

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

APRIL 7, 2009

+ + + + +

The regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD Chairman
SHANE L. DETTMAN Vice Chairman

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, FAIA Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
ARTHUR JACKSON
PAUL GOLDSTEIN

This transcript constitutes the minutes from the regular Public Hearing held on April 7, 2009.

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

1:10 a.m.

CHAIRMAN LOUD: Good afternoon.

This hearing will, please, come to order.
This is the April 7th Public Hearing of the
Board of Zoning Adjustment of the District of
Columbia. My name is Marc Loud, Chairperson.

Joining me today to my immediate right are
Vice Chair Shane Dettman and Mr. Michael
Turnbull from the Zoning Commission. And to
my left are Mr. Clifford Moy, Secretary for
the Board, Mary Nagelhout from the Office of
Attorney General and Ms. Beverley Bailey from
the Office of Zoning as well.

Copies of today's hearing agenda
are available to you and are located to my
left in the wall bin near the door. Please,
be advised that this proceeding is being
recorded by a Court Reporter and is also
webcast live. Accordingly, we must ask you to
refrain from any disruptive noises or actions
in the hearing room.

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

8 All persons planning to testify
9 either in favor or in opposition are to fill
10 out two witness cards. These cards are
11 located to my left on the table near the door
12 and on the witness tables. Upon coming
13 forward to speak to the Board, please, give
14 both cards to the reporter sitting to my
15 right.

16 The order of procedure for special
17 exceptions and variances is: No. 1, statement
18 and witnesses of the applicant. No. 2,
19 Government reports including the Office of
20 Planning, Department of Public Works,
21 etcetera, Department of Transportation and so
22 on and so forth.

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1 No. 3, the report of the Advisory
2 Neighborhood Commission. No. 4, parties or
3 persons in support. No. 5, parties and
4 persons in opposition. No. 6, closing remarks
5 by the applicant.

6 Pursuant to sections 3117.4 and
7 3117.5, the following time constraints will be
8 maintained: The applicant, persons and
9 parties, except an ANC, in support, including
10 witnesses are allowed 60 minutes collectively.

11 The appellees in the case of an appeal, which
12 we don't have today, persons and parties,
13 except an ANC, in opposition, including its
14 witnesses 60 minutes collectively. And
15 individual witnesses 3 minutes each.

16 These time restraints do not
17 include cross examination and/or questions
18 from the Board.

19 Cross examination of witnesses is
20 permitted by the applicant and parties only.
21 The ANC within which the property is located
22 is automatically a part in a special exception

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1 or variance case.

2 Nothing prohibits the Board from
3 placing reasonable restrictions on cross
4 examination, including time limits and
5 limitations on the scope of cross examination.

6 The record will be closed at the
7 conclusion of each case, except for any
8 material specifically requested by the Board.

9 The Board and the staff will specify at the
10 end of the hearing exactly what is expected
11 and the date when the persons must submit the
12 evidence to the Office of Zoning. After the
13 record is closed, no other information will be
14 accepted by the Board.

15 The Sunshine Act requires that the
16 Public Hearing on each case be held in the
17 open before the public. The Board may,
18 consistent with its Rules of Procedure and the
19 Sunshine Act, enter Executive Session during
20 or after the Public Hearing on a case for
21 purposes of reviewing the record or
22 deliberating on the case.

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

7 Please, turn off all beepers and
8 cell phones, at this time, so as not to
9 disrupt these proceedings.

10 The Board will now consider any
11 preliminary matters. Preliminary matters are
12 those which relate to whether a case will or
13 should be heard today, such as requests for
14 postponement, continuance or withdrawal or
15 whether proper and adequate notice of the
16 hearing has been given.

17 If you are not prepared to go
18 forward with a case today or if you believe
19 that the Board should not proceed, now is the
20 time to raise such a matter.

21 Does the staff have any preliminary
22 matters?

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1 MS. BAILEY: Mr. Chairman, Members
2 of the Board and to everyone, good afternoon.
3 Staff does not, Mr. Chairman.

4 CHAIRMAN LOUD: Thank you, Ms.
5 Bailey. If not, then let us proceed with the
6 afternoon's agenda. Would all individuals
7 wishing to testify today, please, rise to take
8 the oath? Thank you. And, Ms. Bailey, would
9 you, please, administer the oath?

10 MS. BAILEY: Thank you, sir.
11 Please, raise your right hand.

12 (Whereupon, the witnesses were
13 sworn.)

14 MS. BAILEY: Thank you. Thank you,
15 sir. The first case, Mr. Chairman, is
16 Application No. 17901. It's the application
17 of East Capitol Minnesota LLC and it is
18 pursuant to 11 DCMR 3104.1 and 3103.2, for a
19 special exception to allow a food delivery
20 carryout service that is Papa John's Pizza
21 under section 734 and variances from the
22 requirement for a brick wall along the alley

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1 lot line and enclosed refuse dumpster under
2 subsections 734.3 and 734.4, respectively.
3 The property is Zone C-2-A. It is located at
4 3548 East Capitol Street, N.E., Square 5047,
5 Lot 801.

6 CHAIRMAN LOUD: Thank you, Ms.
7 Bailey. And at this time, is the applicant
8 ready to proceed forward?

9 MR. AGUGLIA: Yes, sir, we are
10 ready.

11 CHAIRMAN LOUD: Okay. Why don't
12 you go ahead and get started?

13 MR. AGUGLIA: Thank you.

14 CHAIRMAN LOUD: And welcome.

15 MR. AGUGLIA: Well, thank you.
16 Good afternoon. Richard Aguglia for the
17 applicant. I do appreciate you allowing us to
18 make this testimony today. With me is Darlene
19 Dalbec, behind me is Lee Westnedge, an
20 associate who will be assisting me on this,
21 and we have two potential witnesses to the
22 extent you have any questions, Avi Halpert,

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1 who is the owner of the property and Sunil
2 Singh, who is the owner of the business, Papa
3 John's, that wishes to be placed at the
4 establishment.

5 So as is my usual, I will -- we
6 will present a PowerPoint presentation. It
7 will be about 15 to 20 minutes. As we go
8 through each picture, I will show you how we
9 meet the tests underneath -- the tests
10 underlying the requirements for the special
11 exception and for the variance.

12 You will also see this is a little
13 bit unique circumstances, because the
14 regulations were really geared to an
15 individual building and here we have a
16 shopping center. So we will show you how it
17 all fits and that our requests are reasonable.

18 So the first picture is the corner
19 of East Capitol and Minnesota Avenue, N.E.,
20 and that's the sign off of Minnesota Avenue
21 entering into the building.

22 Next picture, please. Here again

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1 is a car proceeding towards Minnesota Avenue
2 going out of the shopping center. You can see
3 there is significant space there, which can be
4 used for parking.

5 Next. Here is the front of the
6 mall as you're approaching it from Minnesota
7 Avenue. And you can see there is also a
8 parking area there.

9 Next picture. Here is the view
10 from the mall from East Capitol Street. There
11 are currently three properties. Three of the
12 units are vacant. If you approve the Papa
13 John's, there will be only two. It's just a
14 sad state of the economy that we're in this
15 particular recession, but we see hope here for
16 hiring D.C. residents and putting the Papa
17 John's.

18 Next picture. All right. So the
19 Papa John's will be where the arrows are
20 indicated in the upper right hand side of the
21 property. That is the address at 3548 East
22 Capitol.

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1 Next picture shows you a little bit
2 better view of it, sort of a semi-circular
3 entrance to the proposed Papa John's.

4 Next picture. Again, there is
5 another picture of it.

6 Next picture. Here is the rear
7 parking lot with 35th Street in the background.

8 There are, approximately, 45 to 46, 47 spaces
9 here for parking that are striped and paved.
10 And in the prior picture there are roughly 16
11 to 17 striped parking spaces right in front of
12 the proposed Papa John's. So there is,
13 approximately, 60 or 61 spaces.

14 This particular owner also owns two
15 separate lots, which I showed you in the
16 beginning of the pictures that are not striped
17 or paved, but those would be also for
18 additional parking, if needed.

19 The building was built in 1942
20 before the 1958 Regulations and, therefore,
21 there was no parking requirements allowed, but
22 there is oodles of parking.

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1 Next picture, next picture. All
2 right. Here is -- this square is split zoned.
3 There is an alley running through that
4 square. The apartments to the right are
5 zoned, I believe, R-5-B. And of course, we
6 are in the commercial section. But as long as
7 there is an alley between the two, it
8 satisfies one of the requirements of the
9 special exception that there be an alley
10 separating the commercial portion of the block
11 from the residential. So that's how we
12 satisfy one of the requirements.

13 Also, there will be no drive-
14 through, that's how we satisfy another one of
15 the requirements.

16 Next picture. All right. Here is
17 the alley from the opposite direction. What
18 you can't see because of the pictures are
19 somewhat dark here, on the left hand side
20 there are some units that have their trash
21 dumpsters out facing the alley and facing the
22 residences.

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1 And what we propose to do is take
2 those out of there as a minor eyesore and put
3 them on the other side of the building with
4 the three -- with the brick enclosure around
5 it to provide a sufficient buffer and we'll
6 show you that in a second.

7 Next picture. All right. Here is
8 a large compactor for recycling in blue or
9 gray. As you see, it's very large and the
10 loading dock and then there is another
11 dumpster to the right of the loading dock.

12 So our proposal is to have a two-
13 sided trellis around the large compactor. The
14 compactor, as you can see, feeds directly into
15 the building, into the Discount Mart. You
16 will see sort of a reddish-brownish chute that
17 comes directly out of the Discount Mart that
18 goes -- that throws out, so to speak, its
19 recyclables into the bin.

20 The bin is then replaced when
21 filled. It is actually pulled up and out and
22 then replaced with a new container. And we

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1 can only put a two-sided trellis around it.
2 Obviously, one side will be along the alley,
3 so it will not be seen from the apartments.
4 And the other one would be in front of the
5 trash -- in front of the compactor and would
6 swing open, so the truck can pull in and hoist
7 it out and then put in a new one.

8 We cannot put the trellis on the
9 other side of the container closest to the
10 loading dock, because it would actually block
11 the trucks from coming in and unloading.

12 Now, the small dumpster to the
13 right, that is where we would propose to place
14 all the trash dumpsters, including that for
15 Papa John's. There would be a dumpster along
16 with probably 4 yard and then a 2 yard for
17 recycling material. And that would be
18 enclosed. It's already enclosed on one side,
19 so to speak, with the building. And then
20 there would be two other sides of brick and
21 then the opening would be an opaque opening.
22 So that would act as a buffer from the

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1 neighbors.

2 So in one sense, we comply with the
3 special exception, because the dumpsters that
4 will house the Papa John's trash will be
5 enclosed, according to the regulation.
6 However, if you take a broader view, again, we
7 have this unique circumstance where it's a
8 shopping center on one lot.

9 If you take a broader view, that
10 the container, the large compactor, has to be
11 four-sided -- three-sided with an opaque
12 opening, which we can't do physically, that's
13 where we are requesting the variance to make
14 it a two-sided trellis. And the big deal
15 there is we have the buffer along the alley,
16 so that neighbors don't see it.

17 If you could go to the next slide,
18 please? That's basically the interior build-
19 out plan for the Papa John's. The entrance is
20 to the left, as you see as you enter the semi-
21 circular opening. Then there will be numerous
22 registers there. The square tables where they

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1 prepare the pizzas. And as you go farther
2 back towards the right, you will see the
3 ovens. And then there are bathrooms. So
4 that's essentially the layout.

5 And again, the dumpsters, their
6 dumpsters will not be in the back of the alley
7 facing the residences. They will be around
8 the other side concealed by the brick
9 structure.

10 The next picture. So this gives
11 you sort of the layout. You can see the
12 shopping center itself is in the middle along
13 the alley and it is roughly, in the rough
14 numbers here, 300 feet along the alley. And
15 the Papa John's is located on the rectangular
16 side. You will see where I say location of
17 Papa John's Pizza proposed in that particular
18 oval entrance there.

19 So it's the -- the back of that
20 building really is completely along the
21 property line. So if you look at it in a
22 microcosm, we comply with the regs. But if

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1 you look at the shopping center as a whole, it
2 doesn't go the entire length of the alley,
3 which would be another 200 feet of brick wall,
4 which would be, you know, highly cost-
5 prohibitive.

6 So what we have proposed is along
7 the alley on each side of the shopping center
8 as a buffer to the neighbors, we would have
9 trees and landscaping. So you can see I've
10 got an arrow drawn to those two particular
11 areas where we would have landscaping to act
12 as a buffer for the rest of the lot along the
13 alley.

14 The -- you will see the three-sided
15 brick dumpsters on the -- where the Papa
16 John's will be housed is just below the large
17 compactor, which will have the two-sided
18 trellis. So that's basically our outline.

19 You see that the parking again to
20 the left of the picture. There is roughly 60
21 or 61 spots there. And then there are parking
22 lots, parking spaces that are striped and

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1 paved facing the proposed Papa John's. And
2 what it does not show is that there are
3 actually some parallel parking across from
4 Papa John's that is parallel to East Capitol.

5 There is Lot 80 -- they own two
6 other lots in the far right hand side, but
7 those -- the upper lot is not striped and
8 paved, even though it shows it on that
9 particular drawing. That's the drawing we
10 submitted with our application. That is, in
11 fact, not striped or paved. And I showed you
12 that in the first couple of pictures.

13 So if you would show the next
14 picture, which is the -- roughly the concept
15 of the trellis that would be the two-sided
16 trellis that surrounds the large compactor.
17 Again, acting as a buffer for the community
18 directly across the alley.

19 So that's our basic case. I feel
20 that we meet the special exception. We are
21 separated by the alley from the neighbors. We
22 have no traffic problems. We have plenty of

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1 parking. There is no drive-through. And
2 there are -- we have submitted, approximately,
3 465 names in support of the proposal. A
4 petition, we filed the petition, numerous
5 petitions on three occasions with the Board.

6 I would estimate that at least 400
7 are D.C. residents, if not more, I'm being
8 conservative. We asked them to put in their
9 address. And we also estimate that,
10 approximately, 50 of the persons who signed
11 are in ANC-7A where the property is located.

12 So there is significant support in
13 the record for our proposal. Again, people
14 are interested in getting jobs and getting the
15 community on a sound footing.

16 I would note for the record that I
17 attended the first ANC meeting where the old
18 Board Members some of the -- that there were a
19 number of Board Members there who were in
20 favor; however, they did not have a quorum.
21 So Mr. Halpert, as the owner, went to the next
22 two meetings and he was advised that unless he

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1 guaranteed that Papa John's would hire only
2 D.C. residents, that they would not have a
3 favorable vote. And the vote was, in fact,
4 not favorable. The vote was 2 against, 1 for
5 and 2 abstained from the vote.

6 And again, the issue was largely
7 over the lack of written guarantee that Papa
8 John's would hire only D.C. residents. So Mr.
9 Singh is here and if you need to ask him some
10 questions, he is prepared to answer your
11 questions.

12 But as in our other Papa John's
13 cases, this is at least the third that I have
14 had, the owner of the business will use
15 reasonable best efforts to hire D.C.
16 residents. In fact, the preference is that
17 they walk from the immediate community. It
18 takes up less parking.

19 The anticipation is that there will
20 be, approximately, 20 persons hired as part of
21 this Papa John's, that typically the drivers
22 will be anywhere from 6 to 8 to 10 and the

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1 remainder, which would be somewhere between 4
2 to 12 persons -- let's see, that's not right,
3 10 to 12 persons would be working in shifts in
4 the shop itself making the pizza and manning
5 the computers for purchases.

6 We have not received a letter from
7 the ANC and we checked the file and I don't
8 believe there is any letter in the file from
9 the ANC, but I'm just reporting to you what
10 exactly happened at the meeting.

11 But again, we have at least 50
12 residents in that ANC who are in favor of a
13 Papa John's. So that's my basic case. Now,
14 we ask for your approval and we're here for
15 questions.

16 CHAIRMAN LOUD: Thank you, Mr.
17 Aguglia. Let me turn to Members of the Board
18 and see if they have any questions for you.

19 COMMISSIONER TURNBULL: Thank you,
20 Mr. Chair. Mr. Aguglia, I would just like to,
21 I guess for the record, clarify your
22 nomenclature. A trellis really is an

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1 overhang, that's really a fence.

2 MR. AGUGLIA: A fence would be a
3 better --

4 COMMISSIONER TURNBULL: Yes.

5 MR. AGUGLIA: -- term.

6 COMMISSIONER TURNBULL: I guess the
7 most obvious question is if you are putting up
8 this PVC fence, which I feel is not very
9 durable for the long length of time that this
10 is going to be there, why not a brick wall on
11 the side where that dumpster is? You're not
12 doing the 200 feet. You are doing 20 feet of
13 a brick wall instead of a PVC fence, which is
14 unsubstantial, and I don't think it's really
15 much of a screen.

16 MR. AGUGLIA: Okay.

17 COMMISSIONER TURNBULL: I'm
18 throwing that out. You're not doing the 200.
19 You're doing 20 feet.

20 MR. AGUGLIA: And please, announce
21 who you are.

22 MR. HALPERT: Hi, my name is Avi

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1 Halpert. I'm one of the owners for the
2 shopping center. During the ANC meetings,
3 there was a concern raised by two, this is the
4 first one that actually Richard and I went to,
5 of the ANC Commissioners suggested something
6 that had transparency. They were concerned
7 about people loitering, hiding.

8 MR. AGUGLIA: Drug dealing.

9 MR. HALPERT: And doing other
10 things and they liked the idea and they
11 actually suggested this, so that's where the
12 idea of a -- this type of fence came through.

13 COMMISSIONER TURNBULL: Are you
14 going to maintain this fence? I mean, I have
15 a feeling as PVC, it's -- my feeling is it's
16 going to get beat up quite a bit.

17 MR. HALPERT: I think any material
18 along the public alley and on one side and a
19 recycling dumpster on the other will require
20 constant maintenance, but I think this can be
21 washed down, sprayed down.

22 COMMISSIONER TURNBULL: And the

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1 gate would be of the same material?

2 MR. HALPERT: The gate would
3 probably be -- probably have a fence
4 structure. We haven't hired a fencing
5 contractor yet. It will probably be a little
6 bit more durable, just because it's going to
7 be -- it's got to swing open.

8 COMMISSIONER TURNBULL: Okay.

9 MR. HALPERT: So it will be
10 something that can be maintained properly and
11 cleaned on a regular basis.

12 COMMISSIONER TURNBULL: How big do
13 you see the dumpster enclosure being? I mean,
14 part of the thing is for us to look at some of
15 these things, we didn't really get a sketch of
16 any of this. We just got a little box showing
17 this is what is going to happen. It would
18 have been nice to have seen some kind of an
19 illustration or a sketch that shows where
20 these things actually are, the size.

21 MR. HALPERT: The intent for the
22 trash dumpsters as well as recycling

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1 containers that would be utilized by the
2 balance of the tenants in the building will
3 house all of the currently on-site and off-
4 site dumpsters in one contained area. So if I
5 --

6 COMMISSIONER TURNBULL: I mean, is
7 this like 20 feet wide by 8 feet deep coming
8 out or?

9 MR. HALPERT: Off the --

10 COMMISSIONER TURNBULL: Off the
11 building?

12 MR. HALPERT: Can you go to that,
13 the actual picture? So where you see the 8
14 yard dumpster over there, it will -- there
15 will be an enclosure that will house the 8
16 yard, probably another 8 yard and a 4 yard
17 recycling as well as probably two commingled
18 96 yard toters. So it will run probably
19 upwards of 20 feet along that wall.

20 COMMISSIONER TURNBULL: 20 feet
21 along the wall. And it will come out how far?

22 MR. HALPERT: I'm not up to date on

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1 my dumpster dimensions. Probably between 6 to
2 8 feet. It will give enough clearance to set
3 the dumpster inside the area and still allow
4 for doors to open and close.

5 COMMISSIONER TURNBULL: And then is
6 the front of this thing a whole gate or does
7 the brick wall return a bit? Is the gate
8 opening in the middle like 8 feet or is the
9 whole thing going to be a series of gates that
10 open?

11 MR. HALPERT: It will probably be a
12 series of gates that will totally enclose and
13 hide the trash dumpsters. Again, the
14 neighbors were also concerned about
15 transparency on this and suggested that the
16 brick on the end perhaps be cinder block that
17 would be turned on the side on some pattern,
18 so you could actually see on the sides. You
19 could see within the dumpster enclosure for --
20 as a safety mechanism.

21 COMMISSIONER TURNBULL: Um-hum,
22 okay. The landscaping you talked about with

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1 trees. You sort of show on the one plan a
2 couple of circles and everything, but are
3 these fully landscaped? Is there trees? Is
4 there bushes? Is there -- what are you
5 looking to do there?

6 MR. HALPERT: That was another item
7 that was raised by the ANC. They had
8 indicated in -- previously that people when
9 they show this, they come in with one gallon
10 containers of azaleas that usually disappear.

11 The intent is to have substantial screening.

12 And the way it was discussed and shown of
13 Leyland Cypress, probably at a minimum, 6 to 8
14 foot and Leyland Cypress probably the most
15 durable drought resistant tree in the
16 Washington Metropolitan area and also grows
17 about a foot a year.

18 So there would be landscaped areas,
19 mulched areas that would comprise of the
20 Leyland Cypress.

21 COMMISSIONER TURNBULL: Are you
22 then building a pocket in the -- I mean, you

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1 have got asphalt all the way along there now.

2 Will you define this area?

3 MR. HALPERT: Yeah. In the rear
4 parking area, it would need a --

5 COMMISSIONER TURNBULL: A curb? A
6 curb around it?

7 MR. HALPERT: Curb or, I'm at a
8 loss. Well, but railroad tie concept to
9 define the area. In the front, I believe, it
10 already is a dirt area and we would probably
11 do the same just to define the area.

12 COMMISSIONER TURNBULL: Okay.
13 Thank you.

14 VICE CHAIR DETTMAN: I think the
15 majority of my questions are going to go to
16 Mr. Halpert. So just continuing along the
17 lines of the questions that Mr. Turnbull had,
18 just you had mentioned the front area. You're
19 going to put landscaping in the front of the
20 area along East Capitol?

21 MR. HALPERT: No, it's along the
22 alleyway. Wait, back up. There is -- along

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1 there there is a -- where the asphalt drops
2 off and where the alley begins still on the
3 property, there is a dirt area that would be
4 utilized. And if need be, we would -- you
5 know, to properly plant the trees, we would
6 encroach on the asphalt area.

7 VICE CHAIR DETTMAN: Okay. You
8 kind of went into how many dumpsters we're
9 really talking about that are going to be
10 relocated from the alley and put inside this
11 enclosure. But I have a couple 8 yards, 4
12 yard, two recycling bins and then a 96 yard.
13 So we are talking about seven dumpsters?

14 MR. HALPERT: No. Currently there
15 is just an 8 yard that is utilized as a common
16 area one for some of the tenants as well as
17 the cleaning company that comes on a regular
18 basis to do. I believe there are two 2 yard
19 containers currently in the alleyway and then
20 again, ultimately, if possible, we probably
21 looked to consolidate everyone under a common
22 area and probably put a second 4 yard and then

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1 a second 8 yard and then a 4 yard for
2 recyclable cardboard and then the 96 gallon
3 toters for commingled not yard, not quite the
4 container.

5 VICE CHAIR DETTMAN: And that's
6 what my question was really going to. Is
7 there an opportunity here to consolidate
8 instead of having, you know, all of these
9 different things in one area? How is trash
10 pick up handled? Is it by the tenant or do
11 you handle it? Because if we consolidate,
12 then we have less people coming to pick up
13 trash.

14 MR. HALPERT: You know, the intent
15 to the extent that the tenants can get out of
16 their individual agreements is to consolidate
17 under one and just bill it as a common area
18 expense. And I agree, I believe everyone is
19 currently with the same provider, so that
20 might be the easiest route. And if need be,
21 to -- again, I'm looking to create as small
22 and practical enclosure as possible.

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1 So to the extent that if you have
2 ever read a trash contract, there is ways of
3 buying yourselves out of it. So if need be,
4 to consolidate the size of the overall
5 dumpster, we will do that as well.

6 VICE CHAIR DETTMAN: And my last
7 question goes to the compactor. It is fairly
8 big. Does that tenant actually produce that
9 much where -- is there an opportunity to get
10 rid of that and actually have them use this
11 joint recycling bin that might be picked up
12 more often?

13 MR. HALPERT: The tenant has been
14 there for upwards of 15 years. I think
15 originally when they first came in there, they
16 tried to go to an exterior dumpster. They
17 create the volume. Again, something we can
18 raise, but speaking to the owner of that
19 business, they create a lot of cardboard
20 recyclable products that get pulled. And it's
21 the most efficient way, rather than having 10
22 pulls a month, this allows them to have a one

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1 pull a month.

2 VICE CHAIR DETTMAN: Okay. Okay.

3 Thank you.

4 MR. HALPERT: Thank you.

5 CHAIRMAN LOUD: One question, one
6 follow-up question. First, let me commend
7 your team. It sounds like you set out to open
8 up a pizza delivery spot and found yourselves
9 in the dumpster management and strip mall
10 management business. But typically with the
11 variance test, the applicant needs to show a
12 practical difficulty for not being able to
13 comply with the requirements of the regs.

14 And I thought I had heard the
15 witness say the reason why they are not able
16 to provide the brick enclosure stems to some
17 comments made at an ANC meeting on behalf of a
18 couple of ANC Commissioners or persons in
19 attendance at the meeting. I wasn't clear.

20 But I just wanted to get some
21 feedback from counsel in terms of the
22 practical difficulty prong of the variance

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1 test and the reason articulated for the
2 trellis as opposed to the brick enclosure.

3 MR. AGUGLIA: May I consult with my
4 client for just a second? If we could go to
5 the picture? Daryl, could you show the
6 picture again of the dumpsters on the side?
7 You know, again, you know, the background is
8 fighting with micro versus macro where micro
9 with Papa John's I'm fine and we're trying to
10 clean up the rest to make it more a more
11 practical appearance for the neighbors,
12 including moving.

13 I know you are concerned about
14 perhaps the size of the dumpster on the right,
15 but the intent there is to take them out of
16 the back where they are facing the alley and
17 the residents and put them on the side where
18 they don't see them and enclose them.

19 The big concern here is, of course,
20 cost. Again, this was a 1942 building and
21 we're kind of stuck between there would
22 probably be a significant cost here. You

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1 would have to -- you see where there is a curb
2 with a metal railing along the side of the
3 alley. And if we put up a brick enclosure
4 along that side, that -- you know, there may
5 be extensive cost in regrading that and taking
6 down the railing and putting up the brick
7 wall, as opposed to the PCV fence.

8 And again, we were constrained
9 there because of uniqueness of the land right
10 next to the alley and the position of a
11 loading dock, because we can't obscure the
12 loading dock and then we can't unload within
13 the space provided. So that's the unique
14 circumstance involving this particular lot.

15 CHAIRMAN LOUD: Thank you. That
16 did clarify it somewhat. In fact, it
17 clarified it a lot. Do you have any
18 information, any cost estimates? I mean,
19 nothing down to a part of science, but any
20 sense of the regrading costs and some of what
21 you alluded to with respect to --

22 MR. AGUGLIA: Not at this time. We

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1 went with the PCV because we thought it was
2 the easiest to maintain and most durable and
3 can be painted when needed. And so we thought
4 that was a reasonable alternative. And then
5 the trellis type of design, even though I call
6 it a trellis, allowed some transparency,
7 because of neighbors' concern about illegal
8 activities being blocked from sight.

9 So we were dancing, we were across
10 a thin line there.

11 CHAIRMAN LOUD: And just so I'm
12 clear and this is probably my final question,
13 the enclosure will enclose both food delivery,
14 which is your basic line of business, but then
15 it's going to also incorporate some of these
16 other uses currently on the site, which are
17 not food at all and they will be in a single
18 enclosure altogether?

19 MR. AGUGLIA: Yeah.

20 CHAIRMAN LOUD: Okay.

21 MR. AGUGLIA: One consolidated --

22 CHAIRMAN LOUD: You need to come on

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1 your microphone.

2 MR. AGUGLIA: It would be one
3 consolidated trash area, waste management area
4 for the entire center.

5 CHAIRMAN LOUD: Okay. Thank you.

6 MR. AGUGLIA: Thank you.

7 COMMISSIONER TURNBULL: Mr. Chair,
8 let me get back to your fence question. I
9 guess I don't totally agree with the
10 applicant's assessment of how difficult things
11 would be. You have a degree of difficulty to
12 put up your vinyl fence that you want to do,
13 your PVC. You have got to cut down the steel
14 pipe railing there, which is sunk into
15 concrete, which looks to be about 8 to 12
16 inches in width.

17 So you're going to have to cut that
18 down and fill it in and then somehow you are
19 going to have to -- it sounds like all you are
20 going to do is put a plate down and anchor
21 this fence with a couple of drill holes,
22 instead of actually sinking it into the

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1 concrete, which you would have to dig up and
2 redo. It sounds like it's not going to be
3 very stable.

4 MR. HALPERT: I have no intent on
5 doing things twice or half-bake. Again, the--
6 it might require steel posts to be every 4
7 foot or 8 foot, probably every 4 foot section,
8 to supplement the design. I agree, I agree
9 that just putting up as shown, and again it
10 was just for illustrative purposes only, would
11 be fine out in the suburbs, but not for an
12 urban application.

13 COMMISSIONER TURNBULL: They are
14 going to have to break into that wall to sink
15 pipes or posts or whatever you want to do.

16 MR. HALPERT: Again, having not
17 gotten into the full design, we would probably
18 get rid of the supports and leave the vertical
19 supports and utilize those as a portion of the
20 fence and try to make -- utilize those and
21 perhaps add tubular steel on top of it and
22 then overlay, I believe, these fence sections,

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1 come in 6 x 6 with a hollow core, and they can
2 -- or 4 x 4 posts that could go right over
3 those.

4 CHAIRMAN LOUD: Do Board Members
5 have any further questions? Not seeing any,
6 is anyone from the ANC here this afternoon?
7 Okay. Then we will now turn to the Office of
8 Planning for your report. Good afternoon.

9 MR. MORDFIN: Good afternoon,
10 Chairman and Members of the Board. I'm
11 Stephen Mordfin with the Office of Planning.
12 The subject application is in conformance with
13 the provisions for the granting of an area
14 variance, the provision requiring a brick
15 dumpster enclosure and to the provision
16 requiring that the entire lot be screened from
17 the adjoining residence District to the north,
18 because the site is unique in that it is
19 developed with multiple uses on a single
20 property and not as a single use on a single
21 lot.

22 This unique -- this results in the

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1 need to provide a brick wall across the rear
2 lot line of the entire shopping center
3 property, not just the portion to be dedicated
4 to the food delivery service and for all
5 dumpsters to be located within a brick
6 enclosure and not just the ones associated
7 with the proposed use, even when not otherwise
8 required.

9 The granting of these variances
10 would not substantially impair the integrity
11 of the Zone Plan, because the dumpsters
12 associated with food delivery service would be
13 located within a three-sided brick enclosure
14 with an opaque gate and the extent of the
15 space to be occupied by the food delivery
16 service would be separated from the adjoining
17 residence District by a brick wall for the
18 entire length of the space to be occupied by
19 the use.

20 Therefore, the Office of Planning
21 recommends that the area variances do not
22 require all of the dumpsters to be located

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1 within a three-sided brick enclosure and the
2 area variance not to require a brick wall for
3 the entire length of the subject property
4 abutting the residence District be granted.

5 The subject application is also in
6 conformance with the criteria for the granting
7 of a special exception for a food delivery
8 service, because no part of the lot is within
9 25 feet of a residence District unless
10 separated by a public alley or street. No
11 drive-through is proposed. The use is
12 designed to not become objectionable to
13 neighboring properties, because it would be
14 located within a shopping center.

15 The refuse dumpsters associated
16 with these would be within a three-sided brick
17 enclosure with an opaque gate. The use itself
18 will be screened from the alley abutting the
19 residence District to the north by a brick
20 wall. And parking as required by the Zoning
21 Regulations would be provided.

22 The use would not create a

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1 dangerous or otherwise objectionable traffic
2 conditions as it would be a use located as an
3 in-line store within an existing shopping
4 center. And the Office of Planning recommends
5 that the granting of area variances do not
6 allow the dumpsters on-site to be located
7 within a dumpster enclosure and to allow the
8 entire property located across the alley from
9 residence District to not be separated from
10 the residence District by a continuous brick
11 wall.

12 Therefore, the Office of Planning
13 recommends that the special exception request
14 to permit a food delivery service within C-2-A
15 Zone District be granted. Thank you.

16 CHAIRMAN LOUD: Thank you. That
17 was an excellent report as usual and very
18 helpful in terms of going through the variance
19 test. Let me see if Board Members have any
20 questions. Mr. Turnbull, do you have any
21 questions for OP?

22 COMMISSIONER TURNBULL: I just had

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1 -- did you say there would be a brick wall?

2 MR. MORDFIN: There would be a
3 brick wall for the length of the portion of
4 the building that is occupied by the use,
5 which is the rear wall of the building.

6 COMMISSIONER TURNBULL: Right.

7 MR. MORDFIN: But not for the
8 entire length of the property.

9 COMMISSIONER TURNBULL: Right.

10 MR. MORDFIN: Just for the use
11 itself.

12 COMMISSIONER TURNBULL: That's
13 impractical. Okay. Did you talk to the
14 applicant about a brick wall possibly just by
15 the side of the compactor?

16 MR. MORDFIN: The applicant had
17 come in with us several months ago about the
18 provision of that brick wall and the
19 difficulties that they saw with putting the
20 brick wall there with the existing dumpster
21 and the trucks that come in and actually pick
22 up that dumpster and empty it.

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1 And they told us that that might be
2 a difficulty to actually put the wall there
3 and have the dumpster there at the same time
4 and also empty it. So we also weren't
5 completely sure that the brick wall even had
6 to be over there, because of the way the
7 Zoning Regulations are written where it's for
8 food delivery service, but then it also says
9 "Any refuse dumpster shall be housed in the
10 three-sided brick enclosure and any refuse
11 dumpster associated with the use or any refuse
12 dumpster on the property."

13 And we also weren't clear as to
14 just exactly what the intent is or the way it
15 is written what that actually means. So
16 because of the difficulties with emptying that
17 dumpster, we thought that, you know, some
18 other type of screening would suffice to
19 provide the intent that you're not looking at
20 the dumpsters from across the alley from the
21 residence District, so those people living in
22 the apartments wouldn't be looking directly at

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1 it. We thought that would also go towards the
2 intent of screening the dumpsters.

3 COMMISSIONER TURNBULL: Do you know
4 and I should have asked the applicant, are all
5 the -- is the alley -- on all of the other
6 tenants, is everything loaded from the alley?

7 MR. MORDFIN: Where do they do
8 their loading from?

9 COMMISSIONER TURNBULL: Yes. Is it
10 the deliveries are all made in the rear?

11 MR. MORDFIN: I don't know where
12 the deliveries are made.

13 COMMISSIONER TURNBULL: Okay.

14 MR. HALPERT: No deliveries are
15 made from the alley. It's emergency egress
16 only. All the tenants either take it from the
17 front of the center or in the case of Discount
18 Mart take it from the loading dock.

19 COMMISSIONER TURNBULL: So all
20 package van/trucks go to the front of the
21 strip mall?

22 MR. HALPERT: Yeah, everything is

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1 front-loaded.

2 COMMISSIONER TURNBULL: Okay.

3 Thank you.

4 MR. HALPERT: Thank you.

5 COMMISSIONER TURNBULL: Thank you,
6 Mr. Mordfin.

7 MR. AGUGLIA: If I may just have a
8 few words, please, in conclusion? So, Mr.
9 Turnbull, I understand your concerns. I'm
10 trying to have a happy medium here with the
11 client whereas Office of Planning wasn't even
12 sure that I had to request these variances. I
13 did them out of a conservative vein to make
14 sure there was no question about it.

15 But also, I'm trying to strike a
16 heavy medium with the client and the cost
17 associated with this. And he has agreed to
18 put in the substantial plantings to take the
19 dumpsters off of the alleyway there in the
20 back and put them in a larger enclosure than
21 would ordinarily cost them.

22 And then when I mentioned the brick

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1 wall, you know, along the side of the big
2 dumpster, it was an exorbitant cost given the
3 location and type of mall/shopping center that
4 this is.

5 CHAIRMAN LOUD: Okay. Let me just
6 go back to Office of Planning for one moment
7 and ask Office of Planning the same question
8 regarding the practical difficulty prong of
9 the variance test with respect to the brick
10 enclosure for the dumpsters and your sense of
11 whether the articulated reason regarding --
12 and it's laudable of working with the ANC,
13 given that it is a variance request before us,
14 so we are operating on that assumption where
15 that falls out with respect to the prong of
16 the test.

17 MR. MORDFIN: Well, we thought that
18 the practical difficulty it results from the
19 uniqueness in that this is one lot that has
20 multiple uses on it and not all of them are
21 subject, except for the proposed use, are
22 subject to section 734 of the Zoning

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1 Regulations.

2 So that results in the uniqueness
3 that everything possibly would have to fall
4 under 734, even though they are not food
5 delivery services. And from that uniqueness,
6 I think that results in the practical
7 difficulty to have to take an entire shopping
8 center and make it conform to the uses for a
9 food delivery service, even though the entire
10 shopping center itself is not a food delivery
11 service. It operates as a shopping center,
12 not one great big large food delivery service.

13 So I thought that that would be the
14 practical difficulties that you have to make
15 an entire multiple use center conform to the
16 needs of one use within that center.

17 CHAIRMAN LOUD: So if I understand,
18 let me just ask one follow-up question then.
19 So if the applicant were only enclosing the
20 Papa John's refuse dumpster as opposed to all
21 the different uses that are on the lot, even
22 with the other uses that are on the lot, then

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1 your argument would not stand, because there
2 wouldn't be this sort of assemblage of
3 different uses that are required to comply
4 with that requirement? Is that a fair sort of
5 restatement of what you just said?

6 MR. MORDFIN: That -- I think so,
7 yes.

8 CHAIRMAN LOUD: All right. So it's
9 the fact that they are going to have again all
10 of these dumpsters enclosed in one structure
11 that creates the practical difficulty?

12 MR. MORDFIN: For the need to have
13 to put them all into one. And they are almost
14 putting most of them into that one with the
15 need to have to put them all into one, even
16 though they are not associated with the food
17 delivery service.

18 CHAIRMAN LOUD: Yes. Okay. Thank
19 you. We are now going to -- did anyone show
20 up from the ANC for this case? Okay. We are
21 now going to call any parties or persons that
22 are in support of the application. Hearing

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1 none, are there parties or persons in
2 opposition to the application?

3 Okay. Why don't we move then to
4 closing remarks by the applicant?

5 MR. AGUGLIA: Based upon the
6 evidence in the PowerPoint presentation, we
7 would ask you to approve the special exception
8 and the two variances as we have proposed.

9 CHAIRMAN LOUD: Short and sweet,
10 okay. Hold on one second. Thank you for your
11 patience. We were just discussing whether or
12 not to try to deliberate the case today and I
13 think we have come to the conclusion that we
14 probably need a little more information. But
15 what we're going to try to do is assuming how
16 quickly you can get that information, we might
17 be able to set it up for decision before the
18 month is over with.

19 Specifically, we would like to see
20 landscape plans for the rear lot where you
21 talked about the, I believe, trees that would
22 buffer from the R-5 District across the alley.

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1 Also, specific drawings on the enclosure that
2 you have contemplated.

3 And then under our section 2117.14,
4 I believe, let me just double check, I'm
5 sorry, 2117.11 and 12, in particular 11, there
6 is a requirement regarding landscaping
7 covering a minimum of 5 percent of the total
8 area devoted to parking and we would like a
9 landscape plan that shows how that requirement
10 will be met.

11 So you may want to just look at
12 2117.11. And then in your submission make
13 sure that you are in compliance with that.

14 MR. AGUGLIA: I missed No. 2. No.
15 1 was landscaping plans for the rear lot,
16 which are on each side of the back of the
17 center.

18 CHAIRMAN LOUD: Of the rear, that's
19 correct.

20 MR. AGUGLIA: And then No. 2 was
21 drawings?

22 CHAIRMAN LOUD: For the enclosure.

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1 MR. AGUGLIA: Which enclosure?

2 CHAIRMAN LOUD: The enclosure of
3 the dumpsters. Is that correct, Mr. Turnbull?
4 Were you also concerned about the --

5 COMMISSIONER TURNBULL: Like I
6 wouldn't mind seeing both.

7 CHAIRMAN LOUD: So drawings for
8 both, the compactor as well as the assembled
9 dumpsters. And then did you get the third?

10 MR. AGUGLIA: I did.

11 CHAIRMAN LOUD: Okay. All right.
12 So depending on how soon you can get those to
13 us, we're more than open to setting this for a
14 decision before the May decision date.

15 MR. AGUGLIA: We will do our best
16 to file something before the end of next week.

17 CHAIRMAN LOUD: Okay. And let's
18 narrow that down with a little more
19 specificity. So if you file something by
20 the --

21 MR. AGUGLIA: That would be the
22 17th.

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1 CHAIRMAN LOUD: -- 17th, then we
2 would -- and if we really get it on the 17th,
3 let's see what we have, we could probably do a
4 decision on the 21st, I would think. But
5 again, we would really have to get --

6 MR. AGUGLIA: How about the 16th,
7 but before noon?

8 CHAIRMAN LOUD: The sooner the
9 better. That's a holiday here in the District
10 though and so you may find the office is not
11 open on the 16th. So again, if you could do it
12 either the Wednesday, that would be great, or
13 if you did it the Friday, that would be
14 stretching us, but we would make that effort.

15 MR. AGUGLIA: All right. Well,
16 we'll use best efforts to get it to you on the
17 15th.

18 CHAIRMAN LOUD: We'll put it on the
19 21st.

20 MR. AGUGLIA: Not later than the
21 17th.

22 CHAIRMAN LOUD: Often times

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1 applicants promise and they end up getting it
2 to us like the day before the hearing or the
3 morning of the hearing and it makes it very
4 difficult to really go forward with the
5 decision. And we're going to make every
6 effort on our end to honor these decision
7 commitments once we schedule them.

8 MR. AGUGLIA: Yes.

9 CHAIRMAN LOUD: And I hope that the
10 applicants and the parties honor it from their
11 end, so that we don't have to continue
12 rescheduling this into the future.

13 MR. AGUGLIA: Would that be at the
14 Public Meeting in the morning of the 21st?

15 CHAIRMAN LOUD: Yeah, what I'm
16 thinking is that we could hear this case
17 initially ahead of the Public Hearing cases,
18 deliberate on it, render a decision and then
19 move into the Public Hearing cases after we
20 conclude it.

21 MR. AGUGLIA: Thank you.

22 CHAIRMAN LOUD: Um-hum. Board

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1 Members, do you have any thoughts on that?
2 Okay. Ms. Bailey or Mr. Moy, is there
3 anything else that should be done on this
4 case?

5 MR. MOY: I don't know. I was out
6 for a moment, Mr. Chair. Were you -- was the
7 Board requesting any responses from any
8 parties that was necessary?

9 CHAIRMAN LOUD: You mean from, for
10 example, the ANC?

11 MR. MOY: The ANC, an opportunity.
12 I understand they are not here and they did
13 not file, but that's left to the discretion of
14 the Board.

15 CHAIRMAN LOUD: I think essentially
16 what we are talking about, my thinking and
17 I'll confer with the Board, is that the
18 trellis fence that we are talking about is
19 something that was pretty much recommended by
20 the ANC. And we are simply asking for
21 drawings that depict what they ANC
22 recommended.

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1 The landscaping plan and the 5
2 percent requirement and the rear landscaping
3 plan are things that are required under our
4 regs anyway and, apparently, were not the
5 subject of the discord with the ANC, which
6 apparently was about job creation or something
7 to that effect.

8 So let me see how the other Board
9 Members feel, but I would be inclined to move
10 forward with the dates that we have agreed to
11 and not to have to push it back further to
12 allow for continuation of response, further
13 response and response to the response,
14 etcetera. But how do you feel, Mr. Dettman
15 and Mr. Turnbull?

16 VICE CHAIR DETTMAN: I'm
17 comfortable with those dates, Mr. Chairman.

18 COMMISSIONER TURNBULL: So am I.

19 MS. BAILEY: Mr. Chairman, I would
20 suggest that the applicant do provide the ANC
21 with a copy of whatever is being filed with
22 the Board.

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1 MR. AGUGLIA: Absolutely. And just
2 for the record, it was the old board, the old
3 Commission that we met with whose members were
4 in favor, but did not have a quorum that
5 requested this. Whether or not the new board
6 has expressed anything on this, I can't speak
7 to that. The new board simply wanted the
8 unconditional written guarantee and that we
9 couldn't live with.

10 So okay. But they will absolutely
11 get a copy. We will do them by overnight
12 mail, if not by delivery. Because we have had
13 trouble with this particular ANC in terms of
14 its address, because even though they show a D
15 Street, S.E., address, our -- the mail is
16 returned, so we -- now, we are sending it to
17 the attention of the chair at her home address
18 to make sure she gets it.

19 CHAIRMAN LOUD: Well, I think Ms.
20 Bailey makes an excellent point. And you
21 obviously will do that anyway, since they are
22 a party.

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1 MR. AGUGLIA: Yes.

2 CHAIRMAN LOUD: But it's really
3 important if we're going to try to stick with
4 these dates, that notice be made timely to all
5 parties. Mr. Moy, did you have some further
6 thoughts?

7 MR. MOY: No, I was just throwing
8 that out just for the Board that it is always
9 good -- the applicant is well-aware that they
10 should always serve the ANC.

11 CHAIRMAN LOUD: Thank you. Okay.
12 Thank you.

13 MR. AGUGLIA: Thank you.

14 CHAIRMAN LOUD: We appreciate your
15 time and efforts. Ms. Bailey, would you like
16 to call the next case?

17 MS. BAILEY: Thank you, Mr.
18 Chairman. Application 17904 of Robert Holland
19 and others, pursuant to 11 DCMR section
20 3104.1, for a special exception to allow the
21 continued used of an accessory parking lot
22 under section 213. The property is located at

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1 3820 through 3826 McKinley Street, N.W. It is
2 Zoned R-2. It is located in Square 1859 on
3 Lots 49, 50, 51 and part of Lot 92.

4 Members of the Board, I do have two
5 handouts to pass out. We did receive these
6 documents yesterday and I don't believe the
7 Board has them, so I'll pass them out at this
8 time.

9 CHAIRMAN LOUD: Ms. Bailey, these
10 are documents submitted by the applicant?

11 MS. BAILEY: Yes, Mr. Chairman. As
12 you can tell, one is a petition in support of
13 the application and then the other has to do
14 with landscaping, the provision of
15 landscaping. It seems as if the document was
16 from a landscaping company and the applicant
17 has made arrangements to provide landscaping
18 at the site.

19 CHAIRMAN LOUD: Okay. And it was
20 not -- they were not submitted within the time
21 lines of our regulations?

22 MS. BAILEY: All documents are to

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1 be filed 14 days ahead of time, so no, we did
2 not receive these in a timely manner from the
3 applicant.

4 CHAIRMAN LOUD: So the question is
5 whether or not we waive our rules, I believe,
6 under 3100.5 and allow these in?

7 MS. BAILEY: Yes, sir.

8 CHAIRMAN LOUD: Let me just ask the
9 applicant the reason for the late filing.

10 MR. SMITH: Good afternoon.

11 CHAIRMAN LOUD: Good afternoon, how
12 are you? Good. You may have to turn your
13 mike on.

14 MR. SMITH: Yes, good afternoon,
15 Mr. Chairman and Members of the Board. To
16 address that issue, we received the request
17 from Park and Planning several weeks ago and
18 acted immediately to have that matter looked
19 into, get several quotes and then get a
20 contract.

21 Park and Planning requested a plan
22 along with a contract at the time of the

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1 hearing. And we moved immediately to do so.
2 In fact, we met with them on -- a week ago
3 last Friday and that was reiterated. So as
4 soon as we found out, we submitted the plan
5 immediately.

6 CHAIRMAN LOUD: Okay. Let me just
7 ask whether or not anyone from the ANC is here
8 this afternoon for this case? There does not
9 appear to be. I think you have stated good
10 cause for the late filing. Board Members, do
11 you have any questions or any concerns with us
12 admitting and waiving our rules to allow these
13 documents in?

14 Okay. Then what we are going to do
15 is allow the documents in under section 3100.5
16 and it's important that you provide the ANC
17 with copies of these as well and the Office of
18 Planning.

19 MR. SMITH: Yes, we will, Mr.
20 Chairman.

21 CHAIRMAN LOUD: Okay. And if you
22 are prepared to start right now, we can move

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1 into your case.

2 MR. SMITH: Yes. My name is George
3 Smith. I'm here on behalf of the applicants.

4 We are here for a renewal or respectfully
5 request a renewal of the special exemption
6 last granted 5 years ago. We believe granting
7 of the renewal of the -- will be in harmony
8 with the general purpose and intent of the
9 Zoning Regulations and will not affect
10 adversely the use of the neighboring property.

11 in support of the application, we
12 have previously submitted, and is part of the
13 record, the letter of support from the ANC
14 along with a petition of support containing
15 over or approximately 200 signatures of both
16 members of the community and patrons of the
17 businesses that use this lot.

18 In addressing an issue raised by
19 Park and Planning, namely on section 2117.11,
20 the 5 percent landscaping requirement, we
21 have, in fact, submitted a contract for the
22 landscaping and would request an order from

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1 the Board under 3130.4 allowing us 6 months to
2 comply with that order and have the
3 landscaping plan placed into effect.

4 So that the Board may ask questions
5 regarding these matters, today we have Mr. Don
6 Schupp and Mr. Buddy Weitzman here to testify
7 and answer to any questions that the Board may
8 have.

9 CHAIRMAN LOUD: Thank you. Are you
10 witnesses -- do your witnesses have any
11 prepared statements, either to submit to the
12 record or that they would like to provide or
13 they are making themselves available primarily
14 to answer any questions?

15 MR. SMITH: Yes, Mr. Chairman.

16 CHAIRMAN LOUD: The latter? Okay.
17 Why don't we do this, we have reviewed,
18 obviously, the record prior to coming in and I
19 think may have had some preliminary reflects
20 on it. And I would like to turn to Mr.
21 Dettman with respect to some of those
22 concerns.

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1 VICE CHAIR DETTMAN: Good
2 afternoon. I'm sorry, I was taking notes when
3 you introduced yourself. I didn't get your
4 name.

5 MR. SMITH: George Smith.

6 VICE CHAIR DETTMAN: Okay. Just a
7 couple of questions about the relief that is
8 before the Board that is being requested.
9 Your previous approval, did that lapse? Are
10 you currently in compliance?

11 MR. SMITH: I believe that order
12 expired in July.

13 VICE CHAIR DETTMAN: Okay. So as
14 it was advertised, it was for the continued
15 use of an accessory parking lot. It is really
16 for, since you have lapsed, the establishment
17 of a parking lot? Would that be more correct?

18 MR. SMITH: Um, given the fact that
19 it has lapsed, yes.

20 VICE CHAIR DETTMAN: Okay, okay. I
21 don't think that changes our analysis on that,
22 just to clarify the caption, the advertisement

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1 language. My second question is you are
2 coming in under 213, which is for a parking
3 lot. The advertisement categorized it as an
4 accessory parking lot.

5 And my question is are these
6 parking spaces tied to any particular retail
7 establishment or are they just made available
8 to retail establishments in the vicinity?

9 MR. SMITH: Specifically, the
10 retail establishments that are the applicants
11 before the Board, if I could direct the
12 Board's attention to the aerial photograph, in
13 particular it is lots --

14 CHAIRMAN LOUD: Are you looking at
15 Exhibit 23?

16 MR. SMITH: Yes.

17 CHAIRMAN LOUD: Okay.

18 MR. SMITH: It depicts the parking
19 lot along with the driveway containing parking
20 spaces, which are for the five businesses
21 along Connecticut Avenue.

22 VICE CHAIR DETTMAN: Okay. Is

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1 there a sign in the parking area that says for
2 the use of CVS or what have you?

3 MR. SMITH: If I could defer to my
4 client?

5 VICE CHAIR DETTMAN: Yes.

6 MR. SMITH: Yes, it is.

7 VICE CHAIR DETTMAN: Okay. Mr.
8 Chairman, I'm thinking, and we can ask the
9 Office of Attorney General as well, by the
10 sounds of it, this parking area is more
11 accessory parking spaces for particular retail
12 use as opposed to a parking lot that, and I'll
13 quote it from the regs, under 213.6 "The
14 parking lot shall be reasonable necessary and
15 convenient to other uses in the vicinity, so
16 that the likely result will be a reduction in
17 over-spill parking on neighborhood streets."

18 Since there is a sign posted that
19 it is for the use of these five businesses,
20 it's not really made available to the uses in
21 the vicinity. They are accessory to a
22 particular use. I think the more appropriate

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1 route for the Board would be to look at this
2 under 214.

3 And again, we can ask the Office of
4 Attorney General if I'm misguided here.

5 CHAIRMAN LOUD: Why don't we do
6 that? Why don't we ask Ms. Nagelhout from the
7 Office of Attorney General to respond?

8 MS. NAGELHOUT: I think it would be
9 helpful if the applicants looked at 213 and
10 214 and wanted to respond. You do have an
11 issue of who the applicant is here. And if it
12 is 214, then I don't know if you can go
13 forward today, because you're missing I think
14 one of the necessary parties.

15 You don't have anything in the
16 record, I don't think, from the businesses
17 that are supposed to be served with this
18 accessory parking.

19 CHAIRMAN LOUD: Ms. Nagelhout, can
20 you specify the section of 214 regarding
21 having the correct parties in front of us?

22 MS. NAGELHOUT: For that I'm

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1 thinking more 2115.6. That's the wrong
2 section.

3 VICE CHAIR DETTMAN: 2116?

4 MS. NAGELHOUT: Yeah.

5 VICE CHAIR DETTMAN: Location of
6 parking spaces.

7 MS. NAGELHOUT: 5, maybe. Yeah,
8 2116.5.

9 CHAIRMAN LOUD: We appreciate your
10 patience as we kind of sort out the
11 appropriate relief. We wouldn't want you to
12 have waited all this time and then come before
13 us and we're not able to pull together to
14 frame it in accordance with our rules.

15 MS. NAGELHOUT: It's --

16 CHAIRMAN LOUD: Yes?

17 MR. SMITH: If I --

18 CHAIRMAN LOUD: I think you have
19 got to push it and then --

20 MR. SMITH: Yes, Mr. Chairman.

21 CHAIRMAN LOUD: All right.

22 MR. SMITH: The parking lot is

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1 owned by the landlord and made available to
2 the tenants. Would that take them outside of
3 213.6? And in fact, that parking lot does
4 reduce parking in the neighborhood, because
5 you have the patrons coming not only from the
6 District, but also surrounding areas who
7 utilize that. And because of its use, they
8 don't park on the street.

9 CHAIRMAN LOUD: That could have an
10 impact on our analysis, but I thought I had
11 heard you say earlier that there are -- or
12 your client say that parking is restricted or
13 there is a signage there or something
14 regarding it being restricted to the
15 businesses? Did I not hear that correctly?

16 MR. SMITH: To my knowledge, the
17 sign states that it is for patrons of CVS and
18 then the other businesses, but there is no
19 enforcement for any noncompliance if somebody
20 were to park there.

21 CHAIRMAN LOUD: Um-hum.

22 MR. SMITH: It's a sign put up to

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1 show that this is a convenience for those
2 patrons. But there is no one on the lot.
3 There is no guard or anyone taking license
4 numbers or calling for towing or anything like
5 that.

6 VICE CHAIR DETTMAN: But did I hear
7 you correctly to say that the owner of the lot
8 is the landlord for these businesses?

9 MR. SMITH: Yes.

10 VICE CHAIR DETTMAN: So the owner
11 of the lot also owns the land for these five
12 businesses?

13 MR. SMITH: Yes. Well, several
14 owners, you know.

15 CHAIRMAN LOUD: Ms. Nagelhout, do
16 you have any further reflections on it?

17 MS. NAGELHOUT: Well, I'm wondering
18 if like if I were to drive there and park and
19 go to the library that's a couple blocks up
20 the street, you could do that? There is no --
21 is it -- it's sort of a convenience thing that
22 like if you are driving to CVS, there might be

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1 -- you referred to parking. Say parking is
2 available at the rear, but anybody can go
3 there and park there and you won't have them
4 towed?

5 MR. SMITH: Well, to assist in
6 responding, could I have the clients?
7 Identify yourself.

8 MR. SCHUPP: How's that?

9 MR. SMITH: Okay.

10 MR. SCHUPP: Ladies and gentlemen,
11 my name is Don Schupp. I am one of the owners
12 of the businesses on the street and a 25
13 percent owner of the parking lots. These
14 parking lots have been in existence for over
15 60 years to serve the businesses there.
16 That's their primary use.

17 Mr. Buddy Weitzman is the
18 proprietor of one of the businesses and are de
19 facto parking lot overseer, if you will. He
20 is on the scene, knows everything that goes on
21 there and ensures that it is properly
22 maintained.

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1 I would like for him to make some
2 comments about the use of the parking lot.

3 MR. WEITZMAN: Good afternoon.

4 CHAIRMAN LOUD: Before we go to
5 him, just very briefly, can you state your
6 name again?

7 MR. SCHUPP: Yes, sir, Don Schupp.

8 CHAIRMAN LOUD: Okay. Okay. And
9 you are a 25 percent owner of the lot. And
10 you are the owner of one of the businesses?

11 MR. SCHUPP: Two of the buildings.

12 CHAIRMAN LOUD: Two of the
13 businesses?

14 MR. SCHUPP: Two of the buildings
15 that are then leased out.

16 CHAIRMAN LOUD: Okay. Thank you.

17 MR. WEITZMAN: All right. My name
18 is Buddy Weitzman. I am Chevy Chase Wine and
19 Spirits, one of the businesses that is in the
20 application here. I manage the parking lot
21 for the businesses. No, it's not open to free
22 parking for people going to the library or any

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1 place else.

2 We maintain it. We ticket, we tow
3 people that aren't supposed to be parking
4 there. That is part of my job as owner of the
5 store when I bought it in 1986 and I've been
6 doing it ever since. So no, it is not open to
7 anybody that just wants it. We make sure that
8 the people use it for the businesses that are
9 associated with it.

10 We have, if my mind serves me
11 correct, in the preceding variances, not been
12 allowed to have a guard house, a parking
13 attendant, anyone out there to issue tickets
14 to collect money, so anybody could park there.

15 That has not been allowed.

16 Also, one of the things, since I'm
17 sort of involved with Mr. Schupp here for a
18 long time, this case was filed last year.
19 Unfortunately, the attorney that has been
20 handling it, frankly, since I bought the shop
21 in 1986, got sick and died last year.

22 So we had filed, but because of

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1 that situation, we got pushed into this year
2 and then this is the date you all requested.
3 Do you have any questions of me?

4 VICE CHAIR DETTMAN: I have
5 actually a question for Ms. Nagelhout. I
6 think that the appropriate relief here is 2114
7 and 2116, accessory parking spaces. But it
8 sounds like we have the right people at the
9 table. We have the owner of the property
10 where the business is located bringing an
11 application to the Board to request off-site
12 accessory parking spaces.

13 I would like to get your opinion on
14 that.

15 MS. NAGELHOUT: I think the same
16 thing. It does sound like the right people
17 are here.

18 CHAIRMAN LOUD: Then what I would
19 suggest we do, having heard from the Office of
20 Attorney General, is it sounds that we are
21 clearer now on the appropriate relief for this
22 applicant and that we should proceed forward

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1 with the understanding that the test to be met
2 is section 2114 as well as 2116.

3 And if the applicant is prepared to
4 move forward under those provisions, we can
5 proceed forward this afternoon. If for some
6 reason you are not, it would be understandable
7 and we can discuss that as well, but I do
8 think at least we are clear on the sections
9 that are going to be in play for this hearing.

10 Okay. Now, let us turn back to the
11 applicant and get your response to that.

12 MR. SMITH: Well, Mr. Chairman, how
13 would that change our original application
14 under 2114?

15 CHAIRMAN LOUD: Go ahead.

16 VICE CHAIR DETTMAN: Well, I think
17 your original request was from 2113.

18 MR. SMITH: Yes.

19 VICE CHAIR DETTMAN: For a parking
20 lot.

21 MR. SMITH: Correct.

22 VICE CHAIR DETTMAN: How this

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1 changes is that now you will be held to the
2 standard of section 2114. You will need to
3 present your case under section 2114, as well
4 as 2116.5. Because, essentially, 2116 governs
5 the location of parking spaces.

6 Just by looking at the aerial
7 photo, it looks like you are unable to provide
8 the appropriate number of parking spaces that
9 these businesses require on-site for a number
10 of reasons. So you need to locate them off-
11 site.

12 So 2116.5 gets you the ability to
13 locate these parking spaces off-site. And
14 2114 governs the accessory parking spaces, the
15 lot that we are looking at. And the reason
16 for this change is because these spaces are
17 really tied to a particular business, instead
18 of being made available to the general
19 vicinity, which is a requirement under 2113.

20 MR. SMITH: Therefore, we would
21 have to have the actual business owners here
22 as well?

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1 VICE CHAIR DETTMAN: The owner of
2 the property.

3 MR. SMITH: Just the owner of the
4 property?

5 VICE CHAIR DETTMAN: The owner of
6 the property.

7 MR. SMITH: And we have one here.

8 MR. SCHUPP: If I may ask a
9 question?

10 CHAIRMAN LOUD: Please, go ahead.

11 MR. SCHUPP: I just want to try to
12 figure out how this is different from the last
13 10 or 12 times this was approved, just so that
14 we can get it straight and do it properly.
15 This -- if by general vicinity you mean
16 anybody that wants to say park and take a bus
17 downtown or something, that's not the
18 intention.

19 But we not only make this parking
20 available to the businesses owned by me and my
21 other landlords, but there are a couple of
22 other people nearby that are allowed to use

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1 the lot, just as a convenience to them for
2 traffic and other tenants in the area, because
3 sometimes people will go from the drugstore to
4 the restaurant to the Bread and Chocolate,
5 whatever. You know, they will park and go to
6 several different locations.

7 So I just want to make sure that we
8 are all on the same track here and we are
9 giving you the proper information under the
10 right regulations.

11 CHAIRMAN LOUD: That's obviously a
12 very good question and part of what we were
13 struggling with reflecting on the relief being
14 sought and the regulations as they are
15 written. I think what we are trying to do is
16 clean it up and give you the proper relief, so
17 that it is not subject to any form of
18 invasiveness or attack on the grounds of err.

19 And it was not clear from the
20 pleadings that had been submitted that 213 was
21 the appropriate relief. 214 has a number of
22 different requirements that the applicant,

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1 through counsel and through witnesses, would
2 have to establish that are a little bit
3 different than 213. And so we just want to
4 make sure that you have every opportunity to
5 make that test and properly establish it.

6 So it's -- understandably, there is
7 some confusion and we certainly appreciate
8 your patience on it. But it is also important
9 that we clarify the type of relief that you
10 really need in this case. And I think one of
11 the triggers has been, you know, this use of
12 the lot, whether it is restricted to the
13 businesses or whether it is just a lot open
14 for all use.

15 Did you have further --

16 VICE CHAIR DETTMAN: No, Mr.
17 Chairman. I think that's exactly right. What
18 we are doing is cleaning it up here. And
19 actually, Ms. Bailey raised a very good point.

20 Your previous approval back in, I'm not
21 exactly sure 2000-something, was under 2114,
22 accessory parking spaces. So I think this is

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1 the right approach.

2 MR. SMITH: In light of that, Mr.
3 Chairman and Members of the Board, we would
4 need additional time to prepare a case under
5 2114. We were prepared to go forward under
6 2113.

7 CHAIRMAN LOUD: You want to confer?
8 I'll tell you what, why don't we do this?
9 Why don't we take a 5 minute break, give you
10 guys the opportunity to confer with one
11 another and then we will come back out in 5
12 minutes and resume the hearing?

13 MR. WEITZMAN: Before you do that,
14 can you tell us exactly again what is the
15 difference that we are talking about between
16 13 and 14?

17 CHAIRMAN LOUD: It's pretty
18 extensive to walk-through right here. But the
19 regulations cover it and I don't see that
20 there would be any problem providing a copy--

21 MS. NAGELHOUT: Do you have a copy
22 of the regulations?

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1 CHAIRMAN LOUD: -- of the
2 regulations.

3 MR. WEITZMAN: No, I don't
4 personally.

5 MR. SMITH: Yes.

6 MR. WEITZMAN: But if we applied
7 previously under 2114 --

8 CHAIRMAN LOUD: Um-hum.

9 MR. WEITZMAN: -- and Mr. Smith,
10 obviously, made an error when he filed the
11 application. We were assuming that we were
12 going under the same requirements as we had in
13 the past.

14 CHAIRMAN LOUD: Um-hum.

15 MR. WEITZMAN: So you know, giving
16 us the 5 minutes, I think, possibly we can put
17 our minds together, because that's the
18 assumption we were going on. We were just
19 redoing what we had been doing for 60 years.

20 CHAIRMAN LOUD: Okay. So then
21 let's do that. You take a look at the
22 requirements of section 2113 and section 2114.

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1 And let's say 10 minutes to make it a little
2 more reasonable. Okay?

3 MR. WEITZMAN: Thank you.

4 CHAIRMAN LOUD: Okay.

5 (Whereupon, at 2:43 p.m. a recess
6 until 2:59 p.m.)

7 CHAIRMAN LOUD: Good afternoon. I
8 think we would like to resume the case, Ms.
9 Bailey. Are there any formalities?

10 MS. BAILEY: No, Mr. Chairman.

11 CHAIRMAN LOUD: Okay. Thank you.
12 As we took break, Mr. Smith, we were
13 articulating why the case has been -- the need
14 to convert it from a 213 to a 214, mentioning,
15 in fact, the previous orders that had been
16 processed as 214s. The most recent one being
17 July 29, 2003. And we were going to allow for
18 your team to go forward today, if you are so
19 prepared.

20 Had you thought about it and have
21 you decided what you would like to do?

22 MR. SMITH: Yes, Mr. Chairman.

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1 CHAIRMAN LOUD: Okay.

2 MR. SMITH: We have had an
3 opportunity to discuss it and we would like to
4 go forward today. What happened is that we
5 did file under 214. The Zoning Administrator
6 felt that 213 would have been better and then
7 that analysis changed somewhat, but the
8 applicants filed their application under 214
9 and we believe we are in compliance with 214.

10 CHAIRMAN LOUD: Okay.

11 MR. SMITH: And can withstand the
12 scrutiny of an analysis.

13 CHAIRMAN LOUD: All right. In that
14 case, I think we would like to proceed today
15 as well. And so why don't we give you the
16 chance to articulate for us the elements of
17 214 that you think appropriate to raise and
18 point to the evidence that you have, as
19 appropriate, and we can move forward. Okay?

20 MR. SMITH: Yes, Mr. Chairman.
21 Directing the Board's attention to the aerial
22 photo made a part of the record, I'll go

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1 through what I believe to be the necessary
2 parts of the regulation.

3 In particular, 214.2 on the
4 "Accessory parking spaces shall be in an open
5 area or in an underground garage, no portion
6 of which, except for access, shall extend
7 above the level of the adjacent finished
8 grade."

9 Clearly here, we have the adjoining
10 lot with spaces marked located and separated
11 by an alley. 213.3 "Accessory parking spaces
12 shall be located in their entirety within 200
13 feet of the area of which they are accessory."

14 CHAIRMAN LOUD: I know what you
15 meant. I'm only interrupting you because we
16 had this interplay between whether it should
17 be 213 or 214.

18 MR. SMITH: Okay.

19 CHAIRMAN LOUD: You said 213.

20 MR. SMITH: I mean, 214. I'm
21 sorry.

22 CHAIRMAN LOUD: There you go,

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1 214.3.

2 MR. SMITH: 214.3. I'm sorry.

3 CHAIRMAN LOUD: Okay. Go right
4 ahead. Go right ahead.

5 MR. SMITH: And the parking spaces
6 are located within 200 feet of the buildings
7 that are using that lot.

8 214.4 "Accessory parking spaces
9 shall be contiguous or separated only by an
10 alley from the use to which they are
11 accessory." We do have that here.

12 214.6 "It shall be deemed
13 economically impractical or unsafe to locate
14 the accessory parking spaces within the
15 principal building or on the same lot for
16 which the building or use is permitted because
17 of the following topography here would prevent
18 such a parking lot."

19 And then 2114.7 "Accessory parking
20 spaces shall be so located and facilities in
21 relation to the parking lot shall be so
22 designed that they are not likely to become

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1 objectionable to the adjoining or nearby
2 property because of noise, traffic or other
3 objectionable conditions."

4 Again, we have the support of the
5 ANC, which has already been made part of the
6 record, and of members of the community. The
7 parking lot, in fact, is an asset to the
8 community in that it lightens the load of
9 parking on the streets and performs a benefit
10 therefore for the overall area.

11 Taking those sections into account,
12 I believe that we would be in compliance with
13 2114 and we respectfully request that the
14 renewal of the special exemption be granted.

15 CHAIRMAN LOUD: Thank you, Mr.
16 Smith. And let me see if Board Members have
17 any questions.

18 VICE CHAIR DETTMAN: Mr. Smith,
19 with respect to 214.6, you had mentioned that
20 there is an issue with topography. But I'm
21 wondering, just looking at the aerial photo on
22 DCOP's report, is there really alley access to

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1 the rear of these properties? It looks like
2 there might be a driveway, but there may not
3 be an actual public alley, right? So okay.

4 MR. SMITH: Right. The driveway
5 separates.

6 VICE CHAIR DETTMAN: There is no
7 alley access, okay. Okay. And then just two
8 other points. 214.5 requires you to address
9 the provisions in Chapter 23 as well. And to
10 your point about the ZA, I'm looking at the
11 letter that was submitted by the ZA. He does
12 mention 2116.5, so essentially, those
13 provisions speak to making a showing that you
14 can't provide parking on-site and that you
15 need to locate it elsewhere.

16 And so if you could look at those
17 provisions as well, 2116.5, because those are
18 really the two areas of relief we are looking
19 for.

20 CHAIRMAN LOUD: And I do believe,
21 Mr. Smith, that we are probably, if this is
22 helpful to you, going to leave the record open

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1 today to supplement it, so that if you are not
2 able to articulate immediately all the things
3 you want to say under either 2300 or 2116, you
4 will have a chance to do that before we make a
5 final decision on it.

6 MR. SMITH: Thank you, Mr.
7 Chairman.

8 VICE CHAIR DETTMAN: Mr. Smith, if
9 you are looking at Chapter 23, it's really
10 2303 that you need to address.

11 MR. SMITH: Okay. The Board's
12 indulgence, please. Yes, Mr. Dettman, on
13 2303.1, the parking spaces have been marked.
14 None of the vehicles protrude. And again, if
15 you take a look at the aerial photo, it shows
16 that sufficient space has been allotted to
17 accommodate all vehicles, so that they are not
18 hanging over any line. The spaces are clearly
19 defined.

20 There is no other use being
21 conducted, other than for the purposes of the
22 parking lot. The vehicle -- the entrance to

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1 the parking lot is within 40 feet of the
2 street and 40 feet of McKinley Street. The
3 parking lot does, in fact, have lighting.

4 And the parking lot, even as
5 depicted in this photograph, is clear of any
6 refuse. And the tenants do maintain and clean
7 the lot on a regular basis. Again, the
8 witnesses can address the issue of cleaning of
9 the lot as well.

10 CHAIRMAN LOUD: Thank you. Yes,
11 sir, go ahead.

12 MR. SCHUPP: If I may, just to add
13 to what Mr. Smith just relayed to you, we have
14 just signed a contract with a paving company
15 to redo the lot, restripe it. It is all going
16 to be handled before Memorial Day. And we, at
17 the suggestion of Mr. Jackson, are going to
18 replace trees that were dead that we cut down
19 in the fall with 6 new white dogwood trees
20 that we have a contract for as soon as we are
21 assured that we are going to get our approval.
22 So that is an ongoing process.

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1 And as I said earlier, Mr. Weitzman
2 here is our on-the-scene enforcer, if you
3 will, of making sure everything is clean and
4 maintained and free of snow and trash and all
5 of that.

6 COMMISSIONER TURNBULL: The trees
7 you are speaking of are on McKinley and the
8 Parkway?

9 MR. SCHUPP: Yes, sir.

10 COMMISSIONER TURNBULL: Okay.

11 MR. SCHUPP: Yeah, there were trees
12 there that were dead that we removed in the
13 fall.

14 VICE CHAIR DETTMAN: With respect
15 to the current condition of the surfacing, Mr.
16 Smith mentioned that it is covered with an
17 all-weather surface --

18 MR. SCHUPP: It's all asphalt.

19 VICE CHAIR DETTMAN: Okay.

20 MR. SCHUPP: And striped. It's just
21 every 5 or 6 years you have got to reseal it
22 and fix potholes and cracks and restripe.

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1 VICE CHAIR DETTMAN: Okay.

2 MR. SCHUPP: And we are going to
3 put in a couple of speed bumps also.

4 VICE CHAIR DETTMAN: And perhaps
5 this is something that the Office of Planning
6 could help us with, but 2303.1(f) requires 5
7 percent of the total area. That landscape
8 strip along McKinley, is that in excess of or
9 equal to 5 percent?

10 MR. SCHUPP: Yes, yes.

11 MR. SMITH: And that's the contract
12 that Mr. Schupp referred to that will be
13 landscaped.

14 CHAIRMAN LOUD: Do Board Members
15 have further questions for the applicant?

16 VICE CHAIR DETTMAN: Just if Mr.
17 Smith wouldn't mind taking a look at 2303.2, I
18 think we had left off there and touch upon
19 that.

20 CHAIRMAN LOUD: Okay.

21 MR. SMITH: Yes, again, referring
22 to the area photograph, the parking lot has a

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1 brick retaining wall going around it, which is
2 also maintained by the applicants separating
3 it from the homes that surround it. And again
4 the -- that wall is devoted solely to the
5 parking lot.

6 I believe Park and Planning has had
7 an opportunity to observe the site and agrees
8 that the wall does, in fact, serve its
9 purpose.

10 VICE CHAIR DETTMAN: I think the
11 only other thing that we're looking at here is
12 2116.5, which is referenced in the ZA's
13 letter. And so if you wouldn't mind looking
14 at 2116.6 through 8?

15 MR. SMITH: Again, 2116.D --
16 2116.6(d) is that what you were referring to?
17 Well, this is the only practical place to
18 locate this lot.

19 VICE CHAIR DETTMAN: I think 2116 -
20 - the requirements of 2116 you have covered in
21 your other ones. You have touched upon a lot
22 of these provisions already, so --

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1 MR. SMITH: Okay. Thank you, Mr.
2 Dettman.

3 CHAIRMAN LOUD: Any further
4 questions for the applicant? I think we're
5 going to move on to the Office of Planning.
6 I'll check to make sure the ANC is not here.
7 I don't think they are. They are supportive
8 in any event. But again, I just want to
9 remind the applicant that we are mindful that
10 the nature of the relief changed and that
11 there may be some things you want to say to
12 each of these elements, either 2114 or 2116 or
13 2300 and you will have a chance to supplement
14 the record to do that.

15 Also, OP, I believe, is going to
16 give its report in alignment with 2114 and
17 those provisions, I believe, so they may fill
18 some of the gaps that you, you know, may not
19 feel like you have covered and you don't have
20 to duplicate what they do.

21 So is the ANC here? Since they are
22 not, we will go to the Office of Planning for

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1 Mr. Jackson's report.

2 MR. JACKSON: Mr. Chairman, Members
3 of the Board, okay, well, we have -- as I
4 said, the questions that you raised about the
5 submission were some that we passed on to the
6 Zoning Administrator. And the Zoning
7 Administrator gave us our explanation. But in
8 light of your determination, we will proceed
9 to review -- to responding to the review of
10 section 213 -- 214, which was submitted by the
11 applicant.

12 We concur with the applicant's
13 interpretation of the site, in that in our
14 visits we noted that there were no conditions
15 irregular to the existence of -- to the
16 regulations. With the -- although there were
17 some unique circumstances. The unique
18 circumstances are noted in our report.

19 The wall is not continuous masonry
20 and stone wall, but it has chain link and
21 slats on top of the wall. However, there was
22 no indication that that did not meet the

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1 intent of the regulations or that it screened
2 neighboring properties from the lights and
3 activities in -- on the site.

4 We noted that the -- we did ask for
5 a clarification of the actual extent of the
6 parking lot and that the original submission
7 that was submitted with the application
8 indicated that there were just three rows of
9 parking and a fourth row was actually on a
10 separate piece of property. But the applicant
11 did submit another aerial, an aerial that
12 shows that all the parking -- it shows all the
13 parking that is actually a part of this
14 application, which we wanted added to the
15 record for clarity.

16 And we also noted that during
17 the --

18 COMMISSIONER TURNBULL: Just to
19 clarify, that's Exhibit 21?

20 MR. JACKSON: Yes, yes. You can
21 see, just for sake of illustration, the
22 numbers are 49, 50, 51 and 92 are the lots

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1 that are covered by this special exception.
2 And that the number of parking spaces that
3 were in the submission were increased by,
4 approximately, 12 with the addition of the
5 lot, parking spaces outside the wall, but
6 still on the same properties.

7 We also noted that the removal of
8 the existing trees was a concern, in that the
9 special exception -- the previous special
10 exception anticipated that the last trees
11 would be retained. And we are pleased that
12 the applicant has come forward with a proposal
13 to put in some more trees.

14 Our only concern is that we would
15 really like to have some documentation in the
16 file of what the trees are and where they are
17 located. So we would still encourage them to
18 provide some sort of landscaping plan or a
19 plan that shows where the landscaping would
20 go.

21 We also think in line with the
22 regulations that we have in the -- the Zoning

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1 Regulations that we have concerning trees,
2 that they be at least 6 to 8 feet in height
3 when they are planted, such that -- so that
4 they are guaranteed to survive. We want them
5 to be, obviously, installing plants that are
6 substantial enough that they won't require a
7 lot of maintenance.

8 And of course, if you put in a
9 small plant, then you would have to pay more
10 attention to it. The bigger the better. But
11 we assume once they are installed, they should
12 last fairly well in that location.

13 So to recap, we think that they
14 would still provide a plan or an illustration
15 of just where the trees would be, so that in
16 subsequent reviews with the Office of Planning
17 or whoever is reviewing the application will
18 have an idea what they should be looking for.

19 We also wanted the -- the other
20 concerns and issues that we raised were folded
21 into our proposed conditions of approval. But
22 in recap, we, basically, just highlighted

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1 those three items.

2 There was one other issue. There
3 was a proposal that was made at the BZA -- at
4 the Commission hearing about clearing snow and
5 whether or not the ANC expected that to become
6 part of the final approval, that's Condition
7 No. 10, that snow and ice would be properly
8 removed from the parking lot and adjacent
9 businesses.

10 We don't think this necessarily
11 needs to be part of a requirement for the
12 adjacent businesses, in that the adjacent
13 businesses are not actually covered by the
14 special exception. But in line with what was
15 apparently problems with the ANC, we think it
16 would behoove the applicant to include that
17 condition under special exception for the
18 parking lot.

19 Of course, you know, you do it
20 anyway, but it would just be something that is
21 documented that said you are being cooperative
22 with the ANC, because you will have to go them

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1 again.

2 Other than that, I think the
3 application -- the applicant's review of the
4 regulations and how they apply to this
5 property is consistent with the regulations as
6 they are stated. And we support the
7 application the version of conditions as we
8 have indicated, as provided in our application
9 -- in our report.

10 That concludes our brief summary of
11 the Office of Planning's position. And we are
12 available to answer questions.

13 CHAIRMAN LOUD: Do Board Members
14 have any questions of Mr. Jackson?

15 VICE CHAIR DETTMAN: Just two
16 questions, Mr. Chairman. With respect to the
17 masonry wall and I'm specifically looking at
18 the wall on McKinley along the alley and along
19 the southern wall, the three sides that
20 essentially face the residential. Does -- I
21 know that you had mentioned that there is
22 fence on top of it, but with respect to the

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1 masonry part of it, does it meet the height
2 requirement?

3 MR. JACKSON: No.

4 VICE CHAIR DETTMAN: Okay. And
5 secondly, you had mentioned that something --
6 we needed something in the record that
7 demonstrated the height of the trees when they
8 would be planted?

9 MR. JACKSON: No, what I was
10 thinking of was that if there should be a plan
11 in the record indicating where the trees are.
12 And a notation on the plan would be all
13 that's necessary to indicate the height of the
14 trees at planting.

15 VICE CHAIR DETTMAN: Okay.

16 COMMISSIONER TURNBULL: Mr.
17 Jackson, it looks like the chain link fence
18 also has slats in it?

19 MR. JACKSON: Yes, it's a masonry
20 wall that comes up to a point. I should
21 clarify what I said earlier. There are some
22 portions of the wall that are the correct

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1 height, but the height of the wall varies,
2 because the slope varies.

3 COMMISSIONER TURNBULL: Right.

4 MR. JACKSON: So I don't think it's
5 consistent height. But the extension, as
6 provided by the chain link fence and the
7 slats, is at least 6 feet all the way around,
8 I would say. Yes, what they have is a short,
9 what do you call it, I forgot the term for a
10 foot wall, but at any rate, it's a -- they
11 have so many courses that come up to a point.

12 There is concrete and then they have metal
13 poles that are placed into the wall.

14 COMMISSIONER TURNBULL: Right.

15 MR. JACKSON: And then further up
16 it's chain link. And then they have slats and
17 chain link.

18 COMMISSIONER TURNBULL: Slats.

19 MR. JACKSON: Vertical slats.

20 COMMISSIONER TURNBULL: So it's a
21 fairly opaque wall?

22 MR. JACKSON: Yes, yes. It wasn't

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1 night when I went out there, but I couldn't
2 see through the slats to the cars inside.

3 COMMISSIONER TURNBULL: Yeah, okay.

4 Thanks.

5 CHAIRMAN LOUD: Any further
6 questions of the Office of Planning? Okay.
7 If there are any parties that are -- well,
8 first let me just say that the ANC, I don't
9 believe is here. We have asked for them
10 several times and they have not come forward,
11 but they did submit a report. And the report
12 is favorable toward the application with a
13 number of conditions as specified in the
14 report and I believe captured in OP's report
15 as well.

16 I'm not going to review all of
17 those here, I'll just note that it is Exhibit
18 19. It is dated January 16, 2009 and it was
19 properly noticed and a quorum was there.
20 Allowing for the conditions that they seek to
21 impose, they voted approval of the application
22 request.

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1 If there are any witnesses, we're
2 going to move on now to, if there are persons
3 here in support of the application and would
4 like to give testimony, this is the time to do
5 so. Seeing none, if there are persons or
6 parties in opposition to the application, we
7 don't have any parties, so if there are
8 persons in opposition to the application, this
9 is the time to do so.

10 And moving further, seeing none,
11 this is the appropriate time for closing
12 remarks by the applicant.

13 MR. SCHUPP: Yes, Mr. Chairman, I
14 would like to just clarify and respond to Mr.
15 Jackson. We have a signed contract for these
16 trees. The contract did say 5 to 6 feet, but
17 we can amend that to be 6 foot minimum. And
18 the other -- damn-it, I'll turn that off, I'm
19 sorry.

20 CHAIRMAN LOUD: Your mike is on.

21 MR. SCHUPP: Sorry about that, too.

22 And the other thing is that the area where

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1 this landscaping will take place is currently
2 a grass area. It's a grass strip that runs in
3 between the sidewalk on McKinley Street and
4 the wall, that's where these tree will be
5 done. We will get a sketch to that effect in
6 with this application.

7 MR. SMITH: Again in closing, Mr.
8 Chairman, I would just like to say that the
9 granting of the renewal will be in harmony
10 with the general purpose and intent of the
11 Zoning Regulations and will not affect
12 adversely the use of neighboring property.

13 For the reasons set forth in the
14 record and here today, we respectfully would
15 request that the renewal of the special
16 exemption be granted.

17 CHAIRMAN LOUD: Thank you, Mr.
18 Smith and thank you, applicants for being very
19 flexible and putting on a very thoughtful
20 case, given that the dynamics is that it
21 changed as you got here and so we appreciate
22 that.

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1 What we are going to do, we're not
2 going to deliberate this today. We want to
3 give you an opportunity to submit some of the
4 documentation that Mr. Jackson referenced.
5 And then we will -- we are closing the record
6 today; however, with allowance only for these
7 things that I'm going to mention and other
8 Board Members may mention. And then we're
9 going to schedule this for deliberation and
10 decision, assuming you can get these documents
11 in and the timing works, we're going to
12 schedule this for the first Tuesday in May.

13 One of the things that I think we
14 want to leave the record open for is
15 documentation from you that would show the
16 types of plants that you are going to be using
17 and that these would be a minimum of 6 feet,
18 as we discussed.

19 So the exhibit that you submitted
20 regarding the contract and the 5 feet, you may
21 want to just have a statement that amends
22 that. But I believe Mr. Jackson also wanted

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1 to know the different types of plants,
2 schedule of plants or something to the effect.

3 In addition to which, a landscape plan or
4 illustration of exactly where the different
5 plants and trees would be on the lot.

6 And I'm not certain if there were
7 other things that we wanted to leave the
8 record open for from the applicant.

9 VICE CHAIR DETTMAN: I think, Mr.
10 Jackson, and correct me if I'm wrong, you had
11 made a note about the plat. The plat isn't
12 exactly showing correctly in terms of the
13 location of the parking spaces?

14 MR. JACKSON: Well, on this -- for
15 the sake of this application, I think the
16 aerial -- their submission of an aerial that
17 shows all the parking would be within the area
18 of the four lots is sufficient for my
19 purposes.

20 VICE CHAIR DETTMAN: Okay.

21 CHAIRMAN LOUD: Okay. And I think
22 from -- I'm sorry, hold on one second. The

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1 final thing and Board Member Dettman and I
2 were just talking about it is that under
3 214.8, there is a requirement that the --
4 before taking final action, this Board shall
5 submit the application to the D.C. Department
6 of Transportation for review and report.

7 And it looks like we did. Our
8 Exhibit 14, yeah, we did send something over
9 on October 29th, but that referenced section
10 213.8. So perhaps out of an abundance of
11 caution, we ought to redo that. What do you
12 think, Mr. Moy, in terms of renoticing DDOT on
13 this?

14 MR. MOY: Yeah, for -- I think that
15 would be prudent --

16 CHAIRMAN LOUD: Okay.

17 MR. MOY: -- on the Board's part.

18 CHAIRMAN LOUD: Okay. So we will
19 leave the record open for those three reports
20 to come back to us. We also want to leave OP
21 the option, and maybe you can just weigh in
22 right now, so we will know whether to expect

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1 it, to submit a revised report that reflects
2 the conversion of the or the amendment of the
3 relief to 214.

4 I know your testimony addressed
5 214, but your written record still is
6 exclusively 213. So you certainly have that
7 option.

8 MR. JACKSON: Would you rather --

9 CHAIRMAN LOUD: It could be very
10 brief. It doesn't -- it could be a paragraph.

11 MR. JACKSON: All right. I will--
12 OP will follow through with that suggestion.

13 CHAIRMAN LOUD: Okay.

14 MR. JACKSON: And so our deadline
15 would be the same as the applicants for
16 getting that into the record?

17 CHAIRMAN LOUD: Well, we're going
18 to talk about that right now, because I'm not
19 certain how much time the applicants have
20 indicated they will need, but again, in your
21 case, it's only a paragraph or so at max that
22 we are asking for, because your testimony was

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1 really extensive on 214.

2 It shouldn't take you more than a
3 couple of days probably, you know, given the
4 simplicity of what we're looking for in that.

5 Turning back, and of course, all of what we
6 are asking for needs to be sent to the ANC,
7 which is a party and sent promptly to the ANC.

8 Turning to the applicant, I wanted
9 to get a sense from you of how long you think
10 it will take you to be able to supplement the
11 record with these docs, because that will
12 determine when we set the case for decision.

13 MR. WEITZMAN: You -- it just so
14 happens I have to be in front of the ANC next
15 Monday, at that time, for renewal of my ABC
16 license, we will submit the landscaping plan
17 to them next Monday evening.

18 CHAIRMAN LOUD: Great.

19 MR. WEITZMAN: So there is your
20 time frame. Because you know you want that, I
21 assume, to go into the file before you give
22 the final approval, so I'll get it in next

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1 Monday.

2 CHAIRMAN LOUD: All right.

3 That's --

4 MR. JACKSON: The only advisement I
5 would say is you might want to do it after you
6 talk to the ANC, just in case they had some
7 suggestions or comments. I think we are
8 looking for a landscaping plan. You have
9 proposed certain trees. You may get some
10 feedback from the ANC that might modify the
11 trees. I would suggest that the trees or
12 shrubbery or -- would be reasonable.

13 I'm just saying if you are doing
14 trees, that they should be at least 6 feet
15 tall. Shrubby, obviously, there is some
16 flexibility. So I hate for him to submit
17 something to -- put something in the record
18 and the ANC has some reaction and they want to
19 respond to, it probably should be after it is
20 vetted by your Neighborhood Commission.

21 MR. WEITZMAN: Okay.

22 CHAIRMAN LOUD: Yeah, I think it

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1 makes a lot of sense to approach it that way.
2 Sidebar, I'm wondering if they have noticed
3 this meeting for landscape votes and decisions
4 and all of that? And I think what Mr. Jackson
5 is suggesting might be a way to truncate some
6 buy-in from the ANC leadership on that,
7 because I do think we ought to give them a
8 period of time after you have submitted it to
9 respond to Mr. Jackson's comments.

10 So if you can get that in by the
11 14th, I guess, because the meeting is Monday
12 night, right?

13 MR. WEITZMAN: That's correct.

14 CHAIRMAN LOUD: Okay. And so --

15 MR. WEITZMAN: Do you just want me
16 to submit it to them and then they -- how do I
17 approach them as far as getting it in to you
18 all on time?

19 CHAIRMAN LOUD: Well, you should
20 submit it to us on the 14th and I'm assuming if
21 they have some changes that they can
22 communicate to you at the meeting, you can

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1 incorporate those, you know, in a 24 hour turn
2 around and then --

3 MR. WEITZMAN: I'm sure that's not
4 going to be a problem, because they were very
5 happy with everything we have done there.

6 CHAIRMAN LOUD: Okay.

7 MR. WEITZMAN: Because we had some
8 issues in the past with big bushes and
9 homeless people sleeping under them and so
10 forth and that was a big issue with the ANC.
11 And frankly, I -- we're not there at night.
12 They come at night and they sleep underneath
13 and they leave in the morning and we kept
14 cleaning them out and they finally said -- and
15 I said to them, you know, we're not here at
16 night.

17 Take a little responsibility and
18 you call the police to get rid of them. And
19 they said well, we're not going to do that.
20 And I said then what are you suggesting? We
21 move the trees? So we removed the trees and
22 it got rid of the homeless problem. They have

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1 been very happy with the way things are, so I
2 don't think we'll get a negative response out
3 of whatever we give to them next week.

4 CHAIRMAN LOUD: Okay. Good. Then
5 that would work from our end as well, because
6 then we can give them, I think, two weeks
7 after that if they are going -- to give them
8 an allowance of two weeks after that, which
9 would take us to about April 30, say Thursday,
10 April 30, to submit to us anything in writing
11 that they -- any concerns they have about the
12 plan. And then we can stick to a schedule of
13 Tuesday, the first Tuesday in May for the
14 decision meeting.

15 MR. WEITZMAN: Okay.

16 CHAIRMAN LOUD: Okay. Any concerns
17 about that, Ms. Bailey?

18 MS. BAILEY: No, Mr. Chairman. But
19 if it's appropriate, I would like to read the
20 schedule that you have set up.

21 CHAIRMAN LOUD: Okay.

22 MS. BAILEY: To make sure we're on

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1 the same page. The applicant is to file the
2 response by April 14th. The response from the
3 ANC is due April 30th. And I'm assuming, Mr.
4 Chairman, that's also the response deadline
5 for the Department of Transportation and the
6 Office of Planning?

7 CHAIRMAN LOUD: Yeah, I don't think
8 Planning would need that long, but, yes,
9 definitely allow them the same period of time.
10 Thank you.

11 MS. BAILEY: And the Board will
12 consider a decision on May 5th.

13 CHAIRMAN LOUD: Yes. Any other
14 questions?

15 MR. SMITH: No, thank you so much,
16 Mr. Chairman and Board Members.

17 CHAIRMAN LOUD: Thank you. We
18 appreciate your patience. And, Ms. Bailey,
19 can we call the next case?

20 MS. BAILEY: Yes, Mr. Chairman.
21 Just one second --

22 CHAIRMAN LOUD: Yes.

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1 MS. BAILEY: -- to kind of shift
2 gears.

3 CHAIRMAN LOUD: Okay.

4 MS. BAILEY: Mr. Chairman, ready?

5 CHAIRMAN LOUD: Yes, Ms. Bailey,
6 thank you.

7 MS. BAILEY: Application No. 17898
8 of District-Properties.com LLC, pursuant to 11
9 DCMR 3103.2, for a variance from the lot width
10 and lot area requirements under section 401,
11 and a variance from the side yard requirements
12 under section 405, to construct a new one-
13 family detached dwelling at premises 311 58th
14 Street, N.E. The property is Zoned R-2. It
15 is located in Square 5264 on Lot 15.

16 This application was initially
17 taken up on March 24th, Mr. Chairman, but was
18 postponed for today. And finally, we do have
19 a letter that came into the Board today. It
20 is from the Northeast Boundary Civic
21 Association and I'll pass that out at this
22 time.

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1 CHAIRMAN LOUD: Thank you. Thank
2 you, Ms. Bailey. This appears to be a letter
3 request for continuation of the case today
4 submitted on behalf of the Northeast Boundary
5 Civic Association, signed by Carol A.
6 Washington. And does Mr. Sikder have a copy
7 of this letter?

8 Mr. Dettman just raised a good
9 point and that would be clarifying if these
10 are two separate exhibits or the same exhibit.

11 MS. BAILEY: They came in together,
12 Mr. Chairman. I'm assuming they are one,
13 because they were -- they came in together.
14 The top, at the very top it has G.W. Hospital
15 Nursing Administration on both of them, so I'm
16 assuming it's one exhibit, at the very top.

17 CHAIRMAN LOUD: Very interesting.
18 Mr. Dettman pointed out as well that the first
19 page is from Commissioner Mary Gaffney and she
20 has initialed off on that. The second page is
21 signed by Carol A. Washington. So they appear
22 to be separate exhibits.

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1 MS. BAILEY: From the same person?

2 CHAIRMAN LOUD: From different
3 people.

4 MS. BAILEY: But --

5 CHAIRMAN LOUD: And so it does
6 appear that these are two separate persons
7 that are seeking to have these documents
8 admitted and that the first one is a request
9 for a continuance, I believe, a 30 day
10 continuance. And the second one rather is a
11 statement of opposition to the proposal.

12 Neither of these, I take it, meet
13 our requirements for the submission of
14 documents, Ms. Bailey?

15 MS. BAILEY: These do meet it, Mr.
16 Chairman, because this is not an ANC or
17 Government report or the applicant submission.
18 Those have time lines, but these are just
19 letters from the public.

20 CHAIRMAN LOUD: Right.

21 MS. BAILEY: And there is no time
22 requirement for these to be filed.

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1 CHAIRMAN LOUD: Thank you. I
2 appreciate that clarification. Does Mr.
3 Sikder have these?

4 MR. SIKDER: Yes, Mr. Chairman, I
5 just received from Ms. Bailey.

6 CHAIRMAN LOUD: Okay. All right.
7 Well, thank you. We will accept these into
8 the record then, given the clarification.
9 And, Mr. Sikder, if you are -- well, let me
10 back up. With respect to the request for
11 continuance, is that a preliminary matter that
12 we should address?

13 MS. BAILEY: Yes, Mr. Chairman.

14 CHAIRMAN LOUD: Okay. Mr. Sikder,
15 have you had an opportunity to review the
16 request?

17 MR. SIKDER: You mean the request
18 from Mary Gaffney?

19 CHAIRMAN LOUD: Yes.

20 MR. SIKDER: Your question is if I
21 reviewed the -- I mean, if I reviewed the
22 letter?

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1 CHAIRMAN LOUD: Yes, if you have a
2 position on the request for a continuance?

3 MR. SIKDER: We -- I really don't
4 know the reason, because I gave Ms. Gaffney
5 the -- all our plans and what we were planning
6 to do. And I sent -- I was out of country and
7 I sent my manager at the meeting and he
8 attended it, but there was no specific course
9 send -- letter to the building, whether they
10 were asking some other issues like the, you
11 know, building looks funny and all other
12 issues, but there is no other -- there is no
13 specific opposition why they want to oppose
14 it.

15 And I really don't know why they
16 want to continue it. And I also talked to
17 even -- I left a message a couple of times
18 with Ms. Gaffney and she didn't return my
19 call. I mean, if she needed some more
20 drawings, I explain her very clearly what we
21 are planning to do. I told her if you have
22 any questions, okay, we -- I can sit down with

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1 you or I can attend to the meeting.

2 But right now, we had the hearing
3 last couple of weeks ago, now we reschedule
4 today and now if you continue it, I mean, I
5 have nothing to say, but it's up to you. But
6 I do not -- I mean, I would say that would be
7 unfair to me to come every time for the same
8 case.

9 CHAIRMAN LOUD: Let me just ask a
10 couple of really quick questions. Did you
11 actually meet with her?

12 MR. SIKDER: Yes.

13 CHAIRMAN LOUD: And when did you
14 meet with her?

15 MR. SIKDER: I met her, it was I
16 think, February 9th, I think.

17 CHAIRMAN LOUD: Okay. And was that
18 -- did you have any meetings with her
19 following that?

20 MR. SIKDER: I had a meeting with
21 her including two other neighbors at the -- at
22 this property. And the neighbor seemed to be

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1 very friendly and they said that they are
2 looking forward. And I -- what I was -- I
3 mean, I could not attend the meeting, so I came
4 back. I talked to her, she and -- and then
5 she said well, a neighbor -- I mean, in the
6 meeting, the other people, they were opposing
7 this project.

8 And there was no particular reason,
9 but only one question I heard that the
10 building looks funny. That's the only reason.

11 CHAIRMAN LOUD: But my question
12 just more goes to whether or not you made
13 yourself available to meet with her
14 previously? It sounds like you did meet with
15 her in February --

16 MR. SIKDER: Definitely.

17 CHAIRMAN LOUD: -- of '09.

18 MR. SIKDER: I met with her.

19 CHAIRMAN LOUD: And was there a
20 second meeting? You said -- did you meet with
21 her again?

22 MR. SIKDER: That was first

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1 meeting. And then I met her at the last
2 hearing.

3 CHAIRMAN LOUD: At the ANC hearing?

4 MR. SIKDER: No, no, over here.

5 CHAIRMAN LOUD: At this hearing.

6 Okay. And did you go to the ANC -- did the
7 ANC have a meeting on your proposal?

8 MR. SIKDER: Oh, I could not go.
9 That's what I was telling that I was not -- I
10 was out of country and I sent my manager at
11 the meeting.

12 CHAIRMAN LOUD: I'm sorry, hold on
13 one second. Let me just back up. Did the ANC
14 have a meeting on this proposal?

15 MR. SIKDER: Yes.

16 CHAIRMAN LOUD: And you knew about
17 that meeting?

18 MR. SIKDER: Yes.

19 CHAIRMAN LOUD: But you were not
20 able to attend?

21 MR. SIKDER: I didn't attend, but
22 my manager.

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1 CHAIRMAN LOUD: But you sent a
2 representative to that meeting?

3 MR. SIKDER: Yes.

4 CHAIRMAN LOUD: Okay.

5 MR. SIKDER: He was at the meeting.

6 CHAIRMAN LOUD: And did he make a
7 presentation --

8 MR. SIKDER: Yes.

9 CHAIRMAN LOUD: -- of the proposal?
10 Okay. Do you happen to know if Ms. Gaffney
11 was at that meeting?

12 MR. SIKDER: Yes.

13 CHAIRMAN LOUD: She was at that
14 meeting?

15 MR. SIKDER: Sure.

16 CHAIRMAN LOUD: Okay. Okay.
17 Ma'am, hold on one second. Thank you. I
18 appreciate your patience. I saw a hand raised
19 from the rear of the room and I just wanted to
20 both acknowledge you and ask you to step
21 forward. I don't know if you have been sworn
22 in? You have not. Well, why don't you step

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1 forward and let's hear -- right now, we are in
2 a preliminary matter pertaining to whether or
3 not the case should be continued. So, yes?

4 MS. BAILEY: Raise your right hand.

5 (Whereupon, the witnesses were
6 sworn.)

7 MS. BAILEY: Okay. Mr. Chairman,
8 did you want her to have a seat at the table?

9 CHAIRMAN LOUD: Yes, why don't you
10 have a seat at the table as we sort out this
11 preliminary matter. It may be more
12 appropriate for you to come back later in
13 today's hearing if we do go forward with the
14 case and give testimony, at that point in
15 time.

16 Right now, the only issue on our
17 plate is the request of the Northeast Boundary
18 Civic Association to continue the case. And
19 if you have some information that is pertinent
20 to that, we would certainly like to hear it.
21 First, you should introduce yourself for the
22 record.

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1 MS. BENSON: First, I want to say
2 good evening to the Chairman and Board. My
3 name is Mary Benson. I am one of the persons
4 who attend the Civic's meeting. I'm the
5 Chaplain of the Civic's meeting, Far Northeast
6 Boundary.

7 At the meetings that we hold and
8 the one that you are speaking of now about,
9 gentlemen, we asked to have this channel,
10 because we did not get information. His
11 representative came and we asked him
12 questions. He could not reply. He didn't
13 have information and he promised to get back
14 with us.

15 As of today, they have not gotten
16 back with us to meet with us in our Civic's
17 meeting. We have a meeting coming up this
18 Monday at Beulah Baptist Church at 7:00 p.m.
19 And also, the property he is speaking of is
20 directly behind my house.

21 CHAIRMAN LOUD: Well, you will have
22 an opportunity as a witness to speak to the

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1 property being directly behind your house and
2 the impact on your house. I think the concern
3 initially, the threshold question is whether
4 this should be continued, if there is good
5 cause shown for this to be continued?

6 Were you aware of the ANC meeting
7 that was held?

8 MS. BENSON: Yes, I was there.

9 CHAIRMAN LOUD: You were in
10 attendance?

11 MS. BENSON: Yes.

12 CHAIRMAN LOUD: And did the
13 applicant send a representative to that
14 meeting?

15 MS. BENSON: He sent his
16 representative, but his representative had no
17 information to give us.

18 CHAIRMAN LOUD: Okay.

19 MS. BENSON: And we challenged the
20 hearing on that until we could get information
21 and someone come and speak with us and show us
22 their plans and tell us exactly what was going

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1 to go on. That's why we channeled it to put
2 it on hold.

3 CHAIRMAN LOUD: Okay. Are you --
4 so that what may come out of today's hearing,
5 if we move forward with the hearing, will be
6 your first opportunity to hear about the
7 project?

8 MS. BENSON: Yes, or to see any
9 plans or anything.

10 CHAIRMAN LOUD: So there were no
11 plans shown at the ANC meeting?

12 MS. BENSON: There were no plans.
13 No plans.

14 CHAIRMAN LOUD: Were any handouts
15 provided?

16 MS. BENSON: No, there was not.

17 CHAIRMAN LOUD: And is there a
18 reason why -- I know that Commissioner
19 Gaffney, who is the president, would have
20 wanted to be here, but you are here.

21 MS. BENSON: Yes.

22 CHAIRMAN LOUD: And you represent

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1 the Northeast --

2 MS. BENSON: She could not get
3 off --

4 CHAIRMAN LOUD: -- Boundary Civic
5 Association. Is there any reason why we could
6 not go forward with you here as the
7 representative from that organization?

8 MS. BENSON: Well, she couldn't be
9 here, because she is at work and she called me
10 this morning and asked me to come. But I will
11 do my best to apply what is going on.

12 CHAIRMAN LOUD: Okay. Let me turn
13 to Mr. Sikder and if you could just briefly
14 respond to some of the points raised regarding
15 the presentation at the ANC, not having plans
16 and not providing information? I don't know
17 if you are on the mike.

18 MR. SIKDER: Oh, I'm sorry. I gave
19 the drawings to Ms. Gaffney on the first
20 meeting I had with her. And I told my
21 representative to show them whatever -- I
22 mean, all the papers. And I mean, it looks to

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1 me -- I mean, I was not able to be there. I
2 mean, my representative told me that he was in
3 the meeting. They were asking some questions
4 not related to the drawings, but some
5 appearance how then if you did not have the
6 drawing, how --

7 CHAIRMAN LOUD: Mr. Sikder, if you
8 could frame your questions to me?

9 MR. SIKDER: Okay.

10 CHAIRMAN LOUD: Your comments, your
11 replies to me and not necessarily to Mrs.
12 Benson.

13 MR. SIKDER: Oh, yeah, I'm sorry,
14 yeah. The question arised in the meeting that
15 the building looks funny. My question is if
16 they did not see the drawing, how could they
17 conclude that the building would look funny?
18 I mean, at this moment, they are saying they
19 don't have any plan or anything else.

20 My comment is if they don't have
21 the drawing, how could they -- I mean, how
22 could come to the conclusion that the building

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1 looks funny?

2 CHAIRMAN LOUD: Okay. So your
3 position is that --

4 MR. SIKDER: They had the drawing,
5 yes.

6 CHAIRMAN LOUD: Your position is
7 that they have seen the drawings.

8 MR. SIKDER: Of course.

9 CHAIRMAN LOUD: Okay. Let me just
10 open this up to other Board Members and I
11 think we can wrap this phase up and make a
12 decision on what we're going to do.

13 VICE CHAIR DETTMAN: Well, Mr.
14 Chairman, first, I was a little bit unsure
15 based on the ANC's request for a continuance.
16 You know, when we last saw this, they were
17 requesting that a meeting with the SMD where
18 the property is located, they were requesting
19 that a meeting happen.

20 And I wasn't sure that that
21 actually happened. But although the letter
22 from Ms. Gaffney comes from the Northeast

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1 Boundary Civic Association, it appears as if
2 she is also the SMD for 7C05. So it looks
3 like a meeting did occur.

4 CHAIRMAN LOUD: Um-hum.

5 VICE CHAIR DETTMAN: And right now,
6 I mean, it appears to me for them to be able
7 to characterize the drawings as, looking at
8 the letter here, a funny house, they did have
9 something to look at. So right now, I'm
10 leaning towards the applicant on this one. It
11 looks like a meeting occurred. They had
12 something in front of them that gave them an
13 idea of what this house was going to look
14 like. So I would be comfortable going
15 forward.

16 CHAIRMAN LOUD: Mr. Turnbull, do
17 you have any thoughts on this?

18 COMMISSIONER TURNBULL: Well, Mr.
19 Chair, it is a little confusing to know
20 exactly what happened. But I would concur
21 with Mr. Dettman that there was a meeting. It
22 looks like somebody saw something. Now, I

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1 guess the only question is if whoever was
2 there couldn't answer the questions, that's
3 one thing. But I would be willing to go
4 ahead.

5 CHAIRMAN LOUD: Ms. Benson, first,
6 let me say that I think it's very important
7 that you are here. And I'm sorry, did you
8 have some follow-up that you wanted --

9 MS. BENSON: Yes. Mr. Chairman,
10 what he is talking about, the funny little
11 house, we were speaking of a house that has
12 already been built on 58th Street and we call
13 that the little funny house. That's where the
14 little funny house come in at.

15 CHAIRMAN LOUD: Okay. Let me
16 follow-up along the lines of sort of wrapping
17 this issue up, so that we can proceed. I
18 think that it is very significant and very
19 important and the rules require, in fact, that
20 the ANC submit written reports on our cases,
21 so that we have a sense of what the ANC would
22 like to do.

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1 It is also important, I think, you
2 know, from the applicant's standpoint to do as
3 much outreach as the applicant can. It just
4 makes sense so that when you come to hearings
5 like this, we don't have this kind of issue
6 surface.

7 That being said though, you are
8 here today.

9 MS. BENSON: Yes.

10 CHAIRMAN LOUD: And he is going to
11 present this application fully today,
12 including drawings and there will be an
13 opportunity for us as Members to ask very
14 pointed questions of him. And it does appear
15 that there was an attempt on his part to meet
16 in February '09 with the organization that you
17 are a part of as well as send a representative
18 to the ANC meeting.

19 So I think it is appropriate for us
20 to move forward today.

21 MS. BENSON: Yes.

22 CHAIRMAN LOUD: And to hear -- for

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1 one thing, it will give you an opportunity, it
2 sounds like, perhaps for the first time to
3 learn a little bit more detail about what is
4 going on. And I think that -- I don't know
5 how the other Board Members feel, but given
6 some of the allegations that you raised, I
7 think it would be appropriate for us to not
8 necessarily decide this case today, but to
9 make sure that you are able to take back to
10 your organization and that the ANC have an
11 opportunity to supplement the record regarding
12 any concerns that they may have, so that we
13 sort of get the best of both worlds.

14 We get the opportunity to get this
15 case out in the open and discussed and
16 resolved one way or the other and then your
17 being here allows you to take this information
18 back to your neighbors, so that if you still
19 have concerns about it, everyone will know,
20 but perhaps you may hear something that leads
21 you to believe that the project is
22 appropriate. But we just won't know if you

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1 don't hear it.

2 So with that being said, unless
3 there is objection, I would like to move
4 forward with the case. Okay. Thank you. You
5 will be called back later, Mrs. Benson, as a
6 witness.

7 MS. BENSON: Okay.

8 CHAIRMAN LOUD: Thank you. Mr.
9 Sikder, we can begin when you are ready.

10 MR. SIKDER: Yes, I'm ready. Good
11 afternoon, Mr. Chairman and Board Members. My
12 name is Mohammed Sikder. And we are asking
13 for area variance for lot area, lot width and
14 side yard under section 401 and 405 for Square
15 5264 and Lot 15.

16 We are having shortage of this and
17 as you can see, in the zoning -- I mean, in
18 the table, all there is -- I mean, we are
19 having 500 discovered shortage for lot area in
20 this R-2 Zone. And 15 feet width for the -- I
21 mean, 15 feet wide in the lot width-wise. And
22 side yard, we are having 5 feet shortage. And

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1 thus, we are seeking for variance and I'm
2 going to explain you how would we overcome the
3 test of this variance.

4 The minimum side yard required in
5 the R-2 Zone is 8 feet. And the proposed
6 structure will be 9 feet in width, which would
7 leave 6 feet available for side yard set-back.

8 And therefore, we would provide side yards of
9 only 3 feet and need relief of 5 feet both
10 side yards.

11 The subject property is unique
12 because of an exceptional circumstance in that
13 the lot has created prior to the 1958 Zoning
14 Regulations. The new regulations created
15 dimensions for lot size and lot width that
16 were greater than those of the existing lot.

17 Adjacent property are already
18 developed and in separate ownership. So there
19 is no opportunity to combine lots to create a
20 conforming lot.

21 And actually on the right hand
22 side, there is a vacant lot at this moment and

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1 I send a letter if they would either sell the
2 partial -- partially or as a whole. I would
3 buy that lot, but the owner did not let me or
4 call me back or did not send me any letter.
5 And I have the paper. I mean, I sent it in
6 certified mail.

7 And regarding -- and also, we have
8 a practical difficulty because the lot area
9 and lot width cannot be expanded, because the
10 adjacent lots have different ownership and
11 they are currently developed. So we don't
12 believe the property would be incapable of
13 being developed.

14 The -- and the variance would not
15 cause substantial detriment to the public good
16 and would not impair the intent, purpose and
17 integrity of the Zone Plan, as embodied in the
18 Zoning Regulations and Map.

19 The requested variance would be
20 granted without substantial impact to the
21 Zoning Regulations and public good. The
22 proposed three-story structure would not limit

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1 the light and air to adjacent properties or to
2 the other dwellings in the neighborhood. It
3 would also provide one car garage actually on
4 the backside of the -- of this house.

5 Also, I would like to say that you
6 recently approved one of our case fairly
7 similar to the -- this property. And we
8 already built the house. I would like to
9 share it, to show you how do you do the job.

10 Actually, we are trying to improve
11 somehow. I mean, vacant properties is not
12 giving anything good for the community, not
13 good for the city. And in general, if we
14 build the houses, as you can see, this would
15 improve the neighborhood. It would give
16 better for the city as a tax rights, as -- I
17 mean, better for everybody.

18 So I would like to show you that
19 this is the one you just recently approved.

20 CHAIRMAN LOUD: If you could hand
21 that to Ms. Bailey, that would be great. And
22 I don't know necessarily that the rules compel

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1 it, but it would be a nice idea to provide
2 Mrs. Benton with a copy of whatever you gave
3 us a copy of.

4 MR. SIKDER: Sure.

5 CHAIRMAN LOUD: Okay. Thank you,
6 Ms. Bailey. Okay. I didn't mean to interrupt
7 you, Mr. Sikder. If you want to describe
8 again what this is?

9 MR. SIKDER: Oh --

10 CHAIRMAN LOUD: I think you are off
11 the mike again.

12 MR. SIKDER: Sorry. I mean, the
13 picture I send this is the -- I'm just trying
14 to make a point that we build the houses.
15 This -- I mean, it brings the community, it
16 brings the area in better form. It helps
17 somehow. It is not ruining the community, but
18 developing it.

19 CHAIRMAN LOUD: I mean, the idea
20 with the -- what you just passed out is that
21 this is an example --

22 MR. SIKDER: Exactly.

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1 CHAIRMAN LOUD: -- of?

2 MR. SIKDER: Actually the same.

3 CHAIRMAN LOUD: This is the exact
4 same house that you would do at this --

5 MR. SIKDER: Right.

6 CHAIRMAN LOUD: As part of this
7 application, so you wanted us to see that.
8 Okay.

9 MR. SIKDER: Right.

10 CHAIRMAN LOUD: Were you through
11 with your presentation?

12 MR. SIKDER: Yes.

13 CHAIRMAN LOUD: Okay. Board
14 Members, do you have any questions for Mr.
15 Sikder?

16 COMMISSIONER TURNBULL: Are you
17 looking to -- the picture you gave us, the
18 elevation is a little different from the
19 elevation in the proposed house that you are
20 planning to build.

21 CHAIRMAN LOUD: You're not on the
22 microphone again.

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1 MR. SIKDER: It may be different
2 because Office of Planning ask us to modify
3 it. That's why you may have seen a little bit
4 different on the front. But inside is
5 remaining same though.

6 CHAIRMAN LOUD: Um-hum.

7 COMMISSIONER TURNBULL: Are you
8 doing any landscaping to this house?

9 MR. SIKDER: Yes. I mean, this
10 house we did not have enough space. It was
11 very short. I mean, length-wise as would
12 opposing the width-wise, but the proposed one,
13 we are going to make some things up with
14 landscaping.

15 COMMISSIONER TURNBULL: How close
16 does this house relate to the house next to
17 it?

18 MR. SIKDER: It would be from house
19 to house if you compare, it would be about, I
20 think about, around 10 feet.

21 COMMISSIONER TURNBULL: And how far
22 are you -- you're a little bit -- the house to

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1 the side looks like it's a little bit wider
2 than your's. And it is back farther. Are you
3 -- how far up from that house are you?

4 MR. SIKDER: Currently, the subject
5 property on the left hand side there is a
6 house. Currently there is a house that would
7 be about 10 feet away from the -- our
8 property. And right inside currently there is
9 a vacant lot. And that lot is pretty big,
10 about 6,800 square feet lot. And if the
11 building was single-family house, that would
12 be enough space.

13 COMMISSIONER TURNBULL: Okay.

14 MR. SIKDER: I would say about
15 maybe 15 feet.

16 COMMISSIONER TURNBULL: Well, I
17 guess what I'm saying is your -- the stairs to
18 your house starts past the public space at 15
19 feet and it's about 5 feet, you're about 20
20 feet back to the face of your house. How far
21 back is the house next to you? 30 feet?

22 MR. SIKDER: In the back side?

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1 COMMISSIONER TURNBULL: No, the one
2 right next to you.

3 MR. SIKDER: On the left?

4 COMMISSIONER TURNBULL: The left
5 hand side as we're looking at it.

6 MR. SIKDER: Different side.

7 COMMISSIONER TURNBULL: How far
8 back from -- is that 30 feet back? 40 feet
9 back? I'm just trying to get a relationship
10 of how far, where your house is in
11 relationship to the street.

12 MR. SIKDER: Oh, I see. I see, I
13 see. That would be, approximately, about 20
14 feet.

15 COMMISSIONER TURNBULL: Okay.
16 Thank you.

17 CHAIRMAN LOUD: Thank you, Mr.
18 Turnbull. Mr. Dettman? Mr. Sikder, I have a
19 couple of questions regarding the variance
20 test. Particularly the lack of a substantial
21 detriment to the public good. I mean, part of
22 the -- part of what the prong assumes is that

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1 the public, particularly neighbors, will know
2 enough about the project to formulate a
3 rational decision about whether they are
4 victims of some kind of detriment.

5 In this case, you had indicated
6 that your representative went to the ANC
7 meeting.

8 MR. SIKDER: Correct.

9 CHAIRMAN LOUD: Okay. And when he
10 came back from the meeting, did he give you an
11 update or briefing on how the meeting played
12 out?

13 MR. SIKDER: Yes. He said one of
14 the neighbor was -- raised the question about
15 this house looks, I mean, funny looking and a
16 few other would say why don't you buy the lot
17 from the next door -- from the next
18 neighboring lot? So he actually did not know
19 at the time that I sent the letter to the
20 neighboring owner.

21 CHAIRMAN LOUD: Okay.

22 MR. SIKDER: And I already told

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1 about that I did discuss with Ms. Gaffney that
2 I sent the letter to the both neighbors, the
3 right side and left side, and especially on
4 the right hand side I, you know, wrote a
5 letter and I told her that, but then she said
6 oh, okay, I see, okay.

7 And she expressed that for some
8 reason neighbor does not -- they don't approve
9 your -- they don't like your project. I said
10 well, there are nothing I can do. I mean, if
11 you have any concern, you can tell me and I
12 can provide you, I mean, the information.

13 CHAIRMAN LOUD: Did you provide the
14 briefing materials that your -- what was the
15 name of your representative who attended the
16 ANC meeting?

17 MR. SIKDER: I give -- personally,
18 I give her the -- all the drawings and all the
19 stuff I gave her personally.

20 CHAIRMAN LOUD: Okay. What was her
21 name?

22 MR. SIKDER: Ms. Gaffney.

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1 CHAIRMAN LOUD: No, no, no, your
2 representative who attended.

3 MR. SIKDER: His name is Said
4 Dinaseck.

5 CHAIRMAN LOUD: Okay. So you
6 prepared for Mr. Dinaseck the briefing
7 materials that he took to the ANC meeting
8 showing -- or did --

9 MR. SIKDER: Yes.

10 CHAIRMAN LOUD: -- you not?

11 MR. SIKDER: Yes, I told her. I
12 told him to take the entire package from the
13 office at the meeting.

14 CHAIRMAN LOUD: Okay.

15 MR. SIKDER: I mean, I was
16 expecting that. And I told that, but I don't
17 know. I mean, he didn't tell me anything
18 about the drawings. He was telling me some
19 other issues, like the building looks funny,
20 why somebody say -- ask that -- I mean, you
21 know, you don't live here. I mean, you live
22 some other state and you make money here. All

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1 sorts of other stuff.

2 CHAIRMAN LOUD: When it was brought
3 to your attention that the attendees at that
4 meeting claimed not to have seen the drawings,
5 did you then have a discussion with Mr. Aseck
6 regarding whether or not he brought the
7 drawings?

8 MR. SIKDER: He did not tell me
9 anything about that that he --

10 CHAIRMAN LOUD: No, no, no. That's
11 not my question. When you first learned that
12 the neighbors were -- the attendees at the ANC
13 meeting claimed that he didn't bring the
14 drawings for them to witness, when you first
15 learned it, did you have a conversation with
16 him about that?

17 MR. SIKDER: With Said Dinaseck,
18 no.

19 CHAIRMAN LOUD: Yes.

20 MR. SIKDER: No, I did not have.

21 CHAIRMAN LOUD: You did not have.

22 MR. SIKDER: Because simply I even

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1 didn't know that that is the case. I have no
2 idea that the drawings are the cause of
3 opposing our project. This is the -- I mean,
4 I mean, because I didn't know.

5 CHAIRMAN LOUD: You're learning
6 that today for the first time?

7 MR. SIKDER: I mean sort of.

8 CHAIRMAN LOUD: Hum?

9 MR. SIKDER: I did not -- yes. I
10 mean --

11 CHAIRMAN LOUD: You're learning
12 today for the first time that your --

13 MR. SIKDER: Yes.

14 CHAIRMAN LOUD: -- Mr. Aseck did
15 not bring drawings?

16 MR. SIKDER: Absolutely.

17 CHAIRMAN LOUD: I see.

18 MR. SIKDER: All along Ms Gaffney
19 was telling me why don't you send the letter
20 to the neighbors, which we did. We have -- I
21 told her we sent by certified mail.

22 CHAIRMAN LOUD: Are there any

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1 neighbors that you are aware of either through
2 the ANC or not through the ANC process that
3 actually saw either drawings or pictures akin
4 to what you passed out today? Just some
5 visual indication of the property and the
6 layout and the dimensions and how it would
7 relate to neighboring properties?

8 MR. SIKDER: No, when I met with
9 Ms. Gaffney, there were two other neighbors at
10 the time. At the time, I didn't have this
11 picture, because we just finished it. And I
12 mean, at the time I explained this is what it
13 will look like. And this -- we don't have
14 enough space to -- and that's why we need some
15 variance.

16 And the other two neighbors, they
17 are -- appear to be very friendly. They said
18 yes, we would like to have this on the house,
19 otherwise sitting -- I mean, it's sitting
20 there as nobody doing any assist -- help. I
21 mean, I do not remember their name, but there
22 was two neighbors there.

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1 CHAIRMAN LOUD: Okay. Would you
2 have any problems with providing the ANC
3 leadership with illustrations and drawings for
4 the project?

5 MR. SIKDER: We have no problem.

6 CHAIRMAN LOUD: Okay. But you have
7 just not had an opportunity to put it in their
8 hands yet?

9 MR. SIKDER: No, I did.

10 CHAIRMAN LOUD: You did?

11 MR. SIKDER: I did.

12 CHAIRMAN LOUD: Okay. I
13 understand.

14 MR. SIKDER: I did give to Ms.
15 Gaffney.

16 CHAIRMAN LOUD: So Ms. Gaffney has
17 actually seen the --

18 MR. SIKDER: Of course.

19 CHAIRMAN LOUD: Okay. And was that
20 at the February --

21 MR. SIKDER: February. I believe
22 the 9th.

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1 CHAIRMAN LOUD: -- '09 meeting.
2 Okay. And what did she see, to the best of
3 your recall?

4 MR. SIKDER: I give her all the
5 drawings, the front view. I showed her the
6 floor plans.

7 CHAIRMAN LOUD: Okay. Anything
8 else?

9 MR. SIKDER: No, that's -- I mean,
10 we give her the entire package of the
11 drawings. The floor architectural plans,
12 front view, side views, back view and the
13 floor plans.

14 CHAIRMAN LOUD: And did the plans
15 change at all since the time you gave them to
16 her?

17 MR. SIKDER: No, no, no. Not, I
18 mean, extensively.

19 CHAIRMAN LOUD: Okay.

20 MR. SIKDER: Other than as what
21 Office of Planning was asking to modify in
22 some permit.

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1 CHAIRMAN LOUD: Were there any
2 other neighbors that you provided that to in
3 addition to Ms. Gaffney?

4 MR. SIKDER: No.

5 CHAIRMAN LOUD: Okay. I don't have
6 any further questions. Okay. With that, we
7 will now turn, since the ANC is not present,
8 to the Office of Planning for its report.
9 Good afternoon.

10 MR. GOLDSTEIN: Good afternoon, Mr.
11 Chairman, Members of the Board. For the
12 record, my name is Paul Goldstein and I am a
13 development review specialist with the Office
14 of Planning. I think I'll just address one
15 point that was made first and then kind of go
16 into my analysis.

17 The Office of Planning did
18 encourage the applicant to make a few minor
19 changes to the look of the house. The picture
20 that Mr. Sikder put into the record is
21 similar, but not exactly the same as what was
22 originally submitted in this case.

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1 We just tried to get the windows
2 and the doors to align a bit better. And we
3 encouraged him also to use hardy plank, which
4 I have heard from folks internally is a better
5 material than the siding. So there were some
6 more cosmetic changes that we did suggest.
7 But substantially, the same house.

8 Now, I'm going to just turn back to
9 my analysis. The Office of Planning
10 recommends approval for the applicant's
11 request for lot area, lot width and side yard
12 variance relief to construct a new single-
13 family detached dwelling at 311 58th Street,
14 N.E., which is the vacant Lot 15 in Square
15 5264.

16 The subject property is Zoned R-2
17 and is of a substandard size. Although R-2
18 Zones require a minimum lot area of 4,000
19 square feet and lot width of 40 feet for
20 single-family detached homes, the subject site
21 measures only 3,500 square feet and 25 feet in
22 width.

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1 The applicant has also proposed 3
2 foot side yards, rather than the required 8
3 feet to accommodate a 19 foot wide dwelling.
4 A required parking space would be provided in
5 the rear of the lot.

6 OP supports the applicant's request
7 for relief based on the -- its review of the
8 three part variance test. First, beginning
9 with the lot area and lot width, OP finds that
10 the property is unique. It was created prior
11 to the adoption of the 1958 Zoning Code and,
12 as such, it has inherent characteristics,
13 namely lot area and lot width that do not
14 conform to the current requirements for
15 single-family detached homes in an R-2 Zone.

16 Second, the lot area and lot width
17 requirements create a practical difficulty
18 that is unnecessarily burdensome to the
19 applicant. Single-family detached homes are
20 permitted use in the R-2 District, but the lot
21 area and lot width are too small under current
22 zoning standards, meaning that the property

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1 would remain undeveloped without relief.

2 And while OP does encourage the
3 combining of nonconforming lots where
4 appropriate, such an outcome, as you have
5 heard today, does not appear possible in this
6 case. The applicant has indicated and
7 submitted to the record that he has attempted
8 to contact the owner, the vacant lot owner, to
9 the south.

10 The reason you may see in the
11 letter that the address is different, of
12 course, than the lot address. The owner is
13 somewhere else, of course. And that he has
14 indicated to us that he has gotten no
15 response.

16 Third, granting the lot area and
17 lot width relief should not cause substantial
18 detriment to the public good or impair the
19 intent, purpose and integrity of the Zoning
20 Regulations. The proposal had put a vacant
21 lot into a productive conforming use and would
22 not be inconsistent with other nearby

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1 development.

2 Just to switch to the other area of
3 relief, which is the side yard request, again,
4 the property -- OP finds the property is
5 unique due to the substandard width of 25
6 feet, which predates the 1958 Zoning
7 Regulations.

8 The practical difficulty of
9 enforcing, of course, an 8 foot side yard is
10 that you would result in a 9 foot wide
11 building. The 3 foot side yard width that is
12 proposed would accommodate a 19 foot wide
13 building and 3 feet is pretty much a standard
14 minimum that OP encourages in these
15 situations.

16 Relief could also be granted
17 without causing substantial detriment to the
18 public good. I estimated the distance between
19 this proposed dwelling and the neighboring
20 dwelling to the north at about 8 feet. But it
21 may be 10. You add the 3 foot side yard to
22 the north of this proposed dwelling, it looked

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1 like there was about another 5, maybe 6, maybe
2 a little bit more, feet between the property
3 line to the north and the existing dwelling.

4 There is some type of wooden ramp
5 that seems to be leading to the side of that
6 house. So we estimate that is about 8 feet
7 separation between these homes.

8 And finally, granting the relief
9 would not substantially impair the intent,
10 purpose and integrity of the Zoning
11 Regulations and Map. Single-family detached
12 dwellings are permitted in R-2 Zones and 3
13 foot side yards would not be out of character
14 in the area.

15 So to conclude, the Office of
16 Planning recommends approval of the requested
17 variance relief and that concludes my
18 presentation. I am now available for
19 questions.

20 CHAIRMAN LOUD: Thank you, Mr.
21 Goldstein, that was a very good report. Are
22 there questions from Board Members?

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1 COMMISSIONER TURNBULL: Just one
2 question. Mr. Dettman and I often look at
3 each other on things like this. The house
4 looks like a row house when you see it from
5 the front. The one -- the picture, the ones
6 that he showed us.

7 When he comes before -- in looking
8 at this, did you talk to him about maybe
9 putting on a gabled roof or something that is
10 more characteristic of some of the other homes
11 in the neighborhood?

12 MR. GOLDSTEIN: You know, it's --
13 we try not to put too much of an architect hat
14 on, because I certainly am not one. We
15 recommended changes around the edges, but we
16 didn't recommend substantial changes to the
17 design. A gabled roof may not be a bad idea.

18 I think you can probably see examples of
19 homes with gables and homes without gables in
20 this area.

21 COMMISSIONER TURNBULL: Yeah, it's
22 kind of a mixed neighborhood. I'm looking at

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1 the aerial view looking down does -- if I look
2 around far enough, I can see some other roofs
3 that are maybe similar, but I don't know if
4 those are duplexes or --

5 MR. GOLDSTEIN: No.

6 COMMISSIONER TURNBULL: I mean --

7 MR. GOLDSTEIN: No. I think if you
8 look along 59th Street, which is sort of to the
9 east of the home, I think there is a number of
10 them that actually do have flat roofs.

11 COMMISSIONER TURNBULL: Some, okay.

12 MR. GOLDSTEIN: Maybe I should --
13 it's mixed on that particular street.

14 COMMISSIONER TURNBULL: Yeah, I
15 mean, just looking at the homes that are next
16 to where this home would be, most of them have
17 gabled roofs. I'm not sure what the one is
18 three doors away, it's hard to tell.

19 MR. GOLDSTEIN: Yeah.

20 COMMISSIONER TURNBULL: But the one
21 next to it looks like it is gable or a hip
22 roof and the next one looks like a gable.

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1 MR. GOLDSTEIN: Yeah, that stretch
2 does have some gable.

3 COMMISSIONER TURNBULL: Mansards.

4 MR. GOLDSTEIN: Yeah.

5 COMMISSIONER TURNBULL: We're just
6 curious. It looks like back on 5 -- you're
7 right, on 59th there looks like there is some
8 flat roofs. There is a mix.

9 MR. GOLDSTEIN: I think also
10 actually it is cut off, but if you go to the
11 north far enough, it's kind of a line of row
12 dwellings that actually are more examples of
13 flat roofs. But I'm saying that from memory.

14 COMMISSIONER TURNBULL: Yeah.

15 MR. GOLDSTEIN: I don't --

16 COMMISSIONER TURNBULL: Okay.

17 Thank you.

18 MR. GOLDSTEIN: -- have a strong
19 sense. Sure.

20 CHAIRMAN LOUD: Thank you, Mr.
21 Turnbull. Anything further? Okay. Mr.
22 Goldstein, just a quick question on the whole

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1 ANC issue. I know often times your office is
2 in touch with the ANC regarding applications.

3 And I wanted to know if in this case you had
4 any conversations or have any information to
5 elaborate on that?

6 MR. GOLDSTEIN: I have been in
7 touch with a few people from the ANC. And in
8 fact, I actually -- we have either emailed or
9 spoke with Ms. Gaffney yesterday. She seemed
10 to suggest -- I don't mean to characterize --
11 I'm not testifying on her behalf, but my
12 recollection is that she was surprised there
13 wasn't something in the record from the ANC
14 after the last hearing, which may explain
15 perhaps a late submission that came in just
16 recently.

17 She did suggest something to the
18 effect of the lot seemed too small, but the
19 discussion wasn't really a developed one. And
20 it just -- I couldn't tell quite if there was
21 -- I think she also mentioned that there was
22 an ANC meeting coming up at some point, maybe

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1 two weeks down the road, but it was a little
2 unclear quite what the process is or what
3 official ANC or community meeting action was--
4 there had been or was planned to be.

5 So I don't want to mischaracterize
6 our communication, but that seems to be my
7 recollection.

8 CHAIRMAN LOUD: And just one
9 further question on that. Did she indicate to
10 you one way or the other as to whether or not
11 she had actually seen any plans for the
12 project?

13 MR. GOLDSTEIN: I don't recall. I
14 don't recall her indicating one way or the
15 other.

16 CHAIRMAN LOUD: Okay. Thank you.

17 MR. GOLDSTEIN: Sure.

18 CHAIRMAN LOUD: Any additional
19 questions for Mr. Goldstein from -- okay.
20 Then are there -- did you get a chance to
21 review OP's report, Mr. Sikder?

22 MR. SIKDER: Yes.

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1 CHAIRMAN LOUD: Okay. Do you have
2 any questions for Mr. Goldstein?

3 MR. SIKDER: No.

4 CHAIRMAN LOUD: Okay. We will then
5 move on and if there are persons in support of
6 the application, we will hear from you now.
7 Seeing none, if there are persons in
8 opposition to the application, I think that
9 would be you, Mrs. Benson, this would be the
10 appropriate time to step forward and give your
11 testimony.

12 MS. BENSON: Chairman, I would like
13 to have this tabled until we can find out more
14 about this and bring to the neighborhood
15 exactly what is going on and what is going to
16 be put there, so they have an idea exactly
17 what we are looking at.

18 CHAIRMAN LOUD: Mrs. Benson, I
19 think that early on before we started this, we
20 considered the request to postpone it or to
21 continue it and made a decision that it would
22 be appropriate and it would not be prejudicial

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1 to hear the case today. So we have already
2 crossed that bridge to a certain extent.

3 And this would be a good time for
4 you, and I sort of understand part of your
5 dilemma, but this would be a good time for you
6 to, as a personal witness, I understand that
7 your community also may have some concerns, to
8 share your concerns about any aspects of the
9 project that would relate to the request for
10 relief.

11 MS. BENSON: And may I ask
12 something?

13 CHAIRMAN LOUD: Yes, ma'am.

14 MS. BENSON: Would it be possible
15 for the builder to come to our meeting,
16 hisself, so he can answer questions?

17 CHAIRMAN LOUD: Well, I don't think
18 this body can compel his body to attend, but
19 we are probably not going to decide this case
20 today. I don't know how the other Board
21 Members feel. And I think one of the options
22 open to us is to make sure that these plans

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1 and the drawings get to the ANC and that Mr.
2 Sikder make every effort to do that, so that
3 there is an opportunity for it to -- for them
4 to be reviewed.

5 Our regulations look to the ANC as
6 the community's representative for these kinds
7 of hearings. And hopefully the SMD and your
8 civic association could be brought under that
9 umbrella and have an opportunity to review
10 everything fully.

11 And it would certainly be in his
12 best interest between now and the time that
13 the decision is made on the case to do the
14 outreach. But I don't think we can legally
15 compel him to be there.

16 MS. BENSON: Okay. I just want to
17 state so he would understand our meeting is
18 held the second Monday of each month at 7:00
19 p.m.

20 CHAIRMAN LOUD: So you would have
21 another meeting on Monday, April 13?

22 MS. BENSON: Yes, sir.

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1 CHAIRMAN LOUD: At 7:30 p.m.?

2 MS. BENSON: At Beulah Baptist
3 Church, 59th and Dix Street, N.E.

4 CHAIRMAN LOUD: Okay. And I think
5 that's noted for the record. Do you have
6 concerns from what you now know and I realize
7 it's not a whole lot more, but from what you
8 do know of the project that you want to put on
9 the record for this hearing?

10 MS. BENSON: Yes. I would like to
11 say we have no problem with him building a
12 house, but from the picture I just saw, that
13 is really too tall to fit in our neighborhood.

14 CHAIRMAN LOUD: So you have some
15 concerns about the height of the project?

16 MS. BENSON: Right. Yes.

17 CHAIRMAN LOUD: Building on that
18 lot is not necessarily a concern, but the
19 height of it as he proposes.

20 MS. BENSON: Yes.

21 CHAIRMAN LOUD: Okay. And is that
22 in relation to the height of other adjoining

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1 buildings?

2 MS. BENSON: Yes. Right next door
3 to that building, where he is going to build,
4 315, is a nursing home. And that's like a
5 rambler. And the height that I see in the
6 picture that he illustrated, that's taller
7 than any of the buildings around there.

8 CHAIRMAN LOUD: Now, I think you
9 had mentioned earlier that your property was
10 directly behind --

11 MS. BENSON: Right behind.

12 CHAIRMAN LOUD: -- his property?

13 MS. BENSON: Yes, sir, it is.

14 CHAIRMAN LOUD: And do you have
15 concerns as a property owner regarding either
16 the height of his project or other things
17 related to the project itself? Not
18 construction phase and things like that, but
19 the project itself.

20 MS. BENSON: No. I -- we just had
21 a house built between 314 and 316 and that
22 seems to be pretty good, which is on 59th

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1 Street, Mr. Ike. If you recall last year, we
2 was here about that. And I have to thank him,
3 because he was very thoughtful and considerate
4 and he did not start at 7:00 a.m. He started
5 at 8:30 or 9:00 and usually by 6:00 he was
6 finished.

7 And that's something else I would
8 like to bring in consideration, because we
9 have a lot of seniors there, plus we have a
10 nursing home. And too early hours is
11 disturbing.

12 CHAIRMAN LOUD: Well, at this
13 juncture, we have not deliberated regarding
14 the issue of relief period in terms of giving
15 an indication that we would even give relief
16 to Mr. Sikder. But assuming we even get to
17 the point where we do, the construction issues
18 are outside of the scope of what we hear at
19 BZA.

20 Were there other issues, you as a
21 very adjacent property owner might have, with
22 respect to the project or are we to the point

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1 of closing out?

2 MS. BENSON: I just want to say I
3 thank you for listening to me and I'm hoping
4 and praying that Mr. Sikder will come to our
5 meeting this Monday coming with the
6 information, so we can pass on with this and
7 move on.

8 CHAIRMAN LOUD: Well, thank you
9 very much for taking the time to come down
10 today and for being patient in getting your
11 opportunity to speak as a witness. It was
12 very helpful to me to hear some of your
13 concerns, particularly since your property is
14 in very close proximity to the project. Also
15 helpful for me to hear that you were not
16 opposed to some of the like projects going up.

17 Mr. Agbu is someone that comes
18 before us for projects as well that are often
19 similar to Mr. Sikder's project and your
20 information regarding the whole height issue
21 was very helpful to us, so I really appreciate
22 you coming down.

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1 Do Board Members have any questions
2 for Mrs. Benson? Okay.

3 MS. BENSON: Thank you.

4 CHAIRMAN LOUD: Thank you so much.

5 VICE CHAIR DETTMAN: Actually, Mr.
6 Chairman?

7 CHAIRMAN LOUD: Yes?

8 VICE CHAIR DETTMAN: Not
9 necessarily a question, but it might be
10 helpful for Mrs. Benson to have Exhibit No.
11 25, which is the latest drawings, so she can
12 at least leave here today with a copy of the
13 most recent drawings.

14 CHAIRMAN LOUD: Thank you, Mr.
15 Dettman. Are we able to provide that, Ms.
16 Bailey?

17 MS. BAILEY: Yes, Mr. Chairman,
18 after the hearing, I'll make sure she gets it.

19 CHAIRMAN LOUD: Thank you so much.
20 And I would suggest to Mr. Sikder that
21 anything that you have available that speaks
22 to the project, this would be a good time to

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1 get it into the hands directly of Mrs. Benson
2 and not have to depend on an intermediary.

3 MR. SIKDER: Definitely,
4 definitely, I will.

5 CHAIRMAN LOUD: We are now at the
6 point where we are going to hear closing
7 remarks by the applicant.

8 MR. SIKDER: I don't have nothing
9 to say. Thank you. I have no closing
10 comments. I'll try to be at the meeting and
11 I'll explain them what exactly we are planning
12 to do and to go from there.

13 CHAIRMAN LOUD: I'm sorry, you said
14 it is your plan to attend the meeting on the
15 13th?

16 MR. SIKDER: 13th.

17 CHAIRMAN LOUD: Okay.

18 MR. SIKDER: At 7:00 p.m., correct.

19 CHAIRMAN LOUD: Okay. And bringing
20 your plans and --

21 MR. SIKDER: Yes.

22 CHAIRMAN LOUD: -- illustrations.

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1 Okay. That's very good. I think what we will
2 do is sort of assess where we are right now
3 and the steps we need to take. So if you can
4 be patient for a moment, we'll get right back
5 to you.

6 MR. SIKDER: Okay.

7 CHAIRMAN LOUD: Thanks for your
8 patience, Mr. Sikder. I think what we would
9 like to do is to close the record with the
10 exception of asking for a couple of things.
11 And then once we get those, set it for
12 decision and we're looking, Ms. Bailey, at the
13 May 19 meeting. May 19 meeting?

14 MS. BAILEY: Yes, sir.

15 CHAIRMAN LOUD: For decision and
16 what we would like to leave the record open
17 for is the opportunity for the ANC to
18 supplement its report that they have submitted
19 with an additional report, if they so choose,
20 and to do that in response to the opportunity
21 you will have to meet with them and to present
22 plans and documents regarding the project.

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1 And we want to be really clear that we are
2 talking about the ANC having that opportunity.

3 I think it's great that you are
4 also going to really do the outreach and meet
5 with the civic association.

6 MR. SIKDER: Sure.

7 CHAIRMAN LOUD: But we are leaving
8 the record open for the ANC to supplement its
9 report. And I think Mr. Jackson alluded to an
10 earlier case with different parties, but it's
11 really good to work with the community and get
12 the community behind what you are doing. And
13 this will give you the time to do that.

14 I think a number of us here have
15 seen some of these kind of cases before and
16 have granted relief in some of these kind of
17 cases. And speaking for me, the whole issue
18 of the ANC and the public detriment is
19 something that remained open in my mind. And
20 the sooner it is closed, the sooner we can
21 move to resolution on it.

22 So is there anything that Board

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1 Members wanted to add? Okay. Ms. Bailey,
2 does that look like we can calendar it for May
3 19, maybe the first decision meeting?

4 MS. BAILEY: A Special Public
5 Meeting?

6 CHAIRMAN LOUD: Yes, ma'am.

7 MS. BAILEY: Yes, sir.

8 CHAIRMAN LOUD: Okay.

9 MS. BAILEY: And are you looking
10 for dates, Mr. Chairman, for the applicant to
11 file his submission to us or actually there is
12 nothing coming from the applicant. What the
13 record is left open for is from the ANC.

14 CHAIRMAN LOUD: That would be
15 correct. We're giving the ANC the
16 opportunity, particularly since we didn't
17 continue the hearing, to get a briefing,
18 review the plans and submit something in
19 writing to us per section 3115, that we can
20 take under consideration.

21 So I think -- Mr. Moy, do you have
22 the dates that the ANC might meet between now,

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1 which is April 7, and then?

2 MR. MOY: Well, Ms. Benson
3 mentioned that they meet the 2nd Monday of the
4 month, I believe, she said. So she is meeting
5 April 13th. The next meeting would be May the
6 11th.

7 CHAIRMAN LOUD: Okay.

8 MR. MOY: Okay.

9 CHAIRMAN LOUD: Now, I wasn't
10 clear, so, Mrs. Benson, you can just nod your
11 head, it's okay. Does the ANC meeting the
12 second Monday or is that the Northeast
13 Boundary Civic Association? Thank you.
14 Appreciate that. So yeah, that's even better.

15 So all right. So it seems to me
16 that either date would work. Mr. Sikder is
17 going to go on the 13th, so hopefully every
18 effort will be made leaving this meeting to
19 get that arranged and scheduled and get on the
20 agenda and so on and so forth. And then we
21 can definitely have a decision by May 19th.

22 MR. MOY: I'm assuming also, Mr.

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1 Chair, that since the record is open for the
2 ANC to file a supplemental, does that also
3 pertain to allowing the supplemental report
4 from the Northeast Boundary Civic Association
5 as well? Just a point of clarification on the
6 staff's part.

7 CHAIRMAN LOUD: I appreciate that,
8 because we don't want it to be confusing. I
9 only thought in terms of the ANC, which is a
10 representative for the community, and the
11 civic association working in conjunction with
12 the ANC to make sure its views are reflected.

13 It's not a party in this case, the
14 civic association. So that would be --

15 MR. MOY: She seems to be --

16 CHAIRMAN LOUD: Okay. All right.
17 So that will work for Mrs. Benson and it
18 certainly works from our end. Board Members
19 don't object? Okay.

20 MS. BAILEY: I would suggest, Mr.
21 Chairman, that May the 12th the record would be
22 left open until then for the ANC report. So

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1 that's quite a bit of time for the ANC to get
2 something in.

3 CHAIRMAN LOUD: Okay. Thank you.
4 Then let's do that, let's make May 12 the
5 deadline. Thank you, Mr. Sikder, we
6 appreciate the presentation and your time
7 today.

8 And is there anything further on
9 this case, Ms. Bailey?

10 MS. BAILEY: No, Mr. Chairman,
11 that's it for this case.

12 CHAIRMAN LOUD: Okay. Do we have
13 anything further on the agenda?

14 MS. BAILEY: That's it.

15 CHAIRMAN LOUD: Okay. Thank you
16 very much. Thank everyone very much for
17 today's attendance. I did want to, as I did
18 earlier at the decision meeting this morning,
19 just say for the record that this is my first
20 day as Chair and it has been quite a
21 challenge.

22 I appreciate everyone's patience,

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1 the Office of Planning's patience and everyone
2 else's patience. And again to recognize the
3 OZ staff for all that you guys do, Ms. Bailey
4 and Mr. Moy.

5 I think Mr. Nero and I were talking
6 last week and he mentioned that the office
7 here is about 165 cases annually or more
8 actually and I know I have never gotten a case
9 that had less than about 30 exhibits in it.
10 So that's thousands of documents that are
11 reviewed each year and Mr. John Nyarku, who I
12 did not mention this morning, is really
13 pivotal in that process.

14 I really wanted to thank him for
15 all that he does. The OZ staff period, if I
16 start naming everybody, I'm going to skip
17 somebody. But I really didn't mean to leave
18 out Mr. Nyarku for all the help that he
19 provides.

20 MS. BAILEY: Thank you, Mr.
21 Chairman.

22 CHAIRMAN LOUD: Do I need to say

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1 we're adjourned? This meeting is adjourned.

2 (Whereupon, the Public Hearing was
3 concluded at 4:46 p.m.)

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