

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 20, 2010

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
SHANE L. DETTMAN, Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

KONRAD SCHLATER, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS

STEVE COCHRAN

ARLOVA JACKSON

MATT JESICK

ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on July 20, 2010.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

AGENDA ITEM	PAGE
Call to Order, Chairperson Moldenhauer.5
Preliminary Matters9
Application 18085 of James M. Falls and Steve B. Mongeau.	11
Office of Planning, Maxine Brown- Roberts	13
Vote: 3-0-2 to approve.	16
Application No. 18086 of Raymond C. Fay	18
Office of Planning, Steve Cochran	19
Vote: 3-0-2 to approve.	21
Application No. 18083 of Reynaldo Paniagua.	23
Office of Planning, Arlova Jackson.	27
Vote: 3-0-2 to approve.	31
Application No. 18087 of National Public Radio	39
Cary Kadlecek, Esq., Goulston & Storrs Holzbach, Hickok Cole Architects.	40
Maurice Schlesinger, National Public Radio..	40
Office of Planning, Maxine Brown- Roberts	63
Vote: 3-0-2 to approve.	76
Application No. 18084 of Washington Hebrew Congregation.	77
Kinley Bray, Esq., Arent Fox Ellen McCarthy, Arent Fox Steve Jacober, Executive Director Nancy Cook, Director Early Childhood Education Center David Nelson, Street Traffic Studies.	77
Office of Planning, Matt Jesick	83
Vote: 3-0-2 to approve.	91

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

Application No. 18066 of Casey Dalton 93

 Toye Bello, Esq.. 94

 Casey Dalton, Applicant100

 Office of Planning, Arthur Jackson. . .111

ADJOURN, Chairperson Moldenhauer.127

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

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

10:40 a.m.

MADAM CHAIR MOLDENHAUER: This hearing will please come to order. Good morning, ladies and gentlemen. This is the July 20, 2010 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Meridith Moldenhauer, Chairperson. Joining me today to my right Shane Dettman, Representative of the National Capitol Planning Commission. To my left is Representative of the Zoning Commission, Mr. Konrad Schlater.

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

When presenting information to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

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

15 The order of procedure for special
16 exceptions and variances are as follows. (1)
17 Statement and witnesses of the Applicant. (2)
18 Government reports including the Office of
19 Planning, the Department of Public Works,
20 etc.; the report of the Advisory Neighborhood
21 Commission; parties or persons in support;
22 parties or persons in opposition; and,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 finally, closing remarks by the Applicant.

2 Pursuant to Sections 3117.4 and
3 3117.5 the following time constraints will be
4 maintained. The Applicant, the Appellant,
5 persons and parties except an ANC in support,
6 including witnesses, will be given 60 minutes
7 collectively.

8 Appellees, persons, and parties
9 except an ANC in opposition including
10 witnesses will be given 60 minutes
11 collectively. Individuals will be given three
12 minutes. These time constraints do not include
13 cross-examination and/or questions from the
14 Board.

15 Cross-examination of witnesses is
16 also permitted by the Applicant or parties.
17 The ANC within which the property is located
18 is automatically a party in a special
19 exception or a variance case. Nothing
20 prohibits the Board from placing reasonable
21 restrictions on cross-examination including
22 time limits and limitations on the scope of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the cross-examination.

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

11 The Sunshine Act requires that the
12 public hearing on each case be held in the
13 open before the public. The Board may
14 consistent with the rules and procedures in
15 the Sunshine Act enter into executive session
16 during or after the public hearing on * for
17 purposes of reviewing the record or
18 deliberating on the case.

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 present not engage the members of the Board in
2 conversation. Please turn off all beepers and
3 cell phones at this time so as not to disrupt
4 this proceedings.

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 a
9 request for postponement, continuance, or
10 withdrawal, or whether proper and adequate
11 notice of the hearing has been given.

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

16 Mr. Secretary, are there any
17 preliminary matters?

18 MR. MOY: Madam Chair, at this
19 point in the proceedings there are no major
20 preliminary matters. I would like to announce
21 in my secretary's report, Madam Chair, if I
22 may, that the cases scheduled for public

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 meeting on July 27, 2010, which is next
2 Tuesday, has been rescheduled to a public
3 meeting on Tuesday, August 2nd, 2010.

4 The reason is because of a lack of
5 a quorum pursuant to requirements in Section
6 3101.2 of the zoning regulations. That
7 completes my report to the Chair.

8 MADAM CHAIR MOLDENHAUER: Mr. Moy,
9 do you mean Tuesday, August 3rd?

10 MR. MOY: That's correct.

11 MADAM CHAIR MOLDENHAUER: Since
12 we're rescheduling I want to make sure that
13 it's clear the same Tuesday, August 3rd.

14 MR. MOY: Absolutely.

15 MADAM CHAIR MOLDENHAUER: All
16 individuals wishing to testify today please
17 stand to take the oath. Ms. Bailey will
18 administer the oath.

19 MS. BAILEY: Please raise your
20 right hand. Do you solemnly swear or affirm
21 that the testimony that you will be giving
22 today will be the truth, the whole truth, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 nothing but the truth?

2 WITNESSES: I do.

3 MS. BAILEY: Thank you.

4 Madam Chair, the first case of the
5 morning is Application 18085. It's the
6 application of James M. Falls and Steve B.
7 Mongeau and it's pursuant to 11 DCMR Section
8 3104.1 for a special exception to allow a one-
9 story rear addition to an existing one-family
10 semi-detached dwelling.

11 The application is under Section
12 223 of the regulations and it does not meet
13 the lot occupancy (Section 403) and sideyard
14 (Section 405) requirements. The property is
15 zoned R-4. It's located at 720 Park Road,
16 N.W., Square 2894, Lot 53).

17 MADAM CHAIR MOLDENHAUER: Thank
18 you very much, Ms. Beverley. If the parties
19 can please step forward and take a seat at the
20 witness tables.

21 Good morning. What we'll do is if
22 you turn on your microphone and state your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 name and home address. We'll start on my
2 right and move to the left.

3 MR. FALLS: Good morning.

4 MADAM CHAIR MOLDENHAUER: I don't
5 believe your microphone is on.

6 MR. FALLS: Am I on?

7 MADAM CHAIR MOLDENHAUER: Yes, now
8 you're on.

9 MR. FALLS: James Falls. I reside
10 at 720 Park Road, N.W. Washington, D.C. I am
11 the occupant of the home.

12 MADAM CHAIR MOLDENHAUER: Thank
13 you.

14 MR. JARRAR: Good morning, Madam
15 Chair. My name is Zade Jarrar. I reside at
16 6628 Tucker Avenue, McLean, Virginia. I'm the
17 contractor.

18 MADAM CHAIR MOLDENHAUER: Thank
19 you.

20 MR. MONGEAU: Good morning. I'm
21 Steve Mongeau. I reside at 720 Park Road and
22 I'm one of the owner occupants of the home as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 well.

2 MADAM CHAIR MOLDENHAUER: Thank
3 you very much. Before we get started I just
4 want to compliment you. I think that we have
5 a very full record in this case. The Office
6 of Planning is recommending approval. I think
7 it's one of the cases that what we say we can
8 potentially rest on the record. If you would
9 like, you can provide additional testimony.
10 If you think that it's sufficient, we can move
11 on in the proceeding.

12 MR. MONGEAU: We were just here to
13 answer any questions that you may have or
14 anything along those lines.

15 MADAM CHAIR MOLDENHAUER: I
16 appreciate that. Right now I don't believe we
17 have any questions. What we'll do then is
18 we'll move on to the Office of Planning for
19 their report and then we can always come back
20 if there are any additional questions at that
21 time.

22 MS. BROWN-ROBERTS: Good morning,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Madam Chairman and members of the Board. I am
2 Maxine Brown-Roberts from the Office of
3 Planning. I will also stand on the record on
4 this case. As seen in our recommendation and
5 the analysis of the 223 we do not think that
6 the light and air or any impact on adjacent
7 neighbors will be affected by this proposal
8 and, therefore, we recommend approval. Thank
9 you, Madam Chairman.

10 MADAM CHAIR MOLDENHAUER: Thank
11 you very much, Ms. Brown-Roberts.

12 At this time are there any
13 individuals in the audience in support or in
14 opposition of this case? Seeing none, is
15 there anybody representing the ANC-1A? Not
16 seeing anyone come forward we have Exhibit No.
17 22 in our record which is from the ANC-1A
18 which indicates that they had a regularly
19 scheduled meeting with a quorum present on
20 June 9, 2010 at which time they adopted a
21 resolution where they were not aware of any
22 opposition to the request and they recommended

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 approval of the application for special
2 exception in case 18085 for James Fall and
3 Steve -- how do you pronounce it?

4 MR. MONGEAU: Mongeau.

5 MADAM CHAIR MOLDENHAUER: Mongeau.

6 Thank you.

7 That then being entered into
8 evidence and given great weight, at this time
9 we would turn back to the Applicant. I don't
10 see any questions that we would have for
11 either of you. Is there anything else you
12 would like to add?

13 MR. MONGEAU: No. At this time I
14 think we have everything in front of you.

15 MADAM CHAIR MOLDENHAUER: Okay.
16 That being said, then at this point in time
17 we'll conclude the hearing and we'll go
18 directly into deliberation. As I stated
19 earlier, I think we will just simply
20 incorporate the Office of Planning's report
21 into our deliberation in which the report
22 outlines the requirements for 223 special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exception.

2 Here I think that there may
3 potentially also be need for relief under
4 2001.3 for a nonconformity but I believe that
5 would actually be incorporated in 223 but I'll
6 just provide that as part of the record.

7 The Applicant has support of the
8 ANC. There are no individuals in opposition.
9 The OP recommends approval. At this point in
10 time I'll see if there are any additional
11 deliberation from Board members.

12 Seeing none I'll make a motion to
13 approve Application 18084 for a special
14 exception or 223 for 720 Park Road NW for a
15 one-story rear addition.

16 COMMISSIONER SCHLATER: Second.

17 MADAM CHAIR MOLDENHAUER: I have a
18 second. The motion has been made and
19 seconded. All those for approval say aye.

20 BOARD MEMBERS: Aye.

21 MR. MOY: Staff would record the
22 vote as three to zero to two. This is on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 motion of the chair, Ms. Moldenhauer, to
2 approve the application for a special
3 exception relief under 223 not meeting the lot
4 occupancy 403 and side yard 405 requirements
5 and the 2001.3 nonconforming provisions.

6 MADAM CHAIR MOLDENHAUER: Thank
7 you very much, Mr. Moy. I think there is no
8 opposition we would like to waive our
9 requirement and have summary order.

10 MR. MOY: Yes.

11 MADAM CHAIR MOLDENHAUER:
12 Congratulations. Thank you very much.

13 Before we read the next case, I
14 would just like to welcome and say that
15 joining us today are several students that are
16 working in the Office of Planning under the
17 Summary Youth Employment Program. We are
18 happy to have some students present and I hope
19 that they enjoy watching some of the
20 proceeding.

21 That being said, we'll enter into
22 the next case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: Madam Chair, that's
2 Application 18086, the application of Raymond
3 C. Fay and it's pursuant to 11 DCMR Section
4 3104.1 for a special exception to allow the
5 construction of a rear deck addition serving
6 an existing one-family row dwelling.

7 The application is under Section
8 223. It does not meet the lot occupancy
9 requirements (Section 403) and the rear yard
10 requirements (section 404). The property is
11 zoned R-4. It's located at 1348 Perry Place,
12 N.W. (Square 2827-S, Lot 147).

13 MADAM CHAIR MOLDENHAUER: Good
14 morning. Please introduce yourself for the
15 record.

16 MR. FAY: My name is Raymond Fay.
17 I'm the owner and resident at 1348 Perry
18 Place, N.W., Washington.

19 MADAM CHAIR MOLDENHAUER: Thank
20 you very much, Mr. Fay. I think that you know
21 the history of this case. It was here before
22 us and then you came back obviously with a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 smaller development which OP approved. I
2 think now with the new layout of this project
3 I think that it rest on the record, a very
4 simple case. We appreciate you providing the
5 reduced relief.

6 Is there anything else you would
7 like to add for the record or would you like
8 to move forward?

9 MR. FAY: Just move forward.

10 Thank you.

11 MADAM CHAIR MOLDENHAUER: Then at
12 this point in time I'll turn to the Office of
13 Planning for their report.

14 MR. COCHRAN: I think the students
15 may see the briefest case on record. OP
16 stands on the record.

17 MADAM CHAIR MOLDENHAUER: Thank
18 you. Are there any questions from Board
19 members for the Office of Planning or the
20 Applicant? Seeing none, are there any
21 individuals in the audience wishing to testify
22 in support or in opposition of this case?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Seeing none then we would move on to the ANC.
2 We have the same ANC-1A so I believe they are
3 also not in the audience for this case. We
4 have a documentation for ANC-1A that on June
5 9, 2010 there was a meeting, a duly held
6 meeting with a quorum present which was an
7 eight to zero vote to support the application
8 and we have a resolution to that affect which
9 is our Exhibit No. 31 which indicates that
10 they would receive great weight in support of
11 this application.

12 That being said, we would then
13 turn back to the Applicant for any closing
14 remarks.

15 MR. FAY: I have none. Thank you.
16 Except to thank the Board and the Office of
17 Planning.

18 MADAM CHAIR MOLDENHAUER: At this
19 point in time we'll enter into deliberation.
20 We have Application No. 18085 for a special
21 exception, or 223, for a 70 percent lot
22 occupancy. This application has the support

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the ANC. There are three letters of
2 support which are Exhibit No. 11, 12, and 13
3 which indicates the support of neighboring
4 individuals.

5 The Office of Planning has
6 supported the application. For purposes of
7 this deliberation I'll incorporate their
8 analysis of the 223 standards into my review
9 and this deliberation. That being said is
10 there any further points of deliberation?
11 We will not include in the belief the setback
12 requirement which was recommended.

13 MR. COCHRAN: You will?

14 MADAM CHAIR MOLDENHAUER: We will,
15 yes. Is there a second on the motion?

16 COMMISSIONER SCHLATER: Second.

17 MADAM CHAIR MOLDENHAUER: The
18 motion has been made to approve Application
19 18086 for 223 relief including 406.1, setback
20 relief. The motion has been made and
21 seconded. All those for approval say aye.

22 BOARD MEMBERS: Aye.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Mr. Moy, if you could
2 read back the vote.

3 MR. MOY: Yes, Madam Chair. The
4 staff would record the vote as three to zero
5 to two. This is the motion of the Chair Ms.
6 Moldenhauer to approve the application, as
7 you've cited. Seconded by Mr. Schlater. Also
8 in support of the motion is Mr. Dettman. No
9 other participating Board members. Again, the
10 total vote is three to zero to two.

11 MADAM CHAIR MOLDENHAUER: Thank
12 you very much. With no opposition we would
13 recommend that we waive our requirements and
14 have a summary order.

15 MR. MOY: Very good. Thank you.

16 MADAM CHAIR MOLDENHAUER: Thank
17 you very much, Mr. Fay.

18 MS. BAILEY: Madam Chair, ready
19 for the next case?

20 MADAM CHAIR MOLDENHAUER: Yes,
21 please.

22 MS. BAILEY: Application 18083.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This is the application of Reynaldo Paniagua,
2 pursuant to 11 DCMR Section 3103.2 for a
3 variance from the lot area and lot width
4 requirements under Section 401, a variance
5 from the occupancy requirements under Section
6 403 to allow the construction of a flat. The
7 property is zoned R-4. It's located at 928
8 Euclid Street, N.W. Square 2882, Lot 727.

9 MADAM CHAIR MOLDENHAUER: Would
10 the parties please step forward to the table,
11 please. Hi. Turn on your microphone and
12 introduce yourselves for the record.

13 MS. PANIAGUA: Good morning. My
14 name is Badia Paniagua and I'm the owner of
15 the property at 928 Euclid Street.

16 MR. CLARK: My name is Jerald
17 Clark. I live at 3530 T Street, N.W. 20007.
18 I'm the architect for the project.

19 MADAM CHAIR MOLDENHAUER: Thank
20 you very much. At this time you can present
21 your case for the relief that you're seeking
22 in addition to any additional documentation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that is already in the record.

2 MR. CLARK: We don't have anything
3 other than what was presented to the ANC
4 hearing which was approved and I believe the
5 Board of Zoning Adjustment has everything and
6 I think it's also approved so we don't have
7 anything to add unless we are called upon.

8 MADAM CHAIR MOLDENHAUER: Okay. I
9 believe what I'll do now is open up the floor
10 for Board questions for the Applicant.

11 COMMISSIONER SCHLATER: Do we have
12 any documentation of the ANC vote?

13 MR. CLARK: I'm sorry. I do not.
14 I thought it would all be with the Board.

15 MADAM CHAIR MOLDENHAUER: We don't
16 have it in our record but if you can testify
17 under oath as to what occurred and what was
18 presented, that would be helpful.

19 MR. CLARK: Okay. We presented
20 the drawings in a preliminary meeting with the
21 group that reviews a different neighborhood's
22 applications and they approved it. Then it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 went to a general meeting and they presented
2 it to the general meeting. There was no
3 comment and it was approved.

4 MADAM CHAIR MOLDENHAUER: Was
5 there any opposition by any individuals in the
6 audience?

7 MR. CLARK: No opposition in the
8 audience or in any way.

9 MADAM CHAIR MOLDENHAUER: Just to
10 provide you with the information, while we'll
11 accept that testimony we can't give that great
12 weight but we will recognize the testimony you
13 provided.

14 Are there any other questions from
15 Board members?

16 COMMISSIONER SCHLATER: One last
17 question. On the drawings it says the
18 exterior of the proposed flats is painted
19 stucco. Is that consistent with the
20 surrounding townhomes?

21 MR. CLARK: Actually, it will
22 probably be integrated in the stucco.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER SCHLATER: It will be
2 part of the stucco?

3 MR. CLARK: Yes.

4 COMMISSIONER SCHLATER: And would
5 you say that's consistent with the other
6 buildings around there?

7 MR. CLARK: No.

8 COMMISSIONER SCHLATER: No?

9 MR. CLARK: The other buildings
10 are stone and brick but if we do stone and
11 brick, they will end up with a 13-foot 6-inch
12 wide house by the time we put everything you
13 have to put for an outside wall and everything
14 and so we are going for a thinner wall in
15 stucco.

16 COMMISSIONER SCHLATER: And then
17 how wide is the house at that point?

18 MR. CLARK: Fifteen three inside.

19 COMMISSIONER SCHLATER: That's a
20 big difference for sure. Okay. No further
21 questions. Thank you.

22 MADAM CHAIR MOLDENHAUER: Any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 additional questions from Board members?

2 Seeing none then at this time we'll move on to
3 the Office of Planning report. We may come
4 back for some additional questions.

5 MS. JACKSON: Good morning Chair,
6 members of the Board. For the record my name
7 is Arlova Jackson with the Office of Planning.
8 OP recommends approval of the requested
9 variance permitting lot area of 1281.6 square
10 feet and a lot width of 16 feet.

11 The property is existing
12 nonconforming with regard to lot, width, and
13 size. Adjacent properties are under separate
14 ownership and are improved with other
15 structures. OP finds the project meets the
16 standards for approval. The property's lot
17 size and width predated the 1958 zoning
18 regulations and would be practically difficult
19 for the owner to mitigate.

20 To add, the proposed use is
21 consistent with those found in the area and
22 the zone. The requested variances if granted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 should not impact the zone plan as the
2 proposed structure would meet the other R-4
3 requirements.

4 Approval of the requested
5 variances would also not be judgmental to the
6 public good in that it would improve a vacant
7 lot with the new residential structure.
8 Therefore, we recommend approval of the
9 variance request for lot area and lot width
10 and we'll take any questions you have at this
11 time.

12 MADAM CHAIR MOLDENHAUER: Thank
13 you very much, Ms. Jackson. Are there any
14 additional questions from Board members of the
15 Office of Planning?

16 Seeing none does the Applicant
17 have any questions for the Office of Planning?

18 MR. CLARK: No.

19 MADAM CHAIR MOLDENHAUER: Thank
20 you very much. No questions at this time.
21 We'll then move on to any persons or parties
22 in support or in opposition of this case in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the audience. Seeing none, we also then would
2 turn to the ANC but, as we stated, we do not
3 have a letter from ANC-1B in our record but we
4 did take testimony from the Applicant
5 regarding what transpired in July 1, 2010
6 meeting.

7 That being said, we go back to the
8 Applicant for any additional discussions in
9 regards to the application.

10 MR. CLARK: We have none.

11 MADAM CHAIR MOLDENHAUER: Nothing
12 further?

13 MR. CLARK: No.

14 MADAM CHAIR MOLDENHAUER: Then at
15 this point in time we will conclude the
16 hearing and enter into deliberation. I will
17 just start us off for Application 18083 for a
18 variance under lot area and lot width to allow
19 the construction of a flat on a current vacant
20 lot.

21 The Office of Planning has
22 articulated their standards for variance

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 relief and they recommend approval. The ANC,
2 while we're not providing it great weight, did
3 approve and we have no evidence of any
4 opposition in our record.

5 We are always very encouraging of
6 development of vacant properties throughout
7 the District. I think that one of the
8 concerns potentially would have been whether
9 it's conforming with the area with the stucco.
10 I think Board Member Schlater pointed that
11 out. I think there was sufficient evidence
12 from the architect regarding the difficulty of
13 the lot size which is obviously one of the
14 factors that went into the first prong of the
15 variance test that go to the need for them to
16 use that material which we would always prefer
17 to see brick construction, especially in an
18 area where the majority of the buildings are
19 brick but where that would be permitted based
20 on the uniqueness and the exceptional
21 circumstance of the narrowness of this lot.

22 I would recommend approval but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 first let's see if there is any additional
2 deliberation from Board members. Seeing none
3 then I will submit a motion to approve
4 Application 18083 for the property at 1928
5 Euclid Street, N.W. to construct a flat
6 needing variance relief under lot area and lot
7 width.

8 The motion has been made. Is
9 there a second?

10 COMMISSIONER SCHLATER: Second.

11 MADAM CHAIR MOLDENHAUER: Motion's
12 been made and seconded. All those for
13 approval say aye.

14 BOARD MEMBERS: Aye.

15 MR. MOY: Staff would record the
16 vote, Madam Chair, as three to zero to two on
17 the motion of the Chair Ms. Moldenhauer to
18 approve the application for variance relief
19 from Section 401 lot area, lot width. The
20 application also amended to not include lot
21 occupancy 403 not being required. Seconded
22 the motion Mr. Schlater. Also in support of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the motion Mr. Dettman. No other
2 participating Board member so, again, the
3 total vote is three to zero to two.

4 MADAM CHAIR MOLDENHAUER: Thank
5 you very much. With no opposition in this
6 case we'll waive our requirement and recommend
7 a summary order.

8 MR. MOY: Very good.

9 MR. CLARK: We thank the Board.

10 MS. PANIAGUA: Thank you very
11 much.

12 MADAM CHAIR MOLDENHAUER: Thank
13 you.

14 I believe that concludes our
15 morning so we will then reconvene at 1:00.
16 Thank you.

17 (Whereupon, at 11:07 a.m. off the
18 record until 2:18 p.m.)

19

20

21

22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1

2

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

3

2:18 p.m.

4

MADAM CHAIR MOLDENHAUER: This

5

hearing will now come to order.

6

Good afternoon, ladies and

7

gentlemen This is the July 20, 2010 Public

8

Hearing of the Board of Zoning Adjustment for

9

the District of Columbia.

10

My name is Meridith Moldenhauer,

11

Chairperson.

12

Joining me today is Shane Dettman

13

representing the National Capital Planning

14

Commission. Konrad Schlater, representing the

15

Zoning Commission.

16

Copies of today's hearing agenda

17

are available to you and located to my left in

18

the wall bin near the door.

19

Please be aware that this

20

proceeding is being recorded by a court

21

reporter and is also being webcast live.

22

Accordingly, we must ask you to refrain from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 any disturbing noises or actions in the
2 hearing room.

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

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

18 The order of procedure for special
19 exceptions and variances are as follows:

20 The statement and witnesses of the
21 Applicant; government reports including the
22 Office of Planning and the Department of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Public Works; report of the Advisory
2 Neighborhood Commission; parties or persons in
3 support, and; parties or persons in
4 opposition; and then finally closing remarks
5 by the Applicant.

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

9 The Applicant, appellant, persons
10 or parties except an ANC in support including
11 witnesses are provided 60 minutes
12 collectively;

13 Appellees, persons and parties
14 except an ANC in opposition including
15 witnesses are provided 60 minutes
16 collectively;

17 Individuals three minutes.

18 These time restraints do not
19 include cross-examinations or questions from
20 the Board. Cross-examination of witnesses is
21 permitted by the Applicant or parties.

22 The ANC within which the property

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is located is automatically a party to a
2 special exception or variance case.

3 Nothing prohibits the Board from
4 placing reasonable restrictions on cross
5 examination including time limits and
6 limitations on the scope of cross-examination,
7 relevance, redundancy, et cetera.

8 The record will be closed at the
9 conclusion of each case except for any
10 material specifically requested by the Board.
11 The Board and the staff will specifically
12 state at the end of the hearing exactly what
13 is expected and the date when the person must
14 submit that evidence to the Office of Zoning.

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

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 after the public hearing on a case for
2 purposes of reviewing the record or
3 deliberating on the case.

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

10 Please turn off all beepers and
11 cell phones at this time so as not to disturb
12 these proceedings.

13 The Board will make will every
14 effort to conclude the public hearing as near
15 as possible to 6:00 p.m. If the afternoon
16 cases are not completed at 6:000 p.m., the
17 Board will access whether it can complete the
18 pending case or cases remaining on the agenda.

19 At this time the Board will
20 consider any preliminary matters. Preliminary
21 matters are those that relate to whether a
22 case should or will be heard today such as a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 requests for postponement, continuance,
2 withdrawal or whether proper adequate notice
3 for a the hearing has been given.

4 If you are not prepared to go
5 forward in a case today or if you believe that
6 the case should not proceed, now is the time
7 to raise such a matter.

8 Mr. Secretary, are there any
9 preliminary matters?

10 MR. MOY: Ma'am Chair, at this
11 point in the afternoon proceedings there are
12 no known preliminary matters. However, I
13 would like to make a quick announcement to
14 reannounce what I said earlier in the morning,
15 which is that for the public hearing cases
16 scheduled for July 27th, which is next
17 Tuesday, all those cases have be rescheduled
18 to Tuesday, August the 3rd because of a lack
19 of a Board quorum on the 27th.

20 Thank you.

21 MADAM CHAIR MOLDENHAUER: Thank
22 you very much, Mr. Moy.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 All individuals wishing to testify
2 this afternoon, please rise to take the oath.
3 Ms. Bailey will administer the oath.

4 (WITNESSES SWORN)

5 MADAM CHAIR MOLDENHAUER: Now we
6 can call the first case. Thank you.

7 MS. BAILEY: Thank you, Madam
8 Chair. And good afternoon to everyone.

9 The first case is Application of
10 the National Public Radio and the number is
11 18087. It's pursuant to 11 DCMR 3104.1, for
12 a special exception to allow a roof structure
13 not set back from the required distance from
14 the exterior walls and not of uniform height
15 under subsection 411.11, ad special exception
16 to allow roof mounted antennas under section
17 2712. The property is zoned C-3-C. It's
18 located at 1111 North Capitol Street,
19 Northwest. Square 673, Lot 837.

20 MADAM CHAIR MOLDENHAUER: Thank
21 you very much.

22 Those parties can come forward and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 introduce themselves for the record.

2 MR. KADLECEK: Good afternoon.

3 I'm Cary Kadlecek with the law firm of
4 Goulston & Storrs on behalf of the Applicant.

5 MR. HOLZBACH: My name is Ralph
6 Holzbach with Hickok Cole Architects.

7 MR. SCHLESINGER: And I'm Maury
8 Schlesinger with National Public Radio.

9 MR. KADLECEK: I do have one
10 preliminary matter, and that is to have
11 Holzbach qualified as an expert in
12 architecture. I believe that you have his
13 résumé in front of you.

14 MADAM CHAIR MOLDENHAUER: We do
15 now.

16 Mr. Holzbach's résumé was not
17 included in the prior submissions, but we now
18 have it. We'll take a moment to review it.

19 His résumé indicates that he's
20 registered architect in Maryland. But is Mr.
21 Holzbach registered in the District of
22 Columbia?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HOLZBACH: I'm not registered
2 in the District of Columbia.

3 MADAM CHAIR MOLDENHAUER: Have you
4 previously ever been certified as an expert in
5 the District of Columbia?

6 MR. HOLZBACH: No, I have not.

7 MEMBER DETTMAN: Yes. Mr.
8 Holzbach, maybe it's a question for counsel,
9 but could you just give us a very simply idea
10 of what area of your testimony you'll be
11 relying upon your expertise in architecture?
12 Does it go to the actual structure of the
13 building and why the penthouses need to be
14 located?

15 MR. HOLZBACH: Exactly. I'm
16 sorry, should I -- it relates directly to
17 architectural design intent, and its purpose
18 for being as to NPR's need for this to be.

19 COMMISSIONER SCHLATER:
20 Approximately how many office building have
21 you been the lead designer on?

22 MR. HOLZBACH: The lead designer,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this is the first in which I'm the lead
2 designer. I've been involved in several
3 office buildings in the past as project
4 manager and project architect.

5 MEMBER DETTMAN: It seems to me
6 that the penthouse really, what is driven the
7 needs for these antennas that you're also
8 seeking relief for, it goes more towards to
9 the design and requirements of the antennas
10 and not necessarily something structurally or
11 architecturally related to the building of the
12 building.

13 MR. HOLZBACH: Well, the antenna
14 themselves are located in two positions.
15 Particularly as relates to NPR's specific use
16 as a communications organization, they have an
17 immense need for communication devices such as
18 antenna.

19 As you'll see in my presentation,
20 the location of the satellite dishes are met
21 to provide aesthetic effect which is evocative
22 of NPR's mission as a communication

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 organization. So, those have been located
2 there to evoke that.

3 The rest of the antenna have been
4 located in the ways which will basically make
5 them invisible from the street. They are all
6 mounted on the penthouse and set back as much
7 as possible, yet to still be effective.

8 COMMISSIONER SCHLATER: Okay. But
9 that's aesthetics and the needs of NPR. What
10 you just said didn't necessarily draw upon
11 your expertise in architecture.

12 MR. HOLZBACH: I would argue that
13 it does in that the location of those and the
14 way that it effects neighboring structures and
15 views is all about the aesthetic choice of the
16 locations.

17 The quantity is a given. So,
18 that's something we're working with.

19 And we care very deeply about the
20 effect that these have on neighboring
21 properties, as well as the overall aesthetic
22 of the building. So, that's our argument

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 today.

2 COMMISSIONER SCHLATER: Okay.

3 Thank you.

4 MADAM CHAIR MOLDENHAUER: I
5 believe from a consensus of the Board we will
6 quality you as an expert. So, we'd like to
7 start your presentation.

8 Thank you.

9 MR. KADLECEK: Great. Thank you.

10 Again, I'm Cary Kadlecek with
11 Goulston & Storrs. With me is John Epting,
12 also with Goulston & Storrs. As I mentioned,
13 Rob Holzbach to my right from Hickok Cole
14 Architects and then to his right, Maury
15 Schlesinger of NPR.

16 As I'm sure you're aware having
17 read the record, this is a pretty complete
18 record. We have support of the ANC. We have
19 support of the Office of Planning and the
20 District Department of Transportation.

21 We are comfortable relying on the
22 record with the exception with a small change

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in the plans that you've received before you
2 relating to the placement of the antennas
3 after discussions with the Historic
4 Preservation Office. It doesn't really have
5 anything to do with the relief, per se, but
6 it's more of a result of an aesthetics
7 discussion with Historic Preservation Office.

8 If the Board agrees, we can go
9 briefly to our presentation just about the
10 change in the plans?

11 MADAM CHAIR MOLDENHAUER: That
12 would be appreciated. And if you can just
13 provide some perspective on the different
14 vantage points in regards to the visual
15 appearance of the antennas and satellite
16 dishes from the different streetscapes and
17 neighboring properties? Thank you.

18 MR. KADLECEK: Mr. Holzbach will
19 address those.

20 MR. HOLZBACH: Perhaps the best
21 thing to do is if it's okay, I'd like to just
22 skip forward in my presentation. It's a very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 visual presentation.

2 So, particularly we're talking
3 about the areas in blue, which are we've
4 located the satellite dishes at the lower roof
5 for high visibility. And the rest of the
6 antenna are located on the penthouse in three
7 rows. I have a plan that shows that a little
8 more clearly.

9 In plan view, the satellite dishes
10 are located here and here. And then we've
11 located all of the other antenna on three
12 armatures.

13 These two armatures are actually
14 located on the inside face of the penthouse
15 wall. The antenna located up here are best
16 described as what you might think of as TV
17 antenna, for the most part; stick and pole
18 type antenna.

19 There's a third armature located
20 on a penthouse roof here, which is set back in
21 all directions as much as possible from the
22 street. The effect from the street when seen

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from the north there is only one antenna which
2 is visible on the penthouse here, in which we
3 would actually say is somewhat of an
4 interesting looking antenna.

5 The other antenna are the
6 satellite dishes, which again the point is
7 that we want them to be visible. In working
8 with HPO they had asked that we remove them
9 off of the corner tower element. And so we
10 shifted them half a bay, which is to the east.
11 And they have approved that.

12 Effects from other views. This is
13 the view from the southwest looking at the
14 building. Here you can see that only the
15 satellite dishes are visible. The other
16 antenna are set back and hidden from view.

17 And then a view from the southeast
18 where only a very small portion of the antenna
19 are visible right there.

20 So, it's our argument that these
21 have been located in a way as to have most
22 visual effect, which is none except where we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 want, which is at the entrance to the building
2 as a way to be evocative of NPR's mission.

3 MADAM CHAIR MOLDENHAUER: Can you
4 provide a perspective of the neighboring
5 properties? I believe there's a resident
6 across the street. And the vantage points
7 that they would have both the satellite dishes
8 and the antennas?

9 MR. HOLZBACH: We do not have a
10 perspective view from that location at this
11 time. It's something we can provide, of
12 course.

13 MADAM CHAIR MOLDENHAUER: Can you
14 provide a verbal description of that?

15 MR. HOLZBACH: Certainly. That's
16 probably best described from the roof plan.

17 I believe the building you're
18 talking about is across the street to the
19 west, slightly to the northwest.

20 MADAM CHAIR MOLDENHAUER: I
21 believe there's also a new project that had
22 been approved to the rear of the structure --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. HOLZBACH: Yes.

2 MADAM CHAIR MOLDENHAUER: -- and
3 has not yet been completed, but has received
4 approval. So, it will be a residential
5 project eventually. So if you can reference
6 that as well, that would be appreciated.

7 MR. HOLZBACH: The building
8 directly to the east of our project has no
9 windows facing our site. It's directly on the
10 property line. There are no views to our
11 building.

12 The views from the property
13 located to the northwest would primarily see,
14 again as I said, the satellite dishes lined up
15 on beams organized. The entire area is green
16 roof, so it's sort of, they will be seen
17 offset against the green roof.

18 And the antenna on the penthouse
19 area, again these three bands, will be
20 organized in a row as opposed to mounted
21 haphazardly across the roof. It was important
22 to us to maintain an organization and submit

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there's no visual anarchy on the roof from
2 other building.

3 MADAM CHAIR MOLDENHAUER: Thank
4 you.

5 Are there any additional questions
6 from Board members?

7 COMMISSIONER SCHLATER: Just
8 curious as to where the process is in the
9 Historic Preservation review process. I saw
10 in the record there was submitted something
11 from the Mayor's agent giving approving of a
12 partial demolition of the building. Does that
13 mean it next goes to HPRB for approval of the
14 design?

15 MR. KADLECEK: No. It's already
16 gone through concept approval from HPRB. And
17 the reason we went to the Mayor's agent was
18 for the demolition portion of the rear of the
19 historic structure.

20 COMMISSIONER SCHLATER: Sure.
21 Okay.

22 MR. KADLECEK: That's all now been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 approved. And the ongoing discussion with
2 HPO, which is why we submitted changes to you
3 today, those are all the discussions now; that
4 everything else with HPO final. But there's no
5 need to go back to HPRB.

6 COMMISSIONER SCHLATER: Okay. One
7 other thing. So we've got relief requested on
8 the location of the antennas. But can you
9 also walk us through the relief that's being
10 requested on the penthouses themselves?
11 You're not getting the proper set backs on a
12 few of them, is that correct?

13 MR. HOLZBACH: Certainly, I'd be
14 happy to.

15 Again, going back to this diagram
16 that shows the location of relief we are
17 requesting, there's a court on the east face
18 of our building where the future Camden will
19 occur.

20 We're looking for a set back
21 relief on the penthouse walls on either side
22 of the court. The penthouse wall, which is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 our central elevator and stair core, set back
2 relief as well as non-uniform height of the
3 penthouse. Specifically describing why we're
4 doing that, I'll start with the non-uniform
5 height and the set back.

6 The footprint of the site in the
7 first four floors is approximately 60,000
8 square feet. As you can see in the drawing,
9 it's quite a large footprint for the first
10 four floors.

11 We have an elevator core that's
12 central to those first four floors.

13 Because this is a historic
14 property our intent is to respect the historic
15 structure. The office building in the portion
16 of the addition that's above that is set back
17 as much as possible, which leads to the core,
18 the central core being an offset core at the
19 office floors.

20 So this, the elevator core is
21 located here. The office floors have this
22 very open space behind it. Just by nature of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the offset due to the historic building.
2 Frankly, that works very well for NPR's need
3 for the space above. It's a happy
4 coincidence.

5 The design has a central corridor
6 along the exterior of all office floors. So
7 what we end up with is this is an elevation of
8 the south. This is that elevator core here
9 going down through the building. In the west
10 elevation, this is the elevator core. So you
11 can see it's quite central to the main portion
12 of the building.

13 The set back relief is sought
14 because of the location in relation to the
15 facade in the office block.

16 In the packet that's handed out it
17 might be easier to see. We have dashed in red
18 the allowable building area per Zoning; 130
19 feet plus the penthouse in the set back.

20 As you can see, because we are
21 trying to respect the historic structure and
22 we're not building to the maximum height

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 allowable, our elevator penthouse is still
2 quite far back from the allowable.

3 We're seeking uneven height relief
4 because there's no need to go to 18 feet. We
5 wanted to minimize the impact as viewed from
6 the street. So it's better to have the
7 elevator penthouse as small as need be. And
8 I'll jump to the perspective view.

9 This is the lowest height that we
10 need. There no need to make it higher,
11 essentially. So that goes to an uniform
12 height. The set back is a function of the
13 elevator being central to the building at the
14 lower floors and still set back quite an
15 enormous distance from the street.

16 COMMISSIONER SCHLATER: Somewhere
17 in the application I read that there was going
18 to be roof deck as part of this. Is part of
19 that elevator core, I mean that penthouse
20 structure, is that going to be used as any
21 sort of gathering space as well?

22 MR. HOLZBACH: No. Actually no.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The roof terrace occurs on the roof of the
2 fourth floor. The third floor here is
3 accessible from the fourth floor.

4 COMMISSIONER SCHLATER: Okay.

5 MR. HOLZBACH: There's no
6 occupiable or public space on the overall roof
7 of the building.

8 COMMISSIONER SCHLATER: Okay. And
9 then the elevator penthouse that's shorter
10 than the rest of the penthouse is going to be
11 the one that's most visible that would appear
12 from the street?

13 MR. HOLZBACH: Exactly.

14 COMMISSIONER SCHLATER: What
15 materials are going to be used to make that an
16 attractive penthouse since it's going to be
17 right there flush with the building edge?

18 MR. HOLZBACH: That's a great
19 question.

20 We envision precast. The overall
21 penthouse material will be precast material
22 seen from this view. And this goes to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 other set back, really, that we're requesting
2 which we can address momentarily.

3 The view of the primary penthouse
4 is precast.

5 COMMISSIONER SCHLATER: Yes.

6 MR. HOLZBACH: To match the rest
7 of the building.

8 Kind of as seen as the light
9 portion is precast, and then as shown as gray,
10 we're calling it an accent material. It could
11 be metal panel. It's meant to match the same
12 material that we're using as an accent in the
13 building located here and wrapping the fire
14 command center at the entrance. It's this
15 idea of this continuity of this color that is
16 seen from the building. So even though we
17 have this element, we do feel it's important
18 to show it as a link through the building.

19 Oh, I'm sorry, thank you, Maury.

20 The other element to point out is
21 the stairwell. Just to the left of the
22 elevators is the stair that goes all the way

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 through the building. And that will be glass.

2 COMMISSIONER SCHLATER: Where is
3 that? Sorry?

4 MR. HOLZBACH: Just right there.
5 Sorry. I'm trying to hold this steady. Right
6 there, just to the left of the elevators.

7 COMMISSIONER SCHLATER: Your
8 elevator core is sort of at the edge of the
9 building, that doesn't block? It's all glass
10 on the facade?

11 MR. HOLZBACH: It's all glass on
12 the facade.

13 COMMISSIONER SCHLATER: And the
14 elevator core itself is a little bit recessed
15 into the building?

16 MR. HOLZBACH: Yes. There's
17 perimeter circulation wrapping the entire
18 footprint of the office floors.

19 COMMISSIONER SCHLATER: Yes.

20 MR. HOLZBACH: So there's a 5 foot
21 corridor bypassing the core, plus the
22 thickness of the facade, which is about 2

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 feet. So it's a little less than 7 feet back.

2 COMMISSIONER SCHLATER: On the
3 penthouses, is there any other relief that you
4 haven't described --

5 MR. HOLZBACH: Yes.

6 COMMISSIONER SCHLATER: -- that
7 you're asking for?

8 MR. HOLZBACH: Let me go back to
9 the elevation. Actually, this plan will do.

10 The other relief we're looking for
11 is the set back requirement along the court.
12 This is a court between the future Camden
13 Building, that apartment building as described
14 earlier, on both sides. On the south and the
15 north side there is a court. So at the roof
16 level we're requesting relief from setting
17 back the penthouse. This elevation along the
18 east side probably best represents that, and
19 that's the bottom drawing.

20 Again, in red indicates the extent
21 of allowable building area. For us, we felt
22 it was important to avoid more articulation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 than necessary. Setting back the penthouse at
2 the top would add another level of detail to
3 the building that we don't want. It would
4 start to create a wedding cake type effect.
5 And ultimately this facade would be covered by
6 the Camden anyway.

7 I'll go back to that perspective
8 view. This is one perspective view, which
9 there is almost no impact visually.

10 Again, the southwest perspective,
11 no impact.

12 And then this is probably the area
13 where you see it most prominently. And we
14 felt that it was a better design element to
15 have it be a continuous height all the way and
16 provide an anchor for what we're calling the
17 office block, which is this element that's
18 floating above the historic structure --

19 COMMISSIONER SCHLATER: Yes.

20 MR. HOLZBACH: -- to anchor that
21 rather than weaken it by setting the penthouse
22 back.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER SCHLATER: And I
2 think a lot of the times people are concerned
3 about these set backs when it comes to height
4 and the measurement of height. And it's not
5 a problem in this case. So, I don't see a
6 problem with it. I think it looks great.

7 MR. HOLZBACH: Thank you.

8 COMMISSIONER SCHLATER: No further
9 questions.

10 MADAM CHAIR MOLDENHAUER: Thank
11 you very much.

12 Are there any additional questions
13 from Board members? Mr. Dettman? No, nothing
14 at this time.

15 Then if you an additional witness,
16 any additional witnesses?

17 MR. SCHLESINGER: I'm Maury
18 Schlesinger, Director of Real Estate and
19 Administrative Services for NPR.

20 And I just would like to expand on
21 Rob's comments about the location of the
22 satellite dishes on the fourth floor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Clearly, Rob has already
2 articulated that the need for communication
3 devices is key to our operation as a provider
4 of news and information.

5 The aesthetic choices for the
6 satellite dishes on the fourth floor roof
7 coincidence with technical needs for those
8 transmission dishes to be as low to the ground
9 as possible to protect them from interference
10 from other users of the same frequencies.

11 So there's this nice confluence
12 that putting them on that roof both gives us
13 the opportunity to visually express our
14 business and also do our business.

15 The quantity of dishes is sort of
16 a basic requirement of our operation of the
17 Public Radio satellite system which transmits
18 and receives programs through the country's,
19 basically the electronic highway for over 800
20 Public Radio stations throughout the country.
21 And the various receiving antenna on the upper
22 penthouse roof are for reception of off-air

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 broadcasts from all the local radio and
2 television stations. And to make them very
3 good receptions, you're basically going to
4 have a particular antenna tuned to each
5 stations, and that's one of the reasons for
6 all the quantities.

7 I hope helping you understand the
8 rationale behind these requests.

9 I think that's about all I have.
10 Thank you.

11 MADAM CHAIR MOLDENHAUER: Are the
12 number of antennas you currently have at your
13 current facility in the District the same as
14 to the number that you're putting on your new
15 building?

16 MR. SCHLESINGER: We are actually
17 asking for an increase. Partially in order to
18 be prepared for whatever the future may bring.

19 We currently have in terms of the
20 large dishes its comparable. I think we've
21 asked for some additional flexibility on,
22 basically, direct TV sized antenna dishes

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because that's an area that we can't predict
2 the service needs we'll have.

3 In terms of the small Yankees, I
4 think the only thing we're asking for is some
5 additional shortwave receiving and ham
6 transmission antennas that we don't currently
7 have.

8 MADAM CHAIR MOLDENHAUER: I just
9 want to look at my diagram for a second.

10 Do any Board members have any
11 questions before I -- while I'm looking at
12 something, are there any additional witnesses
13 for the Applicant?

14 MR. KADLECEK: We have nothing
15 further.

16 MADAM CHAIR MOLDENHAUER: Nothing
17 further?

18 Then at this point in time I'll
19 turn to the Office of Planning for their
20 report.

21 MS. BROWN-ROBERTS: Good
22 afternoon, Madam Chairman and members of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Board. I'm Maxine Brown-Roberts representing
2 the Office of Planning, and actually I'm
3 filling in for the Project Manager this
4 afternoon.

5 The Office of Planning recommends
6 approval of NPR's requested relief that is
7 necessary to permit redevelopment of its
8 proposed new location at 1111 North Capitol
9 Street.

10 Specifically, the Applicant
11 requested special exception relief from the
12 structure requirement to permit penthouse
13 walls of uneven height and to permit the
14 installation of a number of antenna which
15 would not meet the set back height and
16 visibility requirements of Section 2704.

17 Various relief is also necessary
18 in order to permit penthouse walls which were
19 not set back the required distance from the
20 roof's edge.

21 For reasons explained, OP's
22 position is this is appropriately considered

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 under the criteria for a variance relief and
2 not special exception. The Board is aware of
3 OP's position regarding this issue, and
4 therefore there's no need to rehash that
5 today.

6 With respect to the antenna
7 installation, we found that they would be in
8 harmony with the intent of the Regulation and
9 the penthouse installation should not be
10 easily visible from the North Capitol Street
11 frontage.

12 With respect to the larger antenna
13 on the lower roof of the existing building,
14 this was carefully considered by HP staff and
15 deemed acceptable given the building's former
16 and future function as a telecommunications
17 building.

18 With respect to having roof
19 structures with walls of an equal height, this
20 is neither practical in this instance as
21 feasible, as it would increase the building's
22 visual massing and not be in keeping with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 building's historic character.

2 Light and air to any nearby
3 structure would not be effected. Therefore,
4 relief would not harm the intent of the
5 Regulations.

6 With respect to the penthouse set
7 back from the roof's edge, the property
8 exhibits an exceptional situation under which
9 relief could be granted without detriment to
10 the public good and without substantially
11 impairing the intent of the Regulations and
12 Map. Therefore, the Office of Planning
13 recommends approval of the requested special
14 exceptions and variance.

15 Thank you, Madam Chairman.

16 MADAM CHAIR MOLDENHAUER: Thank
17 you very much.

18 Does the Applicant have any
19 questions for the Office of Planning?

20 MR. KADLECEK: We have no
21 questions.

22 MADAM CHAIR MOLDENHAUER: Do any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Board members have any questions for the
2 Office of Planning?

3 Seeing none, then at this point in
4 time we'd move on to any persons or parties in
5 support or opposition of this case.

6 Seeing nobody in the audience,
7 we'll then move on to the ANC. Is the ANC for
8 this Applicant's area, which is ANC 6C
9 present?

10 Seeing nobody present, I will
11 reference that -- we have a reference that
12 there was a June 9, 2010 ANC meeting, but do
13 we have in our record a letter from the ANC?
14 We do?

15 MR. KADLECEK: I know that they
16 did submit a letter to the record.

17 COMMISSIONER SCHLATER: It's
18 Exhibit 23.

19 MADAM CHAIR MOLDENHAUER: I just
20 found that.

21 COMMISSIONER SCHLATER: Submitted
22 June 14th. The Commissioners voted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unanimously, 8-0, to support the application.

2 MADAM CHAIR MOLDENHAUER: Thank
3 you, Mr. Schlater.

4 The letter indicates that there's
5 a duly meeting, and that a quorum was present.
6 So this would satisfy our requirements to
7 receive great weight.

8 That being said, are there any
9 closing remarks by the Applicant?

10 MR. KADLECEK: I just have two
11 brief closing remarks. With respect to the
12 roof structure relief, as Rob explained the
13 roof structure is set back considerably from
14 the property lines. And it's really a
15 technicality that we have to seek roof
16 structure relief, particularly given the fact
17 that the matter-of-right building envelop is
18 considerably larger than what the building is.
19 The amount of impact that this roof structure
20 would have is really quite negligible.

21 Secondly, with respect to the
22 antennas. As Maury explained quite clearly,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think, the need for antennas for NPR is
2 probably more so than almost any other
3 organization you could think of. But the
4 antennas are not all in need of relief. The
5 reason we asked for relief for all them is
6 simply for clarity's sake. Some of them are
7 matter-of-right, some of them are not. But it
8 makes the application much cleaner to just ask
9 for relief for all the antennas.

10 With that, we have no more
11 remarks.

12 MADAM CHAIR MOLDENHAUER: Thank
13 you very much. Are there any additional
14 questions from Board members.

15 Seeing none, at this point in time
16 we'll conclude our hearing and I believe we'll
17 go directly into deliberation.

18 I will start us off. We have
19 application 18087 for NPR's request for
20 special exception relief under 2712 to permit
21 the installation of 53 roof mounted antennas
22 not meeting the set back height or visibility

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 requirement under Section 2704. And relief
2 under Section 401.5 to permit penthouse walls
3 of uneven height.

4 We've heard testimony from the
5 Applicant, both their architect and a
6 representative of NPR as to the needs of this
7 nonprofit organization and how the location
8 and needs of that organization go to the
9 number of antennas and satellite dishes that
10 are required for this location. In addition
11 to that, there was testimony by the architect
12 regarding the penthouse set back and the
13 historical nature of the building, and the
14 need to locate a elevator core in certain
15 locations of the additional structure and how
16 that effects requiring it to be not set back
17 as much from the new addition on the higher
18 levels of the roof and the penthouse.

19 In addition, there were statements
20 regarding the court relief, and I'm not going
21 to repeat all the testimony but I think that
22 there was adequate evidence and proof put into

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the record in regards to why that is required
2 and what that is needed here.

3 There was an ANC report, which
4 receives great weight. And the approval of
5 the ANC we went through.

6 And our concern is how this would
7 potentially be visually seen by neighboring
8 properties and visually seen as North Capitol
9 Street, which is one of the, obviously, more
10 streets in the District of Columbia. But I
11 think that based on the architect's testimony
12 of understanding kind of where Historic
13 Preservation is on the reviewing of this and
14 the revision to potentially pull back one of
15 the satellite dishes from that corner of North
16 Capitol Hill Street I think was very helpful
17 to me.

18 And at this point, you know I
19 would agree with OP in regards to approval of
20 the relief being requested.

21 And that being said, I'll open up
22 the floor for additional deliberation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MEMBER DETTMAN: Madam Chair, I
2 agree with every point that you've made with
3 respect to the relief that's being sought.

4 Just one comment about the
5 restructure relief. You know, we have this
6 ongoing disagreement with OP, and there's
7 quite a bit of history to this.

8 It was Jamal's TP case that this
9 originally came up. I thought it was a very--
10 and since I raised it. It was fully briefed.
11 The Board decided to continue seeing this as
12 a special exception because of 30 years of
13 history, despite the plain language of the
14 Regs seeing that I think as a variance.

15 OP at the time agreed. And so now
16 it's kind of this, myself and OP seeing it as
17 a variance but more seeing the special
18 exception.

19 So I think it might be worth
20 exploring the idea of sending forward a text
21 amendment to the Zoning Commission for
22 clarification.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 This was done in the late 1970s to
2 clarify the special exception authority of the
3 Board under 411. That clarity provided by the
4 Zoning Commission hasn't done what it's
5 intended to do, so perhaps it's worth doing
6 this again.

7 MS. BROWN-ROBERTS: It has been
8 considered under the Zoning rewrite. That is
9 something that we're --

10 MEMBER DETTMAN: Right, I
11 understand that. But we don't know when the
12 ZRR Regs for heights and roof structure set
13 backs are going to be actually put in place.

14
15 MS. BROWN-ROBERTS: Yes.

16 MEMBER DETTMAN: But I do
17 understand, you know withholding a text
18 amendment and waiting for the ZRR. But most
19 recently there was a text amendment in order
20 to clarify the role of special exception as
21 nonconforming uses and whether or not they are
22 subject to the discontinuance clause of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Zoning Regulations. So, it's not without
2 precedent that we continue to put forth text
3 amendments in order to just provide greater
4 clarity for the Board prior to the ZRR coming
5 on board.

6 MS. BROWN-ROBERTS: I will take
7 back your concerns to the office, and we'll
8 convey to you what responses at another time.
9 Okay.

10 MEMBER DETTMAN: I think it will
11 be helpful for the Board because right now we
12 have an OP report where the Board can't give
13 great weight to OP's analysis when it comes to
14 roof structure set back because we're seeing
15 it as a special exception and OP sees it as a
16 variance.

17 MADAM CHAIR MOLDENHAUER: Thank
18 you, Mr. Dettman. I think that's a very
19 helpful request. And obviously an clarity
20 that the Zoning Commission by a text amendment
21 can provide, you know looking now at our
22 Zoning Commission representative in these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 regards, is always important and helpful.

2 Clarity is always the best practice.

3 That being said, is there any
4 further deliberation?

5 COMMISSIONER SCHLATER: I will
6 certainly take the issue back to my fellow
7 Commission members. I'll discuss it, and see
8 if pushing a text amendment at this point is
9 warranted.

10 MADAM CHAIR MOLDENHAUER:

11 Fabulous.

12 So that being said, I will submit
13 a motion, a motion to approve to application
14 18087 for special exception under Section
15 411.11 to allow a roof structure not set back
16 from the exterior wall of the required
17 distance and for a special exception under
18 Section 2712 to allow roof mounted antennas.

19 A motion has been made. Is there
20 a second?

21 MEMBER DETTMAN: Second.

22 MADAM CHAIR MOLDENHAUER: Motion's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 been made and seconded.

2 All those for approval say aye.

3 BOARD MEMBERS: Aye.

4 MR. MOY: Staff would record the
5 vote as three-to-zero-two. It was on the
6 motion of the Chair, Ms. Moldenhauer to
7 approve the application for relief on special
8 exceptions 2712 and 411.11

9 Seconding the motion, Mr. Dettman.
10 Also in support of the motion Mr. Schlater. No
11 other participating members. Again, the final
12 vote is three-to-zero-two.

13 MADAM CHAIR MOLDENHAUER: Thank
14 you very much.

15 You can call the next case.

16 MR. KADLECEK: One last thing.
17 Can we ask for a summary order in this case?

18 MADAM CHAIR MOLDENHAUER: Yes.
19 There is no opposition, and in that regard the
20 Board would waive their requirement and
21 request summary order.

22 MR. KADLECEK: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: The second case of
2 the afternoon is the Application of the
3 Washington Hebrew Congregation, the number is
4 18084. It's pursuant to 11 DCMR 3104.1, for
5 a special exception for an expansion of an
6 existing child development center that's 133
7 children, 30 staff under section 205. The
8 property is zoned R-1-B. It's located at 3935
9 Macomb Street, Northwest. Square 1798, Lot
10 28.

11 MADAM CHAIR MOLDENHAUER: Good
12 afternoon.

13 If can please introduce yourself
14 for the record?

15 MS. BRAY: Good afternoon, Madam
16 Chair and members of the Board.

17 My name is Kinley Bray. I'm with
18 the law firm of Arent Fox on behalf of the
19 Applicant, Washington Hebrew Congregation.

20 With me today are Ellen McCarthy,
21 Director of Planning and Land Use for Arent
22 Fox as well as Steve Jacober the Executive

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Director of Washington Hebrew Congregation,
2 Nancy Cook the Director of the Early Childhood
3 Education Center at Washington Hebrew
4 Congregation. And behind me is David Nelson,
5 our traffic engineer with Street Traffic
6 Studies.

7 MADAM CHAIR MOLDENHAUER: Thank
8 you very much.

9 I think that the record in this
10 case is fairly full. I do have, however, have
11 you received the letter that we just today, or
12 yes, yesterday. We just got it today, which
13 is stamped in the Office of Zoning yesterday
14 from Paul Coughlin?

15 MS. BRAY: Coughlin, maybe?

16 MADAM CHAIR MOLDENHAUER:
17 Coughlin. Exhibit 35.

18 MS. BRAY: Yes.

19 MADAM CHAIR MOLDENHAUER: Okay.

20 MS. BRAY: We did receive that and
21 we have been in touch with Mr. Coughlin and
22 provided him a copy of the traffic study,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 which I think he was requesting in that
2 letter.

3 MADAM CHAIR MOLDENHAUER: Was
4 there any additional discussions with him? I
5 mean, for me he was raising issues of queuing,
6 other concerns about traffic. And from the
7 substance of the application I didn't really
8 see any evidence of that or any problems.

9 So I mean, I guess my question is
10 one: Does it really exist? And if it does,
11 you know what the current problems that the
12 Applicant is having currently with that and
13 how that will be effected by an increase?

14 MS. BRAY: We don't believe that
15 those problems currently exist. But I think
16 Mr. Jacober is probably best to answer the
17 question in terms of communicating with Mr.
18 Coughlin and the history of dealing.

19 MR. JACOBER: Yes. Washington
20 Hebrew Congregation through myself has been in
21 contact with Mr. Coughlin on a number of
22 occasions throughout the past three years of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 my employment. Most recently to give you an
2 example of the type of communications that we
3 received, he shared his concerns with me about
4 five bags of garbage that was in Rock Creek
5 Park land adjacent to the synagogue, and which
6 he had shared with me, had come from McLean
7 Gardens and what could we do to help the
8 situation. So we did remove the garbage bags
9 after contacting the police and the local ANC.

10 Another type of communication with
11 Mr. Coughlin was centered around the
12 brightness of the yellow parking stripping in
13 our parking lot and the directional arrows
14 coming into the parking lot. So we did
15 blacken out those bright yellow directional
16 arrows.

17 This will give you an idea of the
18 type of communication that we have. We do
19 treat Mr. Coughlin with respect and do try to
20 answer his concerns to the best of our
21 ability.

22 MADAM CHAIR MOLDENHAUER: Other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 than this gentleman, have you had any other
2 neighbor communication regarding issues of
3 traffic; pick up, drop-off, queuing things of
4 that effect?

5 MR. JACOBBER: In terms of the
6 Early Childhood Center as well as our
7 religious school center, I have not received
8 any direct communication from neighbors about
9 queuing or problems with the pick up or drop-
10 off either directly or through our area
11 neighborhood ANC.

12 MR. SCHLESINGER: When you
13 attended the ANC meeting on June 21, 2010 were
14 there any comments from the community about
15 their concerns in that regard or any
16 discussions?

17 MR. JACOBBER: No, there were not.

18 MADAM CHAIR MOLDENHAUER: Do Board
19 members have any other specific questions
20 about this or would they like --

21 COMMISSIONER SCHLATER: I don't
22 have any concerns.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MADAM CHAIR MOLDENHAUER: From a
2 consensus of my Board members, I believe that
3 there would be no need, I think as I
4 previously said earlier the application is
5 very full, to go forward and do a full
6 presentation of the facts. I think that was
7 some of the concerns that we had.

8 That being said, if you feel a
9 need to provide additional information, please
10 go ahead. Otherwise, we'll move on to the
11 Office of Planning.

12 MS. BRAY: Thanks, Ma'am Chair.

13 No, I don't think we need to do a
14 full presentation.

15 I would note for the record,
16 though, that at the ANC meeting and in
17 additional meetings with the community there's
18 been an open dialogue of communication, not
19 only about the traffic operations at the Early
20 Childhood Center but also with regard to the
21 other activities that take place. Because
22 this is a house worship and there are many

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 activities that take place from time-to-time
2 including large events such as weddings and
3 funerals. And there is an open line of
4 communication with the neighbors. And that
5 was acknowledged at the ANC meeting.

6 And, you know we will continue
7 that. The current conditions of approval
8 require a yearly contact with the ANC. And I
9 know that Ms. Jacober and Ms. Cook are taking
10 steps to actually communicate more frequently
11 then that and to take advantage of the
12 community listservs, and other such resources,
13 to make sure that the community is aware when
14 large events go on on the campus.

15 And throughout those
16 communications there have been no concerns
17 with respect to the parking or the pick up and
18 drop-off related to the ECC.

19 With that said, we would like to
20 adopt the Office of Planning's staff report.
21 In terms of our analysis we think that they
22 did a very thorough job and appreciate the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 time that they've spent on this matter.

2 And we'll dispense with a full
3 presentation.

4 MADAM CHAIR MOLDENHAUER: Thank
5 you very much. Then at this point in time I
6 will turn to the Office of Planning for their
7 report.

8 MR. JESICK: Thank you, Madam Chair
9 and members of the Board.

10 My name is Matt Jesick.

11 We reviewed this case pursuant to
12 the criteria of Section 205 in the Zoning
13 Regulations. And we find that the application
14 successfully meets all those criteria.

15 We feel that there will be
16 adequate queuing space on site for the drop-
17 off. And that there will be adequate parking
18 also on site for all users of the property.

19 So for the rest of my testimony
20 I'd be happy to rest on the record. But I'd
21 be glad to take any questions as well.

22 Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MADAM CHAIR MOLDENHAUER: Thank
2 you very much.

3 Just a couple of questions for
4 you. In regards to the parking requirement,
5 you say that there is a requirement for eight
6 spaces, but there's 66. And that would be
7 sufficient to satisfy all of the CDC
8 requirements as well as other weekday
9 requirements. Do you know what the needs were
10 for the weekday uses of either the synagogue
11 or other aspects of the location in regards to
12 parking requirements that you can confirm that
13 there were eight additional spaces?

14 MR. JESICK: Just in our
15 discussions with the Applicants, they
16 indicated that there were very minimal other
17 users during these hours of the day. Perhaps
18 some office workers of the synagogue or maybe
19 other visitors. But very minimal use of the
20 parking lot during the day.

21 MADAM CHAIR MOLDENHAUER: Okay.
22 Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And did you receive any other
2 communications from any neighbors regarding
3 any opposition or concerns of pick up or drop-
4 off or queuing or things to that effect?

5 MR. JESICK: No, we did not
6 receive any communication from neighbors on
7 that topic, or any other topic.

8 MADAM CHAIR MOLDENHAUER: Okay.
9 Thank you.

10 Do any other Board members have
11 questions for the Office of Planning? Seeing
12 none, does the Applicant have any questions
13 for the Office of Planning?

14 MS. BRAY: We do not.

15 MADAM CHAIR MOLDENHAUER: Then
16 we'll now turn to any individuals in the
17 audience in support or opposition of this
18 Applicant?

19 Seeing none, we'd then ask if
20 anybody of ANC 3C is present? Seeing no one
21 step forward, I'll reference that we have
22 Exhibit 30, which is a letter from the ANC

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 including a resolution which meets the
2 requirements of the Regs. and which permit us
3 to give it great weight. It indicates that
4 there was a duly held meeting on June 21, 2010
5 in which a quorum was present. And they voted
6 to support the special exception application
7 for the Washington Hebrew Congregation for a
8 child development center.

9 That being said, we will turn back
10 to the Applicant. And I was just curious, do
11 all of your students live in the community and
12 do they walk to school in addition to driving?
13 Sorry. Obviously, the students don't walk.
14 Do their parents walk them to school in
15 addition to doing driving pick up and drop-
16 off?

17 MS. COOK: We'll see in the
18 traffic report, Mr. Nelson really did a
19 detailed report about the exact numbers. But
20 we really do serve the neighboring community.
21 That is our primary source of where our
22 students come from. And we were actually

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 having this discussion right before that a lot
2 of parents, I think, are choosing our school
3 because it is within walking distance. Either
4 they like to walk the children themselves or
5 they have nannies and they come in strollers.
6 And when they get older, maybe little trikes.
7 So, we promote that and we do provide storage,
8 you know, if they need us to.

9 MADAM CHAIR MOLDENHAUER: Okay.
10 Great. I know that the District a longstanding
11 program that they're really encouraging right
12 now to try to encourage local CDCs to do
13 things like, you know walking, buses and
14 things. As a matter, where you're pretty much
15 carpooling in the children in groups of buses
16 or bikes to the school. They're trying to
17 reduce the traffic and reduce any potential
18 issues of the neighbors. And, obviously, we
19 would encourage all CDCs to do that if it's
20 available and if they do serve the community.

21 MS. COOK: And we do a lot of
22 carpooling and we actually have forms that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 send out with our parent directory to try to
2 encourage and facilitate that, you know to
3 help match make them.

4 MADAM CHAIR MOLDENHAUER:

5 Wonderful.

6 Well, I have no other questions,
7 and I don't see any problems with this
8 application.

9 If there are no final comments
10 from the Applicant, we can conclude the
11 hearing.

12 MS. BRAY: No. We have nothing
13 further.

14 MADAM CHAIR MOLDENHAUER: Thank
15 you very much. Then at this point in time we
16 will conclude the hearing and we will enter
17 into our deliberation.

18 I will start us off. We are
19 reviewing a special exception expansion of a
20 child development center at 3985 Macomb Street
21 Northwest, BZA Case No. 1884. And this is for
22 an increase of 95 children to not exceed a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 133 children enrolled at the CDC. To increase
2 the number of staff by 24 so that the staff
3 shall not exceed 30.

4 In addition to that, I think that
5 I'll incorporate OP's report and its analysis
6 of 205. I think that they did an exceptional
7 job and the application was very full in that
8 regard.

9 We also considered the letter that
10 was written by one of the neighbors and his
11 concerns about parking. But I think that the
12 evidence is sufficient to prove that there
13 doesn't seem to be a problem. And the CDC has
14 been in existence for many years, and there
15 are no other significant evidence of any
16 problems.

17 The ANC vote is receiving great
18 weight, which is our Exhibit 31, in support of
19 this application. It seems that based on the
20 prior order, the Applicant is doing a very
21 good job of working with the community. And
22 as was just testified to by Ms. Cook, they are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 encouraging multiple forms of transportation
2 to the school, which obviously then would
3 alleviate any traffic problems or any queuing
4 issues. And that's obviously something that's
5 very much encouraged.

6 That being said, is there any
7 additional deliberation or should I submit a
8 motion?

9 MEMBER DETTMAN: Madam Chair, just
10 a minor clarification. That we're actually
11 increasing from 95 and from 24 to not exceed
12 133 children and not exceed 30 staff.

13 MADAM CHAIR MOLDENHAUER: Thank
14 you. I was reading that incorrectly. I think
15 that's an important clarification. I
16 appreciate that.

17 That being said, I would submit a
18 motion to approve application 18084 for a
19 special exception for an CDC to not exceed 133
20 children, to not exceed 30 staff. The
21 children's ages shall range from 2 to 5 years
22 old. The hours of operation shall be from 7:00

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a.m. to 6:30 p.m. Monday through Friday. The
2 center's Executive Director shall meet with
3 the local ANC no less than once per year in
4 order to access an address any concerns of the
5 area residents that may arise as a result of
6 the operation of the center. And that the
7 center shall make available to the staff and
8 parents information about public
9 transportation options in the area. And that
10 this shall be termed for a period of ten
11 years.

12 Motion has been made. Is there a
13 second.

14 COMMISSIONER SCHLATER: Second.

15 MADAM CHAIR MOLDENHAUER: Motion
16 has been made and seconded. All those in
17 favor say aye.

18 BOARD MEMBERS: Aye.

19 MR. MOY: Staff would record the
20 vote as three-to-zero-two. There's a motion
21 of the Chair, Ms. Moldenhauer to approve the
22 special exception relief from Section 205 per

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the conditions, seven conditions. The seventh
2 one being a term for a period of ten years.

3 Second the motion Mr. Schlater.

4 Also in support of the motion Mr. Dettman. No
5 other Board members participating. Again, the
6 final vote is three-to-zero-to-two.

7 MADAM CHAIR MOLDENHAUER: Thank
8 you very much.

9 And even though we received a
10 letter in opposition, there was not a party or
11 a party status in opposition. So based on
12 that, I will recommend that we waive our
13 requirements and issue a summary order.

14 Thank you.

15 MS. BRAY: Thank you very much.

16 MADAM CHAIR MOLDENHAUER: I
17 believe we're ready for the next and last case
18 for the day.

19 MS. BAILEY: Madam Chair, that's
20 the application of the Casey Dalton, and the
21 No. 18066, and it's pursuant to 11 DCMR
22 3104.1, for a special exception to allow a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 change of use from a nonconforming retail
2 grocery store to a delicatessen/prepared food
3 shop. The application was submitted under
4 subsection 2003.1. It's located at 1201 S
5 Street Northwest. Square 275, Lot 35. And the
6 property is zoned R4.

7 MADAM CHAIR MOLDENHAUER: Thank
8 you very much, Ms. Bailey.

9 If we can have the parties
10 introduce themselves, that would be great.

11 MR. BELLO: Thank you, Madam
12 Chair.

13 My name is Toye Bello, and we're
14 representing the Applicant Mr. Dalton.

15 MR. DALTON: I'm Casey Dalton. I'm
16 the owner of the property at 1201 S Street
17 Northwest.

18 MR. BELLO: Madam Chair, if I
19 could take a minute to just explain why we
20 were not able to supplement the record with
21 respect to the requests to the Office of
22 Planning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The original applicant here was,
2 or the operator of the prepared food shop was
3 going to be Sunrise Academy. They've since
4 dropped out of the application and we're not
5 able to definitively that or determine that
6 until this morning when the owner, Mr. Dalton,
7 stepped in as the Applicant.

8 So we want to ask the indulgence
9 of the Board to supplement the records with
10 their appropriate plans that would reflect the
11 prepared food shop as not exceeding 18 seats,
12 and would also eliminate the seating in the
13 sidewalk café in public space.

14 MADAM CHAIR MOLDENHAUER: You can
15 go ahead and supplement the record with those
16 documents. It probably will mean that I would
17 still have to review those and we won't be
18 able to decide the case today. But if you
19 have additional documentation that we need to
20 see, please, go ahead and provide it to Ms.
21 Bailey and she'll distribute it out.

22 MR. BELLO: No, we don't at this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 time. So we'll supplement the record. We
2 understand that it will delay the decision.

3 Thank you.

4 The application is for a special
5 exception under 2003.1 to allow the change of
6 a nonconforming use, which used to be a
7 grocery store. It's become a prepared food
8 shop. For seats not to exceed 18.

9 Section 2003.1 permits the Board
10 to approve variances or special exceptions
11 where a nonconforming use is being changed for
12 the use first permitted in the most
13 restrictive zone in which the nonconforming
14 use is first permitted. And that zoning
15 district here will be C-1.

16 Both the grocery store and the
17 prepared food shop not exceeding 18 seats
18 permitted use as a matter-of-right in the C-1
19 zone. So with respect to 2003.1 the
20 application meets the test.

21 2003.2 the proposed use shall not
22 adversely effect the present character or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 future development of the surrounding area in
2 accordance with this title.

3 The surrounding area shall be
4 deemed to and compare to the existing uses and
5 structures within at least 300 feet radius in
6 all directions of the nonconforming use. And
7 most of the users here are residential in
8 nature, single-family row dwellings,
9 apartments, institutions, churches and two
10 family flats.

11 The proposed uses to be
12 established at the premises through the
13 interior reconfiguration of the interior space
14 of this building, and very little changes to
15 be effected on the facade of the building.
16 So, we feel that the use will not adversely
17 effect the present character or future use of
18 the property.

19 2003.3 the proposed use shall not
20 create any dangerous external effects
21 including but not limited to noise, traffic,
22 parking or loading consideration,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 illumination, vibration, order of design or
2 sight and effects.

3 The proposed use would not create
4 an external effects in that no change to the
5 existing building is anticipated. The
6 facility establishment is intended to be a
7 neighborhood facility and will get pedestrian
8 destination, not one that attracts vehicular
9 or traffic from outside the immediate
10 neighborhood.

11 2003.4 when an existing
12 nonconforming use has been changed from
13 conforming use or more restrictive use, it
14 shall not be changed back to the nonconforming
15 use or less restrictive use. This section is
16 not applicable here because this nonconforming
17 use has never been changed from a conforming
18 use.

19 In the resident's district the
20 proposed use shall be dwelling, flat,
21 apartment house or neighborhood facility. We
22 submit that the application is for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 neighborhood facility. Since the prepared
2 food shop will be a coffee shop or not having
3 any cooking facility on premises. And it is
4 intended to serve the immediate neighborhood
5 and not a destination establishment.

6 2003.6 the application does comply
7 with this section in the following order of
8 the use restriction.

9 2003.7 the Board may require a
10 provision of or direct changes, modifications
11 or amendments to any design plans, screening,
12 landscaping, type of light and nature of any
13 design, pedestrian or vehicular access,
14 parking, loading, hours of operation.

15 The proposed use anticipates that
16 there are probably about two or three
17 deliveries a week. Having been previously a
18 grocery store, there was a loading area on S
19 Street right in front of the property which
20 would continue to serve that purpose.
21 There'll not be much of a drive in to this
22 facility because it's intended as a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 neighborhood facility.

2 And that's basically what we have.

3 Now with respect to the Office of
4 Planning's report, the Applicant is willing to
5 submit itself to certain conditions of
6 approval as the Board may see fit. The intent
7 is to have hours of operation that go from
8 7:00 a.m. to 10:00 p.m. Monday through Sunday.

9 And Mr. Dalton would be
10 eventually having a tenant who would enter
11 into a contract with respect to how many times
12 trash is picked up a day. But in our
13 supplemental submissions we would graphically
14 show an area where the trash will be stored
15 and picked up.

16 Mr. Dalton a history of how he's
17 owned the property and his inability to market
18 it as a grocery store, which informs this
19 application.

20 MR. DALTON: Yes. Basically I've
21 owned the building for, I think, 102 years.
22 I lived on that block for a couple of years

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 prior. And before I purchased the property
2 there was a convenience store serving beer and
3 wine to go, convenience items.

4 And when I went under contract, I
5 tried to convince the store owners to actually
6 stay. And he did not. He left, and so his
7 sold his beer and wine license. And after
8 that I was unable to market it successfully as
9 a store under the usage that it was zoned for.

10 As I marketed it three times, the
11 last time almost successfully, the tenants all
12 seem to come to me with two different ideas.
13 One was something like this, a
14 delicatessen/coffee, either more towards the
15 coffee or more towards the deli. However,
16 those tenants were always afraid of this
17 process and the length and the duration, and
18 paying rent without being open. And paying
19 the architect and the gentleman next to me to
20 come before to this point.

21 The other would be tenants that
22 came in with pockets deep enough, but wanted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to do too much with the space.

2 I work for a company now that has
3 several establishments in the area. And they
4 came to me with two different proposals. And
5 I told them both it was too much for this
6 space. It would create too much garbage. I
7 didn't want any cooking. It's my building. I
8 didn't want any grease traps or hoods, or
9 anything like that.

10 I've been in the restaurant for 16
11 years, so I pretty much have a strong
12 understanding of what goes into an operation
13 that cooks and how much cleaner an operation
14 can be that doesn't cook.

15 So, this property has sat vacant
16 despite my willingness to rent it out for the
17 past 102 years.

18 Sunrise Academy came forward with
19 strong financials and a plan. And they got it
20 pretty much to this point and ran into some
21 difficulties, and I guess a week ago told me
22 that they could not pursue this project any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 further.

2 So, rather than continue to leave
3 the space vacant I decided to go ahead with
4 this process myself, get the zoning changed to
5 something more amicable to a good tenant. And
6 get this thing rented out. Because I
7 personally am sick of looking at it vacant.
8 Also, I have strong neighborhood support for
9 such an establishment going into the location.
10 The only concerns were the original applicant,
11 and since he has dropped out of the process,
12 I as far as I can tell have unanimous support
13 from my immediate neighbors. I have letters,
14 emails -- or email letters from the neighbors
15 on the 1200 block of S Street, the 1800 block
16 of 12th Street and the 1100 block of S Street.

17 And the one guy who did have
18 problems and was suggesting that he would come
19 down and oppose wished me good luck today, and
20 said he couldn't make it out of work. But I'm
21 sure if he was still in opposition, he could
22 have made it out of work.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And that's where we are.

2 Also, with regard to the parking
3 and the trash delivery, like he mentioned
4 there was originally was a no parking loading
5 zone about a car length and a half wide in
6 front of the building. I don't even think it
7 exceeded like the front of the facade. I
8 guess we would just ask to restate that.

9 And there is very ample parking
10 during the day. And none of the neighbors
11 seem concerned about the parking because
12 besides myself, they all have their own
13 parking spaces on the back of their houses.
14 There's an extensive alley system behind the
15 house for the neighbors for their own parking.
16 So they actually told me that of all of their
17 concerns, parking was not a concern for them
18 personally.

19 As far as trash pick up there was
20 an original slim pad from the store. I think
21 the architect submitted drawings for that.
22 And I would require that the tenant have, not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a dumpster but the Tall Boys neat and orderly
2 and picked up as often as deemed necessary.

3 MADAM CHAIR MOLDENHAUER: Thank
4 you very much.

5 Does that conclude the Applicant's
6 application?

7 MR. BELLO: Yes, Madam Chair.

8 MADAM CHAIR MOLDENHAUER: Thank
9 you.

10 Do any Board members have any
11 specific questions for the Applicant?

12 COMMISSIONER SCHLATER: I have a
13 question, and it probably speaks to my
14 ignorance because I'm not up here on BZA that
15 often. But it has to do with Section 2005.1
16 on discontinuance of nonconforming use.

17 Your testimony said that this was
18 once a grocery store ten years ago, but it
19 hasn't been a grocery store in that
20 intervening period.

21 In my understanding of the Regs, I
22 think we've had one case on this, is that that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 nonconforming use lapses after three years if
2 it's not used in that way. And that reading
3 the Regs it says "discontinuance for any
4 reason of a nonconforming use of a structure
5 or of a land, except where a governmental
6 action impedes access to the premises for a
7 period of more than three years shall be
8 construed as prima facie evidence of no
9 intention to resume active operation as a
10 nonconforming use. Any subsequent use shall
11 conform to the regulations of the District in
12 which the use is located."

13 Does that apply in this case?

14 MR. BELLO: Actually not. The
15 only relevance of that section, if there ever
16 was an intervening conforming use in that
17 space, which is not the case here.

18 Not only that, in granting a
19 special exception or variance under this
20 section the Board would actually be granting
21 a conforming use by virtue of a BZA order. So
22 I do not think the discontinuance of a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 nonconforming use, in and of itself, throws an
2 applicant out of this section.

3 Specifically, if there hasn't been
4 any intervening conforming use within that
5 space.

6 MEMBER DETTMAN: Well, Mr. Bello,
7 I mean I think that that might be your
8 interpretation of 2005. I mean, I personally
9 disagree with that interpretation. I think
10 that if you're a nonconforming use and you go
11 away for three years, 2005.1 sets up the
12 situation where the presumption is made that
13 there is no intent to resume operations.
14 There doesn't have to be an intervening
15 conforming use.

16 MR. BELLO:

17 MEMBER DETTMAN: Under that
18 interpretation a nonconforming use could go
19 away for 50 years and then come back. And I
20 don't think that's what 2005 contemplates.

21 What I think 2005 contemplates is
22 that on its face it's prima facie evidence

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that there's no intent to resume. However, I
2 think over the last years that the Applicant
3 has gone to great lengths to try to get
4 another tenant into this property. And so I
5 think it's clear that there was no intent to
6 abandon the use. He's been trying for ten
7 years to put it back to a productive
8 operation.

9 MADAM CHAIR MOLDENHAUER: And I
10 think that that being said, I agree with Mr.
11 Dettman and I agree with Commissioner Schlater
12 that that section does apply here.

13 I think that because the lack of
14 use of the space for 102 years is just
15 substantially over the three years is prima
16 facie evidence. I think there needs to be
17 additional supplemental evidence to get above
18 that burden now in addition to the Applicant's
19 testimony or in support of the Applicant's
20 testimony that he has for that period of time
21 made continuing efforts to try to market and
22 continue that use. And that was his intent to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 never give up or never to abandon that use.
2 I think that that is an area were the record
3 can be additionally supplemented in addition
4 to the Applicant's testimony to that effect.

5 MR. DALTON: Also, there's also a
6 strong historical --

7 MADAM CHAIR MOLDENHAUER: Mr.
8 Dalton, can I just ask if you can just pull
9 away from the microphone just a slight bit.

10 MR. DALTON: Oh, yes. I'm sorry.

11 MADAM CHAIR MOLDENHAUER: Thank
12 you. I appreciate that.

13 MR. DALTON: Yes. Okay. That
14 sounds better.

15 Yes, the building I think was
16 built in 1897 and architecturally it was built
17 to be a store front and has not changed, and
18 was actually a business. Was always a
19 business front. And has always been intention
20 to get a business in there.

21 I think it would be a very odd
22 space to live in.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And it's a magnificent space. And
2 my part of my goal is also to bring this space
3 to my neighbors, not just to one person. To
4 have all my neighbors in there, it's like 112
5 foot ceiling, it's 22 feet wide interior. It's
6 got amazing windows. I went to great expense
7 to put in all historic doors, windows;
8 everything historic and historically accurate.

9 I found old doors in the basement,
10 used them as templates for new doors.

11 It has always been my intention to
12 have a business and have people be able to
13 access this space and enjoy a cup of coffee or
14 messing around on the computer. And not just
15 keep it for one person.

16 MADAM CHAIR MOLDENHAUER: Thank
17 you.

18 MR. DALTON: You're welcome.

19 MR. BELLO: Just additionally, I
20 think the record should reflect that we
21 submitted a current Certificate of Occupancy
22 for a grocery store, which basically it was an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 affirmative action on our part to establish
2 lack of abandonment. So I think we're
3 probably saying the same thing two different
4 ways.

5 MADAM CHAIR MOLDENHAUER: Thank
6 you.

7 And is there any additional
8 questions or any additional submissions by the
9 Applicant?

10 MR. BELLO: Other than the
11 supplemental plans.

12 MADAM CHAIR MOLDENHAUER: Thank
13 you.

14 Then at this point in time we will
15 turn to the Office of Planning for their
16 report.

17 MR. JACKSON: Good afternoon,
18 Madam Chair, members of the Board.

19 The Office of Planning submitted a
20 report, dated June 1, 2010. And the Applicant
21 has taken some steps to address those issues.

22 Essentially, we were asking for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 more information on the application. Note
2 that we did accept the Certificate of
3 Occupancy for a grocery store as being
4 sufficient evidence that the use had been
5 continuing, or at least to the satisfaction of
6 the Department of Consumer and Regulatory
7 Affairs.

8 In any case, we appreciate the
9 fact that the Applicant is planning to submit
10 revised plan showing that it will be
11 consistent with the 18 seat limit in terms of
12 matter-of-right uses. And that allowed for a
13 matter-of-right prepared of food use in the C-
14 1 district.

15 We heard the hours of operations,
16 but we'd still appreciate more information
17 about the number of employees, to their best
18 estimate. And any other particulars about the
19 plan of operations.

20 We would encourage as they develop
21 these additional information to make the ANC
22 and neighbors aware of what the specific plans

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are for the operation of the use, if they
2 haven't already. I think it would be
3 unfortunate if the ANC had one impression or
4 had no idea of how it actually would work, but
5 were taken back or somehow disturbed by the
6 actual decisions made about how the use would
7 work.

8 So, prior to coming back before
9 the Board it would be good to check in with
10 the ANC to make sure they're aware of the more
11 details aspects of the proposed use.

12 We still would like to get better
13 clarification about the number of dwellings on
14 sight and how the residents park their cars.
15 The Applicant made reference to it, but more
16 specifics would be good.

17 And the provisions of the plan to
18 show how you plan to deal with storage and
19 pick up of the trash inside the building would
20 also be some useful information.

21 We're not opposed to the use based
22 on the standards and the regulation with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regard to the 18 seat limit and how it might
2 work in the area. Again, we're more concerned
3 about a larger use, and that it is seemingly
4 more suitable for a commercial or a
5 nonresidential area being establish on this
6 site.

7 And with additional information, I
8 think the Office of Planning could make a
9 supplemental report that would interpret how
10 the additional information would comply with
11 the Regulations and it addressed the issues we
12 raised in our original report.

13 That's a brief response to what
14 the Applicant has presented today. And we're,
15 of course, available to answer any questions.

16 MADAM CHAIR MOLDENHAUER: Thank
17 you for those statements.

18 I guess one of my questions would
19 be I think that it would be helpful since
20 there's additional information that's being
21 requested by OP and there's statements from
22 the Applicant that there's going to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 additional supplemental documentation provided
2 to providing additional clarity. Would you be
3 willing to provide a supplemental OP report
4 following those submissions?

5 MR. JACKSON: Certainly, in fact
6 we were in email and fax communication with
7 the Applicant anticipating that we would get
8 the reviews and revised plans before this
9 hearing. So we look forward to receiving the
10 information and filing a secondary report.

11 MADAM CHAIR MOLDENHAUER:
12 Wonderful. That being said, I'm not going to
13 any specific questions. Obviously, I think
14 that most of them would have to do with some
15 of the limitations in the record currently.
16 So I will wait until we take a look at the
17 supplemental report.

18 Are there any questions of the
19 Board at this time?

20 Does the Applicant have any
21 questions for the Office of Planning?

22 MR. BELLO: No, Madam Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MADAM CHAIR MOLDENHAUER: Okay.

2 MS. MONROE: Madam Chair, I want
3 to say one thing. This Board has no authority
4 to give you a loading zone. If it's not there
5 anymore, we can't do it here.

6 I just wanted you to know that
7 because you mentioned it earlier.

8 MADAM CHAIR MOLDENHAUER: Thank
9 you very much for that clarification. I think
10 that's important.

11 Then at this point in time we
12 would move on to any individuals in support or
13 in opposition of this case? Are there any in
14 the audience?

15 Seeing no one step forward, we
16 would then see if there's anybody from ANC 1B
17 was present.

18 Seeing no one in the audience, I'd
19 reference our Exhibit 28, which indicates that
20 at a regularly scheduled meeting on July 1st
21 with a quorum present ANC 1B voted unanimously
22 to support the application for a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exception to allow the change of a
2 nonconforming grocery store use to a
3 nonconforming prepared food shop at 1201 S
4 Street Northwest.

5 That being said, at this point in
6 time we would be turning back to the Applicant
7 for closing remarks. But, obviously, if the
8 Applicant has any closing remarks, they can
9 provide that. But what I would indicate would
10 be that any closing remarks also be provided
11 in writing along with the supplemental
12 documentation that we are getting.

13 I think I'll just outline some
14 things that I have heard so far.

15 There's going to be revised plans.

16 Confirmation that it's 18 seats
17 that are going to be requested.

18 Some potential additional
19 elaboration or documentation of the continued
20 intent and lack of abandonment of the use for
21 the period of 102 years in which there was no
22 use in the location.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 In addition to that, some
2 testimony -- sorry.

3 I'd like to just confirm any
4 support from the neighbors in writing since
5 there were statements with regards to
6 potential opposition from some neighbors.
7 Anything that you can provide to that degree
8 in writing would be preferable.

9 And to confirm the use of the
10 building in other areas that we understand,
11 the full parking requirements for this
12 property.

13 Those are all the points I had in
14 my notes. Were there any additional elements
15 that the Applicant would to have the record
16 left open for?

17 MR. BELLO: Just wanted to make
18 sure that I understood right. There isn't a
19 parking requirement for this. The proposed
20 use does not require any parking. And the
21 existing uses, for all intents and purposes,
22 grandfathered in.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Did you just want some information
2 about whether the residents drive or whether
3 the employees who are going to come from the
4 immediate neighborhood drive or not?

5 MADAM CHAIR MOLDENHAUER: Just the
6 confirmation the number of employees that
7 would be public, conditioned on the reports we
8 could understand that there wouldn't be any
9 parking requirement. And any additional
10 information that you think would be relevant
11 to that as far as a grandfather history and
12 things of that effect.

13 MR. BELLO: Thank you.

14 MADAM CHAIR MOLDENHAUER: And that
15 included, I indicated some revised plans. But
16 those revised plans should also include trash
17 location. Thank you.

18 Are there any other comments from
19 Board members as to documents they'd like to
20 see in the supplemental record? Seeing none,
21 I'll just make sure the Applicant has no
22 additional comments he'd like to have.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Okay. I'm seeing the Applicant
2 shake its head no.

3 MR. BELLO: No, thank you.

4 MADAM CHAIR MOLDENHAUER: Thank
5 you for putting that on the record.

6 That being said, then at this
7 point in time we'll conclude this hearing and
8 we'll leave the record open for those
9 documents.

10 Mr. Moy, what's our time frame. I
11 mean, obviously we buy I think sufficient time
12 between now and when we can hear this case
13 again. And do we have any time in September
14 for then to give some dates for the Applicant
15 to submit the application and OP to submit a
16 supplemental report?

17 MR. MOY: Well, Madam Chair, the
18 first question I have is whether or not the
19 Board would require any submission from the
20 ANC as a result of the new supplemental
21 information coming into the record? If not,
22 then the Board can take an earlier decision on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this or a continued hearing?

2 MADAM CHAIR MOLDENHAUER: I think
3 that what we can probably do is schedule this
4 for a continued hearing since some of the
5 additional supplemental documentation may
6 create questions for the Office of Planning,
7 may create questions for the Applicant.

8 That being said, you know
9 obviously at that point in time we could
10 always potentially decide the case that day if
11 the facts so present themselves in condition.
12 So we're looking for a date in September,
13 maybe, for then a continued hearing.

14 MR. MOY: The September 14th is
15 the first hearing in the month of September,
16 and that's pretty full, unless you want to add
17 at 3:00 in the afternoon.

18 MADAM CHAIR MOLDENHAUER: How
19 about in the afternoon on the 21st?

20 MR. MOY: The 21st third in the
21 afternoon would be fine.

22 MADAM CHAIR MOLDENHAUER: That

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sounds perfect.

2 So we'll ask that the Applicant
3 get all their supplemental documentation in by
4 September 7th. And OP can then get their
5 documentation in by -- Mr. Moy, what would the
6 Friday before the 21st be?

7 MR. MOY: It would be -- one
8 second. Would September 14. Well, actually
9 it would be Tuesday the 14th of September.
10 That Friday would be the 17th.

11 MADAM CHAIR MOLDENHAUER: The
12 17th. And then OP would have until the 17th
13 to get in their supplemental report.

14 Is that good.

15 MR. DALTON: It's good for me.

16 MADAM CHAIR MOLDENHAUER:
17 Wonderful. Okay. And the Applicant has those
18 dates written down?

19 MR. BELLO: That's correct. Thank
20 you.

21 MADAM CHAIR MOLDENHAUER: Okay.
22 Perfect. Thank you very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. BELLO: Thank you.

2 MR. DALTON: Yes. Thank you.

3 MADAM CHAIR MOLDENHAUER: Well,
4 that concludes the cases for our hearing, but
5 I would just like to make some personal
6 comments on the record.

7 Today is my last day here with Mr.
8 Dettman. Mr. Dettman will be appearing for
9 one last showing on August 3rd, a special
10 August hearing. You see, he can't give up all
11 the fun he has, he's got to have one last
12 occurrence.

13 You know, Shane has been on the
14 Board now for three years. And I think that
15 the Board is so much better for those three
16 years that Shane has put forth and shown
17 everybody a really high standard, a standard
18 of professionalism that's dedicated to --
19 obviously this is something that is in
20 addition on top of all his other work
21 associated with NCPC.

22 But he, you know, every Monday --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or you have a phone call and you return to
2 this really with the same dedication and
3 professionalism that you do anything else. And
4 I really commend you for that.

5 When I first started a year ago I
6 looked to you as a role model and a standard
7 which I constantly tried to obtain and to
8 reach for. Because it was quite impressive and
9 it still is.

10 You're a wealth of knowledge of
11 the Regs, you're ability to reference sections
12 and always pull out all of the details and
13 make sure that the Applicants always have all
14 of the different reliefs that they're
15 requiring, even if they don't ask for it all
16 the time.

17 So, it's really impressive, and
18 it's been great working with you for the last
19 year. And I know that the Zoning Office has
20 appreciated the last three years of all of
21 your hard work. And I think that you are an
22 ideal in my mind, obviously, not only

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exemplary as an NCPC rep, but an ideal NCPC
2 rep and all of your D.C. -- you're not just an
3 NCPC rep but you're also a D.C. citizen and I
4 think you take that first and foremost in how
5 you address all of the cases. And I really
6 respect that.

7 And I just want to say that we are
8 going to miss you, and that Jeff our new NCPC
9 rep has very big shoes to fill in regards to
10 your constant performance and diligence here
11 on the BZA.

12 So, thank you.

13 MEMBER DETTMAN: Thank you, Madam
14 Chair. It really has been a pleasure being
15 able to serve with you, and every single
16 member of the Zoning Commission. I learned an
17 enormous amount from each and every person
18 that I've ever served on the Board with, in
19 addition to the entire OZ staff and the Office
20 of Attorney General. It really is -- it's
21 really been a great learning experience.

22 And, you know I've always said

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that every single Tuesday, I look forward to
2 every single one. You know, I'm so excited
3 when I walk in the door here simply because,
4 you know I am a very proud District resident.
5 I love this city.

6 And I loved it, but for the past
7 three years I've had the opportunity to work
8 with the community and work with the legal
9 community and local residents in trying to
10 build a really build a great city all the way
11 from a brand new office building downtown to
12 someone's rear deck. I've really tried to
13 approach every single case like it is
14 absolutely the most important case this BZA is
15 ever going to review.

16 So, I hope that came through at
17 least a little bit.

18 And I really do like that I get to
19 span my going away party over the course of
20 three weeks. I get one more in a couple of
21 weeks.

22 So, thank you. I appreciate your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 words.

2 MADAM CHAIR MOLDENHAUER: Well
3 thank you very much. I'm sorry I'm going to
4 miss your last day, but I know that Nicki and
5 everybody else will make sure to continue your
6 high praises and tell you how much you'll be
7 missed.

8 But that being said, we are now
9 concluding our hearing and our meeting this
10 evening. Thank you very much.

11 (Whereupon, at 3:55 p.m. the
12 Public Hearing was adjourned.)

13
14
15
16
17
18
19
20
21
22

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701