

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

APRIL 13, 2010

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:00 a.m., Meridith Moldenhauer, Madam Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH MOLDENHAUER Madam Chairperson
SHANE L. DETTMAN Vice Chairman
(NCPC)
NICOLE SORG Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL Commissioner
FAIA (AOC)

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN
ARLOVA JACKSON
STEVE COCHRAN
MAXINE BROWN-ROBERTS

This transcript constitutes the minutes from the Public Hearing held on April 13, 2010.

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

2 10:16 a.m.

3 CHAIRPERSON MOLDENHAUER: This
4 hearing will come to order. Good morning,
5 ladies and gentlemen. This is the April 13,
6 2010 Public Hearing of the Board of Zoning
7 Adjustment for the District of Columbia.

8 My name is Meridith Moldenhauer,
9 Chairperson. Joining me to my right is Vice
10 Chair Shane Dettman representative of the
11 National Capital Planning Commission. To his
12 right is Michael Turnbull representative of
13 the Zoning Commission. To my left is Nicole
14 Sorg, Mayoral Appointee.

15 Mr. Clifford Moy, Ms. Lori Monroe
16 and then Ms. Beverley Bailey.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin.

20 Please, be advised that this
21 proceeding is being recorded by a Court
22 Reporter and is also being webcast live.

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1 Accordingly, we must ask you to refrain from
2 any disturbing noise or any actions in the
3 hearing room.

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

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

19 The order of procedure for special
20 exceptions and variances are: Statement and
21 witnesses of the applicant; Government
22 reports, including the Office of Planning and

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1 the Department of Public Works; Reports from
2 the ANC; Parties and persons in support;
3 Parties and persons in opposition; Closing
4 remarks by the applicant.

5 Pursuant to Sections 3117.4 and
6 3117.5, the following time constraints will be
7 maintained: The applicant, appellant, persons
8 and parties, except an ANC, in support,
9 including witnesses, have 60 minutes
10 collectively. The appellee, persons and
11 parties, except an ANC, in opposition,
12 including witnesses, have 60 minutes
13 collectively. Individuals have 3 minutes.

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

21 Nothing prohibits the Board from
22 placing reasonable restrictions on cross-

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1 examination, including time limitations and
2 limitations on the scope of cross-examination.

3 The record will be closed at the
4 conclusion of each case, except for any
5 material specifically requested by the Board.

6 The Board and the staff will specify at the
7 end of each hearing exactly what is expected
8 and the date when the persons must submit
9 evidence to the Office of Zoning. After the
10 record is closed, no other information will be
11 accepted by the Board.

12 The Sunshine Act requires that the
13 Public Hearing of each case be held in the
14 open before the public. The Board may
15 consider within its rules or procedures and
16 the Sunshine Act to enter into Executive
17 Session during and after the Public Hearing on
18 the case for the purposes of reviewing the
19 record and deliberating on the case.

20 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 requests that persons
2 present do not engage the Members of the Board
3 in conversation.

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

7 The Board will now consider any
8 preliminary matters. Preliminary matters are
9 those which relate to whether a case will or
10 should be heard today, such as requests for
11 postponement, continuance or withdrawal or
12 whether the proper adequate notice of a
13 hearing has been given. If you are not
14 prepared to go forward with a case today or if
15 you believe that the Board should not proceed,
16 now is the time to raise such a matter.

17 Does the staff have any
18 preliminary matters?

19 MS. BAILEY: Madam Chair, Members
20 of the Board and to everyone, good morning.
21 The preliminary matter, Madam Chair, has to do
22 with one of the cases that was scheduled for

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1 this morning, Freeda's Child Development
2 Center. The Application No. is 18052.

3 That application was postponed for
4 next week, Madam Chair.

5 CHAIRPERSON MOLDENHAUER: And is
6 there anybody in the audience for that case?
7 Seeing none, then we will proceed and we will
8 address that at the end.

9 MS. BAILEY: Thank you.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you. All individuals wishing to testify
12 today, please, rise to take the oath. Ms.
13 Bailey, will you, please, administer the oath?

14 MS. BAILEY: Please, raise your
15 right hand.

16 (Whereupon, the witnesses were
17 sworn.)

18 MS. BAILEY: Thank you. Madam
19 Chair, ready for the first case?

20 CHAIRPERSON MOLDENHAUER: Yes,
21 please, Ms. Bailey. Thank you.

22 MS. BAILEY: Application 18053 of

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1 Italo Rodriguez, and it's pursuant to 11 DCMR
2 ' 3104.1, for a special exception to allow a
3 two-story rear addition to an existing one-
4 family row dwelling under section 223, not
5 meeting the lot occupancy and rear yard
6 requirements, that's section 403 and section
7 404. The property is Zoned R-3. It is
8 located at 3112 P Street, N.W., Square 1256,
9 Lot 1.

10 Is Mr. Rodriguez or his
11 representative here? Would you, please, have
12 a seat at the table?

13 MR. NATHANIEL: Good morning. My
14 name is Gabriel Nathaniel. I'm a
15 representative for Mr. Italo Rodriguez.

16 CHAIRPERSON MOLDENHAUER: Good
17 morning. How are you doing?

18 MR. NATHANIEL: Great. Thank you.

19 CHAIRPERSON MOLDENHAUER: Do you
20 have a Letter of Authorization from you to
21 represent Mr. Rodriguez?

22 MR. NATHANIEL: No, we do not. I

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1 do not, but I can have one for you.

2 CHAIRPERSON MOLDENHAUER: Okay.
3 That would be required in writing, so if you
4 can, please, make sure that we have that as
5 part of the record?

6 MR. NATHANIEL: Definitely.

7 CHAIRPERSON MOLDENHAUER: Okay.
8 If you would like to begin presenting your
9 case?

10 MR. NATHANIEL: Sure. Mr.
11 Rodriguez is looking to expand his existing
12 home to accommodate a growing family. There
13 is a dire need for intimate private outdoor
14 living space, which is accommodated in the
15 first floor covered porch.

16 In addition, he is looking to
17 update the layout of the house to a more
18 contemporary and sophisticated living space,
19 thereby increasing the space of the master
20 bedroom and adding a second full bathroom to
21 the living space.

22 Currently, the second floor is

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1 comprised of two bedrooms and one bathroom.
2 This expansion again will add a second full
3 bath to that second level and extend the
4 master bedroom.

5 We have taken -- Mr. Italo and I
6 have taken great strides to maintain the
7 existing historical character of the building,
8 thereby shielding the new addition from any
9 sort of views from the curb and front
10 elevation.

11 The existing lot is about 90
12 percent landlocked in regards to having
13 buildings, both commercial and residential on
14 all sides, except for the front.

15 And just lastly, I just want it to
16 be noted that we feel the updates to the house
17 will anchor its residential character and
18 allow Mr. Rodriguez to stay in the
19 neighborhood with his family.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you very much. So that concludes your initial
22 presentation?

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1 MR. NATHANIEL: Yes, it does.

2 CHAIRPERSON MOLDENHAUER: Okay.

3 At this time, I will see if any Board Members
4 have any specific questions.

5 VICE CHAIRMAN DETTMAN: Thank you,
6 Madam Chair. And I'm sorry, I didn't catch
7 your name when you introduced yourself.

8 MR. NATHANIEL: Sure. Gabriel
9 Nathaniel.

10 VICE CHAIRMAN DETTMAN: Thank you.
11 I did see in the letter that was submitted by
12 the ANC that they do support the project.
13 However, it is contingent upon -- there
14 consent is dependent upon a Letter of Consent
15 from the adjacent residential neighbor.

16 Can you tell me about the outreach
17 that you have had with the adjacent neighbors?

18 MR. NATHANIEL: Yes. Mr.
19 Rodriguez spoke with the -- he has two
20 neighbors. The neighbor at 3210 is a
21 residence and 3214 is a commercial building.

22 He spoke with the residents at

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1 3210 and obtained a Letter of Authorization
2 and also spoke with the tenants at 3214 who he
3 delivered a Letter of Authorization to and
4 they went to the owner for consent and
5 signature.

6 He obtained both letters and he
7 has forwarded those letters to the Office of
8 Planning and to the local ANC. And
9 furthermore, I have copies of those letters
10 with me.

11 VICE CHAIRMAN DETTMAN: You have
12 copies of those letters?

13 MR. NATHANIEL: Yes.

14 VICE CHAIRMAN DETTMAN: And they
15 are letters of support for the project? Is
16 that what you said?

17 MR. NATHANIEL: Yes.

18 VICE CHAIRMAN DETTMAN: Okay. And
19 this is the neighbor to the east along P
20 Street and then the neighbor to the west that
21 would be along Wisconsin Avenue. Is that
22 right?

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1 MR. NATHANIEL: Correct.

2 VICE CHAIRMAN DETTMAN: Okay.

3 Madam Chair, I think it would be helpful to
4 have those letters in the record.

5 CHAIRPERSON MOLDENHAUER: Yes.

6 What we will do is we will hold the record
7 open, so you can provide a copy. Do you have
8 a copy of those letters with you today?

9 MR. NATHANIEL: Yes.

10 CHAIRPERSON MOLDENHAUER: If you
11 could then pass them over to Ms. Bailey, she
12 will make copies for us right now.

13 MR. NATHANIEL: Great.

14 CHAIRPERSON MOLDENHAUER: Okay.

15 Thank you. Thank you very much. While we are
16 waiting for copies of those letters from the
17 neighbors, are there any other questions from
18 Board Members for the applicant? Sir, we are
19 not finished yet, so if you want to come back
20 to the table? That's okay. That's fine.

21 At this point in the procedure,
22 we're going to turn to the Office of Planning

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1 to provide their report.

2 COMMISSIONER TURNBULL: Madam
3 Chair?

4 CHAIRPERSON MOLDENHAUER: Oh, you
5 do have a question?

6 COMMISSIONER TURNBULL: I just had
7 one question.

8 CHAIRPERSON MOLDENHAUER: Okay.

9 COMMISSIONER TURNBULL: I'm just
10 trying to clarify that. Do you have a copy of
11 the OP report?

12 MR. NATHANIEL: Not on me, I
13 don't.

14 COMMISSIONER TURNBULL: I'm just
15 trying to determine maybe which property on
16 Wisconsin Avenue wrote the letter. I'm
17 looking at several lots on there. I don't
18 know whether -- it's not the corner one and
19 I'm sure it's not -- I'm not sure whether it
20 is the second, third or fourth lot in.

21 MR. NATHANIEL: It's the corner
22 lot. It's the, I believe it is, ice cream

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1 store.

2 COMMISSIONER TURNBULL: Oh, he has
3 got a letter. Okay. But none of the other
4 lots going down? There is a lot on Wisconsin
5 Avenue that would look into his backyard.

6 MR. NATHANIEL: I see. No, we did
7 not obtain a letter from that neighbor. I
8 believe the reasoning is that that structure
9 is, approximately, two-story and has a brick
10 facade with no fenestration into the property.

11 COMMISSIONER TURNBULL: Oh, okay.
12 Okay. Thank you.

13 CHAIRPERSON MOLDENHAUER: Any
14 additional questions from Board Members?
15 Then, at this point, we will turn to OP for
16 their report.

17 MR. GOLDSTEIN: Thank you, Madam
18 Chair, and good morning. The Office of
19 Planning supports the proposal, which requires
20 relief under special exception for section
21 223. And we are willing to stand on the
22 record and be available for any questions that

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1 the Board may have.

2 CHAIRPERSON MOLDENHAUER: Thank
3 you very much. Does the applicant have any
4 questions for the Office of Planning?

5 MR. NATHANIEL: No.

6 CHAIRPERSON MOLDENHAUER: Do any
7 of the Board Members have any questions for
8 the Office of Planning? All right. Thank you
9 very much.

10 At this time, we would turn to the
11 ANC, which is ANC-2E. Is there anybody in the
12 audience from ANC-2E? Seeing no one, then I
13 will reference that we have our Exhibit No.
14 24, which is a letter from the ANC. It
15 indicates that it was held, they had a
16 regularly public held meeting that was duly
17 noticed on March 30, 2010.

18 A quorum was present and that they
19 unanimously voted to support the application.

20 It says "ANC-2E has no objection to the
21 application for special exception in view of
22 the minimal impact on the second story rear

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1 addition to 3212 P Street. However, this
2 consent is dependent upon a Letter of Consent
3 from the adjacent residential neighbors."

4 And seeing that we now have in our
5 record two letters from the neighbors from the
6 property, we would definitely give this letter
7 great weight in its support.

8 Next, we would turn to any persons
9 or parties in support or in opposition to the
10 application. If there are parties, they can
11 step forward. You will have to step forward
12 and come to the table. Please, you will
13 provide your card to the Court Reporter.

14 And when you sit down, you will
15 turn on the light, so that your microphone is
16 on. And you can state your name and home
17 address and whether you are in support or
18 opposition. The light has to go from a --

19 MS. SHERMAN: I see.

20 CHAIRPERSON MOLDENHAUER: You have
21 it on now. Okay. Perfect. Thank you.

22 MS. SHERMAN: Hello. I'm Lysbeth

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1 Sherman. I'm living 3206 P Street. And we
2 are opponent.

3 CHAIRPERSON MOLDENHAUER: Okay.
4 You're in opposition. You will have three
5 minutes to present your opinions on the case.

6 MS. SHERMAN: We have serious
7 concern about the light issue. Our dining
8 room and bedroom are facing what is -- I'm
9 sorry, I'm French, so we are facing the back
10 where the addition is supposed to be built.

11 We don't have a lot of light
12 already in the dining room. And we would like
13 to save it, you know.

14 Another concern is identity. You
15 know, in Georgetown we try to keep this
16 community, you know, as it is. And having
17 this addition will look bulky in the back.

18 CHAIRPERSON MOLDENHAUER: Is that
19 everything?

20 MS. SHERMAN: Yes.

21 CHAIRPERSON MOLDENHAUER: Okay.
22 Thank you. Just a few questions. Had you had

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1 an opportunity to either meet or speak with
2 the applicant?

3 MS. SHERMAN: No.

4 CHAIRPERSON MOLDENHAUER: Did you
5 attend any of the ANC meetings to voice your
6 concerns?

7 MS. SHERMAN: We weren't aware.

8 CHAIRPERSON MOLDENHAUER: You were
9 not aware of it?

10 MS. SHERMAN: No.

11 CHAIRPERSON MOLDENHAUER: Okay.
12 Does any other Board Members have any other
13 questions for the -- I'm sorry, what was your
14 last name again?

15 MS. SHERMAN: Sherman, S-H-E-R-M-
16 A-N.

17 CHAIRPERSON MOLDENHAUER: For Ms.
18 Sherman?

19 MS. SHERMAN: Yes.

20 VICE CHAIRMAN DETTMAN: Ms.
21 Sherman, can you let us know where your house
22 is in relation to Mr. Rodriguez' house?

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1 MS. SHERMAN: We have one house
2 between us.

3 VICE CHAIRMAN DETTMAN: Okay.

4 MS. SHERMAN: But that our view is
5 directed on the backyard.

6 VICE CHAIRMAN DETTMAN: Okay. I
7 see it now. Thank you.

8 MS. SHERMAN: I forgot also to say
9 that our bathroom is facing the backyard, so
10 adding more addition will definitely be an
11 intrusion in terms of our privacy, both in the
12 bedroom and in the dining room actually and
13 bathroom.

14 CHAIRPERSON MOLDENHAUER: We're
15 all just trying to identify your property on
16 our OP reports and I think we have done that.

17 MS. SHERMAN: I have a picture if
18 it can help.

19 CHAIRPERSON MOLDENHAUER: Do you
20 have -- one moment.

21 VICE CHAIRMAN DETTMAN: Ms.
22 Sherman, it is Sherman, right?

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1 MS. SHERMAN: Yes.

2 VICE CHAIRMAN DETTMAN: Did you
3 have an opportunity, I wasn't sure if you said
4 that you had an opportunity to review the
5 plans? You have actually --

6 MS. SHERMAN: Yes.

7 VICE CHAIRMAN DETTMAN: -- seen
8 the actual plans?

9 MS. SHERMAN: Yes. I got
10 yesterday, yes.

11 VICE CHAIRMAN DETTMAN: Okay. And
12 with respect to your concerns about privacy,
13 did you note that there were no windows on the
14 side of the addition that faces your property?

15 MS. SHERMAN: On the side.
16 However, the problem is not it's a front
17 window that we have from the bathroom.
18 Definitely, I mean, the front window of the
19 actual bay window is facing my bathroom. I
20 mean, it doesn't seem clear, but from the
21 bathroom, if I'm coming out of the shower or
22 whatever, I'm facing, you know, the front

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1 window, not the side window.

2 VICE CHAIRMAN DETTMAN: The window
3 on the back of the house? On the back of Mr.
4 Rodriguez' house?

5 MS. SHERMAN: Actually --

6 VICE CHAIRMAN DETTMAN: There is a
7 bay window?

8 MS. SHERMAN: -- they have a bay
9 window.

10 VICE CHAIRMAN DETTMAN: Yes.

11 MS. SHERMAN: Three window, two on
12 this side, one --

13 VICE CHAIRMAN DETTMAN: Right.

14 MS. SHERMAN: Yes. The one, the
15 biggest one, you know, not the side window, is
16 facing my bathroom.

17 VICE CHAIRMAN DETTMAN: Okay.

18 CHAIRPERSON MOLDENHAUER: Any
19 additional Board questions? Well, at this
20 time, I'll see if Mr. Nathaniel, do you have
21 any questions for Ms. Sherman?

22 MR. NATHANIEL: Yes. In regards

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1 to the bay window, are you aware that the
2 existing window will be removed and that the
3 extension of the addition, which faces your
4 yard, will have no windows. Were you aware of
5 that?

6 MS. SHERMAN: The extension will
7 go more than 10 feet, that's what it is now.
8 I mean, about.

9 MR. NATHANIEL: Yes, about 10
10 feet, yes.

11 MS. SHERMAN: Okay. So already
12 have trouble at facing the front window of the
13 bay window. So you will not have side window,
14 but you -- I mean, you're going to have the
15 front window, that's right?

16 MR. NATHANIEL: Yes. It will be a
17 window at the back of the elevation. However,
18 it will be flat. It will not be angled to
19 view onto your property.

20 MS. SHERMAN: It's even worse if
21 it's flat. Because actually, I have a problem
22 right now with the smaller window and more far

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1 window. So if you do an extension, and it's
2 going to be a flat window -- I mean, any
3 window is an issue, but more is going to be
4 advanced, more it's facing my bathroom.

5 MR. NATHANIEL: I'm not entirely
6 clear on how you --

7 MS. SHERMAN: And the bedroom
8 actually.

9 MR. NATHANIEL: -- picture the new
10 window. Our new window or the new window
11 itself will be, again, flat against the back
12 of the house and thereby facing a masonry
13 wall. So if we were to stand in front of the
14 window and look forward, we would see a
15 masonry wall from the property owners at the
16 rear of our building.

17 The only way we would be able to
18 see a window on your property would be to
19 actually lift the window and stick our head
20 out of the window and look.

21 MS. SHERMAN: Maybe you should
22 come in my bathroom to have another view.

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1 MR. NATHANIEL: Okay.

2 MS. SHERMAN: That's what you are
3 seeing, that's not what we are seeing. And I
4 have picture.

5 MR. NATHANIEL: Okay.

6 MS. SHERMAN: Yes.

7 CHAIRPERSON MOLDENHAUER: Well, if
8 there is no other questions for Ms. Sherman,
9 thank you very much and we will consider your
10 testimony.

11 VICE CHAIRMAN DETTMAN: Madam
12 Chair, I actually have a couple more
13 questions.

14 CHAIRPERSON MOLDENHAUER: Oh, I'm
15 sorry.

16 VICE CHAIRMAN DETTMAN: I'm sorry.

17 CHAIRPERSON MOLDENHAUER: Sorry
18 about that, Mr. Dettman.

19 MS. SHERMAN: Don't be sorry.

20 VICE CHAIRMAN DETTMAN: Do you see
21 in terms of the existing condition they have a
22 bay window? Do you see the proposed addition

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1 increasing any kind of intrusion on your
2 privacy?

3 MS. SHERMAN: Yes.

4 VICE CHAIRMAN DETTMAN: You do.

5 MS. SHERMAN: Significantly.

6 VICE CHAIRMAN DETTMAN: How so?

7 MS. SHERMAN: And it's going to be
8 -- yes, both in the bedroom, in the bathroom
9 and then it's going to be intrusion from our--
10 I mean, from the dining room, then you're
11 going to have this building coming up and
12 blocking a serious part of the light.

13 VICE CHAIRMAN DETTMAN: Okay.
14 Well, with light it's another issue. But in
15 terms of privacy --

16 MS. SHERMAN: Privacy, yes.

17 VICE CHAIRMAN DETTMAN: Is the
18 existing house intruding on your privacy now?

19 MS. SHERMAN: Already a little
20 bit. A little, because it is a bay window, so
21 it's more discrete. But if you have a whole
22 building, definitely. And even from the

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1 dining room and I notice that doesn't sound
2 clear, because from that perspective, of
3 course, they are looking toward, but we can
4 see the windows, the front window from our
5 building.

6 VICE CHAIRMAN DETTMAN: So when
7 you look out your window --

8 MS. SHERMAN: Yes.

9 VICE CHAIRMAN DETTMAN: -- you can
10 see into their house?

11 MS. SHERMAN: Yes, yes.

12 VICE CHAIRMAN DETTMAN: Just as
13 curiosity, do you do anything in your house in
14 order to prevent intrusions on privacy from
15 other properties? A blind, a curtain?

16 MS. SHERMAN: Yes, but curtains,
17 of course, suppress the light, suppress -- you
18 know, it's more dark. So it's okay now,
19 because it's spring. But in the winter, it's
20 problematic. And in the bathroom, of course,
21 we try, but, you know, more we have -- I mean,
22 it's nicer to have natural light to work

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1 around.

2 VICE CHAIRMAN DETTMAN: Okay.

3 Thank you.

4 MS. SHERMAN: Thank you.

5 COMMISSIONER TURNBULL: Excuse me,
6 Madam Chair, but I'm still confused on where
7 this is, where the windows are. I'm looking
8 at trying to see the house one house away.
9 And trying to look at the aerial view and
10 trying to figure out where the impact is. And
11 I really can't see it as yet.

12 CHAIRPERSON MOLDENHAUER: I mean,
13 Mr. Turnbull, I'm looking at the OP report.
14 The larger map on page 2 of the OP report.

15 COMMISSIONER TURNBULL: Right.

16 CHAIRPERSON MOLDENHAUER: And you
17 can kind of see, I guess, the windows on the,
18 I guess it looks like, second and third floor
19 of the house.

20 COMMISSIONER TURNBULL: I see a
21 single. Yes, I see single windows.

22 CHAIRPERSON MOLDENHAUER: And then

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1 I don't know if there is any additional
2 windows behind. It looks like a tree that
3 hasn't bloomed and there may be some
4 additional windows back in that section.

5 COMMISSIONER TURNBULL: Yes, I see
6 the single windows. I'm just trying to get a
7 handle on how moving the house straight back
8 will impact that.

9 CHAIRPERSON MOLDENHAUER: And I
10 think, obviously, there is a question there.

11 COMMISSIONER TURNBULL: Yes. I'm
12 just --

13 CHAIRPERSON MOLDENHAUER: And it
14 seems that Ms. Sherman may have some
15 additional pictures, which may help.

16 COMMISSIONER TURNBULL: Sure.

17 CHAIRPERSON MOLDENHAUER: If you
18 could present those, first, to the applicant.

19 Let the applicant see a copy of the pictures.

20 And then bring it over to Ms. Bailey. Thank
21 you.

22 MEMBER SORG: It looks here like

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1 they may have a rear addition on their house
2 that you can see the possible windows.

3 CHAIRPERSON MOLDENHAUER: Yes.

4 MEMBER SORG: To the side of their
5 rear addition.

6 CHAIRPERSON MOLDENHAUER: What we
7 will do is we will break for five minutes
8 until we get the pictures. And then we will
9 be able to review those.

10 (Whereupon, at 10:41 a.m. a recess
11 until 10:42 a.m.)

12 CHAIRPERSON MOLDENHAUER: All
13 right. We're going to go back on the record
14 to explain each of the pictures, so that we
15 can understand what we are looking at. And
16 then what we will do is once we understand
17 what each picture is, we will then go off the
18 record. Thank you. Okay.

19 MS. SHERMAN: I don't know which--

20 CHAIRPERSON MOLDENHAUER: You need
21 to turn on your microphone. Yes. I think
22 what we are going to do is I'm going to hand

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1 these pictures back to you. And then if you
2 can go through each and describe each of them
3 on the microphone, and then once you have done
4 that, you can pass them to Ms. Bailey and then
5 we will understand or have more of a context
6 for each picture.

7 MS. SHERMAN: Okay. I'm not sure
8 you will understand. I don't know. I show
9 you like that. Okay. That's the view from
10 the bedroom, so when we are walking in the
11 bedroom doing -- I mean, being in the bedroom,
12 we are facing this part. So the building that
13 the planned addition going to be extended to
14 here, which is going to open the spectrum, you
15 know. You know what I mean?

16 CHAIRPERSON MOLDENHAUER: Yes. I
17 mean, all you have to do is just explain where
18 the vantage point is.

19 MS. SHERMAN: Okay. Yes, okay.

20 CHAIRPERSON MOLDENHAUER: And then
21 you can move on to the next picture.

22 MS. SHERMAN: Okay.

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1 Unfortunately, I forgot to take a picture from
2 the bathroom. The bathroom is located in this
3 part, so the angle is even worse. It's even--
4 from our bathroom it is facing this actual
5 window. So worse if he is going to extend,
6 then the view going to be bigger.

7 Okay. So here you have another
8 picture.

9 COMMISSIONER TURNBULL: Ms.
10 Sherman?

11 MS. SHERMAN: Yes?

12 COMMISSIONER TURNBULL: Could I
13 just ask you, getting back to that bathroom
14 view.

15 MS. SHERMAN: Yes.

16 COMMISSIONER TURNBULL: It looks
17 like looking at the plan on the OP report that
18 your house goes straight back and then makes a
19 little jog to the other property line. Is
20 that where the bathroom window is?

21 MS. SHERMAN: The bathroom is --
22 could you repeat again the question? I'm

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1 sorry.

2 COMMISSIONER TURNBULL: Well, it
3 looks like your house goes straight back and
4 then there is a little bit of a return to your
5 property line. It makes an L-shape. It makes
6 a little bit of a jog back. What is in that
7 little part that goes back?

8 MS. SHERMAN: Ah, yes, it's a
9 kitchen.

10 COMMISSIONER TURNBULL: Oh, okay.

11 MS. SHERMAN: It's a kitchen with
12 no elevation on that.

13 COMMISSIONER TURNBULL: Okay.

14 MS. SHERMAN: It's only on the
15 first floor.

16 COMMISSIONER TURNBULL: Oh, okay.

17 CHAIRPERSON MOLDENHAUER: Maybe
18 you can ask it this way, Mr. Turnbull. Is the
19 bathroom closer to P Street or farther from P
20 Street than the bedroom?

21 MS. SHERMAN: The bedroom is
22 further to P Street.

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1 CHAIRPERSON MOLDENHAUER: Okay.

2 MS. SHERMAN: But the space is
3 minimal.

4 CHAIRPERSON MOLDENHAUER: Got it.
5 Thank you.

6 MS. SHERMAN: Yes.

7 CHAIRPERSON MOLDENHAUER: If you
8 can then just go through the other pictures?

9 MS. SHERMAN: Yes.

10 CHAIRPERSON MOLDENHAUER: Or is
11 that everything?

12 MS. SHERMAN: Yes. Then there is
13 an issue about the light, the density of the
14 building and the privacy again, that is from
15 the dining room. So actually, right now we
16 have a tree which give us a little bit of
17 privacy, but if you add this building, then we
18 have no light. And it's going to look bulky
19 looking at our dining room.

20 So in this matter, we would have
21 to cut the trees and it's not completely in
22 the spirit of the community in Georgetown. We

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1 try to keep, you know, some -- we are -- even
2 in our home, we did very little
3 transformation.

4 CHAIRPERSON MOLDENHAUER: I don't
5 mean to cut you off.

6 MS. SHERMAN: Yes.

7 CHAIRPERSON MOLDENHAUER: But if
8 you can just explain each picture and then not
9 provide some additional testimony --

10 MS. SHERMAN: Yes.

11 CHAIRPERSON MOLDENHAUER: -- I
12 think you have already gone through that
13 picture. Do you want to go to the next one?

14 MS. SHERMAN: No, that's the
15 picture from the dining room. The first one
16 was from the second floor. So basically,
17 that's it.

18 CHAIRPERSON MOLDENHAUER: That's
19 it? Okay. Thank you very much. Do you want
20 to provide those pictures to Ms. Bailey?
21 Thank you.

22 MS. SHERMAN: Thank you.

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1 VICE CHAIRMAN DETTMAN: Mr.
2 Nathaniel, I'm wondering does the proposed
3 addition extend beyond the house that is to
4 the east?

5 MR. NATHANIEL: No.

6 VICE CHAIRMAN DETTMAN: The house
7 that is in between the applicant's and Ms.
8 Sherman's?

9 MR. NATHANIEL: No, it does not.
10 The extension will extend, approximately, to
11 the edge of the existing deck.

12 VICE CHAIRMAN DETTMAN: Okay.
13 Thank you.

14 MS. SHERMAN: Thank you.

15 CHAIRPERSON MOLDENHAUER: At this
16 time, we will just go off the record and we'll
17 take a quick five minute break.

18 (Whereupon, at 10:47 a.m. a recess
19 until 10:53 a.m.)

20 CHAIRPERSON MOLDENHAUER: Okay.
21 We are back on the record. And we are in the
22 middle of listening to Case 18053. And at

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1 this point in time, we have her testimony,
2 some persons in support and in opposition.
3 And now, it is an opportunity for the
4 applicant to provide any closing statements,
5 if they wish.

6 MR. NATHANIEL: We are concerned.

7 Well, I guess, we haven't had a chance to
8 speak with Ms. Sherman about any opposition.
9 We were totally unaware of her position. We
10 have been going through this process for,
11 approximately, a year now dealing with the
12 local ANC and the Commission of Fine Arts.

13 And you know, we would want to,
14 you know, accommodate any sense of privacy,
15 both on our -- within our property confines as
16 well as Ms. Sherman's. And that's all.

17 CHAIRPERSON MOLDENHAUER: Thank
18 you very much. At this point in time, the
19 record will be closed and we will enter into
20 the deliberation phase for this case.

21 Mr. Dettman, would you like to
22 start us off?

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1 VICE CHAIRMAN DETTMAN: Certainly,
2 Madam Chair. This is an application for an
3 addition to an existing two-story row dwelling
4 at 3212 P Street, N.W., in the Georgetown
5 neighborhood.

6 And in order to prevail on the
7 requested relief, the applicant must
8 demonstrate that it can meet the burden under
9 the general special exception criteria of 3104
10 and then the specific special exception
11 criteria under 223.

12 I think the case is relatively
13 straightforward, with the exception that I'll
14 make some specific points about the issues
15 that Ms. Sherman raised with respect to light
16 and air and privacy and use of her property.

17 The subject property is
18 nonconforming with respect to lot area and lot
19 width, lot occupancy. It will be
20 nonconforming with respect to lot occupancy as
21 a result of the proposed addition as well as
22 rear yard and open court.

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1 Just briefly summarizing the
2 criteria under 223, I'll just simply for the
3 most part incorporate by reference the Office
4 of Planning's report and note that I do agree
5 with the outcome of their analysis where they
6 recommend approval.

7 The 223.2 indicating that the
8 addition or accessory structure shall not have
9 a substantially adverse effect on the use or
10 enjoyment of any abutting property or dwelling
11 with respect to light and air.

12 I think that given the development
13 in the surrounding neighborhood to the
14 immediate east, the commercial development to
15 the west along Wisconsin Avenue, I don't see
16 that the proposed addition being a two-story,
17 it's open on the first level, it's just a
18 screened in porch and the second story an
19 expanded bedroom and then projecting out to
20 about the same depth as the existing deck, I
21 don't see the proposed addition having a
22 substantially adverse affect on light and air

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1 to neighboring properties. And so I think
2 that that standard is met.

3 With respect to the privacy of use
4 and enjoyment to the neighboring properties,
5 we do have, in our record, Letters of Support
6 from the adjacent neighbor to the east as well
7 as the tenant from the adjacent property to
8 the west.

9 And so with those letters, I would
10 say that the abutting properties are in
11 support of the project and do not see the
12 potential for any undue impact to the privacy
13 of use and enjoyment of their properties.

14 With respect to the points that
15 Ms. Sherman raised, I simply can't see where
16 the proposed addition, again, is going to have
17 an undue impact on the privacy and use of her
18 property.

19 In fact, it seems to me that,
20 looking at the pictures that she submitted,
21 the situation in the bathroom will improve,
22 because the current condition is a bay window

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1 that has a window that faces the bathroom.
2 The extension of the property will,
3 essentially, bring the property further out in
4 line with the bathroom window. And on the
5 eastern facade of the addition, there is going
6 to be no windows.

7 So I think the situation is
8 improved. And I also think that given that
9 the density of the Georgetown neighborhood,
10 you have to balance the decision to live in
11 such a dense neighborhood with any kind of
12 impact on privacy that that may or may not
13 have.

14 And so again, is there a small
15 impingement on privacy of the existing
16 condition and the proposal? Perhaps, but I
17 don't see it as an undue impact.

18 Finally, I'll note that the
19 application does have the support of the ANC,
20 that's our Exhibit No. 24, indicating that
21 they have no objection to the application for
22 a special exception. And they did say that

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1 their support for the project was contingent
2 upon a Letter of Support from the adjacent
3 residential neighbors. And as I have stated,
4 we have those letters in our record.

5 And so with that, Madam Chair, I
6 am in support of the application and will turn
7 it back to you for additional comment.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you, Mr. Dettman. I think that that was a
10 very full summary. And I would just simply
11 add that, as you said, the ANC did indicate
12 their approval was conditioned upon a Letter
13 of Consent from the adjacent neighbor, even
14 though Ms. Sherman did raise points, she is
15 not the adjacent neighbor. She is actually
16 two over from the applicant's property.

17 And we don't have items marked,
18 but we do have letters in support provided
19 today by Mr. Nathaniel from the neighbors at
20 3210 P Street and 3214 P Street. The one from
21 3214 P Street is actually from the tenant, not
22 the owner.

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1 And I do agree with your analysis.

2 I think that while Ms. Sherman does present
3 some concerns, I think that the level of
4 impact is not substantial considering that the
5 bay window will be eliminated, the windows
6 will be flattened, thus there will be some
7 reduction, potentially some minor increase and
8 impact, but nothing that would, I think, rise
9 to the level where we wouldn't support an
10 application.

11 In addition to that, the applicant
12 had reduced the request that they were asking
13 for. They had initially been asking for more
14 relief, but then they actually brought that
15 back and provided us with a revised set of
16 plans that came under 223.

17 223 relief has a more lenient
18 standard and so in reviewing that, I agree
19 with OP's report and I agree with Mr.
20 Dettman's analysis. And I'll see if there are
21 any other comments from Board Members.

22 COMMISSIONER TURNBULL: Thank you,

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1 Madam Chair. I just would concur with both of
2 you on your analysis. And I would just add my
3 own. I think this is a very unique little
4 site. You have got a lot of little backyards
5 which are so tight and close up to one
6 another, so that already from the existing
7 condition, different people can see different.

8 I think Mrs. Sherman could
9 actually see more of what's going on in the
10 applicant's backyard than vice versa. And I
11 think getting rid of the bay window actually
12 improves the condition, so she doesn't have
13 that other window looking more at an angle
14 onto her property.

15 So I would agree with your
16 analysis about the impact of the view on the
17 neighboring -- the sort of view blocking her
18 or allowing more of a view into her space.

19 So I'm in agreement with both of
20 you on that. I would just advise the
21 applicant that when we are looking at it, that
22 you are adding another downspout. I would

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1 just make sure that the existing downspout and
2 the new downspout drain the water into your
3 own property and make sure that it is focused,
4 say, on your own property and that any of the
5 lights that you add are down-lighting, that
6 they don't intrude or are not up-lighting that
7 would intrude with the neighboring spaces.

8 And I think that is all of my
9 comments.

10 CHAIRPERSON MOLDENHAUER: Ms.
11 Sorg, would you like to add anything?

12 MEMBER SORG: No. I think that
13 all three of you gave a very good summary and
14 analysis that I am in agreement with.

15 CHAIRPERSON MOLDENHAUER: Prior to
16 asking if there is a motion, I believe that
17 I'll leave the record open for a Letter of
18 Authorization from Mr. Nathaniel on behalf of
19 the applicant. We need that in writing today.

20 Thank you.

21 And that being said then, is there
22 a motion?

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1 VICE CHAIRMAN DETTMAN: Madam
2 Chair, I would be happy to make a motion.
3 Just before I do that, I want to just make a
4 couple closing remarks just specifically about
5 the light and air.

6 I know I said that it doesn't
7 appear as if there is going to be any kind of
8 substantial detriment to the light and air,
9 but again, just noting that there may be a
10 little bit of impact as a result of extending
11 the rear of the property.

12 However, that impact is going to
13 probably fall mainly on the property
14 immediately to the east, not on Ms. Sherman's
15 property. And especially not in any kind of
16 usable open space on either of those
17 properties.

18 I didn't mention the result of lot
19 occupancy under 223. The applicant can go to
20 70 percent and what is being proposed is 69
21 percent. Is that right? Yes. And so they
22 are consistent with that as well.

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1 And so with that, I would move for
2 approval of Application No. 18053 to permit a
3 rear addition to an existing two-story row
4 dwelling at 3212 P Street, N.W., not meeting
5 the area requirements of section 401, lot area
6 and lot width, lot occupancy, rear yard as
7 well as open court.

8 CHAIRPERSON MOLDENHAUER: And I
9 will second.

10 A motion has been made and
11 seconded. All those in favor say aye.

12 ALL: Aye.

13 CHAIRPERSON MOLDENHAUER: Mr. Moy,
14 can you, please, read back the vote?

15 MR. MOY: I'll forward that to Ms.
16 Bailey --

17 CHAIRPERSON MOLDENHAUER: Oh,
18 sorry. Thank you.

19 MR. MOY: -- for the vote. That's
20 fine.

21 CHAIRPERSON MOLDENHAUER: Ms.
22 Bailey, please?

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1 MS. BAILEY: Not a problem, Madam
2 Chair. The vote is recorded as 4-0-1 to grant
3 the application. The motion was made by Mr.
4 Dettman, seconded by Mrs. Moldenhauer. Ms.
5 Sorg and Mr. Turnbull support the motion to
6 approve. The third Mayoral Appointee is not
7 sitting at this time.

8 Are we doing a summary order on
9 this, Madam Chair?

10 CHAIRPERSON MOLDENHAUER: Yes,
11 please. Thank you.

12 MS. BAILEY: And with the
13 understanding that Mr. Gabriel will provide
14 the authorized letter prior to issuance of the
15 order?

16 CHAIRPERSON MOLDENHAUER: Yes,
17 that would be required.

18 MS. BAILEY: Thank you.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you. Thank you very much. And thank you, Ms.
21 Sherman, for coming in and providing your
22 testimony.

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1 We can read the next case on the
2 docket. Thank you.

3 MS. BAILEY: That is of Easter
4 Seals Greater Washington-Baltimore Region.
5 The number is 18051 and the application is
6 pursuant to 11 DCMR ' 3104.1, for a special
7 exception to allow a child development center,
8 that is 96 children and 35 staff, under
9 section 205. The property is Zoned R-4. It
10 is located at 2800 13th Street, N.W., Square
11 2855, Lot 837.

12 MS. RICKER: Thank you. Good
13 morning, my name is Marilyn Ricker, Vice
14 President of Easter Seals Children's Programs
15 and Services. And I do want to highlight that
16 this is not for operation. We have been there
17 since 1959 serving children with special needs
18 and low income subsidy kids.

19 We have been there for a while.
20 We are simply asking to increase our occupancy
21 from 80 to 96.

22 CHAIRPERSON MOLDENHAUER: Thank

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1 you very much, Mrs. Ricker. I believe that
2 the application is very full.

3 MS. RICKER: Yes.

4 CHAIRPERSON MOLDENHAUER: And we
5 have probably just a few points of
6 clarification. If you would like to allow us
7 to ask those questions prior to you presenting
8 your --

9 MS. RICKER: Sure. And you have
10 these?

11 CHAIRPERSON MOLDENHAUER: Yes, we
12 have all the documentation.

13 MS. RICKER: Okay.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you. Some points of clarification. In that
16 document that you actually just presented is
17 actually our Exhibit No. 24. And in that it
18 actually indicates that you would be serving
19 102 children, but then in the Office of
20 Planning report and some of the additional
21 documentation, it indicates that it would be
22 80 to 96. If you can clarify that for us?

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1 MS. RICKER: Sure. Our
2 Certificate of Occupancy for 96 would mean
3 that you can serve up to 96 children a day.
4 Frequently, if children graduate and we have
5 kids on the waiting list, because we do have
6 over 250 kids on our waiting list, if somebody
7 graduates, then we do fill that slot. So that
8 means that even our occupancy is 96, we can
9 serve more than 96 during the year, if we
10 replace one child with another.

11 CHAIRPERSON MOLDENHAUER: So you
12 would still then be just asking for 96?

13 MS. RICKER: Yes.

14 CHAIRPERSON MOLDENHAUER: In this
15 request.

16 MS. RICKER: Right.

17 CHAIRPERSON MOLDENHAUER: Okay.
18 Thank you for that clarification. And then, I
19 guess, the other point of clarification was
20 Office of Planning had indicated that there
21 would be about 30 to 35 staff members. But
22 then in some of your submissions, it indicated

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1 25.

2 MS. RICKER: I think what we
3 requested was up to 35, but right now we only
4 need 25 for the current -- for 96 children
5 right now. We would only need that. We were
6 encouraged in case there was any program
7 growth, not for number of children, but
8 delivery of different services that we could
9 utilize more staff.

10 And in that parking lot, and we
11 would be happy to limit that number of staff,
12 but that parking lot would accommodate that.
13 You can see from the pictures that during the
14 say we actually have extra spots and those are
15 for perhaps out-patients or community
16 visitors, parent program activities, things
17 like that.

18 CHAIRPERSON MOLDENHAUER: Okay.
19 Thank you. And have you had a chance to
20 review the Office of Planning report?

21 MS. RICKER: Yes.

22 CHAIRPERSON MOLDENHAUER: And then

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1 can you touch upon -- I know that in your
2 application you had indicated that there were
3 no other child development centers within
4 1,000 square feet. And obviously, OP's report
5 indicates that there are three other child
6 development centers, but that there wouldn't
7 be a significant.

8 Can you address that issue?

9 MS. RICKER: That are within 1,000
10 square feet?

11 CHAIRPERSON MOLDENHAUER: Yes,
12 1,000 feet. It indicates --

13 MS. RICKER: Not that I'm aware
14 of. I mean, we are at 13th and Girard. I
15 know that there is, you know, up on 14th, but
16 I would assume that that was a further
17 distance.

18 CHAIRPERSON MOLDENHAUER: Okay.
19 We can actually ask OP when they present their
20 testimony. But they indicate that, yes, there
21 are two on 1420 Columbia and then one on 2900
22 14th Street.

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1 MS. RICKER: Yes.

2 CHAIRPERSON MOLDENHAUER: That
3 would be within the --

4 MS. RICKER: I don't know that
5 they are within 1,000 square feet. I really--
6 you know, I was not aware that they were.

7 But we have been there since 1959.
8 We are not asking to operate a child
9 development. We are simply asking to increase
10 capacity.

11 What we do that is different from
12 the other child development centers, we are
13 inclusive, meaning we serve children with
14 special needs in a therapeutic environment
15 along with children that are typically
16 developed as a therapeutic environment.

17 So what we do that is different is
18 that we have our own in-house therapy, you
19 know, team that delivers services to the kids
20 in -- you know, with early childhood
21 education. And none of those other centers
22 are delivering those services.

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1 So we have a contract with D.C.
2 Early Intervention to provide early
3 intervention services. We are also gold
4 tiered, meaning we are accredited and we are a
5 subsidy provider, which -- so that's the
6 differentiator between Easter Seals and early
7 childhood education versus just child care.
8 This is a therapeutic environment.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you.

11 MS. RICKER: So they are not the
12 same.

13 CHAIRPERSON MOLDENHAUER: Do any
14 of the other Board Members have questions?

15 VICE CHAIRMAN DETTMAN: Yes. Ms.
16 Ricker, I just wanted to clarify something.
17 You had stated that you are not here for a
18 special exception to operate a child
19 development center.

20 MS. RICKER: Yes.

21 VICE CHAIRMAN DETTMAN: But I
22 think you might be, which doesn't change the

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1 way we go about today. However, I'm looking
2 at your C of O dated 2005 and for that C of O,
3 it was issued for a health care facility. And
4 then I'm looking at our Exhibit 4, which is
5 the letter addressed to a Ms. Reeves from Matt
6 Le Grant indicating that you will be required
7 to obtain a special exception under the
8 provisions of section 205, which is child
9 development center.

10 And so it appears as if you are
11 here to get a new C of O for child development
12 center, not a health care facility.

13 MS. RICKER: We have -- because
14 Easter Seals has been there since 1959 --

15 VICE CHAIRMAN DETTMAN: Yes.

16 MS. RICKER: -- originally, our
17 mission was to serve all -- all of our
18 children were children with special needs.
19 Many of those kids were medically fragile.

20 We still serve children that are
21 medically fragile with special needs, but we
22 serve them in an inclusive environment.

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1 Meaning, we are -- this is a child development
2 center that makes an exception for medically
3 fragile special needs children.

4 So you know, I don't -- you have
5 to tell us. And they did when we got our new
6 Certificate of Occupancy in 2005, we applied--
7 we were advised to apply as the same. So you
8 know, you have to tell me what we need to do.

9 VICE CHAIRMAN DETTMAN: Oh, I
10 think that, I mean, whether you were ill-
11 advised then or what have you, I think that,
12 like I said, it doesn't change the way we go
13 about today. And perhaps today will set the
14 record straight where we will put you in a C
15 of O, if the Board is inclined to grant the
16 approval, the request, you will have a C of O
17 for a child development center and you will be
18 well on your way.

19 MS. RICKER: Yes.

20 VICE CHAIRMAN DETTMAN: But what
21 would be helpful for the Board, and I don't
22 know if you know the provisions of section

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1 205? We can provide them to you.

2 MS. RICKER: Yes.

3 VICE CHAIRMAN DETTMAN: If we
4 could go through those and maybe with the
5 assistance of the Office of Planning just get
6 on the record from you --

7 MS. RICKER: Sure.

8 VICE CHAIRMAN DETTMAN: -- whether
9 or not you meet those provisions.

10 MS. RICKER: Sure.

11 VICE CHAIRMAN DETTMAN: And it
12 talks about parking and other stuff like that.

13 CHAIRPERSON MOLDENHAUER:
14 Actually, we just looked and our Exhibit No.
15 3, which was submitted by you in your
16 application, already went through and is
17 incorporated for our record, section 205. But
18 it is a good point for the record to realize
19 that we would not just be providing you, if we
20 are granting relief today, an extension or
21 expansion of the number of children and staff,
22 but also to potentially authorize you for a

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1 special exception for a child development
2 center.

3 MS. RICKER: Right.

4 CHAIRPERSON MOLDENHAUER: So that
5 you would be able to potentially correct your
6 C of O and the use of your C of O if we
7 granted the relief today.

8 MS. RICKER: Great. Thanks.

9 CHAIRPERSON MOLDENHAUER: Are
10 there any additional questions from the Board?

11 COMMISSIONER TURNBULL: Yes, Madam
12 Chair. I just have one.

13 Just getting back to the 120
14 versus 96, basically, is a graduating class
15 been around 24?

16 MS. RICKER: Yes. And that can
17 vary. Sometimes a child is there for early
18 intervention services and they were honoring
19 their IFSP, their Individual Family Service
20 Plan, and they do so well that they may not
21 need to stay there. They can go ahead and
22 transition into D.C. Public Schools, that's

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1 our goal. That's the goal of early
2 intervention.

3 So yes, it could be the graduating
4 class or it could be a child that was younger
5 that met the goals of their therapy services.

6 So, yes.

7 COMMISSIONER TURNBULL: All right.

8 MS. RICKER: The difference
9 between that is the number of children. And
10 maybe we shouldn't have put that in there,
11 because the number of children we serve per
12 year is always greater than our occupancy,
13 because not all children stay for the whole
14 year.

15 Some stay for five years. It just
16 depends.

17 COMMISSIONER TURNBULL: Yes. I
18 guess, the occupancy at any one time can be no
19 more --

20 MS. RICKER: It never exceeds --

21 COMMISSIONER TURNBULL: -- than

22 96?

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1 MS. RICKER: We never do. No.
2 And licensing requires that as well.

3 COMMISSIONER TURNBULL: Okay.

4 MS. RICKER: That you can never
5 exceed your -- and actually, we are always
6 under that number. That's the maximum number.
7 For best practices, we really never reach
8 that maximum number.

9 THE INVESTIGATOR: Okay. Thank
10 you.

11 MS. RICKER: Okay.

12 CHAIRPERSON MOLDENHAUER: It
13 doesn't appear that there is any additional
14 questions from the Board. We can always
15 return to additional Board questions. But
16 right now, what we will do is we'll turn to
17 the Office of Planning for them to present
18 their report.

19 MS. JACKSON: Good morning, Chair
20 and Members of the Board. For the record, my
21 name is Arlova Jackson with the Office of
22 Planning. The Office of Planning recommends

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1 approval of this request from the Easter Seals
2 for child development center.

3 We find it meets the criteria
4 found in section 205. I'll just briefly
5 state: The site has adequate parking to
6 accommodate the increase as well as a defined
7 pick-up and drop-off area, so as not to create
8 objectionable traffic conditions.

9 Outdoor play areas are screened
10 and located at the rear of the site. And the
11 project has received favorable recommendation
12 from its adjacent neighbor to the west.

13 So in sum, we find the proposal
14 meets the special exception review criteria
15 and should not have an adverse impact on
16 surrounding properties.

17 I will leave it there and take any
18 questions that you have, at this time.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you very much. Are there any questions from
21 the Board for OP? It doesn't appear as though
22 there are any.

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1 If the applicant would like to ask
2 any questions of OP?

3 MS. RICKER: No, thank you.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 Then at this time, we will open up the floor
6 to the ANC. It does not appear that there is
7 anybody in the audience from the ANC.

8 We have our Exhibit No. 28, which
9 is a letter from the ANC, which indicates that
10 they had a noticed meeting on April 1, 2010,
11 that there was a quorum present and that they
12 voted unanimously 6-0 to support the
13 application. And that this letter would
14 satisfy all of our requirements to receive
15 great weight.

16 Thank you. And at this point in
17 time, we will open up the floor to any persons
18 or parties in support or in opposition. There
19 is no one in the audience. Seeing none, we
20 will move on.

21 At this point in time, the
22 applicant can present a closing statement.

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1 MS. RICKER: I just want to thank
2 you for supporting Easter Seals and our
3 mission.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you very much. Does the Board have any final
6 questions for the applicant? It does not
7 appear as such.

8 So at this point in time, we will
9 end the Public Hearing and enter into a
10 deliberation on this case.

11 I will start us off. The
12 applicant is before us by a letter from Mr. Le
13 Grant indicating the relief that is required
14 in our Exhibit No. 4. And as Mr. Dettman
15 identified, they are here both to seek a
16 special exception under 205 for a child
17 development center, so that there occupancy
18 permit can indicate the correct use, and also
19 so that they can have an extension of the
20 prior number of children that they were
21 serving.

22 And so it is under 205 that we

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1 reviewed this application. I will incorporate
2 for reference all of OP's report, which is our
3 Exhibit No. 25. I think that it runs through
4 all of the different items for the special
5 exception relief under 205.

6 And the applicant seems to be an
7 exceptionally positive aspect of the
8 community. They have been working in the
9 community since --

10 MS. RICKER: 1959.

11 CHAIRPERSON MOLDENHAUER: -- 1959.

12 I was just looking for the applicant. And so
13 they have, obviously, had no issues with the
14 community, no issues with parking, things to
15 that effect.

16 And so there was a statement in
17 OP's report that there are three additional
18 other child development centers within 1,000
19 feet of this center. However, since they have
20 been operating for such a long period of time
21 with no other negative impact, OP stated that
22 that would not be a concern. And I don't

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1 believe it would be a concern either for
2 granting the relief.

3 In addition to that, we have, one,
4 two, three, four, five letters of support from
5 different neighbors and different members of
6 the community, which is our Exhibit No. 23.
7 We also have, as I read into the record, the
8 ANC's letter of support indicating that they
9 would support the application.

10 And then based on the above, I
11 would also recommend support of the
12 application. Is there any further
13 deliberation from Board Members?

14 COMMISSIONER TURNBULL: Madam
15 Chair, I would just add that we also have a
16 letter from DDOT, which is Exhibit No. 26,
17 recommending approval. And we also have an
18 Exhibit No. 22, a letter from OSSE,
19 recommending approval.

20 CHAIRPERSON MOLDENHAUER: Yes,
21 thank you very much, Mr. Turnbull. Are there
22 any additional items for deliberation?

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1 If not, then I will make a motion
2 to approve Application No. 18051 for a special
3 exception for the existence of a child
4 development center at location 2800 13th
5 Street for relief under section 205, to allow
6 96 students and 35 staff members.

7 Do I have a second?

8 COMMISSIONER TURNBULL: Second.

9 CHAIRPERSON MOLDENHAUER: All
10 those in favor?

11 ALL: Aye.

12 CHAIRPERSON MOLDENHAUER: Ms.
13 Beverley, will you, please, read back the
14 vote?

15 MS. BAILEY: Madam Chair, the vote
16 is recorded as 4-0-1 to approve the
17 application. Mrs. Moldenhauer made the
18 motion, Mr. Turnbull seconded, Mr. Dettman and
19 Ms. Sorg support the motion. The third
20 Mayoral Appointee is not sitting at this time.

21 So the vote is 4-0-1.

22 And the Board did not approve any

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1 conditions and are we doing a summary order,
2 Madam Chair?

3 CHAIRPERSON MOLDENHAUER: Yes,
4 considering that there is no parties in
5 opposition, I would like to waive the
6 requirements and request a summary order.

7 MS. BAILEY: Thank you.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much.

10 MS. BAILEY: Those are all the
11 cases for the morning session, Madam Chair.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you very much. The one case you had indicated
14 earlier was postponed, which was the Freeda
15 Child Development Center to April 20th.

16 And so the morning session is
17 concluded. Thank you.

18 (Whereupon, the Public Hearing was
19 recessed at 11:22 a.m. to reconvene at 1:18
20 p.m. this same day.)

21
22

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

2 1:18 p.m.

3 CHAIRPERSON MOLDENHAUER: This
4 hearing will, please, come to order. Good
5 afternoon, ladies and gentlemen.

6 This is the April 13, 2010 Public
7 Hearing of the Board of Zoning Adjustment for
8 the District of Columbia. My name is Meridith
9 Moldenhauer, Chairperson. Joining me today is
10 Vice Chair, Shane Dettman representing the
11 National Capital Planning Commission, and
12 Nicole Sorg, Mayoral Appointee.

13 To her left is Mr. Clifford Moy,
14 Secretary of the Zoning Office, Lori Monroe, a
15 representative from OAG, and then Ms. Beverley
16 Bailey.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door. Please,
20 be aware that this proceeding is being
21 recorded by a Court Reporter and also is being
22 webcast.

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1 Accordingly, we must ask you to
2 refrain from any disruptive noise and actions
3 in the hearing room.

4 When presenting information to the
5 Board, please, turn on your microphone and
6 speak into the microphone, starting with
7 stating your name and home address.

8 When you are finished speaking,
9 please, turn your microphone off, so that the
10 microphone no longer picks up any sound or
11 background noise.

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

20 The order of procedures for
21 special exceptions and variances are: One,
22 statement and witnesses of the applicant; Two,

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1 Government reports, including the Office of
2 Planning and Department of Public Works;
3 Three, reports from the ANC; Four, parties and
4 persons in support; Five, parties and persons
5 in opposition; and then last, closing
6 statements by the applicant.

7 The order of procedure for an
8 appeal application will be as follows:
9 Statements and witnesses of the appellant; the
10 Zoning administrator; other Government
11 officials' case; case for the owner, lessee or
12 operator of the property involved, if not the
13 applicant; the ANC within which the property
14 is located; intervenors in the case, if
15 permitted by the Board; rebuttal and closing
16 statement by the appellant.

17 Pursuant to section 3117.4 and
18 3117.5, the following time constraints will be
19 maintained: The applicant, appellant, persons
20 and parties, except an ANC, in support,
21 including witnesses will be provided 60
22 minutes collectively. Appellees, persons and

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1 parties, except ANC, in opposition, including
2 witnesses will be provided 60 minutes
3 collectively. And individuals will get three
4 minutes.

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

12 Nothing prohibits the Board from
13 placing reasonable restrictions on cross-
14 examination, including time limits and
15 limitations on the scope of cross-examination.

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

19 The Board and the staff will specify at the
20 end of each hearing what is expected and the
21 date when the person must submit such
22 additional evidence to the Office of Zoning.

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1 After the record is closed, no
2 other information will be accepted by the
3 Board.

4 The Sunshine Act requires that the
5 public hearing on each case be held in the
6 open before the public. The Board may,
7 consistent with its Rules of Procedure and the
8 Sunshine Act, enter Executive Session during
9 or after the Public Hearing on a case for
10 purposes of reviewing the record or
11 deliberating on the case.

12 The decision of the Board in these
13 contested cases must be based exclusively on
14 the public record. To avoid any appearance to
15 the contrary, the Board requests that persons
16 present do not engage the Members of the Board
17 in conversation.

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

21 The Board will make every effort
22 to conclude the Public Hearing as near to as

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1 possible 6:00 p.m. If the afternoon cases are
2 not completed at 6:00 p.m., the Board will
3 assess whether it can complete the pending
4 cases or case remaining on the agenda.

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

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

16 Does the staff have any
17 preliminary matters?

18 MS. BAILEY: Madam Chair, good
19 afternoon.

20 CHAIRPERSON MOLDENHAUER: Good
21 afternoon.

22 MS. BAILEY: And to Members of the

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1 Board and to everyone as well, there is, Madam
2 Chair, and it has to do with an Appeal of
3 William J. Reaves, No. 17980. There was a
4 request from the Department of Consumer and
5 Regulatory Affairs for the session this
6 afternoon to be postponed, Madam Chair.

7 The Zoning Administrator has
8 indicated that he will be unavailable and I
9 think he has a representative here to address
10 the matter.

11 MR. RENJEL: Good afternoon.
12 Robert Renjel on behalf of DCRA. And just
13 like Ms. Bailey, I believe, said, I'm here
14 just moving for a continuance of the matter,
15 based on the unavailability of Mr. Le Grant.

16 CHAIRPERSON MOLDENHAUER: I
17 believe that there was a motion to dismiss the
18 case filed by your office, also?

19 MR. RENJEL: Yes, there was both a
20 motion to dismiss and the motion to continue.
21 Mr. Le Grant will be speaking about the
22 certain matters that are in the motion to

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1 dismiss as well as an email that he received
2 from the appellant, Mr. Reaves, indicating
3 that the matters have been resolved.

4 He is just looking for a refund of
5 his appeal fee. That's the only issue left in
6 the matter.

7 CHAIRPERSON MOLDENHAUER: Are you
8 prepared to argue or at least present your
9 motion to dismiss today?

10 MR. RENJEL: I would rather have
11 Mr. Le Grant here, because he is the one who
12 received the specific email. And he can
13 identify each of the documents in the motion
14 to dismiss.

15 CHAIRPERSON MOLDENHAUER: I mean,
16 I don't think that it's actually necessary if
17 the motion is uncontested and you have already
18 provided us the documentation, we can consider
19 that. I don't think that we actually have to
20 have testimony in regards to a motion to
21 dismiss.

22 So if you are prepared to move

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1 forward today, I would like to move forward on
2 the motion to dismiss.

3 MR. RENJEL: Okay. We can move
4 forward.

5 CHAIRPERSON MOLDENHAUER: Okay.
6 Thank you. Then what we will do is we'll call
7 the case third on the docket, as it is already
8 shown on the agenda.

9 MR. RENJEL: Okay.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you. So then I think what we will do is we
12 will dismiss any motion to continue and move
13 forward with the agenda as planned.

14 At this time, what we will do is
15 any individuals wishing to testify today will,
16 please, rise to be given the oath. Ms.
17 Bailey, will you, please, administer the oath?

18 (Whereupon, the witnesses were
19 sworn.)

20 MS. BAILEY: Thank you. Madam
21 Chair, ready for the first case?

22 CHAIRPERSON MOLDENHAUER: Yes, I

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1 am. Thank you very much.

2 MS. BAILEY: Application 18054 of
3 Raymond C. Fay, and it's pursuant to 11 DCMR '
4 3103.2, for a variance from the lot occupancy
5 requirements under section 403, a variance
6 from the rear yard requirements under section
7 404, to allow the construction of a rear deck
8 addition to an existing one-family row
9 dwelling. The property is located at 1348
10 Perry Place, N.W. It is located in Square
11 2827 on Lot 147 and the property is Zoned R-4.

12 CHAIRPERSON MOLDENHAUER: Hello,
13 good afternoon. Could you both introduce
14 yourself for the record?

15 MR. FAY: My name is Raymond Fay.

16 CHAIRPERSON MOLDENHAUER: I
17 believe your microphone has to be on.

18 MR. FAY: Oh, now it's on. My
19 name is Raymond Fay. I am the applicant. I
20 live at 1348 Perry Place, N.W.

21 MR. ENRIQUEZ: And I'm Tony M.
22 Enriquez. I'm an architect. And Ray is my

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1 Godfather to my child.

2 CHAIRPERSON MOLDENHAUER: Okay.

3 At this time, the applicant can present its
4 case.

5 MR. FAY: Thank you, Madam Chair.

6 I have been a D.C. resident since 1970 except
7 for Peace Corps service in South America where
8 I met Tony Enriquez and he and I served
9 together, and except for a work stint in
10 Chicago. And I'm a single parent of three
11 children.

12 We moved to the Columbia Heights
13 neighborhood just very recently after having
14 lived elsewhere in D.C. for many, many years.

15 I bought the house that I live in
16 in the condition in which it is. Somebody
17 renovated it, so all of the things that you
18 see on the application are as they were when
19 they bought the house.

20 I would submit to you that the
21 application has no opposition. It has been
22 supported not only by my immediate neighbors

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1 on the side of me, one of whom has lived there
2 for 70 years, Mr. Holliday, and Mr. Powell on
3 the other side of me who has lived there for
4 over 40 years.

5 And we spent some time talking not
6 only about the plans, but also about their own
7 access to their rear yards because of the very
8 tight restrictions that we have in the
9 alleyway. And they have supplied, with the
10 application, I believe, with the supplement I
11 submitted, their letters of support.

12 We also had the unanimous support
13 of the ANC. We went to the ANC and the ANC
14 wanted 10 copies of the entire application.
15 And we had a nice discussion there and a long
16 ANC meeting.

17 And the neighbors were -- there
18 was a lot of discussion about this, because
19 the application was filed and Tony was with me
20 at the time of the snow, so even though I was
21 a new neighbor, a lot of people were on the
22 street and also asking about the project, what

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1 impact it would have on them and also talking
2 about their own plans.

3 I would like to spend just a
4 second describing the project, because it is
5 not totally accurately described in the Office
6 of Planning report. And I'll paint the mental
7 picture.

8 The house has two existing decks
9 on it, small decks, that both extend from
10 doorways. There is a doorway on the first
11 floor, which is the dining area. And that's
12 the door that goes out to the small deck.
13 Directly above it is another deck that
14 provides the safety egress from a bedroom
15 door.

16 So the decks are about 8 feet in
17 depth from the house and then go down into the
18 rear yard.

19 The rear yard is now paved. It is
20 basically enough for two parking spaces and it
21 provides the ability to get two cars off the
22 street.

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1 And then there is another
2 characteristic that's fairly important in
3 terms of the objections that were raised here,
4 is to the left of the small deck is the
5 existing stairwell that has been there since
6 the house was built in 1900. It goes down in
7 to the basement well.

8 There is no door down there. The
9 only egress from, safety egress, the basement
10 is through the window in my son's bedroom.
11 And you come out that window and then you have
12 to go up the steps.

13 Those steps don't end until you
14 get about 12 feet from the house. So when you
15 take the 12 feet plus the landing area, that's
16 really where you have to begin this deck
17 project. You can't bring it any closer than
18 about 15 feet from the house. So then you
19 have the paved area and 20 feet.

20 And then the other aspect of this
21 is that at the end of the proposed 20 foot
22 deck, you have an irregular-shape at the end

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1 of the property. And I'm proposing to leave
2 that open, so that neighbors on both sides
3 will have access to their rear yards. And it
4 is also an, as I'll talk about with regard to
5 the uniqueness, irregular-shape in terms of
6 the alley there.

7 Again, just to give a general
8 picture, when you look out the back of my
9 house and you go to the proposed deck level,
10 which would be about 8 feet above ground, at
11 that level, you are looking pretty much
12 straight into the backyards of all of the
13 houses across the alley, because the houses
14 across the alley on Parkwood Place all are
15 elevated.

16 They have retaining walls and
17 steps that go up. Some of them, their yards
18 don't start until the top of a flat roof
19 garage. So basically, everything on the
20 Parkwood side is 4 to 8 feet higher than the
21 ground on our side.

22 And the other thing that actually

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1 I was talking to Mr. Cochran before the
2 hearing about this, I had forgotten about one
3 of the restrictions is that on the Parkwood
4 side, everybody has got to put their garbage
5 cans in the alley. So you have 2 or 3 less
6 feet in the alleyway, because they can't put
7 their garbage cans in the yard and then bring
8 them down. It's too high a spot.

9 On our side of the street, on the
10 Perry Place side of the street, the picture
11 shows that my immediate neighbor to the east,
12 Mr. Holliday, he has a second story deck porch
13 built into the brick structure, which is
14 exactly even with my higher deck.

15 There are two or three more of
16 those looking down the road. Basically, there
17 are many structures, in terms of rear decks,
18 that are just as high or higher than mine on
19 my side of the street. And there are also
20 fences that are at the same level as what I am
21 proposing to build.

22 In light of the fact that we had

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1 an objection here, I would like to go
2 directly, if I might, to the questions of
3 uniqueness and practical difficulty.

4 And I think there has been a
5 little bit of misunderstanding about the
6 uniqueness aspect.

7 The exceptional condition of this
8 property is the shape at the alley line and
9 the limitation on alley access. The property
10 is unique because of what the OP called the
11 rhomboid-shape at the alley line. And right
12 in the middle of my property, the alley goes
13 from a width of 15 feet to 10 feet and there
14 is the bend.

15 In that bend, at that point, the
16 alley narrows making it very difficult to
17 maneuver. So to accommodate the neighbors on
18 either side in terms of the unique shape that
19 I'm facing here, I've pushed the deck in as
20 far as I can from the rear property line and
21 still made that clearance from the house, so
22 that you can get out of the basement.

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1 And that's the way it is set up.
2 You can't really get in and out of the place
3 unless you have that setback from my property,
4 which I'm giving up at the alley line and it's
5 that narrowing from 15 to 10 feet which has
6 even made it a little bit worse, because at
7 the 10 foot point, people have, on the
8 Parkwood side, got the garbage cans.

9 The retaining walls are leaning
10 in, so it's even narrower there. So as a
11 practical matter, it's a real narrow space to
12 get in and out. I think it's one of the
13 narrowest alleys around.

14 In terms of the practical
15 difficulty, I think I have explained a little
16 bit about it, is my objective here is,
17 obviously, to kind of double the use of the
18 backyard, is to provide a place for two cars
19 to park to keep them off the street in a very
20 tight parking neighborhood and also to have
21 the usable rear yard space in the form of a
22 deck, which is roughly 20 x 20.

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1 And I want to kind of stand on the
2 idea that I think it is great for the
3 neighborhood to alleviate the parking problem,
4 because everybody complains about it and
5 everybody is happy to see two fewer cars on
6 the street. And it is even aggravated on my
7 street because Perry Place, my block, had the
8 distinction of being the only street in the
9 neighborhood that couldn't get a plow down it
10 during the snow, because it's so narrow to
11 begin with.

12 In terms of the positive aspects
13 of the project, there is no negative impact
14 here in terms of the sight lines. The privacy
15 is what it is. Everybody waves to everybody
16 out the back window. You see everybody on
17 every level. This is not any greater. I'm
18 not increasing the level of looking down on
19 anybody any more than anybody already is.

20 And basically what I'm doing is
21 I'm trying to double the use of the space in
22 an aesthetic manner with a, obviously, well-

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1 planned deck by Mr. Enriquez and alleviate the
2 parking problem.

3 I would like any kind of a
4 technical question to be directed to Tony,
5 because that's his business and not mine. And
6 I would also like to request, if I might, a
7 Bench decision and summary order. Thank you.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much. Do you want to have Tony
10 testify as to any aspects or are you completed
11 with your testimony?

12 MR. FAY: It's up to him. If he
13 thinks I left a lot of stuff out, he should
14 say something. If not, I think he should
15 respond to questions.

16 MR. ENRIQUEZ: Well, the only
17 thing I might add is that the deck is very
18 open. It's got railing and the pictures that
19 -- of the existing decks will be mimicked by
20 the new deck. So all the railing is not
21 solid. It's just railing with 4 inches in
22 between. So it's very open.

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1 So it doesn't have any impact on
2 any air circulation. It doesn't have any
3 impact on shadows casting on the neighbors.
4 It doesn't have any -- it doesn't increase the
5 noise levels, because as Ray testified, there
6 is really no privacy in the back alley there.

7 Every row house is two and a half
8 stories. They all have windows looking down,
9 so, you know, there is nothing to that.

10 The other thing that I might add
11 is that he plans to have container gardens up
12 there, so there will be some greenery in the
13 drab alley as it is now. So I think it's
14 really an addition to the alleyway. And not
15 to mention that it does take two much needed
16 parking spaces off the streets and into the
17 back alley.

18 Not everybody in that block is
19 able to park in the back. There are some
20 people that don't have access to their
21 backyards. So that and everything else,
22 unless anybody has any questions?

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you very much. What we will do now is we'll
3 open up the floor to any Board questions.
4 And, Mr. Dettman?

5 VICE CHAIRMAN DETTMAN: Thank you,
6 Madam Chair. Mr. Fay, just based on your
7 testimony, it sounds like you are relatively
8 familiar with the three prong test that the
9 Board has to apply to each variance case.

10 MR. FAY: Yes, sir.

11 VICE CHAIRMAN DETTMAN: And you
12 had addressed the first two prongs. For the
13 exceptional condition, correct me if I'm
14 wrong, but I basically heard there are
15 essentially two exceptional conditions on your
16 property. One has to do with its shape at the
17 rear alley. And the second one is the
18 limitation on alley access.

19 And my question to you is how did
20 those two elements, and you can address them
21 individually, if you would like, give rise to
22 your practical difficulty? Basically, how do

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1 those two aspects create the practical
2 difficulty whereas, how I understand it, it
3 would be your inability to double the use of
4 the backyard and your inability to alleviate
5 the parking problem.

6 MR. FAY: That's right. To me, in
7 my view, kind of one flows into the other.
8 And the reason being is because unless -- you
9 know, I have this limitation that I've got to
10 be 15 feet away from the house to start it.
11 And then I have to be a little farther in from
12 the rear to finish it. And that leaves,
13 basically, enough space to put the cars
14 underneath the deck.

15 I mean, one, there is no way to
16 accomplish both uses without designing the
17 project the way it is. I mean, and in my
18 discussions with Mr. Cochran, we talked about
19 options and, including, you know, pushing the
20 whole project in or slicing it in half,
21 parallel parking a car, which I tried to do,
22 can't do it.

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1 One of the things that is not
2 shown topographically here is that there is a
3 little rise between the alley and my rear yard
4 and the slope is in that first 3 to 5 feet.
5 And so since it was suggested that I should
6 convert the whole thing to a one parking space
7 thing, which I disagree that that would be the
8 optimal use, but I tried to parallel park a
9 car and you really can't.

10 I have a small car. You can't do
11 it, because of the bend in the alley, the fact
12 that it is 10 feet wide, that you've got
13 garbage cans there, it's just not practical.
14 You have to be Parnelli Jones to do it.

15 VICE CHAIRMAN DETTMAN: Okay. I
16 believe you are probably required to provide,
17 perhaps not even provide, one parking space
18 based on the age of the house, but I'm pretty
19 sure the regulations call for one space. You
20 have two.

21 And so I guess how do these
22 exceptional conditions make it practically

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1 difficult for you to park two cars back there,
2 when, indeed, you are doing it right now?

3 MR. FAY: I'm doing it now. Well,
4 I mean, I view this as explaining the
5 practical difficulty of both aspects of the
6 use.

7 VICE CHAIRMAN DETTMAN: Okay.

8 MR. FAY: Because I'm trying to
9 double the use of the backyard, which I
10 thought was a good thing.

11 VICE CHAIRMAN DETTMAN: Yes.

12 MR. FAY: It is still consistent
13 with the Zoning Regulations. It allows me to
14 use this space without impinging on others.

15 VICE CHAIRMAN DETTMAN: Yes.

16 MR. FAY: And that the practical
17 difficulty is you can't construct the deck
18 except in the way that we have presented it
19 and still park the two cars in the back. You
20 know, and if I'm not -- I'm not an expert in
21 this area of the law, as you might expect,
22 but, I mean, I see it as kind of common sense

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1 blending of the two aspects of it.

2 VICE CHAIRMAN DETTMAN: I saw in
3 your filings, our Exhibit 24, when you address
4 some of the discussions that you had with OP
5 staff concerning an option that would provide
6 for 70 percent lot occupancy and a special
7 exception of 223.

8 Could you kind of summarize those
9 discussions?

10 MR. FAY: Well, one of the
11 discussions had to do with moving the deck
12 closer to the house. And I think I probably
13 didn't explain it too well in the beginning,
14 but it is the egress from the basement that
15 actually prevents you from doing that.

16 And also, I would have to tear
17 down or shorten the existing decks and, I
18 mean, that's what I basically paid for the
19 house. It's brand new construction. It's
20 very solid material and I don't -- I think it
21 would be an undue burden to do that. That was
22 one of the things we talked about.

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1 The other thing we talked about
2 was basically having a deck that is shorter
3 than the cars would be. And if -- you know,
4 we'll have kids around and I don't know a kid
5 that isn't -- doesn't throw stuff off a deck.

6 And I don't want to -- I mean, the only --
7 the practical use here is to cover the cars.

8 And so a 15 foot deck would not
9 cut it. And that was -- so those were the
10 discussions that we had. We also did talk a
11 little bit -- we didn't talk about the part in
12 the report about the parallel parking, that
13 came afterwards.

14 So it was just the infeasibility
15 of shrinking the project to get to the 70
16 percent. And the other thing that I was
17 thinking and I volunteered to Mr. Cochran was
18 that even though the test for the 70 percent
19 is a little more lenient, you still are
20 looking at the same general idea.

21 You know, is there any negative
22 impact on the neighbors? Is this a good thing

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1 in terms of the use of space? Does it
2 generally conform to the zoning? And I
3 thought that the 77 percent and the 70 percent
4 were just about roughly equal. We are still
5 building a very high grade deck, open design,
6 neighbor-friendly, because of the fences on
7 both sides, that will allow my neighbors to
8 get another foot on their property, because
9 they will get to tear down their own fences.

10 And that was my thinking. And I
11 went to Tony and I said can you sharpen your
12 architectural pencil and try to redraw this
13 thing and get it to 70 percent and he told me
14 he couldn't do it.

15 VICE CHAIRMAN DETTMAN: One more
16 question, Madam Chair. I guess it would be
17 directed towards Mr. Enriquez.

18 Why couldn't you, essentially,
19 shave off 116 square feet from the deck?

20 MR. ENRIQUEZ: Well, the only --

21 VICE CHAIRMAN DETTMAN: Is it
22 possible structurally?

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1 MR. ENRIQUEZ: No, it's not
2 possible structurally. But in order to take,
3 I think it was, 117 feet in order to bring it
4 down to 70 percent, you would have to take 5
5 foot off of the deck, which is roughly about
6 102 square feet. And then the way the project
7 was designed, it was designed so there would
8 be no -- so that the whole deck, including the
9 railing would be inside of the property line.

10 So we wouldn't have any negative
11 impact on the neighbors in terms of property
12 lines and everything. So the way that that
13 would accomplish was in order to knock off an
14 additional 15 square feet, would be to put the
15 railings instead of the outside of the deck,
16 to bring it in 6 inches. So that gives you a
17 total of about 15 square feet.

18 So that would be the only way of
19 accomplishing that. But then again, you would
20 be cutting the deck down to 15 feet.

21 Because of the limitation of the
22 landing of the stairwell coming from the

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1 basement, I mean by code, you are regulated to
2 provide a landing with a minimum of 3 feet.
3 So that sort of prevents you from pushing it
4 back.

5 One of the things though is that
6 we did take a lot of care in setting the deck
7 back, especially on the property to the west,
8 because historically that fence line has ended
9 about 3.5 to 4 feet, because that's the only
10 way that the neighbor can have access.

11 So in essence, that triangle that
12 is left, I think if you look at the floor plan
13 page, this page here, if you look at it, this
14 triangle here is actually almost deeded over
15 to the alley, so that the traffic coming
16 through there will have a much better
17 transition from the 10 feet to the 15 feet,
18 plus also allow Mr. Fay and the two neighbors
19 a better turn radius into their property.

20 The neighbor to the east, even
21 though he is able to park one car, he can only
22 come in from the west and park at an angle.

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1 He just doesn't have enough room to maneuver.

2 CHAIRPERSON MOLDENHAUER: Just to
3 kind of follow-up on some questions. Mr.
4 Dettman asked the question about would there
5 be a structural problem in actually just
6 reducing the size. And I think what you
7 indicated, you referenced information about
8 having to just reduce the size, but the only
9 negative would be that the deck would be
10 smaller?

11 MR. ENRIQUEZ: Well, yes. If you
12 reduced it and still be allowed to park two
13 cars underneath, the deck area would be
14 roughly around 15 x 20. In order to only put
15 a deck on half of the lot, you run into all
16 kinds of problems because structurally, you
17 are not expanding, you know, the whole width
18 of the yard. So you are actually losing a lot
19 of space if you only put half a deck on there.

20 CHAIRPERSON MOLDENHAUER: Okay.

21 MR. ENRIQUEZ: The long way. You
22 know what I mean?

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1 CHAIRPERSON MOLDENHAUER: I mean,
2 you are losing space, but it could still be
3 accomplished?

4 MR. ENRIQUEZ: No, it wouldn't,
5 because you would have structural poles in the
6 center of your lot line.

7 CHAIRPERSON MOLDENHAUER: But that
8 would be if you are actually -- couldn't you
9 move it closer to the house instead of
10 actually making it narrower?

11 MR. ENRIQUEZ: No. We can't move
12 it closer to the house because we need at
13 least 15 feet from the house because of the
14 access from the basement. The basement, it's
15 like a basement well. And it has got stairs
16 coming up. And when you come up from the
17 stairs, you are 12 feet away from the property
18 line and then you need a landing of 3 feet.

19 CHAIRPERSON MOLDENHAUER: But I
20 guess my question is not the -- I understand
21 the --

22 MR. ENRIQUEZ: The length?

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1 CHAIRPERSON MOLDENHAUER: --
2 practical understanding of the fact that you
3 have to have a separation between the prior
4 porches and the starting of the deck.

5 My question is why does it have to
6 go 20 feet into the rear and why can't it just
7 go 15 feet into the rear?

8 MR. ENRIQUEZ: There is actually
9 no limitation. I mean, they could go 15 feet.

10 CHAIRPERSON MOLDENHAUER: They
11 could go 15 feet instead of 20?

12 MR. ENRIQUEZ: 15 feet, yes --

13 CHAIRPERSON MOLDENHAUER: Okay.

14 MR. ENRIQUEZ: -- not 20.

15 CHAIRPERSON MOLDENHAUER: And
16 just --

17 MR. ENRIQUEZ: But --

18 CHAIRPERSON MOLDENHAUER: -- to
19 kind of put something on the record for Mr.
20 Fay to understand, I understand your testimony
21 about the fact that, you know, children will
22 throw things off and that's detrimental to

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1 your use.

2 But as the Board, we have to look
3 at the regs and we have to look at the
4 property. We can't look at an individual
5 person's use or individual factors. We have
6 to look at how the property and whether or not
7 the property or the use could be obtained and
8 not seek additional relief and whether or not
9 that conforms with the Zone Plan.

10 So without considering whether or
11 not, you know, the deck would cover the full
12 length of the car, we have to see, okay, well,
13 is it practical? Is it possible that you
14 could conform with a 223 or you could conform
15 with something that has a less stringent
16 requirement.

17 A variance is one of the highest
18 levels of relief that is sought. And I just
19 want to make sure that you are aware of that
20 as we are kind of going through this analysis.

21 MR. FAY: I am aware of that. And
22 I was a little bit -- I mean, my reaction to

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1 the question about the inquiry from the Office
2 of Planning about should you do a 223 special
3 exception, I wanted to answer that because to
4 show that we did look at options and figure
5 out, try to figure out if there was a way to
6 do it and still, you know, stay with the
7 proposal as designed.

8 I thought that what we were doing
9 here was to separate that from trying to meet
10 the test for the variance. And I want to do
11 that. I want to meet the requirements for the
12 variance.

13 I understand that if the Board
14 turns down the application, that I have the
15 opportunity to seek something lesser, but what
16 I would like to do is to get approval to build
17 the deck as planned and use it. And I'm
18 focusing on the totality of the test and
19 looking at all of them, including the fact
20 that there is no negative impact on the
21 surrounding neighbors, that it's something
22 that is well-supported.

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1 Frankly, you know, all my
2 neighbors were very enthusiastic about this.
3 They liked it. Some of them said, you know,
4 when you go through the process tell me how
5 you do it, because I want to do it, too. And
6 I think that's a good sign that people are
7 always improving their properties for their
8 use.

9 And so that's why I wanted to try
10 to meet the test for the proposal as planned,
11 instead of -- I mean, my response about can
12 you do something less is simply to show you
13 that we considered those. And for the
14 project, as planned, it can't be done because
15 of these restrictions, both the alley line and
16 the distance from the house that you need to
17 start.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you. Do any other Board Members have any
20 questions? No. At this point then, what we
21 will do is we're going to turn to the Office
22 of Planning to present their report.

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1 MR. COCHRAN: Thanks, Madam Chair.

2 I would like to start with a correction. If
3 you look at the second page of our report,
4 there is a table at the bottom. The rear
5 yard, the restriction says minimum of 20 feet
6 measured from the center line of the alley.

7 Please, just take out what is in
8 that parentheses there. It gets measured from
9 the rear lot line.

10 And you might also consider that
11 when you are measuring the rear yard,
12 technically, you would average the rear yard.

13 It's 3.5 feet on the west side. It would be
14 3.5 feet on the west side under the
15 applicant's proposal and zero feet on the east
16 side. And because of that angle, it would
17 vary. So the average would be less than the
18 3.5 feet that the applicant mentions and OP
19 had quoted.

20 The situation that we are facing
21 is one that hasn't been all that unusual
22 recently where an applicant wants a deck.

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1 Perhaps the deck wouldn't have a substantially
2 negative impact on the neighbors. The ANC has
3 supported it and the neighbors have indicated
4 support.

5 But you have got a situation where
6 there would be substantial harm to the Zoning
7 Regulations if you go ahead and grant the
8 relief that is requested.

9 OP doesn't feel that the applicant
10 has demonstrated a uniqueness to the site.
11 There are at least seven properties on this
12 block that are smaller than the applicant's
13 site, smaller than the required 1,800 square
14 feet in an R-4 Zone.

15 There is a 3.5 foot grade change,
16 apparently, most of it is at the rear line,
17 but if you wanted a level backyard, you could
18 easily put in a 3 foot or 3.5 foot retaining
19 wall and there wouldn't be any kind of a
20 problem.

21 With respect to the shape in the
22 back, again, it's only a 3.5 foot difference

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1 from one side to the other. I don't think
2 that that rhomboid at the back makes it a
3 particularly unusual or difficult shape,
4 otherwise, it's a fairly rectangular lot.

5 In terms of the practical
6 difficulty, I understand why the applicant
7 might want to be able to have a larger rear
8 deck and be able to continue to park two cars.

9 But again, as Mr. Dettman pointed out, there
10 is no requirement to park on the lot.

11 I have had some discussions with
12 the applicant. I have looked at the site and
13 the site plans. And if you look at Sheet 1 of
14 7 in the applicant's plans, I think you will
15 be able to come to somewhere between a
16 speculation and a conclusion that the
17 applicant could fairly easily park even one
18 car off of the street and still come up with a
19 deck that would measure -- well, a new
20 additional 200 square foot deck in addition to
21 the decks that the applicant already has.

22 This isn't a small amount of

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1 recreation space in an urban situation.
2 Admittedly, the applicant would not be able to
3 cover over the parking space that isn't
4 required anyway, but you would still be able
5 to come up with a fairly decent size deck and
6 park one car off of the street.

7 So we are just having a difficult
8 time understanding what the practical
9 difficulty is that the applicant is
10 confronting.

11 So when you consider that we don't
12 feel that the applicant has demonstrated that
13 there is a unique circumstance that leads to a
14 practical difficulty and when you consider
15 that the applicant has, as Mr. Dettman and the
16 Chair has pointed out, some other avenues that
17 are less demanding for seeking zoning relief,
18 if the applicant wants to be able to park a
19 car off the street and still expand the
20 recreation space.

21 We feel that it would be
22 inappropriate for the Board to grant this

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1 requested relief and we would recommend
2 against it.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you very much. At this time, if the applicant
5 has any questions for OP?

6 MR. FAY: No, I have no questions.
7 Maybe Mr. Enriquez does.

8 MR. ENRIQUEZ: Well, yes, I do.
9 In terms of the uniqueness of the lot, which
10 is one of the tests, it is not so much the
11 shape of the lot, but it's the placement of
12 the lot within the boundaries of the alleyway.

13 Because the 10 foot width of the
14 alley changes right at the midpoint of our
15 lot. It changes not only a subtle change, it
16 is almost, you know, a 50 percent change. It
17 goes from 10 feet to 15 feet at the middle of
18 the lot. And there is no other lots that I
19 looked in that particular area that I could
20 find that had this uniqueness to it.

21 It's very unique in that on half
22 of the lot the alleyway is 10 feet and on the

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1 other side it's 15 feet. Plus, the --

2 CHAIRPERSON MOLDENHAUER: Mr.
3 Enriquez, I'm sorry, I'm just going to
4 interrupt you for a second. I'm sorry. This
5 is the point in time in the procedures where
6 you can ask OP a question.

7 MR. ENRIQUEZ: Oh, okay.

8 CHAIRPERSON MOLDENHAUER: So if
9 you have questions you want to ask him, you
10 can ask him them in phrases of questions and
11 then he can respond to them.

12 MR. ENRIQUEZ: Okay.

13 CHAIRPERSON MOLDENHAUER: And then
14 at the end, if you want to provide a closing
15 statement which kind of responds to some of
16 the things that have been brought out, you
17 can.

18 MR. ENRIQUEZ: Okay. I'm sorry
19 about that.

20 Yes, Mr. Cochran, my question
21 would be wouldn't the fact that the alley
22 narrows from 15 feet to 10 feet at the

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1 midpoint and all those things that we talked
2 about, give any uniqueness to that particular
3 lot?

4 MR. COCHRAN: I don't think so and
5 certainly not one that would lead to a
6 practical difficulty. The applicant and the
7 applicant's architect and I were discussing
8 this before the meeting today and even under
9 the proposed conditions, the applicant,
10 again, if you look at Sheet 1 of 7, would park
11 in the following manner:

12 For the space that he proposes be
13 on the east side of his rear yard, he would
14 come in on the alley from the west side and
15 pull in there. For the space that would be on
16 the west side of the rear yard, the applicant
17 would come in from the east and pull in.

18 So either way you look at it,
19 whether you put the deck on one side or the
20 other, you would still be able to get in and
21 park a car there. It seems like more
22 logically you would come in from the east and

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1 park on the west side of the backyard and then
2 still have the east side of the backyard
3 available for a deck extension.

4 So no, I don't see where that jog
5 poses a difficulty, since, as you have already
6 indicated to me, you could park on both sides
7 of the backyard.

8 MR. ENRIQUEZ: Well, you can park
9 on both sides of the yard if you don't have a
10 deck. But what you are suggesting is that
11 half of the rear yard have a deck over it?

12 MR. COCHRAN: I'm saying that that
13 seems like it would be one scenario. I don't
14 want to design everything.

15 MR. ENRIQUEZ: Well, the only
16 problem with that scenario --

17 MR. COCHRAN: It's not my place.

18 MR. ENRIQUEZ: -- is then you
19 would have supports in the -- running down the
20 center of the lot. And if you have supports
21 running down the center of the lot, then you
22 would have problems getting in the cars.

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1 That's why the deck can be reduced lengthwise,
2 but width-wise, it's very difficult to do
3 because of the structure.

4 MR. COCHRAN: Madam Chair, in the
5 interest of trying to find some common ground
6 here, I would suggest that there would be only
7 one support that might possibly be in the way.

8 And you could fairly easily cut the support
9 out of that corner by beefing up supports on
10 either side of it and just having a little bit
11 of the deck edge slightly cantilevered. And
12 you would still be able to cut that corner.

13 Again, I'm not trying to design
14 from the dias, but just suggesting that there
15 might be some possibilities.

16 MR. ENRIQUEZ: Okay. I don't have
17 any other questions.

18 CHAIRPERSON MOLDENHAUER: Okay.
19 Thank you. Do Board Members have questions
20 for OP? No, it doesn't appear as such. Thank
21 you.

22 At this point in time, are there

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1 persons or parties in the audience in support
2 or in opposition? I'm sorry, actually before
3 we go to that, we will go to ANC. Is the ANC
4 Member present?

5 I don't see anybody coming
6 forward, but we do have in our record Exhibit
7 No. 22, which is a letter, which indicates
8 that the ANC-1A had a meeting on March 10,
9 2010. It was a duly noticed meeting with a
10 quorum present. And there was a vote of 6-0-1
11 in support of the resolution to approve the
12 zoning variance and the zoning relief was
13 described in the resolution. This report
14 would be given great weight.

15 And now, we will move on to any
16 persons or parties in support or in
17 opposition. Seeing none in the audience, we
18 will move forward.

19 If the applicant, at this point,
20 had any closing remarks they wanted to
21 provide, they could.

22 MR. FAY: Thank you, Madam Chair.

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1 I don't really have anything additional to
2 provide. I want to thank everybody for the
3 exchange that we had today. I thought it was
4 very useful.

5 I do again think there is value in
6 the project as proposed, because it
7 effectively doubles the space of the use --
8 the the use of the space in the yard. I do
9 disagree with some of the statements made here
10 today about the one versus two car parking.

11 I mean, if you go take a picture
12 on a Wednesday afternoon when there is street
13 cleaning, people have to move their cars, but
14 outside of that, I believe it is extremely
15 valuable to maximize the use of the space in a
16 restricted urban area.

17 And on the basis of that, I
18 respectfully ask you to grant the application.

19 Thank you.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you. Before we conclude, did Board Members
22 have any other additional questions for the

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1 applicant? No? Thank you very much.

2 MR. FAY: Thanks.

3 CHAIRPERSON MOLDENHAUER: At this
4 point in time, we can actually move into the
5 deliberations and I will start us off.

6 What we have before us is an
7 application for an area variance to create a
8 rear deck that would go into the rear of the
9 yard and provide for two car parking
10 underneath of the deck.

11 The area variance is requesting
12 403.2 lot occupancy relief and 404.1 rear yard
13 relief.

14 I think that OP outlines the
15 report or the different prongs of a variance
16 test in great detail. And I understand the
17 applicant's desired use, but, unfortunately,
18 in strictly applying the test as we have to do
19 here, I don't see the uniqueness.

20 I think a variance is not -- we
21 got into some discussions during the hearing
22 about the difference between a 223 and a

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1 variance relief. Special exceptions are
2 considered something that would typically be
3 permitted in a zoned area versus variances are
4 something that are exceptional relief that
5 would not typically be something permitted or
6 in conformity with the Zoning Regulations.

7 And because of that, I don't think
8 that the applicant satisfies the test and I
9 also think that there are testimony that a lot
10 of his neighbors were interested in hearing
11 what would happen in the future and that would
12 be doing exactly what a variance should not
13 do, which is rezoning or permitting something
14 in the area by changing, almost changing, the
15 Zoning Regs or changing that type of
16 requirement in an area.

17 I think that the property size of
18 the lot is predominantly a square, except for,
19 yes, there are some aspects of it. I think
20 that the applicant was trying to argue some
21 sort of a totality of the circumstances in the
22 uniqueness stating that there were issues of

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1 the sloping, the narrowness, not only of the
2 alleys, but the way the two alleys connect on
3 and diagonal also with the garage.

4 Yet, I don't think that all of
5 those aspects, one, in my view, create a
6 totality of the circumstances which would rise
7 to the level of uniqueness under the variance
8 test nor do I think that they are actually
9 related to his practical difficulty.

10 Practical difficulty has to do
11 with whether or not the applicant could
12 strictly apply the zoning requirements. And
13 because there is no specific requirement of
14 parking on this property, as the Office of
15 Planning said there is actually no parking
16 requirement, he would not have to, if strictly
17 applying the zoning requirements, provide
18 parking at all.

19 While I understand parking is
20 something that every homeowner would like to
21 have, in regards to this test and this type of
22 relief, it's not something that we can state

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1 would then lead to practical difficulty by
2 trying to have both parking and outdoor
3 recreational space.

4 And then even, unfortunately, by
5 not being able to pass the first or the second
6 prong, in my view, even though the third prong
7 there is very limited or no harm to the
8 public, based on the support that is being
9 obtained by the ANC and by the neighbors, in
10 my view, we can't even get to that prong.

11 There is a large amount of relief
12 that is being sought here, so it's not an
13 issue of well, there is minimal relief and
14 they are just kind of getting by, so, thus,
15 they have the third prong and it would boost
16 them up.

17 And I think again, as I stated at
18 the beginning of my discussions, I think that
19 this would potentially, I'm not saying
20 absolutely, create a harm to the Zone Plan
21 because of the likelihood that maybe other
22 individuals would request this and then it

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1 would become something where you are almost
2 changing the zoning in that area versus
3 creating individual variances where there is
4 uniqueness.

5 At that point, I will open up the
6 deliberations to any other Members of the
7 Board.

8 VICE CHAIRMAN DETTMAN: Thank you,
9 Madam Chair. And I'm in agreement with you
10 with respect to the outcome of your analysis.

11 I certainly agree with the applicant that
12 it's a good thing to try to maximize the use
13 of the space on this property.

14 But certainly, that needs to
15 happen within the boundaries of the Zoning
16 Regulations set up as a matter-of-right and
17 then as a special exception, perhaps under
18 223, because a special exception is still
19 presumed to be compatible for an area. And
20 that only in the most exceptional
21 circumstances would you entertain a variance.

22 And so if there was a way to

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1 provide a reasonable amount of recreation
2 space on this property and still provide for
3 two parking spaces, even though one is
4 required and maybe one isn't even required,
5 but if you could still provide two parking
6 spaces and help relieve the congestion on the
7 street, that's certainly a good thing.

8 And I think that there is
9 opportunity here to do both. However, not as
10 a variance.

11 I think that there is an
12 exceptional condition on the property. I
13 think it is fairly exceptional that at the
14 midpoint of the rear of this property, the
15 alley expands by 50 percent, as Mr. Enriquez
16 said. However, I don't see that exceptional
17 condition giving rise to a practical
18 difficulty with respect to the lot occupancy,
19 perhaps the rear yard.

20 I mean, even if you were to reduce
21 the alley side of the deck by 5 feet, you
22 would still need rear yard relief under 223,

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1 because you couldn't get your 20 feet. But it
2 does not give rise to a practical difficulty
3 if you were strictly applying the lot
4 occupancy requirements.

5 So with that respect, I really
6 don't see an exceptional condition giving rise
7 to a practical difficulty. And as I don't see
8 the first two prongs of the test being met, I
9 don't need to get to the third prong.

10 I do acknowledge though that it
11 does have the support of the neighbors. And
12 in fact, the neighbors -- if the applicant is
13 unable to prevail on the variance test, the
14 neighbors should not be discouraged for
15 improving their properties.

16 I think the applicant could inform
17 his neighbors of the process of going through
18 the Office of Zoning and the BZA and perhaps
19 we will see additional projects, you know, in
20 this neighborhood for expanded recreation
21 space, of course, as a special exception.

22 CHAIRPERSON MOLDENHAUER: Thank

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1 you very much. Any additional deliberation?

2 MEMBER SORG: No, I don't actually
3 have anything further to add. I think that,
4 you know, both you and Mr. Dettman made very
5 strong points and I agree in whole with your
6 analysis.

7 CHAIRPERSON MOLDENHAUER: Well,
8 then if there is no additional deliberation,
9 thank you. I will submit a motion.

10 It will be a motion under BZA Case
11 18054 for 1348 Perry Place, N.W., to deny the
12 area variance which is sought for 403.2 for
13 lot occupancy of the lot and to deny the area
14 variance for 404.1. Do I have a second?

15 VICE CHAIRMAN DETTMAN: Second the
16 motion.

17 CHAIRPERSON MOLDENHAUER: The
18 motion has been made and seconded.

19 At this point in time, all those
20 in favor say aye.

21 ALL: Aye.

22 CHAIRPERSON MOLDENHAUER: All

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1 those opposed? Ms. Bailey, could we read back
2 the vote?

3 MS. BAILEY: Madam Chair, the vote
4 is recorded as 3-0-2 to deny the application.

5 Mrs. Moldenhauer made the motion, Mr. Dettman
6 seconded, Mrs. Sorg supports the motion. No
7 other Board Members are sitting at this time.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much. We can waive the requirement
10 and have a summary order.

11 MS. BAILEY: No, Madam Chair.

12 CHAIRPERSON MOLDENHAUER: Or no?

13 MS. BAILEY: This is a full order.

14 CHAIRPERSON MOLDENHAUER: A full
15 order. Thank you very much for correcting me.
16 We can move on to the next case on the
17 agenda.

18 MS. BAILEY: Application No. 18050
19 of Johnny's Sub Shop, pursuant to 11 DCMR '
20 3103.2, for a variance from the use provisions
21 under subsection 701.1, to operate a fast food
22 establishment at 4139 Wheeler Road, S.E.,

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1 Square 4925, Lot 821. The property is Zoned
2 C-1.

3 CHAIRPERSON MOLDENHAUER: Good
4 afternoon. If you can both turn on your
5 microphones and introduce yourselves for the
6 record?

7 MR. CHIANG: Okay. Hello. Yes,
8 good afternoon. My name is Yuc Chiang and I'm
9 his father. And I try to help her to
10 transfer, because it involves speaking
11 English.

12 CHAIRPERSON MOLDENHAUER: Okay.
13 And can you just say your name and introduce
14 yourself?

15 MR. CHIANG: I can't even speak
16 Chinese.

17 CHAIRPERSON MOLDENHAUER: She can
18 just say her name.

19 MS. CHIANG: In Chinese?

20 CHAIRPERSON MOLDENHAUER: That's
21 fine. That's okay.

22 MS. LIN: Lin Jiao.

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1 CHAIRPERSON MOLDENHAUER: And can
2 she state her address also?

3 MR. CHIANG: Can we translate?

4 CHAIRPERSON MOLDENHAUER: You can.
5 Yes, you can translate for her, so she can
6 tell you her address and then you can repeat
7 it as if she is saying it.

8 MR. CHIANG: Okay.

9 CHAIRPERSON MOLDENHAUER: Okay.

10 MS. LIN: 3917 South Capitol
11 Street, S.E.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you. Okay. And now, at this point in time,
14 we have a fairly full record on this case.
15 You are seeking a use variance to obtain the
16 use of a fast food restaurant.

17 If you can provide us with just a
18 summary of your case, that would be great.

19 MR. CHIANG: It's the case. When
20 she buy the restaurant, people do not do
21 anything for us, the seating nor just only can
22 provide the carry-out restaurant. Because

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1 this restaurant has been like capable of carry
2 outside for at least like 15 years.

3 And the first time you look at
4 this restaurant, at this carry-out restaurant,
5 you no see inside. And then she try to go to
6 transfer CO to her name. And they look at it.

7 They say there's no seating. Like before 72
8 seat, so this can't be like -- they need --
9 they want her change to C-1.

10 CHAIRPERSON MOLDENHAUER: So is
11 she providing seating in the restaurant now?

12 MR. CHIANG: She just trying to
13 put the child seat in restaurant, plus nobody
14 seating. And some children will come in like
15 -- she try to put like four table in a bridge
16 and they -- a couple day she use a chair and
17 everything. One of the children, they can
18 move. So she decides to not get -- she cannot
19 put any seating in this restaurant. Nobody
20 sitting in this restaurant.

21 CHAIRPERSON MOLDENHAUER: Okay.
22 And so then everyone just comes in and will

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1 buy the food and then once they buy they food
2 they will leave and eat it?

3 MR. CHIANG: Yes.

4 CHAIRPERSON MOLDENHAUER: Okay.

5 MR. CHIANG: You want to see a
6 picture? Before we got four chair, but it's
7 only for the -- one week. She use like chair
8 everything.

9 CHAIRPERSON MOLDENHAUER: Okay.

10 MR. CHIANG: And just like call
11 police about like two times, because there is
12 one school there. And like after school,
13 they, at least like 30 children, in this
14 restaurant. They do not think that she will
15 hang out in this restaurant. And they were
16 took everything.

17 CHAIRPERSON MOLDENHAUER: And did
18 you or your sister meet with the ANC?

19 MR. CHIANG: ANC? I think no.

20 CHAIRPERSON MOLDENHAUER: No. Did
21 you talk to people in the area? You know, did
22 they want to see the restaurant continue in

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1 the area?

2 MR. CHIANG: Yes.

3 CHAIRPERSON MOLDENHAUER: I think
4 that's pretty much -- we have a full record
5 from OP. I think that would be sufficient.
6 Thank you.

7 Does the Board have any other
8 questions? At this time, we will ask OP to
9 present their report.

10 MS. BROWN-ROBERTS: Good
11 afternoon, Madam Chair and Members of the
12 Commission. I'm Maxine Brown-Roberts
13 representing the Office of Planning.

14 I can -- do you want me to stand
15 on the record or do you want me to just give a
16 summary?

17 CHAIRPERSON MOLDENHAUER: Why
18 don't you just since the --

19 MS. BROWN-ROBERTS: Give a
20 summary?

21 CHAIRPERSON MOLDENHAUER: Right
22 now, on the record, we have very limited

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1 testimony.

2 MS. BROWN-ROBERTS: Okay.

3 CHAIRPERSON MOLDENHAUER: So if
4 you can just give a summary, I think that
5 would be good.

6 MS. BROWN-ROBERTS: Okay. The
7 application is to continue the use of a, what
8 was formerly termed, fast food restaurant. As
9 you see documented in the report, the
10 regulations concerning fast food restaurants
11 have changed over the years. And actually,
12 it's not permitted in the C-1 Zone any longer.

13 This restaurant has been in
14 operation for a number of years. Again, it is
15 documented in the report.

16 The Rules and Regulations, I
17 think, changed in 1985 and they have gotten C
18 of Os for this operation up until 2003.

19 As stated by the applicant, the
20 reason why they had to come before the Board
21 is due to the fact that there was a change in
22 ownership of the restaurant.

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1 Concerning the seating, you notice
2 that in some of the pictures that were
3 submitted by the applicant, that there were
4 some seating there. The day that I visited
5 the restaurant, they were not there.

6 I also spoke to him and advised
7 that as under the definition of the fast food
8 restaurant, they should not have the tables
9 either. So he did say that they were going to
10 -- they weren't going to replace them. So
11 that was -- so I think that meeting the
12 requirements for the fast food restaurant that
13 they do meet those.

14 In context of the variance, I
15 think there is an exceptional situation in
16 that the building, as a shopping center, has
17 been configured for four uses, one of them
18 being the restaurant.

19 Two of the storefronts on that
20 retail strip is currently boarded up. And
21 there is only this fast food restaurant and a
22 small grocery store that are still in

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1 existence.

2 And so the extraordinary -- the
3 exceptional situation again, I think, is that
4 this space is clearly constructed for
5 commercial purposes and for this fast food --
6 and for fast food restaurant in particular.

7 They have, again, been operating
8 there for a long time. And it is configured
9 that there is an area for waiting. There is a
10 space with a register. So it does seem that
11 the operation is, indeed, for the fast food
12 restaurant.

13 Regarding the granting of the
14 relief without -- it doesn't cause a
15 substantial detriment to the public good. I
16 think the potential impacts of that that we
17 would look for would be for an impact on the
18 adjacent residential properties.

19 There is an apartment building on
20 a Residential Zone to the rear of the
21 property. However, the buildings are set back
22 a good 15 to 20 feet from the edge of the

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1 alley. The area around the restaurant is
2 fenced. The garbage receptacle is there
3 within that fenced area. From my observation,
4 it was being kept, you know, in a clean
5 manner. There was no debris.

6 Parking is provided in the front
7 of the restaurant. And they do provide, I
8 think, delivery service also. So I think that
9 the parking would be sufficient to serve their
10 clients. And I think that they do meet the
11 variance test and the Office of Planning
12 recommends approval. Thank you, Madam
13 Chairman.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you very much. At this time, we would hear
16 from the ANC to provide testimony. And I
17 don't believe that anybody is present from the
18 ANC. And we do not have a letter from the
19 ANC.

20 So we will move forward to any
21 persons or parties in support or in
22 opposition. Seeing none in the audience, then

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1 we would move back to the applicant for any
2 closing statements.

3 Would you like to say anything
4 additional?

5 MR. CHIANG: No.

6 CHAIRPERSON MOLDENHAUER: Okay.

7 MR. CHIANG: No.

8 CHAIRPERSON MOLDENHAUER: Then at
9 this point in time, we will conclude the
10 hearing on this case and we will go into
11 deliberations on the record.

12 I will start us off. I think that
13 for this Application No. 18050 for 4139
14 Wheeler Road, for a use variance to continue
15 the property as a fast food establishment
16 within a C-1 District, I think that I will
17 incorporate the Office of Planning's report.

18 The uniqueness is, I believe, a
19 totality of the circumstances regarding the
20 past use, the longstanding use, the history of
21 the property. The fact that it had continual
22 C of Os, but this is the first time that there

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1 was an actual change of ownership, statements
2 regarding the configuration and the fact that
3 this property specifically and uniquely is
4 configured for its current use and that would
5 then relate directly to its practical
6 difficulty.

7 Whereas, if they had to
8 reconfigure it, it would create a practical
9 difficulty to then conform with a use under
10 the Zoning Code.

11 In addition, there is really no
12 substantial detriment to the public good or to
13 the integrity of the Zone Plan.

14 In addition to that, there
15 actually is some positive aspects that would
16 assist the public in regard to the fact that
17 there are other shops that are closed down and
18 this would encourage, you know, the area. And
19 there is no negative aspects in regards to the
20 fact that the area is fenced in.

21 As Ms. Brown-Roberts stated from
22 OP, the parking is provided sufficiently. The

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1 garbage receptacles are being maintained in a
2 clean and fenced manner.

3 Based on the above, I would
4 recommend approval of the application and will
5 open up for any additional deliberation from
6 the Board.

7 VICE CHAIRMAN DETTMAN: Thank you,
8 Madam Chair. And I concur with your analysis,
9 especially with your point regarding the undue
10 hardship that would result if the applicant
11 was required to convert this space that has
12 been long used as a fast food establishment to
13 a conforming use within the C-1.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you. Is there any additional deliberations?
16 No? Then at this time, I would like to
17 provide a motion for Application 18050 for a
18 use variance to allow a fast food
19 establishment in the C-1. Is there a second?

20 VICE CHAIRMAN DETTMAN: Second.

21 CHAIRPERSON MOLDENHAUER: The
22 motion has been made and seconded.

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1 All those in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MOLDENHAUER: Ms.

4 Bailey, would you read back the vote?

5 MS. BAILEY: Madam Chair, the vote
6 is recorded as 3-0-2 to grant the application.

7 Mrs. Moldenhauer made the motion, Mr. Dettman
8 seconded, Ms. Sorg supports the motion and two
9 other Board Members are not present, at this
10 time.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you very much, Ms. Bailey. Seeing that there
13 are no parties in opposition, I would request
14 to waive the requirement and provide a summary
15 order.

16 MS. BAILEY: A summary order,
17 Madam Chair.

18 CHAIRPERSON MOLDENHAUER: And, Ms.
19 Bailey, thank you very much.

20 MR. CHIANG: Thank you.

21 CHAIRPERSON MOLDENHAUER: Before
22 we move forward to the next case, we will just

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1 take a very brief five minute recess. And so
2 we will be back then, let's just say, at 2:30.

3 So a six minute recess. Thank you.

4 (Whereupon, at 2:25 p.m. a recess
5 until 2:46 p.m.)

6 CHAIRPERSON MOLDENHAUER: We are
7 back in session and in a moment I'll ask Ms.
8 Bailey to read the last case of the day.

9 MS. BAILEY: Madam Chair, it is
10 Application -- actually, it's an appeal and
11 the number is 17980. And the appellant is
12 William J. Reaves, and it is pursuant to 11
13 DCMR ' 3100 and 3101, from a determination of
14 the Office of the Zoning Administrator,
15 Department of Consumer and Regulatory Affairs,
16 to allow the construction of a one-family
17 semi-detached dwelling under Building Permit
18 No. B111267 at 4908 Quarles Street, N.E. The
19 property is Zoned R-5-A. It is located in
20 Square 5171 on Lot 35.

21 CHAIRPERSON MOLDENHAUER: Thank
22 you very much. I don't see the appellant in

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1 the audience, but I do see a representative
2 from DCRA. Would you like to introduce
3 yourself for the record?

4 MR. RENJEL: Yes, Robert Renjel on
5 behalf of DCRA.

6 CHAIRPERSON MOLDENHAUER: Thank
7 you very much, Mr. Renjel, for staying here
8 this afternoon.

9 MR. RENJEL: No problem.

10 CHAIRPERSON MOLDENHAUER: At this
11 point in time, we have the case has been
12 postponed from, let me just get the dates here
13 if you could give me a moment, a February 16th
14 hearing. There was actually a prior hearing
15 and then we had the February 16th hearing.

16 We had a February 21st hearing in
17 which there was a pending motion and we
18 informed on the record, the appellant had not
19 shown up, that he needed to show up for the
20 next hearing in order to move forward.

21 We are here now today and we will
22 move forward even though the appellant has not

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1 shown up. If you would like to summarize your
2 outstanding motion, we can then move forward
3 on that.

4 MR. RENJEL: Okay. Thank you. My
5 motion is a motion to dismiss. The sole issue
6 in this case was the issuance of a Building
7 Permit B111267 issued by the Zoning
8 Administrator in April of 2009.

9 The building permit authorized the
10 property owner to construct a three-story
11 single-family dwelling at 4908 Quarles Street,
12 N.E.

13 In June of 2009, the appellant
14 filed this appeal objecting to the issuance of
15 the building permit. And the sole reason for
16 the appeal was that the Zoning Administrator
17 failed to adhere to the side yard
18 requirements.

19 Before construction began, the
20 Zoning Administrator met with the developer
21 and the developer agreed to submit a new
22 building permit application and change the

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1 location of the building, shift it over to the
2 east creating a new side yard an additional 8
3 feet between the appellant's property and the
4 proposed structure. And a new building permit
5 was issued.

6 In August of 2009, a wall test was
7 conducted by the D.C. Surveyor which indicated
8 that adequate side yard requirements exist.
9 The Zoning Administrator argued in our motion
10 to dismiss that both the original structure
11 and the new structure that was actually built
12 had the minimum 8 yard side requirement as
13 required by DCMR.

14 And again, we are just moving to
15 dismiss the matter, because there is no issue
16 outstanding. The matters seem to have been
17 resolved.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you. Thank you very much. Are there any
20 questions from the Board?

21 Seeing none, we would next go on
22 to any parties that are here, the ANC. I

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1 don't believe the ANC is present nor are they
2 engaged. And then, at this point in time, we
3 would be able to turn back to the appellant,
4 Mr. Reaves, but he is not present for any
5 closing argument or any rebuttal.

6 So at this point in time, we will
7 close the case and then rule on the merits of
8 the motion and based on our file that we have
9 on the record.

10 And I will start us off. And I
11 believe that there is sufficient evidence in
12 our record and, as stated here today by DCRA,
13 that the facts show that the issues on the
14 appeal are no longer relevant and they are
15 moot. And thus, the motion to dismiss should
16 be granted.

17 Is there any additional
18 deliberation?

19 Seeing none, I would just like to
20 also reference that we had stated at the
21 February 21st meeting that the appellant
22 needed to attend this hearing today in order

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1 to provide any opposition to the record. In
2 addition to that, I would just like to point
3 out that the motion was served by the DCRA
4 attorney to the applicant in their Certificate
5 of Service.

6 And so based on that, I'll move to
7 dismiss the case, BZA Appeal No. 17980. Do I
8 have a second?

9 MEMBER SORG: Second.

10 CHAIRPERSON MOLDENHAUER: The
11 motion has been made and seconded. Is there
12 any further deliberation?

13 Seeing none, all those in favor
14 say aye.

15 ALL: Aye.

16 CHAIRPERSON MOLDENHAUER: Could
17 you, please, read back the vote?

18 MS. BAILEY: Madam Chair, the vote
19 is recorded as 3-0-2 to dismiss Appeal No.
20 17980. Mrs. Moldenhauer made the motion, Ms.
21 Sorg seconded and also Mr. Dettman is in
22 support. No other Board Members are sitting

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1 at this time.

2 CHAIRPERSON MOLDENHAUER: Thank
3 you very much.

4 MS. BAILEY: Dismissal order,
5 Madam Chair?

6 CHAIRPERSON MOLDENHAUER: Yes,
7 please. Thank you very much.

8 And do we have anything else on
9 the agenda for today?

10 MS. BAILEY: No, Madam Chair,
11 that's it.

12 CHAIRPERSON MOLDENHAUER: Okay.
13 Well, then today's hearing is adjourned.

14 (Whereupon, the Public Hearing was
15 concluded at 2:52 p.m.)

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