

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 15, 2009

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE DETTMAN, Vice Chairperson (NCPC)
MEREDITH MOLDENHAUER, Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chair

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN

MATT JESICK

ARTHUR JACKSON

ARLOVA JACKSON

The transcript constitutes the minutes from the Public Hearing held on September 15, 2009.

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

2 11:53 a.m.

3 CHAIRPERSON LOUD: This hearing
4 will please come to order. Good mid-morning,
5 ladies and gentlemen. This is the September
6 15th Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Marc Loud, Chairperson.

9 Joining me today are Vice Chair Shane Dettman
10 representing the National Capital Planning
11 Commission. To his right and rejoining us is
12 Zoning Commission Chairman Mr. Anthony Hood
13 and then Board Member Meredith Moldenhauer.
14 To my left, Mr. Clifford Moy, Secretary of
15 BZA, Ms. Sherry Glazer, Office of the Attorney
16 General and on the far left, Ms. Beverley
17 Bailey, Zoning Specialist in the Office of
18 Zoning.

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

22 Please be advised that this

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1 proceeding is being recorded by a court
2 reporter and it's also webcast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room.

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

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

20 The order of procedure for special
21 exceptions and variances is: Statement and
22 witnesses of the applicant; government reports

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1 including the Office of Planning, the
2 Department of Public Works, et cetera; the
3 report of the ANC; parties or persons in
4 support; parties or persons in opposition; and
5 finally closing remarks by the applicant only.

6 Pursuant to Sections 3117.4 and
7 3117.5, the following time constraints will be
8 maintained. The applicant, appellant, persons
9 and parties except an ANC in support including
10 witnesses 60 minutes collectively. The
11 appellees if it's an appeal case, otherwise
12 persons and parties except an ANC in
13 opposition including witnesses also 60 minutes
14 collectively and finally, all individual
15 witnesses three minutes.

16 These time restraints do not
17 include cross examination and/or questions
18 from the Board. Cross examination of
19 witnesses is permitted by the applicant or
20 parties only and even with respect to the
21 applicant and parties, cross examination must
22 be limited to what was brought out on direct,

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1 what is relevant. The form of the questions
2 cannot be compound. There needs to be a
3 foundation set and generally speaking, cross
4 examination needs to be conducted in
5 accordance with the guidelines for cross
6 examination.

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

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

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

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

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

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1 Board.

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

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

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

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

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

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

8 Does the staff have any preliminary
9 matters, Ms. Bailey?

10 MS. BAILEY: Mr. Chairman, good
11 morning.

12 CHAIRPERSON LOUD: Good morning.

13 MS. BAILEY: No, sir.

14 CHAIRPERSON LOUD: Excellent. Then
15 let us proceed with this morning's agenda.
16 Would all individuals who are wishing to
17 testify this morning please rise to take the
18 oath? Ms. Bailey will administer the oath to
19 you.

20 MS. BAILEY: Do you solemnly swear
21 or affirm that the testimony that you'll be
22 giving today will be the truth, the whole

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1 truth and nothing but the truth?

2 CHAIRPERSON LOUD: Thank you,
3 witness and thank you, Ms. Bailey. I think as
4 I indicated earlier what we'd like to do is go
5 a little bit out of the published order for
6 the morning hearing calendar. Well, not
7 necessarily. Just a little bit out of the
8 published order.

9 Can we call the Tropicana case?

10 MS. BAILEY: Yes, Mr. Chairman.
11 It's Application 17959 of Tropicana Jamaican
12 Eatery pursuant to 11 DCMR Section 3104.1 for
13 a special exception to operate a fast food
14 restaurant under Section 733. The property's
15 in a C-2-A. It's located at 3522 12th Street,
16 N.E. Square 3881, Lot 31.

17 What I have with this case, Mr.
18 Chairman, is I believe the name of the
19 restaurant may have changed and that may be
20 something the Applicant may want to clarify on
21 the record.

22 CHAIRPERSON LOUD: Thank you, Ms.

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1 Bailey.

2 Can the parties step forward in
3 that case and is the ANC present this morning?

4 Ah, good morning. How are you? Very good.

5 As I indicated sort of in the
6 remarks to open up the hearing, there's an
7 established order that we go in in these types
8 of cases and we certainly want to follow that
9 order.

10 We have reviewed the file. It's a
11 full file. It looks like the ANC is in
12 support and has some concerns about some
13 things that we can take note of. But, we do
14 think the file is pretty full. There's some
15 things, I think, perhaps by way of conditions
16 that might be addressed.

17 So, what I'd like to suggest to the
18 Applicant is given the fact that the record is
19 full, given the fact that part of what makes
20 the record full is a report from the Office of
21 Planning which is very thorough, very
22 extensive, you may just want to generally just

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1 summarize your request for relief and how it
2 came to this point.

3 With respect to the ANC, we have a
4 full report at our Exhibit 22 and you can feel
5 free not to have to read it or, you know, go
6 over everything in it because we have reviewed
7 it. It's an excellent report by the way.

8 It sounds again like you're
9 supportive of the request and this restaurant
10 appears to have been in the area for some time
11 and so, there would be whatever concerns that
12 would be. It's not a new use. So, the
13 community is not surprised or uncertain about
14 what will happen at this location.

15 So, with that said, I want to turn
16 it over to the Applicant and then hopefully we
17 can move fairly briskly through the case.

18 MS. JAMES: Good morning.

19 CHAIRPERSON LOUD: Good morning.

20 MS. JAMES: My name is Tamara
21 James. I took over ownership of the property
22 in April and when I went to get my certificate

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1 of occupancy, they told me the procedures and
2 stuff I needed to go through. So, that's why
3 I'm here right now.

4 It was originally called a carry
5 out and they told me it has to be called a
6 fast food. So, I'm not making any changes to
7 the property except for the name.

8 I gave them all the information
9 before I posted my poster 15 days before. I
10 don't know why it wasn't bring forward, but
11 basically, I'm just trying to -- everything
12 will be the same. I'm just making it into a
13 fast food instead of a carry out.

14 CHAIRPERSON LOUD: Okay. And what
15 is the new name of the restaurant?

16 MS. JAMES: It's called Real Spice
17 Jamaican Eatery.

18 CHAIRPERSON LOUD: And again, you
19 are the owner?

20 MS. JAMES: Yes, one of the co-
21 owners.

22 CHAIRPERSON LOUD: Okay. And you

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1 alluded to the special exception relief that
2 you need for a fast food establishment.
3 That's going to be per our Section 733 and as
4 indicated, the Office of Planning did an
5 excellent report on the criteria for 733.

6 Let me see if the Board Members
7 have any questions for the Applicant. Okay.

8 So, why don't we turn then to the
9 Office of -- I'm sorry. Does the ANC have any
10 questions for the Applicant?

11 COMMISSIONER STEPTOE: No, I just
12 want to reiterate our support for the --

13 CHAIRPERSON LOUD: Okay. Why don't
14 you introduce yourself for the record as well.

15 COMMISSIONER STEPTOE: Carolyn
16 Steptoe. I am the ANC Commissioner for Single
17 Member District 5A-A7. I live at 1257
18 Lawrence Street, N.E., D.C. and it's one block
19 from the establishment.

20 CHAIRPERSON LOUD: Thank you. Good
21 morning. Are you authorized to represent the
22 ANC this morning?

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1 COMMISSIONER STEPTOE: I am.

2 CHAIRPERSON LOUD: All right. Good
3 morning to you.

4 COMMISSIONER STEPTOE: Thank you.
5 Good morning.

6 CHAIRPERSON LOUD: Office of
7 Planning, good morning.

8 MS. JACKSON: Good morning, Chair,
9 Members of the Board.

10 For the record, my name is Arlova
11 Jackson and I'm a Development Review
12 Specialist with the D.C. Office of Planning.

13 I can stand on the record and state
14 that the Office of Planning recommends support
15 of the special exception request to allow the
16 continuation of an existing carry out as a
17 fast food establishment. We find that the
18 project meets the standards for special
19 exception approval found in Section 733 and
20 will note that they will need modifications
21 from Sections 733.2, 733.3 and 733.4 due to
22 its proximity to a residential zone and lack

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1 of a continuous rear brick wall or three-sided
2 trash enclosure.

3 As heard today, the ANC is support
4 and we find the requested use would be in
5 harmony with the general purpose and intent of
6 the Zoning Regs as they're proposing to
7 continue the operation of an existing
8 restaurant that's located in this location for
9 the past ten years.

10 So, again, we recommend support and
11 would take any questions that you have at this
12 time.

13 CHAIRPERSON LOUD: Thank you, Ms.
14 Jackson. Let's see if the Applicant has any
15 questions for you. Then we'll turn to the ANC
16 and then finally to the Board.

17 MS. JAMES: No, I don't have any.
18 I don't have any questions for her.

19 CHAIRPERSON LOUD: Okay.

20 COMMISSIONER STEPTOE: I just
21 wanted to ask just in relation to those two
22 stipulations 733.3 and 4, is there anything

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1 that we as our Commission needs to be aware of
2 just in terms of the zoning requirement or any
3 potential implementation of that? You see
4 that that was a minor concern for the ANC just
5 in terms of compliance. Is there anything?

6 MS. JACKSON: Those two conditions
7 seem to be concerned with the proximity of,
8 you know, the use to residential zones when
9 it's separated by an alley.

10 In this case, they have a solid
11 wooden fence that meets the height
12 requirement.

13 COMMISSIONER STEPTOE: Oh, that
14 does. Okay.

15 MS. JACKSON: So, we didn't think
16 requiring the Applicant to build another brick
17 wall was necessary.

18 COMMISSIONER STEPTOE: Okay.
19 Great. Thank you.

20 CHAIRPERSON LOUD: Thank you.
21 Board Members, are there any questions for the
22 Office of Planning?

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1 I just have one sort of question
2 exchange. A second -- I think Commissioner
3 Steptoe alluded to the first concern that the
4 ANC had raised regarding the continuous brick
5 wall separating. You responded that there's a
6 wooden -- I guess wooden fence back there.
7 So, there's no need to actually make it brick.

8 MS. JACKSON: Okay.

9 CHAIRPERSON LOUD: A second concern
10 they raised was regarding the brick enclosure
11 for the refuse dumpsters and I think you were
12 suggesting the approach we take would be what?

13 MS. JACKSON: We -- I mean based on
14 the photographs showing where it's being kept
15 and in concert with the fact that there is the
16 existing fence, again, we didn't find it
17 necessary to be a requirement of approval
18 absent any evidence that there was a problem
19 since the restaurant has been operating.
20 Since there wasn't any evidence presented that
21 there was an issue with trash or rodents or
22 things that would require again constructing

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1 another enclosure for the trash, we didn't
2 find that it was necessary as a condition for
3 approval.

4 CHAIRPERSON LOUD: Okay. Now, the
5 Applicant has at our Exhibit 17, unless I'm
6 reading it wrong, she's indicated that she's
7 willing to comply with that requirement for
8 the brick enclosure. I don't -- I think it
9 might be helpful to just sort that out right
10 now so that we can determine whether or not we
11 need a condition on that, but she seems
12 willing to --

13 MS. JACKSON: Oh. Okay.

14 CHAIRPERSON LOUD: Unless I
15 misunderstand, she seems willing to.

16 MS. JAMES: I -- I said -- it's not
17 something that I would like to do, but if I
18 have to do it --

19 CHAIRPERSON LOUD: Okay.

20 MS. JAMES: -- I would be willing
21 to fix the problem.

22 CHAIRPERSON LOUD: Well, let me ask

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1 the ANC. Commissioner Steptoe, your response
2 to that. Your thoughts on that.

3 COMMISSIONER STEPTOE: Well, we
4 looked at -- in that block, there are several
5 small fast food restaurants and along that
6 whole alley perimeter, there are actually --
7 all of the refuse disposal is pretty much in
8 sync with Tropicana -- with Real Jamaica.

9 So, there is actually no
10 constructed three perimeter wall within that
11 block for any of the fast foods. So, they've
12 been in compliance. All the other
13 establishments within that block are set the
14 same way. I don't think it'll be fair to put
15 that kind of burden on her yet.

16 CHAIRPERSON LOUD: Okay. Thank
17 you. I just wanted to clarify that. So, it
18 sounds like what I'm hearing is, and I'll open
19 it up to Board Members, that relief from that
20 requirement would be acceptable to the
21 community.

22 COMMISSIONER STEPTOE: Yes, it's in

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1 line with what currently exists.

2 CHAIRPERSON LOUD: And it's
3 definitely acceptable to the Office of
4 Planning.

5 Okay. And if it's acceptable to
6 the community and acceptable to the Office of
7 Planning, I don't have any concerns with it,
8 but let me see if Board Members have any
9 issues. Okay.

10 All right. So, thank you for your
11 report. It doesn't sound like there are any
12 further questions on that. If I'm wrong,
13 just, you know, interrupt me and let me know.

14 Now, we would go to the report of
15 the ANC and that's our Exhibit 22 and we
16 talked about it a little bit earlier.

17 COMMISSIONER STEPTOE: I just want
18 to reiterate that our community -- we did have
19 our community meeting about this matter. It
20 does abut two blocks of residential property
21 that have contended with a very harmonious
22 relationship with this establishment and the

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1 other smaller establishments within that
2 block.

3 At our community meeting on May
4 20th, as most community meetings are, we had a
5 relatively small population, but of those
6 members that attended, I think there were 20
7 to 25, all were in support of the special
8 exception and we did see that the special
9 exception does allow the establishment to have
10 maximum seating and if that happens, then
11 we're in support of that as well.

12 But, the full special exception
13 application, our community does, in fact,
14 support.

15 CHAIRPERSON LOUD: Thank you. Ms.
16 James, do you have any questions for the ANC?

17 MS. JAMES: No, I don't.

18 CHAIRPERSON LOUD: Okay. Board
19 Members, any questions for the ANC? All
20 right.

21 Seeing none, I think what we're do
22 now is just -- were there any parking related

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1 issues, OP, regarding the -- okay. Because is
2 it too small for a parking requirement?

3 MS. JACKSON: Yes, it's only 1200
4 square feet.

5 CHAIRPERSON LOUD: All right.
6 Okay. Well, given the ANC's report regarding
7 the support in the community for it and there
8 not being any related parking issues, I think
9 it bodes well for the Applicant.

10 Are there any persons who are in
11 the audience that are in support of this
12 application? Now, would be the time to come
13 up and you'd be given three minutes.

14 Any persons in the audience who are
15 opposed to this application? Again, now,
16 would be the time to come up and you would be
17 given three minutes.

18 Seeing none, we turn back to you
19 Ms. James for any closing remarks you might
20 have.

21 MS. JAMES: I didn't prepare any.

22 CHAIRPERSON LOUD: You don't have

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1 to I mean if you --

2 MS. JAMES: I'd just like to thank
3 you for coming out and everybody that's
4 supporting me. Thank you.

5 CHAIRPERSON LOUD: Thank you and
6 thank you for your time and your patience this
7 morning.

8 Board Members, I think we have a
9 full record. I think it's something we can --
10 I would recommend we deliberate on this
11 morning.

12 The Office of Planning has
13 indicated, put together an excellent report.
14 It walks us through the requirements of
15 Section 733.

16 With respect to a couple of the
17 requirements under Section 733 regarding a
18 continuous brick wall separating the
19 establishment from the residence district, we
20 heard testimony that there's currently a
21 fence, wood fence, that does the same thing.
22 That the community is supportive of that and

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1 has no objections with it. That OP is also
2 fine with that and has not objections.

3 We also heard some evidence
4 regarding the brick enclosure. That the
5 community is comfortable with the current
6 arrangement with respect to the dumpsters in
7 the rear. The Office of Planning similarly
8 has no objections to it.

9 There is no parking requirement.

10 I would like to incorporate by
11 reference the full report of the Office of
12 Planning into my remarks.

13 And I would like to recommend to
14 the Board that we approve the special
15 exception relief requested by the Applicant
16 and with that, I would like to move approval
17 of Case Number 17959, request for a special
18 exception at 3522 12th Street, N.E. identified
19 as Tropicana Jamaican Eatery.

20 Is there a second?

21 ZC CHAIR HOOD: I will second it,
22 Mr. Chairman, only with -- that we change the

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1 name or Spicy -- Real Spice. Real Spice.

2 CHAIRPERSON LOUD: All right. So,
3 the name is Real Spice Jamaican Eatery?

4 MS. JAMES: Jamaican -- yes.

5 CHAIRPERSON LOUD: Okay. So, as
6 corrected, I'd like to move approval of the
7 Application Number 17959 as corrected.

8 ZC CHAIR HOOD: Second.

9 CHAIRPERSON LOUD: All right. Any
10 further deliberation?

11 Hearing none, all those in favor
12 say aye.

13 (Ayes.)

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

16 Ms. Bailey, can you call back the
17 vote please?

18 MS. BAILEY: Sure, Mr. Chairman.
19 The vote is 4-0-1. Motion made by Mr. Loud.
20 Seconded by Mr. Hood. Mr. Dettman, Ms.
21 Moldenhauer support the motion. 4-0-1 for
22 Real Spice Jamaican Eatery.

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1 Mr. Chairman.

2 CHAIRPERSON LOUD: Yes.

3 MS. BAILEY: 733.2 and 3 and 4, we
4 don't need to do anything with that, sir? OP
5 was saying support the application with the
6 understanding that relief would be needed from
7 these sections.

8 CHAIRPERSON LOUD: Yes, the way I
9 understood the OP report, I think, is that at
10 Section 733.12 the BZA can modify conditions
11 enumerated previously 733.2 on up to .12, I
12 believe and I believe OP was suggesting that
13 we modify the conditions regarding mandatory
14 continuous brick wall in the rear and a brick
15 enclosure around the dumpster and based on the
16 evidence, we heard that the community was
17 supportive of that, that OP was supportive of
18 that, we had under that section decided to do
19 that. So.

20 MS. BAILEY: That's something we
21 can talk about off the record, Mr. Chairman,
22 but thank you for the clarification.

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1 CHAIRPERSON LOUD: Okay.

2 MS. BAILEY: That's it for this
3 case.

4 CHAIRPERSON LOUD: All right.
5 Thank you very much. I appreciate again your
6 patience this morning and good luck with your
7 new restaurant.

8 MS. JAMES: Thank you.

9 CHAIRPERSON LOUD: Okay. We're at
10 least back on the microphone and I think, Ms.
11 Bailey, I'd like to the Washington
12 International School, Case Number 17957.

13 MS. BAILEY: Thank you.

14 CHAIRPERSON LOUD: Parties for that
15 case are present.

16 MS. BAILEY: Thank you, Mr.
17 Chairman. This is the Application of the
18 Washington International School, Application
19 17957 and it's pursuant to 11 DCMR Section
20 3104.1 for a special exception to increase the
21 faculty and staff from 64 to 69, to allow a
22 one-story addition to the existing school and

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1 to amend the number of conditioned on-site
2 parking spaces from 47 to 56 under Section
3 206. The property is zoned R-3. It's located
4 at 1690 36th Street, N.W. Square 1304, Lot
5 14.

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

8 And is the ANC present in this
9 case?

10 COMMISSIONER LEWIS: Yes.

11 CHAIRPERSON LOUD: Good morning.

12 COMMISSIONER LEWIS: Good morning.

13 CHAIRPERSON LOUD: Okay. Why don't
14 we have everyone introduce yourselves for the
15 record? Starting I guess at my far right with
16 the Commissioner for the ANC and then we'll
17 just work our way to your right.

18 COMMISSIONER LEWIS: Good morning,
19 everyone. My name is Ron Lewis. I chair ANC
20 2E.

21 CHAIRPERSON LOUD: Good morning,
22 Mr. Lewis.

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1 MS. OLSON: Hi. Good morning. My
2 name is Kate Olson. I'm an attorney with
3 Greenstein, Delorme and Luchs.

4 MR. DEPUY: Good morning. For the
5 record, Jacques DePuy attorney with
6 Greenstein, Delorme and Luchs representing the
7 Applicant.

8 CHAIRPERSON LOUD: Good morning.

9 MS. MEADE: Good morning. My name
10 is Melody Meade. I'm the Primary School
11 Principal at Washington International School.

12 MR. ANDRES: Good afternoon. My
13 name is Erwin Andres with Gorove/Slade
14 Associates.

15 CHAIRPERSON LOUD: I know you.
16 Good morning.

17 MR. BILLINGS: Good morning. My
18 name is Stuart Billings. I'm the architect
19 with Bowie Gridley Architects.

20 CHAIRPERSON LOUD: Good morning.
21 Before we get started, is there a proffer to
22 qualify your skilled professions as experts?

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1 MR. DEPUY: Because of the issues,
2 if there are any, it might pertain to
3 transportation. I would request at this point
4 only that we qualify Mr. Andres as an expert.

5 If necessary, we can qualify the architect,
6 but I don't believe there are any issues that
7 have been identified so far with respect to
8 the addition and therefore, at this point, we
9 would request Mr. Andres who has been
10 qualified as an expert in transportation by
11 this Board be so qualified for this case.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 DePuy. Commissioner Lewis, is there any
14 objection or concern with that?

15 COMMISSIONER LEWIS: No objection
16 or concern.

17 CHAIRPERSON LOUD: Okay. Board
18 Members, any questions or concerns about the
19 -- okay. So, consider Mr. Andres qualified as
20 an expert and his testimony given the weight
21 accorded experts.

22 MR. DEPUY: Thank you, Mr.

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1 Chairman.

2 CHAIRPERSON LOUD: Okay. I believe
3 we're ready to start and we begin, of course,
4 with the statement and witnesses of the
5 Applicant.

6 I think, again, similarly to the
7 Jamaican Eatery case, we've reviewed the file
8 and have a full file before us and if you see
9 opportunities to truncate the presentation and
10 not repeat necessarily things that are
11 specifically laid out clearly in the filings,
12 please take advantage of those opportunities
13 and with that, I'll turn it over to you.

14 MR. DEPUY: Thank you, Mr. Chair,
15 Members of the Board. Again, for the record,
16 Jacques DePuy, Attorney for the Applicant.

17 Before we start and before I give a
18 very brief opening statement, we would like to
19 submit for the record executed agreements that
20 were submitted in draft with our prehearing
21 statement. There was submitted with the
22 prehearing statement a draft construction

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1 management plan agreement and a draft
2 transportation management plan agreement.
3 Both of which have now been signed by the ANC,
4 by, of course, Washington International School
5 and by two other community organizations
6 representing their agreement -- the agreement
7 of the parties, that is, to issues that were
8 identified in the long process which led to
9 this proceeding this morning and again, these
10 agreements were submitted in the record in
11 draft form, but have now been signed and we do
12 want them to be in the record.

13 I'll give a --

14 CHAIRPERSON LOUD: Thank you, Mr.
15 DePuy.

16 MR. DEPUY: Thank you.

17 CHAIRPERSON LOUD: Before you
18 start, just let me ask a quick question in
19 terms of members of the audience.

20 Are there persons in the audience
21 who are planning to testify in this case in
22 support of the application?

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1 Are there persons in the audience
2 who are planning to testify in opposition to
3 this application?

4 Okay. Thank you, Mr. DePuy.

5 MR. DEPUY: Thank you, Mr.
6 Chairman. We have prepared a relatively brief
7 or truncated presentation because of the fact
8 that the Applicant and the community have
9 worked very long and very hard together to
10 resolve outstanding issues, but let me briefly
11 make several opening remarks.

12 As the record indicates, the
13 application is supported by the ANC as Mr.
14 Lewis will testify. It's been supported by
15 the Office of Planning with conditions and is
16 supported by the Department of Transportation
17 also conditions.

18 It's an application for a special
19 exception to build a relatively small addition
20 to an existing building to increase the
21 faculty and staff cap from 64 to 69 and to
22 revise or eliminate two conditions that were

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1 in previous Board orders.

2 One required marked -- seven marked
3 visitor spaces on the site. This application
4 requested that particular condition be
5 eliminated for reasons that will be addressed
6 by our witnesses and that an earlier condition
7 which capped the parking on campus at 47 be
8 increased to 56 reflective of the modest
9 requested increase in faculty and staff from
10 64 to 69.

11 So, with those brief opening
12 remarks, I'll call our architect Mr. Billings
13 to give a brief overview of the application.
14 Then we'll ask Ms. Meade to give her testimony
15 and then finally, Mr. Andres.

16 Mr. Billings.

17 MR. BILLINGS: Thank you. Is the
18 mike on? Thank you, Jacques.

19 My name is Stuart Billings. I'm
20 with Bowie Gridley Architects. We are the
21 architect for the project. I'll be brief.

22 Just to give you a site overview,

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1 Washington International School Primary School
2 exists on one city block defined on the south
3 by Reservoir Road, on the east by 36th Street,
4 on the north by R Street and on the west by
5 37th Street, N.E.

6 Our neighbors are the Duke
7 Ellington School for Performing Arts directly
8 east. To the south is the Cloisters
9 neighborhood and also Georgetown Hospital and
10 to the west and north is the neighborhood of
11 Burleith.

12 The project consists primarily of a
13 few components. As Jacques mentioned, the
14 one-story with a basement addition,
15 approximately 9800 square feet, which would be
16 located here. The tan represents the existing
17 building.

18 Other work includes extension of
19 five classrooms on the first floor, four on
20 the west side and one on the east side.
21 Expansion of the parking lot on the north ten
22 spaced to pick up a net gain of eight spaces.

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1 Relocation of the existing dumpster from this
2 north corner to the northeast corner to
3 provide better access and less conflict with
4 the children.

5 Work also includes miscellaneous
6 renovations inside the building, extension of
7 the front entry underneath the existing canopy
8 and construction of new covered canopy on the
9 north end to protect kids during pick-up and
10 drop-off.

11 And finally, the work includes, at
12 the request of DOT, upgrades to the sidewalk
13 to provide accessibility to the front of the
14 building.

15 We have some blow-ups of the plans.
16 I'll just whip through these. I think
17 everyone's familiar basically. It's the
18 basement level and the main level addition.

19 Tell me if you want me to stop and
20 go -- slow down.

21 We've produced this drawing to
22 indicate the impact of the project both before

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1 and after. The top being the existing
2 condition and the bottom being after the
3 construction of the addition and it's very
4 difficult to see, but this is where the new
5 edition would occur.

6 The landscaping plan will be to
7 reinforce the existing landscaping and we've
8 worked with the neighborhood to produce this
9 landscape plan.

10 Without the landscaping, this is
11 what the elevation would look like, but in the
12 context of the construction, the new edition
13 with new evergreen screening and like
14 plantings in front, this is a planned view.
15 This is an elevation view.

16 And that concludes my testimony.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Billings. Let me see, starting with Board
19 Members, if there are any questions.

20 MEMBER MOLDENHAUER: Thank you.
21 Just one quick question. Will there be any --
22 I know that the building -- the school does

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1 have some mounted speakers for the playground
2 area. Will there be any additional mounted
3 speakers on the new addition?

4 MR. DEPUY: I think Ms. Meade can
5 address that question. Ms. Meade.

6 MS. MEADE: There will be no new
7 mounted speakers.

8 CHAIRPERSON LOUD: Thank you.
9 Commissioner Lewis, right?

10 COMMISSIONER LEWIS: Yes.

11 CHAIRPERSON LOUD: All right. Do
12 you have any questions?

13 COMMISSIONER LEWIS: No, sir.

14 CHAIRPERSON LOUD: Mr. DePuy, your
15 next witness.

16 MR. DEPUY: Thank you. Ms. Meade.

17 MS. MEADE: Greetings again.
18 Essentially what you've just seen is the
19 extension to support our current program at
20 our school. We are a school that has cramp
21 spaces and so, this will greatly address
22 achieving our current educational goals. We

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1 have been in a process with the neighborhood
2 communities that has gone back six months.
3 Where I've been concerned, it's been a very
4 amicable and mutually beneficial experience
5 and on that, I'm going to end my statement.

6 CHAIRPERSON LOUD: Thank you, Ms.
7 Meade. Let's see if there are any questions
8 for you from the Board -- beginning with the
9 Board. Okay.

10 Just very briefly, you said it's
11 driven by the cramped space and so, you know,
12 you want to further your goals. Can you just
13 speak a little bit about that?

14 MS. MEADE: Sure. We have --
15 currently, our gymnasium is used as a
16 functioning space for our performance venues
17 and as our lunch room and so, when we can
18 dedicate a gymnasium just as a gymnasium, part
19 of this extension is to include a lunch room
20 which will also serve as a venue for mid-size
21 in-school productions.

22 We also do not have locations for

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1 teachers to meet anywhere outside of a
2 classroom and so, our educational program is a
3 dual-language program upon which there is much
4 collaboration needed from the teaching
5 professionals.

6 So, in essence, it's shared space
7 for the students and I call shared space
8 common space such as lunch rooms, cafeterias,
9 such meeting space for our teachers for
10 collaborative planning and storage space which
11 is in sore need.

12 CHAIRPERSON LOUD: Thank you, Ms.
13 Meade. Does the ANC have any questions for
14 Ms. Meade?

15 COMMISSIONER LEWIS: No questions.

16 CHAIRPERSON LOUD: All right.
17 Board Members? All right.

18 Mr. DePuy, I think your perhaps
19 final witness. I'm not sure.

20 MR. DEPUY: Yes, Mr. Andres is our
21 final witness. Mr. Andres.

22 MR. ANDRES: Thank you, Jacques.

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1 Good afternoon, Chairman Loud, Members of the
2 Board.

3 My name is Erwin Andres with
4 Gorove/Slade Associates.

5 Briefly, our involvement included
6 identifying the traffic impacts, developing
7 transportation management plan and
8 coordinating with the necessary agencies
9 involved in the supervision of other projects.

10 Briefly, what we've done -- in
11 identifying the traffic impact, it's basically
12 looking at the impact of five additional staff
13 members. As the application states, our goal
14 for the expansion is not an increase in
15 student caps. It's just an increase in
16 employee cap and that employee cap is five
17 additional faculty and staff members that will
18 be grown over time.

19 Because of that, it's been our
20 conclusion that that additional staff
21 increase, the impact associated with that, is
22 imperceptible. If you were to go out there

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1 today and go out there tomorrow with
2 additional staff, there would be no real
3 perceptible increase in traffic.

4 However, with this project, we were
5 able to provide an opportunity to see what can
6 be done to improve the existing condition and
7 in doing so, we coordinated with the ANC which
8 resulted in the signed transportation
9 management plan agreement that identified some
10 of the incentives and some of the benefits of
11 sort of a new plan to address existing
12 conditions.

13 Some of those measures include
14 aggressive incentives to carpool, a smart
15 benefit program for the employees and better
16 carpool operation with respect to additional
17 staff and the employment of additional traffic
18 control officers at the site during both the
19 morning and afternoon carpool operations.

20 So, given that, we agree with all
21 of the conditions related to the Office of
22 Planning. We've reviewed DDOT's letter which

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1 came in late last night and because we have
2 done some extensive work with the ANC, we were
3 able to address most of the DDOT's comments
4 with the transportation management plan that
5 has been signed.

6 One point that they did raise is
7 constructing the entire sidewalk along 36th
8 Street. What we had done previous to that
9 letter we've coordinated as I mentioned before
10 with the ANC and we've come to an agreement
11 with the ANC to only construct or newly
12 construct or rebuild, excuse me, the portion
13 of the sidewalk at the southeast corner of the
14 site.

15 Given that these comments with DDOT
16 came in last minute, we haven't had an
17 opportunity to coordinate with the ANC.
18 Personally, you know, we don't believe
19 constructing -- reconstructing the sidewalk on
20 36th Street to the extent that DDOT has
21 requested is appropriate.

22 We've been able to allocate the

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1 resources for the school, for the new
2 operations and the new programs that they're
3 implementing.

4 The pedestrian network in front of
5 the school is consistent with the pedestrian
6 network in all of the blocks in this part of
7 town. If you go to the north, the sidewalks
8 are just as wide. If you go to the west and
9 to the east. If anything, across the street
10 with the Duke Ellington School, there's
11 actually no sidewalk because there are
12 concrete aprons there that provide for parking
13 for Duke Ellington students.

14 So, it's our assertion that we
15 don't believe that rebuilding the sidewalk is
16 necessary. We believe that resources at the
17 school as allocated towards the programs to
18 improve the existing operations is something
19 that we not only proposed, but we've agreed to
20 with the ANC.

21 That concludes my testimony. Thank
22 you.

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1 CHAIRPERSON LOUD: Thank you. I
2 think -- I believe we're just getting the DDOT
3 report ourselves and so, kind of trying to
4 thumb through it as you were giving your
5 testimony.

6 Just very briefly, can you connect
7 for me again the issue of rebuilding the
8 sidewalk with the specific relief that is
9 being requested in terms of the additional
10 staff and the amendment to the parking? Just
11 so I am clear on what they're asking for.

12 MR. ANDRES: It is our
13 understanding that the sidewalk reconstruction
14 that DDOT is requesting is basically if you go
15 from the northern curb line of the southern
16 entrance and rebuilding the entire sidewalk to
17 the north up until R Street and as I mentioned
18 before, that sidewalk is consistent with the
19 nature of the sidewalks in this neighborhood.

20 If anything, on R street, on the
21 south side of R Street contiguous to the
22 property, there is no sidewalk.

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1 So, for us to come in -- if you
2 notice there's also some street trees that
3 might be impacted by widening the sidewalks as
4 well.

5 And as I mentioned before, we did
6 agree with the ANC to build the section --
7 rebuild the section of sidewalk on 36th Street
8 south of the driveway to the corner.

9 CHAIRPERSON LOUD: And in your
10 estimation, does that address the safety
11 concerns that were raised in the DDOT letter
12 regarding widening the 36th Street sidewalk?

13 MR. ANDRES: Yes, the pedestrian
14 activity in this area -- because of the fact
15 that many of the students are dropped off, the
16 pedestrian access to and from the north
17 actually, that stretch of sidewalk between the
18 driveways is hardly ever used.

19 CHAIRPERSON LOUD: So, the use is
20 south of the driveway?

21 MR. ANDRES: Yes.

22 CHAIRPERSON LOUD: Okay. All

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1 right. Let's see if Board Members have
2 questions.

3 MEMBER MOLDENHAUER: Can you
4 explain what the reasoning is for not
5 encouraging the use of, I guess, the spaces A
6 through F for visitor parking?

7 MS. MEADE: Spaces A through F,
8 just for my confirmation, are the ones
9 directly in front of the building. Correct?

10 MEMBER MOLDENHAUER: The parallel
11 ones. Yes. From my understanding from your
12 report, they would only be used after the
13 pick-up and drop-off period and the Office of
14 Planning had recommended that they be used for
15 visitor parking.

16 MS. MEADE: Yes. We had visits
17 from the fire marshal. Three within one week.
18 Which we were told that that is to remain
19 open and clear for fire engine access.

20 MEMBER MOLDENHAUER: All right. At
21 all times?

22 MS. MEADE: At all times.

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1 MEMBER MOLDENHAUER: OP's report
2 does give -- I guess give a caveat that, you
3 know, to be used as permitted by the fire
4 marshal. So.

5 MS. MEADE: We were told that we
6 would receive tickets for any cars parked
7 there.

8 MEMBER MOLDENHAUER: Okay. And is
9 it currently paved for parallel parking or
10 lined?

11 MS. MEADE: No, there are no lines.

12 MEMBER MOLDENHAUER: Okay. Thank
13 you.

14 VICE CHAIRPERSON DETTMAN: Just so
15 I'm clear. The spaces that Ms. Moldenhauer is
16 referring to, is that included in your 56?

17 MR. DEPUY: No, it was not.

18 VICE CHAIRPERSON DETTMAN: It's
19 not. Okay. When calculating your parking
20 requirement which it appears based on 69
21 faculty, you have a requirement of 46. Is
22 that correct?

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1 MR. DEPUY: It's either 46 or 48.
2 We're going to double check, but --

3 VICE CHAIRPERSON DETTMAN: Okay.

4 MR. DEPUY: -- it's less than is
5 being provided. I know that.

6 VICE CHAIRPERSON DETTMAN: Okay.
7 There are 69 faculty. Is that FTEs or is that
8 total people employed by the school?

9 MS. MEADE: That's -- that would be
10 FTE.

11 VICE CHAIRPERSON DETTMAN: And
12 currently it looks like just looking at your
13 traffic study you have 47 or 48 spaces on
14 site.

15 Ms. Meade: At my count, it's 48.

16 VICE CHAIRPERSON DETTMAN: Forty-
17 eight. And the number of trips in and trips
18 out say in a morning, it looks like you're
19 filling to capacity.

20 MR. ANDRES: Yes, actually, it's to
21 capacity and actually, there is double parking
22 that occurs in the northern drive aisle and

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1 that's why the provision for the additional
2 spaces are geared to actually address some of
3 the existing conditions.

4 VICE CHAIRPERSON DETTMAN: So, were
5 you able to tell whether or not -- when you're
6 filled to capacity, whether or not all 48
7 spaces are used by staff and faculty?

8 MR. ANDRES: Yes, they are. They
9 are completely filled.

10 VICE CHAIRPERSON DETTMAN: So, with
11 respect to 206.3, can you demonstrate to the
12 Board that not only do you meet your chapter
13 21 requirement, but you also have ample
14 parking spaces to provide for visitors and
15 teachers and staff, faculty, et cetera?

16 MR. ANDRES: Yes, as I had
17 mentioned before, during the school day, the
18 spaces are completely full with some over
19 parking that occurs on site.

20 With the addition of the eight
21 parking spaces and the five full-time employee
22 equivalence and the implementation of the

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1 transportation management program which
2 includes benefits to promote both transit and
3 carpooling, it's our assertion that this
4 parking provided on-site is -- will be
5 adequate.

6 It currently -- as I mentioned
7 because of the double parking that occurs on
8 site, it is currently not adequate.

9 Now, with respect to visitors, as
10 part of the plan, all of the parking on-site
11 is designated as faculty and staff parking.
12 It's been our experience that the visitor
13 parking that is required is short-term parking
14 and we don't want the longer term parking to
15 occur on public streets. As a result, the
16 visitor parking that does occur is very short
17 and it's associated with in and out, helping
18 the students with materials and things of that
19 nature in that event.

20 VICE CHAIRPERSON DETTMAN: Where do
21 the short-term visitors park?

22 MR. ANDRES: Well, the short-term

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1 visitors park off campus.

2 VICE CHAIRPERSON DETTMAN: Off
3 campus.

4 MR. ANDRES: On -- on the streets.
5 There is RPP that protects the neighboring
6 community in that two-hour window that RPP
7 provides.

8 However, the parking visits
9 associated with those visitors are much less
10 than two hours.

11 VICE CHAIRPERSON DETTMAN: So,
12 you're not providing any parking on-site for
13 visitors short or long-term?

14 MR. ANDRES: That's correct.

15 VICE CHAIRPERSON DETTMAN: And
16 those spaces A through F or whatever they are,
17 they're not available whatsoever for short-
18 term visitor parking?

19 MR. ANDRES: Because of the fire
20 marshal -- the fire marshal requirements, they
21 are not available.

22 VICE CHAIRPERSON DETTMAN: Okay.

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1 Just curious, how many people actually are
2 employed by the school?

3 MS. MEADE: We have -- currently,
4 we have 64 on staff.

5 VICE CHAIRPERSON DETTMAN: That's
6 FTEs though. Correct?

7 MS. MEADE: Correct.

8 VICE CHAIRPERSON DETTMAN: So, how
9 many bodies?

10 MS. MEADE: Sixty-four bodies.

11 VICE CHAIRPERSON DETTMAN: Oh. So,
12 this isn't really -- this isn't a hundred
13 percent that some are part-time that
14 collectively equate to 64 full-time
15 equivalents?

16 MS. MEADE: We are very full-time.

17 VICE CHAIRPERSON DETTMAN: Okay.
18 Okay.

19 MS. MEADE: I can address --

20 MR. DEPUY: Mr. Dettman, Ms. Meade
21 can address the visitor issue. Ms. Meade.

22 VICE CHAIRPERSON DETTMAN: Well,

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1 just so clear, I mean FTE from a Board
2 perspective is full-time equivalent which
3 means you could have 100 part-time people that
4 equate to 50 full-time employees.

5 MS. MEADE: We have one part-time.
6 It's an art teacher.

7 VICE CHAIRPERSON DETTMAN: Okay.

8 MS. MEADE: At 50 percent.

9 VICE CHAIRPERSON DETTMAN: Okay.

10 MS. MEADE: Okay. Visitors that we
11 have typically tend to be teachers visiting
12 from other schools to observe what's going on
13 in our school. Often they do not even drive
14 in. They're coming from outside of the D.C.
15 area or if within the D.C. area, they may be
16 staying at hotels and coming in.

17 So, in terms of actual visitors
18 bodies in our school, it tends to be
19 educators. Very few of them are driving in.
20 Otherwise, a visitor could be deemed partially
21 a parent coming in and that would be parking
22 on the street and within the two-hour limit.

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1 So, I would say visitors are at a
2 minimum.

3 VICE CHAIRPERSON DETTMAN: Okay.

4 MS. MEADE: In terms of cars.

5 VICE CHAIRPERSON DETTMAN: Okay.

6 Let me just quickly ask one more question of
7 Mr. Andres.

8 We're proposing 56. What measures
9 in the TDM are there that basically are going
10 to encourage -- although you have 56 available
11 for staff and based on what's happening now,
12 it looks like if you're going to increase the
13 56, 56 teachers are going -- you know, what
14 measures in the TDM are there to actually
15 perhaps increase the 56, but keep the staff
16 driving at the existing level?

17 MR. ANDRES: The TDMP program
18 focuses on carpooling. There's carpooling
19 that focuses on looking at where not only both
20 the students live, but also where employees
21 live and see if there's opportunities there.

22 In addition to that as I mentioned

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1 before, there's a need for implementation of a
2 smart benefit program which provides pre-tax
3 incentives for the faculty and staff to take
4 advantage of.

5 VICE CHAIRPERSON DETTMAN: So,
6 assuming the TDM's successful which perhaps
7 could open up a few spaces, could those be
8 made available to a potential visitor?

9 MR. ANDRES: Yes. Yes, and the
10 school's committed to that with the ANC and
11 establishing potential goals for that as well.

12 VICE CHAIRPERSON DETTMAN: Great.
13 Thank you.

14 ZC CHAIR HOOD: Mr. Chairman.

15 CHAIRPERSON LOUD: Yes, sir.

16 ZC CHAIR HOOD: Mr. Andres, I just
17 want to ask you the sequence of events. I'm
18 looking at this agreement for the
19 transportation management plan, but then I
20 also look at Exhibit 30 which was just given
21 to us this afternoon where it still says that
22 the Washington International School must make

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1 -- well, it says WIS must make strong efforts
2 to mitigate the use of driving to the school
3 and through the community.

4 Was this plan, the TMP, presented
5 to DDOT prior or was that taken into
6 consideration? Because it seems like if they
7 reviewed this, it looks as though they still
8 are expecting some more work to be done or was
9 this taken into consideration or not?

10 MR. ANDRES: We -- I'm not sure
11 drafts were submitted to DDOT, but I believe
12 that -- looking from an odd side up, I believe
13 the drafts were submitted to DDOT. I'm not
14 sure if they had a chance to review them.

15 As I mentioned, we just recently
16 received the report last night. So.

17 ZC CHAIR HOOD: So, it's a
18 possibility that last sentence could probably
19 go away?

20 MR. ANDRES: Which last sentence?

21 ZC CHAIR HOOD: The last sentence
22 on Exhibit 30 which is the DDOT report that we

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1 received today which apparently came in
2 yesterday. Well, it came in today. It's
3 stamped for today.

4 It says "Must make stronger efforts
5 to mitigate the use of driving to school and
6 through the community."

7 MR. ANDRES: Not necessarily go
8 away. They might have softened their stance
9 because of the fact we are providing those
10 additional benefits.

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

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

15 Any additional questions from Board
16 Members for Mr. Andes?

17 MEMBER MOLDENHAUER: Just a quick
18 follow-up from --

19 MR. ANDRES: Absolutely.

20 MEMBER MOLDENHAUER: -- the point.
21 Yes, the DDOT report actually asks the
22 question. It says that DDOT has no

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1 information on the number of WMATA smart
2 benefit enrollees at the school. Do we know
3 that number?

4 MR. ANDRES: Well, that number is
5 zero because we're looking to provide as a new
6 benefit.

7 MEMBER MOLDENHAUER: So, that
8 benefit hadn't been provided previously?

9 MR. ANDRES: That's correct.

10 MEMBER MOLDENHAUER: Do we have a
11 number of how many staff members -- have you
12 polled the staff to see if people would be
13 interested in that or how many people would
14 potentially be enrolling?

15 MS. MEADE: This would just be an
16 observation. I have five or under who walk,
17 bike and take the bus and public
18 transportation. So, that's an observation.
19 That's not an analysis.

20 MEMBER MOLDENHAUER: All right.
21 Thank you for that information.

22 CHAIRPERSON LOUD: Thank you.

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1 Commissioner Lewis, did you have a chance to
2 ask questions of this final witness?

3 COMMISSIONER LEWIS: I do just have
4 one --

5 CHAIRPERSON LOUD: Okay.

6 COMMISSIONER LEWIS: --
7 clarification question to ask Mr. Andres.
8 When you referred to the sidewalk you referred
9 several times to being in agreement with the
10 ANC on the sidewalk.

11 Can I ask you if you meant to say
12 an agreement with the Office of Planning on
13 the sidewalk and not the ANC?

14 MR. ANDRES: Yes, thank you for
15 correcting me, Mr. Lewis.

16 COMMISSIONER LEWIS: Those weren't
17 part of our discussions one way or the other.

18 MR. ANDRES: No.

19 COMMISSIONER LEWIS: The sidewalk.

20 MR. ANDRES: However, it was part
21 of the Office of Planning report.

22 COMMISSIONER LEWIS: Thanks.

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1 MR. ANDRES: I'm sorry. We've met
2 with so many different groups.

3 CHAIRPERSON LOUD: Thank you,
4 Commissioner and Mr. DePuy, does that close
5 your case?

6 MR. DEPUY: It does. I want to
7 clarify for the record in response to Mr.
8 Dettman's question. The minimum required
9 parking is 46 and so, we're proposing to
10 provide 56.

11 Yes, that completes our case in
12 chief and we'll be available for additional
13 questions.

14 CHAIRPERSON LOUD: Thank you. Why
15 don't we turn now to the Office of Planning?
16 Good afternoon.

17 MR. JESICK: Good afternoon, Mr.
18 Chair and Members of the Board.

19 My name is Matt Jesick.

20 The Office of Planning is
21 recommending approval of the special exception
22 to expand the Washington International School.

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1 The review criteria under Section
2 206 are fairly straightforward. The school
3 should not become objectionable due to noise,
4 traffic, number of students, et cetera.

5 As you've heard, the number of
6 students will not be increasing. The noise
7 might even be reduced because the school
8 campus would, in effect, be further enclosed
9 by the new addition and we were pleased with
10 the efforts set forth in the traffic demand
11 management plan to keep what would already be
12 a very small traffic increase to a minimum and
13 perhaps even further reduce traffic from what
14 it is today.

15 The second criteria is that ample
16 parking space be provided and the school would
17 be providing 56 parking spaces and have
18 committed to a condition that would limit the
19 number of faculty and staff driving to the
20 site to 56 at any one time.

21 So, we're satisfied that there
22 would be enough parking present on the site.

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1 Now, the Office of Planning has
2 proposed some conditions and I'd be happy to
3 go through those in detail if you'd like.
4 Just in regards to the parking spaces A
5 through F and the delivery space in the front
6 of the school, we certainly wouldn't want to
7 impede any kind of fire access should there be
8 an emergency and so, that's why we did add
9 that clause in to give the fire marshal I
10 guess you could say the authority to prohibit
11 parking in front of the school if that was
12 deemed necessary.

13 So, I'd be happy to take any
14 questions.

15 CHAIRPERSON LOUD: Thank you, Mr.
16 Jesick. Let's start with Board Members and
17 see if there are any questions for you. I
18 think they're going through some of the finer
19 points of the report.

20 Commissioner Lewis?

21 COMMISSIONER LEWIS: I have no
22 questions. Thank you.

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1 CHAIRPERSON LOUD: Okay. And turn
2 to the Applicant.

3 MR. DEPUY: We have no questions
4 for the Office of Planning.

5 CHAIRPERSON LOUD: Okay. Did you
6 get an opportunity to see the Department of
7 Transportation's report that the rest of us
8 just got this morning?

9 MR. JESICK: I have not seen the
10 DDOT report.

11 CHAIRPERSON LOUD: You don't have a
12 copy of it?

13 MR. JESICK: No, I don't.

14 CHAIRPERSON LOUD: Do you have an
15 extra copy that we could give to Mr. Jesick.
16 Okay.

17 Just to make sure you have a copy
18 of that and we're going to move forward in the
19 case, but if after reviewing it you wanted to
20 weigh in on anything in it, because you did
21 talk a little bit about, I think, the
22 transportation management plan, we can go back

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1 to you for that.

2 Board Members, any questions for
3 Office of Planning? Okay.

4 Then why don't we turn to
5 Commissioner Lewis and the report of the ANC.

6 COMMISSIONER LEWIS: Thank you,
7 Chairman Loud.

8 I can be very brief. This is a
9 happy experience. I think the process within
10 the community leading up to this point has
11 really worked well.

12 The Washington International School
13 has always set out to be a good neighbor and
14 so, the school and its advisors really
15 welcomed the kind of input that we made into
16 this process and we put together a group of
17 the leaders of the various community
18 organizations and two ANC members to
19 systematically deal with all of the issues
20 presented.

21 There were four principal issues
22 and we came out on all four through

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1 negotiation and consensus and compromise at a
2 place that not only the ANC but the major
3 community organizations are very comfortable
4 with.

5 The four issues were the
6 transportation issues because there was a
7 general feeling among the immediate neighbors
8 that the old transportation plan just really
9 wasn't working very well. It wasn't working
10 well enough. There were big tie-ups and
11 traffic jams morning and even to some extent
12 in the afternoon and it just wasn't working
13 the way it should. So, we spent a lot of time
14 on that and out of that came a good report
15 from Mr. Andres and I believe a very good
16 transportation management plan that despite
17 the increase in faculty and staff should
18 actually reduce traffic and congestion in and
19 out of the school's driveways.

20 And the plan does contain a process
21 for further refinement and improvement and it
22 contains actual targets and goals for

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1 percentage reduction in in and out traffic of
2 15 to 25 percent. So, we're work with the
3 school over the next few years to try to
4 achieve.

5 This is a pattern that we
6 established with the BZA in Georgetown
7 Visitation School two or three years ago and
8 it's worked really well there. They got a
9 major increase in student cap which they
10 wanted and the community got a major decrease
11 in traffic in and out even with the increase
12 in cap.

13 So, concern number 1, we're very
14 happy with the transportation management plan.

15 It is a signed agreement. It's a stand-alone
16 agreement that is enforceable if need be
17 without being part of the zoning conditions,
18 but we would like very much, of course, for it
19 to be part of the zoning conditions.

20 The second and third issues related
21 to the physical bulk of the addition and its
22 impact on the community and HVAC -- and the

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1 possibility of HVAC noise and impact on the
2 community which we've had recently from the
3 Hardy School where construction was just
4 finished.

5 And these were solved again
6 collegially with screening from mature trees
7 to be planted when the construction is
8 finished and with an agreement that the HVAC,
9 the type of equipment that'll be on the roof
10 of the new building won't be heard by the
11 houses across Reservoir Road to the south, the
12 nearest to the building.

13 So, those were satisfied.

14 Finally, the construction
15 management was of great concern to the
16 community especially the Cloisters community
17 of townhouses to the immediate south and there
18 we did what we've been doing elsewhere in the
19 neighborhood with or without zoning
20 involvement, most recently at the Safeway
21 construction. We developed a construction
22 management plan which you have which is also

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1 an executed agreement stand alone that deals
2 with where the construction traffic goes in
3 and out, the noise, hours, fencing, safety,
4 all the things that the community is concerned
5 about and the concerns have been satisfied.

6 We know that it won't be fun during
7 construction, but we've minimized it by
8 agreement to the point where everyone is
9 happy.

10 Now, again, the construction
11 management plan is stand alone and enforceable
12 as need be the way any other agreement would
13 be. We, the ANC, would prefer, if possible,
14 that the BZA incorporate that as a condition,
15 but if you don't usually do construction
16 management plans or if there's some policy
17 reason for not, we'll understand. We're
18 satisfied that we have the plan in place
19 anyway.

20 As the ANC Commissioner from 5A
21 said immediately before this case, she used
22 the word harmonious and I think that is a very

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1 good concept for me to end my statement on
2 here. It has been a very harmonious process
3 and I think we have come out with a good
4 result that satisfies the community and makes
5 the BZA's work potentially easier and helps to
6 lead us all to a good result.

7 Thank you very much.

8 CHAIRPERSON LOUD: Thank you,
9 Commissioner Lewis. Let me see if Board
10 Members have any questions for you. Okay.

11 And does the Applicant have any
12 questions for the Commissioner?

13 MR. DEPUY: No questions other than
14 to thank Mr. Lewis for being here today and
15 for the corporation that he and the ANC have
16 exhibited in this process.

17 CHAIRPERSON LOUD: Okay. And
18 Commissioner Lewis, I understood you to say
19 that in terms of some of the new
20 transportation issues and the resulting what
21 you call very good transportation management
22 plan and some of the noise issues which would

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1 come under 206, those you'd like us to include
2 as conditions, but the construction
3 management, it's a stand-alone instrument.
4 It's enforceable on its own terms.

5 COMMISSIONER LEWIS: Yes.

6 CHAIRPERSON LOUD: Okay.

7 COMMISSIONER LEWIS: But, so is the
8 transportation management agreement. We would
9 prefer --

10 CHAIRPERSON LOUD: Well, I think
11 the difference is that would fit under the
12 rubric of our 206.

13 COMMISSIONER LEWIS: Well --

14 CHAIRPERSON LOUD: Construction
15 management is not, you know, it's not an issue
16 that comes before BZA. It's not part of our
17 jurisdiction.

18 COMMISSIONER LEWIS: Well,
19 certainly noise during construction is
20 arguably under the jurisdiction, but we
21 understand if that one stays stand alone.

22 CHAIRPERSON LOUD: It falls --

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1 okay. All right. It looks like there are no
2 additional questions for you and again, I want
3 to commend you and Ms. Meade for the
4 relationship that has been developed that
5 results in this matter coming before us
6 harmoniously this morning.

7 COMMISSIONER LEWIS: Thank you.

8 CHAIRPERSON LOUD: If there are
9 parties or persons in the audience who are in
10 support of this application, now would be the
11 time to come up and seeing none, if there are
12 parties or persons in the audience who are in
13 opposition to the application, now would be
14 the time to come up. Also, seeing none, then
15 we turn it back to you, Mr. DePuy, for closing
16 remarks.

17 MR. DEPUY: Thank you, Mr. Chair,
18 Members of the Board.

19 Let me say for the record that the
20 Applicant has agreed -- is willing to have the
21 conditions recommended by the Office of
22 Planning incorporated by the Board into its

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1 order. In other words, the Applicant is
2 agreeable to those conditions.

3 The Applicant would also agree with
4 the recommendation by Mr. Lewis that the
5 transportation management plan also be -- if
6 the Board is inclined to adopt it as a
7 condition, that it also be accepted the
8 Applicant.

9 We believe that we've addressed the
10 issues raised by the report of the Department
11 of Transportation. The only clear issue there
12 as we see it is the request by the Department
13 of Transportation to extend the sidewalk, the
14 full block face along 36th. The Applicant has
15 agreed with the recommendation of the Office
16 of Planning to put in a new sidewalk in public
17 space from Reservoir to the driveway. We
18 believe that that will address the pedestrian
19 needs and as Mr. Andres has indicated, any
20 further sidewalk extension is not necessary.

21 We believe we've satisfied the
22 criteria of Section 206 and finally, though

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1 maybe slightly premature, I would like to take
2 this opportunity to request a bench decision
3 for the following reason.

4 The construction period of the
5 school is very, very limited. It really needs
6 to do its construction in the summer when the
7 students are not there. Summer's a very brief
8 time. It's only, the Board's well aware, a
9 three-month period and we need obviously to do
10 full plans, architectural, engineering plans.

11 We need to get a permit. That as the Board
12 knows is not a fast process through DCRA. We
13 need to hire a general contractor and take a
14 lot of steps between now and next summer.

15 It's also, we believe, to the
16 community's benefit that the construction be
17 consolidated during the summer months. Though
18 as Mr. Lewis indicated, it's not a welcome
19 addition to the neighborhood. Everyone, the
20 neighborhood and the Applicant, want it to
21 occur as quickly as possible.

22 So, the Applicant wants to do it as

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1 quickly as possible during the good weather
2 months of the summer while the students are
3 not there and so, therefore, we would
4 respectfully request that the Board issue an
5 affirmative grant of the application and do so
6 as a bench decision.

7 Thank you very much.

8 CHAIRPERSON LOUD: Thank you, Mr.
9 DePuy. I think the record is full on it from
10 my perspective. I think, but won't assume to
11 speak for other Board Members, that we can
12 probably deliberate on it this morning and if
13 we do deliberate on it and it is affirmative,
14 I think that since there's no opposition in
15 the record a summary decision would be
16 appropriate.

17 Board Members, do you have any
18 thoughts with respect to moving forward into
19 deliberation on the case? Okay.

20 Then I think we are going to
21 deliberate this morning and I think Board
22 Member Moldenhauer was going to start us off.

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1 MEMBER MOLDENHAUER: The Applicant
2 is before us for a special exception under 206
3 in which they want to construct a new multi-
4 purpose room, office and storage space, expand
5 the existing ground floor classrooms and
6 construct a new canopy, increase the total
7 number of faculty and staff from 64 to 69 and
8 increase parking from 48 to 56.

9 Based on the testimony and
10 additional documents presented including the
11 Office of Planning report, I would be inclined
12 to support the application. I believe they
13 have met all of their standards under 206
14 including the need to reduce any potential
15 noise and traffic from the increased faculty.

16 I find that the testimony stated
17 that there was actually going to be
18 potentially even a decrease in noise from the
19 construction of the new building. Having
20 personally resided across the street at
21 Winfield Inn, I think that this would be
22 helpful to have the building there to provide

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1 some noise protection from the students. I
2 see the ANC obviously is strongly in support
3 of that.

4 And I think that there was ample
5 testimony from Mr. Andres regarding the
6 parking concern and the fact this minimal
7 increase in faculty will really be
8 insignificant to any impact on the community
9 and that even though there would be a minimal
10 impact on the community by this increase in
11 faculty, that they actually took the
12 opportunity to meet with the ANC and create an
13 improved, even though it was not required, but
14 an improved planning management plan.

15 And I would suggest that this is
16 approved with the following conditions: That
17 the number of staff not exceed 56; that the
18 transportation management plan that was
19 executed or effective, sorry, as of August
20 31st, 2009 be incorporated and adopted as part
21 of this approval, that the Applicant increase
22 the number of bike parking spaces on-site from

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1 six to 15, that the Applicant shall improve
2 the sidewalk to ANC compliant from Reservoir
3 up 36th, but only to the beginning of the
4 driveway and that the existing condition
5 requiring the formal marking of parking spaces
6 be deleted.

7 CHAIRPERSON LOUD: Board Members?
8 First of all, thank you, Board Member
9 Moldenhauer. That was an excellent and pretty
10 quick recap of the evidence and 206
11 requirements.

12 See if Board Members want to weigh
13 in as well.

14 VICE CHAIRPERSON DETTMAN: I just
15 wanted to ask Ms. Moldenhauer, you had
16 mentioned about the improvement on the
17 sidewalk to ANC compliance. Did you mean ADA?

18 MEMBER MOLDENHAUER: Yes, thank you
19 very much.

20 VICE CHAIRPERSON DETTMAN: Okay.
21 I'm in support of the application for sure and
22 the applications that Ms. Moldenhauer had

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1 suggested.

2 I actually am in favor of DCOP's
3 recommended condition number two with respect
4 to the parking spaces A through F. I know
5 that there's a fire marshal issue here.

6 However, you know, as Mr. DePuy has
7 mentioned, they meet the requirement under
8 Chapter 21. Based on the number of faculty,
9 they have a parking requirement of 46 and
10 they're going to be providing 56. Ten more
11 than what they're required to do. However,
12 based on what's happening now and some
13 testimony that we received, it's likely that
14 we're going to limit 56 staff on-site at
15 anyone time. It could be that all 56 drive.

16 I think the TDM's going to be
17 successful in driving that number down, but if
18 it's not, I would like to know that if the
19 fire marshal does have a change of heart and
20 sees it differently and these parking spaces
21 do become available, that they be reserved for
22 visitors and deliveries to insure that the

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1 Applicant without any question meets the 206
2 requirement that goes beyond the Chapter 21
3 requirement and requires them to demonstrate
4 that ample parking spaces be provided on-site.

5 So, I think it's a harmless
6 condition and really only comes into play if
7 the fire marshal decides that these spaces can
8 be made available for parking.

9 CHAIRPERSON LOUD: Before I turn to
10 you, Mr. Chair, since he was replying, I
11 think, in some respects to Board Member
12 Moldenhauer, if you wanted to jump back in
13 with respect to that issue.

14 MEMBER MOLDENHAUER: I mean I would
15 be fine so long as it was specifically stated
16 that if the fire marshal -- that they wouldn't
17 -- that the school would not need to go out
18 and I guess pursue an approval by the fire
19 marshal, but rather that if the fire marshal
20 on its own made a change of heart or a change
21 of decision that then that would be then a
22 part of the condition.

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1 CHAIRPERSON LOUD: All right.
2 Sounds like Mr. Dettman is agreeing to your
3 wordsmithing and concept and that Chairman
4 Hood doesn't want to weigh in at all.

5 I just -- again, I thought you did
6 an excellent job of recapping the evidence and
7 showing how they meet the requirements of
8 Section 206.

9 I, too, support the application.

10 I think Ms. Meade sort of put a
11 context for it in terms of the gymnasium
12 doubling now for performance space and the
13 lunch room and the need to -- particularly
14 with their educational model where there's a
15 lot of collaboration needed. The need for
16 teachers to have the space where they can plan
17 their collaboration a little bit better. It's
18 a modest request for relief both in terms of
19 the addition and the five additional staff.

20 It doesn't appear from the
21 testimony of the Commissioner that there has
22 been this huge problem in the past with

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1 visitors or with transportation, traffic
2 backups and if there has been, they worked
3 amiably together to develop this new sort of
4 transportation management protocol to make
5 sure that they're tweaking it and keeping it
6 up to speed and they've even got a process
7 built into it for continuing refinement.

8 So, I think with respect to all of
9 the areas of 206 everybody's sort of hit
10 everything on the head and I support the
11 application and the way you lay it out, Board
12 Member.

13 With that, is there a motion for --
14 yes.

15 MEMBER MOLDENHAUER: A motion to
16 approve the special exception under the
17 aforementioned conditions.

18 CHAIRPERSON LOUD: Okay. Okay.
19 So, a motion's been for approval of
20 Application Number 17957 as conditioned and
21 Board Member Moldenhauer walked us through the
22 conditions. Board Member Dettman refined it

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1 somewhat with respect to the fire marshal
2 issue and Board Member Moldenhauer agreed to
3 that and the transcript should capture all of
4 that.

5 So, it's been moved. Is there a
6 second?

7 VICE CHAIRPERSON DETTMAN: Second.

8 CHAIRPERSON LOUD: Motion's been
9 made and seconded. Is there further
10 deliberation?

11 ZC CHAIR HOOD: Mr. Chair, I just
12 have a question and I probably should have
13 brought this up when you asked me the first
14 time.

15 You mentioned early on in your
16 comments the construction management plan.
17 You know, you'll incorporate it. Which I
18 understand. But, I think in the past, the BZA
19 has pointed to it.

20 Will that we done in this case?

21 CHAIRPERSON LOUD: First of all,
22 let me thank you for bringing your expertise

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1 to the table as the Chair of the Zoning
2 Commission and we want to be consistent so
3 that the community keeps the same expectation
4 of how we operate here.

5 When you say pointed to it, what
6 does that mean exactly?

7 ZC CHAIR HOOD: It just says that
8 there's an agreement out there between. Even
9 though I know in the Commission we don't get
10 involved in separate agreements, but it just
11 says that there's an agreement out there and
12 I've seen it. Actually, I've been here long
13 enough to see it go both ways and I'm not sure
14 which way we're going now, but I'm just
15 curious are we going to point to it? You
16 know, just mention it in the order.

17 Maybe Ms. Glazer could help me with
18 that. I know -- I can tell you this though.
19 I do know it has changed.

20 CHAIRPERSON LOUD: Okay. Why don't
21 we turn to Ms. Glazer. Then I can give you
22 some thoughts I have on it.

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1 I don't think we can hear you.

2 MS. GLAZER: I'm sorry. I think
3 Commissioner Hood is correct. It has been
4 done different ways, but more recently, the
5 Board has decided that it does not have
6 jurisdiction over the construction management
7 agreements.

8 In a full order, perhaps it's been
9 referenced as a finding of fact, but not
10 incorporated as a condition.

11 Whereas, the transportation
12 management plans have been incorporated.

13 CHAIRPERSON LOUD: Thank you, Ms.
14 Glazer.

15 I think given sort of the way Ms.
16 Glazer laid it out that what I would suggest
17 is that we reference it and say that it
18 exists, but not make it part of the condition
19 or the order necessarily. As a summary order.

20 Be it there's any dispute between
21 the parties and it doesn't seem like it would
22 ever happen currently as they present before

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1 us, but it's not something that we would -- if
2 it were a condition, it would be something
3 that we'd have to make it come back to us and
4 say that there's a violation of a condition
5 and we have to sort out jurisdiction from not
6 jurisdiction.

7 So, to me, it's just much cleaner
8 to reference it like you said and we're
9 referencing it in our deliberation, but in
10 terms of conditions in the actual order, it
11 would be as proposed by Board Member
12 Moldenhauer.

13 Is that okay with you, sir?

14 ZC CHAIR HOOD: I'm definitely in
15 agreement with that.

16 CHAIRPERSON LOUD: Okay.

17 ZC CHAIR HOOD: Thank you.

18 CHAIRPERSON LOUD: All right. So,
19 the motion's been made for approval of
20 Application Number 17957 as conditioned. It's
21 been seconded by Board Member Dettman. Is
22 there further deliberation?

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1 Hearing none, all those in favor of
2 the motion please indicate by saying aye.

3 (Ayes.)

4 CHAIRPERSON LOUD: All those
5 opposed? Are there any abstentions?

6 And Ms. Bailey, can you read back
7 the vote please?

8 MS. BAILEY: Mr. Chairman, the vote
9 is recorded as 4-0-1 to grant the application
10 as conditioned. Ms. Moldenhauer made the
11 motion. Mr. Dettman seconded. Commissioner
12 Hood and Board Member Loud support the motion.

13 The Mayoral appointee position vacant at this
14 time.

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

17 MS. BAILEY: Summary order?

18 CHAIRPERSON LOUD: I believe a
19 summary order would be appropriate and is
20 there anything further on this case?

21 MS. BAILEY: Not for this case, Mr.
22 Chairman.

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1 CHAIRPERSON LOUD: Okay. Thank
2 you, Commissioner Lewis. We appreciate your
3 time and patience. Thank you, Applicants and
4 good luck with your project.

5 Good afternoon. We never left the
6 record. We're back on the microphone again.

7 It's 1:00 p.m. and we still have
8 one case that has not been heard from the
9 morning calendar. We have two cases scheduled
10 for the afternoon calendar.

11 I think what the Board would like
12 to do is take a 30-minute break and then come
13 back at 1:30 and pick up with the Rosan case
14 from this morning's calendar, work our way
15 through the Rosan case and then pick up the
16 two afternoon cases.

17 So, hopefully everyone can do what
18 they need to do with the 30-minute break.
19 But, we want to try to make it through the
20 calendar as best we can.

21 So, we'll take a 30-minute break
22 and then we'll see everybody about 1:40.

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(Whereupon, the hearing was recessed at 1:14 p.m. to reconvene at 1:40 p.m. this same day.)

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

2 2:05 p.m.

3 CHAIRPERSON LOUD: The morning
4 hearing calendar for September 15th. I
5 believe we were getting ready to call the
6 final morning case which is Case Number 17960
7 of Claudio and Lucia Rosan.

8 I just also want to say for anyone
9 in the audience who's here for Cases Number
10 17961, Center for Digital Imaging Arts and
11 17967, So Others May Eat, that we have run
12 behind in this morning's calendar and so,
13 we're probably going to be running behind for
14 most of the day.

15 We're going to try to get caught up
16 by holding parties to their allotted times and
17 that kind of thing, but we're definitely
18 running significantly behind and if we run to
19 6:00/6:30 and we've not made it through the
20 day's calendar, we are going to continue
21 whatever we have not heard for that day to the
22 next available date on the calendar.

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1 So, I just wanted to let everyone
2 know we're going to do our level best to try
3 to get through all of this, but in the event
4 that we're not able to, I just wanted to let
5 everyone know right now.

6 With that, Ms. Bailey, would you
7 like to call the final case?

8 MS. BAILEY: Sure, Mr. Chairman.
9 Good afternoon.

10 Application Number 17960. This is
11 the application of Lucia and Claudio Rosan and
12 it's pursuant to 11 DCMR Section 3103.2 for a
13 variance to allow four rooms of an existing
14 rooming house to be used for daily occupancy
15 in conjunction with the daily occupancy of the
16 other eight rooms in the building. Under
17 Subsection 2002.3, the property is zoned R-5-
18 D. It's located at 2005 Columbia Road, N.W.
19 Square 2536, Lot 150.

20 CHAIRPERSON LOUD: Thank you, Ms.
21 Bailey. I understand we may have some
22 preliminary matters on this case as well.

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1 MS. BAILEY: Yes, Mr. Chairman,
2 there is a request for party status. It is
3 from the Oakland Condominium Association.

4 CHAIRPERSON LOUD: Okay. So, why
5 don't the parties in this case step forward as
6 well as the ANC obviously is a party in every
7 case before it and I also believe in the
8 interest of sort of keeping on track from a
9 time standpoint, if there's a party status
10 applicant that is here and you submitted your
11 party status request, I think at our Exhibit
12 30, would be one of those, you should step
13 forward as well.

14 Good afternoon, everybody and thank
15 you for your patience. Why don't we start
16 then by having everyone at the table introduce
17 themselves and let's start with the Applicant
18 in the case which is Mr. Collins and reps the
19 Applicant to my far left and then we'll just
20 work all the way over from his left.

21 MR. COLLINS: Good afternoon, Mr.
22 Chairman and Members of the Board. My name is

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1 Christopher Collins with Holland & Knight.
2 I'm here representing Claudio and Lucia Rosan.

3 CHAIRPERSON LOUD: Good afternoon I
4 should say.

5 MR. CRAWFORD: Good afternoon. My
6 name is Peter Crawford. I'm President of the
7 Oakland Condominium Association.

8 CHAIRPERSON LOUD: Good afternoon.

9 MR. CRAWFORD: Thank you.

10 MR. HARGROVE: Good afternoon, Mr.
11 Chairman, Members of the Board. I'm John
12 Lawrence Hargrove. I'm acting as counsel to
13 the Oakland Condominium.

14 CHAIRPERSON LOUD: Good afternoon
15 to you as well.

16 So, let me just get this straight.

17 And we have that party status request at
18 Exhibit -- I guess it's Exhibit 30.

19 Now, Mr. Crawford, you are the --
20 are you the legal representative of --

21 MR. CRAWFORD: No, Mr. Hargrove.

22 CHAIRPERSON LOUD: Mr. Hargrove is.

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1 You're the president of the condo
2 association?

3 MR. CRAWFORD: That's correct.

4 CHAIRPERSON LOUD: Okay. All
5 right. Thank you and good afternoon.

6 COMMISSIONER MOYE: Good afternoon.
7 My name is Stacey Moye and I'm representing
8 ANC 1C.

9 CHAIRPERSON LOUD: Good afternoon,
10 Ms. Moye.

11 MR. HURTEAU: Good afternoon. I'm
12 Vincent Hurteau and I will be a witness today.
13 I'm Principal Broker of Continental
14 Properties.

15 CHAIRPERSON LOUD: And give me that
16 again?

17 MR. HURTEAU: Vincent Hurteau H-U-
18 R-T-E-A-U.

19 CHAIRPERSON LOUD: Very good and
20 you'll be a witness for the ANC? Who's going
21 to be calling you as a witness? All right.
22 So, assuming that the condo's given party

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1 status, they'll call you as a witness a little
2 bit later.

3 So, you can actually take your seat
4 back in the audience and then when we get to
5 that part of the proceeding, the party that
6 you're going to be a witness for will call you
7 forward and you'll have three minutes to
8 provide your testimony.

9 MS. HARGROVE: Actually, I can take
10 my seat as well. I'm a witness for Oakland
11 Condominiums.

12 CHAIRPERSON LOUD: Okay. And if
13 you don't mind giving us your name.

14 MS. HARGROVE: My name is Ann
15 Hughes Hargrove.

16 CHAIRPERSON LOUD: Okay. All
17 right. I think that the first order of
18 business might be the preliminary matter of
19 the party status request of the Oakland
20 Condominium. That's our Exhibit 30 and from
21 what I can understand, the condo's directly
22 across the street from the Applicant's

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1 property and you're alleging some concerns
2 regarding safety, traffic, noise. You're less
3 than 80 feet away. You did meet the 14-day
4 requirement under the rules to get party
5 status.

6 I don't know how long we're going
7 to spend on this. I don't know if Mr. Collins
8 objects to it or not, but we certainly have
9 your exhibit.

10 I don't have any questions about
11 your exhibit. I don't know if the Board
12 Members want to ask you any questions. I'll
13 certainly open it up to them.

14 And then following that, we can
15 turn to you, Mr. Collins and the ANC and see
16 if there are any concerns about the party
17 status request.

18 Board Members any questions for --
19 okay. No questions from the Board.

20 Mr. Collins?

21 MR. COLLINS: Yes, I have several
22 concerns. Exhibit 30 of the record is the

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1 request for party status by the Oakland Condo
2 Association represented by Peter Crawford.

3 Presumably the Oakland Condominium
4 is a membership organization and if that is a
5 correct assumption, then there needs to be
6 something in writing authorizing Mr. Crawford
7 to represent the condominium association.

8 All we have here is a bold
9 assertion by Mr. Crawford that he's president
10 of the condominium association. There's
11 nothing in writing from the condo board, no
12 minutes of a meeting, nothing else like that
13 that represents -- that references it and Mr.
14 Crawford's representations here orally cannot
15 cure that defect.

16 Section 3106.1 says that any person
17 or party or may represented by any other
18 person duly authorized in writing to do so.

19 This case has been pending for
20 quite some time. The Oakland Condominium
21 Association has been aware of it. They've
22 elected to seek party status and with that

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1 election to seek party status comes a burden
2 to comply with the regulations. They have not
3 done so.

4 So, I would object to party status.

5 CHAIRPERSON LOUD: Thank you, Mr.
6 Collins.

7 Mr. Hargrove or Mr. Crawford, did
8 you want to respond to that?

9 MR. HARGROVE: Mr. Chairman, as Mr.
10 Crawford made clear a moment ago, I think the
11 Oakland Condominium has retained me to
12 represent them in the case.

13 Mr. Crawford's status here in as
14 far as the case is concerned is as a witness.

15 So, the party status request does not depend
16 on his authorization to present the Oakland
17 Condominium.

18 We have -- I do not know that we
19 have on our person today, but we certainly
20 have written authorization for me to represent
21 Oakland in this case and I might point out in
22 connection with party status generally that

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1 the Oakland was granted party status in the
2 2003 hearing involving this same controversy.

3 It seems to me the question of
4 party status is to be determined on the basis
5 of the substantive requirements for party
6 status. Not anything having to do with Mr.
7 Crawford's authorization to represent them
8 which, in fact, he is not doing in this case.

9 MR. COLLINS: Mr. Chair, that
10 doesn't cure the defect. What you have then
11 is a condominium association being authorized
12 only by one member of the organization who
13 then authorized an attorney to represent the
14 condominium association.

15 I have no problem if Mr. Crawford
16 wants to go ahead and seek party status on his
17 own behalf, but there's nothing in the record
18 and Mr. Hargrove's letter or the letter
19 authorizing Mr. Hargrove to represent the
20 organization doesn't cure the defect. There's
21 still the missing gap. There is no written
22 authorization by the condominium association

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1 to represent -- to appear here or to authorize
2 Mr. Crawford to speak on their behalf or to
3 authorize Mr. Hargrove to be their attorney.

4 You have one member of that condo
5 association making those representations.

6 CHAIRPERSON LOUD: Is there some
7 prejudice? Well, let me just ask a couple of
8 questions. I don't want to -- I don't think
9 any of us want to spend all afternoon on the
10 party status request from an applicant that's
11 directly across the street, but is there any
12 prejudice to the Applicant from allowing this
13 party status application to move forward?

14 MR. COLLINS: The regulations are
15 quite clear. Requesting party status from an
16 organization requires something in writing and
17 we have no idea. I have no idea whether the
18 whole association has agreed to do this or
19 not.

20 We have one person here before you
21 from that association who's making all these
22 representations and purporting to speak on

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1 behalf of 25 people.

2 CHAIRPERSON LOUD: But, is there
3 any prejudice to the Applicant?

4 MR. COLLINS: Well, if there's one
5 person seeking party status, yes, that's
6 different in my view from a 25-member body
7 none of whom appear to be having -- given any
8 kind of authorization in writing for him to
9 speak on their behalf.

10 CHAIRPERSON LOUD: And I understand
11 the Rule 3106.1, but 3100.5 gives us the
12 authority I think to waive that rule if we
13 find -- unless we find that it would prejudice
14 a party.

15 MR. COLLINS: Well, it's for good
16 cause shown as well, Mr. Chairman.

17 CHAIRPERSON LOUD: All right. For
18 good cause shown, but I mean what would be the
19 prejudice to the Applicant of --

20 MR. COLLINS: The burden is on
21 them. The burden shouldn't be on the
22 Applicant to demonstrate any burden, any

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1 burden on the Applicant.

2 I think the burden on 3100.5 is on
3 the moving party to show good cause why they
4 have not produced anything in writing
5 authorizing him to represent them.

6 CHAIRPERSON LOUD: All right. And
7 you read 3106 to require what by way of
8 writing? You mentioned minutes, but I don't
9 see --

10 MR. COLLINS: It's the second
11 sentence in 3106.1.

12 CHAIRPERSON LOUD: It doesn't say
13 anything about minutes. You mentioned there
14 being no --

15 MR. COLLINS: It just says
16 authorized in writing to do so. Any person or
17 party and person is defined to include an
18 association, so, if you read it that way, any
19 association may be represented by any other
20 person duly authorized in writing to do so.

21 So, the association hasn't
22 authorized anybody in writing to do so.

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1 MR. HARGROVE: Mr. Chairman, if I
2 may intervene.

3 CHAIRPERSON LOUD: Sir.

4 MR. HARGROVE: It is not correct
5 that the association is not authorized anyone
6 to represent them. The association, and not
7 as Mr. Collins alleged Mr. Crawford alone, has
8 authorized me to represent the association in
9 this matter. The provision does not require
10 that that authorization in writing be
11 presented to the Board at the time of the
12 hearing or before the hearing.

13 Admittedly, it's a good idea to do
14 so, but the existence of that authorization is
15 a matter of fact.

16 We have in addition to Mr. Crawford
17 here one or two other members of the Board
18 who, if the Board wishes, can testify to the
19 fact that the Board authorized me to represent
20 the condominium in this matter.

21 MR. COLLINS: What we have in the
22 record are two letters. One is -- or two

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1 pieces of paper. One is a request for party
2 status by Mr. Crawford purporting to represent
3 the association. The second is a letter from
4 Mr. Crawford authorizing Mr. Hargrove to
5 represent the association.

6 We have nothing from the
7 association authorizing either Mr. Crawford or
8 Mr. Hargrove to speak on their behalf.

9 MR. CRAWFORD: As the president of
10 the board of the association, I'm authorized
11 under our bylaws to represent the association.

12 Furthermore, at a meeting of the
13 board of directors of the condominium, I was
14 authorized to proceed to seek party status in
15 this case.

16 Furthermore, as an officer and the
17 president of the board of the Oakland
18 Condominium, I then authorized Mr. Hargrove to
19 represent the association.

20 I have another board member present
21 here today who is willing to verify that.
22 We'd be happy to submit copies of the minutes

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1 or whatever else is required for the record in
2 the future to substantiate that claim.

3 CHAIRPERSON LOUD: From me just a
4 couple of very quick follow-up questions.
5 I'll open it up for the Board.

6 Did the authorization that you
7 received include the power to bind the condo
8 association before the Board?

9 MR. CRAWFORD: Yes, it did.

10 CHAIRPERSON LOUD: It did. Okay.
11 And when was your meeting?

12 MR. CRAWFORD: I have to get the
13 notes.

14 CHAIRPERSON LOUD: Was it within
15 the last month, last couple of months, last
16 six months?

17 MR. CRAWFORD: Within the last
18 month.

19 CHAIRPERSON LOUD: Within the last
20 month and is there a reason why you did not
21 submit in writing that you were duly
22 authorized to represent the board of

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1 directors, I guess, in accordance with your
2 bylaws? Everything you just said. We're duly
3 authorized to represent the condo association
4 and submit that to us in writing in accordance
5 with our rules.

6 MR. CRAWFORD: In the written
7 instructions that came with the party form, I
8 did not see that as a requirement. It might
9 have been an omission on my part, but it was
10 not deliberate.

11 CHAIRPERSON LOUD: Okay. I don't
12 have any further questions. Let me see --
13 open it up to Board Members. It appears that
14 Board Members don't have any questions
15 either.

16 I'm inclined, Board Members, to
17 recommend that we do a couple of things.
18 First, under our rule 3100.5, that we waive
19 the requirement for the written authorization
20 on the part of the party status applicant just
21 to this effect that the party status applicant
22 be required to submit that in writing promptly

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1 after the close of this hearing. Within a
2 couple of days after the close of this
3 hearing.

4 That documents the authority of Mr.
5 Crawford and Mr. Hargrove here to represent
6 and to bind. Look at the language of 3106.
7 To bind the representative here on behalf of
8 the organization.

9 So, that's my first suggestion to
10 the Board Members.

11 Secondly, that we waive our
12 requirement under 3100.5 for Mr. Hargrove and
13 Mr. Crawford here to appear on behalf of the
14 condo association to represent it with respect
15 to their party status application. There
16 being good cause shown. There's been
17 testimony that there was somewhat confusion
18 regarding the requirements of the rule, not
19 fully understanding the form that had been a
20 part of the party status filing made by the
21 party status applicant and no hearing
22 prejudice to the Applicant particularly with

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1 the representation by Mr. Crawford and Mr.
2 Hargrove that they are binding the condominium
3 association during the course of these
4 proceedings. So.

5 That would be the suggestion that I
6 would make and certainly if you have
7 questions, let's discuss it so that we might
8 be able to move forward with the proceeding.

9 Okay. Then --

10 MR. COLLINS: Mr. Chairman, I have
11 a second concern.

12 CHAIRPERSON LOUD: Yes, sir.

13 MR. COLLINS: I'm not sure whether
14 this is the right time to raise it.

15 Mr. Crawford just mentioned the
16 instructions didn't include any requirement
17 for a written authorization by the Board and
18 what I'm handing up are the instruction sheet
19 and the second page is the party status
20 application. That is on the website of the
21 Office of Zoning and it's quite clear in those
22 instructions which are the first thing you'd

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1 see when you pull up the party status
2 application request and I've highlighted that
3 the requirements are not less than 14 days
4 prior to the date set for the hearing, the
5 party requesting or the person requesting
6 party status must submit a list of information
7 and item E is a list of witnesses who will
8 testify on the person's behalf.

9 Well, I received yesterday
10 afternoon a document from the Oakland
11 Condominium Association listing some witnesses
12 who are going to try and speak today. These
13 instructions are clear. They require that the
14 list of witnesses be submitted 14 days in
15 advance and the prejudice is that we don't
16 have the opportunity to prepare for these
17 witnesses.

18 If Mr. Crawford wants to appear, he
19 signed the original application for party
20 status. He can certainly be a witness, but
21 the document I received yesterday lists two
22 other witnesses and there is prejudice to

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1 that.

2 We have not had an opportunity to
3 prepare for, you know, the case fully because
4 we didn't get this document 14 days in advance
5 with the list of witnesses.

6 CHAIRPERSON LOUD: Okay. Mr.
7 Collins, do you mind if we just resolve the
8 issue of the party status question still
9 lingering on the table?

10 MR. COLLINS: That's fine. I
11 didn't know if you wanted me to raise it now
12 or --

13 CHAIRPERSON LOUD: And then we can
14 come back. No, you make good points and we
15 can come back and talk about the late filings
16 on the witness list and any other late filings
17 for that matter.

18 But, I think the specific issue
19 before us now is the party status. Now, he's
20 alleged he's 80 feet away. He's got noise and
21 safety and other concerns.

22 You had objected procedurally how

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1 his applications before us for party status,
2 but did you have any questions regarding the
3 substance of his claim that he's a unique
4 party?

5 If not, we can just vote on his
6 party status application. Then we can talk
7 about the witness list and that kind of thing.

8 MR. COLLINS: I do have some
9 concern about the substance of the claims on
10 party status because I think the -- some of
11 these claims on the party status application
12 go to issues that are not before the Board.

13 For instance, item number 6. I'm
14 sorry. Item number 5. The Oakland, a
15 condominium, believes that the subject
16 property has been inappropriately granted
17 zoning and other approvals to operate as a
18 transient boarding facility in a residential
19 neighborhood.

20 Well, that's not before the Board.
21 This issue before the Board is four rooms in
22 an existing daily occupancy rooming house.

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1 Four additional rooms besides the eight that
2 are already authorized.

3 So, they're going back and trying
4 to argue their harm to grant them party status
5 is based upon the very existence of the
6 rooming house today and that's not before the
7 Board.

8 CHAIRPERSON LOUD: Okay. I
9 understand your argument, but they go on to
10 say that to allow the additional four or five
11 -- I think they actually say five here, but
12 we're only talking about four would do broader
13 damage to the interest of the community at
14 large, so on and so forth.

15 I agree with your point. I mean if
16 we're here specifically on the use variance
17 for the additional four, I think that should
18 be made clear. We're not talking about the
19 preexisting, if that's the correct term, eight
20 that had been grandfathered in. We're just
21 talking about the additional four.

22 If there's some opportunity or

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1 occasion where there's some overlap and we
2 need to get into that a little bit because it
3 relates to the zoning history case that's
4 going to be made regarding the exceptional
5 situation, then I think, as a Board, we can
6 take it up as the information is presented.

7 But, I think on the whole just
8 looking at the party status application, I
9 think that they meet the criteria of being
10 uniquely affected.

11 And if they go beyond what our
12 scope is today, then I think it's certainly --
13 you know, we can cut them off or you can cut
14 them off in cross examine or you can object
15 and bring it to our attention.

16 There is a lot of overlap just
17 because of the history of the case and because
18 you're making the zoning history kind of
19 argument. So, you got to go into history and
20 when you go into history, you're going to go
21 into the grandfathering and all those other
22 issues.

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1 But, I think we want to keep this
2 on track. We have every motivation to keep
3 this on track and to keep it limited to the
4 four additional units that we're talking
5 about.

6 And so, with that, let me just
7 check in with OAG. Do we need to vote on the
8 party status application?

9 MS. GLAZER: I would suggest you
10 did, Mr. Chair.

11 CHAIRPERSON LOUD: Okay. Then I
12 would like to move that we approve the party
13 status application of the Oakland Condominium
14 which is at our Exhibit 30 as meeting our
15 requirements both in terms of the 14 days
16 notice of being more significantly, distinctly
17 and uniquely affected than others in the
18 general community.

19 Is there a second on it?

20 ZC CHAIR HOOD: Second.

21 CHAIRPERSON LOUD: Is there further
22 deliberation? All right.

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1 It's been moved and seconded. All
2 those in favor say aye.

3 (Ayes.)

4 CHAIRPERSON LOUD: All those
5 opposed? Are there any abstentions?

6 Ms. Bailey, can you read back the
7 vote please?

8 MS. BAILEY: Sure, Mr. Chairman.
9 The Board has voted 4-0-1 to grant party
10 status with the Oakland Condominium. The
11 motion was made by Mr. Loud. Seconded by Mr.
12 Hood. Ms. Moldenhauer, Mr. Dettman supported
13 the motion.

14 CHAIRPERSON LOUD: Thank you, Ms.
15 Bailey.

16 Now, before we get into -- there's
17 another preliminary matter you wanted to go
18 into Mr. Collins regarding witness lists and
19 okay.

20 But, before we get into that, are
21 there any other preliminary issues, Ms.
22 Bailey?

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1 MS. BAILEY: Not that I'm aware of
2 at this time, Mr. Chairman.

3 CHAIRPERSON LOUD: Okay. All
4 right. Then, Mr. Collins, let's go back to
5 you for your -- some of the concerns that you
6 started to raise earlier.

7 MR. COLLINS: I'll refer again to
8 the instruction sheet that accompanies the
9 request for party status form and it does say
10 that the person requesting party status shall
11 submit not less than 14 days prior to the date
12 set for the hearing a list of information.
13 Item E is a list of witnesses who will testify
14 on the person's behalf.

15 If for some reason someone filling
16 this out skips over the instruction sheet,
17 goes right to the form, at the very top of the
18 form under the heavy words Party Status
19 Application, it says before completing this
20 form, please review the instructions on the
21 reverse side.

22 So, there's no way that anyone

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1 could miss the requirement to list witnesses
2 and submit them 14 days in advance.

3 And the prejudice to the Applicant
4 is that the purpose of having all this
5 information 14 days in advance is to give the
6 Applicant an opportunity to prepare and giving
7 a list of witnesses one day in advance in the
8 afternoon before the morning hearing does not
9 give adequate opportunity for preparation.

10 CHAIRPERSON LOUD: All right. Let
11 me turn to Mr. Hargrove. Are you going to
12 answer all the questions for the condo?

13 MR. HARGROVE: I beg your pardon.

14 CHAIRPERSON LOUD: Are you going --
15 you're representing the condo association.
16 So, all the questions should be directed to
17 you as their counsel?

18 MR. HARGROVE: Yes.

19 CHAIRPERSON LOUD: Okay.

20 MR. HARGROVE: Obviously, on the
21 basis of the instruction sheet alone, Mr.
22 Collins raises a good point.

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1 I would suggest in this case only
2 that there are certain extenuating
3 circumstances that need to be borne in mind.
4 In the case of a citizen group or a
5 condominium association, in this case, if I'm
6 not mistaken of chronology, they did not
7 retain an attorney until after the 14 days had
8 expired. They had no idea as to the content
9 of the case that would be prepared and
10 consequently could not have truthfully
11 provided the witness list as required by the
12 form.

13 I don't think that is a requirement
14 in the Zoning Regulations as a matter of fact.

15 Although the Zoning Regulations do authorize
16 the Office of Zoning to provide a form.

17 Just what the status in law of
18 these requirements is is perhaps open to
19 question.

20 Beyond that, I don't think there is
21 any genuine prejudice arising out of the
22 failure to provide the witness list a

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1 substantial time in advance of the hearing.

2 I would point out that several days
3 elapsed after information was circulated to
4 the affect of my having been retained as
5 attorney before I received Mr. Collins' list
6 and then only in e-mail form which required me
7 with my limited computer skills to figure out
8 how to get the thing into a readable written
9 form.

10 So, I would ask in this case that
11 the Board waive any requirement that may be
12 attributed to this provision in the form and
13 let us proceed with the case.

14 On the other point which I guess is
15 not at issue, I'll save my comment on the
16 matter of the substantive issues raised in the
17 form that Mr. Crawford provided and the
18 question of whether they are or are not within
19 the scope of the hearing.

20 CHAIRPERSON LOUD: How many
21 witnesses do you have? How many witnesses do
22 you have?

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1 MR. HARGROVE: We have three.

2 CHAIRPERSON LOUD: Three witnesses
3 and I don't recall when I asked earlier for
4 witnesses that would be appearing for the
5 party status application who those witnesses
6 were.

7 Would that be the Mr. Hurteau and
8 Ms. Hargrove?

9 MR. HARGROVE: I beg your pardon.

10 CHAIRPERSON LOUD: Is that Vince
11 Hurteau and -- who are your witnesses?

12 MR. HARGROVE: Vincent Hurteau,
13 Peter Crawford and Ann Hargrove.

14 CHAIRPERSON LOUD: Okay.

15 MR. HARGROVE: And they're listed
16 in the statement which we submitted to the
17 Board.

18 CHAIRPERSON LOUD: This is the
19 statement that Mr. Collins is saying that he
20 got yesterday?

21 MR. HARGROVE: That's correct.

22 CHAIRPERSON LOUD: Okay.

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1 ZC CHAIR HOOD: Mr. Chairman, can I
2 just ask?

3 CHAIRPERSON LOUD: Yes. Yes, sir.

4 ZC CHAIR HOOD: Maybe -- Mr.
5 Collins is making the statement. Mr. Collins
6 are you making the statement that you didn't
7 have adequate time to prepare? Are you then
8 asking us for a continuance or I'm not sure
9 where we're going.

10 MR. COLLINS: I'm not asking for a
11 continuance. What I'm asking for is that
12 these proposed witnesses not be allowed to
13 proceed.

14 That we have -- there are rules.
15 The excuse given here was well, they didn't
16 get their stuff together in time. Well, this
17 case had been pending for several months. The
18 fact that they only came around to getting to
19 it and weren't prepared to say what their case
20 was 14 days in advance, well, there's a
21 requirement in the regulations that the Zoning
22 Commission enacts that requires parties, and

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1 it was reaffirmed in the year 2000, to be very
2 specific as to the obligation of people
3 seeking party status. What they had to and
4 our documents were in 14 days in advance and
5 our list of witnesses was in 14 days in
6 advance.

7 They were given, you know, an
8 explicit set of instructions as to what's
9 required. They didn't follow it and it's
10 prejudice to us.

11 ZC CHAIR HOOD: Have you ever
12 witnessed those regulations and rules in your
13 tenure being waived?

14 MR. COLLINS: I'm sorry. Say it
15 again please.

16 ZC CHAIR HOOD: Have you ever
17 witnessed those -- times you've been down
18 here, have you ever witnessed that to be
19 waived?

20 MR. COLLINS: I've seen the Board
21 and the Commission waive all sorts of rules.

22 ZC CHAIR HOOD: Okay.

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1 MEMBER MOLDENHAUER: I just have a
2 quick question. I know the ANC is a party
3 here and they would actually be exempt from
4 that 14-day requirement. Would the ANC be
5 calling the identical witnesses?

6 COMMISSIONER MOYE: No, we are not
7 calling the identical witnesses.

8 MEMBER MOLDENHAUER: So, you have
9 separate witnesses?

10 COMMISSIONER MOYE: I actually
11 don't --

12 MEMBER MOLDENHAUER: You have no
13 witnesses at all.

14 COMMISSIONER MOYE: We don't have
15 witnesses today.

16 MEMBER MOLDENHAUER: Okay.

17 COMMISSIONER MOYE: No.

18 CHAIRPERSON LOUD: I'm sort of want
19 to piggyback on what both of my colleagues
20 here are saying so that we can move this along
21 and get to the case on the merits.

22 Just in terms of -- your basic

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1 argument is that you're prejudiced by not
2 knowing of the existence of -- certainly you
3 knew -- Mr. Crawford is one of your witnesses?

4 All right.

5 So, I mean certainly you're not
6 trying to make the argument that you're
7 prejudiced by the presence of Mr. Crawford
8 who's --

9 MR. COLLINS: No.

10 CHAIRPERSON LOUD: Okay.

11 MR. COLLINS: He filed his document
12 14 days in advance.

13 CHAIRPERSON LOUD: And he's also
14 the president of the condo association.
15 Presumably has been involved in this.

16 But, you're prejudiced by Ms.
17 Hargrove and you're prejudiced by Vince
18 Hurteau.

19 MR. COLLINS: By other witnesses
20 who were not listed 14 days in advance.
21 That's correct.

22 CHAIRPERSON LOUD: Well, those are

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1 the only two that are not listed. So.

2 MR. COLLINS: That's correct.

3 CHAIRPERSON LOUD: Let me just ask
4 for a proffer from the -- from you, Mr.
5 Hargrove, as to the scope of the testimony of
6 Mr. Hurteau and Ms. Hargrove. What are they
7 going to testify to?

8 MR. HARGROVE: Mr. Hurteau --

9 CHAIRPERSON LOUD: In the context
10 of the standard for a use variance.

11 MR. HARGROVE: I beg your pardon.

12 CHAIRPERSON LOUD: In the context
13 of the standard for a use variance.

14 MR. HARGROVE: Mr. Hurteau would
15 testify to the point that the property is
16 capable of being turned to a lawful use
17 leading to the conclusion that no hardship can
18 be demonstrated on the part of the Applicants.

19 Ms. Hargrove would testify to the
20 point that the granting of a variance would
21 adversely impact the zone plan as reflected in
22 the Zoning Regulations and that -- she would

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1 also address the question which arises in
2 connection with the issue raised by the
3 Applicants of good faith reliance and
4 representations by District officials as to
5 the efforts made by the community during the
6 long period in which this establishment was
7 operating without compliance with the
8 certificate of occupancy to get the District
9 of Columbia to take corrective action.

10 CHAIRPERSON LOUD: Okay. So, the
11 first witness is going to testify to the
12 second prong of the use variance test. That
13 there are -- in other words, part of the test
14 is that you've got to demonstrate that there
15 are no conforming uses that you could put the
16 property to and so, your witness is going to
17 testify that there are conforming uses that
18 the property could be put to. That's Hurteau.

19 MR. HARGROVE: That's correct.

20 CHAIRPERSON LOUD: Am I pronouncing
21 that correctly?

22 MR. HARGROVE: Beg your pardon.

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1 CHAIRPERSON LOUD: Am I -- okay.
2 That's Mr. Hurteau and, Mr. Collins, the fact
3 that we're going to have a witness here who's
4 going to be offering testimony that there are
5 conforming uses that the property could be put
6 to and presumably, you know what all the
7 conforming uses are already, is something that
8 catches you by surprise or in some way
9 prejudices your ability to move your case
10 forward?

11 MR. COLLINS: No, as I said before,
12 there was no opportunity to prepare for these
13 witnesses.

14 CHAIRPERSON LOUD: Okay. And then
15 again just recap for me for my purposes and
16 I'll turn it over to the other Board Members,
17 Ms. Hargrove, the basic testimony that she's
18 going to give is going to be what? Just, you
19 know, in a nutshell. I know you just went
20 through it, but I got distracted looking at a
21 few things up here.

22 Yes, if you could just recap, just

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1 restate what you just said about the purpose
2 for Ms. Hargrove's testimony. Mr. Hurteau is
3 going to speak to the second prong of the use
4 variance test and Ms. Hargrove is going to
5 speak to what?

6 I don't think you're speaking in
7 the microphone. I can't hear you.

8 MR. HARGROVE: Yes, Ms. Hargrove
9 would speak to the issue of whether the
10 granting of the requested variance would
11 adversely impact the zone plan, compromise its
12 integrity, et cetera.

13 She would also address the question
14 as a matter of fact whether the community took
15 diligent action during the two -- the five-
16 year period of unlawful operation to get the
17 District of Columbia to correct that
18 situation.

19 Mr. Hurteau would testify that
20 there are other lawful uses to which the
21 property could be put at a reasonable return.

22 Consequently, leading to the conclusion that

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1 the Applicant's are not suffering undue
2 hardship by reason of the strict application
3 of the regulations.

4 CHAIRPERSON LOUD: Okay. All
5 right. And so, let me now it back to you, Mr.
6 Collins. Mr. Collins, I know you mentioned on
7 the form that there's the statements regarding
8 witnesses. Are you familiar with one of our
9 rules that would also require that?

10 MR. COLLINS: The rules -- the
11 regulations don't have that requirement, but
12 the -- as actually, Mr. Hargrove mentioned
13 that the regulations do authorize the Board to
14 issue forms and this is a form that's been
15 issued on behalf of the Office of Zoning and
16 is out there for all the world to see and use
17 and rely upon.

18 CHAIRPERSON LOUD: Okay.

19 MR. COLLINS: The fact is when it
20 says the persons requesting party status are
21 required to submit this 14 days in advance, I
22 think that applicants have the right to rely

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1 upon that.

2 CHAIRPERSON LOUD: Okay.

3 COMMISSIONER MOYE: Mr. Chairman, I
4 hope I'm not speaking out of turn.

5 CHAIRPERSON LOUD: Yes.

6 COMMISSIONER MOYE: But,
7 respectfully, in the Applicant's
8 presubmission, they do go through a lot of
9 their argument where they talk about the uses
10 that they're arguing that can't possibly be
11 used for this property and so, these expert
12 witnesses would be speaking to those matters
13 and so, on behalf of the ANC, for what it's
14 worth, what our opinion is worth, we would
15 respectfully request that you would allow
16 these witnesses. Because I would argue that
17 their material is already here that they've
18 prepared for this.

19 CHAIRPERSON LOUD: Thank you,
20 Commissioner Moye and I'm -- you know, I think
21 I've heard sort of a full airing out on both
22 sides and prepare to recommend to my

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1 colleagues here what we do.

2 One clarification, they're not
3 being presented as expert witnesses yet. I
4 mean we get -- once we get to the case, if
5 they want to be offered as expert witnesses,
6 we can go through the voir dire for that, but
7 I think right now the question is just the
8 element of surprise prejudice that Mr. Collins
9 is raising in light of the form.

10 Colleagues, my feel based on the
11 evidence is that we should allow the witnesses
12 for the party status applicant. First,
13 there's no rule that's been pointed to that
14 would mandate as a matter of law that this
15 witness list be submitted.

16 Secondly, the areas that are
17 claimed as areas of surprise or prejudice I
18 think are areas that are typical and standard
19 for use variance cases and probably
20 anticipated that there would be some evidence
21 that the opponent would put on to each of
22 those elements. So, I don't see the case

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1 being made that they're a surprise.

2 There's no requirement here that
3 one produce discovery for example. We can
4 really dig deep into what a person's going to
5 testify to. It's just the allegation that the
6 form requires you to submit a name.

7 So, I don't see the prejudice. I
8 don't see where the rules compel this witness
9 list and I think that we -- my suggest to you
10 is that we not grant the request of Mr.
11 Collins and try to move forward to the merits.

12 VICE CHAIRPERSON DETTMAN: Mr.
13 Chairman, I agree with you though Mr. Collins
14 does raise some very, very good points.

15 We put a form out. We should be
16 enforcing the instructions that go along with
17 that form.

18 So, while I'm with you on this
19 case, I think going forward perhaps we
20 prescreen before we get to the hearing to make
21 sure that these instructions are abided by.

22 But, hearing of the two witnesses

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1 and three issues that are going to be
2 testified to, based on what I've seen in the
3 record so far, I think that the Applicant will
4 be able to address any of the issues that are
5 raised by these witnesses.

6 There was one issue. I think it
7 was the second issue that Ms. Hargrove is
8 going to testify to with respect to the
9 efforts that the community has made in the
10 previous five years of operation.

11 I didn't raise it when it was
12 mentioned, but I can't seem to fit that
13 particular testimony into the three-prong test
14 that we'll be applying today.

15 So, I think that we as a board
16 should be very much aware of what's being
17 brought out on testimony and make sure that it
18 applies to the very narrow focus that we'll be
19 looking at in terms of the additional four
20 rooms not the overall use.

21 So, that's my opinion.

22 CHAIRPERSON LOUD: Thank you, Mr.

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1 Dettman. Any other Board Members want to
2 weigh in? Okay.

3 It appears then that we're going to
4 allow Mr. Hurteau and Ms. Hargrove to appear
5 as witnesses.

6 We're going to pay really careful
7 attention, I think as Mr. Dettman suggested,
8 to the scope of what's relevant on the part of
9 all of these witnesses particularly some of
10 the -- what Mr. Dettman pointed out about the
11 efforts on the part of the community to work
12 with the D.C. Government regarding some of the
13 -- I guess the enforcement issues that might
14 relate to the property which are not our
15 issues.

16 But, in terms of just admitting the
17 witnesses themselves, we're going to go ahead
18 and allow those witnesses, Mr. Hargrove, and
19 take appropriate steps to curtail them if they
20 go beyond the scope.

21 I think with that, we don't have
22 any additional preliminary matters. Do we?

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1 Okay. We don't have any additional
2 preliminary matters and we can move into the
3 merits of the case and we would turn to you,
4 Mr. Collins, to get us started.

5 MR. COLLINS: Could we have the
6 tables for our witnesses?

7 CHAIRPERSON LOUD: Yes. If the
8 party status party could now just sit in the
9 audience so that Mr. Collins can have an
10 opportunity to call his witnesses.

11 I think ANC -- do need the -- do
12 you need every chair, Mr. Collins?

13 MR. COLLINS: No.

14 CHAIRPERSON LOUD: Okay. So,
15 Commissioner Moye, you can stay there.

16 MR. COLLINS: Mr. Chairman, Members
17 of the Board, again, my name is Christopher
18 Collins with the Law Firm of Holland & Knight.

19 Seated to my left Ms. Lucia Rosan.
20 To my right, Mr. Claudio Rosan and to my far
21 right, Mr. Toye Bello.

22 This is an application for a use

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1 variance to allow four rooms of the rooming
2 house at 2005 Columbia Road, N.W. to be used
3 for daily occupancy in conjunction with the
4 other eight rooms in the R-5-D zone.

5 This is a unique case with a unique
6 set of facts. This property has been used as
7 a rooming house for daily occupancy since
8 1969. In 1969, there was a certificate of
9 occupancy issued that had no limit on the
10 number of rooms.

11 The prior owner had a business
12 license that allowed 15 rooms in the rooming
13 house. The prior owner died in 2002. The
14 Rosans bought the property in 2003.

15 The official records in effect at
16 the time the Rosans purchased the property
17 included the 1969 certificate of occupancy
18 without limit on the number of rooms and the
19 15-room business license.

20 They inquired at the District as to
21 what they should do when they bought the
22 property and were told for some reason to file

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1 a new certificate of occupancy application for
2 an inn/tourist home. They were then told to
3 apply for an ownership change for the rooming
4 house, but were limited to eight rooms. There
5 was no explanation given at the time to why
6 eight rooms. They did what they were told.
7 They filed it. They did what they were told
8 in the inn/tourist home. They filed those.
9 The people of the city told them to do it and
10 they did it.

11 Once they had the eight-room
12 certificate of occupancy for the rooming
13 house, in order to expand that eight rooms to
14 12 rooms, they applied for a building permit
15 to make 12 rooms in the rooming house. That
16 permit was issued.

17 Meanwhile, their application for
18 the inn/tourist home was denied and they were
19 directed to go to the BZA. They were told to
20 do it and they did it. They had no legal
21 counsel at the time. They did what they were
22 told by the city officials.

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1 They didn't think they needed to be
2 at the BZA. They really had no idea what the
3 BZA was all about as the transcript will show.

4 They commenced work on the building
5 pursuant to the issued building permits in
6 mid-2003 and they also went to the BZA
7 hearing.

8 They showed up as they were
9 instructed. Clearly had not idea what the BZA
10 proceedings were all about. They came here to
11 this very room six years ago and argued that
12 they were grandfathered and what was this all
13 about. Some of the very same people in this
14 room, you know, very skilled in the ways of
15 zoning made mincemeat out of them in essence.
16 They were totally unprepared and they didn't
17 realize at the time they didn't even need to
18 be here.

19 The application was subsequently
20 denied. They withdrew the application prior
21 to issuance of an order.

22 They continued the building of the

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1 12 rooms in the rooming house pursuant to the
2 duly issued permits and they got their final
3 approvals for the construction, but they did
4 not get a certificate of occupancy for 12
5 rooms. They applied for one and it was
6 preliminarily approved and then someone
7 participating in the zoning variance case
8 complained to the city, got the city all
9 nervous, had them call the Rosans in to change
10 their plans on their building drawings from 12
11 rooms to eight rooms. They refused to do
12 that.

13 Nothing ever happened after that.
14 There was no stop-work order. No rescision of
15 the building permit. No nothing.

16 They continued to work and that
17 same agency that called them in issued the
18 final approvals for the construction.

19 This application was filed after
20 the issuance of the February 2009 letter from
21 the Zoning Administrator.

22 The Rosans are here today to ask

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1 for a variance to allow the building to be
2 used for the 12 rooms that they were
3 authorized to construct instead of limiting
4 them to eight daily occupancy rooms in the
5 building.

6 There's an extensive rehearing
7 submission that we filed with exhibits. We
8 have two witnesses today. I'd be happy to go
9 through the exhibits with you if you'd like at
10 your direction, Mr. Chair, or we can go right
11 to the witnesses.

12 CHAIRPERSON LOUD: My thought, and
13 I'll see what other Board Members think, is
14 that in the context of the evidence that's
15 going to come out, some of the exhibits are
16 going to be very, very important to get
17 clarity on, but going through every exhibit, I
18 don't know if that --

19 MR. COLLINS: Right.

20 CHAIRPERSON LOUD: -- is that
21 helpful. Is that sort of how -- yes, I think
22 -- yes. So, as we go through the testimony

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1 that amplifies what you just said, there may
2 be some questions around specific exhibits.

3 MR. COLLINS: All right. Fine.
4 With that, I'll go to the first witness Ms.
5 Lucia Rosan.

6 Ms. Rosan, would you please state
7 your name and then proceed with your
8 testimony.

9 MS. ROSAN: Good afternoon. My
10 name is Lucia Rosan and I thank you for the
11 opportunity to come before you today to
12 present our application.

13 I continue?

14 We own and operate a rooming house
15 which is located at 2005 Columbia Road, N.W.
16 The building has four stories and a basement.

17 The land area of our property is 1,914 square
18 feet and there are 5,377 square feet in the
19 building.

20 We bought the rooming house in
21 March of 2003 from the estate of Mr. Richard
22 W. Byrd who died in 2002. Mr. Byrd operated

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1 the rooming house up until the day he died.

2 We were familiar with the rooming
3 house and we visited it when it was for sale
4 by Mr. Byrd's estate. He had 15 bedrooms in
5 the rooming house and some of the rooms were
6 set up as private rooms and other's had
7 several beds and mattresses on the floor. The
8 house was poorly maintained and needed lots of
9 work.

10 Mr. Byrd had a certificate of
11 occupancy for the rooming house that did not
12 list the number of rooms and he had a 2001
13 business license which indicated 15 rooms in
14 the rooming house.

15 After we bought the rooming house,
16 we spoke with people in the City Government to
17 find out what we needed to do to continue the
18 rooming house business. We also hired someone
19 to help us get the permits. We applied for a
20 change of ownership certificate of occupancy,
21 but were told that it would be limited to only
22 eight rooms. We did not understand why and no

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1 one in the City Government was able to explain
2 this to us. However, this is what we were
3 told to do. So, we filed it that way.

4 We also filed building plans in
5 April of 2003 to completely renovate the
6 interior of the building and to reduce the
7 number of guest rooms from 15 to 12.

8 Around that same time, we were also
9 told by Fay Ogane who was with the Zoning
10 Administrator's Office that we should file a
11 new certificate of occupancy application for
12 an inn/tourist home. We did not understand
13 why, but we did what she said and filed that
14 the application. We then received a letter
15 rejecting the application and telling us to
16 file an application with the BZA.

17 We always believed that we would be
18 grandfathered to allow us to continue with the
19 rooming house business in the same manner as
20 Mr. Byrd and we did not understand that the
21 legal issues were -- with that BZA
22 application, but we just followed instructions

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1 and filed it.

2 I'm sorry. This is a bit long, but
3 we came to the BZA hearing in this room on
4 July 29th, 2003 totally unprepared for what
5 took place. We felt at that time that we did
6 not need a use variance and that we had a
7 right to continue just as Mr. Byrd had
8 operated.

9 We had no idea of what was expected
10 of us at the hearing. There were many
11 neighbors in opposition and it was all very
12 confusing to us.

13 We kept arguing that we were
14 grandfathered, but the BZA did not want to
15 hear that.

16 We were told that we should have
17 filed an appeal rather than an application,
18 but no one had explained that to us in the
19 past. The BZA proceeding went very poorly for
20 us.

21 After the proceedings were over, we
22 asked several people for advice and were

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1 advised to withdraw the application which we
2 did.

3 Meanwhile, we obtained our building
4 permit for the 12-room rooming house
5 renovation on June 2nd, 2003 and we began
6 work.

7 We then applied for a new
8 certificate of occupancy for the 12-room
9 rooming house on August 11th and it was
10 approved by Mr. Denzel Noble at that time.

11 In late August, we received a phone
12 call from Mr. Chen from the permit office
13 telling us to come to his office to change our
14 building permit drawings from 12 rooms to
15 eight rooms. We found out later that this
16 phone call was the result of a letter sent to
17 the permit office by one of our opponents at
18 the BZA for the inn/tourist home application.

19 Mr. Chen told us that Mr. Byrd's
20 certificate of occupancy was only for eight
21 rooms. That is not what Mr. Byrd's
22 certificate says.

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1 We refused to make those changes to
2 the plans because we were already -- we
3 already had the building permit for 12 rooms
4 and at that point, the work was about 70
5 percent complete and we had already spent
6 about \$300,000 worth of labor and materials on
7 the renovations.

8 We left that meeting and heard
9 nothing more from Mr. Chen or anyone else
10 about that issue.

11 We finished the construction work
12 in the house and received all of the final
13 approvals for the work in April of 2004.

14 After we finished construction, we
15 needed to furnish the rooms which we did
16 little by little as we could afford to. We
17 began operating the rooming house in December
18 of 2004.

19 The renovated rooming house is a
20 tremendous improvement over the rooming house
21 operated by Mr. Byrd. We think we have made a
22 beautiful renovation. We have been inspected

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1 by the city and we have never received any
2 citations or violation notices until we
3 received Mr. Lagrant's letter.

4 Our guests are also different from
5 the type of guests that Mr. Byrd rented to.
6 Our guests are primarily vacationers and
7 business travelers mostly from around the
8 country and overseas. This type of rooming
9 house operation is very popular in Europe
10 especially with travelers who don't want to
11 stay in big expensive luxury hotels.

12 Our guests are quiet and are not
13 disruptive in the neighborhood. Most of them
14 arrive in the city by train or airplane and
15 they take public transportation either Metro
16 or taxi to come to the rooming house. On very
17 rare occasions, we may have a guest who drives
18 to the rooming house, but we direct them to
19 park at either the Hilton or the Marriott so
20 that they do not add to the parking congestion
21 on the street.

22 Our rates are competitive and

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1 usually less than what is available elsewhere.

2 We serve breakfast to our guests and someone
3 is on duty in the house at all times.

4 We have two trash containers that
5 we keep behind a gate out of sight to store
6 our trash. The trash collection company picks
7 up the trash from the storage area and returns
8 the cans to the storage area. We do not store
9 our trash on the sidewalk. We generate a
10 small amount of trash and much less than our
11 neighbors.

12 On occasion, we have found that our
13 neighbors have deposited their trash on the
14 sidewalk in front of our guest house including
15 bags of garbage, old furniture and the like.
16 This is not our trash and it not right, but we
17 cannot stop them.

18 Our guests do not make any noise
19 that is heard outside of the house. Our
20 guests are not allowed to bring their own
21 guests or to otherwise entertain in their
22 rooms. We do not allow pets or smoking in the

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1 house or cooking in the rooms.

2 All of our guest register in
3 advance through the Internet and we do not
4 take guests in off the street.

5 We had been steadily building our
6 business. The occupancy standard in the
7 hospitality industry is 80 percent. So, with
8 12 rooms at 80 percent occupancy, we would
9 typically have at most nine or ten of those
10 rooms occupied. With the eight rooms that we
11 are already allowed to have, occupancy at 80
12 percent would mean six to seven occupied
13 rooms.

14 Some of our guests stay for two
15 days. Others for three to seven days. So,
16 not everyone comes and goes all at once
17 everyday.

18 Because we are a small rooming
19 house and because our guests do not all come
20 or go at the same time, we do not generate any
21 significant level of traffic on the street.
22 Columbia Road is a major street with one

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1 driving lane in each direction and a middle
2 turning lane that is used by traffic in both
3 directions.

4 For guests who arrive by taxi, it
5 takes less than a minute for the guest to get
6 out of the taxi and get their luggage from the
7 driver. If a car is parked at the curb, a
8 taxi driver pulls over to the side as far as
9 he can and cars that want to pass simply drive
10 around the taxi that is stopped. This is a
11 common occurrence in our neighbor and in the
12 city and that's how it works here. This does
13 not cause traffic congestion.

14 We received a letter from Mr.
15 Lagrant last October in which he said that he
16 was going to revoke our certificate of
17 occupancy. We contacted Mr. Collins and we
18 had a meeting with Mr. Lagrant. He issued a
19 new letter in February of this year revoking
20 his previous letter and recognizing that the
21 entire building was grandfathered for a
22 rooming house, but only for eight rooms and

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1 not for the 12 rooms that the building permit
2 allowed us to have.

3 His letter directed us to file an
4 application with the BZA to increase the
5 number from eight to 12 and that's why we are
6 here.

7 Mr. Lagrant's letter leaves us with
8 very few options. We could theoretically
9 combine some of the rooms together to create
10 eight guest rooms or rent out four of the
11 guest rooms to guests who stay for at least 90
12 days or create some other use in the four
13 guest rooms that is permitted by zoning, but
14 none of these options is feasible.

15 If we were to combine several rooms
16 to create eight guest rooms out of the
17 existing 12 guest rooms, the result would be
18 that we would double the size of some of the
19 guest rooms, but we could not charge double
20 the rent for that room. Our average rate is
21 155 per night, but we could not charge \$310
22 for a room that is twice as large.

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1 A very nice room at the Hilton
2 Hotel down the street on Connecticut Avenue
3 costs from 170 to 175 per night. The
4 amenities at the Hilton include parking, pool,
5 concierge, restaurant, fitness center,
6 computers, elevators and a refrigerator and
7 mini-bar in the rooms. We have none of that.

8 The Normandy Hotel on Wyoming
9 Avenue has rooms that rent from 174 for a
10 night. That hotel which was formerly called
11 the Judy's Normandy Inn has fewer amenities
12 than the Hilton, but much more than we have.

13 So, if we were required to double
14 the size of four of our guest rooms, we could
15 not justify any significant increase in the
16 nightly rate. Our expenses would stay roughly
17 the same, but our income would drop by one-
18 third. We never would have spent \$1.1 million
19 to buy the rooming house and substantially
20 renovate it for 12 rooms if we knew that later
21 on we would not -- we would be only limited to
22 eight rooms.

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1 We cannot rent out four of the
2 rooms to guests who stay for a minimum of 90
3 days while at the same time operating the rest
4 of the rooming house for daily occupancy.
5 These are two different types of operations.

6 Single room occupancy tenants who
7 occupy a premises on a long-term basis are
8 typically people who for some reason cannot
9 afford to rent a typical apartment with full
10 kitchen and bathroom facilities. They are not
11 typically business travelers or vacationers.

12 Our rooming house does not have the
13 types of amenities found in a typical
14 extended-stay hotel such as a kitchen,
15 bedroom, living room, elevator and parking.
16 That would attract a person looking for a 90-
17 day or more accommodation in the city.

18 Our rooms do not have cooking
19 facilities and we do not permit cooking in the
20 rooms and the rooms are not large enough to
21 comfortably accommodate a typical living
22 arrangement for 90 days or more.

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1 Our budget requires that we rent a
2 room for an average of 155 per night. A
3 person wishing to stay for 90 days or more
4 would, therefore, be paying \$4,650 to rent a
5 room in our rooming house. It is not
6 reasonable to think that anyone would be
7 willing to rent a room in a rooming house for
8 that amount of money when they could get a
9 furnished short-term apartment for much less
10 at another location.

11 For instance, the King William at
12 the corner of Connecticut and Leroy offers
13 efficiency and one-bedroom apartments from
14 1200 and 2200 per month.

15 We would need to significantly
16 reduce the amount of rent that we could charge
17 for those rooms in order to be competitive
18 with the King William. Our budget would not
19 allow such a large decrease in revenue and we
20 could not afford to do it and we would not
21 have purchased and renovated the rooming house
22 if we knew that we would be required to do

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1 this nor could we afford to change the use of
2 the four -- four of the guest rooms to another
3 use that is permitted by zoning.

4 Mr. Collins has provided us with
5 the list from the Zoning Regulations of other
6 uses that are permitted in the R-5-D zoning
7 district. The only use off that list which
8 would be theoretically possible would be to
9 convert four of the rooms into two apartments.

10 However, Mr. Bello has looked into
11 this and he will tell you why that alternative
12 is not possible.

13 If that was our only alternative,
14 we could not charge the amount of rent
15 necessary to make up for the tremendous cost
16 that we would incur to create two apartment
17 units.

18 Even if we could find tenants
19 willing to occupy those two apartments in the
20 rooming house and share the building with our
21 daily guests, apartment tenants would be more
22 likely to have cars and, therefore, need to

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1 park in the neighborhood and they would be
2 more likely to have guests which we do not
3 currently allow in our rooming house and to
4 get deliveries, clogging the streets as the
5 pizza cars and the moving trucks and the
6 delivery trucks and the FedEx trucks are
7 double parked on the street as is the case
8 with some of our neighbors and generate food
9 waste, stay up late with the TV or music on
10 and otherwise live as apartment tenants do.
11 They would not be able to be subjected to the
12 same house rules and limitations on pets,
13 smoking and noise as our current guests are
14 subject to.

15 In sum, limiting our rooming house
16 to only eight rooms or requiring us to have
17 long-term renters for 90 days or more in four
18 of those rooms or converting four of those
19 rooms to apartments would impose a tremendous
20 financial burden on us and would be -- and it
21 would be an undue hardship.

22 We believe that the number of

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1 occupants in the building would be the same
2 whether we operate a 12 daily rooming house or
3 eight daily rooms and four long-term rooms or
4 eight daily rooms and two apartments. Thus
5 the impact of these alternatives on the
6 neighborhood would be about the same and
7 probably less with 12 daily rooms.

8 Thank you for your consideration
9 and we'd be happy to answer any questions.
10 Sorry it was so long.

11 CHAIRPERSON LOUD: Thank you, Ms.
12 Rosan.

13 MS. ROSAN: You're welcome.

14 CHAIRPERSON LOUD: Board Members,
15 are there any questions? Okay. I hear none
16 there.

17 Mr. Hargrove, are there any
18 questions for the witness?

19 MR. HARGROVE: Mr. Chairman, I
20 would be happy to --

21 CHAIRPERSON LOUD: I don't know if
22 you're speaking into the microphone. I don't

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1 think that -- no, she can't. The court
2 reporter can't hear you. You have to cut on
3 the microphone at the based.

4 MR. HARGROVE: I'd be happy to
5 proceed with some cross examination, but my
6 understanding is that Commissioner Moye should
7 proceed me.

8 CHAIRPERSON LOUD: Oh, that's fine.
9 Yes, so, you want to defer to the
10 Commissioner. Okay.

11 COMMISSIONER MOYE: Thank you.
12 Just one item. I would just like to point out
13 in Mr. Collins' testimony, he had said that
14 they had no legal counsel at the time during
15 the 2003 proceedings. One of the things that
16 I would like to point out is that several
17 times during --

18 MR. COLLINS: Mr. Chairman, sir, is
19 there a question here?

20 CHAIRPERSON LOUD: Yes, I think --

21 COMMISSIONER MOYE: May I clarify?

22 CHAIRPERSON LOUD: Well, let me --

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1 COMMISSIONER MOYE: May I clarify
2 something that he had said that I feel is
3 incorrect for the record?

4 CHAIRPERSON LOUD: I think you can,
5 but I think what Mr. Collins may have been
6 getting to -- a couple of things. First, he
7 was just giving the opening statement on
8 behalf of his clients. It wasn't testimony,
9 but more importantly, this is the cross
10 examination part of the case.

11 COMMISSIONER MOYE: Yes.

12 CHAIRPERSON LOUD: And so, you're
13 cross examining actually witnesses and Mr.
14 Collins is not a witness now.

15 COMMISSIONER MOYE: Okay.

16 CHAIRPERSON LOUD: When we get to
17 your case you can go on the record and correct
18 any misstatements that you've heard up to the
19 point --

20 COMMISSIONER MOYE: Okay.

21 CHAIRPERSON LOUD: -- up to that
22 point. Okay. So --

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1 COMMISSIONER MOYE: Perhaps then
2 maybe I could -- I could formulate it into a
3 question that I can ask the Applicant. Would
4 that be acceptable?

5 CHAIRPERSON LOUD: Your direct --
6 I'm sorry. Your cross of the Applicant would
7 be limited to what she testified to.

8 COMMISSIONER MOYE: Okay.

9 CHAIRPERSON LOUD: Yes.

10 COMMISSIONER MOYE: Thank you for
11 the clarification.

12 CHAIRPERSON LOUD: Okay.

13 COMMISSIONER MOYE: This is my
14 first time before this Board. So.

15 CHAIRPERSON LOUD: Okay.

16 COMMISSIONER MOYE: Just a number
17 of questions where we just wanted to establish
18 some of the facts and some of the background
19 concerning this matter.

20 To Ms. Rosan or Mr. Rosan, whoever
21 would like to respond, it's our understanding
22 that in addition to the property that you have

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1 located at 2005 Columbia Road, N.W. you also
2 have two additional guest houses. Is this
3 correct?

4 MR. COLLINS: That was not the
5 scope of her testimony, Mr. Chairman.

6 COMMISSIONER MOYE: My questions go
7 to the scope of the entire application and it
8 was my understanding that it would be
9 acceptable to ask questions surrounding the
10 application as a whole.

11 CHAIRPERSON LOUD: Well, again,
12 you're limited in cross on what was brought
13 out on direct by the witness and I'm not
14 certain of the relevance of other properties
15 owned by the Applicant to the four. You know,
16 to the request for four additional rooming
17 units.

18 COMMISSIONER MOYE: Well --

19 CHAIRPERSON LOUD: But,
20 nonetheless, I mean your cross is limited to
21 what was brought out on direct.

22 COMMISSIONER MOYE: Okay. You

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1 purchased the property 2005 Columbia Road in
2 March of 2003. How did you come to purchase
3 the property? Did you know Mr. Byrd
4 personally or did you know of his business
5 that existed? How did you find out that the
6 property was for sale?

7 MS. ROSAN: We were driving by and
8 saw that it was for sale.

9 COMMISSIONER MOYE: But, you didn't
10 know him personally?

11 MS. ROSAN: No.

12 COMMISSIONER MOYE: Okay. And were
13 you -- did you have familiarity with the
14 business that he was running there?

15 MS. ROSAN: Yes.

16 COMMISSIONER MOYE: Okay. When you
17 purchased the home, it's my understanding that
18 you had stated previously you purchased
19 everything that was in the home. Is that
20 correct? I don't think you said that
21 specifically in your statement.

22 MS. ROSAN: It was an estate sale.

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1 COMMISSIONER MOYE: Sure.

2 MS. ROSAN: And we had the option
3 to get rid of everything or the attorney
4 handling the estate sale would clean it out
5 for us and we said we would take it as it was.

6 COMMISSIONER MOYE: Was the house
7 empty when you purchased it? No one was
8 living there?

9 MS. ROSAN: There was one -- on the
10 contract, they let us know that it was a
11 person that was -- that helped Mr. --

12 COMMISSIONER MOYE: Mr. Byrd.

13 MS. ROSAN: -- Byrd to run the
14 house, but when we -- after closing, he was
15 gone. So, we didn't have to deal with him.

16 COMMISSIONER MOYE: But, he wasn't
17 -- Mr. Byrd died I believe in April of 2002
18 and so, as far as we can figure out, there was
19 no business being run from April of 2002 to
20 when you purchased. The person who was living
21 on the premises, you don't believe he was
22 running the rooming house business?

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1 MS. ROSAN: I can't answer that. I
2 don't know.

3 COMMISSIONER MOYE: Okay. The
4 business license that Mr. Byrd had expired in
5 January of 2002 and obviously, we don't know
6 whether he was ill for a long period of time.
7 So, that's kind of a murky area.

8 When you purchased the property,
9 you have documentation submitted in your
10 application in your prehearing submission.
11 This would be the certificate of occupancy
12 that Mr. Byrd had obtained on September 5th,
13 1969 to operate the rooming house.

14 Did you obtain this document before
15 or after you purchased the property? When was
16 your awareness of the existence of this
17 document?

18 MS. ROSAN: Well, since we got the
19 house with everything in it, everything was
20 there. We had every -- everything Mr. Byrd
21 ever owned became ours and he's documents were
22 hanging on the wall.

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1 COMMISSIONER MOYE: So, that actual
2 physical certificate he had, that's where you
3 had it? Okay.

4 One of the other pieces in the
5 presubmission hearing is his actual
6 application dated July 31st, 1969. When did
7 you come to see this document? The actual
8 application for the certificate of occupancy.
9 Do you recall? Was that among his papers?

10 MS. ROSAN: Yes, we still have all
11 of his documents.

12 COMMISSIONER MOYE: Okay.

13 MS. ROSAN: Everything was there
14 when the sales -- the salesperson showed us
15 the house. We had access to everything.
16 Everything was there.

17 COMMISSIONER MOYE: Okay. When you
18 saw this document and you reviewed it, did you
19 happen to notice the notation for eight units
20 on the actual application?

21 MS. ROSAN: We -- we didn't pay
22 great attention to that, but Mr. Byrd had his

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1 license and his documents all together hanging
2 and we went off them. Was the one that didn't
3 have a number on it. His -- one of his
4 certificate of occupancies did not have a
5 number on it.

6 COMMISSIONER MOYE: The 1969 one
7 which references the whole house rather than
8 the application? After you purchased the
9 property on approximately March the 10th,
10 2003, that's when you went to apply for a new
11 certificate of occupancy based upon an
12 ownership change? This is correct?

13 MS. ROSAN: Yes.

14 COMMISSIONER MOYE: And this
15 document is in the presubmission hearings.
16 This is in Tab J. I don't know how your
17 exhibits are laid out.

18 So, did anyone -- when you went
19 initially for this new certificate of
20 occupancy, did anyone assist you with
21 preparing your application? You just went in
22 yourself and --

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1 MS. ROSAN: Well, we went in to the
2 counter. I think at that time Mr. Mooney was
3 the one there. I think that was his name. We
4 went to the counter and asked what we could
5 do. What do we need -- what we needed to do.

6 COMMISSIONER MOYE: Okay.

7 MS. ROSAN: So, they told us what
8 to do.

9 COMMISSIONER MOYE: You didn't
10 retain the services of any individual for pay
11 who would assist you with well, these are what
12 the rules are, this is what you need to do,
13 this is what you need to be careful about or
14 whatnot?

15 MS. ROSAN: We hired an architect -
16 - engineer/architect to do the drawings for
17 us. He's the one that got the building
18 permits for us.

19 COMMISSIONER MOYE: But, specific
20 to the certificate of occupancy, nobody
21 assisted you with that initial process?

22 MS. ROSAN: Just the city people.

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1 COMMISSIONER MOYE: Okay.

2 MS. ROSAN: Whomever was there.

3 COMMISSIONER MOYE: Okay. The only
4 reason I ask is I just wanted to get
5 clarification because in the hearing from
6 2003, you said that someone put their --
7 "Somebody did this for us. We paid somebody
8 to do it and they advised us on what was the
9 best way to go about getting the inn C of O."

10 MS. ROSAN: That's about the
11 construction.

12 COMMISSIONER MOYE: Okay. You said
13 of C of O. So, you misspoke you think?

14 MS. ROSAN: I don't remember, but
15 we --

16 COMMISSIONER MOYE: Okay.

17 MS. ROSAN: -- got somebody to help
18 us with the construction.

19 COMMISSIONER MOYE: Okay. I just
20 have copies just of the relevant dialogue on
21 this particular issue which I can pass down to
22 everybody and I mean if you want to pass this

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1 down. Then I'll need to give these to the
2 Board.

3 On the application and the
4 testimony that you had said C of O. I mean if
5 it's -- if it was the building permits that
6 you received assistance on, then we can
7 clarify that.

8 So, anyway, you went in March 10th
9 to the -- to get your new certificate of
10 occupancy and you have indicated that DCRA
11 personnel instructed you to list only eight
12 rooms on the application. This is correct?
13 This is your testimony?

14 MS. ROSAN: Well, we hired -- we
15 hired somebody to -- to get us the -- do the
16 drawings and get the permits. Maybe I got
17 confused. I don't know. Believe me, when we
18 were here the first time, we were totally
19 lost.

20 COMMISSIONER MOYE: That's exactly
21 -- well, confused. I just want a
22 clarification on that matter.

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1 So, back to applying for that first
2 initial certificate of occupancy, so, you went
3 in on March the 10th. You and your husband
4 went in by yourselves and you asked for the
5 new C of O and you stated that DCRA personnel
6 instructed you list only eight rooms on the
7 application and did they explain to you why
8 just eight rooms? I mean did you get an
9 adequate explanation or did you ask?

10 MS. ROSAN: Well, for us, we never
11 doubted the fact that we were grandfathered.
12 We just went in to pretty much get a name
13 change because that's what we were told to do,
14 but anything else that happened didn't make
15 sense to us because we knew we were
16 grandfathered and that's what kept us going to
17 this day. We just didn't understand why the
18 people that were there trying to help us at
19 the Government offices, DCRA I guess, they
20 were telling us to do other things, but we
21 kept on saying but we are suppose to be
22 grandfathered.

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1 COMMISSIONER MOYE: And --

2 MS. ROSAN: But --

3 COMMISSIONER MOYE: I'm sorry. Go
4 ahead. Excuse me. The grandfathering though,
5 where did you get the grandfathering? Who
6 told you you were grandfathered initially?

7 MS. ROSAN: When we stopped to look
8 at the house, we didn't know that Mr. Byrd was
9 dead. We knew about the business, 2005
10 Columbia Road guest house. Then we
11 immediately called the agent and whomever we
12 spoke with mentioned -- we thought we're just
13 -- for us, the business was there. So, we --
14 we had no reason to believe that there was a
15 problem. The business existed and we couldn't
16 see a problem.

17 We couldn't imagine that all of
18 this would have happened. We just went in
19 because well, this is an existing business.
20 They were on the Internet like all the other
21 guest houses and we saw no problems with it.

22 We saw his documents on the wall.

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1 We went with that. We didn't have a reason to
2 doubt that there was a problem. We never did.

3 COMMISSIONER MOYE: Okay. Okay.
4 So, after going in there in March, you got
5 your new certificate of occupancy just for the
6 eight rooms and then -- but, again at this
7 point, this didn't raise any red flags in your
8 mind that they insisted no, it's just eight
9 rooms and did you argue with them? Well, we
10 think we've got 15 rooms.

11 MS. ROSAN: We did. Actually, we
12 did. People wouldn't even talk with us
13 anymore. Every time they saw myself and my
14 husband, people kind of turn away. There they
15 come again. We -- believe me, we kept on
16 going back and saying but, you know, we should
17 be grandfathered in this. Look 15 rooms.
18 But, nobody would listen. They all said well,
19 you have to do this. You have to do that and
20 that's pretty much what happened.

21 COMMISSIONER MOYE: I see. But,
22 subsequent to this, subsequent to getting the

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1 eight-room certificate of occupancy, you then
2 filed an application with the Zoning
3 Administrator to try and get access to the
4 full 15 rooms. Do I understand correctly
5 based on your prehearing submission that that
6 was based on Ms. Oganee? That she had told
7 you that you needed to go to them to get
8 permission to get those exact rooms. Am I
9 correct?

10 MS. ROSAN: We -- we were coming
11 from the understanding that Mr. Byrd had a
12 license for 15 rooms and he had a C of O
13 without a limitation on it. So, we were
14 coming from that. Our mind was fixed on that.

15 So -- but, when you -- when we
16 would come to DCRA, people at the counters
17 would tell us other things even though we kept
18 on insisting that we're suppose to be
19 grandfathered into what is there and not -- we
20 shouldn't -- but, we -- we had no option
21 because we didn't know how to fight that.

22 We -- like you mentioned, that we -

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1 - if we had had an attorney helping us at that
2 time, I don't believe we would ever have end
3 up at BZA in 2003.

4 COMMISSIONER MOYE: Okay. So, but
5 you still -- you filed the application with
6 the Zoning Administrator presumably because
7 someone instructed you that that was the
8 appropriate action to take to get the rest of
9 those rooms and it seems like on April 7th,
10 2003, the Zoning Administrator rejected your
11 application. Is this correct?

12 MS. ROSAN: I don't recall the
13 dates, but I'm sure you have the dates.

14 COMMISSIONER MOYE: And you had the
15 opportunity to appeal that determination, but
16 you chose not to. Correct?

17 MS. ROSAN: It wasn't a matter of
18 choosing not to. We really did not know what
19 to do and we were relying on what the people
20 that are -- were working at DCRA. They were
21 the ones that knew the laws and we are relying
22 upon their knowledge and we were doing what

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1 they were telling us to do.

2 So, we didn't go in there knowing
3 well if this happens, you can do this. We
4 never read any, I guess, zoning books or so,
5 we didn't know. We were going by what we
6 thought people were there to do that. They --
7 that's -- that was their business. They knew
8 what they were doing even though we were -- we
9 kept on saying we should be grandfathered. We
10 should be grandfathered throughout the issue.

11 Even when we came to the BZA, we
12 kept on saying we shouldn't be doing this. We
13 should be grandfathered, but nobody would
14 listen. They kept on pushing us to do other
15 things and we didn't know how to fight that.

16 Like I said if we had been able to
17 pay somebody that knew how to deal with the
18 system, how to resolve these issues, we would
19 never have come to BZA to begin with in 2003
20 because we shouldn't have. We knew that much.

21 But, we didn't know how to keep them from
22 pushing us to go somewhere else.

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1 COMMISSIONER MOYE: Okay. So, on
2 April 29th, you went to DCRA and you filed
3 your building plans and this is what you said
4 that the architect actually went and did this
5 for you. You didn't actually go down to DCRA
6 with your plans.

7 MS. ROSAN: No.

8 COMMISSIONER MOYE: Okay. And you
9 were able to or your architect was able to
10 obtain a building permit to at least start the
11 interior parts of the property.

12 So, at this point, it looked like
13 you had been put on notice a couple of times
14 by D.C. Government officials that you could
15 get a certificate of occupancy for eight
16 rooms, but still going down to DCRA.

17 MS. ROSAN: Because we had
18 documents in hand that show us differently.
19 We had a certificate of occupancy that had no
20 unit limitation and we had a copy of Mr.
21 Byrd's business license that said 15 rooms.
22 So, we just -- we stayed with that. We tried

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1 telling everybody every time we went to DCRA,
2 you know, this, but nobody would even -- they
3 would look at it and say well, but this is,
4 you know, this is something else.

5 So, we had to go with whatever they
6 are telling us because we didn't know how to
7 fight them. We didn't know how. We actually
8 didn't know how. You know, that we had the
9 option to appeal. We didn't know that.

10 Even when we lost here, we didn't
11 know that we could withdraw. The only reason
12 we did was because some God-sent person told
13 us, you know, withdraw. We didn't even know
14 what that was.

15 So, unfortunately, we were very un-
16 knowledgeable about zoning. Nowadays, we have
17 learned, you know, a lesson. But.

18 COMMISSIONER MOYE: Okay. So, you
19 got your first building permits for 12 rooms
20 April 29th. When you received that first
21 building permit, did you start just work
22 immediately? I believe those building permits

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1 were for the interior and then there was a
2 second one. I believe it was for electrical
3 and plumbing, but -- and then the second one
4 was for more substantial demolition.

5 But, upon receipt of that first
6 permit, did you just get rolling?

7 MS. ROSAN: I don't remember
8 exactly, but I think we had to do the whole
9 plumbing. The whole building needed new
10 plumbing. The whole building needed new
11 electrical and new plumbing, electrical. What
12 else? And air.

13 So, as soon as we were able to, we
14 were -- we started working. As -- you know,
15 as we got the permits, we started doing the
16 work.

17 COMMISSIONER MOYE: Okay. And the
18 second one, it looks like it came in on June
19 the 2nd and this is interior work for plans.
20 This is in K of the presubmission hearing from
21 the Applicant.

22 So, you just started rolling as

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1 soon as you got the permits.

2 But, around that same time, I don't
3 have the day in front of me, I want to say May
4 the 30th, 2003, then you went to the BZA for
5 the use variance application.

6 So, kind of the murky issue still
7 surrounding Mr. --

8 MS. ROSAN: Well, we didn't do it
9 by choice. We were told to do. We were doing
10 whatever the officials at the DCRA were
11 telling us to do because we didn't know what
12 the procedures were. But, we kept on saying
13 the whole time we should be grandfathered.

14 We even went to the -- there's this
15 library where another God-sent person said go
16 and get these zoning laws. Show it to Mr. --
17 what was his name? Mr. Denzel Noble. Show it
18 to Fay Oganee. We did that. We went and
19 researched even though we didn't understand
20 what we were doing, but we brought it to them.

21 But, they wouldn't hear about it. They would
22 say well, just -- you know, just do this.

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1 COMMISSIONER MOYE: So, just this
2 issue of the -- this outstanding issue of the
3 certificate of occupancy which is really sort
4 of a critical element to being able to move
5 forward with your dream plans of operating
6 this business, but it's all up in the air.
7 But, you're still making this huge investment
8 in the renovations.

9 MS. ROSAN: I -- I -- we had one
10 that had no --

11 COMMISSIONER MOYE: The building
12 permit issue, but --

13 MS. ROSAN: We had a C of O with no
14 limitation. It didn't say eight and we had a
15 business license that said 15.

16 Would you --

17 COMMISSIONER MOYE: If I was given
18 a brand new certificate of occupancy, this is
19 just me, that just said eight rooms, I think
20 I'd get that cleared up. But, that's just me.

21 MS. ROSAN: No, we tried.

22 CHAIRPERSON LOUD: Commissioner,

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1 let me just remind you again as well as the
2 witness where we are in the proceedings. Your
3 cross examining the witness and so, as you
4 have been doing, asking very targeted
5 questions. You don't have to answer questions
6 that the witness asks you and if we can stay
7 on track like that, it'll be very helpful for
8 the transcript as well as getting through the
9 proceedings this afternoon.

10 COMMISSIONER MOYE: The next sort
11 of key date in the sequence is the July 29th,
12 2003 hearing before this body and it's
13 concerning the first application and then so
14 you have that hearing and then that hearing
15 ended with no end result. There was -- the
16 Board decided that they needed some more
17 information and we're going to move forward
18 until September and get some additional
19 information.

20 But, shortly thereafter, again,
21 this variance issue is still up in the air,
22 still an active case before the BZA, but you

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1 filed another certificate of occupancy. This
2 time for the 12 rooms on August the 11th,
3 2003. This is correct?

4 MS. ROSAN: I don't recall the
5 dates, but I'm sure you have them.

6 COMMISSIONER MOYE: This is Tab M
7 in the Applicant's presubmission hearing and
8 then it was a very short time after that, a
9 few days after that, that's when you got the
10 call from the DCRA official who told you that
11 the building permits, in fact, were probably
12 issued erroneously. You got them for 12.
13 They should have been for eight. Will you
14 please come in and help us sort this matter
15 out and then you refused. Is that correct?

16 MS. ROSAN: Yes, because we had
17 spent a lot of money already. They came --
18 they approved. It took -- it wasn't -- when
19 they were doing the -- when we applied for the
20 building permit, there was a lot of going back
21 and forth, this and that. They were looking
22 at issues. They were fixing and telling us

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1 well, this is not okay. This is okay. So,
2 they approved something and they allowed us to
3 begin construction. They were coming and
4 looking at us. We -- they approved us. Why
5 would we doubt them?

6 They approved us for a 12 -- is
7 this -- this is -- is this the one that Mr.
8 Denzel signed? Yes, there is also -- I'm
9 sorry. I'm a bit nervous. So, I forget
10 things. There was -- Mr. Denzel Noble
11 actually signed a certificate of occupancy for
12 12 units. Then he got a letter from somebody
13 that's in this room and I guess he got
14 concerned and backed out. I don't know why.

15 COMMISSIONER MOYE: So, maybe it
16 could have been that they discovered that they
17 had made a mistake. Do you think or no?

18 MS. ROSAN: They are professionals.
19 They must know what they do. I don't know.

20 COMMISSIONER MOYE: Okay. On
21 September 16th, this body ruled against your
22 application for the use variance for the

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1 additional four rooms and as you -- you stated
2 earlier, the next day, the 17th of September,
3 you withdrew before this body could issue a
4 written report, a written order rather into
5 the record.

6 Subsequent to this time, you
7 continued the renovations. You finished the
8 renovations and then you began operating as a
9 daily -- the daily occupancy guest house for
10 12 rooms. Is this correct?

11 MS. ROSAN: On December.

12 COMMISSIONER MOYE: December of
13 2003?

14 MS. ROSAN: Yes.

15 COMMISSIONER MOYE: Okay.

16 MS. ROSAN: In 2003?

17 COMMISSIONER MOYE: And then
18 further in the record, you continued the
19 operation of the 12 rooms.

20 MS. ROSAN: Two thousand and four.

21 COMMISSIONER MOYE: I'm sorry.

22 MS. ROSAN: December -- I think it

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1 was December 2004 when we finished.

2 COMMISSIONER MOYE: So, okay. So,
3 you continued the operation of the 12 rooms
4 until fall of last year, October '08, when as
5 you mentioned, you have your certificate of
6 occupancy revoked and this is correct. Right?

7 So, you continued to operate until October of
8 last year.

9 MS. ROSAN: Well, we always -- we
10 finish the construction. We furnished slowly.

11 Then in December, I believe, 2004, we got the
12 license and we -- as you can -- I'm sure have
13 seen our website, we list 12 rooms where
14 people can choose from. Our occupancy has
15 been very low because we're building the
16 business up. We have -- I'm sorry. I forgot
17 your question.

18 COMMISSIONER MOYE: Yes, I was just
19 confirming that you had operated the 12 rooms
20 it sounds like December 2004 up until October
21 of last year when Mr. Lagrant revoked your C
22 of O.

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1 MS. ROSAN: They are available.
2 They are available, but they haven't been --
3 we haven't had 12 rooms occupied. But, they
4 are available. People can choose from 12
5 rooms. Because they all have different --
6 they're all different looking. So, people
7 when they go online, they can choose from 12
8 rooms, but we --

9 COMMISSIONER MOYE: But, that --
10 but, presumably, you stopped when Mr. Lagrant
11 issued his first letter in October?

12 MS. ROSAN: No, we haven't stopped
13 doing anything. We have never tried hiding
14 anything. It has always been out there on the
15 website, but we have never had a full load. I
16 wish.

17 We have 12 rooms that we -- if you
18 go to the website, if you go to rooms and
19 rates, you're going to see pictures and
20 description of 12 rooms, but if you try
21 reserving, you will get -- you won't be able
22 to reserve but eight rooms.

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1 COMMISSIONER MOYE: So, okay. But,
2 you -- because you had your certificate of
3 occupancy revoked in October of '08 and then
4 you had it essentially -- you had it
5 reinstated in February with some caveats that
6 you only had eight rooms, but that he was
7 going to -- Mr. Lagrant was going to stay the
8 order allowing you to continue to rent the
9 rooms until this matter was resolved before
10 this body. Yes?

11 MS. ROSAN: I'm sorry. Can you say
12 that again?

13 COMMISSIONER MOYE: Sure. October
14 of last year --

15 MS. ROSAN: Okay.

16 COMMISSIONER MOYE: -- October of
17 last year, you had your certificate of
18 occupancy revoked which presumably means that
19 you're not allowed to have any -- you're not
20 allowed to operate the business if I
21 understand correctly. Then you had the matter
22 on a preliminary basis resolved somewhat by

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1 February when Mr. Lagrant issued his new
2 letter.

3 MS. ROSAN: Mr. Lagrant realized he
4 had perhaps -- the reason Mr. Lagrant sent us
5 a revocation letter is because someone in this
6 room I guess went to DCRA and said something
7 about us being -- running an illegal business.
8 So, then we got a letter.

9 But, once Mr. Collins came in and
10 explained how we were grandfathered, Mr.
11 Lagrant said that unfortunately, there were no
12 documentation in our file that he could see.
13 Therefore, he revoked our certificate of
14 occupancy in error because then he understood
15 that we were grandfathered and he reinstated
16 it as I'm sure you have copies of his letters.

17 COMMISSIONER MOYE: Well, I think
18 there were some caveats to that, but -- so,
19 but right now as your website -- and I know
20 you're familiar with your own website, but for
21 the benefit of everyone here, I'd like to
22 enter into the record just -- they're simply

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1 copies of the pages on their website
2 indicating the rooms and basically restating
3 everything that Ms. Rosan said about the
4 number of rooms that are available. If we
5 could pass these down.

6 CHAIRPERSON LOUD: Commissioner
7 Moye, as you do that, I'd just like to ask you
8 not to rush you at all, but how much
9 additional time you're going to be -- okay.
10 Okay. Okay. Okay. Okay.

11 COMMISSIONER MOYE: You said that
12 haven't been at full capacity, but with the 12
13 rooms, if you had full capacity, approximately
14 how many people would that be? Do you have
15 each room two people per room? Would it be 24
16 people if you were at max occupancy?

17 MS. ROSAN: We have -- either four
18 of the rooms I think it's single occupancy.

19 COMMISSIONER MOYE: If you had a
20 sold-out house, about how many people would
21 you have in there? Like I'm sure during the
22 inauguration you probably sold out, how many

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1 people did you have about?

2 MS. ROSAN: Oh, let's count
3 together. I don't remember.

4 COMMISSIONER MOYE: How about 24?
5 Is that too high? Too low?

6 MS. ROSAN: We have single
7 occupancy rooms. Where you see maximum
8 occupancy.

9 COMMISSIONER MOYE: Okay. Well,
10 let's strike that question and we'll just move
11 on to the last thing.

12 Previously, you had stated that Mr.
13 Rosan lives on site. This is correct?

14 MS. ROSAN: Yes.

15 COMMISSIONER MOYE: Okay.

16 MS. ROSAN: On and off.

17 COMMISSIONER MOYE: Is that -- on
18 and off?

19 MS. ROSAN: We have help, too.

20 COMMISSIONER MOYE: Okay. But,
21 this is not his primary residence?

22 MS. ROSAN: We both cover the guest

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1 house. We have also other people.

2 COMMISSIONER MOYE: Yes, but in
3 terms of your driver's license, your --

4 MS. ROSAN: No.

5 COMMISSIONER MOYE: -- tax -- do
6 you pay D.C. personal tax? Okay.

7 MR. COLLINS: When you ask the
8 question, you need to let the witness answer
9 the question that you've asked.

10 MS. ROSAN: Can you ask again?

11 COMMISSIONER MOYE: Sure. You
12 previously stated that you lived on site. Is
13 this correct?

14 MS. ROSAN: Yes, because you guys
15 are too noseey. Yes.

16 COMMISSIONER MOYE: What do you
17 mean by that?

18 MS. ROSAN: Well, you guys have
19 given us a very hard time, but we have -- at
20 all times, we have people. We have -- but, we
21 cover. It's our business. It's our life.
22 Believe me, we don't want anything bad to

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1 happen to it.

2 I find it interesting that you or
3 any of the people in this room would care for
4 our investment more than we do. I mean I just
5 find that amazing.

6 So, sometimes I may give you
7 answers just to get you off our back. But, it
8 doesn't -- what matters is we care about our
9 property. We care about our business and out
10 of 50 listed under trip advisor, we have been
11 within number 1 and 6 for the last, what, 5/6
12 years that we are there.

13 So, if we were doing, you know,
14 abandoning out property and not doing what we
15 are suppose to be doing as a guest house,
16 believe me we would not be within the first
17 number 6 out of 50. It doesn't make sense.

18 So, for you to try and make us look
19 like, you know, we abandoned our property, we
20 are not. That doesn't make sense.

21 COMMISSIONER MOYE: I don't think
22 anyone has ever made that assertion, but Mr.

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1 Chairman, no further questions. Thank you.

2 CHAIRPERSON LOUD: Thank you,
3 Commissioner. Is there any --

4 MR. COLLINS: I have some redirect
5 questions if I may.

6 Ms. Rosan, just a couple of
7 questions. Ms. Moye asked you about what you
8 -- what was in the house, what you received
9 when you bought the house and she asked you
10 whether you received the certificate of
11 occupancy which is at Tab D which I'm showing
12 you and your answer was yes and that's
13 correct?

14 MS. ROSAN: Yes.

15 MR. COLLINS: Yes. Let me ask you
16 about the application. Do you recall whether
17 this application was part of the documents
18 that you got or did you get this later?

19 MS. ROSAN: I think I saw this one.

20 MR. COLLINS: You saw it. The
21 answer is -- and she's pointing to the
22 certificate of occupancy and the response was

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1 that the application was found much later.
2 Was this found in his records or did someone
3 find this for you in the records of the D.C.
4 Government?

5 MS. ROSAN: D.C. Government.

6 MR. COLLINS: This is from the D.C.
7 Government. So, this application which
8 indicates eight units, this was not among the
9 documents that you received when you bought
10 the house?

11 MS. ROSAN: No.

12 MR. COLLINS: All right.

13 MS. ROSAN: It wasn't.

14 MR. COLLINS: All right. Thank
15 you. The transcript that was passed out that
16 shows your testimony back in 2003, now, you've
17 told me before about your state of mind when
18 you were at the BZA and people were asking you
19 all sorts of questions.

20 This testimony says -- this is you
21 speaking in response to Ms. Hargrove's
22 question. "We went to apply for an inn C of

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1 O. We were advised -- somebody did this for
2 us." You said "We were advised by . . .
3 Somebody did this for us. We paid somebody to
4 do it and they advised us how -- what's the
5 best way to go about getting the inn C of O."

6 Was that correct? Did you pay
7 somebody to do the C of O for you or did you
8 pay someone to do the building permit for you?

9 MS. ROSAN: The architect/engineer
10 was involved with getting the construction
11 permit.

12 MR. COLLINS: Was he involved in
13 getting the inn C of O for you or is that when
14 you spoke to the people at the city and they
15 told you to do this?

16 MS. ROSAN: That's when we spoke
17 with people at the city. They were telling us
18 what to do even though we kept on saying
19 something else, but they kept on saying. So,
20 at DCRA, at the counter, people were telling
21 us what to do.

22 MR. COLLINS: Okay. All right.

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1 Okay. All right. Bear with me a second.

2 Ms. Moye asked you in one of her
3 questions -- she said the Zoning Administrator
4 rejected your application in April of 2007.
5 Now, thinking back to then, your testimony --

6 COMMISSIONER MOYE: Two thousand
7 and three.

8 MR. COLLINS: I'm sorry. Two
9 thousand and three. Thank you. In April
10 2003, my own bad handwriting. Thank you.

11 At that time, there were several
12 things going on at the same time. You had
13 applied for the change of ownership. This is
14 what your testimony says. That you applied
15 for the change of ownership to get a rooming
16 house and then someone told you to apply for a
17 certificate of occupancy for an inn/tourist
18 home.

19 Rejection by the Zoning
20 Administrator in April of 2003, that was the
21 inn/tourist home. Is that correct?

22 MS. ROSAN: Two thousand three.

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1 MR. COLLINS: After you first
2 bought, Ms. Oganee told you to apply for a --
3 this is your testimony. You said Ms. Oganee
4 told you to apply for an inn/tourist home C of
5 O and your testimony then said that you then
6 received a letter rejecting your application
7 for the inn/tourist home. Okay. So -- all
8 right.

9 MS. ROSAN: Yes.

10 MR. COLLINS: Thank you. Thank
11 you. There were the questions to you about
12 the various things going on. You had the
13 application for the rooming house that was
14 issued, but for eight rooms. But, no one
15 explained to you why.

16 Ms. Oganee said you should file an
17 inn/tourist home C of O.

18 MS. ROSAN: Yes.

19 MR. COLLINS: And it was
20 subsequently rejected. That's your testimony.

21 MS. ROSAN: Yes.

22 MR. COLLINS: And then you applied

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1 for a building permit. You also applied for a
2 building permit at that same time for 12 rooms
3 and you received that.

4 MS. ROSAN: Yes.

5 MR. COLLINS: So, the confusion I
6 think comes around that you were following
7 three parallel tracks. Now, knowing what you
8 know now, would you have done the same thing?

9 MS. ROSAN: No, knowing what we
10 know now, we would never have -- would never
11 go into DCRA even though I hear that it's much
12 better now, but we would never go there or go
13 to a BZA hearing trying to do something
14 because we -- we don't know enough. We -- we
15 just don't know. You know, even now here, I'm
16 -- I can't remember the dates. I should feel
17 comfortable because I have an attorney on my
18 side, but I'm very uncomfortable. I'm very
19 nervous.

20 Not because we are doing anything
21 wrong. I don't believe. We never believed to
22 be doing anything wrong. It's just that this

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1 whole procedure is difficult for us.

2 We are simple folks. We like to
3 clean bedrooms and bathrooms. This all is too
4 fancy for us.

5 That's -- so would I go and do
6 something again, no. No. We didn't -- the
7 other time we went. We tried doing it
8 ourselves because we just couldn't afford to
9 pay somebody to help, to go through the
10 legalities of things. We couldn't afford to
11 do that.

12 MR. COLLINS: And you then just --
13 whatever someone -- when someone said file
14 this certificate of occupancy application, you
15 did it because they're the Government and they
16 told you to do it.

17 MS. ROSAN: Right. Like I would
18 today. You know, if somebody tells me this is
19 how you should do it, even though -- if I
20 believe that that's not really what should be
21 -- should happen, I would keep on going back
22 and saying but, listen. But, listen.

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1 We got to the point where at Mr.
2 Denzel's office they wouldn't allow us to talk
3 to him anyway. They would -- we would call or
4 we would just come to the office and sit there
5 in the hopes that he would feel for us and try
6 and resolve our problem, but he -- they
7 wouldn't even allow us to talk to him because
8 I guess maybe he had his hands tied with
9 neighborhood issues. I don't know.

10 But, we kept on believing that we
11 are not doing anything wrong. We should be
12 grandfathered and you guys are just making us
13 do all these things that we shouldn't be
14 doing.

15 Would we do that again today? No,
16 we wouldn't. We would not. If we can't
17 afford to have help, we will not go through
18 any processes with DCRA or BZA or anybody.

19 MR. COLLINS: Ms. Moyer asked you a
20 question about the September 15th vote of the
21 BZA back in 2003. The way she described it,
22 she said the Board turned down the additional

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1 four rooms and I believe you agreed with that
2 statement.

3 What was that application for? Was
4 that for additional four rooms for the rooming
5 house for which you had eight rooms already or
6 was that a different application?

7 MS. ROSAN: Oh, that. The reason
8 we were here was because Mr. Denzel Noble and
9 Fay Oganee sent us here. Told us that we had
10 to feel out this application and this is how
11 our problem was going to be resolved. We were
12 not here seeking anything other than doing
13 what -- and even other than what Fay Oganee
14 had said. Even at the hearing, we kept on
15 saying but, you know, we are grandfathered.
16 We should be grandfathered. But --

17 CHAIRPERSON LOUD: I think just
18 sort of move us along a little bit. I think
19 your counsel is just trying to establish.
20 It's in the record as I understand. That the
21 application in all three was for a tourist
22 inn.

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1 MR. COLLINS: Right.

2 CHAIRPERSON LOUD: And not
3 necessarily for a use variance for four
4 additional rooms and you wanted --

5 MR. COLLINS: The inn --

6 CHAIRPERSON LOUD: -- it's a matter
7 of the record in the case in any event. So, I
8 --

9 MR. COLLINS: I just want to make
10 sure that the witness' answer in her
11 nervousness answering incorrect is corrected
12 in the record.

13 CHAIRPERSON LOUD: Okay.

14 MR. COLLINS: That's all. Thank
15 you for that.

16 You testified actually -- you
17 responded about the -- in the question about
18 the operation of the rooming house, the
19 question about you have 12 rooms and you said
20 people can choose from whichever room. That's
21 why you have -- you have the 12. They're
22 already there. People can choose, but you

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1 really don't fill that up.

2 Do you remember, I'm sure you do,
3 what is the typical maximum occupancy standard
4 in the hospitality industry for occupancy of a
5 transient hotel or rooming house and inn?

6 MS. ROSAN: It's normally -- 80
7 percent I believe is the norm.

8 MR. COLLINS: As the maximum and
9 can you tell me what your historic rate has
10 been recently?

11 MR. HARGROVE: Mr. Chairman, if I
12 may object just a moment. I don't --

13 CHAIRPERSON LOUD: Yes, sir. Yes,
14 sir, go ahead.

15 MR. HARGROVE: -- qualified as an
16 expert on the hospitality industry.

17 CHAIRPERSON LOUD: That is true.
18 On the other hand, it is her line of business.
19 She's been in it for a number of years. I
20 think we can give it the appropriate weight.
21 This is my -- I think the appropriate weight
22 without necessarily striking it from the

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1 record and I don't see it as something that,
2 you know, is going to be decisive with respect
3 to the balance of the case. So.

4 MR. COLLINS: Thank you. What has
5 been your historic occupancy rate in the past?

6 MS. ROSAN: Fifty/55 percent.

7 MR. COLLINS: Fifty/55 percent.
8 So, of the 12 rooms, that means somewhere
9 around five or six. Okay. Thank you.

10 MS. ROSAN: Yes.

11 MR. COLLINS: All right. Ms. Moye
12 said that Mr. Lagrant revoked your certificate
13 of occupancy in October of 2008 when he sent
14 the letter. Is that actually what occurred?
15 Did Mr. Lagrant revoked the certificate of
16 occupancy?

17 MS. ROSAN: He sent a letter saying
18 that I think we had ten days. Wasn't it? I
19 don't remember.

20 MR. COLLINS: It was ten days. Do
21 you recall having a meeting with Mr. Lagrant
22 shortly after the receipt of that letter?

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1 MS. ROSAN: Yes, with -- with Mr.
2 Collins.

3 MR. COLLINS: Do you recall whether
4 he revoked the certificate of occupancy at
5 that point?

6 MS. ROSAN: I don't remember.

7 MR. COLLINS: All right. Ms. Moye
8 was trying to get you to say that -- establish
9 whether Mr. Rosan lived on site and you
10 responded, but your voice kind of got soft.
11 Does he live at the Columbia Road site full-
12 time?

13 MS. ROSAN: No, not full-time.

14 MR. COLLINS: Do you have someone
15 else there?

16 MS. ROSAN: Yes.

17 MR. COLLINS: So, is it true that
18 there's someone there all the time?

19 MS. ROSAN: Yes, we all rotate. We
20 all cover.

21 MR. COLLINS: All right.

22 MS. ROSAN: Mostly in D.C., he

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1 does.

2 MR. COLLINS: Thank you. No
3 further questions.

4 CHAIRPERSON LOUD: Thank you, Mr.
5 Collins. Now, we turn to you, Mr. Hargrove
6 with respect to any cross examination you may
7 have and let me remind you that, you know, the
8 Board will be looking at cross in terms of it
9 being duplicative or irrelevant or covering
10 terrain that's already been covered
11 extensively.

12 MR. HARGROVE: Thank you, Mr.
13 Chairman. I'll certainly try to avoid any
14 repetitious questions.

15 Ms. Rosan, you testified earlier
16 about your purchase of the property in early
17 2003 I believe.

18 MS. ROSAN: March.

19 MR. HARGROVE: I believe you've
20 testified that you and your husband purchased
21 this property with the intention of operating
22 it as a 15-room transient facility. Is that

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1 correct?

2 MS. ROSAN: Yes, we purchased it to
3 continue what Mr. Byrd was doing.

4 MR. HARGROVE: Did you have any
5 conditions in your purchase contract making it
6 contingent on acquiring the necessary zoning
7 authorization to operate such a facility?

8 MS. ROSAN: No, we had no reason to
9 believe that that wasn't possible.

10 MR. HARGROVE: As I understand from
11 your testimony both direct and on cross, there
12 were four occasions on which you sought
13 authorization to operate a facility of more
14 than eight rooms.

15 The first was your application for
16 a 15-room facility which was denied.

17 The second was your application --
18 I'm sorry. There were three -- there were
19 four occasions on which you sought some
20 authorization to operate a facility of a
21 certain number of rooms. The second one was
22 your application for the eight room

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1 certificate of occupancy which was granted.

2 The next was your application for a
3 variance to this Board which was not granted
4 and finally, in August of 2003, you sought a
5 certificate of occupancy for a 15-room
6 facility.

7 You did not get that certificate of
8 occupancy either. Did you?

9 MS. ROSAN: I don't know. Did we?
10 No.

11 MR. HARGROVE: So, is it fair to
12 say that from the time you received the C of
13 O, the certificate of occupancy, for an eight-
14 room facility in March of 2003 until October
15 -- at least October of 2008, you had only a
16 certificate of occupancy for an eight-room
17 facility?

18 MS. ROSAN: No.

19 MR. HARGROVE: That's not -- is
20 that an accurate statement?

21 MS. ROSAN: No, because we come
22 from the -- in our hat, the only thing that we

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1 had was there is an original certificate of
2 occupancy with no number on it and there is a
3 business license with 15 rooms.

4 Whatever happened from that point
5 on, it wasn't because we chose to. It was
6 simply because people were just making us do
7 all of these things that you just mentioned,
8 but we never agreed with it.

9 MR. HARGROVE: I understand these
10 facts to which you've testified, but is it not
11 the case that the certificate of occupancy
12 issued to you and your husband in March of
13 2003 for eight rooms was the certificate of
14 occupancy that you had until the fall of last
15 year? You had not received any other
16 certificate of occupancy from --

17 MS. ROSAN: Right. Well, other
18 than the one that Mr. Denzel Noble canceled.

19 MR. HARGROVE: Now, and as I
20 understand from your testimony, you were
21 operating a 12-room facility from the time
22 that you completed the operation and got the

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1 thing up and running until 2008.

2 MS. ROSAN: We never hid the fact
3 that we had 12 rooms. No.

4 MR. HARGROVE: Now, with respect to
5 Mr. Lagrant's letter in October -- I'm sorry.

6 With respect to his letter in February of
7 this year in which he stated that your
8 occupancy was limited to eight rooms and I
9 believe indicated that any occupancy over
10 eight rooms might be grounds for revocation of
11 the certificate of occupancy, do I understand
12 currently from your testimony earlier this
13 afternoon that you are now publicly holding
14 out all 12 rooms as available for occupancy?

15 MS. ROSAN: Yes, we have -- they
16 are all there. People can choose from 12
17 rooms.

18 MR. HARGROVE: So, you could not
19 identify which four rooms are being held out
20 or something other than extended out?

21 MS. ROSAN: As I understand it, we
22 don't have the right to have somebody there

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1 for more than 30 days. So, we are doing that.

2 Is that what you ask?

3 MR. HARGROVE: Sorry.

4 MS. ROSAN: We are not -- we -- did
5 you ask -- I'm sorry. Ask me again.

6 MR. HARGROVE: I was just asking
7 whether you are now through your public
8 advertising holding out -- identifying 12
9 rooms that are available for overnight
10 occupancy?

11 MS. ROSAN: People can choose from
12 12. It doesn't mean they get 12.

13 MR. HARGROVE: You testified about
14 -- extensively about how you and your husband
15 run the operation. I'm sure you're doing the
16 best you can, but as to the employees that you
17 have assisting you, how many employees do you
18 have devoted full-time to the operation of
19 2005 Columbia Road?

20 MS. ROSAN: I operate. I'm the
21 one. I deal with the office issues, the
22 reservations. I screen the guests. I --

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1 everything to that effect I do. I don't trust
2 anybody to take that over.

3 MR. HARGROVE: Your time is devoted
4 100 percent to 2005 Columbia Road?

5 MS. ROSAN: Yes.

6 MR. HARGROVE: You have nothing to
7 do with any other facility --

8 MS. ROSAN: No.

9 MR. HARGROVE: -- you own?

10 MS. ROSAN: No.

11 MR. HARGROVE: How many part-time
12 employees do you have?

13 MS. ROSAN: I have two part-time
14 and one full-time.

15 MR. HARGROVE: Now --

16 MS. ROSAN: And we cover -- Claudio
17 and I, mostly Claudio, covers also.

18 MR. HARGROVE: And what does a
19 full-time employee do?

20 MS. ROSAN: We all -- when you work
21 at a guest house, B&B, everybody wear all
22 hats. We clean. We cook. We answer phones.

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1 We resolve -- we help the guest resolve
2 issues. A small guest house, you can't afford
3 to have somebody just dedicated to one thing.

4 I take care of the business side.
5 I keep up with that. I only allow people to
6 cover for me. Like right now, somebody got
7 the phones. But, normally, that's my full-
8 time job.

9 MR. HARGROVE: You testified that
10 you direct people who arrive at your facility
11 by car to park at the Hilton or the Marriott.
12 Both of which are nearby.

13 MS. ROSAN: Yes, I think I tell
14 them, too, that that's a residential area and
15 if they park there, they will get a ticket and
16 they also will get targeted in that
17 neighborhood when people see out-of-state
18 licenses. So, nobody really wants to get a
19 ticket.

20 MR. HARGROVE: Thank you. Do you
21 have any arrangements with either the Hilton
22 or the Marriott for subsidizing of --

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1 MS. ROSAN: No, we don't need to.

2 MR. HARGROVE: Well, for the
3 parking that your clients --

4 MS. ROSAN: No. No, the -- our
5 guests come to us because evidently they think
6 we offer a good rate even though they have to
7 pay for parking which is about \$28 a night.
8 When they come to us, they already know that.

9 We establish -- I make sure we establish
10 communication via e-mail and phone because I
11 want them to be prepared for parking, prepared
12 for how we operate and that's how come we get
13 to be the top six.

14 MR. HARGROVE: But, you don't turn
15 down any perspective guests that are arriving
16 by car if they do not go to the Hilton or the
17 Marriott.

18 MS. ROSAN: They make their
19 reservation before they came. We -- it has
20 been rare the times that I -- maybe once or
21 twice somebody knocked at the door and we saw
22 that they had luggage and we allow them to

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1 come in. Other than that, they -- we don't
2 allow people to just walk in off the street
3 because actually we don't think it's safe. We
4 want to make sure that our guests -- and it's
5 our home, too. We don't see that property as
6 just being a guest house. We see that
7 property as being our home. So, we don't --
8 we want to make sure that no one is in there
9 that shouldn't be in there.

10 MR. HARGROVE: Thank you. Let me
11 ask one more question. Going back to the time
12 of your purchase of the property and your
13 later renovation of the property, did you have
14 contracts with the -- one or more contracts
15 with the firms or individuals who were doing
16 the renovation?

17 MS. ROSAN: We had a contract with
18 LaMain Electrical, Air Conditioning. We had
19 contracts with people that came to do
20 structure or walls. We had contract, you
21 know, the bathrooms. We had contract with
22 people that install the tiles. We had -- we

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1 have extensive woodworking in the house and
2 everything was in very, very bad shape. So,
3 everything was sanded and refinished.

4 MR. HARGROVE: Did you condition
5 any of those construction contracts on your
6 ability to get zoning approval for the type of
7 operation that the project was being
8 constructed for?

9 MS. ROSAN: No, because we wouldn't
10 -- that wouldn't cross our mind. Maybe today
11 we would be more careful, but back then saw
12 pink everywhere. Everything was beautiful.
13 We found this wonderful location. To bad Mr.
14 Byrd for his family, but for us, was like oh,
15 God, thank you and we saw no problems with it.
16 We just wow.

17 MR. HARGROVE: Well, thank you very
18 much for your answers. I have no further
19 questions.

20 MR. COLLINS: I just have a few.

21 MR. HARGROVE: Thank you,

22 MR. COLLINS: Ms. Rosan, Mr.

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1 Hargrove just asked you one of his early
2 questions about the four occasions in which
3 you were seeking authorization for more than
4 eight rooms and he named them as follows. He
5 said you asked for 15 rooms and you were
6 denied. Then you asked for eight rooms and it
7 was granted and then you asked for the
8 inn/tourist home BZA application and then you
9 asked for a certificate of occupancy for 15
10 rooms that Mr. Noble then reduced to 12 rooms.

11 The first one where he said you
12 asked for 15 rooms and were denied, that was
13 the application for the inn/tourist home that
14 Ms. Oganee asked you to apply for. Is that
15 correct?

16 MS. ROSAN: I don't remember.

17 MR. COLLINS: Okay. I'm sorry.
18 Well, wasn't there, in fact, a fifth
19 application where you filed for building
20 permits to create 12 rooms?

21 MS. ROSAN: Yes.

22 MR. COLLINS: Yes. All right.

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1 MS. ROSAN: I'm sorry. My mind is
2 going blank.

3 MR. COLLINS: That's all right.
4 That's all right. Mr. Hargrove asked if you
5 were operating a 12-room facility and you
6 answered that you never hid the fact that you
7 had 12 rooms. But, previously in answer to
8 Ms. Moyer's questions, you also said that we
9 have these rooms and people can choose and we
10 never have them all occupied. That's correct?

11 MS. ROSAN: Yes. Yes.

12 MR. COLLINS: All right. And Mr.
13 Hargrove then asked you -- I think this is my
14 last question. Mr. Hargrove asked you whether
15 you had contracts with firms doing the
16 renovation. You answered yes. You listed
17 them and he said were any of those contracts
18 conditioned upon getting zoning approval.
19 Well, at that time, did you have the building
20 permit that was approved by the city for 12
21 rooms before they did the work?

22 MS. ROSAN: Yes. Oh, I didn't

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1 understand. Yes, we had the construction
2 permits.

3 MR. COLLINS: Okay.

4 MS. ROSAN: I thought he meant
5 something else.

6 MR. COLLINS: Well, I think he did.
7 He did mean that, but you had the building
8 permit you said. Okay.

9 MS. ROSAN: Yes.

10 MR. COLLINS: Thank you. No
11 further questions.

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

14 Board Members, are there any
15 questions of this witness? Okay.

16 MEMBER MOLDENHAUER: Good
17 afternoon. You mentioned that you hired a
18 plumbing and electrical permit and on Exhibit
19 K, the bottom permit says a separate
20 electrical permit is required. Can you state
21 why it's not included in your package or
22 representation?

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1 MS. ROSAN: I don't know. Maybe my
2 husband knows.

3 MR. ROSAN: Yes, we had the
4 permits. They said just go first on that
5 permit. Then electrical and the -- electrical
6 and plumbing should be separate and we got
7 them. We got --

8 MEMBER MOLDENHAUER: And you did
9 get those permits?

10 MR. ROSAN: Yes, we did the
11 permits, but I don't think we have here, but
12 we do have.

13 MEMBER MOLDENHAUER: And the
14 drawings that are attached in Exhibit L, are
15 those the same drawings that you used then for
16 -- they have mechanical and electrical
17 diagrams.

18 MR. ROSAN: Yes.

19 MEMBER MOLDENHAUER: So, those are
20 the same permits?

21 MR. ROSAN: Yes, they are the same.

22 As you'll see -- you can see where you see MP

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1 and you'll -- you'll see P is plumbing and E
2 electrical. So, about the permits, they came
3 after the -- those -- those previous --

4 MEMBER MOLDENHAUER: And on those
5 permits, they show 13 rooms even though -- I
6 just want to make sure I understand this.
7 Even though there's no room number -- suite
8 number two. Is that correct? So, there
9 really only is 12?

10 MR. ROSAN: Yes, just 12. They
11 crossed out one.

12 MEMBER MOLDENHAUER: And can you I
13 guess tell me where I guess somebody like
14 yourself or your wife or one of your
15 additional part-time or full-time employees
16 are in the building in order to work and sleep
17 for 24-hour staffing?

18 MR. ROSAN: She can.

19 MS. ROSAN: In case you wonder why
20 I have been answer more, my English is a
21 little bit better than his.

22 The basement room where the -- I

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1 guess the reviewer made it. He told us to
2 remove that wall and it became a huge room
3 with one bathroom at each end, but we did not
4 remove the wall and we use that other
5 partition for like an office, like where we
6 stay when we are there even for -- sometimes
7 we have arrangements where people come and
8 stay for awhile in exchange for work. They
9 will stay for free. That's where they stay.
10 That's where our staff -- whomever does the
11 night part, that's where they stay and we also
12 use Room 114. So, it actually became a --
13 it's a big room with a door with two
14 bathrooms. So, we kind of use -- you can't
15 really use -- we end up using 114 a lot for
16 ourselves and 115 is set up where we have a
17 desk, have a microwave, coffee maker for
18 whomever is staying there.

19 MEMBER MOLDENHAUER: Thank you.
20 The ANC and the Oakland Condominium raised
21 some concerns about safety. Can you describe
22 the access to the building and how you -- just

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1 your typical processes for that for guests?

2 MS. ROSAN: Like when they come in?

3
4 MEMBER MOLDENHAUER: Yes.

5 MS. ROSAN: If you go on the
6 website, you make a reservation and there we
7 tell you you must get an entry code before you
8 come. Because if we are way up in a room
9 cleaning or in the basement, we never heard
10 the doorbell ringing. So, we don't even have
11 it anymore. There were instances where people
12 just ring it at all hours. So, we just -- it
13 doesn't even work anymore. So, we tell people
14 you must have an entry code because we want
15 you to be able to come and go as you please.
16 We don't want our guests to feel obligated to
17 being there at a certain time, but we do tell
18 them if you come late, we may not be there
19 waiting for you. We may be sleeping.

20 So, they understand that beforehand
21 and they're okay with that and the system
22 works.

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1 A lot of -- and we do things like
2 this because we are also establishing
3 clientele. When you're establishing, you make
4 a lot more -- I forgot the word, but you make
5 it easier for people to come to you.

6 But, it's a good system because
7 people don't have to worry about oh, is
8 somebody going to be here waiting for me.
9 What if I go out to, you know, see a movie or
10 something or whatever and I am coming back at
11 2:00 a.m., are you going to open the door for
12 me and so, they have an entry code to come and
13 go as they please.

14 MEMBER MOLDENHAUER: How often do
15 you change that code access number?

16 MS. ROSAN: Oh, I change it quite
17 often because it's --

18 MEMBER MOLDENHAUER: Can you
19 estimate like how often?

20 MS. ROSAN: Oh, maybe every week.
21 The longest maybe a couple of weeks.

22 MEMBER MOLDENHAUER: You said in

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1 your testimony earlier that I guess one of the
2 benefits of having a housing facility is that
3 you can actually -- you have additional house
4 requirement that wouldn't typically be imposed
5 upon an apartment complex and that's a
6 benefit.

7 Do you -- how do you stop a guest -
8 - you said the guests aren't permitted to have
9 other guests. So, how do you stop a guest
10 from giving out that entry code and having
11 other people going into the building?

12 MS. ROSAN: Well, they -- we
13 establish our communication before they come.

14 I'm known for being very picky and I try
15 fixing problems before they happen.

16 So, at the guest house, I just make
17 sure that our guests are aware of how we work.

18 They -- we exchange e-mails, phone calls and
19 I need to be assured that they are
20 comfortable. Because we ask them for reviews
21 and I don't want to make them unhappy and give
22 us bad reviews.

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1 So, they are -- we tell them we
2 want you to feel like you are in your home
3 away from home. We use that slogan on our
4 plate. So, we don't want to be hovering over
5 them. They know that.

6 They come and go and we are
7 fortunate that people that come, they are --
8 they know how the system works. They are
9 comfortable with that.

10 It's not unusual. People that
11 normally stay at a guest house or B&B, they --
12 they don't normally break rules. They -- they
13 are not looking for -- to do anything wrong.
14 They just want to come to a place where they
15 can have piece and quiet, can have a clean bed
16 to sleep on and a good breakfast to eat.

17 Did I get off --

18 MEMBER MOLDENHAUER: No. Yes, I
19 think you answered my question. Just two more
20 questions.

21 You said that this is not where you
22 -- where your primary residence is. Where is

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1 your primary residence?

2 MS. ROSAN: I live in Arlington.

3 MEMBER MOLDENHAUER: Okay. So, do
4 you drive then to the facility or whatever,
5 the rooming house and where do you park?

6 MS. ROSAN: I park -- I'm guilty of
7 this. I park on the streets and I hide from
8 my neighbors because they don't want to see us
9 parking there. So, but we park in the
10 neighborhood. We get tickets. We -- when we
11 get night tickets, we get that rose thing that
12 allows us to park. If you're staying
13 overnight enough, they will give you
14 permission to park for six months at a time I
15 believe. So, we get those, too and sometimes
16 we go to the police station and show them our
17 -- the mortgage documents and they give us
18 time to park. What else?

19 MEMBER MOLDENHAUER: Okay.

20 MS. ROSAN: That's --

21 MEMBER MOLDENHAUER: I guess one
22 last question. Have you been making a

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1 reasonable profit over the last -- since --
2 you said -- oh, I'm sorry. When did you open
3 the facility after renovation?

4 MS. ROSAN: We opened December of
5 2004.

6 MEMBER MOLDENHAUER: Okay. So,
7 have you been making a reasonable profit for
8 your investment?

9 MS. ROSAN: We are moving up little
10 by little each year, but we -- our profit has
11 been quite -- quite small. I think we have
12 the numbers, but I don't remember. I'm sorry.
13 But, we haven't -- we are not making much
14 money because we are still establishing
15 clientele.

16 As for -- if you allow me, they
17 keep on bringing up our other property. The
18 reason we have been able to exist so -- you
19 know, up to this point with all of the
20 problems that we have had to face, if we had
21 -- we were one of the those people that
22 refinanced over and over again to keep afloat.

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1 So, and to this date, I still rent rooms in
2 my home. If you want to rent a room is \$800 a
3 month. Because we need help. We are not
4 there yet.

5 MEMBER MOLDENHAUER: Thank you.

6 CHAIRPERSON LOUD: Thank you, Board
7 Member Moldenhauer. Are there any other Board
8 questions?

9 VICE CHAIRPERSON DETTMAN: Thank
10 you, Mr. Chairman. I actually have a few
11 questions for -- probably Mr. Collins is best
12 equipped to answer these.

13 Prior to the 1989 Zoning Regulation
14 Amendment Order 614, was there any limitation
15 on rooming homes in the Zoning Regulations?
16 I'm not talking about a building code,
17 occupancy limitation, a fire and life safety.
18 Zoning Regulations.

19 MR. COLLINS: Sure, they were first
20 permitted in the R-4 zone. So, they were not
21 allowed in the R-3, R-2 or R-1. If that's
22 what your question is.

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1 VICE CHAIRPERSON DETTMAN: No, in
2 terms of number of rooms, number of units?

3 MR. COLLINS: No, that was handled
4 by the Housing Code.

5 VICE CHAIRPERSON DETTMAN: By the
6 Housing Code. Okay. So, if I was to open up
7 a rooming home prior to Order Number 614, from
8 a zoning perspectives, I could have as many
9 rooms as I wanted to.

10 MR. COLLINS: Provided that you met
11 all the other building code requirements.

12 VICE CHAIRPERSON DETTMAN: The
13 other codes.

14 MR. COLLINS: The same as today.
15 There's no limitation in the code today about
16 the number of rooms either.

17 VICE CHAIRPERSON DETTMAN: Okay.
18 Looking at the 1969 certificate of occupancy,
19 there's a discrepancy between the application
20 and then no occupancy load indicated on the
21 actual C of O.

22 Would you happen to know whether

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1 one of those documents is the governing
2 document?

3 MR. COLLINS: Just bear with me.
4 Oh, I lost it here. Well, the C of O itself
5 -- the certificate of occupancy itself is the
6 governing document. What the application says
7 -- requests proposed use. It says rooming
8 house and then it's filled in eight units.
9 That was the proposed use, but the C of O
10 itself is for rooming house. It doesn't have
11 a number on that and actually that's something
12 that Mr. Bello is going to get to in his
13 testimony.

14 VICE CHAIRPERSON DETTMAN: Okay.
15 But, to your knowledge, the C of O -- in
16 situations like this where there's a
17 discrepancy, it's the C of O that's really the
18 governing document.

19 MR. COLLINS: There is no -- as Mr.
20 Bello will get into, there doesn't seem to be
21 any zoning basis for the number eight. It was
22 what was the applicant proposing at the time.

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1 VICE CHAIRPERSON DETTMAN: Okay.

2 MR. COLLINS: Eight. Did it have a
3 zoning significance? We don't think so.

4 VICE CHAIRPERSON DETTMAN: Okay. I
5 guess I can save my next question for Mr.
6 Bello then.

7 CHAIRPERSON LOUD: Any additional
8 questions from the Board?

9 Okay. I have just one question for
10 Mr. Collins. Sort of follow-up on Mr.
11 Dettman.

12 The grandfathering argument that
13 applies with respect to Mr. Byrd, would that
14 grandfathering survive (a) his death and (b)
15 the change of ownership?

16 MR. COLLINS: Certainly, that's
17 what grandfathering is all about.

18 CHAIRPERSON LOUD: Okay.

19 MR. COLLINS: That when a use is
20 existing -- actually we actually even looked
21 for in the zoning records the case that one of
22 my partners handled back in the '80s in the

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1 Dupont Circle area we think. Where it was an
2 inn. It was run by two elderly sisters and
3 the first one died. The second died. The
4 estate, they closed up the building for 27
5 years and then it was opened back up again. I
6 don't know what happened in the intervening 27
7 years, but everything was closed up.

8 Someone bought it and it opened
9 back up. They went in. The dishes were in
10 the cupboard. The sheets were on the beds.
11 The towels were in the closets. The Zoning
12 Administrator ruled that there was no break --
13 there was no intention to abandon. It was not
14 a discontinuance of a nonconforming use in
15 that zone because there appeared to be no
16 intention to abandoned because nothing
17 changed.

18 There was no intention to make it
19 something else. No one ever overtly made it
20 -- tried to make it something else. In that
21 case, the Zoning Administrator allowed it to
22 continued.

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1 That issue isn't relevant here
2 because Mr. Byrd died in 2002 and the Rosans
3 bought it in 2003 and applied for permits.
4 So, the discontinuance of nonconforming use is
5 not an issue here, but that's what the
6 grandfathering is all about.

7 CHAIRPERSON LOUD: Okay. So, the
8 language at the bottom of the permit from '69,
9 that's B7 -- 71243 that says that the C of O
10 becomes void. (a) It's not transferable, but
11 it becomes void upon a change of ownership.
12 Even though this C of O with unlimited rooming
13 capacity would have become void by change of
14 ownership, the argument of the Applicants is
15 that the privilege to have unlimited rooming
16 capacity survives this C of O becoming void.

17 MR. COLLINS: Yes, it's typical.
18 When a new owner takes ownership, they get
19 what's called a change of ownership C of O and
20 those are normally issued at DCRA over the
21 counter and under the same conditions as what
22 appears on the previous C of O and that's what

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1 the concern is here.

2 This C of O has no limit on the
3 number of rooms and the Rosans were never --
4 it was never explained to them why the number
5 eight was there and it was only after we found
6 this application where the number eight was
7 written on there did anyone put two and two
8 together and figure out and that's what Mr.
9 Lagrant confirmed. That it's the application
10 for the C of O that he believes governs, but
11 that's not been the case historically.

12 CHAIRPERSON LOUD: Okay. Thank
13 you. I don't have any additional questions.
14 I believe we can move -- unless there are
15 other questions, we can move to your next
16 witness.

17 I would like, if you don't mind,
18 Mr. Collins, just to proffer as to how much
19 additional time you think we're talking about
20 for both witnesses and then a proffer as to
21 what Mr. Rosan's testimony will include in the
22 context of --

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1 MR. COLLINS: Mr. Rosan will not be
2 testifying. The only other witness is Mr.
3 Bello.

4 CHAIRPERSON LOUD: He's not. Okay.
5 Okay. And Mr. Bello's going to testify to
6 which of the prongs of the use variance?

7 MR. COLLINS: The second and third.

8 CHAIRPERSON LOUD: Okay. About how
9 long are you anticipating?

10 MR. BELLO: Ten minutes. Less.

11 CHAIRPERSON LOUD: Okay.

12 MR. COLLINS: All right. We'd like
13 to proffer Mr. Bello as an expert witness. He
14 has appeared previously before the Board as an
15 expert. I have his résumé here. I proffer
16 him as an expert in zoning and real estate
17 development in D.C.

18 CHAIRPERSON LOUD: Have you given
19 the ANC and the party status applicant copies
20 of that?

21 MR. COLLINS: Doing that now.

22 CHAIRPERSON LOUD: Do Board Members

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1 have any questions regarding Mr. Bello's
2 qualifications as an expert?

3 And does the ANC have any questions
4 regarding Mr. Bello's qualifications?

5 Okay. Mr. Hargrove, do you have
6 any questions regarding his -- okay.

7 So, by consensus and there not
8 being any objections from the ANC and from the
9 party status, we'll accord Mr. Bello status as
10 an expert.

11 Good afternoon.

12 MR. BELLO: Good afternoon. Thank
13 you, Mr. Chairman. Good afternoon, Board
14 Members.

15 Again, for the record, my name is
16 Toye Bello. Address of 900 2nd Street, Suite
17 6, N.E., Washington, D.C. 20002 is the zip
18 code.

19 The property in questioning here as
20 we all know is a four-story building with a
21 basement and it sits on a lot area of
22 approximately about 1900 square feet of lot

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1 area. The gross floor area of the building is
2 about 5300 square feet approximately. As it
3 is in its current condition, the building is
4 completed as a 12-room rooming house.

5 The property is located on Columbia
6 Road and is within the R-5-D. That zoning
7 encompasses -- it extends from the Columbia
8 Road intersection at Connecticut Avenue all
9 the way to Kalorama Avenue and beyond.

10 The Zoning Regulations categorizes
11 in Section 105.1 the R-5-D zone as a medium
12 high density zone.

13 The rooming house use is permitted
14 as a matter of right in the R-4, R-5, R-5-B,
15 R-5-C and as well as in the R-5-D zone where
16 this property is located.

17 Current Zoning Regulations for
18 rooming houses changed in 1989 as the
19 submissions show. Prior to that time, rooming
20 houses were permitted without any
21 qualifications as to length of stay. They
22 were considered as transient accommodations.

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1 Zoning Commission Order Number 614
2 which is Tab H on the submissions changed the
3 definition for rooming houses to require a
4 monthly or longer stay. That order also
5 required that in the R-4 and R-5 Zone District
6 the rooming houses be subject to 90-day stay
7 and other limitations as set forth in Section
8 330.6 and 350.4(a) of the Zoning Regulations.

9 Existing rooming houses which were
10 established prior to the Zoning Commission
11 Order were permitted to continue to operate as
12 lawfully existing nonconforming uses under the
13 prior regulations and I think the Zoning
14 Administrator's recession of the revocation
15 letter also attests to that as transient
16 accommodations with daily occupancy.

17 In the R-4 and R-5 Zones, they
18 could continue to operate without all other
19 limitations which now appear in Section 330.6.

20 I think you would find this
21 conclusion to be consistent and not
22 inconsistent with the conclusions of the BZA

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1 in BZA Appeal Numbers 15264 and 15265.

2 D.C. Government records that prior
3 to 1969 there was a tenement house certificate
4 of occupancy for the subject project property.

5 In 1969, a C of O was issued for a
6 rooming house. No limitation on the number of
7 rooms was expressed on the face of the
8 certificate of occupancy. The application for
9 the certificate of occupancy indicated that
10 eight units were proposed.

11 I should also like to point out
12 that -- because there's been a lot of
13 discussions about the application and the fact
14 that it indicated eight units in parenthesis
15 which seems to be an afterthought, but if you
16 look at the floors that are occupied, which
17 indicate that all floors plus the basement
18 will be occupied this use, there's also a
19 description that seems to allude to ten
20 bedrooms.

21 And the purpose of bringing this
22 point out is that, in fact, the inscription of

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1 eight units or ten bedrooms on an application
2 really has very limited zoning value on the
3 certificate of occupancy that is ultimately
4 issued.

5 This 1969 certificate of occupancy
6 permit that was issued was issued without any
7 limitation to number of rooms and that is the
8 controlling document.

9 I'm also going to raise as an
10 example, and I have those records on Tab P of
11 the prehearing statement in this case, Exhibit
12 J. Exhibit J is a series of documents
13 pertaining to the Judy's Normandy Inn now
14 known as the Normandy Hotel including several
15 certificates of occupancy and some material
16 from their website.

17 That building was converted from an
18 apartment house of 35 units to a 77-room
19 rooming house prior to the 1989 change in the
20 Zoning Regulations. As you can see in each
21 instance, the number of rooms and apartments
22 was indicated on the certificate of occupancy

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1 itself. Those numbers act as a limitation on
2 the number of units that can be in the
3 building when they appear on the certificate
4 of occupancy.

5 Incidentally, that rooming house
6 now operates as a hotel on a daily occupancy
7 basis in total conformance with the Zoning
8 Regulations.

9 The Rosans obtained a change of
10 ownership certificate of occupancy when they
11 bought the building in 2003. That certificate
12 of occupancy says eight units because they
13 were instructed to write that number on the
14 application and apparently, because someone in
15 the Zoning Office felt that the number had
16 zoning significance. There is no basis in the
17 regulations for a limitation of eight rooms in
18 the rooming house because the certificate of
19 occupancy that was issued allow the entirety
20 of the building to be used for the said
21 purpose.

22 The Rosans then applied for and

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1 obtain a building permit to convert the
2 rooming house from a 15-room rooming house
3 that it had to a 12 rooms. After construction
4 was completed, they obtained all the required
5 inspections and approvals from DCRA.

6 According to the Zoning Regulations
7 and the practices of DCRA at that time, after
8 completion of construction and after obtaining
9 all of the inspections and final approval,
10 they were entitled to issuance of a
11 certificate of occupancy for a 12-room rooming
12 house.

13 In support of that conclusion, I
14 wish to point to Section 3203.11 of the Zoning
15 Regulations and this is a section that governs
16 the issuance of certificates of occupancy for
17 use of a structure or part thereof if the
18 establishment of the use is dependent upon
19 erection construction, conversion or
20 alteration of a structural part thereof.

21 Specifically, 3203.11(c) states
22 that at the time of the issuance of a building

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1 permit required by this subsection, the
2 proposed use shall be designated in a
3 provisional certificate of occupancy.

4 So, really, at the time that the
5 Rosans were issued a building permit to
6 convert the subject property to a 12-room
7 rooming house, the Zoning Administrator had
8 issued a provisional certificate of occupancy
9 to which the Rosans are entitled.

10 In February 2009, the Zoning
11 Administrator wrote the Rosans to continue the
12 use of the entire building. Well, the Zoning
13 Administrator made a ruling in his
14 revocational decision of his revocation letter
15 to allow the Rosans to continue to use the
16 entire building as a daily occupancy rooming
17 house. Because essentially, the certificate
18 of occupancy is for the entirety of the
19 building in total gross floor area and in all
20 floors under the prior Zoning Regulations, but
21 limits the occupancy to eight rooms.

22 As previously stated, that ruling

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1 gave the Rosans several options including:
2 (1) combining some of the rooms together to
3 create eight rooms, (2) renting four of those
4 guest rooms for a minimum 90 days and (3)
5 establishing some other use for it, tied to it
6 by the Zoning Regulations. And it is totally
7 infeasible for inclusion into a four-story
8 walk-up rooming house.

9 The Zoning Regulations list all of
10 them and you have seen them listed in the
11 prehearing statement at pages 17 and 18.

12 If money were no object, then
13 theoretically you could convert four of these
14 rooms perhaps on the second and third floors
15 to two small apartments. However, this could
16 theoretically be done only if money was not a
17 consideration because the cost would be
18 prohibitive and it may not even be approvable
19 under the building codes.

20 The introduction of a two-unit
21 building would actually convert the building
22 to a mixed-use building.

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1 Unlike the Zoning Regulations, the
2 building codes categorizes uses by use group.

3 So, if any of the floors were to be converted
4 for purposes of a two-unit building, you would
5 actually establishing what is called an R-2
6 use -- an R-3 use where the rooming house is
7 an R-2 use and for that purpose, the building
8 would actually be required to undergo a level
9 three alteration which will require two means
10 of egress, a sprinkler in the building that it
11 doesn't have at this point and the need to
12 bring in a new water line to sprinkle the
13 property.

14 And quite frankly because all
15 egresses are required to discharge into public
16 space and this property as the submissions
17 attest to is landlocked, those two means of
18 egress would have to -- would actually
19 discharge to the street.

20 I think looking at the
21 configuration of the building as it exists,
22 this would require a total gut of that

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1 building to be able to achieve if at all
2 possible considering that there are historic
3 preservation elements to be considered here.

4 Further, the building would then be
5 subject also to an accessibility requirement
6 which would require that an elevator be
7 installed. As the building exists, the
8 building does not have an elevator in it.

9 From a zoning standpoint, allowing
10 the four additional rooms at issue in the
11 rooming house to be used for daily occupancy
12 use will not cause a substantial detriment to
13 the public good.

14 The Office of Planning has come to
15 this same conclusion in their report. This is
16 a high density neighborhood with a mix of uses
17 and this proposed use of four additional guest
18 rooms will not result in a substantial
19 detriment to the public good.

20 Similarly, I believe that the
21 inclusion of the four additional rooms at
22 issue in this rooming house will not

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1 substantially impair the intent, purpose and
2 integrity of the Zone Plan as embodied in the
3 Zoning Regulations and Map.

4 The Office of Planning has
5 concluded in its report that the granting of
6 the variance would have a "substantial
7 negative impact on the Zoning Regulations."

8 I respectfully disagree with that
9 conclusion. The Office of Planning report
10 says that allowing the four additional rooms
11 to be used for daily occupancy will be
12 contrary to the Zoning Commissions intent in
13 1987. In 1987, the entire building at the
14 subject property was permitted to be used as a
15 rooming house according to the 1969
16 certificate of occupancy.

17 Similarly, the entire building is
18 permitted to -- if the entire building is
19 permitted to be occupied today as a daily
20 occupancy rooming house, but only for eight
21 guest rooms, the occupancy load of this
22 building will be about the same whether there

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1 are eight rooming housing units or two
2 apartments or 12 rooming housing units and no
3 apartments.

4 The R-5-D Zone is a zone that
5 allows a broad mix of residential uses.
6 Rooming houses are currently permitted as a
7 matter of right. There is a minimum stay of
8 90 days for rooming houses established after
9 1989.

10 The OP report further states that
11 the approval of the variance application will
12 be inconsistent with Section 2002 of the
13 Nonconforming Use Regulations. However, a
14 review of those provisions shows that this is
15 not the case and I'll just go through them
16 very quickly.

17 Section 2002.3 of the regulations
18 say that nonconforming uses shall not be
19 extended to portions of the building not
20 devoted to that nonconforming use at the time
21 of the enactment or amendment of the
22 regulations. In this instance, the entire

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1 building has been allowed to be used as a
2 daily occupancy rooming house since 1969 up to
3 the present. So, therefore, there is really
4 no extension of the use to any portions of the
5 building not previously occupied.

6 Section 2002.4 allows ordinary
7 repairs, alterations, modernizations to be
8 made to a structure devoted to a nonconforming
9 use. That is what the Rosans did with
10 properly issued permits and inspections and
11 approvals from DCRA.

12 Section 2002.5 prohibits the
13 enlargement of a structure devoted to a
14 nonconforming use. The Rosans have not
15 proposed to enlarge the existing structure.

16 Finally, Section 2002.6 prohibits
17 the construction of a new structure to have a
18 nonconforming use. That's clearly not the
19 case in this application.

20 So, my conclusion is there's
21 nothing in this application that is
22 inconsistent with Section 2002 or the Zoning

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1 Regulations.

2 Thank you. I'll be happy to take
3 questions.

4 MR. COLLINS: Mr. Bello, I just
5 have a few questions.

6 You're heard testimony and you're
7 certainly aware that the Rosans were directed
8 to apply in 2003 for a certificate of
9 occupancy for an inn/tourist home.

10 MR. BELLO: Yes.

11 MR. COLLINS: And you are aware
12 that the application was denied and then they
13 were then directed to seek a use variance from
14 this Board.

15 MR. BELLO: That's correct.

16 MR. COLLINS: In your professional
17 opinion, was that necessary?

18 MR. BELLO: Absolutely not. If the
19 application of the Rosans had been handled
20 appropriately the first time, they should have
21 been able to walk into DCRA and obtain a
22 certificate of occupancy for change of use and

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1 retain the rooming house certificate of
2 occupancy without limitation on the number of
3 rooms.

4 MR. COLLINS: You're aware that the
5 Rosans applied for a building permit to
6 reconfigure the rooming house from 15 guest
7 rooms to 12?

8 MR. BELLO: That's correct.

9 MR. COLLINS: And you testified
10 that after completion of construction and
11 after all inspections and approvals were
12 granted they were entitled to receive a C of
13 O?

14 MR. BELLO: That's correct.

15 MR. COLLINS: You've heard all the
16 testimony so far. In your view, was there
17 anything wrong or illegal or dishonest in the
18 filing of the building permit application in
19 the first place?

20 MR. BELLO: Absolutely not.

21 MR. COLLINS: Okay. Was there
22 anything wrong with the Rosans refusal to

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1 change the building plans as requested by Mr.
2 Chen after the substantial completion of
3 construction given what you know of the facts
4 in this case?

5 MR. BELLO: No, and I believe that
6 Section 3203.11 also underscores that point.
7 That at the time of the issuance of the
8 building permit, the Zoning Administrator had
9 issued a provisional certificate of occupancy
10 pending completion of construction --
11 approvals of all construction conducted. That
12 occurred.

13 The Rosans should have been issued
14 a certificate of occupancy for 12 rooms.

15 MR. COLLINS: So, it was then
16 reasonable for them to rely upon the issuance
17 of a building permit to proceed with all the
18 renovation of the building?

19 MR. BELLO: Absolutely. Yes.

20 MR. COLLINS: No further questions.

21
22 VICE CHAIRPERSON DETTMAN: Mr.

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1 Collins, as the Chairman is speaking with Mr.
2 Moy, I'd like to ask does that close out your
3 case? Is that your last witness?

4 MR. COLLINS: Yes, it does.

5 VICE CHAIRPERSON DETTMAN: That
6 would take us to cross. Would it not?

7 MR. COLLINS: That's correct.

8 VICE CHAIRPERSON DETTMAN:
9 Commissioner. Can you turn your mike --

10 COMMISSIONER MOYE: I have no
11 cross.

12 CHAIRPERSON LOUD: Thank you.

13 CHAIRPERSON LOUD: Yes, sir. I
14 don't think we can hear. I know I can't hear
15 you and I don't know if the court reporter can
16 hear you.

17 MR. HARGROVE: Beg your pardon.

18 CHAIRPERSON LOUD: Okay. Now, we
19 can hear you.

20 MR. HARGROVE: As we all know,
21 continued somewhat longer than the original
22 schedule had participated and we have one

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1 witness who must leave at 5:30. I'm wondering
2 if it would be possible to sandwich him in and
3 then return to the cross examination of Mr.
4 Bello and the remainder of the Applicant's
5 case.

6 CHAIRPERSON LOUD: Kind of
7 complicates things. Well, I don't have any
8 challenge with that. Mr. Collins is shaking
9 his head in concurrence with it.

10 A couple of things, we're getting -
11 - in addition to your concern about time,
12 we're getting late in the day. It's now 5:00.
13 We've got two cases that are on the afternoon
14 calendar that have not been called yet and
15 those folks have been waiting all day.

16 I think our thought here as the
17 Board would be to allow this case, the
18 Applicant's case, to pause for a moment since
19 the Applicant has closed out his part of the
20 case and then call one of the afternoon cases
21 which we think is going to be a very brief
22 case that we can resolve in very quick time.

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1 Then we're probably looking at
2 rescheduling one of the afternoon cases. It
3 looks like the Digital case and we want to
4 hear from the parties on that and then
5 recalling your case so that we can finish you
6 up tonight.

7 I think we can still do that, but
8 it just sounds like instead of recalling you
9 after dealing with the afternoon calendar
10 issues, you're saying that we need to get one
11 of your witnesses right now or we're going to
12 lose that witness.

13 MR. HARGROVE: I'm not sure I
14 understand the proposal. Oh, would that
15 continue this case after -- today after the
16 other case has been heard?

17 CHAIRPERSON LOUD: Right. What we
18 would do is we would take a break from your
19 case call one of the afternoon cases,
20 reschedule the second afternoon case, then
21 recall your case and hopefully finish that
22 case out tonight. Our plan though is still to

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1 adjourn sometime around 6:30 or 7:00, but we
2 think with your --

3 MR. HARGROVE: Yes, that does help.

4 Realize with the problem of this witness
5 who's --

6 CHAIRPERSON LOUD: Well, I think
7 perhaps what we can do is hear this witness if
8 the Board's amenable to it. Hear this witness
9 and depending on the cross exam of this
10 witness, then take the break. Use that as an
11 opportunity to take a good clean break in this
12 case. Then call one of our afternoon cases.

13 What I'm trying to avoid is the
14 afternoon parties have been here since 1:00
15 now and I would hate for any of those parties
16 to stick around until 7:00 or 8:00 and find
17 out at 7:00 or 8:00 that they're not going to
18 get a chance to be heard tonight. They might
19 as well find out right now at 5:00 and we can
20 continue that case so that those persons that
21 we're not going to be able to get to tonight
22 can leave. So, those are my thoughts.

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1 That perhaps we can hear this one
2 additional witness that the party status -- is
3 it your witness, Mr. Hargrove or is it the
4 ANC's witness? Well, the ANC doesn't have any
5 witnesses. So. All right. So, this would be
6 your witness and how long do you think the --

7 MR. HARGROVE: I don't think the
8 direct should have an issue of -- take more
9 than 10 minutes.

10 CHAIRPERSON LOUD: Ten minutes of
11 direct. Okay. So, we're at 5:00. That would
12 take us to probably about 5:30 with cross and
13 then I think if we were to stick with our game
14 plan of then calling the So Others Might Eat
15 in the afternoon calendar and then calling the
16 parties up from Digital to discuss the
17 continuance date. We would be able to remain
18 on track with hearing the rest of your case
19 without having those parties wait interminably
20 through this proceeding.

21 How does that sound, colleagues?
22 All right.

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1 So, why don't you go ahead then and
2 call your witness. Is that okay, Mr. Collins?

3 All right. So, why don't you go ahead and
4 call your witness, Mr. Hargrove, and we may
5 cross of that.

6 MR. HARGROVE: We call Vincent
7 Hurteau.

8 CHAIRPERSON LOUD: Okay.

9 MR. HURTEAU: Thank you for the
10 accommodation.

11 MR. HARGROVE: Would you state your
12 name for the record please?

13 MR. HURTEAU: Vincent Hurteau.

14 MR. HARGROVE: And what is your
15 occupation?

16 MR. HURTEAU: I'm a real estate
17 broker, principal broker of Continental
18 Properties.

19 MR. HARGROVE: Would you give the
20 Board a thumbnail résumé of your experience in
21 the field of your occupation?

22 MR. HURTEAU: I've been in real

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1 estate in the District since 1986. I've been
2 principal broker of Continental Properties
3 since the year 2000.

4 MR. HARGROVE: Have you had
5 experience in the purchase, sale or
6 redevelopment of properties in the general
7 area in which the subject property in this
8 case is located?

9 MR. HURTEAU: Yes, quite a few.

10 MR. HARGROVE: Mr. Chairman, I ask
11 that Mr. Hurteau be qualified as an expert for
12 purposes of testifying in this proceeding.

13 CHAIRPERSON LOUD: Have you given
14 Mr. Hurteau's profile to Mr. Collins?

15 MR. HARGROVE: No, unfortunately,
16 inadvertently got off without his written
17 résumé, but we'd be happy to supply it to the
18 -- after, but on the basis of his oral
19 presentation, I think he qualifies clearly as
20 an expert in this case.

21 MR. HURTEAU: I also brought my
22 real estate license.

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1 CHAIRPERSON LOUD: Okay. Mr.
2 Collins?

3 MR. COLLINS: I'm just curious what
4 he'd be qualified as an expert in. Subject
5 matter of his expertise.

6 CHAIRPERSON LOUD: I thought they
7 testified earlier that he would be speaking to
8 the second prong and conforming uses. Is that
9 -- well, let me just let the witness answer.

10 MR. HARGROVE: He'd be qualified as
11 an expert in real estate generally with
12 specific emphasis on the redevelopment of real
13 estate in the District of Columbia. More
14 specifically, the redevelopment of buildings
15 similar to the one that is at issue in this
16 case.

17 MR. COLLINS: In that case, I would
18 object. Because as a broker, I don't think
19 he's qualified in redevelopment of real
20 estate. He's qualified in sale of real
21 estate, purchase of real estate, but not
22 redevelopment of real estate.

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1 CHAIRPERSON LOUD: Yes, and just,
2 you know, very specifically, in terms of our
3 use variance test, which of the -- it sounds
4 to me like the second prong, but which are you
5 prepared to offer testimony on? That they are
6 conforming uses to --

7 MR. HARGROVE: I beg your pardon.

8 CHAIRPERSON LOUD: Just trying to
9 find out which of -- what the scope of the
10 testimony is going to be that's relevant to
11 the use variance request of Mr. Collins'
12 client.

13 MR. HARGROVE: Mr. Hurteau will
14 testify that the subject property on the basis
15 of his experience, similar situations is
16 capable of being redeveloped into a reasonably
17 profitable allowable use probably as a single-
18 family dwelling or as a single-family dwelling
19 with a basement apartment.

20 CHAIRPERSON LOUD: Okay. And Mr.
21 Collins, I think, has a question out on the
22 table regarding your qualifications to testify

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1 to the redevelopment of this property as a
2 single family -- is that what you said single-
3 family --

4 MR. HARGROVE: Yes.

5 CHAIRPERSON LOUD: -- dwelling.
6 Okay. And can you respond specifically to Mr.
7 Collins' question about that? Just your
8 background and experience that would qualify
9 you to have an expert opinion on that.

10 MR. HURTEAU: Well, actually, I had
11 a property around the corner on S Street, 2129
12 S Street that I actually brought before this
13 Board for redevelopment. I have since sold
14 that property and did not develop it, but as -
15 - speaking as a real estate broker who has
16 sold properties to people who have converted
17 them or have renovated them, I would answer
18 questions regarding this house of what it
19 could -- what it could potentially -- how it
20 could potentially be brought back to be sold
21 as a single family or two family or -- or
22 single family with an in-law suite in the

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1 basement.

2 CHAIRPERSON LOUD: Mr. Collins, did
3 you want to respond at all to his -- he's
4 taken an attempt to --

5 MR. COLLINS: If he wants to
6 testify -- I'm sorry. If he wants to testify
7 to the sale of other properties, single family
8 or single family with in-law suite or whatever
9 it was that was mentioned, that's fine. But,
10 redevelopment I don't see as appropriate. He
11 have expertise in redevelopment.

12 CHAIRPERSON LOUD: Well, he's
13 mentioned that he's been before the Board with
14 a redevelopment project and --

15 MR. HARGROVE: Mr. Chairman, if I
16 may intervene, Mr. Hurteau has extensive
17 experience observing transactions regarding
18 properties that have been purchased and
19 redeveloped and redeveloped on a profitable
20 basis and that would be the basis for his
21 testifying as to the viability of this
22 property for that sort of treatment.

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1 The issue under the zoning -- under
2 the variance criteria is whether it is capable
3 of any conforming use at a reasonable return
4 and he has had opportunity over many years to
5 observe how those criteria are met or failed
6 to be met in the case of similar properties.
7 Namely, large rowhouses in this general part
8 of the city.

9 CHAIRPERSON LOUD: You know, it
10 sounds to me how -- let the Board Members
11 weigh in. It sounds to me like he is
12 qualified on the very limited issue that Mr.
13 Hargrove is trying to advance him which is
14 very -- he said single-family dwellings for --
15 I guess for sale or for rent in this
16 neighborhood. That's what you do I think as a
17 broker.

18 MR. HURTEAU: Primarily sales.

19 CHAIRPERSON LOUD: Primarily sales.

20 So I think -- would he have a sense of the
21 marketability, the potential use of this for
22 four-story property as a single-family

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1 dwelling. I mean that's all he's being
2 proffered for. That would be the limitation
3 of his testimony.

4 MR. COLLINS: With that
5 understanding, I have no objection.

6 CHAIRPERSON LOUD: Okay. And it's
7 my understanding, Mr. Hargrove, that that's
8 why he's before us. That you're proffering
9 for just that limited issue -- limited scope.

10 MR. HARGROVE: That's correct.

11 CHAIRPERSON LOUD: Okay. Board
12 Members? All right. Board Member
13 Moldenhauer, you look like you're just
14 itching.

15 MEMBER MOLDENHAUER: I would just -
16 - I would definitely just want to make sure
17 that it's limited. Because I mean in my
18 opinion, I think that it would -- he would not
19 be able to testify as to, you know, purchasing
20 or return on investment, but rather just the
21 sale and the marketing and selling of property
22 in that area.

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1 CHAIRPERSON LOUD: Okay. So, then
2 let's move forward, Board Member Moldenhauer.
3 Help us out if it seems like he's sort of
4 wandering into retrofitting and a lot of other
5 areas that are not his expertise and I think
6 if we can keep him on track, we'll accept him
7 as an expert.

8 MR. HARGROVE: Thank you, Mr.
9 Chairman.

10 Mr. Hurteau, are you personally
11 familiar with the building at 2005 Columbia
12 Road?

13 MR. HURTEAU: Yes.

14 MR. HARGROVE: How did you become
15 familiar with it?

16 MR. HURTEAU: I actually was a --
17 had made an offer to purchase the property
18 directly from Mr. Byrd when he was alive. I
19 had gone through the house completely,
20 negotiated with him and -- and was not
21 successful in that negotiation, but had gone
22 through the house when he was -- Mr. Byrd was

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1 alive.

2 MR. HARGROVE: So, is it true that
3 at that time at least you were prepared on the
4 basis of your experience to purchase the
5 property? Would it have been your intention
6 to develop it as a rooming house?

7 MR. HURTEAU: No.

8 MR. HARGROVE: What would you have
9 intended to do with it?

10 MR. HURTEAU: Basically, it was --
11 it was my intent to -- to live in the house.
12 There were partitions put in -- in some of the
13 rooms right down the middle in the bay window.
14 So, I was going to take out the partitions.
15 A lot of the original detail is intact and
16 thank you is still intact and my intention was
17 to -- to basically just take out the partition
18 walls and then use the side entrance that goes
19 -- the -- the gate that's to this as an
20 entrance to the -- the back. That is, an
21 entrance to the basement as a separate
22 apartment and so, I would rent out the

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1 basement and then -- then live above it
2 basically.

3 MR. HARGROVE: Now, the building is
4 no longer the same configuration that it was
5 in 2003. Have you seen the floor plans for
6 the building in its present configuration?

7 MR. HURTEAU: Yes.

8 MR. HARGROVE: In your opinion,
9 could this property in its present condition
10 be redeveloped for residential use at a
11 reasonable profit?

12 MR. HURTEAU: Yes.

13 MR. HARGROVE: Could you perhaps
14 briefly describe a little further at least one
15 means by which that redevelopment might take
16 place? What changes would be required in --

17 MEMBER MOLDENHAUER: I'm sorry.
18 Can you limit the testimony not to
19 redevelopment, but potentially to the sale or
20 marketing of? Thank you.

21 VICE CHAIRPERSON DETTMAN: I'd also
22 just like to point out that our focus here is

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1 four rooms not the entire house.

2 MR. HARGROVE: In your experience,
3 is the configuration that you spoke of, that
4 is a single family with basement apartment, a
5 common one for rowhouses of similar scale in
6 the Adams Morgan/Dupont Circle neighborhoods?

7 MR. HURTEAU: It's quite common.
8 Oftentimes basements at -- at any opportunity
9 -- not any opportunity, but quite often
10 basement apartments are made into a legal or
11 as they call it in-law suite throughout the
12 neighborhood.

13 MR. HARGROVE: Is there an active
14 market for rowhouses that have been so
15 reconfigured in the Adams Morgan/Dupont Circle
16 area?

17 MR. HURTEAU: You're speaking of
18 single family with a lower apartment? Yes.

19 MR. HARGROVE: Has that market held
20 up notwithstanding the economic downturn?

21 MR. HURTEAU: Well, actually, with
22 the economic downturn, I -- I seem to have

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1 more people who would want a basement
2 apartment to rent out. More often now than we
3 had before. They want to have that as just a
4 -- as an economic way to help pay the -- pay
5 the mortgage as it were.

6 MR. HARGROVE: I have no further
7 questions.

8 CHAIRPERSON LOUD: Thank you, Mr.
9 Hargrove. Mr. Collins?

10 MR. COLLINS: Mr. Hurteau, you
11 mentioned that you were previously before this
12 Board for a project at 2129 S Street --

13 MR. HURTEAU: Yes.

14 MR. COLLINS: -- N.W. Was that a
15 use variance application?

16 MR. HURTEAU: It was -- it was to
17 create in a, I believe, R-3 zoning four
18 residential units.

19 MR. COLLINS: And that would be an
20 apartment house in an R-3 zone.

21 MR. HURTEAU: That is correct.

22 MR. COLLINS: Was the building

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1 previously an apartment house?

2 MR. HURTEAU: The building was used
3 as a school for -- probably since World War
4 II. It was part of the Holton Arms School.

5 MR. COLLINS: So that your
6 application -- you applied for the use
7 variance to create a four units in a building
8 in a zone that doesn't allow four units.

9 MR. HURTEAU: That is correct.

10 MR. COLLINS: Why didn't you do a
11 single-family home with an in-law suite?

12 MR. HURTEAU: I couldn't --
13 basically, I was looking at affordability. It
14 would have been nice, but I couldn't afford
15 that and in the end, I couldn't afford the
16 project at all and I ended up selling it.
17 But, I couldn't afford it as a single family.

18 MR. COLLINS: Was the Office of
19 Planning opposed to the application? Do you
20 recall?

21 MR. HURTEAU: I believe they were.

22 MR. COLLINS: Okay. The four rooms

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1 that are at issue in this case, are you
2 suggesting that those four rooms could be
3 turned into a single-family home and the other
4 eight rooms would become, what, the rooming
5 house that's permitted as a matter of right?

6 MR. HURTEAU: No.

7 MR. COLLINS: So, you're just
8 talking about using the entire building, to
9 convert the whole building to something else.

10 Scrapping the permitted rooming house use of
11 the property.

12 MR. HURTEAU: It is my
13 understanding that as -- if as a hardship they
14 needed to sell the house, they would have
15 other purposes and could have a good resale
16 return as a single-family house because it
17 would not be that difficult to convert it
18 back.

19 MR. COLLINS: So, are you opposed
20 to use variances?

21 MR. HURTEAU: I'm not coming here
22 as an opinion one way or the other on use

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1 variances.

2 MR. COLLINS: But, you haven't
3 looked into what kind of loss would be
4 incurred by virtue of the sale of the building
5 to create a single family home with an in-law
6 suite?

7 MR. HURTEAU: I have -- I can only
8 tell you that I have not done such a -- such a
9 search of loss. I can only tell you about if
10 they were to sell this property as a single
11 family that there's a lot of demand for it as
12 such because this house retains a lot more
13 original detail than most properties. So,
14 there's a good demand for that and as a -- as
15 a very elegant single-family house or two
16 family.

17 MR. COLLINS: You've looked at the
18 economics of that?

19 MR. HURTEAU: Well, I've looked at
20 recent sales in the neighborhood.

21 MR. COLLINS: But, you don't have
22 any opinion on this particular property and

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1 whether there would be a profit or loss or --

2 MR. HURTEAU: I can't tell you. I
3 don't know the financial circumstances
4 involved here. So, I can't tell you about
5 profit or loss. I can tell you it has a good
6 resale potential there.

7 Some places -- the building I had
8 was made as a school. So, it had very little
9 original detail and the people who bought it
10 from me kept it as a school, but many houses
11 had the original detail taken from it. But,
12 this house has a lot of original detail left
13 that's in quite demand for people who want
14 that in a house. A lot of people come to the
15 city for the architecture.

16 MR. COLLINS: Thank you. No
17 further questions.

18 CHAIRPERSON LOUD: Thank you, Mr.
19 Collins. Commissioner Moye, did you have any
20 questions for this witness? Commissioner
21 Moye? No. Okay.

22 Board Members, any questions?

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1 Okay. Then I think what we will do
2 is -- thank you, Mr. Hurteau.

3 I'm sorry. Yes, you can re-have
4 the witness.

5 MR. HARGROVE: Mr. Hurteau, Mr.
6 Collins having opened this up further, you're
7 aware of and familiar with on the basis of the
8 floor plans and the other plans for the
9 building in its present configuration of what
10 will be required to redevelop it as a single-
11 family house with a basement apartment and
12 it's your judgment, is it not, that would not
13 prevent the profitable redevelopment of that
14 house for these purposes?

15 MR. HURTEAU: Well, to have it as a
16 viable single-family house or two family, the
17 removal of the partition walls especially on
18 the second floor because that was the grand
19 main floors that were and to remove the extra
20 bath that was -- there are four bathrooms on
21 that floor, to remove two of them.

22 MR. HARGROVE: I have no further

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1 questions.

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

4 Okay. Thank you, Mr. Hurteau, and
5 I think where we are now is that the Applicant
6 has closed its case. Right? All right. So,
7 the Applicant has closed its case.

8 When we come back, if there are any
9 questions that the Board Members have for you
10 in connection with the evidence, I think,
11 we'll give them an opportunity to do that.

12 But, what we'd like to do is go
13 into the afternoon calendar, the 1:00 p.m.
14 calendar. So, we're going to call that
15 calendar.

16 Then we're going to ask you to come
17 back, Mr. Collins and the ANC and Mr.
18 Hargrove, and we're going to try to finish out
19 your case tonight in about let's say 45
20 minutes or 40. What is now? It's about 5:15
21 now. So, if you come back at 6:00, yes, about
22 45 minutes and we'll try to finish out your

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1 case.

2 And how do I do this from the legal
3 standpoint? Do I adjourn it and then we
4 recall it later or just temporarily --

5 MS. GLAZER: Mr. Chair, I think you
6 did whatever you needed to do. You stated on
7 the record that this case was going to be
8 continued 45 minutes from now.

9 CHAIRPERSON LOUD: Correct. But,
10 then I need to adjourn out of this hearing and
11 go into the afternoon hearing and I need to do
12 the reading all over again and all of that.
13 So, I just wanted to make sure that I had
14 adjourned. Okay. I got you.

15 So, we're adjourning for 45 minutes
16 the morning calendar. We're going to recall
17 part of that calendar in 45 minutes.

18 Now, I would like to go to the
19 afternoon calendar for September the 15th.

20 Good afternoon. Bear with me for a
21 moment. I'm going to read the remarks
22 attendant to the hearing calendar and then we

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1 can call the two cases.

2 I think we're going to call Digital
3 first and just get a sense of a continuation
4 on that. I don't think there's any need to
5 make those parties and witnesses wait until
6 we've resolved the So Others Might Eat case
7 and then we'll call So Others Might Eat which,
8 I think, is a case that we can resolve in
9 short order.

10 This hearing will please come to
11 order. Good afternoon, ladies and gentlemen.

12 This is the September 15th Public
13 Hearing of the Board of Zoning Adjustment of
14 the District of Columbia.

15 My name is Marc Loud, Chairperson.

16 Joining me today are Vice Chair Shane Dettman
17 representing the National Capital Planning
18 Commission. Chairman Anthony Hood
19 representing the Zoning Commission and Board
20 Member Meredith Moldenhauer representing the
21 BZA.

22 Copies of today's hearing agenda

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1 are available to you and are located to my
2 left in the wall bin near the door.

3 Please be aware that this
4 proceeding is being recorded by a court
5 reporter and is also webcast live.

6 Accordingly, we must ask you to
7 refrain from any disruptive noises or actions
8 in the hearing room.

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

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

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1 The order of procedure for special
2 exceptions and variances is as follows:
3 statement and witnesses of the applicant;
4 Government reports including the Office of
5 Planning, the Department of Public Works, et
6 cetera; report of the ANC; parties or persons
7 in support; parties or persons in opposition;
8 closing remarks by the applicant.

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

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

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

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

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

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

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

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

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

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

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

13 The Board will make every effort to
14 conclude the public hearing as near as
15 possible to 6:00 p.m. today and if the
16 afternoon cases are not completed, and that's
17 kind of what we're going through now, the
18 Board will assess whether it can complete the
19 pending case or cases remaining on the agenda
20 and if it's necessary to continue cases to the
21 next available date.

22 At this time, the Board will

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1 consider any preliminary matters being those
2 that relate to whether a case will or should
3 be heard today such as requests for
4 postponement, continuance, withdrawal or
5 whether proper and adequate notice of the
6 hearing has been given.

7 If you're not prepared to go
8 forward with a case today or if you believe
9 the Board should not proceed, now is the time
10 to raise such a matter.

11 Does the staff have any preliminary
12 matters?

13 MS. BAILEY: No, Mr. Chairman.

14 CHAIRPERSON LOUD: Thank you, Ms.
15 Bailey.

16 If not, we can proceed with the
17 afternoon agenda and I think, Ms. Bailey, it
18 would be appropriate to swear in the witnesses
19 who are going to be for the afternoon cases.
20 I guess specifically the SOME case. They're
21 in the room.

22 MS. BAILEY: Do you solemnly swear

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1 or affirm that the testimony that you'll be
2 giving this afternoon will be the truth, the
3 whole truth and nothing but the truth?

4 CHAIRPERSON LOUD: Excellent. So,
5 in the So Others Might Eat case, there are
6 only going to be two witnesses? Okay. Is
7 there any opposition? It's going to be --
8 okay. All right. Excellent.

9 In the Digital Imaging case which
10 is now before us, I think you're going to call
11 that case, Ms. Bailey.

12 MS. BAILEY: Mr. Chairman, it's
13 Application 17961, Center for Digital Imaging
14 Arts at Boston University pursuant to 11 DCMR
15 Section 3104.1 and 3103.2 for a variance from
16 the off-street parking requirements under
17 Subsection 2101.1 and a special exception for
18 a private trade school under Section 912 at
19 premises 1055 Thomas Jefferson Street, N.W.
20 Square 1191, Lot 71. The property is in the
21 W-3 District.

22 CHAIRPERSON LOUD: Thank you, Ms.

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1 Bailey.

2 Good afternoon.

3 MR. AGUGLIA: Good afternoon.

4 CHAIRPERSON LOUD: Thanks for your
5 patience. We appreciate that. It just
6 appears as though we're not going to be able
7 to get through what's left on the calendar
8 today and don't want you to wait until the end
9 of the day to find that out.

10 MR. AGUGLIA: Well, let me ask you
11 this. This is Richard Aguglia for the
12 Applicant.

13 CHAIRPERSON LOUD: Yes, sir.

14 MR. AGUGLIA: With the Law Firm of
15 Hunton & Williams and the Applicant is the
16 Center for Digital Imaging Arts at Boston
17 University.

18 I can make our presentation in 20
19 minutes. It's no opposition. OP recommends
20 approval. I have a one-minute lights on Power
21 presentation. So, you can see the pictures.

22 I talked with counsel for SOME and

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1 he's told me that he may have a ten-minute on
2 the record case.

3 So, I believe we could finish both
4 cases before 6:30 and you could time me for 20
5 minutes. I've already done my prehearing with
6 my client yesterday and we timed it and about
7 20 minutes. It's very straightforward.

8 CHAIRPERSON LOUD: Well, I know for
9 certain with the SOME case and I'm glad to
10 hear that that case may be about ten minutes
11 or so. It was fairly straightforward. We had
12 a full record. I don't think there were a lot
13 of questions from the Board. I'm not so
14 certain with the Digital case --

15 MR. AGUGLIA: All right.

16 CHAIRPERSON LOUD: -- that, you
17 know, there could be more questions. Not
18 necessarily questions that change the outcome.

19 We don't know, but there just could be more
20 questions regarding the case.

21 We could hear this case. How many
22 witnesses do you have?

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1 MR. AGUGLIA: Just one.

2 CHAIRPERSON LOUD: Just one
3 witness.

4 MR. AGUGLIA: And about a two-
5 minute PowerPoint with the lights on and
6 that's it.

7 CHAIRPERSON LOUD: Okay. I'm
8 getting scared because first you said a one-
9 minute PowerPoint. Now, it's grown to two
10 minutes.

11 But, we could certainly hear you as
12 early as next week, the first case in the
13 afternoon and again, if we're talking about a
14 really sort of short truncated case, you could
15 be in and out of here in a fairly short time
16 and that way there could be a full flushing
17 out of any questions that Board Members have
18 for the case.

19 MR. AGUGLIA: I understand.

20 CHAIRPERSON LOUD: Let me just see
21 if Board Members have any additional thoughts
22 on that.

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1 MEMBER MOLDENHAUER: Yes, before we
2 -- I don't see in the record an actual
3 authorization from the property owner. We
4 have a letter from the Boston College which I
5 believe is Exhibit 7, but do you know of an
6 actual letter in the file from the property
7 owner providing authorization for the
8 Applicant?

9 MR. AGUGLIA: It was my
10 understanding that either the owner or in our
11 case, the tenant could authorize me.

12 MEMBER MOLDENHAUER: It has to be
13 the owner or an authorized party by the owner
14 and so, the owner would actually have had to
15 authorize the tenant.

16 MR. AGUGLIA: I can supply that.

17 MEMBER MOLDENHAUER: So, I mean
18 maybe -- I think that also would give reason
19 to postponing until next week and then
20 obviously, we'd have a full record in that
21 regard.

22 MR. AGUGLIA: Okay. All right. We

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1 will submit that before the end of the week
2 and I understand you also want to flush out
3 more questions.

4 MEMBER MOLDENHAUER: Yes, just to
5 give a little bit of a heads up, unless Mr.
6 Dettman wants to make a comment, but the -- I
7 believe we will be having a couple of
8 questions about the uniqueness and the
9 potential of the lack of -- the fact that the
10 uniqueness may be common to the neighborhood
11 and so, you may want to flush out that issue
12 also.

13 MR. AGUGLIA: I would say very
14 quickly that, you know, we've amended the
15 application from a parking variance to a
16 special exception for parking and we just have
17 to meet the special criteria, the special
18 exception criteria under 2108 and that is
19 because we're asking for a 25 percent maximum
20 reduction. So, it's changed considerably from
21 a uniqueness test to a meeting the criteria
22 under 2108.

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1 VICE CHAIRPERSON DETTMAN: Well,
2 Mr. Aguglia, just -- and I think I'll have
3 some questions about that, but, you know,
4 between now and next week --

5 MR. AGUGLIA: Yes.

6 VICE CHAIRPERSON DETTMAN: -- just
7 be aware that when we're calculating parking,
8 when it comes to staff and faculty, we don't
9 count full-time equivalents. We're talking
10 about number of bodies that are employed.

11 So, if you have 50 people on your
12 payroll and they're all part-time, that
13 doesn't allow you to use 25 for your parking
14 calculation.

15 So, based on the record, it appears
16 to me that your parking calculation might be a
17 little higher than what you're suggesting.
18 Which may not allow you to go for the special
19 exception.

20 So, just be -- you've argued both
21 the special exception and the variance.

22 MR. AGUGLIA: I have. Correct.

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1 VICE CHAIRPERSON DETTMAN: But,
2 just make sure that you come with the proper
3 parking calculation.

4 MR. AGUGLIA: All right. So,
5 you're saying that if it's a full-time
6 employee you would count that as -- for each
7 employee as one rather than --

8 VICE CHAIRPERSON DETTMAN: If you
9 have two part-time employees, that's two
10 people. It's not one full-time equivalent and
11 you can reference the St. Patrick's BZA case
12 to get an explanation of where the Board
13 stands in terms of the use of FTEs for
14 purposes of calculating parking.

15 MR. AGUGLIA: Understood.

16 CHAIRPERSON LOUD: Thank you, Mr.
17 Dettman. Anything further from the Board?
18 Okay.

19 So, we would be looking then at
20 next Tuesday, September 22nd. The afternoon
21 calendar roughly should start around 1:00 or
22 so and you would be the first case called.

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1 Your case would be the first case called.
2 But, next Tuesday afternoon.

3 Board Members have sort of laid out
4 some things that by grace kind of gets you
5 ahead of the game a little bit for next week
6 and when you return -- and you can bring the
7 authorization -- you can send that in Monday.

8 You don't have to press yourself to get it in
9 by the end of the week. We'll take it from
10 there.

11 MR. AGUGLIA: Thank you.

12 CHAIRPERSON LOUD: Thank you and I
13 really do appreciate your patience.

14 Okay. I don't think there's
15 anything further in this case. Is there, Ms.
16 Bailey?

17 MS. BAILEY: No, Mr. Chairman, we
18 can move forward.

19 CHAIRPERSON LOUD: Okay. So, I
20 think if we were to call the next case.

21 MS. BAILEY: Application 17967 So
22 Others Might Eat, Inc. also known as SOME

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1 pursuant to 11 DCMR Section 3104.1 and 3103.2
2 for a variance from the lot occupancy
3 requirements under 2001.3 to allow an addition
4 to an existing nonconforming structure and a
5 special exception to allow more than one roof
6 structure and roof structures set back less
7 than the requirement at Subsection 411.11 for
8 the renovation and conversion of a building
9 into an affordable residential building
10 containing 17 apartments and 26 single-
11 occupancy rooms. 1667 Good Hope Road, S.E. is
12 the property. The location of the property is
13 also known as Square 5765, Lot 894 and the
14 property is zoned C-2-A.

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

17 Good afternoon.

18 MR. KADLECEK: Good afternoon,
19 Members of the Board. Hi. My name's Cary
20 Kadlecek from the Law Firm of Pillsbury,
21 Winthrop, Shaw, Pittman. I represent the
22 Applicant.

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1 I do have one preliminary matter
2 and that is to have Ms. Jane Nelson admitted
3 as an expert in architecture and I'll bring
4 her résumé up.

5 CHAIRPERSON LOUD: Okay. Can you
6 make sure you give a copy of that to
7 Commissioner Jones. Is that Commissioner
8 Jones? Commissioner Jones, how are you this
9 evening?

10 COMMISSIONER JONES: I'm very
11 anticipating to continue the evening with a
12 positive attitude. Hopefully, it will be
13 successful on behalf of SOME.

14 CHAIRPERSON LOUD: All right.

15 COMMISSIONER JONES: And my
16 position on -- rather than Ward 8A04.

17 CHAIRPERSON LOUD: All right.

18 COMMISSIONER JONES: Thank you.

19 MS. BAILEY: Mr. Chairman, I think
20 the ANC Commissioner is present. Mr. Maleck
21 Muhammad. Am I --

22 CHAIRPERSON MUHAMMAD: Anthony

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1 Muhammad.

2 MS. BAILEY: Anthony Muhammad.

3 Excuse me.

4 CHAIRPERSON LOUD: Thank you and I
5 was just going to ask that question through
6 clarification.

7 COMMISSIONER JONES: He's present.
8 He's opposing. He's present. He's an
9 opposing. He's not a representative.

10 CHAIRPERSON LOUD: All right. So,
11 we've got a couple of issues to sort out then.

12 In terms of the ANC, ANC 8A04, did
13 ANC 8A04 take an official vote with notice and
14 quorum and take a position on it? A written
15 -- I'm sorry.

16 Yes, why don't you come on up to
17 the table, Commissioner? Is it Commissioner
18 Muhammad?

19 CHAIRPERSON MUHAMMAD: Yes, sir.

20 CHAIRPERSON LOUD: Yes, sir, why
21 don't you come on up. Good evening and thank
22 you for your patient.

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1 And just -- I want to just sort --
2 kind of sort out where we are just in terms of
3 preliminary matter.

4 The notice went out to Commission
5 8A for a report, what we call a great weight
6 report. I think you've been here before. So,
7 you know. All right.

8 And so, is there a notice, full
9 quorum report submitted by 8A?

10 CHAIRPERSON MUHAMMAD: This is the
11 stamped report that I -- this is the stamped
12 report I turned into BZA.

13 CHAIRPERSON LOUD: Okay.

14 ZC CHAIR HOOD: Mr. Chairman, can I
15 -- okay.

16 CHAIRPERSON LOUD: Please, Chairman
17 Hood.

18 ZC CHAIR HOOD: I was going to see
19 if I can get a copy. But, I think I have a
20 copy. Vice Chairman let me use his copy.

21 COMMISSIONER JONES: Mr. Marc Loud,
22 can I have a copy? Can I get a copy?

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1 CHAIRPERSON LOUD: Yes, sir, if you
2 would just give me one second to make it
3 through.

4 COMMISSIONER JONES: Want to get a
5 copy of it myself.

6 CHAIRPERSON LOUD: You don't have a
7 copy of the --

8 COMMISSIONER JONES: I don't.

9 CHAIRPERSON LOUD: All right. All
10 right. Okay. Commissioner -- Chairman
11 Muhammad, was there a notice of this meeting
12 in the community?

13 CHAIRPERSON MUHAMMAD: Yes.

14 CHAIRPERSON LOUD: Okay. I don't
15 see it represented. Okay. I do see that.
16 Meeting held after proper notice and with a
17 quorum. Okay.

18 So, my understanding is this then
19 would be the -- I don't -- this then would be
20 the report for the ANC and then Commissioner
21 Jones, you could give testimony with respect
22 to your status as a Single Member District

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1 Commissioner.

2 COMMISSIONER JONES: Yes, sir.

3 Yes.

4 CHAIRPERSON LOUD: Which would be
5 what we call our three-minute witnesses. So,
6 we would end up calling you back up later and
7 you can give your testimony.

8 COMMISSIONER JONES: All right.

9 CHAIRPERSON LOUD: And I think you
10 sat through one of our hearings and sort of
11 got the lay of the land. So, you can take a
12 seat back in the audience and then we'll call
13 you back later as either a person in support
14 of the application or I don't think you're in
15 opposition.

16 COMMISSIONER JONES: Okay. I am
17 not in opposition.

18 CHAIRPERSON LOUD: And we'll call
19 you at that time.

20 COMMISSIONER JONES: But, I'm like
21 -- I gave my acceptance on this and he is --
22 his part -- body -- the rest of the body of

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1 the ANC's opposed. Due to my understanding,
2 it's opposed. This -- this --

3 CHAIRPERSON LOUD: Okay.
4 Commissioner Jones, we're not going to go into
5 that, but I think what can happen is when you
6 come back, yes, and you give your testimony,
7 you can make sure that we have that testimony
8 in the record that goes to whether or not
9 there was an actual five to two vote not to
10 support the application as Commissioner
11 Muhammad represents in his signed letter of
12 September 10. Absolutely. Absolutely, you're
13 free to testify to that when you return. All
14 right.

15 So, it appears as though we do have
16 some opposition here.

17 Chairman Muhammad, are you going to
18 call any witnesses this afternoon? Okay.
19 Then I'm sorry about that. She was not able
20 to --

21 CHAIRPERSON MUHAMMAD: Oh, my
22 witness had to leave.

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1 CHAIRPERSON LOUD: Okay. Are you
2 planning cross examination of the Applicant's
3 in the case? Sometimes the ANCs will both
4 cross and give a statement themselves.

5 CHAIRPERSON MUHAMMAD: Yes.

6 CHAIRPERSON LOUD: Okay. All
7 right. Well, again, I appreciate your
8 patience waiting most of the afternoon. We
9 want to try to make sure we get through as
10 much as we can.

11 We may not be able to get through
12 your entire case this afternoon. It just
13 depends. We really want to try to not leave
14 the earlier Rosan case hanging and have to
15 continue that given as much of it as we've
16 gotten through. So, we're going to give you
17 all the time that you need.

18 On the other hand, if we need to do
19 like we did with the Rosan case and sort of
20 cut the case at some point and continue it,
21 then we'll try to do the best we can as we did
22 with Digital and give you the next available

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1 date on the calendar. Okay. All right.

2 So, with that --

3 VICE CHAIRPERSON DETTMAN: Mr.
4 Chairman.

5 CHAIRPERSON LOUD: Yes, sir.

6 VICE CHAIRPERSON DETTMAN: Can I
7 just ask one question of the Applicant before
8 we get started and it goes to the relief
9 that's being sought.

10 This is a self-certified
11 application and you've decided to pursue an
12 area variance until 2001.3 and I was just
13 wondering why and not consider this a
14 modernization under 2001.2?

15 MR. KADLECEK: I think we sought
16 the relief under 2001.3 because I think the
17 regulation clearly states that you cannot make
18 an addition to a nonconforming building with a
19 conforming use. It's a conforming use. It's
20 a residential use that's permitted under C-2-
21 A.

22 The lot occupancy is already

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1 nonconforming at 73 percent. Sixty percent is
2 permitted in the zone.

3 So, that makes the clearest case I
4 believe to make that addition on that
5 nonconforming building.

6 VICE CHAIRPERSON DETTMAN: Right.
7 And I'm asking kind of the -- based on my
8 review of the record, the scope of your
9 improvement seems to be more of a
10 modernization for accessibility in ADA and
11 what have you and under 2001.2,
12 modernizations, repairs, alterations are
13 permitted to a nonconforming structure.

14 Just wondering to get your response
15 on why you decided to go after an area
16 variance when it seems like a modernization
17 would be allowed as a matter of right.

18 MR. KADLECEK: It think because we
19 are, in fact, making an addition that does
20 slightly change what the, you know, use -- the
21 FAR would be and so, it's unclear under the
22 modernization regulation that you can actually

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1 make that addition.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Dettman. Any other Board Members have any
4 questions before we launch?

5 Okay. Why don't we begin with
6 Applicant's statement of the case?

7 MR. KADLECEK: I just wanted to
8 raise the issue of qualifying Ms. Jane Nelson
9 as an expert.

10 CHAIRPERSON LOUD: Any Board
11 Members have any problems with Ms. Nelson
12 being qualified as an expert in architecture?

13 Commissioner Muhammad, have you
14 taken a look at her résumé?

15 CHAIRPERSON MUHAMMAD: Yes.

16 CHAIRPERSON LOUD: Do you have any
17 questions regarding it or challenge to her
18 being accepted as an expert?

19 CHAIRPERSON MUHAMMAD: Are you a
20 member of the AIA?

21 MS. NELSON: I am not a member.

22 CHAIRPERSON LOUD: You have to

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1 speak into the microphone so that we can get
2 it captured.

3 MS. NELSON: I am not a member of
4 the AIA club. It has nothing to do with
5 registration.

6 CHAIRPERSON MUHAMMAD: Okay.

7 CHAIRPERSON LOUD: Did you have a
8 follow-up? Okay. So, are you opposing it?
9 Are you -- you've had the question answered to
10 your satisfaction and are ready to move
11 forward?

12 CHAIRPERSON MUHAMMAD: No. Are you
13 a licensed architect in Washington, D.C.?

14 MS. NELSON: I am a licensed
15 architect in Washington, D.C.

16 CHAIRPERSON MUHAMMAD: Okay. Thank
17 you.

18 CHAIRPERSON LOUD: Thank you,
19 Commissioner. If there's no objection to it,
20 by consent, we'll simply move admission of Ms.
21 Nelson in as an expert. If there's objection
22 to it, we'll vote and articulate a rationale

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1 regarding whether she is or is not qualified.

2 ZC CHAIR HOOD: Mr. Chairman, can I

3 --

4 CHAIRPERSON LOUD: Yes, sir.

5 ZC CHAIR HOOD: Can I ask a
6 question? Have you ever been proffered before
7 in front of either the Zoning Commission or
8 the BZA?

9 MS. NELSON: I have not.

10 ZC CHAIR HOOD: Thank you.

11 CHAIRPERSON LOUD: Thank you,
12 Chairman Hood.

13 Okay. I would, Board Members,
14 suggest that we approve the proffer of Ms.
15 Jane Nelson as an expert in architecture.
16 Twenty-six years experience in architecture.
17 Is licensed in the District of Columbia. The
18 résumé they submitted, there's no exhibit
19 number, but it identifies a number of projects
20 that she's been involved in as an architect
21 and she appears to meet our criteria for an
22 expert. So.

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1 Are there any objections? Moving
2 forward. Okay. The witness has been admitted
3 as an expert and her testimony will be created
4 as an expert. Thank you.

5 MR. KADLECEK: Chairman Loud,
6 again, good evening, Members of the Board.

7 My name is Cary Kadlecek from the
8 Law Firm of Pillsbury, Winthrop, Shaw,
9 Pittman. I'm the attorney on behalf of the
10 Applicant.

11 To my left is Ms. Jennifer Bremmer.
12 She represents SOME. To her left Phil Feola
13 also of Pillsbury and then to my right is Ms.
14 Jane Nelson of Nelson Architects.

15 I believe this is a pretty
16 straightforward case. We actually just
17 learned of the ANC's opposition today. So, we
18 didn't actually realize that they were in
19 opposition to the Application until today.
20 But, we did have a chance to review the
21 letter.

22 Nevertheless, I do believe this is

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1 a straightforward case merely concerning the
2 rehabilitation of a rundown and unoccupied old
3 building in order to create an all affordable
4 residential project for senior citizens.

5 The renovations will add a rooftop
6 terrace and some roof structures that will
7 make the building handicapped accessible and
8 it will also give the senior citizens some
9 outdoor recreation space on the roof.

10 In order to complete the
11 renovations in a manner that's suitable for
12 the senior citizen population, the Applicant
13 has requested a special exception for roof
14 structures and also the area variance with
15 respect to a nonconforming structure with
16 respect to lot occupancy.

17 My first witness I would like to
18 call is Ms. Bremmer and she's going to discuss
19 the program that will go into the building and
20 give a little bit of background on SOME.

21 CHAIRPERSON LOUD: Thank you.

22 MS. BREMMER: Hi, I'm Jennifer

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1 Bremmer. I'm the Housing Development Project
2 Manager at SOME.

3 If you don't know SOME, we are an
4 interfaith community-based organization
5 started about 40 years ago with a mission to
6 serve the poor and homeless of Washington.
7 We've expanded from starting as a soup kitchen
8 to really address the root causes of
9 homelessness. We offer a variety of programs
10 starting from meals, clothing, showers,
11 medical, dental, behavioral health care, job
12 training, evictions recovery and affordable
13 housing as well as counseling for seniors and
14 individuals with mental illness.

15 I just want to talk a little bit
16 about our affordable housing efforts. We've
17 actually started providing affordable housing
18 in 1989 with our Shalom House and that is our
19 typical model of affordable housing.

20 It's SRO and efficiency units and
21 SRO is a single-room occupancy unit where
22 folks have an individual room and they share a

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1 bathroom with usually two to three other
2 residents. They'll also have a shared kitchen
3 typically on each floor and lounge space.

4 An efficiency unit will be similar,
5 but have a private bath and a small
6 kitchenette in the unit.

7 That's kind of been our model of
8 housing for the past just about 20 years.
9 Residents sign a lease and they pay 30 percent
10 of their income on rent.

11 We also have a number of senior
12 programs that SOME has provided. We have a
13 summer camp that we've been offering for about
14 I think 30 years. We have a program where we
15 match homebound seniors with caregiver
16 volunteers and a variety of other programs
17 directed at seniors.

18 We've also found in our affordable
19 housing that we currently operate which is
20 about 250 units for single adults that a lot
21 of seniors do reside in our program.

22 So, in the recent years, we have

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1 seen the greatest challenge for our clients is
2 lack of affordable housing in the city and so,
3 we've developed an initiative to develop a
4 thousand units of affordable housing in the
5 District.

6 This project which is on Good Hope
7 Road is one of those projects to develop that
8 thousand units and because of the layout of
9 the building, it kind of made itself a good
10 fit for a senior program. We were looking for
11 a building that had street access and what's
12 conducive to things like adding an elevator.

13 This building has somewhat wider
14 hallways. So, we're able to add a handrailing
15 throughout the hallways in the building.

16 We're also able to make six fully
17 accessible efficiency units and then in the
18 unit that we can't make fully accessible, we
19 are making as many accessible features as we
20 can such as grab bars in the bathrooms, roll-
21 in showers.

22 We're also designing to have a

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1 washer and dryer in the kitchens for each unit
2 so that residents -- the seniors aren't having
3 to lug their laundry down to a central laundry
4 room and things like that.

5 That's kind of the rationale and
6 the design of this building. As part of our
7 design, we also wanted to provide outdoor
8 space. The existing building is basically on
9 the lot line. It borders the public alley, a
10 sidewalk, a sidewalk and an existing building.

11 There's a small courtyard kind of
12 in the middle. That's off of the alley, but
13 it's pretty small and somewhat limiting as far
14 as outdoor recreation, lounging kind of space
15 for the residents and so, our hope was to
16 provide a roof deck where all the residents
17 would be able to access and have some outdoor
18 space.

19 There's also a great view of the
20 city from this building and so, it would be a
21 nice feature for the seniors to have.

22 The changes that Cary will describe

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1 of what we're hoping to accomplish is bringing
2 up a second stairwell to provide a means of
3 egress as well as an elevator. We're actually
4 adding an elevator to the building to make all
5 the floors fully accessible and we want to
6 bring that -- extend that to the roof so that
7 the roof also would be accessible.

8 We had reached out to the community
9 as far as getting their support for this
10 request. We actually -- I attended the ANC 8A
11 meeting on August 4th to present the project
12 and I spoke with -- you know, answered any
13 questions the folks had there and actually I
14 had two members who voiced their support of
15 the project and that SOME is a good neighbor,
16 but they asked to have additional information
17 which we provided. I had put together a two-
18 page flyer describing SOME, the project itself
19 as well as the specifics of the request we
20 were soliciting and we were asked to attend
21 their executive meeting on August 24th.

22 Troy Swanda and myself and Cary had

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1 tried to attend that meeting. Unfortunately,
2 no one showed up and we were unable to meet
3 with them at that point and it was our
4 understanding that there was not any other
5 concerns that were brought up to us.

6 We also had a call from -- once the
7 notice was posted, we did have a call from
8 Charles Wilson at the Historic Anacostia Block
9 Association who asked us to attend their
10 September 10th meeting, but asked us that day.

11 Unfortunately, we were not able to get there
12 that evening, but we are on their schedule for
13 their October meeting to talk about any
14 questions. We spoke with him a couple of
15 times to see if he had any questions. He just
16 wanted us to come to also present the project
17 to his neighborhood.

18 We do have a letter of support from
19 Mr. Jones who's the Single Member District for
20 8A04.

21 And finally, we sent a letter of
22 request when we purchased the building back in

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1 2006 to the then ANC Chair who was Marietta
2 Michael when we were applying for financing
3 with the D.C. Department of Housing and
4 Community Development.

5 And I think that's it.

6 CHAIRPERSON LOUD: Thank you.

7 Board Members, any questions?

8 Chairman -- shall I call you
9 Chairman or Commissioner Muhammad?

10 CHAIRPERSON MUHAMMAD: I'm the
11 Chair. You're the Chair. Right?

12 CHAIRPERSON LOUD: Mr. Chairman, do
13 you have any questions?

14 CHAIRPERSON MUHAMMAD: No, I
15 don't.

16 CHAIRPERSON LOUD: All right. A
17 quick question.

18 CHAIRPERSON MUHAMMAD: Yes, one
19 question.

20 CHAIRPERSON LOUD: Yes, sir, go
21 ahead.

22 CHAIRPERSON MUHAMMAD: You

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1 mentioned Ms. Michael. When was this? You --
2 Commissioner?

3 MS. BREMMER: Sure. We send a
4 letter on May 31st, 2006 to Ms. Michael. We
5 received no response to that letter. It's
6 typical of an application for financing
7 through the Department of Housing and
8 Community Development to request ANC support
9 and so, we did submit that request for
10 support, but we had no response.

11 CHAIRPERSON MUHAMMAD: Okay. Thank
12 you.

13 MS. BREMMER: Okay.

14 ZC CHAIR HOOD: Just a couple.

15 CHAIRPERSON LOUD: Yes, sir. Yes,
16 sir, Mr. Chair.

17 ZC CHAIR HOOD: You mentioned that
18 you met with the -- I guess you met with ANC
19 8A one time and you were coming back to meet
20 with the full commission on the 24th or
21 whatever the date was and nobody showed up.
22 You obviously had a -- and I can ask Chairman

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1 Muhammad at the appropriate time, but you
2 obviously had a chance to see their letter.
3 Right? That was submitted. I think we got it
4 today. You haven't had a chance to --

5 MS. BREMMER: I have not seen that.

6 ZC CHAIR HOOD: Okay.

7 MR. KADLECEK: I got a chance to
8 look at it very briefly.

9 ZC CHAIR HOOD: Got a chance to
10 look at it. I would like --

11 MR. KADLECEK: I don't believe that
12 Ms. Bremmer has had a chance to look at it.

13 ZC CHAIR HOOD: Okay. And what do
14 you understand to be the concern? What do --

15 MR. KADLECEK: Well, I spoke with
16 Chairman Muhammad just before the meeting and
17 my understanding of his concerns is a slight
18 misunderstanding about the lot occupancy and
19 also he expressed some concerns about the
20 population of the building. Who will live in
21 the building and Ms. Bremmer and I spoke with
22 him and I think we answered some of his

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1 questions. So, I suspect he'll still testify
2 about his position on the project, but I do
3 believe we did clear up some basic
4 misunderstandings.

5 ZC CHAIR HOOD: So, you didn't hear
6 any concerns about the roof structure or the
7 setback or anything of that nature?

8 MR. KADLECEK: No, we did not hear
9 any concerns about roof structure or setback.

10 No.

11 ZC CHAIR HOOD: Okay. All right.
12 Thank you, Mr. Chair.

13 CHAIRPERSON LOUD: Thank you, Mr.
14 Chair. There are an abundance of chairs here
15 this evening. Just --

16 ZC CHAIR HOOD: But, you're a real
17 chair.

18 CHAIRPERSON LOUD: A very quick
19 question. The property was purchased in 2006.
20 Correct?

21 MS. BREMMER: Yes.

22 CHAIRPERSON LOUD: And have you

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1 since 2006 had a practice or any sort of
2 outreach strategy with the surrounding
3 community including the ANC?

4 MS. BREMMER: Not specifically
5 other than when we are applying for financing
6 or yes, that type of support.

7 Typically, because it has not been
8 renovated yet and I'm not the program staff
9 who will be operating, you know, managing the
10 tenants, we usually -- usually the program
11 staff would be the folks making that outreach
12 closer to when people are actually moving in.

13 Just when I'm in the neighborhood
14 at the building, you know, folks come by and
15 have questions about the program. I have
16 spoken with them. But, that's all kind of
17 just as folks have questions when they see me.

18 CHAIRPERSON LOUD: Moving forward,
19 you know, one way or the other, do you see
20 both some value in that kind of proactive
21 outreach and some opportunities to implement
22 that as part of the overall location of the

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1 facility into the community and good neighbor
2 policy relationship building skills and so on?

3 MS. BREMMER: Yes, I do. I think
4 that that's an important part. I think one of
5 the challenges is turnover and the timing of
6 financing.

7 As you see, we purchased this
8 building in 2006. There's a completely
9 different ANC Chair and whatnot. So --

10 CHAIRPERSON MUHAMMAD: So --

11 MS. BREMMER: -- or --

12 CHAIRPERSON LOUD: Chairman
13 Muhammad, we'll have an opportunity to get
14 back to you.

15 MS. BREMMER: From my knowledge of
16 what -- the listing that, you know, when we
17 looked up who the chair was for this. That
18 was the person to speak with. So some of the
19 turnover might be challenging when, you know,
20 we haven't started construction yet. So,
21 there's potential for completely differently
22 folks.

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1 So, once we start getting ready to
2 be actually in the neighborhood and we have
3 the staff, we'll be there to help address it
4 more. We typically do more outreach at that
5 point.

6 CHAIRPERSON LOUD: Okay. And one
7 of the concerns that the chairman raises in
8 the letter Exhibit 26 is that there's a
9 funeral parlor, I believe, close by and a
10 library in that there's a premium parking.
11 Had you -- what are some of your thoughts
12 regarding potential parking, displacement and
13 the community's concerns? Because the
14 chairman is not just representing himself.
15 He's got people that he represents. He
16 mentions this Ms. Melanie Brown who are
17 concerned about some of these issues.

18 MS. BREMMER: Sure. Well, I have
19 actually gone to introduce myself to the
20 funeral home next -- the manager of the
21 funeral home next door and kind of let them
22 know of our intentions of the building and to

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1 contact me with any questions and any
2 discussions since they are actually sharing a
3 wall with us and are our neighbor.

4 You know, our request is not any
5 concern of -- you know, our parking, we're
6 meeting zoning parking requirements to my
7 understanding and -- but, typically and
8 anecdotally, I've never seen an over flux of
9 parking issues in the area and I'm -- as
10 project manager, I monitor the site. I go and
11 make sure that it is -- you know, the
12 building's still standing and whatnot and I've
13 -- I've never seen a concern with parking and
14 typically, in our other programs based on the
15 ratio of residents, it would be unlikely that
16 we would have any sort of demand on parking at
17 this time. You know, our experience of
18 operating housing at this -- this type of
19 housing.

20 CHAIRPERSON LOUD: Okay. I don't
21 have any further questions. I don't know if
22 Board Members -- I think they didn't have any

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1 questions the first go around.

2 I believe we're going to turn -- do
3 you have any additional witnesses?

4 MR. KADLECEK: Just the architect.

5 CHAIRPERSON LOUD: Okay. All
6 right. Let's move to your next witness then.

7 MR. KADLECEK: I'd now like to have
8 Ms. Nelson testify as to the program changes
9 and the decisions as to why we're seeking the
10 relief that we are.

11 MS. NELSON: My name is Jane Nelson
12 owner of Nelson Architects. I'm the architect
13 for this project.

14 The project involves the renovation
15 of a three-story existing building built in
16 1936. The building sits on the corner of Good
17 Hope Road and Fendal. This is Good Hope and
18 Fendal Street. It is bordered by a 16 foot
19 public alley and then to the north is the two-
20 story funeral parlor that was mentioned
21 earlier.

22 The neighborhood is mainly low-

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1 density commercial and moderate density
2 residential. The scope of the renovations is
3 to modify the interior layout of the existing
4 apartment building to accommodate 17
5 efficiency apartments and 26 single-room
6 occupant units.

7 As mentioned before, we are
8 installing a new elevator to make the building
9 fully accessible and that allows us to provide
10 50 percent of the units as fully accessible
11 units.

12 The restoration will also include
13 restoring the facade, repairing -- repointing,
14 cleaning the facade et cetera.

15 The reason we're here today is
16 because we are also proposing a rooftop
17 terrace to be used by this elderly population.

18 One stair currently goes to the roof and we
19 would be bringing the elevator to the roof to
20 make the roof terrace accessible and then the
21 second means of egress would be by extending
22 the second stair to the roof which does not

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1 currently go to the roof.

2 Both the new roof structures, the
3 elevator and the new stair will be clad in
4 brick to match the existing brick of the
5 existing stair tower that is a roof structure.

6 We are also proposing an open
7 trellis adjacent to the -- adjacent to the
8 elevator tower and that would be painted wood.

9 Just to walk you through the plans
10 again to show you. So, Good Hope Road, the
11 building entrance is off of Good Hope Road and
12 it is fully accessible. It's at grade. We
13 have located the elevator adjacent to the
14 accessible lobby.

15 This is the existing stair that
16 goes to the roof. This is the second existing
17 stair that does not go to the roof. So, on
18 the roof plan, you have the existing stair,
19 you have the proposed elevator with the
20 trellis and then the second stair extended.

21 We're requesting special exception
22 zoning relief as it pertains to the number of

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1 roof structures, their varying heights and the
2 setback requirement.

3 We are proposing three individual
4 roof structures that are not connected. It
5 would be cost prohibitive for this project to
6 have one conforming roof structure which would
7 cover most of the roof once you go from the
8 stair over to the elevator.

9 Also, requiring the three roof
10 structures to be at the same height would
11 result in unreasonable cost with no real
12 purpose. The height of the elevator enclosure
13 due to the elevator override is 6 feet greater
14 than what is necessary for the stair
15 structures. So that, not only would be have
16 to build the second new stair roof structure
17 much taller than is necessary, we'd have to
18 add on top of the existing stair enclosure.

19 And as you can see in this photo
20 montage, keeping the second stair closure and
21 the existing stair closure at its height is
22 actually a benefit because we're standing on

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1 the corner here looking and you cannot see the
2 top of that existing roof structure. We have
3 shown what we perceive as what the view of the
4 elevator tower will be from street at a height
5 of 14 feet 10 inches high.

6 The setbacks, where we do not meet
7 the setback requirement for the new stair
8 extension -- it meets the requirement to the
9 public alley side of the building and it meets
10 the requirement to Fendal and certainly, to
11 the rear of the site. Where it doesn't meet
12 it is right at this corner to the interior
13 courtyard.

14 With the elevator tower, we do not
15 meet it to the interior courtyard. We do meet
16 it to the north, but the trellis area is about
17 7 feet 9 from the edge open trellis and then
18 from Good Hope Road, we are 14 feet 3 inches
19 from the face of the parapet and the height is
20 14 feet 10.

21 So, again, the location of the
22 stair extension and the roof -- I mean, sorry,

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1 the elevator will really sort of predetermine
2 by the conditions of the existing building.
3 The second stair is, you know, where it is and
4 it would be difficult to -- well, you can't
5 move the stair, but to even transfer out to
6 relocate the stair, it would be -- we would
7 wipe out a large portion of the top floor.

8 And again, the elevator, we've
9 located the elevator so that it is immediately
10 adjacent to the accessible lobby so that as
11 seniors come into the building, it's the most
12 efficient way. They go directly into the
13 elevator as opposed to having to back and
14 forth -- traverse back and forth down the
15 hallways.

16 But, I'd also like to point out
17 that since the elevator is totally new and in
18 theory, it could be placed anywhere in the
19 building, it still couldn't -- even if we set
20 it in the middle of the building as opposed
21 to, you know, the corridor takes up the middle
22 of the building, we still could not meet the

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1 setback requirement because of the required
2 height. The building is only 40 feet wide and
3 the height of the roof structure is 14 and
4 that only leaves -- and the width is 14 feet 5
5 I believe. That only leaves about 12 feet 9½
6 inches on either side. So, we would always
7 have a problem with that.

8 We are also requesting a variance.

9 As discussed earlier, the building is unique
10 because it is nonconforming due to its lot
11 occupancy of 73 percent in a zone that is 60
12 percent lot occupancy. So, therefore, no
13 addition would be allowed at all.

14 The roof terrace is an important
15 amenity to this urban elderly population and
16 the addition is required to make the roof
17 terrace accessible and safe by providing a
18 second means of egress.

19 Please note that the proposed roof
20 structure additions will not extend any
21 nonconformity and the building will maintain
22 the lot occupancy at 73 percent.

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1 The proposed roof structures will
2 not impair the intent of the zoning
3 regulations. They will not cast shadows on or
4 block air flow to nearby properties because
5 they are spaced apart and are not
6 disproportionately large.

7 It's also worth noting that where
8 the roof structures do not meet, that one-to-
9 one setback is primarily on the interior court
10 and where it doesn't meet it to a, you know,
11 public way, it's only shy by 7 inches.

12 And that concludes my testimony.

13 CHAIRPERSON LOUD: Thank you. Are
14 there any questions from the Board? And
15 hearing none, Mr. Chair, do you have any
16 questions?

17 CHAIRPERSON MUHAMMAD: With these
18 additions, will the roof be structurally
19 sound?

20 MS. NELSON: The existing roof?

21 CHAIRPERSON MUHAMMAD: After the
22 additions that will be put --

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1 MS. NELSON: Yes, the roof that
2 people will be standing on. Yes, we are
3 actually reinforcing that roof -- that
4 existing roof structure to accommodate the
5 loads of the -- of occupied space.

6 CHAIRPERSON MUHAMMAD: Will it be
7 reinforced with steel or wood?

8 MS. NELSON: Actually both. We are
9 sistering wood joists to missing joists. We
10 are also providing steel which the guardrails
11 will be anchored to so -- because we
12 understand, you know, a guardrail has to meet
13 a certain code requirement, lateral force.
14 So, the answer is both.

15 CHAIRPERSON MUHAMMAD: Thank you.

16 CHAIRPERSON LOUD: Thank you.

17 ZC CHAIR HOOD: Mr. Chairman.

18 CHAIRPERSON LOUD: Yes, sir.

19 ZC CHAIR HOOD: How will you
20 determine? Is there anywhere in the
21 requirements that you're going to do like a
22 floor load test or how does that work?

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1 MS. NELSON: Yes, the structural
2 engineers have to meet a design -- the roof
3 would basically be treated as an -- because
4 it's a roof terrace, it's treated as an
5 occupied floor just like any other floor and
6 so, it has to be meet those requirements.
7 Which is one of the reasons why the second
8 means of egress is required.

9 ZC CHAIR HOOD: So, it will be so
10 many pounds per square foot and I think you
11 said you're going to be using that. So,
12 people will be up there. We'll know what the
13 cutoff point is. Right?

14 MS. NELSON: That's right. That's
15 right.

16 ZC CHAIR HOOD: Okay.

17 MS. NELSON: There is an occupant
18 load allowed.

19 ZC CHAIR HOOD: Okay. Thank you.

20 CHAIRPERSON LOUD: Thank you, Mr.
21 Chair. Is there any redirect or rehab of the
22 witness, sir?

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1 MR. KADLECEK: I have none.

2 CHAIRPERSON LOUD: Okay. Then why
3 don't we turn to the Office of Planning for
4 its report. Good evening. Good early
5 evening.

6 MR. GOLDSTEIN: Good early evening,
7 Mr. Chairman, Members of the Board.

8 My name is Paul Goldstein and I'm a
9 Development Review Specialist with the Office
10 of Planning.

11 The Office of Planning recommends
12 support for the Applicant's request for
13 special exception variance relief to permit
14 multiple roof enclosures of nonuniform heights
15 on top of an existing apartment building.

16 The property, as you've heard, is
17 located at 1667 Good Hope Road, S.E. which is
18 Square 5765, Lot 894 and is zoned C-2-A.

19 I'm just going to briefly walk
20 through some of the relevant criteria and, of
21 course, if needed, I'll expand on any of the
22 findings of the report.

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1 The application satisfies the
2 criteria for special exception relief under
3 Section 411.11 which references Sections 411.3
4 and 411.5 to permit more than one roof
5 enclosure and of enclosures of different
6 heights.

7 As you've heard, the need for
8 relief is driven by the intention to renovate
9 an existing building and the configuration of
10 existing stairways and the proposed elevator
11 location and granting special exception relief
12 to the requirements of 411.3 and .5 would be
13 in harmony with the intent of the Zoning
14 Regulations and the relief would not adversely
15 affect the neighboring property.

16 As explained in our report, we
17 actually diverge with the Applicant on a
18 technically. OP has identified the relief.
19 That relief from Section 411.2 which specifies
20 that the stairway and elevator penthouse must
21 meet the setback requirements of Section
22 770.6(b) would be an area variance and not a

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1 special exception. As a result, OP reviewed
2 the request under the area variance analysis.

3 Nonetheless, we still are
4 supportive of the application. We believe
5 that it actually -- it does satisfy the area
6 variance three-part test as well.

7 And finally, OP believes that the
8 application satisfied the area variance test
9 for an addition to a nonconforming structure
10 under 2001.3 and to conclude, OP supports
11 granting special exception and area variance
12 relief.

13 And that concludes my presentation
14 and I'm available for any questions if you
15 have any.

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

18 Are there any questions, Board
19 Members? Okay. For the Applicant's counsel,
20 do you have any questions?

21 MR. KADLECEK: No questions.

22 CHAIRPERSON LOUD: Okay. Chairman

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1 Muhammad, do you have any questions for the
2 Office of Planning?

3 CHAIRPERSON MUHAMMAD: No
4 questions.

5 CHAIRPERSON LOUD: Thank you. Then
6 we will now turn to you, Chairman Muhammad,
7 for the presentation of your case. It's my
8 understanding you don't have any witnesses,
9 but you do have a report, Exhibit 26, dated
10 September 10, 2009.

11 CHAIRPERSON MUHAMMAD: Yes. Dear
12 Chairperson Loud, the Commission has a few
13 concerns about the application which we would
14 like addressed. Some citizens opposed to SOME
15 being there lead by Ms. Melanie Brown of
16 Fendal Street, S.E.

17 CHAIRPERSON LOUD: Chairman, if you
18 will allow me to interrupt you for just one
19 second, just to let you know that you actually
20 don't have to read it into the record if you
21 don't -- yes, because we have it. It's been
22 marked as an exhibit. So, it's a part of our

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1 record for deliberation purposes. I didn't
2 want to stop you if you wanted to read it.

3 CHAIRPERSON MUHAMMAD: No.

4 CHAIRPERSON LOUD: But, just wanted
5 to let you know that you didn't have to read
6 it into the record.

7 CHAIRPERSON MUHAMMAD: No.

8 CHAIRPERSON LOUD: Is there
9 anything specific about it that you might want
10 to just pull out and highlight for us briefly?

11 CHAIRPERSON MUHAMMAD: And actually
12 for the record, SOME -- I like SOME because I
13 know it has the most wraparound services, but
14 I wasn't dealing with SOME. I was dealing
15 with the structure that was being presented
16 with us. That's what I was arguing. The
17 structure and the way it's being built.

18 Forty-three units inside. It's too
19 small for that space. Forty-three units is
20 too small. It's an old building built in
21 1936. No one will be able to live in there
22 comfortably.

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1 CHAIRPERSON LOUD: Okay.

2 CHAIRPERSON MUHAMMAD: Especially
3 you're going to have to use a bathroom with
4 other people, a sink with other people and
5 you'll have to use a kitchen with other
6 people. It's going to be chaos in that
7 section of the city.

8 Prostitution is already up and down
9 there and with the advert and Cialis and
10 Viagra, old people still do the same things
11 that young people do.

12 But, I'm in support of SOME. But,
13 the structure and the amount of space is too
14 small. It's too small.

15 I would like to see it reduced to
16 30.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Chairman. Are there any questions for the
19 Chair and/or the ANC regarding it's report?

20 Okay. Counsel, do you -- yes, sir.

21 ZC CHAIR HOOD: Chairman Muhammad,
22 when you had a discussion with the Applicant

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1 and you mentioned -- I'm sure you mentioned
2 that to them, what was the response? Because
3 I think this is the first time hearing that.
4 I think tonight. Okay.

5 CHAIRPERSON MUHAMMAD: No response,
6 but what I would have liked to have seen at
7 the ANC meeting was this architect with the
8 presentation she presented here and that was
9 what we did not receive when Mr. Kadlecek came
10 and Ms. Bremmer from SOME. We would have been
11 better informed.

12 ZC CHAIR HOOD: Okay.

13 CHAIRPERSON LOUD: Thank you.

14 ZC CHAIR HOOD: I'm curious why
15 they didn't take all of that presentation on
16 the road.

17 CHAIRPERSON LOUD: Since they're
18 here before us --

19 ZC CHAIR HOOD: Yes.

20 CHAIRPERSON LOUD: It's always
21 disappointing to --

22 ZC CHAIR HOOD: Right.

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1 CHAIRPERSON LOUD: -- get to these
2 hearings and find out that they're presenting
3 things for us, but they're not taking those to
4 the ANC.

5 ZC CHAIR HOOD: Yes.

6 CHAIRPERSON LOUD: So, I mean if
7 you want to ask that question. Commissioner
8 Jones, we're going to get to you in a moment.
9 We're not at that point in the hearing. I
10 think --

11 ZC CHAIR HOOD: So, we won't get
12 out of order I'll ask it at the appropriate
13 time.

14 CHAIRPERSON LOUD: Okay.

15 ZC CHAIR HOOD: Thank you.

16 CHAIRPERSON LOUD: Okay, Mr. Chair.

17 CHAIRPERSON MUHAMMAD: And maybe we
18 missed it at the last meeting that we were
19 suppose to have with them. It could have been
20 our fault, too.

21 CHAIRPERSON LOUD: Okay. Counsel,
22 did you have any questions for the ANC?

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1 MR. KADLECEK: I just have one
2 question for Chairman Muhammad.

3 Do you or the ANC have any concerns
4 or opposition to the roof structures that are
5 being proposed?

6 CHAIRPERSON MUHAMMAD: None.

7 MR. KADLECEK: Thank you.

8 CHAIRPERSON LOUD: Thank you. And
9 if there are parties or persons in support of
10 the Application in the audience, now would be
11 the time to come up. You would be given three
12 minutes.

13 Commissioner Jones, would that be
14 you? Okay. So, come on up and you can take a
15 seat all the way on the end and there's a
16 microphone.

17 Do we have -- I don't know if we
18 have the portable microphone or not. Okay.

19 COMMISSIONER JONES: I know --

20 CHAIRPERSON LOUD: I just wanted to
21 let you know before you start that you'll be
22 given three minutes and so --

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1 COMMISSIONER JONES: Yes, I got it.

2

3 CHAIRPERSON LOUD: Okay.

4 COMMISSIONER JONES: That's right.

5 CHAIRPERSON LOUD: All right.

6 COMMISSIONER JONES: That's like 90

7 -- that's like about 90 seconds or whatever.

8 CHAIRPERSON LOUD: Okay.

9 COMMISSIONER JONES: Ninety. But,

10 look, I don't like anybody like, you know,

11 pulling anybody's leg especially when it

12 comes, you know, to trying to make a

13 difference in, you know, somebody's life.

14 Mr. Muhammad -- Mr. Muhammad, can I

15 ask you a question? When do you have -- hold

16 your ANC meetings?

17 CHAIRPERSON MUHAMMAD: The first

18 Tuesday in every month.

19 COMMISSIONER JONES: Okay. Just as

20 an example, the 10th of month.

21 CHAIRPERSON LOUD: I'm sorry. I'm

22 sorry, Mr. -- I'm sorry, we have a certain --

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1 COMMISSIONER JONES: Okay.

2 CHAIRPERSON LOUD: -- procedure and
3 protocol and order that we have to follow.

4 COMMISSIONER JONES: Okay.

5 CHAIRPERSON LOUD: You can have the
6 opportunity to ask Mr. Chairman questions
7 afterward.

8 COMMISSIONER JONES: No. No. No.
9 I'm not through with --

10 CHAIRPERSON LOUD: It's just three
11 minutes of testimony. No questions for the
12 parties.

13 COMMISSIONER JONES: That was
14 addressed -- that was addressed on the 10th of
15 the month. You know, what I'm saying. That
16 was addressed on the 10th of this month and we
17 have our meeting every first Tuesday. Well,
18 that would have been the 8th.

19 The 8th of the month, I was down
20 here at a trial. You understand. I informed
21 this man, you know what I'm saying, because he
22 wanted to be here to represent that trial, you

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1 know, but unfortunately, he wasn't, you know.

2 His opposition is broad. The
3 library's right across the street over on the
4 other side of the road.

5 The building is for disabilities.
6 He must never or never experienced living in
7 group homes. Tell people just -- well, they
8 get along. That's how we live. I live. I
9 have a group home. I grew up in a group home.

10 You know what I'm saying? Choose the
11 independent living. Support the independent,
12 too. Independent. Now, I got my condo.

13 I met Ms. Jennifer. You know, I
14 let her know -- I let her know that -- I
15 wanted to recognize the true understanding of
16 her wanting to renovate the building and not
17 being railroaded, you know. Then I gave her a
18 call. That was anyway. You see how it was
19 going on.

20 But, Mr. Muhammad also has a copy
21 of what BZA sent me. You understand? Of the
22 architect, I gave to him. Wouldn't -- and he

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1 couldn't give it back. So, I had to ask for
2 another one.

3 So, you know, you're just lying all
4 the way around and how you going to hold a
5 emergency meeting without anybody. I think
6 you hooked that up on a Thursday, but your
7 meetings every -- on the Tuesday, I presented
8 it to your Board along with my participate and
9 I was told -- and I told you I couldn't stay
10 for long because I do entertainment on
11 Tuesdays and you said you didn't get around to
12 it because SOME wasn't there. However, I
13 don't know whether SOME was there or not, but
14 you know what I'm saying. You did the letter
15 on your own. That's my.

16 CHAIRPERSON LOUD: Thank you,
17 Commissioner Jones. We appreciate your
18 testimony regarding the issues before us.

19 Did Board Members have any
20 questions for the Commissioner? Are there any
21 questions for the Commissioner from the
22 parties?

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1 MR. KADLECEK: I have none.

2 CHAIRPERSON LOUD: Okay.

3 CHAIRPERSON MUHAMMAD: Could I ask
4 a question?

5 CHAIRPERSON LOUD: Yes, sir.

6 CHAIRPERSON MUHAMMAD: When did you
7 have your Single Member District Meeting to
8 present this project to your 2000 constituents
9 that you represent in your Single Member
10 District 8A04?

11 CHAIRPERSON LOUD: Well, first of
12 all, why don't you come back to the table so
13 you'll have a microphone.

14 Secondly, Mr. Chair, if I could ask
15 that your questions just be restricted to sort
16 of what he testified to.

17 CHAIRPERSON MUHAMMAD: Oh.

18 CHAIRPERSON LOUD: And not some of
19 the other issues that are -- I'm sure they're
20 important, but could be taken up outside of
21 the BZA.

22 COMMISSIONER JONES: Let me answer

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1 him though. Just like I met Ms. Jennifer --

2 CHAIRPERSON LOUD: I think the
3 question was when did you have your meeting?

4 COMMISSIONER JONES: Sir, the
5 meetings I go to is the meetings that the
6 community has. Everything at my -- at my
7 community, I do good for my community. I
8 adjust them as I go. I don't have time. A
9 man just sit behind a desk with a white shirt
10 and tie that don't mean, you know what I'm
11 saying, important just because you make --
12 you're giving orders.

13 The same way I met Jennifer at the
14 -- all my -- I'm interacting with my
15 community, you know. I'm a commissioner a
16 long. Actually, I'm no different for anybody
17 else.

18 CHAIRPERSON LOUD: Okay. Thank
19 you.

20 COMMISSIONER JONES: I'm in a
21 mixture of the grind what we're trying to do
22 to make changes for the better fight.

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1 CHAIRPERSON LOUD: Thank you,
2 Commissioner.

3 Unless there are any additional
4 questions for the witness, we would now move
5 on to parties or persons in opposition. If
6 there are any in the audience, you would now
7 come up and you're given three minutes.

8 Seeing none, we turn back to you,
9 counsel, for closing remarks of the Applicant.

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

12 I do have a couple of quick closing
13 remarks.

14 One is I just want to address the
15 ANC issue. We did present before an ANC. As
16 Ms. Bremmer noted, there was a quorum present
17 at the August 4th meeting and we answered all
18 the questions we could.

19 They requested additional
20 information and as Ms. Bremmer also noted, we
21 did prepare a full brochure explaining
22 everything, explaining who the population was,

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1 explaining what we were proposing. We did
2 send that to the ANC office. We even had it
3 return receipt. I know that they received it.

4 I can't attest as to where it went after
5 that, but --

6 CHAIRPERSON MUHAMMAD: We received
7 it.

8 MR. KADLECEK: Okay. And we did
9 show up to the August 24th executive meeting
10 as they requested at the August 4th meeting
11 and no one showed up.

12 So, it was our understanding
13 because of that that there were no issues or
14 concerns and as we mentioned at the beginning
15 of this presentation, we weren't even aware of
16 their opposition until today.

17 So, we believe that we were
18 operating in good faith and trying to reach
19 out to the community and do what the ANC was
20 asking of us.

21 That being said, I would just like
22 to summarize very briefly the relief that we

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1 are requesting.

2 With respect to the special
3 exception, as Ms. Nelson noted, it would be
4 very restrictive and basically prohibitive for
5 the Applicant to comply with the requirements
6 with respect to roof structures given the
7 programmatic requirements that SOME is trying
8 to achieve with this rooftop terrace and as
9 she noted, the amount of relief particularly
10 with respect to setbacks is really quite
11 minor. It really is almost impossible given
12 the roof structure for the elevator to have a
13 structure that complies based on the size of
14 the building.

15 Also, the placement of the
16 structures is really predetermined by the age
17 of the building and the structures that
18 already exist within the building. To do
19 anything otherwise to make it conforming would
20 be extremely cost prohibitive to an
21 organization that is nonprofit and operates
22 affordable housing.

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1 With respect to the variance, as
2 Ms. Nelson also noted, it's a building that
3 was built prior to the adoption of the current
4 zoning regulations. It is nonconforming with
5 respect to lot occupancy. We are not in
6 anyway proposing an increase in the lot
7 occupancy and the only reason we need to seek
8 relief is because we're making a small
9 addition in order to fulfill SOME programmatic
10 requirements.

11 With that, I have nothing further
12 and I thank you for your time.

13 CHAIRPERSON LOUD: Thank you.
14 Chairman Hood, did you have something? Okay.

15 ZC CHAIR HOOD: I just want to
16 follow up. A follow-up question before he
17 went into his closing comments.

18 Who all went with you to the
19 meeting on August the 24th? Mr. Chairman had
20 admitted that it may be partly their fault
21 because no one appeared, but who all went with
22 you to that meeting?

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1 MR. KADLECEK: It was me, Ms.
2 Bremmer and Mr. Swanda who's also from SOME.
3 He's sitting right behind Mr. --

4 ZC CHAIR HOOD: Okay. And your
5 architect's name is Ms. Nelson. Right?

6 MR. KADLECEK: Yes, she did not
7 attend though.

8 ZC CHAIR HOOD: So, either way,
9 this would not have been presented to the
10 community?

11 MR. KADLECEK: That's --

12 ZC CHAIR HOOD: Showing the rooftop
13 structures and even though he said he didn't
14 have any opposition. I think what I heard was
15 that the architect -- and this may have helped
16 him some if they were able to see this because
17 the lot occupancy is the same. I agree with
18 that, but they were not given the opportunity
19 to hear from the architect.

20 And I guess why is the -- even
21 though unfortunately they were there, but I
22 would have thought that that would have also

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1 been accompanied just like it came down here
2 to us.

3 MS. NELSON: Is it appropriate for
4 me to answer that? Okay.

5 When we heard of the meeting time,
6 I unfortunately was not available at that
7 time. Jennifer is -- actually has been
8 involved in the development of many projects.
9 She's very knowledgeable. I was fully
10 comfortable that she could talk to any of
11 those issues and the zoning issues, of course,
12 Cary was going to be there.

13 And as I mentioned, unfortunately,
14 I'm a small practitioner and I was not
15 available that evening, but I thought we were
16 fully represented and I apologize for any
17 offense.

18 ZC CHAIR HOOD: Thanks. Now, who
19 is Jennifer? Jennifer?

20 MR. KADLECEK: That's Ms. Bremmer.

21 ZC CHAIR HOOD: So, who did we make
22 -- Mr. Chairman, who did we make the expert on

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1 architecture? Did we make -- okay.

2 My point is -- I got my point
3 across. Thank you, Mr. Chairman.

4 CHAIRPERSON LOUD: Thank you, Mr.
5 Chairman. I don't think we need a lot of back
6 and forth.

7 MR. KADLECEK: Okay. I just wanted
8 to make one additional comment if it's okay.

9 We also did include the plans in
10 the initial filing that the ANC received and
11 also in the prehearing statement and I spoke
12 with Mr. Muhammad and I actually e-mailed him
13 the plans as well. So --

14 CHAIRPERSON MUHAMMAD: I have --

15 MR. KADLECEK: -- there was an
16 opportunity for him to see the plans even
17 though the architect wasn't at the
18 presentation.

19 CHAIRPERSON LOUD: Thank you very
20 much. Is that the close of your case?

21 MR. KADLECEK: Yes, that's the
22 close of my case. Thank you.

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1 CHAIRPERSON LOUD: Okay. Thank
2 you. Thank you, Chairman Hood.

3 I think Chairman Muhammad was very
4 gracious in sort of saying hey, maybe some of
5 this was our fault because we weren't there
6 and it would be good to hear that kind of
7 graciousness, too, from the Applicants in
8 terms of making sure when these community
9 meetings are held even if it's -- and things
10 happen and the architects can't be there that
11 plans are there that the community can walk
12 past and take a look at.

13 I know sometimes I struggle sitting
14 here looking at plans, you know, that are 8½
15 by 11, sometimes the full set of plans, but
16 when they're big and blown up like that, it
17 just helps the community to really fully
18 appreciate what's going on.

19 So, with that being said and
20 that'll be the final word on that, I think we
21 might be ready to deliberate and I think Mr.
22 Dettman is going to lead us off. Okay.

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1 VICE CHAIRPERSON DETTMAN: Thank
2 you, Mr. Chairman. I think I can be
3 relatively brief here.

4 This is an application for two
5 areas of relief. The areas of relief being
6 sought was a special exception from the roof
7 structure provisions under 411.11 and an area
8 variance under 2001.3.

9 I guess I'll address the area
10 variance first. As stated, it's an area
11 variance under 2001.3 and in order to meet the
12 variance test, the Applicant needs to
13 essentially comply with the three prongs of
14 the area variance test. They need to
15 demonstrate that there's a practical
16 difficulty.

17 With respect to the first prong,
18 whether the property is affected by an
19 exceptional or extraordinary situation or
20 condition, based on the filings and what we
21 heard through testimony, the exceptional
22 condition here would be the existing lot

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1 occupancy that actually predates the 1958
2 Zoning Regulations. When the building was
3 constructed in 1936, it was constructed to a
4 lot occupancy of 73 percent and that being
5 said, whether or not that exceptional
6 condition, the existing lot occupancy gives
7 rise to a practical difficulty upon the owner.

8 I think that there is a practical
9 difficulty here. In a sense, the existing lot
10 occupancy being 73 percent essentially would
11 eliminate any opportunity to add an addition
12 to this building and in order to construct, I
13 guess, the addition that's being proposed here
14 would require essentially a partial demolition
15 of the building to get it into compliance in
16 order to add the proposed roof structures
17 which actually are not increasing the lot
18 occupancy whatsoever.

19 That last statement goes to the
20 third prong. Is that the proposal is not
21 extending any existing nonconformity
22 whatsoever. The roof structures can be

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1 located on the roof without causing any kind
2 of substantial detriment to the public good
3 with respect to light and air and visibility
4 from the street and what have you.

5 So, I think the three-prong
6 variance test for the variance under 2001.3 is
7 met.

8 With respect to the special
9 exception that's being requested under 411.11,
10 I can rely upon OP's analysis in terms of
11 laying out how it would be cost prohibitive
12 for the Applicant to meet all of the roof
13 structure provisions under Section 411.

14 For the record, I actually am in
15 agreement with DCOP in terms of the type of
16 relief that should be requested. I believe
17 that should be an area variance, but I won't
18 expand upon the fun that we had, you know,
19 last year about that issue.

20 I think where we ended up, you
21 know, in the past is that we agreed to
22 disagree with the Office of Planning and me on

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1 one side and the Board on the other.

2 I think historically the Board has
3 treated this type of relief as a special
4 exception and so, that's kind of how I'll lay
5 out the analysis today.

6 So, the three areas that the
7 Applicant cannot meet with respect to 411 is
8 411.3 which requires all the penthouse
9 mechanical equipment to be in one enclosure.
10 The Applicant has stated that it would be cost
11 prohibitive for them to enclose the three
12 proposed roof structures into one enclosure.
13 Not only that is that, I guess, putting it
14 into one enclosure given the location on the
15 roof would actually have more of a detrimental
16 impact on the community in terms of the
17 visibility from the street.

18 411.5 talks about the equal height
19 and that the architect has testified that
20 actually providing a consistent height in the
21 roof structures is not necessary. It would
22 increase the visibility from the street and it

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1 would actually require them given the
2 necessary height for the elevator to add two
3 or three additional unnecessary feet to the
4 roof structure.

5 Finally, 411.2 deals with the
6 setback requirements. The setback relief
7 that's being requested is very de minimis and
8 essentially what's driving that is the
9 location of the existing stair that's being
10 elevated to the roof level that location is
11 predetermined and the chosen location of the
12 elevator adjacent to the lobby allows the
13 Applicant to mark it or I guess advertise a
14 substantial number of the apartments in the
15 building as accessible. Not only that, is
16 that no matter where you put the elevator on
17 the roof given the width of the building, it's
18 possible that they may not even be able to
19 meet the setback requirements whatsoever.

20 So, that being said, Mr. Chair, I
21 think both the special exception tests as well
22 as the area variance test are met.

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1 I will note that the ANC in their
2 Exhibit 26 did indicate that they took a vote
3 of 5 to 2 not in support of the application
4 and just quickly, some of the issues they
5 raised.

6 One was the proposed apartment and
7 rooming house in a C-2-A which is community
8 business center, low-moderate density. I read
9 that as kind of going towards Commissioner
10 Muhammad's comments that there are too many
11 dwelling units and essentially an apartment
12 house is allowed in this C-2-A Zoning District
13 as a matter of right by way of it being
14 allowed in the R-5 District and unlike the
15 limitations on the number of dwelling units
16 that are in the R-4, there's no limitation
17 tied to the amount of land area here. So,
18 that's kind of an issue that's not really
19 before the Board here.

20 There were comments about the lot
21 occupancy and that it should remain the same.

22 It is. There's no change to the 73 percent

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1 lot occupancy and there's also no impact to
2 parking. There's a parking credit of, I
3 think, 14 spaces and they're providing two
4 which would be required.

5 And finally, there's one comment
6 with respect to inconsistency with the
7 Comprehensive Plan and I think the Board
8 recently has taken the position that kind of
9 consistency with the policies and objectives
10 of the Comprehensive Plan is not really
11 something that we look to. We look to
12 consistency with the existing regs that are
13 before us.

14 CHAIRPERSON LOUD: Thank you, Mr.
15 Dettman. That was a very good analysis and
16 plugging in the evidence to the standards.

17 Did Board Members have any
18 additional comments? Okay.

19 Is there a motion with respect to
20 the application?

21 VICE CHAIRPERSON DETTMAN: I move
22 for approval of Application Number 17967 of So

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1 Others Might Eat, Inc. pursuant to 11 DCMR
2 3104.1 and 3103.2 for a variance from the lot
3 occupancy requirements under 2001.3 to allow
4 an addition to an existing nonconforming
5 structure and a special exception to allow
6 more than one roof structure pursuant to
7 Subsection 411.11 in the C-2-A District at
8 premises 1667 Good Hope Road, S.E.

9 CHAIRPERSON LOUD: Thank you.

10 Motion has been made. Is there a second?

11 MEMBER MOLDENHAUER: I second.

12 CHAIRPERSON LOUD: Okay. Motion's
13 been made and seconded. Further deliberation?

14 I just wanted to add to what you
15 said, Mr. Dettman. I thought you covered it
16 all.

17 I think I also heard Chairman
18 Muhammad say that the ANC did not have any
19 opposition to the roof structure relief, but
20 he did note the areas of their concern that
21 they were opposed.

22 Any further deliberation?

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1 Okay. The motion's been made and
2 seconded. All those in favor say aye.

3 (Ayes.)

4 CHAIRPERSON LOUD: All those
5 opposed? Are there any abstentions?

6 Ms. Bailey, can you read back the
7 vote please.

8 MS. BAILEY: Mr. Chairman, the vote
9 is 4-0-1 to grant the application. Mr.
10 Dettman made the motion. Ms. Moldenhauer
11 seconded. Mr. Loud, Commissioner Hood support
12 the motion.

13 CHAIRPERSON LOUD: Thank you, Ms.
14 Bailey. Is there anything further in this
15 case?

16 MS. BAILEY: Yes, Mr. Chairman.
17 Are we doing a full order or a summary order?
18 Is this a full order?

19 CHAIRPERSON LOUD: Is that
20 something we have to decide on the record?

21 MS. BAILEY: No, Mr. Chairman, you
22 don't have to decide.

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1 MS. GLAZER: Decide if you want to
2 waive the requirement for findings of fact and
3 conclusions of law. You need to take a vote.

4 CHAIRPERSON LOUD: Thank you and I
5 may need just a little guidance on this. It's
6 my understanding from the testimony that there
7 was no opposition to roof structure relief and
8 would that allow a summary decision?

9 MS. GLAZER: Well, unless the ANC
10 withdraws their opposition to the other area
11 of relief, I think a full order would be
12 requirement to address their issues and
13 concerns with respect to the variance relief.

14 CHAIRPERSON LOUD: Okay. And I'm
15 not going to put the ANC Chair in that
16 position. I think a full order. To answer
17 your question, Ms. Bailey, a full order would
18 be appropriate.

19 MS. BAILEY: Full order it is, Mr.
20 Chairman, for Ms. Glazer.

21 CHAIRPERSON LOUD: Thank you. I
22 appreciate that and thank you. Appreciate

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1 your patience today.

2 Well, I'm ready to go forward.
3 However, Board Member Moldenhauer -- several
4 of us want to take a bathroom break. So, five
5 minutes maybe and then we'll come back in five
6 minutes and we can resume with the -- which
7 case was that? We'll resume with the Rosan
8 case in exactly five minutes.

9 (Whereupon, the above-entitled
10 matter went off the record at 6:38 p.m. and
11 resumed at 6:53 p.m.)

12 CHAIRPERSON LOUD: Okay. I think
13 we're ready to resume the earlier case that we
14 had been on, the Rosan case and I don't know
15 if there are any formalities that need to be
16 observed in terms of just calling the case
17 back. Okay.

18 So, let's just -- call the case
19 again, I guess, Ms. Bailey and then we'll --

20 MS. BAILEY: I would just -- as you
21 have indicated, let the record show that we're
22 resuming with Application 17960 of Lucia and

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1 Claudio Rosan and I think that should be
2 sufficient.

3 CHAIRPERSON LOUD: Thank you very
4 much. As the parties come back to the table,
5 we've done our level best to try to make sure
6 that the cases that were calendared for today
7 were heard. It does appear, however, that
8 we're not going to be able to get through even
9 the entirety of this case tonight. Because we
10 are going to leave about 7:15 tonight and
11 adjourn.

12 My notes reflect we have one
13 additional witness in Ms. Hargrove as well as
14 a cross examination opportunity for Mr. Bello
15 and then, of course, the cross examination of
16 Ms. Hargrove and the Office of Planning's
17 testimony for tonight and I don't -- do you
18 have some limitations on your time this
19 evening, Mr. Cochran?

20 MR. COCHRAN: Yes, Mr. Chair.

21 CHAIRPERSON LOUD: Okay. And our
22 adjourning at 7:15 is consistent with whatever

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1 limitations you have on your time?

2 MR. COCHRAN: Even then, my
3 limitations would probably be burned. Dinner.

4 CHAIRPERSON LOUD: Okay. Well,
5 there's always hope. If you say probably,
6 that means that there's hope that we can get
7 through at least that much and again, when we
8 send notices out regarding the cases that are
9 scheduled for the afternoon, the notices come
10 with the proviso that if we are not able to
11 get through a case by 6:00, we'll make an
12 assessment and decide what to do.

13 In the case of today, the Board has
14 been at it since about 9:30 and we had a 30-
15 minute lunch break just to make sure we could
16 try to keep things on track, but it happens
17 from time to time where there are
18 unanticipated issues and witnesses that are
19 party status requests and we're just not able
20 to make it through a full calendar in a day.

21 We had ten cases today and we're
22 going to try our level best, but it does --

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1 I'm just letting everyone know it doesn't
2 appear that we're going to be able to get
3 through the full case tonight before we
4 adjourn. So, we're going to probably need to
5 continue it to the next available date and
6 we'll try to get the earliest date that we can
7 get. Okay.

8 So, with that in mind, I think
9 where we were was that the Applicant had
10 presented all of its witnesses, namely, Ms.
11 Rosan and Mr. Bello and there had not been --
12 then we sort of interrupted the schedule and
13 there had not been a cross opportunity I think
14 of Mr. Bello. So, we would now turn to the
15 ANC as well as to Mr. Hargrove for cross.

16 COMMISSIONER MOYE: I don't have
17 cross for Mr. Bello, but is it possible that
18 we could get a copy of his statement?

19 CHAIRPERSON LOUD: Yes.

20 COMMISSIONER MOYE: I have no
21 received a copy of it. Thank you very much.

22 CHAIRPERSON LOUD: Absolutely.

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1 COMMISSIONER MOYE: And I'll turn
2 it over to Mr. Hargrove.

3 CHAIRPERSON LOUD: Mr. Collins, do
4 you have an extra copy of the statement for --

5 MR. COLLINS: We had our own notes.
6 We didn't have a copy of the statement.
7 Those are just notes that we had.

8 CHAIRPERSON LOUD: Well, did you
9 have -- I know you read a statement or you had
10 a prepared statement.

11 MR. BELLO: Those were just notes
12 that I had taken down.

13 CHAIRPERSON LOUD: Notes. Okay.
14 All right. So, I don't think there's any duty
15 to prepare a statement if you didn't have a
16 statement coming into the proceeding.

17 The transcript will be available
18 though I think in a couple of weeks. The
19 transcript will be available and it'll contain
20 a verbatim and I think the webcast will be on
21 -- available tomorrow or in a couple of days
22 on the Internet.

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1 Mr. Hargrove.

2 MR. HARGROVE: Yes, Mr. Chairman.

3 I have just a few questions for Mr. Bello.

4 CHAIRPERSON LOUD: Okay.

5 MR. HARGROVE: Whose expertise on
6 these matters is a matter of common knowledge
7 and he's widely respected.

8 But, I do want to ask, for example,
9 the following. You testified, if I'm not
10 mistaken that, that the Applicants were issued
11 a provisional certificate of occupancy at the
12 time they got their building permits.

13 MR. BELLO: That is correct.

14 MR. HARGROVE: Do you have a copy
15 of that provisional certificate of occupancy?

16 MR. BELLO: Well, as a matter of
17 procedure, well, first of all, let me just
18 point you again to Section 3203.11(c),
19 Subsection (c), of D.C. Zoning Regulations.

20 And basically, that section governs
21 the issuance of certificates of occupancy.
22 Really where you need to obtain a building

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1 permit either to conduct an alteration of
2 repair or a change of use within a building
3 and what Subsection (c) is saying is at a time
4 that the Zoning Administrator approves a
5 building permit that for all intents and
6 purposes, a provisional certificate of
7 occupancy has been issued.

8 Now, within the DCRA process, that
9 document would be your pre-occupancy data
10 sheet. It's called POD.

11 So, in fact, at the time of the
12 approval of the building permit, a provisional
13 certificate of occupancy and this building
14 permit would be the one that goes to the 12
15 rooming unit. For all intents and purposes,
16 the Zoning Administrator issued a provisional
17 certificate of occupancy at that time pending
18 completion of the construction at the subject
19 property and once DCRA inspected and approved
20 all inspections, all construction having been
21 conducted according to approved plans and code
22 requirements, the Rosans were entitled to the

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1 final certificate of occupancy which they
2 never got.

3 MR. HARGROVE: That's true. They
4 never got any 12-room certificate of
5 occupancy.

6 Well, I'm a little puzzled by your
7 testimony. Because I have the provision
8 before me and it doesn't say anything about
9 all intents and purposes. It says at the time
10 of issuance of the building permit that is
11 required by this subsection, that is in the
12 case of construction or renovation, the
13 proposed use shall be designated in a
14 provisional certificate of occupancy.

15 So, I would suppose it is not
16 strictly correct to say that the Rosans got a
17 provisional certificate of occupancy at that
18 stage. Is that correct?

19 MR. BELLO: No, I don't agree with
20 that. The provisional -- the building permit
21 application for purposes of compliance with
22 the Zoning Regulation seeks to establish a

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1 zoning use and the limitations placed on that
2 use.

3 So, at the time that the Rosans
4 applied for a building permit stating that
5 they were establishing a 12 rooming unit use
6 -- rooming house at the property which is
7 clearly stated not only on the application but
8 also consistent with the approved set of plans
9 that were submitted, the use was designated on
10 that provisional certificate of occupancy.

11 MR. HARGROVE: Well, where is the
12 provisional certificate of occupancy?

13 MR. BELLO: As a matter of
14 procedure, it would be the pre-occupancy data
15 sheet.

16 MR. HARGROVE: Not the following
17 section says the use designated in the
18 provisional certificate of occupancy shall
19 comply with all provisions of this title in
20 effect on the date of which the building
21 permit required by this subsection is issued.

22 Is it not true that at the time of

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1 the issuance of the building permits the
2 Zoning authorities had determined shortly
3 before that the Rosans were not entitled to a
4 certificate of occupancy in excess of eight
5 rooms? In fact, had not that determination
6 been made more than once?

7 MR. BELLO: Well, I think either
8 you look at these documents independently and
9 in some instances you got to look at the
10 intent of them in terms of the zoning history
11 pertaining to the particular property.

12 If you take the building permit
13 application singularly, okay, when the Zoning
14 Administrator reviewed that project and issued
15 a building permit for a 12-unit rooming house,
16 that was the zoning decision at that time. At
17 that particular time.

18 And when you pair that in tandem
19 with the history of use of the property and
20 the grandfathering of the subject property,
21 then there was no reason not to issue them a
22 certificate of occupancy, the final

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1 certificate of occupancy post inspection.

2 MR. HARGROVE: So, you're saying
3 that hypothetically if I have a certificate of
4 occupancy that I'm dissatisfied with as to my
5 building which I have received from the people
6 who issue C of O and I go to the people who
7 issue building permits in the same agency and
8 get them to issue me a building permit for a
9 project alleging a different use then the
10 Zoning Administrator is compelled to issue me
11 a new certificate of occupancy complying with
12 the building permits?

13 MR. BELLO: I think bearing in mind
14 that both processes have to go through the
15 Zoning Administrator's office for approval of
16 compliance with the Zoning Regulations, I'm
17 not sure how to answer your question.

18 Clearly, the Zoning Administrator -
19 - the context of your question, if the Zoning
20 Administrator issued a building permit for a
21 nonconforming use in error, that's a different
22 matter. There are provisions for mitigating

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1 such error.

2 But, here, even at the time that
3 DCRA was calling the Rosans to come in to
4 change the building permit to a eight-unit
5 rooming house based on what they believed the
6 information was, they never revoked the permit
7 and they had the opportunity to do that. They
8 thought that the building permit had been
9 issued in error.

10 MR. HARGROVE: In any event, would
11 you agree that the only certificate of
12 occupancy that the Rosans had during the
13 period in which they applied for and received
14 their construction permits and executed those
15 projects was a certificate of occupancy for
16 eight rooms?

17 MR. BELLO: The certificate of
18 occupancy that was issued prior to the
19 building permit, that's correct.

20 MR. HARGROVE: Thank you. Just one
21 other point. I believe you testified that in
22 connection with the question of whether there

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1 would be an adverse impact on the Zone Plan by
2 this project that this is a mixed-use
3 neighborhood. Conclusion being that further
4 mixture wouldn't really undermine the existing
5 situation and you referred in so doing to the
6 Office of Planning report which Mr. Cochran is
7 here to present much later in which Mr.
8 Cochran says "Although zoned primarily for
9 residential use, Columbia Road between 18
10 Street and Connecticut Avenue already has a
11 mix of uses including substantial apartments
12 with limited parking, stores and restaurants
13 with sidewalk cafés."

14 Are you aware of the actual zoning
15 and actual use of land between Connecticut
16 Avenue moving north up to Belmont Road and
17 Mintwood Place which is a distance of about
18 four long blocks?

19 MR. BELLO: Well, I'm aware that
20 from the intersection of Columbia Road with
21 Connecticut Avenue up until Kalorama Road that
22 you have high-density FID zoned districts.

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1 But, if you're moving even closer to Adams
2 Morgan, then there's some smattering of
3 commercial-use zoned districts in the
4 neighborhood.

5 MR. HARGROVE: I was asking you
6 about the segment of that stretch of Columbia
7 Road, four blocks, between Connecticut Avenue
8 and Mintwood and Belmont on one side of the
9 road?

10 MR. BELLO: I believe it's mostly
11 R-5-D and there may be some R-5-B there.

12 MR. HARGROVE: Well, what about the
13 actual use?

14 MR. BELLO: The uses?

15 MR. HARGROVE: Yes.

16 MR. BELLO: Well, it's a mix of
17 high-density apartment buildings and some
18 rowhouses. Yes.

19 MR. HARGROVE: Are there any shops
20 or sidewalk cafés or restaurants in that area?

21 MR. BELLO: They're closer --

22 MR. HARGROVE: Of the 7 Eleven

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1 nonconforming use at Wyoming and --

2 MR. BELLO: That would be going
3 closer to 18th Street. So, it was Adams
4 Morgan.

5 MR. HARGROVE: That's all I've got.

6 CHAIRPERSON LOUD: Thank you, Mr.
7 Hargrove. Mr. Collins?

8 MR. COLLINS: Just one or two
9 questions.

10 Mr. Bello, when Mr. Hargrove asked
11 you whether the certificate of occupancy for
12 eight rooms was the C of O that was in effect
13 when the Rosans applied for the 12-room
14 building permit and you said yes, isn't it a
15 fact that they had the C of O for eight rooms?

16 They applied for a building permit for 12
17 rooms. When the 12-room building permit was
18 approved, that's when the POD, the use is
19 designated on that, and then the natural
20 conclusion of that building permit process
21 that they built in accordance with the plan,
22 the approved plans, got the final inspections,

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1 the final approvals, they were entitled to a
2 12-room C of O for a rooming house. Isn't
3 that correct?

4 MR. BELLO: That is correct and I
5 believe that the Rosans followed up by
6 applying for a 12-room rooming house which was
7 somehow -- though they never issued that.

8 MR. COLLINS: Thank you. That's
9 it.

10 CHAIRPERSON LOUD: Just one
11 question. Clarification so I can sort of
12 follow it and understand it, too.

13 What is it about the C of O that
14 makes it provisional when it's being connected
15 to the issuance of the building permit? Why
16 is it not just the permanent C of O? I mean
17 it implies that there are things that could
18 happen that could change its status as being a
19 valid C of O.

20 MR. BELLO: Well, the certificate
21 of occupancy although primarily a zoning tool
22 also is issued to indicate compliance with

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1 construction codes.

2 So, when you're issued a building
3 permit and you commence on approved
4 construction, then the inspection process
5 comes behind that to confirm that, in fact,
6 those constructions are being conducted in
7 compliance with the construction code also
8 prior to the final issuance of a certificate
9 of occupancy.

10 CHAIRPERSON LOUD: Is the
11 presumption that it may not be in compliance
12 with construction codes, but it is in
13 compliance with zoning codes?

14 MR. BELLO: That could considerably
15 happen. You could be in compliance with say a
16 use issue from a zoning standpoint and also
17 comply with your parking requirements, but a
18 lot happens out there when people get to
19 constructing. Sometimes not in compliance
20 with the approved set of plans. So, there may
21 be an issue with the actual issuance of the
22 certificate of occupancy because of a

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1 construction code issue.

2 CHAIRPERSON LOUD: Thank you. I
3 don't have any questions. Let's see if Board
4 Members have any questions for you.

5 VICE CHAIRPERSON DETTMAN: Mr.
6 Bello, so I'm just looking back at the 1969 C
7 of O and associated application. The
8 application indicates eight units. The C of O
9 does not.

10 At that time, presumably as DCRA
11 was going through their checklist, zoning,
12 plumbing, electrical, building, when they were
13 doing their final inspection for the building
14 code, is it your assumption that a
15 determination was made that okay, well, what's
16 been proposed on the application is eight?
17 We're carrying out our final determination
18 that yes, you've built according to plans
19 eight and so, the assumption that's
20 essentially associated with the C of O is
21 eight even though it doesn't say that.

22 MR. BELLO: And I'll try to

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1 understand your question.

2 Well, first of all, we're not privy
3 to whether there were an approved set of plans
4 that Mr. Byrd obtained to change the use from
5 a tenement house to a rooming house and quite
6 frankly from a practical standpoint, the
7 tenement house is a precursor cousin of the
8 rooming house. So, in affect, there may not
9 have been really a necessity for obtaining the
10 building permit because the life safety
11 requirements would have been the same for
12 both.

13 Further, if you look under -- right
14 below the line, and I'm referring to Tab D
15 here which is the application that accompanied
16 the certificate of occupancy, which floors
17 will be occupied for above use, it says all
18 plus basement and there seems to be further
19 inscriptions there that points to ten
20 bedrooms.

21 So, really when you put those two
22 facts together, I do not believe that a

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1 limitation on the number of rooming units was
2 at issue here of any zoning significance.

3 More importantly because the
4 property, obviously, is an historic district,
5 parking from a zoning standpoint would not
6 have been an issue and, of course, there would
7 have been some grandfathering from the
8 tenement house use because the parking
9 schedule as we know them today only dates back
10 to 1983 I believe.

11 VICE CHAIRPERSON DETTMAN: Thank
12 you.

13 CHAIRPERSON LOUD: Thank you, Mr.
14 Dettman. Any additional questions?

15 MEMBER MOLDENHAUER: Yes, just one.
16 Is it your position that if the
17 Rosans had maybe sought advice from somebody
18 prior to applying for their eight-unit C of O,
19 if they had submitted a C of O for 12 units
20 and they should have been granted that at that
21 point in time?

22 MR. BELLO: At the time, in fact,

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1 the Rosans should not have ended up with a BZA
2 application whatsoever. At the time that they
3 purchased the property, they ought to have
4 been able to walk in to get a certificate of
5 occupancy for the 15-room rooming unit if
6 that's what they wanted to do and I believe
7 that that's really what they asked for, but
8 were denied.

9 If I point you to Section 3203.5 of
10 the Zoning Regulations, that section permits
11 the issuance of a certificate of occupancy
12 over the counter even if there is to
13 construction or alteration and repair within a
14 building provided that the life safety
15 requirements for both uses were the same or
16 one was not greater than the other.

17 So, since we're not changing any
18 occupant load and it was just a name change, a
19 change of ownership, they were entitled to a
20 certificate of occupancy for a transient
21 rooming house for 15 rooms.

22 But, then they needed to reduce the

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1 occupant load. So, that's what led to their
2 building permit application.

3 MEMBER MOLDENHAUER: So, again, let
4 me just see if I can clarify for myself and
5 for the record, that the reason why we're here
6 today is that because at some point they went
7 and they obtained a reduced C of O which is
8 now the valid C of O for eight units and
9 because of that, they then need now this
10 exemption for the additional four.

11 MR. BELLO: Well, not of their own
12 making.

13 MEMBER MOLDENHAUER: I understand
14 that. That testimony. Yes. But, I'm just
15 trying to clarify that that's --

16 MR. BELLO: Exactly. Right. The
17 only --

18 MEMBER MOLDENHAUER: -- kind of the
19 history as to where we are now and why we're
20 here.

21 MR. BELLO: That's correct.

22 MEMBER MOLDENHAUER: Okay.

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1 MR. BELLO: In summary, that's --

2 CHAIRPERSON LOUD: Are you of the
3 opinion that the Zoning Administrator's
4 February 27, 2009 letter, I think it's Exhibit
5 5 in the record, yes, just to sort of follow
6 out this dialogue, is -- and I know it's not
7 before us today, but what is your opinion
8 about the opinions put forward in the Zoning
9 Administrator's February 27 letter?

10 MR. BELLO: Well, I think --

11 CHAIRPERSON LOUD: I think they
12 reject the grandfathering argument as to
13 anything but eight.

14 MR. BELLO: Well, as far as the
15 recision is concerned, that is absolutely the
16 correct decision.

17 As far as the limitation on the
18 number of unit, this is very clear to me that
19 Zoning Administrator basically was just
20 looking to the last certificate of occupancy
21 and not the totality of the zoning history
22 that affects this property.

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1 CHAIRPERSON LOUD: Any additional
2 questions? Okay. Then I think we're probably
3 at a very appropriate point to break for
4 today.

5 I believe that your case has come
6 to a close, Mr. Collins.

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

8 CHAIRPERSON LOUD: Okay. So, then
9 when we resume again, we pick up with the
10 Office of Planning's report and then the ANC
11 and the party status party would be presenting
12 their cases and you'd have an opportunity to
13 cross and so on and so forth.

14 I think what we need to do now is
15 see if we can get a date where the parties can
16 come back before us and we could resume the
17 hearing.

18 And I probably need a little help
19 in sorting through the calendar, but it looks
20 like it's a pretty full calendar until around
21 October 20. On October 20. So, in the --
22 one, two, three. Still pretty ugly.

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1 Okay. It looks like October 20th
2 is going to have an opportunity for us to
3 resume the hearing and Chairman Hood will be
4 back with us on October 20th.

5 MR. COLLINS: October 20th?

6 CHAIRPERSON LOUD: October 20th in
7 the afternoon and hopefully so that we don't
8 get in this position again, we'd be taking you
9 first on the 20th.

10 MR. HARGROVE: Mr. Chairman, if I
11 may, I'm informed that Mr. Crawford cannot be
12 here on that date.

13 CHAIRPERSON LOUD: Okay. Is there
14 an officer of the association, Mr. Crawford,
15 that could ably work with counsel regarding,
16 you know, the case that is going to be brought
17 forward that day?

18 You got to step up to the table.

19 MR. CRAWFORD: I don't think so to
20 be frank.

21 CHAIRPERSON LOUD: And get a
22 microphone. You need a microphone still.

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1 MR. CRAWFORD: Thank you. No, to
2 my knowledge, there is not another officer who
3 is prepared to do this. I will check, but I'd
4 be happy to do that and I regret, but I got a
5 business conference in Colorado.

6 CHAIRPERSON LOUD: Okay. Okay.

7 MR. CRAWFORD: That's not my
8 choice. I have to be there.

9 MR. HARGROVE: Yes, Mr. Chairman,
10 we don't want to create undue difficulties,
11 but I do think it would have a significant
12 affect on our case if Mr. Crawford could not
13 testify and someone had to be substituted for
14 him.

15 CHAIRPERSON LOUD: I'm sorry. We
16 were just sort of exchanging information.

17 MR. HARGROVE: We don't want to
18 create undue scheduling difficulties, but I do
19 think that Mr. Crawford is in a position to
20 play a unique role as a witness and it would
21 prejudice our case to some extent if he were
22 not permitted to testify.

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1 CHAIRPERSON LOUD: Okay.

2 MR. COLLINS: If everyone at the
3 condo is in support of this, then why wouldn't
4 someone else be prepared to testify?

5 CHAIRPERSON LOUD: I mean how --

6 COMMISSIONER MOYE: Yes, but Mr.
7 Crawford testified in 2003 --

8 CHAIRPERSON LOUD: -- far do we
9 need to dig down there. I think --

10 COMMISSIONER MOYE: -- and I think
11 -- I'd like to hope that we settle this issue
12 earlier. I mean --

13 CHAIRPERSON LOUD: Yes, I don't
14 want to dig too far down there. I mean he --
15 this is the first date that we've tried to
16 come up with. He says that he's out of town.
17 He's going to be in Colorado. I don't think
18 it's an extraordinary request for us to see if
19 there's another date that he might be
20 available. As we would, you know, extend the
21 same privilege to all the parties if a key
22 witness that they wanted to have was not going

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1 to be available.

2 Okay. And it looks like for us
3 October 27th the very next week would be
4 something we could do in the afternoon. We
5 could set it as the first case for the
6 afternoon. So, basically talking about seven
7 days later.

8 Does that work for all of the
9 parties? Okay. All right. Sounds good.

10 Then we will resume on Tuesday,
11 October 27th. It'll be the first case in the
12 afternoon.

13 I again want to apologize for those
14 of you that waited from -- in this case from
15 this morning to right now, but it's better
16 that we break and resume in a way we can hear
17 the entire case and everybody can be part of
18 it than to try to drag it on further tonight.

19 COMMISSIONER MOYE: Mr. Chairman,
20 just one additional point of clarification,
21 the record is not yet closed. So, if we feel
22 that there is additional materials we'd like

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1 to submit, we're free to do so. Is that
2 acceptable?

3 CHAIRPERSON LOUD: Well, what we're
4 doing really is continuing a case from today
5 as to which submissions should have been made
6 before today in any event, but you're right in
7 the sense that the record is not closed.

8 What did you have in mind? The
9 record is not closed. So. Yes. Yes. Well,
10 again the --

11 MR. COLLINS: Mr. Chairman, I would
12 request that the record be closed. I mean we
13 were all prepared to go forward today. You
14 know, it would be -- we've had cross
15 examination based on information in the
16 record. Any additional information is only
17 going to create additional, you know,
18 questions and additional opportunities, I
19 guess, for getting into other areas.

20 But, I would respectfully request
21 that the record be closed except for what's
22 been requested by the Board.

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1 CHAIRPERSON LOUD: I don't see how
2 we can do that. I mean we've only heard your
3 case and there may be -- by the time we get to
4 the end of the case, there could be a lot of
5 different things that we're interested in
6 requesting be made part of the record.

7 MR. COLLINS: Well, that's after
8 the case is over. I mean after the
9 presentations have been done.

10 CHAIRPERSON LOUD: Right. So, what
11 are you saying that we close? What do you
12 mean by that we should close the record?

13 MR. COLLINS: Between now and the
14 end -- between now and the continued hearing
15 date, that there be no additional --

16 CHAIRPERSON LOUD: Oh, no further
17 submissions with respect to the continuation
18 of the hearing.

19 Do the parties have a position on
20 that at all?

21 MS. BAILEY: Mr. Chairman, while
22 the parties are discussing the matter, the

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1 record earlier -- the Board Members had
2 requested that the Oakland Condo Association
3 provide a letter of authorization for Mr.
4 Hargrove and Mr. Crawford to represent them,
5 binding the association. So, that document
6 should come in the record.

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

9 COMMISSIONER MOYE: I'd like it to
10 be open, but --

11 CHAIRPERSON LOUD: Yes, let's see
12 how Board Members think? My gut is I think,
13 you know, we can -- I don't want to encourage
14 this, you know, flurry of filing on any issue,
15 but I think that we probably are capable of
16 taking a look at anything that might come in
17 that might be significant and making a
18 decision on the spot as to whether we're going
19 to let it in as opposed to just closing the
20 record in the middle of the hearing.

21 That's my gut, but I'm wide open to
22 any other opinion.

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1 VICE CHAIRPERSON DETTMAN: Mr.
2 Chairman, I'm actually in favor of having the
3 record closed until our continuance date.
4 Only because in past cases that have a bit of,
5 you know, opposition, we've seen, you know, a
6 flurry of filings and it's a volley of
7 responses and it just kind of muddies the
8 record and it makes for a very difficult and
9 clean decision at the end of the day.

10 So, perhaps we can just close the
11 record and basically, I think what that allows
12 us to do is if we do receive filings in
13 addition to the one Ms. Bailey mentioned, it
14 allows us to upon reopening the record decide
15 whether or not their pertinent to the issues
16 that are before the Board and allow us to
17 allow what's pertinent and not allow what's
18 not.

19 CHAIRPERSON LOUD: Okay. I'm
20 amenable to that. I guess what I'm hearing is
21 like no further filings until October 27th and
22 I think if that's the direction we want to go

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1 in, I'm fine with that. I'm amenable to that
2 and then we'll resume October 27th.

3 Obviously, if there's something of
4 an emergency nature that comes in, we'll
5 evaluate whether it should be let in, but we
6 definitely I think as Mr. Dettman and Mr.
7 Collins were moving in that direction do not
8 want to encourage this flurry of filings that
9 always happens in contentious cases.

10 MEMBER MOLDENHAUER: I agree with
11 Mr. Dettman. We should close the case. Close
12 the record rather.

13 CHAIRPERSON LOUD: Okay. And
14 again, you mean temporarily until we come back
15 and --

16 MEMBER MOLDENHAUER: Yes, and I
17 think that, you know, if we request any
18 documents, then obviously, they would be
19 provided for us after we finish hearing any of
20 the additional testimony.

21 But, that it would really only be
22 open for us requesting specific items that we

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1 want.

2 CHAIRPERSON LOUD: Okay. Okay.

3 I'm quite amenable to that.

4 Any final words from the parties?

5 Okay. Then we'll resume the hearing on

6 October 27th, first case in the afternoon. No

7 further filings until that time.

8 Thank you. Appreciate your

9 patience and look forward to seeing you again

10 on the 27th.

11 Ms. Bailey, is there anything

12 further on the calendar for today?

13 MS. BAILEY: No, Mr. Chairman.

14 CHAIRPERSON LOUD: This meeting is

15 adjourned.

16 (Whereupon, the hearing was

17 concluded at 7:26 p.m.)

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