

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 27, 2009

+ + + + +

The Regular Public Meeting convened in Room 220 South, 441 4<sup>th</sup> 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, Chairman  
SHANE DETTMAN, Vice Chair (NCPC)  
MERIDITH MOLDENHAUER, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Zoning Commissioner (NPS)

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.

The transcript constitutes the minutes from the Public Meeting held on October 27, 2009.

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

2 10:20 a.m.

3 CHAIRPERSON LOUD: The meeting will  
4 please come to order.

5 Good morning, ladies and gentlemen.

6 This is the October 27th Public Meeting of  
7 the Board of Zoning Adjustment of the District  
8 of Columbia.

9 My name is Marc Loud, Chairperson.

10 To my right is Mr. Shane Dettman  
11 representing the National Capital Planning  
12 Commission, Mr. Peter May representing the  
13 Zoning Commission, Mrs. Meridith Moldenhauer  
14 to my left, Mayoral Appointee to the BZA. Mr.  
15 Clifford Moy, Secretary to the BZA. And my  
16 far left Ms. Beverley Bailey, Zoning  
17 Specialist, Office of Zoning.

18 We would like to apologize to each  
19 of you for coming out here late this morning.

20 It's our intention every Tuesday to get out  
21 here by 9:30 a.m. So we do apologize.

22 Copies of today's meeting 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 We do not take any public testimony  
4 at our meetings unless the Board asks someone  
5 to come forward.

6 Please be advised that this  
7 proceeding is being recorded by a court  
8 reporter and it's also webcast live.  
9 Accordingly, we must ask you to refrain from  
10 any disruptive noises or actions in the  
11 hearing room. Please turn off all beepers and  
12 cell phones.

13 Does the staff have any preliminary  
14 matters?

15 SECRETARY MOY: Yes, we do, Mr.  
16 Chairman. But I would suggest that we take  
17 that on a case-by-case basis.

18 CHAIRPERSON LOUD: I think we can  
19 proceed with the agenda. And I believe the  
20 order that we'd like to call the cases may  
21 vary from the published agenda, in that we'd  
22 like to call Hosseinkhani first, then D.C.

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1 Public Library, then the Park's matter.

2 SECRETARY MOY: Yes, sir.

3 Good morning, Mr. Chairman, members  
4 of the Board.

5 The first case for decision then,  
6 would be Application No. 17934 of Mr.  
7 Hosseinkhani, pursuant to 11 DCMR § 3103.2,  
8 for a variance from the nonconforming  
9 structure provisions under subsection 2001.3  
10 to allow a third-story addition to an existing  
11 flat, which is a two-family dwelling in the R-  
12 4 District at premises 1721 4th Street,  
13 Northwest. That's in Square 519, Lot 54.

14 If the Board will recall, this  
15 application was amended to also include area  
16 variance relief from the lot occupancy section  
17 403.2 and the rear yard setback, section 404.1  
18 because of an addition of deck.

19 At it's last public meeting on  
20 October 6, 2009 the Board convened and  
21 deliberated on Application 17934. After  
22 discussion, rescheduled its decision to

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1 October 27th. This was to allow the Board the  
2 opportunity to review the applicant's untimely  
3 filing at the time, which was granted into the  
4 record. It would also allow time for the ANC-  
5 5C additional time to clarify its position.

6 There are no additional filings in  
7 the record, Mr. Chairman. During the course  
8 of the Public Hearing ANC 5C did submit a  
9 revised resolution letter, dated October 5,  
10 2009, although it was date stamped October 6,  
11 2009 stating how the ANC voted and meeting the  
12 other requirements in the Zoning regulations.  
13 That's identified as Exhibit 31 in your case  
14 folder.

15 The Board is to act on the merits  
16 of the multi-variance relief.

17 And that completes the staff's  
18 briefing, Mr. Chairman.

19 CHAIRPERSON LOUD: Thank you.

20 I believe that, as you indicated,  
21 we have a full record before us in  
22 Hosseinkhani and we're prepared to deliberate.

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1 And Board Member Dettman is going to lead us  
2 off.

3 VICE CHAIRPERSON DETTMAN: Thank  
4 you, Mr. Chairman. I think it's going to be  
5 relatively quick.

6 I think what we're looking at here  
7 is a variance request 404, 403 and 2001.3 for  
8 an addition story to an existing building  
9 located at 1721 4th Street, Northwest.

10 As you'll recall, at the original  
11 hearing the Board showed a little bit of  
12 concern about the proposed architectural  
13 design of the additional floor and requested  
14 that the applicant revisit the design. And on  
15 September 25, 2009 we received some revised  
16 architectural drawings.

17 So with respect to the variance  
18 test, I think that I'll rely a little bit on  
19 DC OP's report submitted to us in Exhibit 21  
20 for the purposes of taking the Board through  
21 that test.

22 I think the applicant has

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1 successfully demonstrated that the property  
2 does have some extraordinary conditions or  
3 exceptional situations in that it's an  
4 excessively small property. I believe OP's  
5 report called it the smallest property in the  
6 square. It's also the only triangular shaped  
7 lot in the square. And looking at OP's  
8 report, Exhibit 1, you can see how unusually  
9 shaped that is.

10 In addition, the existing building  
11 that's on the property currently does occupy a  
12 very large percentage of the property leading  
13 to an existing nonconformity in lot occupancy.

14 With respect to the second prong of  
15 the test of whether or not those two  
16 exceptional conditions, the odd shape as well  
17 as the small size of the property, gives rise  
18 to a practical difficulty, I think that burden  
19 is met as well. I think the existing  
20 nonconformity lot occupancy is not being  
21 expanded with this particular project. The  
22 only reason why lot occupancy relief is

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1 necessary is because this is an addition, a  
2 third-floor addition to the existing  
3 nonconforming building. It's again not  
4 increasing the lot occupancy.

5 And in order to comply with lot  
6 occupancy and rear yard, the applicant will be  
7 required to demolish a substantial portion of  
8 the building simply to come into conformance  
9 with the regulations to add the third-story.

10 The applicant did provide some  
11 testimony about having a practical difficulty  
12 to provide larger living spaces to meet modern  
13 standards. And while the Board has  
14 entertained that argument as a practical  
15 difficulty in the past, and may do so in the  
16 future, I think for purposes of this  
17 application I don't think the applicant has  
18 testified to orally or submitted into the  
19 record adequate information that would allow  
20 us to find that a practical difficulty does  
21 exist with respect to providing larger living  
22 spaces. But nonetheless, I think that the

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1 second prong of the variance test is met  
2 simply because of the need to demolish a  
3 portion of the structure.

4 The third prong of the test, again,  
5 I think that's also met. I don't think that  
6 the addition of the third-story will cause any  
7 substantial detriment of public good or the  
8 intent and purpose of the Zone Plan,  
9 especially with respect to the revised  
10 drawings that we received on September 25th.  
11 I think the revised architectural design is  
12 more in tune with the existing structure and  
13 the mansard roof that exists, as well as the  
14 surrounding neighborhood.

15 So, Mr. Chair, I think that the  
16 variance test is adequately met.

17 We did receive Exhibit 31 from the  
18 ANC who took a supportive vote on October 5,  
19 2009 with a quorum present, 10 members of a  
20 total of 12. And they voted to support the  
21 project.

22 As a final note, we did receive a

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1 letter in support, which is our Exhibit 23,  
2 from a Muriel Gregory.

3 We received a signed petition,  
4 Exhibit 24, in support of the project.

5 We also did receive one letter in  
6 opposition to the project from a Mr. John  
7 Grumbind at 1706 4th Street, Northwest  
8 indicating concerns regarding the  
9 architectural integrity of the Wardman design,  
10 parking issues and the values of neighboring  
11 properties. And I think, I mean this is a  
12 property that doesn't provide any parking  
13 right now and since it was constructed prior  
14 to the Zoning Regulations, it's grandfathered  
15 at least space.

16 And I think the requirement is only  
17 one space, according to the regs. And I think  
18 that the revisions to the architectural design  
19 take care of the concerns regarding  
20 architectural integrity of that existing  
21 building.

22 So, Mr. Chairman, as I'm sure

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1 you're aware, I can make a motion if you're  
2 ready or I can turn it back to you for other  
3 comments by other Board members.

4 CHAIRPERSON LOUD: That was a great  
5 analysis. I don't have any comments. Let's  
6 see if Mr. May may have.

7 Ms. Moldenhauer, you're on this  
8 case, are you? You are. Okay. We'll see if  
9 they have any comments. If not, we can go  
10 back to you for the motion.

11 COMMISSIONER MAY: I'm not going to  
12 touch on all three points. I do want to talk  
13 about the detriment to public good and the  
14 concern of the neighbor across street about  
15 exactly what this building would look like.  
16 Because what was originally presented in the  
17 application, I think, was problematic to say  
18 the least.

19 And I think that at the moment the  
20 city is being plagued by a number of third-  
21 story additions that are very unattractive and  
22 not fitting, and many of them proceed as a

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1 matter-of-right. But there's actually a long  
2 history in this city of doing that with two-  
3 story buildings. It's actually very, very  
4 common.

5           And the thing is that when people  
6 did it in 1920 or 1930, at this point when we  
7 look at those buildings we don't really notice  
8 that those were actually originally built as  
9 two-story buildings, and then there's that  
10 third-story. And very often what happens is  
11 the bay gets extended and you wind up with a  
12 little porch or there or there are other  
13 treatments that make it blend in with the  
14 architecture of the building.

15           What we originally had in front of  
16 us was something where it did not blend with  
17 the architecture of the building or the row,  
18 and it stood out like a sore thumb. And I  
19 think in those circumstances we should be  
20 vigilant about what we allow to proceed. And  
21 I think that in the end what has been  
22 presented with a slight increase in the height

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1 of the mansard portion of the roof I think  
2 addresses this adequately and makes it fit  
3 much better into the context of the  
4 neighborhood. And I hope that it all comes  
5 through exactly and looks as good as it does  
6 in the renderings. But I'm pretty confident  
7 that it will, and so that's why I'm  
8 comfortable moving ahead.

9 CHAIRPERSON LOUD: Thank you, Mr.  
10 May.

11 Mrs. Moldenhauer?

12 BOARD MEMBER MOLDENHAUER: I think  
13 that Mr. Dettman summarized the issues, and I  
14 believe that they've met the test.

15 CHAIRPERSON LOUD: Thank you.

16 Mr. Dettman, I think that we'll  
17 turn back to you now for your motion. I just  
18 wanted to say, again, it was a great analysis  
19 of everything.

20 Out of an abundance of caution, I  
21 thought I heard you mention that the OP  
22 report was Exhibit 1. And just in case you

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1 did, I wanted to indicate that it was Exhibit  
2 21 in case anyone was relying on that part of  
3 your comments and goes back to check in the  
4 record for Exhibit 1.

5 Is there a motion?

6 VICE CHAIRPERSON DETTMAN: Yes, Mr.  
7 Chair. And this motion is made on the plans  
8 that are before the Board in Exhibit 30, which  
9 is the revised plans. I'm not sure if I  
10 mentioned that.

11 That being said, I would move for  
12 approval of Application No. 17934 pursuant to  
13 11 DCMR § 3103.2, for a variance from the  
14 nonconforming structure provisions under  
15 subsection 2001.3 and a variance from the area  
16 requirements of 404 and 403 rear yard and lot  
17 occupancy to allow a third-story addition to  
18 an existing flat in the R-4 District at 1721  
19 4th Street, Northwest.

20 CHAIRPERSON LOUD: Thank you, Mr.  
21 Dettman.

22 Motion has been made. Is there a

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1 second?

2 COMMISSIONER MAY: Second.

3 CHAIRPERSON LOUD: Motion's been  
4 made and seconded.

5 Is there further deliberation?  
6 Hearing none, all those in favor of the motion  
7 say aye?

8 ALL: Aye.

9 CHAIRPERSON LOUD: All those who  
10 are opposed? Are there any abstentions?

11 Mr. Moy, can you read back the vote  
12 for us, please?

13 SECRETARY MOY: Yes, sir. The  
14 final vote is four to zero to one on the  
15 motion of the Vice Chairman Dettman to approve  
16 the application for the variance relief  
17 stated.

18 Second the motion Mr. Peter May.  
19 Also in support of the motion Ms. Moldenhauer  
20 and Mr. Loud. And no other Board  
21 participated.

22 So again, the final vote is four to

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1 zero to one. Other than that the Board wishes  
2 to waive the requirements of a summary order  
3 or not.

4 CHAIRPERSON LOUD: Thank you, Mr.  
5 Moy. So we can a summary order?

6 SECRETARY MOY: Yes, sir. The ANC  
7 was in support of the --

8 CHAIRPERSON LOUD: Is that correct?  
9 Okay. So why don't we do that.

10 And congratulations to the  
11 applicant in this case.

12 Is there anything further in this  
13 case? Okay.

14 When you're ready, Mr. Moy, you can  
15 call the next case.

16 SECRETARY MOY: That would be  
17 Application No. 17973 of D.C. Public Library,  
18 pursuant to 11 DCMR § 3193.2, for a variance  
19 from the off-street parking requirements under  
20 subsection 2101.1. As the Board will recall,  
21 the applicant amended their application to  
22 withdraw relief from the open court with

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1 requirements under section 406.

2 This is to construct a new full-  
3 service neighborhood library in the R-2  
4 District at premises 115 Atlantic Street,  
5 Southwest. Square 6172W, Lot 813.

6 As the Board will recall at its  
7 Public Decision Meeting on October 6, 2009 the  
8 Board convened, deliberated. After discussion  
9 the Board on its own motion rescheduled its  
10 decision to October 27th. This would allow  
11 ANC-8D to correct deficiencies in its  
12 resolution letter to meet the requirements of  
13 3115.1 including the option of further  
14 clarifying its exposition.

15 There were three filings in your  
16 case folders, Mr. Chairman. The first from  
17 ANC 8D, dated October 20, 2009, date stamped  
18 October 22nd, 2009, Exhibit 38. In this  
19 letter it also contains a request for the  
20 Board to continue its decision "in order to  
21 revisit dialogue with the community and the  
22 D.C. Public Library." This would be a

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1 preliminary matter, Mr. Chairman.

2 The second filing is also a second  
3 filing of ANC 8D, which is dated October 23rd  
4 of 2009, identified as Exhibit 39.

5 And finally yesterday the Applicant  
6 DCPL filed a motion to strike. This document  
7 is dated October 29, 2009, which should be  
8 Exhibit 40.

9 The Board is to act on the  
10 preliminary matters and to then act on the  
11 merits of the variance relief.

12 That completes the staff's  
13 briefing, Mr. Chairman.

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

16 I believe that we've got a  
17 considerable record before us and want to move  
18 forward. I believe let's do this, let's start  
19 out with the threshold issue of this Exhibit  
20 38 and Exhibit 39 and the response to that.  
21 And then we can move into the issue on the  
22 merits.

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1 I think Ms. Moldenhauer is going to  
2 lead us off, certainly if we proceed to a  
3 discussion on the merits. Did you want to  
4 lead us off on the threshold question as well?  
5 If not, I'm happy to start us off there.

6 BOARD MEMBER MOLDENHAUER: Chairman  
7 Loud, I can start us off and then, obviously  
8 you can.

9 CHAIRPERSON LOUD: Okay.

10 BOARD MEMBER MOLDENHAUER: There's  
11 going to be a lot of discussion on this issue,  
12 so I think --

13 CHAIRPERSON LOUD: Enough for  
14 everybody here?

15 BOARD MEMBER MOLDENHAUER: Yes.

16 CHAIRPERSON LOUD: Okay.

17 BOARD MEMBER MOLDENHAUER: The  
18 preliminary issue is whether or not we will  
19 address the motion to postpone, which was  
20 requested in Exhibit 39 by the ANC. So I  
21 think what we should do is we should first  
22 take whether or not we're actually going to

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1 accept that motion and whether we would strike  
2 that motion or not. And then once we accept  
3 or strike that motion, we can then determine  
4 how we would act on that motion.

5 So I think that as a preliminary  
6 matter since a motion has been submitted, even  
7 though we do not accept supplemental  
8 documentation after the record is closed, a  
9 motion can be accepted. And this is a motion  
10 to postpone or stay; I'd personally like to  
11 rather clarify it as a motion to postpone  
12 rather than as an indefinite stay or a stay  
13 until an unstated time frame as the letter  
14 states by Mrs. Jones.

15 So I would actually be in favor of  
16 addressing the motion on its merits and  
17 considering that, and then discussing that if  
18 anyone has any additional discussions.

19 CHAIRPERSON LOUD: Thank you, Ms.  
20 Moldenhauer. I'd be in support of what you've  
21 just suggested. And it looks like from the  
22 silence that everyone's agreeing with you.

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1 BOARD MEMBER MOLDENHAUER: So then  
2 the next preliminary issue is whether or not  
3 we would consider to grant the motion to  
4 postpone or whether we would consider to deny  
5 the motion to postpone.

6 I think that the issues presented  
7 by the ANC in Exhibit 29 in regards to good  
8 faith definitely bring up some concerns. And  
9 this entire record has been quite  
10 disheartening as to the fact that the  
11 applicant has continually failed to present a  
12 clear dialogue with the community, especially  
13 considering that this is a D.C. Public Library  
14 which is going to be serving the community,  
15 considering that it's very disheartening.  
16 However, I don't think that I can link their  
17 request to the specific issue that's being  
18 addressed, which is just the variance for  
19 parking. I think that the record is full in  
20 that regard, and that we could move forward  
21 for a deliberation on that case.

22 CHAIRPERSON LOUD: Thank you, Ms.

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1 Moldenhauer.

2 Other Board members?

3 I would agree with you, Ms.  
4 Moldenhauer. Some of the issues that are  
5 raised in this Exhibit 39, and presumably, are  
6 linked to the request for a continuance as you  
7 suggest don't deal with the parking, which is  
8 the only variance request before us now. They  
9 talk about a raze permit being issued for the  
10 building; why a new building as opposed to  
11 rehabing the existing building.

12 So for all the reasons that you  
13 just laid out, I'm supportive of allowing it  
14 in the record, have reviewed it, of course,  
15 and have reviewed the opposition to it and  
16 would not be in favor of granting it.

17 BOARD MEMBER MOLDENHAUER: With  
18 that if there's no additional deliberations, I  
19 will submit a motion. A motion to accept  
20 Exhibits 38, 39 and Exhibit 40, which would be  
21 the applicant's motion to strike and/or deny  
22 the motion to postpone.

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1                   And then I'd make a motion to deny  
2 the motion to postpone and move forward on the  
3 merits. Do I have a second?

4                   CHAIRPERSON LOUD: Why don't we do  
5 this: Did you make two motions?

6                   BOARD MEMBER MOLDENHAUER: I did.

7                   CHAIRPERSON LOUD: Why don't you  
8 make one at a second, or the second one at a  
9 time. All right.

10                  BOARD MEMBER MOLDENHAUER: Okay.  
11 Then the first, I'll make a motion to accept  
12 the motion. Yes. To accept the motion to  
13 postpone and accept Exhibits 38, 39 and  
14 Exhibit 40.

15                  CHAIRPERSON LOUD: Motion seconded.  
16 Any further discussion?

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

19                  ALL: Aye.

20                  CHAIRPERSON LOUD: Is there any  
21 opposition? And there are abstentions.

22                  Mr. Moy, can you read back the

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1 vote?

2 SECRETARY MOY: Yes, sir.

3 The final vote would be four to  
4 zero to one on the motion of Ms. Moldenhauer.

5 Second by Mr. Loud. Also supported the  
6 motion Mr. May and Mr. Dettman, the motion as  
7 stated by Ms. Moldenhauer. So again, that was  
8 four to zero to one.

9 BOARD MEMBER MOLDENHAUER: Next I  
10 will make a motion to deny the motion to  
11 postpone the request in Exhibit 39 by the ANC.

12 CHAIRPERSON LOUD: Motion seconded.  
13 Any further deliberation?

14 Hearing none, all those in favor  
15 say aye.

16 ALL: Aye.

17 CHAIRPERSON LOUD: There's no  
18 opposition. Are there any abstentions?

19 Mr. Moy, can you read back the  
20 vote?

21 SECRETARY MOY: Yes, sir. Again,  
22 the final vote would be four to zero to one on

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1 the motion of Ms. Moldenhauer to deny the  
2 motion to postpone as cited in Exhibit 39.

3 Second by Mr. Loud. Also supported  
4 the motion Mr. May and Mr. Dettman. No other  
5 Board member participating. So again, the vote  
6 is four to zero to one.

7 CHAIRPERSON LOUD: Thank you, Mr.  
8 Moy.

9 CHAIRPERSON LOUD: Okay. Before us  
10 now we have the application for a parking  
11 variance pursuant to section 2101.1 The prior  
12 application for a variance for open courts had  
13 been taken out of the case, and so the only  
14 issue before us is the issue for parking.

15 The requirements are for a  
16 determination that the subject property is  
17 unique, as it regards to topography and the  
18 rear retaining wall. And that that specific  
19 issue of topography and the existing retaining  
20 wall present a particular practical difficulty  
21 for the applicant in order for them to satisfy  
22 the required parking, which would be for this

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1 project, 21 parking spaces.

2 They present testimony that they  
3 would only be able to present seven parking  
4 spaces and that that would not have any impact  
5 on the Zoning Plan.

6 Prior to going into each of those  
7 elements, I will just say there has been  
8 testimony and parties to the ANC in this case.

9 And we have received additional supplemental  
10 letters to provide great weight. And based on  
11 all of the documentation there's an inference  
12 that the record has both notice, the quorum  
13 was present and that they specifically  
14 identified the different conditions or  
15 elements that they wanted the Board to  
16 consider great weight.

17 Going through the different issues,  
18 I do think that this property does have a  
19 unique topography and that there is a  
20 considerable issue of the retaining wall. I  
21 think that that is very clear in the case.  
22 It's clear by the OP's report.

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1           So then going on to the second  
2           prong of the test is whether or not that issue  
3           of the topography and retaining wall creates  
4           the practical difficulty for the parking  
5           variance. And I think then, you know, I go to  
6           the different testimony and all of the  
7           different documentation.

8           We have statements from the  
9           Architect and from the applicants Jeff  
10          Bonvechio, stating that the need for -- that  
11          they currently evaluated the parking to be  
12          about nine spaces, and that staff currently  
13          park off-street. And that the topography and  
14          the needs of the project based on Monaco would  
15          require them to need separate sections in the  
16          project for teenagers, for younger students in  
17          order to meet their needs of a public library  
18          and the institutional requirements.

19          So that is some of the reasons that  
20          they present for the need -- in fact, the cost  
21          of actually going underground based on the  
22          development envelope of the site because of

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1 the topography in the rear of the lot and the  
2 retaining wall would create a potential  
3 difficulty to actually build any parking  
4 underground.

5           However, there is testimony, which  
6 is there's some questions, so there's  
7 testimony from the ANC, a Mrs. Jones, that  
8 there were actually 14 spaces in the rear of  
9 the property, not nine. And then by Mr. Oaten  
10 that there was actually 15 in the rear of the  
11 property. Again, not nine. And that, you  
12 know, those were currently not being used  
13 because that was mainly locked. And so I  
14 think that there is a question as to how much  
15 parking would be needed if it was redeveloped  
16 and if there was an actual determination as to  
17 what was there and what would be needed on the  
18 site.

19           In addition to that, there was a  
20 reference in the OP's report that directly  
21 across the street is the South Capitol  
22 Terrace, which has commercial parking which

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1 would assist the project and would also be for  
2 the fact that they wouldn't actually need the  
3 full parking of the 21 spaces.

4           However, there was also testimony  
5 by -- I'm not sure actually who it was by.  
6 But that's all right. It was stated that there  
7 was going to be development across the street,  
8 so I think there's a question as to whether or  
9 not that factor should really be considered.  
10 Because if there's development, then that  
11 commercial space, within the walls of that  
12 commercial parking would be lost.

13           So the question is: Do they meet  
14 the test in regards to the topography being  
15 the direct cause of the practical difficulty?  
16 And I think the one question that I still have  
17 is the architect upon a question by the Board  
18 members had not considered any other layouts  
19 based on the ability for them to develop that  
20 site. So there was really no telling us  
21 whether or not there would be a different  
22 envelop that would permit more parking for the

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1 community and for the site. And I think that  
2 still creates a question in my mind as to  
3 whether or not the topography is the exact  
4 reason for the practical difficulty. And that  
5 being my concern and my issue, I'll open up  
6 any additional conversation for the Board.

7 CHAIRPERSON LOUD: Thank you, Ms.  
8 Moldenhauer. That was an excellent summary of  
9 the facts in the case and the standard that  
10 applies.

11 Let me just run through some of  
12 what you set before us and provide my own take  
13 on some of the evidence, and then open it up  
14 further for our other Board members.

15 In terms of the uniqueness, I agree  
16 with you. The testimony revealed that there's  
17 an 18 percent whether the lot is unbuildable  
18 due to the grade in the rear of the property  
19 where the retaining wall is. There's a 16  
20 foot high retaining wall.

21 In addition to that, there's a 12  
22 foot no building zone in the rear of the

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1 property. There's a building restriction line  
2 of 15½ feet, but I don't know if that  
3 necessarily affects the parking part of the  
4 equation. But all of this together paints a  
5 portrait of a confluence of factors that  
6 suggests that the property is exceptional.

7 In terms of practical difficulty,  
8 the applicant testified that the constrained  
9 size of the lot along with the program needs  
10 that it had as a nonprofit under Monaco, which  
11 you mentioned, essentially prevented them from  
12 providing 14 additional spaces because they'd  
13 basically only be able to provide those spaces  
14 by going underground. And I think the record  
15 before us indicated that that would cost about  
16 \$200,000 for them to go underground. And so  
17 that created a practical difficulty just in  
18 terms of the cost.

19 In terms of the program needs, the  
20 testimony was that they've got three different  
21 populations that they're trying to serve:  
22 Teens, I think young children, I guess they

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1 call it tweens now and seniors. And the  
2 testimony was, anyway, through some meetings,  
3 interaction with the community there was some  
4 interest in separating these different  
5 populations. And so these, what we're calling  
6 pods were created as a part of the design to  
7 keep the different populations separated  
8 within the building. And so that influenced  
9 their design choice, which was driven by what  
10 they identified as a program need.

11 With respect to substantial  
12 detriment to the public good, I believe that  
13 Ms. McCarthy appeared for the applicant and  
14 she testified that it was her opinion that  
15 there would not be any substantial detriment  
16 to the public good because in her testimony  
17 there were 12 nearby bus routes, 34 percent of  
18 the local population was under 18, and I guess  
19 her conclusion that they would not drive.  
20 Seven percent over 65. They did an anecdotal  
21 survey which show that 30 percent, according  
22 to her testimony, drove as part of the survey.

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1       And then she indicated that there was  
2       substantial on-street parking nearby. And you  
3       mentioned in your analysis the Capitol South  
4       across the street.

5               So there was I think significant  
6       testimony in the record that would tend to  
7       support a conclusion on my part that there  
8       would not be substantial detriment to the  
9       public good as relates to the whole issue of  
10      the parking.

11             We had a number of witnesses that  
12      came before us from the ANC.

13             I want to commend the ANC because  
14      as I recall, not only did most of Ward 8A and  
15      C come, they came and they were not prepared  
16      to go forward that day with the actual  
17      hearing. I think they wanted it continued.  
18      And we voted to go forward that day. And  
19      notwithstanding that, they were all there,  
20      they were all very prepared, all of them  
21      testified in opposition to it. And I'm just  
22      going to briefly go through some of that

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1 testimony.

2 I believe Commissioner Mitchell,  
3 Melvin Mitchell or if he's not a Commissioner,  
4 I think he's just a witness of the ANC. He's  
5 an architect, faculty member at UDC. He  
6 testified about the community outrage at the  
7 lack of interaction with the architects for  
8 the project, which is a thing that we hear  
9 over and over again from this record in terms  
10 of the exhibits, the actual testimony from the  
11 witnesses. And that where the community had  
12 gotten together, it was clear from Mr.  
13 Mitchell's perspective that the community was  
14 very much in opposition to the design of the  
15 project. There was some concern about the  
16 loss of parking and the impact on nearby  
17 residents from Mr. Mitchell. But there was  
18 just tremendous amount of angst about the  
19 design. He saw the design as a sore thumb in  
20 the community.

21 Commissioner Sims appeared, and his  
22 testimony was that the majority of the

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1 community does not favor the project due to  
2 the parking. And that the current library  
3 redevelopment was being done not for the  
4 current residents, but for presumably folks  
5 that would be moving in at some unspecified  
6 point in time.

7 Commissioner Shelton appeared as  
8 well. And he was additionally a voice in  
9 opposition to the project. He'd indicated how  
10 long he'd lived in D.C., been a resident since  
11 1952. His bottom line was design. He called  
12 it a hideous structure, completely out of  
13 realm for what should be in that community.  
14 Felt like the Government was shoving the  
15 project down the community's throat. Again,  
16 echoing Mr. Mitchell and some of the other  
17 ANCs that there had been no outreach to the  
18 community and no outlet for feedback.

19 Mr. Audit appeared. He's with Mt.  
20 Pleasant ANC and a community organizer. And,  
21 again, the issue of the design of the project  
22 came up and the way that allegedly the Public

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1 Library precluded Ward 8 residents from  
2 speaking directly with the architect. It was  
3 his opinion, although he's not an architect,  
4 that the pods were not necessary, that there  
5 had not been discussion with the community  
6 about the pods.

7 Let's see, Ms. Deon Brown appeared  
8 as well and she testified. She testified that  
9 there was broad community support for the  
10 library. She also indicated that there was a  
11 literature drop done for every house in the  
12 community, and it was her opinion that the  
13 community was excited about rebuilding the  
14 library. Thought it would be a rebranding for  
15 the neighborhood. And she indicated that the  
16 design changes were well received, and that  
17 the neighbors on her block or the neighbors of  
18 the local community were interested. Were  
19 mostly seniors and very interested in life  
20 long learning opportunities and so welcomed  
21 the library.

22 Chairman Jones appeared in

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1 opposition. Did not support 14 space variance  
2 because she believed it need to be absorbed by  
3 nearby residents. That a number of neighbors  
4 had converted their garages already for  
5 personal use and so did not have access to  
6 their own off-street parking.

7 And she had some concerns about the  
8 courts at the time that she appeared, but  
9 those concerns I think were remedied by the  
10 fact that the court relief has now been  
11 removed.

12 And, again, this theme of the  
13 design, of it not being consistent with the  
14 surrounding community.

15 So there was a lot of testimony  
16 both for the project in terms of the variance  
17 standard, against the project for the variance  
18 standard.

19 When I look at the record before  
20 us, I'm looking very narrowly at the variance  
21 test. And you did an excellent job of  
22 outlining what the elements are, the

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1 uniqueness, the separate situation, the  
2 practical difficulties, the substantial  
3 detriment to the public good, et cetera. And  
4 as the application is now before us, it has  
5 gone through some changes.

6 I believe the ANC had a meeting on  
7 September 24. Representatives from the D.C.  
8 Public Library apparently were there based on  
9 the exhibit that the ANC submitted to us. I  
10 think it's our 38, maybe. And I think  
11 Councilmember Barry was there, that's in the  
12 ANC's representation of who was at that  
13 meeting.

14 The design was changed a little.  
15 It's not clear from the record if it was  
16 changed because of that meeting or if it was  
17 changed anyway, but it was softened in the  
18 sense that the pods, which were I think multi-  
19 colored initially when it came up before the  
20 Board, there's a uniform finish now and then  
21 color to it that makes it somewhat more  
22 harmonious with the main part of the building.

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1           Given what I can see in the record,  
2 I think that the applicant has made a case for  
3 variance relief. I will say that I've not  
4 seen a case before me during my tenure here on  
5 the BZA where it appears from the record  
6 consistently in different types of exhibits  
7 that an applicant either has gone out of its  
8 way or just through oversight has consistently  
9 not engaged the community on its project. And  
10 it baffles me as to why that's the case. It's  
11 almost like the applicant -- this is just pure  
12 speculation, this is not the record. So I'm  
13 not going to say that.

14           But it's baffling to get a good  
15 handle on the outreach strategy of the  
16 applicant in this case.

17           That notwithstanding, I think our  
18 jurisdiction is the land use issues and  
19 specifically the parking variance for 66  
20 percent, for 14 spaces. And I think based on  
21 the testimony in the record, the testimony of  
22 Ms. McCarthy, the testimony regarding the

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1 availability of parking in the nearby area and  
2 whether it would create a detrimental impact,  
3 I think that they've made their case.

4 I think that the objections of the  
5 community are strong objections, but I don't  
6 think all of them go to the land use issues  
7 that we deal with. And I think there are  
8 other forms in our overall scheme of engaging  
9 civic leaders that are proper forms for those  
10 issues to be addressed. From a land use  
11 standpoint, though, I think that the applicant  
12 has made a case.

13 And with that, let me turn to other  
14 Board members.

15 COMMISSIONER MAY: Thank you, Mr.  
16 Chairman.

17 I have a few comments to make. I  
18 think, first of all, I sorry -- Board member  
19 Moldenhauer used the right word in describing  
20 the process as disheartening. and it really is  
21 disheartening to have a case like this come  
22 before us when there is such acrimony between

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1 the applicant and the ANC when the applicant  
2 is a public agency that's trying to provide  
3 services to that community. It's just  
4 baffling to me that this would be such a  
5 contentious issue.

6 That the design of the project  
7 itself would cause such difficulties for the  
8 ANC, and the agency, the Public Libraries  
9 would insist on pressing forward for this with  
10 every available means. It's astonishing to  
11 me. And this is the sort of thing that I've  
12 had to do in my career is advocate for public  
13 building projects and meet with communities,  
14 and work with them to resolve issues. I just  
15 don't understand it. Now that's just a  
16 reaction to the nature of the case.

17 I think it's very good that the  
18 court relief that was originally requested has  
19 been addressed in another way. Because I  
20 think that that was very clearly self-imposed  
21 in my mind by the design and it was something  
22 that could be addressed by a design change,

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1 and it was.

2           There remain, I think, significant  
3 design issues:

4           I think the fact that the parking  
5 is in front of the building is bad;

6           I think the nature of the design  
7 is, at least in the initial application,  
8 looked quite alien in nature. And I think,  
9 frankly, the quality of the materials that  
10 were presented were not very good. So it made  
11 an alien design seem even more foreign because  
12 of the quality of what was presented, and;

13           I think that the reception by the  
14 community just really tells it all when it  
15 comes to the proposed designed, and;

16           And I think the design itself is  
17 also quite impractical. And I'm very  
18 concerned that given the fact that the library  
19 systems seems to be facing economic straits in  
20 its operations across the city, that they  
21 would be engaging in the process of building a  
22 design that seems to be very, very complicated

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1 and very expensive to maintain. And so I  
2 wonder how many days a week they're going to  
3 be able to keep this thing open because  
4 they're spending too much time or money  
5 maintaining it.

6           However, all of those issues, I  
7 think, are beside the case. I think that when  
8 I look at that and think about whether those  
9 amount to a contributing factor in evaluating  
10 the test for a variance, I don't see enough to  
11 say that this in fact going to be detrimental  
12 to the public good.

13           I do see the constraints on the  
14 property and the difficulty of building there.

15           And I think that in all honesty, the idea of  
16 having 21 parking spaces for a neighborhood  
17 library is not the right number, and it's not  
18 needed. And I can see how having to provide  
19 that many spaces would be very difficult.

20           Now, could you configure the site  
21 to come up with 15 spaces comfortably? I  
22 think maybe you could. So are we really

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1 debating how much relief is granted? I'm not  
2 sure that we are. I think the fact that we  
3 cleared the threshold to grant the relief and  
4 what they're providing is reasonably  
5 approximate to what is there now, I think  
6 leads me toward it probably being close  
7 enough.

8 I say "probably."

9 I do have a question, though, which  
10 is that what we received -- let me see if I  
11 can find the exact exhibit. But it was the  
12 relatively recent submission that includes the  
13 design.

14 Can I pull yours? It's not  
15 numbered, but it's the letter dated October  
16 5th from Arent Fox and it includes this  
17 revised image of the project which is more  
18 subdued and uses more wood and a little less  
19 bumpy, if you will, than the previous designs.

20 This letter indicates that the  
21 applicant would like flexibility and they show  
22 this as an example of how the design may be

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1 evolving. But it's not clear to me that this  
2 is, in fact, the design that's proposed. If  
3 it is the design that's proposed, I am much  
4 more comfortable with this from a design  
5 perspective and it does allay some of my  
6 concerns. I still think its problematic in  
7 many other ways, but again not in ways that  
8 contribute to my evaluation of the test.

9 So, it would be helpful to me to  
10 know that this in fact it.

11 MS. GLAZER: Mr. May, sorry to  
12 interrupt. Could you identify the exhibit for  
13 the record, please?

14 COMMISSIONER MAY: I wish I could.  
15 It's not stamped. It's a letter dated October  
16 5th from Arent Fox.

17 MS. GLAZER: Thank you.

18 COMMISSIONER MAY: I think we  
19 received it at the last hearing, probably  
20 before it had been stamped with an exhibit  
21 number.

22 Thirty-seven? Maybe. Maybe 37?

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1                   Anyway, that's what I have to say.

2                   CHAIRPERSON LOUD: Let's see if Ms.  
3 Bailey may have -- do you have an exhibit  
4 number for it? Okay.

5                   Excuse me. As we're doing that,  
6 and I think that's a very important question  
7 to clear up. I too saw that submission and  
8 was moved significantly by way of support for  
9 the project based on the changes represented  
10 by what you just described, Mr. May. So I  
11 think we need to clarify your question  
12 regarding -- it's Exhibit 37 as Ms.  
13 Moldenhauer had suspected. So we're talking  
14 about Exhibit 37 so that everyone is on the  
15 same page.

16                   And I think Mr. May's question is,  
17 is this it? Is this the deal? Is that what  
18 is going to be moved forward by the applicant?

19                   And I think certainly BZA needs to know the  
20 answer to that question before we can vote on  
21 this. And I think the community needs to be  
22 clear as well.

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1           So perhaps not right this second.  
2           I think I'll see if Mr. Dettman can walk us  
3           through his concerns, questions, responses.  
4           And then we'll get back to the issue that Mr.  
5           May raised.

6                         VICE CHAIRPERSON DETTMAN: Well, I  
7           won't belabor the point as it pertains to the  
8           way procedurally this application has  
9           progressed, especially with the interaction  
10          with the community. And I think this is an  
11          example of DCPL designing a building that they  
12          themselves are proud of instead of the  
13          community actually taking pride in their brand  
14          new library. And that is disheartening and  
15          baffling.

16                        With respect to the narrow request  
17          of parking, I would agree with you Mr.  
18          Chairman that I think the uniqueness test, the  
19          first prong in the variance test is met. I  
20          think that the 15 foot building restriction  
21          line does encumber some area of the property  
22          that could otherwise be used for parking, but

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1 because of the restriction line it can't.

2 I think the presence of the  
3 substantial retaining wall and the amount of  
4 land that is unavailable for development given  
5 the steep topography in the backside of that  
6 property is an exceptional situation and does  
7 contribute to a practical difficulty. But I  
8 also think that the chosen envelop of the  
9 building contributes to the applicant's  
10 practical difficulty as well.

11 And I think that looking at the  
12 design of the building with the amphitheater  
13 underneath the one pod and the entrance way  
14 under the other pod, you know I think that  
15 that is a desire of the library and that  
16 particular design is not a result of any  
17 community input. In fact, during the  
18 applicant's case we heard testimony that the  
19 amphitheater is a programmatic desire of the  
20 library.

21 So in a sense to the extent that  
22 the chosen envelope, the amount of land area

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1 that the footprint of this building occupies  
2 contributes to the practical difficulty, I  
3 would think that that is actually kind of a  
4 self-created situation. That, of course, this  
5 is an variance and a self-created practical  
6 difficulty or hardship is just only one factor  
7 that the Board needs to consider.

8 That being said, I think that the  
9 variance test has been met, although by the  
10 skin of their teeth.

11 I think that the retaining wall and  
12 the building restriction line create enough of  
13 a practical difficulty to warrant a variance  
14 of 14 parking spaces, I believe it is.

15 With respect to the detriment to  
16 the public good, the applicant argued that the  
17 library site is served by 12 bus routes,  
18 including those that connect to nearby Metro  
19 stations.

20 You had mentioned their survey and  
21 that a high percentage of their patrons  
22 actually walk to the site, or use any other

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1 means of public transportation and whatnot.

2 There's a substantial degree of on-  
3 street parking.

4 And so I think that there's enough  
5 there to determine that with respect to the  
6 third prong that there won't be an adverse  
7 impact or a significant impact to the public  
8 good, or the Zone Plan.

9 And that's my position on the  
10 variance for parking, Mr. Chairman.

11 CHAIRPERSON LOUD: Thank you, Mr.  
12 Dettman.

13 Let me ask this question: Without  
14 repeating anything that we've already covered,  
15 do Board members see an opportunity or need to  
16 have an additional round? Okay. It doesn't  
17 appear as such. I didn't know if you want to.

18 COMMISSIONER MAY: No. If we're  
19 going to get clarity on that, that would be--

20 CHAIRPERSON LOUD: Okay. So I  
21 think in that case, and I want to just make  
22 sure we're doing this properly from a legal

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1 standpoint, Ms. Glazer, Mr. May had a question  
2 that I think that is important to all of us.  
3 And I wanted the opportunity to call up Ms.  
4 Bray during the decision just to get an answer  
5 to that specific question. And in terms of  
6 the procedure for that, the legality of it?

7 MS. GLAZER: I'm not sure what the  
8 question is.

9 CHAIRPERSON LOUD: His question was  
10 whether this Exhibit 37, which was submitted  
11 by the applicant and represented by the  
12 applicant as being the modified plan for the  
13 library, is in fact the fixed plan, design for  
14 the library. Because there was some language  
15 apparently in the letter that said this is  
16 what? Subject to change? Mr. May can--

17 COMMISSIONER MAY: Yes. They're  
18 requesting certain flexibility to change  
19 exterior materials of the proposed library  
20 building in response to community concerns.  
21 And then they show this rendering, and it's  
22 not absolutely clear that in fact they want to

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1 build this or whether they want to build the  
2 original design.

3 So, I mean the basic question is:  
4 How firm is this as a proposed design?

5 MS. GLAZER: I mean, I don't know  
6 if the ANC is here. It could be prejudicial  
7 to allow additional testimony in the record at  
8 this point without the ANC present.

9 The applicant did indicate, I  
10 believe, that that was a modified design. And  
11 if the Board wants to clarify that, I don't  
12 see any harm in doing so.

13 On the issue of flexibility,  
14 though, I think the Board has to deliberate  
15 based on the record it has before it unless it  
16 wants to ask for additional information and  
17 give the ANC an opportunity to comment or  
18 review it.

19 CHAIRPERSON LOUD: Well, would the  
20 Board be able to vote approval of Exhibit 37  
21 as what we would approve and if the applicant  
22 waivers from Exhibit 37, they're not in

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1 compliance with our approval?

2 MS. GLAZER: I believe that's true  
3 in general. I assume that the applicant was  
4 asking for a condition which would give it the  
5 authority to make minor design -- not design  
6 changes, but to change the materials is what I  
7 thought they requested.

8 COMMISSIONER MAY: Right. It's  
9 just the letter that they submitted doesn't  
10 make it clear that this is their starting  
11 point for making those changes or whether it's  
12 somewhere between the original design and  
13 this. That's all.

14 MS. GLAZER: I thought Exhibit 37  
15 was their modification, and that's what was --

16 COMMISSIONER MAY: I understand  
17 that. And I read over it several times. It's  
18 not clear to me that that is in fact what  
19 they're saying is the final design. That's  
20 why I'm asking the question.

21 MS. GLAZER: Well, if the Board  
22 isn't clear on any point, I think they have

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1 the right to request additional information.  
2 The only problem would be to give the ANC an  
3 opportunity to comment on anything as a matter  
4 of due process.

5 CHAIRPERSON LOUD: Well, I  
6 understand Mr. May's point, and I agree with  
7 Mr. May's point. I mean, we should have a  
8 fixed firm rendering that represents the  
9 change in the design before us. On the other  
10 hand, I mean we've spent some considerable  
11 time reviewing this record now, deliberating  
12 this morning. If there's a way that we can  
13 push forward this morning and make a decision,  
14 I think that's what we would like to do. And  
15 are looking for options that from a legal  
16 standpoint won't run afoul of due process or  
17 anything like that.

18 If this applicant were to delete  
19 the language in the Exhibit 37 memo, reserving  
20 to itself some flexibility, that would not be  
21 a due process issue, would it?

22 MS. GLAZER: I'm not sure I

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1 understand the question, but --

2 COMMISSIONER MAY: Mr. Chairman,  
3 I'm not sure that we would want that  
4 necessarily either. I think that having some  
5 flexibility as they continue their discussions  
6 with the community is probably wise. The  
7 question is whether, in fact, they are  
8 planning on this uniform treatment of the  
9 surfaces and so on that are expressed here as  
10 opposed to the prior version which had all  
11 sorts of metal panels and things like that.

12 I think that's the real question  
13 that I'm looking for clarity on. And if they  
14 want to, you know manipulate these fins that  
15 are covering the surfacing or something like  
16 that in consultation with the community, I'm  
17 happy enough that they have some flexibility  
18 to do that. The question is whether this  
19 overall image is the starting point or whether  
20 its this is the starting point.

21 MS. GLAZER: I don't see any  
22 problem in calling Ms. Bray up solely to

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1 clarify that issue.

2 CHAIRPERSON LOUD: Okay. And let  
3 me ask this question: So if Ms. Bray comes up  
4 and she's asked that question and the ANC is  
5 or is not here, is there a requirement that  
6 the ANC be able to respond to -- I know they  
7 can't question her because she's the attorney.  
8 But is there a due process requirement  
9 regarding the ANC as a party having a chance  
10 to respond to that?

11 MS. GLAZER: I don't believe so,  
12 not if Ms. Bray merely affirms what she  
13 already said in writing.

14 CHAIRPERSON LOUD: Okay. Then with  
15 that concern, Mr. Dettman, let me defer to  
16 you.

17 VICE CHAIRPERSON DETTMAN: Mr.  
18 Chairman, I would just like to ask one  
19 question. And I think if the Board is going  
20 to go forward and want to get clarity on  
21 what's going to be constructed based on Ms.  
22 Bray's letter of October 5th, I think that's

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1 fine. But this, it actually raises a question  
2 in my mind that I've had for a while, it's  
3 that the variance that we're looking at right  
4 now is parking. It only goes to the design of  
5 the building in terms of the envelop of the  
6 particular building. And with this particular  
7 case where there's been so much debate about  
8 the design of the building, I'm just wondering  
9 is the Board going to vote, and by the sounds  
10 of it it might be that we might be supporting  
11 the parking variance and then we're going to  
12 tie the applicant down in terms of  
13 constructing the actual building that's shown  
14 in the plans that's in the record?

15 I just don't understand why we  
16 would tie them to a particular design when it  
17 doesn't go to the variance parking. It's  
18 always been a question of whether or not the  
19 approved plans and the Board record, we've  
20 always said that they have to construct that.

21 In this particular case we might  
22 support a variance of 14 parking spaces, which

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1 to me says that they can build a building as  
2 long as they provide the 7 parking spaces that  
3 they said they're going to provide.

4           Going forward from a BZA decision  
5 if the applicant decides to engage the  
6 community, if another governmental agency or  
7 body decides to get involved, it might result  
8 in changes to the design which would require  
9 the applicant to come back for a modification  
10 of approved plans.

11           It's kind of a question mark I've  
12 always had in terms of we're going to vote on  
13 a parking variance but require them to build  
14 this exact building design with the pods and  
15 whatnot. So if there's not an answer to this  
16 question, that's fine. We'll get the clarity  
17 on the design and go forward.

18           CHAIRPERSON LOUD: I don't have an  
19 answer to that question. Let me see from a  
20 legal standpoint there's some really clear  
21 guidance on that to Mr. Dettman's question.

22           MS. GLAZER: Well, I don't have the

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1 rule at my fingertips.

2 CHAIRPERSON LOUD: Okay.

3 MS. GLAZER: But the application is  
4 approved according to the plans that are  
5 presented. And that's in the regulation.

6 VICE CHAIRMAN DETTMAN: That's  
7 right.

8 MS. GLAZER: So the Board would  
9 have to approve -- if it were to approve this  
10 variance application, it would be accordance  
11 with Exhibit 37.

12 CHAIRPERSON LOUD: All right. So  
13 then what I've heard is that Ms. Bray can  
14 answer the specific question. She can come to  
15 the table and Mr. May can ask his question.  
16 She can answer that specific question without  
17 it creating a due process issue for our  
18 proceeding.

19 Ms. Moldenhauer.

20 BOARD MEMBER MOLDENHAUER: Just  
21 before we get to that, I mean I just want to  
22 kind of go back. Because even though I hear

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1 what the rest of the Board members are saying,  
2 I still find a separation between the  
3 uniqueness of the topography and the retaining  
4 wall and the building envelop, which I think  
5 creates, as Mr. Dettman said, is a self-  
6 inflicted issue that they're creating which is  
7 the need for this divergence from the parking  
8 requirement. And whether it's, you know, as  
9 Mr. May said, whether it's 21 spaces or 15  
10 spaces or somewhere between 21 and 15 and 7,  
11 the issue still is I think that the uniqueness  
12 is not the absolute factor, which is creating  
13 the practical difficulty here. I think that  
14 it's the building envelope.

15 And there's testimony and there's  
16 information in our record as to the cost.  
17 That the only other option would be that they  
18 would need to build parking underground or add  
19 another story on the building. But on direct  
20 question from the Board there was never any  
21 other design considered by the applicant which  
22 i think states that this is a self-imposed

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1 difficulty and that they have not yet shown us  
2 that with potentially another design, that  
3 this is the only way by going underground or  
4 by adding another floor that would use the  
5 envelope or using the buildable area based on  
6 the topography that would create this  
7 practical difficulty. And that's still a  
8 question.

9 And everyone else, all the other  
10 Board members are saying that they're on the  
11 fence and just right over. I'm on the fence  
12 and just right under the requirements.

13 So I want to throw that issue out  
14 before we get any additional clarity.

15 CHAIRPERSON LOUD: Well, let me  
16 suggest this: Why don't we do both? Why  
17 don't we get the clarity that goes to Mr.  
18 May's point. And then we can have an  
19 additional round.

20 Your point is that you don't  
21 believe that the practical difficulty is  
22 proximately caused by the unique and

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1 exceptional situation that you do believe  
2 exists?

3 BOARD MEMBER MOLDENHAUER: Exactly.  
4 I don't believe that the two are tied  
5 together.

6 CHAIRPERSON LOUD: Okay.

7 BOARD MEMBER MOLDENHAUER: I don't  
8 believe that there's been any supporting  
9 evidence to show that these elements that  
10 we're referencing as to the uniqueness is  
11 directly caused and is the approximate cause  
12 of the difficulty.

13 CHAIRPERSON LOUD: Okay. And so in  
14 our second round we can sort of have a go at  
15 that particular issue. But I think to resolve  
16 the issue of what we have before us, why  
17 don'[t we get this out of the way and then we  
18 can return back to you point. How's that?  
19 Okay.

20 COMMISSIONER MAY: Mr. Chair, you  
21 want me to ask the question again directly?  
22 Okay.

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1           So the question I have is the  
2 design that was submitted on October 5th in  
3 Exhibit 37, is that the current state of the  
4 design and you're requesting some additional  
5 flexibility regarding materials?

6           MS. BREY: That is correct.

7           COMMISSIONER MAY: Okay. Thanks.

8           CHAIRPERSON LOUD: Okay. And the  
9 questions have been answered to your  
10 satisfaction?

11          COMMISSIONER MAY: Yes.

12          CHAIRPERSON LOUD: Okay. Now why  
13 don't we move on then and Ms. Moldenhauer has  
14 raised an issue regarding the second prong and  
15 the sufficiency of the evidence to establish  
16 whether the uniqueness, the topography, the  
17 restricted building line, et cetera, is really  
18 the approximate cause or the driver of this  
19 practical difficulty. And so I'd like to open  
20 it up again if Board members want to weigh in  
21 on Ms. Moldenhauer's concern of that  
22 particular issue.

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1                   Would Board members like to raise,  
2 Ms. Moldenhauer has raised, you know, sort of  
3 like a laser focusing us in specifically on  
4 the second prong and whether it's proximately  
5 connected to the first prong? And so I  
6 thought in this round before we close out and  
7 go the decision on it, we would respond to  
8 that if we have responses to it.

9                   COMMISSIONER MAY: You know, I  
10 think that on-the-fence is a good way to  
11 describe this and are you slightly over or  
12 slightly under.

13                   I mean, I think that the nature of  
14 the site is cause for relief because I think  
15 that while you might be able to come up with a  
16 site that meets the parking requirements, it  
17 might either be extraordinarily expensive such  
18 as parking below the building or it might be a  
19 really contorted building, or a building that  
20 doesn't work well with the program because  
21 it's three floor rather than two, or something  
22 like that.

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1 I think one could, as I said  
2 before, design a building that has 15 parking  
3 spaces and still meets the program, or  
4 something like that. And you're right, we  
5 didn't have any explanation of that as a part  
6 of this case. But nonetheless, I think what  
7 you've connected and make the case for the  
8 relief, then the question becomes what's the  
9 right amount of parking.

10 And given what's the record I  
11 didn't see a real reason why relieving them of  
12 7 spaces out of the 21 or 14 spaces out of the  
13 21, I mean I didn't see a really strong  
14 argument that you really needed to have 15  
15 spaces on site, or we needed to have 20 spaces  
16 on site. I think that it was they made a  
17 reasonable case that 7 is going to be enough.

18 And I think that if we didn't have  
19 such concern about the design and the  
20 neighborhood's reaction to it, it probably  
21 would have been fine the 7 spaces and not much  
22 on the facts.

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1                   BOARD MEMBER MOLDENHAUER: I just  
2 think that even based on your statements there  
3 is still this questions that, you know we're  
4 making this large leap that okay it should be  
5 okay, or we're assuming that, okay, well then  
6 based on the fact that they've potentially  
7 made this one argument that they're  
8 sufficient, that okay, well we don't really  
9 know whether 15 would have been needed, or  
10 whether 7 would be needed; and so we're just  
11 going to permit this large jump, this large  
12 assumption.

13                   You know, I think that there was  
14 testimony, there was conflicting testimony  
15 that there was currently potentially in  
16 existence of 9 spaces, or there was currently  
17 in existence of 15 spaces. There was  
18 testimony that this would impact the public  
19 parking on the street. That there would be  
20 some concern by the local neighbors. There  
21 was then conflicting testimony in support by  
22 Mrs. Brown that there would not be any

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1 problems with parking in the community.

2           So I think there is a question as  
3 to what would be the right number of spaces if  
4 this was focused. And I think that also one  
5 of the issues is is that our main hearing was  
6 so focused on the court issue, that I don't  
7 think the applicant actually provided  
8 sufficient support for this parking issues.  
9 Because that was kind of, that took backseat  
10 to the court and to the design.

11           And so again, I just go to the  
12 issue of, you know, could there exist another  
13 building envelope that would meet the  
14 programmatic needs of the application that  
15 would potentially provide more parking? And I  
16 don't think that the applicant has submitted  
17 anything to ensure they even considered that.

18           And thus, it's a self-inflicted difficulty  
19 and not something that is potentially cause or  
20 we can't make that determination, we can't  
21 make that leap I don't think from the record  
22 that that's caused by the topography and by

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1 the rear retaining wall. And I that's just I  
2 don't feel there's enough in the record to  
3 show that.

4 VICE CHAIRPERSON DETTMAN: Ms.  
5 Moldenhauer, I certainly understand your  
6 comments, absolutely.

7 The argument that this is a self-  
8 created situation, I think that when it comes  
9 to an area variance test it doesn't  
10 automatically defeat the variance test like it  
11 would in a use variance case. It's just one  
12 factor that the Board needs to weigh in  
13 addition to the retaining wall, the  
14 topography, the building restriction line, you  
15 know the other factors that the applicant has  
16 testified to.

17 You know, to your question about  
18 could there be a design that could allow for  
19 all 21 spaces, could here be a design that  
20 could require a lesser degree of a variance?  
21 I'm sure that there are designs out there;  
22 this is the design that the applicant decided

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1 to pursue.

2 Looking at the design with the  
3 material changes, now that we've gotten  
4 clarity on that, I think that there's enough  
5 there to warrant the variance test.

6 CHAIRPERSON LOUD: Well, I  
7 certainly have empathy with where you're  
8 coming from on the design issue. My recall is  
9 that a lot of our discussion around even  
10 whether there were alternate designs didn't  
11 have a lot to do with the parking. It just  
12 had a lot to do with the fact that we just did  
13 not like the design. And it was in that  
14 context, I think, that as you pointed out that  
15 drove a lot of the discussion in the hearing.

16 When I look at this record I think  
17 the applicant has demonstrated that the  
18 topography of the lot, the fact that it loses  
19 18 percent of what normally could be built on  
20 it, I'm sure that it could get 14 spaces on  
21 that 18 percent that's lost when added to the  
22 fact that there's a no park zone in the rear

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1 of the building, a 15 foot restriction line in  
2 the front of the building; I mean, it's  
3 severely constrains the amount of parking that  
4 it can work with or that it can develop on  
5 that site.

6 I didn't see anything in the record  
7 that would suggest to me that even with a  
8 different design they could get 21 parking  
9 spaces. They might be able to get a number of  
10 over 7, but still need to come before us for  
11 variance relief.

12 And when Mr. -- I think his name is  
13 Bonvechio, testified about the program needs  
14 of th library, the size of the building that  
15 they were placing for us was driven by this  
16 sort of standard formula that they use for  
17 libraries in terms of size that they to aim  
18 for as a North Star.

19 So I'm very, very, very empathetic  
20 to the question of the design. But my recall  
21 is that O always talked about that in the  
22 context of do I like the way this building

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1 looks? Is there another way for this building  
2 to look? Not so much would this design yield  
3 five more spaces or would this design yield 10  
4 more spaces.

5 So that's sort of where I come out  
6 on it.

7 Is there further deliberation?  
8 Yes?

9 BOARD MEMBER MOLDENHAUER: No. I  
10 obviously, I disagree. I think that the issue  
11 is not even a matter of design. It's a matter  
12 of, you know, showing the connection between  
13 uniqueness and the difficulty.

14 But I think that the discussion is  
15 full. And if you'd like, since I don't  
16 believe I'll be voting in favor of it, you,  
17 Chairman Loud, you can make a motion.

18 CHAIRPERSON LOUD: Let's first see  
19 if there's any further deliberation on it and  
20 then move this to a closure.

21 Okay. Hearing none, then I would  
22 like to move for approval of Application No.

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1 1797, D.C. Public Library, for a variance  
2 relief with respect to 14 parking spaces of a  
3 required 21 not being met based on the  
4 discussion that we've had and the articulation  
5 of the evidence tied to the three prongs of  
6 the variance test, and with the certainty that  
7 Exhibit 37 represents what the applicant will  
8 be moving forward with as its design.

9 COMMISSIONER MAY: Second.

10 CHAIRPERSON LOUD: Motion's been  
11 made, seconded. Is there further deliberation?  
12 Hearing none, all those in favor of the  
13 motion say aye.

14 ALL: Aye.

15 CHAIRPERSON LOUD: All those  
16 opposed?

17 BOARD MEMBER MOLDENHAUER: Aye.

18 CHAIRPERSON LOUD: And are there  
19 any abstentions?

20 And, Mr. Moy, can you read back the  
21 vote?

22 SECRETARY MOY: Yes, sir. The vote

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1 would be three to one to one on the motion of  
2 the Chair, Mr. Loud, to approve the  
3 application for a variance relief 2101.1 off-  
4 street parking requirements seconded by Mr.  
5 Peter May also supporting the motion Mr.  
6 Dettman. No other Board members. So again,  
7 that's three to one -- oh, and Ms. Moldenhauer  
8 opposed to the motion. So again, that's three  
9 to one to one.

10 CHAIRPERSON LOUD: Thank you, Mr.  
11 Moy.

12 And I want to thank Mr. May who is  
13 going to be leaving now. Thank you for  
14 joining us this morning. We're going to be  
15 joined, I think, by Commissioner Hood.

16 I also want to thank to Ms.  
17 Moldenhauer, who did an outstanding job I  
18 think of briefing the case and setting it  
19 before us for deliberation.

20 MS. GLAZER: Mr. Chair?

21 CHAIRPERSON LOUD: Yes.

22 MS. GLAZER: Is the Board going to

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1 rule on the request for flexibility?

2 CHAIRPERSON LOUD: You have to  
3 elaborate, Ms. Glazier, let me know what you  
4 mean.

5 MS. GLAZER: The applicant also  
6 asked for flexibility on the materials. And I  
7 don't know if that was deliberated or not.

8 CHAIRPERSON LOUD: Okay. Mr. May,  
9 perhaps hang on for a few more moments.

10 I don't know what that means.

11 COMMISSIONER MAY: Well, as long as  
12 the form of the building is decided and the  
13 basic look of it, I think that they're talking  
14 about changes in the actual material of some  
15 of these fins and so on. I think that that's  
16 reasonable. And I would support granting them  
17 some flexibility, particularly if they're  
18 going to be working hard with the community to  
19 try to make it as acceptable as possible to  
20 them.

21 CHAIRPERSON LOUD: Is that  
22 something that we would need to vote on, Ms.

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1 Glazier?

2 MS. GLAZER: Well, since it's been  
3 segregated, I think it would be wise to vote  
4 on it since this point. The issue has been  
5 segregated from the general approval.

6 CHAIRPERSON LOUD: Okay. Then  
7 we'll follow the advice of counsel on that.

8 I'm in agreement with you, Mr. May.

9 I think we've gotten this close to the finish  
10 line. I think, obviously, if there are going  
11 to be some modifications to this, then I think  
12 it's rule 3126, whichever rule governs minor  
13 modification would be the appropriate route to  
14 do those modifications. But in light of the  
15 qualification that Mr. May put on it, I would  
16 be in support of giving them some limited  
17 flexibility on material selections and being  
18 responsive to the community, I think is the  
19 way he put it.

20 COMMISSIONER MAY: Right.

21 CHAIRPERSON LOUD: I move for  
22 approval of allowing the applicant some

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1 limited flexibility for materials selection as  
2 tied to dialogue with the community.

3 Is there further discussion?

4 COMMISSIONER MAY: I second.

5 CHAIRPERSON LOUD: All right.

6 There's a second. Motion's made and seconded.

7 Further discussion? Hearing none,  
8 all those in favor say aye.

9 ALL: Aye.

10 CHAIRPERSON LOUD: All those who  
11 are opposed? Are there any abstentions?

12 And, Mr. Moy can you read back the  
13 vote, please?

14 SECRETARY MOY: For clarification,  
15 how did Mr. Moldenhauer vote?

16 BOARD MEMBER MOLDENHAUER: In  
17 favor.

18 SECRETARY MOY: In favor? Thank  
19 you.

20 So that would be a vote of four to  
21 zero to one on motion of the Chairman, Mr.  
22 Loud, to approve the language that provides

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1 for limited flexibility in the selection of  
2 the exterior building materials. Second by  
3 Mr. Peter May. Also supporting the motion Ms.  
4 Moldenhauer and Mr. Dettman. Again, that's  
5 four to zero to one.

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

8 If there's nothing further with  
9 this case if we can call the final decision  
10 case for this morning?

11 SECRETARY MOY: Yes, sir.

12 That would ANC 6C's motion for  
13 reconsideration of Appeal No. 17902 of Joseph  
14 Park, pursuant to Section 3126 of the Zoning  
15 Regulations. The original appeal that was  
16 approved on May 12, 2009 is pursuant to 11  
17 DCMR § 3100 and 3101 from an August 28, 2008  
18 decision of the Zoning Administrator to revoke  
19 the Certificate of Occupancy Permit No. 167331  
20 for a liquor store, Oasis Liquors, in the R-4  
21 District at premises 1170 3rd Street,  
22 Northeast, Square 773, Lot 277.

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1           As the Board will recall at its  
2 Public Decision Meeting on September 15, 2009  
3 the Board convened and deliberated on the ANC  
4 6C's motion for reconsideration. After a  
5 discussion the Board reopened the record for  
6 the limited reconsideration of the ANC's  
7 motion attended to findings of fact and No. 16  
8 in the order.

9           The Board requested the appellant  
10 to serve ANC 6C all the tax returns with a due  
11 date of September 22nd of 2009. The ANC 6C to  
12 respond by October 21st of 2009 and the Board  
13 reschedule its decision on October 27th.

14           There are two filings in your case  
15 folder, Mr. Chairman. The first from the  
16 appellant Joseph Park who filed his tax  
17 return, and his document is dated September  
18 15, 2009, identified as Exhibit 40.

19           The ANC 6C filed a response, dated  
20 October 19, 2009. And that is identified as  
21 Exhibit 41.

22           With these exhibits then, the Board

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1 is to act on the merits of the motion for  
2 reconsideration pursuant to section 3126.

3 And that completes the staff's  
4 briefing, Mr. Chairman.

5 CHAIRPERSON LOUD: Thank you, Mr.  
6 Moy. I think we can dive directly into the  
7 reconsideration of the motion. i'll be happy  
8 to take the lead on it. And I don't think this  
9 will take an extraordinary amount of time.

10 Let me just start out with the rule  
11 that we've been joined by Mr. Lori Monroe of  
12 the Office of Attorney General. And it's good  
13 to see you. In fact, we'll start out with the  
14 rule that was provided for our review by Ms.  
15 Monroe as we first sat down to deliberate this  
16 case.

17 This is covered by section 2005.1  
18 in the D.C. Regs. And we've addressed the  
19 standard for that.

20 Also significantly BZA has adopted  
21 that rule or applied that rule in the Appeal  
22 Case No. 15893, the Appeal of Malone which

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1 talks about the history. That's a BZA case  
2 which talks about the history of section  
3 2005.1 and notes how the originally proposed  
4 language was ultimately rejected by the Zoning  
5 Commission included the following phrase:

6 "Intent to resume active operation  
7 if a nonconforming use shall not alter the  
8 provisions of this chapter." Shall not alter  
9 the provisions of this chapter. That's Malone  
10 at page 4. That language was rejected by the  
11 Zoning Commission.

12 And District case law is consistent  
13 with the approach that the Zoning Commission  
14 took, and specifically of disallowing an  
15 intent to resume from altering the provisions  
16 of section 2001.5.

17 The District case law is embodied  
18 in GW University versus DC BZA, 428 A2nd at  
19 1342, D.C. case 1981. And the case law from  
20 the GW case is as follows:

21 The test in the District continues  
22 to be: (1) whether there was an intent to

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1 abandon, and; (2) some overt act or failure to  
2 act which carries the implication of  
3 abandonment.

4 So that the intent to abandon is a  
5 very strong component of the law in the  
6 District of Columbia as regards abandonment in  
7 cases like this.

8 Now, the ANC has filed Exhibit 41.

9 I think the challenging findings 16, findings  
10 25; they make I think four points and I'm  
11 going to respond to each of the four briefly.

12 I am not in favor, by the way, of  
13 reversing our earlier decision on the case. I  
14 think the decision was based on substantial  
15 evidence in the record, substantial evidence  
16 that we went over in very great detail at the  
17 initial deliberation, which basically  
18 concluded that there was not a three year  
19 period of time that we could point to where it  
20 was shown that the appellant abandoned or had  
21 the intent to abandon operation of the liquor  
22 store.

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1           But the ANC says that the Board  
2 made an error with respect to finding 16 when  
3 we stated that the 2005 tax returns showed  
4 income. And my review of the record, and I'm  
5 looking at what the ANC submitted, the tax  
6 returns show at page 5 at line, I think, I-5,  
7 total taxable income of negative \$10,580. But  
8 there's no gross income indicated.

9           So I think the ANC is right. I  
10 commend the ANC for bringing this error and  
11 factual finding to our attention. That's  
12 something that should be corrected, I guess in  
13 an amended version of our decision.

14           But very interestingly, this same  
15 tax return that the ANC brings to our  
16 attention to suggest that we made the wrong  
17 decision also includes some information at  
18 page 5. There are two boxes, Box 4 and Box 5.

19           Box 4 says: "If the business is terminated,  
20 state the reason." Box 5 says: "Termination  
21 date." And the applicant did not check either  
22 of those boxes. Again, it just corroborates

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1 all that we've already said about there not  
2 being evidence in the record, sufficient  
3 evidence to establish that this appellant  
4 intended to abandon the operation as the Oasis  
5 Liquors.

6 Secondly, the ANC says that the  
7 Board made an error stating that in 2005 the  
8 tax return showed that repairs were made. And  
9 again, the ANC is correct. Looking at line 12  
10 of the tax returns for 2006 it does not show  
11 that any repairs were made, and we should make  
12 that correction to our finding. But again,  
13 it's a technical correction.

14 The same year tax returns show an  
15 operation loss of \$8,645. That's evidence  
16 that a business was up and operating during  
17 that year. They lost money. I don't think  
18 that the rule requires that the business have  
19 to make money, but that it's the appellant has  
20 an intent to abandon.

21 That same return for '06 again says  
22 this Box 4 and 5 on page 5 which gives a tax

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1 filer an opportunity to say that the business  
2 has been terminated, state the reason,  
3 termination date. And again in '06 that was  
4 not checked off by the appellant.

5 The ANC goes on then to say that  
6 tax records show no income for 2007, 2008 but  
7 finding 16 did not claim that there was tax  
8 recorded income for '07 and for '08. So  
9 there's no need to address that.

10 With respect to finding 25 in  
11 effect the ANC is asking the BZA to reconsider  
12 what we already reconsidered on September 14  
13 and rejected on September 14 where the  
14 discussion that we had regarding whether there  
15 was actually \$30,000 in repairs in 2008 a that  
16 time, September 14, echoing our deliberation.

17 The Board credited Mr. Park's testimony that  
18 there were \$30,000 in repairs in 2008 all  
19 going to the renewal and -- not renewal so  
20 much, but execution of a lease for the  
21 property again, which goes to defeat the  
22 argument that there was an intent to abandon

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1 it. And the Board was free to credit that  
2 testimony, and we did so. And we said as such  
3 September 14.

4 Finally the ANC says that the Board  
5 decision as a whole was weighted very heavily  
6 by our reliance on the tax records. And Board  
7 member Laud, Board member Dettman and Chairman  
8 Hood from the Zoning Commission are quoted in  
9 the ANC's reconsideration motion at page 2.

10 I can only speak for Board member  
11 Loud in saying that my reliance of the tax  
12 records was done in concert with all of the  
13 other evidence that was in the record,  
14 including finding Mr. Park to be a credible  
15 witness crediting his testimony regarding  
16 whether he intended to abandon and so forth  
17 the payment of the safekeeping for the  
18 license, the execution of the April 2008  
19 lease. Later on I do mention the tax filings  
20 and I do mention the income erroneously. So  
21 I'm the culprit for the fact that the finding,  
22 that income for 2005 in the first place, but

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1 also what the ANC quotes me on also exonerates  
2 the statements that I made. Because the  
3 emphasis I place is on the tax filings, not  
4 necessarily the tax income. I think the  
5 filings demonstrate along with the other  
6 evidence the ongoing desire to continue to  
7 operate this business.

8 So again, sort to close this out at  
9 least from my perspective, I think the ANC has  
10 done an excellent job of bringing to our  
11 attention some things that we need to correct,  
12 but I don't think that it changes the bottom  
13 line as to whether or not substantial evidence  
14 support our finding that the appellant, Mr.  
15 Park, did not intend to abandon operation of  
16 the Oasis Liquors.

17 And with that, let me turn it over  
18 to Mr. Dettman.

19 VICE CHAIRPERSON DETTMAN: Mr.  
20 Chairman, I really don't have anything to add.  
21 I agree with you on the outcome of this  
22 motion. And with respect to the corrections

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1 that you've identified that you propose to be  
2 changed in the order, I think that that's  
3 appropriate.

4 I think the ANC raises some very  
5 good points with respect to some comments that  
6 we made about the tax returns.

7 During our decision I believe I  
8 stated that the relevant three year period in  
9 this case to me, the three year period that I  
10 relied upon was the three year period that  
11 immediately preceded the ZA's notice of an  
12 intent to revoke the C of O. And within that  
13 area, within that three year period, was an  
14 executed lease dated 2008.

15 The weight of my support for the  
16 case was mostly placed on that executed lease.

17 And the other testimony and the other  
18 evidence that you have already gone through  
19 supported my weight on that lease. So I'm in  
20 agreement with you with respect to this  
21 motion.

22 CHAIRPERSON LOUD: Thank you, Mr.

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1 Dettman.

2 Then what I'd like to do is move  
3 that we deny the motion for consideration of  
4 the ANC 6C in Case No. 17902. Is there a  
5 second?

6 VICE CHAIRMAN DETTMAN: Second.

7 CHAIRPERSON LOUD: Motion has been  
8 made and seconded. Any further deliberation?  
9 Hearing none, all those in favor say aye.

10 ALL: Aye.

11 CHAIRPERSON LOUD: All those who  
12 oppose? Are there any abstentions?

13 SECRETARY MOY: Yes, sir, Mr.  
14 Chairman. Before I give a final vote there is  
15 -- oh, I sorry. Mention the abstentions. But  
16 I do have an absentee ballot, if I'm not  
17 jumping the gun here, from Anthony Hood who  
18 also participated. And his absentee vote is  
19 to deny the motion, the ANC's motion.

20 CHAIRPERSON LOUD: Thank you.

21 SECRETARY MOY: So with that, would  
22 give a final vote of three to zero to two. A

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1 motion of the Chair, Mr. Loud, to deny ANC  
2 6C's motion to reconsider, seconded by Mr.  
3 Dettman, Vice Chair. No other Board members  
4 participating. So again with Mr. Hood's  
5 absentee vote to deny, that would give a total  
6 vote of three to zero to two.

7 CHAIRPERSON LOUD: Thank you, Mr.  
8 Moy.

9 Is there anything further in this  
10 case?

11 SECRETARY MOY: No, sir.

12 CHAIRPERSON LOUD: Then I think  
13 what we'll do is adjourn the morning Decision  
14 Meting, take a five minute break, and then  
15 we'll come back and get started on the morning  
16 Hearing cases.

17 (Whereupon, the Special Public  
18 Meeting was adjourned at 11:49 a.m.)

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