

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 19, 2009

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:34 a.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, Commissioner
WILLIAM WARREN KEATING, FAIA, Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS

MATT JESICK

STEVEN COCHRAN

D.C. DEPARTMENT OF TRANSPORTATION PRESENT:

JEFFREY JENNINGS

The transcript constitutes the minutes from the Public Hearing held on May 19, 2009.

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

2 10:34 a.m.

3 CHAIRPERSON LOUD: This Public
4 Hearing Session will now come to order and for
5 those of you that are sitting and watching me
6 adjourn and convene, it's a part of the
7 formality that's required. The transcript
8 requires that all of these things be said on
9 the record including what I'm about to read.

10 This hearing will please come to
11 order. Good morning, ladies and gentlemen.
12 This is the May 19th Public Hearing of the
13 Board of Zoning Adjustment of the District of
14 Columbia.

15 My name is Marc Loud, Chairperson.

16 Joining me today are Vice Chair Shane Dettman
17 to my right, Mr. Michael Turnbull representing
18 the Zoning Commission to his right and then to
19 my left as indicated, Mr. Clifford Moy,
20 Secretary of the BZA.

21 We're going to be joined by Ms.
22 Sherry Glazer, I believe, from the Office of

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1 Attorney General momentarily and then on the
2 far left, Ms. Beverley Bailey, Zoning
3 Specialist in the Office of Zoning.

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

7 Please be advised that this
8 proceeding is being recorded by a court report
9 and is also webcast live. Accordingly, we
10 must ask you to refrain from any disruptive
11 noises or actions in the hearing room.

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

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

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

4 The order of procedure for special
5 exceptions and variances is statement and
6 witnesses of the applicant; Government reports
7 including Office of Planning, Department of
8 Public Works, Department of Transportation, et
9 cetera; report the Advisory Neighborhood
10 Commission; parties or persons in support;
11 parties or persons in opposition; closing
12 remarks by the applicant.

13 I'm going to skip over the appeal
14 directions since we don't have any of those
15 for the hearing calendar this morning.

16 Pursuant to Sections 3117.4 and
17 3117.5, the following time constraints will be
18 maintained. The applicant, appellant, persons
19 and parties except an ANC in support including
20 witnesses 60 minutes collectively. Appellees,
21 persons and parties except an ANC in
22 opposition including witnesses 60 minutes

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1 collectively. Individuals three minutes.

2 These time constraints do not
3 include cross examination and/or questions
4 from the parties. Cross examination of
5 witnesses is permitted by the applicant or
6 parties.

7 The ANC within which the property
8 is located is automatically a party in a
9 special exception or variance case.

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

14 The record will be closed at the
15 conclusion of each case except for any
16 material specifically requested by the Board.

17 The Board and the staff will specify at the
18 end of the hearing exactly what is expected
19 and the date when the persons must submit the
20 evidence to the Office of Zoning.

21 After the record is closed, no
22 other information will be accepted by the

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1 Board.

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

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

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

19 The Board will now consider any
20 preliminary matters. Preliminary matters are
21 those which relate to whether a case will or
22 should be heard today such as a request for

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1 postponement, continuance or withdrawal or
2 whether proper and adequate notice of the
3 hearing has been given.

4 If you are not prepared to go
5 forward with a case today or if you believe
6 that the Board should not proceed, now is the
7 time to raise such a matter.

8 Does the staff have any preliminary
9 matters?

10 MS. BAILEY: Mr. Chairman, Members
11 of the Board, good morning again. To
12 everyone, good morning.

13 Yes, it has to do with the first
14 case that's on the docket this morning
15 Application 17854. This is the application of
16 Equity Appreciation Partners Capital Fund 1
17 LLC. That application was withdrawn, Mr.
18 Chairman.

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

21 MS. BAILEY: No further action is
22 required by the Board. It was withdrawn on

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1 March 23rd of this year.

2 CHAIRPERSON LOUD: Thank you.

3 Thank you. Any other preliminary matters?

4 MS. BAILEY: Just the swearing of
5 the witnesses. That's all staff has.

6 CHAIRPERSON LOUD: Okay. Why don't
7 we do that?

8 MS. BAILEY: All those wishing to
9 testify today, would you please stand to take
10 the oath and would you please raise your right
11 hand?

12 Do you solemnly swear or affirm
13 that the testimony that you'll be giving today
14 will be the truth, the whole truth and nothing
15 but the truth? Thank you.

16 CHAIRPERSON LOUD: Thank you. Good
17 morning. I do believe, Ms. Bailey, when I
18 asked regarding preliminary matters someone in
19 the audience raised their hand. Two persons
20 in the audience raised their hand.

21 Well, why don't you come up and
22 have a seat at the table and introduce

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1 yourselves, share what that preliminary matter
2 is and if, in fact, it's preliminary, we may
3 address it now. If not, what we'll do -- yes,
4 come on up to the table. What we'll do is let
5 you know so that you can know where it fits in
6 this morning's proceedings.

7 Good morning.

8 MR. CLARE: Good morning, Mr.
9 Chairman, Members of the Board. My name is
10 Peter Clare. I'm an attorney for the
11 Southeast Children's Fund and in regard to
12 Application Number 17923 and I've requested a
13 postponement of our hearing because we had
14 been proceeding under the assumption that
15 we're in a R-5-A Zone. We made our
16 application on January 8th. On May 7th, found
17 out that the zoning had changed in November
18 from R-5-A to R-3 and that we wouldn't be able
19 to seek relief under special exception, that
20 we now have to go for a use variance and we're
21 not prepared to proceed under that basis today
22 and we'd like to request a postponement until

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1 either July 7th or July 14th whichever one is
2 more convenient for the Board.

3 CHAIRPERSON LOUD: Okay. Now, in
4 your particular matter, Southeast, we are
5 aware of that. It is scheduled for the 1:00
6 p.m. hearing session. So, you're actually a
7 little early. So, the way they're scheduled
8 is that there's an a.m. There's a morning
9 session for hearings. Then typically a break.

10 Then there's an afternoon session for
11 hearings.

12 So, right now, we're just in the
13 morning sessions and the cases before us do
14 not include your case.

15 However, I do believe that when we
16 get to the afternoon cases, we might be able
17 since that's a preliminary and pretty
18 perfunctory-type matter, we might be able to
19 do that quickly and do it first.

20 But, as for now, though we've got
21 to go through the morning's published cases.

22 MR. CLARE: Would you need me to

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1 come back at 1:00 p.m. then?

2 CHAIRPERSON LOUD: We do.

3 MR. CLARE: All right.

4 CHAIRPERSON LOUD: Good morning.

5 MR. DELGADO: Good morning, Board.

6 My name is Enrique Delgado. I'm representing
7 the home residents of Application 17925,
8 Carlos Henrique.

9 And basically, we applied in
10 January of this year for two variances. After
11 sitting down with the Office of Planning, we
12 were made aware of other variances that we
13 needed to apply for and since speaking with
14 the owner of the home and attending last
15 week's meeting at ANC-A1 or 1A, excuse me, we
16 are choosing to postpone our application for a
17 later date to revise and amend our application
18 and the drawings for this residence.

19 We were just wondering how long we
20 could get that postponement to.

21 CHAIRPERSON LOUD: Why don't we do
22 this. Ms. Bailey, why don't we just go ahead

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1 and call the Henrique case. I think we were
2 going to call it first anyway. I'm not sure.

3 But, let's just go ahead and call it and you
4 can then seek the postponement relief. Okay.

5 Then we can see who else is here for that
6 case.

7 MS. BAILEY: Thank you, Mr.
8 Chairman. Application 17925, application of
9 Carlos M. Henrique and others pursuant to 11
10 DCMR 3103.2 for a variance from the number of
11 stories limitation under Section 400 to allow
12 a fourth floor addition to an existing one-
13 family row dwelling in the R-4 District at
14 premises 1314 Park Road, N.W., Square 2843,
15 Lot 80 and as just a reminder, Mr. Chairman,
16 we do have a request for party status in
17 opposition to this case.

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

20 Let me just ask out of an abundance
21 of caution, I don't see anyone else in the
22 audience, if the Burley/Woodbury parties --

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1 punitive parties are here today. You had
2 submitted Exhibit 21 seeking party status in
3 this case. If you are here, if you can kindly
4 step forward. No one is stepping forward and
5 we are at the scheduled time for this case.
6 So, we'll proceed forward.

7 Okay. Now, I'll turn it back over
8 to the Applicant with the request for the
9 postponement.

10 MR. DELGADO: Thank you,
11 Chairperson.

12 Again, my name is Enrique Delgado
13 for the record. I'm representing Carlos M.
14 Henrique and the Application 17925.

15 We're requesting a postponement for
16 a further date. Hopefully two months from now
17 or something. Whatever is available in your
18 schedule around that time for us to amend our
19 application and drawings, so forth.

20 CHAIRPERSON LOUD: Okay. Thank you
21 and I do believe upon our review of the record
22 that that might be a very appropriate thing to

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1 do and I personally support it. I don't know
2 where the other Board Members are, but I
3 personally support.

4 So, let me see if other Board
5 Members either have questions for you or
6 concerns.

7 Mr. Delgado, do you have on file an
8 authorization to represent Mr. Henrique?

9 MR. DELGADO: No, sir, a colleague
10 of mine, Rachel Domencic was taking the case
11 prior to me taking it. She has moved to
12 Virginia Beach and passed it along. Just kind
13 of cordially invited me to take the case.

14 I'm also an architect. I'm not
15 registered in D.C. She is.

16 But, she can be made available for
17 any record appearances or signing of the
18 documents or any such notice with some heads-
19 up notice.

20 CHAIRPERSON LOUD: Okay. Let me
21 just confer with Ms. Glazer for a moment on
22 that.

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1 Ms. Glazer, he does not -- you can
2 stay seated. Okay. We're not going to spend
3 a lot of time on this.

4 He doesn't have the written
5 authorization, but the request is simply to
6 postpone, to continue. I think the Board
7 could on our own postpone or continue the case
8 if the Applicant didn't appear. So, is there
9 any reason why we can't move forward with
10 selecting a date?

11 MS. GLAZER: I don't think there's
12 a reason. I would suggest though that an
13 authorization be submitted to the file as soon
14 as possible.

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

17 MR. DELGADO: Thank you.

18 CHAIRPERSON LOUD: Ms. Bailey,
19 looking at the available dates that would I
20 guess begin 60 days out -- is that correct,
21 Mr. Delgado? Beginning about 60 days out from
22 today.

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1 MR. DELGADO: Yes, that would be
2 preferred.

3 CHAIRPERSON LOUD: Give you the
4 time you needed.

5 Do you see anything that we can
6 squeeze this case in?

7 MS. BAILEY: Mr. Chairman, I'm
8 going to answer your question, but I also
9 wanted to remind Mr. Delgado that if a project
10 changes substantially, that information does
11 need to be filed with the Office of Zoning so
12 that we can re-advertise because it's
13 advertised for one thing now. So, if you're
14 going to change the relieve you're requesting,
15 you do need to file that ASAP and Mr.
16 Chairman, we do require at least 40 days for
17 that to be published in the register -- DC
18 Register.

19 CHAIRPERSON LOUD: Ms. Bailey
20 raises a good point. My assumption listening
21 to you is that you knew that already and the
22 additional relief that OP had counseled you

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1 about would require re-advertising because
2 it's much more expansive than what you
3 initially filed.

4 But, I think to Ms. Bailey's point
5 we should be real clear about that as we move
6 forward and you're asking for something 60
7 days out. She's mentioning that you're going
8 to need at least 40 days to give adequate
9 notice to everyone. So, let's be real clear
10 that you've got to re-advertise the case once
11 you sit down and I guess you're going to meet
12 with the ANC and other folks at OP, but there
13 will be a requirement to re-advertise.

14 MR. DELGADO: I appreciate that and
15 I'm going to take that into consideration and
16 I will do that as needed.

17 Just to be clear, after sitting
18 down with the Office of Planning, we're
19 probably going to make some adjustments to be
20 more within the criteria of DC regulations and
21 our variance application may be just limited
22 to an area issue.

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1 We're not going to proceed with the
2 fourth floor addition which is basically what
3 was the most I guess least approval. Item
4 least approved by the regulations and the
5 Office of Planning and ANC-1A.

6 So, we're probably going to detract
7 various of the variances and just probably
8 work with a variance of area. So, I just need
9 -- probably just my question is if I refile,
10 is that considered a brand-new -- would I get
11 a brand-new application number? Would the
12 owner need to pay additional fees? I'm not
13 familiar with the proceedings.

14 CHAIRPERSON LOUD: I can tell you
15 part of the answer to that. You're not going
16 to need to get another number, but in terms of
17 whether the fees will increase, it just
18 depends on the relief that is sought once you
19 make the decisions about your amendment and
20 you really -- you should work very closely
21 with the Office of Planning and you as the
22 architect in the matter should obviously be

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1 familiar with our regulations at 11 DCMR and
2 confer with your colleague who is licensed in
3 the District and if you still have questions
4 regarding that, I believe he can also work
5 with the Office of Zoning on some of those
6 questions as well.

7 So, you'll have an opportunity to
8 speak both with the Office of Planning and the
9 Office of Zoning to refine some of that. It's
10 impossible for us to say right now.

11 MR. DELGADO: Of course. Is there
12 anyone in particular at the Office of Zoning
13 Board that I should speak to?

14 CHAIRPERSON LOUD: Mr. Moy.

15 MR. DELGADO: Great.

16 CHAIRPERSON LOUD: Who's in front
17 of you now.

18 MR. DELGADO: Thank you.

19 CHAIRPERSON LOUD: Okay. So, back
20 to the date.

21 COMMISSIONER TURNBULL: Mr. Chair,
22 I'd just like to point out that the Applicant

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1 should be aware that there have been
2 amendments to 400 and he should check with the
3 Office of Planning to make sure that he's up
4 to date. Especially, 400.11.

5 CHAIRPERSON LOUD: Thank you, Mr.
6 Turnbull. I see the Applicant writing that
7 section down. It's very important to be on
8 top of that as you decide what relief you're
9 going to seek and the type of project you want
10 to move forward. So, it's good to write that
11 section down and review it before you move
12 forward.

13 Is there anything further? Okay.
14 So, if we can take a look at some dates.

15 MS. BAILEY: Mr. Chairman, if you
16 have your schedule in front of you, I bring
17 your attention to July 21st, first case in the
18 afternoon and ask you if that would be an
19 appropriate place for this case.

20 CHAIRPERSON LOUD: Thank you, Ms.
21 Bailey. I'm pulling it up right now.

22 Ms. Bailey, I've found that it's

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1 almost impossible to hear three cases between
2 let's say 9:30 and 12:00, 10:00 and 12:00 in
3 the morning.

4 What about that afternoon?

5 MS. BAILEY: Well, that's what I
6 said. Afternoon I think.

7 CHAIRPERSON LOUD: Oh, I'm sorry.

8 MS. BAILEY: Or I mis-spoke. I'm
9 not sure of that.

10 CHAIRPERSON LOUD: No, you probably
11 said and I wasn't paying careful enough --
12 yes, I think in the afternoon looks great.

13 MS. BAILEY: So, that's July 21st,
14 2009, first case in the afternoon.

15 CHAIRPERSON LOUD: So, Mr. Delgado,
16 we'll see you back on July 21st. It's
17 scheduled for the afternoon session, the 1:00
18 p.m. session.

19 Did you say first case?

20 MS. BAILEY: Yes, sir.

21 CHAIRPERSON LOUD: First case. So,
22 it's scheduled as the first case. So, you

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1 should be here right around 1:00 p.m.

2 MR. DELGADO: Thank you, sir.

3 Thank you, Board.

4 CHAIRPERSON LOUD: Thank you and
5 thank you, Ms. Bailey and I believe we can
6 call the next case.

7 MS. BAILEY: The next case is
8 Application 17924. It's the application of
9 Andrew Johnson and it's pursuant to 11 DCMR
10 Section 3104.1 for a special exception for a
11 change of nonconforming use from a grocery
12 store to a grocery store and dry cleaning
13 pick-up establishment under Subsection 2003.1.

14 The property is zoned R-3. It's located at
15 3008 Q Street, N.W, Square 1269, Lot 311.

16 CHAIRPERSON LOUD: Thank you, Ms.
17 Bailey and I see the Applicants have come
18 forward and I see it. So, why don't we begin
19 with you stating your name and address for the
20 record.

21 MR. JOHNSON: Good morning, Mr.
22 Chairman. My name is Andrew Johnson and I

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1 currently reside at 1425 27th Street, N.W.,
2 Washington, D.C.

3 CHAIRPERSON LOUD: Good morning.

4 MR. JOHNSON: Good morning.

5 MRS. JOHNSON: Good morning.

6 MR. JOHNSON: And this is my wife
7 Sukyang.

8 CHAIRPERSON LOUD: Good morning.

9 MR. BELLO: Mr. Chair, good
10 morning. Toye Bello, 900 2nd, Street, N.E.

11 CHAIRPERSON LOUD: Good morning,
12 Mr. Bello.

13 MR. BELLO: Good morning.

14 CHAIRPERSON LOUD: Andrew Johnson
15 is the name of a very famous Democrat from
16 Tennessee. Any family relation?

17 MR. JOHNSON: Not that I'm aware
18 of, but on some travails to Nashville,
19 Tennessee, when I use that name, I'm very
20 popular there. I worked at a Federal Office
21 Building that bears the same name. So, my
22 coworkers had to bring me down off that

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1 pedestal.

2 CHAIRPERSON LOUD: Well, we're
3 happy to have you here this morning.

4 We've reviewed the file in this
5 case and I think, just speaking for me, it was
6 a very well put together application. A
7 pretty full file.

8 I don't necessarily need you to go
9 through every single element of the test. So,
10 you may want to bear that in mind as you brief
11 us this morning, but we can begin with your
12 statement. I don't believe you -- if you have
13 any witnesses. Then we'll move to OP and then
14 we can -- I believe the ANC supports it. I
15 don't know if they're here, but they submitted
16 a report and we can take it from there. We
17 may be able even to deliberate this morning.

18 MR. JOHNSON: Thank you, Mr.
19 Chairman. I would like to open up with a
20 brief statement.

21 Mr. Chairman, Members of the Board,
22 good morning. My name again is Andrew Johnson

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1 and this is my wife Sukyang who is here with
2 me this morning.

3 We own and operate Sarah's Market
4 grocery store which is a retail establishment
5 located on 3008 Q Street, N.W. in Washington,
6 D.C.

7 Our property is the subject of an
8 instant application for special exemption
9 before you in BZA Case Number 17924. We seek
10 a special exemption under Section 2003.1 to
11 allow for the partial conversion of
12 approximately 140 square feet of current
13 nonconforming retail grocery store space for
14 purposes of dry cleaner and laundry pick-
15 up/drop-off functions.

16 Our store is located in the
17 Georgetown historical neighborhood and it
18 appears based on public records that the
19 existing one-story structure was constructed
20 around 1920 as a commercial building.
21 Therefore, the existing commercial building
22 precedes the adoption of the Zoning

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1 Regulations in May of 1952.

2 Personally, my wife and I have
3 operated the property and run the existing
4 nonconforming retail store since 1991.

5 The application is property before
6 the Board in that the Board is authorized
7 under the general provisions of Section 3104.1
8 to grant a special exemption where the Board's
9 judgment granting relief to allow the
10 establishment of the use sought will be in
11 harmony with the general purpose and intent of
12 the Zoning Regulations and Zoning Maps and
13 will not tend to affect adversely the use of
14 neighborhood properties.

15 As we are made aware of to satisfy
16 the foregoing tests, we must show compliance
17 with each condition set forth in Sections
18 2003.1 through 2003.7 and Mr. Chairman, in
19 order to make a more judicious and efficient
20 use of the Board's time and knowing the Board
21 Members like you said will have read and
22 familiarized yourself with the prehearing

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1 submissions, we wish to stand on the record of
2 the prehearing statement which outlines how
3 the instant application complies with each
4 condition set forth for the granting of the
5 relief sought and perhaps take specific
6 questions the Board Members may have.

7 As we noted earlier, we have Mr.
8 Bello here to assist us with specific zoning
9 questions.

10 CHAIRPERSON LOUD: Thank you, Mr.
11 Johnson. Why don't we follow your lead then
12 and see if Board Members have any questions
13 for you regarding your prehearing submission
14 or your testimony or the case generally.

15 There are no questions for you.
16 Normally, we would have the Office of Planning
17 submit their testimony. They did submit a
18 report. It's our Exhibit 23. They are in
19 support of your application and they walk
20 through, I think, in a pretty thorough way
21 Section 2003 and the parts of it that apply to
22 your request and again, they may show up.

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1 They may not show up, but let me just ask you
2 did you get a chance to review their report?

3 MR. JOHNSON: I was able to take a
4 quick look at it. Yes, sir.

5 CHAIRPERSON LOUD: Okay. Did you
6 have any questions about anything in it or --

7 MR. JOHNSON: No, I did not.

8 CHAIRPERSON LOUD: Okay. All
9 right. Board Members, I know you have
10 reviewed the report as well. Did you have any
11 questions or any comments regarding same?

12 COMMISSIONER TURNBULL: Mr. Chair,
13 I think the OP report was very thorough.

14 CHAIRPERSON LOUD: I agree, Mr.
15 Turnbull. I think it really walked through
16 the relief needed and the grounds for
17 supporting it in this case.

18 Let's move past the OP report then
19 I guess and if they should show up, we'll give
20 them an opportunity to lift up as much of it
21 as they want to. They may just stand on the
22 record like you did.

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1 We now normally go to the Advisory
2 Neighborhood Commission. I don't see anyone
3 in the audience that would be representing the
4 ANC in this matter. It's ANC-2E. They did
5 submit a report. It's our Exhibit 24 and they
6 fully support your request. They want to make
7 sure that the use is limited to the 140 square
8 feet and it's just pick-up and drop-off and no
9 actual on-site services being performed there,
10 but again, it supports your request and we are
11 obligated to give it great weight.

12 Board Members, did you have any
13 questions or comments regarding the ANC
14 report?

15 All right. So, we'll more right
16 along to parties or persons in support.
17 Looking out, there appear to be none.
18 However, there is in our record Exhibit 22
19 which is a petition. I think it's framed as
20 neighbors, but it's almost 100 signatures of
21 folks there in the area that support this
22 request and so, we take note of that.

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1 With respect to parties or persons
2 in opposition, if you are here and can hear my
3 voice, please come forward now and there
4 appear to be done.

5 So, we would now move to closing
6 remarks by the Applicant.

7 MR. JOHNSON: Thank you, Mr.
8 Chairman.

9 We appreciate your time and
10 consideration of our application.

11 Ultimately, the goal for my wife
12 and I, too, is in Georgetown to provide
13 additional services to the community. We hope
14 that this dry cleaner can fill a void. I mean
15 we hope to primarily bring in the same
16 clientele that we do with our grocery store
17 which is primarily walking distance to our
18 store. People are very busy and we're hoping
19 these additional services will make their life
20 a little easier and also help us in these
21 economically difficult times.

22 So, we appreciate you time and

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1 attention. Thank you so much.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Johnson, and we appreciate your testimony this
4 morning and your patience as well.

5 As you were providing your closing
6 statement, we've been joined by the Office of
7 Planning and just to bring the Office of
8 Planning up to speed, good morning.

9 MR. COCHRAN: Thank you.

10 CHAIRPERSON LOUD: We missed you
11 this morning.

12 MR. COCHRAN: Thank you. For the
13 record, my name is Steve Cochran. Sorry. I
14 didn't realize the case was going to be
15 postponed. So, I rode my bike.

16 CHAIRPERSON LOUD: Oh, good. Well,
17 that's good exercise.

18 During the period of time that we
19 normally would have gone to OP, we mentioned
20 that you submitted a report, that it was a
21 very thoroughly done report walking us through
22 the analysis of 2003 and how this application

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1 met the requirements of 2003 and also noted
2 that were you here you may have chosen to
3 stand on the record or lift us specific parts
4 of it. So.

5 MR. COCHRAN: My entire testimony
6 would have been OP stands on the record.

7 CHAIRPERSON LOUD: Okay. All
8 right. So, I think we've moved in a fashion
9 that was consistent with what you would have
10 done.

11 The Applicant has just finished his
12 closing remarks and if you have nothing
13 further to add to, okay, the OP report, I
14 think we may be ready to deliberate. Would
15 Board Members like to deliberate this case
16 this morning?

17 Okay. Then I think Mr. Turnbull is
18 going to start us off on the deliberation.

19 COMMISSIONER TURNBULL: Mr. Chair,
20 I'd like to make a motion to approve
21 Application Number 17924 of Andrew Johnson
22 pursuant to 11 DCMR 3104.1 for a special

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1 exception for a change of nonconforming use
2 from a grocery store to a grocery store and a
3 dry cleaning pick-up establishment under
4 Subsection 2003.1 at premises 3008 Q Street,
5 N.W. in an R-3 District, Square 1269, Lot 311
6 and look for a second.

7 VICE CHAIRPERSON DETTMAN: Second.

8 COMMISSIONER TURNBULL: Mr. Chair,
9 I think and I can -- I think as you've
10 discussed already, this is a fairly
11 straightforward case. I think we have a lot
12 of things in the record that make this fairly
13 easy for us. ANC is in favor of this. We are
14 looking -- and I would go to the Office of
15 Planning report for an excellent summary of
16 their meeting 2003 and if you'd like, I'd
17 summarize some of that.

18 CHAIRPERSON LOUD: It's at your
19 discretion, Mr. Turnbull. I thought both the
20 report of OP was outstanding, but if you want
21 to lift up some of it, I mean --

22 COMMISSIONER TURNBULL: Yes, well,

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1 I think --

2 CHAIRPERSON LOUD: -- it certainly
3 wouldn't hurt anything.

4 COMMISSIONER TURNBULL: -- I think,
5 first of all, we have -- it's a nonconforming
6 use and first of all, it has not adverse
7 affects on the present character or future
8 developments within the 300 foot radius. This
9 building has been there and is there. It's
10 simply a modification. I think they're
11 basically using one-quarter of the present
12 space, 140 square feet for this dry cleaning
13 pick-up. So, essentially, the building is
14 remaining what it is. It's a grocery store
15 with another -- with this dry cleaning use
16 added to it.

17 Again, following 2003.3, there is
18 no deleterious affects on the neighborhood.
19 It's there. There's no change.

20 2003.4, the structure has not been
21 previously changed back to a conforming use.
22 It's been what it has been since 1957.

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1 The proposed use shall be a
2 neighborhood use under 2003.5. It is. It
3 will continue to operate as that.

4 2003.6 lists zones in the area.
5 The C-1 Zone is the most restrictive zone and
6 it does meet the criteria for that use and
7 under 2003.7, the Board may require conditions
8 it may deem necessary to protect the value,
9 utilization or enjoyment of the property in
10 the neighborhood. As OP has stated in its
11 record, no conditions are necessary. There is
12 no significant change to the structure and to
13 the use as it is.

14 And again, for further, I think the
15 Office of Planning report is very clear and I
16 think as Mr. Cochran says, he stands on the
17 record and I think that can fill in whatever
18 I've left out.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 Turnbull. I'd only add that again the ANC
21 supported. It sounds like you guys have been
22 there for about 18 years or so and you both

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1 have ANC support. You testified that you've
2 been operating it since 1991. So, you both
3 have ANC support and then you've got this
4 petition from close to 100 neighbors. So,
5 that suggests the quality of how you've done
6 your market and their vote of confidence that
7 this new phase will be operated in a similar
8 -- at a similar high level.

9 I think the motion's been made.
10 The motion's been seconded. Is there further
11 deliberation?

12 Hearing none, all those in favor of
13 the motion say aye.

14 (Ayes.)

15 CHAIRPERSON LOUD: All those
16 opposed? Are there any abstentions?

17 Ms. Bailey, can you read the vote
18 back?

19 MS. BAILEY: Mr. Chairman, the vote
20 is recorded as 3-0-2 to grant the application.

21 Mr. Turnbull made the motion. Mr. Dettman
22 seconded. Mr. Loud supported the motion. To

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1 Mayoral Appointees not sitting on the Board at
2 this time. That's 3-0-2 and are we doing a
3 summary order on this one, Mr. Chairman?

4 CHAIRPERSON LOUD: Yes, ma'am, I
5 think we should. There's no opposition to it.
6 The ANC supports it. So.

7 MS. BAILEY: Thank you, sir.

8 CHAIRPERSON LOUD: Thank you and
9 thank you and good luck in the new phase of
10 the market.

11 MR. JOHNSON: Thank you very much,
12 Mr. Chairman.

13 CHAIRPERSON LOUD: I believe the
14 next -- is the next case Koo Yuen? Okay. I
15 believe the next case is Koo Yuen. I don't
16 see anybody here for us to call that case.

17 MR. MOY: Mr. Chairman, maybe I
18 should add at this point if I may although we
19 haven't called the case into the record, but
20 I've been in communication with the attorney
21 representing the Applicant and apparently,
22 this mid-morning, he was under the mis-

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1 impression that his case was for 1:00 and so,
2 he had to make changes to be here at the
3 appropriate time and I just spoke with him a
4 couple of minutes ago and he's on his way and
5 he expects to be in the hearing chamber around
6 11:30 this morning.

7 CHAIRPERSON LOUD: Okay. So, why
8 don't we adjourn until he arrives or until
9 11:30 whatever comes earlier and then we can
10 take up the Koo Yuen matter.

11 Adjourned.

12 (Whereupon, at 11:08 a.m., off the
13 record until 11:46 a.m.)

14 CHAIRPERSON LOUD: Good mid-
15 morning. We are resuming the public hearing
16 schedule for Tuesday, May 19th, 2009 and I
17 believe we're ready now to call the sole
18 remaining case from this morning's hearing
19 schedule.

20 Ms. Bailey.

21 MS. BAILEY: Mr. Chairman, it's
22 Application 17870. It's the application of

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1 Koo Yuen and it's pursuant to 11 DCMR Section
2 3104.1 for a special exception to establish a
3 gasoline service station under Section 726 and
4 706 at premises 3710 Minnesota Avenue, N.E.
5 It's square 5046, lot 810. The property is
6 zoned C-2-A and this is a continuation
7 hearing, Mr. Chairman. The last times the
8 Applicants were here April 27th of this year.

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

11 The Applicants were not here this
12 morning when we did the swearing in. Do they
13 need to be sworn in?

14 MS. BAILEY: Yes, Mr. Chairman,
15 it's good to swear them in.

16 CHAIRPERSON LOUD: Okay.

17 MS. BAILEY: Would you please raise
18 your right hand?

19 Do you solemnly swear or affirm
20 that the testimony that you'll be given today
21 will be the truth, the whole truth and nothing
22 but the truth? Thank you.

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1 CHAIRPERSON LOUD: Thank you and
2 good morning. Can you please come forward and
3 have a seat at the table and introduce
4 yourselves.

5 I don't believe your microphone is
6 one.

7 MR. DECARO: There we go.

8 CHAIRPERSON LOUD: All right.

9 MR. DECARO: I'm sorry. My name is
10 Thomas DeCaro. I'm the attorney for the
11 Applicant.

12 MR. YUEN: Chairman, my name is Koo
13 Yuen. I am the Applicant.

14 MR. WAY: Jeffrey Way, architect.

15 MR. DECARO: Mr. Chairman, I'm
16 pleased to --

17 CHAIRPERSON LOUD: Good morning,
18 gentlemen.

19 MR. DECARO: -- report that we have
20 worked diligently if I can characterize my own
21 -- our own work product thus and we have been
22 able to secure approval of DDOT and the Office

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1 of Planning to this application and so, I
2 would move that -- and there have been no
3 written objections filed that I've been served
4 with and so, on that record, I would move for
5 approval of the special exception.

6 CHAIRPERSON LOUD: Well, it's
7 moving a little -- we want to move fast, but
8 it's moving a little fast.

9 MR. DECARO: Okay.

10 CHAIRPERSON LOUD: And I think
11 probably one of the Board Members would have
12 to move for approval, but in the spirit of
13 what you said, we have a bit of a problem in
14 the sense that we have a case scheduled at
15 1:00.

16 MR. DECARO: I see.

17 CHAIRPERSON LOUD: And it looks
18 like your case if it moves according to a
19 fairly decent pace will not take us beyond
20 that, but I really want to ask for your help
21 in keeping us on schedule this morning.

22 We were prepared to move forward

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1 with your case at 11:00. We had to call a
2 recess because you guys were not here.

3 Now, I understand that things
4 happen and one of the good things that's come
5 out of that is that you were able to work out
6 all of the outstanding issues with OP and with
7 DDOT. But, nonetheless, it does leave us
8 wanting to make sure that you have an
9 opportunity to do everything on your case that
10 you need to do while we still remain true to
11 our schedule today.

12 So, without going beyond that at
13 all, why don't we turn it over to you, Mr.
14 DeCaro, and I think you've got a case to --
15 the burden is on you to establish the case
16 under 726 and 706 and so, what you may want to
17 do is bearing the time frame in mind just be
18 really really specific about how your client
19 meets the criteria and then we can see if
20 Board Members have questions of you.

21 MR. DECARO: Okay. Well, the
22 criteria are for the establishment of a

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1 gasoline service station. I guess the way the
2 criteria are met were set forth in our
3 application. We were able to -- I guess those
4 criteria haven't changed. The way those
5 criteria are met haven't changed.

6 The drawing has gone through two
7 revisions. One revision which took into
8 account the comments of the Office of Planning
9 as those comments were forwarded to the Board
10 in a memorandum and another very recent
11 revision which was filed on Friday took into
12 account the previous comments of the
13 Department of Transportation.

14 And I think representatives of --
15 Mr. Matthew Jesick and Mr. Jeff Jennings from
16 those organizations are here and so, I think,
17 you know, they've had an opportunity to review
18 the -- at great lengths to review the
19 submission and so, it's our contention on that
20 record that the Applicant meets the
21 requirements.

22 CHAIRPERSON LOUD: Okay. Let me

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1 then move to Board Members and see if there
2 are, to move us along, specific questions that
3 they may have of you regarding your client's
4 burden.

5 MR. DECARO: Thank you.

6 CHAIRPERSON LOUD: Board Members,
7 do you have any questions of the Applicant or
8 his counsel or architect?

9 If there are none, then what we can
10 do is go to the Office of Planning for both
11 your report and your testimony this morning?
12 Good morning.

13 MR. JESICK: Good morning, Mr.
14 Chairman and Members of the Board. My name is
15 Matt Jesick with the Office of Planning.

16 I'd like to give the Board an
17 update. Our last memorandum was dated April
18 21st, 2009 and at that time, there was still
19 one outstanding issue and that was regarding
20 Section 706.4 which states the operation of
21 the use shall not create dangerous or other
22 objectionable traffic conditions.

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1 Since that time, the Department of
2 Transportation has had an opportunity to
3 review the case and with conditions, is now
4 recommending approval and feels there will not
5 be any undue traffic impacts.

6 So, the Office of Planning's happy
7 to change its recommendation to recommend
8 approval of the application, but we do stand
9 by the recommended conditions in our April
10 21st memo and Mr. Jeff Jennings from the
11 Department of Transportation will also speak
12 to a few additional items that he would like
13 to add to the list of conditions.

14 MR. DECARO: And, Your Honor, I'm
15 sorry. If I may say to the panel for the
16 record, you know, the Applicant doesn't have
17 any problem with any of those conditions with
18 the approval being conditioned as we have
19 previously discussed. I just want to make
20 that clear. Thank you.

21 MR. JESICK: So, again, the Office
22 of Planning recommends approval. If the Board

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1 has any specific questions about the special
2 exception criteria, I'd be happy to go into
3 that, but I'm open for any questions.

4 COMMISSIONER TURNBULL: Mr. Jesick,
5 I just wanted to clarify for the record. I
6 think your comments and the comments of Mr.
7 Jennings are going to be based upon the recently
8 revised drawings dated May 14th, 2009.

9 MR. JESICK: That's correct. May
10 14th.

11 COMMISSIONER TURNBULL: Okay.
12 Thanks.

13 CHAIRPERSON LOUD: Just one quick
14 question. In terms of the report that's on --
15 the only report we have from you is Exhibit
16 34, written report or was there a supplemental
17 after that?

18 MR. JESICK: The Office of Planning
19 submitted a total of three reports.

20 CHAIRPERSON LOUD: Okay. And the
21 most recent one would be?

22 MR. JESICK: The most recent one is

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1 April 21st.

2 CHAIRPERSON LOUD: Okay. That's
3 Exhibit 34. Well, you probably don't know the
4 number, but it's Exhibit 34 and that one you
5 are not recommending approval, but your
6 testimony today is that you're rescinding that
7 report.

8 MR. JESICK: That's correct.

9 CHAIRPERSON LOUD: Except to the
10 extent of the conditions.

11 MR. JESICK: Yes, now that --

12 CHAIRPERSON LOUD: Okay.

13 MR. JESICK: -- the Department of
14 Transportation has indicated that there would
15 be no undue traffic impacts --

16 CHAIRPERSON LOUD: Okay.

17 MR. JESICK: -- we can recommend
18 approval.

19 CHAIRPERSON LOUD: Okay. Thank
20 you. Mr. Dettman, did you have any questions
21 for OP? Excuse me. For OP?

22 VICE CHAIRPERSON DETTMAN: Maybe

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1 just one question. I noticed in DDOT's
2 report, they recommend a condition that says
3 that gasoline delivery should occur between
4 7:00 p.m. and 7:00 a.m. which I think is a
5 good suggestion to avoid congestion, but, Mr.
6 Jesick, do you have anything to add regarding
7 potential noise issues with delivering at
8 night?

9 MR. JESICK: The noise of
10 deliveries was not something that we looked at
11 specifically. We did -- I believe there's a
12 condition regarding amplified sounds outside
13 and we did consider that and we're asking that
14 there be no amplified sounds in the delivery
15 area or under the canopy for instance. But,
16 we did not specifically look at delivery
17 impact.

18 VICE CHAIRPERSON DETTMAN: Okay.
19 No concern for just the truck moving in and
20 out of the site to deliver fuel at any given
21 time?

22 MR. JESICK: Thinking about the

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1 Applicant's new commitment to use smaller
2 trucks, I think that would probably be less of
3 an impact than the large tractor trailers that
4 might otherwise be used. So, we don't feel
5 that there would be a significant increase in
6 noise over the noise already present on
7 Minnesota Avenue.

8 VICE CHAIRPERSON DETTMAN: Okay.
9 Thank you.

10 COMMISSIONER TURNBULL: Mr. Chair,
11 I just had one question. On the May 14th
12 drawing, it shows a truck pulling in and it
13 says appropriate position of straight body
14 truck fuel delivery. I guess what I'm looking
15 at is the location of the truck. That's the
16 location of the truck when it's going to fill
17 up the tanks which are to the right of the
18 truck.

19 MR. WAY: That is correct.

20 COMMISSIONER TURNBULL: So, the
21 truck -- does the truck ever have to back up?

22 MR. WAY: Well, once it's come off

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1 of Minnesota Avenue, has made its right-hand
2 turn onto the property, then made its left-
3 hand turn into that position, I mean it, of
4 course, could back up --

5 COMMISSIONER TURNBULL: Right.

6 MR. WAY: -- for the convenience of
7 the driver. I mean that's only ten or 15 feet
8 if it's sitting directly over the tank, but if
9 the tank fills are anywhere in that alignment,
10 it's relatively straightforward.

11 COMMISSIONER TURNBULL: Okay. I
12 was just concerned that obviously the truck's
13 probably equipped with the OSHA required
14 backup. I just --

15 MR. WAY: Of course.

16 COMMISSIONER TURNBULL: -- didn't
17 want to see too much back and forth, back and
18 forth.

19 MR. WAY: No. No.

20 COMMISSIONER TURNBULL: So, you see
21 it basically pulling in, sitting. Okay.

22 MR. WAY: Right.

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1 MR. YUEN: Mr. Turnbull, may I
2 address. I've been a gas station operator for
3 35 year in the District of Columbia. So, I,
4 you know, started as an attendant. So, I -- I
5 actually work at the gas station for many year
6 and --

7 COMMISSIONER TURNBULL: Okay.

8 MR. YUEN: -- and the driver are
9 very experienced and especially this smaller
10 truck, they will pull in. They know where our
11 fill is. It's not like somebody never been to
12 the station. So, they know where all the
13 position of where they should drop the gas
14 properly. Would not have to, you know, do
15 much maneuver.

16 In fact, when they position
17 themselves right next to the building, they
18 are ready to rapidly drop the gas. The driver
19 basically on the what you call efficiency
20 measures so that they can do certain amount of
21 delivery in the period of time.

22 So, it is to their interest not to

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1 stay in the station too long or otherwise.

2 Once they position it, once they
3 fill completely empty to the storage tank,
4 they will simply pull out to Ames Street. No
5 different than any other car come into our
6 place for fueling.

7 COMMISSIONER TURNBULL: Okay. So,
8 they're always going forward.

9 MR. YUEN: Always going forward.
10 So, I just want to make clear, but in a case
11 where it would be absolutely, you know, very
12 rare that the driver might just simply forgot
13 where the position is and -- and the hose
14 might not be able to reach the fill --

15 COMMISSIONER TURNBULL: Yes.

16 MR. YUEN: -- then he might have to
17 back up a little bit or pull forward a little
18 bit. But, your concern about they have to
19 back up in order to exit or otherwise, that is
20 almost negligible. In fact, zero.

21 COMMISSIONER TURNBULL: Okay.

22 MR. YUEN: Okay.

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1 COMMISSIONER TURNBULL: Thank you.

2 VICE CHAIRPERSON DETTMAN: What is
3 the typical height of the 30-foot trucks that
4 would be accessing the site?

5 MR. YUEN: I would say no more than
6 ten feet.

7 VICE CHAIRPERSON DETTMAN: Okay.

8 MR. YUEN: Ten feet at the most.

9 VICE CHAIRPERSON DETTMAN: So the
10 canopy clearance is okay?

11 MR. YUEN: Right. It's much lower
12 than the 12-6 that we're -- which is, you
13 know, allowed for the -- it's a little bit
14 like the RV. Okay. Like you're 30-foot motor
15 home. Okay. About that type of height. Yes.

16 CHAIRPERSON LOUD: Mr. DeCaro, let
17 me just ask before we move on to DDOT if you
18 have any questions for the Office of Planning?

19 MR. DECARO: No.

20 CHAIRPERSON LOUD: Okay.

21 MR. DECARO: Thank you.

22 CHAIRPERSON LOUD: Thank you. And

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1 we will now move to DDOT which has submitted a
2 May 19, 2009 report for an update from you.

3 Before you do that though, let me
4 ask Ms. Bailey a question. Not Ms. Bailey.
5 Mr. Moy, in terms of the exhibit that we got
6 from DDOT a few minutes ago, is there a way
7 that we can put an exhibit number on this at
8 the hearing or what's the protocol regarding
9 that?

10 MR. MOY: Normally do that.

11 CHAIRPERSON LOUD: Okay.

12 MR. MOY: Ms. Bailey handles
13 filings that are submitted on the dais.

14 CHAIRPERSON LOUD: Okay.

15 MR. MOY: She has the exhibit log.
16 So, she's probably the best person at this
17 point that can tell you what the exhibit
18 number of this would be.

19 CHAIRPERSON LOUD: Okay. Thank
20 you, Mr. Moy, and --

21 MS. BAILEY: Exhibit 38, Mr.
22 Chairman. We'll make that Exhibit 38.

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1 CHAIRPERSON LOUD: Thank you, Mr.
2 Bailey. So, we'll now refer to this May 19th
3 submission from DDOT as Exhibit 38. I think
4 it's pretty pivotal to the case. So, it's
5 important that Ms. Bailey has given it a
6 number so we can refer to it properly. Thank
7 you.

8 You can go ahead and begin.

9 MR. JENNINGS: Thank you. Good
10 morning. Good afternoon, Chairman Hood.
11 Excuse me. Chairman Loud. Usually here for
12 the Zoning Commission and Fellow
13 Commissioners.

14 My name is Jeff Jennings. I work
15 for the District Department of Transportation.

16 We've had the opportunity to review
17 this application for quite some time now and
18 had a meeting as recently as last Thursday
19 afternoon when many of the revisions in the
20 May 14 rendering were presented to us.

21 We feel that the concessions made
22 on behalf of the Applicant do meet a lot of

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1 the concerns that we had and I think you
2 probably may have received a memorandum dated
3 April 19 or April 20 from DDOT and one of the
4 bigger concerns was the curb cut located
5 closest to Minnesota and Ames and you'll see
6 on this May 14 render, the Applicant has
7 removed that curb cut completely and we find
8 that to be a much safer environment and the
9 curb cut that's still along Minnesota Avenue
10 based upon our discussion from last Thursday,
11 the Applicant is aware that we will approve at
12 DDOT a 25-foot-wide curb cut which led to our
13 discussion about what type of vehicle would
14 be able to enter this site.

15 As has been the case in the last --
16 well, in the last 12 to 24 months, you know,
17 DDOT is certainly trying to make minor
18 arterials like Minnesota Avenue that much more
19 of a pedestrian-friendly environment. I think
20 which is why we looked at this land-use case
21 with such a close eye as we did. Typically,
22 gas stations generate many vehicle trips and

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1 to reduce the amount of curb cuts, we feel is
2 something that we're moving in the right
3 direction with that and this latest rendering
4 does just that. Reduces those curb cuts and
5 reduces the size of the one curb cut along
6 Minnesota Avenue.

7 As far as the type of vehicle
8 that's being proposed here for fuel delivery,
9 this 30-foot-long vehicle which I've come to
10 find out today would carry approximately 5,000
11 gallons of fuel would deliver the fuel and as
12 we put in our comments which you mentioned are
13 Exhibit 38, we would like to see that be part
14 of the order. So, a 30-foot truck with no
15 more than 5,000 gallons would be part of the
16 order if this case does move to that point.

17 And then we viewed the other curb
18 cut along Ames Street as not as much of a
19 concern and we did look at it using the design
20 and engineering guidelines that DDOT typically
21 has knowing that Ames Street is not as
22 traversed by pedestrians not as much as

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1 Minnesota Avenue is and that's the reason why
2 we've concluded that the Ames Street curb cut
3 meets our expectations at this point in time.

4 Ames, to the best of my
5 recollection, is a local street and, you know,
6 again, doesn't see as much in the way of
7 vehicle traffic or pedestrian foot traffic as
8 perhaps Minnesota Avenue does.

9 CHAIRPERSON LOUD: Thank you, Mr.
10 Jennings. Let me see if Board Members have
11 any questions for you. Then we'll see if Mr.
12 DeCaro does.

13 VICE CHAIRPERSON DETTMAN: I just
14 had one question for DDOT.

15 Good afternoon, Mr. Jennings.

16 This really doesn't -- isn't really
17 a zoning issue that's going to affect our
18 analysis, but I'm looking at the curb cut on
19 Ames and your criteria for public space, is it
20 60-foot from the intersection?

21 MR. JENNINGS: That's correct.

22 VICE CHAIRPERSON DETTMAN: What's

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1 the likelihood that as -- if this project was
2 to move forward the curb cut wouldn't be
3 approved from the public space advantage?

4 MR. JENNINGS: Excellent question.

5 Part of the entire process since those April
6 comments were delivered to the BZA has been to
7 include staff from the Public Space Division
8 within DDOT and they are aware that even our
9 Associate Director Karina Ricks has reviewed
10 these plans. Karina sits on the Public Space
11 Committee and one of the engineers who's had
12 the opportunity to help me out, develop some
13 of the comments that you've seen, he's aware
14 of the curb cut along Ames Street. There's a
15 very good chance, 99.9 percent chance, that
16 the Ames Street curb cut will be approved.

17 VICE CHAIRPERSON DETTMAN: Okay.

18 Thank you. That's very good to hear and I
19 commend you on your efforts because I think
20 the outcome is great from a pedestrian
21 perspective and thank you for your memo.

22 CHAIRPERSON LOUD: It appears there

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1 are no further Board questions. So, why don't
2 we turn to Mr. DeCaro? If you had any
3 questions for DDOT.

4 MR. DECARO: I don't have any
5 questions of DDOT.

6 CHAIRPERSON LOUD: Okay.

7 COMMISSIONER TURNBULL: Mr. Chair,
8 I just had a question for the Applicant.

9 With the smaller truck, do you need
10 -- when you are filling up the tanks and I'm
11 not sure what the capacity is of a bigger
12 truck, do you have to have -- one truck comes
13 at a time or are there going to be two trucks
14 coming?

15 MR. YUEN: Let me address that to
16 you, Board Member -- Mr. Turnbull.

17 The big truck is only holding about
18 7900 gallon. So, this is only about --

19 COMMISSIONER TURNBULL: Okay.

20 MR. YUEN: We are able to carry 66
21 and a third capacity.

22 COMMISSIONER TURNBULL: Of your in-

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1 ground tanks?

2 MR. YUEN: Correct. And our
3 delivery are actually monitored by automatic
4 gauging system where we know what our fuel
5 inventory at all given time. So, therefore,
6 ability to schedule, you know, correctly
7 without have to run out of fuel where, you
8 know, basically in our business if you run out
9 of fuel, you're out of business. So --

10 COMMISSIONER TURNBULL: Yes, I mean
11 I'm always interested when you go by gas
12 stations and you see little bags over the --
13 it's like wasn't somebody thinking and didn't
14 they keep tabs on this?

15 MR. YUEN: So, we -- we proud of
16 our inventory management and is not efficient
17 to have two truck coming after the other
18 because that way we have to invest in another
19 truck. So, our truck will basically do about
20 maybe a third of the trip more over a month
21 period. Okay. So, if we're talking about ten
22 delivery, so, we only talk about maybe 15 at

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1 the most. Okay. With the -- but, however,
2 the small truck a lot more efficient. They go
3 in, go out just like an automobile.

4 COMMISSIONER TURNBULL: So, from an
5 operational standpoint, that doesn't hurt your
6 operations at all by doing --

7 MR. YUEN: Not at all, Mr.
8 Turnbull. In fact, we like it because it
9 doesn't require a tractor and trailer license,
10 a semi-license. In fact, you can drive that
11 truck, sir.

12 COMMISSIONER TURNBULL: Uh-huh. An
13 alternate career for me.

14 MR. YUEN: Not to be -- I just want
15 to make a point, sir.

16 COMMISSIONER TURNBULL: No, I know.
17 I know.

18 MR. YUEN: Okay. So, we feel very
19 good that we have come to this solution and
20 certainly as a -- if District of Columbia
21 growing like Manhattan, New York, Manhattan,
22 New York already will now allow tractor

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1 trailer into any gas station. Only small
2 truck can get into Metropolitan, New York.
3 So.

4 COMMISSIONER TURNBULL: Okay. So,
5 that -- so, the way things are going are
6 smaller trucks then.

7 MR. YUEN: Yes, I -- I am -- maybe
8 because of the help of Mr. Jennings, we might
9 be in the forefront of having this type of
10 truck.

11 COMMISSIONER TURNBULL: All right.

12 MR. YUEN: Will not block any
13 traffic or create any kind of dangerous
14 situation or impede, you know, a motoring
15 traffic situation in District of Columbia.

16 COMMISSIONER TURNBULL: Well, chalk
17 one up for us. Well, thank you very much.

18 MR. YUEN: Thank you, sir.

19 CHAIRPERSON LOUD: Thank you. I
20 wanted to just go back to Mr. Jennings for one
21 second. Just clarify that the only two
22 conditions that your agency would be advancing

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1 would be the restricted delivery 7:00 p.m. to
2 7:00 a.m. and then the 30-foot delivery trucks
3 capped at 5,000 gallons or were there others?

4 Just wanted to make sure before we proceed
5 further.

6 MR. JENNINGS: It would also be
7 helpful I think if the number of curb cuts and
8 the width especially of the Minnesota Avenue
9 curb cut is part of the order.

10 It's always helpful from -- when it
11 comes from the Office of Zoning and lands at
12 DDOT to have that reinforcement. That would
13 be number one the curb cut -- the number of
14 curb cuts and the width of the curb cuts.
15 Ames is not to exceed 25 feet and Minnesota
16 Avenue curb cut not exceed 25 feet.

17 Hours of fuel delivery, as I
18 understand it 7:00 p.m. to 7:00 a.m. The goal
19 here is to avoid potential conflicts
20 especially along Minnesota Avenue.

21 We are happy that it's a smaller
22 truck and that's point number three as far as

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1 the order is concerned. You know, we feel
2 tractor trailers have a certain weight
3 bearance or if I can use that term, they bear
4 a certain weight along minor arterials like
5 Minnesota Avenue.

6 I'll give you a good example. In
7 front of the Reeves Center, you'll see at the
8 bus stop the amount of infrastructure that's
9 almost kind of -- it's almost like a ruffled
10 effect if you will where the buses stop and
11 the pavement infrastructure actually has a lot
12 of bumps along it. It's at the northwest
13 corner of 14th and U and we feel that getting
14 these larger weight trucks with many axles off
15 of the street is probably a better thing for
16 the infrastructure and then also these types
17 of trucks provide a better visibility scenario
18 for the drivers.

19 So, the delivery would happen
20 between 7:00 p.m. and 7:00 a.m. and then
21 finally, the length of the truck not to exceed
22 30 feet and that truck, being as I heard it

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1 today from the Applicant, carries 5,000
2 gallons of fuel.

3 CHAIRPERSON LOUD: And I'm going to
4 turn to Mr. DeCaro to respond to that in one
5 second, but just for my edification, is there
6 a regulation that regulates the width of the
7 curb cut?

8 MR. JENNINGS: We have a policy in
9 place that states for commercial entities such
10 as this for two-way traffic we would expect a
11 25-foot-wide curb cut and we're doing our best
12 for a commercial entity such as this to limit
13 curb cuts to two.

14 So, there is a policy in place at
15 DDOT.

16 CHAIRPERSON LOUD: Thank you.
17 Thank you, Mr. Jennings.

18 Mr. DeCaro, did you care to respond
19 at all?

20 MR. DECARO: Well, we, of course,
21 discussed all these matters at length and we
22 would agree with Mr. Jennings that those

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1 restrictions are appropriate as a pre-
2 condition to BZA approval.

3 MR. YUEN: Chairman and the Board,
4 we have no problem. We have station right now
5 at 25 feet and exactly what the DDOT
6 requirement are. So, therefore, it does not
7 impede our commercial operation. So, we are
8 very happy to comply.

9 CHAIRPERSON LOUD: Thank you. I
10 think if we have no further questions for DDOT
11 regarding his report or questions from the
12 Board generally to the party or DDOT, we can
13 move forward in the proceedings.

14 This is normally the point in time
15 when the ANC would give a report. I don't see
16 in our record that the ANC has submitted a
17 report. Correct me if I'm wrong and there's
18 no one here from the ANC to testify.

19 So, we would move forward from
20 there to parties or persons in support. If
21 there's anyone in the audience that would like
22 to come forward to testify in support, now

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1 would be the time. You would be allowed three
2 minutes to give your testimony. Okay. Okay.

3 MR. DECARO: Would you please state
4 your name and address?

5 MR. EGEZABHER: Yes, my name Lulu
6 Egezabher.

7 MR. DECARO: That's L-U-L-U.

8 MR. EGEZABHER: L-U-L-U and the
9 last name E-G-E-Z-A-B-H-E-R.

10 MR. DECARO: And what's your
11 address, Mr. Egezabher?

12 MR. EGEZABHER: 3762 Minnesota
13 Avenue.

14 MR. DECARO: Mr. Egezabher, are you
15 familiar with this --

16 CHAIRPERSON LOUD: Mr. DeCaro, let
17 me interrupt you and I think you and I are
18 going in the same direction. We're at the
19 point of the proceedings now where we've
20 passed witnesses of the Applicant where you
21 direct the witness through and these are
22 parties or persons in support. So, he's not a

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1 party, but he's a person in support. One of
2 the key differences is that he's given three
3 minutes. So, it's not a directed walk
4 through, but I can understand if you want to
5 sort of get him --

6 MR. YUEN: Chairman --

7 CHAIRPERSON LOUD: -- structured.
8 Hold on one second, but it's really a
9 different stage of the proceeding. It's just
10 that they're -- if they're persons in support,
11 they come -- they step forward. They have
12 three minutes to articulate their reason for
13 support.

14 Yes, sir, Mr. Yuen.

15 MR. YUEN: Chairman, Mr. Lulu
16 Egezabher is my potential operator at the
17 location and he also familiar with the
18 neighborhood. He's been a convenience store
19 operator at the Greenway Shopping Center which
20 is next door for many, many year and he have
21 looked forward to be a proprietor at this
22 location.

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1 So, he knows the neighborhood very
2 well. He knows friends and people that he
3 have called away over the last, you know, 15-
4 some odd year.

5 So, Lulu just --

6 CHAIRPERSON LOUD: Why don't we let
7 the witness say everything you just said and -
8 -

9 MR. YUEN: Lulu, just go ahead and
10 say what is on your mind.

11 CHAIRPERSON LOUD: Excuse me, Mr.
12 Yuen. Excuse me. Let the witness say
13 everything you just said for himself and
14 again, you're given three minutes to do it.

15 MR. EGEZABHER: Yes, I used to have
16 a store on Greenway Shopping Center since 1989
17 and then I sold the store in 1998. I've been
18 down there more than 15/16 years. I know the
19 people that live in that area. So, I knew
20 that area very well.

21 MR. DECARO: And what do you think
22 of this development?

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1 MR. EGEZABHER: Oh, that's
2 community -- the people, they need that gas
3 station special. The place very nice to open
4 gas station in that area. People, they might
5 like it. The community.

6 Most of them, I talk to them. They
7 like to see the gas station coming.

8 MR. DECARO: Do you have any
9 further comments?

10 MR. EGEZABHER: No, sir.

11 MR. DECARO: Thank you.

12 CHAIRPERSON LOUD: Thank you. How
13 do you spell your last name?

14 MR. EGEZABHER: E-G-E-Z-A-B-H-E-R.

15 First name Lulu L-U-L-U.

16 CHAIRPERSON LOUD: Okay. Thank you
17 very much. Let me see if Board Members have
18 any questions for you. Okay. There are no
19 questions and then, Mr. DeCaro, did you have
20 any questions?

21 MR. DECARO: I don't have any
22 questions.

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1 CHAIRPERSON LOUD: Okay. Thank
2 you, Mr. -- and I know I'm going to pronounce
3 it incorrectly. So, I'm not going to even
4 attempt. But, thank you.

5 MR. EGEZABHER: Thank you.

6 CHAIRPERSON LOUD: Now, if there
7 are parties or persons in opposition, this
8 would be the time to step forward and seeing
9 that there are none, we would now moving to
10 closing remarks by the Applicant or your
11 counsel.

12 MR. DECARO: Well, I'm going to
13 make a brief statement and then I'm going to
14 defer to my client here.

15 I think that -- I mean this area
16 has been in need of development for some time.

17 I've been down there many, many times myself
18 looking around. I've been familiar with the
19 care and attention they've taken towards, you
20 know, putting this project together so it'll
21 be very effective in the community and will
22 provide an alternative of unbranded or reduced

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1 price gasoline for the community residents and
2 I'd like to ask my client here if he has any
3 further comments.

4 MR. YUEN: Chairman and the Board
5 Members and Mr. Jennings, Mr. Jesick, I
6 personally appreciate all your effort in
7 hearing this case. I know it's been a long
8 ordeal with many delay and so on and I'm very
9 happy to have the support of the government
10 department at the final hour so that we can
11 meet the deadline to not have to extend this
12 hearing again or have to at least ask for your
13 indulgence one more time.

14 I as the Applicant has been a
15 businessman here since I was 19 years old. I
16 grew up in Washington, D.C. I worked for a
17 gentleman in 14 and Georgia Avenue in Park Row
18 when I was going to junior high school in
19 Banicur and went to McKinley High School here
20 in Washington and the service station industry
21 has been good to me and my family and
22 certainly, I have make many friend and

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1 neighbor who patronize our location.

2 I was at one time a major brand
3 dealer. I started with Exxon. Later on, the
4 opportunity arise where we're able to develop
5 what you call an unbranded business. Today, I
6 am very happy to report that we actually serve
7 the District of Columbia motorists at their
8 best interest which is offer them same quality
9 gasoline at a much lower price where it mean
10 more money for them to left over to meet other
11 budgets.

12 And certainly, with the help of my
13 architect, we have been designing some very
14 forefront, clean looking station. Nothing
15 that we call a eyesore. I mean all the
16 location that we have are very environmental
17 friendly. We landscape. We do everything we
18 can to play boss so to speak with the
19 department's policy or whatever policy they
20 have maybe on the book or may not on the book
21 or in the planning stage such as the way that
22 we help work to this point where Mr. Jennings

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1 have actually worked diligently over the
2 weekend which we don't expect him to be able
3 to study the plan that we have today and able
4 to come up with his blessing on the matter.

5 My only hope, sir, is that I have
6 been delay almost four year due to a reading
7 of the section of the law which could be
8 controversy. Is that this is a former gas
9 station and we believe at some point we could
10 have reopened as a gas station without have to
11 come to this body for another BZA special
12 exemption case.

13 But, however, we believe that we
14 rather went with the government instead of
15 confront the government. So, therefore, we
16 choose this method to -- not so much to
17 pleasing the DCRA, but I thought it was the
18 right thing to do. This way I know that I
19 have order up-to-date conformity. So, that I
20 do this legally. As you all can see,
21 there's no opposition. My neighbors certainly
22 are not here to raising Cain and say look, we

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1 don't want your gas station here.

2 So, I think with all that in mind,
3 so with all fair mind that we're working
4 under, I believe that I will be a very
5 responsible citizen. I have been showing that
6 way.

7 There's not even one complaint been
8 ever registered about our gas station. We
9 always work with the ANC people. If there's
10 an unwelcome situation, we always go to the
11 meeting. We will contribute. We will see
12 what we can do on our part to make our society
13 better, our neighborhood better so that we all
14 can live together, work together and be
15 harmony.

16 I know gas station is not the most
17 well liked business around because of the
18 traffic, because of the past image where
19 people have dirty location, grease and so on,
20 where car parking all over the place and
21 unorderly.

22 But, today, you are dealing with a

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1 group of professional businessmen. I have
2 grown from those area. For me to do anything
3 that will be contradictory to our general
4 policy will be bad for my business.

5 So, I'm asking the Board here to
6 approve without any delay so that I can
7 proceed with my construction and I thank you
8 for all your time and your indulgence in
9 hearing this matter and I wish you all well.

10 Thank you very much.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Koo Yuen, and thank the members of your very
13 able team, your counsel, your architect for
14 the overall presentation that came before us.

15 MR. WAY: May I address the Board
16 for just a moment?

17 CHAIRPERSON LOUD: Only if you
18 think it's necessary at this point.

19 MR. WAY: I just wanted to say that
20 I've worked for Mr. Yuen for many years and
21 there's something quite poetic about this
22 location. I grew up not far from this

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1 location and was a student at Woodson Junior
2 High School and Eastern High School.

3 So, in my childhood dreams of
4 becoming an architect, I always wanted to
5 contribute to the community in significant
6 ways and I had no idea that my pursuits would
7 bring me through high school, through the
8 Catholic University of America, one of the
9 youngest registered architects in the city, to
10 work with someone who actually went to high
11 school with my own brother at McKinley. So,
12 life has interesting poetry and I hope that
13 he'll continue to do well.

14 He's a great great citizen and he
15 loves the city very much and I'm proud to work
16 for him.

17 CHAIRPERSON LOUD: Thank you and
18 I'm glad you got an opportunity to put that on
19 the record and as I said, thanks to your team
20 for the job that you've done in this case.

21 I think we may be able to
22 deliberate. May be ready to deliberate today.

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1 I'll turn to Board Members and see if there's
2 any objection to deliberating to today and if
3 not, I'll ask Mr. Dettman if he could start us
4 off.

5 VICE CHAIRPERSON DETTMAN: Thank
6 you, Mr. Chairman. I'd be happy to start us
7 off here.

8 This is a request for a special
9 exception to establish a gasoline station
10 pursuant to Section 726, the special exception
11 criteria laid out in 706 and it's located at
12 3710 Minnesota Avenue, N.E.

13 So, I can quickly take us through
14 those provisions. Starting off at 706.3,
15 stating that the station shall not be located
16 within 25 feet of a residential district
17 unless it's separated by a street or alley.
18 This location is within the 25 feet of a
19 residential district. However, there is an
20 existing 16-foot alley that does separate the
21 two.

22 706.4, the operation and use shall

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1 not create any dangerous or objectionable
2 traffic conditions and I think this provision
3 was the biggest sticking point as this project
4 kind of went through the process, but I'm
5 happy to say that those issues have been
6 resolved.

7 The Applicant did conduct a traffic
8 study which is our Exhibit Number 31 and with
9 respect to additional trips and congestion, it
10 doesn't look like the additional trips that
11 are going to be generated by this use are
12 going to have any significant or negligible
13 impact on the level of service of the study
14 area intersections.

15 We received a memo from the
16 Department of Transportation. That's our
17 Exhibit Number 38. It was submitted today to
18 us and it appears as if with respect to the
19 location of the curb cuts, the size of the
20 curb cuts, the number of the curb cuts and
21 mainly the delivery vehicles that are going to
22 be servicing this location, those issues have

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1 been resolved. DDOT does recommend -- give
2 their conditional support and they do
3 recommend two conditions that we can take up
4 which I finish up the analysis here.

5 706.5, the Board may impose
6 requirements pertaining to design, appearance,
7 screening and lighting. DCOP has recommended
8 some conditions that pertain to lighting,
9 accessibility, deliveries, the trash
10 enclosure, amplified sound and landscaping.
11 The Board can either incorporate those into
12 the order as conditions or in the alterative
13 since it looks like all of the conditions --
14 almost all of the conditions that DCOP is
15 recommending also show up as notations on the
16 plan, we might have a level of comfort with
17 them just being on the plan. That's going to
18 tie them to satisfying those conditions. It's
19 a decision that we'll have to make.

20 706.6 deals with required parking
21 spaces. According to the revised plans, again
22 that's Exhibit Number 37, the required number

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1 of parking spaces are being provided and they
2 are arranged in a manner that complies with
3 the provisions.

4 This application needs to meet the
5 requirements of Chapter 23 as well.
6 Specifically, 2302. For many of the reasons
7 that I've already stated, it appears as if the
8 Application does meet the criteria of Section
9 2302.

10 And I think finally, the general
11 special exception criteria of 3104.1 dealing
12 with harmony with the Zoning Regulations and
13 Zoning Map as well as any adverse impacts to
14 the use of neighboring property. We did have
15 two exhibits, Exhibit 29 and Exhibit 19, which
16 were signed petitions from the neighbors
17 expressing opposition. There really wasn't
18 any indication of why they opposed this
19 gasoline station. One of them did mention
20 that they didn't need another one. So,
21 apparently, there's a couple in the
22 neighborhood.

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1 However, in terms of adverse
2 impacts from a zoning perspective, I don't
3 really see anything that would prevent this
4 application from not meeting the general
5 exception criteria of 3104.

6 DCOP's in support of this
7 application. They have submitted to us
8 Exhibit Number 34 expressing their support as
9 well as the conditions I have mentioned and I
10 had already mentioned that in Exhibit 38, the
11 DC Department of Transportation has expressed
12 their support with two conditions being
13 proposed.

14 So, it looks pretty good. It looks
15 like they've met their special exception
16 burden and I think the only remaining question
17 is what conditions -- if the Board was
18 inclined to grant this application, what
19 conditions would we choose to incorporate into
20 the order?

21 CHAIRPERSON LOUD: Thank you, Mr.
22 Dettman. Mr. Turnbull.

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1 COMMISSIONER TURNBULL: Mr. Chair,
2 I would concur with Mr. Dettman and his
3 analysis and I guess I was unclear. Did you
4 reference Exhibit 37 into that? The drawing,
5 the recent.

6 VICE CHAIRPERSON DETTMAN: If I
7 didn't, yes, I think that it's good that we
8 do. Yes.

9 The revised plans are Exhibit
10 Number 37.

11 COMMISSIONER TURNBULL: Right.

12 VICE CHAIRPERSON DETTMAN: Yes.

13 COMMISSIONER TURNBULL: I guess
14 that would -- again, going along with Mr.
15 Dettman's comment about conditions, I mean I
16 guess referencing Exhibit 37 answers some of
17 those which he had said earlier. I'm not sure
18 if we'd still need to reference the conditions
19 of the three by the Department of
20 Transportation regarding the hours and that.
21 So.

22 CHAIRPERSON LOUD: Thank you, Mr.

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1 Turnbull. Let me join with you in concurring
2 with Mr. Dettman's analysis. I thought it was
3 an excellent summary of the evidence and where
4 we are.

5 For me as well, I think the
6 exhibit, I guess it's Exhibit 38, the DDOT
7 report that came in today sort of helped to
8 nail things shut here and had removed what had
9 been an outstanding issue in the case and that
10 rescinded the Exhibit 33, the earlier report
11 of DDOT and then OP's testimony today in
12 support as conditioned and that rescinded
13 their earlier report which is our Exhibit 34.

14 So, I'm fully supportive of it.

15 In terms of the conditions, I agree
16 with Mr. Dettman that since most of those are
17 addressed in the submitted plans that I don't
18 think we need to go to the extra step of
19 making it a written condition with the
20 exception of the restricted hours of delivery
21 7:00 p.m. to 7:00 a.m. and then the size of
22 the truck. I think it was a 30-foot maximum

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1 and limiting the size of the cargo to 5,000
2 gallons.

3 I don't think -- after having
4 checked, don't think that we need to make the
5 25-foot width a specific condition since it's
6 in our regulations already and it's an issue
7 of compliance with existing law. So, I don't
8 think we need to necessarily make that a
9 condition.

10 But, I do think that the other two
11 concerns of DDOT should be made conditions and
12 assuming they are, I'm fully supportive of the
13 application and its moving forward today.

14 VICE CHAIRPERSON DETTMAN: Mr.
15 Chairman, I'm prepared to make a motion if the
16 time is right. Okay.

17 Before I do that, I'd like to
18 commend the Office of Planning and DDOT for
19 their attention to this. I think it was -- it
20 took some time, but I think the Applicant and
21 their willingness to be flexible came out to a
22 good place.

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1 So, that being said, I'll move for
2 approval of 17870 of Koo Yuen pursuant to 11
3 DCMR 3104.1 for a special exception to
4 establish a gasoline service station under
5 Section 726 and 706 at premises 3710 Minnesota
6 Avenue, N.E. as conditioned.

7 CHAIRPERSON LOUD: I second the
8 motion. Is there further deliberation?

9 The motion's been made by Mr.
10 Dettman. Seconded. All those in favor say
11 aye.

12 (Ayes.)

13 CHAIRPERSON LOUD: All those
14 opposed? All those in abstention? Ms.
15 Bailey, can you read back the vote for us?

16 MS. BAILEY: Mr. Chairman, the vote
17 is 3-0-2 to grant the application with the two
18 conditions indicated by the Board. Mr.
19 Dettman made the motion. Mr. Loud seconded.
20 Mr. Turnbull supported the motion. Two
21 Mayoral Appointees not sitting on the Board at
22 this time.

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1 CHAIRPERSON LOUD: Thank you, Ms.
2 Bailey. Is there anything further in this
3 case?

4 MS. BAILEY: Just to ask, are we
5 doing a summary order, Mr. Chairman? I didn't
6 see as you had indicated earlier that there's
7 an ANC report. So, would this be a summary
8 order?

9 CHAIRPERSON LOUD: I think it can
10 be. As you said, there's no ANC report in
11 opposition. No party status in opposition.
12 So, yes.

13 MS. BAILEY: Thank you, sir.

14 CHAIRPERSON LOUD: Thank you and
15 thank you.

16 MR. DECARO: Thank you very much.

17 MR. YUEN: Thank you.

18 MR. DECARO: Thank you. Attention
19 to this matter is greatly appreciated.

20 CHAIRPERSON LOUD: Thank you again
21 and this concludes the morning public hearing
22 meeting of May 19th.

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(Whereupon, the hearing was recessed at 12:35 p.m. to reconvene this same day.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:25 p.m.

3 CHAIRPERSON LOUD: Good afternoon.

4 This hearing will please come to order.

5 My name is Marc Loud. This is the
6 May 19th Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia. I'm
8 the chairperson of BZA and joining me today
9 are Vice Chair Shane Dettman to my right and
10 Zoning Commissioner Bill Keating to his right
11 and this is Commissioner Keating's first time
12 here with BZA. So, we welcome you. To my
13 left is Mr. Clifford Moy, Secretary of BZA,
14 Ms. Sherry Glazer, Office of Attorney General
15 and Ms. Beverley Bailey, Zoning Specialist
16 here in the Office of Zoning.

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

20 Please be aware that this
21 proceeding is being recorded by a court
22 reporter and is also webcast live.

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1 Accordingly, we must ask you to
2 refrain from any disruptive noises or actions
3 in the 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 are 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 statement and
21 witnesses of the applicant; Government reports
22 including the Office of Planning, the

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1 Department of Transportation, et cetera; the
2 report the Advisory Neighborhood Commission;
3 parties or persons in support; parties or
4 persons in opposition; and finally, closing
5 remarks by the applicant.

6 I'm going to skip over the part
7 pertaining to appeals since we don't have any
8 this afternoon.

9 Pursuant to Sections 3117.4 and
10 3117.5, the following time constraints will be
11 maintained. The applicant, appellant, persons
12 and parties except an ANC in support including
13 witnesses 60 minutes collectively. Appellees,
14 persons and parties except an ANC in
15 opposition including witnesses 60 minutes
16 collectively and finally, individuals three
17 minutes.

18 These time constraints do not
19 include cross examination and/or questions
20 from the Board. Cross examination of
21 witnesses is permitted by the applicant or
22 parties.

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1 The ANC within which the property
2 is located is automatically a party in a
3 special exception or variance case.

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

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

11 The Board and the staff will specify at the
12 end of the hearing exactly what is expected
13 and the date when the persons must submit the
14 evidence to the Office of Zoning.

15 After the record is closed, no
16 other information will be accepted by the
17 Board.

18 The Sunshine Act requires that the
19 public hearing on each case be held in the
20 open before the public. The Board may
21 consistent with its rules of procedure and the
22 Sunshine Act enter executive session during or

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1 after the public hearing on a case for
2 purposes of reviewing the record of
3 deliberating on the case.

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

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

13 The Board will make every effort to
14 conclude the public hearing as near as
15 possible to 6:00 p.m. If the afternoon cases
16 are not completed at 6:00 p.m., the Board will
17 assess whether it can complete the pending
18 cases remaining on the agenda.

19 At this time, the Board will
20 consider any preliminary matters. Preliminary
21 matters are those which relate to whether a
22 case will or should be heard today such as

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1 requests for postponement, continuance or
2 withdrawal or whether proper and adequate
3 notice of the hearing has been provided.

4 If you are not prepared to go
5 forward with a case today or if you believe
6 that the Board should not proceed, now is the
7 time to raise such a matter.

8 Does the staff have any preliminary
9 matters?

10 MS. BAILEY: Mr. Chairman, good
11 afternoon to everyone. Good afternoon as
12 well. There is a preliminary
13 matter. It has to do with the Southeast
14 Children's Fund, Application 17923. There is
15 a request for postponement of this case, Mr.
16 Chairman.

17 CHAIRPERSON LOUD: Thank you, Ms.
18 Bailey. Why don't we do this then? Well, let
19 me suggest this. Why don't we swear in I
20 guess all of the witnesses and then let's call
21 out of order. Let's call Southeast first and
22 dispose of the continuance request and then we

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1 can call the Two Rivers case.

2 MS. BAILEY: All persons wishing to
3 testify, please stand to take the oath and
4 please raise your right hand.

5 Do you solemnly swear or affirm
6 that the testimony that you'll be giving this
7 afternoon will be the truth, the whole truth
8 and nothing but the truth? Thank you.

9 CHAIRPERSON LOUD: Thank you and
10 did you want to call the Southeast Children's
11 Fund?

12 MS. BAILEY: Sure, Mr. Chairman.

13 CHAIRPERSON LOUD: Thank you.

14 MS. BAILEY: It's Application
15 Number 17923, Southeast Children's Fund
16 pursuant to 11 DCMR Section 3104.1 for a
17 special exception to establish a community
18 service center under Section 334 at premises
19 4230 6th Street, S.E., Square 6208, Lot 58.
20 The property is zoned R-3 and as I indicated,
21 Mr. Chairman, the Applicant is requesting a
22 postponement until early July.

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1 CHAIRPERSON LOUD: Thank you, Ms.
2 Bailey. Good afternoon. Good to see you
3 again and if you could state your name for the
4 record and I think you can just go straight
5 into what you shared with us this morning and
6 put it back on the record.

7 MR. CLARE: Sure. My name is Peter
8 Clare. I'm attorney for the Southeast
9 Children's Fund and we are requesting a
10 postponement on the hearing until July 21st if
11 at all possible.

12 We initially proceeded with a
13 special exception application based on
14 thinking that the property was zoned R-5-A
15 when we made the application in July -- on
16 January 8th. On May 7th, we found out it had
17 been rezoned as of November of last year from
18 R-5-A to R-3 and we can no longer proceed with
19 a special exception, but it must go for a use
20 variance.

21 So, we would like a postponement
22 until July to amend their application which we

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1 should be able to get in within the next week
2 to reflect the use variance.

3 CHAIRPERSON LOUD: Thank you. I
4 think we did continue something this morning
5 to July 21st. So, I'm not sure what the
6 schedule is, but certainly, I think your
7 request is reasonable and we want to
8 accommodate it.

9 Do you have a sense of how many
10 witnesses you're going to have?

11 MR. CLARE: No more than two.

12 CHAIRPERSON LOUD: I don't see an
13 ANC report in here yet. Have you been in
14 consultation with the ANC?

15 MR. CLARE: Have been in
16 consultation with the ANC. We got bumped from
17 last month's agenda because the Mayor showed
18 up.

19 CHAIRPERSON LOUD: Okay. And I see
20 where the Office of Planning, our Exhibit 23,
21 is also in support of postponement. So, let
22 me see if Board Members have any questions

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1 about this and if not, we can go to get a date
2 working with Ms. Bailey.

3 Hearing none, Ms. Bailey, I think
4 the request is for July 21. I thought we had
5 some opportunity that afternoon. I'm not
6 certain.

7 MS. BAILEY: We did put on a case
8 for this date in the afternoon, Mr. Chairman,
9 and there is one other case. So, this could
10 be the third case if that's the pleasure of
11 the Board.

12 CHAIRPERSON LOUD: Yes, just sort
13 of checking for me, I think that it would work
14 for us. I don't think it's going to be a case
15 that's going to be particularly drawn out.
16 So, I think we could get it into that five-
17 hour time block.

18 MS. BAILEY: The only thing, Mr.
19 Chairman, is we would advise the Applicant to
20 get their revised application or I should say
21 revised announcement in to us as soon as
22 possible so we can re-advertise because based

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1 on what the Applicant indicated, there's a
2 possibility that the application would change
3 -- the relief would change substantially from
4 the way it's advertised at this moment.

5 CHAIRPERSON LOUD: Thank you, Ms.
6 Bailey. I think that you had mentioned that
7 in connection with another case this morning
8 as well as it's good advice to adhered to.

9 I think you will be working with
10 the Office of Planning and the Office of
11 Zoning as you reformulate your relief request.

12 So, it is important to make sure that you
13 stick to those dates because you probably will
14 have to re-advertise.

15 Okay. So, July 21 in the afternoon
16 and we look forward to seeing your then.

17 Is there anything else, Ms. Bailey,
18 on this case?

19 MS. BAILEY: Not for this case, Mr.
20 Chairman.

21 CHAIRPERSON LOUD: Okay. Thank you
22 and thanks for your patience.

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1 Judging from the number of people
2 staring at us, I take it that there's another
3 case to be called this afternoon.

4 MS. BAILEY: Mr. Chairman, it's
5 application of the Two Rivers Public Charter
6 School. Are you ready for that now, sir?

7 CHAIRPERSON LOUD: Yes, ma'am.

8 MS. BAILEY: Application 17929.
9 It's pursuant to 11 DCMR Section 3103.2 and
10 3104.1 for a variance from the single roof
11 structure requirements under Subsection 411.3
12 and a variance from the off-street parking
13 requirements under Subsection 2101.1 or
14 alternatively, a special exception to allow
15 accessory parking to be located on a separate
16 lot under Subsection 2116.5 to accommodate new
17 construction for the expansion of an existing
18 charter school at premises 1234 4th Street,
19 N.E., Square 772, Lot 16. The property is
20 zoned C-M-1.

21 And, Mr. Chairman, if you could
22 just indulge me for a moment.

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1 Do we have a letter of
2 authorization for you or is the Applicant here
3 on this case?

4 MS. PRINCE: The Applicant is here.

5 MS. BAILEY: Okay. Great. Thank
6 you very much. Thanks, Mr. Chairman.

7 CHAIRPERSON LOUD: Thank you, Ms.
8 Bailey, and we've been joined at the table by
9 the Applicant and her team and so, why don't
10 we begin with you and you can introduce
11 yourselves for the record and please state
12 your address. I'm sorry.

13 MS. PRINCE: Good afternoon. I'm
14 Allison Prince with Pillsbury.

15 With me here today is Jessica
16 Wodatch of Two Rivers Charter School to my
17 left. Bonnie Johnson Holod of Boggs &
18 Partners Architecture to my right and Erwin
19 Andres of Grove/Slade.

20 In this case, Two Rivers is
21 requesting a variance from the off-street
22 parking requirements Section 2101.1 of the

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1 Zoning Regulations. As a less preferred
2 alternative and if the Board finds it
3 necessary, the school is seeking a special
4 exemption under Section 2116.5 to locate
5 accessory parking spaces on a separate lot.

6 The school is no longer seeking a
7 variance from the single roof structure
8 requirement.

9 Two Rivers is an extremely
10 successful and well regarded charter school
11 located in the Near Northeast neighborhood of
12 Ward 6. The school has experienced tremendous
13 growth since it opened at its present location
14 in 2007 right across the street from the
15 subject site.

16 In order to accommodate this
17 growth, the school is constructing the new
18 building that is proposed for 4th Street.
19 Construction is well underway. The use is
20 permitted as a matter of right and, in fact,
21 the building can be opened up once it's
22 completed without any relief from this Board.

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1 We're seeking relief to accommodate
2 the additional faculty and staff that are
3 anticipated once the building reaches full
4 capacity.

5 When the building does reach
6 capacity, it will be slightly short of the
7 parking requirement which is a two for three
8 requirement based on faculty and staff.

9 The requested variance is very
10 straightforward. As discussed in the
11 prehearing statement and as the testimony will
12 demonstrate today, the application meets the
13 requirements for an area variance. The site
14 of the building is unique and the school will
15 face a practical difficulty if it must provide
16 all of the required parking on the site.

17 In addition, as demonstrated from
18 the ANC's support and the general area-wide
19 support for the application, it can be granted
20 without affecting parking in the neighborhood
21 and without any violation of intent of the
22 Zone Plan.

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1 If the Board finds it necessary,
2 instead of the variance relief, the
3 application could also proceed as a special
4 exception. The school has informal
5 relationships with more than one nearby
6 property owner that has allowed some overflow
7 parking onto neighboring uses. The school
8 would greatly prefer not being constrained by
9 a lease-hold arrangement with any of these
10 schools. It's a series of friendly
11 relationships and, in fact, the school really
12 doesn't have a significant overflow parking
13 situation now and doesn't anticipate having
14 one because of the very significant number of
15 faculty members that walk or take the Metro to
16 the campus.

17 Two Rivers has been a great
18 neighbor. That came across very well at the
19 ANC meeting and this is an ANC that's not
20 easily satisfied. We had the unanimous
21 support of both the Planning and Zoning
22 Committee and the full ANC last week. There

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1 should be a letter in the record today. I
2 don't know if it's quite made it to you. I
3 know they need a waiver.

4 But, if the Board has no questions,
5 I'd like to proceed with Ms. Wodatch's
6 testimony. She is the Executive Director and
7 really the founder of Two Rivers.

8 CHAIRPERSON LOUD: Thank you. I
9 have a couple of very quick questions and
10 Board Members may as well.

11 You started out by saying that your
12 requested relief now is the variance from
13 2101.

14 MS. PRINCE: Yes.

15 CHAIRPERSON LOUD: Or alternatively
16 the special exception from 2116.5. The
17 pleading suggested or contained a variance
18 request from the rooftop structures.

19 MS. PRINCE: Right.

20 CHAIRPERSON LOUD: Have you amended
21 that prior to --

22 MS. PRINCE: We've amended that we

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1 no longer need that relief.

2 CHAIRPERSON LOUD: Was that part of
3 the pleadings or is that being amended as we
4 speak?

5 MS. PRINCE: That was in the
6 pleadings.

7 CHAIRPERSON LOUD: Okay.

8 MS. PRINCE: It was in the
9 pleadings.

10 CHAIRPERSON LOUD: Okay. And so,
11 you're not under the conviction that you need
12 any kind of relief, special exception --

13 MS. PRINCE: No construction
14 relief.

15 CHAIRPERSON LOUD: -- or variance
16 for --

17 MS. PRINCE: Roof structure, no.

18 CHAIRPERSON LOUD: Okay. And just
19 can you articulate a little bit why you don't
20 believe you need at least special exception
21 relief for the roof structure?

22 MS. PRINCE: For the roof

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1 structure?

2 CHAIRPERSON LOUD: Yes.

3 MS. PRINCE: I believe our roof
4 structure -- the architect can address this in
5 greater detail, but I believe our roof
6 structure issue was the need to connect the
7 two portions of the roof structure with a
8 trellis so as to constitute one roof structure
9 because only one roof structure is permitted
10 per building.

11 We weren't going to do the trellis
12 connection. We now are and that obviated the
13 need for the relief.

14 CHAIRPERSON LOUD: Okay. Thank
15 you. So, the interior space that was going to
16 be set aside for the young people will be --
17 you're not seeking -- I mean your plans have
18 changed such that you don't need that space.
19 Okay.

20 MS. PRINCE: We don't need that
21 relief.

22 CHAIRPERSON LOUD: Okay.

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1 Understood and Board Members may have some
2 questions on that, but let me back up to my
3 second question. Now, the whole
4 business about the variance versus the special
5 exception for the parking, if you get the
6 variance, you don't have the parking
7 requirement at all. Correct?

8 MS. PRINCE: Only we'll provide
9 simply the three spaces that are shown on the
10 plans.

11 CHAIRPERSON LOUD: Okay.

12 MS. PRINCE: Rather than the total
13 of ten that would be required when the
14 building reaches capacity.

15 CHAIRPERSON LOUD: And the special
16 exception -- your preference is to get the --

17 MS. PRINCE: A flat-out variance.

18 CHAIRPERSON LOUD: -- variance.
19 The special exception, your issue is the term?
20 Terming it or what?

21 MS. PRINCE: No, in the event that
22 this Board were to offer us only special

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1 exception relief rather than a variance, we
2 would need to provide evidence to the Zoning
3 Administrator that we have an arrangement, a
4 permanent-type arrangement with a nearby
5 property owner to accommodate the additional
6 parking spaces.

7 CHAIRPERSON LOUD: So, the concern
8 about the -- you've had a concern about
9 whether or not you might meet the variance
10 test and so as an alterative --

11 MS. PRINCE: No, we believe we do
12 meet the variance test, but frankly, when we
13 filed the application, it's not often that I
14 represent a school that has so little
15 neighborhood animosity and to be cautious, we
16 assumed that there might be some neighbor
17 concern. Just a visceral reaction to the idea
18 of a parking variance.

19 Well, that didn't pan out at all.
20 We had really an extremely positive reaction
21 from the neighborhood, but just to cover our
22 basis, we wanted to make sure to offer the

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1 Board an alternative.

2 CHAIRPERSON LOUD: Thank you for
3 the clarifications. One final question for
4 me. Then I'll see if Board Members have a
5 question.

6 Do you recall where in the
7 pleadings you rescinded the relief request
8 for --

9 MS. PRINCE: I believe we
10 referenced the lack of need in our prehearing
11 statement that was filed two weeks ago today.

12 CHAIRPERSON LOUD: Okay. Okay.
13 Thank you.

14 MS. PRINCE: In the prehearing
15 statement.

16 CHAIRPERSON LOUD: Okay. Thank
17 you. Mr. Dettman, do you have any questions?

18 VICE CHAIRPERSON DETTMAN: Just two
19 very quick ones. Good afternoon, Ms. Prince.

20 MS. PRINCE: Hello.

21 VICE CHAIRPERSON DETTMAN: So, the
22 plans haven't changed. It's just the fact

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1 that you're actually going to do the trellis
2 versus not doing the trellis?

3 MS. PRINCE: Exactly.

4 VICE CHAIRPERSON DETTMAN: And have
5 you been working with the ZA? Has he
6 acknowledged that the trellis actually makes
7 these one enclosure?

8 MS. PRINCE: Well, we have a
9 building permit to build the building as it
10 is.

11 VICE CHAIRPERSON DETTMAN: Okay.

12 MS. PRINCE: So, you know,
13 presumably he's ruled on that issue by virtue
14 of signing off.

15 VICE CHAIRPERSON DETTMAN: Okay.
16 My second question is to roof structure
17 setback. It looks as if it's sitting on the
18 exterior wall and I know in OP's report they
19 call it an exterior wall. I'm just wondering
20 is there additional relief that's necessary
21 here?

22 MS. PRINCE: I'm going to ask the

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1 architect to address the issue with roof
2 structure setback.

3 MS. HOLOD: I believe that all of
4 the roof structures are setback in compliance
5 with the code.

6 VICE CHAIRPERSON DETTMAN: Okay.

7 MS. HOLOD: Except at the south
8 wall which is the wall that is sharing with an
9 adjacent building.

10 VICE CHAIRPERSON DETTMAN: The
11 party wall.

12 MS. HOLOD: At which case, we
13 didn't believe that there needed to be an
14 applicable setback.

15 VICE CHAIRPERSON DETTMAN: Okay.
16 Yes, the southern one is on the party wall.
17 The northern one looked like -- actually, I
18 couldn't tell from the plans. What's the
19 height of the roof structure above the top
20 floor?

21 MS. HOLOD: Can I go grab my plans?
22 I'd rather give you an accurate answer.

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1 So, the penthouse is located --
2 it's 13 feet above the surface of the roof and
3 it's set back 13 feet from the north wall.

4 VICE CHAIRPERSON DETTMAN: Noted.
5 Okay. Do we have an up-to-date roof plan? I
6 don't have a roof plan in your latest -- your
7 prehearing.

8 MS. HOLOD: It's on the elevation
9 drawing A200.

10 VICE CHAIRPERSON DETTMAN: I see an
11 elevation. I don't see a roof plan showing
12 the setback.

13 MS. HOLOD: Right. It's indicated
14 in elevation. It was not I believe indicated
15 in plan. So, in detail two, the east
16 elevation.

17 VICE CHAIRPERSON DETTMAN: Um-hum.
18 Oh, I see it. Thank you.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 Dettman. Commissioner Keating, did you have
21 any questions?

22 COMMISSIONER KEATING: No

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1 questions.

2 CHAIRPERSON LOUD: Okay. So, I
3 think we're set for launch now. You were
4 going to go into your case.

5 MS. PRINCE: Right.

6 CHAIRPERSON LOUD: We just had a
7 couple of questions up front particularly
8 since it appeared to us that the nature of the
9 relief had changed a little bit.

10 MS. PRINCE: Great.

11 CHAIRPERSON LOUD: All right.

12 MS. WODATCH: Good afternoon.
13 Thanks for having us today. My name is
14 Jessica Wodatch. I'm the Executive Director
15 at Two Rivers. I'm one of the founders. I'm
16 also a parent of two students at Two Rivers.
17 I'm a lifetime resident of Ward 6. I live
18 there now and I grew up there as well.

19 Two Rivers opened in 2004. We were
20 over at Elliott Junior High at that time. We
21 moved to our current building in 2007 and we
22 are seeking to open another building across

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1 the street.

2 We have a fairly successful school.

3 One way that people define whether or not
4 you're successful is by your enrollment. We
5 had 1,000 people apply to Two Rivers this
6 year. We are now over 1,000 people on our
7 waiting list. We have 367 students enrolled.

8 So, there's tremendous demand for this
9 school. That's one of the reasons that we've
10 chosen to open an additional building so that
11 we could accommodate as many students as
12 possible.

13 The plan is to open our middle
14 school building in the fall and then to expand
15 into middle school. When we originally
16 opened, it was just an elementary school.

17 One of the things about Two Rivers
18 is that we do have a commitment to the
19 environment and we have a commitment to
20 walking and biking to work.

21 We were very happy this year to be
22 selected to be one of the safe routes to

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1 schools pilot schools. That's a program from
2 DDOT run by Jenny Hefren and as part of that
3 program, we've been working with a team that
4 includes some neighborhood folks, people from
5 the No Mo Bid as well as some other community
6 members and parents and staff at the school to
7 come up with ways we could enhance walking and
8 biking to school in the neighborhood.

9 We've been working with them on
10 some engineering recommendations that actually
11 affect the actual streets around us, but we've
12 also been doing a fair amount of education.
13 So, we've had some education around biking
14 safety. We just celebrated bike to work day
15 and overall, we do encourage our staff to
16 bike, walk and take public transportation to
17 work.

18 Currently, about 52 percent of our
19 staff does bike, walk or take public
20 transportation to work. Of the remaining
21 folks who use vehicles to get to work, 22
22 percent of them are Ward 6 residents and some

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1 of the remaining folks who drive to work do
2 not park in the neighborhood. They're dropped
3 off by spouses.

4 Also, I just wanted to mention that
5 as Allison said we have a real commitment to
6 being a good neighbor. We were founded by a
7 group of Capitol Hill parents and so, we're
8 from the neighborhood and we want to be a good
9 neighbor.

10 When we first moved into this
11 building, we walked around door-to-door. We
12 knocked on everybody's door. We gave them
13 fliers, invited them to come to an open house.

14 We continue to give fliers twice a year to
15 everyone in the neighborhood so they have our
16 up-to-date contact information.

17 I'm on the LISTSERVs for the ANC
18 and the Near Northeast Neighborhood
19 Association and so, I get messages and we have
20 messages that we want to share, we send them
21 out through those LISTSERVs as well. For
22 example, we have an upcoming event where we

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1 celebrate our students learning for the year
2 and so, we invite neighbors to join us for
3 those as well.

4 But, we have really worked hard to
5 be a good neighbor to folks and to hear any
6 concerns that come up and address them and to
7 make sure that we're doing what we need to do
8 and we also ask others to do things for us as
9 well.

10 We were excited at both the ANC-6C
11 Planning, Zoning and Environment Committee and
12 the full ANC-6C meeting that we received
13 unanimous support and that at both those
14 meetings they talked about Two Rivers as a
15 good neighbor.

16 So, we are seeking your support for
17 the variance for the off-parking requirements
18 and happy to answer any questions.

19 CHAIRPERSON LOUD: Thank you, Ms.
20 Wodatch. Board Members, are there any
21 questions for Ms. Wodatch? Okay. Am I
22 pronouncing that correctly?

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1 MS. WODATCH: It's Wodatch. Thank
2 you for asking.

3 CHAIRPERSON LOUD: Wodatch. Thank
4 you. Thank you very much.

5 Ms. Prince, I think we can move on
6 to your next witness?

7 MS. PRINCE: Great. Next I have
8 our architect Bonnie Johnson Holod of Boggs &
9 Partners. She has not been accepted as an
10 expert by this Board. Yet, she has ten years
11 of experience in architecture. She's a
12 registered architect and she has a whole lot
13 of school experience. So, I have her résumé
14 with me and if you could accept her as an
15 expert, I would appreciate it.

16 CHAIRPERSON LOUD: Thank you, Ms.
17 Prince. Board Members, have you had an
18 opportunity to review -- are you just now
19 submitting that?

20 MS. PRINCE: Just now submitting.

21 CHAIRPERSON LOUD: Okay. All
22 right. So, give Board Members just a moment

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1 to take a look at it and then if there are any
2 questions that may come up, we'll ask you.

3 I think I've had a chance to review
4 it. I don't know if Board Members have had a
5 chance as well.

6 Are there any questions? Okay. I
7 think you meet the criteria for an expert
8 witness and hearing no objection, will be
9 admitted as such.

10 MS. HOLOD: Thank you. I am also a
11 resident of Ward 6 and was thrilled when I was
12 approached by Two Rivers to have an
13 opportunity to work with them and help convert
14 a building that was an abandoned site
15 effectively in an industrial area into
16 something that was prosperous and would add
17 life to a part of the community.

18 As I mentioned, the site is an
19 industrial area along Florida Avenue and 4th
20 Street. It is directly across from the Two
21 Rivers Elementary School.

22 The site itself is long and narrow

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1 with 60 foot of frontage along 4th Street and
2 150 feet deep along the 15-foot-wide alley to
3 the north. This is a very difficult site to
4 work within as you can imagine being long and
5 skinny as it is to try to accommodate a
6 school.

7 There is a 30-foot-wide alley at
8 the rear of the building and an adjacent
9 structure to the south of the building as
10 indicated in the plans.

11 The program was for a middle school
12 to accommodate grade 6 through 8 consisting of
13 seven classrooms, a large multipurpose room,
14 an arts studio and offices as well.

15 The school also expressed a desire
16 for an outdoor play area which would be
17 accommodated on a roof plaza potentially if
18 there was no area left available on the site
19 surface.

20 A portion of the program is also
21 for shared use with their existing elementary
22 school across the street. The multipurpose

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1 room and the play area that are provided at
2 their existing school, as they've grown,
3 they've outgrown those spaces and were looking
4 for some overflow shared space.

5 In order to accommodate this
6 program, we built the site out to its maximum
7 allowable envelope considering the height
8 restriction in the zone of 40 feet.

9 We were required to develop a
10 highly efficient interior plan in order to
11 accommodate those program and also provide for
12 safe egress.

13 The multipurpose room was decreased
14 in area to provide three parking spaces along
15 the alley which is clear, I think, in the
16 plans that we did try to accommodate some of
17 the parking.

18 We went through a number of early
19 studies to try and see if we could accommodate
20 the balance of the parking on the site. We
21 explored an option to review underground
22 parking. The site does have poor soils which

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1 required the use of ego-piers which was
2 already an added expense for the school to
3 even build this structure, but adding
4 underground parking proved to be entirely too
5 closely and the layout was incredibly
6 inefficient due to the size proportions being
7 such a long and skinny site. Ingress and
8 egress from an underground parking structure
9 would really be quite difficult.

10 We also considered elevating the
11 building on columns with the surface parking
12 and play area below those columns, but this
13 solution proved to be too costly as well and
14 yielded unsafe and undesirable play areas that
15 would be in shadow primarily most of the day
16 and we also felt it might be a danger for the
17 neighborhood at night because it would create
18 dark places where bad things could happen and
19 it really wouldn't provide a play area that
20 provided access to fresh air and views as one
21 would imagine would make up a positive play
22 area for children.

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1 Lastly, we explored surface parking
2 in front of the building directly off of 4th
3 Street where we would have to apply for
4 parking in public space. We determined that
5 this would require maneuvering within six to
6 eight feet of the entrance of the building
7 across from the side rock which we determined
8 would not be attractive for the neighborhood
9 or safe for the neighborhood especially with
10 4th Street being a one-way southbound street.

11 We determined that if we tried to
12 add an additional seven spaces and drive
13 aisles we would effectively have to delete the
14 multipurpose room at the back of the school in
15 the current plan configuration.

16 So, I can show you if you see the
17 plan that we've got here. Effectively, we've
18 got three spaces along the alley and in order
19 for us to accommodate an additional seven
20 spaces and drive aisles, we would effectively
21 have lost the bulk of the multipurpose room
22 which was one of the driving purposes of

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1 building the school.

2 An alternative plan that we
3 considered was parking along the alley in this
4 direction or somehow off of here, but that
5 would have impacted the egress from the school
6 through the fire stair as well as obliterating
7 two classrooms from the required program.

8 In this rendering, you can see what
9 the program would have looked like and what
10 the streetscape would have looked like having
11 cars parked in front had we applied for public
12 space parking which we just didn't feel added
13 to the streetscape of the environment.

14 If there's any questions, I'm happy
15 to address those now.

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

18 MS. HOLOD: Holod.

19 CHAIRPERSON LOUD: Holod. Thank
20 you. Board Members, are there any questions?

21 COMMISSIONER KEATING: I just had
22 one question. In your consideration of the

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1 design, I appreciate kind of the walk through
2 you gave us in terms of the logic, but I was
3 curious if any consideration was given to just
4 elevating the multipurpose room on piers and
5 using that area underneath there for the
6 parking and thereby also elevating that rear
7 end part of the building in order to have kind
8 of continuous use of that roof perhaps. I
9 haven't done the measurements, but I think it
10 might work out.

11 Just had a question of whether that
12 was given some consideration or thought.

13 MS. HOLOD: We did study that as
14 well. It would have required for there to be
15 a ramp or elevator access to get to the
16 multipurpose room from the balance of the
17 interior of the school and it would have
18 required separate egress in the form of stairs
19 from the multipurpose room rather than direct
20 grade egress from the multipurpose room which
21 would have decreased the size of the
22 multipurpose room. Additionally, an added

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1 cost for us to elevate the multipurpose room
2 structure off of grade.

3 So, we did look at that as an
4 option and felt it just didn't -- it didn't
5 work. The sacrifices for the area that would
6 have been required for the additional egress
7 and re-configuring the footprint to gain
8 access from the interior took away too much
9 square footage.

10 CHAIRPERSON LOUD: Thank you, Mr.
11 Keating. Mr. Dettman, did you have any
12 questions? Okay.

13 I think for me this is the first
14 case I think that I've been on where part of
15 the uniqueness has been the quality of the
16 soil I believe. So, if you could just, not,
17 you know, really elaborate, but just very
18 briefly just describe what it is about the
19 soil that makes it substandard and so on.

20 MS. HOLOD: The soil is -- it's a
21 fill soil. It's not natural soils and
22 therefore, it doesn't have standard bearing

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1 capacity and we believe that part of that is
2 because this area grew up as an industrial
3 area and this was used as a dumping ground
4 effectively. In order for -- we would have
5 had to excavate basically the entire site and
6 add back new soils in order to build there
7 which is why we had to use such an exotic if
8 you will foundation structure anyway using
9 ego-piers.

10 CHAIRPERSON LOUD: Thank you. That
11 was very helpful. If there are no further
12 questions for Ms. Holod, then we'll move --
13 did I say that correctly, Ms. Holod -- Holod?

14 MS. HOLOD: Very good. Thank you.

15 CHAIRPERSON LOUD: We can move to
16 your next witness.

17 MS. PRINCE: Our final witness is
18 Erwin Andres of Grove/Slade. He's been
19 accepted as an expert by this Board numerous
20 times and the Commission as well.

21 CHAIRPERSON LOUD: Thank you and
22 just to make it formal, is being accepted here

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1 as an expert witness as well unless Board
2 Members have some questions or concerns about
3 that. Okay.

4 MR. ANDRES: Thank you. Good
5 afternoon, Chairman Loud, Members of the
6 Board.

7 My name is Erwin Andres. I'm a
8 principal with Grove/Slade Associates. I
9 reside at 475 K Street, N.W.

10 With respect to the overall plan
11 associated with this development, we looked at
12 existing conditions and proposed conditions
13 and the justification for the support of the
14 parking variance. With respect to the
15 existing conditions, actually a lot of the
16 characteristics of the school have been
17 identified by some of the previous witnesses.

18 It's important that -- I want to
19 emphasize that this location, both the
20 existing school as well as the proposed
21 building across the street from it is well
22 served by transit. If you can reference our

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1 submittal dated May 5th, 2009 on page 4, what
2 we've identified are the existing Metro bus
3 routes and there are four of them on Florida
4 Avenue that run east/west and the fairly new,
5 relatively new, Metro rail station at the New
6 York Avenue/Gallaudet Metro rail station that
7 is approximately three blocks, three city
8 blocks, which is roughly 900 feet.

9 Given those walking distances and
10 given the availability of existing transit and
11 the experience that the school has identified
12 with their own staff, it's been our conclusion
13 that the number of spaces that are provided
14 which are three are sufficient enough to meet
15 the practical demand of the new school
16 building.

17 Some of the other items I wanted to
18 bring up briefly was that the users in the
19 area. There's the Florida Avenue Market just
20 north of the site. There's Gallaudet
21 University to the south and to the east of the
22 site are primarily where all the residences

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1 are.

2 Those residences are protected by
3 RPP with two-hour parking for visitors. So,
4 what we've identified and feel that even with
5 the RPP there is sufficient off-street
6 parking, excuse me, on-street parking on the
7 roads surrounding the site that don't impact
8 the neighbors and that's evident with the
9 coordination with the ANC because they've
10 supported the fact that parking isn't an issue
11 associated with the new building.

12 Given that, given the high transit
13 utilization, our conclusions are that they
14 three spaces are sufficient to serve the use -
15 - the parking demand for the building.

16 CHAIRPERSON LOUD: Thank you, Mr.
17 Andres. Board Members, are there any
18 questions?

19 Okay. Then does that wrap up your
20 case?

21 MS. PRINCE: That completes our
22 presentation.

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1 CHAIRPERSON LOUD: Okay. Thank
2 you. I think what we'll do now is move to the
3 Office of Planning for your report. Good
4 afternoon.

5 MS. BROWN-ROBERTS: Good afternoon,
6 Mr. Chairman and Members of the Board.

7 I'm Maxine Brown-Roberts from the
8 Office of Planning.

9 Our analysis is set out in the
10 report that was submitted and so, I would let
11 that stand on the record.

12 However, just a few things that
13 I'll highlight that was mentioned in the
14 report.

15 The Applicant has submitted
16 application for the parking variance or in the
17 alternative for a special exception. The
18 Office of Planning in our report analyzed both
19 requests and recommended that the parking
20 variance be granted.

21 I think one of the strong points
22 that the Applicant also mentioned today was

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1 that under the special exemption we would want
2 to see a lease, a signed lease, that would run
3 with the special exception and, therefore, we
4 didn't think that as stated in the analysis of
5 the variance that there was any impact from
6 granting the variance from the seven parking
7 spaces.

8 Regarding the variance, we think
9 that this is a proposed public nonprofit use
10 that requires specific facilities and in
11 addition to the poor quality of the soil.
12 Based on these exceptional situation, we think
13 that again the school has specific program
14 needs and providing all the parking spaces on
15 site would diminish the value of program
16 space.

17 By reason -- but, we think that it
18 would not be a detriment to the community in
19 that there are -- as stated by the Applicant,
20 a number of the faculty either walk, bicycle
21 or use public transit and that this area is
22 mostly industrial use and there are available

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1 on-street parking spaces.

2 The granting of the variance would
3 not impair the intent of the Zone Plan as the
4 reduction in the required parking spaces would
5 be offset by the provision of off-site spaces
6 as well as alternative transportation use by
7 staff and, therefore, the Office of Planning
8 recommends approval of the variance request.

9 Thank you, Mr. Chairman.

10 CHAIRPERSON LOUD: Thank you. Let
11 me first see if Board Members have any
12 questions for you. It was obviously a very
13 thorough report and answered I think --
14 anticipated any questions that we may have had
15 and addressed those.

16 Ms. Prince, have you had an
17 opportunity to review the report?

18 MS. PRINCE: I have and I have no
19 questions.

20 CHAIRPERSON LOUD: Okay. Very
21 good. Then what we will do now is move
22 through the order of proceedings for the case.

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1 The next part of the case would be the report
2 of the Advisory Neighborhood Commission and
3 indeed, we do have a report of the ANC. It's
4 ANC-6C and it's our Exhibit Number 26.
5 Normally, I think we would, and this was just
6 an oversight on my part, have as a preliminary
7 matter waived the report in because I don't
8 think it came in a timely fashion and we are
9 authorized under our rules, I believe it's
10 3100.5, to waive it in.

11 Do Board Members have a copy of
12 this exhibit? It's Number 26. It's of the
13 ANC and essentially did not meet the time
14 limit's requirements of our rule, but it
15 doesn't appear to prejudice the case at all or
16 any of the parties in the case and I would be
17 strongly in favor of us waiving the rule and
18 allowing it in.

19 Not hearing any objection, okay,
20 not hearing any objection, we'll do that.

21 This is a report that's dated May
22 14th, Exhibit Number 26 and it indicates that

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1 there was a public meeting with proper notice
2 and a quorum and that the commissioners voted
3 on May 13. I'm just trying to find the -- I
4 think it was a unanimous vote to support the
5 application. So, it did receive the -- yes,
6 it was unanimously voted to support the
7 application. So, although they are not here,
8 their report is entitled to great weight.

9 Next in the order would be the
10 parties or persons in support and looking out
11 into the audience and seeing none, we'll move
12 on.

13 Then parties or persons in
14 opposition. Same thing. Looking out and
15 seeing none.

16 Now, we move to any closing remarks
17 by the Applicant.

18 MS. PRINCE: Just briefly in
19 closing, we appreciate your time today. We'd
20 greatly appreciate your action as soon as
21 possible. We believe we've met the variance
22 burden of proof and we ask that you approve a

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1 variance from the parking requirements for the
2 site. Thank you.

3 CHAIRPERSON LOUD: Thank you, Mr.
4 Prince and this would be probably the last
5 time we decide whether we're going to
6 deliberate today or not. See if Board Members
7 have any questions for you upon reflection of
8 the whole matter.

9 So, we have a couple of choice now.

10 We can deliberate and decide your case today
11 or we can see if there's any additional
12 information we need and schedule it for a
13 later date.

14 Let me just check with Board Member
15 colleagues and see the sense of either
16 deliberating today or scheduling it for a
17 point in the future.

18 Don't be shy. You can come right
19 up to the microphone and, you know, I kind of
20 feel like particular since the rooftop
21 structure variance was taken off the table
22 that I don't think there's any additional

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1 information that I'd be looking to get. So,
2 I'd be in favor of deliberation today if you
3 guys want to move forward.

4 COMMISSIONER KEATING: Yes, I'd be
5 in favor of that as well. I can't see
6 anything else that I need here in terms of
7 additional information.

8 CHAIRPERSON LOUD: Okay. All
9 right. So, why don't we deliberate today and
10 Mr. Dettman, if your prepared to start us off,
11 that would be fine. If not, I can do it.

12 VICE CHAIRPERSON DETTMAN: I'd be
13 happy to, Mr. Chairman and I think we can do
14 this fairly quickly.

15 The relief that's being requested
16 is very straightforward here and what we're
17 looking at is simply an area variance from the
18 required parking regulations under 2101.1.
19 Given the anticipated staffing, the future
20 staffing of the school which I believe is 15
21 staff members, it triggers a parking
22 requirement of ten parking spaces and what's

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1 being proposed is three along the northern
2 side of the building along the alley. So,
3 that being said, there's a variance being
4 requested from seven of the ten parking
5 spaces.

6 And we can quickly get into the
7 three-prong test of the variance. With
8 respect to the first prong, the existence of
9 an exceptional situation or a unique
10 condition, the pleadings, Exhibit Number 24,
11 as well as the testimony from the Applicant
12 stated that the site is long and narrow, that
13 there are poor soils present on the site and
14 the Applicant also did a good job of taking us
15 through the program that needed to be met.

16 With respect to the poor soils and
17 looking at Exhibit 10, page 7 and it states
18 that in looking at the building foundation and
19 analyzing the soils on site, the
20 representative that prepared this study states
21 that we do not recommend supporting the
22 building directly on the existing fill soils

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1 with shallow spread foundations and so, I
2 think it's noted in the report, clear in the
3 report that there is something there with
4 respect to the stability of the soil and
5 actually excavating and putting something
6 underground.

7 Moving on to the second prong of
8 the variance test and whether or not the
9 exceptional situations on the property give
10 rise to a practical difficulty upon the
11 property owner, there were a few practical
12 difficulties here. The Applicant took us
13 through the different iterations that they
14 looked at in terms of being able to provide
15 the necessary amount of parking. They had
16 mentioned that providing an underground
17 structure would be prohibitively costly and
18 may or may not be possible given the
19 conditions of the soil.

20 Provision of parking on the surface
21 at the rear of the property would have
22 required the removal of the multipurpose room.

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1 Parking along the alley would take
2 out necessary space and given the depth of the
3 property which, I believe, is somewhere around
4 140-some feet, I'm not even sure that they'd
5 be able to provide the necessary ten parking
6 spaces along the length of the property that
7 would meet the required 9 by 19 dimensions.

8 They considered provision of
9 parking spaces to the front of the property
10 and public space which I guess they still
11 could do, but with respect to meeting the
12 zoning requirements, those would not go
13 towards meeting the requirement and it does
14 trigger some public space and pedestrian
15 environment issues as well.

16 They also considered raising the
17 multipurpose room, but found that that would
18 be prohibitively costly and it would also
19 decrease the necessary square footage of the
20 multipurpose room due to the egress
21 requirements.

22 So, I think there's a practical

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1 difficulty there in terms of cost, in terms of
2 safety and in terms of meeting the school's
3 programmatic criteria.

4 Moving on to the third prong of the
5 variance test as to whether the relief can be
6 granted without causing any detriment to the
7 Zone Plan and impacts to the public good, the
8 Applicant's transportation engineer mentioned
9 that the site is well served by transit being
10 only a few blocks, I believe, east of the New
11 York Avenue Metro station.

12 With respect to impacts on the
13 residential neighborhood, there's not too much
14 residential immediately adjacent to the site
15 and nonetheless, it's already protected by RPP
16 requirements.

17 The Applicant stated that there's a
18 high percentage of their staff that actually
19 use transit or ride their bike or walk to
20 work. There's a high percentage of the staff
21 that actually live in Ward 6 in close
22 proximity.

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1 And finally, there's also
2 availability of providing off-site parking
3 with the friendly relations that the Applicant
4 has with the surrounding neighborhoods and so,
5 if there's at all potential for spill-over
6 parking into the neighborhood, it could at
7 least be absorbed by the surrounding neighbors
8 and the available parking that they have.

9 And so, it seems pretty clear that
10 the variance test is met and that in my
11 opinion, the relief could be granted.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 Dettman. That was a very thorough
14 articulation of the evidence in the
15 presentation.

16 I don't see anything really to add
17 to it. I'll just throw out one thing about
18 the ANC report again. That they did submit
19 the report. It's entitled to great weight and
20 they focused on something you talked about.
21 They focused on the third prong, the public
22 detriment, and essentially add further support

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1 for there not being any substantial detriment
2 to the public good. Talking about the RPP
3 program that you mentioned as well as
4 something that Ms. Wodatch mentioned in her
5 statement regarding the environmentally-
6 friendly nature of the school and the safe --
7 I think it's called safe routes to school
8 program. So, that further buttresses the
9 record in terms of meeting the variance test
10 on the third prong.

11 So, if there's further
12 deliberation, this is the time to do it. If
13 not, perhaps there's a motion to be made.

14 COMMISSIONER KEATING: I don't have
15 anything else to add. I think the application
16 is complete. The summary was complete and
17 that we're looking at something that is very
18 exciting for this neighborhood. So, that's
19 all.

20 I'd move for us to vote on this at
21 this point.

22 CHAIRPERSON LOUD: Okay. Thank

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1 you, Mr. Keating. Perhaps we can move the
2 application itself.

3 VICE CHAIRPERSON DETTMAN: Mr.
4 Chairman, I would move for approval of
5 Application Number 17929 of Two Rivers Public
6 Charter School pursuant to 11 DCMR 3104.1 for
7 a variance from the off-street parking
8 requirements under Subsection 2101.1 to
9 accommodate new construction for the expansion
10 of an existing charter school at premises 1234
11 4th Street, N.E.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 Dettman. The motion is seconded. Any further
14 deliberation?

15 Hearing none, all those in favor of
16 the motion say aye.

17 (Ayes.)

18 CHAIRPERSON LOUD: All those
19 opposed? Are there any abstentions?

20 Ms. Bailey, ca you read back the
21 vote for us please?

22 MS. BAILEY: Mr. Chairman, the vote

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1 is recorded as 3-0-2 to grant the application.

2 Mr. Dettman made the motion. Mr. Loud
3 seconded. Mr. Keating supports the motion.
4 Two Mayoral Appointees not sitting on the
5 Board at this time.

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

8 To the Applicants, congratulations
9 and congratulations to your team. It was a
10 very thorough presentation and good luck.

11 MS. BAILEY: Mr. Chairman, we're
12 doing a summary order. Correct?

13 CHAIRPERSON LOUD: That is correct
14 because we have the full support of the ANC.

15 Thank you, Ms. Bailey.

16 I don't believe we have further on
17 the calendar today. I'm not sure, but --

18 MS. BAILEY: That's all that I
19 have, Mr. Chairman. I don't know if anyone
20 else has anything else, but that's all I have.

21 CHAIRPERSON LOUD: Okay. There's
22 nothing else on the calendar? All right.

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1 Well, then I want to take point of privilege
2 as chair and just since I know my kids watch
3 this on the webcast just say Marc,
4 congratulations on your art exhibit at
5 National Airport and Jordan, congratulations
6 on performing in the band last week at school.

7 And this meeting is adjourned.

8 (Whereupon, the meeting was
9 concluded at 2:19 p.m.)

10

11

12

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