

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 9, 2009

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 12:05 p.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE L. DETTMAN, Vice Chairman (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on June 9, 2009.

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

2 12:05 p.m.

3 BZA CHAIR LOUD: This hearing will
4 please come to order. Good morning or good
5 mid-morning, ladies and gentlemen. This is
6 the June 9 Public Hearing of the Board of
7 Zoning Adjustment of the District of Columbia.

8 My name is Marc Loud. I'm the
9 Chairperson. Joining me today are Vice Chair
10 Shane Dettman representing the National
11 Capital Planning Commission and Chairman
12 Anthony Hood from the Zoning Commission. To
13 my left is Ms. Beverley Bailey, Zoning
14 Specialist in the Office of Zoning and Ms.
15 Lori Monroe from the Office of Attorney
16 General and taking his seat is Mr. Clifford
17 Moy, Secretary to the BZA.

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

21 Please be advised that this
22 proceeding is being recorded by a court report

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1 and is also webcast live. Accordingly, we
2 must ask you to refrain from any disruptive
3 noises or actions 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 both
17 cards to the reporter sitting to my right.

18 The order of procedure for special
19 exceptions and variances is statement and
20 witnesses of the applicant; Government reports
21 including the Office of Planning, the
22 Department of Transportation, et cetera; the

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1 report of the Advisory Neighborhood
2 Commission; parties or persons in support;
3 parties or persons in opposition; and then
4 finally closing remarks by the applicant.

5 Since we do not have any appeals on
6 the agenda for this afternoon, I'm going to
7 skip that section of the introduction.

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

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

22 The ANC within which the property

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1 is located is automatically a party in a
2 special exception or variance case.

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

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

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

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

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

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1 purposes of reviewing the record or
2 deliberating on the case.

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

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

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

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

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1 Does the staff have any preliminary
2 matters?

3 MS. BAILEY: Mr. Chairman, Members
4 of the Board, to everyone, good afternoon.

5 BZA CHAIR LOUD: Good afternoon,
6 Ms. Bailey.

7 MS. BAILEY: Staff does not, Mr.
8 Chairman.

9 BZA CHAIR LOUD: Thank you. If
10 not, then let us proceed with the agenda.

11 Would all individuals wishing to
12 testify today please rise to take the oath?
13 Ms. Bailey will administer the oath to you.

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

16 Do you solemnly swear or affirm
17 that the testimony that you'll be giving this
18 afternoon will be the truth, the whole truth
19 and nothing but the truth? Thank you.

20 BZA CHAIR LOUD: Thank you, Ms.
21 Bailey. Thank you, witnesses.

22 I would like to ask a preliminary

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1 question before we get started. Six hands
2 went up. So, there will be six witnesses
3 giving testimony and I wanted to find out with
4 respect to the witnesses if they are witnesses
5 -- if all the witnesses who raised their hands
6 are witnesses for both cases, both of the
7 Craftsmen cases or for just one of the cases.

8 So, I think you can indicate by
9 hand. If you're going to be a witness for
10 both cases, just raise your hand.

11 Okay. So, everybody's a witness
12 for both cases.

13 MR. LEFANDE: If I may, Mr.
14 Chairman --

15 BZA CHAIR LOUD: Thank you. Well,
16 we've got to call the case first and then we
17 can proceed from there. We can take it from
18 there I think and what I'd like to do, Ms.
19 Bailey, is see if we can consolidate these
20 cases for hearing purposes, call both cases
21 and then as we go through the case, we will
22 make sure -- if I do anything wrong, just

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1 correct it for me to make sure that we're
2 establishing records independently for each
3 case in terms of the criteria that have to be
4 met and when witnesses are testifying in favor
5 and opposition. Making it clear that we have
6 a record for both cases, but I think it'll
7 save everyone time to just hear both cases.

8 MS. BAILEY: Sure, Mr. Chairman.

9 BZA CHAIR LOUD: Okay.

10 MS. BAILEY: The first one is
11 Application 17927. It's the application of
12 The Craftsmen Group, Inc. pursuant to 11 DCMR
13 Section 3103.2 for a variance from the use
14 provisions to allow the establishment of an
15 office, artisan studio, metal and glass
16 working shop for historic restoration projects
17 under Subsection 330.5. The property's zoned
18 R-4. It's located in the rear of 729 Fairmont
19 Street, N.W., Square 2885, Lot 59.

20 Same Applicant. Application Number
21 17928, the application of The Craftsmen Group,
22 Inc. pursuant to 11 DCMR Section 3103.2 for a

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1 variance from the use provisions to allow the
2 establishment of an office, artisan studio,
3 metal and glass working shop for historic
4 restoration projects under Section 330.5.
5 Again, the property's zoned R-4. It's located
6 at premises rear 775 Fairmont Street, N.W.,
7 Square 2885, Lot 862.

8 And I just wanted to bring to the
9 Board's attention that there was a document
10 that was passed out and it has to do with this
11 case. I believe all of the Board Members have
12 it in front of them. The Applicant should
13 have a copy of it. It was received from
14 DeWayne Calhoun and I believe that person is
15 here today and wants to testify on this case,
16 Mr. Chairman.

17 BZA CHAIR LOUD: Thank you, Ms.
18 Bailey. So, we can consider the document as a
19 supplemental to the testimony and just accept
20 it following the testimony.

21 MS. BAILEY: I would assume so, Mr.
22 Chairman.

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1 BZA CHAIR LOUD: Okay. All right.
2 Thank you. Then that's what we'll do and
3 now, we'll turn -- just tell me your name
4 again so I can --

5 MR. LEFANDE: Matthew LeFande.

6 BZA CHAIR LOUD: Okay, Mr. LeFande,
7 we'll turn to you now.

8 MR. LEFANDE: I'm going to speak to
9 that last matter.

10 BZA CHAIR LOUD: Okay.

11 MR. LEFANDE: I do not believe Mr.
12 Calhoun is present here.

13 BZA CHAIR LOUD: Okay.

14 MR. LEFANDE: And if that could be
15 confirmed, I don't think that that person is
16 testifying.

17 BZA CHAIR LOUD: All right. Thank
18 you for raising that. Is Mr. DeWayne Calhoun
19 present?

20 Okay. Why don't you step forward?
21 Yes.

22 MS. MONROE: She's got to be on the

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1 mike.

2 BZA CHAIR LOUD: Yes. Why don't
3 you step forward and just repeat what you said
4 for our record. No, you got to cut it on.

5 MS. LUCAS: Hello.

6 BZA CHAIR LOUD: Is it on?

7 MS. LUCAS: Hello. Okay. My name
8 is Stacey Lucas. I'm a representative of
9 Calhoun Properties, Mr. DeWayne Calhoun. I'm
10 a representative for him.

11 BZA CHAIR LOUD: Okay. Thank you
12 and so, you'll be testifying later with
13 respect to the applications?

14 MS. LUCAS: Yes, sir.

15 BZA CHAIR LOUD: Okay. And your
16 intention with respect to the statement that's
17 been given to us is that you will -- in other
18 words, is this a written summary of what
19 you'll be testifying to?

20 MS. LUCAS: Yes, sir.

21 BZA CHAIR LOUD: Okay. Mr.
22 LeFande, am I pronouncing it --

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1 MR. LEFANDE: Yes, sir.

2 BZA CHAIR LOUD: I'm sorry. Say it
3 again.

4 MR. LEFANDE: LeFande.

5 BZA CHAIR LOUD: LeFande. Okay.
6 Mr. LeFande, did you have any concerns about
7 that? You'll obviously have a chance to cross
8 her. So.

9 MR. LEFANDE: Well, just -- we were
10 -- we just wanted to establish for the record
11 who it was actually that was testifying with -
12 -

13 BZA CHAIR LOUD: Okay. All right.

14 MR. LEFANDE: Because that did seem
15 to be an inaccuracy on that part of it. What
16 was stated previously.

17 BZA CHAIR LOUD: Thank you for
18 bringing that to our attention and if you're
19 ready, we can move forward with the statement
20 -- your statement and then your witnesses for
21 both cases.

22 MR. LEFANDE: Yes, if I could since

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1 we are at this late hour consolidating de
2 facto the two matters, I simply wanted to
3 speak to how we intended to proceed in that
4 regard.

5 Again, Matthew LeFande. I am the
6 attorney for the Applicant The Craftsmen
7 Group, Incorporated, a corporation organized
8 under the laws of the District of Columbia.

9 With me at the table is Christian
10 Kellehar, the President of that company and
11 the sole owner.

12 Due to the unique circumstances and
13 the evidentiary challenges in this particular
14 case, I will offer a recital of some of the
15 documents that have been tendered as part of
16 the record to the Board.

17 Obviously, all of these documents
18 or the vast majority of them predate many of
19 our births. Speaking to matters that occurred
20 some 30, 40, 50, 60 years ago and obviously, I
21 don't have any witnesses to authenticate or to
22 speak to them and they simply have to be --

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1 they're simply offered for what they say on
2 the face of them.

3 I will be offering Mr. Kellehar's
4 testimony as to the present circumstances of
5 the businesses at these two buildings, but as
6 to the vast -- the corpus of this case, it is
7 involving a review of some historic documents
8 which we can only put them before the Board
9 and ask you to consider them for what they
10 have upon their face.

11 In that regard, I will consolidate
12 the argument as it is -- it is equal amongst
13 the two -- identical amongst the two cases
14 though the circumstances and the evidence that
15 we have between them are somewhat different.

16 Again, the matter does come before
17 the Board of Zoning Adjustment upon the
18 application for a use variance under D.C. Code
19 5424G311 and District Municipal Regulations
20 Title 113103.2.

21 It is our intention to demonstrate
22 today that the presence of these industrial

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1 buildings built prior to and after the 1958
2 Zoning Ordinance and now existing in an R-4
3 zoned neighborhood together with the
4 documented history of the industrial use of
5 these buildings are unique circumstances
6 peculiar to these particular properties and
7 not to the general conditions of the
8 neighborhood.

9 We further offer that upon the
10 application of The Craftsmen Group in the
11 early 1990s to obtain a certificate of
12 occupancy and incorrectly being denied them is
13 an exceptional situation appropriate for this
14 Board's consideration.

15 MS. MONROE: Mr. LeFande, can I
16 interrupt for a moment.

17 Mr. Chair, I just want to be
18 careful with this. Since we have the two
19 different buildings, two different
20 applications, when you go through the test,
21 may sure you hit each prong of the test for
22 each separate application.

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1 For example, you say they were
2 denied the C of O, I don't know if that C of O
3 went to both the buildings or only to one.

4 MR. LEFANDE: Yes.

5 MS. MONROE: Okay.

6 MR. LEFANDE: In that case, that's
7 a good point.

8 MS. MONROE: I just want to be
9 really clear because then on the record if
10 there's a future -- because they'll be two
11 orders.

12 MR. LEFANDE: Yes.

13 MS. MONROE: And even if it's a
14 summary order they each have to relate to the,
15 you know --

16 MR. LEFANDE: Yes, that's a very
17 good point, Ms. Monroe, and I will say that
18 where we depart actually between the two
19 buildings, I will try to make that distinction
20 even though we are proceeding in a
21 consolidated manner.

22 In this particular instance, the

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1 question you just brought, in fact, the
2 exhibits before -- already in the record show
3 both properties having an application for a
4 certificate of occupancy in the earlier 1990s
5 and both of them being turned down for the
6 identical reason. So, I haven't made that
7 distinction because, in fact, they are -- in
8 that particular case, they are identical
9 circumstances.

10 BZA CHAIR LOUD: Mr. LeFande, just
11 to follow up Ms. Monroe's point, I think it --
12 and I understand what you're saying about
13 where there is a difference, you will make it
14 a point to draw attention to the fact that
15 there's a difference, but I think it's also
16 helpful that you state at the outset that what
17 you're getting ready to say applies to both
18 properties. In other words, as you go to from
19 the exceptional unique prong of the test and
20 you finish that up and then you go to undue
21 hardship, just to qualify at the beginning
22 suggesting that everything you're about to say

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1 applies to both properties and then it'll be
2 really clear for our record that the test is
3 or is not being made with respect to both
4 cases.

5 So, it's just a slight --

6 MR. LEFANDE: And yes, again, I'm
7 just offering --

8 BZA CHAIR LOUD: -- twist on what
9 you're doing.

10 MR. LEFANDE: -- an overview of our
11 argument at this point.

12 BZA CHAIR LOUD: Okay.

13 MR. LEFANDE: And just touching
14 upon those and again, I'm going to give a
15 separate factual recital for each of the
16 properties and refer to the documents that you
17 folks should have already before you insofar
18 as the historic stuff that demonstrates the
19 prior use of the -- and there will be two
20 completely separate recitals though the legal
21 argument will be, in fact, identical for them
22 and if the Board wishes to offer some

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1 distinction that they detect that I haven't
2 seen, I will try my best to address that.

3 So, the factual recitals will be
4 separate and distinct for the two cases, but
5 the legal argument since the circumstances are
6 almost identical will be one as a whole
7 applying to both of them.

8 I hope that makes that more --

9 BZA CHAIR LOUD: It does make sense
10 and if you see a reason why you wouldn't need
11 to do separate factual recitations because
12 even the facts are identical, you can feel
13 free to --

14 MR. LEFANDE: And that part --

15 BZA CHAIR LOUD: -- truncate that
16 part of it.

17 MR. LEFANDE: -- I do have -- that
18 they are different and I'm just going to move
19 right on now into the discussion of the
20 property at 729 Fairmont. This would be, in
21 fact, the Application 17927. It's the first
22 one on the agenda.

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1 A series of exhibits was offered to
2 the Board in accordance with its rules that
3 they be filed in advance of this hearing. If
4 I can just have one second to get this booted
5 back up again.

6 What was previously marked as
7 Exhibit G is a series of index cards that was
8 once located within the District's Zoning
9 Records demonstrating variances that were
10 granted for 729 Fairmont Street, N.W. and I
11 quote "From the open court requirements of the
12 area district to permit erection of a two-
13 story rear addition to building." See if I
14 can pull that up here to -- and apparently
15 series of index cards were found within the
16 records back when the DCRA was on H Street.
17 So, this was at the time of an application
18 that was made again in the early 1990s, March
19 7th, 1994.

20 At some point, these applications
21 including the -- if you can see where the
22 little hand is, these variances again which

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1 reads "From the open court requirements of the
2 area district to permit erection of a two-
3 story addition to building." This is dated
4 September 23rd, 1942.

5 This structure on Lot 59 of Square
6 2885 consists of a two-story building with a
7 large sliding door facing the alley. There
8 are no internal stairs and an external exposed
9 staircase provides the only access to the
10 second floor. The building has a concrete
11 floor with a first level and a rough honed
12 plank floor on the second. The walls on both
13 levels have no internal face or finish and
14 consist only of load-bearing internal brick
15 work. There's a large hearth inside the lower
16 level.

17 Turning to Exhibit E which are the
18 commercial Lusk Directories of 1948, the rear
19 of 729 Fairmont Street is classified as a
20 stable. I'm not going to go through each of
21 the individual pages of these directories, but
22 they are in chronological order in there. The

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1 1959 Lusk Directory and each of the subsequent
2 directories found in there in the course of
3 this historical research classify the property
4 as a commercial garage.

5 In 1990, The Craftsmen Group
6 acquired this particular building. According
7 to Exhibit H --

8 BZA CHAIR LOUD: Let me just ask a
9 quick question so I don't get lost. Our
10 exhibits are numbered. So, what you had
11 originally called Exhibit G, for example, is
12 our Exhibit 8.

13 MR. LEFANDE: I'm sorry. I don't
14 have a copy of your numbering.

15 BZA CHAIR LOUD: I need to --

16 MR. LEFANDE: There are large green
17 stickers. These exhibits were all previously
18 tendered to the Office of Administrative
19 Hearings and I just simply adopted the
20 previous markings.

21 BZA CHAIR LOUD: Okay. Let me just
22 ask a quick question. Are these exhibits

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1 attached to anything that you submitted to us?

2 MR. LEFANDE: Yes, that was --

3 BZA CHAIR LOUD: What's the date of
4 what you submitted?

5 MR. LEFANDE: Original submission
6 in January. At the time of the original
7 application, I believe it was January 6th. It
8 was -- they made the multiple copy submission
9 of that. Sorry.

10 Ms. Moore says that that was made
11 on January 27th, 2009.

12 VICE CHAIR DETTMAN: Mr. Chairman,
13 we do have the photocopy of the variances.

14 MR. LEFANDE: Okay.

15 VICE CHAIR DETTMAN: Of the index
16 cards. This exhibit that you're showing now
17 as well as the one just previous I think
18 showing the classification as a stable --

19 MR. LEFANDE: Right. Yes.

20 VICE CHAIR DETTMAN: -- we didn't -
21 - we don't have those in our record.

22 MR. LEFANDE: Okay. Yes, they were

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1 -- all those copies were submitted to -- as
2 part of the original application January 27th.

3 BZA CHAIR LOUD: Okay. What would
4 be helpful then is if you have copies with you
5 if you could submit those to us.

6 MR. LEFANDE: Yes, I -- well, I can
7 offer -- I have them on computer here.

8 BZA CHAIR LOUD: Hold on one
9 second. Hold on one second. If you could
10 submit those to Ms. Bailey I think and she can
11 make sure that we have copies.

12 Do you have them?

13 MR. LEFANDE: Do you have a
14 complete copy? Okay. Yes, I can pass up
15 another copy. I actually have two copies
16 here. I can work from the computer here.

17 BZA CHAIR LOUD: Sorry, Mr.
18 LeFande. I didn't mean to interrupt the
19 overall flow.

20 MR. LEFANDE: Oh, no.

21 BZA CHAIR LOUD: But, it looks like
22 we probably would want to be looking.

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1 Certainly to have this as part of the record.

2 MR. LEFANDE: Yes, and again, it
3 was -- we made a very careful effort to make
4 sure that it was filed as part of the original
5 application.

6 BZA CHAIR LOUD: Okay.

7 MR. LEFANDE: Where it goes from
8 there, I'm not privy to unfortunately.

9 BZA CHAIR LOUD: I appreciate your
10 efforts. Perhaps we can still move forward
11 since you have it on the screen and --

12 MR. LEFANDE: Sure.

13 BZA CHAIR LOUD: -- the record will
14 be supplemented.

15 MR. LEFANDE: And I'm showing --
16 this is a 1992 real estate property tax
17 assessment for the alley rear of 729 Fairmont
18 Street.

19 Looking over to the left center
20 where the hand is, you can see that the
21 property is classified at this time as
22 commercial garage vehicle sale and it's taxed

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1 as a commercial property at the commercial
2 property rate.

3 Sometime I guess this would be 1994
4 after The Craftsmen Group acquired the
5 property, they made an application for a
6 certificate of occupancy with the DCRA and I
7 have that up on the screen at this point and
8 scrolling down to the Zoning Office section
9 there. It shows The Craftsmen Group's
10 application as zone R-4 and no record of prior
11 use.

12 Obviously, we stipulate that the
13 neighborhood is zoned R-4, but we have also
14 some documentary evidence of the prior use as
15 a commercial property and then also the
16 District of Columbia treating it as a
17 commercial property for the purposes of
18 taxation.

19 And Exhibit I also shows the most
20 current assessment of the property. If I can
21 -- if you can see where the hand is located.
22 Again, use code of 79 industrial miscellaneous

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1 tax class 002-commercial.

2 I'm going to proceed on to do the
3 same recital with 775 and then I'm going to
4 call a witness as to the configuration use of
5 the property and then discuss the argument in
6 support of the application if that so pleased
7 the Board.

8 What's been previously marked as
9 Exhibit L is a 1948 telephone directory which
10 we pulled up from the Martin Luther King
11 Library's archives showing that a company
12 known as the Modern Machinists owned a series
13 of buildings in the alley between the 700
14 blocks of Fairmont and Girard Street, N.W.
15 where the two buildings are located referenced
16 in this application.

17 It's our understanding from some
18 oral history and also some documentary
19 evidence that Modern Machinists was a
20 manufacturing company which was known to have
21 produced among other things parts to make
22 phonographic record players.

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1 We have found a similar set of
2 zoning variance index cards to the one that I
3 showed you for 729 which address the location
4 behind this property. Let's see. Rear 774
5 Girard Street which is actually the flipside
6 of 775 Fairmont Street. Showing a series of
7 variances that were obtained first in 1941 to
8 permit the use of the property as a machine
9 and welding shop or nonconforming use-part 4-
10 (1) from a junk shop to a machine and welding
11 shop. Again that one -- and then again, in
12 1945, it quotes "Variance from the use
13 provisions of the residential district to
14 permit erection of a one-story rear addition
15 to the machine and welding shop and permission
16 to make other structural alterations."

17 VICE CHAIR DETTMAN: Mr. LeFande?

18 MR. LEFANDE: Yes.

19 VICE CHAIR DETTMAN: Are those for
20 the subject property?

21 MR. LEFANDE: Those are addressing
22 -- yes, they are addressing the subject

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1 property. They describe the parking garage
2 that was built. I believe that that address
3 is erroneous because we have a building permit
4 showing that that particular property that is
5 described there, the actual construction was
6 the lot 862 which is described within the
7 applications and has been referenced by the
8 ownership since its inception as 775 Fairmont
9 Street, but being the rear alley also of 774
10 Girard.

11 Then hopefully this part here will
12 clear that up. Unfortunately, these records
13 are not necessarily as accurate as we'd like
14 them to be as well.

15 VICE CHAIR DETTMAN: Not to
16 interrupt again, but we don't have any of this
17 in the record.

18 MR. LEFANDE: Again, that was -- we
19 filed these documents in accordance with the
20 rules.

21 VICE CHAIR DETTMAN: Okay.

22 MR. LEFANDE: And where they go

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1 from there, I don't know. I can -- we're very
2 happy to provide them again and they certainly
3 were relied upon by the folks at OP and by the
4 ANC and I believe all of those documents were
5 received from the BZA.

6 MR. KELLEHAR: Mr. Nero --

7 VICE CHAIR DETTMAN: Okay.

8 MR. KELLEHAR: -- Mr. Nero was in
9 receipt of those documents. There was an
10 entire --

11 VICE CHAIR DETTMAN: Okay.

12 MR. KELLEHAR: -- I think about a
13 60-pound box, 20 copies of -- I'm sorry. Yes,
14 just to make clear, I was present when a large
15 box of 20 copies with great labor and
16 thoroughness was submitted to Mr. Nero's
17 office. Sorry.

18 MR. LEFANDE: Yes, and obviously,
19 we didn't provide that to OP directly. They
20 must have received it from you folks in the
21 process. So, maybe they can speak to that.

22 MS. THOMAS: I'm sorry. I'm Karen

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1 Thomas with the Office of Planning.

2 Some of these we do not have.
3 Admittedly, we do not have, but I did some
4 research on my own and I did find some of
5 them. I have what was -- similar to the
6 Board.

7 MS. MONROE: Let me just say they
8 were obviously submitted and obviously didn't
9 make it into our record. All you have to do
10 is just make sure you give them to us at the
11 end of the hearing.

12 MR. LEFANDE: Yes, and we've
13 already provided copies. So.

14 MS. MONROE: Right. But, these
15 other ones for the second -- whichever -- for
16 775, is that the one we're doing now?

17 MR. LEFANDE: Everything you just
18 got --

19 MS. MONROE: Is everything.

20 MR. LEFANDE: -- is everything.

21 MS. MONROE: Okay. So, then we'll
22 have it in front of us.

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1 MR. LEFANDE: In there, there may
2 be some photographs that were submitted on May
3 14th.

4 MS. MONROE: Okay.

5 MR. LEFANDE: And the signature
6 pages, but all the documentary evidence that
7 we're trying to work through right now was
8 part of the January 27th submission.

9 MR. KELLEHAR: Is Mr. Nero not
10 available because he was very helpful and very
11 clear about having received these things.

12 BZA CHAIR LOUD: You know, I can
13 answer that question, but I think Ms. Monroe
14 has it right in saying that I think the best
15 use of this time is to go ahead and go through
16 with the --

17 MR. LEFANDE: And we appreciate.

18 BZA CHAIR LOUD: -- witnesses that
19 are here and the arguments being made.

20 We are in the process of getting
21 copies of those parts of the record that we
22 don't have and you can rest assured that we

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1 won't make a decision until we make sure we
2 have a complete record of -- which includes
3 both the testimony and evidence today and then
4 the documents you're talking about and we do
5 apologize for any mixup in it, but --

6 MR. LEFANDE: Now, we're --

7 BZA CHAIR LOUD: -- I think it's
8 best to move forward.

9 MR. LEFANDE: -- all working
10 together towards a similar end.

11 BZA CHAIR LOUD: Okay.

12 MR. LEFANDE: And again, am
13 looking at the Lusk Directories here. You'll
14 see where the little arrow is here at the
15 bottom left. It shows Lot 862 having a series
16 of six -- a six-car garage on the property
17 owned by Wallet and Owen who were the owners
18 of the Modern Machinists.

19 In 1961, this is one of the items
20 that we were looking at. Erect parking garage
21 and for a variance over the lot and occupancy
22 and rear-yard requirements of the R-4 District

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1 to permit same for lot 862.

2 Again, I think this speaks to --
3 this may clarify the issue that Mr. Dettman
4 brought up. No, there it is. Not this one.

5 Seeing that it says the rear of 774
6 Girard Street as the address but looking at
7 the circled item, it does show the correct
8 square and lot number that references 775
9 Fairmont Street.

10 I believe -- again, I think this
11 was simply an error, misidentification as to
12 the number of this -- the name and number of
13 the street since they were adjacent through
14 the alley there.

15 The structure that was built
16 pursuant to this particular -- just one second
17 please. Pursuant to this variance is pictured
18 here and there's one large industrial-type
19 building covering almost the entire lot with a
20 single sliding door across the entire space of
21 the building. The brick flat roof building
22 consisted of a single undivided space

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1 approximately 26 by 62 feet. The structure
2 was completely without interior walls or
3 finishing and the ceiling -- the floors are
4 unfinished concrete and the ceiling was 13
5 feet in height.

6 The 1967 Lusk Directory again
7 marked as Exhibit E reflects that lot 862 is
8 now a commercial parking garage. Each of the
9 later Lusk Directories included in Exhibit E
10 indicate the same use classification.

11 Exhibits N, O and P are a
12 succession of deeds showing that the Modern
13 Machinist was sold by the owners and then a
14 succession of companies with commercial
15 enterprises owned the properties until
16 purchased by The Craftsmen Group in 1993.

17 Exhibit A, and this goes to Ms.
18 Monroe's original question, is a very similar
19 certificate of occupancy application that was
20 made on October 20th, 1993 and again, despite
21 the history that was shown, the Zoning Office
22 marked these two applications as R-4 which is

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1 the correct designation for the neighborhood,
2 but no record of prior use. The applications
3 were subsequently denied for this reason.

4 Turning to what was marked as
5 Exhibit J, see if I can get this rotated here,
6 showing 775 Fairmont Street, Square 2885 and
7 Lot 862. This is a real property assessment
8 by the District of Columbia from 1994 showing
9 that the type of property is 062 commercial
10 garage and vehicle sale and that the property
11 is tax assessed in accordance with the
12 commercial rate.

13 Also, the current assessment as
14 shown on the District of Columbia's own
15 records here for Lot 862 775 Fairmont Street
16 shows 62 commercial garage vehicle sale and
17 the tax class again being 002 commercial.

18 After the -- I'm going to have
19 Chris speak to this in a moment. After the
20 applications were denied, these folks made an
21 application to BZA for a variance despite the
22 evident prior history and through some

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1 procedural mis-queues, that was -- they failed
2 to appear at a hearing and the matter was
3 dismissed summarily which they were unaware
4 of. There was some question whether they had
5 received proper notice of it and they have
6 been operating in this location since 1993
7 running this woodworking business.

8 I'm going to call Chris Kellehar
9 now as a witness to speak to the history of
10 the acquisition of the property and his
11 application for the original certificates of
12 occupancy for both properties and what the
13 endeavors are that go on within the property.

14 Mr. Kellehar, how are you so
15 employed?

16 MR. KELLEHAR: I'm employed at The
17 Craftsmen Group, Washington, D.C.

18 MR. LEFANDE: And who owns The
19 Craftsmen Group, sir?

20 MR. KELLEHAR: I do.

21 MR. LEFANDE: Okay. Are you the
22 sole owner of the business, sir?

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1 MR. KELLEHAR: Yes, sir.

2 MR. LEFANDE: Okay. Are you
3 familiar with the manner in which the two
4 properties which are the subject of the
5 application today were acquired by The
6 Craftsmen Group?

7 MR. KELLEHAR: Yes, sir.

8 MR. LEFANDE: Could you please
9 describe those to us?

10 MR. KELLEHAR: Well, actually, I
11 might say that they've been acquired for The
12 Craftsmen Group's use in that I personally
13 actually own the properties and yes, it was a
14 friend who showed me the carriage house at the
15 top of hill initially and I bought that in
16 1990 with help from him in terms of the loan
17 and then in 1992, I guess late '92, we got the
18 second property at the bottom of alley, the
19 larger garage looking building.

20 MR. LEFANDE: If I may, when you
21 refer to the carriage house at the top street
22 is that, in fact --

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1 MR. KELLEHAR: Seven twenty-nine.

2 MR. LEFANDE: And the one at the
3 bottom of the hill?

4 MR. KELLEHAR: The garage type is
5 775.

6 MR. LEFANDE: Okay. And since that
7 time, what have you utilized -- I'm sorry.
8 Let me back up a little bit here. At that
9 time that you acquired the properties, did you
10 make an effort to obtain a certificate of
11 occupancy for the property?

12 MR. KELLEHAR: Yes, sir, I think I
13 still have some signature sheets which I think
14 were submitted from my original walk through
15 the neighborhood to get support for my C of O.

16 When I bought the property, it was
17 -- it's funny too that one of the -- the son
18 of the fellow that had the law past to have
19 the artist studio provision in the law and the
20 then owner who sold me the property made it
21 clear that, you know, you could potentially
22 get your C of O as an artist studio and that

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1 all along was my intention.

2 MR. LEFANDE: And there did come a
3 time for both properties that you made
4 applications for a certificate of occupancy?

5 MR. KELLEHAR: Yes, sir.

6 MR. LEFANDE: And what was the
7 disposition of those original applications?

8 MR. KELLEHAR: Well, they were --
9 frankly for lack of better legal terms, they
10 were confounded and, you know, clearly more
11 dialogue had to go on with the city than I was
12 capable of doing with the limited resources I
13 had at the time and, you know, I guess they
14 were basically denied.

15 MR. LEFANDE: And did they give you
16 a reason for that denial?

17 MR. KELLEHAR: Well, I have to say,
18 sir, I do remember one particular and
19 disappointing comment by a city official and I
20 was -- you know, we were splitting hairs about
21 whether this was craft work or artistic work
22 and how fine the craft was and, you know,

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1 there was some distinction made there that we
2 weren't artists and, therefore, you know, it
3 -- you know, we can't get an artist studio C
4 of O.

5 MR. LEFANDE: Well, the DCRA give
6 you instructions as how to proceed once they
7 denied the application?

8 MR. KELLEHAR: No, sir.

9 MR. LEFANDE: Did there come a time
10 that you made an application before the Bureau
11 of Zoning Adjustment?

12 MR. KELLEHAR: I did appear at one
13 morning meeting with the BZA and frankly,
14 there was some procedural issues and things
15 were tabled at that point.

16 MR. LEFANDE: Had you had any
17 experience with this type of procedure at that
18 time?

19 MR. KELLEHAR: No, sir, just a --

20 MR. LEFANDE: And how old were you
21 at that time?

22 MR. KELLEHAR: Thirty-two I guess.

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1 MR. LEFANDE: Was this the first
2 business you ever owned?

3 MR. KELLEHAR: Yes, sir.

4 MR. LEFANDE: Okay. Is this the
5 first commercial property you ever owned?

6 MR. KELLEHAR: Yes, it's the first
7 property of any type. Yes.

8 MR. LEFANDE: Okay. Once you had
9 gone to the BZA meeting, did you continue to
10 occupy the property?

11 MR. KELLEHAR: Yes, sir.

12 MR. LEFANDE: And what did you do
13 with the property?

14 MR. KELLEHAR: Well, we slowly
15 improved it and we occupied it doing just as
16 the documents say. We're engaged in the
17 restoration and reproduction of metal work for
18 historic buildings. So, basically, we make
19 doors and windows or fix them.

20 MR. LEFANDE: And what -- I just
21 sort of want to flush out this proceeding of
22 making doors and windows. Is this a mass

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1 production for retail sale or --

2 MR. KELLEHAR: No, sir, it's always
3 a one of a kind process or, you know, a series
4 of a kind for a given structure. It's always
5 in response to the building's original design
6 motifs and, you know, when we can't restore
7 these items, we reproduce them rather
8 exactly.

9 MR. LEFANDE: And what does that
10 reproduction ordinarily entail when you're
11 producing one of these items from wall lumber
12 perhaps?

13 MR. KELLEHAR: Well, as you might
14 imagine, you know, cutting and shaping of the
15 materials, the joinery involved, the final
16 finishing, the marriage of the wood and glass
17 and the metal hardware and so on and then the
18 installation of those items in the building.

19 MR. LEFANDE: And is this done with
20 large industrial machines or is this done by
21 hand?

22 MR. KELLEHAR: No, I mean somewhere

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1 in between. There's machinery involved, but
2 it's a fairly simple machine. It's versatile
3 and can be used for many different operations.

4 MR. LEFANDE: And is the production
5 of these items identical between the two
6 buildings or are different things done in the
7 different two buildings?

8 MR. KELLEHAR: Well, at this point
9 -- and I'm grateful that the second building
10 offered itself up to us. That was really a
11 magical moment for this little struggling
12 business. Was that we could expand down the
13 alley and turn the carriage house into a metal
14 and glass working shop and then the wood shop
15 could move down the alley.

16 So, at one point, the entire
17 operation, my office was in a little corner
18 and we did the woodworking next door and it
19 was a difficult struggle. All the same we
20 managed to get through that period and then
21 when the opportunity at the bottom of the
22 alley opened up, we seemed to get our feet

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1 pretty well and divide the purposes of the
2 building somewhat.

3 MR. LEFANDE: And do you continue
4 to operate the building in that manner today?

5 MR. KELLEHAR: Yes, sir.

6 MR. LEFANDE: Are you aware of any
7 history where that building was used for any
8 residential purpose?

9 MR. KELLEHAR: Well, yes, in the
10 early '90s in order to pay the bills, we --
11 the upstairs was rented by, you know, one of
12 the apprentices and craftsmen and then later,
13 it was rented out through the '90s mostly to
14 Howard University students, but that was just
15 the top floor of the carriage house. None of
16 the other spaces would lend themselves to
17 residential use. That space now is our
18 office.

19 MR. LEFANDE: And you stated that
20 none of the other space would lend itself to
21 residential use. Could you just describe the
22 configuration starting off with 729 Fairmont

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1 Street? What about that building would make
2 it unsuitable for residential purposes?

3 MR. KELLEHAR: Well, it's -- you
4 know, it's just basically raw space. It's a
5 brick building with old rafters in it and a
6 concrete floor. You know, it's just not too
7 amenable. It has fluorescent lightning and,
8 you know, just small bath facilities, no
9 shower and things like that.

10 Where upstairs, we did eventually
11 set it up as an apartment and that now works
12 great as an office.

13 That 775 is just a cavernous big
14 concrete room, you know, and I think you
15 described it well earlier.

16 MR. LEFANDE: Speaking as to the
17 day-to-day operations of the two buildings,
18 how many persons would ordinarily be present
19 between the two buildings in the conduct of
20 this operation?

21 MR. KELLEHAR: I'd say generally on
22 average there's two people at the top shop at

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1 the carriage house 729 and there's two to
2 three at the bottom shop, the wood shop, 775.

3 At any given moment, there might be
4 no one there or there might be another five
5 folks there in the morning, you know, shifting
6 things and moving off to a job.

7 MR. LEFANDE: Is the majority of
8 your work conducted within these buildings or
9 is your business also involved outside of the
10 buildings themselves?

11 MR. KELLEHAR: No, more people are
12 engaged, more efforts are applied on-site.

13 MR. LEFANDE: And are there any
14 off-site operations at --

15 MR. KELLEHAR: Yes, there's always
16 multiple sites luckily enough in today's
17 climate. We are -- you know, for example, I
18 think there's three or four job sites
19 currently.

20 MR. LEFANDE: If these variances
21 for the two applications were not to be
22 granted to you by this Board, what would be

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1 your intention? What would you do with the
2 property?

3 MR. KELLEHAR: Well, I can tell you
4 I'm grateful to be before this Board and I
5 thank you for your consideration. You know,
6 it would be a -- you know, it would be a life
7 changing catastrophic thing for me personally
8 and for my employees, it would be a greatly
9 disheartening and disorienting situation.

10 I haven't really mused upon what
11 I'll do. Because the more I think about it, I
12 don't know.

13 MR. LEFANDE: Okay.

14 MR. KELLEHAR: I can say that the
15 fact that these properties are in the alley
16 and were basically unwanted and unused when we
17 acquired them did allow us to get a foothold
18 in this business and in a town I love and was
19 born in and basically lived in all my life and
20 it allowed me to take my little basement group
21 house shop in Adams Morgan and set it up and
22 start a fledgling business which now survives

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1 and employs numbers of good earnest men that,
2 you know, are here to help preserve the
3 historic architecture of the city.

4 MR. LEFANDE: Thank you, Mr.
5 Kellehar. I have no further questions for Mr.
6 Kellehar and I'll turn it back to the Board.

7 BZA CHAIR LOUD: Thank you, Mr.
8 LeFande. Thank you, Mr. LeFande. Thank you,
9 Mr. Kellehar.

10 MR. KELLEHAR: Kellehar.

11 BZA CHAIR LOUD: Kellehar. Thank
12 you as well.

13 Let me see if the Board Members
14 have questions.

15 Okay. Let me -- doesn't appear as
16 if either Board Member does. I have a very
17 quick question on the second prong of the test
18 which I think you started to get into, Mr.
19 LeFande, as the testimony drew to a close.

20 MR. LEFANDE: I haven't offered --

21 BZA CHAIR LOUD: I'm sorry.

22 MR. LEFANDE: I haven't offered any

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1 argument yet, but --

2 BZA CHAIR LOUD: I'm going to ask
3 the witness a follow-up question on something
4 he did testify to regarding what would happen
5 if the variances were not granted and the
6 follow-up question would be do you have any
7 estimates of the cost of relocating your
8 business from where it currently is to some
9 third location?

10 MR. KELLEHAR: Well, I only lament
11 not, you know, in having a little bit more
12 resources in the late '90s and there were
13 close to some opportunities then. You know,
14 since the real estate boom and the current
15 situation, I think it would crush the
16 business. I don't think that we could afford,
17 you know, typical commercial space prices, you
18 know, without being in Gaithersburg or
19 something where, you know, you just can't
20 provide the service, the care, the attention
21 and the immediacy to these difficult and, you
22 know, nuanced projects that we do.

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1 So, I -- you know, I know the city
2 quite well. I know its nooks and crannies and
3 I've been looking at them for 10/15 years and,
4 you know, since some charter schools took over
5 a couple of unwanted properties and this and
6 that, there's no -- you know, I don't have a
7 lot of capitol to -- anyway.

8 BZA CHAIR LOUD: Just in terms --
9 following that up very briefly, just in terms
10 of your equipment that you have in both the --
11 what you call the carriage house type and then
12 the garage type --

13 MR. KELLEHAR: Um-hum.

14 BZA CHAIR LOUD: -- any sense of
15 the relocation costs just for that?

16 MR. KELLEHAR: I mean just to
17 relocate the contents of the buildings, I
18 guess oh, you know, between -- well, it would
19 probably be equally expensive. I imagine I
20 could get some trucks loaded, you know, for
21 something like \$10,000, move everything. Then
22 to get all the, you know, compressed air lines

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1 and the vacuum lines and all the electricity
2 and the lighting and all outfitted, all the
3 storage stuff reinstalled and, you know, I
4 could imagine that could be another
5 \$10/\$20,000, but what would even be worse is
6 the interruption in service and there would be
7 significant interruption in us being able to
8 provide our service.

9 BZA CHAIR LOUD: Okay. And the
10 20,000 would be per alley dwelling?

11 MR. KELLEHAR: Yes, per building.
12 I think that would be a fair estimation.

13 BZA CHAIR LOUD: Okay. Do you have
14 estimates on top of that 20,000? Estimates
15 for what it would then take to build out each
16 alley dwelling for residential? I think you -
17 - one you said already had an upper-level
18 apartment that was built out.

19 MR. KELLEHAR: Right.

20 BZA CHAIR LOUD: But, the other one
21 you said pretty much remained in original
22 condition.

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1 MR. KELLEHAR: That is the
2 architecture does, but mine you despite us
3 having some space in town, we make use of
4 every cubic inch of each building. So, that
5 has been a long evolution where we -- I'm
6 sorry we don't have some interior shots. We
7 may somewhere. Yes. Because, you know, it
8 would take, you know, years frankly to get
9 settled again so that you know just where the
10 number eight pinhead slotted screws are and so
11 on.

12 And there's a before. That's the
13 day I opened the doors at the carriage house.
14 That's what was there.

15 BZA CHAIR LOUD: But, again, just
16 in terms of --

17 MR. KELLEHAR: Excuse me if I don't
18 readily have numbers.

19 BZA CHAIR LOUD: That's okay.

20 MR. KELLEHAR: In terms of -- I
21 could see the build out costing \$60,000, you
22 know, to actually be fully settled in and in

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1 operation.

2 BZA CHAIR LOUD: Do you recall what
3 the original build out was just for the
4 apartment unit that you do have?

5 MR. KELLEHAR: Well, that's a good
6 point. Just the -- I mean just to do an
7 apartment's got to be, you know, 50,000 bucks
8 or something and those are pretty raw costs
9 for men who can do the work and have, you
10 know, pretty close connections in the
11 industry.

12 MR. LEFANDE: If I could just
13 clarify the Chairman's point -- question there
14 and maybe Chris can speak a little bit better
15 to this, I think the Chairman is asking as to
16 what the dollar costs were back at the time of
17 the original build out and I think Chris may
18 have a little bit of trouble offering that
19 because this was entirely done by these folks
20 as they were trying to make -- run a business.

21 I mean this was a -- this is a progression of
22 build out over 15 years where these folks are

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1 trying to run a business, but at the same
2 time, crafting for themselves these literally
3 hundreds of little drawers to put these
4 specialty hand tools and setting up jigs for
5 making of very unique millwork.

6 And they're just simply -- unlike
7 if we were talking about putting a Checkers
8 in. You've got a guy who comes from the
9 corporation and says yes, well, that build out
10 is \$15 per square foot and we're doing \$37 a
11 foot triple net on this location and now, let
12 me give me an analysis of the environmental
13 HVAC costs.

14 And with these folks coming to
15 very, very distressed properties at a very,
16 very early stage in the revitalization of this
17 neighborhood and then progressively over a
18 decade improving upon them, it's just -- the
19 circumstances are very, very different than
20 what the Board might ordinarily encounter from
21 a commercial developer.

22 So, I think if he can try to speak

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1 to that a little more clearly, I'd --

2 MR. KELLEHAR: Well, Matt and Mr.
3 Loud, I appreciate your questions and Matt, I
4 think that's just well said. I mean that's
5 exactly the case and, you know, to this day,
6 we're -- you know, part of what we like to do
7 is make our work spaces better and so, you
8 know, we're constantly engaged in it.

9 BZA CHAIR LOUD: Board Members, do
10 you have any questions? I'll turn it over to
11 Mr. Dettman. Okay. Mr. LeFande and Mr. --

12 MR. LEFANDE: well, I have a couple
13 of items --

14 BZA CHAIR LOUD: Sorry.

15 MR. LEFANDE: -- here and I'm not
16 sure how to proceed with them.

17 BZA CHAIR LOUD: Okay.

18 MR. LEFANDE: We don't have -- it
19 doesn't appear that we have somebody here from
20 the ANC to present their letter of
21 recommendation. That was filed, in fact, with
22 the Board on June 5th. Did you receive a copy

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1 of that?

2 BZA CHAIR LOUD: Just in terms of
3 the order of the proceeding, right now, we're
4 in your case. What's called the applicant's
5 case.

6 MR. LEFANDE: Okay. I'm sorry. I
7 just wanted to make sure that I didn't -- if
8 that was part of the evidence that that came
9 in before I made the argument, but --

10 BZA CHAIR LOUD: No. No. No. You
11 can go on through your case and exhaust your
12 witnesses and then we'll -- there's a point in
13 the proceedings where we'll -- if the ANC's
14 here by then, they'll step forward. If not,
15 we'll acknowledge their exhibit before --

16 MR. LEFANDE: I believe that we are
17 at a point where I have offered the evidence
18 that supports each of the elements that I wish
19 to proffer to the Board in terms of the
20 Applicant having met their burden of proof
21 insofar as the variance should be granted as
22 provided under the law and I'm prepared to

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1 offer the argument in that regard.

2 BZA CHAIR LOUD: Okay. Well,
3 you'll have the opportunity to have the final
4 say because you get the closing -- applicant's
5 closing statement a little later in the
6 proceedings.

7 So, if you're --

8 MR. LEFANDE: We have no further
9 witnesses.

10 BZA CHAIR LOUD: Okay. If you have
11 no further witnesses and I don't think the
12 Board has any questions for you.

13 VICE CHAIR DETTMAN: Mr. Chairman,
14 if I could, just -- maybe just a couple of
15 questions so I make sure that, you know, the
16 evidence that you've presented I understand
17 fully.

18 First, you kind of took the Board
19 through the process of the certificate of
20 occupancy application and as I understand it,
21 you purchased the property in 1990. You
22 applied for a C of O somewhere between '92 and

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1 '94. Discussions took place, but ultimately,
2 the C of O was -- the C of O which looking at
3 the application had proposed use artist studio
4 which was the use prior to you acquiring the
5 properties.

6 MR. KELLEHAR: No, it was never a C
7 of O for artist studio. I think that law had
8 just about right around there then passed and
9 no, it had never had a C of O for that.

10 VICE CHAIR DETTMAN: Okay. But, it
11 was your understanding that based on your
12 business model, what you knew you were going
13 to be doing inside the subject properly, you
14 felt that it could be characterized as an
15 artist studio, but DCRA saw it differently.

16 MR. KELLEHAR: Correct.

17 VICE CHAIR DETTMAN: Okay. And in
18 1994, DCRA rejected your or denied your
19 application and referred you to the BZA?

20 MR. KELLEHAR: Correct.

21 VICE CHAIR DETTMAN: Okay. And
22 then you had mentioned that you had attended a

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1 hearing.

2 MR. KELLEHAR: That's correct.

3 VICE CHAIR DETTMAN: Okay. I'm
4 looking at the order for 1994, June 8th, 1994,
5 for 729 Fairmont Street and it says that the
6 application was called as a preliminary
7 matter, but there was no response from the
8 applicant or any other person representing the
9 applicant. The staff informed the Board that
10 attempts were made to contact the applicant by
11 telephone. Do you recall that happening?

12 MR. KELLEHAR: By telephone, no,
13 sir.

14 VICE CHAIR DETTMAN: You were in
15 the audience when the application was called?

16 MR. KELLEHAR: I was -- I was
17 before a board. I don't remember the
18 architecture. It wasn't this room, but it was
19 laid out fairly similarly and I -- I just -- I
20 remember meeting Dorothy Brazil that morning
21 and she thought this was a great idea and
22 there was something that I hadn't applied, you

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1 know, and you -- you have to excuse me. It's
2 quite a long time ago and, you know, I'm a
3 significantly more seasoned businessman. At
4 the time, I -- you know, a good old carpenter
5 trying to set up a shop and I had -- you know,
6 it was overwhelming just to get a morning off
7 in order to make my case much less pay for
8 counsel or get all the paperwork in in a
9 timely way. You know, I can cut dovetail
10 joints, but I'm not much of a typist and it
11 was difficult.

12 VICE CHAIR DETTMAN: Okay.

13 MR. LEFANDE: And I think it's been
14 quite evident and I don't think there's been
15 any question that they did suffer at this
16 point from some procedural shortfallings of
17 their own or the other thing -- or there was
18 some lack of notice due to the fact that, you
19 know, these folks were out in the field all
20 the time. This was before most of us had cell
21 phones and -- or e-mail and that, you know, it
22 feel through the cracks. They failed to avail

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1 themselves of all of the procedures that were
2 ordinarily available to somebody who
3 understood the procedures and went through
4 that and simply were not even cognizant of the
5 disposition of it. They didn't know.

6 MR. KELLEHAR: I do remember some
7 inspectors coming out. There was a plumbing
8 inspector and a zoning inspector that came to
9 the properties and, you know, made some
10 comments and I do remember then, too, getting
11 frustrated like my whole C of O hinged on what
12 those plumbing inspectors said about the
13 diameter of the vent tube, you know, in a
14 plumbing system that worked just fine and it
15 was just becoming mired in -- it was just a --
16 you know, it was just very difficult. So.

17 VICE CHAIR DETTMAN: And thank you
18 for, you know, being patient and taking the
19 time to answer these questions. Because from
20 what I see in terms of the first prong of the
21 variance test, most of what you've said goes
22 to the original construction and the history

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1 of the use of the property, but also kind of
2 these procedural matters and efforts that the
3 Applicant has made and investments that the
4 Applicant has made into the property based on
5 actions or, you know, lack of action by
6 Government officials.

7 MR. LEFANDE: Yes, and we did make
8 that argument in the burden of proof
9 statement.

10 VICE CHAIR DETTMAN: Right.

11 MR. LEFANDE: Which is the question
12 of this fell -- if, in fact, this falls
13 through the cracks because we have an
14 inexperienced and youthful businessman,
15 completely unversed in these proceedings,
16 failing to do what was required of him and
17 then proceeding, paying taxes on a commercial
18 property at a commercial rate with a licensed
19 business doing business directly with the
20 District of Columbia. These are the folks
21 that redid the windows for Eastern Market
22 after it burned down and to just continue

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1 forward investing in and operating out of
2 these buildings with the apparent assent of
3 the Government and the order that you have was
4 wholly unknown to any of us until the DCRA
5 folks found it late last year.

6 VICE CHAIR DETTMAN: And I heard
7 just a minute ago you had mentioned that you
8 were not cognizant of the dismissal of the
9 application. The last page of the order, Mr.
10 Kellehar, do you still reside at 1841 Columbia
11 Road?

12 MR. KELLEHAR: No, sir, 2nd Street,
13 N.W.

14 VICE CHAIR DETTMAN: Did you live
15 there in 1994?

16 MR. KELLEHAR: Yes, sir.

17 VICE CHAIR DETTMAN: So, this was
18 served. It says right here it was given to
19 Christian Kellehar at 1841 Columbia Road, Unit
20 506.

21 MR. KELLEHAR: To me personally?

22 VICE CHAIR DETTMAN: It has your

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1 name.

2 MR. KELLEHAR: It has my name.

3 VICE CHAIR DETTMAN: In addition to
4 that, you know, you were told by the District
5 Government that you could not occupy this
6 property with this use before you get BZA
7 approval and for whatever reason, the process
8 didn't fully, you know, carry itself out.
9 Whether it was for Government reasons or for
10 the Applicant's or it was shared, but after
11 June 2004 when the application was dismissed,
12 decision was made just to go forward and
13 operate the business.

14 MR. KELLEHAR: If I can, you know,
15 indeed, sir, and based on something other than
16 zoning doctrine, based on some pretty basic
17 human values and that is that what I'm doing
18 here is decent and good for the city. What
19 I've done to these buildings is improve them.
20 What I do as a neighbor is pick up trash and,
21 you know, try to fix up and help my neighbors
22 houses. So, with that faith, sir, I proceeded

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1 and I paid my commercial taxes and hoped the
2 day would come, this day would come someday.

3 MR. LEFANDE: And again --

4 VICE CHAIR DETTMAN: I just want to
5 say that I know that I'm asking some pretty
6 direct questions, but just by looking at the
7 file, you do an amazing job. I really do
8 believe that and I respect the work that you
9 do and that you've done to this building.

10 But, what we need to do is -- in
11 all the evidence that you've provided to us
12 for the first prong, we need to kind of sort
13 through it and make sure that the factors that
14 have contributed to your uniqueness are
15 directly linked to the second prong, the undue
16 hardship and so, I'm just trying to get a
17 feeling for which ones actually contribute to
18 your hardship and which ones do not.

19 MR. LEFANDE: And I think that the
20 prior -- and I'm going to have to just touch
21 upon this a bit. In that, Mr. Kellehar takes
22 responsibility for what happened in 1993. He

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1 has. Once this was brought to his attention
2 again, he has fully availed himself of these
3 proceedings, gotten an attorney who has, you
4 know, been a part of this at every stop and
5 we've made -- he's spent a considerable amount
6 of money and made an enormous amount of effort
7 to bring himself into conformance. Where that
8 was missed -- he admittedly missed in the
9 1990s and it's very simple for you and I to
10 have a meeting of minds on these issues.

11 The words that are contained within
12 that Board of Zoning Adjustment order from
13 1994 are very plain to you and I. You folks
14 deal with this all the time. I deal with it
15 quite a bit, but for an artisan who's cutting
16 wood all day, this is a very, very different
17 thing and to necessarily accept the import of
18 that based on your perception or my perception
19 I think is doing -- is unfair to a 31-year-old
20 Chris Kellehar and if you're searching for
21 some malfeasance within the four corners of
22 the proceedings that occurred back then to say

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1 that he doesn't come to this with clean hands,
2 I think is unfair.

3 I makes perfect sense to you and I.

4 VICE CHAIR DETTMAN: Mr. LeFande, I
5 am certainly not searching for any kind of
6 malfeasance and if I come off that way, I do
7 apologize, but I certainly am not.

8 I am very much in favor of this use
9 at this property, but we can't just go ahead
10 and give away a use variance. This is a very
11 high standard for the Board.

12 MR. LEFANDE: Oh, sure.

13 VICE CHAIR DETTMAN: And so, what
14 I'm trying to do through my questions is put
15 together a very strong use variance case so it
16 can meet the highest standard that the Board
17 evaluates projects on.

18 So, I'm not looking for any kind of
19 malfeasance, but what I'm also trying to do is
20 kind of tease out where -- for lack of better
21 words, where some finger pointing is being
22 done towards the District Government and where

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1 maybe that's not appropriate.

2 MR. LEFANDE: Well, and I agree and
3 I -- there may be some kicking under the table
4 going on here just because -- I mean he has --
5 this is an emotional issue. I mean this is an
6 artist who's operating again in a different
7 perception than you and I are and the
8 perception is that there was -- there were
9 wrongs done to him.

10 This may be an inaccurate
11 perception, but, you know, this is a very
12 emotional issue. This has been -- fully one-
13 half of, you know, his adult life has been
14 completely committed to doing what he feels is
15 good and right and proper in this alley and he
16 feels very, very strongly about this and at
17 some point, you know, there's -- said well,
18 you know, I feel that I've been done wrong. I
19 have all this history. This is an industrial
20 building. I'm being taxed as an industrial-
21 use occupant. Why is this being done to me?

22 Well, it's obvious why it's been

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1 done. I mean you didn't avail yourselves of
2 the ordinary procedures that are available to
3 you under Title 11 of the DCMR.

4 Plain as day to you and me, Mr.
5 Loud and Mr. Hood. You guys do this all day,
6 but yes, there is that tinged. There is that
7 finger pointing. I'm not saying it's
8 justified. It's a perception and --

9 MS. MONROE: Mr. Chair, can I
10 interrupt for a second? This is kind of
11 unnecessary.

12 BZA CHAIR LOUD: Please.

13 MS. MONROE: Because whether or not
14 you guys don't have the C of O or out of
15 compliance is only marginally relevant to the
16 Board. Actually, it's not even all that
17 important for the Board's decision and I think
18 what Mr. Dettman is trying to do is tie that
19 whole issue to the use variance. That's all
20 we talk about is the use variance.

21 MR. LEFANDE: Sure.

22 MS. MONROE: We know you don't have

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1 a C of O. That's why you're here. In fact,
2 this morning, we decided the Teacher's Credit
3 Union case. They haven't had a C of O for ten
4 years and they've been operating. Exactly the
5 same situation. We have schools come in here
6 all the time out of compliance. Have all
7 kinds of issues. We don't just deny the
8 special exception because of that. We hear
9 it. That's why you're here to be heard. So,
10 worry about it. Let's not argue who did wrong
11 or did right.

12 BZA CHAIR LOUD: If I can --

13 MS. MONROE: This is not relevant.

14 BZA CHAIR LOUD: Thank you. I
15 appreciate that, Ms. Monroe. Let me use this
16 also as an opportunity to say that we're
17 running behind in today's calendar and I know
18 the National Progressive Baptist Convention
19 had a case that's schedule for 1:00.

20 If you're in the audience, we
21 probably will not get to that case for another
22 hour or so. So, if you want to take a break,

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1 you are more than free to do that.

2 With respect to the current case,
3 it is going on. I think Mr. Dettman had some
4 questions as I saw it relating to -- it
5 started out relating to the zoning history and
6 we've looked at zoning history from time to
7 time as a factor for the uniqueness or
8 exceptional situation and it sounded as if we
9 were closing that out and we were getting
10 ready to go to the Office of Planning for
11 their report.

12 I think some of -- and I'll turn it
13 over to you, Mr. Hood, in one second. Some of
14 the argumentation from counsel is probably
15 best set aside for closing statement where you
16 pull all your evidence and you make your
17 arguments and you explain, et cetera, but
18 again, it sounded as if you had -- you were
19 bringing your case to a close and we were
20 going to turn to OP and I'll see if Mr.
21 Dettman and Mr. Hood have any further
22 questions.

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1 ZC CHAIR HOOD: I just wanted to
2 caution the applicant and I agree with Ms.
3 Monroe, but I think where Mr. Dettman was
4 going was more or less helping us to make sure
5 that we look at what we're bound to look at.

6 Sometimes it's better to just
7 pause. Because he was making -- he was going
8 down a great direction and he was getting the
9 answers he needs so we can make sure we have a
10 full and complete record.

11 But, my question is to Mr.
12 Kellehar. Have you been a good neighbor?

13 MR. KELLEHAR: I think so. Yes,
14 sir.

15 ZC CHAIR HOOD: So, you haven't had
16 any -- and I know this is --

17 MR. KELLEHAR: Sir, I would just --
18 you know, just --

19 ZC CHAIR HOOD: Let me finish.
20 Because one of the things I noticed this
21 morning is that the Chair when he first
22 started, counsel didn't let him finish. Mr.

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1 Dettman, you don't let him finish. So, let me
2 finish.

3 One of the things that we received
4 and I'm not -- it doesn't have a exhibit
5 number and it talks about some things that go
6 on in the back. So, I'm just curious. Will I
7 hear some opposition today?

8 MR. KELLEHAR: Well, sir --

9 ZC CHAIR HOOD: Or concern?

10 MR. KELLEHAR: Like you, this is
11 the first time I've seen this document and
12 apparently there is a woman here. Her name is
13 DeWayne Calhoun, but there's an owner. He,
14 too, a gentleman I've never met. I am
15 familiar with his property. It is a rental
16 property and shucks, if you would like to get
17 specific about this criticism, we can.

18 You know, I think just like our
19 families and our neighborhoods and everything,
20 you know, everyday everybody doesn't get along
21 and I think the spirit of cooperation is what
22 one has to try to maintain. So, I'm happy to

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1 respond to this.

2 But, yes, I mean I think you -- I
3 don't know if you got all this paperwork, but
4 there -- I think there's 20 or 30 signatures
5 of support. There's numerous letters. I
6 think heartfelt and well-written letters, you
7 know, sincerely expressing a kinship with The
8 Craftsmen Group.

9 ZC CHAIR HOOD: I think all that's
10 great, but again, I think the line of question
11 of my colleague Mr. Dettman was taking us in
12 the correct direction and the way I looked at
13 it as a Board Member sitting on this
14 particular case, it was of help to you.

15 So, thank you, Mr. Chairman.

16 MR. KELLEHAR: Well, excuse --

17 BZA CHAIR LOUD: Thank you, Mr.
18 Hood and Mr. Dettman, did you have additional
19 follow-up?

20 VICE CHAIR DETTMAN: No. Not at
21 all. The Board -- the courts say that we can
22 look at a confluence of factors and maybe in

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1 your closing -- because I think you've put a
2 lot into the first prong and so maybe in your
3 closing, you can help me tie those factors to
4 the second prong because that's what we need
5 to do and that's really what my questions were
6 going towards. So, thank you.

7 BZA CHAIR LOUD: Thank you, Mr.
8 Dettman, Mr. Hood. Thank you, Ms. Monroe.

9 We're now going to turn to the
10 Office of Planning.

11 I just wanted to note. I think you
12 said, Mr. Kellehar, in response to Mr. Hood's
13 question that there are a number of neighbors,
14 I think about 16, that signed petitions
15 supporting the application. That's in our
16 Exhibit Number 24. It's an attachment to
17 something. I think your counsel didn't get
18 around to mentioning before closing out your
19 case. So, I'm going to -- since you said it,
20 I'm just going to acknowledged it for the
21 record. We can move on. We don't have to
22 elaborate on that.

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1 And there were some other exhibits
2 that you submitted that showed support. I
3 think one from the Brasille Reid that's at
4 Exhibit 10. Again, just noting it for the
5 record.

6 We'll move now to the Office of
7 Planning.

8 MS. THOMAS: Good afternoon, Mr.
9 Chairman and Members of Boards.

10 Karen Thomas for the Office of
11 Planning.

12 I'll just go through this really
13 briefly to consolidate our recommendation for
14 both properties at 729 Fairmont Street and 775
15 Fairmont Street.

16 To say that the Office of Planning
17 is recommending approval to continue the use
18 of the existing structures as an artisan
19 studio and as a metal and glass workshop.

20 Based on HP's comment to us, we
21 noted that the alleys behind Fairmont Street
22 while it was not an historic district or --

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1 there are structures there which have been
2 historically used for industrial purposes
3 including repair garages and metal works.

4 We believe that the site's history
5 of use and it's nonconforming aspect of the
6 existing structures create an exceptional
7 situation which makes the properties unique.

8 We believe that denial the
9 continued use would deprive the Applicant of
10 the use of the building which was not
11 constructed for residential use. The District
12 has recognized that these buildings were
13 commercial and industrial buildings as
14 evidenced by their tax assessment records and
15 we took that into consideration as well.

16 We also considered that the
17 intended structure and design of the building
18 weren't suitable for residential use and best
19 suited for the intended uses that have been
20 documented in the Applicant's submission.

21 With respect to the detriment to
22 the public good and the impairment of the

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1 intent of the Zoning Regulations and Map, we
2 notice that under Section 801.7(g) it's
3 classified as -- classifies this present use
4 as light manufacturing, fabricating or repair
5 establishment which is consistent with prior
6 established uses.

7 We also deemed that use for
8 residential purposes could be prohibited under
9 the current requirements of Section 2507.3
10 which deals with buildings and alley
11 structures -- buildings on alley lots. Sorry.

12 And the use options for existing
13 alley structures are very limited. So, use of
14 the building for its originally intended
15 purposes would not impair the integrity of the
16 Zoning Regulations.

17 Again, the buildings have been used
18 for light industrial purposes for many years
19 and what is proposed as a woodworking shop
20 would continue the productive use of these
21 buildings. So, there should not be any
22 additional detriment to the public good.

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1 So, on those basis, with respect to
2 the criteria of the use variance, we deem that
3 it -- we could support a use variance for
4 these two buildings and I'll be happy to take
5 any questions. Thank you.

6 BZA CHAIR LOUD: Thank you and let
7 me see if the Board Members have any questions
8 for you.

9 I have one follow-up question
10 regarding the uniqueness exceptional situation
11 prong of the test and the interior staircase
12 issue -- the lack of an interior staircase
13 issue.

14 Is it your testimony that the
15 configuration of the structures, the fact that
16 they're not built out currently for
17 residential makes it a unique property and/or
18 exceptional situation?

19 MS. THOMAS: Yes, we would say --
20 we concluded that the way the buildings were
21 designed it's conditioned as it were. There
22 were not internal plumbing systems, nothing

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1 that would lend itself to what we would term
2 residential use. We believe that this
3 contributed as well as its prior historical
4 uses.

5 BZA CHAIR LOUD: Okay. Do you make
6 anything of, sort of, zoning interaction
7 reliance on the District Government argument
8 that I think the Applicant would have -- do
9 you think that that helps to make it an
10 exceptional situation or are you saying that
11 with the configuration alone and with the
12 prior use history, this meets the test?

13 MS. THOMAS: While we recognize the
14 Applicant's history with respect to dealings
15 with the District Government, we sort of focus
16 on what existing situation is with these two
17 structures and that was the main focus. It's
18 historical usage prior to the 1950s and the
19 way the buildings were designed and we focused
20 on that mainly.

21 BZA CHAIR LOUD: And what do you
22 see as the practical -- not practical

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1 difficulty, but the undo hardship of using the
2 buildings for an artist studio?

3 MS. THOMAS: Well, we admitted that
4 denying the use would deprive him of the use
5 of his building which essentially couldn't be
6 used for anything else the way we see it based
7 on the Zoning Regulations. So, we tied it
8 again into the Zoning Regulations.

9 I don't see how -- what else he
10 could probably sell it as. The next person
11 who probably came back and would purchase it
12 would have to come back in here and have that
13 same argument that there's no relevant use for
14 this type of building in the R-4 Zone as it
15 is. They couldn't convert it into a
16 residential structure. The alleys are not 30-
17 feet wide. It would -- it's very prohibitive
18 to use these structures for any residential-
19 type purposes.

20 BZA CHAIR LOUD: Is that the only
21 other matter-of-right use, residential?

22 MS. THOMAS: Residential, artist

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1 studio.

2 BZA CHAIR LOUD: Okay. And again,
3 I know you may have answered this and I just
4 didn't catch it. What would be the undue
5 hardship of using it as an artist studio?

6 MS. THOMAS: He would have to sell
7 it as an artist studio. I mean I don't know
8 the undue -- I wouldn't see it as an undue
9 hardship as an artist studio, but there is a
10 difference between artist studio and what he's
11 portraying as artisan. There is a different
12 and we're sticking to the artisan.

13 BZA CHAIR LOUD: All right. Thank
14 you. I don't have any further questions. Mr.
15 Hood.

16 ZC CHAIR HOOD: Chairman, in line
17 with that and I may have missed some -- Ms.
18 Thomas, will forgive me.

19 I'm looking in your report which I
20 -- actually, when I read it, I thought that
21 was -- you made a very good argument.

22 Typically under the light

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1 manufacturing, fabricating and repair
2 establishment, that's typically permitted in
3 the -- permissible in the C-M-1 Zone.
4 Correct?

5 MS. THOMAS: Yes.

6 ZC CHAIR HOOD: Okay. And you may
7 have eluded to it. I guess I'm looking at
8 this case as a whole. Is there a possibility
9 that maybe this whole site or the area needs
10 to be rezoned or is it close enough to other
11 R-4 residential homes to where that's not the
12 issue? The issue is just this small parcel or
13 is it this area?

14 MS. THOMAS: Yes, the issue is that
15 area particularly between Fairmont and Girard.
16 Yes. It has been historically -- the alley
17 structures behind there have been historically
18 used. Like I said, while it's not been --
19 it's not historically designated or anything
20 like that, but a history of all those uses in
21 a garage from 1941 thereabouts.

22 ZC CHAIR HOOD: But, I guess where

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1 I'm going -- and thank you. I guess where I'm
2 going is do you think eventually maybe it
3 should constitute a rezoning or --

4 MS. THOMAS: I don't know. We're
5 going to be looking at alley structures with
6 the Zoning rewrite. So, we will take all of
7 this into consideration. As to say whether
8 it's a rezoning or not, I don't get that far
9 yet.

10 ZC CHAIR HOOD: Okay. Thank you.
11 Thank you, Mr. Chair.

12 BZA CHAIR LOUD: Thank you, Mr.
13 Hood.

14 Mr. LeFande, did you -- first of
15 all, do you have a copy of the Office of
16 Planning's report?

17 MR. LEFANDE: Yes, just got it
18 yesterday.

19 BZA CHAIR LOUD: Okay. Do you have
20 any questions?

21 MR. LEFANDE: No, I concur with it.

22 BZA CHAIR LOUD: Okay. Then we'll

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1 move along now to the ANC report. Is anyone
2 here from ANC 1B to give this report? There
3 doesn't appear to be anyone here.

4 The ANC did file a report. It's
5 our Exhibit 27. It relates to both cases
6 17927, 17928. The report notes that at a
7 meeting on May 7 which had proper notice and a
8 quorum, nine of 11 members present, ANC 1B
9 voted unanimously to support the application
10 for the use variance.

11 The testimony before the ANC
12 established that the Applicant consulted
13 extensively with the neighbors and other
14 affected parties with the mediation of
15 Commissioner Smith and has the support of the
16 neighborhood.

17 The Commission supports with the
18 stipulation that the seven employees who work
19 in the building obtain visitor parking passes
20 from the Metropolitan Police Department and
21 park on the street never in the alley.

22 Then they designate two

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1 commissioners to represent the ANC at the
2 hearing and they are not here, but the ANC 1B
3 did submit the report. They do support it
4 conditionally with the proviso about parking
5 for the seven employees.

6 With that, we will now call forward
7 any parties or persons that are in support of
8 the application. Please if you could come
9 forward and just have a seat at the table and
10 state your name and address for the record.

11 MS. ROBINSON: Well, my name is
12 Sylvia Robinson.

13 BZA CHAIR LOUD: Good afternoon,
14 Ms. Robinson.

15 MS. ROBINSON: And my address is
16 733 Euclid Street, N.W.

17 BZA CHAIR LOUD: And you're
18 testifying in support of the application this
19 afternoon?

20 MS. ROBINSON: Yes.

21 BZA CHAIR LOUD: Okay. Go right
22 ahead.

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1 MS. ROBINSON: Okay. As I say, I
2 live at 733 Euclid Street which is the
3 community center on the next block over from
4 Fairmont and I've been there since started
5 construction about 2002 and renovated an
6 abandoned building there and I just wanted to
7 speak out in support of this application for
8 two reasons.

9 One, I believe that, you know, this
10 operation has been there long enough to really
11 be integrated into the neighborhood. They're
12 really woven into the fabric of the community.

13 I didn't know even they were there
14 until more recently, but, you know, I think
15 that that says that, you know, they have been,
16 you know, a part of the community.

17 And the second thing is that I'd
18 like to or what I would fear if this
19 application wasn't approved is what would
20 happen to the buildings. Our neighborhood --
21 and I'm very active in the community and our
22 neighborhood is struggling with crime and we

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1 would have -- we have a lot of issues with,
2 you know, the youth and a lot of, you know,
3 silly things going on in the neighborhoods and
4 I worry about what would happen to -- with
5 these buildings. Because I have the feeling
6 that, you know, buildings that have a limited
7 use in this economy and, you know, I have an
8 arts community. So, I know that the
9 possibilities of an artist studio coming in
10 and taking those buildings over is pretty
11 small and I would fear that those buildings
12 would sit abandoned for a long time which
13 would not benefit the neighborhood.

14 I think that that would be a
15 terrible detriment to the community given the
16 work that we're trying to do to build up the
17 neighborhood and get, you know, to work to try
18 and curb some of the negative activity that's
19 going on.

20 So, I just wanted to make those two
21 points.

22 BZA CHAIR LOUD: Thank you, Ms.

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1 Robinson. We appreciate your patience here
2 waiting for your opportunity and your
3 appearance.

4 Board Members, are there any
5 questions?

6 ZC CHAIR HOOD: Thank you. Ms.
7 Robinson, I was glad to hear you say about the
8 fabric in the community and that's one of our
9 telltale words we hear a lot.

10 I'm really interested in finding
11 out what some of the issues may be
12 surrounding. I know about the crime and
13 what's happened up pretty much in your area,
14 but I'm more concerned about how is the
15 Applicant basically selling it to the
16 community.

17 You said you didn't even notice
18 them. So, apparently a good neighbor from
19 what you're saying. They are a good neighbor.

20 MS. ROBINSON: I would say. I mean
21 can't speak to any particular issues that go
22 on in the block because their operation

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1 doesn't affect me, but I've met Mr. Kellehar
2 fairly recently in some of the community
3 meetings. He has contributed to our community
4 center in terms of donations of helping us get
5 boxes planted and, you know, we've interacted
6 in some of the neighborhood meetings.

7 So, in that sense, I would say
8 that, you know, he's probably more familiar
9 and in touch with the community than some of
10 the other businesses that are in the
11 neighborhood.

12 ZC CHAIR HOOD: Okay. Thank you.
13 Thank you, Mr. Chair.

14 BZA CHAIR LOUD: Thank you, Mr.
15 Hood and thank you. You can take your seat.

16 Now, this is the part of the case
17 now where parties or persons that are in
18 opposition and there are no parties that are
19 qualified. So, if you're in opposition -- I'm
20 sorry. You're in support. Okay. Why don't
21 you step forward? Very sorry.

22 And state your name and address for

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1 the record.

2 MR. ZEWDIE: My name is Mesfin
3 Zewdie.

4 BZA CHAIR LOUD: I don't think your
5 microphone is on. You've got to push the
6 button at the bottom.

7 MR. ZEWDIE: I live 727 Fairmont
8 Street, N.W., Washington, D.C. I live on this
9 address 1990. Almost 17 or 18 years on this
10 address.

11 BZA CHAIR LOUD: And did you state
12 your name?

13 MR. ZEWDIE: Mesfin Zewdie.

14 BZA CHAIR LOUD: Okay.

15 MR. ZEWDIE: I'm supporting because
16 he build up on this area and I know what
17 looked like the area before he got here, you
18 know. It was really messed -- messed up. You
19 know, so many thing going on.

20 Since he got there, you know, he
21 cleaned the area and, you know, is friendly
22 with the neighbor, you know.

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1 That's why I'm here to support him.

2 BZA CHAIR LOUD: Thank you. Can
3 you give me the spelling of your name?

4 MR. ZEWDIE: M-E-S-F-I-N.

5 BZA CHAIR LOUD: Thank you. Let me
6 see if Board Members have any questions.
7 Thank you, Mr. Mesfin. All right.

8 Now, we move to the part of the
9 proceedings where persons that are in
10 opposition -- okay. Why don't you step
11 forward? State your name and address for the
12 record and --

13 MS. LUCAS: My name is Stacey
14 Lucas. I am a representative for Calhoun
15 Properties, 40725. Sorry.

16 In our letter that you see that Mr.
17 Calhoun has presented today, he did state that
18 he does oppose The Craftsmen Group receiving
19 an occupancy license. However, towards the
20 end of the letter, it states that unless the
21 company can remove any and all equipment and
22 cars and miscellaneous items that's blocking

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1 the public alleyway, this is the only reason
2 why we would move forward with them.
3 Proceeding with the -- so, the intent today
4 was not to discredit them.

5 However, I've heard several
6 statements from the company in regards to the
7 type of services that they provide for his
8 customers and within the community. However,
9 I'm sure that the people that have signed the
10 petitions are not being directly affected by
11 some of the debris and trash that's allowing
12 or not allowing the access to the residents of
13 725 to get to their driveway.

14 So, if his company could just
15 extend that same services that he does to his
16 customers where he's -- where his company is
17 storing things in the back and into the public
18 alley, we would greatly appreciate it. I
19 think it's just a common courtesy if you're
20 going to have that type of commercial business
21 mixed in with the residential area that you
22 would definitely be on your Ps and Qs as far

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1 as making sure your things are handled better
2 and so, that it's not affecting anyone trying
3 to access their property and they pay taxes
4 the same thing that, you know, he's doing with
5 his commercial property.

6 So, that's what I would like to
7 state for the record today.

8 BZA CHAIR LOUD: Thank you, Ms.
9 Lucas. Board Members, are there any questions
10 for Ms. Lucas?

11 ZC CHAIR HOOD: So, Ms. Lucas, I
12 guess I'm hearing the public alley is being
13 blocked?

14 MS. LUCAS: Yes, sir and from what
15 I got today, there's a mixed communication
16 within the neighborhood itself in regards to
17 that spot. Where who's leaving trash, who's
18 leaving this? So, I just think it's a common
19 courtesy for everyone involved that's not
20 getting access to their driveway to be
21 courteous of each other, but especially for
22 The Craftsmen Group because they are a

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1 commercial property there and, of course,
2 residents are, you know, bound to do several
3 things, but just for his company alone to just
4 be -- take extra special care of that.

5 ZC CHAIR HOOD: Thank you.

6 MS. LUCAS: Thank you.

7 BZA CHAIR LOUD: Mr. Dettman, any
8 questions for the witness?

9 I have just one quick question.
10 Just want to clarify when you say that they're
11 blocking the public alley, are you talking
12 about blocking it with vehicles, employee
13 vehicles or can you determine --

14 MS. LUCAS: Blocking it with
15 different types of equipment, cars, just
16 miscellaneous items. That has been presented
17 to the person that owns the property at 725.

18 Now, as the owner stated today when
19 speaking with him, he said that it's not his
20 items. It's a mixture of different people
21 just leaving things out there. Neighbors or
22 whatever the case may be and my understand

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1 statement to him and the gentleman that spoke
2 before me was all it takes is a knock on the
3 door to say hey, is this your stuff? If it
4 is, can you move it out of the way, et cetera,
5 et cetera.

6 But, again, just if those things
7 are his company's items just to be specially
8 -- to take special attention to it making sure
9 that any of his items that he's using glass,
10 wood, et cetera, et cetera are not blocking
11 public access and if it's something that the
12 community has to get together and rally
13 against or maybe have a walk through of that
14 alley so everybody can have access to their
15 driveways, then that's something that needs to
16 be done.

17 BZA CHAIR LOUD: Okay. Thank you.

18 We appreciate that and I think that -- it's
19 somewhat consistent with what the ANC
20 mentioned in their record. At least as
21 regards to blocking the alley perhaps with
22 employee parking in the alley and they were

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1 requesting that all employee parking be moved
2 to the street. So, that's something that is
3 now part of the record and as we deliberate,
4 we'll take it into consideration.

5 MS. LUCAS: Thank you.

6 BZA CHAIR LOUD: Thank you. Mr.
7 LeFande, we now move to closing remarks. Your
8 closing remarks. Then after that, the Board
9 will lay out the next steps.

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

12 I think there was a good point that
13 was brought up in the exchange between the
14 Chairman and the lady from the Office of
15 Planning with regards to whether the
16 configuration alone is sufficient to
17 demonstrate an undue hardship upon the owner
18 of the property and also touching upon the
19 other leg of this is whether this variance
20 would not cause substantial detriment to the
21 public good and will not impair the intent,
22 purpose and integrity of the Zone Plan as

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1 embodied in the Zoning Regulations and Map.

2 As an attorney, I am obligated to
3 offer all cognizable arguments that may lend
4 credence and further my client's position. I
5 certainly am in agreement with the Office of
6 Planning's position that the configuration
7 alone is sufficient.

8 I raise the issue of the history
9 with the Government in that I believe there
10 are -- remains some equitable arguments there
11 that the Board should properly consider.

12 First of all, as Mr. Dettman has
13 pointed, you know, there is an absence of
14 malfeasance in this regard. That we were
15 dealing with a youthful and inexperienced
16 person totally unfamiliar with the procedures
17 and what was required of him.

18 Once these were brought to his
19 attention and enforcement was done for the
20 first time, he immediately sought a
21 reconciliatory position that brings us here
22 today including applying for the new C of O,

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1 applying for these variances and paying a
2 substantial fine for the prior noncompliance
3 and the fact that there is some evidence he
4 should have been granted this C of O -- these
5 C of Os back in 1993. That there is this
6 documented history of these properties having
7 variances already.

8 These properties having long
9 standing, decades long employment of these
10 properties. Solely as commercial properties,
11 as industrial properties. That the
12 configuration of the properties is wholly
13 unsuitable to anything but this very recent
14 statutory creation of this concept of an
15 artist's studio.

16 Quite frankly, you know, when these
17 buildings were built, there was -- people
18 weren't -- there aren't artist's studios in
19 the District. People had built buildings and
20 they were making money out of them.

21 This was industry. That's why they
22 call it industrial. That's why it was taxes

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1 industrial during all this time.

2 And while, you know, there's an
3 interesting deposit there about whether this
4 property could now be shoehorned into this
5 statutory creation of an artist's studio, it's
6 not really appropriate -- an appropriate
7 option. We have folks who have been using
8 these properties consistent with their long-
9 time use and with the apparent assent of the
10 Government from a very early stage.

11 Had the Government recognized that
12 back in 1993, we wouldn't be here today. They
13 would have their C of O, but, you know, we're
14 talking about index cards that were -- even
15 then were some 30/40 years olds and, you know,
16 there was a mistake there and I don't think
17 that the mistake was entirely on the part of
18 The Craftsmen Group.

19 I think that Mr. Hood brings up a
20 good point in his discussions with the Office
21 of Planning about that we're not seeking a
22 wholesale revision of the Zoning Plan. We

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1 have some small parcels which are unique
2 circumstances peculiar to the properties. Not
3 unique -- not general conditions of the
4 neighborhood and this does not undermine the
5 function of the Zoning Commission. We're not
6 going to have folks with townhouses wanting to
7 run woodworking businesses out of there.

8 These folks are not asking to use this
9 property for something different than it has
10 always been intended. We're trying to correct
11 an error on somebody's part from 15 years ago
12 in not recognizing that or not adapting that.

13 In that regard, it touches on the
14 issue of whether this causes detriment to the
15 public good.

16 It talks to the intent. As we see
17 it within these index cards of the District as
18 in its early adoption of the Zoning
19 Regulations is that it was intended to have
20 these folks operate these light industrial
21 properties in these alleys.

22 And the Office of Planning has

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1 noted that there's been a long time history in
2 various alleys not just this one of these very
3 little unique properties that are operating in
4 -- these small parcels operating in this
5 industrial manner and they wholeheartedly
6 concur on that and I think that's a very
7 significant point to make.

8 And I think Ms. Robinson as a
9 neighbor there has also made a good point. Is
10 what do you do if you don't grant this. Where
11 are these properties going to go?

12 Okay. There is a statutory regime
13 for this artist studio. What is the market
14 for these artist studios? I don't know how
15 folks could expect to buy a property for what
16 the inflated property prices in this area
17 would go for and then use it at their leisure
18 for painting or sculpting.

19 These folks have an ongoing concern
20 there. They're present in that alley, making
21 themselves good neighbors, contributing to the
22 community and that's reflected very much in

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1 the ANC's concurrence and its appearance on
2 its face meets the requirements of 311151
3 which, therefore, this Board should afford
4 great weight to as it has met all the
5 requirements.

6 It looks like they drafted that
7 letter word for word from the DCMR Section to
8 make sure that I've met all those elements and
9 I think that they're sending a very, very
10 strong message to this Board that they want
11 these folks to continue there for the reasons
12 that Ms. Robinson spoke more clearly to. This
13 is important.

14 And Mr. Mesfin, this gentleman has
15 been present through the entire series. He
16 says 18 years he's been present in that
17 location in a property that is immediately
18 adjacent to these folks and he says that they
19 have made a very positive, not detriment, but
20 a positive impact on the public good insofar
21 as what's going on in that alley.

22 As to Ms. Lucas' concerns, these

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1 are concerns that are shared by The Craftsmen
2 Group in that there has been a history of
3 neglect in that alley prior to their presence
4 and folks do still see fit to deposit their
5 trash in these alleys or leave things
6 haphazard, but we also found that -- but if
7 you listen carefully to her testimony, she is
8 not blaming The Craftsmen Group for any of it.

9 She says what she got today, those were her
10 words, she got a little bit of information
11 from the folks who actually live there. Ms.
12 Lucas doesn't live there and Mr. Mesfin does
13 and they had -- I witnessed a rather lengthy
14 conversation between them and this is not The
15 Craftsmen Group and she does not allege it's
16 The Craftsmen Group that's leaving trash or
17 equipment behind.

18 As to the ANC's concern about
19 parking in the alley, well, yes, I think
20 that's a very good concern in that they say
21 well, there's seven people who are coming into
22 this alley to work. Where are they going to

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1 park? Well, they don't take into
2 consideration that these folks for the large
3 part are all cycling enthusiasts. That
4 they're biking in. They're parking inside the
5 buildings and also that because of the very
6 long-standing relationships that Mr. Kellehar
7 and these other folks have developed, the
8 neighbors offer them off-street parking when
9 they're at work. They said I don't want to
10 park in there. You park in there. So, there
11 is not problem.

12 Certainly, they agree that if any -
13 - there will be no employee parking in the
14 alley and I don't believe there ever has been
15 any employee parking in the alley.

16 The ANC has a good logical
17 concerned based on what is being offered to
18 them, but not on a particular report that this
19 is actually occurring.

20 So, as to this prong, as to this
21 substantial detriment to the public good, I
22 think that we have overwhelming demonstrated

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1 that this is a positive impact, that we do
2 have good neighbors as Mr. Hood was very
3 concerned about and that has been borne out by
4 eyewitness testimony. Not second person
5 testimony, but persons who were actually there
6 for the last 18 years.

7 And for these reasons and the
8 reasons that are set forth in the burden of
9 proof memos, I'm not going to go through an
10 academic recital of each of the prior BZA
11 decisions in support and the D.C. Court of
12 Appeals support, but for these reasons, we ask
13 that the applications be granted as meeting
14 that burden of proof as is articulated
15 previously by this Board and as set forth by
16 the regulatory regime for the District of
17 Columbia.

18 I understand that we've had some
19 evidentiary issues as misplacement of exhibits
20 that were previously filed, but if that's been
21 remedied at this point and the Board has no
22 further concerns, we would ask that a

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1 favorable disposition be rendered today.

2 Thank you.

3 BZA CHAIR LOUD: Thank you, Mr.
4 LeFande and thank you for your presentation
5 this morning, your witnesses and, of course,
6 OP and all of witnesses.

7 I have one quick question about the
8 ANC report just to get your response to it.
9 In the report, they support your application
10 overall, but with the condition that your
11 employees however many there are obtain
12 visitor parking passes and park on the street,
13 never in the alley and I heard you to say that
14 in the first place, it's not happening. But,
15 even if it were, you have no problems with
16 that?

17 MR. LEFANDE: No. No, not at all.

18 I mean --

19 BZA CHAIR LOUD: Okay.

20 MR. LEFANDE: -- we're seeking a
21 remedy for a nonexistence problem. Insofar as
22 if this issue were to arise, any employee were

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1 to need to park an automobile at that
2 location, yes.

3 I will point out that the
4 particular configuration of the 775 building
5 affords that there's an apron in front of --
6 in front of the door which is essentially an
7 off-street parking space. I have a photograph
8 here that I can pull up when it shows their
9 little pickup truck in front of it, off the
10 alley and they actually do have an off-street
11 parking space as well as each of these
12 buildings having very large doors that they
13 can drive into since this was originally a
14 six-unit garage at one time.

15 So, yes, there is -- should the
16 employees not be biking to work, should the
17 employees actually have a car that would be
18 parked there during the day, yes, of course,
19 they would meet those requirements.
20 Absolutely. There's not problem with that
21 stipulation.

22 BZA CHAIR LOUD: Okay.

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1 MR. LEFANDE: Insofar as that does
2 -- I heard some earlier conversation about --
3 insofar as that does fall within the purview
4 of this Board to mandate it.

5 BZA CHAIR LOUD: It would.

6 MR. LEFANDE: Yes.

7 BZA CHAIR LOUD: Traffic impacts.
8 Definitely do that.

9 Okay. Thank you. I believe I
10 understand. Let me just see if Board Members
11 have any final questions for you. Hearing
12 none, I think what we'll do -- I can't speak
13 for everybody, but I need a little time to
14 remove particularly some of the things that we
15 got today.

16 The record is close to full. I
17 don't think for me anyway -- it's not a
18 question of if we need any additional
19 information. It's just a question of having
20 some time to reflect on everything we've heard
21 and then some of the documents that were
22 provided that came, but again, I just didn't

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1 have a copy of prior to this hearing.

2 MR. LEFANDE: Sure.

3 BZA CHAIR LOUD: So, I thank you
4 for that. Thank you for your patience with
5 respect to that.

6 And I think what I'd like to do if
7 Board Members are in agreement perhaps to
8 select a date for a decision. Okay. Sounds
9 like everybody's in agreement with that.

10 So, looking forward a couple of
11 weeks, maybe two or three weeks. Four weeks.

12 Oh, okay. We like to do these as soon as we
13 can if we can because it's still fresh in our
14 minds and --

15 MR. MOY: Yes, well, today's the
16 9th.

17 BZA CHAIR LOUD: The 14th.

18 MR. MOY: Well, there are a couple
19 of options. The first option is the next
20 public meeting is July 14th. There's no
21 hearing in the first week of July because of
22 the national holiday, 4th of July.

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1 We do have a case that's been --
2 later on on the -- on June 30th. So, that's
3 an opportunity for the Board to take a special
4 -- special public --

5 BZA CHAIR LOUD: So, we would have
6 a decision June 30.

7 MR. MOY: June 30 at the earliest.

8 BZA CHAIR LOUD: Well, is there any
9 earlier time? What are we doing?

10 MR. MOY: We have a June 23rd.

11 BZA CHAIR LOUD: What do we have in
12 the morning?

13 MR. MOY: We have two other cases
14 for a decision. So.

15 BZA CHAIR LOUD: Which two do we
16 have? This is --

17 MR. MOY: One is W Street and the
18 other is Babyland Development. Which the
19 Board can handle pretty well. So, do you want
20 to add this as the third decision case for
21 that --

22 BZA CHAIR LOUD: Yes. Yes. You

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1 know, I think let's push the envelope and try
2 to deliberate as soon as we can and one way or
3 the other get the Applicant's decision on it.

4 Is that okay with you guys? Okay.

5 So, we're looking to have a
6 decision on June 22nd I think.

7 MR. MOY: Twenty-third.

8 BZA CHAIR LOUD: June 23rd and let
9 me see if the Board Members have any
10 additional information they want to request.

11 ZC CHAIR HOOD: Mr. Chairman, I
12 know you've gotten June 23rd. I'm just
13 curious if I send a proxy because I do have a
14 meeting with some folks out of town on the
15 23rd and I know I won't be here. So, I don't
16 know who the Zoning Commission Member will be.

17 I just don't want to put you in a bind that
18 you don't have anybody.

19 Look like maybe I can get
20 Commissioner May to return the favor since
21 he's going to be here. Okay.

22 BZA CHAIR LOUD: Sounds like a --

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1 ZC CHAIR HOOD: I'm good.

2 BZA CHAIR LOUD: -- like a little
3 inside baseball. Well, we're going to have to
4 be here no matter what so and I'm assuming
5 we'll have our three and you can always do the
6 absentee. So. Unless I'm hearing that you
7 absolutely want to be here for it on the 23rd,
8 we'll go ahead and do the 23rd.

9 ZC CHAIR HOOD: I think I -- that's
10 fine. I think I can work with the record and
11 send my proxy in if that's okay.

12 BZA CHAIR LOUD: Okay.

13 ZC CHAIR HOOD: Thank you.

14 BZA CHAIR LOUD: That's fine from
15 this end.

16 So, let's say June 23rd for a
17 decision and we look forward to making a final
18 deliberation based on the record.

19 MR. LEFANDE: Thank you, Mr.
20 Chairman.

21 BZA CHAIR LOUD: Letting the public
22 know. Okay. Yes.

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1 MS. BAILEY: Mr. Chairman, sorry.
2 I was out of the room for a portion of the
3 hearing. Was there anything that was
4 presented at the video that needs to go into
5 the record or pretty much everything that was
6 on the video is in the record?

7 BZA CHAIR LOUD: That's a good
8 question. It's my -- go ahead.

9 MR. LEFANDE: I'm sorry. Yes, it's
10 my understanding that that was all part of the
11 May 14th submissions. That those photographs
12 that I showed had been submitted to the Board
13 as part of the last set of -- the second set
14 of submissions.

15 BZA CHAIR LOUD: Well, let me ask
16 this follow-up question because this is what I
17 thought. I thought that the binder book that
18 you gave Ms. Bailey --

19 MR. LEFANDE: That was the first
20 set of -- first set of original submissions
21 with the documentary evidence that was part of
22 the OAH record.

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1 BZA CHAIR LOUD: Okay. Okay.

2 MR. LEFANDE: There was a --

3 BZA CHAIR LOUD: Hold on.

4 MR. LEFANDE: I'm sorry.

5 BZA CHAIR LOUD: All right. So,
6 but we have all of that in the record now
7 through what you gave Ms. Bailey and you
8 testified earlier that that pertained to both
9 cases.

10 MR. LEFANDE: Oh, very much so.

11 BZA CHAIR LOUD: Okay. So, now,
12 we're just talking about pictures.

13 MR. LEFANDE: Pictures. Yes.

14 BZA CHAIR LOUD: All right. So,
15 with respect to pictures?

16 MR. LEFANDE: Ms. Moore submitted
17 those as part of the submissions as well.
18 Those photographs. So, they should appear in
19 the record.

20 BZA CHAIR LOUD: Okay. Okay. Then
21 that sounds fine. Ms. Bailey, does that
22 answer your question?

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1 MS. BAILEY: I just want to make
2 sure that everything we need we have in the
3 record, Mr. Chairman. It sounds as if we do.

4 BZA CHAIR LOUD: Okay. Thank you.

5 MR. LEFANDE: And we're not relying
6 -- I mean they were -- they were vaguely just
7 demonstrative of anything. So, I -- we don't
8 -- I don't believe it's fatal to our case if
9 they're not upon the record.

10 BZA CHAIR LOUD: I think Ms.
11 Bailey's point is a good one. Just making
12 sure we have a full record. There were a lot
13 of pictures in the original submission anyway.

14 It was more the Lusk and the tax records and
15 things like that that we did not -- some of us
16 didn't have.

17 MR. LEFANDE: Some of them were the
18 same photo. A couple of photos that I used
19 here --

20 BZA CHAIR LOUD: Are the same as
21 were submitted.

22 MR. LEFANDE: -- were those photos

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1 you've seen before.

2 BZA CHAIR LOUD: Okay. All right.

3 Thank you.

4 MR. LEFANDE: Thank you.

5 BZA CHAIR LOUD: Then if there's no
6 further issue with this case, we'll move
7 forward to the afternoon. Why don't we take a
8 five-minute break and then we'll call the
9 afternoon hearing.

10 MR. LEFANDE: Are we excused, sir?

11 BZA CHAIR LOUD: Yes, sir, you are.

12 Thank you.

13 Let me just correct myself with
14 respect to the National Progressive Baptist
15 case. We're going to come back in about 15
16 minutes. I think folks want an opportunity to
17 grab some juice or something like that. So,
18 in 15 minutes we'll be back.

19 (Whereupon, the hearing was
20 recessed at 1:56 p.m. to reconvene this same
21 day.)

22

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

2 2:41 p.m.

3 BZA CHAIR LOUD: Good afternoon.

4 This hearing will please come to order. Good
5 afternoon again, ladies and gentlemen.

6 This is the June 9 Public Hearing
7 of the Board of Zoning Adjustment of the
8 District of Columbia. My name is Marc Loud,
9 Chairperson and joining me today are Vice
10 Chair Shane Dettman representing the National
11 Capital Planning Commission and Mr. Anthony
12 Hood, Chairperson of the Zoning Commission.
13 To my left, Mr. Clifford Moy, Secretary of
14 BZA, Ms. Lori Monroe, Attorney in the Office
15 of Attorney General and Ms. Beverley Bailey,
16 Zoning Specialist here in the Office of
17 Zoning.

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

21 Please be aware that this
22 proceeding is being recorded by a court

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1 reporter and is also webcast live.

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

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

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

20 The order of procedure for special
21 exceptions and variances is as follows:
22 statement and witnesses of the applicant;

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

7 Pursuant to Sections 3117.4 and
8 3117.5, the following time constraints will be
9 maintained. The applicant, appellant, persons
10 and parties except an ANC in support including
11 witnesses 60 minutes collectively. Appellees,
12 persons and parties except an ANC in
13 opposition including witnesses 60 minutes
14 collectively and individuals three minutes
15 each.

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

21 The ANC within which the property
22 is located is automatically a party in a

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1 special exception or variance case.

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

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

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

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

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

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1 deliberating on the case.

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

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

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

17 At this time, the Board will
18 consider any preliminary matters. Preliminary
19 matters are those that relate to whether a
20 case will or should be heard today such as
21 requests for postponement, continuance or
22 withdrawal or whether proper and adequate

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1 notice of the hearing has been provided.

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

6 Does the staff have any preliminary
7 matters?

8 MS. BAILEY: Mr. Chairman, good
9 afternoon.

10 BZA CHAIR LOUD: Good afternoon.

11 MS. BAILEY: Member of the Board,
12 to everyone, good afternoon please.

13 There is a preliminary matter. It
14 has to do with the Parkmont School,
15 Application 17858, that application, Mr.
16 Chairman, was withdrawn.

17 BZA CHAIR LOUD: Thank you, Ms.
18 Bailey. Are there any additional preliminary
19 matters?

20 MS. BAILEY: Not from me, Mr.
21 Chairman.

22 BZA CHAIR LOUD: Okay. Why don't

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1 we proceed with the agenda.

2 Would all individuals wishing to
3 testify today please rise to take the oath?
4 Ms. Bailey will administer the oath to you.

5 MS. BAILEY: Would you please raise
6 your right hand?

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

11 BZA CHAIR LOUD: Good afternoon.
12 We've already been joined at counsel's table
13 and I'd like to first apologize for the delay
14 in getting to this case this afternoon. We
15 had some late filings at the very start of
16 today's calendar which pushed everything after
17 those cases back a little bit further. So, I
18 do apologize and thank you for your patience.

19 Why don't you -- we're going to
20 start with Applicant's statement and witnesses
21 and why don't you for the record indicate your
22 names and addresses?

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1 MR. KEYS: Good afternoon, Mr.
2 Chairman, Members of the Board.

3 My name is George Keys. I'm with
4 the firm of Jordan and Keys, PLLC, 1400 16th
5 Street, N.W., Suite 710, Washington, D.C.

6 I'm here on behalf of Progressive
7 National Baptist Convention to seek approval
8 for a private school in the R-5-A District at
9 601 50th Street, N.E. and this is a special
10 exception and I think the application may be
11 somewhat confusing and I'd like to try to
12 restate what we're actually here for.

13 It's been advertised as a private
14 school for enrollment of 300. In the
15 supplemental information that I filed on May
16 26, 2009, I indicated that the Applicant was
17 really requesting an enrollment increase of
18 200 and it's on that that we'd like to proceed
19 today.

20 Now, I'm also -- I would have to
21 apologize to the Board that this application
22 doesn't come before you I think as fully

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1 developed as it should be and I will attribute
2 that to my late involvement in this case and
3 also the complexity of this case and the lack
4 of records and I think pertinent to your
5 consideration of this case is just briefly a
6 bit of the zoning history of this case.

7 The history of this school predates
8 zoning. This school has been in continuous
9 operation for 100 years. Nannie Helen
10 Burroughs opened the school in 1909.

11 The only record -- the earliest
12 record I could find for a BZA appearance by
13 this Applicant and that was the Nannie Helen
14 Burroughs School, Inc. which was the owner of
15 the property and the school at the time was in
16 1968 and this particular order of the BZA
17 tells a great deal about why we're here today
18 and the circumstances that make this
19 application a little bit unusual.

20 The request from the Board in 1968
21 and this is in Appeal Number 9538. The order
22 date was September 23rd, 1968.

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1 This school intended to build a new
2 building and the Board acknowledged that the
3 school campus, it's a 5.23 acre site, that the
4 school campus had multiple buildings. At this
5 time a chapel, a dormitory, several classroom
6 buildings, residences, utility and maintenance
7 facilities and what they wanted to do was to
8 construct a new building that would contain
9 ten classrooms, administrative offices, a
10 preschool for 100 children and the Board
11 looked at the matter and concluded the school
12 is a use not likely to be objectionable to
13 neighbor adjoining property basically the
14 special exception, has no adverse impact on
15 public good or the integrity, intent and
16 purpose of the zone plan and the Board
17 approved that.

18 Two year later, the Applicant came
19 back to the Board and said we want to modify
20 that plan. We're taking down some more
21 buildings. We're enlarging this building, but
22 again, the uses were to be a preschool center

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1 for 80 children and that was in 1970 and that
2 was in Appeal Number 10525.

3 Now, the reason I mention that
4 zoning history is just to suggest that that
5 explains a great deal about the existing
6 certificate of occupancy for the school which
7 was included with the application and that's
8 Certificate of Occupancy Number B143230. I
9 believe there's a copy of that in the
10 application.

11 BZA CHAIR LOUD: It's our Exhibit
12 7.

13 MR. KEYS: Okay. That particular
14 certificate of occupancy was issued in
15 September 1985 and the occasion for that
16 certificate of occupancy was, in part, the
17 change in ownership because the Progressive
18 National Baptist Convention became the owner
19 of the property, but also, it was probably
20 done to reflect the enrollment at the time.
21 Because the language administration building,
22 classrooms, preschool facilities comes

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1 directly from the prior 1968 orders and my
2 expectation is that if we were to go back in
3 time to try and find prior C of Os, it would
4 have exactly this kind of language in it.

5 So, it's really from this
6 certificate of occupancy that we are -- we're
7 trying to modify by getting the recognition of
8 what this school really is. It's not a
9 preschool and that's one of the things that we
10 just recently put together.

11 In looking at the history, when the
12 Nannie Helen Burroughs School -- and I think I
13 allude to this in the application, in the
14 supplemental information. When the Nannie
15 Helen Burroughs School went from being a women
16 and girls school to being a coeducational
17 school and that was in the late 1960s, they
18 decided to start it at preschool and then
19 advance it as the demand came to go to the 8th
20 grade. Currently, the school is nursery to
21 6th grade, but the C of Os have never
22 reflected the change in the nature of the

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1 school to a primary education.

2 So, what we're attempting to do is
3 by this process to have the Board acknowledge
4 the school's existence as a private school in
5 the R-5-A Zone, acknowledge an enrollment
6 ceiling of 200 and fine that this school can
7 be accommodated under the special exception
8 standards and as we will demonstrate through
9 our witnesses, we believe that we can meet all
10 of the standards applicable in Section 206 and
11 in Section 3104.1.

12 I have three witnesses to present
13 today and I will start with Dr. Tyrone S.
14 Pitts, the General Secretary of the
15 Progressive National Baptist Convention, the
16 owner of the property and I think Dr. Pitts
17 has a statement he would make and will be
18 available obviously for your questions.

19 DR. PITTS: Thank you very much,
20 Mr. Chairman.

21 BZA CHAIR LOUD: Good afternoon,
22 Dr. Pitts.

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1 DR. PITTS: Good afternoon, sir.

2 My name is Dr. Tyrone S. Pitts. I
3 reside at 3496 Paul Street in Alexandria,
4 Virginia.

5 I am the General Secretary of
6 Progressive National Baptist Convention
7 incorporated which is the only African
8 American Baptist Convention with a
9 headquarters office in Washington, D.C. It is
10 also the only African American Baptist
11 Convention that has one location for its staff
12 and operations and that location, Mr. Chairman
13 and Board is at 601 50th Street, N.E.,
14 Washington, D.C. which is Lot 824 and Square
15 5194 which is the property in question today.
16 It is 5.23 acres of land.

17 Presently, there are nine staff at
18 the Progressive National Baptist Convention
19 headquarters and in my role as General
20 Secretary, I serve as Chief Operating Officer
21 and I've been in that capacity since 1990
22 April 16th.

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1 In my testimony today, I want to
2 give you a brief history of the Progressive
3 National Baptist Convention, Incorporated,
4 talk to you a little bit about its
5 relationship with the Nannie Helen Burroughs
6 School and also, I'd like to talk to you a
7 little bit about the property which was
8 purchased from the Nannie Helen Burroughs
9 School Board on May 6th, 1978.

10 Before I begin, I'd like to thank
11 you for giving us the opportunity to present
12 our case at this hearing. The testimony you
13 will hear today really asks you to look
14 seriously at the urgency of the situation of
15 the Nannie Helen Burroughs School where 56
16 students from Washington, D.C. will be
17 negatively impacted if we do not get an
18 occupancy permit by June 30th, 2009.

19 The Progressive National Baptist
20 Convention I am said to say has not applied
21 for an occupancy permit the Nannie Helen
22 Burroughs School or any of its property since

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1 1985 when it moved its headquarters to the
2 Nannie Helen Burroughs School campus.

3 Through this zoning process, Mr.
4 Chairman and Board, I have discovered that
5 there may be other buildings in our
6 headquarters campus that have either outgrown
7 their certificates of occupancy or do not have
8 any. We're in the process now of making them
9 in compliance and regular and we as an African
10 American Christian organization are committed
11 to in compliance with the regulations and laws
12 of Washington, D.C.

13 I'd like to give you bit of history
14 about the Progressive National Baptist
15 Convention. The Progressive National Baptist
16 Convention was founded in 1961 by Dr. L.
17 Venchael Booth of Cincinnati, Ohio. It became
18 the denominational home of Dr. Martin Luther
19 King, Jr. and many of the members of the civil
20 rights movement.

21 The organization grew out of
22 dissatisfaction with the National Baptist

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1 Convention U.S.A of America over the issues of
2 tenure of office, over the issues of unified
3 giving, support for civil and human rights and
4 support for education in African American
5 colleges and universities.

6 The Progressive National Baptist
7 Convention not only gave a platform to Dr.
8 Martin Luther King, but it also provided an
9 arena for him to do organizing through its
10 Civil Rights Commission.

11 The mission of the Progressive
12 National Baptist Convention, Mr. Chairman and
13 Board Members, is very clear. It is an
14 organization that proclaims and advocates the
15 New Testament as sufficient for our polity and
16 practices.

17 Although Nannie Helen Burroughs
18 died during the year that our convention was
19 found, Nannie Helen Burroughs had a very deep
20 and abiding relationship with members of our
21 convention. She was President of the Women's
22 Auxiliary of the National Baptist Convention

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1 U.S.A., Incorporated and during that period of
2 her tenure, the National Baptist Convention,
3 Incorporated refused to allow members of that
4 convention to support the Nannie Helen
5 Burroughs School which at that time was for
6 women and girls.

7 Dr. Nannie Helen Burroughs gained
8 support over the years from members of the
9 Progressive National Baptist Convention who
10 were a part of the National Baptist Convention
11 before its schism and Dr. Nannie Helen
12 Burroughs educational goals, her understanding
13 of the livelihood of African American women at
14 the time and the Progressive National Baptist
15 Convention's commitment to education for
16 African Americans became the cornerstone
17 through which the work of Nannie Helen
18 Burroughs and the Progressive National Baptist
19 Convention were merged.

20 I would ask you, Mr. Chairman, if
21 you'd like to read more about Dr. Nannie Helen
22 Burroughs, the school has many books

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1 concerning her life work and ministry, but I
2 would ask you to pay close attention to the
3 book called The Dream and The Dreamer by Dr.
4 Earl Harrison who was one of the former
5 presidents of the Progressive National Baptist
6 Convention to gain more of an understanding of
7 the school and its life and ministry.

8 One of the things that I would like
9 us to be aware of, Mr. Chairman, is that the
10 Progressive National Baptist Convention over
11 the years has tried to keep faith not only
12 with its principles, but also with the
13 principles outlined by Dr. Nannie Helen
14 Burroughs many years ago when she created the
15 school. The objectives of the Convention
16 according to Article 2 and Section 1 of the
17 Convention is to encourage support and promote
18 Christian evangelism, Christian mission,
19 Christian education including necessary
20 publications and distribution of literature,
21 Christian stewardship, benevolence, human
22 freedom and such Christian work as the

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1 Convention may determine.

2 That work in terms of education in
3 the school has been an integral part of the
4 Convention since it purchased the school in
5 1978.

6 I would like you to come with me
7 for a moment to look at the present usage of
8 the school and we have a map, a aerial map,
9 that will help us walk through this process.

10 If I may, Mr. Chairman.

11 BZA CHAIR LOUD: That would be much
12 appreciated, Dr. Pitts. You can feel free to
13 sort of summarize some of the key points, but
14 I do think its important that you sort of lay
15 out the whole site plan.

16 DR. PITTS: Thank you very much,
17 Mr. Chairman.

18 First of all, Mr. Chairman, if you
19 look at the site, the 5.23 acres of land, you
20 will see that it borders on 50th Street, N.E.,
21 Washington, D.C., 5th Place in Northeast and
22 also 50th Street and here's the Nannie Helen

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1 Burroughs Avenue and here is 51 Street.

2 There is a wrought iron fence that
3 covered the total amount of land in the
4 Convention. It does not show here, but there
5 is a fence that covers all of this.

6 In the property itself, we have the
7 Old Trades Building which is now named the L.
8 Venchael Booth Building after the founder of
9 our Convention Dr. L. Venchael Booth. There
10 are 13 parking spaces for this building.

11 Here we have the Nannie Helen Burroughs
12 School named after Dr. Nannie Helen Burroughs.
13 We have 26 spaces for this building.

14 And here we have the old dormitory
15 which has been named after Earl G. Harrison
16 which is now housing several groups -- two
17 groups of people and that is the Child and
18 Family Services and the Monroe School.

19 ZC CHAIR HOOD: Mr. Chairman, Dr.
20 Pitts, if I can just interrupt just a little
21 bit. If you just hold the mike. You're good
22 -- but, if just hold the mike just a little

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1 bit away, that will help us and we'll be able
2 to hear you.

3 DR. PITTS: Trying to get my
4 preaching voice.

5 ZC CHAIR HOOD: I know that's
6 right. All right.

7 DR. PITTS: Thank you very much,
8 sir.

9 If you look at the property, you
10 will also see that there is natural traffic
11 flow from 50th Street to the building here
12 which is the L. Venchael Booth Building around
13 the back of the building to the Nannie Helen
14 Burroughs School around the back of the Nannie
15 Helen Burroughs School to the Harrison
16 Building and then in front of the Nannie Helen
17 Burroughs School and back out to the street.

18 We also have --

19 MR. KEYS: Dr. Pitts, if I could
20 interrupt you a bit. In talking about the
21 roadway, could you indicate where someone
22 approaching the school, a parent dropping off

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1 a child, where they would come and how they
2 would get into the site and how they would
3 leave the site?

4 DR. PITTS: Yes.

5 MR. KEYS: Could you just trace
6 that with your finger?

7 DR. PITTS: Yes.

8 MR. KEYS: And for Board Members,
9 attached to the traffic report which was
10 submitted in this case, there is a picture,
11 another aerial, a slightly different view,
12 different angle, different direction that you
13 could perhaps follows this also.

14 DR. PITTS: Yes, the parents
15 normally would come from 50th Street in front
16 of the building, drop the children off here
17 and then go back out the 50th Street. That is
18 the normal flow.

19 There are people here who chaperon
20 children. I think you'll hear more about
21 that, but will chaperon children to the
22 school.

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1 There is literally no traffic
2 blockage from 50th Street to the front of the
3 building through here and then back out of
4 50th Street.

5 Finally, Mr. Chairman, I would like
6 to encourage you and this Zoning Board to
7 grant our position here primarily because 56
8 students from Washington, D.C. will not be
9 able to attend this fine school, and you'll
10 hear more about that, this fall if we are not
11 granted this particular license.

12 Thank you, sir.

13 MR. KEYS: Dr. Pitts, before you
14 leave, there's another building on the site
15 that you did not identify. I think that's the
16 chapel.

17 DR. PITTS: Yes, this is the
18 Chambers Chapel which is now being service.
19 Working on this. That's now being serviced by
20 the Convention, but it is occupied now with a
21 church called the Temple Deliverance Church
22 which is a church that has just been planted

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1 and it is a church that's working with
2 community groups in the community.

3 I also would like to just state
4 that the Child and Family Services which is
5 located in the Harrison Building works with
6 poor and low-income families in this area
7 supplying food, clothing and support for those
8 individual and also, the Monroe School is
9 supplying support for children who have
10 special needs in this particular building.

11 Thank you, Mr. Chairman.

12 BZA CHAIR LOUD: Thank you, Dr.
13 Pitts and let me see if the Board Members have
14 any questions. Okay.

15 You have another witness or a
16 couple of more witnesses.

17 MR. KEYS: Rita Johnson who is the
18 Principal of the Nannie Helen Burroughs
19 School.

20 BZA CHAIR LOUD: Good afternoon.

21 MS. JOHNSON: Good afternoon.

22 BZA CHAIR LOUD: Good afternoon,

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1 Mrs. Johnson.

2 MS. JOHNSON: My name is Rita
3 Johnson and I reside at 605 Drumshoe Court in
4 Upper Marlboro, Maryland. I am the Principal
5 of the Nannie Helen Burroughs School presently
6 and have been since September of 2006.

7 As you've heard, Board, that Dr.
8 Burroughs a very strong Christian woman
9 founded the school that was named at first the
10 National Trade and Professional School for
11 Women and Girls.

12 Determined her students to become
13 independent women, she stressed the three Bs,
14 the Bible, the bath and the broom with lessons
15 in godliness, physical cleanliness and good
16 housekeeping, but she did not stop there. She
17 did not limit her charges to just that. They
18 also learned dressmaking, printing and
19 entrepreneurship.

20 Since 1964, the Nannie Helen
21 Burroughs School has served as a coeducational
22 institution serving students from nursery

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1 through grade 6, providing a strong academic
2 program with an emphasis on basic skills,
3 technology, African American studies and
4 Christian education.

5 The mission of the Nannie Helen
6 Burroughs School is to provide students a
7 strong academic program in a nurturing, safe,
8 Christian environment. The school promotes
9 cultural awareness, creative expressive and an
10 appreciation of the arts which enables
11 students to become productive citizens in the
12 global society.

13 The school promotes human health
14 and welfare through the numerous programs
15 that we provide and opportunities that we give
16 our young people.

17 It is a school that provides and
18 seeks Christian principles. Our school begins
19 everyday with devotions and reading of
20 scriptures, encouraging positive character
21 values to our children on how to get along
22 with one another, sharing and positive

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1 thinking.

2 We are committed to the holistic
3 education of children. We do provide a before
4 and after care. Our before care begins at
5 7:00 a.m. and our evening care goes from 3:00
6 to 6:00 p.m. The regular academic day starts
7 at 8:45 and ends at 3:00.

8 Parents do bring their children.
9 Most of them by car. Drop them off at a
10 certain point where they are supervised from
11 getting out of the car to entering the
12 building.

13 We do have several students that
14 ride public transportation as well as walk.
15 That number is very minimal. Approximately 15
16 students out of the 133.

17 The Nannie Helen Burroughs School
18 is an accredited institution with the Middle
19 States Association for Schools and Colleges.
20 The accreditation was granted for the period
21 of April the 20th, 2004 through May the 30th
22 of 2014.

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1 The accreditation states that we
2 effectively advance the quality of education
3 experiences that we offer to students and meet
4 our responsibilities to the public and to the
5 profession of education.

6 We are currently piloting a primary
7 curriculum that was developed and has
8 copyright through the Library of Congress.
9 The Board of Trustees, educational consultants
10 as well as the administration also are working
11 to finalize the intermediate curriculum that
12 we hope will be developed and finalized for
13 school year 2010/2011.

14 Annually, we administer the Iowa
15 Basic Skills testing along with other teacher
16 made tests and resources for assessment of our
17 students annually to see that they make their
18 targets.

19 The teaching staff is consisted of
20 experienced professional teachers, certified
21 teachers to help build our academic. Our
22 students are involved in a lot of school-wide

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1 as well as city-wide programs. The spelling
2 bee, science fair, writing and arts contests,
3 oratorical contests, poetry writing.

4 We partner with a lot of
5 organizations throughout the city. The Lab
6 School of Washington, Howard University, Arena
7 Stage, J. Craig Venture Institute, the
8 Smithsonian Institute, the Kennedy Center. We
9 also work closely with the District of
10 Columbia Public Schools with the Title 1
11 Program.

12 A camp was added to our program
13 2006, 2007 and 2008. The camp only services a
14 small group of students the month of July
15 where the children are able to explore the
16 city of Washington, D.C. We go to the
17 museums, the parks, gardens and buildings
18 throughout the city and they are able to
19 explain, explore and exhibit their knowledge
20 that they have gained through this.

21 We also reach out to community
22 services throughout the city. We connect with

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1 a lot of the churches throughout the city
2 where we do outreach programs for feeding the
3 hungry, providing hygiene to the homeless as
4 well as needy families in the neighborhood
5 with Thanksgiving and Christmas baskets. We
6 do a fundraiser for the Pennies for Patient,
7 the Leukemia Society every year and we
8 contribute over \$2,000 annually.

9 The majority our students are
10 dropped off as I said and there are personnel
11 that are there to help supervise those
12 students as they come in and out of the
13 building. We have never gotten a complaint
14 from the public transportation about students
15 and how they go to and from school.

16 We go through a licensing process
17 for our pre-kindergarten every year which our
18 schools goes through an annual inspection with
19 the D.C. Fire Department. Fire extinguishers
20 are checked and services annually through a
21 private company. Immunization compliance
22 through the Department of Health with our

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1 students. Annual extermination and termite
2 inspections take place as well.

3 We have a hot lunch program
4 provided by a licensed caterer and milk is
5 delivered weekly for all students to have
6 access to milk.

7 The building is adequate to
8 accommodate the increased enrollment as the
9 application is asking for 200 students. There
10 are several classrooms that are vacant at this
11 time. The number of classrooms available is
12 17 throughout the building. We enroll 20 per
13 class. Twenty students per one teacher. All
14 classes from nursery through second grade have
15 a teacher assistant or teacher aide.

16 The student population as Dr. Pitts
17 emphasized, there are 56 students that are
18 part of the D.C. Opportunity Scholarship
19 Program. We received a call back in April
20 that we know that a lot of the private schools
21 were under zoning issues that had to come
22 before the Zoning Board and I was told that

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1 our students may not be reassigned to the
2 school if we did not have our certificate of
3 occupancy by June the 30th.

4 The enrollment period is usually
5 the month of April and May. They have
6 extended it to June. So, it is very critical
7 that 56 of our students out of the 133 would
8 be a great loss, a detrimental act to the
9 school with the enrollment only being 133.

10 We do have 76 students that are
11 D.C. residents and those students that are
12 part of the D.C. Opportunity Scholarship Fund
13 are D.C. residents.

14 Parents are very concerned. They
15 have expressed their concern to me that their
16 children may not be able to come back to
17 Nannie Helen Burroughs, a very well-organized,
18 well-run school, Christian setting, high
19 academic setting. So, parents are very
20 concerned that their children may not have a
21 school as Nannie Helen Burroughs to attend.

22 They are hopeful. As I came to the

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1 hearing today, some of them prayerfully wished
2 me well and said that we hope that our
3 students will be able to return to Nannie
4 Helen Burroughs next year.

5 So, it is very important that our
6 testimony is one that is persuasive to you
7 that we are critical and have been a beacon in
8 the Dean Wood area of Washington, D.C. for
9 over 100 years serving a lot of students,
10 African American students, young ladies and
11 young men. Very proud of our students.

12 During my tenure as the principal,
13 I have never had a complaint from the local
14 community or the immediate neighbors about the
15 actions of our students, about traffic, noise,
16 activities. In fact, we open up our school to
17 our neighbors to come in and be partners with
18 us.

19 That is my testimony. Thank you.

20 BZA CHAIR LOUD: Thank you, Mrs.
21 Johnson. Board Members, are there any
22 questions?

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1 ZC CHAIR HOOD: I missed something
2 from Principal Johnson. The three Bs? I know
3 one of them is Bible, but I missed the other
4 two.

5 MS. JOHNSON: The Bible, the bath
6 and the broom. Godliness, physical
7 cleanliness and good housekeeping.

8 ZC CHAIR HOOD: Oh. Okay. Thank
9 you for that explanation.

10 One of the questions that I did
11 want to ask you mentioned a -- okay. In the
12 Office of Planning Report, it said 134. I
13 think you mentioned 133. You're trying to get
14 to 200.

15 MS. JOHNSON: Yes, sir.

16 ZC CHAIR HOOD: So, I'm thinking we
17 need to really revisit that and how many do
18 you have now? You have 133 or --

19 MS. JOHNSON: It's 133 students.

20 ZC CHAIR HOOD: And you're trying
21 to get to 200?

22 MS. JOHNSON: Yes, sir.

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1 ZC CHAIR HOOD: So, right now with
2 the 56 that Dr. Pitts mentioned, I have 189.
3 Now, I may need to come over to one of your
4 math classes, but I come up with 189. I want
5 to make sure that --

6 MS. JOHNSON: No, the 56 is
7 included in the 133 number.

8 ZC CHAIR HOOD: So, the 56 is
9 already included in the 133?

10 MS. JOHNSON: Yes, sir.

11 ZC CHAIR HOOD: Oh, so, we just
12 want to go up to a cap of 200?

13 MS. JOHNSON: Of 200. Yes, sir.

14 ZC CHAIR HOOD: Okay. Thank you.

15 MS. JOHNSON: You're invited to
16 come to one of the math classes if you like.

17 MR. KEYS: Just to be sure the
18 record is clear, Mrs. Johnson, you've stated
19 that the enrollment is 133 currently for this
20 school year.

21 MS. JOHNSON: Yes, sir.

22 MR. KEYS: And what's the staffing

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1 that's associated with the school at that size
2 right now?

3 MS. JOHNSON: We have a total of 33
4 staff members. One staff member is an out-
5 source Spanish teacher, but we have 33 that
6 service our children at this point.

7 MR. KEYS: And how would your
8 staffing change if you're granted an
9 enrollment ceiling of 200? What would you
10 have to do to get to staffing for 200?

11 MS. JOHNSON: We would have to hire
12 at least four to five more classroom teachers
13 that would work with our students, but
14 included in the 33 number are our special
15 subject teachers that take classes at
16 different time. So, four to five new teachers
17 that will be classroom teachers.

18 MR. KEYS: I'm going to ask you to
19 make reference to the traffic study and the
20 diagram figure 2, the aerial photograph that's
21 in the traffic study. I believe that's
22 Exhibit 28 for Board Members. It was part of

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1 the supplemental information that was filed on
2 May 26th. I think this might give better
3 depiction.

4 Talking from that, could you
5 explain how parents bring their children into
6 school and, you know, if more than one parent
7 arrives at the same time or if several come at
8 the same time, how does that actually work?

9 MS. JOHNSON: Okay. A lot of our
10 parents do come up 50th Street coming from
11 Nannie Helen Burroughs Avenue which is heading
12 south. Am I right? South. Turning left into
13 the opening of the school, the gate that came
14 in.

15 They do not -- we changed the fact
16 that they had to drop children off in the
17 front because all of our children are
18 assembled in the all-purpose room at the
19 arrival time before classes begin. So, they
20 come around the PNBC Headquarters Building,
21 down the hill to the parking lot area where
22 the school -- the back of the building.

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1 All parents must pull into a
2 parking space before they let children out.
3 There is someone out there to escort and help
4 move them in, but no one is to stop, letting
5 children out without pulling into a parking
6 area for safety reasons. Someone's there to
7 assist as children move out. If there are two
8 or three, there are enough parking spaces so
9 that there's not a congestion at that time
10 when children start arriving at 7:00.

11 Staff members are not due to come
12 to school until 8:30. Teaching staff,
13 educational aides and the administration are
14 there before that time and we have a
15 designated person that is there to help assist
16 them.

17 As parents leave the area, they go
18 on around the back of the school building, in
19 between the school and the Monroe School, the
20 dormitory area coming back around the front of
21 the building, exiting out the gate. There's a
22 separate entrance side to the gate and a

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1 separate exit side. So, they do travel all
2 the way around the back of the buildings to
3 let children off.

4 The same way with pick-up time.
5 They came in the same way. They pick-up their
6 students at that back entrance where they are
7 -- they must come in. Sign them out. Escort
8 them and into the car.

9 MR. KEYS: In your opinion, do you
10 have adequate parking on the site to
11 accomplish these tasks as well as parking for
12 your staff?

13 MS. JOHNSON: Yes, we do have staff
14 that are there full-time and we have part-
15 time. So, not at any time are the entire 33
16 persons on the site. Our custodial staff are
17 all part-time persons. One -- shifts. They
18 work in shifts to accommodate that. We have
19 part-time teachers that only work two or three
20 days a week. The special teachers. Our
21 classroom teachers are full-time employees.
22 Our office staff is full-time employees.

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1 MR. KEYS: I just want to ask one
2 more thing again to clarify the testimony.

3 What does the loss these
4 scholarships -- the loss of the scholarships
5 clearly is students not able to go to the
6 school, but what's the impact on the school?

7 MS. JOHNSON: Budget-wise, it's
8 almost \$400,000 to the school and that would
9 be a loss of staff members. There would be
10 some staff members that we would have to
11 dismiss because of the loss of the 56
12 students. It would be detrimental to the
13 school.

14 MR. KEYS: Thank you very much, Ms.
15 Johnson. Does the Board have anymore
16 questions of this witness?

17 BZA CHAIR LOUD: Excellent
18 question. Let's see. Any questions from
19 Board Members?

20 VICE CHAIR DETTMAN: Just one, Mr.
21 Chair. Ms. Johnson, just so I'm clear, you
22 had mentioned your staffing levels and I think

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1 you're contemplating a slight increase in
2 staffing. The application said 37 staff
3 people total. Is that what you're looking at?

4 MS. JOHNSON: There are 34 staff
5 members. One being -- I'm sorry. Let me
6 look. Make sure of my numbers. Thirty-three
7 staff members and one of those staff is an
8 out-source Spanish teacher that we have
9 contracted in.

10 VICE CHAIR DETTMAN: Okay. And
11 then as a result of the increase to 200
12 students, you had mentioned that you're going
13 to need to hire a couple extra people?

14 MS. JOHNSON: Yes, at least four to
15 five classroom teachers.

16 VICE CHAIR DETTMAN: Four to five
17 and is that a total of both your part-time and
18 full-time people?

19 MS. JOHNSON: The 33 number?

20 VICE CHAIR DETTMAN: Yes.

21 MS. JOHNSON: Yes. Yes, it is,
22 sir. Eighteen full-time, 14 part-time and one

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1 part-time Spanish person that's out-sourced.

2 VICE CHAIR DETTMAN: Okay. Thank
3 you.

4 MS. JOHNSON: You're welcome.

5 BZA CHAIR LOUD: Thank you, Mr.
6 Dettman. I just have a couple of -- not so
7 much questions. I just want to make sure I'm
8 understanding what is taking place here.

9 So, basically, you've got a couple
10 of different problems. One is the C of O that
11 doesn't speak to the population any longer and
12 that's sort of our most independent of the
13 expansion. You need some relief for that
14 anyway and as to that C of O, there's this
15 organization that funds 50 students and they
16 have said if you don't get the C of O
17 corrected, potentially they could yoke the
18 scholarship.

19 Now, your submission from May 26
20 says that they might pull it I think or
21 something like -- it doesn't sound as
22 definitive as the testimony from Mrs. Johnson

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1 this morning that you've got an absolute drop-
2 dead date of June 30. So, I just wanted to
3 ask you about that just so we're real clear
4 moving forward. So, that would be one
5 question.

6 MS. JOHNSON: As I understand it,
7 the gentleman, Mr. Walbrown from the
8 scholarship fund, made it very clear that if
9 we did not get our C of O, the certificate of
10 occupancy, that we would not -- they would not
11 be reassigning the students to the school.
12 They were going to send out notices to them
13 the month of June to let them know they may
14 have to reassign them. So, June is usually
15 the deadline when everyone knows their
16 enrollment. The majority of their students
17 that come to their schools.

18 BZA CHAIR LOUD: Okay. You know, I
19 hear you loud and clear and certainly want to
20 make sure that whatever we do, whichever way
21 we go, we try to do it expeditiously, but do
22 you think from what has been communicated up

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1 to this point between you and the scholarship
2 fund that if for any reason it goes past June
3 30 that you would be in jeopardy of losing
4 those 50 students or if they see that you've
5 come before BZA, that you've presented your
6 case and that we're deliberating it and may
7 take, you know, a short period beyond that
8 that they would grant you some grace on that?

9 MS. JOHNSON: I'm sure they would.

10 BZA CHAIR LOUD: Okay.

11 MS. JOHNSON: If we got something
12 in writing maybe from the Board or something
13 that shows with our lawyer here that we're
14 working on getting it.

15 BZA CHAIR LOUD: Okay. All right.

16 Now, in terms of the diagram that you showed
17 us which if it is a part of our record, I
18 didn't see it. So, this question -- excuse me
19 if it's a question that I should already have
20 the answer to, but there are four buildings
21 mentioned in the pleadings and four shown on
22 the diagram and then parking indicated for

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1 three of the four but not for the church, not
2 for the chapel.

3 Is there parking for the chapel?

4 MS. JOHNSON: Not as I know of.
5 They use our facilities because usually we're
6 not in session.

7 BZA CHAIR LOUD: On Sunday.

8 MR. KEYS: I think Dr. Pitts
9 probably is the best person to respond to
10 that. If I could get Dr. Pitts --

11 BZA CHAIR LOUD: Sure. Yes. And
12 Dr. Pitts, this is not a got you sort of
13 question. It's just sort of --

14 DR. PITTS: I understand.

15 BZA CHAIR LOUD: -- you know, round
16 out my understanding of the overall picture,
17 but --

18 DR. PITTS: And the reason why I
19 did not -- the reason why I did not mention
20 the parking for the chapel is because the
21 chapel operates on Sunday and there's no
22 activity on the campus on Sunday. So,

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1 individuals on the chapel park in the parking
2 lots that's available in the -- all of the
3 parking lots. But, they also park on the
4 street down near the gate of the chapel which
5 is on 50th Street.

6 BZA CHAIR LOUD: Okay. Thank you,
7 Dr. Pitts.

8 I don't have any additional
9 questions up to this point. So, if you've got
10 -- you want to move to your next witness.

11 MR. KEYS: Yes, Mr. Chairman. We'd
12 like to ask Erwin N. Andres who's a
13 professional engineer, who ought to be
14 familiar to the Board. We've included his
15 professional résumé in the supplemental
16 information filed on May 26th and would ask
17 for the Board to consider Mr. Andres an expert
18 witness for the purposes of these proceeding
19 and if you want us to examine him to establish
20 his bona fides, but I think he's been an
21 expert in this body many times.

22 BZA CHAIR LOUD: Board Members, do

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1 we want to do any kind of voir dire or -- yes,
2 I think we see him almost every week it seems.

3 So, he's been qualified as an expert before.

4 So, assuming that there's no objection to
5 him, we'll accept your qualifications as an
6 expert for this case as well.

7 MR. KEYS: You have a copy of his
8 report, his traffic analysis as part of
9 Exhibit 28 and I'll just ask him to summarize
10 his conclusions and his observations.

11 MR. ANDRES: Good afternoon,
12 Chairman Loud and Members of the Board.

13 My name is Erwin Andres, Principal
14 of Grove/Slade Associates. I reside at 475 K
15 Street.

16 With respect to our involvement in
17 this project, what we've done is we've
18 examined existing conditions and the impact of
19 the additional 67 students and four employees
20 to get to the caps that were identified as
21 part of the application.

22 With respect to the application

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1 itself, what's been testified to before and I
2 can confirm, there is a one-way circulation
3 route that circumvents the entire site. It is
4 counterclockwise where all of the drop-offs
5 and pick-ups occur in the rear of the building
6 and all the exits occurred basically around
7 the site in a counterclockwise manner and
8 exiting out onto 50th Street.

9 We've identified that 20 percent of
10 the student population either walk or take
11 transit. The students that do take transit
12 participate in WMATA's student transit
13 program.

14 In addition to that, we've
15 identified the number of vehicles that arrive
16 during the peak hour associated with the
17 Nannie Helen Burroughs School. In the
18 morning, the peak trip generation associated
19 with the school is equivalent to 50 vehicles
20 with the existing student population.

21 With the proposed expansion going
22 up to 200 students, the impact is an

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1 additional 27 vehicles that would arrive over
2 a period of the peak hour and the peak hour is
3 between 7:45 and 8:45 which is the hour before
4 school starts at 8:45.

5 The benefits associated with the
6 existing plan and the plan that they're
7 looking to implement include the before school
8 program and after school program. Typically,
9 programs like that help spread out the
10 traffic. It provides obviously a benefit for
11 the parents so that they provide an additional
12 day care program, but traffic-wise it has a
13 significant benefit in dispersing the amount
14 of traffic that arrives before school and
15 exits after school.

16 We've also had a conversation with
17 the District Department of Transportation,
18 Jeff Jennings, and based on the report that
19 we've submitted, we've had a discussion and I
20 don't mean to speak for him, but we've had a
21 discussion and he wasn't typically concerned
22 about the traffic impacts of the plan.

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1 If there's one comment that I do
2 want to share with the Board, it is that he
3 stressed that given that this school is fairly
4 car oriented that he would like to see more
5 carpooling. Given that, I've shared that with
6 the school administration and they will make
7 some efforts to promote carpooling by either
8 sharing directory information, zip code
9 information and things like that with the
10 parents so that more carpools can be
11 organized.

12 But, given that, the school is
13 actually served with three bus lines. Two on
14 Fish Place which is to the south of the school
15 and one bus line serves -- is provided on
16 Burroughs Avenue.

17 Given that, the addition of the 27
18 vehicles during the peak hour we believe can
19 easily be accommodated by the surrounding
20 network. Burroughs Avenue is four lanes in
21 each direction and is a major arterial that
22 provides significant east/west traffic and

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1 connections.

2 Given that, we believe that there
3 is no adverse impact associated with the
4 expansion going from 133 students to 200.

5 With respect to the parking, there
6 are 50 spaces shown on the aerial to my right.

7 Most of which are designated for the school
8 with 26 spaces. Given a recent parking
9 occupancy that was done actually today after
10 school was admitted, the maximum occupancy on-
11 site was 34 spaces. Six spaces associated
12 with the headquarters for Progressive National
13 Baptist Convention which is relative to the 13
14 spaces. Of the 26 spaces associated with the
15 school, 12 of those were occupied and of the
16 11 spaces associated with the Monroe Private
17 school, 16 of them are occupied. So, there
18 was some people parking on the grass, but
19 overall with respect to the overall parking
20 utilization on campus, there is a significant
21 number of spaces that are empty.

22 So, with the increase in staff and

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1 the fact that not all of those staff are full-
2 time, we believe that the available spaces is
3 adequate to accommodate the increase in staff.

4 MR. KEYS: Mr. Andres, you
5 mentioned that there are 50 striped parking
6 spaces.

7 MR. ANDRES: Yes, that's correct.

8 MR. KEYS: Did you see other areas
9 in the campus that -- other paved areas that
10 are available for parking, but simply aren't
11 striped?

12 MR. ANDRES: Yes, there are paved
13 areas that are available for parking and
14 there's actually, if you notice on the aerial
15 and the aerial has been taken years ago
16 because of the wrought iron fence that
17 surrounds the perimeter is not shown, but if
18 you look at the aerial itself, it identifies
19 several locations where cars have historically
20 parked.

21 It doesn't surprise me that on
22 Sundays when there are services that patrons

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1 potentially park on the ring road as well as
2 on sound grass areas.

3 It's my understanding through my
4 coordination with the school administration
5 that after special events such as graduation,
6 some holiday events, Thanksgiving, Christmas
7 and things of that nature that when they do
8 expect a large number of people arriving for
9 those special events that occur occasionally
10 that they do park in and around the ring road
11 that surrounds the school.

12 And it's appropriate that that
13 situation continues because the school itself
14 has a very nice feel with the grass and to
15 convert it into parking we believe isn't
16 necessary to accommodate those rare
17 occurrences.

18 BZA CHAIR LOUD: Does that conclude
19 your testimony?

20 MR. ANDRES: Yes. Yes, it does.

21 BZA CHAIR LOUD: Thank you, Mr.
22 Andres. Are there any questions?

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1 Do you have any additional
2 witnesses, Mr. Keys?

3 MR. KEYS: No additional witnesses,
4 Mr. Chairman. I could either summarize the
5 case now or do so at the end of the proceeding
6 if there was a rebuttal or after cross
7 examination or however you would choose to do.

8 BZA CHAIR LOUD: Why don't you hold
9 it and then we'll go through the Office of
10 Planning and if the ANC -- I think the ANC did
11 submit a report. We'll go through the normal
12 procedure and then we'll come back to you for
13 the final sort of summation and wrap-up.

14 Office of Planning, good afternoon.

15 MR. JACKSON: Good afternoon, Mr.
16 Chair, Members of the Board.

17 My name is Arthur Jackson. I'm a
18 Development Review Specialist in the District
19 of Columbia Office of Planning and I'll
20 briefly summarize the Office of Planning's
21 report on this application.

22 As stated by the Applicant, the

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1 case is actually to increase the number -- the
2 enrollment from 62 to 200 students. The
3 increase would be 200 -- as summarized in the
4 presentation, it would be 200 students and
5 approximately 38 staff.

6 The standards for approval are
7 subject to and need to be in compliance with
8 Section 206 which I will go through right now.

9 Section 206.1, the private school
10 shall be located as not to become likely
11 objectionable to adjoining property owners
12 because of noise, traffic, number of students
13 or objectionable conditions. We find that the
14 building is placed some distance from the
15 perimeter and in light of the separation, the
16 increased enrollment is not likely to increase
17 -- to generate sufficient additional noise to
18 negatively impact the residences.

19 Regarding the impact in enrollment
20 with regard to area traffic, we acknowledge
21 the fine report by the consultants Grove/Slade
22 that found "that based on the analysis

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1 performed, an increase associated with
2 additional 67 students and four staff will
3 result in 27 additional vehicles in the
4 morning peak hour which could easily be
5 accommodated" and as they stated during their
6 presentation, they think the afternoon and
7 evening peaks will not increase enough to
8 sufficiently impact the neighborhood.

9 Moving on to Section 206.2, we were
10 concerned that we did not have an accurate
11 inventory of the actual uses on-site to really
12 make the determination as to whether or not
13 there is ample parking as required by this
14 provision. So far this afternoon, we've
15 talked about a principal office use which
16 would be the Progressive National Baptist
17 Convention, this Nannie Helen Burroughs
18 School, Monroe School, the Child and Family
19 Services operation which has -- there's no
20 clear affiliation and previous approval for a
21 child and residents care home and then a --
22 and a possible child care center.

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1 So, based on the information we had
2 at the time, we asked that there be clarity as
3 to what uses are on-site and how the parking
4 resources are allocated to those uses. The
5 Applicant did provide a list of the use --
6 minimal parking spaces on-site, but we still
7 don't have that type of delineation of what --
8 how much parking is allocated to each.

9 And beyond that, we also found that
10 a number of the uses don't seem to have been
11 approved by the BZA, the ones that are subject
12 to additional approvals. Those raise some
13 concerns, but we would -- based on the
14 information presented, we again acknowledge
15 that we don't think based on the
16 transportation study that the increase in
17 enrollment would have impact on the traffic
18 circulation in the area and we think there is
19 sufficient parking uses -- parking spaces on-
20 site to support the facilities based on the
21 explanations that have been presented.

22 We'd like to see that document in

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1 some manner, but we also would encourage the
2 Applicant to really look seriously at getting
3 all the uses on-site approved through the
4 process that are in place and to bring the
5 entire site into conformance with the Zoning
6 Regulations. Because what you're faced with
7 now is the circumstance where the proper
8 documentation is not updated and it's possible
9 that this occur again in other instances if
10 the property is not brought to current with
11 the current regulations.

12 We also would encourage them to
13 seriously consider whether or not the fact the
14 CO was issued for just 62 spaces was not
15 related just to the fact there were only 62
16 students on the property. That is to say you
17 might want to look into whether not there are
18 some other issues that contributed to the low
19 certificate of occupancy not related to the
20 BZA approval.

21 In other words, the BZA approval
22 for 200 doesn't automatically mean you'll be

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1 allowed to have a CO for 200 if there are
2 other issues that need to be addressed. So, I
3 encourage the Applicant to check into that.
4 Because based on the presentations that were
5 made today at this hearing, no one seems to
6 have a clear understanding why you received a
7 CO for just 62 when you already had a BZA
8 approval for 80.

9 So, you might want to check into
10 that. So, that regardless of the BZA's action
11 that you not run into another roadblock where
12 there's another issue that needs to be
13 addressed and it's not related to Zoning.

14 That concludes the Office of
15 Planning's report -- summary of the Office of
16 Planning's report and we remain available to
17 answer questions.

18 BZA CHAIR LOUD: Thank you, Mr.
19 Jackson. Board Members, are there any
20 questions for the Office of Planning?

21 ZC CHAIR HOOD: Yes, Mr. Chair.
22 Mr. Jackson, you mentioned -- well, in your

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1 report, you have that you are unable to make a
2 recommendation for the parking. I guess
3 designation and what goes to what. Is that
4 still the major issue?

5 MR. JACKSON: Yes, with regard to
6 the actual use under consideration. I think
7 that's the major missing pieces.

8 Again, we have all the pieces, but
9 they haven't been aligned.

10 ZC CHAIR HOOD: Okay.

11 MR. JACKSON: But, now, I think
12 beyond that there are issues related to the
13 uses on-site and whether they have been --
14 received the proper approvals.

15 ZC CHAIR HOOD: Okay.

16 MR. JACKSON: That maybe something
17 the Board wants to consider now or give some
18 guidance to the Applicant about how they
19 should proceed to address those issues.

20 But, a table that really says we
21 got these parking spaces that cover this use
22 on the site and a list of what uses actually

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1 are on-site would address the Condition Number
2 206.2. I'm sorry. 206.3 in the regulations.

3 ZC CHAIR HOOD: Okay. So, the
4 parking mix and also the use mix is basically
5 -- you just want some -- Office of Planning's
6 report would probably -- and I don't want to
7 put words in your mouth, but you'd probably
8 support this project if those things were
9 clarified?

10 MR. JACKSON: It -- it -- yes, sir,
11 and we would -- well, we -- there are three
12 concerns. One, we want to make sure there's a
13 clear understanding about what uses are on-
14 site and how the parking resources are
15 allocated to each use.

16 The second concern was whether or
17 not the increase in enrollment would impact
18 the surrounding neighborhood. But, the
19 transportation study presented by Grove/Slade
20 resolved that because they essentially took
21 what happens now and added on the additional
22 number of students and teachers that are

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1 there.

2 So, in essence, their report
3 already accounts for everything that's
4 happening now. It's just the delta with the
5 new -- with the additional students. So, that
6 resolved the issue about the impact on the
7 surrounding neighborhood.

8 And then the third issue is just we
9 would strongly encourage the Applicant to come
10 into conformance with the Zoning Regulations
11 with regard to the uses that are on-site and
12 to be sure that future uses that are brought
13 to the site, again, we have five acres, that's
14 a lot of room, are also all done in accordance
15 with the Zoning Regulations.

16 ZC CHAIR HOOD: Okay. Thank you.
17 Thank you, Mr. Chairman.

18 BZA CHAIR LOUD: Thank you, Mr.
19 Hood. Any additional questions from the Board
20 for Mr. Jackson?

21 I just have one question, Mr.
22 Jackson, concerning the aspect of the

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1 Applicant's predicament that just involves the
2 potential loss of the scholarships which does
3 not appear to me anyway to involve any kind of
4 expansion as I understand it. These are
5 students that are already there.

6 MR. JACKSON: What is the question?

7 BZA CHAIR LOUD: The question is is
8 there enough in this record for you to support
9 that? For you to support their compliance
10 with 206 for the existing population? Does
11 that make any sense?

12 MR. JACKSON: Well, the only issue
13 that we have -- again, we're going back just
14 to 206.3. We just wanted to make sure that
15 the uses on the parking all line up.

16 There are plenty of spaces and a
17 number of uses and if we have a table that
18 actually reflects all of that and there's
19 surplus, we think that would be reasonable and
20 that that would satisfy the condition 206.3.
21 Which I think basically all of them would be
22 the same.

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1 BZA CHAIR LOUD: That makes sense.
2 Just so I'm clear, so, the whole concern
3 about the 206 -- it's 206.2. Right?

4 MR. JACKSON: Well see 206.1 is --

5 BZA CHAIR LOUD: You've kind of met
6 that.

7 MR. JACKSON: Right. Now, 206.2 is
8 located so it doesn't affect adjoining
9 property because of noise, traffic and number.
10 The traffic issue was addressed by the
11 traffic consultant and the noise was addressed
12 by the fact that the ANC hasn't complained
13 about the use and we don't anticipate that the
14 addition of 27 students would create enough to
15 impact residences that are over 150 feet away.

16 So, now, we're at 206.3. It says
17 ample parking to address all the uses on-site
18 and we have uses that have been approved, not
19 approved, some that actually require that
20 parking be provided on-site.

21 I'm referring to the youth care
22 facility. Apparently, that's no longer

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1 existing. So, that's off the table.

2 So, just documenting what's
3 actually there I think would address 206.3 and
4 once that's done, 206.4 I don't think applies
5 in terms of -- there's no mention of Katrina
6 students coming to go to the school. So, I
7 think that would satisfy the requirements of
8 the regulations with regard to this section.

9 BZA CHAIR LOUD: So, bottom line,
10 even if they weren't expanding and they were
11 just here to come into compliance because of
12 the C of O not meeting what the current use
13 is, OP would still be requesting this clear
14 inventory of different uses on the site and
15 how they work together or don't work together
16 with respect to parking?

17 MR. JACKSON: Well, just to
18 clarify, this is a new special exception for a
19 school. What we had before was a special
20 exception that didn't specifically say that it
21 was for a school setting and so, then the
22 Applicant indicated that this -- the whole

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1 purpose of this application is to bring
2 everything into conformance with regard to the
3 school use. So, we're looking at a new
4 application here.

5 BZA CHAIR LOUD: Okay. Thank you.

6 MR. KEYS: Mr. Chairman.

7 BZA CHAIR LOUD: Yes, go ahead.

8 MR. KEYS: I mean I think I
9 understand OP's statement, but I think they're
10 going beyond the text of 206 reaching other
11 issues. 206 deals with private schools and
12 it's whether or not there's ample parking
13 space for the students, teachers and visitors
14 and I think we have established easily.

15 I mean if you -- if we reference
16 the parking requirement for a school, the
17 parking requirement for a school is two spaces
18 for each three staff members. We've testified
19 that there are 33 staff members and that would
20 require 22 parking spaces.

21 Mrs. Johnson's testimony was that
22 all of those staff members aren't there at the

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1 same time. Some are part-time and come
2 throughout the day. Some are custodial staff.

3 They're there some hours and not others. I
4 think we've got surplus situation with respect
5 to the school right now.

6 And even when the enrollment
7 increases and we have 37 staff, that requires
8 only 24 parking spaces and we're still in
9 excess.

10 And as, you know, Mr. Andres
11 testified, there's lot of parking on-site. In
12 the middle of the day, there's parking spaces
13 available.

14 So, rather than going about looking
15 at other uses in other buildings, this is
16 getting away from 206. 206 is speaking about
17 the school and the school use. 206.3 relates
18 to students, teachers and visitors likely to
19 come to the school.

20 Now, you know, the question of
21 getting certificates of occupancy and getting
22 other uses on the site properly documented and

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1 authorized is something the Applicant is very
2 serious about doing. This is the first. We
3 can only take it building by building and use
4 by use.

5 BZA CHAIR LOUD: Mr. Hood, do you
6 want to weigh in?

7 ZC CHAIR HOOD: Yes, I just wanted
8 to ask. So, Mr. Keys, in other words, I, too,
9 heard the Applicant say that they're trying to
10 bring everything into conformance and I think
11 if I'm not mistaken Mr. Jackson is trying to
12 help to do that.

13 But, anyway, under 206 as you
14 stated, one of the things that he has in his
15 report is proposed allocation and I think Mr.
16 Jackson is still looking in how that -- even
17 with the school I think is going to be -- how
18 that is going to be broken up and the way I
19 see that maybe come to conclusion on that is
20 maybe a tabulation sheet and just have some --
21 what that mix is going to be pertaining to the
22 school and that may have garnered some support

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1 from Office of Planning. Because we do have
2 to give the Office of Planning great weight by
3 law. So, we're just trying to see how we can
4 deal with that issue.

5 Because I do agree with your point
6 under 206. You have to crawl before you walk.

7 So, and obviously, the good Baptists are
8 coming forward. I'm a Baptist also. So,
9 you're coming forward to try to get everything
10 taken care of, but you're trying to do this
11 step first and I think that may satisfy this
12 requirement and I'm not putting words. I'm
13 kind of asking. If we do have a mix of
14 allocation which you have here in your report.

15 MR. JACKSON: Yes, that's simply
16 what I'm asking. Now, okay, just to be clear,
17 206.3 says ample parking for the school. If
18 you don't know -- if you have so many spaces
19 and you have so many uses, you aren't clear
20 about how many spaces are available for the
21 school.

22 Now, we say there's a lot. We say

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1 generally there are these uses and a table
2 that allocates the number of spaces per use
3 on-site would satisfy 206.3.

4 Above that, you know, there are a
5 lot of uses there that have not been -- that
6 may require some zoning relief. Those should
7 be addressed. That's being suggested.

8 MR. KEYS: Mr. Jackson, I -- Mr.
9 Jackson, you just stepped outside of the
10 boundary again because you're reaching out to
11 other uses on-site. That's not the question.

12 BZA CHAIR LOUD: Mr. Keys, let me
13 just interrupt you just in terms of where we
14 are in the proceedings. I think if you have
15 some questions that pretend to undermine the
16 creditability of Mr. Jackson, as you know, you
17 can ask those questions. But, to argue back
18 and forth is not the appropriate way to
19 proceed at this point.

20 So, you're free to ask him any
21 questions. You can damage the story line, the
22 creditability, but when you do your summation

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1 and your wrap-up, you can point out all the
2 weaknesses that you perceive in Mr. Jackson's
3 case.

4 Were there any questions for the
5 Office of Planning? Okay. Mr. Dettman.

6 VICE CHAIR DETTMAN: Thank you, Mr.
7 Chairman.

8 I think if you look at how the
9 Board has handled these types of cases in the
10 past, both approaches have been taken.

11 I think that Mr. Keys raises a good
12 point that 206 kind of says that the Board
13 takes a narrow focus at this, you know, and
14 just looks at the private school. Based on
15 the number of staff that they're going to
16 have, they calculate their number of parking
17 spaces and then in a situation like that,
18 maybe it's up to the Board to make sure to tie
19 the Applicant down in terms of what parking
20 spaces on-site are going to be designated for
21 that particular use.

22 And so, playing that out a little

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1 bit, if -- I came up with 39 staff and so, if
2 that triggers a requirement of 26 spaces, we
3 would require the Applicant to designate
4 particular spaces on that site to be used only
5 for that school and then in the future if they
6 come in here with another use, you know, with
7 the Office of Planning doing their research
8 and the Board doing their research, we would
9 have to remember that those 26 spaces are
10 spoken for.

11 I guess -- and we did that recently
12 and I think that that works out. I think it's
13 the most efficient way of kind of looking at
14 it.

15 I do understand what Mr. Jackson is
16 asking. It's a very, very good question, but
17 I would rather take a narrow focus and look at
18 the private school and make sure that, you
19 know, they have the designated parking spaces
20 that they have to have.

21 So, that goes to my question for
22 Mr. Jackson. With that in mind, if the Board

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1 was to take a narrow focus and just look at
2 the school in terms of -- and looking how many
3 spaces they have to provide and what they're
4 going to designate, do they meet their
5 requirement?

6 MR. JACKSON: Yes, for the school.

7 VICE CHAIR DETTMAN: Could you
8 support this application with that narrow
9 focus?

10 MR. JACKSON: I think that that
11 addresses the immediate concern which would be
12 the school's other application with the -- and
13 the Applicant seems to be of a mind to try to
14 move forward any other uses, but, of course,
15 then they have to realize that these 26 spaces
16 will no longer be available to be allocated to
17 any other uses that would be posed in the
18 future.

19 So, Office of Planning is in
20 agreement.

21 BZA CHAIR LOUD: Thank you, Mr.
22 Dettman. Thank you, Mr. Jackson.

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1 Just one quick clarification
2 question, so are the 26 spaces that appear on
3 the blow-up that are behind what was -- I
4 think already identified as the school, those
5 are the 26 spaces that are going to be
6 designated as for the school? Okay. All
7 right.

8 Thank you, Mr. Dettman, for helping
9 us get through that.

10 VICE CHAIR DETTMAN: Mr. Chairman,
11 could I just ask one question of Mr. Andres?

12 So, now, we have 26 spaces and, of
13 course, that's the Zoning Regulation, but
14 206.3 is a little broader than that. So,
15 based on your observation in terms of
16 occupancy, how many teachers are using public
17 transportation? Do you know? Are the 26
18 spaces adequate enough to accommodate the
19 teachers that actually drive and the visitors
20 that come to visit the school on a daily
21 basis?

22 MR. ANDRES: Yes, it does and the

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1 reason for that is because based on our
2 existing occupancy figures, currently, right
3 now, the 33 staff requires 22 spaces, but only
4 12 of those 26 are being occupied.

5 VICE CHAIR DETTMAN: Okay.

6 MR. ANDRES: So, if you were to
7 extrapolate that up to the proposed numbers of
8 faculty and staff which is 37, there is more
9 than enough to accommodate the proposed
10 expansion as well.

11 VICE CHAIR DETTMAN: Is there
12 anything out there now that designates those
13 spaces just for the school?

14 MR. ANDRES: There is not. There
15 is no signing or anything like that that
16 designates it for the school. So, basically,
17 it's proximity. You know, those are obviously
18 the most proximate to the school.

19 VICE CHAIR DETTMAN: And in your
20 observations, you haven't seen any kind of
21 competing for spaces during the time where
22 teachers are coming to the school and parents

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1 are dropping off? That slight overlap.

2 MR. ANDRES: No, and what can be
3 done to help manage that is have the teachers
4 park the furthest away from the school which
5 will leave the ones closest to the school
6 available for that turnover.

7 VICE CHAIR DETTMAN: Thank you.

8 BZA CHAIR LOUD: Thank you. Is
9 there anything further for the Office of
10 Planning? Yes, sir.

11 ZC CHAIR HOOD: I just want to make
12 sure we're clear. Because we're talking about
13 any organization losing scholarships, I just
14 think that we move -- move definitely with
15 caution.

16 Mr. Jackson mentioned something
17 may come up with the C of O and I just wanted
18 to ask Mr. Keys, do you feel confident that if
19 we keep the narrow scope -- which I kind of
20 agree with my colleague here, but I want to
21 make sure that we do all of this today and you
22 get down and you get ready to go for your C of

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1 O and then you have another problem and then
2 basically, you're right back where you are.
3 So, I know you're trying to narrow the scope,
4 but do you see any issues that you in
5 hindsight may see that may pop up when you're
6 going to go for your C of O?

7 MR. KEYS: I don't believe so.
8 This was run by the Zoning Administrator and
9 we got, you know, assurances that this is the
10 direction we had to move in.

11 Now, there's -- I think as Dr.
12 Pitts testified, I mean we've got to fix the
13 other buildings on the property and that's a
14 process we'll be engaged in, but I think as
15 long as we're moving in that direction, I
16 don't think we're going to have a problem
17 getting the school legitimized.

18 ZC CHAIR HOOD: So, you know the
19 Administrator --

20 MR. KEYS: The school has a C of O.

21 ZC CHAIR HOOD: The Zoning
22 Administrator already knows. You've had

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1 conversations with him and he knows that
2 you're dealing with the school issue only at
3 this time.

4 MR. KEYS: That's correct.

5 ZC CHAIR HOOD: Okay. Thank you.
6 Thank you, Mr. Chair.

7 BZA CHAIR LOUD: Thank you. I
8 think it's a good question.

9 And even if you run into some
10 problems with the other uses, let's say the
11 office building for example, would that have
12 any impact on the school -- the C of O for the
13 school? In other words --

14 MR. KEYS: It should not.

15 BZA CHAIR LOUD: Okay. I think Mr.
16 Hood had a good question. So.

17 MR. KEYS: This is a very
18 problematic site because I mean really it's
19 un-subdivided. It's not a campus plan. It's
20 not subject to that kind of rule. You've got
21 buildings, you know, in very different uses.

22 You know, I don't know what we're

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1 going to face as we go down the road to deal
2 with this, but I think there is -- there's a
3 legitimate basis to get these all in by
4 special exception.

5 BZA CHAIR LOUD: But, again, just
6 following up on Mr. Hood's point, you're
7 comfortable moving forward on (a) just
8 focusing in on the narrow look that we're
9 taking now with respect to designating these
10 26 parking space and then presenting --

11 MR. KEYS: Yes, Mr. Chairman.

12 BZA CHAIR LOUD: -- what one has to
13 the ZA for his final. Okay. Any additional
14 questions for Mr. Jackson?

15 All right. Hearing none, then what
16 we'll do now is move to the ANC report. I'm
17 not certain that there is an ANC report in
18 this case.

19 MR. KEYS: Mr. Chairman, there is
20 not. There is a letter --

21 BZA CHAIR LOUD: Okay.

22 MR. KEYS: -- from the Chairman of

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1 ANC 7C, but the ANC has not had a formal
2 meeting of all commissioners to discuss this.

3 In fact, we don't get before them until this
4 Thursday.

5 BZA CHAIR LOUD: Okay. And do we
6 have the letter from the Chairperson of the
7 ANC?

8 MS. BAILEY: No, Mr. Chairman.
9 What Mr. Keys -- which is not answering your
10 question, but I just wanted to put it on the
11 mike. That what Mr. Keys filed today was a
12 copy of a letter from Ms. Yvette Alexander
13 which is the Council Person for Ward 7 and
14 that copy is before the Board, but we don't
15 have an ANC letter.

16 MR. KEYS: Oh, please excuse me.

17 BZA CHAIR LOUD: Thank you.

18 MR. KEYS: I had assumed -- I have
19 a letter that was dated May 28th from the
20 Chairman of ANC 7C that I assumed had gotten
21 into the record and I see now that it has not.

22 BZA CHAIR LOUD: Okay. So, what

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1 you may want to do is give a copy of that to
2 Ms. Bailey so that we can at least have it for
3 our record and we understand -- I want to take
4 a quick look at it, but we understand that
5 it's not an ANC great weight report.

6 ZC CHAIR HOOD: Mr. Chairman --

7 BZA CHAIR LOUD: Yes, sir.

8 ZC CHAIR HOOD: -- as our good
9 friend Councilmember Alexander need any ink
10 for her printer or maybe we -- we might want
11 to mention it to her.

12 BZA CHAIR LOUD: Either that or we
13 all need some glasses. I think what we're
14 going to do is just take a few seconds to look
15 at this letter which is not signed and it's
16 not -- doesn't indicate it's a great weight
17 letter, but nonetheless, take a few seconds
18 just to look at it and --

19 MR. KEYS: Mr. Chairman, the signed
20 copy is with Mr. Hood right now.

21 BZA CHAIR LOUD: You have a signed
22 copy. Okay. Well, I tell you what. It's not

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1 a great weight report, but it is a letter that
2 -- so, we wouldn't -- we wouldn't give this
3 great weight, but it is from the ANC 7C Chair.

4 That's the ANC that this school is in and it
5 does support the application and has a number
6 of very positive things to say about the
7 school. So, we will make it a part of our
8 record and give it the appropriate weight in
9 deliberations.

10 Now, we move on to, unless there's
11 an objection from the Board Members, witnesses
12 who are in support stepping forward and giving
13 your testimony. Seeing none.

14 If there are witnesses in the
15 audience who are in opposition, now is the
16 time to step forward and give your testimony
17 and seeing none of those, we turn back to you,
18 Mr. Keys, for your summation and closing
19 remarks.

20 MR. KEYS: Thank you, Mr. Chairman.

21 I want to mention that I have given
22 Ms. Bailey a copy of a letter from

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1 Councilmember for Ward 7, Yvette Alexander,
2 which I hope will be included the record in
3 this case and her letter is supportive of the
4 application for an increase in enrollment.

5 I'm not going to go repeating a lot
6 of the evidence that was offered in this case,
7 but simply ask you to consider the fact that
8 the Board has looked at this site before. The
9 Board has looked at this institution before
10 and found it to be an appropriate use in this
11 neighborhood that does not adversely either
12 the Zone Plan or adjacent properties and I
13 think it's fairly clear that this is a school
14 which has endured for a century, performs a
15 viable public service to the children, parents
16 and to the District of Columbia itself.

17 The standards of 206 as the Office
18 of Planning indicated are the ones that are
19 important and I think it's easily deduced from
20 the evidence, derived from the evidence that
21 this Applicant meets all of those standards.

22 There's been great emphasis placed

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1 on the parking and I would simply ask the
2 Board to look at the record, look at
3 requirements for the zoning, review the
4 testimony of both Dr. Pitts and Principal
5 Johnson is not an issue, has not been an issue
6 for this site.

7 And also look at the allocation of
8 spaces of the available striped spaces that
9 already exist on the site. Not to mention the
10 spaces that are available. Parking spaces
11 that could be made available just by striping
12 on either side of the roadway at the read of
13 the school.

14 Parking is not an issue in this
15 case. The Applicant has more parking than is
16 necessary for all of the uses of the space
17 combined.

18 As we indicated in the supplemental
19 information, the school, the Monroe School
20 which occupies one floor of the so-called
21 dormitory building, again it's a school. It's
22 measurement for parking is a function of the

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1 staff requirement and as we indicated, there
2 are eight staff in that school. Two spaces
3 for every three employees. We're still
4 talking about no more than six spaces
5 necessary for that school. There are 13
6 available.

7 There is surplus parking for every
8 use on this site and I think that that was
9 clear in the supplemental information and
10 should certainly be clear now with the
11 description of the entire property.

12 I'm going to ask the Board if it
13 will consider whether or not under the
14 circumstances and given the facts that have
15 been laid out today and given the standards in
16 the regulations, whether or not this is a case
17 that could be decided by bench decision and
18 the only reason I proffer that is that time is
19 of the essence for this Applicant in resolving
20 this and being able to move forward to get
21 this property in a position to get its C of O
22 and to qualify for those scholarships.

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1 There's no opposition and really
2 there's no opposition from the Office of
3 Planning.

4 If the Board wishes to, I think it
5 could easily condition. I'm not sure how this
6 works, but it might condition its order with
7 the requirement that we, you know, move
8 forward in doing other things on the site by
9 way of certificates of occupancy or
10 application for necessary special exception or
11 anything else that's needed to get the other
12 uses legitimated.

13 And, Mr. Chairman, I think that's
14 all I want to say.

15 BZA CHAIR LOUD: Thank you, Mr.
16 Keys. Any final questions for Mr. Keys?

17 Okay. Then I think what we'll do
18 now is decide whether we want to deliberate
19 today. It's usually the case when the record
20 is well briefed and counsel has done an
21 outstanding job pulling together the
22 information and witnesses and as I said, the

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1 record is complete that we decide to go ahead
2 and deliberate.

3 So, we'll see if you've done that
4 today, Mr. Keys and if we're ready to
5 deliberate.

6 Colleagues, do you have any
7 opinions on whether to postpone this or
8 deliberate today?

9 VICE CHAIR DETTMAN: Mr. Chairman,
10 I'm prepared to go forward.

11 BZA CHAIR LOUD: I think I'm
12 prepared to go forward as well and Mr. Hood
13 joins in. I think we can -- I think that's an
14 affirmative vote that perhaps counsel has done
15 an outstanding job today of pulling all the
16 information together. So, we'll see.

17 Deliberation doesn't mean that
18 we'll decide favorably, but we'll move
19 forward.

20 And I think Mr. Dettman will lead
21 us.

22 VICE CHAIR DETTMAN: Thank you, Mr.

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1 Chairman. I'll be happy to take the Board
2 through the necessary provisions of Section
3 206 which happen to be 206.2 and 206.3.

4 This is a request for an increase
5 in enrollment in a private school which
6 currently has -- I apologize for pulling
7 together my notes here. I believe we have 134
8 students and we're looking to increase to an
9 enrollment of a total of 200 students with an
10 increase from 33 to 34 staff up to a maximum
11 of 39 which is what I gather from the
12 testimony.

13 206.2 states that the private
14 school shall be located so that it's not
15 likely to become objectionable to adjoining or
16 nearby property because of noise, traffic,
17 number of students or otherwise objectionable
18 conditions. Based on the record and testimony
19 that we heard from Dr. Pitts and Mr. Johnson,
20 the school's been there for quite some and it
21 has a successful history of operating in this
22 neighborhood without any complaints from the

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1 surrounding neighbors.

2 Especially as it pertains to noise,
3 we didn't see anything in the record or as
4 evidenced in nobody being here to testify in
5 opposition with respect to noise. I don't
6 think that that's a problem.

7 The increase to 200 students I
8 suspect isn't going to be a problem either.
9 As Mr. Jackson noted, the location of the
10 school building is situated in the middle of
11 this rather large property. So, it does have
12 some distance from the surrounding residential
13 properties.

14 With respect to traffic, the
15 traffic study that was conducted noted that
16 currently roughly 50 vehicles visit the site
17 and as a result of the increase in students
18 and staffing, it's going to trigger an
19 additional 27 student, I'm sorry, 27 vehicles
20 during the peak period between 7:45 and 8:45
21 and the testimony of Mr. Andres noted that the
22 surrounding roadway network can easily

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1 accommodate that additional 27 vehicles.

2 I already made mention of the
3 number of students. The testimony of Ms.
4 Johnson mentioned that there are several
5 classrooms in the building that are currently
6 vacant. So, it can easily absorb the increase
7 to 200 students and it doesn't appear as if
8 the increase in the number of students is
9 going to cause any kind of spill-over affects
10 on the residential neighborhood.

11 And I don't see any potential for
12 causing any other objectionable conditions.

13 There was a lot of discussion that
14 revolved around parking and 206.3 states ample
15 parking space, but not less than that required
16 in Chapter 21 of this Title shall be provided
17 to accommodate the students, teachers and
18 visitors likely to come to the site.

19 Based on what I gathered from the
20 testimony in the record, we have a current
21 staffing of 33 to 34 and as a maximum, the
22 school would be required to hire an additional

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1 five and that's combined both full-time and
2 part-time and so, we're going to use that
3 number to generate our parking requirement.
4 Which based on a maximum staff level of 39, it
5 appears as if that would require 26 spaces and
6 in the testimony, it was noted that 26 spaces
7 actually are designed for the use of this
8 school.

9 We also heard that utilization of
10 the parking spaces is that roughly 13 spaces
11 are used or 15 spaces are used on a regular
12 basis. So, that opens up some parking spaces
13 to accommodate any kind visitors that are
14 coming to the school on a day-to-day basis and
15 I think that can be attributed also that we're
16 generating our parking requirement including
17 part-time people and, you know, though there
18 may be a total 39 staff, nowhere near 39
19 people -- staff people are on-site at any one
20 time.

21 I think that's about it, Mr.
22 Chairman.

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1 The application has the support of
2 -- we don't have a great weight resolution
3 from the ANC, but we do have a letter from the
4 Chairperson of ANC 7C indicating their support
5 for the application. We also received today a
6 letter from a Councilmember from Ward 7,
7 Yvette Alexander and I could be wrong, but I'm
8 thinking that the Office of Planning is in
9 general support of the application though
10 cautious support noting their concern for
11 parking demand for the overall site looking at
12 the uses in general.

13 In terms of conditions, I could see
14 one opportunity for one condition that would
15 require the Applicant to actually designate
16 the spaces, the 26 spaces, for the exclusive
17 use of the school.

18 Mr. Keys made mention to the
19 possibility of a condition about bringing in
20 the other uses on this site to bring them into
21 compliance. I'm not sure that can be -- that
22 should be incorporated into the order if we do

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1 end up granting the application, but I guess
2 we can encourage the Applicant to do that and
3 maybe do that in one fell swoop and bring it
4 in under one application so that the Board can
5 actually get a good look at what's going on on
6 this property in its entirety and put the
7 parking issue to rest.

8 So, that's what I have, Mr.
9 Chairman.

10 ZC CHAIR HOOD: I'll second. That
11 was his motion I hope.

12 VICE CHAIR DETTMAN: It was a long-
13 winded motion.

14 ZC CHAIR HOOD: I'll second it.

15 BZA CHAIR LOUD: Well, you want to
16 make a formal motion, Mr. Dettman?

17 VICE CHAIR DETTMAN: Certainly. I
18 move for approval of Application Number 17880
19 of Progressive National Baptist Convention,
20 Inc. pursuant to 11 DCMR 3104.1 for a special
21 exception for a private school, 200 students,
22 grade preschool through 6th, under Section 206

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1 in the R-5-A at premises 601 50th Street, N.E.

2 BZA CHAIR LOUD: Okay. Motion's
3 been made and --

4 ZC CHAIR HOOD: I'll second it.

5 BZA CHAIR LOUD: Okay. Before you
6 second the motion, I'll tell you what because
7 we're deep into deliberation there's one
8 clarification question that we need that the
9 school -- the scope of the school is, I think,
10 pre-K to 6th grade?

11 MR. KEYS: Nursery to 6.

12 BZA CHAIR LOUD: Nursery to 6th.
13 Okay. That answers your question? Okay. So,
14 now let's go back into deliberation and the
15 motion's been made for approval of special
16 exception relief and I think you were --

17 ZC CHAIR HOOD: I'm going to second
18 it only with the amendment --

19 BZA CHAIR LOUD: Okay.

20 ZC CHAIR HOOD: -- further
21 amendment that we do not include the other
22 uses and I think the Applicant has shown a

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1 good faith effort on coming down to start with
2 and I'm sure that they're going to go in and
3 they want to clean up what's going on. So.

4 BZA CHAIR LOUD: Okay.

5 ZC CHAIR HOOD: I don't think we
6 need to include that as a condition.

7 BZA CHAIR LOUD: All right. So,
8 let's been real clear. So, the motion -- does
9 the motion have any conditions with it, Mr.
10 Dettman?

11 VICE CHAIR DETTMAN: I offered up
12 that one condition to require the Applicant to
13 actually designate those 26 spaces. I think
14 that's an appropriate condition.

15 BZA CHAIR LOUD: I would support
16 that. So, the motion has been made as
17 conditioned and there's not a second for the
18 motion as conditioned.

19 All those in favor say aye.

20 (Ayes.)

21 BZA CHAIR LOUD: All those opposed?

22 All those in abstention?

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1 Ms. Bailey, can you call back the
2 vote please?

3 MS. BAILEY: Mr. Chairman, the vote
4 is recorded as 3 to 0 to 2 to grant the
5 application as amended and as conditioned.
6 Mr. Dettman made the motion. Mr. Hood
7 seconded. Mr. Loud supported the motion. Two
8 other Board members are not present at this
9 time.

10 BZA CHAIR LOUD: Thank you, Ms.
11 Bailey. Is there anything further on this
12 case?

13 ZC CHAIR HOOD: Mr. Chairman --

14 BZA CHAIR LOUD: Yes, sir.

15 ZC CHAIR HOOD: -- I just wanted to
16 thank Dr. Pitts for the history lesson.
17 You're often wondering how the National
18 Baptist Convention and Progressive Convention
19 -- Baptist Convention separated. So, I want
20 to thank him for that history and I really
21 appreciate it. Even though it has nothing to
22 do with our procedures, but it's always good

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1 sometimes to get some -- the correct
2 background. So, thank you.

3 MS. BAILEY: Mr. Hood, would it be
4 appropriate for me to thank Principal Johnson.

5 I think it was a great legacy to Nannie Helen
6 Burroughs and she would be so honored and
7 proud to have you represent her today.

8 BZA CHAIR LOUD: That was very nice
9 of you, Ms. Bailey and Mr. Hood.

10 Anything further? All right. This
11 case is behind us. I think we can get a
12 summary decision. Yes, we can get a summary
13 order on this. So, hopefully, we'll have
14 something to you very shortly and certainly,
15 you'll make the June 30 deadline.

16 Thank you all for coming. Thank
17 you for your patience.

18 Do we have anything further on the
19 calendar this afternoon, Ms. Bailey?

20 MS. BAILEY: No, Mr. Chairman.

21 BZA CHAIR LOUD: Okay. This
22 meeting is adjourned.

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(Whereupon, the meeting was
concluded at 4:19 p.m.)

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