

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 14, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson  
SHANE L. DETTMAN, Vice-Chairman

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN  
ARTHUR JACKSON  
STEPHEN MORDFIN

The transcript constitutes the minutes from the Public Hearing held on April 14, 2009.

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

9:48 a.m.

MR. MOY: We're into the hearing,  
so I'll turn that over to Ms. Bailey.

CHAIRPERSON LOUD: Thank you.

MS. BAILEY: Mr. Chairman, good  
morning.

Should I swear the witnesses in  
now?

CHAIRPERSON LOUD: Let me just ask  
a point of clarification just for me so I'll  
know in the future.

Since we've come out of a decision  
meeting and now into hearing, do I need to  
read over -- okay.

So let me start by doing that and  
then we'll get to the witness swearing in.

This morning's hearing will please  
come to order.

Good morning, ladies and gentlemen  
again.

This is the April 14, 2009 Public

1 Hearing of the Board of Zoning Adjustment of  
2 the District of Columbia.

3 My name is Marc Loud. I'm the  
4 Chairperson. To my immediate right is Vice-  
5 Chairman Shane Dettman, and to his immediate  
6 right is Mr. Anthony Hood, Chairperson of the  
7 Zoning Commission and representing Zoning  
8 Commission this morning. To my left is Mr.  
9 Cliff Moy, who is the Secretary of the Board  
10 of Zoning Adjustment and Ms. Lori Monroe to  
11 his left representing the Office of Attorney  
12 and Ms. Beverley Bailey on the end, a Zoning  
13 Specialist here in the Office of Zoning.

14 Copies of today's hearing agenda  
15 are available to you and are located to my  
16 left in the wall bin near the door.

17 Please, be advised that this  
18 proceeding is being recorded by a Court  
19 Reporter and is also webcast live.  
20 Accordingly, we must ask you to refrain from  
21 any disruptive noises or actions in the  
22 hearing room.

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.

13                  Upon coming forward to speak to  
14 the Board, please give both cards to the  
15 reporter sitting to my right.

16                  The order of procedure for special  
17 exceptions and variances is as follows:

18                  Statement and witnesses of the  
19 applicant;

20                  Government reports, including  
21 Office of Planning, Department of Public  
22 Works, DDOT, et cetera;

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1 Report of the Advisory  
2 Neighborhood Commission;

3 Fourth, parties or persons in  
4 support;

5 Fifth, parties or persons in  
6 opposition;

7 Sixth, closing remarks by the  
8 applicant;

9 I'm going to skip the outline for  
10 appeals because that will happen this  
11 afternoon. Is that appropriate? Okay. Let's  
12 do that then.

13 Pursuant to Sections 3117.4 and  
14 3117.5 the following time constraints will be  
15 maintained:

16 The applicant or persons and  
17 parties, except an ANC in support, including  
18 witnesses, are allowed 60 minutes  
19 collectively;

20 The appellees, persons and  
21 parties, except an ANC in opposition,  
22 including witnesses, are also allowed 60

1 minutes collectively;

2 Individuals witnesses are allowed  
3 3 minutes.

4 These time constraints do not  
5 include cross examination and/or questions  
6 from the Board.

7 Cross examination of witnesses is  
8 permitted by the applicant or parties only.  
9 The ANC within which the property is located  
10 is automatically a party in a special  
11 exception or variance case.

12 Nothing prohibits the Board from  
13 placing reasonable restrictions on cross  
14 examination, including time limits and  
15 limitations on the scope of cross examination.

16 The record will be closed at the  
17 conclusion of each case, except for any  
18 material specifically requested by the Board.  
19 The Board and the staff will specify at the  
20 end of the hearing exactly what is expected  
21 and the date when the persons must submit the  
22 evidence to the Office of Zoning. After the

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1 record is closed, no other information will be  
2 accepted by the Board.

3 The Sunshine Act requires that the  
4 Public Hearing on each case be held in the  
5 open before the public. The Board may,  
6 consistent with its Rules of Procedure and the  
7 Sunshine Act, enter Executive Session during  
8 or after the Public Hearing on a case for  
9 purposes of reviewing the record or  
10 deliberating on the case.

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

17 Please, turn off all beepers and  
18 cell phones at this time, so as not to disrupt  
19 these proceedings.

20 The Board will now consider any  
21 preliminary matters. Preliminary matters are  
22 those which relate to whether a case will or

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

8 Does the staff have any  
9 preliminary matters?

10 MS. BAILEY: Mr. Chairman, Vice-  
11 Chair and to everyone, good morning.

12 There is a preliminary matter very  
13 quickly. It has to do with the withdrawal of  
14 one of the cases. And that's Application  
15 17892, 660 North Capitol, LLC. That  
16 application, Mr. Chairman, was withdrawn.

17 CHAIRPERSON LOUD: Thank you, Ms.  
18 Bailey.

19 MS. BAILEY: And no other  
20 preliminary matters, Mr. Chairman, other than  
21 swearing in the witnesses.

22 CHAIRPERSON LOUD: Thank you.

1                   Would all individuals wishing to  
2 testify today please rise to take the oath?

3                   (Witnesses sworn.)

4                   CHAIRPERSON LOUD: Thank you, Ms.  
5 Bailey.

6                   Would you like to call the first  
7 case?

8                   MS. BAILEY: Mr. Chairman, the  
9 first case is Application 17810. It's the  
10 Application of Patricia A. O'Hara, pursuant to  
11 11 DCMR § 3104.1, for a special exception to  
12 construct a garage as an accessory structure  
13 serving a one-family semi-detached dwelling  
14 under section 223, not meeting the lot  
15 occupancy requirements of section 403. The  
16 property is located in the R-4 District and  
17 the premises are known 516 9th Street,  
18 Southwest, Square 949, Lot 811.

19                   CHAIRPERSON LOUD: Good morning.  
20 How are you? Good.

21                   I take it you're ready to present  
22 your case. But before you do that, why don't

1 you just state your name and your client's  
2 name and address for the record.

3 MS. FOWLER: Jennifer Fowler, of  
4 Fowler Architects, 1819 D Street, Southwest.

5 This is Patricia O'Hara of 516  
6 19th Street, Southwest.

7 CHAIRPERSON LOUD: Thank you.

8 You may proceed if you're ready.

9 MS. FOWLER: Okay.

10 CHAIRPERSON LOUD: Let me just say  
11 at the beginning, I think we have a fairly  
12 full record. There may be some questions on  
13 some issues that probably won't effect the  
14 outcome, depending on what we hear this  
15 morning. So you can feel free to lift up what  
16 you think goes straight to the heart of the  
17 matter.

18 MS. FOWLER: Okay.

19 CHAIRPERSON LOUD: Okay.

20 MS. FOWLER: So what we're asking  
21 for today is approval to build a very modest  
22 garage at the rear of the property at 516 9th

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1 Street, Southeast.

2 The current lot occupancy is  
3 nonconforming at 58 percent. It's a semi-  
4 detached house. And we're proposing that we  
5 go up to 70 percent lot coverage. With the 70  
6 percent lot coverage we're going to be able to  
7 get an 18 foot garage, which is pretty much  
8 the minimum depth that you can park a car in.  
9 So it's a very modest garage. And it's very  
10 similar in size to the garage next door at 514  
11 9th Street, which is a 19 foot 3 inch deep  
12 garage.

13 We're going to stick to the same  
14 roofline and everything so it'll match the  
15 garage next door.

16 We have support from several of  
17 the neighbors, including the adjacent  
18 neighbors. And we have support from the  
19 Historic Preservation Office and Capitol Hill  
20 Restoration and the ANC. So beyond that, I  
21 think we'll just rest on the record and fill  
22 free to ask any questions that you have of us.

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1 Thank you.

2 CHAIRPERSON LOUD: Thank you very  
3 much. I don't have any questions, but let me  
4 see if other Board members have questions.  
5 Okay. Appearing to not have any questions,  
6 then let's go to the Office of Planning, which  
7 is not here. I didn't realize they were not  
8 here. Okay. Very interesting. All right.

9 So we're going to continue the  
10 hearing. And they did submit a report. That  
11 report is our Exhibit 26, and it in favor of  
12 granting the relief proposed. It is a very  
13 well done report. I did see Ms. Jackson here  
14 earlier, so I wonder if she stepped out. But  
15 nonetheless, it's a report that walks through  
16 the requirements of 223 covering all of the  
17 elements of light, air, privacy, use of  
18 enjoyment. And it concludes that this is an  
19 application that they will support. So that  
20 it is a part of our record and it is a part of  
21 the evidence that we look at in terms of  
22 reaching our conclusion on that.

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1                   Did Board members have any  
2                   comments about anything in the Office of  
3                   Planning report? Okay. There are no comments  
4                   on that report, but it is accepted into our  
5                   record. And, again, just affirming that it is  
6                   our Exhibit 26, dated March 27, 2009.

7                   Next, we would hear from the ANC  
8                   for this area. Is anyone here representing  
9                   the ANC? Okay. It doesn't appear that  
10                  anyone's here representing the ANC. But their  
11                  report did come in. Thank you, Mr. Dettman.  
12                  It's at our Exhibit 24, dated February 11,  
13                  2009. And they also support the application.  
14                  So we give the ANC's report great weight.  
15                  It's always good when applicants come in and  
16                  have ANC support lined up, and in this case  
17                  you do.

18                  Did you get a copy of the ANC's  
19                  report?

20                  MS. FOWLER: No, we didn't.

21                  CHAIRPERSON LOUD: Okay.

22                  MS. FOWLER: But we were at the

1 meeting, so we --

2 CHAIRPERSON LOUD: Okay.

3 Fantastic. Fantastic.

4 Next I'd like to see if there are  
5 any parties or persons in support of the  
6 application here, there appearing to be done.  
7 We'll just keep right on moving.

8 I will note, however, that a  
9 number of supporters did file evidence into  
10 the record supporting the application,  
11 including the Capitol Hill Restoration  
12 Society. That's our Exhibit 25, dated March  
13 16, '09,

14 One of the applicant's neighbors  
15 at 514 9th Street also submitted an exhibit in  
16 support of the application.

17 And another adjoining neighbor at  
18 518 19th Street, that's our Exhibit 9  
19 submitted a support letter as well.

20 ZC CHAIRPERSON HOOD: Also, Mr.  
21 Chairman, you may have mentioned, I may have  
22 missed it, Capitol Hill Restoration Society,

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1 which is at Exhibit 25, also has a letter of  
2 support.

3 CHAIRPERSON LOUD: Thank you, Mr.  
4 Hood. I really appreciate that. And again,  
5 appreciate the applicant for pulling the  
6 support together in advance of the hearing.  
7 It makes it much easier to review.

8 Now I'd like to call parties and  
9 persons in opposition. Again, there being  
10 none in the room.

11 Why don't we turn to Ms. Fowler  
12 and if you have any closing remarks, you can  
13 share those.

14 MS. FOWLER: I'd just like to  
15 thank you for your time. And I wish they were  
16 all this easy.

17 Thanks so much.

18 CHAIRPERSON LOUD: Somebody up  
19 here whispered they do too.

20 Thank you. I think it makes it a  
21 lot easier when you've lined up community  
22 support as you have in this case, when you've

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1 really done the homework that you need to do  
2 establish the 223. So it's a mutual -- it  
3 makes easier on both ends.

4 I think we're prepared to  
5 deliberate this case this morning and make a  
6 decision. And what I'm going to do is turn to  
7 Mr. Dettman to lead us through as much of the  
8 deliberation as he feels appropriate.

9 MEMBER DETTMAN: Thank you, Mr.  
10 Chairman.

11 I think given the relatively how  
12 straightforward this case is, I think that we  
13 could do this under motion, if that's all  
14 right with you.

15 CHAIRPERSON LOUD: Yes.

16 MEMBER DETTMAN: Before taking the  
17 Board through the analysis under 223, I would  
18 move for approval of Application 17910 of  
19 Patricia O'Hara, pursuant to 11 DCMR § 3104.1  
20 for a special exception to construct a garage  
21 as an accessory structure serving a one-family  
22 semi-detached dwelling under section 223, not

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1 meeting the lot occupancy requirements of  
2 section 403. And I believe we're going to  
3 incorporate as well the existing  
4 nonconformities that are currently on the lot,  
5 which would be as to lot area and width under  
6 401, side yard under 405 and the nonconforming  
7 structure provisions of 2001.3. And I think  
8 that's consistent with what the Board  
9 typically does.

10 So let me just very quickly read  
11 that again. So it's a special exception to  
12 construct a garage as an accessory structure  
13 serving a one-family semi-detached dwelling  
14 under section 223, not meeting the  
15 requirements of section 403, 405, 401 and  
16 2001.3 in the R-4 District at premises at 516  
17 9th Street, Southeast.

18 ZC CHAIRPERSON HOOD: Second.

19 CHAIRPERSON LOUD: The motion has  
20 been made and seconded.

21 Very sorry. Go right ahead.

22 MEMBER DETTMAN: Very quickly. I

1 actually think that we can rely upon OP's  
2 report for our analysis. They laid out the  
3 analysis under 223 very clearly.

4 This is an addition. It's an  
5 accessory building garage for a semi-detached  
6 one-family dwelling in the R-4. It currently  
7 is nonconforming to lot occupancy. What being  
8 proposed takes the -- according to the  
9 applicant, takes the property up to 70 lot  
10 occupancy, which is allowed under 223.

11 We have the support of the  
12 neighbors. We have two letters in support  
13 from a Carol Connelly and an Erin Conaton.  
14 Those are Exhibits 8 and 9 in our record.

15 As Mr. Hood had mentioned, we have  
16 the support of Capitol Hill Restoration  
17 Society at Exhibit 25.

18 And I'll mention that in OP's  
19 report they mentioned that HPRB has approved  
20 this project in concept and delegated final  
21 approval to the HPO staff.

22 I think with that I'll just say

1 that it's, again, very straightforward 223.

2 It meets all the requirements of 223.

3 And just a personal observation  
4 going through the analysis of this project.  
5 It looked like the calculations for lot  
6 occupancy compared to what I came up with were  
7 just slightly different. It doesn't change  
8 the analysis whatsoever. To me it looked like  
9 the proposed lot occupancy was a little bit  
10 less than 70 percent. So it might be  
11 something looking into going forward, but  
12 again it does not change the Board's  
13 deliberation in the analysis of this  
14 application and does not prevent this from  
15 going forward.

16 CHAIRPERSON LOUD: Thank you, Mr.  
17 Dettman. That was a great pulling together of  
18 the record and making it succinct.

19 Mr. Hood, did you have anything  
20 you wanted to add.

21 ZC CHAIRPERSON HOOD: No. I think  
22 Mr. Dettman covered it all.

1 CHAIRPERSON LOUD: Okay. The  
2 motion's been made by Mr. Dettman, seconded by  
3 Mr. Hood. All those in favor say aye.

4 ALL: Aye.

5 CHAIRPERSON LOUD: All those  
6 opposed? Abstentions?

7 Can you call the vote, Ms. Bailey?

8 MS. BAILEY: Mr. Chairman, the  
9 vote is recorded as three-zero-two to grant  
10 the application as amended.

11 Mr. Dettman made the motion. Mr.  
12 Hood seconded. Mr. Loud supported the motion.

13 Again, the vote is three-zero-two  
14 to grant as amended.

15 CHAIRPERSON LOUD: Thank you, Ms.  
16 Bailey.

17 And thank you and congratulations.

18 We're trying on an experimental  
19 basis something new today, and I think we've  
20 been able to do it. I'm not certain. But  
21 we're going to see if can have your order for  
22 you that you can pick up from the front desk.

1 This morning, Mr. Moy?

2 MR. MOY: I would suggest that the  
3 applicant go to the front desk and a general  
4 idea, sense of when it'll be ready.

5 CHAIRPERSON LOUD: Okay. We're  
6 still working through some of the kinks of it,  
7 but we're going to try, especially in these  
8 summary cases to have the order available the  
9 same day.

10 So I want to thank Mr. Moy and his  
11 staff for working hard to make that happen.

12 Thank you.

13 Well, it looks like where we're  
14 prepared to go forward if Jeong was here. So  
15 I think ought we ought to do is recess for  
16 about 20 minutes. And then we'll come back  
17 out for the Jeong case.

18 (Whereupon, at 10:05 a.m. off the  
19 record until 10:48 a.m.)

20 CHAIRPERSON LOUD: Good morning.

21 I'd like to resume.

22 My name is Marc Loud. I'm the

1 Chair of the Board of Zoning Adjustment and  
2 I'd like to resume this morning's hearings for  
3 the April 14, 2009 schedule of the BZA.

4 Ms. Bailey, would you like to call  
5 the next case?

6 MS. BAILEY: Thank you, Mr.  
7 Chairman.

8 The Application No. 17906. It's  
9 the application of Se Y. Jeong, pursuant to 11  
10 DCMR § 3104.1 for a special exception to  
11 change a nonconforming use from a grocery  
12 store to a grocery store with delicatessen  
13 under sections 2002 and 2203. The property is  
14 zoned R-4, it's located at 321 T Street,  
15 Northeast. Square 3567, Lot 804.

16 The applicant, would you please  
17 have a seat at the table. I should say the  
18 applicant's representative.

19 CHAIRPERSON LOUD: Good morning.

20 Ms. Bailey, do we need to have the  
21 witness sworn in?

22 MS. BAILEY: Absolutely.

1 CHAIRPERSON LOUD: Why don't we do  
2 that. She will swear you in.

3 MS. BAILEY: Please stand.

4 (Witness sworn.)

5 CHAIRPERSON LOUD: Good morning  
6 again.

7 Why don't we start by you stating  
8 your name and address for the record?

9 You have to put your microphone on  
10 and make sure that you can be heard.

11 MR. TEREFA: Good morning. My  
12 name is Endale Terefa, the owner of Makali  
13 Market. I'm located at 321 T Street,  
14 Northeast, Washington, D.C.

15 CHAIRPERSON LOUD: Thank you.

16 And just so that I don't mess up  
17 your last name during the course of the  
18 hearing how do you pronounce it again?

19 MR. TEREFA: Terefa, T-E-R-E-F-A.  
20 Terefa.

21 CHAIRPERSON LOUD: Terefa. Okay.  
22 Thank you.

1           Mr. Terefa, we're here this  
2 morning on your application for relief and  
3 earlier this morning when I read the order of  
4 procedure for cases you weren't here yet, so  
5 I'm just going to go over it very briefly  
6 again so that you'll know how we'll proceed  
7 this morning.

8           MR. TEREFA: Yes, sir.

9           CHAIRPERSON LOUD: And you can be  
10 prepared to plug your testimony into that  
11 contest.

12           First we're going to hear a  
13 statement and any witnesses that you might  
14 have as applicant.

15           Then we're going to hear  
16 government reports. In this context, it's the  
17 Office of Planning.

18           Then we would normally have a  
19 period of time for the report of the Advisory  
20 Neighborhood Commission. In this case we  
21 don't have a report from the ANC.

22           Then we would move on to parties

1 or persons in support of your application.

2 Then parties or persons in  
3 opposition to your application.

4 Then we would turn it back over to  
5 you for closing remarks that you might have.

6 And during each of those phases  
7 there will be opportunities for the Board to  
8 ask questions if they have questions.

9 So we have reviewed your file and  
10 it's given rise to some questions, but I think  
11 the best way to proceed is to allow you to go  
12 ahead and follow our regular procedure with  
13 your statement in support of the relief. And  
14 then as we have questions, Board members will  
15 ask those questions.

16 MR. TEREFA: Yes, sir.

17 CHAIRPERSON LOUD: All right.

18 Do you have a prepared statement,  
19 Mr. Terefa?

20 MR. TEREFA: About the  
21 application?

22 CHAIRPERSON LOUD: Yes.

1 MR. TEREFA: Yes, sir.

2 CHAIRPERSON LOUD: Okay. Would  
3 you like to either read it or just state it?

4 MR. TEREFA: I can state it, but  
5 everything what I want is in the application.  
6 But to verify what I want I can state it from  
7 my own.

8 CHAIRPERSON LOUD: Why don't you  
9 then. I mean, just take a few moments, but  
10 just state it so that we get the testimony on  
11 the record in terms of what the relief is  
12 you're seeking.

13 MR. TEREFA: Okay. Thank you,  
14 sir.

15 I and my wife, Fetelwork Teferi  
16 own this store as a lease for the past five  
17 years. I have a lease of ten years and five  
18 hears optional. And since we operate that  
19 business, as you know small business is going  
20 down for quite a bit for the last two years.  
21 And me and my wife sit down and discuss how  
22 can we improve the service we provide the

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1 neighborhood. And we decided to have a  
2 delicatessen like coffee, hot dog and donuts,  
3 some fresh vegetables sort of demand from this  
4 neighborhood.

5 And when we went to -- I went to  
6 the 941 North Capitol to apply for that  
7 license, they recommend me to come to the  
8 Board of Zoning to have a special exemption  
9 for this license. And I decided to have that  
10 permit from this Board.

11 And the only what we need is we  
12 don't have any kind of change on the building,  
13 any additional thing or seat or anything. The  
14 only thing we add in the property -- in the  
15 store is only the small coffee machine, the  
16 hot dog machine and there are some kind of  
17 fridge too, you know to add on -- already what  
18 I have in the store to make it fresh for the  
19 vegetable and cut meat. So this is the only  
20 thing what I need for permission from the  
21 Board.

22 CHAIRPERSON LOUD: So if I

1 understand you're going to be adding primarily  
2 or maybe exclusively fresh vegetables, donuts,  
3 coffee and hot dogs?

4 MR. TEREFA: Yes, sir.

5 CHAIRPERSON LOUD: And you said  
6 something about cut meats.

7 MR. TEREFA: Yes. Like packed  
8 meat. You know, like a delicatessen kind of  
9 meat for the neighborhood, that's all.

10 CHAIRPERSON LOUD: Okay. And  
11 would that be to make sandwiches or would it  
12 be to sell the meats as fresh meats?

13 MR. TEREFA: No, to make  
14 sandwiches.

15 CHAIRPERSON LOUD: To make  
16 sandwiches. Okay.

17 MR. TEREFA: Cold sandwiches.

18 CHAIRPERSON LOUD: Okay. So the  
19 sandwiches would be made on site by you or by  
20 persons working for you?

21 MR. TEREFA: Yes, sir.

22 CHAIRPERSON LOUD: Okay. Okay.

1 I'm sorry. I did not mean to interrupt you.  
2 You can continue on with your testimony or if  
3 you've brought it to a conclusion, I'll ask  
4 Board members if they have questions.

5 MR. TEREFA: I think this is all I  
6 need. This is what -- the statement I'm  
7 trying to make.

8 CHAIRPERSON LOUD: Okay. Thank  
9 you. Why don't I turn to members of the Board  
10 and open it up for any questions that you may  
11 have of the applicant.

12 ZC CHAIRPERSON HOOD: Just wanted  
13 to make sure I understood. You said you're  
14 going to be make cold sandwiches. You'll be  
15 preparing them on site?

16 MR. TEREFA: Yes, sir.

17 ZC CHAIRPERSON HOOD: Okay. So  
18 this new scheme of things that you and your  
19 wife discussed requires another refrigerator.  
20 You've got to have a refrigerator on site, I'm  
21 sure.

22 MR. TEREFA: Yes, I do.

1 ZC CHAIRPERSON HOOD: Okay.

2 Again, how are you going to heat up the hot  
3 dogs?

4 MR. TEREFA: There is a hot dog  
5 machine which --

6 ZC CHAIRPERSON HOOD: It's the one  
7 that rolls. What do they call it? I don't  
8 even know what it's called.

9 MR. TEREFA: I don't know if it  
10 has a specific name. We call it hot dog  
11 machine.

12 ZC CHAIRPERSON HOOD: Hot dog  
13 machine? Oh, okay.

14 MR. TEREFA: Yes. It's a small--

15 ZC CHAIRPERSON HOOD: And it rolls  
16 on and it heats up? Okay.

17 MR. TEREFA: You know, as you say,  
18 it's on the 7-Eleven on the stores --

19 ZC CHAIRPERSON HOOD: Okay. One  
20 of those. A hot dog machine?

21 MR. TEREFA: Yes, sir.

22 ZC CHAIRPERSON HOOD: Okay. So

1 hot dogs, coffee, tea --

2 MR. TEREFA: Yes.

3 ZC CHAIRPERSON HOOD: -- and  
4 prepared sandwiches?

5 MR. TEREFA: Yes, sir.

6 ZC CHAIRPERSON HOOD: On site?

7 MR. TEREFA: Yes, sir.

8 ZC CHAIRPERSON HOOD: Okay. All  
9 right. Thank you.

10 MR. TEREFA: Thank you, sir.

11 MEMBER DETTMAN: Just a couple of  
12 questions. Good morning.

13 You had mentioned that you're not  
14 making any changes to the interior of the  
15 building?

16 MR. TEREFA: Yes, sir.

17 ZC CHAIRPERSON HOOD: So when  
18 you're going to be preparing these sandwiches  
19 and preparing the food that you're going to be  
20 selling, are you going to have a counter that  
21 people come up to to order their sandwiches?  
22 How are you going to fit this new thing into

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1 the building as it exists today?

2 MR. TEREFA: As you see in the  
3 picture, there are two already -- I don't have  
4 it with me. I don't know if you have it, the  
5 picture. There are two already existing  
6 fridges and counters in the building. It's  
7 inside the building. Years ago they used to  
8 sell cut meat like ham and everything. The  
9 store already have a fridge prepared for that.  
10 But that fridge is not working anymore because  
11 I think the previous stop to sell that one,  
12 and he doesn't sell it. But the fridge is  
13 already existing. It's on the picture which  
14 I provide for the Board.

15 And there is no -- and then for  
16 the hot dog machine, there is already standing  
17 right there and always in the 7-Eleven, it's  
18 self-serving, you know. They pick up the hot  
19 dog and they put it on the bread and they  
20 bring it to the counter, we charge them for  
21 the price.

22 MEMBER DETTMAN: Okay. So you

1 already have counter space? You're not going  
2 to be constructing new counter?

3 MR. TEREFA: No.

4 MEMBER DETTMAN: Rearranging the  
5 inside of the store?

6 MR. TEREFA: No. Maybe we -- you  
7 know, after I get a permission from here, the  
8 Health Department they require me to have  
9 certain requirements for that license. I  
10 don't know which and what. But it is not  
11 outside. I is not additional. But they might  
12 ask me to clean or to fix the existing fridge,  
13 sort of those kind of things. But no  
14 additional things I'm going to be adding in  
15 there.

16 MEMBER DETTMAN: And what you're  
17 proposing, I mean do you see this being the  
18 principle use in this building or is this  
19 mainly still going to be a grocery store?

20 MR. TEREFA: A grocery store. It's  
21 a grocery store. I don't know if you have --  
22 there is a nurse -- I mean lovely people

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1 living next to my store. And they always ask  
2 me to have that because there is nothing, that  
3 kind of service around there. They have to  
4 miles to get that kind of coffee or hot dog,  
5 or tea to get all the way up on Rhode Island  
6 Avenue. So I have a 57 neighborhood signature  
7 petition supporting -- signature from my  
8 neighborhood. So that's why I'm providing  
9 this especially for that building, the Shalom  
10 Nursing Home for elderly people. Those people  
11 are the ones who always, you know, motivate me  
12 to spend time and energy to get this license.

13 MEMBER DETTMAN: You get a lot of  
14 customers from McKinley Tech High School?

15 MR. TEREFA: Yes, students. When  
16 they come out from the school they buy me  
17 candies, all kind of things. I'm sure if I  
18 get hot dog, as you know, kids like hot dogs.  
19 I'm sure I'm going -- I might get some  
20 customers from the students, too. That was my  
21 hope.

22 MEMBER DETTMAN: I'll figure that

1 out.

2 CHAIRPERSON LOUD: Mr. Terefa, am  
3 I still pronouncing that correctly?

4 MR. TEREFA: Right.

5 CHAIRPERSON LOUD: Mr. Terefa, I  
6 just want to ask a couple of follow-up  
7 questions from Mr. Hood and Mr. Dettman's  
8 questions.

9 Do you currently have -- well, let  
10 me back up. What type of merchandise does  
11 your store currently sell?

12 MR. TEREFA: Yes, sir.

13 CHAIRPERSON LOUD: Just the  
14 different broad categories of what you do  
15 right now?

16 MR. TEREFA: The license I have is  
17 I have grocery store license which is all  
18 kinds of groceries from sodas, candies, paper  
19 towels, cleaning materials; all kinds of  
20 household merchandise. And I have a beer and  
21 wine license.

22 CHAIRPERSON LOUD: Okay.

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1 MR. TEREFA: And I have cigarette  
2 license. And I have medicine license which I  
3 sell Tylenol, all this over-the-counter  
4 medicines.

5 CHAIRPERSON LOUD: Okay.

6 MR. TEREFA: And a food stamp  
7 license. I think that's it.

8 CHAIRPERSON LOUD: Now, do you  
9 have a system or means of tracking sales from  
10 the existing merchandise that you carry?

11 MR. TEREFA: Yes, I do have it.

12 CHAIRPERSON LOUD: You do have a  
13 system?

14 MR. TEREFA: Yes, you know to  
15 balance out which one is -- sell how much, I  
16 do have that.

17 CHAIRPERSON LOUD: Fantastic.  
18 That sort of leads to my next question. How  
19 do your sales categories breakdown right now?

20 MR. TEREFA: Yes. You know, as you  
21 know that neighborhood about six or seven  
22 block, or more than that, there is no store.

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1 So my of my sale is grocery store like, you  
2 know, all kind of grocery merchandise it  
3 maintain.

4 CHAIRPERSON LOUD: Meaning food  
5 stuffs or --

6 MR. TEREFA: A few food stuffs  
7 like bread, cheese, egg, milk. All sort of  
8 household materials; paper towels, cleaning  
9 materials, all those are the ones I sell most.

10 CHAIRPERSON LOUD: Do you have any  
11 either actual or just estimated percentages in  
12 terms of how your sales break down? Like, you  
13 know 30 percent is beer and wine and 40  
14 percent is food stuff, or anything similar to  
15 that? And if you don't have it, that's fine.

16 MR. TEREFA: If you want it  
17 specific, I can tell you approximately.

18 CHAIRPERSON LOUD: Okay.

19 MR. TEREFA: As I said before,  
20 sales is down significantly for the last two  
21 years because there are a couple of apartment  
22 buildings are shut down, because of that my

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1 sales down. But before I can say about 45  
2 percent grocery and the next one is cigarettes  
3 and then beer and wine, about 15 to 20  
4 percent. That's about it. It's  
5 approximately, it's not exact.

6 CHAIRPERSON LOUD: Okay. And as  
7 you envision the additional offerings for  
8 donuts and hot dogs and tea and sandwiches, do  
9 you have a projection in mind in terms of what  
10 your goal is of where they would fit in your  
11 sales pattern?

12 MR. TEREFA: Yes. As I said  
13 before because the sale is down, if I add up  
14 additional merchandise in the store and then  
15 on the top of that, the majority of the  
16 neighborhood they ask me to have coffee and  
17 hot dogs, especially coffee. The  
18 neighborhood, you know, they said that senior  
19 citizen buildings and then another -- there is  
20 another hair -- next door there is a hair  
21 style place. She have a lot of customers.  
22 They ask me a lot of coffees. And so I'm sure

1 it might change my gross sales significantly.

2 CHAIRPERSON LOUD: One of the  
3 questions I think we're looking at is the  
4 extent of the change. Partially because  
5 you're now getting maybe 65 percent of your  
6 sales from groceries and from beer and wine  
7 and then another amount from cigarettes which  
8 you didn't give me an exact number figure for.  
9 But if the proposed offerings that you have,  
10 the donuts, the hot dogs et cetera are  
11 relatively minor, then it doesn't really  
12 effect the kind of operation that you have at  
13 the store. So some of our questioning is  
14 designed to get at an answer to that. On the  
15 other hand, if the proposed offerings  
16 significantly impact what the store will now  
17 be offering the community, it does have an  
18 impact on the appropriate relief for you and  
19 the extent to which the application is  
20 granted.

21 So if you don't have those answers  
22 this morning, that's fine. But again if you

1 have just an estimate of where you think this  
2 new category of sales fit in the overall pie  
3 chart that you kind of outlined, that's  
4 helpful information for us to have.

5 MR. TEREFA: Yes, sir. As i said,  
6 this additional merchandise I trying to  
7 increase in my business, it doesn't increase  
8 any additional traffic or customer from  
9 anywhere else, or there is nobody coming to  
10 get a coffee from anywhere else or Makali  
11 Market have a market and let me go get there.  
12 But as I said, there are people who want to  
13 have that service in my store because it is  
14 next door for them and in the neighborhood.  
15 They don't travel three-quarter of a mile or  
16 half a mile or a mile to get a coffee. And  
17 when they buy their bread, they can get their  
18 coffee. When they buy their cigarettes, they  
19 can get their coffee and hot dog.

20 It is additional service for them.  
21 My customer already come into my store. So I  
22 don't think it creates more traffic in the

1 neighborhood or changes in the neighborhood.  
2 Maybe a passerby might be once in a while see  
3 a coffee sign or anything, they come in to get  
4 a coffee. Just that's once in a while, you  
5 know. It's not like they coming from out of  
6 their way to get my coffee or my hot dog.

7 CHAIRPERSON LOUD: Okay. Thank  
8 you. I don't have any further questions for  
9 right now.

10 Do other Board members have  
11 questions?

12 Okay. Why don't we turn to the  
13 Office of Planning for its report.

14 MS. BROWN-ROBERTS: Good morning,  
15 Mr. Chairman and members of the Board. I'm  
16 Maxine Brown-Roberts from the Office of  
17 Planning.

18 I'm going to stand on the record  
19 and just take questions. The Office of  
20 Planning recommends approval of the  
21 submission. So I'll just take some questions  
22 if you have any.

1 CHAIRPERSON LOUD: Thank you. And  
2 good morning as well.

3 And it was a good report. We may,  
4 in fact, have some questions about it. But  
5 first I wanted to ask the applicant if he has  
6 a copy of the report of the Office of  
7 Planning?

8 MR. TEREFA: Yes, I do.

9 CHAIRPERSON LOUD: Okay.  
10 Fantastic. Do you have any questions for the  
11 Office of Planning? And you don't have to.  
12 If you don't have any questions, that's fine.

13 MR. TEREFA: I don't have any  
14 questions.

15 CHAIRPERSON LOUD: Okay. Let me  
16 turn to Board members and see if there are any  
17 questions.

18 MEMBER DETTMAN: Just one  
19 question. Good morning. How are you?

20 MS. BROWN-ROBERTS: Fine, thanks.

21 MEMBER DETTMAN: Based on what  
22 we're hearing this morning in terms of the

1 description of the services that are going to  
2 be provided, you know what's the use that  
3 we're looking at? Does what's being described  
4 fall into one of the uses articulated in the  
5 regs? I guess, you know in other words what's  
6 the change that's being proposed here?

7 MS. BROWN-ROBERTS: Okay. Let's  
8 see, okay. He has a grocery store and then  
9 the application states that he was trying to  
10 add a deli. When I looked at the regulations  
11 and also spoke to the Zoning Administrator, if  
12 you remember there was some text amendment  
13 that got rid of the deli definition. And the  
14 Zoning Administrator sort of directed me to  
15 the accessory prepared food as a accessory  
16 prepared food shop. And then the discussion  
17 turned around also, and I think you're trying  
18 to get to this also, is it an accessory use or  
19 will it become a primary use.

20 From talking to the applicant I  
21 assessed and even going and looking at the  
22 store and when he showed me where it was going

1 to be, I sort of assessed that it would be an  
2 accessory use.

3 Some of the things he mentioned  
4 here today as with the meat, I hadn't heard  
5 about that before. I think in my discussion  
6 with the applicant it was the hot dog and the  
7 coffee and tea, and that was my assessment was  
8 based on. I didn't hear about the other  
9 things.

10 So therefore, okay, usually if you  
11 have a grocery store and this was something  
12 that's going to be added, usually there would  
13 be a separate area of the store that we could  
14 measure to say, okay, such-and-such a square  
15 footage of the store is going to be used for  
16 that new use. In this case it's not, because  
17 he already has the counter space that he'll  
18 place these things on. And so I wasn't able  
19 to do that sort of analysis to say it's going  
20 to take up a certain amount of square footage  
21 and therefore, again, sort of led me more to  
22 think of it just an accessory use. There's

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1 some uses that he's adding to the grocery  
2 store and not, you know, any other type of  
3 use.

4 A prepared food shop is also a  
5 permitted use within the C-1 District. And so  
6 that's why, you know, we analyzed it as we  
7 did.

8 Anything else?

9 MEMBER DETTMAN: So based on what  
10 you saw in your site visit and what we heard  
11 this morning in looking at the definition of  
12 prepared food shop, you feel that what's being  
13 proposed falls squarely into that definition?

14 MS. BROWN-ROBERTS: Yes. Yes. Or  
15 at least it was the best one. Because it was  
16 sort of hard to really pigeonhole it into one  
17 thing. We just thought this was -- this  
18 seemed as if it's the best one.

19 MEMBER DETTMAN: Yes, I agree with  
20 you. I don't think it fits perfectly into one  
21 container, which is why I'm just kind of  
22 exploring this with you. Because the

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1 definition of prepared food shop mentions a  
2 principle. This structure being used  
3 principally for the sale of prepared foods.  
4 And I'm also thinking of the Harris Teeter  
5 case that the Board kind of decided that  
6 grocery stores have kind of evolved over time  
7 and that the purchase of foods, the purchase  
8 of beer and wine and medicine has just kind of  
9 been this normal evolution of a grocery store.  
10 So I'm just wondering if there's no change of  
11 use being here. We're kind of swapping out  
12 maybe a little bit of sale of groceries for  
13 the sale of a sandwich.

14 MS. BROWN-ROBERTS: Yes. I mean,  
15 actually when I read the application at first  
16 and started looking at it, you know my  
17 inclination is why is he here. But then  
18 because there was this sort of separate  
19 definition for the prepared food shop as  
20 against a grocery store, I think that's why we  
21 looked at it as -- and then, you know, we  
22 brought in the word "accessory" because really

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1 there isn't any accessory prepared food shop.  
2 So we sort of just brought that word in with  
3 it to cover it, to sort of say well at least  
4 to say that this is not the principle use of  
5 the space.

6 ZC CHAIRPERSON HOOD: So accessory  
7 prepared food shops is not in the new text  
8 amendment which the Zoning Commission --

9 MS. BROWN-ROBERTS: No, no.

10 ZC CHAIRPERSON HOOD: And it's a  
11 created, accessory food prepared shop has been  
12 created by whom?

13 MS. BROWN-ROBERTS: No, no. I  
14 think what we're looking at is a prepared food  
15 shop, but we wanted to specifically state that  
16 this was going to be an accessory use and not  
17 the principle use or a joint use of the space.

18 ZC CHAIRPERSON HOOD: So we're not  
19 titling it accessory prepared food shop? It's  
20 not a title?

21 MS. BROWN-ROBERTS: No, it's not a  
22 title.

1                   ZC CHAIRPERSON HOOD: Okay. That  
2 gives me more comfort.

3                   Ms. Monroe, and I should have it  
4 in front of me but I don't, what did we say  
5 prepared food shops were again?

6                   MS. MONROE: The definition  
7 actually?

8                   ZC CHAIRPERSON HOOD: Yes.

9                   MS. MONROE: From the text  
10 amendment?

11                  ZC CHAIRPERSON HOOD: Yes. Right.

12                  MS. MONROE: Is "A place of  
13 business that offers seating or carry out  
14 service or both, and which is principally  
15 devoted to the sale of prepared food,  
16 nonalcoholic beverages or cold refreshment."  
17 Then it says "This term includes an  
18 establishment known as a sandwich shop, coffee  
19 shop or ice cream parlor." That doesn't  
20 really apply.

21                  The problem is because it has to  
22 be principally devoted to prepared food, not

1 alcoholic beverages or cold refreshments, I  
2 don't know if you can have an accessory. I  
3 don't know the answer to that question.  
4 Because if it's principally devoted to  
5 something, you can't be an accessory to  
6 something else which is principally devoted to  
7 something else. I don't know how it works.  
8 But I understand the dilemma, because this  
9 kind of falls in the middle.

10 ZC CHAIRPERSON HOOD: Thank you,  
11 Mr. Brown-Roberts.

12 CHAIRPERSON LOUD: I want to  
13 follow-up Mr. Hood and Mr. Dettman's questions  
14 and Ms. Monroe's explanation of where the  
15 definition may come out for prepared food in  
16 terms of being principle or accessory.

17 First of all, are there categories  
18 of offerings that merchants may bring to the  
19 table that just do not fall into any of our  
20 recognized land use definitions, like prepared  
21 food --

22 MS. BROWN-ROBERTS: Oh, yes.

1 CHAIRPERSON LOUD: -- fast food  
2 establishment, et cetera?

3 MS. BROWN-ROBERTS: Definitely,  
4 yes.

5 CHAIRPERSON LOUD: Okay. So we've  
6 established that that's a possibility in the  
7 universe of possibilities.

8 MS. BROWN-ROBERTS: Yes.

9 CHAIRPERSON LOUD: Now in this  
10 particular case you were leaning in that  
11 direction for a moment and then you quickly  
12 pulled yourself back away from that. But  
13 given the testimony you've heard this morning  
14 what is so persuasive that your office now  
15 concludes that this needs to fall into one of  
16 those categories?

17 MS. BROWN-ROBERTS: I don't think  
18 that it was persuasive. I think that the fact  
19 that the Zoning Administrator sent him for --  
20 say that he needed this relief was sort of  
21 more the convincing. You know, if it's a case  
22 where the applicant hadn't gone to the Zoning

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1 Administrator, I think we would have said,  
2 look, we don't think that you need a special  
3 relief. But sort of the mere fact that he  
4 went there and they sent him over, that was  
5 sort of more where we were. So we're trying  
6 to accommodate that.

7 CHAIRPERSON LOUD: To balance?

8 MS. BROWN-ROBERTS: And then  
9 talking to the Zoning Administrator he seemed  
10 to have said yes, you know, he needs some  
11 relief.

12 CHAIRPERSON LOUD: Was there  
13 something persuasive, some magic bullet in  
14 that conversation with the Zoning  
15 Administrator that made a light go off and  
16 made you see it a little differently, or was  
17 it just the authority of the --

18 MS. BROWN-ROBERTS: Well, it was  
19 just the authority of the Zoning  
20 Administrator.

21 CHAIRPERSON LOUD: I see. Okay.

22 MS. MONROE: Mr. Chairman, let me

1 interject for a second and maybe help out.  
2 Because this is a nonconforming use, I have a  
3 feeling that the ZA was much more concerned  
4 about limiting the additional potential uses  
5 or accessories as opposed to if it were a  
6 matter-of-right use you probably would have  
7 been less concerned about having some relief  
8 granted.

9 I don't know whether the relief is  
10 necessary, but I'm just saying that might have  
11 triggered him to send him here because its  
12 nonconforming, you know, and we're trying to  
13 limit nonconforming use as a limit. They're  
14 expansion, and they're not supposed to be  
15 expanded.

16 So if this were to be seen as an  
17 expansion of his grocery use , the ZA was  
18 right to send him here. It just depends on  
19 where you think it falls. And I think that  
20 might be why he sent him.

21 CHAIRPERSON LOUD: Let me ask this  
22 question, again follow-up: If you had not had

1 that conversation with the ZA and were mindful  
2 that this applicant is seeking this to offer  
3 these additional things, donuts, tea, coffee  
4 and cold sandwiches prepared on site and you  
5 hadn't had that conversation with the ZA,  
6 where would you come out in terms of --

7 MS. BROWN-ROBERTS: I think we  
8 would have said that he didn't need an  
9 application. He already operated a grocery  
10 store and that what he's proposing was just  
11 part of what's usually in a grocery store.

12 CHAIRPERSON LOUD: Thank you. I  
13 don't have any further questions right now.  
14 I don't know if Board members have anything.  
15 Okay.

16 Then next we would -- I know you  
17 had said earlier you didn't have any question.  
18 You still not have -- okay. Just wanted to  
19 double check and make sure.

20 Next we would normally hear from  
21 the Advisory Neighborhood Commission for your  
22 area, that's ANC 5C. The Office of Planning

1 did contact the ANC and the ANC has not  
2 submitted anything. So we're going to move  
3 forward from there.

4 Then we would ask for parties and  
5 persons in support. There's no one here in  
6 the room but us.

7 Parties and persons in opposition?  
8 Again, no one's in the room.

9 So that would turn it back over to  
10 you for any closing remarks that you want to  
11 make. It's your opportunity. You certainly  
12 don't have to, Mr. Terefa. But if you'd like  
13 to, you have the opportunity.

14 MR. TEREFA: The only thing I'm  
15 adding in the closing is, as I said the reason  
16 why I am pursue to have this application -- I  
17 mean this request to be granted is it is like  
18 the neighborhood support me significantly, as  
19 I submitted about 57 signatures, all of them  
20 that neighborhood section in the same  
21 neighborhood. So I will appreciate if the  
22 Board approved it for me so I can have that

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1 limited service for the community.

2 CHAIRPERSON LOUD: Thank you.  
3 Really appreciate your closing. And, in fact,  
4 you did mention something in the record we  
5 haven't alluded to, but there are some  
6 exhibits from neighbors. You mentioned the  
7 one I think that has about 57 neighbors or so  
8 that support you. And I don't have an exhibit  
9 number on my copy of it, but it's in the  
10 record and it's one of our exhibits.

11 There's also a letter in the  
12 application, which is Exhibit 23, and that's  
13 from one neighbor, Ms. Hunter, who states her  
14 opposition to the grant of relief.

15 So I just wanted to mention those  
16 for the record.

17 If you will be patient for

18 CHAIRPERSON LOUD: One second I'm  
19 going to confer with Board members and make an  
20 assessment if this is a case that we are  
21 prepared to deliberate on today or if we will  
22 need to schedule it for a separate session.

1 MR. TEREFA: Yes, sir.

2 CHAIRPERSON LOUD: That you, Mr.  
3 Terefa. Again, appreciate your patience.

4 We've decided that we are going to  
5 go ahead and deliberate and vote on your case  
6 today. Appreciate your coming down this  
7 morning. Sorry you had the problems with the  
8 parking. But I do think we will be able to  
9 provide an answer for your request for relief.

10 What I'm going to do then is turn  
11 it over to Mr. Dettman to get us started on  
12 the deliberation.

13 MEMBER DETTMAN: Thank you, Mr.  
14 Chairman.

15 In reviewing the record before  
16 today's hearing and then listening to what the  
17 applicant has in mind in terms of the  
18 additional services that he wants to provide,  
19 and listening to DC OP, I really just don't  
20 see anything that's being proposed that rises  
21 to a level that could be considered an  
22 accessory use or a principle use, or any use

1 that's defined in our regulations, for that  
2 matter.

3 I agree with DC OP that if you had  
4 to take what's being proposed and put it into  
5 something in our regs, the closest thing that  
6 resembles what's being proposed a prepared  
7 food shop. But the definition of prepared  
8 food shop does say that its principally  
9 devoted to the sale of prepared food. And I  
10 think we heard in the testimony that that's  
11 not going to be the case here. This is going  
12 to be a grocery store primarily.

13 And I alluded to the Harris Teeter  
14 case, too. I think that it's not uncommon to  
15 walk into either a 7-Eleven or a Harris Teeter  
16 and see that they're providing the services  
17 that the applicant is proposing to provide as  
18 well. And I suspect on their C of Os you  
19 would see grocery store. I think that this is  
20 a normal component of a modern day grocery  
21 store.

22 So that being said, I would be in

1 favor of actually dismissing this case. And  
2 I'm prepared to make a motion to do so, which  
3 essentially says -- and I commend the  
4 applicant for doing his due diligence, going  
5 to talk to people, seeing if he needs  
6 permission to do this before going ahead and  
7 doing that. But by dismissing the case  
8 essentially what that means is that the  
9 applicant doesn't need permission to do this.  
10 As long as he is only going to do what he  
11 proposes to do, I think that he doesn't need  
12 to have his C of O changed, he doesn't need  
13 additional relief. He could go ahead as the  
14 owner and operator of a grocery store and do  
15 what he's proposing.

16

17 ZC CHAIRPERSON HOOD: Is that your  
18 motion?

19 MEMBER DETTMAN: I could make the  
20 motion.

21 ZC CHAIRPERSON HOOD: Okay. Well,  
22 I'll just go ahead. I would move for

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1 dismissal of Application No. 17906.

2 ZC CHAIRPERSON HOOD: And I'll  
3 second the motion.

4 I just want to echo what Board  
5 Member Dettman mentioned about commending the  
6 applicant for seeking first to see what the  
7 proper approvals are, and also in going to the  
8 variety of streets that you did. I noticed  
9 that you just didn't go on T Street. You went  
10 on Todd Place, you went on 4th Street. And you  
11 wanted to make sure that was vetted through  
12 the community. And also noted that we did  
13 have, as the Chairman alluded to, Exhibit 23  
14 a letter in opposition. But in reading the  
15 letter I just see other than an issue about  
16 cleaning this, I don't really think that  
17 there's an issue to stop us from moving  
18 forward. And I will, again, second that  
19 motion.

20 CHAIRPERSON LOUD: Thank you, Mr.  
21 Dettman. I thought that was an excellent  
22 summary of where we are in the case and what

1 the evidence has shown, and the peculiar state  
2 of our regulations, so to speak, and this need  
3 to see if it fits into any pigeonhole that we  
4 currently have or if it falls outside of all  
5 of them. So I think it was a great summary.

6 I, too, believe that you captured  
7 everything that I thought about the case in  
8 terms of whether a dismissal is inappropriate.  
9 I only wanted to echo something I heard you  
10 say in terms of the applicant being very  
11 intentional about limiting the use to what's  
12 been described here today and the testimony  
13 that came out today, and not through  
14 inadvertence or just the press of everyday  
15 business allowing some kind of sprawl of use  
16 to gradually consume the main operation of  
17 your business.

18 And I note, like Mr. Hood does,  
19 that there is tremendous support for the  
20 application by way of the petition. And there  
21 is also one exhibit that is adamantly opposed  
22 to it. And I just want to read from that for

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1 two seconds to say that "the store's the worst  
2 I've ever seen and I lived in this areas in  
3 1949." May or may not be the case, obviously  
4 it's only one person's opinion. But I think  
5 that staying within the uses that Mr. Dettman  
6 outlined and not allowing this to get to any  
7 expanded use that would bring you within our  
8 regulations related directly to this person's  
9 concern about litter and/or cleanliness of the  
10 place. So it's just something to remain  
11 mindful of as this Board deliberates further  
12 and votes this morning on Mr. Dettman's motion  
13 for dismissal.

14 There's been a motion to dismiss.  
15 The motion has been seconded. All in favor  
16 say aye.

17 ALL: Aye.

18 CHAIRPERSON LOUD: All opposed?

19 Any abstentions?

20 Ms. Bailey, can you call the vote?

21 MS. BAILEY: Sure, Mr. Chairman.

22 The vote is recorded as three-

1 zero-two to dismiss the application.

2 Mr. Dettman made the motion. Mr.  
3 Hood seconded. Mr. Laud supported the motion.

4 Dismissal order, Mr. Chairman, to  
5 be written.

6 CHAIRPERSON LOUD: Thank you, Ms.  
7 Bailey. Appreciate that.

8 MEMBER DETTMAN: Mr. Chairman,  
9 just a couple of comments. And we had  
10 discussed this. In the dismissal order if we  
11 could make it very, very clear as to the scope  
12 of services that's going to be offered.  
13 Because I think what the applicant needs to  
14 understand is that this needs to be simply a  
15 very, very minor, a couple of sandwiches here  
16 and there, hot dogs, coffee and tea. This  
17 can't grow to something that actually could  
18 fit into the regs.

19 And just to follow-up on the  
20 Exhibit 23, and this is just a personal  
21 observation. This has nothing to do with our  
22 deliberations. But unfortunately our regs

1 don't allow for these types of stores in  
2 residential districts, but as an urban planner  
3 I think that they should. I think that these  
4 things are real community assets. And so  
5 going forward providing your sandwiches and  
6 all that actually is going to require a little  
7 bit more responsibility on your part. I mean,  
8 there could be more trash, there could be  
9 litter, loitering. So I would encourage you  
10 as the Board is dismissing this we can't  
11 really talk to the maintenance and upkeep of  
12 it, but I would encourage you to see what you  
13 can do to the exterior appearance of this  
14 place. I think the community supports you and  
15 they take a lot of pride in you being there.  
16 But I think that some improvements could be  
17 done to the facade of this building.

18 ZC CHAIRPERSON HOOD: And I agree  
19 with Board Member Dettman.

20 MR. TEREFA: Yes, sir. To all of  
21 us after, you know, as I said I have a plan  
22 after I get this permission, I have a plan to

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1 do. Because they don't give me the license  
2 just like that because I have approval from  
3 here. They come in and inspect the area  
4 pretty good before I get the permission to do  
5 that. So I have a plan to do everything  
6 possible to make it look like a better place.  
7 I promise to do that, sir.

8 CHAIRPERSON LOUD: Thank you, Mr.  
9 Terefa. We'll be holding you to that, and  
10 visiting the store sometime soon to check it  
11 out.

12 Do we have any further cases this  
13 morning?

14 MS. BAILEY: Not for the morning,  
15 Mr. Chairman.

16 CHAIRPERSON LOUD: Thank you, Ms.  
17 Bailey.

18 Shall we adjourn the morning  
19 session?

20 MS. BAILEY: Adjourn it is.

21 CHAIRPERSON LOUD: Is there  
22 anything additional that we need to do?

1 MS. BAILEY: Not at this time,  
2 sir.

3 CHAIRPERSON LOUD: So this session  
4 is adjourned.

5 (Whereupon, at 11:33 a.m. the  
6 morning session of the Public Hearing was  
7 adjourned.)

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1 proceeding is being recorded by a Court  
2 Reporter and is also webcast live.  
3 Accordingly, we must ask you to refrain from  
4 any disruptive noises or actions in the  
5 hearing room.

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

13 All persons planning to testify  
14 either in favor or in opposition are to fill  
15 out two witness cards. These cards are  
16 located to my left on the table near the door  
17 and on the witness tables.

18 Upon coming forward to speak to  
19 the Board, please give both cards to the  
20 reporter sitting to my right.

21 The order of procedure for appeal  
22 applications will be as follows. And I'm

1 going to skip the order of procedure for  
2 special exceptions and variances.

3 The procedure is as follows:

4 The statement and witnesses of the  
5 appellant, the Zoning Administrator or other  
6 government official's case, the case for the  
7 owner/lessee or operator of the property  
8 involved, if not the appellant and I think it  
9 in this case it is the appellant the ANC  
10 within which the property is located, the  
11 intervenor's case if permitted by the Board  
12 and then any rebuttal and closing by the  
13 appellant.

14 Pursuant to Sections 3117.4 and  
15 3117.5 the following time constraints will be  
16 maintained:

17 The applicant, appellant, persons  
18 and parties, except an ANC in support,  
19 including witnesses, 60 minutes collectively;

20 The appellees, persons and  
21 parties, except an ANC in opposition,  
22 including witnesses, 60 minutes collectively;

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1                   Individuals 3 minutes.

2                   These time restraints do not  
3 include cross examination and/or questions  
4 from the Board.

5                   Cross examination of witnesses is  
6 permitted by the applicant or parties. The  
7 ANC within which the property is located is  
8 automatically a party in special exception and  
9 variance cases.

10                  Nothing prohibits the Board from  
11 placing reasonable restrictions on cross  
12 examination, including time limits and  
13 limitations on the scope of cross examination.

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

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1           The Sunshine Act requires that the  
2 Public Hearing on each case be held in the  
3 open before the public. The Board may,  
4 consistent with its Rules of Procedure and the  
5 Sunshine Act, enter Executive Session during  
6 or after the Public Hearing on a case for  
7 purposes of reviewing the record or  
8 deliberating on the case.

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

15           Please, turn off all beepers and  
16 cell phones at this time, so as not to disrupt  
17 these proceedings.

18           The Board will make every effort  
19 to conclude the public hearing as near as  
20 possible to 6:00. If the afternoon cases are  
21 not completed at 6:00 p.m. the Board will  
22 assess it whether it can complete the pending

1 case or cases remaining on the agenda.

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

13 Does the staff have any  
14 preliminary matters?

15 MS. BAILEY: Mr. Chairman, members  
16 the Board, to everyone, good afternoon.

17 Yes, Mr. Chairman. One of the  
18 cases that was originally scheduled for this  
19 afternoon has been withdrawn. The application  
20 No. 17745. It's the Appeal of Advisory  
21 Neighborhood Commission 3E. As I indicated,  
22 that application was withdrawn, Mr. Chairman.

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1 CHAIRPERSON LOUD: Thank you, Ms.  
2 Bailey.

3 MS. BAILEY: There was also  
4 another preliminary matter. It has to do with  
5 the appeal -- or the other appeal that's  
6 scheduled for the afternoon. Mr. Chairman,  
7 staff is going to suggest or recommend that  
8 the case be called in and the witnesses be  
9 sworn in before the Board take up the request  
10 for postpone of this case.

11 CHAIRPERSON LOUD: Okay. Let's do  
12 that then. Would you like to call the first  
13 case?

14 MS. BAILEY: Yes, Mr. Chairman.  
15 I'll just swear the witnesses in real quickly  
16 and then call the case.

17 CHAIRPERSON LOUD: Okay.

18 MS. BAILEY: Please stand all  
19 those persons who will be testifying.

20 (Witnesses sworn.)

21 MS. BAILEY: This is an appeal.  
22 The No. 17902. It's the Appeal of Joseph

1 Park, pursuant to --

2 MR. GREEN: Excuse me. I hate to be  
3 disruptive. And please forgive me, Mr.

4 Chairman. My name is Matthew J. Green, Jr.,  
5 and I'm an Assistant Attorney General with the  
6 Department of Consumer Regulatory Affairs.

7 We have an interpreter present who  
8 had just came in as the other witnesses were  
9 being sworn. We would ask that the  
10 interpreter also be sworn.

11 Thank you very much.

12 CHAIRPERSON LOUD: Thank you, Mr.  
13 Green. I believe we can accommodate that  
14 request without any problems.

15 MS. BAILEY: Please stand.

16 (Interpreter sworn.)

17 MS. BAILEY: Starting over, Mr.  
18 Chairman, this is an appeal. The number is  
19 17902. It's the Appeal of Joseph Park, and  
20 it's pursuant to 11 DCMR § 3100 and 3101 from  
21 an August 29, 2008 decision of the Zoning  
22 Administrator to revoke Certificate of

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1 Occupancy No. 167331, for a liquor store,  
2 Oasis Liquors. The property is located in the  
3 R-4 District at premises 1179 3rd Street,  
4 Northeast. Square 773, Lot 277.

5 There are two preliminary matters  
6 that are associated with this case that I'm  
7 aware of, Mr. Chairman, at this time one of  
8 which is there is a request from the Capitol  
9 Hill Neighborhood Association to intervene in  
10 the case.

11 And secondly, there was a request  
12 from the applicant to postpone the hearing for  
13 a later date.

14 And those two requests, Mr.  
15 Chairman, from my understanding, are before  
16 the Board at this time.

17 CHAIRPERSON LOUD: Okay. Thank  
18 you, Ms. Bailey.

19 Why don't we have the parties come  
20 forward. Parties are forward. All right.

21 And let's hear first from the  
22 appellant in terms of what I understand is a

1 request to postpone.

2 MR. GELL: Thank you, Mr.  
3 Chairman. My name is Stephen Gell. I'm an  
4 attorney. My office is at 1101 30th Street,  
5 Northwest.

6 It seemed to us that since there  
7 is an application pending and we had been  
8 through ANC meetings on both the appeal and  
9 the application and there had not been an  
10 opportunity for negotiations between Mr. Park,  
11 myself and the neighborhood, and the fact that  
12 Mr. Park had agreed to one of the major  
13 demands that we had heard in all of those  
14 meetings, that he eliminate the hard liquor  
15 from his application. For all those reasons  
16 it seemed to us that if we could reach an  
17 agreement on the application for variances, it  
18 would be unnecessary to have the appeal. And  
19 therefore, we requested that the appeal be  
20 held either at or after the hearing on the  
21 application.

22 It seems to me to be the most

1 economic way for the Board to deal with these  
2 cases. And we're willing to do that at this  
3 point. That's it.

4 CHAIRPERSON LOUD: Thank you, Mr.  
5 Gell. Just for clarification, is the proffer  
6 or suggestion that the appeal would not go  
7 forward regardless of what happens with  
8 respect to the variance or just that you would  
9 want additional time to negotiate some of the  
10 finer edges of the use at the site? And then  
11 depending on how the Board deals with the  
12 variance, you would make a decision on the  
13 appeal?

14 MR. GELL: Certainly if the Board  
15 were to grant the variance as it would have  
16 been requested and changed, obviously we would  
17 have to at some point change the request in  
18 accordance with whatever agreement we came to  
19 with the neighbors. But if the Board were to  
20 grant that, of course, we would withdrawn the  
21 appeal. There would be no need to hear the  
22 appeal.

1 CHAIRPERSON LOUD: But the appeal  
2 might still move forward if the Board should,  
3 just assuming arguendo. not grant the variance  
4 relief?

5 MR. GELL: I suppose that would be  
6 a possibility.

7 CHAIRPERSON LOUD: Okay. Just  
8 wanted to be clear on that.

9 Now I also see, I'm looking at  
10 your letter dated March 31, 2009 --

11 MR. GELL: I'm sorry for the date.

12 CHAIRPERSON LOUD: Oh, this was  
13 actually --

14 MR. GELL: It was not March 31.  
15 That was -- I forgot to change the date when  
16 I -- it was April 13th.

17 CHAIRPERSON LOUD: Well, it's date  
18 stamped April 13th. But I think we're looking  
19 at the same thing. It's a request for a  
20 postponement. And you represent in there that  
21 you were working with Ms. Anne Phelps and  
22 should that be construed by us as an

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1       indication that these discussions are still  
2       underway with Ms. Phelps?

3               MR. GELL: We've been trying to  
4       start the discussions. As I say, Mr. Park has  
5       moved considerably from the position that he  
6       had prior to this in an effort to start those  
7       discussion. Where they end up, we can't tell.  
8       They may be different from what he has now  
9       proposed, they may be the same. We hope the  
10      neighborhood will accept what he has said.  
11      But in that negotiation we will see what kind  
12      of agreement we can have.

13              And, of course, he would assess  
14      his ability to make a go of whatever uses that  
15      he finally is asked to agree to. And that  
16      would also be a factor, of course, in your  
17      consideration of his application.

18              So they haven't started. We're  
19      hopeful that they will start. I have a pretty  
20      good record on bringing these sorts of things  
21      to closure. The Board might remember, I don't  
22      know, ten or 15 of them that I've done. Even

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1 in situations where the neighborhoods have  
2 been hostile, I always find a way for the  
3 parties to get -- both sides to get at least  
4 enough of what they want so that they can come  
5 to agreement. And I have every reason to  
6 believe to believe that would happen here.  
7 But, again, we need to start that process.  
8 And I think Ms. Phelps is willing to get  
9 together and negotiate. I don't see any reason  
10 why she wouldn't.

11 CHAIRPERSON LOUD: Okay. And  
12 certainly I think the law favors amicable  
13 resolution of disputes between neighbors as  
14 opposed to judicial proceedings. So that  
15 would be something that we would take into  
16 consideration.

17 But why I don't see if Mr. Dettman  
18 or Mr. Hood have any questions, and then we'll  
19 turn to DCRA.

20 Okay. Why don't we turn to you,  
21 Mr. Green and DCRA.

22 MR. GREEN: Good afternoon, Mr.

1 Chairman and Members of the Board.

2 The position of the Department of  
3 Consumer and Regulatory Affairs is in strong  
4 opposition to continuing this matter,  
5 postponing it, however you want to  
6 characterize it. And I'd like to point out a  
7 couple of things.

8 First of all, in spite of Mr.  
9 Gell's alleged Ralph Bunch type skills of  
10 bringing people together, I would point out  
11 that this matter has been going on since  
12 December. And if he could have exercised his  
13 good offices during that time frame and there  
14 were certain ongoing negotiations, certainly  
15 that would demonstrate clearly a seriousness  
16 of purpose in trying to resolve this thing.  
17 That's not the case.

18 I would also point out that the  
19 arguments pointed out in his letter, though  
20 dated April the 13th though really on the 31st  
21 of March, it mentions a Ms. Anne Phelps. I  
22 think that it would have been appropriate if

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1 they had certain ongoing discussions taking  
2 place with her relatively to this resolution,  
3 that certainly she would have been signatory  
4 or been a proponent of this postponement, or  
5 there would be some statement from her  
6 indicating that she also wished this matter to  
7 be postponed, or that she perhaps would have  
8 contacted DCRA and indicated to the government  
9 that this matter should be postponed, and the  
10 government would look at it in a different  
11 light. That hasn't taken place.

12 I would out also, Mr. Chairman,  
13 that this letter is better served addressing  
14 a variance type proceeding. The content of  
15 it, I mean he has in it certain hopes, certain  
16 wishes, certain aspirations none of which have  
17 to fruition.

18 CHAIRPERSON LOUD: But there's no  
19 prohibition against requesting a continuance--

20 MR. GREEN: That's absolutely  
21 right. You're absolutely right. But normally  
22 when people seek a continuance, there is some

1 extraordinary circumstance pending such as,  
2 the unavailability of witnesses, sickness of  
3 counsel, sickness of witnesses, sickness of  
4 the proponents or some other cataclysmic  
5 event. Or if the parties were close to  
6 reaching a resolution without having to come  
7 before this body. None of these extraordinary  
8 matters have been demonstrated in his letter  
9 or in his presentation, Mr. Chairman and  
10 members of the Board.

11 I would also point out since we're  
12 talking about saving time and not wasting the  
13 Board's time, I would point out that all of  
14 our witnesses are here. These people have  
15 jobs other than coming down here, all due  
16 respect, to give testimony.

17 Members of the community related  
18 to this matter are here and ready to testify.  
19 Our witnesses are ready to testify.

20 Now if you want to put this matter  
21 off, I would ask the Board to really look at  
22 all of these things, all of these factors:

1 The seriousness of purpose in terms of  
2 reaching a resolution; the probability of  
3 success on the merits; all of this as it  
4 relates to variants. That's what this letter  
5 is all about.

6 This is a variance request. This  
7 is a variance hearing, that is this letter  
8 sent by counsel. This is not a variance  
9 proceeding.

10 Thank you very much.

11 CHAIRPERSON LOUD: Thank you, Mr.  
12 Green. I appreciate your articulation of your  
13 position.

14 We've also been joined at the  
15 table, and can you state your name for the  
16 record, please?

17 COMMISSIONER PHELPS: Good  
18 afternoon. I'm Anne Phelps. The ANC  
19 Commissioner for ANC 604 and duly appointed by  
20 ANC 6C to represent the Commission in this  
21 afternoon.

22 CHAIRPERSON LOUD: Good afternoon,

1 Ms. Phelps. How are you?

2 COMMISSIONER PHELPS: Good. Thank  
3 you.

4 CHAIRPERSON LOUD: Great. Does  
5 the ANC have a position on continuance?

6 COMMISSIONER PHELPS: We actually  
7 oppose a continuance or a postponement of this  
8 matter. And I convened that yesterday to  
9 DCRA, Mr. Rengel.

10 And this letter dated April 13th,  
11 I just received it immediately prior to this  
12 proceeding today.

13 CHAIRPERSON LOUD: Okay. So the  
14 representation regarding your name in this  
15 letter is accurate, but only in the most  
16 technical sense, perhaps?

17 COMMISSIONER PHELPS: I would  
18 actually consider it a very generous reading  
19 of what's happened this far.

20 CHAIRPERSON LOUD: Okay. Mr. Gell  
21 contacted me Thursday afternoon via email  
22 about Mr. Park, what he terms a concession and

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1       how he would like to approach the use  
2       variance. That was the start of a four day  
3       Easter weekend for my family, and so I didn't  
4       turn to it until this morning. And so we  
5       actually haven't had any discussions about  
6       whether or not we're going to have ongoing  
7       negotiations about this. I emailed this  
8       morning to say that I would take this to the  
9       community, but he'd also contacted some  
10      community members. And the immediate response  
11      I got from them was that they weren't  
12      interested in negotiating for a convenience  
13      store with beer and wine.

14                   I think we have some disagreement  
15      about how we use the word "liquor store."

16                   CHAIRPERSON LOUD: Let me ask both  
17      the ANC and DCRA what you see as the prejudice  
18      from a continuation? I can see some very  
19      strong points in favor it, and I'll ask my  
20      colleagues as well to weigh in. Certainly we  
21      always from this perch are interested in  
22      settlements and encouraging communication and

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1 dialogue. And if there is at least the  
2 possibility out there that it may happen in  
3 this case, although there's some testimony  
4 that it may not happen, there's also some  
5 judicial economy to having both cases heard  
6 the same day so that if there is any  
7 duplication of witnesses they're all there the  
8 same day and they don't have to come back for  
9 two separate occasions.

10 But again, I want to hear from the  
11 ANC and the DCRA what you see as the prejudice  
12 if we were to continue the case?

13 MR. GREEN: I looked in the rear  
14 just to see how many people were here to  
15 address this matter today, Mr. Chairman. And  
16 as I pointed out, they have other commitments.  
17 It's difficult for people to come down, even  
18 when matters effect them directly. It's  
19 difficult sometimes to leave work. It's  
20 difficult to address the issue of child care.  
21 I don't have to go on, but you understand the  
22 economic laws people suffer when they have to

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1 continually come to a proceeding, whether it  
2 is a court proceeding or an administrative  
3 proceeding when they can address the matter  
4 before the court or the administrative body  
5 currently. That's part of the prejudice, Mr.  
6 Chairman.

7           The issue is, again, we're talking  
8 about variance and we're talking about an  
9 appeal. Now, a variance proceeding is one in  
10 which the Department of Consumer and  
11 Regulatory Affairs would not a party. That's  
12 strictly a matter before the Board. If we get  
13 involved in trying to address an appeal and a  
14 variance the same day what you have is an  
15 attempt to play baseball on a soccer field  
16 while a soccer game is also in progress. And  
17 I don't the Board would want a mishmash of  
18 that sort of thing to take place.

19           I think that there are some  
20 straightforward issues that can be addressed  
21 in either circumstance. I believe that the  
22 Board would best serve not only the

1 Department, the appellant and the members of  
2 the community by having one proceeding and one  
3 proceeding only.

4 If the counsel wants the Board to  
5 consider a variance as he's raised in his  
6 April 13th letter, then I think the proper  
7 thing to do would be to do what? Withdraw the  
8 appeal and consider a variance. Turn this  
9 into a variance proceeding. Withdraw his  
10 appeal.

11 CHAIRPERSON LOUD: Thank you, Mr.  
12 Green. I think I've gotten the flavor of some  
13 of your concerns.

14 We're going to move to wrap up  
15 this part of the discussion with respect to  
16 the continuance.

17 Ms. Phelps, DCRA indicated that  
18 there's potential prejudice to witnesses, sort  
19 of an awkwardly scheduled orchestration of  
20 both cases on the same cases as factors being  
21 prejudicial.

22 Did you have anything that you

1 wanted to add to that, or does that capture  
2 your concern as well?

3 COMMISSIONER PHELPS: I do. I  
4 have a couple of things I'd like to add.

5 In addition to the issue of the  
6 witnesses being here, Mr. Gell has already  
7 indicated to the Board today that should the  
8 use variance application fail, it's likely or  
9 a possibility that he would continue this  
10 appeal. So then what you're asking is these  
11 witnesses who are here today to give up a  
12 third day of work. So not just today, but  
13 when the use variance is before this Board and  
14 then if he continues the appeal at a later  
15 date, a third day for people to give up work.  
16 And that's --

17 CHAIRPERSON LOUD: Well, yes and  
18 no. Because if we do this at all, we would  
19 schedule both of those cases on the same day  
20 so that --

21 COMMISSIONER PHELPS: Well, I  
22 still think giving another day when we've all

1 given up our time and taken vacation from work  
2 or unpaid leave, I think that's -- these  
3 hearings are already set up in a way that  
4 doesn't encourage community input and because  
5 of the timing during the date for those of us  
6 that work. And so I would say that I think  
7 should be considered with substantial weight  
8 as the inconvenience to the witnesses who have  
9 attended today.

10 And the other issue I have is that  
11 -- and DCRA's already indicated these are two  
12 separate issue, C of O and use variance. But  
13 the other thing when the applicant filed for  
14 the use variance in December of 2008, in that  
15 letter to this body he requested a  
16 consolidated proceeding at that time and it  
17 hasn't been granted. There were two hearings  
18 already scheduled. So how many times is he  
19 allowed to ask for this again before we just  
20 move ahead.

21 CHAIRPERSON LOUD: Okay.

22 COMMISSIONER PHELPS: And then I

1 have concerns about it being asked and  
2 answered already.

3 CHAIRPERSON LOUD: Okay.

4 COMMISSIONER PHELPS: Thank you.

5 CHAIRPERSON LOUD: Then Board  
6 members do you have any questions or would you  
7 like to weigh in with this turn of events?

8 ZC CHAIRPERSON HOOD: Yes. The  
9 disadvantage for me as a Zoning Commissioner,  
10 this is the first time I've seen this. I  
11 didn't know we've already dealt with this one  
12 or two times prior.

13 I just want to ask Mr. Green --  
14 well let me back up. If someone can help me  
15 understand, and I don't know whether it was  
16 scheduling or what, how did we get the appeal  
17 before we got the variance case, which I think  
18 is coming up in two weeks? So how did we get  
19 to that point? Maybe, Mr. Gell, you can help  
20 me. I don't understand.

21 MR. GELL: Mr. Hood, as far as the  
22 scheduling is concerned, I think it was simply

1 an oversight on the part of the office. At  
2 the bottom of my request for the variance I  
3 asked for them to be consolidated. Yes, for  
4 the variance. I asked for them to be  
5 consolidated.

6 I filed the application for the  
7 variance subsequent to the application for the  
8 appeal. That had a very tight time frame.  
9 And I don't know whether the office could have  
10 scheduled them together or whether it was  
11 simply just missed.

12 ZC CHAIRPERSON HOOD: Okay.

13 MR. GELL: I don't think the Board  
14 made a decision that they didn't want to hear  
15 them on the same day.

16 I might add that I had really  
17 hoped to forestall the inconvenience to the  
18 witnesses and so forth when Friday I asked the  
19 DCRA counsel, or that is AJ if he would join  
20 in my request for a continuance. And  
21 yesterday when I called, not having gotten a  
22 response I called and asked again. And I was

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1 told that he was going to check with Ms.  
2 Phelps. And they made the decision that they  
3 wanted to go ahead. So --

4 ZC CHAIRPERSON HOOD: Okay.

5 MR. GELL: -- I realize it's an  
6 inconvenience. But, by the way, if we can  
7 reach an agreement, nobody will have to show  
8 up at the hearing. I mean, they may if they  
9 want to, but there would not be the antagonism  
10 and the adverse testimony that you would find  
11 today or later if we don't get it.

12 ZC CHAIRPERSON HOOD: And I will  
13 say, Mr. Gill, on that note history has shown  
14 that to be very prudent. That has actually  
15 come to reality. But I understand -- and I'm  
16 not sure which way the Board is going to go.  
17 This is only one commissioner. I understand  
18 people take off from work, people come down.  
19 And I'm very cognizant of it. That's why the  
20 Zoning Commission meets at night. So we all  
21 who work during the day, like myself, can do  
22 that. But I think the BZA is a different type

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1 of mechanism because they have so many smaller  
2 cases. And you think that you wait a long  
3 time to get your case now, if they do their  
4 stuff at night you might be five years before  
5 you're able to get in front of this Board.  
6 That's due diligence to the BZA for coming  
7 down and spending the whole day. So it works  
8 both ways, Commissioner.

9 And I just want you to know that  
10 we take all that. I know we have four or five  
11 folks here today to testify.

12 Let me ask Mr. Green, have you  
13 ever asked for a postponement?

14 MR. GREEN: Yes. I've asked for a  
15 postponement --

16 ZC CHAIRPERSON HOOD: Okay.  
17 That's all.

18 MR. GREEN: And I've been sure that  
19 it was one that merited consideration.  
20 Somebody was sick, somebody was totally  
21 unavailable.

22 ZC CHAIRPERSON HOOD: Okay. Thank

1 you.

2 Thank you, Mr. Chairman.

3 MS. MONROE: Mr. Chairman, I hate  
4 to do this.

5 CHAIRPERSON LOUD: Yes.

6 MS. MONROE: This is kind of out  
7 of turn.

8 CHAIRPERSON LOUD: Yes, go ahead.

9 MS. MONROE: Can I ask a question?

10 CHAIRPERSON LOUD: Yes.

11 MS. MONROE: Which might help this  
12 along maybe.

13 Mr. Gell, you just said that if  
14 you come to an agreement with the  
15 neighborhood, maybe nobody will have to come  
16 down. Does that mean that you feel you  
17 wouldn't need a hearing at all? Nothing?

18 MR. GELL: No, there's have to be  
19 a hearing, of course. What I was saying that  
20 the neighborhood would be satisfied and they  
21 wouldn't be coming out to oppose the action  
22 that we would be requesting.

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1 MS. MONROE: But you'd still have  
2 to decide the discontinuance, right? I mean  
3 that seems to be the crux of the matter here,  
4 not what the neighborhood wants or doesn't  
5 want?

6 MR. GELL: Decide the which?

7 MS. MONROE: The discontinuance,  
8 whether or not the nonconforming use was  
9 discontinued: That's the essence of the  
10 appeal. And that --

11 MR. GELL: That's right.

12 MS. MONROE: I don't want to get  
13 into an argument. But that needs to be  
14 decided.

15 MR. GELL: It would be mute. In  
16 our view that would be mute because we would  
17 withdraw it. If the Board granted a variance--

18 MS. MONROE: But they can't grant a  
19 variance. So you're saying independent, it  
20 would be just a separate, a new use variance.

21 MR. GELL: That's right.

22 MS. MONROE: Forget the old use at

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1 all?

2 MR. GELL: That's correct.

3 MS. MONROE: Okay.

4 CHAIRPERSON LOUD: Why don't we do  
5 this: Unless Mr. Dettman has some questions.  
6 You didn't get an opportunity yet.

7 MEMBER DETTMAN: No questions.

8 CHAIRPERSON LOUD: Okay.

9 MEMBER DETTMAN: But a position on  
10 what's before us right now, this question of  
11 continuance.

12 Yes, I understand and I  
13 understand Mr. Gill's desire to postpone so  
14 that we can work out issues with the  
15 community. Those are issues that are going to  
16 have to be worked out whether we go forward  
17 today or not. I mean, they're issues that  
18 really go towards the variance request. But  
19 after hearing what I've heard, I don't really  
20 see a need to postpone this. And really it's  
21 Ms. Monroe put it perfectly. It's the question  
22 of discontinuance. I think that's the

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1 question that needs to be answered before we  
2 go forward with the variance.

3 If we were to hear this variance  
4 first, it is still the question that needs to  
5 be answered. Because if the Board was to find  
6 that there's no discontinuance, you don't need  
7 a use variance. You can simply change from  
8 one use to other. And I think that that  
9 question is best answered in this venue under  
10 the appeal.

11 CHAIRPERSON LOUD: Thank you, Mr.  
12 Dettman.

13 We're going to spend just two  
14 seconds up here discussing our thoughts on  
15 proceeding forward and then come right back.  
16 We're not going to break. And make a decision  
17 on the continuance request.

18 Okay. Thank you. We appreciate  
19 your patience. We just wanted to clarify how  
20 best to proceed forward.

21 I think we've heard testimony and  
22 argumentation from the appellant as well as

1 given an opportunity to DCRA Zoning  
2 Administrator and the ANC as well to weigh in.  
3 And my feeling, I'll let other Board members  
4 weigh in if you'd like to, is we strongly  
5 encourage parties to attempt settlement. I  
6 mean, it's something that prompts goodwill  
7 among neighbors, it prompts judicial economy  
8 and so on and so forth. And so under normal  
9 circumstances we would be in support of that.

10 I think what is different here is  
11 that the likelihood of this delay leading to  
12 fruitful settlement discussions does not  
13 appear high in light of Ms. Phelps' testimony,  
14 and she's referenced in this letter that she--  
15 the position of the ANC that the case go  
16 forward to today.

17 It's also helpful to know that the  
18 witnesses are here and would be somewhat  
19 prejudiced by our continuing the case. But I  
20 think more for me the whole idea of settlement  
21 were to grant it at all would be to facilitate  
22 some fruitful discussions around the parties

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1 working out their differences. And it doesn't  
2 appear from what we've heard so far that there  
3 would such a likelihood of that happening that  
4 we could return on May 12 and be in much of a  
5 different posture.

6 So I don't think there's any  
7 prejudice that I've heard to the appellant  
8 from going forward today.

9 And I'll turn it over to my  
10 colleagues if they'd like to weigh in as well.  
11 And then, Mr. Gell, you can respond. But  
12 first let me turn it over to Dettman and Mr.  
13 Hood.

14 MR. GELL: Could I say something  
15 before the vote?

16 CHAIRPERSON LOUD: Sure. Well,  
17 we're not going to vote just yet. If they  
18 would like to weigh in on the discussions  
19 we've been having so far, this would be a good  
20 time. And then you can say something right  
21 after that. That way you can catch all of our  
22 responses.

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1                   ZC CHAIRPERSON HOOD: To save some  
2 air time, Mr. Chairman, we concur. I concur.

3                   CHAIRPERSON LOUD: Mr. Gill, you  
4 have the last word.

5                   MR. GELL: Well, I don't think so.

6                   One of the things that I didn't  
7 bring out and you may or may not have seen  
8 them in the earlier submissions, is that we  
9 had 38 people in the neighborhood, close  
10 neighbors, who wanted to see the liquor store  
11 remain and reopen. We now we've since gotten  
12 six more or seven more, which are attached to  
13 the letter to Mr. Loud.

14                   So there is a significant desire  
15 in the neighborhood to see something like what  
16 Mr. Park was presenting.

17                   It seems to me that many of the  
18 neighbors don't want to see the liquor store  
19 and it would really be in everybody's interest  
20 if there not a liquor store. That would not  
21 be the case, however, if the Board were to  
22 grant our appeal. And I recognize that

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1       whoever takes over the store and so forth is  
2       going to have the -- is going to be living in  
3       that neighborhood. On the other hand, you  
4       know, it's obviously extremely important to us  
5       that he have a use that is feasible use, he  
6       can make some money at and that won't be  
7       closed down and be an eyesore again. That is  
8       not our intention.

9               So I feel there's sufficient  
10       reason to believe that in fact we would reach  
11       an agreement with -- I realize that many of  
12       the people that are here now, we didn't bring  
13       anybody with us. We thought perhaps there was  
14       a good chance of getting the continuance.  
15       Somebody was going to come. That's our fault.  
16       We told them not to good. But that doesn't  
17       matter. There are obviously going to be  
18       people who are speaking against it. But a  
19       sufficient number -- a significant number of  
20       people want in that. And in that give and  
21       take within the neighborhood I think very  
22       clearly there would be some place where people

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1 would come together.

2 That's all I wanted to say.

3 CHAIRPERSON LOUD: Thank you, Mr.  
4 Gell, I appreciate that.

5 And we're going to move forward I  
6 think, and we're going to hear the case this  
7 afternoon. That doesn't necessarily mean at  
8 least at this point that we will decide the  
9 case today. I'm not certain if we will or we  
10 won't. But assuming that for whatever reason  
11 we do not decide it, that will allow some  
12 additional time as well for parties to  
13 participate in further discussions between the  
14 end of today and the May 12 already schedule  
15 variance.

16 So at that point this is a good  
17 juncture, I think, to move that we hear the  
18 case today. That we deny the motion for a  
19 continuance. And I'm happy to make that  
20 motion.

21 MEMBER DETTMAN: I second the  
22 motion.

1 CHAIRPERSON LOUD: The motion has  
2 been made and seconded. Is there any further  
3 deliberation?

4 All right. Motion made, seconded.  
5 All those in favor say aye.

6 ALL: Aye.

7 CHAIRPERSON LOUD: All those  
8 opposed? All those in abstention?

9 Ms. Bailey, can you call the vote?

10 MS. BAILEY: Mr. Chairman, the  
11 vote is three-zero-two to deny the appellant's  
12 motion for continuance.

13 Mr. Loud made the motion. Mr.  
14 Dettman seconded. Mr. Hood supported the  
15 motion.

16 Three-zero-two.

17 CHAIRPERSON LOUD: Thank you, Ms.  
18 Bailey.

19 I believe you indicated that  
20 there's a second preliminary matter?

21 MS. BAILEY: Yes, Mr. Chairman.  
22 There was a request from the Capitol Hill

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1 North Neighborhood Association to intervene in  
2 the case.

3 CHAIRPERSON LOUD: Is anyone here  
4 representing the Capitol Hill North  
5 Neighborhood Association? Come on, step  
6 forward, please.

7 Have you been sworn in already?  
8 Oh, okay. You can take a seat in front of one  
9 of the microphones.

10 And we have your Exhibit 16 on  
11 behalf of your organization, Exhibit 16  
12 speaking to your request for intervention.  
13 But why don't you articulate the reasons why  
14 you'd like to be an intervenor in this case?

15 MS. GRANT: Yes. My name is  
16 Cheryl Grant, and I am Chair as well as a  
17 founding member of the Capitol Hill North  
18 Neighborhood Association. I've been very  
19 invested in the area that immediately  
20 surrounds Oasis Liquor stores. Over the past  
21 three years I have worked very closely with  
22 neighbors about idea for developing the

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1 neighborhood, prospering the neighborhood,  
2 concerns of the neighborhood.

3 We have a roll of 150 neighbors  
4 that we have worked with. And last year,  
5 almost a year ago, we did express opposition  
6 to Oasis Liquors being in that site. Going  
7 back now coming forward a year there is not a  
8 single person on our roles that has any  
9 interest in having the liquor store remain  
10 there.

11 We have had ongoing talks with our  
12 leadership. I am an elected officer with the  
13 association, as well as being the founding  
14 member working for two years prior to the  
15 association being official with the D.C.  
16 Government and getting incorporated.

17 We regularly talk with neighbors

18 We have been very open in the past  
19 to having talks and seeing what could be in  
20 that site, but with this being the 11th hour  
21 and with our neighbors waiting so very long,  
22 we're no longer interested in going forth with

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1 that. We don't have an interest from anyone  
2 in the neighborhood on our rolls of 150 in our  
3 membership who wants a liquor store. And we  
4 have a lot of reasons behind that, not just to  
5 the idea of being a good neighbor, but also to  
6 the idea of just general business operating  
7 practices.

8 I'm an elected official and we  
9 have a steering committee that does the lead  
10 the organization. We have met every month for  
11 the past three years at least, and I do  
12 believe that I can speak to the interest of  
13 the at least 150 on our rolls. And I also as  
14 a resident do live three blocks from the  
15 liquor store and regularly walk the block.  
16 The Metro is right beyond it. So that's why  
17 I'm here.

18 CHAIRPERSON LOUD: Thank you, Ms.  
19 Grant. Now you are aware that you can give  
20 testimony against the application without  
21 having to be an intervenor in the case?

22 MS. GRANT: I am a bit ignorant to

1 politics, but I do know that if I can be an  
2 intervenor, I can possibly have more power to  
3 effect the sentiment of my neighborhood. We  
4 are the ones that live there, so that's why I  
5 requested. I don't know if that was in error,  
6 but that was the reason why.

7 CHAIRPERSON LOUD: We're all  
8 fairly powerless here today, so I'm not  
9 certain what the additional power would be.

10 There are some privileges that  
11 come with intervenor status that if the  
12 intervening party is prepared to take  
13 advantage of, can infer some additional  
14 participation in the hearing. Those would  
15 include, for example, the ability to put  
16 witnesses on during your case.

17 Do you have any witnesses today  
18 that you would like to put on?

19 MS. GRANT: There are a few  
20 persons here with the neighborhood  
21 association. I believe they're here today in  
22 the capacity as neighbors, but there are two

1 here. And that I am absolutely able to  
2 provide written testimony, if that is  
3 requested, from persons within the  
4 neighborhood association to speak on this  
5 issue.

6 CHAIRPERSON LOUD: Well, both  
7 yourself and the neighbors that you're  
8 speaking about will have the opportunity today  
9 to either give written statements or come back  
10 as you're doing now and actually give  
11 testimony against the application. In other  
12 words, you don't have to be an intervenor for  
13 that. All of your witnesses would be allowed  
14 to speak on the record and what they say would  
15 go into our deliberations in terms of where we  
16 come out on this case.

17 So, I just wanted to let you know  
18 that you don't have to be intervenor. And  
19 there are some standards under the regs for  
20 intervenors. And I'm going to ask Ms. Monroe  
21 if she would pull that site. Give you a few  
22 minutes do it. I don't want to put you on the

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1 spot. But it generally I think speaks to  
2 there being an interest that the intervening  
3 party would have in the outcome that is very  
4 unique and sort of sets that would be party  
5 apart from the general public that, for  
6 example, might not want to see a liquor store  
7 on that block or in their neighborhood and  
8 doesn't support the accumulation of trash or  
9 the type of loitering, et cetera, that goes  
10 on. This would be a really unique sort of  
11 adversity that would effect the would be  
12 intervening party.

13 And I'm going to read to you from  
14 our section 3112.13 which reads: "At the time  
15 of the hearing on the appeal, the Board in its  
16 discretion and for good cause shown may permit  
17 persons who have a specific right or interest  
18 that will be effected by action on the appeal  
19 to intervene in the appeal for such general or  
20 limited purpose as the Board may specify."

21 So kind of what I'm hearing, again  
22 you're fully privileged to pursue

1 intervention, but we're going to make a  
2 decision based on 3112.15.

3 What I'm hearing is that it will  
4 avail you of the opportunity to provide either  
5 written or testimony today against the  
6 application. And you don't have to have this  
7 status to do that.

8 MS. GRANT: I'm guess I'm a little  
9 unclear as to what would be the benefit of the  
10 intervenor, an additional benefit having that  
11 status.

12 CHAIRPERSON LOUD: Ms. Monroe,  
13 would you like to respond?

14 MS. MONROE: Let me speak to this,  
15 maybe I can help.

16 The difference is you're either a  
17 party to the appeal or you're just a person  
18 testifying. Because this is an administrative  
19 body, it's not a court, so it's not as heavy  
20 duty.

21 As a person testifying you have  
22 three minutes or longer, if the Board allows,

1 to testify one way, either opposition,  
2 support, whatever.

3 If you want to be an intervenor  
4 and the Board grants you intervenor status,  
5 you become a party to the case which means you  
6 can then cross examine other people's  
7 witnesses, you can present your own witnesses,  
8 you have an opportunity to present your own  
9 affirmative case; however you want to do that,  
10 bringing witnesses in, written testimony,  
11 affidavits, testifying to facts yourself. You  
12 also have the opportunity, you do not have to,  
13 to file pleadings.

14 You can papers, testimony as a  
15 person but as a party it gives you more rights  
16 and responsibilities, including cross  
17 examination, asking questions of other  
18 people's witness.

19 It's really up to the Board. They  
20 would decide. But that's the difference. One  
21 is lesser participation and one is a great  
22 participation.

1 MS. GRANT: I do believe -- sorry.

2 May I speak?

3 MR. RENJEL: Mr. Loud, if I can  
4 also make a comment about the intervention.

5 CHAIRPERSON LOUD: Yes, sir. Can  
6 you state your name for the record.

7 MR. RENJEL: I'm sorry. Robert  
8 Renjel on behalf of DCRA.

9 CHAIRPERSON LOUD: Good afternoon.

10 MR. RENJEL: Mrs. Grant is here  
11 both as a neighbor, someone who lives in the  
12 neighborhood as well as someone who represents  
13 this neighborhood association. So she's  
14 speaking both to the issue of the abandonment  
15 of a nonconforming use both as a personal  
16 witness as well as what other members of her  
17 association have witnessed. That's, I  
18 believe, her special part of this hearing  
19 today.

20 CHAIRPERSON LOUD: Thank you. Is  
21 it Mr. Renjel?

22 MR. RENJEL: Renjel, yes.

1 CHAIRPERSON LOUD: Thank you, Mr.  
2 Renjel

3 CHAIRPERSON LOUD: Board members  
4 do you have any questions, comments, concerns?

5 MEMBER DETTMAN: Yes. Actually  
6 one question, Mr. Chairman. And maybe I can  
7 pose one question and ask Ms. Grant and Mr.  
8 Renjel.

9 So I'm glad you brought up the  
10 issue of discontinuance. I think it's the  
11 very narrow question that the Board's looking  
12 to answer here, whether or not there was a  
13 discontinuance.

14 When I read your letter or Exhibit  
15 16 it really went to the impacts of the use on  
16 the neighborhood, which I think you have a  
17 very unique perspective with respect to the  
18 variance case. But I think the Board needs to  
19 determine whether or not there's a  
20 discontinuance in order to decide whether the  
21 ZA in revoting the C of O.

22 So from that perspective, I'm not

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1 sure intervenor is the appropriate place. But  
2 Mr. Renjel seemed to allude to that you can  
3 somehow provide a unique perspective with  
4 respect to whether or not there was a  
5 discontinuance of the use. And so I guess my  
6 question is can you provide some insight with  
7 respect to the discontinuance that DCRA and  
8 the ANC won't be able to provide to the Board?

9 MS. GRANT: Well, not just living  
10 in the neighborhood, but representing the  
11 association that promotes the neighborhood, I  
12 do believe that the association does have  
13 knowledge and interest in this more so than  
14 any other body perhaps that's here as far as  
15 specifically residing in the neighborhood. I  
16 do believe that.

17 MEMBER DETTMAN: And you think  
18 that this is knowledge that won't come out in  
19 DCRA's or the ANC's case?

20 MS. GRANT: Now you're asking me  
21 my expertise as far as DCRA and the ANC.

22 I can definitely speak that I do

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1 believe that we have a level knowledge that is  
2 not just informative, but also very personal.  
3 This is a very personal issue to the neighbors  
4 of the association.

5 MEMBER DETTMAN: But again, it's a  
6 personal issue because of the impacts in terms  
7 of loitering or trash or what have you, but it  
8 needs to be narrowly focused on whether or not  
9 the use was discontinued.

10 MS. GRANT: Oh, absolutely.

11 MEMBER DETTMAN: Okay.

12 MS. GRANT: I'm sorry.

13 CHAIRPERSON LOUD: Hold on one  
14 second. Let's see if Mr. Hood would like to  
15 weigh in.

16 ZC CHAIRPERSON HOOD: We're  
17 missing 3112.15, and I'm not seeing where Mrs.  
18 Grant -- I equate this to like party status,  
19 intervenor. And I'm just not sure if she's  
20 passed the test to do that. What more she has  
21 to offer than the ANC and then what DCRA, I  
22 just -- I can't find it. I just can't find it.

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1                   CHAIRPERSON LOUD:  Why don't we do  
2                   in the interest of moving this forward and  
3                   getting resolution on this issue, I believe  
4                   Ms. Phelps wanted to say something and Mr.  
5                   Gell, I don't know if you got an opportunity  
6                   to respond and/or would even like to.  Okay.

7                   So why don't we hear from Ms.  
8                   Phelps, Mr. Gell and then we'll make a  
9                   decision on this one.

10                   COMMISSIONER PHELPS:  Thank you.  
11                   I think if I'm understanding what Mr. Dettman  
12                   is saying, I mean the real issue here today is  
13                   discontinuance.  And I think that the one  
14                   thing that Ms. Grant brings is we both  
15                   represent the neighborhood.  I represent it as  
16                   an elected official for the ANC and she  
17                   represents it as the Chair of the neighborhood  
18                   association.  And in that way we may have  
19                   spoken to different residents about their  
20                   experiences with the store being closed.  And  
21                   if we're going -- I mean, as we should be  
22                   focused on on that, on whether or not the

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1 store was closed. I mean whether or not this  
2 gets to intervenor status or not, I think Ms.  
3 Grant may have more conversations with  
4 residents other than the ones that I've spoken  
5 to about their experiences with the store  
6 being closed. And I can certainly raise those  
7 as they came up, but if she's spoken with  
8 other people, we may have -- if you decide  
9 against intervenor status, you have to  
10 understand that there may be a flurry of notes  
11 of who said what, but she would be able to  
12 speak to some neighbors that I won't be able  
13 to speak to. But that's my only comment.

14 Thank you.

15 CHAIRPERSON LOUD: Thank you, Ms.  
16 Phelps.

17 Mr. Gell?

18 MR. GELL: Yes, Mr. Loud.

19 Obviously -- I'm sorry, Cheryl Grant has a  
20 perspective and like to be able to speak to  
21 it, but I think it really be setting a  
22 precedent if she were granted party status. I

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1 don't know if anything called intervenor  
2 status in BZA proceeding, so I'm treating this  
3 as party status application.

4 Normally there has to be some  
5 showing that the person who is giving the  
6 testimony in fact, or the representing the  
7 person giving the testimony, lives very close  
8 to the site of the property and has some  
9 special, not general interest in it.

10 Clearly Ms. Grant can speak to  
11 some of those issues in the three minutes she  
12 has or if the Board wants to give her  
13 additional time. But granting her party status  
14 would not really add very much.

15 I would remind you that the ANC  
16 does have party status and has all the  
17 benefits that accrue to party status. And so  
18 Ms. Grant wouldn't be losing anything if she  
19 were working with Ms. Phelps to assert that.

20 But it really would be setting a  
21 precedent that I don't think the Board has in  
22 the past been willing to grant. And we would

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1 be opposed to it.

2 CHAIRPERSON LOUD: Okay. Thank  
3 you, Mr. Gell.

4 I think we're fully briefed on  
5 this issue and appreciate your testimony, Ms.  
6 Grant. We're going to make a decision on it.  
7 Just give two seconds to orchestrate how we're  
8 going to proceed.

9 Thank you for patience. We just  
10 wanted to make sure moving forward that we're  
11 doing it in a timely and appropriate fashion.

12 I think that the rule that you  
13 would be coming in under, Ms. Grant, requires  
14 that there be some specific right or some  
15 unique interest that you would have and/or in  
16 a manner that would adversely effect you. And  
17 I think it's a pretty -- it's a different  
18 threshold than being in the community, being  
19 concerned about the neighborhood as a whole,  
20 having information about discontinuance, et  
21 cetera. So our decision with respect to the--  
22 and we're going to vote on it momentarily, but

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1 from my perspective is that there isn't enough  
2 of a showing this afternoon for intervenor  
3 status under 3112.15. However, we are mindful  
4 that since you're in the neighborhood and have  
5 been in the neighborhood and have information  
6 directly pertinent to discontinuance, that you  
7 be given the opportunity along with the  
8 persons that you brought as witnesses to speak  
9 to that. And we're going to make sure that  
10 you have that opportunity today. In fact,  
11 you're going to get your allotted mandatory  
12 three minutes to provide that testimony under  
13 our rules. And if you need to go over, or any  
14 of your witnesses need to go over, we'll  
15 figure out a way to allow that to happen so  
16 that we fully get relevant testimony from you  
17 and your witnesses on the whole discontinuance  
18 issue. But I do think that we're going to  
19 move forward not approving the motion for  
20 intervention. However, one of us needs to  
21 make a motion, second and then we'll call the  
22 vote.

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1                   Is there any further discussion on  
2 this?

3                   ZC CHAIRPERSON HOOD: I would  
4 move, Mr. Chairman that we deny Ms. Grant,  
5 Capitol Hill North Neighborhood Association  
6 intervenor status. Because if you look at the  
7 submittal, it's not anything -- anymore  
8 different or unique than anyone else who lives  
9 in the neighborhood. But, Mr. Chairman, you  
10 being the good chairman that you are, we're  
11 going to take that in context and hopefully,  
12 Mr. Gell doesn't have a problem. We want to  
13 make sure we flush out a lot and we will go  
14 above and beyond the call of the allotted  
15 time. And we will query to get as much as  
16 information out of Mrs. Grant as we can. And  
17 that's my motion.

18                   MEMBER DETTMAN: I'll second it.

19                   CHAIRPERSON LOUD: Motion has been  
20 made and seconded that the Capitol Hill North  
21 Neighborhood Association's motion for  
22 intervenor status be denied. Any further

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1 deliberation on it?

2 Hearing none, all those in favor  
3 say aye.

4 ALL: Aye.

5 CHAIRPERSON LOUD: All those  
6 opposed? Any abstentions?

7 Ms. Bailey, can you read the vote?

8 MS. BAILEY: Mr. Chairman, the  
9 vote is three-zero-two to deny the motion of  
10 the Capitol Hill North Neighborhood  
11 Association to intervene in the case.

12 The motion was made by Mr. Hood.  
13 Seconded by Mr. Dettman. Mr. Loud supported  
14 the motion.

15 CHAIRPERSON LOUD: Thank you, Ms.  
16 Bailey.

17 I think what we'll do now is  
18 hearing no objection from Board members, we'll  
19 take a five minute break. Mr. Gell, that may  
20 give you some opportunity to gather your  
21 thoughts had you not totally assumed that we  
22 would be going forward today, as well as other

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1 parties a chance to have a little break. And  
2 then we'll resume in exactly five minutes and  
3 move forward.

4 Thank you.

5 (Whereupon, at 2:08 p.m. a recess  
6 until 2:22 p.m.)

7 CHAIRPERSON LOUD: Good afternoon.  
8 We're ready to resume the afternoon appeal  
9 case.

10 Mr. Gell, I think where we left  
11 off is that you were getting ready to present  
12 your case.

13 MR. GELL: Thank you, Mr.  
14 Chairman.

15 I'll have some comments after Mr.  
16 Park speaks, but I'd like to have him lay out  
17 his case concerning the discontinuance.

18 I wonder if the Chair could rule  
19 that because this simply an appeal on the  
20 discontinuance, that matters outside of that  
21 concern would not be relevant, would not be  
22 admitted as testimony? I know there are a lot

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1 of people here who don't like the liquor  
2 store. I don't think that that's really a  
3 relevant issue.

4 It's simply a question of whether  
5 it was discontinued for three years or not, or  
6 more than three years. Or whether even if it  
7 was discontinued for three years there were  
8 other factors which would bear on the question  
9 of whether he lost the right to reestablish it  
10 as a liquor store.

11 There are cases that say that a  
12 three year gap, if indeed there was a three  
13 year gap, is simply a rebuttal presumption.  
14 It's not a final factor. It's a rebuttal  
15 presumption which can be changed if there are  
16 other factors would show that it was not, in  
17 fact, in his intention to discontinue and in  
18 fact it was not discontinued.

19 So the three years is relevant.  
20 I'm not saying it's irrelevant. But there may  
21 well be other factors which we hope to show to  
22 show the Board that in fact he should continue

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1 to have the right to have a liquor store.

2 I'll have Mr. -- and again, this  
3 is only on the discontinuance, whether the  
4 liquor store was properly operated, whether  
5 there were people in the neighborhood who  
6 shouldn't have been there because the liquor  
7 was there, whatever. I think all of those  
8 issues while they're important in this,  
9 they're going to be important if and when we  
10 get to the application stage and hearing.  
11 They're simply not relevant here.

12 Anyway, let me ask Mr. Park to  
13 read his statement.

14 MR. PARK: Mr. Chairman and member  
15 of the BZA, my name is Joseph Park. I have  
16 filed an appeal for the Board of Zoning  
17 Adjustment because the DCRA has revoked my  
18 Certificate of Occupancy for my liquor store  
19 at 1179 3rd Street, Northeast.

20 My family has owned and operated a  
21 liquor store and convenience store at 1179 3rd  
22 Street since 1986.

1           The building was built in 1038  
2 and has been used as a commercial building  
3 from that time until September 2006. I have  
4 owned and operated a liquor store until I  
5 started to have a health problem a few years  
6 ago.

7           The business was not abandoned. I  
8 intended to reopen the store or find a buyer  
9 or a lessee for the store. I kept the stock  
10 in the store during the whole period. I did  
11 open periodically during 2005 and 2006, but  
12 now I realized that without the basic business  
13 license that was improper.

14           I did not pay the electric bill  
15 because there was no need while I was trying  
16 to sell.

17           The water was \$14 a month for a  
18 long time. But then jumped to \$3,000 because  
19 unknown to me. There was a leak in the pipe,  
20 they say. While I was protesting that bill,  
21 the water company cut off the water even after  
22 I pay the water bill at the Tax Office. The

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1 water department continued to send me bills  
2 because they say the bill had not been  
3 reimbursed from the Tax Office.

4 It took me a long time to get that  
5 straightened out. And still carry on. I  
6 still get that water bill from WASA as unpaid  
7 since 2006.

8 I consider this just plain  
9 harassment after I did my part paying full  
10 amount of water bill.

11 I also kept looking for someone to  
12 operate or even buy the business. I  
13 maintained liquor license on the property.  
14 The license is in safekeeping until I can find  
15 a buyer.

16 I pay real estates taxes and did  
17 necessary upkeep. I advertised and notified  
18 real estate brokers, business brokers about  
19 the store. I got offers. People sign, were  
20 willing to sign the lease, but then had to  
21 back out when they could not raise the  
22 capital.

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1           Recently I found a lessee and  
2           applied for Certificate of Occupancy and  
3           building permit. It was granted in May 2008.  
4           I did not know that Zoning had changed and  
5           assumed the zone was the same as it had been  
6           on the previous application. The Permit  
7           Office did not advise me that Zoning had  
8           changed it. Because of the Certificate of  
9           Occupancy, lessee signed the lease with option  
10          to buy and begun improvement on the property.

11           I later realized the mistake in  
12          allowing a lessee to start the building and  
13          partly demolition without the permit. The  
14          fine was paid and we applied in July for the  
15          permit. They were granted and they continued  
16          to do the work, which was to after the  
17          partition, I mean alter the partition, repair  
18          the walls, repair the ceiling, replace window  
19          glasses, repair the roof and fix drainage  
20          because new lessee had a hope and dream  
21          they're going to make that store first class  
22          to beautify the corner of that neighborhood.

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1 I would estimate that we were  
2 obligated to pay over \$30,000 for the work or  
3 more.

4 Oasis Liquors has been a benefit  
5 to the community. Many neighbors like the fact  
6 that we are also convenient store with a good  
7 selection of the beverage like soft drinks,  
8 food products, counter medicines, paper  
9 products prepared and lottery tickets, et  
10 cetera, et cetera.

11 Neighbors came out to support me  
12 when I had to renew my liquor license every  
13 year.

14 Over 100 neighbors signed a  
15 petition in favor of my retaining the liquor  
16 store -- liquor license. In addition, 45  
17 neighbors who live close to the store signed  
18 the petition to support my application to  
19 reopen the liquor store.

20 Especially senior citizens like  
21 that establishment close by to them in walking  
22 distance.

1 MR. RENJEL: Mr. Loud, can I  
2 object? Mr. Gell indicated that the purpose  
3 of this hearing is to focus on the one issue  
4 of whether or not this store has been opened  
5 for a three year period. And he's discussing,  
6 just like he said, he wanted us to avoid what  
7 the feeling of the other neighbors were. So  
8 could we just focus on the issue of whether or  
9 not the store has been opened for the three  
10 year period?

11 MR. GELL: Mr. Loud, I think Mr.  
12 Park is within one sentence of finishing.

13 I think whatever there is there  
14 that's irrelevant has really been very brief.  
15 And I agree with Mr. Renjel. We really do want  
16 to limit this to relevant issues.

17 CHAIRPERSON LOUD: Okay.

18 MR. RENJEL: Right.

19 CHAIRPERSON LOUD: So let me add--  
20 one minutes, Mr. Park. Let me ask, rather,  
21 both counsel to remain within the lanes that  
22 we've sort of set up. I agree. I think it

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1 went beyond. Some of it was foundational and  
2 good background and good context. But then to  
3 go further and talk about seniors and breaking  
4 it down, I think it went a little overboard.  
5 But I think counsel recognizes that, and you  
6 guys are both going to work with us to keep  
7 everybody sort of focused on that single issue  
8 of discontinuance. And so I appreciate the  
9 objection and I think we can move forward now  
10 from that point.

11 MR. PARK: That is my purpose,  
12 too, to let the Board members to recognize  
13 some of my background. And I'm seeking your  
14 understanding. And I fully realize I made a  
15 mistake unintentionally because my health  
16 problems a few years ago.

17 Now --

18 MR. GELL: Do you want to expand  
19 on your health problem?

20 MR. PARK: Yes. If I have to  
21 mention my health problem was diagnosed with  
22 diabetes --

1                   MR. GREEN: Excuse me, Mr.  
2 Chairman. I hate to be, again, a beller of the  
3 will, but I thought we were trying to deal not  
4 with his health concerns. Anyway, I'm not  
5 unsympathetic to that, whatever they may be.  
6 But we're trying to get to this whole question  
7 of what happened for a three year period,  
8 whether they were in business or not. That's  
9 what this thing's turning on.

10                   There's a three year period that  
11 we're talking about in this proceeding.

12                   I thought he was giving an opening  
13 statement, which is a brief outline of the  
14 direction you want to go. It appears it's his  
15 testimony that's subject to cross. What do we  
16 have here? Do we have an opening statement or  
17 do we have testimony?

18                   MR. GELL: Mr. Loud, sorry, if I  
19 may? I'm sure Mr. Green will appreciate the  
20 fact that the reason why the store was closed  
21 is quite relevant to whether in fact it was  
22 abandoned. That's all Mr. Park is explaining

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1 now is why he stopped working there and what  
2 happened during that period. I think it's  
3 quite relevant.

4 CHAIRPERSON LOUD: Yes, Mr. Green,  
5 I hear your point. I hear your point. Let me  
6 finish. I hear your point. Whether or not  
7 this has ultimate relevance I think requires  
8 that we allow the witness to speak to where I  
9 think where he's trying to go is speak to the  
10 issue of abandonment, intent to abandon and so  
11 on and so forth. I don't think we need to  
12 linger here forever, but I think it's very  
13 appropriate for him to lay out his testimony  
14 as regards that issue.

15 Mr. Gell, on the second point that  
16 Mr. Green raised in terms of being able to  
17 cross examine the witness on what has now  
18 become, it sounds like, testimony. I mean, we  
19 are now clear that he's testifying, is that  
20 correct?

21 MR. GELL: Well, he's certainly  
22 giving facts And certainly he could be cross

1 examined on those facts.

2 CHAIRPERSON LOUD: Okay. So Mr.  
3 Green, you'll have an opportunity to cross  
4 examine him on all everything that was brought  
5 out on direct and you can go it at very  
6 assertively. But I think and want to caution  
7 the witness now, not to go overboard here, but  
8 this is relevant testimony to the issue of  
9 abandonment and/or intent to abandon, et  
10 cetera.

11 So we can move forward.

12 MR. GELL: I think that concludes  
13 Mr. Park's statement. And I have a statement  
14 relative to some of the testimony that he's  
15 just given.

16 I think we pointed out several  
17 issues whether draw into question whether in  
18 fact there was an intent to abandon or even  
19 there should be presumed to been an intent to  
20 abandon.

21 We have submitted for the record a  
22 number of proposals to lease the property, a

1 number of letters that he received that he  
2 responded to from brokers and so forth  
3 interested in bringing to him lessees for the  
4 business, lessees for the property.

5           There was a lot of activity  
6 between 2005 and 2007 over dealing with this  
7 liquor store as a liquor store. And in fact  
8 he has a lease now which I believe is the  
9 second lease. Other leases, other attempts  
10 failed because people couldn't raise capital.  
11 But there is a lease now in force and people  
12 are presumably going to be able to start the  
13 liquor store.

14           Excuse me. Were you going to say  
15 something?

16           MR. PARK: Yes.

17           MR. GELL: All right.

18           MR. PARK: I emphasize whether or  
19 not I abandon. I cannot afford abandon. As  
20 you can see, I like to point out to the Board  
21 members that has been my lifeline when I show  
22 preparation for my old age and retirement. As

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1 much as I abandon and take it easy, but I  
2 couldn't do it, you can see, because that is  
3 the sole retirement that I was planning on my  
4 part. So the fact, I point it out. I cannot  
5 abandon if I want to.

6 So I never abandoned business  
7 chances at 1179 3rd Street, Northeast. I want  
8 you to understand that.

9 Thank you.

10 CHAIRPERSON LOUD: Thank you, Mr.  
11 Park.

12 MR. GELL: I would add in addition  
13 to the fact that he continued to try to get  
14 people to take over the liquor store and kept  
15 the stock in the store during that period of  
16 time, that there is another issue as well  
17 which we suggested in our prehearing  
18 statement--

19 MR. GREEN: Excuse me, Mr.  
20 Chairman. I'm going to have to object.

21 CHAIRPERSON LOUD: Yes, sir, Mr.  
22 Green.

1 MR. GREEN: It appears that counsel  
2 is testifying. You know, he's going beyond  
3 just making a statement. He's gone beyond  
4 just giving an outline. He's testifying.

5 Now if he wants to be a witness  
6 and get on the witness stand, that's fine.  
7 But I think that he needs to outline what his  
8 role is at this particular point.

9 MR. GELL: I don't believe it's  
10 testimony when I'm trying to put what Mr. Park  
11 gave as facts into some context where the  
12 Board can apply the law to them. I think  
13 that's the role of a lawyer, and I wanted to--

14 CHAIRPERSON LOUD: Mr. Gell, if  
15 you're going do that, wouldn't closing be the  
16 appropriate opportunity for you to do that?

17 I thought perhaps what you were  
18 doing, because you stated at the outset that  
19 you didn't bring a number of your witnesses  
20 that you were going to point us to what's in  
21 the record and already and just briefly  
22 highlight these different things that are in

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1 the record that speak to your applicant's  
2 case. But to summarize the witness' testimony  
3 at this juncture, DCRA has not even crossed  
4 your witness, it just strikes me as sort of  
5 out of order.

6 MR. GELL: All right. What I was  
7 going to do now was to touch on the issue of  
8 estoppel which Mr. Park spoke to the facts  
9 relating to estoppel. And I was simply going  
10 to apply the law to that. I can do that now  
11 or I can do that at a later time.

12 CHAIRPERSON LOUD: I think it  
13 would be appropriate to do it at a later time  
14 and allow for, first of all, questions from  
15 the Board on your witness if you're through  
16 with the witness. And then cross examination  
17 by the parties.

18 MR. GELL: You can proceed with  
19 questions.

20 CHAIRPERSON LOUD: Okay. Do Board  
21 members have any questions for Mr. Park?  
22 Okay.

1           In that case, in that case let's  
2           turn first to DCRA, the appellee, for cross  
3           examine.

4           MR. GREEN: Okay.

5           CHAIRPERSON LOUD: Remember that  
6           cross is limited to what's brought out on  
7           direct and so and so forth.

8           MR. RENJEL: Okay. Mr. Park, you  
9           admitted your direct examination that you did  
10          not have a basic business license after 2003,  
11          is that correct?

12          MR. PARK: I just don't have a  
13          memory. I thought since this is a liquor  
14          store--

15          CHAIRPERSON LOUD: I'm sorry, Mr.  
16          Park. Mr. Park, I'm sorry. Our Court  
17          Reporter can't hear you unless you speak  
18          directly into the microphone.

19          MR. PARK: Sorry. Sorry.

20          This is my understanding. With a  
21          liquor license that's a major license and I  
22          thought that this master business license will

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1 cover all thing. Used to have food products,  
2 patent medicine and lottery license and so on.  
3 But somehow I don't have a different memory  
4 whether or not I renewed it or not. Just I  
5 knew that when I had a master business license  
6 there, I thought that will cover us.

7 MR. RENJEL: So did you or did you  
8 not have a basic business license after 2003?  
9 That's what I'm going for. Did you or did you  
10 not have a basic license after 2003?

11 MR. PARK: I just don't have a  
12 memory that whether or not I renewed it.

13 MR. RENJEL: Okay. But prior to  
14 2003 you had a basic business license?

15 MR. PARK: What kind?

16 MR. RENJEL: A basic business  
17 license?

18 MR. PARK: I thought I had all the  
19 license required to running that business over  
20 there -- I mean 1179 3rd Street, Northeast.

21 MR. RENJEL: Okay. But again, I'm  
22 asking you did you or did you not prior to

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1 2003 did you or did you not have a basic  
2 business license?

3 MR. PARK: I understand that I had  
4 food products, beverage, patent medicine and  
5 lottery and such. Yes, ABC Retail Class A  
6 license as well.

7 MR. RENJEL: Okay. My second  
8 question. Did you meet with Mr. LeGrant on,  
9 I believe it's April 8th, last Wednesday.

10 MR. PARK: Yes.

11 MR. RENJEL: During that meeting  
12 didn't you admit that you did not have a basic  
13 business license after 2003?

14 MR. PARK: Here again, I thought I  
15 had. That's my ignorance part, I think. I  
16 thought one master business or Class A liquor  
17 license will cover us.

18 MR. RENJEL: Okay. And during  
19 that same meeting did you admit to Mr. LeGrant  
20 that you have not been operating at 1179 3rd  
21 Street since 2003?

22 MR. PARK: Here again, it may be

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1 my old age but I don't have a clear cut what  
2 year or what month. But all I know is I come  
3 to store, check things around, just carry on.  
4 But I admit that there wasn't an active  
5 business activities there.

6 MR. RENJEL: Okay. I'm going to  
7 ask the question again then. During that  
8 meeting on April 8th did you admit to Mr.  
9 LeGrant that you were not operating after  
10 2003, since 2003 onward? Didn't you admit  
11 that to Mr. LeGrant during that meeting on  
12 April 8th?

13 MR. PARK: I don't know whether I  
14 admit it or not admit. What I explain just  
15 like I did, there was -- there may not be an  
16 active business activities. I cannot tell  
17 what months, what year. Because maybe a  
18 couple of hours a day I check around the  
19 premises and how things going, and that kind  
20 of thing. But definitely became very inactive  
21 for business operation. I admit that, yes.

22 MR. RENJEL: Okay. During the

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1 period of 2003 to 2008 did you have water  
2 service at 1179 3rd Street? Was water  
3 service--

4 MR. PARK: That again, it's now  
5 clear in my memory. What I know is I got a  
6 dispute with the WASA people. And that  
7 neighborhood has a problem. I thought because  
8 of neighbor's mistake they charged their water  
9 bill against me. So I contact them and I ask  
10 why or what's wrong with it and so on and so  
11 forth. And then later on I found a lien  
12 against my property through the D.C. Tax  
13 Office. So I thought I don't have much choice  
14 but to pay that first and then take -- looking  
15 for solution otherwise.

16 So I mentioned or your statement,  
17 it's just one man operation, one man using.  
18 But it's \$5, \$10 water bill per month. And  
19 suddenly you get over \$3,000 you can see. So  
20 we had a long time to try to settle that  
21 dispute. That's why I don't have a proper  
22 water bill regularly.

1                   MR. RENJEL: Okay. I'm not asking  
2 about the water bill. What I asked was during  
3 the period of 2005 to 2008 was your  
4 disconnected at 1179 3rd Street?

5                   MR. PARK: I think it is.

6                   MR. RENJEL: All right. Thank  
7 you.

8                   MR. PARK: See, they forced when I  
9 don't pay because it was too much money,  
10 \$3,000 -- over \$3,000 cash payment. So I had  
11 to contact bank and to loan that amount. And  
12 paid it anyways.

13                   MR. RENJEL: Okay.

14                   MR. PARK: After that I had a  
15 water bill, I think. But still there isn't  
16 settlement yet because the D.C. Tax Office  
17 hasn't reimbursed my payment 2006. Believe  
18 me, since 2006 WASA contact D.C. Tax Office,  
19 and I contact D.C. Tax Office. They never  
20 reimbursed my water bill to the WASA since  
21 2006. So you can see what kind of harassment  
22 I having with them.

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1 I feel terrible. Abuse me so  
2 much.

3 MR. RENJEL: Okay. In 2005 did  
4 you receive a letter from the Alcoholic  
5 Beverage Control Board regarding the keeping  
6 of your license.

7 MR. GELL: Mr. Chairman, I'm going  
8 to ask whether this is really necessary. Mr.  
9 Rengel has the letters, he has all of this  
10 information. Whether Mr. Park can remember  
11 dates or not, is kind of irrelevant at this  
12 point. He's got the original documents. I  
13 think he should simply present those and not  
14 put Mr. Park through this.

15 MR. RENJEL: Mr. Loud, if I can,  
16 I'm going directly to the issue of the three  
17 year period in this matters that's directly  
18 relevant to this matter. And I'm also  
19 contradicting several statements that Mr. Park  
20 made during his -- whether it was an opening  
21 statement, testimony, whatever it was. I'm  
22 directly contradicting those statements.

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1 That's exactly what I'm doing by going down my  
2 list of questions.

3 CHAIRPERSON LOUD: I think the  
4 questions are definitely legitimate cross  
5 questions.

6 I think to Mr. Gell's point that  
7 particular documents, it's in the record. I  
8 don't think it's contested that there was  
9 there this 2005 correspondence from DCRA. I'm  
10 not certain. But it may help move things  
11 along if you don't ask a foundational question  
12 on everything that's already a part of the  
13 record and just go straight to the heart of  
14 either your impeachment evidence or zeroing in  
15 on inconsistencies in his testimony, so and so  
16 forth.

17 ZC CHAIRPERSON HOOD: Mr.  
18 Chairman?

19 CHAIRPERSON LOUD: Yes, sir.

20 ZC CHAIRPERSON HOOD: Can I just  
21 interrupt and ask a quick question of Mr.  
22 Rengel?

1 CHAIRPERSON LOUD: Yes.

2 ZC CHAIRPERSON HOOD: Is there a  
3 time limit on a basic business license? And  
4 I know the Council did something recently with  
5 that, but back during this time of 2003?  
6 Would it have expired as, say, like a five  
7 year period.

8 MR. RENJEL: It's a two year time  
9 period and he -- I will present evidence that  
10 Mr. Park had a license from 2001 until 2003  
11 and after that he didn't have a license.

12 ZC CHAIRPERSON HOOD: So normally  
13 DCRA gives them out for two year intervals?

14 MR. RENJEL: Yes.

15 ZC CHAIRPERSON HOOD: Okay. Thank  
16 you.

17 CHAIRPERSON LOUD: I think, Mr.  
18 Gell, some of Mr. Rengel's questions are not  
19 asking for, you know really specific dates.  
20 But as I heard him, he was asking periods of  
21 time, like after 2003 do you remember if you  
22 had -- if you opened the store. So I think

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1 some of the questions are legitimate questions  
2 to ask.

3 MR. GELL: It seemed to me that  
4 Mr. Park had answered much of that in his  
5 testimony. He said that he went to the store.  
6 He had told me at an earlier time that he had  
7 on occasion opened the store and people came  
8 in and bought things.

9 We have a letter in the record in  
10 2006 from somebody in the neighborhood who  
11 said that they actually bought things. In  
12 fact, two letters --

13 MR. RENJEL: Your Honor --

14 MR. GELL: -- from people who said  
15 that they bought things --

16 MR. RENJEL: Mr. Loud, I'm going  
17 to object.

18 CHAIRPERSON LOUD: You would have  
19 to admit that he's entitled to cross examine  
20 this witness on his testimony, even if there  
21 are --

22 MR. GELL: Oh, absolutely.

1 CHAIRPERSON LOUD: -- exhibits in  
2 the record from other --

3 MR. GELL: I was just objecting to  
4 try to pin him down to dates, dates that are  
5 very clear from the documentary evidence  
6 that's in the record that we're not objecting  
7 to.

8 CHAIRPERSON LOUD: Okay.

9 MR. PARK: In other words, if I  
10 have to add, I haven't abandoned business  
11 ownership. And then when I apply for  
12 occupancy permit, we were granted and along  
13 with building permit. And they said --

14 CHAIRPERSON LOUD: Well, I think--

15 MR. RENJEL: Mr. Loud, there is no  
16 outstanding question.

17 CHAIRPERSON LOUD: I'm sorry. I  
18 think we'll get to that part of the testimony  
19 later. I think Mr. Rengel's question  
20 concerned a 2005 letter from the Alcohol  
21 Beverage and Control Board. And I think it's  
22 relevant and I think he should be allowed to

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1 cross examine on it. But again, you don't  
2 have to go step-by-step-by-step to get at what  
3 you're trying to get.

4 MR. RENJEL: Thank you.

5 Okay. Going back to the issue of  
6 the 2005 letter. What I was trying to get at  
7 is did you receive a letter in 2005 from ABC,  
8 the Alcoholic Beverage Control Board  
9 indicating that your business was not  
10 operating and your alcoholic beverage license  
11 was not in safekeeping? Do you remember  
12 receiving that letter?

13 MR. PARK: I don't remember that.

14 MR. RENJEL: Okay.

15 MR. PARK: Because my license was  
16 already in safekeeping.

17 MR. RENJEL: As of what date?

18 MR. PARK: I think so. 2006.

19 MR. RENJEL: Okay. Switching the  
20 Certificate of Occupancy. You indicated  
21 during your direct or I guess your opening  
22 statement that you applied for the Certificate

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1 of Occupancy, is that accurate? Is that what  
2 you stated?

3 MR. PARK: Excuse me.

4 MR. RENJEL: Going back to your --

5 MR. PARK: Under my name? Is that  
6 it?

7 MR. GELL: Yes, whether you  
8 applied again.

9 MR. RENJEL: Did you apply for the  
10 Certificate of Occupancy in 2008? During your  
11 direct you indicated that you applied -- you  
12 submitted the application and you were the one  
13 who applied for the Certificate of Occupancy,  
14 is that correct?

15 MR. PARK: No. Apply for  
16 occupancy permit under new lessee, new owner,  
17 who is going to take over the business.

18 MR. RENJEL: Okay. Okay. Now  
19 with regard to the renovations. Isn't it true  
20 that you began renovations on the property  
21 without obtaining a building permit?

22 MR. PARK: Yes. At the very

1 beginning, it was early May 2008, we figure we  
2 don't need to do too much repair work. I  
3 thought just general cleaning, you know  
4 cleaning up and throw away some bad  
5 merchandise and stuff like that. So we  
6 started. We started without building permit,  
7 that is true.

8 One day we got a stop order from  
9 DCRA. And I went to DCRA office and where the  
10 hospital location is. And apply for new  
11 building permit.

12 After we paid a fine that we  
13 started working for that building without  
14 permit. We got the building permit at that  
15 time. And also occupancy permit also under new  
16 lessee, new owner's name and worked there  
17 three or four months since May 2008.

18 MR. RENJEL: I have nothing  
19 further for Mr. Park right now, Your Honor --  
20 Mr. Loud.

21 CHAIRPERSON LOUD: Thank you, Mr.  
22 Rengel.

1           Let's see if Board members have  
2 any questions.

3           Mr. Gell, did you want reask the  
4 witness or --

5           MR. GELL: No, I accept Mr. Park's  
6 response. They were as wholesome as they  
7 could be.

8           We did have a meeting with Mr.  
9 LeGrant and Mr. Rengel. At that meeting some  
10 of the factors that he had brought up today  
11 were laid out for Mr. Park. When he saw them,  
12 he didn't object to it. Although as he  
13 pointed out, in some cases there were --

14           MR. RENJEL: I'm going to object  
15 again. Is he offering testimony or is he  
16 making closing statement. He needs to either  
17 question the witness about what he's asking or  
18 not make a statement.

19           MR. GELL: I don't have anything  
20 further.

21           CHAIRPERSON LOUD: Thank you, Mr.  
22 Gell.

1 Do you have further witnesses, Mr.  
2 Gell?

3 MR. GELL: No.

4 CHAIRPERSON LOUD: Okay. Then  
5 barring any questions from Board members,  
6 we'll move on to the Zoning Administrator's  
7 case, DCRA's case.

8 MEMBER DETTMAN: Mr. Chairman  
9 would you mind if I asked the applicant a  
10 question?

11 CHAIRPERSON LOUD: Not at all. Not  
12 t all. Go right ahead.

13 MEMBER DETTMAN: Mr. Park, can you  
14 tell me when was the last time that the liquor  
15 store was actually open for business?

16 MR. PARK: I just don't have a  
17 clear cut date or month because I didn't pay  
18 attention. I thought that I will close that  
19 store business like DCRA claims because I  
20 thought this just carry on. Although it's a  
21 very inactive slow business action, but I  
22 thought my argument that now I shouldn't do

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1 that way, but still my thought was my business  
2 I can close when I want to and that kind of  
3 thinking, you know which is a fully silly, now  
4 I can fully realize now. But the point I'm  
5 making is I never abandoned the business.  
6 It's just carry on kind of feeling I had. As  
7 you see, you renew --

8 MEMBER DETTMAN: I think that  
9 there are multiple ways that you can  
10 demonstrate how you may not have abandoned the  
11 business. But one way you can demonstrate it  
12 is by having the door open and that you're  
13 open for business. And so my question was,  
14 you know, when was the last time that you can  
15 remember that you went to the store, opened up  
16 the door and made it available for people to  
17 shop?

18 MR. PARK: I just -- I just don't  
19 have a clear cut memory, sir, believe me.  
20 Because I never paid attention to these  
21 direction because I've been running there  
22 about 18 years, 20 years, you know. I thought

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1 just carry on kind of thinking that I had.  
2 And my business place is just carry on, like  
3 I has been doing -- have been doing. So that  
4 is -- that's why I'm sorry I cannot just  
5 pinpoint exact date, believe me. But I admit  
6 that it was not active business operation. No  
7 question about it because of the health  
8 problem and son and so forth.

9 MR. RENJEL: And can I ask one  
10 additional question, Mr. Loud.

11 CHAIRPERSON LOUD: Yes, sir. Mr.  
12 Rengel.

13 MR. RENJEL: Okay. From, say,  
14 2003/04 do you have any tax records that  
15 indicate you paid sales or income tax for your  
16 business from 2003 forward?

17 MR. PARK: Yes. Always paid so  
18 called enfranchised incorporated tax.

19 MR. RENJEL: Okay.

20 MR. PARK: And also here again, I  
21 -- I don't recall exactly date, but I even  
22 kept with income tax return or business

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1 franchise taxes on tax day.

2 MR. RENJEL: Okay. So again, do  
3 you have any proof that you have paid sales  
4 taxes or income taxes for 2003 forward? Do  
5 you have any proof for that period of time?

6 MR. PARK: Of course, I have  
7 income tax return.

8 MR. RENJEL: For your business  
9 from 2003 forward?

10 MR. PARK: I suppose so. Because  
11 I prepare the tax return from CPA, my  
12 accountant. And he got that tax report. I'll  
13 find it. Tax payment.

14 MR. RENJEL: So do you have a copy  
15 of those tax returns with you today?

16 MR. PARK: No, not today. No.

17 ZC CHAIRPERSON HOOD: Can I just  
18 piggyback on what Board member Dettman was  
19 speaking?

20 Mr. Park, he was trying to find  
21 out trying to find out when the last time your  
22 doors opened and you don't remember. But what

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1 do you mean by when you say, what is your  
2 interpretation of "carry on." When you said  
3 you just "carry on." Help me understand what  
4 carry on means.

5 MR. PARK: See, I've been  
6 operating that store since 1986 although the  
7 business operation in very inactive because of  
8 my health condition. By the way, I'm 78 years  
9 old, old man. You can see. So kind of slow  
10 down for the business operation. And  
11 constantly looking for the -- somebody to take  
12 over, a new lessee. Believe me, I did. I  
13 spend most of time trying to looking for.

14 So many people interested, but  
15 come to the time to settle, they don't have  
16 financial muscle to take over right away. And  
17 as carry on, time passed, 2005, 2006, 2007 and  
18 finally I found 2008 new lessee. And I found  
19 out all the problems I'm facing that I thought  
20 never happened in my business. But look like  
21 this happened and my DCRA. So I'm having  
22 these problems right now, sir. But to me if

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1 I want to abandon, I cannot abandon. That's  
2 one of my lifeline, as I mentioned before.

3 So please understand. Believe me,  
4 I'm saying this under the oath, that I'm  
5 telling you the truth, my true feeling.  
6 Although business is inactive, but I never  
7 abandon. One proof is to try find a new  
8 buyer, new management, new owner and so on and  
9 so forth.

10 I have the proof that contact  
11 business brokers and real estate agents and  
12 son and so forth and month-to-month various  
13 association I'm dealing with and so on to try  
14 to find a new buyer. But unfortunately I  
15 couldn't find earlier, but I did in 2008. And  
16 I found all this problem.

17 So, believe me, I have not  
18 abandoned my business, as you understand. I  
19 wanted to, I cannot.

20 Thank you.

21 CHAIRPERSON LOUD: Thank you, Mr.  
22 Park.

1                   Mr. Hood, do you have any further  
2 questions?

3                   ZC CHAIRPERSON HOOD: I'm not sure  
4 if my question got answered. I'm getting  
5 confused. Maybe I just need to sit back and  
6 listen first. Because that's why they call  
7 these appeals, and most of the times we call  
8 them hearings. Because I'm getting very  
9 confused. Okay.

10                  CHAIRPERSON LOUD: Thank you, Mr.  
11 Hood.

12                  I just want to ask two quick  
13 follow-up questions based on other Board  
14 member's questions and the direct testimony.

15                  Mr. Park, are you the person in  
16 the store that would keep the stock current in  
17 the Oasis Liquors? Are you the person in the  
18 store would keep the stock, the inventory,  
19 current? Would that be you?

20                  MR. PARK: Yes, sir.

21                  CHAIRPERSON LOUD: Okay.

22                  MR. PARK: I have an inventory

1 kept.

2 CHAIRPERSON LOUD: Okay. And I  
3 got that on your direct testimony that the  
4 inventory was kept, stocked during -- well you  
5 testified the whole period. Would the whole  
6 period being 2003 to 2007?

7 MR. PARK: Whatever the time  
8 period.

9 MR. GELL: Excuse me, Mr. Loud. I  
10 think you may have misheard Mr. Park.

11 CHAIRPERSON LOUD: Okay.

12 MR. GELL: As I heard him he  
13 didn't testify that he restocked.

14 CHAIRPERSON LOUD: I understand.

15 MR. RENJEL: Again, Mr. Loud, I'm  
16 going to object.

17 CHAIRPERSON LOUD: I understand.

18 MR. RENJEL: I'm going to Mr. Gell  
19 directly testifying.

20 MR. GELL: If you will permit me--

21 CHAIRPERSON LOUD: One at a time.  
22 Just one at a time. Go ahead, Mr. Gell?

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1 MR. GELL: You can tell by the  
2 transcript, I believe what he said and he has  
3 his statement written out here, what he said  
4 was that "inventory was kept in the store."

5 CHAIRPERSON LOUD: I'm not asking  
6 him about restocking, though. I'm not asking  
7 him about testimony about restocking. Just --  
8 I'm getting ready to, but I didn't ask him  
9 about restocking.

10 Okay. So you were the person that  
11 did keep the inventory up during that period.  
12 And you testified that the inventory was kept  
13 during that period? That was your testimony?

14 MR. PARK: Yes, sir.

15 CHAIRPERSON LOUD: Do you have a  
16 recollection of having a need to and/or -- not  
17 even having a need to. Did you order  
18 inventory for the store during that period,  
19 apart from what was already stocked in the  
20 store?

21 MR. PARK: Because there's stuff  
22 enough to operate if I want, I mean I don't

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1 need to reorder.

2 CHAIRPERSON LOUD: And the period  
3 that you did not need to reorder would have  
4 started when and ended when?

5 MR. PARK: That is correct, sir.

6 CHAIRPERSON LOUD: When would it  
7 have started, this period during which the  
8 stock was kept and you didn't need to reorder,  
9 do you have a recollection of when that  
10 started?

11 MR. PARK: I haven't reordered  
12 because I have an ample inventory stock.

13 CHAIRPERSON LOUD: Okay. During  
14 what period have you had ample inventory stock  
15 so that you haven't had to reorder?

16 MR. PARK: Well, since 1986.

17 CHAIRPERSON LOUD: Oh, we're  
18 lacking communication.

19 MR. PARK: All these years. Years  
20 accumulation.

21 CHAIRPERSON LOUD: No, we're not  
22 communicating. I think I'm not articulating

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1 my question properly.

2 MR. GREEN: Your Honor, I'm going  
3 to object to counsel instructing the witness  
4 in how to respond to your inquiry. Now I  
5 think we've been pretty helpful here, but I  
6 think that if he wants to -- that is if  
7 counsel wants to further develop his witness'  
8 response, he can do so by asking questions  
9 that the court can hear. But what we have in  
10 this situation we have counsel reaching over,  
11 whispering into the ear of his witness and  
12 telling him how to respond to you. That's not  
13 proper and I would object to that  
14 continuation.

15 CHAIRPERSON LOUD: Objection  
16 noted, Mr. Green.

17 MR. GELL: I would be happy to  
18 state it in open hearing what I said to Mr.  
19 Park.

20 CHAIRPERSON LOUD: I don't think  
21 it's necessary.

22 MR. GREEN: We don't want to hear

1 what he has to say. We want to hear what Mr.  
2 Park has to say.

3 CHAIRPERSON LOUD: Objection  
4 noted. I think the witness is under oath and  
5 I think that we can draw some inferences from  
6 the witness being under oath in terms of being  
7 coached by counsel to directly lie under oath.

8 So objection noted. But I think  
9 we should move on.

10 The question I was trying to get  
11 at, and I don't require interpretation,  
12 interpretation services. Okay.

13 Yes, you have to be on the record  
14 as well.

15 (Interpreter speaks to Mr. Park in  
16 Korean.)

17 MR. PARK: I thought I answer  
18 that. I cannot quite pinpoint what year  
19 reorder for additional inventory stock. But  
20 to me, to my recollection, I haven't reordered  
21 because I had ample inventory stock to run the  
22 business all these years.

1 CHAIRPERSON LOUD: Okay. Thank  
2 you. Thank you. That's an appropriate  
3 answer.

4 And just one further questions  
5 about the health issue that you testified to  
6 on direct. Do you recall when the health issue  
7 that you testified about first started with  
8 respect to your not being able to operate, I  
9 think your word was "the store actively"?

10 MR. PARK: I'm sorry. I don't  
11 have the medical record. It's simple. I could  
12 provide anytime the medical record. It is in  
13 2003 and 2004 I was diagnosed as diabetes and  
14 high blood pressure. And I have prescription  
15 drugs to take care of that. And I was under  
16 diabetes class instructions and so on.

17 CHAIRPERSON LOUD: Okay.

18 MR. PARK: And then along with I  
19 got a backache problem, too. I treated it in  
20 the chiropractic all this time, try to  
21 maintain my regular health back. That is the  
22 main reason I couldn't be active for business

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1 operation.

2 CHAIRPERSON LOUD: Okay.

3 MR. PARK: Believe me.

4 CHAIRPERSON LOUD: Thank you. I  
5 appreciate your testimony.

6 I believe now that we're going to  
7 go to the Zoning Administrator's case.  
8 However, I think I overlooked that the ANC has  
9 an opportunity to cross examine as well. So,  
10 Ms. Phelps having heard the testimony on  
11 direct if you have any cross examination  
12 questions, now is the time to get those out.

13 COMMISSIONER PHELPS: Actually, I  
14 think that I'll address any concerned I have  
15 in my testimony.

16 CHAIRPERSON LOUD: Thank you, Ms.  
17 Phelps.

18 With that, we'll turn the  
19 appellee's case, and Mr. Green, I'll turn it  
20 over to you. Or Mr. Rengel. Either one.

21 MR. RENJEL: Mr. Green, if you  
22 want to start with an opening statement?

1 MR. GREEN: Thank you, Mr.  
2 Chairman, members of the Board. I'm going to  
3 be very brief.

4 We intend to show through the  
5 testimony process as well as documents that  
6 starting in July of 1986 Mr. Park has operated  
7 a beverage store located at 1179 3rd Street,  
8 Northeast in what started out as a CM-1 zone.  
9 The zone changed to R-4, and a result the  
10 business became a nonconforming use.

11 We intend to show that for a  
12 period of time that a discontinuance of that  
13 nonconforming use took place. We intend to  
14 show through witnesses that the law is pretty  
15 specific on this. That is DCMR 2005.1. And  
16 this states that a discontinuance for any  
17 reason of a nonconforming use of a structure  
18 for a period more than three years shall  
19 construe a prima facia evidence of no  
20 intention to resume active service or  
21 operation as a nonconforming use.

22 In this particular situation,

1 again, we intend to show that that is exactly  
2 what took place.

3           There has been a lot of discussion  
4 in this case about abandonment. It doesn't  
5 matter. It says for any reason. The law says  
6 discontinues for any reason, whether you  
7 abandoned it or pushed out. The only  
8 exception would be if there was some  
9 governmental interference that impeded in the  
10 access to the premises. That hasn't been  
11 brought out in this case. We intend to show  
12 that the government has not -- the District  
13 Government has not impeded access to the  
14 premises.

15           Now usually when we think about  
16 impeding, we think about Metro or some other  
17 superseding intervening matters that take  
18 place that prevent on the part of the  
19 government. That's not the case here.

20           In this present case there's  
21 overwhelming evidence which we will provide  
22 that supports our assertion that there was a

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1 discontinuance for a period greater than three  
2 years.

3 Now the burden is on Mr. Park to  
4 rebut that. He has got to show that this  
5 discontinuance of a nonconforming use took  
6 place for a period -- rather during this time  
7 frame was the result of governmental  
8 interference or that he has continued to  
9 operate his business during this time frame.  
10 If so, that certainly is in violation of the  
11 D.C. statutes.

12 Now what we've heard thus far is a  
13 variance request. That's what he should be  
14 dealing with. That's what we're not  
15 addressing. And we're, again -- and I want to  
16 stress it, we intend to show that there was a  
17 discontinuance of a nonconforming use pursuant  
18 to the statute I just cited and that it took  
19 place, and the appeal should be denied.

20 Thank you.

21 CHAIRPERSON LOUD: Thank you, Mr.  
22 Green.

1           May I ask one question before you  
2 begin to put your witnesses on? Do you have  
3 a specific period that your witnesses are  
4 going to be testifying to that the three year  
5 discontinuance occurred? Just so as I hear  
6 the testimony I know the exact period?

7           MR. RENJEL: It will be from 2003  
8 up to 2008.

9           CHAIRPERSON LOUD: Okay.

10          MR. RENJEL: However, there will  
11 be some obviously that moved into that  
12 neighborhood during that period who will also  
13 testify to a three year period when they're  
14 within that period. But it did start -- we  
15 will show it did start that it did start  
16 around 2003 and ran all the way up to 2008.

17          CHAIRPERSON LOUD: And started in  
18 '03 in the sense that if you were to show '03  
19 through '06, you would have met the three year  
20 requirement and the way you're looking at the  
21 testimony?

22          MR. RENJEL: Yes. Or, I mean what

1 we have in the Notice to Revoke is 2005 to  
2 2008. However, we believe we went back as far  
3 as 2003.

4 CHAIRPERSON LOUD: Okay. Thank  
5 you.

6 MR. RENJEL: Okay. Our first  
7 witness is Mr. LeGrant. I'm going to have him  
8 introduce himself to the court by stating his  
9 full name for the record.

10 ZA LeGRANT: Good afternoon,  
11 members of the Board. I'm Matthew LeGrant,  
12 I'm the Zoning Administrator here for the  
13 District of Columbia.

14 MR. RENJEL: Okay. Mr. LeGrant,  
15 can you discuss your educational background,  
16 please, very briefly?

17 ZA LeGRANT: Certainly. I have a  
18 bachelor's in city and regional planning,  
19 California Polytechnic State University San  
20 Luis Obispo 1978 and I have a master's in city  
21 planning from the University of California at  
22 Berkeley 1984.

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1 MR. RENJEL: Okay. What is your  
2 current position with the District?

3 ZA LeGRANT: I'm the Zoning  
4 Administrator.

5 MR. RENJEL: And what are your  
6 duties involved in that position?

7 ZA LeGRANT: The responsibilities  
8 of the Zoning Administrator to administer,  
9 interpret and enforce the Zoning regulations  
10 for the District of Columbia,

11 MR. RENJEL: Okay. I'm going to  
12 first show you a document here that I believe  
13 I attached with my statements in opposition to  
14 Mr. Park's appeal. I believe that the Board  
15 members have, but I want you to identify  
16 what's on the top of that document.

17 ZA LeGRANT: Okay. This document  
18 is a photocopy of a Certificate of Occupancy.  
19 It's numbered B146037, dated July 9, 1986.

20 MR. RENJEL: Okay. And can you  
21 identify what the Certificate of Occupancy is  
22 for?

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1                   ZA LeGRANT: This is a Certificate  
2 of Occupancy that was granted to Joseph M.  
3 Park to use the first floor of the building  
4 located Lot 277, Square 773 known as the  
5 premises of 1179 3rd Street, Northeast for the  
6 following purposes. And it's the retail  
7 beverage store.

8                   MR. RENJEL: And what's the zone  
9 indicated on that Certificate of Occupancy?

10                  ZA LeGRANT: There is no -- oh  
11 yes. I'm sorry. Down in the corner it says  
12 zone CM1.

13                  MR. RENJEL: Can you explain very  
14 briefly what a CM-1 zone is?

15                  ZA LeGRANT: A CM-1 zone is the  
16 commercial manufacturing district here under  
17 the District Zoning regulations.

18                  MR. RENJEL: Okay. And on the  
19 first page of this document can I have you  
20 identify what this document is, please?

21                  ZA LeGRANT: This is another  
22 Certificate of Occupancy number CO167331,

1 dated May 30, 2008.

2 MR. RENJEL: And what is the  
3 Certificate of Occupancy issued for?

4 ZA LeGRANT: This was for -- the  
5 approved uses are retail.

6 MR. RENJEL: And who is the  
7 recipient or the person that that C of O was  
8 granted to?

9 ZA LeGRANT: It was granted to a  
10 self proprietor in the name of Mik Yon Eun.

11 MR. RENJEL: Okay. And again,  
12 what is what the zone that is listed on that  
13 Certificate of Occupancy?

14 ZA LeGRANT: The zone that was  
15 indicated it says CM-1.

16 MR. RENJEL: Thank you.

17 MR. RENJEL: Your Honor, I would  
18 like to move this document into evidence. And  
19 I have copies for the Board if they need it.

20 CHAIRPERSON LOUD: That would be  
21 fine. Do you have copies for Mr. Gell as well  
22 and for the ANC?

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1                   You can give them to Ms. Bailey on  
2                   the end.

3                   MR. RENJEL:    Okay.  Mr. LeGrant --

4                   CHAIRPERSON LOUD:  If you could  
5                   just give one second.  We're making sure that  
6                   everyone on the Board gets a copy of what you  
7                   just distributed.

8                   Okay.  You can proceed, Mr.  
9                   Rengel.

10                  MR. RENJEL:  Okay.  Mr. LeGrant,  
11                  I'm going to hand you a second document here.  
12                  Can you identify what that document is?

13                  ZA LeGRANT:  This is a letter from  
14                  me, dated August 29, 2008.  It is a Notice to  
15                  Revoke Certificate of Occupancy No. 167331.

16                  MR. RENJEL:  Is this a document  
17                  that you would have issued out of your office?

18                  ZA LeGRANT:  Yes.

19                  MR. RENJEL:  And is it signed by  
20                  you on the document?

21                  ZA LeGRANT:  Yes.

22                  MR.  RENJEL:  Can you briefly

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1 describe the factual background behind the  
2 issuance of this notice?

3           ZA    LeGRANT:   Okay.   The  
4 Certificate of Occupancy that I noted in the  
5 previous exhibit, which was reviewed and  
6 issued by my office in again May 2008, after  
7 the issuance of that certificate it came to my  
8 attention that there was a question about  
9 whether the nonconforming of that liquor store  
10 was in fact had been discontinued.

11           After a thorough investigation and  
12 review of the information available, I  
13 concluded that the use had been discontinued  
14 given the provision of the Zoning regulation  
15 of 2005.1 and given the facts that the zone  
16 that was shown on that Certificate of  
17 Occupancy said the CM-1 when in fact the zone  
18 is an R-4 District. I concluded that the use  
19 had been discontinued. That the certificate  
20 was not properly issued, therefore I sent this  
21 notice to revoke the issuance of the  
22 Certificate of Occupancy.

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1 MR. RENJEL: Okay. Now based on  
2 what you have in this notice here, what facts  
3 have you obtained that led you to believe that  
4 the use of the business had been discontinued?

5 ZA LeGRANT: The key facts were  
6 the fact that there was no business license,  
7 continuous business license for the period of  
8 time after 2003. There's no renewal of that  
9 business license.

10 It came to my attention that the  
11 Alcoholic Beverage Control Board had issued a  
12 letter on November 9, 2005 that the licensed  
13 establishment was not operating.

14 The other key information that  
15 came to my attention after my office  
16 researched this matter was that the water  
17 service for the premises from April 2005 to  
18 May of 2008 had been disconnected.

19 This was all evidence to me that  
20 there was no business operating during this  
21 period.

22 MR. RENJEL: Okay. Now going to

1 another issue. Have you had any meetings with  
2 Mr. Park?

3 ZA LeGRANT: I met with Mr. Park  
4 last week.

5 MR. RENJEL: And during that  
6 meeting did Mr. Park admit to you or make any  
7 statements to you regarding whether or not the  
8 business had been opened?

9 ZA LeGRANT: Well, in discussions  
10 with Mr. Park we asked him if the business had  
11 been opened since 2003. And he indicated to  
12 me that it had not.

13 MR. RENJEL: Okay. And finally  
14 switching over to the issue of the filing of  
15 both an appeal and variance, what effect do  
16 you believe that the filing of the variance  
17 has on this appeal?

18 ZA LeGRANT: Well, I was somewhat  
19 surprised when I learned that a variance  
20 application had been applied for. It  
21 indicates to me that it is an admission that  
22 the business had been discontinued. That the

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1 variance is seeking establishment of a  
2 commercial use in an R-4 District. And that  
3 the appropriate remedy to do such an activity  
4 would in fact be that variance application.

5 The fact that the variance  
6 application has been filed for and it will be  
7 pending before this body is to me the remedy,  
8 and it's the remedy that I advised to Mr. Park  
9 to if there was going to be a reestablishment  
10 of the business, that would be the appropriate  
11 avenue is to seek a variance, it is up before  
12 the Board to grant the variance if the  
13 business use in an R-4 District could be  
14 commenced. Because in my view the business  
15 activity has been discontinued.

16 MR. RENJEL: Okay. Mr. LeGrant,  
17 one final question that I think I missed. Can  
18 you identify the chart that is on the board  
19 over there?

20 ZA LeGRANT: Yes.

21 MR. RENJEL: Can you identify  
22 where the property is in relation to the

1 chart?

2 ZA LeGRANT: Yes. And we have 8½  
3 by 11 copies that will be distributed now to  
4 members of the Board as well as opposing  
5 counsel and ANC.

6 The large poster -- has basically  
7 four pieces of information on it. I'll start  
8 with the upper left hand corner.

9 This is a photo -- this  
10 information is developed from the District's  
11 geographic information system and other  
12 information resources operated by DCRA's  
13 Office of Information Systems.

14 In the upper left hand corner is a  
15 photograph of the premises dated, as you can  
16 see, August 24, 2004. I will note that photo  
17 appears to me that the establishment is  
18 closed.

19 To the right is a map showing the  
20 property in question on context of its  
21 immediate neighborhood. In red is the subject  
22 premises in the southeast corner of 3rd Street

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1 and M Street, Northeast.

2 This particular image shows the  
3 zoning for that and the subject premises is  
4 the R-4 District. And it shows the addresses  
5 of the adjacent properties.

6 In the lower left hand corner is  
7 an aerial photograph showing the larger  
8 surrounding neighborhood which gives a little  
9 bit of the context of its area. On that map,  
10 that aerial photograph is the New York Avenue-  
11 Gallaudet Metro station showing with the  
12 square Ms right across the railroad tracks,  
13 Metro rail right-of-way. And it also shows  
14 some other establishments that sell alcohol in  
15 the general area.

16 The case summary, finally, in the  
17 lower right hand corner is the description for  
18 the case today. That's taken from the Office  
19 of Zoning's website.

20 MR. RENJEL: Okay. I have nothing  
21 further with Mr. LeGrant.

22 I would like to move the Notice to

1 Revoke the Certificate of Occupancy into  
2 evidence.

3 CHAIRPERSON LOUD: Mr. Gell, do  
4 you have cross for this witness?

5 MR. GELL: May I just have a  
6 minute?

7 CHAIRPERSON LOUD: Sure. Do you  
8 mind if the Board asks some questions as you--

9 MR. GELL: No, no, no.

10 CHAIRPERSON LOUD: Okay. All  
11 right. So let me see if Board members have an  
12 question for Mr. LeGrant. Mr. Hood or Mr.  
13 Dettman do you have any questions for Mr.  
14 LeGrant.

15 ZC CHAIRPERSON HOOD: Not really.  
16 Well, I'm trying to understand. \*3:31 was off  
17 for -- maybe it was the building permit. And  
18 I had \*\* and I think you may alluded to it.  
19 Sometime you miss something when you're trying  
20 to read and understand things while you're  
21 testifying or answering questions. But can  
22 you back through the exercise again, a C of O

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1 which has May 30, 2008 on it and has a CM-1  
2 zone and a building permit. I'm not sure of  
3 the date on it. Actually, the date is July.

4 When was the zoning changed? When  
5 was it rezoned?

6 ZA LeGRANT: The area was rezoned  
7 by Zoning Commission Order on August 4, 1997.  
8 That was the point that a map amendment was  
9 made that rezoned this particular area as well  
10 as other areas in the surrounding neighborhood  
11 from the CM-1 to the R-4 District.

12 ZC CHAIRPERSON HOOD: 1997 to R-4.

13 I know this predates you, but I'm  
14 just curious, why do we still show a zone of  
15 CM-1?

16 ZA LeGRANT: As I noted, the  
17 Certificate of Occupancy that was incorrectly  
18 issued by my office on May 30th incorrectly  
19 denoted the zone as CM-1. It should have been  
20 an R-4 zone indication on that document.

21 ZC CHAIRPERSON HOOD: So what was  
22 done to rectify it?

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1                   ZA LeGRANT: I'm sorry?

2                   ZC CHAIRPERSON HOOD: What was  
3 done to correct it?

4                   ZA LeGRANT: Well --

5                   ZC CHAIRPERSON HOOD: Was another  
6 C of O issued or what happened?

7                   ZA LeGRANT: No. When we began  
8 the review and it was brought to my attention  
9 that the -- first it was a question whether  
10 the use had been discontinued or not. And so  
11 my office began researching the matter looking  
12 at information to see if in fact the use has  
13 been discontinued because we had received  
14 concerns from the neighborhood that wait a  
15 second, this liquor store in people's minds  
16 had been long since closed and I think some  
17 people made the assumption that it would not  
18 ever reopen.

19                   And then there was beginning of  
20 the activity first of the construction  
21 activity without a building permit that was  
22 later subject to the stop work order.

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1                   We received communications from  
2 neighboring residents about wait a second,  
3 what's the status. And then in the course of  
4 my review of the information I concluded that  
5 the use had been discontinued. That was the  
6 basis for me then to go and revoke the  
7 Certificate of Occupancy. And that was the  
8 major reason for my notice of August 29th.

9                   ZC CHAIRPERSON HOOD: Typically,  
10 and I'm not sure back then, typically when a  
11 rezoning takes place everyone within 200 feet  
12 is notified. Do we know if that happened at  
13 that time with the rezoning?

14                  ZA LeGRANT: That I do not know.  
15 We do have -- I have here, we have a copy of  
16 the order. It is not my office's  
17 responsibility to give notice for rezonings.  
18 And, frankly, offhand I do not know if that  
19 lies with the Office of Zoning or the Office  
20 of Planning. But how the notice process works  
21 for rezonings what is the obligations of the  
22 District to notify property owners. I believe

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1 it is set forth, but I do not know in this  
2 particular instance what those notice -- what  
3 in fact which notice took place.

4 ZC CHAIRPERSON HOOD: Yes. And I  
5 just wanted to make sure Mr. Park was aware of  
6 it since he's been there since 1986. Because  
7 actually that has been transferred -- I don't  
8 know if was transferred, but the Office of  
9 Zoning has taken that on under \*\*3:35 in 1999,  
10 but this predates her and I was just wondering  
11 if that happened when this was rezoned. But  
12 I guess we have no way of finding out.

13 Okay. Thank you very much.

14 ZA LeGRANT: Thank you.

15 MEMBER DETTMAN: Good afternoon,  
16 Mr. LeGrant.

17 Is this the first time you've ever  
18 had to investigate a discontinuance in your  
19 role as ZA?

20 ZA LeGRANT: No. I've had some  
21 other instances in which the question has been  
22 brought before me.

1                   MEMBER   DETTMAN:  Is there a  
2                   specific protocol that you follow in order to  
3                   do your investigation?  You had mentioned the  
4                   water bill and the business license.

5                   ZA  LeGRANT:  Well, I guess my  
6                   approach is to first look at which District  
7                   records may either concur or be at odds with  
8                   the continuance of that use.  And if it is  
9                   subject to a business license, I look to our  
10                  business license department.

11                  The other things that -- I go to  
12                  the Office of Tax and Revenue to see, for  
13                  example, for residential properties we have a  
14                  vacancy classification to see if something was  
15                  deemed vacant.  Utility records when I can  
16                  access them, as well.

17                  And then the -- in this case and  
18                  then some other cases I've had to look at if  
19                  there's special licensing such as from the  
20                  ABC, then I have a resource I feel I can go to  
21                  to see what these other agencies have for  
22                  their licensing classification and taxing

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1 rolls what information they have. And I would  
2 certainly -- I take all that information into  
3 account.

4 MEMBER DETTMAN: Okay. This is  
5 kind of a hypothetical. But assuming that the  
6 resources that you have access to give you all  
7 indications that the business may have been  
8 discontinued. If someone was to bring to you  
9 information such as health records showing  
10 that they've actively pursued during a course  
11 and time that they're looking to sell a  
12 business, although the door weren't opened  
13 during that time, other information that  
14 wouldn't be available to you through the other  
15 district agencies, would you entertain an  
16 argument that that would say that something  
17 wasn't discontinued?

18 ZA LeGRANT: Well, first of all,  
19 in issuing the notice I look to a response to  
20 see if - what information an individual can  
21 bring to me. And if they can demonstrate to  
22 my satisfaction that in fact a business or a

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1 particular use had been continued to operate,  
2 certainly for example in something that  
3 doesn't require a business license or an ABC  
4 license like a residential use, has it been  
5 discontinued or not, then I would look at  
6 maybe private records. Examples of lease  
7 agreements or other private contracts.

8 I do have to say if simply putting  
9 a property on the market and seeking to sell  
10 or lease a business does not speak to the  
11 issue of maintaining the use. That is a  
12 proposal to sell or lease an activity. It  
13 doesn't speak to whether that use is  
14 continuous because many businesses can and do  
15 operate when they're for sale or seeking a new  
16 business owner or property owner.

17 So I tried to see what information  
18 is available to me about the maintenance and  
19 continuance of the use itself.

20 MEMBER DETTMAN: Okay. And so the  
21 information that's been presented today by the  
22 applicant, the health issues, the soliciting

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1 interest from other property owners or  
2 business owners, that was presented to you  
3 during this time line and it didn't convince  
4 you, is that what you mean?

5 ZA LeGRANT: Right. Certainly the  
6 information was brought to my attention. I  
7 have great sympathy for Mr. Park and his  
8 health issues. And I can understand perhaps  
9 why he was not able to operate the business.  
10 But my question's very discrete: Did the use  
11 continue or not regardless of the reason? And  
12 so that's what I was trying to zero in on.

13 MEMBER DETTMAN: Okay. Thank you.

14 CHAIRPERSON LOUD: Good afternoon,  
15 Mr. LeGrant. I just have a couple of quick  
16 follow-up questions, most of them to clarify  
17 things that you testified to during your  
18 direct. But the first one, though, is a  
19 little different.

20 Your office issued the C of O in  
21 May of '07 and then in August of '08 revoked  
22 it. And I'm not clear from the record as to

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1 what triggered the investigation and the  
2 revocation. Were you just doing subsequent  
3 reviews of C of Os issued and made a  
4 determination that, hey, let me take a second  
5 look at this one or --

6           ZA LeGRANT: I received concerns  
7 from the neighborhood. I can't recall the  
8 specific phone call or email that actually  
9 triggered it. But when it came to my  
10 attention the question was raised. No, the  
11 business has been closed and by the way, the  
12 complainant did know about section 2005.1  
13 about the three year discontinuance rule. At  
14 that point I obviously took upon a research.  
15 Okay. I've got research this, but I'm not  
16 going to make any conclusion until after I do  
17 a thorough research. And in the course of  
18 that some of the facts that I've spoken to  
19 have that have been brought up by my counsel  
20 was taken into account. And I had to conclude  
21 that research to come to the point of making  
22 a decision that the three year discontinuance

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1 had in fact had occurred. And that's the  
2 point I had to move forward with the  
3 revocation.

4 CHAIRPERSON LOUD: Okay. I'm just  
5 curious. And when the complaint came forward,  
6 was the three year period, if you can recall,  
7 from '03 forward?

8 ZA LeGRANT: Well, there have been  
9 various claims about the beginning of the  
10 period; 2003, 2004, 2005. As noted earlier,  
11 it's three year regardless of when the  
12 beginning point.

13 At the point that the Certificate  
14 of Occupancy was applied for, which April or  
15 May of 2008, back dating that to 2005 was the  
16 test that I was looking at.

17 CHAIRPERSON LOUD: Thank you. And  
18 then just to clarify a couple of things that  
19 you testified to, you say that you had met  
20 with Mr. Park and that he admitted that the  
21 business had not been opened since 2003, did  
22 I understand your testimony?

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1                   ZA LeGRANT: Right.

2                   CHAIRPERSON LOUD: Okay. And when  
3 was that meeting? When did the meeting take  
4 place?

5                   ZA LeGRANT: That was probably  
6 last week.

7                   CHAIRPERSON LOUD: Okay. And you  
8 also start out your testimony saying that you  
9 took into consideration a number of things.  
10 One was the basic business license lapse. The  
11 other was the water revocation. And I had a  
12 question. Do you remember what year the water  
13 revocation was?

14                   ZA LeGRANT: I have it here in my  
15 notes if you'll give me a moment.

16                   CHAIRPERSON LOUD: Okay. If you  
17 can recall that, that would be good.

18                   ZA LeGRANT: Yes. According to my  
19 review of WASA records from April 2005 until  
20 May of 2008 the water service had been  
21 disconnected.

22                   CHAIRPERSON LOUD: Okay. And did

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1 you add anything to that? I know you  
2 mentioned the BBL and the water revocation. I  
3 thought you had mentioned a third thing that  
4 I just didn't get in my notices.

5 ZA LeGRANT: Yes. The ABRA  
6 license.

7 CHAIRPERSON LOUD: The ABRA  
8 license. Okay. That's the way May 2005 --

9 ZA LeGRANT: Right.

10 CHAIRPERSON LOUD: -- when someone  
11 came by to look at the site and allegedly it  
12 was not open. And they were asked to place it  
13 in safekeeping?

14 ZA LeGRANT: Right.

15 CHAIRPERSON LOUD: Okay.

16 ZA LeGRANT: The letter dated  
17 November 9, 2005 from ABRA.

18 CHAIRPERSON LOUD: November?  
19 Okay. Thank you. I don't have any additional  
20 questions.

21 I think now Mr. Gell.

22 MR. GELL: Mr. LeGrant?

1                   ZA LeGRANT:  Yes.

2                   MR. GELL:  Mr. LeGrant, now you  
3                   heard Mr. Park testify today and he also, I  
4                   believe, in our statement to the Board on the  
5                   appeal indicated that he basically closed the  
6                   regular running of the business but kept it  
7                   open on occasion.  Is it possible that in your  
8                   question to him about when did you close the  
9                   business that he was referring to the formal,  
10                  or let's say the ceasing regular operations;  
11                  holding it open everyday, every week as  
12                  opposed to opening it on occasion?  When he  
13                  responded to you yes since -- I think you said  
14                  since 2003?

15                  ZA LeGRANT:  Yes.

16                  MR. GELL:  Was that clear to you  
17                  that he was referring to that as opposed to  
18                  the testimony that he has today?

19                  ZA LeGRANT:  Well --

20                  MR. GREEN:  Mr. Chairman, I'm going  
21                  to object to the question as to form.  I'm  
22                  going to ask that it be broken down.  It's a

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1 compound question and some parts of it really  
2 are irrelevant to today's proceedings.

3 MR. GELL: It seems to me Mr.  
4 LeGrant was about to answer it. Maybe it's  
5 not so unclear to him.

6 CHAIRPERSON LOUD: It was a little  
7 confusing to me, and I know exactly what  
8 you're asking and I really want to hear the  
9 answer to it. But is there a way to reword  
10 it?

11 MR. GELL: I'm not sure it would  
12 satisfy everybody. You heard Mr. Park's  
13 testimony today, didn't you, that he did open  
14 it on occasion during the period, at least up  
15 until 2006? Did you? Did you not? You can  
16 answer that.

17 ZA LeGRANT: Well, we had the  
18 meeting and I simply asked --

19 MR. GELL: Fine. I mean just  
20 today you heard that? You heard him testify  
21 to that today, right?

22 ZA LeGRANT: That he was open on

1 occasion?

2 MR. GELL: Yes.

3 ZA LeGRANT: Yes, I believe I  
4 recall him stating that today.

5 MR. GELL: All right. In the  
6 meeting that we had that was last Wednesday  
7 you stated that he said to you that he closed  
8 the business in 2003, am I right about that?

9 ZA LeGRANT: Yes.

10 MR. GELL: All right. Is it  
11 possible that you misunderstood his answer at  
12 the meeting in your office? Not to mean that  
13 he was closed for good and never reopened, but  
14 that in fact that he closed his regular  
15 business open everyday five days a week as  
16 opposed to opening it on occasion during that  
17 period of time?

18 ZA LeGRANT: Well, to me I just  
19 asked a simple question. And at that point of  
20 that discussion there was no elaboration at  
21 that point in time. He did not add on oh, but  
22 I was open occasionally. I don't recall him

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1 following up my specific question to him where  
2 you close it, when did you close.

3 MR. GELL: Fair enough. I think  
4 we have the answer. I'll move on to another  
5 point.

6 You stated that in your opinion  
7 filing the application shortly after we filed  
8 the appeal was an indication to you that we  
9 believe that there had been a proper  
10 discontinuance that would rationally lead to  
11 the withdrawal -- the revocation of his C of  
12 O, am I right?

13 MR. GREEN: Your Honor -- I mean,  
14 Mr. Chairman, I'm going to object again. Is  
15 he making a statement, asking a question?

16 MR. GELL: I'm asking the witness  
17 if that's what he stated. He can tell me  
18 that.

19 ZA LeGRANT: Can you please repeat  
20 that?

21 MR. GELL: Yes. Am I right in  
22 recalling that you made the statement, I think

1 it's also in your testimony, I think it's in  
2 the written statement as well, that simply  
3 filing the application for a variance shortly  
4 after filing the appeal was an indication to  
5 you that he was admitting that he had been  
6 closed and that his appeal was, in effect,  
7 improper or mute or whatever?

8 ZA LeGRANT: Well, what I recall  
9 saying is that the filing of the variance  
10 application to me is the proper remedy for  
11 resolving the issue of a use that has been  
12 discontinued.

13 MR. GELL: Did you read the  
14 statement submitted by the attorney for DCRA,  
15 the appellee's statement in opposition to the  
16 Appeal of Joseph Park?

17 ZA LeGRANT: Yes.

18 MR. GELL: Perhaps I'm  
19 misunderstanding your statement. I thought  
20 you were saying the same thing as what you  
21 stated here. I can read it if the Board wants  
22 me to.

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1 CHAIRPERSON LOUD: Is this just on  
2 the issue of Mr. LeGrant's opinion that  
3 pursuing the application and the appeal  
4 simultaneously is somehow an admission of  
5 abandoning the use?

6 MR. GELL: Well, I'll use the  
7 words here. Is it essentially admitting that  
8 his appeal is not warranted? Is that Mr.  
9 LeGrant's view as well?

10 ZA LeGRANT: If you can point me  
11 to the place in the statement?

12 MR. GELL: The pages aren't  
13 numbered, but it's at the top of the fourth  
14 page. It's number 14.

15 ZA LeGRANT: Is it subsection --

16 MR. GELL: The one I have -- we  
17 seem to have different copies here.

18 ZA LeGRANT: I think it's an  
19 earlier version. Okay. Yes.

20 I'll read it. Number 14: "After  
21 filing this appeal Mr. Park has also submitted  
22 an application for a variance. In doing so,

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1 Mr. Park is essentially admitting that this  
2 appeal is not warranted."

3 MR. GELL: And my question is, is  
4 that your view?

5 ZA LeGRANT: Yes.

6 MR. GELL: And do you have any  
7 experience with cases in which parties who  
8 have appealed and also filed variances at the  
9 same time?

10 ZA LeGRANT: Not to date, no.

11 MR. GELL: Did it occur to you in  
12 making that statement or agreeing to that  
13 statement that the length of time that Mr.  
14 Park is forced to keep his business closed is  
15 so onerous having revoked his C of O which was  
16 granted in '08, that he would take whatever  
17 actions he could to shorten the period the  
18 time that he would be out of business not  
19 knowing for sure how the Board was going to  
20 rule on his appeal? And are you saying that  
21 it's proper to deprive him of that right  
22 simply by using it as an inference that in fact

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1 he doesn't believe he has a right to bring the  
2 appeal?

3 MR. GREEN: Your Honor -- rather  
4 Mr. Chairman, you know it appears that the  
5 comments being made by counsel fall within the  
6 realm of a closing argument, perhaps. I don't  
7 see the question in it. Now maybe you do.  
8 But Mr. LeGrant can't answer what appears to  
9 be a closing argument.

10 Now if he wants to rephrase it and  
11 ask him a straightforward question, I'm quite  
12 sure that Mr. LeGrant, based on his background  
13 and training and experience, will be  
14 responsive. But if he has to respond to a  
15 closing argument, then I don't think that Mr.  
16 LeGrant can give an answer that's helpful to  
17 this Board. And I would therefore impose my  
18 objection.

19 MR. GELL: I grant that Mr.  
20 LeGrant is not an attorney. We don't expect  
21 him to give judicial answers. However, he did  
22 make a statement that sounded to me the same

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1 as this number 14. And in fact, he says he  
2 agrees with it. So I'm asking whether he  
3 agrees with it under the circumstances that I  
4 suggested and does he believe that it's proper  
5 for him to take that position?

6 CHAIRPERSON LOUD: I'll go ahead  
7 and ask the witness to answer the question.  
8 But just let me reflect for a second.

9 MR. GELL: Okay.

10 CHAIRPERSON LOUD: In terms of the  
11 overall helpfulness to the issue of  
12 discontinuance, I'm not certain how far this  
13 takes us because the witness has testified  
14 about the BBL being the basis of the decision,  
15 the water, the period during which the water  
16 was not available on site. The statement made  
17 last week during a meeting that the appellant  
18 admitted being closed since 2003. So this  
19 specific issue we're talking about now is just  
20 one more, almost pile on type issue that you  
21 can demolish. I mean, you're free to demolish  
22 it. But I'm just wondering how much time we

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1 want to spend on it when I don't know if it's  
2 necessarily the meat of the case they're  
3 putting forward regarding whether or not  
4 there's been discontinuance.

5 MR. GELL: I'll take the Board's  
6 advice on that and move on.

7 Do I understand you correctly to  
8 be stating that when the Zoning Commission  
9 adopted the R-4 zoning for this entire block  
10 that had there been an objection by Mr. Park,  
11 assuming he got some notice of that proposed  
12 action, that the Zoning Commission would have  
13 carved out an 800 square foot lot for a  
14 separate use?

15 MR. RENJEL: I'm going to object,  
16 Mr. Loud, to that question on the basis that  
17 it's speculation. Mr. LeGrant can't  
18 necessarily speculate as to what the Zoning  
19 Commission may or may not have done based on  
20 what Mr. Park may or may not have done in  
21 1996. That's completely speculation.

22 MR. GELL: Well, I think it's

1 speculation as well to assume that simply  
2 because the Commission did not carve this out  
3 and give it CM status or C-1 status, or  
4 whatever, that the implication is that they  
5 wanted the use to change.

6 COMMISSIONER PHELPS: I'm going to  
7 object if that's all right, Mr. Chairman, as  
8 a party. This doesn't go to the issue of  
9 discontinuance about whether or not he  
10 received notice about the rezoning. That  
11 doesn't impact whether or not he was open in  
12 that three year period. And so whether or not  
13 the zoning order addresses who got notice or  
14 whatever else, which by the way I have a copy  
15 and I know who testified and who -- there was  
16 notice. It isn't germane to the topic at  
17 hand, which is the discontinuance.

18 CHAIRPERSON LOUD: Why don't we  
19 let Mr. Gell respond and then --

20 ZC CHAIRPERSON HOOD: I might open  
21 it up, Mr. Chairman.

22 CHAIRPERSON LOUD: Yes, sir. Mr.

1 Hood, go right ahead.

2 ZC CHAIRPERSON HOOD: And I'll  
3 tell you why I asked it because as far as I  
4 was concerned it was germane to some testimony  
5 Mr. Park mentioned. I think earlier he  
6 mentioned that he was not notified. Because  
7 that would -- eventually whenever rezoning is  
8 taking place on the Commission, when it comes  
9 to issues where people are going to be in a  
10 nonconforming use, that happenstance -- those  
11 issues sometimes never come up, but this is  
12 one I rarely see, at least in my 12 years  
13 being there, but it goes to exactly Ms. Phelps  
14 is talking about, discontinuance.

15 I brought that up to give myself  
16 some reference to find out exactly going back  
17 to the testimony that he didn't know. And I  
18 think that's what he mentioned earlier in his  
19 testimony. And I know at one time this office  
20 was not doing that. But now that we are  
21 provided by applicants the labels, and then  
22 this office sends them out. So I just know

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1 that that has taken place since 1999.

2 Hopefully, Mr. Chairman, I didn't  
3 lead everyone down the wrong road, but that  
4 was for myself understanding so I can  
5 understand how all this transpired.

6 COMMISSIONER PHELPS: My objection  
7 is to Mr. Gell's statements about speculating  
8 whether or not they rezoned which portion of  
9 this square. And we can talk about what other  
10 portions were rezoned if you'd like, but again  
11 I don't think that this question is germane.

12 CHAIRPERSON LOUD: Yes. I don't  
13 want to meander too far down this path. But  
14 Mr. Gell, is there a connection between the  
15 question and the specific issue on the table  
16 for us this afternoon in terms of there being  
17 a continuous three year period of non-  
18 operation of the store? Yes, discontinuance  
19 of use, I think. Let me use the exact Zoning  
20 language.

21 MR. GELL: Mr. Loud, if I may  
22 solve an agreement with Mr. Phelps. This

1 really does go more toward the application  
2 phase than it does the discontinuance issue.

3 CHAIRPERSON LOUD: Okay.

4 MR. GELL: I'd be glad to withdraw  
5 it.

6 CHAIRPERSON LOUD: Okay. All  
7 right. Well let's move on then.

8 MR. GELL: I have no further  
9 questions.

10 CHAIRPERSON LOUD: Okay. Ms.  
11 Phelps. Thank you, Ms. Phelps.

12 There being no further cross  
13 examination of Mr LeGrant, do Board members  
14 have any final questions for Mr. LeGrant?  
15 Okay.

16 Let me pause just to note that  
17 it's 4:00 and our goal is to be able to end  
18 this no later than 6:00. So that if there are  
19 any witnesses here who have to leave  
20 immediately, now might be the time to put that  
21 on record so that we with consent of folks  
22 take witnesses out of order and get those who

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1 have to leave taken care of.

2 Mr. Rengel and/or Mr. Green, how  
3 many more witnesses do you have total?

4 MR. RENJEL: Six.

5 CHAIRPERSON LOUD: Six witnesses?

6 And have you done a mental vet in terms of  
7 duplication of testimony and, you know, it's  
8 good to have corroborating witnesses, but --

9 MR. RENJEL: And that's what I'm  
10 going to focus on.

11 CHAIRPERSON LOUD: Okay.

12 MR. RENJEL: People who live in  
13 the neighborhood and can testify as to whether  
14 or not the store was open at any point between  
15 2003 and the present. Everybody will be  
16 testifying to the same thing. I can start  
17 with one witness and then again if it becomes  
18 too duplicative, I can -- you know, you can  
19 certainly cut me off. And I will, again, try  
20 to keep it brief with regard to each one.

21 CHAIRPERSON LOUD: Okay. And how  
22 long do you think it will take you to move

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1 through the six witnesses?

2 MR. RENJEL: Well, again, I can  
3 tell you very briefly my questions are going  
4 to be have them introduce themself, state  
5 where they live and basically whether or not  
6 they know whether or not the store's been open  
7 for a period of three years.

8 CHAIRPERSON LOUD: Okay.

9 MR. RENJEL: It's going to be very  
10 brief. I can make them as brief as possible.

11 CHAIRPERSON LOUD: So why don't we  
12 go through that and then you call the  
13 witnesses in the order so that we can get  
14 everyone's testimony on record.

15 MR. RENJEL: Okay. And you're  
16 going to have to help me with your name here,  
17 Mr. Salim Bhabhrawala.

18 MR. BHABHRAWALA: That's right.

19 MR. RENJEL: Okay. You want to  
20 come up?

21 MR. BHABHRAWALA: Good afternoon.

22 MR. RENJEL: Okay. Mr.

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1 Bhabhrawala, can you please introduce yourself  
2 to the BZA?

3 MR. BHABHRAWALA: Sure. Good  
4 afternoon. Is this working?

5 MR. RENJEL: Yes.

6 MR. BHABHRAWALA: Okay. My name  
7 is Salim Bhabhrawala.

8 MR. RENJEL: Okay. Can you  
9 indicate where your current residence is?

10 MR. BHABHRAWALA: I currently live  
11 at 1160 Abby Place, Northeast. If you look at  
12 the map to the right, it is Lot 0217.

13 MR. RENJEL: Okay. How long have  
14 you lived at your current residence?

15 MR. BHABHRAWALA: Approximately 4  
16 years and 7 months.

17 MR. RENJEL: Okay. Are you  
18 familiar with the business at 1179 3rd Street?

19 MR. BHABHRAWALA: I'm familiar  
20 with the property there, yes.

21 MR. RENJEL: Okay. And during the  
22 time that you lived in the neighborhood have

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1 you seen that liquor store open at any point?

2 MR. BHABHRAWALA: No.

3 MR. RENJEL: I have nothing else  
4 for this witness.

5 MR. BHABHRAWALA: Okay. Thank  
6 you.

7 CHAIRPERSON LOUD: Well, hold on  
8 one second.

9 Mr. Gell, do you have any  
10 question, cross examination, I'm sorry, for --  
11 how do you pronounce your last name?

12 MR. BHABHRAWALA: Bhabhrawala.

13 CHAIRPERSON LOUD: Mr.  
14 Bhabhrawala. Thank you.

15 MR. GELL: I wonder if I could ask  
16 you to spell it, please?

17 MR. BHABHRAWALA: B-H-A-B-H-R-A-W-  
18 A-L-A. And the first name is Salim, S-A-L-I-  
19 M.

20 MR. GELL: All right. You said  
21 you've lived there four years and seven  
22 months. Could you give us the dates, please?

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1 MR. BHABHRAWALA: In and around --  
2 I moved into the property in and around  
3 November '04.

4 MR. GELL: And how often did you  
5 pass by the store?

6 MR. BHABHRAWALA: Almost daily.  
7 In fact if I could add, I can see the property  
8 from my back deck.

9 MR. GELL: All right. Thank you.

10 MR. BHABHRAWALA: Thank you.

11 CHAIRPERSON LOUD: Well, hold on  
12 one second. We're going to go through the ANC  
13 and then we're going to come back and see if  
14 the Board members have any questions for you,  
15 Mr. Bhabhrawala.

16 Yes, Ms Phelps?

17 COMMISSIONER PHELPS: I have just  
18 a couple of quick question.

19 Do you take advantage of the Metro  
20 station?

21 MR. BHABHRAWALA: Almost daily.

22 COMMISSIONER PHELPS: And where is

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1 that located?

2 MR. BHABHRAWALA: The Metro  
3 station is located approximately on the corner  
4 of Delaware and M Street, Northwest, which is  
5 approximately 1½ blocks from residence.

6 COMMISSIONER PHELPS: So is it  
7 safe to say you have to pass by 1179 3rd  
8 Street, Northeast to get to the Metro?

9 MR. BHABHRAWALA: Almost --  
10 absolutely, daily.

11 COMMISSIONER PHELPS: And do you  
12 also have a dog?

13 MR. BHABHRAWALA: I do have a dog.

14 COMMISSIONER PHELPS: And do you  
15 walk that dog in the neighborhood?

16 MR. BHABHRAWALA: I walk that dog  
17 daily pass the property in question.

18 COMMISSIONER PHELPS: And at any  
19 of those times going to and from the Metro  
20 everyday and walking your dog everyday, have  
21 you seen the establishment open anytime since  
22 November 2004?

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1 MR. BHABHRAWALA: Since November  
2 2004 in all the days that I've ever walked by  
3 that property I have never seen the property  
4 open for business where there have been  
5 customers going in and out or the doors even  
6 open.

7 COMMISSIONER PHELPS: Thank you.  
8 No further questions.

9 CHAIRPERSON LOUD: Thank you, Ms.  
10 Phelps.

11 Board members, do you have any  
12 questions?

13 ZC CHAIRPERSON HOOD: I may be  
14 able to understand why you may not see it  
15 early in the morning, because I'm sure if you  
16 go to work by 8:00 or so I'm sure it may not  
17 be open Typically in the evening about what  
18 time do you walk your dog?

19 MR. BHABHRAWALA: I typically walk  
20 by dog between 8:00 and 8:30 in the morning.

21 ZC CHAIRPERSON HOOD: Oh, 8:00 and  
22 8:30?

1 MR. BHABHRAWALA: Yes. A little  
2 bit on the later side.

3 ZC CHAIRPERSON HOOD: Okay.

4 MR. BHABHRAWALA: I'm ashamed to  
5 admit that I get into work around 9:30, sir.

6 ZC CHAIRPERSON HOOD: Okay. No  
7 problem. You're in the core hours between  
8 10:00 and 3:00. That was a joke. No, don't  
9 answer that.

10 MR. BHABHRAWALA: As long as this  
11 transcript is not going to be sent to my boss.

12 ZC CHAIRPERSON HOOD: Thank you,  
13 Mr. Chairman. Thank you.

14 MR. BHABHRAWALA: Thank you.

15 CHAIRPERSON LOUD: Any question,  
16 Mr. Dettman? Okay.

17 Your next witness.

18 MR. RENJEL: Okay.

19 MR. BHABHRAWALA: Thank you.

20 (Whereupon, the witness was  
21 excused.)

22 MR. RENJEL: Mr. Webster, I'm

1 going to ask you the same questions I asked.

2 Can you please introduce yourself to the BZA?

3 MR. WEBSTER: Benjamin Webster.

4 MR. RENJEL: All right. Please  
5 indicate your current address, please.

6 MR. WEBSTER: I live at 1108 4th  
7 Street, Northeast.

8 MR. RENJEL: And looking at the  
9 map that's on the board over there, can you  
10 identify where in relation to 1179 3rd Street  
11 where you live?

12 MR. WEBSTER: WE live on 4th  
13 Street which is two blocks to the east of 3rd  
14 and one block to the south.

15 MR. RENJEL: Okay. And how long  
16 have you lived at your current resident?

17 MR. WEBSTER: Since March -- early  
18 March 2005.

19 MR. RENJEL: Okay. And at anytime  
20 that you've lived in that neighborhood have  
21 you ever seen the liquor store open at 1179  
22 3rd Street, Northeast?

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1 MR. WEBSTER: I presume you're  
2 talking about the property at 1179?

3 MR. RENJEL: Yes.

4 MR. WEBSTER: I just make that  
5 clarification because from my perspective in  
6 the years that I've lived there it certainly  
7 ha not been a liquor store. It has been a  
8 vacated property.

9 So the property once again?

10 MR. RENJEL: The question again,  
11 have you ever seen that liquor store open in  
12 the time that you've lived in that  
13 neighborhood?

14 MR. WEBSTER: I've not seen that  
15 property open for any type of business.

16 MR. RENJEL: Okay. That's all I  
17 have.

18 MR. GELL: Could I get the  
19 spelling of your name, please?

20 MR. WEBSTER: Like the dictionary,  
21 W-E-B-S-T-E-R.

22 MR. GELL: First name again?

1 MR. WEBSTER: Benjamin.

2 MR. GELL: And your address?

3 MR. WEBSTER: 1108 4th Street,  
4 Northeast.

5 MR. GELL: I'm sorry, I missed it.  
6 How long have you lived there?

7 MR. WEBSTER: March 2005.

8 MR. GELL: That's all. Thank you.

9 CHAIRPERSON LOUD: Mr. Phelps?

10 COMMISSIONER PHELPS: I'll be  
11 quick.

12 CHAIRPERSON LOUD: Okay.

13 COMMISSIONER PHELPS: Mr. Webster,  
14 in the time that you've lived at that  
15 property, and I apologize for bringing this up  
16 but at one point in that time you did have a  
17 dog?

18 MR. WEBSTER: That is correct.

19 COMMISSIONER PHELPS: And you did  
20 walk that dog pass that establishment?

21 MR. WEBSTER: That's correct. Yes.

22 COMMISSIONER PHELPS: And you also

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1 at some point in the last years have had the  
2 opportunity to stroll children around that  
3 neighborhood?

4 MR. WEBSTER: That is correct. I  
5 try and take the kids out for walks as often  
6 as we can on weekends at all points during the  
7 day.

8 I also from March 2005 through  
9 February 2007 passed by this establishment or  
10 this vacant property probably six out of seven  
11 days a week.

12 COMMISSIONER PHELPS: And at any  
13 of those times whether it be walking by for  
14 the Metro or walking by strolling your  
15 children at all hours of the day on the  
16 weekend or during the week did you ever see  
17 the establishment open?

18 MR. WEBSTER: No, I did not see it  
19 open, nor have I ever seen any advertisements  
20 that the property was for sale or for lease as  
21 one does see other abandoned properties around  
22 the neighborhood with banners saying for

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1 lease.

2 COMMISSIONER PHELPS: Okay. Thank  
3 you.

4 No further questions.

5 CHAIRPERSON LOUD: Thank you, Ms.  
6 Phelps.

7 Board members do you have any  
8 questions?

9 MEMBER DETTMAN: Just very  
10 quickly.

11 Mr. Webster, would you say that in  
12 the number of times that you've passed this  
13 store it's happened at several different times  
14 during the day so if it's closed in the middle  
15 of the day, you'd still see?

16 MR. WEBSTER: Most of the from the  
17 March 2005 to February 2007 I was commuting  
18 back and forth to work. On weekends, so that  
19 would be in the mornings or the late  
20 afternoon. Since then, the same pattern but  
21 on weekends at any point during the day.

22 MEMBER DETTMAN: Okay.

1 MR. WEBSTER: To drive home I have  
2 to drive pass this establishment.

3 MEMBER DETTMAN: At any time have  
4 you passed the property during the week in the  
5 mid part of the day?

6 MR. WEBSTER: On random occasions,  
7 yes.

8 MEMBER DETTMAN: Okay. Thank you.

9 MR. GELL: I wonder if I could ask  
10 a question?

11 CHAIRPERSON LOUD: Yes, sir. Go  
12 right ahead.

13 MR. GELL: What if the property  
14 were being used if a customer were in there  
15 buying, how would you know?

16 MR. WEBSTER: I would assume that  
17 the security gates would be opened up?

18 MR. GELL: In all those cases the  
19 security gates were closed?

20 MR. WEBSTER: Except when I  
21 understood that there was illegal construction  
22 taking place.

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1 MR. GELL: All right. Thank you.

2 CHAIRPERSON LOUD: Thank you, Mr.  
3 Webster.

4 (Whereupon, the witness was  
5 excused.)

6 CHAIRPERSON LOUD: Next witness,  
7 Mr. Rengel?

8 MR. RENJEL: Vicki Stewart?

9 Josh Kliek?

10 Mr. Kliek, can I have you also  
11 introduce yourself to the BZA?

12 MR. KLIEK: Yes. Good afternoon.  
13 I'm Josh Kliek.

14 MR. RENJEL: Can you indicate  
15 where your current residence is?

16 MR. KLIEK: It's at 1145 6th  
17 Street, NE, Washington, D.C.

18 MR. RENJEL: And looking at the  
19 map on the board over there, can you -- or the  
20 one in front of you here, can you say where in  
21 relation to 1179 3rd Street that your  
22 residence is?

1 MR. KLIEK: Yes. I'm about a  
2 little less than a half a mile to the east.  
3 I'm just off of 6th Street.

4 MR. RENJEL: Okay. And are you  
5 familiar with 1179 3rd Street, that property?

6 MR. KLIEK: Yes.

7 MR. RENJEL: How long have you  
8 lived at your current residence?

9 MR. KLIEK: Just over five years.

10 MR. RENJEL: Okay. And during  
11 that time have you ever seen the business  
12 located at 1179 3rd Street open for business?

13 MR. KLIEK: I have not seen any  
14 customers in it. I have seen when  
15 construction was going on a few weeks ago,  
16 months ago.

17 MR. RENJEL: But nothing that  
18 would indicate to you that there was an active  
19 business going on at that location?

20 MR. KLIEK: Right.

21 MR. RENJEL: Okay. Nothing  
22 further.

1 CHAIRPERSON LOUD: Mr. Gell?

2 MR. GELL: When did you start  
3 seeing construction equipment or construction  
4 taking place? When did you start seeing the  
5 doors open for construction purposes?

6 MR. KLIEK: I believe it was about  
7 a month ago. I'm not exactly certain.

8 MR. GELL: About a month ago?

9 Thank you.

10 CHAIRPERSON LOUD: Thank you, Ms.  
11 Phelps.

12 Are there questions from Board  
13 members?

14 Thank you, Mr. Kliek.

15 (Whereupon, the witness was  
16 excused.)

17 CHAIRPERSON LOUD: And we can go  
18 to your next witness.

19 MR. RENJEL: Okay. My next  
20 witness is Vicki Stewart.

21 Ms. Stewart, can you introduce  
22 yourself to the BZA, please?

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1 MS. STEWART: Vicki Stewart.

2 MR. RENJEL: Can you please  
3 indicate your current residence?

4 MS. STEWART: 1170 Abby Place.

5 MR. RENJEL: And how long have you  
6 lived at that residence?

7 MS. STEWART: Four and half years.

8 MR. RENJEL: Okay. Well looking  
9 at the map on the wall and the one in front of  
10 you here, you can tell where in relation to  
11 1179 3rd Street do you live?

12 MS. STEWART: I'm the house  
13 directly behind it.

14 MR. RENJEL: Okay.

15 MS. STEWART: Because I'm right  
16 here.

17 MR. RENJEL: Okay.

18 MS. STEWART: That's the store,  
19 right?

20 MR. RENJEL: And during the time  
21 that you've lived in the neighborhood have you  
22 seen the liquor store opened for business at

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1       anytime?

2                   MS. STEWART:  When I first moved  
3       in I did see some activity like maybe on a  
4       Saturday.  And I don't know that he -- I don't  
5       think he was open for business, but I did see  
6       activity there.  But shortly after that, it's  
7       not been opened at all.

8                   MR. RENJEL:  Okay.

9                   MS. STEWART:  And I mean like  
10       within months.

11                   MR. RENJEL:  That's all I have for  
12       Ms. Stewart

13                   ZC CHAIRPERSON HOOD:  Can I just  
14       ask a question?

15                   CHAIRPERSON LOUD:  Ms. Stewart, if  
16       you can stick around for a few minutes, there  
17       may be some follow-up questions from either  
18       Board members, Mr. Gell or Ms. Phelps.

19                   ZC CHAIRPERSON HOOD:  Ms. Stewart,  
20       I may have missed it and I know now that  
21       you're 1170, right behind the store.  When did  
22       you say you moved in?

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1 MS. STEWART: It May -- April

2 2005?

3 ZC CHAIRPERSON HOOD: 2005?

4 MS. STEWART: I guess it's four  
5 years.

6 ZC CHAIRPERSON HOOD: Okay.

7 MS. STEWART: Five years. Yes.

8 ZC CHAIRPERSON HOOD: Okay. All  
9 right. Thank you.

10 MR. GELL: Four years.

11 MS. STEWART: Four years. Thanks.  
12 I'm sorry.

13 CHAIRPERSON LOUD: Mr. Gell, do  
14 you have any questions?

15 MR. GELL: Yes.

16 You said you did see activity when  
17 you first moved in April of 2005?

18 MS. STEWART: Yes. It was like on  
19 -- I think it was like two different  
20 Saturdays. But it wasn't open -- I have a  
21 very flexible job so I'm home a lot, like I go  
22 in and out all day long. And so I know for

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1 sure he wasn't open for business after the  
2 first couple of months that I moved in. Like  
3 two months.

4 MR. GELL: But he was open for  
5 business in April of 2005?

6 MS. STEWART: I don't think so. I  
7 saw activity, but I don't-- I can't say that  
8 he was open for business.

9 MR. GELL: So you don't know?

10 MS. STEWART: It was not open  
11 during the week. It was open maybe -- there  
12 was some activity I recall on a couple of  
13 Saturdays within the first two months that I  
14 moved in. And that's it, for sure.

15 MR. GELL: Okay. Thank you.

16 CHAIRPERSON LOUD: I have one  
17 follow-up question, Mr. Rengel after we get to  
18 Ms. Phelps before the witness is excused.

19 Do you have any question, Ms  
20 Phelps?

21 COMMISSIONER PHELPS: When you say  
22 you saw activity, did you see Mr. Park's

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1 vehicle parked on the public space there or  
2 what type of activity are you talking about?

3 MS. STEWART: Well, I actually saw  
4 the door -- I saw the door open. I did see --  
5 but it was like a Saturday, and then that was  
6 it. It really wasn't open for the business.

7 COMMISSIONER PHELPS: So you  
8 didn't see people entering or exiting the  
9 store?

10 MS. STEWART: I -- no.

11 COMMISSIONER PHELPS: Okay. Thank  
12 you.

13 CHAIRPERSON LOUD: Thank you, Ms.  
14 Phelps.

15 I had a quick question in terms of  
16 after that first period of activity in, I  
17 guess, maybe April of 2005 do you recall if  
18 you saw the security gates pulled down on the  
19 establishment?

20 MS. STEWART: Oh, yes. It was  
21 locked up for over three years. I mean, there  
22 was some -- they started working doing

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1 construction work on it I think a couple of  
2 years ago now or a year and a half ago. But  
3 it wasn't open for business.

4 CHAIRPERSON LOUD: Okay. Do you  
5 ever recall going pass there after that  
6 initial April 2005 period and apart from what  
7 you believe to have been construction where  
8 you didn't see the security gates down?

9 MS. STEWART: No.

10 CHAIRPERSON LOUD: Okay. Thank  
11 you. I don't have any additional questions.

12 Board members, any additional  
13 questions for -- okay.

14 You'd have to speak to your  
15 counsel.

16 MR. PARK: No, I'm going to talk  
17 about her. The question is I welcome her,  
18 first I met -- you know, moved in their  
19 neighbor. And fixing her place is nicely. I  
20 extended by welcome to her. And then there's  
21 the worker there named Orlando. He's offering  
22 to take over my place while he's taking care

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1 of her house, building, remodeling job. In  
2 other words, he was very friendly to me at the  
3 beginning and I welcome her to neighborhood.  
4 And she seemed so nice and support my  
5 establishment there --

6 CHAIRPERSON LOUD: Mr. Gell, we're  
7 in the DCRA's direct case. And we would want  
8 to proceed forward with their witnesses if we  
9 can, unless you have some additional cross  
10 questions for Ms. Stewart.

11 MR. PARK: Which means her worker  
12 offered to take over the business.

13 MR. GELL: Do you remember any  
14 conversations that you had with Mr. Park  
15 during that time when you first moved in?

16 MS. STEWART: Sometime after, yes.  
17 He's actually -- yes, I've spoken to him.

18 MR. GELL: Do you recall that  
19 somebody working on your house had offered to  
20 take over the business?

21 MS. STEWART: I think -- I think  
22 that he -- there was a construction company

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1 that was working on my house that was friendly  
2 with Mr. Park. And I really wasn't privy, or  
3 not -- I wasn't part of any conversations I  
4 don't think with that construction company and  
5 Mr. Park.

6 MR. GELL: Okay.

7 MS. STEWART: But I do know there  
8 were some communication because --

9 MR. GELL: And when would that  
10 have taken place?

11 MS. STEWART: That was like a year  
12 and a half ago or two years, maybe two years  
13 ago. It's after -- the business wasn't open.

14 MR. GELL: Not when you first  
15 moved in?

16 MS. STEWART: Right. It wasn't  
17 open.

18 MR. GELL: I'm saying the  
19 conversations didn't take place when you first  
20 moved in?

21 MS. STEWART: No. Probably about  
22 a year and a half -- I think it was about a

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1 year and a half ago.

2 MR. GELL: Okay. All right.

3 Thank you.

4 MS. STEWART: It could be a little  
5 bit longer.

6 CHAIRPERSON LOUD: Nothing  
7 further, Mr. Gell?

8 Okay. The witness can be excused.

9 (Whereupon, the witness was  
10 excused.)

11 CHAIRPERSON LOUD: And you can  
12 call your next witness.

13 MR. RENJEL: Next I'd like to call  
14 Anne Phelps as a resident of the neighborhood.

15 That's fine, you can stay there.

16 CHAIRPERSON LOUD: No. I think you  
17 can stay where you are.

18 MR. RENJEL: Ms. Phelps, can you  
19 indicate where your current residence is?

20 COMMISSIONER PHELPS: I live at  
21 1150 5th Street, Northeast.

22 MR. RENJEL: Okay. And looking at

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1 the map on the board to your right as well as  
2 the one that I've handed out, can you indicate  
3 where your residence is in relation to 1179  
4 3rd Street?

5 COMMISSIONER PHELPS: I live two  
6 blocks east and about a third of a block  
7 south.

8 MR. RENJEL: All right. And how  
9 long have you lived at that residence?

10 COMMISSIONER PHELPS: We purchased  
11 on Martin Luther King day 2002 and we moved in  
12 the first -- within June of 2002.

13 MR. RENJEL: Okay. And are you  
14 familiar with 1179 3rd Street?

15 COMMISSIONER PHELPS: I am  
16 familiar.

17 MR. RENJEL: All right. And  
18 during the time you've lived in the  
19 neighborhood, have you seen the liquor store  
20 open at any point?

21 COMMISSIONER PHELPS: The liquor  
22 store was opened the weekend I moved in in

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1 June 2002 because we stopped in to see if they  
2 sold ice. And they did not. And past that  
3 date, I don't recall seeing it open. And --  
4 but we walk to Union Station Metro until that  
5 Metro opened. The New York Avenue Metro that  
6 you see on the map indicated by the M, that  
7 opened in November of 2004. At that point we  
8 walked everyday pass the store and it wasn't  
9 ever open when we walked beyond.

10 MR. RENJEL: That's it I have with  
11 Ms. Phelps.

12 CHAIRPERSON LOUD: Thank you, Ms.  
13 Phelps. Mr. Gell?

14 MR. GELL: Ms. Phelps, you've been  
15 in that neighborhood since June 2002. And we  
16 have testimony from Ms. Stewart saying that  
17 when she moved into the neighborhood in 2005  
18 there was indication of activity at the liquor  
19 store at the time. If Mr. Park was open for  
20 a couple of hours during the day or five hour,  
21 or every couple of weeks, how would you know  
22 that he was totally closed?

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1                   COMMISSIONER PHELPS: My statement  
2 was that I hadn't seen the operation open  
3 during the time that I walked by to go to and  
4 from the Metro.

5                   And I'll state that I was elected  
6 to the ANC in November of 2007 -- '06. I  
7 don't know what year what this. Around in my  
8 second term. And so after that, I was walking  
9 around frequently talking with the neighbors  
10 and I never saw it open on the weekend either.  
11 But I can't speak to what Ms. Stewart did or  
12 did not see.

13                  MR. GELL: All right. That's all  
14 I have.

15                  CHAIRPERSON LOUD: Thank you, Mr.  
16 Gell.

17                  Board members do you have any  
18 questions for MS. Phelps?

19                  Thank you, Ms. Phelps. You can  
20 remain at the table.

21                  (Whereupon, the witness was  
22 excused.)

1 CHAIRPERSON LOUD: And we can move  
2 to what I believe is your last witness? Okay.

3 MR. RENJEL: Well, I have two more  
4 witnesses. One more neighborhood witness and  
5 then one more for DCRA that I would like to  
6 call as well, if possible.

7 CHAIRPERSON LOUD: Okay. Okay.

8 MR. RENJEL: Cheryl Grant, please.

9 Ms. Grant, can you I guess first  
10 of all introduce yourself to the BZA?

11 MS. GRANT: My name is Cheryl  
12 Grant.

13 MR. RENJEL: Okay. Please  
14 indicate your current residence?

15 MS. GRANT: 1200 6th Street,  
16 Northeast.

17 MR. RENJEL: And how long have you  
18 lived at your current residence?

19 MS. GRANT: Since the first week  
20 of May 2005.

21 MR. RENJEL: Okay. And looking at  
22 the map on your right and the one in front of

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1 you can you indicate to the BZA Board where in  
2 relation to 1179 3rd Street your --

3 MS. GRANT: I'm exactly three  
4 blocks.

5 MR. RENJEL: Three blocks?

6 MS. GRANT: I'm at the corner 6th  
7 and M. It's at the corner of 3rd and M.

8 MR. RENJEL: And are you familiar  
9 with the business located at 1179 3rd Street

10 MS. GRANT: Yes.

11 MR. RENJEL: All right. During the  
12 time you've lived in the neighborhood how long  
13 or have you ever seen that liquor store open?

14 MS. GRANT: No, I have not.

15 MR. RENJEL: Okay.

16 MS. GRANT: From -- about June of  
17 2005 until August/September of 2006 I took the  
18 Metro at New York -- I'm sorry, at M and --  
19 the New York Avenue Metro at the M Street  
20 entrance three days during the week and one  
21 day on the weekend and walked by it every time  
22 and never saw it open during that time, ever.

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1 And then not since, just being and living in  
2 the neighborhood.

3 MR. RENJEL: Okay. And you also  
4 indicated earlier that you have some active  
5 civic roles in your neighborhood. Could you  
6 explain what those roles are?

7 MS. GRANT: Yes. I'm Chair -- I  
8 was elected Chair of the Capitol Hill North  
9 Neighborhood Association in June of 2007. And  
10 I also am a founding member of that  
11 association going back the previous two years  
12 working with five other members in the  
13 neighborhood.

14 MR. RENJEL: Has that association  
15 discussed this appeal and the business located  
16 at 1179 3rd Street?

17 MS. GRANT: Yes. We've had two  
18 general -- probably about three general  
19 meetings to discuss this. We've also had  
20 numerous, I'd say at least seven steering  
21 meetings which were the leadership meetings of  
22 the association which happen every month. And

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1 we've talked quite a lot about this.

2 MR. RENJEL: Okay. Both in terms  
3 of the neighbors in the area as well as the  
4 members of that association on whatever board  
5 you may have, what is the context, what is the  
6 feeling of the neighborhood with regard to the  
7 business at 1179 3rd Street?

8 MR. GELL: Mr. Chairman, I'm going  
9 to have to object to the broadness of that  
10 question.

11 CHAIRPERSON LOUD: Okay.

12 MR. GELL: I think it's going to  
13 get us into irrelevant areas.

14 CHAIRPERSON LOUD: Okay.

15 MR. RENJEL: Okay. Let me --

16 MR. GELL: I think the question  
17 could be tailored specifically to the issues.

18 MR. RENJEL: Okay. I'll rephrase  
19 the question.

20 CHAIRPERSON LOUD: Okay.

21 MR. RENJEL: Based on the  
22 discussions that have taken place that you

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1 have been present at the neighborhood  
2 association meetings what conversations have  
3 you had with regard to whether or not this  
4 business has been open or not?

5 MS. GRANT: A lot of discussion on  
6 updates or why isn't the business operating.  
7 Discussion of the trash, the litter. The  
8 nuisance look of the operation because it's  
9 not operating. Questions about what may  
10 happen there. Questions about what neighbors  
11 would like to have there. Along that sort.

12 ZC CHAIRPERSON HOOD: Mr.  
13 Chairman?

14 CHAIRPERSON LOUD: Yes, Mr. Hood.

15 ZC CHAIRPERSON HOOD: And I'm  
16 going down a line I know you don't want to go  
17 down, and this goes to the young lady's -- Mr.  
18 Grant --

19 MS. GRANT: Grant.

20 ZC CHAIRPERSON HOOD: I'm sorry.  
21 Ms. Grant's line of questioning. If the  
22 business is closed, I'm just trying to figure

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1 out if -- I'm trying to figure out how I can  
2 word this without messing up.

3           Anyway, if we've been told that  
4 the business has been discontinued or closed,  
5 then the trash issue, I don't understand. And  
6 this is a line we're not going down. I don't  
7 see how that -- what the trash issue, I don't  
8 think it's coming from the business if the  
9 business is "closed." So I'm trying to figure  
10 out what's germane to the group's discussion  
11 as far the liquor store. I don't understand.

12           MS. GRANT: Well, I can say that  
13 the concerns of the neighbors that I've spoken  
14 with has been that the property is not  
15 maintained in anyway. And also the fact --  
16 and I don't know how much you want me to share  
17 here. But the fact that there's been --  
18 what's going to happen if nothing's happening  
19 there. There's no business operating there.  
20 It is closed. Why is it closed for so long.  
21 What would we like to have there. Things of  
22 that sort. And also the new -- you know,

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1 there's four liquor stores in a five block  
2 radius --

3 ZC CHAIRPERSON HOOD: And I don't  
4 want to appear that I'm naive or can't think  
5 for myself but when you testify, I'm trying to  
6 put your testimony into context. You say  
7 trash on one end and then it's closed. So  
8 apparently if the business is giving off  
9 trash, then isn't it still open?

10 MS. GRANT: Well, in my  
11 neighborhood and I've been there several years  
12 now, you know when folks don' see that there's  
13 any activities, that people aren't looking out  
14 for the well-being of the properties, then  
15 people congregate, they throw trash there.  
16 Activities that wouldn't necessarily happen in  
17 someone's yard happen in front of  
18 establishments that are closed down. That's  
19 a problem to myself and my neighbors. And so  
20 we talk about it regularly in our meetings  
21 And also wondering about why it has been so  
22 closed for so long.

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1 I have been the point person for  
2 the Oasis being an issue in our neighborhood.  
3 And so I'm pretty familiar and I've gone to  
4 several meetings. And I'm often asked by  
5 neighbors as well as outside of the  
6 association. Our association has 150 members.

7 ZC CHAIRPERSON HOOD: Okay.

8 MS. GRANT: You know, what's going  
9 on. And so I'm just giving updates.

10 ZC CHAIRPERSON HOOD: I thank you.  
11 You've satisfied -- no, you were very helpful.  
12 You helped me with my question. Because most  
13 of the time around liquor stores you hear, go  
14 down, we drink near the liquor store and we  
15 leave it down there. But you're right, when  
16 places are vacant then that does happen.

17 So thank you.

18 MS. GRANT: Absolutely.

19 CHAIRPERSON LOUD: Thank you, Mr.

20 Hood

21 I believe you had additional  
22 testimony to give before we began questioning

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1 you. But if not?

2 MR. RENJEL: I'm not sure, Mr.  
3 Loud, unless you wanted her to speak on behalf  
4 of the neighborhood association. IS that what  
5 you wanted her do or --

6 CHAIRPERSON LOUD: Let me ask you  
7 this: Having had the opportunity to testify  
8 now, is there further you'd like to add that  
9 would not require us to have to bring you back  
10 later since you're here right now and giving  
11 testimony, and have given a lot of testimony

12 MS. GRANT: Well, I don't want to  
13 be out of order. I have a lot of information  
14 outside of whether or not the business was  
15 open, outside of whether or not this business  
16 was operating. I'm trying to keep it specific  
17 to that. But I certainly have lots of  
18 information if you want me to about the  
19 sentiment of the neighborhood, about the way  
20 even with what has been shared to my  
21 understanding that it's not just a matter of  
22 whether or not the liquor is sold, but the

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1 type of business practices that were  
2 operating.

3 I'm trying to be specific, so I  
4 don't want to be out of order.

5 CHAIRPERSON LOUD: Thank you. I  
6 appreciate your gracious in working with us.

7 I think the lane we want to be in  
8 today just relates to the discontinuance.

9 MS. GRANT: Yes. As far that is -  
10 -

11 CHAIRPERSON LOUD: There is a  
12 separate case. And during that case, and we  
13 know so with your exhibits you've referenced  
14 both cases, you will have an opportunity to  
15 switch lanes a little bit more and have a  
16 little more leeway to discuss some of the  
17 other issues, merchandising and litter and  
18 trash, et cetera.

19 So I think today if you've  
20 exhausted your testimony on the issue of the  
21 discontinuance, once we excuse you now, we  
22 probably will not call you back unless you

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1 feel like there's something additional to add.

2 MS. GRANT: Thank you.

3 CHAIRPERSON LOUD: Thank you.

4 MS. GRANT: Okay.

5 (Whereupon, the witness was  
6 excused.)

7 CHAIRPERSON LOUD: Well, I don't  
8 believe, Ms. Phelps, you don't have any -- do  
9 you have any cross. Okay.

10 Then. Mr. Gell? Okay.

11 Board members do you have any  
12 additional questions.

13 Okay.

14 MR. RENJEL: Okay. The last  
15 witness I have is Reuben Pemberton.

16 Okay. Mr. Pemberton, can you  
17 please introduce yourself to the BZA?

18 MR. PEMBERTON: Zoning Enforcement  
19 Officer with DCRA.

20 MR. RENJEL: What is your current  
21 position at -- I'm sorry. Just reading. I'm  
22 sorry.

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1                   Tell me about some of your duties  
2 as Zoning Enforcement Officer?

3                   MR. PEMBERTON: Okay. My duties  
4 are to provide compliance and enforcement  
5 efforts for the agency. And I gather  
6 investigations pertaining to matters such as  
7 the one at hand.

8                   MR. RENJEL: Okay. Can you  
9 discuss what your investigation revealed with  
10 regard to 1179 3rd Street?

11                  MR. PEMBERTON: The investigation  
12 on 1179 3rd Street revealed that the business  
13 has actually discontinued the nonconforming  
14 use and that it should revert back to the base  
15 zoning, which is now an R-4, or since '87.

16                  MR. RENJEL: Okay. Let me start  
17 also by showing you this document that I'll  
18 provide to the BZA.

19                  Mr. Pemberton, can you identify  
20 this document, please?

21                  MR. PEMBERTON: Yes, I can. This  
22 document is an account data, it's more or less

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1 a snapshot of account data for 1179 3rd Street  
2 between the years, what? 2005 -- is this what  
3 I'm looking at. Yes. From April 2005 to May  
4 of 2008 showing that the water had actually  
5 been cut off at 1179 3rd Street.

6 MR. RENJEL: And where did you  
7 obtain this document?

8 MR. PEMBERTON: I obtained it from  
9 Victoria Veronica Fleming, I believe. She is  
10 with the Office of General Counsel for DC  
11 WASA.

12 MR. RENJEL: Okay. I show you the  
13 next document here. Mr. Pemberton, can you  
14 identify this document, please?

15 MR. PEMBERTON: Oh, yes. This is  
16 a letter to Mr. Park from ABRA showing him --  
17 telling him that his license is not -- is not  
18 in safekeeping, but giving him the application  
19 to apply for safekeeping.

20 MR. RENJEL: Okay. Can you read  
21 the first full paragraph of that letter,  
22 please?

1 MR. PEMBERTON: "The agency's  
2 records indicate that the licensed  
3 establishment is not operating and that the  
4 license has not been placed in safekeeping."

5 MR. RENJEL: And what's the date  
6 of the letter?

7 MR. PEMBERTON: The date is  
8 November 9, 2005.

9 MR. RENJEL: And where did you  
10 obtain this document?

11 MR. PEMBERTON: Commissioner  
12 Phelps actually forwarded this document to me  
13 sometime last July/August

14 MR. RENJEL: And this was obtained  
15 in the course of your investigation?

16 MR. PEMBERTON: It was obtained in  
17 the course of my investigation, and I  
18 confirmed that this document was legitimate  
19 through Maria Dunleavy, the former Director of  
20 ABRA.

21 MR. RENJEL: Okay. I'm going to  
22 show you the next document here. Identify

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1 what that document is?

2 MR. PEMBERTON: This document is  
3 an affidavit from Juva Hepburn. And she is --  
4 what's her title? She works at business  
5 licensing at DCRA. I forget her title.  
6 Program Manager. I'm sorry. At the time.

7 MR. RENJEL: Okay. At during your  
8 investigation did you learn anything with  
9 regard to the basic business license for 1179  
10 3rd Street?

11 MR. PEMBERTON: Yes. I had learned  
12 that the business license had expired in 2003.

13 MR. RENJEL: Okay. And can I have  
14 you read what is in paragraph seven of the  
15 document, please?

16 MR. PEMBERTON: Sure. "According  
17 to the records kept in the regular course of  
18 business by the Basic Business License  
19 Division of the Department of Consumer and  
20 Regulatory Affairs it appears that Mr. Joseph  
21 Park held the following licenses:

22 (a) A food product license which

1 was valid from August 8, 2001 until July 31,  
2 2003, the business address associated with  
3 this license was 1179 3rd Street, Northeast.  
4 This license has not yet been renewed at any  
5 point since July 31, 2003;

6 (b) Patent medicine license which  
7 was valid until January 31, 2004. This  
8 license has not been renewed at any point  
9 since January 31, 2004. However, this license  
10 was held for 1174 P Street, not 1179 3rd  
11 Street, Northeast.

12 MR. RENJEL: Okay. And I'd move,  
13 Mr. Loud, that all these documents be admitted  
14 into evidence.

15 CHAIRPERSON LOUD: Thank you, Mr.  
16 Rengel.

17 Are there any questions for Mr.  
18 Pemberton? Mr. Gell?

19 MR. GELL: This is the first time  
20 Mr. Park has had a chance to see this  
21 affidavit.

22 Mr. Pemberton, would you take a

1 look at the letter Laura Bird of ABRA?

2 MR. PEMBERTON: Yes.

3 MR. GELL: And would you read the  
4 address under the name Mr. Joseph Park?

5 MR. PEMBERTON: 1743 P Street,  
6 Northwest.

7 MR. GELL: All right. And what is  
8 the business address of Mr. Park, of Oasis  
9 Liquors?

10 MR. PEMBERTON: 1179 3rd Street,  
11 Northeast.

12 MR. GELL: Why do you suppose  
13 there's a difference?

14 MR. PEMBERTON: I suppose the  
15 difference is because Mr. Park lives at 1734  
16 P Street, Northwest, not at Oasis Liquors.  
17 And the license must have been mailed to his  
18 home address.

19 MR. GELL: You're making that  
20 assumption? That --

21 MR. PEMBERTON: Yes. You asked do  
22 you suppose.

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1 MR. GELL: -- on November 9th --  
2 I'm sorry. I'll finish in a second. You made  
3 the assumption that on November 9, 2005 he  
4 lived at 1735 P Street?

5 MR. PEMBERTON: Based on your  
6 question, yes.

7 MR. GELL: I don't know why these  
8 documents weren't given to us in sufficient  
9 time so that we could go over them and really  
10 investigate them. But we'll do the best we  
11 can.

12 Excuse me one moment.

13 MR. RENJEL: Mr. Loud, can I also  
14 comment that this was filed along with my  
15 statement in opposition to Mr. Park's appeal.  
16 So it wasn't just presented to him today.  
17 That his attorney had it emailed to his  
18 attorney on the date that I filed this  
19 document here, which is April 10th, which is  
20 at least Friday.

21 CHAIRPERSON LOUD: Point well  
22 taken. I mean it's -- even that is still

1 Friday. So I think his point is a well taken  
2 point but I also think I heard him say he's  
3 going to take a few minutes and look it over  
4 so that we can continue to move forward.

5 MR. GELL: Mr. Pemberton, it seems  
6 in paragraph 7(b) that the same address is  
7 shown.

8 Excuse me one moment.

9 This appears to be an address Mr.  
10 Park had as his personal residence up until  
11 1999. Why is it that if he got licenses since  
12 then, which you've already testified that he  
13 had licenses in 2001 to 2003, they would have  
14 been applied for with his then current address  
15 that these notices would have gone to 1734 P  
16 Street? Can you explain that?

17 MR. PEMBERTON: I cannot explain  
18 that.

19 MR. GELL: Is it possible they  
20 never reached him?

21 MR. PEMBERTON: I don't -- I don't  
22 know.

1 MR. GELL: I think Mr. Park's  
2 testimony has already addressed most of these  
3 issues. So we'll rest with that.

4 CHAIRPERSON LOUD: Mr. Gell, thank  
5 you.

6 Board members, do you have any  
7 questions for Mr. Pemberton? Okay.

8 And Ms. Phelps?

9 COMMISSIONER PHELPS: I think that  
10 you probably rather I include stuff in my  
11 statement than -- I mean I have statement  
12 about applications for ABRA I have their  
13 records here with that address. But --

14 CHAIRPERSON LOUD: But if they're  
15 not questions that --

16 COMMISSIONER PHELPS: They're not  
17 questions, so I'd rather save it.

18 CHAIRPERSON LOUD: -- it probably  
19 would be better to hold.

20 COMMISSIONER PHELPS: Yes.

21 CHAIRPERSON LOUD: Okay. So if  
22 you can hold those until you get into your

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1 direct case, which will be next, I believe.

2 I believe that you've closed your  
3 case? Okay.

4 So next we are going to go to the  
5 -- let's see. I just want to make sure I'm  
6 following it absolutely to the letter. The  
7 ANC. And that would be you, Ms. Phelps?

8 COMMISSIONER PHELPS: May I  
9 request a three minute break? Thanks.

10 CHAIRPERSON LOUD: Why don't we do  
11 this? Why don't we take a five minute break  
12 for everyone, and then we'll resume in five  
13 minutes in here.

14 COMMISSIONER PHELPS: Thank you.

15 CHAIRPERSON LOUD: Okay? Thank  
16 you.

17 (Whereupon, at 4:44 p.m. off the  
18 record until 5:10 p.m.)

19 CHAIRPERSON LOUD: Good again.  
20 We're going to resume case No. 17902, the  
21 appeal of Mr. Park.

22 And I think where we were, Ms.

1 Phelps, is that the ANC has a case it wants to  
2 present and you're prepared to present the  
3 case.

4 Can I ask you before you get  
5 started do you have any witnesses?

6 COMMISSIONER PHELPS: I do not.

7 CHAIRPERSON LOUD: Okay. That's  
8 very good.

9 And we can proceed when you're  
10 ready.

11 COMMISSIONER PHELPS: If I may, a  
12 question for information's sake?

13 CHAIRPERSON LOUD: Yes.

14 COMMISSIONER PHELPS: I have  
15 essentially a statement from the ANC that I'd  
16 like to read in. And I'd like to add in some  
17 responses to things that I've heard today.

18 And then there are a couple of  
19 points of clarification that I'd like to make  
20 that I didn't address in questions because  
21 there was no way to do it as questions. If  
22 that's all right?

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1 CHAIRPERSON LOUD: Let me ask a  
2 quick question about the ANC report. The ANC,  
3 as I understand, did submit a report. It's  
4 our Exhibit 14.

5 COMMISSIONER PHELPS: Yes, we  
6 submitted a letter.

7 CHAIRPERSON LOUD: Okay.

8 COMMISSIONER PHELPS: And I'm  
9 essentially --

10 CHAIRPERSON LOUD: So you would  
11 not need to -- I mean you can just sort of  
12 lift up the pertinent parts and summarize.

13 COMMISSIONER PHELPS: Okay.

14 CHAIRPERSON LOUD: You don't need  
15 to read the whole thing because it is a part  
16 of our record.

17 COMMISSIONER PHELPS: Yes. I  
18 won't.

19 CHAIRPERSON LOUD: Okay.

20 COMMISSIONER PHELPS: I won't do  
21 that.

22 CHAIRPERSON LOUD: And then what

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1 was your second question?

2 COMMISSIONER PHELPS: The other  
3 question I wanted to address is Mr. Hood had  
4 raised some concern about the zoning order of  
5 the rezoning and I have that. And I just  
6 wanted to make a point of clarification on  
7 that. And then another question about the  
8 ABRA notice. But I can --

9 CHAIRPERSON LOUD: Okay. Yes, I  
10 know Mr. Hood has raised that. I'm certain if  
11 it goes directly to the issue that's before us  
12 today on the discontinuance, Mr. Hood.

13 ZC CHAIRPERSON HOOD: It didn't,  
14 and that's what I was trying to clarify. But  
15 I was going somewhere with that earlier due to  
16 the testimony that Mr. Parks. But I think at  
17 this point I'll just pull back on that.

18 COMMISSIONER PHELPS: And then I'm  
19 happy to put that away.

20 CHAIRPERSON LOUD: Okay. We  
21 wouldn't force you to put it away, but  
22 recommend strongly since he's indicated it's

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1 not pertinent to what we're going to be  
2 focusing on --

3 COMMISSIONER PHELPS: That's fine.

4 I was just hoping to clarify for him --

5 CHAIRPERSON LOUD: Okay.

6 COMMISSIONER PHELPS: -- the  
7 questions that he had. But that's fine.

8 CHAIRPERSON LOUD: Okay.

9 COMMISSIONER PHELPS: If he's  
10 willing to move on, I'm more than happy to do  
11 so.

12 CHAIRPERSON LOUD: So why don't we  
13 proceed when you're ready.

14 COMMISSIONER PHELPS: Okay. Okay.  
15 I was going to say good afternoon, but now I  
16 think we're into the afternoon.

17 So I want to thank you for having  
18 me to make a statement on behalf of the ANC.  
19 I'm a Single Member District Commissioner.  
20 And I testified, I live 2½ blocks away. And I  
21 pass this establishment on a regular basis.

22 As you know, at ANC 6C's duly

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1 notice regularly scheduled monthly meeting on  
2 March 11th with a quorum of five Commissioners  
3 and public present, ANC 6C reviewed this  
4 application and voted unanimously to support  
5 the revocation and oppose the appeal.

6           ANC 6C supports the revocation.  
7 We think DCRA's investigation confirmed that  
8 Oasis had not been operating for more than  
9 three years. I think DCRA's made that case,  
10 and so I won't go through those points again.

11           I will say that in regard to ABRA  
12 as to when ABRA noticed that it was closed,  
13 that the letter of November 2009 indicates  
14 when it noticed when it was closed, not  
15 necessarily that that is when it closed. And  
16 in terms of where that letter was addressed,  
17 I just want to say that that's apparently the  
18 address on record for ABRA. I have Mr. Park  
19 indicated and Mr. Gell said that Mr. Park has  
20 not lived at that location since 1979. But  
21 the application he filed in 1985 with ABRA  
22 indicates that is his address of record. And

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1 I have that.

2 I didn't know it was going to  
3 come, so I don't have copies. But I can  
4 submit copies if you'd like.

5 So no basic business license,  
6 ABRA, WASA all of those things indicate he  
7 wasn't open. And I'd say that my  
8 understanding is that the Certificate of  
9 Occupancy applicant has the burden of proof at  
10 this point to show that the nonconforming use  
11 was not discontinued. And I've reviewed his  
12 application, the ANC reviewed the application  
13 and noting in it provided any evidence to  
14 rebut the presumption. In fact, in our opinion  
15 the evidence is completely to the contrary.  
16 No business license, liquor license that was  
17 at best, in safekeeping, no noticeable  
18 activity on the site, no inventory records of  
19 purchase, no sales receipts, no sales tax  
20 records, no delivery invoices, no evidence at  
21 all that he was open at any point.

22 The applicant also asserts that

1 until September 2006 he was in one or two days  
2 a week. That's what the application says. But  
3 Mr Park today himself said that there was no  
4 active business and that rather he spent a  
5 couple of hours checking on the building. He  
6 never said he was operating a business during  
7 that time. And even if he did at some point,  
8 he was doing so without any proper licensing.

9 The applicant states in the  
10 application also without supporting evidence  
11 that he kept lottery and food license in  
12 force, paid taxes and advertised the store to  
13 brokers. Even if true, which the ANC does not  
14 concede, none of this shows that a store was  
15 open or that it would be open at that  
16 particular address in the future. Any of  
17 those activities could have been done to  
18 transfer that license to a new location, and  
19 noting indicates that it was active.

20 The applicant also further asserts  
21 that he kept his property in good repair. And  
22 I think that we could talk about that more

1 than you'd care to. But the fact that the  
2 billboards have been falling off the building  
3 for the last several years, that there's  
4 broken glass; all of those things indicate  
5 that that not only was not in good repair, but  
6 it wasn't operational. If it were, you would  
7 think he would be taking care of it.

8 And we're not going to doing  
9 petitions because that's not at issue here.  
10 That doesn't go to the discontinuance.

11 I will say that he's indicated  
12 that the liquor license was kept renewed and  
13 that's not the indication at all from ABRA  
14 records. It's been in safekeeping. The ANC  
15 has protested that license as well, which is  
16 up in the air as a result of this appeal.  
17 They don't proceed unless there's Certificate  
18 of Occupancy on record.

19 I will say in addition to his  
20 statements today, Mr. Park is saying that he's  
21 checked the business. He never indicated he  
22 was operating. He said today there was no

1 active business.

2 Mr. Park stated at the July 9,  
3 2008 ANC meeting when he was there about his  
4 liquor license, that he had been closed for  
5 four to five years. He never indicated that  
6 he had been open at anytime in that time  
7 frame. He said he'd been by to check on the  
8 business, just like he did today.

9 This is the same statement he made  
10 to me in person in June 2008 outside the  
11 establishment when I noticed they were working  
12 on it and I stopped in to find out what was  
13 going on.

14 For all the reasons submitted in  
15 the ANC 6C letter and the reasons that I've  
16 stated just now, 6C Commissioners voted 5-0 to  
17 support the revocation and to oppose the  
18 applicant's appeal.

19 The Oasis Liquor building was  
20 unoccupied, unused and unkept for far longer  
21 than three years. That discontinuance creates  
22 a presumption of abandonment or discontinuance

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1 of the nonconforming use and the applicant  
2 presents no evidence to rebut that  
3 presumption. And so we urge the Board to deny  
4 the applicant's appeal.

5 Thank you.

6 CHAIRPERSON LOUD: Thank you, Ms.  
7 Phelps.

8 Are there any questions for Ms.  
9 Phelps by the parties?

10 MR. GELL: Ms. Phelps, did I  
11 understand you to say that you understood me  
12 to say that Mr. Park changed in address in '79  
13 rather than '99, I believe.

14 COMMISSIONER PHELPS: I'm sorry.  
15 I heard '79. If you said '99, my mistake.  
16 But my indication is that's still the address  
17 on the record of ABRA.

18 MR. GELL: You said that was from  
19 '86?

20 COMMISSIONER PHELPS: Right.  
21 Because I thought you said '79.

22 MR. GELL: Do you have any

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1 evidence that that's the address on record?

2 COMMISSIONER PHELPS: No. I said,  
3 I was trying to clarify the point that was  
4 made, that you are now pointing out. I was  
5 mistaken.

6 CHAIRPERSON LOUD: Unless you  
7 testify to it, Mr. Gell, you're more than  
8 entitled to bring out what was brought out on  
9 direct. But does her testimony and that line  
10 of questioning regarding the address on ABRA  
11 connect to the discontinuance question before  
12 BZA: There being a three period of  
13 discontinuance?

14 MR. GELL: Well, yes. First of  
15 all, I was only trying to clarify what she  
16 said, make sure that she heard what she  
17 thought she did. And I think the point's now  
18 been made that we did '99, not '79. But if he  
19 didn't get notices, I think that's a  
20 significant issue as to whether he was  
21 actively involved in the business in one way  
22 or another.

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1                   And I also -- well, I don't want  
2 to start testifying so I won't --

3                   CHAIRPERSON LOUD: Okay.

4                   MR. GELL: -- go any further than  
5 that.

6                   As far as the property is  
7 concerned, you have pictures of it so I don't  
8 have to go into her statement that billboards  
9 were falling off the building.

10                  I think that's all I need to say.

11                  CHAIRPERSON LOUD: Thank you, Mr.  
12 Gell.

13                  Mr. Green or Mr. Rengel any  
14 questions for Ms. Phelps?

15                  MR. RENJEL: We have nothing for  
16 Ms. Phelps.

17                  CHAIRPERSON LOUD: Okay. Board  
18 members? Okay. Thank you.

19                  We now are at the point in the  
20 case where under our Rule 3100.5 we would be  
21 allowed to hear testimony from witnesses --  
22 I'm sorry, from persons who are not

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1 necessarily a part of any of the parties'  
2 case. And I think earlier when Ms. Grant had  
3 come up to seek intervenor status and we ruled  
4 against her, we did let her know that any  
5 witnesses that would have testimony to present  
6 would be given three minutes to do it. And  
7 this would be the time that we'd do it. And  
8 as I said, we would authorize under our Rule  
9 3100.5.

10 So if there are any witnesses at  
11 this point who would fit in that category,  
12 this would be the time to step forward. And  
13 if there are not, we can move right along with  
14 the proceeding.

15 Okay. Thank you, Ms. Grant.  
16 You're shaking your head negatively in the  
17 rear.

18 With that, I think what we ought  
19 to do is move to closing statements. And we  
20 would begin with the appellant followed by  
21 DCRA and then by the ANC. And at the close of  
22 the closing statements the Board will be

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1 sharing what we're going to do with this case.

2 If you feel like you've already  
3 done a closing statement, you've already  
4 summarized the evidence, I know there was a  
5 lot of that in Ms. Phelps' testimony, you  
6 don't have to repeat anything that you've  
7 said. You don't have to do another closing  
8 statement. But you have the opportunity to do  
9 it.

10 MR. GELL: Shall I?

11 CHAIRPERSON LOUD: Yes, you can go  
12 right ahead.

13 MR. GELL: Thank you, Mr. Loud,  
14 members of the Board.

15 I wanted to remind the Board that  
16 the question of whether or not he had  
17 abandoned the business, whether he was closed  
18 sufficiently for purposes of 2005.3 or 1, the  
19 provision that says that there's a rebuttal  
20 presumption and that if you're closed for  
21 three years that you have abandoned the  
22 business. I would remind you that in BZA

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1 cases it's been stated over and over again  
2 that this is rebuttal and other factors have  
3 to be taken in or can be taken in. And I  
4 would cite you a case Woodrow D. Malone Appeal  
5 No. 15893 where I think -- I won't go over it,  
6 but the statement is a pretty clear one, and  
7 I'll just read a line of it. "The rule  
8 adopted provides that nonuse for three years  
9 will be construed as prima facie evidence not  
10 conclusive evidence of intent to abandon."

11 And they do cite a couple of other  
12 cases. Wood v. District of Columbia, 39 A2nd,  
13 67. It's a 1944 case And George Washington  
14 University v. DC Board of Zoning Adjustment,  
15 429 A2nd, 1342, a 1981 case. In the latter  
16 one stating that the mere lapse of a period of  
17 nonuse was not enough to lead to the  
18 forfeiture of the right to a use.

19 Having said that, I think the  
20 testimony it's very hard to prove that he  
21 never went into the store and opened it up.  
22 But we also have to concede that it was not

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1 opened regularly for business during the  
2 period of time that the District says it was  
3 closed. We think that there is sufficient  
4 evidence that there was enough business and  
5 other activities to show that there was no  
6 intent to abandon. And, in fact, that  
7 activities were ongoing.

8 There's another matter that we  
9 have to address, and really has nothing to do  
10 with the three year period, and that is the  
11 estoppel issue. The estoppel of the  
12 government from saying that he had no right to  
13 have his business after they had issued the  
14 permit, not going to the C of O to the lessee  
15 that he managed to get, but also a building  
16 permit to do extensive renovations on the  
17 building. Now there are five tests for that.  
18 And I think he meets all five of those tests.

19 First of all, it has to be a party  
20 acting in good faith, and there's no evidence  
21 here of bad faith.

22 When he was advised he needed

1 permits, he went and got them.

2 There have of to be affirmative  
3 acts of a municipal corporation. D.C. did  
4 grant the C of O three months before the  
5 revocation and granted the building permit  
6 over a month before the revocation. And  
7 indeed, by their own admission, extensive work  
8 was being done because that was what led to  
9 their discovering that some work was being  
10 done in which there was a building permit  
11 required.

12 Third, the test is that the person  
13 makes expensive and permanent improvements and  
14 reliance on the issuance of the permit. His  
15 lessee began performing work soon after the  
16 grant of the C of O. And I might not just a  
17 month and a half ago, but really but in '08,  
18 shortly after May '08 when he signed the  
19 lease.

20 He thought it would not require a  
21 building permit, but D.C. said the work was  
22 substantial and issued a stop work order.

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1           The grant of the building permit  
2 permitted to alter the petition, repair the  
3 walls, repair the ceiling, replace window  
4 glass, repair the roof, fix the drainage  
5 before it issued its revocation. And I'll  
6 cite Savy v DC BZA, 433 2nd, 1114. And that  
7 was a case in which the court found that the  
8 District estopped from telling the owner that  
9 he couldn't use his property in the way it had  
10 permitted to do.

11           The equities favor the applicant.  
12 He wa sick in 2003 and partially shut down the  
13 business. Sometime after that, there's a  
14 question of whether it was '03 or '05, there's  
15 been testimony here that in '05 he was to some  
16 degree operating there. I think you start to  
17 find this three year period falling within  
18 such a narrow limit that it's very hard to say  
19 that that should justify taking somebody's  
20 business from him that he'd had since 1986.

21           And by the way, if he didn't know  
22 that there was a three year limitation, so

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1 didn't the D.C. Government which issued the  
2 permit? It wouldn't have even been found if  
3 it weren't for neighbors having contacted the  
4 Zoning Administrator.

5 D.C. often gives warnings that  
6 nonconforming uses have lost their grandfather  
7 status. Here it pulled the C of O with no  
8 notice or opportunity to come into compliance.  
9 I think the equities in this case rest with  
10 the appellant.

11 Finally, did he have reason to  
12 know that he was violation of the regs? I  
13 think we've dealt with that. If D.C. didn't,  
14 then it's reasonable to assume that the  
15 average person wouldn't necessarily know. And  
16 I would cite D.C. v. Kayhill, 60 Appellant DC,  
17 34243, F2nd. 453 a 1931 case.

18 We don't know how this is going to  
19 turn out in the appeals phase. Obviously,  
20 we're going to make every effort we can in the  
21 time remaining before May 12 to meet with the  
22 neighbors and to see if we can't work out

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1 something with them. As I said before, if  
2 that's possible to do, it may not be necessary  
3 for the Board actually to make a decision. if  
4 not, then obviously we would be looking to  
5 you. And to say that Mr. Park would have the  
6 right to continue using the building for a  
7 liquor store.

8 We'll also be marshalling evidence  
9 to show that only a liquor store or a store  
10 that can sell liquor as well as other things  
11 would be able to make a go of it sufficient to  
12 enable him to reap some benefit from the  
13 property. I think the history of the BZA and  
14 BZA cases shows that the Board doesn't want  
15 property to lie fallow or to be unused, and  
16 generally speaking if there is some reasonable  
17 use that can be made of the property, the  
18 Board will grant it. We think that we can  
19 show that that would be the case here with a  
20 liquor store or with beer and wine and  
21 conveniences. Mr. Park has continued to say  
22 that he's willing to serving the neighbors who

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1 want the convenience store items, and  
2 obviously he would do that whether or not the  
3 Board grants -- I mean even if the Board  
4 grants him the right to continue the liquor  
5 store.

6 I'll have some technical requests  
7 regarding the record and so forth. I don't  
8 know if you want me to bring that up now, but  
9 I'll conclude my statement.

10 CHAIRPERSON LOUD: Thank you, Mr.  
11 Gell. Why don't you hold off on the technical  
12 requests.

13 And earlier when I went through  
14 the order for closing, I erroneously said that  
15 there would be an opportunity for closing by  
16 the appellee and by the ANC thinking that this  
17 was the same procedure that we follow in  
18 variance and special exception cases. And  
19 this is week number two on the job for me.  
20 And it's been brought to my attention that the  
21 rules for appeals are a little different. The  
22 rebuttal and the closing statement is by the

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1       appellant.  And apparently there are no  
2       opportunities for the appellee and the ANC to  
3       do the same.  Why?  I have no idea.  But rules  
4       are the rules.  And it would be my desire to  
5       follow the rules in this case, as happens in  
6       all of our cases.

7               MR. GREEN:  But would also want  
8       fundamental fairness, too.  I think you've  
9       demonstrated that throughout this proceeding.  
10      So if you can, and if you decide to make an  
11      exception in this instanced, we would  
12      appreciate it.

13             CHAIRPERSON LOUD:  Well, I don't--  
14      let me just ask this question of Mr. Gell,  
15      because the rules are set up in such a way  
16      that speaking of fairness, it would be unfair  
17      to him for us not to follow the rules.  So do  
18      you have any thoughts on that, Mr. Gell?

19             MR. GELL:  At 5:35?  I won't stop  
20      the Board from listening to further  
21      statements.  I think everything's probably  
22      been said on the other side.  I did want my

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1 time because as you know from the beginning  
2 there were statements I wanted to make about  
3 the estoppel issue, and that was the main  
4 reason for my doing so. But I don't know if  
5 that that's the case with the appellee.

6 CHAIRPERSON LOUD: Okay. Well,  
7 here's my thinking, Board members. Ms. Phelps  
8 gave a very outstanding presentation as the  
9 ANC's contribution to the case, which did in  
10 my assessment include a closing kind of a  
11 statement. It was a summary of the evidence  
12 and conclusions drawn from the evidence. And  
13 since is not entitled to close, and this is a  
14 privilege, I would be for giving the appellee  
15 an opportunity to very briefly do the same  
16 thing within five minutes or less, and then  
17 setting this case for a decision.

18 Respond candidly.

19 ZC CHAIRPERSON HOOD: You're a  
20 good Chairman, Mr. Chairman. I'm going to  
21 follow your lead.

22 MEMBER DETTMAN: I think that the

1 rules have been in place for quite some time.  
2 And I certainly know for a fact that this is  
3 not Mr. Green's first appeal before the BZA.  
4 And I'd venture to guess that if we went to  
5 those previous appeals, Mr. Green was not  
6 given the opportunity to close.

7 I do understand his comment about  
8 fairness today. We did extend a helping hand  
9 to Ms. Grant. But I think that that was an  
10 opportunity that the Board felt like they  
11 needed to extend given that she did have a  
12 unique situation, but not to a level that rise  
13 to intervenor status.

14 I think that DCRA put on a great  
15 case and I think we've heard what we need to  
16 hear.

17 But if I'm outvoted two to one,  
18 I'm willing to put in the extra five minutes.

19 CHAIRPERSON LOUD: Well, I don't  
20 think we have to take a vote. But I do think,  
21 first of all, Chairman's error. I made the  
22 mistake here. I made the mistake by saying

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1 that there would be that opportunity. And I  
2 think I also made the mistake by allowing the  
3 ANC to make a presentation that a lot of it  
4 was a closing statement.

5 And so in that context and if Mr.  
6 Green can assure us that this will not take  
7 more than five minutes, I'd be willing to on  
8 this one occasion only, I don't think I'll be  
9 making this same mistake ever again, allow a  
10 brief closing.

11 MR. GREEN: I thank the Chairman  
12 and I thank the Board members. I will stay  
13 within the five minute limitation.

14 First of all, I just want to point  
15 out that what's controlling here is 11 DCMR  
16 2005.1. Discontinues for any reason of a  
17 nonconforming use of a structure or land  
18 except where governmental action impedes  
19 access to premises for a period of more than  
20 three years shall be constructed as prima  
21 facie evidence of no intention to resume  
22 active operation as a nonconforming use.

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1 That's what happened in this particular  
2 situation. And it was proven by the evidence  
3 that we presented which showed no BBL in 2003,  
4 WASA cut the water off 2005 to 2008, OTR, the  
5 Office of Tax and Revenue characterized this  
6 as vacant property, there were no tax records  
7 presented by Mr. Park, no sales receipts, no  
8 demonstration of income during this period  
9 from 2003 to 2008.

10 We had six neighbors in the area,  
11 they got up and they said they saw no business  
12 activity from the years 2003 to 2008.  
13 Sometimes if you don't want to take 2003 to  
14 2005, then 2005 to 2008. No business  
15 activity.

16 You have the ABRA, the alcoholic  
17 beverage organization for the District of  
18 Columbia indicating that by letter which we  
19 put on as evidence that the matter was on the  
20 shelf. No safekeeping for the ABC license.

21 We have even an admission on the  
22 part of the appellant that he did not operate

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1 since 2003.

2 I submit had there been any  
3 business operations between 2003 and 2008,  
4 let's say 2005 and 2008, that would have been  
5 an unlawful activity in light of no BBL.

6 The ANC gave its support for the  
7 revocation. And as you know, the ANC is given  
8 great weight in its considerations. I would  
9 also point out the President of the civic  
10 association, the person that represents a 140  
11 people said look, we saw no business activity  
12 during the time frame of 2003 and 2008.

13 I would also point out as my final  
14 statement that if you're going to get a  
15 situation where there's going to be an  
16 impeding of access to the premises by the  
17 government, you'd have to have some kind of  
18 Metro construction or some other event or  
19 activity engaged in by the government that  
20 prevented the business from operating during  
21 this three year period. That information was  
22 never brought forward.

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1                   What we would have, we would have  
2                   in this particular circumstance a business, if  
3                   it were open, operating illegally and in bad  
4                   faith.

5                   And I thank you. And I surrender  
6                   back the balance of time for the Board to use  
7                   it in the most appropriate way.

8                   ZC CHAIRPERSON HOOD: I submit,  
9                   Mr. Chairman --

10                  CHAIRPERSON LOUD: Thank you, Mr.  
11                  Green.

12                  Mr. Hood?

13                  ZC CHAIRPERSON HOOD: -- I think  
14                  he finished right on time. I actually took my  
15                  watch off purposely to make sure he got his  
16                  five minutes.

17                  CHAIRPERSON LOUD: Thank you, Mr.  
18                  Green. And thank you, Mr. Hood. And I think  
19                  with however many seconds that are left of  
20                  your time, we're going to do the most  
21                  appropriate thing.

22                  I think what we're going to do is

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1 set this case for a decision. We're looking  
2 to set it for a decision on May 12, which  
3 would coincide with the date that I believe  
4 that the variance is scheduled.

5 And I believe the record is full  
6 between what was submitted prior to today,  
7 what was submitted today at the hearing the  
8 testimony that we heard. So I think that  
9 we're going to close the record after today's  
10 hearing and not leave it open for anything  
11 further.

12 I understand, Mr. Gell, you had  
13 wanted to make some comments regarding that.

14 MR. GELL: Yes, Mr. Loud. I would  
15 ask you to hold the record open for us to, if  
16 we can, to submit some additional  
17 documentation. There was some question about  
18 tax returns that were asked earlier, and Mr.  
19 Park said that he thought he had some that he  
20 thought he could submit. Franchise tax  
21 records and so forth.

22 I would also like some additional

1 time to respond to the documents that I wasn't  
2 given until last Friday which contain some  
3 matters that I wasn't able to talk to Mr. Park  
4 about and he wasn't able to respond to me on.  
5 Yes, it is true I have had them since Friday  
6 and there was a busy weekend with five  
7 grandchildren who left yesterday, or Sunday.  
8 But I really would like that opportunity.

9 I would also ask the Board to  
10 incorporate the materials that we submitted  
11 for the application into this record file.  
12 Because I think there may be some items there,  
13 and the same with the application. I think if  
14 they can be brought together, it will save us  
15 time and effort of reproducing much of that.

16 CHAIRPERSON LOUD: Well, let me  
17 just respond to the last request first and  
18 then to the -- well, let me do it the other  
19 way around.

20 In terms of the tax returns, I  
21 think that's a fair request. Because it did  
22 come out in the testimony. And so I think

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1 that the appellant has some tax returns for  
2 the years in question, it would be appropriate  
3 to submit those.

4 In terms of the franchise records,  
5 I'm not sure specifically what you were  
6 talking about. When you say "Franchise  
7 records," specifically what you seeking to  
8 have admitted?

9 MR. GELL: Mr. Park mentioned some  
10 franchise tax records that he --

11 CHAIRPERSON LOUD: Okay.

12 MR. GELL: -- thought might be  
13 useful that he hadn't thought about before.

14 CHAIRPERSON LOUD: So those would  
15 be akin to the tax -- like income tax record  
16 and the like.

17 MR. GELL: Yes, but relating to  
18 the business.

19 CHAIRPERSON LOUD: Okay.

20 MR. RENJEL: Mr. Loud, could I  
21 make one request at least. You're going to  
22 allow him -- so that this not be used as a

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1 floodgate to admit a bunch of other evidence,  
2 just that we focus on -- if he's going to  
3 introduce tax records for this period, just on  
4 what are focused on here today.

5 CHAIRPERSON LOUD: Okay.

6 MR. RENJEL: I think it was in  
7 regard to variance, I mean that's a completely  
8 separate issue.

9 CHAIRPERSON LOUD: Yes. We're  
10 going to get to that. And I agree with you on  
11 that. But even with respect to what we're  
12 talking about in terms of tax records, I want  
13 to be really clear that we're being very  
14 specific to tax records pertaining to what  
15 came out of today's hearing regarding the  
16 years. I think 2003 to 2008.

17 So there were tax records, there  
18 was franchise records and there was a third  
19 category of records, Mr. Gell, that you  
20 mentioned.

21 MR. GELL: Well, they were  
22 responses to items, cases, whatever and

1 statements in the appeal, the appellee's  
2 statement. The appellee's statement in  
3 opposition to the appeal by Joseph Park.

4 CHAIRPERSON LOUD: Just hold on,  
5 Mr. Green. Hold on, Mr. Green. Hold on.  
6 You'll get a chance.

7 Specifically, though, what --

8 MR. GELL: As well as the  
9 affidavit that Juva Hepburn -- and I don't  
10 believe I've seen this. I don't know if Mr.  
11 Rengel was able to send this to me on Friday  
12 or not, but I don't recall seeing it at all.  
13 Those were the documents that I thought we  
14 ought to be able to have another look at and  
15 be able to provide the Board with some  
16 additional opinion or shadings, or evidence,  
17 or whatever based on what was said there.

18 I mean, one item that came out  
19 fairly clearly to us was that there was a  
20 mistake on the part of D.C. Government as to  
21 where Mr. Park lived. I assume there may be  
22 some other issues along those lines.

1 MR. RENJEL: Mr. Loud, if I can  
2 only make a comment. I'm not sure how much  
3 getting into a lot of these issues is going to  
4 address the issues of the three year period,  
5 whether or not he was open or not. I don't  
6 know. You know, again, this is just going to  
7 end up being another floodgate to open up, you  
8 know, just start showing things at this Board  
9 without really being relevant to what's going  
10 on here today because he may or may not have  
11 been ready for the hearing today. Just as a  
12 way to keep this record open.

13 MR. GELL: It's very interesting--

14 CHAIRPERSON LOUD: Well, Mr. Gell,  
15 I mean I think --

16 MR. GELL: -- that Mr. Rengel is  
17 being so aggressive on this. I certainly know  
18 what's relevant to the issues before you, and  
19 I assume you that I have no intention of going  
20 far afield.

21 COMMISSIONER PHELPS: Mr.  
22 Chairman, if I may?

1 CHAIRPERSON LOUD: Yes, Ms,  
2 Phelps.

3 COMMISSIONER PHELPS: If everyone  
4 has been able to chime in?

5 CHAIRPERSON LOUD: Yes.

6 COMMISSIONER PHELPS: I just have  
7 a comment about you we talking about tax  
8 records.

9 CHAIRPERSON LOUD: Yes.

10 COMMISSIONER PHELPS: And I would  
11 say that his income tax records are only  
12 relevant in the way that they prove anything  
13 specific to 1179 3rd Street. I would say more  
14 relevant would be sales tax records for that  
15 establishment itself, not Mr. Park as an  
16 individual. I don't think individual tax  
17 records are relevant as much as sales tax.

18 In terms of allowing other things  
19 in related to the application, I was unclear  
20 if Mr. Gell meant the appeal before you or the  
21 application for the use variance. Because I  
22 would argue any materials related to the use

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1 variance should not be allowed to be submitted  
2 by Mr. Gell because the ANC will not have the  
3 same opportunity to provide information. And  
4 we don't want to go down that road, I don't  
5 think. I think that was established early on.  
6 So I don't know if that's what he meant or  
7 not, but I just want to be clear.

8 CHAIRPERSON LOUD: Thank you, Ms.  
9 Phelps. We're going to get to that part. I  
10 just wanted to really drill down the specific  
11 items that we're going to leave the record  
12 open in this appeal.

13 And I agree with you that when  
14 we're talking about tax information, we're  
15 talking only about the information that would  
16 pertain to the business and tax records on the  
17 business for the relevant period that we're  
18 talking about to the extent that they would  
19 tend to show or not show some activity there  
20 at the site of the liquor store. So that's  
21 first. Just business tax record.

22 With respect to the documents that

1 came in on April 10th, I believe, that  
2 admittedly came on in Friday --

3 MR. GELL: Mr. Chairman. I'm  
4 sorry. You know very often people combine  
5 their business and their personal tax records  
6 together. I mean, certainly it would be  
7 applicable to the business what I would give  
8 you, but it may be in his income tax record.  
9 I really don't know what there is. If I did,  
10 I could be very specific. And we may not even  
11 submit anything. I want to look at what Mr.  
12 Park has to see whether in fact its relevant  
13 to your consideration. But it may be in his  
14 income tax record. I don't now why we're  
15 making --

16 MR. GREEN: Mr. Chairman, if I  
17 might be heard?

18 CHAIRPERSON LOUD: Yes.

19 MR. GREEN: The Department of  
20 Consumer and Regulatory Affairs did not bring  
21 this appeal. This appeal was brought by the  
22 appellant back in December, or some such

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1 period. This Board gave notification of a  
2 hearing. This Board said on this day today  
3 this is your opportunity to be heard on your  
4 appeal.

5 Now what we have going on now is  
6 this: An attempt to retry this case through  
7 the submission of information after the fact.  
8 Information that may or may not be given an  
9 opportunity to be examined or cross examined.

10 All of the parties have been  
11 present today and everyone who came here today  
12 was or should have been ready to proceed.  
13 That's the purpose of this hearing. And it is  
14 not to allow the pollution of information to  
15 mudge things up, to confuse. But it is to  
16 decide one issue. And I think that the  
17 Chairman and the Board have been pretty clear  
18 of the information that they want to  
19 determine, and it was determined through  
20 witnesses and evidentiary material presented.

21 Now if one wasn't ready to proceed  
22 today, particularly when one wanted this

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1 hearing to take place, then that's  
2 unfortunate. That's the way it is.

3 And I would submit to you that to  
4 cloud the record with irrelevancies is not  
5 only improper, but it is fundamentally  
6 unfair to the citizens that came down here  
7 today.

8 And I thank you.

9 CHAIRPERSON LOUD: Thank you, Mr.  
10 Green.

11 And what we're trying to do is  
12 along the spirit of what you just said. We're  
13 trying to take this across the finish line.  
14 we're at the two yard line right now. We just  
15 want to get it right across the finish line.

16 I think it's appropriate for the  
17 appellant to submit tax records. That was a  
18 line of questioning that Mr. Rengel, I  
19 believe, went into with the appellant. And I  
20 think it's appropriate that the appellant be  
21 given an opportunity to just place those  
22 documents in the records.

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1           It's the Board's responsibility to  
2 weigh that evidence and assess how valuable it  
3 will be to us, but I don't see any harm or any  
4 unfairness to appellee in allowing that in.  
5 Particularly since it was your counsel that  
6 raised those questions for the appellant.

7           Moving along to the issue of the  
8 April 10th submission by the Office of  
9 Attorney General, a slightly different matter  
10 from the way I'm looking at it. Board members  
11 can comment. But even though it was submitted  
12 on April 10th, most of the documents that are  
13 included as attachments, Mr. Gell, are  
14 documents that your client would have had or  
15 should have had because they pertain to  
16 notices of infractions against your client,  
17 two notices of infractions. There's a notice  
18 of a reduction of a fine at the site. There's  
19 a stop work order. I mean, these are not  
20 things that could have or should have  
21 surprised anyone having them brought out  
22 today. There's the notice to revoke the C of

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1 O that's the subject of the appeal. And then  
2 there are -- there's a 2005 ABRA letter. Then  
3 there's the ANC report.

4 Yes, they were submitted April  
5 10th, but they're not documents that should  
6 necessarily have caught anybody by surprise.  
7 Why would you need an additional time to  
8 reflect upon those?

9 MR. GELL: Well, it seemed to me  
10 that I cited two documents that we didn't  
11 have.

12 CHAIRPERSON LOUD: Okay.

13 MR. GELL: One of them was the  
14 November 8, 2005 letter. And the other one  
15 was the affidavit of Juva Hepburn. And the  
16 third, and I'm not sure if there's anything  
17 here but I'd like to have a chance to look at  
18 it further, was a record sent for outbound  
19 call relating to the water bill. I think he's  
20 already testified about the water bill and  
21 there may not be anything further I'd want to  
22 say about it, but we didn't have these three

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1 records before.

2 Yes, we did have some of them, and  
3 I'd be certainly willing to test on whatever  
4 testimony we've had about those. But I think  
5 it would be fair to Mr. Park not to surprise  
6 him like this with documents that he didn't  
7 have before.

8 CHAIRPERSON LOUD: Okay. But  
9 you're saying the November 2005 safekeeping  
10 episode has been a surprise to your client,  
11 that he --

12 MR. GELL: Yes, it was addressed  
13 to the wrong address. He hadn't been at that  
14 address since 1999. And he'd filed another  
15 documents and so forth with the District  
16 Government since then.

17 MR. PARK: '96.

18 MR. GELL: I'm sorry, '1996. And  
19 he'd filed other things with the District  
20 Government since then. So he says he never  
21 saw it, and I can see why.

22 CHAIRPERSON LOUD: But was he in a

1 relationship with the ABC of placing the  
2 license for safekeeping that's not in dispute?

3 MR. GELL: He did place the  
4 license in safekeeping at a later time, yes.

5 CHAIRPERSON LOUD: I don't quite  
6 understand how this issue would have caught  
7 him by surprise for today's preparation. If he  
8 aware of the safekeeping period under our  
9 review and engaged with the agency around the  
10 safekeeping or not safekeeping the license  
11 such that there would be a need for additional  
12 time -- I'm not certain what the time would be  
13 for, but it doesn't seem like an issue that is  
14 a surprise.

15 MR. GELL: Well, it is a surprise  
16 because we didn't see it. But more the point,  
17 it seems to be very important to the appellee.  
18 And if it's important to the appellee, it  
19 seems to me we should have an opportunity to  
20 look at it further and to have a chance to  
21 respond to it if there's a response.

22 CHAIRPERSON LOUD: Okay. So we'd

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1 be looking specifically at the November '05  
2 ABRA letter and the affidavit of Juva Hepburn,  
3 who was not here today. And would that be all  
4 that we would be looking at?

5 MR. GELL: Those two things. I  
6 also mentioned the record from WASA. And  
7 again, I have to look at it. It's very hard  
8 to read the print. But I grant the appellee  
9 that it must be very important because they  
10 brought somebody here to introduce it  
11 specifically. But those are the only three  
12 that I can think of.

13 CHAIRPERSON LOUD: Okay. So we'd  
14 be looking then at the franchise record, tax  
15 records, the affidavit of Juva Hepburn, the  
16 water record and the November '05 letter. And  
17 with respect to each of those, you'd just need  
18 some additional time to do what? To submit a  
19 supplemental memorandum?

20 MR. GELL: Memorandum would be  
21 fine. If we have a response to any to any  
22 those items with attachments for any records,

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1 any tax records.

2 CHAIRPERSON LOUD: Okay.

3 MR. GELL: Income tax or franchise  
4 tax relating to the business that Mr. Park can  
5 find.

6 CHAIRPERSON LOUD: And you're not  
7 contemplating any affidavits being submitted,  
8 are you?

9 MR. GELL: At this point I can't  
10 tell you whether that would be part of it or  
11 not. I really have to study it before I can  
12 say what sort of response we'd be making.

13 CHAIRPERSON LOUD: Well, I think  
14 from our standpoint, Mr. Gel, we want to  
15 close this record today and not allow for  
16 there to be any additional testimony that  
17 parties wouldn't get a chance to cross  
18 examine, and close it out just tot hose things  
19 that were discussed today that need further  
20 clarification on. For example, the tax  
21 records or in the case of the information that  
22 you got at the last minute right before

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1 Eastern weekend, that's understandable, give  
2 you a little additional time to reflect on  
3 those and submit a very brief one or two page  
4 memo in response to that.

5 But if we leave the record open  
6 for additional testimony, then we do run into  
7 the question which I think we all want to  
8 avoid so that we can close this down and have  
9 this May 12 decision meeting of parties not  
10 being able to cross examine. So I'm strongly  
11 against that. I don't know how other Board  
12 members feel.

13 I think we have a very full record  
14 before us, both in connection with what's been  
15 submitted so far and the testimony today.

16 MR. GELL: I'm sorry, what would  
17 you be opposed to?

18 CHAIRPERSON LOUD: There being  
19 some kind of testimony that would come in  
20 during this period that there would not be an  
21 opportunity to cross examine, the sworn  
22 statement.

1           MR. GELL: Well, quite frankly, if  
2 we'd had this two weeks ago, we might very  
3 well have had somebody here to testify about  
4 it. Again, I'm really at a loss. I don't  
5 know what answer we're going to have about  
6 this because we didn't see it in time. Mr.  
7 Park didn't have a chance to review it in  
8 time.

9           MR. RENJEL: Mr. Loud, I'm kind of  
10 wondering if it may be helpful. You know, the  
11 purpose of the ABRA letter, it was something  
12 that was admitted by Mr. Park with regard to  
13 whether or not he had his license in  
14 safekeeping. All right. That's -- you know,  
15 it's not necessarily something that that's  
16 important to our case. We had other testimony  
17 about it from the ANC. You know, we can  
18 withdraw the letter. That's not entirely  
19 relevant. We had other oral testimony about  
20 that matter.

21           With regard to the affidavit from  
22 Juva Hepburn, you know the reason for that was

1 to show that Mr. Park for -- didn't have a  
2 basic business license after 2003. I think  
3 he's admitted that fact. So, you know, if all  
4 these things are going to be such big issues,  
5 you know, we could withdraw those documents.  
6 Because we have other oral testimony that will  
7 support our case.

8 MR. GELL: I think we were more  
9 restrictive than what Mr. Rengel is  
10 suggesting. We don't have any further  
11 testimony about the basic business license.  
12 But -- well, I thought my request was so  
13 limited that it would be easy for the Board to  
14 accept. And I --

15 MR. RENJEL: And even with regard  
16 to the water bill, I think that's something he  
17 admitted on both cross and that was something  
18 that Mr. Pemberton put forward with regard to  
19 his conversations with WASA and how he  
20 obtained that information.

21 So, I mean, all of this stuff is--  
22 you know, it was brought out as well through

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1 oral testimony that he could have crossed.  
2 You know, he could have asked those individual  
3 who brought that forward.

4 COMMISSIONER PHELPS: If I may?

5 CHAIRPERSON LOUD: Yes, Ms.  
6 Phelps.

7 COMMISSIONER PHELPS: I would just  
8 concur that Mr. Park admitted today on the  
9 record that the water had been turned off.  
10 And that document, which I only saw today,  
11 too, I read and it's pretty clear. IT says the  
12 water was turned off. So I'm not sure what  
13 further investigation is necessary for that.

14 Mr. Park in regard to the issue of  
15 safekeeping has said himself it was put it  
16 into safekeeping.

17 I mean, my concern is that if more  
18 of this -- I mean we have more comment. I  
19 mean, the appeal was filed in October.  
20 There's been plenty of time for him to amass--  
21 the rebuttal presumption is his. And there's  
22 been plenty of time for him to amass this

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1 information and present today. They haven't  
2 done that. He's had since October to do it.

3 If you give him more time to add  
4 more stuff, then we should have the  
5 opportunity to look at that and comment. And  
6 then it goes on and on and on. And I think  
7 that this was his case to make. He's had since  
8 October to pull it together. And it's  
9 frustrating from my perspective that he's  
10 going to continue to be able to comment after  
11 today and we're not going to be given the  
12 courtesy to comment on whatever he comments  
13 on. Do you see the spiral that I'm talking  
14 about.

15 CHAIRPERSON LOUD: I do, and  
16 that's exactly what we're trying to avoid.

17 COMMISSIONER PHELPS: So I'm sorry  
18 that I'm expressing my frustration. I know  
19 we've all been here a long time.

20 CHAIRPERSON LOUD: Right.

21 COMMISSIONER PHELPS: But, thank  
22 you.

1                   CHAIRPERSON LOUD: That's exactly  
2 what we're trying to avoid. And I think,  
3 again, if we limit this -- if we leave the  
4 record open and limit it just to the franchise  
5 and/or tax records, the business records and  
6 the appellee is willing to withdraw this Juva  
7 Hepburn affidavit, I really don't see at that  
8 point what would be left to leave the record  
9 for beyond the taxes. I mean, because the  
10 appellee did have a witness here that was open  
11 for cross who essentially testified, I think,  
12 to the BBL issue. And that issue, again, I  
13 think was thoroughly available for cross  
14 through both the ZA and the Mr. Pemberton.

15                   So, I'm not seeing a reason why we  
16 would need to reopen some of these issues, Mr.  
17 Gell.

18                   MR. GELL: I have to stand on my  
19 previous statement.

20                   CHAIRPERSON LOUD: Okay.

21                   MR. GELL: I think you can  
22 foreclosure Mr. Park's ability to respond to

1 something that he hasn't seen before,  
2 information that he wasn't aware of before,  
3 and we have to accept that.

4 CHAIRPERSON LOUD: Okay. Let me  
5 check in my colleagues on the Board for any  
6 thoughts or concerns.

7 Okay. Then this is what I would  
8 like to propose that we do, outline us doing.

9 I hear the appellee that he is  
10 withdrawing is the affidavit of Juva Hepburn,  
11 is that correct?

12 MR. GELL: Yes. And all the  
13 testimony relating to that?

14 MR. RENJEL: No, no. Of course  
15 not. I mean, that's the point; is there's  
16 oral testimony with regard to their licensee.  
17 I mean, if you're going to make an issue out  
18 of this affidavit, there's other oral  
19 testimony. There's no reason to have to -- I  
20 mean that is one of the key points with regard  
21 to -- with or case.

22 I mean, first, I don't see what

1 the issue is with regard to an affidavit.  
2 We're merely stating that someone did or he  
3 didn't have a license. Either he did or he  
4 didn't. He admitted he didn't. That's the  
5 point of the affidavit.

6 You know, if he's going to make a  
7 huge issue of the piece of paper with the  
8 affidavit on it, it was something that was  
9 supported by oral testimony from three people,  
10 including Mr. Park. So, you know --

11 CHAIRPERSON LOUD: Let's not re-  
12 litigate the issue. I think the record speaks  
13 for itself on that. The witness was here, he  
14 was available for cross on the full scope of  
15 what was brought out on direct. But the  
16 affidavit is a different matter. I think  
17 removing the affidavit from the record that  
18 all of us review and consider would take away  
19 the issue of whether or not there seems to be  
20 some response to the affidavit. And that's  
21 helpful to getting us to some -- to what  
22 specifically we'll leave the record for.

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1           So as I understand it, the  
2 affidavit is going to be withdrawn. There's  
3 no need then to leave the record open for any  
4 sort of response to the affidavit.

5           That would only leave in this  
6 April 10th document the water and sewer  
7 computer record. And I don't see any  
8 potential for harm there in terms of what the  
9 appellant could submit. I think I'm more  
10 concerned about opening it up to any type of  
11 evidence that would the parties in an unfair  
12 situation by way of cross. And that would be  
13 it.

14           The other thing that we would  
15 leave it open for would be the franchise tax  
16 records.

17           MR. GELL: And the other business  
18 tax records.

19           CHAIRPERSON LOUD: And the  
20 applicable regiment of business tax records  
21 pertaining to this period of time that we're  
22 talking about.

1                   COMMISSIONER PHELPS: Chairman  
2 Loud?

3                   MR. GELL: Thank you.

4                   CHAIRPERSON LOUD: Yes.

5                   COMMISSIONER PHELPS: You know, I  
6 said that I would hope that you would narrow  
7 it to sales tax. But I'd just want to go on  
8 the record as saying that in my opinion he's  
9 had ample opportunity to provide that as part  
10 of the rebuttal presumption of evidence that  
11 he has since October to present on sales tax.  
12 And I don't think that this is the first time  
13 that this would have come up in conversations.  
14 I can't speak to that. But I would say that  
15 giving him the opportunity to provide that  
16 evidence after the hearing has been completed  
17 and not giving us the opportunity to ask  
18 questions about those records, I think is  
19 problematic. I think he has -- he filed for  
20 this in October. He could have provided that  
21 documentation to show that yes, indeed, he was  
22 open and had sales receipts and collected

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1 sales tax in that time. He didn't do that.

2 And so by allowing the record to  
3 stay open for him to submit that, I think that  
4 is something that could be subject to cross  
5 because that would be something that would  
6 have had to have been part of this proceeding.

7 So, I'm not an expert in Zoning,  
8 but just from an issue in fairness, I think  
9 he's ample opportunity and hasn't met the  
10 burden that he needed to meet. And I don't  
11 know how long we continue to allow that to go  
12 on.

13 CHAIRPERSON LOUD: Well, I think  
14 what we're going to do on May 12 is give our  
15 decision on where we think the evidence comes  
16 out in terms of whether he's met that burden  
17 or not. We're not going to do that today.  
18 We'll hold that off until May 12th. But I  
19 think leaving the record open just allows us  
20 to make sure that it's absolutely airtight and  
21 absolutely full.

22 And I understand your objection.

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1 And it's so noted. But I think that where we  
2 are now is that we're going to allow the tax  
3 record. Okay.

4 That being said, there was one  
5 further thing regarding allowing records from  
6 the variance to be part of the records for the  
7 appeal. And I do think that would be  
8 incredibly confusing and chaotic. So I think  
9 that the record that we have before us is the  
10 record that's been filed and submitted for  
11 17902, and that's all we're going to have,  
12 that and the testimony of today that we'll be  
13 looking at in terms of coming up with a  
14 decision on the appeal. And we'll look at the  
15 variance file separately.

16 MR. GELL: Mr. Loud, I certainly  
17 accept that. Would it be possible, though, to  
18 go the other way and to say that the evidence  
19 that we submitted for the appeal would be part  
20 of the record on the application? It just  
21 saves us the time and expense of resubmitting  
22 it all.

1 CHAIRPERSON LOUD: Mr. Rengel?

2 MR. RENJEL: I mean, that wouldn't  
3 prejudice this specific hearing, but I think  
4 it would confuse issues in your second  
5 hearing. I don't quite see the relevance. I  
6 mean, that's up to you. I'm not involved in  
7 that second hearing. But all it would do is  
8 really seem to confuse the issues in the  
9 second hearing.

10 COMMISSIONER PHELPS: And,  
11 Chairman, I am involved in that second  
12 hearing. And I have a problem with that.  
13 Because the issues of the Certificate of  
14 Occupancy revocation I don't think are  
15 relevant to the use variance application. I  
16 think they're two separate issues. I mean--

17 CHAIRPERSON LOUD: Well, is that  
18 something that has to be settled right now,  
19 Mr. Gell? In other words, would you have to  
20 prepare differently if we decided that in the  
21 context of that case?

22 MR. GELL: We'll just have to

1 resubmit a whole lot of stuff that we've  
2 submitted already, obviously things relating  
3 specifically to the abandonment or not  
4 abandonment wouldn't be relevant. So I don't  
5 think we'll go to a lot of trouble to resubmit  
6 that. But whatever there is in this record  
7 that we feel relevant for the other, we can  
8 either just refer to it or you can tell us to  
9 resubmit it all.

10 CHAIRPERSON LOUD: Yes. First of  
11 all, I think rather than consuming that in  
12 this case and trying to deal with the May 12th  
13 decision by referencing that particular  
14 problem, I think that we need to go ahead and  
15 just outline what we're going to need for May  
16 12th.

17 I think on the larger question of  
18 duplication of effort and having multiple  
19 copies of things that we don't need, that it  
20 would make sense for you since you're going to  
21 be pointing to what you think may be in this  
22 record that's relevant, to gather up that

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1 information and provide it for you. To your  
2 point, I don't thin it's going to be a lot of  
3 stuff necessarily because the test is very  
4 different. But whatever it is, I mean you have  
5 the assurance because you've done it of  
6 knowing that you've gotten the right things in  
7 the record. So that would be my approach to  
8 it.

9 I don't know if Mr. Dettman or Mr.  
10 Hood have a different take on it.

11 So to reiterate, we're going to  
12 leave the record open for the appellant's  
13 submission of the business tax records  
14 pertaining to this period of time we're  
15 talking about, discontinuance or not  
16 discontinuance. We are not going to use  
17 records from the 17902 appeal case in the  
18 variance case. The applicant in that case  
19 will have to regather those documents and  
20 paginate them and organize them, and then just  
21 resubmit the ones that you think are  
22 appropriate.

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1           And we're going to set this for a  
2 decision on May 12. And if we can back up  
3 some dates from that, Ms. Bailey, in terms of  
4 giving the opportunity for the appellant to  
5 submit the business tax records that we're  
6 talking about.

7           MS. BAILEY: Mr. Chairman, I would  
8 suggest April 24th as the date for Mr. Gell to  
9 file the documents.

10           And did you want the ANC and DCRA  
11 to respond to whatever Mr. Gell fires, Mr.  
12 Chairman?

13           CHAIRPERSON LOUD: April 24th. So  
14 if we -- yes, I think we could squeeze that in  
15 and still make May 12, which would be my  
16 concern.

17           MS. BAILEY: Okay.

18           CHAIRPERSON LOUD: But we would  
19 cut it off at that. There wouldn't be any  
20 further responses to the responses. So it  
21 would the appellant serving those documents to  
22 us and to the appellee and the ANC. And then

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1 if we could give them about a week, I think,  
2 to respond to that.

3 MS. BAILEY: I would suggest May  
4 6th for that, Mr. Chairman.

5 CHAIRPERSON LOUD: What day of the  
6 week is that?

7 MS. BAILEY: That's on a  
8 Wednesday.

9 CHAIRPERSON LOUD: Okay.

10 MS. BAILEY: So again, the date's  
11 on April 24th for the applicant's -- I'm  
12 sorry. Excuse me. It's getting late.  
13 Appellant's response is April 24th, ANC and  
14 DCRA's responses May 6 and then the Board to  
15 consider a decision on May 12th.

16 CHAIRPERSON LOUD: Okay. Ms.  
17 Phelps, I saw some concern in your eyes.

18 COMMISSIONER PHELPS: Yes. Sorry.  
19 That's right. And that's because for BZA to  
20 give any opinion of the ANC great weight, it  
21 has to come from an ANC decision voted at a  
22 duly noticed public meeting with a quorum

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1 present. And we don't meet until May 13th.

2 And so this is just one more  
3 problem with continuing this record is in  
4 order for the ANC to be on record on any  
5 further submittals, it would have to be after  
6 May 13th. So now we're back to the same  
7 problem that I've been mentioning before, and  
8 that's it's continuous to go on.

9 I mean, that's the requirement of  
10 the BZA is that the letter come from the full  
11 ANC after that type of meeting and a full  
12 vote. So while I'm authorized to represent  
13 the ANC, your own rules require a different  
14 meeting. And I'm not --

15 ZC CHAIRPERSON HOOD: Mr.  
16 Chairman--

17 CHAIRPERSON LOUD: I'm sorry, Ms.  
18 Phelps.

19 Go right away.

20 ZC CHAIRPERSON HOOD: -- let me  
21 just ask, what all did we ask for? We asked  
22 for the sales tax records, right?

1 CHAIRPERSON LOUD: That's correct.

2 ZC CHAIRPERSON HOOD: What else?  
3 I'm sorry, I was probably talking.

4 CHAIRPERSON LOUD: The sales tax  
5 records and that's it. Just the full regiment  
6 of tax records that would pertain to income in  
7 an operation at that site during that period.

8 ZC CHAIRPERSON HOOD: Okay. So  
9 going back to Commissioner Phelps, I don't --  
10 and that's why I purposely -- I wouldn't see  
11 where the ANC would need to comment --I  
12 personally wouldn't see where the ANC would  
13 need to comment on that. I think the ANC has  
14 already --you've already presented the case.  
15 And I think as the Chairperson always says,  
16 "it duly noted."

17 I wouldn't think that we would  
18 need to prolong this another month to wait for  
19 the ANC to meet. Because I think we've  
20 already got the ANC's position. and it's so  
21 noted.

22 COMMISSIONER PHELPS: Well, you

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1 were just giving dates for when the ANC could  
2 comment. And so I'm just giving you the  
3 information that we're not allowed to comment  
4 without a full meeting.

5 ZC CHAIRPERSON HOOD: A full  
6 meeting. But I think the position of the ANC  
7 is already -- I really don't think we need to  
8 go that far. I really don't.

9 CHAIRPERSON LOUD: Thank you, Mr.  
10 Hood.

11 I agree with you. I don't see --  
12 this is a very full record. Six witnesses  
13 alone --

14 COMMISSIONER PHELPS: I'm not  
15 disputing that. I'm just clarifying where  
16 we're coming from in terms of your own rules.

17 CHAIRPERSON LOUD: Oh, I  
18 understand.

19 COMMISSIONER PHELPS: So that we  
20 don't get into ugly muddy water down the road  
21 about ANC's rule.

22 CHAIRPERSON LOUD: I appreciate

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1 that. But I also appreciate Mr. Hood's point  
2 about the full plate of evidence before us.  
3 It isn't like one single thing is going to be  
4 completely decisive. It's a very full record.

5 So if the ANC is not able to  
6 respond to that particular opportunity to  
7 respond, I don't think it's prejudicial. And  
8 I think we can still move forward on the  
9 record before us and make a fair decision and  
10 give the ANC's report its great weight. Okay.  
11 Thank you.

12 MS. BAILEY: Those dates remain as  
13 identified previously?

14 CHAIRPERSON LOUD: Yes. Yes. All  
15 right.

16 So, with that, we're going to be  
17 following those dates as closely as we can,  
18 everyone. And we will definitely have the  
19 decision date on May 12.

20 Is there anything further, Mr.  
21 Bailey?

22 MS. BAILEY: No, Mr. Chairman.

1 CHAIRPERSON LOUD: Okay. Anything  
2 further, Board members?

3 I'd like to thank everybody for  
4 your time, your patience this afternoon. I  
5 appreciate all that you've gone through. And  
6 the presentations were outstanding on the part  
7 of all of the parties. So thank you very  
8 much.

9 (Whereupon, at 6:18 p.m. the  
10 Public Hearing was adjourned.)

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