

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 5, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

ARLOVA JACKSON

The transcript constitutes the minutes from the Public Hearing held on May 5, 2009.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

Marc D. Loud. 4

PRELIMINARY MATTER:

Application No. 17918 - Rescheduled 9

ROBERT C. JENKINS AND JOHN J. FAHEY:

APPLICATION NO. 17921 - ANC - 3C:

PRELIMINARY MATTER:

Request Waiver of Publication Requirement . . 13

WITNESSES:

Robert Jenkins. 16

OFFICE OF PLANNING:

Arthur Jackson. 18

CLOSING REMARKS:

Robert Jenkins. 21

VOTE TO APPROVE 17921 (3-0-2) 27

JEROME BAUMAN:

APPLICATION NO. 17917 - ANC - 6A:

Request Waiver of Publication Requirement . . 30

WITNESSES:

Jerome Bauman 37

OFFICE OF PLANNING:

Arlova Jackson. 67

CLOSING REMARKS:

Stephen Gell. 81

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

1:39 p.m.

CHAIRPERSON LOUD: This hearing will please come to order. Good afternoon, ladies and gentlemen. This is the May 5th public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Marc Loud, Chairperson. Joining me today are Vice-Chair Shane Dettman representing the National Planning Commission, and Mr. Peter May representing the Zoning Commission. And both of them are to my right. To my left are Mr. Clifford Moy, Secretary of the BZA, Ms. Sherry Glazer of the Office of the Attorney General and Ms. Beverley Bailey, Zoning Specialist in the Office of Zoning.

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

Please be aware that this proceeding is being recorded by a court reporter and is also web cast live.

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1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

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

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

19 The order of procedure for special
20 exceptions and variances is: (1) Statement
21 and witnesses of the applicant; (2) Government
22 reports, including the Office of Planning, the

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1 Department of Transportation, etcetera; (3)
2 report of the Advisory Neighborhood
3 Commission; (4) parties or persons in support;
4 (5) parties or persons in opposition; and
5 finally (6) closing remarks of the applicant.

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

11 Appellees, persons and parties, except an ANC
12 in opposition, including witnesses, 60 minutes
13 collectively. Individuals, three minutes.

14 These time constraints do not include cross
15 examination and/or questions from the Board.
16 Cross examination of witnesses is permitted by
17 the applicant or parties.

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

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1 time limits, and limitations on the scope of
2 cross examination.

3 The record will be closed at the
4 conclusion of each case except for any
5 material specifically requested by the Board.
6 The Board and the staff will specify at the
7 end of the hearing exactly what is expected
8 and the date when the persons must submit the
9 evidence to the Office of Zoning. After the
10 record is closed no other information will be
11 accepted by the Board.

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

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

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1 the contrary the Board requests that persons
2 present not engage the members of the Board in
3 conversation.

4 Please turn off all beepers and
5 cell phones at this time so as not to disrupt
6 these proceedings.

7 The Board will make every effort
8 to conclude the public hearing as near as
9 possible to 6:00 p.m. If the afternoon cases
10 are not completed at 6:00 p.m., the Board will
11 assess whether it can complete the pending
12 case or cases remaining on the agenda.

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

20 If you are not prepared to go
21 forward with a case today, or if you believe
22 that the Board should not proceed, now is the

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1 time to raise such a matter.

2 Does the staff have any
3 preliminary matters?

4 MS. BAILEY: Mr. Chairman, Vice-
5 Chairman, Mr. May, and to everyone, good
6 afternoon.

7 Yes, sir. It has to do with one
8 of the cases this afternoon that was
9 rescheduled. Application 17918, Behzah
10 Hosseinkhani. It's my understanding, Mr.
11 Chairman, that the applicant of this case had
12 an emergency situation and had to travel
13 overseas and the hearing was therefore
14 rescheduled to July 28th, 2009 in the morning.

15 CHAIRPERSON LOUD: Thank you, Ms.
16 Bailey. Do we need to call that case and
17 formally reschedule it, or is that a matter
18 that's been accomplished already?

19 MS. BAILEY: The matter has been
20 accomplished, Mr. Chairman, primarily because
21 of the emergency situation that had to be
22 resolved.

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1 CHAIRPERSON LOUD: Thank you, Ms.
2 Bailey. Are there any other preliminary
3 matters?

4 MS. BAILEY: That's it, Mr.
5 Chairman, other than swearing in the
6 witnesses.

7 CHAIRPERSON LOUD: Okay. Thank
8 you. Mr. Moy, did you have any preliminary
9 matters?

10 MR. MOY: Yes, I do, Mr. Chairman,
11 but I have an overarching preliminary matter
12 that I think might be best addressed after we
13 call the first case for the afternoon.

14 CHAIRPERSON LOUD: Okay. Thank
15 you, sir.

16 So why don't we -- yes?

17 MS. GLAZER: (Off microphone.)

18 CHAIRPERSON LOUD: Is your mic on?

19 MS. GLAZER: I'm sorry. I thought
20 it was on. On the prior case that was
21 rescheduled, just a question. I don't know
22 whether administratively notice was sent out

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1 or will be sent out regarding the rescheduled
2 date.

3 CHAIRPERSON LOUD: The rescheduled
4 date? Either, Mr. Moy or Ms. Bailey, if you
5 have answered that, I'm fairly certain --

6 MS. BAILEY: Those notices have
7 been sent out, Mr. Chairman.

8 CHAIRPERSON LOUD: Thank you.
9 Thank you, Ms. Bailey.

10 Why don't we call forward all
11 witnesses wishing to testify today so that you
12 can rise and take the oath? Ms. Bailey will
13 administer the oath.

14 MS. BAILEY: Please raise your
15 right hand.

16 (Whereupon, the witnesses were
17 sworn.)

18 MS. BAILEY: Thank you.

19 The first case, Mr. Chairman, is
20 Application No. 17921 of Robert C. Jenkins and
21 John J. Fahey, pursuant to 11 DCMR 3104.1,
22 for a special exception to allow an addition

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1 to an existing one-family dwelling under
2 section 223, not meeting the lot occupancy,
3 section 403, rear yard, section 404, and side
4 yard, section 405 requirements. The property
5 is zoned R-1-B. It's located at 3127 Newark
6 Street, N.W., Square 2073, Lot 805.

7 CHAIRPERSON LOUD: Thank you, Ms.
8 Bailey.

9 The party has stepped forward. I
10 was going to ask you to step forward. But
11 since you've already stepped forward let me
12 just double check and make sure the ANC is not
13 here, and they do not appear to be here. So
14 why don't you go ahead and state your name and
15 address for the record?

16 MR. JENKINS: Robert Jenkins, 3127
17 Newark Street, N.W., Washington, D.C.

18 CHAIRPERSON LOUD: Good afternoon,
19 Mr. Jenkins. We have reviewed the pleadings
20 in your case which were pulled together very
21 well and you've elaborated on the test in the
22 case well. So what I would offer you is the

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1 opportunity to highlight your case and the
2 relief that you're seeking, and the grounds
3 for the relief, feeling very free to not go
4 into everything or repeating necessarily
5 everything that's already a part of the
6 package, but again just highlighting the key
7 parts of your case. And I'm certain that Mr.
8 May and Mr. Dettman may have some questions
9 for you and can engage in that way as well.

10 MR. JENKINS: Thank you, Mr
11 Chairman.

12 CHAIRPERSON LOUD: Yes?

13 MR. MOY: This may be a good time
14 for me to jump in, if I may, to mention this
15 preliminary matter.

16 CHAIRPERSON LOUD: Yes, Mr. Moy.

17 MR. MOY: It's come to the
18 attention of the Office of Zoning, as a matter
19 of fact last Friday, Mr. Chairman, that the
20 Office of Documents and Issuances advised OZ
21 that they had inadvertently not published our
22 May 5th public hearing notice in the D.C.

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1 Register. And as you know, pursuant to 3112.4
2 that's one of the requirements for a public
3 notice. So that's an issue that the Board
4 should address.

5 Staff would advise though that
6 there are other requirements other than
7 publishing in the D.C. Register which I
8 believe have been fulfilled such as mailing
9 notices to the ANC within which the subject
10 property is located, sending notices to public
11 owners within 200 feet of the subject
12 property, as well as publishing the agenda on
13 our OZ web site and of course the applicant's
14 requirement to post the public notice with the
15 orange placard on the subject property,

16 CHAIRPERSON LOUD: Thank you, Mr.
17 Moy. In terms of preceding forward, let me
18 first ask Board Members if they have any
19 questions regarding what Mr. Moy just stated.

20 Okay. Then what I would suggest
21 is, and you've mentioned it, Mr. Moy, that
22 there are a number of exhibits in our record

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1 which establish that notice was given through
2 alternative means including the Exhibit 24 and
3 exhibit 25 which are the notice that went to
4 the ANC. In fact, we have a report from the
5 ANC, we have an exhibit referencing support
6 letters from neighbors, we have the 200 radii
7 letter that goes out, all of which suggests
8 that this is a case that's not a big secret,
9 that it's well known in the community.

10 But without hearing objection from
11 Mr. Dettman or Mr. May, perhaps you can, Mr.
12 Jenkins, just very briefly state what
13 encounters you've had with the community, with
14 the ANC, to let them know about this.

15 MR. JENKINS: Sure. We have
16 attended first actually a hearing on the
17 Historic Review Board. Also with the ANC
18 twice, first on the historic review
19 considerations. And then most recently for
20 the special exception. We've had
21 conversations with all of the immediate
22 abutters and I understand that the word is out

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1 in the neighborhood that this is happened, and
2 as Mr. Moy mentioned, a sign in the front
3 yard.

4 CHAIRPERSON LOUD: Thank you. And
5 again it appears from our record, even without
6 your testimony, that notice has gotten out to
7 the community, but it's also good to know that
8 you've had conversations with the abutters and
9 presented at Historic Preservation.

10 Do Board Members have any
11 questions for Mr. Jenkins regarding those?

12 Okay. So unless there's
13 objection, why don't we waive publication
14 requirement and dispose of the preliminary
15 matter with respect to notice and move
16 straight to the case?

17 Okay. Let's do that.

18 MR. JENKINS: Thank you, Mr.
19 Chairman.

20 Just very briefly, the project
21 that we are proposing is part of a larger
22 renovation of a house we purchased recently.

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1 All the rest of the renovation conforms, but
2 we would like to add a small screen porch off
3 of the kitchen. The addition of the screen
4 porch puts us slightly over our lot coverage
5 occupancy at 43 percent versus 40. That's
6 largely a factor of our current lot being non-
7 conforming in the rear yard, the lot occupancy
8 and the lot width. We will also be six feet
9 from the side yard rather than eight. That's
10 the second request for a special exception.

11 We believe we meet the conditions
12 for a special exception in that we don't
13 affect the light or quality of the neighbors'
14 dwellings. And we have -- the three adjacent
15 neighbors have each provided a letter of
16 support. The HPRB has provided unanimous
17 support, as has the ANC-3C, and as has the
18 Office of Zoning staff has provided support as
19 well.

20 CHAIRPERSON LOUD: Thank you. Are
21 there any questions for the applicant from the
22 Board Members?

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1 Okay. And the ANC is still not
2 here, so what we'll do now is move to the
3 Office of Planning.

4 And again, you've pulled together
5 a very excellent report. I think what might
6 be helpful is just perhaps to very briefly
7 walk through the analysis, light and air
8 analysis, so that we have that on the record
9 and we can then see if there are any questions
10 and proceed from there.

11 And good afternoon, Mr. Jackson.

12 MR. JACKSON: Good afternoon. My
13 name is Arthur Jackson. I'm a development
14 review specialist with D.C. Office of
15 Planning. Let me go briefly through the
16 Office of Planning report on this application.

17 Looking at the compliance with the
18 provisions of section 223 of the regulations,
19 this proposal involves an addition to a semi-
20 detached dwelling in R-1-B. The existing
21 dwelling is legally non-conforming. The use
22 is legally non-conforming and the existing

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1 setbacks do not meet the current regulations
2 and there for it is eligible for relief under
3 this provision.

4 I propose in terms of the impact
5 on air and light, we didn't find that the
6 proposed addition would have any impact on air
7 and light to the adjacent dwellings. It would
8 not impact the privacy of use or enjoyment of
9 neighboring properties. It would not
10 substantially intrude on the character and
11 scale of the neighborhood or the subject
12 street frontage. In fact, the application was
13 reviewed by the Historic Preservation Review
14 Board and was found to be consistent with the
15 historic regulations of the District. In
16 fact, the final approval was delegated to
17 staff at the Preservation office and there was
18 sufficient documentation provided.

19 The proposed lot occupancy
20 increase is consistent with the regulations
21 that it be less than 50 percent, which
22 allowed. And no special treatment was

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1 required, per our opinion, for the proposed
2 addition. And essentially the proposal would
3 expand an existing legal non-conforming
4 residential structure in a residential
5 district.

6 Based on that information, we
7 think the application meets the standards for
8 special exception approval and we so recommend
9 that in our report.

10 That concludes our brief summary
11 and we're available to answer questions.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 Jackson.

14 Are there any questions for Mr.
15 Jackson from Board Members?

16 Okay. Mr. Jenkins, have you
17 reviewed Mr. Jackson's report?

18 MR. JENKINS: Yes, I have.

19 CHAIRPERSON LOUD: Do you have any
20 questions for him?

21 MR. JENKINS: No, I don't. Thank
22 you.

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1 CHAIRPERSON LOUD: Okay. We would
2 now normally move to a report from the ANC,
3 but looking out into the audience I don't see
4 where the ANC has shown up.

5 So if there are parties or persons
6 in support, now would be the time to step
7 forward.

8 There are none. If there parties
9 or persons in opposition, now would be the
10 time to step forward.

11 Again, seeing none. So we now
12 move to your opportunity to give closing
13 remarks.

14 MR. JENKINS: I very much
15 appreciate the time to present this and to
16 have your consideration. Thank you.

17 CHAIRPERSON LOUD: Thank you.

18 I think we got a couple different
19 options here now as to what we can do. We can
20 deliberate today, we can set it for a
21 decision. It seems like the consensus is that
22 we deliberate today. And so why don't I start

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1 us off? And I'm not going to repeat what has
2 been a very excellent pleading briefly, as
3 well as some of the testimony we heard here
4 today, particularly from Mr. Jackson the 223
5 analysis.

6 But essentially the project
7 proposed a 214-square-foot screen porch and
8 Mr. Jenkins has indicated it's right off the
9 kitchen, part of a larger renovation that's
10 currently underway. The challenge is that it
11 doesn't meet the requirements of section 405
12 as to side yard. Eight feet is required. Six
13 feet will be provided after the construction
14 on the west side. Nor does it meet the
15 requirements of section 403, lot occupancy.
16 The lot occupancy will be 43 percent. After
17 construction only 40 percent is allowed in the
18 R-1-B, however, with the section 223 relief
19 lot occupancy can go up to 50 percent.

20 We also testimony that the
21 applicant met with a number of his neighbors
22 and that word was out in the community

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1 regarding the project. In fact, the ANC
2 submitted at our Exhibit 23 a great weight
3 letter of support for the applicant, which
4 I'll just very briefly say that the meeting
5 was publicly noticed. They had a quorum. It
6 was held April 20. They considered this
7 application and there was unanimous vote to
8 not object to the proposal.

9 In addition to the ANC's report,
10 the Office of Planning gave testimony this
11 afternoon and Mr. Jackson went over the
12 elements of the analysis for 223 and how the
13 applicant's project meets those requirements.

14 There was also Exhibit 25, I
15 believe, which is the adjacent property owners
16 to the applicant also evidencing their support
17 for the project.

18 So I think on the whole the
19 applicant has made a case for 223 and it's
20 been supported by OP and ANC, and surrounding
21 neighbors. And would like to recommend to my
22 Board Members here this afternoon that we vote

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1 approval of this.

2 But now I'll open it up to see if
3 Board Members want to weigh in as well.

4 MS. GLAZER: Mr. Chair, sorry to
5 interrupt, but I wanted to note that the
6 caption also mentioned relief by virtue of
7 section 404, rear yard provisions. So I just
8 wanted to make sure that was under the Board's
9 consideration.

10 CHAIRPERSON LOUD: Thank you, Ms.
11 Glazer. I do appreciate that.

12 Mr. Jackson, let me turn to you
13 for a moment and just ask with respect to rear
14 yard whether that came into play in the case.

15 MR. JACKSON: Well, the
16 circumstances that the rear yard does not meet
17 the current requirement, the addition is not
18 increasing the rear yard, but it's still
19 legally non-conforming. So in essence, the
20 existing non-conformity is not affected by the
21 proposed addition because the proposed
22 addition would be line with the existing

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1 building.

2 CHAIRPERSON LOUD: Okay. Would
3 that be a separate area of relief that we need
4 to vote upon today?

5 MR. JACKSON: Well, I think it
6 would be reasonable because the applicant
7 actually has the option to construct the
8 addition such that it does not impinge on the
9 rear yard. So he could, in other words, move
10 the addition back from the rear yard such that
11 it met the requirement. Being in line with
12 the existing non-conformity, the existing rear
13 of the building, he's continuing the legal
14 non-conformity, but not increasing it. So it
15 would be reasonable to add that to the relief
16 that's being provided.

17 CHAIRPERSON LOUD: Okay. Thank
18 you, Mr. Jackson.

19 Let me see if Board Members want
20 to weigh in on that issue as well.

21 Okay. Thank you, Ms. Glazer, for
22 raising that. I don't think it affects our

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1 analysis with respect to the 223 case being
2 made, but once the motion is made we will make
3 sure to include that as an additional area of
4 relief.

5 I think we were at the point where
6 I had opened it up to Board Members to see if
7 they wanted to weigh in. And not hearing any
8 desire to weigh in, I think we are probably
9 ripe for a motion and I'd be happy to make
10 that motion.

11 I'd like to move for approval of
12 Application No. 17921, special exception
13 relief under section 223 for relief from
14 section 405, side yard; section 403, lot
15 occupancy; and section 404, rear yard.

16 Is that correct, Ms. Glazer?
17 Section 404?

18 MS. GLAZER: Yes, Mr. Chair.

19 CHAIRPERSON LOUD: Thank you very
20 much.

21 Is there a second?

22 COMMISSIONER MAY: Second.

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1 CHAIRPERSON LOUD: Thank you, Mr.
2 Dettman.

3 CHAIRPERSON LOUD: The motion's
4 been made and seconded regarding approval of
5 this application. Is there further
6 deliberation?

7 Hearing none, I'd like to ask that
8 all in favor of the motion say aye. Aye.

9 VICE-CHAIRPERSON DETTMAN: Aye.

10 COMMISSIONER MAY: Aye.

11 CHAIRPERSON LOUD: All opposed?

12 Any abstentions?

13 Ms. Bailey, can you read the vote?

14 MS. BAILEY: Mr. Chairman, the
15 Board has voted 3-0-2 to grant the
16 application. Mr. Loud made the motion, Mr.
17 May seconded. Mr Dettman supported the
18 motion. Two mayoral appointees not present at
19 this time. 3-0-2.

20 Summary order, Mr. Chairman?

21 CHAIRPERSON LOUD: Yes, please.

22 MS. BAILEY: Thank you.

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

3 And thank you, Mr. Jenkins. Thank
4 you for your patience.

5 MR. JENKINS: Thank you, Mr.
6 Chairman, and thank you, Members of the Board.

7 CHAIRPERSON LOUD: Ms. Bailey, do
8 we have another case on he calendar this
9 afternoon?

10 MS. BAILEY: Yes, Mr. Chairman.
11 That is Application 17917. This is the
12 application of Jerome Bauman, pursuant to 11
13 DCMR 3103.2, for a variance from the use
14 provisions under subsection 330.5, allowing
15 office, service and retail uses as permitted
16 in the C-1 District in an existing building.
17 The property is zoned R-4. It's locate at
18 1452 D Street, Northeast, Square 1053, Lot 90.

19 CHAIRPERSON LOUD: Thank you, Ms.
20 Bailey.

21 I see that the applicant has
22 already is in the process of taking its seat.

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1 So once you get settled there, if
2 you can state your name and address for the
3 record.

4 And I think we have a preliminary
5 matter before we actually get into the case.

6 Good afternoon.

7 MR. BAUMAN: Good afternoon,
8 Chairman Loud. My name is Steven Gell. I'm
9 a zoning attorney. With me is Jerry Bauman
10 who's the owner of the property that's the
11 subject of the case today.

12 CHAIRPERSON LOUD: And, Mr.
13 Bauman, did you want to state your name and
14 address for the record? Your counsel has
15 introduced you already, but just for our
16 record.

17 MR. GELL: Jerome Bauman. Jerome
18 Bauman, 315 Hannes Street, Silver Spring,
19 Maryland. Subject project is 1452 D Street,
20 Northeast.

21 CHAIRPERSON LOUD: Thank you, Mr.
22 Bauman. Good afternoon.

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1 I do believe we have a preliminary
2 matter, Mr. Moy?

3 MR. MOY: Yes, Mr. Chairman. As I
4 have stated earlier in the first application,
5 the office was alerted last Friday that the
6 Office of Documents and Issuance had advised
7 us that they had inadvertently not published
8 the May 5th public hearing cases in the D.C.
9 Register. So the Board should address the
10 requirements in the Zoning Regulations
11 pursuant to 3112.14 where publishing notice in
12 the D.C. Register is required.

13 Staff does note for the Board,
14 however, that there were other methods for
15 public notice and staff believes that those
16 requirements have been met.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Moy.

19 Mr. Gell, I think you sat through
20 as we went through this in the very first
21 case. And I think in your case as well there
22 are other means of notice that were satisfied

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1 in this case, including Exhibit 23, the
2 affidavit of posting, Exhibits 14 and 15,
3 which were notices that the Office of Zoning
4 sent to the ANC, and I believe Exhibit 7,
5 which was the letters that the Office of
6 Zoning sent to property owners in a 200-foot
7 radius. But again, if your client has
8 something to add to that regarding meetings in
9 the community, meetings with neighbors,
10 attendance at ANC meetings, etcetera, it would
11 only help further.

12 MR. GELL: Yes, Mr. Loud. We did
13 indeed meet with the Zoning and Planning
14 Committee of the ANC. We met with the Capitol
15 Hill Restoration Society and with the ANC. I
16 think all of those are spelled out in our
17 submission.

18 In addition, Mr. Bauman had gotten
19 several close neighbors to sign a petition and
20 they're in support. And as far as we know,
21 nobody has objected to what Mr. Bauman is
22 asking for. If there were some other meetings

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1 before I came into the picture and Mr. Bauman
2 would like to discuss those, he certainly is
3 free to do so.

4 MR. BAUMAN: Well, I did go to the
5 neighborhood meeting at Kingsman Elementary
6 School, and I thought it was interesting. I
7 went there before I think we even filed the
8 case originally to find out what really the
9 neighbors wanted. And in general they didn't
10 care, although I had some people who said
11 they'd like to have a coffee shop. And there
12 happened to be somebody who had a coffee shop
13 some blocks away and I said would you like
14 another coffee shop? You know, I have to sell
15 the location so to speak, which I've been
16 trying to do for a long time. And the people,
17 you know, did like that idea. And I had one
18 man who even looked into putting a coffee shop
19 there and he happened to be the catering
20 manager for Heritage Foundation. Don't go
21 into that?

22 MR. GELL: They're really only

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1 concerned about --

2 MR. BAUMAN: Okay. Sorry about
3 that.

4 MR. GELL: -- the meetings you had
5 with --

6 MR. BAUMAN: Okay. I'm sorry.
7 I'm sorry.

8 MR. GELL: We'll go into that
9 later.

10 MR. BAUMAN: Yes, yes, yes. So,
11 I've been trying -- okay. You don't want to
12 hear that editorial comment. Sorry about
13 that.

14 CHAIRPERSON LOUD: I think we may
15 have an opportunity as we proceed further for
16 additional testimony from you.

17 MR. BAUMAN: Okay. Yes, yes.
18 Okay. I'm sorry.

19 CHAIRPERSON LOUD: But I think for
20 our purposes right now there's a sufficient
21 record I think for us to make a decision on
22 waiving the requirements of our rules as

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1 regarding publication in the D.C. Register.
2 If you look at the exhibits that I've already
3 referenced, 23 and 14 and 15, Exhibit 6, to
4 which is added now the testimony that you met
5 with the Zoning and Planning Committee of the
6 ANC, you met with the Capitol Hill Restoration
7 Society. A petition was signed by a number of
8 neighbors. Unless there are objections from
9 Board Members, I think that we can waive the
10 requirements under section 3100.5 for the
11 publication by the D.C. Register.

12 Board Members?

13 Seems as if everyone is in support
14 of that. So why don't we do that officially?

15 And now let us move into the case.

16 Before we begin with your
17 presentation of our case, Mr. Gell, Board
18 Members have reviewed the file and have
19 thought through very carefully, I think, the
20 relief being requested and the circumstances
21 driving the relief being requested. And I
22 think, and I hope I'm wording this properly,

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1 that it is somewhat out of the ordinary; let's
2 put it like that, to review a case where there
3 is a request for multiple uses to be approved
4 in one fell swoop. And while that's not a bar
5 that's absolutely beyond our authority to
6 review, it does bring into question issues of
7 rezoning of the property where again we're
8 talking about approving multiple uses as
9 opposed to designating a use. We certainly
10 don't want to tie your hands in terms of
11 presenting your case, but wanted to know if
12 you had considered other options including
13 designating a particular use and seeking a
14 special exception under section 2003. And
15 again, I think I'm capturing some of the
16 concern.

17 And let me see if Board Members
18 want to weigh in as well.

19 Okay. Mr. Dettman?

20 VICE-CHAIRPERSON DETTMAN: Simply
21 that when, Mr. Gell, as you addressed the
22 question that's been posed by the Chair, in

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1 addition, in explaining the route that you've
2 decided to take, why you decided to pursue a
3 use variance?

4 MR. GELL: Okay. Mr. Chairman,
5 Members of the Board, we of course did
6 consider all of those issues very, very
7 carefully. Before I comment further on them,
8 I wonder if it's possible for Mr. Bauman to
9 make a statement that he had prepared that I
10 think will address some of the issues and then
11 I will either recap or add to that giving a
12 sense of how we dealt with those issues. But
13 I think much of what we wanted to say is in
14 his statement.

15 CHAIRPERSON LOUD: Thank you, Mr.
16 Gell. I think that will be helpful. And then
17 if you can, I think by implication you may
18 have already done that, but just respond
19 directly as to whether the preference is to
20 continue to proceed as a use variance without
21 designating a specific use, even after Mr.
22 Bauman makes his opening statement.

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1 MR. GELL: Good afternoon.

2 MR. BAUMAN: Okay. I'm Jerry
3 Bauman and I'm about to testify regarding a
4 variance for 452 D Street, Northeast in BZA
5 Case No. 17917.

6 Chairman Loud and Members of the
7 Board, my name is Jerry Bauman. I have strong
8 ties to Washington and the property you're
9 considering today.

10 I was born at Sibley Hospital in
11 1930 when it was on North Capitol Street.
12 Started kindergarten where Miner Elementary
13 School is on 15th Street, two blocks from
14 subject property. Went to Kingsman
15 Elementary, which is about three blocks from
16 subject property. Graduated Eastern High
17 School, enlisted in the National Guard at the
18 armory near Eastern. National Guard was
19 federalized and I spent three years as a radar
20 operator during the Korean War. My dad had
21 the first sales tax number in the District.
22 His store was at Euclid Market in 1948. I

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1 started GW. Graduated AU under the GI Bill
2 after my Korean discharge.

3 My family has owned the building
4 at 1452 D Street since 1932. Since 1924, it's
5 been a mom and pop grocery store and then a
6 grocery store/delicatessen. I've been
7 remodeling the building since the last tenant
8 moved out. We have been able to find another
9 grocery store operator for the space and now
10 can see no other course but to try to use the
11 building for some other commercial use.

12 We filed the request for a
13 variance so that we could rent the building
14 for other types of commercial uses such as
15 offices, small retail, grocery, restaurant,
16 dry cleaning, optician, locksmith, bakery,
17 auto, no installation, flower or hardware.
18 These are all now permitted in the C-1
19 District, as is the grocery/deli which we now
20 have. We excluded some uses that the
21 neighbors said they didn't want such as a
22 laundromat or a liquor store.

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1 The problem is that the building
2 is small. It has two stories and a cellar.
3 Each floor is approximately 800 square feet.
4 it shares the lot with a barber shop and is on
5 a corner property with no rear yard. These
6 factors make the property unique in the
7 square. It's also unique in the fact that it
8 has continually had a commercial use since
9 before 1924. A second test for a variant is
10 whether we would suffer a hardship if we had
11 to continue the grocery store or convert the
12 building to residential. We've tried to
13 attract another grocery store/deli to the
14 site, but there have been no takers.

15 Here are some of the efforts I've
16 made to rent the store. I've advertised for
17 nine months at great expense in the Washington
18 Post. I was on Craigslist. I contacted
19 Vanguard Realty, Solomon Realty, Formant
20 Realty, Thomas Waltz Realty, Keller Williams
21 Realty, all to no avail.

22 I have considered a small

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1 restaurant, a coffee café, a bakery, a
2 pediatric therapist's office. Frankly, most
3 did not qualify financially. Others did not
4 want to wait several months for the various
5 variance process to run its course. What
6 makes matters worse is the economy, but I'm
7 hopeful if we can market it with a variety of
8 uses and minimum lead time, someone will want
9 to take the space.

10 I love the area and am tied to it,
11 as I have been for almost 80 years. It
12 deserves a good tenant and I am bound to find
13 one that will put the property to good use and
14 fit into the neighborhood.

15 Incidentally, when I was at the
16 Reeve Center and I looked through the planning
17 book it said that the Capitol Hill properties
18 really needed more retail and that many people
19 who lived in the Capitol Hill area actually
20 did their shopping in Virginia. And I would
21 say most of the people, or a big percentage of
22 the people anyway, who live near 15th and D

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1 are Government workers. My father loved being
2 in any business in the District because a big
3 percentage of the people do work for the
4 Government, so it is a good area.

5 Because of its long history as a
6 grocery store, it would need costly
7 retrofitting to install a kitchen and other
8 residential amenities. However, the rent for
9 so small a space would not justify this
10 expense. Also, the floor plates are too small
11 for a two-apartment building. There are no
12 reasonable alternative uses for the property
13 but a commercial use. It seems that the
14 Advisory Neighborhood Commission 6A and Office
15 of Planning agree with this assessment.

16 The parking needs for office use
17 or other uses permitted in C-1 would not be
18 very different from that of a grocery store.
19 We would be depending on street parking as we
20 have in the past since there are no spaces on
21 the lot for parking. On the 15th Street side
22 of the building there's a 14.3-foot side yard

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1 that extends for about 95 feet, however, it is
2 really part of the right of way. Perhaps we
3 could obtain permission from DDoT to use the
4 area for parking, but it could not be counted
5 for zoning purposes. During the day there's
6 plenty of street parking.

7 In addition, there's good public
8 transportation to and from the site. A bus
9 stops in front of the building, travels down
10 15th Street and up 14th Street winding up at
11 RFK Stadium and Metro. The D6 bus goes along
12 D Street from Union Station.

13 We would be grateful for any help
14 you could give us in pursuing this variance.
15 Thank you very much for giving us the time.

16 MR. GELL: I also want to thank
17 you for listening to the statement. I thought
18 it was important to get some of the facts to
19 the record so that as we look at the legal
20 arguments there's a structure that we can
21 refer to.

22 There are basically two questions,

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1 I believe, that you asked. One was why a
2 variance? And that is, why not a neighborhood
3 facility? I gather that's the intent of the
4 question.

5 As I looked through the cases to
6 neighborhood facilities, I noticed that there
7 were a number of possible uses that Mr. Bauman
8 felt he would like to be able to offer which
9 were not permitted. Because for a
10 neighborhood facility you have to show that
11 your clientele is coming from the immediate
12 area by and large rather than being able to
13 serve a larger district or larger area. There
14 was one case, 13787, where the Board rejected
15 a non-profit organization, an office for a
16 non-profit organization. They rejected a
17 detective agency. They rejected law offices,
18 bookkeeping offices. And I can give you the
19 numbers of these cases. I'd be happy to do
20 that. 14041 was a tea room seating 20
21 persons. So I can't be absolutely sure that
22 he would even be able to get a coffee shop

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1 based on that particular case. Maybe the
2 Board has changed its mind in the meantime,
3 but that gave me pause. 14660, electrical
4 contractor's office was also rejected.

5 I understand the intent of the
6 provision that permits neighborhood
7 facilities, but when you look at the economy
8 as it is today and as it has been for awhile,
9 understanding that it takes five to six months
10 to go through a zoning case, and that every
11 time you get a new tenant you then have to go
12 back to the BZA to ask either for the
13 neighborhood facility or for a different kind
14 of a use. It means the Board is going to be
15 much busier than perhaps it needs to be.

16 And secondly, it puts a great
17 strain on the landlord to try to find somebody
18 who's willing to wait that five or six months
19 before it can be approved.

20 So what we did was we had a wide
21 range at first, a wide range, anything in C-1
22 except I think for two or three uses. Some of

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1 the neighbors, the Capitol Hill Restoration
2 Society, didn't suggest that we select one
3 use. They said if you could pare down the
4 list and make it a smaller list. We then did
5 that. We also listened very carefully to all
6 the neighbors who said this is the way we want
7 it to be operated, this is how we'd like the
8 building to look and various other aspects of
9 the operation of the business.

10 We put those into conditions that
11 we are proposing to the Board that the Board
12 would be willing to accept. Those were not
13 imposed on us by any agreement. I haven't
14 seen the ANC letter, but I don't believe they
15 included them in their approval. But in fact
16 because we had heard them, because we wanted
17 to satisfy the neighbors, even it wasn't
18 necessary, but we thought they were reasonable
19 concerns, we put them in as conditions. We
20 would not have done that perhaps if it were a
21 single use. But recognizing that we're asking
22 the Board to do something a little different

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1 from it's done in the past, we thought that
2 would be a protection for the neighbors. In
3 fact, we even included a liaison requirement,
4 which perhaps may be more onerous than is
5 necessary and we might want to talk about
6 that. But in effect, we're willing to abide
7 by what we've suggested.

8 It's for those reasons that we've
9 asked for a broader grant and the fact that
10 the neighbors are supportive, you know, the 13
11 people that signed those petitions. Nobody
12 has spoken against it. We think that should
13 really go in our favor in asking the Board to
14 do something that is a little bit out of the
15 ordinary.

16 I'll be happy to answer any
17 questions that you might have.

18 CHAIRPERSON LOUD: I'm going to
19 ask Board Members in one second to follow up
20 with you on that, but first I did want to say
21 that I would like to get a list of the cases
22 that you're talking about.

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1 MR. GELL: Sure.

2 CHAIRPERSON LOUD: That you can
3 give to Ms. Bailey, first.

4 Second, I wanted to make sure that
5 your witness is available for questions. You
6 introduced him as giving an opening statement
7 as opposed to giving testimony, but I'm
8 assuming that you're not making a distinction
9 and that if Board Members -- because he went
10 into the variance test quite extensively.

11 MR. GELL: No, absolutely.

12 CHAIRPERSON LOUD: Okay. Okay. I
13 just wanted --

14 MR. GELL: He'd be happy to answer
15 any questions.

16 CHAIRPERSON LOUD: Okay. And then
17 just to make sure I understand what you just
18 said, it sounds like the basic reason that
19 you're before us for a variance designating
20 multiple uses is that, to paraphrase, there
21 was not a lot of confidence from reading the
22 BZA cases that certain of the neighborhood

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1 uses that would qualify would actually get
2 approval from BZA, again based on the cases
3 where some of these uses were rejected.

4 Is that a fair statement?

5 MR. GELL: It really was that the
6 list, even if there was a list that I could
7 take out of the cases as being pretty sure and
8 secure, the list was not a large enough list
9 to serve Mr. Bauman's needs because he has to
10 market this site. He's tried to do it with a
11 grocery store and he's going to have to go out
12 to a much broader audience. Hopefully he will
13 get somebody very quickly. We certainly don't
14 want to see that property just sit there and
15 not be used and neither does the neighborhood
16 or anybody else, but we just felt that the
17 neighborhood facilities designation was too
18 restrictive, even if one could be really, you
19 know, assured.

20 I looked at the Office of Planning
21 report, and I see a lot of lists of uses that
22 require special exceptions, but perhaps I

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1 should hold that for testimony from the Office
2 of Planning, but it seemed to me that none of
3 those uses could be used in a change of use by
4 a non-conforming use, that those are uses that
5 are permitted in C-1 if you get approval of
6 BZA. But we couldn't then translate that into
7 a use that we could ask for as a special
8 exception. In a residential district we're
9 asking for a change to another commercial use.

10 So in any event, it's too small a
11 list, we felt.

12 CHAIRPERSON LOUD: Okay. Board
13 Members, do you have any questions for Mr.
14 Gell and/or Mr. Bauman?

15 COMMISSIONER MAY: Yes, Mr.
16 Chairman.

17 Following up on that list of uses
18 that were previously rejected, these were all
19 special exception cases that had been --

20 MR. GELL: These were all
21 neighborhood facilities cases.

22 COMMISSIONER MAY: Yes. Yes. So

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1 your argument that we should grant a variance
2 which theoretically gives you more latitude to
3 place additional uses in there is somehow
4 supported by the fact that special exceptions
5 had been turned down for less onerous uses?
6 I mean, it's sort of a perverse case to make.
7 Do you understand my logic? Because you're
8 asking us to -- the door's already open
9 through the special exception process for a
10 number of uses and you want to push it open
11 further because some of those uses weren't
12 granted.

13 MR. GELL: That's not quite what
14 my position is on that. What I was saying
15 there was that for Mr. Bauman to come in with
16 a specific neighborhood facilities use, first
17 of all he can't find one. He's advertised
18 widely. Nobody's come along and said we want
19 to have a grocery store. That of course he
20 could do as a grandfathered-in use. But
21 nobody's come along and said we want to have
22 a -- I forget now what some of the uses that

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1 were permitted, but something, a barber shop.
2 He's got one on the property. He doesn't want
3 another barber shop or a beauty parlor. Those
4 would probably be considered neighborhood
5 uses.

6 So our purpose in saying that
7 these uses were not permitted is simply to say
8 that even ones that one might consider to be
9 within the scope of a neighborhood facility
10 have been turned down by the BZA. In addition
11 to which, these are the kinds of uses that
12 might very well fit in that neighborhood that
13 would not be neighborhood facilities, but
14 which the neighbors have already kind of
15 looked at the situation and said, yes, that
16 doesn't bother us. That would be okay. A
17 real estate office, for instance, is generally
18 turned down because it serves a wider
19 clientele than just people within the
20 neighborhood. A law office and so forth. But
21 a law office may fit very well in that
22 location. A small retail store might fit very

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1 well. A small retail store might also be a
2 neighborhood facility, but an auto parts store
3 might not because it's more specialized in the
4 kinds of things that it uses.

5 COMMISSIONER MAY: So how do we
6 know what is appropriate and what's not
7 appropriate?

8 MR. GELL: How do you know?

9 COMMISSIONER MAY: Yes.

10 MR. GELL: Well, that would
11 certainly be for the Board to determine.

12 COMMISSIONER MAY: And the process
13 for that is?

14 MR. GELL: I'm sorry. Appropriate
15 as a neighborhood facility or as --

16 COMMISSIONER MAY: I mean, you
17 know, what use might make sense? I mean, you
18 sort of come at it with the notion that some
19 of these other uses, the law office or
20 bookkeeper's offices, or the tea room, they
21 were rejected as special exception cases,
22 right?

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1 MR. GELL: Right.

2 COMMISSIONER MAY: And, you know,
3 they're thrown up as if these are examples of
4 where perhaps these uses were inappropriately
5 denied.

6 MR. GELL: No, no.

7 COMMISSIONER MAY: And --

8 MR. GELL: They could -- I'm
9 sorry. I didn't mean to interrupt.

10 COMMISSIONER MAY: That's okay. I
11 mean, but I guess my point is that the process
12 by which we determine that something is or is
13 not appropriate when you're dealing with a
14 grandfathered non-conforming use is the
15 special exception process which gives the
16 public an opportunity to speak out on whether
17 that particular use is appropriate or not
18 appropriate. The format for dealing with
19 whether a class of uses or a larger group of
20 uses is -- I mean, that's not really what
21 special exception is about, or, I mean, in
22 this circumstance what necessarily a use

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1 variance is about. I don't want to go too far
2 down that road, but I'm just --

3 MR. GELL: I guess that's the
4 Zoning Commission.

5 COMMISSIONER MAY: Well, I mean
6 maybe it is. I don't know. We're only part
7 of the way through the case, so we'll figure
8 where we go.

9 MR. GELL: Well, if I could
10 respond to what you just said --

11 COMMISSIONER MAY: Sure.

12 MR. GELL: -- when they rejected a
13 law office, they didn't say we will never
14 consider a law office. They simply said
15 special exception is not the route. You have
16 to come with a variance.

17 COMMISSIONER MAY: Right.

18 MR. GELL: So that's why we
19 started.

20 COMMISSIONER MAY: Right. Which
21 is another public process.

22 You stated that it's five or six

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1 months for a zoning case. And you said zoning
2 case, you didn't say a BZA case. Did you mean
3 BZA?

4 MR. GELL: I meant BZA.

5 COMMISSIONER MAY: Yes. Okay.
6 When did you file for this case?

7 MR. GELL: Excuse me. I thought
8 the date was right on it. Oh, November 25th.
9 No wait, that may just be the form. Sorry.

10 MS. BAILEY: November 26th, 2008,
11 Mr. Gell?

12 MR. GELL: All right. November
13 26th.

14 COMMISSIONER MAY: Okay.

15 CHAIRPERSON LOUD: That would be
16 our Exhibit 12. Thanks, Ms. Bailey.

17 Exhibit 12, Mr. May.

18 COMMISSIONER MAY: Okay. The cost
19 to renovate the premises that was submitted
20 for the record shows an extraordinarily high
21 cost and it involves renovations to make it
22 effectively into three units.

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1 MR. GELL: This was the cost to
2 make it a residential use.

3 COMMISSIONER MAY: Yes.

4 MR. GELL: We were trying to show
5 that that would not be --

6 COMMISSIONER MAY: Right. Right.
7 Well, and of course you couldn't do a three-
8 unit building anyway in this zone, right, in
9 an R-4? Not without a certain amount of
10 square footage.

11 MR. GELL: You could do it, but
12 you need enough space.

13 COMMISSIONER MAY: Right. So I'm
14 not sure how to judge that.

15 The second floor is an existing
16 apartment?

17 MR. GELL: Well, I think we gave
18 you the cost for two and for three units. We
19 could ask for --

20 COMMISSIONER MAY: Well, I mean,
21 it was broken down separately, so you could
22 take off the cost for one of the units.

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1 The second-floor unit though is
2 already and apartment, isn't it?

3 MR. GELL: I think it's designated
4 an apartment. I don't know if it's used as an
5 apartment.

6 MR. BAUMAN: Not, it's not used as
7 an apartment.

8 COMMISSIONER MAY: Has it been
9 used an apartment?

10 MR. BAUMAN: The way the lease was
11 written many years ago, it said there's an --
12 it was a commercial lease, but it says
13 incidental use is permitted, whatever that
14 means. That's legalese.

15 COMMISSIONER MAY: Yes.

16 MR. BAUMAN: So the people
17 downstairs in the store were living over the
18 store as I did when I was a kid.

19 COMMISSIONER MAY: Right. So I
20 guess my point is the way it's physically
21 configured right now, is it physically
22 configured as an apartment? Does it have a

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1 bathroom?

2 MR. BAUMAN: Yes.

3 COMMISSIONER MAY: Does it have a
4 kitchen?

5 MR. BAUMAN: No. Excuse me for
6 saying it, but the tenant took out all the
7 fixtures.

8 COMMISSIONER MAY: Okay. But
9 there's plumbing for the kitchen?

10 MR. GELL: It had been fitted out
11 as an apartment at one time, yes.

12 COMMISSIONER MAY: Okay. I mean,
13 is it a kitchen without a stove and
14 refrigerator or does the kitchen --

15 MR. BAUMAN: No refrigerator.

16 COMMISSIONER MAY: No cabinets?

17 MR. BAUMAN: Pretty horror story.
18 You don't want to hear my problems.

19 COMMISSIONER MAY: No, I just want
20 to know if there are cabinets there. I just
21 want to know what the state of it is.

22 MR. BAUMAN: No.

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1 CHAIRPERSON LOUD: Okay. But
2 there's plumbing in place for it now. And do
3 you know how heavy the electrical service is
4 at this point? Is there sufficient electrical
5 service for it?

6 MR. GELL: I don't know.
7 Presumably case -- the company that gave us --

8 COMMISSIONER MAY: Yes. It's hard
9 to know with --

10 MR. GELL: They must have looked
11 at that as well.

12 COMMISSIONER MAY: And there's not
13 very much specific information, so it's hard
14 to know what the scope is.

15 What I'm trying to get at is
16 whether there really is substantial kind of
17 any structure costs that are part of this.
18 Because if you're going to make the case that,
19 you know, in order to pass the second prong of
20 the test it really is extraordinarily
21 difficult to convert it to apartments. It's
22 hard to do it on the level of information

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1 that's provided. Frankly, I don't think the
2 case is made there on that.

3 MR. BAUMAN: (Off microphone)
4 case --

5 MR. GELL: I have it.

6 COMMISSIONER MAY: Yes, it's
7 submitted and it gives us round numbers for
8 making a unit into an apartment. I know
9 enough about construction to know that those
10 numbers seem very high for that amount of
11 square footage. And, you know, the cost of,
12 you know, putting in a serviceable kitchen for
13 a rental unit, if that's all that's needed on
14 the second floor, that's one thing. If it's
15 something else, I don't know. But all I'm
16 saying is that that information isn't in what
17 was submitted.

18 MR. GELL: Well, I don't know that
19 we included the second floor in our request.
20 We're really dealing primarily here with the
21 first floor and the basement, which has never
22 been a residence.

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1 COMMISSIONER MAY: And I don't
2 think it ever should be a residence. It's
3 completely below grade. It's a cellar space.

4 MR. GELL: The cellar and the
5 first floor.

6 COMMISSIONER MAY: Oh, you're
7 going to make the cellar as part of that
8 bottom unit?

9 MR. GELL: In terms of the use of
10 the property, yes.

11 COMMISSIONER MAY: Okay. You've
12 made the case that it cannot be converted to
13 residential use because of the extraordinary
14 cost, right?

15 MR. GELL: Not the first floor and
16 the basement, that's right.

17 COMMISSIONER MAY: But what was
18 submitted was an estimate for three floors of
19 building.

20 MR. GELL: And indeed we could
21 have asked for a variance for an additional
22 space, but what I gave you, I thought, was

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1 figures that could apply to two stories or to
2 three stories.

3 COMMISSIONER MAY: Yes. I guess
4 if we're going to accept the case that it
5 really is an extraordinary cost to take the
6 existing structure and make it into a
7 serviceable set of flats, that it should be
8 more specific as to the cost of doing just
9 that.

10 MR. BAUMAN: Might I make an
11 editorial comment?

12 COMMISSIONER MAY: Sure.

13 MR. BAUMAN: In the little bit of
14 work that I did in that property, I'm not very
15 astute. If I were a big company and I met a
16 worker and he gave me an estimate, he would
17 stick to the estimate. But they gave me low-
18 ball -- everybody who came in there gave me
19 low-ball estimates. In other words, you
20 should -- they give me an estimate to do this
21 and they say, oh, by the -- you know, we
22 really should do -- you know, what do I know?

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1 COMMISSIONER MAY: Right.

2 MR. BAUMAN: The same thing with
3 these estimates this man gave me, it was like
4 \$300,000 to \$400,000, you know, to make a two-
5 unit apartment. And then he says if you just
6 want to make one residence, you can take
7 \$100,000 off. Well, you know, I don't know
8 what I'm getting into.

9 COMMISSIONER MAY: Yes.

10 MR. BAUMAN: And, you know, at my
11 age I'm certainly not going to spend \$200,000,
12 \$300,000, \$400,000 to convert it into a
13 residence.

14 COMMISSIONER MAY: Right. And I'm
15 not suggesting that you should. I'm just
16 suggesting that if you're going to make the
17 case that -- and this is a big part of your
18 case, that there's not another way to make
19 reasonable use of the property. You need to
20 make the case in a sufficient level of detail
21 for us to evaluate that.

22 MR. GELL: I appreciate what

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1 you're saying and I note that the Office of
2 Planning did in their report also indicate
3 that the first floor and the basement would
4 not be suitable for residential use. We have
5 some support for our proposal.

6 COMMISSIONER MAY: Yes, but I mean
7 there's a certain common sense argument about
8 that. It's not that it wouldn't be suitable.
9 It may not be ideal. There's certainly plenty
10 of residential units that are similar to that
11 kind of a configuration probably right in that
12 neighborhood. I'm familiar with the
13 neighborhood and I'm familiar with a lot of
14 neighborhoods in the city. There are a lot of
15 things that are less than ideal, but certainly
16 are rentable. But again, I'm not talking
17 about that. I'm talking about the question
18 of, you know, you make the case that it's too
19 expensive to convert it to a residential and
20 I think that if you're going to make that case
21 I'd need to see a little more detail on what
22 it really is going to cost. Because I don't

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1 think those figures that you have there are
2 supportable.

3 MR. GELL: Perhaps we can provide
4 some additional comfort on that. I mean, the
5 space is 800-and-some square feet and it's set
6 back from the curb in a way that you would --
7 in fact as the corner is kind of lopped off as
8 you would expect for a corner grocery store.
9 Nobody's even suggested that it would be -- of
10 course it's not ideal and it's perhaps not
11 suitable. But also, what we tried to show is
12 that the --

13 COMMISSIONER MAY: All right. If
14 we're going to down that road, I mean, all you
15 have to do is put up a fence and knock out the
16 concrete and you've got a front yard. I mean,
17 and that's not where the big money is. The
18 big money is in upping the electrical service
19 and putting in the plumbing and things like
20 that.

21 MR. GELL: Right.

22 COMMISSIONER MAY: So I simply do

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1 not buy the idea that it is not suitable for
2 residential use.

3 MR. GELL: Right. And we did try
4 to supply some information about the likely
5 rents that you could get in a space like that,
6 which is so far out of keeping with the
7 numbers for any kind of rehabilitation. But
8 if you need some more specificity on that,
9 that's something we could certainly supply.

10 CHAIRPERSON LOUD: Mr. Dettman, do
11 you have any questions?

12 Okay. Mr. Gell, if you are
13 through, and I don't believe we've been joined
14 by the ANC, what we can do now is turn to the
15 Office of Planning for their report.

16 MR. GELL: Give me one second.

17 CHAIRPERSON LOUD: Sure.

18 MR. GELL: I may want to make a
19 summary statement later, but I think that's
20 basically our case.

21 CHAIRPERSON LOUD: Okay. And you
22 will have the opportunity to do that.

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1 So let us now move to the Office
2 of Planning. Good afternoon.

3 MS. JACKSON: Good afternoon,
4 Chair, Members of the Board.

5 For the record, my name is Arlova
6 Jackson. I'm a development review specialist
7 with the D.C. Office of Planning.

8 I just wanted to point out that
9 while the initial application was to permit
10 the use of the ground floor and basement for
11 any use allowed within the C-1 zone, the
12 applicant later amended the application to
13 specify specific preferred retail, office or
14 service uses that would be permitted.

15 Briefly, the property is
16 approximately 1,440 square feet in size and is
17 improved with two buildings, a vacant two-
18 story mixed-use building and a one-story
19 commercial building at the rear of the lot
20 which currently is occupied by a barber shop.
21 There's 10-foot wide public alley located to
22 the rear of the lot providing access to the

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1 site from 15th Street.

2 As stated, the property has been
3 owned and/or operated by the applicant's
4 family since the 1920s with the ground floor
5 and basement being the site of a neighborhood
6 grocery store and a delicatessen added in
7 later years. In the past the applicant has
8 received zoning relief at the subject property
9 at least twice, both special exceptions
10 allowing a change in a non-conforming use,
11 once in 1997 and once in 2001.

12 Regarding the use variance test,
13 the Office of Planning did find that there are
14 certain factors that do contribute to an
15 exceptional situation affecting the property
16 which is located within an R-4 residence
17 district including the building which was
18 apparently constructed for mixed uses which
19 has contained a neighborhood grocery store and
20 upper-level apartment for the past several
21 decades, as well as the presence of a rear
22 detached commercial building on the same lot.

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1 As discussed, the applicant
2 presented data regarding the cost of
3 converting the ground-level use to a residence
4 along with estimated rents for dwelling units
5 in the area largely as a basis for economic
6 hardship which would preclude the use of the
7 lower levels for residential purposes. While
8 we would agree that the site conditions and
9 configuration of buildings on the lot are not
10 as marketable for ground-floor residential, as
11 for retail there are other viable options.

12 The exceptional situation with
13 regard to the historical use of the building
14 and its configuration, combined with the
15 regulations, do not rise to an undue hardship
16 affecting the property. Chapter 20, which
17 addresses non-conforming uses, has a provision
18 that allows for changes in a use within
19 residential districts to a neighborhood
20 facility via special exception approval, a
21 process which the applicant has benefitted
22 from twice in the past.

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1 While there's no definition for
2 this term, the BZA has found that
3 characteristics that define neighborhood
4 facilities include that it is patronized by
5 people who live and work close by, the
6 facility is not used by any one group, but by
7 all members of the community, it is not
8 exclusive and it is accessible by walking.

9 And actually I did a similar
10 search of past BZA orders and found many times
11 where uses similar to those that are being
12 suggested by the applicant were granted. I
13 can type this up; I just have my notes. But
14 the majority of them were uses similar to the
15 one that's existing. The majority I would say
16 were grocery/deli types of uses. But I also
17 found laundromat, barber shop, beauty shop,
18 restaurant, deli, dry cleaning pick up
19 station, a dentist office, a general office,
20 a gift card shop and a retail fabric store.
21 So there were a variety of uses that did
22 qualify under the neighborhood facility term.

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1 Finally, in terms of the impacts
2 on the Zone Plan and public good, it's
3 difficult to predict or determine the impact
4 of the proposed change without knowing what
5 the intended use will be. For the subject
6 property in the past and for other properties,
7 the BZA has granted special exception approval
8 for changes in use which include conditions to
9 mitigate the impact of such use on neighboring
10 properties. A blanket as-of-right approval as
11 being requested would eliminate the
12 opportunity for this review and analysis,
13 however, in this case the applicant has
14 suggested conditions for approval.

15 To conclude, the Office of
16 Planning cannot recommend support of the
17 requested relief, however, should the BZA
18 decide to grant the use variance, OP would
19 recommend adoption of the conditions suggested
20 by the applicant.

21 That's all and I'll take any
22 questions you have.

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

3 Why don't we go first to Board
4 Members and then to you, Mr. Gell?

5 If none, certainly you'll have an
6 opportunity, if some come to you, to ask after
7 Mr. Gell has any questions.

8 Do you have any questions for OP,
9 Mr. Gell?

10 MR. GELL: I wanted to kind of
11 clarify the inclusion of all the special
12 exception uses in the back of the report. Did
13 I state fairly accurately how the law would
14 work on that?

15 MS. JACKSON: Just to clarify, the
16 list was just for informational purposes, just
17 to show the uses that are allowed within the
18 C-1. So it wasn't necessarily saying that all
19 of these uses could be approved as a
20 neighborhood facility. It was just to give a
21 sense of the types of uses that are C-1 uses.

22 MR. GELL: So that if we asked for

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1 anything that's permitted in C-1 --

2 MS. JACKSON: Right.

3 MR. GELL: -- we could use it for
4 any of those uses?

5 MS. JACKSON: Exactly.

6 MR. GELL: Okay. But of course we
7 had reduced the list, as you know.

8 MS. JACKSON: Right.

9 MR. GELL: No, I don't think I
10 need to ask any further questions. I think
11 it's pretty straightforward. I reviewed the
12 report. I thought it was well written. But
13 I think it also pointed up the difficulty that
14 he has had, and this is where the hardship
15 comes in, trying to find in this market
16 somebody that's willing to take that space.

17 And if he had a tenant now, if
18 somebody were willing to say, okay, I'm ready
19 to go, as he has had, they get scared away by
20 the fact that it was going to take so long.
21 So, as I said, that's part of the hardship.

22 I wrote out the list of

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1 neighborhood facilities that were not
2 permitted. I don't have the case numbers for
3 two of them, the law office and the detective
4 agency, but I can easily find that. But the
5 others I have case numbers for. So I'd be
6 glad to give that to Ms. Bailey and she can
7 perhaps make a copy for the Board.

8 CHAIRPERSON LOUD: Thank you, Mr.
9 Gell.

10 Let me ask Ms. Jackson a follow-up
11 question and then ask you a quick question.

12 Ms. Jackson, in your report you
13 reference an ANC meeting, March 18th, 2009,
14 but we did not get a report from the ANC in
15 the case. And I'm just wondering were you in
16 attendance at the meeting?

17 MS. JACKSON: No, I got the
18 minutes from their web site.

19 CHAIRPERSON LOUD: I see. Okay.
20 All right.

21 And then, Mr. Gell, just a quick
22 question for you when you return.

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1 You mentioned that one of the
2 challenges that your client faces in terms of
3 designating a single use, I think, is the
4 reticence that potential tenants would have
5 coming through the BZA given the lengthy time
6 that it takes to process an application. And
7 what in your estimation is the time period
8 that would not be a bar for potential tenants?
9 I'm assuming that you're saying it takes about
10 five months just to get the hearing and then
11 maybe another couple of months after that to
12 get the decision, I'm not sure. But just give
13 me your sense of what would be an expedient
14 process from the vantage point of the market?

15 MR. GELL: Well, my experience has
16 been five months. I think at one time it had
17 gotten down to four months, but you're busy
18 and we understand that. You take an awful lot
19 of cases.

20 CHAIRPERSON LOUD: So that's four
21 months from the --

22 MR. GELL: Right now it's five to

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1 six months.

2 CHAIRPERSON LOUD: Okay.

3 MR. GELL: That's a business
4 decision. Perhaps Mr. Bauman can tell you
5 about the experience he had with somebody that
6 was interested in putting a coffee shop there
7 but would not have been permitted without the
8 special exception.

9 CHAIRPERSON LOUD: Just going back
10 to the four-month metric for a moment, the
11 four months would be from the date the
12 application is filed until the date that the
13 applicant gets a decision?

14 MR. GELL: Actually it's to the
15 date of the hearing.

16 CHAIRPERSON LOUD: To the date of
17 the hearing.

18 MR. GELL: Normally the Board is
19 able to give a decision on that same day.
20 That's been my experience. But that could
21 stretch another couple of months if there are
22 continuations.

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1 CHAIRPERSON LOUD: Okay. But so
2 the ideal standard would be four months from
3 filing until hearing date and then after that
4 normally we'd get a decision within possibly
5 a month or so after that.

6 MR. GELL: When you say ideal,
7 it's really a question of what is a potential
8 lessee willing to wait for? How long are they
9 willing to wait? And that -- as I said, it's
10 a business decision that I can't make. They
11 make it. And the experience has been that
12 whoever's been interested but isn't ready to
13 go has had to make the decision that they're
14 not willing to wait, otherwise we would be
15 able to walk in with them and say this is the
16 use that we would like to make of the
17 property. Mr. Bauman did get this response
18 from somebody who was going to put a café in
19 the space, seemed very interested, then walked
20 away. Now, whether it was this five or six
21 months -- was there any indication?

22 MR. BAUMAN: No, they didn't

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1 qualify. That's the basic -- if you want to
2 hear my editorial comments --

3 MR. GELL: Oh, they didn't
4 qualify. Well, that's not the Board's
5 concern. We're just talking now about the
6 amount of time that it would take.

7 I mean, how long would somebody be
8 willing to wait? Now certain kinds of uses
9 require licenses and so forth. People aren't
10 even going to start to go through that process
11 unless they know that they can actually make
12 the use of it. So now you're stretching it
13 out even more. So if you got it down to four
14 months, you may have to add another three and
15 the person says, no, I'll go some place where
16 I can start working tomorrow. Two months
17 would be ideal, I think, but I have to be
18 realistic about it.

19 COMMISSIONER MAY: Mr. Chairman?

20 CHAIRPERSON LOUD: Okay, Thank
21 you.

22 Yes, Mr. May?

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1 COMMISSIONER MAY: Yes, I just
2 wanted to follow up with something. You made
3 reference to multiple cases where people
4 weren't interested because of the time
5 required for a special exception, right?

6 MR. GELL: Yes.

7 COMMISSIONER MAY: How many were
8 there? I mean, there was one that was a café
9 that you just mentioned. How many were there
10 and what were the uses?

11 MR. BAUMAN: The basic problem is
12 really getting somebody who qualifies. Time
13 is also -- you're talking about the time.
14 Well, I had a therapist, a baker, a
15 restaurant.

16 COMMISSIONER MAY: And all of
17 those were not interested because of the
18 special exception requirement?

19 MR. BAUMAN: Yes, the time is a
20 huge factor. But the main factor is the great
21 depression that we're now in, have been in and
22 a businessman takes a chance whether he wants

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1 to go in business today or not. That's number
2 one. Number two, where is he going to get the
3 money? It's tough. I live in the real world,
4 I'm sorry and I got low-balled and to convert
5 it, I'll be low-balled again. I don't have
6 the expertise not to be low-balled. It's not
7 my business. I'm not here to make a quick
8 buck.

9 COMMISSIONER MAY: Yes. Thanks.
10 I was just curious about how many walked away
11 because of the special exception, so thanks.

12 CHAIRPERSON LOUD: Did Board
13 Members have any questions? I guess we've
14 already talked about whether you had questions
15 for Ms. Jackson. I wanted to just double back
16 one last time before we move forward.

17 Okay. I don't believe the ANC is
18 here in this case. There is something in the
19 record that indicates they did meet March 18.
20 They did vote. They did have some conditions.
21 But nonetheless, we have not gotten a copy of
22 that so I think when we move into the

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1 deliberation phase a little bit later, we'll
2 talk about whether to leave the record open
3 for that, because it would carry great weight
4 with us.

5 This is the time where we would
6 ask if there are parties or persons in support
7 of the application in the audience, so now
8 would be the time to come forward.

9 Seeing no one step forward, if
10 there are parties or persons in opposition to
11 the application, this would be the time to
12 step forward.

13 Again, seeing none. So we turn
14 back to, Mr. Gell, for any closing remarks and
15 I think you had mentioned you wanted to sort
16 of summarize aspects of the case as well.

17 MR. GELL: Yes, thank you very
18 much. The Board has in the past considered
19 general office use without a specific kind of
20 office. In fact, I had that case myself, so
21 I know about it. That was actually a few
22 blocks away from where Mr. Bauman's place is.

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1 It was 15th --

2 MS. JACKSON: Fifteenth and B.

3 MR. GELL: -- and B. Yes. It was
4 converted from a beauty salon to general
5 office use. Now it's true it wasn't other
6 retail and so forth uses. This would be
7 another step. But there was a recognition at
8 that time that it was difficult to find a
9 specific use, one that you knew was going to
10 be there for any reasonable length of time.
11 If you have to come back every six months
12 because people move out and then they've got
13 another office use, then you're back and forth
14 to the Board with again the four or five-
15 month wait.

16 That it seemed to me was the right
17 decision. In this case, with the economy as
18 bad as it is, it's even harder to market the
19 space. If somebody's not free to say I have
20 the zoning that will permit you to start your
21 business as soon as you can get your licenses
22 or as soon as you can, you know, get your

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1 inventories, then he has a much, much better
2 chance of putting that space back into useful
3 use. Then if he has to say to somebody it
4 looks interesting, you qualify, you have the
5 money, you seem to have the experience
6 necessary, you're willing to accept the
7 conditions, now we have to go permission from
8 the BZA.

9 By limiting the numbers of uses as
10 we did, to some extent did the best we could
11 on that, we thought that it might be possible
12 for the Board to say, yes, under these
13 conditions we're going to allow Mr. Bauman to
14 market it more broadly.

15 I detect a reluctance on the part
16 of the Board to go that far. I may be
17 misreading your thoughts. But what I would
18 like to suggest, if the Board is willing to
19 consider it, is to perhaps continue the
20 hearing to a date perhaps a couple of months
21 down the road which would give Mr. Bauman a
22 chance -- this is not the ideal result, but it

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1 might give him an opportunity to find a more
2 specific use that he could come back to you
3 and not then have to wait the four or five
4 months that would be necessary if the Board
5 were to turn him down. We'd also be able to
6 give Mr. May and the Board some more
7 information about the costs relative to the
8 apartment use.

9 And there is a time spot
10 available. I'm about to withdraw a case, so
11 if you didn't have some other time, that might
12 be spot that you could use. This is just an
13 alternative suggestion that you might want to
14 consider.

15 CHAIRPERSON LOUD: I feel like
16 we're being set up, Mr. Gell, a very elaborate
17 plan to get this case set up for that case
18 that's being withdrawn. But I think it's
19 something that we should talk about. I think
20 it's something that, you know, we had some
21 thoughts about earlier as well. And it would
22 do away with the initial issue of the

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1 designating multiple uses. I have a question
2 for you, and then I'm going to open it up to
3 the Board, in terms if the Board decides that
4 that's the direction it wants to move in and
5 when you were to come back with a specific
6 tenant, would that request still be a variance
7 test, or would it be for a single tenant, a
8 special exception request?

9 MR. GELL: Well, I'm sure it would
10 be ideal from the Board's point of view to
11 have it a special exception. It would be
12 certainly a lot easier to grant. We don't
13 know. I would ask that you make it possible
14 for us to bring a tenant that would require a
15 variance.

16 CHAIRPERSON LOUD: Okay. Let me
17 open it up to Board Members.

18 VICE-CHAIRPERSON DETTMAN: Mr.
19 Chairman, just a couple of thoughts. You
20 know, I'm still kind of trying to resolve in
21 my brain the variance versus special exception
22 route that the applicant has decided to take.

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1 Based on what the applicant is provided us it
2 seems like he's here because based on past
3 precedent that the Board has more often than
4 not said that an office would not be
5 considered as a neighborhood facility and that
6 the proper route for that use would be a use
7 variance. I haven't seen anything today, and
8 based on what I've looked at in past cases
9 where the Board has kind of categorically said
10 this particular use, be it a locksmith, be it
11 a flower shop, be it a grocery store, that
12 that wasn't going to be considered to be
13 neighborhood-serving.

14 And so I kind of like the
15 applicant's suggestion that we put off
16 decision and allow them to go back and try to
17 seek a specific use, but based on the economy
18 I think that might be difficult. But I guess
19 I would suggest that the applicant go back and
20 instead of using past precedent to justify the
21 use variance, use past precedent to try to put
22 together a list of uses that the Board is

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1 likely to consider as neighborhood facilities.
2 I mean, I guess from my point of view I'd be
3 more comfortable considering a range of
4 facilities that could be considered
5 neighborhood facilities and could be looked at
6 as a special exception. I'm much less
7 comfortable looking at a range of uses as a
8 use variance strictly because I'm not sure
9 what that says about the jurisdiction of the
10 Board in terms of an actual rezoning of a
11 property. You know, where is that threshold?
12 Typically it's one use for one application.

13 So if we do put this off, I would
14 like to see one of two options. If you want
15 to explore the use variance, we have one use
16 identified. Otherwise, I would like to see a
17 list of uses that could reasonably be
18 considered neighborhood facilities.

19 MR. GELL: If the Board would
20 permit me to consult with the client. He's
21 just made another suggestion which I think
22 might be useful.

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1 CHAIRPERSON LOUD: Absolutely.

2 And if you feel it appropriate that you need
3 five minutes or so, we can actually break for
4 five minutes and reconvene.

5 MR. GELL: Could you? That would
6 be very nice. Thank you.

7 CHAIRPERSON LOUD: Board Members,
8 how do you feel about that?

9 Okay. So why don't we just break
10 for five minutes. Is five minutes all you
11 need, Mr. Gell?

12 MR. GELL: I think that should be
13 enough.

14 CHAIRPERSON LOUD: Okay. Then
15 we'll reconvene in five minutes.

16 (Whereupon, at 3:04 p.m. off the
17 record until 3:13 p.m.)

18 CHAIRPERSON LOUD: Mr. Gell?

19 MR. GELL: Mr. Chairman, Mr.
20 Bauman and I have discussed a couple of
21 possibilities. One is to reduce the list even
22 further. I'm not sure if that's going to meet

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1 the Board's needs. Essentially the Office of
2 Planning has come up with a list of uses that
3 have been permitted as neighborhood
4 facilities. They include a deli, a
5 restaurant, coffee shop. I assume coffee shop
6 goes along with restaurant. A dentist's
7 office. And I assume doctor's office of
8 physical therapist would also be included in
9 that general category. Gift shop, which might
10 include a dollar store, which is another
11 possible use that Mr. Bauman has thought would
12 be possible for him. Dry cleaning, a bakery
13 and general office. That is some reduction.
14 What it doesn't include is just general
15 retail, just opening it up to any kind of
16 retail. And I think there may be a couple of
17 others. I haven't checked it against our
18 list, but I think it excludes others. We
19 didn't even pick up on the laundromat because
20 neighbors said they didn't want a laundromat,
21 so we're not even going to go there.

22 If that's a list that the Board

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1 could consider, that's something that Mr.
2 Bauman's willing to work on. The other
3 alternative is to give him the additional
4 time, continuing the hearing so that we could
5 come back to you with something else.
6 Obviously he's anxious to get everything
7 concluded as quickly as possible, but he
8 doesn't right now have a tenant, so that's the
9 problem.

10 CHAIRPERSON LOUD: And, Mr. Gell,
11 does your client have a preferred option, or
12 he's tossing these up to BZA so to speak to
13 get a sense of --

14 MR. GELL: General office was
15 perhaps high on the list and I think a dollar
16 store. Some of the others have already been
17 kind of accepted as neighborhood facilities in
18 general, so it's likely that the Board
19 wouldn't have any problem with them and
20 certainly the neighbors didn't.

21 CHAIRPERSON LOUD: And under
22 option one that you just suggested, would the

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1 test still be the variance test?

2 MR. GELL: Well, it would be a
3 variance test certainly for some of them. For
4 others it would be a special exception test.
5 And I'd could go through again -- as I read
6 them and as I have looked at the cases, which
7 I reviewed a large number of cases, and
8 certainly every case; there were quite a
9 number, but I was kind of shocked at some of
10 the ones that have been rejected as
11 neighborhood facilities, although I can
12 understand the theory behind that.

13 CHAIRPERSON LOUD: Okay. Let me
14 open it up to Board Members for any feedback
15 and/or questions.

16 COMMISSIONER MAY: I have to say
17 frankly at this time I'm not keen on the idea
18 of a list, even if it's a reduced list. I
19 mean, you know, if we're getting into the area
20 where there's going to be a list of properties
21 that are approved, you really might as well be
22 seeking a rezoning of the property. I mean,

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1 I don't think the case has been made that the
2 only thing that can happen with this property
3 is a commercial use and therefore we need to
4 open the door open this wide. I think that
5 certainly it's a viable thing to do, it's a
6 sensible thing to do, in many ways it's a
7 desirable thing to do, but the process for
8 doing that is a special exception process.
9 And I understand that that process can take
10 time and too much time in certain
11 circumstances, but I didn't get the feeling
12 that that was the single thing that's making
13 it difficult to lease this property out. I
14 mean, it may be a contributing factor, but I'm
15 not getting the sense that this is the
16 absolute thing. I mean, that's kind of where
17 I stand.

18 I am open to the idea of
19 continuing the case until a specific use is
20 brought forward and that would give us, you
21 know, the opportunity to consider the impacts
22 of that particular use. Because there is a

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1 difference in, you know, certain uses. I
2 mean, even within something like general
3 office. I mean, is it something that's going
4 to be mostly served by people in the
5 neighborhood? Is it something where there are
6 going to be, you know, a lot of cars coming
7 and going? I mean, these are different
8 impacts. And that's why we establish zones
9 for those impacts and we have exceptions when
10 we can judge through a public process that the
11 exception is appropriate.

12 CHAIRPERSON LOUD: I want to ask
13 this question without putting anyone on the
14 spot in terms of telegraphing where you might
15 be coming out, but the applicant has proposed
16 cutting back the application to identifying a
17 single use, continuing the hearing and then
18 coming back. And we would deliberate on it,
19 we would, you know, hear the evidence and then
20 deliberate as a variance case. And I wanted
21 to know if I heard you correctly, Mr. May, in
22 suggesting that there were serious hurdles for

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1 a variance analysis, whether we're talking
2 about 10 potential uses or a single designated
3 use, that some of those same concerns would
4 still be there?

5 COMMISSIONER MAY: I think there
6 are hurdles to clear. I wouldn't say that
7 they're major. I think that the economic case
8 with, you know, regard to converting it to a
9 solely residential use just hasn't been made
10 in the materials that were submitted. It's
11 not to prejudge that it couldn't be made. I
12 think it could be made conceivably. So I'm
13 certainly willing to consider additional
14 information in that regard.

15 CHAIRPERSON LOUD: Mr. Dettman?

16 VICE-CHAIRPERSON DETTMAN: Well,
17 I'm okay with continuing the case and I'm in
18 agreement with Mr. May that thus far the
19 burden hasn't been made with respect to the
20 use variance.

21 In terms of the range of uses, I
22 could make my peace with considering a range

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1 of uses, but I feel very strongly that I would
2 be able to look at a range of uses as a
3 special exception. Mr. Gell had stated that
4 we could reduce the list of uses and then some
5 would be special exceptions, some would be
6 variances. But really, I mean, general office
7 shows up in the C-1 area. So before you get
8 to a variance, the Board would have to
9 determine that they don't consider that to be
10 a neighborhood facility. I mean, it's
11 possible that the current constitution of the
12 Board could consider that as a neighborhood
13 facility which would allow him to get a
14 special exception.

15 So I'm not comfortable with
16 looking at a range of uses as a variance. I
17 could as a special exception. So as I stated
18 earlier, to see maybe a reduced list of
19 possible uses that the Board could look at and
20 decide which ones would be considered
21 neighborhood facilities and which ones would
22 not would be my choice in terms of the route

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1 that we go.

2 CHAIRPERSON LOUD: Thank you. I
3 guess I'm a little bit closer to Mr. May on
4 this in terms of what had been tossed out as
5 option two, designating a specific use and
6 then coming back to the Board at the
7 continuance date prepared to push forward with
8 the case with respect to that specific use.

9 I wanted to ask you the date that
10 you had in mind from the case that would be
11 withdrawn as a continuance date.

12 MR. GELL: Can I perhaps correct a
13 misimpression, and I'm sure it's my fault?

14 CHAIRPERSON LOUD: Yes.

15 MR. GELL: Mr. Bauman doesn't have
16 a specific use right now. My thought about it
17 is that possibly within two months one would
18 come to him that he would feel reasonable
19 about coming back to the Board with, either as
20 a special exception or as a variance. And
21 obviously we would have to meet the test for
22 either one, depending. But we wouldn't be

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1 able to give you a specific use right now.

2 CHAIRPERSON LOUD: No, I

3 understand that.

4 MR. GELL: Okay.

5 CHAIRPERSON LOUD: I understood
6 you to suggest that by continuing the hearing
7 we would give you enough time to identify that
8 use.

9 MR. GELL: Right. As far as the
10 time is concerned, the case was scheduled for
11 June 30. I'm not sure which case number it
12 is, but it's -- let's see I can give that to
13 you. It's Mr. Land, 1252 Bladensburg.

14 MS. BAILEY: We have a 1251
15 Bladensburg Road, Northeast, 17939.

16 MR. GELL: That's it.

17 MS. BAILEY: It's in the afternoon
18 of June 30th.

19 MR. GELL: We were just sent a
20 letter from the Zoning Administrator saying
21 that he has looked at our historical
22 information and decided that in fact they

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1 could get the C of O for that building. And
2 anybody's that been in Washington long enough,
3 knows that E. Land has been around as just
4 that exact kind of use for many, many, many
5 years. So we feel that that's been solved and
6 we have that time.

7 CHAIRPERSON LOUD: Okay. Well
8 again, a couple of different ways we could
9 proceed. We could continue with the
10 understanding very specifically that you'd
11 come back with the single use identified. We
12 could also sort of hybrid the issue before us
13 and allow you to come back with the single use
14 identified, but if you're not able to do it by
15 June 30, allow for review of this very limited
16 list of uses that you've spoken on the record
17 about, the deli, the coffee shop, dental and
18 doctor office, etcetera. That way it would
19 allow for a more comprehensive and final
20 resolution of the issue.

21 But again, let me open it up to
22 the Board and see how you all feel about that.

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1 COMMISSIONER MAY: You know, I
2 think that if we were to consider the short
3 list, if you will, I don't want to predict how
4 that would go, but I'm certainly going to be
5 more amenable to a short list that fits into
6 the special exception realm rather than the
7 use variance realm. Because I think that
8 we're still I think, you know, i wouldn't say
9 bending the rules, but we're taking a pretty
10 expansive interpretation of what we can do
11 under the special exception. But I'd be much
12 more inclined to consider it in that sort of
13 circumstance than under a use variance. I'm
14 not sure where it will go.

15 I would suggest that, you know, if
16 we continue to June 30th and there isn't a
17 specific use in mind that, you know, a further
18 continuance could be granted to, you know,
19 another date, hopefully not, you know, five
20 months out, but at some point in the future to
21 allow further flexibility as they try to
22 market the property.

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1 CHAIRPERSON LOUD: Well why don't
2 we do this then, we don't we look to
3 continuing the hearing to June 30. And then
4 I know you need some really clear direction
5 from us in terms of what your showing will be
6 on June 30, correct?

7 MR. GELL: Yes, I'm happy to have
8 you restate it.

9 CHAIRPERSON LOUD: And I think
10 what the Board will be looking for at that
11 time, I think the consensus developing up here
12 is for the limited list of potential uses on
13 June 30 that could be reviewed as special
14 exceptions. If, however, you have the
15 specific use identified at that time, I think
16 you can also offer that for our review, but I
17 think that the general direction we're going
18 in would be the reduced list that would entail
19 special exception review. And then as we get
20 closer to that date, if it's clear that a
21 further continuance is necessary, then we can
22 consider it at that time.

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1 MR. GELL: Okay.

2 CHAIRPERSON LOUD: Okay. And let
3 me go back and ask, Mr. May, you had earlier
4 wanted some additional information on the cost
5 to covert the cellar and the ground floor to
6 residential, not having a tremendous degree of
7 confidence in the costs that were a part of
8 our record right now.

9 COMMISSIONER MAY: Yes.

10 CHAIRPERSON LOUD: Is that
11 something that you'd still be interested in
12 looking at?

13 COMMISSIONER MAY: You know, that
14 comes into play if we're looking at use
15 variance. We'd need to make the economic
16 hardship case a little bit stronger and, you
17 know, I would need more information in order
18 to approve that.

19 CHAIRPERSON LOUD: Okay. Why
20 don't we leave the record open for that with
21 the understanding that we're morphing in the
22 direction of a special exception and may not

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1 need that? But in the event that it doesn't
2 pan out the way we're projecting here right
3 now, we won't have to continue just for not
4 having that information.

5 MR. GELL: If the Chairman would
6 permit the record to just stay open generally
7 since you're ending the hearing, it's a
8 continuance that might be a good thing.

9 CHAIRPERSON LOUD: Okay.

10 MR. GELL: Thank you.

11 CHAIRPERSON LOUD: Okay.

12 VICE-CHAIRPERSON DETTMAN: Mr.
13 Chairman, I'd like to maybe suggest to the
14 applicant, and if this is amenable to OP, to
15 work closely with OP and use OP's expertise to
16 assemble a list that could quite possibly be
17 considered to be neighborhood facilities by
18 the Board. We're required to give them great
19 weight and, you know, if they provide a very
20 supportive report to us, that would be
21 helpful.

22 MR. GELL: I'd be happy to do

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1 that.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Dettman.

4 Now with respect to us continuing
5 the hearing, and you're going to be looking
6 into working with OP, Ms. Bailey, do we need
7 any dates backed up from June 30? I don't
8 like to get the pleadings the day before the
9 hearing or the morning of the hearing, so it
10 would be helpful.

11 MS. BAILEY: Mr. Chairman, I would
12 suggest the dates.

13 CHAIRPERSON LOUD: Okay. Let's do
14 that then.

15 MS. BAILEY: Unless there's some
16 objection.

17 CHAIRPERSON LOUD: No.

18 MS. BAILEY: The dates I would
19 suggest, Mr. Chairman, is additional
20 submission from the applicant would be June
21 16th, the Office of Planning June 23rd and
22 also the ANC on June 23rd. And that would

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1 provide sufficient time for the Board's
2 continuation of the hearing on June 30th.

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

5 Mr. Gell, you have any response to
6 that?

7 MR. GELL: Obviously it's a short
8 time, but it is really the longest time that
9 you could give us. I quite appreciate that.
10 We'll just work as hard as we can to find
11 somebody to bring before you.

12 CHAIRPERSON LOUD: Okay. Thank
13 you.

14 If there's nothing further, we'll
15 adjourn this case.

16 Ms. Bailey, do we have anything
17 else on our agenda for this afternoon?

18 MS. BAILEY: No, Mr. Chairman.

19 CHAIRPERSON LOUD: Okay. Then
20 this afternoon hearing is adjourned.

21 (Whereupon, the hearing was
22 concluded at 3:32 p.m.)

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