

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 2, 2010

+ + + + +

The Regular Public Hearing
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C. 20001, pursuant to
notice at 11:00 a.m., Marc Loud, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairman
MERIDITH H. MOLDENHAUER, Board Member
NICOLE SORG, Board Member

ZONING COMMISSION MEMBERS PRESENT:

KONRAD SCHLATER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS

DAN EMERINE

STEPHEN VARGA

STEVE COCHRAN

MAXINE BROWN-ROBERTS

The transcript constitutes the minutes from the Public Hearing held on March 2, 2010.

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AGENDA ITEM	PAGE
Application No. 18035 of George Chopivsky, ANC-2D.	11
Presentation of the Applicant's Case. . .	12
Application No. 18036 of Newcomb Child Development Center, ANC-8C.	34
Recall of Application No. 18035	40
Presentation of the Applicant's Case. . .	41
Office of Planning.	47
Vote to Approve	57
Application No. 18035-A	58
Presentation of the Applicant's Case. . .	60
Office of Planning.	60
Closing Remarks	81
Vote to Approve	102
Application No. 18038 of 57th Street Mews, Inc., ANC-1A.	112
Preliminary Matter.	113
Presentation of the Applicant's Case. . .	115
Office of Planning.	116
Parties in Opposition	118
Closing Remarks	134
Vote to Approve	146
Application No. 18037 of Dix Street Corridor Revitalization Partners, LLC.	147
Presentation of the Applicant's Case. . .	153
Office of Planning.	197
Other Government Reports.	208
Witnesses in Support.	215
Rescheduled	251

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Application No. 18020 of District of Columbia
Department of Real Estate Services.254

 Presentation of the Applicant's Case. .258
 Office of Planning.269
 Closing Remarks271
 Vote to Approve275

ADJOURN, Chairperson Loud278

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

11:00 a.m.

CHAIRPERSON LOUD: Good morning.

This hearing will please come to order.

Ladies and gentlemen this is the March 2nd
public hearing of the Board of Zoning
Adjustment of the District of Columbia.

My name is Marc Loud, Chairperson.

Joining me this today is Meridith Moldenhauer,
Mayoral Appointee, Nicole Sorg, Mayoral
Appointee. We have been joined by Mary
Nagelhout from the Office of the Attorney
General.

Good morning, Ms. Nagelhout.

And, of course, Beverley Bailey,
Zoning Specialist. Those of you that were in
the audience before that are listening to me
read this again, I just want you to know that
I have to read this at the beginning of each
decision and read it separately at the
beginning of each hearing so you have to sit
through this twice.

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1 Copies of today's hearing agenda
2 are available to you and are located to my
3 left in the wall bin near the door. Please be
4 advised that this proceeding is being recorded
5 by a court reporter and is also webcast live.
6 Accordingly, we must ask you to refrain from
7 any disruptive noises or actions in the
8 hearing room.

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

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

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1 The order of procedure for special
2 exceptions and variances is as follows. The
3 statement and witnesses of the applicant,
4 government reports including the Office of
5 Planning, the Department of Transportation,
6 etc., the report of the Advisory Neighborhood
7 Commission, parties or persons in support,
8 parties or persons in opposition, and finally
9 closing remarks by the applicant only.

10 Pursuant to Sections 3117.4 and
11 3117.5 the following time constraints will be
12 maintained. The applicant, the appellant,
13 persons and parties except an ANC in support,
14 including witnesses, are allotted 60 minutes
15 collectively; the appellees, the persons and
16 parties except an ANC in opposition including
17 witnesses 60 minutes collectively. Individuals
18 are allotted three minutes. Individuals
19 representing organizations are allotted five
20 minutes.

21 These time constraints do not
22 include cross examination and/or questions

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1 from the Board. Cross examination of
2 witnesses is permitted by the applicant or
3 parties only. The ANC within which the
4 property is located is automatically a party
5 in a special exception or a variance case.

6 Nothing prohibits the Board from
7 placing reasonable restrictions on cross
8 examination. The record will be closed at the
9 conclusion of each case except for any
10 material specifically requested by the Board.
11 The Board and the staff will specify at the
12 end of the hearing exactly what is expected
13 and the date when the persons must submit the
14 evidence to the Office of Zoning.

15 After the record is closed no
16 other information will be accepted by the
17 Board. The decision of the Board in these
18 contested cases must be based exclusively on
19 the public record. To avoid any appearance to
20 the contrary the Board request that persons
21 present not engage the members of the Board in
22 conversation.

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1 Please turn off all beepers and
2 cell phones at this time so as not to disrupt
3 this proceedings. The Board will consider any
4 preliminary matters. Preliminary matters are
5 those that relate to whether a case will or
6 should be heard today such as requests for
7 postponement, continuance, or withdrawal, or
8 whether proper and adequate notice of the
9 hearing has been given.

10 If you are not prepared to go
11 forward with a case today, or if you believe
12 that the Board should not proceed, now is the
13 time to raise such a matter. Let me note for
14 the record that in many cases what would be
15 considered preliminary matters are usually
16 taken up in the context of the case and
17 addressed appropriately.

18 Does the staff have any
19 preliminary matters?

20 MS. BAILEY: Mr. Chairman and
21 Members of the Board, and to all a good
22 morning. As you indicated, Mr. Chairman, we

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1 do but it's specific so we would recommend
2 that we take it up at that time.

3 CHAIRMAN LOUD: Very well, Ms.
4 Bailey. Thank you.

5 Let us then move on to the oath.
6 Would all individuals wishing to testify in
7 any of this morning's hearing cases please
8 rise to take the oath and Ms. Bailey will
9 administer the oath to you.

10 MS. BAILEY: Please raise your
11 right hand. Do you solemnly swear or affirm
12 that the testimony that you will be giving
13 today will be the truth, the whole truth, and
14 nothing but the truth?

15 WITNESSES: I do.

16 MS. BAILEY: Thank you.

17 Ready, Mr. Chairman?

18 CHAIRMAN LOUD: Yes.

19 MS. BAILEY: The first case is
20 Application 18035, the application of George
21 Chopivsky, pursuant to 11 DCMR 3103.2 for a
22 variance from the lot occupancy requirements

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1 under Section 403, and the nonconforming
2 structure provisions under Subsection 2001.3,
3 to allow a third story addition to an existing
4 row dwelling and to construct a new accessory
5 garage in the R-3 District at premises 1919
6 23rd Street, N.W. It's also known as Square
7 2528, lot 276.

8 CHAIRMAN LOUD: Thank you, Ms.
9 Bailey. I see that the parties for this case
10 and their representative Mr. Horsey -- I don't
11 know if I'm pronouncing that correctly -- are
12 approaching the table.

13 Is the ANC present for this case?
14 This would be ANC-2D. All right. They're not
15 present. They are automatically a party and,
16 of course, join you at the table there.

17 Once you are ready and your
18 representative is ready, I think you can
19 introduce yourselves for our record and then
20 we'll give you some slight guidance in terms
21 of proceeding.

22 MS. BRILLEMBOURG: Good morning.

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1 I am Clara Brillembourg. I'm joined here by
2 my husband George Chopivsky and our architect
3 Outerbridge Horsey.

4 We are here today to ask you to
5 approve a variance in order for us to enclose
6 a garage with a green roof in the back of our
7 house and also to enclose a small existing
8 roof deck that is currently adjoined to our
9 house which is not really within the same
10 aesthetic as the rest of our house.

11 We are both local Washingtonians.
12 We bought our house last fall because we are
13 looking to start a family and we wanted to
14 stay in the downtown D.C. area but be able to
15 grow into our house with our children.

16 In order to do that what we would
17 like to do is take the existing garage which
18 is the only garage on this narrow segment of
19 the alley which is 12 feet wide which has
20 currently --

21 CHAIRMAN LOUD: Let me just
22 interrupt you very briefly just to say that

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1 why don't we have your husband introduce
2 himself for the record. I think you
3 introduced who he was but have him and then
4 have your architect introduce himself for the
5 record. Then we can go into a little bit more
6 of the case and we'll come right back to you.

7 MS. BRILLEMBOURG: Okay.

8 CHAIRMAN LOUD: All right.

9 MR. CHOPIVSKY: I'm George
10 Chopivsky, the owner of 1919 23rd Street
11 representing case 18035.

12 CHAIRMAN LOUD: Thank you very
13 much. Your architect is busy setting up. Ms.
14 Bailey is going to hand you a microphone.

15 MR. HORSEY: Outerbridge Horsey
16 for George Chopivsky and Clara Brillembourg.
17 Good morning, Mr. Chairman, and Members of the
18 Board.

19 CHAIRMAN LOUD: Good morning. Do
20 you need a few additional moments to set up?

21 MR. HORSEY: I think I'm all
22 right.

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1 CHAIRMAN LOUD: Okay.

2 MR. HORSEY: I just wanted to
3 confirm how much time is the applicant
4 allowed?

5 CHAIRMAN LOUD: You're allowed one
6 hour.

7 MR. HORSEY: One hour. We'll be
8 using all that time.

9 CHAIRMAN LOUD: Let me say this in
10 terms of the relief being proposed and I'll
11 open it up to other Board Members as well. As
12 I understand it you are seeking two areas of
13 relief, both variances. Why don't you join
14 your clients at the table.

15 MR. HORSEY: Sure. Yes, they are
16 both variances. We reviewed this, normally
17 the enclosure of the second-floor deck.
18 There's an accessory garage as part of the
19 project and an enclosure of a third-story deck
20 is the second component.

21 If the deck were being proposed by
22 itself, it would only require special

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1 exception relief but because it's being
2 proposed in conjunction with the garage that
3 requires variance relief, it was determined in
4 consultation with Mr. Nero that both
5 components would be variance relief.

6 CHAIRMAN LOUD: Very well. I just
7 wanted to confirm that. So you are looking
8 for the two area variances. Now, for me --
9 and I'll open it up to Board Members so that
10 it can sort inform how you approach the
11 presentation.

12 I've looked at the record. I've
13 looked at OP's report. You've got a lot of
14 support in the community, a lot of support
15 from neighbors as well. I don't speak for
16 other Board Members but I think that the
17 accessory garage case you address all the
18 elements.

19 They appear to be in our record
20 and it's something that one can take a look at
21 and be really, really clear about where you're
22 going and what the evidence is that supports

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1 it.

2 On the third-story deck which, to
3 me, a really careful reading of the OP report
4 suggest that they really take issue with the
5 fact whether or not you have made the variance
6 test on that.

7 I would like as you go through
8 your presentation to sort of emphasize and
9 separate that out from the accessory garage as
10 to how you are contending you would make the
11 variance test with respect to the third-story
12 deck and to separately sort of walk through
13 each prong so that I'm clear at the end of
14 this how you have made the case for each of
15 those.

16 I guess that's a long-winded way
17 of saying rather than sort of a mechanical
18 kind of presentation going through every nook
19 and cranny and the history of the site and all
20 of that, to some extent kind of target how you
21 are making the third-story deck variance case
22 would be helpful for me. I'll see before you

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1 start if other Board Members have similar sort
2 of framing kinds of questions to put you in
3 the ballpark in terms of making your
4 presentation.

5 MEMBER SORG: Chairman Loud, if I
6 can just ask a quick question. I'm a little
7 confused by the direction that you were giving
8 because in reading the OP report it seems to
9 me that OP indicated that on its own they
10 would be in support of the third story
11 addition and that it would meet the
12 requirements of 223 so, in my opinion, I was
13 feeling that the focus of the testimony should
14 be on the accessory garage which was, I
15 thought, the piece that OP was taking
16 exception to with regard to the uniqueness of
17 the property.

18 My guidance to the presentation
19 would be to help us to understand further the
20 specific uniqueness of the property as well as
21 the practical difficulty with special regard
22 to the accessory garage. Do you think I'm

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1 incorrect in that reading?

2 CHAIRMAN LOUD: I think it's good
3 that we sort of have this kind of dialogue up
4 front so the applicant is real clear on what
5 we're looking at. I didn't read the OP report
6 that way.

7 I thought that the OP report had
8 indicated that if this were only a Section 223
9 that they would find the third-story deck
10 acceptable because of the 70 percent lot
11 occupancy which they would not exceed.

12 But by combining both requests for
13 relief, the accessory garage and the addition
14 I read the OP report to indicate they felt the
15 only reason they were asking for it was that
16 they just wanted more living space on the
17 third story.

18 Of course, in OP's mind that would
19 not meet the test. That's why I was asking
20 for a little more clarification. We are going
21 to give you a chance to clarify. That was the
22 basis for how I started out.

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1 Yes, sir.

2 MR. HORSEY: Chairman Loud, I just
3 wanted to say that the combination of these
4 two aspects of the proposal into a single
5 application was done, and this is probably
6 obvious, to be more sufficient to the Board.

7 We could have applied obviously
8 for a separate special exception application
9 for the enclosure of the third-story deck. I
10 think the zoning guidelines kind of indicate
11 that that's probably the default method.

12 However, in an effort to be
13 efficient and to not have to come down here
14 twice and take your time twice, it was
15 recommended that we combine them but that sort
16 of created this difficulty, if you will, that
17 all of a sudden shifted what would normally be
18 a special exception application into a
19 variance.

20 I don't know that the zoning
21 regulations specifically dictate that needs to
22 be done and you would know better than I but

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1 it seemed to me that the Board might have the
2 authority to separate them and hear them both
3 at the same time if that's your preference and
4 separate the enclosure of the second-floor
5 deck as what it would have been on its own, a
6 special exception application.

7 CHAIRMAN LOUD: I hadn't thought
8 about that. That's an intriguing suggestion.
9 You're suggesting that to have separated out
10 what would have been 223 relief, come before
11 the Board, get the relief under 223. After
12 it's fait accompli then come back a second
13 time to get the relief accessory garage as a
14 variance.

15 MR. HORSEY: And neither component
16 is affected by the other component. In other
17 words, we're not increasing the lot occupancy
18 by the third-story deck enclosure and,
19 therefore, neither application would prejudice
20 the other if they were done separately.

21 It's not like we're trying to get
22 something we wouldn't get normally by

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1 separating them out but it's purely for the
2 efficiency and the time and we didn't want you
3 to think the second time we came around, "When
4 are you coming around the third time?" You
5 see what I'm saying?

6 CHAIRMAN LOUD: I do because if
7 you went for a 223 you would be under the 70
8 percent.

9 MR. HORSEY: Exactly. We're at 62
10 percent. We're over lot occupancy now in the
11 existing structure and we're not increasing it
12 by the enclosure of the second-floor deck.

13 CHAIRMAN LOUD: And if you came
14 back independently on the accessory garage,
15 even though it was not a slam dunk for OP but
16 if you came back separately on the accessory
17 garage, the elements that would qualify as
18 exceptional regarding the side-load garage
19 issue and the practical difficulty would kind
20 of stand on their own and you wouldn't have to
21 make a separate case for uniqueness and
22 practical difficulty on a third-story deck.

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1
2 Also here in your comments sort
3 of, and I don't want to speak for you, a
4 concession that you are going to have a very
5 difficult time making a variance test for the
6 third-story deck.

7 MR. HORSEY: I don't think that's
8 probably the case. I'm not saying it's not
9 possible.

10 CHAIRMAN LOUD: It's an intriguing
11 sort of turn of events, something that I
12 hadn't anticipated. I would like to turn
13 first to the Attorney General's Office and
14 then to my colleagues and just ask the
15 question as to procedurally if this applicant
16 decides it wants amend or modify the request
17 for relief at this point and just pursue a
18 special exception under 223 and then
19 separately completely independent of that
20 pursue a variance under 403.2 how do you
21 recommend that you would proceed?

22 MS. NAGELHOUT: It's a self-

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1 certified application so if you want to allow
2 the applicant to amend the application, you
3 can. I would just point out I think you could
4 do the 223 and then the variance for the
5 garage but I don't think you can do them in
6 the reverse order because the garage would put
7 them over and make them not eligible. Keep
8 that in mind if you do allow this request.
9 It's not quite that clean but, you know, it's
10 a self-certified application.

11 CHAIRMAN LOUD: Board Member
12 Moldenhauer, I think you're saying they
13 definitely have to be separate?

14 MEMBER MOLDENHAUER: I think they
15 would then definitely have to be separate
16 numbers because we couldn't knowingly approve
17 the 223 knowing that the variance would
18 eventually push it past the 223 relief so you
19 would have to approve the 223 on one order
20 number and then approve the variance on a
21 separate, or do you think that wouldn't be
22 necessary?

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1 MS. NAGELHOUT: I think it would
2 be necessary if you're splitting the projects,
3 yeah.

4 MEMBER MOLDENHAUER: Can we
5 procedurally do that today if the applicant
6 amends their application to provide a
7 secondary order number?

8 MS. NAGELHOUT: I think you could.
9 We did that in the Protestant Episcopal
10 whatever, Beauvoir School case. We split that
11 one up.

12 MEMBER SORG: So could we then say
13 that we want to consider them separately or
14 they would have to amend their application?

15 CHAIRMAN LOUD: I think they have
16 to amend their current request for relief. I
17 think we have to decide whether the plans that
18 we have would be adequate for the 223 relief.
19 I think from what I'm hearing from counsel
20 from OAG that if they were to do that on the
21 record, then we could proceed as a 223 today?
22 I'm not trying to supply you with language.

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1 MS. NAGELHOUT: It's a lesser form
2 of relief. I have some concerns about
3 splitting the case when you know the second
4 case is coming and you couldn't do it in a
5 reverse order. We generally want to see the
6 entire scope of a project and here you have
7 the entire scope of the project and you're
8 splitting it to approve it in such a way but
9 if you did the reverse, you couldn't.

10 CHAIRMAN LOUD: I don't want the
11 applicant to get the impression that we are
12 saying we are going to improve it because the
13 applicant still might not make the variance
14 test for the accessory garage.

15 I think if the rules are such that
16 an applicant could make a decision to proceed
17 this way and if it's sort of a gray area in
18 the rules, I don't want to use the word
19 "loophole" but if the rules allow it, then the
20 applicant sounded like he was going to pursue
21 that way and was convinced to try it a
22 different way. The rules allow it and I don't

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1 think the applicant would be violating any
2 rule by doing that.

3 MS. NAGELHOUT: And you would go
4 ahead with the variance case today, too?

5 CHAIRMAN LOUD: I don't see how we
6 could because you just responded to Ms.
7 Moldenhauer that we need a separate case
8 number for it. You're saying we could do that
9 without --

10 MS. NAGELHOUT: In Beauvoir we
11 split it and we heard both the same day. That
12 was two separate uses. I don't know. I think
13 the regs don't really contemplate this so they
14 don't say anything one way or the other. You
15 do have one application before you and this is
16 what the applicant has asked for so it's up to
17 you if you want to allow the applicant to
18 amend the application if, in fact, the
19 applicant wants to amend the application.

20 CHAIRMAN LOUD: Well, again, I
21 think, putting my personal thoughts aside,
22 that the rule allows the applicant to pursue

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1 a special exception if he's under 70 percent
2 for a third-story addition and that's the
3 rule. That's the rule presuming that the
4 relief would be compatible in the zone if the
5 criteria is met for the special exception and
6 then the variance test is what it is.

7 The applicant is not an automatic
8 shoe-in for that but if he's got evidence that
9 suggest the variance test can be met, then we
10 are going to hold him to the rule and apply
11 the rule fairly. I don't see it as
12 circumventing the system at all. I think it's
13 what the rules allow.

14 If the applicant wants to amend
15 the application and pursue 223 relief for the
16 third-story deck, we go through that analysis.
17 We want to hear from OP as well.

18 We go through that analysis and
19 then separately if the applicant wants to
20 pursue a variance for the accessory garage, we
21 can go through that as a straight clear
22 variance separated out from the third-story

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1 deck. It sounds like Board Members are also
2 saying, at least Mrs. Moldenhauer. Ms. Sorg,
3 I'll open it up to you for your thoughts on
4 it.

5 MEMBER SORG: Well, I think it
6 seems from the record so far today that the
7 applicant is requesting this split as
8 something that makes sense to him, or to them.
9 I mean, I also would be in favor of that if it
10 makes both cases more clear for us to
11 deliberate on.

12 CHAIRMAN LOUD: Why don't we do
13 this then. Please indulge us as we sort of
14 work through this issue out loud. I'll turn to
15 the Office of Planning to get the Office of
16 Planning's perspective on this. I think
17 perhaps we can make a decision on how to
18 proceed.

19 MR. EMERINE: Good morning, Mr.
20 Chair and Members of the Board. For the
21 record, my name is Dan Emerine. I'm with the
22 Office of Planning. Was there a very specific

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1 question that you had for me?

2

3 CHAIRMAN LOUD: Yes, sir. I think
4 the question is as presently framed the relief
5 pushes the application above lot occupancy
6 such that a variance would be required and
7 it's because we're taking into account both of
8 the improvements that the applicant is talking
9 about, the accessory garage and the third-
10 story addition.

11 The applicant has the option of
12 choosing a Section 223 relief, would be under
13 the 70 percent assuming that the applicant
14 makes the 223, would be entitled to it under
15 the rules the way the rules are drafted and
16 written and enforced today. So would the
17 Office of Planning have some objection to the
18 project proceeding sort of in that bifurcated
19 manner?

20 MR. EMERINE: I don't think we
21 would have any objection to proceeding in that
22 manner. We have already indicated in our

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1 report, although we didn't provide an analysis
2 of the 223 relief, we have certainly reviewed
3 evidence that goes to the 223 test. I think
4 I would be prepared to offer analysis from the
5 dias today based on the 223 test and based on
6 what information is in the record.

7 As far as the lot occupancy
8 variance for the accessory garage, I think we
9 would stand by the analysis that we provided
10 in the report that relates to the garage
11 issues. I think it's at the Board's
12 discretion whether to accept an amended
13 application and we have no objection to
14 proceeding if that is how you would like to do
15 it.

16 CHAIRMAN LOUD: Okay. Then my
17 suggestion is in light of OP's not having an
18 objection to it and in light of the Office of
19 the Attorney General suggesting that we can do
20 this provided we hear the 223 first, that we
21 allow the applicant if it wants to to amend
22 its current application and then hear it for

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1 223 and then hear the variance and we'll see
2 where the evidence takes us.

3 MEMBER MOLDENHAUER: I agree,
4 Chairman Loud. I think we would have to have
5 an oral motion from the applicant articulating
6 their desire to bifurcate the case and then we
7 would have to rule on that or maybe it's a
8 motion where we can just simply have an
9 unanimous approval that you could confirm.

10 CHAIRMAN LOUD: That's a very
11 excellent point. Let me just confirm that
12 with the OAG. Following on Ms. Moldenhauer's
13 point the 223 relief that we're talking about,
14 the Board would need to make a decision on
15 that prior to getting into the variance relief
16 being requested?

17 MS. NAGELHOUT: Yes, because the
18 variance relief would put them over the 70
19 percent permitted under 223.

20 CHAIRMAN LOUD: Okay. If for some
21 reason we go through the 223 but we're not
22 ready to make a decision this morning, for

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1 whatever the reason is, could we hear the
2 variance and schedule them for separate
3 decision dates with the 223 decision date
4 being before the variance decision date?

5 MS. NAGELHOUT: Yes, I think so.
6 The only limit to that is if you did decide
7 the variance before the 223 and if you granted
8 the variance, then I don't know how you would
9 continue with the 223 because of the lot
10 occupancy.

11 CHAIRMAN LOUD: Okay. I think we
12 all kind of understand the ground rules pretty
13 much. Thank you, Board Member Moldenhauer for
14 keeping everything clear.

15 Now, we turn back to you, Mr.
16 Horsey, first to ask you if you have any
17 questions about the way we've suggested to
18 proceed. Then, assuming you don't and it's
19 clear or you do and we can answer those
20 questions, then the follow-on to Board Member
21 Moldenhauer regarding amending your requested
22 relief.

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1 MR. HORSEY: I think I understand
2 exactly what you're proposing to do. Before
3 making the change, could I just have a minute
4 or two to confirm with my clients?

5 CHAIRMAN LOUD: Yes. Would you
6 like to take a break?

7 MR. HORSEY: If it suits you,
8 sure.

9 CHAIRMAN LOUD: Five minutes?

10 MR. HORSEY: Sure. That would be
11 great.

12 CHAIRMAN LOUD: We'll come back in
13 exactly five minutes and move forward. Thank
14 you.

15 (Whereupon, at 11:27 a.m. off the
16 record until 11:52 a.m.)

17 CHAIRMAN LOUD: Good morning. We
18 are back in session on the March 2nd hearing
19 calendar of the BZA. We've had an opportunity
20 sort of as you were doing, Mr. Horsey, gather
21 our thoughts and get ourselves prepared for
22 the hearing.

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1 In addition to that, though, in
2 terms of managing the morning calendar a
3 little more effectively and being mindful of
4 the Newcomb case and some of the issues with
5 the Newcomb case, what we wanted to do was to
6 adjourn your case for just a few moments, just
7 a few moments.

8 We are going to call the Newcomb
9 and we are going to continue the Newcomb and
10 we'll go into the reasons why we are going to
11 continue it and not hear it today. Then we
12 will call your case right back and we'll
13 proceed through with the evidence and the
14 presentation.

15 So, with that, let's adjourn this
16 case and then, Ms. Bailey, if you could call
17 the Newcomb case.

18 MS. BAILEY: Mr. Chairman, it's
19 Application 18036, Application of Newcomb
20 Child Development Center, pursuant to 11 DCMR
21 Section 3104.1 for a special exception for a
22 child development center. That's 39 children

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1 and 12 staff, under Section 205. The property
2 is located at 541 Newcomb Street, S.E. It is
3 zoned R-5-A. It's located in Square 5985 on
4 Lot 818.

5 The ANC Commissioner, Mr.
6 Chairman, was here for ANC. However, she had
7 to leave. She did indicate that ANC was not
8 able to hear the application because of the
9 snow storm that we had the other day but she
10 does apologize for having to leave.

11 CHAIRMAN LOUD: Thank you, Ms.
12 Bailey. I believe that she has since returned
13 and I believe I see Commissioner Cuthbert in
14 the rear so you might join the parties at the
15 table. The ANC, as you know, is automatically
16 a party.

17 If each of you could introduce
18 yourselves for our record, we'll proceed
19 accordingly from there.

20 MR. SPIKES: Harry Spikes.

21 CHAIRMAN LOUD: Is your microphone
22 on? It doesn't appear to be. A green light

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1 will come on at the base of the microphone if
2 you push the button correctly.

3 MR. SPIKES: Okay. Thank you.
4 Harry Spikes, the attorney for Newcomb
5 Daycare.

6 CHAIRMAN LOUD: Good morning.

7 MS. CANNON: Andrea Cannon,
8 Executive Director, Newcomb.

9 CHAIRMAN LOUD: Good morning.

10 MS. CANNON: Good morning.

11 MS. SPIKES: Patricia Spikes.

12 CHAIRMAN LOUD: Good morning.

13 MS. CUTHBERT: Mary Cuthbert,
14 Chair for Advisory Neighborhood Commission 8C.
15 I'm in Single Member District 8C-03.

16 CHAIRMAN LOUD: Good morning. I'm
17 sorry. Did I cut you off?

18 MS. CUTHBERT: No. That's all
19 right.

20 CHAIRMAN LOUD: Good morning to
21 everyone. The short on this is that we've
22 reviewed the file in the case. We've reviewed

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1 the request for relief in the case. We are
2 going to postpone the case. We'll get a date
3 on the calendar.

4 The primary reason that we are
5 going to postpone the case is that we think in
6 order for us to evaluate the case under the
7 standard of law Section 205 that we would need
8 a report from OSSE and we do not see it in our
9 record. It's not any fault necessarily of the
10 applicant that it's not in the record but we
11 could not walk through the Section 205
12 analysis without that report in our record.

13 We are mindful that this is the
14 Child Development Center that was before BZA,
15 I believe, in perhaps late fall and that there
16 were a number of items placed on the record by
17 the OSSE which we would like an update from
18 them on so we can't proceed. We are not able
19 to render any kind of decision today without
20 that record.

21 That is really key, in addition to
22 which there is the need for a variance case to

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1 be made for the parking requirements under
2 Section 2101 which would require one space for
3 every four teachers. There would be a three-
4 space requirement here unless a variance was
5 sought.

6 We would like for the applicant to
7 go back and address the parking case. The
8 applicant could also walk through Section 205
9 analysis in its submission in a little more
10 thorough manner. Most importantly for the
11 Office of Planning, I think, which would get
12 the OSSE report. We really want something in
13 writing, particularly given the history of
14 this site. Okay?

15 Now we are going to look for a
16 date, Ms. Bailey.

17 MS. BAILEY: Mr. Chairman, were
18 you anticipating sometime in March or April?

19 CHAIRMAN LOUD: I'm thinking that
20 we probably couldn't do it in March. I know
21 the N Street Follies is going to take up the
22 entire afternoon on March 16th. Just give us

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1 a few moments and we're going to suggest some
2 dates and make sure everybody is available.

3 Sorry about that. It seems like
4 calendaring is simple sometimes but it's the
5 hardest part of what we have to do. Okay. We
6 are mindful of some time issues here. Looking
7 at next week in the morning it would be one of
8 our morning cases. We currently have two
9 cases scheduled in the morning.

10 We could hear as the third case in
11 the morning but we would really need for that
12 OSSE report to be in the record by the time we
13 get together on the 9th. If for some reason
14 that's just not possible we are going to have
15 to push it into April.

16 MS. THOMAS: Good morning, Mr.
17 Chair, Members of the Board. Karen Thomas
18 with the Office of Planning. I will certainly
19 try to do that. I can't speak for Mrs. Ware's
20 schedule and her priorities at this time but
21 I will certainly make an effort to do so.

22 CHAIRMAN LOUD: Okay. For the

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1 applicant is that a date that you could
2 return?

3 MR. SPIKES: Sure.

4 CHAIRMAN LOUD: Okay.

5 Commissioner Cuthbert, we understand some
6 issue that you would like to raise but we are
7 going to ask you to hold those off until the
8 actual hearing and we'll take them all up at
9 that time.

10 MS. CUTHBERT: Great.

11 CHAIRMAN LOUD: Okay. Very well.

12 Thank you for your patience and we'll see you
13 on March 9.

14 Thank you, Ms. Thomas. We
15 appreciate it.

16 Now should we recall the case that
17 we were on?

18 MS. BAILEY: Mr. Chairman, only to
19 say that the Board is now back on Application
20 18035.

21 CHAIRMAN LOUD: Thank you, Ms.
22 Bailey. We are going to back into the case.

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1 We'll start with the 223 and well get through
2 the 223 and then we'll move onto the variance.

3 I think there is some direction
4 that the Board might be able to give the
5 applicants in terms of where we see the most
6 emphasis being placed on the variance case
7 just in the sense that there is a full record
8 on some aspects of it and not as full a record
9 on other aspects.

10 Rather than be duplicative
11 regarding the areas where it's full to sort of
12 zero in on the areas where a little more
13 highlighting is needed we'll give you
14 direction on that when we get to that.

15 MR. HORSEY: Great.

16 CHAIRMAN LOUD: Okay?

17 MR. HORSEY: Thank you.

18 CHAIRMAN LOUD: So I think we're
19 at the point where we were going to start the
20 case and you can walk us through the 223.

21 MR. HORSEY: Very good. Thank
22 you, Mr. Chairman. Outerbridge Horsey again

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1 back on record for George Chopivsky and Clara
2 Brillembourg, 1919 23rd Street.

3 I think I was asked to formally
4 request to amend the application to have the
5 enclosure of the third-story rear deck the
6 application relief being switched from
7 variance relief to special exception relief
8 per Section 223.

9 Just to recap, I have conferred
10 with Mr. Emerine at the Office of Planning and
11 I think we are all on the same page as to the
12 variance relief -- excuse me, the special
13 exception relief. Per 223 we need relief from
14 the minimum lot dimension of the width which
15 is Section 401. We have 19.3 feet. The regs
16 require 20 feet.

17 We also need special exception
18 relief for Section 403. The percentage of lot
19 occupancy currently we're at 62 percent and
20 the regulations stipulate 60 percent as the
21 maximum but do allow 70 percent as the maximum
22 under special exception relief.

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1 Finally, because we are over lot
2 occupancy we also require special exception
3 relief under 223 for Section 2001.3 which is
4 in addition to a nonconforming structure
5 devoted to a conforming use. Because we are
6 allowed to request that relief under 223
7 because the proposed addition does not
8 increase the lot occupancy further.

9 CHAIRMAN LOUD: Excuse me. Could
10 I just ask you to repeat the first special
11 exception relief? I think you said rear yard?

12 MR. HORSEY: The lot width.

13 CHAIRMAN LOUD: Lot width. Okay.
14 Thank you.

15 MR. HORSEY: The 401.1 it says,
16 "Except as provided in chapter 20 or 25 in the
17 case of a building on or before May 12, 1958
18 on a lot with lot area or width of lot or both
19 less than prescribed in 401.3.

20 CHAIRMAN LOUD: Okay.

21 MR. HORSEY: We do qualify under
22 the minimum lot area. At this time should I

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1 go ahead and just describe the rear deck
2 enclosure for you?

3 CHAIRMAN LOUD: Sure.

4 MR. HORSEY: Thank you. Just
5 quickly to locate the lot for you, it's
6 located on 23rd Street in the Kalorama
7 historic district at the intersection with
8 Tracy Place. It abuts an alley that you see
9 here in the large plan. It's in the R-3
10 zoning district. The back of the property
11 where both the enclosed deck and the garage
12 are located abuts an R-5-B zoning district.
13 At the front there is an abutment with an R-1-
14 B district.

15 The deck itself is located at the
16 northwest corner of the property. Here are
17 photographs of the front of the property. This
18 is a photograph of the property from the
19 front. It's the left-hand one. It's in a row
20 of four. I'll come back to that later with
21 respect to the garage case. This is the rear
22 of the property locating the second floor deck

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1 which you see in this photograph both here
2 along the alley, overlooking the alley, and
3 here. The deck is currently made of siding
4 material. The fireplace chimney is proposed
5 to be removed.

6 In terms of the second floor
7 third-story plan the deck again is located up
8 here. The existing deck northwest corner of
9 the house overlooking the rear yard is
10 proposed to be enclosed and converted to a
11 nursery adjacent to the master bedroom. On
12 that floor there is the master bedroom and
13 library at the front of the house. All the
14 other bedrooms are on the floor above.

15 In terms of the elevation this is
16 the existing elevation from the side at the
17 alley and this is from the rear showing the
18 siding. You can't really see the siding
19 because of the tree in the photograph. The
20 proposal is to enclose that with brick and
21 windows to match the existing brick facade and
22 windows on the north elevation. This is the

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1 north side.

2 I would say that the Historical
3 Preservation Office was very enthusiastic
4 about this as well. This shows the existing
5 deck here and the enclosure at the rear.

6 I think that summarizes the
7 exhibits. We have reviewed this with the
8 neighbors in conjunction with the other
9 component of the application and together with
10 the other component they seem enthusiastic.
11 I think it's fair to say that the emphasis in
12 the presentation and the review of the project
13 focused on the garage component as opposed to
14 the deck but there was certainly no
15 opposition.

16 I think people felt that there was
17 an improvement not only aesthetically from the
18 historic preservation standpoint exchanging
19 the wood siding material for brick, but also
20 by enclosing the deck it gives adjacent
21 properties more privacy because there is no
22 overlooking of their properties from this

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1 upper-story deck.

2 I would be happy to take any
3 questions. I should say that also I think the
4 letters can be special exception relief. The
5 criteria is fairly clear. "The light and air
6 available to neighboring properties shall not
7 be unduly affected. The privacy and use of
8 enjoyment of neighboring properties shall not
9 be unduly compromised."

10 I think it's fair to say in
11 support of both projects those issues that are
12 required for a special exception relief have
13 been duly met.

14 CHAIRMAN LOUD: Thank you, Mr.
15 Horsey. I don't have any questions. Let me
16 see if other Board Members do on the 223.

17 MEMBER MOLDENHAUER: I have no
18 additional questions.

19 CHAIRMAN LOUD: Okay. Well,
20 certainly if some come to mind we can always
21 go back to the Board.

22 Why don't we turn now to the

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1 Office of Planning for its review and response
2 to the requested relief.

3 MR. EMERINE: Okay. Thank you,
4 Mr. Chair. As I indicated earlier, you won't
5 find a full analysis of 223 relief in our
6 submitted report but we did indicate in the
7 report that it was our belief that the third-
8 story addition would meet the requirements of
9 223. I'll kind of walk through the criteria
10 of 223 and explain what the basis of our
11 statement is.

12 So the criteria of Section 223.2
13 state that first the addition shall not result
14 in the light and air available to neighboring
15 properties being unduly affected. There is no
16 evidence that light and air available to
17 neighboring properties would be affected.

18 As Mr. Horsey indicated, the deck
19 or the addition would be in the northwest
20 corner. It's essentially the corner bounded
21 by the two alleys that surround the property.
22 As for both A and B, light and air and privacy

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1 and use of enjoyment of neighboring
2 properties, the applicant's next-door neighbor
3 has indicated in a letter submitted to the
4 Board that they support the application.

5 The letter doesn't really
6 specifically speak to the addition but
7 presumably if the immediately adjoining
8 neighbor who is the only neighbor that in my
9 review of the situation could even potentially
10 be said to have a potential for concern about
11 light and air and privacy. Presumably they
12 would have brought it up if they had any
13 concerns about that issue.

14 As for whether the addition would
15 substantially visually intrude upon the
16 character, scale, of comparative houses along
17 the subject street frontage, the submissions
18 from the applicant I think indicate that the
19 addition would not only not substantially
20 visually intrude upon character, scale, and
21 pattern but would actually be consistent with
22 the character, scale, and pattern and more

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1 than likely an improvement over what exist on
2 the third story at present.

3 Specifically the cladding or
4 siding materials that are used at the third
5 story are somewhat unusual compared to the
6 surrounding properties perhaps not fully in
7 keeping with the character. The brick masonry
8 materials that the applicant has proposed
9 would be much more consistent with the
10 surrounding character.

11 The windows that have been shown
12 on the drawing submitted by the applicant are
13 substantially similar to the windows already
14 on the existing property with similar patterns
15 around it. Again, I would note that neighbors
16 in the ANC have not objected to the
17 application on these grounds. The Historic
18 Preservation staff have reviewed the third-
19 floor addition and have not found any
20 preservation issues that would intrude on
21 character, scale, and pattern.

22 As I have just indicated, in

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1 response to Criteria D the applicant has
2 submitted graphical representations, plans,
3 photographs and elevations and I would say an
4 exceptional level of detail compared to other
5 applications that I've seen and all of those
6 exhibits, I think, support the compliance with
7 paragraphs A, B, and C of Section 223.2.

8 Having said that, the Office of
9 Planning, I think, would recommend approval of
10 relief under Section 223.

11 CHAIRMAN LOUD: Thank you. Is
12 there anything further you would like to add
13 to the report?

14 MR. EMERINE: Not with respect to
15 the 223 relief but if the Board has any
16 questions, I'm happy to answer them.

17 CHAIRMAN LOUD: Okay. Let's see
18 if the Board has any questions. Doesn't
19 appear such. Do you have a copy of the Office
20 of Planning's report? With respect to what we
21 are talking about now, do you have any
22 questions regarding anything?

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1 MR. HORSEY: No, sir.

2 CHAIRMAN LOUD: Okay. Then why
3 don't we make note of the fact that there are
4 no other government reports in our record.
5 ANC-2D at our Exhibit 31 has submitted a
6 report. In the report they are in favor of
7 granting the variance relief requested which
8 is much more significant relief than the
9 special exception that we're talking about and
10 significantly indicate that they see
11 improvements to the surrounding area by the
12 proposed third-story deck much along the lines
13 of what the Office of Planning has testified
14 to.

15 In addition to that their number
16 of neighbors at our Exhibits 23 to 28 that
17 also support relief for the applicant. And
18 that the Sheridan Kalorama Historical
19 Association at our Exhibit 29 has submitted an
20 exhibit into the record that is neither in
21 opposition to or supportive of the relief but
22 indicates a number of reasons why at least

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1 they are not opposing the relief. We take
2 note that those are in our record.

3 I now turn to persons in the
4 audience, and there is only one, that
5 would like to testify either in support or in
6 opposition. There do not appear to be any so
7 we now turn back to the applicant for closing
8 remarks as relates to the 223 relief.

9 MR. HORSEY: Mr. Chairman, I don't
10 have anything to add to my presentation but I
11 appreciate the Board separating out these two
12 components of the original application. Thank
13 you.

14 CHAIRMAN LOUD: All right. Thank
15 you. I think we probably can deliberate on
16 this. I wanted to just double check with OAG
17 regarding whether or not the Board needs to --
18 hold on for one second. Okay. Sort of
19 looking to the Attorney General's Office to
20 make sure we follow the appropriate
21 requirements because we would not want it to
22 be collaterally challenged for that reason.

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1 All right. Again, I think that we
2 are ready to deliberate. I would be happy to
3 lead us off in the deliberations on the 223
4 and then we can try to get into the various
5 part of the case. I think it's been noted for
6 our record that as we proceed forward the case
7 number will change so that the 223 relief will
8 now be formally referred to as 18035. The
9 variance part of the case will now become
10 18035-A so as regards 18035, I'm happy to lead
11 us off.

12 I think the applicant has done a
13 good job both in the pleadings and in the
14 testimony describing the third story addition
15 essentially in closing an existing deck. I'm
16 not going to repeat that for our record. I'll
17 just reference the exhibits that speak to that
18 including the Office of Planning's report and
19 the testimony that was just given by Mr.
20 Horsey.

21 In terms of the Section 223
22 analysis, the Office of Planning testified on

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1 that moments ago. With respect to 223.2(a).
2 The testimony is that there is no evidence
3 that the light and air to neighboring
4 properties would be affected. The project is
5 on the northwest corner. It's bounded by two
6 alleys surrounding the property such that it
7 does not appear in our record that there would
8 be any adverse light or air impacts.

9 With respect to 223.2(b) the
10 testimony from the Office of Planning is that
11 the next-door neighbor supports the
12 application and, indeed, I referenced that
13 exhibit earlier. The only neighbor that would
14 potentially be affected by virtue of being positioned such
15 that would be potentially affected by the
16 privacy concerns has not raised any of those
17 privacy concerns.

18 With respect to 223.2(c) the
19 testimony from the Office of Planning is that
20 there is no substantial visual intrusion upon
21 the character, scale, or pattern of houses
22 when viewed from the alley and that more than

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1 likely what is being proposed is an
2 improvement upon what currently exist
3 specifically as relates to improved cladding
4 and then the use of brick masonry materials
5 that are a bit more consistent with the
6 surrounding character. The Office of Planning
7 also noted with respect to that part of the
8 test that there is not any ANC objection, as
9 I noted as well.

10 Then, finally, with respect to
11 223.2(d) the Office of Planning testimony is
12 that the plans have been submitted, that the
13 criteria of that element of the requirements
14 are met and that in the Office of Planning's
15 point of view that the plans were submitted
16 with an exceptional level of detail that
17 definitely complies with the requirements.

18 In light of that, colleagues, I
19 would be in favor of granting 223 relief.
20 I'll make a motion and if there's a second we
21 can deliberate further as appropriate but I
22 would like to move approval of Application No.

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1 18035 for special exception relief from the
2 lot occupancy and nonconforming structure
3 requirements to allow an addition to a row
4 dwelling in the R-3.

5 MEMBER SORG: I'll second.

6 CHAIRMAN LOUD: Motion has been
7 made and seconded. Is there further
8 deliberation? Hearing none all those in favor
9 say aye.

10 ALL: Aye.

11 CHAIRMAN LOUD: All those who
12 oppose?

13 Ms. Bailey, can you read back the
14 vote for us, please?

15 MS. BAILEY: Certainly, Mr.
16 Chairman. The vote is recorded as three zero
17 two to grant the special exception relief.
18 The motion was made by Board Member Loud,
19 seconded by Board Member Sorg. Mrs.
20 Moldenhauer supported the motion. Two other
21 Board Members are not participating at this
22 time.

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1 CHAIRMAN LOUD: Thank you. Now --

2 MS. BAILEY: Summary order -- I'm
3 sorry, Mr. Chairman. Are we going to wrap
4 everything together in one order or that is to
5 be determined?

6 CHAIRMAN LOUD: No. It's my
7 understanding that we would not do it in the
8 same order.

9 MS. BAILEY: So this is separate
10 summary order.

11 CHAIRMAN LOUD: Yes.

12 MS. BAILEY: Okay.

13 CHAIRMAN LOUD: If there is no
14 opposition.

15 All right. Now we are going to
16 proceed with the variance part of the test
17 and, again, follow closely the counsel of the
18 Office of the Attorney General.

19 Let me just say at the outset in
20 terms of helping with the framework to guide
21 how you highlight the evidence and what you go
22 into.

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1 First I think, and I'll let other
2 Board Members weigh in, that from the evidence
3 in the record already that the substantial
4 detriment prong of the variance test is
5 probably adequately briefed on the pleadings
6 alone so you might not need to make an effort
7 to go into that. I think the ANC and the
8 different neighbors and so on, the Historic
9 Association and so on and so forth.

10 Impairment to the zone plan I
11 think is adequately briefed. You and OP may
12 not necessarily see every part of that eye to
13 eye but at least the issue is briefed and we
14 can draw some conclusions on our own.

15 The issues that you may want to
16 focus on are exceptional situation and
17 practical difficulty. I think once you've
18 done that we can probably turn to OP for its
19 take on those two elements.

20 I also think there is in our
21 record -- this is self-certified but there is
22 in our record mention of the relief that would

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1 be necessary from the section of our
2 regulations that require a setback of 12 feet
3 from the center line of the alley for the
4 garage structure and that requested relief has
5 not been made. You may want to respond to
6 that. I'm just going to lay it all out and
7 you can respond to it.

8 Then finally in our record, and I
9 think this was an OZ letter that may have gone
10 out, notification was made that there arguably
11 could be a need for relief from the maximum
12 accessory garage lot occupancy which is 30
13 percent.

14 You may want to respond to whether
15 or not you think it exceeds that 30 percent,
16 whether you think that relief is appropriate
17 in this case. As to each of the latter two
18 things that I said, those would be variances
19 that would need to be made so this would be
20 the opportunity to make those variances.

21 MR. HORSEY: Thank you, Chairman
22 Loud. Let me just address those two

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1 additional elements because we have studied
2 that. The center line of the alley issue
3 is -- the alley changes configuration. I
4 guess you can see it best in this, the
5 geometry of the alley.

6 I do not have the diagram that we
7 did but the intersection of -- so what we did
8 is we took the intersection of these two
9 alleys which form the alley in the back of the
10 subject property and interpolated a center
11 line to join the two center lines together and
12 then determined that we were well back of the
13 12 feet required from that combined center
14 line.

15 I would be happy to submit that as
16 an additional element or to request it in the
17 sake of time, request variance relief. I am
18 satisfied, and we did do the calculation, that
19 the garage is set back sufficiently more than
20 12 feet from the center line.

21 CHAIRMAN LOUD: Okay. If you
22 could submit that, that would be very helpful.

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1 Again, if you could just say what you just
2 said for me one more time so I can digest it.

3 MR. HORSEY: The garage is located
4 at the point where the two alleys bisect the
5 square here. You can see the alley goes all
6 the way through from 23rd to Connecticut
7 Avenue and the geometry changes as it so
8 happens directly in back of our property.

9 What we did is we took the center
10 line of the two alleys. If you took them to
11 meet directly, we would be well back from that
12 center line to the face of our garage.

13 CHAIRMAN LOUD: Okay. Thank you.

14 MR. HORSEY: And then the second,
15 the rear yard is defined from the end of the
16 structure all the way to the end of the
17 property. The required rear yard is 20 feet.
18 We have 18 foot 8 from the face of the
19 structure to the rear of the primary structure
20 so we are only occupying 1 foot 4 inches of
21 the required rear yard. We believe that we
22 comply with the 30 percent maximum.

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1 I would like to start out by
2 saying, back up a little bit, that this
3 project which I think is an unusual one, is of
4 primary importance to the applicants and very
5 important to their pursuit of living here for
6 the foreseeable future.

7 Let me start out by saying that
8 this house was built as one of four properties
9 built at the same time in 1916. I'm going to
10 go to the uniqueness with this discussion.
11 It's northern most of the four houses that
12 were built in the same architectural style
13 roughly the same size.

14 However, there are two differences
15 that make this property unique with respect to
16 the other three. One is the fact that each of
17 the other three has a garage on it. These two
18 both have freestanding garages and the third
19 one has an attached garage. Unfortunately
20 it's just out of this picture.

21 The second thing is that this is
22 the smallest by somewhere from 14 to 21

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1 percent of the four lots. The average size
2 lot is around 2,400 of the four. We are at
3 2,118, about 14 percent less so that makes us
4 not only unique but also creates a practical
5 difficulty in not having enough land. If all
6 four lots were the same size, we would have
7 enough space to request to build a garage
8 without asking for a variance.

9 I should add, and it's a minor
10 point but in case it comes up, the garage is
11 two feet back from the alley and it's
12 separated from the alley by another piece of
13 property that is owned by the house next door,
14 the Shwebels. They have granted a right of
15 passage over that property to access the
16 garage.

17 Going to the unique conditions,
18 the property actually has a garage off of the
19 alley that you see in this photograph. It's
20 a side-entry garage. The alley is only 12-
21 feet wide as you see in this blow-up detail.
22 This is a unique characteristic of this house,

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1 a sort of side-loaded garage in this square.

2 I think the OP report attests to that as well.

3 Unfortunately, it doesn't meet the
4 existing zoning regulations of having the
5 garage be 12 feet back from the center line.
6 It's only six feet back. Then you can see
7 very clearly the dilemma and the difficulty
8 that exist in using this garage and, in fact,
9 it has been abandoned by the previous owner in
10 favor of the parking spaces at the rear.

11 Here is another plan that shows
12 the garage at the rear of the structure so our
13 proposal would be to remove that garage and
14 use that space as additional living space.

15 MS. BRILLEMBOURG: If I might add
16 also, it's not in addition to the fact that
17 it's almost impossible to part there which is
18 why the previous owners never used it. We are
19 also very concerned about the security and
20 safety of using it.

21 It's a serious blind spot and a
22 lot of the trucks that access the alley and

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1 cars go by there very quickly and we would be
2 concerned about coming in and out of the
3 garage, particularly our children walking in
4 and out of the garage with their toys or what
5 have you.

6 MR. CHOPIVSKY: That alleyway also
7 serves as several high-rise apartment
8 buildings which you might see in the far
9 distance there. Most of the residents in
10 those apartment buildings use this alley to
11 access the surface parking that is afforded
12 around those apartment buildings so it's a
13 very high-traffic area.

14 MR. HORSEY: Most of the other
15 houses, the single-family houses in the square
16 almost all of them already have mostly
17 detached garages. Some are incorporated into
18 the house and you can see those both in this
19 aerial photograph as well as this photograph.

20 This is a view looking up the
21 alley towards Connecticut Avenue it's just
22 lined with garages for all the adjacent

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1 properties. This creates yet another not
2 quite uniqueness but a differentiation between
3 our property and the typical condition on the
4 block.

5 In terms of the practical
6 difficulty, the applicants have a garage they
7 are not able to use under normal safe
8 conditions. As a result the previous owners
9 have abandoned the garage in favor of surface
10 parking at the rear of the property.

11 This surface parking area is not
12 secure either for entry or egress of the
13 family to and from the house or for the secure
14 storage of vehicles and does not provide
15 security for the property itself or for the
16 adjacent property next door. The owners of
17 the property next door are extremely
18 interested in this proposal for that reason.
19 They have had some trouble and they say so,
20 the Shwebels, in their letter of support.

21 The second practical difficulty is
22 created by having the small lot size that I

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1 addressed earlier and the fact that our lot,
2 made the smallest of the four, creates a
3 practical difficulty in forcing its owner to
4 have to seek a variance for a condition that
5 other similar size property owners have as a
6 matter of right.

7 I think those are the two
8 principal practical difficulties. Would you
9 like me to go into the public good and the
10 impairment, or lack thereof, of the zone plan?

11 CHAIRMAN LOUD: I think the record
12 is full but let me defer to my colleagues on
13 the Board and see what they want. Okay. It
14 doesn't appear as though the Board needs that
15 additional testimony.

16 MR. HORSEY: Okay. Thank you.

17 CHAIRMAN LOUD: When OP does
18 testify, if they go into that and you want to
19 respond to it, you will have a chance to do
20 that.

21 MR. HORSEY: Is there anything
22 else you would like me to do while I'm up

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1 here? I mean, I can go into detail about the
2 green roof and all that if you'd like to but
3 that really speaks to the public good and the
4 benefits and the details.

5 CHAIRMAN LOUD: I think you've
6 covered it fairly well in your submissions
7 already. If there is nothing further, then
8 we'll turn to the Office of Planning. As I
9 said, if something comes along that you want
10 to say later, we'll let you do that as well.

11 Hello again.

12 MR. EMERINE: Hello, Mr. Chair.
13 So with respect to the variance request and,
14 for my own clarity, I want to be sure of what
15 exactly the variance relief being requested is
16 at this point. It's my understanding that at
17 present the applicant is requesting relief
18 from Section 403 for lot occupancy. At this
19 point is there also relief necessarily from
20 2001.3?

21 CHAIRMAN LOUD: 2001.3 or 2003.1?

22 MR. EMERINE: 2001.3, the

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1 nonconforming structure.

2 CHAIRMAN LOUD: I think the way we
3 have treated those in the past, and correct me
4 if I'm wrong, Ms. Nagelhout, is that through
5 the special exception process for the 2001.3?

6 MS. NAGELHOUT: I don't think any
7 relief from 2001.3 is necessary any longer
8 because that referred only to the third story
9 addition. Now we're talking about a separate
10 accessory building that affects lot occupancy
11 but not enlarging the nonconforming structure.

12 MR. EMERINE: Right. Thank you.
13 So with respect to the variance request for
14 lot occupancy requirements under Section 403
15 the application is for an accessory garage, a
16 two-car one-story accessory garage, I believe,
17 at the property that would cover what are
18 currently existing parking spaces which are
19 open to the air.

20 The garage will raise the lot
21 occupancy from the 70 percent -- excuse me,
22 from the 62 present that was allowed under the

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1 223 to approximately 81 percent lot occupancy
2 with the garage. With respect to the question
3 of whether the property exhibits specific
4 uniqueness, as we've discussed in our report,
5 the side-loaded garage is an unusual
6 condition.

7 The question then is does that
8 unusual condition lead to the second part of
9 the variance request. Does it lead to a
10 practical difficulty which is unnecessarily
11 burdensome to the applicant. The Office of
12 Planning would certainly agree that the side-
13 loaded garage is difficult to use. The
14 applicant has also expressed reasons why there
15 are, in fact, safety concerns with the use of
16 that side-loaded garage.

17 I guess in our analysis the
18 question is with respect to the question of
19 whether the difficulty is not necessarily
20 burdensome, can they use the property in some
21 other way that's conforming and, in our
22 opinion, the rear of the property which does

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1 currently house two parking spaces unenclosed
2 could be used and, in fact, have been used for
3 that purpose.

4 With respect to the security
5 issues, I don't think that we necessarily have
6 an opinion one way or the other on that.
7 There are, I guess, conforming solutions.
8 That doesn't necessarily mean that the
9 conforming solutions are the best solutions
10 for the applicant and, in fact, the neighbors
11 have expressed the point of view that the
12 solution that they have proposed would be
13 preferred.

14 So moving on then to the question
15 of can relief be granted without substantial
16 detriment to the public good and without
17 substantially impairing the purpose and
18 integrity of the zoning regulations in that.

19 I think we would repeat that the
20 analysis we provided in our report that there
21 would be no appreciable detriment to the
22 public good. As a matter of fact, the garage

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1 and the green roof may provide certain
2 aesthetic benefits to the neighborhood.
3 Certainly stormwater benefits with the
4 additional filtration provided by the green
5 roof as compared to the fully-paved surface
6 that exist now.

7 I think where we have the most
8 difficulty is with the intent of the zoning
9 regulations. As we indicated in our report,
10 there is a standard for lot occupancy. The
11 standard is 60 percent. Whether or not that's
12 the right or the wrong standard the zoning
13 regulations have made it explicit.

14 So I think we would still feel
15 that there is the potential for some
16 impairment to the intent of the zoning
17 regulations if lot occupancy relief were
18 granted but we would certainly agree there is
19 no impact on the public good. If any, it may
20 be a positive impact on the public good.

21 With that I think I would
22 reiterate with respect to the variance request

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1 we are still not able to recommend approval of
2 this requested relief but I'm certainly happy
3 to answer any questions that the Board may
4 have.

5 CHAIRMAN LOUD: Thank you. Let's
6 see if Board Members have any questions for
7 you. Doesn't appear -- yes.

8 MEMBER MOLDENHAUER: In your
9 report right now you are stating that you
10 don't believe that the unique circumstances of
11 the property lead to a practical difficulty.

12 I guess my question to you would
13 be if you're looking at kind of status quo
14 they currently have an existing closed secure
15 garage that is unusual and that the uniqueness
16 of the lot in relationship to the other lots
17 that were built at the same time have the same
18 closed garage. Wouldn't that then directly
19 relate to the difficulty or the practical
20 difficulty of them wanting to build a closed
21 garage in that back patio area?

22 MR. EMERINE: When you are asking

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1 about the uniqueness of the lot compared to
2 its three neighbors, are you referring to the
3 testimony that Mr. Horsey provided earlier
4 with respect to the lot size?

5 MEMBER MOLDENHAUER: Yes, and also
6 the fact that the other properties have either
7 a rear access covered parking or a front
8 covered parking and that this property has
9 side covered parking and that by providing
10 that same covered parking would then associate
11 and provide the connection between the
12 uniqueness and the practical difficulty.

13 MR. EMERINE: I'm reluctant to
14 offer an opinion on that question because the
15 argument regarding the uniqueness of the
16 property with respect to it being the only one
17 of the three having a garage and the size of
18 lot compared to its three neighbors. Those
19 are facts that just didn't enter into our
20 analysis. I don't think it was actually
21 presented as part of the applicant's case
22 until this morning.

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1 I guess I don't dispute the facts
2 that Mr. Horsey presented. I think where I
3 have difficulty is in assessing it to whether
4 it actually does present uniqueness and a
5 result in practical difficulty having heard it
6 for the first time.

7 MEMBER MOLDENHAUER: I understand
8 the fact you wanting to state an opinion on
9 the first issue of uniqueness because that's
10 been presented for the first time.

11 Then if we were to for assumption
12 say, okay, we'll pass uniqueness, and we'll
13 just kind of go to the practical difficulty
14 just for the sake of argument here indicate
15 your opinion on it, would you feel comfortable
16 saying or do you not agree with the concept
17 that the original layout of the building with
18 having this rear access garage and it being
19 unusable is a practical difficulty because of
20 the loss of space and then trying to provide
21 what is lost on another portion of the
22 property by providing it in the rear would

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1 qualify as a practical difficulty?

2 MR. EMERINE: I'm sorry, Ms.
3 Moldenhauer. When you said the loss of space,
4 the loss of living space, the loss of open
5 space?

6 MEMBER MOLDENHAUER: The loss of
7 useable space because if you have original
8 design and layout of the property where you
9 have indoor parking, enclosed parking, and
10 they can't use it for parking and, thus, they
11 also cannot use it for any other use because
12 so, thus, it's a practical difficulty for the
13 loss of space.

14 MR. EMERINE: I'm not sure I would
15 agree with that because, as I stated earlier,
16 the applicant does have a conforming
17 opportunity to use parking and could then
18 convert the garage into otherwise useable
19 space. Again, whether that's the most ideal
20 scenario for the applicant, you know, probably
21 not but, I guess, that would be the conforming
22 scenario would be to use the open parking

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1 spaces unoccupied by a garage.

2 MEMBER MOLDENHAUER: So then would
3 you say that the main portion of the reason
4 why you're denying the case is because it does
5 not conform with the zoning plan? You're
6 saying you feel there is a better solution
7 that would be as a matter of right by just
8 providing a parking pad and not actually
9 closing it and creating a garage?

10 MR. EMERINE: Again, I want to be
11 clear. We stated that we can't recommend
12 approval of the case. There is sometimes some
13 nuance to what we say and I think we've
14 deliberately not flat out said that we would
15 recommend denial. Certainly with respect to
16 the question of why we're not able to
17 recommend approval I think because we're not
18 able to get to sort of the -- in our analysis
19 the practical difficulty has not been
20 demonstrated to our satisfaction. Therefore,
21 with that if we can't find that, then we think
22 there could be some impairment to the intent

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1 of the regulations. The Board is certainly
2 free to disagree with me on that question.

3 MEMBER MOLDENHAUER: I thank you
4 for taking the time to kind of walk through
5 this. It helps me in analyzing the case.
6 Thank you.

7 MR. EMERINE: Sure.

8 CHAIRMAN LOUD: Thank you, Mrs.
9 Moldenhauer.

10 Are there any additional questions
11 from the Board at this time? Certainly if not
12 we can move forward and come back to the Board
13 if they have questions.

14 Mr. Horsey, did you have any
15 questions for the Office of Planning?

16 MR. HORSEY: No, Mr. Chairman. I
17 just did want to add that Mr. Emerine is
18 correct in saying that the two elements that
19 I described of the relation of this property
20 to the three adjacent all of which were built
21 at the same time, the fact is the smallest and
22 the only one of the four that does not have

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1 either a detached garage at the rear or side
2 attached is something we discovered fairly
3 recently in further analysis.

4 I did communicate it to him
5 earlier when we met down here but not prior to
6 that so that's why it's not in his report.
7 Thank you.

8 CHAIRMAN LOUD: Thank you. We can
9 move on. Let me take note of the fact that
10 there is an ANC-2D report, our Exhibit 31, in
11 support of the variance for the accessory
12 garage. ANC-2D is not here. That report is
13 entitled to great weight. There are also a
14 number of support letters in our record,
15 Exhibits 23 through 28 from various neighbors
16 supportive of the variance relief application.

17 There is an Exhibit 29, a report
18 from the Sheridan Kalorama Historic
19 Association which is neither in support of or
20 in opposition to the requested relief for the
21 accessory garage variance but notes on the
22 record what it believes are unique

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1 circumstances of this property that tend to
2 set it apart from what the association views
3 as other properties that might be seeking the
4 same kind of relief.

5 Now I turn to members of the
6 audience. If there are any members in our
7 audience that are either in support or in
8 opposition to the application, now would be
9 the time to come up. You would be given three
10 minutes.

11 Seeing none come forward, we turn
12 back to you, Mr. Horsey, and the applicant for
13 any closing remarks.

14 MR. HORSEY: Thank you, Mr.
15 Chairman. I'll be brief. We believe that the
16 intent of the zone plan is not impaired. I
17 think that is an important distinction. To
18 sort of arrive at the intent I looked at the
19 interpretation of Section 101 and application
20 of the zoning regulations, Section 101 and
21 DCMR 11. I won't go into them unless you want
22 me to. I think our proposal is in keeping

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1 with and in support of each of the criteria
2 that are mentioned in Section 101.

3 Just in closing, the practical
4 difficulty, I think, is that the owners are
5 unable to have without variance relief a
6 useable garage as most other houses in the
7 square already have and certainly as the other
8 three in the development of four have.

9 Our project seeks additional lot
10 coverage of 11 percent over the special
11 exception allowance of 70 percent but in
12 exchange offers an unusual tradeoff in that
13 the key element, namely the roof which is used
14 to enclose the parking spaces and, thus,
15 increase the lot occupancy from 62 to 81
16 percent, is a fully landscaped green roof that
17 actually increases the actual amount of
18 useable rear yard where the family and, most
19 importantly, gives the perception of more open
20 space for the surrounding neighbors which is
21 why they support it so much.

22 Given the overall small size of

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1 the garage structure, 396 square feet, the
2 lack of any opposition, the significant public
3 support, and previously mentioned public
4 benefits we maintain this proposal cannot be
5 viewed as a substantial impairment of the zone
6 plan.

7 We respectfully submit that a
8 decision by the Board to grant the request for
9 a variance would not be adverse to any party
10 and can be made without substantially
11 impairing the intent and purpose and integrity
12 of the zone plan. Thank you, Mr. Chairman.

13 CHAIRMAN LOUD: Thank you, Mr.
14 Horsey.

15 Let me just ask Board Members if
16 there are any final questions for the
17 applicant or the Office of Planning.

18 MEMBER SORG: I guess we still
19 have some questions about whether or not the
20 variance from the 2300.2, the setback from the
21 alley of 12 feet, is required. There is a
22 possibility, and maybe you can help us, that

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1 we can clear that up today.

2 You mentioned it in your testimony
3 but maybe you have a couple more comments on
4 that. Perhaps something that would be helpful
5 to understand this is to understand what is
6 the width of the alley at the entrance to the
7 garage and what is the width of the garage?
8 Those two measurements, I would think, would
9 tell us, or can tell me if there is some other
10 way.

11 MR. HORSEY: I actually don't know
12 so let me find out. There is one distinction.
13 Let me just find the current plan here. The
14 one alley with the unusual garage, this one
15 here, is 12 feet wide. The widest dimension
16 of the alley as it faces -- I'm not quite sure
17 how to do this just because of the geometry
18 but let me take it parallel to the face.

19 It's actually 50 feet. When taken
20 parallel this dimension here at its widest is
21 50 feet. Here this alley is 68 feet. What I
22 was getting at earlier if you were to commit

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1 these two center lines, and I should say that
2 the reason for this regulation is to provide
3 access, safe and easy access to the garage
4 from the public alley.

5 I think that this proposal does
6 that because this is actually the widest place
7 in the alley and so getting into this garage
8 will be very easy in this clear line of site.

9 What we did is we connected the
10 two center lines here so they connect
11 somewhere in this area. Twelve feet on this
12 plan is approximately a quarter inch. You can
13 see that the center line of the alley is well
14 away from the rear of the garage. Does that
15 answer your question sufficiently?

16 MEMBER SORG: Yes.

17 MEMBER MOLDENHAUER: If you're
18 looking down into almost what I would call a
19 cul de sac in the middle of the alley.

20 MR. HORSEY: Here?

21 MEMBER MOLDENHAUER: No, further
22 down in between all the garages.

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1 MR. HORSEY: Here?

2 MEMBER SORG: You mean behind the
3 neighboring houses I think. Right?

4 MEMBER MOLDENHAUER: Yes, behind
5 the neighboring houses.

6 MR. HORSEY: That. That's private
7 property.

8 MEMBER MOLDENHAUER: That was my
9 question. So that's not an alley. That's
10 private property.

11 MR. HORSEY: Right. This triangle
12 belongs to 1917.

13 MEMBER MOLDENHAUER: Okay.

14 MEMBER SORG: That entire
15 triangle. Okay.

16 MEMBER MOLDENHAUER: Okay. That
17 answers the question. Thank you.

18 MR. HORSEY: Great.

19 CHAIRMAN LOUD: Any additional
20 questions from the Board? There don't appear
21 to be any. We've got a couple of options
22 here. We can close our record, deliberate

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1 today and reach a decision today or we can
2 schedule it for the earliest possible time
3 that we can get on the calendar which would
4 probably be next week. I toss this out to
5 Board Members. To me I see a very strong case
6 for a variance notwithstanding the testimony
7 from the Office of Planning. I'm not going to
8 get into deliberation until we decide whether
9 we're going to do that today but I just see a
10 very strong case being made.

11 On the other hand, I'm not even
12 after the walk-through with Board Member Sorg
13 with the analysis and the ruler and the
14 quarter-inch scale. It's probably because my
15 background is not as rich in architecture as
16 is yours or Mrs. Moldenhauer's.

17 I would really like to suggest we
18 leave the record open and have the applicant
19 submit that in writing where you can sort of
20 pinpoint the center line and have some
21 notation showing where it is because this
22 Exhibit 11 that we have in our record from Mr.

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1 Nero, which you responded to in testimony, but
2 just to have something to cover that base for
3 our record, I think it would be kind of
4 difficult.

5 I'm here and I'm watching and
6 following the best I can but for persons who
7 are reading a transcript who don't know where
8 you were standing in relation to the diagram
9 and where you put your pin, your pencil, so on
10 and so forth, it would just help to really
11 make sure it's air tight.

12 If the Board Members go along with
13 me, what I would be suggesting is just putting
14 it off for one week, next Tuesday, and making
15 a decision next Tuesday as opposed to today if
16 you could get that in in a day or so.

17 MR. HORSEY: Mr. Chairman, it's
18 been awhile now but I'm pretty sure I
19 responded in writing to Mr. Nero. He may not
20 have put it in the record. Would it be
21 possible to ask him? I remember this coming
22 up. It may not have been with the diagram.

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1 I know we did the diagram so why wouldn't --

2 CHAIRMAN LOUD: So your

3 recollection is --

4 MR. HORSEY: I guess if I had --

5 CHAIRMAN LOUD: He did submit

6 something in writing.

7 MR. HORSEY: -- he would have put

8 it in the record. Is that fair to say?

9 CHAIRMAN LOUD: Oh, yeah. He

10 definitely would have made it part of our

11 record. Your written response was to both the

12 30 percent issue and --

13 MR. HORSEY: Yes, the two issues

14 he raised.

15 CHAIRMAN LOUD: Okay.

16 MR. HORSEY: That's how we did the

17 diagram. I could be wrong.

18 CHAIRMAN LOUD: That's Rick's

19 letter. Exhibit 11 is Rick's letter. We will

20 double check just to make sure we're not

21 overlooking anything but there did not appear

22 to be a separately identified exhibit in our

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1 record.

2 MR. HORSEY: Would there be some
3 prejudice to postponing the decision for a
4 week?

5 MR. CHOPIVSKY: We both won't be
6 here. We're traveling next week for work.

7 CHAIRMAN LOUD: Well, the good
8 thing about our decision is that you don't
9 actually have to be present and you can -- I
10 don't know if you would want to do this
11 wherever you are but you can pull it up on the
12 internet and it's webcast live. Apart from
13 that, I mean, you don't have to be present for
14 a decision.

15 MR. HORSEY: I can be here.

16 CHAIRMAN LOUD: Your
17 representative could be here. I think, again,
18 just speaking for myself it's, to me, a very
19 strong application. I can't imagine what
20 would happen in a week that would make it less
21 strong. I'll open it up to Board Members for
22 their thoughts as well. Who knows. We may be

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1 able to do this today.

2 MEMBER SORG: Mr. Chairman, I also
3 agree with you that I think this is an
4 extremely strong case for a variance. I
5 personally am convinced despite the lack of
6 document that I think Mr. Rajat says that he
7 submitted.

8 I'm convinced by his demonstration
9 with regard to the 12-foot alley requirement
10 as well as the other elements of the case for
11 variance so I would be ready to decide this
12 today. On the other hand, if other Board
13 Members would feel more comfortable, then I
14 suppose that's understandable, too.

15 CHAIRMAN LOUD: Thank you.

16 Board Member Moldenhauer.

17 MEMBER MOLDENHAUER: Well, I don't
18 have the same comfort level as Board Member
19 Sorg. I do feel as though Mr. Horsey has
20 actually explained the rationalization in his
21 calculations sufficiently so I'm really kind
22 of I could go either way because I think it

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1 would be beneficial for the record to have
2 that additional information.

3 That way there is just no
4 question. At the same time I think if we
5 needed to go forward I think that the
6 representations by the applicants' architect
7 would also be sufficient.

8 CHAIRMAN LOUD: Tell you what
9 then. Let's do this. We can go forward
10 today. It's a self-certified application.
11 The applicant runs the risk of going to the
12 zoning administrator and that relief being
13 needed and not provided so I'm comfortable,
14 too, because I think on the actual variance
15 before us that the record is full and we can
16 move forward.

17 Given that decision, we are going
18 to go ahead and deliberate today and I am more
19 than happy to start us off. This is, as Mr.
20 Horsey indicated, an application to construct
21 an accessory garage to enclose two existing
22 parking spaces at the rear of the applicant's

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1 property so the enclosure increases the lot
2 occupancy to roughly around 81 percent which
3 exceeds lot occupancy in the R-3 which is
4 capped at 60 percent.

5 In order to secure the relief for
6 the accessory garage the applicant would need
7 to meet the variance test. As such the
8 applicant has provided the following evidence
9 and testimony regarding the various prongs of
10 the variance test.

11 In terms of it being unique or
12 exceptional what the applicant has indicated
13 is that it is a side-load garage. It's the
14 only one of its kind in the square. It's the
15 only property with the garage front fronting
16 onto the narrow 12-foot portion of the alley
17 and he showed us some diagrams establishing
18 that.

19 It's also the smallest of the four
20 surrounding lots and testimony that the side
21 load is unusual. In fact, based on the
22 pictures and the testimony it is, in fact,

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1 rather unusual to have this side-load garage.

2 In terms of the practical
3 difficulty, the applicant has testified and
4 provided evidence that the narrowness of the
5 alley precludes the use of the side-load
6 enclosed garage because the turning
7 possibilities are very, very limited and very,
8 very dangerous.

9 The applicant testified as to a
10 blind spot leaving the alley which creates
11 some danger from oncoming traffic in an alley
12 that would be used not only by the applicant
13 but is shared by several nearby highrises so
14 we've had some practical difficulty cases
15 where the applicant has alleged security and
16 safety concerns but to me nothing quite like
17 this where the security and safety concerns
18 are specifically identified with the property.

19 Often times they are identified
20 with crime in the area or not being able to
21 enclose the parking pad and so on. In this
22 case it's the very narrowness of the alley,

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1 the blind spots that are created, the
2 potential for traffic in the alley that really
3 kind of creates a safety concern. Those are
4 not going to go away.

5 Crime may disappear in 10 years at
6 that particular location if that were your
7 only argument but the way this property is
8 configured these safety concerns are not going
9 to go away. That was the evidence pertaining
10 to practical difficulty.

11 With respect to substantial
12 detriment to the public good, the applicant,
13 of course, drew attention to the storm water
14 mitigation parts of the improvement, the
15 greenery, components of the improvement.

16 The Office of Planning did not
17 disagree. In other words, the Office of
18 Planning agreed that there would not be any
19 substantial detriment to the public good and
20 even cited some garage and green roof
21 aesthetic benefits.

22 With respect to whether or not

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1 there is substantial impairment to the zoned
2 plan, the Office of Planning said yes but
3 digging deeper through the Office of
4 Planning's testimony they said the reason that
5 there would be impairment to the zone plan is
6 because it would violate the letter of the law
7 but that's the point of a variance.

8 You are not applying the letter of
9 the law strictly to a given set of
10 circumstances if the elements of the test can
11 be made regarding exceptional situation,
12 practical difficulty and so on. OP did not
13 support their conclusion that there was
14 substantial impairment to the zone plan behind
15 just reciting that the letter of the law would
16 be violated so I was not persuaded by OP's
17 arguments in that regard.

18 I think OP agreed with the
19 arguments in that regard. I think OP agreed
20 with the applicant that there are some unusual
21 features to the side load. In fact, I think
22 the OP testimony this afternoon, and I quote,

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1 is that "the side load is unusual." I think
2 they agree with that.

3 I think with respect to the
4 practical difficulty the OP testimony was that
5 there are ways that the applicant can use the
6 property that is conforming but to me
7 requiring that element for an area variance is
8 not what we normally do. We do that for undue
9 hardship where you have to demonstrate that
10 there is not a conforming use that the
11 property could be put to, but with an area
12 variance we don't necessarily do that.

13 Again, there was nothing
14 additional to that, I think, that the Office
15 of Planning established strongly by way of
16 there being opposed to the practical
17 difficulty prong of the test. For me also
18 what makes it practically difficult is the
19 fact that we have a property that already has
20 an enclosed garage that is not useable and the
21 alternative is an inferior alternative which
22 would be a surface parking.

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1 It's not like someone who doesn't
2 already have enclosed. They have it. It's
3 just not useable and we are saying to them,
4 "Touch luck. Go use an inferior option." I
5 think that they demonstrated practical
6 difficulty in that regard. With that, I think
7 that's the evidence that I recall as regards
8 the variance test and I'll open it up to
9 colleagues.

10 MEMBER SORG: Chairman Loud, I
11 would totally agree with your assessment in
12 this case and I think that your analysis is
13 extremely sufficient. I also wanted to make
14 a note with regard to sort of OP's implied
15 argument of being able to use the parking pad
16 as an alternative to the enclosed garage which
17 is just to note that the applicant cited
18 security concerns which OP kind of didn't want
19 to get into or it was outside of what their
20 analysis was.

21 And just to note that in addition
22 to the applicant testifying to the security

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1 concerns with regard to the parking pad that
2 each of the seven letters that were received
3 in support also mention the security of the
4 parking as their concerns which would be
5 mitigated by the construction of the garage.

6 MEMBER MOLDENHAUER: I think both
7 of the Board Members have really surmised a
8 lot of the important facts. I actually
9 personally agree with OP in not really
10 addressing the security concerns in regards to
11 the analysis here but I differ from that in my
12 final conclusion. I believe that both Board
13 Members are correct in that the applicant has
14 satisfied the practical difficulty and the
15 uniqueness test for the variance.

16 I think that both Board Members
17 actually address one of my main issues that I
18 think is an issue of the loss of the useable
19 space because of the original configuration of
20 the property creates a practical difficulty in
21 wanting to replace the garage in kind and that
22 there are really no other options in creating

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1 another garage while, yes, there is a matter
2 of right option of creating a parking pad and
3 to be able to use that.

4 I think in analyzing this specific
5 unique case where a covered garage is already
6 existing on the property, that then directly
7 associates with the practical difficulty of
8 them either buying a parking space somewhere
9 else or having other options would create a
10 practical difficulty in not allowing them to
11 be able to build a covered garage on the
12 alleyway.

13 I would also like for them to
14 address the other issue that was brought up in
15 the hearing which is the issue of the Section
16 2300.2(b) about the setback of the 12 feet
17 from the center line of the abutting alley.

18 This was a point for me that was a
19 little confusing and maybe Board Member Sorg
20 can provide a better analysis but we had
21 testimony from the applicant's attorney, Mr.
22 Horsey, and he provided us a summary using --

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1 I'm trying to find my exhibit number. It's
2 Exhibit 2 of our Exhibit No. 3.

3 That shows that the alley is
4 unique where there are two alleys combining in
5 the rear of the property with a diagonal
6 access which actually is not part of the
7 applicant's property but rather part of a
8 neighbor's property which there is testimony
9 that there was an easement or some sort of
10 agreement between the neighbors to provide
11 access.

12 The center line has to actually be
13 a joint assessment between the alleyway off of
14 23rd Street and the alleyway coming from the
15 east of the property. There was sufficient
16 testimony, I think, to show that does provide
17 the required setback so we don't need to
18 consider that relief.

19 CHAIRMAN LOUD: Thank you, Board
20 Member Moldenhauer.

21 Is there further deliberation or
22 discussion? Okay. Then I would like to make

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1 a motion that we approve Application No.
2 18035-A for variance relief to allow the
3 construction of an accessory garage in the R-
4 3.

5 MEMBER MOLDENHAUER: I second.

6 CHAIRMAN LOUD: Okay. Motion has
7 been made and seconded. Is there further
8 deliberation? All those in favor, say aye.

9 ALL: Aye.

10 CHAIRMAN LOUD: All those who
11 oppose? Are there any abstentions?

12 Ms. Bailey, can you read back.

13 MS. BAILEY: Mr. Chairman, the
14 vote is recorded as three zero two to grant
15 the application. Board Member Loud made the
16 motion. Board Member Moldenhauer seconded.
17 Ms. Sorg supported the motion.

18 CHAIRMAN LOUD: Thank you. Now,
19 Application No. 18035 was decided earlier and
20 would need to be issued earlier in time and
21 18035-A would need to follow separately. In
22 date I would suspect at least.

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1 MS. BAILEY: Yes, Mr. Chairman.

2 CHAIRMAN LOUD: Okay. And with
3 respect to whether this one could be a
4 summary, there was opposition from the Office
5 of Planning but I'm not certain if that would
6 preclude the summary.

7 MS. BAILEY: I think it has been
8 determined that the Office of Planning is not
9 a party to the case and, therefore, we can't
10 issue a summary order. I think that has been
11 determined in the past.

12 CHAIRMAN LOUD: Okay. Let me just
13 weigh in with OAG regarding whether it has any
14 thoughts on summary or not summary for the A
15 part of the case.

16 MS. NAGELHOUT: I think a summary
17 order would be acceptable.

18 CHAIRMAN LOUD: Okay. Then why
19 don't we do a summary order. Is there
20 anything further in this case?

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

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1 CHAIRMAN LOUD: Thank you, Ms.
2 Bailey.

3 Thank you, Ms. Nagelhout, for the
4 advice and counsel as we proceed forward. I
5 want to thank the applicant for a good
6 presentation. I thank the Office of Planning
7 as well for being able to sort of be fluid and
8 move with us as we move through some shifts in
9 the case.

10 I don't believe there is anything
11 further on this morning's hearing calendar.
12 I think we are going to adjourn for about 45
13 minutes, you think? Okay. We're going to
14 adjourn for about 45 minutes and then we'll
15 come back and we'll pick up the afternoon
16 calendar. We'll start with the decision in
17 the McKinney case and then we'll go into the
18 hearing cases. Thank you.

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

2:37 p.m.

CHAIRMAN LOUD: For those of you who are in the audience, we have to go through this formality of reading introductory remarks before we convene both a hearing that we call a hearing meeting and a decision meeting so bear with me as I read through the prepared opening remarks.

This hearing will please come to order. This is the March 2nd public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Marc Loud, Chairperson. Joining me today is Zoning Commissioner Mr. Konrad Schlater; BZA Mayoral Appointees Mrs. Meridith Moldenhauer, Mrs. Nicole Sorg; Mr. Clifford Moy, Secretary of the BZA; and on my far left Ms. Beverley Bailey, Zoning Specialist in the Office of

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1 Zoning. We'll be joined shortly by Ms. Mary
2 Nagelhout of the Office of the Attorney
3 General.

4 Copies of today's hearing agenda
5 are available to you and are located to my
6 left in the wall bin near the door. Please be
7 advised that this proceeding is being recorded
8 by a court reporter and is also webcast live.
9 Accordingly, we must ask you to refrain from
10 any disruptive noises or actions in the
11 hearing room.

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

19 All persons planning to testify
20 either in favor or in opposition are to fill
21 out two witness cards. These cards are
22 located to my left on the table near the door

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1 and on the witness tables. Upon coming
2 forward to speak to the Board please give part
3 cards to the reporter sitting to my right.

4 The order of procedure for special
5 exceptions and variances is as follows. The
6 statement and witnesses of the applicant,
7 government reports including the Office of
8 Planning, the Department of Transportation,
9 etc., the report of the Advisory Neighborhood
10 Commission, parties or persons in support,
11 parties or persons in opposition, and finally
12 closing remarks by the applicant only.

13 Pursuant to Sections 3117.4 and
14 3117.5 the following time constraints will be
15 maintained. The applicant, the appellant,
16 persons and parties except an ANC in support,
17 including witnesses, are allotted 60 minutes
18 collectively; the appellees, the persons and
19 parties except an ANC in opposition including
20 witnesses 60 minutes collectively. Individuals
21 are allotted three minutes. Individuals
22 representing organizations are allotted five

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1 minutes.

2 These time constraints do not
3 include cross examination and/or questions
4 from the Board. Cross examination of
5 witnesses is permitted by the applicant or
6 parties only. The ANC within which the
7 property is located is automatically a party
8 in a special exception or a variance case.

9 Nothing prohibits the Board from
10 placing reasonable restrictions on cross
11 examination. The record will be closed at the
12 conclusion of each case except for any
13 material specifically requested by the Board.
14 The Board and the staff will specify at the
15 end of the hearing exactly what is expected
16 and the date when the persons must submit the
17 evidence to the Office of Zoning.

18 After the record is closed no
19 other information will be accepted by the
20 Board. The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

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

4 Please turn off all beepers and
5 cell phones at this time so as not to disrupt
6 this proceedings. The Board will consider any
7 preliminary matters. Preliminary matters are
8 those that relate to whether a case will or
9 should be heard today such as requests for
10 postponement, continuance, or withdrawal, or
11 whether proper and adequate notice of the
12 hearing has been given.

13 If you are not prepared to go
14 forward with a 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, Ms. Bailey?

19 MS. BAILEY: Mr. Chairman, Members
20 of the Board, good afternoon. No, Mr.
21 Chairman, we don't have any preliminary
22 matters.

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1 CHAIRMAN LOUD: Okay. Good
2 afternoon to you.

3 Why don't we have our witnesses,
4 those wishing to testify in any of the
5 afternoon cases, to please take the oath.
6 Stand and take the oath and Ms. Bailey will
7 administer the oath to you.

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

13 WITNESSES: I do.

14 CHAIRMAN LOUD: Thank you. Good
15 afternoon to everyone. Let me just see by a
16 show of hands if you don't mind how many of
17 those who just stood up to be sworn as
18 witnesses intend to testify in the Mews case
19 which is 18038? Just one witness in that
20 case. Okay.

21 In the Dix Street case? All
22 right, I see nine hands that were raised for

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1 the Dix Street Case.

2 Let me suggest to each of you we
3 are going to try to get to all of your
4 testimony but to those that are orchestrating
5 the presentation of the case if you believe
6 there are opportunities to frame the case in
7 such a way that we do not hear duplicative
8 testimony or evidence or matters that are
9 covered adequately already in the pleadings do
10 not have to be addressed in any degree of
11 significance on the record except where the
12 Board indicates we want to hear something in
13 a little more detail, this would be a good
14 time to perhaps sort some of that out.

15 There are nine witnesses who
16 raised their hands. Certainly, as I said, any
17 overlap, any duplication of evidence it would
18 not be necessary to do that to present a solid
19 case moving forward.

20 How about for the D.C. Department
21 of Real Estate? Okay. Of course, counsel
22 doesn't need to be sworn in as a witness but

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1 it looks like there are four persons raising
2 their hand so I think we will be able to make
3 it through what we have before us.

4 With that, why don't we call the
5 first case which is the Mews case.

6 MS. BAILEY: Mr. Chairman, this is
7 Application 18038, 57th street Mews, Inc.,
8 pursuant to 11 DCMR Section 3103.2, for a
9 variance from the lot area requirements under
10 Subsection 401.3, to allow the construction of
11 a flat (a two-family dwelling) in the R-4
12 District. The property is located at 787
13 Irving Street, N.W., Square 2891, Lot 34.

14 Mr. Chairman, I should quickly add
15 that the property was posted four days late
16 but during that time, Mr. Chairman, I'm not
17 making an excuse for the applicant but that
18 was probably one of the worst snow storms this
19 city has had when the property was required to
20 be posted. I'm not sure that was a factor but
21 I just know that the property was posted four
22 days late.

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1 CHAIRMAN LOUD: Thank you, Ms.
2 Bailey. Why don't we very, very briefly just
3 take that up as a preliminary issue. As you
4 know, we can't under our rule 3100.5 waive
5 most of our other rules and it appears as
6 those there is probably good cause to be shown
7 and no prejudice to other parties.

8 In addition to that, there are a
9 number of other ways that parties and impacted
10 members of the public receive notice. Did you
11 want to respond to that very briefly?

12 MR. BELLO: Yes, Mr. Chair. Every
13 property owner within a 200-foot radius, as
14 you know, received notice of this application
15 as did the Single Member District Commissioner
16 and also the ANC. The only explanation we
17 have is that of inclement weather and its
18 impact on posting the notice.

19 CHAIRMAN LOUD: Okay. I think
20 that is sufficient reason for posting it a few
21 days late. As you indicate, those persons
22 living within 200 feet got notice and the

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1 other forms of notification were met in this
2 case. Do we need to actually vote on waiver
3 of the rule? Okay. So I'll just make a
4 ruling that we waive our rule and allow
5 posting four days late.

6 Before you get started, from the
7 record that's before us I think that Board
8 Members think that a pretty full record has
9 been provided by the applicant so I don't
10 think you need to go through a formal
11 presentation hitting all the points of the
12 required relief but I think Board Members may
13 have some specific questions for you regarding
14 the application and, if so, we'll ask that at
15 the outset and then move forward from there.

16 To the extent that we don't have
17 questions, we feel it's addressed in the
18 submission, we can proceed with some degree of
19 haste. Okay?

20 MR. BELLO: Yes, sir. We are glad
21 to take you up on the offer and rest on the
22 record and make ourselves available to answer

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1 any questions the Board has.

2 CHAIRMAN LOUD: Okay. Why don't
3 you at least just a quick blurb about the
4 project, the relief requested, and then we'll
5 ask Board Members if they have any very
6 specific questions for you.

7 MR. BELLO: Thank you. The
8 application is the application of 57 Mews LLC.
9 As stated, the request is for an area variance
10 from the minimum lot area requirements for the
11 underlying R-4 zone.

12 As far as the tests are concerned,
13 we have relied on the pre-existing condition
14 of the property with respect to the
15 shallowness for meeting the uniqueness test
16 and the fact that the owner of the property
17 practically cannot expand this lot in any
18 direction for improvements.

19 On either side of it is an alley
20 and a street so there is really no opportunity
21 for the applicant to be able to expand the lot
22 in any kind of way. The proposed two-family

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1 flat is a use that's permitted a matter of
2 right in the R-4 zone. That's basically what
3 we have.

4
5 CHAIRMAN LOUD: Let us see if any
6 questions are coming forth from the Board. If
7 not we can move the Office of Planning.
8 Doesn't appear as though we have any questions
9 from the Board so why don't we move to the
10 Office of Planning.

11 Good afternoon.

12 MR. VARGA: Good afternoon, Mr.
13 Chairman. Stephen Varga, Office of Planning.
14 Office of Planning will stand on the record.
15 I would be happy to answer any questions if
16 you might have them.

17 CHAIRMAN LOUD: Very well. We
18 have received your report, Exhibit 21, and you
19 recommend approval.

20 MR. VARGA: That's right.

21 CHAIRMAN LOUD: The record you're
22 standing on is the recommendation of approval.

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1 MR. VARGA: That's correct.

2 CHAIRMAN LOUD: Let's see if Board
3 Members have any questions for you and/or if
4 the applicant does. Let's start with Board
5 Members. No questions for you. It was a very
6 well prepared report.

7 Does the applicant have any
8 questions for the Office of Planning?

9 MR. BELLO: No, Mr. Chair.

10 CHAIRMAN LOUD: All right. Very
11 well. Then let me note for the record that we
12 do not have any report from any other
13 government agencies. We do not have a report,
14 as I recall, from the ANC in this case which
15 would be ANC-1A. If we did, this would be the
16 time that we would either enter it or hear
17 testimony from the ANC. If there are parties
18 or persons in the audience that are in support
19 or opposition to the application, now would be
20 the time to come up. You would be given three
21 minutes. Seeing no one rise to come forward,
22 we turn back to you, Mr. --

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1 I'm sorry. Good afternoon. How
2 are you? Why don't you take a seat, cut the
3 microphone on and introduce yourself.

4 MR. CUMMINS: My name is Ryan
5 Cummins. I live on the 700 block of Irving
6 and I brought with me today a letter from
7 another neighbor of mine and a letter from
8 myself signed off on by no less than 20 of my
9 neighbors.

10 CHAIRMAN LOUD: Okay. Are you in
11 support or opposition?

12 MR. CUMMINS: We are in opposition
13 to the plan as filed.

14 CHAIRMAN LOUD: Okay. Have you
15 given that letter to Ms. Bailey?

16 MR. CUMMINS: I gave it to Mr.
17 Moy.

18 CHAIRMAN LOUD: All right. Very
19 well. Then what we're going to do once every
20 Board Member has a copy of it -- does the
21 applicant have a copy of it?

22 MR. CUMMINS: No, sir. Not that

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1 I'm aware of.

2 CHAIRMAN LOUD: Do you have any
3 extras?

4 MR. CUMMINS: There may be.

5 CHAIRMAN LOUD: Why don't we make
6 sure the applicant has a copy of it. Once
7 everyone has a copy of it we are going to
8 allow you to give your testimony. As I had
9 indicated at the outset, you will be given
10 three minutes for your testimony. Okay?

11 MR. CUMMINS: Okay.

12 CHAIRMAN LOUD: Is your testimony
13 going -- are you going to read?

14 MR. CUMMINS: No, sir.

15 CHAIRMAN LOUD: You're going to
16 speak?

17 MR. CUMMINS: I was pretty much
18 just the messenger here today.

19 CHAIRMAN LOUD: Okay.

20 MR. CUMMINS: I pretty much said
21 what I needed to say vaguely in my letter that
22 my neighbors agreed with and signed. Mr.

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1 Bobeck is the letter on top that you are
2 probably reading right now. He chose to write
3 his own letter because he felt like he needed
4 to say more.

5 CHAIRMAN LOUD: Okay. Give me
6 your name again. I'm sorry.

7 MR. CUMMINS: My name is Ryan, R-
8 Y-A-N, Cummins, C-U-M-M-I-N-S.

9 CHAIRMAN LOUD: Okay. Very well.
10 Why don't we start him off with the three-
11 minute clock and when you're ready you can go
12 ahead and give your testimony.

13 MR. CUMMINS: Okay.

14 CHAIRMAN LOUD: You can go when
15 you're ready.

16 MR. CUMMINS: Um, let's see. I
17 guess we just would like to see something else
18 besides an additional two unit, three bedroom
19 apiece condo development go into our block.
20 There is an existing building next door that
21 is of similar design and construction and it
22 has been for sale and vacant for at least four

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1 years.

2 There is another building of
3 similar design and construction. Columbia
4 Road in the same 700 block and mostly finished
5 but unfinished project of similar design and
6 construction. It's multi-unit.

7 As I put in the letter, high-
8 density low-quality development that doesn't
9 seem to be in demand in the neighborhood and
10 we would like to see something else on the
11 order of either smaller number of bedrooms per
12 unit or possibly a single-family dwelling or
13 more green space or a little more adequate
14 parking provision.

15 Essentially we're just not
16 satisfied with the project as filed and we
17 would like to see something else. That's
18 pretty much it. Thank you.

19 CHAIRMAN LOUD: Thank you, Mr.
20 Cummins. Why don't we see if the applicant
21 has any questions for you.

22 MR. BELLO: No, Mr. Chair.

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1 CHAIRMAN LOUD: There are none.
2 Just in terms of me sort of understanding the
3 essence of the opposition, as you know, the
4 standard that we would look at is what is
5 called the variance test. That is, is there
6 something unique or exceptional about the
7 property?

8 If there is, does that something
9 that is unique or exceptional cause a
10 practical difficulty for the applicant in
11 terms of using the property appropriately.
12 Then, thirdly, notwithstanding that there is
13 something unique or exceptional that it causes
14 a practical difficulty, is there substantial
15 detriment to the public good or harm to the
16 zone plan by affording the relief.

17 It sounds to me like some of your
18 concerns reflect design issues and perhaps the
19 density of the site but are you able to frame
20 some of your concerns around the test that we
21 have to use as our standard?

22 MR. CUMMINS: To address, I guess,

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1 the first one which is sort of the specialty
2 of the property, the special nature of the
3 property, this person recently purchased this
4 property knowing full well that it wasn't of
5 proper square footage to make said development
6 and would have to come before this Board and
7 ask for a variance to do so.

8 If we have any sort of say, we
9 would not like to see additional development
10 occur that has occurred already and is not
11 then a good thing for our neighborhood on our
12 street. I guess that's it.

13 CHAIRMAN LOUD: That's okay. I
14 think your response to my question raised a
15 point that we hear in a number of our cases,
16 namely that there was sort of a knowing
17 element to the applicant's request for relief,
18 that the applicant perhaps created the
19 hardship for him or herself by knowingly going
20 into a transaction that had some shortcomings
21 or some question marks.

22 In the area variance test,

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1 however, that's not something that we can take
2 into consideration. In what is called a use
3 variance test it is because there is a
4 requirement that it not be a self-created
5 hardship. I'm not certain that would directly
6 relate to the test that we have to uphold in
7 a case like this. I just wanted to share that
8 with you on the record. Is there anything
9 further that you wanted to add?

10 MR. CUMMINS: Off the top of my
11 head not at the time.

12 CHAIRMAN LOUD: Okay. Then why
13 don't we do this. Just turning back to the
14 Office of Planning for a moment, you have had
15 an opportunity to hear from this witness who
16 was not available at the time you prepared
17 your report and based on the witness'
18 testimony what you've been able to glean from
19 what has been submitted, does the office still
20 stand on its report?

21 MR. VARGA: Yes, the office still
22 stands on its report. I can address any of

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1 the individual matters if there are any
2 questions regarding some of the information
3 recorded in the information submitted just
4 now.

5 CHAIRMAN LOUD: I think that would
6 be helpful.

7 MR. VARGA: Okay. The Office of
8 Planning feels as though the size is of a
9 practical difficulty. It is the shallowest
10 lot on the square. As the applicant submitted
11 earlier, they can't consolidate with adjacent
12 lots. We feel as though the building does fit
13 the character of the area. The Office of
14 Planning is concerned that if this area
15 variance is not granted the property may
16 remain undeveloped.

17 As in the letter here states, "The
18 property has been poorly constructed and a
19 vacant eyesore that has only contributed
20 blight to the neighborhood in the forms of
21 trash," etc., etc. The Office of Planning
22 feels as though this is appropriate info

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1 development. They could address some of those
2 issues as well.

3 Also this use is a permitted one
4 in the R-4 as well. According to the area
5 variance test being submitted looking at that
6 specifically, the Office of Planning feels as
7 though the applicant meets the criteria.

8 MEMBER MOLDENHAUER: Can I just
9 ask one question? Can you address the issue
10 that Mr. Cummins referenced in relation to the
11 parking and the accessibility or, I guess, the
12 ability for the lot both topographically and,
13 I guess, the width to access to parking
14 spaces?

15 MR. VARGA: Yes. The alley is a
16 10-foot alley and as shown on the application,
17 the applicant is proposing two spaces in the
18 back which meets the parking criteria for one
19 space for every three dwellings in the R-4
20 District.

21 Regarding the space required to
22 access those actual spaces, the Office of

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1 Planning really can't comment on that. That
2 question may be more appropriate for the
3 applicant to be able to address in terms of
4 their proposal for what's appropriate for the
5 site and being able to fit two parking spaces
6 into the rear yard along the alley.

7 MR. BELLO: In Chapter 21 the
8 zoning regulation sets forth the minimum width
9 requirements for an alley to access required
10 parking as 10 feet so this alley does meet the
11 minimum requirement to access required
12 parking.

13 CHAIRMAN LOUD: Thank you. Is
14 there anything further from Mr. Cummins from
15 either the Board for the applicant? If not,
16 then we'll move forward.

17 Mr. Cummins, thanks for your
18 testimony.

19 MR. CUMMINS: I have an additional
20 comment on that alley.

21 CHAIRMAN LOUD: Okay.

22 MR. CUMMINS: I believe I included

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1 a picture of said alley in my set of
2 documents. It's one of the last couple of
3 pages. Currently that alley is basically
4 grass and mud and has been for a number of
5 years, in excess of 20. There seems to be no
6 plan in place to pave that alley or to improve
7 it in any way.

8 It's currently being used by two
9 apartment buildings as a storage area for
10 trash cans and it's kind of a shared parking
11 space for a number of people who occupy those
12 apartment buildings. There seems to be like
13 no plan to deal with these existing conflicts
14 that it will have with the neighborhood if
15 someone just decided to come in and start
16 driving through the muck and go into this
17 alley lot parking space.

18 Additionally, it doesn't seem to
19 be the geometry available to pull in two
20 vehicles into the back of this new development
21 given the current situation. You have at
22 least a 12-foot tall retaining wall dividing

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1 the rear of this property from the courtyard
2 of the apartment building that is adjacent but
3 lies at the corner of Irving and Sherman.

4 The retaining walls that both
5 retain the property that is to be built upon
6 as well as the alley are in sad state of
7 disrepair and are crumbling so we would like
8 to see that those walls were attended to or
9 that something would be done about them as
10 well.

11 I'm sorry if I am a little bit
12 unprepared. This is my first time doing
13 anything like this. I was sort of nominated
14 by the neighborhood to come here and give our
15 concerns to the Board so that's what I'm
16 trying to do. Thanks.

17 COMMISSIONER SCHLATER: Mr.
18 Cummins, just a quick question. In your ideal
19 world what would occur on this property?

20 MR. CUMMINS: Well, there is a
21 consensus of varying opinions amongst the
22 people I talked to, a consensus that this is

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1 just too much in the way of bedrooms. It
2 would bring too many people to the block. A
3 lot of people are very concerned about the
4 parking situation is kind of tight now and if
5 you were to add six bedrooms more of people to
6 the block, well, I know three-bedroom houses
7 or, as I like to call them, two-and-a-half
8 bedroom houses that we have on our street,
9 regularly have two cars per building and if
10 this is going to be two more, then that's kind
11 of like between four to six cars that they are
12 going to add to that block. We would like to
13 see basically a smaller building or a more
14 well-thought-out building. So far that's not
15 what I'm seeing here and not what my neighbors
16 are seeing when they looked at the plans that
17 I showed them.

18 COMMISSIONER SCHLATER: So you
19 would prefer a single-family residence with
20 one or two bedrooms?

21 MR. CUMMINS: Either a single-
22 family residence or perhaps two-bedroom condos

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1 with more kind of living space and less people
2 warehousing-looking bedrooms.

3 COMMISSIONER SCHLATER: I guess
4 one other question is you've got this building
5 next door that the community isn't happy with
6 because it's not complete and I understand
7 that. Do you have any reason to believe that
8 this particular developer would repeat, you
9 know, doing that to the adjacent --

10 MR. CUMMINS: We have no kind of
11 guarantee that they wouldn't. Concerning the
12 building it is complete. It's just not a very
13 great building and it's not a desirable
14 building and it's been for sale for quite a
15 long time. People kind of come up and look at
16 it, you know, "eh" and leave. We kind of feel
17 like there is not enough room for more "eh"
18 development on Irving Street. There's plenty
19 of it to go around already.

20 COMMISSIONER SCHLATER: Would you
21 rather see a vacant lot there?

22 MR. CUMMINS: Honestly, most of my

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1 neighbors would rather see a vacant lot than
2 another kind of half-hearted building.

3 COMMISSIONER SCHLATER: No further
4 questions, Mr. Chair.

5
6 MEMBER MOLDENHAUER: I'm sorry.
7 Two quick questions. I don't see a letter in
8 our file from the ANC. You said you were
9 representing a group of different neighbors.
10 Have you guys attended ANC meetings where this
11 project was discussed?

12 MR. CUMMINS: Many of my neighbors
13 aren't familiar with the ANC as well as
14 myself. I don't necessarily know where they
15 meet all the time.

16 MEMBER MOLDENHAUER: So you have
17 not attended?

18 MR. CUMMINS: No.

19 MEMBER MOLDENHAUER: Okay.

20 MR. CUMMINS: But we are in
21 communication with one another on the block
22 quite often and kind of have our own way of

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1 dealing with neighborhood issues.

2 MEMBER MOLDENHAUER: Have you ever
3 tried to speak with the applicant and discuss
4 your concerns with him?

5 MR. CUMMINS: I was unaware of how
6 to make contact with the applicant. Most of
7 my neighbors honestly were unaware that this
8 project was even in existence until I made
9 reference to, "Hey, remember that sign over
10 there?" "Oh, I didn't notice the sign."
11 "Well, there's one on the property." Maybe it
12 was covered in snow for a good portion of the
13 period of time that it was supposed to be, you
14 know, posted but a lot of people didn't know
15 the first thing about it.

16 MEMBER MOLDENHAUER: In the future
17 the ANC usually has an opportunity to discuss
18 it with an applicant and there are a lot of
19 different avenues to try to get in contact
20 with an applicant. That way you can have some
21 sort of additional conversations in advance to
22 meetings like this.

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1 MR. CUMMINS: Well, I --

2 MEMBER MOLDENHAUER: I'm trying to
3 help out to educate the community and educate
4 you and your neighbors. You sound like you
5 have an active group.

6
7 MR. CUMMINS: I guess I would feel
8 better if there was an ANC person here today
9 and I wouldn't need to be doing the talking
10 right now.

11 CHAIRMAN LOUD: Are there any
12 additional questions for Mr. Cummins? Okay.
13 Then if not, again, we want to thank you, Mr.
14 Cummins, for coming down here and providing
15 your testimony and speaking on behalf of your
16 neighbors as regards the application.

17 MR. CUMMINS: Thank you, sir.

18 CHAIRMAN LOUD: I think we will
19 now move to the applicant for any closing
20 remarks.

21 MR. BELLO: Thank you, Mr. Chair.
22 The only relief that the applicant has on the

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1 table is one that is directly related to its
2 unique circumstance. The proposed footprint
3 of the building would be in compliance with
4 the allowable percentage of lot occupancy and
5 the project provides in excess of the required
6 parking for a two-unit flat in the underlying
7 zone.

8 We believe the application and the
9 submissions clearly show that this application
10 meets the burden of proof for the granting of
11 the variance and would respectfully request
12 the Board to grant that variance. Thank you
13 very much.

14 CHAIRMAN LOUD: Thank you. We
15 appreciate your presentation and your
16 packaging of information for our
17 consideration. Let me also commend the Office
18 of Planning and thank them for its report.

19 Let me thank Mr. Cummins for your
20 testimony and your submission as well.

21 I think we have a couple of
22 options right now. We can deliberate on this

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1 case right now if we think the record is full
2 or we can postpone it for a date in the next
3 week or two if we think we need additional
4 information.

5 I'm inclined to think that we have
6 a full record but I am not drawing a line in
7 the sand so if there is something that we need
8 to leave the record open for, we can do that.
9 Let me open it up to others for your thoughts.

10 COMMISSIONER SCHLATER: Mr.
11 Chairman, I'm prepared to deliberate on the
12 case right now.

13 CHAIRMAN LOUD: Okay. Thank you,
14 Mr. Schlater.

15 Ms. Sorg?

16 MEMBER SORG: Yeah, I agree.

17 CHAIRMAN LOUD: Okay. Ms.
18 Moldenhauer, did you have any thoughts on the
19 thoroughness or lack thereof of the record?

20 MEMBER MOLDENHAUER: I believe
21 there are a couple of holes but I think that
22 if everybody else is ready to deliberate, they

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1 can fill in those holes for me in the
2 discussion process.

3 CHAIRMAN LOUD: Okay. Then why
4 don't we deliberate. I'm happy to start us
5 off and then I'll turn to others for your
6 thoughts on this. I'm sorry?

7 MEMBER SORG: Mr. Chairman, I'm
8 sorry. I have one question I would like to
9 ask the applicant.

10 CHAIRMAN LOUD: Please. Let's
11 come out of deliberation.

12 MEMBER SORG: Sorry. I missed the
13 boat on the question time.

14 Just very quickly, what is the
15 width of the property? I'm looking for it
16 here but I just don't see it.

17 MR. BELLO: I believe it's 19
18 feet.

19 MEMBER SORG: Nineteen feet.
20 Okay. That's actually what I wanted to know.

21 CHAIRMAN LOUD: All right. As
22 indicated I believe we all feel the record is

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1 full in terms of deliberation. As I said,
2 I'll start us off. The application is for
3 variance relief for a proposed three-story
4 two-family flat with cellar. It's in the R-4.
5 The R-4 allows the flat use. However, the
6 property is not large enough to accommodate
7 two-dwelling units under our Section 401.3 and
8 so the only area of relief, as Mr. Bello
9 represented toward the end here, is the lot
10 area relief. It's in a zone that requires
11 minimum lot area of 1,800 square feet and this
12 lot is 1,330 square feet.

13 In order to grant the relief
14 requested by the applicant, the applicant has
15 to meet it's burden of establishing that the
16 variance test has been met. In this case the
17 evidence that supports granting of the
18 variance relief has been adequately captured,
19 I think, by the applicant and presented and
20 put on the record and then finds its way also
21 in the Office of Planning report.

22 In terms of the first prong of the

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1 test that the property be exceptional or
2 unique in some way, the evidence is that the
3 lot is the shallowest lot within the square
4 that it's located on and that it's at 1,330
5 square feet. It actually existed in that
6 configuration prior to adoption of the zoning
7 regulations in 1958.

8 There aren't other vacant lots in
9 the square such that an assembly of lots could
10 be successfully completed that would allow for
11 a larger lot area to build this proposed
12 development on. There is no consolidation
13 opportunities so it appears to be a unique and
14 exceptional lot in that sense.

15 In terms of the practical
16 difficulties that would accrue to the owner,
17 the evidence is that the lot would potentially
18 be unbuildable, that it would not be
19 developable for any use in the zone were this
20 relief not to be granted. As I indicated, the
21 owner can't expand the lot area by acquiring
22 other nearby properties.

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1 Whether the relief results in
2 substantial detriment to the public good or
3 whether it will impair the intent, purpose,
4 and integrity of the zone plan, the evidence
5 from the Office of Planning is that, in fact,
6 development is in the interest of the public
7 good because it would remove a vacant eyesore
8 from the community and allow for building what
9 it considers positive in-fill development.

10 Now, there is some testimony from
11 Mr. Cummins that in his estimation and those
12 of a number of neighbors who signed a petition
13 that he introduced into our record that it
14 would create a substantial detriment to the
15 public largely on design issues, largely on
16 the inadequacy or question marks around the
17 availability of adequate parking for the site,
18 a few other issues that he raised in his
19 testimony and in the letter that was submitted
20 including the impossibility of trash and
21 recycling crews to collect refuse because of
22 the alley.

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1 I think Mr. Bello responded to
2 that point as to a section of our regs, I
3 think 2101, that identified the alley width
4 that is required and that the alley adjoining
5 this property meets that width requirement and
6 would be accessible for removal of trash.

7 Again, there were a lot of
8 aesthetic design issues, not wanting to see
9 that intensity of use on the site as opposed
10 to a strict variance sort of test. That does
11 not diminish the evidence put forward by Mr.
12 Cummins.

13 It just in my mind does not meet
14 the test of whether a substantial detriment to
15 the public good would result from granting
16 this relief. I don't believe on the record
17 that was presented that substantial detriment
18 would occur.

19 Whether or not there would be harm
20 to the zone plan, the Office of Planning
21 testified that there would not be harm to the
22 zone plan and that, in fact, it would rather

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1 see development here on the site than for the
2 site to remain unimproved forever.

3 There was not an ANC report in the
4 matter so there is not an ANC report to give
5 great weight to. With that, let me open it up
6 to other Board Members for your reflections.

7 MEMBER MOLDENHAUER: Chairman
8 Loud, I believe you gave a very full summary
9 of the case and I am in agreement with you on
10 your analysis. I just wanted to make a couple
11 of different points in regards to Mr. Cummins'
12 testimony.

13 I think that the applicant should
14 be happy to see that there is a very active
15 community on the street. I would really
16 strongly encourage both parties to get
17 together after this meeting.

18 It's unfortunate that there was no
19 ANC meeting which is normally an opportunity
20 for the community and the applicant to sit
21 down and talk about different desires and
22 interests but I think that this is an

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1 opportunity for both parties to come together
2 at this point and move forward with
3 potentially right now since I give two votes
4 for approving the application but to make sure
5 that all interests are at least heard and
6 discussed. I think there is potential for
7 modification.

8 I'm looking at the front elevation
9 plans and it looks like the front elevation
10 plans may not be fully completed yet or, if
11 they are, there may be some modifications as
12 to whether or not that's consistent with the
13 building type in the neighborhood and that
14 might be something but I'm not sure exactly.

15 I think OP didn't dive into that
16 issue but I think it was something that was
17 brought up by Mr. Cummins' testimony and I
18 think that it's something that if the
19 applicant has not finalized their plans yet
20 that could be a point in which the community
21 could work together on.

22 MEMBER SORG: I would also like to

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1 add I'm glad that Ms. Moldenhauer brought that
2 up. Another comment which is just to
3 reiterate that I think we, although I don't
4 want to speak for my colleagues, are sensitive
5 to the types of issues that Mr. Cummins brings
6 up but I also agree with Chairman Loud that
7 those issues don't hamper the satisfaction of
8 the variance test by the applicant.

9 I would also add to Ms.

10 Moldenhauer's comments about the design and
11 aesthetic here. This type of small in-fill
12 development in a city like ours, as many of us
13 in this room know, are extremely important
14 with regard to maintaining and keeping the
15 character of our neighborhoods, especially an
16 important historical neighborhood like
17 Columbia Heights so I also would urge that the
18 applicant and the community get together and
19 find a common ground and definitely to look at
20 the aesthetic of the elevations that I'm
21 seeing here which we can't really tell very
22 much from. Thank you.

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1 CHAIRMAN LOUD: Thank you Board
2 Members Moldenhauer and Sorg. It doesn't
3 appear as if there is any additional -- did
4 you have any?

5 COMMISSIONER SCHLATER: I'll just
6 say, Mr. Chairman, that I'm in support here.
7 I'm in support of in-fill development. As a
8 rule I think it's a good thing to get rid of
9 vacant properties. I think it's a good thing
10 for investment and for the District. I think
11 it's good despite some of the concerns that
12 were raised that I understand around parking.
13 I think it's good to have density in our
14 neighborhoods as well. I think it's good to
15 have more people walking on the street than
16 fewer people walking on the street. I think
17 the completion of this project will actually
18 be to the benefit of the District. I
19 certainly wouldn't want to get into how many
20 bedrooms are in the building. I think more
21 people is better for the city so I'm happy to
22 support this.

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1 CHAIRMAN LOUD: Thank you one and
2 all. Any replies to the replies? Okay. I,
3 too, obviously support the application. I
4 think looking at it from the strict variance
5 test, which is our charge, the applicant meets
6 its burden. I think there are some standards
7 that we look at where design considerations
8 play a more prominent role than we are allowed
9 to with the variance test. But I do echo the
10 concerns and remarks of my colleagues, Mrs.
11 Moldenhauer and Ms. Sorg, regarding taking
12 every remaining available opportunity to be
13 transparent and accessible to members of the
14 community in working through the steps that
15 will ensure following what happens here today.
16 Unless there is further deliberation I'll make
17 a motion. I would like to move approval of
18 BZA Case No. 18038 for area variance relief at
19 787 Irving Street, N.W. from the lot area
20 requirements of Section 401.3.

21 COMMISSIONER SCHLATER: Second.

22 CHAIRMAN LOUD: Motion has been

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

4 ALL: Aye.

5 CHAIRMAN LOUD: All those who
6 oppose? Are there any abstentions?

7 Can you read back the vote?

8 MS. BAILEY: Mr. Chairman, the
9 vote is recorded as four zero one to grant the
10 application. Board Member Loud made the
11 motion, Commissioner Schlater seconded it.
12 Mrs. Moldenhauer and Ms. Sorg support the
13 motion.

14 CHAIRMAN LOUD: Thank you, Ms.
15 Bailey. There is no opposition from the ANC
16 from any parties in this case. Correct? This
17 would qualify as a summary order.

18 MS. BAILEY: Summary order it is,
19 Mr. Chairman.

20 CHAIRMAN LOUD: Thank you.
21 Anything further in this case?

22 MS. BAILEY: No, sir.

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1 CHAIRMAN LOUD: Okay. Again, let
2 me thank the applicant, the Office of
3 Planning, and Mr. Cummins for your
4 participation this afternoon.

5 Ms. Bailey, you can call the next
6 case when you're ready.

7 MS. BAILEY: Mr. Chairman, that is
8 Application 18037. It's the application of
9 Dix Street Corridor Revitalization Partners,
10 LLC., and it's pursuant to 11 DCMR Section
11 3104.1 and 3103.2 for a special exception
12 under Subsection 353.1, for the construction
13 of more than one structure on one record lot
14 under Subsection 2516.1, and for a variance
15 relief from the number of parking spaces
16 required under Subsection 2101.1, from the
17 size of parking spaces required under
18 Subsection 2115.1, from the number of
19 contiguous compact parking spaces required
20 under Subsection 2115.4, from the parking area
21 requirements under Subsection 2115.10, and
22 from the building lot control requirements

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1 under Subsection 2516.4.

2 All of this is to allow the
3 renovation and construction of residential
4 buildings for a new multi-family housing
5 development. It is zoned R-5-A and C-2-A.
6 It's located at premises 400 through 414
7 Eastern Avenue, N.E., 405 through 407 Dix
8 Street, N.E., and 61st Street, N.E., Square
9 5260, Lots 2, 17, 18, 19, 28, 800 and 806.

10 Is the applicant here for this
11 case?

12 CHAIRMAN LOUD: Thank you, Ms.
13 Bailey. At this time we would ask for the
14 applicant to come to the table up front as
15 well as the ANC in this case if they are
16 present, the ANC representative. Those would
17 be the only persons coming to the table right
18 now would be the applicant, his counsel
19 obviously, the ANC if the ANC is present. If
20 there is someone here who has been authorized
21 to speak on behalf of the ANC, this would be
22 the time for them to come forward as well.

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1 In terms of this case, I recall
2 that earlier I think nine hands went up for
3 testifying in this case. I just wanted to see
4 if those persons who raised their hands
5 earlier, how many plan to testify in support
6 of the application?

7 Okay. How many, if any, plan to
8 testify in opposition to the application?
9 Very well. Is a designated authorized
10 representative of the ANC present? Very well.
11 Yes, sir. I'm sorry.

12 PASTOR TURNER: I have a statement
13 for the commission.

14 CHAIRMAN LOUD: Okay. Are you --
15 I'm sorry?

16 PASTOR TURNER: I'm the applicant.

17 CHAIRMAN LOUD: Okay. That's a
18 little bit different if you have a statement.
19 They are not present so is the statement that
20 you have part of our record? Has it been
21 entered into our record?

22 PASTOR TURNER: No.

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1 CHAIRMAN LOUD: Why don't you
2 introduce yourself for the record so that the
3 court reporter and everyone will have it.

4 PASTOR TURNER: Yes. I'm Pastor
5 Marcus E. Turner, Sr., the Board of Director
6 Chairman of the Beulah Community Improvement.
7 I'm one of the co-developers.

8 CHAIRMAN LOUD: Okay.

9 PASTOR TURNER: And I have a
10 statement but I don't believe it's part of
11 your record.

12 CHAIRMAN LOUD: Okay. Then if you
13 could give a copy, if you have copies, to Ms.
14 Bailey to your far right and she'll make sure
15 Board Members get a copy of what you have.

16 PASTOR TURNER: Okay. Forgive me.
17 I don't have it in front of me. I just have
18 the quote written on a sheet of paper but I
19 can make sure she has that.

20 CHAIRMAN LOUD: All right. We'll
21 cross that bridge when we get to it.

22 PASTOR TURNER: Perfect.

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1 MR. UTZ: And they did enter a
2 letter of support on the record, the ANC did.

3 CHAIRMAN LOUD: Very well.

4 PASTOR TURNER: That's what I'm
5 speaking of.

6 CHAIRMAN LOUD: All right. Sounds
7 good. Okay. Let's go back to the beginning
8 and why don't we have everyone introduce
9 themselves for our record. This is a case
10 we're going to hear this afternoon. Some of
11 the cases we truncate and kind of move through
12 them. Others we want to hear.

13 This is one we want to hear but,
14 again, if there are opportunities, counsel, to
15 do without some duplicative evidence, then
16 take advantage of the opportunities available.

17 MR. UTZ: Okay. I am Jeff Utz
18 with Pillsbury Winthrop Shaw Pittman. I'm
19 here on behalf of the applicant and I'll let
20 everybody introduce themselves.

21 MR. SADOWSKI: My name is Kevin
22 Sadowski. I'm the applicant. I'm part of Dix

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1 Street Corridor Revitalization Partners. I
2 live at 1417 B 11th Street, N.W.

3 MR. NIX: Good afternoon. My name
4 is Ray Nix. I'm a principal with Urban
5 Matters who is one of the co-developers. I
6 live at 4411 Sheridan Street, University Park,
7 Maryland.

8 CHAIRMAN LOUD: Good afternoon to
9 each of you. Did we get everybody? Okay.

10 PASTOR TURNER: You want me to do
11 it again?

12 CHAIRMAN LOUD: No, not at all.
13 The court reporter has it.

14 Why don't we then turn it back to
15 you, counsel, for the presentation of your
16 case.

17 MR. UTZ: Okay. The first matter
18 that we wanted to bring up because I think
19 there might be some community folks that have
20 a time-sensitive issue so we wanted to see if
21 it would be possible for them to precede our
22 presentation. Another preliminary matter is

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1 just see if we can have some of our witnesses
2 accepted as experts in architecture and site
3 engineering.

4 CHAIRMAN LOUD: Okay. How much
5 time do your witnesses have, the ones that
6 have to leave?

7 MR. UTZ: I think anybody with a
8 problem is no longer here so I think we're
9 okay on the first issue.

10 CHAIRMAN LOUD: Okay.

11 MR. UTZ: Regarding the second
12 issue we entered resumes into the record as
13 part of our 14-day filing for both Mark
14 Ramirez and Ron Schneck, Square 134
15 Architects. We would like to have both
16 qualified in the field of architecture as
17 experts.

18 As you can see, Mark has over 13
19 years of experience in architecture and has
20 worked on quite a few notable projects
21 including L'Enfant Plaza redesign, 1401 New
22 York Avenue in National Harbor.

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1 Ron is a co-founder of Square 134
2 Architects and also has 15 years of experience
3 and worked on some pretty sizable noteworthy
4 projects himself including Logan Row and the
5 Democratic National Convention Headquarters
6 here in D.C.

7 Then we would also like to have
8 Joanne Gabor also qualified as an expert in
9 site engineering and she's got four years of
10 experience in site engineering and then eight
11 years of further experience in water resources
12 engineering.

13 CHAIRMAN LOUD: Very well. As to
14 the latter, Ms. Gabor, you are only seeking
15 expert qualification onsite engineering, not
16 the water.

17 MR. UTZ: Right.

18 CHAIRMAN LOUD: All right. Let me
19 just make sure all the Board Members have had
20 an opportunity to review what you submitted.
21 I've taken a look at it and I don't have any
22 questions regarding it. Assuming Board

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1 Members don't have any we may be able to move
2 forward on that but let me check and see.

3 Okay. There are no concerns or
4 objections to the proffered experts that you
5 identified and so for our record we'll
6 indicate that Mr. Ramirez, Mr. Schneck, and
7 Ms. Gabor are each admitted as experts.

8 MR. UTZ: Okay. Thank you. All
9 right. Good afternoon members of the Board of
10 Zoning Adjustment. As I said, my name is Jeff
11 Utz and I've with Pillsbury Winthrop Shaw
12 Pittman here on behalf of the applicant for
13 BZA Case 18037.

14 We appreciate the opportunity to
15 come before you today. The applicant is
16 proposing to redevelop 400 through 414 Eastern
17 Avenue, 405 through 407 61st Street, and
18 portions of Dix Street, N.E., a lot of
19 addresses for one large kind of oddly shaped
20 triangular parcel created by the eastern end
21 of the L'Enfant Plan.

22 The property is split zone, C-2-A

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1 and R-5-A. The applicant was awarded this
2 right to redevelop this property by the Deputy
3 Mayor of the Pentagon Economic Development's
4 office. The project is going to be an all
5 affordable townhouse project and the plan is
6 really to rejuvenate this neighborhood.

7 Right now our team will get into
8 some more details about this. It's a vacant
9 site. There are five buildings that are
10 totally abandoned and they are fenced off and
11 it's clearly a detriment to the community. In
12 order to achieve the project we are requesting
13 basically three areas of relief. It kind of
14 sounds like more of an ask than it is.

15 The three areas are the Section
16 353 relief to build multi-family housing in R-
17 5-A zone district. Special exception and
18 variance relief under Section 2516.1 and
19 2516.4 to both build multiple buildings on one
20 record lot and then also get some relief on
21 some lot occupancy, open space, and FAR issues
22 that are discussed in that Section 2516.

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1 Then variance for basically
2 parking, number of parking spaces and the size
3 and spaces that we feel are kind of all
4 related into one over-arching parking relief
5 request.

6 All of the relief goes to the
7 existing nature of the structures, the
8 topography of the property, the oddly-shaped
9 lot that I discussed, and even we feel some of
10 the requested desires of the District to have
11 more units there, larger units there on the
12 property through the Deputy Mayor's office.

13 Relief from the particular
14 requirements of the zoning regulations because
15 there are also two sets of District policies.
16 It facilitates the development of affordable
17 housing and enables the desire of additional
18 development in an area that would benefit from
19 this sort of investment.

20 As we introduced ourselves there
21 are a few others as well. With me today are
22 Pastor Turner of the Washington Interfaith

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1 Network; Kim Sadowski and Ray Nix, the
2 applicant; Mark Ramirez and Ron Schneck of
3 Square 134; and Joanne Gabor of Bowman
4 Consulting. We also have Jack Story, our
5 landscape architect here as well.

6 As you can see, we've tried to
7 include all possible information in the
8 record. If you would like, we would be
9 willing to stand on the record but we did want
10 to have a brief introduction from Pastor
11 Turner as well to kind of talk about some of
12 the community involvement and kind of the
13 over-arching vision for the history of the
14 site and things like this.

15 CHAIRMAN LOUD: Before we go
16 forward there is something I think I ought to
17 bring out on the record just out of an
18 abundance of caution which is that I am a
19 member of the Emory United Methodist Church
20 and the Emory United Methodist Church is a
21 member of the Washington Interfaith Network
22 which I'm not certain but I see a letter from

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1 the Washington Interfaith Network in support
2 of the project. I think, as I said, out of an
3 abundance of caution I wanted to disclose on
4 the record that I'm a member of a church that
5 is also a member of the Washington Interfaith
6 Network. I am not personally familiar with
7 any of the persons present in front of me. I
8 have never seen them a day in my life. I
9 don't believe I've heard of this church and I
10 certainly don't think that there is any reason
11 why I could not be fair in this case but,
12 again, out of an abundance of caution I just
13 want to make sure that I disclose that on the
14 record. I don't intend to recuse myself. I
15 think my colleagues have the option of voting
16 me off if they for some reason believe that I
17 would not be fair but I think it's important
18 enough to mention on the record.

19 Let me ask Ms. Nagelhout is there
20 anything further I need to do apart from
21 disclosing it on the record?

22 MS. NAGELHOUT: You could ask if

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1 anyone has any objections.

2 CHAIRMAN LOUD: Okay. Is that
3 parties or anyone present in the room?

4 MS. NAGELHOUT: That's parties,
5 too.

6 CHAIRMAN LOUD: Okay. Let me ask
7 the parties who are present are there any
8 objections to my remaining in the case?

9 MR. UTZ: No objection.

10 CHAIRMAN LOUD: Okay. Let me ask
11 my colleagues are there any objections to my
12 remaining in the case? Okay. Again, wanted
13 to put that on the record. It's my intention
14 to be fair, objective, and neutral in the
15 case. If you were sitting through the
16 previous case, there is a series of tests in
17 your case that have to be met. If you meet
18 the test, you earn the relief. If you don't
19 meet the test, you don't earn the relief.
20 Okay. Sorry. We can now go forward.

21 PASTOR TURNER: As I said earlier,
22 My name is Marcus E. Turner, Sr. I serve as

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1 the Chairman of the Board for Beulah Community
2 Improvement Corporation, BCI. We are co-
3 developers in this particular project. But I
4 am also a representative of a longstanding
5 institution in the Deanwood Heights Community.

6 I'm the Senior Pastor of the
7 Beulah Baptist Church. Beulah Baptist Church
8 has been in this community for over 100 years
9 and we support this endeavor. We feel that it
10 is a major and much needed endeavor.

11 From October 2005 until March 2007
12 Beulah Baptist Church in conjunction with
13 Washington Interfaith Network, WIN, ANC-7C,
14 and Northeast Boundary Civic Association
15 organized a set of community meetings to
16 collect residents' input about Deanwood
17 Heights reinvestment. WIN facilitated these
18 meetings in which residents were asked to
19 provide input and information about the
20 condition and needs of their community and
21 neighborhood.

22 One particular site stood out like

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1 a sore thumb. It was the site at the corner
2 of Eastern Avenue and Dix Street. According
3 to the community homeowners and stakeholders
4 this particular property had been vacant and
5 abandoned since 1982. Prior to 1982 the
6 subdivision was corrupt and indifferent thus
7 causing its current desolate state.

8 The housing redevelopment project,
9 this particular one, is the first of many
10 community development projects that Beulah
11 Baptist Church alongside of WIN plans to carry
12 out in the next 10 years to reinvest and
13 rebuild a community that is full of potential
14 and opportunity.

15 I want to give you a little
16 insight on what the community is saying about
17 what is going on in the community at this
18 present moment. We have been working with the
19 Deanwood Heights community for the last five
20 to seven years. Dr. Gaffney has quoted, "The
21 work that you are planning to accomplish along
22 the Dix Street Corridor in the areas of

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1 affordable housing, education, medical care,
2 adult daycare, senior housing, community
3 space, recreation, and retail space is an
4 asset to this community."

5 Commander Conte has quoted, "One
6 thing that I have found true is where there is
7 education promotion, proper living conditions,
8 job training, and employment opportunities
9 there tends to be a reduction in crime. I
10 believe that your efforts are noteworthy and
11 should be supported."

12 Mr. John Campbell, who is a
13 business owner in the community, has quoted,
14 "I am fully supportive of the vision of Beulah
15 Baptist Church through Beulah Community
16 Improvement Corporation for the revitalization
17 of the Deanwood Heights Community."

18 Lastly, the community in general
19 has had this particular consensus. "We are
20 pleased with the project. The property has
21 long been under-utilized and vacant. The
22 developer partnered with Beulah Baptist Church

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1 has been communicative with the community and
2 is committed to the vision for the
3 revitalization of the Deanwood Heights
4 neighborhood.

5 Mr. Chairman and to the Board
6 Members, I thank you for listening.

7 CHAIRMAN LOUD: Thank you. Do
8 Board Members have any questions for -- okay.
9 Very well. We can move on, Mr. Utz.

10 MR. UTZ: Okay. Thank you. I
11 would now like to turn it over to Kevin
12 Sadowski and Ray Nix as representatives of the
13 applicant for a description of the property
14 and kind of a general discussion of meetings
15 with the District and the community and other
16 aspects of the project. Thanks.

17 MR. SADOWSKI: Mr. Chairman and
18 Members of the Board, hello. My name is Kevin
19 Sadowski. I live at 1417 B 11th Street. As
20 I stated, I represent Dix Street Corridor
21 Revitalization Partners.

22 Our group obtained the right to

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1 acquire and develop this project through a
2 successful RFP award from the Deputy Mayor of
3 Economic Development, the subsequent
4 negotiations of a land disposition agreement
5 with DMPED, and then ultimately the approval
6 of the DC counsel of that LDA.

7 Our project team is comprised of
8 several partner organizations with extensive
9 experience in community outreach and the
10 development and construction of affordably
11 priced townhouse units.

12 The property is an assemblage of
13 public and private parcels. As outlined on
14 the existing conditions plan and the site
15 plan, the property is comprised of several
16 lots some of which are zoned R-5-A and some of
17 which are zoned C-2-A. The assembled site has
18 a total site area of 78,989 square feet.

19 Can you guys put up the site plan?

20 The triangular parcel to the upper
21 right-hand side of the board there is zoned R-
22 5-A. The remainder of the site is zoned C-2-

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1 A. The project ultimately consist of 60
2 affordable townhouse units in three and four-
3 bedroom configurations.

4 From a planning standpoint the
5 proposed townhouse use for the site fits well
6 with the Office of Planning's 2006
7 comprehensive plan future land use map. This
8 land use map calls for medium-density
9 residential and low-density commercial uses
10 for the property. The project is also located
11 on a Metro bus route and is less than four
12 blocks from the Capital Heights Metro Station.

13 As indicated on the existing
14 conditions plan, which is the left-hand board
15 up there, you can see that right triangular
16 piece is currently occupied by 32 vacant
17 apartment units in five buildings. The photos
18 that were up previously show those vacant
19 buildings.

20 The portion of the property
21 containing the vacant buildings was previously
22 owned by HUD and was actually conveyed from

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1 HUD to the District of Columbia. As part of
2 our redevelopment plan for the site the three
3 largest buildings, which are the three
4 buildings on the center of that triangular
5 piece, those will be redeveloped and converged
6 into fee simple townhouse lots.

7 The two smaller buildings, which
8 are sort of at the tips of the triangle, those
9 will be raised and replaced by new ground-up
10 fee simple townhouse units. The remainder of
11 the site, which is outside of that triangular
12 piece, if you will, will be 100 percent new
13 ground-up fee simple townhouse units and most
14 of those will have garages.

15 As the developer we have had
16 several meetings with various DC offices and
17 agencies in order to identify and address any
18 concerns they might have about the project
19 plan. We have met with the Office of
20 Planning, the Urban forestry Administration,
21 and DDOT.

22 We have received very productive

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1 feedback from the Office of Planning and we
2 believe we have responded to all of their
3 questions presented during the process. We
4 had a very productive meeting with Urban
5 Forestry Administration and will continue to
6 work with them as we work through the
7 permitting process.

8 As far as DDOT is concerned, we
9 have already addressed most of their concerns.
10 We will honor their remaining requests for us
11 to develop a traffic demand management plan.
12 We will continue to work with DDOT to find the
13 most practical solution for trash management
14 at the site.

15 My colleague Ray Nix now will
16 discuss our interaction with HUD and the local
17 community during the predevelopment process.

18 MR. NIX: Good afternoon again,
19 Chairman of the Board and Members of the
20 Board. My name is Ray Nix. Again, I live at
21 4411 Sheridan Street, University Park,
22 Maryland. The District property, as Kevin

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1 stated earlier, is subject to HUD covenant
2 and certain restrictions associated with the
3 previous use.

4 As a condition of the disposition
5 of the property and the redevelopment of the
6 parcel our team in the District have worked
7 closely with HUD officials in the past several
8 months to structure this redevelopment plan to
9 not only incorporate HUD's homeownership
10 approvability restrictions but provide for a
11 mixed-income community while assuring long-
12 term affordability and first-time
13 homeownership opportunities for 60 families.

14 As a development team we have
15 really embraced the notion of a public/private
16 partnership and I am very pleased with how
17 transparent and engaging our community
18 participatory process has been. As a result
19 of ongoing dialogue with the neighborhood
20 stakeholders and the Single Member District
21 Commissioner we have been able to take
22 proactive measures to address community

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1 concerns both onsite and offsite to protect
2 the integrity of the development's success.

3 In February of this year the
4 partnership met with the full body of the ANC
5 board to present and update the community on
6 the development plans and homeownership
7 opportunities. I am pleased to say, as the
8 record will state, that we have full
9 expression of support for the project. Thank
10 you.

11 MR. UTZ: We would now like to
12 turn it over to the architects to give a
13 little more detail.

14 MR. RAMIREZ: Good afternoon. My
15 name is Mark Ramirez. I live at 112 East
16 Randal Avenue in Alexandria, Virginia. I'm
17 with Square 134 Architects.

18 MR. SCHNECK: My name is Ron
19 Schneck. I live at 7300 Maple Avenue, Takoma
20 Park, Maryland, and I am also principal of
21 Square 134 Architects.

22 MR. RAMIREZ: As previously

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1 mentioned the site is located at the
2 intersection of Dix Street and Eastern Avenue
3 in NE Washington, D.C. The five existing two-
4 story structures that currently configure as
5 apartments -- I'm sorry. The site contains
6 five existing two-story apartments that are
7 currently configured as apartment buildings.
8 The lot is split into two zoning areas.

9 I think one of the difficult
10 challenges we had when we first got this
11 project was trying to deal with the oddly-
12 shaped configuration of the lots, the two
13 lots, as well as the various street frontages
14 which made it difficult for us to lay out the
15 site.

16 There is also a significant
17 topography change from top to bottom at sort
18 of the north end of Eastern Avenue down to the
19 southern part of Dix Street. It's about 25
20 feet which also made it difficult for us to
21 lay out the units and achieve the required
22 density. The proposed plan is to demolish two

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1 of the existing apartment buildings as
2 mentioned.

3 Ron, can you put up the plan?

4 And construct eight new sort of
5 single-family townhouses for a total of 60
6 townhouses. The townhouses will have three or
7 four bedrooms depending on where they are
8 located in the site.

9 The renovated units are
10 approximately 1,600 square feet -- excuse me,
11 vary between 1,300 to 1,600 square feet and
12 the townhouse units are roughly 1,500 square
13 feet. The height of the proposed buildings,
14 the renovated units are approximately 27 feet
15 in height and the townhouse units will vary
16 but approximately 32 feet in height.

17 In the proposed plan the site has
18 57 parking spaces, 25 surface and 32 garage.
19 Our general sort of plan, or general idea, was
20 to maximize the amount of green space and
21 create an interesting sort of urban condition
22 while also maximizing the efficiency to create

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1 density to the site which is the configuration
2 that we currently have.

3 The project will be constructed
4 into two phases. Phase I will be the first
5 part -- Ron, could you show that -- which is
6 the renovated units as well as three of the
7 new townhouse buildings. In Phase II with the
8 lower portion of Bellucci Deontic Street.

9 Let's see. Just to give you a
10 brief description of materials, the proposed
11 materials for the project are fiberglass or
12 steel front doors, asphalt singles, painted
13 vinyl trim and vinyl siding of different
14 degrees.

15 You can sort of see from the
16 rendering what we are trying to achieve here
17 as far as stylistically. We are going to vary
18 the siding, have some horizontal siding and
19 some board and batten siding as well as in
20 certain places vinyl singles just to give the
21 structure quality. In this rendering you see
22 one of the proposed new townhouse units and

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1 behind it you can see a little glimpse of the
2 renovated units.

3 We met with Office of Planning on
4 a number of occasions. One of the concerns
5 that was raised by the Office of Planning was
6 the durability of vinyl. We submitted for the
7 record the warranty information for the
8 proposed product.

9 The manufacturer is Certanteed
10 which is a national and reputable
11 manufacturer. It has a lifetime warranty for
12 the original owner and then a 50-year warranty
13 for subsequent owners and then in varies to
14 the degree by which the ownership changes over
15 time. We feel it's a durable product and has
16 a long life.

17 The big advantage of vinyl, of
18 course, is that you don't have to paint it so
19 it's not necessarily maintenance free but it's
20 certainly a low-maintenance product.

21 We are asking for some flexibility on this
22 issue as far as material selection with

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1 respect to the durability of the final site.

2 As I mentioned previously, the
3 project as a number of unique and exceptional
4 conditions, mainly the organization or, excuse
5 me, the oddly configured lot size as well as
6 the topography as well as the different street
7 faces.

8 Strict adherence to the zoning
9 requirements would create a practical
10 difficulty as we are required to meet a number
11 of requirements from the DMPED RFP,
12 particularly with respect to density. As well
13 we are trying to maintain the character of the
14 neighborhood as far as the density of the
15 neighborhood and so we feel this is the right
16 plan for the project.

17 We conclude by saying the granting
18 of the variances would not cause any
19 substantial detriment to the public good or
20 substantially impair the intent, purpose, or
21 integrity of the zoning plan. The proposed
22 project will allow the property to be updated

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1 and brought to productive use.

2 You saw the photographs. It's
3 sort of a derelict lot and we feel that the
4 relief will not change the overall permitted
5 density or height on the property. I think
6 that concludes my testimony unless there is
7 anything else.

8 MR. UTZ: Thank you. There were
9 some other things that we wanted to just note
10 that we submitted into the record. We
11 submitted the subdivision plan, both pre and
12 post alley closing prior to the hearing. It
13 would be 11 by 17 black and white papers. We
14 submitted the rendering that just went up on
15 the board.

16 Also the trash enclosure that was
17 requested in the Office of Planning's report
18 we submitted in detail about the plan for
19 that. Then as Mark was mentioning, the
20 durability information for the vinyl as
21 requested in the OP report as well.

22 Then other than that the

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1 landscaping plan for the project is included
2 in the 14-day filing, it's two pages in there,
3 that we feel that the intent is to maximize
4 the green spaces as Mark was, again,
5 mentioning. Twenty-seven percent, I believe,
6 of the site is green space which is a little
7 less than 20,000 square feet, or maybe even
8 more than that.

9 We just wanted to finish off
10 summarizing about the standards that are
11 related to this relief request. As the Board
12 well knows, the standards for granting
13 variance relief under Section 3103.2 are well
14 settled. We believe they are satisfied for
15 this case for the approval of the variances
16 requested.

17 In order to grant a variance the
18 Board must find that the property is subject
19 to an exceptional or extraordinary situation
20 or condition, a strict application of the
21 zoning regulations will result in a practical
22 difficulty to the applicant and the variance

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1 will not cause substantial detriment to the
2 public good or substantially impair the
3 purpose or intent of the zone plan.

4 As we presented this afternoon,
5 the applicant meets the standards for these
6 requested variances. The property is subject
7 to an extraordinary condition, actually
8 several. It's subject to topographical change
9 of 24 feet from end to end, oddly-shaped lots,
10 existing structures some of which are going to
11 be maintained, and the split zoning that runs
12 right through the middle of the site.

13 This strict application of the
14 zoning regulations would also result in a
15 practical difficulty to the applicant such as
16 if adherence was required to the size of the
17 parking spaces, for instance, that would
18 eliminate the ability to maximize the communal
19 green space that is really one of the main
20 goals of this project.

21 It would also require that
22 demolition of some of the existing structures

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1 and the decrease in size of these affordable
2 units which, as we were mentioning, desire to
3 be larger by the Deputy Mayor's Office.

4 The variance as well will not
5 cause substantial detriment to the public good
6 or the intent and purpose of the zone plan.
7 We actually believe that it will fully
8 implement the intent and purpose of the zone
9 plan if something needs to happen along the
10 lines of this project at this site.

11 Similarly under Section 353 the
12 Board is authorized to grant special exception
13 relief for the construction of multi-family
14 housing in the R-5-A zone district if the
15 property minimizes any adverse impact on
16 surrounding properties, which might occur as
17 a result of the project.

18 This standard has been satisfied
19 since the project will not only create no
20 adverse impacts on the surrounding community
21 but it will improve the neighborhood. The
22 applicant has started well into now. We

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1 actually had our preliminary design review
2 meeting number one with DDOT. We started the
3 consultation process with the District
4 agencies and we plan on working closely with
5 the relevant agencies in the community going
6 forward.

7 Similarly, under Section 3104.1
8 the Board is authorized to grant special
9 exception relief for the parking requirements
10 -- I'm sorry, from 2516.1 requirements if the
11 special exception is in harmony with the
12 general purpose and intent of the zone plan
13 and the special exception does not adversely
14 affect the use of neighboring property. As we
15 said several times now, we feel that is
16 certainly the case.

17 This project doesn't detract from
18 the zone plan but actually enhances it. This
19 is an important investment for this
20 neighborhood and will really bring a long
21 neglected currently vacant chainlink-fenced-
22 off property into vibrant usage and activated

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1 on this important streetscape, Eastern Avenue,
2 kind of a busy corridor.

3 If the application were to be
4 approved by the Board, we would also like to
5 request the condition is included in the order
6 that would allow both the flexibility to
7 modify the site plan at the request of
8 District agencies and utilities and similar
9 flexibility regarding the materials that would
10 be used as reference by Mr. Ramirez.

11 That brings our presentation to a
12 close. We greatly appreciate the opportunity
13 to present our case.

14 CHAIRMAN LOUD: Thank you, Mr.
15 Utz. Let us see if Board Members have any
16 questions for any of your witnesses. While
17 they are mulling it over I have one quick
18 question, I think, for Mr. Ramirez. I think
19 Mr. Ramirez. He alluded to the deputy mayor's
20 requirements and I think counsel in his
21 summation talked about the affordable unit.
22 One of your witnesses put on the record what

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1 the practical difficulty is as regards the
2 Deputy Mayor's requirements, I guess, for the
3 land. I think you were trying to tie it to
4 affordable units.

5 MR. UTZ: Yeah, our comment was
6 that one of the kind of practical difficulties
7 in the grand scheme of this project is to
8 adhere to the Deputy Mayor's request to have
9 as many units and as big of units as possible.

10 In order to, for instance, have
11 fully compliant parking spaces, larger parking
12 spaces, it would actually start to cut into
13 the size of the footprints for the units in
14 places. Similarly that's the case with the
15 provision of some of the open space in lot
16 occupancy and such under the 2516.4
17 considerations.

18 CHAIRMAN LOUD: I think since we
19 have a record, since we have a transcript, to
20 put that on the record in detail in terms of
21 what the Deputy Mayor's requirements were and
22 what the project is providing by way of that

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1 concern.

2 That might be for one of your
3 witnesses to do. We can come back to this if
4 it's something that you need to sort of review
5 just to get the numbers out. You put some
6 numbers out regarding the size of the
7 renovated units versus the size --

8 MR. NIX: Mr. Chairman, I can
9 speak to the requirements of the Deputy
10 Mayor's office.

11 CHAIRMAN LOUD: Yes, sir.

12 MR. SADOWSKI: It was an iterative
13 process. We were selected to negotiate with
14 the Deputy Mayor's office as a result of the
15 RFP. At that point Mr. DeGenerone, the
16 Director of Development and the Project
17 Manager, Yeonce Fuller, and different folks at
18 the Deputy Mayor's Office and we were working
19 to maximize the density on the project in
20 order to obviously make maximum use of the
21 existing infrastructure, therefore, to be able
22 to drive down the cost basis of the

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1 infrastructure and the land cost.

2 Basically they would amortize it
3 over more units. Of course, the RFP also
4 required three bedrooms as a minimum in each
5 unit. We exceeded that. We actually came
6 back with -- we had a little bit of a market
7 concern.

8 We wanted the ability to be able
9 to provide four bedroom units so that we could
10 provide homes for larger families as well and
11 we've done that in Phase II. We've added the
12 capacity for four-bedroom units as well. All
13 these things combined sort of drove the
14 maximization of the density on the project.

15 CHAIRMAN LOUD: Just so I
16 understand, the odd shape, the topography
17 change, those are drivers as well as what was
18 in the RFP so all these factors sort of come
19 together and create restrictions.

20 MR. SADOWSKI: We actually went
21 out and acquired some private property as well
22 to maximize. We worked with the Deputy

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1 Mayor's Office as best we could to maximize
2 the density on the project to be able to make
3 the limited amount of subsidy that was
4 available and essentially make the project
5 work from an underwriting standpoint.

6 CHAIRMAN LOUD: Okay. Thank you.

7 Then there was some testimony regarding --

8 MR. SADOWSKI: I'm sorry. I
9 believe Ray --

10 MR. NIX: Mr. Chair, I just wanted
11 to speak to the affordability question if the
12 Board would like to hear that.

13 CHAIRMAN LOUD: Sure.

14 MR. NIX: As it relates to the
15 affordable nature of the project, this is an
16 extreme example of affordable in the District.
17 Twelve of the units, 12 of the six units, are
18 set aside for families that are currently
19 residing in the Lincoln Heights/Richardson
20 dwellings public housing complex and are set
21 aside for homeownership which maxes their
22 household income at 30 percent of AMI.

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1 The balance of the units range
2 from 31 percent up to capping out at 120
3 percent. Even in the best case scenario as
4 far as producing a financial performer for
5 this project, this project is so constrained
6 by the notion of workforce housing which is
7 directly in line with the Neimia housing
8 product that the RFP required.

9 One of WIN's platforms is
10 providing housing for families that make
11 between \$25,000 and \$75,000 of household
12 income. We were able to achieve that. With
13 the addition of the private acquisition along
14 61st Street the Deputy Mayor was pleased to
15 see that we were able to stretch the density
16 to not only speak to workforce housing but
17 also families that make below \$75,000 in the
18 District as far as homeownership.

19 CHAIRMAN LOUD: Thanks. I'm a
20 little confused by what you said so maybe on
21 the record clarify. You said 12 were set
22 aside for purchases of 30 percent of AMI but

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1 then it sounded like you said the other 48
2 would be available for persons making 120
3 percent of AMI. Is that accurate?

4 MR. NIX: There is a range of
5 sales prices that will go from 31 percent of
6 AMI up to a maximum of 120 percent of AMI.

7 CHAIRMAN LOUD: Okay. Just wanted
8 to get that out on the record. Okay.

9 MR. SADOWSKI: We're actually
10 capped -- I mean, we are actually more -- we
11 are closer to about 80, 85 percent they allow
12 and you can't really go past that in the
13 market price in that neighborhood. It's 12
14 from zero to 30, it's 40 and it's from 31 to
15 60 and then the remaining 44 are from 61 to
16 120 but really it's 61 to about 85 just
17 because the market price keeps you below AMI
18 really if that makes sense.

19 CHAIRMAN LOUD: Makes sense to Mr.
20 Schlater. I thought the AMI is not a
21 reflection of the market price, it's a
22 reflection of the income of the purchasers.

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1 MEMBER SORG: It is. It just
2 happens coincidentally, if you will, they
3 intersect at this point. The market
4 intersects at about 85 percent AMI, somewhere
5 in that neighborhood.

6 CHAIRMAN LOUD: Okay.

7 COMMISSIONER SCHLATER: What's the
8 market price? What's the high end that you
9 think you can achieve on the sales price?

10 MR. SADOWSKI: Our revenues at
11 this point are in the high -- I think our most
12 expensive unit is \$289,000 or right around
13 \$290,000. That's the most expensive unit.
14 Our units range from \$130,000 to \$290,000 and
15 it's a pretty even distribution the whole way
16 through.

17 COMMISSIONER SCHLATER: So your
18 head covenant would allow you to charge up to
19 120 percent of AMI. Is that what you're
20 saying? Or the Deputy Mayor's Office, whoever
21 is establishing these requirements on you
22 would let you go all the way up to 120

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1 percent?

2 MR. SADOWSKI: On 44 of the units
3 that is correct. We do have an affordability
4 table that we've committed to, though, for
5 purchase prices.

6 MR. UTZ: We also did want to say
7 that regarding the practical difficulty, or
8 actually the extraordinary condition, we are
9 also dealing with some of the existing
10 structures there which we are going to
11 maintain and ultimately incorporate into the
12 project and build around and plan around.

13 Kind of the existing horseshoe
14 shape that dominates the site is staying and
15 that really dictates a lot of the layout of
16 the property. Also regarding the same factor
17 the site is split-zoned right down the middle
18 between C-2-A and R-5-A.

19 COMMISSIONER SCHLATER: Mr. Utz,
20 I've got a quick question.

21 Is that okay, Mr. Chairman?

22 CHAIRMAN LOUD: Yes, definitely.

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1 COMMISSIONER SCHLATER: You say
2 you are asking for flexibility to modify the
3 site plan. What are some of the potential
4 modifications that you are thinking about
5 here?

6 MR. UTZ: During the preliminary
7 design review meeting we basically were just
8 talking about some of the units being shifted
9 over to have sidewalks, bigger sidewalks or
10 more sidewalks potentially shifting around the
11 location of, I think, the trash in some areas,
12 although my take on it was it's kind of
13 generally in the area where it should be. It
14 makes the most sense.

15 Those sorts of tweaks, I believe,
16 which really would be minor and then maybe
17 yard shifting here and there for putting in
18 utilities for shipping around utilities should
19 that become necessary should a line not be
20 large enough to service the property of
21 something like this.

22 COMMISSIONER SCHLATER: In terms

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1 of the ability to have flexibility on the
2 materials, are you seeking flexibility on what
3 kind of vinyl you're looking for or vinyl
4 versus brick and that kind of stuff?

5 MR. SADOWSKI: I can speak to
6 that. We just really hadn't determined. We
7 are considering vinyl. We're considering
8 possibly a masonry component. We're
9 considering possibly hardy plank siding.

10 It was just a concern that the
11 Office of Planning had brought up and we
12 mentioned or possible materials. Quite
13 frankly, the likelihood is somewhere between
14 vinyl and hardy but we're not sure yet. That
15 was the only material they expressed concern
16 about so that is the material that we provided
17 further information on.

18 COMMISSIONER SCHLATER: Thank you
19 very much.

20 No further questions.

21 CHAIRMAN LOUD: Thank you, Mr.
22 Schlater.

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1 Are there questions from the
2 Board? Okay. Just one follow-up question
3 regarding -- I forget which witness testified
4 to this but it was regarding our discussions
5 with DDOT on the transportation management
6 plan. Could you sort of elaborate a little
7 more if there is a timeline in place and some
8 of the issues that you had a discussion with
9 them over?

10 MR. SADOWSKI: I'll let Jeff Utz
11 speak to the timeline but in terms of the
12 items, the traffic demand management plan, the
13 items contained in that would be for us to
14 provide bicycle parking, us to provide
15 complementary Smart Trip cards with initial
16 Metro fare at closing, provide website links
17 to CommuterConnections.com and GoDC.com on our
18 websites, provide information about carpooling
19 in the common areas.

20 Also distribute alternative
21 transportation information and brochures at
22 both the closing and possibly at the common

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1 area on the site and any of the further items
2 that DDOT would bring up.

3 We have talked to some of the
4 folks at Zipcar and the preliminary feedback
5 there is not positive but we just don't know
6 if they will ultimately agree that is an
7 economically viable site for a Zipcar. If it
8 is, we would certainly consider that.

9 Jeff, I'll let you speak to the
10 time frame.

11 MR. UTZ: As far as timing we
12 would have a plan in place prior to giving the
13 building permit. I know that my understanding
14 is that the PDRM we had was a pre-PDRM so
15 we'll have the real preliminary design review
16 meeting soon.

17 CHAIRMAN LOUD: Okay. Again,
18 let's see -- Ms. Sorg, you have -- okay.

19 MEMBER SORG: I do, thank you. I
20 have two questions. The first one is I think
21 on some of those RFPs from DMPED they also
22 have other requirements that relate to

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1 community amenities and things like that so I
2 was wondering if there were any other
3 provisions that you're making for those
4 things. That's my first question. The second
5 question is are there any sustainable design
6 elements in this project?

7 MR. SADOWSKI: Regarding the
8 sustainable items we are meeting the green
9 communities requirements which is Energy Star
10 rated windows, Energy Star rated appliances,
11 low-flow plumbing fixtures, low-VOC paints and
12 finishes. It's a green community
13 certification that is provided for affordable
14 project developments so we are meeting that.

15 In terms of other items required
16 by the RFP I don't recall. Ray, you want to
17 speak to that a little bit?

18 MR. NIX: I'll just add that on
19 the site plan you'll notice that there are two
20 significant green spaces. One is pretty much
21 a passive space and that's on what I'll call
22 the triangular parcel along Eastern Avenue.

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1 The other is behind the existing cluster of
2 renovated townhomes which we are calling a top
3 lot so there will be benches within the
4 circulation plan.

5 CHAIRMAN LOUD: Board Member Sorg,
6 did you have any additional follow-up?

7 MEMBER SORG: No. I'm good.

8 CHAIRMAN LOUD: Certainly we can
9 come back to it.

10 Does that conclude your case, Mr.
11 Utz?

12 MR. UTZ: Yes.

13 CHAIRMAN LOUD: Okay. Then unless
14 Board Members have questions for the applicant
15 or witnesses we can turn to the Office of
16 Planning.

17 Good afternoon.

18 MR. COCHRAN: Thank you, Mr. Chair
19 and Members of the Board. For the record, I'm
20 Steve Cochran with the D.C. Office of
21 Planning. The office has submitted a detailed
22 report describing the project and analyzing

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1 the requested relief. Because of that, and
2 with your permission, I would like to just
3 summarize our recommendations and go into more
4 detail if the Board has questions afterwards.

5 As discussed on pages 5 to 10 of
6 our report, the design for the sloping 1.8
7 acre site meets Section 353.1's criteria for
8 permitting a multi-family development in an R-
9 5-A zone. It also meets Section 2516.1's
10 criteria for permitting more than one building
11 on a record lot in the R-5-A zone and a record
12 lot in the C-2-A zone.

13 With respect to Section 2516.1,
14 however, there is one possible area where the
15 criteria aren't met and that's Section
16 2516.6(b) which requires a minimum alley width
17 of 25 feet. The applicant has met with OP and
18 DDOT on this. It doesn't comply but DDOT
19 doesn't have a problem with it, OP doesn't
20 have a problem with it. If the Board decides
21 that relief is needed on this particular item
22 OP would not have a problem with that either

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1 and you are permitted to give relief and grant
2 flexibility for that under Section 2516.6(d).

3 The split zone site, as has been
4 described, has five vacant multi-family walk-
5 up units on the R-5-A portion of the site and
6 mostly vacant land on the C-2-A portion of the
7 site.

8 The development would retain three
9 of the five multi-family buildings now on the
10 site and convert them to townhouses and would
11 construct eight additional buildings with rows
12 of townhouses. All these would be simple
13 homeowner occupied affordable units.

14 The main thrust behind the site
15 plan is that it would cluster the residential
16 units in order to provide a central playground
17 and other landscaped areas for community use.
18 OP recommends the Board approve the requested
19 special exception relief.

20 We had earlier had some pause
21 about the siting. Our concern, as the
22 applicant mentioned, durability. With the

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1 information that the applicant submitted today
2 on the lifetime guarantees, OP is satisfied
3 that the maintenance cost wouldn't be unduly
4 passed on to future homeowners because it is
5 a lifetime guarantee.

6 The applicant has also submitted
7 some details on the screening for the trash
8 units. Still a little bit concerned about
9 that because we still don't know where the
10 final location is for the trash enclosures or
11 the landscaping for that.

12 I'm hoping that maybe if the Board
13 can engineer it, maybe the applicant could be
14 asked to address that in more detail before
15 this hearing is closed because that's our only
16 really remaining concern under 2516 or under
17 353.

18 Those are the two special
19 exceptions. Now we come to several area
20 variances. Four of these relate to parking
21 and one of them relates to the theoretical
22 lots. For the parking it has to do with the

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1 number, the size, and the location of the
2 parking spaces required by Sections 2101 and
3 2115.

4 For the theoretical lots it has to
5 do with Section 2516.4 requirements that the
6 lots and the buildings on them meet the same
7 physical development standards of theoretical
8 lots as is required for record lots.

9 The applicant on pages 15 to 18 of
10 its prehearing statement demonstrated the
11 site's unique topographical conditions, oddly-
12 shaped lots and the presence of existing
13 structures and the fact that those unique
14 conditions lead to practical difficulties in
15 accommodating the 60 required parking spaces
16 at the dimensions, the size, and the compact
17 car grouping requirements of the zoning
18 regulations.

19 The difficulty is such that the
20 applicant is requesting relief to provide only
21 57 of the required spaces and to make 25
22 spaces that would be surface spaces rather

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1 than townhouse garage spaces and to make those
2 spaces the same size as compact car spaces.

3 The requested relief would enable
4 the applicant to reuse some of the site's
5 existing buildings. It would result in more
6 efficient land use and better design and
7 improved amounts and quality of green space
8 and safe play areas. It would not adversely
9 impact on neighboring properties and would
10 help the project achieve its goal of creating
11 decent family-oriented affordable housing.

12 DDOT has said the same thing both
13 in meetings and in writing that they don't
14 have a problem with these requested variances.
15 So OP recommends that the Board approve the
16 parking related variances requested from the
17 requirements of 2101.1, 2115.1, 2115.10, and
18 2115.4.

19 The same topographical and site
20 shape and existing building present conditions
21 also lead to practical difficulties in meeting
22 what's required of the theoretical lots, that

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1 they meet the same development standards as
2 record lots.

3 The most up-to-date list of the
4 requested relief for these theoretical lots as
5 far as I can tell is on page 12 of OP's
6 report. The OP report takes into account the
7 increases in permitted lot occupancy and FAR
8 that came in with the IZ regulations.

9 Another way of putting it is that
10 the applicant actually asked for more relief
11 than they need to because IZ gives greater lot
12 occupancy and greater FAR for some of the lots
13 than had existed in the regulations prior to
14 IZ. So OP recommends that the Board approve
15 the variance relief requested from Section
16 2516.4 as modified by the standards permitted
17 in the IZ project.

18 The project is consistent with
19 both the policy and the area objectives of the
20 comprehensive plan. It has been strongly
21 supported by ANC-7C. As you can see from the
22 record, both DDOT and Fire and Emergency

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1 Services have commented on the application.
2 FMES has no problem with the application as
3 long as the long as the applicant has
4 sprinklers in the units.

5 Although DDOT has concerns
6 relating to larger transportation policies, it
7 does not have any objections to the requested
8 zoning relief. FEMS comments don't relate to
9 the requested zoning relief so all in all OP
10 is very happy to recommend approval of this
11 project.

12 CHAIRMAN LOUD: Thank you, Mr.
13 Cochran.

14 Let's start with the Board and see
15 if there are any questions for you and then we
16 can move to the applicant.

17 COMMISSIONER SCHLATER: Ms.
18 Cochran, one quick question. You mentioned
19 that IZ applies to this site.

20 MR. COCHRAN: Yes.

21 COMMISSIONER SCHLATER: It's an
22 all-affordable project so I assume they are

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1 meeting the affordability requirements?

2 MR. COCHRAN: More than meeting
3 them.

4 COMMISSIONER SCHLATER: Exceeding
5 them?

6 MR. COCHRAN: Yes.

7 COMMISSIONER SCHLATER: Okay.
8 Very good. Do they have to register the
9 project with the IZ program? I'm not sure how
10 that works.

11 MR. COCHRAN: I believe they would
12 have to, yes.

13 COMMISSIONER SCHLATER: Okay.
14 Great. Thank you.

15 CHAIRMAN LOUD: Just a couple
16 quick questions, one a quick follow-on to Mr.
17 Schlater's question. If 44 of the units can
18 be sold for up to 120 percent of AMI, how is
19 that considered affordable?

20 MR. COCHRAN: From IZ standpoint
21 there would be 16 affordable units. The 12
22 that would be reserved for families, or

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1 households rather, earning no more than 30
2 percent of AMI and the four that would be
3 reserved for households earning no more than
4 60 percent of the AMI.

5 The others would likely come in
6 under the affordability requirements just from
7 a market standpoint but because they are
8 allowed to go up to 120 percent of the area
9 median income they wouldn't technically meet
10 the IZ requirements, the IZ guidelines.
11 Nevertheless, the project as a whole
12 definitely meets IZ. Let me be clear about
13 that.

14 CHAIRMAN LOUD: Okay. And that's
15 because of the 16 units?

16 MR. COCHRAN: That's right.

17 CHAIRMAN LOUD: Okay. So when we
18 say it's 100 percent affordable am I missing
19 something or is it 100 percent affordable?

20 MR. COCHRAN: It's not 100 percent
21 affordable under IZ. It is considered 100
22 percent affordable under some federal

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1 programs' definitions of affordable.

2 CHAIRMAN LOUD: All right.

3 MR. COCHRAN: Probably some
4 District programs but I can't quote them.

5 CHAIRMAN LOUD: Okay. And the
6 second question is you testified regarding the
7 vinyl siding and initially OP was opposed to
8 it but based on a recent submission or recent
9 clarification that OP is not now.

10 MR. COCHRAN: Let me clarify. OP
11 wasn't opposed to it.

12 CHAIRMAN LOUD: Okay.

13 MR. COCHRAN: We were asking for
14 more information about it. Our concern is
15 durability, especially in an affordable
16 housing project and the applicant has
17 demonstrated that it would be durable and so
18 you're not passing on sort of hidden costs to
19 future homeowners.

20 CHAIRMAN LOUD: And what
21 specifically, just so I'll know from my notes,
22 what in the record has changed OP's position

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1 and persuades OP that it is durable now?

2 MR. COCHRAN: The lifetime
3 guarantee indicates that, let's say, even if
4 it isn't durable the manufacturer is going to
5 be responsible for fixing it and the homeowner
6 won't have to bear that cost. That satisfies
7 our concerns. This is the brochure the
8 applicant submitted today.

9 CHAIRMAN LOUD: Okay. Thank you.
10 So we probably need an exhibit number for
11 this. I guess we don't have one. This all
12 came in today. Okay. Thank you. I just
13 wanted to be clear on that. Appreciate that.

14 I don't have any additional
15 questions. Does the applicant have any
16 questions for OP?

17 MR. UTZ: No, we don't.

18 MR. SADOWSKI: We would like to
19 speak to the affordability issue.

20 MR. NIX: Would it help just to
21 define for the Chair and the Board the
22 District standards as they are overlaid with

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1 HUD standards about levels of affordability
2 just for the record or not?

3 CHAIRMAN LOUD: For my purposes I
4 don't think I need it in terms of taking a
5 look at the special exception relief on the
6 table and the variance test on the table. I
7 just want to be clear in my mind.

8 We were saying 100 percent
9 affordable and then we were also saying that
10 some 40 odd units could theoretically go up to
11 120 percent of AMI. Again, I don't think it
12 relates necessarily to the practical
13 difficulty part of the variance test.

14 MR. NIX: Okay.

15 CHAIRMAN LOUD: I don't know how
16 other Board Members feel. It doesn't sound
17 like they want clarification.

18 Mr. Utz, again, no questions or
19 clarifications?

20 MR. UTZ: No clarifications.

21 CHAIRMAN LOUD: Okay. Then what
22 we would do now is turn to other government

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1 agencies. The Department of Transportation
2 did submit a report. It's marked as our
3 Exhibit 31 and I believe it sounds like from
4 the testimony earlier that the applicant has
5 received a copy of it and, in fact, there has
6 been extensive testimony regarding the efforts
7 underway between the applicant and the
8 Department of Transportation on the
9 transportation demand management plan.

10 MR. UTZ: That's correct.

11 CHAIRMAN LOUD: And other items
12 recommended in the report including the Smart
13 Trip and the provision of bicycle spaces and
14 so on, is there anything in addition to what
15 you or your witnesses have already put on the
16 record that you want to indicate regarding the
17 DDOT study?

18 MR. UTZ: No, I don't think we do.

19 MR. SADOWSKI: I would just like
20 to circle back on the trash enclosure issue.
21 That is one issue that Mr. Cochran had brought
22 up. It's outstanding and it's outstanding

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1 with DDOT as well. We are working through
2 that process. It's just the way the site is
3 configured it doesn't lend itself for the
4 portion of the site where the existing units
5 are located.

6 Obviously somebody cannot keep
7 their trash in -- if they don't have a garage
8 there is no place for them to keep their trash
9 bins so we want to provide trash enclosures on
10 site for them to walk their trash to daily or
11 every few days or whatever and we are trying
12 to find a place on site where they are
13 convenient for the unit owners and also
14 accessible for the trash company.

15 It's not a problem in Phase II
16 where the new units are because most of those
17 units have garages. People will keep trash
18 cans in their garages and wheel them out on
19 trash day, etc., etc., so we are working
20 through that issue with Office of Planning and
21 DDOT.

22 CHAIRMAN LOUD: Just to follow up

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1 because it is something Mr. Cochran mentioned
2 and he wanted us to try to get that resolved
3 or clarified at the hearing today. Is there
4 a reason why you can't locate them on site
5 plan now?

6 MR. SADOWSKI: We have located
7 them and we received preliminary feedback from
8 the Department of Transportation in November
9 that we could provide two locations on site
10 and use essentially the parking lane on
11 Eastern Avenue for the trash truck to stop,
12 access the site, pull the trash, load, and
13 then pull away.

14 However, in subsequent meetings
15 the Department of Transportation is not sure
16 if they like that solution and the Office of
17 Planning I believe is not sure if they like
18 that solution either. Another issue that has
19 come up is how we are going to screen those
20 dumpsters, the trash areas. We proposed a
21 six-foot board-on-board fence which we think
22 will provide adequate screening but we haven't

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1 received agreement yet.

2 MR. COCHRAN: I think from the
3 standpoint of what the Board needs to consider
4 OP will be able to work with DDOT on this
5 matter no matter what you decide so we'll
6 still have some input into this.

7 At this point our main concern is
8 the landscaping around the six-foot fence. We
9 are aware of the concerns. You don't want to
10 locate it next to a bedroom window. You don't
11 want to locate it in the middle of a play
12 area. You want to have it accessible to the
13 street and we think we can address all of
14 those things when DDOT is looking at their
15 PDRM.

16 MR. UTZ: It will be impossible to
17 avoid it as part of the building permit
18 process. It will absolutely be discussed.

19 CHAIRMAN LOUD: Very well. I
20 believe that there are no additional
21 government reports so we would turn next to
22 the ANC report. In this case do we have an

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1 ANC report? We do not have an ANC report. I
2 think one of our witnesses --

3 MR. COCHRAN: Mr. Chair, I did
4 receive a copy of the ANC report and I believe
5 that I e-mailed it over to OZ. I think that
6 the applicant also -- at least I think they
7 told me that they filed it. If not, I've got
8 a copy here.

9 CHAIRMAN LOUD: If you have a
10 copy, maybe you can provide it. I'm showing
11 that it should have been our Exhibit 27 but
12 the package that I received did not include an
13 ANC report, although the exhibit list, I
14 believe, may have.

15 MS. BAILEY: Mr. Chairman, we have
16 several letters from residents. It does say
17 regarding ANC-7C's letter but -- no, Mr.
18 Chairman. What Mr. Cochran just handed to me
19 is the first time I'm seeing this so I'll make
20 copies.

21 CHAIRMAN LOUD: That's fine. I
22 think we want to officially enter that into

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1 the record. Is a representative from ANC-7C
2 here? Okay. What we'll do is Ms. Bailey is
3 going to make copies and we'll take a look at
4 that report and confirm that proper notice of
5 a quorum requirements are met and if it's in
6 support of the application it will be given
7 great weight. If not, it will not be given
8 great weight.

9 Now, if there are persons in our
10 audience that are in support, and I know a
11 number of hands went up earlier, of the
12 application, this is the time that you
13 testify. You'll be given three minutes and so
14 why don't we move to that and we'll come back
15 and deal with the ANC report when Board
16 Members have copies of it.

17 If there are witnesses in the
18 audience who are currently in support -- if
19 all the witnesses could actually come forward
20 that are in support and we'll take you back to
21 back to back to back. There are no other
22 witnesses in support. In terms of witnesses

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1 who are in opposition to the application, how
2 many? When this witness leaves we'll call you
3 up. If you could state your name for the
4 record.

5 MS. CHATMAN: For the record my
6 name is Dorrie Chatman and my address is 2710
7 Terrace Road 602, Washington, D.C. Good
8 evening, Chairman and Commissioners, ladies
9 and gentlemen, fellow community members. Like
10 I said, my name is Dorrie Chatman. I'm an
11 active member of the Beulah Baptist Church, a
12 church determined to do it God's way.

13 It's located in the Deanwood
14 Heights Community in Northeast. My husband
15 and I lease an apartment east of the river in
16 Ward 7 along with our two beautiful daughters,
17 Danielle, three years old, and Denise, one
18 year old. We always thought it would be
19 impossible to own property in the District of
20 Columbia because of the value of homes.

21 We even thought of relocating to
22 afford a house with adequate space for our

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1 growing family. We consider Eden Place
2 Development the perfect opportunity for our
3 family. There are several reasons we desire
4 to own a home in Washington, D.C.

5 For many years homeownership has
6 been a life-long family goal for us.
7 Achieving the American dream has lessened by
8 the unstable economy. For us we know that all
9 things are possible for those who believe. We
10 want to lead by example for our children.

11 Our ultimate goal is to leave an
12 inheritance for our children's children
13 providing them a jumpstart in life. This
14 creates endless opportunities. Another reason
15 is being able to purchase at a rate that is
16 affordable for hardworking families with the
17 same financial demographics as ours.

18 Eden Place Development is a
19 vehicle that will allow us to have a safe,
20 secure, and affordable housing. Furthermore,
21 this housing project will give us the benefit
22 as homeowners to earn tax deductions,

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1 financial appreciation, stability, and
2 freedom.

3 The Eden Place Development is a
4 very positive and important entity for the
5 Deanwood Heights Community. The vacant
6 apartments on the corner of Dix Street and
7 Eastern Avenue are a magnet for drug
8 trafficking, prostitution, and other illegal
9 actions. It is also considered an eyesore to
10 many locals and guests.

11 This development offers the
12 opportunity to create jobs for the unemployed,
13 offers a positive impact on a crime-infested
14 corner in the northeast, help beautify the
15 community and create tax-paying owners as well
16 as an added voice of positivity and further
17 development in the community.

18 Finally, with the Eden Place
19 Development in mind, the District of Columbia
20 will benefit from property taxes, homeowners
21 will gain equity, and the Deanwood Heights
22 Community will receive a new welcoming look.

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1 This will surely spark other community
2 development initiatives in our area.

3 Thank you for giving me the
4 opportunity to speak as a supporter of the
5 Eden Place Development and the Deanwood
6 Heights Community.

7
8 CHAIRMAN LOUD: Thank you, Ms.
9 Chatman. We appreciate you taking the time to
10 come in and provide testimony.

11 If there are witnesses in the
12 audience that are in opposition. Well, before
13 I do that, are there any questions for Ms.
14 Chatman? Okay. Thank you. You can be
15 excused. If there are witnesses who are
16 opposed, and I saw two hands pop up earlier,
17 now is the time to come forward.

18 If you could once you get to the
19 table, make sure the microphone is on and just
20 introduce yourselves for the record and we can
21 go forward. Ms. James, make sure that your
22 microphone is on and that you are speaking

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1 into it so the court reporter can pick it up.
2 It's not on. A green light will come on at
3 the base when you are speaking into it.

4 MS. JAMES: Okay. I'm Bernadette
5 James and I live at 3981 Ames Street, N.E. I
6 am a business owner on Dix Street. It seems
7 like the Board has been led to believe that
8 the Dix Street area is vacant and it's not.
9 There are several business owners on the Dix
10 Street corridor.

11 It seems like it's just being
12 swept from under our feet. I had no knowledge
13 of it. I also live in Ward 7 and I know a few
14 of the ANC people and I have not been informed
15 about the project that is about to take place.
16 I was informed but not by the ANC Commission.

17 I was informed by Pastor Turner
18 who sent one of his representatives to my
19 facility to see if I knew what was about to
20 take place. I spoke with him and that's when
21 I first heard of the project that was about to
22 take place.

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1 They also said it was going to
2 take place down the line. I have over a
3 hundred children in my daycare facility and to
4 me that would displace a lot of children and
5 a lot of parents would lose jobs.

6 I mean, it's just not fair.
7 Everybody is talking about new homes coming
8 but there's a big lot directly across the
9 street from my place of business that's just
10 empty. It seems like the developers want to
11 displace my business and my children when
12 there is another option for them which is
13 directly across the street from where we are
14 on a vacant lot.

15 No one has mentioned tying the
16 business into the new development that's
17 coming. I haven't been offered anything.
18 I've met with Pastor Turner twice and the
19 second meeting, which was on Thursday of last
20 week, I believe, he mentioned that I should --

21 I had an upcoming prior meeting
22 which was that Friday. I'm not prepared

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1 today. If I had known it was like this. This
2 is my first time attending one of these
3 sessions but I explained to Pastor Turner that
4 whatever God has for me and my children it
5 will be. I also told him that I would let my
6 parents know. Had I told them at the prior
7 meeting on Friday, I'm sure this place would
8 be flooded by now.

9 Everybody would be here but he
10 told me that would not be necessary for me to
11 do. I would have loved to be more prepared if
12 this is postponed so that my parents would
13 have an opportunity to speak as well as the
14 other business owners in the area. I must
15 agree with them Eastern Avenue is an eyesore
16 and it has been vacant for years. I grew up
17 in Ward 7 all of my life and as far as I can
18 remember it's been vacant for years but Dix
19 Street is very much alive.

20 CHAIRMAN LOUD: I do believe the
21 three minutes are up. We'll give an
22 opportunity for the applicant to ask questions

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1 and follow up. Thank you very much for your
2 testimony. I think I'm going to have some
3 follow-up questions and why don't we turn to
4 the second witness and then we can open it up
5 for questions from the Board and then the
6 applicant.

7 MS. TOLLIVER: Okay. My name is
8 Kimberly Tolliver. I reside at 2045 Gales
9 Street, N.E., D.C. I'm going to start by
10 saying I'm the director under the owner of
11 Kids Are People Too. I've been there for five
12 years. I want to say they are trying to
13 develop on Eastern Avenue, 61st Street.

14 Not one time did they mention in
15 their testimony that there was a childcare
16 facility on Dix Street. However, they did
17 mention demolishing businesses. Never did
18 they mention a childcare center. However,
19 Pastor Turner did quote from one of his
20 resources that someone did promote education.
21 The demolish of a childcare center to me is
22 just under the gun.

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1 I'm not going to dispute the
2 marvelous engineering backgrounds of the
3 developers. However, Kids Are People Too, we
4 are undergoing accreditation. We are trying
5 to offer our children the highest quality
6 education in a low-income neighborhood. We
7 are trying to do that. Demolishing the center
8 would not allow that. We want to offer the
9 same education to low-income families that
10 high-income families have. We want to offer
11 that same education to low-income families.

12 Like Ms. James here said, we are
13 unprepared. After the snowstorm we came back
14 to a business that slapped a big sign on the
15 side of our building saying that there was
16 going to be a meeting. We never attended a
17 hearing so we are unprepared for it.

18 However, sitting and listening to
19 the developers and Pastor Turner, you know,
20 the mention of the daycare center was just
21 never mentioned. It hurts us to know that.
22 Like Ms. James says, we take care of 100

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1 children. That facility houses 100 children.
2 They call that -- I'm sorry.

3 A lot of children consider the
4 daycare a safehaven. In the summer we
5 participate in a D.C. food program where a lot
6 of parents they come in, children as well.
7 They depend on us to give those meals in the
8 summer. The children run down there and it
9 makes their day.

10 Getting rid of that facility, I
11 mean, it's a block for that neighborhood. A
12 lot of the children they come down and get
13 those meals, the parents, and it's free to the
14 D.C. residents. We offer a lot, Spanish for
15 our children, sign language. Displacing us
16 will also displace 25 employees so, you know,
17 it will be real damaging.

18 There was a hearing about two
19 months ago, I believe, where they had a
20 meeting. Mayor Fenty was there. I did
21 personally speak with Mayor Fenty and I asked
22 him, "We hear that you all are trying to

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1 develop Eastern Avenue." Not one time did
2 they mention 61st Street and I myself
3 personally asked Mayor Fenty, "What is it
4 going to be for the business?" He told us at
5 that time more business. Not one time did he
6 mention the demolish of our business.

7 CHAIRMAN LOUD: Ms. Tolliver, I
8 just want to remind you that your three
9 minutes are up.

10 MS. TOLLIVER: Okay.

11 CHAIRMAN LOUD: Do you think you
12 can wrap up shortly?

13 MS. TOLLIVER: Yes. One last
14 thing. I noticed at the end of their
15 testimony they mentioned they was looking for
16 a place to put trash. My question -- I don't
17 know if I'm allowed to ask them questions but
18 will our building be their designated spot
19 where they would like to place their trash?

20 CHAIRMAN LOUD: Okay. Thank you
21 for your testimony. We appreciate both you
22 and Ms. Chatman's testimony. I'm getting a

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1 picture of some things I wasn't clear on prior
2 to your testimony. I'm not certain I'm clear
3 on it now. We will open this up for them to
4 ask you questions. You're not really allowed
5 to ask them questions but they may decide to
6 go ahead and answer some of what you raised
7 which I think are good questions.

8 Let me just start by asking a
9 clarification question. Is the business that
10 you own, the 100-child daycare facility, are
11 we talking about one that you both are co-
12 owners of or are they separate facilities?

13 MS. JAMES: No. I own the
14 business and she runs the business.

15 CHAIRMAN LOUD: I got you. Okay.
16 This business is on the site of the proposed
17 development?

18 MS. JAMES: Yes, it is.

19 CHAIRMAN LOUD: Okay. Do you
20 lease the site? You lease your business?

21 MS. JAMES: Yes.

22 CHAIRMAN LOUD: And there is an

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1 owner that you pay rent to on a regular basis?

2 MS. JAMES: Yes, there is.

3 CHAIRMAN LOUD: And that owner had
4 not notified you at all regarding --

5 MS. JAMES: He did not notify me
6 at all. I spoke with him a few days ago and
7 he still says there's nothing to worry about,
8 that he hasn't signed any papers selling the
9 business -- I mean, selling the building or
10 anything.

11 CHAIRMAN LOUD: I see.

12 MS. JAMES: But in my lease I have
13 -- he wrote in the lease when I first leased
14 from him that I would have first option to buy
15 the building when he was ready to sell and
16 that's written.

17 CHAIRMAN LOUD: Okay. I'm just
18 educating myself on the issue. Are you on a
19 month-to-month lease?

20 MS. JAMES: I have the lease for
21 10 years.

22 CHAIRMAN LOUD: You have a 10-year

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1 term lease?

2 MS. JAMES: Yes.

3 CHAIRMAN LOUD: Which would expire
4 when?

5 MS. JAMES: Five more years from
6 now.

7 CHAIRMAN LOUD: Okay. All right.
8 I don't have any additional questions right at
9 this second. Go ahead, please.

10 MEMBER MOLDENHAUER: I want to ask
11 a question. On that diagram can you point out
12 where the building is that you are currently
13 using because I was not clear on that.

14 MS. JAMES: I think it's --

15 CHAIRMAN LOUD: We're going to try
16 to get you -- do we have a portable mic?

17 Ms. James, we're going to get you
18 a portable mic so that the court reporter can
19 pick up your testimony.

20 Thank you, Ms. Bailey.

21 MS. JAMES: I do not see the
22 address but we're here in this area at 61st.

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1 It's like in the middle of the block. There
2 is a liquor store and there's my facility, my
3 two facilities there.

4 MEMBER SORG: So it's close to the
5 corner of 61st and Dix Street. How close
6 would you say? Just so we can get an idea
7 that way.

8 MS. JAMES: Maybe about a half a
9 block.

10 MEMBER SORG: Okay.

11 CHAIRMAN LOUD: Did you follow-up,
12 Mrs. Moldenhauer?

13 MEMBER MOLDENHAUER: No. I think
14 obviously we'll need some clarification from
15 the applicants and then obviously there may be
16 some additional questions for both of the
17 opposing witnesses once we get some
18 clarification from the applicant.

19 CHAIRMAN LOUD: Let's see if other
20 Board Members have any questions for the
21 witnesses and then we'll turn to the
22 applicant. Okay. It doesn't appear that

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1 Board Members have any questions

2 Mr. Utz.

3 MR. UTZ: I think we would like to
4 turn it over to Pastor Turner for a bit of an
5 overview.

6 PASTOR TURNER: I just want to
7 give a little background. First, it's good to
8 see Ms. James. She's a beautiful person and
9 a strong stakeholder in our community.

10 In August of 2009 we met with Mr.
11 Fabrizio who is the owner of the building that
12 she's referring to to which she leases from.
13 When we met with him that was part of the RFP
14 to look at more properties that was in the
15 area of the land we was going for from DMPED.
16 When we met with him he was fully in agreeance
17 to sell it. He signed up the proper contracts
18 and did everything legally on that end. He
19 also has a signature on the BZA application to
20 which he was definitely for.

21 In December, Mrs. James is right,
22 I did have -- it really wasn't my

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1 representative. It was one of the lead
2 organizers from the Washington Interfaith
3 Network who was also bringing the community
4 together to help push this community program
5 which the community is fully behind.

6 He went and had a conversation
7 with Ms. James and he also had a conversation
8 with what is called Mr. T who is the owner of
9 the liquor store that's within the building
10 and shared with them about the upcoming
11 development. In 2010 I met with Ms. James and
12 Mr. T on different occasions and let them know
13 that Mr. Fabrizio did consider selling the
14 building and watched what I shared with them.

15 They said that they didn't know
16 that he was selling and I just made the
17 comment that sometimes landowners do things
18 like that when they don't want to lose any
19 revenue but we as the community after speaking
20 to Dr. Gathly who is the ANC commissioner for
21 7C we thought it would be good to come to them
22 and let them know that we would help them with

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1 potential relocation spots.

2 Ms. James, like she said, maybe a
3 week ago or last Thursday was at Beulah
4 Baptist Church and we have a lot of space at
5 our church. We have an education building and
6 the school we had there had just relocated at
7 the end of last year but it's on the second
8 floor and Ms. James she deals with infants so
9 that wouldn't work.

10 We was giving all of the possible
11 relocations and we are still dedicated to
12 looking for places for relocation. One came
13 up along Dix Street just last Friday. I did
14 not know I was going to see Ms. James here
15 today so we haven't talked about the upcoming
16 relocation but we are working diligently with
17 her and Mr. T trying to help them do what they
18 need to do.

19 COMMISSIONER SCHLATER: I have
20 some follow-up questions. Just on matters of
21 fact, do you have a purchase contract for the
22 property?

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1 MR. SADOWSKI: We do.

2 COMMISSIONER SCHLATER: Have you
3 seen the leases for the liquor store and the
4 child development center?

5 MR. SADOWSKI: Yes.

6 COMMISSIONER SCHLATER: Is there a
7 purchase option on the lease?

8 MR. SADOWSKI: I don't recall if
9 there is a purchase option in the lease. I
10 don't recall the purchase option in the lease.
11 I don't recall that. It doesn't mean it's not
12 there. I haven't read the lease in a few
13 months.

14 COMMISSIONER SCHLATER: Okay. No
15 further questions.

16 CHAIRMAN LOUD: Do you recall if
17 it's a term?

18 MR. SADOWSKI: A term lease?

19 CHAIRMAN LOUD: Yes.

20 MR. SADOWSKI: Yeah, I do recall
21 that it's a term lease.

22 CHAIRMAN LOUD: And the term, do

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1 you recall the expiration on the term?

2 MR. SADOWSKI: I believe it is
3 about four or five years.

4 CHAIRMAN LOUD: Four or five
5 years.

6 MR. SADOWSKI: Yes, sir. The
7 parcel we're speaking of is part of Phase II.
8 Phase I is set to commence once we receive the
9 proper permitting which would be sometime this
10 spring. Phase II would not start for probably
11 at least a year. That is sort of the timing
12 on that.

13 CHAIRMAN LOUD: Let me ask this
14 question. Actually it goes into the expertise
15 area of Mrs. Moldenhauer, but when there's a
16 term on a property that you purchased, do you
17 have to honor the term?

18 MR. SADOWSKI: I would defer to my
19 counsel on the lease. We have specific
20 counsel regarding the leases, transactional
21 counsel who is not here today.

22 CHAIRMAN LOUD: I see.

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1 Mr. Utz, can you venture an answer
2 to that?

3 MR. UTZ: We haven't seen the
4 lease but it's largely lease dependent. It
5 really depends on what's in there but we
6 haven't reviewed this set of documents.

7 CHAIRMAN LOUD: Pastor Turner.
8 Correct?

9 PASTOR TURNER: Yes, sir.

10 CHAIRMAN LOUD: Okay. You
11 testified regarding making some outreach and
12 offers of relocation assistance. You gave us
13 a specific example of the second floor, I
14 guess at your church but are there other types
15 of assistance that you've made outreach to
16 Mrs. James on?

17 PASTOR TURNER: Yes. We met and
18 the same thing. As I speak for Ms. James, I'm
19 also speaking for the liquor store. Also we
20 made specific outreach and we wanted to hear
21 exactly what their thoughts are. We shared
22 with them and I used the word "compensation"

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1 but I don't know what the proper compensation
2 is.

3 Our goal was as I spoke with the
4 Commissioner for the ANC was to let them know
5 that we all are community people. We do feel,
6 as the ANC feels, that this project is a great
7 idea and needs to move forward but we don't
8 want our community operators or business
9 owners or feel like they are no longer part of
10 the community and that's why even though the
11 owner had not shared anything with them we
12 thought it was our burden or our need to share
13 with them because we are part of the
14 community.

15 I personally said that as the
16 pastor of Beulah Baptist Church which has been
17 in the community for 100 years we didn't want
18 that mark on our resume so that's why we went
19 out.

20 One building came up and I can't
21 speak definitely on this building because it
22 just came up on Friday and, to be honest, I

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1 have not been in a meeting with my board of
2 trustees or my board of deacons and I don't
3 know what they would decide on doing but we
4 received notice that a tenant had gave us a
5 notice of moving out of a building down the
6 street which the church owns and I believe
7 it's the building that could be large enough
8 that could accommodate if not both of the
9 tenants, at least one of the tenants.

10 I didn't mean to bring that up
11 tonight or anything because I need to talk to
12 my official leaders at Beulah Baptist Church
13 but we are looking.

14 Also we have been in conversation
15 --I didn't mean to stop and pick back up but
16 we also had been in conversation with WIN,
17 which is the Washington Interfaith Network, to
18 have communication with the developers along
19 the East Capital Street because there is a
20 project going on, it's a HOPE VI project
21 titled Capital Gateway.

22 It has residential and commercial

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1 but the commercial has yet to come because
2 they were waiting to sell maybe like 90
3 percent capacity of the residential but then
4 they was going to move into the commercial.

5 We wanted to start having meetings
6 with them to see if they didn't mind speeding
7 up the commercial because in the plan there's
8 plans for daycares and business owners and
9 different things so as the applicant we've
10 been trying to do our due diligence to at
11 least show good faith on our end.

12 CHAIRMAN LOUD: Thank you, Pastor
13 Turner. I think you are to be commended for
14 some of your outreach effort. When you talked
15 about the building address that the church
16 owns, can you state that address for the
17 record?

18 PASTOR TURNER: Yes, if I can give
19 a disclaimer on the same record that I'm not
20 saying that it's a possibility as of yet
21 because I have yet to meet with my board of
22 trustees yet but the address is 5713 Dix

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1 Street, N.E.

2 Presently there's a Job Corps
3 recruiting and outreach center at that
4 location and they gave us a notice on this
5 past week and I just have the notice sitting
6 on my desk because I don't meet with my
7 chairmans until this upcoming Thursday so
8 that's why I'm kind of reluctant on speaking
9 about it.

10 CHAIRMAN LOUD: So noted for the
11 record.

12 Are there any other questions from
13 the Board?

14 MEMBER MOLDENHAUER: Yes, I just
15 have a few. You show in your Diagram A what's
16 been referred to in different diagrams as a
17 tot lot and also a playground. Was it ever
18 contemplated knowing that there was already in
19 existence on the property a child daycare
20 center to incorporate that into the design?

21 MR. SADOWSKI: I think the tot lot
22 was incorporated into the design because we

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1 expect families with children. I don't think
2 the daycare center existence had much to do
3 with that. We anticipate the daycare center
4 relocating somewhere in the neighborhood but
5 we anticipate the tot lot being used for the
6 residents of our community.

7 MEMBER MOLDENHAUER: So there was
8 never a contemplation to actually incorporate
9 a child development center into the facility,
10 a basement level of one of the units or into
11 a portion of the building?

12 MR. SADOWSKI: No.

13 MEMBER MOLDENHAUER: And --

14 MR. SADOWSKI: That was not part
15 of the RFP. The RFP was for affordable
16 housing. It was not.

17 MEMBER MOLDENHAUER: Obviously
18 additional amenities can always be provided.
19 I'm just asking if it was considered. You
20 indicated that you are not sure whether the
21 lease has a purchase option. You do recall
22 the remaining term on the lease. Would you be

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1 willing to provide the Board with a copy of
2 that lease?

3 MR. SADOWSKI: I would ask
4 counsel.

5 MR. UTZ: We'd have to review it.
6 There might be confidentiality terms in there
7 that we are not at liberty to submit.

8 MEMBER MOLDENHAUER: I'm sure the
9 opposing party would probably waive any
10 confidentiality terms. Obviously you are a
11 party and your applicant would be willing to
12 provide a copy.

13 MR. UTZ: We can ask the Fabrizzios
14 as well, the actual owners of that property.

15 MEMBER MOLDENHAUER: And is there
16 a reason why Mr. Fabrizio is not present? Am
17 I understanding correctly, sorry, that he is
18 a part of the development group or he has just
19 simply entered into a contract to sell a
20 portion of the property as part of the
21 acquisition of all the different lots?

22 PASTOR TURNER: One of the

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1 requirements that was given to us through the
2 RFP was to try to create a larger footprint.
3 Once we received that requirement, we just
4 started having one-on-one meetings with the
5 owners and he decided that he wouldn't mind
6 selling. He has not connection to the
7 development team.

8 MEMBER MOLDENHAUER: I'm just
9 throwing this out there. If, per se, there is
10 a purchase option on the lease and, thus, the
11 sale potentially could not go through, would
12 you then be coming back before the Board to
13 modify your application because obviously that
14 would modify the plans that we see currently.

15 MR. EPTING: I'm John Epting. I
16 think there are two things and I think you're
17 headed in the right direction. If Mr.
18 Fabrizio is not able to work out with the
19 tenants, I don't think that affects going
20 ahead with approval because we do have
21 authorization to pursue it but clearly if the
22 tenants have rights under those leases and

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1 we're not able to pursue it with the
2 development, we'll have to modify this
3 approval.

4 We are facing it so this is not
5 the part that's going ahead of time so it does
6 have -- we do have time to do that. Many
7 times when you are seeking approvals you do
8 have tenant issues that you have to deal with
9 and you don't want to deal with them until you
10 are sure you have the approvals so it is a bit
11 of a Catch 22.

12 Communication should have been
13 clear but, as Rev. Turner said, at the same
14 time there is also attention to tenants in
15 terms keeping them to pay. Clearly if we're
16 not able to work out a situation where we can
17 use the property, we'll come back to the Board
18 to modify if we need to.

19 MR. SADOWSKI: Just to further
20 elaborate on that, if you look at the existing
21 conditions plan it's probably difficult for
22 you all to make out from here but the bottom

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1 parcel -- the parcel at the bottom of the page
2 is lot 806 which is the District owned parcel.
3 To the north of that is the existing alley.
4 If for whatever reason we were not able to
5 obtain lots 1, 2, and 28, i.e., the Fabrizio
6 parcels, the alley could be left in place and
7 we could develop Phase II without that parcel
8 and, as John said, modify the plan.

9 MR. EPTING: In the future there
10 is hope to add more property to this so we
11 would also have to come back for that so this
12 is sort of a rolling process that we're
13 talking about but you have to start somewhere.

14 MEMBER MOLDENHAUER: I understand.
15 I understand the complexities there. It's
16 just a matter of the Board dealing with new
17 issues that we were not aware of prior to
18 today and trying to figure out how this will
19 affect at this point and then moving forward
20 any review or approval process. Thank you.

21 CHAIRMAN LOUD: I have a question
22 for Mr. Cochran. Were you aware of the

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1 presence of the daycare center?

2 MR. COCHRAN: No.

3 CHAIRMAN LOUD: The testimony from
4 Mrs. James is that there are 100 kids there.
5 I'm taking her at her word. How would that
6 factor in, if at all, to the substantial
7 detriment to the public good prong of the
8 test.

9 MR. COCHRAN: This is in a Planned
10 Unit Development so within the limits of the
11 relief being requested of the BZA, their
12 actions wouldn't be detrimental to the public
13 good. It's not a zoning action. Even if one
14 says that the displacement of the daycare
15 center would not be particularly good for the
16 neighborhood, it's not the relief that you may
17 or may not be granting that would cause that
18 harm.

19 The potential purchase of that
20 property and the lease negotiations are
21 separate from anything having to do with the
22 application here today in terms of actual

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1 zoning considerations. I hope I'm making that
2 distinction clear.

3 If it were a Planned Unit
4 Development and you were looking at the
5 totality of impacts and benefits and
6 amenities, my answer might be different but
7 I'm just looking at the relief being requested
8 under the sections being requested. It's more
9 a policy consideration than it is a zoning
10 consideration.

11 CHAIRMAN LOUD: Thank you. I
12 wanted to certainly get your testimony on the
13 record inasmuch as it sounds like you were as
14 unaware as we were. Not saying I totally
15 agree with your testimony, or I disagree with
16 it, but at least it's on the record now.

17 MR. UTZ: Can I interject
18 something as well, please?

19 CHAIRMAN LOUD: Yes.

20 MR. UTZ: We actually did list the
21 list of tendencies in the application packet.
22 We mentioned it in the statement and then it's

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1 tab 6 of the booklets that we submitted. We
2 looked at both the daycare center and the
3 liquor store as part of the many requirements
4 of the application packet. It's kind of
5 hidden towards the back so it's easy to
6 overlook but those two are listed in there.

7 CHAIRMAN LOUD: Thank you for
8 making that clarification on the record.

9 Okay. Again, I want to thank our
10 witnesses. I don't know if there are any
11 additional questions for the witnesses. I
12 don't believe so. Thank you again for your
13 testimony. We appreciate that. I believe we
14 are at the point of the proceeding where we go
15 back to the applicant for closing remarks.

16 MR. UTZ: Thank you. We just had
17 one comment we wanted to follow-up on Mr.
18 Cochran's report. He noted that we should
19 discuss 2516.6(b) about the private roads
20 being less than 25 feet. That is something we
21 touched on in our application packet and would
22 like the Board to review.

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1 That standard deals with the Board
2 being able to approve something that has a
3 lesser width as long as it's compatible with
4 and not likely to have an adverse affect on
5 the present character and future development
6 of the neighborhood.

7 We believe that is certainly the
8 case here, a 25-foot-wide private drive. Bear
9 to the bottom left of the drawing on the
10 right. A 25-foot wide driveway there would be
11 just too wide. We looked at a lot of
12 circulation possibilities there. This
13 proposed configuration blends operational
14 efficiencies, the ability to move trash trucks
15 through and things like this with kind of the
16 community modular feel of the entirety of the
17 project so we had competing interest to
18 minimize the road width but also have it
19 functional.

20 MR. SADOWSKI: If I can expand on
21 that a little bit as well. It's the 20-foot-
22 wide cartway but there are four-foot islands,

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1 if you will, off the edge of the units so that
2 the actual functional width is 28 feet from a
3 car standpoint accessing their garage and
4 leaving their garage so it's 20 feet center
5 cartway and then you have four foot on each
6 side to enter and leave your garage. The only
7 vehicles that were really impacted by the 20
8 foot were the trash truck and EMS and we did
9 the proper turning analysis with those and
10 determined that there was sufficient turning
11 radii.

12 MR. UTZ: Just wanted to close
13 that loop and that concludes our presentation.
14 Thank you.

15 CHAIRMAN LOUD: Thank you, Mr.
16 Utz. I want to thank the Office of Planning
17 as well as the witnesses that appeared. We've
18 got a couple of options but before I go into
19 that, I think I'll see if Board Members have
20 any final questions of the applicant or of OP.

21 Okay. I think one option would be
22 to deliberate the case today and I know I'm

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1 not prepared to do that. There is a lot more
2 I want to think about and other Board Members
3 I think may feel the same way.

4 The second option would be to set
5 it for deliberation on a date in the future
6 when we can get it on our calendar. I wanted
7 to ask before we try to do that if there is
8 any sense of urgency around a final decision
9 that maybe has not come forth in the hearing.
10 Are you under any timelines that we need to
11 know about?

12 MR. SADOWSKI: We are committed to
13 close on the property April 30th of this year.
14 In order to close we must have building
15 permits in hand for Phase I. In order to have
16 a building permit in hand we would need this
17 approval in a timely fashion ahead of the
18 closing date.

19 CHAIRMAN LOUD: I think we're
20 looking at March 9. We could stick it in in
21 the morning as a decision. Certainly I think
22 it would give you quite a bit of lead time for

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1 that April 30 date that you're talking about.
2 I think Mrs. Moldenhauer had some reflections.

3 MEMBER MOLDENHAUER: While I
4 definitely understand the concept the
5 applicant has put forward by its counsel in
6 regards to a multiple-phase project, I think
7 that for administrative efficiency it would be
8 good for us to at least have a copy of the
9 lease or at least a letter or something within
10 the next week from counsel indicating or
11 confirming whether or not that is going to be
12 an issue because if there is a modification
13 that may need to be made, we would like to
14 possibly know that before going forward with
15 this current layout. I'm seeing heads shaking
16 from counsel that would be something we can
17 get? Okay.

18 CHAIRMAN LOUD: Okay. Why don't
19 we set it for Tuesday, March 9. It will be
20 one of the four decision cases that we
21 deliberate on next Tuesday. A grueling
22 Tuesday morning it will be but we are

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1 dedicated to serving the public so we are
2 going to do that.

3 Those of you who participated in
4 this case you do not have to come back --
5
6 counsel knows this -- for the deliberation.
7 It's broadcast live on the webcast for the
8 Office of Zoning which you are free to come if
9 you choose to come. However, we do not allow
10 any testimony on the day of deliberation.
11 Okay?

12 MS. BAILEY: Mr. Chairman, should
13 we set a date or just leave that open-ended
14 for submission of the document that you asked
15 for?

16 CHAIRMAN LOUD: Mrs. Moldenhauer
17 said within the next week or so but if we can
18 get it by Friday or something like that so we
19 can review it at the latest over the weekend.

20 MS. BAILEY: So that would be the
21 5th.

22 CHAIRMAN LOUD: Yes, how about

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1 that, Mrs. Moldenhauer?

2 MEMBER MOLDENHAUER: Good.

3 CHAIRMAN LOUD: Okay. We'll say
4 Friday for the supplemental filing.

5 MR. UTZ: We can get it Thursday,
6 too. Just wanted to throw that out there.

7 CHAIRMAN LOUD: Okay. You weren't
8 elected to get it at all at first and now you
9 can get it by Thursday. If you can get it by
10 Thursday, that would be good. Certainly
11 Friday. There would be no harm in getting it
12 by Friday and then we'll try, as I said, set
13 it for decision next week on Tuesday.

14 MR. UTZ: Thank you.

15 CHAIRMAN LOUD: Anything further
16 in this case, Ms. Bailey?

17 MS. BAILEY: No, Mr. Chairman.

18 CHAIRMAN LOUD: All right. Thank
19 you. We are going to take a five-minute break
20 and then we're going to call our final case of
21 the afternoon and I'm hopeful that that case
22 will take an extraordinary amount of time. If

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1 there is any need for setup, this would be a
2 good time to do the setup for the final case.

3 (Whereupon, at 5:05 p.m. off the
4 record until 5:24 p.m.)

5 CHAIRMAN LOUD: Good afternoon.
6 We are back on the record for the final case
7 of the March 2nd afternoon hearing calendar.

8 Ms. Bailey, when you're ready, you
9 can call the case.

10 MS. BAILEY: Mr. Chairman, this is
11 Application 18020 of the District of Columbia
12 Department of Real Estate Services. This
13 application has been around quite a bit, Mr.
14 Chairman, so I'm hoping that I'll be reading
15 the announcement correctly.

16 It's pursuant to 11 DCMR Section
17 3103.2, for a variance from the off-street
18 parking requirements under Subsection 2101.1,
19 to construct a new five story government
20 office building at premises 4058 Minnesota
21 Avenue, N.E. The property is located on
22 Square 5052, Lot 12. This is in C-3-A.

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1 CHAIRMAN LOUD: Thank you, Mrs.
2 Bailey. The applicants are at the table.
3 Good early evening. Good news and bad news.
4 I think the bad news is that it's about 5:30
5 and we're just now getting started on your
6 case.

7 I think the good news might be
8 that the case does not appear to require an
9 extensive briefing. I think you brought a
10 number of witnesses that you represented in
11 your pleading. I think perhaps the only one
12 we might want to hear from is the
13 representative from the D.C. Government.

14 The others I think if they are
15 available for questions as Board Members have
16 questions, that's probably the way we want to
17 proceed, I think. I know from my end I think
18 I'm just looking to see the variance test made
19 out as appropriate and then the reductions
20 that you're talking about.

21 Before we start, let me just
22 clarify that we are looking now at a

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1 requirement of 284. You are providing 196 and
2 you're looking for a variance for 88.

3 MR. LAPIN: That's correct.

4 CHAIRMAN LOUD: Okay. Any other
5 hidden information in the application or is
6 that pretty much all we're looking at?

7 MR. LAPIN: I don't believe there
8 is anything else hidden. Hopefully it was all
9 laid out.

10 CHAIRMAN LOUD: Okay. Very well.
11 Then let me ask this before you introduce
12 yourselves for our record. Well, why don't
13 you go ahead and introduce yourselves for our
14 record and then I'll come back.

15 MR. LAPIN: Sure. Again, my name
16 is Joseph Lapin. I'm an Assistant Attorney
17 General in the D.C. Attorney General's Office.

18 MS. MISRA: And my name is
19 Sanjukta Misra and I'm with the General
20 Counsel's Office for the Department of Real
21 Estate Services. Do you need me to state my
22 home address?

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1 CHAIRMAN LOUD: Yes, we typically
2 ask for that. I guess perhaps you could give
3 your business address.

4 MS. MISRA: My business address is
5 2000 14th Street N.W., Suite 800, Washington,
6 D.C.

7 CHAIRMAN LOUD: Okay. The
8 variance test would be made out by whom as a
9 witness?

10 MR. LAPIN: I'll introduce the
11 factors of the variance test and then I
12 imagine we would have Mr. Donald Eichens from
13 the Department of Real Estate Services speak
14 on that a bit as well.

15 CHAIRMAN LOUD: Some of it seems
16 like just the history of the project that
17 would tie into some of these variance problems
18 like exceptional situation, practical
19 difficulty and so on.

20 MR. LAPIN: Sure.

21 CHAIRMAN LOUD: So before we
22 start, let me see if Board Members have any

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1 areas that they want to focus you in on so
2 that we can sort of truncate the hearing just
3 to what we really need for the relief being
4 requested.

5 Okay. So, again, for me it's just
6 how do you make the variance test, how are you
7 satisfying the reductions that you're seeking.
8 If you leave anything out, we'll follow-up
9 with some questions.

10 MR. LAPIN: Great. Thank you very
11 much. Just to repeat, we are working with a
12 parking requirement for the zoning regulations
13 of 284 spaces and providing 196 spaces as
14 mixed between the DOES headquarters building
15 itself and shared parking in the WMATA parking
16 garage that's adjacent.

17 I think Don might speak to this
18 more just to briefly, I think, update you on
19 project status. The DOES headquarters
20 building is substantially complete and the
21 WMATA garage building is complete and
22 operational as of November 2009.

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1 Essentially based on as-built
2 conditions on the site, this variance from the
3 parking requirements is necessary to allow the
4 DOES building to get its final approvals. For
5 example, the certificate of occupancy, and to
6 be put into use in a cost effective and timely
7 manner. As the Board might imagine there are
8 some significant logistical and cost
9 implications of timely agency relocation and
10 those types of things.

11 To get into the variance test
12 itself, the applicant believes that as
13 evidenced in the application statement and the
14 supplemental materials, as well as the Office
15 of Planning report and supplemental report and
16 other items of record that the requirements
17 for granting the variance request are met.

18 Specifically as the Board is
19 aware, the Board has the power to grant this
20 variance. If by virtue of extraordinary or
21 exceptional situations or conditions, the
22 strict application of the zoning regulations

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1 would result in peculiar and exceptional
2 practical difficulties and can be granted
3 without substantial detriment to the public
4 good.

5 As far as the extraordinary and
6 exceptional situation or condition here, what
7 we are looking at is the current as-built
8 condition of this property. Essentially the
9 condition is rendered as impractical,
10 infeasible, and pretty much impossible to now
11 meet the requirements of the zoning
12 regulations. If the Board is interested, we
13 can get into the causes of this but we'll go
14 there with the Board's lead.

15 As far as exceptional practical
16 difficulties, I think there are some fairly
17 apparent confluence of factors here that have
18 led to the difficulties. It's impossible or
19 basically impossible to add parking spaces at
20 the DOES building itself or the WMATA garage.
21 Both buildings are fully excavated and
22 essentially complete.

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1 The challenge is to adding
2 additional segregated parking spaces for
3 District use at the WMATA garage are
4 exceptional from the perspective of
5 infrastructure changes that would be needed
6 within the garage as well as ongoing
7 operational issues that would be presented by
8 that. If the Board is interested in hearing
9 more about that, the representatives from
10 WMATA are here to speak more particularly on
11 that.

12 There is also some potential
13 exceptional legal and procedural difficulties
14 that would arise if use of additional spaces
15 in the WMATA garage were needed. Counsel from
16 WMATA is here also to speak to that as
17 necessary.

18 To speak to the public good, I
19 think it can be seen that this sort of truly
20 is a transit oriented development as detailed
21 in the Office of Planning report and WMATA's
22 letter in support from August 18th of 2009.

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1 The Metro station here is served by the orange
2 line and 10 bus routes. In fact, it's the
3 Metro's second busiest bus station I'm
4 informed. Metro studies have concluded that
5 a very large percentage of employees are
6 expected to use transit to get to the site and
7 that parking, therefore, is more than
8 sufficient.

9 The project is providing more than
10 a one-for-one replacement of current Metro
11 surface parking as well as providing 113
12 spaces in addition to the number of spaces
13 that DOES currently utilizes at its two
14 locations on 609 H Street and 64 New York
15 Avenue.

16 Because the parking needs are
17 sufficiently, or more than sufficiently met
18 here, there are no overflow parking issues
19 that are anticipated. In fact, it's actually
20 the granting of the variance in helping sort
21 of right-size the demand for parking here
22 would maximize the parking spaces available

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1 for Metro and other users of the WMATA garage.

2 I think I'll leave it there for
3 now and allow myself or my witnesses to
4 address questions that the Board might have.
5 Thank you.

6 CHAIRMAN LOUD: Thank you. We
7 appreciate that. Let's see if there are any
8 Board questions.

9 COMMISSIONER SCHLATER: Mr.
10 Chairman, I'll ask just a couple quick ones.

11 CHAIRMAN LOUD: Sure.

12 COMMISSIONER SCHLATER: First on
13 how we got to this point. I think I
14 understand within the DOES building the story
15 there. It's a little less clear on the WMATA
16 garage as to how the number of parking spots
17 delivered was fewer than originally
18 anticipated. Can you just walk me quickly
19 through that point?

20 MS. MISRA: It's a difficult
21 question to answer. Obviously the garage was
22 built and one of the requirements was that the

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1 DOES portion of the garage be separate,
2 physically separated from the WMATA portion of
3 the garage, the clientele portion of the
4 garage.

5 There are, as you know, about 515
6 spaces in the WMATA garage that are available
7 in total. Conceivably it could have been
8 reconfigured so that more of it would have
9 been segregated for the DOES portion of it.
10 Unfortunately, we don't have any of the
11 project managers left who made any of those
12 decisions. All we know is that last summer as
13 we were going through and going through the
14 WMATA garage it became apparent that this was
15 the state of facts. It was already complete.
16 The segregation was already complete. There
17 were separate armed gates and systems for
18 entry and exit from those portions. I don't
19 know if WMATA's counsel might have more to add
20 historically speaking.

21 COMMISSIONER SCHLATER: Who
22 constructed the garage?

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1 MS. MISRA: DRES constructed that
2 garage, Real Estate Services.

3 COMMISSIONER SCHLATER: And what
4 are the practical difficulties in
5 reconfiguring the garage that would make it
6 impossible for the District to make use of
7 those spots?

8 MS. MISRA: If you can picture it,
9 and I know we have given some floor plans of
10 the garage layout, but when you come through
11 the entryway to the garage or up the -- it's
12 not a roadway. I guess it's a private alley
13 or private roadway -- there are two physically
14 separate entrances.

15 One of them is for the WMATA
16 clientele. You access the building and it
17 slopes up, ramps up directly so you come in
18 and there are parking spaces. As you are
19 going up the slope you go up under the upper
20 levels it's all WMATA's.

21 There is no way to actually come
22 down to the other portion. If you go a little

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1 bit further and you take your right into the
2 garage, you are in the DOES portion which is
3 actually the ramp down because the DOES
4 portion of the building is the ramp down and
5 then the below-ground level of the garage.

6 It would be physically very
7 difficult to have cars moving between the
8 upper levels and the lower levels at this
9 point in time. You would have to come up with
10 a system of allowing DOES employees access
11 into the WMATA section and figure out how to
12 enforce that, how to segregate that.

13 COMMISSIONER SCHLATER: Okay. I
14 think I understand that. So you can't have
15 District dedicated spaces in the WMATA portion
16 of the garage?

17 MS. MISRA: It creates these
18 operational difficulties in the way that WMATA
19 operates its garage. There are key -- I
20 really don't know enough details about it and
21 perhaps one of the WMATA witnesses can speak
22 more to how they operate it but, as I

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1 understand it, the concern is where would they
2 -- how do you get the employees to go into
3 WMATA's garage and actually park where they
4 are supposed to park, only park where they are
5 supposed to park.

6 How do you make sure that they are
7 parking in the right hours when they are
8 allowed access. It's really very operational
9 for them and their ability to allow that space
10 to be maximized for the Metro customers who
11 should be using it in order to access the
12 Metro or the buses.

13 I think if you had other questions
14 operational, probably Patrick would be able to
15 answer them.

16 COMMISSIONER SCHLATER: I think
17 I'm okay there. The last question is just on
18 the only concern, and I don't know that I
19 share this concern, is that potentially you
20 would have all these employees coming into the
21 neighborhood wouldn't have a place to park
22 and, therefore, you know, would be flooding

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1 the neighborhood with parking.

2 In the materials you provided you
3 said that the garage is actually providing
4 more spaces than are currently provided to
5 DOES employees. How are those garage spots
6 going to be allocated by DOES?

7 MS. MISRA: That is usually the
8 agency's own determination how they allocate
9 their parking. I don't think I can speak on
10 behalf of that director for the Board. I'm
11 happy to look into it.

12 We do know that we're providing
13 more parking than they currently have
14 available. I know for other agencies that
15 I've been involved with it's often a lottery
16 system for the people who are interested in
17 having parking.

18 I would also note that I think
19 it's OP's report or another report where they
20 noted that there would be a significant number
21 of employees expected to use the Metro system
22 and public transportation.

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1 COMMISSIONER SCHLATER: Very good.

2 Thank you.

3 I have no further questions.

4 CHAIRMAN LOUD: Thank you, Mr.
5 Schlater.

6 Did you have anything additional
7 or can we move on to the Office of Planning?

8 MR. LAPIN: You can move on unless
9 there are more questions.

10 CHAIRMAN LOUD: Okay. I don't
11 believe there are any questions right now. If
12 we have some later, we'll come back.

13 Why don't we turn to the Office of
14 Planning. Good early evening.

15 MS. BROWN-ROBERTS: Good evening
16 Mr. Chairman and Members of the Board. I'm
17 Maxine Brown-Roberts representing the Office
18 of Planning. I am going to basically stand on
19 the record this afternoon. We submitted the
20 first report and then a supplemental report
21 with some clarification.

22 I think the applicant did explain

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1 most of the technicalities on which the
2 variance request and the variance test is
3 based. I would just like to recommend
4 approval and also say that I'm open to
5 questions and we'll go from there.

6 CHAIRMAN LOUD: Thank you. We
7 appreciate that. There is no ANC report as I
8 recall. Is that correct?

9 MS. BROWN-ROBERTS: I have not
10 seen one.

11 CHAIRMAN LOUD: Okay. Very good.
12 Just in terms of the community, you've not
13 heard any concerns?

14 MS. BROWN-ROBERTS: No, I haven't.

15 CHAIRMAN LOUD: Okay. Because
16 right now this is not opposed and depending on
17 how the Board goes this could be a summary
18 judgment so I just wanted to make sure that
19 was the case in terms of community opposition.

20 Does the applicant have any
21 questions for OP? All right.

22 Board Members? Okay.

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1 We would now turn to other
2 government agencies for reports. I don't
3 believe that we have any other government
4 agency reports in our record. As indicated,
5 the ANC did not submit a report.

6 If there are persons in the
7 audience that are either in support or in
8 opposition to the application, this would be
9 the time to come up. You would be given three
10 minutes to give your testimony.

11 Seeing no persons come forward, we
12 now turn back to the applicant for closing
13 remarks.

14 MR. LAPIN: Mr. Chairman and
15 Members of the Board, I wouldn't really have
16 any other closing remarks per se other than to
17 just reiterate that the applicant does believe
18 that the application and the materials in the
19 record establish the elements of the variance
20 test and request that the Board grant the 88
21 parking space variance that has been
22 requested.

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1 CHAIRMAN LOUD: Thank you.
2 Appreciate that. I think we are probably
3 ready to deliberate the case. I think because
4 it's had a couple of different hearings and
5 the record has been supplemented a couple of
6 different times and you've done a really good
7 job of keeping up with all that and presenting
8 it clearly for us, I think we are ready to
9 deliberate such as it were.

10 I'm happy to lead us off. In
11 fact, I think rather than go through an
12 elaborate sort of analysis and recap of the
13 facts and so on and so forth, I just want to
14 incorporate by reference both the initial
15 report of Planning and then the supplemental
16 report which is dated February 23, I think,
17 Exhibit 31, both by way of the variance relief
18 and then the parking reduction relief under
19 Section 2104.

20 I think you make a good case both
21 in the pleadings and in the part of the
22 testimony that you went into today in terms of

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1 the history being exceptional. You've got
2 essentially a homeless agency out there that
3 needs to offer services. You've got the
4 structures that are built that cannot be
5 rebuilt without considerable cost impact to
6 the agency, so on and so forth.

7 The practical difficulties, I
8 think Mr. Schlater sort of had an exchange
9 with you and one of the other witnesses
10 regarding why you could not use more of the
11 WMATA parking spaces, the operational
12 difficulties related to that, cost
13 prohibitions regarding getting the additional
14 spaces through some other mechanism.

15 You spoke in your pleadings
16 regarding the additional WMATA board authority
17 that would have some time delays if you were
18 to try to pursue that rather than I think
19 there were some other federal agencies that
20 you needed some support from as well.

21 I think it's clear there are some
22 practical difficulties that are addressed in

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1 the record including you talked about the
2 threat on title as well if this does not move
3 forward as you guys had initially agreed to.

4 In terms of substantial detriment
5 to the public good, I don't think that was
6 ever a real question. It's a TOD project.
7 It's close to Metro, close to bus zones.
8 There is no indication that it would violate
9 the zone plan or anything like that. OP has
10 gone on record saying that. I think, as I
11 said, you meet the requirements of the
12 variance test.

13 OP's walk through the Section 2104
14 I'm just going to incorporate it and not waste
15 anyone's time going through it on the record.
16 There is no opposition to it. I think it's a
17 project that needs to be brought to closure
18 and I'm glad that we could do our part here to
19 support that. I'm in favor of it and I'll
20 open it up to other Board Members to comment
21 and/or weigh in.

22 COMMISSIONER SCHLATER: I think

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1 that people have been looking to see transit
2 oriented development in the District. I think
3 the fact that less parking spaces are being
4 provided is probably a good thing. People
5 probably think on some District government
6 sponsored projects there's too much parking so
7 the fact that they are coming in with less
8 parking may be something to be commended. I'm
9 going to support it.

10 CHAIRMAN LOUD: Is there anything
11 further? Okay. Then what I would like to do
12 is move approval of BZ Application No. 18020
13 for variance relief from the parking
14 requirements of Section 2101 as well as BZA
15 parking reduction under Section 2104 for
16 nonresidential structures near Metrorail
17 stations.

18 Is there a second?

19 MEMBER MOLDENHAUER: I second.

20 CHAIRMAN LOUD: The motion has
21 been made and seconded. Further deliberation?
22 Hearing none, all those in favor say aye.

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1 ALL: Aye.

2 CHAIRMAN LOUD: Is there any
3 opposition and/or any abstentions?

4 Ms. Bailey, if you could read back
5 the vote, please.

6 MS. BAILEY: Mr. Chairman, the
7 vote is recorded as four zero one to grant the
8 application. Mr. Loud made the motion, Board
9 Member Moldenhauer seconded it. Ms. Sorg and
10 Mr. Schlater support the motion. Mr. Denton
11 is not present today.

12 CHAIRMAN LOUD: Thank you, Ms.
13 Bailey. I believe there is no opposition so
14 this would be a summary order.

15 MS. BAILEY: There was opposition,
16 Mr. Chairman, but it was withdrawn to be
17 technically correct.

18 CHAIRMAN LOUD: Thank you very
19 much for that technical correction. Why don't
20 you just mention the exhibit number that we
21 have attached to that withdrawal.

22 MS. BAILEY: Unfortunately it came

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1 in today and I don't have an exhibit number on
2 it, Mr. Chairman.

3 CHAIRMAN LOUD: That's okay. Why
4 don't you reference the date of it and who it
5 is signed by.

6 MS. BAILEY: We received it today,
7 March 2nd. It was faxed to us. It's from
8 Peter Gambrill.

9 CHAIRMAN LOUD: Okay. So as a
10 result of that, as Ms. Bailey indicated, there
11 is no opposition officially and it would be
12 appropriate to do a summary order.

13 MS. BAILEY: Yes, sir.

14 CHAIRMAN LOUD: Okay. Is there
15 anything further in this case?

16 MS. BAILEY: No, sir.

17 CHAIRMAN LOUD: All right. Thank
18 you. We appreciate your time and your
19 patience this afternoon and good luck with
20 your project.

21 MR. LAPIN: Thank you.

22 CHAIRMAN LOUD: Anything further

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for the calendar?

MS. BAILEY: No, Mr. Chairman.

CHAIRMAN LOUD: We are adjourned.

(Whereupon, at 5:47 p.m. the
hearing was adjourned.)

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