

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

JANUARY 6, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Vice Chairman
MARY OATES WALKER Board Member

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.
JOHN NYARKU Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN
STEPHEN MORDFIN
KAREN THOMAS

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

1:23 p.m.

CHAIRPERSON MILLER: This hearing will, please, come to order. Good afternoon, ladies and gentlemen, and happy new year. This is the January 6, 2009 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I'm the Chair.

To my right is Mr. Marc Loud, he is our Vice Chair. To my left will be coming in the door is Mary Oates Walker, Board Member. Our other Board Member, Mr. Shane Dettman, is out of the country, at this time, so he won't be participating in our hearings this afternoon.

And with us is Mr. Cliff Moy from the Office of Zoning and Ms. Beverley Bailey from the Office of Zoning and expected to join us shortly are Ms. Lori Monroe from the Office of Attorney General and I believe we will also be joined shortly by a Zoning Commissioner.

1 So that's who we are up here.
2 Now, copies of today's agenda are available to
3 you and are located to my left in the wall bin
4 near the door. Please, be aware that this
5 proceeding is being recorded by a Court
6 Reporter and is also webcast live.
7 Accordingly, we must ask you to refrain from
8 any disruptive noises or actions in the
9 hearing room.

10 When presenting information to the
11 Board, please, turn on and speak into the
12 microphone, first, stating your name and home
13 address. When you are finished speaking,
14 please, turn your microphone off, so that your
15 microphone is no longer picking up sound or
16 background noise.

17 All persons planning to testify
18 either in favor or in opposition are to fill
19 out two witness cards. These cards are
20 located to my left on the table near the door
21 and on the witness tables. Upon coming
22 forward to speak to the Board, please, give

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1 both cards to the reporter sitting to my
2 right.

3 The order of procedure for special
4 exceptions and variances is as follows: One,
5 statement and witnesses of the applicant.
6 Two, Government reports, including Office of
7 Planning, Department of Public Works, DDOT,
8 etcetera. Three, report of the Advisory
9 Neighborhood Commission. Four, parties or
10 persons in support. Five, parties or persons
11 in opposition. Six, closing remarks by the
12 applicant.

13 Pursuant to Section 3117.4 and
14 3117.5 of the Zoning Regulations, the
15 following time constraints will be maintained:
16 The applicant, persons and parties, except an
17 ANC, in support, including witnesses, 60
18 minutes collectively. Persons and parties,
19 except an ANC, in opposition, including
20 witnesses, 60 minutes collectively.
21 Individuals 3 minutes.

22 These time restraints do not

1 include cross examination and/or questions
2 from the Board. Cross examination of
3 witnesses is permitted by the applicant or
4 parties. The ANC within which the property is
5 located is automatically a party in a special
6 exception or variance case.

7 Nothing prohibits the Board from
8 placing reasonable restrictions on cross
9 examination, including time limits and
10 limitations on the scope of cross examination.

11 The record will be closed at the
12 conclusion of each case, except for any
13 material specifically requested by the Board.
14 The Board and the staff will specify at the
15 end of the hearing exactly what is expected
16 and the date when the persons must submit the
17 evidence to the Office of Zoning. After the
18 record is closed, no other information will be
19 accepted by the Board.

20 The Sunshine Act requires that the
21 Public Hearing on each case be held in the
22 open before the public. The Board may,

1 consistent with it's Rules of Procedure and
2 the Sunshine Act, enter Executive Session
3 during or after the Public Hearing on a case
4 for purposes of reviewing the record or
5 deliberating on the case.

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

12 Please, turn off all beepers and
13 cell phones, at this time, so as not to
14 disrupt these proceedings.

15 The Board will make every effort
16 to conclude the Public Hearing as near as
17 possible to 6:00 p.m. If the afternoon cases
18 are not completed at 6:00, the Board will
19 assess whether it can complete the pending
20 case or cases remaining on the agenda.

21 At this time, the Board will
22 consider any preliminary matters. Preliminary

1 matters are those that relate to whether a
2 case will or should be heard today, such as
3 requests for postponement, continuance or
4 withdrawal or whether proper and adequate
5 notice of the hearing has been given. If you
6 are not prepared to go forward with a case
7 today or if you believe that the Board should
8 not proceed, now is the time to raise such a
9 matter.

10 Does the staff have any
11 preliminary matters?

12 MS. BAILEY: Madam Chair, to
13 everyone, good afternoon. Staff does not.

14 CHAIRPERSON MILLER: Okay. Then
15 at this time, would all individuals wishing to
16 testify today, please, rise to take the oath?
17 And Ms. Bailey will administer it.

18 MS. BAILEY: The gentleman at the
19 door, you're with the DC Teacher's Credit
20 Union? Would you and your party come in,
21 because it's time. Sorry.

22 Would you, please, raise your

1 right hand?

2 (Whereupon, the witnesses were
3 sworn.)

4 MS. BAILEY: Thank you. Madam
5 Chair, the first case this afternoon is the
6 Application of the DC Teacher's Federal Credit
7 Union and it's a continuation case from the
8 November 25, 2008 hearing. It's Application
9 No. 17842. As indicated, DC Teacher's Federal
10 Credit Union, pursuant to 11 DCMR 3103.2, for
11 a use variance to allow the continued use of
12 the former Edmunds Public School for general
13 office use under section 330.5 at premises 901
14 through 903 D Street, N.E. The property is
15 Zoned R-4. It is located in Square 938, Lot
16 809.

17 At the last hearing, there was
18 some concerns about posting of the property.
19 That matter has been resolved and I believe
20 the hearing is to be continued with the
21 applicant's continued presentation of the
22 case, at this time.

1 CHAIRPERSON MILLER: Good
2 afternoon. When you are ready, why don't you
3 introduce yourselves for the record? I guess
4 we can start from this side, my right. I
5 don't think you are on the mike. You have to
6 press where it says push or push where it says
7 push.

8 MR. McWILLIAMS: I'm David A.
9 McWilliams. I'm the CEO of the DC Teacher's
10 Federal Credit Union.

11 MR. ROCHELLE: Anthony Rochelle,
12 General Counsel to the DC Teacher's Federal
13 Credit Union.

14 MR. BURRELL: James Burrell, I'm a
15 consultant with the DC Teacher's Federal
16 Credit Union.

17 MR. MAIDEN: Joe Maiden, I'm the
18 architect for the DC Teacher's Federal Credit
19 Union.

20 MR. LIVERMORE: John Livermore,
21 associate of Maiden & Associates, structural
22 engineer.

1 CHAIRPERSON MILLER: And is there
2 anybody here from the ANC on this case? Oh,
3 would you come forward, too, as well, since
4 you are automatically a party in this case.

5 MR. HOLMES: I'm David Holmes.
6 I'm the designated representative of ANC-6A.

7 CHAIRPERSON MILLER: Okay. So you
8 are ready to proceed today on this case. As
9 I understand it, you already were given a use
10 variance and you didn't obtain the C of O in
11 time before the order lapsed. Is that
12 correct?

13 MR. MAIDEN: That's correct.

14 CHAIRPERSON MILLER: So you are
15 here again for the same use variance?

16 MR. MAIDEN: Yes.

17 CHAIRPERSON MILLER: Okay. Okay.
18 That part is pretty straightforward, but if
19 you want to just address briefly why you meet
20 the variance test, that would set the
21 framework here.

22 MR. MAIDEN: Okay. The Office of

1 Planning wrote a statement the last time, I
2 don't have that statement with me, but it's
3 basically the same thing that they had in
4 their statement that --

5 CHAIRPERSON MILLER: Is your mike
6 on?

7 MR. MAIDEN: Yes, it is.

8 CHAIRPERSON MILLER: There you go.
9 That's better.

10 MR. MAIDEN: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MR. MAIDEN: -- meets the test.

13 We are basically here to renew the letter that
14 was briefly issued -- an order that was
15 previously issued. And the ANC has some
16 concerns and we have been in touch with the
17 ANC. And we are working out those
18 arrangements with them. And that's basically
19 it.

20 CHAIRPERSON MILLER: Okay. So you
21 basically have been using the property for
22 office space in accordance with the summary

1 order for 10 years?

2 MR. MAIDEN: That's correct.

3 CHAIRPERSON MILLER: You just
4 never got the C of O?

5 MR. MAIDEN: That is correct.

6 CHAIRPERSON MILLER: Okay. Okay.
7 And I have the Office of Planning's report as
8 well, we all do, and they support the
9 application and they are here to speak for
10 themselves as well. So am I correct then
11 maybe the issue here is -- goes to the ANC's
12 conditions?

13 MR. MAIDEN: Well --

14 CHAIRPERSON MILLER: I'm going to
15 turn to the ANC. We can turn to the ANC,
16 but --

17 MR. MAIDEN: -- the last time we
18 were here, the sign --

19 CHAIRPERSON MILLER: There was a
20 posting issue.

21 MR. MAIDEN: Right, posting.

22 CHAIRPERSON MILLER: And that has

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1 been taken care of?

2 MR. MAIDEN: That's been taken
3 care of, yes.

4 CHAIRPERSON MILLER: Okay. Is
5 there anything you want to add to your case,
6 at this point?

7 MR. MAIDEN: No.

8 CHAIRPERSON MILLER: Okay. Are
9 there questions from Board Members?

10 VICE CHAIRMAN LOUD: Just real
11 brief. After the initial use variance was
12 granted, I guess, in 1999, there was some
13 modifications to the building. Is that
14 correct? There were some modifications
15 undertaken?

16 MR. MAIDEN: Yes.

17 VICE CHAIRMAN LOUD: Okay. Do you
18 just very briefly want to share what those
19 were and what the cost was? If anybody knows.

20 MR. MAIDEN: Do you know anything
21 about that, John?

22 MR. McWILLIAMS: We spent roughly

1 -- I guess that's the life of being in the
2 building, we probably spent roughly over a
3 million dollars. And I say that to say this.
4 Let me qualify it a bit.

5 When we occupied the building
6 initially, the D.C. Government, District
7 Government, DC Public Schools was trying to
8 get rid of its surplus properties, because
9 they had a lot of compliance issues and we --
10 they did not have the resources to take care
11 of those compliance issues. So we acquired
12 the building and in the process of doing so,
13 went about the business of satisfying as many
14 of the compliance issues or the compliance
15 issues in the building as possible to remove
16 asbestos and many of the other things there.

17 There have been some things that
18 have been done that just add to the
19 atmosphere, the health and danger of staffing,
20 like removing asbestos and things of that
21 nature. We went about the business of doing
22 it and that was quite an expensive

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1 undertaking.

2 To replace the windows on the 9th
3 Street side, on the -- to replace the entire
4 windows in the building when we initially
5 moved in, we have since that time upgraded
6 them to more pleasing, more grids to look --
7 to satisfy perhaps the conditions of the
8 Historical Society.

9 Suited bathrooms, working on
10 having handicapped accessibility plan that we
11 are working on as well. We have been really
12 pushing to make this a suitable building to
13 identify with the neighborhood. We have been
14 asked by neighbors to make certain
15 improvements. We have not been reluctant to
16 do that by any means. We have always moved to
17 be good neighbors.

18 We have a Flexcar that parks on
19 our parking lot. We allow parking for the
20 neighborhood, the church. We allow the
21 neighbors to park at night, so that they just
22 must have their cars off by 8:00 in the

1 morning.

2 And I guess I got a little carried
3 away. You just asked me one simple question
4 and I'm telling you how to make a watch there.
5 So I apologize.

6 VICE CHAIRMAN LOUD: That's okay,
7 I'm used to it. But to sort of reiterate what
8 you said about a million dollars in
9 modifications and it included the asbestos
10 removal, entire window replacement and then
11 some other things that you went into in a
12 little more detail.

13 MR. McWILLIAMS: Yes.

14 VICE CHAIRMAN LOUD: Okay. And
15 that was all since you were granted the use
16 variance?

17 MR. McWILLIAMS: That's right.

18 VICE CHAIRMAN LOUD: Okay. Thank
19 you.

20 CHAIRPERSON MILLER: I'm not sure
21 if my memory serves me correctly, but were
22 there other agreements that you had made at

1 the time you applied for the use variance 10
2 years ago to make certain improvements that
3 the neighbors were seeking?

4 MR. McWILLIAMS: Yes, we --

5 CHAIRPERSON MILLER: And what
6 happened with those?

7 MR. McWILLIAMS: Well, we were
8 asked to put -- I think we were asked to put
9 some flower pots around the front. However,
10 we did on the very side, the D Street side.
11 We built a wall there and put flowers there
12 that were aesthetically pleasing to the
13 community. As a matter of fact, we got all
14 kinds of rave reviews for doing that.

15 We have landscapers, not
16 landscapers, but people who come in and keep
17 the lot clean and do all kinds of things to
18 make sure that the lot is as pleasing and well
19 maintained. And that was part of our plan,
20 but we are always cautious about cost and
21 trying to make sure that we manage our
22 membership resources well balancing that with

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1 the community.

2 CHAIRPERSON MILLER: Other Board
3 questions? Does the ANC have any questions
4 for the applicant?

5 CROSS EXAMINATION

6 MR. HOLMES: Yes, thank you. Were
7 the modifications that you expense -- that you
8 just mentioned, the expenses that you just
9 mentioned, pursuant to the order or were they
10 done separately?

11 MR. McWILLIAMS: No, these were
12 just necessary improvements that just had to
13 be made. The painting of the building, the
14 putting of the roof on, the removal of the
15 asbestos and, you know, flooring cosmetics.
16 We had to upgrade the electricity in the
17 building because of surges and things of that
18 nature.

19 MR. HOLMES: Okay.

20 MR. McWILLIAMS: So that has been
21 a continual and ongoing improvement plan for
22 our building.

1 MR. HOLMES: In the transcript of
2 the 1999 hearing, a number of discussions are
3 had by the Board Members and in response to
4 the letters submitted by the community asking
5 for certain modifications to be done. Do you
6 have an expense that was caused directly as a
7 result of that discussion? This is more on
8 point to Mr. Loud's question as to whether
9 expense actually took place pursuant to the
10 order.

11 MR. McWILLIAMS: Um-hum, yes. I
12 do have expenses associated directly with
13 that, since that time, the planting of the
14 flowers --

15 MR. HOLMES: Those are the flower
16 boxes?

17 MR. McWILLIAMS: -- that were put
18 out front.

19 MR. HOLMES: Thank you.

20 MR. McWILLIAMS: Thank you.

21 CHAIRPERSON MILLER: Okay. Why
22 don't we go to the Office of Planning then?

1 MR. MORDFIN: Good afternoon,
2 Chair and Members of the Board. I'm Stephen
3 Mordfin with the Office of Planning. And the
4 subject application is in conformance with the
5 provisions of the variance test in that the
6 subject property is unique and that a previous
7 use variance was granted by the Board in 1999
8 and the building has been used and modified to
9 accommodate these based on that approval, even
10 though the applicant erred in not obtaining a
11 Certificate of Occupancy following the
12 granting of the previous application.

13 The unique and extraordinary
14 condition is that the property has functioned
15 as office space for the DC Teacher's Federal
16 Credit Union for, approximately, 10 years
17 based on that previous approval. It would be
18 an exceptional and undue hardship not to allow
19 the use to continue because of the oversight
20 of the applicant in not filing for the
21 Certificate of Occupancy.

22 And the variance can be granted

1 without substantial detriment to the public
2 good and without substantially impairing the
3 intent, purpose and integrity of the Zoning
4 Regulations and Map because it is a relatively
5 quiet use with no evening or weekend hours.
6 Parking is provided on-site and more than 50
7 percent of all the transactions are completed
8 electronically. Thank you.

9 CHAIRPERSON MILLER: Okay. Any
10 questions? I have a question. Have you had
11 a chance to see what is marked as Exhibit 25,
12 which is the ANC's proposed conditions set
13 forth in a letter from the Chair of ANC-6A?

14 MR. MORDFIN: Yes, I have a copy
15 of that.

16 CHAIRPERSON MILLER: Okay. And it
17 looks like this is something that we would
18 give great weight to because it was voted upon
19 at a publicly noticed meeting with a quorum
20 present. Okay. Do you have any comments on
21 that, at this point? I know we are going to
22 turn to the ANC when it is their turn to

1 explain them, but if you have some now, we
2 could entertain them.

3 MR. MORDFIN: I don't have any
4 comments on the conditions. I mean, some of
5 the conditions go beyond the private space
6 into the public space, which may be difficult
7 to condition for them to do things in public
8 space. But our only comments with these are
9 that whether or not they actually go towards
10 the use variance and whether or not they
11 support the use or don't support the use.

12 And, you know, whether -- they
13 have to -- I view the conditions as they have
14 to be relevant to the use variance request.
15 And that's the way I look at the conditions,
16 whether or not they actually support that use
17 variance or not.

18 CHAIRPERSON MILLER: Okay. And
19 this is a use to allow an office use, a
20 variance to allow an office use in a
21 Residential District. So I think that some of
22 these are questions of fact that go to that.

1 For instance, No. 1 talks about noise. And I
2 don't know whether you have any other
3 information about whether the noise is
4 creating an adverse impact on neighboring
5 properties.

6 MR. MORDFIN: I don't have any
7 information on that and I don't know what the
8 noise level is either.

9 CHAIRPERSON MILLER: Okay. Okay.
10 The next one deals with public space. The
11 third one talks about -- well, maybe we will
12 have to hear the ANC explain some of them.
13 But do you have an opinion on, for instance,
14 whether this should be termed? This says that
15 the variance would expire after a period of
16 seven years.

17 MR. MORDFIN: Whether it should
18 expire?

19 CHAIRPERSON MILLER: Um-hum.

20 MR. MORDFIN: Um, my view on that
21 is that if the use of this building, if there
22 is a unique situation and it is appropriate to

1 use the building as that, I'm not sure that it
2 should expire. Special exceptions typically,
3 you know, you can have them expire because its
4 use is permitted, you know, as a matter-of-
5 right, subject to conditions because it could
6 cause adverse effects.

7 This isn't a special exception,
8 although it's not an area variance. It's a
9 use variance making it a little bit different.
10 But whether or not, you know, if it's
11 appropriate, I don't see that it needs an
12 expiration date. If it's not appropriate,
13 then it should just not be approved.

14 CHAIRPERSON MILLER: Thank you.
15 Do others have questions of Office of
16 Planning? Does the applicant have any
17 questions? Does the ANC? Before we go to the
18 ANC, I just want to ask the -- I want to
19 follow-up with the applicant just to get on
20 the record.

21 If relief weren't granted, the
22 Office of Planning has concluded that it would

1 be an undue hardship upon you all if you
2 couldn't operate there. Do you want to
3 elaborate what that would mean as far as undue
4 hardship upon you if the relief weren't
5 granted?

6 MR. McWILLIAMS: Well, I just
7 immediately think about our membership and its
8 impact on teachers, the ability for us to
9 provide services to them, the cost associated
10 with a move or moving to another location,
11 just what -- I could just go on and on and on
12 in terms of our bottom line and its impact
13 over all. I just -- it would be devastating
14 for the Credit Union and its membership.

15 Oh, okay, let me just first of all
16 share with you that prior to 1999 we were
17 given the building as an opportunity to
18 operate for the DC Teacher's Federal Credit
19 Union, at that time. Credit Unions
20 historically have provided space for its
21 credit unions. We were provided space there.

22 However, we were charged -- that

1 was the first time we had been charged rent
2 for such -- for use of such space. Again, I
3 reiterate that the District Government did not
4 have the funds and resources, at that time, to
5 bring the building into compliance. And so we
6 acquired the building with the idea of
7 bringing it into compliance. And we have done
8 that over the years.

9 CHAIRPERSON MILLER: Okay. So you
10 made a great investment in this building as
11 well. Is that correct?

12 MR. McWILLIAMS: That's correct.

13 CHAIRPERSON MILLER: Okay.

14 MEMBER WALKER: So what was the
15 reason for the Credit Union's failure to
16 obtain a C of O after the BZA order issued in
17 '99?

18 MR. McWILLIAMS: There was a
19 series of attempts with another firm to get
20 this taken care of and it just never got
21 followed through on the way it should have.
22 And I've got to tell you, or I don't need to

1 tell you rather, that this is not an easily or
2 attainable kind of thing. That here I am
3 sitting with my attorney and architect and
4 engineer and a consultant and probably are not
5 manned or got enough resources now to make
6 sure that we do all of the things and get
7 these things done in an appropriate fashion.

8 MEMBER WALKER: And one more
9 question just following up on what you said
10 about your -- about the building being made
11 available to you. Was there some relationship
12 between the Credit Union and DCPS or D.C.
13 Government back then? I mean, how is it that
14 the Credit Union came to gain access to this
15 building in the first place?

16 MR. McWILLIAMS: Credit Unions in
17 order to operate must have a sponsor. The
18 Credit Union was started in 1935 and the DC
19 Public Schools was our single source sponsor
20 at that time. Since that time, we now serve
21 the University of the District of Columbia and
22 charter schools and members of their immediate

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1 family.

2 But without the sponsorship of DC
3 Public Schools, we never would have. So we
4 are not District Government, but we are -- we
5 serve our District Government employees. And
6 they benefit from our services. Um-hum, and
7 the school board, of course, gave us that
8 building initially for our headquarters and to
9 operate.

10 We were in the Summer School
11 Building prior to that and that was being
12 renovated and they moved us to that building.

13 MEMBER WALKER: So you leased the
14 building then from the school board?

15 MR. McWILLIAMS: We leased the
16 building from the school board at that time.
17 When it got to the point, as I said, they
18 didn't have the resources to do the -- make
19 the necessary improvements. We then -- these
20 surplus properties were made available and we
21 acquired the property in 1999.

22 MEMBER WALKER: And how long had

1 you occupied the building prior to 1999?

2 MR. McWILLIAMS: I think we were
3 in there 1980, if I'm not mistaken, 1980/81 we
4 have been in that building.

5 MEMBER WALKER: Thank you.

6 MR. McWILLIAMS: Um-hum.

7 CHAIRPERSON MILLER: Okay. Any
8 other questions? All right. Why don't we go
9 to Mr. Holmes then on behalf of the ANC?

10 MR. HOLMES: Madam Chair,
11 Commissioner -- Members of the Board, at your
12 last meeting, you asked me for a more specific
13 authorization and I said I would be happy to
14 provide one. I'm unable to satisfy that
15 request, because no formal --

16 CHAIRPERSON MILLER: I'm sorry,
17 could you repeat that? I got distracted for
18 a minute and I want to hear what you said.

19 MR. HOLMES: At the last meeting,
20 you had asked me to provide a more specific
21 authorization from the ANC. I'm unable to
22 provide that request, because no formal

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1 agreement was offered to the ANC on which they
2 could vote, other than what we had discussed
3 all along.

4 The enumerated points in our
5 original motion were simply there hopefully to
6 be part of a negotiated settlement between the
7 DC Teacher's Credit Union and the ANC and the
8 neighborhood in advance of this meeting. We
9 hoped we could present ourselves here with a
10 signed agreement and simply go for a summary
11 judgment and a Bench decision.

12 That has not happened. We have
13 not received anything except an offer on the
14 part of the architect, but that is not
15 formally binding on the Credit Union. So I am
16 now in the position under our resolution from
17 the ANC of opposition. The requested variance
18 fails to meet the conditions of the variance.

19 CHAIRPERSON MILLER: Okay. Can I
20 stop you for a second?

21 MR. HOLMES: Sure.

22 CHAIRPERSON MILLER: I'm looking

1 at November 14, 2008 letter that I made
2 reference to.

3 MR. HOLMES: Yes.

4 CHAIRPERSON MILLER: To which I
5 said we would be giving great weight because
6 it references a publicly noticed meeting with
7 a quorum present and a vote, etcetera. Now it
8 sounds like you are saying something
9 different. This says that the ANC
10 conditionally supports the applicant's
11 request, subject to the following conditions
12 and there are six.

13 MR. HOLMES: And those conditions
14 have not been met.

15 CHAIRPERSON MILLER: Okay. I have
16 just been handed a letter, December 28th. I
17 don't know if any of my Board Members -- do
18 you have it? Oh, okay. Oh, okay, this
19 December 28th letter, this doesn't look like
20 it has a vote or was at a publicly noticed
21 meeting, correct?

22 MR. HOLMES: That's correct. This

1 is pursuant -- testimony pursuant to the
2 original resolution adopted by the ANC, which
3 set several conditions.

4 CHAIRPERSON MILLER: Oh, okay.

5 MR. HOLMES: And designates --

6 CHAIRPERSON MILLER: So this is
7 your testimony?

8 MR. HOLMES: I'm sorry?

9 CHAIRPERSON MILLER: Is this like
10 testimony?

11 MR. HOLMES: Yes.

12 CHAIRPERSON MILLER: Okay, okay.
13 I'm sorry. I just wanted to get that
14 straight. It's just that, you know, I read
15 the resolution that says conditionally support
16 and then you started to say that the ANC
17 opposes and so they seemed a little bit
18 different.

19 MR. HOLMES: We would have been
20 happy to support their request had they met
21 the conditions. They have not. We have not
22 received anything from them. And as a matter

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1 of fact, we did receive a letter from their
2 architect with a set of conditions and we have
3 included the following within the design and
4 it goes through the conditions that we had
5 discussed with them and embodied in that
6 motion.

7 Those have been withdrawn. So we
8 have, in fact, nothing now except our
9 opposition. They have not -- failed to meet
10 any of those conditions.

11 MS. MONROE: Can I interject for a
12 second, Madam Chair? I realize that you had
13 conditionally supported and now there is a
14 letter from December 28th saying -- but the
15 new letter doesn't say that it was voted on at
16 the ANC and have all the great weight
17 requirements. So I would recommend if you do
18 want to be an opposition party, that we have
19 a letter come in that would meet all the great
20 weight requirements opposing.

21 As opposed to the first one which
22 said we conditionally support, because there

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1 is nothing there that says the conditions
2 weren't met. See what I'm saying? If you're
3 reversing your position, you should have a new
4 letter, if that's possible.

5 MR. HOLMES: The motion says that
6 the ANC --

7 CHAIRPERSON MILLER: What's the
8 motion you are referring to? Are you calling
9 the December 28th -- what motion are you
10 talking about?

11 MR. HOLMES: The motion adopted by
12 the ANC, which is embodied in that letter.

13 CHAIRPERSON MILLER: November 14th
14 letter?

15 MR. HOLMES: Right.

16 CHAIRPERSON MILLER: Okay.

17 MR. HOLMES: Which designates me
18 as their representative or any officer to
19 determine -- to support based on the
20 acceptance of certain conditions by the DC
21 Teacher's Credit Union. Since they have not
22 met any of those conditions, I cannot be in

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1 support. I am in opposition.

2 CHAIRPERSON MILLER: Okay. That
3 kind of language just isn't all that clear, so
4 why don't you go through the conditions and
5 we'll hear the responses to it, because maybe
6 today they are going to say something, you
7 know, I don't know. So what I see in front of
8 us that has been voted on by the ANC at a
9 publicly noticed meeting are conditional
10 support, subject to these six conditions.

11 So why don't we go through the
12 conditions and the Board will consider the
13 conditions as well, even if they haven't
14 agreed to them, that's what we're here for.
15 So can you address them? For instance, No. 1,
16 the noise produced by air conditioners on the
17 north side of the building as abated. Can you
18 tell us about that? How do we measure whether
19 this noise is having an adverse impact on the
20 community? And how would you propose that it
21 be abated?

22 MR. HOLMES: The current noise

1 level is sufficient that it is difficult to
2 hold a conversation on the sidewalk as you
3 walk by. Neighbors on the opposite side of
4 the street complain constantly about the
5 noise. These are old heat pumps and condenser
6 units, you know. Under the normal scheme of
7 things, I think they would have been replaced
8 anyway. But the noise level is sufficient
9 that the noise has to be abated.

10 The architect's proposal was to
11 move them to the roof. Failing that, the
12 noise -- the condensers could be replaced.
13 The heat pump could be replaced with current
14 units that would reduce the noise level. The
15 ANC's suggestion, this is mine, is that it be
16 reduced to 65 dba, which is conversation
17 level, at the nearest point on the sidewalk.

18 CHAIRPERSON MILLER: Okay. Why
19 don't we hear the applicant's response?

20 MR. McWILLIAMS: I would just like
21 to say that we would agree to replace the
22 units. I think there is only -- out of the

1 units that are there, there is one that is an
2 old unit and we were waiting for it to kind of
3 give us its last hurrah and then we were going
4 to replace it with new, of course, more
5 efficient units. So the answer is yes, we
6 would be amenable to that.

7 CHAIRPERSON MILLER: Well, when
8 would that be?

9 MR. McWILLIAMS: I would like --
10 how much window could you give me?

11 CHAIRPERSON MILLER: No, I mean, I
12 think that we would put a time in the order.

13 MR. McWILLIAMS: I'll put it --

14 CHAIRPERSON MILLER: But, you
15 know, if you are waiting for them to, you
16 know, wear out, if that's 10 years or
17 something, then that's not going to work.

18 MR. McWILLIAMS: What I want to do
19 is incorporate it in my budget and I want to
20 make sure that -- because when I leave here,
21 I want to make sure that these things get
22 done.

1 CHAIRPERSON MILLER: Okay. Now,
2 is that something you need to figure out or is
3 that something you could commit to today?

4 MR. McWILLIAMS: I think that --

5 CHAIRPERSON MILLER: You want to
6 take a look at that and say yes, we will
7 replace the units within such and such time?

8 MR. McWILLIAMS: Yes.

9 MR. ROCHELLE: Yes, we would want
10 to submit something with a time certain.

11 CHAIRPERSON MILLER: Okay.

12 MR. ROCHELLE: In terms of
13 replacement.

14 MR. HOLMES: May I suggest July
15 31, 2009?

16 CHAIRPERSON MILLER: Do you want
17 to respond to that?

18 MR. McWILLIAMS: We would like to
19 get back to the Board.

20 CHAIRPERSON MILLER: Okay. So
21 then they will get back on that one. Okay.
22 So they are willing to address Condition No.

1 1. How about Condition No. 2? Let me see.

2 MR. HOLMES: That's a public space
3 condition.

4 MR. ROCHELLE: I think we take the
5 view that that's outside the Board's authority
6 and should be addressed.

7 CHAIRPERSON MILLER: Do you have a
8 response to that?

9 MR. HOLMES: I would have to base
10 my statement on the 1999 transcript where the
11 same questions were raised and the Board in
12 its final decision decided that it was outside
13 their boundary. If I have to accept that, I
14 will. I would be very appreciative if you
15 could order the concrete slab in the public
16 space to be removed, but we have contacted
17 Public Space, since we didn't get an
18 agreement, and inspectors are to come out and
19 there is no grandfathering of violations of
20 public space. So we expect it will be removed
21 automatically by Public Space action.

22 CHAIRPERSON MILLER: Okay. I

1 would concur that this is not within our
2 jurisdiction, that it is public space, if
3 Board Members don't disagree. It seems like
4 we can take that condition out and that's not
5 going to mean that the ANC opposes the
6 application, correct?

7 MR. HOLMES: That's correct.

8 CHAIRPERSON MILLER: Okay. So
9 let's go to No. 3. The parking spaces between
10 the building and sidewalk are eliminated.

11 MR. HOLMES: Once again, that is
12 within public space. The inspector says there
13 is a clear violation. One of those and half
14 of those units, in other words, those on
15 public space will need to be removed.

16 CHAIRPERSON MILLER: Okay. So
17 you're dealing with that in public space.
18 That's not within our jurisdiction, so we'll
19 take that out of consideration. Okay. No. 4,
20 the grates will be removed from the lower
21 windows to improve the appearance of the
22 building.

1 MR. HOLMES: That's clearly within
2 your jurisdiction. The unfortunate effect of
3 the current grates, they are painted white and
4 they are the close knit, finely woven kind, is
5 to give it an institutional look. It looks
6 very much like DC Jail. We simply ask them to
7 replace it with something that is unobtrusive.

8 We recognize that they store a lot
9 of money in this building and need security,
10 but there are a lot of options out there that
11 would provide security and would look good.
12 So we hope that you can include some language
13 in your order that would do that. And I
14 suspect they will agree to it, since the
15 architect's plans said that they would do so.

16 CHAIRPERSON MILLER: All right.
17 What's the applicant's response?

18 MR. McWILLIAMS: You address it.

19 MR. ROCHELLE: We are prepared to
20 address this particular issue. We do have a
21 major concern about security. In terms of the
22 aesthetics, we believe that the frontage on

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1 both D and 9th Street should be addressed.
2 The rear however where we're likely to receive
3 a break-in should maintain the same kind of
4 protection that we have. And so we would look
5 at changing the front gates on 9th and D
6 Street.

7 MR. HOLMES: We will take what we
8 can get. Nonetheless, I suspect that these
9 probably need to be replaced, too. They are
10 old. The support structures that they are
11 secured into are probably also very old. It's
12 real easy to pull these things out. But I'm
13 not going to fight for that. At least we will
14 get it towards the public space, towards the
15 neighbors.

16 CHAIRPERSON MILLER: Okay. So the
17 applicant is going to get back to us on that
18 as well, right? Okay. 5, the chain link
19 fence should be replaced with a more
20 attractive alternative.

21 MR. HOLMES: The current chain
22 link fence is badly corroded. The attachments

1 to the vertical posts, the posts themselves
2 are all corroded and the whole thing is
3 rusted, beginning to rust out. It is not
4 appropriate within the Historic District to
5 have such a chain link fence. We asked them
6 to replace that with something that is more
7 attractive and appropriate to the Historic
8 District.

9 CHAIRPERSON MILLER: Okay. The
10 applicant's response?

11 MR. ROCHELLE: Yes. We are
12 prepared to address that. However, again, we
13 would like some time to put it in the budget,
14 because it's not without cost. And we would
15 like to be able to get back to you with a time
16 table with a date certain.

17 CHAIRPERSON MILLER: Okay.

18 MR. HOLMES: Then I would plead
19 with the BZA in embodying the language, the
20 time table language to make it as short as
21 possible.

22 CHAIRPERSON MILLER: Okay. I

1 mean, I think that the Board hears both of the
2 concerns here and that we would weigh that and
3 then set the time. Okay. The last one is
4 putting a term on the variance. You obviously
5 heard what the Office of Planning said.

6 MR. HOLMES: In 1999, a number of
7 agreements seemed to have been made which did
8 not get realized. And I quote the chair at
9 that point. It says that your -- "You all
10 look downright, upright, forthright people and
11 you said you will do it, so we'll take your
12 word for it, besides which I know a bunch of
13 you," this is Vice Chair King.

14 Several points they said that "We
15 are relying on your good faith, of which I
16 believe they have in abundance that they will
17 go ahead and take these actions." We would
18 like for you to formalize the time, formalize
19 the process to the extent you can. The last
20 time it didn't happen. This time I hope it
21 will.

22 CHAIRPERSON MILLER: Okay. Now, I

1 hear exactly what you are saying and I think
2 that what I would contemplate is putting
3 whatever we expect to happen in the order. It
4 was not in the order at that time. They just
5 relied on their good -- on their word and it
6 was in the transcript and that's not the same
7 thing as being a part of the order.

8 So these things could be
9 conditions in the order. However, that
10 doesn't go to the question of a term. And I
11 think that if what you are looking for is
12 enforcement and that it's in the order, there
13 will be enforcement, because there will be an
14 order that the seven years doesn't really
15 accomplish that as much as putting the
16 conditions in an order.

17 MR. HOLMES: I understand.

18 CHAIRPERSON MILLER: Okay. So we
19 have just gone through all the conditions. I
20 also want to make a comment and I guess get
21 your response. We have gone through all the
22 conditions that the ANC has recommended.

1 Therefore, I mean, we're giving them great
2 weight right now.

3 And then when we deliberate, we
4 will go through this process. However, when
5 I read this, "The Commission will
6 conditionally support the request for
7 variance, subject to the following
8 conditions," and we have just gone through
9 some and then decided that well, a couple of
10 them aren't in our jurisdiction or that
11 embodying the conditions in the order will, in
12 fact, achieve the goal of No. 6, I think, of
13 enforceability, that I wouldn't interpret that
14 type of order as one that the ANC would be in
15 opposition to.

16 MR. HOLMES: Could you repeat that
17 last sentence?

18 CHAIRPERSON MILLER: No. I'm kind
19 of saying that we have gone through all the
20 conditions that they say. They conditionally
21 support, subject to the following conditions.
22 Okay. We have taken a couple of them out,

1 because they are not our jurisdiction.

2 So I don't think that that means
3 that the ANC would oppose the relief. Now,
4 then we get to the one about the -- the last
5 one about the expiration and we have had this
6 dialogue about well, what's the point of that?
7 And my understanding the point of that is that
8 you want this order, these conditions to be
9 enforceable.

10 And that actually they are more
11 enforceable, I'm saying they are more
12 enforceable if they are in the order, than if
13 we put an expiration on the relief. So I
14 think that we're not at deliberation time, but
15 if we get -- if the applicant responds to some
16 of the other concerns raised in your letter
17 with respect to the air conditioning and the
18 grates and the chain link fence, etcetera, I
19 would not interpret the ANC as being opposed
20 to the relief that is being granted, but it's
21 subject to interpretation.

22 So I don't know if you want to

1 respond to that?

2 MR. HOLMES: Yes.

3 CHAIRPERSON MILLER: I mean, it's
4 just one Board Member saying that.

5 MR. HOLMES: The motion adopted by
6 the ANC is very careful investing its
7 representative with the power to negotiate and
8 make determinations. In other words, I am not
9 totally bound. If the BZA order --

10 CHAIRPERSON MILLER: I see.

11 MR. HOLMES: -- accomplishes some
12 of these that are within its jurisdiction, I
13 am prepared to support their request.

14 CHAIRPERSON MILLER: I see.
15 Actually, the last sentence says that you are
16 vested with the power to determine your
17 ultimate decision to support or oppose the use
18 variance.

19 MR. HOLMES: It's the only way we
20 can do it --

21 CHAIRPERSON MILLER: That's good.

22 MR. HOLMES: -- in these

1 negotiable situations.

2 CHAIRPERSON MILLER: No, that's
3 good, because that's -- because you are here
4 and you can assess whether the goals are being
5 met. Okay. And I think you won't know for
6 sure probably until you see their filing,
7 correct?

8 MR. HOLMES: That's correct.

9 CHAIRPERSON MILLER: Okay. Are
10 there other questions?

11 VICE CHAIRMAN LOUD: I just wanted
12 to ask the applicant in terms of your budget
13 process and how you would go about revising
14 your budget or identifying funds in your
15 budget. How long does that normally take?
16 And are you currently in a budget? In other
17 words, you have already submitted a budget to
18 your board that has already been approved and
19 so you now are in the posture of having to go
20 back to your board with some revisions. And
21 how long would that process take?

22 MR. McWILLIAMS: I would say at

1 least a quarter. At least one quarter, yeah.

2 VICE CHAIRMAN LOUD: They meet
3 quarterly?

4 MR. McWILLIAMS: Well, no, the
5 Board meets monthly, but I would just want to
6 have the time to pull together all the
7 estimates and show the total impact of what
8 this is going to cost us. How we allocate it
9 over the next 5 to 7 years or whatever the
10 time limit that we have to make these
11 improvements.

12 VICE CHAIRMAN LOUD: And well,
13 some of the thinking that you might try to
14 make it through this season with the existing
15 air conditioners? I mean, it's pretty much
16 seasonal use. You're not going to use it in
17 the winter pretty much.

18 MR. McWILLIAMS: That's right,
19 yeah. So there is no need at least until the
20 summer for the air conditioners to kick in.

21 VICE CHAIRMAN LOUD: But the idea
22 is that you would have -- and if you don't

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1 know right now, you don't know. The idea is
2 that you don't know whether you were going to
3 try to make it through this season with it and
4 then we're talking about 2010 or you know
5 and --

6 MR. McWILLIAMS: Yeah.

7 MR. ROCHELLE: It's also to look
8 at the life cycle of the units to see where
9 they are and to make those determinations.
10 That's why we wanted some time to go back and
11 reflect and do the analysis to be able to make
12 a hard and firm decision for the Board.
13 Because we understand the need for
14 enforceability. We understand the need for
15 compliance and just to do it in a way that
16 balances the cost and the likely replacement
17 over time anyway.

18 MR. HOLMES: If I could respond to
19 that, Mr. Loud? The Credit Union very
20 efficiently has contracted with Mr. Maiden,
21 the architect, who has already been in the
22 process of making those determinations of

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1 expense and need. I suspect this thing can
2 happen pretty quickly, since he has already
3 reached the point where he had
4 recommendations. So it need not be drawn out
5 for a great period, length of time.

6 VICE CHAIRMAN LOUD: Well, I think
7 what I hear them saying is that in order to
8 get the information processed through the
9 Board, it would probably take about a quarter.
10 So that even if there is some data already out
11 there, just in terms of massaging it for a
12 briefing package for the Board and whatnot and
13 then allowing a turnaround of decision might
14 take a quarter.

15 I don't know how that fits in
16 terms of your perspective on if that's timely
17 enough, but it is what it is. They are saying
18 about a quarter for the decision.

19 MR. HOLMES: A quarter is
20 certainly reasonable for a decision to be
21 made. I just would like to see this work done
22 as soon as possible. When I replaced my heat

1 pump, my electrical bills dropped by a third
2 when I got a new high efficiency one. They
3 will see at least that. It's something that
4 good business dictates that they should do
5 anyway.

6 CHAIRPERSON MILLER: Does the
7 applicant have any questions for the ANC?

8 MR. ROCHELLE: No, I don't believe
9 that we do.

10 CHAIRPERSON MILLER: Okay.

11 MR. ROCHELLE: Unless Mr. --

12 MR. MAIDEN: I have a comment to
13 make.

14 CHAIRPERSON MILLER: No.

15 MR. MAIDEN: All right.

16 CHAIRPERSON MILLER: Well, I'm not
17 asking for comments. I'm just asking if you
18 have a question for them. You will get to
19 comment later though before we are done.
20 We're just sticking in the process here.

21 If we don't have any other
22 questions for the ANC right now, I would ask

1 if there is anybody here who wishes to testify
2 in support of this application? Anybody here
3 who wishes to testify in opposition to the
4 application?

5 Okay. Can we make room at the
6 table for -- I think there are two, three
7 individuals that want to come and present
8 testimony here at the table. Anybody want to
9 go first in particular? Yes, sir? I don't
10 think your mike is on. And can you give your
11 address as well as your name?

12 MR. LEE: Thelmiah Lee, 2505
13 Brentwood Road, N.E. I was born here and was
14 raised here and I have been a member of the
15 Credit Union for I guess about like 15 years.
16 And they have done quality work as far as
17 assisting me whenever I had to come there.
18 And their parking is very convenient, because
19 a lot of times it's hard to find a parking
20 space, but the parking lot is very beneficial.

21 And it just is very frustrating
22 when we have people who just got into the

1 community and then trying to make -- dictate
2 on everybody else, relationships trying to
3 work together and it's just frustrating that
4 I see this occurring so much, you know.

5 I'm used to living in Lincoln Park
6 neighborhood at one point in time and it's
7 frustrating how folks come in and rather than
8 trying to work with people, they want to
9 dictate this way and dictate that way. And
10 always there's a common ground of trying to
11 work things out, so everybody can be in a win-
12 win situation, whether one person win and one
13 person lose.

14 But like I said, I have got
15 quality service there. The people are very
16 nice and very understanding and they work with
17 you. And that's an old school building and
18 I'm just glad that it's doing something
19 protective in the community.

20 CHAIRPERSON MILLER: Thank you.
21 Any Board questions? Okay. Thank you very
22 much.

1 MR. TALLANT: Madam Chairperson,
2 my name is Drury Tallant. I co-chair the Land
3 Use Committee at the Stanton Park Neighborhood
4 Association and I reside at 732 3rd Street in
5 Northeast. I actually testified at the
6 hearing in 1999 and my objection then is the
7 same as it is today, which has to do with the
8 physical appearance of the exterior of the
9 building.

10 Principally, the concrete apron,
11 which is a point of clarification, actually
12 straddles the public space and private space.
13 The building is set-back from the property
14 line and there is a concrete housekeeping pad
15 that goes from the face of the building to the
16 sidewalk that's rather unsightly.

17 We asked in '99 that that be
18 remediated and returned to green space the way
19 that type of space is treated on the Capitol
20 Hill Historic District neighborhood. And
21 there was implicit agreement that that would
22 be looked at and that they would try to do

1 something to improve the appearance.

2 In fact, it did not make it into
3 the order, as has been noted here today, and
4 nothing has been done.

5 CHAIRPERSON MILLER: Is that
6 public space or private space you're talking
7 about?

8 MR. TALLANT: It's both. It
9 straddles the line. Part of it is on public
10 space, part of it is on private space.
11 Because the building does not go to the
12 property line.

13 CHAIRPERSON MILLER: Okay. I'm
14 having trouble visualizing this, but is it
15 conceivable that what's in our jurisdiction
16 would make a difference without the public
17 space?

18 MR. TALLANT: Yes, it would.

19 CHAIRPERSON MILLER: Okay.

20 MR. TALLANT: Certainly, you
21 probably would not remove half of a concrete
22 slab.

1 CHAIRPERSON MILLER: Not me
2 personally, no, I wouldn't. You're saying
3 that the applicant wouldn't remove half of it,
4 right?

5 MR. TALLANT: I would hope not.
6 We intend to pursue the public space concrete
7 slab through the Public Space Division.

8 CHAIRPERSON MILLER: They could --
9 if you get them, you get the whole thing?

10 MR. TALLANT: Well, no. They
11 would only be technically then required to
12 remove the part that is on public space. The
13 private space would potentially remain. We
14 would like to see it removed in its entirety
15 and landscaped.

16 CHAIRPERSON MILLER: Okay. Am I
17 correct that that is pending before the Public
18 Space Committee in some manner?

19 MR. TALLANT: An application is --
20 I don't know quite whether to say it's
21 pending. No formal application has been made.
22 David referenced, David Holmes, that initial

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1 review by DC Public Space Authority has
2 occurred, but I don't believe that a formal
3 application for a hearing has been, you know,
4 applied for. That is all. I'm sorry.

5 CHAIRPERSON MILLER: Okay.
6 Thanks. I wasn't sure if I had interrupted
7 you.

8 MR. TALLANT: No, that's all.

9 CHAIRPERSON MILLER: Okay. Any
10 other questions? Okay. Mr. Peterson?

11 MR. PETERSON: Thank you very
12 much. My name is Gary Peterson. I live at
13 810 Massachusetts Avenue, N.E., and I am
14 Chairman of the Capitol Hill Restoration
15 Society Zoning Committee. I would just like--
16 we submitted a letter in November of 2008, but
17 I would like to speak to the couple issues
18 that were raised today, because I have
19 personal experience for those, since I live
20 not too far from this property.

21 First of all, when I walk my dog
22 in the summertime, the noise from the

1 equipment on the ground is quite loud. In
2 fact, one could not hold a conversation from
3 the sidewalk based on how noisy the equipment
4 is.

5 Secondly, the school building, as
6 many school buildings are, is not built to the
7 property line or the set-back line. And so
8 portions of the -- there is space between the
9 front of the building and the set-back line
10 for the property. And they should be able to
11 do something in that space. The property
12 itself is very ugly to look at and I think you
13 have heard a few of the things that they could
14 easily do to make it look much better.

15 CHAIRPERSON MILLER: I don't
16 remember. I mean, this is a concrete slab
17 we're talking about?

18 MR. PETERSON: Right.

19 CHAIRPERSON MILLER: What was it
20 that they could easily do to make it look
21 better, besides replacing it, which isn't
22 easy.

1 MR. PETERSON: Well, they could
2 put plants there, potted plants. They could
3 put trees, again, in pots if they had to.
4 There is any number of things that would not
5 be as expensive that they could do. I mean,
6 this is done downtown in a number of places.
7 But they could just make -- sort of add to the
8 greenery of the neighborhood and make it look
9 much better.

10 You also heard testimony about the
11 grills on the windows. They are that extreme
12 fine mesh and then when it is painted, it
13 almost looks like a solid white in the
14 windows. That's all I have to add.

15 CHAIRPERSON MILLER: Okay. Any
16 questions?

17 VICE CHAIRMAN LOUD: I would be
18 curious to get your feedback on something.
19 With a special exception we take a look at
20 whether something is visually intrusive upon
21 the character and scale of surrounding
22 properties, etcetera. But with respect to a

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1 use variance and you know the test as well as
2 anyone, we look at substantial detriment to
3 the public good or impairment of the Zone
4 Plan.

5 The kinds of suggestions you were
6 making regarding trees and green space, do you
7 think that has applicability in the use
8 variance test?

9 MR. TALLANT: Yes, I do from the
10 standpoint of the substantial detriment to the
11 public good. I think that's the area that
12 that comes into.

13 VICE CHAIRMAN LOUD: Okay. Thank
14 you.

15 CHAIRPERSON MILLER: Anything
16 else? Okay. Thank you very much.

17 MR. TALLANT: Um-hum.

18 CHAIRPERSON MILLER: Does the
19 applicant want to respond to the issue about
20 adding greenery or, you know, some type of
21 landscaping or greenery to the front?

22 MR. McWILLIAMS: We are certainly

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1 amenable to doing that. And as a matter of
2 fact, we had talked about placing some pots in
3 the front of the building that would either
4 house trees or house small flowers or greenery
5 of that nature. Removal of the cement, as we
6 were told, because it was put there by DC
7 Public Schools with the idea that it was --
8 water was seeping into the building and that
9 was their resolution to that.

10 And so it provides a benefit.
11 While it may not be as aesthetically pleasing
12 as we would like for it to be, it does provide
13 a benefit and allows for use of the -- at
14 least one-third, it would take away one-third
15 of the building if we were suffering from
16 water seeping into the building in addition to
17 becoming a danger.

18 CHAIRPERSON MILLER: Okay. I
19 think at this time then we are ready for any
20 closing arguments you want to make and then we
21 can talk about what kind of filings you will
22 be doing and the schedule for that. So if you

1 have anything else you want to add at this
2 point, because I don't anticipate another
3 hearing.

4 I would anticipate that, you know,
5 you would address some of the things already
6 discussed and we will review that after you
7 make any other statements by written filings.
8 And then we will set a date for decision.

9 MR. MAIDEN: I have one comment to
10 make. In order --

11 CHAIRPERSON MILLER: I told you
12 you would get your chance.

13 MR. MAIDEN: In order to address
14 any of these issues, a building permit will be
15 needed. And we cannot even start the building
16 permit process until we are able to get a
17 Certificate of Occupancy. DCRA would not
18 allow the application to be filed unless there
19 is a C of O in place.

20 So however we do this, I think,
21 some kind of decision needs to be made at some
22 point where we can address the issues, because

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1 we're kind of caught in between here.

2 CHAIRPERSON MILLER: Okay. I'm
3 not clear.

4 MR. ROCHELLE: I think what Mr.
5 Maiden is saying is that if we have a
6 conditioned order with date certain, I think
7 that -- and have been given an order by the
8 Board, can apply for a C of O to get the
9 building permit to do the conditions that are
10 contained in the order.

11 CHAIRPERSON MILLER: Right.
12 That's what would happen. We're going to --
13 okay. This is the way I see it. We already
14 talked about the ANC's conditions. And you
15 all have said that you want to go back and
16 look at your budget and meet with your
17 officers or whoever and come up with a
18 specific plan as to what steps you are going
19 to take, like you're going to replace the air
20 conditioner in July or you're going to
21 whatever, but those are concerns that have
22 been raised by the ANC that you all have said

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1 you would address, the grates, the fence,
2 okay, the air conditioning.

3 Okay. And I think that the other
4 item would be the greenery. And these all go
5 to the third prong of the variance test. We
6 consider three prongs. The exceptional
7 condition, the practical difficulty -- the
8 undue hardship, sorry, on the applicant and
9 then no substantial detriment.

10 So that's what these go to. So
11 what I anticipate is that you would do -- the
12 applicant would do that. You can give us a
13 time table when you think you would be ready
14 to have that information. You would serve
15 that on the ANC and Office of Planning and the
16 Board. And then the ANC would have an
17 opportunity to respond.

18 And then the Board will consider
19 that information and make its decision. And
20 it will issue an order that sets forth the
21 relief that is granted, if we grant the use
22 variance, then any conditions that go along

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1 with it. And then you take that and go get
2 your C of O. Okay.

3 All right. Is there anything more
4 you want to say with respect to argument today
5 or anything?

6 MR. ROCHELLE: No. I would
7 encapsulate everything you just said as what
8 we would proceed to do upon giving the
9 approval, subject to those conditions.

10 CHAIRPERSON MILLER: Okay. So if
11 there aren't any other questions, I think, at
12 this point, I would ask the applicant then
13 when you would like to propose filing your
14 information, because that's what the schedule
15 is contingent upon.

16 MR. McWILLIAMS: April 1st.

17 CHAIRPERSON MILLER: All right.
18 Let me ask the ANC how much time do you think
19 you would need to respond to that?

20 MR. HOLMES: Could you hold on
21 just a second?

22 CHAIRPERSON MILLER: Okay.

1 MR. HOLMES: The ANC will meet on
2 the 9th of April. We can respond shortly
3 thereafter. I can write a letter within a day
4 or two, based on the motion that we will
5 adopt. I suspect this is not going to be a
6 difficult matter for us.

7 CHAIRPERSON MILLER: Okay. Then
8 perhaps we should set this for a May 5th
9 decision meeting? Mr. Moy, do you have a
10 comment on that?

11 MR. MOY: No, that sounds good
12 with the staff, Madam Chair.

13 CHAIRPERSON MILLER: Okay. Does
14 the Board have any comments? Okay. That's
15 what we will do then. We will set this for
16 decision on May 5th. Applicant will file its
17 submissions April 1, 2008 and the ANC will
18 file --

19 MR. HOLMES: You say the 14th of
20 April?

21 CHAIRPERSON MILLER: Okay. April
22 14th, that's good. I think that Mr. Mordfin

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1 maybe we could leave the record open for a
2 response from OP, if you want, but I don't --
3 I would not say you would be required to.
4 This seems pretty straightforward. Let's just
5 put a date in though.

6 MR. MOY: Then if I do that for
7 the Office of Planning, then --

8 CHAIRPERSON MILLER: Yeah.

9 MR. MOY: -- no later than April
10 the 29th, which is a Wednesday.

11 CHAIRPERSON MILLER: Okay. All
12 right. Is everybody clear? Then the record
13 is going to be closed, but for this
14 information, which is, you know, I don't know
15 if I'll say it again, but it's applicant's,
16 you know, representations as to what they will
17 commit to do with respect to those conditions
18 that we talked about, the air conditioning and
19 the fence and whatever.

20 Okay. And then the ANC will
21 respond to those and the OP will also respond.
22 And that's it.

1 MR. MAIDEN: I think we heard a
2 misquoted date, 2008 instead of 2009.

3 CHAIRPERSON MILLER: Oops. Okay.
4 Yeah, I see, I wrote that down. Okay. 2009.
5 Thank you.

6 MR. HOLMES: Madam Chair, a
7 question for you. If Public Space agrees that
8 the concrete outside on public space, as
9 opposed to the private property, needs to be
10 removed, should we -- should something be done
11 within your order about the removal or not of
12 the concrete on private property?

13 CHAIRPERSON MILLER: Okay. So
14 you're saying in the interim if Public Space
15 requires them to --

16 MR. HOLMES: Remove the --

17 CHAIRPERSON MILLER: -- remove the
18 -- okay. If Public Space requires them to
19 remove the concrete slab, then could we leave
20 the record open for them to respond as to what
21 they might do with the private part?

22 MR. HOLMES: Exactly.

1 CHAIRPERSON MILLER: Okay. Well,
2 yeah, because you are responding to the
3 private part, in any event. As of now, you
4 may be responding by saying you're going to
5 put these potted plants or whatever. You
6 could be responding if circumstances change
7 with respect to public space, that you might
8 do something else. Yeah, the record would be
9 open for that. Okay.

10 MR. HOLMES: And could you indulge
11 me just for a moment? This is giving the
12 appearance of being an adversarial proceeding.
13 It is not intended to be so simply because we
14 didn't have the negotiation that took place in
15 the interim months. If I seem to be hostile,
16 they are a good community resource here. They
17 have helped us out especially with the church
18 and its propensity of double parking by
19 letting them park in their parking lot. We
20 appreciate their service to the community and
21 their presence in the community. Thank you.

22 CHAIRPERSON MILLER: Okay. Good.

1 Okay. Well, it looks like you are close to
2 resolution. So we will look forward to that.
3 Okay. Just so that we don't close the record
4 more tightly than we intend to, and I'm not
5 saying this is required at all, but if there
6 were any like visuals as to what you are going
7 to do with respect to any landscaping or
8 greenery, that would be allowed into the
9 record.

10 MR. MOY: Madam Chair?

11 CHAIRPERSON MILLER: Or window
12 treatments, you know, if you want to show it
13 more visually, but we will leave that up to
14 you. And I hope that you will be just talking
15 to each other and showing each other. Okay.
16 All set?

17 MR. MOY: Madam Chair?

18 CHAIRPERSON MILLER: Yes?

19 MR. MOY: If I can add, I don't
20 mean to muddy this any further, but in looking
21 at the drawings, like Exhibit No. 7, which is
22 a very early exhibit, there are floor plans

1 for the basement floor, first floor, second
2 floor. I was wondering if -- I'm assuming the
3 applicant already has it, if the Board so
4 desires, would it be useful to have a site
5 plan that would show the building in relation
6 to the street and where the public space,
7 which has been of issue, and then you could
8 indicate on that site plan what you intend to
9 do with landscaping? If the Board felt that
10 that was a useful graphic for your
11 understanding.

12 CHAIRPERSON MILLER: Do you want
13 to respond? Is that a problem?

14 MR. MAIDEN: No, that's not a
15 problem. We can submit that at a later date,
16 yes.

17 CHAIRPERSON MILLER: You could
18 submit it with your filings. Yes?

19 MR. MAIDEN: Yes.

20 CHAIRPERSON MILLER: Okay. Great.

21 MR. MAIDEN: Yes.

22 CHAIRPERSON MILLER: Okay. I

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1 guess that's it now. Thank you very much.

2 We're going to take a 5 minute
3 break and decide which case we are going to
4 hear next.

5 (Whereupon, at 2:33 p.m. a recess
6 until 3:06 p.m.)

7 CHAIRPERSON MILLER: Okay. We're
8 back on the record. Ms. Bailey, we have
9 decided that we are ready to have you call the
10 next case, 17860. We can take that case in
11 the order that is on the schedule.

12 MS. BAILEY: Thank you, Madam
13 Chair. Application 17860 of Jemal's KFC, LLC,
14 pursuant to 11 DCMR 3103.2, for a variance
15 from the floor area ratio requirements under
16 section 771, a variance from the rear yard
17 requirements under section 774, and a variance
18 from the parking requirements under subsection
19 2101.1, to permit the development of a two-
20 story commercial building in the C-2-A
21 District at premises 1442 Pennsylvania Avenue,
22 S.E., Square 1065NE, Lot 49.

1 CHAIRPERSON MILLER: Thank you.
2 And I want to note for the record that Mr.
3 Jeffries has joined us from the Zoning
4 Commission and that Mr. Loud is not going to
5 be participating on this case, but we do have
6 a quorum now with Mr. Jeffries. We were
7 waiting for him to join us.

8 Okay. Why don't we start now with
9 introductions? And happy new year.

10 MR. GLASGOW: Thank you. All
11 right, happy new year, Madam Chair, Members of
12 the Board. For the record, my name is Norman
13 M. Glasgow, Jr. with the Law Firm of Holland
14 & Knight representing the applicant for a
15 redevelopment of property located at 15th and
16 Pennsylvania Avenue, S.E.

17 Here with me are Mr. Paul
18 Millstein of Douglas Development, owner and
19 developer of the property, Mr. George Myers of
20 GTM Associates Architects for the property and
21 Mr. Steven Sher, Director of Zoning and Land
22 Use Services for Holland & Knight. Mr. Sher

1 is offered as an expert witness in land
2 planning.

3 I believe the Members of the Board
4 have a copy of the Statement of Applicant that
5 we filed and also the report from the Office
6 of Planning and the support that we have from
7 the ANC, which is a unanimous vote in support.
8 I think with that, I think this is a pretty
9 straightforward case. We are ready to rest on
10 the record and have -- answer questions that
11 the Board may have or if you would like to
12 have Mr. Sher just give a 3 minute summary of
13 how we meet the burden of proof, we can
14 proceed in that fashion.

15 CHAIRPERSON MILLER: Okay. I
16 think at least someone, perhaps Mr. Sher. I
17 think, you know, there is a lot of support for
18 this project and that's evident. I think an
19 explanation about how it specifically meets
20 each prong of the variance test would be
21 useful, since we have to --

22 MR. GLASGOW: Mr. Sher can address

1 that.

2 CHAIRPERSON MILLER: -- decide on
3 that basis.

4 MR. GLASGOW: All right. Then any
5 questions or anything else, if there is any
6 further information that is needed.

7 MR. SHER: Good afternoon, Madam
8 Chair and Members of the Board. For the
9 record, my name is Steven E. Sher, the
10 Director of Zoning and Land Use Services with
11 the Law Firm of Holland & Knight. We are here
12 this afternoon because we are asking for three
13 variances to allow the redevelopment of the
14 property at 1442 Pennsylvania Avenue, S.E., as
15 Mr. Glasgow noted, at the northwest corner at
16 the intersection of Pennsylvania Avenue and
17 15th Street, S.E.

18 We need a variance on the FAR
19 requirements, because we are proposing to
20 build a 2.0 FAR building on a site where the
21 non-residential FAR is limited to 1.5. We
22 need a variance on the rear yard requirements

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1 because the rear yard normally required in the
2 C-2-A District is 15 feet and we are proposing
3 to provide no rear yard.

4 And we need a variance on the
5 number of parking spaces. We need a total for
6 -- the building is proposed to be retail on
7 the ground floor, office on the second floor.
8 That would require a total of 29 parking
9 spaces and we are proposing to provide no
10 parking spaces.

11 So those are the three variances.
12 And they are all area variances, as the Board
13 is familiar. And I think with apologies to
14 Mr. Peterson, who is sitting behind me,
15 perhaps the easiest way to talk about this is
16 to look at the site plan.

17 We have a property that is a
18 quadrilateral, but it's an irregular shaped
19 one, no right angles anywhere on that lot.
20 Well, actually there is one right here, sorry.
21 But what we are proposing to do is build a
22 two-story building that covers 100 percent of

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1 the lot.

2 The lot is 7,277 square feet.
3 Even though there is a notch at the first
4 floor, that still counts in FAR, because it is
5 covered by the second floor above. So we are
6 at 2.0 FAR for the entire property.

7 The property is currently improved
8 with a one-story building that covers a
9 portion of the property that is not being used
10 for anything right now, but was most recently
11 used as a fast food restaurant. It is a, I'll
12 call it, disfavored use, in the sense that the
13 Zoning Regulations now no longer permit a fast
14 food restaurant as a matter-of-right in a C-2-
15 A District.

16 If it was proposed to go in new,
17 it would have to be a special exception. But
18 because the use has been there and because it
19 hasn't been discontinued or abandoned, it's
20 just not operating at the moment, another fast
21 food restaurant could go in there tomorrow or
22 as soon as they could remodel the interior to

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1 make it look like something other than a
2 Kentucky Fried Chicken outlet, which is what
3 it was before.

4 If you wanted to put a McDonalds
5 in there or I don't want to pick on McDonalds,
6 if you wanted to put in any other fast food
7 restaurant, the right to do that is still
8 inherent in that property. It is not a
9 nonconforming use.

10 CHAIRPERSON MILLER: Is it vacant?
11 Has it been vacant for how long?

12 MR. GLASGOW: Approximately, one
13 year.

14 MR. SHER: Okay. But it's not a
15 nonconforming use in any event. So the
16 discontinuance provisions don't even apply.
17 It could be with no intervening use, it could
18 be a C of O would be issued as a name change
19 or as a new operator and there would be no
20 requirement to do anything except get a
21 building permit if you wanted to do the
22 interior in a different way.

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1 So if you look at the area
2 photograph, which is the last page of the
3 outline you have in front of me -- in front of
4 you, sorry, the subject site is in the lower
5 right hand corner of that photograph and it
6 shows that the building is adjoined by a
7 surface parking lot to its west.

8 Sorry, I'll hold it up. This is
9 the subject property in the lower right hand
10 corner of the triangular-shaped square. And
11 it is the only property which doesn't occupy
12 the full frontage along Pennsylvania Avenue,
13 right here, in this square. Everything else
14 fills out the street line the way one would
15 expect in sort of an urban street situation.

16 And the problem that the applicant
17 faces is if they are going to replace that
18 use, the use which is currently allowed and
19 which while disfavored under zoning, is
20 probably from an economic point of view
21 advantageous to the applicant, because there
22 are fast food chains who would go into that

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1 space.

2 If we want to replace that use, we
3 have to be able to leverage the replacement.
4 The applicant has to be able to get enough of
5 an economic advantage to replace the use with
6 something else. And so the replacement of
7 that use, as proposed, is 1 FAR of retail and
8 1 FAR of office above.

9 Why does the strict application of
10 the regulations cause us a problem? Well, if
11 we had to provide a 15 foot rear yard across
12 the rear of the property, what that does is it
13 impacts the exit stair from the second floor.
14 It impacts the loading area shown on the first
15 floor. All of that stuff has got to move down
16 15 feet further into the site.

17 And so you take what is already
18 not a particularly large floor plate on the
19 first and second floor and reduce it by that
20 15 foot dimension on the rear yard.

21 What does it mean if you have to
22 provide parking on this site? Well, if you

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1 put one level of parking below-grade, you
2 could ramp down coming in off the alley
3 somewhere and get a minimal number of spaces,
4 maybe 5 or 6, maybe 4, something like that.
5 If you contemplated getting 29 spaces and you
6 wanted to, you know, have underground parking,
7 it is practically impossible, because as you
8 have to put all the ramp in, you have nothing
9 but room for a ramp on any level.

10 There is no room for any parking
11 spaces. You can stop the ramp at the first
12 floor and get a small number of spaces, but if
13 you start to try and go down more to get more
14 spaces, you wind up with none. And Mr. Myers
15 has drawings that demonstrate that if you need
16 to see that.

17 CHAIRPERSON MILLER: Mr. Sher, can
18 I just ask you if you can back up a little bit
19 and say what's the exceptional condition that
20 leads to the practical difficulty?

21 MR. SHER: Okay. It is the shape
22 of the site. The -- as it affects where the

1 rear yard is, how you get parking to get down
2 into that building which you can't do. It's
3 the size of the site. And it is also the
4 existence of that fast food restaurant
5 existing configuration.

6 We want to get rid of that. We
7 have been -- it has been suggested to us by
8 neighbors in the immediate vicinity, they
9 don't want to see another fast food restaurant
10 go in there. We are trying to do, I'll
11 loosely say, the right thing. We're trying to
12 be responsive to that. We're trying to say
13 yeah, we can replace that. We can leverage
14 getting rid of that fast food restaurant.

15 But in order to do that, we've got
16 to have enough density on the site in order to
17 make it reasonable to say we're going to take
18 the opportunities we have had to lease this to
19 a fast food restaurant and say no, thank you.
20 We're going to take lower rents in those
21 spaces. But we need more square footage to
22 offset the loss that we would get from trying

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1 to rent the space as it now exists.

2 COMMISSIONER JEFFRIES: But so
3 this is self-imposed of sorts.

4 MR. SHER: No, it's not really.
5 Well, No. 1, self-imposed doesn't apply,
6 because it's not a use variance. But No. 2,
7 it's not really self-imposed. It is a
8 condition that is applicable to the property.
9 I mean, the building is there. The use was
10 there and the use is allowed to continue.

11 Any owner who bought the property
12 would have that same situation. So it's not
13 like this applicant has created the difficulty
14 for themselves. What they are trying to
15 respond to is --

16 COMMISSIONER JEFFRIES: They are
17 trying to accommodate --

18 MR. SHER: -- the desire to
19 replace that use with a more conforming use,
20 which would be retail. And we have through
21 the Memorandum of Understanding, which you
22 will see, if you haven't already seen it, we

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1 have suggested we would limit some uses that
2 would go in there and certain other things
3 that would go on.

4 COMMISSIONER JEFFRIES: But it is
5 possible that the applicant could tell the
6 community, I'm sorry, I cannot accommodate
7 you, correct? I mean, I'm just hypothetically
8 speaking here.

9 MR. SHER: Yes, it is possible.

10 COMMISSIONER JEFFRIES: I just
11 want to be clear.

12 MR. SHER: I think Mr. Millstein
13 would be the best person to address that. We
14 don't want to do that.

15 COMMISSIONER JEFFRIES: Yeah.

16 MR. SHER: But --

17 MR. MILLSTEIN: May I address
18 that? Candidly, that would be in our interest
19 and we -- what happened was we acquired this
20 site, approximately, a year ago.

21 CHAIRPERSON MILLER: Is your mike
22 on?

1 MR. MILLSTEIN: Yeah.

2 CHAIRPERSON MILLER: Okay.

3 MR. MILLSTEIN: Hello? We
4 acquired the site, approximately, a year ago.
5 Shortly after acquiring it, before I had even
6 seen the property, one of our leasing persons
7 had leased it, had a Letter of Intent out to
8 a 7-Eleven South Incorporation. I found out
9 because a member of the community who reached
10 out to Douglas, Jemal, the owner of the
11 company directly and said, Mr. Jemal, I
12 understand I'm hearing murmurs in the
13 community about a potential 7-Eleven on this
14 site. We know you recently acquired and in
15 the process of acquiring it. Could we do
16 something better?

17 That's a use we really don't want.
18 Then I became involved in it very quickly. I
19 met with the community and we stopped that
20 lease, that lease from going forward. And
21 then actively worked with the community and
22 said well, what would be better suited? But

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1 they certainly understand that if we can't get
2 the relief, then we can't get the relief. And
3 then we will lease it the way it is and that
4 would be fine with us, if that's the way it
5 has to go.

6 The shame would be here is that I
7 have never seen a community work so hard to
8 get a development done as I have on this
9 corner. This is not a large development for
10 us.

11 COMMISSIONER JEFFRIES: Um-hum.

12 MR. MILLSTEIN: Even as it's
13 currently proposed as 14,000 feet
14 approximately, but it's a corner and it's
15 surrounded by people who are very committed to
16 their neighborhood that took an inordinate
17 amount of time to go door to door, to meet
18 with us in the evenings and in these current
19 financial times, we are just inclined to let
20 it go, but we feel committed to the effort
21 they have put forward.

22 COMMISSIONER JEFFRIES: I just --

1 I hear what you're saying. I guess, you know,
2 under the hurdle of unique and exceptional
3 situations, you know, I tend to be more
4 accustomed to, you know, topography, shape of
5 site and those types of things. You know,
6 when I start to hear, you know, that the
7 community wants something, then I -- you know,
8 clearly, you know, we should try to
9 accommodate the residents. It just seems to
10 be slightly outside the ballpark for me.

11 MR. GLASGOW: It's a little
12 different, but legally it's fully sustainable.
13 You have the Clerics of St. Viator case which
14 talks about its the property itself which can
15 include the building on the property. And
16 also we had a case years ago which was a
17 Monaco case on Capitol Hill. We represented
18 the Republican National Committee building and
19 that was essentially like a use variance --

20 COMMISSIONER JEFFRIES: Um-hum.

21 MR. GLASGOW: -- in that case.

22 And the use history of the property was deemed

1 to be an exceptional situation or condition.
2 I think we have both of those cases cited in
3 our documents.

4 COMMISSIONER JEFFRIES: Okay.

5 MR. GLASGOW: Because I knew this
6 was a little bit different. I did the briefs
7 on Monaco years ago, so I know a little bit
8 about it. And those cases, the Court of
9 Appeals did say you can go beyond just the
10 topography, the shape of the lot and all that
11 type of thing, building on the property, use
12 history of the property.

13 COMMISSIONER JEFFRIES: Right.

14 MR. GLASGOW: All of those things
15 can be an exceptional situation or condition.

16 CHAIRPERSON MILLER: It can also
17 be circumstances surrounding a property that
18 change that make its situation unique.

19 COMMISSIONER JEFFRIES: Um-hum.

20 CHAIRPERSON MILLER: So I'm really
21 just trying to understand what that is here.
22 And is it that the matter-of-right uses are

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1 more detrimental to the community or
2 something, that that's what is different here?
3 That yeah, you could do a 7-Eleven or you
4 could do a fast food, but you want to do
5 something better?

6 MR. GLASGOW: I think that's part
7 of it. That is part of the discussion.

8 CHAIRPERSON MILLER: I mean, I see
9 with the parking it sounds like the topography
10 with the ramps. You just can't get that
11 parking under there.

12 COMMISSIONER JEFFRIES: Well,
13 that's --

14 CHAIRPERSON MILLER: So that's the
15 normal.

16 COMMISSIONER JEFFRIES: -- the
17 shape.

18 MR. GLASGOW: Yeah, size and
19 shape --

20 CHAIRPERSON MILLER: Yeah.

21 MR. GLASGOW: -- of the lot.

22 COMMISSIONER JEFFRIES: Right.

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1 MR. GLASGOW: Make it so you can't
2 -- you just can't get there from here with the
3 parking. And then with respect to the size
4 and the shape of the lot, you have part of
5 that comes into play also with the rear yard
6 and how you are using up, you know, valuable
7 FAR on the ground floor. If you push that
8 back in, you would not want to cover it.

9 Right now, all of that is
10 enclosed. The trash room, the loading berth,
11 that's all enclosed. If somebody were to deny
12 the rear yard variance, then you would open it
13 up, because you don't want to lose FAR on
14 that.

15 MR. MILLSTEIN: And I might add,
16 that's how it was originally designed. We
17 were respecting the 15 foot rear yard. But in
18 meeting with the community and the ANC as
19 well, they really had a desire to bring those
20 aspects internal, so that was the way we
21 designed around it.

22 MR. GLASGOW: And we also were

1 able to use an existing curb cut which you
2 wouldn't be able to use. Then we would have
3 a big curb cut issue with DDOT as opposed to
4 using the existing curb cut. There's an
5 existing curb cut on the 15th Street.

6 CHAIRPERSON MILLER: So that's for
7 the loading? Okay.

8 MR. GLASGOW: Right.

9 MR. SHER: Sorry, no loading is
10 required, because we are below the thresholds
11 for the minimum amount of loading. But as a
12 practical matter, we're going to service the
13 building that way.

14 Again, the point with the rear
15 yard is if you have to take 15 feet and hold
16 the building back, then one of two things
17 happen. Either all this stuff shifts further
18 down into the building thereby impacting the
19 usable amount of space on the first floor or
20 you wind up putting it outside.

21 And so you have your trash
22 collection, trash storage and your loading in

1 what would be the rear yard, which you are
2 allowed to do, but which seems to be a less
3 desirable solution.

4 COMMISSIONER JEFFRIES: Yeah, I
5 don't -- I mean, you know, the practical
6 difficulties as relates to, you know, building
7 layout and so forth, I don't have any, you
8 know, issue around that. I understand what
9 the issues are there. I just, again, am
10 trying to get comfortable with the first test.

11 I mean, did we like interrupt you
12 or were you done?

13 MR. SHER: I could be done. I
14 think we have talked about what happens and
15 why -- what we think the exceptional situation
16 is and the practical difficulty. What I
17 didn't talk particularly a lot about was the
18 no substantial detriment part of the test, but
19 I think that's -- we sort of talked a little
20 bit around that in terms of being able to
21 replace the disfavored use with matter-of-
22 right things being able to keep the height of

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1 the building well below the maximum permitted,
2 the overall densities below the maximum
3 permitted.

4 Being able to build to the lot
5 line at the north lets us keep the trash and
6 the loading inside the building as opposed to
7 outside the building. And we have agreed in
8 the Memorandum of Understanding with respect
9 to conditioning certain aspects or certain
10 uses that would go on here, that would work in
11 the favor of the community at large.

12 So I think that addresses the
13 third part of the test.

14 COMMISSIONER JEFFRIES: And the
15 drive through aisles, can you -- that exist on
16 the site --

17 MR. SHER: As it exists today, I
18 don't believe there is a drive through aisle
19 on the site. The parking area shows parking
20 both adjacent to the building and adjacent to
21 the west lot line. But I don't know where the
22 drive through aisles would have been in the

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1 past. I don't believe there is a drive
2 through aisle there now.

3 COMMISSIONER JEFFRIES: I'm just
4 going on -- I'm just looking at the Office of
5 Planning's report, but I'll -- it says that
6 "Further, the former drive through aisles
7 serve a use no longer permitted at all in the
8 zone." But that's something I can talk with
9 Office of Planning about that.

10 MR. SHER: Um-hum.

11 CHAIRPERSON MILLER: Could you
12 explain a little further about the Certificate
13 of Occupancy for the fast food establishment?
14 You are saying that no matter how long that
15 building is there, because it's not a
16 nonconforming use, it can be there forever.
17 Is that what you're saying?

18 MR. SHER: That's essentially
19 correct. A use originally permitted and now
20 only permitted by special exception, by
21 definition is not a nonconforming use. It is
22 a conforming use. And the only reason you

1 would have to come to the Board is if you
2 propose to expand that use.

3 So if you kept the existing
4 building, didn't expand the size of the
5 building and wanted to change the interior to
6 make it some other kind of fast food
7 restaurant, you could do that today, tomorrow,
8 next year or 10 years from now, as long as
9 there was no intervening use of the property
10 that limited, terminated, put some other use
11 in there, in which case then if you wanted to
12 go back to a fast food restaurant, you would
13 have to come back to the BZA.

14 CHAIRPERSON MILLER: Right. Okay.
15 And other uses that could be there would be
16 like a 7-Eleven? Why a 7-Eleven?

17 MR. SHER: We -- the uses
18 permitted in the C-2-A District would be
19 allowed. And as I said, in the Memorandum of
20 Agreement, we have stipulated certain things
21 we have agreed not to do and I know Mr.
22 Millstein can speak to those if you need more

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1 clarification on that, but other than that, we
2 would propose any retail use permitted in a C-
3 2-A District on the first floor and any office
4 use on the second floor.

5 CHAIRPERSON MILLER: I guess my
6 question is if the relief weren't granted,
7 what could you do?

8 MR. GLASGOW: You could put any
9 kind of fast food establishment.

10 CHAIRPERSON MILLER: Yes, I got
11 that one.

12 MR. GLASGOW: Right.

13 CHAIRPERSON MILLER: Okay.

14 MR. GLASGOW: But I mean, recently
15 you had an inquiry, if you want to disclose
16 it.

17 MR. MILLSTEIN: Yeah, we -- as
18 recently as last week, we have Dunkin' Donuts
19 is very interested in the site. We could do
20 that deal tomorrow.

21 CHAIRPERSON MILLER: That's like a
22 fast food.

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1 MR. MILLSTEIN: Pardon me?

2 CHAIRPERSON MILLER: Is that a
3 fast food?

4 MR. MILLSTEIN: That's a good
5 question.

6 CHAIRPERSON MILLER: It's like a
7 fast food, okay.

8 MR. MILLSTEIN: You would have to
9 discuss that with the community. But again,
10 we -- our intention was to quickly get through
11 this and develop the building, so we would not
12 do that deal. Although, I happen to like that
13 use, but that's just me.

14 CHAIRPERSON MILLER: So that means
15 like you use the building as it is for some
16 type of similar situation versus --

17 MR. MILLSTEIN: Oh, yeah.

18 CHAIRPERSON MILLER: -- you do
19 this new development --

20 MR. MILLSTEIN: You could just --

21 CHAIRPERSON MILLER: -- with mixed
22 use.

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1 MR. GLASGOW: That's part of the
2 issue is to take a building that you can just
3 put back on the market immediately, just cut
4 and paste and go, sign a lease at a high
5 dollar per square foot as opposed to razing
6 the site, going through all the development
7 process, get a whole different type of tenant
8 mix and all of that type of thing.

9 MR. MILLSTEIN: Yes, they would
10 take the building as is.

11 COMMISSIONER JEFFRIES: And the
12 second floor will be office?

13 MR. MILLSTEIN: That's the
14 intention.

15 COMMISSIONER JEFFRIES: Well,
16 what's the square footage?

17 MR. MILLSTEIN: Approximately,
18 7,000 feet.

19 CHAIRPERSON MILLER: The unique
20 aspect of it being the only one in the square
21 that is not completely facing the street, how
22 does that lead to a practical difficulty?

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1 MR. SHER: Well, again, what we
2 are trying to do is replace the existing
3 condition with something which would be more
4 typical with an urban streetscape found along
5 the more intensively developed portions of the
6 Pennsylvania strip. So you wind up with
7 buildings that are on the property line facing
8 the street without the break that's now
9 occasioned by, because of the surface parking
10 lot.

11 The existing building is at about
12 .2 or .3 FAR, so it's a relatively low
13 intensity use of the property. So what we are
14 trying to do is get back to, in this case, the
15 1 FAR retail plus the 1 FAR of office. In
16 order to do that, you get the added benefit of
17 filling in that gap in the streetscape
18 creating the more unified wall going all the
19 way from 15th up to Potomac Avenue and
20 creating the street front that's more
21 pedestrian-friendly along there, rather than
22 have the curb cut coming in across from

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1 Pennsylvania Avenue.

2 CHAIRPERSON MILLER: Okay. Do we
3 have any other questions? Is the ANC here in
4 this case? Okay. All right. Do you have
5 anything more, at this point?

6 MR. SHER: I do not.

7 CHAIRPERSON MILLER: Okay. Why
8 don't we go to the Office of Planning then?

9 MR. COCHRAN: Good afternoon,
10 Madam Chair. For the record, Steve Cochran,
11 Office of Planning. I just wanted to start
12 with a few corrections. Obviously, this
13 report is dated December 30, 2008, not January
14 30, 2009. The heading in the -- on other
15 pages was correct.

16 There is a phrase on page --
17 somewhere in here we have said that, let's
18 see, page 6, under V, the first paragraph ends
19 with "DDOT supports OP's request for more
20 parking," relief-related information that's
21 left over from an old draft of the report.
22 The applicant did supply that information and

1 both DDOT and OP were satisfied with that
2 information.

3 CHAIRPERSON MILLER: I'm sorry,
4 where are you?

5 MR. COCHRAN: On page 6. Page 6
6 of the OP report, the second paragraph in.
7 "Other agencies concerns," it ends with "DDOT
8 supports OP's request for more parking
9 relief," related information that was supplied
10 in between one draft and the other.

11 Let's see, back on page 3, Mr.
12 Sher said that he didn't think that there was
13 a loading requirement. To the best of my
14 knowledge, there is a loading requirement,
15 because they have more than 5,000 square feet
16 of retail. So there is a loading requirement,
17 which, of course, they meet.

18 To explain further some of the
19 responses to the question you had about what
20 uses could continue on the site, again, it's
21 my understanding, open to correction, that if
22 the Certificate of Occupancy for this type of

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1 current use, not the proposed, but the current
2 fast food, expires, then for a period of three
3 years -- excuse me. It expires after three
4 years of not being occupied.

5 Therefore, if there weren't a
6 similar use, something that met the current C
7 of O in there, then they would have to come
8 back for a special exception to put something
9 like that in. So I was just trying to
10 clarify.

11 CHAIRPERSON MILLER: It sounds
12 like you are just differing from Mr. Sher.

13 MR. COCHRAN: No, I think Mr. Sher
14 was saying that you can use -- continue with
15 the current type of use on infinite item as
16 long as your Certificate of Occupancy never
17 expires. I'm just saying that there is a
18 point at which the Certificate of Occupancy
19 could expire if the building remains vacant.

20 CHAIRPERSON MILLER: How do we
21 know what that is?

22 MR. COCHRAN: Well, it's typically

1 three years.

2 CHAIRPERSON MILLER: I mean, it's
3 typically three years with respect to
4 nonconforming uses, but I think Mr. Sher was
5 making a distinction that this isn't a
6 nonconforming use.

7 MR. COCHRAN: I would have -- if
8 you wish to ask OAG about that, maybe they
9 know more than I do, but it has always been my
10 understanding that --

11 CHAIRPERSON MILLER: It's my
12 understanding with nonconforming uses, but I
13 understand Mr. Sher's point if it's not
14 considered a nonconforming use under the regs.
15 But I don't know if some Certificate of
16 Occupancy permits expire anyway, but this one
17 doesn't have an expiration on it, I assume.

18 MR. SHER: It does not.

19 CHAIRPERSON MILLER: Okay. So I
20 guess the question was if you want OAG to
21 weigh in on this?

22 MS. MONROE: If you want me to.

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1 Mr. Sher is right insofar as the use lawfully
2 in existence at the time of the adoption or
3 amendment of the title that would thereafter
4 require a special exception approval shall not
5 be deemed a nonconforming use. So it's not
6 nonconforming.

7 The question of whether or not the
8 C of O expires, each C of O is different. If
9 he says this one does not have an expiration
10 date, it doesn't. And so, therefore, it could
11 go on forever. If it did have an expiration
12 date, then Steve Cochran would be right. But
13 it doesn't.

14 CHAIRPERSON MILLER: So is that
15 correct that this one does not? Do you know?

16 MR. GLASGOW: It does not as far
17 as we are aware.

18 CHAIRPERSON MILLER: Okay.

19 MR. COCHRAN: Retract that. And
20 Mr. Jeffries had been asking about the curb
21 cuts. There is a curb cut at the northeast
22 corner of the site on 15th Street. Our GIS

1 shows there being a curb cut on Pennsylvania
2 Avenue which would be at the southwest corner
3 of the site. The drive aisles would have gone
4 then from Pennsylvania Avenue to 15th Street,
5 in sort of an arc around that site.

6 OP is happy to rest on its report
7 if you wish. I would also be, of course,
8 happy to answer any questions you might have.

9 CHAIRPERSON MILLER: Mr. Sher
10 referred to the fast food uses. I think he
11 said a disfavored use. Would you like to
12 comment on that?

13 MR. COCHRAN: If the applicant
14 were developing the building next door for
15 instance, it would -- and it wanted to do a
16 fast food use, it would have to go through a
17 special exception. If the applicant wished to
18 develop the building next door with what this
19 site had -- what the applicant cited had been
20 used for, which is a drive through fast food,
21 it couldn't do that at all. That's absolutely
22 prohibited. A new fast food restaurant

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1 requires a special exception. So that's why
2 he didn't say prohibited, he said disfavored.
3 If I can try to --

4 CHAIRPERSON MILLER: This one had
5 a drive through?

6 MR. COCHRAN: Yes, it did.

7 CHAIRPERSON MILLER: That's
8 disfavored?

9 MR. COCHRAN: No, that's
10 prohibited.

11 CHAIRPERSON MILLER: That's
12 prohibited. Special exception uses are not
13 necessarily disfavored though.

14 MR. COCHRAN: I think he was
15 probably trying to incorporate both into one
16 elegant word that encompassed both.

17 CHAIRPERSON MILLER: Mr. Sher, I'm
18 sorry, do you want to say anything about that?
19 Okay.

20 MR. SHER: For the record, no.

21 CHAIRPERSON MILLER: I mean, I
22 think a lot of communities would consider it

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1 disfavored next to residential.

2 MR. COCHRAN: Some communities
3 would undoubtedly consider the use that was
4 recently there to be a use that they desire.
5 Capitol Hill in this area is changing and so
6 the community has expressed that this is no
7 longer a use that they seem to wish.

8 CHAIRPERSON MILLER: And do you
9 see this as an exceptional situation?

10 MR. COCHRAN: Yes, it is an
11 unusually shaped lot, that's for sure. When
12 it -- it's very easy to get to practical
13 difficulty for any number of elements in this.
14 But when it comes to the exceptional situation
15 on the lot, mostly it has to do with shape and
16 distance from -- it has to do more with the
17 requirements for the site than it does with
18 the actual shape of the site.

19 You have a site where it would be
20 difficult to load off of an alley, because it
21 is 12 feet. So getting a delivery truck in
22 there would be different -- difficult rather.

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1 You have a site where certainly, as Mr. Sher
2 explained, getting any parking would be
3 difficult, unless it were surface parking.

4 If you had surface parking, you
5 could get, at most, three parking spaces in
6 there and you would be losing 550 square feet
7 on each floor from pulling the rear yard in by
8 20 feet, which is -- which would get you the
9 parking space.

10 With respect to other aspects of
11 the use on the site, you are required to have,
12 essentially, equal and opposite ingress and
13 egress. If you pull off of the alley for the
14 rear yard, that would further eat into the
15 building. And if you were go develop it with
16 half of the floor being residential, then you
17 have yet more space that the building -- that
18 would not be usable space within the building,
19 because you have to have a corridor that
20 provides access to both of those points of
21 ingress and egress.

22 When you add that up and you look

1 at the historical pattern of development in
2 that neighborhood, and this is not a lot that
3 has building wall to building wall development
4 right now when everyone else does, it all adds
5 up to it being an exceptional situation,
6 especially with respect to this particular
7 square in the city.

8 CHAIRPERSON MILLER: So you're
9 saying that the building as it is, that they
10 could, you know, just release or whatever,
11 that that's out of character with the pattern
12 of development around it?

13 MR. COCHRAN: Yes.

14 CHAIRPERSON MILLER: And that this
15 project would be compatible?

16 MR. COCHRAN: It would absolutely
17 be compatible and certainly more compatible
18 than reusing it for fast food. Excuse me,
19 reusing it for fast food without a new
20 structure that came to the building walls.
21 Obviously, if it were -- if there were new
22 structure, it wouldn't necessarily be

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1 incompatible for it to be a fast food use.
2 But the combination of factors indicates that
3 this is an exceptional situation.

4 CHAIRPERSON MILLER: Other
5 questions? Okay. Any questions for Office of
6 Planning from the applicant?

7 MR. GLASGOW: No questions.

8 CHAIRPERSON MILLER: Why don't you
9 tell us, if you don't mind, why there is no
10 substantial detriment? Mr. Sher, you were
11 going through the three prong test and then I
12 think we stopped you there.

13 MR. SHER: I did get back to that,
14 but the -- my view on that comes down to the
15 following: That the overall height and
16 density of the building is below the maximums
17 permitted by the C-2-A District, which would
18 allow 50 foot height. We're at 31 feet. Two-
19 stories is roughly equivalent to that. Not
20 roughly. Two-stories is the same height as
21 all the buildings that surround it in the
22 square. It's a little bit taller, but still

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1 only two-stories.

2 The fact that we are able to put
3 the loading and trash service in the building
4 rather than having it outside in the rear
5 yard, we think is a benefit, and not creating
6 a substantial detriment. In fact, we think
7 it's an improvement. And the fact that we
8 have agreed through the Memorandum of
9 Understanding to limit certain aspects of the
10 operation of the loading in the building and
11 to restrict to ourselves certain uses that
12 would go on there, I think winds up with a
13 situation where we have an acceptable
14 situation for the neighborhood and one where
15 granting the relief would not cause any
16 detriment to adjoining properties.

17 The last thing I would note is
18 that there is a this 12 foot alley to the
19 north, which separates this building from the
20 adjoining residential building on the other
21 side of the alley, and that seems to provide
22 sufficient separation to not cause any adverse

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1 impacts, since their loading is off the side,
2 rather than off the back.

3 COMMISSIONER JEFFRIES: Excuse me,
4 Madam Chair, just a quick question. Is there
5 a drawing of just the entire street wall with
6 the new building as well as the existing
7 buildings along Pennsylvania Avenue?

8 MR. GLASGOW: I think it's just
9 the existing building.

10 COMMISSIONER JEFFRIES: Just the
11 existing building?

12 MR. GLASGOW: Um-hum.

13 COMMISSIONER JEFFRIES: I mean --

14 MR. GLASGOW: We have a
15 photograph.

16 COMMISSIONER JEFFRIES: Yeah,
17 something like this, but there's nothing here.

18 MR. GLASGOW: Yeah, we have
19 photographs, Mr. Jeffries, but not a drawing.

20 MR. SHER: Yeah, there's a metric
21 on page 4 of the plans that shows the
22 buildings going to the west and the north.

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1 That's the most we have.

2 COMMISSIONER JEFFRIES: And the
3 building is what 30? What's the height?

4 MR. SHER: About 31 feet.

5 COMMISSIONER JEFFRIES: 31 feet.
6 So and the existing buildings hang -- I mean,
7 what's the difference? Maybe --

8 MR. SHER: It's a little bit
9 taller, but I don't know the exact heights of
10 the adjoining buildings there. They are two-
11 stories.

12 COMMISSIONER JEFFRIES: And
13 everybody in the community is comfortable with
14 the architecture?

15 MR. SHER: That I have no idea.

16 COMMISSIONER JEFFRIES: Okay,
17 okay.

18 MR. GLASGOW: We were asked by the
19 ANC to run the design of the building by
20 Historic Preservation Office, even though it's
21 outside the Historic District and --

22 COMMISSIONER JEFFRIES: Okay.

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1 MR. GLASGOW: -- Steve Callcott
2 sent an email which we have a copy of and Ms.
3 Bushman was kind enough to print it out for us
4 here. You all should have a copy of that.
5 It's from Steve Callcott. It's sent June 13,
6 2008 to Traci Weems, who is part of the staff,
7 and Melissa Cohen, who is with George Myers'
8 office.

9 COMMISSIONER JEFFRIES: Wait, do
10 we have an exhibit number on that?

11 MS. BAILEY: It was handed out
12 when the hearing started. I have an extra
13 copy.

14 COMMISSIONER JEFFRIES: No, no,
15 no.

16 CHAIRPERSON MILLER: Well, maybe
17 we should read this into the record, since we
18 are looking at it. It's an email from Steve
19 Callcott to Traci Weems and it talks about how
20 it isn't an Historic District or subject to
21 review by the Commission of Fine Arts. It
22 doesn't fall into any Governmental

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1 jurisdiction in terms of design review.

2 "However, my own opinion is that
3 it looks very handsome and is compatible with
4 its context - it has an appropriate scale and
5 height, compatible use and variety of
6 materials, strong punctuation of the corner,
7 clear distinction between retail base and
8 upper floor use, and strong architectural
9 styling without overt historical references.
10 I think it will be a handsome addition to the
11 street and neighborhood."

12 And then we have a part of an
13 email from Traci Weems to Steve Callcott
14 saying "We are working on the design of a new
15 2 story retail & office building for this
16 site. We met with the ANC and they were very
17 happy with the proposal."

18 That's all I have.

19 MS. BAILEY: Madam Chair, if you
20 turn on the back.

21 CHAIRPERSON MILLER: Oh, it
22 continues on the back? "The building is not

1 listed as historic and is not located in an
2 historic district. However, they requested
3 that we run the design by HPRB for a second
4 opinion. I have attached the packet that was
5 presented to ANC."

6 COMMISSIONER JEFFRIES: And we
7 know that what is being referred here in this
8 email is the same drawings we are looking at
9 today?

10 MR. MILLSTEIN: Yes.

11 COMMISSIONER JEFFRIES: Okay.

12 COMMISSIONER JEFFRIES: Well, I
13 just asked the question. I'm trying to lessen
14 my architectural review comments.

15 CHAIRPERSON MILLER: I don't think
16 I have ever seen a case where everyone in the
17 community has said they like something.

18 COMMISSIONER JEFFRIES: No, I
19 don't think everybody likes it.

20 CHAIRPERSON MILLER: Everybody,
21 that's a big question.

22 COMMISSIONER JEFFRIES: No, I

1 mean, I just saw a head or two shake.

2 CHAIRPERSON MILLER: Oh, okay,
3 yeah. Mr. Callcott -- I mean, Mr. Cochran,
4 did you have something to say?

5 MR. COCHRAN: Just that I have
6 received numerous calls from the community in
7 favor of this project. I have not heard
8 anything yet opposed to it. But I keep
9 getting communications in favor of it.

10 CHAIRPERSON MILLER: Okay. I
11 asked before if anyone was here from the ANC.
12 Is anybody here now? Okay. We have an
13 Exhibit No. 21 from ANC-6B, which represents
14 that at a publicly noticed meeting on December
15 9, 2008 with a quorum present, they voted
16 unanimously 8-0 to support the applicant's
17 request as presented.

18 "The Commission is taking this
19 action because after reviewing the applicant's
20 documentation and the applicant's extensive
21 communications with the neighbors and the
22 neighbors' petition of support signed by over

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1 23 residents, believes the applicant has met
2 the test of variances, conditioned upon the
3 attachment of Items 1 through 5 of the
4 neighbors' Memorandum of Understanding with
5 the application to the BZA report as
6 conditions to be derived."

7 Okay. Well, I think that brings
8 us to the next point. They suggest that
9 Conditions 1 through 5 that are in a
10 Memorandum of Understanding between the
11 applicant and the ANC be, I guess, repeated
12 and incorporated in the order, correct?

13 MR. GLASGOW: That's correct.
14 That's what we discussed at the ANC meeting
15 and we agreed to that. We went through the
16 conditions with them and as to what paragraph
17 should be conditions in the order. And I
18 think that's all repeated in the Office of
19 Planning report on pages 6 and 7.

20 CHAIRPERSON MILLER: All right.
21 Why don't we take a look at these conditions.
22 Certainly, any conditions can be agreed to in

1 a Memorandum of Understanding that the Board
2 doesn't have any say over and that's fine. So
3 whatever conditions though we put in our
4 order, have to be within our jurisdiction and
5 usually for the purpose of mitigating any
6 adverse impacts or potential adverse impacts.

7 So in my skimming over these five
8 conditions, do you all have it in front of
9 you? Yes?

10 MR. GLASGOW: Or you can use the
11 OP report, it has them.

12 CHAIRPERSON MILLER: Okay.
13 Anyway, I just want to skip to No. 4, because
14 that deals with construction activities and we
15 don't usually put construction activities in
16 our zoning orders, because DCRA has
17 jurisdiction over that and we don't. Do you
18 have a comment on that?

19 MR. GLASGOW: I don't have a
20 comment on it one way or the other. We will
21 abide by whatever the Board does and we have
22 our Memorandum of Understanding with the

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1 community.

2 CHAIRPERSON MILLER: Okay. Mr.
3 Cochran, do you?

4 MR. COCHRAN: No, I just wanted to
5 correct any impression that Mr. Glasgow may
6 have just given, OP is not necessarily
7 recommending that you incorporate these
8 conditions. We're noting that they have been
9 worked out between the applicant and the
10 community and especially the ANC, which
11 continues and can help to enforce those
12 conditions.

13 CHAIRPERSON MILLER: Okay. And I
14 think it's a good condition and an important
15 condition and it's enforceable in the
16 Memorandum of Understanding, so I don't want
17 to diminish that at all. I just want to
18 clarify that when we look at these conditions,
19 we will only put in conditions that are within
20 our authority to enforce.

21 And then the other one is No. 5.
22 I didn't know whether you can be more specific

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1 about that. It says "Douglas or its tenants
2 will promptly remove all trash and debris from
3 the public space located between the property
4 line and the adjacent curb."

5 You know, when I look at this for
6 enforcement, I'm just wondering what does that
7 mean "promptly"?

8 MR. GLASGOW: Well, I think what
9 we said, we would police the area daily,
10 except, I think, Saturday and Sunday,
11 depending upon the nature of the operation.

12 MR. MILLSTEIN: We agreed to keep
13 the property clean and not be relying on the
14 city or any of the city agencies. We will
15 take it under our own to see that we staff it
16 accordingly to keep it cleaned every day of
17 the week, including Sunday, so that trash
18 doesn't accumulate. And we are going to do
19 that regardless whether it's in the Zoning
20 Order or not. That's just what we will do.

21 COMMISSIONER JEFFRIES: Okay. So
22 we're really talking about 2 and 3. What

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1 about 1, I mean? And even 1 -- it seems like
2 2 and 3. I mean, I don't --

3 CHAIRPERSON MILLER: I think 1
4 goes to --

5 COMMISSIONER JEFFRIES: Yes, but
6 don't we --

7 CHAIRPERSON MILLER: -- a
8 substantial detriment prong of the variance
9 test that these were -- are uses that the
10 neighboring residents believe would have an
11 adverse impact on them.

12 COMMISSIONER JEFFRIES: Yeah, but,
13 I mean, if it is permitted, you know, for our
14 regs, I mean, I don't see how this really
15 applies to the BZA. Am I missing something?

16 MS. MONROE: If I can reply?

17 CHAIRPERSON MILLER: Yes.

18 MS. MONROE: I think the way it is
19 -- you're talking about Condition No. 1?

20 COMMISSIONER JEFFRIES: Yes.

21 MS. MONROE: The uses. Okay. It
22 says even though permitted within the

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1 District, they won't be -- it won't happen at
2 this location. And I think they are
3 permitted, yes, but the Board can not permit
4 them at this location by conditioning the
5 order. I think you can do that. I think you
6 have the authority to do that.

7 The one thing I would caution you
8 about is it sale the sale of pornographic
9 material, you know, what does that mean? I
10 mean, some of this is kind of pretty -- you
11 know, the last thing a wine and cheese shop or
12 similar use shall be permitted. I don't know.
13 Just this morning you made that whole bakery
14 decision about similar use.

15 I mean, this is very loosely
16 worded. So I don't know whether you want to
17 include it as a condition. It's already in
18 the MOA and the parties have agreed to that.
19 So I think you have the authority to limit the
20 uses, but whether or not you want to do it and
21 how you want to do, it's up to you.

22 COMMISSIONER JEFFRIES: Um-hum.

1 CHAIRPERSON MILLER: Yes. I think
2 just picking up on what she says, I mean, the
3 point of our putting in conditions for orders
4 would be to mitigate any adverse impacts or
5 potential adverse impacts. One way of looking
6 at this is it's not necessary, because it's in
7 the Memorandum of Understanding. They can
8 enforce it through that mechanism. We don't
9 need to.

10 COMMISSIONER JEFFRIES: Yeah. No,
11 no, I understand we have put conditions in our
12 orders. I understand that. But I'm just --
13 I was just concerned reading No. 1, perhaps,
14 you know, we were -- I mean, some of this is
15 already covered and that we would just be
16 restating what -- you know, but I understand
17 from OAG in terms of the concern.

18 CHAIRPERSON MILLER: Well, what I
19 would suggest is, I mean, I don't think we're
20 going to decide at this minute. We can -- I
21 think there are more witnesses here or more
22 individuals that want to testify and they

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1 might testify and tell us why it's important,
2 if it is. I don't know. We just haven't
3 heard everything yet. We haven't gone to the
4 public witnesses yet.

5 COMMISSIONER JEFFRIES: Yeah,
6 right.

7 CHAIRPERSON MILLER: So I mean, it
8 will be up to us to determine whether we think
9 we need to do it to mitigate adverse impacts
10 or not, based on the evidence before us. We
11 haven't had a lot of evidence that goes to No.
12 1.

13 COMMISSIONER JEFFRIES: Yeah, we
14 haven't had a lot.

15 CHAIRPERSON MILLER: Yeah.

16 COMMISSIONER JEFFRIES: And then
17 there is other people who -- I mean, well --

18 CHAIRPERSON MILLER: Okay. Do you
19 want to say anything else before we go to the
20 public witnesses?

21 MR. GLASGOW: We don't have any
22 other comments, at this time.

1 CHAIRPERSON MILLER: Okay. Is
2 there anybody here who wishes to testify in
3 support of this application? Okay. Now, is
4 your time to come forward. Okay. Would you
5 introduce yourself for the record, please?
6 Wait, is your mike on?

7 MR. WHALEN: My name is Tom
8 Whalen.

9 CHAIRPERSON MILLER: Okay.

10 MR. WHALEN: So I'm here, in
11 essence, I'm one of the neighbors who signed
12 the --

13 CHAIRPERSON MILLER: Wait. Could
14 you give us your address also, please?

15 MR. WHALEN: Yeah. My address is
16 1419 Potomac Avenue, S.E. So I share the
17 alley with the former KFC building. So I'm
18 here. I'm one of the neighbors who signed the
19 agreement. And in essence, I'm sort of here
20 representing that today. I think a lot of
21 other people wanted to be here, but jobs and
22 child care, you know, things sort of supersede

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1 that.

2 I don't want to spend a lot of
3 time sort of going over the points in our
4 letter. I think it's pretty clear. For the
5 most part, I think what my role here is, if
6 there's questions that you have, you know, if
7 our letter maybe wasn't clear, I think a lot
8 of our interests coincided with the interests
9 of Douglas.

10 We were happy to see a building
11 that was two-stories, because it's in
12 character with all the other buildings. We
13 were happy to see a building that filled the
14 entire lot, because what we didn't want to see
15 was a lot of space behind that building that
16 would be used for loitering, which has been a
17 problem over the years, particularly in that
18 alley.

19 So a lot of our interest had
20 coincided, even the issue with parking. I
21 think the neighbors want to see uses that are
22 sort of local by design or ones that people

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1 can access from the Metro, which is only a
2 block away, the Potomac Avenue Metro Stop. So
3 even the absence of parking has coincided with
4 our interests.

5 So for the most part, I think,
6 really if you have questions, then I hope to
7 be able to answer those for you, but
8 otherwise, there is strong neighborhood
9 support for doing something nice here and
10 getting rid of the old KFC building.

11 CHAIRPERSON MILLER: Okay. Thank
12 you. I have a couple of questions. I mean,
13 it sounds like a pretty amicable relationship,
14 but with respect to the Memorandum of
15 Understanding, how do you think it is
16 enforceable?

17 MR. WHALEN: Well, our concern is
18 it's enforceability, which is why you have
19 these conditions in front of you to write them
20 into the order. If they are in the order, at
21 least our understanding is that, that actually
22 makes them enforceable.

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1 I mean, our understanding is that
2 the MOA itself isn't really enforceable,
3 except to the extent that we were to hire a
4 lawyer and argue that they had broken the
5 Memorandum of Understanding, which isn't an
6 attractive option for us. But I think for
7 some of these things, I think it's one that we
8 would live with.

9 CHAIRPERSON MILLER: Okay. The
10 other thing I was saying and I don't want to
11 belabor it, but since you are here, you know,
12 our standard for putting conditions in orders
13 is based on the evidence in the record that
14 leads us to believe that the conditions are
15 necessary to mitigate an adverse impact.

16 And so I think what we were saying
17 before when we were looking at No. 1 and it's
18 talking about all these different uses and
19 stuff, we really don't have much evidence, I
20 think, in the record that goes to that
21 condition. And I don't know if there is
22 anything you want to add to that.

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1 MR. WHALEN: Yeah, I mean, I'm not
2 sure that I have a lot to add to that. I
3 mean, some of those are, you know, as I
4 recall, things that would be difficult to put
5 in the building anyway, like a liquor store,
6 for example. And you know, I think that would
7 have an obvious negative detriment, but I
8 think that there would be a lot of other ways
9 the neighbors could prevent that from
10 happening.

11 With respect to other things, you
12 know, I think that the view of the neighbors
13 is that we want to see something that is
14 better. The Douglas has talked a lot about
15 how -- you know, the next best option for them
16 is to return it to a fast food restaurant or
17 turn it into a 7-Eleven. And so for us, we
18 want to see uses that are an improvement over
19 that.

20 And so part of writing that first
21 clause was to try to guarantee that we didn't
22 end up with uses in that building that we

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1 might actually see as worse as their next best
2 offering.

3 COMMISSIONER JEFFRIES: Even if
4 those uses are matter-of-right or perhaps, you
5 know, down the -- I mean, they could happen
6 through special exception.

7 MR. WHALEN: Yeah, I think that's
8 fair. That's fair to say.

9 COMMISSIONER JEFFRIES: Okay. So
10 future owners will be bounded. Okay.

11 MR. WHALEN: Yeah. I mean, and
12 part of the reason that we would be -- we had
13 hoped to get this into your order is that it
14 would bind future owners to the same
15 requirements, so that they can't simply sell
16 the building and opt out of any agreement that
17 was made with us.

18 CHAIRPERSON MILLER: And have you
19 lived near this site for a long time?

20 MR. WHALEN: I have lived there
21 for -- since 1999, so almost 10 years.

22 CHAIRPERSON MILLER: And has it

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1 been a fast food establishment since you have
2 been there?

3 MR. WHALEN: It was a fast food
4 establishment for the first three or four
5 years. I think it has been closed for maybe
6 two years now. It's been closed for maybe two
7 years now. So it was a fast food restaurant
8 for a long time. In fact, for what it's
9 worth, I have two dogs and walking the dogs
10 was always a treat for them, because they got
11 to eat chicken bones that were just strewn all
12 over the neighborhood.

13 CHAIRPERSON MILLER: Okay. Other
14 questions?

15 COMMISSIONER JEFFRIES: You know,
16 I hate to continue to go on with this point
17 No. 1. I mean, and the other question, I
18 mean, you know, this really doesn't seem to
19 have anything to do with the relief that is
20 being requested here, I mean, these uses and
21 so forth. I don't know. I'm just feeling as
22 if we are getting outside of our -- I mean,

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1 even though we can do this, it just seems to
2 be out, you know, side of the scope.

3 And quite frankly, it appears that
4 the community will still have a way in which
5 if there is a liquor store or certain things,
6 they still have special exception that they
7 will have a chance to sort of, you know, make
8 their voices heard. But anyway.

9 MR. WHALEN: Is that a question?

10 COMMISSIONER JEFFRIES: Oh, no,
11 no, I'm just sort of talking out loud here.

12 MR. WHALEN: All right.

13 COMMISSIONER JEFFRIES: I'm just
14 still having a little bit of difficulty.

15 CHAIRPERSON MILLER: Well, it is
16 an odd kind of, I agree, condition and we
17 don't need to adopt it, you know.

18 COMMISSIONER JEFFRIES: Yeah,
19 yeah.

20 CHAIRPERSON MILLER: They can ask
21 and we can decide what we want to do.

22 COMMISSIONER JEFFRIES: Well, I

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1 mean, clearly, you know, I have lived in a
2 neighborhood. I have very similar situations
3 and so I'm absolutely very sympathetic. But,
4 you know, also, you know, I don't want to rob
5 future developers of their right to, you know,
6 apply for a special exception or build
7 something that is matter-of-right.

8 I mean, it seems like something
9 that we need to take up in larger point, but
10 not for particular --

11 MR. WHALEN: Yeah, and I can't
12 speak for everyone that has signed this letter
13 or part of this agreement, so, you know, I
14 don't think that the neighbors would withdraw
15 their support for this if No. 1 didn't appear
16 in the order. I don't think that that's the
17 case. Obviously, I can't speak for the group.

18 COMMISSIONER JEFFRIES: Right.

19 MR. WHALEN: And of course, I
20 can't speak for the ANC either, which that was
21 part of their letter.

22 CHAIRPERSON MILLER: Yeah, the

1 ANC's language is kind of not clear. It says
2 "It is conditioned upon the attachment of
3 Items 1 through 5 of the neighbors' Memorandum
4 of Understanding with the application to the
5 BZA report as conditions to be derived."

6 So anyway, but we understand what
7 the concerns are. And I think it's great that
8 there is a Memorandum of Understanding. So
9 when we get to this point, if we decide to
10 grant the relief, then we can specifically
11 address the proposed conditions. Okay. Thank
12 you very much.

13 MR. WHALEN: Thank you.

14 CHAIRPERSON MILLER: Anybody else
15 here to testify in support of the application?
16 Anybody here to testify in opposition? Mr.
17 Peterson, come on forward.

18 MR. PETERSON: I'm Gary Peterson.
19 I live at 810 Massachusetts Avenue, N.E., and
20 I'm Chairman of the Capitol Hill Restoration
21 Society Zoning Committee.

22 First let me say you always have

1 to say whether you oppose or you support and
2 there -- the application is for three
3 variances. No. 1 for a variance from the
4 floor area requirement; No. 2 a variance from
5 the rear yard requirement; and the third one
6 a variance from the parking.

7 I would say, first of all, I feel
8 that the parking requirement, I think they
9 meet the test on that. And I have no problem
10 with you granting that variance that is
11 requested. So I think we can take that one
12 off the table.

13 The rear yard requirement is a
14 little weaker, but it's not one that we feel
15 is substantially so weak that we couldn't go
16 along with that. The issue that we do have is
17 with the FAR variance. And I think that's the
18 most important one here. Really, the idea and
19 if you go to the Comprehensive Plan for the
20 Capitol Hill Element, the idea is is to bring
21 housing back in to these commercial areas.

22 And that's why there is that extra

1 FAR, that's the purpose. And so if they want
2 to build a building, they can have an
3 additional 1 FAR and they certainly have the
4 height with which to do this. And if they
5 don't have to meet the parking requirement or
6 the rear yard requirement, I don't see -- it
7 appears to me there's no reason that they
8 can't meet the FAR requirement, which is 1.5
9 for commercial and 1 for residential.

10 The other thing I would like to
11 say is I met with the community and, frankly,
12 what is motivating the community is they are
13 terrified that a fast food operation will come
14 in there and let me say the Capitol Hill
15 Restoration Society doesn't want a fast food
16 operation in there either as well. But they
17 were looking at it that it was either a fast
18 food operation or what the applicant was
19 proposing.

20 And I was unsuccessful in
21 persuading them that there was even something
22 better that could be done here and I think

1 that's the case. I think as a matter-of-
2 right, they could go up to a 2.5 FAR if they
3 just changed their mix on this site. And I
4 think the property can be used in that purpose
5 -- for that purpose and there's nothing that's
6 preventing them from developing the site as
7 the zoning foresees.

8 I would like to also point out to
9 you to just sort of take some of this off the
10 table is if they built their current project,
11 a Dunkin' Donuts could go in on the first
12 floor. There would be no problem with that.
13 We have a Dunkin' Donuts at the corner of 8th
14 and Pennsylvania Avenue in a commercial
15 property without a drive through.

16 Personally, I like Dunkin' Donuts,
17 so it would probably be a place I would
18 frequent. But a 7-Eleven could go in there as
19 a matter-of-right. There is lots of uses that
20 could go in there that the community might not
21 consider that they would like, but this
22 doesn't prevent that.

1 I would like to address the MOU.
2 When I met with the community, I advised them
3 that I didn't think this MOU was enforceable
4 through the BZA process. You will have to
5 decide that for yourselves, but it looked iffy
6 to me. And I recommended to them that they
7 proceed to get it done as a -- recorded as a
8 covenant running with the land, that that
9 would bind both the current owner and it would
10 bind subsequent owners.

11 And I seem to remember in a
12 conversation I had with one of the neighbors
13 that they told me that that had been agreed to
14 by the applicant, but I don't -- I would have
15 to say that was just a conversation and it
16 could be that the neighbor did not understand
17 the legal differences between a covenant
18 running with the land and agreeing to have it
19 be part of the BZA order.

20 But it's my view that this should
21 be a covenant running with the land,
22 otherwise, it's not going to be that

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1 beneficial to the neighborhood.

2 Finally, I would like to call your
3 attention to there was a Small Area Plan done
4 for this strip. It is the Pennsylvania Avenue
5 Southeast Corridor Land Development Plan. And
6 it was a final in January of 2008. And I
7 would argue that part of this development is
8 not compatible with that plan.

9 And I would refer you to page 48,
10 when you get a chance, of that plan. This
11 plan, by the way, is up on the Office of
12 Planning website and is available to everybody
13 at that website. And one of the things it
14 says is the new buildings will be of high
15 quality architecture and compatible with the
16 historic nature of the street.

17 I would argue that Mr. Callcott
18 notwithstanding that this building is not of
19 high quality architecture and compatible with
20 the historic nature of Pennsylvania Avenue.
21 So I would say this is -- doesn't meet the
22 Pennsylvania Avenue Southeast Plan.

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1 Also, on page 48, it just points
2 out lot coverage should conform with the
3 current Zoning Regulations, other land uses,
4 active ground floor retail is encouraged with
5 upper story small offices or residential.
6 Then it goes to preservation, developments
7 outside the Historic District is highly
8 encouraged to use the Historic District
9 Guidelines.

10 And then --

11 COMMISSIONER JEFFRIES: But excuse
12 me, it does say though that you could have
13 ground floor retail and office above.

14 MR. PETERSON: Yeah, it does.

15 COMMISSIONER JEFFRIES: Okay.

16 MR. PETERSON: That's correct.

17 You heard me. Correct. And then the -- and
18 then as to parking, it says "An Historic
19 District allows waivers for parking, any new
20 parking within or outside the Historic
21 District will be either in the rear or below-
22 grade." And I would say in this particular

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1 site, we could waive the parking. This is
2 also close to the Potomac Avenue Metro, which
3 is another reason the parking can be looked
4 at.

5 Then the plan also refers to
6 building design. It talks to building
7 materials and colors. It also talks about
8 transparency, that at least 50 percent of the
9 ground floor, street frontage should be made
10 of transparent materials to enhance and
11 activate the street.

12 I think all of these issues need
13 to be addressed and would suggest to you that
14 if you look at the current proposed building,
15 it doesn't comply with the plan.

16 And then the Comprehensive Plan in
17 the Capitol Hill Elements, so that would be
18 Chapter 15. I'm referring to page 15-24,
19 which is about the Pennsylvania Avenue
20 Southeast Corridor. It is Capitol Hill
21 Element 2.2 on page 15-24.

22 It says "Opportunities for new

1 multi-family developments should be
2 concentrated on vacant lots and on the drive
3 through commercial properties along the avenue
4 and should emphasize moderate densities rather
5 than medium or high densities."

6 So the Comp Plan does encourage
7 residential along the avenue. So I have a lot
8 more trouble -- that's why I have a lot more
9 trouble with the FAR variance and not the
10 other two variances.

11 COMMISSIONER JEFFRIES: Well, in
12 bringing all of this up, I mean, because I'm
13 trying to stay focused on the variance test.
14 So in terms of the Small Area Plan and the
15 Comprehensive Plan, you are tying your
16 comments about that to --

17 MR. PETERSON: The substantial
18 detriment.

19 COMMISSIONER JEFFRIES: -- the
20 substantial detriment?

21 MR. PETERSON: Yes.

22 COMMISSIONER JEFFRIES: Okay.

1 MR. PETERSON: And also in
2 granting this variance, the things you have
3 got to look at among others are the Comp Plan.
4 It's not -- it is out there and is a law that
5 does govern and you should pay attention to.

6 I think if you are going to do
7 something that is contrary to the Comp Plan
8 and you may want -- decide to do that, I think
9 you have to put in writing then why you are
10 not going to go along with that.

11 CHAIRPERSON MILLER: No, I don't
12 think so. Where does it say that? We are
13 bound by the Zoning Regulations. I mean, I
14 understand your arguments about when we are
15 looking at substantial detriment that --

16 MR. PETERSON: Right.

17 CHAIRPERSON MILLER: -- we
18 consider what the Comprehensive Plan says it
19 thinks, you know, is good for the city and
20 different districts. That's something to look
21 at. But I'm not aware of any requirement that
22 we put in writing if we don't follow every

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1 point in the Comprehensive Plan that relates
2 to a certain district. That's all.

3 MR. PETERSON: Okay.

4 CHAIRPERSON MILLER: Okay.

5 COMMISSIONER JEFFRIES: For a
6 variance test, I mean, I just -- I mean,
7 clearly, I mean, PUDs, I mean, I'm just
8 curious. I mean, I was going to -- you know,
9 when you brought up a number of these things,
10 I went to look at the Office of Planning's
11 report to see if I had missed something, and
12 there wasn't any -- I mean, you have seen
13 Office of Planning's report?

14 MR. PETERSON: No, I haven't.

15 COMMISSIONER JEFFRIES: Oh, okay.
16 So there was just -- you know, in terms of
17 some of the things you are speaking about,
18 there was just not that discussion. I mean,
19 clearly, there was discussion around
20 substantial detriment as relates to FAR.

21 MR. PETERSON: Right.

22 COMMISSIONER JEFFRIES: But not

1 this, you know, larger in the context of the
2 Small Area Plan or the Comprehensive Plan.

3 MR. PETERSON: Right.

4 COMMISSIONER JEFFRIES: I have to
5 tell you, I just haven't -- I don't recall
6 seeing a lot of that. You know, I have sat on
7 the BZA for variance cases, I just haven't
8 seen it. So that's why I responded.

9 MR. PETERSON: Okay. Well --

10 CHAIRPERSON MILLER: And I think
11 Mr. Cochran probably may want to weigh in on
12 this, but I understand that the law is that --
13 excuse me. The law is that it's not -- the
14 Comp Plan is not self-effectuating. It's that
15 it's there and then the Zoning Commission
16 would then enact regulations to implement
17 what's in the Comp Plan and that we, on the
18 BZA, are not bound by what's in the Comp Plan.
19 Though, we can look to it, you know, as I
20 said, as what's out there is to, you know,
21 what it says, you know, might be beneficial,
22 detrimental, whatever, but we are not bound by

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1 it or required to respond to it. I don't
2 think.

3 Mr. Cochran, do you have a comment
4 on that?

5 MR. COCHRAN: On that particular
6 issue, no. With respect to what you need to
7 or don't need to do, vis-a-vis the
8 Comprehensive Plan, again, I defer to OAG on
9 that. I did discuss this with the Ward
10 Planner and we don't find this to be
11 inconsistent with the Comprehensive Plan. And
12 there is not guidance for this specific site
13 in the Pennsylvania Avenue Plan.

14 There are some blocks in the
15 Pennsylvania Avenue Plan where specific
16 initiatives are proposed. This is not one of
17 those sites.

18 MR. PETERSON: Yes, but what I was
19 reading to you was the general statement that
20 covered the whole avenue, not just -- so,
21 indeed, there are particular sites that are
22 covered. But what I was reading to you was

1 about what should be done with the whole area
2 there.

3 CHAIRPERSON MILLER: Is it your
4 point though that this site should be used for
5 residential instead of office retail?

6 MR. PETERSON: If it's going to go
7 above 1.5 FAR, yes. It should then be used
8 for residential. That was the -- that's the
9 purpose. And I don't think they have made any
10 showing that they can't go above -- that they
11 can't go to 2.5 FAR. What they want to do is
12 go to 2 and use it all for commercial. But
13 they can use it as a residential building if--
14 or partially residential if they want to.

15 CHAIRPERSON MILLER: So they could
16 do that as matter-of-right you are saying?

17 MR. PETERSON: Right.

18 CHAIRPERSON MILLER: And not need
19 variance relief?

20 MR. PETERSON: Right.

21 CHAIRPERSON MILLER: Okay. Maybe
22 they will respond to that.

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1 MR. PETERSON: Well, I'm -- I
2 mean, or they could get a variance for the
3 parking and their rear yard requirement that
4 they don't need the variance for the FAR.

5 CHAIRPERSON MILLER: I know, but--
6 okay. I hear what you are saying with that.

7 MR. PETERSON: Right.

8 CHAIRPERSON MILLER: But I guess I
9 just want to pin you down. Do you think they
10 could build as a matter-of-right without any
11 variance?

12 MR. PETERSON: No. I think --

13 CHAIRPERSON MILLER: The
14 residential that you are proposing.

15 MR. PETERSON: I would think they
16 would definitely need a parking variance.

17 CHAIRPERSON MILLER: Okay. So
18 they would definitely.

19 MR. PETERSON: Yeah.

20 CHAIRPERSON MILLER: Okay.

21 MR. PETERSON: And they would
22 probably need a rear yard variance.

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1 CHAIRPERSON MILLER: Okay.

2 Anything else?

3 MR. PETERSON: No.

4 CHAIRPERSON MILLER: Any other
5 questions? Is there anybody else here who
6 wishes to testify on this application? Okay.
7 Then does the applicant have any closing
8 remarks? And perhaps you can respond.

9 MR. GLASGOW: Yes, we have some
10 closing remarks and rebuttal. I think that,
11 first of all, we do think that we have met all
12 of the burden of proof that we have on all
13 three of the variances that we have requested.
14 And I think as part of our case we don't have
15 to show every conceivable variable as to how
16 you could develop the site.

17 I mean, if somebody said that part
18 of our burden of proof was to come in here and
19 show how you can't build 2.5 FAR, we would
20 have the architect go out and do studies
21 showing that. How do you do a mixed-use
22 building that has 7,000 square feet and has

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1 multiple floors? You have multiple means of
2 egress. You don't want to be sharing egress
3 and corridors. You would probably have
4 separate dedicated elevators to -- for
5 security purposes.

6 I don't think that that's part of
7 what we have to go through to say as to why it
8 is that you don't take a small irregular-
9 shaped site and have two different uses on it
10 and two or three floors, because we would have
11 retail. We would have office. And we would
12 have residential, you know, within such a
13 small site and building.

14 So I think in some ways we can
15 dispose of that. I was thinking as I was
16 hearing some of the things with that
17 Pennsylvania Avenue Plan, there were so many
18 things there that we complied with and that we
19 did, like go to the Historic Preservation
20 Office, even though we are outside the
21 Historic District.

22 And when we coordinated with the

1 Office of Planning with respect to ground
2 floor retail, small office type uses on the
3 upper floor, we are doing all of that.
4 Waivers for parking, we're asking for that.
5 So I think that there were a number of things
6 that we did on that and we thought that we had
7 worked very well with the community on an
8 overall basis with the Office of Planning and
9 everybody else to come to where we are at this
10 point in time.

11 And also the -- as the Chair said,
12 the Comprehensive Plan is not self-executing.
13 There is case law on that. So we have
14 complied with what it is that we have to do
15 with respect to the Comprehensive Plan.

16 I'm trying to think if there are
17 any other issues that were raised on this with
18 respect to the questioning of the FAR variance
19 that the Board wants the applicant's side to
20 address.

21 CHAIRPERSON MILLER: Well, I would
22 just want to clarify. FAR variance is that

1 related to an economic viability question?

2 MR. GLASGOW: Yes. I mean, we
3 have an existing use that we have gone over
4 and the viability of that use as recognized by
5 both the developer and the community. And in
6 order to replace the use, you have to have
7 something that makes economic sense. And
8 building 1.5 floors, I think we did show that
9 building 1.5 floors doesn't make any sense
10 with a small irregularly-shaped site, such as
11 this.

12 And once you -- and so that means
13 either you're going to build one floor or
14 you're going to build two. And at one story,
15 it doesn't make any sense for us to demolish
16 the existing use and rebuild a one-story
17 building. If we can have two-stories and we
18 have the retail on the ground floor and have
19 office on the second floor, then we've got
20 something that makes sense.

21 And when you -- and also when it
22 was talked about build a mixed-use building

1 and have a variance from the parking, I don't
2 know that the community would agree with that,
3 because with the -- there will be some demand
4 for cars for the residences in that building.
5 And they may not want to have additional
6 residential permit parking and all of that
7 type of thing, because we have seen that in
8 other cases that we have had.

9 So there is a jump in the logic
10 there that there would be support for 2.5 FAR
11 mixed-use building with no parking. I don't
12 know that that's the fact. And I don't know
13 that anybody can say that on the other --
14 having the other position that that's a fact.
15 We know that there is support all across the
16 board for having no parking for ground floor
17 retail and a second floor office, because that
18 means that all of those type uses will be
19 community-oriented.

20 You wouldn't be -- you would not
21 lease that space if you thought people had to
22 have cars to get to your business

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1 establishment. And that's what we have heard
2 from the community in the support that they
3 had at the ANC meeting and elsewhere on this
4 issue.

5 I think that we have gone through
6 all the areas of the burden of proof for the
7 three variances that have been requested. We
8 would like to get a Bench decision. There are
9 no parties that are in opposition to this
10 case, because time is not our ally here. We
11 have kept the property off the market. We
12 have been -- we otherwise would have been able
13 to release this property and put it back in
14 service.

15 And Mr. Millstein and community
16 have worked very well together and we have
17 just taken the time to go through the process,
18 but now we finished up that part of the
19 process and we would like to conclude it.

20 CHAIRPERSON MILLER: Okay. I
21 don't think there is anything else that the
22 Board would be waiting for. I think we have

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1 all the information in the record. Let me
2 just see if my colleagues are ready to
3 deliberate on it.

4 Okay. We're going to deliberate
5 on it. I guess I'll start the deliberations.
6 After hearing all the testimony today, I would
7 be in favor of granting the motion for a
8 variance, granting the relief for the three
9 variances. I think it has been pretty well
10 fleshed out, you know, what is the exceptional
11 condition here and what practical difficulty
12 that leads to.

13 And I see a few. I mean, I see
14 the exceptional condition, one being the
15 topography, the shape of the property and that
16 leading to certainly the difficulty with the
17 parking and that the amount of space that the
18 ramp takes up and the cost of trying to put
19 parking underneath it, it just doesn't make
20 any sense at all.

21 And we see that in a lot of cases,
22 so I think that that's a pretty easy one. And

1 that if you put parking on the property, it
2 would cut in way too much of the space for the
3 other uses.

4 Then there is the FAR issue and
5 the rear yard issue. I think that the law
6 does recognize an exceptional condition of a
7 property considering not just the land and the
8 topography, but also the building on it and
9 the use of that building and the circumstances
10 around it.

11 And I think that the exceptional
12 condition here is that it does have what is
13 being characterized as a disfavored use on it,
14 that's the fast food use, that is being
15 proposed to be replaced with a use that is
16 more suitable to the community in which it
17 sits.

18 And we see also architecturally
19 there has been a change in the historic
20 pattern of development here. And that the --
21 even though they could use the building as it
22 is for fast food, that there has been all this

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1 development around it and that this actually
2 is not in character architecturally even with
3 what surrounds it.

4 I think when they try to develop
5 it that these circumstances give rise to
6 certain practical difficulties, for instance,
7 with respect to the rear yard that the
8 applicant has said that on the one hand if it
9 left the rear yard, then it would leave
10 exposed the loading and the trash and that
11 doesn't seem to make any sense. That would
12 have a substantial detriment, I think, on the
13 community.

14 Whereas, if it is enclosed, it
15 doesn't. And that there is certainly an
16 economic price to do this new development and
17 they need to be able to get back some of the
18 costs, I think, by using that extra FAR and
19 that extra space on the rear yard.

20 I don't see any substantial
21 detriment to the community. Actually, they
22 are very much in favor of it. The height and

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1 the density fits in with the surrounding
2 properties. The loading and the trash is
3 enclosed. I don't know. Do you have other
4 things that we have heard today? What do you
5 think about that?

6 COMMISSIONER JEFFRIES: I mean, I,
7 Madam Chair, would agree with pretty much
8 everything you have said. I mean, I still go
9 back to the exceptional situation and I tend
10 to just hang my hat more on the configuration
11 of the site and the size of the site and that
12 that is the main driver of, for me, a number
13 of the practical difficulties, particularly
14 around the area of building layout.

15 And I would agree that as it
16 relates to the variance needed for parking, I
17 think that that's very strong as well as the
18 rear yard. And when I move to substantial
19 detriment, as related to FAR, rear yard and
20 parking, I think I don't see that there is any
21 measurable impact, negative impact on this
22 community based on the relief that is being

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1 requested. So I'm in favor of moving forward.

2 CHAIRPERSON MILLER: I think the
3 other thing is that, I would just throw in,
4 the proximity to the Metro, that there
5 wouldn't be an adverse impact by granting the
6 relief from parking.

7 Why don't we then look at the
8 question of the conditions that are in the MOU
9 that we have been asked to consider putting in
10 our order? Starting with No. 1, which lists
11 various uses that would be restricted for this
12 property, even though they are allowed as a
13 matter-of-right.

14 We started talking about this
15 earlier and I would not be in favor of
16 including it. I don't think that we have
17 sufficient evidence in the record to put it in
18 our order, to make it binding that it is
19 necessary to mitigate certain conditions.

20 MEMBER WALKER: I agree, Madam
21 Chair, just because the parties agree that
22 they will not support these uses in these

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1 locations, doesn't mean that, you know, it's
2 our role to add some teeth to that agreement.
3 I don't think we have anything in the record
4 today that sort of establishes that these will
5 have a negative impact.

6 COMMISSIONER JEFFRIES: I think my
7 comments have been well-recorded as relates to
8 No. 1.

9 CHAIRPERSON MILLER: Okay. So
10 that's that with No. 1. We won't include it.
11 No. 2 is it says "The subject property will be
12 developed substantially in accordance with the
13 architecture plans and elevations dated July
14 11, 2008 and attached hereto as Exhibit A."

15 We see this sometimes, but it's
16 like when we grant an order, it's based on
17 architectural plans and they have to be in
18 accordance with them. So you know, we have
19 two choices. One is we don't need it, we
20 won't include it, it's redundant, which I
21 think I would be -- I would lean towards that,
22 or you know, well, it's true, so we could put

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1 it in. But I don't think.

2 I think we should have conditions
3 that are really meaningful that, you know,
4 they need to be in.

5 COMMISSIONER JEFFRIES: Right.

6 CHAIRPERSON MILLER: Okay. So we
7 won't put that in. Third, "Douglas, its
8 tenants and contractors will not use the
9 loading berth on the subject property between
10 the hours of 8:00 p.m. and 7:00 a.m. on Monday
11 through Saturday. Douglas, its tenants and
12 contractors may use the loading berth only
13 between the hours of 9:00 a.m. and 1:00 p.m.
14 on Sunday."

15 We do that in some of our orders.
16 You know, we didn't give any relief related to
17 loading, so on the one hand, I mean, it looks
18 like a good thing, but I'm not sure that we
19 need it in our order or not.

20 MEMBER WALKER: Again, Madam
21 Chair, I don't think it's our role to add
22 teeth to the party's agreement. I mean they

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1 have come to agreement on these terms and they
2 don't necessarily have anything to do with the
3 relief that this Board has granted. And so I
4 would not be in favor of including it as a
5 condition.

6 CHAIRPERSON MILLER: Okay. That's
7 fine. I think that part of the reason we are
8 stuck on it a little bit is because we don't
9 have -- we didn't hear any testimony really
10 related to this. And so --

11 COMMISSIONER JEFFRIES: Not --
12 yeah. We have this Memo of Understanding.
13 There's no research to know, you know, how
14 extensive these issues are. And it's just,
15 you know -- so I think it's good that they
16 have entered into this agreement and it's good
17 that the applicant has agreed, but, you know,
18 I just think we're just looking at variances
19 here.

20 CHAIRPERSON MILLER: Okay. I
21 mean, I think it's a close one, because it
22 does certainly go to adverse impact on

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1 neighboring property because of the operations
2 that this project will bring. You know, it's
3 not that far fetched, but --

4 MEMBER WALKER: But we don't have
5 anything in the record related to those
6 adverse impacts.

7 CHAIRPERSON MILLER: Okay. Yeah.

8 COMMISSIONER JEFFRIES: Correct.

9 CHAIRPERSON MILLER: No. 4 was
10 construction activities that we said were
11 under the purview of DCRA. So then we have
12 No. 5, which goes to keeping their property
13 clean. It says "Douglas or its tenants will
14 promptly remove all trash and debris from the
15 public space located between the property line
16 and the adjacent curb."

17 And then we heard the applicant
18 state that they would police their property
19 daily.

20 MEMBER WALKER: I don't think --

21 COMMISSIONER JEFFRIES: I think
22 it's a bust here.

1 CHAIRPERSON MILLER: I do, too. I
2 think that would look very silly having this
3 one little condition hanging out there.

4 COMMISSIONER JEFFRIES: I think we
5 should probably just take our vote and move
6 on.

7 CHAIRPERSON MILLER: Yeah. I
8 think it's a very good Memorandum of
9 Understanding and I think they probably had a
10 lot of discussion about these issues and we
11 should leave it at that. We should leave it
12 at that. Okay.

13 All right. Then okay, at this
14 point then, I would like to move approval of
15 Application No. 17860 of Jemal's KFC, LLC,
16 pursuant to 11 DCMR section 3103.2, for a
17 variance from the floor area ratio
18 requirements under section 771, a variance
19 from the rear yard requirements under section
20 774, and a variance from the parking
21 requirements under subsection 2101.1, to
22 permit the development of a two-story

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1 commercial building at premises 1442
2 Pennsylvania Avenue, S.E.

3 COMMISSIONER JEFFRIES: Second.

4 CHAIRPERSON MILLER: Further
5 deliberation?

6 All those in favor say aye.

7 ALL: Aye.

8 CHAIRPERSON MILLER: All those
9 opposed? All those abstaining? Would you
10 call the vote, please?

11 MS. BAILEY: Madam Chair, the vote
12 is recorded as 3-0-2 to grant the application.
13 Mrs. Miller made the motion, Mr. Jeffries
14 seconded, Mrs. Walker supported the motion,
15 Mr. Dettman and Mr. Loud are not present at
16 this time.

17 CHAIRPERSON MILLER: We have one
18 final issue, I think, and that is whether or
19 not this can be a summary order, whether or
20 not there are no parties in opposition and
21 that turns on, I think, our interpretation of
22 the ANC report. The ANC supported the request

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1 for variance by a vote of 8-0, but then they
2 have this somewhat unclear language about
3 whether it is conditioned upon Items 1 through
4 5. I can read it one more time.

5 Well, no that's in the letter.
6 Wait a second. Oh, yeah, I personally think
7 that the letter is vague enough that we should
8 not hold up this project by doing a full order
9 which we often do. We did give great weight
10 to the ANC's concerns, but I'll read this
11 letter again just so that we get it on the
12 record.

13 It says "Dear Board Members, at a
14 regularly called and properly noticed meeting
15 of December 9, 2008 with a quorum present,
16 ANC-6B voted unanimously 8-0 to support the
17 above applicant's request as presented."

18 Okay. So that's what they voted.
19 They say that's what they voted. We don't
20 have here their actual resolution which is a
21 little bit problematic, but they say they
22 voted that and then they say "The Commission

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1 is taking this action because after reviewing
2 the applicant's documentation and the
3 applicant's extensive communication with the
4 neighbors and the neighbors' petition of
5 support signed by over 23 residents, believes
6 the applicant has met the test of variances,
7 conditioned upon the attachment of Items 1
8 through 5 of the neighbors' Memorandum of
9 Understanding with the application to the BZA
10 report as conditions to be derived."

11 Anyway, I think it's not clear
12 whether their support is conditioned upon our
13 including the Items 1 through 5 in the Board's
14 order. And even if it is though, I don't
15 think there's a requirement that there be a
16 full order. I think that we have given great
17 weight to those conditions by addressing them
18 in this deliberation. Do you all agree?

19 COMMISSIONER JEFFRIES: Yes.

20 CHAIRPERSON MILLER: Okay. Then
21 this will be a summary order.

22 MS. BAILEY: Thank you.

1 CHAIRPERSON MILLER: Okay. Thank
2 you.

3 MR. MILLSTEIN: Thank you very
4 much.

5 CHAIRPERSON MILLER: What's the
6 next case? We're just going to take a 5
7 minute break before the next case, so if you
8 all want to, you know, leave and come back,
9 you can as well. Okay.

10 (Whereupon, at 4:42 p.m. a recess
11 until 4:55 p.m.)

12 CHAIRPERSON MILLER: We're back on
13 the record and we're ready for the next case,
14 Ms. Bailey, when you are.

15 MS. BAILEY: Madam Chair, it's
16 Application No. 17865 of the National Academy
17 of Sciences, pursuant to 11 DCMR 3104.1, for
18 a special exception to allow an addition to an
19 existing office building under section 508.
20 The property is located in the SP-2 District
21 at premises 2101 Constitution Avenue, N.W.,
22 Square 88, Lot 58.

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1 CHAIRPERSON MILLER: Okay. Good
2 afternoon still and why don't you introduce
3 yourselves for the record, please?

4 MS. RODDY: Hi, my name is
5 Christine Roddy and I'm an attorney with
6 Pillsbury Winthrop. And with me today is
7 William Colglazier with the National Academy
8 of Sciences, Baird Smith with Quinn Evans
9 Architects and Erwin Andres with Gorove/Slade.

10 CHAIRPERSON MILLER: I just want
11 to check, is the ANC here in this case? Okay.
12 They are not. So why don't you proceed?

13 MS. RODDY: Okay. Thank you.

14 CHAIRPERSON MILLER: It doesn't
15 seem too complicated.

16 MS. RODDY: No, it's a very
17 straightforward case, so hopefully we will be
18 quick in our testimony. As a preliminary
19 matter though, we did want to have Mr. Smith
20 as well as Mr. Andres qualified as expert
21 witnesses. Mr. Smith would be an expert in
22 architecture and Mr. Andres would be offered

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1 as an expert in traffic engineering.

2 And we submitted Mr. Smith's
3 resume as Exhibit H to the prehearing
4 statement and then Mr. Andres' his resume was
5 submitted on the 30th in a separate
6 submission.

7 CHAIRPERSON MILLER: Okay. I know
8 that we have already qualified Mr. Andres
9 several times as an expert in traffic issues.
10 Have we had Mr. Smith here before this Board
11 before? I didn't recognize you. Okay. I'm
12 looking at the resume. I don't have any
13 issue. Does anybody here? Okay. Fine. So
14 they are both qualified in their fields.

15 MS. RODDY: Great. Thank you. We
16 are here this afternoon for the special
17 exception application of the National Academy
18 of Sciences. They are seeking relief for an
19 addition to an existing office building
20 located at 2101 Constitution Avenue. The
21 office building is a designated historic
22 landmark located in Ward 2.

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1 NAS is immediately south of the
2 State Department, is north of West Potomac
3 Park, to the east of the American Pharmacists
4 Association and to the west of the Federal
5 Reserve.

6 The Academy was last before this
7 Board for this property in 1968 when it sought
8 approval for an addition as well as for
9 approval of modification of the parking
10 requirements. The property is located in SP-2
11 Zone District. The project consists of an
12 addition of, approximately, 9,500 square feet,
13 which is primarily through the enclosure of
14 three courtyards.

15 Pursuant to section 508 of the
16 Zoning Regulations, an addition to an office
17 building in this zone requires special
18 exception approval from the Board regardless
19 of whether the project will remain within the
20 parameters for the SP-2 Zone District. And in
21 this case, the project will remain well within
22 the parameters for the SP-2 Zone District.

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1 For instance, the floor area ratio
2 will increase from .87 to .92, it's minimal,
3 whereas, a 3.5 FAR is permitted in this zone
4 district. The lot occupancy increases from 31
5 percent to 32 percent. Again, it's minimal.
6 And otherwise, a commercial use can have a 100
7 percent lot occupancy.

8 The application satisfies the
9 standard for special exception relief. The
10 addition is in harmony with the general
11 purpose and intent of the Zoning Regulations
12 and Zoning Maps and relief can be granted
13 without adversely affecting neighboring
14 properties.

15 As our filings in this case and
16 our testimony here today will demonstrate, the
17 use, height, bulk and design of the addition
18 is in harmony with the existing uses and
19 structures on neighboring properties. And the
20 office use will not create dangerous or other
21 objectionable traffic conditions.

22 We would like to note this

1 application has the support of the Office of
2 Planning as well as the District Department of
3 Transportation. We did attempt to contact the
4 ANC on several occasions. Actually, on six
5 separate occasions and just did not receive a
6 response from them.

7 We will have three witnesses
8 testifying today. Mr. Colglazier will provide
9 an overview of the history of NAS, as well as
10 the need for the renovations. Mr. Smith will
11 go through the architectural elements of the
12 addition. And then we will have Mr. Andres
13 who will testify with regard to the traffic
14 mitigation efforts of NAS.

15 (Whereupon, at 5:00 p.m. the
16 Public Hearing continued into the evening
17 session.)

18
19
20
21
22

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 CHAIRPERSON MILLER: Okay. I have
4 two things. First of all, did you get a copy
5 of the January 6, 2009 memorandum from the
6 Department of Transportation?

7 MS. RODDY: Yes, we received that
8 this afternoon.

9 CHAIRPERSON MILLER: Okay. So you
10 might -- will you be addressing that at all?

11 MS. RODDY: Mr. Andres will
12 address that in his testimony.

13 CHAIRPERSON MILLER: Okay. And
14 then my other comment is I think this is
15 pretty straightforward and there's no
16 opposition, so that the witnesses shouldn't
17 feel like they need to go into great depth.

18 MS. RODDY: Okay.

19 COMMISSIONER JEFFRIES: If at all.

20 MS. RODDY: Okay. Well, let me
21 introduce Mr. Colglazier.

22 MR. COLGLAZIER: I'll be very

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1 brief then. The Academy of Sciences was
2 chartered by Congress in 1863, signed by
3 Abraham Lincoln with a private corporation, a
4 not for profit, a 501(c)(3) corporation.
5 Besides creating an academy that could honor
6 distinguished scientists as members, the
7 original charter also said it required the NAS
8 to advise the Federal Government, when asked,
9 but also to do without compensation, except
10 for expenses.

11 In 1916 out of the same
12 preparation, the operating arm of the National
13 Research Council was created. The purpose was
14 to be able to include other scientists, who
15 were not members, to serve on the committees
16 providing advice to the Government.

17 In 1964, the second honorary
18 academy, the Academy of Engineering was
19 created to honor engineers. In 1970, the
20 third academy of the Institute of Medicine.
21 So we have now three honorary academies and an
22 operating arm of the National Research Council

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1 and we produce several hundred reports a year
2 produced largely by having experts serve on
3 committees advising primarily the Federal
4 Government.

5 Our historic building is -- the
6 main purpose is to further these purposes
7 having meetings and serving expert committees
8 and also the home of these three organizations
9 that compose the one not for profit
10 corporation.

11 The reason for the need for the
12 restoration, our building was built in 1924.
13 Now it needs to be renovated and restored,
14 particularly for up to modern standards and
15 energy efficiency, for ADA compliance, for
16 fire safety codes. The building is designated
17 as an historic landmark on the EC Index of
18 historic sites.

19 It has not had a renovation since
20 1970, so the renovations will modernize and
21 improve the facilities to better accommodate
22 our programs, including changing some of the

1 meeting room sizes to better facilitate the
2 types of meetings that we require.

3 So our goal really is to modernize
4 this wonderful historic building and to be
5 able to have it serve for another 80 years.
6 Thank you.

7 CHAIRPERSON MILLER: Great. Thank
8 you very much. That was great. Yes, yes, no,
9 we have a question from a Board Member.

10 MEMBER WALKER: Just a quick
11 question. How many employees do you have?

12 MR. COLGLAZIER: We have,
13 approximately, 1,100 employees.

14 MEMBER WALKER: All at that --

15 MR. COLGLAZIER: Most of them are
16 actually located in our other building at 500
17 5th Street, which is close to your facility
18 here.

19 MEMBER WALKER: And so how many at
20 the subject site?

21 MR. COLGLAZIER: It's,
22 approximately, I think, 170 at the --

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1 MEMBER WALKER: Thank you.

2 CHAIRPERSON MILLER: Any other
3 Board questions? Okay.

4 MR. SMITH: Thank you. I'm Baird
5 Smith of Quinn Evans Architects. Is it all
6 right if I stand up?

7 CHAIRPERSON MILLER: Yes. Do you
8 have -- you need to just be on mike all the
9 time.

10 MR. SMITH: Yeah, I --

11 CHAIRPERSON MILLER: Okay. You've
12 got it.

13 MR. SMITH: Right. Very quickly,
14 the original building, 1924, faces
15 Constitution Avenue. It is set-back quite
16 considerably and in line with Federal Reserve
17 and the five buildings along that strip. We
18 will be talking in a minute about the
19 additions that were put at the back facing the
20 State Department.

21 This building you may have been
22 in, this is where a large auditorium is housed

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1 inside. It seats about 800 people. And they
2 have a fair number of sponsored events there
3 that many people attend for education purposes
4 and meetings and conferences.

5 We will be talking about this, you
6 might call it a slot or an areaway between
7 these two buildings. This is one of the areas
8 that we are now enclosing to make an atrium,
9 to make it a weather enclosed, basically, to
10 capture this unused space joining it into this
11 wing.

12 In a bird's-eye view, with the
13 front of the building here, and these are the
14 sides and this is the big auditorium addition,
15 there are two current existing courtyards like
16 courts that we are going to cover over with
17 skylights to then also join with the adjacent
18 rooms. And that other slot to the north is
19 shown with this skylight. And that with some
20 other second story space there and third story
21 space here comprises the 9,500 square feet
22 that we are adding to the building out of a

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1 total of 180,000 roughly.

2 Just very quickly, the floor plan.
3 Again, the front of the building is down here.
4 This is one of the courts. This is the second
5 one a little bit of an irregular shape. And
6 then this is the slot on the north. All of
7 these are going to be joined with the meeting
8 rooms that are adjacent, so that this whole --
9 the whole first floor is a very much of a
10 conference facility that you might have in a
11 hotel with the big auditorium and the other
12 conference rooms. And these will become
13 multi-use spaces for receptions and food
14 service and that sort of thing to support the
15 conference activities.

16 I may be going too fast, but this
17 was my intent. The only other thing is to
18 describe a little bit of the parking. This
19 drawing is in your packet and it's the next to
20 the last one. It could be a little bit
21 confusing, because the parking is a composite
22 of surface parking shown here.

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1 And in 1968, a below-grade -- when
2 the auditorium was built, the basement level
3 of the auditorium is an underground parking,
4 enclosed parking. And it is accessed by two
5 exposed ramps. A down ramp here with parking
6 on it and an up ramp or down ramp here with
7 parking on it. So we have all of these in the
8 kind of ramp parking and this on the upper
9 surface.

10 So we are redoing this to make now
11 a much more formal entry and put accessible
12 parking. And the net here, there has always
13 been a parking lot here, a visitor parking
14 lot. Actually, the net is to add one space
15 here, but we are taking away spaces in the
16 basement for some mechanical rooms and they
17 were not laid out to the legal limit of the 9
18 foot by 19.

19 So when you do an actual measured
20 count of the parking spaces, we come out with
21 115 parking spaces, which is greater than what
22 the requirement would be.

1 CHAIRPERSON MILLER: What's the
2 requirement? Do you know?

3 MR. SMITH: 87.

4 MS. RODDY: I believe it's 96.

5 MR. SMITH: Sorry, something less,
6 sorry.

7 CHAIRPERSON MILLER: Thank you.
8 That was very helpful. Any Board questions?
9 Okay.

10 MR. ANDRES: Good afternoon, Madam
11 Chair, Members of the Board. My name is Erwin
12 Andres with Gorove/Slade Associates. What we
13 had done working with the design team is
14 identifying the benefits of the proposed plan.
15 As was discussed earlier, the plan is not
16 necessarily to add additional employees to
17 this location. It is to better use or better
18 maximize the space.

19 As a result, with respect to trip
20 generation, there isn't necessarily going to
21 be any real changes in daily trip generation
22 because of that. Given that, the actual

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1 improvements of this -- of the lay-by area
2 that has been identified on the east side of
3 the facility doesn't currently exist.

4 We are introducing this lay-by
5 area which allows -- which basically relieves
6 the clutter that is currently experienced on
7 22nd Street because what had happened after, I
8 guess, 9/11 the State Department had closed C
9 Street and as a result, it sort of dead-ended
10 the street.

11 By providing the drop-off and
12 pick-up area on the eastern side of the
13 facility, the pick-ups and drop-offs
14 associated with events, as well as with daily
15 activity, is much easier -- is much more
16 efficiently handled, because there aren't
17 three-point turns being performed in the
18 middle of the street.

19 So the benefit of the eastern side
20 drop-off actually mitigates an existing
21 condition. Given that, we have worked with
22 DDOT and responded to their questions. They

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1 issued us an email correspondence identifying
2 some questions they wanted answered on
3 December 30th.

4 Unfortunately, given the holiday
5 schedule, you know, there was only so much we
6 can do to answer the questions. Given that,
7 we have -- the questions that we did answer
8 involved the transportation demand management
9 aspect of what NAS does do.

10 For example, an important aspect
11 of what they do is the shuttle service. The
12 shuttle service provides a linkage between NIS
13 to other facilities and the Foggy Bottom Metro
14 Station. That linkage helps provide an
15 incentive for the employees to use the transit
16 benefit that NAS provides.

17 NAS provides \$120 a month maximum
18 and that's the maximum pre-tax benefit that
19 can be provided to the employees and they have
20 maxed that out. So that is an important
21 aspect of the Transportation Demand Management
22 Program.

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1 In addition to that, there is also
2 a Bike-to-Work Program that allows for \$120 a
3 month, if you choose to bike, to be used for
4 biking expenses, maintenance of the bike and
5 things like that to help incentivize patrons
6 and employees to use a bicycle to work.

7 In addition to that, there -- the
8 Transportation Management Plan also includes
9 the opportunity to use, as I mentioned, the
10 Foggy Bottom Metro Station and also to apply
11 those, that \$120 benefit, for park and ride
12 facilities in the event that the employees are
13 coming from further out.

14 But given that monthly benefit,
15 there is an opportunity, especially for a lot
16 of the employees closer in, to be completely
17 subsidized by the \$120 a month benefit. So we
18 see that as a plus. And given the progressive
19 nature of these programs, given our experience
20 with other office buildings in the area, this
21 is actually sort of setting a standard that a
22 lot of the other, at least, private office

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1 buildings in the area don't currently
2 subscribe to.

3 So given that, I believe we have
4 addressed DDOT's comments. Some of -- I would
5 like to go specifically through the letter
6 that was -- that we received this afternoon.
7 As I mentioned before, we are in the process
8 of compiling information regarding ridership
9 of the shuttles as well as subscriptions to
10 the transit benefit and that we will -- that's
11 information that DDOT just wants to have in
12 order for them to be comfortable with their
13 recommendation.

14 In addition to that, they have
15 also identified that the 115 vehicle parking
16 spaces -- it's important to note that that
17 parking supply also serves the visitors that--
18 during certain parts of the year, there are
19 events that occur there. So that helps to not
20 only address employee parking, but visitor
21 parking, especially for some of the events
22 where there are a couple hundred people that

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1 show up at the event.

2 In addition to that, the travel
3 demand evaluation, they just mentioned that we
4 -- when we did do our analysis, it was in
5 June. It was to meet the time frames of the
6 application, but the application had lagged,
7 so as a result our counts were -- are
8 outdated. However, the conclusions would
9 still be the same. There is a benefit of
10 shifting some of that traffic to the eastern
11 portion of the facility.

12 And lastly, again, they just
13 wanted more information about the specifics
14 with respect to the transportation benefit
15 that is being provided to the employees.
16 Hopefully, I kept that as short as I could.

17 CHAIRPERSON MILLER: Yes. The
18 shift to the east side for the parking, is
19 that new or was that existing?

20 MR. ANDRES: Well, there is a lot
21 there, but the configuration of it is
22 modified, so that there is -- so that you

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1 don't have conditions where there is three-
2 point turns occurring.

3 CHAIRPERSON MILLER: And I might
4 have misheard Mr. Smith, but I thought that he
5 said that sometimes there were events for 800
6 people?

7 MR. ANDRES: Well, they vary in
8 size in the couple of hundred range. Those
9 events most -- most of the events occur for
10 those instances where it's spread out, where
11 there is people coming in and out. And then
12 for some of the larger events, there is a lot
13 of shuttle busing that occurs as well.

14 CHAIRPERSON MILLER: Okay.

15 MR. ANDRES: To support those
16 events.

17 CHAIRPERSON MILLER: But --

18 MR. ANDRES: But they are existing
19 events. They are events that currently occur
20 today.

21 CHAIRPERSON MILLER: Right.

22 MR. ANDRES: And they are not -- I

1 guess the handling of them is much more
2 efficient this way.

3 CHAIRPERSON MILLER: And the
4 seating capacity and everything was factored
5 into the parking requirement, which you meet,
6 correct?

7 MR. ANDRES: Yes.

8 CHAIRPERSON MILLER: Okay. And
9 with respect to the special exception that is
10 before us with the -- you are covering the
11 courtyards basically. Is there any
12 correlation at all between what is being done
13 and an increase in traffic?

14 MR. ANDRES: Well, with respect
15 to, again, the daily utilization of the
16 facility, there is no difference. With
17 respect to some of the events that might
18 occur, you know, to my understanding that what
19 is occurring is decompression of space that is
20 currently being used. And by covering some of
21 those -- by enclosing some of those areas, it
22 allows better efficient use and circulation

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1 within the building.

2 MS. RODDY: Exactly. With the
3 addition, we are not anticipating more traffic
4 coming to the site as a result of the
5 addition. It's just a more effective use of
6 the space that they have.

7 CHAIRPERSON MILLER: Okay. That's
8 what I thought. Any other questions? Any
9 other witnesses or shall we go to Office of
10 Planning?

11 MS. RODDY: That's all that we
12 have.

13 CHAIRPERSON MILLER: Is the ANC
14 here in this case? No. Okay. Then let's
15 turn to the Office of Planning.

16 MR. MORDFIN: Good afternoon. I'm
17 Stephen Mordfin with the Office of Planning.
18 And the subject application is in conformance
19 with the criteria contained within section 508
20 for the granting of a special exception to
21 permit additions to an office building within
22 the SP-2 District, because the proposed

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1 additions are for office use.

2 The enclosures will be in harmony
3 with surrounding uses and structures, because
4 the enclosed courts will not be visible from
5 the exterior of the building and the enclosed
6 open court will be visible from C Street only.
7 No dangerous or objectionable traffic
8 conditions will result. Sufficient parking as
9 required will be provided.

10 And the Office of Planning does
11 not recommend any special treatments.
12 Therefore, the Office of Planning recommends
13 approval of the application. Thank you.

14 CHAIRPERSON MILLER: Thank you.
15 Any questions from the Board? Okay. Any
16 questions from the application for the Office
17 of Planning? Do you have a copy of the Office
18 of Planning report? Okay, okay. Thank you
19 very much. The report was quite thorough.

20 So anybody here who wishes to
21 testify in support of this application?
22 Anybody here who wishes to testify in

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1 opposition to this application? Any closing
2 remarks, rebuttal?

3 MS. RODDY: Well, we would just
4 like to say that we believe that we have
5 satisfied the special exception standard and
6 given the support that this case has, we would
7 request a Bench decision and ask that the
8 Board issue a summary judgment, a summary
9 order.

10 CHAIRPERSON MILLER: Okay. I
11 think we are ready to deliberate on this
12 application. Is there a motion?

13 VICE CHAIRMAN LOUD: Madam Chair,
14 I would like to move approval of Application
15 No. 17865 of the National Academy of Sciences,
16 for a special exception relief under section
17 508, for an addition to an office building.
18 I think that the record before us is very
19 full. The report from OP included.

20 So what I'm going to do is just
21 give a brief summary of the factual situation
22 and then I would like to adopt by reference

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1 OP's report, both the written report and I
2 think the very excellent verbal presentation
3 that just went through all of the elements and
4 I don't want to just repeat everything they
5 have done.

6 Essentially, this is an
7 applicant's proposal to add about 7,600 square
8 feet, 7,660 to be exact, in the SP-2 to an
9 existing 175,100 square foot building which
10 requires special exception relief because it
11 is in the SP-2. And any addition requires
12 special exception relief.

13 This addition will yield
14 additional meeting and public space for the
15 applicant and allow them to more flexibly
16 accommodate some building upgrades that they
17 are doing, including HVAC and electrical.

18 The applicant proposes to enclose
19 three ground floor courts, including two that
20 are currently interior and one that is
21 exterior. The building materials are similar
22 to the existing building materials. There is

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1 no parking impact. The required parking, the
2 testimony was 86. And after the project is
3 completed, there will be 117 parking spaces.

4 No adjacent office buildings
5 except for the pharmacy institute. The rest
6 are unzoned and mostly federal enclaves.

7 With respect to the requirements
8 that we would look to to pass on the special
9 exception application, again, they are found
10 in section 508. And OP did an excellent job
11 of walking us through those, both in writing
12 at Exhibit 27 and then verbally the testimony.

13 ANC-2A did not respond at all.
14 There was testimony that six attempts were
15 made to contact them.

16 The Department of Transportation
17 did respond in a pleading that we received
18 today dated January 6th with no exhibit number
19 on it. There were a lot of things mentioned
20 in that response that they did, but most
21 significantly, I think, at paragraph 2, they
22 essentially concluded that there are no

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1 objectionable traffic conditions.

2 And then they go on to highlight a
3 number of, what I would call, policy
4 preferences of DDOT regarding transportation
5 and traffic elements, but not objectionable
6 traffic conditions.

7 So with that said, I intend to
8 give this application my full support and I
9 defer to my colleagues.

10 CHAIRPERSON MILLER: I think that
11 was excellent. I think that we have got a
12 discrepancy. We have a discrepancy about how
13 many spaces they are going to be providing.
14 I think the applicant said 96 and I think that
15 the Office of Planning said something like 87,
16 but in any event, they all agree that 115 is
17 what is required -- I mean, is what they are
18 providing and that they are providing, you
19 know, well above what is required.

20 And that this addition has no
21 impact on traffic, that it is just enclosing
22 spaces. It's not adding employees or anything

1 else, you know, to it.

2 So that's all I wanted to add.

3 Anything else? Was it moved and seconded?

4 Okay. I'll second it.

5 We have a motion before us and I'm

6 seconding it. Is there further deliberation?

7 Okay.

8 All those in favor of the motion

9 say aye.

10 ALL: Aye.

11 CHAIRPERSON MILLER: All those

12 opposed? All those abstaining? And would you

13 call the vote, please?

14 MS. BAILEY: Madam Chair, the vote

15 is -- the Board has voted 4-0-1 to grant the

16 application. Mr. Loud made the motion, Mrs.

17 Miller seconded. Mrs. Walker and Mr. Jeffries

18 support the motion and Mr. Dettman is not

19 present, at this time.

20 CHAIRPERSON MILLER: Thank you.

21 And this can be a summary order as there is no

22 party in opposition. Thank you very much.

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1 Okay. Ms. Bailey, we're ready for the last
2 case of the afternoon when you are ready to
3 call it.

4 MS. BAILEY: Madam Chair, it's
5 Application 17863 of The Ambassador Baptist
6 Church Christian School, pursuant to 11 DCMR
7 3104.1, for a special exception for a private
8 school, that is kindergarten through 8th
9 grade, 84 students and 13 staff, under section
10 206. The property is Zoned R-3. It is
11 located at 1412 Minnesota Avenue, S.E., Square
12 5605, Lot 163.

13 CHAIRPERSON MILLER: Oh, right
14 there is fine. Right in the middle. That
15 would be great. Take your time. So when you
16 are ready.

17 REVEREND SETTLES: Yes.

18 CHAIRPERSON MILLER: Okay. Could
19 you introduce yourself for the record with
20 your name and address?

21 REVEREND SETTLES: Yes. Madam
22 Chair, to the Members of the Board, my name is

1 Roy Settles, Reverend Roy Settles. I'm the
2 foundering pastor of The Ambassador Baptist
3 Church founded in 1968.

4 I'm here to ask for a variance for
5 my Christian School. I might explain in 1984,
6 we had a daycare center and they had a C of O
7 for 97 students. Because of the request of
8 parents, at that time, we were limited to the
9 ages, I believe, of 4, 2 through 4, I believe.
10 And because of the increase in the enrollment
11 and the requests of the parents, we decided
12 that the daycare was not sufficient to meet
13 the needs of the community.

14 And so we developed The Ambassador
15 Baptist Church Christian School and which we
16 have been operating since 2000, I believe. I
17 was not aware, because of my ignorance I
18 guess, that a C of O was needed for the
19 Christian School. And when an inspector told
20 me that it was needed, then I said well, let's
21 get it. And so here I am.

22 And the only thing -- difference

1 here is, as far as I'm concerned, one was a
2 daycare and the other one was a school. Well,
3 now we have to have a C of O for the Christian
4 School and that's why I'm here.

5 I did bring along with me some
6 pictures. And I might say --

7 COMMISSIONER JEFFRIES: Excuse me,
8 Reverend?

9 REVEREND SETTLES: Yes?

10 COMMISSIONER JEFFRIES: A quick
11 question. How did it come to be that the
12 inspector showed up?

13 REVEREND SETTLES: All right. The
14 Mayor wanted to know about all the private
15 schools in the District of Columbia.

16 COMMISSIONER JEFFRIES: Ah.

17 REVEREND SETTLES: And he had a
18 record of The Ambassador Baptist Church
19 Christian School. And so when the inspector
20 came, he said I want to see your occupancy
21 permit for the Christian School.

22 COMMISSIONER JEFFRIES: Oh.

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1 REVEREND SETTLES: And I pointed
2 to the one on the wall and he said no, that's
3 for your daycare center. I want to see one
4 for the Christian School.

5 COMMISSIONER JEFFRIES: Right,
6 okay.

7 REVEREND SETTLES: So that's what
8 I'm here to get is a variance for the -- to
9 operate the Christian School. Now --

10 CHAIRPERSON MILLER: Can I ask
11 you?

12 REVEREND SETTLES: Yes?

13 CHAIRPERSON MILLER: Are you also
14 still operating the daycare center or is --

15 REVEREND SETTLES: No, no. No,
16 no.

17 CHAIRPERSON MILLER: That's over.

18 REVEREND SETTLES: That's over.

19 CHAIRPERSON MILLER: It's just the
20 school, okay.

21 REVEREND SETTLES: See the daycare
22 center grew and the demand of the parents was

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1 that you've got to go past this 4 year-old.
2 So it was decided that hey, why don't we have
3 a Christian School where we can incorporate
4 Christian religion into the school along with
5 the curriculum. And it was decided.

6 And it just grew. And it's -- I
7 would say speaking, because I'm the foundering
8 pastor of the church and the organizer of all
9 of this, I think we have the best Christian
10 School in Washington, D.C., private Christian
11 School.

12 We have beautiful classrooms. I
13 brought some pictures so you could see what
14 I'm talking about. We have everything that we
15 need except the C of O.

16 CHAIRPERSON MILLER: Okay. Yeah,
17 that's what you are here for today.

18 REVEREND SETTLES: That's right.

19 CHAIRPERSON MILLER: But I'm just
20 curious though, what happened to the demand
21 for a daycare center? Is that just gone? Is
22 this a greater demand for a school?

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1 REVEREND SETTLES: Because --

2 CHAIRPERSON MILLER: The kids grew
3 up?

4 REVEREND SETTLES: That's right.

5 CHAIRPERSON MILLER: Okay.

6 REVEREND SETTLES: Most of our
7 students grew. Some of them now -- and we
8 have some who have finished college already.
9 So the Christian School is the thing of the --
10 it's so needed and demanded. And we just need
11 a C of O, so we can be in compliance. That's
12 all I want to do is be in compliance with
13 everything that is asked for by The Ambassador
14 Baptist Church.

15 It is not a separate entity. It's
16 a part of the church along with the other
17 operations that we have, such as the -- we
18 have the only 24 hour food distribution center
19 in Washington, D.C. and the metropolitan area.
20 We have the only 24 hour food distribution
21 center in all of Washington and the
22 metropolitan area.

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1 Likewise, here, Brother, take
2 these. I can't move as fast as I used to.
3 I'm going to give you this little thing here.
4 Will you take this because your Board Members
5 might want to see all these good pictures?
6 I'm proud of them.

7 CHAIRPERSON MILLER: Let me ask
8 you this. I mean --

9 REVEREND SETTLES: Yes, ma'am.

10 CHAIRPERSON MILLER: I know that
11 your church does a great service to the
12 community. But what you are here for is you
13 want to be able to get the C of O for your
14 school.

15 REVEREND SETTLES: Yes.

16 CHAIRPERSON MILLER: So what I
17 think I want to suggest is just so that we
18 focus on what we need in order to give you --

19 REVEREND SETTLES: All right.

20 CHAIRPERSON MILLER: -- what you
21 need, perhaps we should go to the Office of
22 Planning, because the Office of Planning is

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1 well-aware of all the elements that need to be
2 addressed and it is addressed in this report,
3 in their report. And then the Office of
4 Planning has some conditions they want to put
5 on the order.

6 Do you have a copy of the Office
7 of Planning report?

8 REVEREND SETTLES: Yes, ma'am.

9 CHAIRPERSON MILLER: Okay. So
10 maybe we could hear from Office of Planning
11 and then we will ask for your response. Would
12 that be all right with the Board Members?
13 Okay. And then I will pass the pictures along
14 in the meantime. All right. Thank you.

15 MS. THOMAS: Good evening, Madam
16 Chair, Members of the Board. Happy new year
17 to all. I'm Karen Thomas with the Office of
18 Planning. And the Office of Planning is
19 recommending approval of the church school
20 special exception request to continue its
21 operation as a private school, which has been
22 in operation since 2000.

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1 As the pastor alluded to, it has
2 been operating under a C of O for a child
3 development center, which was its previous
4 operation. And they are here to come into
5 compliance with regulations, specifically
6 section 206 of the Zoning Regulations.

7 And we found that the operation
8 did, in fact, meet and satisfy the provisions
9 of section 206, including section 206.2 and 3,
10 which discusses the parking situation for
11 staff. The school is proposing to have up to
12 13 staff members eventually. There are
13 currently 7 staff persons working at the
14 school. And according to the pastor about
15 three of them drive and the parking seems to
16 be adequate. There are 9 parking spaces.

17 In addition, the pastor also
18 informed OP that since they own all the
19 properties, the majority of the properties
20 within that square along, which avenue is it,
21 Minnesota Avenue, there is ample parking
22 otherwise. So it would meet the requirement

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1 for an increase in staff of 13, up to 13 staff
2 members. So we had no problem with that.

3 In terms of drop-off and pick-up
4 of students, the -- in front of the church or
5 the school, there is parking -- no parking
6 signs for the times of operation for drop-off
7 and pick-up. So DDOT did held them all to
8 that years ago as I was made to understand,
9 you know, posting special signs.

10 So all of that said, we do believe
11 that it met the general purpose and intent of
12 the Zoning Regulations and there are going to
13 be no changes to the operation and it won't
14 have any adverse effect on the use of
15 neighboring properties. So based on that, we
16 would recommend approval and we recommended
17 approval with certain conditions up to 10
18 years, in this case, for a maximum of 84
19 students and 13 staff.

20 And I have just a correction to
21 make here on the third portion of the
22 recommendation. It's said child development

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1 center and it should say private school here.
2 So I've been dealing with too many of these
3 child development centers, so I'm sorry about
4 that.

5 And we just wanted to add as well
6 that if they have a policy that they could put
7 in writing to -- for future regarding parking,
8 drop-off and pick-up to present to parents,
9 you know, during -- at enrollment and it would
10 be nice if that could be done. We would
11 encourage that. And encourage also the use of
12 public transportation and carpooling. Thank
13 you.

14 CHAIRPERSON MILLER: Thank you.
15 That's a very thorough report and helpful for
16 our analysis. I just want to ask you about
17 some of the conditions that you recommend.
18 The school has been operating for 9 years
19 without adverse impacts apparently. And I'm
20 wondering why you are suggesting that it be
21 termed for a 10 year period?

22 MS. THOMAS: I guess just out of

1 habit, in terms of the way we are looking at
2 schools now. We -- potentially, the school
3 could change. They may want to add more
4 students and we would like to see what impact
5 that might have.

6 CHAIRPERSON MILLER: You mean add
7 more students within the 84 limit or above the
8 84 limit?

9 MS. THOMAS: It could add above
10 the 84 limit.

11 CHAIRPERSON MILLER: They have
12 less now?

13 MS. THOMAS: They have less. They
14 have 56.

15 CHAIRPERSON MILLER: Oh, they have
16 56. So part of your rationale would be then
17 if they increased to 84, maybe there might be
18 impacts?

19 MS. THOMAS: Might be more, yes,
20 yeah.

21 CHAIRPERSON MILLER: Okay. Do you
22 have any specific thoughts as to how the

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1 applicant should encourage future staff and
2 parents to use public transportation or
3 carpool?

4 MS. THOMAS: Well, I would suggest
5 at enrollment they hand out any handouts that
6 they have to parents. If they do have a
7 website available, that they can post this
8 type of information to encourage them, if they
9 do have a website. If not, you know, handouts
10 would work as well and be part of their
11 registration at the school.

12 CHAIRPERSON MILLER: And what
13 public transportation is nearby?

14 MS. THOMAS: There are many bus
15 routes along Minnesota Avenue.

16 CHAIRPERSON MILLER: Oh, okay, bus
17 routes.

18 MS. THOMAS: Yeah.

19 CHAIRPERSON MILLER: Okay.

20 MS. THOMAS: I'm not exactly
21 certain how close they are to the Metro
22 Station, but I know there are many bus lines.

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1 CHAIRPERSON MILLER: Okay. Any
2 other questions?

3 COMMISSIONER JEFFRIES: How close
4 is the school to a Metro?

5 REVEREND SETTLES: Metro, it's
6 about 4 blocks.

7 COMMISSIONER JEFFRIES: 4 blocks,
8 okay.

9 REVEREND SETTLES: But we don't
10 have any parents who use or utilize Metro
11 bringing a child. All of our parents drive,
12 drop-off. We are open from 6:30 in the
13 morning for drop-off, but our school starts at
14 7:30. So they come, they drop the child off
15 and they go to work.

16 COMMISSIONER JEFFRIES: Um-hum.

17 REVEREND SETTLES: So we don't
18 have any parent parking anywhere.

19 COMMISSIONER JEFFRIES: Um-hum.

20 REVEREND SETTLES: The parking
21 that we have is for our staff and I have ample
22 parking for staff. In fact, I allow the

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1 probation office to use some of my parking
2 space, because the seven staff that I have
3 live right in the community.

4 CHAIRPERSON MILLER: You know, we
5 can really hear you, because you have a strong
6 voice.

7 REVEREND SETTLES: Oh, yeah.

8 CHAIRPERSON MILLER: But can you--
9 if your microphone is not on, you might want
10 to put it on, because it's easier for the
11 Court Reporter to get it.

12 REVEREND SETTLES: Oh, I'm sorry.
13 I'm sorry.

14 CHAIRPERSON MILLER: Oh, there you
15 go, okay.

16 REVEREND SETTLES: I'm sorry. I'm
17 sorry.

18 CHAIRPERSON MILLER: That's okay.
19 I think he was hearing it, but I just wanted
20 to make sure.

21 COMMISSIONER JEFFRIES: I could
22 hear you clearly.

1 CHAIRPERSON MILLER: Yeah, well,
2 of course.

3 REVEREND SETTLES: I apologize.
4 When I get up to preach, they turn down the
5 volume, so I'm sorry.

6 COMMISSIONER JEFFRIES: Whoa, you
7 better talk to the Deacons.

8 CHAIRPERSON MILLER: Do you have
9 any parents carpooling or not? They are just
10 basically dropping the kids off?

11 REVEREND SETTLES: No, no.

12 CHAIRPERSON MILLER: It doesn't
13 work for what their situation is.

14 REVEREND SETTLES: No, no. It's
15 just the parents come. Well, some of them
16 walk if they are living in the community.

17 CHAIRPERSON MILLER: Um-hum.

18 REVEREND SETTLES: But most of
19 them who are outside of the community, they
20 are driving to work and they drop their
21 parents and they -- drop their child and they
22 keep going. So we have no need for parents to

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1 park their cars. And we have no one who goes
2 to Metro.

3 CHAIRPERSON MILLER: And there
4 hasn't been a traffic problem, I assume?

5 REVEREND SETTLES: Oh, no, ma'am.

6 CHAIRPERSON MILLER: Okay. Do you
7 have, let's see, comments on OP's conditions,
8 such as one of them is that you distribute a
9 policy manual prior to the start of the
10 academic year?

11 REVEREND SETTLES: Yes, ma'am.

12 CHAIRPERSON MILLER: Regarding
13 parking, pick-up and drop-off. Do --

14 REVEREND SETTLES: Yes, ma'am.

15 There is a manual.

16 CHAIRPERSON MILLER: You have one?

17 REVEREND SETTLES: I have one, oh,
18 yes.

19 CHAIRPERSON MILLER: Okay. So you
20 don't have a problem with that?

21 REVEREND SETTLES: No, not at all.

22 CHAIRPERSON MILLER: Okay. Are

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1 the hours correct that you want to operate
2 between 6:00 a.m. and 6:00 p.m., Monday
3 through Friday?

4 REVEREND SETTLES: 6:30.

5 CHAIRPERSON MILLER: 6:30?

6 REVEREND SETTLES: 6:30.

7 CHAIRPERSON MILLER: Okay. 6:30

8 a.m.?

9 REVEREND SETTLES: 6:30 a.m. to
10 6:30 p.m.

11 CHAIRPERSON MILLER: 6:30 p.m.

12 REVEREND SETTLES: Five days a
13 week.

14 CHAIRPERSON MILLER: Okay.

15 Because we wouldn't want to put the wrong
16 times in an order.

17 REVEREND SETTLES: That's the --

18 CHAIRPERSON MILLER: Okay.

19 REVEREND SETTLES: -- right time,
20 6:30 to 6:30.

21 CHAIRPERSON MILLER: And it's for
22 K through 8?

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1 REVEREND SETTLES: Yes, ma'am.

2 CHAIRPERSON MILLER: Okay. Okay.

3 Let's go through -- we've moving upward. The
4 maximum number of students. Office of
5 Planning has put in 84 and staff of 13.

6 REVEREND SETTLES: Yes, ma'am.

7 CHAIRPERSON MILLER: What's that
8 based on?

9 REVEREND SETTLES: Well, it's
10 based on space. We have ample space for that
11 many students and you see the size of the
12 classrooms. And we have a maximum of 12
13 students, no more, per class. So when we
14 looked at the class space that we have, we
15 came up with 84.

16 CHAIRPERSON MILLER: And how about
17 the staff of not exceeding 13? How did you
18 get that number?

19 REVEREND SETTLES: From the
20 classroom size and the staff teaching the
21 classes.

22 CHAIRPERSON MILLER: Okay, good.

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1 So you are comfortable with that totally?

2 REVEREND SETTLES: I'm very
3 comfortable.

4 CHAIRPERSON MILLER: Okay. Then
5 the last question I have is with respect to
6 the term of 10 years. That means that you
7 would come back in 10 years and the Board
8 would review it.

9 REVEREND SETTLES: I probably
10 won't come back. I'm 80 years-old now, so I
11 said 10, that's 90. I don't think I could
12 make it up those steps.

13 CHAIRPERSON MILLER: Oh, should we
14 make it 5 then?

15 REVEREND SETTLES: I won't be
16 here.

17 CHAIRPERSON MILLER: I'm just
18 kidding.

19 REVEREND SETTLES: I don't really
20 see that we're going to have a great increase
21 in growth to the extent that we would have to
22 come back down here in 10 years. I really

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1 don't see that. But if that's Planning's way
2 of doing things, I think that it should be no
3 limit as to time.

4 CHAIRPERSON MILLER: But --

5 REVEREND SETTLES: Because I --
6 pardon me.

7 CHAIRPERSON MILLER: The church
8 owns the property on the street, most of the
9 property?

10 REVEREND SETTLES: We own
11 everything in the 1400 Block, except one
12 building, and I'm the founder. I started it
13 all and I bought it all. So you know, I
14 believe in that. Let me give you a little
15 something about myself. It won't take but a
16 minute.

17 I retired from the military in
18 1964 after 21 years on Friday, February the
19 10th. On Monday morning, I went to work for
20 the Navy Department where I was a
21 transportation manager and I worked another 20
22 years. So I'm a double-dipper, twice retired.

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1 Then I organized the church and everything
2 that The Ambassador Baptist Church has I
3 developed it.

4 And when we first came, it was a
5 house church. It was a house church. And of
6 course, at that time, the community,
7 complexion of the community was different, at
8 that time. And then when the residents
9 started moving to the suburbs, I would get a
10 loan and buy their house. And so eventually,
11 I bought all of them.

12 And right now, in '81, we tore
13 down the house church and I designed the
14 church that we now have and it's beautiful.
15 And I designed it with a school, but I didn't
16 think school then, I thought of daycare in the
17 building. So it's multi-purpose, three
18 stories.

19 And we have everything that we
20 wanted and I wanted to say to you today, I
21 thank God that everything is paid for. We
22 don't owe nobody but Pepco and Washington Gas

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1 and DC Water and some insurances. But other
2 than that, the Lord has blessed us and I'm
3 down here hoping that I can get blessed with
4 that C of O and I'm heading on back to
5 southeast, if I can get a ride. That's where
6 I am.

7 COMMISSIONER JEFFRIES: And
8 Pastor, I have to -- Reverend, I have to say
9 it was a nice touch the photographs. Those
10 are really nice, nice, very nice pictures --

11 REVEREND SETTLES: Thanks so much.

12 COMMISSIONER JEFFRIES: -- of the
13 kids with their feet together and I mean, boy.

14 REVEREND SETTLES: Everything, I'm
15 military.

16 COMMISSIONER JEFFRIES: Yeah, it
17 is very clear.

18 REVEREND SETTLES: Everything has
19 to be right.

20 COMMISSIONER JEFFRIES: Yep.

21 REVEREND SETTLES: Including the
22 congregation.

1 COMMISSIONER JEFFRIES: Yes, I saw
2 it.

3 REVEREND SETTLES: Everybody in my
4 church tithes, everybody.

5 COMMISSIONER JEFFRIES: Oh.

6 REVEREND SETTLES: You can't be a
7 member unless you tithe, so that's how we were
8 blessed to accomplish so much with just a
9 handful of people.

10 COMMISSIONER JEFFRIES: Oh.

11 REVEREND SETTLES: And I might
12 share an ending there, we only have, as of
13 yesterday, 33 members of The Ambassador
14 Baptist Church.

15 COMMISSIONER JEFFRIES: Did you
16 lose one the day before or what? What the
17 heck? Stop tithing? I'm just kidding.

18 REVEREND SETTLES: Tithing is a
19 requirement. You can't get the right hand of
20 fellowship unless you consent to tithing.

21 COMMISSIONER JEFFRIES: That's
22 right.

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1 MEMBER WALKER: Okay. Dr.
2 Settles, I have just a quick question about
3 your drop-off for the children in the morning,
4 drop-off and pick-up. If you could give me
5 just some specifics about that procedure? I
6 take it that since you are open at 6:30 and
7 school starts at 7:30, that it is staggered
8 drop-off?

9 REVEREND SETTLES: There are two
10 signs right in front of -- oh, I'm sorry.
11 There are two signs right in front of the
12 church that's room for two cars put there by
13 the District. No parking from that time to
14 this time. And usually we have only one car
15 at a time come in and drop their child off.

16 MEMBER WALKER: And is it the case
17 usually that parents just pull over to the
18 side and the children get out?

19 REVEREND SETTLES: Yes, and walk
20 right into the building.

21 MEMBER WALKER: Or do they escort
22 them? So they don't escort the children in?

1 REVEREND SETTLES: Oh, no, ma'am.

2 MEMBER WALKER: Okay. Is there
3 any staff member that escorts the young
4 children in?

5 REVEREND SETTLES: We have three
6 staff members in the lobby beginning at 6:00
7 a.m., but the school doesn't start until 6:30,
8 but they are there at 6:00 for the purpose of
9 arranging things and all of that. So we don't
10 have no problems. None at all.

11 CHAIRPERSON MILLER: Okay. I want
12 to be careful, you know, with your times,
13 because I don't want to -- we don't want to
14 put you in a position where you are violating
15 the order. So I'm going back in my notes and
16 putting in 6:00 a.m., because that's when the
17 school is open.

18 REVEREND SETTLES: Okay, okay.

19 CHAIRPERSON MILLER: Even though
20 the class -- you know, you've got somebody
21 there at 6:00.

22 REVEREND SETTLES: No, ma'am, no,

1 ma'am.

2 CHAIRPERSON MILLER: No?

3 REVEREND SETTLES: No, ma'am. The
4 staff is in the lobby --

5 CHAIRPERSON MILLER: At 6:00?

6 REVEREND SETTLES: -- at 6:00 a.m.

7 CHAIRPERSON MILLER: Okay.

8 REVEREND SETTLES: The light
9 switch doesn't come on until 7:00. I mean,
10 until 6:30. So no parent come at 6:00. The
11 staff, three members, are seated in the lobby,
12 seated, just seated there.

13 CHAIRPERSON MILLER: Okay.

14 REVEREND SETTLES: But the lights
15 is an indication that we are open. And that
16 comes on at 6:30. So no one brings a child in
17 before 6:30.

18 CHAIRPERSON MILLER: Okay. That's
19 fine. But there are -- it's operating, in a
20 sense, that there are staff there, that's all.
21 I wouldn't want somebody to -- if we -- if we
22 by any chance grant you this relief, I

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1 wouldn't want somebody to come up to you at
2 6:00 and say you can't be there because the
3 order says 6:30.

4 REVEREND SETTLES: The school
5 opens at 6:30.

6 CHAIRPERSON MILLER: Okay.

7 REVEREND SETTLES: Now, I'm
8 usually -- I live about four houses down.

9 CHAIRPERSON MILLER: Okay.

10 REVEREND SETTLES: On the corner.

11 CHAIRPERSON MILLER: All right.

12 Okay. That's okay.

13 REVEREND SETTLES: I'm usually
14 there at 5:30 myself.

15 COMMISSIONER JEFFRIES: We can do
16 6:00. We're just going to do 6:00.

17 CHAIRPERSON MILLER: Okay. All
18 right.

19 COMMISSIONER JEFFRIES: You can
20 open, do anything, we're just going to do
21 6:00, yeah.

22 REVEREND SETTLES: All right.

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1 Good enough. You're the boss.

2 CHAIRPERSON MILLER: I have one
3 quick question.

4 REVEREND SETTLES: Yes, ma'am.

5 CHAIRPERSON MILLER: For a quick
6 response.

7 REVEREND SETTLES: Yes, ma'am.

8 CHAIRPERSON MILLER: And that is
9 the one building that you don't own on that
10 street, who is in it?

11 REVEREND SETTLES: Saint
12 Theresa's.

13 CHAIRPERSON MILLER: Saint
14 Theresa's, okay.

15 REVEREND SETTLES: The priest --
16 the directory.

17 CHAIRPERSON MILLER: All right.

18 REVEREND SETTLES: They won't sell
19 it to me.

20 CHAIRPERSON MILLER: So it's not a
21 residence?

22 REVEREND SETTLES: No, ma'am.

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1 CHAIRPERSON MILLER: Okay. All
2 right. Are there any other questions? Okay.
3 There is nobody else in the audience to
4 testify. Is there anything else you want to
5 say?

6 REVEREND SETTLES: No, ma'am.

7 CHAIRPERSON MILLER: Okay. Good.
8 Thank you very much. I think the Board is
9 prepared to deliberate on this, at this point.
10 Does anybody have a motion on this?

11 VICE CHAIRMAN LOUD: Madam Chair
12 and colleagues, I would like to move approval
13 of Application No. 17863 of The Ambassador
14 Baptist Church for special exception relief
15 for a private school under section 206.

16 CHAIRPERSON MILLER: Second.

17 VICE CHAIRMAN LOUD: And again,
18 this is a case where the record, I believe, is
19 pretty full and the testimony is both full and
20 colorful. The applicant seeks continued
21 operation as a private school, K through 8, in
22 the R-3 after notification of noncompliance by

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1 the Zoning Administrator.

2 He is requesting as part of the
3 application an increase from 56 students to a
4 cap of 84 and a cap of 13 staff. Under our
5 regulations, section 206, there are a number
6 of requirements that the testimony has to
7 establish have been met. I think all of those
8 were articulated very clearly in the Office of
9 Planning report, which is our Exhibit 20.

10 By the way, the Office of Planning
11 supports this application, so I'm not going to
12 repeat those requirements, only to reference
13 by record and adopt the Office of Planning's
14 analysis and walk through of the section 206
15 requirements.

16 I also want to note that the ANC-
17 8A did make a submission, our Exhibit 22. It
18 doesn't appear to be a great weight
19 submission, because I don't see a reference to
20 a quorum and that kind of thing, unless I
21 overlooked it. But they do support the
22 application, at least the Chairman who signed

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1 it, Chairman Muhammad supports the
2 application.

3 There's testimony in the record
4 that the school has been in existence since
5 2000 and there are no complaints that we have
6 gotten in the record. So I'm fully in support
7 of it and defer to my colleagues with respect
8 to outlining the conditions to the extent that
9 we want to do that.

10 CHAIRPERSON MILLER: Okay. I
11 think there is a consensus in support of the
12 application, is there not? We can move to
13 conditions?

14 COMMISSIONER JEFFRIES: Yes.

15 CHAIRPERSON MILLER: Okay. Good.
16 All right then. Let's look at Office of
17 Planning's proposed conditions.

18 The first is that it be for a
19 period of 10 years from the date of the
20 Board's approval. I'm inclined not to include
21 this provision. I mean, I'm open to others,
22 but this school has a track record already of

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1 being in existence for 9 years. It is on a
2 street where most of the property is owned by
3 the church/applicant and the only other
4 property is not residential.

5 So I don't think there is reason
6 to believe that this would need to be
7 revisited because of adverse impacts. Do
8 other have -- I think that Office of Planning,
9 they were saying it was kind of like a
10 standard that they often put in for our
11 consideration, but there wasn't anything that
12 necessarily caused Office of Planning, in this
13 case, to, you know, feel strongly about the 10
14 years.

15 How do others feel? Okay. We're
16 going to take it out. All right. We're not
17 going to have that.

18 "Maximum number of students shall
19 not exceed 84 and the maximum number of staff
20 shall not exceed 13." I think that's a good
21 condition. We checked with the Reverend and
22 it reflects the space for students and then

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1 the staff that would be needed to work with
2 those students. Okay. Not hearing any
3 objection.

4 Third, "The private school shall
5 operate between 6:00 a.m. and 6:30 p.m.,
6 Monday through Friday, for children K through
7 grade 8." We had some discussion about, you
8 know, whether they are really operating at
9 6:00, but they are going to be open and I
10 think it's safer to give them that leeway.
11 Any concerns? Okay.

12 The next condition, "The applicant
13 will distribute a policy manual prior to the
14 start of the academic year regarding parking,
15 pick-up, drop-off. This information shall
16 also be posted on the school's website, if
17 applicable."

18 I think that the applicant said he
19 does that. He said they have a policy manual.
20 That's a good policy, especially -- I mean, I
21 think it's a good condition, especially, you
22 know, as the school may grow. Any concern

1 with that? Relevant? Okay. We'll include
2 that one.

3 The last one, "The applicant will
4 encourage future staff and parents to use
5 public transportation or carpool." I don't
6 really think that one is necessary. It
7 sounded like that the population or whatever,
8 the clients that use this school that is not
9 really within their lifestyle from the
10 evidence that we heard, that they drive and
11 drop-off and that there is no traffic problems
12 or anything of that kind.

13 So I don't think it's really a
14 good condition. It doesn't seem to match the
15 evidence really. Even though it's a good
16 policy in general, I think that Office of
17 Planning and DDOT like to encourage that in
18 general, I don't think it fits so much here or
19 is needed to mitigate an adverse condition.
20 Is there consensus on that?

21 COMMISSIONER JEFFRIES: Yes.

22 CHAIRPERSON MILLER: Comments?

1 MEMBER WALKER: Madam Chair, I
2 would like to go back. I was just sitting
3 here thinking about the limitation on the
4 maximum number of staff members. And while I
5 certainly agree that we should impose a limit
6 on the number of students, based upon the
7 space constraints of the facility, I'm
8 wondering whether imposing a limitation on the
9 number of staff may be overstepping a little
10 bit.

11 I mean, generally, the more staff
12 you have for a school, the more teachers,
13 instructors you have, the better. They don't
14 have a problem with parking here for staff
15 members. And if the school were fortunate
16 enough to have it in their budget to increase
17 the number of staff members, that could be a
18 very positive thing for the school.

19 And so I'm thinking that the Board
20 should consider removing the limitation on the
21 number of staff members.

22 CHAIRPERSON MILLER: I think you

1 make a good point. I think you make a good
2 point, I just wanted to look at the number of
3 staff as it related to the parking
4 requirement, because that seems to be the only
5 reason that we would limit it.

6 MEMBER WALKER: Right.

7 CHAIRPERSON MILLER: And the
8 question is whether --

9 MEMBER WALKER: If the school
10 wanted to bring in, you know, a music teacher
11 or an art specialist or something, I mean, you
12 know, I would hate for them to be precluded
13 from, you know, adding staff members for
14 either instruction or enrichment or, I mean,
15 for any purpose really.

16 COMMISSIONER JEFFRIES: The staff,
17 from what I understand from the Reverend, is
18 mainly coming from the neighborhood. Is that
19 correct? So they are walking. So it's not as
20 if they are going to be using vehicles and
21 parking and so forth. So it doesn't mean that
22 you won't perhaps in the future get --

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1 REVEREND SETTLES: Yes.

2 COMMISSIONER JEFFRIES: -- you
3 know, faculty that won't be using vehicles.
4 I guess that would be my only, you know,
5 pause, but beyond that, I don't really have a
6 problem with the suggestion. On-street
7 parking, there's plenty of on-street parking.

8 CHAIRPERSON MILLER: They own the
9 whole street. That's true. All right. So if
10 we are not concerned, then I don't have a
11 problem with not imposing that as a condition.
12 That's a good point.

13 COMMISSIONER JEFFRIES: I mean, if
14 we said not to exceed 20, what does that mean?
15 I mean, is there ever a situation where you
16 can get 22, 23 teachers and then what would
17 the impact be? I mean, I'm just putting an
18 arbitrary number out there.

19 MS. THOMAS: And if I can
20 interrupt?

21 COMMISSIONER JEFFRIES: Sure,
22 sure, Office of Planning.

1 MS. THOMAS: You know, even so,
2 teachers like that as suggested, you know,
3 instructional teachers, they don't -- they are
4 not there all day. They come part-time as we
5 have seen in other cases, in other school
6 cases. You know, they might come for music,
7 which might be in the afternoon. They won't
8 be there all day.

9 COMMISSIONER JEFFRIES: Um-hum.

10 MS. THOMAS: So it shouldn't
11 create that adverse impact with respect to
12 parking and traffic and all of that. So, you
13 know, it won't -- it shouldn't limit them. We
14 don't have to limit them to 13. I tend to
15 concur with that.

16 MEMBER WALKER: The number --

17 COMMISSIONER JEFFRIES: So you say
18 -- but I think what Board Member Walker is
19 saying is that just no cap at all.

20 MS. THOMAS: Right, right.

21 COMMISSIONER JEFFRIES: You --

22 MS. THOMAS: I agree with that.

1 COMMISSIONER JEFFRIES: You're
2 fine?

3 MS. THOMAS: Yeah, um-hum.

4 MEMBER WALKER: I think the number
5 can creep up pretty quickly, especially when
6 you are talking about staff. I mean, we are
7 talking about janitorial staff. We're talking
8 about lunch staff. I mean, we're talking
9 about, you know, all staff members. And so
10 when you are talking about 84 children, I
11 mean, your number could creep up quickly.

12 REVEREND SETTLES: Right.

13 MEMBER WALKER: If you --

14 REVEREND SETTLES: Could be
15 substitute teachers, too.

16 COMMISSIONER JEFFRIES: Okay.

17 CHAIRPERSON MILLER: Right. And
18 the point of limiting it is so that there is
19 not an adverse impact on the surrounding
20 neighbors related to traffic or whatever and
21 there really aren't any surrounding neighbors
22 pretty much, other than the applicant himself,

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1 except for the Saint Theresa's.

2 REVEREND SETTLES: Saint Theresa.

3 CHAIRPERSON MILLER: So I think
4 that that's a good point. And Office of
5 Planning recommended the condition and is now
6 saying it's not necessary and agreeing also.
7 So why don't we leave it out? Thank you. All
8 right. Anything else then on this before we
9 vote?

10 Okay. Then there is a motion
11 before us that has been seconded and
12 conditioned.

13 All those in favor say aye.

14 ALL: Aye.

15 CHAIRPERSON MILLER: All those
16 opposed? And all those abstaining? And would
17 you call the vote, please?

18 MS. BAILEY: Madam Chair, the vote
19 is recorded as 4-0-1 to grant the application
20 with the three conditions identified by the
21 Board. Mr. Loud made the motion, Mrs. Miller
22 seconded, Mr. Jeffries and Mrs. Walker support

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1 the motion. The third -- the fifth Board
2 Member is not present, at this time.

3 CHAIRPERSON MILLER: Okay. And
4 this can be a summary order as there is no
5 party in opposition. So what that means is
6 you are not walking out today with an order,
7 but an order will be issued in the next couple
8 of days or so. And then you can take that
9 order to go get your Certificate of Occupancy.

10 REVEREND SETTLES: Thank you,
11 ma'am.

12 CHAIRPERSON MILLER: Okay. Thank
13 you very much.

14 REVEREND SETTLES: I want to thank
15 the Board.

16 CHAIRPERSON MILLER: Ms. Bailey,
17 is there anything else on the agenda for this
18 afternoon?

19 MS. BAILEY: No, Madam Chair,
20 that's it.

21 CHAIRPERSON MILLER: Okay.

22 MS. BAILEY: I just want to give

1 the photographs back.

2 CHAIRPERSON MILLER: That's right.

3 We will give the photographs back. Okay.

4 Then this hearing is adjourned.

5 REVEREND SETTLES: Thank you.

6 (Whereupon, the Public Hearing was
7 concluded at 6:01 p.m.)

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