

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 27, 2009

+ + + + +

The Regular Public Hearing
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 12:03 p.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:

ANTHONY J. HOOD, Commission 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:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN
STEPHEN VARGA
STEPHEN COCHRAN

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

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

2 12:03 p.m.

3 CHAIRPERSON LOUD: Good afternoon,
4 everyone.

5 This hearing will come to order.
6 Welcome to the October 27th Public Hearing of
7 the Board of Zoning Adjustment of the
8 District of Columbia.

9 My name is Mark Loud, Chairperson.

10 Joining me today are Vice Chair Shane
11 Dettman representing the National Capital
12 Planning Commission to my right. To my left,
13 Mrs. Meridith Moldenhauer, Board member,
14 Mayoral Appointee to the BZA. Ms. Lori
15 Monroe is to her left, the Office of the
16 Attorney General. And we'll be joined
17 shortly by Mr. Clifford Moy, Secretary of the
18 BZA. And to my far left, Ms. Beverley
19 Bailey, Zoning Specialist here in the Office
20 of Zoning.

21 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 advised that this
4 proceeding is being recorded by a court
5 reporter and also webcast live. We ask you
6 to refrain from any disruptive noises or
7 actions in the hearing room.

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

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

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1 my right.

2 The order of procedure for special
3 exceptions and variances is as follows:

4 Statement and witnesses of the
5 applicant; government reports including the
6 Office of Planning, the Department of Public
7 Works, et cetera; the report of the Advisory
8 Neighborhood Commission; parties or persons
9 in support; parties or persons in opposition;
10 and then finally closing remarks by the
11 applicant only.

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

15 The applicant, appellant, persons
16 or parties except an ANC in support including
17 witnesses 60 minutes collectively;

18 Appellees, persons and parties
19 except an ANC in opposition including
20 witnesses 60 minutes collectively;

21 Finally individuals are given

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1 three minutes, organizations are given five
2 minutes.

3 These time restraints do not
4 include cross-examination or questions from
5 the Board. Cross-examination of witnesses is
6 permitted by the applicant or parties only.

7 The ANC within which the property
8 is located is automatically a party.

9 Nothing prohibits the Board from
10 placing reasonable restrictions on cross-
11 examination.

12 The record will be closed at the
13 conclusion of each case except for material
14 specifically requested by the Board. The
15 Board and the staff will specify at the end
16 of the hearing exactly what is expected and
17 the date when the persons must submit the
18 evidence to the Office of Zoning.

19 After the record is closed, no
20 other information will be accepted by the
21 Board.

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

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

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

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

21 Does the staff have any

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1 preliminary matters?

2 MS. BAILEY: Mr. Chairman, members
3 of the Board, good afternoon.

4 CHAIRPERSON LOUD: Thank you.

5 Then let's proceed with the
6 agenda.

7 Would all individuals wishing to
8 testify today please rise to take the oath.
9 And Ms. Bailey will administer it to you.

10 (Witnesses sworn.)

11 CHAIRPERSON LOUD: Ms. Bailey,
12 before you get started calling cases, I think
13 we took a look at the morning's calendar and
14 we want to go a little bit out of order from
15 the published version of the agenda.

16 We want to start with the House of
17 Mercy 17983, then the Jemal's Bartley 17983,
18 and finally the Badey case 17977. It's our
19 hope and desire to be able to get through all
20 three cases by 1:00. We're going to work
21 through our lunch break, and then we'll

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1 probably a small break at 1:00.

2 We do believe that the House of
3 Mercy case is one that will probably take
4 absolutely no time.

5 The Jemal's Bartley case may take
6 slightly more time than the House of Mercy,
7 and it'll give us time to dig into Bady a
8 little bit better.

9 So that's the suggested order, Ms.
10 Bailey.

11 MS. BAILEY: Thank you, Mr.
12 Chairman. I think all of the parties are
13 here for each of the case.

14 Starting with the House of Mercy,
15 it's Application 17982, House of Mercy, Inc.,
16 pursuant to 11 DCMR § 3104.1 for a special
17 exception for a child development center.
18 It's 163 children ages six weeks to five
19 years old and 89 full and part-time staff
20 under section 205. The property is zoned R-4.
21 It's located at 2000 Rosemount Avenue,

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1 Northwest. Square 2618, Lot 166.

2 CHAIRPERSON LOUD: Thank you, Ms.
3 Bailey.

4 Good morning to the parties here.
5 Let me ask, is the ANC of this
6 case here?

7 COMMISSIONER MCKAY: Yes.

8 CHAIRPERSON LOUD: Good morning,
9 sir. How are you?

10 COMMISSIONER MCKAY: Fine. Thank
11 you.

12 CHAIRPERSON LOUD: Very good.

13 Why don't we start like this: Why
14 don't we ask everyone to introduce yourself
15 for our record and start on my right and work
16 all the way to the left.

17 I think that the Board has,
18 obviously reviewed the record and come away
19 with the impression that is a very strong
20 case for relief, and probably does not
21 require a full blown presentation of the

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1 evidence. So I'm thinking and signaling that
2 this is probably a case that we might rest on
3 the record. But we'll give everyone an
4 opportunity to suggest that that's not the
5 course to go if that's not appropriate.

6 But with that said, why don't we -
7 - sir, to you?

8 MR. SULLIVAN: Yes. Good
9 afternoon, Mr. Chairman, members of the
10 Board. My name is Marty Sullivan. I'm an
11 attorney representing the House of Mercy and
12 the Rosemount Center.

13 MR. RONDEAU: Good afternoon.
14 Jacques Rondeau, Chief Operating Office for
15 the Rosemount Center and Director of
16 Operations for the House of Mercy.

17 COMMISSIONER MCKAY: Jack McKay
18 for ANC 1D.

19 CHAIRPERSON LOUD: Good afternoon
20 to each of you.

21 Mr. McKay, ANC 1D is supportive of

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1 the application?

2 COMMISSIONER MCKAY: Yes, it is.

3 CHAIRPERSON LOUD: Okay. Again,
4 let me reiterate that the case as presented
5 in the pleadings submitted before us is a
6 very strong case for relief. And I'll turn
7 my colleagues and see if they have a
8 different opinion. But we think that based
9 on the record before us and the report from
10 the Office of Planning that we can deliberate
11 and make a decision based on what we see
12 already.

13 If there is something that you
14 would like to add to it, we certainly want to
15 give you the opportunity to do that. But
16 it's a very full case in terms of the
17 briefing material.

18 MR. SULLIVAN: I'm happy to
19 accommodate. So I don't have anything to add
20 and we're available to answer questions.

21 CHAIRPERSON LOUD: Then why don't

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1 we turn to the Office of Planning. And good
2 morning.

3 MR. VARGA: Good morning, Mr.
4 Chairman.

5 CHAIRPERSON LOUD: It was a very
6 outstanding report that you submitted. And
7 again, just to reiterate as was indicated
8 with the applicant, I think it's a very
9 strong record before us and very strong
10 arguments being made for relief.

11 MR. VARGA: Yes. The Office of
12 Planning agrees and we stand on the record.
13 And we're happy to field any questions that
14 you might have.

15 CHAIRPERSON LOUD: Okay. All
16 right. And let me turn to the ANC
17 representative again, based on -- and it
18 doesn't happen in all of our cases, but where
19 the record before us for relief is very
20 comprehensive, very persuasive. There are
21 times when we don't go through the

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1 formalities of the hearing. And this is a
2 strong case in that manner.

3 So, I want to turn to you as the
4 ANC representative and see if you have a
5 statement that you'd like to make or --

6 COMMISSIONER MCKAY: I think our
7 resolution, which is in your hands, speaks
8 for itself.

9 CHAIRPERSON LOUD: Okay. All
10 right.

11 At this time I'll turn to the
12 audience to see if there are any members in
13 the audience that are in support of the
14 application. Now would be a great time to
15 come up if there are any members in the
16 audience that are in opposition to the
17 application now, would also be the time to
18 come up.

19 And seeing none, we turn back to
20 the applicant for a closing statement,
21 closing remarks if any.

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1 MR. SULLIVAN: Nothing to add,
2 other than just obviously we'd like a bench
3 decision and summary order.

4 CHAIRPERSON LOUD: Okay. I think
5 we have a very scary question for you coming
6 from Ms. Moldenhauer.

7 BOARD MEMBER MOLDENHAUER: Just
8 one quick question to make sure that we
9 address it. There's the Department of
10 Transportation's report, which is Exhibit 26.

11 And I'm not going to go into their first
12 point in regards to more data. I don't think
13 that that's warranted. But I just wanted to
14 ask the one question about whether or not the
15 House of Mercy participants in Smart Benefits
16 programs?

17 MR. RONDEAU: We do have a parking
18 control system which is administered by
19 managers and building engineers. We do not
20 impact the residents on the street and we
21 insist parents park in the lot. We had the

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1 statistics that show at least 50 of our
2 families either walk in the neighborhood
3 bringing the children to Rosemount or use
4 Metro bus.

5 I also have a limiting factor in
6 the fact that we have a union at Rosemount
7 Center, SEIU. And any kind of effort to
8 effect a benefits package, either one way or
9 the other which is what the WMATA suggestion
10 comes down, a DDOT suggestion, would have to
11 be negotiated with the union. And our next
12 union contract starts in negotiation phase in
13 winter of 2010.

14 BOARD MEMBER MOLDENHAUER: Okay.
15 Thank you for the additional information.

16 MR. SULLIVAN: Thank you.

17 BOARD MEMBER MOLDENHAUER: And,
18 obviously, we would encourage any
19 communication at that time with the union for
20 Smart Benefits based on DDOT's condition. But
21 I don't believe there's any additional

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1 information that we need now.

2 MR. SULLIVAN: Thank you.

3 CHAIRPERSON LOUD: Thank you, Ms.
4 Moldenhauer.

5 Is there anything further from
6 Board members? Okay.

7 Then I think we are going to
8 deliberate this morning, and I'll turn back
9 to Ms. Moldenhauer to start us off.

10 BOARD MEMBER MOLDENHAUER: Thank
11 you, Chairman Loud.

12 I believe that the case is full.
13 We have a full record. And with regards to
14 any additional discussion, I don't believe
15 there is any. And I would submit a motion to
16 approve the special exception request under
17 section 205. And I would incorporate OP's
18 report in our discussion. And I would state
19 that our motion would not include any of the
20 conditions recommended by DDOT.

21 CHAIRPERSON LOUD: Thank you, Ms.

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1 Moldenhauer.

2 Motion's been made. Is there a
3 second?

4 VICE CHAIRPERSON DETTMAN: Second.

5 CHAIRPERSON LOUD: Okay. Motion's
6 been made and second.

7 Is there further deliberation?

8 Just on the deliberation, just to
9 clarify, we're voting approval of 163 for
10 students and 89 for staff.

11 And I just wanted to clarify the
12 hours right quick. Since the applicant is at
13 the table, that would be the quickest way to
14 just confirm the hours. Just confirm 7:00
15 a.m. to 6:00 p.m. Monday through Friday, is
16 that correct?

17 MR. RONDEAU: We've actually
18 altered that. Effective September 1st we
19 moved our program service hours from 8:00
20 a.m. to 6:00 p.m. Monday through Friday.

21 CHAIRPERSON LOUD: So it would be

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1 8:00 a.m. Monday through Friday. Okay.

2 Thank you very much.

3 Go back into deliberation on it.

4 So the motion has been made by Ms.

5 Moldenhauer for approval of 17982 special

6 exception. I've seconded the motion.

7 Is there further deliberation? And

8 hearing none, all those in favor say aye.

9 ALL: Aye.

10 CHAIRPERSON LOUD: I'm sorry.

11 Let's do that again. I need to say aye
12 myself.

13 All those in favor say aye?

14 ALL: Aye.

15 CHAIRPERSON LOUD: All those who
16 oppose? Are there any abstentions?

17 And, Ms. Bailey, can you read back
18 the vote for us, please?

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

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1 motion. Mr. Dettman second it. Mr. Loud
2 supported the motion. There are two other
3 Board members not sitting at this time.

4 So it's granted, Mr. Chairman.
5 And this is going to be a summary order, sir?

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

8 Yes, there's no opposition from
9 the ANC, so a summary order would be
10 appropriate.

11 MS. BAILEY: Thank you.

12 CHAIRPERSON LOUD: Thank you.

13 Is there anything further in this
14 case?

15 CHAIRPERSON LOUD: No, Mr.

16 Chairman

17 CHAIRPERSON LOUD: Thank you.

18 Congratulations to you. And thank you for
19 your patience this morning.

20 I think we can now call the Jemal
21 case.

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1 MS. BAILEY: Application 17983 of
2 Jemal's Bartley, LLC/Jemal's Epes Dorsey
3 Street, LLC, pursuant to 11 DCMR § 3103.2,
4 for a variance from the rear yard
5 requirements under section 774, a variance
6 from the off-street parking requirements
7 under subsection 2101.1, a variance from the
8 residential floor area requirements under
9 subsection 1706.4, to allow the construction
10 of a two-story commercial building with
11 office and ground floor retail uses in the
12 DD/C-2-C District at premises 705-707 6th
13 Street, Northwest. Square 486, Lots 4 and 45.

14 Mr. Chairman, if you'll bear with
15 me for just a moment because I believe the
16 applicant did withdraw one of the relief.
17 Yes. The applicant withdrew the relief from
18 the residential floor area requirements.

19 And the case is ready now, Mr.
20 Chairman, for hearing.

21 CHAIRPERSON LOUD: Thank you, Ms.

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1 Bailey.

2 And good morning to the
3 applicants.

4 MS. BROWN: Good morning.

5 CHAIRPERSON LOUD: I just want to
6 clarify that you did receive the supplemental
7 report from the Office of Planning?

8 MS. BROWN: Yes, we did.

9 CHAIRPERSON LOUD: Okay. Then
10 this is also a case that has been fully
11 briefed, although I don't think we want to go
12 through it at the pace that we did the
13 previous case. So it may be helpful to go on
14 the record articulating the evidence that
15 supports the claim for relief, but doing it
16 in a way where, you know if you don't need to
17 show a lot of demonstrative evidence, we can
18 probably not go into all of that. And then
19 we'll turn to the Office of Planning. You
20 may want to address the Office of Planning's
21 supplemental report as part of your

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1 presentation.

2 Yes, please?

3 BOARD MEMBER MOLDENHAUER: Before
4 we begin, I just want to go on the record and
5 make sure that it's known that I actually
6 reside in the property right adjacent to this
7 project at 703 6th Street. I'm stating that
8 I do not believe that would affect my ability
9 to be fair and objective on this case. And I
10 believe if the Board agrees with that issue,
11 we can move forward.

12 CHAIRPERSON LOUD: I certainly
13 think your representation that you can be
14 fair and impartial is enough for me.

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

17 Did the applicants have any?

18 MS. BROWN: The applicant has no
19 objection.

20 CHAIRPERSON LOUD: Okay. And is
21 the ANC here in this case? Okay.

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1 So we can move forward.

2 MS. BROWN: Very well. Thank you,
3 Mr. Chairman.

4 Good morning, members of the
5 Board. I guess good afternoon.

6 I'm Carolyn Brown with the law
7 firm of Holland & Knight here on behalf of
8 the applicant.

9 To my right is Paul Millstein from
10 Douglas Development representing the
11 applicant. Steve Sher from our office is
12 here today as our expert in zoning and land
13 use. And finally, we have Mr. Rick Conrath
14 from GTM Architects. We don't plan on him
15 testifying, but he's here to answer any
16 questions you may have.

17 Given that there's no opposition
18 and your instructions, we do plan on just an
19 abbreviated presentation for you.

20 And to clarify again, yes we have
21 withdrawn our request for variance relief

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1 from the residential requirement. Instead,
2 the applicant will be purchasing CLDs to
3 fulfill that requirement in the DD.

4 We propose to have Mr. Millstein
5 discuss with you today very briefly the
6 project and then Mr. Sher go through the
7 variance standards that we met.

8 And we have received the Office of
9 Planning's supplemental report as stated. And
10 we do fully agree with their revised support
11 for the project.

12 We do take one exception with the
13 request to have the DDOT requirement for
14 loading in the back. While we have no
15 objection to it, there's no other place to do
16 loading or servicing the building. That's
17 where it should be, off the alley. We do
18 note that there is no loading requirement for
19 this project, so we meet the Zoning
20 requirements. So I don't know that that
21 needs to be in the order as a condition.

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1 But, obviously, that's the only place it will
2 be.

3 Going through my abbreviated notes
4 here.

5 And Mr. Sher will go through, as I
6 said, the standard of relief.

7 We do have exceptional and
8 extraordinary conditions for the property,
9 most notably the extremely small size of the
10 site. There's an existing building on it, so
11 the only vacant parcel available for
12 construction Lot 4, which only has 2125
13 square feet. And there are various other
14 limitations that Mr. Sher will go through
15 with you.

16 So I think with that, I will just
17 turn it over to Mr. Paul Millstein.

18 MR. MILLSTEIN: Good morning.

19 Paul Millstein Douglas Development.

20 Thank you for having us today.

21 This is not a large project in stature, but I

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1 think it's important because there's a vacant
2 tooth in this block and we'd like to see it
3 developed, we'd like to see it finished out.

4 We'd like to bring a credible use to the
5 building and vacant land beside it. So we
6 didn't try to go with a very large structure
7 here, a large building, because we really
8 thought it wasn't in context with the
9 neighboring buildings right now. And we
10 tried to get our arms around something that
11 we think is developable in today's economy
12 that makes sense, that's marketable, that's
13 leasable and brings some nice services to the
14 community, which is really what we're very
15 vested in.

16 Our offices are a block away. I
17 walk those streets everyday. I spend a lot of
18 time downtown. And, you know, like what's
19 been happening down there and want to see it
20 continue on and I see this as an opportunity
21 to do.

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1 So we're before you with a
2 relatively small building, but I think its
3 important to the neighborhood.

4 So with that, I'll turn it over to
5 Steve and then be available for questions.

6 Thank you.

7 MS. BROWN: And before Mr. Sher
8 starts, I would like to qualify him as an
9 expert in zoning and land use. He's been
10 previously qualified numerous times.

11 For the benefit of the new member
12 of the Board, we have his résumé if we
13 appropriately can pass it forward.

14 CHAIRPERSON LOUD: Thank you. Why
15 don't we give Ms. Moldenhauer an opportunity
16 to review it.

17 Mr. Dettman, did you have any
18 questions regarding the proffer of Mr. Sher
19 as an expert? Okay. So I think Mr. Dettman
20 and I are on board with it. And once Ms.
21 Moldenhauer completes her review.

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1 CHAIRPERSON LOUD: I've had an
2 opportunity to review the CV, and I find no
3 problem with Mr. Sher serving as an expert.

4 CHAIRPERSON LOUD: Okay. Then
5 formally the proffer is accepted and his
6 testimony will be accorded the weight that
7 expert testimony is accorded.

8 MS. BROWN: Thank you.

9 MR. SHER: Mr. Chairman, members
10 of the Board, for the record my name is
11 Steven Sher, the Director of Zoning and Land
12 Use Services with the law firm of Holland &
13 Knight.

14 I will abbreviated the discussion
15 and go to what this case is about.

16 We have a piece of property that's
17 50 feet wide with a depth of 85 feet on the
18 east side of 6th Street between G and H
19 Streets. The property has a total land area
20 of 4,250 square feet. There is an existing
21 two-story vacant building on the northern

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1 half of the site, the southern half of the
2 site is vacant and unimproved.

3 The immediate context: There's a
4 four-story apartment building immediately to
5 the south called the Meridian Apartments
6 where Mrs. Moldenhauer lives. There's a 12
7 story apartment building immediately to the
8 north. So there's no opportunity to expand
9 the site. And there's an alley at the rear
10 and the street at the front, so the site is
11 what we have.

12 The existing zoning is DD/C-2-C.
13 That's C-2-C with the Downtown Development
14 Overlay. The site is in the Chinatown sub
15 area which requires retail on the ground
16 floor. It's also in housing priority area B,
17 which requires a certain minimum amount of
18 residential, which as we've stated will be
19 satisfied through the combined lot
20 development provisions. And there is no
21 residential proposed on this site.

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1 What is proposed is to retain the
2 existing two-story building and integrated it
3 to new construction on the currently vacant
4 portion of the site, what would wind up and
5 would be a commercial building with retail on
6 the ground floor, office or retail on the
7 second floor with third floor access to a
8 roof deck. So technically a three-story
9 building, 36 feet in height, approximately
10 8,980 square feet or 2.11 FAR.

11 We are for relief that constitutes
12 two variances: One on the rear yard and one
13 on the number of parking spaces.

14 In a C-2-C District the rear yard
15 requirement is 15 feet. It doesn't vary with
16 the height of the building, and that's
17 measured from the center line of the alley
18 for the first 20 feet in height and from the
19 rear property line above that. Because there
20 is a 16.75 foot wide alley at the back,
21 technically the first floor only requires a

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1 rear yard of 6.62 feet, and we don't have
2 that because we're proposing to build to the
3 rear property line, as you can see on the
4 drawing that's on the easel.

5 And above the first floor we would
6 be required to have 15 feet, and we don't
7 have that either. So we have no rear yard
8 provided and we need a variance on the rear
9 yard requirement.

10 With respect to the number of
11 parking spaces, parking is not required for
12 the existing building since it predates the
13 1958 Zoning Regulations. What would be
14 required for the addition, that would be two
15 spaces. We are not proposing to provide any
16 parking, so we seek a variance on two parking
17 spaces for the total combined development.

18 I think the Board is aware of the
19 standards for an area variance or area
20 variances, and I will not go into those in
21 detail other than to go specifically to

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1 address how we meet the three part test.

2 With respect to the exceptional or
3 extraordinary situation or condition, the
4 small size of the site, again it's only 50
5 feet wide by 85 feet deep, if you had to put
6 parking or a rear yard in the back of that
7 property, you essentially compromise the use
8 of the first floor because you're going to
9 take up almost 25 percent of that first floor
10 of addition for parking or alternatively rear
11 yard depending on how you look at it.

12 The site is not suitable for full
13 development under DD/C-2-C. For example, the
14 building immediately to the north which is a
15 full DD/C-2-C building is 75 feet wide, not
16 50 feet wide. So when you start trying to lay
17 out cores and elevator access to residential
18 on the upper floors, you can do that on a lot
19 that's 75 feet wide. You can't do it on a lot
20 that's 50 feet wide. So you're essentially
21 looking at what can you do with this property

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1 where you can use the commercial FAR and not
2 get into those upper story uses.

3 As I've stated earlier, the width
4 and area dimensions are locked in by the
5 alley configurations and existing buildings
6 to the south and the north.

7 The last piece of the exceptional
8 situation is the existing building on the
9 northern half of the property. It's built to
10 the rear lot line, it has no rear yard. The
11 grade of the first floor of that building is
12 two steps up about 18 inches from the grade
13 of the alley. So you can't go right into
14 that building, in fact there is no garage
15 access into that building now. And since
16 what we're going to do here is lay out the
17 new building so it aligns with the floors of
18 the existing building, you wouldn't be able to
19 get into the back of the new building either
20 because its 18 inches above the floor of the
21 alley. If you had to ramp up to get there,

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1 you would go even further into the space of
2 the building.

3 With respect to the practical
4 difficulty again, to create a continuous
5 floor plate across the entire site, you need
6 to align the height of the new construction
7 with the existing floors which makes the
8 whole first floor inaccessible from the alley
9 for parking. The site's way too small to
10 provide underground parking. And again, we
11 need to have a sufficient footprint in total
12 floor area to make the redevelopment feasible
13 for commercial retail or service, or office
14 use here.

15 With respect to the detriment to
16 the public good. As we've noted before, the
17 Chinatown subarea of the DD requires retail
18 on the first floor. I believe that there is
19 sufficient access to the area by transit such
20 that parking is not necessary. There are
21 many other retail uses existing in that area

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1 which do not provide parking area, and they
2 do so without apparent adverse impact to the
3 neighborhood.

4 And with respect to the rear yard
5 situation, there is the 16.75 foot wide alley
6 at the rear. And then the building on the
7 east side of the alley is setback about 15
8 feet from the alley. So there's more than 30
9 feet between the rear wall of the building
10 existing and as proposed to the building
11 across the alley to the east.

12 So for all of those reasons, we
13 believe that we have demonstrated that we
14 meet the three part test for a variance.
15 That there are exceptional or extraordinary
16 situations or conditions that the strict
17 application of the Regulations would cause a
18 practical difficulty, and that the relief can
19 be granted without detriment to the public
20 good. And I would suggest that you should
21 grant the application.

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1 CHAIRPERSON LOUD: Thank you, Mr.
2 Sher.

3 Are there any questions for Mr.
4 Sher?

5 VICE CHAIRPERSON DETTMAN: Mr.
6 Sher, not specific to the relief that's being
7 sought here, the two areas of relief. But can
8 you just describe for me briefly why the two
9 stair towers constitute a partial third-floor
10 instead of your normal everyday stair tower
11 that would be required to be setback?

12 MR. SHER: We've had that
13 discussion with the Zoning Administrator on
14 many occasions. The permitted height in this
15 zone is far above what the height is proposed
16 here. So if these stair accesses had been
17 above the permitted height, then they would
18 have to have been loose structures. The
19 Zoning Administrator has ruled to us and told
20 us many times that if we want to include them
21 within the overall height of the building,

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1 count them in FAR and otherwise, you know,
2 have it be determined. We could have built a
3 box that went straight up 90 feet and went
4 across. In fact, we could have built a box
5 in this case that went straight up to 120
6 feet because under the DD you get the maximum
7 height allowed under the Act in 1919. But in
8 this case we're only going 36 feet. So we
9 said let's call it a third-floor. It will
10 provide access to the roof deck, and there we
11 are.

12 VICE CHAIRPERSON DETTMAN: Did the
13 discussion with the ZA revolve around the
14 definition of a story as its defined in the
15 Zoning Regulations?

16 VICE CHAIRMAN DETTMAN: We have
17 had that discussion in other cases, not in
18 this case. But again, I don't want to declare
19 how old I am or how long I've been doing
20 this, but we've had this discussion with many
21 Zoning Administrators over many years and the

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1 response has basically been as long as you
2 count it in FAR and make it part of the
3 building, you can design it anyway you want
4 to and you're not above the limit of height.

5 When you get above the limit of height, then
6 it has to meet the setback requirements and
7 proceed from that point.

8 VICE CHAIRPERSON DETTMAN: When
9 you get above the limit of height according
10 to the Zoning Regulations?

11 MR. SHER: Yes.

12 VICE CHAIRPERSON DETTMAN: Okay.
13 Thank you.

14 MR. SHER: It would be the same
15 under the Act in this case, but we're not
16 anywhere near that.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Dettman.

19 Any additional questions for Mr.
20 Sher?

21 I'm sorry, did you -- okay.

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1 Did you have an additional
2 witness?

3 MS. BROWN: No, that concludes our
4 case in chief.

5 CHAIRPERSON LOUD: Okay.

6 MS. BROWN: And we'll just make a
7 closing remark.

8 CHAIRPERSON LOUD: Fantastic.
9 We'll come back to you for that.

10 Good morning, Mr. Cochran.

11 MR. COCHRAN: Good morning, sir,
12 other members of the Board.

13 For the record, I'm Steve Cochran
14 of the Office of Planning.

15 OP's basing its testimony both on
16 the applicant's October 13th filing as well
17 as on the letter that was attached to OP's
18 supplemental report, dated October 22nd.

19 Based on these we recommend that
20 the Board grant the applicant's relief
21 request from section 774.1's rear yard

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1 requirements without condition and section
2 2101.1's parking requirements.

3 I'd be happy to go into why we
4 think the applicant has met the three part
5 test if the Board likes. If the Board
6 prefers, I would just skip that and go on to
7 conclusions.

8 CHAIRPERSON LOUD: I like the idea
9 of not going through the entire analysis
10 personally. I'll check with other Board
11 members. But there are two questions that I
12 would have if you can answer.

13 MR. COCHRAN: Okay.

14 CHAIRPERSON LOUD: One is Ms.
15 Brown raised a question regarding the DDOT
16 recommended condition of the loading
17 operation or requirement in the alley.

18 MR. COCHRAN: Sure.

19 CHAIRPERSON LOUD: If you could
20 respond to the issue that she raised? She
21 said that Zoning does not require that.

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1 And then secondly, just very
2 briefly on the third prong of the test, the
3 Office of Planning's perspective on how the
4 project the third prong.

5 MR. COCHRAN: Okay. With respect
6 to DDOT's recommendation, there is no loading
7 requirement for the building. It's simply a
8 recommendation, not necessarily a requirement
9 that the applicant use the alley to load.
10 The applicant has already said they would use
11 the alley. DDOT, I believe, is trying to sort
12 of head-off any potential future problems by
13 at this stage raising the concern about
14 loading or double parking in front. Because
15 we've already got the Verizon Center doing
16 load there as well as the Gallery Place
17 project. Both of those load off of 6th
18 Street.

19 So they're just asking the
20 applicant to make sure that they do loading
21 only from the alley, not during day from any

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1 -- they won't be getting any dedicated
2 loading spaces in the front, et cetera.

3 Does that explain that better?

4 CHAIRPERSON LOUD: It does. Does
5 OP have an opinion on whether that should be
6 a condition of the relief?

7 MR. COCHRAN: We recommended that
8 with respect to DDOT's opinion we are
9 recommending that it does be a condition of
10 the relief.

11 The other condition that we were
12 recommending that you note because it would
13 make it much easier for future DCRA reviewers
14 that the applicant has to complete its
15 combined lot covenant before it can be
16 granted a building permit for this. Because,
17 as you know, the applicant does have a
18 housing requirement, the applicant has agreed
19 to fulfill that housing requirement through a
20 combined lot covenant.

21 So, again, both of these are to

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1 make it simpler to go through the
2 administrative process later on when the
3 applicant is getting a building permit.

4 CHAIRPERSON LOUD: Thank you.

5 And in terms of the substantial
6 detriment prong, so the whole alley loading
7 issue you are connecting to the third prong?

8 MR. COCHRAN: Correct.

9 CHAIRPERSON LOUD: Okay. And --

10 MR. COCHRAN: And the applicant,
11 by being able to gain relief from the rear
12 yard requirement, would be able to keep his
13 trash enclosed in the building. There is a
14 fairly large residential structure right
15 behind the applicant's site.

16 And as far as any other impact on
17 the public good or the Zoning Regulations,
18 for that matter, the applicant's noted just
19 how much transit there is in the area and
20 even DDOT has told OP that they have no
21 problem with the parking relief because there

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1 is so much commercial parking available
2 within a half a block of the site.

3 CHAIRPERSON LOUD: Okay. We'll
4 turn to Ms. Brown shortly for her response,
5 if any, to that. But let's see if the Board
6 members have any additional questions for the
7 OP report.

8 Okay. There don't appear to be
9 any. So, Ms. Brown we'll turn back to you.

10 MS. BROWN: I don't know if
11 there's an ANC report that needs to be
12 addressed first or if you're just asking me
13 to --

14 CHAIRPERSON LOUD: No. I think any
15 questions that you might have for OP would
16 come before the ANC report, and then we'd go
17 for the ANC report.

18 MS. BROWN: No, I have no
19 questions for OP.

20 CHAIRPERSON LOUD: Okay. And do
21 you have a position on whether the

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1 requirement that loading take place in the
2 alley be a condition or not a condition in
3 the--

4 MS. BROWN: You know, ultimately I
5 don't think that we care.

6 CHAIRPERSON LOUD: Okay.

7 MS. BROWN: But I don't know that
8 it's necessary and it ties in directly to the
9 relief that's being sought. And the same
10 position with the combined lot development.
11 That has to be a requirement of every
12 building permit in the DD. To satisfy it
13 somewhere we could put in it conditions for
14 every other requirement under the Zoning
15 Regulations as a condition, but I think it's
16 implicit. But we certainly don't object to
17 it

18 CHAIRPERSON LOUD: Okay. Thank
19 you.

20 And to your point, we would now go
21 to -- the DDOT is not here, so they did have

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1 some suggestions. I think we've incorporated
2 that into our discussion.

3 So we would now turn to the ANC
4 for its report. The ANC is not present.
5 This is ANC 6C. They did, however, at our
6 Exhibit 22 submit a report indicating that
7 there was a duly noticed meeting that had a
8 quorum, eight of nine Commissioners along
9 with some members of the public. That after
10 the project was presented and discussed, the
11 Commissioners voted eight to zero to zero to
12 support the project. This report meets the
13 requirements of our section 3115 for ANC
14 reports, and so will be given great weight.

15 Now if there are parties or
16 persons in the audience who are in support of
17 this project, now would be the time to come
18 up.

19 And seeing none, if there are
20 parties or persons in opposition, now would
21 be the time to come up. And also none.

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1 We would now turn back to the
2 applicant for any closing remarks.

3 MS. MONROE: Mr. Chairman, could I
4 just interject a second?

5 CHAIRPERSON LOUD: Yes.

6 MS. MONROE: The ANC did have a
7 caveat. I don't know if you want to address
8 that.

9 CHAIRPERSON LOUD: Please do.

10 MS. MONROE: That the elevator
11 shaft on the roof be enclosed in glass to the
12 extent possible in order to compliment the
13 glass of the floor below. I don't know
14 whether you want to talk about it or not, but
15 its in there and so it's kind of a
16 conditional approval you might want to just
17 ask a question about.

18 CHAIRPERSON LOUD: Thank you, Ms.
19 Monroe. I did not mean to overlook that.

20 She has sort of brought this out
21 on the record. It's part of Exhibit 22. In

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1 any event, did you want to respond to that?

2 MS. BROWN: Yes. The applicant
3 agrees to both -- well, there's one condition
4 that's written, there is another one that
5 they expressed during the meeting that there
6 being greenery on the roof. And the
7 applicant has agreed to do both: The glass
8 enclosed stair tower third-floor at the front
9 and the greenery.

10 BOARD MEMBER MOLDENHAUER: I just
11 have a quick question before you provide your
12 closing remarks.

13 The renderings and the plans that
14 are presented in the application, are these
15 the final plans for the project?

16 MS. BROWN: Yes, they are the
17 final plans for the project?

18 BOARD MEMBER MOLDENHAUER: Thank
19 you.

20 CHAIRPERSON LOUD: And just on
21 your last point about the greenery that's not

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1 a part of the ANC's written report, but just
2 some language that would allow a condition to
3 be written, where was the greenery to be? On
4 the roof?

5 MS. BROWN: I will flip the page
6 to the rendering, but you'll see some
7 greenery on the rendering.

8 CHAIRPERSON LOUD: So if we just
9 reference the exhibit?

10 MS. BROWN: You'll see on the
11 rendering trees towards the front of the roof
12 terrace. And it would simply be some tree
13 boxes and other planting boxes that would be
14 on the roof.

15 CHAIRPERSON LOUD: And you've
16 agreed to do that?

17 MS. BROWN: Yes.

18 CHAIRPERSON LOUD: Okay. All
19 right.

20 MS. BROWN: If I could just
21 clarify one point on are these the final

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1 plans? These are the final conceptual plans
2 for the exterior design. Obviously, the
3 tenant layout is going to be changing
4 depending on who goes into the building.

5 BOARD MEMBER MOLDENHAUER: I guess
6 on that point I guess to your knowledge would
7 there be any substantial change and I guess
8 any portion of the visual layout of the
9 building based on a tenant development, or
10 layout as you referenced?

11 MS. BROWN: My understanding is
12 no, but I'm going to let Mr. Millstein answer
13 that question.

14 MR. MILLSTEIN: As we sit today,
15 we don't have a tenant so we don't know
16 exactly what the future will bring. This is
17 the building we intend to build. I would say
18 if there is a substantial modification of the
19 building, we'll submit it, we'll bring it
20 back. But as of now, this is where we are.

21 We'll have signage, we'll need

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1 signage for whatever particular tenant comes
2 forward.

3 And the ability to potentially
4 make changes if a tenant comes forward that
5 makes sense to do something with, but as of
6 now we're building it spec. And this is what
7 we'd like to build.

8 BOARD MEMBER MOLDENHAUER: Thank
9 you.

10 MR. MILLSTEIN: Sure.

11 CHAIRPERSON LOUD: Just to that
12 point, I know the applicant is familiar with
13 that the rule for modifications is 3120 in
14 terms of how substantial or inconsequential
15 the change would be. I think you said only
16 if its a substantial change, you'd be
17 resubmitting it. So that rule speaks to how
18 that's gauged.

19 MR. MILLSTEIN: Okay.

20 MS. BROWN: Okay. Thank you, Mr.-

21 -

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1 CHAIRPERSON LOUD: I'm sorry.

2 Turn back to you now for your closing.

3 MS. BROWN: Thank you. That
4 concludes our presentation. We believe we've
5 fully met the burden of proof for variance
6 relief in this case based on the testimony of
7 Mr. Sher and our pleadings in the file, and
8 the OP report.

9 We're very thrilled to have the
10 full support of the ANC, Office of Planning
11 and also there is a letter in the record from
12 the Downtown Neighborhood Association, Mr.
13 Miles Groves submitted a letter in support.
14 He's also a resident to the north of the
15 project. So there is full support for this.

16 And we would respectfully request
17 your approval of the application and if
18 appropriate, we would be happy to have a
19 bench decision as well.

20 Thank you.

21 CHAIRPERSON LOUD: Thank you.

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1 I think, as you indicated, the
2 record is full and I think we can probably
3 deliberate on this today. But let me check
4 in with my colleagues and see if there's any
5 hesitancy regarding that.

6 Okay. Let me start us off. I
7 think as indicated, we can deliberate today.

8 This is an application for
9 variance relief from the rear yard provisions
10 in our regs and the parking provisions under
11 section 2101.1. The required parking as to
12 the project provides zero parking. The rear
13 yard requirements, 15 feet and no rear yard
14 is being provided, as I understand.

15 The unique exceptional situation
16 as testified to by Mr. Sher is basically the
17 small size of the lot. It's 50 feet wide by
18 80 feet deep. Well that, and the fact that
19 there's an existing building on the north
20 property line. And the combination of these
21 two realities create practical difficulties

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1 for the applicant in that if it were to try
2 to provide the parking, it sounds like it
3 would cut into the first-floor space that's
4 currently a part of the footprint of the
5 building. In addition to which, the two
6 separate buildings on the property are not in
7 direct alignment, and to try to connect the
8 two buildings would require providing a plate
9 that would also create some pretty
10 significant difficulties for the building
11 that they intend to construct on the
12 building.

13 The testimony is that there is no
14 substantial detriment to the public good. In
15 fact, retail is being provided. Retail is
16 required as a part of the Chinatown subarea.

17 The Office of Planning is in full
18 support and agrees that property is
19 exceptional, causes a practical difficulty,
20 there's no substantial detriment to the
21 public good or the Zone Plan.

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1 There are several conditions that
2 the evidence lifted out before us, one of
3 which is in our regs anyway. I'm not certain
4 if we'd want to conclude that as a condition.

5 We do want to, I guess, make it clear that
6 the applicant should complete its combined
7 lot development process. And since that, as I
8 understand it, is a requirement of the regs
9 I'm not certain if we'd put that as a
10 condition.

11 The second condition that we
12 discussed is that the applicant would load
13 only in the alley. I think that's a
14 condition that the applicant agreed to. And
15 there is a lot of congestion in there, and we
16 talked about that. So I'm fine with that
17 being one of the conditions.

18 The ANC met on the project. They
19 voted affirmably to approve it. And in their
20 approval they listed one of the conditions,
21 which thanks to Ms. Monroe, was brought out

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1 on our record. That's the elevator shaft on
2 the roof being enclosed in glass. And the
3 applicant agreed to that as well.

4 The ANC did not mention a second
5 condition, which the applicant has agreed to,
6 and it concerns the provision of greenery on
7 the roof as captured in their rendering,
8 which is in one of our exhibits. But the
9 applicant has agreed to that as well, and I
10 think that would be appropriate for a
11 condition also.

12 With that, let me open it up to
13 Board members and see if there's additional.

14 BOARD MEMBER MOLDENHAUER: I'll
15 just state on the record that, as stated
16 earlier, I live right next to the project and
17 I'm very excited about it. I commend the
18 applicant for working with the community and
19 making sure that everybody was on board.

20 And I think that it's positive
21 that they're willing to agree to the

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1 condition of the loading in the rear. I
2 think that that's important considering that
3 the property to its south, the building I
4 live in which has no parking, is historic,
5 and there's already some additional DDOT work
6 going on to provide additional loading on
7 other streets. So I think that that's a
8 positive.

9 And with that, I think we can move
10 forward.

11 CHAIRPERSON LOUD: Thank you.t

12 VICE CHAIRPERSON DETTMAN: Mr.
13 Chairman, I'm also in support of the project.
14 I'm very happy to see that even in this poor
15 economic climate the applicant is willing to
16 go forward with a project that is marketable
17 as well as will provide some amenities to the
18 neighborhood.

19 I do want to go on the record just
20 to state that I do disagree with something
21 that's in the OP report on page 2. And I'm

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1 not disagreeing with OP, I'm actually
2 disagreeing with the Zoning Administrator in
3 that it says: "The ZA has determined has
4 determined that the proposed roof stair
5 towers would constitute a partial third-floor
6 and would not be subject to roof structure
7 setback standards." Again, this isn't
8 actually directly applied in this case. But
9 I disagree with that for a few reasons.

10 One is that I think the regs are
11 very clear. If you read the definition of
12 story, it says the term story shall not
13 include cellars, stairways or elevator
14 penthouses. I think it's pretty clear. It
15 says it shall not include stairways provided
16 that the total area of the roof structures
17 located on the top story shall not exceed
18 one-third of the roof area. The one-third of
19 the roof area is probably between 1200 and
20 1300 square feet. According the applicant's
21 filing, the roof areas of these stairways is

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1 480 square feet; so it's below one-third.

2 If you read the definition of top
3 story, it says that the upper most portion of
4 a building or structure that is used for
5 purposes other than housing for mechanical
6 equipment or stairways. So I don't think it
7 can be considered a top story.

8 The regulations also are more
9 restrictive than what the Height Of Buildings
10 Act says in terms of setbacks. Because 411.2
11 says that when located below, at the same
12 roof level, or above the top story you shall
13 setback.

14 Now when the Zoning Administrator
15 says that well since you're below the height
16 that's allowed under the Zoning Regulations
17 or the 1910 Height Act, you can include them
18 in the FAR and consider them as a story, even
19 though it's very clear the definition of
20 story doesn't allow for it.

21 The height of the building,

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1 regardless of where its built, has nothing to
2 do with the spirit of the setback provisions
3 of 411. The spirit is in 411.1: "To
4 exercise a reasonable degree of architectural
5 control, the visibility of these structure
6 from the public rights of way, specifically
7 the public streets."

8 So I don't see how -- and I raise
9 this, in this case it's not a height of
10 buildings issue. And NCPC has kind of looked
11 at as the big bad wolf of the Height of
12 Buildings Act. But we will see a case where
13 a building is going to be built someday in
14 the city that's built to the height that's
15 allowed under the 1910 Act, and these are the
16 types of cases that will be pointed to as
17 precedent to say well they're not actually
18 roof structures, they're part of he story.
19 And in that situation I'm looking forward to
20 the actual measurement of the building being
21 to the top of the stairway, or not the top of

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1 the parapet and then we're going to consider
2 these same exact structures as roof
3 structures, and then set them back.

4 CHAIRPERSON LOUD: Thank you, Mr.
5 Dettman. And you're right, you're setting
6 the foundation factually for that argument
7 not to be successful, because the transcript
8 will contain your clear distinction on this
9 record.

10 So, that being said, I would like
11 to now move to close us out on this case. I
12 think the record has been full and we've
13 deliberately fully. And I'd like to move
14 approval of Application No. 17983 for
15 variance at 705-707 6th Street from our rear
16 yard requirements of 774.1 and our parking
17 requirements under 2101.1, as condition.

18 Is there a second?

19 BOARD MEMBER MOLDENHAUER: I
20 second.

21 CHAIRPERSON LOUD: Okay. Motion

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1 has been made and seconded. Is here further
2 deliberation? Hearing none, all those in
3 favor say aye.

4 ALL: Aye.

5 CHAIRPERSON LOUD: All those who
6 oppose? And are there any abstentions.

7 And, Ms. Bailey, if you read back
8 the vote?

9 MS. BAILEY: Mr. Chairman, the
10 vote is recorded as three-zero-two to grant
11 the application.

12 Mr. Loud made the motion, Ms.
13 Moldenhauer seconded, Mr. Dettman supported
14 the motion. Two other Board members are not
15 sitting at this time.

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

18 I'm sorry.

19 MS. BAILEY: Excuse me. And
20 that's with the condition that were
21 articulated.

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1 CHAIRPERSON LOUD: Thank you, Ms.
2 Bailey. And this is one we can do a summary
3 decision on.

4 MS. BAILEY: Yes, Mr. Chairman.

5 CHAIRPERSON LOUD: So let's do
6 that. And if there's nothing further in this
7 case, thank you. Appreciate your patience
8 this morning. Have a great day.

9 MS. BROWN: Thank you.

10 MS. BAILEY: Mr. Chairman, there
11 was graphic that was spoken about, and I
12 would like to have that, if that's possible.

13 With the trees and all. Yes, okay. All
14 right. Good. Thank you.

15 CHAIRPERSON LOUD: Okay. And I
16 believe we're going to call the Badey case
17 next, and then we're going to do our best to
18 get through the Badey case without any
19 unnecessary delays. And then we'll probably
20 take a break.

21 So if anyone is here for the

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1 afternoon cases and wanted an opportunity to
2 take a break, now would be a good time. I'm
3 kind of estimating that we probably -- I'm
4 certain we're going to break before we start
5 the afternoon calendar. I'm not certain what
6 time we'll start the break. But as we get
7 further in the day, I'll know a little bit
8 more. But I'm thinking that certainly around
9 1:30 we should be through with this case,
10 perhaps 1:30 or 1:45. And we'll probably
11 break for about, what? You say 30 minutes
12 would be enough. Yes, we'll break for about
13 30 minutes.

14 So just sort of giving you some
15 advance time if you're in the audience and
16 don't want to remain here. It looks like
17 we'll probably call the afternoon calendar
18 around 2:15 or so.

19 Ms. Bailey?

20 MS. BAILEY: Mr. Chairman, the
21 last case of the morning is 17977, it's the

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1 application of Frederic and Laure-Anne Badey,
2 pursuant to 11 DCMR § 3103.2, for a variance
3 from the height requirements under subsection
4 2500.4 and 2500.6, and a variance from the
5 use provisions under subsection 2500.5, and a
6 variance from the side yard requirements
7 under subsection 2500.6, to allow a second
8 story addition to an existing accessory
9 building proposed for living quarters. The
10 property is zoned R-4. It's located at 541
11 14th Street, Northeast. Square 1043, Lot
12 860.

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

15 Good morning to everyone. If you
16 could introduce yourselves for the record,
17 and I guess starting with my right. And then
18 we can get started.

19 MS. BADEY: Good afternoon.
20 My name is Laure-Anne Badey. And I'm the
21 owner of the property.

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1 MR. BADEY: Good afternoon. My
2 name is Frederic Badey. And I'm the co-owner
3 of the property.

4 MR. SHOVE-BROWN: Good afternoon.
5 My name is David Shove-Brown. I'm the
6 architect for the Badey residence.

7 CHAIRPERSON LOUD: Good afternoon
8 I should say to everyone.

9 And, Mr. Brown, you're
10 representing the applicants?

11 MR. SHOVE-BROWN: Correct.

12 CHAIRPERSON LOUD: Okay. IS the
13 ANC for this case present, I believe it's ANC
14 6B? Okay.

15 Then why don't we go ahead and
16 start with you. We'll turn it over to you,
17 Mr. Brown and let you get started.

18 MR. SHOVE-BROWN: Okay. There's
19 actually an error in the application. This
20 is in Southeast, it's not in Northeast.

21 CHAIRPERSON LOUD: Okay.

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1 MR. SHOVE-BROWN: Just to have the
2 record show that.

3 The property is on 14th Street,
4 Southeast, just north of the Potomac Avenue
5 Metro station. I believe you all have copies
6 of drawings and renderings. Okay.

7 The property is an interesting one
8 in that it is 13 feet wide and about 130 feet
9 long. That 130 foot length is eastwest.

10 On the west side of the property
11 is an interesting condition in that there is
12 a two-car garage that actually encompasses
13 the neighbor to the north's rear lot, aside
14 from a three foot slot that just provides
15 access to the alley from the back yard.

16 The proposal is to build an in-law
17 suite above the garage. And given the Badeys
18 are from France, they have relatives that
19 come for a month or so at a time. So the
20 intent is to build an in-law suite for
21 relatives only. This is not a property for

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1 rental, for sale, for lease, for subzoning or
2 anything of that sort.

3 In going with the three part
4 analysis, really the most constraining part
5 of this application is the site: The fact
6 that the site is 13 feet wide and 130 feet
7 long provides a very interesting arrangement
8 for the existing house.

9 What also adds to some of the
10 challenge in the existing house is the fact
11 that the backyard, the house actually steps
12 off the property line and gets narrower. The
13 initial exploration was to do an addition at
14 the back of the house looking at gaining an
15 additional residential bedroom for an in-law
16 area. However, one bedroom would be
17 sacrificed in gaining access to that rear
18 bedroom, if that make sense.

19 If we build a bedroom on the back
20 of the house, the existing rear bedroom
21 becomes a hallway and nothing more, and

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1 therefore we have no net gain.

2 So given the fact that that lot
3 constraint and the existing constraint
4 exists, we visited building on the second
5 story of the garage.

6 Now the lot is also quite
7 interesting in that at the east side of lot,
8 the rear of the lot, is all industrial areas.

9 It's parking for DDOT vehicles, there's a
10 vehicle garage repair shop there, there's a
11 sheet metal shop and parking for garbage
12 trucks. So the proposal was to build this
13 addition to block off some of that noise, add
14 some security to the lot and allow for the
15 maintenance of what small back yard currently
16 exists for the two daughters to play.

17 We have letters of support from
18 the neighbors. We have investigated if there
19 will be any physical detriment to the back
20 yard of the neighbors. And, yes, given
21 afternoon sun on a December day, there will

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1 be some loss of light in the backyard. There
2 is an existing tree that causes loss of
3 light, but as you know trees can come and go.
4

5 So the neighbors on the north side
6 are in support of this project. The
7 neighbors on the south side are in support of
8 this project. We have no neighbors that are
9 against the project.

10 CHAIRPERSON LOUD: Thank you.

11 It's Mr. Brown, correct?

12 MR. SHOVE-BROWN: Shove-Brown.

13 It's hyphenated. It confuses just everybody.

14 CHAIRPERSON LOUD: Okay. Well,

15 I'll Shove-Brown. Mr. Shove-Brown.

16 MR. SHOVE-BROWN: You should see

17 me get airline tickets. It's a mess.

18 CHAIRPERSON LOUD: Just a couple

19 of quick things.

20 Mr. Nero did at our Exhibit 22,

21 and if you don't have a copy you should

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1 probably get a copy, make the correction to
2 the quad and he indicated that it was
3 southwest.

4 MR. SHOVE-BROWN: Okay.

5 CHAIRPERSON LOUD: And the correct
6 ANC was 6B. So he's done that just so that
7 you'll know that he's done that.

8 Also, your request for relief
9 includes an area variance as well as a use
10 variance. And the test is, generally
11 speaking, the same except that with the use
12 variance there's also a requirement that the
13 applicant show an undue hardship as distinct
14 from the area variance where a practical
15 difficulty is shown.

16 MR. SHOVE-BROWN: Yes.

17 CHAIRPERSON LOUD: And one of the
18 tests that the case law has come out with for
19 whether there's an undue hardship is an
20 articulation of a reason why the property
21 cannot be used as zoned. And so this is

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1 zoned R-4 and there are a number of
2 permissible uses in the R-4 for a private
3 garage. And so did you want to address that
4 somewhat?

5 MR. SHOVE-BROWN: Well, it stems
6 from our visiting of doing the addition off
7 the back of the house in that the net gain of
8 zero residential units or bedrooms didn't
9 prevent a viable solution to trying to get
10 additional sleeping quarters for relatives.
11 Chewing up any additional backyard space also
12 provided a hardship in that right now the
13 kids play either on 14th Street, which
14 unfortunately has had some fairly significant
15 crime over the last year, or in the alley, or
16 in the backyard. So we wanted to maintain as
17 much backyard space as humanly possible,
18 which led us to the garage exploration.

19 CHAIRPERSON LOUD: Now I think I
20 understood. Now that was eye opening for me
21 because I didn't pick that up originally from

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1 just reviewing the pleadings in terms of the
2 loss of the potential bedroom.

3 But speaking to the use variance
4 test specifically, I think what it's saying
5 is that one of the things that you would have
6 to articulate or show for our consideration
7 is that the current private garage that
8 you're talking about converting--

9 MR. SHOVE-BROWN: Yes.

10 CHAIRPERSON LOUD: -- could not be
11 use for the zone permitted purposes, which
12 would include obviously a private garage?

13 MR. SHOVE-BROWN: Correct. The
14 garage story will stay. We're building
15 directly on top of the existing garage. So
16 for R-4, the garage use is permitted. The
17 residential unit above is what we're going
18 for the variance because we have no other
19 place that we can do a viable extra
20 residential unit on the property. The
21 hardship is that we need the extra living

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1 quarter. And, quite frankly, the garage is
2 the only place that provides space to do so.

3 CHAIRPERSON LOUD: Okay. And the
4 testimony again on not adding to the existing
5 primary dwelling is that -- I understood it,
6 but I didn't fully understand it. Is it that
7 you would end up losing a bedroom if you
8 added on?

9 MR. SHOVE-BROWN: Correct.
10 Correct. Currently at the back of the house,
11 the residence is not the entire width of the
12 property. It steps in about 4½ feet or so
13 from one edge, the north edge of the
14 property. That's currently a bedroom.

15 If we add a bedroom to the back of
16 that because of the need for a corridor and a
17 door into that back bedroom, that room would
18 become useless. It would essentially become
19 a grand hallway that maybe you could put a
20 desk in, but the function of the bedroom
21 would be lost. So we would do an addition

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1 off the back and gain nothing towards the end
2 goal.

3 CHAIRPERSON LOUD: Thank you.

4 Let me see if the Board members
5 have additional questions.

6 VICE CHAIRPERSON DETTMAN: Just
7 along those same lines in terms of the
8 addition to the rear of the house.

9 MR. SHOVE-BROWN: Sure.

10 VICE CHAIRPERSON DETTMAN: Would
11 you happen to know if the court, that's I
12 believe on your north side. Yes, the open
13 court along the side of your house, do you
14 happen to know what the width is and whether
15 or not it contributes to lot occupancy
16 currently?

17 MR. SHOVE-BROWN: Where the
18 building steps back from the property?

19 VICE CHAIRPERSON DETTMAN: Where
20 the building steps back and then its
21 separated from the property line.

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1 MR. SHOVE-BROWN: That area is not
2 considered in the overall building area or
3 building footprint currently. It's about or
4 4½ feet wide.

5 VICE CHAIRPERSON DETTMAN: So I
6 think that given the definition of lot
7 occupancy, less than five feet contributes to
8 a lot occupancy. So it does count towards
9 the lot occupancy automatically.

10 MR. SHOVE-BROWN: Okay.

11 VICE CHAIRPERSON DETTMAN: Because
12 its a nonconforming court.

13 MR. SHOVE-BROWN: Okay.

14 VICE CHAIRPERSON DETTMAN: Did you
15 consider in looking at a possible addition to
16 the rear of the house filling in that court?

17 MR. SHOVE-BROWN: We had not given
18 the in initial thought of the cost of doing
19 so just to get the bedroom in the back, to
20 try to in fill was going to be difficult. So
21 we did not explore that beyond initial

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1 discussions.

2 VICE CHAIRPERSON DETTMAN: Okay.

3 And just to your statement about the undue
4 hardship, and you had mentioned that the
5 undue hardship is the fact that you need this
6 additional bedroom?

7 MR. SHOVE-BROWN: Correct.

8 VICE CHAIRPERSON DETTMAN: I guess
9 kind of right now I'm having a hard time
10 considering that as the actual undue
11 hardship. I'm wondering what's the result of
12 you not being able to have this extra
13 bedroom? So what undue hardship or what
14 hardship results from you not being able to
15 get the relief in order to provide that third
16 bedroom?

17 MR. SHOVE-BROWN: Well,
18 unfortunately, the situation is that
19 relatives visiting from abroad are not able
20 to stay with the family and with Frederic and
21 Laure-Anne working full-time and two young

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1 daughters, the intent was that they would be
2 able to come over and take care of the
3 children during the day. The hardship is
4 that they would not be able to stay at the
5 house. Given the fact that they would stay at
6 a hotel and -- you know --

7 VICE CHAIRPERSON DETTMAN: Right.

8 Okay.

9 MR. SHOVE-BROWN: As much as I
10 like to encourage my mother at a hotel.

11 That's a whole other --

12 VICE CHAIRPERSON DETTMAN: Thank
13 you.

14 Well, I believe you were putting
15 on your case, taking us through the three
16 prongs of the variance test. I just want to
17 ask whether or not that closes out your case,
18 are there any extra points that you want to
19 make to fill in your variance test in terms
20 of the three prongs that go the area variance
21 as well as the three prongs that go to the

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1 use variance?

2 MR. SHOVE-BROWN: Correct. No. I
3 think that pretty much summarizes. We've
4 actually been communicating very openly with
5 Mr. Goldstein from the Office of Planning and
6 have read and reviewed his report.

7 The only downfall in the literal
8 Zoning variance is that we're only looking at
9 the garage. Part of the hardship exists with
10 the house itself and being able to do the
11 addition off the back. So that's where we
12 think part of this hardship really stems
13 from?

14 VICE CHAIRPERSON DETTMAN: Okay.
15 Ms. Moldenhauer, any questions?

16 BOARD MEMBER MOLDENHAUER: Looking
17 at the diagram of the addition, I guess it
18 looks as though in addition to another floor
19 you're also putting in a roof deck, is that
20 correct?

21 MR. SHOVE-BROWN: No. I'm not

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1 sure. Which drawing are you looking at?

2 BOARD MEMBER MOLDENHAUER: I'm
3 looking at the east elevation on 1.5.

4 MR. SHOVE-BROWN: No, that's just
5 the stair going up to the residential unit
6 with a landing up at the top. That door that
7 you see on the first floor is the existing
8 door, just --

9 BOARD MEMBER MOLDENHAUER: So this
10 area up here would not be a roof deck?

11 MR. SHOVE-BROWN: Correct. That's
12 just the extension of the parapet for fire
13 protection from property-to-property. And
14 then the way that the roof slopes down.

15 BOARD MEMBER MOLDENHAUER: In
16 order to potentially not have as much impact
17 on neighbors, you did mention that obviously
18 adding another level would have an impact on
19 the light and sun of the property. Did you
20 look at potentially doing a flat roof on that
21 second floor, and can you talk to me about

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1 that analysis and why you ended up not going
2 with a flat roof?

3 MR. SHOVE-BROWN: We did
4 investigate several different roof options.
5 Part of the situation is actually the
6 building across alley that's actually
7 slightly taller than this proposal. And what
8 we've done is slope the yard side portion of
9 the roof down so that we minimize the amount
10 of head room required and maximize the amount
11 of light coming in past the building across
12 the alley into the property. So we found
13 that this actually helped us gain a little
14 bit of height, in the actual space minimize
15 the amount of light lost in the backyard.
16 And in an attempt to make everybody happy.

17 BOARD MEMBER MOLDENHAUER: Thank
18 you.

19 VICE CHAIRPERSON DETTMAN: This
20 might actually go to the question that Ms.
21 Moldenhauer just asked. I missed your last

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1 question. But I was wondering how you got to
2 your height resulting in 22 feet? So I'd
3 essentially like to know what's the clearance
4 height of the existing garage? And then are
5 you retaining that ceiling height on the
6 lower level and then building on top?

7 MR. SHOVE-BROWN: We're actually
8 dropping the existing garage height slightly,
9 as much as we can, to minimize the amount of
10 height that we've got. It comes from the
11 existing garage height, which is a clear
12 story, or a clear height of about eight feet.

13 Then with structure, joist, insulation,
14 flooring we then have the highest point
15 inside the unit just about 9, 9½ feet before
16 you get to the structure. And then that
17 highest point becomes 22 feet.

18 VICE CHAIRPERSON DETTMAN: So
19 clearance on the first floor and second floor
20 total eight feet on the bottom and nine feet
21 on top?

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1 MR. SHOVE-BROWN: Roughly. The
2 ceiling up on the second floor slopes with
3 the roof. So you end up with about 9½ feet.

4 So you're looking at 17 feet. There's also
5 a slight difference from the street level in
6 the alley versus the land level in the
7 backyard. The alley's about a foot down, so
8 that 22 feet is from the alley side.

9 VICE CHAIRPERSON DETTMAN: I know
10 that there's a provision in the regs that is
11 very clear on how this building should be
12 measured. And is it measured according to--
13 I thought it was the rear of the building
14 instead of the alley side. Because that 4½
15 feet of structure. That seems to be unusual.

16 MR. SHOVE-BROWN: Yes. And
17 unfortunately, I don't have those exact
18 numbers in front of me, so I'd have to dig
19 that up. I'm sorry I'm not prepared with
20 that. Of course, my client is better
21 prepared.

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1 This is just the structural
2 calculations, I'm afraid.

3 VICE CHAIRPERSON DETTMAN: Thank
4 you. Yes, it's 2500.7. It says: "The
5 height of accessory building permitted by .4
6 and .5 shall be measured from the finished
7 grade at the middle of the side of the
8 accessory building that faces the main
9 building."

10 MR. SHOVE-BROWN: Okay.

11 VICE CHAIRPERSON DETTMAN: So you
12 had said that the alley is a foot --

13 MR. SHOVE-BROWN: It's roughly,
14 yes, just under a foot. About 10 or 11
15 inches from the grade level of the backyard.
16 There's actually a stepdown into, or two
17 steps in the garage.

18 VICE CHAIRPERSON DETTMAN: So the
19 alley is higher than the other side of the
20 building?

21 MR. SHOVE-BROWN: No. The

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1 backyard is higher than the alley.

2 VICE CHAIRPERSON DETTMAN: It's
3 higher? Okay.

4 And you wouldn't have any idea
5 what that measurement would be from the other
6 side of the building? Would you be at 20
7 feet, which is still higher?

8 MR. SHOVE-BROWN: Yes, I would say
9 20 feet and change.

10 VICE CHAIRPERSON DETTMAN: Thank
11 you, Mr. Chairman.

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

14 IF there are no further questions,
15 we can turn to the Office of Planning for its
16 report.

17 Good afternoon.

18 MR. GOLDSTEIN: Good afternoon,
19 Mr. Chairman and members of the Board.

20 For the record, my name is Paul
21 Goldstein, and I'm with the Office of

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1 Planning.

2 The Office of Planning cannot
3 recommend approval of the applicant's request
4 for area variance relief to section 2500.4
5 and use variance relief pursuant to section
6 2500.5. As you've heard, the relief is
7 needed to accommodate the applicant's
8 proposal to construct a second-floor addition
9 above the detached garage and to use it for
10 human habitation.

11 The subject property just
12 generally is Lot 860 in Square 1043 and is
13 zoned R-4.

14 I'll briefly address the three
15 part variance test for each section.

16 First, 2500.4 limits detached
17 accessory garages to one story and 15 feet in
18 height.

19 OP agrees with the applicant that
20 the lot is unique. The majority of the
21 property is length, is 13 feet wide, which is

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1 unusually narrow for residential lots. But
2 that combined with the fact that the property
3 expands to about 27 feet in the rear creates
4 an irregular shape to the property.

5 OP does not believe, however, the
6 applicant has made the case for the practical
7 difficulty arising from the property's
8 uniqueness. The property is already
9 developed with a single-family home and a two
10 car garage. If expansion is needed, I guess
11 there has been some discussion today could it
12 occur in a different way that would not
13 require a variance relief? I guess there
14 could be a possibility of an expansion up. I
15 think we haven't heard that as much. There
16 could be a possibility also of a special
17 exception going back. The applicants always
18 said that there are some constraints that
19 would hamper that, but those are
20 possibilities.

21 While the relief does not appear

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1 to present any problems to the public good,
2 relief would substantially impair the intent
3 of the Zone Plan.

4 The height and the story
5 regulations serve to maintain the character
6 of the zoned district by prescribing
7 appearance and the development density of
8 accessory structure. And the second-story
9 addition would be out of character for
10 residential properties in the square.

11 Concerning section 2500.5, the
12 property's uniqueness does not impose an
13 undue hardship, which as you noted, is the
14 variance standard under a use variance.

15 The property is currently used in
16 conformance with the R-4 zone. It's being
17 used as a single-family dwelling property.
18 The house has been there for more than a 100
19 years. And in-law suites are not permitted
20 above detached accessory garages in this
21 zone. And as a result, granting the variance

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1 in this case would impair the intent of the
2 Zoning Regulations.

3 OP does note, as I think the
4 applicant testified, there are neighbors in
5 support of this, including neighbors to the
6 north and the south.

7 The ANC submitted a letter that
8 was a little unclear, actually, as to what
9 their intention was. It seemed to reflect on
10 the one hand both we'll vote against it and
11 on the other hand no opinion at all. So I
12 really don't know quite what to make of the
13 ANC's letter.

14 That will conclude my
15 presentation. And I'm available for any
16 questions.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Goldstein.

19 Just on the area variance for a
20 moment, the witness had testified that one of
21 the options that you suggested, perhaps going

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1 back, would result in the loss of a bedroom.

2 And it is a narrow property, we talked about
3 that as well. Can you elaborate, I guess, on
4 your conclusion that the narrow width of the
5 property, the irregular shape would not cause
6 a practical difficulty as to the area
7 variance?

8 MR. GOLDSTEIN: It is my belief
9 that I think it was also identified perhaps
10 in closing the court would be a possibility.

11 It is tight, I'm not going to deny that.
12 The home as it juts back with the court is
13 only ten feet wide. If you were to preserve
14 that court, certainly would create a narrow
15 space. I mean, whether it could be done I'm
16 not an architect. You may not get exactly
17 what you want, but it's probably possible
18 given, maybe, different configurations.

19 This is tough. I mean, there are
20 13 foot wide properties elsewhere. The fact
21 that you're 13 feet wide doesn't necessarily

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1 mean that you should be able to get as much
2 house as everybody wants. But I can see
3 there still are some constraints to what the
4 applicant proposes, but there could possibly
5 be some solutions that maybe doesn't get
6 exactly what they want, but can get closer to
7 what they want.

8 CHAIRPERSON LOUD: And just on the
9 use variance, you mentioned the current use
10 as being conforming. Are there other uses
11 that this property could be put to in the
12 alley in the R-4 that would be conforming?

13 MR. GOLDSTEIN: You're saying for
14 the actual structure, the accessory
15 structure? I guess accessory structures just
16 by their nature can be artist studios or just
17 used. I mean to use conforming right now
18 just for parking.

19 You could actually have a flat on
20 the property if it was internal to the
21 building. I don't know. There might be

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1 constraints on that. But generally the
2 property is zoned for single-family use. Its
3 continued in the past as single-family use.
4 It can continue in the future as single-
5 family use. So there is a reasonable use of
6 the property. It just may not be able to
7 have as many bedrooms in the configuration
8 that you want.

9 CHAIRPERSON LOUD: And did I
10 understand correctly that the current private
11 accessory garage could as a matter-of-right
12 be used as an artist studio in the R-4?

13 MR. GOLDSTEIN: I'd have to look
14 at the regulations. But I believe there are
15 some conditions to the use of it. But as far
16 as a use goes, it would be permitted. Now I
17 don't believe it would actually be permitted
18 on the second floor by right. Let me qualify
19 that. Probably the use could be permitted on
20 the second floor, but the second floor itself
21 is not permitted in an R-4 zone.

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1 CHAIRPERSON LOUD: Say, for the
2 variance --

3 MR. GOLDSTEIN: Yes, say for an
4 area variance.

5 CHAIRPERSON LOUD: Well, that
6 would be an area variance, though, for the
7 second floor in that case.

8 MR. GOLDSTEIN: Yes. Yes. So if
9 it would be possible to get an area variance
10 for the second floor and then have a
11 conforming use in that second story. I think
12 we've actually seen those cases in the past.

13 CHAIRPERSON LOUD: Okay. I don't
14 have any additional questions.

15 Let's see if other Board members
16 do.

17 And Mr. Shove-Brown, do you have
18 any questions for the Office of Planning?

19 MR. SHOVE-BROWN: I do not.

20 CHAIRPERSON LOUD: Okay. Is the
21 ANC here? They're not here. They did submit

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1 a report and essentially I think as Mr.
2 Goldstein said, its our Exhibit 24. They
3 didn't take a position one way or the other,
4 as I'm understanding. In fact they said "we
5 take no position."

6 So there's a support letter from a
7 Mr. Salzman, our Exhibit 23. And I think
8 that you mentioned there are some additional
9 neighbors that support the project?

10 MR. SHOVE-BROWN: Correct.

11 CHAIRPERSON LOUD: Okay. At this
12 time we'll turn to see if there are any
13 persons in the audience who are in support of
14 the application, this would be the time to
15 come up.

16 Seeing none, if there are any
17 persons who are in opposition, this would
18 also be the time.

19 And again seeing none, we would
20 now turn to the applicant for any closing
21 statement.

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1 MR. SHOVE-BROWN: I think one
2 thing, too, just revisit and bring in terms
3 of the summary from the Office of Planning,
4 in terms of the characteristics of the rear
5 yard units I think it's important to note and
6 the site plan is the fact that we've got
7 these 2, 2½ story industrial buildings to the
8 rear yard. So we feel as though this
9 addition will actually be enhancing the
10 backyard view and enclosing the backyard
11 experience as opposed to the sheet metal
12 shops and the dump truck and garage truck
13 parking.

14 CHAIRPERSON LOUD: Thank you.

15 I think that unless there's
16 further -- if there are any additional points
17 you want to make going to what we are here
18 today, we probably have a full record before
19 us and can deliberate on the case today.

20 Okay. I think what we'll do is
21 turn to Mr. Dettman to get us started.

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1 VICE CHAIRPERSON DETTMAN: Thank
2 you, Mr. Chairman. Having reviewed the record
3 and hearing the testimony today, I am
4 actually in agreement with the position that
5 the Office of Planning takes with respect to
6 this application, and specifically the use
7 variance requests. I'll start by going
8 through the use variance analysis, the
9 relevant three prongs.

10 Since essentially the applicant is
11 trying to establish a room for human
12 habitation above the one-story garage and if
13 the applicant is unsuccessful in meeting the
14 use variance test, the area variance
15 essentially would not apply.

16 I agree with OP that I think the
17 property has some unique aspects. It has a
18 couple of exceptional conditions. It is a
19 very narrow lot, and I believe OP says that
20 it's not uncommon in the square. However, in
21 terms of residential properties throughout

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1 the District, it can be considered to be
2 narrow.

3 It also has an irregular shape.
4 It's fairly narrow from the front going
5 towards of the rear of the alley and then it
6 expands to 20 some feet along the alley,
7 which is where the existing one-story
8 accessory garage is.

9 Whether or not those two
10 exceptional conditions give rise to, in this
11 case, an undue hardship upon the property
12 owner, that is where I'm not being able to
13 establish that connection between the first
14 prong and the second prong undue hardship
15 requirement.

16 And having come to that
17 conclusion, I for myself do not need to get
18 to the third prong in terms of whether or not
19 the use variance would cause substantial
20 detriment to the public good or to the intent
21 and purpose of the Zone Plan.

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1 I think that we've heard
2 testimony, we have letters in the record and
3 that indicate that there would not be
4 substantial detriment to the public good.
5 The neighbors to the north and to the south
6 are supportive of the project, as well as a
7 Mr. Salzman. However, I think I do see a
8 potential for having a substantial impairment
9 on the intent and purpose of the Zone Plan,
10 and specifically to the provisions in 2500.

11 So, therefore, Mr. Chairman,
12 unless you would like me to take us through
13 the area variance request, I see the
14 application failing on the three prongs of
15 the use variance test and cannot support the
16 project.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Dettman.

19 I think since both requests for
20 relief are before us, we probably as a
21 precaution ought to vote on both of them

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1 separately. Then if you wanted to walk
2 through an area variance analysis, you can do
3 that. If not, I can certainly do it as well.

4 VICE CHAIRPERSON DETTMAN:

5 Certainly.

6 The area variance that was
7 requested is from the provision of 2500.4,
8 which I believe states that an accessory
9 garage shall not exceed one story or 15 feet.

10 The proposed accessory garage is
11 to a height that approximates 22 feet. I
12 think we established during the testimony
13 that measuring from the rear of the building
14 as 2500.7 indicates or .6 or .7 indicates it
15 might be a little bit lower than 22 feet.
16 But nonetheless, it does have two stories and
17 it does exceed the 15 feet.

18 Again, applying the area variance
19 test to this case, I think the same
20 exceptional conditions that exist on the
21 property that I determined for the use

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1 variance test apply to the area request as
2 well. It's a narrow lot, 13 feet wide and it
3 has an irregular shape. However, again I'm
4 unable to draw the connection between how
5 those particular conditions give rise to a
6 practical difficulty on the property owner to
7 maintain an accessory building at the
8 existing height, one-story and at or below 15
9 feet.

10 So I think in both cases the use
11 variance and the area variance requests fail
12 on the second prong.

13 CHAIRPERSON LOUD: All right.

14 Thank you, Mr. Dettman.

15 I have looked at the evidence much
16 the same way you have. I'm sort of hesitating
17 because I was just presented with a second of
18 the regs that I'm not certain about. And I
19 think what I'm going to do is ask counsel,
20 Ms. Monroe from the Office of Attorney
21 General about it as we deliberate. Just out

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1 of an abundance of caution because I don't
2 want to overlook something that may be
3 applicable. But it talks about accessory
4 uses. In section 202 it talks about
5 accessory uses. There's a section -- is it
6 section 202? I'm sorry, is that the one that
7 I was just given.

8 Okay. I'm sorry. Then I've been
9 corrected. That the section that I was
10 looking at does not apply. So I withdraw.

11 BOARD MEMBER MOLDENHAEUR: Mr.
12 Chairman, I think you should continue on with
13 your analysis. I think the section that I
14 was referring to you previously did not
15 apply, but the other sections do.

16 CHAIRPERSON LOUD: I'm sorry. Just
17 so I'm clear, the section -- was it 204 I was
18 just handed?

19 MS. MONROE: Do you want me to
20 explain? What I was trying to do was answer
21 Mr. Loud's question before when he said what

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1 accessory uses would be allowed if he asked
2 OP. And OP didn't have the regs in front of
3 them, but I do.

4 CHAIRPERSON LOUD: Okay.

5 MS. MONROE: So I went and I just
6 looked. And accessory uses in buildings that
7 are allowed in R-4 zones under 331 would send
8 you back to 321, which is the R-3 zone, which
9 sends you back to the R-1 zone, which is
10 sections 202 and 204.

11 CHAIRPERSON LOUD: Okay. Okay.

12 MS. MONROE: Which is why I told
13 you to just go right to 202 and 204 and it
14 sets forth certain things that are allowed in
15 accessory building throughout the residential
16 districts.

17 CHAIRPERSON LOUD: Okay. And
18 these are uses within the building proper?

19 MS. MONROE: Within the building.

20 CHAIRPERSON LOUD: Okay. All
21 right. So I don't think that it would, given

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1 that qualification, apply to the case at
2 hand.

3 And then let me continue with
4 where I started out to go. I think that the
5 property is unique and exceptional as well,
6 given its narrowness and width; 13 feet. The
7 minimum size width for the R-4 is 18 feet.
8 That alone doesn't make it unique, but I
9 think the testimony from OP was that they
10 agreed that the lot was fairly narrow and
11 unique.

12 In terms of the area variance, I
13 was persuaded that the practical difficulty
14 that the applicant, Mr. Shove-Brown,
15 testified to had been met with respect to the
16 impact that it would create on the existing
17 bedroom that would need to be essentially --
18 the use of which would be lost. So you would
19 be gaining something by losing the very
20 something that you're gaining. That wouldn't
21 make a lot of sense to me. So that was kind

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1 of persuasive.

2 I know there was discussion about
3 possibly going up, possibly using part of the
4 court. But it wasn't nailed down really
5 clearly in my mind. It seemed like it was
6 more of speculative discussion with respect
7 to practical difficulty. So I thought that
8 the applicant made a test out for that.

9 In terms of substantial detriment
10 to the public harm, I think that OP agreed
11 that there's no harm to the public good.

12 With respect to the requested area
13 variance, although OP did believe that there
14 would be harm to the Zone Plan.

15 But I think the real crux of the
16 case is the use variance. Because without
17 that you really are not able to provide what
18 the applicant is looking for by way of
19 accommodations for relatives to take care of
20 the applicant's children.

21 And I, like Mr. Dettman, do not

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1 see the evidence that would support a use
2 variance, particularly the second prong of
3 the undue hardship prong, especially in light
4 of the fact that the property is being used
5 in conformity, the private garage in the
6 alley is being used currently in conformity
7 with the zone. It's being used as a garage
8 right now. And the test is a very high test.
9 It's not the same as the area variance. You
10 have to demonstrate that there's not a use to
11 which the property could be put that's in
12 conformance with the zone for the undue
13 hardship part of the use variance test to be
14 met. And that would be a difficult test to
15 make. And in this case I don't see where the
16 evidence would support the test being made.

17 So regrettably, but looking
18 strictly at our standard and looking at the
19 evidence as relates to that standard, it's
20 not an application that I can vote to support
21 as well.

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1 BOARD MEMBER MOLDENHAUER: I won't
2 rehash all the different issues. I do agree
3 with both Mr. Loud, Chairman Loud and Mr.
4 Dettman. I think that the area variance would
5 pass the requirements that based on the
6 testimony we've heard today from Mr. Shove-
7 Brown that they do have an exceptional
8 practical difficulty associated with trying
9 to have the cost of filling in that four foot
10 area in the court or potentially having to
11 put on another story. However, I do think
12 that they do not meet the use variance, as
13 has already been articulated by the other
14 Board members.

15 CHAIRPERSON LOUD: Okay. Now I
16 think what we can do now is move for a motion
17 on the application. And I think, Mr.
18 Dettman, did you have a motion you wanted to
19 make?

20 VICE CHAIRPERSON DETTMAN: Let me
21 just grab the language here, Mr. Chairman.

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1 I would move for denial of
2 Application 17077, pursuant to DCMR § 3103.2,
3 for a variance from the height requirements
4 under subsection 2500.4 and 2500.6, a
5 variance from the use provisions under
6 subsection 2500.5, and a variance from the
7 side yard requirements under subsection
8 2500.6, to allow a second story addition to
9 an existing accessory building proposed for
10 living quarters in the R-4 District, located
11 at 541 14th Street, Southeast.

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

14 Let me just beg indulgence and ask
15 for guidance from the Office of Attorney
16 General just on since we have two variance
17 requests, should there be separate motions?
18 I know practically speaking one is going to
19 cancel out the other, but just --

20 MS. MONROE: You don't need to do
21 that. It depends on what Mr. Dettman wants

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1 to move for. Do you want to move to deny
2 both or do you want to move to deny one and
3 grant the other one? I don't know what
4 you're -- are you denying the whole
5 application, moving on the application, I
6 assume?

7 VICE CHAIRPERSON DETTMAN: My
8 motion applies to the language that was
9 advertised in the two variances that were
10 sought.

11 MS. MONROE: Well then his motion
12 applies to both. So you vote up or down.

13 CHAIRPERSON LOUD: Okay. All
14 right. I just wanted to make sure we were
15 proceeding appropriate.

16 All right. So the motion's been
17 made. Is there a second?

18 BOARD MEMBER MOLDENHAUER: I
19 second.

20 CHAIRPERSON LOUD: Okay. Motion
21 has been made and seconded.

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1 Is there further deliberation?

2 VICE CHAIRPERSON DETTMAN: Just
3 out of an abundance of caution, I just wanted
4 to make sure when we applied the area
5 variance test it seemed that yourself and Ms.
6 Moldenhauer thought that the area variance
7 test was met. I didn't. So if we just want
8 to keep the record clean, I would be all
9 right in bifurcating my motion. Otherwise we
10 can just go forward. I just wanted to clear
11 that up.

12 CHAIRPERSON LOUD: I think as a
13 practical matter it would still not carry.
14 Because three votes required. So that even
15 if two were in favor and one was against, it
16 would be denied. So I'm not certain of any
17 practical import in bifurcating at this
18 point.

19 VICE CHAIRPERSON DETTMAN: Okay.

20 CHAIRPERSON LOUD: Okay. So the
21 motion has been made. It's been seconded.

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1 Any additional deliberation?

2 Hearing none, all those in favor say aye?

3 ALL: Aye.

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

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

8 MS. BAILEY: Mr. Chairman, the
9 vote is three-zero-two to deny the
10 application.

11 Mr. Dettman made the motion, Ms.
12 Moldenhauer seconded, Mr. Loud supported the
13 motion.

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

16 Is there anything further in this
17 case?

18 MS. BAILEY: Full order, Mr.
19 Chairman, that's it.

20 MS. MONROE: You don't need to do
21 a full order because OP is not technically a

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1 party. You can if you want to. Because the
2 ANC took no position. So it's up to you, but
3 you don't have.

4 CHAIRPERSON LOUD: Thank you. Is
5 that a decision we need to make from this
6 dias right now.

7 MS. MONROE: I don't think so.

8 CHAIRPERSON LOUD: Okay.

9 MS. MONROE: There's no need to do
10 one.

11 CHAIRPERSON LOUD: Right. And I'm
12 agreeing with you that if the ANC --

13 MS. MONROE: It's not a contested
14 issue in that --

15 CHAIRPERSON LOUD: -- didn't take
16 a position.

17 MS. MONROE: Because they
18 literally say ANC 6A, or whatever, takes no
19 position.

20 CHAIRPERSON LOUD: Okay.

21 MS. BAILEY: Is that a summary

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1 order, Ms. Monroe?

2 MS. MONROE: IF the Board so
3 desires. They can have it either way I think
4 in this case. And it's up to the Chair, or
5 to the Board.

6 CHAIRPERSON LOUD: Yes. I think a
7 hybrid version where we don't go into a full
8 lengthy extended written decision the way we
9 do when it is contested and have to respond
10 to the different allegations that are made in
11 the opposing party's presentation. But
12 something that would articulate the rationale
13 for the decision. So does that answer your
14 question?

15 MS. BAILEY: Yes, Mr. Chairman.

16 CHAIRPERSON LOUD: Thank you.

17 All right. And to the applicants,
18 thanks for your patience this morning. I'm
19 sorry that things did not work out in
20 accordance with the application. But we do
21 wish you luck and well in navigating the

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1 regulations, and perhaps there's some option
2 that work for and meet your needs.

3 Thank you.

4 I think what we'd like to do now
5 is in the afternoon calendar, which we not
6 going to call the afternoon calendar right
7 now, but there is a withdrawal in that
8 matter. And I don't think we need to call
9 that now and formally do anything with it, do
10 we?

11 MS. BAILEY: No, Mr. Chairman.
12 It's simply to put on the record that the
13 application was withdrawn.

14 CHAIRPERSON LOUD: Okay.

15 MS. BAILEY: So when we begin the
16 afternoon session, that would be an
17 appropriate time.

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

20 So why don't we do this? Why
21 don't we take a break, let everyone get a

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1 breather for about, let's say, 35 minutes.
2 And then we can come back and pick up with
3 the Rosan case as our first case in the
4 afternoon.

5 Okay. And the morning Public
6 Hearing meeting is adjourned.

7 (Whereupon, at 1:36 p.m. the A.M.
8 Public Hearing was adjourned.)

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1 left in the wall bin near the door.

2 Please be aware that this
3 proceeding is being recorded by a court
4 reporter and is also webcast live.

5 Accordingly, we must ask you to refrain from
6 any disruptive noises or actions in the
7 hearing room.

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

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

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1 The order of procedure for special
2 exceptions and variances is:

3 Statement and witnesses of the
4 applicant; government reports including the
5 Office of Planning, the Department of Public
6 Works, et cetera; the report of the Advisory
7 Neighborhood Commission; parties or persons
8 in support; parties or persons in opposition;
9 and finally closing remarks by the applicant.

10 There's one appeal scheduled for
11 this afternoon. The order for appeals is as
12 follows:

13 Statement and witnesses of the
14 appellant;

15 The Zoning Administrator or other
16 Government official's case;

17 Case for the owner, lessee, or
18 operator of the property involved if not the
19 appellant;

20 The ANC within which the property
21 is located;

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1 The intervenor's case if permitted
2 by the Board, and;

3 Rebuttal and closing statement by
4 the appellant only.

5 Pursuant to Sections 3117.4 and
6 3117.5, the following time constraints will
7 be maintained:

8 The applicant, appellant, persons
9 and parties except an ANC in support
10 including witnesses 60 minutes. And that's
11 60 minutes collectively;

12 Appellees, persons and parties
13 except an ANC in opposition including
14 witnesses 60 minutes. And again, that's 60
15 minutes collectively, and;

16 Finally individuals three minutes
17 and organizations five minutes.

18 These time restraints will be
19 followed today. They do not include cross-
20 examination and/or questions from the Board.

21 Cross-examination of witnesses is permitted

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1 by the applicant or parties.

2 The ANC within which the property
3 is located is automatically a party in a
4 special exception or variance case.

5 Nothing prohibits the Board from
6 placing reasonable restrictions on cross-
7 examination, including time limits and
8 limitation on the scope of cross-examination.

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

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

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

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

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1 the contrary, the Board requests that persons
2 present not engage the members of the Board
3 in conversation.

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

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

14 At this time the Board will
15 consider any preliminary matters being those
16 that relate to whether a case will or should
17 be heard today such as a request for
18 postponement, continuance or withdrawal or
19 whether proper and adequate notice of the
20 hearing has been given.

21 If you are not prepared to go

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1 forward this afternoon or if you believe that
2 the Board should not proceed, now is the time
3 to raise such a matter.

4 Does the staff have any
5 preliminary matters?

6 MS. BAILEY: Mr. Chairman, members
7 of the Board, good afternoon.

8 Mr. Chairman, there is a
9 withdrawal. It's Application 17976 of the
10 Community Development Corporation-USA, Inc.
11 That application was withdrawn, Mr. Chairman.

12 CHAIRPERSON LOUD: Thank you, Ms.
13 Bailey.

14 And I think what we'll do is
15 proceed with the afternoon calendar. And I
16 believe the first case is 17960.

17 MS. BAILEY: It is, Mr. Chairman.

18 And is this a good time to swear the
19 witnesses or would you prefer for me to call
20 the case first.

21 CHAIRPERSON LOUD: Thank you, Ms.

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1 Bailey. Why don't we swear the witnesses in.

2 CHAIRPERSON LOUD: Thank you.

3 MS. BAILEY: Thank you.

4 All those persons wishing to
5 testify today please rise to take the oath.

6 (Witnesses sworn.)

7 Members of the Board, this is a
8 continuation hearing, as you well know. It's
9 continued from September 14th. And it's the
10 Application of Lucia and Claudio Rosan, No.
11 17960, and it's pursuant to 11 DCMR § 3103.2
12 for a variance to allow four rooms of an
13 existing rooming house to be used for daily
14 occupancy in conjunction with the daily
15 occupancy of other eight rooms in the
16 building. Under subsection 2002.3, at
17 premises 2005 Columbia Road, Northwest. It
18 is zoned R-5-D. It's located in Square 2536
19 on Lot 150.

20 Mr. Chairman, when the Board last
21 had its hearing on this case, it requested

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1 specific information from the Oakland
2 Condominium Association. That information
3 was filed in the record. And it is my
4 understanding, Mr. Chairman, that the hearing
5 will resume today with a report from the
6 Office of Planning.

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

9 Let me ask the parties to come to
10 the table. And if the persons at the table
11 can introduce yourselves, starting with my
12 right and then working our way over to Mr.
13 Collins.

14 COMMISSIONER MOYE: Good
15 afternoon. My name is Stacey Moyer. I'm
16 representing ANC 1C.

17 CHAIRPERSON LOUD: Okay.

18 MR. HARGROVE: I'm John Lawrence
19 Hargrove representing the Oakland
20 Condominium.

21 MR. COLLINS: I'm Christopher

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1 Collins with Holland & Knight representing
2 the applicant.

3 CHAIRPERSON LOUD: Good afternoon
4 to each of you.

5 MR. COLLINS: Good afternoon.

6 CHAIRPERSON LOUD: Thanks for your
7 patience this afternoon.

8 I believe, as Ms. Bailey had
9 indicated, we have gone through a part of the
10 case, and that part would be the applicant's
11 case which was brought to a close, I
12 understand. And we were prepared to turn to
13 the Office of Planning for its report.

14 Is that consistent with everyone's
15 understanding of where we are?

16 MR. COLLINS: Yes, sir.

17 CHAIRPERSON LOUD: Okay.

18 Do we have any preliminary matters
19 in this case with respect to filings that
20 have been made in the interim. I think there
21 were some, if I'm not mistaken, filings that

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1 were submitted in the interim.

2 MR. COLLINS: Mr. Chairman, we did
3 submit something this afternoon to the Board,
4 mindful of the Board's statement that the
5 record was closed. This was, in going
6 through the transcript, Ms. Moldenhauer had
7 asked the applicant whether they had obtained
8 an electrical permit for the work. And Mr.
9 Rosan indicated that, yes, they had in fact
10 done that. And just to make the record clear
11 we submitted the document, served copies on
12 the parties of the three approved stickers
13 that were not submitted with the statement.
14 These are stickers that we had found
15 subsequent to the hearing for the electrical,
16 gas and plumbing approval of the inspections.
17 These supplement the other approvals that
18 are Tab N of the prehearing statement that we
19 filed.

20 CHAIRPERSON LOUD: And does the
21 ANC or party status opponent have any

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1 questions or concerns with respect to this
2 submission?

3 MR. HARGROVE: We have no concerns
4 with this submission, Mr. Chairman.

5 CHAIRPERSON LOUD: Okay. All
6 right.

7 COMMISSIONER MOYE: The ANC has no
8 concerns.

9 CHAIRPERSON LOUD: Okay. Then why
10 don't we formally allow this in as an
11 exhibit. And it will be properly marked for
12 our record.

13 Were there any other preliminary
14 matters. Okay.

15 Then why don't we turn to the
16 Office of Planning for its report?

17 COMMISSIONER MOYE: Mr. Chairman?

18 CHAIRPERSON LOUD: Yes.

19 COMMISSIONER MOYE: I'm not sure
20 if this considered a preliminary matter, but
21 my understanding was the Kalorama Citizens

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1 Association had submitted a resolution in
2 opposition, and they did submit to the Board.

3 Was that received by the Board? And if not,
4 I have brought 20 copies and a request that
5 they be entered.

6 They are not a party, but they are
7 an organization located in Adams Morgan.

8 CHAIRPERSON LOUD: I do not have a
9 copy of that. I don't know if other Board
10 members have. Apparently, none of us
11 received copies of that.

12 COMMISSIONER MOYE: Okay.

13 CHAIRPERSON LOUD: And perhaps you
14 can give Mr. Collins a copy as well.

15 COMMISSIONER MOYE: Yes.

16 CHAIRPERSON LOUD: Perhaps if you
17 can give us just a few moments to go through
18 and just familiarize ourselves with it?

19 Has everyone had an opportunity
20 who had not become familiar with it, to
21 review it and its contents.

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1 MR. COLLINS: Yes, sir.

2 CHAIRPERSON LOUD: Mr. Collins,
3 did you want to respond to this at all?
4 They're requesting that it be made a part of
5 the record.

6 MR. COLLINS: No. There's no
7 opportunity to cross examine it, so you can
8 take it for what it is.

9 CHAIRPERSON LOUD: Okay. We'll
10 give it the weight that it would properly be
11 given as a number of these exhibits come in
12 that are not submitted by persons that are
13 witnesses.

14 So, with that qualified vote of
15 endorsement, do Board members have any
16 concerns about allowing this into the record?

17 Okay. We will also allow this into our
18 record. And it will be properly marked as an
19 exhibit as well.

20 And with that, I think we can
21 finally turn to Mr. Cochran for the --

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1 MR. COCHRAN: Thank you, Mr.
2 Chairman. And good afternoon, Mr. Chairman
3 and members of the Board.

4 As you may remember from last
5 month, the applicant currently operates a
6 daily occupancy transient accommodation in an
7 R-5-D zone. The facility is configured to
8 have 12 rooms for rent. The Zoning
9 Administrator has determined that the
10 grandfathered Certificate of Occupancy
11 permits the applicant to rent only eight of
12 the 12 rooms for transient use. The owners
13 wish to continue renting out all 12 of those
14 for transient use. The applicant is,
15 therefore, asking for a use variance from
16 section 2002.3.

17 This section prohibits the
18 extension of a nonconforming use to portions
19 of the structure not devoted to the
20 nonconforming use, in this case the four
21 rooms that are accommodated in the

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1 grandfathered C of O.

2 The Office of Planning recommends
3 that the Board deny this application for
4 relief as the applicant has not demonstrated
5 the existence of an exceptional condition
6 that causes undue hardship by preventing all
7 reasonable use of the property consistent
8 with the Zoning Regulations.

9 While granting of relief would not
10 likely cause substantial harm to adjacent
11 properties or the neighborhood, it would
12 cause substantial harm to the Zone Plan and
13 the Zoning Regulations.

14 The applicant's arguments for
15 unique circumstance or exceptional conditions
16 is based on the property's zoning regulatory
17 and administrative history since it became
18 something other than a single-family
19 residence. OP summarized this history on
20 page 3 of its September 8 report.

21 The history is complicated and

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1 there are several seeming discrepancies in
2 the record. However, the applicant's
3 testimony has not clarified the ambiguities
4 to the point of having demonstrated that the
5 conditions rise to the level of the first
6 test for relief.

7 Even if the Board determines that
8 there are exceptional circumstances, the
9 applicant has not demonstrated that such
10 circumstances impose an undue hardship on the
11 applicant. This is a demanding demonstration
12 as a hardship must first be shown and then
13 hardship must also be demonstrated to deprive
14 the applicant of all reasonable use of the
15 property consistent with the Zoning
16 Regulations.

17 The applicant has not demonstrated
18 that the history that has resulted in the
19 Zoning Administrator's ruling, the ruling
20 that no more than eight rooms may be used for
21 daily use accommodations, has caused the

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1 applicant to be unable to make reasonable
2 use of the space occupied by the other four
3 rooms.

4 The applicant may have
5 demonstrated that there may be no financial
6 advantage to folding the four rooms into
7 other guest rooms to comply with the Zoning
8 Regulations. However, the applicant has not
9 demonstrated that if using the four rooms for
10 something other than daily use accommodations
11 were infeasible, it would be architecturally,
12 regulatorily or financially infeasible for
13 the applicant to use them for uses that are
14 permitted by the Regulations, or to combine
15 with other portions of the building and put
16 the entire building into a matter-of-right
17 use.

18 The applicant testified in
19 September that the existing operation has
20 been modestly successful for the last six
21 years with an average daily occupancy rate of

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1 60 to 65 percent; that is using between seven
2 and eight rooms. If the applicant wishes to
3 use the other four rooms for permitted
4 purposes, it appears that there may not be a
5 building code impediment to this.

6 According to the Chief of the
7 Structure Division at the DCRA, Department of
8 Consumer and Regulatory Affairs, a wood frame
9 masonry covered building of four stories or
10 fewer must have two means of two minute
11 egress such as two internal stairways or an
12 internal stairway and an external fire
13 escape. The applicant's building has the
14 latter, an internal stairway and an external
15 fire escape.

16 A four story building with fewer
17 with 16 rooms may mix transient and
18 nontransient accommodations without fire
19 separation. The applicant's building has few
20 than 16 rooms fitted out for such rentals.

21 Thus, the applicant has not demonstrated

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1 undue hardship.

2 The granting of relief is not
3 likely to have a substantial impact on the
4 public good or on adjacent properties in the
5 neighborhood. Although parking is limited,
6 the area is well served by Metro, by buses
7 and has a number of retail and dining
8 establishments within two blocks of either
9 side of the building's front door, as well as
10 large apartment buildings directly across the
11 street.

12 The location does not vary within
13 low or moderate density residential blocks.

14 Now the establishment of a new
15 transient accommodation at this location
16 might pose an adverse impact on the
17 neighborhood, but there would not likely be a
18 significant impact on the public good by
19 legalizing the use of four additional rooms
20 for transient accommodations in a building
21 already used for that purpose and previously

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1 used for 12 to 15 such accommodations.

2 On the other hand, even if the
3 Board determines that the applicant has
4 demonstrated exceptional conditions and undue
5 hardship, which OP does not believe it has,
6 the applicant still has not demonstrated that
7 the granting of relief of would do
8 substantial harm to the intent or purpose of
9 the Zoning Plan or Regulations.

10 Permitting the legal expansion of
11 the transient accommodation uses with the
12 building would be inconsistent with section
13 2002's discouragement of expansion and
14 foreign uses. More importantly, it would
15 undercut the intentions of Zoning Commission
16 Orders in Case No. 87-31, which provided a
17 clearer Zoning distinction between housing
18 uses and transient accommodation uses and
19 sought to protect residential areas from the
20 encroachment of hotels, B&Bs and the like by
21 requiring room rentals be of at least 90 days

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1 duration and by prohibiting the preparation
2 or serving of meals in common areas; both of
3 which the applicant does.

4 This concludes OP's testimony.
5 I'm, of course, available for questions.

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

8 Can you just give the case number
9 again for the case you just cited?

10 MR. COCHRAN: Sure. 87-31.

11 CHAIRPERSON LOUD: Thank you.
12 Let's see if the Board members have any
13 questions, and then we'll turn to the
14 applicant, and then to the ANC and party
15 status.

16 Board members have any questions
17 for Mr. Cochran?

18 Okay. Why don't we turn to Mr.
19 Collins.

20 MR. COLLINS: I just have one
21 question. You testified that the applicant

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1 testified that the occupancy average was 60
2 to 65 percent.

3 MR. COCHRAN: I did testify, yes.

4 MR. COLLINS: Is that consistent
5 with the transcript?

6 MR. COCHRAN: I believe that the
7 transcript indicated that at first the
8 applicant said 70 percent, and then adjusted
9 it downwards.

10 (Whereupon, at 2:51 p.m. off the
11 record until 2:52 p.m.)

12 CHAIRPERSON LOUD: So, Ms. Moye,
13 we'll turn to you now if you have any
14 questions for the Office of Planning.

15 COMMISSIONER MOYE: I just have
16 one correction that needs to be made to the
17 memo. It lists the property as in ANC 1A.
18 It's 1C. So just a minor correction that
19 needs to be --

20 CHAIRPERSON LOUD: Thank you.

21 I'm sorry, tell me your name one

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1 more time? I'm sorry. Yes.

2 MR. HARGROVE: I have no
3 questions.

4 CHAIRPERSON LOUD: You have no
5 questions. Okay.

6 MS. BAILEY: Mr. Hargrove, Mr.
7 Chairman.

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

10 I don't believe here was a DDOT
11 report in this case, or any other Government
12 report.

13 So we would turn now to the ANC
14 for the presentation of its case. I'm sorry.
15 Yes, for the presentation of its case.

16 BOARD MEMBER MOLDENHAUER: Mr.
17 Loud, I just have a quick question for OP
18 from the Board.

19 CHAIRPERSON LOUD: Yes, please.

20 BOARD MEMBER MOLDENHAUER: Your
21 statement that the permission of the use for

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1 transient purposes would impact the Zoning
2 Regs. Can you tell me how the fact that the
3 fact that this property has been used for
4 rooming house since, I guess the C of O that
5 I have on Exhibit D since 1969, how that
6 factor has been considered by you in the fact
7 that even though its the same use and it's at
8 all floors and basement as it has been
9 previously used, if you considered that as
10 part of your analysis for saying that this
11 going to impact the Zoning Plan?

12 MR. COCHRAN: Yes, OP did. With
13 12 rooms the applicant would be having fewer
14 transient accommodations than it had before
15 2003. But the Zoning Administrator has
16 determined that it has a right to use only
17 eight rooms. So the addition of four would
18 be an expansion.

19 Oddly, the document that you just
20 admitted from the Kalorama Citizens
21 Association gives you a very good list of the

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1 Zoning actions that have happened in the last
2 three decades, all of which are making a
3 clearer distinction between a residence and a
4 transient accommodation. And it gives you
5 the list of the ways in which the Zoning
6 Commission has tried to narrow what is
7 permitted in this zone so that it gets out of
8 the zone hotels, rooming house of less than
9 90 days, et cetera.

10 Based on that direction of the
11 Zoning Commission and the history of this
12 building's use, OP does think that expanding
13 it by what would amount to 50 percent of the
14 number of rooms goes against that trend in
15 the Zoning Regulations. And that's how we
16 say that it would actually harm the Zoning
17 Plan and the Zoning Regulations.

18 BOARD MEMBER MOLDENHAUER: Just
19 one second. I'm trying to look at the
20 resolution from the Kalorama Citizens
21 Association that you were making reference

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1 to.

2 From what I see in these different
3 examples, weren't these, or some of these
4 examples, where they were actually taking for
5 instance the 1980 Hilton Case where they were
6 taking an apartment building and then making
7 that into a transient, whereas this is from
8 the record always been a transient rooming
9 house and it's just simply maintaining and
10 it's not a matter of taking away residential
11 use in the area, but rather just potentially
12 as you said providing larger use of this one
13 location?

14 MR. COCHRAN: It's expanding by 50
15 percent the number of rooms that the Zoning
16 Administrator says the applicant can now
17 legally use. It's an expansion. That's what
18 we're basing it on.

19 BOARD MEMBER MOLDENHAUER: Okay.
20 Thank you.

21 MR. COCHRAN: I mean, I did also

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1 note that --

2 BOARD MEMBER MOLDENHAUER: I see
3 your clarification or your distinction there.

4 I just don't --

5 MR. COCHRAN: Yes. I noted that
6 OP -- when it comes to impact on the
7 neighborhood, that OP does not think that
8 this expansion would have that much impact on
9 the neighborhood. We do think that a new
10 building would clearly go against the
11 neighborhood's best interests. We're making
12 the distinction between that and the Zoning
13 Regulations which have clearly tried to
14 narrow the uses in this part of Kalorama that
15 can be used for something other than
16 residential purposes.

17 BOARD MEMBER MOLDENHAUER: Thank
18 you.

19 CHAIRPERSON LOUD: Thank you, Ms.
20 Moldenhauer.

21 Are there any additional questions

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1 from the Board with respect to OP's report?
2 If not, we can turn back to Ms. Moye for the
3 ANC's report.

4 COMMISSIONER MOYE: Thank you for
5 the opportunity appear before you today to
6 relay ANC 1C's report in opposition to
7 granting a use variance in this case.

8 I am not going to read our entire
9 report in the interest of time, but there are
10 a few short point that we would like to
11 highlight.

12 First of all, we want to emphasize
13 that our process in reviewing this matter was
14 thorough and transparent.

15 Over the summer, our Planning,
16 Zoning and Transportation Committee held
17 three public meetings that were devoted
18 exclusively to examining this matter.
19 Outside of these meetings Commissioners
20 reviewed documentation relating to the
21 current application as well as stacks of

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1 documents relating to the 2003 case. And
2 then after reviewing everything, we came to
3 the same conclusion that we had arrived at in
4 2003, which is to oppose the application.

5 This applicant has had several
6 opportunities to go through the formal zoning
7 process. Each time multiple Zoning officials
8 have made a determination that there could be
9 no more than eight rooms for transient use at
10 this property. This applicant has had far
11 more bites at the apple than most people get.

12 Most applicants will be precluded
13 from repackaging the same set of facts and
14 circumstances before a different group of
15 Zoning officials in an attempt to achieve a
16 more favorable result. And it's our position
17 that using the Zoning process in this manner
18 in an abuse to the system.

19 The applicants mentioned that they
20 didn't have legal representation when they
21 last appeared before the BZA in 2003. For the

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1 record, we would like to note that then ANC
2 1C Chairman Allen Roth that he had
3 recommended to them at least three times that
4 they seek legal counsel.

5 Then BZA Chairman Jeffrey Griffith
6 also recommended that they seek counsel, and
7 the Rosans themselves indicated that the
8 Zoning Office staff gave them a list of
9 lawyers who specialize in this type of work.

10 I would like to submit for the
11 record that dialogue from the 2003 BZA
12 Hearing.

13 Pass that. Thank you.

14 We understand that meeting the
15 elements of the use variance test is subject
16 to the strictest scrutiny by this Board.
17 There is no exceptional situation or
18 condition that exists concerning this
19 property. It is similar in its physical to
20 other row houses located either next to it or
21 in the surrounding area.

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1 In 2003 Bruce Johnson, a qualified
2 expert witness in the renovation of historic
3 homes testified that 2005 Columbia Road could
4 easily be transformed into a single-family
5 residence and sold at a handsome profit. And
6 I would actually like to submit Mr. Johnson's
7 testimony from the 2003 BZA hearing as well
8 for the record.

9 MR. COLLINS: Mr. Chair, I'd just
10 like to make a point of reference here. This
11 is testimony from another case or different
12 application. The record is clear in this
13 case that that application was unnecessary
14 for the Rosans to.

15 Too, there's no opportunity to
16 cross-examine this testimony that's being put
17 in. So I object to its inclusion.

18 CHAIRPERSON LOUD: Ms. Moye, would
19 you like to respond?

20 COMMISSIONER MOYE: Yes. First of
21 all, last month I submitted a number of

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1 pieces from the 2003 hearing. And it is, in
2 fact, the BZA's own record of its proceeding.

3 And it also was a use variance case. The
4 applicants were asking essentially for the
5 same thing. Maybe they weren't calling it an
6 in tourist room today, but they're requesting
7 additional low capacity to use in the same
8 way. So we do feel that it's relevant, and
9 we respectfully request its inclusion.

10 CHAIRPERSON LOUD: But you're
11 proffering a witness as an expert witness, I
12 guess, because what this witness would be
13 testifying to is beyond the kin of the
14 average layperson. That witness is not here
15 for Mr. Collins to cross-examine. Don't you
16 think that's extraordinary to allow that kind
17 of testimony to come in through a back door
18 that it would not be allowed to come in
19 through the front door.

20 COMMISSIONER MOYE: Well, the
21 witness is here. He is actually in this room.

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1 So maybe --

2 CHAIRPERSON LOUD: Perhaps -- and
3 we can see how this go with Mr. Collins. But
4 perhaps a better way to approach this is
5 you're in your case now, you can call that
6 gentleman as a witness. You can seek to
7 qualify him as an expert. Mr. Collins would
8 have an opportunity to voir dire his
9 qualifications as an expert. And if he
10 qualified as an expert, you have an
11 opportunity to cross him on the content of
12 his testimony.

13 But I can understand Mr. Collins'
14 point. I know how other Board members feel
15 about just adopting into our record expert
16 testimony from a completely different case on
17 a completely different calendar without any
18 opportunity for Mr. Collins to cross that
19 witness.

20 Board members, did you have any
21 additional thoughts on that?

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1 MR. HARGROVE: Mr. Chairman, if I
2 could intervene a moment? The testimony was
3 in a different case, of course, but the
4 issues on which the testimony, as I
5 understand, was based are identical. And in
6 any event, it was subject to cross-
7 examination by the party who is the applicant
8 in this case. So it is of somewhat in the
9 category as a result of those two factors.

10 In any event, it is something of
11 which the Board could take official notice
12 since its a part of its own record. But it
13 would seem to me that the course of actions
14 you suggested would certainly solve any
15 problems about the availability of the
16 witness for cross-examination in this
17 proceeding.

18 CHAIRPERSON LOUD: Again, let's
19 separate out the issue of submission of this
20 into our record for the expertise that's
21 going to be represented in here. If the

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1 witness is here, he can testify to that.
2 This is a matter of public record. This is
3 something that this gentleman could be
4 impeached on in any proceeding because he's
5 sworn to this testimony here. But that's
6 different than what you're talking about.

7 And let's turn back to Mr.
8 Collins. I think they've offered that the
9 proffered witness is here. They're planning
10 to call him and qualify him as an expert.
11 You'd have any opportunity to cross-examine
12 at that point. Is there any problem with
13 that that you see?

14 MR. COLLINS: As long as I can,
15 you know, question his capacity as an expert
16 witness in addition to cross-examination
17 after his testimony, that's fine.

18 CHAIRPERSON LOUD: Okay. So you
19 want to challenge whether in fact he is an
20 expert?

21 MR. COLLINS: I don't know what

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1 they said. I haven't seen the transcript. I
2 objected before it got to me. So --

3 CHAIRPERSON LOUD: Well, this is a
4 whole new proceeding. The testimony and the
5 direct would completely different. We're not
6 going to go into this as the basis of today's
7 testimony. You can impeach on this if you
8 see something there, and presumably there's a
9 CV or something that you could get, I think
10 perhaps, I'm not certain. A résumé that you
11 could give to Mr. Collins and the rest of us
12 for your proffered witness when you get ready
13 o call him?

14 COMMISSIONER MOYE: Can you come
15 up now?

16 Do you have a résumé?

17 And the witness doesn't have a
18 résumé.

19 CHAIRPERSON LOUD: I don't think
20 we have to have a written résumé.

21 COMMISSIONER MOYE: Okay.

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1 CHAIRPERSON LOUD: I think you can
2 voir dire on his qualifications. Mr. Collins
3 will ask him questions about that, the Board
4 may ask him questions. And if he meets the
5 test, a decision will be made on his
6 acceptance of his qualification.

7 COMMISSIONER MOYE: Okay. IF we
8 could, if we could have Bruce Johnson
9 approach.

10 CHAIRPERSON LOUD: Okay.

11 COMMISSIONER MOYE: Does Mr.
12 Johnson need to be sworn separately?

13 CHAIRPERSON LOUD: If he has not
14 been sworn in, he would need to -- you have
15 not been sworn in? Yes, sir. Then you would
16 need to stand up and take the oath
17 administered by Ms. Bailey.

18 (Witness sworn)

19 CHAIRPERSON LOUD: And just before
20 you get it into it, just so I remain focused
21 on this, he's being proffered as an expert in

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1 what and for what?

2 COMMISSIONER MOYE: Expert
3 preservation construction.

4 CHAIRPERSON LOUD: Okay. And that
5 would go to which of the variance elements
6 that we're talking about?

7 COMMISSIONER MOYE: That would go
8 to hardship.

9 CHAIRPERSON LOUD: Okay.

10 COMMISSIONER MOYE: About being
11 able to redevelop the home into one of the
12 other uses, a single-family residence.

13 CHAIRPERSON LOUD: Okay. Thank
14 you.

15 COMMISSIONER MOYE: Would you
16 state your full name and occupation for the
17 record, please?

18 MR. COLLINS: I didn't catch all
19 that. There's distortion. He's being
20 proffered as an expert in what?

21 CHAIRPERSON LOUD: Historic

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1 preservation.

2 MR. COLLINS: Historic
3 preservation?

4 COMMISSIONER MOYE: Historic
5 preservation and development of historic
6 homes.

7 MR. COLLINS: Historic
8 preservation and development of historic
9 homes?y

10 COMMISSIONER MOYE: All right?

11 CHAIRPERSON LOUD: Sorry. Go
12 ahead, please.

13 COMMISSIONER MOYE: Would you
14 state your full name and occupation for the
15 record, please? Hit the button.

16 MR. JOHNSON: Bruce E. Johnson.
17 And my degree is historic preservation. And
18 I've been practicing that for the past 30
19 years in Washington.

20 COMMISSIONER MOYE: And where do
21 you live?

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1 MR. JOHNSON: 2007 Columbia Road.

2 COMMISSIONER MOYE: And that's
3 actually next door to 2005 Columbia Road, the
4 property that's in question.

5 What generally is the type of work
6 that you engage in, and what is it that you
7 specialize in, this particular field?

8 MR. JOHNSON: We specialize in
9 buying older houses, renovating them and
10 selling them. We also do the design and have
11 other people renovate them for other clients
12 also.

13 COMMISSIONER MOYE: Have you taken
14 any historic row homes in this particular
15 area, have you developed themself?

16 MR. JOHNSON: Yes, I have.

17 COMMISSIONER MOYE: Ones that
18 were, perhaps, sort of rundown and needed to
19 be redeveloped into whatever use; perhaps a
20 single home or condos or something like that?

21 MR. JOHNSON: Yes. The house that

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1 I'm in now was -- they're all rundown. When
2 you get them, they're all -- almost every
3 system needs to be redone.

4 COMMISSIONER MOYE: Yes. And
5 would you say that -- oh, and when did you
6 purchase your home?

7 MR. JOHNSON: 2000 -- 2000/2001.

8 COMMISSIONER MOYE: Okay. Have
9 you ever been inside 2005 Columbia Road both
10 prior to the renovations that the Rosans did?

11 MR. JOHNSON: Yes, I have been.

12 COMMISSIONER MOYE: And what was
13 the condition of the home?

14 MR. JOHNSON: It was in need of
15 restoration.

16 COMMISSIONER MOYE: And have you
17 been in that subsequently?

18 MR. JOHNSON: It was not finished
19 when I went in.

20 COMMISSIONER MOYE: The way its
21 configured subsequently is not configured for

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1 a single-family residential home or an
2 apartment, or anything like that?

3 MR. JOHNSON: My house has been
4 configured during the war for apartments and
5 we've converted it back. So any house can be
6 converted back to residential use very
7 easily.

8 COMMISSIONER MOYE: Very easily?
9 When you say "very easily," what do you mean
10 by very easily? What are the steps?

11 MR. JOHNSON: Basically, it's --
12 it's -- here's a wall that's put up. Take
13 the wall down. If there's electric in it, you
14 reroute it.

15 COMMISSIONER MOYE: Yes.

16 MR. JOHNSON: It's pretty easy.

17 COMMISSIONER MOYE: Okay. So do
18 you have a professional opinion whether 2005
19 Columbia Road could be transitioned back into
20 a residential property, renovated back?

21 MR. JOHNSON: Of course it could.

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1 CHAIRPERSON LOUD: Well, hold on a
2 second. I want to make sure I'm following
3 everything.

4 Now we stared out just voir diring
5 the witness as to his qualifications. Before
6 we get to your actual opinion, and I don't
7 know if you had concluded that, but the next
8 step would be if you have concluded it, then
9 we would give Mr. Collins an opportunity to
10 ask questions about the qualifications. Then
11 we would go into the expert on it.

12 So I don't know if got lost in
13 there or we were merging those two steps
14 together? Okay. I didn't hear Mr. Collins
15 object, which I expected to hear him do so,
16 so I jumped out there and just clarified
17 where we are.

18 MR. COLLINS: Thank you.

19 CHAIRPERSON LOUD: So let me ask
20 her, were you finished with the
21 qualifications part of the testimony?

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1 COMMISSIONER MOYE: He was
2 qualified in 2003 as an expert witness. My
3 questions finished. I don't know if Mr.
4 Hargrove --

5 CHAIRPERSON LOUD: Okay. Well,
6 we'll come back to Mr. Hargrove.

7 I had one question about you said
8 you had a degree in historic preservation.

9 MR. JOHNSON: That's right.

10 CHAIRPERSON LOUD: Could you just
11 elaborate on where you got that degree from
12 and what type of --

13 MR. JOHNSON: University of
14 Maryland.

15 CHAIRPERSON LOUD: University of
16 Maryland? Is that a BA degree or what's it-
17 -

18 MR. JOHNSON: Individual studies
19 program.

20 CHAIRPERSON LOUD: I'm not
21 familiar with the nomenclature of individual

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1 study.

2 MR. JOHNSON: A bachelor of arts.

3 CHAIRPERSON LOUD: A bachelor of
4 arts? Okay.

5 MR. JOHNSON: It was through the -
6 - it was working with the architectural
7 department.

8 CHAIRPERSON LOUD: Yes. And what
9 year was that?

10 MR. JOHNSON: Oh, in about 25 --
11 no, I'd say about 30 something years. I
12 don't even know the exact date. I could get
13 that for you if you needed it.

14 CHAIRPERSON LOUD: For right now,
15 if I do I'll ask about it later. But I think
16 for right that's all. That would be the end
17 of my questions?

18 Okay. Then let's turn to you, Mr.
19 Collins.

20 MR. COLLINS: Do you have any
21 expertise in the application or the

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1 applicability of the various building codes?

2 MR. JOHNSON: I do.

3 MR. COLLINS: Could you describe
4 that?

5 MR. JOHNSON: For 30 years we've
6 been dealing with the building department.
7 We've been bringing houses up to code.
8 They'd all been inspected. That's how we
9 deal with it.

10 I mean, I'm not -- I'm not a
11 building inspector, but you know we've dealt
12 with building inspectors through the years
13 and have had minimal problems.

14 MR. COLLINS: Mr. Chair, just on
15 that basis alone I would object to his
16 qualifications as an expert. He sounds like
17 every other contractor that's ever gotten
18 permits and had some problems with the
19 inspectors. I don't know if that rises to
20 the level of expert in the development of
21 historic homes.

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1 MR. JOHNSON: I've renovated about
2 45 homes, 30 to 45 homes in Washington in the
3 past 25 or 30 years.

4 CHAIRPERSON LOUD: Mr. Collins,
5 would you agree that every other contractor
6 may not have this degree in historic
7 preservation from a four year university like
8 the University of Maryland?

9 MR. COLLINS: Well, the issue that
10 we're before this Board on is not a historic
11 preservation issue. It has a number of
12 different things. And certainly the three
13 part variance test or an integral part of
14 this is the applicability of the codes,
15 regulations. A bachelor of arts degree is
16 not the same as a bachelor of science degree.

17 If there was some kind of, you know, a
18 scientific background or some code. This is
19 a bachelor of arts in affiliation with the
20 architecture program. He's not an architect,
21 he's a builder. And like every other builder

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1 goes down and waits, and gets permits with
2 the city and then builds buildings. You
3 know, he's done them. He's done them, he
4 said maybe one and a half a year for 30 to 45
5 or 44 or 45, over 30 years; that averages
6 like one a year.

7 To me being an expert has to be
8 something different than just the -- you
9 know, a builder who gets permits and
10 constructs buildings or renovates buildings.

11 CHAIRPERSON LOUD: I don't think
12 I'm as ready to disregard his education.
13 He's got a four year degree from an
14 accredited major university in our region.
15 It's in historic preservation.

16 I think to the extent that -- and
17 this is why I'm still a little unclear. But
18 to the extent that we're saying that undue
19 hardship and the inability to return this
20 property, I guess back o a different use, is
21 an issue. I think it sounds to me like he

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1 would be qualified to have an expert opinion
2 on that.

3 I think the 30 years actually help
4 out and sort of give a foundation for the
5 college education. I don't see that as
6 diminishing his experience at all.

7 MR. COLLINS: I'm certainly not
8 belittling or diminishing his college
9 education. I think college education is a
10 wonderful thing. But to have a degree in
11 historic preservation when the issue before
12 the Board is not a historic preservation
13 issue does not, in my mind, qualify someone
14 as an expert on the issues that are before
15 this Board.

16 CHAIRPERSON LOUD: Let me turn
17 back to Ms. Moye, then open it up for other
18 Board members.

19 Can you be really specific about
20 the area of his testimony that relates to the
21 variance test, particularly you mentioned the

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1 undue hardship element of the test and how
2 his testimony relates to that, or how some
3 historic preservation test went into that?

4 COMMISSIONER MOYE: As an expert
5 in historic preservation in the redevelopment
6 of those properties this probably is over 100
7 years old. It's in a historic designated
8 area. And therefore, if he wanted to do
9 anything to a property like that, you do need
10 to have knowledge of those particular codes
11 and have an expert working with you when you
12 want to do something.

13 The other piece of it is the undue
14 harm test where it goes through a series of
15 different things that the property may
16 potentially turn back into.

17 I believe the applicants laid out
18 a couple of different scenarios, apartments
19 or long term rentals. But I don't believe
20 that they laid out a scenario of just taking
21 the entire property and reverting it back to

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1 a single resident use. And so that would be
2 the purpose of his testimony about the
3 feasibility of doing that.

4 CHAIRPERSON LOUD: And again, just
5 make the link for me. And the feasibility of
6 him doing that relates back to whether the
7 property can be used in conformance with the
8 current zoning?

9 COMMISSIONER MOYE: Right.

10 CHAIRPERSON LOUD: Okay.

11 COMMISSIONER MOYE: That there is
12 a use.

13 CHAIRPERSON LOUD: There is a use?
14 And he's been qualified as an expert in the
15 previous case, I think you --

16 COMMISSIONER MOYE: Yes, sir. He
17 was.

18 CHAIRPERSON LOUD: And what was
19 that case?

20 COMMISSIONER MOYE: This was the
21 2003 BZA Hearing.

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1 CHAIRPERSON LOUD: The one that
2 we're talking about with the transcript?

3 COMMISSIONER MOYE: Yes.

4 CHAIRPERSON LOUD: All right. Let
5 me see if Board members have any questions.
6 And then I'd like to see if we can move
7 beyond this threshold issue onto the merits.

8 It doesn't look like there are any
9 questions.

10 Mr. Hargrove, did you have any
11 questions?

12 MR. HARGROVE: I have no questions
13 at this time of the witness. If the issue is
14 still before the Board as to his
15 qualifications, I would suggest that there
16 are two aspects to the expertise that's
17 required of this case in view of the facts
18 about the house and the historic district in
19 which it is located. One is the historic
20 preservation aspects of any action with
21 respect to the house. And the other, of

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1 course, is expertise in construction,
2 specifically and renovation specifically
3 related to historic houses.

4 And with respect, I can't conceive
5 of a better foundation for expertise in these
6 combined areas than having a college degree
7 in historic preservation and several decades
8 of experience in taking actual houses in
9 historic areas and dealing with them in an
10 appropriate way while renovating them.

11 CHAIRPERSON LOUD: Thank you.

12 Mr. Dettman?

13 VICE CHAIRPERSON DETTMAN: Ms.
14 Moye, as you present Mr. Johnson as your
15 witness, will he be testifying to the ability
16 to convert the four rooms into a single-
17 family home and not the entire structure?
18 Because I think the narrow focus of this case
19 is we're grandfathered for eight rooms
20 already. And so I think our focus is what
21 can those four rooms, those four additional

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1 rooms be converted to in terms of the
2 availability of the conforming uses in this
3 zone?

4 COMMISSIONER MOYE: I appreciate
5 the narrowness of what you're dealing with.

6 His testimony would necessarily
7 would be for the whole building because the
8 applicants it seems are arguing that if just
9 get the use of these eight rooms, that it no
10 longer is feasible for them. And one of the
11 uses that can be used for this is simply take
12 the entire and revert it to residential use.

13 Sell it and renovate and sell it, however
14 you want to use it as a residence.

15 And so for that reason it would be
16 the residential property in its entirety.

17 VICE CHAIRPERSON DETTMAN: Okay.

18 I'll be honest and say that I find it
19 difficult if your case and Mr. Johnson's
20 testimony goes to the relative ease of
21 converting this entire structure back to a

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1 single-family home. If that's going to be
2 the scope of it, it will be very difficult to
3 fit into the narrow focus of these four
4 rooms.

5 You know, this use variance
6 applies to four rooms, not the entire
7 structure. The applicant could withdraw this
8 application and go forward with eight rooms
9 as a grandfathered use.

10 So just maybe it's a word of
11 caution, perhaps, as you present your case.

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

14 I'd like to weigh in as well. I
15 think the applicant can go forward and lose
16 this case and still have the eight rooms.
17 I'm not clear on how that testimony would be
18 directly relevant if it's going to be the
19 universal approach to the building. I mean,
20 if the testimony would be about converting
21 the entire eight plus the proposed four back,

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1 I'm just not certain that it's relevant to
2 the test. Because the eight are in
3 conforming with the zone already and there's
4 no requirement to do anything with the eight.

5 So if that's the proffer, even
6 though I'm not questioning your
7 qualifications; you seem like you're very,
8 very qualified to me. I'd be prepared to
9 vote your qualifications up. I'm going down
10 to the issue of the relevance of it.

11 MR. HARGROVE: Mr. Chairman, could
12 I have a word on this point?

13 CHAIRPERSON LOUD: Sure.

14 MR. HARGROVE: It seems to me it
15 would be unfortunate to preclude Mr.
16 Johnson's testimony by prejudging the issue
17 of whether the question of what can be done
18 with the entire building in compliance with
19 the Zoning codes is not permissibly
20 considered.

21 The question is in any variance

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1 case can any lawful use of the property be
2 made at reasonable return. And the property
3 here is clearly the building and land at 2005
4 Columbia Road. The courts have previously
5 decided it is not simply the land but
6 includes the building, but the concept is
7 property. And as far as I can see from the
8 court decisions, the Board would be under no
9 obligation to rule out the possibility of a
10 use of the entire property in accordance with
11 the permitted uses in this area as
12 demonstrating that there is a use of the
13 property at reasonable return, consistent
14 with the code, and thereby negating the claim
15 of undue hardship.

16 Now there are other uses that of
17 course we'll be discussing in due course, and
18 have discussed, that do preserve the eight
19 rooms in their present form. But it would
20 seem to me this, at any rate, is not the
21 stage at which to judge that issue and that

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1 perhaps, nor would be well advised to hear
2 any argument on that issue in the course of
3 the further development of the cases.

4 And if the Board should decide
5 that it is not legitimate to consider a use
6 of the eight rooms in determining the undue
7 hardship criteria, then they can properly
8 evaluate Mr. Johnson's testimony. But if you
9 determine that issue now, you'll not have the
10 opportunity to evaluate his testimony should
11 you determine that it is appropriate to
12 consider the entire property in determining
13 where the undue hardship criterion is met.

14 CHAIRPERSON LOUD: I feel like the
15 briefing has been pretty full on this issue
16 and I'm prepared to vote on it. But I did
17 want to see if Board members had any follow-
18 up questions, and then hear from Mr. Collins.

19 BOARD MEMBER MOLDENHAUER: I just
20 have a couple of questions. Considering, I
21 guess, I agree with the other Board members'

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1 statements, but hearing where Mrs. Moye and
2 the ANC are going in this testimony, I guess,
3 I would have some question as to Mr. Johnson,
4 your experience in -- you said that you've
5 done all, I guess, 30 some odd properties, 30
6 or 40 some properties and development. You
7 testified as to your experience and I guess
8 pro formas and acquisitions costs. Because
9 we're talking, you know, detrimental harm and
10 you're talking about renovating the property
11 to be a single-family residence but in this
12 case the property was acquired as a
13 commercial project as a rooming house. And
14 as has been said by other Board members,
15 there's eight units that are already being
16 used in that effect that are grandfathered
17 in. So I think that if Ms. Moye wants to use
18 your testimony as an expertise in that
19 regard, I would need to hear additional
20 experience that you have as to costs and
21 acquisitions and issues to that factor. If

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1 you can speak on that?

2 MR. JOHNSON: Several of the
3 houses that I've done have been as a rooming
4 house and I converted it back to a single-
5 family residence. That's probably the only
6 one I've done, it was the Toutorsky Mansion
7 on 16th Street.

8 BOARD MEMBER MOLDENHAUER: And
9 that property was purchased with the intent
10 to convert it back to a residence?

11 MR. JOHNSON: Yes, it was.

12 BOARD MEMBER MOLDENHAUER: Does
13 anybody else have any other questions?

14 VICE CHAIRPERSON DETTMAN: Mr.
15 Johnson, what kind of experience do you have
16 working with the Historic Preservation office
17 and the Historic Preservation Review Board in
18 renovating some of the homes that you've
19 done?

20 MR. JOHNSON: The house that I'm
21 in now had several issues that were brought

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1 before the Board. The Toutorsky Mansion had
2 none. It was all inside, so we didn't deal
3 with this sort of preservation at all,
4 although Historic Preservation was in the
5 house many times for events, but not just --
6 that's as far as it went.

7 VICE CHAIRPERSON DETTMAN: But
8 you're familiar with the standards that they
9 have out there that guide developers in doing
10 things to historic, and the cost or the extra
11 cost that's associated with bringing a
12 property back to, you know, a historic level?

13 MR. JOHNSON: Yes.

14 CHAIRPERSON LOUD: Well, let me
15 start us off then. Well, I had indicated
16 that let Mr. Collins close us out before we
17 decide his issue of the qualifications and
18 the need, I guess, for expert testimony on
19 this issue.

20 Mr. Collins, if you have anything
21 additional?

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1 MR. COLLINS: Just one last point
2 in this colloquy that went back and forth.
3 The witness indicated in an answer to a
4 question that he did convert one rooming
5 house to a single-family dwelling, that it
6 was purchased for that purpose for
7 conversion. And that because all the work
8 was interior, there was no historic
9 preservation considerations involved in the
10 interior renovation.

11 He's being put up as an expert in
12 historic preservation. The issues in this
13 case have to do with the interior. I just
14 want to go back to what I said in the
15 beginning. This expertise has nothing to do
16 with the issues in this case.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Collins.

19 MR. COLLINS: Thank you.

20 CHAIRPERSON LOUD: Colleagues, I
21 am not seeing a case that has been made for

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1 allowing the proposed witness to appear
2 before us as an expert on historic
3 preservation given the expanded use that the
4 ANC would like to make of the testimony. I
5 think if the ANC were to narrow the use of
6 this testimony, that the questions to the
7 four rooms that are in play and under our
8 consideration in the case, then I would
9 arguably see both the relevance of it and I
10 think the gentleman has established his
11 qualifications, personally. But the ANC has
12 said that they don't intend to proceed like
13 that, that they'd like to address the house
14 as a whole. And that would be all of the
15 rooms of the house, and that's not before us.
16 And there's no obligation on the applicant to
17 do anything with the eight rooms that already
18 have the Certificate of Occupancy.

19 So in the interest of efficient
20 administration of the case, I would be really
21 concerned about allowing a lot of testimony

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1 in on a issue that is not material or in play
2 right now before us.

3 So I would be against allowing Mr.
4 Johnson in as an expert on historic
5 preservation as proffered by the ANC.

6 And if you guys could weigh in so
7 we could make this decision and move on?

8 VICE CHAIRPERSON DETTMAN: Mr.
9 Chairman, I think that Mr. Johnson will be
10 able to provide us with some helpful
11 information.

12 CHAIRPERSON LOUD: Okay.

13 VICE CHAIRPERSON DETTMAN: On what
14 it would take to either convert the four
15 rooms to a conforming use or the entire
16 building to a single-family use. However,
17 seeing that the property is located in a
18 historic district but it's not landmarked,
19 there's nothing as I understand it historic
20 on the interior, the cost of what's necessary
21 to convert that to a single-family home on

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1 the interior I don't think holds from his
2 background in historic preservation. I think
3 it holds more appropriately from his
4 background as a builder.

5 And so with respect to Mr. Johnson
6 being proffered as an expert in historic
7 preservation, I don't see how that background
8 applies to this case. And again, I think
9 he'll provide us with some very helpful
10 information and testimony, but not as an
11 expert witness.

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

14 Are there others?

15 ZC CHAIR HOOD: Mr. Chairman, I
16 would just concur. I think that the term
17 expert, while he definitely has the
18 qualification dealing with historic
19 preservation his argument said, I think that
20 term of expert witness should not just be
21 thrown around. Because what will happen is

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1 they'll come back later and say well I was
2 proffered, as we heard already, in another
3 case. And I think Mr. Collins actually is
4 exactly correct. But as Board member Dettman
5 just mentioned, that we can hear a lot of
6 that, some testimony, and then we can weigh
7 it on the merit of his testimony.

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

10 BOARD MEMBER MOLDENHAUER: I agree
11 with most of the comments that have been said
12 so far. I think that historical
13 preservation, his experiences in historical
14 preservation really is not relevant here.
15 That he can testify as to his knowledge and
16 experience in construction and development
17 and then we can weigh that and make our own
18 conclusions from that testimony. And that
19 would not require an expert qualification.

20 CHAIRPERSON LOUD: Thank you.

21 So I think by consensus what we're

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1 saying is that we don't find Mr. Johnson to
2 be an expert in historic preservation as that
3 issue would be engaged in our case, in terms
4 of the interior of the property. But find
5 that his testimony could be useful for some
6 of the issues that are under our
7 consideration of the variance test.

8 So the proffer of him as an expert
9 is being denied by the Board, but you may
10 still call him as a witness and we'll
11 evaluate, as Mr. Collins and Mr. Hargrove
12 will, on an issue-by-issue by basis whether
13 the particular testimony exceeds a lay
14 witness.

15 COMMISSIONER MOYE: So may I
16 continue with Mr. Johnson or do you --

17 CHAIRPERSON LOUD: Go ahead.

18 COMMISSIONER MOYE: With not
19 knowing what the four additional rooms are,
20 but if you had to reconvert four rooms into
21 another purpose in that house, and you have

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1 said that you've been into it subsequently
2 when it's been renovated, when it was in the
3 process of renovated?

4 MR. JOHNSON: (No audible
5 response).

6 COMMISSIONER MOYE: Okay. So you
7 haven' seen the final product? If you wanted
8 to do some renovations to switch it to
9 another, what would be your -- first of all,
10 do you think it would be onerous to switch it
11 to something, to another allowable use, like
12 an apartment or some such thing?

13 MR. JOHNSON: It lend itself to
14 any use that -- it could be residential or it
15 could be just made -- the rooms could be made
16 larger.

17 COMMISSIONER MOYE: Yes. Now a
18 property of this nature where you're not,
19 obviously, you're not testify as a historic
20 expert witness, but within the walls of a
21 property of this nature there are typically

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1 features that people look for when they are
2 looking at homes of this type. Can you tell
3 us some of the things that somebody who
4 walked into a home like this, what are the
5 valuable features that they look at?

6 Woodwork, chandelier --

7 MR. JOHNSON: Doors, woodwork,
8 wainscoting. As to medallions, I don't think
9 the house has any medallions. But, you know,
10 charm.

11 COMMISSIONER MOYE: So and there's
12 still value even in the economic downturn in
13 something like that? People are still
14 looking for those qualifications in a
15 residence?

16 So would it be your opinion that
17 if they were to -- say, if they didn't
18 transfer it into a residential home but kept
19 as-is, but then they made the option to sell
20 with the rooming house structure, the eight
21 rooms, do you think that would be a saleable

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1 property?

2 MR. JOHNSON: Yes, I do.

3 COMMISSIONER MOYE: For other --
4 for someone --

5 MR. JOHNSON: Yes, anything in the
6 neighborhood is a saleable property.

7 COMMISSIONER MOYE: And that's
8 based upon the historic nature, location --

9 MR. JOHNSON: Yes. It -- it is a
10 desirable neighborhood.

11 COMMISSIONER MOYE: Okay. I don't
12 think I have any further questions for the
13 witness. I don't know if Mr. Hargrove does.

14 CHAIRPERSON LOUD: Mr. Hargrove,
15 you can ask the witness now, and then we'll
16 turn to Mr. Collins.

17 MR. HARGROVE: Mr. Johnson, for
18 the record and without prejudging the Board's
19 ultimate determination as to the relevance of
20 your response on this question, I gather from
21 your prior comment that it is your opinion

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1 based on your experience with the renovation
2 of houses of the same general type, that this
3 house could be converted to a single-family
4 use at a reasonable return?

5 MR. JOHNSON: Absolutely.

6 MR. HARGROVE: Thank you. I have
7 no further questions.

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

10 Mr. Collins?

11 MR. COLLINS: Mr. Hargrove is not
12 your counsel, is he?

13 MR. JOHNSON: No.

14 MR. COLLINS: Okay. Both Ms. Moyer
15 and Mr. Hargrove proffered during the
16 exchange regarding your qualifications that
17 you would be testifying about properties,
18 they're being used in conformance with
19 Zoning?

20 MR. JOHNSON: Yes.

21 MR. COLLINS: Do you agree that's

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1 the essence of your testimony?

2 MR. JOHNSON: Whether -- tell me
3 more what you're asking.

4 MR. COLLINS: I'm asking you
5 whether you agree with the statements put
6 forth on your behalf by Ms. Moye and Mr.
7 Hargrove that you would be testifying about
8 the fact that the property should be used in
9 conformance with Zoning?

10 MR. JOHNSON: Yes.

11 MR. COLLINS: Okay. And you
12 testified that you purchased your house in
13 about 2001?

14 MR. JOHNSON: 2000/2001, yes.

15 MR. COLLINS: And is it important
16 to you, is your house in conformance with
17 Zoning?

18 MR. JOHNSON: Yes.

19 MR. COLLINS: Are you in fact
20 using, or have you used your house in
21 conformance with Zoning?

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1 MR. JOHNSON: As far as I know I
2 have.

3 MR. COLLINS: Are you taking the
4 Homestead deduction?

5 MR. JOHNSON: Yes, I am.

6 MR. COLLINS: Are you leasing the
7 property out for other purposes?

8 MR. JOHNSON: There's a rental
9 unit in the basement.

10 MR. COLLINS: And what about the
11 events that occur in your house?

12 MR. JOHNSON: Like what events?

13 MR. COLLINS: Well, the weddings,
14 the photo shots?

15 MR. JOHNSON: ABC rented the house
16 out once time. We've a wedding, it was free,
17 didn't charge them.

18 Everybody has events in their
19 houses. This is not a commercial venue.
20 This is my house.

21 MR. COLLINS: Okay. So you have a

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1 renter in your house?

2 MR. JOHNSON: Yes, I do.

3 MR. COLLINS: So would that
4 qualify as a two family dwelling then? Is
5 your house an apartment in the basement, is
6 that it?

7 MR. JOHNSON: Yes.

8 MR. COLLINS: So that would be a
9 two family dwelling?

10 MR. JOHNSON: Yes.

11 MR. COLLINS: With what's called a
12 flat?

13 MR. JOHNSON: I believe so.

14 MR. COLLINS: And do you know
15 whether a flat requires a Certificate of
16 Occupancy?

17 MR. JOHNSON: I don't know. I
18 don't know that.

19 MR. COLLINS: Do you have a
20 Certificate of Occupancy?

21 MR. JOHNSON: I don't believe I

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1 do.

2 MR. COLLINS: Okay. But it's
3 important to you that properties be used
4 consistent with Zoning?

5 MR. JOHNSON: Yes.

6 MR. COLLINS: I have no further
7 questions.

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

10 Let us turn to Board members and
11 see if there are any questions for the
12 witness. And if Ms. Moye would like an
13 opportunity to redirect the witness. Then I
14 think the Office of Planning wanted to go on
15 record and make a small correction to his
16 testimony. So we can do that in short order
17 as well.

18 I don't think there are any
19 questions from the Board.

20 Ms. Moye, did you have any follow-
21 up with the witness?

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1 COMMISSIONER MOYE: No.

2 CHAIRPERSON LOUD: Okay. Then why
3 don't we do this: Let's go to the Office of
4 Planning. I think there's a question to
5 earlier testimony. And then we'll come back
6 to you, Ms. Moyer, for any additional witness
7 that you have.

8 MR. COCHRAN: Thank you, Mr.
9 Chair.

10 OP had just testified that in
11 September the applicant testified that the
12 occupancy rate or historically was between 60
13 and 65 percent. While other people have been
14 testifying I was able to go back and look at
15 the record again. The applicant actually
16 testified that on page 204 of the transcript
17 Mr. Collins said: "Can you tell me about
18 your historic rate -- what your historic rate
19 has been recently." The discussion was about
20 occupancy.

21 And Ms. Rosan answered: "Fifty to

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1 55 percent."

2 And then on page 229 Ms. Rosan
3 stated: "We are moving little-by-little each
4 year, but our profit has been quite small.
5 But again, a profit."

6 So that's what I based OP's
7 testimony on.

8 Thank you.

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

11 Ms. Moye, I'm sorry, did you have
12 a follow-up? Okay.

13 VICE CHAIRPERSON DETTMAN: For Mr.
14 Johnson.

15 CHAIRPERSON LOUD: For Mr.
16 Johnson. Absolutely.

17 VICE CHAIRPERSON DETTMAN: Mr.
18 Johnson, you testified just a moment ago that
19 you believe that this property can be
20 converted to a single-family home?

21 MR. JOHNSON: Yes.

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1 VICE CHAIRPERSON DETTMAN: Would
2 you agree that irrespective of cost any
3 structure can be reconverted back to a
4 single-family home?

5 MR. JOHNSON: Yes.

6 VICE CHAIRPERSON DETTMAN: Do you
7 have any idea what it would take to bring
8 this property back to the status of a single
9 family home, and then in terms of your
10 knowledge of the real estate market in that
11 area what a property could sell for?

12 MR. JOHNSON: It would depend the
13 finishes that you put in. It could range
14 anywhere from 500 to a million the
15 renovation. And houses of that neighborhood
16 can garner a million eight, two million, 256
17 depending on the size. It's a large house.

18 VICE CHAIRPERSON DETTMAN: Okay.
19 Based on your - I know you haven't seen the
20 finished product, but based on what you saw
21 when you were in there while it was being

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1 renovated, could you speculate what it looks
2 like in terms of the interior condition now?

3 What it would cost to convert it? And, you
4 know, is this going to be a million dollar
5 renovation and then a \$1.1 million sale?

6 MR. JOHNSON: I haven't seen it in
7 its final look, so I couldn't give you --

8 VICE CHAIRPERSON DETTMAN: Okay.
9 All right. Thank you.

10 CHAIRPERSON LOUD: I think, Ms.
11 Moye, we're back at you in terms of either --
12 I'm not certain if you said you wanted to
13 redirect the witness or just go on to your
14 next witness.

15 COMMISSIONER MOYE: I was just
16 going to continue with my review.

17 CHAIRPERSON LOUD: Okay. So then
18 you're through with Mr. Johnson as a witness?

19 COMMISSIONER MOYE: Yes.

20 MR. JOHNSON: Okay. Thank you,
21 Mr. Johnson.

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1 MR. JOHNSON: Thank you.

2 CHAIRPERSON LOUD: Appreciate your
3 time.

4 COMMISSIONER MOYE: Last month
5 Vincent Hurteau, a qualified expert witness
6 in the marketability and sale of properties
7 with features similar to this one testified
8 that even in the current economic downturn a
9 property such as this remains attractive to
10 buyers.

11 The applicants claim that they
12 relied to their detriment on the statements
13 of Government officials as well as the
14 issuance of building permits in assuming that
15 there wasn't a problem with the business they
16 wanted to run. They asserted that based on
17 this they moved forward with extensive
18 renovations to the property and will suffer
19 hardship if relief is not granted.

20 The record clearly demonstrates
21 that they were put on notice that there was a

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1 problem with Zoning from their very first
2 interaction with D.C. Government officials
3 immediately after purchasing the property,
4 and then again with each successive
5 interaction with D.C. Zoning officials.

6 Rather than wait until they had
7 made sure they had Zoning authorization for
8 their project, they opted to take a gamble
9 and press ahead with substantial renovations
10 seeking building permits for 12 rooms knowing
11 that they had Zoning authorization for only
12 eight.

13 It should be noted that the
14 applicants are not inexperienced when it
15 comes to setting up this kind of business and
16 they weren't in 2003. They are professional
17 innkeepers and from at least 2003 to present
18 they have run two other rooming
19 establishments just like this one in
20 Virginia.

21 And without objection, I would

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1 like to submit for the public record tax
2 records from their properties in Arlington
3 and Alexandria, as well as information from
4 some travel websites about the usage of those
5 properties.

6 Without objection?

7 MR. COLLINS: I would object to
8 any tax records for Arlington, Virginia. That
9 has nothing to do with this case.

10 CHAIRPERSON LOUD: Ms. Moye, could
11 you proffer the relevance again?

12 COMMISSIONER MOYE: The relevance
13 of this information is that throughout the
14 proceeding the applicants have cast
15 themselves as not knowing what's going on, we
16 have no idea what this about, why are we
17 here. And we are trying to say that they're
18 professional innkeepers. They know this
19 business very well. And to prove that they
20 are professionals, they own these two other
21 properties in Virginia in Arlington and

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1 Alexandria which presumably have their own
2 sets of Zoning bureaucracy and regulations
3 that they need to adhere to. So that is the
4 relevance of it.

5 CHAIRPERSON LOUD: And these two
6 other properties are inns?

7 COMMISSIONER MOYE: Yes. One of
8 them they reside in.

9 CHAIRPERSON LOUD: Well, is it an
10 inn or a residence? Ms. Moye?

11 COMMISSIONER MOYE: A single
12 dwelling patio house.

13 CHAIRPERSON LOUD: I don't see the
14 relevance of that particular one.

15 COMMISSIONER MOYE: Well, one is
16 that the Arlington one is the Arlington Guest
17 House and then there's the Alexandria Guest
18 House. So Arlington House and Alexandria
19 Guest House.

20 CHAIRPERSON LOUD: And so let me
21 just make sure I understand. So to impeach

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1 the credibility of the witness as regards
2 being naive or unexperienced about the Zoning
3 --

4 COMMISSIONER MOYE: Yes, coming
5 into this situation and not having any
6 awareness that when you're going to start a
7 business such as this that are rules and
8 licenses and certificates that one needs to
9 apply or --

10 CHAIRPERSON LOUD: But those are
11 tax records?

12 COMMISSIONER MOYE: There's tax
13 records but there's also, we pulled out from
14 the internet some documentation pertaining to
15 these guest listing, internet listings for
16 the properties. That they are in fact being
17 listed as guest house and advertised as guest
18 house. They're being used, suggested by some
19 organizations as some inexpensive hostels to
20 stay at for when persons of low income come
21 to D.C. and want, you know students,

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1 whatever, missionaries who need an
2 inexpensive place to stay. So--

3 CHAIRPERSON LOUD: I'm not
4 necessarily seeing the connection between the
5 -- the owning challenges that they allegedly
6 encounter at the DCRA and the history of
7 Zoning challenges. And I think they're
8 trying to make a case for Zoning history
9 helping to make the property exceptional.
10 And then the tax records from Arlington.
11 Perhaps even some Zoning records from
12 Arlington might, arguably, be a little more
13 relevant.

14 I mean, I get the argument about
15 they're a little more savvy than they're
16 trying to present during the course of our
17 proceeding. But I'm just not convinced that
18 the tax records help to make that case. I
19 don't know if Board members have any thoughts
20 on that as well. But the tax records, again,
21 I don't see them as directly relevant to that

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1 case trying to make that case.

2 It goes without saying the fact
3 that they've operated this property for a
4 number of years. And that they've gone
5 through a process both here at BZA -- I mean,
6 you can draw the inference that if I were in
7 your position, that there's a certain amount
8 of suaveness that goes with having been able
9 to operate it successfully for a number of
10 years without necessarily having to go into
11 the tax records from Arlington. I think the
12 record allows certain inferences to be drawn
13 already regarding that issue.

14 MR. HARGROVE: Mr. Chairman, if I
15 could intervene? It seems to me it would
16 depend on what the tax records are being
17 proposed to show. It would seem to me that
18 the Board has no interest in personal income
19 or income tax paid by the applicants on their
20 properties, for example. But if the tax
21 records do demonstrate the simple fact of

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1 ownership in the properties, that would be a
2 different matter.

3 MR. COLLINS: Excuse, Mr. Chair.
4 May I just make a point of clarification?

5 I'm sorry to interrupt.

6 But Mr. Hargrove is not counsel
7 for the ANC. He's counsel for a party here.

8 He is coming to the aid of the ANC. The ANC
9 is perfectly able to deal with their own
10 testimony.

11 They have a resolution in the
12 record. They can testify as to what actions
13 they took. But for Mr. Hargrove to jump in
14 and try and bolster the ANC's testimony I
15 think is improper.

16 CHAIRPERSON LOUD: Well, I don't
17 necessarily with that point. But I do agree
18 with your point that the ANC would know the
19 reason why the records are being proffered
20 for admission. And they've already indicated
21 why they're proffering it for admission. So

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1 I'm not sure what it adds, Mr. Hargrove, for
2 you to weigh in why their records are being
3 proffered for admission into the case.

4 So that's where I am. And I'd
5 like to hear from other Board members. But I
6 think there's a record already fairly
7 established in the case from which one can
8 draw inferences regarding the level of savvy
9 of the applicant. To put in tax records from
10 another jurisdiction that may or may not
11 contain private information about the
12 applicant, I just don't see where it's
13 relevant enough to the impeachment issue that
14 I think you're trying to get at to allow that
15 in.

16 I didn't understand the website,
17 the other category of records that you were
18 talking about.

19 COMMISSIONER MOYE: The websites
20 just further bolster the use, bolster
21 basically the fact that they are running two

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1 other establishments, again going towards the
2 issue that they are professional innkeepers
3 and these are just listing them as inns that
4 are available both in Alexandria and
5 Arlington.

6 CHAIRPERSON LOUD: Okay. Those
7 would sound to me to be a little less
8 invasive in terms of including personal
9 information about the applicant. But did you
10 provide Mr. Collins with a copy of that?

11 COMMISSIONER MOYE: I'm providing
12 it right now. I have copies.

13 CHAIRPERSON LOUD: And do Board
14 members have copies? Or perhaps you can take
15 a look at it, Mr. Collins, and we can try to
16 make our way through this and get on with the
17 other components of the case.

18 I don't think that Board members
19 have any copies.

20 COMMISSIONER MOYE: No, I have
21 them. I would need to separate out the tax

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1 information. It's the property tax
2 information that's publicly available. But I
3 can separate that out very quickly and ask my
4 colleagues to bring it up to you. Is that
5 acceptable?

6 CHAIRPERSON LOUD: Yes. Well, why
7 don't we hear back from Mr. Collins, and just
8 see. I think Board members can formulate
9 ideas about whether they think that's going
10 to be a problem, even without taking a look
11 at it. It sounds like website information.
12 And by the time that we get the records from
13 you, we should know where we are and be able
14 to move forward.

15 Yes, sir?

16 MR. COLLINS: I'm sorry. Was a
17 question posed to me? I was talking to my
18 clients.

19 CHAIRPERSON LOUD: No. I didn't
20 pose a question. You came back looking at the
21 microphone like you were prepared to respond

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1 to the records that you had just been given.

2 MR. COLLINS: Well, you know,
3 these are out on the internet. They are what
4 they are. We have some response. This is not
5 the appropriate time to make responses to
6 that, but we will at the appropriate time.

7 CHAIRPERSON LOUD: Thank you.

8 And Board members, do you have any
9 concerns regarding the internet-based
10 records? Okay.

11 BOARD MEMBER MOLDENHAUER: Yes. I
12 would be fine with allowing in the internet
13 records and not the tax records.

14 CHAIRPERSON LOUD: Okay. Thank
15 you, Ms. Moldenhauer.

16 COMMISSIONER MOYE: The records
17 are coming up there.

18 CHAIRPERSON LOUD: All right. I
19 think we'd like to move forward from this
20 impasse. I think we've heard from myself and
21 Ms. Moldenhauer. Do Board members or

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1 Chairman Hood and Board member Dettman have
2 any further on this issue? Okay.

3 Then why don't we do this? We're
4 going to admit into the record the internet-
5 based records. We will not admit into the
6 record the tax related records. And we can
7 move forward.

8 COMMISSIONER MOYE: Thank you, Mr.
9 Chairman.

10 The applicants also stated in 2003
11 the prior purchase, it was a real estate
12 agent who told them they could rent 15 rooms.

13 I do have an excerpt from the 2003
14 testimony. But we also placed this excerpt
15 into the ANC report. So I'm happy to give
16 you this information, but it is already in
17 our report. Whatever you would like me to
18 do.

19 CHAIRPERSON LOUD: Well, if it's
20 in the report, you don't have to give it to
21 us again.

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1 COMMISSIONER MOYE: Okay. All
2 right.

3 The applicants did not seek to
4 confirm what the realtor had told them in
5 anyway by checking the Zoning rules or even
6 making their real estate sales contract
7 contingent upon their ability to secure the
8 appropriate Zoning authorization to conduct
9 their business. This is quite unfortunate,
10 but anyone who decides to purchase a property
11 for purposes of running any kind of business
12 ultimately bears the burden to conduct the
13 basic due diligence to determine what the
14 rules are and ensure that they can comply
15 with those rules. This is common sense.

16 Any hardship experienced by the
17 applicants is therefore self-imposed and not
18 based upon any detrimental reliance on the
19 statements of Government officials.

20 Now ANC 1C has always taken an
21 active interest in protecting our residential

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1 zones from further nonresidential uses. We
2 will continue to be interested in these
3 issues.

4 Any expansion of a commercial use
5 would be an encroachment into a residential
6 zone and would open the door for others to
7 make the same claim.

8 In Adams Morgan we have intense
9 commercial corridors so it makes the
10 residential areas that we do have that much
11 more sacrosanct. For this reason ANC 1C does
12 respectfully disagree with the one conclusion
13 from the Office of Planning that o harm to
14 the public good would take place if this
15 variance is approved.

16 When ANCs are charged with
17 reviewing any community matter we look
18 towards the established records and we talk
19 to affected members of the community as it is
20 our job to serve as the voice of our
21 constituents. ANCs cannot compel witnesses

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1 or evidence, we can't hold anyone in
2 contempt, we don't put anybody under oath.
3 So for this reason when we look into a matter
4 we rely very heavily on good faith and
5 credibility.

6 Much to our disappointment in this
7 case the applicants have continued to
8 demonstrate bad faith that calls their
9 credibility into question. The prime example
10 is they're going to the building authorities
11 for permits for 12 rooms while having only a
12 Certificate of Occupancy for eight rooms in
13 hand. And having been repeatedly turned down
14 for additional rooms. Then constructing the
15 12 room facility even though DCRA later
16 informed them that the plans needed to be
17 changed, and then operating it for several
18 years in violation of their Certificate of
19 Occupancy.

20 Even now after the Zoning
21 Administrator's February 2009 letter

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1 requiring them to observe the eight room
2 limitation, they advertized all 12 rooms as
3 available for prospective clients.

4 As to credibility when asked as to
5 whether Mr. Rosan or any other employee is on
6 duty during the overnight hours, the
7 applicants have given a different response
8 each time. Sometimes they've said that Mr.
9 Rosan lives there. Other times, they've
10 simply dismissed the question saying that
11 they're not even required to have anyone on
12 site.

13 In her testimony of September 15th
14 Mrs. Rosan stated definitely that someone is
15 on duty on site at all times. A cursory
16 review of information posted on their website
17 indicates no one stays on site at night.
18 This is a huge safety concern to the
19 community.

20 Likewise, in their September
21 testimony Mrs. Rosan states she routinely

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1 violates residential parking rules and did
2 not remove a partition from the basement as
3 requested by the Construction Office because
4 there were no windows, and as such it
5 couldn't be used a room for human habitation.

6 This Board denied the applicants'
7 request for a use variance based upon
8 essentially the same set of facts in 2003,
9 and we are respectfully requesting that the
10 Board do the same with this new application.

11 We do understand that this Board
12 looks at each application on its own merit.
13 It's very important, however, that the
14 community be able to rely upon the
15 consistency in BZA rulings in protecting our
16 residential zones.

17 Thank you.

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

20 Ms. Moye, did you have additional
21 witnesses?

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1 COMMISSIONER MOYE: I do not.

2 CHAIRPERSON LOUD: Okay. Then let
3 us turn to Mr. Collins and see if there's
4 cross, and then we'll come back to the next
5 phase of the case.

6 MR. COLLINS: Ms. Moyer, I want to
7 explore a little bit about your allegations
8 concerning the properties in Arlington and
9 Alexandria that are owned by the Rosans.

10 Do you know whether those
11 properties, either or both of those
12 properties were acquired from an estate of
13 someone who had been operating a rooming
14 house for 30 some odd years?

15 COMMISSIONER MOYE: I was not
16 aware of that. I was just aware of the fact
17 that they had guest houses similar to --

18 MR. COLLINS: Do you know anything
19 about whether there was a Certificate of
20 Occupancy for those buildings, either or both
21 of them, for rooming houses at the time that

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1 they purchased them?

2 COMMISSIONER MOYE: In Virginia?

3 MR. COLLINS: Yes.

4 COMMISSIONER MOYE: I have no
5 idea.

6 MR. COLLINS: Do you know anything
7 about the zoning about either or both of
8 those properties?

9 COMMISSIONER MOYE: No, and that
10 was not the point of introducing that
11 information. The point of introducing that
12 information was that they are professional
13 innkeepers and they have these properties in
14 these other jurisdictions. It wasn't to
15 explore what the Zoning rules or Certificate
16 of Occupancy rules were in those two
17 jurisdictions. It was simply as a matter of
18 stating that they are professional
19 innkeepers.

20 MR. COLLINS: But you were
21 inferring, if not explicitly stating, that

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1 because they're professional innkeepers in
2 your term, that they should know the
3 procedures for getting permits and that they
4 were working around the system in D.C. in
5 getting their permits by going to here, then
6 going to there, then going to someplace else
7 under the guise of being, as you called them,
8 professional innkeepers. So based on that --

9 COMMISSIONER MOYE: I don't think-
10 -

11 MR. COLLINS: Wait. The question
12 is coming.

13 So do you have any information
14 whatsoever about those two properties, either
15 or both of those properties, in the way, the
16 manner in which they obtained their permits
17 to operate them or the circumstances under
18 which they renovated them, or the prior
19 history, the Zoning history, or whether they
20 had to go for any Zoning hearings, or
21 anything of that nature regarding those two

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1 properties or either of them?

2 COMMISSIONER MOYE: No, I don't.

3 Because again, it was not the reason for
4 offering that information. The reason for
5 offering that information is to just show
6 that they are in this particular line of
7 business, they have experience in this
8 particular line of business. And to come
9 into the District and not do any
10 investigation whatsoever, it seems if you're
11 a professional --

12 MR. COLLINS: But there you're
13 crossing a line. You're saying that they are
14 very good in their business as professional
15 innkeepers, but then you're saying when they
16 come in the District they should do all these
17 Zoning type issues that they should be doing.

18 So is there --

19 CHAIRPERSON LOUD: Can I ask the
20 parties to move on? I think you've asked the
21 question. She's certainly answered the

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1 question. I think you've asked it at least
2 twice. She said no twice. And on each
3 occasion she's beyond the no to explain why
4 she did it proffer it. And then so we're
5 getting circular where she's sort of
6 repeating her reasons for proffering it. But
7 you've established, I think, through your
8 question that the witness had no knowledge
9 about any Zoning interactions, any Zoning
10 problems that they may have faced in the
11 Arlington with the properties that she tried
12 to introduce.

13 So if we could move on.

14 MR. COLLINS: Thank you, Mr.
15 Chairman.

16 I have no further questions.

17 CHAIRPERSON LOUD: Okay. Are
18 there any questions from the Board for Ms.
19 Moye? Okay.

20 Then where we are in the case now
21 is that we would go to any parties or persons

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1 that are in support of applications. And no
2 parties has been qualified in support.

3 If there are any witnesses in the
4 audience who are in support of the
5 application, you would be given three minutes
6 to testify in support. Okay.

7 Seeing none, we would now go to
8 parties, persons in opposition. And we do
9 have a party status qualified through Mr.
10 Hargrove who represents the Oakland
11 Condominium. And so this would be your
12 opportunity to present your case, Mr.
13 Hargrove.

14 Let me ask you before we get
15 started, we're at about 4:00 now. How many
16 witnesses are you planning to call?

17 MR. HARGROVE: Two.

18 CHAIRPERSON LOUD: Two witnesses?

19 Okay. And just a rough ballpark how long
20 dow you think that your case is going to
21 take? I'm not trying to speed it up at all.

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1 Take all the time you need.

2 MR. HARGROVE: I think considering
3 their direct testimony, not more than 20
4 minutes combined.

5 CHAIRPERSON LOUD: Okay.

6 MR. HARGROVE: And possibly less
7 than that.

8 CHAIRPERSON LOUD: Okay. Thank
9 you. Well, you can get started when you're
10 ready.

11 MR. HARGROVE: Thank you, Mr.
12 Chairman.

13 We'd like to call Mr. Peter
14 Crawford.

15 CHAIRPERSON LOUD: Okay.

16 MR. CRAWFORD: Good afternoon. My
17 name is Peter Crawford. I live at 2006
18 Columbia Road, Northwest, Washington, D.C.,
19 Apartment 31. Directly across the street
20 from the subject property.

21 I have a brief statement to submit

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1 for the record, and I'd be happy to summarize
2 that in order to save time.

3 CHAIRPERSON LOUD: Thank you, Mr.
4 Crawford. I don't want you to fill in any way
5 -- if you want to summarize, you're welcome
6 to. And if you want to go beyond just a
7 summary, you can do that as well.

8 MR. CRAWFORD: We have the copies
9 to submit to -- or should we do that at the
10 end?

11 MR. HARGROVE: They're already
12 distributed.

13 MR. CRAWFORD: They've already
14 been distributed. Thank you very much.
15 Okay.

16 For the record, our building
17 contains 25 residential units, 80 percent of
18 the units approximately are owner-occupied.

19 MR. COLLINS: Sorry. I apologize.
20 May I ask for a clarification? I was just
21 handed a statement of Oakland Condominium in

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1 opposition. Is this the same document that
2 was submitted dated September 14th, or is
3 this a new document?

4 MR. HARGROVE: Do you have a copy
5 of Mr. Crawford's statement?

6 MR. COLLINS: I was handed the
7 statement of Oakland Condominium in
8 opposition. It looks to be the same as what
9 was submitted on the 14th of September.

10 MR. HARGROVE: Yes, I'm sure
11 that's the case. It was simply an
12 inadvertent confusion of the two documents.
13 You need a document that's headed "Statement
14 of Peter M. Crawford."

15 MR. COLLINS: Okay.

16 CHAIRPERSON LOUD: Mr. Dettman has
17 just reminded me. We apparently received
18 something different than what you are
19 referencing now. We received a Statement of
20 Peter M. Crawford dated September 15. Okay.

21 So it's just a simple question of clarifying

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1 the document that you got.

2 Thank you, Mr. Dettman.

3 CHAIRPERSON LOUD: I think, Mr.
4 Crawford, you can proceed.

5 Mr. Collins, do you now have the
6 correct document?

7 MR. COLLINS: I have two sets of
8 documents. One is called "Statement of Peter
9 M. Crawford," dated September 15th. And it's
10 multi page and it has some attachments to it.

11 And then a second document has the
12 number 5-C on the top right hand corner, and
13 its some photos.

14 MR. CRAWFORD: That's correct.
15 That's Exhibit 5-C.

16 MR. COLLINS: Great. Thank you.
17 Thanks.

18 MR. CRAWFORD: That's it.

19 CHAIRPERSON LOUD: Okay. All
20 right. Now I think we can proceed.

21 And, again, I want to let the

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1 witness know you can take all the time you
2 need. On the other hand, Mr. Hargrove,
3 you've got one hour total for the
4 presentation of your case. That does not
5 include cross or questions from the Board. So
6 it sounds like you're going to be well within
7 your projected 20 minutes of direct.

8 Mr. Crawford, sorry for the
9 interruption.

10 MR. CRAWFORD: And I'll be
11 expeditious.

12 As I said, the Oakland directly
13 faces the property for which the zoning
14 variance has been requested. I happen to
15 live on the third floor in the front facing
16 the unit, which is directly across the street
17 from the property.

18 Today I'll testify to the nature
19 and extent of the impacts on the Oakland and
20 to the public good that we believe will
21 result from the continued operation of

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1 American Guest House with expansion from
2 eight to 12 rooms.

3 I want you to know I and my family
4 have a long history in the District of
5 Columbia, lived in this specific neighborhood
6 for four generations. So my interest goes
7 deep. But today I'm testifying not
8 necessarily for myself, but for the
9 condominium in my fiduciary interest as a
10 member of the Board.

11 We do believe that in contrast to
12 the report of Office of Planning that
13 granting the requested variance would cause
14 substantial detriment to the public good. We
15 testified to that effect in the prior case.
16 And while I know that we're talking now about
17 a new case, again I believe that consistency
18 in public policy and enforcement regulations
19 is important.

20 We contend that the Oakland
21 Condominium, the surrounding residential

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1 properties and the community at large will be
2 adversely impacted by the proposed variance
3 due to a 50 percent or greater increase in
4 the volume of vehicular and pedestrian
5 traffic, noise, potentially trash that would
6 result in the expansion of the already
7 current use.

8 Specifically increase vehicular
9 traffic to the residents, endangerment of
10 residents and other passersby including
11 students and faculty who cross nearby for the
12 Oyster-Adams School.

13 Potential impingement on already
14 limited and restricted parking in the
15 neighborhood. The residents have already
16 submitted some testimony on that as well.

17 Increased noise from guests, from
18 taxicabs and the impudence of traffic imperil
19 safety and security of the guests of the
20 guest house itself, the neighboring
21 structures and the residents due to lack of

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1 on site management and accelerated
2 degradation of the already poorly maintained
3 premises potentially affecting market demand
4 and values for adjacent property.

5 Let me go first to the increased
6 traffic to the property. Ostensibly, the
7 increase from eight to 12 room would increase
8 the volume of vehicular traffic. That would
9 typically be in the mode of taxicabs and
10 shuttle buses as Ms. Rosan has previously
11 testified. Depending on the actual use, she
12 said they're only at 55 to 65 percent
13 occupancy. To increase that to 12 rooms and
14 presuming total use and 100 percent occupancy
15 would potentially increase the impact by more
16 than 50 percent.

17 This is a primarily residential
18 neighborhood. The Office of Planning has
19 said that there's some commercial activity
20 very close, in fact within a couple of
21 blocks. Actually, if you look at the

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1 photographs -- well, I've submitted the
2 zoning maps, my Exhibits 1, 2 and 3 which
3 shows the uses. The first shows the streets
4 and the property. The second shows the same.
5 And the third shows the zoning layout. And
6 these should be familiar since they were
7 drawn from the evidence submitted by the
8 Rosans.

9 The fourth exhibits is a
10 photograph of Columbia Road facing east --
11 excuse me. Facing west. You can see that
12 it's a high traffic corridor. It just has
13 one westbound traffic lane, which is on the
14 applicant's side of the street. It has two
15 eastbound lanes; one is a travel lane and the
16 other one is a turning lane.

17 Moving on to additional
18 information on the south side of the street.

19 There's an alley entrance also between the
20 Oakland Condominium, which is our building,
21 and the Schuyler Arms that serves both

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1 pedestrian and vehicular traffic to the
2 school.

3 There's also a restricted
4 residential parking permit on both sides of
5 the street. You can see that from the
6 subsequent photos.

7 And if you look at both Exhibit 4,
8 both Exhibit 5 which shows the premises--
9 excuse me for not going in order. And
10 Exhibit 7 you'll see the residential
11 character of the neighborhood. There's
12 really no commercial use whatsoever from
13 Connecticut Avenue going east until you get
14 to Belmont, which is I believe four full
15 blocks.

16 I want to emphasize the virtually
17 complete residential nature of this
18 neighborhood, which we seek to preserve.

19 Okay. The facility has no curb
20 cut. I'm talking about 2005 Columbia Road
21 now. There's no curb cut, there's no

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1 dedicated no parking zone, there's no
2 driveway, no other place for vehicular
3 traffic serving the property to safety stop,
4 discharge or pickup passengers or deliver
5 supplies or other materials. There's no
6 alley access for trash pickup, although
7 they've moved the trash now into an area off
8 to the side.

9 The subject property and locations
10 currently used for passenger pickup and
11 discharge are all in direct proximity to the
12 crosswalk for the school and stop vehicles in
13 the westbound lane, block not only traffic
14 but also visibility which we believe impact
15 pedestrian safety.

16 I'd like to take you -- why don't
17 we skip 5-B and go to 5-C. 5-C is the
18 separate set of color photographs that I've
19 submitted. They're right here.

20 There's a big problem here, and
21 it's a big safety problem and I want to point

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1 out and make a very strong point here.

2 If you look at 5-C on page 1, you
3 see a large taxi parked out in front of the
4 American Guest House, 2005 Columbia Road.
5 The problem is with the parking along the
6 side of the street and only one westbound
7 travel lane, any traffic behind that stopped
8 vehicle either has to stop itself or come
9 around. What happens when they do come
10 around into the eastbound turning lane
11 causing great potential for personal and
12 vehicular harm.

13 The subsequent photos show some of
14 the guests getting out of the cab, waiting
15 for their luggage, putting themselves in
16 peril from potential oncoming traffic behind.

17 Number 3 I believe essentially
18 does these same thing. They're fishing for
19 their fare to pay the cabby.

20 Number 4 shows a white truck
21 rushing by and which very close to the people

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1 getting out of the cab. Another vehicle
2 shortly thereafter.

3 They're still out there in the
4 street in number 6 while the cabby is moving
5 their luggage up. And yet another cab comes
6 along passing the cab that's stopped.

7 This is a serious situation. The
8 increase in the volume of that traffic is
9 substantial.

10 I've heard an argument that says
11 that there's noise and things are already in
12 the neighborhood that it's a high impact
13 zone. That there's quite a bit of activity
14 in the area. I agree. Our neighborhood is
15 noisy, there's a lot of traffic, it's out of
16 control. There are no traffic controls at
17 those intersections immediately adjacent to
18 the school or at 20th and Wyoming and 20th
19 and Columbia. I believe we're at a tipping
20 point. And I would argue that any additional
21 use, any expansion of the use, any additional

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1 taxicab traffic out in front and not
2 necessarily the ones just zooming by, but the
3 ones that are stopping and discharging
4 passengers is an increased threat to our
5 safety and the noise.

6 I want to move on to --

7 BOARD MEMBER MOLDENHAUER: Can I
8 just -- before you move on, I have one point
9 of clarification. Using, I guess, it looks
10 like a base atlas diagram, can you show me
11 where the school is that you're referencing?

12 I'm not familiar with the area enough to
13 know where the school is.

14 MR. CRAWFORD: Sure. If you look
15 at what I marked Exhibit 1, which I believe
16 was Exhibit 32 in the applicant's case,
17 you'll see the shaded area in the street with
18 the arrow pointing to the applicant's
19 property. Immediately across the street
20 you'll see a property marked 25, which is the
21 Oakland Condominium. And you'll see an alley

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1 just immediately to the northeast of that
2 which is going back.

3 And all those little stripped
4 areas back there in the back under the larger
5 number 826 are the Oyster-Adams School.

6 BOARD MEMBER MOLDENHAUER: Yes.
7 Thank you.

8 MR. CRAWFORD: Yes. You're
9 welcome.

10 So moving on, I'd like to talk
11 about the endangerment by lack of management
12 and residents at night. Despite the
13 testimony of the applicants, we hear quite
14 the contrary. We've found evidence again in
15 the internet, our Exhibits 10-A through 10-B
16 of quotes from people who have said that the
17 residents were not there at night -- the
18 owners were not there at night.

19 And if you look at Exhibit 10-B in
20 the highlighted area at the top, this is from
21 Tripadvisor.com, dated June 10, 2009. It

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1 says: "This was a new experience for me,
2 turning up to a hotel with a key code to get
3 in and no staff to meet you until morning."
4 That doesn't tell me that there's around the
5 clock residents.

6 Another one says: "The owners are
7 only at the property," and I'm referring 10-
8 A, "until around 3:00 p.m. But there's a
9 curiosity phone to call them if you need
10 anything."

11 That gives us pause. If there's a
12 major problem, if there's a fire emergency,
13 if there's a flood, a water break, a gasoline
14 break that there's nobody there at those
15 premises. It not only endangers their own
16 guests and their own investment, and I know
17 they're concerned about their own investment,
18 but it also endangers their neighbors. And
19 that causes us great concern.

20 I've talked about noise. But I'd
21 also like to talk about damage to the public

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1 good in terms of the poor maintenance of the
2 property. If you look at 11-B and at 11-A
3 through B, you'll see the current appearance
4 of the exterior of the building.

5 If you look above the awning, the
6 whole facade, all the way up, is not painted
7 and has not been painted since they acquired
8 the property. There's rust, there's paint
9 scaling off, their fire escape doesn't appear
10 to me to be well maintained, but I'm not an
11 expert on fire escapes. And in general it's
12 in shoddy and poor condition. We think that
13 that detracts from the values of the
14 properties in the neighborhood, both in the
15 Oakland Condominium, and the residents next
16 door and those elsewhere in the block. And
17 that does impact us.

18 Finally, I would close with a
19 point that I tried to make up front. We did
20 participate in the 2003 case because we were
21 concerned. And the prior use of the property

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1 was terrible. There were people hanging out
2 the windows screaming at night, and it was a
3 bad situation. We were concerned then.

4 I will say that the situation is
5 not as bad now as it once was. But there are
6 still people outside. There are people who
7 stand outside and talk on their cell phones.

8 There are people who go outside to smoke
9 their cigarettes because they're not allowed
10 to inside. And they converse. And they make
11 noise.

12 There's something about our block,
13 I don't now what it is, but it's like an echo
14 chamber. You hear everything. And it
15 bounces straight into our front window.

16 Finally, so I urge you all to take
17 the whole record into context. I know this
18 is a new Board, but there is a long history
19 here. And we concurred with the ruling in
20 the 2003 case, and we hope that this Board
21 will follow-up and deny the application for a

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1 variance.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Crawford. Appreciate your testimony.

4 Board members, are there any
5 questions for Mr. Crawford?

6 BOARD MEMBER MOLDENHAUER: One
7 question. You just stated that there has
8 been some concern about noise in the area.
9 Do you have any documentation or have you
10 ever called for a noise violation on the
11 property?

12 MR. CRAWFORD: No.

13 BOARD MEMBER MOLDENHAUER: Okay.

14 ZC CHAIR HOOD: Mr. Crawford, with
15 the zoning coming into compliance, as the ZA
16 said, that its occupancy should have eight
17 room, I'm looking here at your Exhibit 5-C,
18 does this happen anywhere else on the street?

19 MR. CRAWFORD: There are no guest
20 houses where you got --

21 ZC CHAIR HOOD: Well, I mean,

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1 anything else? Any regular house? Does this
2 happen offloading, people stopping, is it
3 anywhere else or it was just this particular
4 unit?

5 MR. CRAWFORD: It's primarily in
6 this -- it's possible. But I'll tell you,
7 the configuration of the traffic lanes is
8 unique from 20th Street to about another 20
9 yards or so west where the lanes actually
10 switch, the turning lane switches to the
11 westbound lanes and it becomes a single bound
12 lane heading east.

13 ZC CHAIR HOOD: Right. I think I
14 see how the traffic patterns are. But I
15 guess my question is on 5-C number 1, and I
16 just want to know does this offloading happen
17 anywhere else -- and I'm too familiar with
18 the block also. You have other houses on the
19 street, right?

20 MR. CRAWFORD: People get in and
21 out of cabs, yes.

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1 ZC CHAIR HOOD: So this is not the
2 only occurrence of this happening right here
3 at this -- okay. So it does happen elsewhere
4 on the street?

5 MR. CRAWFORD: Yes.

6 ZC CHAIR HOOD: Okay.

7 MR. CRAWFORD: My testimony went
8 to the increased use and the increased
9 incident.

10 ZC CHAIR HOOD: Before? So you
11 were thinking it would be lesser impact, your
12 testimony would be it will be lesser impact
13 if we do away with those four additional
14 units?

15 MR. CRAWFORD: That's correct.

16 ZC CHAIR HOOD: You won't have as
17 many cab visits coming? Okay. Gotcha.

18 Thank you. Thank you, Mr. Chair.

19 VICE CHAIRPERSON DETTMAN: Mr.
20 Crawford, do you have any idea with what
21 regularity this happens on a daily or weekly

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1 basis kind of traffic issues in front of the
2 building?

3 MR. CRAWFORD: Oh, it happens
4 quite a bit. I believe it happens everyday
5 in which their passengers arrive -- guests
6 arrive or leaving the facility.

7 VICE CHAIRPERSON DETTMAN: Once a
8 day? Twice a day a couple of cabs?

9 MR. CRAWFORD: No. It's -- well,
10 the incidents is -- is concentrated,
11 obviously, when guests depart and when guests
12 arrive. So it's in the morning and in the
13 afternoon. But depending on what their load
14 is in the facility, it's greater or less.

15 VICE CHAIRPERSON DETTMAN: Okay.
16 And just to follow-up on the question that
17 Ms. Moldenhauer just asked, have you ever
18 approached the property owners with respect
19 to noise and congregation on the front of the
20 porch?

21 MR. CRAWFORD: No. They're seldom

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1 there to approach.

2 VICE CHAIRPERSON DETTMAN: Okay.

3 Thank you.

4 ZC CHAIR HOOD: Mr. Chairman, I
5 have one other question.

6 MR. Crawford, you mentioned I
7 think it's Exhibit 11-D, you said how that
8 was impacting. Help me understand exactly
9 how the -- I think I know but I need to hear
10 it from you, how the paint peeling and the
11 poor condition. You said, I think, it was
12 detriment to the public good and to the
13 community. How is that? Tell me how all
14 that works?

15 MR. CRAWFORD: Their failure to
16 maintain the property in a condition
17 equivalent to the rest of the neighborhood
18 detracts from the rest of the neighborhood
19 and I believe it impacts property values.

20 ZC CHAIR HOOD: Yes. So pretty
21 much this is the only unit or the only house

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1 that has paint peeling and --

2 MR. CRAWFORD: If you look at the
3 other photographs of the properties on the
4 street, you'll see that they're maintained
5 very well.

6 ZC CHAIR HOOD: Help me get there
7 right quick. Are you talking about like on
8 page--

9 MR. CRAWFORD: I would cite as
10 examples --

11 ZC CHAIR HOOD: Oh, I see. I see.
12 Page 2?

13 MR. CRAWFORD: If you look at
14 Exhibit 7 on page 5.

15 ZC CHAIR HOOD: Page 7.

16 MR. CRAWFORD: The lower
17 photograph showing the Wyoming Condominium,
18 the Oakland Condominium, which is our
19 structure. And I'm sorry, I'm going from
20 right to left. And on the left, the Schuyler
21 Arms. So I was going from west to east,

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1 excuse me. And at the top, and it's my
2 stitching together the photographs. There is
3 not actually a geographic fault in the middle
4 of our street. I apologize for that. But you
5 can see the other properties are pretty well
6 maintained as well.

7 ZC CHAIR HOOD: Okay. Thank you,
8 Mr. Crawford. I want to tell you, I really
9 appreciate the submittal. Thank you.

10 MR. CRAWFORD: Thank you.

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

13 Mr. Collins, I think we'll turn to
14 you.

15 MR. COLLINS: Bear with me a
16 second.

17 Mr. Crawford, let's talk about
18 traffic first because that's how you started.

19 You mentioned that there would be
20 an increased traffic by 50 percent because of
21 cabs and buses. Were you here on September

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1 15th when Mrs. Rosan testified?

2 MR. CRAWFORD: Yes, I was.

3 MR. COLLINS: And did you hear her
4 testify that people walk to the site, and
5 they take cabs, and they come by other modes
6 of transportation?

7 MR. CRAWFORD: The testimony I
8 heard from Mrs. Rosan was most of them arrive
9 by taxi or shuttle.

10 MR. COLLINS: Okay. The question
11 was raised about the --

12 MR. CRAWFORD: And that's been our
13 experience and observation as well.

14 MR. COLLINS: Okay. The question
15 was raised -- excuse me. Oh, one of the Board
16 members raised the question about whether
17 this occurrence that you how this one cab
18 stopping, does this occur elsewhere. And you
19 said it does occur elsewhere. Does it occur
20 in front of the Oakland Condominium?

21 MR. CRAWFORD: I'm sure it does.

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1 MR. COLLINS: Okay. If --

2 MR. CRAWFORD: We're not applying
3 for an applicant to increase our load,
4 though.

5 MR. COLLINS: Understood. But how
6 many people live in your building?

7 MR. CRAWFORD: There are 25 units.

8 MR. COLLINS: How many people live
9 in your building?

10 MR. CRAWFORD: Approximately 50.

11 MR. COLLINS: Fifty? Okay.
12 Fifty? All right.

13 MR. CRAWFORD: Some of whom are
14 elderly, some of whom are children.

15 MR. COLLINS: All right.

16 MR. CRAWFORD: Who don't drive
17 vehicles.

18 MR. COLLINS: No. But we're not
19 talking about driving vehicles. We're
20 talking about taxicabs and vehicles on the
21 street.

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1 MR. CRAWFORD: Correct.

2 MR. COLLINS: Okay. You talked
3 about traffic safety and the fact that
4 there's an alley that goes between the
5 Oakland and the Schuyler. Is that alley used
6 by the trash trucks for the Oakland
7 Condominium?

8 MR. CRAWFORD: Yes, it is.

9 MR. COLLINS: Are you familiar
10 with any accidents or near accidents
11 involving your trash trucks in the alley
12 either accessing the alley or leaving the
13 alley?

14 MR. CRAWFORD: No, I'm not.

15 MR. COLLINS: Your photo of
16 Columbia Road, the road seemed pretty empty,
17 yet you mentioned there's a lot of traffic.
18 Is your --

19 MR. CRAWFORD: That photograph was
20 taken on a Sunday evening at about 6:00.

21 MR. COLLINS: Okay. Do you know

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1 what the level of traffic is on Columbia
2 Road, on this block of Columbia Road?

3 MR. CRAWFORD: It's significant.
4 I don't know -- I don't have traffic flow
5 numbers.

6 MR. COLLINS: Okay. If these four
7 rooms that are at issue in this case were not
8 approved, were this situation continue here a
9 you show in Exhibit 5-C; that cabs would have
10 to pull up, they could not pull over to the
11 curb?

12 MR. CRAWFORD: Yes, it would.

13 MR. COLLINS: For the Oakland
14 Condominium, do you have a loading zone, a
15 dedicated loading zone in front of your
16 building where people can pull over to the
17 curb?

18 MR. CRAWFORD: No, we don't but
19 there's one right next door at the Schuyler
20 Arms.

21 MR. COLLINS: Okay. The Schuyler

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1 Arms, but not in front of your building?

2 MR. CRAWFORD: No.

3 MR. COLLINS: Okay. For your 25
4 units do you ever have deliveries or trades
5 people, or construction people, or different
6 people coming to service individual units or
7 the building as a whole?

8 MR. CRAWFORD: Certainly.

9 MR. COLLINS: And where do they
10 park?

11 MR. CRAWFORD: They park in either
12 residential parking or in the designated
13 spaces. There are four parking spaces for
14 the building.

15 MR. COLLINS: And they're in the
16 alley?

17 MR. CRAWFORD: That's correct.

18 MR. COLLINS: And those are
19 reserved for trades people and deliveries
20 and--

21 MR. CRAWFORD: No. They're

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1 reserved for unit owners.

2 MR. COLLINS: Unit owners? So how
3 do the trades people and the deliveries get
4 in those spaces?

5 MR. CRAWFORD: IF the trades
6 people need to use them, they can make an
7 arrangement with the unit owner if it's for
8 those apartment. Otherwise trades people
9 park on the street, just as they would
10 anywhere else.

11 MR. COLLINS: Okay. You testified
12 about the noise and you mentioned, you said
13 that someone had testified this is a high
14 impact zone and it's a noisy neighborhood.
15 Do the buses contribute to that noise?

16 MR. CRAWFORD: You bet.

17 MR. COLLINS: And how often do
18 they come?

19 MR. CRAWFORD: Frequently.

20 MR. COLLINS: Probably they seem
21 to come really frequently?

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1 MR. CRAWFORD: Frequent.

2 MR. COLLINS: And you can hear the
3 people across the street talking over the
4 noise of a bus hat passes by?

5 MR. CRAWFORD: I can hear the --
6 you can't hear anything over a Metro bus
7 passing by.

8 MR. COLLINS: Okay.

9 MR. CRAWFORD: The new gas fired
10 ones are a little better than the old diesel.

11 MR. COLLINS: Indeed?

12 MR. CRAWFORD: Hallelujah.

13 MR. COLLINS: I'm sorry. Just
14 bear with me a second, please.

15 So the people across the street
16 smoke and your concern is with the smoke?

17 MR. CRAWFORD: No. My concern is
18 when they smoke they go outside and they
19 converse.

20 MR. COLLINS: And they talk?

21 MR. CRAWFORD: The testimony of

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1 the Rosans was then that no one ever makes
2 any noise outside of their structure. Well,
3 that's patently wrong. They go outside and
4 they talk on their cell phones and they smoke
5 and they have their conversation. It's not
6 as bad as it was when Mr. Byrd ran it when
7 they used to hang out on the fire escapes,
8 but its still bad. It's still noticeable,
9 let me put it that way. That's a more fair
10 statement.

11 MR. COLLINS: Do pedestrians on
12 occasion walk up and down the sidewalk?

13 MR. CRAWFORD: You bet.

14 MR. COLLINS: And do they talk?

15 MR. CRAWFORD: You bet?

16 MR. COLLINS: And does that bother
17 you?

18 MR. CRAWFORD: You bet.

19 MR. COLLINS: I have no other
20 questions.

21 CHAIRPERSON LOUD: Thank you, Mr.

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1 Collins.

2 MR. COLLINS: Thank you.

3 CHAIRPERSON LOUD: Mr. Hargrove,
4 you have any questions for the witness? I'm
5 sorry, you have to get on the microphone.

6 MR. HARGROVE: I'm sorry. I have
7 no questions on direct for Mr. Crawford.

8 CHAIRPERSON LOUD: Okay. And Ms.
9 Moye?

10 COMMISSIONER MOYE: I have no
11 questions.

12 MR. JOHNSON: Okay. Thank you,
13 Mr. Crawford.

14 MR. CRAWFORD: Thank you all very
15 much.

16 CHAIRPERSON LOUD: We appreciate
17 your testimony ad your patience this
18 afternoon.

19 And, Mr. Hargrove, we'll move to
20 your next witness.

21 MR. HARGROVE: Thank you, Mr.

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1 Chairman. We'd like to call Anne Hughes
2 Hargrove.

3 Could you state your name and
4 address for the record, please?

5 MRS. HARGROVE: My name is Anne
6 Hughes Hargrove. I live at 1827 Belmont Road,
7 Northwest.

8 MR. HARGROVE: Could you briefly
9 describe the general area of your
10 professional experience, or areas?

11 MRS. HARGROVE: I think areas is
12 better so that you can't consider me an
13 expert in any one of these areas by itself.

14 I hold a master's degree in
15 political science. I also have had a long
16 career in program, planning and development,
17 budget, urban planning and land use and
18 housing. I can cite many instances of that,
19 such as work for the New York City's Housing
20 Development Administration in the Planning
21 and Programs Division and also as a

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1 coordinator for that agency for the Rand
2 Corporation Study.

3 Additionally, I've worked for a
4 consultant firm in New York where I did a
5 comprehensive plan and personal study for
6 Bridgeport, Connecticut, housing studies in
7 Bridgeport and Norwalk, Connecticut, Takoma
8 Washington, the State of Rhode Island. All
9 sorts of things of that sort, and as an
10 independent consultant in Washington, D.C.
11 later conducting studies for the Federal
12 Government in welfare policy and rural waste,
13 and waste system development and for a
14 nonprofit organization some criminal justice
15 studies. And I've also worked for the
16 Council of the District of Columbia as an
17 legislative aide for David Clarke, the
18 Council Chairman.

19 MR. HARGROVE: You're being asked
20 to testify on the impact of the proposed
21 variance on the Zone Plan. Could you briefly

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1 describe your experience in Washington, and
2 particularly in reference to Adams Morgan
3 with Zoning and planning as it may bear on
4 this case.

5 MRS. HARGROVE: Well, I have
6 worked here on many land use planning and
7 historic preservation issues, plans and
8 studies and Zoning and BZA and Historic
9 Preservation cases involving the District of
10 Columbia for more than 30 years.

11 I've appeared before D.C. and
12 Federal Boards and Commissions and the
13 Council of the District of Columbia, and I've
14 been appointed to special committees by the
15 Council, the Mayor and the ABC Board. I've
16 worked on mapping surveys, proposals, reports
17 and text related to various iterations of the
18 District's Comprehensive Plan. I was
19 appointed by the Mayor to the Mayor's Task
20 Force on the Current Comprehensive Plan while
21 it was being drafted.

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1 I'm a founding members of A Scenic
2 D.C. and an affiliate of Scenic America.

3 I've been a trustee of the Committee 100 in
4 the Federal City, and a past Chairman of that
5 Committee.

6 And I've also served on the Zoning
7 and Historic Preservation Subcommittees. And
8 I've also received a life time achievement
9 award through them.

10 But most specifically in this
11 particular neighborhood, which I think
12 boundaries should be specified to you at this
13 point, between 16th Street, Connecticut
14 Avenue, Harvard Street and Florida Avenue,
15 which is a large territory, I have served as
16 Chairman of the Adams Morgan Advisory
17 Neighborhood Commission 1C, as an officer of
18 the Kalorama Citizens Association, as KCA
19 Zoning and Historic Preservation Chairman.

20 I've been instrumental in the
21 establishment of the Kalorama Triangle Start

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1 District, and more recently organized the
2 latest successful community effort to
3 establish a Washington Heights Historic
4 District.

5 I have resided in Adams Morgan
6 since 1963 with the exception of a several
7 year hiatus in New York City. And I've been
8 substantively involved with a variety of land
9 use issues affecting this neighborhood and
10 city wide.

11 MR. HARGROVE: Just one further
12 question, have you owned during that period a
13 big old row house in Adams Morgan?

14 MRS. HARGROVE: I've owned --
15 we've owned big old row houses in Adams
16 Morgan which my parents used to say were very
17 rundown. But that's another issue.

18 MR. HARGROVE: Well, thank you.
19 Would you proceed with your testimony,
20 please?

21 MRS. HARGROVE: Thank you.

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1 Today I'd like to just discuss
2 very, very briefly two things. The first has
3 to do with the necessity that the applicants
4 show that the proposed variance would not
5 substantially impair the intent, purpose and
6 integrity of the Zone Plan. This requirement
7 in the case of this work is of special
8 significance in this neighborhood. Because a
9 great deal of what is now on the books
10 regarding transient occupancy, hotels,
11 rooming houses, bed and breakfast and that
12 sort of thing is attributable in some measure
13 to the ongoing efforts of the Adams Morgan
14 area over the years to protect its
15 neighborhood, which is substantially
16 residential in its mapping in a Zoning sense,
17 and has been recognized substantially as
18 residential in the Comprehensive Plan as
19 well. It should indicate, just as you have
20 heard from the previous witness, that there's
21 only a portion of the west side of Columbia

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1 Road -- it's always hard to describe whether
2 it's west or east, but on a lot of maps it
3 shows that its west. Whether that strip of
4 Columbia Road is commercial at all. It isn't
5 from Connecticut Avenue all the way to 18th
6 and Columbia Road except for Biltmore Street,
7 which the commercial zone starts at Biltmore
8 Street, which is one block from Columbia
9 Road. It's all residential. And the other
10 side the same is true except for the last
11 block before you get to 18th and Columbia
12 Road.

13 And when I say "all residential,"
14 I mean that. There are a couple of embassies
15 in that particular area, including the very
16 fine Lothrop Mansion which is inhabited by
17 the Russians. And there's also in that are a
18 nonconforming use, which is a 7-Eleven, a
19 very small little thing, one story, which is
20 at the corner of 19th Street and Wyoming.

21 Additionally in that area it's

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1 completely residential going back from those
2 properties, mostly row houses and some
3 apartment areas as well, going back to
4 Calvert Street. And in that area there are
5 bed and breakfasts. And I want to get
6 straight about one thing: We have had a
7 great deal of that issue in Adams Morgan,
8 which is one of the reasons some of these
9 cases that you see we will quickly list or
10 have already listed in your document
11 occurred. We had more of bed and breakfast
12 on Mintwood Place, to pick an example.
13 Fortunately, two of those properties have
14 recently been sold and are now being
15 converted back to residential use. At least
16 we think that's the best answer, because
17 Mintwood Place is a one block street with a
18 very narrow street. Parking only one side
19 because the other side had a park behind it,
20 not even an alley back there. The result is
21 an enormous congestion from these uses and

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1 problems for that street. People just have
2 to understand that this kind of use has an
3 impact. But the greatest impact is quite
4 simple: The loss of housing.

5 From 1963 when we moved there,
6 many of the buildings that were zoned
7 residential were rooming houses. We approve
8 of those things, and think that they're a
9 good use of housing. But most of these
10 buildings were catered to long time
11 occupants, many of whom I suspect have been
12 there from World War II. And it's rather
13 interesting that we use that as an issue when
14 it came to describing what should be done in
15 the home occupations case, which occurred
16 later after we had so many problems with
17 transiency. Because we already had
18 familiarity with owner/occupied rooming
19 housing, and we still have some, and we think
20 that they serve a valid purpose in our
21 neighborhood. So that's a very important

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1 issue.

2 This whole thing, though, about
3 transiency is an outgrowth of what happened
4 in the '50s and the '60s. Although '50s I
5 was still a girl in school, but anyway, I do
6 know that the Hilton Hotel property that came
7 about in 1959 to be able to build a hotel
8 there instead of an apartment house, on the
9 theory that there would be a big freeway
10 called the Northwest Freeway down Florida
11 Avenue. At the same time that that was going
12 on, the Hilton decided at a later date that
13 it would tear down three apartment houses,
14 the -- Wyoming, which is a landmark and the
15 two buildings now beside it which are now
16 part of the Historic District, along with a
17 school that someone mentioned to you earlier
18 on 19th Street in the same block. They were
19 going to demolish them all. That is the
20 genesis for the hotel case, which restricts
21 what hotels can do if they already are legal

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1 in the particular zone that they are in,
2 which they were in the residential zones at
3 that time, that led to a lot of other issues
4 because it became apparent very soon that
5 there was no proper definitions for some of
6 these transient uses in the other zones. And
7 so there was a transiency case about that.
8 And one of those, if you want to read these
9 things in here, had to do with how you define
10 a rooming house so that you could convert,
11 hopefully, into more of a permanent place for
12 people to live rather than a transient place.

13 Now if you can imagine the impact
14 of four bed and breakfast two blocks away
15 from this one, another bed and breakfast
16 which is a lawful one, which is owner
17 occupied on Wyoming Avenue, then you can see
18 why this would be a big issue about how these
19 entities are treated and what we hope will
20 happen in the future.

21 No, we don't think that everything

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1 has to be modified to a single-family house
2 with a basement apartment. But we think that
3 the meaning in the code about the Zoning
4 Regulation which says that you have to deal
5 with what is allowable in a residential zone
6 has to include all of the things that would
7 be allowable in a residential zone, including
8 a single-family house and a basement
9 apartment. So you can't limit it to just a
10 few rooms within a house. But there's no
11 reason why you couldn't have both. And it's
12 my understanding from Mr. Cochran's testimony
13 that you don't have to have a firewall
14 separation between transient uses and
15 nontransient in the same house.

16 I believe the ANC testimony was
17 pretty much on the basis of the fact that the
18 applicants themselves said that they couldn't
19 make it if they didn't have more than eight
20 rooms. So that's probably the genesis of the
21 description that was made there.

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1 I do want to say one other thing
2 about this neighborhood. When we first moved
3 in here I was asked by the then Traffic
4 Director Tom Aires, who was the person who
5 was pushing the freeway plan, which as you
6 probably know the courts said would not take
7 place and instead we would have a Metro
8 system, which we have today. He told me that
9 I should move. That we should take our young
10 children and move because this was not a good
11 place for me.

12 The Hilton Hotel in 1959 when it
13 got its zoning for the huge hotel instead of
14 the residential apartment building that the
15 Zoning Advisory Committee wanted at that
16 time, that entity existed before Home Rule,
17 they said that we'd have to fight against the
18 rising tide from the east. And I think you
19 know what I mean by that comment.

20 It was a very different
21 neighborhood at that time. And I hope you

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1 understand that part of what we were about
2 was to prevent the urban renewal plan from
3 tearing down all the buildings, which was
4 also on the books, and it was negated in the
5 1960s thanks to Elizabeth Rose's leadership
6 at the NCPD.

7 Also, there was the terrible worry
8 about this freeway, which would have taken
9 thousands of homes all the way along its
10 total length.

11 So billing out of this, this is
12 just one feature of that. There were other
13 features of Zoning cases that we provided to
14 try to be sure that housing was protecting in
15 a neighborhood such as rezoning the C-2 zone
16 along 18th Street and Columbia Road where it
17 is now, but also in other sections of the
18 city.

19 And I wanted you to understand all
20 of that in terms of the importance of the
21 Zoning cases as well as the Comprehensive

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1 Plan that importantly recognizes that these
2 things should be protected. And in that
3 regard, rather than reading these policies
4 which you've already been given in our
5 original statement, I would like to say we
6 did have to make a couple of corrections of
7 what I said in that earlier rendition.

8 The fact of the matter is that one
9 of them had a word wrong and another one had
10 a sentence that was wrong. So please refer
11 to the ones that you have now, rather than
12 that, we would be very grateful.

13 IF you want more information about
14 the houses that were sold that were sold that
15 I told you about, because they do show that
16 houses can be converted, I am not sure
17 whether they will be converted into
18 apartments or whether they will be converted
19 into some other residential use. I do know
20 that there are families living in both of
21 them who say they will not operate the

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1 transient accommodations. And I have
2 confirmed all of this from the Kalorama Guest
3 House which originally owned all four of
4 these buildings about what the use will be.
5 And the signs have been pulled down, and we
6 assume that that is correct. I can't say
7 more than I've said because I don't know what
8 the next few months will hold. But that's my
9 opinion.

10 I do know what they sold for. I
11 know that one of them sold for well over a
12 million dollars, it's the larger of the row
13 houses involved. The other one sold for
14 \$895,000; it's the smaller of the two row
15 houses involved.

16 So with that, I do want to say one
17 final thing about this. And that is that we
18 actually just -- although what the Chairman,
19 Mr. Loud had said earlier, that it was not
20 terribly important about what the
21 neighborhood did with the yard to these

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1 entities, I should point out that there were
2 numerous efforts to try to get the city to at
3 least investigate the situation. I very much
4 personally regret that the Rosans are in this
5 situation, but I do feel strongly that the
6 city should have not made the mistake through
7 the Building Department, that they should
8 have realized that there was a problem in not
9 following the city's dictate without just
10 dealing with the BZA variance cases that they
11 were supported to deal with. And that
12 they're coming back for a second chance on
13 something which really deals with something
14 that was of their own making.

15 So with that, if you have any
16 questions, I'd be happy to take them.

17 CHAIRPERSON LOUD: Thank you, Mrs.
18 Hargrove.

19 Let's see if Board members in fact
20 have any questions for you. It doesn't as
21 such. If they do, we'll be able to get back

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1 around to that.

2 Mr. Collins, did you have any
3 questions for the witness?

4 MR. COLLINS: Just a few.

5 Mrs. Hargrove, you mentioned in
6 your testimony about a number of rooming
7 houses on Mintwood Place. Do you know
8 whether those were approved by the Board of
9 Zoning Adjustment?

10 MRS. HARGROVE: Yes, they were. I
11 will tell you that we won the case initially
12 on those houses. But it was actually
13 overturned. I'm not sure that that appears
14 adequately on the website, because I recently
15 pulled out the original order --

16 MR. COLLINS: Yes.

17 MRS. HARGROVE: -- which deals
18 with those cases. They were originally owned
19 by a man from Maryland who said it was a
20 trashy neighborhood and this would be a great
21 help to it. After that owner, I don't know

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1 whether there's been a subsequent owner, but
2 I believe that Doug Jamel owned it most
3 recently. And as I said, two of them have
4 been sold and the other two still continue to
5 operate with a valid Certificate of Occupancy
6 on Mintwood.

7 MR. COLLINS: Those buildings were
8 approved by the Board of Zoning Adjustment.

9 MRS. HARGROVE: The problem, as
10 you probably realize, is that the definitions
11 were so bad at that time about transiency in
12 relation to rooming houses. Since rooming
13 houses since the 1958 code, which I'm sure
14 you determined, were allowed to be transient
15 or nontransient. They could pay you, for
16 example, on a daily basis. Now they have to
17 -- rooming houses are supposed to pay on a
18 monthly basis.

19 MR. COLLINS: This building --
20 strike that question.

21 Your testimony, just so I'm clear,

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1 is that granting a variance will adversely
2 impact the neighborhood or what--

3 MRS. HARGROVE: No. It would
4 impact -- adversely impact the Zone Plan for
5 the neighborhood.

6 MR. COLLINS: Adversely impact the
7 Zone Plan? All right.

8 MRS. HARGROVE: Yes. The Zone
9 Plan, which is absolutely shown by the cases
10 that have existed to qualify and --

11 MR. COLLINS: I just -- I got my
12 answer.

13 MRS. HARGROVE: No, I am
14 answering, but I appreciate your --

15 MR. COLLINS: No, I have -- I have
16 my answer. I just wanted to know what you
17 were saying.

18 MRS. HARGROVE: I appreciate your
19 just letting me answer, please.

20 MR. COLLINS: You don't need to
21 answer a question I didn't ask.

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1 MRS. HARGROVE: You -- I told you
2 that, yes, that that is the case --

3 MR. COLLINS: Thank you.

4 MRS. HARGROVE: -- because of the
5 history of the Zoning in the neighborhood and
6 the Comprehensive Plan.

7 MR. COLLINS: Thank you.

8 MRS. HARGROVE: You're welcome.

9 MR. COLLINS: Is a rooming house a
10 permitted use as a matter-of-right in the R-
11 5-D zone?

12 MRS. HARGROVE: Yes, it is.

13 MR. COLLINS: Is that consistent
14 with the Zone Plan?

15 MRS. HARGROVE: Yes, it is.

16 MR. COLLINS: Does the Zone Plan
17 recognize the continued validity of
18 nonconforming uses?

19 MRS. HARGROVE: Of course it does.

20 It does for every use except for hotels,
21 which of course are not considered-- which an

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1 unusual decision by the Zoning Commission.

2 MR. COLLINS: All right. Does the
3 Zone Plan recognize the ability of the Board
4 of Zoning Adjustment to grant variances?

5 MRS. HARGROVE: Of course.

6 MR. COLLINS: What is the
7 practical difference between a rooming house
8 that allows a minimum of 90 day stay and a
9 rooming house for a stay of, say, two to
10 seven days?

11 MRS. HARGROVE: The point of the
12 current rooming house definition is that it
13 must be paid for on a monthly basis. That's
14 the rule now. So let's at least use the word
15 "month" rather than to five to seven days.

16 The fact is that we still have
17 good rooming houses in Adams Morgan. We have
18 three on Cliffborn alone, and they're owner
19 operated. And so we're very pleased with
20 that because they do afford housing and,
21 frankly, rooming house are less destructive

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1 of the interiors than would be the case if
2 they were converted to apartments.

3 We would have been very happy if
4 the Rosans had moved into the house. The
5 school is excellent. It's the Oyster School,
6 which is a school that most parents try
7 desperately to get into in the city. They
8 have to do it by lot. And they would have
9 had a good situation for their children. And
10 initially we thought they would move in.

11 MR. COLLINS: So your answer to my
12 question is that there's no practical
13 difference between a rooming house that rents
14 by the month and a rooming house that rents
15 by the day? The practical difference seen?

16 MRS. HARGROVE: No, I think that
17 there can be a difference, yes. But we
18 particularly think it's important for it to
19 be owner occupied.

20 MR. COLLINS: Okay. The
21 regulations that existed prior to 1989 did

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1 not require owner occupancy, is that correct?

2 MRS. HARGROVE: That's correct, as
3 I said in this paper.

4 MR. COLLINS: All right.

5 MRS. HARGROVE: I just can tell
6 you that from working on that case and some
7 of the language that exists in that case,
8 that it is very clear that the Zoning
9 Commission understood that rooming houses
10 with owner occupants were frequently less
11 destructive than rooming houses without them.

12 And they used as an example the fact that
13 most rooming houses for most of us who moved
14 into the neighborhood in the '60s were
15 actually run by owner occupants and they were
16 not let out as guest houses. There were very
17 few of those in the city at the time.

18 MR. COLLINS: You used the word
19 "destructive." So is it your testimony that
20 the use of this property as a rooming house
21 with rooms let on a daily basis or occupied

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1 in the range of two to seven days as Mrs.
2 Rosan testified is destructive?

3 MRS. HARGROVE: No. I said owner
4 occupied rooming houses tend to be less
5 destructive because, first of all, the owners
6 are involved with neighborhood issues
7 including the maintenance of properties on
8 the block and that sort of thing. But also
9 because they are less destructive in terms of
10 putting petitions in the house and dividing
11 it up into little tiny rooms, as some of them
12 are in the Rosan's house. For example, if it
13 had been sold as a single-family house, I
14 think it's highly likely, as was the case
15 with the two houses that we have owned in
16 Adams Morgan, we first lived on Biltmore, now
17 on Belmont, we removed the partitions that
18 had been put in by people that are just very
19 simple partitions to divide rooms in half.
20 There were partitions that were already in
21 that house, at least at the front, when they

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1 bought it. And I think they probably
2 replaced them with nicer ones. But I'm not
3 sure there were partitions on all the floors
4 at the back of the house. They make very
5 small rooms and they make it less historical
6 or interesting in terms of the sorts of
7 description --

8 MR. COLLINS: So just so I'm clear
9 then, when you talk about they use the word
10 "destructive," you're talking about to the
11 interior of the property?

12 MRS. HARGROVE: Well, not
13 necessarily.

14 MR. COLLINS: You're talking the
15 interior of the property?

16 MRS. HARGROVE: We think that
17 owners who live there tend to probably paint
18 their houses more frequently than absentee
19 owners may. It's a commercial business, it's
20 not the same.

21 MR. COLLINS: So is it destructive

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1 -- I'm just trying to understand the use of
2 your word "destructive." Are you talking
3 about the interior of the house or are you
4 talking about destructive in terms of what
5 the use does to the neighborhood, or what are
6 you saying?

7 MRS. HARGROVE: I'm saying that
8 for purposes of our primary interest of
9 having housing in the neighborhood rather
10 than mixed use zoning, which we have along
11 the corridors, that it's better to have a
12 owner occupied rooming house and that I'm
13 also asserting that I believe that there's a
14 greater contribution to the community by
15 having a owner occupied house; that would be
16 the case if it were somebody from outside.
17 That's probably not always the case, as you
18 would suspect, but I think that that is
19 possibly so.

20 MR. COLLINS: So again, I'm sorry
21 to belabor the issue, but --

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1 MRS. HARGROVE: But why don't you
2 not?

3 MR. COLLINS: -- what is the
4 benefit then that you're saying that an owner
5 occupied property versus a rooming house,
6 some of which you said are well kept or B&Bs,
7 or that they were assets to the neighborhood,
8 I think you said something to the words like
9 that; what's the difference?

10 MRS. HARGROVE: Now you're
11 jumbling it all up. And that seems to be
12 your forte.

13 But in any event, as for the
14 houses --

15 MR. COLLINS: I'll accept that.

16 MRS. HARGROVE: Good.

17 As for these houses, I think it's
18 important to recognize that having a resident
19 in the houses, it adds more stability to a
20 neighborhood, a neighborhood that was facing
21 when we first moved here and only through

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1 great work of some Zoning changes and some
2 other things and defeat of an urban renewal
3 plan and a highway has it become more
4 stabilized. We want people to live in our
5 neighborhood and to live in the residential
6 portions of the neighborhood and not to lose
7 housing when it is to a business interest.

8 I mean, a little lady who has got
9 several rooming house tenants in the house or
10 man, we're delighted to have them. And
11 sometimes the prices are low, and sometimes
12 they're higher. I don't have an analysis to
13 give you about the difference in that. But
14 we think that that's --

15 MR. COLLINS: Would you agree that
16 a community-based residential facility is a
17 matter-of-right use in the R-5-D zone?

18 MRS. HARGROVE: You can have one,
19 yes. There are some issues about that.

20 MR. COLLINS: Are consistent with
21 the Zone Plan?

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1 MRS. HARGROVE: That is consistent
2 with the Zone Plan. So are halfway houses.

3 MR. COLLINS: How about a
4 hospital?

5 MRS. HARGROVE: Are you looking
6 for other uses?

7 MR. COLLINS: Yes, sure.

8 MRS. HARGROVE: Yes, hospitals are
9 allowed in the R-1 zone, in fact.

10 MR. COLLINS: Hospitals in R-1
11 zones?

12 MRS. HARGROVE: Yes.

13 MR. COLLINS: What about
14 sanitariums?

15 MRS. HARGROVE: Many of these
16 nonresidential uses you would allow in a
17 neighborhood. And have you realize that
18 these decisions were made back in 1958 when
19 neighborhoods like ours was written off.
20 Truly, because we were supposed to be R-4
21 according to the Lewis Plan. But instead the

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1 Commissioners changed it to R-5-D because
2 they thought -- I'm talking about row house
3 areas now.

4 MR. COLLINS: Yes.

5 MRS. HARGROVE: Because they
6 thought that it made a lot of sense because
7 of the freeway. You can look at that.
8 That's a matter of record. I've submitted
9 that before in cases.

10 MR. COLLINS: And things like a
11 private club or a lodge, or a fraternity or a
12 sorority, they're permitted in the R-5-D
13 zone? And you just --

14 MRS. HARGROVE: You can also have
15 art galleries, another one.

16 MR. COLLINS: Part of a house?

17 MRS. HARGROVE: You can have
18 churches.

19 MR. COLLINS: Police station?

20 MRS. HARGROVE: Of course you can
21 have public things. You can have public

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1 things everything.

2 MR. COLLINS: Mass transit
3 facility?

4 MRS. HARGROVE: As a matter of
5 fact, we have schools in every single zone in
6 the city.

7 Is there some purpose to this
8 question because it's so obvious?

9 MR. COLLINS: Sorry?

10 MRS. HARGROVE: Is there some
11 purpose to this question?

12 MR. COLLINS: Yes.

13 MRS. HARGROVE: Would you like to
14 edify me, for a change --

15 CHAIRPERSON LOUD: Let me just
16 weigh in, just so we can stay on track. On
17 cross-examination the counsel gets to ask the
18 witness questions, not necessarily the
19 witness --

20 MRS. HARGROVE: I apologize. But
21 some --

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1 CHAIRPERSON LOUD: That's okay.

2 Just --

3 MRS. HARGROVE: -- of these
4 questions don't make any sense to me.

5 CHAIRPERSON LOUD: Okay. Well,
6 you can ask him to explain the question. But
7 stay on track if we can proceed further with
8 the cross-examination.

9 MR. COLLINS: Sure. I'm just
10 trying to understand the difference between,
11 or the relative impact in the community
12 between having the four additional rooms in
13 this rooming house versus a fire station in
14 terms of impact on the community.

15 MRS. HARGROVE: May I ask you why
16 you think that's absolutely part of this
17 case? It's a ridiculous question. Of course
18 we can have public things like fire stations
19 and places, whether people like them. And
20 there are some in our neighborhood on
21 residentially zoned blocks.

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1 MR. COLLINS: What about a
2 community-based residential facility?

3 MRS. HARGROVE: The same for that.

4 MR. COLLINS: And a private club
5 or a lodge?

6 MRS. HARGROVE: Yes. We've gone
7 through these things before. Do you want to
8 repeat the mall?

9 MR. COLLINS: No. I've asked.
10 I've asked. Thank you.

11 Do you view the test that you
12 testified to, the impact on the Zone Plan
13 test for a variance as a sliding scale
14 depending upon the use? For instance, a
15 concrete plant in a residential zone?

16 MRS. HARGROVE: I think that I
17 would not answer that question unless I knew
18 the specific case. I have to say that the
19 variance standards are the same for all
20 zones, no matter what. And you have to
21 decide what the impact of the particular

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1 situation would be. Sometimes variances are
2 favored by community people, and sometimes
3 they're not.

4 MR. COLLINS: So it's possible
5 then that a concrete plant in the residential
6 zone could have the same or even less impact
7 than adding four daily occupancy rooms in
8 this rooming house?

9 MRS. HARGROVE: Again, may I ask
10 you the relevance of that? Because that's
11 not before us at all.

12 MR. COLLINS: You're testifying on
13 the issue of the impact on the Zone Plan.
14 And I'm trying to understand how you view the
15 Zone Plan and impacts and relative impacts on
16 the Zone Plan.

17 MRS. HARGROVE: Well, first of
18 all, it doesn't make sense because there is
19 no concrete plant allowed in the residential
20 zone.

21 MR. COLLINS: It would be a use

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1 variance, correct?

2 MRS. HARGROVE: It would be very,
3 very impossible, I think, to get it.

4 MR. COLLINS: But it would require
5 a use variance.

6 MRS. HARGROVE: Yes, it would. And
7 use variances are harder --

8 MR. COLLINS: And this application
9 is a use variance.

10 MRS. HARGROVE: Yes, and that's
11 the hardest test of all to --

12 MR. COLLINS: So in terms of the
13 relative, the sliding scale I'm asking for,
14 would you put like let's say a concrete plant
15 in a residential zone, would you put that at
16 like the far end of a scale or do you view
17 all use variances as the same?

18 MRS. HARGROVE: Mr. Chairman, I
19 can't answer this question because you have
20 to deal with it on a case-by-case basis. And
21 I think it's unfair question in view of the

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1 case before us.

2 CHAIRPERSON LOUD: I'm sorry to
3 both of you. I was responding to something
4 that Ms. Bailey brought to my attention.

5 MRS. HARGROVE: I can't answer a
6 hypothetical question about a concrete plant,
7 or any of these other uses without saying
8 that I simply don't know what the
9 circumstances are.

10 CHAIRPERSON LOUD: Let me just ask
11 if you could repeat the question and not do
12 it in a compound form or a bunch of questions
13 joined.

14 MR. COLLINS: Just to set the
15 stage. Ms. Hargrove is testifying on the
16 issue of adverse impact on the Zone Plan, the
17 third part of the variance test. And I asked
18 whether because it requires a use variance
19 would a concrete plant in a residential zone,
20 I asked her whether she viewed the Zone Plan
21 test, the third part of the test, as a

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1 sliding scale. And using a concrete plant in
2 a residential plant as an example would Ms.
3 Hargrove view that as, say, like at the far
4 end of a sliding scale of uses that could
5 have an adverse impact on the Zone Plan
6 relative to or as compared with four rooms,
7 daily occupancy rooms in an existing daily
8 occupancy rooming house.

9 MRS. HARGROVE: May I answer in
10 one way, and the only way I can think of --

11 CHAIRPERSON LOUD: And what -- can
12 you answer it?

13 MRS. HARGROVE: -- is logical at
14 all?

15 CHAIRPERSON LOUD: Certainly.

16 MRS. HARGROVE: And that is to say
17 that there are two things that determine what
18 is appropriate in the Zone Plan. The Zone
19 Plan was the wording that was used before we
20 had Home Rule and the requirement for our
21 Comprehensive Plan. Now we also have to have

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1 a Comprehensive Plan which specifies the kind
2 of uses that they want to encourage in
3 particular zones.

4 The Comprehensive Plan, as a
5 matter of fact, now discourages some of the
6 uses that are actually in our zone by matter-
7 of-right. But the point is that I doubt very
8 seriously if this issue would come up,
9 because there's nothing in the Comprehensive
10 Plan that suggests it's a good idea to locate
11 concrete plants in a residential zone.

12 MR. COLLINS: Okay. Let me ask
13 the question then. Do you believe that all
14 use variances that are granted result in an
15 adverse impact on the Zone Plan?

16 MRS. HARGROVE: No. I can't say
17 that in any sureness until I figured out what
18 on earth that would amount to case-by-case.

19 MR. COLLINS: Well, I'd offered
20 the case of a concrete plant in a residential
21 zone.

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1 MRS. HARGROVE: I just gave you an
2 answer, too.

3 MR. COLLINS: Okay. All right.
4 No further questions. Thank you.

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

7 And thank you, Mrs. Hargrove.

8 Let's see if Board members -- I
9 think initially when I asked I indicated that
10 we would ask back in case members came up
11 with any questions. And then we can turn to
12 Mr. Hargrove to redirect the witness.

13 It doesn't look like there's any
14 question. So, Mr. Hargrove we turn it back
15 over to you.

16 MR. HARGROVE: I have no redirect.

17 CHAIRPERSON LOUD: Thank you.

18 And Ms. Moye, did you have any
19 questions for Mrs. Hargrove?

20 COMMISSIONER MOYE: No, I do not.

21 CHAIRPERSON LOUD: Thank you.

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1 Thank you, Mrs. Hargrove for your
2 testimony this afternoon and for your
3 patience.

4 We're now going to move to the
5 part of the case where if there are persons
6 in the audience who are in opposition, this
7 would be your time to come up. You would be
8 given three minutes, organizations you'd be
9 given five minute. And seeing where none are
10 coming up, we'll turn back to you, Mr.
11 Collins for closing remarks.

12 MR. HARGROVE: Mr. Chairman, I
13 understand that we have some time remaining.

14 I would appreciate being allowed to make a
15 few concluding comments in the presentation
16 of our case.

17 CHAIRPERSON LOUD: WE typically
18 don't allow closing remarks by parties in
19 opposition. How long do you think you'll
20 take for what you'd like to say to sort of
21 wrap up?

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1 MR. HARGROVE: Ten minutes.

2 CHAIRPERSON LOUD: Ten minutes.

3 We don't allow closing remarks under our
4 rules for opposing parties. It's only for the
5 applicant. So to allow it at all, would be
6 extraordinary. To allow it to go on for ten
7 minutes would be really extraordinary. Do
8 you think you might be able to do it in less
9 time?

10 I mean, you certainly have time to
11 call additional witnesses.

12 MR. HARGROVE: I can abbreviate my
13 comments, certainly.

14 CHAIRPERSON LOUD: I'm sorry?

15 MR. HARGROVE: I can abbreviate my
16 comments.

17 CHAIRPERSON LOUD: It's fine with
18 me because I don't recall you necessarily
19 having an opening statement where you
20 outlined what your witnesses would testify to
21 and sort of pull it together. So this would

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1 kind of be like that.

2 So if it's okay with the Board
3 members. And with respect to Ms. Moyer, Mr.
4 Collins, I think what he's asking is really
5 not for closing remarks but an opportunity
6 what he should have done at the outset, which
7 is sort of summarize what his witnesses were
8 going to say, but doing it on the back end.
9 So, unless there's an objection to that,
10 we'll allow him to go ahead and do that.

11 You said how many minutes, sir?

12 MR. HARGROVE: I beg your pardon?

13 CHAIRPERSON LOUD: You said you
14 could do this in about how many minutes?

15 MR. HARGROVE: I'll take five
16 minutes.

17 CHAIRPERSON LOUD: Okay.

18 MR. HARGROVE: Thank you, Mr.
19 Chairman, I appreciate the opportunity.

20 First, I'd like to make a comment
21 on the question of exceptional situation,

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1 which is the first requirement of the
2 applicants in justifying the variance.

3 The claim of the applicants is
4 that they confront an exceptional situation
5 based on a confluence of factors that imposes
6 on them an undue hardship as a result of the
7 fact that they have a building which they
8 have configured for 12 rooms that can use it
9 for only eight.

10 Now in our initial submission,
11 written submission, we outlined why we
12 thought that those factors were not
13 legitimate contributors to an exceptional
14 situation under the Zoning Regulations. But
15 we believe it's important for the Board at
16 this stage of the progression of the argument
17 to revert immediately to the question of
18 self-created hardship. We set out a number
19 of cases in the initial written submission
20 indicating that the courts have consistently
21 applied the so called self-created hardship

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1 rule which was to the effect that a situation
2 brought about as a result of one's own
3 affirmative voluntary act could not provide
4 the basis for a Zoning variance by
5 establishing the hardship. It wouldn't
6 amount to a hardship within the scope of the
7 rule.

8 We think that is a critical issue.

9 And in fact, if it is the case according to
10 the decisions of the court that this a self-
11 created hardship, that roots the question of
12 whether there is an exceptional situation or
13 whether it is possible for the applicant to
14 demonstrate that there is no alternative use
15 within the Zoning Regulations to which the
16 property could be put.

17 The retort of the applicant, in
18 view of the fact that it's not disputed that
19 these were voluntary acts that the applicants
20 engaged in when they invested in the property
21 and then moreover, invested in the renovation

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1 of the property as a 12 unit facility, since
2 there's no dispute that these were their own
3 acts, they weren't compelled to do these my
4 anybody, their retort has been that they
5 relied in good faith on the representations
6 of Government officials.

7 Now there is a principle that
8 reliance in good faith on such
9 representations will cure problems such as
10 self-created hardship. In fact, however, I
11 think it's been conclusively demonstrated
12 that they did not rely in good faith on the
13 representations of any Government officials
14 as to whether they complied with the Zoning
15 in proceeding with the renovation of their
16 house. In fact, as Commissioner Moye
17 indicated and it is indicated in our initial
18 statement, they had at least three trips to
19 the well on this question of whether they
20 were entitled to more rooms than eight. And
21 they were unsuccessful each time. And yet

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1 during that period and having only had a
2 Certificate of Occupancy for eight rooms,
3 they went to the Building Permit authorities
4 and sought a permit for a 12 room facility.

5 Mr. Bello testified, as I recall,
6 that he saw nothing really wrong -- you know,
7 illegal or even wrong about this. Well, that
8 seems to us a rather strange comment in view
9 of the fact that in going to the permitting
10 authorities for the building permit, they
11 were asking DCRA to do something which it had
12 no lawful authority to do. You can't issue a
13 building permit lawfully that doesn't comply
14 with the Zoning, but clearly these permits
15 did.

16 Then DCRA discovered its mistake,
17 came back and tried to get the applicants to
18 come in to have the building permit corrected
19 so that it would be in conformity with the
20 Zoning, they ignored that. They went on and
21 completed their investment and then since

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1 DCRA never got off hits duff and came in with
2 an enforcement action, operated this thing in
3 violation of the Certificate of Occupancy for
4 a period of five years, I believe.

5 So there is no basis for claiming
6 the good faith reliance on the
7 representations by any Government official as
8 to whether they've complied with the Zoning.

9 They sent into the investment in full
10 knowledge that they had no Zoning authority
11 to operate a 12 room facility, and they
12 invested substantially in a 12 room facility
13 notwithstanding that advice.

14 Finally, I need to address the
15 question of the collateral attack that the
16 applicants have mounted on the determination
17 in February of this year by the Zoning
18 Administrator that they were entitled only to
19 eight rooms. There are a variety of fatal
20 flaws in the argument that that in somehow
21 compromises a part of the case that entitled

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1 them to the variance. But the principal
2 argument is a jurisdictional one.

3 This Board in our submission has
4 no jurisdiction to consider whether that
5 ruling by Mr. LeGrant in his February letter
6 was well-founded or not. Because the only
7 way allowing under the Zoning Regulations to
8 do that is through an appeal in accordance
9 with the procedures set out in those
10 regulations. And for the Board to consider
11 as an element in this proceeding the validity
12 or lack thereof of that ruling by Mr. LeGrant
13 simply would exceed the Board's jurisdiction.

14 Consequently for all of these
15 reasons we think that the applicant has not
16 met its burden to demonstrate that there's an
17 exceptional situation demonstrating that they
18 would suffer undue hardship if the Zoning
19 Regulations were to be strictly applied.

20 I would point out in this
21 connection that the only evidence, bear on

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1 mind the burden is on the applicants to
2 produce the evidence that there is no lawful
3 use to which the property could be put, the
4 only evidence that they have educed on this
5 question has to do with the assertion that
6 altering their use, for example changing four
7 rooms or using four rooms for long term
8 occupancy, would not entitle them or not
9 enable them to realize the level of revenue
10 that their budget requires. That is no a
11 reason under the prevailing case law for
12 establishing an undue hardship. The case law
13 says quite clearly you're not entitled to a
14 profit. You're certainly not entitled to the
15 same level of profit. You're entitled to a
16 reasonable return.

17 The possible alternatives that the
18 applicants have considered do not include
19 concrete plants, for example, but they do
20 include turning four of the rooms to long
21 term use, combining four of the rooms and

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1 turning them into apartments. And they have
2 not presented any evidence other than the
3 simple bold declaration that this will be too
4 expensive in either case, or would deprive
5 them of the level of revenue that they now
6 enjoy.

7 I believe --

8 CHAIRPERSON LOUD: Mr. Hargrove,
9 let me just ask, are you close to wrapping
10 up? We've gone beyond the five minutes?

11 MR. JOHNSON: I believe the Board
12 will find that the case law clearly
13 establishes that this is not an acceptable
14 basis for concluding that they would suffer
15 undue hardship.

16 And thank you again for the
17 opportunity to make these few remarks.

18 CHAIRPERSON LOUD: Thank you so
19 much for your pulling together some of the
20 testimony that your witnesses provided.

21 I think as is appropriate, we now

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1 turn to Mr. Collins for the closing remarks.

2 But before we do that, I think there's one
3 question that Ms. Moldenhauer had for Office
4 of Planning. And following Mr. Collins'
5 summation, we can make determinations
6 regarding deliberation and/or decision today
7 or setting the case for decision later.

8 BOARD MEMBER MOLDENHAUER: Thank
9 you, Mr. Chairman.

10 Just based on some of the
11 testimony that's come out in the opposition's
12 case I just had a quick question for OP.

13 Normally in your report there
14 would be some sort of reference to either
15 discussions with DDOT, but I don't see any
16 reference to that. I think that that would
17 be an issue in regards to the public good and
18 traffic concerns that both you addressed and
19 the opposition addressed. Did you have any
20 correspondence with DDOT in regards to this
21 project?

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1 MR. COCHRAN: We did not have a
2 correspondence. We had informal
3 conversations over the telephone.

4 BOARD MEMBER MOLDENHAUER: And do
5 you remember what those informal
6 conversations were with them?

7 MR. COCHRAN: I do remember. And
8 to take a colloquial phrase into something
9 more appropriate for the record, DDOT thought
10 that it would not have much impact.

11 BOARD MEMBER MOLDENHAUER: Okay.
12 Thank you.

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

15 Mr. Collins, are you ready for
16 your summation?

17 MR. COLLINS: Actually, at this
18 point we have the opportunity for rebuttal.
19 We'd like to do a rebuttal testimony and then
20 go to the closing statement. So I'd like to
21 ask both Mr. Bello and Mrs. Rosan to sit at

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1 the table to my left.

2 CHAIRPERSON LOUD: And whose
3 testimony are you rebutting?

4 MR. COLLINS: The testimony that
5 was presented in opposition in this case.

6 CHAIRPERSON LOUD: Specifically
7 who? Are you talking about Mrs. Hargrove and
8 Mr. --

9 MR. COLLINS: Mrs. Hargrove, Mr.
10 Crawford, Mr. Hurteau.

11 CHAIRPERSON LOUD: Oh, all the
12 witnesses? Okay. And how long do you
13 think this is going to take?

14 MR. COLLINS: Maybe half an hour,
15 including the closing.

16 CHAIRPERSON LOUD: And is any of
17 it ground that you've already covered with
18 testimony?

19 MR. COLLINS: Well, there's things
20 we need to rebut, statements that were made
21 that we need to rebut. And I'll keep it to

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1 the minimum that I absolutely can.

2 CHAIRPERSON LOUD: Okay. All
3 right. Then let's proceed forward.

4 So you're going to be calling Mr.
5 Bello and --

6 MR. COLLINS: And Mrs. Rosan.

7 CHAIRPERSON LOUD: And Mrs. Rosan.

8 MR. COLLINS: First, Mrs. Rosan,
9 several questions. You've heard the
10 testimony of the representatives of the
11 Oakland Condominium regarding the issues that
12 they discussed in terms of noise and traffic
13 and things. And you've seen the photos that
14 they had submitted. Do you have those photos
15 with you?

16 MS. ROSAN: They're right here.

17 MR. COLLINS: You'll see that, you
18 have the photo there, one of the photos shows
19 a taxicab discharging a passenger in front of
20 your building?

21 MS. ROSAN: Yes.

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1 MR. COLLINS: Do you see that?
2 Have you ever seen taxicabs discharging
3 passengers or picking up passengers in front
4 of other buildings?

5 MS. ROSAN: Yes.

6 MR. COLLINS: What about the
7 Oakland Condominium?

8 MS. ROSAN: Yes.

9 MR. COLLINS: Have you brought any
10 photos today with you?

11 MS. ROSAN: Yes.

12 MR. COLLINS: Mrs. Rosan, in terms
13 of taxicabs loading and unloading, and I
14 direct you to -- let's see, we can just start
15 at 21. That photo was taken of a taxi
16 discharging or picking up in front of which
17 building? Number 21.

18 MS. ROSAN: That says Schuyler --
19 Schuyler Arms.

20 MR. COLLINS: All right. If you
21 would turn to 38-A. Do you see 38-A?

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1 MS. ROSAN: Yes.

2 MR. COLLINS: Picture number 38-A?

3 MS. ROSAN: Oh, yes.

4 MR. COLLINS: And could you
5 describe that photo?

6 MS. ROSAN: That's a Super Shadow
7 drop off in front of Oakland.

8 MR. COLLINS: And 39?

9 MS. ROSAN: A taxi in front of
10 Oakland.

11 MR. COLLINS: Okay. And the next
12 page, 41?

13 MS. ROSAN: Also in front of
14 Oakland, it's a taxi.

15 MR. COLLINS: And 42?

16 MS. ROSAN: A drop off or pick up
17 for Oakland.

18 MR. COLLINS: All right. Thank
19 you.

20 In terms of the road where there
21 was a photo submitted by Mr. Crawford that

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1 showed a very wide expanse of Columbia Road
2 and on cross-examination he mentioned that
3 that photo was taken at 6:00 on a Sunday
4 evening and there appears to be no traffic in
5 that photograph. No, it's a different photo.
6 But do you have -- in terms of the photos
7 that you've submitted today, we can start
8 with picture zero on the very first page, can
9 you describe what you see in those photos
10 going down -- it looks like are there trucks
11 on the -- a type of trucks on the --

12 MS. ROSAN: Yes. Trucks. One seems
13 to be in between Schuyler Arms and Oakland.

14 MR. COLLINS: Yes.

15 MS. ROSAN: And there is another
16 one further up. Another one at the beginning
17 near the pedestrian crossing.

18 MR. COLLINS: What about picture
19 1? Turn to picture 1, if you would.

20 MS. ROSAN: That is in front in
21 between our property and Oakland.

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1 MR. COLLINS: Is that your
2 dumpster?

3 MS. ROSAN: No.

4 MR. COLLINS: What about picture
5 number 7?

6 MS. ROSAN: Number 7. That's in
7 front of -- further up -- I'm not sure what
8 is that?

9 MR. COLLINS: The towers?

10 MS. ROSAN: Yes.

11 MR. COLLINS: And where is that
12 truck parked? Is that a parking space?

13 MS. ROSAN: No. That's in the
14 middle lane, I believe.

15 MR. COLLINS: Parking in the
16 middle lane and in what appears to be loading
17 or unloading?

18 MS. ROSAN: Yes.

19 MR. COLLINS: All right. What
20 about page 16 it shows what appears to be a
21 trailer truck?

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1 MS. ROSAN: McLean?

2 MR. COLLINS: And it could be the
3 driver is standing on the ground outside the
4 driver's door?

5 MS. ROSAN: Yes.

6 MR. COLLINS: Is that on a curb
7 lane? Where is that truck parked?

8 MS. ROSAN: This truck is parked
9 across from the embassy at the corner.

10 MR. COLLINS: IS in a parking
11 space?

12 MS. ROSAN: No. It's in a turning
13 lane.

14 MR. COLLINS: All right. Could
15 you turn to picture 31? Can you describe
16 that?

17 MS. ROSAN: That's a moving truck
18 in front of Oakland.

19 MR. COLLINS: All right. Thirty-
20 seven and 38?

21 MS. ROSAN: That is in front of--

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1 in between our building and Oakland.

2 MR. COLLINS: And what are those
3 things there?

4 MS. ROSAN: I'm sorry, what?

5 MR. COLLINS: What are those big
6 blue things there?

7 MS. ROSAN: The container you
8 mean?

9 MR. COLLINS: Yes.

10 MS. ROSAN: I don't know who it
11 belongs to. We thought it belonged to
12 Oakland, but we don't know.

13 MR. COLLINS: It's not yours,
14 correct?

15 MS. ROSAN: It's ours.

16 MR. COLLINS: All right. And one
17 last one on picture 48.

18 MS. ROSAN: That's another moving
19 truck parked in front of Oakland closer to
20 Wyoming.

21 MR. COLLINS: All right. In terms

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1 of you've heard some testimony about the fact
2 that these taxis on occasion those who do
3 come to your rooming house by taxi double
4 park on the street. Could you turn to
5 picture No. 9?

6 MS. ROSAN: Okay.

7 MR. COLLINS: And could you
8 describe that photo?

9 MS. ROSAN: On picture 9 we have -
10 - there were two of these door-to-door
11 containers parked. There is a truck double
12 parked.

13 MR. COLLINS: All right.

14 MS. ROSAN: That's closer to
15 Wyoming. The container, I believe, it's
16 Oakland.

17 MR. COLLINS: All right. How
18 about photo 25?

19 MS. ROSAN: This is next door
20 neighbor, 2007, a moving truck. They were--
21 they seemed to be -- have a function on this

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1 day. It wasn't just a mover, a regular moving
2 thing.

3 MR. COLLINS: They had a function
4 and they were moving things?

5 MS. ROSAN: It didn't look like a
6 regular moving of furniture. It was more of
7 equipment. I couldn't tell exactly.

8 MR. COLLINS: And what about --

9 MS. ROSAN: But it wasn't just a
10 regular moving company.

11 MR. COLLINS: What about 27 on the
12 next page?

13 MS. ROSAN: Yes, that's -- that's
14 still them next door.

15 MR. COLLINS: And 29?

16 MS. ROSAN: And they had their
17 things in front of our entrance.

18 MR. COLLINS: And photo 29?

19 MS. ROSAN: Two trucks double
20 parked in front of 2007 and further down.

21 MR. COLLINS: All right. And let's

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1 go to 34, what is that?

2 MS. ROSAN: This is next door at
3 2007. This storage container was placed
4 there.

5 MR. COLLINS: Is that in front of-
6 -

7 MS. ROSAN: In front of our
8 property.

9 MR. COLLINS: -- your property and
10 that's not yours?

11 MS. ROSAN: No. But our next door
12 neighbor said it was his.

13 MR. COLLINS: I see. And 35 and
14 36 show the same thing?

15 MS. ROSAN: Yes. And they then
16 left trash there.

17 MR. COLLINS: All right.

18 MS. ROSAN: Empty boxes.

19 MR. COLLINS: All right. Forty-
20 six? What is that?

21 MS. ROSAN: UPS delivery truck.

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1 They are pretty common there. This one is
2 closer to Wyoming.

3 MR. COLLINS: And then 47?

4 MS. ROSAN: And then FedEx in
5 front of Oakland.

6 MR. COLLINS: And is that a fairly
7 common occurrence?

8 MS. ROSAN: Yes, with all the
9 buildings.

10 MR. COLLINS: You'd heard
11 testimony about the safety of the school kids
12 and that the additional traffic that would be
13 caused by the four additional rooms in your
14 rooming house would cause traffic safety
15 concerns in the neighborhood and certainly
16 for the children going to and from the school
17 that is located roughly behind the Oakland
18 Condominium. You heard that testimony?

19 MS. ROSAN: Yes, I did.

20 MR. COLLINS: Have you ever
21 witnessed any accidents or potential

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1 accidents involving vehicles moving in or out
2 of that alley and school children?

3 MS. ROSAN: Yes. We -- I did it,
4 my husband did one day. One of the pick up
5 trash, like there is number 15, there are a
6 couple of them, one for each building we
7 believe. They were backing out onto the --
8 onto Columbia Road or -- no. They were
9 backing into the school area, which is behind
10 Oakland, which is an alley there. And they
11 were school children coming and the guy did
12 not see them. And people were screaming for
13 him to stop, and eventually he did. We
14 actually went to the school and let them know
15 that kids were coming through that alley and
16 we told them about this, what happened.

17 MR. COLLINS: All right. Bear
18 with me a second, if you would?

19 I'm going to picture 14.

20 MS. ROSAN: That's another trash
21 pick up for either Oakland or Schuyler Arms.

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1 There are two of them --

2 MR. COLLINS: And the same --

3 MS. ROSAN: -- or the school.

4 MR. COLLINS: And photo 15 is the
5 same?

6 MS. ROSAN: I'm sorry?

7 MR. COLLINS: And photo 15 is
8 generally the same?

9 MS. ROSAN: Yes.

10 MR. COLLINS: All right. The
11 trash, you describe the trash how you handle
12 your trash from your property. And could you
13 using photos 17 and 18 describe where you
14 store your trash and then how that works?
15 Seventeen and 18.

16 MS. ROSAN: Seventeen and 18 is
17 the gate where we keep our two blue bins.

18 MR. COLLINS: And where is that,
19 just as a --

20 MS. ROSAN: That's in between our
21 property and 2003, next door.

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1 MR. COLLINS: The building next
2 door to the right if you're looking at it
3 from the street?

4 MS. ROSAN: Yes.

5 MR. COLLINS: And so describe
6 again how that works? Your trash is stored
7 in there?

8 MS. ROSAN: Yes. And we, of
9 course, pay for a commercial service. And
10 they come and they normally just remove the
11 bags. We're very careful about not having
12 spill overs because we are terrified of rats
13 and things. So we keep our things pretty
14 bagged up so they are able to come and just
15 carry the bags away.

16 MR. COLLINS: Okay. And compare
17 that against a photo --

18 MS. ROSAN: Yes. We have a
19 picture of one of them. Picture 53.

20 MR. COLLINS: Okay.

21 MS. ROSAN: He's removing.

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1 MR. COLLINS: And whose is that?

2 MS. ROSAN: This is somebody that
3 works for the trash company.

4 MR. COLLINS: Yes. And 52, the
5 photo?

6 MS. ROSAN: That's in front --
7 that's across from -- that's the neighboring
8 house. It's more across from Wyoming. Is it?

9 MR. COLLINS: And what about photo
10 6?

11 MS. ROSAN: These are our next
12 door neighbor's trash, 2007.

13 MR. COLLINS: And picture 8?

14 MS. ROSAN: It's the -- 2007 is
15 the brownstone that you see there. So it's
16 one house down after him. That's a regular
17 site. It's nothing unusual.

18 MR. COLLINS: And picture 19?

19 MS. ROSAN: That's the brownstone.
20 So it's after the brownstone, right, this
21 one? Yes.

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1 MR. COLLINS: So that's not yours?

2 MS. ROSAN: No, it's not ours.

3 Ours is before this brownstone. We don't
4 store it on the street.

5 MR. COLLINS: And what about --

6 MS. ROSAN: It is behind the
7 gates.

8 MR. COLLINS: And photo 24?

9 CHAIRPERSON LOUD: Mr. Collins, by
10 way of a quick question, what testimony is
11 this rebutting? There wasn't a lot of
12 testimony about garbage being caused by the
13 applicant.

14 MR. COLLINS: This property is the
15 only one that's not kept up in the
16 neighborhood, that the rest of the
17 neighborhood is well kept properties and this
18 is a -- the word "blight" was not used, but
19 certainly the fact that this property was not
20 maintained in the same way that other
21 properties were maintained.

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1 CHAIRPERSON LOUD: That's what Mr.
2 Crawford talked about the rust and the paint
3 scaling off the fire escape not being
4 maintained, and this witness is rebutting
5 that with testimony regarding the garbage
6 cans?

7 MR. COLLINS: And the general --
8 you know, the use of other properties, the
9 conditions of other properties in the
10 neighborhood.

11 CHAIRPERSON LOUD: Okay.

12 MR. COLLINS: And one last photo,
13 actually, number 24?

14 MR. COLLINS: That is an old
15 radiator that our neighbors left in front of
16 our house, just one of the things that was
17 left there.

18 MR. COLLINS: Not yours?

19 MS. ROSAN: No.

20 ZC CHAIR HOOD: Mr. Chair, I'm
21 just curious, and I probably shouldn't even

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1 go to Adams Road, but how do you know as your
2 neighbor left a radiator in front of your
3 house?

4 MS. ROSAN: Because we saw them
5 doing a few things and this is the type of
6 thing you come in sometimes at night.
7 Because we -- we come and go. And you see
8 people doing things, leaving trash bags.
9 Some people have fought about it, but we
10 didn't. We just let it go.

11 ZC CHAIR HOOD: Thank you.

12 MR. COLLINS: Ms. Rosan, did you
13 ever have a discussion with a woman named
14 Elizabeth Ricker regarding the Alliance to
15 Save Energy regarding the possible use of
16 letting rooms in your bed and breakfast?

17 MS. ROSAN: Yes.

18 MR. COLLINS: In your rooming
19 house? Did you have any correspondence with
20 Mr. Ricker?

21 MS. ROSAN: Yes. We exchanged

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1 emails.

2 MR. COLLINS: May I show you this
3 document and see if this is the exchange of
4 email that you're talking about?

5 MS. ROSAN: Yes, part of it.

6 MR. COLLINS: Obviously, these
7 emails, the sequence is from the back to the
8 front.

9 So can you describe in your terms
10 what this exchange of emails is about?

11 MS. ROSAN: Well, she called
12 looking to room rents. And they also needed
13 to rent a meeting room for about 11 to 12
14 people. And I told her we could rent rooms,
15 but we could not -- we didn't have any
16 meeting space. But I said I know my neighbor
17 does, you might want to talk with him. And I
18 talked to my neighbor and asked if I could
19 give her his phone number. And he said yes.
20 So I gave this lady his phone number and they
21 got in touch.

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1 After that she did cancel the
2 reservation that they had made with us, which
3 she I think explains somewhere here. But out
4 of curiosity I asked her if she had seen our
5 neighbor's home. I did tell her that it was
6 a beautiful home because we had seen it. And
7 she said she did. And she talked to him.

8 And then I said "Do you mind
9 telling me how much he charges for his
10 facility?" Then she told me. So this is
11 what this email is about. This happened in
12 June.

13 MR. COLLINS: Could you read her
14 email to you of June 25, 2009?

15 CHAIRPERSON LOUD: Again, Mr.
16 Collins, I definitely want for you to have
17 every opportunity to rebut, but is this Mr.
18 Bruce Johnson who testified?

19 MR. COLLINS: It is.

20 CHAIRPERSON LOUD: He admitted on
21 cross that he allowed his home to be used,

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1 but indicated it's not a commercial business
2 runs out of his house. And you got him to
3 talk about his opinion regarding complying
4 with the zone and how strongly he believed in
5 that and whether if he believed in it as
6 strongly as he did, why he had rental
7 property without the proper C of O.

8 So since he admitted it, I'm not
9 certain what this rebutting. But also just
10 in terms of reading this line-by-line, I
11 think we have. We can take a look at it and-
12 -

13 MR. COLLINS: Well, can I proffer
14 to the Board then what it indicates? That
15 contrary to the witness' testimony --

16 CHAIRPERSON LOUD: Okay.

17 MR. COLLINS: -- that he allows
18 his house to be used for free for one time
19 deals. This is from someone who actually
20 asked him. And her response was that he
21 said, he told her that he usually gets about

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1 a \$1,000 a day from the BBC --

2 CHAIRPERSON LOUD: Okay.

3 MR. COLLINS: -- and from music
4 that he owns and weddings.

5 CHAIRPERSON LOUD: Okay.

6 MR. COLLINS: He gave her the
7 price of \$350 a day. So that goes to the
8 credibility of the witness --

9 COMMISSIONER MOYE: Mr. Chairman-
10 -

11 MR. COLLINS: -- that's really the
12 purpose of this. The credibility of the
13 witness.

14 CHAIRPERSON LOUD: Okay. Okay.

15 MR. COLLINS: Thank you.

16 COMMISSIONER MOYE: Mr. Chairman,
17 wouldn't this be considered hearsay? And I'm
18 not about the relevance.

19 CHAIRPERSON LOUD: Well, this is
20 admissible in administrative proceedings,
21 unlike general civil proceedings in a

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1 nonadministrative body. The Administrative
2 Procedure Act specifically allows hearsay.
3 It does. It does.

4 MR. COLLINS: Then --

5 CHAIRPERSON LOUD: I mean we can
6 look at it from the context of the weight to
7 be given to the evidence. But I think
8 there's specific language in there that
9 allows hearsay in administrative proceedings.

10 MR. COLLINS: Ms. Rosan, you had
11 an opportunity to review the internet
12 listings for your homes that were submitted
13 by the ANC?

14 MS. ROSAN: Yes. Yes.

15 MR. COLLINS: And there were two
16 properties there?

17 MS. ROSAN: Yes.

18 MR. COLLINS: And do you have any
19 comments on those listings?

20 MS. ROSAN: These are old, yes,
21 way back then we used to give them names and

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1 we were told by the county that we -- if we
2 built a website, then we would be considered
3 a business. And I believe on my last -- in
4 September when I testified, I did mention
5 that we have rented and still rent rooms. So
6 I believe I mentioned that.

7 But now we live in Arlington. We
8 have tried selling both houses but we can't.

9 The Alexandria is still for sale. And we
10 either rent, but people are staying at least
11 90 days. We either rent rooms or we go into
12 foreclosure. We don't know which one to do.

13 But we live in Arlington.

14 We have done everything we can to
15 survive the seven years that we have been
16 going through and renting rooms is what we
17 do. We don't know how to do anything else.
18 That's what we do.

19 MR. COLLINS: All right.

20 MS. ROSAN: I think I even said if
21 somebody wants to rent a room, you can get a

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1 room with us for \$800 a month. I believe I
2 said that.

3 MR. COLLINS: Specifically one of
4 those two properties, is that currently used
5 as a rooming house now?

6 MS. ROSAN: No. We moved -- we
7 tried to selling Arlington, we couldn't. We
8 -- in Arlington we are allowed to rent for at
9 least -- people have to stay 30 days and we -
10 - so we used to do that before.

11 We --

12 MR. COLLINS: So let me just cut
13 to the chase then. So even though the
14 website says that it is a rooming house, it
15 actually is your home?

16 MS. ROSAN: Now it is our home,
17 yes.

18 MR. COLLINS: Thank you.

19 MS. ROSAN: We live there.

20 MR. COLLINS: Getting on to the
21 issue of the cabs and vans and the increase

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1 in traffic, you testified previously that
2 people stay anywhere between two and seven
3 days. I believe it was two and seven days, or
4 maybe two to five days in the rooming house
5 at this time. Does everyone come at the same
6 time everyday?

7 MS. ROSAN: We have -- our check
8 in policy is pretty flexible. We tell people
9 -- we say we promise your room to be ready by
10 3:00, however if you need an earlier check
11 in, let us know. And we normally when they
12 come, if the room is clear, it's ready, they
13 can occupy the room.

14 MR. COLLINS: So do they come and
15 go at the same time everyday? Does everyone
16 come --

17 MS. ROSAN: I don't think so. And
18 they mentioned something about somebody
19 complaining that they came, they didn't find
20 anybody there. Well, we do have people there
21 that live there actually. We -- I forgot

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1 what I was saying.

2 MR. COLLINS: So do the people all
3 leave at the same time? Does everyone check
4 in the same day and leave the same day at the
5 same time?

6 MS. ROSAN: No. And they also,
7 sometimes they check in late at night.

8 MR. COLLINS: So your testimony is
9 that they come at all hours of the day?

10 MS. ROSAN: Yes.

11 MR. COLLINS: And they leave at
12 all hours of the house?

13 MS. ROSAN: Yes.

14 MR. COLLINS: So this is not a
15 queue? You don't have taxis waiting in front
16 of your building up the street --

17 MS. ROSAN: No. Because we allow
18 them to leave their luggage. After they check
19 out, they are allowed to leave their luggage.

20 So they come and then they go and come back
21 to get their luggage.

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1 MR. COLLINS: Thank you.

2 You were about to say, I cut you
3 off on something. You were rebutting, I
4 think, some testimony about the fact that no
5 one is there. I'm sorry I cut you off. I'm
6 not sure the answer to the question about
7 whether there is some there all the time?

8 MS. ROSAN: Yes, there is.

9 MR. COLLINS: All right. You
10 don't have a dedicated loading zone in front
11 of your building?

12 MS. ROSAN: The city had for some
13 unknown reason to us, they gave us two
14 spaces, actually. I think the neighbor left
15 because when we purchased the property in
16 2003 I actually did call the city and I asked
17 them if they could give us a
18 loading/unloading zone. And they asked me
19 how many rooms we had, and I told them 12.
20 And they said no, you don't qualify. You
21 have to have at least -- I don't remember how

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1 many anymore. Twenty-four or 30. So that
2 was the end of the conversation. They said
3 you cannot have a loading/unloading zone.
4 But for some reason, I don't remember exactly
5 now and this is what threw us into this
6 hearing because the neighbors got upset, the
7 city installed a two car loading/unloading
8 sign in front of our property. And then we
9 started getting threatening phone calls from
10 the neighborhood telling us if we didn't get
11 those signs down, they would make our life
12 miserable. And this is how this came about
13 again.

14 I -- we were actually not even
15 aware that the city had installed the signs.
16 Then we saw the signs. I called the city
17 and told them our neighbors are threatening
18 us and they are putting notes on the
19 neighbor's car telling them that we are
20 running an illegal business. And really, I
21 don't have a word that; making us look bad in

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1 the neighborhood.

2 So the city told me, said call the
3 police. If they have removed the sign, call
4 the police. And I said if they are ready to
5 do these things to us, if we call the police
6 what are they going to do to us. So I said
7 I'm not calling the police because I'm afraid
8 of what they might do to us. So there's
9 where -- I never -- the two, what do you
10 call, posts, the two things are still there
11 stuck.

12 And we saw neighbors late at night
13 when they were coming, they put -- it was
14 even funny. He took the sign and put on top
15 of her garden in the front. I guess they
16 didn't see us. And then as we -- we -- we
17 came out the sign -- we went into the house.

18 When we came out the sign was disappeared
19 and the next morning it appeared again where
20 the city had put it.

21 The city came back and used cement

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1 to secure. But they removed one of the --
2 one of the signs. So the posts are there,
3 but they removed -- I think one or two? One.

4
5 So we never use that
6 loading/unloading. We never called the
7 police to complain about what was going on.
8 But we were -- we are not seen with good eyes
9 in our immediate neighborhood because every
10 time we ask we have -- in these last months
11 asked people, you know, do you see us here?
12 Are we causing harm to the neighborhood? And
13 they bring up this thing about well, you
14 know, you don't have the right to have these
15 loading/unloading and you were causing us to
16 lose parking space. But we didn't -- it
17 wasn't because we went back and asked for
18 them. The city put them there. But they told
19 us that we did not qualify for them, so --
20 another reason why we wouldn't fight for
21 them. Because if they told us we don't

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1 qualify why -- you know, I don't have the
2 right to fight for something that I don't
3 qualify.

4 MR. COLLINS: And so they're not
5 there now, is that the point?

6 MS. ROSAN: They are there.

7 MR. COLLINS: They are there?

8 MS. ROSAN: We never -- we just--
9 we just left it there. The neighbors removed
10 one of the plates -- plate, but they are
11 there. But they parked. People park there.
12 We don't use that for loading/unloading.

13 MR. COLLINS: Okay.

14 MS. ROSAN: People park normally
15 and we don't call anybody, no.

16 MR. COLLINS: Okay. Thank you.

17 I have no other questions for Ms.
18 Rosan.

19 Mr. Bello, you testified last time
20 that if one were to convert four other rooms
21 to some matter-of-right use and if money was

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1 no object, then the only logical use of all
2 those permitted uses in R-5-D zone, the only
3 logical use for those four rooms was to make
4 two apartments if money was no object?

5 MR. BELLO: That is correct.

6 MR. COLLINS: And then you
7 testified as to what would be required to do
8 that. You heard some testimony today from
9 the Office of Planning about code
10 requirements. Do you have any comments on
11 that.

12 MR. BELLO: Definitely. I think
13 that the Office of Planning's testimony was
14 that the question to the DCRA official was
15 with respect to whether transient and
16 nontransient boarding housing could coexist
17 in an existing building. And the official
18 response is correct in the context of the
19 limit of the question. But our testimony was
20 to the fact that two apartment units would be
21 created by converting four rooms here should

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1 this relief not be granted. And those two
2 apartment units or two-family flat has a use
3 group classification under the building
4 codes. And to the extent that this
5 conversion occurs, there would actually be a
6 change in use in the existing building to
7 create two categories of use groups.

8 A transient boarding house is
9 considered a R-1 use group under the building
10 codes.

11 A two-family flat is considered an
12 R-3 use group.

13 In the instance of mixed use
14 groups, there are separation requirements
15 under the building codes that would require
16 specifically significant reconfiguration of
17 the building.

18 Office of Planning's testimony did
19 allude to the fact that two means of egress
20 would be required. And in his testimony, the
21 Office of Planning staff stated that the

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1 second means of egress existing here would be
2 the fire escape. Well, that would be true if
3 you're renovating an existing building within
4 which you're not effecting a use group
5 change. When you do so, you're required to
6 provide an enclosed egress which would
7 require significant reconfiguration of the
8 building.

9 When you change a use with a group
10 you are no longer allowed to use a fire
11 escape or then existing condition where there
12 is no use group change occurring.

13 There are several sources of the
14 industry what the square foot cost of
15 construction is. It's region sensitive. One
16 such source is the Means Book. The Means
17 Book for this region puts the construction
18 cost per square foot at \$150 per square foot.

19 So if they extended the Rosan's
20 half to reconfigure this building in totality
21 and given that the majority of the gross

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1 floor area will be required will be involved
2 in this reconfiguration because of the need
3 to create two egress, assuming about 3,000 to
4 4,000 square feet of gross floor area
5 involved in this reconfiguration, I think the
6 math works out to be \$300,000 to \$400,000 of
7 construction costs to effect this conversion.

8 And this would be in addition to the \$1.1
9 million that the Rosans have already expended
10 on this property.

11 In addition to that, when you do
12 the math based on the 12 rooms and the 50
13 percent occupancy rate, mathematically the
14 Rosans will be required to take a \$6,000 a
15 month loss of income not to include the
16 expense of amortizing the cost of this
17 construction.

18 This is the essential case with
19 respect to the undue hardship on the Rosans.

20 I think the testimony and the
21 record points to that the most that you can

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1 get for an apartment house rental is \$2200 a
2 month. So in exchange for \$4400 a month the
3 Rosans will be subjected to losing \$9300 a
4 month mathematically. I can walk through the
5 math if the Board so desires, but that's what
6 it works out to by my calculation.

7 MR. COLLINS: So in terms of your
8 calculations would you conclude then that
9 this use if you're able to do it, would not
10 result in a fair and reasonable return to the
11 owner?

12 MR. BELLO: It absolutely would
13 not. Not only would the Rosans be subjected
14 to the additional expense of reconfiguring
15 the building, they'd also be subjected to a
16 loss of income. I'm not a banker, but I
17 think the simple math of it would be that \$2
18 million, whatever their income is and their
19 income loss at this point, would not allow
20 them to expect a reasonable return on
21 investment on the property.

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1 MR. COLLINS: All right. Thank
2 you.

3 Turning to the third part of the
4 variance test, you've heard --

5 CHAIRPERSON LOUD: Mr. Collins,
6 before you do that, let me just say on the
7 record that we are now at 6:00. And I think
8 I stated earlier that once we reached 6:00 we
9 would assess where we were in the day. There
10 is another case that is scheduled to go after
11 your case closes out.

12 And I think for the purposes of
13 the persons that are waiting in the room for
14 that second case, I think the approach that
15 we've talked about taking in that case is to
16 hear, assuming we can make it through the
17 conclusion of your case shortly, is to hear a
18 threshold question regarding timeliness in
19 the case, and then to look at continuing the
20 rest of the case if there is a merit case
21 left to next Tuesday in the afternoon.

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1 There's a slot available on our calendar. We
2 could probably do it the first case in the
3 afternoon.

4 Not to discuss it right now, but I
5 did want to let you know that we are running
6 significantly behind. And the likelihood
7 that we would hear the entire case today is
8 growing very slim. And I did not necessarily
9 want for persons that you may decide do not
10 need to be here, to remain beyond 6:00 if
11 necessary.

12 So, we'll go back in. I'm sorry
13 to interrupt you, Mr. Collins, but I did want
14 to follow up on that.

15 MR. COLLINS: I have one other
16 area of questions and then I just have my
17 brief closing statement.

18 Mr. Bello, in terms of the third
19 party variance test, you've heard it
20 described by several witness as whether it's
21 being an adverse impact on the public good,

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1 an adverse impact on the Zone Plan. What
2 exactly is the third part of the variance
3 test?

4 MR. BELLO: Well, it is a two part
5 test.

6 MR. COLLINS: And what exact
7 language? Is it adverse impact?

8 MR. BELLO: The exact language is
9 actually "substantial detriment and
10 substantial impairment."

11 MR. COLLINS: Substantial
12 detriment?

13 MR. BELLO: That's correct.

14 MR. COLLINS: Impairment or
15 detriment? But substantial impairment or
16 substantial detriment?

17 MR. BELLO: Absolutely. Yes, sir.

18 MR. COLLINS: I'm sorry. Could
19 you please proceed?

20 MR. BELLO: Well, it is I think
21 reasonably expected in any relief case before

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1 the Board that there is some detriment. The
2 question is whether the detriment is
3 substantial enough or reaches a threshold
4 that does not allow the Board to grant the
5 relief.

6 I do not find any testimony in the
7 course of a hearing that reaches that reaches
8 that threshold with respect to substantial
9 detriment to the public good.

10 There isn't much of a practical
11 difference between a transient rooming house
12 or a nontransient rooming house for all
13 intents and purposes. In fact, in the
14 Wakeshaw case the Board found that rooming
15 houses, nontransient rooming houses attracted
16 questionable patrons. So in terms of degree
17 I think there is a much better control of
18 nontransient rooming house guests in the
19 manner that the Rosans operate there.

20 MR. COLLINS: Did you say
21 "nontransient" or "transient."

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1 MR. BELLO: Transient.

2 MR. COLLINS: Transient. Thanks.

3 MR. BELLO: Yes. I find no
4 evidence that there will be substantial
5 detriment based on the four additional
6 nontransient room in conjunction with the
7 existing eight.

8 MR. COLLINS: And substantial
9 impairment to the Zone Plan, would there be?

10 MR. BELLO: I do not believe that
11 threshold has been established. A room house
12 use is to a committed use even from the more
13 restrictive R-4 zoned district. A
14 grandfathered transient rooming house, as is
15 the case here, is still recognized a
16 legitimate use under the zoning of the
17 property.

18 And impairment also goes to height
19 and bulk. And there's no evidence here that
20 that will be changing. In fact, forcing the
21 Rosans to convert would actually affect the

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1 bulk in the reconfiguration of the existing
2 building, which is not planned here.

3 In conclusion, though, although
4 such language cannot be found in Zoning
5 parlance, this is really an application about
6 righting a wrong. Because the Rosans bought
7 a property that they believed was a 15 room
8 transient facility and they sought to reduce
9 the occupant load to 12. And barring the
10 unique Zoning history here, the Rosans would
11 not be before the Board of Zoning
12 Adjustments.

13 MR. COLLINS: Thank you.

14 At this point I'd just like to
15 make my closing statement and then conclude.

16 In terms of the evidence that
17 you've heard, the testimony that you heard
18 today, the Office of Planning in their
19 conclusion they opposed the application. But
20 if you look at the report, you'll see under
21 the heading of Exceptional Situation or

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1 Condition they say "OP has been unable to
2 determine whether the property Zoning and
3 regulatory history establishes an exceptional
4 situation." Did not oppose any and they
5 won't determined.

6 In terms of the undue hardship,
7 they said the applicant has not provided
8 sufficient information to establishment that
9 it could not make a reasonable use of the
10 property. Not that they oppose it, or that
11 they can't, but we just haven't made a case
12 in their view in their written report that
13 was submitted before the last hearing on
14 September 15th.

15 In terms of the third part of the
16 test, they agree with the applicant that
17 there would be no substantial detriment to
18 the public good by adding four rooms,
19 allowing this building to be used for 12
20 rooms as opposed to eight rooms. But in
21 terms of the substantial impairment, the

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1 intent, purpose and integrity of the Zone
2 Plan they observe if the relief was granted
3 the applicant would be able to operate all 12
4 rooms under the pre-1989 regulations instead
5 of just the eight.

6 It was said today that they
7 recognize that there was a larger number
8 before the Rosans bought the property, but
9 that the Zoning Administrator has determined
10 that only eight are allowed. And since there
11 are eight that are allowed and we're asking
12 for 12, that that's an increase. And so
13 they're really they're saying that that is a
14 substantial detriment to the public good.
15 Well, I think the same can be said for any
16 grant of a variance relief when a Zoning
17 standard is not met. You know, what's the
18 difference? If a variance is sought and
19 granted, the applicant's given permission to
20 act in a manner contrary to the Zoning
21 Regulations. That's what a variance is all

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1 about.

2 So the question really is whether
3 the grant of the variance relief would
4 substantially impair the intent, purpose or
5 integrity of the Zone Plan. And here when
6 the entire building is already allowed to be
7 used for a daily occupancy rooming house, and
8 that the entire building was used since 1969
9 as a daily occupancy rooming house, at one
10 point had 15 rooms for daily occupancy, to go
11 from eight to 12 in this high density zone
12 would not, in our view, substantially impair
13 the intent, purpose or integrity of the Zone
14 Plan.

15 The Oakland Condominium and the
16 ANC, they twist and mischaracterize, misstate
17 the facts and the applicable law in this
18 case. The applicants obtained a C of O when
19 they obtained the building for eight rooms.
20 For reasons not explained to them they were
21 sent on a wild goose chase to seek a use --

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1 another use other than a rooming house, which
2 they didn't need to seek. In the meantime,
3 they pursued their normal and the orderly
4 fashion to apply for the 12 room rooming
5 house. The permits were granted. The
6 building was constructed. They were then
7 asked to come down and talk about the plans.

8 They were asked to change the plans back to
9 eight. They refused to do that. DCRA took
10 no further action on that. DCRA signed off
11 on all the disciplines, the electrical, the
12 plumbing, the gas, structural; all the
13 approvals were granted. They were, as Mr.
14 Bello testified in length last time, they
15 were entitled at that point because they had
16 a pre-occupancy data sheet that allowed 12
17 rooms. They were entitled to get Certificate
18 of Occupancy for 12 rooms. But for some
19 reason they never did.

20 This not a self-created hardship.

21 The arguments to the contrary, I believe, is

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1 nothing more than a red herring.

2 The Rosans, when they walked in,
3 they found as Mrs. Rosan said when they
4 looked at the building, they saw the C of O
5 on the wall. It had no limitation on the
6 number of rooms. They saw a business license
7 for 15 units hanging on the wall of the
8 building.

9 The C of o allowed the use of all
10 floors plus the basement for a rooming house.

11 Anyone doing normal due diligence,
12 even after the purchase, would have found the
13 same thing in the D.C. records. If they'd
14 even gone further, they would have found that
15 the D.C. Code provides that at Tab S of our
16 prehearing submission, states that DCRA
17 cannot as a matter of law issue a business
18 license for 15 rooms unless the applicant's C
19 of O allows 15 rooms.

20 So they would have also found that
21 the Zoning Regulations in 1969 did not limit

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1 the number of units in a rooming house.

2 Since DCRA came to the conclusion
3 that 15 units were allowed when they issued
4 the business license, why would not the
5 applicant be entitled to rely on that same C
6 of O when they apply for 12 rooms in their
7 rooming house and got the building permit?
8 Anyone doing due diligence would be entitled
9 to that same conclusion.

10 If the number of eight rooms was
11 an important zoning limitation, as Mr. Bellow
12 testified last time, then it would have
13 appeared on the C of O itself. Mr. Bellow
14 testified that the controlling document is in
15 fact the C of O and not the application.

16 He also testified that the
17 limitation of eight units in Mr. LeGrant's
18 February 2009 letter was proper, properly
19 based upon the issuance of the C of O for
20 eight units back in 2003. So there was no
21 error there. It was a situation where there

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1 were -- there was no probing into prior to
2 that time to look at the building permits
3 that were issued and the approvals that were
4 granted at that time.

5 And Mr. LeGrant, in essence, he
6 referred the case here, which is where it
7 should be. We're just here to get this issue
8 resolved.

9 The event sequence at the ANC and
10 the Oakland -- I say, again, they convoluted
11 -- they charged our clients with bad faith in
12 proceeding as they did. Mr. Bellow testified
13 last time there's no bad faith. Any
14 applicant would have normally proceeded, but
15 for the application for the end guest house
16 they were sent on a wild goose chase for,
17 everything else was orderly. They came down.

18 They got a C of O. It says eight. They
19 said well how can we get it to 12? They
20 applied for 12 in a building permit, and they
21 got the building permit, and then they built.

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1 And then because of actions by people in
2 this room back then, there was questions
3 raised by the structural engineer on that
4 issue. The Rosans came and met. They were
5 asked to change, there was no basis for
6 change, they refused to change. And DCRA did
7 nothing. They continued to allow them to
8 build, they signed off on the application,
9 they signed off on the approvals. They were
10 entitled -- the Rosans were entitled at that
11 point to receive a C of O, and for some
12 reason they did not get one.

13 So there are several cases that I
14 would like to hand in that I'll be relying
15 upon.

16 Just going to ask you to assist me
17 please with this. There are three cases that
18 we have here.

19 What I'd like to refer to is the
20 BZA Application that's marked as *Application*
21 *17908 of Mark Merlino*. And if you look at

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1 page 4 in the highlighted language, this
2 Board has previously stated "That once a
3 building permit is issued the applicant's
4 right to complete the construction authorized
5 by the permit was vested, pursuant to 11 DCMR
6 at § 3202.4, and that's what Mr. Bellow
7 testified to last time.

8 The use was also vested -- in hat
9 case the use was also vested with the
10 issuance of the building permit. And then
11 they site the *Baskin* that went to the Court
12 of Appeals. Ordinarily the building permit
13 is the document that reflects a Zoning
14 decision about whether a proposed structure
15 and its intended use as described in the
16 permit application conform to the Zoning
17 Regulations.

18 That's what they had. They had a
19 building permit that allowed the use. It was
20 clear what the use was. They were entitled
21 to the use.

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1 The second case I'd like to refer
2 to is the *Monaco* case, *Monaco v. D.C. Board*
3 *of Zoning Adjustment*. It stands for two
4 propositions, and I've highlighted pages 1098
5 and 1101.

6 1098 there's just the highlighted
7 language there, but you can read the whole
8 case. States that the past Zoning history
9 can be taken into account in the uniqueness
10 facet of variance tests.

11 And 1101 the court there concluded
12 that good faith detrimental reliance on a
13 Zoning authorities, in that case, informal
14 assurances may be taken into account in
15 assessing the intervenor's undue hardship
16 under variance law. A use variance case.

17 And then finally, I submit
18 *Neighbors United For A Safety Community v.*
19 *D.C. Board of Zoning Adjustment*. And that
20 stands for the proposition that in the ANC
21 context on page 798 the great weight

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1 requirement pertains only to the written
2 recommendations of the effected ANC and not
3 its oral testimony.

4 Just continuing on, in this case
5 the confluence of circumstances that we
6 described in our testimony created the
7 exceptional situation or condition. The
8 *Monaco* case, the *Marlino* case stand for that.

9 In terms of unique hardship, the
10 Oakland Condominium says that in order to
11 prove our case we must include a
12 consideration of converting the entire
13 building to some other use. That's not
14 what's before the Board. The Board
15 recognizes that; that we have the right to
16 use the entire building, all square footage,
17 all 5377 square feet for eight rooms, we're
18 asking to use that same square footage for 12
19 rooms in accordance with what the original
20 building permit allowed back in 2003.

21 The request -- the reduction of

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1 their business a third after building it out
2 to 12 rooms in reliance upon the permit are
3 requiring a tremendous cost, as Mr. Bello and
4 also the neighbor in opposition testified,
5 the tremendous costs that would be required
6 to retrofit this building or convert it, or
7 substantially cutting the rates for the four
8 rooms to compete with other long term
9 extended facilities would result in undue
10 hardship because there would no longer be a
11 fair and reasonable return to the owner based
12 upon their investment back expectations
13 created by the issuance of a building permit.

14 There's no substantial detriment
15 to the building good. The Office of Planning
16 agreed with that statement. I don't think
17 that anyone can reasonably conclude that by
18 allowing four additional rooms where some
19 people come by taxi, others walk, others come
20 by other means and they get let off in front
21 in the same way that other people get let off

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1 in front in front of other building by
2 taxicab, that that is going to cause a
3 tremendous impact on traffic or have a
4 substantial detriment to the public good in
5 terms of traffic.

6 People on the street, pedestrians
7 walking up and down, speaking on their cell
8 phones, there's some sensitivity by the
9 Oakland Condominium to voices of pedestrians
10 on the sidewalk, not just the guests of the
11 guest house but also pedestrians walking up
12 and down. That was testified to by Mr.
13 Crawford.

14 Columbia is a very heavily
15 transversed street, as Mr. Crawford
16 mentioned. Lots of traffic, buses, trucks.
17 You saw the pictures. Lots of activity on
18 the street. The noise is already there.
19 Pedestrians talking, they're not screaming.
20 There was testimony that they're not yelling,
21 they're just talking and they're smoking. I

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1 don't see that that can create an adverse
2 impact.

3 I don't believe that for the
4 reasons that we've stated that having the
5 rooming house with 12 rooms rather than eight
6 would cause a substantial impairment to the
7 intent, purpose or integrity of the Zoning
8 Plan for the reasons that Mr. Bello has
9 testified to.

10 Th ANC, they raised some of the
11 same issues and we've already addressed
12 those.

13 So, Mr. Chairman, members of the
14 Board, thank you.

15 I'm sorry. Let me just go through
16 this one last point. The three part test.
17 We've talked about the three part test, not
18 just the physical aspects but also the unique
19 Zoning history. We've given substantial
20 information to the record on that.

21 The conflict of circumstances that

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1 the *Gilmartin* case recognizes, we've given
2 substantial evidence on that.

3 The *Palmer Test*, the case law on
4 that case that we cannot reasonably use the
5 property for any purpose for which it is
6 zoned without fair and reasonable return to
7 the owner. I think the applicant has
8 testified as to that. That Mr. Bello said
9 the only reasonable use under the whole list
10 of uses allowed in the Zoning Regulations,
11 the only reasonable use for those four rooms
12 other than increasing the size of eight rooms
13 to 12 -- I'm sorry, to take the same space as
14 12, or to combine rooms or to let them for
15 another purposes, the 90 day occupancy, was
16 to convert them to apartment house. And Mr.
17 Bello talked about the apartment houses.
18 Mrs. Rosan talked about using those four
19 rooms as a 90 day occupancy. And Mr. Bello
20 just embellished on that a little bit about a
21 recent BZA case that recognized the

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1 difference between long term rooming houses
2 and transient rooming houses.

3 The C of O have always allowed the
4 entire building to be used for the daily
5 occupancy rooming house.

6 In conclusion, this is a unique
7 case with a unique set of circumstances and
8 facts. The purpose of this application, as I
9 started to say earlier, is to resolve this
10 issue once and for all.

11 This is a use variance, yes. But
12 I believe that if you look at this use
13 variance in the context of all possible use
14 variances that you've seen in the past, that
15 as I've mention before, a concrete plant in a
16 residential zone would be at one end of this
17 scale, this sliding scale of use variances.

18 On this use existing daily
19 occupancy rooming house, the entire building
20 can be used for a daily occupancy rooming
21 house. We're asking to go from the eight to

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1 the 12 that were permitted by DCRA back in
2 2003 when they issued the building permit.

3 We are just asking to get what we
4 were entitled to have gotten back in 2003 but
5 for some reason did not get.

6 The substantial evidence of record
7 including the applicant's expert witness
8 support this application and support the
9 reasons for granting the variance, and we
10 respectfully request that you grant the
11 application.

12 Thank you very much.

13 CHAIRPERSON LOUD: Thank you, Mr.
14 Collins. And thank the applicants.

15 I want to thank Commissioner Moye
16 as well on behalf of ANC 1C.

17 And I thank you as well, Mr.
18 Hargrove and all the witnesses who appeared
19 today.

20 I think that all of us have a
21 tremendous record in front of us. A lot of

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1 testimony to review and think about. And I
2 don't think we're going to decide this case
3 today.

4 We were taking a look at Tuesday,
5 November 17th as the decision date. And
6 putting it on as a decision for that
7 afternoon right before we go into hearing
8 that afternoon. We have three cases in the
9 morning and we're finding it hard, I think,
10 to hear three cases between 9:30 and 12:00
11 and do a decision and not get backed up like
12 we did today.

13 So unless there's a rule
14 prohibiting decisions from being done in the
15 afternoon? And Ms. Glazier says no. And,
16 counsel, unless you have some really strong
17 concerns about that, it can be watched
18 webcast.

19 MR. COLLINS: No, sir. That's
20 fine.

21 CHAIRPERSON LOUD: Yes. So then

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1 we'd look then at Tuesday, November 17th.
2 We'll put it on as the first decision in the
3 afternoon at 1:00 right before we go into the
4 afternoon hearing cases. Okay?

5 Anything further in this case.

6 Again, thank each of you. Thank
7 you for your patience.

8 And I think, Ms. Bailey, we can
9 call the final case for today.

10 MS. BAILEY: Thank you.

11 Application 17971, this is an
12 Appeal of Outerbridge and Georgina Horsey,
13 pursuant to aa DCMR § 3100 and 3101, from a
14 determination of the Office of the Zoning
15 Administrator, Department of Consumer and
16 Regulatory Affairs, to allow additions to a
17 one-family dwelling by Building Permit Nos.
18 B0902028 and B0905289. The property is
19 located in the R-3 District at 3046 N Street,
20 Northwest. Square 1209, Lot 854.

21 CHAIRPERSON LOUD: Good afternoon.

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1 I should say good early evening to
2 everybody. And again, really do want to
3 apologize for the lateness of the hour.

4 And as I indicated, we're not
5 going to be able to get through the case this
6 evening. I wouldn't want to put anybody
7 through that, staying here until 8:00/9:00 at
8 night. But we do think that there's a
9 threshold question regarding timeliness.
10 Apparently there are a couple of different
11 permits in play: December permit, then a
12 revised permit I think that was dated April
13 30 of '09.

14 I'm sorry. I've been corrected by
15 Board Member Moldenhauer. So any
16 misstatements that I make, let's get it
17 corrected before we proceed further. Okay.

18 So I think we'd be looking at
19 Permit B0902028, which was issued December
20 11th. And Permit B0905289, which was issued
21 for April 30 '09.

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1 The appeal date is May 15, 2009.
2 Correct me if I'm wrong on any of this, okay.

3 And so I think what we'd be starting out
4 looking at is the question of the timeliness
5 of the appeal as would relate to both the
6 12/11/08 set of improvements, which I think
7 was the upper floors deck, upper level deck,
8 and then the B0905289 which related to
9 reducing the size of the variously called
10 connection, landing deck, et cetera.

11 And then once we make it through
12 that as an issue, definitely we'll open it up
13 for some comment on -- once we make it
14 through that as an issue in assessing what
15 may or may not be left in the case, I think
16 the game plan would be to try to continue
17 this until next week. We have some
18 opportunity in the afternoon next week, and
19 this would fit right in.

20 So why don't we -- having set that
21 up as sort of a context, or proposed context,

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1 why don't we have each of you introduce
2 yourselves for the record.

3 MR. HITCHCOCK: Thank you very
4 much, Chairman Loud, members of the Boards.
5 I'm Con Hitchcock. I'm appearing for the
6 appellant Outerbridge and Georgina Horsey.

7 MR. HORSEY: And I'm Outerbridge
8 Horsey, one of the appellants. My wife,
9 she's not -- she was here, but she was
10 excused.

11 MS. BOLLING: Good evening,
12 Chairman Loud and Board members. My name is
13 Melinda Bolling. I'm Acting Deputy General
14 Counsel for DCRA

15 MR. RENJEL: Robert Renjel on
16 behalf of DCRA.

17 MR. LeGRANT: I'm Matthew LeGrant.
18 I'm the Zoning Administrator for DCRA.

19 CHAIRPERSON LOUD: All right. If
20 you could just give me the spelling of your
21 last name, Mr. Renjel?

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1 MR. RENJEL: Renjel, R-E-N-J-E-L.

2 CHAIRPERSON LOUD: Again, good
3 early evening to all of you.

4 And as I indicated, we see a
5 threshold issue regarding the timeliness of
6 the appeal as relates to the permits that
7 have been made a part of our file that are in
8 play. And we would like counsel for the
9 appellant as well as counsel for the DCRA to
10 provide some briefing for us on that, some
11 argumentation on it.

12 To the extent that you need to
13 call witnesses, I think that's appropriate.
14 You can call witnesses. Some of this may be
15 factually driven. You can certainly call the
16 witnesses you have available for that.

17 MR. HITCHCOCK: Well, let me
18 begin, Mr. Chairman, if I may? Because the
19 building permit that we have, Permit No.
20 B0902028 is dated March 16, 2009.

21 CHAIRPERSON LOUD: Okay. And just

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1 give me the number of that permit again?

2 MR. HITCHCOCK: B0902028, which is
3 the number referenced on the appeal that was
4 filed on March 15th -- excuse me, May 15,
5 2009, which is within 60 days from the
6 issuance of the first of the two permits.

7 I believe the permit application
8 was filed in December of 2008, but the permit
9 which I am holding in my hand has a date of
10 March 16th.

11 CHAIRPERSON LOUD: Okay. So let's
12 everybody be clear on that. I thought I saw
13 in the record an issuance of 12/11.

14 BOARD MEMBER MOLDENHAUER: Can you
15 identify what exhibit that is in our packet?

16 MR. RENJEL: It's not included in
17 your packet. We have a copy of it here. I
18 don't believe it's included, though. Oh,
19 yes, it is. It's Exhibit -- well --

20 BOARD MEMBER MOLDENHAUER: Mr.
21 Hitchcock, can you reference Exhibit 13,

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1 Exhibit A.

2 MR. HITCHCOCK: I don't have that
3 number, Ms. Moldenhauer. Which is that
4 document?

5 BOARD MEMBER MOLDENHAUER: It's
6 the appellee's statement in opposition. I
7 think that's why you see some confused faces
8 on the Board.

9 MR. HITCHCOCK: Okay. One moment,
10 if I may.

11 MR. HITCHCOCK: I see what you are
12 saying. However, the copy that we have that
13 Mr. Horsey obtained from DCRA and worked with
14 when he called Mr. LeGrant out with respect
15 to the stop work order was dated March 16,
16 2009. So I can't explain the discrepancy. I
17 see your point.

18 I would point out, however, that
19 the application, the paperwork has a date
20 showing that it was received by DCRA on
21 December 11, 2008, which shows up as the

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1 issuance date.

2 It also shows the sign off as
3 March of 2009. So March 16, 2009.

4 Let me show you the paper.

5 There's also the invoice from
6 DCRA, dated March 16, 2009.

7 VICE CHAIRPERSON DETTMAN: What
8 was that last point you just made about the
9 invoice.

10 MR. HITCHCOCK: Oh. There's an
11 invoice from DCRA for \$136.50 for alteration
12 and repair in conjunction with the permit
13 with this name. So it presumably would not
14 have been issued if the permit had been
15 issued three months earlier.

16 MR. HORSEY: This is Outerbridge
17 Horsey. There had been work going on at the
18 house, but it was only interior work, to my
19 knowledge, up until that time. And then the
20 exterior work permit was issued on March
21 16th. And I first noticed it visually on

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1 March 19th.

2 BOARD MEMBER MOLDENHAUER: Can we
3 get a copy of that building permit that
4 you're referencing? That seems to be
5 identical to our Exhibit 13-A, but different.

6 MR. HITCHCOCK: I'd be happy to
7 hand it up. We don't have extras here.

8 MS. MONROE: We can make copies.
9 We need to see the one that's dated March
10 16th. Because it's the same number as the
11 one that's dated March 11th. The same
12 Building Permit number on it. The one that's
13 dated December 11th does make any sense.

14 Let's make copies. Thank you.

15 CHAIRPERSON LOUD: The one that's
16 dated December 11th is not signed at the
17 bottom and perhaps when you respond to what
18 counsel for appellant has raised, essentially
19 saying that this is a mistake in submission
20 and you can perhaps clarify whether a
21 signature is required on the bottom of this

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1 document to make it an official document and
2 otherwise sort of vet out which of these two
3 permits we're talking about

4 MS. BOLLING: Good evening again,
5 Chairman Loud.

6 The District didn't file a motion
7 to dismiss for untimeliness and based upon
8 all the other evidence that we have in our
9 package, it looked as if Mr. Horsey is
10 correct and that it was timely and that it
11 was in March '09.

12 CHAIRPERSON LOUD: Okay. All
13 right.

14 MS. BOLLING: From what I can
15 tell.

16 CHAIRPERSON LOUD: All right. So
17 we can essentially disregard this attachment
18 to Exhibit 13 that has the issuance date of
19 December 11, 2008.

20 MS. BOLLING: That appears to be a
21 mistake. I can clarify it when I get back to

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1 the office, but that looks to be an error.

2 CHAIRPERSON LOUD: Okay.

3 And just ask the Board members,
4 were there any other questions related to
5 timeliness? I think that that clarified my
6 questions related to it.

7 I would like to see a copy of the
8 actual building permit, but Ms. Bailey I
9 think is making copies of it now.

10 And so what that does is leave us
11 with an opportunity to get into the merits,
12 to start the merits of the case. And why
13 don't we do that to not waste any time. I
14 think we can go into the merits of the case.

15 And we'll probably try to end
16 around 7:00, just sort of letting everyone
17 know, and pick up again next week.

18 MR. HITCHCOCK: Thank you,
19 Chairman Loud.

20 CHAIRPERSON LOUD: And thank you
21 for clarifying that for us. Appreciate.

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1 MR. HITCHCOCK: Yes. If we could.

2 While Mr. Horsey is setting up the
3 easel, I'd like to make a few introductory
4 comments.

5 He would be the only witness in
6 this case for himself and Mrs. Horsey. And I
7 don't think the presentation will take the
8 full allotted hour.

9 I think unlike some of the other
10 cases that the Board has coming before it,
11 the issues in this case are fairly simple and
12 fairly straightforward. We are talking about
13 two decks, one a lower deck on the rear of
14 house onto which a stair and landing were
15 added, and the second is an upper deck. And
16 the issues that we're going to be talking
17 about are whether the stair and landing are
18 permitted in the rear. And secondly, whether
19 the upper addition is an addition for which
20 Zoning relief is required or whether it can
21 be done as a matter-of-right.

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1 I would like to make one
2 preliminary comment. I think the issues have
3 been fairly well briefed, both in our opening
4 for the Zoning Administrator's response and
5 the reply that we put in two weeks ago. So
6 we'll try to avoid covering a lot of ground
7 there.

8 But there is one difference that I
9 wanted to point out. A lot of the analysis
10 in the District's memorandum talks about
11 uses, and a use variance and the need for a
12 use variance or something like that. This
13 case is not about uses. It's about area, an
14 area variance and other relief of that sort.

15 So I think for that reason, among
16 some of the others we'll talk about, our
17 position is that Zoning relief is required to
18 permit both forms of the structure to go
19 forward.

20 And without any further
21 introduction, I will have to Horsey walk you

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1 through. I think you'll need to pick up the
2 microphone here.

3 I believe we've also provided
4 copies to the Board of the photographs and
5 the drawings that are being provided.

6 I would add also Mr. Horsey does
7 happen to be an architect who practices here
8 in town. So has that background and can
9 explain some of the factual issues.

10 Mr. Horsey?

11 MR. HORSEY: Chairman Loud,
12 members of the Board. I'm just going to walk
13 through some of these photographs and
14 drawings.

15 Starting counter clockwise in the
16 upper left of our first sheet shows the
17 physical situation with 3046 as a four story,
18 a nonconforming house --

19 MS. BOLLING: Pardon me.

20 Chairman Loud, has Mr. Horsey been
21 sworn in since he's testifying.

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1 MR. HORSEY: Oh, right.

2 CHAIRPERSON LOUD: Let us do that.

3 Thank you, Ms. Bolling.

4 All of our witnesses need to be
5 sworn in.

6 (Witness sworn).

7 MR. HITCHCOCK: Mr. Chairman, if I
8 may, another preliminary matter when he's
9 setting up.

10 I would note for the record that
11 we did provide copies of all the materials to
12 the homeowner by service at various points.
13 And the homeowner has expressed and wants to
14 interest in participating.

15 CHAIRPERSON LOUD: Okay. Thank
16 you.

17 MR. HORSEY: So again, starting
18 from the upper left, it just shows the
19 physical surroundings which I think are
20 interesting and relevant.

21 This is the subject house that

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1 received the building permit. It's
2 nonconforming with respect to number of
3 stories, there are four stories, lot
4 occupancy and nonconforming rear yard.

5 This shows that house, this shows
6 the house that my wife and I own. This
7 little plan in the center here in the bottom
8 shows the site plan of the properties. This
9 is us down here. And this shows you where the
10 roof deck and the third story deck and the
11 second story deck and stair are located.

12 These over here are enlarged
13 plans. The one on the bottom left showing the
14 existing conditions prior to any
15 construction. And this stair was in place
16 until March 16th, or thereabouts.

17 And this shows the original
18 proposal for an upper deck and a stair, or a
19 landing, or whatever you want to call it.
20 That was subsequently cut back slightly.

21 You can see here it was cut back

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1 in this photograph on the second sheet. I'll
2 come back to that.

3 Also on the first sheet on the
4 right hand side shows the plat. Marked in
5 red is the 60 percent lot occupancy line so
6 you can see the level of nonconformance.
7 It's 69.8, I think, as the District
8 Government asserted. I agree with that. And
9 the rear yard is about 19 feet where 20 feet
10 is required.

11 On the second sheet you see in
12 back again a cross section showing our house
13 and the lower deck, second story deck and the
14 third story deck addition up above.

15 On the bottom left you have the
16 before and after elevations showing the same
17 decks. There was no deck there prior to the
18 construction.

19 And finally, this photo -- and I
20 apologize if it's a little wanky, but I just
21 couldn't get far enough away from it. This

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1 is 19 feet from my house, and that's the best
2 I could do to put these photographs together.

3 This is the upper deck that was
4 added, and then this is the lower deck
5 landing with the stair.

6 As Mr. Hitchcock said, I think you
7 can go back over the submittals to the extent
8 that you want, but I think that basically the
9 issues are simple and brief.

10 Starting with the upper story deck
11 the question is whether it's an addition or
12 not. I submit that it is an addition. There
13 were structural plans submitted for the
14 permit, structural details for it on the
15 drawings. So it's clearly a structure under
16 the Zoning Regulations.

17 The word "addition" isn't defined,
18 so we went to *Webster's* and we picked out
19 that "addition." And I Believe it qualifies
20 under at least three of definitions of
21 addition in *Webster's Dictionary*. It adds

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1 value to the house, it's useable an expansive
2 space and it is something that is simply
3 added.

4 The lower story deck down here
5 gets to another question in the Zoning
6 Regulations as to whether a landing is
7 included as part of a stair. And I submit
8 that it's not. In the building code, it's
9 defined as a separate element. The Zoning
10 Regulations clearly stipulate under the
11 ability for a construction like this, namely
12 a stair and a handrail, to project into a
13 required rear yard. They specifically do not
14 include a landing. It specifically includes
15 a handrail, and you sort of wonder okay if
16 there are three parts to the stair: The
17 handrail, the stair and the landing, why
18 didn't they include the landing? And my
19 stipulation is they didn't just for reasons
20 like this where the landing, because it's not
21 defined, can be taken to be of any size

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1 anybody wants and any purpose other than just
2 serving the stair. And so in that section
3 that allows for a stair and a handrail to
4 project into a required rear yard, a landing
5 is not included. And I submit cannot be
6 constructed without a variance allowing it to
7 project into the rear yard and also it in
8 itself would be an addition as well to a
9 nonconforming structure which isn't allowed.

10 I think that summarizes my
11 comments.

12 Con, do you have anything to add?

13 MR. HITCHCOCK: Thank you, Mr.
14 Horsey.

15 I think that well states it.
16 There argument really here I think is a
17 question of interpretation, as Mr. Horsey
18 indicated. What is a landing? Is it part of
19 the stair or is it a separate element? And
20 the authorities that we've cited including
21 the building code and several other elements,

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1 suggests that the landing is a separate
2 element. In fact, the authorities indicate
3 that you do not need a landing, that you can
4 have stairs go right up to an entrance. And
5 so therefore, by having it a separate landing
6 here, the order in question was erroneous by
7 treating it as the same element.

8 Secondly, with respect to the
9 upper deck. The Zoning Administrator's
10 decision, as we read it, says this doesn't
11 add to the FAR. It's implicit where it's an
12 area.

13 And as we see it, the key issue is
14 whether it is an addition or not just using
15 the definition of addition. If it is an
16 addition or extension, then you need the
17 Zoning relief under the sections in question.

18 And the issue of FAR is not critical for
19 purposes of determining that threshold
20 question.

21 The reply memorandum that Board

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1 member Moldenhauer referred to a few moments
2 ago contains our response to the authorities,
3 the Board decisions that were cited by the
4 District in its papers. And let me take them
5 in order.

6 The problem with the first one,
7 the dealing with the stair versus landing, is
8 that --

9 MS. BOLLING: One second. You are
10 an attorney and you're appearing as an
11 attorney on behalf of Mr. Horsey?

12 MR. HITCHCOCK: Yes. I'm
13 presenting legal argument.

14 MS. BOLLING: Okay. I just wanted
15 to make sure.

16 MR. HITCHCOCK: No, this is legal
17 argument, not testimony.

18 MS. BOLLING: Okay. I just wanted
19 to make sure.

20 MR. HITCHCOCK: I'm trying to stay
21 there.

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1 The distinction and sort of the
2 policy reason why you would want to have this
3 interpretation is that otherwise you would
4 have a platform of rather considerable length
5 between the set of stairs and an entrance.
6 It could fill up a rear yard, it could do a
7 lot of things the zoning doesn't allow. But
8 if you call it a "land," quote/unquote, as
9 part of the stairs then no violation would
10 occur. And we don't think that that is a
11 sensible interpretation of rear yard
12 requirements or anything else with respect to
13 which stairs may be allowed and counted, or
14 not counted for the rear yard purposes.

15 I don't have anything further on
16 that point. They're all there. The cases
17 that is cited, as I started to say a moment
18 ago, I think can be distinguished because
19 they dealt with other situations. The one
20 the stair versus landing was a bench
21 decision. We've cited another one in which

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1 the Board made the point that I've just made,
2 that just having a platform between stairs
3 and the door does not make the platform and
4 landing. You need a closer connection.

5 So I will stop at that point for
6 questions from the Board. And I guess then
7 cross-examination. And maybe we will be done
8 by 7:00.

9 CHAIRPERSON LOUD: Thank you. I
10 don't have any questions at this time. Let's
11 see if other Board members.

12 And I kind of understand the
13 dilemma you're in, because I think a lot of
14 this case is going to be legal argumentation,
15 interpretation. And obviously you guys
16 don't want to set yourselves up for cross-
17 examination. I'm not viewing it like that.
18 I think it's just a question of legal
19 interpretation, whose correct and whose got
20 the case law behind them.

21 MR. HORSEY: Well, I'm not a

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1 lawyer. I'm an architect.

2 And that's why this may be clearer
3 to me. But there's also prior cases, BZA
4 cases that we found where a roof deck
5 addition is clearly noted as an addition and
6 Zoning relief has been sought, and sometimes
7 granted and sometimes been denied. So I
8 think that case is relatively clear and it
9 meets the definition of an addition, which
10 oddly enough is not defined in the Zoning
11 Regulations. And maybe that could be
12 something that could be addressed in the next
13 go around. But it clearly meets the
14 definition of *Webster's Unabridged Dictionary*
15 edition.

16 And landing is also distinguished
17 in prior BZA orders as a separate element
18 from a stair.

19 CHAIRPERSON LOUD: Well let's have
20 DCRA go at it, they may see it a little
21 differently.

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1 BOARD MEMBER MOLDENHAUER: A quick
2 question, Mr. Horsey.

3 I just want to confirm or clarify,
4 are you still objecting because this issue of
5 the timing of the permit has now been
6 resolved, are you still objecting to the
7 current, I guess, revised second floor
8 landing/deck the way it currently exists?

9 MR. BELLO: I am, yes.

10 BOARD MEMBER MOLDENHAUER: Okay.
11 I just wanted to clarify and confirm that.

12 MR. HORSEY: If I could just
13 explain. And I don't think it's
14 unreasonable.

15 And, in fact, in prior
16 conversations before we went down this road
17 we tried to work out a deal with the
18 neighbor. This is also a door. This stair
19 could have been easily designed, and I did a
20 layout for them. In fact -- well, where you
21 could just have a landing right at the top,

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1 which is a minimal amount to get up the stair
2 and in the door.

3 And so that's why -- we have been
4 here, we have seen the density, we have seen
5 the noise that can come out of a house this
6 close to our house, come out of doors this
7 close to our house. So we know what can
8 happen with this kind of extension. And so I
9 still do object, yes.

10 BOARD MEMBER MOLDENHAUER: I'm
11 sorry. Because it looks like a window to do
12 to the left of the French doors, but that
13 currently right now a door?

14 MR. BELLO: It is a fixed door
15 panel. It could be an operating door fairly -
16 - these two are fixed, these two are
17 operating.

18 BOARD MEMBER MOLDENHAUER: Okay.
19 I just wanted to make sure. That's actually
20 a fixed panel that could be of the dimension
21 of a door if necessary?

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1 MR. BELLO: Yes. Yes.

2 BOARD MEMBER MOLDENHAUER: Okay.

3 Thank you.

4 MS. BOLLING: Okay.

5 CHAIRPERSON LOUD: Ms. Bolling,
6 did you have any cross?

7 MS. BOLLING: Yes. Mr. Horsey, are
8 the depictions on the easels, are they all
9 what was submitted in the original building
10 plan application or some of those your
11 depictions?

12 MR. BELLO: Thank you.
13 Everything. The only drawing -- here, let me
14 go right here. The only drawings that are
15 from the permit set are this one, by another
16 architect, and the plat. Everything else is
17 something that I put together.

18 This, he drew that and I drew over
19 it.

20 MS. BOLLING: You testified that
21 you believe that the upper area that's got

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1 the railing around it should be an addition
2 because there were drawings submitted? Is
3 that one of the reasons you believe it's an
4 addition?

5 MR. HORSEY: That's why I believe
6 it's a structure.

7 MS. BOLLING: Okay. And because
8 there were plans, you believe that makes it
9 an addition under the Zoning Regulations?

10 MR. HORSEY: I believe it makes it
11 a structure under the Zoning Regulations.

12 MS. BOLLING: Okay. Now as an
13 architect do you sometimes design stairwells?

14 MR. HORSEY: All the time.

15 MS. BOLLING: Okay. And when you
16 design those do you normal design some sort
17 of a landing for them to come out on or do
18 they immediately a door and go into a step?

19 MR. HORSEY: No. The building code
20 requires that there be either a landing or a
21 floor at the top and bottom of every stair.

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1 MS. BOLLING: Okay. So is it fair
2 to say that you believe this landing is just
3 too big for your --

4 MR. HORSEY: That happens to be
5 the case, but it also, I believe that a
6 landing is excluded from the exception that
7 allows a stair and a railing to be built into
8 a required open space.

9 MS. BOLLING: But didn't you just
10 testify that as an architect you have to put
11 a landing?

12 MR. HORSEY: No. I testified that
13 you have to have either a landing -- a stair
14 could lead to a deck, which is in my opinion
15 what's happening here. You don't have to have
16 a landing. It could --

17 MS. BOLLING: I thought you said
18 the building code requires you to have a
19 landing at the top and at the bottom?

20 MR. HORSEY: It requires either a
21 landing or a floor, i.e., a deck in this case

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1 because outside.

2 MS. BOLLING: Okay. So there have
3 to be some sort of an even thing when you
4 come out of a door?

5 MR. HORSEY: Correct.

6 MS. BOLLING: Okay. And you just
7 don't like this one because you think its too
8 big?

9 MR. HORSEY: No. I think this one
10 does not comply with the Zoning Regulations.

11 And I think it adds more -- I also think
12 that it adds more than what is needed,
13 strictly needed for the stair. You see the
14 circular stair was on there for 60 years that
15 served the back of that house perfectly well.

16 MS. BOLLING: The Board's
17 indulgence.

18 No further questions, Chairman
19 Loud.

20 CHAIRPERSON LOUD: Thank you.

21 Let me just ask one quick follow

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1 up question. I know I'm going to regret this,
2 but at what point does under your
3 interpretation given your vast experience of
4 both the codes and the Zoning Regulations, at
5 what point does a landing become a deck? Is
6 it based on the dimensions?

7 MR. HORSEY: Yes. I would once a
8 landing --

9 CHAIRPERSON LOUD: It being based
10 on the dimensions, are those dimensions found
11 in either the code or the Zoning Regulations,
12 or is it a subjective --

13 MR. HORSEY: No. The building
14 code requires a landing to have the same
15 minimum width as the stair and to be,
16 basically, 36 inches square is the minimum
17 size for a landing.

18 CHAIRPERSON LOUD: Is there a
19 maximum size or are you saying that if goes
20 beyond what is defined as the minimum, then
21 it becomes a deck?

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1 MR. HORSEY: That's -- that --
2 yes, I think it's fair to say that, but I'm
3 also saying that because a landing is
4 something other than a stair and a railing
5 and are specifically included in the
6 exception in the Zoning Regulations, that it
7 itself is not included in those. And so that
8 tells me that a landing has to be behind the
9 rear yard. It cannot project. The stair can,
10 the railing can, but not the landing. So you
11 cannot -- you know, and otherwise you get
12 into theoretical definition of what a landing
13 is and how big is it. And there's no
14 definition of that other than the building
15 code.

16 CHAIRPERSON LOUD: Okay.

17 BOARD MEMBER MOLDENHAUER: I
18 actually have some follow up questions from
19 your point, Mr. Chairman, which I think was a
20 good one.

21 What are the distinctions or are

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1 there distinctions between what the different
2 building code requirements would be for a
3 landing or a deck such as structural
4 requirements to build a deck, issues of a
5 push factor for additional railing
6 requirements, things of that effect.

7 MR. HORSEY: Basically no
8 different. The railing has to have certain
9 structural capacity whether its on a stair or
10 enclosing a deck. And you have to have
11 posts. So I think the structural capacity of
12 a landing or a deck or a stair or relatively
13 similar. And height requirements as well.

14 BOARD MEMBER MOLDENHAUER: So then
15 how would you define the distinction between
16 a landing a deck?

17 MR. HORSEY: I would say the
18 landing is the minimum size. And this is,
19 incidentally, I don't know if you mentioned
20 the ANC but they're a party here, and they
21 did write a letter. And this is a point they

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1 made. That a landing should be the minimum
2 size required to get from the stair into the
3 door. So that would be my -- the current --
4 the old stair that was there had a tiny
5 landing, but it was a landing. And anything
6 beyond that is for purposes other than
7 gaining -- and can you move the door all the
8 way to the other side of the deck? Well,
9 yes, I guess you could. Then is the whole
10 deck a landing? Well, I guess some people
11 might say it would be. But that's not my
12 point.

13 That the easiest way to get up the
14 stairs, in the house is to go in that door on
15 the left hand side as you look at the --

16 MR. HITCHCOCK: May I add a
17 thought on that? And I will try to stick to
18 legal argument.

19 The distinction that the Board
20 noted in an earlier case that we cited is do
21 the stairs lead to a door? Are they

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1 connecting to a door? Because if they are,
2 then you have questions about whether you're
3 dealing with a deck or a landing are somewhat
4 easier to resolve. When you have separation
5 between the stairs and the door or when the
6 deck extends beyond the purpose of providing
7 access to a door, then you're in a different
8 situation. And I think that may go to the
9 Chairman's question and Board Member
10 Moldenhauer's question, too.

11 I think it is somewhat
12 situational. The building code, the text of
13 it quite clearly distinguishes in a number of
14 places, and this is page 3 of our submission
15 from two weeks ago, that talk about a floor
16 or a landing at the top and bottom of each
17 stairway, that a flight of stairs shall have
18 a vertical rise of 12 feet between floor
19 levels, or landings. The width of each
20 landing shall not be the width of the
21 stairway served.

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1 So the idea of a landing is
2 serving the stairway, not providing for a
3 greater length than would be the case. And
4 that's one of the reasons to avoid getting
5 into the -- that's one of the ways you avoid
6 the problems of the exception swallowing the
7 rule and having a very large deck that
8 happens coincidentally to provide access to a
9 door and stairs at some level. And that was
10 the decision, the name of which escapes me at
11 the moment, that we cited in opposition to
12 the District's position, *Appeal 14093* which
13 we cite on pages 2 and 3.

14 CHAIRPERSON LOUD: But it almost
15 seems like in any given case -- the point of
16 the stairs is to get you into the door?

17 MR. HITCHCOCK: Yes.

18 CHAIRPERSON LOUD: Okay. And the
19 circumstances around getting into that door
20 might vary greatly with the user. For
21 example, if you're a parent of young

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1 children, perhaps you have twins and you've
2 got to get the stroller up the stairs and you
3 get to the top of the stair and you need just
4 a little more space than the bare minimum
5 required for a landing. Does that mean
6 because you take advantage of that
7 opportunity, you're going to have a
8 connection between the stairs and the rear of
9 the house, the door, you take advantage of
10 that opportunity to add that connection to
11 make it just large enough to get your baby
12 stroller into that, mean that you now have a
13 deck or is it -- I mean, just the fact that
14 it's larger than he 36 inches, you now have a
15 deck?

16 You see what I'm trying to get at?

17 There's a lot of gray area here in terms of
18 when this level flat area ceases to be a
19 landing and starts to be a deck.

20 MR. HORSEY: Well, I agree there's
21 gray area. I come back to my main point, and

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1 I would pose the question the D.C.
2 Government. My main point is that whether
3 it's part of the stair or not part of the
4 stair, it is not included in the exception
5 that allows it to project into a required
6 rear yard.

7 So let me just pose the question
8 then if a landing is a part of the stair,
9 then why does that exception specifically
10 include and cite the handrail as well as the
11 stair as being allowed into the required rear
12 yard, but yet there's no mention of the
13 landing which actually appears all the time
14 in BZA cases but does not appear in the
15 Zoning Regulations as being allowed. And yet
16 the handrail does. And that's what really
17 gets me.

18 So that makes me think that the
19 landing could be anything and everybody will
20 go along with that. But it can't be in the
21 rear yard, and it won't -- it's not part that

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1 exception that allows the stair and the
2 handrail to reject into the required rear
3 yard.

4 MS. BOLLING: Mr. Horsey, I'm just
5 a little confused. When you say the landing
6 can't be in the rear yard, if you come out
7 that door, you come out where to the rear
8 yard?

9 MR. HORSEY: The required rear
10 yard. Excuse me.

11 MS. BOLLING: Okay. Thank you.

12 MR. HORSEY: And this is a
13 nonconforming rear yard. So anything out
14 there is in the required rear yard. Sorry.

15 MS. BOLLING: But you testified it
16 has to be at 36 inches?

17 MR. HORSEY: Correct. So that my
18 original assumption is that they need
19 variance relief to get the stair. And
20 actually, when I went down there initially to
21 challenge this, I spoke with the Zoning

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1 Technician, whose name is on the permit, and
2 I said how come you allowed this. And she
3 said the only reason I allowed this was
4 because that the architect told me that the
5 neighbor was elderly, and the owner was
6 elderly and needed a better stair than the
7 one that was there.

8 Now, that tells me that she sort
9 of agreed with my interpretation. I didn't
10 really push it any further. And I said the
11 owner is a 40 year old man, he's going to
12 sell the house as soon as he finishes it.
13 And she said that she thought she had been
14 misled.

15 Anyway --

16 MR. HITCHCOCK: May I add a
17 thought to respond to the Chairman's question
18 about how do you measure the difference?

19 CHAIRPERSON LOUD: Sure. Let me
20 just say as we proceed, we're now at 7:00.

21 MR. HITCHCOCK: Yes.

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1 CHAIRPERSON LOUD: And it was my
2 hope that once we closed out the testimony
3 from your witness and the cross-examination,
4 that that would be a good logical point to
5 break and resume next week.

6 MR. HITCHCOCK: Yes.

7 CHAIRPERSON LOUD: Yes, feel free
8 to go ahead and --

9 MR. HITCHCOCK: I had a very short
10 point to make in terms of the question. I
11 mean, I take your point about what happens if
12 people have children, you know, twins, that
13 sort of thing. I don't think the Board needs
14 to decide that in order to resolve this case
15 because the stairway reaches and the deck
16 reaches as far as it does.

17 I would also cite the Board to the
18 definition from the building code. We've
19 talked about the 36 inch minimum, which is 36
20 inches measured in the direction of travel,
21 which suggests a limitation that you look at

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1 the landing for purposes of determining
2 access between the stairs and the door, not
3 an opened ended deck. It's not a precise
4 limiting factor, but it does provide some
5 focus for inquiry in terms of what should be
6 counted or not.

7 And that was the only point I
8 wanted to make.

9 CHAIRPERSON LOUD: If we look at
10 the building code definition but ignored the
11 definition in dictionary, which I think is
12 what our rules requires us to do when it's
13 not a definition in our rules, would that be
14 in your opinion erroneous, an error to look
15 at the-- because I don't think the definition
16 in the dictionary has a dimension attached to
17 it.

18 MR. HITCHCOCK: Mr. Horsey
19 deserves the credit. We looked and found
20 every Board decision using the word
21 "landing." And it's not clear, there's not

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1 been a definition that was given for landing.

2 I would ask him if he remembers
3 the dictionary definition of landing. But I
4 think in this case where you do have the
5 building code saying what it does when it
6 draws distinctions between stairs, landing
7 and railing, that there is a conceptual
8 difference between those three items.

9 Did you want to add something?
10 But I can check the dictionary between now
11 and next time.

12 MR. HORSEY: As I recall, it's
13 similar to the building code definition.

14 CHAIRPERSON LOUD: Well, obviously
15 we'll be able to take this up next week when
16 we resume the case. It's a fascinating case I
17 think, and one that we all want to chew on a
18 little bit longer.

19 Is there further cross of the
20 witness?

21 MS. BOLLING: No, Chairman Loud.

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1 CHAIRPERSON LOUD: Okay. I think
2 this would be a logical break then for
3 continuation to next week. And it sounds
4 like the parties are amenable to that.

5 MR. HITCHCOCK: Just to confirm,
6 Mr. Chairman. We're talking about Tuesday,
7 the 3rd at 1:00?

8 CHAIRPERSON LOUD: Yes, sir.

9 MR. HITCHCOCK: Okay.

10 CHAIRPERSON LOUD: Okay.

11 MR. HITCHCOCK: Good.

12 CHAIRPERSON LOUD: Very good. And
13 thank you for your patience and we look
14 forward to continuing this next Tuesday at
15 1:00. It'll be set for the first case in he
16 afternoon.

17 How much longer do you think
18 you'll be with your -- you've got one
19 witness, Mr. LeGrant?

20 MR. LeGRANT: Yes. Maybe one hour.

21 CHAIRPERSON LOUD: An hour for

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1 direct, or you building into that anticipated
2 cross of the witness?

3 MR. LeGRANT: Everything.

4 CHAIRPERSON LOUD: Direct and
5 cross? Okay.

6 And then counsel may want to think
7 about some further legal argumentation around
8 this interpretation of the various cases.
9 Each of you have cited cases that you say
10 support your interpretation of everything. I
11 think it'll be pretty interesting to hear the
12 legal arguments, too. So if we have a chance,
13 we'll get into that.

14 Is there anything further?

15 MS. BAILEY: Mr. Chairman, next
16 week when the hearing starts, we will start
17 with DCRA?

18 CHAIRPERSON LOUD: DCRA, that's
19 correct.

20 MS. BAILEY: And the record is
21 open, so additional information can be filed

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1 in the record.

2 CHAIRPERSON LOUD: Yes. If
3 there's nothing further, thank you for your
4 patience. Appreciate it. And we look
5 forward to seeing you guys next week.

6 (Whereupon, at 7:07 the Public
7 Hearing was concluded.)

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