

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JUNE 23, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:30 a.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER MAY Commissioner (NPS)
WILLIAM W. KEATING Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON
STEPHEN MORDFIN
KAREN THOMAS
MAXINE BROWN-ROBERTS
MATT JESICK

OFFICE OF TRANSPORTATION STAFF PRESENT:

JEFF JENNINGS

This transcript constitutes the minutes from the Public Hearing held on June 23, 2009.

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

2 10:37 a.m.

3 CHAIRMAN LOUD: Good morning again.

4 This hearing will, please, come to order.
5 Ladies and gentlemen, this is the June 23rd
6 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia. My
8 name is Marc Loud, Chairperson. Joining me
9 today are Vice Chair, Shane Dettman
10 representing the National Capital Planning
11 Commission, Mr. Peter May representing the
12 Zoning Commission.

13 To my left is Mr. Clifford Moy,
14 Secretary of the BZA, Ms. Lori Monroe from the
15 Office of Attorney General. And to her left
16 Ms. Beverley Bailey, Zoning Specialist in the
17 Office of 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. Please,
21 be advised that this proceeding is being
22 recorded by a Court Reporter and is also

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

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

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

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

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1 Department of Public Works; Report of the
2 Advisory Neighborhood Commission; Parties or
3 persons in support; Parties or persons in
4 opposition; and finally, Closing remarks by
5 the applicant.

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

14 Individuals 3 minutes each.

15 These time restraints do not
16 include cross examination and/or questions
17 from the Board. Cross examination of
18 witnesses is permitted by the applicant or
19 parties only. The ANC within which the
20 property is located is automatically a party
21 in a special exception or variance case.

22 Nothing prohibits the Board from

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1 placing reasonable restrictions on cross
2 examination, including time limits and
3 limitations on the scope of cross examination
4 asking leading questions, testifying during
5 cross examination and so forth.

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

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

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

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

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

10 The Board will now consider any
11 preliminary matters. Preliminary matters are
12 those which relate to whether a case will or
13 should be heard today, such as requests for
14 postponement, continuance or withdrawal or
15 whether proper and adequate notice of the
16 hearing has been given. If you are not
17 prepared to go forward with a case today or if
18 you believe that the Board should not proceed,
19 now is the time to raise such a matter.

20 Does the staff have any preliminary
21 matters?

22 MS. BAILEY: Mr. Chairman and to

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1 Members of the Board and everyone, good
2 morning.

3 CHAIRMAN LOUD: Good morning, Ms.
4 Bailey.

5 MS. BAILEY: No, sir. No, sir, we
6 do not.

7 CHAIRMAN LOUD: Thank you. If not,
8 we can proceed with the agenda. Would all
9 individuals wishing to testify this morning,
10 please, rise to take the oath? And Ms. Bailey
11 will administer the oath to you.

12 MS. BAILEY: Please, raise your
13 right hand.

14 (Whereupon, the witnesses were
15 sworn.)

16 MS. BAILEY: Thank you.

17 CHAIRMAN LOUD: Thank you, Ms.
18 Bailey. You can call our first case.

19 MS. BAILEY: Thank you, Mr.
20 Chairman. Application No. 17937 is the
21 application of Walter Bruce Shirk and Norma L.
22 Shirk, pursuant to 11 DCMR section 3104.1, for

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1 a special exception to construct a rear deck
2 addition to a one-family detached dwelling
3 under section 223, not meeting the rear yard
4 requirements of section 404. The property is
5 located at 5023 Warren Street, N.W. It is
6 Zoned R-1-A. And the record needs to be clear
7 that this property is located in Square 1467
8 on Lot 920.

9 CHAIRMAN LOUD: Thank you, Mr.
10 Bailey. Thank you, Ms. Bailey. And good
11 morning, Mr. Shirk?

12 MR. SHIRK: Yes.

13 CHAIRMAN LOUD: All right. Mr.
14 Shirk, you have the almost rare case where
15 everything has been put together nearly
16 perfectly. You are seeking a special
17 exception for rear yard setback. You are in a
18 zone that requires 25 feet and your deck is
19 going to result in you having only 12 feet.

20 We have reviewed the file and, as I
21 said, it's a nearly perfect assembly of the
22 materials and meeting the standard and so on

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1 and so forth.

2 So you are free, at this point, to
3 make a case, to make a statement or you can
4 rest on the record and we can turn to the
5 Office of Planning. Okay.

6 MS. MONROE: Put your microphone
7 on.

8 CHAIRMAN LOUD: Yes, your
9 microphone has to be on.

10 MS. MONROE: Push the button on the
11 bottom and then just say the same thing, just
12 so --

13 MR. MOY: No, the big one.

14 MR. SHIRK: Here?

15 MS. MONROE: Where it says push.

16 MR. MOY: You got it. You got it.

17 MS. MONROE: Yes.

18 MR. MOY: No, turn the -- you --

19 MR. SHIRK: We rest on the record.

20 CHAIRMAN LOUD: All right. Thank
21 you, Mr. Shirk. I have already asked Mr.
22 Dettman, he didn't have any questions for you.

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1 Let me ask Mr. May if he has any questions
2 for you. Okay. Then why don't we turn to the
3 Office of Planning? And because the applicant
4 has not formally made his case on the record
5 and you have done an outstanding report here,
6 it would be helpful if you did just walk
7 through the light, air, etcetera provisions
8 and then doing it as briefly as you think you
9 can and we can proceed forward.

10 MR. JESICK: Thank you, Mr. Chair
11 and Members of the Board. My name is Matt
12 Jesick. This application is made pursuant to
13 section 223 and that section has a number of
14 criteria that we are to evaluate.

15 The first one being whether the
16 light and air available to adjacent properties
17 would be impacted. Our evaluation is there
18 would be no impact to adjacent properties by
19 the construction of the deck. Another
20 criteria is whether privacy of adjacent
21 properties will be unduly compromised.

22 Again, we find that there would be

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1 no compromise of the neighbors' privacy. If
2 you note the configuration of the houses on
3 this cul-de-sac is such that the rear yards of
4 the homes and, in fact, the homes themselves
5 are angled away from each other granting a
6 little more room between them and increasing
7 the privacy.

8 The section 223 also asks about
9 whether the structure would be seen from a
10 public street. There are no public streets in
11 this area. It is all private streets. But
12 even there, we feel that the deck would be if
13 not totally invisible from the street, almost
14 so.

15 And 223 also asks about lot
16 occupancy. The lot occupancy of this
17 property, even with the addition of the deck,
18 would be only 34 percent which is well under
19 the 50 percent permitted under section 223.

20 So we find no issues with the
21 application and we are happy to recommend
22 approval.

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1 CHAIRMAN LOUD: Thank you, Mr.
2 Jesick. Are there any questions for Mr.
3 Jesick from the Board? Okay. Mr. Shirk, did
4 you have any questions for Mr. Jesick?

5 MR. SHIRK: No, sir.

6 CHAIRMAN LOUD: Okay. The Advisory
7 Neighborhood Commission in this case ANC-6C,
8 are they present this morning? They are not
9 present, but they did submit a report. It is
10 our Exhibit 20 and it is in support of your
11 application. And so it is entitled to great
12 weight under our rules.

13 Are there any parties or persons,
14 other parties or persons in support of the
15 application in the audience this morning? If
16 there are not, are there any parties or
17 persons in opposition this morning?

18 And, Mr. Shirk, we turn now to you
19 for closing remarks. And you can feel free, I
20 won't rush you through closing remarks like I
21 did through your opening presentation. So if
22 you have got something that you would like to

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1 highlight about the matter, you can -- this is
2 your opportunity to do it.

3 MR. SHIRK: I have nothing to add
4 to the Planning Commission report.

5 CHAIRMAN LOUD: Okay. I think,
6 Board Members, we can determine now if we want
7 to deliberate this morning or if we want to
8 put it off for another date? Okay. It's
9 unanimous consent for deliberating this
10 morning.

11 And I think I'll start us off.
12 This is an application under section 223 for
13 rear yard relief. The applicant wants to put
14 a deck in his yard and is required by our
15 rules to meet the requirements of 223 to do
16 that.

17 We heard testimony from the Office
18 of Planning this morning, Mr. Jesick, that the
19 requirements of the 223 as to light and air
20 were met. There is no impact to adjacent
21 properties per Mr. Jesick's report. In terms
22 of privacy, there is no privacy impact to

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1 adjacent properties. In fact, Mr. Jesick
2 testified that the rear yard of homes in the
3 area are angled away from each other, which
4 actually increases the privacy.

5 With respect to whether the
6 structure can be seen from public streets and
7 whether it would visually intrude upon the
8 character and scale of the neighborhood, the
9 deck is, as Mr. Jesick testified, nearly
10 totally invisible. In addition to which,
11 there are no public streets in the area that
12 we are talking about. The streets are all
13 private.

14 And Mr. Jesick also testified and
15 his report indicated that the lot occupancy
16 does not exceed 50 percent. We are in the R-
17 1, so it does not exceed 50 percent in the R-
18 1. In fact, it's going to be 34 percent. So
19 I think the test for the section 223 is made
20 and I'm prepared to support it. Colleagues?

21 COMMISSIONER MAY: I don't have
22 anything to add other than to move approval of

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1 Application No. 17937 for special exception to
2 construct a rear deck addition to a one-family
3 attached dwelling under section 223, not
4 meeting the rear yard requirements of section
5 404 at premises 5023 Warren Street, N.W., and
6 ask for a second.

7 VICE CHAIR DETTMAN: Second.

8 CHAIRMAN LOUD: Thank you,
9 gentlemen. The motion has been made and
10 seconded. Is there any further deliberation?

11 All those in favor say aye.

12 ALL: Aye.

13 CHAIRMAN LOUD: All those opposed?
14 Are there any abstentions? Can you read back
15 the vote, Mr. Moy? I'm sorry, can you read
16 back?

17 MS. BAILEY: That's okay. It's
18 confusing sometimes.

19 CHAIRMAN LOUD: I'm sorry. My
20 mistake. Can you read back the vote, Mrs.
21 Bailey?

22 MS. BAILEY: Sure, Mr. Chairman.

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1 Mr. Chairman, the vote is recorded as 3-0-2 to
2 grant the application. Mr. May made the
3 motion, Mr. Dettman seconded, Mr. Loud
4 supports the motion. And are we doing a
5 summary order for this one, Mr. Chairman?

6 CHAIRMAN LOUD: Yes, Ms. Bailey.

7 MS. BAILEY: Thank you, sir.

8 CHAIRMAN LOUD: Thank you. Is
9 there anything further in this case?

10 MS. BAILEY: No, sir.

11 CHAIRMAN LOUD: Okay. Then thank
12 you for your presentation. Thank you for your
13 package this morning. It was very, very
14 helpful to us.

15 MR. SHIRK: Thank you.

16 MS. BAILEY: Ready, Mr. Chairman?

17 CHAIRMAN LOUD: Yeah, why don't we
18 go ahead and call the case.

19 MS. BAILEY: The next case,
20 Application 17938 is the application of
21 Barbara Wilks-Carney and it's pursuant to 11
22 DCMR section 3104.1 for a special exception to

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1 allow a rear addition to an existing one-
2 family semi-detached dwelling under section
3 223, not meeting the side yard requirements of
4 section 405. The property is located in the
5 R-4 District at premises 3151 Childress
6 Street, N.E., Square 4076, Lot 115.

7 CHAIRMAN LOUD: Good morning and
8 you are the applicant?

9 MS. WILKS-CARNEY: Yes, I am.

10 CHAIRMAN LOUD: Is it Mrs. Wilks-
11 Carney?

12 MS. WILKS-CARNEY: Yeah.

13 CHAIRMAN LOUD: Okay.

14 MS. WILKS-CARNEY: Miss, my husband
15 has passed.

16 CHAIRMAN LOUD: Okay. Ms. Wilks-
17 Carney. Thank you and good morning to you.

18 MS. WILKS-CARNEY: Good morning.

19 CHAIRMAN LOUD: We have also had
20 the opportunity to review your file and your
21 request for side yard relief under 223. And
22 it is also a full record, so I'm inviting you

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1 to highlight the basic project you have in
2 mind, bearing in mind that you can be as brief
3 as necessary as circumstances warrant.

4 Just like the case before your's
5 and we will tease out most of the facts that
6 support the 223. And again, this is only
7 because the package that you put together was
8 very well put together and you've got
9 tremendous support from neighbors, that's our
10 Exhibit 21, Office of Planning and so on and
11 so forth.

12 And then we will turn to the Office
13 of Planning and have them walk through the 223
14 analysis.

15 MS. WILKS-CARNEY: I'm basically
16 trying to close in my back porch, so that I
17 can bring up a laundry room. Right now, in
18 order to wash clothes, I have to go outside
19 and down the steps. I don't have a basement.

20 I have a laundry room. So in the wintertime
21 or at night, at dark, I can't wash clothes.
22 If it rains, I have to take my clothes out in

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1 the rain and get an umbrella and try to come
2 back. Because I have fallen down the steps a
3 couple of times, so I'm trying to close it in
4 and make it more accommodating for me.

5 CHAIRMAN LOUD: Absolutely. We
6 would not want you to have to go outdoors to
7 do laundry. And fortunately, the Zoning Regs
8 permit you to do, I believe, what you are
9 trying to do. But let's turn to Board Members
10 and see if they have any questions for you.

11 COMMISSIONER MAY: I would just
12 like to make clear, you know, we received a
13 package of photographs and I think that we
14 have the photograph on the first page. Is it
15 showing only a partial view of your home?

16 MS. WILKS-CARNEY: Which one?

17 COMMISSIONER MAY: Is that right?

18 MS. WILKS-CARNEY: That's a full
19 view.

20 COMMISSIONER MAY: Where is the --
21 I guess I'm just not clear which one is the
22 view of your home. It's this page?

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1 MR. WINDER: I don't have a copy of
2 that with me.

3 COMMISSIONER MAY: It's the, I'm
4 guessing, upper right?

5 MR. WINDER: That's the front.

6 COMMISSIONER MAY: And that's the
7 front of the house. And the upper right of
8 the -- and it's the right hand side of that
9 photo? Is that correct?

10 MR. WINDER: Yes.

11 COMMISSIONER MAY: So we only have
12 a partial view of the front of that house,
13 right?

14 MR. WINDER: Right, that's correct.

15 COMMISSIONER MAY: Okay. Now, the
16 rear of it, I think, is pointed out with a --
17 someone wrote it up and just drew an arrow
18 and wrote 1351 at the property in the rear and
19 that's lower left? Is that right?

20 MR. WINDER: That's correct.

21 COMMISSIONER MAY: Okay. And there
22 is -- you are enclosing your back porch, but

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1 it's not a roofed porch. It's just a stoop?

2 MR. WINDER: That's correct.

3 MS. WILKS-CARNEY: Right.

4 COMMISSIONER MAY: Yeah, okay. I
5 just wanted to be clear on that.

6 CHAIRMAN LOUD: Thank you.

7 COMMISSIONER MAY: That's it for my
8 questions.

9 CHAIRMAN LOUD: Thank you, Mr. May.

10 Mr. Dettman, did you have any questions for
11 the applicant? Okay. Why don't we now turn
12 to the Office of Planning? Good morning.

13 MS. BROWN-ROBERTS: Good morning,
14 Mr. Chairman and Members of the Board. I am
15 Maxine Brown-Roberts from the Office of
16 Planning. I think what I'll do is I'll just
17 walk you through the section 223 requirements.

18 Just as a background, the subject
19 property is nonconforming in its lot width and
20 its lot area and its side yard. The proposed
21 enclosure will not increase the -- any of
22 these -- the portion of the side yard, the new

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1 portion of side yard will remain within the
2 21.21 feet that is the existing side yard.

3 Under 223, the subject property is
4 located in the R-5 Zone. It is a
5 nonconforming structure with a nonconforming
6 use. And as I said, it's nonconforming to lot
7 area, lot width and its side yard.

8 Under .2, the addition will not
9 affect the light and air for adjacent
10 properties and would -- since it would retain
11 the existing side yard and would not protrude
12 beyond the rear portion of the adjacent
13 houses.

14 The addition is to the rear of the
15 property. It would be within the existing
16 footprint and would not be visible from the
17 main street, which is Childress Street, but is
18 -- will be visible from the rear alley.

19 Other houses within the
20 neighborhood have enclosed their rear -- have
21 rear additions also, which are similar to what
22 is being proposed today. The property is

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1 within the R-4 District that has a maximum lot
2 occupancy of 40 percent. The existing lot
3 occupancy is 37 percent and will remain as
4 such.

5 This is a residential use which is
6 conforming to the R-4 District and with the
7 addition would remain as such.

8 The Office of Planning finds that
9 the application or the applicant has met all
10 the requirements of the special exception and
11 recommends approval. Thank you, Mr. Chairman.

12 CHAIRMAN LOUD: Thank you. And we
13 appreciate the thoroughness of your report as
14 well. Board Members, are there any questions
15 for the Office of Planning?

16 COMMISSIONER MAY: Yeah, I have
17 questions. And I just want to get clarity,
18 because I think that there may actually be a
19 need for relief on lot occupancy. The -- when
20 you calculated the lot occupancy at 37
21 percent --

22 MS. BROWN-ROBERTS: Um-hum.

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1 COMMISSIONER MAY: -- does that
2 include or exclude the front porch?

3 MR. WINDER: That's excluding.

4 COMMISSIONER MAY: Excluding the
5 front porch. And does it include or exclude
6 the rear stoop?

7 MR. WINDER: It includes it.

8 COMMISSIONER MAY: Includes the
9 rear stoop. And I would argue that it
10 actually should be the other way around. The
11 front porch has a roof over it and so there is
12 a structure that is above 4 feet and so that
13 should be counted toward lot occupancy.

14 MS. BROWN-ROBERTS: Um-hum.

15 COMMISSIONER MAY: And then the
16 rear stoop is presumably at the same grade as
17 the front of the house, which does not appear
18 to be above 4 feet at the front of the house.

19 And so therefore it's -- it would be -- this
20 is the same level as the main floor, it would
21 not count as part of the lot occupancy.

22 That exchange of area doesn't

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1 really make that much of a difference to me,
2 but when you then build over the back stoop,
3 and then also you need to actually count the
4 side yard into the lot occupancy, because it
5 is nonconforming. So in essence, you have 39
6 x 20.62 as the resulting total lot occupancy,
7 which works out to be about 43 percent.

8 MS. BROWN-ROBERTS: Um-hum. I
9 didn't calculate this.

10 COMMISSIONER MAY: Yeah. And I
11 only raised this because, you know, I think
12 that we ought to be very clear if there is
13 relief needed on lot occupancy, it ought to be
14 calculated in the standard way.

15 CHAIRMAN LOUD: Thank you, Mr. May.
16 Let's turn back to the Office of Planning
17 just to give her an opportunity to do some of
18 the calculations. I hear you saying we're at
19 43 percent. The maximum is 40 percent.

20 COMMISSIONER MAY: Right.

21 CHAIRMAN LOUD: So some relief --

22 COMMISSIONER MAY: But they --

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1 yeah.

2 MS. BROWN-ROBERTS: I think but
3 under the 223, they would be able to go to 70
4 percent, so they are still below that 70
5 percent.

6 COMMISSIONER MAY: Right.

7 CHAIRMAN LOUD: All right. So it's
8 not a totally inconsequential change, but
9 nonetheless that is still under lot occupancy
10 for this zone. Is that correct?

11 MS. BROWN-ROBERTS: That's correct.

12 CHAIRMAN LOUD: Okay.

13 MS. BROWN-ROBERTS: Yes.

14 CHAIRMAN LOUD: All right. So it
15 doesn't change the 223 relief, 223 analysis.
16 But does it -- will there be a requirement
17 that they change the plans in any respect
18 going forward to the ZA?

19 MS. BROWN-ROBERTS: No, I think
20 they maybe just need to change their
21 calculations.

22 CHAIRMAN LOUD: Okay.

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1 COMMISSIONER MAY: Yeah. But it
2 does add another layer of relief. It's not
3 just -- they need relief on the side yard.

4 MS. BROWN-ROBERTS: Yes, we would
5 say -- all right.

6 COMMISSIONER MAY: They would need
7 also relief on lot occupancy, but it certainly
8 can be granted as a special exception under
9 223.

10 CHAIRMAN LOUD: Okay. Thank you,
11 Mr. May. Anything further for either the
12 Office of Planning or the applicant?

13 COMMISSIONER MAY: Actually, I did
14 have another follow-up question for the
15 applicant. I had forgotten about this one.

16 CHAIRMAN LOUD: Sure.

17 COMMISSIONER MAY: I thought about
18 it before. Looking at the floor plans and the
19 addition, on the second floor I see the
20 bedroom is shifting to the back of the house
21 and I'm just curious as to why there is only a
22 single window in that addition there, because

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1 it seems to me that you have -- you know, it's
2 a room that has an exposure on two sides and
3 so you could certainly put in more than one
4 window there and it would -- might make it a
5 nicer room.

6 MS. WILKS-CARNEY: I would like
7 that.

8 COMMISSIONER MAY: Yeah.

9 CHAIRMAN LOUD: Okay.

10 MR. WINDER: Well, a single window
11 was for -- actually allowing for wall space.

12 COMMISSIONER MAY: Right. I know
13 you need to have a wall and you need to have
14 room for a bed-wall and it's a small bedroom,
15 so I understand those sorts of constraints,
16 but you could also have a, you know, high
17 window on the side or something like that.

18 MR. WINDER: Right.

19 COMMISSIONER MAY: I'm just
20 thinking it would be a good idea to have a
21 second window, so you can get -- and on the
22 other face, so that you could get some cross

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1 ventilation.

2 MR. WINDER: Right. Okay.

3 COMMISSIONER MAY: That's just a
4 minor comment.

5 CHAIRMAN LOUD: Thank you, Mr. May.

6 Again, if there are no further questions for
7 either OP or the applicant or if OP doesn't
8 have any further response to some of our
9 dialogue here, we can move forward in the
10 proceeding. And I do believe that the ANC, if
11 Members of the ANC are present in this case,
12 this is ANC-5B, now would be the opportunity
13 to come up and give your report.

14 My record reflects that the ANC did
15 submit a report. I don't actually have a copy
16 of it in my file. Okay. And Mr. Dettman is
17 clarifying that there -- the reference in the
18 record to the ANC supporting it is from the
19 Single Member District Commissioner, which
20 would be a Mr. Hooper, who is Vice Chair of
21 ANC-5B, and I guess he is Single Member
22 Commissioner 5B07.

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1 And in the letter, he recommends
2 approval of the application for special
3 exception relief. However, our rules require
4 a certain matter of protocol for an ANC report
5 to be submitted and to be given great weight.

6 And part of the requirement is that the full
7 ANC meet and the report come from the Chairman
8 of the Commission and it be submitted after
9 proper notice given to the community and a
10 quorum convened for the purpose of the
11 meeting.

12 So it's an important distinction to
13 make, particularly in close cases. In this
14 case, it doesn't appear to be that close,
15 because you made a strong section 223 analysis
16 and you've got the backing of the Office of
17 Planning and I think our Exhibit 21 shows a
18 number of neighbors in the surrounding area
19 that support you, as well as this Single
20 Member District Commissioner. But in --

21 MS. WILKS-CARNEY: Excuse me, can I
22 say something?

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1 CHAIRMAN LOUD: Yes.

2 MS. WILKS-CARNEY: I went to the 5B
3 meeting and they voted on it. And Mr. Hooper
4 was supposed to write the letter and
5 representation of the full Committee --
6 Commission.

7 CHAIRMAN LOUD: Thank you.

8 MS. WILKS-CARNEY: There is also
9 something in here that shows how they voted.

10 CHAIRMAN LOUD: Thank you. We --

11 MS. WILKS-CARNEY: Because I went.

12 CHAIRMAN LOUD: Hum?

13 MS. WILKS-CARNEY: I went --

14 CHAIRMAN LOUD: I'm sorry.

15 MS. WILKS-CARNEY: -- and presented
16 my case before the 5B Commissioners.

17 CHAIRMAN LOUD: Okay.

18 MS. WILKS-CARNEY: And they voted
19 on it.

20 CHAIRMAN LOUD: And that much is
21 noted in the Office of Planning's report.

22 MS. WILKS-CARNEY: Okay.

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1 CHAIRMAN LOUD: As well that the
2 ANC met on May 7th, voted 11-0-1 to recommend
3 approval. It's just that I don't have a copy
4 of their resolution. I don't know if other
5 Board Members have it.

6 MS. WILKS-CARNEY: Oh.

7 CHAIRMAN LOUD: Yeah, I don't have
8 a copy of their resolution of approval in the
9 record that I received and it doesn't look
10 like other Board Members have it as well.

11 MS. BAILEY: Mr. Chairman, what I
12 think often happens is ANC gets a little
13 turned around and really doesn't follow the
14 rules exactly the way we have it written. But
15 what you do have in your hand is a copy of
16 their resolution. Well, not the resolution,
17 the minutes of the meeting where they voted on
18 that application, on this application.

19 CHAIRMAN LOUD: Okay.

20 MS. MONROE: Is it in the record?

21 CHAIRMAN LOUD: Okay.

22 MS. BAILEY: Yes, it is in the

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1 record.

2 CHAIRMAN LOUD: This has no exhibit
3 number on it.

4 MS. BAILEY: That particular copy
5 doesn't, but it is in the record.

6 CHAIRMAN LOUD: Okay.

7 MS. BAILEY: I saw it there.

8 CHAIRMAN LOUD: Okay. So what Ms.
9 Bailey has handed me is in our record. I
10 don't have it. And it would give you that
11 great weight support that you would need. I
12 think one of the more important things is to
13 not have the ANC oppose you, because once they
14 oppose you, we can't -- if you meet the test
15 for relief, we can't give you a summary
16 decision.

17 And in this case, it's very clear
18 that they don't oppose you. But what I have
19 been handed is from the May 7, 2009 meeting of
20 ANC-5B. It says the meeting was called to
21 order by the Chair. A quorum was present. It
22 is not signed, but we will duly take note of

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1 the fact that the record clearly supports your
2 Single Member District ANC Commissioner
3 supporting you, the minutes from the May 7
4 meeting, demonstrating that there was strong
5 support for you in the community.

6 But nonetheless, this doesn't
7 appear to meet the requirements for a great
8 weight report. Again, that does not harm your
9 case at all, because in your case there is no
10 opposition. The ANC certainly is not opposed
11 to it. So assuming the Board deliberates
12 today and supports granting the relief, we
13 would still be able to do a summary decision.

14 Board Members, any further
15 reflection on the ANC issue? Okay. Now, if
16 there are parties or persons in the audience
17 that are in support of this application, now
18 would be the time to come up, then you would
19 be given 3 minutes. And seeing none, if there
20 are parties or persons in the audience that
21 are in opposition to this application, now
22 would be the time to come up and we would like

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1 to hear from you. You would be given 3
2 minutes.

3 And seeing none, we'll turn back to
4 the applicant for your closing remarks.

5 MS. WILKS-CARNEY: I wish you'd
6 approve it.

7 CHAIRMAN LOUD: Well, let's see
8 what the Board Members think in terms of
9 deliberating today and where that may lead us
10 to. Is there any objection to deliberating
11 today? Okay.

12 Well, let me start us off. This is
13 an application for section 223 relief. The
14 applicant needs side yard relief. She
15 proposes an enclosure of a back porch, I
16 believe, largely for laundry, that will result
17 in a 2.2 foot side yard where 8 feet is
18 required. And also where the lot occupancy is
19 going to go up to about 40 percent, but still
20 below the 70 percent threshold for the R-4
21 District.

22 The Office of Planning gave

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1 testimony this morning and submitted a report,
2 our Exhibit 22, in support of the application.

3 The ANC Single Member District Commissioner
4 also submitted a report, that's our Exhibit 20
5 in support of the application.

6 Our Exhibit 21, a number of
7 neighbors, I think about 19 neighbors or so,
8 submitted documentation in support of the
9 application as well.

10 The Office of Planning testified
11 that there would be no impact to light and air
12 to adjacent properties, that the proposed
13 project does not protrude beyond the rear
14 portion of neighboring houses. In terms of
15 privacy, there was no compromise to adjacent
16 properties due to the proposed project.

17 The intrusion -- the visibility of
18 the proposed improvement from public streets
19 and the surrounding area, other houses have
20 similar enclosures. This one is not going to
21 be visible from the street. It would be
22 visible from the rear alley, but, as OP

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1 testified, other houses have similar
2 enclosures.

3 The maximum lot occupancy initially
4 was identified as 37 percent, but Mr. May
5 pointed us in the right direction in terms of
6 including the front structure, I believe
7 covering the porch, he testified, as part of
8 the lot occupancy, but not including the rear
9 stoop, if I'm correct, Mr. May.

10 COMMISSIONER MAY: Yeah, I think
11 the key point there is that when calculating
12 the lot occupancy when the addition is built,
13 the front porch should be included in the lot
14 occupancy, because it has a roof over it. And
15 the side yard should be included, because it
16 is too narrow to be a legal side yard. And so
17 those things together bump up the total lot
18 occupancy to 43 percent.

19 CHAIRMAN LOUD: Okay. I stand
20 corrected on that. I believe I said bumped it
21 up to 40 percent. It actually bumps it up to
22 43 percent. But nonetheless, it's still below

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1 the 70 percent lot occupancy that you can get
2 with the special exception in the R-4.

3 That being said, I don't have
4 anything further to add. I'll open it up to
5 Board Members.

6 COMMISSIONER MAY: Okay. Then I
7 would like to move approval of Application No.
8 17938 of Barbara Wilks-Carney for special
9 exception relief under section 223 for a rear
10 addition to a one-family semi-detached
11 dwelling in the R-4. Is there a second?

12 VICE CHAIR DETTMAN: Second.

13 CHAIRMAN LOUD: The motion has been
14 made and seconded. Is there further
15 deliberation?

16 Hearing none, all those in favor
17 say aye.

18 ALL: Aye. All those opposed? Are
19 there any abstentions? And can you read back
20 the vote, Ms. Bailey?

21 MS. BAILEY: Certainly, Mr.
22 Chairman. The vote is recorded as 3-0-2 to

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1 grant the application. The motion was made by
2 Mr. Loud, seconded by Mr. May, Mr. Dettman
3 support the motion. 3-0-2 as I indicated and
4 we are doing a summary order, Mr. Chairman?

5 CHAIRMAN LOUD: Yes.

6 MS. BAILEY: Thank you, sir.

7 CHAIRMAN LOUD: Thank you. All
8 right.

9 MS. WILKS-CARNEY: Thank you all.

10 CHAIRMAN LOUD: I think -- do you
11 think a 10 minute break would be what we would
12 need? Okay. So we're going to take a 10
13 minute break and then come back and hear from
14 the final case this morning, which would be
15 the Propco LLC. And one of the first
16 questions, I think, we will have is whether
17 you all are prepared and are willing to work
18 through the lunch hour.

19 Okay. See you in 10 minutes.

20 (Whereupon, at 11:11 a.m. a recess
21 until 11:33 a.m.)

22 CHAIRMAN LOUD: Good morning. We

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1 are resuming the morning hearing calendar, the
2 June 23rd hearing calendar of the BZA. And I
3 believe there is one final case on our
4 calendar this morning.

5 Ms. Bailey, can you call that case?

6 MS. BAILEY: Yes, Mr. Chairman.
7 It's the Application of Propco LLC and the
8 number is 17926, and it is pursuant to 11 DCMR
9 section 3104.1, for a special exception to
10 locate parking spaces on a lot that is
11 separate from the building that they are
12 intended to serve in accordance with
13 subsections 2116.6 through 2116.9. The relief
14 is sought to permit the construction of a new
15 one-story retail development on land that is
16 bounded by Western Avenue, N.W., 44th Street,
17 N.W., and Jenifer Street, N.W., and to use the
18 existing surplus parking located on the Lord &
19 Taylor parking lot at 4423 Harrison Street,
20 N.W. The zoning of the property is C-3-A, C-
21 2-A, R-5-B and R-2. It is located in Square
22 1660, Lot 811 and Square 1580, Lot 33.

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1 CHAIRMAN LOUD: Thank you, Ms.
2 Bailey. Can the parties, please, come forward
3 for that case? Good morning. And if you
4 could introduce yourselves for the record?

5 MR. FEOLA: Should I start over
6 here?

7 CHAIRMAN LOUD: Yeah, you can start
8 to my left.

9 MR. FEOLA: Thank you, Mr.
10 Chairman. For the record, my name is Phil
11 Feola with the Law Firm of Pillsbury Winthrop
12 Shaw Pittman here on behalf of the applicant.

13 MR. KABATT: Chris Kabatt with
14 Wells & Associates on behalf of the applicant.

15 MR. BERMINGHAM: Jerold Bermingham
16 from National Realty & Development for the
17 applicant.

18 MR. HEAPES: Richard Heapes with
19 Street-Works for the applicant.

20 CHAIRMAN LOUD: Good morning to
21 each of you. Is the ANC present?

22 MR. HEAPES: I do not believe so.

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1 CHAIRMAN LOUD: Okay. ANC is
2 automatically a party in the case. And I
3 think we have a preliminary matter involving
4 an ANC report that we got this morning that
5 did not come in within the time lines of our
6 rules, which we would, as a preliminary
7 matter, need to waive in. I believe all Board
8 Members have had an opportunity to review it.

9 It's a June 22nd document.

10 Does the applicant have a copy of
11 it?

12 MR. FEOLA: I do not.

13 CHAIRMAN LOUD: Okay. And it
14 purports to be a great weight report with
15 notice and a quorum for May 12 meeting and a
16 resolution conditionally in support of the
17 application.

18 Board Members did you have any
19 concerns about waiving our rules to allow this
20 in? Okay. So why don't we waive our rules on
21 the 3100.5 to allow the ANC report in, which
22 is dated June 22, 2009 and purports to be a

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1 resolution in support of the application.

2 The second preliminary matter would
3 involve an application for party status and
4 there was a party status applicant, I believe,
5 a Mr. Todd. Is Mr. Todd present? Okay. Good
6 morning. If you can come forward and take a
7 seat as well, we're going to -- this is not
8 necessarily going out of order, but this is
9 considered a preliminary matter before we get
10 into the case and you have an application for
11 party status, so we wanted to invite you up
12 and give you the opportunity to walk through
13 the standards for party status.

14 Yes, sir, your microphone is not
15 on.

16 MR. TODD: What I would ask and I
17 talked to the staff before about this is to
18 withdraw the request for party status and just
19 testify as a proponent of the project later in
20 the session.

21 CHAIRMAN LOUD: Thank you, Mr.
22 Todd. We can certainly accommodate that. And

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1 we will call you back when we get to that part
2 of the proceeding. I think, Mr. Feola, we are
3 prepared to go into --

4 MR. FEOLA: Just a, Mr. Chairman,
5 couple of preliminary matters on our side.

6 CHAIRMAN LOUD: Okay.

7 MR. FEOLA: One is the Affidavit of
8 Posting --

9 CHAIRMAN LOUD: Okay.

10 MR. FEOLA: -- that we filed with
11 the staff and the second is identifying expert
12 witnesses. We have two, Mr. Heapes on
13 architecture and urban planning and Mr. Kabatt
14 on traffic and transportation, both of whom
15 have testified either as experts either before
16 this Board or before the Zoning Commission.

17 CHAIRMAN LOUD: Okay. Thank you.
18 Why don't we do the latter first then and just
19 formally pass upon their qualifications to
20 testify as experts, so that their testimony
21 would be credited and given the weight of an
22 expert here.

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1 We do have the background
2 statements for Mr. Heapes and Mr., think it's
3 pronounced, Kabatt, okay, here with us, so we
4 just got it, so give Board Members a couple
5 seconds to look it over, but we are bearing in
6 mind that they have testified and then
7 qualified as experts here before.

8 Board Members are there any
9 questions for the proffered expert witnesses?

10 Okay. Then why don't we -- do we need to
11 vote on this, Ms. Bailey, Ms. Monroe?

12 MS. BAILEY: No, Mr. Chairman.

13 CHAIRMAN LOUD: Okay. So we don't
14 need to vote on it. I think as presiding
15 officer, I have authority to say by consensus
16 the Board approves that their witnesses should
17 be credited as that of an expert.

18 MR. FEOLA: One final preliminary
19 matter, we would like to submit a revised
20 landscape plan that is the product of
21 interaction we had with the property owners
22 within 200 feet as well as the ANC, which I

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1 think the ANC refers to in its submission.

2 CHAIRMAN LOUD: Okay.

3 MR. FEOLA: We would like to submit
4 into the record.

5 CHAIRMAN LOUD: Why don't we do
6 that. And as that is being done, what was the
7 issue with respect to the posting? The
8 posting you --

9 MR. FEOLA: No, we -- I was just
10 noting that we filed the Affidavit of Posting.

11 CHAIRMAN LOUD: Okay. Thank you.
12 Okay. Mr. Feola, I think we can start when
13 you are ready.

14 MR. FEOLA: Thank you, Mr.
15 Chairman. Again, my name is Phil Feola for
16 the applicant on behalf of LT Propco LLC.
17 With me is Cary Kadlecek of our law firm.

18 LT Propco has a long-term ground
19 lease on the two properties that are before
20 you today. Essentially, what this application
21 is is a special exception pursuant to 2116.5
22 to provide required parking off-site from the

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1 site of the proposed building.

2 The two properties are across
3 Jenifer Street from each other in Northwest
4 Washington, both abut Western Avenue to the
5 north, so on the District property line. The
6 first is Lot 33 and Square 1580, which is
7 about 6.2 acres of land. It is split zoned
8 between the C-2-A, R-5-B and the R-2 Zone and
9 it is occupied by, approximately, 150,000
10 square foot Lord & Taylor store, a parking
11 deck for that store and surface parking for
12 that property.

13 The second parcel is in Square 1660
14 and it's Lot 811. And it is a little over 1
15 acre and it's Zoned C-3-A and it is currently
16 surface parking. A little bit of background
17 about these.

18 LT Propco has a long-term ground
19 lease on both of these and has held -- and its
20 predecessor has held this ground lease since
21 the early '50s or mid-'50s when the Lord &
22 Taylor store was built.

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1 When Lord & Taylor was built, there
2 wasn't enough land in Lot 33 to accommodate
3 the parking requirement, at the time, and the
4 predecessor to Lord & Taylor came before your
5 predecessor and sought a special exception to
6 build the required parking on the lot that we
7 euphemistically call the "Home Plate Lot,"
8 which is the other property, that 1 acre
9 property across Jenifer Street.

10 That was approved by this Board in
11 Order No. 5226. And subsequently, in the mid-
12 '80s, the Zoning Commission changed the
13 parking regulations and lowered the
14 requirement for parking for properties like
15 the Lord & Taylor store.

16 Such that today, the current Zoning
17 Regulations would require 491 parking spaces
18 on-site for Lord & Taylor. The Lord & Taylor
19 site has 640 spaces. So what we are asking
20 for is the ability to use that surplus zoning
21 required spaces on the Lord & Taylor lot for
22 this new building, which will be about 40,000

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1 square feet, which would have a parking
2 requirement of 121 spaces.

3 Since there is that surplus, we are
4 seeking a special exception to essentially do
5 a 180 from the '50s. In the 1950s, the
6 applicant came before the Board and asked to
7 park across Jenifer Street for Lord & Taylor.

8 We are asking now going back across Jenifer
9 Street the other way to the west to provide
10 parking for the new facility that we propose
11 to build here.

12 So there are two pieces of relief
13 we are really asking. One is to release the
14 covenant that -- we would have the Board
15 authorize the release of the covenant that was
16 required under 5226 to maintain the "Home
17 Plate Lot," if you will, as parking. And
18 second to allow us to park pursuant to special
19 exception 2116.5 and to locate parking spaces
20 elsewhere on the site.

21 What we will show today is that it
22 is more practical to let us park on the Lord &

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1 Taylor site for this new building, because
2 there is an efficient use of land, better
3 design, it's safer for ingress and egress
4 purposes and it has less impact on the
5 neighborhood.

6 And that while the Board's charge
7 is to prefer locations off-site that are
8 separated only by an alley, in this case, we
9 are only separated by a fairly small Jenifer
10 Street. And of course, the Board can impose
11 conditions on screening and such that are
12 appropriate.

13 And I'm happy to say we have
14 reached an agreement with the ANC and the
15 immediate neighbors to the Lord & Taylor
16 parking lot on what those screening conditions
17 are. They are reflected in -- the landscape
18 part is reflected in the new landscape plan.
19 And we are going to submit some proposed
20 conditions which mirror what the ANC has asked
21 to be made a condition of the order.

22 So with that, I would like to call

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1 Mr. Bermingham to give a brief overview of his
2 role in this project and what Lord & Taylor
3 and LT Propco's goals are.

4 If it pleases the Board and given
5 the time, if you would like us to go through
6 the whole presentation and then stand for
7 questions, we can do that or we can just hear
8 questions after each presentation.

9 CHAIRMAN LOUD: I think in the
10 interest of time, it makes a lot of sense and
11 if Board Members are on board with that, no
12 pun intended, we can do it that way. But
13 obviously, if there is some burning question
14 someone wants to get to, we don't --

15 MR. FEOLA: Never stop you from
16 asking a question.

17 CHAIRMAN LOUD: But I do think that
18 approach makes a lot of sense.

19 MR. BERMINGHAM: Hello. My name is
20 Jerold Bermingham. I'm an Executive Vice
21 President with National Realty & Development.

22 Our company is a sister company to Lord &

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1 Taylor and the lease holder LT Propco.

2 And we are charged with handling
3 the real estate matters for Lord & Taylor's
4 matters like this, which come up,
5 redevelopments and developments of that. In
6 addition, we handle the construction property
7 management for our own account, privately
8 held, of another 80 shopping centers beyond
9 the Lord & Taylor holdings.

10 We have in-house our own
11 construction property management, legal staff,
12 accounting, etcetera, and we integrate design
13 development issues like this commonly. So
14 that's the structure of this.

15 From the perspective of the sister
16 company, Lord & Taylor, this site, as we call
17 it "Home Plate," represents an interesting
18 opportunity for us to create this Friendship
19 Heights Plaza, which will consist of the
20 combination of the Lord & Taylor store with
21 this small boutique high class and high
22 quality building, which would draw from the

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1 surrounding tenants, such as the Neiman Marcus
2 and the Bloomingdale's.

3 It would also -- would create the
4 kind of street environment that Wisconsin has
5 in that area where it is only a one story
6 structure, a little more hospitable, a little
7 more street friendly, a little more boutiquey.

8 So the people who are walking on Wisconsin
9 are drawn really to come shop at Lord & Taylor
10 as well as this.

11 The integration of these two from a
12 market perspective as well as from a real
13 estate perspective makes a lot of sense. It
14 is good business. Obviously, in this
15 environment, larger structures and bigger
16 developments would be hard to sustain, but
17 this is a particularly great market.

18 We have gotten an excellent
19 response from people who love this site. It
20 fills in, obviously, in a strong retail market
21 place. So we think it makes good business
22 sense. It is excellent real estate and the

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1 plan in front of us is a well-thought out
2 plan.

3 MR. FEOLA: Mr. Heapes?

4 MR. HEAPES: Mr. Chairman, Members
5 of the Board, Richard Heapes. I'll walk you
6 quickly through just the diagrammatic
7 thinking, so you can understand the project a
8 little better. I'll step up if that would be
9 okay?

10 Just to review its location, this
11 is the site and, of course, today it sits
12 almost 100 percent impervious as a surface
13 parking lot, not used. You should know that
14 along Western Avenue there are a number of
15 significant canopy trees that are there. And
16 then, of course, there is Jenifer and
17 Wisconsin of the Triangle and you have
18 Bloomingdale's, Neiman's and Lord & Taylor.

19 Today as you stand there, Lord &
20 Taylor sits almost by itself down the street
21 separated by this site. If you look carefully
22 at the "Home Plate" itself, it really is a

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1 three-fronted building. The primary front in
2 terms of the retail orientation is, of course,
3 along Western Avenue where you have the
4 entrance to the Metro Station, the entrance to
5 Neiman Marcus, the entrance to Lord & Taylor
6 both here and here.

7 And really the goal was to create a
8 retail frontage there keeping the existing
9 trees, staying back off the trees, having a
10 significant amount of landscaping on that
11 sidewalk, but still a full 20 foot width of
12 pedestrian activity. It's a very wide
13 setback, almost 40 feet from the curb to the
14 face of the building, as you see.

15 Walking along the other side then,
16 this is a private street. The issue was not
17 to create a building with a significant front
18 and a back, but three significant sides, if
19 you would.

20 As you come around the corner to
21 Jenifer Street, we are required to have 5
22 handicapped spaces on-site, those are

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1 consolidated off the site and across from the
2 parking in a small lot here accessible off of
3 Jenifer. And we also have the requirement for
4 two internal loading bays, which are shown
5 here, which allow the trucks to come off of
6 Wisconsin and pull into those two loading
7 bays.

8 We do also have the ability to have
9 a third lay-by bay should, in the course of
10 the daily activity, those two bays be
11 occupied. Although private, this is
12 essentially a combination street/alley
13 environment. This is the parking entrance to
14 Mazza Gallery and significant loading to Mazza
15 Gallery here.

16 What we attempted to do is to
17 create wide generous sidewalks. As I said,
18 you will have almost 40 feet here, create a
19 small almost weigh station, if you would, of a
20 public space that emphasizes this corner. We
21 have also emphasized this corner
22 architecturally and emphasized the back of

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1 this through the landscaping and architecture
2 of this.

3 So this is really a building of
4 about 1, 2, 3 corners and good sidewalks that
5 are being designed between those corners that
6 are appropriate to the scale and amount of
7 activity you would expect to see here.

8 Although just a one-story building
9 and the architecture -- I believe you have the
10 drawings in the application, the architecture
11 attempts to really clarify and make more out
12 of the corners than a simple one-story
13 building. So they can respond back and forth
14 across the street to the major anchors and
15 create more of a corner condition there.

16 And then the middle part of the
17 building, this for example, is along Western,
18 so this is the building across from Neiman
19 Marcus. It has got some more architecture
20 than just tenant architecture. It has some
21 strength and has a smaller scale similar to
22 what you would see up and down Wisconsin of

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1 not a completely horizontal building, but
2 smaller scale, 1 to 1.5 story buildings.

3 The same thing here across from
4 Lord & Taylor with a more simple building as
5 you walk along the edge under the tree canopy.

6 As you come around the corner along Jenifer
7 Street, we have pulled storefront, although
8 not the front of the building. We have kept
9 the canopy to create scale and sun and cover
10 along Jenifer Street and windows.

11 And likewise along 44th Street, we
12 have kept openings and some glazing, enough to
13 create some scale and rhythm to that side. So
14 it's not all a front and a back. Towards the
15 back, a corner facing Jenifer away from
16 Western, we have also created a significant
17 corner element in front of those handicapped
18 spaces. So as you are coming down Jenifer
19 from Wisconsin, you will see that as kind of a
20 weigh station to the Lord & Taylor.

21 The elevations are not as clear
22 perhaps and so here is three very simple

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1 sketches showing today's condition. If you
2 were standing at Lord & Taylor looking up
3 Western towards Wisconsin, there is Blooming--
4 there is Neiman's in the back. You can see
5 this kind of significant corner building, if
6 you would. More architecture than pure tenant
7 architecture in the vocabulary of today's
8 modern aesthetic that matches the two
9 aesthetics somewhat or fits with the
10 aesthetics of Lord & Taylor and Neiman's.

11 If you were to turn around and
12 stand at the corner of Neiman Marcus looking
13 back the other way, there is a Neiman Marcus
14 and Mazza Gallery, Metro Station. You can see
15 that corner element, that streetscape, and
16 again that building is sitting under the
17 canopy of those existing trees.

18 We move around the building looking
19 at it from Jennifer and that corner, you see
20 less retail building. You see that almost
21 plaza for the five handicapped spaces. You
22 see the loading dock, which we would propose

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1 be handled with glass loading doors as if it
2 was storefront that had some activity, had
3 some light behind it, not clear glass, opaque
4 glass and the character of the storefronts
5 walking around the front as you head to Lord &
6 Taylor's second entrance.

7 That is in a nutshell the character
8 of that simple three cornered one-story
9 building.

10 MR. FEOLA: Mr. Kabatt?

11 MR. KABATT: Hello. I'm Chris
12 Kabatt with Wells & Associates. We were
13 retained by LT Propco LLC to evaluate the
14 traffic impacts of the new retail space and
15 the parking associated with the application
16 and the adjacent Lord & Taylor.

17 We have prepared a Transportation
18 Impact Study dated April 23, 2008, which was
19 submitted with the application and was
20 reviewed by DDOT.

21 My testimony today will focus on
22 the off-street parking. If there are any

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1 questions regarding the traffic study, I'm
2 happy to answer them.

3 Richard, can we put up that aerial?

4 Just as Richard had gone through, but I'll
5 repeat it. The site is located within a
6 connected net work of local collector and
7 arterial streets. There is a continuous
8 network of sidewalks and public
9 transportation, both rail and bus.

10 The portals for the Friendship
11 Heights Metro Station, one is located on
12 Western Avenue, approximately, one block from
13 the corner of Western and 44th, which is the
14 corner of our site. There is also another
15 entrance on Wisconsin Avenue to the south of
16 Jenifer Street.

17 There are four Metro Bus series:
18 The E, L, N and 30 Series that operate along
19 Wisconsin Avenue and Western Avenue. And on
20 the other side of Western Avenue in Maryland,
21 bus service is also provided by Metro and by
22 Montgomery County Ride-On.

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1 Bus stops are located on Western
2 Avenue in front of the Lord & Taylor building
3 and at the intersection of 44th Street, that
4 private part of 44th Street. They are also on
5 Wisconsin Avenue midway between Western and
6 Jenifer and also on the south side of Jenifer
7 Street.

8 Sidewalks are located on both sides
9 of the streets in the study area connecting
10 pedestrians to the mix of uses and public
11 transportation and private parking facilities
12 in the area.

13 The special exception relief sought
14 for the parking should be granted for the
15 following reasons: A sufficient number of
16 parking spaces will be provided on the Lord &
17 Taylor lot to accommodate both parking demands
18 for the Lord & Taylor store and the new retail
19 stores on the "Home Plate" lot.

20 The parking spaces on the Lord &
21 Taylor lot that would serve the new retail are
22 conveniently located with respect to the new

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1 stores. The parking lot is within 800 feet,
2 which is considered an acceptable walking
3 distance by industry standards.

4 The intended walking paths from the
5 Home Plate lot to the Lord & Taylor parking
6 facility will operate efficiently and safely.

7 Again, there are a continual network of
8 sidewalks. There are marked crosswalks at
9 Jenifer and 44th Street, which is a stop
10 controlled -- all-way stop controlled
11 intersection and there are also marked
12 crosswalks and pedestrian countdown signals at
13 Western and Jenifer Street.

14 Traffic using the ADA accessible
15 parking on the proposed site and the loading
16 dock driveways will be light, resulting in few
17 pedestrian and vehicle conflicts along that
18 piece of the -- Jenifer. And also the
19 distance to cross Jenifer at 44th Street is a
20 manageable 50 feet.

21 If there are any questions, I would
22 be happy to answer them.

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1 MR. FEOLA: Thank you, Mr.
2 Chairman. That concludes our direct
3 presentation. I would like to submit proposed
4 conditions for inclusion in an order if you
5 are inclined to approve this. These parrot
6 the ANC's recommendations, but I want to make
7 sure that it is known that the applicant
8 supports these recommendations. So they are
9 the same as the ones that are in Section 5 of
10 the ANC resolution.

11 CHAIRMAN LOUD: Thank you, Mr.
12 Feola. I noticed you have couched it very
13 carefully to suggest that they are not
14 identical with the ANC's. Are they the exact
15 same as the ANC's?

16 MR. FEOLA: No, they are the exact
17 same.

18 CHAIRMAN LOUD: Gotcha. Okay.

19 MR. FEOLA: That was -- I wasn't
20 trying to be cute.

21 CHAIRMAN LOUD: I just wanted to
22 make sure. Okay. Thank you and thank your

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1 witnesses for the presentation this morning.
2 Let me see if Board Members have any questions
3 in response to the testimony this morning so
4 far.

5 COMMISSIONER MAY: Mr. Feola, the
6 Zoning Map that was submitted, it's behind Tab
7 C, I guess in the most recent submission,
8 indicates that the Home Plate lot was part of
9 a PUD. Can you explain that?

10 MR. FEOLA: Apparently at some
11 point in the distant past, someone made an
12 application for a Planned Unit Development for
13 that site, but it was never acted on by the
14 Zoning Commission.

15 COMMISSIONER MAY: And so -- and
16 that's also true then for the neighboring lot,
17 the rest of that, the Neiman Marcus or
18 whatever?

19 MR. FEOLA: Oh, that's correct. I
20 believe that the Mazza Gallery came forward
21 with a PUD that was either denied or rejected
22 or withdrawn back in the late '70s.

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1 COMMISSIONER MAY: So this goes
2 back to the late '70s?

3 MR. FEOLA: That's my
4 understanding.

5 COMMISSIONER MAY: Okay. I think
6 we need to have --

7 MR. FEOLA: There is no order
8 issued by the Zoning Commission for a PUD for
9 either one of those sites.

10 COMMISSIONER MAY: Is it the -- I'm
11 surprised to see that it had been mapped then,
12 because I would -- I mean, I know that it's
13 possible for -- to make mistakes in the
14 mapping, I have seen that happen before. But
15 I guess I would want to clarify with the
16 Zoning Commission staff why that was mapped in
17 error.

18 MR. FEOLA: I don't believe it was
19 a mistake. I think if you look at the Zoning
20 Map, every PUD application that was ever filed
21 is shown on the Map as a PUD.

22 COMMISSIONER MAY: Okay.

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1 MR. FEOLA: Even if it hadn't been
2 acted on.

3 COMMISSIONER MAY: So it's the --
4 the Map indicates when there has been an
5 application? Not when there has been an
6 approval?

7 MR. FEOLA: That's correct.

8 COMMISSIONER MAY: Okay. That's
9 something else we've got to take up with the
10 Zoning Commission staff, because I find that
11 very confusing. Okay. The parking lot where
12 the accessory parking will be, I understand
13 that it is less, it is now legally less spaces
14 are required. I didn't see a lot of argument
15 that it actually truly does have excess
16 capacity. Is there some evidence that it has
17 been significantly and consistently under-
18 utilized? Is that in the traffic study and I
19 missed it?

20 MR. KABATT: We did take parking
21 occupancy counts also in March.

22 COMMISSIONER MAY: Um-hum.

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1 MR. KABATT: Let me just double
2 check that they are in there, the study. And
3 what we found was that in March, about -- on a
4 Saturday about 45 percent of the spaces were
5 occupied and on a typical weekday, the day we
6 counted was a Tuesday, about 27 percent of the
7 spaces were occupied.

8 We then went further and applied a
9 peak parking demand toward the December month,
10 which is your peak month for retail.

11 COMMISSIONER MAY: Um-hum.

12 MR. KABATT: And based on ULI
13 Standards, Urban Land Institute, March is
14 about 64 percent of the peak parking demand of
15 the December. So we applied that factor and
16 if you applied that to the Saturday numbers,
17 it would equate to about 452 of the parking
18 spaces would be occupied. 640 minus 452 is
19 188 vacant parking spots.

20 MR. FEOLA: Mr. May, this is
21 located on page 28 of the traffic study.

22 COMMISSIONER MAY: Okay.

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1 MR. FEOLA: 29 actually, which is
2 Tab F of the most recent submission.

3 COMMISSIONER MAY: It's --

4 MR. FEOLA: I'll get the right tab
5 for you. It's Tab C of the most recent
6 submission. I apologize.

7 COMMISSIONER MAY: Well, I see it
8 here. Okay. The -- Mr. Heapes referred to
9 the parking lot, which is on the Home Plate
10 site as not used. Is it now completely
11 unused?

12 MR. BIRMINGHAM: Yes, it's
13 completely unused, except for a special event
14 or if there is some reason why -- in
15 particular, if we're doing work on the
16 existing lot.

17 COMMISSIONER MAY: Okay.

18 MR. BIRMINGHAM: But its --

19 COMMISSIONER MAY: Otherwise it's
20 just closed? It's fenced off or something
21 like that?

22 MR. BIRMINGHAM: Correct.

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1 COMMISSIONER MAY: And no one uses
2 it.

3 MR. BERMINGHAM: Fenced off and
4 vacant.

5 COMMISSIONER MAY: Okay. There is
6 a reference in the Office of Planning report
7 to DDOT recommending consideration of street
8 loading. And I was wondering if you could
9 respond to that? Curb side loading, I guess.

10 MR. HEAPES: Well, you remember
11 where the loading docks were?

12 COMMISSIONER MAY: Um-hum.

13 MR. HEAPES: One of the features of
14 the site is that there is not curb parking
15 along Jenifer or along Western. So you would
16 be looking to have a truck, essentially, take
17 up a turning lane. And from our perspective,
18 I believe their thinking was that that would
19 lessen the pedestrian impact of having trucks
20 back in to the loading, that's the best I
21 could think of why they would think that.

22 And to be quite honest, I see it

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1 quite the opposite. When you load off the
2 curb, you will be crossing the path of
3 loading, be it with pallet trucks or whatever
4 repeatedly and in the case of these curbs, you
5 are likely to off-load onto the sidewalk. And
6 so I think create much more of a pedestrian
7 conflict.

8 Secondly, one of the interesting
9 things about the setbacks here is you do have
10 pretty enormous sidewalks relative for the
11 amount of pedestrian traffic, particularly
12 along Jenifer. And I think we were looking to
13 be able to have a significant amount of other
14 grass or planting strips under the trees.
15 Obviously, that would be a difficult thing to
16 have.

17 So in terms of traffic conflicts
18 and pedestrian conflicts and use of the
19 sidewalk, I'm really -- I was quite surprised
20 by that.

21 COMMISSIONER MAY: And did they,
22 did DDOT have any direct conversation with you

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1 all about that idea?

2 MR. FEOLA: Yes. We had a meeting
3 with DDOT and they suggested that we should
4 look at that. And we did and I think Richard
5 and Mr. Kabatt can expound on that a little
6 bit more. But our -- besides the zoning
7 constraint that we would have, which would
8 mean we would need a variance before this
9 Board, which clearly wasn't noticed after we
10 found out about this, we don't think it's a
11 good solution to an urban situation for other
12 reasons Richard said.

13 So we thought adequate loading
14 behind closed doors would be a better way to
15 go. And I think from an operational
16 standpoint, Mr. Bermingham can speak to it, we
17 don't anticipate that there will be, you know,
18 thousands of trucks coming here, but the 8 or
19 9 that come, 6 or 8 or 9 that come a day, it
20 seems like they will pull in, they will shut
21 the doors, they will unload and they will go
22 on their way without doing major injustice.

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1 So it surprised us quite frankly, but we
2 looked at it.

3 COMMISSIONER MAY: Um-hum. Okay.
4 I would also just say architecturally it's
5 rare that you find a loading circumstance and
6 a lot that actually lends itself so well to
7 that central loading dock. I mean, you
8 usually have long corridors and you have, you
9 know, crossing from other services from the
10 service side of the building to the retail
11 side. I mean, it just works so well on the
12 interior of the building. So I think that's
13 it for my questions. Thank you.

14 CHAIRMAN LOUD: Thank you, Mr. May.

15 Mr. Dettman, do you have any questions?

16 VICE CHAIR DETTMAN: Just one, Mr.
17 Chairman. Mr. Feola, I was looking and it
18 looks to me that being able to locate these
19 parking spaces in the zone, in the area where
20 you are proposing can be done as a matter-of-
21 right. Accessory parking spaces are allowed
22 to be located in an R-5-B Zone. So of course,

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1 that's not part of our review here, but it
2 looks like you would be on the hook for the
3 proper screening under 2117, those provisions.

4 MR. FEOLA: Yes.

5 VICE CHAIR DETTMAN: So I'm looking
6 at the conditions, the proposed conditions
7 that you submitted and I'm just wondering how
8 those line up with the provisions in the
9 regulations that you would be required to
10 comply with.

11 The first one requiring a 6 foot
12 high wood stockade fence where the regulations
13 require you to do a wall and evergreen
14 screening. It looks to me you might have a
15 little overkill here.

16 MR. FEOLA: Well, the regulations
17 require a 42 inch high screen, either a wall
18 or evergreens. We are doing a taller more
19 dense screen. In working with those
20 neighbors, that was something they felt very
21 strongly about.

22 VICE CHAIR DETTMAN: Okay.

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1 MR. FEOLA: So the proposal is to
2 do, as you can see from the landscape plans,
3 significantly bigger more dense evergreens as
4 well as a solid 6 foot wall when a 42 inch one
5 would be acceptable under the regulations.

6 VICE CHAIR DETTMAN: Okay. So you
7 will come -- your plan is to comply with
8 whatever the regulations require and this goes
9 above and beyond?

10 MR. FEOLA: Our plan is to comply
11 with what goes above and beyond, yes.

12 VICE CHAIR DETTMAN: Okay. Okay.
13 Thank you.

14 CHAIRMAN LOUD: Thank you, Mr.
15 Dettman. I don't have any questions, at this
16 point. I'll reserve some for later if I do
17 have some. If there are no further questions
18 for the applicants, we will turn to the Office
19 of Planning.

20 MS. THOMAS: Good afternoon, Mr.
21 Chairman.

22 CHAIRMAN LOUD: Good morning. Good

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1 afternoon.

2 MS. THOMAS: Members of the Board.

3 I'm Karen Thomas with the Office of Planning.

4 And this is an application to locate required
5 parking off-site for proposed retail use on
6 the Home Plate lot. And based on our review
7 of section 2116.5, we see that it met the
8 provisions and the intent of 2116.6, which
9 would be to allow a more efficient use of the
10 land and infrastructure and to reduce
11 pedestrian/vehicle conflict.

12 We believe that the special
13 exception requested relief has been met and it
14 would not adversely affect the use of
15 neighboring properties. The site of the
16 proposed retail construction is within a
17 commercial area. And the use of the
18 department store parking garage would not
19 result in new construction of that property.

20 Therefore, we didn't anticipate any
21 impacts on the adjacent uses. And I'll be
22 happy to take any questions.

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1 CHAIRMAN LOUD: Thank you, Ms.
2 Thomas. Mr. Feola, did you have any questions
3 for the Office of Planning?

4 MR. FEOLA: No, sir.

5 CHAIRMAN LOUD: Okay. Board
6 Members, are there any questions for the
7 Office of Planning? There don't appear to be
8 any at this point in time, but we -- if we
9 have some as the case proceeds, we'll get back
10 to you on that.

11 Is the Department of Transportation
12 here? Okay. Not seeing them, why don't we --
13 I believe we checked earlier on the ANC and
14 they were not present at that time. Is the
15 ANC present now? They are not.

16 So this is the stage of the
17 proceedings that we would ask all parties or
18 persons that are in support of the application
19 to, please, come forward. I believe, Mr.
20 Chapman, you had stepped forward earlier and
21 this would be your opportunity to give
22 testimony.

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1 MR. TODD: Hello. My name is
2 Chapman Todd. I am a homeowner and resident
3 at 4445 Harrison Street, N.W., which is within
4 the 200 foot range of the property and
5 actually immediately bordering the alley on
6 Harrison Street adjacent to the lot of the
7 existing parking lot for the Lord & Taylor.

8 I am here speaking for myself, but
9 I have been working with a group of neighbors
10 that are also within the 200 foot range over
11 the course of the period since this
12 application got submitted.

13 I want to raise to you today that
14 under the Zoning Regs, a special exception can
15 be granted where the request will not tend to
16 adversely affect the use of the neighboring
17 property in accordance with the Zoning Regs.
18 And under the Zoning Regs, the BZA may impose
19 conditions on any accessory parking spaces as
20 to the screening, coping, setbacks, fences,
21 location of entrances or exits or any other
22 requirements it deems necessary to protect the

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1 adjacent or nearby property.

2 When the application initially came
3 in and what you have before you indicated on
4 page 6, the applicant felt that no additional
5 screening was necessary beyond the existing
6 conditions. Subsequent to me and some of my
7 200 foot neighbors seeing that, we engaged in
8 a conversation with the applicant to discuss
9 the specific concerns that were brought up by
10 the immediately adjacent neighbors.

11 As a result of that discussion and
12 ongoing dialogue with them, they have agreed
13 to request that five conditions be included in
14 the zoning order and that's what is in front
15 of you now. It is also in their executed
16 agreement with the ANC.

17 The specific scope of those five
18 are: The screening and what both the fence
19 and the trees are. (2) Specificity about the
20 lighting, about the availability of the
21 parking to customers of the retail and the
22 clarification on the loading times and the use

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1 of the -- the cleaning of the lot.

2 The applicants also submitted an
3 amended C102 that was referenced before that
4 provides clarity about the types and size of
5 trees that would be on the Harrison Street
6 side of the lot.

7 So I'm here before you today to say
8 as an immediately adjacent neighbor, I ask
9 that you include these five conditions in your
10 order. They have agreed to these conditions.
11 The ANC supported them. And the BZA has the
12 authority to impose them as conditions to
13 protect the immediately adjacent properties.

14 All of these five conditions are
15 specifically intended to mitigate or negate
16 the impact of the special exception on the
17 immediate neighbors for the more intense use
18 of this lot that will result from the building
19 being built.

20 To close and again I'm speaking for
21 myself, I'm in support of the introduction of
22 this retail to the neighborhood. I look

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1 forward to this project and to the special
2 exception they requested being granted with
3 the inclusion of these five conditions in the
4 amended C102 being recognized by the BZA.

5 I believe that each of these
6 conditions are reasonable. They have been
7 discussed with the applicant at length and
8 agreed to by the applicant. And I would hope
9 that the BZA agrees with that. So thank you
10 for the opportunity to be here.

11 CHAIRMAN LOUD: Thank you, Mr.
12 Todd. Let me see if the Board Members have
13 questions for you.

14 VICE CHAIR DETTMAN: Mr. Todd, is
15 your support for the application contingent
16 upon all five of these orders coming -- or all
17 five of these conditions being incorporated
18 in the order?

19 MR. TODD: My support is and I
20 would take a look and say this is not -- this
21 was a conversation that not just included me,
22 but with -- you know, we -- when this first

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1 came up, we communicated with all the owners
2 on -- within the 200 foot range that are
3 resident homeowners and explained, you know,
4 that this was coming and we wanted to discuss
5 with the applicant.

6 And we worked through with Mr.
7 Feola the things that we felt was important
8 and I believe that this is where we came to.
9 This is where they came to. It seemed
10 reasonable. The ANC -- I would think that a
11 reasonable person will look at each of these
12 and say that these are certainly within the
13 purview of the BZA to include in the order in
14 order to mitigate the impact of the use of the
15 lot.

16 So long answer to the question,
17 yes. Yeah.

18 VICE CHAIR DETTMAN: Well, I'm
19 looking at No. 4, which goes to the use of the
20 loading docks and the hours. And I'm not
21 seeing how that has anything to do with the
22 special exception that is before the Board.

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1 And I'm wondering if the Board was to not
2 include that particular one, what does that do
3 to your support for the application?

4 MR. TODD: Well, the issue is we're
5 really talking about two loading docks here.
6 We're not just talking about -- if you read
7 it, it's the existing Lord & Taylor and the
8 new building built on the Home Plate lot. Of
9 concern really to the neighbors is the one on
10 the existing Lord & Taylor lot, which I think
11 would be within your purview as part of the
12 special exception to say -- I mean, this is a
13 weird lot to be honest with you.

14 When you look at where the existing
15 Lord & Taylor store is, you have an R-5-B, an
16 R-2 and then a C Zone all in one. And so this
17 was designed to provide clarity as to what the
18 really timing of the law for the District in
19 regards to use of the loading dock on the
20 existing Lord & Taylor store.

21 So that is important to the
22 immediate neighbors and so I would hope that

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1 you would see that that would be something
2 that you could include as a condition.

3 VICE CHAIR DETTMAN: But is the use
4 and operation of the existing loading dock on
5 the Lord & Taylor store lot somehow changed,
6 impacted by these additional vehicles parking
7 on the parking structure?

8 MR. TODD: Well, it could be. If
9 there is a more intense use of the lot, say
10 it's additional hours that the lot is utilized
11 beyond what is currently -- what currently
12 happens with the store, sure. I can see a
13 scenario where Lord & Taylor would change
14 their loading operations to say do it in the
15 middle of the night, because of the increased
16 use of the lot.

17 So I certainly could see that and
18 that came up in the conversation where there
19 needed to be some kind of clarity around what
20 that was -- that what was possible within that
21 loading dock. I'm trying to anticipate some
22 of the changes that might happen as the result

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1 of the intense, more intense use of the lot.

2 VICE CHAIR DETTMAN: Okay, okay.
3 And my last question goes to No. 3, the
4 lighting. It seems the wording of that
5 condition is almost exactly what is found in
6 the regulations under 2117.13, which states
7 that the "Lighting needs to be directed
8 downwards and the light needs to be confined
9 to the lot."

10 And typically what the Board shies
11 away from is pulling the exact wording from
12 the regs into the orders as conditions.

13 MR. TODD: Okay.

14 VICE CHAIR DETTMAN: And so if we
15 were to find that lighting is not an issue,
16 because the applicant is required to comply
17 with the regs, what does that do to your
18 support?

19 MR. TODD: Well, I guess I would
20 ask back on -- the ANC also incorporated that
21 into their's and so I know that they are not
22 here, but that would be a question I would

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1 have about the ANC's support as well.

2 VICE CHAIR DETTMAN: Okay.

3 MR. TODD: When I look at this,
4 where this came up from the neighbor's
5 perspective, you know, none of whom including
6 myself are experts in the Zoning Regs, the
7 concern was that with a more intense use of
8 the lot, there would bring new lighting to
9 this.

10 And the conversation that we had
11 was, you know, all of us on the 200 foot
12 range, we live next to a parking lot now. We
13 know what that's like. And we know what the
14 existing conditions are and part of the
15 conversation that we had was try to ensure
16 that, okay, in exchange for this special
17 exception, this does not mean this is like the
18 parking lot at Montgomery Mall that is off on
19 a field, you know, somewhere where there is
20 not houses immediately adjacent to it.

21 And so the conversation was around
22 trying to ensure that what exists now would be

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1 what we could expect moving forward. Now,
2 whether that is consistent with what is
3 exactly in the Zoning Regs, that didn't come
4 up in the conversation. The reason to include
5 this was more of, you know, not turning it
6 into something that is lit up like a stadium
7 when this -- when the special exception is
8 granted in order to mitigate the negative --
9 you know, potential negative impact from the
10 immediate neighbors.

11 VICE CHAIR DETTMAN: Okay, okay.

12 MR. TODD: Particularly, because a
13 lot of this lot is in a Residential Zone. I
14 mean, you know, that's something that while
15 they operate under an exception going back, as
16 Phil mentioned, from 1958, I mean, you know,
17 it is an R-5-B or an R-2 and this could get
18 complicated and that's why we wanted to make
19 sure that that was in there just to make sure
20 that there was an agreement and understanding
21 of what we were trying to get at.

22 VICE CHAIR DETTMAN: Okay. Thank

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1 you. Thank you, Mr. Chairman.

2 COMMISSIONER MAY: Mr. Chairman?

3 CHAIRMAN LOUD: Thank you, Mr.
4 Dettman. Mr. May?

5 COMMISSIONER MAY: I just had one
6 quick follow-up. Where is the loading dock
7 for the existing Lord & Taylor store?

8 MR. FEOLA: I could tell you, but
9 it will be better if he shows it on the --

10 COMMISSIONER MAY: Um-hum.

11 COMMISSIONER MAY: Can't hear you.
12 You need to be on a microphone.

13 MR. HEAPES: It's in this -- this
14 is the general turning area where they back
15 into the bay that is here. So it's
16 essentially here.

17 COMMISSIONER MAY: Okay. Thank
18 you.

19 CHAIRMAN LOUD: Thank you, Mr. May.
20 I don't believe there are any questions. Do
21 you have any questions for the witness, Mr.
22 Feola?

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1 MR. FEOLA: No, sir.

2 CHAIRMAN LOUD: Okay. Mr. Todd,
3 thank you for your testimony. You can be
4 excused. We are now going to turn to any
5 persons that may be in opposition to the
6 application, if you are in the audience and
7 wish to testify, now would be the time to come
8 up.

9 Seeing none, I guess we would move
10 to the closing remarks of the applicant. But
11 before we do that, I just want to make sure
12 that there are no further questions for the
13 applicant.

14 COMMISSIONER MAY: Mr. Chairman, I
15 would just want to note that we did receive a
16 letter in opposition from a Mr. Vigdor and I
17 don't know if that -- whether the applicant
18 has received that, but I would be interested
19 in hearing the applicant's response to that
20 letter.

21 CHAIRMAN LOUD: Thank you, Mr. May.
22 Have you received it, Mr. Feola?

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1 MR. FEOLA: We just got it as we
2 sat here, yes.

3 CHAIRMAN LOUD: Okay. Do you need
4 some time to review it?

5 MR. FEOLA: I think we can address
6 it or more appropriately address by the
7 traffic engineer.

8 CHAIRMAN LOUD: Okay.

9 MR. FEOLA: Right.

10 CHAIRMAN LOUD: Why don't we call
11 him back?

12 MR. FEOLA: If I could paraphrase
13 which I think the issue is, it's that the data
14 for this traffic report was collected in March
15 of '08. And the opponent's letter suggests
16 that that data is dated, given that it is now
17 June '09 and I'll let Mr. Kabatt address that.

18 MR. KABATT: As I mentioned
19 previously, we did our traffic counts or our
20 traffic study. It was submitted in April of
21 2008. The traffic counts were done in March
22 of 2008. We did include a background growth

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1 rate of 0.5 percent per year annually and
2 applied that over a 2 year period. That is
3 consistent with the Wisconsin Avenue Corridor
4 study that was conducted for this area.

5 And secondly, we reviewed average
6 daily counts that DDOT posts on the website
7 for 2002, 2006 and 2007 and those traffic
8 volumes along Wisconsin Avenue and this area
9 and along Western are consistent over those
10 three years. In fact, from 2007 -- or from
11 2002 to 2007, traffic volume on Wisconsin
12 Avenue actually decreased slightly.

13 So we are comfortable with the --
14 with our growth rate to account for growth in
15 the area.

16 MR. FEOLA: Is it your opinion that
17 a more recent count would produce different
18 results from your conclusions?

19 MR. KABATT: No. It's my opinion
20 that the results of our traffic study would be
21 consistent.

22 COMMISSIONER MAY: Can you address

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1 more specifically the development referred to
2 as Wisconsin Place in the letter and whether
3 the impact of that development was factored
4 into your calculations and your evaluation?

5 MR. KABATT: Wisconsin Place which
6 is a project on the Maryland side of Western
7 Avenue was not explicitly included in our
8 study. In other words, we didn't forecast
9 traffic generated by that development and
10 assign it to a road network.

11 What we did was we assumed that
12 that would be captured in that growth rate
13 that we applied to all the turning movements
14 at the studied intersections.

15 COMMISSIONER MAY: Is that unusual?
16 I mean, wouldn't you ordinarily try to
17 capture things that you know are in the
18 pipeline and potentially have an effect?

19 MR. KABATT: Yes, we would. We
20 typically do put other developments into the
21 study. In this case, we did two projects that
22 were on the Washington side of Western Avenue.

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1 Again, in reviewing the data and then
2 reviewing the counts over the course of the
3 year since 2007, 2006 and 2002 and seeing that
4 there wasn't much of a change in the traffic
5 counts, we were comfortable with the growth
6 rate that was consistent with Wisconsin Avenue
7 Corridor study.

8 COMMISSIONER MAY: So developments
9 like the one that is across Wisconsin Avenue
10 from Mazza Gallery which is a PUD that -- a
11 big project that came on-line a few years ago,
12 that was within your -- the time frame that
13 you had studied and even with something like
14 that coming on-line, it didn't cause a big
15 jump or bump in the numbers?

16 MR. KABATT: That's correct. And I
17 would also add that there was -- on the east
18 side of Wisconsin Avenue and Maryland, those
19 retail stores were definitely developed
20 between 2002 and 2007 and again, there wasn't
21 a jump in traffic volumes.

22 COMMISSIONER MAY: Okay. Thanks.

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1 CHAIRMAN LOUD: Let me just ask a
2 follow-up question based on Mr. May's
3 question. You have been qualified as an
4 expert. And in your industry, would there be
5 a need or a requirement to supplement your
6 study? Apparently, when you did this study,
7 the project had not been completed, I guess,
8 at that time, in March 2008? But now as it
9 has rolled out, would there -- would your
10 industry require you to supplement your
11 findings?

12 In other words, are there any
13 standards in the industry about keeping the
14 data current and if so, what are those
15 standards?

16 MR. KABATT: Typically, we do our
17 traffic studies, the counts we typically have
18 within a year of when we take the counts and
19 when the case is heard or submitted. This
20 case was delayed a bit and again, looking at
21 the review of the historic counts over the
22 years, we didn't conclude that it was

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1 necessary to go through and update the traffic
2 study another year.

3 We did factor in growth over a 2
4 year period and with the consistent counts on
5 Wisconsin and Western, we are comfortable with
6 our results and with our counts that were in
7 the study.

8 CHAIRMAN LOUD: And I think there
9 was some testimony earlier that the Department
10 of Transportation -- you had some dialogue
11 with the Department of Transportation
12 regarding your traffic findings. Is that
13 correct? Did I hear that correctly?

14 MR. KABATT: Well, we did have a
15 meeting with DDOT and they have had the
16 traffic study, the issue of the counts didn't
17 come up. They did bring up the loading and we
18 generally talked about the parking and the
19 pedestrian access, but the issue of the counts
20 was not discussed.

21 CHAIRMAN LOUD: Okay. And I
22 believe we have been joined by DDOT actually

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1 since, good afternoon, earlier in the
2 proceeding where we normally would have called
3 DDOT, they were not here, but they are here
4 now. And I think it would be appropriate,
5 unless Board Members have any concerns, that
6 if DDOT has any testimony regarding this
7 matter -- I did not see a report from DDOT in
8 this matter, but there has been testimony that
9 your agency was involved at some point.

10 MR. JENNINGS: Thank you. For the
11 record, my name is Jeff Jennings. I work for
12 the District Department of Transportation.
13 Chairman Loud, good afternoon, good afternoon,
14 fellow Commissioners.

15 We were not able to get a written
16 report into the record for this particular
17 case, for which I apologize. Rather than
18 remaining complacent, I thought I would try
19 and get over here and see if we could add our
20 position on this particular case.

21 We did meet on a couple of
22 occasions, most recently, within the last

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1 month and a half or so with the applicant and
2 then I do remember our meeting from last year
3 when we initially reviewed the numbers within
4 the transportation study that is being
5 discussed right now with the applicant's
6 transportation engineer.

7 As the engineer cited, one of our
8 bigger concerns was the two loading docks that
9 would be positioned into what we regarded as a
10 major pedestrian thoroughfare. And we
11 discussed at great length what better loading
12 situation we may be able to achieve with this
13 project instead of having large delivery
14 trucks pulling forward and then backing up was
15 the course that we understood these trucks
16 would take in backing up across the sidewalk.

17 And one of the compromises, I
18 believe, that Mr. Feola, in our conversation,
19 mentioned they would minimize the loading dock
20 size and accommodate it only for 30 foot
21 trucks instead of four 53 foot trucks, which
22 is in the positive direction with this case.

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1 One of the other ideas that DDOT
2 pitched to the applicant for them to review
3 was what about simply disposing of the loading
4 dock altogether and instead we would make a
5 very, very unique exception for this
6 particular land use where we would have a
7 well-managed loading situation. The loading
8 would occur on the street. And we would want
9 it to occur during certain hours.

10 And we felt that that would perhaps
11 be something that they may be willing to look
12 at as well. The response I got to that
13 particular proposal was would our architects
14 take a look at it and see if there is an
15 internal artery system that we may be able to
16 assemble and I'll certainly get back to you.

17 And I did hear back from Mr. Feola.

18 It sounded as though it was something that
19 they would consider. So knowing that, there
20 is ample parking, which is what the special
21 exception is for here. We do support this
22 case for sure.

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1 However, the typical loading
2 stickiness of a site like this was where we
3 had a difficult time trying to reach any kind
4 of final conclusion with the whole entire
5 case.

6 CHAIRMAN LOUD: Thank you, Mr.
7 Jennings. Let me see if Board Members have
8 any questions for you and then we'll turn to
9 Mr. Feola to see if he has any.

10 COMMISSIONER MAY: I don't really
11 have any questions. I'm just really
12 astonished that the -- that DDOT would
13 recommend street loading in this circumstance.

14 But you know, you have your expertise and
15 that's fine. I don't think I really need an
16 answer to it. I'm just sort of taking note of
17 this and maybe I'm going to write it down on
18 the calendar or something.

19 MR. JENNINGS: If I could just
20 quickly, I know you necessarily said you don't
21 need a response. The reason we would look at
22 that as an option is because there's no

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1 parking here. And what you would allow for is
2 curbside loading. You would know that those
3 trucks perhaps arriving there earlier in the
4 day or maybe even later in the evening, not
5 during a major retail kind of crush period, if
6 you will, those trucks would be able to pull
7 up curbside and do their unloading and then
8 see to it that they are out of there in time
9 for when there is a major pedestrian use of
10 the site.

11 So that was the idea of curbside
12 loading versus would you want to consume space
13 on the site, have 53 or 30 foot trucks back
14 into the site with that always potential
15 pedestrian conflict going on? And so that was
16 something that we threw out there as an option
17 to them.

18 COMMISSIONER MAY: But if you were
19 going to -- if you are so concerned about
20 pedestrians that you would be -- that you
21 would want to restrict the applicant's loading
22 times to non-pedestrian hours, why wouldn't

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1 you just put that restriction on and let them
2 have the loading dock? I mean, then, you
3 know, you would get it in the building and you
4 are not blocking traffic or turning lanes or
5 anything.

6 MR. JENNINGS: It's a point well-
7 taken. I think we looked at this as far as
8 when you look at the pedestrian environment,
9 there is this aspect in DDOT that we regard as
10 what's called "shy space." Shy space is the
11 environment that a pedestrian has against the
12 nearest building.

13 So when you have hypothetically an
14 8 foot sidewalk and then you have a curb cut
15 along with a garage door that may lift,
16 enclose, there is always that opportunity for
17 trucks to come in. And so, you know, we took
18 all these factors into consideration when we
19 said would you consider doing something
20 curbside versus trying to do away with the
21 space that you have set aside for the loading.

22 COMMISSIONER MAY: Okay. Thank

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1 you.

2 CHAIRMAN LOUD: Thank you, Mr. May.
3 Mr. Dettman? Okay. Mr. Feola, did you have
4 any questions for DDOT?

5 MR. FEOLA: No, sir.

6 CHAIRMAN LOUD: Okay. Then why
7 don't we turn to your closing remarks? I do
8 believe, unless there are any additional, I
9 think we were at the point where witnesses who
10 were in opposition could step forward. I
11 don't believe any stepped forward. So we were
12 about to close the case and that would require
13 you giving us your closing.

14 MR. FEOLA: If I -- I would like to
15 ask Mr. Bermingham to comment just on the
16 loading issue really quickly.

17 CHAIRMAN LOUD: Okay.

18 MR. FEOLA: If he might on his --
19 with regard to operating a facility like this.
20 Mr. Bermingham?

21 MR. BERMINGHAM: We did give it
22 some consideration. And from the perspective

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1 of future tenants as well as the operations of
2 our existing retail, overwhelmingly, the
3 retailers as well as we as operator managers
4 have a strong preference and need to have the
5 loading not be curbside. So we did look into
6 it though.

7 MR. FEOLA: Just a couple of
8 comments to conclude then. We think we have
9 met the test for special exception. We think
10 that parking across the street from this
11 potential new building, which is a matter-of-
12 right building in every other manner, is the
13 right thing to do for this site.

14 We are almost a half a block from a
15 Metro Station. There is a lot of pedestrian
16 traffic, which, I think, raises the issue that
17 Mr. Jennings is concerned about as well as we,
18 to make sure that traffic is safe and can
19 access these properties without danger.

20 But we have met all those tests.
21 It is a better use of this land to take the
22 surface parking lot, which is not an

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1 environmentally happy place right now and turn
2 it into a productive piece of real estate,
3 both from a tax standpoint and from an
4 environmental standpoint, because it will have
5 to incorporate many of the techniques and
6 storm water management, etcetera, that aren't
7 currently on that site.

8 So I think with that, we will just
9 ask the Board to deliberate on this and
10 hopefully find in our favor for this special
11 exception. Thank you very much.

12 CHAIRMAN LOUD: Thank you, Mr.
13 Feola. I think what we announce is it's about
14 almost 12:40. Maybe we can take a 5 minute
15 bathroom break and then we'll come back out
16 here and discuss next steps and/or
17 deliberation today. Okay. All right.

18 (Whereupon, at 12:39 p.m. a recess
19 until 12:52 p.m.)

20 CHAIRMAN LOUD: Good afternoon. We
21 are back in session on the Propco case and I
22 do believe Board Members have a full record

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1 before us and we're going to go ahead and
2 deliberate today in reviewing the testimony
3 and the evidence from today.

4 One thought that we had was that
5 the spaces that we're talking about that are
6 the subject of the application are required
7 spaces. And as such, the spaces make
8 necessary the provision of a covenant running
9 with the land. And we wanted to, before we go
10 into deliberation, perhaps hear from Mr. Feola
11 regarding -- if you have any response at all
12 to that. It could be very much the case that
13 you don't have that.

14 The exact language of the covenant
15 is something that we would work out with the
16 Office of Attorney General, so we're not
17 prepared.

18 MS. MONROE: The exact language of
19 the condition, not the covenant. We're not
20 writing the covenant.

21 CHAIRMAN LOUD: Right, right, of
22 the condition. So I mean, we're not prepared

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1 necessarily to go over in great detail right
2 now, but just if you would like to step
3 forward perhaps, if you have any response to
4 that?

5 MR. FEOLA: As to the, I'm sorry,
6 Mr. Chair, need for a covenant?

7 CHAIRMAN LOUD: That's correct. We
8 were reviewing the Triminiscan Census that has
9 been brought on Board with the ANC and Mr.
10 Todd and I think favoring client, I'm not
11 going to speak for my colleagues, to look at a
12 set of conditions for the case and what we saw
13 that might be missing from the list of
14 conditions would be this whole issue of a
15 covenant running with the land that would
16 speak to the continued usage for the required
17 parking spaces.

18 And I guess I'm saying it now,
19 because once we go into deliberation on it,
20 there would not be an opportunity for you to
21 sort of weigh in and respond.

22 MR. FEOLA: Well, and two

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1 responses. One is we wouldn't have a problem
2 with the covenant. It's -- I mean, it's
3 intended that these spaces would tie to the
4 building permit and the C of Os of the Home
5 Plate lot. I don't personally think legally
6 it is needed. I think the zoning order covers
7 that.

8 In years past, there were
9 covenants. In fact, there is a covenant on
10 Home Plate lot right now for required parking.

11 I thought the Board got away from that
12 requirement, because it's in the order and
13 it's part of the zoning and that parking can't
14 go away.

15 But if this Board thinks otherwise,
16 we will do it. A condition that requires a
17 covenant subject to, you know, approval by OAG
18 is acceptable.

19 CHAIRMAN LOUD: Well, with that,
20 unless Board Members wanted to weigh in just
21 on that particular issue, separate from
22 deliberation, I think we can begin our

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1 deliberations. And I think Mr. May is going
2 to start us off.

3 MR. MOY: Yes. I think the case on
4 this is appropriately thorough and it's, I
5 think, a very straightforward matter, a simple
6 building and a simple request for relief with
7 regard to required parking. You know, I
8 think, there are a couple of things I would
9 just note about the case that has been made
10 that are of particular interest.

11 One is that overall the aggregate
12 need for parking seems to have dropped in the
13 area or maybe it never lived up to the
14 expectations and so the parking lot was never
15 filled. But I think that's an interesting
16 circumstance that we're dealing with.

17 It's sort of counterintuitive given
18 the level of traffic that we know exists in
19 the area, but it does open the door for, I
20 think, a more sensible use of the land and
21 allows us, I think, to not build more parking
22 than is really absolutely needed.

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1 Some of the issues that were raised
2 in the case, the DDOT request for
3 consideration of doing curbside loading, which
4 I still can't get over, I don't think that
5 they made a really strong case that anything
6 else should be considered. And I think the
7 applicant responded to that appropriately and
8 I think that -- I don't think we need to say
9 much more about that.

10 I think that the loading solution
11 as proposed is perfectly appropriate. I think
12 that the applicant has done a very good job of
13 addressing the neighborhood concerns, the fact
14 that there have been discussions with the ANC
15 and an agreement has been reached with the ANC
16 that has yielded conditions that would be made
17 part of the order is ample evidence of that.

18 The traffic concern that was raised
19 at the last minute by Mr. Vigdor, I think, was
20 adequately answered by the applicant. I think
21 that I would have been more comfortable if
22 there were more specific reference in the

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1 traffic study to developments that were on the
2 books and were planned and not just relying on
3 background levels and how they would be
4 expected to climb based on industry standards
5 or local projections of what traffic loads
6 would be.

7 I think that's -- I would be more
8 comfortable so we wouldn't have some of these
9 questions, but I think it was adequately
10 answered. I think that the specific relief
11 that is requested, I believe that the
12 applicant has made a strong case that in
13 accordance with 2116.6 through 9, that the
14 case for a special exception to allow
15 accessory parking off-site is -- or allow
16 parking off-site, rather, is -- has been very
17 strongly made.

18 I think the only question for the -
19 - in my view, is the conditions that would be
20 imposed. I do believe that a covenant to run
21 with the land with -- to require the parking
22 is appropriate and I don't know if it has been

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1 current practice. I certainly don't recall --
2 I recall doing this in past cases and I don't
3 know that we ever departed from that.

4 But I think it's appropriate given
5 the fact that the current circumstance with
6 that much parking and with a small building
7 that is clearly below the allowable FAR for it
8 is not going to be that building there
9 forever. I think it's important that it be
10 recorded with the land, so that we know what--
11 so that our successors know how to handle this
12 in the future.

13 So I think that's about it for what
14 I would say to summarize. Thanks.

15 VICE CHAIR DETTMAN: Mr. Chairman,
16 I agree with everything that Mr. May said.
17 This is a very simple special exception, as I
18 see it. And it's a fairly narrow focus that
19 we are looking at here. You know, I think
20 it's a good thing the parking is there and it
21 should be used. And so this shared parking
22 situation is a good thing.

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1 With respect to the discussion and
2 the concerns raised by DDOT specific to the
3 loading dock, I think they are the experts and
4 these are the things that they look at, but
5 again, I think that that falls outside of this
6 narrow focus that the Board is looking at in
7 terms of being able to locate parking spaces
8 on an adjacent lot.

9 I have the same concern looking at
10 one of the conditions that deal with limiting
11 the loading dock on both the Lord & Taylor
12 site as well as the Home Plate lot. But since
13 the efforts of Mr. Todd as well as the ANC has
14 resulted in these agreed upon conditions, I'm
15 in favor of these five conditions as well as
16 the sixth condition regarding a covenant.

17 My last comment goes to the traffic
18 study. I agree, again, with Mr. May that it
19 would have been better to have all of the
20 pending development, especially the one as
21 large as Wisconsin Place, included in the
22 traffic study.

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1 But again, the concerns with
2 respect to traffic and congestion go more to
3 the use and the use that is being contemplated
4 is a matter-of-right use. Those -- the
5 congestion and traffic situations is going to
6 exist whether or not we approve or disapprove
7 of this application.

8 If the use was before us, as a
9 special exception or variance, those would be
10 issues that we would be looking at. We would
11 be, you know, digging deep into the traffic
12 study to look for these types of concerns.
13 But again, this is just a request to locate
14 required parking on an adjacent lot and I
15 think those concerns fall outside of our
16 analysis here.

17 CHAIRMAN LOUD: Thank you. I think
18 between the two of you, you have said
19 everything that I would have said, so I won't
20 be redundant. There is before us a list of
21 five conditions contained in the ANC report as
22 well as on a separate submission by Mr. Feola.

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1 They are identical to each other. And I
2 would be in support of including all five of
3 those conditions as currently worded.

4 They are in Section 5 of the ANC
5 report. And I'm saying that, because I'm not
6 going to read each of the conditions, but they
7 are in Section 5 of the ANC report dated June
8 22, 2009. And I want just to be very clear
9 that those are the only conditions that I'm in
10 support of including as a part of this order.

11 And if there is further
12 deliberation on that, we can do that.

13 COMMISSIONER MAY: Mr. Chairman?

14 CHAIRMAN LOUD: Yes?

15 COMMISSIONER MAY: Just to clarify,
16 I mean, the need for a covenant would also be
17 a condition?

18 CHAIRMAN LOUD: Absolutely. I'm
19 sorry, let me be clear on that. I'm talking
20 about of the different things discussed in the
21 ANC report, like a \$25,000 payment and a bunch
22 of other things that go outside what we are

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1 talking about. The only ones that I would be
2 in favor of including as conditions are those
3 five.

4 Then added to that would be our
5 discussion about the covenant language. So if
6 there is a motion to be made, I think now is
7 an appropriate time to make it. And we can
8 proceed to the next steps.

9 COMMISSIONER MAY: I would move
10 approval of BZA Application No. 17926 for a
11 special exception to request to relocate off--
12 I'm sorry, locate required parking spaces off-
13 site for the proposed retail establishments on
14 the property at Square 1660, Lot 811. And
15 would ask for a second?

16 VICE CHAIR DETTMAN: Second.

17 CHAIRMAN LOUD: A motion has been
18 made and seconded. Further deliberation?

19 COMMISSIONER MAY: I would just
20 note that the -- that motion incorporates the
21 conditions that -- the five conditions from
22 the ANC report and the condition for the

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1 covenant.

2 CHAIRMAN LOUD: So noted. The
3 motion has been made as conditioned and
4 seconded. Any further deliberation?

5 Hearing none, all those in favor
6 say aye.

7 ALL: Aye.

8 CHAIRMAN LOUD: All those opposed?
9 Are there any abstentions? Ms. Bailey, can
10 you read back the vote for us, please?

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

13 Mr. May made the motion, Mr. Dettman seconded
14 and Mr. Loud supports the motion. And it is
15 approved with the five conditions. And the
16 sixth condition, Mr. Chairman, I just need for
17 my clarification, a covenant would run with
18 the land and the wording is to be developed by
19 OAG?

20 CHAIRMAN LOUD: That's correct.

21 MS. BAILEY: To be included in the
22 order?

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1 CHAIRMAN LOUD: That's correct.

2 MS. BAILEY: Thank you, sir.

3 CHAIRMAN LOUD: Thank you. And I
4 believe the party status applicant was
5 withdrawn, so there is no opposition to this
6 case and it can be a summary order.

7 MS. BAILEY: A summary order it is.

8 CHAIRMAN LOUD: All right.
9 Anything further on this case?

10 MS. BAILEY: No, sir.

11 CHAIRMAN LOUD: Thank you very
12 much. Thank you very much applicants and
13 witnesses. We are going to take maybe about a
14 10 minute break and stick fairly close to our
15 afternoon schedule. So if you are here for
16 the afternoon cases, we will resume those at
17 about 1:15 or so.

18 (Whereupon, at 1:06 p.m. a recess
19 until 1:29 p.m.)

20 CHAIRMAN LOUD: This hearing will,
21 please, come to order. Good afternoon, ladies
22 and gentlemen. This is the June 23rd Public

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

3 My name is Marc Loud, Chairperson
4 of the BZA. Joining me today are Vice Chair,
5 Shane Dettman, representing the National
6 Capital Planning Commission and to his right,
7 Mr. William Keating representing the Zoning
8 Commission. To my left is Ms. Lori Monroe
9 from the Office of Attorney General and Ms.
10 Beverley Bailey representing the Office of
11 Zoning.

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

20 When presenting information to the
21 Board, please, turn on and speak into the
22 microphone, first, stating your name and home

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1 address. When you are finished speaking,
2 please, turn your microphone off, so that your
3 microphone is no longer picking up sound or
4 background noise.

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

13 The order of procedure for special
14 exceptions and variances is: Statement and
15 witnesses of the applicant; Government
16 reports, including the Office of Planning, the
17 Department of Public Works, Department of
18 Transportation, etcetera; The report of the
19 Advisory Neighborhood Commission; Parties or
20 persons in support; Parties or persons in
21 opposition; and finally, closing remarks by
22 the applicant.

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1 Pursuant to Sections 3117.4 and
2 3117.5, the following time constraints will be
3 maintained: The applicant, appellant, persons
4 and parties, except an ANC, in support,
5 including witnesses, 60 minutes collectively.

6 The appellee, persons and parties, except an
7 ANC, in opposition, including witnesses, 60
8 minutes collectively. And individual
9 witnesses 3 minutes each.

10 These time constraints do not
11 include cross examination and/or questions
12 from the Board. Cross examination of
13 witnesses is permitted by the applicant or
14 parties only. The ANC within which the
15 property is located is automatically a party
16 in a special exception or variance case.

17 Nothing prohibits the Board from
18 placing reasonable restrictions on cross
19 examination, including time limits,
20 limitations on the scope of cross examination,
21 relevance, not testifying during cross
22 examination and so on and so forth.

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1 The record will be closed at the
2 conclusion of each case, except for any
3 material specifically requested by the Board.

4 The Board and the staff will specify at the
5 end of the hearing exactly what is expected
6 and the date when the persons must submit the
7 required information and evidence to the
8 Office of Zoning. After the record is closed,
9 no other information will be accepted by the
10 Board.

11 The Sunshine Act requires that the
12 Public Hearing on each case be held in the
13 open before the public. The Board may,
14 consistent with it's Rules of Procedure and
15 the Sunshine Act, enter Executive Session
16 during or after the Public Hearing on a case
17 for purposes of reviewing the record or
18 deliberating on the case.

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

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1 present not engage the Members of the Board in
2 conversation.

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

6 The Board will make every effort to
7 conclude the Public Hearing today as nearly as
8 possible to 6:00 p.m. or earlier. If the
9 afternoon cases are not completed at 6:00
10 p.m., the Board will assess whether it can
11 complete the pending case or cases remaining
12 on the agenda. We don't expect that to apply
13 today.

14 At this time, the Board will
15 consider any preliminary matters. Preliminary
16 matters are those that relate to whether a
17 case will or should be heard, such as requests
18 for postponement, continuance or withdrawal or
19 whether proper and adequate notice of the
20 hearing has been given. If you are not
21 prepared to go forward with a case today or if
22 you believe that the Board should not proceed,

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1 now is the time to raise such a matter.

2 Does the staff have any preliminary
3 matters?

4 MS. BAILEY: Mr. Chairman, good
5 afternoon and to everyone, good afternoon as
6 well.

7 CHAIRMAN LOUD: Good afternoon.

8 MS. BAILEY: No, sir, no
9 preliminary matters.

10 CHAIRMAN LOUD: Thank you, Ms.
11 Bailey. Let us then proceed with the
12 afternoon's agenda. Would all individuals
13 wishing to testify in any of the cases this
14 afternoon, please, rise to take the oath? Ms.
15 Bailey will administer it for you.

16 MS. BAILEY: Please, raise your
17 right hand.

18 (Whereupon, the witnesses were
19 sworn.)

20 MS. BAILEY: Thank you.

21 CHAIRMAN LOUD: Ms. Bailey, why
22 don't you call the first case and we can get

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1 started.

2 MS. BAILEY: Thank you, Mr.
3 Chairman. Application No. 17935 is the
4 Application of the Academy of Educational
5 Development, pursuant to 11 DCMR section
6 3103.2, for a variance from the floor area
7 ratio requirements under subsection 771.2, and
8 a variance from the nonconforming structure
9 provisions under subsection 2001.3, to
10 construct an addition to an elevated
11 pedestrian bridge connecting two office
12 buildings in the C-3-C District at premises
13 1825 Connecticut Avenue, N.W., Square 2535,
14 Lot 831.

15 CHAIRMAN LOUD: Thank you, Ms.
16 Bailey. And can the parties at the table
17 introduce yourselves?

18 MR. KADLECEK: Good afternoon. My
19 name is Cary Kadlecek. I'm from the Law Firm
20 of Pillsbury Winthrop Shaw Pittman on behalf
21 of the applicant. Also with me is John Epting
22 with Pillsbury.

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1 MR. SUOMI: I am David Suomi from
2 the Academy for Educational Development.

3 MR. BURKE: My name is John Burke.
4 I'm the architect of Studio 27 Architecture
5 and I'm here with the Academy for Educational
6 Development.

7 CHAIRMAN LOUD: Thank you and good
8 afternoon, gentlemen. We have reviewed the
9 file. I think this is a good file day,
10 because a lot of the files that have come
11 before us today have been very, very complete
12 and very, very full and it's always very
13 helpful to us in terms of our review and how
14 the proceeding is conducted.

15 All of which is a long-winded way
16 of saying you can feel free to go straight to
17 the variance test in the case. You don't have
18 to give a lot of history on the buildings and
19 structures involved, that certainly is an
20 option we want to encourage you to take
21 advantage of.

22 Obviously, we can't force you to do

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1 it if there is some things that you want to go
2 into, feel free to do that. But we think the
3 record is really, really full in this case.
4 Do we have as a preliminary matter qualifying
5 your expert?

6 MR. KADLECEK: Yes. If it pleases
7 the Board, I would like to have Mr. Burke
8 qualified as an expert in architecture. I
9 believe he has been qualified before the Board
10 before.

11 CHAIRMAN LOUD: Okay. And I think
12 we have before us his profile, so I'll give
13 Board Members a few minutes to look at it and
14 see if there are any concerns. Hearing no
15 objection to it, he has been qualified before,
16 we'll qualify him as an expert and credit his
17 testimony as that of an expert.

18 MR. KADLECEK: Great. I'm just
19 going to give a brief introduction and then I
20 think what we'll do is just have Mr. Burke
21 speak a little bit about the variance test.

22 CHAIRMAN LOUD: Okay.

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1 MR. KADLECEK: Like I said, my name
2 is Cary Kadlecek from the Law Firm of
3 Pillsbury Winthrop Shaw Pittman. This is a
4 very simple case of very minor variance
5 relief. In this case, the applicant, the
6 Academy for Educational Development or AED, is
7 seeking a variance of .01 FAR.

8 The subject property in this case
9 is 1825 Connecticut Avenue, N.W., also known
10 as the Universal South Office Building. It is
11 in the C-3-C Zone District. Just to the north
12 is the Universal North Office Building. AED
13 is a major tenant in both of these buildings
14 and now it plans expand the pedestrian bridge
15 that connects the two buildings.

16 It would connect the 10th Floor of
17 the Universal South Building with the 11th --
18 I'm sorry, the 10th Floor of the Universal
19 North Building with the 11th Floor of the
20 Universal South Building.

21 The Universal South Building was
22 constructed in 1957 and is nonconforming as to

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1 FAR. So the applicant requests a variance in
2 order to enlarge the nonconforming structure.

3 The Board has already granted the same type
4 of variance relief in 2005 to construct the
5 third story of the bridge and that BZA order
6 is included in the pleadings.

7 The variance relief is very minor
8 and the addition of the bridge will not cause
9 any adverse impacts to the surrounding
10 neighborhood. I'll also note that the ANC has
11 submitted a letter in which they indicated
12 they do not oppose the application.

13 With that, I would like Mr. Burke
14 just to explain briefly the variance test and
15 explain how the building is unique and the
16 practical difficulty that the applicant would
17 endure by conforming with the Zoning
18 Regulations.

19 MR. BURKE: Thank you and good
20 afternoon again. The unique physical aspects
21 of this particular property are that Universal
22 South was constructed prior to the

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1 implementation of the Zoning Regulations back
2 in 1957, back before FAR was a criteria, so
3 we're working with a structure that was always
4 a little bit over FAR by modern terms.

5 During the development of the
6 project over the years actually 14,000 square
7 feet of space has been taken away from
8 Universal South, so it is smaller than it was
9 originally. The other issue -- well, there is
10 four issues.

11 The second issue with Universal
12 South is that it has an internal parking
13 structure, so the building is wrapped around
14 the internal parking structure. I think it's
15 kind of a very clever way to hide the parking
16 structure, but it limits, obviously, the
17 amount of floor area available for a large
18 tenant like AED who occupies over 400,000
19 square feet in the two buildings.

20 The third item is AED took this
21 building because of the close relationship
22 between Universal South and Universal North.

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1 There is not a lot of places in the District
2 where you can find contiguous space in the
3 amounts of 400,000 or 500,000 square feet
4 without requiring your employees, visitors,
5 lecturers, staff to leave the building, go
6 across the street and go back up.

7 So there is a reason AED picked
8 this building. There is a reason that they
9 have a long-term lease. There is a reason
10 that they occupy at the moment, probably, 80
11 to 85 percent of the two buildings.

12 And the fourth issue is the way the
13 lot lines are drawn between the two buildings,
14 this application is for Universal South, but
15 the lot line for Universal South is held tight
16 to the adjacent building, Universal North. So
17 the small bridge, which is 200 square feet as
18 Cary said, applies entirely to Universal
19 South, which is the building with the FAR that
20 was never conforming.

21 With the lot line over a little
22 bit, we could have applied the FAR to

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1 Universal North instead of Universal South and
2 we wouldn't have an FAR issue. So those are
3 the four unique things concerning this
4 property.

5 The practical difficulty in not
6 granting the FAR or not granting the variance
7 would be there really is no other way for AED
8 to achieve this connection. So they would be
9 left -- AED is one of the largest nonprofits
10 in the county. And sustainability and
11 accessibility is very much part of their
12 corporate mission.

13 So it is a hinderance to their
14 mission to not be able to have their people
15 connect and work together and also they feel a
16 little bit of -- that it's against their
17 mission to inconvenience staff or guests by
18 not allowing the bridge. So that's -- those
19 are the two -- those are the issues that I
20 wanted to touch on. Thank you.

21 MR. KADLECEK: Thank you. That
22 concludes our presentation. We have nothing

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1 further. If the Board has questions, we're
2 happy to answer them.

3 CHAIRMAN LOUD: Did any of your
4 witnesses want to address the -- whether there
5 would be substantial detriment to the public
6 good? There is some evidence in the record
7 that touches upon that if -- and it's not from
8 your witness. I think OP goes into it. I'm
9 just giving you the option to --

10 MR. KADLECEK: Sure.

11 CHAIRMAN LOUD: Okay.

12 MR. KADLECEK: Mr. Burke, in your
13 opinion, would the addition of the bridge
14 change any aspects of the building with
15 respect to use or an increase in population of
16 the building?

17 MR. BURKE: No, because the bridge
18 is not an inhabitable space. It's simply a
19 corridor that ties the two buildings. It also
20 occurs within the property between the two
21 buildings. It is not an aperture or something
22 that sticks out on the street. It is

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1 completely contained.

2 MR. KADLECEK: Thank you.

3 CHAIRMAN LOUD: Thank you. Board
4 Members, are there any questions?

5 VICE CHAIR DETTMAN: One question,
6 Mr. Chairman. Mr. Burke, the internal parking
7 structure, is that still there?

8 MR. BURKE: It is still there.

9 VICE CHAIR DETTMAN: It's not used
10 for office space?

11 MR. BURKE: No, it's not. It is
12 still there.

13 CHAIRMAN LOUD: Mr. Keating?

14 COMMISSIONER KEATING: No, thank
15 you.

16 CHAIRMAN LOUD: Okay. Why don't we
17 then turn to the Office of Planning? Good
18 afternoon.

19 MR. MORDFIN: Good afternoon.
20 Stephen Mordfin with the Office of Planning.
21 And the subject application is in conformance
22 with the criteria for the granting of an area

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1 variance. The site is unique as a result of
2 an applicant leasing space within the
3 Universal North and Universal South Buildings,
4 two adjacent, but separate buildings.

5 And visitors and employees must
6 pass between the two buildings, including
7 those attending regularly scheduled
8 conferences within the South Building some of
9 whom are disabled. And this uniqueness
10 results in a practical difficulty, visitors
11 and employees having to take an elevator down
12 and cross over only to return to the same
13 level is a hardship on those individuals and
14 on the ability of the applicant to service all
15 of its clientele equally.

16 And the granting of this variance
17 will not substantially impair the purpose and
18 intent of the Zone Plan as only a minimal
19 amount of floor area, 264 square feet, and
20 will be minimally visible from the street as
21 it would be the addition of a 4th level to an
22 existing 3 level pedestrian bridge.

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1 Therefore, the Office of Planning
2 recommends the granting of a variance to
3 increase the FAR to 6.96 and to permit the
4 enlargement of a nonconforming building.
5 Thank you.

6 CHAIRMAN LOUD: Thank you, Mr.
7 Mordfin. Board Members, are there any
8 questions for the Office of Planning? Hearing
9 none, Mr. -- counsel for applicant, I'm sorry,
10 tell me your name again.

11 MR. KABATT: Kadlecek.

12 CHAIRMAN LOUD: Kadlecek. Do you
13 have any questions for the Office of Planning?

14 MR. KADLECEK: No, I don't have any
15 questions.

16 CHAIRMAN LOUD: All right. The ANC
17 did file a report, I do believe, and their
18 report is supportive of the application. Is
19 anyone from the ANC present with us? They are
20 not here, but they did file a report, our
21 Exhibit 23. And as I said, Exhibit 23
22 evidences their support for the project,

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1 indicating that there was -- well, it doesn't
2 look like it has the great weight requirement.

3 It does not have the great weight
4 requirement. I see Mr. Dettman shaking his
5 head.

6 But nonetheless, it indicates
7 support. It's clearly not in opposition, so
8 if the Board were to go ahead and deliberate
9 on it today, this would not be a reason to
10 prevent a summary sort of decision and/or
11 review when we get to that point.

12 Nonetheless, it's our Exhibit 23
13 and it supports the application.

14 Now, we would turn to any parties
15 or persons who are in the audience who are in
16 support of this project, now would be the time
17 to come up. And seeing none, if there are
18 parties or persons in the audience who are
19 opposed to the project, now would be the time
20 to come up.

21 And seeing none, we now turn back
22 to you for closing remarks. And we sort of

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1 allowed you to jump right into the case on the
2 use variance test. So if in the closing you
3 want to -- you or your witnesses want to say
4 something that you didn't get a chance to say
5 at the outset, feel free to take this
6 opportunity to do that.

7 MR. KADLECEK: I'm pretty
8 comfortable with what the testimony has been
9 thus far. I would just like to reiterate that
10 this is, in fact, an extremely minor area
11 variance, .01 FAR. And as Mr. Burke
12 indicated, the impacts would be virtually
13 nonexistent, because it's unoccupiable space.
14 And with that, I request approval of this
15 application. Thank you.

16 CHAIRMAN LOUD: Thank you. I think
17 as we have done in some of these cases, we, at
18 this point, could schedule this for
19 deliberation and get you in probably December
20 of 2009 or we can deliberate right now. So I
21 think we're probably going to deliberate right
22 now and I think Mr. Dettman is going to start

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1 us off.

2 VICE CHAIR DETTMAN: Thank you, Mr.
3 Chairman. As counsel for the applicant has
4 noted, this is a very simple straightforward
5 application for variance relief from the FAR
6 requirements under 771.2 and under the
7 nonconforming structure provisions of 2001.3.

8 The applicant is requesting
9 variance relief in order to construct an
10 additional level to an existing three story
11 elevated pedestrian walkway in order to
12 connect the 11th Floor of Universal South with
13 the 12th Floor of Universal North.

14 And I'll note for the record that
15 this -- the variance relief actually applies
16 to the property that Universal South sits on.

17 And so quickly going through the three prongs
18 of the variance test:

19 With respect to the first prong as
20 to whether there is an exceptional or
21 extraordinary situation or condition specific
22 to the property, the applicant has offered up

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1 a confluence of factors. But I think those
2 that really apply to the variance test is that
3 Universal South Building was constructed prior
4 to the 1958 Zoning Regulations and, at that
5 time, there were no FAR limitations.

6 And so in a sense, by the adoption
7 of the Zoning Regulations, this building was
8 rendered nonconforming with respect to FAR.

9 The architect testified that there
10 is an internal parking structure and,
11 essentially, it's an office building that
12 wraps this internal parking structure, which
13 significantly limits the amount of gross floor
14 area that can be developed for purposes of
15 office use or what have you.

16 And perhaps in the filings one of
17 the unique factors was that this is a unique
18 complex of buildings where this particular
19 tenant, AED, leases a substantial amount of
20 square footage between the Universal North and
21 Universal South Buildings.

22 And so whether or not those

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1 confluence of factors give rise to a practical
2 difficulty upon the property owner, I think
3 looking at the severity of the relief being
4 requested, we're really only talking about an
5 increase of .01 FAR.

6 And it's effect -- I'll kind of
7 look at the second and third prong together.
8 And it's overall effect on the Zone Plan. I
9 think that there is a practical difficulty
10 here that is created by the unique situations.

11 We have a tenant here that again is leasing a
12 substantial amount of office space between the
13 two buildings and they have a need to, as part
14 of their mission, make their space as
15 accessible as possible for their employees as
16 well as their visitors who come to the
17 property for conferences, meetings, training.

18 In addition, I think it is worth
19 noting that in order for the Universal South
20 Building to comply with the required FAR would
21 require the applicant to remove about 24,000
22 square feet of office space in order just

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1 simply to put on this extra level to the
2 pedestrian bridge. And so I think that would
3 be a practical difficulty.

4 Finally, with respect to the third
5 prong, we heard testimony that again this is a
6 very, very small variance request. It's .01
7 FAR. And not only that, it's not going to
8 equate to any additional leasable office
9 space. It's not going to increase the
10 building population. It's not going to
11 increase the number of cars visiting this
12 building.

13 And so I don't think that there is
14 going to be any kind of substantial detriment
15 to the public good nor the Zone Plan. The
16 additional level is not going to easily be
17 seen from the public right-of-way,
18 Constitution to Florida Avenue.

19 And I think that's it, Mr.
20 Chairman. OP is in support, that's our
21 Exhibit 26. Then finally, the ANC submitted a
22 report stating no objection to the application

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1 and that's our Exhibit No. 23.

2 CHAIRMAN LOUD: Thank you, Mr.
3 Dettman. That was a very good summary of the
4 case. Mr. Keating?

5 COMMISSIONER KEATING: Yes. That
6 was an excellent summary of the case. I have
7 really nothing to add other than I do think
8 that there is no substantial detriment to the
9 public and that it's a very straightforward
10 case.

11 CHAIRMAN LOUD: Thank you. Then is
12 there a motion on this case? Is your
13 microphone on?

14 COMMISSIONER KEATING: I move to
15 approve Application 17935 Academy of
16 Educational Development.

17 VICE CHAIR DETTMAN: I'll second
18 the motion.

19 CHAIRMAN LOUD: The motion has been
20 made and seconded. Is there further
21 deliberation?

22 Hearing none, all those in favor

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1 say aye.

2 ALL: Aye.

3 CHAIRMAN LOUD: All those opposed?
4 Are there any abstentions? Ms. Bailey, can
5 you read back the vote for us, please?

6 MS. BAILEY: Sure, Mr. Chairman.
7 The vote is recorded as 3-0-2 to grant the
8 application. Mr. Keating made the motion, Mr.
9 Dettman seconded, Mr. Loud supports the
10 motion. Two other Board Members are not
11 sitting at this time.

12 CHAIRMAN LOUD: Thank you, Ms.
13 Bailey. There is no opposition, so I believe
14 a summary order would be appropriate.

15 MS. BAILEY: A summary order it is,
16 Mr. Chairman.

17 CHAIRMAN LOUD: Thank you. Is
18 there anything further on this case?

19 MS. BAILEY: Not for this case,
20 sir.

21 CHAIRMAN LOUD: Thank you. Ms.
22 Bailey, you can call the next case when you

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1 are ready.

2 MS. BAILEY: Sure, Mr. Chairman.
3 Application No. 17936 is the Application of
4 New York University, pursuant to 11 DCMR
5 section 3103.2, for a variance from the lot
6 occupancy requirements under section 772, a
7 variance from the off-street parking
8 requirements under subsection 2101.1, and a
9 variance from the loading requirements under
10 subsection 2201, to allow the construction of
11 a 9 story dormitory and academic center
12 building. The property is located in the
13 DD/C-2-C District at premises 1307 through
14 1311 L Street, N.W., Square 247, Lot 103.

15 CHAIRMAN LOUD: Thank you, Ms.
16 Bailey. And we have been joined at the table
17 by applicant. So why don't we start with you
18 introducing yourselves for the record? I
19 don't think your microphone is on. Still
20 can't hear you.

21 MS. DWYER: It's on now?

22 CHAIRMAN LOUD: Yes.

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1 MS. DWYER: Yes, okay. For the
2 record, Maureen Dwyer with the Pillsbury Law
3 Firm on behalf of NYU, the applicant.

4 CHAIRMAN LOUD: Good afternoon.

5 MR. JULIANO: Joe Juliano from the
6 New York University.

7 CHAIRMAN LOUD: Good afternoon.

8 MR. CAUDLE: And Laurence Caudle
9 with Hickok Cole Architects.

10 CHAIRMAN LOUD: Thank you. Just by
11 quickly a show of hands in the audience, are
12 there persons who are in the audience who are
13 witnesses for this case? Okay. I just wanted
14 to get the lay of the land before we got
15 started.

16 You can feel free to start your
17 case.

18 MS. DWYER: All right. As I said,
19 we are here on behalf of NYU, which is seeking
20 an application for variance relief from the
21 strict requirements of the Zoning Regulations
22 in order to construct a university building at

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1 1307 to 1311 L Street, N.W.

2 Specifically, we are requesting
3 variance relief from the loading, lot
4 occupancy and parking requirements. And the
5 project will conform to the Zoning Regulations
6 in all other ways.

7 The property is located in the east
8 end sub-market of the downtown area of the
9 city and sits -- and will sit on a very small
10 lot comprising only 6,960 square feet. The
11 property is currently unimproved and there was
12 a prior variance request by the former owner.

13 At that time, they were going to construct an
14 office building and the Board approved
15 variance relief, because of the small size and
16 narrow width of this lot.

17 NYU intends to improve the property
18 as an NYU center in D.C. It's main purpose
19 will be to provide a semester program for
20 students from NYU and New York and from other
21 locations around the world to experience
22 Washington, D.C. and to study in politics,

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1 international relations, economics and art
2 history.

3 NYU expects that, approximately,
4 100 students as well as a small number of
5 visiting students will enroll in the center
6 during each semester. Beginning on page 5 of
7 our prehearing submission, we set forth the
8 ways in which we believe this project meets
9 the area variance requirements. And I'm not
10 going to go through those in detail right now.

11 We provide the case law and we also
12 provide as attachment precedent cases for this
13 type of variance relief.

14 What I would like to do instead is
15 turn to the first witness, Mr. Joe Juliano, to
16 describe quickly the nature of the program and
17 then to ask the architect to walk through the
18 satisfaction of the variance relief
19 requirements.

20 MR. JULIANO: Thank you very much,
21 Mr. Chairman. NYU endeavors to create many
22 study away, what we call study away,

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1 experiences for our students throughout the
2 world. Washington, D.C. is just yet another
3 one of those sites. We currently operate 10
4 sites around the world and are developing a 4
5 year liberal arts college in Abu Dhabi.

6 Washington, D.C. would represent
7 another one of those sites for our students to
8 be able to go from New York to various foreign
9 sites, to Washington, D.C. for students from
10 Abu Dhabi to come to Washington, D.C. to study
11 for a semester.

12 This is our concept of what
13 universities need to become in the 21st
14 Century. The program there will be basically
15 focused on those disciplines that Ms. Dwyer
16 has already listed, but will also expand its
17 other areas, such as environmental studies and
18 other types of disciplines that would fine a
19 semester her to be advantageous for students.

20 Much of the students experience
21 here will be involved with having internships
22 and foundations which the site is well-placed

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1 and well-located for as well as some
2 Government agencies and corporate firms.

3 MS. DWYER: And with that, I'll ask
4 the architect to walk through the practical
5 difficulties, the unique factors and the lack
6 of any substantial detriment.

7 MR. CAUDLE: Good afternoon. My
8 name is Laurence Caudle. I'm with Hickok Cole
9 Architects. We did bring exhibits of boards,
10 but I think I'll go through the unique and
11 exceptional conditions first. They are the
12 same documents that you have in front of you,
13 so if there are any questions or any queries
14 later on, I can refer to those.

15 But truly one of the unique aspects
16 of the site is certainly of small size, I
17 should say, particularly in relationship to
18 the other sites in the area. It measures only
19 58 feet wide and is a total of 6,960 square
20 feet.

21 In addition to that, the site is
22 constrained at the rear off of which there is

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1 a rear alley where there is only 30 foot width
2 of exposure to this alley. And actually
3 access to the north side of the site from the
4 alley is through the one -- a little pipe
5 stem, I guess, condition off the alley. It's
6 not even on the main alley itself.

7 And as Joe said, there is -- the
8 other unique aspect of this facility is the
9 fact that it is an academic and student
10 housing center creating a true mixed-use
11 development within the neighborhood.

12 Continuing on to the practical
13 difficulties, as I mentioned before, it is a
14 combination of the small footprint and
15 narrowness that, in terms of the parking,
16 creates an adverse effect for laying out any
17 efficient parking plan for the building.

18 We would only be able to get,
19 approximately, 7 to 8 parking spaces per
20 level, which would require for us to go up to
21 six levels below-grade to satisfy the parking
22 requirements.

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1 In terms of the loading, the alley
2 restricts access certainly for a full-sized
3 loading space. We are asking relief from a 30
4 foot and delivery foot space for a single
5 loading space. Given that this single loading
6 space would serve the day-by-day functions of
7 the facility and of itself, we feel that this
8 is sufficient for the building.

9 There would be, of course, an
10 initial move in other building, but other than
11 that, as explained, the facility is really
12 only to function for semester long. The
13 students will probably be bringing just
14 suitcases and perhaps a bicycle if they so
15 choose.

16 Also in terms of the parking
17 counts, the propensity for this would be to
18 double count, since the students living at six
19 of the levels are also utilizing the academic
20 facilities on the floors below, so that's
21 another reason for some of the difficulties of
22 this site.

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1 In terms of lot occupancy, a
2 residential building, which was what this is
3 deemed as, would require up to 80 percent lot
4 occupancy or allow up to 80 percent lot
5 occupancy. If it were an office use, it would
6 be allowed to go up to 100 percent lot
7 occupancy. However, we are asking only for an
8 increase to 87.5 percent.

9 We like to describe putting this
10 building together as doing a vertical watch
11 and to create typical floor prints is very
12 critical to create efficient floor plates for
13 this building and for all the synergy of uses
14 to work together.

15 So we feel that given the use of
16 this institution, that increase in lot
17 occupancy would help us, relieve us from the
18 fact that this is a very small site.

19 We believe in allowing for these
20 three areas of relief, that is for the
21 loading, the lot occupancy and parking would
22 not cause any substantial detriment to the

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1 neighborhood.

2 In terms of the loading, large
3 trucks again are not needed, since students
4 attending for a semester will be coming into
5 fully furnished rooms. The 20 foot loading
6 space from the alley will be sufficient from
7 the day-to-day uses of the building.

8 In terms of the parking, again,
9 students will actually be prohibited from
10 bringing cars to the site and the site is
11 certainly a transit-oriented site. It is
12 within walking distance of all the major Metro
13 lines, major Metro Bus routes as well as
14 within walking distance of up to 10 public
15 parking garages.

16 It is also in the vicinity of all
17 of the retails and services that any of the
18 residents in the dormitory rooms would
19 necessitate. And also walking distance of a
20 lot of the, as Joe described, nonprofits or
21 Government facilities that they would be
22 entering at.

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1 And lastly, in terms of lot
2 occupancy, I think the attention of the lot
3 occupancy is to provide light and air for the
4 project. Clearly, that is something that we
5 had to provide for the dormitory levels above
6 and we do meet our rear yard setback
7 requirements. And we feel comfortable that,
8 especially for the dormitory levels, we are
9 providing the light and air requirement for
10 those uses.

11 In terms of the Comprehensive Plan,
12 the site is designated for high density and
13 high density residential use. Given the
14 mixed-use nature of this facility, I believe,
15 it truly falls in that category. It certainly
16 contributes to the growing vibrancy of the
17 neighborhood and all the developments around
18 the neighborhood as a true mixed-use area.

19 And lastly, would you like me to
20 speak to community outreach? We have taken
21 the -- and presented the project. Two of my
22 colleagues have presented the project to the

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1 ANC-2F on May 27th and June 3rd meetings and
2 received, we're fortunate to say, unanimous
3 support.

4 We also have met with adjacent
5 property owners who are also in support of
6 this project.

7 MS. DWYER: Thank you. That
8 concludes our direct testimony. And I think
9 you probably now have before you the ANC
10 letter. I had gotten an email indicating --

11 MS. BAILEY: We checked and we did
12 not receive it as that.

13 MS. DWYER: All right.

14 MS. BAILEY: Oh, you did?

15 MS. DWYER: Is that the ANC letter?

16 MS. MONROE: Yeah, I think so, June
17 22, 2009.

18 MS. DWYER: Okay. Because I had
19 gotten an email saying they had faxed it to
20 the office.

21 CHAIRMAN LOUD: Okay.

22 MS. DWYER: And I hadn't seen it in

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1 the file.

2 CHAIRMAN LOUD: We will --

3 MS. DWYER: So I just wanted --

4 CHAIRMAN LOUD: Yes, we do have the
5 ANC. Just give us a minute, because we
6 literally just now --

7 MS. DWYER: Right.

8 CHAIRMAN LOUD: -- are taking a
9 look at it. Well, let me just take a look at
10 it right quickly and then we can make copies
11 for the record. Well, what we can do is have
12 some copies made and then as you close our
13 your case, when we get to the part where the
14 ANC would give it's report, assuming they
15 won't be here by that time, I'll just read
16 into the record the pertinent parts of this,
17 so that we can keep moving forward.

18 MS. DWYER: All right.

19 CHAIRMAN LOUD: Ms. Bailey, can I
20 give you their report and ask if you could
21 make some copies? That would be -- well, I
22 guess -- okay. Ms. Bailey is just letting me

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1 know that we did get a late report from the
2 D.C. Fire and Emergency Management Service
3 that also supports the application. So when
4 we get to the Government reports part, we'll
5 go over that as well.

6 Let me turn now to Board Members
7 and see if they have any questions for you.

8 VICE CHAIR DETTMAN: While we're on
9 the subject of the ANC, Mr. Caudle, when the
10 plans were presented to the ANC in May and in
11 June, since then, have the plans changed at
12 all?

13 MR. CAUDLE: We are right now in
14 late design development. So while there are
15 truly minor plan adjustments, maybe move, you
16 know, a wall an inch or two, there are no
17 changes that are changing the program, the
18 number of dorm rooms, anything of that nature
19 right now.

20 VICE CHAIR DETTMAN: Okay. And in
21 terms of this building in relation to other
22 buildings in the area, office or residential,

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1 was the ANC well-aware of where this building
2 sat in relation to everything else in the
3 square?

4 MR. CAUDLE: To the immediate
5 neighborhood or to his immediate neighbors?

6 VICE CHAIR DETTMAN: We will just
7 say in the square and to the buildings to the
8 south.

9 MR. CAUDLE: Yes.

10 VICE CHAIR DETTMAN: And impacts on
11 light and air.

12 MR. CAUDLE: Yes, I think --
13 absolutely, yes, they were.

14 VICE CHAIR DETTMAN: Okay. Okay.
15 Thank you.

16 CHAIRMAN LOUD: Thank you, Mr.
17 Dettman. Mr. Keating? Okay. Before we then
18 turn to the Office of Planning, which I think
19 we will do, MS. Dwyer, did you want to qualify
20 Mr. Caudle as an expert --

21 MS. DWYER: Oh, I'm sorry.

22 CHAIRMAN LOUD: -- in the case?

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1 MS. DWYER: I neglected to do that.

2 CHAIRMAN LOUD: Okay.

3 MS. DWYER: He has previously
4 appeared before you. We submitted his resume
5 and we would like him qualified as an expert
6 in architecture.

7 CHAIRMAN LOUD: Thank you. I do
8 recall seeing him here before and his profile
9 is at our Exhibit H of the prehearing
10 statement, which is Exhibit 25, if Board
11 Members need an opportunity to briefly look at
12 it. But unless there is any objection to it,
13 we'll qualify you as an expert.

14 MS. DWYER: All right. Thank you.

15 CHAIRMAN LOUD: And your testimony
16 given that weight. And just in time, I think
17 we will now turn to the Office of Planning.
18 Thank you.

19 MR. JACKSON: Good afternoon, Mr.
20 Chair, Members of the Board. My name is
21 Arthur Jackson of the D.C. Office of Planning.
22 Before you have a report from the Office of

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1 Planning summarizing our support of the
2 application.

3 Based on this information being
4 before you, we will stand on the record and
5 just be available to answer any questions that
6 you might have. I would also note that we did
7 receive a response to an inquiry from the
8 Office of Planning. We received an email from
9 the Department of Fire and Emergency Services
10 saying that they have no concerns about this
11 application.

12 And I believe I forwarded a copy
13 for that -- of that to be added to the record
14 file. If not, I'll do so immediately upon
15 returning to my office. That concludes a
16 brief summary of the Office of Planning report
17 and we're available to answer questions, as I
18 mentioned.

19 CHAIRMAN LOUD: Thank you, Mr.
20 Jackson. In fact, we did get a copy of the
21 fire -- D.C. Fire and EMS letter noting that
22 they had no concerns with the project. So

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1 we'll make sure you get a copy of that as
2 well.

3 Board Members, were there any
4 questions for the Office of Planning? Okay.
5 And I don't have any either. Do you have any
6 questions for the Office of Planning?

7 MS. DWYER: We have none. Thank
8 you.

9 CHAIRMAN LOUD: Okay. And as
10 indicated, we did get a letter from the D.C.
11 Fire and EMS Department. It has not been
12 given an exhibit number yet, I don't think,
13 but in sum and substance what it says is that
14 they have reviewed the request and based on
15 the site plans that were submitted, they have
16 no objection to this request, as long as
17 construction is in compliance with the
18 International Fire Code and all applicable
19 D.C. Laws. And it is signed by the -- it is
20 initialed by Gary Palmer.

21 I just had one quick question with
22 respect to the site plans that they reviewed

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1 and it sort of follows Mr. Dettman's question
2 about the review by the ANC. Have the site
3 plans changed any since the review by the D.C.
4 Fire Department?

5 MR. JULIANO: No, they have not.

6 CHAIRMAN LOUD: Okay. Are there
7 any questions regarding the Fire Department's
8 report? Okay. Then what we will do now is
9 move on to the ANC. And assuming that they
10 have not shown up, I'll take note of the fact
11 that they did submit a report. It is signed
12 by the Chair of ANC-2F. It does not have an
13 exhibit number yet. You have a copy of the
14 report, I take it?

15 MS. DWYER: I do.

16 CHAIRMAN LOUD: Okay.

17 MS. DWYER: Yes, thank you.

18 CHAIRMAN LOUD: And I'm just going
19 to take 2 seconds to review it right quick.
20 And the report goes on and notes that with
21 proper notice and a quorum, the Community
22 Development Committee of the ANC reviewed the

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1 evidence that was presented by the applicants,
2 had some substantial concerns over the near
3 100 percent variance from established parking
4 minimums, but not withstanding those concerns,
5 went on to vote to support the -- to approve,
6 voted to approve the application.

7 So this will be given great weight
8 by our body. Any questions regarding this?
9 Okay. Then if there are persons or parties
10 who are in the audience who are in support of
11 this application, now would be the time to
12 come up. And seeing none, if there are
13 persons or parties who are in opposition to
14 this application that are in the audience, now
15 would be the time to come up.

16 Seeing none, then we turn back to
17 you for closing remarks.

18 MS. DWYER: Thank you. Just a
19 brief closing. We do believe that on the
20 basis of our written submission, the support
21 of the Office of Planning and their excellent
22 report, the support of the ANC, that this is

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1 an application that deserves to be approved
2 and that we meet the requirements for the
3 requested variance relief.

4 I would also like to say that NYU
5 is very anxious to begin their fund raising
6 for this building. And therefore request a
7 decision from you as soon as possible, so that
8 they can begin to fund raise and get the money
9 to go forward with this very exciting program
10 that they are looking forward to doing in D.C.

11 CHAIRMAN LOUD: Thank you, Ms.
12 Dwyer. And I believe now we will consider
13 whether or not we want to deliberate this
14 afternoon. I think we do, but let me just
15 open it up to Board Members to see your
16 concern.

17 Okay. So I think there is
18 unanimous consent for moving forward and
19 deliberating. And I think Mr. Dettman is
20 going to start us off.

21 VICE CHAIR DETTMAN: Thank you, Mr.
22 Chairman. It looks like I have three hours to

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1 get us through this, right? Take my time.
2 Given that the record is so full in this
3 application and there is no opposition to the
4 project, we can do this quickly.

5 The applicant is looking to
6 construct a 9 story building with three floors
7 of academic use and six floors of student
8 housing. And I think it's worth noting that
9 in addition to that there is going to be three
10 stories below ground that is going to be used
11 for academic purposes.

12 And so in order to do so, the
13 applicant is requesting relief, three
14 variances, one from the parking under 2101,
15 loading under 2201 and lot occupancy under
16 772.

17 With respect to the first prong of
18 the variance test, and I'll deal with all
19 three variance requests all at once, as to
20 whether there is an exceptional or
21 extraordinary situation upon the property, we
22 have a confluence of factors here. Mainly,

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1 it's the small size of the lot measuring
2 almost 7,000 square feet, 6,960, and it also
3 has a significantly narrower width than any of
4 the properties within the square measuring 58
5 feet in width.

6 There is also kind of a unique rear
7 property line condition where a portion of, I
8 think it's the, eastern portion of the rear
9 property line is actually the wall of the
10 building. It abuts the wall of the building
11 leaving only about 28 feet along the rear
12 property line, 30 feet on the rear property
13 line to provide access to loading and parking
14 and those types of activities.

15 So I think that the application
16 meets the first prong. And as to whether the
17 unique conditions give rise to a practical
18 difficulty upon the property owner, if the
19 Zoning Regulations were to be strictly
20 applied, there are, I think, a collection of
21 practical difficulties here.

22 With respect to the loading,

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1 providing loading and underground parking
2 access would be difficult given the very
3 little linear square -- linear footage along
4 the rear property line where you typically
5 provide those types of facilities.

6 Providing the requisite number of
7 parking spaces would require multiple levels
8 of underground parking. We heard that from
9 the architect which, essentially, would have--
10 you would have to get below the three stories
11 of academic uses that are programmed for
12 underground or actually move those facilities
13 up into the building, which essentially you're
14 going to lose some square footage.

15 And it's probably going to be the
16 residential units that would have a practical
17 difficulty in impacting the university's
18 program for the building. If you are going to
19 lose residential properties, I assume that
20 that could trigger some adverse impact on the
21 third prong, because these students need to
22 stay somewhere and they would be coming to the

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1 property possibly with a vehicle.

2 With respect to the lot occupancy,
3 I think that there is a practical difficulty
4 here in that the strict application requires a
5 removal of, approximately, 522 square feet
6 from each of the residential floors. And I'm
7 not exactly sure how many apartments that
8 would -- or how many beds that would actually
9 require removal, but certainly it's going to
10 impact their program.

11 And in addition to that, the 87.5
12 percent lot occupancy is going to help the
13 applicant create more efficient floor plates
14 for the building.

15 As to whether or not there is going
16 to be substantial detriment to the public good
17 or if it's going to substantially impair the
18 intent and purpose of the Zoning Regulations,
19 I think there isn't anything in the record or
20 we heard in the testimony that would make me
21 think that any of those variance requests
22 would cause substantial detriment to the

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1 public good.

2 The residential units are going to
3 be furnished and so we're not going to have --
4 every single semester, we're not going to have
5 students having to move all of their furniture
6 out and other ones moving it in. I think
7 given the proposed use of the building, the --
8 and we heard in the testimony from the
9 architect that smaller loading vehicles,
10 smaller trucks are going to be able to
11 adequately service this building on a day-to-
12 day basis using smaller trucks.

13 With respect to the parking, I
14 think this is a very transit-oriented site.
15 We have, I think, three Metro stations, plenty
16 of Metro Bus lines, the Circulator. In fact,
17 the students are going to be prevented from
18 actually having a vehicle on the site or in
19 the area.

20 And in addition to that, if the
21 students, I assume, need access to a vehicle,
22 there is plenty of Zipcars in the area. So

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1 there is a lot of transportation choices that
2 are going to help mitigate any kind of spill
3 over that the parking relief is going to be --
4 potentially cause.

5 And finally, with respect to the
6 lot occupancy, the applicant has stated that
7 the proposal is consistent with several of the
8 Comp Plan policies and also in the generalized
9 Land Use Map of the Comprehensive Plan.

10 And in addition to that, what we
11 are really looking at is possibly less lot
12 occupancy than would actually be allowed if
13 you were going to build this building 100
14 percent commercial.

15 And so even though residential is
16 80 percent, you can get 100 percent in
17 commercial. So I think that there is a
18 balance there.

19 OP is in support of the
20 application, that's our Exhibit No. 26. The
21 ANC, we have a report from them now expressing
22 their support for the application, unanimous

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1 support, in fact. And we heard through the
2 oral testimony of the applicant that the
3 adjacent property owners were presented with
4 plans and they are in support as well.

5 So I'm supportive of the
6 application, all three requests for variance
7 relief.

8 CHAIRMAN LOUD: Thank you, Mr.
9 Dettman, that was another excellent summary of
10 the case leaving very little for me to add to
11 it. I just would add the -- and you sort of
12 already put it in the record regarding the
13 site plans that were shared with the ANC being
14 what is before us and there being no gray area
15 of confusion about that, ditto for the fire,
16 D.C. Fire and EMS Service.

17 So apart from that, I don't have
18 anything to add to what you just laid out.
19 Mr. Keating? Okay. It looks like Mr. Keating
20 doesn't have anything to add either.

21 COMMISSIONER KEATING: Nothing to
22 add. It's a complete record.

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1 CHAIRMAN LOUD: Okay. Then if we
2 can entertain a motion? Mr. Dettman, would
3 you like to make a motion?

4 VICE CHAIR DETTMAN: I would move
5 for approval of Application No. 17936,
6 pursuant to 11 DCMR 3103.2, for a variance
7 from the lot occupancy requirements of 772, a
8 variance from the off-street parking
9 requirements of 2101, and a variance from the
10 loading requirements of 2201.

11 COMMISSIONER KEATING: I second.

12 CHAIRMAN LOUD: Second. Okay. Mr.
13 Keating has seconded. Okay. The motion has
14 been made and seconded. Is there further
15 deliberation?

16 Hearing none, all those in favor
17 say aye.

18 ALL: Aye.

19 CHAIRMAN LOUD: All those who
20 oppose? Are there any abstentions? Ms.
21 Bailey, can you read back the vote, please?

22 MS. BAILEY: Mr. Chairman, the vote

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

2 The motion was made by Mr. Dettman, seconded
3 by Mr. Keating, Mr. Loud supports the motion.

4 CHAIRMAN LOUD: Thank you, Ms.
5 Bailey. Is there anything further on this
6 case?

7 MS. BAILEY: Summary order, sir?

8 CHAIRMAN LOUD: Summary order would
9 be very appropriate. There's no opposition to
10 it.

11 MS. BAILEY: Thank you.

12 CHAIRMAN LOUD: Okay. Before we
13 adjourn, I want to take a point of privilege.
14 The parties can leave if you want to or you
15 can stay. I just want to take point of
16 privilege and acknowledge two people right
17 now.

18 First, I want to acknowledge Mr.
19 Clifford Moy who is secretary of the BZA.
20 Today we had, I believe, 10 cases on the
21 calendar. Okay. 10 cases on the calendar.
22 We started pretty much on time, about 9:45

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1 maybe, and we are getting out of here, to Mr.
2 Dettman's dismay, at 2:15 this afternoon and
3 there is a tremendous amount of work. People
4 don't realize how much work goes into being
5 able to get through a calendar every Tuesday
6 from reproduction of the files and cases and
7 transmittal to the ZC and the Board Members
8 and the Office of Attorney General and
9 everybody.

10 And so I just want to acknowledge
11 Mr. Moy and his staff for the great job that
12 they do every week, but particularly today
13 when we had 10 cases to get through.

14 MR. MOY: May I say a few words,
15 sir?

16 CHAIRMAN LOUD: Yes, go ahead.

17 MR. MOY: I'll use a point of
18 privilege for a moment, since we have 3 hours.

19 First of all, thank you very much.
20 Appreciation is always welcome, but really,
21 sir, I think that, as for me, the credit goes
22 to the staff, certainly the staff that do

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1 great work for me and the BZA.

2 Secondly, as we all know in any
3 military company, leadership comes from the
4 top. And it has been a real pleasure from
5 staff's position to have you as Chair as well
6 as Mr. Dettman as Vice Chair.

7 CHAIRMAN LOUD: Thank you, Mr. Moy.

8 And then secondly, I wanted to acknowledge my
9 colleague, Mr. Shane Dettman, who over the
10 past couple of weeks took and was successful
11 in becoming an American Institute of Certified
12 Planners Association, so he is now officially
13 part of that organization.

14 And he took the test as he was
15 meeting regularly with us each Tuesday and
16 holding a full-time job where he works and
17 taking this test and I believe that he scored
18 near 100, if not 100. So I just wanted to
19 acknowledge him for his outstanding service to
20 our community.

21 VICE CHAIR DETTMAN: Thank you, Mr.
22 Chairman. I appreciate that.

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CHAIRMAN LOUD: And with that, we
are adjourned.

MS. DWYER: Thank you.

(Whereupon, the Public Hearing was
concluded at 2:20 p.m.)

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