

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment
441 4th Street, N.W.
Washington, D.C. 20001

SPECIAL PUBLIC MEETING AND PUBLIC HEARING
October 19, 2010
10:00 a.m. through 3:07 p.m.

Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson
Jeffery L. Hinkle - NCPC
Michael G. Turnbull - Architect
Greg Selfridge - Zoning Commission
Clifford Moy - Secretary
Beverley Bailey - Office of Zoning
Mary Nagelhout - Office of the Attorney General
John Nyarku - Office of Zoning

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C o n t e n t s

MORNING SESSION

1. Chairperson's Introduction3
2. Case 17806-A.4
3. Case 18006	9
4. Case 18113	17
5. Case 18115	28
6. Case 18116	71
7. Case 18101115

AFTERNOON SESSION

1. Case 18057	141
2. Case 18117	143
3. Case 18139	154
Conclusion of Meeting197

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

2 CHAIRPERSON MOLDENHAUER: This meeting
3 will please come to order good morning ladies and
4 gentleman. This is the October 19, 2010, Public
5 Meeting of the Board of Zoning Adjustments for
6 the District of Columbia. My name is Meridith
7 Moldenhauer, Chairperson. Joining me today to my
8 right is the Representative of the National
9 Capital Planning Commission Jeffrey Hinkle, to my
10 left Michael Turnbull, Representative of the
11 Zoning Commission. Copies of today's meeting
12 agenda are available to you and are located to
13 the left in the wall bin near the door. We do
14 not take any public testimony at our meeting
15 unless the Board asks someone to come forward.
16 Please be advised this proceeding is being
17 recorded by a court reporter and is also being
18 webcast live. Accordingly we must ask you to
19 refrain from any disturbing noises or actions in
20 the hearing room. Please turn off all beepers
21 and cell phones. Mr. Secretary do we have any
22 preliminary matters?

1 SECRETARY MOY: We have some slight ones
2 Madam Chair but Staff would suggest we could
3 address those matters when Staff calls the case.

4 CHAIRPERSON MOLDENHAUER: Wonderful why
5 don't we proceed then with the agenda.

6 MR. MOY: In that regards the first of
7 the three cases for decision is the motion for
8 the two year extension of the validity of the
9 order this is to Application 17806-A of the Mid-
10 Atlantic Realty Partners, LLC, pursuant to
11 section 3130 of the Zoning Regulations. Madam
12 Chair, I'm not going to read the original
13 advertisement for the application but if the
14 Board will recall that its decision made on
15 September 28, 2010, the Board convened and
16 granted the applicants request to delay the
17 Board's decision until October 19th which is
18 today. There is a filing in your case folder
19 Madam Chair by the Applicant which was filed and
20 posted with today's date October 19th identified
21 in the case folders as "Exhibit 34", with that
22 the staff if going to conclude its briefing Madam

1 Chair.

2 CHAIRPERSON MOLDENHAUER: Thank you very
3 much Mr. Moy, as you indicate this case has been
4 postponed previously due to request by the
5 Applicants Council and we received another
6 exhibit, which Mr. Moy referenced "Exhibit No.
7 34" which requests another postponement
8 indicating that there was some additional
9 information and materials that the Board had
10 requested previously that they're trying to
11 obtain, the Applicants Attorney requests a
12 postponement until December 7th, but what I think
13 we should do is postpone this to a decision on
14 December 14th.

15 MR. MOY: Very good, thank you Madam
16 Chair.

17 CHAIRPERSON MOLDENHAUER: Thank you.

18 MR. MOY: The next case for the Boards
19 action is the Applicants motion for
20 reconsideration of Condition No. 1 which states
21 the (term of period of five years) this is to
22 Application No. 18095 of Ronald McDonald House

1 Charities of Greater Washington, D.C., pursuant
2 to: Section 3129 of the Zoning Regulations. The
3 original application was approved by the Board on
4 September 14, 2010, and that application was
5 pursuant to: 11 DCMR 3104.1 for a special
6 exception to operate a religious group residence
7 from 96 persons under Section 215 in the R-1-B
8 District at premises 1326 Quincy Street, N.E.
9 The property's located in (Square 3968 Lot 17).
10 There are 2 filings in your case folders Madam
11 Chair, the first is from the Applicant their
12 motion for the reconsideration of condition No. 1
13 and that is identified as "Exhibits 33 and 34",
14 the second filing is from ANC 5-A-6 which is
15 their response to the reconsideration request
16 dated October 6, 2010, posted or logged into the
17 record on October 7, 2010, document identified as
18 "Exhibit 35". The Board is (INAUDIBLE) in the
19 merits of the motion and rehearing by the
20 Applicant pursuant to: Section 3126.6 and that
21 completes the Staff's briefing Madam Chair.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Moy, I believe all the members have
2 reviewed the motion and the documents in our
3 file. I'll start off by just indicating that
4 after reviewing it I still feel as though the
5 term was supported by the evidence in the record
6 and evidence that was presented at the hearing
7 that there were unforeseen adverse impacts with
8 the potential based on testimony from the
9 Applicant who indicated that currently the number
10 of sisters that would be located in the facility
11 were very few and that the reason why they had
12 requested 96 was potentially for future growth.
13 That future growth is unclear as to how that
14 would impact the neighborhood or the use for the
15 services of that facility. That was the
16 reasoning for the term, however, despite that I
17 think that the Applicants motion for
18 reconsideration does point out that this issue is
19 not discussed in the hearing and so based on that
20 I would recommend to my other Board Members that
21 we have a limited hearing and provide notice to
22 the ANC and the neighborhood to provide a limited

1 hearing solely on the issue of the term and that
2 impact. That being said I'll see if any other
3 Board Members agree or would like to add some
4 additional comments?

5 MR. TURNBULL: Madam Chair I would agree
6 with you, I think a limited hearing would be in
7 order. One of the Applicants statement is
8 basically, this is in "Exhibit 33", talking about
9 because the special exceptions that were
10 previously issued for this property did not have
11 a term limit, I think I'll just go back to make
12 the point that just because the term limit was
13 not imposed previously does not mean that the
14 conditions that are now present on this property
15 with this special exception shouldn't include
16 some type of a term but, no I'm open for a
17 limited hearing on this matter.

18 MR. HINKLE: Madam Chair I agree with
19 both yourself and Mr. Turnbull. I think the
20 Applicant should have an opportunity to make a
21 case for not having a term limit on here so I'm
22 certainly open to hearing that.

1 CHAIRPERSON MOLDENHAUER: Okay then based
2 on consensus rather than a vote we will grant the
3 motion for reconsideration for a new hearing and
4 we'll set a hearing for November 30th in the
5 afternoon, that will be a limited hearing solely
6 on the issue of a term limit for this
7 Application.

8 MR. MOY: Very good, thank you Madam
9 Chairperson.

10 CHAIRPERSON MOLDENHAUER: Thank you and
11 just make sure that notice goes out to all the
12 parties.

13 MR. MOY: Yes, yes, Staff will take care
14 of that. The last action of the Board in this
15 Special Public Meeting Madam Chair is Application
16 No. 18066 of Casey Dalton (formerly titled
17 Charles Emor) pursuant to: 11 DCMR 3104.1, for a
18 special exception to allow a change of use from a
19 nonconforming grocery store to a prepared food
20 shop under (Subsection 2003.1) in the R-4
21 District at premises 1201 S Street, N.W. (Square
22 275, Lot 35). As the Board will recall on

1 September 21, 2010, the Board completed public
2 testimony, closed the record and scheduled its
3 decision on October 19th. The Board requested
4 additional information to supplement the record.

5 The Staff would report that there is a filing in
6 the record from the Applicant, identified as
7 "Exhibit 36", posted or logged into the record
8 October 18th, yesterday. Other than that the
9 Board's acting on the merits of the requested
10 special exception relief. That completes the
11 Staff's briefing Madam Chair.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much Mr. Moy. We did receive something just this
14 morning from the Applicant addressing the issue
15 of Mr. Bellow and Mr. Pau's representation and
16 authorization for the Applicant that the hearing,
17 however there's still one issue outstanding with
18 this case that I'd like to see resolved and then
19 we can make a decision next week. It would be
20 clarifying the Applicant and the Owner of the
21 project, there's reference in our "Exhibit No.
22 One" which is the Application that the property

1 owner is Casey Dalton but then in the owner and
2 authorization section it indicates Charles Emor.
3 Then in "Exhibit 5" which is the self-
4 certification form indicates that Mr. Emor is the
5 property owner and that Mr. Richard Aganga-
6 Williams is the Agent for Mr. Emor and then
7 however Mr. Dalton is now the Sole Applicant in
8 this case so what I'd like to see is that the
9 Applicant resolve that issue just in writing it
10 would be a very simple thing to clarify whether
11 or not Mr. Emor is involved in the case anymore,
12 whether he's not. Then just confirming that Mr.
13 Dalton is the Sole Applicant so when we do
14 finalize a decision on this and issue an order
15 that issue is accurate rather than intentionally
16 having any inaccuracies in our record. So I will
17 recommend that we postpone this until next week
18 and we can make a decision on that. I think that
19 should be sufficient timing to review that
20 information and for the Applicant to get that
21 information into us as well, so that would be
22 postponed to the 26th of October, and why don't we

1 put that in the morning.

2 MR. MOY: Yes very good, so this decision
3 the Board will be reconvened on the morning of
4 October the 26th. That completes the cases for
5 the decision meeting this morning Madam Chair.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much Mr. Moy. Then this hearing will please come
8 to order, good morning ladies and gentleman this
9 is the October 19' 2010, Public Hearing of the
10 Board of Zoning Adjustments for the District of
11 Columbia. My name is Meredith Moldenhauer,
12 Chairperson, joining me today to my right is
13 Jeffrey Hinkle, Representative of the National
14 Capital Planning Commission and to my left
15 Michael Turnbull, Representative of the Zoning
16 Commission. Copies of today's agenda are
17 available to you and are located to my left in
18 the wall bin near the door. Please be advised
19 this proceeding is being recorded by a court
20 reporter and is also being webcast live,
21 accordingly I must ask you to refrain from any
22 disturbing noise or actions in the hearing room.

1 When presenting information to the Board please
2 turn on and speak into your microphone first
3 stating your name and home address, when you are
4 finished speaking please turn off your microphone
5 so your microphone no longer picks up sound or
6 background noise. All persons planning to
7 testify either in favor or in opposition are to
8 fill out two witness cards; these cards are
9 located to my left on the table near the door and
10 on the witness tables, upon coming forward to
11 speak to the Board please give both witness cards
12 to the court reporter sitting to my right. The
13 order of procedures and special exceptions and
14 variances is as follows: 1. Statement of the
15 Applicant and the Applicant's witnesses.
16 2. Parties and persons in support. 3. Parties
17 and persons in opposition. 4. Government reports
18 including the Office of Planning and the
19 Department of Transportation and the Office of
20 the State Superintendent for Education. Next
21 reports from the ANC and then finally rebuttal
22 and closing statements by the Applicant.

1 Pursuant to Section 3117.4 and 3117.5 the
2 following time constraints will be maintained.
3 The Applicant Appellant, persons and parties
4 except in ANC in support including its witnesses
5 will be given 60 minutes collectively. Apelles
6 Persons and Parties except an ANC in opposition
7 including witnesses will be given 60 minutes
8 collectively, individuals will be given 3 minutes
9 and organizations will be given 5. These time
10 restraints do not include cross examinations or
11 questions from the Board. Cross examination of
12 witnesses permitted by the Applicant or Parties.
13 The ANC within with the property is located is
14 automatically a party to a special exception or
15 variance case. Nothing prohibits the Board from
16 placing reasonable restrictions on cross
17 examination including time limitations and
18 limitations on the scope of cross examination.
19 The record will be closed at the conclusion of
20 each case except for any material specifically
21 requested by the Board. The Board and the staff
22 will specifically at the end of each hearing

1 identify what information is requested by those
2 parties and give a date when the person must
3 submit the evidence to the Office of Zoning.
4 After the record is closed no other information
5 will be accepted by the Board. The Sunshine Act
6 requires that a public hearing on each case be
7 held in the open before the public. The Board
8 may consistent with its rules and procedures and
9 the Sunshine Act enter into Executive Session
10 during or after a public hearing on a case for
11 purposes of reviewing the record or deliberating
12 on a case. The decision of the Board in these
13 contested cases must be based exclusively on the
14 public record. To avoid any appearance to the
15 contrary the Board requests the person present
16 not engage the members of the Board in
17 conversation. Please turn-off all cell phones
18 and beepers at this time as to not disturb these
19 proceedings. The Board will not consider any
20 preliminary matters. Preliminary matters are
21 those which relate to whether a case should or
22 will be heard today, such as request for

1 postponement, continuance or withdrawal or
2 whether proper adequate notice of a hearing has
3 been given. If you are not prepared to go
4 forward with a case or you believe that the Board
5 should not proceed now is the time to raise such
6 a matter. Mr. Moy do we have any additional
7 matters?

8 MR. MOY: Yes Madam Chair there is an
9 issue of a document, and affidavit which the
10 Board is better served to take up when the case
11 is called in fact it's the first case for the
12 morning session.

13 CHAIRPERSON MOLDENHAUER: Okay then,
14 before we precede will all individuals wishing to
15 testify before the Board please stand and Ms.
16 Bailey will administer the oath.

17 MS. BAILEY: Please raise your right
18 hand. Do you solemnly swear or affirm that the
19 testimony that you'll be given today will be the
20 truth the whole truth and nothing but the truth?

21 CHAIRPERSON MOLDENHAUER: You can call
22 the first case.

1 CASE: 18113, ANC-4A

2 MS. BAILEY: Thank you Madam Chair, good
3 morning to everyone. The first case is
4 Application 18113, it's the Application of
5 Jonathan M. Harwitz and Sandhya Mehta and it's
6 pursuant to: 11 DCMR Section 3104.1 for a
7 special exception to allow an accessory apartment
8 in an existing one family detached dwelling under
9 (Subsection 202.10) the property is on R-1-B it's
10 located at 1407 Leegate Road, N.W. (Square 2769,
11 Lot 42).

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much will the Applicant please step forward, take
14 a seat at the table before us. You also have a
15 request for Party Status, will Party Status
16 Applicant at present please come forward and take
17 a seat at the table as well. You can introduce
18 yourselves for the record please.

19 MR. HARWITZ: Jonathan Harwitz, 1407
20 Leegate Road.

21 MS. MEHTA: Sandhya Meththa also 1407
22 Leegate Road.

1 CHAIRPERSON MOLDENHAUER: Thank you, as I
2 indicated is a Ms. Brown present in the audience?
3 Okay Ms. Brown can you please come forward and
4 take a seat at the table as well. If there's
5 something else that you'd like to submit yes you
6 can submit that to Ms. Bailey and we'll take care
7 of that at a later time. Please sit down, and
8 turn on the microphone and introduce yourself for
9 the record.

10 MS. BROWN: I'm Jourdinia S. Brown; I
11 reside at 7820 14th Street, N.W., Washington, D.C.
12 20012.

13 CHAIRPERON MOLDENHAUER: Okay, so we have
14 two preliminary matters first is looking at the
15 Application for Party Status and determining
16 whether or not the Board deems the Party Status
17 opponent to qualify and I'm reviewing our
18 "Exhibit No. 24" and based on my review I think
19 that the Applicant does satisfy the requirements,
20 I'll look to my Board to see if they confer on
21 that, they do and so we're going to grant Party
22 Status, I'll ask the Applicant if there's any

1 opposition to that Party Status Application.

2 MR. HARWITZ: No.

3 CHAIRPERSON MOLDENHAUER: Okay, so Ms.
4 Brown you are now officially a Party in the case
5 and next we'll address the issue of posting of
6 the affidavit. We have not received that, that's
7 required to be received by our office and posted
8 so I'll turn to the Applicant to either provide
9 us with the affidavit now or/and explain why it
10 hasn't been previously provided. You have
11 documentation you can provide to Ms. Bailey,
12 actually Mr. Moy, thank you. It's required that
13 this is posted at least 15 days prior to the
14 hearing and I'm looking at the affidavit opposing
15 that I just received and it looks like you didn't
16 even put up the poster until yesterday.

17 MS. MEHTA: That's correct.

18 CHAIRPERSON MOLDENHAUER: That's correct
19 okay. Is there a reason why it took you so long
20 and why you didn't put that up?

21 MS. MEHTA: I just screwed up
22 unfortunately.

1 CHAIRPERSON MOLDENHAUER: Okay, umm, with
2 having opposition in this case and requiring
3 notice to the public I'm inclined to require that
4 this case be postponed and permit that this
5 poster be sufficiently provided to the
6 neighborhood so that if any other individuals in
7 the neighborhood, you know, see that this poster
8 is up and have any issues they have the
9 opportunity then to come down, there has been
10 notice obviously we have a Party Status
11 individual, we have letters from the ANC, I'm
12 looking at the Party Status submission which is
13 are petitions. It seems as though potentially
14 this has been well notified in the community.
15 Ms. Brown would you be willing to testify that
16 the community is well aware of this and that we
17 don't need to postpone the hearing?

18 MS. BROWN: I think for the most part the
19 people who live in the surrounding blocks have
20 been notified, however I still hadn't seen the
21 notice on their lawn. This as I understand it
22 the request for the exception was made during the

1 summer?

2 CHAIRPERSON MOLDENHAUER: It takes time
3 for the request to be processed and actually for
4 the Applicant to come before the Board so there
5 is timeframe between the Application and this
6 process.

7 MS. BROWN: I will reluctantly agree to
8 postponing it because the Applicants have asked
9 for an exception if they have asked for an
10 exception they should have done due diligence in
11 delivering their materials on time and notifying
12 the surrounding neighbors. When the neighbors
13 received their letters from, I guess the Board of
14 Zoning because that was the first time we had
15 heard of it, those neighbors were notified by us
16 the residents also that live in the surrounding
17 areas but if you desire to postpone it I will
18 reluctantly agree, that is reluctantly.

19 CHAIRPERSON MOLDENHAUER: Okay you'd
20 prefer to go forward?

21 MS. BROWN: I do.

22 CHAIRPERSON MOLDENHAUER: You do, okay.

1 MR. HARWITZ: We would as well.

2 CHAIRPERSON MOLDENHAUER: You would as
3 well, I'm going to look at the other Board
4 Members is sounds like there has been quite a lot
5 of notice to the community; we have the ability
6 to wave this requirement. I'm looking at the
7 petition the Applicant submitted with many names
8 obviously in opposition to the case from the
9 surrounding neighborhood, so we can either go
10 forward and I'll open it up to the Board Members
11 and waive the requirement or continue on today?
12 Based on the consensus of the Board Members we're
13 going to postpone this case for two weeks, that
14 way there's full disclosure to the neighboring
15 requirement that way you actually will then have
16 satisfied the requirements based on this posting
17 affidavit, so you have to leave that poster on
18 your lawn for the next two weeks, we'll
19 reschedule this then for, let's see here...

20 MR. MOY: It should be November the 9th
21 Madam Chairperson.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Moy. So November the 9th in the morning
2 session as well and we'd ask that all members of
3 the community that are present today, Ms. Brown
4 as well you're not a Party Status, if there's any
5 additional information that you decide to provide
6 to the Board you're also required to serve that
7 on Ms. Brown and the ANC. So if you review
8 anything obviously based on the fact that you
9 know that you have opposition and you want to
10 submit additional information to the Board I just
11 want to make sure you're aware that you'd have to
12 serve that on Ms. Brown and the ANC.

13 MR. HARWITZ: May I just ask is the other
14 Party subject to the same service requirements
15 for example we were not aware of this petition.

16 CHAIRPERSON MOLDENHAUER: Yes, she should
17 provide a copy, Ms. Brown can you provide the
18 Applicants a copy of the petition you provided us
19 as well. If you don't have a copy Ms. Bailey
20 will make a copy for the Applicant, make sure you
21 have a copy of that.

22 MR. HARWITZ: Is she required to serve

1 that on you and the ANC as we are for any
2 information.

3 CHAIRPERSON MOLDENHAUER: At this point
4 we accept evidence into the record at hearings so
5 that would have been evidence that we would have
6 accepted into the record at a hearing, you would
7 have gotten a copy of it during this proceeding.
8 Since we're obviously continuing the proceeding
9 for two weeks what we'll do it you'll get a copy
10 of it now and if Ms. Brown provides any
11 additional information to the Board between now
12 and then, she should provide a copy to the
13 Applicant as well as to our Office.

14 MR. HARWITZ: But not the ANC?

15 CHAIRPERSON MOLDENHAUER: Mr. Moy is
16 that, would the Parties Opponent be required to
17 serve the ANC as well?

18 MR. MOY: I'm sorry I didn't catch the
19 question.

20 MR. HARWITZ: My question is, is the Party
21 required to provide service to us and to the ANC
22 of any additional evidence because this has

1 happened previously in the ANC meeting that we
2 show up and we get a little bit blindsided by
3 what gets turned in so we'd prefer to have in
4 advance any materials that are going to be
5 provided at the hearing otherwise...

6 CHAIRPERSON MOLDENHAUER: There's not a
7 requirement that it has to be done in advance, we
8 do accept evidence at the hearing.

9 MR. HARWITZ: From us as well?

10 CHAIRPERSON MOLDENHAUER: From you as
11 well, obviously we prefer to get anything in
12 advance so we can review it, we get the case
13 files in advance, if there is going to be
14 documentation we ask that you get it to us by at
15 least the Wednesday prior to the hearing so that
16 would be for everybody, what date would that be
17 Mr. Moy? November the 3rd, so I would ask that
18 all Parties if you have any additional materials
19 you get that to our office and all the other
20 Parties by November 3rd, if there's obviously
21 information that will come in, in the hearing the
22 Parties can object to evidence being entered in

1 at that point in time and we would hear those
2 arguments at that time. Is that something new
3 that you'd like to ask Ms. Brown or is...?

4 MS. BROWN: I would just like to make a
5 statement about...

6 CHAIRPERSON MOLDENHAUER: There are no
7 statements at this time.

8 MS. BROWN: May I inform you of something
9 please?

10 CHAIRPERSON MOLDENHAUER: If it doesn't
11 have to do with the postponement then what were
12 going to do is let you make any comments when you
13 have your turn when we actually hear your case so
14 I ask that you hold any statements until the
15 actual case is heard in two weeks.

16 MS. BROWN: There was a statement that
17 was just made by Mr. Harwitz that I would like to
18 say please if you will permit me to correct
19 something, we did present the petition at the ANC
20 meeting but the ANC said they didn't need it and
21 they didn't look at it they just gave it back to
22 us, so it was presented and Mr. Harwitz was there

1 to the ANC meeting and the Commissioner gave it
2 back to us.

3 CHAIRPERSON MOLDENHAUER: Thank you for
4 that clarification. What we'll do now is we're
5 going to postpone and we will reconvene in
6 November and as I said I'd like all documentation
7 to be provided in advance so we can have time to
8 review that. I appreciate everybody coming down
9 today and I look forward to seeing everybody
10 again in November.

11 MS. BROWN: That's November the 9th?

12 CHAIRPERSON MOLDENHAUER: November the
13 9th.

14 MS. BROWN: In the a.m.?

15 CHAIRPERSON MOLDENHAUER: In the a.m.

16 MR. MOY: Madam Chair if I may for the
17 record going to the question of the Applicant
18 about serving the ANC, the ANC is not to
19 (INAUDIBLE) part as such but as a matter of
20 courtesy the Applicants generally serve the ANC
21 with documentation. The second note too for the
22 record Madam Chair is that this will be the third

1 case in the morning as on in the day of the 9th
2 there are 2 for admission cases for the BZA so
3 again this would be the third case in the
4 morning.

5 CHAIRPERSON MOLDENHAUER: We don't
6 provide any time; we recommend we get here at
7 9:30 which is when the a.m. cases start however
8 you never know if a case is going to be withdrawn
9 or postponed and so you always want to make sure
10 you're here on time. We can call the next case.

11 CASE: 18115, ANC-1A

12 MS. BAILEY: Madam Chair the next case is
13 Application of Richard Klugman and the number is
14 18115 and it's pursuant to: 11 DCMR Section
15 3103.2 for a variance from the minimum lot area
16 requirements under (Subsection 401.11) a variance
17 from the lot occupancy requirements under Section
18 43 a variance from the court requirements under
19 Section 46, and a variance from the off-street
20 parking requirements under (Subsection 2101.1) to
21 allow the conversion of a 12 unit rooming house
22 into a 3 unit apartment house with a third story

1 addition. The property is zoned R-4 it's located
2 at 3603 13th Street, N.W., the properties also
3 known as (Square 2829, Lot 59).

4 CHAIRPERSON MOLDENHAUER: Thank you very
5 much will the Parties please step forward. Good
6 morning if you could please introduce yourself.

7 MR. KLUGMAN: Richard Klugman 3603 13th
8 Street, N.W. Washington, D.C.

9 MS. LEONARD: Christine Leonard, I live
10 at 2109 Poppkins Lane in Alexandria, VA.

11 CHAIRPERSON MOLDENHAUER: Okay, we'll
12 start off with the Applicants testimony and I'd
13 just like to begin by asking if you'd had a
14 chance to review the Office of Planning's Report?

15 MR. KLUGMAN: Yes I have.

16 CHAIRPERSON MOLDENHAUER: So, I just want
17 to make sure that you're aware that obviously
18 they're not recommending approval and that right
19 now you have a little bit of an upward battle in
20 regards to a variance, a variance is one of the
21 higher standards to satisfy and so I just want to
22 make sure that you're aware of that because as we

1 go forward some of the things that we're going to
2 be looking for is that you walk through an
3 explanation of the practical difficulty of your
4 inability or the infeasibility of a flat and had
5 you walking through some of those financial
6 calculations to that affect.

7 MR. KLUGMAN: Understood.

8 CHAIRPERSON MOLDENHAUER: Okay, I'm going
9 to turn it over to you and you can begin your
10 presentation.

11 MR. KLUGMAN: Thank you, good morning
12 everyone my name is Richard Klugman, I live at
13 3603 13th Street, and this is Christine Leonard my
14 Architect. The proposal as been stated is a
15 request for a variance for an area variance for
16 four regulations to allow the conversion of a 12
17 room rooming house to a 3 unit 3 level apartment
18 house. I have some supplemental exhibits if I
19 may distribute to the Board that will help in my
20 explanation.

21 CHAIRPERSON MOLDENHAUER: Please provide
22 them to Ms. Bailey.

1 MR. KLUGMAN: The present condition of
2 the house is a dilapidated inactive rooming house
3 and the planned future condition of the house is
4 to be an owner occupied 3 unit house that is
5 esthetically sound and fitting in with the
6 neighborhood that uses environmentally
7 responsible systems. Now I wish to thank Ms.
8 Arlova Jackson for pointing out in her letter and
9 in her report that perhaps in my justification I
10 did not explicitly explain why this property is
11 unique and deserves relief from Zoning
12 Regulations. Let me first address the first
13 prong of the test. In the O.P. report the first
14 test is whether the property is unique due to A.
15 Exceptional narrowness, shallowness or shape at
16 the time of original zoning regulation adoption.
17 B. Exceptional topographical conditions. C.
18 Other extraordinary or exceptional situation. I
19 differ from the O.P.'s conclusion and even though
20 only one criteria is required I shall now
21 demonstrate to the Board how the property
22 actually meets A. Shallowness and C. Exceptional

1 situations and the Board may accept either or
2 both. In examining the shape of the lot the O.P.
3 compared my lot only to others within the Square
4 2829, yet by using a larger sample in any study
5 one reaches more precise statistics. The O.P.
6 report claimed that 11 lots in 2829 have no alley
7 way access yet on further analysis of these
8 quoted lots actually only 9 of these lots have
9 1800 square feet or less and have no alley, like
10 me, like my situation. If one includes the
11 neighboring squares in the survey 2828, 2833,
12 2834, all of the squares near my section one sees
13 that 2829 is actually an anomaly for square lots
14 and that of the 265 lots in the 4 squares only 17
15 are 1800 square feet or less and have no alley
16 way access. If you look at "Exhibit A" I marked
17 on the 4 lots homes in yellow and orange that
18 meet this description. Now the numbers show that
19 just 6% of the corner lots that were designed
20 with shallow lots to afford homes to be built
21 behind them. In my case my lot was designed
22 shallow and my neighbors was designed shallow so

1 that 3 homes could be built on Otis Place. I
2 also believe the usage of the house is pertinent
3 to the conversation. While the Office of
4 Planning did not address his issue this is not
5 another single family home in the R-4 District.
6 According to neighbors who have lived there for
7 40 years or more this house has been a rooming
8 house for at least that period. I haven't found
9 anyone who's lived there more than 40 years but
10 to their recollection as long as they've been
11 there it's been operated as a rooming house. A
12 rooming house is a business just as we would
13 consider commercial property or a motel to be
14 different from residential homes, so to should we
15 consider a rooming house in an R-4 District as an
16 exceptional situation. Now when combining the 3
17 factors, the shallowness of the land, the no
18 alley way access and the rooming house status,
19 there are only 3 of 265 lots in this area, this
20 is 1% and I believe 1% is unique. Moving on to
21 the 4 variances in the application. I require 4
22 variances from regulations to make the conversion

1 from a rooming house to a 3 unit 3/4 house and I
2 shall go through each one and explain how I plan
3 to do this. The 403.2 the lot occupancy
4 regulation requiring or regulating no more than
5 60% of the Lot be built on. No Ms. Jackson
6 pointed out in her report that perhaps I should
7 have chosen 2001.3 for permission to build the
8 third floor. I was advised that 403.2 was the
9 correct regulation but if this is correct and
10 2001.3 is the more appropriate regulation then I
11 apologize for the error and ask the Board to rule
12 on the correct regulation. The issue...

13 CHAIRPERSON MOLDENHAUER: I'm just going
14 to interrupt and that I agree with Ms. Jackson
15 and I think that what your doing is your actually
16 expanding a non-conforming use and the non-
17 conformity was preexisting with the 71% Lot
18 occupancy so you're not changing the Lot
19 occupancy at all is that correct?

20 MR. KLUGMAN: That is correct, I had a
21 previous meeting with the BZA here and I asked
22 for guidance and one of the recommendations was

1 to apply for 403.2, that's why I chose this.

2 CHAIRPERSON MOLDENHAUER: Okay, what I
3 would recommend is that if you are amenable to it
4 to just orally modify your request to require
5 2001.3 rather than 403, I think that's the more
6 applicable relief that's being sought.

7 MR. KLUGMAN: I believe even if I had
8 known that 2001.3 was the more correct regulation
9 the application would have been the same, the fee
10 would be the same and my argument for building
11 this would have been the same so I think I can
12 continue. In planning the third floor which is
13 what this issue is about for me, we have actually
14 spent much time to design the new design to match
15 the old design, as you can see by the blueprints
16 we've submitted we are continuing the house one
17 floor up, we used the same bricks, we're going to
18 use the same bay window, we want to use the same
19 number of windows as the lower floors and we want
20 to replace the pentacle with the exact same
21 pentacle that is there. So basically just
22 continuing the lines of the house forward to

1 match what is in the neighborhood now and to
2 match the building that is there now. The new
3 layout also adds open space and green space to
4 the lot that has very little now, as I explained
5 in the justification with a green roof and a
6 green garden I'm increasing my green space 1800%
7 presently there is a tiny patch of grass in the
8 front and everything else is concrete. By
9 planning a back deck and removing the concrete
10 yard in the back I'm also increasing the open
11 space in the area by 30% so I believe that this
12 design for open space and green space is much
13 better than what is situated now. I also plan to
14 use Echo Systems or environmentally sound systems
15 to contribute to the neighborhood as I've written
16 in the justification I plan to have solar panels
17 and green roof and rain barrels and green garden
18 and other methods to be economically or
19 environmentally responsible. Now if one looks at
20 the neighborhood three stories is the norm it
21 will not stand out, 52 of the 57 homes on the
22 3500 block are three stories, the four homes

1 across from me are three stories. If you look at
2 "Exhibit B" the letter from Mr. Wolfberg who is
3 the potential neighbor of mine, he also plans to
4 build a third floor, so looking at the map
5 everything from my house and south is three
6 floors so a third floor will flow and fit into
7 the neighborhood, I've consulted with the ANC,
8 I've consulted with my neighbors, I have written
9 about this on blogging sites and everyone who has
10 learned of my design and my plan has approved of
11 it. Moving on to 406.1 the close court,
12 obviously the house was built in 1909 long before
13 the 1958 regulations and so to enlarging the
14 court the closed courtyard inside to five feet
15 from its present three feet would mean I would
16 basically have to tear down the house, I would
17 have to remove a load bearing wall and rebuild
18 the house from scratch and this is not something
19 I can financially do or even contemplate, but I
20 also think that the court serves a valid purpose
21 in that it brings light, it brings air to the
22 lower floors and I wouldn't want to remove that.

1 So I ask the Board to allow the open courtyard
2 to remain as is. In regard to parking, looking
3 at the map one sees that backyard parking for me
4 is impossible, there will never be an alleyway, I
5 will never be near the street and so I cannot
6 feasibly ever fit a parking space into my lot,
7 however as in the report there are two metro
8 stops on the green line within 10 minutes walk,
9 there are several buses on 14th Street and 11th
10 Street and I think public transportation is more
11 than adequate to that neighborhood and to my
12 house, I don't have a vehicle myself and even if
13 the renters of the other two homes have cars I
14 don't think it would ever be as much had the
15 house been rented full as a rooming house to 12
16 people, so there will be a reduction in cars
17 parked on the street from a rooming house to a 3
18 unit house. Finally the fourth variance request
19 is 900 square feet per unit 401, that there be
20 900 square feet of land for every unit built on
21 the property. I have read many minutes about the
22 law and I read that the intent of the law is to

1 maintain the density of the neighborhood and with
2 this I agree. Nobody wants to see every home cut
3 up into small studio apartments yet the law is
4 written for the 99% of the homes that are single
5 family homes in the R-4 District it was not
6 written for the 1% of the rooming houses which to
7 convert to homes. By converting a 12 room
8 rooming house to a 3 unit house I am actually
9 promoting the intent of the regulation by
10 reducing the density. If one looks at the
11 possible number of people that will live in a 12
12 room, rooming house it's 12 or more. If people
13 look at the number of occupants in a 3 unit house
14 it will be perhaps 3 to 6. So by lowering the
15 density and by providing more stable residents
16 and I think it's understood that a resident who
17 signs a one year lease is more stable and has
18 more commitment to the neighborhood than someone
19 who only lives there week to week or month to
20 month. I will be improving the neighborhood with
21 more stable residents. The second prong of the
22 test has pointed out is whether the strict

1 application of the regulations would result in
2 undue hardship to the property owner, to me and
3 it's a very simple question, this is all a very
4 nice picture Richard but why can't you do all
5 these nice renovations within the regulations and
6 the answer is very simple, it is money, I am not
7 a developer I am a single person owner and I
8 cannot afford the projected renovations for this
9 house to make it a fully functioning house again.
10 The extra cost of making this into 3 units is of
11 course more than making it into 2 units however
12 the extra income from that second renter will
13 more than cover that extra cost and in either
14 situation in either renovation projection the
15 cost of the renovation will be more than the
16 purchase price of the house. Going forward to a
17 bank and asking them to lend me more than the
18 price of the house, the value of the house, one
19 must have a solid financial plan to convince them
20 of this and it is much easier to go forward and
21 ask them to loan money of 450 or 475,000 dollars
22 on a 300,000 dollar property if one can show

1 return on the investment. A projected 1300
2 dollars extra rent per month to help me with the
3 mortgage is much smaller than a projected 3,000
4 dollars per month of rental income and while the
5 renovation costs can always vary because there
6 are always problems that arise in renovation and
7 there are always extra costs its fairly easy to
8 predict based on the market, rental income.
9 Finally when I do finish paying off the mortgage
10 whenever that will be hopefully sooner than
11 later, I plan to convert the house back to a
12 single family, I don't want to be a maintenance
13 man for the rest of my life and I do want to have
14 my own house 100% to myself one day. To sum up
15 the 3 prongs of the test that has been mentioned
16 looking at the question of whether the
17 uniqueness of the lot well my situation is 1% so
18 I think I'd meet that. The question of the
19 second prong of whether there is undue hardship,
20 personally as a single person and not a developer
21 I cannot afford these renovations under the
22 strict regulations. The third prong is whether

1 there will be substantial detriment to the
2 community, well I can probably say will there be
3 no detriment to the neighborhood but I believe
4 this will be a positive contribution to the
5 community. No in closing I'd like to mention
6 something that's not in the application and then
7 not in my justification and this is the situation
8 of the house at the time that I purchased it.
9 The house sat on the market for 6 months, not
10 because it was undesirable or not because it was
11 too expensive or not because of its condition or
12 location but it sat on the market because it was
13 unsalable due to the zoning status. When private
14 homeowners look to buy that house they were unable
15 to get a mortgage because every bank who saw that
16 property did an inspection and found that it was
17 a rooming house and rooming houses to banks are
18 businesses and this particular business was a bad
19 business, it was a failing business in their eyes
20 so single family owners turned away from this
21 house. If you look at the letter "Exhibit C"
22 from my broker he will attest to this, the reason

1 that the bank deemed the property not suitable
2 for a loan was because of its status as a group
3 house, it also was in part the condition of the
4 dwelling, thus the number of potential buyers was
5 limited due to the fact that they would have to
6 bring cash to the table. So single family people
7 couldn't buy this without a loan. Turning to
8 developers who looked at the house, well
9 developers were uninterested in this property
10 also because of the zoning issues, I spoke to two
11 developers in the neighborhood who by chance
12 happen to look at this property before I did and
13 they told me that it was not worth their while
14 because there was no profit for them in
15 developing a house with only two units. As one
16 developer wrote me, I was actively looking to
17 purchase this particular building engaging my
18 realtor, architect, builder and bank, however, I
19 chose not to pursue it any longer after realizing
20 it was zoned R-4 and the lot could only produce
21 two units without going for a zoning variance
22 which had no guarantee of success that I would

1 receive the variance, at this point with only two
2 units there is no feasible way for me to
3 successfully develop the property. So it was at
4 this point that I entered the picture and I
5 bought the property with cash believing that one
6 day I would stand here before the Board and
7 convince you that my plan is the right plan for
8 this property and the right plan for the
9 community and that I am worthy of relief. Thank
10 you and now I will turn it over to Christine
11 Leonard.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much, Ms. Leonard.

14 MS. LEONARD: Thank you, as Richard said
15 I'm Christine Leonard and I'm his architect for
16 the project and Richard covered everything very
17 clearly I just want to give you just a little bit
18 more from my perspective. Over the past year
19 Richard has been looking at various properties
20 and I've been working with him and looking at all
21 the different properties that he's found,
22 evaluating them for whether they were able to be

1 renovated and price and I was very happy when he
2 called and said that he had found this house at
3 3603 13th Street that he liked it and it had the
4 potential for renovation into a wonderful home
5 provided that the proper zoning be approved.
6 Throughout the entire design process Richard's
7 main concern for this addition was that it fit
8 well within the existing street elevation and the
9 surrounding architecture, therefore we repeated
10 several of the existing architectural elements
11 and materials on the façade such as the brick
12 veneer, the large double hung windows and the bay
13 projection as well as the copula(ph sp) roof
14 structure so that it kept in scale with the
15 existing house as well as with the street. We
16 recessed the addition on the back to provide a
17 small deck on the upper level thus reducing the
18 massing onto the back alleyway and all of these
19 features have been a very important part of
20 Richard's development of this project. I have
21 enjoyed working with him throughout this entire
22 process as he has expressed interest and the

1 design features on the interior yet asked to stay
2 consistent with the fabric of the neighborhood on
3 the exterior. His plans to use green appliances,
4 solar water heaters, solar panels and rain
5 barrels also add to the value of this project.
6 He has the support of his neighbors as well as
7 the ANC and I would like to ask the Board to
8 support Richard in the development of this
9 property as he has come a long way in search of
10 his future home, thank you.

11 CHAIRPERSON MOLDENHAUER: Thank you both
12 very much, at this time I'll open of the Board
13 for any questions of the Applicant or his
14 Architect?

15 MR. TURNBULL: Thank you Madam Chair I'm
16 just curious you said you planned at some point
17 to convert this back to a single family?

18 MR. KLUGMAN: Yes after the mortgage is
19 paid.

20 MR. TURNBULL: That will be a significant
21 renovation again, since you've got separate
22 mechanical units for all three units, you've got

1 kitchens, you've got duct work, you've got
2 venting, it's a significant amount of money
3 coming down the line.

4 MR. KLUGMAN: Well not actually because
5 since I'm the sole owner I could redo the
6 entrance way and have one entrance and I could
7 still have, I believe it's called an in-law suite
8 in the basement, and we'll have that for visitors
9 so it would only be changing the top of the
10 house.

11 MR. TURNBULL: You'd have three kitchens.

12 MR. KLUGMAN: I can easily remove one
13 kitchen.

14 MR. TURNBULL: I'm just curious I think
15 some of your arguments are interesting I'd like
16 to hear from Mr. Jackson from O.P. on some of
17 these but one, I mean you were talking about how
18 this is an undevelopable property although had
19 you more money you could've developed this as a
20 single family residence for yourself now.

21 MR. KLUGMAN: Yes, had I more money, then
22 yes I would be able to.

1 MR. TURNBULL: I guess we have to tread
2 lightly on circumstances of money and where your
3 position is as to whether that's a unique feature
4 or not or whether this is a difficult property
5 that there are people that could buy this
6 property and develop it as a single family
7 residence.

8 MR. KLUGMAN: Well as I've explained no
9 single family person will be able to get a loan
10 for it and no developer will invest in the
11 property knowing that only two units...

12 MR. TURNBULL: I'm just throwing it out
13 there could be somebody who could buy this
14 property for cash or whatever and remodel it over
15 any number of years for a single family
16 residence.

17 MR. KLUGMAN: There always could be one
18 person who has a large amount of money who could
19 buy any property and develop it for his own
20 personal taste regardless of the actual value of
21 the house.

22 MR. TURNBULL: I guess the zoning

1 regulations in one way are not strictly designed
2 for money making opportunities for a piece of
3 property that there is the aspect of the value of
4 a residential unit in and of itself not for
5 development, that's my only point on this it's
6 not a cash cow, that every piece of real estate I
7 mean we all want to have our property and have it
8 retain its value but at some point there's also
9 the fact that it's a residence and it can be
10 developed as a residence not as a development, we
11 don't need to hear that every developer can't
12 develop this property. That's my only statement
13 that I think you make an argument but it's a
14 tenuous one in the sense that as a residential
15 piece of property as a single family house, there
16 is still a value for it just as a single family
17 house.

18 MR. KLUGMAN: There is a value but for
19 the six months it was on the market there were no
20 takers, that's an example of perhaps it doesn't
21 have as great a value as one may think for a
22 single family.

1 CHAIRPERSON MOLDENHAUER: In my opinion
2 six months in this market is minimal I mean
3 that's not saying a lot in this current market
4 properties do sit for a period of time, it's not
5 like what it used to be when properties would get
6 contracts, you know, within weeks it's just not
7 what we're seeing now days. But I think I'm
8 following Mr. Turnbull's thought process and I
9 guess my question is a 310,000 dollar purchase
10 price wouldn't have been feasible to not have the
11 extensive renovation cost of adding an additional
12 floor and putting this property into a use as a
13 two unit flat? I don't understand maybe your
14 math maybe you need to walk through that with me
15 better but I don't see how it's practically
16 difficult to take a 310,000 dollar purchase
17 price, renovate the upper unit, create a single
18 family home with a rental unit in the basement
19 and create a flat that would be permitted by
20 right.

21 MR. KLUGMAN: Because the cost of the
22 renovation already exceeds the value of the

1 house. Just speaking as the house that is now to
2 renovated the house was 310,000 dollars the cost
3 of the renovation will be upwards of 400,000
4 because it is in such a poor condition, all the
5 plumbing, all the electrical, all the gas, all
6 the lines must be replaced. So when going beyond
7 the purchase price of the house one must show the
8 bank a solid financial plan and how it will be
9 repaid, with my income and only with one basement
10 renter helping me I will not be able to cover the
11 mortgage and no bank will give me that loan.
12 However if I spend a little more on the house and
13 more than double my rental income, income coming
14 from renters then I have a solid plan from the
15 bank to convince them that this is a solid plan.

16 CHAIRPERSON MOLDENHAUER: Can you just
17 explain to me how you get to 400,000 I'm going
18 through your documentation and it shows
19 electrical at 50,000, mechanical at 94,000, I
20 just, can you provide maybe some more information
21 as to the condition, what's the age of the
22 plumbing, electrical and gas I mean is this the

1 original plumbing that's been existence in the
2 building, when was the building built, I mean if
3 we can get some more information as to the actual
4 condition rather than just some statements I
5 think that would be helpful.

6 MR. KLUGMAN: Well the plumbing is
7 original.

8 CHAIRPERSON MOLDENHAUER: What year, when
9 was the house built?

10 MR. KLUGMAN: 1909, the electrical has
11 been added, I'll say several times, without ever
12 the original electrical wiring being removed so
13 it has several electrical systems, it has we'll
14 call it modified plumbing systems old added to
15 new but it's in such a deteriorated state with
16 holes in the pipes that they all have to be
17 removed and the electrical, I feel at that point
18 with so many systems is unsafe.

19 CHAIRPERSON MOLDENHAUER: So you're going
20 to, you'll do a complete gut job in regards to
21 the plumbing and the electrical?

22 MR. KLUGMAN: Yes, basically the only

1 thing that's going to remain that can be saved
2 are the floors, the joist and the wood floors on
3 the first and second floor, everything else is
4 going to be gone.

5 CHAIRPERSON MOLDENHAUER: Can you go back
6 to your, our "Exhibit No. 9" and walk me through
7 how this comes up to a 400,000 dollar cost if you
8 were just to create a flat.

9 MR. KLUGMAN: That was based on
10 consultations with more than one developer, I'm
11 sorry not more than one developer, more than one
12 contractor, so I came up with the number that was
13 most feasible speaking to more than one.

14 CHAIRPERSON MOLDENHAUER: I understand
15 that you obviously contacted many contractors but
16 I'm looking at this sheet right here that is our
17 "Exhibit No. 9" and this is based on renovating
18 and adding an additional floor and creating the
19 three units and this is showing a total cost of
20 about 605,000 and change for construction, you
21 gave a quote of about 400,000 I'm asking do you
22 have a similar breakdown to this that would show

1 the 400,000 dollar cost for a flat that could
2 then just provide us additional documentation
3 that says okay your showing that's it going to
4 actually cost that much money, that it wouldn't
5 be feasible for a flat, that breakdown as well.

6 MR. KLUGMAN: Unfortunately I don't have
7 the second estimate, the contractor who worked on
8 this his wife became ill after doing the first
9 appraisal or estimate and while we talked about
10 the numbers I didn't want to push him and to
11 write up the document, I left him with his ill
12 wife.

13 CHAIRPERSON MOLDENHAUER: I don't have
14 any other questions do any other Board Members?

15 MR. TURNBULL: This is just a small point
16 it's not related to any of the variances or
17 anything. You're talking about putting solar
18 panels on the roof but aren't you really not in
19 the best advantageous direction to doing that,
20 since it's longitudinal east and west, I'm just
21 curious how much sun you're really going to see
22 on this lot.

1 MR. KLUGMAN: The southern exposure is
2 where the solar panels will be applied and if you
3 look at the design I specifically designed it at
4 36 degrees which is the optimum angle for solar
5 panels. So basically it's not an accident that
6 the house has an angled roof like that it was
7 designed that way for solar panels.

8 MR. TURNBULL: Okay, I have no more
9 questions Madam Chair.

10 MR. HINKLE: Thank you Madam Chair just a
11 real quick and I think you might have touched on
12 this, could you go over again the parking
13 situation in the neighborhood and the available
14 transit and transportation that's around there?

15 MR. KLUGMAN: There is of course street
16 parking in the front, I don't have alleyway
17 access so there's not street parking behind me.
18 There is the green line there are two stations,
19 Columbia Heights and Petworth their both 8 or 9
20 minute walk depending on how fast you walk to
21 both of them. There are several bus lines on 14th
22 Street that's also maybe 8 minutes walk for me

1 and there are a few buses on 11th Street which is
2 12 minutes walk for me.

3 CHAIRPERSON MOLDENHAUER: Thank you very
4 much, at this point...

5 MR. TURNBULL: I'm sorry Madam Chair I
6 just have one more question, you were talking, I
7 guess one thing that you had mentioned earlier in
8 your discussion about some three story buildings
9 in the neighborhood, the ones right adjacent to
10 you are only two stories right?

11 MR. KLUGMAN: The ones to my right are
12 two stories as the letter submitted the one to my
13 left he will propose to make is a three story,
14 the four across from me are all three story and
15 90% of the homes south of me are three stories.

16 MR. TURNBULL: Of similar character?

17 MR. KLUGMAN: Yes.

18 MR. TURNBULL: Okay thank you.

19 CHAIRPERSON MOLDENHAUER: Thank you, at
20 this point I will turn to anybody in the audience
21 who is here in support or in opposition of this
22 case. Seeing no one I'll just reference that we

1 do have three exhibits, "Exhibit 10, 11, and 12"
2 which are all letters from neighbors in support.
3 Then at this point in time we'll turn to the
4 Office of Planning for their report.

5 MS. JACKSON: Good morning Chair, members
6 of the Board, for the record my name is Arlova
7 Jackson with the Office of Planning. The Office
8 of Planning as indicated in our staff report
9 cannot recommend approval for the variance
10 request from Lot area, Lot occupancy, court width
11 and off street parking and as discussed earlier
12 the amended request from the non-conforming
13 characteristic section 2001.3. Just briefly the
14 property is rectangular shape lot with no
15 significant changes in grade and is approximately
16 1800 square feet in size. While the property
17 does not have alley access or curb cut that
18 condition is not unique to lots within the
19 subjects square. The Applicant has extended his
20 analysis to four adjacent squares which obviously
21 yielded a different result in terms of his
22 interpretation and analysis of uniqueness.

1 Generally we look at the subject square and for
2 characteristics of the lot using that as our
3 standard geography so certainly if you expand
4 that you're going to get some different numbers.
5 I'm struggling and haven't fully been able to
6 say whether my mind has totally been changed in
7 response to the Applicants testimony about the
8 shallowness, the depth of the lot, a 90 foot lot
9 as compared to the analysis I did would not be
10 considered exceptionally shallow nor the fact
11 that it doesn't have alley access, perhaps if you
12 add the previous use as a rooming house that
13 certainly is a different and a typical condition,
14 I'm just not, I'm not prepared to completely
15 change my opinion at this point. However even if
16 you do accept that the lot is unique the second
17 prong of the test requires connecting those
18 unique features in combination with the
19 regulations to a practical difficulty and I guess
20 I still have a hard time connecting those
21 particular characteristics with the request for
22 an additional unit that doesn't meet the lot area

1 requirements. The financial hardship discussed,
2 it's hard to connect a shallow lot or lack of
3 alley access to not being able to meet the
4 criteria for an additional dwelling unit. I'm
5 not seeing the connection directly between those
6 features that were suggested as unique and the
7 request. So if you don't allow the additional
8 unit a lot of the other requests for zoning
9 relief are unnecessary. The addition requires
10 relief from courts which certainly the existing
11 layout when the house was built prior to the
12 regulations would make it impossible, nearly
13 impossible to comply with court with the lot
14 occupancy as we said is not changing and if you
15 do accept that the uniqueness test has been met,
16 the Office of Planning would certainly not, would
17 support the office street parking relief due to
18 the surrounding access to transit and those sorts
19 of things, so with regard to a couple of the
20 requests we're a little more flexible. It's the
21 lot area and the last part while changing a
22 rooming house to an apartment building certainly

1 could be argued would be an improvement to the
2 public good, it's the impact on the zone plan and
3 the recent changes to the regulations
4 specifically geared at limiting multi-family
5 conversions of this type that we have a hard time
6 finding that it would not substantially impair
7 the intent of the regulations and what they are
8 for, and the recent amendments to the R-4 were
9 designed to protect. So it's difficult, I'll
10 leave it at that and take questions.

11 CHAIRPERSON MOLDENHAUER: Thank you very
12 much Ms. Jackson, does the Applicant have any
13 questions for the Office of Planning?

14 MR. KLUGMAN: When you do an analysis of,
15 a statistical analysis of anomalies or uniqueness
16 do you only look at the one square that it's in
17 on a normal basis?

18 MS. JACKSON: Generally our analysis
19 looks at the square.

20 MR. KLUGMAN: But aren't the regulations
21 based on the city or at least the neighborhood
22 and isn't just using one square even though it

1 happened to be my square statistically inaccurate
2 to make rulings for the regulations for the
3 District of Columbia?

4 MS. JACKSON: I wouldn't give us that
5 much credit and say we're doing a statistical
6 analysis. The three issues we're looking at in
7 terms of lot characteristics or some kind of
8 exceptional situation it's hard to define and
9 appropriate geography statistically so the square
10 is kind of a common unit of geography in the
11 District and that's what we tend to go to, to
12 expand it beyond the square I supposed you could
13 look at the 200 foot mailing radius which is
14 required for notice beyond that I think it would
15 be difficult to say what's and appropriate sample
16 size and it might vary depending on what you're
17 asking for.

18 MR. KLUGMAN: Well if the regulations are
19 for R-4, maybe the sample should be the R-4 area.

20 MS. JACKSON: I think if we looked at the
21 R-4 area you'd have a very different result than
22 the 1% you found with your squares because we

1 have a wide range of lot sizes across the
2 District and R-4 zones that are significantly
3 smaller than 1800 square feet.

4 MR. KLUGMAN: But very few of them are
5 rooming houses.

6 MS. JACKSON: I couldn't say.

7 CHAIRPERSON MOLDENHAUER: No other
8 questions?

9 MR. KLUGMAN: No more questions.

10 CHAIRPERSON MOLDENHAUER: Thank you; okay
11 do the Board Members have any questions for the
12 Office of Planning?

13 MR. TURNBULL: Good morning Ms. Jackson,
14 going back over your comments and your report,
15 once again it's a very thorough report. You were
16 maybe hesitating a little bit on the first prong;
17 they might make a case you'd want to revisit that
18 for uniqueness that it was a rooming house. It
19 sounds like your biggest hang-up or one of the
20 ones where you keep coming back is the second
21 prong is the practical difficulty. I totally
22 agree with you but we were concerned about

1 conversions in the R-4 and the square footage
2 necessary to produce a neighborhood that would
3 have consistency to it. I'm just trying to throw
4 this out on the practical difficulty. As you're
5 saying the Applicants talked about the fact the
6 narrows to the lot and no alley access but how do
7 you really tie that into making a case for where
8 he is it's not like he needs the alley access or,
9 and it's a fairly level lot. I'm just sort of
10 talking out loud here I'm not trying to make a
11 case one way or another. What do you see as
12 practical difficulty that would make or break
13 this?

14 MS. JACKSON: I think for certain aspects
15 of the project it's reasonable and obvious for
16 the court if you have a nonconforming structure
17 that was built prior to the regulations expanding
18 that would be practically difficult. I did
19 mention although it may not be the preferable
20 option but if he wanted to in the addition not
21 have a court at all that would be allowed but I
22 think it would probably not be a good thing.

1 MR. HINKLE: Well I think he would have a
2 problem with windows and spaces and rooms.

3 MS. JACKSON: So I think for issues like
4 the court and the parking requirement I see the
5 physical characteristics of the lot while I might
6 not be convinced that they're unique if one were
7 to find a unique I think the fact that the
8 property has alley access and no curb cut
9 probably would be very difficult to grant a curb
10 cut certainly makes it practically difficult to
11 establish an off street parking space, it's a
12 very clear direct relationship and the same for
13 court it's there, it would be difficult to
14 correct at this point, so I see the connection
15 and even if it were lot occupancy which we've
16 ruled out its similar in addition to the
17 nonconforming structure that's not changing, it's
18 just getting to the extra dwelling unit.

19 MR. HINKLE: But if it was the same
20 building with just an owners flat and one
21 apartment you would have no issue with this?

22 MS. JACKSON: No the flat conversion

1 wouldn't...

2 MR. HINKLE: Wouldn't be a problem.

3 MS. JACKSON: No.

4 CHAIRPERSON MOLDENHAUER: Thank you Ms.
5 Jackson, I think that actually that clarification
6 that really your concern is obviously the first
7 prong but if there was an argument of size for
8 the first prong, the second prong (INAUDIBLE) the
9 flat and that conversion to three units. I was
10 kind of probing the Applicant earlier and I'm
11 sure you heard that dialog about the issues of
12 renovations, the cost associated with that, to
13 create a flat versus having the financial ability
14 to create a three unit dwelling. You didn't find
15 that persuasive at all in order to changing your
16 mind as to the practical difficulty?

17 MS. JACKSON; The financial argument is
18 always a difficult one to access, I guess similar
19 to Commissioner Turnbull's discussion about where
20 the line is drawn in terms of being able to make
21 a profit, it's just hard to say, I guess I wasn't
22 swayed substantially.

1 CHAIRPERSON MOLDENHAUER: I was asking
2 you for your opinion I don't mean to put you on
3 the spot but I was trying to see, because
4 obviously what the Applicant worked with you
5 previously and what you had previously and what
6 the Applicant may have testified to today may
7 have provided you additional information I was
8 just curious if that swayed your opinion in any
9 way?

10 MS. JACKSON: No.

11 CHAIRPERSON MOLDENHAUER: Okay, I don't
12 have any other questions. No other questions
13 from Board Members. At this point we'll turn to
14 reports from the ANC. Seeing is anybody from ANC
15 1A present in the audience? Seeing know one, I
16 will indicate that we have "Exhibit No. 8" which
17 indicates that a duly notice meeting with a corum
18 present that the ANC voted 6 to 2 to 1, to
19 support the resolution regarding the zoning
20 relief for a variance at 3603 13th Street, so this
21 letter satisfies all of our requirements
22 including the resolution that's attached and so

1 we would give the ANC support of this application
2 great weight. That being said we'll turn back to
3 the Applicant for any closing remarks or
4 rebuttals from any discussions that had been made
5 during the remainder of this program.

6 MR. KLUGMAN: Thank you I would maybe like
7 to address the issue of the hardship, the
8 financial issue that has been mentioned several
9 times. One is that yes if I had sacks of money
10 of course I could renovate this house by myself
11 in cast and it would be a beautiful single family
12 home, but the reality is I don't have that type
13 of cash and I have spent over a year looking for
14 the right house to build my dream home if you
15 would call it that. I looked at 12 homes before
16 this, no I bid on 12 homes before this one, so I
17 can say the other 12 homes I bid on before and 11
18 of them were Columbia Heights, none of them were
19 on the market for 6 months, none of them were on
20 the market for one month. Some of them sold over
21 a weekend, so this house was unique in that
22 nobody wanted it, it wasn't by accident that it

1 sat there for 6 months waiting for someone with
2 cash to show up. It was a problem house and I
3 saw it as an opportunity to make something
4 special out of it. So the finances are a
5 hardship for me, I cannot with the estimates I've
6 been given rebuild this house for just myself and
7 one renter but if I had two renters helping me
8 with the mortgage then the financial plan is
9 solid and I could renovate it.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much, at this point in time I don't believe that
12 the Board Members, I know I'm not ready to
13 deliberate on this case right now, I think what
14 we're going to need to do is we're going to need
15 to review the record and set this for a decision
16 at a later date. I, while I have compassion for
17 the contractor and his sick wife I think that the
18 burden is with you to prove the practical
19 difficulty and I too right now am having a
20 challenge associating potentially the uniqueness
21 with the practical difficulty and seeing that
22 practical difficulty with not being able to make

1 a two unit flat versus making a three unit flat.
2 I would encourage you to try to get a break down
3 and to provide some more evidence in regards to
4 those costs and how, because as even Ms. Jackson
5 said it's a challenge for an Applicant and the
6 Applicant has the burden of showing the
7 difference between not being able to do something
8 as a matter of right and needing in words that
9 thin line that Mr. Turnbull was indicating in
10 regards to what is a reasonable return and then
11 what is profit. We obviously if you can show us
12 that there's just simply a need for a reasonable
13 return on a property and that, that wouldn't be
14 feasible with doing a flat that's obviously some
15 information that would be beneficial to you to
16 provide us and that's something where the
17 application is still weak. So what I'll do is
18 we'll set this for a decision and I will provide
19 you, would three weeks be sufficient, for you to
20 try to if you are interested in getting us
21 additional documentation to get us additional
22 documentation would that be sufficient?

1 MR. KLUGMAN: Yes.

2 CHAIRPERSON MOLDENHAUER: So then Mr. Moy
3 what would be potentially a date for I guess a
4 hearing then in four weeks providing the
5 Applicant three weeks to respond.

6 MR. MOY: Right, according to my calendar
7 that would be Nov 16th for the Board's decision,
8 the morning of the 16th.

9 CHAIRPERSON MOLDENHAUER: Okay, yeah that
10 looks like about the time there.

11 MR. MOY: Mr. Turnbull will be here in
12 the morning too, according to his schedule.

13 CHAIRPERSON MOLDENHAUER: Perfect,
14 perfect, okay so we will reschedule this for a
15 decision on the 16th, in the morning and we will
16 give you until the 11th, the record will remain
17 open until the 11th, after the 11th we won't accept
18 any further documentation to provide any
19 additional submissions that you think maybe
20 persuasive, okay.

21 MR. MOY: Madam Chair, if staff could way
22 in, if the Applicant could provide filing by

1 Wednesday the 10th, because there may be a holiday
2 that following day.

3 CHAIRPERSON MOLDENHAUER: Sorry the 10th
4 because the 11th is a holiday. So that concludes
5 this portion of the hearing, does the Applicant
6 have any questions for the Board?

7 MR. KLUGMAN: Not at this time.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much then we'll call the next case.

10 CASE: 18116, ANC-2B

11 CHAIRPERSON MOLDENHAUER: Can we call the
12 next case, and the next Applicant step forward.

13 MS. BAILEY: Madam Chair the next
14 Application is Kerry Bedard and the number is
15 18116 it's pursuant to 11 DCMR Section 3103.2 for
16 a variance from the floor area ratio requirements
17 under Section 402 a variance from the Lot
18 occupancy requirements under Section 43, a
19 variance from the yard requirements under Section
20 404 and a variance from the nonconforming
21 structure requirements under (Subsection 2001.3)
22 with the construction of a rear addition

1 including garage serving a one family Row
2 Dwelling. The property is in the DuPont Circle
3 R-5-B District at 2023 N Street, N.W. (Square 97,
4 Lot 47).

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much Ms. Bailey, will the Applicants please turn
7 on their microphones and introduce themselves?

8 MS. BEDARD: Good morning my name is
9 Kerry Bedard and I'm at 2023 N Street, N.W.

10 MR. KASSA: My name is Armstrong Kassa,
11 I'm with SJ Companies and we are here
12 representing 2023 N Street, N.W.

13 CHAIRPERSON MOLDENHAUER: Thank you both
14 very much. Before we begin I just want to make
15 sure that you both had a chance to review the
16 Office of Planning report.

17 MS. BEDARD: Yes.

18 MR. KASSA: Yes we did.

19 CHAIRPERSON MOLDENHAUER: I just want to
20 indicate as you may have heard me say earlier
21 that you're seeking a variance and a variance is
22 one of the higher standards so based on what

1 we've seen in the record, I see an uphill battle
2 in regards to some of the different prongs. Did
3 you consider at all reducing the application to
4 potentially seek a special exception to look at
5 something that was below, if you see an addition
6 that's below 70% of lot occupancy that has an
7 easier standard to satisfy and right now you're
8 at 85.4% so I just want to make sure that the
9 Applicant is aware of all of their options if you
10 move forward with this and we potentially deny
11 the application you would not be able to seek a
12 review of the application again for another year,
13 if you individually decide to modify the
14 application or withdrawal it then if you withdrew
15 you could actually revisit the design in six
16 months so I just want to make sure that the
17 Applicant is aware of all the options that they
18 have.

19 MS. BEDARD: There is no question that
20 the house addition the enlargement of the house
21 is under the lot occupancy and will afford me an
22 elevator because I'm handicapped, the garage

1 addition is what we are here for, that is the
2 only question and it is in line with all of the
3 other garages in the not on the lot but in the
4 square in the row, so I believe the Office of
5 Planning is wrong when they said that this is not
6 unique as all of the other homes have in fact
7 been granted garages and I need that access
8 because I'm handicapped.

9 CHAIRPERSON MOLDENHAUER: Let me just
10 stop right here in this portion of the proceeding
11 because if your request is specifically related
12 to your handicap then we actually would not have
13 specific jurisdiction it would be handled by
14 another branch of the government which has to do
15 with the Fair Housing Act and so I may advise you
16 and I'm going to look to my left to OAG and to
17 Mr. Moy to eventually jump in because based on
18 you stating that your need for both the addition
19 and for the garage is based on your handicap I
20 don't think we have the jurisdiction to handle
21 this case and rather that you should pursue it
22 through a different agency.

1 MS. BEDARD: I disagree because the, I
2 have the matter of right to do the addition; the
3 garage is in compliance with all of the other
4 garages that have been built on either side of
5 me.

6 CHAIRPERSON MOLDENHAUER: Let me just
7 correct you there. We do not at all base any of
8 our determination based on what your neighbors
9 have, I don't know the conditions of your
10 neighbor's property that is not persuasive nor is
11 that how we evaluate each standard, we look at
12 each case based on your property and the
13 standards that we have to apply based on the
14 zoning regs, so while you may say that, that's
15 not something that we review.

16 MS. BEDARD: This is a row of identical
17 homes.

18 CHAIRPERSON MOLDENHAUER: I know the
19 property, I know those lots very well, and I just
20 want to make sure that you're aware that we don't
21 look at neighboring properties.

22 MS. BEDARD: I have been previously

1 granted this approval.

2 CHAIRPERSON MOLDENHAUER: Let's go back
3 to the issue of the handicap; there is a way to
4 permit certain renovations if the reasoning is
5 related to your needs for handicapped. Is the
6 necessity for the garage part of or a need based
7 on your handicap?

8 MS. BEDARD: It is the access to get to
9 the elevator. It is access so that I don't have
10 to walk down slippery steps in inclement weather
11 and as I stated I've already received the
12 approval application of 15068 in the past so I
13 don't know why the Board would go against an
14 application that is already been approved.

15 CHAIRPERSON MOLDENHAUER: We reevaluate
16 that's an old application and we're reevaluating
17 all the effects of it. But I think, again Mr.
18 Moy, I don't know how to proceed here, if the
19 Applicant is indicating on the record that it's
20 related to her handicap, I don't think I have the
21 jurisdiction to handle this case unless she's
22 waving that, I just want to make sure...

1 MS. BEDARD: That's a portion of the
2 issue; it's not the entire issue.

3 CHAIRPERSON MOLDENHAUER: But again if
4 you pursue it through that body you have the
5 right to potentially obtain this relief without
6 having to argue these standards because of
7 certain rights that are afforded to you.

8 MR. BEDARD: Would you give me a moment
9 to speak with Mr. Kassa?

10 CHAIRPERSON MOLDENHAUER: Sure.

11 MR. MOY: Madam Chair while the Applicant
12 is in recess can the Board do likewise for five
13 minutes.

14 CHAIRPERSON MOLDENHAUER: We're going to
15 take a five minute recess and we'll consult with
16 our attorneys and make sure we're following the
17 correct procedures.

18 (RECESS)

19 CHAIRPERSON MOLDENHAUER: Okay we're
20 reconvening, thank you all for taking that time.

21 Based on the information that's been provided by
22 the Applicant what we find is appropriate is that

1 other agencies have greater authority than we do
2 to provide you with potential relief as a matter
3 of right to build these additions based on a
4 handicap, so what we're going to do is we're
5 going to recommend that, we're going to stay this
6 proceeding reconvene it in a period of time to
7 permit you the opportunity to speak with
8 individuals in our office and go down to the ZA
9 and potentially have the other agencies
10 potentially approve this application based on the
11 facts that you provided us this morning. What I
12 would do is I'm going to recommend that as soon
13 as we finish here you can speak with either a Ms.
14 Bushman or a Mr. Nero and they will direct you to
15 the appropriate individuals either at the ZA or
16 the other agencies in the District to work with
17 you. If that path does not lead to your approval
18 then obviously we're staying this proceeding and
19 you can come back before us and we can continue
20 this at that time.

21 MS. BEDARD: I believe that is a greater
22 handicap to me then going ahead with this

1 proceeding, I then I have to make other trips and
2 have other meetings that are difficult for me,
3 when I have facts that I can present to you now
4 that I believe if we look at the memorandum from
5 the Office of Planning, I would like to make
6 those points today and have them in record, and
7 then ask you to make your decision.

8 CHAIRPERSON MOLDENHAUER: Then what we
9 would do is I'd have to have you formally wave
10 your right to potentially pursue this at another
11 agency, is that what you're asking to do.

12 MS. BEDARD: What I'm asking you to do is
13 hear the testimony that I have today and then if
14 you desire to proceed to wave the hearing to
15 another time I will go through the additional
16 steps that you require me to do before I can come
17 back and complete it. But I believe that when I
18 make my arguments you will agree with me and be
19 able to proceed.

20 CHAIRPERSON MOLDENHAUER: Okay so what
21 we'll do is we'll hear this today but we'll
22 postpone any decision on this case for a period

1 of time providing the Applicant time to either
2 pursue this in an alternative method or to wait
3 for our decision.

4 MS. BEDARD: That's fine.

5 CHAIRPERSON MOLDENHAUER: Then at this
6 point in time we'll turn this over to the
7 Applicant to proceed with her case in chief(? Ph
8 sp).

9 MR. KASSA: Good morning everybody we
10 have supplement(INAUDIBLE) in the form of letter
11 of support from adjacent properties that I would
12 like to submit to the Board and we have a copy of
13 the Conservancy Group Meeting minutes basically
14 supporting our project.

15 CHAIRPERSON MOLDENHAUER: I'm just going
16 to provide a notice to the Parties potentially in
17 the audience seeing that this case is going to go
18 forward the last the case for the day 18101 will
19 most likely convene after our lunch recess so if
20 any Parties in the audience need to go ahead and
21 take lunch we'll hear that case at 1 o'clock so
22 there's no need to wait around, thank you. Now

1 we are being provided additional documents, you
2 only have one copy so what we're going to do, Ms.
3 Bailey if you can make copies for us, you have
4 three copies? I appreciate that. Thank you, you
5 can proceed.

6 MR. KASSA: The proposed addition
7 consists of a three story house addition and the
8 construction of an attached car garage with
9 landscaped roof. The proposed house addition is
10 not to exceed past adjoining house additions.
11 This proposed house addition has an FAR of 1.8,
12 lot occupancy of 60% and a building height less
13 than 50 feet compliant fully with the zoning
14 regulation for the R-5-B Zoning District. So by
15 building the garage we're exceeding the FAR lot
16 occupancy and the rear yard setback limits so
17 however the proposed car garage is similar if not
18 identical to those of neighboring properties and
19 having one of the last properties without a
20 covered car garage and because of her handicap
21 Ms. Bedard is requesting relief so that she can
22 build a house addition with an attached car

1 garage similar to those existing adjacent
2 properties. A garage would provide her added
3 security and safe condition when entering and
4 exiting the public alley and also resolve the
5 grade change at the rear of her property.
6 Interestingly a proposal for a garage addition on
7 the same Square and Lot was previously presented
8 to the Board in July of 1989, and was approved
9 with BZ Order No. 15068. The current proposal
10 was presented before the ANC-2B the DuPont Circle
11 Conservancy Group and the Historic Preservation
12 Review Board all of which have supported the
13 proposed addition. As you've also just received
14 we also obtained three letters of support from
15 adjoining property owners namely 2021 N Street,
16 2025 N Street and 2011 N Street, N.W. It is also
17 important to note that our proposal or proposed
18 addition did not gain the full support of the
19 Office of Planning according to the memorandum we
20 received from O.P. the property does not exhibit
21 specific uniqueness and since there's no
22 uniqueness there cannot be a resulting practical

1 difficulty. We owner and Architect defer from
2 O.P.s conclusion, we believe that the property
3 does exhibit uniqueness in that it is one of the
4 last properties without a garage and as such
5 water runs off all impervious surfaces on
6 adjacent properties and alley and on to Ms.
7 Bedard's property. Construction of a garage
8 would eliminate one less dark pocket in the
9 alley, an elevated landscaped deck would provide
10 more daylight into interior space and does not
11 block light nor air circulation in the alley, so
12 therefore it is nearly possible for the Applicant
13 to build a house and a garage addition similar to
14 those of adjoining properties without violating
15 the zoning regulations and it is clearly
16 necessary that such addition be built so that Ms.
17 Bedard can enjoy her property to the same degree
18 as neighboring properties. Thank you and we're
19 open for any questions.

20 CHAIRPERSON MOLDENHAUER: Do the Board
21 Members have any questions for the Applicant?

22 MR. TURNBULL: Did you provide us any

1 information regarding these other properties as
2 to the relief that they got?

3 MR. KASSA: Yes we did if...

4 MR. TURNBULL: I have these little
5 letters but I don't have anything that actually
6 relates back to the, no I don't have any
7 information that relates back to the date which
8 they got there, if they're illegal I have no idea
9 as yet whether they're illegal, not illegal and
10 how they got it, if it was 10 years ago, 5 years
11 ago, 2 years ago, and what the circumstances were
12 and how I can use that information to determine
13 the relationship to this particular site.

14 MS. BEDARD: Within the past two years...

15 MR. TURNBULL: But it's your onus to be
16 able bring us that information.

17 MS. BEDARD: I have their blueprints does
18 that...?

19 CHAIRPERSON MOLDENHAUER: We would
20 actually need a zoning a BZA Order or some sort
21 of documentation which shows that they actually
22 received approval. Every lot is different and so

1 one persons addition may have been as a matter or
2 right or may have been a special exception which
3 as I had indicated earlier as a relief that does
4 not require such a high standard, so we don't
5 know what type or if any as Mr. Turnbull
6 indicated, there are we don't like to hear about
7 it but there are illegal additions that are
8 illegal construction that happens in the city and
9 so that's why we can't use a neighboring
10 properties condition as evidence.

11 MR. KASSA: We have done our research and
12 we're able to obtain several copies of BZ Orders
13 allowing most of the garage additions are built,
14 we unfortunately do not have all of the copies
15 here with us; at least I don't believe we do.

16 MR. TURNBULL: You would have to be able
17 to explain to us not just show us a picture
18 describe as you would have done to the Office of
19 Planning the similarities between those
20 properties why they got relief and why you feel
21 you also deserve similar relief. As the Chair
22 had said if it's a special exception you're going

1 down a different road. If they received a
2 special exception that's different, it's not as
3 strenuous to prove as a variance test. So you
4 have to be able to tell us verbally and in
5 written format what that is. We need written
6 documentation. The Office of Planning should
7 have been told this.

8 MR. GOLDSTEIN: I'm sorry Commissioner
9 Turnbull I can actually address some of this
10 issue if you'd prefer?

11 CHAIRPERSON MOLDENHAUER: Why don't we do
12 this while the Applicant is looking through some
13 of their documentation we'll go back to you at a
14 point in time for rebuttal or closing remarks,
15 let me just see if there's anybody in the
16 audience in support or in opposition of this
17 case, seeing none then at this time we'll turn to
18 the Office of Planning for your report and maybe
19 you can also address some of the questions that
20 have been thrown out, I appreciate it.

21 MR. GOLDSTEIN: Certainly can, good
22 morning Madam Chair, Members of the Board. For

1 the record my name is Paul Goldstein with the
2 Office of Planning. As seen in the report the
3 Office of Planning cannot recommend approval of
4 the Applicants request for relief from Sections
5 402, 403, and 404, and relief from Section 2001.3
6 was also requested but it didn't appear from our
7 review that such relief would be needed since
8 there's no existing nonconformity that's being
9 expanded. Out of abundance of caution if the
10 Board finds it necessary we can certainly address
11 the 2001.3 relief further. The subject property
12 is (Lot 47 in Square 97) and is a Zone DCR 5B
13 relief is needed to accommodate the Applicants
14 proposal to expand the rear of the dwelling and
15 to add an attached one story garage and roof with
16 a roof deck. R-5-B Zoning generally limits the
17 building to 60% lot occupancy, the improvements
18 on the lot or 70% under 223 special exception
19 1.8FAR and minimum rear yard setback of 15 feet.
20 The Applicants proposal anticipates 85% lot
21 occupancy and FAR of 2.18 and a rear yard of 5.3
22 feet, thereby generating why we're here today and

1 the variances requested. The O.P. analysis just
2 to echo an issue that came up earlier does not
3 reflect any issues of whether the Applicants
4 handicap needs are addressed in this proposal
5 that was news to me, that's new information so
6 I'm just judging based on the application as
7 submitted. Based on that the proposal did not
8 satisfy the variance test, O.P. we didn't feel
9 that the uniqueness was demonstrated, the
10 application raised issues that the square single
11 alley entrance odors vermin, water runoff, I
12 wouldn't mind hearing maybe a little bit more
13 about that issue and crime are generally not
14 considered unique to this particular property as
15 such there can be no resulting practical
16 difficulty. But even if the Board determines
17 that there's uniqueness the Applicant has not yet
18 demonstrated how it relates to the relief
19 requested and the relief requested is for both a
20 house addition and a garage. The Applicant has
21 not demonstrated yet that any building additions
22 could not be designed, a conform to zoning or

1 just special exception relief. O.P. does not
2 anticipate that the proposal would cause
3 substantial harm to the public good and I do want
4 to address some of these other properties.
5 Typically O.P. does not look at improvements on
6 neighboring properties as support to bootstrap an
7 application here but it certainly is something
8 that I can address. I went back and looked at
9 the various orders around it, the Applicant is
10 correct in part there was relief granted for this
11 particular property in 1989, my sense is that,
12 that was a detached garage which needed a lot
13 occupancy and alley set back relief. I don't
14 know the dimensions, I don't know the extent of
15 relief, and it's a slightly different proposal
16 than what is coming forward now. Unfortunately I
17 don't have the records to run through it. I can
18 if the Board would like I can run through some of
19 the other cases that have come up along this
20 block.

21 CHAIRPERSON MOLDENHAUER: Yes, please.

22 MR. GOLDSTEIN: Sure, and if it is helpful

1 I also do have copies of these orders, that might
2 assist the Applicant as well. 1301 21st Street,
3 N.W. received lot occupancy and rear yard
4 variance relief to accommodate a rear garage of
5 which I don't have the addresses on the map to be
6 able to point out exactly which address that is
7 maybe the Applicant later can address which one
8 some of these properties are. That was from 1989
9 so that was lot occupancy, rear yard variance
10 relief to accommodate a rear garage, I don't
11 recall if that was an attached or detached
12 garage.

13 MS. BEDARD: It's detached garage and it
14 faces 21st Street not...

15 MR. GOLDSTEIN: I was just saying what
16 the address was, sure that's fine. 2019 N
17 Street, received lot occupancy and rear yard
18 variance relief to accommodate a rear addition I
19 assume that means it's an attached addition that
20 was from 1974. 2025 N Street, N.W. which is the
21 neighbor I believe immediately to the west
22 received lot occupancy and alley setbacks

1 variance relief to accommodate a detached garage
2 in 1989, and 2021 N Street which is the neighbor
3 to the east, and I think the Applicant was
4 referencing this one, received FAR lot occupancy
5 rear yard and expanse of a nonconforming
6 structure variance relief to accommodate a garage
7 addition. I've reviewed that one a bit that was
8 an application opposed by O.P. in 2008 so 2 years
9 ago and some of the issues are similar and some
10 of the issues are a little different from this
11 case, so there has been a fair amount of relief
12 granted along this block, I can't tell you
13 exactly, I can see the result, I don't know what
14 the extent of relief was for these other
15 applications and whether, you know what the
16 precise circumstances were that could have led to
17 relief, so one was from 74, 3 were granted in 89,
18 I guess they might have all been part of a
19 cluster of cases which were brought.

20 MS. BEDARD: One of which was mine.

21 MR. GOLDSTEIN: Yeah one of which was
22 yours correct and I guess I assume never built.

1 And then one was actually 2008, which I have
2 reviewed the transcript and to the extent that
3 I'm familiar with it I can answer questions about
4 that case. So there is some history of relief
5 along this block, now whether the Applicant, the
6 problem we have is first of all looking at this
7 case as its own circumstances and not saying that
8 because others got relief to some extent we don't
9 know what the relief was, we don't know what the
10 circumstances was, that relief can't be used to
11 justify this relief simply my neighbors got
12 something so therefore I'm entitled to something
13 as the uniqueness and we think that this proposal
14 as it is contrary to how we find the intent of
15 the zoning regulations are that it's excessive
16 compared to what zoning permits you and because
17 the Applicant is only about 47% lot occupancy
18 they're under FAR, they've got a rather sizeable
19 rear yard we were wondering if there was some
20 other and I know the Mr. Kassa and I have
21 discussed this, is there some way given the
22 flexibility on this property that her needs could

1 be satisfied within a less zoning impactful
2 manner, could the garage still get built either
3 matter of right or as a special exception, could
4 there be some other organization on the property
5 that could be less contrary to the intent of the
6 zoning regulation. So as we see it we just can't
7 find the uniqueness, we can't find how the
8 practical difficulties related, the proposal is
9 related to that uniqueness and that there may be
10 some other ways to get sort of what the Applicant
11 is after but within a less contrary way under
12 zoning. The ANC has supported it, I believe
13 another DuPont Citizens Association supported it,
14 I haven't seen the letters but the Applicant
15 indicated that neighbors are supported so I mean
16 that's sort of out there but we just can't get
17 passed the hurdle at this point and again that's
18 not in reference to any disabilities that the
19 Applicant suffers and what her needs are. Thank
20 you and I'm available for any questions.

21 CHAIRPERSON MOLDENHAUER: Thank you Mr.
22 Goldstein, I have a couple of questions unless

1 any of the other Board Members have questions at
2 this time.

3 MR. TUNRBULL: I know you're, I think one
4 of the biggest things is the lot occupancy which
5 is almost twice the request, what the existing is
6 now they're going to, you know, 85.4% which is as
7 you said if it had been a special exception going
8 for the 70 that's one thing but now almost, you
9 know, we're only 15% shy of total lot coverage
10 here I think that's a significant hurdle in and
11 of itself.

12 MR. GOLDSTEIN: I agree with you, that
13 was a problem that we had in evaluating it is
14 getting up to the 85% from the 40 plus percent
15 that it is now which also shows that there is
16 some flexibility to create maybe some other
17 designs that could perhaps just be under that 70%
18 limit.

19 MR. TURNBULL: Okay, thank you Mr.
20 Goldstein.

21 CHAIRPERSON MOLDENHAUER: One of my
22 questions is about the uniqueness right now there

1 is some testimony that it's the only property
2 without a garage is that accurate, I'm just going
3 to refer to this block as Riggs Row, I know it's
4 known by that by many people in the area it's a
5 historic grouping of homes.

6 MS. BEDARD: I've never heard of that.

7 CHAIRPERSON MOLDENHAUER: You've never
8 hear it referred as Riggs Row, the initial owner
9 or developer was actually and maybe the architect
10 knows of this now a lot of historians refer to it
11 that way, but that grouping of homes are there
12 other homes that are designed in the same manner
13 on that block of N Street that don't have a
14 garage?

15 MR. GOLDSTEIN: I'll do my best from
16 memory and the Applicant of course can correct me
17 she'd be more familiar than I am with her block.

18 One distinction I'd like to make is that just
19 because a property has a garage doesn't mean it's
20 up to 85% lot occupancy so I just want to
21 separate those two issues. Coming in from the
22 street as far as my memory's concerned this

1 property I think is the only one of the five row
2 dwellings that are zones R-5-B that doesn't have
3 a garage on the alley. I think if you keep
4 moving east along N Street where you get into the
5 R-5-E Zoning there might be, I believe there's a
6 property that doesn't have a garage and, but as
7 far as this stretch goes coming in from N Street
8 of the five properties I believe it's the only
9 one that doesn't.

10 CHAIRPERSON MOLDENHAUER: So you're
11 saying that there is a distinction I guess in the
12 zoning one is R-5-B which is this property and
13 there's an R-5-E, so one of the properties which
14 share similarity I guess in the age in which
15 these properties were built and the appearance
16 from the street, one of those in the R-5-E does
17 not have a garage but in regard to this zone this
18 is the only one in that zone that doesn't have a
19 garage.

20 MR. GOLDSTEIN: Among those I think
21 stretch of properties, I think if you go across
22 the alley the one across the back of the property

1 on 21st Street I believe that one also it is
2 multi-family that is correct and I don't believe
3 it has any rear garage it has some surface
4 parking off the back. Based on my image that I
5 have on page 2 the O.P. report unfortunately it's
6 a bit hit or miss on this image about which
7 properties do have detached garages and which
8 don't but think there maybe be a couple as you go
9 up the alley along the west side that may not.
10 The first one on 21st Street doesn't there's a
11 stretch I believe that does have some rear
12 detached dwellings. I'm not as familiar as you
13 go further up the alley whether there are any
14 that don't as well.

15 CHAIRPERSON MOLDENHAUER: Once the Board
16 finishes asking questions then the Applicant can
17 ask questions and at the end have an opportunity
18 to provide closing remarks if there's any
19 additional points of clarification you can
20 provide them at that time. I do agree with your
21 point about flexibility, did you have
22 conversations with the architect about trying to

1 rearrange this plan so that there was, I mean
2 even if it was not below a 70% for a special
3 exception was there a discussion to try and
4 reduce the level of belief that's being sought by
5 this application.

6 MR. GOLDSTEIN: Yeah I think there's a
7 couple points, one actually the Applicant did
8 reduce it a bit, there was a rear deck overhang
9 over the garage which extended out another couple
10 of feet so they actually removed that which was I
11 think a good thing it might increase the
12 circulation along an alley if this is constructed
13 or it also diminished it gave a bit of a greater
14 rear yard setback a little less on lot occupancy
15 and I believe it would put it in line to the
16 garage to the east. So that was one measure that
17 was taken by the Applicant, we did, the architect
18 and I did have discussions, I encouraged them to
19 try to find a solution that was less impactful in
20 lot occupancy and FAR. I was really pushing
21 towards 70% to try to make it a special exception
22 as opposed to a variance but I was encouraging

1 them to see if there was a solution that either
2 you got the garage, you got the rear house
3 addition or some combination that could be more
4 conforming to zoning than their proposal.

5 CHAIRPERSON MOLDENHAUER: Thank you are
6 there any other questions from Board Members,
7 seeing none then does the Applicant have any
8 questions for the Office of Planning?

9 MR. KASSA: If we look at this addition
10 in two phases we have an addition of the livable
11 space a three story livable space addition and if
12 we look at the lot occupancy of just that we are
13 at 60% lot occupancy and 1.8 FAR which we're okay
14 with the R-5-B Zone District. It's only when we
15 add that garage that we're exceeding and as we
16 explained earlier the garage is more of a
17 necessity than just wanting, it creates as we
18 said earlier security and it gives a safe
19 entrance and exit for Ms. Bedard into the alley.

20

21 MS. BEDARD: If I chose to...

22 CHAIRPERSON MOLDENHAUER: Let me just

1 this is to ask questions, question/answer, okay
2 there was a statement earlier and if you want to
3 ask questions you'll have an opportunity to do
4 closing remarks.

5 MS. BEDARD: Okay, the question I have is
6 what do you consider an unusual grade change?
7 Because you're saying there's no unusual grade
8 change at this property as there is a slope to
9 both the east and the west and the north and the
10 south. What do you consider an unusual grade
11 change?

12 MR. GOLDSTEIN: I don't have a specific
13 number in mind, the application just says that
14 there's water runoff issues and I'd certainly be
15 willing to hear more about what they are and how
16 the grade change effects you but I didn't see any
17 reason to believe that there was some uniqueness
18 to this particular property as far as a grade
19 change goes.

20 MR. BEDARD: Is it not your job to
21 inspect the property and find out what the grade
22 change is?

1 MS. BEDARD: I did go to your property, I
2 did look at it, but as the Applicant you have the
3 burden of showing that there is something unusual
4 about the grade change I can't figure it out
5 without you carrying your burden.

6 MS. BEDARD: It's relatively obvious if
7 you're at the property that the east side of the
8 grade is higher than the west side and that the
9 south side of the grade is significantly 8 feet
10 higher than the north side of the grade. I don't
11 understand what I could do to show you something
12 different than what is evident at the property.

13 MR. TURNBULL: Ma'am your architect has
14 to provide drawings that show this grade change
15 and that has to be provided in very...

16 MR. KASSA: Actually that is provided on
17 SK-7 showing a section across the building from N
18 Street to back up the alley.

19 MR. TURNBULL: But that doesn't show a
20 grade that shows me a line going down that could
21 be a foot, that could be 6 inches to me that
22 could be still read as minimal that is not a very

1 severe grade change which is what the Office of
2 Planning looks at, now if you want 8 feet and it
3 showed going down significantly then yes I could
4 see how Mr. Goldstein would say you have a
5 serious problem, this I don't think right now
6 would indicate a serious problem. I mean I'm
7 just looking at what you've provided it does not
8 indicate a serious problem and just for point of
9 clarification I'm not an architect so it's your
10 burden to make sure that you point these things
11 out to us while your presenting your case because
12 looking at this diagram on SK-7 I have it open
13 right now I don't see anything right here that
14 points out to me that there's a significant grade
15 change, nor was that part of the initial
16 presentation so when we get back to you at your
17 closing remarks I think that might be something
18 you might want to do but just procedurally I want
19 to continue on and say if you have further
20 questions for Office of Planning you can continue
21 on the questions.

22 MS. BEDARD: I would like to reiterate the

1 question of what is an unusual grade change and
2 I'm not getting an answer to that question, what
3 is considered a significant or unusual grade
4 change?

5 MR. GOLDSTEIN: I would answer that it
6 varies by context so I can give you a specific
7 measure. What I can say is when I went down to
8 your property the whole block, neighboring homes
9 looked similar there's nothing that stuck out to
10 me as your property differed from the properties
11 around it and by visually looking at it I didn't
12 see as Commissioner Turnbull referenced anything
13 that stuck out to me as a particularly
14 exceptional situation.

15 MS. BEDARD: Did you notice the water
16 drains on the back of the property where there is
17 significant rutting from water?

18 MR. GOLDSTEIN: I did not notice that.

19 MS. BEDARD: You cannot give me an
20 absolute as to what you consider a significant
21 grade change and so this is a subjective answer,
22 are you saying its subjective to every property

1 being unique or every property being the same
2 because what you're telling me is I have to be in
3 compliance with everybody else but you're not
4 telling me what that compliance is.

5 MR. GOLDSTEIN: I'm not sure how to
6 answer that question.

7 MS. BEDARD: Your second test does the
8 extraordinary or exceptional situation impose a
9 practical difficulty which is unnecessarily
10 burdensome to the Applicant. What do you
11 consider practical difficulty?

12 MR. GOLDSTEIN: Again it depends on the
13 case.

14 MS. BEDARD: So you're saying this is
15 subjective so the fact that I would have to
16 utilize stairs in the inclement weather if I were
17 to build as my neighbor to the west who does not
18 have a garage that is attached where they have to
19 go outside in inclement weather to reach their
20 property and climb stairs but as opposed to my
21 neighbor on the east who has an attached garage
22 and can go through their property into their home

1 and your saying that does not create a practical
2 difficulty for me?

3 MR. GOLDSTEIN: I'm sorry I don't know
4 how to answer that.

5 MR. BEDARD: Again this is a subjective
6 opinion. And as far as 3 can relief be granted
7 without substantial detriment to the public good,
8 you're saying that enclosing the property so that
9 there is no access to the neighbor's property or
10 my property from the alley is not good for the
11 public good that it is not a deterrent to the
12 public good.

13 MR. GOLDSTEIN: I think if you reread
14 that section you'd see that O.P. did not
15 anticipate any harm to the public good by what
16 you're proposing.

17 MS. BEDARD: Okay thank you.

18 CHAIRPERSON MOLDENHAUER: No further
19 questions.

20 MS. BEDARD: Not at this time.

21 CHAIRPERSON MOLDENHAUER: At this point
22 in time I thank O.P. for their testimony and we

1 now move onto reports from the ANC, anybody
2 present from ANC 2-B seeing nobody in the
3 audience I'll just reference that we have our
4 "Exhibit No. 23" which is a letter that satisfies
5 the requirements to be receiving great weight
6 there was a corum present at a duly noticed
7 meeting where a vote was 9 to 0 to support the
8 application and so that letter from the ANC will
9 receive great weight. That being said now we
10 turn back to the Applicant for any closing
11 remarks.

12 MR. BEDARD: I would like to know if you
13 would like to have a copy of the application
14 17795 from my adjacent neighbor which is his
15 approved variance.

16 CHAIRPERSON MOLDENHAUER: You can enter
17 that into the record if you'd like yes.

18 MS. BEDARD: And I would like to..

19 CHAIRPERSON MOLDENHAUER: I want to
20 reiterate that while we did take testimony as to
21 the other properties that back in 89' and 74' and
22 then in 08' received approval, approval from a

1 neighboring property does not bear any weight
2 into how we review your property.

3 MS. BEDARD: That was from my property.

4 CHAIRPERSON MOLDENHAUER: It doesn't
5 matter either, that was a prior approval by a
6 prior Board and the laws change, our review is a
7 new review completely fresh that was a summary
8 order we see no information as to how they
9 reached that, how they found it to be unique. We
10 have to look at this as a brand new application
11 just because you received approval previously
12 doesn't mean that you'll receive approval now.
13 We need to based on the evidence that your
14 providing us look at this and determine whether
15 you satisfy the three prongs, first whether
16 there's a unique or exceptional circumstance, 2
17 whether there's practical hardship and then again
18 I think from what we had said earlier that prior
19 application for this property was a different
20 application it was an application just for a
21 garage and not for an addition while your
22 architect indicated that if you did the addition

1 it would be within the 60% we can't separate that
2 out, we do have applicants that will do one
3 addition as a matter of right and then come
4 before us for the second portion of the addition,
5 you didn't do that, you're coming before us and
6 we are only able to look at what's before us.

7 We're looking at a 40 some odd percent lot
8 occupancy that's jumping to an 85% lot occupancy.

9 We can't separate out this application that's
10 your choosing as submitting the application
11 together and so we have to take what currently
12 exists on the property and what would then be
13 existing following this approval. So I just want
14 to make sure that you understand how under the
15 regs we have to review this case so that being
16 said we'll take the BZA Order into evidence.

17 MS. BEDARD: That said you have not given
18 me any standard for unusual grade change I think
19 there is in fact unusual and significant grade
20 change that should have been noted by the people
21 that came to inspect the property and I believe
22 that it is noted in the documents that were

1 provided by my architect, when you look at the
2 amount of steps you know what a legal step is in
3 the front of the property and the rear of the
4 property so I do believe it is there, I believe
5 it's in the photographs that show the grade
6 change in the alley that are apparent in the
7 photograph and if you're at the property there is
8 significant rutting from water runoff in the
9 alley from my property and from the neighbors
10 that abut me. The fact that you cannot tell me
11 what the practical difficulty is that there is no
12 standard for that, that this is totally
13 subjective and I don't find any reason that it
14 shouldn't be approved so thank you very much for
15 hearing me. I need to schedule the next hearing
16 in compliant with medical issues so.

17 CHAIRPERSON MOLDENHAUER: Let me just
18 address a couple of issues and I'll address that
19 last comment. I can provide you with some
20 additional understanding of practical difficulty,
21 exceptional circumstances but that's not our
22 obligation, we can't give you legal advice or

1 counsel you have an architect, you have the right
2 to hire an attorney to work with the Office of
3 Zoning to better understand how you can prove
4 your case and provide us with evidence that goes
5 to showing the grade change. I think Mr.
6 Turnbull indicated that based on what we've seen
7 by other applicants we don't see information
8 right now that shows that this grade change is
9 exceptional or unique just to your property. We
10 don't see any documentation which shows practical
11 difficulty means that you would have a practical
12 difficulty associated with the uniqueness so
13 somehow the grade change of the water runoff
14 directly relates to or is connected with your
15 inability to build this as a matter of right, as
16 something that would satisfy the zoning
17 standards. So here one of the challenges that I
18 see in this case is that you're going from a 45
19 or 40 some odd percent lot occupancy and these
20 issues that your pointing out as potentially
21 exceptional circumstances how does that relate to
22 you practical difficulty of now needing an 85%

1 lot occupancy. It to me doesn't relate and
2 that's what the Applicant (you) need to prove to
3 us that there's a correlation between those
4 exceptional circumstances and the relief that
5 you're asking for.

6 MS. BEDARD: But I have asked for the
7 standard and there is none.

8 CHAIRPERSON MOLDENHAUER: I just
9 explained the standard.

10 MS. BEDARAD: Well the standard for the
11 grade for the practical difficulty but you
12 haven't explained the standard for grade change.

13 MS. BEDARD: That is your obligation to
14 prove to us that it is a significant grade change
15 by showing us architectural diagrams by
16 potentially we've had individuals that have come
17 forward that the grade change creates a problem
18 where you would need to potentially dig out a
19 portion or that it creates challenge in building
20 and we have architects or we have lawyers that
21 come before us all the time and prove to us or
22 provide evidence that we can then evaluate that

1 says this grade change is different from my
2 neighbors, this grade change is different or
3 creates a difficulty for me to build this
4 project, look and see how this would happen if we
5 did it this way or if we did it that way, those
6 are ways in which the Applicant satisfies their
7 building.

8 MS. BEDARD: But what is the standard?

9 CHAIRPERSON MOLDENHAUER: It's a matter of
10 proving and evidence and it's your burden to
11 prove those issues by presenting evidence to use
12 however you deem necessary.

13 MS. BEDARD: Okay what you're saying to
14 me is that you have no standard which you rule by
15 so it is all subjective is that correct?

16 CHAIRPERSON MOLDENHAUER: No we take
17 evidence and we weigh it and it is the Applicants
18 burden now ours to provide us evidence which we
19 evaluate and we take expert testimony, I'm not
20 going to get into a back and forth discussion
21 with you on this issue and I think I've
22 explained it sufficiently, I'm not going to

1 repeat myself so at this point in time what we
2 will do is we will continue the case but as I've
3 indicated before we'll provide you a copy of the
4 notice under the Fair Housing Act which is a
5 document which states that if you seek a
6 reasonable accommodation the District Columbia
7 rules policies or procedures under the Fair
8 Housing Act or have a disability and believe the
9 District has discriminated against you based on
10 you disability you may contact the D.C.
11 regulatory administration ADA Coordinator Jeffrey
12 Mason at 442-4545, I'm going to provide you a
13 copy of this and I believe that the Office of
14 Zoning is right up here at the top so we'll
15 provide a copy of that. As we've said earlier I
16 think that the relief that you're seeking is
17 associated potentially with a disability that
18 you've referenced that we had notice of for the
19 first time today we will postpone a decision on
20 this case so you can pursue your rights through
21 other agencies under the Fair Housing Act, Mr.
22 Moy is there a date certain when we can set this

1 for a decision, this timeframe will provide you
2 enough time to potentially pursue this through
3 this other agency if you end up obtaining relief
4 through the Fair Housing Act then you can have
5 the right to simply withdraw the case if you've
6 already obtained relief through another agency.
7 Mr. Moy the date.

8 MR. MOY: Yes Madam Chair if I'm reading
9 the Board correctly we're going out what 30 or 45
10 days then we're looking at a date of December 7th.
11 Okay so this decision will be set for December
12 7th. The record will remain open if the Applicant
13 chooses to submit any additional information to
14 supplement the record until, Mr. Moy what would
15 be the date, I'm sorry I don't have my calendar.

16 MR. MOY: I have it, I have it.

17 CHAIRPERSON MOLDENHAUER: November 30th?

18 MR. MOY: November 30 would be excellent.

19 CHAIRPERSON MOLDENHAUER: Okay so the
20 record will remain open for any additional
21 submissions until November 30th and a decision
22 will be rendered on December 7th. Thank you that

1 concludes this hearing and we are leaving the
2 morning session open for one more case that will
3 commence at, we'll reconvene at 1:15.

4 (LUNCH BREAK)

5 CASE: 18101, ANC-2E

6 CHAIRPERSON MOLDENHAUER: Ms. Bailey if
7 you can call that case.

8 MS. BAILEY: Madam Chair good afternoon
9 it's the Application of Nabeel Audeh the number
10 is 18101 and its pursuant to: 11 DCMR Section
11 3103.2 for a variance from the floor area ratio
12 requirements on under Section 771 and the
13 nonconforming structure requirements under
14 (Subsection 2001.3) to expand an existing
15 restaurant to all floors at premises 1440
16 Wisconsin Avenue, N.W. the property is located in
17 the C-2-8 District and it's also known as (Square
18 1244 Lot 163).

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much will the parties please step forward. I'm
21 not sure if the parties were present when the
22 oath was given this morning. If you weren't you

1 can just stand and Ms. Bailey will administer the
2 oath.

3 MS. BAILEY: Please raise your right
4 hand, do you solemnly swear or affirm that the
5 testimony that you're about to give is the truth,
6 the whole truth and nothing but the truth?

7 CHAIRPERSON MOLDENHAUER: When you're
8 seated if you can turn on your microphones and
9 introduce yourself for the record.

10 MR. AUDEH: Good afternoon I am Nabeel
11 Audeh the petitioner here.

12 MR. DUPONT: My name is Stephen DuPont
13 I'm the architect.

14 CHAIRPERSON MOLDENHAUER: Okay, Mr.
15 DuPont you were here previously Mr. Audeh
16 previously there was another gentlemen here that
17 represented the Applicant what was his relation
18 to you?

19 MR. DUPONT: I don't think there was...

20 MR. AUDEH: I'm not sure who you mean
21 ma'am.

22 MR. DUPONT: I think I was here alone.

1 CHAIRPERSON MOLDENHAUER: Oh you were
2 here along maybe that's what it is, I'm sorry, I
3 was thinking, I guess we had some other gentlemen
4 in the audience that day an I'm getting that
5 confused, I appreciate that. Every once in
6 awhile you get different cases confused. So
7 we're here on a rehearing to kind of continue the
8 prior case and address some of the different
9 issues, address the issues of trash, hours of
10 operation and sound there is some additional
11 submissions that were provided I'll turn to both
12 of you to address those and explain to the Board
13 in more detail on how the Applicant is addressing
14 some of those issues.

15 MR. AUDEH: Can we start by talking about
16 the hours of operation perhaps?

17 CHAIRPERSON MOLDENHAUER: That sounds
18 fine.

19 MR. AUDEH: Well our hours of operation
20 won't change even if we do get this variance that
21 will remain from 8 in the morning to 11 in the
22 evening 7 days a week so this will have no affect

1 whatsoever on the hours.

2 MR. DUPONT: I wrote 10:30 I believe in
3 the memo.

4 MR. AUDEH: 10:30.

5 MR. TURNBULL: I was going to correct you
6 because you had submitted something totally
7 different.

8 MR. DUPONT: Well a little different.
9 The neighbor next door is open until 5 in the
10 morning anyway.

11 CHAIRPERSON MOLDENHAUER: We're not
12 talking about that property we're talking about
13 this property. So what's correct then is it till
14 10:30 or is it till..

15 MR. AUDEH: Officially 11 but if things
16 are really slow they get out by 10:30, I usually
17 say 11 to allow for the maximum time.

18 CHAIRPERSON MOLDENHAUER: That's
19 currently your closing hours now?

20 MR. AUDEH: Yes, so there will be no
21 change there.

22 CHAIRPERSON MOLDENHAUER: Okay I want to

1 discuss some of the issues in regards to the
2 trash and the rodent issues and then the
3 neighboring noise.

4 MR. AUDEH: Yes, as far as noise goes we
5 have offered to address my neighbors concern
6 about the noise by sound proofing the upper
7 levels of my building and he has not indicated
8 that he would be amenable to something like that;
9 on the other hand Mr. duPont met with a former
10 resident and brought a letter from him stating
11 that noise was never an issue when he lived
12 there.

13 MR. DUPONT: Actually if I could go back
14 a little bit more in depth we went to the ANC
15 hearing after we left we were sent back to the
16 ANC and prior to the ANC hearing two of the
17 Commissioners had met with the neighbors and
18 thought that they had achieved a consensus
19 remediation so I prepared a remediation plan to
20 the best of my ability. The neighbor on the
21 north, the corner building was very difficult for
22 me to meet with so I really don't have anything

1 specific to address for him, I did draw it but I
2 don't think it addresses the issue and in fact
3 this letter says there is no issue. The neighbor
4 on the south agreed to a layout and he agreed
5 with Mr. Sclecio(ph sp) the ANC who is an
6 architect however an hour before the ANC hearing
7 he changed his mind. So we do not have consensus
8 and on the basis of the lack of consensus the ANC
9 hearing has recommended negatively and I would
10 submit this letter from Architect Robert Bell.

11 CHAIRPERSON MOLDENHAUER: You can
12 actually provide that to Ms. Bailey she can make
13 copies, thank you. Can you maybe just provide
14 some more testimony as to the sound proofing
15 that's shown in exhibit A2?

16 MR. DUPONT: I've given Ms. Bailey a
17 standard detail for sound proofing. It basically
18 requires one surface of the wall to be what's
19 called an uncoupled surface so it won't transmit
20 the vibrations through the wall. The neighbor to
21 the south had concerns on the second floor and
22 the third floor as that is where he lives and

1 sleeps against the party walls. It is kind of a
2 condition, anybody who's lived in a row house
3 knows that foot falls transfer through and
4 sometimes noise from T.V. or something does. The
5 solution of the uncoupled wall is mostly useful
6 for T.V. and voice noise and things of that
7 nature. However, these two floors are an
8 apartment and noise would be on both floors
9 normally, we only intend to use the lower floor,
10 the second floor and in this drawing it includes
11 everything on these two floors and in the
12 stairwell anything above the stair. On the other
13 side I have drawn a solution because I was asked
14 to all along this wall except where the bathroom
15 and the chimneys are, however the letter from
16 Robert Bell who lived in the building on the
17 north and had his office there testifies that
18 there is absolutely no noise transfer through and
19 as it happens the floor levels on that building
20 are offset from the floor levels on this building
21 so the joist are not the same height and the
22 sound transfers differently.

1 CHAIRPERSON MOLDENHAUER: I'm sorry I'm
2 reading some of the documentation and reviewing
3 it. Do any Board Members have any other
4 questions?

5 MR. AUDEH: May I add something to it
6 about the noise issue. My neighbor who's raising
7 noise as an issue contends that when he goes to
8 sleep at 5 o'clock in the morning that's when
9 he's afraid he'll be disturbed. Ironically I'm
10 finding difficulty renting my apartment because
11 he keeps his own business open so late that he's
12 creating a noise disturbance and that led me to
13 think well maybe I should stop trying to rent it
14 out as an apartment and try to enhance my
15 business with this space. I think the noise
16 issue is a contrivance on the part of my neighbor
17 frankly.

18 CHAIRPERSON MOLDENHAUER: I appreciate
19 your frank testimony on that issue we will
20 obviously, we've heard testimony previously from
21 your neighbor and we'll consider that and weigh
22 that appropriately. Issues of trash, we had

1 asked you previously to identify how you are
2 going to handle trash because obviously one of
3 our concerns with additional square footage of
4 indoor seating you're going to have more trash
5 and with your limitations on the exterior of your
6 property how that's going to be handled so you
7 can address that based on the diagrams that you
8 provided us.

9 MR. DUPONT: I'm happy to, I would also
10 like to direct your attention again to the letter
11 from Robert Bell, and he addresses trash very
12 specifically. When he was living there that
13 place was called rat alley, we are accused of
14 causing the rat problem and that is clearly not
15 the case. Indeed there are at least six
16 restaurants within a one block distance or within
17 300 foot radius that we use for notification. At
18 the moment there are two trashcans on site 95
19 gallon cans with tight lids we propose to provide
20 at least four, there's one here currently in the
21 back area way and there's one at the bottom of
22 the stairs currently. We have easy placement of

1 a second one at the bottom of the stairs and
2 there's an alcove under the stair where we can
3 put a fourth. So there's one, two, three, four.
4 In addition we can have a stacking mechanism to
5 lift this one up when it's full and slide any
6 empty underneath it, that makes five. The trash
7 is removed at the moment on a six day a week
8 basis that can be increased to seven if you
9 desire and it's also easy enough to bring all the
10 trashcans to the front at the end of the day as
11 the trash goes out first thing in the morning
12 every day. The restaurant is actually pretty
13 clean downstairs, I've taken the tour and the
14 alley is not particularly clean but none of that
15 is an issue of my client's trash, his trash is
16 all contained within this little area.

17 CHAIRPERSON MOLDENHAUER: So to the
18 Applicant, do you currently use the street for
19 delivery of your trash to be picked up?

20 MR. AUDEH: Yes.

21 MR. DUPONT: The trash goes out at
22 Wisconsin Avenue not in the alley, correct?

1 MR. AUDEH: Yes, yes.

2 CHAIRPERSON MOLDENHAUER: I believe that
3 you provided an attached document for the trash
4 pickup was that proposal for..

5 MR. DUPONT: That's his current contract.

6 CHAIRPERSON MOLDENHAUER: That his
7 current contract.

8 MR. DUPONT: There's also a pest
9 maintenance contract and we've never seen any
10 other maintenance people for other buildings in
11 the area doing the same thing.

12 CHAIRPERSON MOLDENHAUER: So do you
13 believe that the current, I guess, concerns of
14 your neighbors are existing and that they won't
15 be exacerbated by this approval?

16 MR. AUDEH: I truly believe that.

17 MR. DUPONT: Sam is to the south, I think
18 it's called Cappuccino, I could see that he would
19 have a foot fall issue and I have been willing to
20 address it, he has been willing to talk with me
21 about it at some length, in the end however he
22 did say that he was going to do what the neighbor

1 to the north did. His sleeping hours are so
2 irregular that I begin to wonder what I can
3 possibly do for him so I'm still willing to
4 provide a service to him, as my client is willing
5 to pay...

6 MR. AUDEH: I am willing, I am.

7 CHAIRPERSON MOLDENHAUER: So you are
8 still willing to accept that as a condition to
9 sound proof both the, I guess, the south and
10 north...

11 MR. DUPONT: I think abate is a better
12 word than proof.

13 CHAIRPERSON MOLDENHAUER: I think you're
14 accurate, I agree with that.

15 MR. AUDEH: I would do that yes.

16 MR. DUPONT: I do not believe that
17 there's a sound problem to the north however.

18 CHAIRPERSON MOLDENHAUER: Is it the
19 Applicants position that you would not consent to
20 that condition for the north?

21 MR. DUPONT: No we can do it; I just don't
22 think there's a problem.

1 MR. AUDEH: I would do it but I just,
2 it's just hard to take my neighbors complaints
3 seriously but I will do it if need be.

4 MR. DUPONT: It's not that big of deal.

5 CHAIRPERSON MOLDENHAUER: Do any Board
6 Members have any other questions?

7 MR. HINKLE: Thank you Madam Chair, just
8 a real quick, what terms of activity on the
9 second floor and sound as it relates to sound,
10 what do you anticipate is there background music
11 playing at all or is it just kind of..

12 MR. AUDEH: There would be yes, I
13 anticipate background music, it's basically a
14 place for students to set up their Wi-Fi PC's and
15 do homework, you know there's no alcohol you
16 understand so it's like a lounge area, like a
17 Starbucks something like that. In fact in these
18 dozens of letters of support I got from my other
19 neighbors many of them are parents who welcome
20 the idea of a place where their kids can sit
21 safely without alcohol, without things like that
22 going on. So I don't think there will be a big

1 noise issue there.

2 MR. DUPONT: The model I was given when
3 we started the project was a marvelous, sorry the
4 Starbucks down on M Street which has a second
5 floor seating area, I'm sure everybody in here
6 has been in a Starbucks that does have a sitting
7 area, it's quite a respectful place.

8 MR. HINKLE: In terms of the garbage
9 collection you said that currently occurs six
10 days a week.

11 MR. AUDEH: I have six days a week picked
12 up, more I might point out than any of my
13 neighbors and I have seen no evidence that they
14 have an exterminator coming to their
15 establishments.

16 MR. HINKLE: Do you, I'm not sure what
17 the seventh day is, is that a Sunday?

18 MR. AUDEH: A Sunday.

19 MR. HINKLE: Do you anticipate kind of
20 the typical amount of people coming through your
21 restaurant on that day.

22 MR. AUDEH: I'd also like to bring to the

1 Board's attention that we can, if we do get this
2 variance we can add a seventh day there's a part
3 time person who's offered his services on a
4 Sunday so we will certainly go to that extent.

5 MR. HINKLE: But do you see the same
6 amount of clientele on Sundays as you do on the
7 other days?

8 MR. AUDEH: Sunday is typically a slower
9 day.

10 MR. TURNBULL: I guess I'm confused I
11 thought originally that trash went out the back
12 way.

13 MR. DUPONT: The trash is stored in the
14 back and there was a time when the neighbors back
15 pad was used but that kind of came a part there
16 was a disagreement about terms and everything
17 else, so Nabeel now keeps all of his trash onsite
18 and it goes out the front. There is some traffic
19 out the back, this is the building here, it's
20 land locked by this building and this building
21 and by these parking spaces, so there is some
22 traffic out to the alley, these are the only

1 buildings in the whole block that have an alley
2 and the rest of the block is cut off by Hyde and
3 Addison School. So the entire block is land
4 locked but these few sites do have an alley and
5 that does create the conflict with the land
6 locking and the parking spaces. There is some
7 traffic back there with some of the delivery
8 people, we offered to move the delivery to the
9 front but one of the ANC Commissioners objected
10 rather strenuously because he thought it would be
11 detrimental to the Wisconsin Avenue experience.

12 MR. TURNBULL: I think we have something
13 on file, I think we have a letter on that, okay.
14 So when the trash goes out to the front it goes
15 out to the curb?

16 MR. DUPONT: Yes at 8:30 in the morning.

17 MR. TURNBULL: And they pick up fairly
18 consistently?

19 MR. DUPONT: Oh no they come and take it
20 out.

21 MR. TURNBULL: At that time.

22 MR. DUPONT: A lot of people leave it on

1 the sidewalk.

2 MR. TURNBULL: I was getting to that; I
3 don't think you do that.

4 MR. AUDEH: No-no, we don't do that.

5 MR. TURNBULL: Alright so the waste hauler
6 shows up, then the garbage cans come out?

7 MR. AUDEH: I manually pull it out.

8 MR. TURNBULL: Okay thank you.

9 CHAIRPERSON MOLDENHAUER: Any further
10 questions, none. Thank you both for; is there
11 anything further that you have to present?

12 MR. DUPONT: I have additional letters of
13 support since the 20th.

14 CHAIRPERSON MOLDENHAUER: Thank you I
15 appreciate that.

16 MR. DUPONT: And we do have the packet up
17 until the 20th but I think that was already
18 submitted.

19 CHAIRPERSON: Ms. Bailey will confirm
20 whether she has a copy of that or not.

21 MR. DUPONT: They're noted.

22 CHAIRPERSON MOLDENHAUER: Okay well we'll

1 go through those and make sure we have them all
2 entered into the record, if there's duplicates
3 we'll make notice of that.

4 MR. AUDEH: May I just say in conclusion
5 without striking a plaintiff note or anything but
6 the upstairs of my building is proving to be more
7 and more difficult to use as an apartment so if I
8 can't use it for business it's pretty much wasted
9 space all together and it represents a certain
10 financial hardship for me, thank you.

11 MR. DUPONT: I'd like to make one brief
12 comment. One of the problems we had here at the
13 last hearing was a matter of consensus, when we
14 went to the ANC hearing it was entirely based on
15 consensus. I made my presentation, the two
16 neighbors made their objection, I was then not
17 allowed to say anything more and it was over, so
18 the entire decision at the ANC was one of
19 consensus, not trash or sound. I think that when
20 one side has a consensus vote then it's basically
21 a veto. So I'd really prefer this to be judged
22 on its merits rather than that.

1 CHAIRPERSON MOLDENHAUER: We obviously
2 always take into consideration all the evidence
3 before us. Thank you both very much. I'm going
4 to turn to Mr. Goldstein, I know you already
5 provided your testimony is there anything that
6 you feel that you need to supplement, if you
7 don't need to supplement the record then we'll
8 continue on but I'm just going to do a full
9 circle to make sure.

10 MR. GOLDSTEIN: For the record my name is
11 Paul Goldstein. I mostly can just rest on the
12 record I think the applicant submitted some
13 additional information which could be factored
14 into conditions which I think is what the Board
15 maybe considering if as part of the decision
16 they're going to be making in the future,
17 conditions regarding trash, sound, I think it
18 sounds reasonable to consider these as perhaps
19 conditions of an order, and with that I can rest
20 on the record.

21 CHAIRPERSON MOLDENHAUER: Thank you, I'm
22 just going to ask you one question I can pull it

1 up I don't have it right now I don't believe that
2 you would recommend any conditions for a term,
3 would you consider a term in this case?

4 MR. GOLDSTEIN: You know I haven't given
5 enough thought to really be able to advise the
6 Board of my position, I think we tend not, I
7 shouldn't say, I would need to further consider I
8 really don't have an opinion about a term at this
9 point.

10 CHAIRPERSON MOLDENHAUER: I'm not saying
11 that we're deciding one way or another I just
12 thought I would ask that question since you were
13 reference conditions. Any Board Members have any
14 other questions maybe for O.P. or the Applicant?

15 MR. TURNBULL: I think Mr. Goldstein has
16 touched on the relevant points that would come up
17 I think.

18 CHAIRPERSON MOLDENHAUER: Well I'll look
19 back to the Applicant for any closing remarks.
20 None. I think what we're going to do since there
21 was some positive information that we were
22 receiving today in the record if you'd like to go

1 back and review we'll schedule this for a
2 decision, can we put them on the calendar for
3 next week for, it looks like, yes we'll put this
4 down for a hearing for October 26th in the
5 morning, thank you.

6 MR. AUDEH: Thank you and we attend that
7 meeting?

8 CHAIRPERSON MOLDENHAUER: You do not need
9 to attend that meeting, we will not take any
10 testimony at that time, if you like you can
11 simply watch it via the webcast and hear what the
12 decision is and then there will be an Oder issued
13 at a later date.

14 MR. AUDEH: Thank you very much, thank
15 you all.

16 MR. DUPONT: Thank you for your time.

17 CHAIRPERSON MOLDENHAUER: This now
18 concludes the morning session.

19

20 AFTERNOON SESSION

21 CHAIR PERSON MOLDENHAUER: This hearing
22 will now come to order, good afternoon ladies and

1 gentleman this is the afternoon session of
2 October 19th, 2010, for the Public Hearing of the
3 Board of Zoning Adjustments for the District of
4 Columbia, my name is Meredith Moldenhauer,
5 Chairperson joining me today to my right is
6 Jeffrey Hinkle, Representative of the National
7 Capital Planning Commission and to my left who
8 will soon be joining us is Greg Selfridge,
9 Representative of the Zoning Commission. Copies
10 of today's hearing agenda are available to you
11 and are located to my left in the wall bin near
12 the door. Please be aware that these proceedings
13 are being recorded by a court reporter and is
14 also being webcast live, accordingly I must ask
15 you to refrain from any disturbing noises or
16 actions in the hearing room. When presenting
17 information to the Board please turn on and speak
18 into your microphone first stating your name and
19 home address, when you have finished speaking
20 please turn off your microphones so that your
21 microphone is no longer picking up sound or
22 background noise. All persons planning to

1 testify either in favor or in opposition are to
2 fill out two witness cards; these cards are
3 located to my left on the table near the door and
4 on the witness tables. Upon coming forward to
5 speak to the Board please provide the witness
6 cards to the court reporter sitting to my right.

7 The orders or procedures for special exceptions
8 and variances are as follows. 1. Statement of
9 the applicant and applicant's witnesses. 2.
10 Persons and parties in support, persons and
11 parties in opposition, then we have government
12 reports including Office Planning, Department of
13 Transportation and the Office of State and
14 Superintendents of Education. When then have
15 reports from the ANC and to conclude rebuttal and
16 closing statements of the Applicant. Pursuant to
17 Section 3117.4 and 3117.5 the following time
18 constraints will be maintained. The Applicant,
19 Appellant, Persons and Parties, accepted ANC in
20 support including witnesses will be given 60
21 minutes collectively. Apelles, persons and
22 parties accepted ANC and opposition including

1 their witnesses will be given 60 minutes
2 collective. Individuals will be given 3 minutes
3 and organizations will be given 5. These time
4 restraints do not include cross examinations or
5 questions from the Board. Cross examination of
6 witnesses is permitted by the applicant or
7 parties. The ANC within which the property is
8 located is automatically a party to all special
9 exception variance cases. Nothing prohibits the
10 Board from placing reasonable restrictions on
11 cross examination including limitations on time
12 and the scope of cross examination. The record
13 will be closed at the conclusion of each case
14 except for any materials specifically requested
15 by the Board. The Board and the staff will
16 specify at the end of the hearing exactly what is
17 expected and the date when the person must submit
18 the evidence to the Office of Zoning. After the
19 record is closed no other information will be
20 accepted. The Sunshine Act requires that a
21 public hearing on each case be held in the open
22 before the public. The Board may consistent with

1 its rules and regulations and procedures in the
2 Sunshine Act enter into Executive Session during
3 or after a public hearing on a case for the
4 purposes of reviewing the record and deliberating
5 on the case. The decision of the Board in these
6 contested cases must be based exclusively on the
7 record. To avoid any appearance to the contrary
8 the Board requests that all persons present not
9 engage the members of the Board in conversation.
10 Please turn off all beepers and cell phones at
11 this time as to not disturb these proceedings.
12 The Board will make every effort to conclude the
13 public hearing as near as possible to 6 p.m. if
14 the afternoon cases are not completed at 6 p.m.
15 the Board will assess whether it can complete the
16 pending case or cases remaining on the agenda at
17 this time the Board will consider any preliminary
18 matters. Preliminary matters are those which a
19 case should or will be heard today such as
20 requests for postponement, continuance for
21 withdrawal or whether the proper adequate notice
22 of the hearing has been given. If you are not

1 prepared to go forward with a case today or you
2 believe that the case should be postponed now is
3 the time to raise such a matter. Mr. Secretary
4 do we have any preliminary matters?

5 MR. MOY: Good afternoon Madam
6 Chairperson, Members of the Board we do have
7 another member coming momentarily. There are two
8 matters Madam Chair with regards to preliminary
9 matters, one to the first case in the afternoon
10 and one to the last case in the afternoon, the
11 last case is a consent motion so the Board may
12 wish to address that consent motion before
13 opening the first case in the afternoon.

14 CHAIRPERSON MOLDENHAUER: Yes I think
15 what we will do is we will change that around and
16 we will hear the last case first. Before we do
17 that why don't we have all individuals wishing to
18 testify this afternoon please rise and Ms. Bailey
19 will administer the oath.

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

1 the truth the whole truth and nothing but the
2 truth?

3 CASE: 18057, ANC-3G

4 CHAIRPERSON MOLDENHAUER: Thank you, Ms.
5 Bailey can you please call our first case for the
6 afternoon which is the last case on the agenda.

7 MS. BAILEY: Madam Chair that's the
8 appeal and it's the appeal of an Advisory
9 Neighborhood Commission 3/4-G and its pursuant to
10 11 DCMR Section 3100 and 3101 from a December 24,
11 2009, decision letter from the Zoning
12 Administrator Department of Consumer and
13 Regulatory Affairs determining that the Zoning
14 Administrator has no authority to enforce
15 Findings of Fact No. 33 and Condition No. 5
16 relating to a rooftop structure BZA Order No.
17 17055, serving the Army Distaff Retirement Home
18 at premises 6200 Oregon Avenue, N.W.

19 CHAIRPERSON MOLDENHAUER: Good afternoon
20 if the party can introduce himself.

21 MR. SURABIAN: Good afternoon, Assistant
22 Attorney General Jay Surabian for DCRA.

1 CHAIRPERSON MOLDENHAUER: Thank you and I
2 believe that you have a consent motion to
3 present?

4 MR. SURABIAN: Yeah, the Appellant and
5 the property owner filed a consent motion and
6 DCRA would like to join that motion as well.

7 CHAIRPERSON MOLDENHAUER: Wonderful, then
8 that consent motion was to postpone the hearing,
9 what we'll do is we'll actually just postpone
10 this to December 7th, that way it gives plenty of
11 time to make sure that everything has been
12 resolved hopefully amicably and if prior to then
13 all parties wish to withdrawal the case then that
14 would be obviously appropriate if not we'll then
15 hear this case for the first time on December 7th.

16 MR. SURABIAN: Sounds good.

17 CHAIRPERSON MOLDENHAUER: Thank you.

18 MR. SURABIAN: Thank you.

19 CHAIRPERSON MOLDENHAUER: Ms. Bailey
20 whenever you're ready.

21 CASE: 18117, ANC-5A

22 MS. BAILEY: Madam Chair the next case is

1 Application 18117 of East Chop LLC, and is
2 pursuant to 11 DCMR Section 3103.2 for a variance
3 from the minimum lot width requirements under
4 (Subsection 401.3) to allow the construction of a
5 new one family detached dwelling in the 2800
6 block of Myrtle Avenue, N.E, (Square 4319, Lot
7 30) the property is zoned R-1-B.

8 CHAIRPERSON MOLDENHAUER: Will the
9 parties please step forward and take a seat at
10 the table.

11 MR. NATHANIEL: Hello, my name is Gabriel
12 Nathaniel with East Chop LLC, my address is 15013
13 Greenwing Terrace, Upper Marlboro, MD 20774.

14 CHAIRPERSON MOLDENHAUER: Good afternoon
15 Mr. Nathaniel, first we have a preliminary matter
16 which is the affidavit of posting we just
17 received the documentation I guess this afternoon
18 stating that the property had been posted as of
19 October 4th, but we didn't receive this until
20 today is there a reason why there was a delay in
21 receiving the posting?

22 MR. NATHANIEL: Yes it was just an

1 oversight on our behalf, we received a call
2 actually from the Office of Planning on Friday
3 afternoon and I was actually walking out the door
4 and they said that we had not submitted the
5 affidavit and at that time it was too late to
6 turn it in and have it notarized so we had it
7 done first thing Monday morning.

8 CHAIRPERSON MOLDENHAUER: Okay, so if it
9 looks as though it was still posted on October
10 4th, so I've seen that it has been posted for a
11 significant period of time prior to the hearing,
12 I would be willing to wave our requirements do
13 the Board Members agree to that? Okay, based on
14 the consensus we'll wave our requirements and
15 move forward. My second question is a question
16 about just to clarify ownership. You're
17 identified as the property owner in the initial
18 application but then a Mr. George Moray signed
19 the self certification form I just want to make
20 sure we get a clarification on that issue.

21 MR. NATHANIEL: George Moray is the
22 Principal of East Chop LLC; I'm acting as an

1 agent on his behalf.

2 CHAIRPERSON MOLDENHAUER: So you are not
3 a member or an owner of East Chop LLC?

4 MR. NATHANIEL: I am a member of the
5 partnership yes.

6 CHAIRPERSON MOLDENHAUER: You are, so
7 you are part of it and so is Mr. Moray. So
8 you're actually, then you're representing East
9 Chop, you're not actually representing Mr. Moray.

10 MR. NATHANIEL: Correct.

11 CHAIRPERSON MOLDENHAUER: It's a
12 clarification because if you are part of East
13 Chop then you can be here yourself as part of the
14 Applicant rather than having an authorization
15 letter, so I just want to make sure that's clear.

16 Okay that being clarified we can now move on to
17 the merits of the case. The case is fairly well
18 briefed in your submissions but if you'd like to
19 provide any additional information feel free.

20 MR. NATHANIEL: Sure well you know just
21 to sort of recap what we're looking for is the
22 existing front width of the property is at 45

1 feet and we're looking for a variance of a 5 feet
2 to meet the 50 requirement. Our main goal in
3 this process is to fill that vacant lot with a
4 piece of architecture that blends in with the
5 rest of the neighborhood, specifically maintain
6 the single family character and curb appeal of
7 Myrtle Avenue. In addition we also, one of our
8 main goals in developing properties of this
9 nature is to help underprivileged and low income
10 families purchase properties. This property is
11 very important because we're able to sort of
12 customize the size of the home for the incoming
13 occupant. We're working with a company called
14 Home Free USA that allows us to identify
15 homebuyers who would be ready to purchase
16 properties about a year after they enter into
17 their program.

18 CHAIRPERSON MOLDENHAUER: Okay, thank you
19 I, one of my questions is I don't have anything
20 in the record from the ANC did you attend an ANC
21 meeting? I believe based on our O.P. report one
22 occurred on September 7th?

1 MR. NATHANIEL: Yes we did, yes I did,
2 yes I attended that meeting and I made a
3 presentation to the local constituents.

4 CHAIRPERSON MOLDENHAUER: Do you know,
5 what was the overall impression, we don't have a
6 letter in our records and I'm trying to
7 understand what the...

8 MR. NATHANIEL: From my opinion the
9 overall impression is that there was no
10 opposition there was a lot of questions as to
11 what the house would look like and how we would
12 address some issues specifically regarding
13 drainage because that area sort of sits at a
14 valley from the properties around it. We assured
15 the neighborhood constituents that we were
16 putting in the drainage system to actually pump
17 out the water to daylight but from my
18 understanding there was no opposition.

19 CHAIRPERSON MOLDENHAUER: Do any Board
20 Members have any other questions for the
21 Applicant? Seeing none at this time do you have
22 any further testimony?

1 MR. NATHANIEL: No I don't.

2 CHAIRPERSON MOLDENHAUER: Then what we'll
3 do is I will turn to see if there is any
4 individuals in the audience in support or in
5 opposition of this case. Good afternoon.

6 MS. GRANT: Good afternoon my name is
7 Janae Grant, I'm the Chair of ANC-5A as well as
8 the Commissioner representing Single Member
9 District 5A-11 and I'll be brief, I do have a
10 letter of support from the Commission in regards
11 to this variance regarding the relief of 5 feet
12 in terms of the width. So at our Advisory
13 Neighborhood Commission Meeting 5A met Wednesday
14 September 22, 2010, the Commission heard and
15 voted on BZA Case 18117 regarding this
16 development in which the Applicant is seeking an
17 area variance based on the DCMR. Specifically
18 shared with the Commission the 5 feet relief that
19 the Applicant is seeking. We also had
20 (INAUDIBLE) meetings 5-A-11 met with the
21 Applicant and approved the building of the single
22 family home on their lot consisting of the 4

1 bedrooms and 3 ½ baths, small parking pad off the
2 alley and a drainage system, anticipating their
3 resale value what was favorable to the project as
4 it relates to the community was the added value
5 of the drainage system because yes when there's
6 heavy periods of rain there is some puddling that
7 occurs up and along that block particularly.
8 That part of Woodridge Myrtle Avenue consists of
9 a variation of between 26 and 32 homes, that 2600
10 Myrtle Avenue and there's 2800 Myrtle Avenue and
11 when you just do the walk that's the average in
12 terms of homes so this vacant lot being there in
13 the middle of the block for the most part would
14 definitely be enhanced by having the new home
15 being built to the proper code and standard and
16 so though our commission was aware of this case
17 we officially approved it in September, we had a
18 corum Commissioners of 7 there were no
19 oppositions no decents and I was authorized to be
20 here to speak on the matter, so that being the
21 case again we didn't see hardship in terms of not
22 supporting it but in terms of supporting this

1 variance.

2 CHAIRPERSON MOLDENHAUER: Thank you very
3 much for coming down and providing the testimony.

4 Do any Board Members have any questions? Seeing
5 none, thank you very much and at this point in
6 time we'll turn to the Office of Planning.

7 MS. THOMAS: Good afternoon Madam Chair
8 Karen Thomas with the Office of Planning. We
9 believe that there is a practical difficulty in
10 developing this lot being at 5 feet then there
11 are no issues with developing this lot and we
12 would pretty much stand on record of our report.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much Ms. Thomas I think your report is very
15 thorough as I indicated earlier I think that
16 record is full and that your report was well
17 articulated in regards to the variance test. Do
18 any Board Members have any questions for Ms.
19 Thomas? Seeing none, does the Applicant have any
20 questions?

21 MR. NATHANIEL: No ma'am.

22 CHAIRPERSON MOLDENHAUER: No, okay thank

1 you then and at this point in time we'll turn
2 back to the Applicant for any closing remarks.

3 MR. NATHANIEL: I have none, thank you.

4 CHAIRPERSON MOLDENHAUER: I just want to
5 ask do you have a copy of the written pro support
6 of the ANC.

7 MS. GRANT: Yes you can have the copy.

8 CHAIRPERSON MOLDENHAUER: Oh perfect okay
9 whenever you get a chance could you just give it
10 to Ms. Bailey and we'll include that in our
11 record. Okay wonderful if there's no additional
12 comments from the Applicant we will then conclude
13 the hearing and I think we can actually enter
14 into deliberation on this case. Our Board Members
15 I think are ready to do that. Okay I'll start us
16 off we have Application for East Chop LLC, so
17 obtain a variance relief for a minimum Lot with
18 requirements under 401.3 to allow construction of
19 a new one family detached dwelling on an existing
20 substandard lot in the R-1-B District. This is a
21 vacant property where the Applicant is developing
22 a single family home which is exactly what is

1 anticipated and expected as a matter of right in
2 R-1 District and, you know, from what I see
3 there's obviously some unique circumstances in
4 regards to the Lot as it exists which creates
5 some challenges in regards to building a single
6 family home in regards to the relief that's
7 needed here I'll incorporate for reference the
8 O.P.s report and their analysis of the three
9 prong test in regards to the exceptional
10 circumstances related to this property and the
11 practical difficulty and the fact that O.P. and I
12 also find that there's really no negative impact
13 on the zoning plan or on the general public. We
14 have heard testimony from ANC Chair 5A-11 that
15 the ANC 5A h as voted and determined to support
16 the Application that will be entered into the
17 record and we will give that great weight. In
18 addition to that there's no other issues in
19 regards to opposition. The only thing that we've
20 heard that was a concern is potentially water
21 drainage and the Applicant has addressed that and
22 included that as part of his plans which were

1 presented to the ANC as a resolution to that
2 issue. So based on that I would be in support of
3 approving the application, do any Board Members
4 have any additional deliberation? Seeing both
5 Board Members indicate no, then I will submit a
6 motion to approve Application No. 18117 for East
7 Chop LLC, pursuant to 11 DCMR 3103.2 for variance
8 relief from a minimum lot with requirements under
9 401.3 to allow the construction of a new one
10 family detached dwelling on the existing
11 substandard lot in R-1 District at the 2800 Block
12 of Myrtle Avenue, N.E. Motions been made is
13 there a second?

14 MR. HINKLE: Second.

15 CHAIRPERSON MOLDENHAUER: Motion has been
16 made and seconded, all those in favor say aye.

17 CHORUS: Aye.

18 CHAIRPERSON MOLDENHAUER: Mr. Moy if you
19 can read back the vote.

20 MR. MOY: With pleasure Madam Chair, the
21 staff would record the vote as 3 to 0 to 2 this
22 on a motion of the Chairperson Ms. Moldenhauer to

1 approve the application for variance relief from
2 Section 401.3, section motion Mr. Hinkle also in
3 support of the motion Mr. Selfridge and no other
4 Board Members participating so again the final
5 vote is 3 to 0 to 2.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much Mr. Moy seeing that there's no opposition in
8 this case we'd like to wave our requirements and
9 ask for a Summary of Order.

10 MR. MOY: Very good, thank you.

11 CHAIRPERSON MOLDENHAUER: Thank you both
12 very much for coming down today.

13 CASE 18139, ANC-7D

14 MS. BAILEY: Madam Chair you ready for the
15 next case?

16 CHAIRPERSON MOLDENHAUER: We are thank
17 you.

18 MS. BAILEY: This is the Application of
19 the District of Columbia Public Schools the
20 number is 18139 and it's pursuant to 11 DCMR
21 Section 3104.1 and 3103.2 for a variance from the
22 off street location requirements under

1 (Subsection 2116) the approval of the minimum Lot
2 area and Lot width requirements under (Subsection
3 401.3) to establish a child development center,
4 Educare Center for 175 children and 60 staff
5 under the special exception provisions of Section
6 205 the property zoned R-5-A its located at 6050
7 Anacostia Avenue, N.W. Parcel 170/40 and 170/16.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much Ms. Bailey. Once the parties have gotten
10 themselves together we'll ask if they want to
11 introduce themselves.

12 CHAIRPERSON MOLDENHAUER: Good afternoon
13 if you guys, there's a presentation up go ahead
14 and introduce yourself for the record.

15 MS. RODDY: My name is Christine Roddy
16 and I'm an attorney with Golsten(ph sp) and
17 Stores and I represent Educare in this
18 Application.

19 MR. LANG: My name is Joe Lang I'm and
20 Architect with (INAUDIBLE)Planning and Design,
21 representing the Educare from the architecture
22 perspective.

1 MR. JONES: Good afternoon my name is
2 Dana Jones I am the President and CEO of the
3 United Planning Organization the local operating
4 partner of Educare D.C. and I'm also a Board
5 Member of Educare D.C.

6 MR. ANDRES: Good afternoon Madam Chair,
7 Members of the Board my name is Erwin Andres and
8 I'm the (INAUDIBLE) Associates the traffic
9 transportation part consultant on the project.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much we can start off the presentation.

12 MS. RODDY: Great as a preliminary matter
13 we are hoping to have our architect and our
14 transportation consultant recognized as experts
15 in their respected fields and we just submitted
16 their resumes for your consideration.

17 CHAIRPERSON MOLDENHAUER: We'll just take
18 a quick look at those. I have no problems seeing
19 Mr. Lang as registered as an architect in the
20 District he's got over 25 years of experience and
21 has done numerous projects similar to this. Do
22 any of the Board Members have any concern? No.

1 And Mr. Andres I know that we've seen him before
2 the Board and his resume is quite extensive and
3 he has experience in this matter so we will
4 certify him as well.

5 MS. RODDY: Thank you, we are here today
6 on behalf of Educare seeking three areas of
7 relief, it's a fairly straight forward
8 application and the three areas of relief that
9 we're seeking are a special exception pursuant to
10 Sections 3104, 352, and 205 to establish a child
11 development center next to the Neville Thomas
12 Elementary School it's in Ward 7 and the property
13 is located in the R-5-A Zone District. Educare
14 also seeks special exception relief pursuant to
15 Section 401 to establish a lot in the R-5-A Zone
16 District and finally it seeks variance relief
17 with respect to Section 3103 and 2116 to locate
18 all of the required parking on a separate lot.
19 Through our testimony this afternoon we will
20 demonstrate that this application satisfies both
21 the special exception and the variance standards,
22 specifically the child development center will

1 meet all applicable code and licensing
2 requirements, it is located and designed so as
3 not to create any objectionable traffic
4 conditions or any objectionable conditions with
5 drop off and pick up of the children. It
6 provides sufficient off street parking spaces, it
7 is located so that there would be no
8 objectionable impacts on neighboring properties
9 with the respect to noise, activities or any
10 visual intrusions and finally there are no other
11 child development centers located in this square
12 or within 1000 square feet and there are no off
13 site play areas. Now with respect to the
14 requested relief to establish a lot in the R-5-A
15 Zone District we are proposing a lot with a
16 minimum area of 84,791 square feet and a minimum
17 width of 209 feet. This far exceeds the minimum
18 area and width requirements of any other Zone
19 District and notably public schools in the R-5-A
20 Zone District are required to maintain a minimum
21 area requirement at 9,000 square feet and a
22 minimum width of 80 feet and so as I said before

1 this lot will far exceed those requirements.
2 Finally our testimony will demonstrate that we
3 satisfied the variance requirement for providing
4 our parking spaces off site, this site location,
5 context and shape creates a practical difficulty
6 in locating the parking spaces on the property.
7 Nonetheless we believe that our proposal to
8 locate the parking spaces on the Neville Thomas
9 Property is a preferable proposal because it
10 consolidates all the parking and it emphasizes
11 the link between the two properties. We have
12 three witnesses presenting today, Dana Jones and
13 Joseph Lang, Erwin Andres and with that I will
14 turn to Mr. Jones to introduce himself.

15 CHAIRPERSON MOLDENHAUER: Before you do
16 that I just want to make sure that we clarify for
17 the record you indicated that you're here
18 representing Educare but I just want to make sure
19 the actual Applicant is the D.C. Public Schools
20 and Educare is the operators.

21 MS. RODDY: That's correct they have a
22 ground lease with the D.C. Public Schools.

1 CHAIRPERSON MOLDENHAUER: Okay, I just
2 want to clarify that for the record. Mr. Lang
3 can start his presentation, is that who you were
4 going to?

5 MS. RODDY: I'm sorry no we're going to
6 go with Mr. Jones first.

7 MR. JONES: Good afternoon and thank you
8 for affording us this opportunity. I want to
9 just give you a little bit of background about
10 what we're doing and why we're doing it and where
11 we're doing it. The Parkside Community is a
12 community that's been established for quite some
13 time in the city. At the dawn of the second half
14 of the 20th Century it became home to a number of
15 WWII Veterans, military related individuals who
16 had come home from their time of duty. It
17 established with the support of the Federal
18 Government a community that basically started off
19 with its support basis being home ownership for
20 African American Families. The community evolved
21 over time and it has evolved as a vital link in
22 the Ward 7 Corridor, as it has evolved it has

1 also gone through a number of transitions and in
2 recent years the city has invested extensively in
3 planning in this community and investing and
4 securing stability for the community and so
5 Mayfair as an example a 400 unit affordable
6 housing complex was recently renovated with
7 funding from the city in support. Paradise is
8 another community has recently been renovated and
9 throughout this area we see a new community
10 revitalization effort and a planned community
11 that includes healthcare facilities, higher
12 education facilities, newer charter schools and a
13 number of activities that really are geared
14 towards investing and enlightening and enriching
15 the community. As a result of that in the past
16 month the Federal Government has named this
17 community Parkside as 1 of 21 communities that
18 have been awarded funding during the Obama
19 Administration from the Promise Neighborhood
20 Fund, this fund is a fund that was set up to
21 duplicate the internationally renowned Harlem's
22 Children Zone and so it's a community that is not

1 only has a rich history in Washington but it's a
2 community on the move to revitalization and
3 strengthening that we think is critical. I say
4 that because Educare and its investors those that
5 support this effort and I note that 100% of the
6 Capital improvements here are paid for by private
7 sector individuals, foundations with an interest
8 in early childhood development but Educare as an
9 entity started about 10 years ago and about 30
10 months ago they approached Washington and
11 approached the United Planning Organization about
12 the possibility of partnering to create or
13 duplicate their model in Washington, D.C. The
14 model is a model that uses the Federal Headstart
15 Program as its basis but then elaborates on that
16 by rationing up the requirements for both the
17 services the credentialing of the staff and the
18 investment in children and in fact it actually
19 runs at about three times what the Federal
20 Appropriation is to operate such a facility. It
21 partners with State Government, State Boards of
22 Education, Cities and local entities to basically

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1 enhance the quality of early childhood
2 development. It comes with one other point that
3 I think is important, not only is the local
4 investment upfront but it stays in throughout the
5 lifespan of the activity but also it comes with a
6 research component so there is an ongoing dialog
7 between the teaching staff and a university based
8 team that basically continues to access the
9 activity. It is designed to promote high quality
10 and to provide best practices as a model for how
11 early childhood should be implemented throughout
12 the country. As I indicated it's a decade year
13 old it started on the Southside of Chicago and at
14 that time in 2000 it started in the poorest
15 census track in America with the highest
16 concentration of public housing, it was not
17 conceived as a National model but because of its
18 research based efforts and best practices and the
19 results for children at risk it drew the
20 attraction of the Buffet Early Learning
21 Foundation and as a result for that with Buffet's
22 interest it became a National Network. It is not

1 only an early childhood program but it is a
2 platform that is built upon partnerships, I
3 mentioned what those partnerships were, but in
4 addition to that the platform is one that deals
5 with this whole issue of comprehensive services
6 and high quality instruction most of the
7 individuals who will instruct here will be
8 Master's Degree individuals and teaching teams of
9 clusters of no more than four will add a
10 supervising instructor who is a Master Level
11 Instructor as well. It is high octane early
12 learning; in addition to that it is focused on
13 its involvement in the community such that it
14 creates a complimentary response to the need for
15 childcare and also compliments the community as a
16 whole. You can see that currently there are a
17 dozen centers operated in America from Chicago to
18 Oklahoma and all across the country they are
19 growing and under that the second level bullets
20 are those communities that want a facility now.
21 We're very pleased that the Mayor and the
22 Chancellor and others have been engaged in

1 helping us create this opportunity for
2 Washingtonians. I might add that because our
3 organization has existed for 48 years and because
4 we had been the largest provider of early
5 childhood development and services in the city
6 during that time span, we functioned in this
7 community in four different locations. The
8 number of children that we're talking about
9 bringing to this site basically complements what
10 the total number we have in this community now.
11 At Kenilworth Elementary, at Neville Thomas, at
12 the former rec site and at Paradise we have that
13 equivalent number of children. We are not
14 talking about bringing people new into this
15 community, we're talking about creating a new
16 model to serve this community and I think that's
17 critical because when we look at traffic
18 patterns, when we look at a number of other
19 activities and functions that take place it's
20 important to understand that what we're really
21 looking to do is to create an improved learning
22 environment with outside and private sector

1 support to enhance what we're currently doing at
2 different locations. The reason this attracted
3 us and the reason that we travelled and the
4 reason that we have agreed locally to invest in
5 this is that (INAUDIBLE) above the line. What
6 the research has demonstrated over a 10 year
7 period is that the children who are in this
8 program for 5 years the optimum level of time
9 that you can be in this program they rate at
10 105.1% points on school readiness, now the norm
11 of the national is 100 and you can see that the
12 real intent is to accelerate the process for
13 these young folks and each of those bars they
14 reflect the number of years the individuals have
15 been there and consistently across the board what
16 is basically says is this; the longer you stay,
17 the better your prepared. Given the fact that the
18 students come in at different levels and when I
19 say that it's a program for children 0 to 5, we
20 might end up with someone's first year being 4
21 years old, they go to school the next year, and
22 so that has in impact upon what impact we have on

1 them but our intent is to clearly maximize our
2 impact as a political subdivision that is really
3 looking at school reform and has it has a hot
4 button item school readiness becomes a major
5 piece. When working through the planning process
6 for this platform to bring it here, that's why it
7 was critical that the early learning people and
8 the Chancellor and others who are engaged in
9 planning were engaged in planning and supporting
10 this effort and we're pleased to say that they
11 have supported this process and we've gotten to
12 this point where we're ready to actually move
13 forward now that we have a land lease. That is
14 primarily my presentation we do have one other
15 slide, I'll note that we have unanimous support
16 from the ANC; we have the support from the
17 Parkside Civic Association, from the Parkside
18 Community. I would add one other point as well,
19 in planning and designing this we have been very
20 methodical and one of the things that we've done
21 is that we asked those potential users to come in
22 and give us input about the design of the

1 building and what they would like to see, we've
2 asked residents as well to share some concerns.
3 The one thing that we got repeatedly from
4 residents was those with younger children needed
5 parking access in the front of the building, they
6 wanted to have a place where they could park for
7 at least 15 minutes to run in and to drop their
8 kids off. Now as part of the requirement that
9 we're required to by D.C. Law we have to have a
10 brief observation and inspection of every child
11 that comes in the center every morning so if
12 there are marks of abuse of anything along those
13 lines we get to have a conversation with the
14 parents when they bring the child in. So that
15 became a critical piece for us and for those who
16 are transporting younger children the babies
17 primarily those are the ones who normally come by
18 vehicle. The other part of this is that because
19 we have the age ranges D.C. Law requires separate
20 playground equipment and material for children
21 based upon ages. You simply can't have infants
22 in areas where five year olds are running and

1 jumping and hopping, likewise you can't have
2 toddlers in the areas where five year old are
3 running and hopping. So as a result of that we
4 have multiple play areas and in addition to that
5 one of the unique designs that we observed in the
6 educators as we travel across the country was
7 this interior mode of having the children on the
8 inside. We have intently designed based upon
9 configuration and the restrictions because this
10 is a very restricted site, it's a very unusual
11 lot because you've got a restriction line in back
12 of it, you've got a trail to one side of it and
13 you've got an existing structure and so the play
14 areas have been basically situated so that they
15 provide for efficiency in getting the children to
16 the playgrounds and for safety of the children
17 because given the fact that you've got a roadway
18 there we really didn't want to bring children out
19 and around and about and so we actually, if you
20 look at the layout here the classrooms, the
21 playgrounds are right outside the doors of the
22 classrooms and that's intentional for safety of

1 the children and for the efficiency use of the
2 time. Given that the intent of this process is
3 also to help families to basically improve their
4 lots in life. This facility will be open 12 to
5 13 hours a day, basically 6:30 in the morning
6 until 7:30 in the evening, our intent is to work
7 with working parents, they will be our primary
8 target, and in addition there will be evening and
9 parent meetings. We require my virtue of Federal
10 Law and what we find to be an effective tool we
11 require a great deal of parent engagement and a
12 great deal of parent involvement in the process
13 so there will be ongoing meetings with parents in
14 the evenings and afternoons as well. So that is
15 the layout of what we have, we have worked out an
16 extensive partnership arrangement with Neville
17 Thomas, the school systems, the system has been
18 really supportive of that and I say systems
19 because as well the charter in the community has
20 been an active supporter as well and a leader in
21 the Promise Neighborhood piece and they view this
22 as being the early Ed model 0 to 5 for continuing

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1 that is actually designed under the Promise
2 Neighborhood to be a 0 to 25 model.

3 CHAIRPERSON MOLDENHAUER: I just have a
4 couple of questions for you. You indicated so
5 that we can solidify this information for the
6 record that it would be infants like 0 to 5 would
7 be the age range, are you going to be taking
8 individuals or infants at 2 months or...

9 MR. JONES: We will take children at 6
10 weeks.

11 CHAIRPERSON MOLDENHAUER: Six weeks okay.
12 Five years old would be your eldest child.

13 MR. JONES: Yes at the point the child
14 would then transition into public school.

15 CHAIRPERSON MOLDENHAUER: And right now
16 all the information indicates that your hours of
17 operation would be 6:30 to 7:30 but you testified
18 just now that there would be some evening
19 meetings would those go later than 7:30 at night?

20 MR. JONES: Generally speaking, I think
21 that 6:30 to 7:30 would do it, I see those
22 meetings really being 3 to 7:30 recognizing that

1 people with young children have to get home so
2 those young children can get in bed and come back
3 in the morning. In some rare occasions we might
4 push 8 o'clock but for primary reasons I see, and
5 the other thing that I think become important to
6 understand is that the time the children will be
7 in the facility will be staggered by parent need
8 and so we may have children coming as early as 7
9 or 7:30 in the morning and there day is done at
10 3, meaning that their teaching teams for their
11 children will be available to meet with the
12 parents and have those meetings earlier in the
13 day. We think that the latest that we'll be
14 operating is about 7:30.

15 CHAIRPERSON MOLDENHAUER: Okay, thank
16 you, do any other Board Members have any
17 questions? Seeing none we can go to the next
18 witness.

19 MS. RODDY: Thank you and now Mr. Lang
20 will give the architectural presentation.

21 MR. LANG: Thank you, as Mr. Jones
22 indicated Educare has been around for the last 10

1 years and has an architect we've had the benefit
2 of working on the majority of the Educare
3 facilities over that last 10 year period. A
4 distinct advantage that Washington, D.C. has is
5 that they have been able to gain from the
6 knowledge that has been developed over that last
7 10 years as far as what you could term best
8 practices for early childhood education
9 particularly with serving this particular
10 demographic and characteristic of family and
11 children to translate that history into the
12 specific related to the Washington, D.C. facility
13 it will serve 171 children and as Mr. Jones
14 indicated that birth to 5 years old. So you have
15 to think about the context of service being
16 slightly different than in elementary school in
17 that they would be there in a 12 month period and
18 they're there for an extended day. That
19 particular characteristic influences the type of
20 use that occurs, children are outside quite a
21 bit, it's an opportunity not only to enhance
22 their learning environment but it's the

1 transitions that occur in the richness in those
2 playground become part of the overall educational
3 experience for those children. The Educare
4 facility is illustrated on the site map here it's
5 located to the east in Washington, D.C. located
6 in Ward 7 across the Anacostia River in the
7 Kenilworth Parkside Neighborhood. Looking now at
8 the location of the Parkside Neighborhood,
9 Educare is illustrated here with the yellow star,
10 the Anacostia River is located along the west,
11 and north it will be a little bit confusing as
12 you start to see the site plan because north is
13 at a diagonal. But it's comprised of the four
14 neighborhoods of Mayfair, Eastland Gardens,
15 Kenilworth and Parkside. Educare is located in
16 the Parkside Neighborhood and as Mr. Jones
17 indicated that's been designated as a Promise
18 Neighborhood and focusing specifically on the
19 needs of the 0 to 5 year old. As we drill into
20 the more closely associated neighborhood,
21 Parkside boundaries are in this location, again
22 Educare is indicated by the yellow star. The

1 site is bordered by Park land development,
2 Parkside on the east as far as the neighborhood
3 development, Parkland on the west, the Pepco site
4 which is located on the south and to the north is
5 the Neville Thomas Elementary School. Minnesota
6 Avenue metro station is also located at this
7 location and you'll see in the next graphic a
8 pedestrian bridge that is planned for this
9 neighborhood that will allow a connection to the
10 mass transit system. This slide now focuses on
11 the Parkside Neighborhood and the redevelopment
12 that is occurring within that neighborhood.
13 North is to the right, we'll just call it plan
14 north is to the right and west to the top. The
15 entire development that is located within this
16 boundary has received master plan approval
17 there's a section of this that is a little bit
18 darker in the rendered color, that has stage II
19 approval and it will be moving forward shortly
20 specifically with the senior living component
21 that is located directly across from the Educare
22 site and the parking for that particular facility

1 is located on the west side. Future housing will
2 be developed and will start construction in the
3 next year. There was recently completed ground
4 lease with DCPS and the site is roughly defined
5 in this yellow box, we'll talk more about the
6 specifics of that site boundary in just a moment.
7 Neville Thomas Elementary School is then located
8 to the north it was built historically in a
9 couple of different phases. The adjacent
10 building is a multi-story, the Educare facility
11 is a single story facility. Educare and early
12 childhood by nature are single story because of
13 exiting requirements and needs because of the
14 young age of the children it's beneficial to be
15 able to come directly onto grade for those
16 facilities. As we look a bit closer at the site
17 you can better see the boundaries that define the
18 site and influence the shape of the site.
19 Anacostia Trail that is located to the south of
20 the site, Neville Thomas Elementary School and
21 the boundary on the north side of the Educare
22 site was determined by the setbacks required for

1 fire code purposes etc. from the Neville Thomas
2 Elementary School, also the loading that would
3 occur this is the service entry for Neville
4 Thomas and the parking currently for Neville
5 Thomas happens primarily along Anacostia Avenue.
6 There is an existing child development center
7 that hasn't been used for, I think a decade, and
8 sits in great disrepair on the existing site that
9 would be demolished and replaced by the new
10 Educare facility. To give you some visual
11 context for the site this is looking across from
12 the east, the facility will be demolished which
13 is the early childhood educator child development
14 center and then along the left is the Anacostia
15 trail, as you look to the north you can see the
16 multi-story Neville Thomas facility in the
17 background with the early childhood education
18 facility that will be demolished in the
19 foreground. Looking at the facility now from
20 what would be the southeast, again you see the
21 early childhood in the foreground. This is a
22 Neville Thomas photograph that was taken a number

1 of months ago prior to the modernization that
2 occurred. The Educare facility had an influence
3 on expenditure related to Neville Thomas and that
4 it was moved up in the modernization queue and
5 it's actually gone through renovation this past
6 summer. This slide illustrates briefly the
7 boundaries in red that define the ground lease.
8 Looking at the development of the site and the
9 influences for the odd side that is illustrated
10 here. Along the southern boundary is the
11 Anacostia Trail, Anacostia Avenue is located
12 along the eastern boundary. The set back as we
13 talked about a moment ago from Neville Thomas and
14 then the transfer of jurisdiction line along the
15 west defines the western boundary of the site.
16 As Christine identified previously of width of
17 the site is 209 lineal feet and the lot area is
18 identified at 84,791 square feet. Parking and
19 identifying ways to address parking as you can
20 see the building itself and Mr. Jones did an
21 excellent job of articulating the configuration
22 of the building and the importance of the central

1 playground. But the playgrounds around the
2 parameter in comparison to a lot of the other
3 Educare's would be adequately but tight and
4 you'll see here in just a moment we'll walk
5 through the floor plan of the building and you'll
6 understand better the adjacency with the exterior
7 spaces. The playground become one defining
8 feature of the site, there's an adjacency to the
9 Neville Thomas Playground as an ongoing part of
10 the overall development of the site. Parking for
11 the site because of the tightness of the site
12 that occurs on the Neville Thomas Property Mr.
13 Andres will talk more specifically about the
14 parking portion of it but there will be 26
15 parking stalls provided for Educare and 46
16 Neville Thomas stalls on that portion of the
17 development of the site. Looking also at the
18 public parking that will occur along Anacostia 13
19 stalls were developed in discussions with DDOT
20 and their suggestion and requirement was to do
21 back end stalls, those stall would be signed for
22 15 minute parking only and as Mr. Jones indicated

1 that's were drop-off would occur for the children
2 because they're escorted into the facility. Next
3 we're off to the floor plan of the building,
4 north again is to the right side of the facility.
5 The classrooms are primarily located in a U
6 shape around the central playground. The
7 classrooms are comprised of the 0 to 3 so birth
8 to 3 year old are in the light blue and then the
9 pre-school classrooms are located in the dark
10 purple as well as this light turquoise. The
11 importance of the configuration of early
12 childhood is that at the age these children are
13 there's constantly an adult with them, that's a
14 part of the supervision that's required. East
15 access to the playground it critical and key,
16 each one of these classrooms has kind of
17 immediate access out to an age appropriate
18 playground, the light green being the 0 to 3 or
19 birth to 3 and the dark green being pre-school.
20 The central portion of this is a mixed age group
21 playground that also serves the needs of the
22 classrooms provides very importantly an area of

1 safe and security for play and that the
2 configuration then really drives the utilization
3 of the site. I mentioned a moment ago the width
4 of the playgrounds, this is approximately 30
5 feet, in our experience that's about as tight as
6 you want to get the playground so you can see
7 that the building itself has a tendency to
8 consume them, thus thinking about parking and its
9 relationship to the site we had challenges and
10 thinking about parking along the southern portion
11 of the site especially with its relationship to
12 the Anacostia Trail and on the northern portion
13 of the site placing any sort of parking in this
14 location would really bifurcate the playground
15 areas and create a potential safety hazard for
16 children as vehicles would move in and out of the
17 site. The next few slides give you a sense of
18 the architecture of the building; this will be
19 right now we're pursuing lead silver
20 certification on the design of the building.
21 This would be the Anacostia Avenue view, this
22 would be an evening view with the concept to be a

1 beacon for the community, not only will you, as
2 Mr. Jones indicated, this will serve a great need
3 in that community and will be a catalyst for
4 growth within the Parkside redevelopment. An
5 aerial view indicates the primary and main entry
6 that would be located on the east side of the
7 building, Neville Thomas to the north, the
8 service location located on the south and then
9 the classrooms surrounding the central
10 playground. Looking at the site from the south
11 and west, again this is Neville Thomas in the
12 back, the service entry and then classrooms
13 surrounding the playground and then finally a
14 view from the west side of the site looking back
15 from the park, then again the playground are
16 located off of Anacostia and really screened from
17 the rest of the neighborhood. So with that Mr.
18 Andres will share with you some of the parking
19 and planning portions of it.

20 MR. ANDRES: Great, thank you, what I'd
21 like to do now is just quickly go through the
22 elements that contribute to the transportation

1 access and circulation system. Many of these
2 elements have already been raised and I just want
3 to emphasize some of them. With respect to the
4 program itself as was previously mentioned the
5 hours of operation range from 6:30 in the morning
6 to 7:30 in the evening, given that the facility
7 is geared towards working parents the peak
8 arrival in the morning it will be spread out
9 based on the schedules associated with those
10 parents as a result we don't see a peaking
11 indicative with public or private schools that we
12 had previously worked on. The result is that the
13 arrival period is dispersed over a longer period
14 both in the mornings as well as in the evenings.
15 Given that we've identified a range of about 54
16 vehicles that would be arriving during the peak
17 hour. One thing I'd also like to mention with
18 respect to this slide is that there's about 60
19 employees, a maximum of 60 employees and 175
20 students identified for the site. Given the
21 sites proximity to the Minnesota Avenue Metrorail
22 Station which is currently accessed through a

1 pedestrian bridge across Hay Street, there is
2 access to Metro as well as access to
3 approximately 11 bus lines at that service site.
4 So the site is well served by transit. Given
5 that the site is geared to address the daycare
6 demand associated with the nearby community it's
7 traffic that's currently on the roads going to
8 other daycare services so the traffic that's
9 currently out there would primarily be redirected
10 to this site. As previously mentioned the plan
11 identifies two areas of parking, the first is the
12 parking associated with the staff as we've
13 mentioned there are 26 parking spaces to
14 accommodate 60 staff and we believe given the
15 proximity to transit the opportunities for
16 serving that demand is sufficient given the
17 supply. We have coordinated with DDOT in
18 identifying the 13 spaces on Anacostia Avenue
19 serving the Educare facility, we had previously
20 met with them and based on our coordination with
21 them they had asked us to install back in angle
22 parking which is the DDOT standard for angle

1 parking. Given that we are looking to
2 accommodate 54 peak hour vehicles by turning over
3 these 13 spaces four times during an hour we
4 think that what's purposed for the pick-up and
5 drop-off activity is more than enough to
6 accommodate the peak demand.

7 CHAIRPERSON MOLDENHAUER: Can I just ask
8 you a question about that conversation with DDOT
9 are those going to be 15 minute parking spaces
10 that are open to the public or are they going to
11 be specifically limited to during certain hours
12 for pick-up and drop-off?

13 MR. ANDRES: The former, they would be
14 open to the public and those 15 minute spaces
15 would only be designated during the morning and
16 the afternoon peak.

17 CHAIRPERSON MOLDENHAUER: Okay do you see
18 any potential I guess limitation on use for the
19 CDC with a senior apartment building across the
20 street and having people running in and dropping
21 things off for their elderly grandfather or
22 something to that effect and using that?

1 MR. ANDRES: No as a matter-of-fact I
2 think there's some synergies there that both
3 facilities can take advantage of. For example in
4 the evenings when the parking demand and the
5 turnover associated with the school is low that
6 supply can be flexible enough to accommodate some
7 of the drop-off activity with the facility across
8 the street. The location of the site with
9 respect to all of the other planned developments
10 in the Parkside area is actually fairly
11 beneficial to the school because it is located in
12 sort of the remote corner of the site. The
13 benefits associated with that location is that
14 the traffic circulation in and around that part
15 of the site is relatively low compared to some of
16 the other sites that have direct access off
17 Kenilworth Avenue. So with respect to the
18 backing-in and pulling out and the turnover of
19 those spaces during the peak hours the location
20 of the site in the corner is actually the best
21 possible place for this type of facility. Now
22 with respect to loading the proposed loading

1 meets code and it is accessed from Anacostia
2 Avenue it runs parallel to the trail and the
3 loading that is proposed consists of two
4 deliveries that would occur fairly regularly,
5 almost daily for that matter to serve the
6 children and also school supplies would then need
7 to get dropped off, so the loading activity is,
8 you know with respect to volume it would be
9 fairly low on a daily basis. With respect to our
10 conclusions what we've done is we looked, again
11 in coordination with DDOT, we did a traffic
12 impact analysis to see what the impacts are
13 associated with the development. Given the
14 proximity again, given proximity to metro and
15 some of the other transportation resources in the
16 area, the traffic impact will be minimal, if
17 anything the background developments in and
18 around Parkside will be some of the more major
19 contributors. We've identified two intersections
20 along Nannie Helen Burroughs Avenue that
21 experience some delays but some of those delays
22 will be mitigated by some of the work associated

1 with the Kenilworth Avenue quarter study
2 improvements. There are some improvements that
3 have begun but haven't been completed and so once
4 those improvements are completed many of those
5 impacts will be mitigated. In addition to that,
6 after that works done some minor signal time
7 adjustment will also help to mitigate any of the
8 impact of the background developments as well as
9 Educare. So based on that we believe that
10 there's enough stacking, parking and loading to
11 serve the site without any adverse impact to the
12 surrounding community, thank you.

13 CHAIRPERSON MOLDENHAUER: Thank you.

14 MS. RODDY: That concludes our
15 presentation, I just want to reiterate that what
16 Mr. Jones had said that ANC voted in unanimous
17 support of the application as well as the
18 Parkside Civic Association and I believe both of
19 those letters are in the record.

20 CHAIRPERSON MOLDENHAUER: Thank you I have
21 one question for you, under Section 205.10 are
22 typically in all of our CDC cases we require a

1 letter from OSSE stating that the Applicant even
2 in cases where it's a brand new site that the
3 Applicant is making all the effort and that they
4 believe that they will be able to meet all the
5 requirements for licensure. I don't believe we
6 have anything like that in the record.

7 MS. RODDY: I believe the Office of
8 Planning had a conversation with them.

9 MR. GOLDSTEIN: With OSSE I did receive a
10 copy of a letter.

11 CHAIRPERSON MOLDENHAUER: From OSSE?

12 MR. MORDFIN: Yes, from Valerie Ware.

13 CHAIRPERSON MOLDENHAUER: Oh, yeah we'll
14 need that then, Ms. Bailey can make a copy of
15 that because that's something we always like to
16 have in our records. So that question has been
17 answered. We will now if the Applicant has
18 completed its testimony we'll move on now to any
19 individuals in the audience in support or in
20 opposition, seeing none, I just want to reference
21 that we have letters of support from some
22 neighbors "Exhibit No. 31" and "Exhibit No. 32"

1 are some additional letters in our record of
2 support from neighbors. We'll then turn to the
3 Office of Planning for their report.

4 MR. MORDFIN: Good afternoon Chair,
5 Members of the Board I'm Stephen Mordfin with the
6 office of planning and the subject application is
7 in conforms with the criteria for the granting of
8 a special exception to permit a child development
9 center plus the Applicant has indicated that it's
10 capable of meeting all applicable code and
11 licensing requirements in OSSE has recommend
12 approval of the application. Pick-up and drop-
13 off will be provided using angled parking spaces
14 within Anacostia Avenue and DDOT informing the
15 Office of Planning that there do not appear any
16 issues with this application and that the use of
17 the angled spaces would not require approval of
18 the public space committee because the spaces
19 would not be reserved for Educare. Adequate off-
20 street parking would be provided at Neville
21 Thomas Elementary School. Use would be located
22 within buildings specifically designed for

1 daycare without any outdoor play areas adjacent
2 to any residential uses, no off site play areas
3 are proposed and O.P. is unaware of any other
4 daycare center within 1,000 feet. The State
5 Office of the Superintendent of Education
6 recommends the granting of this application. The
7 subject application also conforms to the criteria
8 for the granting of an area variance to permit
9 all 15 required parking spaces be located off
10 site because the site is unique because of the
11 surrounding use make it difficult to locate
12 parking because it would either be located
13 between playgrounds or adjacent to Anacostia Park
14 resulting in esthetic safety or storm water
15 management concerns, this results in a practical
16 difficulty because the parking would either have
17 to be located between the playgrounds of the
18 daycare center and the elementary school,
19 adjacent to park land with no active uses or an
20 electric plant which would result in an unsafe
21 situation to the users due to the isolation of
22 these area and the granting of the relief would

1 not impair the integrity and intent of the zone
2 plan because all of their parking would be
3 provided on a location where the users would feel
4 more safe. The office of Planning also finds
5 that the requested Lot size and Lot width
6 adequate because the proposed site plan conforms
7 to the adequate minimum bulk requirements of the
8 R-5-A District. Therefore, the Office of
9 Planning recommends that the Board approve the
10 application subject to the following condition
11 and that is that the Applicant meets all
12 applicable code and licensing requirements from
13 the child license unit. Therefore the Office of
14 Planning recommends the Board approve.

15 CHAIRPERSON MOLDENHAUER: Thank you very
16 much Mr. Mordfin. Do any other Board Members
17 have any questions for O.P.? I don't, thank you
18 I think it was a very thorough report. Does the
19 Applicant have any questions?

20 MS. RODDY: No.

21 CHAIRPERSON MOLDENHAUER: Okay, then at
22 this point in time we'll turn to ANC-7D, is

1 anybody in the audience present from ANC-7D
2 seeing no one I'll reference you have "Exhibit
3 No. 30" which is letter of support from the ANC
4 indicating that on September 14' 2010, at a
5 regularly scheduled and public meeting that was
6 duly noticed they heard all of the different
7 relief that is being sought by this Applicant and
8 voted to support the application 4 to 0 and this
9 letter would receive great weight in support of
10 the application. That being said we'll turn back
11 to the Applicant for any closing remarks.

12 MS. RODDY: Thank you, we believe that
13 we've satisfied the special exception and
14 variance standards and in light of all the
15 support for this application from the D.C.
16 Agencies as well as the community we would like
17 to ask that you make a bench decision to approve
18 the application this afternoon.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much, then at this point in time if there's no
21 other questions we'll conclude this hearing and
22 we'll go right into deliberation.

1 DELIBERATION

2 CHAIRPERSON MOLDENHAUER: One, I want to
3 compliment the Applicant and the operator for
4 Educare for putting together I think a great
5 project for an area that definitely can use the
6 benefits of such a great facility. It appears
7 that it's a great design some amazing
8 programmatic needs that are being associated with
9 it and it's going to be able to service a lot of
10 children in the area which is very exciting to
11 see. I see that that Applicant I'll incorporate
12 for reference all O.P.s analysis under the
13 standard of 205 for CDC the Applicant has
14 satisfied all those different requirements in
15 regards to traffic conditions, I think that the
16 testimony by Mr. Andres was very thorough and I
17 think that he answered some of my potential
18 concerns about the new development and how that
19 was going to effect it and I think that in
20 addition to that O.P. also makes a lot of
21 reference in regards not just to the CDC approval
22 but also to the variance for parking about the

1 unique circumstances that are here in regards to
2 needing to have parking separate from the child
3 facility and childcare and that fact that the
4 lot, you know, while large is also confined when
5 trying to accommodate so many children and trying
6 to accommodate the programmatic needs of having
7 different age children have different facilities
8 for outdoor play. That being said I think that
9 there are sufficient reasoning's to support both
10 the special exceptions standards and the variance
11 here for offsite parking. The parking is still
12 very close there's I think sufficient parking for
13 the number of employees and for the loading and
14 pick-up of the children in addition to that there
15 was testimony in the record about the facility
16 being very close and having access to both Metro
17 and parking lines. That being said I would be
18 willing to submit a motion to approve if
19 everybody is in favor, is there any additional
20 comments from Board Members, seeing none then I
21 will submit a motion to approve Application No.
22 18139 for the application of the District of

1 Columbia Public School pursuant to 11 DCMR 3104.1
2 and 3103.2 for a variance from off street parking
3 location requirements under (Subsection 2011.6)
4 and the approval of a minimum Lot area and Lot
5 width requirements under 401.3 and to establish
6 child development center for 175 children of the
7 ages of 6 weeks to 5 years old under a special
8 exception provision of 205 in an R-5-A District
9 at 650 Anacostia Avenue, N.E. that would be
10 conditioned for 60 employees, 175 children as I
11 said from 6 weeks to 5 years old from a timeframe
12 of operation from 6:30 a.m. to 8 p.m. that being
13 said a motion has been made is there a second?

14 MR. HINKLE: Second

15 CHAIRPERSON MOLDENHAUER: Motions been
16 made and seconded all those in favor say aye.

17 CHORUS: Aye.

18 CHAIRPERSON MOLDENHAUER: Aye.

19 MR. MOY: Staff would record the vote as
20 3 to 0 to 2 on the motion of the Chairperson Ms.
21 Moldenhauer to approve the application per the
22 multiple exception variance relief, seconded

1 motion Mr. Hinkle. Also in support of the motion
2 Mr. Selfridge, no other Board Members
3 participated and the conditions were for 60
4 employees, 175 children, age of children 6 weeks
5 for infants, 6 weeks to 5 years old and hours of
6 operation from 6:30 a.m. to 8:00 p.m. I believe
7 that covered the conditions Madam Chair.

8 CHAIRPERSON MOLDENHAUER: Yes that does,
9 thank you and with no opposition in this case
10 we'd wave our requirements and ask for a Summary
11 of Order.

12 MR. MOY: Terrific, thank you very much
13 Madam Chair. That concludes today's hearings
14 thank you.

15 CONCLUSION: 3:07 P.M.

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