

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 14, 2009

+ + + + +

The Regular Public Hearing  
convened in Room 220 South, 441 4<sup>th</sup> Street,  
N.W., Washington, D.C., 20001, pursuant to  
notice at 10:00 a.m., Marc D. Loud,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

KONRAD SCHLATER, Commissioner  
MICHAEL G. TURNBULL, FAIA, Commissioner  
(OAC)

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN  
ARLOVA JACKSON  
ARTHUR JACKSON

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

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

2 10:01 a.m.

3 CHAIRPERSON LOUD: This hearing  
4 will please come to order.

5 Good morning again, ladies and  
6 gentlemen. For those of you that here as I  
7 read this for the decision component of this  
8 complaint of this morning's hearing, this is  
9 a required formality as the BZA initiates  
10 both a decision where we reach a decision and  
11 a hearing where we hear testimony. So I'm  
12 going to read it all over again, plus some  
13 additional things that I didn't read earlier.

14 This is the July 14, 2009 Public  
15 Hearing of the Board of Zoning Adjustment of  
16 the District of Columbia. My name is Marc  
17 Loud, Chairperson. Joining me today are Vice  
18 Chair Shane Dettman representing the National  
19 Capital Planning Commission, Michael  
20 Turnbull, representing the Zoning Commission.

21 To my left is Ms. Beverley Bailey, Zoning  
22 Specialist in the Office of Zoning.

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

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

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

17                   All persons planning to testify  
18 either in favor or in opposition are to fill  
19 out two witness cards. These cards are  
20 located to my left on the table near the door  
21 and on the witness tables. Upon coming  
22 forward to speak to the Board, please, give

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1 both cards to the reporter sitting to my  
2 right.

3 The order of procedure for special  
4 exceptions and variances is:

5 Statement and witnesses of the  
6 applicant;

7 Government reports, including  
8 Office of Planning, Department of Public  
9 Works, et cetera;

10 The report of the Advisory  
11 Neighborhood Commission;

12 Parties or persons in support;

13 Parties or persons in opposition,  
14 and;

15 Finally, closing remarks by the  
16 applicant.

17 Pursuant to Section 3117.4 and  
18 3117.5 of the following time constraints will  
19 be maintained:

20 The applicant, appellant, persons  
21 and parties, except an ANC, in support,  
22 including witnesses, 60 minutes collectively:

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1 Appellee, persons and parties,  
2 except an ANC in opposition, including  
3 witnesses, 60 minutes collectively;

4 Individuals 3 minutes.

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

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

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

18 The record will be closed at the  
19 conclusion of each case, except for any  
20 material specifically requested by the Board.

21 The Board and the staff will specify at the  
22 end of the hearing exactly what is expected

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1 and the date when the persons must submit  
2 evidence to the Office of Zoning. After the  
3 record is closed, no other information will  
4 be accepted by the Board.

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

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

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

22           The Board will now consider any

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

11 Does the staff have any  
12 preliminary matters?

13 MS. BAILEY: Mr. Chairman, members  
14 of the Board and to everyone, good morning.

15 CHAIRPERSON LOUD: Good morning.

16 MS. BAILEY: No, sir, I do not.

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

19 And then would all individuals  
20 wishing to testify please rise to take the  
21 oath, and Ms. Bailey will administer the  
22 oath.

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1 (Witnesses sworn.)

2 CHAIRPERSON LOUD: Good morning.

3 You can come forward and sit at  
4 the witness tables.

5 I'm sorry. Why don't we call the  
6 case first. There's only one case on the  
7 morning calendar. Why don't we call the case  
8 and as it's being called, you can step  
9 forward.

10 MS. BAILEY: It's Application  
11 17930 its of Future Studios, LLC. It's  
12 pursuant to 11 DCMR § 3103.2, for a variance  
13 from the off-street parking requirements  
14 under subsection 2101.1 and a variance from  
15 the alley width requirements under subsection  
16 2507.3, to allow the renovation and  
17 alteration of an existing building on an  
18 alley lot for use as a one-family dwelling  
19 and artist studio. It's located in the  
20 premise at the rear of 1469 Harvard Street,  
21 Northwest. Square 2670, Lot 819. The  
22 property is zoned R-5-B.

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1                   This is a continuation, members of  
2 the Board, from June 2nd. At that time the  
3 Board did not hear any of the application,  
4 and so it's ready to go forward at this time.

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

7                   Good morning, again. And if you  
8 could state your name and address for the  
9 record.

10                  MR. VEENSTRA: Good morning to the  
11 Board. My name is Norm Veenstra.

12                  And if it's quite possible, Toye  
13 Bello is in the building and on his way. So  
14 if we could talk really slowly for a moment,  
15 I'm sure he'll be here in time to be sworn  
16 in.

17                  CHAIRPERSON LOUD: Yes. It's  
18 against all the rules to talk very slowly,  
19 but we'll do what we can. I was going to ask  
20 you a question about that because I sw him  
21 listed as a witness in your pleadings.

22                  I'm sorry. Why don't you go ahead

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1 and state your name for the record as well.

2 MS. HUSTED: Sure. I'm Brie  
3 Husted, and I'm the architect on the product.

4 CHAIRPERSON LOUD: Okay. The way  
5 you had organized your case, were you  
6 prepared to start without Mr. Bello or --  
7 okay. So what are you going to cover before  
8 he gets there and what is he going to cover  
9 so we can sort of --

10 MR. VEENSTRA: I have an opening  
11 statement. Ms. Husted will then present some  
12 history of the site and describe the plans.  
13 And then Mr. Bello will be available for  
14 Zoning questions and comments.

15 CHAIRPERSON LOUD: Okay. Why  
16 don't we get started then.

17 As you start, or before you start  
18 there was some issues in the record that  
19 surfaced as whether this is an area variance  
20 case or a use variance case. And the Board  
21 has looked at what was submitted. And based  
22 on the alley decision that we've rendered

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1 previously, we call the Alley Cat Decision,  
2 this would be considered a use variance. And  
3 for your purposes, the only difference is  
4 that -- good morning, Mr. Bello. You haven't  
5 missed much. We're talking about the  
6 appropriate standard legal test, and we're  
7 talking about the use variance test.

8           The test would be that you have to  
9 demonstrate an addition to a unique and/or  
10 exceptional situation, an undue hardship. So  
11 that as you present your evidence this  
12 morning just bear that in mind because you  
13 want to present evidence that meets the  
14 standard of undue hardship. And an area  
15 variance, the test is practical difficulty  
16 and undue hardship is a slightly higher  
17 standard to make. And I'm sure Mr. Bello is  
18 quite familiar with it.

19           So, again, just bear that in mind  
20 as you make your case this morning.

21           Feel free to make the case you  
22 came prepared to make, but also really be

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1 targeted about making sure you meet the  
2 elements of the variance test. Because  
3 that's what we'll be looking at this morning.

4 Okay. Thank you.

5 MR. VEENSTRA: I understand, sir.

6 And thank you for making that clear at the  
7 front end today.

8 As stated, my name is Norm  
9 Veenstra. I am the single member owner of  
10 Future Studios, LLC, the ownership entity of  
11 the property or application before you in  
12 Application No. 17930.

13 Thank you for this opportunity to  
14 introduce myself to you and speak with you  
15 about why it is appropriate for this unique  
16 carriage house to become an artist studios  
17 and residence.

18 Several years ago I initiated a  
19 series of partnerships that have concentrated  
20 on redeveloping vacant or under used  
21 properties in the District. We've taken an  
22 abandon building in the Petworth area and

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1 turned it into a vibrant neighborhood sitdown  
2 restaurant and office space for a nonprofit  
3 social services group on 11th Street in  
4 Columbia Heights.

5 We turned a vacant carryout into a  
6 destination coffee shop. Having seen its  
7 success, other small merchants with new  
8 locally serving restaurants and shops on the  
9 same strip.

10 At 12th and Vermont Northwest in  
11 Logan Circle we built a duplex residence on a  
12 long vacant lot near my own home.

13 After discovering this distressed  
14 property for sale a few years ago I was  
15 fortunately able to purchase it. My hope  
16 this morning is to gain the confidence of  
17 this Board and the permissions necessary to  
18 rejuvenate the unique property that is this  
19 carriage house at the rear of 1469 Harvard  
20 Street Northwest. Currently it is in a state  
21 of disrepair and has languished under  
22 utilized for many decades. But with worth it

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1 can be restored.

2 ANC 1A and the neighbors living  
3 near the property have given tremendous  
4 support for the Board's granting the  
5 variances necessary to put this building back  
6 to active uses appropriate to a residential  
7 area. I have available copies of their  
8 letters and petitions if the Board would like  
9 these brought into the record.

10 To assist with the presentation of  
11 the case I have with me the project architect  
12 Brie Husted to answer questions the Board may  
13 have and to present the project plans and  
14 site history and Toye Bellow who serves as a  
15 Zoning consultant to the project is here to  
16 respond to specific Zoning questions as  
17 deemed necessary.

18 Again, the property of application  
19 is located in the northwest quadrant of  
20 Washington, D.C. at rear of 1469 Harvard  
21 Street Northwest. The subject property and  
22 its existing improvement are located on an

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1 alley lot, such location forming the basis of  
2 why we are before the Board this morning.

3 Speaking to the relief sought.

4 The application before you seeks relief from  
5 two restrictions of the Zoning Regulations:

6 (1) A variance to allow the  
7 conversion of the second floor of the  
8 existing structure for purpose of human  
9 habitation as a one-family dwelling;

10 (2) The other a variance from the  
11 requirement for the provision of one parking  
12 space to serve the proposed one-family  
13 dwelling unit.

14 Specifically, relief is sought  
15 from the restriction of 2507.3 which does not  
16 permit nonresidential structures located on  
17 alley lots which abut alleys less than 30  
18 feet in width to be converted for purposes of  
19 human habitation and the requirement of 2101  
20 for the provision of one parking space for  
21 the proposed dwelling.

22 The application's burden of proof

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1 statement has been prepared to provide for  
2 both an area variance and use variance. We  
3 thought we were asking for an area variance  
4 and a parking variance. But as you've made  
5 clear today we understand that we're looking  
6 at a use variance. Either way, we believe  
7 we meet the necessary tests.

8 CHAIRPERSON LOUD: Let me just  
9 clarify, on the parking variance though, it  
10 is an area variance test. It's is practical  
11 difficulty. So I think you won't need the  
12 parking if you don't make the use variance  
13 case. So you want to hit both, obviously,  
14 but the focus for the dwelling itself is the  
15 use variance case. And essentially most of  
16 your elements will be the same and your  
17 evidence will probably be the same except for  
18 practical difficulty. So if you have any  
19 questions, we can sort of walk you through  
20 the distinctions. But you're going to have  
21 to make an area variance case for the parking  
22 and a use variance for the dwelling.

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1 MR. VEENSTRA: I understand.

2 Thank you for the clarification.

3 Each type of variance requirements  
4 proof of meeting a three pronged test, the  
5 first and third prong being the same in both  
6 variance types, whereas the second prong  
7 differs within a use verses an area variance.

8 The first test requires proof of  
9 extraordinary and exceptional situation or  
10 condition of a specific property.

11 In an area variance the second  
12 test requires a showing of peculiar and  
13 practical difficulties. In a use variance,  
14 the second test requires a showing of  
15 exception and undue hardship.

16 And the third test relates to the  
17 ability to grant the relief without  
18 substantial detriment to the public good and  
19 without substantial impairment of the intent,  
20 purpose and integrity of the zone plan.

21 Moving to test one. The property  
22 meets the first test of the burden of proof

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1 on two accounts as submissions to the record  
2 provide. The unique history of the  
3 replotting of the square which converted what  
4 was the existing structure on a standard lot  
5 to one situated on an alley lot. When this  
6 building was erected in 1904 it was built as  
7 a structure with street frontage. Such  
8 construction took place on the 20 foot alley  
9 already in existence.

10 My architect Brie Husted in a  
11 moment will walk you through this history,  
12 including visual maps within her  
13 presentation.

14 Additionally under test one the  
15 structure occupies its full lot, 100 percent  
16 coverage. And the signs of the existing two  
17 story structure at approximately 3300 square  
18 feet is, in itself, an extraordinary or  
19 exceptional situation or condition of  
20 property. Hence, the application pertains  
21 proof of extraordinary or exceptional  
22 situation or condition of property on two

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1 fronts: One inherit in the lot itself, and  
2 the other in the improvement or structure  
3 existing on the lot.

4 Progressing to test two. Within  
5 test two, Mr. Chairman, given what you've  
6 said to me I have some points with an area  
7 variance that I'd like to go ahead and still  
8 make and then proceed to some points within  
9 use variance.

10 CHAIRPERSON LOUD: Okay.

11 MR. VEENSTRA: Because we feel  
12 that it's a mixed situation because of the  
13 complexities of this location.

14 So speaking to area variance  
15 first. This is a structure that sat on a  
16 site with street frontage which over its  
17 history became an alley lot. This then  
18 created the burden of meeting the 30 foot  
19 width restriction to be able to be used as a  
20 single-family dwelling. This is a carriage  
21 house that became an alley structure. If  
22 nothing had ever been built in front, we

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1 would be having a different conversation  
2 today. The 20 foot alley, however, was built  
3 long before the structure itself and more  
4 significantly, is not changeable.

5 Now moving on to the use variance  
6 criteria for test two. It is understood that  
7 conforming uses allowed under the Zoning  
8 Regulations are artist studio and garage.

9 As to exceptional and undue  
10 hardship, the submissions to the record  
11 provides a debt services comparative report  
12 in support of the conclusion that the  
13 property of application cannot be put to any  
14 of the conforming uses allowed under the  
15 regulations with a fair and reasonable return  
16 to the owner.

17 The life of most artists is not  
18 lucrative. Because of the usually large size  
19 of the structure at 3300 square feet, it is  
20 not realistic to be able to rent this large  
21 amount of space to the struggling artist  
22 population. These are comments directly

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1 related to the unique extraordinary or  
2 exceptional situation of condition of the  
3 property outlined above.

4           Moving on to test three. The  
5 third test goes to whether the variance may  
6 be granted without substantial detriment to  
7 the public good and without substantial  
8 impairment of the intent, purpose and  
9 integrity of the zone plan. The relief can  
10 be granted without substantial detriment to  
11 the public good and without substantial  
12 impairment of the intent, purpose and  
13 integrity of the zone plan for the following  
14 reasons:

15           The application seeks to establish  
16 a use permitted as a matter-of-right in the  
17 underlying R-5-B zoned District which the  
18 subject property is located, as set forth in  
19 section 350.4 and 247.1, and as such it is  
20 compatible with the dominant uses within the  
21 neighborhood. In addition, it also complies  
22 with the Comprehensive Plan which designates

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1 this as an area of moderate density  
2 residential uses.

3 No detriment to the public good  
4 can be seen from the addition of a  
5 residential building within an area currently  
6 zoned for residential use. Such use will not  
7 impair the intent of the zone plan for the  
8 neighborhood, but in reality such use will  
9 uphold the integrity of this same zoning.

10 Second: No addition is  
11 contemplated for the existing two story  
12 structure, therefore no increase in density  
13 is proposed.

14 Third: The Zoning Regulations  
15 permit the alteration or repair of an  
16 existing one-family dwelling on an alley lot  
17 abutting an alley less than 50 feet  
18 understated condition. Hence, the fact of an  
19 alley being less than 30 feet is inherently  
20 not detrimental to the public good, nor  
21 because for substantial impairment of its  
22 intent, purpose and integrity.

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1           Fourth: The subject property is  
2 likely to remain vacant without the granting  
3 of relief sought. And its adaptive reuse  
4 will remove a blight and nuisance to the  
5 neighborhood, thereby improving security in  
6 the dead end alley. The public good of this  
7 community would benefit from this project by  
8 creating a residence with a unique vantage  
9 point and presence on the alley. In essence,  
10 it will be the eyes and ears of the alley.  
11 Such vigilance would be greatest residents  
12 more than any other use, residential use, is  
13 the only use that provides the potential for  
14 such watchfulness on the alleys for the  
15 largest portions of the day and night. This  
16 will perpetuate a new level of safety for a  
17 neighborhood that has had issues with crime  
18 and degenerate behavior in the alleys.  
19 Clearly a boo for the public good.

20           The first floor is proposed to be  
21 occupied as an artist study, a use permitted  
22 as a matter-of-right. And the provision of

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1 an indoor parking space to serve that use  
2 makes the proposed occupancy of the first  
3 floor for the stated purpose in complete  
4 compliance with the requirements of the  
5 Zoning Regulations. Hence, no relief is  
6 being sought for the use of the first floor  
7 in this application.

8 To close, in short this property  
9 is unique within the square. It has several  
10 exceptional circumstances that would prevent  
11 its being used entirely for matter-of-right  
12 purposes without causing not just practical  
13 difficulties, but that would also impose  
14 undue hardship on meeting.

15 With the requested variances it  
16 can be put to a productive use compatible  
17 with its surroundings in a way that does not  
18 substantially harm the Zoning Regulations and  
19 in a way that reenforces the residential part  
20 of the neighborhood so much that the ANC and  
21 the neighbors have voted to support these  
22 variances. Again, I have copies of the

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1 petitions and letters of support from the  
2 area.

3 For these reasons we ask the Board  
4 to grant a variance for the use of this  
5 property for residential purposes and a  
6 variance from the residential parking  
7 requirement.

8 This concludes my presentation.  
9 If it pleases the Board, I would like the  
10 project architect to walk the Board through  
11 the project plans including the history of  
12 the change in the status of the lot by virtue  
13 of the replotting of the square, unless the  
14 Board wishes to exercise its discretion at  
15 this time to ask questions or after the  
16 project presentation.

17 Thank you very much for this  
18 opportunity.

19 CHAIRPERSON LOUD: Thank you, Mr.  
20 Veenstra. That was an excellent  
21 presentation.

22 Let me just see if the Board

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1 members have any questions or if they want  
2 to, as you suggestions, hold questions until  
3 all of the witnesses have presented.

4 Okay. I think we'll hold  
5 questions until after the case has been  
6 presented.

7 MR. VEENSTRA: Okay. Thank you.

8 MS. HUSTED: Good morning.

9 First I'd like to present to you  
10 the history of how this carriage house came  
11 into being. You can see in 1890, and you  
12 should have all these maps in your submittal  
13 as well and I can pass it on, this is  
14 Columbia Road here at the north. And Bacon  
15 Street which did become Harvard Street. 15th  
16 Street and 14th Street to the east.

17 You can see that in 1890 there  
18 were already record lots with 20 foot alleys  
19 in place. This alley paralleling 14th Street  
20 remains today, and this alley paralleling  
21 Columbia Road remains today. The alley to  
22 the west paralleling 15th Street was to be

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1 closed, and actually became our lot.

2 By 1903 you can see this is our  
3 lot plotted here. This is still Bacon Street  
4 at this time. There's nothing on the lot at  
5 the time, but the alley is closed and has  
6 become the lot.

7 By 1911 our structure has been  
8 built. You can see it exists here at the rear  
9 of the lot, but it comprises on the entire  
10 lot and fronts what has now become Harvard  
11 Street.

12 By 1921 the lots have been  
13 subdivided and the front structure has been  
14 built.

15 The key points that make this a  
16 unique property are that the 20 foot alley  
17 precedes our structure by many years. And  
18 what originally was built was a principal  
19 structure on a lot with street frontage,  
20 which then later was subdivided and was  
21 forced into being an alley lot.

22 Does anybody want me to pass this

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1 around?

2 CHAIRPERSON LOUD: I think we have  
3 that exhibit.

4 MS. HUSTED: Okay. You do. Okay.

5  
6 CHAIRPERSON LOUD: So you can just  
7 feel free to move on to the next one.

8 MS. HUSTED: Okay. This is a roof  
9 plan of the property. It's a 30 foot by 66  
10 feet comprising the entire lot. And it's two  
11 stories. So it makes it about 3300 gross  
12 square feet.

13 It was built as a stable, so it's  
14 a very simple structure. Masonry walls, one  
15 row of columns to support the joists. And a  
16 staircase to the second floor. The second  
17 floor is exactly the same.

18 This is the map of it as it is  
19 today, which is very similar to what it was  
20 in 1921. You can see this is our property  
21 here being completely landlocked with an  
22 alley coming from -- well, actually Columbia

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1 Road and then the alley from 15th Street on  
2 both ends.

3 And this is our proposal for the  
4 project which would have the first level as  
5 artist study both, and the second level as  
6 the residence. Both would enter from the  
7 alley connecting to 15th Street and the  
8 artist study would have a parking space  
9 accessed from the alley from Columbia Road.

10 The second floor residence would  
11 be a two bedroom unit. And we would be  
12 seeking a variance for the parking for that  
13 unit.

14 Here are some site photos.

15 This is the access from the 15th  
16 Street. So this would be both the artist  
17 studio and the unit would enter.

18 This is our proposal for repairing  
19 it. You can see it's in a state of decay  
20 right now with just weathered plywood, et  
21 cetera. Two new doors and a balcony that  
22 would look out onto the alley which give it

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1 that eyes and ears of the alley, as we  
2 discussed early.

3 This is the project from the  
4 Columbia Road alley. You can see the garage  
5 here where we would park. And this is a  
6 little balcony structure that would be  
7 attached to one of the bedrooms.

8 This here is just a building  
9 section showing artist studio parking. And  
10 then on the second floor the residence with  
11 the two bedrooms.

12 There's very little fenestration  
13 on this project because most of it all party  
14 wall lined. So the only time we have  
15 fenestration is where we meet the alleys and  
16 then where it used to have street frontage on  
17 the Harvard Street side.

18 And these are just some drawings  
19 of the elevations to classify materials. But  
20 you can pretty much see it all from here.  
21 It's masonry structure, very simple exterior  
22 renovations in terms of just replacing

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1 windows and doors and new roof, and things of  
2 that nature. And then the more complex build  
3 out of the interior.

4 So, I think that concludes it. If  
5 anyone has any questions.

6 CHAIRPERSON LOUD: Thank you.

7 I think what we said we were going  
8 to do is hear all of your witnesses and then  
9 if Board members have any questions, we'll go  
10 back over questions. So I think we have one  
11 further witness this morning, Mr. Bello. And  
12 I think we need to qualify you as an expert.

13 First, we need to swear you in. I  
14 don't think you've been sworn in by Ms.  
15 Bailey.

16 (Witness sworn.)

17 CHAIRPERSON LOUD: Are you a fact  
18 witness this morning or an expert witness?

19 MR. BELLO: I think I'd like to be  
20 entered as an expert witness having been  
21 entered in such similar manner in numerous  
22 other cases.

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1                   CHAIRPERSON LOUD: Okay. And I  
2 think we're very familiar with your  
3 qualifications. So let me just see if Board  
4 members have any questions or concerns about  
5 Mr. Bello's being proffered as an expert  
6 witness this morning. Okay. There are no  
7 concerns about that. So you will be  
8 qualified as an expert and your testimony  
9 given that weight that would normally be  
10 given an expert.

11                   MR. BELLO: Thank you.

12                   The application before you seeks  
13 to establish a one-family dwelling in an  
14 alley that does not meet the minimum width  
15 requirement for an alley.

16                   I know I caught the tail end of  
17 the opening statement and the direction of  
18 the Board that this be considered a use  
19 variance, which the application has been  
20 prepared to meet those standards. But I  
21 wanted to point the Board to section 2507.1.

22                   And what that section says in that sentence

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1 that a one-family dwelling is permitted on an  
2 alley lot pretty much as a matter-of-right.  
3 And this also underscores the matter-of-right  
4 permission of this use in an underlying zone,  
5 which is the R-5-B zone in this application.

6 So it appears that section 2507  
7 seeks to deal with alley properties  
8 especially. But it is doubtful to me that a  
9 one-family dwelling, so therefore not allowed  
10 because it does not meet the alley  
11 requirement.

12 The section under which we're  
13 seeking relief, which is 2507.3 in fact  
14 allows a one-family dwelling under certain  
15 stated circumstances. If you purchase a  
16 property in an alley for which you would  
17 require no more than 50 percent of the cost  
18 or the value of that property in repair  
19 costs, you can establish this use as a  
20 matter-of-right in the underlying zone. We  
21 wouldn't even be here before the Board if  
22 this was the case.

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1                   So we are here because:

2                   (1) We do not meet the alley width  
3 requirement, and;

4                   (2) Because we do not have  
5 evidence that this property has ever been  
6 devoted to use as a one-family dwelling.

7                   I think there needs to be a  
8 distinction made between what is a one-family  
9 dwelling and what is a structure repaired for  
10 human habitation. Obviously there are other  
11 uses that will qualify as structures as human  
12 habitation that are not one-family dwellings.

13                  You got multiple apartment houses, boarding  
14 horses, rooming houses. So I think my  
15 opinion is that the intent of this section is  
16 actually to discourage those other uses more  
17 so than it is to discourage one-family  
18 dwelling units.

19                  But as it is, we really do not  
20 want to make this case a discussion about  
21 what tests it is that it's necessary to meet  
22 because we prepare the application to meet

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1 the use variance standards. And in this case  
2 the history of the property is what's  
3 presented as the exceptional and  
4 extraordinary condition or situation of  
5 property. In this case you have a property  
6 that started out not as an alley property,  
7 but as a structure that was improved as a  
8 principal structure on a lot that has street  
9 frontage. I think the presentation actually  
10 confirms that. The conversion of the  
11 property from a standard lot to an alley lot  
12 only occurred after the structure had been  
13 constructed. And this situation uniquely  
14 affects this property in this square. No  
15 other property suffered this fate by the  
16 replatting of the square.

17 Having been improved or developed  
18 as a nonalley building, it is consequentially  
19 not surprising that the structure was  
20 constructed up to the size that it is, which  
21 is the other point that we invoke as  
22 extraordinary situation and condition of the

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1 property.

2           The property is improved by a two  
3 story carriage house, which is at least  
4 approximately 3300 square feet. This size of  
5 structure is far in excess of what you would  
6 ordinarily find for row dwelling in an R-4  
7 zone or in an R-5-B zone. So the size itself  
8 presents an extraordinary situation and  
9 condition of property.

10           As to the best of the use variance  
11 standards, the second test, what the property  
12 owner has to shown is that conversion of the  
13 property for purposes of a use that is  
14 permitted as a matter-of-right conforming use  
15 would not consider reasonable that use of the  
16 property. And I think that the report from  
17 the broker actually establishes the fact that  
18 absent this relief that we're before the  
19 Board for, the property cannot be converted  
20 for purposes that it is allowed to be and be  
21 able to service the debt on the property.

22           So this is not an application

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1 before you that seeks to be able to make more  
2 profitable use of the property. It's to be  
3 able to make reasonable use of the property.

4 And that reasonable standard goes to the  
5 right of the property owner to expect a  
6 reasonable return on their investments.

7 And that would be my testimony,  
8 Mr. Chair.

9 CHAIRPERSON LOUD: Thank you, Mr.  
10 Bello. Thank you. All of the witnesses for  
11 the applicant.

12 Let's see if and what questions  
13 the Board may have for you, Mr. Bellow, or  
14 any of the witnesses.

15 Mr. Turnbull?

16 COMMISSIONER TURNBULL: Thank you,  
17 Mr. Chair.

18 Those structures are masonry  
19 structure with wood framing?

20 MS. HUSTED: That's correct. But  
21 it would all need to be replaced in terms of  
22 the floor structure.

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1 COMMISSIONER TURNBULL: So you'd  
2 replace it all?

3 MS. HUSTED: Yes.

4 COMMISSIONER TURNBULL: What would  
5 it be? Concrete?

6 MS. HUSTED: No. It would be  
7 probably wood framing as well. New wood  
8 framing.

9 COMMISSIONER TURNBULL: Okay.

10 MS. HUSTED: Possibly steel  
11 because we might want to keep the clear span.  
12 It's a long distance.

13 COMMISSIONER TURNBULL: Oh, I see.  
14 Yes.

15 I was just wondering, you need a  
16 fire rating between the studio and the --

17 MS. HUSTED: That would have to be  
18 a one hour rating.

19 COMMISSIONER TURNBULL: Okay.  
20 Utilities, are they in the alley? Can you  
21 easily pick them up or how do you have to  
22 bring them in?

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1 MS. HUSTED: We talked about that.

2 MR. VEENSTRA: I researched this  
3 last year and if you all understand how the  
4 property is located at this point now, I'll  
5 try to situate. If this is the property, the  
6 alley that goes off to 15th Street, there's  
7 water available there. And the alley goes  
8 towards Columbia Road the northeast  
9 direction, there's a sewer potential  
10 connection there. In both cases we do have  
11 to do a little bit of ground work. But I've  
12 consulted with a gentleman named Otto Sidell  
13 who has done a lot of these jobs in the past  
14 and he has full confidence that we can  
15 connect to the grid. And I've also met with  
16 WASA once on this as well.

17 COMMISSIONER TURNBULL: Okay.  
18 Good.

19 I have to look at the plans. So  
20 basically from the standpoint of lighting  
21 you're basically hitting the two alley sides  
22 for most of your lighting?

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1 MS. HUSTED: Yes, for the required  
2 code --

3 COMMISSIONER TURNBULL: Yes.

4 MS. HUSTED: -- meaning that we  
5 have to have a window in each bedroom, we've  
6 got that because of the valleys. But we'll  
7 probably put a skylight up on the top of the  
8 residence to get some light into the central  
9 living room area.

10 COMMISSIONER TURNBULL: The living  
11 area?

12 And there is an existing skylight  
13 already because I see a light trough that's  
14 going down to the studio?

15 MS. HUSTED: Yes. That would be  
16 new.

17 COMMISSIONER TURNBULL: Oh, that  
18 is new? That is new? Okay.

19 MS. HUSTED: Yes.

20 COMMISSIONER TURNBULL: Thank you,  
21 Mr. Chair.

22 CHAIRPERSON LOUD: Thank you, Mr.

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1 Turnbull.

2 MR. Dettman?

3 VICE CHAIRMAN DETTMAN: A couple  
4 of questions, Mr. Chairman.

5 Good morning.

6 Mr. Veenstra, since you've owned  
7 the property what efforts have you done to  
8 either market and resell the property as a  
9 matter-of-right use or actually put the  
10 property to a matter-of-right use yourself?

11 MR. VEENSTRA: You see me here  
12 today: This is the culmination of a year and  
13 a half of effort to get to this moment. I  
14 did not jump into this project the minute I  
15 purchased it. It was an opportunity to  
16 purchase it and then I had other projects I  
17 was still finishing. But then I started the  
18 process of doing the research to figure out  
19 if we could connect to the grid and then from  
20 there found out about the ability to hire Mr.  
21 Toye Bello to help with this process and  
22 worked with Brie on an initial set of

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1 drawings about what could happen. So it's at  
2 least a year and a half getting just to this  
3 point right now.

4 And I'm not sure if that answered  
5 your question.

6 VICE CHAIRMAN DETTMAN: Partly.  
7 But have you ever marketed this property  
8 solely as a parking garage, an artist studio,  
9 storage to see if there's actually a market  
10 out there to put it to a use that's allowed  
11 as a matter-of-right?

12 MR. VEENSTRA: As a parking  
13 garage, I would have to say no I did not  
14 actively market in that capacity.

15 In an artist studio capacity let  
16 me say this, and it's about myself for a  
17 moment if I can.

18 I know that community quite well.  
19 There's a place called the 9:30 club and I  
20 managed it for 15 years. I know the music  
21 and arts of this town quite well and I've for  
22 many years worked with other people in terms

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1 of trying to find places for artists or  
2 people to rehash and so forth. I know a  
3 little bit about how that market works. And  
4 the more I got into this project, the more I  
5 became realistic about the fact that it  
6 wasn't going to work. It's a really big  
7 place and there's restrictions about how many  
8 artists we could even put in there, and so  
9 forth.

10 So I can't hand you a nice  
11 empirical piece of data. I can just two  
12 seconds pretend to be an expert witness on  
13 this little issue and say I've looked at it  
14 and it doesn't work that way.

15 VICE CHAIRMAN DETTMAN: Okay.

16 MS. HUSTED: I think also that to  
17 be used as even just a garage, we would have  
18 to bring electricity to the building. And  
19 then there's an issue about grounding the  
20 electricity which almost might --

21 MR. VEENSTRA: Might force water  
22 as well.

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1 MS. HUSTED: -- force water to  
2 also be put into the building. Because it's  
3 hard to ground. You either have to have a  
4 water source or you have to have these four  
5 points and we're at full lot occupancy. So  
6 then we would have to get variances from  
7 other people to put grounding points on the  
8 property.

9 So I think he can't currently  
10 market it, and its conditioned because it  
11 doesn't have utilities already there.

12 VICE CHAIRMAN DETTMAN: Okay.  
13 Finally, you had mentioned the reason why the  
14 building was originally constructed as a  
15 carriage house, but in your research did you  
16 find anything, preferably in the recent past,  
17 of what this was used to prior to your  
18 purchase?

19 MR. VEENSTRA: Short answer, no. I  
20 have an awareness that the family that the  
21 family that I purchased it from had it for  
22 close to 20 years. A gentlemen who did real

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1 estate in the area, Mr. Ruhr, he bought it I  
2 believe, don't quote me on this being a 100  
3 percent correct, but I believe he brought it  
4 in '87 and he held it for many years. One of  
5 his sons was an artist, he may have actually  
6 used in that capacity in some way because  
7 there's still a lot of that family stuff in  
8 the place. But beyond their ownership, I  
9 don't have any knowledge previous to that.

10 VICE CHAIRMAN DETTMAN: Okay.

11 MR. VEENSTRA: Other than going  
12 way back to the beginning and the gentleman  
13 who built it, George Altemus, had a grocery  
14 shop on 14th Street. So it's always been our  
15 theory that this was his sort of pull into  
16 Bacon, come in, get the horses and carriages,  
17 come down, get stuff and go deliver it. I  
18 can't prove that, but the stationary makes it  
19 look like maybe that's what happened.

20 VICE CHAIRMAN DETTMAN: Okay. All  
21 right. Thank you.

22 COMMISSIONER TURNBULL: Just one

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1 other question. What kind of artist use do  
2 you think may be going in there or what -- I  
3 mean, considering the various forms, what do  
4 you think might actually find this --

5 MR. VEENSTRA: I think given the  
6 ceiling height, which is going to be pretty  
7 respectful, I think a painter. Certainly an  
8 oversized maybe mixed media painting would be  
9 a logical use because it would have the  
10 ability to deal with the height and a good  
11 sized door and the garage to get their stuff  
12 in and out and then have space to actually  
13 hang or move things around and work. And in  
14 some cases those larger canvas painters  
15 actually make their own frames and they'd  
16 have enough room to, perhaps, do both  
17 activities. That would probably where I  
18 would start as far as who I would try to get  
19 in there.

20 COMMISSIONER TURNBULL: Yes. I  
21 mean thinking about the separation of the  
22 uses, the smells and odor from an artist

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1 studio to -- I mean, obviously the artist  
2 could actually live up above. I guess that  
3 would be an ideal --

4 MR. VEENSTRA: That's our perfect  
5 scenario if things go that way.

6 COMMISSIONER TURNBULL: Yes. That  
7 would be perfect. But I'm just wondering if  
8 it isn't, you have to be able to exhaust a  
9 lot of the odors and --

10 MS. HUSTED: Right. We would  
11 probably have to find a ventilation shaft so  
12 that they'd be able to -- and have a  
13 requirement -- there's also the stand alone  
14 sort of ventilators that have carbon filters  
15 in them.

16 COMMISSIONER TURNBULL: Right.

17 MS. HUSTED: And that could be in  
18 the lease that's required.

19 COMMISSIONER TURNBULL: Okay.

20 Thank you.

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

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1 I just have a couple of follow-up  
2 questions along the lines of both Mr.  
3 Turnbull and Mr. Dettman. And they stem  
4 from, I think, it's Exhibit 12 which is the  
5 Crane report. I don't know if that would Mr.  
6 Bello or Mr. Veenstra, but whoever is  
7 appropriate.

8 And essentially this document to  
9 me, anyway, would represent some evidence of  
10 your efforts to try to use the property in  
11 conformance with the zone because this is  
12 your research and your research is telling  
13 you that you couldn't use it for parking  
14 because the debt service wouldn't be covered  
15 under the scenario of this gentleman here who  
16 is your expert. And then with respect to the  
17 artist studios, I was not able to follow it  
18 as carefully because it sort of used a  
19 different stratagem to articulate the  
20 challenge. With respect to the parking  
21 garage scenario your consultant came right  
22 out and said, I think, you'd be able to

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1 generate about 1200 bucks a month in revenue,  
2 but your debt service would be 1500 bucks, or  
3 something like that.

4 And then when he goes into the  
5 discussion about utilizing it as an artist  
6 studio, and I'm processing this in light of  
7 your testimony about your own expertise in  
8 that arena, he nonetheless talks about the  
9 average per square foot, I guess, rental rate  
10 being between \$12 and \$20 per square foot, is  
11 that correct? So that's the rental rate; \$12  
12 and \$20 per square foot.

13 I guess what I'm trying to get to  
14 is just a bottom line figure that would  
15 represent would the revenue would be.

16 So I understand you're saying you  
17 don't think there's a market for it at all.  
18 But assuming that there were a market for  
19 that, what would be the debt service on that  
20 and what would be the revenue?

21 MR. VEENSTRA: I'm going to break  
22 your question apart into pieces.

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1 CHAIRPERSON LOUD: Okay. Please.

2 MR. VEENSTRA: Because I think  
3 there's some components there and I want to  
4 make sure I understand all the question.

5 As we mentioned in our testimony,  
6 both Mr. Bello and myself, one of the biggest  
7 issues is the size of this building. Is it  
8 possible to rent artist studio space? Yes,  
9 it's possible, but at what point is there no  
10 return? And what I mean is an artist might  
11 need 500 square feet, and that's it. Or  
12 about a 1,000? They may not want to pay any  
13 extra for a 1,000. Well in my situation that  
14 potential unmeasurable variable is huge. How  
15 many artists need 3300 square feet? There's  
16 probably plenty of artists that would love to  
17 have 3300 square feet, but do they actually  
18 need it or can they afford to pay for it even  
19 if I was able to offer it at the lowest  
20 possible rate for the whole square footage?

21 CHAIRPERSON LOUD: Is it 3300  
22 square feet or is it half of that? In other

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1 words, you already have an artist on the  
2 ground floor at whatever square footage, 1600  
3 square feet, I guess. And then wouldn't the  
4 second floor also be around that amount?

5 MR. VEENSTRA: The second floor  
6 would be a similar size but, Mr. Bello might  
7 have to jump in here, but my understanding of  
8 the code if we're just talking about our  
9 studio use would not necessarily allow me to  
10 open the space up to several artists.

11 CHAIRPERSON LOUD: To two, oh  
12 okay. Well, I'll ask Mr. Bello about his  
13 thoughts on that.

14 MR. BELLO: And I think the idea  
15 is that the entirety of the property will be  
16 devoted to this artist studio. So you're  
17 looking at an analysis that actually  
18 questions whether in this market you can find  
19 one or more artists to rent 3300 square foot  
20 of space at the going rate.

21 CHAIRPERSON LOUD: Okay.

22 MR. VEENSTRA: And to clearly

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1 address the going rate it's a lot harder to  
2 find that data. It's not the same as what's  
3 the square footage of condos, say, that are  
4 in Columbia Heights or Adams Morgan. It's not  
5 something that's in the databases that's  
6 readily available. It more comes to my own  
7 experience and also less quantifiable sources  
8 of information, i.e., Craigslist, internet  
9 postings and so forth. And, again, we came  
10 up with the \$12 to \$20 range based on what we  
11 saw but those rates were based on much  
12 smaller situations.

13 So I can't automatically  
14 extrapolate that I'll get the best rate for  
15 the maximum amount of space.

16 I hope that comes closer to  
17 addressing what I perceive to be part of your  
18 question. Is there more, Mr. Chair, that I  
19 can help with?

20 CHAIRPERSON LOUD: Well, let me  
21 turn to Mr. Bello and ask him this follow-up  
22 question. Is it your understanding that the

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1 applicant could not or has chosen not to have  
2 two separate artist studios in the alley, two  
3 separate matter-of-right artist studios, is  
4 there some Zoning prohibition against that?

5 MR. BELLO: Well, there's a  
6 limitation of 450 square feet for each artist  
7 and one apprentice. So the specter of  
8 devoting the entirety of the property to an  
9 artist studio would necessarily have to place  
10 the possibility of six or more artists within  
11 that space. And, of course, such proposal  
12 would assume that the artists are willing to  
13 share space in common as opposed to having  
14 their own individual spaces which would then  
15 lead to the requirement for separations and  
16 egress issues that would really, quite  
17 frankly, make it near impossible to be able  
18 to devote the entirety of that property to  
19 the artist's purposes.

20 And not to talk about the  
21 potential negative impact of having that  
22 density of use.

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1 CHAIRPERSON LOUD: Yes. So it  
2 would almost be something like a mini-Torpedo  
3 Factory instead of what the regulations  
4 contemplate as a like a single artist studio.

5 MR. BELLO: Yes.

6 MS. HUSTED: Can I make one point  
7 also? I think that because of the parking  
8 provisions under that code where it's three  
9 persons for one parking space, that actually  
10 we would have to limit it unless we went for  
11 more variances for parking to three artists  
12 which then would be having to rent over 1,000  
13 square foot per person which is excessive of  
14 what an artist usually wants to rent.

15 And in addition I'd like to make  
16 the point that when we were doing our  
17 neighborhood research many people were really  
18 opposed to the artist studio. They asked us  
19 can't we get two residences in there because  
20 they see what happens in Dupont Circle and  
21 they don't want these art parties that happen  
22 typically in artist studios. And if we were

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1 to maximize many artists in this, I'm sure  
2 this would happen and there'd be many  
3 neighborhood complaints.

4 In many ways for the neighborhood  
5 it's I think best to have a residential unit  
6 there.

7 CHAIRPERSON LOUD: Thank you. I  
8 don't have any further questions. Let me see  
9 if Board members have any additional  
10 questions.

11 VICE CHAIRMAN DETTMAN: I wanted  
12 to ask about the parking garage use because  
13 your Exhibit, the letter from the realtor  
14 said that it's possible that six to eight  
15 vehicles could park inside this building.  
16 And I was wondering did you actually look at  
17 the site plan and see how that might work?

18 MS. BAILEY: It was a little bit  
19 of conjuncture, but the short answer is yes.

20 The thought was we have any existing garage  
21 door in what is the northeast corner, the  
22 Columbia Road alley, that's already there.

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1 And then through significant expense it would  
2 be possible to potentially put another garage  
3 door at the other alley entrance. And that  
4 we thought might make it possible for six  
5 spaces. Six to eight was a bit of a guess  
6 element. But six is possible, maybe-- I have  
7 hired Brie actually to map it out and see if  
8 they're legitimate spaces. I haven't  
9 actually researched what aspects you all  
10 would expect a parking garage to have. So  
11 that was a number --

12 VICE CHAIRMAN DETTMAN: So that's  
13 not six spaces that would meet the Zoning  
14 Regulations?

15 MR. VEENSTRA: And then from there  
16 we looked at what those spaces run for in  
17 that neighborhood and use that number as a  
18 number to extrapolate out, okay, what income  
19 would come from that. And I believe we used  
20 150 space as an average. I think that was the  
21 number used.

22 VICE CHAIRMAN DETTMAN: Okay. But

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1 again, that's not six spaces that would meet  
2 the Zoning Regulations in terms of the size  
3 of the space and the size of the drive aisle  
4 that would be necessary and all that,  
5 correct?

6 MS. HUSTED: Yes. I think it would  
7 be very hard to actually get those amounts of  
8 spaces in there --

9 VICE CHAIRMAN DETTMAN: Okay.

10 MS. HUSTED: -- with the wide  
11 requirements for turning radiuses and  
12 driveways.

13 VICE CHAIRMAN DETTMAN: Okay.

14 Thank you.

15 CHAIRPERSON LOUD: Thank you, Mr.  
16 Dettman.

17 If we don't have any further  
18 questions for the applicant, we can turn to  
19 the Office of Planning.

20 And, good morning.

21 MS. JACKSON: Good morning, Chair  
22 and members of the Board. For the record my

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1 name is Arlova Jackson and I'm a Development  
2 Review Specialist with the D.C. Office of  
3 Planning.

4 As mentioned in our staff report,  
5 the Office of Planning agrees that a use  
6 variance is needed to permit the conversion  
7 of the second floor of an existing carriage  
8 house located at 1469 Harvard Rear into a  
9 dwelling unit.

10 Overall while we recognize there  
11 are exceptional features and characteristics  
12 effecting this property, none create an undue  
13 hardship that would prohibit the use of the  
14 property for one allowed within the R-5-B  
15 zone.

16 While the applicant has submitted  
17 additional materials subsequent to the filing  
18 of our staff report, OP still cannot support  
19 the use variance to allow a single family  
20 dwelling within the existing two story  
21 carriage house. And I'll briefly outline our  
22 analysis of the three part use variance test.

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1                   First, the property is the only  
2 alley lot within the square adjacent to two  
3 alleys, either of which is 30 feet in width.

4                   The lot is located at the rear of  
5 a lot fronting on Harvard Street which is  
6 under separate ownership.

7                   The existing building, a two story  
8 building, apparently constructed as a  
9 carriage house covers a 100 percent of the  
10 lot also a unique characteristic for this  
11 square and surrounding neighborhood.

12                   While there are other rear  
13 detached structures, a couple of which are  
14 two stories along the adjacent alleys, none  
15 are on their own lot.

16                   Despite the exceptional  
17 characteristics of the lot and its  
18 improvements they do not create an undue  
19 hardship for the owner to establish a use on  
20 the property which is permitted in the zone.

21                   The R-5-B zone is a residential zone which  
22 allows a variety of uses at a moderate height

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1 and density. The regulations governing alley  
2 lots found in section 2507 limits their  
3 development based on the size of the abutting  
4 alleys. As such, the use of the subject  
5 property would be limited to an artist studio  
6 or garage given the width of the abutting  
7 alleys.

8 The applicant cites the size of  
9 the structure and the replatting of the site  
10 during the turn of the 20th century as unique  
11 characteristics of the property which create  
12 a practical difficulty for the owner in his  
13 efforts to obtain a reasonable return on his  
14 investment in the property.

15 Similarly, the applicant has  
16 submitted information regarding the cost of  
17 renovating the structure to accommodate a use  
18 that would be more financially viable.

19 Reasonable return on investment and highest  
20 and best use arguments are not relevant to  
21 the use variance test.

22 Further, the size of the building

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1 and prior replatting of the lot do not  
2 prevent use of the property for a garage,  
3 artist studio or accessory storage.

4           Additionally, although there's  
5 been some testimony about this, given the  
6 size of the building more than one artist  
7 studio could be permitted as one artist and  
8 one apprentice are allowed per 450 square  
9 feet of space which could impact the cost of  
10 the renovation and potentially make it more  
11 profitable to the owner.

12           Since the second standard of the  
13 use variance test was not met, the third  
14 prong cannot be met. However, I will say  
15 that section 2507.3 expressly prohibits the  
16 conversion of nonresidential structures for  
17 human habitation regardless of the cost.  
18 Therefore, this would result in a substantial  
19 detriment to the Zone Plan if we get to the  
20 third prong of the test.

21           As a result, OP cannot support the  
22 use variance request for the upper level

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1 dwelling unit. However, also as stated in  
2 the report should the BZA find that the  
3 variance report is made for the dwelling unit  
4 OP would support Zoning relief for the off-  
5 street parking requirements. The exceptional  
6 characteristics of the lot previously  
7 mentioned, namely the lot coverage and siting  
8 of the building along the adjacent two  
9 alleys, would make it difficult for the owner  
10 to provide more than one parking space on the  
11 property.

12 Further, granting of the parking  
13 variance should not substantially detriment  
14 the neighborhood or the Zone Plan as the site  
15 is well served by public transit and it would  
16 not impact vehicular traffic in the alley.

17 That's all. And I'll take any  
18 questions that you have.

19 CHAIRPERSON LOUD: Thank you.

20 Why don't we start with Board  
21 members and then we'll move to applicants if  
22 you have any questions for the Office of

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1 Planning.

2 COMMISSIONER TURNBULL: Thank you,  
3 Mr. Chair.

4 Ms. Jackson, good morning.

5 MS. JACKSON: Good morning.

6 COMMISSIONER TURNBULL: Do you  
7 really think it really classified as a  
8 carriage house? I mean, carriage house to me  
9 is an ancillary structure, a subservient  
10 structure to a main structure. But in  
11 looking at the history which the applicant  
12 has provided, based upon District of Columbia  
13 maps it would appear that this structure was  
14 a primary structure on its own lot at one  
15 point in time. And at some point the  
16 District allowed another building to be built  
17 in front of it, thus blocking it as a primary  
18 structure.

19 So I guess I find it as a carriage  
20 house a little deceiving. It sounds like it  
21 might be a misapplication, a misnomer. It  
22 sounds like it was almost a primary storage

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1 structure. I mean, I'm just going by the  
2 maps that were presented. I see the one back  
3 here and I don't know what the date is on  
4 this, but it's the only structure on the lot  
5 and it's got clear access to Harvard Avenue.

6 And then the next map, which is 1921,  
7 clearly shows that another structure has been  
8 allowed to be that somebody allowed another  
9 structure to be built in front on Harvard.

10 MS. JACKSON: Yes.

11 COMMISSIONER TURNBULL: Thus,  
12 blocking this building. So I'm just curious.

13 I mean it just sounds like this  
14 structure has suffered from a use standpoint  
15 from the fact of the way the city has  
16 developed and allowed other things to go on.

17 MS. JACKSON: Well, the  
18 characterization of it as a carriage house  
19 was something that I took from the  
20 applicant's application.

21 COMMISSIONER TURNBULL: Oh, okay.

22 MS. JACKSON: So that's where that

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1 came from.

2 And these documents were submitted  
3 subsequent to the filing of our report.

4 COMMISSIONER TURNBULL: Okay.

5 But, you know, just in my own in just looking  
6 at these maps it looked like it was a primary  
7 structure at one point in time.

8 Anyway, it just seems that the  
9 structure is suffering from the growth of the  
10 city more than anything else than by -- but  
11 thank you.

12 MS. JACKSON: Sure.

13 CHAIRPERSON LOUD: Thank you, Mr.  
14 Turnbull.

15 Mr. Dettman, did you have any  
16 questions? Okay.

17 Ms. Jackson, I had one question,  
18 just a clarification. I think you had said  
19 in your testimony that highest and best use  
20 and reasonable return on investment are not  
21 related to the undue hardship test. Did I  
22 understand you correctly?

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1 MS. JACKSON: Yes.

2 CHAIRPERSON LOUD: Suppose you  
3 were to learn that fair and reasonable return  
4 on investment was related to the undue  
5 hardship test, would that change your  
6 conclusion at all?

7 MS. JACKSON: Perhaps for an  
8 analysis of the second prong, but not the  
9 third. So the ultimate recommendation  
10 wouldn't change.

11 CHAIRPERSON LOUD: Okay. But just  
12 for the second prong as to whether there's an  
13 undue hardship for the use variance you think  
14 your opinion might change?

15 MS. JACKSON: I think additional  
16 information would have to be provided that  
17 would shed some light on the feasibility of  
18 the use as you were trying to get at in your  
19 questioning earlier, for uses that are  
20 permitted in the zone.

21 Also, you know depending on -- it  
22 seems though Board Member Turnbull is perhaps

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1 characterizing the structure as one that was  
2 created for a single family dwelling  
3 purposes, which has another standard in  
4 2507.3 which requires an analysis of the cost  
5 of the conversion based on the current value  
6 of the land. So I think additional  
7 information about those things would be  
8 necessary.

9 CHAIRPERSON LOUD: Okay. Just  
10 going back for a moment to the undue  
11 hardship, I think the test in the District,  
12 and the Office of Attorney General provides  
13 some case law on this for our review. I'm  
14 just going to read from one of the cases that  
15 was provided, which is Downtown Cluster of  
16 Congregations vs. BZA. And the language is:

17 "That to demonstrate undue hardship as a  
18 requirement for obtaining a use variance, the  
19 applicant must prove that the property cannot  
20 be put to any conforming use with fair and  
21 reasonable return."

22 So I think that the "fair and

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1 reasonable return" standard probably does  
2 relate to the undue hardship.

3 MS. JACKSON: Okay.

4 CHAIRPERSON LOUD: I don't think  
5 the highest and best use language or any  
6 evidence relating to that would have any  
7 bearing on it. But I wanted to make that  
8 point.

9 And then I want to understand your  
10 point now. If we're able to get through the  
11 first two prongs, your point about the third  
12 prong not being met. And the reason the  
13 third prong would not be met is because?

14 MS. JACKSON: Of the impact on the  
15 Zone Plan because the section specifically  
16 prohibits nonresidential structures being  
17 converted for human habitation regardless of  
18 the cost.

19 CHAIRPERSON LOUD: Okay. Would  
20 the fact that the underlying zone is  
21 residential and encourages residential use  
22 not be relevant to that prong of the test?

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1 MS. JACKSON: Well, I think  
2 because this is a section specifically for  
3 building on alley lots that the more specific  
4 regulation is applicable.

5 CHAIRPERSON LOUD: Okay. Thank  
6 you.

7 I don't have any additional  
8 questions. Let me see if the Board members  
9 have any.

10 COMMISSIONER TURNBULL: Mr. Chair,  
11 I don't think I was -- if I did, let me  
12 correct that. I didn't mean to imply that  
13 this wasn't a residential structure.

14 MS. JACKSON: Okay.

15 COMMISSIONER TURNBULL: I guess  
16 what's curious, just based upon the  
17 applicant's testimony and looking at the maps  
18 that the original space that this occupies  
19 was originally an alley or a small street and  
20 at some point was made into two lots. And  
21 that this particular structure is at the rear  
22 of the lot. And, again, I guess we don't

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1 know. I mean other than the fact that  
2 there's a supposition that since the owner of  
3 this property also owned a grocery store that  
4 it could have been a possible storage  
5 building for his grocery business.

6           So there's a structure here, and  
7 I'd call it a primary structure because  
8 there's no other structure on the lot and  
9 although it's at the rear of the lot, we can  
10 only guess as to why it was done that way  
11 other than more access for him. And  
12 apparently it was allowed at the time. So  
13 there's a lot of questions, I mean as to why  
14 it was built there. But all I'm saying is  
15 that it was a primary structure which did  
16 have access to a principal street and an  
17 alley. And it jus seems that as the city  
18 allowed more things to happen, as a residence  
19 was built in the front, this structure just  
20 because became a stepchild. And  
21 unfortunately and just now sort of in the  
22 midst of being almost an unusable structure

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1 because of its location, which I think is  
2 sort of unfair to the building.

3 CHAIRPERSON LOUD: Thank you, Mr.  
4 Turnbull.

5 Mr. Dettman?

6 VICE CHAIRMAN DETTMAN: Good  
7 morning, Ms. Jackson.

8 I wanted to ask about the parking  
9 variance. I don't know in your testimony did  
10 you go through the three prongs and describe  
11 why OP would support that? And if you  
12 didn't, would you mind doing that, please?

13 MS. JACKSON: Sure. I think the  
14 first prong is the same, the characteristics  
15 of the lot and the fact that its completely  
16 covered and has no street access and the  
17 alley access are alleys that are 12 and 20  
18 feet wide, which really renders -- I mean,  
19 I've been to the alley. I think to be able to  
20 convert the one adjacent to the 12 foot wide  
21 alley to allow a garage door would be  
22 extremely difficult.

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1                   So given the site and  
2 characteristics of the lot and the  
3 improvements on the lot, I think the ability  
4 to have more than one parking space is  
5 practically difficult.

6                   And the fact that its two blocks  
7 from a Metro station and is well served by  
8 public transit, I think the impact on the  
9 neighborhood and the Zone Plan would not be  
10 substantially detrimental. So we wouldn't be  
11 -- if the Board agreed to the variance for  
12 the dwelling unit, we wouldn't be opposed to  
13 the parking relief.

14                   VICE CHAIRMAN DETTMAN: Thank you,  
15 Mr. Chair. Thank you.

16                   CHAIRPERSON LOUD: Thank you.

17                   To the applicants, I don't know if  
18 I should turn to Mr. Bello or Mr. Veenstra,  
19 but are there any questions for the Office of  
20 Planning?

21                   MR. BELLO: Ms. Jackson, thank you  
22 very much for your report.

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1 I don't know if you have your  
2 regulations with you. But if you don't, I'm  
3 glad to read at least two sections into the  
4 record.

5 Section 2407.1 states: "Except  
6 for use as a one-family dwelling a structure  
7 shall not be erected, constructed, converted,  
8 altered, remodeled, repaired or repaired for  
9 human habitation in an alley."

10 Would you characterize that as  
11 meaning that a one-family dwelling is  
12 permitted absent any other condition?

13 MS. JACKSON: Well, I can't read  
14 that without continuing to read the other  
15 parameters that would allow it.

16 MR. BELLO: Well, we'll get to  
17 that. But in looking at this section  
18 singularly, would you agree that a one-family  
19 dwelling is a permitted use on a alley lot?

20 MS. JACKSON: Sure.

21 MR. BELLO: Thank you.

22 Now when you read that section in

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1 tandem with 2507.3, and that section says:  
2 "An existing one-family dwelling located on a  
3 alley lot that abuts an alley less than 30  
4 feet in width shall not be converted,  
5 altered, remodeled, restored or repaired for  
6 use as a one-family dwelling if the cost of  
7 conversion alteration" blah, blah, blah  
8 "exceeds one half of the value of the  
9 structure --"

10 MS. JACKSON: Yes.

11 MR. BELLO: " --Immediately prior  
12 to the time conversion."

13 Now would you say that somehow  
14 that this prohibits when you read those two  
15 sections in tandem that this prohibits a one-  
16 family dwelling being in an alley?

17 MS. JACKSON: I think it's the  
18 last sentence of the section is what I was  
19 referring to.

20 MR. BELLO: We'll get to that,  
21 too.

22 If on the stated condition a one-

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1 family, assuming if one of the stated  
2 condition under 2507.3, the one-family  
3 dwelling could be located on an alley lot  
4 that's served by an alley less than 30 feet,  
5 would you then characterize that as being  
6 substantially detrimental to the public good  
7 and intent and purpose of the Zoning  
8 Regulations?

9 MS. JACKSON: I think if it  
10 doesn't meet the parameters that are provided  
11 for, yes.

12 MR. BELLO: Even though there are  
13 circumstances under which you could establish  
14 this use as a matter-of-right without need  
15 for Board approval?

16 MS. JACKSON: If it meets the  
17 parameters that are listed, certainly. But  
18 that's not the case here.

19 MR. BELLO: Okay. I've been  
20 trying to be very specific.

21 MS. JACKSON: So this is the only  
22 dwelling that's allowed in an alley lot if it

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1 meets certain parameters.

2 MR. BELLO: Right. And one of the  
3 parameters is why we're here is the width of  
4 the alley, right?

5 MS. JACKSON: Yes.

6 MR. BELLO: And then under 2507.3  
7 you could considerably establish that use  
8 under stated condition even when the alley is  
9 less than 30 feet wide?

10 MS. JACKSON: If it was already  
11 existing. So that speaks to a building  
12 that's already a single family dwelling that  
13 may have been fallen into disrepair. And if  
14 the costs to bring it back are less than half  
15 of the value of the structure, you can bring  
16 it back.

17 MR. BELLO: So here we have an  
18 existing structure. And I'm trying to just  
19 limit myself to the third prong of the test.

20 MS. JACKSON: Yes.

21 MR. BELLO: Because I think we  
22 tacitly have concurrence that you agree that

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1 there's exceptional situation and  
2 extraordinary condition of property and that  
3 a reasonable return on the investment is an  
4 acceptable standard for a showing of undue  
5 hardship. So it is your position that  
6 notwithstanding that a one-family dwelling  
7 can be located on an alley less than 30 feet  
8 wide on the state circumstances if the Board  
9 were to grant this relief, which is what  
10 we're here, your position is that the relief  
11 would lead to a substantial impairment of the  
12 integrity of the Zone Plan?

13 MS. JACKSON: Yes.

14 MR. BELLO: Thank you very much.

15 CHAIRPERSON LOUD: Thank you, Mr.  
16 Bello.

17 Are there any follow-up questions  
18 for the Board? All right.

19 I just have one follow-up along  
20 the lines of -- I'm sorry.

21 MR. VEENSTRA: I'm very sorry.

22 CHAIRPERSON LOUD: I'm sorry.

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1                   MR. VEENSTRA:  If I could pose a  
2 question to Ms. Jackson.  Within your opening  
3 statement today you made use of reasonable  
4 economic use and highest and best use.  
5 Putting highest and best use aside, there's a  
6 misnomer in the early stage of the  
7 application and strictly focused on  
8 reasonable use.  What I've attempted to show  
9 with the various folks I've brought here  
10 today and the documents is that I can't  
11 reasonable use of it in the other two  
12 scenarios.  I'm not coming to this Board  
13 today or to you trying to maximize some  
14 profit.  I'm just trying to get the place to  
15 pay for itself.  Is that not clear in what  
16 we've submitted?  And if it is clear, does  
17 not that hold any weight with you in your  
18 thoughts?

19                   MS. JACKSON:  I can't say that  
20 it's clear in the documents that have been  
21 submitted.  But I guess my point is that I  
22 can't get past the third -- you have to meet

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1 all three. And even if we spent time and got  
2 more information, it's very difficult for me  
3 to say that you still meet the standard.

4 MR. VEENSTRA: Understood. Thank  
5 you for that clarification.

6 Thank you, Mr. Chair.

7 MR. VEENSTRA: Thank you.

8 Just one follow-up question along  
9 the lines, I think, of Mr. Bello's question  
10 and perhaps Mr. Veenstra, and your testimony.

11 As to the third prong then, just so that I'm  
12 clear, the harm to the Zone Plan is that not  
13 so much that there would be residential in  
14 the alley because I think Mr. Bello walked  
15 through some sections that under his analysis  
16 would allow residential as a matter-of-right?

17 It's more that it would be a conversion of a  
18 nonresidential structure to residential in  
19 this alley in this zone?

20 MS. JACKSON: I think, yes.

21 CHAIRPERSON LOUD: And is there  
22 anything about the history of this alley

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1 structure that would make it a bit different  
2 in terms of its ability to be used that would  
3 connect, I think, directly to the whole  
4 conversion issue, conversion of residential  
5 and the alley?

6 MS. JACKSON: I'm not following  
7 the--

8 CHAIRPERSON LOUD: I don't want to  
9 make applicant's case. But is there  
10 something about the -- this isn't a typical  
11 alley structure that was created as an alley  
12 structure. It was created as a structure  
13 already having street frontage and then the  
14 build out occurred around it later on.

15 MS. JACKSON: Yes.

16 CHAIRPERSON LOUD: That is now  
17 being converted to residential around all of  
18 this residential that had already been there.  
19 It's anomaly sort of like Mr. Turnbull said.  
20 It's a stepchild. It just doesn't make a  
21 whole lot of sense. And is there anything  
22 about that history that would take it sort of

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1 out of that paradigm of alley conversions  
2 that this regulation 2407.3 I think is  
3 designed to put the brakes on? Or is this  
4 the kind of alley lot that its just like any  
5 other conversion this regulation you think  
6 was intended to put an abrupt halt to?

7 MS. JACKSON: Well, I think the  
8 issues with structures regarding human  
9 habitation have to do with life and safety  
10 issues as well, which is -- I mean, I didn't  
11 mention, you know one of the -- some of the  
12 comments we got back from the Fire Department  
13 would require sprinkling of the building for  
14 human habitation.

15 I mean part of the issue is that I  
16 think what this regulation is speaking to is  
17 that these structures aren't appropriate for  
18 people to live in because of how they're  
19 configured. And so if it was constructed for  
20 a dwelling and things got built around it,  
21 there's the part of 2407.3 that says you can  
22 bring it back depending on what's required to

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1 make it liveable again. But if it wasn't  
2 built to serve as a dwelling, it shouldn't be  
3 regardless of what it costs. And I don't see  
4 anything, I guess, different about the  
5 history of this alley lot versus others that  
6 effects how this applies.

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

9 VICE CHAIRMAN DETTMAN: Mr.  
10 Chairman?

11 CHAIRPERSON LOUD: Yes

12 VICE CHAIRMAN DETTMAN: I have one  
13 last question for Mr. Veenstra. I needed  
14 some clarification on the letter from William  
15 Crane. And it's in the first paragraph. It  
16 says: "Although no mortgage is currently  
17 held on the property, this report will assume  
18 a mortgage of \$250,000 30 year fixed at six  
19 percent with a principle and interest payment  
20 of \$1500." Why are we assuming a mortgage of  
21 \$250,000?

22 MR. VEENSTRA: The purchase price

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1 for the property was \$299,000. And at the  
2 time it was possible to get mortgages based  
3 on 10 or 15 percent down. So we came up with  
4 a figure of 250 as being a likely figure that  
5 somebody might have put for debt service on  
6 it. My particular situation was different.

7 To further that point, it's a  
8 exchange situation. So I was not in a  
9 situation where I took on a mortgage at the  
10 purchase.

11 VICE CHAIRMAN DETTMAN: What does  
12 it mean by "although no mortgage is currently  
13 held on the property"?

14 MR. VEENSTRA: I do not -- at the  
15 time of purchase I did not have a mortgage on  
16 the property. It was a cash purchase for me.

17 VICE CHAIRMAN DETTMAN: Okay.

18 MR. VEENSTRA: But that's my  
19 situation. The point within the analysis is  
20 that that's a unique situation. Somebody  
21 else who may have bought this, anyone that  
22 might come before you, would still have the

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1 debt service.

2 VICE CHAIRMAN DETTMAN: Okay. But  
3 the uniqueness and the hardship needs to go  
4 to the property owner --

5 MR. VEENSTRA: It's had debt  
6 service since that time. At the time I  
7 bought it without cash. I have since secured  
8 loans to do this work that I'm doing with you  
9 all now and researching and pay Mr. Bello and  
10 so forth.

11 VICE CHAIRMAN DETTMAN: Okay. But  
12 irrespective of that, the expenses that  
13 you've occurred in terms of pursuing this  
14 project you ar currently paying taxes on the  
15 property and not paying a monthly mortgage?

16 MR. VEENSTRA: I have a monthly  
17 payment through a loan that I have with the  
18 Adams National Bank on that property.

19 VICE CHAIRMAN DETTMAN: For what?

20 MR. VEENSTRA: For \$100,000. It's  
21 approximately 400 a month.

22 VICE CHAIRMAN DETTMAN: And that's

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1 to pursue this project?

2 MR. VEENSTRA: Correct. It's the  
3 first of what we hope is a series of loan to  
4 actually do the project. I have a banker that  
5 I work with there and he gave me initial, I  
6 guess you'd call it seed money, to do this.

7 VICE CHAIRMAN DETTMAN: Okay.  
8 Okay. Thank you.

9 COMMISSIONER TURNBULL: Mr. Chair,  
10 I just one. Yes.

11 Ms. Jackson, you know, again, we  
12 said this was an unusual building kind of a  
13 Catch-22. And although it's not served by an  
14 alley, I'm not trying to make a game out of  
15 this, but it's served by two alleys, 120 and  
16 112, you know. So 30 foot of alley width is  
17 there, although not together. But I guess my  
18 point is from a safety standpoint it does  
19 have access at two points for a vehicle, any  
20 kind of an emergency vehicle to get up.

21 So I suppose at some point if they  
22 really pushed, they could even add a second

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1 stair from this thing. But I guess from a  
2 standpoint of human habitation, this thing is  
3 accessible.

4           Again, as someone representing the  
5 Zoning Commission I don't like to obviously  
6 do anything to harm a Zone Plan or give away  
7 anything. But I think in this particular  
8 situation I' looking at a building which is,  
9 obviously, a structure that can be used for  
10 any number of functions within the zone and a  
11 residential function. Again, giving the  
12 access it's something that I feel is  
13 plausible. I mean, I can see this as a  
14 doable alternative. But again, my feeling is  
15 I know we've had this 30 foot alley  
16 limitation on this, and there is a definite  
17 need for that for residents. But I'm just  
18 looking at the fa that it is served by two  
19 alleys, makes it a little bit unique rather  
20 than something that's stuck in the middle of  
21 an alley, and that's it.

22           CHAIRPERSON LOUD: Thank you, Mr.

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1 Turnbull.

2 I think we're probably ready to  
3 move on to what would be normally the report  
4 of the ANC. And I think as you mentioned,  
5 the ANC is not here but they did submit a  
6 report. And, in fact, they submitted two  
7 reports. We don't need copies of them, Mr.  
8 Veenstra. We have copies of them. Our  
9 Exhibits 24 and 26. And in both reports the  
10 ANC came out, I believe it was unanimously in  
11 support of the project indicating that you  
12 had appeared before them. They support both  
13 variances, the use and the parking variance.

14 I'm trying to see where the vote. I think  
15 there were ten commissioners present and all  
16 ten voted to support the application. So I  
17 think it was unanimous.

18 You had mentioned, and we can get  
19 to this, some letters of support from  
20 neighbors. I don't see that in our record. I  
21 don't know if we have those letters.

22 MR. VEENSTRA: I have the 24

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1 copies here if they're allowed to be added to  
2 the record at this juncture.

3 CHAIRPERSON LOUD: What you may  
4 want to do, because I think it may bear some  
5 relevance to the third prong of the test, is  
6 give those to Ms. Bailey and we'll have them  
7 marked as exhibits and make sure that we  
8 include them as part of our record for review  
9 purposes.

10 And as you're doing that, this  
11 would be the part of the case where if there  
12 are parties or persons in support, they'd  
13 come forward. But, again, you've got some  
14 exhibits that you placed in the record. And  
15 then parties and persons in opposition. And  
16 I don't believe there are any of those in our  
17 record.

18 And so what we'll do now is go to  
19 closing remarks by the applicant.

20 MR. VEENSTRA: I'll yield my time  
21 to Mr. Bello for that closing.

22 CHAIRPERSON LOUD: Okay. All

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1 right.

2 MR. BELLO: Thank you, Mr. Chair.

3 I think the application by a  
4 preponderance of the submissions and the  
5 facts discussed in the hearing today --

6 CHAIRPERSON LOUD: Mr. Bello, I'm  
7 struggling to hear you. I don't know, maybe  
8 you could pull the mic just a little closer.

9 MR. BELLO: Okay. All right.

10 I think by a preponderance of the  
11 facts and the submissions of the fact that  
12 the application here has established that  
13 there is an exceptional, an extra ordinary  
14 situation and condition of property hinged on  
15 not just the history of the replat and of the  
16 square, but the history of the construction  
17 and the size of the building and the  
18 property.

19 And I think that with the Board's  
20 assistance it has also been established that  
21 the property demonstrates the standards for  
22 the granting of a use variance in respect of

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1 the exceptional and undue hardship upon the  
2 owner. That standard is supported by the  
3 report provided to the record by the broker  
4 which basically confirms that absent the  
5 relief that we're here before the Board for,  
6 the property could not be put to reasonable  
7 adaptive use for conforming use.

8 Now as to the third prong of the  
9 test, I want to emphasize that having met the  
10 first two prongs of the test that the  
11 application inherently meets the third prong  
12 of test, and for several other reasons.

13 I'm going to read from BZA  
14 Application 16919 in which the case of Palmer  
15 vs. Board of Zoning Adjustment is quoted.  
16 And in that variance the argument is made,  
17 and I guess the determination of the Palmer  
18 vs. BZA that a use variance seeks to  
19 establish a use that's ordinarily prohibited  
20 in the particular district. This particular  
21 district is R-5-B zone, a residential  
22 district. And to argue that one would be

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1 substantially impairing the intent and  
2 purpose of the Zoning Regulations when one  
3 seeks to establish a use that is permitted  
4 under the underlying zone, notwithstanding  
5 what the building on alley lot sections  
6 dictates, I think does not in my view confirm  
7 that the integrity of the Zoning Plan is  
8 substantially impacted here.

9 Alley lots, as the testimony has  
10 shown, do permit as a matter-of-right under  
11 certain circumstances one-family dwellings  
12 that may be altered and improved on an alley  
13 less than 30 feet. So a condition that the  
14 regulations permit as a matter-of-right under  
15 stated circumstances cannot lend itself to a  
16 substantial impairment of the intent and  
17 purpose of the Zoning Regulations.

18 The application has the support of  
19 the ANC. They have the support of the  
20 immediate neighbors by evidence of the  
21 signatures as submitted to the record. Even  
22 within the report of the Office of Planning

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1 the D.C. Fire Department has recommended that  
2 the building be sprinklered. And based on  
3 that condition, that their opinion is that  
4 this building can be safely occupied as a  
5 one-family dwelling.

6 So I think that the application  
7 presents very strong basis for the grant of a  
8 use variance for which this application is  
9 before the Board today.

10 Thank you very much.

11 MR. VEENSTRA: And would the  
12 applicant sprinkle the building?

13 MR. VEENSTRA: Absolutely. We've  
14 been told by the Fire Department it's a  
15 necessity, and that's fine with me.

16 CHAIRPERSON LOUD: You'd be doing  
17 that?

18 CHAIRPERSON LOUD: Thank you, Mr.  
19 Bello. And thank you Mr. Veenstra. And I'm  
20 sorry, tell me your name one last time.

21 MS. HUSTED: Ms. Husted.

22 CHAIRPERSON LOUD: Ms. Husted,

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1 thank you. All of you for your  
2 presentations. And thank you, Ms. Jackson,  
3 as well.

4 I think what we have the option of  
5 doing right now is deliberating the case or  
6 scheduling it for deliberation at a later  
7 date. And I believe we have a full record  
8 before us and I believe we're prepared to  
9 deliberate. But let me double check that  
10 with Board members and see. Okay.

11 All right. I'd be happy to start  
12 us off with respect to the deliberation and  
13 we can take it from there.

14 Essentially what we have, and  
15 we've discussed this for about the past hour  
16 or so, is a proposed use of the second floor  
17 of an alley dwelling that abuts an alley  
18 that's less than 30 feet seeking a use  
19 variance for that use in the alley.

20 The test for use variances, as  
21 we've discussed it, is that there has to be:  
22 Some unique or exceptional situation; that it

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1 has to cause an undue hardship on the  
2 applicant, undue hardship meaning that the  
3 applicant could not put the property to use  
4 in conformance with the allowable zone and  
5 still get a fair and reasonable return for  
6 its efforts; third that there be no  
7 substantial detriment to the public good or  
8 to the Zone Plan.

9 And I think at least from where I  
10 sit the applicant put forward a strong case  
11 for grant of the use variance and the area  
12 variance under some difficult circumstances.

13 But I think with respect to each element the  
14 evidence in the record, the testimony here  
15 today, suggested to me that the applicant  
16 made the test. So let me just go through  
17 each element individually.

18 With respect to whether there's an  
19 exceptional situation, the applicant talked  
20 about there being two factors that suggest an  
21 exceptional situation. And by the way, the  
22 Office of Planning didn't disagree with

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1 respect to that prong of the test. The  
2 applicant talked about the history of the  
3 replatting of the square which made the  
4 structure go from the street frontage to an  
5 alley structure and how the size of the  
6 structure had been built with this notion, I  
7 guess of having street frontage already in  
8 mind. It wasn't built as an alley structure.

9 And that relates to the marketability, the  
10 use of the structure for one of its matter-  
11 of-right uses, namely as an artist studio.

12 The sheer size of the thing is  
13 such that, I think, the evidence would  
14 suggest that would make it very difficult for  
15 the applicant to use it as an artist studio  
16 because of the likelihood that there isn't a  
17 market for that. And I think Exhibit 12,  
18 which was prepared by this Crane gentleman  
19 whose business it is to make those kind of  
20 projects and do that kind of research, would  
21 support that.

22 It's also unique in the sense that

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1 it has a 100 percent lot occupancy and it  
2 would not be able with respect to the parking  
3 variance, there would not be anyplace for a  
4 second parking space.

5 So for those two reasons I think  
6 it's unique. And again, there's not a  
7 dispute in the record from the Office of  
8 Planning on whether or not there's an  
9 exceptional situation.

10 With respect to whether there's  
11 undue hardship we heard testimony both ways,  
12 there being some testimony from the Office of  
13 Planning that it didn't feel that the  
14 applicant put on enough evidence to  
15 demonstrate that there was an undue hardship  
16 specifically that the applicant perhaps could  
17 have provided more evidence regarding its  
18 efforts to market the structure, which is two  
19 1600 square foot levels. But particularly  
20 maybe to market the second floor for artist  
21 studios and to get some information back that  
22 would have suggested that it's not marketable

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1 in that capacity.

2 Nonetheless, I think that the  
3 applicant did have this report from the Crane  
4 firm which suggested that marketing it in  
5 that capacity was probably not going to be  
6 doable in addition to which the applicant  
7 himself, though not an expert, not qualified  
8 as an expert, indicated that he worked for  
9 about ten years in the arts arena and has  
10 some sense of the size of studios that  
11 artists will pay for. And that this was much  
12 more space than the applicant would have been  
13 able to market.

14 I think while it may have been  
15 helpful to the applicant to have something on  
16 the record in addition to the testimony, in  
17 addition to the Crane letter where you were  
18 not successful marketing it as an artist  
19 studio, we've had cases where that type of  
20 evidence has been placed on the record. I  
21 think that what you did place on the record  
22 is sufficient to meet the undue hardship to

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1 the fact, in addition to the fact that the  
2 property is currently vacant. I mean, it's  
3 currently under utilized. It's not utilized  
4 at all and the applicant paid \$299,000 for it  
5 in 2005 and it just strikes me as odd that  
6 the applicant would not have been  
7 aggressively filling it up with some use to  
8 recapture what has been four years of no  
9 return on the investment.

10 My point being I think if the  
11 applicant could have made some sort of  
12 matter-of-right use to the property in four  
13 years, we'd see some use there. In addition  
14 to that before the applicant had the property  
15 it remained vacant for a number of years  
16 which allowed it to go into the state of  
17 disrepair which suggests to me that the  
18 matter-of-right uses were not plausible.

19 With respect to the substantial  
20 detriment to the public good, the applicant  
21 testified for, and I believe Mr. Bello tried  
22 to reenforce it, that the underlying zone

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1 permits residential use. And Mr. Bello took  
2 it a step further and said that the  
3 underlying zone even permits alley  
4 residential use provided that it's an  
5 existing structure. This was the most  
6 difficult area I thin for the Office of  
7 Planning because of section 2407.3, which is  
8 very clear that conversions of nonresidential  
9 structures for human habitation are not  
10 allowed under the regs.

11 But I think the whole point of the  
12 variance as I understand it is that where  
13 strict application of the regulation presents  
14 an undue hardship, that the variance test is  
15 a safety valve that allows an applicant to  
16 get relief. And if the tests were going to  
17 be anytime we give relief, that relief would  
18 harm the Zone Plan then no one would ever  
19 make the variance test. Because whenever  
20 you'd give relief, you're harming the Zone  
21 Plan because you're asking for relief. So it  
22 becomes a bit of a tautology. So I think

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1 that that's not a strong enough argument, at  
2 least to persuade me in light of the fact  
3 that the underlying zone allows residential  
4 and even in the alley, the use of residential  
5 is not prohibited. And it's just this  
6 conversion that's prohibited.

7 In addition to that with respect  
8 to substantial detriment, the ANC supported  
9 it. And we received late in the hearing a  
10 petition that is signed by a number, I  
11 haven't counted up the number of residents,  
12 but it just appears that all of the folks who  
13 would be most impacted by this in the 1400  
14 block of Harvard Street, 1400 block of  
15 Columbia Road support the application and  
16 don't see the detriment that the Office of  
17 Planning is suggesting is out there.

18 So I'll stop now and see what  
19 other Board members have to say regarding the  
20 test.

21 VICE CHAIRMAN DETTMAN: Mr.  
22 Chairman, I'm in full agreement with you with

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1 respect to everything that you kind of placed  
2 into the three prongs of the use variance  
3 test. I don't have anything to add with  
4 respect to the first prong.

5           The second prong, you know what  
6 we're doing here is we're looking at whether  
7 or not the first prong creates an undue  
8 economic hardship upon the property owner.  
9 And you had referred to the Downtown  
10 Cluster's case which states that the  
11 applicant is not required to seek the highest  
12 and best use, but rather to demonstrate to  
13 the Board that what's being proposed, what's  
14 before us is necessary in order to generate a  
15 fair and reasonable return.

16           And what we have before us is  
17 Exhibit 29, that letter from William Crane,  
18 the realtor. This is really the only exhibit  
19 that we have before us that kind of lays that  
20 story out.

21           I think that the assumption of  
22 \$250,000 mortgage, I'm not sure that that was

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1 the right way to go about laying out this  
2 story. The fact is that it was a cash  
3 purchase back in 2005. So irrespective of  
4 any kind of expenditures that the applicant  
5 has made pursuing this project prior to  
6 getting approval for doing a one-family  
7 dwelling, the applicant still has \$299,000 of  
8 investment put into this property in addition  
9 to the carrying costs since in 2005 in  
10 property taxes.

11 And so looking at that instead of  
12 assuming the \$250,000 mortgage, going through  
13 the parking garage, the artist studio as well  
14 as the storage I still see a case where there  
15 is an economic hardship upon the property  
16 owner.

17 And finally, with respect to the  
18 third prong I think you hit all the relevant  
19 points. The community is support of it. The  
20 ANC is in support of it. Fire and EMS did  
21 weigh in, they did not outrightly object to a  
22 one-family dwelling. They did recommend that

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1 the building be sprinklered, but however this  
2 would be an issue that would be taken up  
3 during the permitting process. So I think  
4 the third prong is met as well.

5 COMMISSIONER TURNBULL: Mr. Chair,  
6 I concur with both you and Mr. Dettman.

7 I think we have a unique building  
8 here. I think the uniqueness is clear. You  
9 have an orphan building that was clearly on a  
10 site that was its own site with frontage to a  
11 principal street and over the years its lost  
12 that. And so you find it in a position where  
13 its only served by alleys. And although I  
14 respect the Office of Planning's view on this  
15 and their stance, and I respect their  
16 opinions on this, I think we do have the  
17 situation here that would not be detriment to  
18 the Zone Plan and I think takes advantage of  
19 a longstanding structure that could be put to  
20 better use.

21 And I think that within the  
22 constraints of the Zone Plan and the block

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1 were its on, that the proposal to use an  
2 artist studio on the first floor and the  
3 residence on the second floor makes a lot of  
4 sense. And I think that the applicant would  
5 be hard pressed to try to make five or so  
6 artist studios out of this. So I think it is  
7 a reasonable approach to putting this  
8 building back into the city tax rolls. I  
9 think it is appropriate and I would be in  
10 favor of voting for this.

11 CHAIRPERSON LOUD: Thank you, Mr.  
12 Dettman. And I'm glad that you mentioned the  
13 quality of the report from the Office of  
14 Planning. I thought it was both a great  
15 report and then I thought the testimony and  
16 the back and forth, which was sort of on her  
17 feet, was great as well. Because some  
18 testimony came out this morning that was not  
19 necessarily in the pleadings. So I thought  
20 it was a great report, but nonetheless I  
21 thought that the applicant met the burden for  
22 use variance and the area variance.

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1                   That being said, is there a motion  
2 for approval of this application? Okay.  
3 We're looking for something that will cue us  
4 into the language right quick, and then we're  
5 going to make a motion. If you can give us  
6 just one second.

7                   VICE CHAIRMAN DETTMAN: Mr.  
8 Chairman, before I go ahead and make the  
9 motion, I don't think that we touched upon or  
10 applied the variance test to the parking  
11 variance. And I'll just go on the record to  
12 say I'm supportive of the parking variance,  
13 as is DC OP. And I'm supportive for the same  
14 reasons that articulated in the OP report.

15                   CHAIRPERSON LOUD: Thank you, Mr.  
16 Dettman. And I would concur with you as well.

17                   VICE CHAIRMAN DETTMAN: So if  
18 there's nothing further, I'll move for  
19 approval of Application No. 17930 of Future  
20 Studios, LLC, pursuant to 11 DCMR § 3103.2,  
21 for a variance from the off-street parking  
22 requirements under subsection 2101.1 and a

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1 variance from the alley width requirements  
2 under subsection 2507.3, to allow the  
3 renovation and alteration of an existing  
4 building on an alley lot for use as a one-  
5 family dwelling and artist studio in the R-5-  
6 B District located at 1469 Harvard Street,  
7 Northwest.

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

10 I second the motion.

11 Motion has been made and seconded.

12 Is there a further deliberation? And  
13 hearing none, all those in favor of the  
14 motion say aye.

15 ALL: Aye.

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

18 And, Ms. Bailey, if you could read  
19 back the vote for us, please?

20 MS. BAILEY: Mr. Chairman, the  
21 vote is recorded as three-zero-two to grant  
22 the application.

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1                   Mr. Dettman made the motion. Mr.  
2 Loud seconded. Mr. Turnbull supported the  
3 motion. Two Board members are not sitting at  
4 this time.

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

7                   And since the ANC did not oppose,  
8 this can be a summary decision.

9                   MS. BAILEY: Summary order, sir.

10                  CHAIRPERSON LOUD: Okay. Thank  
11 you very much.

12                  MR. VEENSTRA: Thank you.

13                  CHAIRPERSON LOUD: Thank you.  
14 Appreciate your time this morning.

15                  And is there anything further with  
16 this case?

17                  MS. BAILEY: No, Mr. Chairman.

18                  CHAIRPERSON LOUD: Okay. So then  
19 the morning's Public Hearing calendar is  
20 hereby adjourned.

21                  (Whereupon, at 11:42 a.m. the  
22 Public Hearing was adjourned, to reconvene

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1 this same day at 1:24 p.m.)

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

2 1:24 p.m.

3 CHAIRPERSON LOUD: This hearing  
4 will please to order. Good afternoon, ladies  
5 and gentlemen.

6 This is the July 14, 2009 Public  
7 Hearing of the Board of Zoning Adjustment of  
8 the District of Columbia. My name is Marc  
9 Loud, Chairperson. Joining me today are Vice  
10 Chair Shane Dettman representing the National  
11 Capital Planning Commission, Mr. Konrad  
12 Schlater representing the Zoning Commission.

13 To my left Mr. Clifford Moy, Secretary of  
14 the Board of Zoning Adjustment, Ms. Mary  
15 Nagelhout, the Office of Attorney General and  
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.

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

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1 reporter and is also webcast live.

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

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

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

20 The order of procedure for special  
21 exceptions and variances is:

22 First, statement and witnesses of

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1 the applicant;

2 Second, government reports,  
3 including the Office of Planning, Department  
4 of Public Works, et cetera;

5 Third, the report of the Advisory  
6 Neighborhood Commission;

7 Forth, parties or persons in  
8 support;

9 Fifth, parties or persons in  
10 opposition, and;

11 Finally, closing remarks by the  
12 applicant.

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

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

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

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1 collectively, and;

2 Individuals are given 3 minutes.

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

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

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

17 The record will be closed at the  
18 conclusion of each case, except for any  
19 material specifically requested by the Board.

20 The Board and the staff will specify at the  
21 end of the hearing exactly what is expected  
22 and the date when the persons must submit the

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1 evidence to the Office of Zoning. After the  
2 record is closed, no other information will  
3 be accepted by the Board.

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

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

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

21 The Board will make every effort  
22 to conclude the Public Hearing as near as

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1 possible to 6:00 p.m. today. If the  
2 afternoon cases are not completed by 6:00  
3 p.m., the Board will assess whether it can  
4 complete the pending case or cases remaining  
5 on the agenda.

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

18 Does the staff have any  
19 preliminary matters?

20 MS. BAILEY: Mr. Chairman, good  
21 afternoon.

22 CHAIRPERSON LOUD: Good afternoon.

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1 MS. BAILEY: To the members of the  
2 Board and to everyone. Welcome, Mr.  
3 Schlater. Welcome to the BZA.

4 There is a preliminary matter. It  
5 has to do with Application 17885, 1101 South  
6 Capitol, LCC. That application, Mr.  
7 Chairman, was withdrawn.

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

10 Hearing no other preliminary  
11 matters -- I'm sorry. If you could identify  
12 yourself for the record?

13 Good afternoon.

14 MS. BRIZILL: My name is Dorothy  
15 Brizill. And I reside at 1327 Girard Street.

16 And I'd like to bring a preliminary matter  
17 to the Board with regards to the second case  
18 to be heard today, case 17942.

19 CHAIRPERSON LOUD: Okay. Why  
20 don't you tell us what the preliminary matter  
21 is? We may address it in the context of  
22 hearing that case, or we may hear it now. It

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1 depends on what it is.

2 MS. BRIZILL: The property has not  
3 been properly posted.

4 CHAIRPERSON LOUD: Okay. What  
5 we'll do then is in the context of that case  
6 we'll review that as a preliminary matter.

7 MS. BRIZILL: You'll do it now--

8 CHAIRPERSON LOUD: Good morning.

9 MS. BAILEY: No, sir, I do not.

10 CHAIRPERSON LOUD: No, no, when we  
11 call the case. We're going to call both  
12 cases now and we're going to go in accordance  
13 with the published order. But then when we  
14 come to that case before we go into the  
15 merits of that case, that'll be the first  
16 issue we deal with.

17 MS. BRIZILL: I appreciate it.  
18 Thank you so much.

19 CHAIRPERSON LOUD: All right. Than  
20 you.

21 And again, all individuals,  
22 whether its the first case or the second case

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1 who are planning to testify today need to be  
2 sworn in. And Ms. Bailey to your right will  
3 swear you in. So if you will please stand  
4 Ms. Bailey will take care of that,

5 (Witnesses sworn.)

6 MS. BAILEY: Ready, Mr. Chairman?

7 CHAIRPERSON LOUD: Yes, Ms.

8 Bailey. Thank you.

9 MS. BAILEY: Application 17943 of  
10 Charles and Susan Parsons, pursuant to 11  
11 DCMR § 3103.2 for a variance from the alley  
12 width requirements under subsection 2507.2,  
13 to convert the second floor of an existing  
14 alley structure into an apartment unit at  
15 premises rear 124 D Street, Southeast. The  
16 property is located in the CAP/R-4 District.  
17 It's also known as Square 733, Lot 806.

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

20 And good afternoon to everyone.  
21 Nice to see you again Ms. Fowler.

22 Why don't each of you introduce

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1 yourselves for the record and just state your  
2 address.

3 Is your microphone. No, it's  
4 actually on the microphone itself at the  
5 bottom.

6 MR. PARSONS: My name is Charles  
7 Parsons. I reside at 129 C Street,  
8 Southeast.

9 MS. PARSONS: I am Susan Parsons  
10 and I also reside at 129 C Street, Southeast.

11 MS. FOWLER: Jennifer Fowler of  
12 1819 D Street, Southeast.

13 MS. TILGHMAN: Catherine Tilghman  
14 at 2101 16th Street, Northwest.

15 CHAIRPERSON LOUD: Thank you.

16 Ms. Fowler, I'm assuming you'll be  
17 taking the lead on presenting the case for  
18 the applicant. And you can start  
19 momentarily.

20 One thing I think we wanted to  
21 point out at the outset just to make sure  
22 we're all on the same page is that the

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1 particular variance test that the applicant  
2 has to meet this afternoon is the use  
3 variance test and accordingly the second  
4 prong of that test has not the practical  
5 difficulty standard, but the undue hardship.

6 So I just wanted to make sure that  
7 you target your evidence toward that.

8 Also, if there are any preliminary  
9 witnesses that you want to qualify, I don't  
10 necessarily think you had any. I don't  
11 recall you having any. But if you did, to  
12 qualify as experts now would be the time.

13 MS. FOWLER: Yes, we don't have  
14 any experts.

15 CHAIRPERSON LOUD: Okay.

16 MS. FOWLER: We do have a neighbor  
17 that's here in support. But that's not what  
18 you're asking for.

19 CHAIRPERSON LOUD: No, that's not.  
20 I think we'll get to the part of the case  
21 where witnesses in support can testify.

22 So with that, when you're ready to

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1 begin, you can begin.

2 MS. FOWLER: Okay. So we're here  
3 today to ask your support for a new residence  
4 in the alley and an existing carriage house  
5 structure. This carriage house was built in  
6 1900 and its two stories, two floors, with an  
7 internal stair. There are windows on two  
8 sides of the structure.

9 It sits on the named alley Rumsey  
10 Court, which is a 30 foot wide alley that  
11 also three small alleys kind of leading to it  
12 and then another one that was a wider alley  
13 that's been taken over partially by the  
14 apartment building.

15 There are other dwellings that are  
16 on this alley. We have actually seven other  
17 occupied structures on the alley.

18 We have the Rumsey Court dwellings  
19 that are immediately to the west of the  
20 property; there's five of them there and then  
21 there's one across closer to the westend of  
22 the alley and another one on the east end of

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1 the alley. So there is a precedence for this  
2 kind of use of the structure.

3 One of the unique things about  
4 this building is its size. Considering it is  
5 an alley dwelling, we have 1,075 square feet  
6 of actual living space we've planned here,  
7 not including the garage parking area. When  
8 you look at the adjacent properties on Rumsey  
9 Court the Rumsey Court dwellings are about  
10 525 square foot apiece divided over two  
11 floors. So it's a very, very large  
12 structure.

13 Another thing that's unique about  
14 it, is its proximity to the Capitol Building  
15 and two other uses in the area. And there's  
16 a demand for housing that the owner of the  
17 property is trying to meet here for short  
18 term housing for people that access these  
19 buildings close by.

20 So I wanted to talk about how  
21 we're not able to use this property by right.

22 The by-right use is an artist studio or

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1 storage, or parking. As I touched on before,  
2 it's a very large space. It's actually too  
3 large for storage. You would have to do some  
4 kind of commercial endeavor that no one in  
5 the alley would want back there.

6 The owner themselves don't need  
7 the storage space, also they don't need the  
8 parking because they actually live across the  
9 alley and they have parking garage of their  
10 own. So it's not practical for them to use it  
11 for their own personal use, nor for really  
12 anybody in that area because it's such a free  
13 standing dwelling and it's not really  
14 attached to anything.

15 It is next to a large condo  
16 building that used to be on the same  
17 property.

18 Any commercial uses would not be  
19 welcome in the neighborhood, as we all  
20 probably understand. And past commercial  
21 uses were a nuisance and, in fact, that's one  
22 of the reasons why Mr. Parsons purchased th

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1 property was because they had issues in the  
2 past with commercial uses of that. But we  
3 also have some evidence that there was  
4 housing in that building as well in the past.

5 And we've filed an affidavit that Ms. Bailey  
6 distributed from Mr. Parsons kind of a brief  
7 history of how it was occupied in the recent  
8 past since he was on the block.

9 Another aspect of the reason why  
10 we're asking for the relief is it's not  
11 feasible to use as an artist studio, and Mr.  
12 Parsons will also touch on that a little bit  
13 more. The practicality and the cost to  
14 renovate compared to the market rate for  
15 artist space it's not practical. The  
16 building needs substantial renovations:  
17 There's roof work, there's a lot of brick  
18 work that has to happen. And it just doesn't  
19 become feasible financially to create an  
20 artist studio out of that space. So that's  
21 why we're proposing an alternate use.

22 It's also not practical to use as

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1 a parking, any kind of commercial parking.  
2 It's a large footprint but you can't fit four  
3 cars on the first floor. You can only fit  
4 two cars and obviously the second still  
5 wouldn't be used in that case. And also,  
6 that's something that the neighbors would not  
7 want to have in that area.

8 We fell like this is not going to  
9 impact the area substantially. We're not  
10 changing the size of the structure, we're  
11 going to restore it, put in new windows and  
12 make it look nice, make it look more in  
13 keeping with how it was originally.

14 We've gotten support from the  
15 immediate neighbors and we also have support  
16 the Capitol Hill Restoration Society and the  
17 ANC, Historic Preservation and Fine Arts.  
18 And we feel like this will be a welcome  
19 rehabilitation of this building and an  
20 appropriate adaptive reuse.

21 And I'll turn it over to Mr.  
22 Parsons at this point.

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1 CHAIRPERSON LOUD: Mr. Parsons,  
2 you are going to need your microphone for the  
3 purposes of the court reporter being able to  
4 transcribe your testimony.

5 MR. PARSONS: Do you hear me?

6 CHAIRPERSON LOUD: Yes.

7 MR. PARSONS: If I may use the  
8 easel that was provided here.

9 This is a site plan for Square  
10 733. My wife and I live at 129 C Street.  
11 We've lived here for 31 years. During that  
12 time -- this is our garage at the foot here.  
13 And when you stand in our garage and look  
14 out, you're looking right across at the  
15 building in question. I think there's  
16 photographs with the exhibit.

17 In any event, when we first moved  
18 in in 1977 this building was owned by an  
19 elderly gentleman named Mr. Needham. Mr.  
20 Needham was from time-to-time renting it out.

21 I can tell you that in the period  
22 from '82 through about '85 he had two tenants

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1 in there. He had an elderly gentleman who  
2 seemed to collect hardware flooring or what  
3 have you. And evidently he didn't pay the  
4 rent, so he was evicted. But during the time  
5 that he was living there, and he did live  
6 there. I don't know what he did for sewer,  
7 but there is a water inlet in this corner  
8 right here and there is electrical, and there  
9 is a sewer line but no connected toilets or  
10 anything.

11 When this man was evicted, the  
12 next tenant moved in and he put insulation  
13 upstairs and he lived there as well. Again,  
14 I don't know what they did for showers or  
15 what they did for toilets, but nevertheless  
16 he lived there and had moved a kerosene  
17 lantern in. It was sort of a spartan way to  
18 exist.

19 He, too was evicted and the next  
20 use that Mr. Needham put the building to was  
21 people doing construction work. And we had  
22 when I would open my garage, I would see

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1 pickup trucks and vans parked there. And I  
2 got on Mr. Needham about that. And so he  
3 evicted those people as well. So there was a  
4 short commercial use that we vigorously  
5 opposed, and they stopped that.

6 At this point I approached Mr.  
7 Needham. I said, look, let me just rent the  
8 property myself because I was getting  
9 concerned about the uses that were going on.  
10 And from, I believe it was in the '80s, about  
11 '89, '87, something like that up until Mr.  
12 Needham's death in '04 I rented it and we  
13 just parked cars in there or stored  
14 materials.

15 Now, I will tell you that these  
16 five buildings right here, and Mr. Wall who  
17 is present today, this is called Rumsey  
18 Court. These are occupied. And twice a week  
19 D.C. trash trucks come in the alley off of D  
20 or they come in the alley off C Street which  
21 are admittedly undersized, and they pick up  
22 trash that everybody leaves at the back and

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1 the Rumsey Court people leave out there in  
2 this 30 foot alley.

3 In addition, mail is delivered to  
4 these buildings right here each day.

5 So this is a functioning 30 foot  
6 alley occupied by tenants. And this two  
7 story building is what we propose is to leave  
8 the downstairs for garage space and to simply  
9 install the toilet that was never there  
10 before and connect up the water lines,  
11 upgrade the electrical and put a one bedroom  
12 apartment above this particular area.

13 As an economic matter if we were  
14 to do that and try to rent it to an artist,  
15 it just would not be cost justified. And our  
16 plans do call, I think, for a substantial  
17 upgrading in this area right here. Certainly  
18 we have gotten support from the neighbors,  
19 the ones that we were able to find.

20 An awful lot of D Street here has  
21 been broken into condos. This is a free  
22 standing self-defined lot and square. How it

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1 got there, I'm sure it's got a history, but  
2 it is not part, even though it bears the name  
3 124 D Street, Southeast Rear, it is a  
4 building that is 25 by 35.

5 And the other thing is if you're  
6 concerned about emergency vehicles being able  
7 to get in, I can tell you that in the last  
8 three years a lady came down and lost control  
9 of her car and suffered injuries. And the  
10 ambulances had no problem at all getting in  
11 here.

12 This is regularly used by  
13 refrigerated trucks that come down the alley  
14 and deliver produce and food stuffs I guess  
15 for the cafeteria of the Republican National  
16 Committee. The Capitol Hill Club also serves  
17 meals. So I know that I see seafood trucks  
18 and I see a variety of different refrigerated  
19 vehicles coming in here to deliver. So as far  
20 as access, it's not problem.

21 What would be nice would be to  
22 keep it residential. That's what my wife and

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1 I want to do, and that is why we've kind of  
2 watched this vigilantly and Mr. Needham, his  
3 estate, ultimately sold the property to us.

4 So, as I say, we've been here 31  
5 years. We have no intention of going anywhere  
6 else. We do have a vested interest in trying  
7 to keep this a liveable space. And it's our  
8 belief that using this for residential  
9 purposes, quite frankly, would be in the best  
10 interest of our Historic District and also  
11 our residential area.

12 So with that, that would be my  
13 presentation. My wife might have comments of  
14 her own to make.

15 MS. PARSONS: I don't. I think  
16 you've said it.

17 MR. PARSONS: Oh, thank you. This  
18 is rare.

19 MS. FOWLER: I just wanted to add  
20 one more thing. In working with Paul  
21 Goldstein we also talked about the idea of  
22 putting in a sprinkler system, and that's

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1 something we will probably do because of the  
2 access and limited access for fire trucks.  
3 So I just wanted to add that in as something  
4 else.

5 CHAIRPERSON LOUD: Thank you.

6 Does that conclude your case?

7 MR. PARSONS: Well actually we  
8 have a neighbor. Is that part of our case?

9 CHAIRPERSON LOUD: Right. I think  
10 if the testimony relates to establishing your  
11 case, then it would go now. If your neighbor  
12 is in support of the application, then that  
13 comes a little bit later in the proceeding.

14 MS. FOWLER: I think he would come  
15 later then.

16 CHAIRPERSON LOUD: Okay.

17 MS. FOWLER: Thank you.

18 CHAIRPERSON LOUD: Does that  
19 conclude presentation of your case?

20 MS. FOWLER: Yes.

21 CHAIRPERSON LOUD: Okay. Why  
22 don't we see if Board members have any

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1 questions for you.

2 VICE CHAIRMAN DETTMAN: Thank you,  
3 Mr. Chairman. One question.

4 You had mentioned that of the  
5 matter-of-right uses that you could put this  
6 property to, an artist studio, a parking  
7 garage, storage would not allow for  
8 reasonable rate of return on what you had  
9 invested in the property. How did you come to  
10 that conclusion? Do you have any  
11 documentation that we can look at that this  
12 was actually looked at?

13 MR. PARSONS: No, sir. We've not  
14 come prepared having crunched numbers. I can  
15 just tell you that we bought the building. We  
16 have had an estimate of, I think it's  
17 \$100,000 to renovate that upstairs. What we  
18 would have to do recoup that, I suppose -- I  
19 haven't crunched the numbers.

20 VICE CHAIRMAN DETTMAN: What year  
21 did you purchase the property?

22 MR. PARSONS: Mr. Needham died in

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1 '04 and I think we purchased it in -- I think  
2 it was '07. I don't know that I brought my -  
3 -

4 MS. PARSONS: I would say we were  
5 renting it for many years prior to that.

6 VICE CHAIRMAN DETTMAN: Okay. So  
7 purchased it around 2005, maybe?

8 MR. PARSONS: He died in '04.  
9 Either that or he died in '01 and we bought  
10 it '04. I think that was it.

11 VICE CHAIRMAN DETTMAN: Okay.

12 MR. PARSONS: I think he passed  
13 away in '01. There was a period of time that  
14 the estate kind of sat on it and we tried to  
15 -- we weren't sure what kind of use they  
16 contemplated, so that we stepped in and  
17 started trying to -- I think we bought it in  
18 '04.

19 VICE CHAIRMAN DETTMAN: Okay. And  
20 what did you pay for the property?

21 MR. PARSONS: \$95,000.

22 VICE CHAIRMAN DETTMAN: \$95,000.

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1 And on average, what have you paid per year  
2 in taxes?

3 MS. PARSONS: About 900.

4 VICE CHAIRMAN DETTMAN: Thank you.

5 MR. PARSONS: Yes, sir.

6 CHAIRPERSON LOUD: Thank you, Mr.  
7 Dettman.

8 Mr. Schlater, did you have any  
9 questions?

10 COMMISSIONER SCHLATER: Do you  
11 know how much you could rent the space out  
12 for art studio usage?

13 MR. PARSONS: It depends on how  
14 good a job you do, obviously.

15 COMMISSIONER SCHLATER: Yes.

16 MR. PARSONS: I mean if you --  
17 it's got a nice location, so I haven't  
18 consulted -- I would think 1250 probably  
19 would be a minimum, to be honest. But I'm not  
20 that conversant with what rents fetch in that  
21 area. It's close to the House Office  
22 Building. It's close to a Metro. Its not

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1 without location, but I have not formulated a  
2 price range.

3 COMMISSIONER SCHLATER: That's for  
4 residential uses you're saying around \$1250?

5 MR. PARSONS: Yes. That's a  
6 guesstimate.

7 COMMISSIONER SCHLATER: Do you  
8 know how much an artist might pay to occupy  
9 that space?

10 MR. PARSONS: Nothing like that,  
11 I'm sure. Nothing like that.

12 COMMISSIONER SCHLATER: For all  
13 practical purposes what will happen if this  
14 variance isn't granted?

15 MR. PARSONS: What will happen if  
16 this variance is --

17 COMMISSIONER SCHLATER: Not  
18 granted.

19 MR. PARSONS: The neighborhood  
20 will continue to look at a vacant building  
21 that needs renovation. I think any -- you've  
22 seen the pictures, I take it?

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1 COMMISSIONER SCHLATER: Yes.

2 MR. PARSONS: It's just -- as a  
3 garage, it's kind of absurd in a way for us  
4 as owners because it's across a 30 foot  
5 alley. We have our own space at the back of  
6 our alley -- back of our house. It'll just be  
7 a white elephant sitting in an otherwise nice  
8 block crying out for a fix up.

9 COMMISSIONER SCHLATER: Okay.  
10 Thank you very much.

11 CHAIRPERSON LOUD: I got a couple  
12 of follow-up questions along the lines of Mr.  
13 Dettman's and Mr. Schlater.

14 First, just by way of  
15 clarification, the use variance test requires  
16 that there be some sort of either unique  
17 property, aspect of property, or an  
18 exceptional situation attended to the  
19 property that proximately causes an undue  
20 hardship.

21 The Office of Planning in their  
22 report, Ms. Fowler, have indicated that they

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1 don't think that there's any uniqueness or  
2 any exceptional situation regarding the  
3 property. And you've spoken about the size  
4 of the property being large and its proximity  
5 to Capitol Hill being unique aspects of it or  
6 exceptional situations. I wanted to see if  
7 you could elaborate on that in terms of how  
8 if those things are unique, how they cause an  
9 undue hardship for this applicant to put it  
10 to the use that the zone allows.

11 MS. FOWLER: I mean if you look at  
12 the square footage of the property, it's  
13 about 1750 interior square footage which is  
14 about the size of an house. I mean, you know  
15 if you look at the other houses in the area,  
16 probably about 700/800 square foot per floor.

17 You know, maybe they have two floors and a  
18 basement, some have three floors. But it's  
19 in the order of a house in terms of the  
20 magnitude, the size relative to other  
21 structures.

22 So I think it's unique in that

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1 it's such a large structure. It's the largest  
2 structure on this alley. In fact, it's  
3 larger than many of the houses. Some of the  
4 houses that are D Street have less square  
5 footage than it. So it's just a large amount  
6 of space to try to make profitable with just  
7 a storage. And I don't know that there's a  
8 need for that kind of storage in that area.

9 CHAIRPERSON LOUD: And would you  
10 say that's similarly true for artist studio;  
11 that the size of the structure makes it more  
12 difficult to rent it out as an artist studio?

13 MS. FOWLER: I mean, I would guess  
14 if you're charging on the basis of square  
15 foot, dollar per square foot on rent, that it  
16 could get to be too expensive for an artist  
17 to afford. Not to say that it wouldn't be  
18 for a group of artists, but I don't know what  
19 the demand is for that in that area. I mean,  
20 artists tend to go to the kind of fringe  
21 areas of the city. You know, they tend to  
22 kind of branch out in other neighborhoods

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1 that people don't have a desire to live in  
2 because there's cheap space. There's big  
3 open, you know, inexpensive rent there. They  
4 don't tend to look in, like a half a block  
5 from the Capitol Hill I think for their  
6 space. And just in my experience.

7 CHAIRPERSON LOUD: And I know your  
8 background is as an architect and you've  
9 appeared before us a number of times. Do you  
10 have any rough estimates of the cost that it  
11 would take for this applicant to make this  
12 property suitable for use as an artist  
13 studio? From where he is right to what would  
14 have to be done to it.

15 MS. FOWLER: I think we were going  
16 on the assumption of maybe \$80,000 to  
17 \$100,000 for the finished apartment. So  
18 maybe for, you know, if you had an artist  
19 studio you wouldn't necessarily have to have  
20 a kitchen. So that would save a little bit.  
21 But it's still going to be, you know,  
22 anywhere between \$60,000 and \$80,000 I would

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1 think.

2                   There's a lot of brick pointing  
3 that has to happen, the roof, the rafters  
4 need to be accessed. They're pretty old and  
5 small. They're not nearly up to code. The  
6 stairs would have to be rebuilt because  
7 they're falling apart and we've risked our  
8 lives going up there a couple of times and  
9 survived. Plus all the windows. We've had  
10 water leaks and there's some damage to the  
11 brick on the interior as well from leaking  
12 through the roof.

13                   So there's just a lot of  
14 infrastructure. There's also plumbing. A  
15 bathroom is an expensive endeavor. You have  
16 to break up the concrete and run the plumbing  
17 and any kind of sink. You'd need even for an  
18 artist you'd have to have running water and  
19 access to plumbing.

20                   So it's a lot of things just  
21 getting it up to kind of sealed in and in  
22 good shape from the outside. And then you

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1 add in the finishing on the inside. And  
2 there's a lot of different levels of finish  
3 of what you could do on the interior.

4 CHAIRPERSON LOUD: But if I  
5 understand correctly, in order to use it as  
6 an artist studio it would take about \$80,000  
7 worth of upgrades?

8 MS. FOWLER: That would be my  
9 guess.

10 CHAIRPERSON LOUD: And to use it  
11 as residential it would take how much?

12 MS. FOWLER: Maybe closer to a  
13 \$100,000.

14 CHAIRPERSON LOUD: To a \$100,000?

15 MS. FOWLER: Yes. For the kind--  
16 you know, we're hoping to create a nice, kind  
17 of upscale housing for people that maybe  
18 they're coming to the area for three months  
19 or six months, political appointees or  
20 something. So it definitely would be on the  
21 higher end of finishes than just something a  
22 college student would rent. Because it's a

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1 different audience we're trying to capture  
2 with this.

3 CHAIRPERSON LOUD: And I thought I  
4 heard some testimony that the applicant  
5 thought he might be able to get 1250 for  
6 residential per month?

7 MS. FOWLER: I would think it  
8 would be a lot higher than that.

9 CHAIRPERSON LOUD: All right. More  
10 than 1250?

11 Do you have any, again, rough  
12 estimates on how much the applicant might be  
13 able to get monthly were it to be used as an  
14 artist studio?

15 MS. FOWLER: I don't have that  
16 information.

17 CHAIRPERSON LOUD: Okay.

18 MS. FOWLER: I know that he was  
19 approached before by an artist, but I don't  
20 think it was even close for them to consider  
21 it. It wasn't even enough, but I don't know  
22 what the number was.

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1 CHAIRPERSON LOUD: Okay. Maybe  
2 Mr. Parsons?

3 MR. PARSONS: It was that one  
4 person did approach us with an offer of \$125  
5 a month.

6 CHAIRPERSON LOUD: A \$125 per  
7 month?

8 MR. PARSONS: Yes, sir.

9 CHAIRPERSON LOUD: And how  
10 recently was that?

11 MR. PARSONS: Within the last two  
12 years.

13 CHAIRPERSON LOUD: Was that the  
14 result of outreach that you did?

15 MR. PARSONS: No.

16 CHAIRPERSON LOUD: Okay. The  
17 person contacted you?

18 MR. PARSONS: It was unsolicited.

19 CHAIRPERSON LOUD: Okay.

20 MR. PARSONS: We're forever  
21 getting -- well, you know, it was  
22 unsolicited.

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1 CHAIRPERSON LOUD: Okay. I don't  
2 have any further questions. I don't know if  
3 Board members have any. Okay. It doesn't  
4 look like, at least for right now, there are  
5 any additional questions from the Board. But  
6 if some should surface, we know where to find  
7 you: You're right in front of us.

8 And I think now we'll turn to the  
9 Office of Planning.

10 MR. GOLDSTEIN: Thank you. Good  
11 afternoon, Mr. Chairman. Commissioner  
12 Schlater, welcome. And members of the Board.

13 For the record, my name is Paul  
14 Goldstein, and I'm a Development Review  
15 Specialist with the Office of Planning.

16 The Office of Planning cannot  
17 support use variance relief to allow the  
18 proposed conversion of an existing carriage  
19 house on an alley lot to residential use at  
20 124 D Street Rear, which is the Capitol  
21 Interest Overlay and the R-4 District.

22 The alley lot fronts, as you've

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1 heard, a 30 foot wide alley Rumsey Court  
2 homes along it, but connects to the street  
3 only by 10 and 15 foot alleys, which is what  
4 makes the relief necessary.

5 The applicant originally applied  
6 under section 2507.2, although 2507.3 is  
7 actually the more appropriate provision for  
8 relief.

9 2507.3 provides that  
10 nonresidential structures, as is the case  
11 here, on alleys below 30 feet in width shall  
12 not be converted, altered, remodeled,  
13 restored or repaired for human habitation  
14 regardless of cost. Since the conversion to  
15 human habitation is not here permitted, the  
16 applicant must satisfy the three part use  
17 variance test. And OP believes that the  
18 proposal does not satisfy the requirements  
19 for use variance.

20 First, although the property does  
21 have some distinguishing features such as the  
22 size, OP did not believe that they rose to

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1 the level of a specific uniqueness.

2 The lot is a pretty typical shape  
3 of other alley lots in this particular alley.

4 And there are multiple structures along the  
5 alley as well, many of which are two stories.

6 Second, even though OP does not  
7 accept that there is a specific uniqueness  
8 from which undue hardship must arise which  
9 would effectively end the analysis here, the  
10 application has not demonstrated how the  
11 owner of the property would suffer an undue  
12 hardship if the property was not converted to  
13 a conforming use as opposed to a residential  
14 use, which could in this case be an artist  
15 studio.

16 I think we're starting to hear  
17 some testimony that's getting toward it.  
18 It's difficult because, as you know, the  
19 analysis is not just the most profitable use  
20 for the property, but a reasonable conforming  
21 use could it exist in this case. I think  
22 we're starting to hear a bit more about that

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1 here toward the undue hardship. But I don't  
2 think the case has yet been made for it.

3 And third, granting the variance  
4 may not cause substantial detriment to the  
5 public good. I mean there's a number of  
6 residences here, so we don't see that being  
7 problematic. But given the language of  
8 2507.3, which is just very specific and  
9 pretty clear, relief could impair the intent  
10 of the Zone Plan.

11 Concerning agency and community  
12 comments, DCFEMS submitted comments to OP, as  
13 we've heard already, that recommended that if  
14 the alley dwelling was permitted to become  
15 residential, that it would need to meet  
16 certain sprinkling standards among other fire  
17 code standards. So it was not a no, I mean  
18 which I think we've seen in the past. It said  
19 "if approved" it would need to meet certain  
20 standards.

21 Further, there are signatures in  
22 support from neighbors that we've seen. And

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1 ANC 6B voted unanimously in support of the  
2 proposal.

3 Finally, I'd just like to mention  
4 as an aside that OP is conducting a more  
5 comprehensive review of alley dwellings,  
6 something that is ongoing at the moment.  
7 What the conclusions of that would be, I'm  
8 not sure. But it is certainly something we're  
9 looking at.

10 And that concludes my  
11 presentation. I'm not available for  
12 questions.

13 CHAIRPERSON LOUD: Thank you. And  
14 it was an excellent report. We appreciate it  
15 being a part of the record.

16 I'm going to turn now to Board  
17 members to see if there are any questions for  
18 the Office of Planning.

19 VICE CHAIRMAN DETTMAN: Mr.  
20 Goldstein, can you talk a little bit about  
21 the historic status of the building itself in  
22 the District it lies within?

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1 MR. GOLDSTEIN: Sure. Well, the  
2 applicant has submitted an application to the  
3 Historic Preservation Office. In discussions  
4 with the individual who is staffed on it from  
5 HP, they've approved the property in concept  
6 for the renovations to it. And there is no  
7 expansion, so it's really more of a cosmetic  
8 change.

9 Additionally, the Commission of  
10 Fine Arts has signed off on the concept of  
11 this approval as well.

12 If you're getting a bit more about  
13 the history more from a Zoning standpoint, is  
14 that what you were -- okay. That's fine.  
15 I'll stop there then.

16 COMMISSIONER SCHLATER: Do you  
17 think its historic status distinguishes it  
18 from other structures throughout District?

19 MR. GOLDSTEIN: No, I don't think  
20 that alone would be enough to. We have quite  
21 a lot of historic contributing buildings. So  
22 that feature alone wouldn't get it there.

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1                   It certainly can be a part of a  
2 mix, I think, of factors that may be  
3 examined. But I shouldn't say that. More to  
4 the impact of not being able to expand or  
5 easily alter a property can have an effect,  
6 but I don't want to be over broad with that  
7 answer. The fact that its historic, it and  
8 of itself, is not a basis for any kind of  
9 uniqueness.

10                   CHAIRPERSON LOUD: Just got a  
11 couple of really quick follow-up questions.  
12 And if these are within your expertise, fine.  
13 If not you can so state.

14                   Is it the opinion of the Office of  
15 Planning that -- well, let me ask it  
16 differently.

17                   Given the size of the structure,  
18 the assessment is 1075 square feet?

19                   MS. FOWLER: 1750.

20                   CHAIRPERSON LOUD: I'm sorry. 1750  
21 square feet?

22                   MR. GOLDSTEIN: Yes. Just general

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1 square feet, okay. That was the earlier  
2 number.

3 CHAIRPERSON LOUD: Okay.

4 MR. GOLDSTEIN: Yes.

5 CHAIRPERSON LOUD: All right. Is  
6 there any correlation that you see between  
7 the size of the structure and its ability to  
8 be marked for matter-of-right use? In other  
9 words, I'm thinking for example of a musician  
10 that might, if wanted to run a music studio.

11 I think the artist studio definition in our  
12 regs section 199 includes a category for  
13 composition of music.

14 MR. GOLDSTEIN: Yes.

15 CHAIRPERSON LOUD: So a musician  
16 comes in, you know a little square box and  
17 you do your music. But certainly that amount  
18 of square footage would well exceed what the  
19 need would be for that particular type of  
20 artist use. Do you see a correlation at all  
21 between the size of the structure and whether  
22 it can be put to a matter-of-right use?

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1 MR. GOLDSTEIN: That's an  
2 interesting question. I feel like that  
3 question can cut either way. To one possible  
4 tenant that might -- or multiple tenants,  
5 that might be a very attractive feature of  
6 the property. To another, it may seem too  
7 large. It's hard for me to say necessarily in  
8 sort of without sort of greater context. It's  
9 hard to say whether a space is more or less  
10 appropriate.

11 It may cost more to renovate a  
12 larger property; it could theoretically. But  
13 as far as the use of it, I don't know which  
14 way that cuts.

15 CHAIRPERSON LOUD: Well if you're  
16 uncertain about which way it cuts, how can  
17 you be absolutely sure that this property can  
18 be used matter-of-right as an artist studio?

19 MR. GOLDSTEIN: Well, the  
20 regulations say that an artist studio can be  
21 in 450 square feet. I think it has some type  
22 of limitation. So you could at least get

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1 maybe one, two or perhaps three artist  
2 studios in there. Then again, you can also  
3 have a mix and match of storage and parking  
4 and artist studio. It would be hard for me to  
5 definitively say you couldn't use it for  
6 conforming uses. I think it probably seems  
7 clear that you probably could use it.  
8 Whether the layout becomes the most efficient  
9 use of space, it's hard to say. But I don't  
10 see anything in the size that would prohibit  
11 someone from using it as an artist studio.

12 CHAIRPERSON LOUD: So in the three  
13 prong variance test what I'm sort of cleaning  
14 is that you don't see a way that the  
15 applicant can establish this as an  
16 exceptional situation or unique property?  
17 Even if they can come back with some  
18 additional information about undue hardship,  
19 do you see a way that they can make the  
20 unique prong of the test?

21 MR. GOLDSTEIN: I had trouble  
22 getting there. I can't say that no evidence

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1 could sway me. Who knows? I had trouble  
2 getting there based on what I saw.

3 There's a lot of alley buildings  
4 in this particular square. There's other two  
5 story buildings on alleys in this particular  
6 square. Other alley lots in this square. It  
7 was a bit more difficult to get to an  
8 exceptional circumstances for this particular  
9 one.

10 It is a little larger. I think  
11 that is a distinguishing feature. But  
12 whether that's enough to make it a specific  
13 uniqueness, I didn't get there based on that.

14 CHAIRPERSON LOUD: You did offer  
15 that there may be some circumstances where  
16 looking at the record before us this could  
17 rise to the level of being unique or  
18 exceptional. Does anything jump out at you  
19 that would make this an exceptional situation  
20 for this applicant and/or unique property?

21 MR. GOLDSTEIN: Yes. I'd rather  
22 not conjecture there. I guess I just -- I

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1 hate to say definitively that I can't ever  
2 imagine it being considered unique. I can't  
3 think of the specific evidence at this point  
4 that would get me there, but I'm certainly  
5 willing to listen.

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

9 Board members, are there any  
10 further questions. Okay.

11 Ms. Fowler, did you have any  
12 questions for the Office of Planning?

13 MS. FOWLER: Yes, I do.

14 Mr. Goldstein, I understand there  
15 was a case this morning that was an alley  
16 dwelling that was approved.

17 MR. GOLDSTEIN: Sure.

18 MS. FOWLER: Was that project  
19 supported by the Office of Planning?

20 MR. GOLDSTEIN: No, it wasn't.

21 MS. FOWLER: It wasn't?

22 MR. GOLDSTEIN: Yes.

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1 MS. FOWLER: And would you  
2 consider a precedent to this project, to this  
3 proposal?

4 MR. GOLDSTEIN: Well, we don't  
5 like to talk about things in terms of  
6 precedent. Each case we like to say kind of  
7 rises and falls on its own particular  
8 circumstances.

9 MS. FOWLER: Okay. And then could  
10 you explain what the reasoning was that you  
11 think that one was approved, or are you able  
12 to talk about that case?

13 MR. GOLDSTEIN: Yes, I probably am  
14 not in the best situation. I'm probably not  
15 the most informed person to be able to  
16 comment on the Board's reasoning that they  
17 heard in that case.

18 MS. FOWLER: Okay. Thank you.

19 CHAIRPERSON LOUD: No further  
20 questions, Ms. Fowler? Okay.

21 Then what we would do now, what we  
22 will do now is turn to the ANC, which is

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1 automatically a party in the case and if  
2 they're here, now would be the time to come  
3 up and give your report.

4 If they're not here, I'll note for  
5 the record that the ANC did file a report and  
6 that report is our Exhibit 22. It's dated  
7 June 11, 2009. And in their report they do  
8 vote approval of the application. So that  
9 recommendation from the ANC will be given  
10 great weight as a part of our review of the  
11 case.

12 MR. PARSONS: If I may just  
13 inquire, we also had the support of the  
14 Capitol Hill Restoration Society. Did they  
15 file a report because they were supportive as  
16 well?

17 CHAIRPERSON LOUD: My file doesn't  
18 reflect any filing by the Capitol Hill  
19 Restoration Society. Let me check with other  
20 Board members to see if that was part of your  
21 record.

22 It doesn't look like it was

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1 something that made it into the record. So  
2 we don't have that.

3 It does look like we did get a  
4 petition of support from various neighbors  
5 that you have, and that's our Exhibit 9.  
6 However, right now we just have the ANC part,  
7 which is why I did mention.

8 Now this is the time for parties  
9 or persons that are in support of application  
10 to give testimony. I think you mentioned  
11 that there were two persons. Is there a  
12 second one? Okay. Okay. So you can  
13 actually feel free to come to the witness  
14 table and then we can do both of these  
15 witnesses.

16 There's a time limit of three  
17 minutes. And so please try your best to say  
18 what you have to say within that time frame.

19 And good afternoon.

20 MR. WALL: Thank you. Good  
21 afternoon. My name is Joe Wall. I'm a  
22 resident of 115 Rumsey Court, Southeast,

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2 I'm here today to testify in  
3 support of the Parsons' application for the  
4 improvements for the property.

5 In our experience, the Parsons  
6 have been excellent neighbors. In this  
7 particular instance they've been proactive in  
8 terms of contacting us within the  
9 neighborhood, explaining to us what their  
10 goals and objectives are. It's been a very  
11 transparent process.

12 I think one of the benefits as a  
13 homeowner in the court for me is that it  
14 continues to help us improve the living  
15 environment within the alley environment. It  
16 does take an inactive property and revitalize  
17 it. Unfortunately, I think we're at a bit of  
18 an inflection point in terms of how much it  
19 costs to sustain a home or property versus  
20 leaving it empty, unoccupied.

21 I know personally through  
22 renovation work on my own home, which is a

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1 half of the usable space that they're talking  
2 about, that it's extremely expensive just to  
3 maintain the exterior brick, for example. In  
4 a, I believe, 300 square foot that I had  
5 repaired last year, it was almost \$7,000 just  
6 for that. And their exterior far exceeds  
7 mine. I don't know the dimensions.

8           Having said that, also having a  
9 residence there would continue to expand, I  
10 guess, our social footprint if you will, in  
11 that we would have more neighbors in the  
12 court. Help us lock down that area and  
13 dissuade people from casual -- what should I  
14 say?

15           Well, recently we've had people  
16 tagging in the backyards. We also had a  
17 break-in three doors up the other night into  
18 one of the homes on D Street. The more  
19 animated, I guess, a community we can be, the  
20 more forthcoming in terms of people coming  
21 and going, I think the safer we'll be as  
22 well.

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1                   But my bigger concern is that if  
2 the Parsons really aren't able to make these  
3 improvements, I'm not sure what else they can  
4 do with the property other than probably make  
5 it a parking lot, which is really not  
6 desirable from our perspective.

7                   I'd be happy to answer any  
8 questions if any of you folks have them.

9                   CHAIRPERSON LOUD: Thank you, Mr.  
10 Wall. Let' see if there any questions from  
11 the Board. It doesn't look like we have any.  
12 But thank you for your testimony this  
13 afternoon.

14                  MR. WALL: Thank you very much.

15                  CHAIRPERSON LOUD: Appreciate it.  
16 Appreciate your patience in waiting.

17                  Ms. Fowler, do you have another  
18 witness in support?

19                  MS. FOWLER: No, we only had one.

20                  CHAIRPERSON LOUD: You only had  
21 one in support? Okay.

22                  Then now would be the time if

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1 there are any persons in the audience who are  
2 in opposition to the application. Now would  
3 be the time to give your testimony. And  
4 seeing none, we turn back to you, Ms. Fowler,  
5 for closing remarks.

6 MS. FOWLER: I don't think I have  
7 anything else to add. But thank you for your  
8 consideration of this project. And I think  
9 it's going to be a very welcome change in  
10 this alley and we hope that you give it some  
11 thought.

12 Thank you.

13 CHAIRPERSON LOUD: Yes, please?  
14 If you could speak into the -- there you go.

15 MS. PARSONS: I think it is  
16 worthwhile just considering the incentive.  
17 When my neighbor spoke about the cost of  
18 repairing brick work and so on, this building  
19 does require considerable improvement to the  
20 exterior. And I think making it habitable on  
21 one level would perhaps give us extra  
22 incentive to do that work. Not that we want

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1 to maintain property that isn't in good  
2 shape, it still would be a big boost and I  
3 think improve it greatly for many people.

4           Furthermore, it does have two  
5 parking spaces within the building. And so  
6 if it were converted into living space, there  
7 would be parking. It would not mean that  
8 people would be losing parking spaces or that  
9 they would be creating the need for extra  
10 parking spaces.

11           And although it has been said that  
12 this building is not unique, it is in fact  
13 unique because it is double the size of any  
14 of the dwellings that are already on the  
15 block. It is quite a significantly unique  
16 building just for that reason.

17           I think that's it.

18           MR. PARSONS: I would just like to  
19 add that when she says that it's bigger,  
20 here's what she's referring to.

21           CHAIRPERSON LOUD: You're still  
22 going to need a microphone, Mr. Parsons.

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1 MR. PARSONS: When you look on D  
2 Street you have 124D, 126D and 128D. This  
3 building actually occupies the rear of the  
4 two different buildings so that the next  
5 garage is -- it would seem to be just a  
6 little under half, but this is twice the  
7 width of the ordinary -- well, this one here  
8 has that courtyard. But the typical garage,  
9 this is almost double the size of the typical  
10 garage. So it is a much larger structure.

11 In other words, there is no one  
12 126 garage. Just 124D which occupies 126 and  
13 124.

14 CHAIRPERSON LOUD: Okay. Thank  
15 you. And thank you, Ms. Fowler. And thank  
16 all of your witnesses.

17 Before we decide what we're going  
18 to do, the Office of Planning, the way I  
19 processed their testimony is that they sort  
20 of are in a grey area about undue hardship  
21 and whether some additional evidence might  
22 make that case better. On substantial

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1 detriment to the public good, they're very  
2 concerned about this impairing the Zone Plan.  
3 We heard that this morning on a similar case.

4 But nonetheless, there's a lot of testimony  
5 about the ANC and the neighbors that support  
6 and so on.

7 On the issue of uniqueness,  
8 though, I think what I got from Mr.  
9 Goldstein's testimony is that he doesn't feel  
10 that there's almost anyway that uniqueness  
11 can be established. And I just wanted to  
12 give you an opportunity to perhaps summarize  
13 what you think the evidence has been that  
14 would establish the uniqueness or the  
15 exceptional situation part of the variance  
16 test. And I think your client talked about  
17 the size of the structure. And, of course,  
18 the size would drive the rehabilitation costs  
19 to some extent, and that would be a factor in  
20 the rental yield and breaking even on putting  
21 it to a matter-of-right use for that zone.  
22 But again, I'm just giving you an opportunity

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1 to sort of sum it all up.

2 MS. FOWLER: Okay. Thank you.

3 So, yes, we talked about the size.

4 Also the fact that it's its own lot. There  
5 are other dwellings on the alley that are  
6 inhabited, but they are also attached to the  
7 property facing the street. This is actually  
8 its own lot.

9 And of the eight units that are on  
10 the block that have two stories, it's the  
11 only one that's not occupied. All the other  
12 buildings that are either the rowhouses or  
13 the other carriage house structures are being  
14 lived in. So I think it's unique in that its  
15 the only that is not.

16 And I think also the location  
17 proximity to the Capitol, proximity to other  
18 uses. We put in a document into the file  
19 that has a diagram of all the other buildings  
20 in the area. I'm sure you have that in your  
21 file somewhere. This one here. So you can  
22 see what kind of demand. Like all the

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1 buildings around this area that would have a  
2 demand for that kind of rental versus the  
3 artist studio, which I just don't think is in  
4 demand in this neighborhood. And we don't  
5 really have any other examples of artist  
6 studios that have been put into other  
7 buildings in this area.

8 I think that's all I have.

9 CHAIRPERSON LOUD: Okay.

10 MS. PARSONS: May I say something  
11 else?

12 CHAIRPERSON LOUD: Yes, please.

13 MS. PARSONS: There is this other  
14 question of if we returned it to a commercial  
15 use, such as a brick storage warehouse or an  
16 auto repair shop, or something like that, I  
17 mean how would that affect our neighbors? I  
18 mean if we actually used it for a commercial  
19 purpose for which it would be equally  
20 suitable, how would our neighbors who are  
21 living next door feel about that? I mean,  
22 which is what we could do with a huge

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1 building like this, and it has been used for  
2 storage of construction materials and also  
3 someone used it for storing antiques and so  
4 on. I mean that would generate a great deal  
5 of -- well, come toing and froing, and  
6 commercial vehicles. I mean its not  
7 inconceivable that it could be an auto  
8 workshop. I don't believe that's prescribed  
9 by the designation. You do? Oh, we can't.  
10 Oh. Well, those are the uses that have been  
11 made of this building previously.

12 CHAIRPERSON LOUD: Okay. Other  
13 than answer your question, I think the point  
14 is well taken that it's a difficult situation  
15 to be in terms of potential uses there on the  
16 sit.

17 I think what we'll do now is make  
18 a decision as to whether we'll deliberate  
19 today or we'll schedule it for deliberation  
20 at a later date. And we realize we're going  
21 on break July 28th. So if we do deliberate,  
22 we'll try to schedule it for July 28th. I

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1 think we have some time in the morning there.

2 But let me get a sense from Board members as  
3 to their thoughts on this.

4 COMMISSIONER SCHLATER: I for one  
5 feel comfortable deliberating today.

6 CHAIRPERSON LOUD: Thank you, Mr.  
7 Schlater.

8 Mr. Dettman?

9 All right. Then I think what the  
10 Board will do is deliberate on it today. And  
11 I'd like to ask one or more of my Board  
12 members here if he'd like to start us off.  
13 And if, I can start us off.

14 Okay. Not at all. I think I'll  
15 go ahead and start us off.

16 This is an application for a use  
17 variance from section 2507.2 regarding human  
18 habitation on an alley dwelling and  
19 conversion of a structure that doesn't meet  
20 the 30 foot wide alley requirements of our  
21 regulations. In order to prevail on this  
22 application the proponent would have to show

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1 first that the property is unique in some  
2 respect, topography or some other physical  
3 dimension of the property itself, or that  
4 there's an exceptional situation attendant to  
5 the property.

6           Secondly, the applicant would have  
7 to show that because of that uniqueness or  
8 because of that exceptional situation there's  
9 an undue hardship on the applicant. And that  
10 as a result of that undue hardship, the  
11 applicant is not able to put the property to  
12 a zoned use, to a conforming use in a way  
13 that gives the applicant a fair and  
14 reasonable return on their investment. I  
15 think that's what the case law says.

16           And third and finally, that  
17 there's no substantial detriment to the  
18 public good or the Zone Plan.

19           I think in the case before us we  
20 heard with respect to the uniqueness prong of  
21 the test that the size of the building is  
22 large at 1750 square feet, particularly

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1 compared to other alley dwellings which were  
2 maybe about a third of that, 525 square feet.

3 Secondly, that it was unique  
4 because it was close to Capitol Hill and that  
5 created, perhaps, some rental opportunities,  
6 as I understood the testimony.

7 But largely I think the argument  
8 was that the size of the building made it  
9 unique. The Office of Planning disagrees  
10 with that conclusion, I think it's safe to  
11 say fairly strongly seeing the shape of the  
12 property as rectangular and there being  
13 nothing about the size that's particularly  
14 unique that would rise to the level of  
15 meeting the variance test, I think is the way  
16 Mr. Goldstein put it.

17 It's a tough issue for me. But I  
18 think at the end of the day where I come out  
19 is that I have not been persuaded that the  
20 applicant has made the case that there's an  
21 exceptional situation with respect to this  
22 property or that its unique.

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1                   We did have a use case earlier  
2 this morning, a use variance case and it was  
3 fairly identical to this one in terms of it  
4 being in the alley. But each case has its  
5 own particular facts. And in that case they  
6 were able to establish that there was an  
7 exceptional situation with respect to the  
8 property because it had been created in 1904  
9 on its own lot, and it had access to a  
10 principal street. And that in subsequent  
11 years the build out occurred and residential  
12 structures were built surrounding that  
13 property to cut it off, in effect, make it an  
14 alley. But it didn't really start out as an  
15 alley property.

16                   So I'm just making the point that  
17 there was evidence there about the uniqueness  
18 of that property that although there was some  
19 strong evidence here, that evidence tended to  
20 better show the uniqueness component of the  
21 variance test.

22                   With respect to there being an

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1 undue hardship, the applicant provided some  
2 evidence that it would take about, I believe  
3 it was \$80,000 to upgrade the current  
4 structure for an artist studio. It would take  
5 about \$100,000 to upgrade it for residential.

6 The property had been purchased in  
7 '04 for about \$95,000 and they have been  
8 paying 900 bucks annually in taxes.

9 I thought and found the undue  
10 hardship evidence persuasive. The amount of  
11 money that it would take to make the  
12 structure viable as an artist studio in  
13 concert with what I think was some testimony  
14 about what artists were willing to pay for,  
15 at least one artist, \$125 a month would not  
16 seem to me that it would cover basic debt  
17 service on the property.

18 So this prong was a very close  
19 call for me, but I found if the applicant  
20 could have made the uniqueness prong, I would  
21 have given the applicant the benefit of the  
22 doubt on the undue hardship prong. But I

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1 stand open to be persuaded, you know, one way  
2 or the other by my colleagues.

3           And then on the substantial  
4 detriment to the public good, I thought the  
5 applicant nailed it. I thought that they  
6 established that there would not be any  
7 substantial detriment to the public good.  
8 They have this report of the ANC, they have  
9 the support of Mr. Wall, they had the  
10 petition by neighbors. So that persons in and  
11 around that community who are genuinely  
12 affected by this would support it.

13           I know the Office of Planning took  
14 the position that the alley dwelling harms  
15 the Zone Plan. But I think as we discussed  
16 this morning if you take that rigid a stance,  
17 then anytime you're going to grant any relief  
18 from a regulation or a zone, then you're  
19 going to harming the Zone Plan. The whole  
20 point of the variance test is that there are  
21 certain situations where you're going to  
22 allow that because an applicant meets the

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1 test and it doesn't harm the Zone Plan.

2 In addition to which, I think the  
3 underlying use here is also residential, it's  
4 R-4. So that this is a residential use. And  
5 so to suggest that a residential use in the  
6 R-4 would harm the Zone Plan, especially  
7 where you can have a residential use in the  
8 alley, too, provided it meets the alley width  
9 requirements. I'm not fully buying that  
10 argument that it harms the Zone Plan. But  
11 nonetheless, I really struggle with the whole  
12 uniqueness prong of the test and the evidence  
13 available before us on that prong.

14 Let me open it up to Board  
15 members.

16 VICE CHAIRMAN DETTMAN: Mr.  
17 Chairman, I think where you end up with  
18 respect to your analysis on the variance  
19 test, I end up in the same place that you do.  
20 However, I was persuaded that the applicant  
21 did meet the first prong and then did not  
22 meet their burden in demonstrating that

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1 there's going to be an undue hardship.

2 I think that the size of this  
3 building is unique. I think that it was  
4 originally constructed during a time where  
5 commercial uses on alleys were not uncommon.  
6 But in this day and age, the regulations are  
7 set up to prohibit nonresidential uses on  
8 alleys and only allow a very narrow range of  
9 uses here.

10 And so what we have is a fairly  
11 big building footprint wise, as well as two  
12 stories, that the regulations call for only  
13 being allowed to put an artist studio,  
14 parking garage and storage in there. And I  
15 think, as you mentioned in the first case  
16 this morning, the applicant did a very good  
17 job in that case of demonstrating here's the  
18 size of my building, it's fairly large in  
19 comparison to many other alley structures.  
20 But when you apply the numbers, the numbers  
21 just won't add up with a matter-of-right use.  
22 I think that's where the applicant failed to

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1 meet their burden on the second prong. That  
2 we just don't have the numbers here, and the  
3 numbers that were brought out in testimony  
4 don't persuade me that there's going to be an  
5 undue burden.

6 I think this is a neighborhood  
7 where parking and storage is at a premium,  
8 given that we have very, very small homes and  
9 we have families that have very different  
10 needs. And the fact that the applicant  
11 testified to having a tax burden of \$900 per  
12 year, which is about \$75 per month; that's a  
13 fairly low tax bill. And so I think that  
14 they would be able to generate at least some  
15 kind of reasonable return on a monthly basis  
16 with respect to putting parking and storage in  
17 this property.

18 But I share your observations with  
19 the third prong and DC OP's report. I think  
20 given the testimony that the ANC and the  
21 Capitol Hill Restoration Society, and the  
22 community are in support of this I don't see

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1 any potential for harming the public good.  
2 But I do think the Office of Planning's  
3 approach with respect to the Zone Plan if  
4 applied to other cases, will always end up  
5 having a failure on the third prong. Because  
6 you're basing the impact of the Zone Plan on  
7 the actual language of the Zoning Regulations  
8 where in fact we're applying this to grant  
9 relief from the language of the Zoning  
10 Regulations.

11 And so, again, I end up where  
12 you're at, just in a little bit of a  
13 different path.

14 COMMISSIONER SCHLATER: Well, this  
15 is my first case. It's certainly an  
16 interesting one.

17 Just on the face of it, we've got  
18 a three prong test to meet. I'll go with the  
19 easy one first.

20 The third prong I think making  
21 this structure into a residential use is  
22 certainly in the public good. That's been

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1 demonstrated through the vote of the ANC,  
2 through the testimony of the neighbors. And  
3 just on the face of it would animate the  
4 alley and clearly make it a more liveable,  
5 enjoyable neighborhood to live in for those  
6 around there. And I think it's good for the  
7 city to have residents back there in that  
8 alley.

9 In terms of the property's  
10 uniqueness, which is the first prong, just  
11 looking at the photos of the two story  
12 historic carriage house, I would say it's  
13 relatively unique. Just based on its size,  
14 based on its historic status I think it does  
15 not look like other alley structures that  
16 I've seen. And it looks like its in need of  
17 some substantial rehabilitation as well. And  
18 that goes then back to the public good prong,  
19 which is it would be good to see this  
20 property rehabbed and improved and occupied.  
21 And I think that would be good for District  
22 residents.

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1                   Now we come down to the second  
2 prong, which has to do with undue hardship  
3 upon the owner the property. And I think  
4 when it comes down to it the way I think  
5 about it is in order for the property to be  
6 rehabilitated, significant investment is  
7 going to have to be made into the property.  
8 You are not seeing rehab projects around the  
9 city being done for artist studio space, and  
10 there's a reason for that. I don't think the  
11 applicant needs to come in here with a  
12 spreadsheet showing us that the rents for  
13 artist studio space are going to support the  
14 rehab the structure, because they're just  
15 not.

16                   You're going to be able to get  
17 great rents because of proximity to the  
18 Capitol for residential rental. You're going  
19 to get, I would suggest, sir, that if you're  
20 able to rent out this space looking at  
21 something closer to \$2,000 a month. Because  
22 you'll be able to get it. And with respect

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1 to artist studio space, it's going to be much  
2 less than that. And I would venture guess  
3 that were we not to grant this exception,  
4 that you will find that you will not move  
5 forward with the project, with the  
6 rehabilitation of the structure because  
7 artist studio rents are not going to be  
8 sufficient. And I'm not swayed that storage,  
9 of using the space for storage, is going to -  
10 - well, first of all, it's not good for the  
11 neighborhood. But second of all, it's not  
12 going to generate rents, significant enough  
13 rents to rehabilitate the property.

14 So my inclination is to grant the  
15 use variance on the basis that the project  
16 certainly meets the three prong test.

17 CHAIRPERSON LOUD: Thank you, Mr.  
18 Schlater. And thank you, Mr. Dettman. I  
19 think both of you helped me see the unique  
20 prong of the test a little differently. And  
21 I already on board with the undue hardship,  
22 relatively speaking, and the substantial

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1 detriment to the public good.

2           Because my mind has not been  
3 totally made up one way or the other, I'm  
4 wide open to thinking about the uniqueness  
5 prong a little bit differently. And I do  
6 think that the size of it, and Mr. Parsons  
7 has some good testimony on this point I  
8 think. The size of it drives higher rehab  
9 costs. If it would half the size, you'd have  
10 the half rehab costs and, arguably, you could  
11 get an artist in there and you wouldn't have  
12 as much debt service to take care of. So I  
13 think I'm close to being there on that.

14           I was already there on the undue  
15 hardship, but it would be so much more  
16 helpful in cases like this to have some  
17 really clear indication that the applicant  
18 has made an effort to use the property in  
19 conformance with the zone. I know we had  
20 that strongly in the first case this morning  
21 where the applicant had some evidence on the  
22 record from an expert who talked about market

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1 uses and rental rates and debt service and  
2 how there was a gap rate between the rental  
3 rate and the debt service for storage and a  
4 gap for artist studios. And it just makes it  
5 a much stronger record.

6 And there have been some cases of  
7 BZA that have gone on up to the Court of  
8 Appeals where they talk about having  
9 substantial evidence. And I don't know if  
10 that means in every case we have to have that  
11 kind of really strong substantial evidence.  
12 It doesn't have to rise to the level of  
13 spreadsheets, but it could be simply the  
14 applicant demonstrating that they made an  
15 effort. It could be an affidavit maybe  
16 saying we made an effort and we got one  
17 artist who wanted to offer 125 bucks, or  
18 something like that. I was willing to credit  
19 that testimony this morning.

20 But I think to Mr. Dettman's  
21 point, because it's a use variance case and  
22 because I know that applicants look at

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1 everything we do very carefully and see when  
2 we've given one, that that creates the  
3 precedent for a similar one. It would have  
4 been helpful to have had a little bit  
5 stronger on the undue hardship.

6 But my mind is open and I think  
7 you guys have persuaded me on the uniqueness.  
8 I was already there on undue hardship. I was  
9 certainly there on public detriment. So  
10 let's open it back up and see here Mr.  
11 Dettman is.

12 VICE CHAIRMAN DETTMAN: Mr.  
13 Chairman, I think my mind isn't made up  
14 either. I think that, as I stated, that the  
15 applicant hasn't met their burden. But, you  
16 know I could also kind of rephrase that and  
17 say that perhaps the record's not full enough  
18 and perhaps the applicant could -- although  
19 we're in deliberations and I'm not sure if  
20 we're able to step out of deliberation and  
21 instead put our decision off, and say okay,  
22 well we're right there on the first and third

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1 prong, we just need a little bit more in the  
2 record to bolster our decision in terms of  
3 laying out the undue hardship prong.

4 So again, I'm open. But I do know  
5 that Board members can draw upon their  
6 experience as well. And I think it's to our  
7 advantage today that Mr. Schlater's here and  
8 you have this kind of background. And it was  
9 very helpful to hear your experience and the  
10 comments that you've made about how we're not  
11 seeing renovations happen right now given the  
12 economy and the amount of work that's going  
13 to have to go into this building to bring it  
14 back up to code for any use.

15 So, I can go either way. I can  
16 leave it to the applicant. I would be open  
17 for leaving to the applicant to supplement  
18 the record, or we can continue our dialogue  
19 and talk a little bit about what it would  
20 take to put this building to a parking use, a  
21 storage use and kind of how those numbers  
22 would kind of fall out.

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1                   COMMISSIONER SCHLATER: Well from  
2 a parking use perspective, I mean the  
3 building is already maximizing its parking  
4 under the proposed plans for the building. I  
5 think we have on record testimony saying you  
6 can't fit more than two parking spaces in  
7 there.

8                   So to me what we're talking about  
9 is how do you use the rest of the structure,  
10 particularly the upstairs space and how would  
11 you make that habitable space, or how would  
12 you make it artist studio space, or how would  
13 you make it storage space that would actually  
14 be rental. And in all cases it would require  
15 some significant investment on the part of  
16 the applicant to get it into that shape.

17                   So, I think the fact that the size  
18 of the property is obviously driving some of  
19 that cost. The fact that it's a historic  
20 property also drives up cost, frankly, just  
21 doing the brick pointing and the roof work,  
22 and putting in the windows that the Historic

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1 Preservation Office is going to approve; all  
2 of this drives up costs. We have high  
3 standards in the city, which is a good thing.

4 But we also have to make sure that the uses  
5 that we're demanding are practical.

6 CHAIRPERSON LOUD: So to sort of  
7 summarize where we are, I think a lot of  
8 options but realistically based on our  
9 discussion two clear options jump out at me.

10 One is to pinpoint the exact  
11 information that we think might be helpful  
12 for the undue hardship case to be made  
13 stronger and give the applicant an  
14 opportunity to submit that information.  
15 Again, whether it be an affidavit talking  
16 about efforts to utilize the property as an  
17 artist studio and the results of those  
18 efforts.

19 Or, the second option would be if  
20 we feel like we have enough in the record  
21 that would support us making a finding on  
22 each of these prongs, and again I was

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1 prepared to credit the testimony of Mr.  
2 Parsons regarding some initial outreach that  
3 had been undertaken where one artist talked  
4 about \$125 a month, and that's only been  
5 bolstered I think by Mr. Schlater's bringing  
6 his professional perspective into our  
7 deliberation, I may not necessarily need the  
8 additional information. But I'm open to the  
9 concern that we may need it. Because, again  
10 there obviously these kinds of cases are  
11 looked closely and used by applicants trying  
12 to secure similar relief. And so we want to  
13 be consistent and fair across all cases and  
14 not carve out special exceptions -- that's  
15 the wrong term. Not carve out exceptions for  
16 particular applicants based on how they've  
17 presented and that type of thing.

18 So, Mr. Dettman, you had I think  
19 the stronger concern about undue hardship and  
20 whether the case had been met, at least  
21 before hearing Mr. Schlater's remarks. And  
22 so I turn it back to you for a sense of what

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1 you think might be most helpful on that  
2 prong.

3 VICE CHAIRMAN DETTMAN: I'm  
4 comfortable going forward today. You know,  
5 relying upon the testimony that was offered  
6 by the applicant and the experience and the  
7 comments that were offered up by Mr.  
8 Schlater.

9 I think it's the weakest prong for  
10 me, but I think based on the numbers and,  
11 again, the comments I can be convinced that  
12 the second prong has been met.

13 To put it off and allow the  
14 applicant to strength the record with some  
15 kind of debt service analysis, I could see  
16 that as an appropriate way to go if there was  
17 some kind of opposition in the case. This is  
18 a widely supported application.

19 And also, there really isn't a  
20 standard that we have to hold an applicant up  
21 to in order to say that, you know, you have  
22 to submit a spreadsheet or you have to submit

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1 this thorough analysis. We're going to deal  
2 with this probably several times going  
3 forward. And then we're just going to have to  
4 pull from the evidence and our experience to  
5 make the best decision that we can.

6 So I'm prepared to vote today.  
7 I've been convinced.

8 CHAIRPERSON LOUD: Just turn to  
9 OAG for one quick clarification on something  
10 Mr. Dettman said. Because I just want to  
11 make sure that we're proceeding correctly.

12 And I agreed with everything you  
13 said, Mr. Dettman. I'm prepared to go  
14 forward today and prepared to utilize the  
15 analysis that has been put on the record by  
16 you and Mr. Schlater.

17 But in terms of the evidence tests  
18 for the undue variance, is there a  
19 substantial evidence test or is less than  
20 that?

21 MS. NAGELHOUT: No, it is  
22 substantial evidence. The findings of fact

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1 have to be based on substantial evidence in  
2 the record and the conclusions of law flow  
3 from that.

4 CHAIRPERSON LOUD: Okay. And the  
5 fact that there is no competing evidence, is  
6 that a factor that makes it easily for a  
7 proponent's evidence to be deemed  
8 substantial?

9 MS. NAGELHOUT: That's the Board's  
10 call. You decide what's substantial evidence  
11 in your mind.

12 CHAIRPERSON LOUD: Okay. All  
13 right. Well, you've answered my query.

14 So I feel comfortable then in  
15 light of the analysis and our exchange here  
16 making a personal finding that the applicant  
17 has met the burden for each prong of the  
18 variance, use variance test. And it sounds  
19 like each of you also feel comfortable making  
20 that same personal finding. And so  
21 collectively, it looks like we're all in  
22 support of the applicant in this very

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1 specific situation. I think we all have said  
2 it's been a very, very close call. But on  
3 the uniqueness point, the sheer size of the  
4 structure, I think Mr. Schlater you'd  
5 emphasized, as well as Mr. Parsons and Ms.  
6 Fowler.

7           And then on the undue hardship  
8 we've talked about the specific evidence in  
9 the record about the artist who approached  
10 the applicant offering \$125 a month. And  
11 then Mr. Schlater drawing in personal  
12 experiences about the current economic  
13 climate and the reality of that climate and  
14 in effect, us taking almost administrative  
15 notice of that.

16           And then on substantial detriment,  
17 none of us had any problems with that prong.

18           So if there's not any further  
19 deliberation, we can move for a vote on this.  
20 Okay. I don't hear any further deliberation  
21 on it.

22           So then I would like to move

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1 approval of Application No. 17943 for  
2 variance relief from the 30 foot alley width  
3 requirements for a dwelling on an alley lot  
4 under subsection 2507.2 in the R-4 at the  
5 rear of 124 D Street, Southeast.

6 Is there a second?

7 COMMISSIONER SCHLATER: Second.

8 CHAIRPERSON LOUD: Motion has been  
9 and seconded. Is there further deliberation?

10 Hearing none, all those in favor of the  
11 motion please say aye.

12 BOARD MEMBERS: Aye.

13 CHAIRPERSON LOUD: All those  
14 opposed say no. Are there any abstentions?

15 Ms. Bailey, can you read back the  
16 vote?

17 MS. BAILEY: Mr. Chairman, the  
18 vote is recorded as three-zero-two to grant  
19 the application.

20 Mr. Loud made the motion. Mr.  
21 Schlater seconded the motion. Mr. Dettman  
22 supported the motion. Two Board members are

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1 not sitting at this time.

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

4 Thank you for your time this  
5 afternoon. We appreciate it.

6 Mr. Goldstein, thank you for your  
7 report and your testimony. It was very  
8 appreciated and I thought a very good report  
9 as well.

10 MS. BAILEY: Mr. Chairman, we  
11 would issuing a summary order, correct?

12 CHAIRPERSON LOUD: That's correct  
13 because there's no ANC opposition, right?  
14 All right. So this would be a summary  
15 decision. Okay.

16 Thank you for your time.

17 Is there anything further in this  
18 case?

19 MS. BAILEY: No, Mr. Chairman.

20 CHAIRPERSON LOUD: All right.  
21 Thank you.

22 Good afternoon, again. And it

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1 looks like you guys are setting up some of  
2 your exhibits, so we'll give you chance to  
3 complete that. And I think Ms. Bailey will  
4 then call the case.

5 Are you ready to move forward?  
6 Just wanted to double check, make sure your  
7 witnesses were here.

8 And we do apologize for running a  
9 little behind schedule this afternoon.

10 MS. BAILEY: Mr. Chairman, before  
11 calling the case, is there anyone who was not  
12 sworn in previously who needs to be sworn at  
13 this time? Okay.

14 (Witnesses sworn.)

15 MS. BAILEY: This is Application  
16 No. 17942. It's the application of the Asian  
17 American LEAD, and it's pursuant to 11 DCMR §  
18 3104.1, for a special exception to allow the  
19 continued operation of a community center  
20 under section 209. The property is located  
21 at 1323 Girard Street, Northwest. It's also  
22 known as Square 2855, Lot 828. And it's zoned

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1 R-4.

2 Mr. Chairman, there is a request  
3 for party status in this application.

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

6 Why don't we do the preliminary  
7 matters first. I think the request for party  
8 status -- Ms. Brizill, if you'd like to join  
9 who are at the witness table. And I believe  
10 when you stepped forward earlier you  
11 mentioned something regarding affidavit of  
12 posting. So why don't we get the issue of  
13 party status squared away, and then we can  
14 move to the posting issue.

15 Good afternoon again, everyone.  
16 And if anyone could just state your name and  
17 address for the record. And then we'll go  
18 into the preliminary matter.

19 MS. BRAY: Good afternoon, Board  
20 members. Welcome Commission Schlater on your  
21 first day with the BZA.

22 My name is Kinley Bray and I'm

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1 with the law firm of Arent Fox here on behalf  
2 of the applicant, Asian American LEAD, AA  
3 LEAD, the applicant in case number 17942.

4 CHAIRPERSON LOUD: Good afternoon.

5 MS. LAI: Good afternoon. My name  
6 is Rosetta Lai. And I'm the Executive  
7 Director of Asian American LEAD. Address is  
8 1323 Girard Street, Northwest, Washington,  
9 D.C.

10 MS. BRIZILL: Excuse me, Mr.  
11 Chairman. I had a question. At these matters  
12 are you required to give your office address  
13 or your home address?

14 CHAIRPERSON LOUD: I don't know if  
15 there's a technical rule on that. I believe  
16 typically witnesses give their home address.

17 MS. BRIZILL: That's what I  
18 understood.

19 CHAIRPERSON LOUD: Okay.

20 MS. LAI: Okay. My home address  
21 is 4615 North Park Avenue, Chevy Chase,  
22 Maryland.

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1 CHAIRPERSON LOUD: Thank you.

2 MS. McCARTHY: My name is Ellen  
3 McCarthy. I'm the Director of Planning and  
4 Land Use for the law firm of Arent Fox.

5 CHAIRPERSON LOUD: Good afternoon,  
6 and thank you.

7 I believe you're going to have to  
8 pull the microphone closer to you and make  
9 sure it's cut on at the bottom.

10 COMMISSIONER AKINMBONI: Good  
11 afternoon. My name is Commissioner  
12 Akinmboni. I'm 1B08.

13 CHAIRPERSON LOUD: Good afternoon  
14 to each of you.

15 Let me just get your name,  
16 Commissioner, again and the spelling of it so  
17 I can make sure I have it correctly.

18 COMMISSIONER AKINMBONI: Rosemary,  
19 the last name is A-K-I-N-M-B-O-N-I.

20 CHAIRPERSON LOUD: Thank you very  
21 much. Thank you.

22 And to my far right?

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1 MS. BRIZILL: My name is Dorothy  
2 Brizill. That's B-R-I-Z-I-L-L. And I reside  
3 at 1327 Girard Street, Northwest.

4 MR. IMHOFF: And Gary Imhoff, 1327  
5 Girard Street, Northwest.

6 Oh, that green light looked odd.  
7 Gary Imhoff, 1327 Girard Street,  
8 Northwest.

9 CHAIRPERSON LOUD: Thank you,  
10 everyone. And again, thanks for your  
11 patience this afternoon in getting to this  
12 case. This is our last case of the afternoon  
13 and we're going to follow all of our  
14 procedures and make sure all of what the  
15 parties are allowed to present and the cross  
16 examination takes place, and everyone is  
17 given their rights. But we are going to  
18 stick to the format. We are going to stick to  
19 the limitations on cross examination in terms  
20 of scope and relevance and so on and so  
21 forth. And stick to the rules regarding  
22 party status and posting, et cetera. So

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1 we'll fair, wide open hearing but we will  
2 conduct in a manner that makes sure that the  
3 rules are followed.

4 I think the initial consideration  
5 is party status. And so there's an  
6 application for party status from --is Ms.  
7 Brizill or Mrs. Brizill?

8 MS. BRIZILL: Ms. Brizill.

9 CHAIRPERSON LOUD: Ms. Brizill and  
10 Mr. Imhoff.

11 MS. BRIZILL: Yes.

12 CHAIRPERSON LOUD: Okay. And I  
13 think what we'll do is ask you to give us  
14 some information as to your qualifications to  
15 be granted party status and then see if  
16 there's any objection from applicants with  
17 respect to that. And then any questions from  
18 the Board.

19 MS. BRIZILL: Well, Mr. Chairman,  
20 on July 1 we filed a formal letter signed by  
21 myself and Mr. Imhoff. We both reside at 1327  
22 Girard Street. Our property is immediately

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1 adjacent to the subject property for today's  
2 hearing.

3 We have been residents in the area  
4 and at that address since 1982. We have long  
5 been active in the civic organization in the  
6 community. And we believe that not only  
7 would our interests and our property be it  
8 possibly adversely effected by any actions by  
9 this Board, but we also believe that our  
10 proximity to subject property, our history of  
11 a civic engagement in Columbia Heights, and  
12 our knowledge of this particular property in  
13 terms of the proceedings on this property  
14 that occurred more than five years ago give  
15 us a unique perspective for which we are  
16 seeking party status.

17 MR. IMHOFF: May I add to that  
18 that we were parties in the initial case at  
19 the application for special exception before  
20 the BZA in 2003.

21 CHAIRPERSON LOUD: Okay. Thank  
22 you.

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1                   Let me just for clarification  
2 purposes are you asking to be granted party  
3 status as the next door neighbors and then  
4 one of you will represent that party interest  
5 by way of asking questions, for example, or  
6 presenting a case, or are you asking  
7 separately to be accorded party status? So  
8 we can clarify it as we move forward in the  
9 proceeding.

10                   MS. BRIZILL: We're separately  
11 asking for party status. And only one of us  
12 will do cross examination, however.

13                   MR. IMHOFF: Yes. Ms. Brizill  
14 will do cross examination. But we would both  
15 like to be accorded the right to speak.

16                   CHAIRPERSON LOUD: Okay. Okay.  
17 Well we'll as we get to that bridge, well  
18 cross is in the context of the hearing. Let  
19 me see if the applicant has any questions.

20                   MS. BRAY: The applicant has no  
21 objection to Ms. Brizill and Mr. Imhoff being  
22 granted party status as a single party in

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1 this case. But we would request the Board's  
2 careful consideration of doubling up on  
3 testimony and time.

4 CHAIRPERSON LOUD: Right. Thank  
5 you. And I think we're very sensitive to  
6 that and in every instance would want to  
7 clarify we're not looking to have any  
8 duplication of evidence, duplication of  
9 testimony, certainly no duplication of cross.  
10 And typically when we have these types of  
11 party status applications the parties work  
12 together. They figure out what works best  
13 for them and then present a united front that  
14 simplifies the proceeding. And so depending  
15 on how we make the decision, we would ask the  
16 two of you to do that as well, particularly  
17 since you're, I believe, husband wife.

18 MS. BRIZILL: Yes.

19 CHAIRPERSON LOUD: And both live  
20 next door.

21 MS. BRIZILL: Yes.

22 CHAIRPERSON LOUD: To sort of

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1 establish who is going to do what so that  
2 from the vantage point of the proceeding  
3 there's a single point status applicant.

4 Let me see if Board members have  
5 any questions.

6 VICE CHAIRMAN DETTMAN: Mr.  
7 Chairman, our Exhibit 40 is the letter, the  
8 request for party status that was submitted  
9 to us. And other than Ms. Brizill's and Mr.  
10 Imhoff's stated proximity to the stated  
11 property, I'm not seeing how what's stated in  
12 this letter meets our 3126.2 provisions on  
13 what they need to demonstrate, successfully  
14 demonstrate to quality for party status. And  
15 in particular, 3106.2(e)(4) and (5) which  
16 says that "You need to state the  
17 environmental, economic, social and other  
18 impacts likely to affect you and how those  
19 impacts will more significantly, distinctly  
20 or uniquely affect you as opposed to people  
21 in the general public." So if you could  
22 articulate for the Board what those effects

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1 are, what those impacts of the proposal are  
2 on you and how they distinctly affect you.

3 MS. BRIZILL: Well, Mr. Dettman,  
4 it was not my understanding that our  
5 submission for party status had to be long  
6 and detailed. And indeed when this was  
7 submitted I was still developing our position  
8 hoping to working with the ANC, and indeed a  
9 part of me hoped to work with the applicant.

10 So it wasn't my intent to lay out our case  
11 or lay out our arguments or lay out our  
12 issues.

13 Because we are next door  
14 neighbors, and as my husband indicated,  
15 because we have been involved in this special  
16 exception issue since day one when the case  
17 was filed in 2003 we know what the order that  
18 came from this Board said that they were  
19 supposed to do in 2003. We also know what  
20 they have failed to do. We also know that  
21 the standard that they must bear is with  
22 regards to noise and traffic. Because we are

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1 neighbors, because we are active in our  
2 neighborhood, because we are civically  
3 engaged we are well versed as regards to the  
4 issues that are before this Board and the  
5 impact of their special exception on the  
6 neighborhood, on us as neighbors with regards  
7 to the issue of noise and traffic. And that  
8 is what I intend to address.

9 VICE CHAIRMAN DETTMAN: And it's  
10 your testimony that the possible impacts on  
11 noise and traffic generated by the applicant  
12 somehow significantly impact you more than  
13 people in the general public?

14 MS. BRIZILL: I think that my  
15 testimony and statements will indicate that  
16 because I am their closest neighbor, I am  
17 across a driveway. Their nearest neighbor  
18 almost a quarter of a block away. I have a  
19 unique perspective because I not only share a  
20 property line with them, but I share a front  
21 yard and a back yard. So that I know what's  
22 going on at the property and I know

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1 specifically as regards to the issues of  
2 noise and traffic.

3 VICE CHAIRMAN DETTMAN: I see.

4 MS. BRIZILL: So I would say that,  
5 yes, I have a unique perspective as regards  
6 to next door neighbor, but I also have spoken  
7 with my neighbors and I have a unique  
8 perspective based upon the impressions and  
9 the concerns of my neighbors in my block.

10 VICE CHAIRMAN DETTMAN: Okay.

11 Thank you.

12 VICE CHAIRMAN DETTMAN: Thank you,  
13 Mr. Dettman.

14 Mr. Schlater, did you have any  
15 questions regarding party status application.

16 COMMISSIONER SCHLATER: No.

17 CHAIRPERSON LOUD: Okay. Counsel  
18 for applicant, do you have any follow-up  
19 questions?

20 MS. BRAY: The only follow-up  
21 question is I'd like to know if, Ms. Brizill,  
22 just to clarify whether your basis for

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1 bringing the party status request is based on  
2 your specialized knowledge of the property or  
3 based on the distinct impact that the special  
4 exception use would have on you and your  
5 husband as residents of the next door  
6 immediately adjacent property?

7 MS. BRIZILL: Both.

8 MS. BRAY: We have no objection to  
9 the party status application.

10 CHAIRPERSON LOUD: Okay. Then let  
11 me just read the rule regarding party status  
12 applicants so that we are real clear on what  
13 makes an applicant qualified for party  
14 status. And Mr. Dettman talked about a  
15 number of the criteria under 3106.2 and then  
16 it's all sort of capped in 3106.3 which says:  
17 "In considering any request for party status  
18 pursuant to 3106.2 the Board shall grant  
19 party status only if the person requesting  
20 party status has clearly demonstrated that  
21 the person's interest would likely be more  
22 significantly, distinctly or uniquely

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1 affected in character or kind by the proposed  
2 Zoning relief than those of other persons in  
3 the general public."

4           And for me looking at that  
5 standard, the fact that there's no opposition  
6 from Ms. Bray, the fact that this applicant  
7 lives right next door and her testimony is  
8 that I think the next closest neighbor was a  
9 quarter of a block away. But even if they  
10 weren't a quarter of a block away, this party  
11 status applicant is right next door. And it  
12 is a community center where folks will be  
13 coming in and out. I think the applicant has  
14 demonstrated that she's entitled to party  
15 status.

16           I think to Mr. Dettman's point,  
17 though, there is a requirement for a filing  
18 14 days before the hearing that would lay all  
19 of that out. And so, again, sticking with  
20 the rules that's a reasonable expectation for  
21 the Board to have. But nonetheless, you're  
22 here now and you can testify now as to how

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1 you make the unique relationship to the case.

2 And I think the applicant's made that case.

3 Okay. It looks like Board members  
4 are nodding in agreement. So do we have to  
5 take a vote, Ms. Bailey, on this formally?

6 MS. BAILEY: You can, Mr.  
7 Chairman. It's at your discretion.

8 CHAIRPERSON LOUD: Okay. Well,  
9 let's go ahead and vote on it.

10 All members who are in favor of  
11 granting party status to the applicants say  
12 aye.

13 BOARD MEMBERS: Aye.

14 CHAIRPERSON LOUD: All those  
15 opposed? Any abstentions. None.

16 Can you read back the vote for us?

17 MS. BAILEY: Mr. Chairman, for  
18 clarification prior to reading the vote, is  
19 that the party status to Ms. Brizill and Mr.  
20 Imhoff?

21 CHAIRPERSON LOUD: That's correct.

22 MS. BAILEY: Okay. The Board has

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1 voted three-zero-two to grant party status to  
2 Mr. Gary Imhoff and Ms. Dorothy Brizill.

3 Mr. Loud, you made the motion, and  
4 who seconded?

5 CHAIRPERSON LOUD: Okay. Mr.  
6 Dettman seconded.

7 MS. BAILEY: Mr. Dettman seconded.  
8 So the vote is three-zero-two.

9 CHAIRPERSON LOUD: Thank you, Ms.  
10 Bailey. And thank you for catching what you  
11 caught.

12 Now, in terms of proceeding  
13 forward, again I just want to reiterate, that  
14 the Board is asking the party status  
15 applicants to consolidate your presentation  
16 of your case. You're entitled now to have a  
17 direct case where you can call witnesses if  
18 you'd like to. You don't have to. And you  
19 can cross examine all of the applicant's  
20 witnesses. But, again, we're looking for some  
21 consolidation.

22 And as it surfaces, whether it's

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1 the party status party or the applicant; if  
2 there's duplicative evidence or duplicative  
3 testimony, I think myself and my colleagues  
4 will encourage you to get back to the point  
5 at hand.

6 I think the second preliminary  
7 issue dealt with posting.

8 MS. BRIZILL: Yes.

9 CHAIRPERSON LOUD: There was a  
10 question regarding posting that the party  
11 status applicant wanted to raise. And so why  
12 don't you share what that is and then, Ms.  
13 Bray, we'll turn to you for a response.

14 MS. BRIZILL: I have asked Ms.  
15 Bailey to provide to the Board some  
16 photographs. And I will give a set of the  
17 photographs to the applicant.

18 Mr. Chairman, as you know --

19 MS. BRAY: Excuse me. I'm sorry to  
20 interrupt you. But, Mr. Chairman, just as  
21 matter of procedure, the Advisory  
22 Neighborhood Commissioner, Ms. Akinmboni is

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1 here.

2 CHAIRPERSON LOUD: Yes.

3 MS. BRAY: As a member of the ANC.

4 CHAIRPERSON LOUD: Thank you.

5 MS. BRAY: And the ANC is  
6 automatically a party to this case. We kind  
7 of skipped over her.

8 CHAIRPERSON LOUD: Thank you.  
9 Thank you so much for that reminder and  
10 correction. And I'm going to try to  
11 pronounce the name correctly. Commissioner  
12 Akinmboni? Yes. I apologize. Ms. Bray is  
13 absolutely correct. Your position with  
14 respect to admission of Ms. Brizill and Mr.  
15 Imhoff as a party is just as important as  
16 questions from the Board, and as important as  
17 the applicant's questions. So please excuse  
18 me. That was my error 100 percent.

19 And if you have any questions or  
20 concerns regarding the party status  
21 application, or even questions for the  
22 applicant, now would be the time.

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1                   COMMISSIONER AKINMBONI: Okay. The  
2 question I have for Director Brizill is that  
3 a community center where we call a place a  
4 community center is where people comes in and  
5 goes out. For trafficking that he's  
6 claiming, I don't understand it. It's not a  
7 beer parlor, it's a community center where  
8 people come for services. And a community  
9 center has to draw people in; in that  
10 children, community members or seniors.  
11 People has to come to that community center  
12 for services.

13                   So I don't understand the statutes  
14 of bringing traffic to --

15                   CHAIRPERSON LOUD: Okay. As we  
16 proceed with the case, as I understand your  
17 comment, and Ms. Brizill testifies and/or  
18 calls witnesses and they testify to traffic,  
19 you'll have an opportunity to cross examine  
20 them regarding the relevance of that to  
21 section 209 relief that they're looking for.  
22                   But the specific issue on the table right

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1 now was simply her qualification and Mr.  
2 Imhoff's qualification as party status  
3 applicants. And the test being if they're  
4 uniquely affected by the application in some  
5 way. And both the Board and the applicant  
6 didn't have any objection to that.

7 So we can get back to your point  
8 about the traffic issue and those such things  
9 later in the proceeding.

10 COMMISSIONER AKINMBONI: If the  
11 applicant did not have objection, I don't  
12 have one.

13 CHAIRPERSON LOUD: Okay. All  
14 right. Thank you very much.

15 Now I think we'll go to the second  
16 preliminary issue, which was again the issue  
17 of posting. And I believe you were  
18 challenging the effectiveness of posting?

19 MS. BRIZILL: Yes, sir. I believe  
20 Ms. Bailey has provided to the Board two sets  
21 of photographs showing the posting of today's  
22 hearing that was done at the property.

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1                   Mr. Chairman, as you know, 15 days  
2 prior to the hearing the applicant is  
3 supposed to submit an affidavit regarding  
4 posting. The affidavit on the back very  
5 clearly cites provisions of -- rules of  
6 practice and procedure before the Board of  
7 Zoning Adjustment and section 3113.15 states:  
8       "Notice shall be posted at each street  
9 frontage on the property involved and on the  
10 front of each building located on the subject  
11 property. Each notice shall be in plain view  
12 of the public."

13                   What I have provided to the Board,  
14 the first photograph is standing on the  
15 sidewalk and this line across the bottom is  
16 there's an embankment wall, so that shows you  
17 where the sidewalk is.

18                   If you look up on the porch of the  
19 building you will see an orange piece of  
20 paper, but you cannot read it. And this was  
21 taken when the sun was at its highest when  
22 there is more sunlight on the porch than

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1 normal during the day when the shadows come.

2 The third photograph is from the  
3 parking lot of Easter Seals. And I took this  
4 photograph because it is only there that you  
5 can you can see where the street is and how  
6 far back the building sitting.

7 And the same as with the second  
8 photograph.

9 Using a telescopic lens you can't  
10 see what the orange sign says, but you cannot  
11 read it.

12 And then the last three  
13 photographs show that postings of today's  
14 notice were put on the rear section floor  
15 landing of the property.

16 Mr. Chairman, I believe that under  
17 the rules of the BZA that this property has  
18 not been properly posted. It has not been  
19 posted on the street frontage. And clearly  
20 the notices of today's hearing are not in  
21 plain view of the public.

22 CHAIRPERSON LOUD: Thank you, Ms.

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1 Brizill.

2 I will turn to Mr. Gray and  
3 Commissioner Akinmboni in a moment. But I  
4 just want to say at the outset that there's:

5 An ANC report here that's Exhibit  
6 42, there's several support letters our  
7 Exhibits 12 through 21;

8 There is an attestation letter  
9 from the Director of the Office of Zoning  
10 that everyone who lived within 200 feet of  
11 the property was notified that's our Exhibit  
12 36;

13 Exhibit 14 is a letter from  
14 Councilmember Tommy Wells in support of the  
15 application.

16 And you are here. And the idea  
17 that the word didn't -- is the point being  
18 that the word did not get out in this case?

19 MS. BRIZILL: Mr. Chairman, the  
20 letter that is sent regarding today's hearing  
21 is sent to the list of property owners, not  
22 the list of renters. The vast majority of

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1 the people, especially on my side of the  
2 street, are renters.

3 When I asked them their position  
4 or their knowledge regarding the hearing,  
5 they had no idea. They saw the orange sign,  
6 they had no idea what it meant.

7 The letters that you refer to that  
8 are in the file, which I will address when we  
9 get into the substance of the hearing, as you  
10 will see they are all form letters. They are  
11 exactly verbatim essentially word-by-word and  
12 they attest to the program and projects of  
13 Asian American LEAD. And at this point I  
14 want to make it very clear neither I nor my  
15 husband are commenting upon their program,  
16 their activities or what have you. We're  
17 simply commenting upon the appropriateness of  
18 the activities and how they have recently  
19 started to run the property, their  
20 activities--

21 CHAIRPERSON LOUD: We're going to  
22 get into that momentarily. I just wanted to

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1 make sure the issue of notice.

2 MS. BRIZILL: But I'm trying to  
3 answer your question as to whether or not the  
4 word got out.

5 CHAIRPERSON LOUD: Okay.

6 MS. BRIZILL: The letters of  
7 support, are letters of support that are in  
8 the same form verbatim that any social  
9 organization would probably secure from  
10 Councilmembers, from funding sources, from  
11 other social service organizations in the  
12 area.

13 My concern is, is that -- and  
14 again when we get into the substance of the  
15 hearing, is is that this unfortunately is the  
16 most recent example of issues that have  
17 occurred at the property in terms of it is  
18 very clear what they needed to do. And it is  
19 very clear that they have not done what they  
20 should do.

21 I can only attest to you, Mr.  
22 Chairman, that when I have spoken to my

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1 neighbors they did not know about the  
2 hearing. I can only tell you that as  
3 recently as this morning.

4 CHAIRPERSON LOUD: Okay. Well,  
5 why don't we hear from Ms. Bray and then from  
6 the Commissioner and see if Board members  
7 have any questions. And then we can move  
8 forward.

9 MS. BRAY: Thank you, Mr.  
10 Chairman.

11 As you can see from the  
12 photographs that were provided by Ms.  
13 Brizill, the orange signs which are quite --  
14 which say quite largely "Public Notice" are  
15 clearly visible from the public right-of-way.

16 The Board's rules do not state  
17 that the sign itself must be legible from the  
18 public right-of-way. They simply prescribe  
19 that the sign must be visible from the  
20 public-of-way and that they must be protected  
21 from the elements and maintained for the  
22 period of 15 days prior to the public

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1 hearing.

2 They also require that an  
3 affidavit of posting be filed with this Board  
4 five days prior to the public hearing, not 15  
5 as Ms. Brizill spoke at the beginning of this  
6 issue.

7 The affidavit of posting was filed  
8 at least five days prior to the hearing by  
9 Lan Nguyen who is also known as Lan Thomas,  
10 the Officer Manager for Asian American LEAD.

11

12 And with respect whether the word  
13 was out that this hearing was taking place, I  
14 think Ms. Lai from Asian American LEAD will  
15 testify and Ms. Thomas may testify as well if  
16 necessary that Asian American LEAD went door-  
17 to-door to notify their neighbors of this  
18 hearing to seek their support and has  
19 appeared at more than three Advisory  
20 Neighborhood Commission meetings over the  
21 course of the last six months to identify  
22 themselves to the community, let the

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1 community know that this hearing was upcoming  
2 and that the ANC formally reviewed this  
3 application at both its June and July  
4 hearings.

5 So to the extent that there is any  
6 failure of notice here, we believe the Board  
7 could waive its own rules given the efforts  
8 that the applicant and the Advisory  
9 Neighborhood Commission have gone to to  
10 ensure that the general public was aware of  
11 this hearing.

12 And I'd just like to add that  
13 there's no prejudice, there's clearly no  
14 prejudice here as Ms. Brizill and Mr. Imhoff  
15 are present at the hearing and able to  
16 participate.

17 CHAIRPERSON LOUD: Thank you.

18 And Commissioner Akinmboni?

19 COMMISSIONER AKINMBONI: Yes. I  
20 think the notice was -- I went to the  
21 building and I saw the sign. It's visible.  
22 And the neighbors notify that there will be

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1 hearing and I go to that domicile to know the  
2 opinion of the neighbors, and they know about  
3 the hearing. Some of them told me they have  
4 already give a supporting letter.

5 So they've been to our ANC  
6 Commission meeting three times to let us know  
7 about this hearing.

8 So the neighbors, the community  
9 know about the hearing.

10 CHAIRPERSON LOUD: Thank each of  
11 you. Thank you, Ms. Brizill. Thank you, Ms.  
12 Bray. Thank you, Commissioner.

13 Let me see if Board members have  
14 any questions. Okay. Hearing no questions,  
15 from the testimony of the Commissioner, from  
16 me taking a look at the record, I don't see  
17 any issue of the notice getting out. I think  
18 the attestation letter went out from Mr.  
19 Nero, the testimony of the Commissioner is  
20 that she went door-to-door, the ANC met on  
21 two occasions, the party status applicant  
22 appeared here and was granted party status.

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1                   So, I don't think that the effort  
2 to quash the posting and as a result  
3 disqualify our moving forward has met with th  
4 firm support in terms of the record before  
5 us.

6                   So what I'd like to do is  
7 recommend that we move forward with the  
8 proceeding on the merits. Okay.

9                   There's consensus on that. And I  
10 think we're now ready to get started with the  
11 applicant's case.

12                   MS. BRAY: Thank you, Mr.  
13 Chairman.

14                   Again, my name is Kinley Bray.  
15 I'm with the law firm of Arent Fox on behalf  
16 of the applicant. With me today are AA  
17 LEADS' Executive Director Rosetta Lai to my  
18 left, AA LEADS Office Manager Lan Thomas,  
19 behind me along with AA LEADS Director of  
20 Programs Kendra Lee.

21                   We also have with us today Alfred  
22 Lie who is an architect with AEPA who

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1 prepared the plans which are part of this  
2 application and Ms. Ellen McCarthy the  
3 Director of Planning and Land Use for Arent  
4 Fox.

5 We'd like to offer to Lie and Ms.  
6 McCarthy as expert in architecture and  
7 planning and zoning respectively. And we've  
8 made that request in our prehearing  
9 statement.

10 CHAIRPERSON LOUD: Thank you, Ms.  
11 Bray. Just on the question of Lie's  
12 testimony as an expert, when I take a look  
13 section 209 the requirements to obtain  
14 relief, I don't see necessarily where there's  
15 any element that would require an expert in  
16 architecture even in this case. You're not  
17 proposing any changes to the building, are  
18 you?

19 MS. BRAY: We are not proposing  
20 any changes. Mr. Lie is actually just --

21 CHAIRPERSON LOUD: So what would  
22 his testimony be?

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1 MS. BRAY: -- here in the event  
2 that we need to address any issues of  
3 compliance of the structure with relevant  
4 building codes.

5 CHAIRPERSON LOUD: So he's sort of  
6 -- he's your anticipatory witness?

7 MS. BRAY: That's right.

8 CHAIRPERSON LOUD: Okay. So why  
9 don't we do this? If we don't need him,  
10 you're not going to need him for your prima  
11 facie case, right?

12 MS. BRAY: We're not.

13 CHAIRPERSON LOUD: Okay.

14 MS. BRAY: We're reserving him for  
15 rebuttal.

16 CHAIRPERSON LOUD: Okay. So then  
17 if it gets to that point in rebuttal and if  
18 the Board thinks that those questions are  
19 even germane to the proceeding, you will be  
20 given an opportunity to use that witness as a  
21 rebuttal witness. But I don't think we need  
22 to qualify him now.

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1 MS. BRAY: That's fine.

2 CHAIRPERSON LOUD: And did you  
3 have another expert, Ms. McCarthy?

4 MS. BRAY: Ms. McCarthy.

5 CHAIRPERSON LOUD: Yes. And we've  
6 seen her before and she's testified before us  
7 before. So let me -- I don't have any  
8 questions or concerns about her qualifying as  
9 an expert. Let me see if Boards do. Board  
10 members don't.

11 So you'll be qualified as an  
12 expert. And the weight that's given to  
13 experts in these proceedings will be given to  
14 you.

15 And good afternoon.

16 MS. BRAY: Thank you.

17 This is a renewal request for the  
18 special exception granted in case no. 17080  
19 for a community center located at 1323 Girard  
20 Street, Northwest.

21 Asian American LEAD is a nonprofit  
22 organization serving children and families in

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1 and around the District. And it has been  
2 operating at the subject property since it  
3 took ownership of the building in 2002.

4 AA LEAD sought the original  
5 application in 2003 at a time when it was  
6 embarking on a large expansion in programs  
7 and facilities, and it hoped to raise a great  
8 deal of money to renovate the property, and  
9 its plans submitted to the BZA reflected that  
10 ambition.

11 As you'll hear from the  
12 organization's Executive Director, Asian  
13 American LEAD was not able to raise those  
14 funds to undertake renovation of their  
15 building, but they have made certain upgrades  
16 and are in compliance with all requirements  
17 of the special exception, including parking  
18 at this time.

19 A couple of preliminary matters  
20 I'd like to address based on the Office of  
21 Planning's staff report.

22 Mr. Jackson had requested an

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1 updated agreement between Asian American LEAD  
2 and Easter Seals for parking, which I've  
3 given to Ms. Bailey and I'll provide a copy  
4 to the ANC and to Ms. Brizill as well. We  
5 just want to offer that into the record at  
6 this time.

7           Also, I'd just like to clarify  
8 that Asian American LEAD seeks approval to  
9 continue its use with no changes to its  
10 operations. We're requesting the same number  
11 of staff and students, the same hours of  
12 operations with minor exceptions for some  
13 weekend and/or evening meetings throughout  
14 the original which was part of the original  
15 special exception approval.

16           Asian American LEAD met on site  
17 with Mr. Jackson from the Office of Planning  
18 on June 16th and has appeared at several ANC  
19 meeting, as I've mentioned.

20           The ANC considered BZA Application  
21 No. 17942 at its June and July meeting and  
22 took a unanimous vote on July 2nd to support

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1 the application. Submitted a letter into the  
2 file today. And, of course, Commissioner  
3 Akinmboni is here.

4 The application is also supported  
5 by Easter Seals, the neighbor immediately  
6 adjacent to the east, by neighbors across and  
7 further west in the same block of Girard  
8 Street and by numerous other nonprofit  
9 organizations in the Columbia Heights area,  
10 and by Ward 1 Councilmember Jim Graham and  
11 Ward 6 Councilmember Tommy Wells. Those  
12 letters of support are also in the record  
13 before you.

14 CHAIRPERSON LOUD: Just one  
15 moment. I don't believe we have a record of -  
16 - we have Councilmember Wells. I don't  
17 believe we have Councilmember Graham. We  
18 don't have Councilmember Graham. So if you  
19 have that --

20 MS. BRAY: I do.

21 CHAIRPERSON LOUD: -- and you can  
22 provide it to Ms. Bailey, that will be

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1 helpful and we'll make it a part of the  
2 record.

3           Didn't mean to interrupt you, so  
4 you can feel free to continue.

5           MS. BRAY: That's all right.

6           I would also like to make one  
7 clarification into the record as a quasi-  
8 preliminary matter.

9           There's a reference in the Office  
10 of Planning's staff report regarding a  
11 citation for noncompliance, which is not  
12 entirely correct. And, of course, we'll  
13 address that in our case in chief. But  
14 there's a question about whether the existing  
15 Certificate of Occupancy had expired and  
16 whether Asian American LEAD is in compliance  
17 with the orders of the Board.

18           The Certificate of Occupancy which  
19 is in the record and is part of the  
20 application has some conflicting information.

21           The Certificate of Occupancy lists the  
22 expiration date as none. And then in the

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1 notes field lists the expiration date as the  
2 same expiration date for Order No. 17080 but  
3 doesn't make any reference to 17080.

4           So I believe there's also in the  
5 record some correspondence between myself and  
6 Mr. Lee Johnson from the Office of Zoning  
7 regarding those issues. But I'm not sure  
8 that it's entirely accurate to say that the  
9 applicant has been cited for noncompliance,  
10 because there have been no notices of  
11 infraction or no notices of violation issued.

12           With that correction, I'll turn it  
13 over to Rosetta Lai, the Executive Director  
14 of Asian American LEAD for her testimony.

15           MS. LAI: Good afternoon, members  
16 of the Board of Zoning Adjustment. Thank you  
17 for providing us opportunity to appear before  
18 you this afternoon.

19           My name is Rosetta Lai, and I'm  
20 the Executive Director of Asian American  
21 LEAD, a 501(c)(3) nonprofit organization  
22 whose mission is to help low income Asian

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1 American youth and families in the Greater  
2 Washington area through education, leadership  
3 development and community building. I have  
4 been with the organization  
5 for four years.

6 Asian American LEAD was founded in  
7 1998 in response to the lack of culturally  
8 and linguistically component services needed  
9 by the influx of low income Asian American  
10 immigrants in the D.C. area. As an  
11 organization, Asian American LEAD is unique  
12 because it is one of the very few providers  
13 of youth development providers specifically  
14 aimed at serving low income Asian Americans,  
15 a demographic that continues to be under  
16 served in both the D.C. area and in the  
17 United States as a whole.

18 Asian Americans and Pacific  
19 Islanders, AAPI, are one of the fastest  
20 growing and most diverse minorities in the  
21 Greater Washington, D.C. area. However, more  
22 than 3300 AAPIs live in the District and they

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1 live below the poverty level, and nearly 700  
2 of these are under the age of 18. Unlike the  
3 model minority myth of successful Asian  
4 immigrants, many low income AAPI's families  
5 face economic and social obstacles to  
6 becoming self-reliant adults.

7 Parents face the challenges of a  
8 lack of formal education, limited English  
9 language proficiency, unfamiliarity with  
10 American culture and field marketable job  
11 skills.

12 Youth in these families often lack  
13 positive and engaged role models. They have  
14 poor academic performance and are at high  
15 risk of dropping out of school, being  
16 recruited into gangs and exhibiting other  
17 delinquent and self-destructive behavior.

18 AA LEAD addresses the above issues  
19 through our four major programs:

20 The after school academic  
21 enrichment program and academic leadership  
22 and resiliency secondary school program.

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1 They provide daily academic enrichment,  
2 homework assistance, art classes, college  
3 preparation assistance, academic counseling  
4 and leadership training.

5 Community services activities and  
6 recreational activities during the school  
7 year and in the summer.

8 We offer a mentorship program to  
9 develop highly rewarding mentoring  
10 relationships that address key risk factors,  
11 provide role models for the youth and  
12 increase the likelihood that its child  
13 becomes a self-sufficient and reliant adult.

14 The family strengthening program  
15 supports educational development of our  
16 children by improving the family's ability to  
17 support their children.

18 Our community center is primarily  
19 used for the secondary school program and for  
20 staff offices.

21 Our hours of operation are still  
22 10:00 to 7:00.

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1           The program serves between 14 to  
2 18 year of age, the students that come to our  
3 program at our center.

4           The average number of students who  
5 come to this center daily is approximately  
6 ten to 30 and never exceeding 60.

7           Student typically arrive by foot,  
8 as we are located only three blocks from the  
9 Columbia Heights Metro station.

10          They are 11 staff members that are  
11 housed in offices on the second and third  
12 floors of our building. The vast majority of  
13 staff also take advantage of public  
14 transportation in either the Metro or bus.

15          The majority of program activities  
16 take place inside the center, including  
17 informational group workshops, student  
18 tutoring, student computer lab use and  
19 various classes.

20          The use of the outside grounds of  
21 the center is limited to one or two annual  
22 events where we invite volunteers and guests

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1 to visit our center. An example is our  
2 volunteer appreciation day held in the  
3 spring.

4 We also hold after school programs  
5 in three D.C. Public Schools. They are  
6 Wilson High School, Bancroft Elementary  
7 School and Thompson Elementary School.

8 The center has three floors and a  
9 basement. The first floor is a main  
10 gathering space for student activities and  
11 includes a kitchen.

12 The second floor has a student  
13 computer lab for activity use and a staff  
14 office.

15 The third floor is exclusively  
16 staff offices.

17 There is a basement in the  
18 building which is used only for storage.

19 The building itself was purchased  
20 in year 2002 and previously belonged to the  
21 Sojourners, which also operated the building  
22 as a nonprofit and community center.

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1           The feature in location being very  
2 close to families AA LEAD served made the  
3 selection of this particular building a  
4 logical choice.

5           Associated with the purchase of  
6 the building was an ambitious capital  
7 campaign to raise \$2.6 million for renovation  
8 and improvements outlined in the Zoning  
9 application five years ago. Despite the  
10 tireless efforts of the Board, supporters and  
11 staff we fell fair short of the goals of our  
12 capital campaign. Ultimately, AA LEAD was  
13 not able to raise all the funds necessary to  
14 make all the improvements we had hoped to  
15 make when we last appeared before the BZA.  
16 However, early this year we initiated our  
17 beautification project and have made several  
18 improvements to comply with our Zoning  
19 requirements.

20           First, we have paved a parking lot  
21 behind our building that can accommodate up  
22 to five vehicles, in addition to the driveway

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1 which can accommodate at least two additional  
2 vehicles.

3           Additionally, we have maintained  
4 the agreement with Easter Seals to use two  
5 parking spaces on their property when needed.

6           Other improvements include new  
7 doors to the front door entrance and  
8 bathrooms, new flooring on the first floor  
9 and new windows on a majority of the rooms on  
10 all three floors.

11           We have retained the services of  
12 Alfred Liu, AIA, to review our building  
13 systems and to ensure that without the  
14 renovations previously planned, the building  
15 and use are not in violation of any relevant  
16 codes.

17           Because the immediate area is  
18 zoned primarily for residences, we are  
19 respectfully and we ensure that our program  
20 operations do not interfere with the nature  
21 and character of the neighborhood. Staff  
22 ensures that any noise coming from the

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1 programs indoors or outdoors do not cause any  
2 disturbance and students are supervised  
3 indoors and outdoors during program hours.

4 We also make efforts to invoke the  
5 neighborhood to see and understand our  
6 programs. One such initiative is the Lotus  
7 Festival that was held this past May. This  
8 event invited our volunteers, staff, Board  
9 members, students, neighbors to enjoy food,  
10 games and fun. We even invited two D.C.  
11 police officers who had previously spoken to  
12 our youth about community issues.

13 Another initiative was done around  
14 Thanksgiving last year where AA LEAD held a  
15 potluck for the neighborhood. Several  
16 neighbors enjoyed various ethnic and American  
17 dishes including residents from across the  
18 street and Easter Seals.

19 Specific to this application we  
20 have made several efforts to reach out to the  
21 neighborhood. We went door-to-door informing  
22 residents that we were seeking to renew our

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1 special exception. So enlisting support and  
2 answering any question they may have.

3 We have received several letters  
4 of support from other nonprofit organizations  
5 in the surrounding community and letters of  
6 support from Councilmember Jim Graham and  
7 Councilmember Tommy Wells, which are in the  
8 record.

9 We also met with the Office of  
10 Planning on site and have appeared at several  
11 ANC meetings over the past year to keep them  
12 informed of our application and activities on  
13 our property.

14 At our most recent meeting on July  
15 2nd we received a unanimous decision in  
16 support of our application for special  
17 exception zoning.

18 Finally, we have offered to meet  
19 with our neighbors, Dorothy Brizill and Gary  
20 Imhoff, both directly and through the ANC, to  
21 address any concern they may have. Despite  
22 our efforts, we have yet to receive a

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1 response from them.

2 We have been operating without any  
3 adverse impacts in the surrounding community  
4 for five years. Every year we serve over 300  
5 youth and families in both the District and  
6 Montgomery County. And we have had over 90  
7 percent of our high school seniors graduate  
8 from high school and go on o college,  
9 including students who have been awarded full  
10 and partial scholarship.

11 We have a diverse network of  
12 funders, volunteers and supporters that span  
13 across the government, corporate and  
14 nonprofit sectors.

15 Because of the good work we do, AA  
16 LEAD was listed in the *Washingtonian Magazine*  
17 in December 2008 issue as one of the top  
18 nonprofits in the D.C. area among more than  
19 8,000.

20 Because of our impact on the  
21 community, the good ties we have established  
22 in our immediately neighborhood and

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1 compliance with Zoning laws we ask that you  
2 support our application for special exception  
3 zoning.

4 Thank you.

5 CHAIRPERSON LOUD: Okay. Let me  
6 just see if Board members, would you like to  
7 ask questions after each witness or after the  
8 applicant's case? Okay. So why don't we go  
9 through the parties to see if they are going  
10 to follow the same pattern or if they'd like  
11 to ask questions after each witness  
12 testifies?

13 MS. BRIZILL: I think my  
14 preference would be to ask questions after  
15 each witness.

16 CHAIRPERSON LOUD: Okay.

17 MS. BRIZILL: But I would defer to  
18 what the Board -- I have not done a Zoning  
19 case in a long time, so I don't know what  
20 your practice is since you've been Chairman.  
21 So whatever you would prefer. I took notes  
22 and things like that.

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1 CHAIRPERSON LOUD: Okay. Well,  
2 oft times if you wait until all the witness  
3 have testified, you may have gotten an answer  
4 to a question that you might have had. So  
5 that's one approach. But again, you're free  
6 to cross examination now. I don't want to  
7 place any limitations on your right to cross  
8 examine.

9 MS. BRIZILL: With regard to Ms.  
10 Lai, I think I'd like to take an exception.  
11 Perhaps I'll wait for the other witnesses  
12 that will be called. But with regard to Ms.  
13 Lai, I'd like to ask her some questions, if  
14 you don't mind.

15 CHAIRPERSON LOUD: Okay. Not at  
16 all.

17 MS. BRIZILL: Ms. Lai, you said  
18 you acquired the property in 2002?

19 MS. LAI: Yes.

20 MS. BRIZILL: Were you the  
21 Executive Director when the Asian American  
22 LEAD had its Zoning hearing back in 2003?

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1 MS. LAI: No, I was not.

2 MS. BRIZILL: When did you come on  
3 board?

4 MS. LAI: Four years ago.

5 MS. BRIZILL: Are you familiar  
6 with the findings of fact and conclusions of  
7 law contained in the BZA Order regarding Case  
8 No. 17080?

9 MS. LAI: I have read the material  
10 that is on file at the center, at AA LEAD.

11 MS. BRIZILL: When you read the  
12 file were you familiar that in those  
13 proceeding the applicant, Asian American LEAD  
14 made certain statements and commitments to  
15 this Board as regards the operation of the  
16 facilities as part of those proceedings?

17 MS. LAI: Can you clarify the  
18 question? Exactly what are you asking that I  
19 know?

20 MS. BRIZILL: In the proceeding  
21 that occurred previously regarding the  
22 special exceptional that Asian American LEAD

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1 sought at a hearing on December 2nd. and  
2 December 9th., 2003 the applicant, your  
3 predecessor as Executive Director, your  
4 attorney and your architect made certain  
5 presentations and pronouncements to the Board  
6 to address community concerns regarding the  
7 potential impact of your facility on the  
8 neighborhood regarding noise and traffic,  
9 such as addressing the concerns of parking.

10 Are you familiar with the findings  
11 of fact and the conclusions of law contained  
12 in the BZA Order issued on March 5, 2004 in  
13 Case No. 17080 before the BZA?

14 MS. LAI: In matters relating to a  
15 finding of law and what AA LEAD did at the  
16 first hearing, I have read through the  
17 document and I believe I understand also. In  
18 areas that I did not understand, I did  
19 consult counsel, Kinley Bray. And I believe  
20 we have complied with -- in regards to what  
21 was agreed on by my predecessor.

22 MS. BRIZILL: Let me ask the

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1 question a different way. You said that--

2 MS. BRAY: I'd like to object, Mr.  
3 Chairman. I mean the question's been asked  
4 and answered twice at this point.

5 MS. BRIZILL: I'm asking a  
6 different question then.

7 CHAIRPERSON LOUD: Hold on, Ms.  
8 Brizill. If we can proceed with a little bit  
9 of order.

10 Now once she makes an objection I  
11 think it's appropriate that we let her get  
12 the objection on the record so that everybody  
13 including Board members hear it and  
14 understand it. And then we'll turn back to  
15 you and let you respond to her objection so  
16 that we don't rush through it unfairly. But  
17 I think her objection is that the question  
18 has been asked and answered, and that's a  
19 legitimate objection. What's your response  
20 to that?

21 MS. BRIZILL: I will phrase my  
22 question differently.

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1                   You indicated that initially Asian  
2 American LEAD was very ambitious and thought  
3 that it could raise a substantial sum of  
4 money for the building as well as for the  
5 projects of Asian American LEAD, is that  
6 correct?

7                   MS. LAI: Yes. The capital  
8 campaign's target was to raise \$2.6.

9                   MS. BRIZILL: In your statement  
10 before the BZA you indicated that earlier  
11 this year certain capital improvements were  
12 made at the property, and I believe you said  
13 in preparation for a BZA proceeding, is that  
14 correct?

15                  MS. LAI: No, I did not say that.

16                  MS. BRIZILL: Can you enlighten me  
17 since I do have a copy of your statement what  
18 you said about the capital improvements that  
19 occurred earlier year?

20                  MS. LAI: The capital improvements  
21 that occurred earlier year was to put in a  
22 parking lot and also to replace some of the

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1 windows that were in disrepair.

2 MS. BRIZILL: Well, wasn't the  
3 issue of a rear parking lot a provision in  
4 the BZA Order regarding Case 17080 that was  
5 issued by this Board in 2004?

6 MS. LAI: I believe that was the  
7 intent of us to put in a parking lot all  
8 along, yes.

9 MS. BRIZILL: Wasn't there great  
10 concern by the community with regards to  
11 section 209 of the BZA regulations as regards  
12 the potential impact of the facility on noise  
13 and traffic, and specifically -- specifically  
14 with regards to parking? And with that  
15 regard the record will show that the Asian  
16 American LEAD made pronouncements that it  
17 would address those concerns by putting in a  
18 parking lot in the rear. Are you aware of  
19 that?

20 MS. LAI: Yes. We have done so.

21 MS. BRIZILL: And you did so at  
22 the beginning of this year?

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1 MS. LAI: Yes.

2 MS. BRIZILL: You --

3 MS. LAI: Also may I add, I have  
4 never received -- neither have my predecessor  
5 received any concern or issue with parking.

6 MS. BRIZILL: That was not my  
7 question.

8 You indicated that most activities  
9 of the Asian American LEAD incur inside and  
10 that you only have one or two activities a  
11 year that occur outside, is that correct?

12 MS. LAI: The events that we would  
13 hold outside are planned events and where we  
14 use our backyard to -- so that we could allow  
15 -- we usually give our awards to our  
16 volunteers. So we could accommodate and  
17 provide public recognition of our volunteers.

18 Our programs are held indoors.

19 Now when the students come at  
20 different times and they stagger their hours  
21 of coming. So if sometimes they have to ring  
22 the doorbell to have access in the building,

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1 and they wait in the veranda where they are  
2 protected from rain and so on. They are not  
3 -- our programs are not meant to be held  
4 outside.

5 MS. BRIZILL: You've already  
6 admitted that or stated that your clients  
7 arrive at staggered times. And in so doing,  
8 they do congregate on the on the front porch  
9 and in the front yard, is that correct?

10 MS. LAI: No, they don't  
11 congregate outside.

12 MS. BRIZILL: They don't play  
13 basketball and football and ride a motorcycle  
14 up and down the sidewalk while they're  
15 waiting to go inside for programs?

16 MS. LAI: No, I'm not aware of  
17 that.

18 MS. BRIZILL: All right. What are  
19 your working hours? Are you there in the  
20 afternoon when the students arrive?

21 MS. LAI: Our operating hours are  
22 from 10:00 a.m. to 7:00 a.m.

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1 MS. BRIZILL: I asked you what are  
2 your hours. Are you there in the afternoon  
3 when the students arrive?

4 MS. BRAY: Objection. I'm not sure  
5 why Ms. Lai's specific hours of work are  
6 relevant. And I'm not sure that that was  
7 addressed in her direct statement.

8 MS. BRIZILL: But, Mr. Chairman,  
9 the --

10 CHAIRPERSON LOUD: Yes.

11 MS. BRIZILL: -- reason I'm asking  
12 this is that in the past there have been  
13 issues and concerns regarding the operation  
14 of the facility. And Ms. Lai's standard  
15 response was I wasn't there, I didn't know,  
16 bring it to my attention, and what have you.

17 If Ms. Lai's going to come here  
18 and testify that there are no activities with  
19 her clients occurring outside the building, I  
20 want to know whether or not she's saying that  
21 because she hasn't seen it or there's  
22 something else going on. Because--

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1 CHAIRPERSON LOUD: I think it's a  
2 fair question. But I also think we should  
3 move on and not linger here --

4 MS. LAI: I would be happy to  
5 respond to that.

6 CHAIRPERSON LOUD: I think the  
7 question is the hours that you are there.  
8 The place is open from 10:00 a.m. to 7:00  
9 p.m., and then your hours.

10 MS. LAI: Okay. I --

11 CHAIRPERSON LOUD: And then we can  
12 move on to --

13 MS. LAI: I am in the office  
14 usually around 10:30 and I leave around 7:00.

15 I am intimately aware of our  
16 program activities. And I can say with pride  
17 that I know if there is any complaint about  
18 our student behavior and so on. I address it  
19 with my staff immediately.

20 There is not one case in which I  
21 have not addressed.

22 MS. BRIZILL: But there have been

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1 cases?

2 MS. LAI: I believe you mentioned  
3 to me one time that there was a motorcycle at  
4 night. Ms. Brizill, I cannot be responsible  
5 for any youth activity that occur along the  
6 street.

7 MS. BRIZILL: My next question,  
8 Ms. Lai, is are you aware that your clients  
9 use the front porch with a hard concrete  
10 surface and the front yard to play  
11 basketball, to play football and to ride a  
12 motorcycle up and down the sidewalk? Yes or  
13 no.

14 CHAIRPERSON LOUD: Again, I don't  
15 want to stop you from answering the question  
16 and don't want to be invasive, Ms. Bray, with  
17 respect to the cross. But generally cross is  
18 limited to what was brought out on direct.

19 Now in your direct case --

20 MS. BRIZILL: She said --

21 CHAIRPERSON LOUD: I'm sorry. Let  
22 me finish. Let me finish.

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1                   In your direct case you'll have an  
2 opportunity to present the evidence that  
3 substantiates motorcycles and congregating on  
4 the stairwell and things like that. And  
5 she'd be crossing you on it, and so you'd set  
6 the foundation for that.

7                   This is a cross examination of her  
8 direct testimony.

9                   MS. BRIZILL: Yes, sir.

10                  CHAIRPERSON LOUD: And so your  
11 picking apart things that she attempted to  
12 assert is factual in that, you're questioning  
13 her credibility on some of these issues. But  
14 there's not even a foundation regarding the  
15 motorcycle and the congregation and you're  
16 cross examining her on it.

17                  MS. BRIZILL: But my question goes  
18 to the fact that in her statement she  
19 indicated that most of our activities occur  
20 inside.

21                  MS. LAI: Which is true and  
22 factually correct.

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1 MS. BRIZILL: I guess we're all  
2 under oath.

3 Earlier this year you made capital  
4 improvements at your facility. Was it solely  
5 with regards to the parking lot and the  
6 windows?

7 MS. LAI: We also what we have  
8 done is what we call beautification project  
9 in which we actually involved volunteers and  
10 students to paint the building. We put in  
11 new floors. Because we want the students to  
12 see it really as a home for them.

13 MS. BRIZILL: You said that the  
14 students who come are supervised inside and  
15 outside with regards to a staff of 11. Are  
16 you aware that there have been issues or  
17 problems regarding the lack of adult  
18 supervision of your clients?

19 MS. LAI: I -- I hold my staff  
20 totally accountable for their responsibility.  
21 And our staff, they are there to supervise  
22 the students during activities. We also have

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1 volunteers that come and help with staff  
2 supervision as well.

3 I sometimes supervise the students  
4 myself

5 MS. BRIZILL: I don't believe you  
6 answered my question, though, Ms. Lai. Are  
7 you asserting that when your clients are  
8 present on site, both inside and outside the  
9 facility, they have adult supervision?

10 MS. LAI: Yes.

11 MS. BRIZILL: You indicated you  
12 made an effort to reach out to neighbors and  
13 you went door-to-door. You also indicated  
14 you made an effort to meet with my husband  
15 and I. Can you elaborate on that?

16 MS. LAI: Yes. I have tried to--  
17 when you start objecting or raising issues  
18 about our center, I have tried to come over  
19 to you. You told me that I would be  
20 prosecuted for trespassing, that I could not  
21 even step on your front porch.

22 I have tried to send letters to

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1 you by registered mail. Our Board Chair has  
2 sent letters to you to try to have an  
3 opportunity to sit down with you and hear  
4 your issues.

5 MS. BRIZILL: Ms. Lai, again under  
6 oath, are you aware of a letter you sent me  
7 on April 28th telling me that you did not  
8 want me to come over to your property and  
9 that you would have me prosecuted if --

10 MS. BRAY: Objection. I believe  
11 this exceeds the scope of the direct  
12 testimony.

13 CHAIRPERSON LOUD: Yes, I'm going  
14 to have to agree. I think her testimony  
15 about going door-to-door related to the party  
16 status part of our proceeding, if I'm not --

17 MS. BRIZILL: That was not my  
18 question.

19 CHAIRPERSON LOUD: Okay.

20 MS. BRIZILL: My question has to  
21 do with the fact that she made a specific  
22 statement that she made an effort to reach

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1 out to my husband and I to resolve any  
2 issues. And that is a bold-faced lie.

3 CHAIRPERSON LOUD: Okay. So  
4 you've asked her your question regarding--

5 MS. BRIZILL: I have no more  
6 questions of this witness.

7 CHAIRPERSON LOUD: Okay. Thank  
8 you, Ms. Brizill.

9 I believe we'll turn now to the  
10 ANC, Commissioner Akinmboni, to see if you  
11 have any cross examination of Ms. Lai.

12 COMMISSIONER AKINMBONI: Ms. Lai,  
13 because I went there myself to see, somebody  
14 that went there to complain, I want to find  
15 out myself. I don't send somebody. That's  
16 why I volunteer.

17 I went there when the program is  
18 on. I've been there when the place is closed.

19 I've been there several time. I walk around  
20 my community to know what is in my community.

21 So I know exactly how the place look like  
22 and how the building look like. So --

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1 CHAIRPERSON LOUD: Okay. Let me  
2 again --

3 COMMISSIONER AKINMBONI: --  
4 there's no question --

5 CHAIRPERSON LOUD: Yes.

6 COMMISSIONER AKINMBONI: -- when  
7 the kids are coming from school, I went there  
8 when the kids are coming from school. And  
9 because the kids come from different school  
10 to come down there, so they are not going to  
11 be there at the same time. So --

12 CHAIRPERSON LOUD: Okay.  
13 Commissioner, can I interrupt for one moment?  
14 Where we are in the proceeding now is that  
15 the applicant has presented his first  
16 witness. That witness is Ms. Lai. She's  
17 been cross examined by the party status. And  
18 now we turn to you to see if you have any  
19 cross examination for that witness. If not,  
20 we'll definitely come back to what you  
21 started to say. But if we allow it now, then  
22 you have to be subject to cross examination

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1 and it gets really confusing.

2 So did you want to --

3 COMMISSIONER AKINMBONI: The only  
4 presentation --

5 CHAIRPERSON LOUD: I'm sorry.

6 Yes?

7 COMMISSIONER AKINMBONI: I have  
8 one question. No, the building. I saw it--  
9 okay.

10 The building, there is a picture  
11 of the building I saw in there. Because all  
12 our file is with the ANC Secretary.

13 CHAIRPERSON LOUD: Okay.

14 COMMISSIONER AKINMBONI: So that's  
15 why I don't have them.

16 CHAIRPERSON LOUD: So your  
17 question is you wanted to see a copy of the  
18 building?

19 COMMISSIONER AKINMBONI: Yes. I  
20 just wanted to see.

21 CHAIRPERSON LOUD: Okay.

22 COMMISSIONER AKINMBONI: Because

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1 according to the complaint that the kids are  
2 playing outside, I want to see -- can you  
3 show me where the kids are playing?

4 CHAIRPERSON LOUD: This would be  
5 for you, Ms. Lai? It wouldn't be for Ms.  
6 Brizill.

7 MS. LAI: They would come through  
8 the steps and they would ring the doorbell  
9 where there is a porch. So while they are  
10 waiting if they play, it would be on the  
11 porch, inside the porch.

12 COMMISSIONER AKINMBONI: That is  
13 the only clarification I want her to put out.

14 CHAIRPERSON LOUD: Okay.

15 COMMISSIONER AKINMBONI: Because  
16 when I look at the picture there is no place  
17 in the front that the kids can be playing.

18 CHAIRPERSON LOUD: Okay.

19 COMMISSIONER AKINMBONI: On the  
20 step.

21 CHAIRPERSON LOUD: Okay. Thank  
22 you.

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1 Was there any re --

2 MS. BRAY: I have one question I  
3 need to ask.

4 CHAIRPERSON LOUD: Okay.

5 MS. BRAY: Ms. Lai, you mentioned  
6 that earlier this year you paved the parking  
7 lot behind the building. Was there space for  
8 parking there prior to the construction that  
9 you mentioned, or the paving that you  
10 mentioned?

11 MS. LAI: Yes. The paving is to  
12 make it easier for our staff to park.

13 CHAIRPERSON LOUD: All right.  
14 Thank.

15 Would you like to move on to your  
16 next witness now? Okay.

17 MS. BRAY: I would. Our next  
18 witness is Ellen McCarthy.

19 CHAIRPERSON LOUD: Okay.

20 MS. McCARTHY: Good afternoon,  
21 Chairman Loud and members of the Board. My  
22 name is Ellen McCarthy, I'm the Director --

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1 are you hearing that as kind of fuzzy because  
2 I can probably switch microphone here. See  
3 if that's better. No. Not really. I'll try  
4 to sit further away. But you can hear me all  
5 right?

6 I'm Director of Planning and Land  
7 Use at Arent Fox, LLP and I'm here today to  
8 testify on the planning and zoning issues  
9 with regard to this case.

10 In terms of my qualifications I  
11 have over 35 years of planning experience  
12 including five years spent at the D.C. Office  
13 of Planning as the Deputy Director for  
14 Development Review and Historic Preservation  
15 which including Zoning, and an additional two  
16 years as the Director of that office in  
17 addition to more than 10 years as a Zoning  
18 consultant before that time.

19 I live in the District, and my  
20 office is at 1050 Connecticut Avenue.

21 My summary conclusion is I have  
22 reviewed AA LEAD's application, I'm familiar

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1 with the standards of granting a special  
2 exception for community centers and community  
3 service centers and in my professional  
4 opinion the application meets the  
5 requirements of the Zoning Regulations and  
6 should be approved.

7 I'm prepared to go into the  
8 specifics of each test depending on the  
9 extent to which you would like that. I know  
10 it's getting late. Want me to just kind of  
11 summarize or you want me to do the full  
12 testimony?

13 CHAIRPERSON LOUD: Let me respond  
14 from my perspective. I think that taking a  
15 look at 209, a lot of this is really self-  
16 explanatory. The one thing that if you have  
17 some testimony that you think might be  
18 helpful, it would be 209.4. And if you have  
19 some specific information that might relate  
20 to that, I don't know if you do or not, as an  
21 expert that would be from my perspective. I  
22 don't know what the other Board members feel.

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1 MS. McCARTHY: Okay. All right.

2 Well basically I spent a little  
3 bit of time in the beginning of my testimony  
4 looking at section 209 and 334 because I  
5 think in either case they are applicable:  
6 One to community center, one to community  
7 service center. And in both cases the tests  
8 are met and they're basically a distinction  
9 without a difference, I think. But I was  
10 trying to make the case for the fact that  
11 they had complied with either of those  
12 provisions for community center/community  
13 service center.

14 With regard to the specific  
15 conditions in 209, which is the provision  
16 under which the applicant is asking for the  
17 extension of the existing special exception,  
18 certainly it meets the standard about  
19 organized for profit, certainly doesn't offer  
20 articles of commerce for sale.

21 And so that brings us to 209.4,  
22 which is that a community center shall not

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1 likely become objectionable in a residence  
2 district because of noise and traffic.

3 As Mr. Jackson notes in the Office  
4 of Planning report the program is unlikely to  
5 create adverse impacts for a number of  
6 reasons.

7 First, it is separated by an alley  
8 or a street from virtually all of the single-  
9 family residences in the block except for the  
10 party in opposition. And it abuts a large  
11 parking lot attached to the Easter Seals  
12 program on the east.

13 The programs are, as you already  
14 have heard, conducted entirely within the  
15 building. There are no outdoor or terraces or  
16 patios.

17 Second, AA LEAD minimizes any  
18 adverse impact from noise by both limiting  
19 its general program hours to 10:00 to 7:00  
20 except for in a small number of evening  
21 meetings. And it doesn't generate  
22 objectionable impacts from traffic as most of

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1 the participants walk to the center or  
2 utilize mass transit, or are dropped by. And  
3 basically by the age range of the students  
4 served, you know they're not driving cars  
5 themselves.

6 209.5 talks about it being  
7 reasonably necessary or convenient to the  
8 neighborhood in which the program is located.

9 And it is definitely, if you've looked at  
10 some of the list of supporters that are  
11 served by the program, they're definitely in  
12 a large number from Columbia Heights and Mt.  
13 Pleasant. Also for those that are served  
14 from ChinaTown, it's a direct line up from  
15 the green line from Chinatown from the  
16 Gallery Place Metro Station, so it's quite  
17 convenient in terms of access in that  
18 respect.

19 I'll skip through 334 and talk  
20 about then the general requirements for  
21 special exceptions under 3104.1

22 As you know, there's basically two

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1 major provisions that have to be met:

2 (1) That the proposed use is in  
3 harmony with the general purpose and intent  
4 of the Zoning Regulations and the Zoning Map.

5 And I think it's important to note  
6 that the program that's described today  
7 before the Board is in line with all the  
8 provisions of the regulations that list what  
9 are the conditions under which a community  
10 center should operate in order to be  
11 considered to be not objectionable. Because,  
12 as the Board is well aware, special  
13 exceptions are uses that have been predeemed  
14 compatible with the zone in which they're  
15 authorized. And it's merely if they operate  
16 according to the conditions that are placed  
17 on that particular predeemed compatible use  
18 that the Board is determining whether or not  
19 the special exception should be granted.

20 And I think it's important to note  
21 that the Zoning Regulations are so cognizant  
22 of the importance and compatibility of

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1 community centers with residential zones and  
2 providing important services to residential  
3 neighborhoods that they are authorized in  
4 even the most restrictive zone in the entire  
5 Zoning Regulations, R-1. That is where  
6 section 209 is first found.

7 So in terms of consistency or  
8 harmony with the Zone Plan and the Zoning  
9 Regulations, I think that is pretty clear.

10 I think it's also interesting and  
11 illustrative to also look at the 2006  
12 Comprehensive Plan because it provides a  
13 pretty important context here as well.

14 Not only did the Plan recognize  
15 the importance of local cultural and  
16 educational institutions in the sections that  
17 are cited in the prehearing statement, 309  
18 and 311.7, but the Comprehensive Plan also  
19 dealt with the issue specifically in the case  
20 of this area of the city, which is called the  
21 "midcity" in the Comprehensive Plan.

22 It notes, on page 20-10, "language

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1 barriers should be broken so that more  
2 foreign born students can get a proper  
3 education, find suitable housing, find a  
4 decent job and participate in community life  
5 and civic affairs. With a growing population  
6 of immigrants and non-English speaking  
7 residents the planning area needs alternative  
8 education options and better access to  
9 literacy and language programs. If residents  
10 are to fill good quality jobs being created  
11 in the new economy, better vocational  
12 training and bilingual services are needed.  
13 Local public schools, charter schools,  
14 universities and nonprofits should be  
15 integral partners in these efforts."

16           While the bulk of the foreign born  
17 residents addressed in this section of the  
18 Comprehensive Plan are Spanish speaking, the  
19 point is a universally applicable one: That  
20 the types of services provided at AA LEAD are  
21 in demand for this community.

22           The Comprehensive Plan, in fact,

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1 has a specific recommendation to promote  
2 programs such as AA LEAD, Policy MC-1.2.1:  
3 "Maintain the cultural diversity of midcity  
4 by encouraging housing and business  
5 opportunities for residents, sustaining a  
6 strong network of social services for  
7 immigrant group and retaining affordable  
8 housing within the planning area."

9 So I think there's pretty clear  
10 evidence that is definitely in harmony with  
11 the intent of the Zone Plan and, in fact,  
12 with the Comprehensive Plan as well.

13 The second major provision under  
14 3104.1 is that the proposed use is not likely  
15 to adversely affect the use of neighboring  
16 property.

17 AA LEAD clearly meets this  
18 requirement as is explained above when I  
19 dealt with the various conditions. With its  
20 limited hours, self-contained site and  
21 program, client access by walking and taking  
22 transit.

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1                   It's also important to note that  
2                   AA LEAD has been operating at this location  
3                   since 2004 and another location in the area  
4                   even before that time. The ANC in its  
5                   unanimous endorsement of this application  
6                   does not indicate any complaints or serious  
7                   adverse impacts associated with that use.  
8                   Certainly if within this substantial period  
9                   of time the applicant had been operating in a  
10                  fashion that had an overall adverse effect on  
11                  neighboring properties, the ANC would have  
12                  taken note. And as you know well from the  
13                  many times you've heard from ANC, it  
14                  certainly would not have had a unanimous vote  
15                  in support of the extension of this special  
16                  exception.

17                  So in conclusion, in my  
18                  professional opinion the proposed time  
19                  extension of the special exception currently  
20                  in place to permit AA LEAD to provide a  
21                  community service center or community center  
22                  at 1323 Girard Street meets all the

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1 requirements of section 209, or in the  
2 alternative 334:

3 It is a local nonprofit  
4 organization with no commercial sales  
5 dedicated to improving the welfare of low  
6 income Asian American residents of the  
7 neighborhood and related areas;

8 It has no adverse impact on the  
9 neighboring property;

10 Is in harmony with the purpose and  
11 intent of the Zone Map and Zoning  
12 Regulations;

13 The applicant has been supported  
14 by the local Advisory Neighborhood  
15 Commission, the Office of Planning and a  
16 number of members of the community.

17 Thank you very much.

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

20 Is that your final witness?

21 MS. BRAY: It is. We'd reserve  
22 any additional witnesses for rebuttal.

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1 CHAIRPERSON LOUD: Okay. That's  
2 great.

3 Why don't we turn to Ms. Brizill  
4 for any cross.

5 MS. BRIZILL: Ms. McCarthy, did  
6 you visit the site?

7 MS. McCARTHY: I have not  
8 personally visited the site. But I have  
9 reviewed Goggle Maps and the number of--

10 MS. BRIZILL: You've reviewed what  
11 maps?

12 MS. McCARTHY: I looked at the  
13 aerial maps, I looked at the photographs that  
14 were in our application and did the street  
15 view and the aerial views on Google.

16 MS. BRIZILL: So how would you  
17 come to the conclusion that it would not have  
18 an adverse affect on neighboring property, or  
19 indeed the neighborhood if you had not made a  
20 visit to the site?

21 MS. McCARTHY: I think I was  
22 pretty clear about the reasons in my

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1 testimony. That is separated by an alley and  
2 a street and a parking lot and Easter Seals,  
3 from everybody basically except for your  
4 property. And that the way the programs are  
5 operated in terms of being contained within  
6 the building and the hours in which they are  
7 operated, that it would be unlikely for them  
8 to have an adverse impact on the neighboring  
9 property.

10 MS. BRIZILL: As far as I can  
11 understand the Zoning Regulations to me the  
12 real litmus test in this instance is section  
13 209 with regards to noise and traffic.

14 If you have not visited the site,  
15 but you said you reviewed aerial maps and  
16 photographs and things like that, how do you  
17 assess the impact of this application with  
18 regards to noise and traffic if you have  
19 never visited the site?

20 MS. McCARTHY: I think I just  
21 answered that question.

22 MS. BRIZILL: No, I'm sorry, I

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1 don't think you did.

2 MS. BRAY: Again, I object to  
3 repeated questions soliciting a different  
4 response. The question has been asked and  
5 answered.

6 MS. BRIZILL: Mr. Chairman, I'm  
7 asking --

8 CHAIRPERSON LOUD: Hold on just  
9 one second.

10 Go ahead, finish getting your  
11 objection out and then you can go after that,  
12 Ms. Brizill.

13 MS. BRAY: I'm simply saying that  
14 the question has been asked and answered.

15 CHAIRPERSON LOUD: Okay.

16 MS. BRAY: And Ms. McCarthy  
17 testified that she -- she drew her  
18 conclusions from her review of the testimony  
19 of the application, the application materials  
20 and her review of additional resources and  
21 has reached the opinion that she professed in  
22 her testimony.

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1 CHAIRPERSON LOUD: Okay. And Ms.  
2 Brizill?

3 MS. BRIZILL: Mr. Chairman, how do  
4 you as an expert witness, and I've known Ms.  
5 McCarthy for a number of years since her  
6 involvement in the Committee of 100, how do  
7 you make a comment on section 209 which  
8 clearly addresses the issue of noise and  
9 traffic by not visiting the site but relying  
10 upon aerial maps? Does an aerial map tell  
11 you the noise emitting from a site? Does  
12 looking at photographs tell you that? But  
13 what about the traffic impact?

14 I mean, do a drive-by. I mean,  
15 you know --

16 CHAIRPERSON LOUD: Okay. Let me  
17 suggest this: I sustain the objection. I  
18 don't know if that's what the Board Chair  
19 normally does, but I think it's a good  
20 objection.

21 I think your question is very  
22 right on: How do you draw a conclusion like

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1 that not having ever visited the site. But  
2 the scope right now is that you asked the  
3 question, she answers the question.

4 MS. BRIZILL: Okay.

5 CHAIRPERSON LOUD: And she did  
6 answer the question. She talked about the  
7 hours of operation and the layout and all  
8 that kind of stuff. And then when you do  
9 your summation, your closing argument, you  
10 can reach back and really highlight these  
11 inconsistencies --

12 MS. BRIZILL: I appreciate your  
13 assistance.

14 CHAIRPERSON LOUD: Okay.

15 MS. BRIZILL: I said I haven't  
16 done this for a while.

17 CHAIRPERSON LOUD: Okay. All  
18 right.

19 MS. BRIZILL: Okay.

20 MS. McCARTHY: And I guess the one  
21 thing that I would add is that the only  
22 evidence that I had seen of an adverse impact

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1 was the report that you had been concerned  
2 about students as they were coming and going.

3 But that that was so episodic because they  
4 came in at staggered amount, that it was  
5 pretty hard to figure out short of stacking  
6 out an entire week of sitting on the front  
7 porch when that was likely to occur. Plus, if  
8 that was an adverse impact from students  
9 coming and going, it was so limited in its  
10 duration that it seemed unlikely to have the  
11 kind of adverse impact that the Zoning  
12 Regulations contemplated as an adverse  
13 impact.

14 MS. BRIZILL: Ms. McCarthy, as  
15 regards to what you just said, what report  
16 that I made regarding students coming and  
17 going? What report are you talking about?

18 MS. MCCARTHY: I believe what I  
19 had heard had been discussed at the ANC  
20 meeting.

21 MS. BRIZILL: Were you at the ANC  
22 meeting?

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1 MS. McCARTHY: No. Ms. Bray was  
2 the ANC meeting.

3 MS. BRIZILL: Okay. So you didn't  
4 go to the site. You weren't at the ANC  
5 meeting. But still you're commenting on  
6 section 209 regarding adverse impact on noise  
7 and traffic?

8 Moving on, in your statement you  
9 say that programs at this facility are  
10 conducted entirely indoors, there are no  
11 patios or terraces. Are you aware that there  
12 is a large front yard? Are you aware that  
13 there's a large porch? Are you aware there's  
14 a large side yard that they use as a driveway  
15 on occasion? And are you aware there's a  
16 large rear yard?

17 MS. McCARTHY: I am aware of all  
18 of those things.

19 MS. BRIZILL: And you assumed that  
20 there would be no activities going on on that  
21 property?

22 MS. McCARTHY: I didn't say I

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1 didn't assume there'd be no activity --

2 MS. BRIZILL: You said that all  
3 programs -- you testified that all programs  
4 conducted entirely indoors and then you made  
5 reference to the fact there are no terraces  
6 or patios to suggest --

7 MS. BRAY: Excuse me.

8 MS. BRIZILL: -- to suggest that  
9 no activities could be going on --

10 MS. BRAY: I'm going to object to  
11 the hostility of the questioning at this  
12 point. You know, there is an objection  
13 grounded in badgering the witness. I think  
14 that's appropriate at this point.

15 MS. BRIZILL: I just want to know,  
16 Mr. Chairman, how she came to her conclusion.

17 CHAIRPERSON LOUD: Yes. Okay.

18 MS. BRIZILL: If she's saying  
19 there's no terraces or patios, or what have  
20 you. And in fact there's a large front yard,  
21 a large side yard, a large backyard and  
22 there's a large front porch.

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1 MS. BRAY: Ms. McCarthy testified  
2 how she had drawn her conclusions.

3 MS. BRIZILL: All -- isn't there a  
4 likelihood that the programs could be  
5 conducted outdoors.

6 CHAIRPERSON LOUD: Okay. Only one  
7 person can talk at a time. Otherwise, first,  
8 the court reporter won't get it for the  
9 transcript.

10 But I think it's a fair question.  
11 You'd like to know how she came to her  
12 conclusion. All right. So let's ask the  
13 witness how she came to the conclusion  
14 regarding the outdoor terrace and patio. And  
15 then whatever her answer is, is what it is  
16 and we move to the next question and keep the  
17 proceeding moving forward.

18 Again, you'll have an opportunity  
19 on direct to establish different parts of  
20 your case.

21 So I think the question was how  
22 did you derive at those conclusions?

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1 MS. McCARTHY: And the answer is  
2 that as I indicated, all programs at the site  
3 are conducted inside the site, which means  
4 that the only adverse impacts that could  
5 occur in terms of people being outside the  
6 site, are those that would occur as people  
7 were coming and going to the site waiting,  
8 ringing the doorbell and waiting to be  
9 admitted. None of those appear to me to rise  
10 to a serious level of objectionable -- of  
11 adverse impact, particularly given that there  
12 is a large front yard, there is a large  
13 backyard. There certainly is no room to  
14 congregate on the back porch. There's not  
15 that much room to congregate on the front  
16 porch in terms of 20 or 30 people that could  
17 be causing a disturbance.

18 And the way that the program is  
19 conducted, the kinds of activities that are  
20 there; mentoring, tutoring, computer use,  
21 those are not outdoor activities. Those are  
22 indoor activities.

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1           So I conclude based on that that  
2           the program is not likely to have  
3           objectionable impacts, which is I believe the  
4           wording of the Zoning Regulations.

5           MS. BRIZILL: Ms. McCarthy, where  
6           did you get your information regarding the  
7           type of programs conducted at this facility?

8           MS. LAI: I provided them

9           MS. BRIZILL: I was talking to Ms.  
10          McCarthy.

11          MS. McCARTHY: The information was  
12          provided by the applicant.

13          MS. BRIZILL: And you are an  
14          employee of the applicant through the law  
15          firm that's representing the applicant?

16          MS. McCARTHY: The applicant is a  
17          client of ours, yes.

18          MS. BRIZILL: Yes. Thank you.

19          MS. LAI: May I also add --

20          CHAIRPERSON LOUD: I'm sorry. I'm  
21          sorry. So that we might keep this on track,  
22          we are currently in the cross examination of

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1 Ms McCarthy having passed beyond your  
2 testimony.

3 If your counsel has some  
4 redirection or rehash, she'll b given an  
5 opportunity to do that and you can speak with  
6 your counsel.

7 If Ms. Brizill has concluded, we  
8 will give the ANC an opportunity to cross  
9 examine the witness. If you'd like to. You  
10 certainly don't have to. Okay.

11 Then why don't we now turn back to  
12 Ms. Bray if you want to rehash or redirect?

13 MS. BRAY: I do. I have a couple  
14 of questions on redirect.

15 CHAIRPERSON LOUD: Okay.

16 MS. BRAY: Ms. McCarthy, you  
17 mentioned that you were Director of the  
18 Office of Planning and Deputy Director of  
19 Development and Review and Historic  
20 Preservation for the Office of Planning.  
21 Were you in either of those positions in  
22 December of 2003 when this case first came

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1 before the Board?

2 MS. McCARTHY: I was.

3 MS. BRAY: And were you familiar  
4 with this case in that capacity?

5 MS. McCARTHY: We discussed  
6 virtually every case that came before  
7 development review at our regular weekly  
8 meetings.

9 MS. BRAY: And do you recall  
10 whether the Office of Planning supported the  
11 case in 2003?

12 MS. McCARTHY: They did.

13 MS. BRAY: Is it safe to say then  
14 that your professional opinion that the  
15 application meets the test in section 209 for  
16 a community service center use are based not  
17 only on your review of certain  
18 representations by the applicant in this  
19 application, but also on your review of the  
20 history of this use on this property?

21 MS. McCARTHY: Yes, and my  
22 familiarity with the neighborhood in general.

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1 MS. BRAY: Can you tell me whether  
2 you have in your experience either as a  
3 Zoning consultant or in your capacity with  
4 the Office of Planning reviewed similar  
5 applications for community center uses?

6 MS. McCARTHY: Definitely.

7 MS. BRAY: And does the proposed  
8 use conform to the typical activities  
9 conducted at other community center uses?

10 MS. McCARTHY: It definitely  
11 conforms to the activities of those community  
12 centers which we supported when I was at the  
13 Office of Planning.

14 MS. BRAY: And is it uncommon for  
15 all activities at a community center to be  
16 contained within a building?

17 MS. McCARTHY: Those generale that  
18 were recommended for approval in a high  
19 density residential neighborhood, yes.

20 MS. BRAY: Okay. I have no  
21 further questions.

22 CHAIRPERSON LOUD: Thank you, Ms.

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1 Bray.

2 Let me turn now to, I believe all  
3 the parties have had an opportunity, turn now  
4 to Board members to see if they have any  
5 questions for any of applicant's witnesses?  
6 None? Okay. I just have a couple of quick  
7 questions for Ms. Lai.

8 I think some of the testimony got  
9 on the record, but I think you're the best  
10 person to testify to it and not necessarily  
11 the expert, certainly not your counsel.

12 Are there any articles of commerce  
13 that are offered for sale in the center? Are  
14 there any articles of commerce that are  
15 offered for sale in the center?

16 MS. LAI: No.

17 CHAIRPERSON LOUD: Okay. And your  
18 organization is a not for profit  
19 organization?

20 MS. LAI: Yes.

21 CHAIRPERSON LOUD: Okay. Where  
22 are you incorporated?

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1 MS. LAI: In District of Columbia.

2 CHAIRPERSON LOUD: In the District  
3 of Columbia. Thank you.

4 And you had somewhat I thought was  
5 very good testimony regarding the  
6 vulnerability of the young people in your  
7 client population to gangs in the area and  
8 how your programs were intervention type  
9 programs, is that correct?

10 MS. LAI: Yes.

11 CHAIRPERSON LOUD: Okay. And the  
12 young people that you talked about, because  
13 this I think goes to 209.5, the community  
14 center being reasonably necessary. The young  
15 people that you talked about, are they in the  
16 neighborhood?

17 MS. LAI: Yes.

18 CHAIRPERSON LOUD: Okay.

19 MS. LAI: In fact, that was why we  
20 purchased this building.

21 CHAIRPERSON LOUD: Okay.

22 MS. LAI: Because there was an

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1 influx of Vietnamese refugees.

2 CHAIRPERSON LOUD: Okay. Thank  
3 you. I don't have --

4 MS. LAI: Also comes from other  
5 parts of the city as well.

6 CHAIRPERSON LOUD: That part I  
7 understood. I just wanted to make sure for  
8 purposes of 209.5 that they were also in the  
9 neighborhood in which the facility is  
10 located. So thank you. I don't have any  
11 further questions.

12 I think we can turn to the Office  
13 of Planning

14 MS. JACKSON: Good afternoon, Mr.  
15 Chair, members of the Board. My name is  
16 Arthur Jackson. I'm a Development Use  
17 Specialist for the District of Columbia  
18 Office of Planning.

19 The Office of Planning submitted a  
20 report on this application that's before you  
21 in your records. For the sake of brevity, I  
22 will stand the record and state the Office of

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1 Planning does support this application. I  
2 think they generally meet the standards that  
3 are applicable.

4 And we noted that there were two  
5 conditions that we requested that the Board  
6 consider:

7 One condition would be to stripe  
8 the on \site parking spaces such that they  
9 were clearly identified on the property. And  
10 since the applicant had proposed to provide  
11 two additional parking spaces in the Easter  
12 Seals parking lot, that they provide a  
13 document stating that they are allowed to use  
14 the parking spaces. And as noted by the  
15 applicant in the applicant's presentation,  
16 that documentation has been provided on the  
17 day.

18 With that, that concludes the  
19 Office of Planning's brief summary. And  
20 we're available to answer questions.

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

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1 Board members, do you have any  
2 questions for the Office of Planning?

3 COMMISSIONER SCHLATER: A quick  
4 question.

5 Mr. Jackson, you said that OP  
6 recommends approval of the special exception  
7 for five additional years subject to those  
8 conditions?

9 MS. JACKSON: Correct.

10 COMMISSIONER SCHLATER: Why the  
11 five year time frame?

12 MS. JACKSON: That's what the  
13 applicant was asking for.

14 MS. BRAY: I'll note just as a  
15 point of procedure, the applicant will be  
16 very happy to receive a term of greater than  
17 five years. But for simplicity's sake, we  
18 requested a renewal based on the existing  
19 conditions of Order 17080, which was for a  
20 term of five years.

21 MS. BRIZILL: For the record, this  
22 party would request that any extension of

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1 their special exception be granted for a  
2 period of time far less than five years.  
3 Because they had five years initially and  
4 they did not comply with that  
5 Order.

6 CHAIRPERSON LOUD: Okay. Thank  
7 you.

8 I think what we'll do -- I don't  
9 know if Mr. Dettman had any questions. I  
10 think Mr. Schlater was through. And Mr.  
11 Dettman has no question.

12 So now you get the opportunity to  
13 actually cross examine Mr. Jackson on the  
14 report of the Office of Planning. Now he  
15 didn't go into it verbally.

16 MS. BRIZILL: Okay.

17 CHAIRPERSON LOUD: But Ms.  
18 McCarthy practically did his whole report, so  
19 it's part of the record. Based on her  
20 testimony and you having seen the report, you  
21 can cross examine on anything in his report,  
22 despite the fact that he didn't have a lot to

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1 say this afternoon.

2 MS. BRIZILL: Okay. Mr. Jackson--

3 MS. JACKSON: Did you see it?

4 MS. BRIZILL: No, I haven't seen  
5 it.

6 CHAIRPERSON LOUD: You have not  
7 seen it? I'm very sorry about that. So here  
8 you go.

9 MS. BRIZILL: Mr. Jackson, did you  
10 in fact visit the site?

11 MS. JACKSON: Yes, I did.

12 MS. BRIZILL: Can you tell me the  
13 date and the time of day?

14 MS. JACKSON: I can't tell you the  
15 date, but it was around -- I had an  
16 appointment with them -- with the applicant  
17 around 1:00. And so I walked up to the site  
18 from our current location at 14th and U  
19 between 12:00 and 1:00. And so I did have  
20 occasion to walk to the site up 13th Street,  
21 walk past -- walk to the property and met the  
22 applicant there. And we conducted our

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1 business outside of the building.

2 MS. BRIZILL: So would it be fair  
3 to say that you would not have been there in  
4 the late afternoon when the majority of their  
5 clients would have been there?

6 MS. JACKSON: Well, as what  
7 happened, after our meeting I waled back to  
8 our offices. And on the way back to our  
9 offices, I ran into a number of their  
10 students who had just gotten off the bus  
11 coming up 14th Street who were walking toward  
12 the center.

13 MS. BRIZILL: Yes.

14 MS. JACKSON: And they said hi,  
15 passed by me. And I assumed they went into  
16 the center after we passed by. But that that  
17 was an occasion when I did see them making  
18 use of transit, getting off transit and going  
19 to the center.

20 MS. BRIZILL: But you would  
21 acknowledge that if there is a concern  
22 regarding students arriving when they get out

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1 of school and congregating and causing noise,  
2 you would not have been in a position to have  
3 observed that?

4 MS. JACKSON: Correct.

5 MS. BRIZILL: Mr. Jackson, are you  
6 familiar with the hearing that was held on  
7 December 2nd and 9th 2003, the decision of  
8 the BZA or their -- issued on January 20,  
9 2004 and the Order issued itself on March 5,  
10 2004 regarding the applicant?

11 MS. JACKSON: I've seen the order,  
12 yes.

13 MS. BRIZILL: Are you aware of the  
14 particular findings of fact and the  
15 commitments and promises the applicant made  
16 to, in essence, garner community support and  
17 the support of the BZA for their special  
18 exception?

19 MS. JACKSON: Yes, I've seen the  
20 findings of fact.

21 MS. BRIZILL: Okay. Is it correct  
22 to say that in the findings of fact that the

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1 applicant agreed to renovate the existing  
2 property as a community center and to provide  
3 an exterior egress being constructed at the  
4 rear of the property, in essence, a fire  
5 escape?

6 MS. JACKSON: Which one are you  
7 referring to?

8 MS. BRIZILL: I'm talking about  
9 paragraph 4 under findings of fact.

10 MS. JACKSON: Yes, it does the  
11 applicant proposes to renovate the building  
12 for use as a community center.

13 MS. BRIZILL: And does it go on to  
14 say an exterior egress will be constructed at  
15 the rear?

16 MS. JACKSON: Yes, it does.

17 MS. BRIZILL: Okay. Does it say  
18 further in paragraph 4 that a handicapped  
19 lift will be constructed?

20 MS. JACKSON: It mentions a  
21 staircase connecting the basement and the  
22 three above grade floors and a handicap lift

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1 providing access to the first floor. Yes, it  
2 does.

3 MS. BRIZILL: Okay. Does it say in  
4 paragraph 8 that activities will be provided  
5 with adult supervision?

6 MS. JACKSON: Excuse me --

7 MS. BRIZILL: Paragraph 8.

8 MS. JACKSON: The proposed center  
9 -- well, it lists all the programs to be  
10 provided by the center.

11 MS. BRIZILL: Doesn't the quote  
12 say activities "will be provided with adult  
13 supervision"?

14 MS. JACKSON: In eight?

15 MS. BRIZILL: Yes.

16 MS. JACKSON: Yes. "Activities at  
17 the community center will be provided --"

18 MS. BRIZILL: The last sentence.

19 MS. JACKSON: "With adult  
20 supervision." It does say that.

21 MS. BRIZILL: Okay. In paragraph  
22 12 does it say there will be 50 to 60 people

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1 on site at any given time?

2 MS. JACKSON: Yes.

3 MS. BRIZILL: Does it say in  
4 paragraph 14 that the rear of the property  
5 will be graded and paved to provide four  
6 parking spaces accessible from the alley?  
7 Does it say that?

8 MS. JACKSON: Yes.

9 MS. BRIZILL: When you did your  
10 inspection of the property did you see egress  
11 from the rear of the property to the alley?

12 MS. JACKSON: Well, during our  
13 discussion outside the applicant and I walked  
14 to the rear of the property. And I  
15 questioned whether or not the rear of the  
16 property was accessible from the alley  
17 because what they seemed to be indicating was  
18 that the parking spaces would be aligned such  
19 that the parking spaces would be across the  
20 rear of the property line. But I was informed  
21 that there is a difficult connection between  
22 the rear of the property and the alley

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1 because of a change in elevation. And at the  
2 point when I visited, that area was closed  
3 off by a fence.

4 So at this time there does not  
5 appear to be a good connection to the alley  
6 because of a difference in elevation.

7 MS. BRIZILL: Mr. Jackson, in the  
8 earlier case that was heard in 2003 the file  
9 is full of architectural renderings and  
10 addresses the issue of the change in grade to  
11 provide that egress. Have you reviewed that  
12 file?

13 MS. JACKSON: I've looked at the  
14 plans that were approved with that  
15 application, yes.

16 MS. BRIZILL: And are you aware  
17 that there are architectural plans in there  
18 that deal with the rear of the property?

19 MS. BRAY: Objection. I'd like to  
20 -- I'm concerned about where this line of  
21 questioning is going because the application  
22 before the Board today has different plans

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1 and elevations which are requesting a  
2 modification from the plans and elevations  
3 which were submitted in Case No. 17080. And  
4 I believe Mr. Jackson's report was based on  
5 the application materials in this case.

6 CHAIRPERSON LOUD: Thank you. I  
7 understand the objection.

8 Do you understand the objection,  
9 Ms. Brizill?

10 MS. BRIZILL: I understand the  
11 objection.

12 VICE CHAIRMAN DETTMAN: I think  
13 she's asking about the overall relevance of  
14 the line of questioning to the elements that  
15 have to be proven today.

16 MS. BRIZILL: I'm trying to lay a  
17 foundation as regards Ms. McCarthy has made  
18 particular mention of the Office of  
19 Planning's position on this case back on  
20 2003. And Mr. Jackson has done a memo to that  
21 effect, supporting the application.

22 I'm simply trying to lay a

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1 foundation as regards in asking Mr. Jackson  
2 whether or not in reviewing the current case  
3 he looked at the original BZA Order, what  
4 they were supposed to do and whether or not  
5 his review of the current property suggest  
6 whether or not they were in compliance with  
7 the requirements in that BZA Order.

8 CHAIRPERSON LOUD: Well -- I'm  
9 sorry, Ms. Bray, go right ahead.

10 MS. BRAY: Excuse me. The Office  
11 of Planning hasn't testified with respect to  
12 compliance with the prior order. They've  
13 simply submitted a report into the record  
14 which analyzes the application based on the  
15 current application materials and a site  
16 visit, and representations by the applicant  
17 of the current use.

18 I'm not sure that compliance with  
19 a prior order, regardless of whether or not  
20 modification was being requested as it is  
21 here, is relevant to the Office of Planning's  
22 analysis as to compliance with section 209

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1 based on the current materials. And I'm not  
2 sure their analysis would change based on  
3 things like whether the alley egress is  
4 provided.

5 As I understand the Office of  
6 Planning's report, it is based simply on the  
7 site visit that was undertaken, I believe, on  
8 June 13th and on review of the application  
9 materials in Case No. 17942.

10 CHAIRPERSON LOUD: I'm inclined to  
11 agree with Ms. Bray and would like to see if  
12 we could move the proceedings along.

13 I'll see if Board members have any  
14 thoughts on it. But I think the issue of  
15 compliance or noncompliance with the previous  
16 order is something that's addressed and  
17 enforced outside of the BZA process. I think  
18 there are enforcement officers who deal with  
19 that.

20 If the line of questioning goes to  
21 in some way mitigation of an adverse impact  
22 that's caused by there not being a rear stair

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1 or perhaps there not being parking, and it  
2 just goes to mitigation, I think you might be  
3 able to say that for your direct case instead  
4 of trying to draw it out through cross  
5 examination of this witness on his report.  
6 But again, I'm struggling in my mind with  
7 what the relevance of the compliance issue at  
8 all to the 209, 304 relief.

9 MS. BRIZILL: Mr. Chairman, can I  
10 just have an indulgence here one moment?

11 CHAIRPERSON LOUD: Okay.

12 MS. BRIZILL: But this is the very  
13 issue: The BZA issues an order, grant a  
14 special exception but no one enforces the  
15 provision in the order. No one. No one.

16 I came and met with Mr. Moy. I  
17 went to DCRA. I've met with people in the  
18 Director's office. No one is enforcing the  
19 provisions in the order.

20 At the last proceedings, more than  
21 five years ago Asian American LEAD had their  
22 attorney, had their Board Chairman, had their

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1 architect make presentations to the Board.  
2 And as we stepped out we said "Oh, when are  
3 you starting work?" "We're not going to do  
4 that."

5 Ms. Lai in her testimony --

6 MS. BRAY: I object.

7 MS. BRIZILL: Ms. Lai in her  
8 testimony said today that it wasn't until the  
9 beginning of this year that they made any  
10 effort to make the capital improvements they  
11 promised more than five years ago.

12 So as the government witness who  
13 has great standing and is what I think is an  
14 objective person, I want to know what Mr.  
15 Jackson saw. Did he see the alley egress?  
16 No, because it's not there.

17 CHAIRPERSON LOUD: Ms. Brizill, a  
18 couple of thoughts.

19 First, I want to sustain the  
20 objection of the applicant and ask you to  
21 move on with respect to the cross  
22 examination. You will get an opportunity

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1 during your direct case, because you're a  
2 party, to bring out the evidence that's going  
3 to help you establish your direct case.

4 With respect to the enforcement  
5 question, BZA is a statutorily created body.

6 We can't roam the field indiscriminately and  
7 do everything that would be perceived as just  
8 or right. I mean, we have rules that we  
9 operate by, and enforcement is not something  
10 that's given to us as part of our  
11 jurisdiction. So we have to stick to section  
12 209, 3104 and the specific evidence areas  
13 that the applicant has to prove to get  
14 relief.

15 It's not that you're not making a  
16 strong case for whether there was or whether  
17 there was not enforcement in the preceding  
18 underlying case. It's just that this is not  
19 the body that would entertain that review at  
20 all. This just isn't the body, BZA.

21 MS. BRIZILL: I realize and that's  
22 the problem. No one is enforcing it.

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1 CHAIRPERSON LOUD: Okay.

2 MS. BRIZILL: No one. So someone  
3 could come here and say anything and an order  
4 is written, and there's no enforcement. And  
5 the neighbors and the neighborhood have no  
6 recourse. I just want to make you aware of  
7 that.

8 CHAIRPERSON LOUD: Okay.

9 MS. BRIZILL: And that's our  
10 frustration.

11 I just have one more question for  
12 Mr. Jackson. Mr. Jackson, you're familiar  
13 with the general overall standing that a  
14 community center activity should not become  
15 objectionable to neighboring property,  
16 correct?

17 MS. JACKSON: Correct.

18 MS. BRIZILL: In assessing that  
19 standard, other than visiting Asian American  
20 LEAD, what factors did you weigh in? Did you  
21 talk to any of the neighbors? Did you come  
22 and knock on my door?

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1 MS. JACKSON: No. We don't  
2 usually go door-to-door asking for opinions.  
3 We defer to the ANC and to the activities of  
4 the neighbors themselves in writing letters  
5 of support or opposition to the record file.  
6 We'll check the record file to review  
7 whatever comments are in there and whatever  
8 is submitted by the applicant.

9 I think as a body the Office of  
10 Planning usually if we appear at a meeting  
11 and we're in the midst of it, we tend to -- I  
12 think in some cases our presence creates more  
13 problems than is helpful with regard to the  
14 community coming together and coming to some  
15 sort of consensus. So we would defer to the  
16 ANC to reach a consensus and come back with  
17 their recommendation. It may not be a  
18 unanimous decision. It may be one that's  
19 even in opposition from the ANC, but we think  
20 that's really the body -- representative body  
21 that does a better job.

22 The ANC, of course, and

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1 neighborhood organizations in the area do a  
2 better job of giving us a good idea of what  
3 the general tenure is of the community that  
4 brought these applications.

5 MS. BRIZILL: So if I understand  
6 you correctly, you personally as an agent of  
7 the Office of Planning and the D.C.  
8 Government have not made a personal  
9 assessment of whether or not this particular  
10 facility would have an adverse effect on  
11 neighboring property or an adverse effect  
12 regarding noise and traffic. You were simply  
13 referring the issue to letters in the file,  
14 the ANC positions and things like that?

15 MS. JACKSON: Well, our estimate  
16 would be based in part on that, on those  
17 letters in the file. And, of course, we'd  
18 also look at the scale of the use, whether or  
19 not they have in place what would seem to be  
20 sufficient parking with regard to the Zoning  
21 Regulations for the activity of the use. And  
22 then whether the actual management style and

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1 outline makes sense. I mean, if it's close  
2 to the Metro, it's two blocks across from the  
3 Metro and they say most the people walk to  
4 the Metro service, logically that would make  
5 sense as opposed to someone that's, say,  
6 remotely located and claims to use Metro to  
7 provide access and there's no Metro use.

8 So it's a lot of factors that we  
9 take in conjunction.

10 MS. BRIZILL: When you visited the  
11 facility did you go in the rear of the  
12 property?

13 MS. JACKSON: Yes.

14 MS. BRIZILL: Did you make note of  
15 the cars parked in the rear of the property?

16 MS. JACKSON: Yes.

17 MS. BRIZILL: Did you make note of  
18 the fact that none of them had a D.C. license  
19 tag on them?

20 MS. JACKSON: That was irrelevant.  
21 What we're looking at is the amount of  
22 parking that's available on the site, not who

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1 was parking there.

2 MS. BRIZILL: But you made a  
3 statement that you make an assessment about  
4 the facility's impact on traffic with regard  
5 to proximity of Metro. If they have 11 staff  
6 members, but none of the staff members are  
7 taking Metro, that could be an impact upon  
8 traffic, right?

9 MS. JACKSON: It is, but that's a  
10 conclusion that -- that is a conclusion  
11 you're stating that. We're not part of that  
12 conclusion.

13 Now if you have some facts to that  
14 regard, it may have been useful to know. But  
15 we have no facts indicating who at the staff  
16 takes Metro and who drives.

17 MS. BRIZILL: So, let me --

18 MS. JACKSON: But we do know that  
19 -- well, this why we asked for the stripping.  
20 We do know that there appeared to be four to  
21 five cars parked in the backyard. We're not  
22 sure what the actual capacity is, which is

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1 why we requested that the parking space be  
2 stripped in accordance with regulations so we  
3 could say in accordance with the regulations  
4 how many spaces can actually fit in the back  
5 of the property.

6 MS. BRIZILL: Isn't it an issue  
7 also of not only how many cars can fit back  
8 there, but once you get a car back there how  
9 do you turn it around?

10 MS. JACKSON: Well, again, our  
11 Zoning Regulations include clear guidance  
12 with regard to how you lay out parking lots,  
13 and such, that you're not going to put -- in  
14 putting the stripping in accordance with the  
15 regulations, you'd have the right size for  
16 each space and allow the right space -- the  
17 right amount of space for turnarounds and  
18 such.

19 The widening of the parking drive  
20 aisle to where it's more than 12 feet,  
21 actually would seem to allow just about any  
22 type of maneuver that is necessary to put a

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1 car in a space in the backyard.

2 So visually, just looking at,  
3 there appears to be more than enough space  
4 now with the widening of the pavement both  
5 for the driveway going in and the paving in  
6 the back for there to be -- to accommodate  
7 four or five cars. But, again, until the  
8 stripe, you don't really know.

9 MS. BRIZILL: You made reference  
10 to the widening of the driveway?

11 MS. JACKSON: Yes.

12 MS. BRIZILL: What are you talking  
13 about exactly?

14 MS. JACKSON: Well, it appears  
15 that with the pavement on the driveway  
16 there's a wide section that's 12 feet wide  
17 and then there seems to be another piece  
18 that's six to eight feet wide. So the  
19 driveway appears to be between 18 and 20 feet  
20 wide. But again, our regulation only require  
21 14 feet for a parking drive aisle. So it's  
22 usually wide.

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1 MS. BRIZILL: Are you aware that  
2 there was a recent survey done of the  
3 property and that driveway, that wide  
4 driveway is not all their property?

5 MS. JACKSON: Again, what we're  
6 looking at was what was visible on the site  
7 that we visited. And if that is the case,  
8 we're not aware of it.

9 MS. BRIZILL: There's a survey  
10 marker in the front of the property and the  
11 side yard --

12 MS. JACKSON: Well, yes. And I  
13 was just saying that I'm not -- I was not  
14 looking for survey markers. I was looking at  
15 the visible evidence of what was paved on th  
16 property. And from our observation on the  
17 site visit, there appears to be more than  
18 enough space on the driveway to accommodate  
19 both turning movements and egress and  
20 ingress.

21 MS. BRIZILL: I appreciate that,  
22 Mr. Jackson. If you're saying that part of

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1 the turnaround space in their driveway is  
2 property that is not theirs, that's a big  
3 problem, isn't it?

4 MS. JACKSON: Again, I --

5 MS. BRAY: Objection. I don't  
6 believe Mr. Jackson testified that he knew  
7 that the property was not theirs, or that  
8 there's any evidence in the record to  
9 determine that the property is not theirs.

10 MS. JACKSON: We made no such  
11 observation.

12 CHAIRPERSON LOUD: You have  
13 additional questions, Ms. Brizill?

14 MS. BRIZILL: No.

15 CHAIRPERSON LOUD: Okay. Board,  
16 let me just check with Board members right  
17 quick and then I'll come to you,  
18 Commissioner.

19 Board members, were there any  
20 follow-up questions for the Office of  
21 Planning? Okay.

22 Commissioner, tell me again how to

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1 pronounce your last name. I'm sorry, if you  
2 speak into the microphone, I'll hear it  
3 clearly.

4 COMMISSIONER AKINMBONI:  
5 Commissioner Akinmboni.

6 CHAIRPERSON LOUD: Akinmboni.  
7 Thank you.

8 Do you have any questions for the  
9 Office of Planning?

10 COMMISSIONER AKINMBONI: No.

11 CHAIRPERSON LOUD: Okay. Thank  
12 you. Then what we're do now is, and I'm  
13 looking at the time. It's about 4:30 and  
14 we're going to try to -- without shortening  
15 anyone's presentation time, try to make sure  
16 that we honor what was said when I started  
17 the proceedings. That we will assess where  
18 we are when we reach a certain point and  
19 determine whether we want to continue the  
20 case or move forward. I don't think we're in  
21 jeopardy at all at this point because it's  
22 4:30. And it looks like we're getting close

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1 to resolution. But this is the point of the  
2 case where we would go to the ANC for the  
3 ANC's report. And so that would be your  
4 opportunity, Commissioner, to give the report  
5 of your ANC.

6 COMMISSIONER AKINMBONI: My name  
7 is Commissioner Akinmboni, 1B08.

8 This property is in my single  
9 member district.

10 We put always put our hearing on  
11 our website, which is for 1B. Any hearing  
12 that is coming up, you will go our website,  
13 you will see it.

14 So in June Ms. Dorothy said call  
15 me the morning of our hearing. I said, oh,  
16 there's a hearing coming up. I want to -- I  
17 say where. This lady has been in our ANC  
18 meeting three times, which was posted in the  
19 ANC and it's now our minutes.

20 So I told her that you can come  
21 and let the ANC know your issue. So when she  
22 got there she explained that the Asian

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1 American LEAD always mess her backyard up,  
2 they drive through her yard, they mess the  
3 floor up and everything. So complain about  
4 what they are doing to her property. And I  
5 immediately I said, "Look here, I would  
6 volunteer to go there and find out what was  
7 going on and see how we can settle the  
8 issue."

9 So I went, I want to talk to Ms.  
10 Dorothy. I met her in front of her yard. She  
11 was planting grass and plants. I talked to  
12 her. I said, "Ms. Dorothy, I'm here to  
13 listen to your complaint about this issue."  
14 She said, "You know what? I'm going to  
15 Baltimore. I can't talk now. I can't wait  
16 now. The first in a Monday, which on the  
17 8th, I will give you a call. When I call you,  
18 then we can sit down and talk."

19 I waited that week. Throughout I  
20 did not receive any call. On the 16th --

21 CHAIRPERSON LOUD: Commissioner,  
22 let me without being rude, let me just

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1 interrupt you for once second. Because if  
2 you've noticed, we've been holding all the  
3 parties to the rules that we operate by,  
4 including in particular on the cross  
5 examination we held Ms. Brizill to the rules.

6 Now you were identified to us as  
7 the representative of the ANC and they  
8 authorized you in their report to give the  
9 report.

10 COMMISSIONER AKINMBONI: Yes. Yes.

11 CHAIRPERSON LOUD: So I think  
12 initially we were looking for you to give the  
13 report of the ANC with respect to when you  
14 met and you had a quorum and who was there,  
15 and that you voted and what the result was.

16 COMMISSIONER AKINMBONI: Yes. Yes.

17 How we get to the conclusion.

18 CHAIRPERSON LOUD: And what I was  
19 going to suggest is if you could do that  
20 first, that will give us the great weight  
21 that's accorded to the ANC report.

22 And then if there's some

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1 additional testimony that you want to give in  
2 your capacity as the SMD, or just because you  
3 have some personal knowledge about that, we  
4 can entertain that as well. But I think the  
5 germane part of where we are in the  
6 proceeding now is the ANC great weight  
7 report.

8 COMMISSIONER AKINMBONI: Yes.

9 CHAIRPERSON LOUD: Does that make  
10 sense?

11 COMMISSIONER AKINMBONI: Yes, how  
12 the ANC generate that report.

13 CHAIRPERSON LOUD: Okay.

14 COMMISSIONER AKINMBONI: That's  
15 what I'm bringing out so that we know why  
16 they voted how they voted.

17 CHAIRPERSON LOUD: Okay. I see.  
18 All right.

19 COMMISSIONER AKINMBONI: So after  
20 that I went down there on the 16th, there was  
21 no response from Ms. Dorothy. So on the 18th  
22 I went to Asian American LEAD to listen to

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1 their own part. Because I have promised the  
2 ANC that I will be the liaison between the  
3 two of them. I went down there. I asked for  
4 the question why your staff driving Mr.  
5 Dorothy Brizill -- so they took me around. I  
6 went down every complaint that Dorothy  
7 Brizill brought to our ANC Commission. I  
8 address that when I went down there myself.

9 So after I went down there myself,  
10 I have not received any call from Dorothy  
11 Brizill. She have my home number. She have  
12 my cell phone number. She have my office  
13 number. Because she have called me on those  
14 numbers before.

15 So I went, I email her the ANC. I  
16 have been doing my duty as you send me, and  
17 there was no response from Ms. Dorothy  
18 Brizill. She promised to call me, she never  
19 all. I went down there two times, she never  
20 respond. I went to Asian American LEAD, I  
21 saw every evidence that prove, so and I asked  
22 them if they want to go down there themselves

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1 to look at the place, to let me know. So I  
2 emailed them.

3 So in our July meeting we brought  
4 it to our meeting, in our agenda. And they  
5 voted unanimously at the ANC for the Asian  
6 American LEAD. That is what the letter that  
7 I sent to you.

8 CHAIRPERSON LOUD: Okay. Thank  
9 you. And I'll just add a couple of things.  
10 That the meeting was regularly scheduled and  
11 noticed July 2nd, I think you mentioned that.

12 Notice of which was properly given and a  
13 full quorum was present, seven of 11  
14 Commissioners. The ANC 1B voted on July 2nd  
15 seven to zero to support the application.  
16 The vote was for a five year extension of the  
17 special exception from Zoning.

18 And I think that that would --  
19 along with what you said and this is our  
20 Exhibit 42 constitute the ANC's report.

21 COMMISSIONER AKINMBONI: Thank  
22 you.

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1 CHAIRPERSON LOUD: Thank you very  
2 much.

3 Let me see if Board members have  
4 any questions for you and then we'll turn to  
5 the other parties. I don't -- yes.

6 COMMISSIONER SCHLATER:  
7 Commissioner, to your knowledge are there  
8 other neighbors who have encountered problems  
9 with this facility?

10 COMMISSIONER AKINMBONI: No, none  
11 of them that I went to. I went down -- after  
12 I met the Asian American LEAD, I went right  
13 around to see if they are having problems.  
14 And most of them have told me they have  
15 already give a supporting letter.

16 COMMISSIONER SCHLATER: In your  
17 personal experience have you seen any  
18 problems at the facility, even if it's just  
19 an incident or two?

20 COMMISSIONER AKINMBONI: I don't  
21 see any problem at the facility. Because the  
22 parking at the back, there was a fence.

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1 There is o way somebody can drive to this,  
2 turn at the Brizill yard to make a U turn.  
3 There was a big fence three that I saw.

4 And in the front there is a little  
5 yard in the front, which is not even allow  
6 kids to play in the front. There is this  
7 strip. The only place the kids and stay and  
8 play is the balcony. And the balcony is the  
9 front of the building.

10 And to my own knowledge I don't  
11 think that should cause any hesitation to any  
12 neighbors because the hours they have, they  
13 are there, that's the hours that most of the  
14 resident community, they're at work.

15 So and the key is don't come  
16 really until after school, which is maybe  
17 from 3:00 to 7:00. They're open from 7:00.  
18 They are not really there during the day that  
19 they can disturb the community or the  
20 neighbors in the area. Because otherwise  
21 it's after school hours. It's only summer  
22 that they were there in the morning until

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1 about maybe 5:00/:6:00. So it's not the  
2 hours that the community told me. Some of  
3 them told me that they don't even -- they saw  
4 he kids when they are walking away going back  
5 home. They don't even have any problems with  
6 the kids.

7 COMMISSIONER SCHLATER: Okay.  
8 Thank you for coming today.

9 COMMISSIONER AKINMBONI: Thank  
10 you, sir.

11 CHAIRPERSON LOUD: Ms. Bray, did  
12 you have any questions for the ANC?

13 MS. BRAY: I have a question for  
14 Commissioner Akinmboni in her individual  
15 capacity.

16 CHAIRPERSON LOUD: Okay.

17 MS. BRAY: Ms. Akinmboni, did you  
18 receive a request from Asian American LEAD or  
19 an offer from Asian American LEAD to meet  
20 with you and with Ms. Brizill?

21 COMMISSIONER AKINMBONI: Yes.  
22 That's why -- the reason why I went down

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1 there to see what date would be convenient  
2 for Ms. Dorothy Brizill and so I can tell  
3 them so we can meet on that day. But it never  
4 happen.

5 MS. BRAY: Okay. Thank you.

6 CHAIRPERSON LOUD: Thank you.

7 And, Ms. Brizill, did you have any questions  
8 for the Commissioner?

9 MS. BRIZILL: Yes. Commissioner  
10 Akinmboni, in response to the question you  
11 were just asked you said you received a  
12 request to facilitate a meeting between  
13 myself and Asian American LEAD. Did you  
14 communicate that to me? Did you call me and  
15 tell me that.

16 COMMISSIONER AKINMBONI: In the  
17 open meeting with the ANC when you brought  
18 the issue to the ANC and it was in our  
19 meetings. And I told them, okay, since this  
20 issue is in my SMD, I will go and be a  
21 liaison to find out the issue, it was in the  
22 minutes of ANC June.

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1 MS. BRIZILL: Okay. And didn't  
2 you within the next week on a Sunday, late  
3 Sunday afternoon drive up in front of my  
4 house and I was standing in my front yard?

5 COMMISSIONER AKINMBONI: Yes,  
6 ma'am.

7 MS. BRIZILL: Okay. And I told  
8 you that I really did want to meet with you,  
9 and that unfortunately my husband and I  
10 needed to get to Baltimore. And that I would  
11 call you or contact you and we would get  
12 together, right?

13 COMMISSIONER AKINMBONI: Yes,  
14 ma'am.

15 CHAIRPERSON LOUD: Ms. Brizill, if  
16 you haven't -- did you get a copy of it,  
17 Commissioner? Oh, I think you have two  
18 copies, Ms. Bray. What is it?

19 MS. BRIZILL: Commissioner  
20 Akinmboni, this is a page from a District of  
21 Columbia Advisory Neighborhood Commission's  
22 page. And it has the list of all

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1 Commissioners, their telephone numbers, their  
2 address and their telephone numbers.

3 The number that is listed for you  
4 is 588-1448.

5 COMMISSIONER AKINMBONI: Yes.

6 MS. BRIZILL: Is that correct?

7 COMMISSIONER AKINMBONI: Yes.

8 That's my home number.

9 MS. BRIZILL: Ms. Akinmboni, when  
10 you call that number you not only never get  
11 an individual, but you don't get an answering  
12 machine. Is that your number?

13 COMMISSIONER AKINMBONI: That's my  
14 number. Ms. Brizill, you remember when there  
15 was a case with Seven's Grocery Store. You  
16 have all my number, because you get me on all  
17 my number. You get my office number, you get  
18 my cell phone number and you have my home  
19 number. So if you can get my three numbers  
20 at that time to get in touch with me to  
21 support Seven Grocery Store, why you don't  
22 have the number now? Why suddenly my home

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1 that you have the number.

2 MS. BRIZILL: Ms. Akinmboni, is--

3 COMMISSIONER AKINMBONI: I'm just  
4 asking.

5 MS. BRIZILL: Ms. Akinmboni, 588-  
6 1448 is listed in D.C. official records as  
7 your telephone number. So what number is  
8 that? Is that not your telephone number?

9 COMMISSIONER AKINMBONI: I didn't  
10 -- I say it's my telephone number. But you  
11 have all that too, elsewhere telephone number  
12 that I have. You have my cell phone number,  
13 you have my office number, apart from my home  
14 number.

15 CHAIRPERSON LOUD: Excuse me. Can  
16 I ask a proffer on the overall relevance of  
17 the telephone number issue.

18 MS. BRIZILL: Ms. Akinmboni now  
19 and at the ANC meeting has made the statement  
20 that she repeatedly tried to get in touch  
21 with me. At the ANC meeting, for example,  
22 she not only said -- she never said she tried

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1 to call me, but she said she rang my doorbell  
2 and she rang my doorbell and my car was in my  
3 driveway and she knew I was home.

4 Well, I just had a new door  
5 installed. I don't even have a doorbell,  
6 okay?

7 So my thing is is that Ms.  
8 Akinmboni is trying to portray a picture that  
9 I have not been willing to meet, I have not  
10 been getting in touch with her and what have  
11 you, and that is not the case.

12 CHAIRPERSON LOUD: Okay. Okay.

13 MS. BRIZILL: And my concern is,  
14 is that this a telephone number that rings  
15 and rings and rings. No one ever has  
16 answered it. I have been calling it for a  
17 month and a half, long before I first went to  
18 the ANC meeting. I didn't know. The last  
19 time, my husband used to be an ANC 1B08.  
20 They didn't have a website. I didn't know  
21 they were posting their agenda on the  
22 website. I found out the day of their ANC

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1 meeting that it was on the agenda. Okay.

2 And subsequent to it, I got a  
3 Councilmember who happened to have  
4 Commissioner Akinmboni's cell phone number to  
5 call her. That's the only reason I got it.

6 CHAIRPERSON LOUD: Okay. So  
7 overall this line of questioning goes to the  
8 ANC's effectiveness in getting the word out  
9 about the meeting --

10 MS. BRIZILL: No.

11 CHAIRPERSON LOUD: -- and the  
12 member's overall veracity

13 MS. BRIZILL: No.

14 CHAIRPERSON LOUD: Okay.

15 MS. BRIZILL: Commissioner  
16 Akinmboni lives one block away from me. I've  
17 know Ms. Akinmboni for a number of years.  
18 And Ms. Akinmboni knows where I live. Ms.  
19 Akinmboni and I have worked on a number of  
20 community issues. Ms. Akinmboni knows how to  
21 reach me. Okay.

22 Ms. Akinmboni would like to

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1 proffer to this Board that she tried to  
2 contact me, and I am telling you I don't --  
3 the doorbell hasn't been installed.

4 CHAIRPERSON LOUD: Okay.

5 MS. BRIZILL: She didn't leave a  
6 single piece of paper.

7 CHAIRPERSON LOUD: All right. Ms.  
8 Brizill, can we move forward? I think it's a  
9 legitimate line of questioning, you're going  
10 to the overall veracity of the witness.

11 CHAIRPERSON LOUD: Okay. I mean,  
12 it's there, you've established it. To the  
13 extent that blood can be drawn, you've drawn  
14 blood. But the point is now let's move it  
15 forward to issues that are more germane to  
16 their report.

17 I'm sorry, Commissioner, hold on a  
18 second.

19 CHAIRPERSON LOUD: That are more  
20 germane to their report and your questioning  
21 the overall usefulness of this report, why we  
22 should or should not give it great weight.

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1 But I think you've been doing a really great  
2 job on some of these cross questions. But,  
3 again, just moving it, keeping it going  
4 forward.

5 MS. BRIZILL: Let me just zero in  
6 one issue. At the ANC meeting that I did  
7 come to the Chairman of the ANC gave me less  
8 than five minutes to make a presentation, is  
9 that correct, Ms. Akinmboni?

10 COMMISSIONER AKINMBONI: They give  
11 you the time they give to everybody that come  
12 there. There is no exception. Everybody  
13 that come for a hearing, they get the same  
14 time.

15 MS. BRIZILL: Ms. Akinmboni--

16 COMMISSIONER AKINMBONI: So there  
17 is no different between you or anybody else.  
18 They always give everybody five minutes to  
19 talk, to address the issue. Because  
20 sometimes we have an issue that we have an  
21 agenda that can take us to until 11:00 at  
22 night. So --

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1 MS. BRIZILL: Ms. Akinmboni, on  
2 this particular matter didn't the ANC  
3 Chairman allow the attorney for Commissioner  
4 Akinmboni and two staff members of Asian  
5 American LEAD to testify, make a  
6 presentation, distribute materials, show  
7 their --

8 MS. BRAY: I think I'm going to  
9 object to this line of questioning --

10 MS. BRIZILL: -- and -- and -- and  
11 -- and --

12 MS. BRAY: -- This just really  
13 doesn't have any relevance to the application  
14 or to the ANC report.

15 MS. BRIZILL: It has relevance  
16 because I'm trying to get to the heart of the  
17 ANC decision.

18 CHAIRPERSON LOUD: Okay.

19 MS. BRIZILL: And the fact that  
20 the ANC was not allowed to hear our  
21 presentation as regards our objections.

22 CHAIRPERSON LOUD: Okay. A couple

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1 of thoughts on this. First, Commissioner, it  
2 would be very helpful to our proceeding and  
3 being fair to everybody, and we try to be  
4 fair to you, we try to be fair to Ms. Bray,  
5 we try to be fair to Ms. Brizill; if you  
6 listen carefully to the question and just  
7 answer that question. You don't go to go  
8 beyond that, and certainly don't stop short  
9 of that. But just listen to the question and  
10 answer that question.

11 Secondly, I think it's a fair  
12 question and she's trying to undermine the  
13 overall credibility of the ANC report. Now  
14 admittedly, there are a lot of compound  
15 questions in there and run-on questions, but  
16 I think what she's trying to get at is that  
17 there may be some reasons why this ANC report  
18 is not as valid as it appears to be on its  
19 face. And I think that if we can go through  
20 that testimony briskly. Again, there's just  
21 no reason to dwell on these very good points  
22 interminably. But I think it's a fair

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1 question. I think it's a good point to  
2 raise. And once you ask the question, sit  
3 back and let the witness answer the question  
4 and then let's move on.

5 COMMISSIONER AKINMBONI: The ANC,  
6 because Dorothy Brizill came to our meeting  
7 in June. So we gave her a whole month to  
8 present her case to us, a whole month before  
9 the next meeting.

10 CHAIRPERSON LOUD: But is it your  
11 recollection that you did or did not give her  
12 five minutes? Is it your recollection?

13 COMMISSIONER AKINMBONI: They gave  
14 her five minutes.

15 CHAIRPERSON LOUD: Okay.

16 COMMISSIONER AKINMBONI: Everybody  
17 is five minutes.

18 CHAIRPERSON LOUD: Okay. Then  
19 what's your next question?

20 MS. BRIZILL: All right. Ms.  
21 Akinmboni, at that same meeting didn't the  
22 Asian American LEAD -- the Asian American

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1 LEAD was not restricted to five minutes,  
2 correct?

3 COMMISSIONER AKINMBONI: Not --  
4 Ms.--

5 MS. BRIZILL: Yes or no. Yes or  
6 no.

7 COMMISSIONER AKINMBONI: Because  
8 they have already bring -- you came on June.  
9 I told them I'm going to intervene. They  
10 give us a whole month to settle the issue,  
11 and I've already put them on the agenda in  
12 June. We postpone it to July so you can have  
13 your own time to speak, which never happened.

14 MS. BRIZILL: But, Mr. Chairman--

15 CHAIRPERSON LOUD: Okay. I think--  
16 -

17 COMMISSIONER AKINMBONI: We give  
18 everybody five minutes.

19 CHAIRPERSON LOUD: Okay. We all  
20 cannot talk at the same time.

21 COMMISSIONER AKINMBONI: Five  
22 minutes.

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1                   CHAIRPERSON LOUD: Perhaps if we  
2 need to take a five minute break so that  
3 everybody can relax a little bit. Because  
4 what happens when everyone talks is that the  
5 court reporter doesn't get anybody's  
6 testimony on the record. And so it's a  
7 difficult record to draw a decision from.

8                   MS. BRIZILL: I just would make a  
9 request. There are written minutes of the  
10 June meeting and the July meeting. It will  
11 state very clearly that there was a lengthy  
12 presentation by Asian American LEAD; their  
13 attorney spoke, two staff members spoke. And  
14 when I indicated -- and -- and the Chairman  
15 was going to move on. Ms. Akinmboni didn't  
16 even acknowledge me in the audience. And I  
17 stood up and said there is someone from the  
18 community that has concerns about the zoning.

19                   And the Chairman turns to me and says "You  
20 have" -- I think she said three minutes. She  
21 said "You have three minutes." I said "Can I  
22 get five?"

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1 CHAIRPERSON LOUD: Okay. Again,  
2 Ms.--

3 MS. BRIZILL: Okay. And the  
4 minutes will reflect that.

5 CHAIRPERSON LOUD: Ms. Brizill, I  
6 don't know if we're going to deliberate on  
7 this today or not. Certainly if we do not,  
8 there may be an opportunity to supplement the  
9 record. If we do, there will not be that  
10 opportunity. And that's something as a party  
11 that you would have had an opportunity to  
12 present to us, would have been expected as a  
13 party to present in your direct case. But  
14 that's testimony for direct. I mean, when  
15 you have your direct, you can testify to the  
16 lack of opportunity to present fully at the  
17 ANC. And then Ms. Bray can cross examine you  
18 on that.

19 Right now you're really going into  
20 the ANC's report. You hit them with quick  
21 questions and you move on.

22 MS. BRIZILL: Okay. Ms.

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1 Akinmboni, can I ask you one question?

2 COMMISSIONER AKINMBONI: Yes,  
3 ma'am.

4 MS. BRIZILL: At the June meeting  
5 the Chairman interrupted me and asked me to  
6 give just one example, just one, as regards  
7 issues and problems I was having with Asian  
8 American LEAD. And I made reference to the  
9 fact that they were driving cars into their  
10 rear yard, but then using my backyard to turn  
11 their cars around, is that correct?

12 COMMISSIONER AKINMBONI: Yes.

13 MS. BRIZILL: Okay. When you went  
14 out to visit their property --

15 COMMISSIONER AKINMBONI: Yes,  
16 ma'am.

17 MS. BRIZILL: -- you saw a fence  
18 erected, correct?

19 COMMISSIONER AKINMBONI: Yes,  
20 ma'am.

21 MS. BRIZILL: And you came to the  
22 conclusion that it was not possible for them

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1 to drive their cars into their rear yard,  
2 come from their rear yard into my backyard to  
3 turn around and then go back out their yard,  
4 right?

5 COMMISSIONER AKINMBONI: I don't  
6 see how that weren't going to happen.

7 MS. BRIZILL: Okay. Did you ask  
8 when that fence was erected?

9 COMMISSIONER AKINMBONI: No. When  
10 you brought --

11 MS. BRIZILL: Yes or no. Yes or  
12 no. Did you ask when the fence was erected?

13 COMMISSIONER AKINMBONI: No.

14 MS. BRIZILL: Okay. Thank you.

15 I have no more questions.

16 COMMISSIONER AKINMBONI: Ma'am,  
17 you brought the issue to us in June --

18 MS. BRIZILL: I have no more  
19 questions, Ms. Akinmboni.

20 CHAIRPERSON LOUD: Thank you.

21 Commissioner -- Commissioner.

22 Thank you, Ms. Brizill. Let me see if there

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1 is -- are there any further questions from  
2 the applicant? Okay.

3 Then what we will do now is that  
4 we've concluded the report of the ANC.  
5 Parties or persons that are in support of the  
6 application, there's no parties in support,  
7 but persons that are in support, if you are  
8 in the audience, you would come forward and  
9 this is your time to give your testimony.  
10 There's a three minute limitation on your  
11 testimony. So if there are persons who would  
12 like to come forward, now is the time.

13 Seeing none, we would now move to  
14 parties or persons in opposition, and that  
15 would be the party status, parties Ms.  
16 Brizill and Mr. Imhoff.

17 And I'm thinking that it's about  
18 5:00. Maybe what we can do is take about a  
19 five minute break, let everyone sort of  
20 gather your thoughts on this, and then we can  
21 return in five minutes if that's okay to the  
22 parties, and finish this case out.

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1                   Sound good? Okay. Let's take a  
2 five minute break. And we'll be back in five  
3 minutes and we'll be ready to go through the  
4 party status applicants.

5                   (Whereupon, at 5:00 p.m. the  
6 hearing was off the record until 5:14 p.m.)

7                   CHAIRPERSON LOUD: We are ready to  
8 resume our afternoon session. We're in the  
9 final case for the afternoon. And I believe  
10 we were getting ready to enter the party  
11 opponent's case.

12                   Your team is back that you need,  
13 Ms. Bray? Okay. I'm sorry?

14                   MS. BRAY: Yes. I think we've got  
15 one team member who hasn't come back, but I  
16 think we can go ahead and get started.

17                   CHAIRPERSON LOUD: Okay. Do you  
18 know if the Commissioner is going to return?  
19 I saw her?

20                   MS. BRAY: I don't think she's  
21 going to be returning.

22                   CHAIRPERSON LOUD: She's not going

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1 to return? Okay.

2 Well then why don't we go ahead  
3 and get started.

4 Ms. Brizill, are you ready?

5 MS. BRIZILL: Yes, sir.

6 CHAIRPERSON LOUD: Okay.

7 MR. IMHOFF: Actually, Mr.  
8 Chairman, I'm going to start.

9 CHAIRPERSON LOUD: Okay. Sorry,  
10 Mr. Imhoff.

11 MR. IMHOFF: For the opponents.

12 And what I'd like to do is refer  
13 the Board again to the decision and order of  
14 January 20, 2004 referring to the hearings of  
15 December 2nd and December 9th.

16 That decision and order talks  
17 about the parties in opposition who are at  
18 that hearing, as they are at this hearing,  
19 Ms. Brizill and myself.

20 The parties in opposition to the  
21 application did not request denial of the  
22 application, but did express concerns about

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1 the concentration of community-based  
2 facilities and social service institutions  
3 already located in the residential  
4 neighborhood in the vicinity of the subject  
5 property, adequate parking for the  
6 applicant's proposed community center,  
7 adequate adult supervision of its clients and  
8 an adequate fire escape and modifications of  
9 the exterior building that might adversely  
10 effect the residential character of the  
11 neighborhood.

12 The parties in opposition also  
13 requested that the BZA review after two years  
14 any exception or variance that might be  
15 granted.

16 We're essentially in the same  
17 position today. Actually, there are fewer  
18 community social institutions, community-  
19 based facilities. So our concern about that  
20 is less than it was 5½ years ago. But other  
21 that, we are in a sense in the same position.

22 We are not in opposition. We do

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1 not speak about the program. We don't think  
2 the issue is whether Asian American LEAD is a  
3 good program or not, run by good people or  
4 not.

5 We think the issue today is did  
6 Asian American LEAD comply with the findings  
7 of fact, with the Order of the Board of  
8 Zoning Adjustment. And, in fact, it didn't  
9 in two important respects.

10 First, in paragraph 4 of findings  
11 of fact the applicant proposes to renovate  
12 the existing building on the subject property  
13 for use as a community center. An exterior  
14 egress will be constructed in the rear of the  
15 building with a staircase connecting the  
16 basement and three above grade floors, and a  
17 handicap lift providing access to the first  
18 floor. To us that is still very important.

19 Asian American LEAD says it will  
20 have up to 60 people in the building at one  
21 time in what was built as a single-family  
22 house. It does not have adequate means of

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1 evacuating the building in case of a fire or  
2 other emergency. In fact, it has bars on  
3 most of its windows, and I think on all of  
4 its windows people can only get out by the  
5 first floor front and rear doors.

6 It is necessary for the safety of  
7 their own clients and staff for them to  
8 comply with this provision that they agreed  
9 to more than five years ago, 5½ years ago.

10 Secondly, paragraph 14 the rear  
11 portion of the subject property will be  
12 graded and paved so as to provide four  
13 parking spaces accessible from the alley. A  
14 fifth space, reserved for handicap use, will  
15 be located in the driveway and accessed from  
16 Girard Street. Why is that important?  
17 Because now that the fence between our  
18 properties has been built, well in fact even  
19 before it was built, the only way in and out  
20 of the rear yard where they have parking is  
21 in the driveway. If there is a car parked in  
22 the driveway, that car or cars have to back

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1 out of the driveway into Girard Street and  
2 stay in Girard Street until the car that's  
3 trying to get out is out. That's why rear  
4 access is important. It's a traffic issue.

5           When Ms. Bray presented this case  
6 to the ANC she said those weren't conditions  
7 on our getting the special exception. They  
8 simply expressed our hopes and wishes.  
9 They're optional. And the fact that we  
10 didn't do them has nothing to do with whether  
11 or not we would have gotten the special  
12 exception, or whether we should get the new  
13 special exception, extension of it.

14           We have heard today from members  
15 of the Board that the Board doesn't enforce  
16 its orders. And if in fact the Board takes  
17 that position by rewarding Asian American  
18 LEAD for ignoring the conditions that it  
19 agreed to, and not just agreed to them. It  
20 came with elaborate architectural plans for  
21 both the fire escape and for the parking lot  
22 in the back with alley access. If it rewards

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1       them not just by saying well your compliance  
2       with our order isn't important to us. Not  
3       only is it not important to us, we'll reward  
4       you by writing a new order that strikes the  
5       provisions you don't want to comply with.

6       Then BZA has declared itself, not just in  
7       this case but in future cases, a paper tiger:

8       Our orders don't mean anything because you  
9       don't have to comply with them, it's  
10      optional, and we're not going to enforce your  
11      compliance with our orders. And if you come  
12      back to us in a few years, we'll rid of any  
13      of the provisions of our orders that you  
14      didn't comply with.

15                 We think it's important for BZA to  
16      have orders that do mean something. We think  
17      that your order of 5½ years ago. which Asian  
18      American LEAD has not complied with, which it  
19      now says it never had to comply with, that  
20      was just optional, a wish list; we think that  
21      the Board should say, must say no, our orders  
22      do have teeth and we can enforce them. We

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1 can enforce them by not rewarding you by  
2 rewriting them when you decide not to comply  
3 so that we comply with your decision not to  
4 pay any attention to the order that we  
5 issued.

6                   What can the Board do today?  
7 Again, we're not talking about the program.  
8 We're not talking about the people. We're  
9 talking about, first, a safety issue, well  
10 both their safety issues. Backing into  
11 Girard Street from the driveway and not  
12 having a fire escape for 60 people in a  
13 single-family house.

14                   We think that the Board should if  
15 it grants an extension, grant a very limited  
16 extension based upon compliance with the  
17 order that it issued 5½ years ago.

18                   I think that that's all I'm going  
19 to say and I'll turn it over to Ms. Brizill  
20 to speak about the issues that we may have  
21 had, we have had with the management of Asian  
22 American LEAD in the past few months. In

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1 fact, primarily since they started at the  
2 beginning of the year to begin to comply  
3 partially with your Order of 2004.

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

6 Let's pause and see if there are  
7 any Board questions for you or if there are  
8 any questions from Ms. Bray.

9 MS. BRAY: I'd like to cross  
10 examine at this time.

11 CHAIRPERSON LOUD: Okay.

12 MS. BRAY: But I'll defer to the  
13 Board if there are Board questions. Okay.

14 Mr. Imhoff, what is your  
15 profession?

16 MR. IMHOFF: I'm a writer.

17 MS. BRAY: Do you have any  
18 background in life safety building  
19 construction or other technical or  
20 engineering, other technical background?

21 MR. IMHOFF: You mean so that I  
22 could say professionally I know that you

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1 should have a fire escape?

2 MS. BRAY: You made a statement  
3 that the property does not have adequate  
4 means egress and I'm wondering on what you  
5 base that --

6 MR. IMHOFF: On the fact that you  
7 have only a front and a rear door for a three  
8 story house that has, according to your  
9 testimony, 60 people in it at a time.

10 MS. BRAY: Okay. And with respect  
11 to grading and paving -- actually I'm going  
12 to skip that question.

13 Are you familiar with the  
14 transcript in the Board's case in Order  
15 17080?

16 MR. IMHOFF: With the transcripts?  
17 No. I was there for them.

18 MS. BRAY: Can you recall or point  
19 me to any place in the transcript from that  
20 hearing at which the Board stated that it was  
21 basing its approval on either the erection of  
22 a fire escape or the access from the alley to

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1 four parking spaces on site?

2 MR. IMHOFF: I can refer you to  
3 paragraphs 4 and 12 of the findings of fact  
4 and the Order.

5 MS. BRAY: Those are listed as  
6 findings of fact in the Order, are they not?

7 MR. IMHOFF: Yes.

8 MS. BRAY: Are they listed as  
9 conditions of approval in the Order?

10 MR. IMHOFF: What the final date  
11 of the Order on, this is page 6 of the Order,  
12 it says "Failure to abide by the conditions  
13 in this Order in whole or in part shall be  
14 grounds for the revocation of any building  
15 permit or certificate of occupancy issued  
16 pursuant to this Order." And in fact, there  
17 is no other section of the Order that is  
18 titled "conditions."

19 MS. BRAY: Thank you.

20 MR. IMHOFF: So I am assuming that  
21 the findings of fact are the conditions.

22 MS. BRAY: Thank you.

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1                   That concludes my questioning of  
2 Mr. Imhoff at this time.

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

5                   We've been joined the  
6 Commissioner. Welcome back.

7                   Do you have any questions for Mr.  
8 Imhoff? Okay.

9                   Then why don't we turn now to Ms.  
10 Brizill. I think you were going to give some  
11 testimony as well.

12                  MS. BRIZILL: Good evening. My  
13 name is Dorothy Brizill and I reside at 1323  
14 Girard Street, Northwest. I have been a  
15 resident at 1323 since 1982 -- 1327 Girard  
16 Street. I'm sorry. I need my coffee. 1327  
17 Girard Street, Northwest since 1982, And I  
18 have long been active in the Columbia Heights  
19 Community, and more important in the District  
20 of Columbia as a civic activist.

21                  I will try to compartmentalize my  
22 testimony and go through it rather quickly

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1 and so I can respond to any questions you or  
2 the Board might have.

3 As Mr. Imhoff has indicated, we  
4 are first and foremost concerned about Asian  
5 American LEAD. But before I say that, let me  
6 say this:

7 (1) I can only say this most  
8 sincerely. We are not making a comment  
9 editorially, personally, any other way  
10 regarding the people, the programs, the  
11 clients of Asian American LEAD. We are not.

12 It is not relevant to what is before this  
13 Board, nor are we personally making a  
14 comment.

15 WE arrived more than 5½ years ago  
16 at the hearing because we were curious about  
17 what our new neighbor was doing. As Mr.  
18 Imhoff indicated, we did not testify in  
19 opposition. We did express concern.

20 We are here again today to express  
21 concern. When I have tried to figure out  
22 what was going on at this property over the

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1 past several months, it was to try to express  
2 concern.

3 The other thing I think this Board  
4 needs to know is that until a few months ago  
5 I and my husband had very good relations with  
6 Asian American LEAD. Because they are there  
7 on a limited basis, I would shoo away and  
8 call the police if I saw some unsavory  
9 characters around there. I had been  
10 renovating my house. We exchanged  
11 pleasantries and what have you.

12 And as I'll go into detail in my  
13 testimony, at some point and it was rather  
14 dramatic things changed and it became almost  
15 a personal attack by Asian American LEAD on  
16 my husband and myself, and it became terribly  
17 unpleasant. And I do not choose to have that  
18 relationship with a neighbor. And I can only  
19 stress to this Board we do not seek an  
20 adversarial relation and it gives me a great  
21 pain to be here. However, this is the only  
22 forum I have to get certain things corrected.

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1                   With that said, I'll go into my  
2 testimony.

3                   As Mr. Imhoff has already  
4 indicated, we are concerned with the regards  
5 to the failure of Asian American LEAD to  
6 abide by statements they made in their  
7 testimony at a hearing before the Board of  
8 Zoning Adjustment on December 2nd and  
9 December 9th, 2003 and reflected in the  
10 decision issued by this Board on January 20th  
11 memorializing an Order issued March 5th.

12                   Several people came from the 1300  
13 block of Girard Street and the surrounding  
14 area, expressed concern about what was this  
15 new facility going to be about. We already  
16 have a large number of community-based  
17 residential facilities and community centers  
18 in the area. How were they going to be  
19 operated? What was going to be the impact in  
20 terms of noise and traffic?

21                   I think the record will reflect  
22 that not a single one of us left that meeting

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1 in opposition. We expressed concerns and we  
2 thought the Order addressed those concerns.  
3 And we lived to see those implemented.

4 It was only recently when things  
5 got off kilter with Asian American LEAD, and  
6 I don't know if it's the new leadership or  
7 new staff, or what have you, and I will give  
8 the Board very specific examples, that I said  
9 wait a minute what happened to this Order?  
10 They're not abiding by the Order. But I  
11 don't mean to digress.

12 There is deep concern regarding  
13 the parking issue. And, yes, we are within  
14 three blocks of a Metro. But also we are a  
15 community that a single-family house today is  
16 a four unit apartment tomorrow. And a  
17 resident of an apartment has one or two cars.

18 So parking has become a premium, parking has  
19 become an issue.

20 As Mr. Imhoff has indicated, the  
21 Order indicated and they proffered to this  
22 Board that they would pave over the rear yard

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1 and they would provide a means of egress from  
2 the rear yard to the alley. That rear yard  
3 was only paved over at the beginning of this  
4 year and no egress to the alley has ever been  
5 provided.

6 And let me share with you a  
7 vignette as regards our relationship.

8 We share a common fence. It was an  
9 old wooden fence that had been partially  
10 demolished because there had been a fire at  
11 an adjoining property and the Fire Department  
12 in order to get a pumper through had come and  
13 knocked out all the fences.

14 I became aware at the beginning of  
15 the year that Asian American LEAD was  
16 replacing the fence along our property line.

17 But I also became aware that they left an  
18 entire section of a stockade fence not there.

19 And I thought well maybe they ran out of  
20 supplies or maybe the contractor didn't  
21 finish. And a week went into two weeks, went  
22 into three weeks. And then the ground froze.

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1 And when the ground froze I realized what was  
2 going on.

3 The employees and visitors of  
4 Asian American LEAD were pulling their cars  
5 into their driveway, coming into their rear  
6 yard parking. But in order to turn around  
7 they were pulling into my yard through that  
8 gap in the fence and pulling out.

9 And for the Board I have -- what  
10 I'm going to show you are photographs of the  
11 section of the fence. This large section of  
12 the fence is new. It was -- bear with me.

13 The single large running section  
14 was replaced after I complained to Ms. Lai  
15 and brought her to my rear yard and showed  
16 here in the frozen ground the tire tracks.  
17 She then sent an email to all her staff  
18 directing them not to use my rear yard to  
19 turn around their cars.

20 The small section that you see  
21 with a board attached to a tree is a section  
22 of the fence that they never erected. And

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1 indeed, earlier this year Asian American LEAD  
2 put the property on the market. And because  
3 I was working on my property on at least two  
4 occasion I heard noise in my backyard. And I  
5 went to my backyard and I found, first, a  
6 property assessor and then a group of  
7 potential buyers coming through the gap in  
8 the fence to look up at their property  
9 because they had left this gap in the fence.

10 As you see, my carpentry skills  
11 are not very great, but I had to get a piece  
12 of fence and a pole and attach that remaining  
13 gap so that the visitors to Asian American  
14 LEAD, their parking assessor, could not come  
15 in my backyard and disrespect me. It's just  
16 plain disrespect.

17 And let me make it very clear, Mr.  
18 Chairman. I'm not one of those finicky  
19 neighbors. I have repeatedly told Ms. Lai if  
20 you need to come on my property, if there's  
21 any issue, call me, knock on my door, leave  
22 me a note: Just do that. But they didn't.

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1                   Let me digress with the rest of  
2 these photographs. And I'll give you another  
3 indication. In addition to this fence issue,  
4 and Ms. Akinmboni would not have know this  
5 because she saw the new fence, you will see a  
6 picture of some trees. What happened was was  
7 that they erected the fence, they then  
8 started to tear down -- to cut down the  
9 trees. What they did, again in a very  
10 unneighborly fashion and a sign of major  
11 disrespect. They cut down the trees and let  
12 the limbs fall where they may, including on  
13 my brand new car, including on my brand new  
14 magnolia tree that's planted back there. And  
15 again, Mr. Chairman, I understand these  
16 things can happen.

17                   I went that morning to Ms. Lai and  
18 I said Ms. Lai, you've got people in your  
19 backyard cutting down trees. That's when she  
20 well we're trying to get in compliance with  
21 our BZA Order. I said I understand. I said  
22 Ms. Lai can you just do one thing for me.

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1 Just let me know when they're going to be  
2 doing the work, and two: If they're going to  
3 be doing work in close proximity to my car or  
4 near my tree, can they put something over the  
5 car or the tree.

6 In less than two hours after my  
7 personal meeting with Ms. Lai they were back  
8 cutting down limbs and letting them fall.

9 I know that this is, perhaps,  
10 difficult to understand. But I will tell you  
11 I've never encountered a situation like this.

12 And I did not know what to do. And I knew  
13 it would be my word against Ms. Lai's word.  
14 So whenever this would occur, I'd go to some  
15 of my neighbors. And I have letters from my  
16 neighbors attesting to what they saw.

17 MS. BRAY: Mr. Chairman, I'd like  
18 to object to the entry of these letters into  
19 the record on the basis that the writers of  
20 the letters are not present to be cross  
21 examined. And there's no evidence, and  
22 perhaps Ms. Brizill will lay foundation, but

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1 there appears to be no evidence that the  
2 letters are from the people who they purport  
3 to be from or the context under which they  
4 were written.

5 CHAIRPERSON LOUD: Why don't you  
6 give us all a few minutes to just take a look  
7 at the letters and then I'll ask Ms. Brizill  
8 to respond.

9 Okay. I've had a chance to review  
10 what we've been given.

11 Board members, have you had a  
12 chance to review it? Okay.

13 Ms. Brizill, did you want to  
14 respond?

15 MS. BRAY: Actually, Mr. Chairman,  
16 if I just could elaborate. And first of all,  
17 I apologize for Commissioner Schlater for  
18 having to deal with a hearsay objection on  
19 this first day before the BZA I understand  
20 that the BZA is not limited to the Rules of  
21 Evidence. However, where there are questions  
22 about the reliability of evidence, the Board

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1 has traditionally looked to the Rules for the  
2 Superior Court. And this would be hearsay  
3 evidence.

4 The writers are not here. I don't  
5 have any information on which to assess the  
6 reliability of the assertions made in the  
7 letters. And I don't see why the letters  
8 could not have been sent directly to the  
9 Board themselves and come into the record as  
10 a matter of course which would at least serve  
11 to bolster their reliability.

12 They're coming in from a truth of  
13 a matter asserted. It's clearly a -- the  
14 person who is making the statement is not  
15 present to be cross examined. And this  
16 clearly falls within the definition of  
17 hearsay under the Superior Court Rules.

18 CHAIRPERSON LOUD: Thank you.

19 And, Ms. Brizill, did you want to  
20 respond briefly?

21 MS. BRIZILL: Mr. Chairman, I  
22 think this is no more hearsay than some of

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1 the materials that has already been put in  
2 the record by the applicant.

3 We don't know the conditions, and  
4 I will get the conditions in which some of  
5 those signatures on the petitions were  
6 gathered.

7 We don't know the conditions under  
8 which some of those letters were written.

9 If it would give the Board  
10 comfort, I am willing to get the three  
11 individuals, Dr. Kenneth Smith, Mr. Jerry  
12 Wilkerson and Marlin Blaize to sign  
13 affidavits and send it to the Board directly.

14 As is always the case, and I'm  
15 sure the Board can appreciate it, you're  
16 working on multiple issues at the same time.

17 And that is why I have included people's  
18 phone numbers in case there was any question  
19 as regards to their veracity. But I would--  
20 I felt compelled to get these statements from  
21 these individuals at the last minute because  
22 at the ANC meeting Ms. Akinmboni seriously

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1 cast dispersions as regards my concerns about  
2 the fence and some other issues. And I think  
3 it is important to lay the foundation as Mr.  
4 Imhoff has as regards simply bad behavior.  
5 Jus simply bad behavior.

6 I don't believe they're hearsay.  
7 These individuals signed of their own free  
8 will. I discussed the matter with them. And  
9 indeed, I was not aware that they were aware  
10 of some of the things that had been going on  
11 and had witnessed it themselves until we were  
12 trying to talk to this week about the Zoning  
13 case.

14 Unfortunately, these are all  
15 working individuals and because I could not  
16 give them a definite time to appear at the  
17 hearing, we did the best we could. But  
18 again, I would defer to the Board. And if  
19 the Board would like an affidavit submitted  
20 and the individuals to send it to them in  
21 sealed letters, I could readily do that.

22 CHAIRPERSON LOUD: All right. Let

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1 me just turn to Board members and see if you  
2 guys wanted to weigh in on the exchange.

3 COMMISSIONER SCHLATER: Well, it  
4 certainly would have been preferable had the  
5 letters been sent through the normal channels  
6 to the Board.

7 Personally I'm not concerned that  
8 these are forgeries. My sense is that they  
9 are likely the true statements of the people  
10 on this piece of paper.

11 If the other Board members are  
12 concerned, I'd be willing to leave the record  
13 open so that they could send the letters  
14 directly to the Board if that is the course  
15 you guys would like to take.

16 VICE CHAIRMAN DETTMAN: Mr.  
17 Chairman, I'm allowing them into the record.

18 CHAIRPERSON LOUD: Okay. Thank  
19 you, Board members. Thank you, Ms. Bray.

20 I think it's fine for these to  
21 come in. We've got a number of -- and we get  
22 these in all of these kinds of cases where we

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1 get submissions by persons that are not  
2 available to be cross examined. We have a  
3 bunch of them in this case from the  
4 applicant, I do believe. And they're not  
5 available for cross examination. So I don't  
6 think that that's a big issue.

7 I think, though, to your larger  
8 point it goes to the weight that we would  
9 give these. I agree with Mr. Schlater that  
10 the party opponent I think is a very  
11 credible, very respected person in the  
12 community. It's beyond my imagination that  
13 there would be this elaborate effort to  
14 submit these fraudulent documents and place  
15 them before the BZA and so on and so forth.

16 MS. BRAY: I was suggesting  
17 nothing of the kind.

18 CHAIRPERSON LOUD: No, I'm not  
19 saying that you are. I'm just saying that I  
20 find in reviewing the whole question of  
21 whether we admit this or don't admit, that  
22 she's credible and I don't think that she

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1 would present this kind of information and  
2 try to fabricate the context for it. But  
3 again, as to the weight that's to be given  
4 this, that's an entirely different matter.  
5 And I think what she's testified to is the  
6 best evidence regarding what these letters  
7 speak about and really more germane than  
8 anything that are in these letters. She's  
9 testified to the tree trimming issue and the  
10 wooden fence, and all that. So this is  
11 almost pile-on to me and it's not something  
12 that I'm going to give a whole lot of  
13 consideration to because she's right here  
14 testifying to the very same stuff.

15 So I think we all are in agreement  
16 to let it in. And it's in, and if we can  
17 continue to move forward.

18 Let me remind everyone that we're  
19 at 5:45 and we had said we would stop at  
20 6:00, assess where we are and make a  
21 determination as whether we would continue  
22 forward today or not. So bear that in mind as

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1 we have skirmishes over things like this,  
2 does it rise to the level of us stopping and  
3 going back and forth about whether we're  
4 going to admit something like that or should  
5 we continue to push and move the proceeding  
6 forward so we can deal with the really  
7 pertinent issues of the case.

8 So let me turn it back to you, Ms.  
9 Brizill.

10 MS. BRIZILL: Based upon later  
11 actions or decisions by the Board if the  
12 record is open, I would have a comfort zone  
13 as regards allowing these individuals to sign  
14 an affidavit before a notary and have them  
15 send it to you directly to the Board. I just  
16 offered that to clear up any doubt or  
17 concerns.

18 The second issue I want to raise  
19 id the serious concerns regarding the fire  
20 escape at the property. And to respond to  
21 the counsel's concern, no we're not experts  
22 on engineering or architecture or what have

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1 you, but I do think we have a little bit of  
2 mother wit. And we are familiar with these  
3 old houses. We are familiar with the fire  
4 hazards that can arise. And we are concerned  
5 that based upon their own testimony they  
6 serve up to 60 youths daily as well as 11 to  
7 15 staff people. And that there is no way  
8 the 60 people and 11 to 15 staff persons can  
9 get out of this building with a front door  
10 and a rear door and bars on all the front  
11 windows and bars on most of the second floor  
12 windows. It is just a danger.

13 And so that is why we had a  
14 comfort zone when again Asian American LEAD  
15 themselves said we're going to erect a three  
16 story fire escape and they submitted  
17 architectural renderings into their  
18 submissions 5½ years ago.

19 Going on, regarding the noise  
20 issue. The clients at the Asian American  
21 LEAD come largely from their after school  
22 program. They congregate in the front yard

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1 making a great deal of noise, eating,  
2 throwing trash, playing basketball and  
3 soccer. And, indeed, were it not for the  
4 fact that I did not want this proceeding into  
5 a circus, I could have brought some  
6 basketballs, I could have brought some soccer  
7 balls that landed in my front yard from my  
8 next door neighbor.

9 My concern is again children will  
10 be children, but I want them to be  
11 supervised.

12 It got to a point a few months ago  
13 that I was at a Council hearing when the  
14 Director of the Children's Youth and Vestment  
15 Trust Fund was there, and I happen to know  
16 that Asian American LEAD gets some of their  
17 money from there. And I was desperate and I  
18 said do you ever come out and inspect the  
19 facility with regard to the safety of  
20 children. And she said "Yes, we do." I  
21 said well I think that you might want to do  
22 another round them, I said because I'm

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1 particularly concerned about a neighbor of  
2 mine who receives funds from the trust as  
3 regards to the fact that the children are  
4 there, sometimes 20, 30, 40 kids totally  
5 unsupervised. And the topper for me was even  
6 with an adult out on the porch, the kids were  
7 allowed to ride a motorcycle up and down the  
8 sidewalk. And what's so difficult about that  
9 is that one corner we have a senior citizens  
10 facility with a great number of their clients  
11 in wheelchairs and at the other end we have  
12 the Easter Seal facility with very young  
13 children, mothers with strollers and what  
14 have you.

15 I've already alluded to the fact  
16 that in order to facilitate the paving over  
17 of the backyard, they cut down trees in my  
18 backyard. Again, this does not go toward a  
19 Zoning issue, but it speaks to just as the  
20 failure to property post the building, are  
21 there rules for most of it and there are  
22 separate rules for Asian American LEAD. And

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1 I need to know that.

2 With regards to Asian American  
3 LEAD, I don't know if this is the solution,  
4 but I proffer this for consideration. At  
5 some point they're reaching capacity, if they  
6 aren't already there. And that is why so  
7 many of the kids cannot fit onto the first  
8 floor, they're hanging out in the front yard  
9 and they're hanging out on the front porch.

10 We have a brand new Columbia  
11 Heights Recreation Center within the next  
12 block, the 1400 block of Girard Street that  
13 has ample space for after school programs.

14 We have a Boys and Girls Club in  
15 the 2500 block of 14th Street that is wanting  
16 for programs.

17 At different times the Asian  
18 American LEAD has had programs in different -  
19 - in a variety of schools. I think they had  
20 one with Bell Multicultural.

21 What I am saying is that maybe  
22 some thought needs to be given to them having

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1 their offices and administrative function at  
2 1323 Girard Street, but having their programs  
3 for their young clients, mostly male I must  
4 add -- because I stress the fact that they're  
5 mostly male because they come up with a lot  
6 of energy and they want to, you know, release  
7 that energy. And so as a result when they  
8 come home from after school they want to play  
9 basketball. I want to see them play  
10 basketball. They want to play soccer. I want  
11 to see them play soccer. In their front yard  
12 is not the right place.

13           And I'll just go through a few  
14 more things. The impact on the 1300 block of  
15 Girard Street. As I've already said, at one  
16 end of the block we have a large Easter Seal  
17 facility that serves handicapped children.  
18 At the other end of the block we have a  
19 facility for senior citizens. Directly in  
20 front of Asian American LEAD we have a group  
21 home for adjudicated youth. Directly behind  
22 Asian American LEAD we have Second Genesis, a

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1 large apartment building that operates a drug  
2 treatment facility. And the corner of 13th  
3 and Girard we have a facility for pregnant  
4 homeless women. So we've done our part.

5 And all of these facilities have  
6 staff, have clients, have visitors that  
7 require parking.

8 One thing I would like to do is I  
9 understand that you have received some  
10 petitions that are in their filing. I would  
11 just like to make some brief comments.

12 I was on my way home one day when  
13 I saw two staff people from Asian American  
14 LEAD with clipboards in their hands. They  
15 knew who I was. They knew I was the next  
16 door neighbor. They hid the clipboard from  
17 me. It was only subsequent to that that I  
18 understood that they were circulating a  
19 petition to get the neighbors to support  
20 them.

21 If you look at the petitions there  
22 are some things that strike you. By in

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1 large, the signatures are dated in February.

2 There was no notice to residents or anybody  
3 of this hearing until March. The statement  
4 at the top of that petition does not say that  
5 there's a Zoning issue.

6 Moreover, the signatures on the  
7 petitions, by in large, with the exception of  
8 two individuals, those are the only two from  
9 Girard Street. And they're at the far end of  
10 the block. Most of the signatures are from  
11 people throughout the region; not D.C., the  
12 region. So I wanted to share that with you.

13 Now on the issue of ANC 1B, I had  
14 your able staff make a copy of their minutes,  
15 which I happen to have. So I have a copy for  
16 you of the minutes of June 4th and the  
17 minutes of July. And in it I stand  
18 corrected.

19 The Chairman of the ANC gave Asian  
20 American LEAD's attorney and two staffers  
21 time to make a presentation. They gave me  
22 and my husband two minutes. Two minutes to

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1 state what our objections were.

2 And when at the meeting that they  
3 took a vote, they refused to let us speak at  
4 to address any inaccuracies that they might  
5 operating under.

6 So let me circulate those minutes.

7 CHAIRPERSON LOUD: I believe we  
8 have them, Ms. Brizill, so you don't -- okay.

9 MS. BRAY: I don't have a copy of  
10 the minutes. If they're entered into the  
11 file, I'd like to have a copy.

12 MS. BRIZILL: I'm sorry.

13 CHAIRPERSON LOUD: Definitely.

14 MS. BRIZILL: Here they are.

15 MS. BRAY: Thank you.

16 MS. BRIZILL: And finally, Mr.  
17 Chairman, as I said I would offer to have the  
18 statements of Dr. Kenneth Smith, Marlin  
19 Blaize and Mr. Jerry Wilkerson submitted as  
20 affidavits that are signed and dated.

21 And with that, I think I will  
22 respond to any questions or issues you might

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1 have.

2 CHAIRPERSON LOUD: I'm sorry.  
3 We're just making sure we have the correct  
4 minutes.

5 MS. BRIZILL: There should be a  
6 minutes for June and there should be a  
7 minutes for July. There's June 4th and July  
8 2nd. The June 4th one is the one we were  
9 given two minutes.

10 CHAIRPERSON LOUD: I don't know if  
11 Ms. Bailey has it. This had to come in right  
12 now during party opponent's case.

13 Okay. Ms. Brizill --

14 MS. BRIZILL: The June meeting  
15 you'll see on page 8 that the Chairman gave  
16 me two minutes to make a statement.

17 CHAIRPERSON LOUD: Okay. We'll  
18 take a look at that.

19 MS. BRIZILL: Okay.

20 CHAIRPERSON LOUD: Does that  
21 conclude your testimony?

22 MS. BRIZILL: Yes, sir.

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1                   CHAIRPERSON LOUD: Thank you.  
2                   That was very extensive. And let me just see  
3                   if Board members have questions for you and  
4                   then we'll turn to the applicant and the ANC.

5                   COMMISSIONER SCHLATER: Ms.  
6                   Brizill, you state that you're concerned--

7                   MS. BRIZILL: Yes.

8                   COMMISSIONER SCHLATER: -- but not  
9                   in opposition?

10                  MS. BRIZILL: Yes.

11                  COMMISSIONER SCHLATER: Is that  
12                  correct?

13                  MS. BRIZILL: Yes.

14                  COMMISSIONER SCHLATER: And that  
15                  sort of the middle ground you're proposing  
16                  here is that you move basically the services  
17                  out of the building. Is that your proposed  
18                  solution here? Because what I'm trying to  
19                  get a sense of is you've raised a number of  
20                  issues in your testimony around the parking,  
21                  the fence, the tree cutting, the fire escape,  
22                  the ball playing and the soccer, the

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1 motorcycle usage. And so I've heard all  
2 those concerns. My question is, is are there  
3 specific actions that can be taken to  
4 mitigate the problems that you're having with  
5 your neighbors, which aren't good that you're  
6 having these problems.

7 MS. BRIZILL: No. No, they're  
8 not.

9 Mr. Chairman, my question about  
10 looking down the road in terms of moving  
11 their program to another site is not what I'm  
12 suggesting they can do immediately. I'm a  
13 realistic, okay?

14 I do know that the city is going  
15 to be providing additional program dollars  
16 for the Boys and Clubs Club, including  
17 capital dollars to renovate the facility. I  
18 do know that there is program space available  
19 at the Columbia Heights Community Center.  
20 But, again, those are -- you have a  
21 discussions today and maybe something happens  
22 six months, a year down the road. I'm not

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1 saying that. But I am saying that-- and  
2 again, I don't know if there will be  
3 allowance for submissions. Minor things. I  
4 do think that the Board needs to get them to  
5 put an egress to the rear of the property  
6 into the alley. That has to happen. That  
7 has to happen because otherwise, as Mr.  
8 Imhoff said, they are backing their cars up.  
9 There is not enough turn around space.

10 And second, with the recent  
11 surveyor's stakes it shows that the property  
12 that they're using in their driveway is not  
13 theirs. Okay? I mean, I'm not talking about  
14 an inch or two. I'm talking about feet,  
15 okay? So I think that the parking issue  
16 needs to be addressed.

17 Minor things for me. I have asked  
18 Ms. Lai for over two years put a trash  
19 receptacle in the front yard, okay? I mean  
20 she has a summer feeding program, okay? It's  
21 only natural for the kids not to all of them  
22 want to eat inside, want to come out on the

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1 front porch. I understand that. But what do  
2 they do with their trash? There's not a  
3 single trash receptacle in the front yard.  
4 So where does it go? It goes in my yard, in  
5 the street and what have you.

6 And fortunately we've had the  
7 summer youth kid who have gone through the  
8 street and pick it up, but normally my job in  
9 the morning is to go and pick up the trash.  
10 Well, I'm tired of doing it. And a couple of  
11 times -- one time I got frustrated and put it  
12 back in their yard, and Ms. Lai sends me a  
13 letter saying I'm trespassing.

14 There are things that need to be  
15 done: The fire escape, getting the Fire  
16 Marshal to make an assessment of the  
17 property. I mean that is --

18 COMMISSIONER SCHLATER: I guess  
19 I'm talking about stuff that immediately  
20 impacts their neighbors and immediately  
21 impacts that you and are there things that  
22 can be done to address that situation?

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1                   The fire escape is a fire code  
2 issue?

3                   MS. BRIZILL: Yes.

4                   COMMISSIONER SCHLATER: In my view  
5 that is not relevant to the impacts on noise  
6 or traffic. And I think at least as far as  
7 it goes in my reading of the case --

8                   MS. BRIZILL: Yes.

9                   COMMISSIONER SCHLATER: -- what  
10 we're really focusing on here is whether the  
11 community center is objectionable in a  
12 residence district because of noise or  
13 traffic.

14                   MS. BRIZILL: Okay. I understand.

15                   COMMISSIONER SCHLATER: And so I  
16 want to focus on that. Their parking in your  
17 yard if that happened, is not a good thing.  
18 But there is now a fence there so it would be  
19 hard to further remedy that situation.

20                   MS. BRIZILL: But when they cut  
21 down the trees, they've cut the trees so  
22 they're top heavy.

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1 COMMISSIONER SCHLATER: Yes.

2 MS. BRIZILL: They cut them so  
3 that all the limbs on their side. So now, I  
4 mean, you know I have great trepidation now  
5 when there's a heavy wind as regards where  
6 they're going to go.

7 But to respond to your question, I  
8 do think all those issues are important: The  
9 egress for the alley, the fire escape are  
10 important. But as regards the noise and  
11 traffic, I do think that somehow you have to  
12 hold them to their word, which I know is not  
13 the case now.

14 Their clients arrive in many  
15 instances when there's no one at the  
16 building, okay? For example, on Saturday.  
17 And they hang around for an hour and there's  
18 no one there and kids do what kids do. If  
19 thy are having a program, whether or not it's  
20 during the week or on the weekend, there must  
21 be adult supervision. There must be someone  
22 there to let them in. There has to be.

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1                   COMMISSIONER SCHLATER:  If they're  
2                   having a program?

3                   MS. BRIZILL:  Yes.

4                   COMMISSIONER SCHLATER:  Because we  
5                   have testimony from the applicant that all  
6                   programs have adult supervision.  Are you  
7                   saying that that's just not true?

8                   MS. BRIZILL:  Okay.  Let me say  
9                   this:  I think there's a parsing of words.  I  
10                  might have a program that's mentoring, but I  
11                  might have 20 kids who are waiting to be  
12                  mentored who are hanging out on the front  
13                  porch or the front yard, okay?

14                  COMMISSIONER SCHLATER:  Yes.

15                  MS. BRIZILL:  So when she says  
16                  that their programs be inside, that  
17                  technically could be correct.  But my thing is  
18                  that if you have a community center in which  
19                  you're attracting young people to your  
20                  facility --

21                  COMMISSIONER SCHLATER:  Yes.

22                  MS. BRIZILL:  -- and you do not

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1 want to have an adverse impact on the  
2 community regarding noise, then you have to  
3 make sure that the doors are open so that  
4 when they arrive, and you know they're going  
5 to not arrive at 3:00 because the program  
6 starts at 3:00; that if they arrive a half an  
7 hour early or what have you, the door's open  
8 to receive them, there's adult supervision  
9 and there's someone who assumes  
10 responsibility for making sure that  
11 outrageous conduct does not occur on the  
12 outside. If not for the neighbors' sake, for  
13 their safety. For their safety. And that is  
14 the approach I've always taken. I've always  
15 tried to let Ms. Lai know that, look, for the  
16 safety of your clients there needs to be  
17 someone monitoring what's going on outside.

18 COMMISSIONER SCHLATER: They can't  
19 monitor their clients outside of their  
20 property --

21 MS. BRIZILL: Yes, they can. It's  
22 on their property.

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1 COMMISSIONER SCHLATER: Oh, no.  
2 I'm asking for -- so on their property which  
3 is their front porch or the lead up to the  
4 front porch they can certainly monitor that.

5 MS. BRIZILL: Yes. And that's  
6 where the problem is occurring.

7 COMMISSIONER SCHLATER: But not on  
8 the sidewalks --

9 MS. BRIZILL: I didn't say that.  
10 No.

11 COMMISSIONER SCHLATER: Okay.

12 MS. BRIZILL: That's not what I  
13 said. That's not what I said.

14 MS. BRIZILL: I didn't say that  
15 was what you said. I just wanted to be  
16 clear.

17 MS. BRIZILL: My thing is is that  
18 if they are -- Ms. Lai's testimony is, is  
19 that their programs are inside. I have seen  
20 her staffers engage in football games, engage  
21 in basketball with the kids in the front  
22 year.

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1 COMMISSIONER SCHLATER: Yes.

2 MS. BRIZILL: Maybe that's not a  
3 program, that's an activity. So I think  
4 we're dealing with is words. But that is  
5 where the noise from 30, 40, 50 kids emanate  
6 in an afternoon. Okay.

7 CHAIRPERSON LOUD: Excuse me,  
8 Commissioner, just for one moment, and Ms.  
9 Brizill. I just wanted to remind everyone  
10 that is now 6:00 p.m. and you heard me state  
11 at the outset when we convened the hearing  
12 that at 6:00 we would stop and assess where  
13 we are and get a determination. So I wanted  
14 to get a sense from the parties how much  
15 longer do you think we'll need? I know that  
16 there's an opportunity to do cross. There are  
17 a lot of questions coming out of the Board  
18 right now and one may want to take a sense of  
19 direction about the level and extent of cross  
20 from some of those questions. But how much  
21 more time do you think we'll need to close  
22 out today?

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1 IF you could just speak into the  
2 microphone.

3 COMMISSIONER AKINMBONI: And make  
4 sure we can finish it today so the people  
5 don't have to come back.

6 CHAIRPERSON LOUD: Okay. I'm just  
7 thinking that we may not even need to get to  
8 6:45, but that's what I'm sort of taking a  
9 survey of right now. But thank you.

10 COMMISSIONER AKINMBONI: You're  
11 welcome.

12 CHAIRPERSON LOUD: Ms. Bray?

13 MS. BRAY: Well, I certainly have  
14 some questions on cross. I'd like to make a  
15 brief statement in conclusion. And I think  
16 I'd like to offer Ms. Kendra Lee, the Program  
17 Director, to speak briefly in rebuttal  
18 regarding the questions that have come up  
19 about supervision and program activities.  
20 She's going to make a very brief statement,  
21 I'd say less than five minutes.

22 So our total time that we need is

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1 maybe 20 minutes.

2 CHAIRPERSON LOUD: Okay. Do you  
3 see any opportunity to truncate any of that  
4 or absorb any of that in the closing  
5 statement that you would normally be giving  
6 anyway?

7 MS. BRAY: I really would like you  
8 to hear from Ms. Lee because she's the person  
9 responsible for daily supervision of kids and  
10 for running all the programs.

11 With respect to truncating my  
12 conclusion, I'd be happy to provide it in  
13 writing.

14 CHAIRPERSON LOUD: Yes.

15 MS. BRAY: With respect to cross,  
16 I will be as brief as possible.

17 CHAIRPERSON LOUD: Okay. And from  
18 your vantage point, I think you had closed  
19 out your direct case and you were getting  
20 questions from the Board, so --

21 MS. BRIZILL: However, Mr.  
22 Chairman, if Ms. Bray calls Ms. Lee, I would

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1 like to cross examine Ms. Lee. Because Ms.  
2 Lee is the person who is supposed to be  
3 monitoring the programs and what's going on  
4 there.

5 CHAIRPERSON LOUD: Absolutely.  
6 You will certainly have that right.

7 So we're at 6:05. I want everyone  
8 to think in terms of where we are, where this  
9 case is, what's come today in terms of the  
10 209 requirement, 3104, any other sections  
11 that might apply. And the extent to which  
12 the record is full, some of what -- some  
13 additional stuff that there may be a desire  
14 to get out on the record, may already be  
15 enough evidence on those issues already in  
16 the record. But certainly everyone's  
17 privileged to make sure that you put on the  
18 case that you want to put on.

19 Anyway, 6:06 and we can continue.

20 Sorry.

21 COMMISSIONER SCHLATER: Just two  
22 final questions for you, Ms. Brizill.

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1                   You said that the problems have  
2                   only arisen recently.

3                   MS. BRIZILL:    Yes.

4                   COMMISSIONER SCHLATER:  Is there  
5                   something that's changed in the programming  
6                   over the past six months or so that has  
7                   raised these concerns or is it something that  
8                   you've tolerated for a long time but your  
9                   relations with Asian American LEAD have  
10                  soured over that period of time so you're  
11                  raising these as additional objections?  I  
12                  just want to get a sense of have you had a  
13                  problem for 4½ years with kids hanging out,  
14                  is it a daily problem, is a monthly problem,  
15                  does it happen all the time?

16                  MS. BRIZILL:  There is an ongoing  
17                  -- has always been an ongoing problem  
18                  regarding the lack of supervision and the  
19                  lack of -- the lack of supervision and the  
20                  noise emanating from the facility.

21                  I truly want to be a good  
22                  neighbor.  I truly don't want to report

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1 people, call authorities, or what have you.  
2 However, there have been increasing incidents  
3 where I thought that the conduct of some of  
4 their clients was bordering on very  
5 dangerous.

6 And we have a ledge in my  
7 driveway. And one day I go out there and the  
8 kids are making like it's a tightrope  
9 walking. And if they fell off one side, it's  
10 almost an eight foot drop. And I -- you  
11 know, I stand there and I look up on the  
12 porch and there's a staffer there. And I say  
13 to him --

14 COMMISSIONER SCHLATER: I'm just  
15 trying to get to the specific question --

16 MS. BRIZILL: Okay.

17 COMMISSIONER SCHLATER: -- which  
18 is is there something that's recent and how  
19 often does it happen?

20 MS. BRIZILL: Okay. Let me tell  
21 you. Okay. Let me tell you.

22 COMMISSIONER SCHLATER: And just a

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1 brief question to be sensitive --

2 MS. BRIZILL: It's been ongoing.

3 COMMISSIONER SCHLATER: -- to

4 everybody here.

5 MS. BRIZILL: And what has

6 happened, which I think has exacerbated the

7 situation was Asian American LEAD put the

8 property for sale. And when they put up for

9 sale they advertised it, it went with a

10 Zoning variance. And I think they became

11 aware, I don't know how, that the Zoning

12 variance was ending, or what have you. But

13 there was a definite change in attitude and

14 relationship. As I said --

15 COMMISSIONER SCHLATER: But about

16 the kids and how they behaved out front?

17 MS. BRIZILL: Well, what happened

18 was with how the kids would behave was that I

19 would try to talk to Ms. Laid. And indeed,

20 in one afternoon when it was just

21 particularly outrageous I asked the kids if

22 they could find an adult for me to talk to,

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1 and what have you. And there was no adult to  
2 be found.

3 So the problem with the kids has  
4 been ongoing. However, I have suppressed it  
5 and tried to manage --

6 COMMISSIONER SCHLATER: Okay. I  
7 think that answers the question. I  
8 appreciate you answering it.

9 The last question. Why is it you  
10 think, and I know you're the only immediately  
11 adjacent neighbor to this property--

12 MS. BRIZILL: Yes.

13 COMMISSIONER SCHLATER: -- but  
14 other neighbors along your block did not come  
15 forward at the ANC meeting, have not shown up  
16 here to express concern about Asian American  
17 LEAD --

18 MS. BRIZILL: Yes.

19 COMMISSIONER SCHLATER: -- in this  
20 way.

21 MS. BRIZILL: Yes.

22 COMMISSIONER SCHLATER: And so how

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1       come, why do you think it's just you and not  
2       the rest of the residents on the block?

3                   MS. BRIZILL:   Number one, until--  
4       I did not even know that Asian American LEAD  
5       was on the agenda.

6                   COMMISSIONER SCHLATER:   Yes.

7                   MS. BRIZILL:   As I said, my  
8       husband used to be an ANC 1B08 Commissioner.

9       And they never had a website.  You never  
10      found out what the agenda was until the  
11      meeting.

12                   I was because I knew the Zoning  
13      case was coming up that I tried to reach Ms.  
14      Akinmboni and repeatedly called the number  
15      for over a month.  And then I went to a  
16      Councilmember and they had a cell phone  
17      number for her.

18                   The second thing --

19                   COMMISSIONER SCHLATER:   So you  
20      think it's just because they don't know --  
21      they didn't know what was happening?

22                   MS. BRIZILL:   Well, yes.  I'm

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1 talking about in terms of going to the ANC  
2 meeting.

3 Number two is as I've shown you,  
4 you cannot see from that posting that there's  
5 a Zoning hearing.

6 Number three, most of the resident  
7 in the immediate proximity are renters. The  
8 notice goes to the property owner, not the  
9 renter.

10 COMMISSIONER SCHLATER: Yes.

11 MS. BRIZILL: And number four, it  
12 is not the most convenient thing to take off  
13 a day to come down here. And indeed, a  
14 number of the people that I spoke to  
15 expressed concerns about what was going on,  
16 but did it rise to them coming down here?

17 No.

18 Columbia Heights has already had a  
19 problem in the past with the BZA regarding  
20 community-based residential facilities. And  
21 so people -- see, people are somewhat shy  
22 about it. And a number of people did turn up

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1 5½ years ago and thought that the order would  
2 address their concerns, and they saw 5½ years  
3 later that it didn't.

4 So the end result, I would not  
5 read anything into the fact that people don't  
6 come.

7 COMMISSIONER SCHLATER: Okay.

8 MS. BRIZILL: And indeed, you know  
9 if anything, you could read into it the  
10 tenacity of my husband and I that we could  
11 have let this pass, but we chose not to.

12 COMMISSIONER SCHLATER: Okay.  
13 Thank you for your testimony.

14 I have no further questions.

15 CHAIRPERSON LOUD: Thank you,  
16 Commissioner Schlater.

17 Mr. Dettman? Okay.

18 I believe you had some cross?

19 MS. BRAY: And I'll be very brief.

20 Ms. Brizill, you mentioned that  
21 parking has been an issue in this  
22 neighborhood and an issue for this property.

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1 But I just want you to verify that  
2 regardless of when the parking area in the  
3 back of the subject property was paved, that  
4 area has in the past five years consistently  
5 been used for parking, is that not correct?

6 MS. BRIZILL: Yes and no. Until it  
7 was paved over it was a muddy hole.

8 MS. BRAY: But it was used for  
9 parking?

10 MS. BRIZILL: I think you could  
11 get two or three cars back there.

12 MS. BRAY: Okay. And you  
13 mentioned and provided photographs of an area  
14 in the fence which you stated is new and was  
15 not part of the fence replacement that was  
16 done over a year ago --

17 MS. BRIZILL: No, it was not done  
18 over a year ago. It was done this past fall.

19 It was not done over a year ago, ma'am.

20 MS. BRAY: Okay.

21 MS. BRIZILL: It was done as part  
22 of your --

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1 MS. BRAY: Okay. The gap in the  
2 fence -- I'm asking a question about the gap  
3 in the fence --

4 MS. BRIZILL: -- witness's -- she  
5 said --she said about the capital  
6 improvements they made the beginning of the  
7 year. And that's why I said --

8 MS. BRAY: I understand that.  
9 Just let me continue.

10 MS. BRIZILL: --that you could see  
11 the tire tracks in the frozen ground. Okay?

12 MS. BRAY: I have a question for  
13 you regarding the gap in the fence.

14 MS. BRIZILL: Yes.

15 MS. BRAY: The area that you were  
16 talking about, you specifically said that you  
17 were pointing to the area in which in your  
18 photograph shows a very narrow portion of the  
19 fence that is boarded to the tree, that that  
20 area allowed a car to drive onto your  
21 property, is that correct?

22 MS. BRIZILL: No, ma'am. No,

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1 ma'am. No, ma'am.

2 MS. BRAY: Okay. Thank you.

3 MS. BRIZILL: No -- no, ma'am.

4 Ma'am -- ma'am -- ma'am -- ma'am --

5 MS. BRAY: I asked a question.

6 MS. BRIZILL: -- I did not testify  
7 that. I said that this large section here,  
8 this large section here was not there when  
9 they put the new fence up. And indeed, after  
10 I talked to Ms. Lai and she sent an email to  
11 her staff to tell them to stop driving in my  
12 backyard, they -- they put this section up.  
13 But they left this small section free.

14 I had a contractor who was doing  
15 work on my property who asked if I wanted him  
16 to fill in the gap. We found this piece of  
17 fence there, that small piece was filled in.

18 And we tacked it to the tree. And it is  
19 because there was a gap that people that were  
20 coming to possibly buy her property were  
21 coming through the --

22 MS. BRAY: Mr. Chairman, I was

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1 asking a question --

2 MS. BRIZILL: Excuse me. I want  
3 to answer your question.

4 MS. BRAY: -- and it's been  
5 answered.

6 MS. BRIZILL: I want to answer  
7 your question.

8 CHAIRPERSON LOUD: Excuse me.

9 MS. BRAY: Answer my question.

10 MS. BRIZILL: They were coming --  
11 (Whereupon, Ms. Brizill's  
12 microphone turned off.)

13 CHAIRPERSON LOUD: Excuse me.  
14 Excuse me. Are you okay, Ms. Brizill? Ms.  
15 Brizill? Ms. Brizill, are you okay.

16 Okay. Why don't we do this then.

17 She gets to ask the questions on cross --  
18 I'm sorry, Ms. Brizill. Are you okay? Can I  
19 go forward? Can I go forward?

20 She gets to ask the questions. And  
21 if it's a question that doesn't make sense,  
22 you can respond very briefly to the question

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1 she's asked, and she's got to move on. And  
2 if it really doesn't make sense, it makes her  
3 look bad. It doesn't make you look bad that  
4 she asked that question. And then she'll  
5 move on with that.

6 No. No. Ms. Brizill, you don't  
7 have to make that clear to me. Ms. Brizill,  
8 we're in cross examination. She gets to ask  
9 the questions. These answers are not  
10 addressed to me. She gets to ask the  
11 questions. If it's an improper question, an  
12 objection can be made and I will certainly,  
13 along with colleagues here, make sure to  
14 direct her back on the path that she should  
15 be on. But this is a privilege that all of  
16 the parties have had, and she gets that same  
17 privilege.

18 So why don't we try to move this  
19 forward and get through this particular  
20 hurdle. And I think both of you guys have  
21 done a great job this afternoon being civil  
22 with each other. Obviously, this is a very

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1 emotional sort of issue, given the proximity  
2 and some of the history. But let's get  
3 through. We've gotten through the greater  
4 part of the day. Let's get through this part  
5 so that we can do what all of us came to do.

6 Ms. Brizill -- Ms. Brizill --okay.

7 Ms. Brizill, can we move forward with the  
8 proceedings? If we need to take a break,  
9 then we can certainly take a break. But if  
10 we can continue to proceed forward, I really  
11 think we're very close to being able to wrap  
12 up this afternoon's proceedings.

13 So you have additional cross  
14 questions.

15 MS. BRAY: I do. I have some.

16 CHAIRPERSON LOUD: Okay.

17 MS. BRAY: I think just two.

18 Ms. Brizill, have you ever been  
19 inside the AA LEAD's building?

20 (Whereupon, Ms. Brizill's  
21 microphone turned back on.

22 MS. BRIZILL: Yes, I have.

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1 MS. BRAY: And are there not two  
2 staircases which lead up and down each floor  
3 of the building?

4 MS. BRIZILL: I wouldn't know.  
5 I've only been in the front room.

6 MS. BRAY: Okay. And finally,  
7 some of your testimony was unclear to me  
8 because you -- and perhaps it's because there  
9 have been incidents where you have observed  
10 the children have been completely  
11 unsupervised in the yard and there have been  
12 other instances where you have observed  
13 children at times where there have been staff  
14 present, but the staff haven't been doing  
15 anything. But I just want to clarify the  
16 record.

17 Have you met with all of the  
18 staff? Have you been introduced or met all  
19 of the staff at AA LEAD?

20 MS. BRIZILL: Asian American LEAD  
21 does not invite neighbors to their activities  
22 or into their offices. I have communicated

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1 with Ms. Lai, who gave me her business card.

2 And I thought that she was the appropriate  
3 person as Executive Director that I could  
4 raise my concern.

5 MS. BRAY: I just asked if you had  
6 met all of the staff. A simple yes or no  
7 answer is --

8 MS. BRIZILL: I don't know who all  
9 15 people are. No, I do not.

10 MS. BRAY: Okay. Do you know the  
11 average age of the staff members?

12 MS. BRIZILL: No, I do not.

13 MS. BRAY: Okay. That's all I  
14 have.

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

17 Commissioner, I believe if you had  
18 any cross examination questions.

19 COMMISSIONER AKINMBONI: One  
20 question.

21 CHAIRPERSON LOUD: One question?  
22 Okay.

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1 COMMISSIONER AKINMBONI: Of  
2 qualification.

3 CHAIRPERSON LOUD: Yes.

4 COMMISSIONER AKINMBONI: For Ms.  
5 Dorothy Brizill house and the Asian American  
6 LEAD house, are they joined together or how  
7 many feet are in between them?

8 CHAIRPERSON LOUD: Okay. You're  
9 asking that question of Ms. Brizill?

10 COMMISSIONER AKINMBONI: Yes, Ms.  
11 Brizill.

12 CHAIRPERSON LOUD: Okay. Did you  
13 hear and understand the question, Ms.  
14 Brizill?

15 MS. BRIZILL: We have a driveway  
16 that separates us.

17 CHAIRPERSON LOUD: Okay. Thank  
18 you for your question.

19 All right. So we have now wrapped  
20 up cross of this witness.

21 And normally what we would do now  
22 is go to the closing remarks of the

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1 applicant. But it's my understanding, I  
2 don't know if you still want to call back  
3 your witness. And you want to call back your  
4 issue on which issue?

5 MS. BRAY: I'd like to call Ms.  
6 Lee to testify with respect to the programs  
7 that AA LEAD offers noise and supervision of  
8 children.

9 CHAIRPERSON LOUD: I'm sorry.  
10 Just so I understand, you want to call her to  
11 testify about the programs that are offered?

12 MS. BRAY: Specifically the issues  
13 with respect to noise that Ms. Brizill has  
14 raised.

15 CHAIRPERSON LOUD: Okay. Okay.

16 MS. BRAY: But she will also  
17 address the types of programs that occur on  
18 the property in an effort to explain what  
19 possible noise could emanate from the  
20 property.

21 CHAIRPERSON LOUD: Okay. Now  
22 you've indicated that you would limit this to

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1 five minutes. There's been an abundance of  
2 testimony of the types of programs that are  
3 offered; the three core programs, the after  
4 school academic enrichment, family  
5 strengthening and so on. So we're not  
6 looking to have any duplicative testimony,  
7 but if there's something specific about a  
8 program as relates to mitigation of noise or  
9 there not being any noise, et cetera.

10 MS. BRAY: That's right. It's  
11 really the nature of the supervision,  
12 mitigation of noise and how the staff deals  
13 with any issues of noise.

14 CHAIRPERSON LOUD: Okay. Then why  
15 don't we do that. And then there will be an  
16 opportunity for cross and then we'll close  
17 out with your closing statement.

18 All right. You're going to --

19 MS. BRAY: I would be happy to  
20 submit a written statement in place of a  
21 closing statement today.

22 CHAIRPERSON LOUD: Okay. Why

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1 don't we do that? Why don't we do that?

2 I'm sorry?

3 PARTICIPANT: (Off microphone.)

4 CHAIRPERSON LOUD: Well as part of  
5 our proceeding, it's not germane obviously.

6 And I think if Ms. Bray wants to lean over to  
7 you and hear you ask a question, that's fine.

8 But we're going to proceed forward with your  
9 witness, if that's okay?

10 MS. BRAY: That's fine. Could I  
11 just have 30 seconds?

12 CHAIRPERSON LOUD: Sure.

13 Okay. I think we were allowing  
14 you an opportunity to confer.

15 MS. BRAY: I'm sorry. We're ready  
16 to go forward.

17 CHAIRPERSON LOUD: Okay. And this  
18 is a different witness than Ms. Lai.

19 MS. BRAY: This is Kendra Lee, the  
20 Program Director for Asian American LEAD.

21 CHAIRPERSON LOUD: Okay. All  
22 right. I made a mistake. I confused it.

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1 MS. LEE: So good evening. I'm the  
2 Director of Programs at AA LEAD. And also at  
3 1323 Girard Street, Northwest.

4 And I will be brief and I won't be  
5 duplicating what --

6 MS. BRIZILL: A home address.

7 CHAIRPERSON LOUD: Yes. Please,  
8 could you give your address?

9 MS. LEE: Sure. I live at 1400  
10 South Joy Street in Arlington, Virginia.

11 And so I just wanted to address,  
12 first give a very perspective of our students  
13 and our community center and their reason for  
14 zoning. We're not building a huge factory or  
15 anything, but it's a community center where  
16 these students come.

17 And I wanted to stress the  
18 importance that our students come voluntarily  
19 and how hard that is in a high school program  
20 for them to feel at home at a certain  
21 location. And that really is one of the  
22 strengths of our community center.

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1 I also wanted to just clarify that  
2 we do not serve 60 students on a daily basis,  
3 as Ms. Brizill said. But as Mr. Lai said we  
4 do serve about 10 to 30 students on a daily  
5 and on special occasions we have up to 60  
6 students.

7 I also need to mention that the  
8 portrait I got from sitting back there is our  
9 students our hoodlums and they do outrageous  
10 dangerous things. But in fact these are  
11 students who have actually given up holidays  
12 or Saturdays to come help us beautify and  
13 paint our building. And they really do  
14 respect the building. And I think that's an  
15 important point because recently we had a  
16 graduation party where we were looking for  
17 different venues. And they said AA LEAD  
18 looks so beautiful now, why can't we just  
19 have it right here. And we thought, oh well  
20 that's great. Let's have it here.

21 So these are students who very  
22 much respect the building.

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1                   In response to some of Ms.  
2           Brizill's issues, once I was informed I think  
3           it was in March that there were some noise  
4           complaints, staff had several different  
5           meetings and we discussed this matter. And  
6           we also informed the students. And we had  
7           never had these complaints before. And so  
8           the staff also did noise checks.  
9           Occasionally if you were there later hours  
10          for a special occasion, just walk outside and  
11          make sure the level of noise was decent. And  
12          we did that very frequently.

13                   I also do wan to mention that part  
14          of our programs is to teach our students  
15          respect. And so there was one story where we  
16          had cookies that we had our students bring  
17          over to Ms. Brizill's residence which they  
18          were, I would like to say, rudely sent back  
19          with the cookies in hand. So we did try to  
20          reach out to Ms. Brizill.

21                   And on the note of respect, both  
22          myself personally as well as our students, we

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1 have actually told them very specifically  
2 please do say hi to your neighbors when you  
3 see them. And so they have, and I have. And  
4 on numerous occasions we have not had a  
5 response from Ms. Brizill even if we say good  
6 morning.

7           For some of the other things, we'd  
8 like to thank Ms. Brizill for her concern  
9 observing us so closely.

10           In response to the noise and  
11 traffic, I think that if we had programs that  
12 were extremely noisy and outdoors, that there  
13 would have been police reports or other  
14 complaints. But the fact is our programs we  
15 are not doing anything. We have tutoring, we  
16 have workshops, we have projects; many of our  
17 programs elicit huge amounts of noise. And  
18 furthermore, we never have programs, very  
19 occasionally do we have programs on  
20 Saturdays. So our students, there's nothing  
21 special about our front porch that would  
22 drive them there. So there should really be

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1 no programs on Saturday unless it's a special  
2 occasion.

3 And in response -- I think she  
4 mentioned trash and how our students throw  
5 trash. We actually also get random trash  
6 from the street as well. And we know what  
7 kind of snacks our students eat. And so to  
8 just make the assumption that any trash she  
9 finds is our students' trash I think is not a  
10 correct assumption. And to furthermore,  
11 throw a plastic bottle onto our staff car  
12 over the fence from her yard to ours is also  
13 not a good example of role modeling from my  
14 neighbors.

15 And I think I'll end here.

16 CHAIRPERSON LOUD: Thank you.

17 Board members, do you have any  
18 questions for the witness? Okay.

19 Ms. Brizill, do you have questions  
20 for the witness?

21 MS. BRIZILL: Yes, please.

22 How long have you been Program

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1 Director at Asian American LEAD?

2 MS. LEE: I started last fall.

3 MS. BRIZILL: When last fall?

4 MS. LEE: End of September, to be  
5 exact.

6 MS. BRIZILL: You mentioned that  
7 on average you have 10 to 30 students and  
8 that on occasion you have up to 60?

9 MS. LEE: That's correct.

10 MS. BRIZILL: Doesn't that  
11 correspond what was in your filing that you  
12 have up to 60 students you serve?

13 MS. LEE: I believe Ms. Lai said  
14 that on a daily basis we have 10 to 30 and  
15 occasionally we do have up to 60 students.

16 MS. BRIZILL: Okay. But in terms  
17 of your daily clients, it's closer to 30 than  
18 it is to 10, right?

19 MS. LEE: No, it really does vary  
20 from 10 to 30,.

21 MS. BRIZILL: Okay. You talked  
22 about doing these noise checks.

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1 MS. LEE: Yes.

2 MS. BRIZILL: And that you became  
3 aware that there were noise complaints. Who  
4 told you about the noise complaints?

5 MS. LEE: It was most likely -- I  
6 can't recall exactly, but I'm assuming it  
7 came from Rosetta probably in response to one  
8 of your complaints.

9 MS. BRIZILL: Would you be  
10 surprised to know that over the past several  
11 years that whenever there was an issue that I  
12 would either drop a note or call Ms. Lai and  
13 say, look, you know I want to make you aware  
14 of it. I know you can't be on site all the  
15 time. That this is an issue and that's an  
16 issue. And that she would then call me back  
17 or send me a note saying that she had brought  
18 the matter to her staff's attention.

19 MS. LEE: But regardless of  
20 complaints, we're pretty cognizant of the  
21 community so we don't allow our students to  
22 make a lot of noise in our center.

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1 MS. BRIZILL: How are you  
2 cognizant of the community if you don't live  
3 in the community?

4 MS. LEE: I work there everyday.  
5 And so what I'm saying is that we treat -- we  
6 teach our students to be responsible in  
7 whatever circumstance that they're in.

8 MS. BRIZILL: Getting back to the  
9 noise, is it possible that there would be  
10 complaints regarding noise that had gone to  
11 Ms. Lei and not you?

12 MS. LEE: I speak with Ms. Lai  
13 every week, so I most likely hear everything  
14 that goes on. In fact, our office is about  
15 ten feet apart so she often comes over when  
16 there's an immediate matter.

17 MS. BRIZILL: Oh, so you speak to  
18 her every week?

19 MS. LEE: I do.

20 MS. BRIZILL: Oh. And your  
21 program operates essentially five days a  
22 week?

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1 MS. LEE: It does. We don't have  
2 programming on Fridays.

3 MS. BRIZILL: But you speak to her  
4 every week?

5 MS. LEE: At our work plan  
6 meetings, yes.

7 MS. BRIZILL: Asian American LEAD  
8 has offices up in Silver Spring. Do you  
9 spend time up there?

10 MS. LEE: On occasion, yes.

11 MS. BRIZILL: How much occasion?  
12 How much time do you spend in Silver Spring  
13 as opposed to the Girard Street property?

14 MS. LEE: The majority of my time  
15 is in the D.C. office.

16 MS. BRIZILL: Fifty/fifty?

17 MS. LEE: No.

18 MS. BRIZILL: Sixty/fifty, 60/40,  
19 what?

20 MS. LEE: No. I would say about 90  
21 percent of my time is in the D.C. office.

22 MS. BRIZILL: Okay. You mentioned

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1 an incident wherein some of your clients came  
2 over to me while I was in my front yard with  
3 some cookies. And that they offered me a  
4 plate of cookies and I said no thank you.  
5 Did they tell you I said no thank you?

6 MS. LEE: It was presented to us  
7 in a very surprising manner that you would  
8 have sent them back like that when they were  
9 trying to be kind and generous and  
10 respectful.

11 MS. BRIZILL: Well, there are a  
12 lot of reasons why a person might not be able  
13 to -- not seek to accept cookies. I made --  
14 I have always made an effort not to let any  
15 of my concerns regarding the operation of  
16 your program spill over onto your clients. So  
17 I go out of my way to be respectful to your  
18 clients. So what exactly did these kids, I  
19 think there were two of them maybe three who  
20 came up my walkway and offered me cookies,  
21 what did they say that led you to think that  
22 I was being rude to them?

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1 MS. LEE: I think they were just  
2 surprised. But thank you for clarifying that  
3 there are reasons why you would reject the  
4 cookies.

5 MS. BRIZILL: Well, I mean there  
6 could be a host of reasons. You don't know  
7 if I have diabetes, right?

8 MS. LEE: No, I did not know that.  
9 I was just --

10 MS. BRIZILL: Okay. You don't  
11 know whether or not I might have just had a  
12 big lunch and didn't want cookies, right?

13 MS. BRAY: Yes, I think the  
14 questions are going off --

15 MS. BRIZILL: Well, she's trying  
16 to --

17 MS. BRAY: -- into a tangent here.

18 MS. BRIZILL: No. No, they're  
19 not. But she's trying to say that --

20 MS. BRAY: Ms. Lee has said that  
21 she understands that there may be a reason.

22 MS. BRIZILL: -- I didn't accept -

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1 - I didn't accept cookies because I was being  
2 rude. There are a host of reasons why I  
3 would not accept cookies. And I said thank  
4 you, but no thank you.

5 Next question. You indicated that  
6 there would be police reports, right, if  
7 there was a problem with noise, right?

8 MS. BRAY: I believe so, yes.

9 MS. BRIZILL: Okay. Are you aware  
10 of Officer Barnhart who is a patrol officer  
11 in our area?

12 MS. LEE: I'm not aware.

13 MS. BRIZILL: Okay. Would you be  
14 surprised if I hadn't talked to Officer  
15 Barnhart to get his input and advice on how  
16 to deal with the noise and traffic and unruly  
17 conduct that I've seen emanating from your  
18 facility?

19 MS. LEE: I was never informed  
20 that there were police reports about unruly  
21 behavior of our students.

22 MS. BRIZILL: Ms. Lee, I didn't

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1 say that there was a police report. I said  
2 that I had had conversation with our  
3 neighborhood patrol officer about the matter.

4 So there was not police reports. Would you  
5 be surprised if I told you that I had had  
6 conversation with Officer Barnhart?

7 MS. LEE: I was not aware. You  
8 never informed me of that.

9 MS. BRIZILL: Have we ever met?

10 MS. LEE: Yes, we did meet  
11 briefly.

12 MS. BRIZILL: Okay. So, but  
13 you're not somebody who has my phone number  
14 and I certainly don't have your phone number.

15 So to suggest that --

16 MS. LEE: Actually, I believe you  
17 do have my phone number because Ms. Lai did  
18 give you my direct contact information.

19 MS. BRIZILL: Okay. Okay.

20 Regarding the issue of trash, is  
21 there any reason why a simple trash  
22 receptacle couldn't be put on your front

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1 porch or in your front yard? For example,  
2 you have the summer feeding program and they  
3 deliver summer meals to your program, and the  
4 kids sit out there on the porch and eat all  
5 day. Is there any reason why there is an  
6 aversion to having a trash receptacle out  
7 there?

8 MS. LEE: No. And our programs  
9 are indoors so students do dispose of their  
10 trash indoors. And our staff did eat outside  
11 once last week, and they did dispose of their  
12 trash.

13 MS. BRIZILL: Can you look at that  
14 set of photographs that's right on that pile  
15 there, and look at the photograph of the  
16 trash? You'll see two Doritos bags and  
17 bottled water, and that's just a photograph  
18 from today.

19 MS. LEE: Right. And we never  
20 serve this kind of bottled water to our  
21 students, actually.

22 MS. BRIZILL: WE're a half a block

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1 from 14th Street and a block from a 7-Eleven.

2 Why do you think that the trash would simply  
3 be from food that you would be serving? I  
4 mean, you know, some of these kids are  
5 nonstop eaters and they walk down the street  
6 and they could be coming from 14th Street  
7 with food. Why do you assume that that  
8 trash, which is right next to your front  
9 step, is not your trash.

10 MS. LEE: Why do you assume that  
11 it is our students' trash?

12 MS. BRIZILL: Because I saw them  
13 put it out there. I was planting trees this  
14 week. I saw them put it out there and I went  
15 and took a photograph this morning.

16 I have no more questions for this  
17 witness.

18 CHAIRPERSON LOUD: Thank you, Ms.  
19 Brizill. Thank you, Ms. Lee.

20 Commissioner, did you have any  
21 questions for Ms. Lee? I think you're going  
22 to have, again, put the microphone in front

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1 of you.

2 COMMISSIONER AKINMBONI: The only  
3 question is that because she thinks that the  
4 kids are putting trash in -- for summer  
5 feeding, what is the rules and regulations  
6 about summer feeding? Can they eat outside  
7 or they can only eat inside?

8 MS. LEE: We are supposed to eat  
9 inside. However, we have several staff and  
10 interns and if students want to be outside on  
11 just the front porch in a quiet manner, then  
12 for them to catch some fresh air, they're  
13 allowed to do that. But that's not  
14 programming and they're supposed to be  
15 indoors, and they are indoors for all of our  
16 student programming.

17 CHAIRPERSON LOUD: Okay.

18 COMMISSIONER AKINMBONI: How often  
19 do you have the kids to stay outside on the  
20 front porch to meet, they have lunch and  
21 breakfast?

22 MS. LEE: How long?

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1 COMMISSIONER AKINMBONI: Yes. How  
2 often?

3 MS. LEE: Oh, how often? Well,  
4 they're just grabbing some fresh air. So if  
5 they're outdoor --

6 COMMISSIONER AKINMBONI: No. For  
7 eating, we're talking about summer feeding.

8 MS. LEE: Yes.

9 COMMISSIONER AKINMBONI: Because  
10 of summer feeding, did you allow for the kids  
11 to eat outside on the porch for breakfast or  
12 for lunch?

13 MS. LEE: Not for breakfast,  
14 because the students are not there. But for  
15 lunch if they're with a staff member or an  
16 intern, then they can sit and enjoy our  
17 porch, the fresh air there.

18 COMMISSIONER AKINMBONI: Okay.  
19 Thank you.

20 CHAIRPERSON LOUD: Thank you,  
21 Commissioner.

22 With that, I wanted to thank

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1 everybody for your patience this afternoon.  
2 We've had a very long hearing and a lot of  
3 testimony came out.

4 I think the record is full. We're  
5 at the point of the proceeding where we turn  
6 to the applicant for closing statement. I  
7 think the applicant has suggested it's going  
8 to be a brief closing statement in lieu of  
9 submitting something in writing. And then we  
10 will cross the finish line with this case and  
11 make a decision right now as to whether we'll  
12 deliberate or we'll schedule it for decision  
13 making.

14 And in your closing if you can  
15 just indicate if there are any time pressures  
16 on the applicant with respect to operating  
17 the facility such that a decision would need  
18 to be made before August recess. Okay.

19 MS. BRAY: Okay. Thank you, Mr.  
20 Chairman.

21 In summation, I'd just like to go  
22 over the testimony, actually not over the

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1 testimony but point out that Ms. McCarthy  
2 analyzed the special exception request in  
3 accordance with both 11 DCMR section 209, 11  
4 DCMR § 3104 for special exceptions and found  
5 in her expert professional opinion that the  
6 use as it operates today as represented by  
7 the applicant, as witnessed by the Office of  
8 Planning and as demonstrated by the  
9 application materials meets the requirements  
10 for special exception for community center  
11 use. In the alternative, the application  
12 also meets the requirements of section 334  
13 for a community service center. Again,  
14 that's sort of a distinction without a  
15 difference.

16 The applicant operates a nonprofit  
17 organization designed to serve the needs of  
18 the community, the social welfare of  
19 community in which it is located. It offers  
20 nothing for sale. There are no objectionable  
21 impacts to the surrounding neighborhood with  
22 respect to noise or traffic. All parking is

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1 accommodate on the site. We have no problems  
2 with the Office of Planning's recommendation  
3 to stripe the parking lot in accordance with  
4 the Zoning Regulations. And we'd be happy to  
5 accept a condition of approval which requires  
6 that.

7           You heard testimony from Ms. Lai  
8 and Ms. Lee regarding the programs that are  
9 offered. You also have numerous letters in  
10 the record from folks that have familiarity  
11 with the programs and services that AA LEAD  
12 offers and who are familiar with the general  
13 surroundings who have stated that they  
14 support the application and that they believe  
15 that AA LEAD should be able to continue on  
16 this property.

17           There's evidence in the record  
18 that despite the fact that the parking area  
19 in the rear of the building was just recently  
20 paved, that it has continuously provided  
21 parking spaces in accordance with this  
22 Board's orders since the Order was granted in

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1 2003. That there have been at least four,  
2 there are now at least five parking spaces in  
3 the rear of the property in addition to the  
4 driveway. And there is an agreement with  
5 Easter Seals, which has been in continuous  
6 effect since the special exception was  
7 granted in early 2004 allowing for two off  
8 site parking spaces on Easter Seal's property  
9 if and when Asian American LEAD needs them.

10 With respect to other  
11 objectionable impacts, the applicant has  
12 appeared before the ANC, has spoken with its  
13 neighbors. The only complaint that are in  
14 the record are from Ms. Brizill and have come  
15 through Ms. Brizill and Mr. Imhoff.

16 There are indeed representations  
17 in Order 17080 that the applicant was to  
18 renovate substantially the subject property  
19 to allow for a community center use. But in  
20 fact, the Order has no conditions of  
21 approval.

22 In our prehearing statement, which

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1 you have in the record, we address  
2 specifically what the difference between  
3 conditions of approval and findings and fact  
4 and conclusions of law are. And have  
5 discussed the transcript from the previous  
6 case which demonstrates that in no way was  
7 the approval predicated upon the  
8 representations that have been pointed out by  
9 Ms. Brizill and Mr. Imhoff today.

10 Specifically, the installation of a means of  
11 egress which is a life safety issue and is  
12 not related to whether the application meets  
13 the test for special exception. And with  
14 respect to the off street parking on the  
15 property or a handicap lift.

16 The applicant has submitted  
17 revised plans as part of this application  
18 which do not include those improvements to  
19 clarify the record.

20 The applicant wishes to continue  
21 to operate on the site and will continue to  
22 do so in accordance with this Board's orders.

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1                   With respect to timing, if the  
2 Board is so inclined, we would very much  
3 appreciate a quick turnaround on an order  
4 because the applicant is in the process of  
5 refinancing the property and will need to  
6 make certain Zoning representations to its  
7 lender.

8                   Other than that, we'd be happy to  
9 supplement the record in any fashion the  
10 Board deems necessary, but we believe we've  
11 met our burden of proof in this case and that  
12 the application clearly meets the  
13 requirements of sections 209 and 3104 of the  
14 Zoning Regulations.

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

17                   And again, thank you to all of the  
18 witnesses and parties for this afternoon.

19                   Now we turn to one another as  
20 colleagues to decide whether we have a full  
21 record and whether we can deliberate today,  
22 or whether we should set it for another day.

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1       And I guess I'll start us off.

2                   I think the record is full. But  
3 that notwithstanding, I'd like a little more  
4 time to go through the record. I think a lot  
5 of information came out today that wasn't a  
6 part of the original record that we just got  
7 freshly today. Some of it in the party  
8 opponent's case and some of it may have been  
9 in the applicant's case. But nonetheless for  
10 me to really thoroughly go over all of the  
11 evidence and match it to the legal standard,  
12 and think about the adverse impact to the  
13 neighbor, if there are any, any conditions  
14 that might mitigate those impacts if there  
15 are any I think it would take a little more  
16 time than for me to try to do it right now.  
17 So I'd be for closing the record and setting  
18 a date before we break for recess.

19                   Let me just open it up and see how  
20 others feel.

21                   MS. BRAY: Mr. Chairman, if I  
22 could just ask a question? If you're going

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1 to close the record today and set this in for  
2 a decision meeting, would you accept proposed  
3 findings of fact and conclusions of fact from  
4 both of the parties prior to that decision  
5 meeting?

6 CHAIRPERSON LOUD: Well, I can  
7 only speak for me. I find those helpful when  
8 cases are very complex and you have to sort  
9 through a lot of evidence to get to basic  
10 factual findings. And sometimes when the law  
11 is a little complicated and you really need  
12 some help doing that. In a case like this,  
13 though, I really think it's pretty -- the law  
14 is really straightforward, 209 and 3104. I  
15 think the facts are pretty clear because the  
16 law is clear. You just have to match up the  
17 evidence to the standard.

18 So I would not find that helpful,  
19 but let me see what the Board thinks.

20 VICE CHAIRMAN DETTMAN: I agree  
21 with you, Mr. Chairman. I don't think the  
22 record is so complex that we would require

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1 proposed findings of fact or conclusions of  
2 law.

3 And I'm in favor of putting this  
4 off in order to allow us a little bit more  
5 time to read through the record.

6 COMMISSIONER SCHLATER: I feel  
7 like there's definitely a lot of stuff to  
8 take in here and read. And so I would  
9 support your idea to take a few days to read  
10 through this. And then, hopefully, we can  
11 make a decision before a recess.

12 CHAIRPERSON LOUD: Okay. So then  
13 why don't we take a look at the calendar.  
14 We've only got two more dates before recess,  
15 the 21st which is absolutely full, and then  
16 July 28th. Perhaps we could do this as a  
17 decision on the morning of July 28th. Does  
18 that look open. Yes.

19 Yes, so we could set this for  
20 decision in a couple of weeks. I don't know  
21 if the transcript will be up in exactly two  
22 weeks or not. But whether it is or not,

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1 we'll set it for a decision on the 28th. and  
2 close the record. I don't think we need  
3 anything additional in the record. As I  
4 said, all three parties did an excellent job  
5 of making the record full. So I think we  
6 have enough to work with.

7 Okay. Is there anything further  
8 in this case, Ms. Bailey?

9 MS. BAILEY: No, Mr. Chairman.

10 I just wanted to remind you, and I  
11 know that you have scheduled this for July  
12 28th. But I just wanted to remind you that  
13 there were two earlier matters today that are  
14 on the schedule for July 28th. So I just  
15 wanted to make sure that you are -- I know  
16 you are aware of it. I just wanted to remind  
17 you about that.

18 CHAIRPERSON LOUD: Thank you.  
19 Jogged my memory. I know we put 1332 Vermont  
20 in the morning.

21 MS. BAILEY: Right.

22 CHAIRPERSON LOUD: Because I think

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1 Mr. Turnbull wanted it in the morning. But  
2 that's 9:45.

3 MS. BAILEY: And we also have  
4 Pennsylvania Avenue. This was to extend the  
5 order decision.

6 CHAIRPERSON LOUD: Okay. All  
7 right. All right. Yes, that would be pretty  
8 straightforward.

9 MS. BAILEY: Okay.

10 CHAIRPERSON LOUD: And that's at  
11 9:30. And we're going to put this at 8:30 as  
12 well.

13 MS. BAILEY: 9:30? Okay.

14 CHAIRPERSON LOUD: Okay.

15 MS. BAILEY: All right. That's  
16 it, Mr. Chairman.

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

19 This hearing is officially  
20 adjourned.

21 (Whereupon, at 6:49 p.m. the  
22 Public Hearing was adjourned.)

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