

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 19, 2010

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairman  
SHANE L. DETTMAN, Vice Chairman, (NCPC)  
MEREDITH H. MOLDENHAUER, Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner  
(AOC)

OFFICE OF ZONING STAFF PRESENT:

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

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OFFICE OF PLANNING STAFF PRESENT:

ARLOVA JACKSON  
ARTHUR JACKSON  
PAUL GOLDSTEIN  
STEPHEN MORDFIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Hearing held on January 19, 2010.

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

9:53 a.m.

CHAIRPERSON LOUD: We will go directly into the hearing calendar for this morning. This hearing will officially and formally come to order. Good morning again, ladies and gentlemen. This is the January 19th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Marc Loud, Chairperson.

Joining me today, as I noted for the decision, are Vice Chair Shane Dettman representing the National Capital Planning Commission; Michael Turnbull representing the Zoning Commission; Meredith Moldenhauer with the BZA; Mr. Clifford Moy, Secretary, BZA; Lori Monroe, Office of the Attorney General; and Ms. Beverley Bailey, Zoning Specialist here in the Office of Zoning.

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

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

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

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

20           The order of procedure for special  
21 exceptions and variances is as follows.  
22 Statement and witnesses of the applicant;

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1 government reports including the Office of  
2 Planning, the Department of Public Works,  
3 etc.; the report of the Advisory Neighborhood  
4 Commission; parties or persons in support;  
5 parties or persons in opposition; and,  
6 finally, closing remarks by the applicant.

7 Pursuant to Sections 3117.4 and  
8 3117.5 the following time constraints will be  
9 maintained this morning. The applicant, the  
10 appellant, persons and parties except an ANC  
11 in support, including witnesses, are allotted  
12 60 minutes collectively, if those 60 minutes  
13 are necessary, but no more than 60 minutes.

14 The appellees, persons, and  
15 parties except an ANC in opposition including  
16 witnesses 60 minutes collectively, again, as  
17 the maximum amount of time. Individuals  
18 wishing to testify three minutes. Individuals  
19 representing organizations, five minutes.

20 These time constraints do not  
21 include cross examination and/or questions  
22 from the Board. Cross examination of

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1 witnesses is also permitted by the applicant  
2 or parties. The ANC within which the property  
3 is located is automatically a party in a  
4 special exception or a variance case.

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

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 parties must submit the  
15 evidence to the Office of Zoning. After the  
16 record is closed no other information will be  
17 accepted by the Board.

18 The Sunshine Act requires that the  
19 public hearing on each case be held in the  
20 open before the public. The Board may  
21 consistent with its rules of procedure and the  
22 Sunshine Act enter executive session during or

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1 after the public hearing on the case for  
2 purposes of reviewing the record.

3 The decision of the Board in these  
4 contested cases must be based exclusively on  
5 the public record. To avoid any appearance to  
6 the contrary the Board request that persons  
7 present not engage the members of the Board in  
8 conversation. Please turn off all beepers and  
9 cell phones at this time so as not to disrupt  
10 this proceedings.

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

18 If you are not prepared to go  
19 forward with a case today, or if you believe  
20 that the Board should not proceed, now is the  
21 time to raise such a matter. Does the staff  
22 have any preliminary matters?

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MS. BAILEY: Mr. Chairman, good morning.

CHAIRPERSON LOUD: Good morning, Ms. Bailey.

MS. BAILEY: Members of the Board and to everyone, good morning. There is a preliminary matter, Mr. Chairman, concerning the posting of one of the cases but that could be taken up when that case is called, Mr. Chairman.

CHAIRPERSON LOUD: Thank you, Ms. Bailey. Which case is that, Ms. Bailey?

MS. BAILEY: 28022, Shirley Scribner, Shirley and Norman Scribner. We don't have the affidavit of that case.

CHAIRPERSON LOUD: All right. Thank you very much.

MS. BAILEY: Okay.

CHAIRPERSON LOUD: We will --

MS. BAILEY: We have it now.

CHAIRPERSON LOUD: Very good.

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1 When you are ready then swear in witnesses for  
2 this morning's calendar.

3 Would all individuals wishing to  
4 testify in this morning's calendar please rise  
5 to take the oath and Ms. Bailey will  
6 administer the oath.

7 MS. BAILEY: Would you please  
8 raise your right hand. Do you solemnly swear  
9 or affirm that the testimony that you will be  
10 giving today will be the truth, the whole  
11 truth, and nothing but the truth?

12 WITNESSES: I do.

13 MS. BAILEY: Thank you. Mr.  
14 Chairman, the first case is Application 18021.  
15 It's the application of Peter and Leslie  
16 Shields and it's pursuant to 11 DCMR Section  
17 3104.1, for a special exception to allow a  
18 two-story rear addition to an existing one-  
19 family detached dwelling under Section 223 not  
20 meeting the side yard requirements of Section  
21 405. The property is zoned R-1-B. It's  
22 located at 4719 Butterworth Place, N.W.,

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1 Square 1536, Lot 834.

2 We do have some problems that came  
3 in, Mr. Chairman, so I'll pass them out at  
4 this point.

5 CHAIRPERSON LOUD: Thank you. I  
6 appreciate that. As you are passing them out  
7 just tell us what they are and when they came  
8 in?

9 MS. BAILEY: One set of filings is  
10 from the applicant and the other set are  
11 photographs from the abutting neighbor. I  
12 believe that is the case.

13 CHAIRPERSON LOUD: And those came  
14 in this morning?

15 MS. BAILEY: Yes. They were  
16 handed to me just before the hearing started.

17 CHAIRPERSON LOUD: As Ms. Bailey  
18 gets the copy of the second fine that was  
19 submitted late this morning, I would like to  
20 ask the parties in the case if they could step  
21 forward and if ANC-3E is here, Chairman Bender  
22 or someone representing that agency.

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1                   Good morning, sir. Step forward  
2 as well.

3                   A bit earlier when Ms. Bailey  
4 administered the oath a number of persons in  
5 the audience raised their hands to be sworn in  
6 for various cases this morning. Are there any  
7 persons who are here and intending to testify  
8 in this case?

9                   Let me just ask again because I  
10 wasn't certain if a hand went up in the rear.  
11 Are there any persons who are present right  
12 now planning to testify in the Shields case?  
13 Very good. Okay. Let us turn to the  
14 applicant and ask you to identify yourself for  
15 the record and then we'll proceed onto the  
16 ANC.

17                   MR. SNOWBER: Good morning. My  
18 name is Chris Snowber. I'm an architect with  
19 Hamilton & Snowber Architects. We're working  
20 with Peter and Leslie Shields on the project.  
21 There is a letter in the file that we  
22 submitted a few weeks ago indicating Mr.

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1 Shields and his wife were out of town and that  
2 was scheduled before the hearing was so I'm  
3 here representing them today.

4 CHAIRPERSON LOUD: Good morning,  
5 sir.

6 MR. SNOWBER: Good morning. I  
7 have one quick question. In your timetable  
8 how much time should I assume I have to speak  
9 here? It's not allotted to any particular  
10 person?

11 CHAIRPERSON LOUD: Collectively I  
12 think the applicant's case is about an hour  
13 but we reviewed the file in your case. It's  
14 a very full file.

15 MR. SNOWBER: Yes.

16 CHAIRPERSON LOUD: Also I have  
17 reviewed the report of the Office of Planning  
18 in your case and think that it's a very clear  
19 case. I noted that there are no witnesses  
20 here to testify in the case either for or  
21 against it so that will truncate it even  
22 further.

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1 I think what we'll do is we'll  
2 continue through everyone introducing  
3 themselves at the table and then more than  
4 likely unless there are specific questions  
5 from the Board for the applicant you can rest  
6 on the record. We think it's a full record.

7 We'll then turn to the Office of  
8 Planning and if there are questions again from  
9 Board Members for the Office of Planning,  
10 Board Members will have that opportunity or  
11 the office can rest on the record and then we  
12 turn to the ANC.

13 I think to answer your question  
14 directly, you've submitted a very full  
15 application on behalf of your client and you  
16 could not even make a formal presentation but  
17 just be available for questions that Board  
18 Members may have.

19 MR. SNOWBER: If I might just be  
20 able to comment on the two things I gave you  
21 this morning just to make sure.

22 CHAIRPERSON LOUD: Why don't we

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1 finish going through the introductions. I  
2 don't think we've done that yet and then we'll  
3 come back to do that.

4 Yes, sir. All the way on my left.

5 MR. ROSENTHAL: Good morning. My  
6 name is John Rosenthal and I'm a neighbor at  
7 4731 Butterworth Place.

8 CHAIRPERSON LOUD: Good morning,  
9 Mr. Rosenthal. Mr. Rosenthal, you are not a  
10 party in the case and at this juncture only  
11 the parties are sitting at the table. Later  
12 on in the case, if you recall from my  
13 statement at the outset, there is an  
14 opportunity for persons that are either  
15 supportive of the application or in opposition  
16 to the application to come forward and give  
17 testimony. The time allotted is three  
18 minutes. When we get to that point we'll call  
19 you back to the table.

20 MR. ROSENTHAL: Okay.

21 CHAIRPERSON LOUD: To the front  
22 table.

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1 MR. ROSENTHAL: In that case then  
2 I will be objecting and there will be a  
3 witness.

4 CHAIRPERSON LOUD: Okay. You'll  
5 have plenty of opportunity to cover at that  
6 time everything that they are going to cover  
7 right now. We'll make sure to afford you all  
8 that time.

9 Far right.

10 VICE CHAIR DETTMAN: Mr. Frumin,  
11 would you mind turning your mic on, please?

12 COMMISSIONER FRUMIN: My  
13 apologies. My name is Matthew Frumin. I'm  
14 representing ANC-3E and the property in  
15 question is in my single member district.

16 CHAIRPERSON LOUD: Good morning,  
17 Mr. Frumin, or Commissioner Frumin?

18 COMMISSIONER FRUMIN: Commissioner  
19 Frumin.

20 CHAIRPERSON LOUD: Commissioner  
21 Frumin. Did the ANC submit a report in this  
22 case?

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1 COMMISSIONER FRUMIN: We did. You  
2 don't have a copy of that report?

3 CHAIRPERSON LOUD: I do not have a  
4 copy of that report, not in this case. I know  
5 we have the case following this.

6 Sorry. We are just clarifying  
7 some of the submissions.

8 Again, you have indicated that the  
9 ANC did submit a report and it looks like --  
10 okay. We are getting copies of it right now.  
11 Where was the report submitted?

12 COMMISSIONER FRUMIN: We had our  
13 January -- we addressed this at our January  
14 4th meeting. I believe it was e-mailed within  
15 days of that meeting.

16 CHAIRPERSON LOUD: Fantastic.  
17 Okay.

18 COMMISSIONER FRUMIN: We need to  
19 check. This isn't the first case where  
20 someone has appeared and you haven't received  
21 our report so we just have to make sure we get  
22 the mechanics of getting this to you right so

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1 this doesn't happen again. My apologies.

2 CHAIRPERSON LOUD: We appreciate  
3 that. Again, your ANC is in a second case  
4 this morning and we did get that report and it  
5 was made part of our record. I think Ms.  
6 Bailey is in the process of getting that  
7 report. As she does that why don't we turn  
8 back to the applicant and if there is anything  
9 that you would like to share, anything that  
10 you want to highlight specifically about your  
11 case, this would be a good time to do that.

12 MR. SNOWBER: Thank you very much.  
13 As Mr. Frumin indicated, there was a hearing  
14 -- an ANC meeting on January 4th where the  
15 neighbor, Mr. Rosenthal who is going to speak  
16 later, did raise some concerns. Mr. Rosenthal  
17 is the neighbor who lives across the alley  
18 from the project so it's a 16-foot wide alley  
19 so there is a fair separation.

20 In response to a few of the things  
21 that were brought up at that ANC meeting is  
22 what I want to just briefly mention since it

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1 sounds like you've reviewed the rest of the  
2 case pretty carefully.

3 The first thing is that, in fact,  
4 there is this separation between the two  
5 buildings, the 16-foot alley plus the setback  
6 on our side plus the setback of his building  
7 from his side of the property line. It's a  
8 total of somewhere around 27 feet that  
9 separate his house and our proposed addition.

10 What I'm showing I then submitted  
11 to you this morning was this large graphic.  
12 It's just a Google map of the general -- part  
13 of the neighborhood of the park there that  
14 incorporates this house. I think it shows  
15 there are quite a lot of houses that have fair  
16 proximity to each other which do have impact  
17 on one another.

18 In fact, even though we are asking  
19 for a side yard setback relief of going to not  
20 the full eight feet that would be required but  
21 4.66 feet, so a 3.33 feet relief, it can be  
22 seen in the neighborhood that it's not unusual

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1 to have in a typical condition assuming many  
2 of these are conforming houses that are fairly  
3 close together. Ours has a fair amount of  
4 separation. That's the first point.

5 The second thing is that there was  
6 some concern about whether our addition would  
7 provide some shade on the neighbors house. We  
8 did do a sun study and we discovered that  
9 because our addition is to the north of the  
10 house and because there is a fair separation  
11 between the buildings, for about eight months  
12 of the year the addition will have no shade at  
13 all at anytime of the day on the neighbor's  
14 house.

15 For a few months before and after  
16 June 21st there is some small amount of shade  
17 that will fall but it is gone before 9:00 a.m.  
18 so, generally speaking, the impact of the  
19 addition is not to provide shade on the house.

20 Then the final thing was at the  
21 ANC meeting there was quite a lot of  
22 discussion about the issues of water on the

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1 site which are also covered in some of the  
2 documents that we submitted. These are just  
3 a few photographs which sort of show the  
4 conditions that we need to deal with.

5 No. 1, the first photograph, is  
6 the alley which is in pretty rough shape. It  
7 holds water, doesn't drain well. Mr.  
8 Rosenthal has a concern about water on his  
9 property causing damage to his basement walls.  
10 Some of the water that is in the alley may, in  
11 fact, be leaking through this cracked alley  
12 and getting into his property which we really  
13 can't do anything about that but obviously the  
14 alley is in bad shape.

15 The second thing -- the second  
16 photo shows a downspout coming off of our  
17 property which is dumping water directly into  
18 the alley and that is something with our  
19 project we will address and not have that  
20 water go any longer into the alley so that  
21 will help that situation. Again, it's covered  
22 in the report. We have visited the site with

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1 the landscape designer and have come up with  
2 a number of solutions for that issue.

3 Then finally there is a photo  
4 taken just over the fence at Mr. Rosenthal's  
5 property showing that, in fact, one of his  
6 downspouts dumps some water onto his  
7 foundation with no pipe or anything pulling it  
8 away.

9 That may be causing some of the  
10 problems with his foundation. We are going to  
11 address the water on our site as is  
12 recommended by the city and not be dumping it  
13 onto the alley so we are going to remediate  
14 that problem. Those are my comments in  
15 addition to everything that was in our  
16 submission. Thank you.

17 CHAIRPERSON LOUD: Your address is  
18 the 4719 Butterworth Place. Correct?

19 MR. SNOWBER: Correct.

20 CHAIRPERSON LOUD: Your submission  
21 here, the third photograph, indicates that Mr.  
22 Rosenthal's residence is 4721 Butterworth

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1 Place?

2 MR. SNOWBER: Right.

3 CHAIRPERSON LOUD: Is that  
4 correct?

5 MR. SNOWBER: That's correct.

6 CHAIRPERSON LOUD: Okay. All  
7 right. There may be a separate address  
8 mentioned in the record but that's fine.  
9 We'll clarify it with Mr. Rosenthal. 4731,  
10 not 4721. Excuse me. I'm sorry. I must  
11 thank you for that correction. Are there  
12 houses between 4719 and 4731?

13 MR. SNOWBER: No. If you look on  
14 the large document I handed out this morning,  
15 4719, my client's house is indicated with the  
16 A and the little yellow mark on it. Directly  
17 to the west of that there is the alley and  
18 directly to the west of that is 4731  
19 Butterworth Place. We are the two neighbors  
20 with the alley in between us.

21 CHAIRPERSON LOUD: Thank you. Let  
22 me see if Board Members have any -- does that

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1 conclude the remarks that you wanted to --

2 MR. SNOWBER: I do have the sun  
3 study and the graphics. It's kind of a  
4 labyrinth but that's what it showed and I can  
5 show it to you if you want to see it right  
6 now.

7 CHAIRPERSON LOUD: What format do  
8 you have it in? Is it a handout?

9 MR. SNOWBER: I can hand it out,  
10 yes.

11 CHAIRPERSON LOUD: That would be  
12 helpful. You should provide that to Ms.  
13 Bailey. Also provide a copy to Commissioner  
14 Frumin. I think it's helpful that you have  
15 provided a copy to Mr. Rosenthal as well. Mr.  
16 Snowber, let me see -- sorry?

17 MR. SNOWBER: I just wanted to  
18 explain it a little bit. It's sort of a -- if  
19 I could just give you --

20 CHAIRPERSON LOUD: Okay.

21 MR. SNOWBER: -- a quick  
22 explanation. So there are three pages. The

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1 first page shows the conditions on June 21st.  
2 The second page shows conditions and that  
3 would be the Summer Solstice. The second page  
4 shows the conditions at the Spring and Fall  
5 Equinox. Is that the right word? March 21st  
6 and October 21st -- September 21st. I've got  
7 it wrong. September 21st.

8 Then, finally, the conditions on  
9 December 21st which we reviewed the Solstice  
10 in the winter so the conditions of the  
11 existing house. What you're seeing in the  
12 graphic we just focused on the upper left-hand  
13 corner. What you are seeing on the right-hand  
14 side my client's house. The vertical line in  
15 between is the alley. On the left-hand side  
16 is Mr. Rosenthal's house next door.

17 On June 21st the shadow there is  
18 the shadow that is caused right now by the  
19 house and the addition that exist as it is.  
20 If we look down below it, you see the shadow  
21 that would be caused by the new addition which  
22 is shown on there as well. The line in the

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1 lower drawing is the shadow line from up above  
2 just carried down to shown what the additional  
3 shading is caused by the addition and you can  
4 see it.

5 So at 8:00 a.m. there is some  
6 light falling on the corner of Mr. Rosenthal's  
7 house from the addition but by 9:00 a.m. there  
8 is no shade anymore and beyond through the day  
9 there wouldn't be anymore light. That's the  
10 condition on June 21st.

11 On March or September 21st again  
12 in the upper left-hand corner that's the shade  
13 that is caused by the existing house. Down  
14 below it is the additional shade caused by the  
15 addition. What it shows is that the addition  
16 is not causing anymore shade on his house.  
17 All the shade that is on his house is caused  
18 by the existing house as it is. The addition  
19 doesn't make any more shade.

20 Then when you go to -- that's at  
21 8:00 in the morning. At 9:00 in the morning,  
22 again, you can see the additional shadow is

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1 not causing anymore on his house and by 10:00  
2 it's completely gone.

3 Then we go to December and it's  
4 the same thing. Again, the shade at 8:30 in  
5 the morning and 8:30 on the existing -- any  
6 shade caused is caused by the house as it  
7 exist. The addition doesn't make anymore  
8 shade and by 9:30 the shade is completely off  
9 his house and by 10:30 it's, again, completely  
10 gone.

11 Since we do these things on  
12 computers we have the ability to model these  
13 things so I just thought it might be useful  
14 for you all to see that.

15 CHAIRPERSON LOUD: Thank you, Mr.  
16 Snowber. Let me see if Board Members have any  
17 questions for you.

18 MEMBER TURNBULL: Yes, Mr. Chair.

19 Mr. Snowber, on your set of  
20 drawings, Exhibit No. 8, maybe you could just  
21 point out on elevation on A-5.

22 MR. SNOWBER: Okay.

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1                   MEMBER TURNBULL: You mentioned  
2 you are going to elevate the downspout on this  
3 side of the house. I don't see anything  
4 depicted so maybe you could just kind of  
5 sketch out or just tell us where --

6                   MR. SNOWBER: Good question.  
7 These drawings were submitted and they are  
8 schematic in nature and we didn't really  
9 address the water issue. The idea I think if  
10 we went to -- I think you have the sheet. If  
11 you go to probably A1.

12                   MEMBER TURNBULL: A1.

13                   MR. SNOWBER: The right-hand side  
14 there is a site plan. The downspout that you  
15 see in that photograph dumping into the alley  
16 is on the lower left-hand corner of the house  
17 and dumping directly to the alley to the left.

18                   MEMBER TURNBULL: It's on the  
19 existing --

20                   MR. SNOWBER: The existing house.  
21 Correct. There is another downspout at the,  
22 I guess, the northwest corner of the house.

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1 What we're going to be doing is taking --  
2 okay, sorry. Then we will additionally be  
3 adding a downspout at the northwest corner of  
4 our addition so it would be the upper left-  
5 hand corner, the very upper left-hand corner  
6 of the project.

7           Additionally one on the upper  
8 north-east corner of the addition so there  
9 will be relative -- near that alley there will  
10 be a total of four downspouts. What we are  
11 planning to do is with the downspout that is  
12 at the southwest corner, so the lower left  
13 corner of the house, we are going to take that  
14 and put it into a pipe and carry it.

15           The ground is slightly higher and  
16 we are going to carry it forward towards the  
17 front yard and there is some slope towards the  
18 street. We are going to put some planting,  
19 what they call a green garden there to retain  
20 some of that water so that it will slow down  
21 before it gets to the sidewalk but it will  
22 stop there and it won't be dumped any longer

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1 into the alley.

2 On the lower -- I'm sorry, on the  
3 upper left corner of the house and the upper  
4 right-hand corner of the additions we are  
5 going to carry those underground towards the  
6 back of the property.

7 The site does slope here as you  
8 are looking at it from east to west. The  
9 thought right now is we are going to build  
10 some sort of a cistern there which we've got  
11 to engineer the exact size of it in order to  
12 be able to retain the water again before it  
13 goes so it can percolate into the ground.

14 There is also possibly just to the  
15 rear of the addition we will put some planting  
16 that will actually, again, be another one of  
17 these green gardens that can actually slow  
18 water down and stop it. The idea is whenever  
19 you address these things you try to find the  
20 simplest solutions that will do it but if it  
21 has to go to being a cistern or to address the  
22 issues, that's what we'll do. Again, we will

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1 not have anymore pipes dumping into the alley.

2 MEMBER TURNBULL: Okay. I'm  
3 looking at several of these photos. Although  
4 there is some ponding it would appear that  
5 there is actually a lot of water that is  
6 coming down further from the alley and just  
7 keeps coming. It's not just showing up from  
8 your property. I'm looking that it's coming  
9 from a long way down. It's just sort of like  
10 is channeling all the way down the alley.

11 MR. SNOWBER: Right. And there  
12 are places where, I mean, in, again the  
13 northwest corner of the property here the  
14 alley is about a foot above our yard. In  
15 fact, the water pools in our yard and doesn't  
16 get into the alley.

17 I would agree with you that all  
18 the water in the alley is not necessarily  
19 caused by us but I think it's a responsibility  
20 that we have as anybody doing a construction  
21 project in the District to follow the  
22 RiverSmart Homes recommendations and deal with

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1 our water on our property, not dumping it onto  
2 the alley so that it then goes --

3 MEMBER TURNBULL: I would  
4 complement you for your actions on that.  
5 Thank you.

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

8 Are there any additional questions  
9 for Mr. Snowber from the Board? All right.  
10 How about from the ANC? Do you have any  
11 questions? Okay. Why don't we then turn to  
12 the Office of Planning.

13 Good morning.

14 MS. JACKSON: Good morning, Chair,  
15 and members of the Board. For the record, my  
16 name is Arlova Jackson with the D.C. Office of  
17 Planning. I would be happy to stand on the  
18 record and just state that the Office of  
19 Planning recommends approval of the special  
20 exception request.

21 We find it meets the standards for  
22 approval found in Section 223 with regard to

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1 impact on light, air, privacy, and how the  
2 structure would be viewed. If you have any  
3 questions, I would be happy to take them at  
4 this time.

5 CHAIRPERSON LOUD: Thank you, Ms.  
6 Jackson. Let me ask a quick question about  
7 the whole storm water management issue which  
8 surfaced initially in the pleading submitted,  
9 I think, by the applicant addressing the  
10 number of concerns of Mr. Rosenthal. Does the  
11 Office of Planning have an opinion regarding  
12 whether that's a zoning issue?

13 MS. JACKSON: I would have to say  
14 it doesn't appear to be in this case.

15 CHAIRPERSON LOUD: So the opinion  
16 of the Office of Planning, if I can sort of  
17 paraphrase, while it may be a problem and a  
18 real problem it sounds like the applicant is  
19 trying to work with Mr. Rosenthal to address  
20 it and we'll hear from Mr. Rosenthal later.  
21 You can walk through the Section 223 analysis  
22 for special exception relief and it does not

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1 implicate storm water at any point in the  
2 test.

3 MS. JACKSON: The standards that  
4 we have to address, light and air, privacy,  
5 the addition and how it may visually intrude  
6 upon the character of the houses on the  
7 street. The lot coverage isn't an issue and  
8 they have submitted the material sufficient  
9 for a 223. Those are the standards that we  
10 have to address in our analysis. I'm not sure  
11 how storm water is directly relevant.

12 CHAIRPERSON LOUD: Let's take the  
13 part of the test that deals with privacy and  
14 use of enjoyment, I think, getting away from  
15 the light and air.

16 If the construction worsens the  
17 condition such that Mr. Rosenthal's use of his  
18 property is substantially adversely impacted,  
19 I think the language of the 223 is, would that  
20 bring this storm water issue within the  
21 framework of a 223 analysis? You can answer  
22 both as an expert but also in terms of your

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1 experience in these types of cases.1

2 MS. JACKSON: I've not -- I have  
3 no experience with a similar situation where  
4 we have looked at it that way.

5 CHAIRPERSON LOUD: Thank you. I  
6 don't have any additional questions. It was  
7 a very good report and thank you very much for  
8 it. Thank you and the Office of Planning.

9 Board Members.

10 MEMBER TURNBULL: Mr. Chair, let  
11 me just go back. I think you were looking for  
12 any impacts. In this case particularly in  
13 relation to storm water. I would agree with  
14 you and I think the firm of Hamilton & Snowber  
15 has addressed this. We've had different -- I  
16 know of past cases where in even a deck where  
17 we've had a downspout issue.

18 As long as the water from the  
19 house in question, the addition is directing  
20 the water back onto their property and not  
21 impacting the general good or a neighbor. I  
22 think that meets the test. I think what

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1 Hamilton & Snowber is doing is -- in fact, I  
2 think one testimony is part of their property  
3 is actually lower than the alley so it's hard  
4 for water to go up hill like that.

5 I think what he's talking about is  
6 directing water through either a rain garden  
7 type filtering it through. I'm looking at  
8 even a flash flood or something. It sounds  
9 like with the cistern on the back and  
10 directing the water, again, into the backyard,  
11 I think they've addressed the concern from  
12 rainwater on the roof being collected and not  
13 being diverted directly onto a public way or  
14 to another's property, an adjacent neighbor's  
15 property.

16 I think that meets the test of  
17 satisfying part of 223 also. I feel very  
18 confident that the measures that he's doing we  
19 will address from the standpoint of water that  
20 they are responsible for from the roof, rain  
21 water. I think they have addressed that issue  
22 under 223.

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1                   CHAIRPERSON LOUD: Thank you, Mr.  
2                   Turnbull. Are there additional questions for  
3                   the Office of Planning? Okay. Thank you.  
4                   Why don't we turn now to the ANC, Commissioner  
5                   Frumin for the ANC's report.

6                   COMMISSIONER FRUMIN: All right.  
7                   I'll be quite brief. I think the gist of our  
8                   report is exactly like the Office of  
9                   Planning's report which is what is sought here  
10                  is side yard relief. There is an alley that  
11                  intervenes between the property and the  
12                  property for which side yard relief is sought.

13                  You have over 20 feet from the  
14                  side of the addition to the property line for  
15                  the other property. That, in our view,  
16                  ameliorated the side yard concerns. We also  
17                  took note of the fact that the proposed  
18                  addition didn't push at the edge of what could  
19                  be done in terms of lot occupancy or in terms  
20                  of rear yard relief.

21                  One of the things that had been  
22                  asked about is can't this be built further

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1 over from the adjoining property and go back  
2 further. It could be pushed over and not seek  
3 side yard relief and go deeper into the yard  
4 which would have been more adverse, in our  
5 view, to the adjacent property. Looking at  
6 the whole picture we thought that this was a  
7 reasonable request.

8 The issue that we injected into  
9 this, and we bear some responsibility for the  
10 fact that water is being talked about now is  
11 that it does seem that water in the alley is  
12 an issue. I agree with you that the water in  
13 the alley comes from lots of sources and there  
14 are houses in a sense up stream, up the hill,  
15 that certainly contribute more to the issue of  
16 water in the alley than probably either Mr.  
17 Rosenthal's house or the Shield's house.

18 Nevertheless, our view was if  
19 significant construction is going to be done  
20 on this property and relief is sought in order  
21 to do that construction, we thought it was  
22 important that efforts be made to make sure

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1 that this house doesn't contribute to the  
2 issue in the alley going forward. In a sense  
3 we are asking them to do more than the other  
4 neighboring properties are doing but because  
5 they are asking for relief.

6 When you look at the property and  
7 we looked at the property I think three of the  
8 commissioners went out and looked at the site  
9 and you see that the spigot currently goes  
10 into the alley. Well, that should be fixed.

11 In the process of this we wanted  
12 to make sure that would be fixed and we were  
13 pleased to see the efforts that were  
14 undertaken to look at ways to address this  
15 water address so that this property after the  
16 addition is done does nothing to contribute to  
17 any issues in the alley. That doesn't mean  
18 there won't be issues in the alley because  
19 there are other contributors but this property  
20 shouldn't be a contributor after the addition  
21 is done.

22 CHAIRPERSON LOUD: Thank you,

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1 Commissioner. Let's see if Board Members have  
2 any additional questions for you regarding  
3 your report as well as your testimony. Let me  
4 ask a couple of questions about the report.  
5 First, the report does indicate that there was  
6 a meeting January 4. There was a quorum. It  
7 was properly noticed but the copy that I have  
8 is not signed by the chair. Is this a copy of  
9 what was submitted to the BZA?

10 COMMISSIONER FRUMIN: I believe it  
11 was signed in the interim and forwarded on.  
12 This is the copy that I had in my file with me  
13 that I brought with me today. I can have it  
14 reforwarded and signed with the e-mail that  
15 forwarded it earlier in January should you  
16 wish.

17 CHAIRPERSON LOUD: But it's your  
18 testimony that the meeting did take place on  
19 the 4th and you are identified as one of the  
20 persons at the meeting.

21 COMMISSIONER FRUMIN: Yes.

22 CHAIRPERSON LOUD: And that a

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1 quorum was present.

2 COMMISSIONER FRUMIN: Yes.

3 CHAIRPERSON LOUD: And this  
4 resolution was voted upon and adopted by the  
5 full ANC.

6 COMMISSIONER FRUMIN: Yes.

7 CHAIRPERSON LOUD: Okay. Excuse  
8 me. Let me just ask Ms. Bailey.

9 Ms. Bailey, do we have in our  
10 exhibit list or in our files a record of the  
11 ANC report?

12 MS. BAILEY: No, Mr. Chairman.

13 CHAIRPERSON LOUD: Mr. Snowber, do  
14 you have any questions for the ANC?

15 MR. SNOWBER: No, I don't.

16 CHAIRPERSON LOUD: Have you seen a  
17 copy of the report?

18 MR. SNOWBER: I have. I was e-  
19 mailed a copy.

20 CHAIRPERSON LOUD: Okay. With  
21 that why don't we now see -- I don't believe  
22 there are parties or persons in the audience

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1 who are in support of the project. If so, now  
2 would be the time to come up.

3           Seeing none, Mr. Rosenthal, I  
4 think you were up at the table earlier. We  
5 would now set aside three minutes for persons  
6 that are in opposition to the project. Good  
7 afternoon, sir. If you could just state your  
8 name and address for the record.

9           MR. ROSENTHAL: Sure. My name is  
10 John Rosenthal. I reside at 4731 Butterworth  
11 Place, Washington, D.C. 20016. I'm the  
12 adjacent neighbor we've been talking about.

13           First, as a general matter, I  
14 would just like to note that having gone  
15 through -- I've been a resident of the  
16 District for over 10 years and having gone  
17 through this process for the first time it is  
18 simply amazing the lack of concern for the  
19 existing property rights of the existing owner  
20 who is not trying to build something here and  
21 disrupt the other neighbors.

22           It's simply amazing that the

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1 entire ANC process seems to be set up towards  
2 development. Yet, I'm sitting here watching  
3 a Board in which Board Members are speculating  
4 about water on a site they've never visited.  
5 It just seems the whole process seems vent  
6 towards approving development.

7 I would think that since the  
8 neighbor is seeking the exemption the burden  
9 should be on him and the presumption should be  
10 against development as opposed to what I've  
11 experienced over the last several weeks which  
12 is a presumption towards this with various  
13 back-office meetings, notices of ANC meetings  
14 where I didn't get notice, etc.

15 With that, let's turn to the  
16 substance of this matter. First of all, I  
17 would like to have stricken from the record  
18 the speculation from both the ANC and from Mr.  
19 Turnbill about where the water comes from.

20 MEMBER TURNBULL: That name is  
21 Turnbull, not Turnbill. Thank you.

22 MR. ROSENTHAL: I would like that

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1 stricken from the record. The simple matter  
2 of the fact is Mr. Shields' property sits  
3 uphill from mine. It's the only one that sits  
4 uphill from mine. It's the only one dumping  
5 the water into the alley. That's a simple  
6 fact. I have lived there for 10 years.

7 Nobody else in this room can  
8 attest to that simple fact. That is the  
9 reality. The reality is that for the last 10  
10 years I've been dealing with a flooding  
11 basement because Mr. Shields doesn't want to  
12 fix the constant water problems that occur as  
13 a result of his property.

14 He only has two downspouts. Both  
15 of them flow into the alley. The alley fills  
16 up and overflows into my property and then  
17 fills into my basement. I've spent over  
18 \$20,000 building French drains and putting in  
19 sump pumps.

20 Now, Mr. Shields comes in here  
21 with a plan and he says -- his architect says  
22 that they are going to ameliorate these water

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1 problems. Well, promises are great. The  
2 actual plans they've submitted to this Board  
3 don't address the water issue one iota.

4 Now, in opposition to the  
5 arguments I was making in front of the ANC  
6 they retained a landscape architect that  
7 noticed, and I've submitted to the Board that  
8 report that noticed the serious water problems  
9 and suggested different ways to ameliorate  
10 that.

11 In response, Mr. Shields and I  
12 tried to resolve this issue and he told me and  
13 submitted in writing to the ANC that he was  
14 not willing to agree to any of those things at  
15 this time. Now, I would like to know and I  
16 would like to have in the form of a plan  
17 submitted to the Board how they actually  
18 intend to resolve the water problems.  
19 Promising to build a cistern isn't building a  
20 cistern.

21 They have an architect. They can  
22 certainly design a water amelioration problem.

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1 I cannot imagine for the life of me that how  
2 water flows off an addition is not part of the  
3 zoning process. If it's this Board's position  
4 that is not within your jurisdiction, then I  
5 think we ought to adjourn this proceeding so  
6 that the Office of Corporate Counsel can  
7 provide an opinion to the Board about what  
8 their jurisdiction is or is not here.

9           So I'm tired of having to pay for  
10 a flooded basement and I'm not willing to have  
11 Mr. Shields make an addition to his property  
12 that is going to exacerbate that problem. I  
13 think it's this Board's duty and obligation to  
14 me as a resident of the District to approve a  
15 plan that specifically addresses how the water  
16 is going to be addressed here, not  
17 theoretically, "We may build a cistern. We  
18 may turn these spouts here. We may do some  
19 landscaping." I would like to have an actual  
20 plan they submit and this Board approves.

21           The second thing on the air,  
22 water, and light at the ANC I raised this

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1 issue and Mr. Shields' architect testified  
2 they had not done any kind of light study. I  
3 don't know what this is. It's not a report.  
4 There are no conclusions on it.

5           You yourself indicated you weren't  
6 taking testimony from the property owner today  
7 so I don't know what this study is. All I  
8 know is that you can see in one of the  
9 pictures I submitted. That's the picture from  
10 my breakfast room and you can see what he  
11 wants to do is put a 20-foot addition onto the  
12 house three stories high.

13           Not two stories high, three  
14 stories high. It's not going to have a flat  
15 roof. It's going to have an angled roof with  
16 a crawl space. That's three stories, not two  
17 stories. I can tell you that's going to block  
18 my water and light. Again, I'm the property  
19 owner. The burden is not on me.

20           Until somebody can come forward  
21 with an actual study that shows it's not going  
22 to impact my property in terms of blocking off

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1 the light into my sunroom where I have  
2 breakfast everyday with my family, I don't  
3 think this should be approved.

4 I'm sorry to take this attitude  
5 but, frankly, I've been disrupted by Mr.  
6 Shields and his property for the last 10 years  
7 and I have no desire to continue to suffer  
8 from his property and make it worse by this  
9 addition.

10 CHAIRPERSON LOUD: Thank you, Mr.  
11 Rosenthal. We appreciate that.

12 I think that this would be an  
13 appropriate time if the applicant has any  
14 questions for the witness and then we'll turn  
15 to the ANC and then see if Board Members have  
16 any questions for you as well.

17 MR. SNOWBER: I just have a few  
18 comments about a few of the statements he  
19 made.

20 MR. ROSENTHAL: Well, I'm going --

21 CHAIRPERSON LOUD: Excuse me, Mr.  
22 Rosenthal. If you have any questions for him,

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1 this would be an appropriate time for the  
2 questions. If you have comments, you can  
3 reserve those for your closing because you are  
4 allowed a closing.

5 MR. SNOWBER: Okay.

6 CHAIRPERSON LOUD: Unlike the  
7 other participants but if you have specific  
8 questions --

9 MR. SNOWBER: I'll have to post  
10 them. Are you aware the definition of what a  
11 story is in the District of Columbia? My  
12 understanding is a story does not include roof  
13 areas and does not include cellars.

14 MR. ROSENTHAL: Do you have a  
15 question or do you want to testify to what the  
16 definition of you think a story is?

17 CHAIRPERSON LOUD: I think it was  
18 a fair question. He asked the question about  
19 whether --

20 MR. ROSENTHAL: I do not know the  
21 legal definition of a story. All I know is  
22 that we had discussed with Mr. Shields. The

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1 house already has one addition on it. This is  
2 the second addition. The first addition put  
3 a flat roof on. I suggested to Mr. Shields  
4 that they put a flat roof on to be consistent  
5 with that and also not to block air and light.

6 That was rejected. Instead they  
7 are going with an angled addition that at  
8 least from the top of the angle I think would  
9 raise it what a layman would consider a third  
10 story. Is that the legal definition within  
11 the zoning laws of what a story is? I have no  
12 idea.

13 CHAIRPERSON LOUD: Mr. Snowber, I  
14 think he answered your question. Do you have  
15 an additional question?

16 MR. SNOWBER: I think I just have  
17 one other question.

18 Did Mr. Shields state exactly he  
19 rejects the idea of doing any water  
20 amelioration or did he actually state that he  
21 is not committing to an actual plan at this  
22 time but we have the stated goal of dealing

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1 with the water on our site? That would be my  
2 question.

3 MR. ROSENTHAL: His written  
4 statement to me is, "We will certainly be  
5 looking at this carefully but cannot commit to  
6 a specific solution at this time.

7 MR. SNOWBER: Thank you. That was  
8 an answer. I guess finally then about the  
9 process. Did Mr. Shields have a meeting with  
10 you on the site and with the ANC commissioners  
11 to review all of your concerns?

12 MR. ROSENTHAL: Mr. Shields the  
13 night before an ANC meeting had his wife come  
14 over to ask me to sign an approval for the  
15 addition and noted in the note that I have  
16 right here that, "There is a community meeting  
17 on this tomorrow and I would appreciate if you  
18 could sign this."

19 That prompted me to contact on my  
20 own the ANC and demand that the then-planned  
21 hearing be postponed. It was postponed. The  
22 ANC offered to come meet with the two of us to

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1 see whether this could be resolved and the  
2 meeting did occur.

3 MR. SNOWBER: Didn't this meeting  
4 where Ms. Shields came over and talked to you  
5 and your wife, I believe, that was on Sunday,  
6 December 6th. The ANC meeting was scheduled  
7 for Thursday, December 10th so it wasn't the  
8 night before, it was like four or five days  
9 before. At your request we agreed to postpone  
10 the meeting to January 4th so we postponed it  
11 a month.

12 Prior to that visit on December  
13 6th by Ms. Shields you did receive notice, the  
14 standard BZA notice that you would have  
15 received in the mail. Also prior to that Ms.  
16 Shields did tell your wife about the project  
17 on October 31st. My only point is -- I guess  
18 you could answer that. Am I right about my  
19 dates there?

20 MR. ROSENTHAL: No, you're not  
21 right about your dates.

22 MR. SNOWBER: I don't have any

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1 further questions.

2 CHAIRPERSON LOUD: Thank you, Mr.  
3 Snowber.

4 Commissioner Frumin, did you have  
5 any questions for the witness?

6 COMMISSIONER FRUMIN: I don't have  
7 any questions but if there is anything about  
8 the process that members of the Board are  
9 concerned about, I would happily answer  
10 questions about that. To try to tease it out  
11 in -- we feel very comfortable that we  
12 conducted a process that was transparent and  
13 gave every opportunity to hear all of the  
14 views including having meetings, including  
15 postponing a meeting.

16 The contact that was made when I  
17 learned what we always do when there is an  
18 application for a special exception is we ask  
19 the applicant to go to all of the nearby  
20 neighbors to find out what their views are  
21 and, (2) elicit support if they can.

22 In this case when we learned that

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1 there was this opposition we postponed the  
2 meeting to allow for more time to try to deal  
3 with that issue and here we are today.

4 CHAIRPERSON LOUD: Thank you.  
5 Let's see if Board Members have any questions  
6 for first the witness Mr. Rosenthal. Then if  
7 there are additional questions that may have  
8 surfaced for Mr. Snowber or the ANC, this  
9 would be a good time to ask those as well.

10 VICE CHAIR DETTMAN: Mr. Chairman,  
11 I have two questions for Mr. Rosenthal. One  
12 is that -- over here. One is that you  
13 received a copy of the sun study that was  
14 conducted by the applicant, this document  
15 here. Although you have made mention that  
16 there are no findings or conclusions on this,  
17 looking at this document do you know what's  
18 going on in the document? Can you look and  
19 see that it's showing the existing shadows?

20 MR. ROSENTHAL: I have no idea  
21 whether this document is accurate or  
22 authentic. There's been no testimony.

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1 There's no indication of what the measurements  
2 are.

3 VICE CHAIR DETTMAN: Okay. I  
4 didn't ask about its accuracy. I asked  
5 whether or not you knew what was kind of going  
6 on.

7 MR. ROSENTHAL: I'm not prepared  
8 to testify on a document that I have no idea  
9 what it is and I don't think the Board does  
10 either.

11 VICE CHAIR DETTMAN: Okay. Well,  
12 I think the Board will decide whether or not  
13 we know how to read these studies or not.  
14 That being said, could you just describe kind  
15 of the general sun and shadow that goes onto  
16 your property or into your house currently?  
17 You mentioned your breakfast room.

18 MR. ROSENTHAL: In the morning in  
19 the breakfast room there is morning shade that  
20 hits the backside before you get to the  
21 windows of the breakfast room. As the day  
22 proceeds it moves off it.

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1                   VICE CHAIR DETTMAN: Do you know  
2 generally hours of the day where you have  
3 sunlight, direct and indirect sunlight into  
4 your breakfast room or along the east side of  
5 your house?

6                   MR. ROSENTHAL: In the morning I  
7 don't know the precise hour, sir. It's  
8 starting at 8:00 and it goes until about at  
9 least 12:00 or so.

10                  VICE CHAIR DETTMAN: With respect  
11 to the water it can be debated whether or not  
12 that is a zoning issue or not but over the  
13 years you had mentioned you spent in excess of  
14 \$20,000 fixing this problem. Did you explore  
15 any other avenues in other District agencies  
16 be it DCRA, Office of Environment, to address  
17 this issue, the condition of the alley, that  
18 might be DDOT, to fix the problem and not just  
19 continue fixing the symptoms?

20                  MR. ROSENTHAL: We have talked to  
21 the District about having the alley redone and  
22 there has been no action on that. We talked

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1 to them several times about that. Again, with  
2 the various things I've done to my property  
3 I've improved it to the point that I've  
4 largely solved a lot of the water problems but  
5 to the extent there is a heavy rain it does  
6 come over the side and it's exacerbated by  
7 these downspouts. My concern is that with the  
8 addition and more coming off the property it's  
9 going to even exacerbate the problem.

10 VICE CHAIR DETTMAN: Thank you.

11 Mr. Chairman, I just have one last  
12 question for the applicant.

13 Mr. Snowber, Mr. Rosenthal said  
14 that he had recommended that maybe a flat roof  
15 be placed on the addition. Is there a reason  
16 why you went with one or the other? Was it  
17 aesthetics or was it function?

18 MR. SNOWBER: It was actually  
19 both. Aesthetically we thought that having a  
20 roof that is a continuation of the existing  
21 roof that is the addition on the back of the  
22 house now. The house is currently -- was

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1 originally L-shaped. It had a main mast with  
2 a wing that stuck off towards the northwest  
3 corner of the house.

4 This addition essentially is an  
5 extension of that addition and we felt that  
6 continuing that roof line and that ridge, even  
7 though our ridge is actually lower, was the  
8 right way to proceed. There was an earlier  
9 addition done to the house -- I don't know  
10 exactly what the date is on that. I think it  
11 precedes Mr. Shields -- that is flat-roofed  
12 and we feel it's not a very attractive  
13 addition. It doesn't complement the house.

14 This addition will, in fact, sort  
15 of surround this other addition a little bit  
16 so that will appear subsidiary to the mast of  
17 the new addition that's being built.  
18 Aesthetically we really feel it makes the  
19 house look much better. Mr. Shields some day  
20 will sell this house and feels like it will be  
21 a more appealing house for that.

22 Functionally, he's had a lot of

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1 problems with the flat roof and in general  
2 there can be problems with flat roofs if they  
3 are not done right. Generally with a sloped  
4 roof it's easier to waterproof and maintain.

5           Finally, there will be HVAC ducts  
6 and equipment in that attic. It's not an  
7 attic space. It's underneath the eaves there,  
8 the ridge. Again, with a flat roof it's  
9 impossible to put the equipment up there and  
10 the duct work. That's the reason for the  
11 roof.

12           MEMBER TURNBULL: Thank you, Mr.  
13 Chair.

14           Mr. Snowber, if this Board  
15 requested you to provide a drawing showing  
16 downspout locations and a drainage plan, you  
17 would be able to provide that. Correct?

18           MR. SNOWBER: I would, yeah.

19           MEMBER TURNBULL: Thank you.

20           CHAIRPERSON LOUD: Mr. Rosenthal,  
21 one of the things you testified to being  
22 concerned about this morning is that while

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1 there was a lot of testimony and there were  
2 representations in the pleadings regarding a  
3 solution, the plans did not have a solution  
4 identified on them. If Mr. Snowber were to  
5 identify the location of the downspouts, the  
6 redirection of the runoff water, would that be  
7 an example of the level of specificity you are  
8 looking for in these plans?

9 MR. ROSENTHAL: Yes, Mr. Chairman,  
10 but I think I need to point out that the  
11 properties here are built on fill and there  
12 isn't good drainage within the actual land  
13 there. Pursuant to what the landscape  
14 architect already recommended, I cannot  
15 imagine that he will be able to resolve this  
16 without building some kind of a water cistern  
17 or some place to lodge the water. I would ask  
18 that the plan pursuant to his own landscape  
19 architects include that very thing.

20 CHAIRPERSON LOUD: Is that your  
21 background, Mr. Rosenthal?

22 MR. ROSENTHAL: Is that my

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1 background?

2 CHAIRPERSON LOUD: Yes, sir.

3 MR. ROSENTHAL: No, it's not my  
4 background but I've had two water experts out  
5 to my house and I've already read the report  
6 from the landscape architect that was done by  
7 Mr. Shields, not by me.

8 CHAIRPERSON LOUD: Okay. One of  
9 the things that you testified to was that, I  
10 believe, and correct me if I'm wrong, that the  
11 location of the applicant's property is such  
12 that it's probably or it's certainly the only  
13 property as to which runoff water could be  
14 causing the accumulation that is then running  
15 off onto your property. Is that a fair  
16 statement of your testimony?

17 MR. ROSENTHAL: Yes, Mr. Chairman.

18 CHAIRPERSON LOUD: Okay. Let me  
19 then turn to the ANC which I think may have  
20 some familiarity with the area. If not, you  
21 can certainly say that you don't. Also to Mr.  
22 Snowber because I thought the representation

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1 that came from you, Mr. Snowber, was that  
2 there were several properties that could have  
3 been the cause of the runoff and not just your  
4 client. Could you respond to Mr. Rosenthal's  
5 concern?

6 MR. SNOWBER: Excuse me one  
7 second. I just want to open the drawing here.  
8 If you look at our sheet A1, again, our  
9 client's house is the one where it says  
10 "proposed addition." The alley which is  
11 identified running north to south on the page  
12 says public alley is sloping from north to  
13 south towards Butterworth Place.

14 Additionally, the public alley  
15 that runs from east to west behind the  
16 property and between the properties on  
17 Butterworth and Brandywine, my understanding  
18 is, and I'm pretty sure, that slope is from  
19 east to west so water is coming down from east  
20 to west getting to the intersection of the  
21 public alley and going towards both Brandywine  
22 and Butterworth.

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1 I believe we're not the only  
2 person putting water in the alley. I think  
3 the alley itself receives water and flows down  
4 towards Butterworth and that's what is filling  
5 up that alley as well. I don't believe that  
6 every other place it slopes towards a  
7 different direction except for where we put in  
8 the water. I think water continues to flow  
9 from many sources towards Butterworth Place.

10 CHAIRPERSON LOUD: Just so I  
11 understand, looking at Exhibit 8.

12 MR. SNOWBER: Yes.

13 CHAIRPERSON LOUD: Exhibit 8. All  
14 right. So you are suggesting that the houses  
15 that abut the public alley to the rear of your  
16 house, and that's also the rear of those  
17 homes, at least the one on the alley, let's  
18 say, the one directly behind your house, that  
19 house probably contributes to the collection  
20 of rainwater because the alley slopes to  
21 Butterworth Place?

22 MR. SNOWBER: That's my belief,

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1 right. It actually might even be easier to  
2 look at it on this large aerial photo. You  
3 can see more of the neighborhood and the way  
4 the alleys all are constructed. 47th Street  
5 is higher than 48th Street so the water is  
6 flowing from east to west and from north to  
7 south.

8 Brandywine is higher than  
9 Butterworth so water is in general flowing  
10 towards the west and towards the south. My  
11 belief is that the alley between the houses on  
12 Butterworth and Brandywine is dumping towards  
13 the west and then landing at that Butterworth  
14 alley, that north/south alley, and dropping  
15 towards Butterworth.

16 CHAIRPERSON LOUD: Thank you. Let  
17 me turn now to Commissioner Frumin.

18 First of all, if you have an  
19 opinion regarding and if you are familiar with  
20 that alley in that area regarding the layout  
21 surrounding the alley and homes that could be  
22 contributing to the collection of water there.

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1                   COMMISSIONER FRUMIN: A couple of  
2 things, Mr. Chairman. At our hearing on  
3 January 4th Mr. Rosenthal brought a picture to  
4 illustrate the issue and it may give as good  
5 a sense as anything else of the topography in  
6 the area. If I could give it to you?

7                   CHAIRPERSON LOUD: Yes, sir. You  
8 just have that one picture? Okay. Why don't  
9 you give it to Ms. Bailey and then we're going  
10 to need to have copies made.

11                  COMMISSIONER FRUMIN: I submitted  
12 that this morning.

13                  CHAIRPERSON LOUD: You did submit  
14 that? Okay. We have the picture and I'll  
15 just take a look at it.

16                  COMMISSIONER FRUMIN: Mostly I  
17 would say from the perspective of the ANC  
18 whether or not it's the only property that  
19 contributes wasn't really a driving factor for  
20 us. The point to us was it shouldn't  
21 contribute and particularly if the applicant  
22 is seeking relief he ought to go the extra

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1 mile and make sure that it doesn't contribute.

2 I think when you look at the  
3 picture it confirms my recollection -- I don't  
4 live very far from here -- that there is a  
5 slight slope up as you go up the alley away  
6 from the Rosenthal's and Shields' homes. They  
7 are quite likely to the extent water flows  
8 down I don't see a place where there is a  
9 valley along here. The likelihood is that  
10 water is coming from further up the alley as  
11 well.

12 Again, our point was let's don't  
13 have any water coming off of Mr. Shields'  
14 property into this alley because he's doing  
15 what he's doing and let's all work together to  
16 try to get the city to address the other  
17 issues in the alley so that this isn't the  
18 problem in the same way that it is.

19 In the meantime our main focus was  
20 this was an application for relief to be able  
21 to build 3.34 feet closer to the boundary line  
22 than otherwise would be allowed when you would

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1 be at 30 percent lot occupancy and well within  
2 the rear yard.

3           While we wanted to see this water  
4 issue addressed and we're consistent in our  
5 resolution that the water issue be addressed,  
6 the other issues about the imposition of the  
7 addition on the adjacent property we didn't  
8 think that's a radical pro-development. We  
9 just thought this was a reasonable request  
10 under the circumstances. In the process of  
11 getting the relief though, the opportunity  
12 should be taken to fix an issue that is a  
13 problem for everyone.

14           I believe that Mr. Shields at our  
15 hearing he didn't say he wasn't going to do  
16 any of these things. He said to us he didn't  
17 know which of these things he was going to do.  
18 I think he should say which of those things  
19 he's going to do. I think it's not an  
20 unreasonable request for you to be saying come  
21 back with a specific plan that shows drawings  
22 and shows are you're going to address this.

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1                   In fact, our resolution said we  
2                   support this on the condition that reasonable  
3                   assurances be made to you that this issue is  
4                   going to be addressed. That's a reasonable  
5                   way to approach this. I'm not sure that is  
6                   going to result in no opposition from Mr.  
7                   Rosenthal but, nevertheless, it strikes us as  
8                   reasonable, and it struck us at our hearing as  
9                   a reasonable approach to make sure this  
10                  benefits everybody.

11                   MEMBER MOLDENHAUER: Mr. Snowber,  
12                   obviously you were at the hearing so you  
13                   understood it was conditioned upon you  
14                   providing adequate relief or addressing the  
15                   issue of the water. How then have you in this  
16                   presentation provided additional information  
17                   or have you met with the ANC to make sure that  
18                   condition was approved?

19                   MR. SNOWBER: Well, I would say we  
20                   didn't provide any additional information. My  
21                   position, or our position, was that if we are  
22                   going to be required by the city, as they

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1 typically do, to deal with the water on our  
2 property, we will follow those requirements at  
3 the time we put together the set for permits.

4           There's a little bit of a question  
5 here about engineering cost and studies and  
6 soil analysis that would have to be undertaken  
7 in order to prepare such a site plan, a water  
8 management plan. While the project was  
9 conditional on your approval of being able to  
10 be built, we felt like we wanted to get that  
11 and then we would go ahead and prepare this  
12 plan. If it turns out that you want to make  
13 it conditional the other way, we can go ahead  
14 and do that.

15           I mean, I think the issue is we  
16 want to deal with the water just as much as he  
17 does. We don't want to continue to dump water  
18 in the alley. We don't want to have it  
19 creating problems for us as well. Like I  
20 said, the site does slope and there are low  
21 points and high points.

22           There are also issues of standing

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1 water on the property so we definitely a water  
2 issue and it's not in our interest to dump the  
3 water in the alley and create problems for  
4 anybody else. It's in our interest to solve  
5 the problem. That would be our take on it.  
6 If you require something like that from us, we  
7 would be willing to do that.

8 MEMBER MOLDENHAUER: Okay. Thank  
9 you.

10 I have one other question for Mr.  
11 Rosenthal. Obviously our job is to apply the  
12 law as it's written currently and to evaluate  
13 that. One of the factors in our evaluation is  
14 whether or not the addition would affect the  
15 light and air significantly of neighboring  
16 properties.

17 Now, we have the sun study that  
18 was provided by a licensed architect from the  
19 District of Columbia and we look at these  
20 every Tuesday multiple times. My question to  
21 you, I think Mr. Dettman was trying to inquire  
22 so that we can understand it and we can

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1 evaluate this because as an opposing party you  
2 are presenting evidence to us that it does  
3 impact your property by light and air.

4 Do you have a copy of this? I  
5 believe you do. I'm trying to understand  
6 where your sunroom is on this diagram. I  
7 believe your property is identified as the  
8 building to the left. The top section is the  
9 existing and the bottom section is the  
10 proposed. Can you either point out to us or  
11 describe to us where your sunroom is so that  
12 we can kind of understand and gauge how your  
13 property would be impacted?

14 MR. ROSENTHAL: Sure. If you look  
15 here on this corner of my property, there are  
16 four French doors. Then on the side here is  
17 three French windows across. This is the  
18 breakfast area. You will see here that's why  
19 I don't believe that these drawings are  
20 necessarily to scale here. He's proposing  
21 from this corner to take back 20 straight feet  
22 so this little block here.

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1 I don't believe these are to  
2 scale. This is going to go back 20 feet from  
3 the existing structure. Not on the other side  
4 but on this side of the alley putting on a  
5 rectangular 20 by -- I don't know what the  
6 width is but it's a rectangular structure.  
7 It's going to go down into the basement three  
8 stories and then at an angle.

9 MEMBER MOLDENHAUER: And your  
10 statement is that additional 20-foot structure  
11 would impose, I guess, or restrict light from  
12 8:00 a.m. until about noon in your breakfast  
13 room? That is your understanding?

14 MR. ROSENTHAL: I have not done a  
15 sun study. I'm not an architect. I got this  
16 this morning. Admittedly according to the  
17 architect it's going to impact sun and light  
18 at some point. His testimony is it will be  
19 minimal impact but they do, at least based on  
20 this first thing, indicate it is going to  
21 impact sun and light. I am not an architect.

22 If I knew this was going to be an

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1 issue, I could have hired an architect and  
2 brought one here this morning but I did not  
3 know this was going to be an issue. I knew it  
4 was going to be an issue. I didn't know there  
5 was going to be a sun study. They testified  
6 at the ANC meeting they had not conducted a  
7 sun study.

8 MEMBER MOLDENHAUER: Thank you.

9 MR. SNOWBER: We conducted the sun  
10 study since the ANC meeting, between then and  
11 now.

12 MEMBER MOLDENHAUER: Did you  
13 provide Mr. Rosenthal the copy prior to this?

14 MR. SNOWBER: No, I just finished  
15 this yesterday. I printed it and I brought it  
16 in and I gave it to everybody.

17 MEMBER MOLDENHAUER: Thank you.

18 CHAIRPERSON LOUD: Board Members,  
19 are there any additional questions for either  
20 the witness, Mr. Rosenthal, or for the  
21 parties, the applicant and the ANC. If not  
22 then, Mr. Rosenthal, thank you for your

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1 testimony.

2           Shortly we'll decide whether we  
3 are going to deliberate this case today and  
4 render a decision or we are going to continue  
5 it pending the need for additional  
6 information. We haven't made that  
7 determination yet. Right now we are going to  
8 turn back to the applicant for any closing  
9 statement.

10           MR. SNOWBER: First of all, thank  
11 you very much for your time and attention.  
12 I'm always struck whenever I come down to the  
13 BZA and the HBRB your contributions to the  
14 city, the real definition of public service.  
15 I greatly appreciate the time that you all put  
16 in here and your thoughtful comments and  
17 deliberations on this. Thank you on behalf of  
18 me and Mr. and Mrs. Shields.

19           In summary I haven't made an  
20 elaborate presentation of all the issues of  
21 the project because it sounds like you had  
22 read our report so I don't want to go over

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1 elaborating on those. My feeling is I think  
2 best summed by what Mr. Shields said in his  
3 letter to you all which was that -- his words  
4 were that, "We are requesting a special  
5 exception because we have an unusual lot and  
6 a home that needs more space.

7 We are proposing a reasonably-  
8 sized structure that takes account of the size  
9 and mass of the structure with a large space  
10 between us and our neighbor's house due to the  
11 alley. Water drainage from our property will  
12 be addressed in a responsible way in  
13 accordance with what the District expects of  
14 us. We hope you will approve our request and  
15 appreciate the work you are doing. Thank you  
16 for your consideration." That's all.

17 CHAIRPERSON LOUD: Thank you. I  
18 want to thank all of the parties as well as  
19 Mr. Rosenthal for your testimony this morning  
20 as well as the pleadings that make up our file  
21 in a case like this.

22 We have a couple of options at

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1 this point. First, we can deliberate the case  
2 today, render a decision today based on the  
3 evidence that we have received prior to the  
4 hearing and the evidence and the testimony  
5 that came up this morning.

6 It's always a challenge to me  
7 personally when we get a lot of filings on the  
8 morning of the hearing because we try to  
9 review this information prior to coming into  
10 the hearing so that we are prepared.

11 We did get some filings this  
12 morning. It was not an extraordinary amount  
13 but just want to encourage the parties to  
14 review and consult the rules and try to have  
15 the information in advance of the hearing so  
16 that we can be fully prepared.

17 With that my personal thoughts,  
18 and I can be persuaded to the contrary, are  
19 that there may be some marginal part of this  
20 storm water runoff issue that is within  
21 zoning. I think Mr. Turnbull alluded to it  
22 and I can remember cases that we've had

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1 specifically where the downspout and the  
2 routing of the water has been deemed a zoning  
3 issue.

4 I think that is implicated in this  
5 case both by the admission of the applicant  
6 that the downspouts are directed into the  
7 alley. The photographs show a collection of  
8 water.

9 One can dispute the cause of that  
10 back and forth but I think it is enough of a  
11 dinging of the part of Section 223 that  
12 requires the applicant to show that the  
13 addition will not substantially impact privacy  
14 and use and enjoyment of neighboring and  
15 adjoining properties to come within our  
16 consideration and review.

17 I know that there are differences  
18 of opinion on that and I certainly would not  
19 have that opinion across the board in every  
20 kind of case that we're talking about where  
21 there is an accumulation of storm water  
22 adjacent to a property, particularly in this

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1 case as it's in the alley and not directly on  
2 the adjoining property. Again, I think that  
3 there is enough in the record to suggest that  
4 is part of our consideration of whether the  
5 applicant meets 223.

6 On that note, the ANC deemed it  
7 important enough a consideration to want to  
8 see more specific information in the plans  
9 that would indicate what the resolution to  
10 this problem is going to be. I know that  
11 there was testimony regarding that. Mr.  
12 Turnbull mentioned that as well.

13 The witness that testified in  
14 opposition to the project, Mr. Rosenthal,  
15 after commenting on the process began his  
16 testimony by indicating that was a major  
17 deficit in what he had been hearing was that  
18 the resolutions proposed were not reflected  
19 anywhere on the actual plans, our Exhibit 8.

20 A long-winded way of saying I  
21 would be supportive of keeping our record open  
22 to allow the applicant to amend his plans or

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1 modify his plans to identify the relocation of  
2 the downspouts away from the alley very  
3 clearly on those plans, as well as allowing  
4 the ANC to submit a fully executed report  
5 since what we have from you is an unsigned  
6 report.

7 We have no record of it in our  
8 file. From my vantage point I'm looking at  
9 this in light of the concern of the ANC, in  
10 light of your representation of the community  
11 and I would like to at least make sure that  
12 your report is officially part of our file.

13 As I said, with that I can be  
14 persuaded otherwise and let me open it up to  
15 other Board Members.

16 VICE CHAIR DETTMAN: Mr. Chairman,  
17 I'm in agreement with you. I think a little  
18 extra time for the Board to look at some of  
19 the filings that came in today would be  
20 useful. In addition to that, I agree with you  
21 with respect to your comment about although it  
22 may be kind of a under -- the issue of the

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1 drainage and the water might be within the  
2 jurisdiction of the Board to a small degree.

3           Nonetheless, I think in our  
4 analysis of whether or not a proposed addition  
5 has an undue impact on the privacy and use and  
6 enjoyment of neighboring properties, if it  
7 turns out that this addition creates or  
8 exacerbates the water issue on neighboring  
9 properties, then that would certainly impact  
10 the enjoyment of the property so I think there  
11 is a hook there so I think additional  
12 information on the plan set that articulates  
13 where the other downspouts will be rerouted  
14 to, I think, is appropriate.

15           My last point is that with respect  
16 to the drainage I'm not expecting to see  
17 information, a full-blown set of construction  
18 documents that show how this addition is going  
19 to solve the issue of drainage in the alley.  
20 It's not the applicant's responsibility to  
21 solve the issue in the alley. It's having a  
22 general working knowledge of other District

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1 standards, as the applicant testified to.  
2 It's now their responsibility to deal with  
3 their water on their property.

4 We have a picture in the record of  
5 Mr. Rosenthal's backyard showing a downspout  
6 that essentially dumps his water into his  
7 basement so we're not looking for the  
8 applicant to solve that problem.

9 With respect to the sun study, I  
10 would be open to keeping the record open for  
11 Mr. Rosenthal to submit a response to this  
12 study. If he so chooses and wants to go to  
13 the expense of hiring an architect to conduct  
14 his own sun study that might refute this one,  
15 I would be open to that as well giving him the  
16 opportunity to respond to this filing that  
17 came in today.

18 MEMBER MOLDENHAUER: I concur with  
19 both of my fellow Board Members. I would only  
20 stress that, you know, while we can keep the  
21 record open for the sun study by Mr. Rosenthal  
22 that he was provided the right notice and

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1 information previous to today and if he had  
2 wanted to come with additional information, he  
3 had that choice.

4 I think that just for the record  
5 to make it clear the reason why we would allow  
6 him additional time to respond was just  
7 because the applicant provided us with the sun  
8 study as of today which was a new piece of  
9 evidence that we had not had a chance to  
10 receive or he did not have a chance to  
11 receive. I just wanted to clarify that from  
12 my view on the record.

13 MEMBER TURNBULL: Mr. Chair, I  
14 would just go back and touch on a point that  
15 Mr. Dettman mentioned about we're not looking  
16 for a full set of drawings to verify the water  
17 situation. I think maybe the best thing would  
18 be to go back to some words that Commissioner  
19 Frumin said is that we basically want to see  
20 that the water collected from the roof is not  
21 a contributing factor to the problems in the  
22 alley.

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1 I think that is basically what  
2 we're trying to satisfy here is that Mr.  
3 Snowber has to produce this drawing that is  
4 going to show that the water collected from  
5 the roof does not contribute to a problem Mr.  
6 Rosenthal alluded to. I think that would be  
7 it.

8 I agree with that the sun study is  
9 what it is. I mean, it's done showing the  
10 existing building and it's done showing the  
11 addition. If Mr. Rosenthal doesn't believe  
12 that the architects produced it, that's up to  
13 him to go back. For us we rely on this as a  
14 certified piece of evidence provided by the  
15 architect. If he doesn't believe it, then  
16 that's Mr. Rosenthal's duty to carry that  
17 further.

18 VICE CHAIR DETTMAN: Just to  
19 follow up on Mr. Turnbull's comment about the  
20 sun study. We've seen several of these types  
21 of studies so the Board has been able to get  
22 to a level of comfort of looking at these

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1 studies and analyzing them and also giving  
2 them the weight that they are really entitled  
3 to.

4           Having conducted these studies  
5 myself, you know, I know the inputs that go  
6 into it and I know how the results of studies  
7 can be manipulated in different ways. That's  
8 why I said let's leave the record -- that's  
9 why I suggested maybe we could leave the  
10 record open to allow Mr. Rosenthal to either  
11 refute the findings in this study by saying  
12 that they are inaccurate or conducting another  
13 study and that we can compare the results.

14           It might turn out that they are  
15 the exact same. It might turn out that  
16 they're different and then it will be up to  
17 the Board to determine what shadow study is  
18 most reflective of what would happen if this  
19 addition would be constructed.

20           CHAIRPERSON LOUD: Thank you,  
21 colleagues. I just wanted to weigh in as  
22 well. I'm generally hearing that we probably

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1 don't want to decide the case today and that  
2 we would like to leave the record open for  
3 potentially a more specific delineation of the  
4 downspout issue because I think that is the  
5 storm water management issue on the table here  
6 today for us and clarifying how that will not  
7 contribute to the pooling of water in the  
8 alley.

9 I'm not necessarily supportive of  
10 allowing Mr. Rosenthal an opportunity to come  
11 up with his own sun study. A couple of  
12 reasons why I'm not. First of all, I think  
13 that it will delay ultimately the decision in  
14 the case because depending on what's in the  
15 study I think the applicant would want an  
16 opportunity to respond to the study. Perhaps  
17 the ANC would as well and that would extend  
18 out further the date that we were to make the  
19 decision in this case.

20 Mr. Rosenthal is not a party in  
21 the case, he is a witness, and his testimony  
22 has been very helpful on the issue of this

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1 water problem but, again, not being a part I'm  
2 not certain if we would want to establish the  
3 precedent of allowing him to provide his own  
4 sun study.

5 I'm also troubled by the fact that  
6 there is no evidence for Mr. Rosenthal in our  
7 record already. This is a case that goes back  
8 a ways. Mr. Rosenthal's concerns are  
9 mentioned in the pleadings very early in the  
10 process.

11 Not only the water pooling in the  
12 alley but the flat roof and some of the other  
13 concerns that he has had so this appears to  
14 have been something that was on the radar for  
15 Mr. Rosenthal and something that the applicant  
16 tried to work through and Mr. Rosenthal tried  
17 to work through previously. I'm not sold on  
18 the idea that there could not have been more  
19 adequate preparation for this morning's  
20 hearing.

21 I think the notice of the hearing  
22 went out in October and it provided all with

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1 a pretty long window of opportunity to get  
2 prepared for this morning's hearing. I don't  
3 think it's fair to continue to extend this  
4 out. I'm not in favor of that.

5 I won't draw a line in the sand on  
6 it if the Board feels strongly that we should  
7 allow that but just know that it will extend  
8 out our date for making a final decision on  
9 this because I do think it would be  
10 appropriate to give the applicant a chance to  
11 respond to that sun study. Not with it's own  
12 supplemental sun study but with the narrative  
13 commentary on it.

14 MEMBER MOLDENHAUER: Chairman  
15 Loud, I think that -- I have two responses.  
16 One, as I said before, I do agree that  
17 typically I would not be willing to provide  
18 additional time but I think because the sun  
19 study was just provided today and that there  
20 was potentially no prior opportunity for Mr.  
21 Rosenberg and the applicant to have a dialogue  
22 on that issue that we should provide him the

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1 additional time.

2 My second point is that the  
3 applicant obviously has their own interests at  
4 heart. Obviously if they want to have a  
5 resolution quickly they will either respond  
6 very quickly or try to summarize any issues in  
7 advance and provide any notations to us on  
8 that issue.

9 I don't think that we would have  
10 to provide a lengthy time period. I believe  
11 that the applicant and the ANC already are  
12 aware of what potential issues may be  
13 addressed by a response from Mr. Rosenberg.

14 CHAIRPERSON LOUD: Okay. Unless  
15 there's an additional round of comments?  
16 Okay. Perhaps what we can do is set this for  
17 decision and then work our way backwards in  
18 terms of response dates that we are going to  
19 leave in our record. We are only going to  
20 leave the record open for the specific things  
21 that we are talking about right now.

22 If we set February 9 for decision

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1 on the case and then working backwards from  
2 February 9, if we were to give until January  
3 26, which would be next Tuesday -- okay,  
4 January 26 for submission of the sun study by  
5 Mr. Rosenthal and then February 2nd for any  
6 responses to that by the parties in the case,  
7 the applicant and the ANC, if any.

8 I know this is kind of hard on the  
9 ANC with your cycle of meetings but I think we  
10 could proceed. You know, we could keep this  
11 case on a forward momentum without sacrificing  
12 the concerns of Mr. Rosenthal as expressed by  
13 the Board.

14 Ms. Bailey or Mr. Moy, for  
15 February 9 what are we looking like in terms  
16 of -- I guess that morning for decision.

17 MR. MOY: This would be the first  
18 and only case for decision that morning, sir.

19 CHAIRPERSON LOUD: All right. So  
20 it looks like a good date to put that decision  
21 on. Again, we can give Mr. Rosenthal until  
22 January 26 which is really next Tuesday for

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1 submission of a sun study or for more  
2 elaborate response to the sun study that has  
3 been submitted. That's your option, Mr.  
4 Rosenthal.

5           Then for the applicant we would  
6 like plans denoting the downspout locations.  
7 I think you've had some narrative already but  
8 any additional narrative that would help to  
9 edify how that does not -- how the addition  
10 with the relocated downspouts serves to  
11 prevent further exacerbation of the pooling of  
12 the water in the alley and that problem.

13           Then for the ANC the fully  
14 executed ANC report. Okay? Then following  
15 that February 2nd. Mr. Rosenthal, that should  
16 go to the BZA, of course, as well as to the  
17 two parties, the applicant and the ANC. If  
18 there is a response, you don't have to respond  
19 to it. If there is a response made to the  
20 filing of Mr. Rosenthal, then that would be  
21 due by February 2nd.

22           These are the only items that we

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1 are leaving the record open for and we are not  
2 requesting any additional information or  
3 explanation of information. In fact, if it's  
4 received and it's not consistent with what we  
5 are leaving the record open for, it will be  
6 rejected. Okay?

7 Yes, sir.

8 MR. SNOWBER: What is the date you  
9 would like me to get the water management  
10 report to you on or the revised plan?

11 CHAIRPERSON LOUD: I'm thinking we  
12 really didn't want a water management report  
13 but the revised plan would be January the  
14 26th.

15 MR. SNOWBER: Thank you.

16 CHAIRPERSON LOUD: Yeah, January  
17 26th.

18 MR. SNOWBER: Just let me clarify.  
19 A site plan showing downspout locations and  
20 the word you used was a narrative?

21 CHAIRPERSON LOUD: And if you have  
22 any additional supplemental information. You

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1 have some in the record already as to why  
2 locating the downspouts in those locations is  
3 sufficient to prevent exacerbation of the  
4 pooling problem in the alley. You may not  
5 have any additional.

6 MR. SNOWBER: Okay. Thank you.

7 MR. MOY: Mr. Chairman.

8 CHAIRPERSON LOUD: Yes, sir.

9 MR. MOY: For staff's  
10 clarification, for February 2nd, for the  
11 respondents for February 2nd would that also  
12 include Mr. Rosenthal the opportunity to  
13 respond to the applicant's revised drawings  
14 and text?

15 CHAIRPERSON LOUD: I don't think  
16 so, Mr. Moy, because, again, Mr. Rosenthal is  
17 not a party. I'm not certain.

18 MR. MOY: That's fine. I just  
19 wanted clarification for the record.

20 CHAIRPERSON LOUD: Okay. All  
21 right. He's not a party. I think what would  
22 be helpful for Mr. Rosenthal and we can then

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1 sort of weigh out the evidence and the weight  
2 to be given to the different parties and  
3 witnesses' positions by simply looking at the  
4 initial sun study, any subsequent sun study  
5 that comes because we're talking about the sun  
6 study issue, and then separately the existing  
7 record on the pooling of water in the alley  
8 and the relocation of the downspouts. Does  
9 that clarify it, Mr. Moy?

10 MR. MOY: Absolutely.

11 CHAIRPERSON LOUD: Okay. Is there  
12 anything further in this case? Yes, sir.

13 COMMISSIONER FRUMIN: I think it's  
14 clear but I just want to be clear.

15 CHAIRPERSON LOUD: Okay.

16 COMMISSIONER FRUMIN: The ANC's  
17 next meeting is February 11th so other than  
18 forwarding to you a verified copy of the  
19 resolution from January I don't see the ANC  
20 taking any other action providing any more  
21 documentation.

22 On this water issue I think we've

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1 spoken to it in our resolution that we would  
2 like them to show -- I think our words were  
3 provide meaningful assurances that whatever is  
4 done in the construction won't exacerbate the  
5 issues in the alley. That's as much as we  
6 have to say. Other than forwarding you that  
7 signed copy of the resolution the ANC is done?

8 CHAIRPERSON LOUD: The ANC is  
9 done. I think the record is full with the  
10 ANC's report as you submitted it. It just  
11 wasn't executed. Some of our leaving the  
12 record open is to address some of the concerns  
13 that I think have already been addressed in  
14 your report to your satisfaction but I think  
15 the Board felt like perhaps to Mr. Rosenthal's  
16 satisfaction some of it had not. It sounds  
17 like to the ANC's it was. Certainly I think we  
18 can move forward on February 9 without any  
19 supplemental ANC information.

20 COMMISSIONER FRUMIN: Again, just  
21 to be clear, will you be taking testimony on  
22 February 9th or will that be part of that

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1 first portion of the meeting where there is no  
2 testimony and, therefore, no need for me to  
3 return on February 9th?

4 CHAIRPERSON LOUD: There is no  
5 need for you to return on February 9th. We  
6 won't be taking testimony. It's also viewable  
7 on the internet. You can watch it on the  
8 internet. Okay? All right. Is there  
9 anything further?

10 MR. SNOWBER: Mr. Loud, I'm sorry.  
11 I do have one further question.

12 CHAIRPERSON LOUD: Yes.

13 MR. SNOWBER: Just because I  
14 wanted to submit sufficient information to you  
15 all to make your record. I don't want to  
16 overdo this but I want to provide you exactly  
17 what -- I guess one question is there any  
18 person I might communicate with about exactly  
19 what the specifics are? I get a site plan.  
20 Are you looking for -- you say it's not full  
21 to the degree of a construction document.

22 You mentioned sort of a narrative

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1 about how this doesn't exacerbate the problems  
2 in the alley. A topographic plan showing  
3 water flow? I don't know if you have a  
4 standard for them or it's up to me? I  
5 certainly want to address the issue. We've  
6 got to deal with it anyhow. We've got to come  
7 up with a plan for this water.

8 CHAIRPERSON LOUD: From my  
9 perspective the location of the downspouts and  
10 a clear indication of that addressing the  
11 problem because I think it may have been Mr.  
12 Rosenthal, it may have been one of the other  
13 witnesses who alluded to it.

14 When you start getting into a lot  
15 of the geotechnical ramifications that is not  
16 the expertise of this Board and there is a  
17 body that you will submit that to that has the  
18 engineers and soil analysts and others who are  
19 skilled at that so it's not really a zoning  
20 issue at that point. I think what we are  
21 concerned about is just the part of this  
22 that's zoning that Mr. Rosenthal has alleged

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1 which would substantially adversely impact his  
2 privacy and use of enjoyment.

3 That for me based on the previous  
4 cases that we've had where there's been some  
5 addressing of this kind of issue is the  
6 location of the downspouts, how they are  
7 routed, how they are directed and making that  
8 really clear on the plan that you submit.

9 MR. SNOWBER: Okay. That's clear.

10 CHAIRPERSON LOUD: Is that clear?  
11 Okay.

12 MEMBER TURNBULL: Mr. Chair, I was  
13 just going to add that you are right, a very  
14 simple landscape plan that shows the downspout  
15 and may be a direction of the flow, where you  
16 think it's going to go on the property, and if  
17 there is any very simple landscape feature or  
18 topo that would assist us in understanding  
19 that the water is going to be there.

20 Again, nothing really too  
21 detailed. Just something very basic that  
22 shows your intent when you complete the

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1 construction drawings of what you will be  
2 showing for a permit. Just, again, something  
3 that --

4 MR. SNOWBER: Thank you.

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

7 With that, unless there are any  
8 additional questions, I think that we can  
9 adjourn this case and move to our next case.  
10 Thank you.

11 Ms. Bailey, when you are ready,  
12 you can call our next case.

13 MS. BAILEY: Mr. Chairman, the  
14 next case is Application 18022, the  
15 Application of Norman and Shirley Scribner,  
16 and it's pursuant to 11 DCMR Section 3104.1  
17 for a special exception to allow a one-story  
18 rear addition to an existing one-family  
19 detached dwelling under Section 223, not  
20 meeting the rear yard requirements. That's  
21 Section 404. The property is located in the  
22 R-1-B District at 3951 Harrison Street, N.W.,

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1 Square 1754, Lot 913.

2 Is someone here from Norman and  
3 Shirley Scribner?

4 CHAIRPERSON LOUD: If you could  
5 please step forward. Have you been sworn in  
6 as witnesses? Okay. Why don't you approach  
7 Ms. Bailey and she'll swear you in. You only  
8 have to be sworn in if you are going to be  
9 giving testimony this morning.

10 MS. BAILEY: Do you solemnly swear  
11 or affirm that the testimony that you're about  
12 to give is the truth, the whole truth, and  
13 nothing but the truth?

14 WITNESSES: I do.

15 MS. BAILEY: Thank you. You can  
16 have a seat.

17 CHAIRPERSON LOUD: Yes, sir.

18 MS. BAILEY: Mr. Chairman, if I  
19 can take you back to when the hearing  
20 initially began we received the affidavit this  
21 morning. It indicates that the property was  
22 posted this past Friday. As you know, there

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1 are 15 days of posting that is required.

2 CHAIRPERSON LOUD: Ms. Bailey, is  
3 it 15 days or five days?

4 MS. BAILEY: No, sir. We're to  
5 receive it five days prior to the hearing but  
6 the property is to be posted for 15 days.

7 CHAIRPERSON LOUD: Okay. Let me  
8 ask before we get started, is the ANC present  
9 for this case? This would be ANC-3E. The ANC  
10 did submit a report, our Exhibit 20, in  
11 support of the application. Why don't you  
12 join us at the table. I don't think that this  
13 case will be long at all. I know I said that  
14 for the last case, too. I'm going to get one  
15 of them right.

16 I think we have a preliminary  
17 issue regarding the posting and then I do  
18 think the record is full. I think you have  
19 submitted a very good application. The Office  
20 of Planning as weighed in and issued its  
21 report supportive of your application. It's  
22 a 223 for an addition to a single-family

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1 dwelling that simply does not meet the  
2 requirements for the rear yard.

3           The requirement is 25 feet and 15  
4 feet will be provided. We are very familiar  
5 with the facts of the case. We need to  
6 initially address the issue of the posting.  
7 Are rules require that posting be done 15 days  
8 in advance of the hearing and that five days  
9 before the hearing that there be some filing  
10 that evidences that posting was done.

11           In this case I believe it was  
12 submitted this morning and that the 15-day  
13 deadline was not met. Is there a reason that  
14 you wanted to proffer? I think you have to  
15 cut that on. Yeah, the green light will come  
16 on when you have done it correctly.

17           MR. SCRIBNER: Am I on the air  
18 now?

19           CHAIRPERSON LOUD: Yes, sir.

20           MR. SCRIBNER: This was just  
21 simply an inadvertent slip on our part. We were  
22 told months ago that there would be a

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1 requirement for a 15-day posting. There is no  
2 other way to state it other than that we let  
3 that date slip by without paying attention to  
4 it. This is not because of a careless  
5 attitude on our part. It's just one of those  
6 things that happens.

7           What we did do is we called down  
8 here and we thought, "Oh, my goodness. We  
9 missed this deadline." That was, I think,  
10 last Friday. We were told that we could come  
11 down immediately and pick up the zoning poster  
12 announcements, two instances of them. We took  
13 them back to the house and posted them just on  
14 the off chance that maybe that would be  
15 available.

16           The reason we didn't bring the  
17 evidence down on Friday was that we had to go  
18 through the process of taking photographs and  
19 go to the notarization of the affidavit which  
20 we did and that didn't get completed until too  
21 late in the day to get down because we knew  
22 the office closed at 5:00 p.m.

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1 I didn't check into this but I  
2 presumed the office was closed on Saturday and  
3 Sunday and then again on Monday. My wife,  
4 Shirley, is the one who spoke to the lady who  
5 indicated that it would be -- I don't want to  
6 put words in her mouth but that we should  
7 bring -- I don't whether she said that was  
8 just fine to bring it but she did say we  
9 should bring the thing when we came to the  
10 hearing.

11 We also realized that late in the  
12 day it was probably too late to cancel out  
13 hearing with you and, therefore, avoid the  
14 offense to you of showing up with this little  
15 snag in the process.

16 We put ourselves at the mercy of  
17 your judgement on this considering that we did  
18 have the full mailing requirements of the  
19 paperwork for all of that, plus getting an  
20 actual letter signed by our immediate  
21 neighbors to make a fairly full docket for  
22 your consideration of the neighborhood's

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1 approval of this. You are absolutely right,  
2 of course. That is the one flaw in the  
3 process for which we apologize and we leave  
4 ourselves to your judgement.

5 CHAIRPERSON LOUD: Thank you, sir.  
6 This has happened in cases before so I don't  
7 think we are going to belabor the point. Let  
8 me just ask you did you identify yourself for  
9 the record are did you jump in --

10 MR. SCRIBNER: No, I did not.

11 CHAIRPERSON LOUD: Okay. Why  
12 don't you identify yourself for the record.

13 MR. SCRIBNER: Norman O. Scribner  
14 at 3951 Harrison Street, N.W.

15 CHAIRPERSON LOUD: All right.  
16 Commissioner Frumin, if you could introduce  
17 yourself again.

18 COMMISSIONER FRUMIN: Yes. My  
19 name is Matthew Frumin, Commissioner ANC-3E.  
20 If you would like, I could offer a brief  
21 comment. I was not familiar with this issue.  
22 I didn't know this has happened but as was the

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1 case in the previous case, what we do when we  
2 have a special exception application is we ask  
3 the applicant to go to all of the neighbors to  
4 get letters or some sort of petition signed.  
5 We would like that because if there are issues  
6 and we find out there are issues in that  
7 process and it's an extra level of notice that  
8 we think is provided.

9 In this case the Scribners did  
10 that, came back. I think the letters are part  
11 of the record. To the extent that an issue  
12 could be a deficiency in notice along the way  
13 of this addition and implications for the  
14 neighbors, I think our extra process in ANC-3E  
15 in soliciting these letters may help on that  
16 issue.

17 CHAIRPERSON LOUD: Very good.  
18 Board Members, I think what we've heard is  
19 testimony from the applicant regarding good  
20 cause shown for not making the deadline and  
21 testimony from the ANC that it has not been  
22 prejudiced. They are a party and they have

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1 not been prejudiced because they have an extra  
2 layer of requirements that they like persons  
3 in their ANC Commission to go through.

4 Our Rule 3100.5 allows us to waive  
5 the provision of the 15-day advance posting  
6 and five-day filing requirement. I recommend  
7 to Board Members that we do that in this case.  
8 It seems by consensus the Board Members agree  
9 that we should waive it.

10 I'll note for the record that our  
11 Exhibit 20 was the notice that went out from  
12 this office to neighbors within 200 feet.  
13 There are ways to notice community members  
14 beyond the posting and in this case it was  
15 done both in terms of our Exhibit 20 and then  
16 the extra layers that Commissioner Frumin  
17 spoke about.

18 Again, the record is full in this  
19 case. We think that you have put together a  
20 strong application for Section 223 relief and  
21 we want to do what we call rest on the record  
22 which is where unless you have some specific

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1 things you want to raise for us we'll turn to  
2 the Office of Planning for a formal  
3 introduction of its report which was  
4 supportive of your application and then we'll  
5 deliberate the case this morning.

6 MR. SCRIBNER: First of all, I  
7 would like to thank the Board for its  
8 favorable consideration of our failure to get  
9 the 15-day posting documented correctly.  
10 Secondly, I would like to say that we have as  
11 much information available narratively to you  
12 from me about the nature of the addition, you  
13 know, probing materials and so forth, shy of  
14 architectural drawings, although the drawings  
15 we did send are pretty good elevation set  
16 forth.

17 I'm just here to answer any  
18 questions that you have. It's a pretty  
19 uncomplicated and pretty clear in the drawings  
20 what the outline of the shape will be and  
21 everything. The purpose of the edition as of  
22 next month we will have six grandchildren in

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1 the space of four years. Do I need to say  
2 more?

3 CHAIRPERSON LOUD: Thank you. I  
4 think we'll proceed along those lines with  
5 your suggestion to make yourself available for  
6 any questions. Unless Board Members have any,  
7 why don't we turn to the Office of Planning  
8 for its report, our Exhibit 21, that  
9 recommends approval.

10 MR. JACKSON: Good morning, Mr.  
11 Chairman and Members of the Board. Yes, you  
12 have the Office of Planning Report before you.  
13 We will stand on the record. The application  
14 was sufficient based on the site visit and the  
15 additional information that was provided by  
16 the applicant and we think the application  
17 meets the standards for approval under Section  
18 223.

19 The only suggestion is that we  
20 suggest a condition that would have the  
21 applicant planting an evergreen tree along the  
22 western boundary in front of the glass door of

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1 the proposed addition in line with the promise  
2 that the applicant made to the neighbors.  
3 Other than that, we are very supportive of the  
4 application.

5 CHAIRPERSON LOUD: Thank you, sir.  
6 Just on that one suggestion, is that a  
7 suggestion or a condition?

8 MR. JACKSON: It's a suggested  
9 condition.

10 CHAIRPERSON LOUD: Suggested  
11 condition. All right.

12 MR. SCRIBNER: I'm not sure that I  
13 quite understood exactly what the suggestion  
14 was, sir.

15 MR. JACKSON: All right. In your  
16 submission there was a statement that you  
17 promised to put an evergreen tree along the  
18 western boundary in front of the glass door on  
19 the west side of the addition to help screen  
20 that from the neighbor's addition. Since it  
21 indicated that was promised, we suggested that  
22 be a condition of approval for the special

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1 exception.

2 MR. SCRIBNER: Okay. The glass  
3 window.

4 MS. JACKSON: Is there a glass  
5 window?

6 MR. SCRIBNER: Yes, there is a  
7 large glass window on the west end of the  
8 addition.

9 MS. JACKSON: I believe that's the  
10 door.

11 MR. SCRIBNER: Is it the door at  
12 the top of the little set of steps that goes  
13 down?

14 MS. JACKSON: Yes.

15 MR. SCRIBNER: Yeah. Okay.

16 MR. JACKSON: Apparently it's a  
17 glass door?

18 MR. SCRIBNER: I don't recall that  
19 part of it. This is embarrassing because, you  
20 know, I just didn't recall that particular  
21 door would be a glass door necessarily. Our  
22 property is that drawing there.

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1 MR. JACKSON: Okay. Do you have  
2 the application before you?

3 MR. SCRIBNER: No, I don't have  
4 the application. I just have the drawings and  
5 copies of the materials that we have brought  
6 here this morning for distribution with the  
7 photographs.

8 MR. JACKSON: I guess what I'm  
9 making reference to was in the second  
10 paragraph of the application. The last  
11 sentence says, "The owners propose to plant a  
12 large evergreen tree along the boundary line  
13 directly opposite the lone glass door on the  
14 west side of the addition to protect the  
15 privacy of their neighbors."

16 MR. SCRIBNER: I now see that,  
17 that tree there. If that was part of the  
18 application, I'm sure we considered that at  
19 one point maybe two or three months ago when  
20 these drawings were made. Yes, we would be  
21 willing to do that and I can attest to that  
22 and affirm that in this hearing for the record

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1 if that is your desire.

2 MR. JACKSON: Okay.

3 MEMBER TURNBULL: Mr. Jackson, I  
4 think what you're referring to is on Exhibit  
5 No. 7, the drawings, Drawing No. 1, the right-  
6 hand side, the stairs.

7 MR. JACKSON: Let me see if I can  
8 find that drawing.

9 MEMBER TURNBULL: Is that the  
10 location at the end of --

11 MR. JACKSON: Well, this is an  
12 existing hedge. Oh, right here, the proposed  
13 evergreen tree. Yes.

14 MEMBER TURNBULL: Proposed  
15 evergreen tree?

16 MR. JACKSON: It would be just --  
17 um, would that be south of the funtenia hedge?  
18 It would be just south of the hedge. A tree  
19 is proposed just south of the hedge going  
20 toward the front property line.

21 MR. SCRIBNER: I've seen the  
22 location on my drawing No. 1.

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1 MR. JACKSON: Yes.

2 MR. SCRIBNER: That comports with  
3 your physical description of where it would  
4 be.

5 MR. JACKSON: Right.

6 MR. SCRIBNER: It will shield that  
7 door which is already at an elevated level off  
8 the ground.

9 MR. JACKSON: Yes.

10 MR. SCRIBNER: Okay. We're happy  
11 with that as a commitment.

12 VICE CHAIR DETTMAN: Mr. Scribner,  
13 just a quick question. Did you discuss the  
14 plans with your neighbor to the west?

15 MR. SCRIBNER: My wife did. I did  
16 not personally discuss it except for Calvin  
17 Cavits who owns the house to the immediate  
18 east of us. I personally solicited his --  
19 he's a personal friend of mine and I  
20 personally solicited his signature.

21 Because we're neighbors and  
22 friends and actually colleagues of a sort

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1 behind the scenes in other matters, I had a  
2 detailed discussion with him about it. Yes,  
3 I did. He was immediately and completely  
4 unqualifiable enthusiastic about everything.

5 Shirley, do you have anything to  
6 add to that? Did you talk with any of our  
7 neighbors? Maybe I'm not supposed to ask  
8 someone else to comment.

9 CHAIRPERSON LOUD: She can comment  
10 but I was just going to say that she would  
11 need to first be sworn in. You were sworn in?  
12 Fantastic. Then just speak into the  
13 microphone.

14 MS. SCRIBNER: Yes, I did. All of  
15 the neighbors from whom I received --

16 CHAIRPERSON LOUD: I don't think  
17 your microphone is on.

18 MS. SCRIBNER: From all of the  
19 neighbors from whom I received letters I have  
20 personally visited and showed the plans and  
21 had discussions with them.

22 VICE CHAIR DETTMAN: And is the

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1 proposed tree a result of some concern that  
2 was expressed by that neighbor?

3 MS. SCRIBNER: No.

4 VICE CHAIR DETTMAN: None at all?  
5 Okay.

6 MR. SCRIBNER: It was probably  
7 there before -- was it there before you even  
8 showed --

9 MS. SCRIBNER: Oh, yes.

10 MR. SCRIBNER: It was already in  
11 the plan.

12 MS. SCRIBNER: It has always been  
13 in the plan.

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

16 CHAIRPERSON LOUD: Board Members,  
17 are there any questions for the Office of  
18 Planning?

19 MEMBER TURNBULL: There is no  
20 water issue on this case. Is there?

21 MR. JACKSON: No.

22 MEMBER TURNBULL: Okay. Thank

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1 you.

2 CHAIRPERSON LOUD: And  
3 Commissioner Frumin. I'm sorry. Do you have  
4 any questions for either the Office of  
5 Planning or --

6 COMMISSIONER FRUMIN: No.

7 CHAIRPERSON LOUD: All right.  
8 Very good. Let's move on to the ANC report.  
9 The ANC did submit a report. It's our Exhibit  
10 -- I'll get my hands on it in two seconds --  
11 Exhibit 20. It's in favor of the application.  
12 You can rest on the record of your submission  
13 if you would like.

14 COMMISSIONER FRUMIN: We will rest  
15 on the record of our submission.

16 CHAIRPERSON LOUD: Fantastic. Are  
17 there any questions for the ANC from either  
18 the Board or the applicants? Seeing none, we  
19 will now see if there are persons in our  
20 audience who are either in favor of or in  
21 opposition to the application.

22 If you are, this would be the time

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1 to step forward. Seeing no one step forward,  
2 then we turn back to you, Mr. Scribner, Mrs.  
3 Scribner. If you have a brief closing set of  
4 remarks, this would be the time. If you don't  
5 want to give that, as I said, the record is  
6 full and you don't have to.

7 MR. SCRIBNER: Well, I would just  
8 like to add my congratulations and thanks to  
9 the fine work that you do here and I  
10 appreciate this attention to detail and your  
11 flexibility, thoroughness, and willingness to  
12 go along with our proposed extension.

13 MS. SCRIBNER: I wondered whether  
14 we could have a bench decision this morning.  
15 Is that possible?

16 CHAIRPERSON LOUD: We'll  
17 deliberate that in a few seconds and I think  
18 it's very possible.

19 Before we go into deliberation,  
20 are there any final questions for OP, the ANC  
21 or the applicant? Why don't we then  
22 deliberate. I'll start us off. This is a

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1 really simple 223 application for relief from,  
2 I think, Section 404 regarding the rear yard  
3 and the proposed addition not meeting the 25-  
4 foot setback of the rear yard requirement.

5 The application has support from  
6 the Office of Planning. It has support from  
7 the ANC. There are no letters of opposition,  
8 no issues of water has been testified to. I  
9 would adopt by reference the full report of  
10 the Office of Planning which walks through the  
11 Section 223 analysis inclusive of their  
12 suggested condition regarding the evergreen  
13 tree on the west property line that would  
14 buffer that glass door from the west neighbor.  
15 With that I'm fully supportive of our approval  
16 of this application.

17 VICE CHAIR DETTMAN: I concur.

18 CHAIRPERSON LOUD: Any further  
19 deliberation? All right. I would like to  
20 move that we approve Application No. 18022 for  
21 Section 223, Special Exception Relief, for  
22 addition to a single-family dwelling in the R-

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1 1-B. Is there a second?

2 VICE CHAIR DETTMAN: Second.

3 CHAIRPERSON LOUD: Motion has been  
4 made and seconded. All those in favor say  
5 aye.

6 ALL: Aye.

7 CHAIRPERSON LOUD: All those who  
8 oppose. Are there any abstentions?

9 MS. SCRIBNER: Is the tree a  
10 condition?

11 CHAIRPERSON LOUD: The tree is a  
12 condition

13 MR. SCRIBNER: Would it be  
14 possible for me to ask the question. This is  
15 a theoretical question, and forgive me if it  
16 seems to belabor the point, but were we to  
17 wonder if maybe we really didn't want that  
18 tree, would negotiation with our neighbors to  
19 the west be a possibility at some future time?

20 This is a highly theoretical  
21 question. It's not really a practical  
22 question. It's not within our intent rate at

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1 this point. It's just what would be the  
2 procedure if that point arose.

3 CHAIRPERSON LOUD: I'm going to  
4 respond two ways. I'm going to give you some  
5 advice they gave me in law school and then  
6 I'll respond to your question. Once you've  
7 won your case, get up from your seat. That's  
8 what they teach you in law school.

9 In terms of the theory of what  
10 you're asking, no. I mean, if we put this as  
11 a condition in our order, then you would need  
12 to come back to the BZA to have that condition  
13 released.

14 MR. SCRIBNER: Okay. That  
15 actually answers my question.

16 MS. MONROE: Can I interject for a  
17 second?

18 CHAIRPERSON LOUD: Yes, ma'am.

19 MS. MONROE: If the Board is  
20 concerned about screening the door, and I  
21 don't know why because the door is raised, but  
22 let's assume there is some issue there,

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1 looking in a window, whatever, you could use  
2 more general language and not just say "put an  
3 evergreen tree." Some type of greenery, some  
4 type of screening, whatever. In other words,  
5 you don't have to be stuck with an evergreen  
6 tree. It could be --

7 MR. SCRIBNER: This was just  
8 evidently an architecture recommendation. At  
9 that stage of the process it just became part  
10 of the plan before it was ever even shown to  
11 anyone else. It was not as a result of  
12 someone else questioning it for any reason.

13 CHAIRPERSON LOUD: Yes, sir.

14 VICE CHAIR DETTMAN: I think that  
15 Ms. Monroe's approach is a better approach  
16 than what we are contemplating now but, in  
17 addition to that, can I make the suggestion  
18 that we approve without condition? It was  
19 testified to by Ms. Scribner that the proposed  
20 evergreen tree was almost a gesture of being  
21 a good neighbor as opposed to in response to  
22 any kind of concern from the neighbors. As I

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1 don't see that it's mitigating anything,  
2 perhaps we could approve without condition.  
3 If there is a concern, I have full confidence  
4 in the Scribners that they will address the  
5 issue.

6 MEMBER MOLDENHAUER: If that's a  
7 motion, I second it.

8 CHAIRPERSON LOUD: Let me just ask  
9 before we make it a motion and a second, do we  
10 have to do anything with the motion that has  
11 already been made and voted upon?

12 MS. MONROE: You can simply  
13 withdraw it.

14 CHAIRPERSON LOUD: Okay. Let me  
15 just formally withdraw the previous motion.  
16 What we are going to is respond to your  
17 concern, Mr. Scribner.

18 I withdraw my motion and then, Mr.  
19 Dettman, I think you wanted to propose --

20 VICE CHAIR DETTMAN: I would move  
21 for approval of Application No. 18022 without  
22 conditions.

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1 MEMBER MOLDENHAUER: I second.

2 CHAIRPERSON LOUD: Motion has been  
3 made and seconded. Any further deliberation?  
4 Hearing none, all those in favor say aye.

5 ALL: Aye.

6 CHAIRPERSON LOUD: All those who  
7 oppose?

8 Ms. Bailey, can you read back the  
9 vote.

10 MS. BAILEY: Mr. Chairman, the  
11 vote is recorded as four zero one to grant the  
12 application. The motion was made by Mr.  
13 Dettman, seconded by Mrs. Moldenhauer. Mr.  
14 Loud and Mr. Turnbull support the motion.

15 CHAIRPERSON LOUD: Thank you, Ms.  
16 Bailey. I think the applicant requested a  
17 bench decision, summary decision. There is no  
18 opposition so it would be appropriate.

19 MS. BAILEY: Thank you.

20 CHAIRPERSON LOUD: Thank you.

21 Thank you for your time this  
22 morning, all of you.

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1 MS. BAILEY: Mr. Scribner, thank  
2 you for your fine music to the District of  
3 Columbia.

4 CHAIRPERSON LOUD: You know what?  
5 We would like to take a break for three  
6 minutes, exactly three minutes. Don't even  
7 move from your seats because this is literally  
8 three minutes and then we'll come back on the  
9 record and call the next case.

10 (Whereupon, at 11:50 a.m. off the  
11 record until 11:51 a.m.)

12 CHAIRPERSON LOUD: Good morning.  
13 I think we are ready to go back on the record  
14 and I believe Ms. Bailey was going to call the  
15 next case.

16 MS. BAILEY: Mr. Chairman, that's  
17 Application 18024. It's the Application of  
18 the Columbia Heights Shaw Family Support  
19 Collaborative and it's pursuant to 11 DCMR  
20 Section 3104.1, for a special exception for a  
21 community service center under Section 334.  
22 The property is zoned R-5-B. It's located at

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1 1470 Irving Street, N.W., Square 2672, Lot  
2 881.

3 CHAIRPERSON LOUD: Thank you, Ms.  
4 Bailey. I see the parties are at the table  
5 this morning. Good morning to everyone. ANC-  
6 1A I think this is. Is ANC-1A here? It does  
7 not appear as though they are here.

8 As we are preparing for the  
9 Columbia Case, if the Franklin Commons folks  
10 are in the audience this morning and waiting  
11 for the case to be called, we are probably not  
12 going to get to that before 1:00. Not that  
13 this case is going to take long but we are  
14 going to take a break for lunch. If you are  
15 in the audience, feel free to take your lunch  
16 and come back at no later than 1:00 p.m.  
17 Okay.

18 With that, then why don't the  
19 parties who are at the table just introduce  
20 yourselves for our record and give your  
21 address as well.

22 MR. HUGHES: Good morning, Mr.

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1 Chair. For the record, my name is Dennis  
2 Hughes of Holland & Knight. I'm joined here  
3 by David Briggs also of Holland & Knight. To  
4 my right is Ms. Penelope Griffith who is the  
5 Executive Director of the Columbia Height Shaw  
6 Family Support Collaborative. To her right is  
7 Rose Gordy. I just realized I'm stealing  
8 their thunder but you would like them to give  
9 their addresses.

10 CHAIRPERSON LOUD: Yes, why don't  
11 we do that. Why don't you give your  
12 addresses.

13 MS. GRIFFITH: Good morning. My  
14 name is Penelope Griffith. I'm the Executive  
15 Director at Columbia Heights Shaw  
16 Collaborative in the main office of 1816 12th  
17 Street, N.W.

18 MS. GORDY: Good morning. My name  
19 is Rose Gordy. I'm the Director of Family  
20 Services and my office is at 1420 Columbia  
21 Road, N.W.

22 CHAIRPERSON LOUD: Good morning to

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1 all three of you. We saw the pleadings. We  
2 saw that you had three witnesses identified  
3 including the deputy director, I guess, who is  
4 not here.

5 MR. HUGHES: She's in the  
6 audience.

7 CHAIRPERSON LOUD: She's in the  
8 audience but she's not going to come up.  
9 Okay. Very good because we don't think that  
10 we need three witnesses from the same  
11 organization to testify this morning. In  
12 fact, I think that the record is full from my  
13 vantage point. I'm going to see if Board  
14 Members agree with that and it looks like they  
15 do.

16 In lieu of a formal statement,  
17 opening statement, presentation of evidence,  
18 let me suggest that you just make yourselves  
19 available for any questions Board Members may  
20 have and then we can proceed forward with your  
21 case.

22 One threshold issue that we

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1 thought may have come from the record was the  
2 absence of any clear indication that the owner  
3 had authorized the application but Mrs.  
4 Moldenhauer brought to our attention that in  
5 the initial application there is authorization  
6 and it's signed by the owner as well as what  
7 I think was submitted just this morning, a  
8 letter from the Barbara Chambers Children's  
9 Center dated 12 January. As the pleadings  
10 reflect, the Children's Center actually owns  
11 the building.

12 MR. HUGHES: That's correct.

13 CHAIRPERSON LOUD: All right. So  
14 I think we can infer from the support of the  
15 application that they authorize bringing the  
16 application.

17 MR. HUGHES: And there is a letter  
18 of authorization in our original application.

19 CHAIRPERSON LOUD: And there is  
20 also a letter of authorization. Okay.

21 MR. HUGHES: And, if I might, I  
22 certainly appreciate your direction to us. We

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1 have submitted a couple of items this morning  
2 and also one through staff late last week was  
3 a letter from Council Member Jim Graham's  
4 office in support of the application.

5 I want to make sure that had found  
6 it's way to you. Then the letter that you  
7 mentioned from the Barbara Chambers Children's  
8 Center, that's the owner of the proposed  
9 location on Irving Street. The Collaborative  
10 wishes to occupy the third floor.

11 There's also a letter from  
12 CentroNia which is the owner and co-occupant  
13 of the Collaborative's existing location at  
14 1420 Columbia Road expressing support for the  
15 application and discussing their exemplary  
16 experience in the past with the Collaborative.

17 MEMBER MOLDENHAUER: Let me just  
18 for the record clarify. The letter of  
19 authorization that actually has the owner's  
20 signature and then identifies David Briggs is  
21 our Exhibit No. 6 which is the Applicant's  
22 Exhibit A to their initial filing.

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1           Then there is an additional letter  
2 which is our Exhibit No. 7 which authorizes  
3 Holland & Knight to represent the applicant  
4 here who is actually on behalf of Columbia  
5 Heights Shaw Family Support Collaboration  
6 which is on behalf then of the owner which I  
7 referenced previously in Exhibit No. 6.

8           CHAIRPERSON LOUD: Thank you,  
9 Board Member Moldenhauer. For me that  
10 clarifies the issue.

11           Do Board Members have any  
12 additional -- okay. It does not appear as if  
13 there are any so why don't we just confirm  
14 that Board Members don't have any questions  
15 for the applicant. If so, this is the time to  
16 ask them. If not, we'll go directly to the  
17 Office of Planning. It looks like we're going  
18 to go to the Office of Planning.

19           Good morning.

20           MR. GOLDSTEIN: Good morning, Mr.  
21 Chairman and Members of the Board. The Office  
22 of Planning is happy to rest on the record.

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1 We are supportive of the special exception of  
2 relief that's requested and I am available for  
3 any additional questions. Thank you.

4 CHAIRPERSON LOUD: Thank you.

5 I think one of the things you  
6 mentioned in your report, and don't want to  
7 spend an extraordinary amount of time on this  
8 at all but you mentioned that the ZA had  
9 determined, I think, October 2001 that because  
10 it was a pre-58 set of buildings on record lot  
11 723 that parking credits carried over into the  
12 post-58 regime of regulations that we are  
13 operating under now. I wanted you to just  
14 very briefly elaborate on that because that  
15 letter from the ZA is not in our record.

16 MR. GOLDSTEIN: Thank you, Mr.  
17 Chairman. The letter was actually provided to  
18 me from the applicant. Generally we don't  
19 seem to deal often with parking credit issues.  
20 The idea is that a pre-58 existing use is  
21 deemed compatible with the parking  
22 requirements at the time and that it builds up

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1 a certain amount of credit.

2 What the applicant provided to us  
3 was a letter from the ZA that seemed to  
4 confirm that the number of parking spaces that  
5 were credited to the site. Frankly, OP didn't  
6 see a reason to really question the amount of  
7 parking available on the site.

8 Additionally, of course, at the  
9 time of permitting if the zoning administrator  
10 saw something wrong with that interpretation  
11 of the parking credits, that would be  
12 something that would certainly be raised with  
13 the applicant.

14 The Office of Planning was willing  
15 to -- we heard the parking credit argument  
16 from the applicant or submission and it seemed  
17 to make sense. Ultimately any judgement that  
18 would need to be passed would be at the time  
19 of permitting.

20 CHAIRPERSON LOUD: In fact, this  
21 doesn't relate directly to the credit but, in  
22 fact, they are leasing 10 parking spaces

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1       apparently from a tenant's association that I  
2       believe they are currently affiliated with.  
3       There are also a thousand parking spaces -- I  
4       think this is in your report -- at the DCUSA  
5       lot that I'm sure is over-parked and a lot of  
6       those spaces are available so it does not  
7       appear that the intensity of use on site will  
8       warrant concerns about parking. I think all  
9       of that came through in your report.

10               Let's see if Board Members have  
11       any questions for you. It doesn't appear  
12       such. Let's see if the applicant has any  
13       questions for the Office of Planning.

14               MR. HUGHES: No, we don't.

15               CHAIRPERSON LOUD: Okay. Then  
16       we'll turn to the ANC which, as I indicated,  
17       is ANC-1A. They have not submitted a report  
18       in the record on this case so there is nothing  
19       to which we can give great weight in this case  
20       either in support of -- I stand corrected.  
21       They did submit a report. You know what  
22       happened? They submitted a report but it's

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1 through your Exhibit 25. I don't think we got  
2 a report directly from the ANC.

3 MR. HUGHES: I believe that's  
4 correct, Mr. Chair. I didn't see it in the  
5 exhibit log but we did include it as our  
6 Exhibit F to our prehearing statement.

7 CHAIRPERSON LOUD: That's correct.  
8 I'm assuming that we can accept that into our  
9 record and give it great weight. It's  
10 supportive of the application and I see Ms.  
11 Monroe nodding her head in approval so we will  
12 accept that into the record and give it great  
13 weight. Thank you for making that  
14 clarification.

15 If there are persons in our  
16 audience who support this applicant and you  
17 want to come up and testify, now would be the  
18 time. Seeing none if there are persons in the  
19 audience who would like to testify in  
20 opposition to the application, now would be  
21 the time. Also seeing none, we turn back to  
22 the applicant for closing remarks.

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1                   MR. HUGHES: Thank you, Mr. Chair.  
2 My only statement in closing would be to thank  
3 the Office of Planning for their efforts and  
4 obviously to thank you for your time. Given  
5 that there is no opposition, we would request  
6 a bench decision and approval and summary  
7 order. Thank you.

8                   CHAIRPERSON LOUD: Thank you, sir.

9                   Board Members, we have the  
10 opportunity at this point to deliberate today,  
11 render a bench decision, summary order  
12 approving or disapproving the application, or  
13 we can postpone it for decision later. I  
14 recommend that we go ahead and deliberate this  
15 morning. I would be happy to start us off on  
16 this. I think the record speaks for itself in  
17 terms of what has been submitted by the  
18 applicant at Exhibit 25, a very thorough  
19 articulation of its request for relief under  
20 Section 334 which allows a community service  
21 center in the R-4. And 352 which continues  
22 authority for that in the R-5 which this is

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1 the R-5 zone.

2 The Office of Planning in its  
3 report walks through an analysis of Section  
4 334 as well as 3104 and I don't want to repeat  
5 it. It would be redundant to do so but I want  
6 to incorporate by reference all of the  
7 findings and the application of the standards  
8 to the evidence in this case that are  
9 contained in our Exhibit 26.

10 I also want to note that the ANC  
11 did meet. It's submitted in our record  
12 through the applicant's Exhibit 25 and not  
13 directly as Exhibit 25, Attachment F. In that  
14 report the ANC is fully supportive of this  
15 application moving forward. This organization  
16 has been around for a number of years.

17 Apparently they are up the street  
18 now and they've got nothing but glowing  
19 remarks from their neighbors in that community  
20 who would like to see them continue to provide  
21 family counseling, youth, violence prevention  
22 counseling in the area. Most of their client

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1 consultations are done off-site.

2           There is not an expectation that  
3 there will be a lot of on-site visits because  
4 the client population can walk to the  
5 facility. For those who are not going to walk  
6 catch Metro Bus or Metrorail. It's close to  
7 Metrorail as well.

8           As indicated, the Office of  
9 Planning walks through this analysis in great  
10 detail and I'm not going to repeat what's in  
11 there. I'll just incorporate it by reference  
12 in my support for the application.

13           Board Members, I'll open it up to  
14 you. It doesn't appear that there is any  
15 feedback from Board Members. What I would  
16 like to do then is entertain a motion on the  
17 application. I would like to move approval of  
18 Application No. 18021 of the Columbia  
19 Collaborative for special exception relief  
20 under 334 and 352 as well as Section 3104 for  
21 the location of a community service center in  
22 the third floor of the Barbara Chambers Child

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1 Development Center.

2 MEMBER MOLDENHAUER: I second.

3 CHAIRPERSON LOUD: Motion has been  
4 made and seconded. Is there further  
5 discussion? Hearing none, all those in favor  
6 say aye.

7 ALL: Aye.

8 CHAIRPERSON LOUD: All those who  
9 oppose? Are there any abstentions?

10 Ms. Bailey, can you read back the  
11 vote, please?

12 MS. BAILEY: Mr. Chairman, the  
13 vote is four zero one to grant the application  
14 as amended. Mr. Loud made the motion, Board  
15 Member Moldenhauer supported the motion, Mr.  
16 Turnbull and Mr. Dettman support the motion.

17 CHAIRPERSON LOUD: Thank you, Ms.  
18 Bailey. I believe since there is no  
19 opposition we can do a summary decision.

20 MS. BAILEY: Thank you, sir.

21 CHAIRPERSON LOUD: All right.

22 Thank you for your time. Thank you for your

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1 patience and your presentation. We appreciate  
2 it. Good luck.

3 I believe this morning's hearing  
4 is going to be not adjourned but continued to  
5 the 1:00 p.m. for the Franklin case. We'll  
6 convene at 1:00 p.m.

7 (Whereupon, at 12:06 p.m. off the  
8 record until 1:25 p.m.)

9 CHAIRPERSON LOUD: Good afternoon.  
10 We are back in session for the January 29th  
11 morning hearing calendar, the Board of Zoning  
12 Adjustment. Early on we continued the final  
13 case for the morning over into the afternoon.  
14 I think that was the Franklin case.

15 Ms. Bailey, when you are ready you  
16 can call that case. If there are persons in  
17 attendance for the Franklin case that were not  
18 here earlier when we swore in witnesses, now  
19 would be a good time to get you sworn in.  
20 What you would do is simply come up to Ms.  
21 Bailey and she would swear you in.

22 MS. BAILEY: Would you please

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1 raise your right hand. Do you solemnly swear  
2 or affirm that the testimony that you will be  
3 giving today will be the truth, the whole  
4 truth, and nothing but the truth?

5 WITNESSES: I do.

6 MS. BAILEY: Mr. Chairman, are you  
7 ready for Franklin?

8 CHAIRPERSON LOUD: Yes, please.

9 MS. BAILEY: Thank you. This is  
10 Application No. 18013 of the Franklin Commons  
11 Intergenerational Day Care Center, Inc. and  
12 it's pursuant to 11 DCMR Section 3104.1, for  
13 a special exception for a child development  
14 center (50 children and 14 staff) under  
15 Section 205 at premises 119 Franklin Street,  
16 N.E. The property is zoned R-3. It's located  
17 in Square 3505, Lot 802.

18 This is a continuation, Mr.  
19 Chairman, from the December 22, 2009 public  
20 hearing. Lastly, in addition to the relief  
21 that I indicated, the Office of Planning is  
22 recommending that the Board grant variance

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1 relief from the off-street parking  
2 requirements.

3 CHAIRPERSON LOUD: Thank you, Ms.  
4 Bailey. If I could, if I could have the  
5 persons who are at the table introduce  
6 yourselves for the purposes of our record.

7 MS. CARTER:

8 CHAIRPERSON LOUD: Community  
9 Manager? Good afternoon.

10 VICE CHAIR DETTMAN: Mr. Chairman,  
11 if I could just interrupt.

12 Would you mind turning your mic  
13 on? The court reporter didn't catch that.

14 MS. CARTER: My name is Shelia  
15 Carter and I'm the Community Manager of  
16 Franklin Commons.

17 MS. BRADSHIRE: My name is  
18 Cassandra Bradshire and I will be the Director  
19 at Franklin Commons.

20 MS. McCLOUD: Blanche McCloud and  
21 I will be a witness and it's located in the  
22 rear of my building.

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1 CHAIRPERSON LOUD: Thank you.

2 MR. ALLEN: My name is Melvin  
3 Allen and I'll be working there with Ms.  
4 Blanche.

5 CHAIRPERSON LOUD: All right. Let  
6 me ask this question. Ms. McCloud, you're  
7 going to be a witness this afternoon?

8 MS. McCLOUD: Yes.

9 CHAIRPERSON LOUD: Okay. So why  
10 don't you for the purposes of our start take  
11 a seat in the audience and later on we'll go  
12 through an order of procedure and we'll ask  
13 for witnesses to step forward. We'll  
14 certainly invite you back at that time. And  
15 as well for -- Millard, I didn't get your last  
16 name.

17 MR. ALLEN: Allen. I'll be  
18 working with Ms. Bradshire at the community  
19 center.

20 CHAIRPERSON LOUD: Okay, Mr.  
21 Allen. Mr. Allen, are you going to be a  
22 witness for the applicant right now or are you

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1 going to just testify in support of the  
2 application?

3 MR. ALLEN: Testify in support.

4 CHAIRPERSON LOUD: Okay. Then the  
5 same for you. Why don't you take a seat in  
6 the audience and later on during the part of  
7 the procedure for witnesses and support we'll  
8 call you back up.

9 MR. ALLEN: All right.

10 CHAIRPERSON LOUD: Okay.

11 I'm sorry? Well, you're the  
12 Community Manager and then we have the  
13 Director so I'm not certain who is going to be  
14 presenting the application for the applicant.

15 Okay. Are you going to testify in  
16 support of the application? You are going to  
17 do that as a witness who is given three  
18 minutes or was it the intention of the  
19 director to lean on your testimony early on?

20 MS. BRADSHIRE: Yes.

21 CHAIRPERSON LOUD: Okay. Well,  
22 here are some initial thoughts on it as we

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1 proceed forward. Board Member, certainly  
2 weight in. I think that the record that has  
3 been submitted for the Board is clear.

4           There may be some questions that  
5 Board Members have but to the extent there are  
6 questions that Board Members have it might be  
7 -- it may facilitate matters more to make  
8 yourselves available for the questions and  
9 then proceed forward with both the special  
10 exception and the variance from the standpoint  
11 of the report of the Office of Planning.

12           Then later on when we call for  
13 witnesses who are in support we'll give your  
14 witnesses an opportunity to provide their  
15 witness testimony in support at which time  
16 they'd be given three minutes. So I think if  
17 that's okay with you to proceed like that,  
18 what I would like to ask you to do is remain  
19 at the table and I think as Board Members have  
20 questions you can make yourselves available.

21           That notwithstanding, if you  
22 wanted to provide a brief overview or opening

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1 statement, I think it would be helpful.  
2 Certainly you don't have to because the  
3 record, as I indicated, is pretty full.

4 MS. BRADSHIRE: Okay. I mean,  
5 it's okay.

6 CHAIRPERSON LOUD: Okay. Why  
7 don't we do that and then we'll turn to the  
8 Office of Planning for its report.

9 MS. BRADSHIRE: Okay. Good  
10 afternoon to everyone. We would like to have  
11 a child development center here at Franklin  
12 Commons. The hours will be from 7:00 to 7:00.  
13 We are going to have before and after care.  
14 We are also planning on having a sports  
15 program and some other activities for the  
16 young youth that's around there.

17 The youth around there they don't  
18 have anything to do, no place to go. They are  
19 always hanging out on the street and we would  
20 like to provide something for them to do so  
21 they will not get into anymore trouble. We  
22 need something for our youth to do where they

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1 will be safe (interference) program for them.

2 CHAIRPERSON LOUD: Thank you. I  
3 think that sort of sets some context for the  
4 application that we're going to hear a little  
5 bit more about.

6 Board Members, did you have any  
7 questions of the applicant at this juncture?

8 VICE CHAIR DETTMAN: Ms.  
9 Bradshire, are you still seeking 50 children  
10 and 14 staff, ages infant to 12?

11 MS. BRADSHIRE: To 12 years of  
12 age.

13 VICE CHAIR DETTMAN: Okay. Quick  
14 question for Ms. Carter. Do you represent the  
15 child development center or do you represent  
16 the property owner?

17 MS. CARTER: I represent the  
18 property owner.

19 VICE CHAIR DETTMAN: Okay. Do you  
20 have an idea -- you'll have to turn your mic  
21 on. Do you have an idea of whether or not the  
22 100 units are fully occupied? In general are

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1 you at 100 percent occupancy?

2 MS. CARTER: Hundred percent  
3 occupancy.

4 VICE CHAIR DETTMAN: Hundred  
5 percent occupancy. And the same goes for the  
6 parking lot? Do the residents in the  
7 apartments use all 100 spaces in the lot?

8 MS. CARTER: No, they don't.

9 VICE CHAIR DETTMAN: They don't?  
10 Do you have a general idea of the percentage?

11 MS. CARTER: I would say maybe  
12 about 60.

13 VICE CHAIR DETTMAN: Sixty  
14 percent?

15 MS. CARTER: Um-hum.

16 VICE CHAIR DETTMAN: Okay. Thank  
17 you.

18 CHAIRPERSON LOUD: Just a quick  
19 follow-on to Mr. Dettman's question. In terms  
20 of the 40 percent that are not used by the  
21 tenants at the building, are they leased out  
22 to third parties or are there some other

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1 arrangements made or are we talking about  
2 basically 40 spaces that are vacant on a daily  
3 basis?

4 MS. CARTER: They're for visitors.

5 CHAIRPERSON LOUD: For visitors?

6 MS. CARTER: Um-hum.

7 CHAIRPERSON LOUD: Okay. What  
8 percentage of those 40 spaces do you think the  
9 visitors normally take up?

10 MS. CARTER: Probably 20 percent.

11 CHAIRPERSON LOUD: Thank you.

12 MEMBER MOLDENHAUER: I have a  
13 question. In our application we had a list,  
14 I think, of about 17 different individual's  
15 names who reside at Franklin Commons. Are  
16 those people that would then be using the  
17 facility, the child development? I'm trying  
18 to understand exactly the relevance of that.  
19 Would those individuals that live at Franklin  
20 Commons would then be using the child  
21 development center?

22 MS. BRADSHIRE: Yes. Franklin

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1 Commons gets first bid on everything.

2 MEMBER MOLDENHAUER: Okay.

3 MS. BRADSHIRE: On everything.

4 MEMBER MOLDENHAUER: Okay. So  
5 currently then you have, I think the number  
6 was 17? Is that correct?

7 MS. BRADSHIRE: I don't know. I  
8 don't know.

9 MS. CARTER: Are you talking about  
10 the residents?

11 MEMBER MOLDENHAUER: Yes, the  
12 residents that live at Franklin Commons.

13 MS. BRADSHIRE: That's in  
14 agreeance? What was your question again?

15 CHAIRPERSON LOUD: We're going to  
16 try to find -- as you answer a question we'll  
17 try to find what she was referencing. There  
18 is something in our file.

19 MEMBER MOLDENHAUER: I think you  
20 did address the issue. You're saying that  
21 Franklin Commons' residents will get first  
22 priority.

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1 MS. BRADSHIRE: Oh, yes.

2 Definitely. Yes.

3 MEMBER MOLDENHAUER: Thank you.

4 This is our -- actually, Exhibit No. 7 is  
5 slashed out on that so I don't know. Our  
6 Exhibit No. 7, it looks like this. Are these  
7 lists of the current residents?

8 MS. BRADSHIRE: Yes.

9 MEMBER MOLDENHAUER: So you have  
10 100 units so this is definitely not 60 people.  
11 I'm just trying to understand. You said you  
12 are about 60 percent occupied?

13 MS. CARTER: Right. I have 100  
14 units there.

15 MEMBER MOLDENHAUER: Okay.

16 MS. CARTER: Where the daycare  
17 center is is two buildings where the residents  
18 live and those are the list of residents that  
19 lives in those two buildings.

20 MEMBER MOLDENHAUER: In just those  
21 two buildings. Okay. You have other  
22 buildings also?

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1 MS. CARTER: Yes, I do.

2 MEMBER MOLDENHAUER: I'm just  
3 trying to make sense of what we have. That  
4 helps. Thank you.

5 CHAIRPERSON LOUD: And in terms of  
6 the parking at just these two buildings where  
7 the development center would be, what is your  
8 sense of the availability of parking at those  
9 two locations?

10 MS. CARTER: We'll have enough  
11 spaces for the child development center to  
12 park at down in that area.

13 CHAIRPERSON LOUD: You know, the  
14 way you quantified it for the whole 100, are  
15 you able to quantify it for the two buildings  
16 that the child development center would be in  
17 like those two buildings have a total of 40  
18 spaces and 30 of those spaces are always taken  
19 up by tenants?

20 MS. CARTER: Well, no one has a  
21 permanent parking space so you can park  
22 anywhere on the property.

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1                   CHAIRPERSON LOUD: Oh, okay. How  
2 many parking spaces are there total for those  
3 two buildings?

4                   MS. CARTER: Ninety-eight. Oh,  
5 for those two buildings?

6                   CHAIRPERSON LOUD: Yeah, just for  
7 those two buildings.

8                   MS. CARTER: I would say about 20.

9                   CHAIRPERSON LOUD: Okay. Let's  
10 see if Board Members have any additional  
11 questions for you. When I say you I mean the  
12 applicant generally and, if not, we'll turn to  
13 the Office of Planning. It doesn't look as if  
14 there are any questions now. Certainly later  
15 if there are some that will surface, we'll ask  
16 at that time.

17                   Why don't we turn to the Office of  
18 Planning for your report. I think it was a  
19 very good report but I think there might be  
20 some questions surrounding the different areas  
21 of relief, the special exception on the one  
22 hand, the variance on the other hand and

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1 helping the Board to understand, I guess, more  
2 fully the basis of the support for the  
3 variance as well as walking us through the  
4 special exception in a summary kind of  
5 fashion.

6 MR. MORDFIN: Good afternoon. I'm  
7 Stephen Mordfin with the Office of Planning.  
8 The application is in conformance with the  
9 criteria for the granting of the special  
10 exception because the child care licensing  
11 unit recommended approval of this application  
12 and no objectionable traffic situations will  
13 result because the site is located within an  
14 apartment complex with vehicular access via an  
15 internal parking lot serving the complex only.

16 Direct access from the outdoors to  
17 the center would be provided without requiring  
18 the people using the center to go through the  
19 building. An existing outdoor playground  
20 would be utilized. No off-site play areas  
21 would be utilized.

22 No other child development centers

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1 are located within the subject square or  
2 within 1,000 square feet and DDOT had no  
3 comments. Also provided that sufficient  
4 parking is available the Office of Planning  
5 recommends approval of this application  
6 provided that the application be approved for  
7 a period of five years only.

8 The purpose is that because a  
9 child development center has the potential to  
10 create noise and this would give the Board the  
11 opportunity and also the community the  
12 opportunity to come back in five years to  
13 ensure this applicant and the application is  
14 in conformance with the criteria.

15 For the parking variance this use  
16 requires four parking spaces because there are  
17 four employees and there is a parking  
18 requirement of one per three. Of these four  
19 spaces none can be provided on the site. The  
20 site is developed as a 100-unit apartment  
21 complex pursuant to a PUD in 1981. The  
22 parking requirement that was approved with

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1 that is one space per unit or 100 parking  
2 spaces.

3 The applicant has indicated that  
4 all of these parking spaces are not used all  
5 of the time and that usually about 60 percent  
6 of them are occupied. Also, during the day  
7 the Office of Planning would expect fewer  
8 people to be there and that would be the time  
9 when the employees of the day care center, or  
10 the child development center, would be parked  
11 on the site.

12 Also, the short-term parking needs  
13 of parents picking up and dropping off  
14 children the Office of Planning does not view  
15 as an issue because these parents would be  
16 picking up or dropping off their children and  
17 they would only be there for a short period of  
18 time and those spaces would turn over rather  
19 rapidly.

20 Because the site is fully  
21 developed as a PUD with a 100-unit apartment  
22 complex there is no additional parking set

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1     aside for this space as it was originally  
2     designed. It would be a practical difficulty  
3     to provide any additional parking on site  
4     without the removal of common open areas and  
5     that would also be to the detriment of the  
6     residents of the complex and the granting of  
7     this variance should not have an adverse  
8     affect on the zone plan because the request is  
9     minimal and demand for the parking by the  
10    center would be during the day only when most  
11    of the residents would be expected to be away.

12                   Therefore, the Office of Planning  
13    also recommends that the Board approve the  
14    parking reduction to reduce the parking  
15    requirement for the child development center  
16    from four to zero. Thank you.

17                   CHAIRPERSON LOUD: Thank you.  
18    Again, it was a good report. Let us see if  
19    Board Members have any questions for you.

20                   MEMBER TURNBULL: Mr. Chair, let  
21    me just --

22                   Mr. Mordfin, looking at your plan,

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1 the playground is not fenced. It's an open  
2 playground?

3 MR. MORDFIN: I believe so.

4 MEMBER TURNBULL: I think the  
5 photo shows that. The building that the  
6 center is in is next to the playground or is  
7 it up further?

8 MR. MORDFIN: The building on the  
9 map that you are looking at, or the area where  
10 it says "site," that is 119 over there. Those  
11 are the two buildings that when you see the  
12 combination of that whole row of the two  
13 buildings that the applicant submitted with  
14 the tenant, those are those two buildings. On  
15 the south side of that is 119 Franklin.

16 MEMBER TURNBULL: Okay. So the  
17 playground is down toward the other building  
18 then?

19 MR. MORDFIN: Correct. The  
20 playground is to the north.

21 MEMBER TURNBULL: For picking up  
22 cars would come in and just circle the lot and

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1 then drop off in front?

2 MR. MORDFIN: Pull into a stall  
3 space and I would expect parents for the child  
4 development center to walk their children, the  
5 younger ones at least anyway.

6 MEMBER TURNBULL: Okay. Thank  
7 you.

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

10 Mr. Mordfin, can you speak to, I  
11 guess, the issue of the exceptional situation  
12 for the off-street parking requirement? I  
13 think your recommendation is that the PUD  
14 itself creates an exceptional situation.

15 MR. MORDFIN: The PUD itself  
16 created the design of the site as you see it  
17 today with the parking lot and the open spaces  
18 and the buildings and the playground. To add  
19 additional parking spaces would require that  
20 some of the amenities that are included in  
21 that PUD which includes the open space be  
22 removed so that the applicant could then

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1 provide four additional parking spaces on the  
2 site.

3 I think that the PUD itself  
4 creates an exceptional situation in that you  
5 would have to remove some of the amenities of  
6 the PUD that are available to the residents  
7 now so that you could have more parking and  
8 that would be just open space where the  
9 residents could use the open green areas.

10 CHAIRPERSON LOUD: Sometimes the  
11 exceptional situation tends to blur with the  
12 practical difficulty. This sounds more like  
13 a practical difficulty that you would have to  
14 eliminate some of the PUD units. It doesn't  
15 necessarily sound like an exceptional  
16 situation.

17 MR. MORDFIN: I think the  
18 practical difficulty is that you have to go in  
19 there and actually either re-stripe the lot or  
20 pave portions of the site. The applicant  
21 would be required to design and build these  
22 spaces when on the site there are 100 parking

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1 spaces that are not all used during the day  
2 when the child development center would be in  
3 use.

4 That would be the practical  
5 difficulty to provide additional parking  
6 spaces when additional parking spaces most  
7 likely would be available during the day when  
8 the applicant would be needing them.

9 CHAIRPERSON LOUD: Board Members,  
10 let's try one more round. Do you have any  
11 questions at this point for the Office of  
12 Planning?

13 MEMBER MOLDENHAUER: I just have  
14 one or two quick questions. You stated that  
15 some of your analysis also relied upon the  
16 fact that the four spaces that would be needed  
17 for the child development center would be used  
18 during the day when most of the residents  
19 would not be using the spaces, but we heard  
20 that there was going to be -- that the child  
21 development center would be open from 7:00 to  
22 7:00 p.m.

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1 I guess I don't see how  
2 potentially if you're going to be open from  
3 7:00 to 7:00 p.m. that the use of staff would  
4 not then conflict with the potential use of  
5 those spaces for the residents.

6 MR. MORDFIN: I wouldn't expect  
7 all of the residents to be gone from 7:00 a.m.  
8 to 7:00 p.m. but some residents will leave  
9 earlier, some will leave later, some will come  
10 back later, some will come back earlier. I  
11 think with the fluctuation that you have with  
12 100 units that some spaces would be available.  
13 Maybe not the exact same spaces all day long  
14 but not everybody works the exact same eight-  
15 hour day and I think that is how it would  
16 fluctuate and that is how you have some  
17 additional spaces that would be available to  
18 the center.

19 MEMBER MOLDENHAUER: Now, legally  
20 from my understanding, and maybe you've looked  
21 at this issue and I'm incorrect on this, but  
22 there are 100 units and there's a required 100

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1 spaces one for one so you really could not  
2 double up on these spaces and say that because  
3 potentially people would not be present that  
4 then you could then kind of overlap the four  
5 spaces that are needed for the child  
6 development center for the spaces that are  
7 currently being provided under the PUD and for  
8 the residential units. How did your analysis  
9 address that issue?

10 MR. MORDFIN: No, you can't double  
11 up and you can't have more than one vehicle  
12 parked in one space at one time. I think what  
13 the issue is is that the spaces are not used  
14 24 hours a day as opposed to maybe an  
15 apartment which is occupied. Whether the  
16 residents are in there or not it's an occupied  
17 unit.

18 These parking spaces are not  
19 assigned to any one specific unit and are  
20 available to the residents on a first-come-  
21 first-serve basis wherever they happen to  
22 park. Because the Office of Planning does not

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1 see that these parking spaces would be in  
2 demand, each one all day long, that results in  
3 a situation where some of them would be  
4 available during the day when the four staff  
5 members or the four parking spaces required  
6 for the staff of the day care center would be  
7 needing those parking spaces.

8 MEMBER MOLDENHAUER: I think you  
9 may be misunderstanding my statement. I'm  
10 saying that legally if you have a legal  
11 requirement to provide 100 spaces for the  
12 residential buildings, you cannot then use  
13 those 100 spaces to then also satisfy -- and  
14 that was my use of the word "double up" --  
15 satisfy a requirement for four spaces. You  
16 would need then 104 spaces in order to  
17 satisfy, or you would need some sort of  
18 additional relief on one of those elements.

19 MR. MORDFIN: That's correct. The  
20 two uses there, the child development center  
21 and the apartment complex require a total of  
22 104 parking spaces. Since there are not 104

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1 parking spaces, the applicant has two options.

2 One, either to build the four  
3 parking spaces or obtain relief from the four  
4 required for the child development center so  
5 that this use could go in. Without granting  
6 of the relief the applicant either has to  
7 build the four spaces or not go into the slot  
8 within the building.

9 MEMBER MOLDENHAUER: Thank you.

10 CHAIRPERSON LOUD: Is the  
11 applicant -- I'm sorry. Go ahead.

12 MEMBER TURNBULL: There is a third  
13 option. They could lease parking spaces at a  
14 nearby lot.

15 MR. MORDFIN: That's correct.

16 CHAIRPERSON LOUD: Turning from  
17 the Board, does the applicant have any  
18 questions for the Office of Planning?

19 MS. CARTER: I have something I  
20 want to say. We have 100 units. We have 100  
21 residents but all 100 residents doesn't own a  
22 car so we will have space for the daycare

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1 center to use.

2 MEMBER TURNBULL: Ms. Carter, how  
3 long has that -- has that 60 percent ratio  
4 been fairly constant since the units have been  
5 built?

6 MS. CARTER: Yes. I've been there  
7 for five years so I know who drives and who  
8 doesn't drive and I do believe that we have  
9 enough space to accommodate the day care  
10 center.

11 MEMBER TURNBULL: You don't see  
12 that fluctuating to a higher number?

13 MS. CARTER: No, I don't.

14 MEMBER TURNBULL: Okay. Thank  
15 you.

16 MEMBER MOLDENHAUER: Ms. Carter,  
17 one other question. Do any of the staff  
18 members that you potentially look towards  
19 hiring for the child development center, do  
20 any of them live in the apartment complex?

21 MS. BRADSHIRE: Yes. Yes, they  
22 do.

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1 MS. CARTER: She said yes.

2 MEMBER MOLDENHAUER: I'm sorry.  
3 How many? I might have been directing my  
4 question to the wrong person. Do you know how  
5 many? Is it going to be one or two? You're  
6 not sure yet?

7 MS. BRADSHIRE: I'm not sure yet  
8 but we already have hired some people already  
9 and we are doing some more interviews.

10 MEMBER MOLDENHAUER: Out of the  
11 persons that you've hired do they live at  
12 Franklin Commons?

13 MS. BRADSHIRE: Yes.

14 MEMBER MOLDENHAUER: Okay. So  
15 right now you do have one of the four that  
16 lives in Franklin Commons?

17 MS. BRADSHIRE: We have two.

18 MEMBER MOLDENHAUER: Oh, you have  
19 two people?

20 MS. BRADSHIRE: Yes.

21 MEMBER MOLDENHAUER: Yes.

22 MS. BRADSHIRE: Already.

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1 MEMBER MOLDENHAUER: Are you  
2 looking -- that helps your case because then  
3 by the nature of having a staff member and a  
4 resident they are already being provided with  
5 a spot which makes it a very unique situation  
6 because you're having a resident who already  
7 has a parking spot based on the current layout  
8 and they don't then need another spot as being  
9 a staff member?

10 MS. BRADSHIRE: We're hiring  
11 within first.

12 MEMBER MOLDENHAUER: Okay. So  
13 right now out of the four required staff you  
14 have two that are currently going to be  
15 residents of Franklin Commons?

16 MS. BRADSHIRE: Yes.

17 MEMBER MOLDENHAUER: Okay. Thank  
18 you.

19 MS. BRADSHIRE: You're welcome.

20 CHAIRPERSON LOUD: Thank you.  
21 Again, did you have any questions for the  
22 Office of Planning on their report?

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1 MS. BRADSHIRE: No.

2 CHAIRPERSON LOUD: Have you had a  
3 chance to review their report or take a look  
4 at it?

5 MS. BRADSHIRE: Yes.

6 CHAIRPERSON LOUD: Okay. Very  
7 well.

8 Now what we'll do is move on to  
9 the ANC which is ANC-5C. They did submit a  
10 report. I don't know if ANC-5C is present  
11 this afternoon. If you are, now would be the  
12 time to come up. I'm seeing heads nod that  
13 they are not present. The ANC-5C submitted a  
14 report. I don't have an exhibit number  
15 unfortunately.

16 I don't know if other Board  
17 Members have an exhibit number. This report  
18 is dated December 18, 2009. It indicates the  
19 meeting was noticed properly on November 12.  
20 A quorum was established with 10 of the 12  
21 elected present and voting, 20 residents in  
22 attendance.

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1                   A motion by one of the  
2 commissioners and ten commissioners voted  
3 unanimously to support the application. It's  
4 Exhibit No. 33. It's part of our record.  
5 Although they're not here it will be given  
6 great weight with respect to our  
7 determination.

8                   It does indicate that the relief  
9 that they were voting on is for a special  
10 exception. It does not mention the variance  
11 request at all in it so we will take it on its  
12 face in terms of the great weight to give it.  
13 Did you have any questions regarding that?

14                   MS. BRADSHIRE: No.

15                   CHAIRPERSON LOUD: All right.  
16 Now, if there are persons in the audience who  
17 are in support of the application, I think  
18 that we had two, perhaps one, earlier that  
19 wanted to testify in support of the  
20 application, now would be the time to come up  
21 and you would be given three minutes to  
22 provide your testimony in support of the

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1 application.

2 Good afternoon again. Why don't  
3 we start with you and then we'll go to you,  
4 Mr. Allen.

5 MS. McCLOUD: Good afternoon. My  
6 name is Blanche McCloud and I live at 119  
7 Franklin Street, N.E., Apartment J14. In my  
8 building there are four of us who do not have  
9 cars. This would be so good for us and for  
10 children because they have absolutely nothing  
11 to do.

12 Especially when you get in that  
13 like middle age they need guidance because all  
14 these families, even though it's a parental  
15 responsibility, we know the parents aren't  
16 doing it. Some of them are not so we are  
17 stepping up to help our children to keep them  
18 guided in the right direction. They might  
19 stumble a little but you have to have somebody  
20 there to pick them up.

21 Also what Ms. Bradshire here is  
22 going to do in D.C. you need volunteer credit

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1 hours. The teenagers will be able to come  
2 into the center and get the volunteer credit  
3 hours and then they will learn not just how to  
4 volunteer but they will learn how to work with  
5 others and it's experience for them.

6 We are just so happy. There's a  
7 lot of things on the plate and we are just  
8 anxious to get it started and get our children  
9 focused in the right direction. I'm in 100  
10 percent support of this child care center.

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

13 Mr. Allen.

14 MR. ALLEN: How you doing? My  
15 name is Melvin Allen, resident of Franklin  
16 Commons. I live in 123 Franklin Street, L24.  
17 I've been living around Franklin Commons since  
18 like 1991 and I grew up in the community.

19 Ever since they took the center  
20 away, you know what I'm saying, there's been  
21 nothing for the children and kids to do around  
22 there so with this program and development

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1 center I'm going to be doing the athletic  
2 department and helping the kids, you know what  
3 I'm saying, with their homework and making  
4 sure they, you know what I'm saying, stay on  
5 the right track.

6 I plan to teach the children of  
7 all ages from children to teenagers to learn  
8 from one another how to love individually  
9 whether they are kin or friend and how to live  
10 a life to their fullest potential. The sports  
11 department will teach the children discipline,  
12 sportsmanship, teamwork, commitment and hard  
13 work.

14 We will also have teen groups,  
15 study hall, progress and report card reviews  
16 and awards for the children and have like  
17 movie night, open rec, you know what I'm  
18 saying, just to keep these kids off the street  
19 because it is, you know what I'm saying, the  
20 neighborhood.

21 There's a lot of small children  
22 and young teenagers and, like she said, Ms.

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1 Blanche said that the kids and the teenagers  
2 need something to do and that will be very  
3 constructive for them to do and not in the  
4 street getting into any trouble or any harm.  
5 I fully support this as a resident and as a  
6 future staff member of this development  
7 center.

8 CHAIRPERSON LOUD: Thank you, Mr.  
9 Allen. Let's see if there are any questions  
10 from the Board for either Ms. McCulla or Mr.  
11 Allen.

12 MS. McCLOUD: It's McCloud.

13 CHAIRPERSON LOUD: Ms. McCloud.  
14 What did I say?

15 MS. McCLOUD: McCulla. You were  
16 close.

17 CHAIRPERSON LOUD: Sorry about  
18 that, Ms. McCloud. There do not appear to be  
19 any questions. I did want to ask you how long  
20 you've been living there.

21 MS. McCLOUD: Fifteen years.

22 CHAIRPERSON LOUD: Fifteen years.

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1 Are you one of the persons in that building  
2 that owns a vehicle?

3 MS. McCLOUD: No, I do not own a  
4 vehicle.

5 CHAIRPERSON LOUD: You do not?  
6 Okay. If there are no additional questions,  
7 now would be the time to call up any persons  
8 in our audience who are in opposition to the  
9 application. Seeing none what we do is turn  
10 back to the applicant now for any closing  
11 remarks.

12 MS. BRADSHIRE: I just would like  
13 for you all to consider this. We are in  
14 urgent need of good child care. We are doing  
15 a lot. We are also having a dance program and  
16 we are having foster grandparents that are  
17 going to come down and help and we just need  
18 this. We really need this bad and I want to  
19 thank you.

20 CHAIRPERSON LOUD: Well, we want  
21 to thank you as well for your application,  
22 your efforts, and really all the fine work

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1 you're doing in that community and we,  
2 speaking for myself, hope to do everything  
3 that we can to try to make your desire come to  
4 fruition.

5           We have certain standards that we  
6 have to apply when we take a look at an  
7 application like this. One of them, of  
8 course, is a special exception which we talked  
9 about. The second one that relates to the  
10 parking relief is called a variance and it's  
11 a separate standard.

12           I think what we're going to do now  
13 having heard the testimony, including the  
14 testimony of the Office of Planning and looked  
15 at our record, we're going to -- we have a  
16 couple of options. We have a couple of  
17 options.

18           We can decide the case today and  
19 vote it up or down one way or the other or we  
20 can continue the case leaving the record open  
21 if we deem that there's some information that  
22 we would like to have that is not currently

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1 part of the record. I think we are going to  
2 make that decision shortly and you can remain  
3 in your seats and listen as we deliberate  
4 through what some of the issues are.

5 With that I think we're ready to  
6 discuss the case further. I would like to ask  
7 if there is a Board Member who would be  
8 willing to start us off in our discussion.

9 VICE CHAIR DETTMAN: I'd be happy  
10 to lead us off, Mr. Chairman. With respect to  
11 you've already kind of framed what's before  
12 the Board which is a special exception under  
13 Section 205 to establish a child development  
14 center. Then there's the additional variance  
15 from the parking requirements which based on  
16 the intended number of staff for this  
17 particular facility, or this particular use,  
18 what's required is four parking spaces.

19 In lieu of going through the  
20 individual provisions of Section 205 I can  
21 just incorporate by reference the Office of  
22 Planning's Report, that's our Exhibit 31, and

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1 state for the record that I'm in agreement  
2 with the Office of Planning that the applicant  
3 has met its burden under Section 205 and I'm  
4 in support of the special exception for the  
5 child development center.

6 With respect to the parking, I do  
7 see it a little bit differently than the  
8 Office of Planning. Looking at this request  
9 and seeing how it comports with the three  
10 prongs in the variance test, I don't see the  
11 uniqueness here. I think there are two  
12 avenues that a particular applicant can pursue  
13 with respect to achieving zoning relief.

14 There's coming to the BZA and then  
15 there's the other avenue for typically what's  
16 for larger projects like this apartment  
17 complex in the 1980s is they can go to the  
18 Zoning Commission and request a battery of  
19 zoning relief in return for a collection of  
20 community amenities.

21 It's just simply another type of  
22 approach to getting zoning relief. Because

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1 this property has been developed fully in  
2 accordance with the plans that were approved  
3 in the 1980s under that PUD, I don't consider  
4 that an exceptional circumstance.

5 I consider that a choice that was  
6 made back in the '80s for purposes of  
7 developing this property and to come back  
8 sometime down the road and say that because we  
9 made the choice to go to the Zoning Commission  
10 in 1981 that presents us with an exceptional  
11 circumstance right now. I don't see it. That  
12 being said, I don't think the applicant can  
13 prevail on the variance request and the  
14 parking requirements that are before us.

15 However, just looking at our  
16 regulations I think that there is an approach  
17 that can decrease the standard that needs to  
18 be met with respect to the required parking  
19 spaces and get the applicant what they  
20 require. There's a couple ways of looking at  
21 it but I think the one that works best for the  
22 applicant, and this would require the Board to

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1 just continue our deliberations for a short  
2 period of time in order for the applicant to  
3 supplement the record with a letter.

4 I did note that in the record the  
5 applicant intends to provide before and after  
6 care for the nearby elementary school so the  
7 approach that I would recommend is that the  
8 applicant seek a special exception for the  
9 parking requirement and essentially what that  
10 means is that you would have to maybe discuss  
11 with the elementary school or with nearby  
12 Trinity University, Trinity College.

13 I see that on the aerial photo  
14 that's in the OP report there's a couple  
15 fairly large-sized parking lots immediately to  
16 the north of Franklin Street. Essentially  
17 what the Board would need is a letter from  
18 either of those entities, Trinity or the  
19 elementary school agreeing that you could use  
20 four of their parking spaces for off-site.  
21 Essentially you would have access to four  
22 parking spaces off of this particular property

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1 but, in a sense, you would be fulling your  
2 parking requirement.

3 I think that is an approach. I  
4 think a better approach would be that because  
5 we heard through testimony that only 60  
6 percent of that parking lot is being used the  
7 Board has the authority to reduce the amount  
8 of required parking that is provided for the  
9 apartment building so it would be the owner of  
10 the property requesting from the Board a  
11 reduction in the number of parking spaces that  
12 are provided for use by the residents.

13 Essentially it would be the  
14 property owner saying, "Could you reduce our  
15 parking requirement to 96 which would free up  
16 the four spaces for the child development  
17 center." The advantage to that is that now  
18 all the parking spaces are on the same  
19 property.

20 Unfortunately our Section 2109  
21 doesn't allow for that because the Board only  
22 has the authority to reduce the parking for

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1 nonresidential buildings and structures.  
2 Since this is an apartment dwelling we can't  
3 do that. The approach really is that you  
4 would need to talk to the elementary school or  
5 Trinity or some other nearby facility. It  
6 doesn't need to be across the street.

7           What the Board just needs to do is  
8 to have something in the record saying that  
9 there is someone out there that's willing to  
10 provide you with access to these four spaces  
11 and then they would write a letter to the  
12 Board and basically say just that. Then the  
13 Board can analyze your request as a special  
14 exception instead of the more stringent  
15 variance and go forward with this case.

16           I'm very much in favor of this  
17 request for the creation of a child  
18 development center and commend the applicant.  
19 I think just what the Board would need is a  
20 little bit more on the record in order to find  
21 the legally appropriate approach to getting  
22 what you actually need.

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1 MS. BRADSHIRE: There is a nearby  
2 street that they can park on. They can park  
3 on Franklin Street. There are streets there  
4 that they can park on.

5 MEMBER MOLDENHAUER: The  
6 requirement is they have to have off-street  
7 parking because the concept is that you want  
8 to make sure that you're not by having a new  
9 use you're not imposing too much on the  
10 current street needs.

11 One of the other things you can do  
12 is if you go to the elementary school or you  
13 go to Trinity College and they say, "Sorry, we  
14 will not rent a parking space to you," you can  
15 come back and in your notice you can tell us,  
16 "We have pursued X, Y, and Z option," and  
17 whether they are not financially feasible,  
18 whether they are not willing to do it. Then  
19 you can say, "We have reviewed the parking on  
20 this street. There is sufficient parking that  
21 would not disturb the neighborhood. In  
22 addition to that, two of our staff members..."

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1                   You can show us affidavits from  
2 your staff members, from Mr. Allen and whoever  
3 else saying, "They currently reside on the  
4 property and, thus, we really only then need  
5 two extra spaces and that additional two  
6 parking spaces on the street would not be an  
7 issue." Again, this would need to be laid out  
8 in an additional type of relief requested.

9                   Right now, as Board Member Dettman  
10 was saying, under the current relief of a  
11 variance it's not likely that you would  
12 prevail in that because of the fact we don't  
13 see the uniqueness there but we are trying to  
14 hopefully provide you with some options so  
15 that you can come back to us shortly and lay  
16 out some additional options that we can  
17 finalize this application and you can move  
18 forward in trying to provide some programs for  
19 the children in the area.

20                   CHAIRPERSON LOUD: Thank you, Mr.  
21 Dettman and Mrs. Moldenhauer. I'm in  
22 agreement with you, Mr. Dettman and Mrs.

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1 Moldenhauer. This is an application that  
2 based on the evidence I want to support. I  
3 think it's an outstanding addition to that  
4 community as a special exception. I'm looking  
5 for ways to show the support that I think the  
6 evidence warrants in this case which I think  
7 is a vote of approval.

8 I think with that Mr. Dettman has  
9 outlined an option and perhaps working closely  
10 with the Office of Planning in terms of being  
11 real clear about what some of the steps you  
12 would take in order to pursue that option  
13 might be very helpful to you.

14 I don't want to speak ahead of the  
15 evidence coming into the record but I'm also  
16 almost persuaded that there might be an  
17 exceptional situation in this in that you're  
18 talking about the PUD that provides for the  
19 100 parking spaces which by itself I don't  
20 think is an exceptional situation but when  
21 added to the testimony that 40 percent of  
22 these spaces have never been used for

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1 residential parking.

2 Maybe 20 percent for visitors.

3 That alone, again, is not necessarily decisive  
4 but when added to the fact that the PUD  
5 requires those 100 spaces so you've got two  
6 factors that are sort of converging on each  
7 other.

8 Then a third factor, I think,  
9 would be something Mrs. Moldenhauer alluded to  
10 which would be if you are to go out and  
11 attempt to get these letters from the school  
12 and from the college and they simply refuse to  
13 provide you with letters saying that they  
14 would provide this parking space, I'm just  
15 wondering if those three things are not a  
16 confluence of factors that would make the  
17 exceptional situation test, at least in my  
18 mind. I think there are some options out  
19 there and some guidance for you in terms of  
20 some steps to take and that's my perspective  
21 on it. I think we've heard from most of the  
22 Board Members except for Mr. Turnbull.

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1                   MEMBER TURNBULL: Mr. Chair, I  
2 would concur with all three of you. I think  
3 the applicant needs to understand that we are  
4 approving the special exception. We're just  
5 trying to deal with the variance on the  
6 parking. As has been suggested, if you went  
7 to Trinity College and the elementary school  
8 and requested to see if they would have four  
9 spaces, if they say now, either way I think a  
10 letter from them helps support your case where  
11 we can then find another venue.

12                   It might also be worthwhile to  
13 have in the record from Ms. Carter something  
14 that actually states that only 60 percent of  
15 the spaces are used and that they're  
16 unassigned and you still have about 40 spaces  
17 during the day for general use. I think that  
18 on the record may help us move this thing  
19 forward, too.

20                   MS. CARTER: So what if I give up  
21 my parking space?

22                   MEMBER TURNBULL: No, you don't

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1 have to do that. I just think we need  
2 something on the record that describes the  
3 parking situation there, that it is not as per  
4 the original PUD. There is not 100 percent  
5 usage. The current usage which has been over  
6 the past few years and which you feel is not  
7 going to increase is going to be at about 60  
8 percent. I think if we had that in the record  
9 just to supplement what's there that will help  
10 us move this forward.

11 MS. CARTER: Okay.

12 CHAIRPERSON LOUD: So I think what  
13 we're all saying is that based on the  
14 presentation made the report from the Office  
15 of Planning with the support of the ANC, the  
16 fact that there are no witnesses in  
17 opposition, only testimony in support and  
18 looking at our standard that the evidence we  
19 know could probably support a special  
20 exception for off-site spaces.

21 If for some reason we can't get to  
22 that, at least in this one Board Member's

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1 mind, it would also potentially satisfy the  
2 test for variance. I think that leaves you  
3 with some choices now to reflect upon some of  
4 the options that we have laid out there  
5 working very closely again with the Office of  
6 Planning.

7 I think they are willing to work  
8 with the applicant. It's part of what they do  
9 as their job so they are more than happy to  
10 sit down and meet with you and talk through  
11 some of what we have discussed at this hearing  
12 today. Then I think what we want to do is try  
13 to set a date for the continuation of the case  
14 at which point in time we'll give you enough  
15 time to get that information into our record.

16 Assuming the information comes  
17 into our record we'll have what is called a  
18 decision meeting on it and we'll actually vote  
19 at that decision meeting. You don't have to  
20 be present for that. You can view it on the  
21 internet or you can come and be present. We  
22 don't normally accept testimony at those

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1 decision meeting hearings and so once Mr.  
2 Dettman rejoins us I think we'll look for a  
3 date where we can do that.

4 Mr. Dettman, as you were  
5 conferring with counsel, I was just sort of  
6 wrapping up here in terms of some next steps  
7 by way of setting this potentially for a  
8 decision meeting. I think we have set before  
9 the applicant some options which they'll  
10 discuss internally and perhaps pursue with the  
11 Office of Planning. I didn't want to close  
12 out without going back to you to see if you  
13 had any additional thoughts on it.

14 VICE CHAIR DETTMAN: I don't think  
15 so, Mr. Chairman. I wanted to follow up on  
16 something you said. There could be an  
17 exceptional circumstance here. I don't think  
18 it's the presence of the PUD but perhaps I  
19 would encourage the applicants who work with  
20 the Office of Planning to see if there are  
21 other exceptional conditions specific to this  
22 property that could help make the case for a

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1 variance in addition to working with the  
2 Office of Planning to strategize on how best  
3 to go about looking for the special exception  
4 for locating these parking spaces off-site  
5 either at Trinity or the elementary school or,  
6 again, some other place.

7           It can't be available on-street  
8 parking unfortunately but some other place.  
9 I mean, you have Catholic that is in close  
10 proximity. You have a parking lot that is at  
11 Michigan and Irving. It's a public parking  
12 lot that might be available to you. Kind of  
13 look at your surroundings.

14           I think there might be opportunity  
15 there to put in place a letter, an agreement  
16 from a particular property owner that says,  
17 "I'm willing to provide access to four parking  
18 spaces." If the Office of Planning could  
19 assist in any way, that would be great.

20           CHAIRPERSON LOUD: Okay. So, I  
21 think, with that we want to look for a date  
22 now to set this for decision and I'm looking

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1 at February 9 in the morning. We only have  
2 one other decision for that morning so it  
3 would be a good opportunity and that would  
4 give you a couple weeks, perhaps two-and-a-  
5 half weeks to work with the Office of Planning  
6 and try to get this additional information for  
7 our record. Do you have any questions? Okay.

8 Why don't we set this for decision  
9 then on Tuesday morning, February 9th. Why  
10 don't we ask that you have your supplemental  
11 letters from either the local elementary  
12 school that Mr. Dettman talked about, or I  
13 think it was Trinity University, or some other  
14 off-site close-by parking.

15 Or if you're not able to get that,  
16 if you've made the effort to get that and they  
17 have simply turned you down, some writing that  
18 reflects that and have that in our record by  
19 February 5th which is Friday. Okay? All  
20 right. Thank you very much.

21 MS. CARTER: Thank you.

22 CHAIRPERSON LOUD: If there is

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1 nothing further in this case, we'll adjourn  
2 the morning hearing and very shortly we will  
3 call the afternoon hearing. Thank you for  
4 your patience and thank you for your time.

5 Ms. Bailey, is there anything  
6 further, or Mr. Moy, for the morning calendar?

7 MS. BAILEY: Not for the morning,  
8 Mr. Chairman.

9 CHAIRPERSON LOUD: Thank you very  
10 much. Then the morning calendar is adjourned.

11 (Whereupon, at 2:14 p.m. off the  
12 record to reconvene at 2:28 p.m.)

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

2:28 p.m.

CHAIRPERSON LOUD: Good afternoon.

This is the January 19th public hearing of the Board of Zoning Adjustment. My name is Marc Loud. I'm Chairperson and joining me today are Vice Chair Shane Dettman representing the National Capital Planning Commission, Mrs. Meredith Moldenhauer, Board of Zoning Adjustment. To her left Mrs. Lori Monroe, Office of the Attorney General. On the far end is Beverley Bailey, zoning specialist here in the Office of Zoning.

Copies of this afternoon's hearing agenda are available to you and are located to my left in the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions

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1 in the hearing room.

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

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

16 The order of procedure for special  
17 exceptions and variances is as follows.

18 Statement and witnesses of the applicant;  
19 government reports including the Office of  
20 Planning, the Department of Public Works,  
21 etc.; the report of the Advisory Neighborhood  
22 Commission; parties or persons in support;

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1 parties or persons in opposition; and,  
2 finally, closing remarks by the applicant.

3 Pursuant to Sections 3117.4 and  
4 3117.5 the following time constraints will be  
5 maintained. The applicant, the appellant,  
6 persons and parties except an ANC in support,  
7 including witnesses, no more than 60 minutes  
8 collectively.

9 Appellees, persons, and parties  
10 except an ANC in opposition including  
11 witnesses, again, no more than 60 minutes  
12 collectively. Individuals wishing to testify  
13 three minutes. Individuals representing  
14 organizations are allowed five minutes to  
15 testify.

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

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1                   Nothing prohibits the Board from  
2 placing reasonable restrictions on cross  
3 examination including time limits and  
4 limitations on the scope.

5                   The record will be closed at the  
6 conclusion of each case except for any  
7 material specifically requested by the Board.  
8 The Board and the staff will specify at the  
9 end of the hearing exactly what is expected  
10 and the date when the parties must submit the  
11 evidence to the Office of Zoning. After the  
12 record is closed no other information will be  
13 accepted by the Board.

14                   The decision of the Board in these  
15 contested cases must be based exclusively on  
16 the public record. To avoid any appearance to  
17 the contrary the Board request that persons  
18 resent not engage the members of the Board in  
19 conversation. Please turn off all beepers and  
20 cell phones at this time so as not to disrupt  
21 this proceedings.

22                   The Board will make every effort

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1 to conclude the public hearing as near as  
2 possible to 6:00 p.m. If the afternoon cases  
3 are not completed at 6:00 p.m., the Board will  
4 assess whether we can complete the pending  
5 case or cases remaining on the agenda.

6 At this time the Board will  
7 consider any preliminary matters. Preliminary  
8 matters are those that relate to whether a  
9 case will or should be heard today such as a  
10 request for postponement, continuance, or  
11 withdrawal, or whether proper and adequate  
12 notice of the hearing has been given.

13 If you are not prepared to go  
14 forward with the case today or if you believe  
15 that the Board should not proceed, now is the  
16 time to raise such a matter.

17 Does the staff have any  
18 preliminary matters?

19 MS. BAILEY: No, Mr. Chairman.

20 CHAIRPERSON LOUD: Very good.

21 Then why don't we swear in all witnesses who  
22 are going to be testifying this afternoon in

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1 the two cases that we have on the calendar and  
2 you can be sworn in by rising to take the oath  
3 and Ms. Bailey will administer the oath to  
4 you.

5 MS. BAILEY: Do you solemnly swear  
6 or affirm that the testimony that you will be  
7 giving today will be the truth, the whole  
8 truth, and nothing but the truth?

9 WITNESSES: I do.

10 MS. BAILEY: Thank you. Are you  
11 ready for the first case, Mr. Chairman?

12 CHAIRPERSON LOUD: Yes, Ms.  
13 Bailey, when you're ready.

14 MS. BAILEY: The first  
15 application, Mr. Chairman, is Application  
16 17975. It's the application of Cleotilde E.  
17 Galvez Kimmell and it's pursuant to 11 DCMR  
18 Section 3104.1 for a special exception for a  
19 child development center. That's for 12  
20 children and 4 teachers under Section 205.

21 The property is zoned R-1-B. It's  
22 located at 6524 8th Street, N.W., Square 2973,

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1 Lot 81. Similar to the previous case, Mr.  
2 Chairman, the applicant also amended this  
3 application and is also seeking relief from  
4 the on-street parking requirement -- from the  
5 off-street parking requirement.

6 CHAIRPERSON LOUD: Thank you, Ms.  
7 Bailey. If the applicant and if the ANC is  
8 present, if they're not that's okay, but if  
9 the applicant could step forward and take a  
10 seat at the table.

11 Good afternoon again. If there is  
12 a member of the ANC Commission 4B present if  
13 you could also join the persons at the tables  
14 up front. There does not appear to be any.  
15 Could we have everyone who is at the table  
16 just introduce yourselves for our record.  
17 Let's start on my far left and work our way  
18 over.

19 MS. ZEGEYE: My name is Meti  
20 Zegeye and I'm a student attorney at the  
21 Washington College of Law.

22 CHAIRPERSON LOUD: Good afternoon.

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1 MS. SALA: Good afternoon. My  
2 name is Emily Sala. I'm also a student in the  
3 program.

4 CHAIRPERSON LOUD: Good afternoon.

5 MS. SALA: Good afternoon.

6 MS. KIMMELL: Good afternoon. My  
7 name is Cleotilde E. Galvez Kimmell. I love  
8 in 6534 A Street, N.W. in Washington.

9 CHAIRPERSON LOUD: Good afternoon.  
10 Andrew Uribe, interpreter.

11 CHAIRPERSON LOUD: Good afternoon.

12 MS. ZEGEYE: I just want to add  
13 also that we are working under the supervision  
14 of our professor Jaime Lee.

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

17 In terms of the interpretation  
18 services, before we start, do you have a  
19 preference on how this might work? We've had  
20 some cases where literal word for word  
21 interpretation has been necessary and others  
22 where the language is understood, English is

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1 understood but not spoken as clearly so the  
2 interpretation --

3 MR. URIBE: Simultaneous and  
4 consecutive but Ms. Kimmell understands  
5 English and she ask that I be present in case  
6 she needs further interpretation.

7 CHAIRPERSON LOUD: Okay. Very  
8 good.

9 MR. URIBE: Is that okay, Ms.  
10 Kimmell?

11 MS. KIMMELL: Um-hum.

12 CHAIRPERSON LOUD: All right. So  
13 we're going to proceed along those lines and  
14 you just stop us if we are not allowing your  
15 client to participate fully in the  
16 proceedings. Very well.

17 Okay. I think a couple of  
18 thoughts at the outset of the case. First, I  
19 just want to commend the applicant's counsel  
20 for the fine job that you've done organizing  
21 the case and presenting the information. We  
22 review these files every Tuesday, at least a

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1 half-a-dozen files each Tuesday.

2 This is on par with what we see in  
3 almost all of our other cases including cases  
4 where the law firms are sending attorneys down  
5 to represent the applicant. An outstanding  
6 job has been done.

7 With respect to the relief that's  
8 going to be requested today and needed today  
9 for the child development center, we've noted  
10 from taking a look at the file that both  
11 special exception relief is necessary which  
12 was initially requested in the initial filing  
13 application and was what we call advertised  
14 and I'll explain that, notice to the  
15 community.

16 And then subsequent to that I  
17 believe either late December or early January  
18 the application was amended for the parking  
19 relief which is what we call the variance  
20 relief as you know from your pleadings, your  
21 very-well-prepared pleadings.

22 With respect to the two types of

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1 relief, variance relief is a little more  
2 involved. It's a little more extensive. The  
3 evidence to establish a variance case is a bit  
4 higher than the evidence to establish a  
5 special exception.

6 In this case we observed from the  
7 record that the request for variance relief  
8 appears not to have been noticed in the  
9 community or advertised in the community to  
10 the same extent that the special exception  
11 relief was. In fact, it does not appear to  
12 have been advertised at all in the community.

13 If that is the case, then we'll  
14 give you the opportunity to respond to that if  
15 you would like to. What we are going to do  
16 then is hold in abeyance the presentation of  
17 the variance case and allow the special  
18 exception case to go forward.

19 Then we can discuss a little bit  
20 further some of the ins and outs of the  
21 variance case as we either postpone it or  
22 decide not to postpone it or whatever we end

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1 up doing. It appears as though there was not  
2 advertisement of the variance case.

3 In those circumstances it would  
4 not be fair to members of the community that  
5 did not have the opportunity to come before  
6 the BZA and express either their support or  
7 their opposition to the specific criteria for  
8 a variance case in the same manner that  
9 they've had an opportunity to come forward and  
10 express support or opposition to the criteria  
11 for the special exception. Okay? Before we  
12 formally launch it, did you have a response to  
13 that? You don't have to if you don't want to.

14 MS. ZEGEYE: No, just to agree  
15 with what you said it wasn't advertised,  
16 although we did write a letter to the ANC  
17 after the completion of our second meeting  
18 with them that we will also be requesting a  
19 parking variance in addition to the special  
20 exception.

21 We didn't address it prior to that  
22 because we were operating under the assumption

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1 that the parking space that came with her --  
2 I mean, with the house would fulfill the  
3 requirement for the child development center.  
4 We only found out that we needed additional  
5 relief after talking to the Office of Planning  
6 who kindly informed us that was the case.

7 CHAIRPERSON LOUD: Again, you are  
8 to be commended for making the correction and  
9 making it in a timely fashion. Nonetheless,  
10 I think moving forward today we'll move  
11 forward on the special exception and we'll  
12 continue the part of the case that deals with  
13 the variance as you draw to a close in your  
14 special exception case and we'll give you some  
15 instructions on that.

16 MS. MONROE: Mr. Chairman, can I  
17 just say one thing, too?

18 CHAIRPERSON LOUD: Yes.

19 MS. MONROE: You realize that this  
20 was not your fault because the reg said the  
21 notice has to go from the Director of OZ so  
22 you don't send the notice, OZ sends the

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1 notice. It's just that it has to be re-  
2 advertised for fairness and due process and  
3 all that.

4 CHAIRPERSON LOUD: Thank you, Ms.  
5 Monroe. Again, just to make it abundantly  
6 clear, what you presented before us is  
7 outstanding and very professional and we  
8 appreciate getting a package that is full like  
9 this that facilitates with you.

10 With that, why don't we begin with  
11 your special exception case. The record is  
12 pretty full. You may want to tell us a little  
13 bit about the child development center and  
14 what you are seeking to accomplish here. The  
15 only question I had was one about the age of  
16 the young people that we're talking about and  
17 then you can feel free to introduce whatever  
18 evidence you think is appropriate  
19 understanding fully that we've got a very well  
20 put together record on the special exception.

21 MS. ZEGEYE: Thank you again. We  
22 just want to start by just first thanking you

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1 again for allowing us to appear in front of  
2 you. At the first hearing we did ask for a  
3 continuance because we wanted to work closely  
4 with the Office of Planning, DDOT, and also  
5 talk to the ANC and get their support.

6 We were able to do all of those  
7 steps. I'm sure the record shows that DOP,  
8 DDOT, and the ANC wrote a letter showing their  
9 support for this application. We do think  
10 it's a valuable addition to the neighborhood  
11 to allow Ms. Kimmell to continue operating her  
12 child development center with an additional  
13 six children.

14 MS. SALA: Thank you again. I  
15 have just a little point of clarification. I  
16 know last time we were here there was a little  
17 confusion about the number of children that  
18 was being asked for so just to clarify that in  
19 case it was unclear. She currently cares for  
20 six children at her home daycare. She is  
21 asking for a maximum of 12.

22 She is asking for six more than

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1 she has now. We believe that is also in line  
2 with the regulations from the Office of the  
3 Statement Superintendent of Education. For  
4 child development home there is a maximum of  
5 12 according to one of their regulations so we  
6 want to keep in line with their rules. Just  
7 to clarify again, 12 is what we're asking for.

8 In addition, we are going to go  
9 just into the special exceptions today but, as  
10 I said, she has a home daycare in the basement  
11 level of her home. She has operated the home  
12 daycare for just over two years now. She's  
13 remained in compliance with the various  
14 offices she has to confer with, her licensing,  
15 her business license that goes with it, those  
16 kind of things.

17 The families in her neighborhood  
18 are very devoted and most of the families live  
19 close by so it's very much a neighborhood  
20 operation. This is in our background within  
21 the description of 205. She's in the basement  
22 location and her off-site play areas she goes

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1 to the Takoma Recreation Center for most of  
2 that and sometimes field trips outside of the  
3 neighborhood.

4 MS. ZEGEYE: Also Ms. Kimmell  
5 offer affordable and very inexpensive service  
6 to families who wouldn't otherwise be able to  
7 get it and part of the D.C. subsidy program.  
8 Thereby she, you know, accept vouchers in the  
9 form of payment so she really offers something  
10 really positive.

11 At the second meeting with the  
12 ANC a lot of the parents showed up and the  
13 community showed up to show their support and  
14 attest that this was, indeed, something really  
15 positive. She should be considered as an  
16 asset to the neighborhood and her endeavor  
17 should be nurtured and fostered further.

18 MS. SALA: Finally, you're asking  
19 about the age she works with. I think her  
20 oldest child right now at the home is four.  
21 Once the children reach a certain age they  
22 will go to school during the day. At that

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1 point she is no longer caring for school-age  
2 children so this is pre-K and under.

3 CHAIRPERSON LOUD: Once they reach  
4 school age are they not going to be in the  
5 program at all and they will just go to  
6 school?

7 MS. SALA: Right.

8 CHAIRPERSON LOUD: So they won't  
9 even be clients at that point?

10 MS. SALA: Right.

11 CHAIRPERSON LOUD: Okay. So it  
12 would be Pre-K to age 4. Okay. Might I make  
13 a suggestion which is that rather than voir  
14 dire the applicant through a series of  
15 questions that sort of establish the framework  
16 and the history and the foundation and the  
17 hours, etc., perhaps you can make her  
18 available for questions that Board Members  
19 might have, very specific questions which may  
20 in turn save her some time and save you guys  
21 some time as well. Okay. Then, with that, I  
22 think what we are going to do is if Board

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1 Members have specific questions of the  
2 applicant or her counsel regarding what's been  
3 presented, now would be a good time to get  
4 those questions out.

5 MEMBER MOLDENHAUER: Looking at  
6 your application it says that the current  
7 hours of operation go from 7:00 a.m. until  
8 11:30 p.m. Is that correct?

9 MS. ZEGEYE: Yes, that's correct.

10 MEMBER MOLDENHAUER: So if you are  
11 obviously increasing by six, are there going  
12 to be other potential children that would need  
13 services until that late in the evening?

14 MS. ZEGEYE: Currently she just  
15 has one child that comes in the evening. From  
16 the parents that came to inquire about her  
17 services, they mostly were those who would  
18 need her services during the day. We cannot  
19 -- again, you know, we don't foresee that to  
20 happen in the future but if it does happen, we  
21 feel that the situation doesn't really change  
22 whether the child comes during the day or in

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1 the evening

2 MEMBER MOLDENHAUER: No, it  
3 doesn't change the facts but, at the same  
4 time, we have to evaluate hours of operation  
5 and that would be one of the conditions that  
6 we would be looking at to identify a  
7 conditional approval and so I'm just trying to  
8 see whether -- I mean, everybody else it looks  
9 like they end around 6:00 p.m. except for this  
10 one child which is 11:30. Is that correct?

11 MS. ZEGEYE: Right.

12 MEMBER MOLDENHAUER: Okay. Thank  
13 you.

14 CHAIRPERSON LOUD: And just to  
15 follow-on to Board Member Moldenhauer's  
16 question, is the request that relief be  
17 granted just for one student to go until, I  
18 guess, 11:30 and that the other 11 would be  
19 within the more traditional hours?

20 MS. SALA: Those are her current  
21 hours of operation. OZ has a list and there  
22 are some child development homes whose hours

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1 go that late and those are her hours  
2 currently.

3

4 CHAIRPERSON LOUD: So, again, her  
5 hours are from 7:00 to 11:00.

6 MS. SALA: Right.

7 CHAIRPERSON LOUD: 11:30 and  
8 that's what the special exception request is  
9 for, 7:00 to 11:30.

10 MS. SALA: The request is that her  
11 hours would remain the same but the request is  
12 focusing on the increase in the number of  
13 children she can care for at any point during  
14 the day.

15 MS. ZEGEYE: And her hours of  
16 operation will remain the same so we are  
17 asking that she be allowed to care for 12  
18 children within the existing hours of  
19 operation.

20 CHAIRPERSON LOUD: Okay. As I  
21 understand the file presented for us, all of  
22 the population would be in the basement?

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1 MS. ZEGEYE: Yes.

2 CHAIRPERSON LOUD: Okay. Just in  
3 terms of the logistics and the ability, I  
4 guess, of the basement to house that  
5 population what are your thoughts on that?  
6 Let me just turn to the applicant and ask her  
7 directly.

8 Are you comfortable and satisfied  
9 that the basement is fully equipped for the 12  
10 students?

11 MS. KIMMELL: Yes. The basement I  
12 prepare and I fix especially for the children  
13 and don't have any connection with the house.  
14 The children cannot go in the house. The  
15 place is very pretty and fixed for the  
16 children.

17 CHAIRPERSON LOUD: Okay.

18 MS. ZEGEYE: If I could add one  
19 more question -- I mean, one more remark. The  
20 Office of the State Superintendent does come  
21 and check on Ms. Kimmell's daycare on a  
22 regular basis, especially also because of the

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1 fact that she does participate in the DC  
2 subsidy program. The adequacy of the center  
3 is very closely monitored by these monitors  
4 that come about four to six times a year.

5 CHAIRPERSON LOUD: Okay. Very  
6 good. Thank you. I don't have any additional  
7 questions for the applicant. Do Board  
8 Members? Okay. Unless the applicant had  
9 something specific you wanted to add, we can  
10 now turn to the Office of Planning for its  
11 report.

12 MR. MORDFIN: Good afternoon. The  
13 subject application is in conformance with the  
14 criteria for the granting of the special  
15 exception because the childcare licensing unit  
16 recommended approval of this application. The  
17 center will be located at the intersection of  
18 two local streets with on-street parking  
19 available on each of those streets. One off-  
20 street parking space will be provided to the  
21 residents of the dwelling.

22 The employees at the center would

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1 also be residents. No employees would be  
2 commuting to the site reducing the need for  
3 on-site parking. The center would be located  
4 within the basement of a single family  
5 detached dwelling with no on-site outdoor play  
6 area.

7                   However, because the child  
8 development centers have the potential to  
9 generate noise and activity, the Office of  
10 Planning recommends that this just be approved  
11 for a period of five years to allow the Board  
12 and the community to re-evaluate the  
13 application at that time.

14                   Outdoor play would be provided at  
15 the Takoma Recreation Center and the applicant  
16 would walk the children on the sidewalk from  
17 the center to the playground which is enclosed  
18 by a fence.

19                   The Office of Planning is unaware  
20 of another child development center within  
21 1,000 feet of the square. The Child Care  
22 Licensing Unit recommended approval of the

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1 application and DDOT found that the center  
2 would have no adverse traffic impacts.  
3 Therefore, the Office of Planning recommends  
4 that the child development center be approved  
5 subject to the condition that it be approved  
6 for a period of five years. Thank you.

7 CHAIRPERSON LOUD: Thank you.  
8 First let's start with Board Members if there  
9 are any questions for the Office of Planning.  
10 There doesn't appear to be. If there are  
11 some, we can certainly come back to Board  
12 Members.

13 Does the applicant or applicant's  
14 counsel have any questions for the Office of  
15 Planning?

16 MS. ZEGEYE: No, we don't.

17 CHAIRPERSON LOUD: Okay. This is  
18 the time then that we turn to the Advisory  
19 Neighborhood Commission ANC-4B. If they are  
20 present, please step forward. I don't believe  
21 they're present. They did submit a report,  
22 Exhibit 37. In the report they indicate that

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1 4B voted unanimously on December 7, 2009.

2           However, taking a look at the  
3 submission and weighing it against our rule,  
4 our rule requires that the ANC report indicate  
5 that notice was given and that a quorum was  
6 present. I does not appear as though this  
7 report meets that standard so we will include  
8 it in our record and it certainly doesn't harm  
9 the applicant in anyway. In terms of it  
10 getting great weight, it doesn't look like  
11 we'll be able to give it great weight.

12           Now, if there are parties or  
13 persons who are in the audience that are in  
14 support of the application, now would be the  
15 time to come up. You will be given three  
16 minutes to give your testimony, five if you  
17 represent an organization.

18           Seeing none, we would then ask the  
19 same question of parties or persons in the  
20 audience that are opposed to this application.  
21 Now would be the time to come up and you would  
22 be given three minutes if you want to testify

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1 as an individual and five minutes if you  
2 represent an organization.

3 Again, seeing none we now turn  
4 back to the applicant, applicant's counsel,  
5 for any closing remarks.

6 MS. ZEGEYE: We just wanted to add  
7 about the ANC. We have been in close  
8 communication with them and we have made a  
9 presentation for them twice. We realize that  
10 the letter that was submitted did not follow,  
11 I guess, the requirements for an ANC letter.

12 I was wondering if we could just  
13 perhaps give you more description as to how  
14 that meeting went, specifically in terms of  
15 your question about the quorum. The minutes  
16 of their meeting may not be still online but  
17 it's something that they had decided and I was  
18 just wondering if that could help in your  
19 assessment.

20 CHAIRPERSON LOUD: Well, certainly  
21 we wouldn't want to deprive you of that  
22 opportunity but it's not going to help in

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1 terms of our giving great weight because our  
2 rules require that the ANC's report include  
3 the notice, the quorum in the body of the  
4 report.

5 In fact, if an ANC member comes to  
6 a hearing like this, the ANC member's  
7 testimony is supposed to be really limited to  
8 the exhibits. Even if you were to add context  
9 for the meeting, it wouldn't go toward  
10 elevating this to a great weight report.

11 MS. ZEGEYE: Okay. Thank you.

12 CHAIRPERSON LOUD: I do think that  
13 was a very good effort to sort of get that  
14 information in. That having been answered  
15 now, does the applicant have a closing set of  
16 remarks?

17 MS. ZEGEYE: In regard to the  
18 special exception, and as you've stated, we've  
19 tried to show that Ms. Kimmell does meet all  
20 the requirements as outlined in Section 205.  
21 She does not create any type of traffic or  
22 parking condition onto the neighbors. We've

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1 talked.

2 We've done some community outreach  
3 and we've talked even to the opposing  
4 neighbors, or tried to talk to them in order  
5 to try to see if there is anyway we can  
6 resolve the issues that they saw in her  
7 application. We believe she can operate this  
8 service with the additional children without  
9 impacting the neighborhood negatively. She  
10 would actually add onto the attraction of the  
11 neighborhood.

12 CHAIRPERSON LOUD: Are you aware  
13 of any opposition that was submitted in the  
14 record?

15 MS. ZEGEYE: There were three  
16 opposition letters that were submitted in the  
17 record and we contacted them individually. We  
18 talked to two of them. The third one we left  
19 a message several times. We all send them a  
20 letter explaining what Ms. Kimmell is trying  
21 to do and providing them with a form for the  
22 ANC to come and voice their opinion. Two of

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1       them stated that they did not want to have to  
2       deal with this anymore and the third one is  
3       not sure.

4                       CHAIRPERSON LOUD:  What is your  
5       understanding of the opposition and what is  
6       your client's response to the opposition?

7                       MS. SALA:  In general the  
8       opposition raised the number of points related  
9       to concerns that they had but they had not  
10      been directly affected but there were mostly  
11      hypothetical concerns of problems that could  
12      arise.

13                      One of the largest points is the  
14      letters also indicate that those three  
15      neighbors who wrote letters did not know there  
16      was a child development home in operation.  A  
17      lot of their letter was directed to, "We don't  
18      necessarily want this to exist," on principle  
19      but they did not know it was already in  
20      operation from the language they used in the  
21      letters.

22                      We also addressed their points at

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1 the ANC meeting. We went through a lot of  
2 those individually. There were concerns with  
3 the use of alley ways which are not used to  
4 access her home and her home daycare.

5 They don't provide any shortcut so  
6 there is not any congestion that is currently  
7 or that's going to be affecting the alley ways  
8 in the neighborhood. A number of concerns  
9 like that. We can go specifically or I'm not  
10 sure if you want too much detail on that part  
11 but --

12 CHAIRPERSON LOUD: I think you  
13 addressed one of them according to the ANC's  
14 report. One of the concerns was the use of  
15 alley ways to access the daycare center and  
16 the ANC, although it's not going to be given  
17 great weight, still in their report  
18 recommended that the BZA not allow families to  
19 use the alley.

20 That is something as we consider  
21 it might end up being a discussion item for us  
22 as to whether to make that a condition but it

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1 sounds like your client would agree that its  
2 client base should not use the alleys, I  
3 guess, for drop-off and pick-up.

4 MS. ZEGEYE: Right.

5 CHAIRPERSON LOUD: Something else  
6 that is reflected in the ANC letter is  
7 concerns about traffic and public safety.  
8 Does your client, or I can ask the applicant  
9 directly, have a response to that, concerns  
10 about public safety or traffic?

11 MS. KIMMELL: In front of my house  
12 we have 4 spaces in front and at the side of  
13 the house is parking for two cars. We won't  
14 have a problem with the parking for the other  
15 neighbors. Most of the time in front of my  
16 house is never parking. I have my car but my  
17 car is used for my family for actual jobs  
18 right now. The space is free all the time.

19 CHAIRPERSON LOUD: Okay.

20 MS. ZEGEYE: I would like to add  
21 to what our client said. In terms of the  
22 safety, I guess, related to the children most

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1 of the children are located so the parents do  
2 take them to the house and they drop them and  
3 pick them up the same way so there is no  
4 safety issue in regard to the kids.

5           Currently out of the six children  
6 that are there two of them come by car and on  
7 a staggered schedule so there is really no  
8 traffic problem that is created because of  
9 that particular operation. We estimate that  
10 this is going to remain the same. Perhaps a  
11 third family will come by car if the number is  
12 increased to 12.

13           As Emily said earlier, they take  
14 the children to an off-street recreation  
15 center, the Takoma Recreation Center. When  
16 they do so the teacher accompanies the  
17 students there. As the Office of Planning so  
18 clearly put out, the road that they utilize to  
19 get to the recreation center is really a  
20 neighborhood very low-traffic road and does  
21 not create any kind of safety problem to the  
22 children.

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1                   CHAIRPERSON LOUD: Okay. With  
2                   that I think, unless there are further  
3                   questions, I have one further observation that  
4                   we may turn internally as a Board to discuss  
5                   your case. The observation I had was that,  
6                   and this is part of the record, that there is  
7                   a case asserted by the Office of Planning,  
8                   advanced by the Office of Planning, for  
9                   variance relief, although we're not going to  
10                  hear that today but it is part of the record  
11                  and obviously as part of our preparation for  
12                  the hearing we review everything in the  
13                  record.

14                  The same report that makes the  
15                  case for a variance also suggest that you may  
16                  not even need a variance if, in fact, you were  
17                  to take advantage of the opportunity to put  
18                  another parking space in the rear of the  
19                  property which I believe this report indicates  
20                  there's room for so I'm just sharing with you  
21                  what's on the record because as we move into  
22                  our discussion I think one of the things we're

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1 going to do is decide whether or not to vote  
2 on the special exception today but we're not  
3 going to be able to do anything with respect  
4 to the variance request.

5 On the other hand, if there were  
6 no variance request, I think whatever we do  
7 when we decide this case we'll dispose of the  
8 entire case. That may be something for you to  
9 think about. I don't know if you have a  
10 reaction to it.

11 I certainly don't want to prompt  
12 you to have a reaction to it but it just seems  
13 to me that were the requirement for parking  
14 satisfied through the existing space that's  
15 available in the rear, and this is on page 4  
16 of the Office of Planning's Report which is  
17 our Exhibit 38, it looks like you would not  
18 even need a variance.

19 MS. ZEGEYE: I just have a  
20 question. Because this observation from the  
21 Office of Planning came in the discussion of  
22 the variance, can we still -- is it, I guess,

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1 a good argument to say that we will use the  
2 space in the rear area as a parking and,  
3 therefore, we want to even talk about the  
4 variance or do we have to talk about the  
5 variance to introduce the fact that we can use  
6 the rear area as a parking requirement?

7 CHAIRPERSON LOUD: I'm going to  
8 share my thoughts on it. I think when we get  
9 into some of these finer legal points I always  
10 refer to the Office of the Attorney General  
11 and my colleagues. They are saying right here  
12 on page 4 that, "Although one additional off-  
13 street parking space could be located on the  
14 subject property directly accessible from the  
15 public alley, the provision of this space  
16 would be redundant."

17 In their opinion the space would  
18 be redundant because they think that a  
19 variance would be appropriate in this case.  
20 I'm reading that to suggest that if you were  
21 to provide that one additional parking space  
22 there would not even be a need to discuss a

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1 variance.

2                   Colleagues, please feel free to  
3 weigh in.

4                   MEMBER MOLDENHAUER: Chairman  
5 Loud, I agree with that assessment. I think  
6 that it's also important to note that if you  
7 were to simply instead of going through the  
8 requirements to make sure that OZ were to post  
9 the variance requirement you could simply just  
10 come back and I think you're going to withdraw  
11 that and in four months that you are looking  
12 at putting a parking space in the rear.

13                   That would satisfy the  
14 requirement. If you decide not to go that  
15 course of action and we move forward with the  
16 variance, Mr. Loud made a comment earlier that  
17 part of the 205 standard requires that we  
18 assess whether or not there is satisfactory  
19 parking.

20                   If we don't find that there is  
21 sufficient parking either through a variance  
22 or through providing additional parking on the

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1 premises, then that would have to be factored  
2 into our evaluation of whether or not the  
3 application would satisfy 205 in general.

4 If you would like, you can take a  
5 few moments with your client and discuss the  
6 option of potentially withdrawing the variance  
7 application if you would like to potentially  
8 have a Board decision today. If you would not  
9 like to have that and would like to  
10 potentially allow us to move on and reschedule  
11 the date, that is something that you can  
12 consider.

13 MS. ZEGEYE: Thank you very much.  
14 We actually would like to take five minutes  
15 maybe to discuss this and then come back.

16 CHAIRPERSON LOUD: I think that's  
17 a great idea. Why don't we break for five  
18 minutes. We'll reconvene, I guess, 3:10 and  
19 hopefully we can move forward at that point in  
20 time. Thank you.

21 (Whereupon, at 3:06 p.m. off the  
22 record until 3:24 p.m.)

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1                   CHAIRPERSON LOUD: Good afternoon  
2 again. I think we would like to go back on  
3 the record in the Kimmell case, 17975. I  
4 believe that you were conferring with your  
5 client regarding the option of the variance.

6                   MS. ZEGEYE: Thank you again for  
7 giving us the opportunity to do that. We did  
8 talk to our client and her decision is that we  
9 not withdraw the variance request.

10                  CHAIRPERSON LOUD: Okay. That's  
11 definitely within her discretion to do that.  
12 Then I think from our vantage point we cannot  
13 decisively rule on this case until we  
14 entertain the variance part of the case.

15                  We could, colleagues, deliberate  
16 on the special exception today if you think we  
17 have enough information to do it and hold the  
18 variance part of the case in abeyance until  
19 after the advertisement period is passed and  
20 reschedule that part of the hearing for -- I  
21 guess we will calculate the days and schedule  
22 it then. Or we can simply since not much can

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1 happen with the special exception being  
2 granted we could hold in abeyance both of our  
3 deliberations and decisions and just do it all  
4 at once.

5 MEMBER MOLDENHAUER: Chairman  
6 Loud, I believe actually we would have to wait  
7 on the special exception since one of the  
8 elements is sufficient parking and we don't  
9 obviously know if they have sufficient parking  
10 until we can determine whether the variance is  
11 approved.

12 CHAIRPERSON LOUD: Okay. All  
13 right.

14 So Mr. Dettman is concurrence and  
15 I'm in concurrence as well so what Mrs.  
16 Moldenhauer has said is that walking through  
17 the special exception analysis there is one of  
18 the prongs that deals with parking.

19 Since your parking is now  
20 contingued upon the variance, we couldn't very  
21 well make it through the entire special  
22 exception test. I think what we need to do at

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1 this point is get a date of the continuation  
2 of this case.

3 I think, Ms. Bailey, are you  
4 taking a look at that?

5 MS. BAILEY: Yes, Mr. Chairman.  
6 February 23. I'm just pulling something out  
7 of the air.

8 CHAIRPERSON LOUD: Okay. Let's  
9 take a quick look at what you're looking at.

10 MS. BAILEY: Mr. Chairman, Ms.  
11 Monroe is just saying that it has to be  
12 advertised. Are we thinking about advertising  
13 just to the community and reposting the  
14 property and having it sent to the Register?

15 CHAIRPERSON LOUD: I think the  
16 former.

17 MS. BAILEY: Just posting the  
18 property and having the ANC notified and so  
19 forth?

20 CHAIRPERSON LOUD: Yes.

21 MS. BAILEY: That would not  
22 require 40 days. That would be sufficient

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1 time for the ANC to meet sometime in February  
2 hopefully.

3 CHAIRPERSON LOUD: Okay. Then  
4 would that still allow us to move forward on  
5 the 23rd or would we have to extend it out  
6 from the 23rd?

7 MS. BAILEY: I think that should  
8 be sufficient time.

9 CHAIRPERSON LOUD: Okay. It  
10 sounds fine with me. Ms. Monroe looks like  
11 she may have some reservations. I want to  
12 make sure.

13 MS. MONROE: I'm trying to do the  
14 math. What is today?

15 CHAIRPERSON LOUD: Doing some  
16 calculations.

17 MS. MONROE: Today is the 19th,  
18 the 23rd?

19 CHAIRPERSON LOUD: Today is the  
20 19th of --

21 MS. MONROE: The notice has to be  
22 40 days from when the notice is given. I

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1 mean, it's not given today. It has to be  
2 mailed out. Right?

3 MS. BAILEY: No. We're saying  
4 that it's not going to be put in the Register.  
5 The applicant would just be notified by the  
6 Office of Zoning -- I'm sorry, the ANC and  
7 reposted on the property.

8 MS. MONROE: I realize that but  
9 the regulations says, "Notice of the public  
10 hearing shall be given by the Director not  
11 less than 40 days before the date of the  
12 hearing by ABC." All of them including  
13 mailing the notice to each person so we need  
14 40 days for the mailing also. That's what it  
15 says.

16 CHAIRPERSON LOUD: Let's do this.  
17 Out of an abundance of caution since it's the  
18 whole issue of the notice that has us here  
19 continuing this in the first place, let's make  
20 sure we have 40 days per Ms. Monroe's comments  
21 which I think would take us past February  
22 23rd.

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1                   Too bad because that looks like a  
2 really great date. Did anybody do the  
3 calculation right quick just to see what we're  
4 talking about? March 2nd has an opportunity.  
5 Certainly March 9th ought to --

6                   MR. MOY: That would do assuming  
7 they do their posting this week. That would  
8 give us more than 40 days.

9                   CHAIRPERSON LOUD: Which one,  
10 March 2nd or March 9th?

11                   MS. BAILEY: March 9th, Mr.  
12 Chairman.

13                   CHAIRPERSON LOUD: March 9th.  
14 Okay. So we're looking at March 9th as the  
15 continuation date for the hearing on this.

16                   MS. ZEGEYE: I was wondering do we  
17 have to do anything in regard to or just show  
18 up on March 9th?

19                   CHAIRPERSON LOUD: No, you do have  
20 some additional steps you'll have to take. I  
21 think it was Ms. Bailey who mentioned -- no,  
22 Ms. Monroe, you'll have to post again. You'll

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1 have to submit an affidavit of posting as  
2 well.

3 Generally if you consult the rules  
4 in Section, I think, 3100 and the different  
5 sections that are contained within 3100 it  
6 will lay out the criteria for that. Okay? Is  
7 there anything additional on this case?

8 MS. BAILEY: Do we need a date,  
9 Mr. Chairman, for submission from the  
10 applicant or would we just leave it to the  
11 applicant to provide the information as soon  
12 as it's available? That is the posting and  
13 additional information perhaps on the parking.

14 CHAIRPERSON LOUD: Isn't the  
15 posting driven by the rules? Is it driven by  
16 the rules in terms of since there's going to  
17 be a subsequent hearing and it's going to be  
18 for the variance.

19 MS. BAILEY: Fifteen days prior to  
20 March 9th.

21 CHAIRPERSON LOUD: That's correct.  
22 Okay. Again, we encourage you to consult the

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1 rules with regard to all of those procedural  
2 dates.

3 MEMBER MOLDENHAUER: In addition,  
4 if there is additional time I would just say  
5 we did not touch on any of the factors for  
6 variance. Looking at OP's report and  
7 currently, I guess, the factors that they  
8 determine to be unique, I'm not speaking for  
9 the other Board Members but for myself and I  
10 think there are some questions as to whether  
11 or not that would be sufficient. I would  
12 maybe dive into that issue a little bit more  
13 and make sure that you're prepared to address  
14 those issues or address questions about that.

15 CHAIRPERSON LOUD: Thank you,  
16 Board Member.

17 Does the applicant have any  
18 questions for us? Very well. Assuming Board  
19 Members have no additional clarifications or  
20 feedback, Ms. Bailey, is there anything  
21 further with this case?

22 MS. BAILEY: No, sir.

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1                   CHAIRPERSON LOUD: Then we will  
2 look forward to seeing you on March the 9th.  
3 We'll take up the second part of the case  
4 then. Thank you for your patience and your  
5 briefing this afternoon. We really appreciate  
6 it. Thank you for your time.

7                   MS. SALA: Thank you.

8                   CHAIRPERSON LOUD: Ms. Bailey,  
9 excuse me. Can you call our final case this  
10 afternoon?

11                  MS. BAILEY: Mr. Chairman, is the  
12 applicant here for that case in Shawn Ayize  
13 Sabater? I don't believe he's present, Mr.  
14 Chairman. Did you still want me to call that  
15 case?

16                  CHAIRPERSON LOUD: Let me just ask  
17 typically what do we do? When we call a case  
18 if the applicant is not there do we dismiss  
19 the case, continue without prejudice? I know  
20 it's our discretion.

21                  MS. BAILEY: We may want to give  
22 him a call to see why he's not available.

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1 CHAIRPERSON LOUD: And we did not  
2 hear from this applicant at all?

3 MS. BAILEY: Not that I'm aware  
4 of. I'm not sure if other people know the  
5 status of why he's not present at this time.

6 MS. MONROE: Probably the most  
7 reasonable thing to do would be to try to  
8 contact him. If you can't, continue it.  
9 We've had cases like this before where we have  
10 dismissed and it's always been a question of  
11 you really should have given the person an  
12 opportunity. Maybe he's in the hospital. Who  
13 knows. I mean, that's the best thing to do.

14 MEMBER MOLDENHAUER: Could we give  
15 him 15 days to respond in writing with reasons  
16 for him not showing up and if he doesn't  
17 respond in writing within 10 days then it's  
18 dismissed? That way we don't have to --

19 MS. MONROE: Wait, wait, wait.  
20 You're writing a whole new regulation. If you  
21 want to write a regulation like that, that's  
22 fine.

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1 MR. MOY: Mr. Chairman, staff  
2 would like to say that the applicant called  
3 and said he would be here within five or 10  
4 minutes. I would suggest we take five or 10-  
5 minute break.

6 CHAIRPERSON LOUD: I am surely  
7 going to take a five-minute break then and  
8 hopefully this applicant will be here because  
9 -- let's adjourn. Let's give this about 10  
10 minutes and we'll come back out here and call  
11 this case and move forward whether this  
12 applicant is here or not.

13 (Whereupon, at 3:34 p.m. off the  
14 record until 3:36 p.m.)

15 CHAIRPERSON LOUD: Back on the  
16 record for the continuation for the January  
17 19th public hearing calendar. I believe we  
18 have the applicant in the final case present.

19 Ms. Bailey, when you're ready,  
20 perhaps you can swear this applicant in and  
21 call the case.

22 MS. BAILEY: Mr. Sabater, would

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1 you stand to take the oath? Would you please  
2 raise your right hand. Do you solemnly swear  
3 or affirm that the testimony that you will be  
4 given this afternoon will be the truth, the  
5 whole truth, and nothing but the truth?

6 MR. SCHNEIDER: I do.

7 CHAIRPERSON LOUD: Good afternoon.  
8 I believe your microphone is not yet on.  
9 There's a button and a green light will  
10 appear.

11 MR. SCHNEIDER: Thank you very  
12 much.

13 CHAIRPERSON LOUD: All right.  
14 That's okay. Why don't we start by you  
15 stating your name and address for the record.

16 MR. SCHNEIDER: Yes. My name is  
17 Rick Harlan Schneider, architect acting on  
18 behalf of my client, Ayize Sabater. The  
19 address of my architecture firm is 1611  
20 Connecticut Avenue, N.W., Washington, D.C.

21 CHAIRPERSON LOUD: I take it you  
22 are representing your client and he won't be

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1 here this afternoon?

2 MR. SCHNEIDER: That is correct.

3 I am representing him.

4 CHAIRPERSON LOUD: Very well.

5 MR. SCHNEIDER: I got word that he  
6 is on the way right now.

7 CHAIRPERSON LOUD: He is on the  
8 way?

9 MR. SCHNEIDER: Correct.

10 CHAIRPERSON LOUD: Is he planning  
11 to offer some testimony? I'm sorry?

12 MR. SCHNEIDER: Excuse me?

13 CHAIRPERSON LOUD: Is he planning  
14 to offer some testimony or he will be here  
15 simply to be present?

16 MR. SCHNEIDER: He will be here  
17 simply to be present.

18 CHAIRPERSON LOUD: Okay. Very  
19 well. I think we can probably get started.  
20 If there are specific questions perhaps Board  
21 Members have of him, hopefully he will have  
22 joined us by that time.

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1           The order of procedure for these  
2 cases, and there does not appear to be anyone  
3 else for this case but since you were not  
4 present when we articulated that, we begin  
5 with a statement and witnesses of the  
6 applicant. That's you.

7           Then we go to the Office of  
8 Planning for its report. Then the ANC report  
9 and the ANC did submit a report in this case.  
10 Persons in support or opposition. Then we go  
11 back to you for closing remarks.

12           Given the nature of the record  
13 before us, even though it sounds like six very  
14 elaborate steps, I don't think it's going to  
15 take a tremendous amount of time. Why don't  
16 we then follow that process and turn to you  
17 for your statement and overview of your  
18 application, your grounds for relief and  
19 basis.

20           MR. SCHNEIDER: Great. We're on  
21 my statement?

22           CHAIRPERSON LOUD: Yes. The ball

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1 is in your court.

2 MR. SCHNEIDER: We presented to  
3 you our rationale for asking for a previously  
4 approved variance and special exception for  
5 this project which is a school and child  
6 center dedicated towards serving needy  
7 families in the neighborhood.

8 Previously on Application No.  
9 17587 this organization asked for relief, a  
10 variance and special exception, and we are  
11 asking for a similar or virtually identical  
12 variance and special exception. I presented  
13 similar evidence to that effect and look  
14 forward to the BZA's comments and hope for  
15 your approval to move forward on this very  
16 worthy neighborhood-oriented project.

17 CHAIRPERSON LOUD: Why don't you  
18 very briefly just give an overview of the  
19 project itself. You're looking to increase  
20 the maximum FAR.

21 MR. SCHNEIDER: Correct.

22 CHAIRPERSON LOUD: It seems like a

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1 minimal increase. Nonetheless, just sort of  
2 give us an overview of the project. I think  
3 you're looking for three areas of relief.

4 MR. SCHNEIDER: Absolutely. We  
5 are looking for an area variance. It is sort  
6 of an odd lot, doubled zoned, of course, as  
7 you all know. We have an R-4 zoning and a C-  
8 2-A zoning. We are looking for a variance on  
9 the 1.5 FAR that is allowed for non-  
10 residential for that site. We are looking to  
11 increase from a 1.5 allowable to a 1.8  
12 allowable.

13 We are also looking for a special  
14 exception that allows us to have two of our  
15 four required parking spaces off-site down an  
16 adjacent alley that is on the same block and  
17 within the recommendations provided for in the  
18 zoning regulations.

19 In other words, the special  
20 exception asks for a certain layout and a  
21 certain approximate, or approximation, I  
22 guess, for those two off-site parking spaces

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1 and we've met those as well and the fact that  
2 they are actually down an alley as opposed to  
3 across a busy street.

4           The school itself is intended to  
5 function as a community-based education center  
6 or child center for children. They currently  
7 are operating programs that are operating  
8 after school, out of a church in Northwest  
9 Washington, D.C.

10           They also have summer school  
11 programs and they are looking to expand and  
12 allow for a facility that will take on more  
13 students and help more children in the  
14 neighborhood. That's what this facility is  
15 intended to do.

16           The client actually came to us  
17 specifically because they wanted to not just  
18 add this terrific resource to the community  
19 but do it in a way that would be as green as  
20 possible so we worked with them very closely  
21 to provide a facility that will be healthy for  
22 the students and the staff there, as well as

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1 healthy for the folks in the neighborhood and  
2 the environment as a whole.

3           And hopefully act as maybe  
4 something of a catalyst toward green  
5 development and green building in the  
6 neighborhood along with some of the other  
7 initiatives that we are seeing up and down  
8 Georgia Avenue. For that reason we, again,  
9 respectfully request for an allowance to move  
10 forward with this project.

11           Is there anything else I can  
12 answer regarding this?

13           CHAIRPERSON LOUD: Let's see.  
14 That's a good seque. Let's see if Board  
15 Members have specific questions. It's the  
16 green roof that helps to contribute to the  
17 increase in FAR?

18           MR. SCHNEIDER: No. Actually, we  
19 have a mezzanine floor. We have a small  
20 townhouse that's a two-story structure built  
21 close to 100 years ago, brick, and we're  
22 trying to retain as much of that as possible

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1 including the facade and the surrounding walls  
2 and as much of the existing floors as  
3 possible.

4           Then we're looking to add on the  
5 side of this building to basically close off  
6 a really dark alley way, or space I should  
7 say, between buildings. Not officially an  
8 alley way. It's owned by my client. It's on  
9 their property. We're looking to add to the  
10 side, to the rear, and then a full story and  
11 mezzanine above.

12           It's true the roof will have a  
13 roof garden up there for folks to go up there  
14 and see how a green roof functions but the  
15 teaching spaces are actually within the  
16 building. We are looking to provide for two  
17 spaces of parking on-site and then two, as I  
18 said, down the alley way there.

19           We worked out with the Department  
20 of Transportation that all loading and  
21 unloading would not take place on Georgia  
22 Avenue because we understand the traffic

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1 concerns there. That loading and unloading  
2 would take place actually in the rear of the  
3 building so we designed a facility that has a  
4 main ceremonial entrance up front on Georgia  
5 Avenue.

6 It has a good street presence, we  
7 believe, but it also has an entrance in the  
8 rear that will be the main entrance for pickup  
9 and drop-off so you are seeing that there, the  
10 door that actually brings you into the  
11 facility.

12 The green features in addition to  
13 the green roof really are aimed at energy  
14 efficiency and healthy interiors so we're  
15 looking at if you are familiar with the U.S.  
16 Green Building Council's LEED certification  
17 process. We are actually aiming for a LEED  
18 silver facility here, something that is  
19 somewhat prescriptive.

20 We are looking to actually break  
21 outside the box a little bit, too, and provide  
22 some additional green features that aren't

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1 necessarily required by a checklist but will  
2 be educational to the children and to the  
3 neighborhood as well. The building ideally  
4 would be sort of a teaching tool for green  
5 design and essentially being a good neighbor.

6 CHAIRPERSON LOUD: All right.  
7 Let's see if Board Members have any questions  
8 for you.

9 MEMBER MOLDENHAUER: Good  
10 afternoon. I just have a couple of questions.  
11 One, the issue of your authorization as an  
12 agent for the owner. I don't see anything  
13 specifically. I see our Exhibit 6 which was  
14 the initial application but it looks like it  
15 only has your signature on it, not Mr.  
16 Sabater's.

17 MR. SCHNEIDER: Sabater.

18 MEMBER MOLDENHAUER: Sabater.  
19 Thank you.

20 MR. SCHNEIDER: I would draw your  
21 attention to the October 1st memo that says  
22 that we're in contractual agreement and that

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1 I am to be an agent on behalf of the owner.

2 MEMBER MOLDENHAUER: It's not on  
3 what I was looking at right here. I just  
4 didn't see it.

5 MR. SCHNEIDER: I believe it's got  
6 a page number at the bottom, page No. 3 of our  
7 application.

8 MEMBER MOLDENHAUER: I'm seeing  
9 another copy of one but mine is in a different  
10 order. Oh, there it is. Hold on. No. 7 is  
11 before No. 6. That's fine. Okay. Thank you.  
12 That addresses that issue. I just wanted to  
13 check off that one issue.

14 The other thing was the parking  
15 that is located off-site up the alley. We see  
16 a recent letter that we received, I guess, on  
17 December 28th that is from the Emergency  
18 Community Arts Collective.

19 MR. SCHNEIDER: That's right.

20 MEMBER MOLDENHAUER: They are  
21 saying that they would be willing to provide  
22 or lease you parking. Am I to understand that

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1 you have not yet entered into a formal  
2 agreement with them?

3 MR. SCHNEIDER: They are willing  
4 and I believe there is a formal agreement that  
5 is there. Is that something that we can  
6 provide to you?

7 MEMBER MOLDENHAUER: I'm just  
8 curious. The way that this letter right now  
9 is drafted it just says that they would be  
10 able to provide you a lease.

11 MR. SCHNEIDER: They are in  
12 agreement. They are in agreement.

13 MEMBER MOLDENHAUER: They've  
14 already signed the lease and they finalized  
15 that information.

16 MR. SCHNEIDER: That's my  
17 understanding.

18 MEMBER MOLDENHAUER: Okay. Thank  
19 you.

20 VICE CHAIR DETTMAN: Mr.  
21 Schneider, I'm wondering in terms of the  
22 improvements on the property that you're

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1 proposing is it just the exterior stair that  
2 extends into the R-4 District?

3 MR. SCHNEIDER: For the most part,  
4 yes. If you actually take a quick look at  
5 that diagram there, you'll notice that there  
6 is a small amount of sod that I believe also  
7 intrudes into that for the most part. No,  
8 excuse me. It is totally just the stair, yes.

9 VICE CHAIR DETTMAN: I know that  
10 you're limited in terms of the amount of FAR  
11 you are allowed to put in that R-4 area. Did  
12 you calculate that and what did you come up  
13 with? I think you are limited to a total of  
14 .9 FAR.

15 MR. SCHNEIDER: .9 FAR in that  
16 area. In our calculation --

17 VICE CHAIR DETTMAN: It's  
18 2514.1(d) that you're required to comply with  
19 pursuant to 2514.2(b). Just wondering what  
20 the FAR is of that external stair.

21 MR. SCHNEIDER: Sure. I can  
22 actually run that calculation right here. I

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1 don't have it in there. Excuse me one minute.  
2 I don't have that right at my fingertips. We  
3 have an exterior stair that is 400 square feet  
4 plus the landings for a total of about 450  
5 square feet.

6 VICE CHAIR DETTMAN: Would you  
7 happen to know the land area of the R-4  
8 District?

9 MR. SCHNEIDER: Yes. We've got --  
10 I'll go ahead and do that real quick. I'm  
11 very sorry to have to run through these calcs  
12 right now but I want to answer your questions  
13 right away. What I have is 29.5 by 22 for a  
14 total of 649 square feet times the .9 FAR  
15 gives me 584 square feet of allowable and so  
16 our 440-450 feet falls within that allowable.  
17 I think we had calculated it based on the C-2-  
18 A and allowing for the whole thing to be  
19 considered as a C-2-A.

20 VICE CHAIR DETTMAN: Right. Even  
21 though you are allowed to extend the bulk  
22 requirements of the C-2-A into the R-4 you are

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1 further limited. It's kind of counter  
2 intuitive but you are only allowed to put .9  
3 FAR in the R-4.

4

5 MR. SCHNEIDER: Okay.

6 VICE CHAIR DETTMAN: What was the  
7 land area of the R-4 portion of the property  
8 did you say?

9 MR. SCHNEIDER: I've got 29.5 feet  
10 by 22 feet for a total of 649 square feet.

11 VICE CHAIR DETTMAN: Right. Thank  
12 you.

13 MR. SCHNEIDER: Times an FAR of .9  
14 is 584.

15 VICE CHAIR DETTMAN: Excellent.  
16 Thank you. That's great.

17 CHAIRPERSON LOUD: Thank you, Mr.  
18 Dettman. If there are no additional questions  
19 for the architect, let's turn to the Office of  
20 Planning for its report, our Exhibit 30.

21 Good afternoon again.

22 MR. MORDFIN: Good afternoon. The

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1 subject application is in conformance with the  
2 criteria for the granting of an area variance  
3 to FAR because the site is unique because of  
4 the topography, the design of the building,  
5 the 25-foot building setback from the front  
6 lot line, and the narrow passageway on the  
7 south side of the building and the courtyard  
8 on the north side of the building, and the  
9 limited visibility into these spaces.

10 This uniqueness results in a  
11 practical difficulty because of the design  
12 flaws which result in areas of minimal  
13 visibility. Filling in these spaces adds to  
14 the FAR of the lot. In addition, the  
15 provision of ADA compliant restrooms,  
16 corridors, and an elevator also add to the FAR  
17 and result in approximately one-third of the  
18 building being devoted to Building Support  
19 Services.

20 The requested FAR would not impair  
21 the zone plan as it would allow for the  
22 adaptive reuse of this building with a

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1 permitted use. This application is also in  
2 conformance with the criteria for the granting  
3 of a special exception to extend the  
4 regulations of the C-2-A district into the R-4  
5 because the extension is less than 35 feet.

6 The FAR of the R-4 portion of the  
7 lot is less than the maximum of 0.9 that is  
8 permitted. The extension should not have an  
9 adverse impact on a neighborhood as the  
10 building would only extend 14 feet into the R-  
11 4 and would be screened from view by a garage  
12 and an adjacent lot. OP does not recommend  
13 imposing additional requirements.

14 The Office of Planning also finds  
15 the application to be in conformance with the  
16 criteria for the granting of a special  
17 exception to locate the required parking off-  
18 site because the size of the site does not  
19 allow for the provision of the four required  
20 parking spaces. Two of the required spaces  
21 would be located along the same alley as the  
22 subject property.

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1                   These spaces would be only \$130  
2 feet away. And the Office of Planning also in  
3 this case does not recommend any additional  
4 conditions. Therefore, the Office of Planning  
5 recommends approval of the application. Thank  
6 you.

7                   CHAIRPERSON LOUD: Thank you, Mr.  
8 Mordfin. Let's see if Board Members have any  
9 questions regarding your report and then we'll  
10 turn to the applicant to see if he's reviewed  
11 it and whether or not he has any questions as  
12 well. It doesn't appear that Board Members  
13 have any questions. Did you have any  
14 questions for Mr. Mordfin regarding his  
15 report?

16                   MR. SCHNEIDER: No. I have  
17 reviewed the report and I have no questions.

18                   CHAIRPERSON LOUD: Fantastic. The  
19 ANC did submit a report. It's ANC-1B. It's  
20 signed by the Chair and Co-Chair, Chair Nadeau  
21 and Vice Chair Conklin. It's dated December  
22 17. It's our Exhibit 27. Per the submission

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1 a meeting was held October 1, proper notice  
2 and a quorum present. They voted unanimously  
3 eight to zero to support the application for  
4 exemption, variance from the FAR limit.

5 It says change of zoning from  
6 commercial and residential to commercial only  
7 and easement to provide for parking. We  
8 respectfully request great weight. This is a  
9 report that appears to meet the criteria of  
10 our rules for great weight, although some of  
11 the language admittedly is a little different  
12 than our terms of art.

13 That being said, it appears as if  
14 we have been joined by the applicant.

15 Good afternoon.

16 MR. SABATER: Good afternoon.

17 CHAIRPERSON LOUD: We have made it  
18 through about half of the hearing so far so  
19 we've only got half left. This is the part of  
20 the hearing where we'll turn to see if there  
21 are persons in opposition or support. Looking  
22 behind you there is no one else in here with

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1 us.

2 We now would turn to the applicant  
3 for any closing remarks. Certainly if you  
4 feel that there are some remarks that you  
5 would like to put on the record and can do so  
6 briefly, I think it would be very appropriate.

7 MR. SABATER: No. We are very  
8 much appreciative of the BZA's prior support  
9 of our efforts and we think it will definitely  
10 help to improve conditions for the lower  
11 Georgia Avenue community. We would appreciate  
12 a favorable response.

13 CHAIRPERSON LOUD: Thank you. It  
14 looks like you've got an exciting addition  
15 planned and an existing program that's kind of  
16 synergizes with Howard University very well so  
17 we'll just see what happens.

18 Let's turn back to you for any  
19 closing remarks.

20 MR. SCHNEIDER: No. I have  
21 nothing to say except we respectfully look  
22 forward to your approval on this project.

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1                   CHAIRPERSON LOUD: Okay. I think  
2 we have a couple of options here. We can  
3 deliberate this today, decide it today. There  
4 does not appear to be any opposition to it.  
5 The ANC supports it. The Office of Planning  
6 supports it.

7                   There is a letter as well at our  
8 Exhibit 22 where Council Member Graham  
9 supports it. I believe there are some  
10 additional letters of support at our Exhibit  
11 11 so I do think the record is full. I would  
12 like to ask Board Member Moldenhauer if she  
13 wouldn't mind starting us off.

14                   MEMBER MOLDENHAUER: Deliberations  
15 for Application 18018 for 2616 Georgia Avenue.  
16 We have an application before us that seeks  
17 three different types of zoning relief; one,  
18 an area variance under 771.2 for an increase  
19 in the maximum floor area ratio from 1.5 to  
20 1.8; and a special exception pursuant to  
21 2514.2 to extend the regulated C-2-A district  
22 33 feet into the R-4 district at the rear of

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1 the lot; and a special exception pursuant to  
2 2116.6 that parking not be located on the  
3 premises but to be located along the alley on  
4 another property.

5  
6 We've gone through all the  
7 elements first with the variance test with the  
8 floor area ratio. I believe that the  
9 applicant and OP have summarized all the  
10 elements. I won't touch on all of them but  
11 the property does have some very specific  
12 topographic and other unique aspects including  
13 the retaining wall, I guess the symmetry of  
14 the property, and the area of the property as  
15 to the alley. That would definitely qualify  
16 for the uniqueness under the variance test.

17 The practical difficulty has been  
18 outlined in the issues of the size of the  
19 current building and the addition. If  
20 required to meet all the different ADA  
21 requirements and additional obligations, it  
22 would pretty much make the rest of the useable

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1 space so minimal to that it would create a  
2 significant practical difficulty.

3 In addition to that, then there is  
4 the issue that this would not generally impact  
5 the zoning plan. The property also has a  
6 unique aspect where it borders on two  
7 different properties.

8 A majority of the building and lot  
9 is on the C-2-A district while another portion  
10 of the property is on the R-4 district. Thus,  
11 under the special exception 2514 the bulk of  
12 the use can obviously then take the larger  
13 less restrictive use as the C-2-A.

14 Also as Mr. Dettman pointed out in  
15 the discussion, even though it does permit  
16 this higher use, it also then has a limited  
17 requirement of only allowing the maximum of,  
18 I believe, .5 in the R-4. That would be the  
19 special exception there. I would incorporate  
20 all the additional elements which are A  
21 through D that are outlined in OP's report.

22 The last is the special exception

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1 for the relocating of the parking space  
2 requirements. There has been testimony on the  
3 record that there is, in fact, an agreement.  
4 We also have our Exhibit 28 which includes the  
5 November 12, 2009 letter from the property  
6 owner of the lot that would provide two  
7 parking spaces.

8 The applicant's architect has  
9 testified that an agreement does exist to  
10 finalize those spaces and to make sure that  
11 the applicant does have those additional  
12 spaces worked out, there has been sufficient  
13 testimony that this would not create any sort  
14 of traffic hazard or there would not be any  
15 lack of alley or ingress or egress issues with  
16 having this additional parking in the alley  
17 way.

18 Again, I'm not going to go through  
19 every single element of it. We also have ANC  
20 support of this and we have a letter from Jim  
21 Graham which -- I'll get those exhibit numbers  
22 for our reference. An ANC letter which is

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1 Exhibit No. 27 and a letter from Jim Graham in  
2 support which is Exhibit No. 22.

3 The ANC letter, as Chairman Loud  
4 indicated, does touch on all the elements  
5 which would allow us to give it great weight  
6 even though the wording is a little different  
7 than we would normally have. Based on all of  
8 the above I believe that the analysis would  
9 allow us to approve all three requests.

10 CHAIRPERSON LOUD: Thank you,  
11 Board Member Moldenhauer. That was a very  
12 thorough analysis of everything. I think we  
13 ought to cut everything short after that. I  
14 did just want to say that I would like to  
15 reverse myself only on the ANC report.

16 It is timely. It's got an exhibit  
17 number. They did vote but the language is so  
18 far off from the criteria that we're looking  
19 at. A zoning change is not something that BZA  
20 is even authorized to do really. It's not an  
21 easement that we're talking about so I'm  
22 uncomfortable giving this great weight given

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1 the language that's in here.

2           Again, it's not a draw-a-line-in-  
3 the-sand issue for me. We've held ANCs to  
4 really particular standards about this great  
5 weight as we've tried to be really clear with  
6 them what does and what does not constitute  
7 great weight so I'm a little queasy going  
8 forward. It doesn't change the outcome at  
9 all. I'm still very much in favor of this  
10 project.

11           I think the spirit of the ANC is  
12 to support the application. There are other  
13 indicia of support for the application so it  
14 is what it is. I think that if it receives an  
15 unanimous vote, it would still be eligible for  
16 summary decision. That's my two cents.

17           MEMBER MOLDENHAUER: I would be  
18 willing to give this letter great weight for  
19 the first two elements of relief. I think  
20 this weight that they address it would be  
21 sufficient for that. The only issue is the  
22 confusing issue of the easement parking. The

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1 first two bullets do summarize what type of  
2 relief is being requested and they do  
3 reference the case number. As you said, I  
4 don't think it's going to affect the Board's  
5 decision in any way.

6  
7 CHAIRPERSON LOUD: Okay. Well,  
8 I'm still deeply troubled by this change in  
9 zoning from commercial/residential to  
10 commercial only. That's kind of not what we  
11 do.

12 MR. SCHNEIDER: We're not  
13 requesting it.

14 CHAIRPERSON LOUD: You're not  
15 requesting that from the BZA.

16 MR. SCHNEIDER: I'm glad they're  
17 happy with us doing it even though nobody is  
18 asking for it.

19 CHAIRPERSON LOUD: That being  
20 said, I guess first we ought to sort that out  
21 whether we are going to give this great weight  
22 or not give this great weight. Normally I

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1 would give in because we try to be flexible  
2 with the ANC but, again, I think we've done  
3 this in previous cases.

4           The Mormon Church case at 16th  
5 Street we were really clear with the ANC about  
6 trying to follow that rule very carefully. I  
7 think it's 3115. I think this goes a little  
8 beyond what we have jurisdiction over. I can  
9 agree with the exemption from the FAR even  
10 though we use the language variance from the  
11 FAR.

12           Exemption I think is close enough  
13 but the other two just gives me pause. With  
14 that said, does the Board Member still feel  
15 strongly? Okay. So I'm going to do what I  
16 advised earlier. You win your case and you  
17 stand up and leave.

18           Why don't I then move approval of  
19 this application which is application No.  
20 18018 for three areas of relief; an area  
21 variance pursuant to Section 771.2; special  
22 exception relief pursuant to Section 2114.2;

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1 and special exception relief pursuant to  
2 2116.6. Is there a second?

3 MEMBER MOLDENHAUER: I second.

4 CHAIRPERSON LOUD: It's been  
5 properly moved and seconded approval of this  
6 application. Is there further deliberation?  
7 Hearing none, all those in favor say aye.

8 ALL: Aye.

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

11 Ms. Bailey, if you could read back  
12 the vote, please.

13 MS. BAILEY: With pleasure, Mr.  
14 Chairman. The vote is recorded as three zero  
15 two to grant the application as amended by the  
16 Board. Board Member Loud made the motion,  
17 Mrs. Moldenhauer seconded, Board Member  
18 Dettman supports the motion and there are no  
19 other Board Members present at this time.

20 CHAIRPERSON LOUD: Just a point of  
21 clarification. You said the application as  
22 amended by the Board?

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1 MS. BAILEY: Yes, Mr. Chairman.

2 It was -- give me a second. The special  
3 exception from 2116.6 was not included in the  
4 advertisement for the application. It was  
5 recommended by the Office of Planning.

6 CHAIRPERSON LOUD: Okay. Very  
7 well. Thank you for clarifying that.

8 So then the vote is recorded. The  
9 application is approved. There is no  
10 opposition to the application and I do  
11 recommend that this be a summary order.

12 MS. BAILEY: Thank you, sir.

13 CHAIRPERSON LOUD: Thank you.  
14 Congratulations to you. We appreciate your  
15 presentation and submission of your pleadings.

16 MR. SABATER: Applicant would like  
17 to request permission to approach the Board to  
18 give you all information about a great  
19 children's event. If you have children in  
20 your life, maybe you all would want to attend.

21 CHAIRPERSON LOUD: Thank you. We  
22 appreciate that. You can give the information

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1 to Ms. Bailey all the way on the end and  
2 she'll make sure that we get it.

3 MR. SABATER: Thank you so much.

4 CHAIRPERSON LOUD: Thank you for  
5 all the work you are doing in our communities.

6 With that, I think that is the  
7 final case for today and I think we'll  
8 adjourn. Today's hearings are adjourned.

9 (Whereupon, at 4:06 p.m. the  
10 hearing was adjourned.)

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