

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING
November 16, 2010
9:36 a.m. through 2:22 p.m.

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

Board Members

Meridith Moldenhauer - Chairperson
Nicole Sorg - Vice 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

OLENDER REPORTING, INC.
1100 Connecticut Avenue, NW Suite 810 Washington, D.C. 20036
Washington: (202) 898-1108 / Baltimore: (410) 752-3376
Toll Free: (888) 445-3376

C o n t e n t s

MORNING SESSION

| | |
|---|-----|
| 1. Chairperson's Introduction | .3 |
| 2. Case 18090. | .4 |
| 3. Case 18115 | .14 |
| 4. Case 18132 | 31 |
| 5. Case 18133. | .36 |
| 6. Case 18134. | .41 |

AFTERNOON SESSION

| | |
|---------------------------------|-----|
| 5. Case 18124 | .51 |
| 6. Case 18135 | 53 |
| 7. Case 18137. | .85 |
| Conclusion of Meeting | 103 |

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 November 16, 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 left will be Nicole Sorg, Vice Chair, Mayoral
9 Appointee to my right is Jeffrey Hinkle,
10 Representative of National Capital Planning
11 Commission, and to his left is Konrad Schlater,
12 Representative of the Zoning Commission. Copies
13 of today's meeting agenda are available to you
14 and are located to my left in the wall bin near
15 the door. We do not take any public testimonies
16 at our meetings unless the Board asks someone to
17 come forward. Please be advised this proceeding
18 is being recorded by a court reporter and is also
19 being webcast live. Accordingly we must ask you
20 to refrain from any disturbing noises or actions
21 in the hearing room. Please turn off all cell
22 phones and beepers at this time. Mr. Secretary

1 do we have any preliminary matters?

2 SECRETARY MOY: Not on a major way Madam
3 Chair.

4 **CASE NO. 18090**

5 CHAIRPERSON MOLDENHAUER: Wonderful, then
6 I will proceed with the agenda for our public
7 meeting.

8 MR. MOY: Yes good morning Madam Chair,
9 Members of the Board. There are two cases before
10 the Board for action, the first I believe is on
11 the Boards own motion to Application No. 18090 of
12 Mohamed Sikder pursuant to Section 3124.2 of the
13 Zoning Regulations. The Board will recall the
14 application was amended to read as follows: 11
15 DCMR 3103.2 for a variance from the Lot are and
16 Lot width requirements under Section 401 a
17 variance from Lot occupancy requirements under
18 section 403, and the variance from the side yard
19 requirements under section 405 to allow the
20 construction of a new one family detached
21 dwelling in the R-1-B District, this is at
22 premises 3158 Monroe Street, NE, the property is

1 in Square 4309, Lot 26. If the Board will recall
2 at its public decision meeting on November 2,
3 2010, the Board deliberated and voted on
4 Application 18090, the Board voted on two motions
5 and both motions failed for lack of concurrent
6 vote of at least full majority of the members of
7 the Board pursuant to Section 3125.2. With that
8 I think staff will conclude and leave the rest to
9 the chair.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much Mr. Moy. As indicated we are short a
12 mayoral appointee and so based on that we had a 2
13 to 2 vote which happens at times but as Secretary
14 Moy indicated we require a majority to move
15 forward on any actions so we were stalled and
16 stale mated in the ability to actually issue a
17 final order thus there was no ability for the
18 applicant of the opposing parties to receive in
19 our minds the ability to move forward on the
20 case. Based on that we are permitted as the
21 Chair I am permitted to reopen the record under
22 Section 3124.2, that being said we're going to do

1 that, reopen the record, articulate some of the
2 areas potentially where both parties, the
3 applicant and the opposing party which includes
4 the ANC the ability to submit in writing
5 additional documentation, arguing and providing
6 specific evidence to their opinions and their
7 points potentially to persuade one of the 2 to 2
8 votes one way or another to hopefully maybe
9 separate this stale mate and obtain a final
10 judgment on this case. That being said what I'm
11 going to do is I'm going to open up the floor to
12 different Board Members to put on the record what
13 information they believe would be helpful to
14 obtain from both the applicant and the ANC and
15 then following a discussion the Office of Zoning
16 will issue a written procedural order and we will
17 provide a deadline giving sufficient time for the
18 ANC since typically ANC's don't meet during
19 December because of holidays, they won't meet
20 then again until mid January or the end of
21 January will provide a deadline of January 28th
22 for the submission of the materials that the

1 Board discusses and then provide a decision date
2 where we revisit this case reviewing the newly
3 submitted, if any the applicant or the ANC don't
4 have to but obviously it's going to be encouraged
5 that they submit documentation and we'll revisit
6 the decision on February 8, 2011. So that being
7 said I'll open up the floor to any Board Members
8 reticulating different issues or standards of our
9 review process and of the standard that we have
10 to evaluate a variance on as to whether or not
11 they would like to see additional information.

12 MR. SCHLATER: Madam Chair thank you for
13 reopening the record on this case I think there
14 is some further information that we could get
15 from the applicant and the parties, that may be
16 able to break the deadlock here. In particular
17 one of the issues that I was most interested on
18 the case was we've got an inferior lot here, very
19 small, very narrow lot, but there's a vacant lot
20 immediately adjacent to it, I think to the west
21 and the owner of that adjacent lot said he was a
22 willing seller of that parcel and if it were sold

1 to the applicant and the lots were combined I
2 think it would make for a much better lot for
3 this home it would be more in keeping with the
4 character of the neighborhood. So the question
5 then was did the applicant make a bonafide market
6 offer for that adjacent lot and I can't remember
7 the exact value it was a little bit hazy exactly
8 how that offer went down, so I think there's some
9 information we could get, could we get a copy of
10 a written offer to purchase that lot, likewise is
11 there something that would indicate that that
12 offer reflects market value for that land so that
13 maybe looking at comps for vacant land sales in
14 that neighborhood or if the applicant or parties
15 have other means or methods for determining the
16 value of that lot I'd be interested in seeing it.
17 I think in the end the practical difficulty test
18 somewhat hinges on whether or not the applicant
19 has made this good faith effort to buy the
20 adjacent lot. In the testimony that I heard it
21 seemed to me that the offer was not market value
22 and based on just the assessment of the lot you

1 could see that this offer was a tiny fraction of
2 the tax assessment of the lot, so it led me to
3 believe that it was not bonafide market offer so
4 I'm open to more information to establish that.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much Mr. Schlater, do any other Board Members
7 have anything else to add?

8 MS. SORG: Thank you Madam Chair, I agree
9 with what Mr. Schlater is asking for and would
10 also, another issue that I think is related to
11 that prong of practical difficulty and the sort
12 of financial hardship that was touched on but I
13 agree still somewhat hazy in testimony would be a
14 construction cost estimate or something similar
15 to describe what the burden for construction for
16 the applicant would be in this, on this lot and
17 the property that he's proposing to construct.

18 CHAIRPERSON MOLDENHAUER: Thank you, any
19 other points?

20 MR. HINKLE: Yeah, thank you Madam Chair,
21 we heard a lot of testimony from the ANC
22 representative in terms of how approval of this

1 application would impact the public good and I
2 would like to hear more information in terms of
3 their thoughts on whether or not approval of this
4 application would be a detriment to the
5 neighborhood. In particular we heard that there
6 would be a significant loss of trees as well as
7 potentially an impact on an underground stream
8 and I would like to hear more information in
9 terms of how that would negatively impact the
10 neighborhood. Also we heard about the potential
11 for this proposed development to negatively
12 impact the property values on the block and
13 impact future sales, some more evidence in terms
14 of how the approval of this application would
15 negatively impact both those issues would be
16 helpful.

17 CHAIRPERSON MOLDENHAUER: Thank you, I
18 think that those are all very clear issues that
19 each Board Member has articulated in regards to
20 what people are looking for. I actually looked
21 at a couple of different prior BZA cases which
22 touched on the ability for the BZA to approve a

1 variance where the lot is less than 80% which is
2 the case here which has to do with Section 401.2
3 and there are two cases that approved such a
4 requirement and two cases which deny this
5 requirement. Those cases that denied the
6 requirement I think mostly rested on the fact
7 that the applicant had not satisfied the
8 practical difficulty and I think that would be
9 something that both parties could touch upon in
10 arguing whether this applicant satisfies the
11 practical difficulty or does not. In addition to
12 that similar to what Mr. Schlater was indicating
13 those applications that did satisfy and were
14 granted really touched upon the issue that
15 typically lots are expected to be combined in
16 order to meet the dimension requirement and that
17 if a vacant lot either has improvement on all
18 sides or in one case where a vacant lot had three
19 sides which were public rights of way that in of
20 itself would create a practical difficulty and I
21 think that it would be important for both sides
22 as were stated by Mr. Schlater to argue or to

1 present additional evidence specific
2 documentation or information regarding whether or
3 not it is practical or impractical for the
4 applicant to expand or to acquire the neighboring
5 properties. Just for reference I'll identify
6 these cases I'm referring to; BZA case 17737; BZA
7 Case 14818; BZA Case 17123 and BZA Case 17321.
8 That being said were there any other points that
9 Board Members would like to make?

10 MR. SCHLATER: Madam Chair just piggy
11 backing a little bit off of what Mr. Hinkle said
12 around the community character issues. I think
13 one of the issues that was raised about this
14 proposed dwelling was that it's out of character
15 with the neighborhood, it's unusually long and
16 narrow and it occupies a significant portion of
17 the lot and I'm trying to think of ways to
18 visually depict it's relationship to it's
19 neighbors and so maybe some renderings or some
20 architects will produce 3-D views of the building
21 in relationship to the adjacent structures. This
22 particular lot is adjacent to the Fort Circle

1 Park and I'd be interested in seeing if there's
2 any impact on the view lines from the park. So
3 anything that could be provided by the architect
4 I'm sure would help clarify this issue for us.

5 CHAIRPERSON MOLDENHAUER: Thank you, I
6 think that's a very good point, we typically see
7 a color rendering or as you indicated a 3-D
8 rendering I think that would be something that
9 would be helpful. I think on the side of the
10 opposition I think it would be helpful for them
11 to provide maybe some additional, we have in our
12 record many colored pictures of properties in the
13 area or on the street, however I think maybe as
14 you indicated and as Mr. Hinkle indicated it
15 would be helpful for them to provide or the
16 opposing parties to provide maybe some additional
17 documentation of how exactly it's going to impact
18 with providing more specificity and more
19 supporting evidence. That being said I think
20 that we've addressed a number of issues which
21 will potentially help us resolve this deadlock,
22 as I indicated earlier we will leave the record

1 open with a deadline of submissions as of January
2 28, 2011, and then revisit this case for a
3 decision on February 8, 2011, thank you.

4 **CASE NO. 18115, RICHARD KLUGMAN**

5 MR. MOY: The next and final case for
6 decision before the Board Madam Chair is
7 Application No. 18115, this is Richard Klugman;
8 pursuant to 11 DCMR 3103.2 and 3104.1 for a
9 variance for the minimum lot area requirements
10 under (Subsection 401.1) a variance from the
11 court requirements under Section 406, a variance
12 from the off street parking requirements under
13 (Subsection 2101.1) and a special exception from
14 Section 2001.3 non-conforming structure
15 provisions to allow the conversion of a 12 unit
16 rooming house into a 3 unit apartment house with
17 a new third story addition in the R-4 District,
18 that premise is 3603 13th Street, NW, property is
19 Square 2829, Lot 59. As the Board will recall on
20 October 19' 2010, the Board completed public
21 testimony, closed record and scheduled its
22 decision on November 16th, the Board did allow the

1 applicant to provide supplemental information in
2 evidence to augment his oral arguments as to the
3 first and second prongs to the variance test.
4 The deadline of submission was set at November
5 10, 2010, the applicant filed timely. His post-
6 hearing document Madam Chair is identified at
7 "Exhibit 36" and that's in your case folders.
8 The Board is (INAUDIBLE) merits of the multiple
9 variance of relief and that completes the staff's
10 briefing Madam Chair.

11 CHAIRPERSON MOLDENHAUER: Thank you very
12 much Mr. Moy. I will start us on in
13 deliberation; this case before us is as Mr. Moy
14 indicated a multi-tiered relief for variance
15 relief. The applicant has purchased a rooming
16 house located at 3603 13th Street, NW. The
17 property had been unoccupied for over a year and
18 then set on the market for a period of 6 months
19 prior to the applicant's purchase of the
20 property. The applicant comes before us seeking
21 to discontinue the rooming house use which is as
22 a matter of right in the zone R-4 and to

1 construct and renovate a 3 unit apartment
2 building. This is a challenging case because in
3 a case like this we have to look at whether or
4 not the applicant, 1. The current use of the
5 property rooming house is a matter of right. 2.
6 Another matter of right would be a flat which is
7 a 2 unit dwelling unit rather than a 3 unit
8 apartment building which is not permitted as a
9 matter of right and would require a variance
10 relief. That being said we have to look at the 3
11 prong test and determine whether or not the
12 property exhibits a exceptional narrowness,
13 shallowness, or has some other type of
14 exceptional situation to the property and that
15 whether that situation directly connects to a
16 practical difficulty for the owner and then
17 whether there is any undue hardship on the, I'm
18 sorry whether there is any negative impact on the
19 zoning plan or on the public. That being said,
20 looking at the first prong of the test it
21 definitely is a challenge to determine whether or
22 not there's uniqueness here. Office of

1 Planning's report could not recommend approval
2 and found that the property was not unique
3 finding that a rooming house is a matter of right
4 and that the property in and of itself had no
5 other unique aspects. That being said the
6 applicant submitted documentation into the record
7 at the hearing which he labeled A, B, and C. A
8 was a summation of looking not just at the
9 specific block but rather looking more at the
10 square looking at a larger perspective in that
11 regard trying to evaluate whether or not his lot
12 was unique. That being said I typically will
13 permit applicants to broaden the horizon in
14 regards to what they're reviewing to make the
15 property unique but I don't find that the
16 property size is unique in any way. But my
17 question then is even though the property is of a
18 matter of right a rooming house typically in
19 today's day and age are rooming houses continued
20 is an investment of a rooming house something
21 that you're going to see. I think that it is an
22 atypical use that being said the question would

1 be does that create a specific exceptional
2 circumstance and I would typically say no,
3 however I think the applicant has provided some
4 evidence while maybe not overwhelmingly positive
5 or persuasive I think it does tip the scale in
6 his favor here that he's articulated that the
7 property has not but sat on the market for six
8 months and that no other purchasers or no other
9 investors found the property to be adequate
10 enough for an investment purposes as a rooming
11 house thus showing that exceptional circumstance.

12 In addition that he submitted documentation
13 "Exhibit C", which was submitted at the hearing
14 from a Mr. Richard DuBeshter and he said that he
15 had been interested in purchasing the property
16 for a period of time but that offer fell through
17 because of financing, the reason the bank, I'm
18 quoting from the letter, the reason that the bank
19 deemed the property not suitable for a loan
20 because of it's status as a group house, so I
21 think that evidence in conjunction with his
22 testimony at the hearing I think in my mind I

1 find that persuasive in regards to satisfying the
2 first prong. Then I go and I analyze the case in
3 regards to the second prong, does that
4 exceptional circumstance, the property being a
5 rooming house lead to a practical difficulty and
6 this was something where we asked the applicant
7 to supplement the record because I think at the
8 hearing the information was not as well
9 articulated and he submitted a new exhibit which
10 Mr. Moy indicated was received by our office on
11 November 10th and here he articulates the
12 financial hardship and the economic hardship
13 which we accept for practical difficulty
14 articulating how much it would cost potentially
15 to renovate the property. I think that he did
16 testify and there are pictures where the property
17 has been in disrepair and is need of renovation
18 whether the applicant was to put the property
19 back to it's matter of right use as a rooming
20 house, whether the applicant was going to use the
21 property as a flat or whether the applicant was
22 to use the property as a three unit building.

1 The question is how does that affect the need for
2 a three unit apartment building versus a flat. I
3 think there's evidence here that shows that it
4 would be a financial detriment to do that and in
5 regards to his statements that it would cost him
6 550, I'm rounding up, 50,000 in addition to the
7 310, 000 that is cost to purchase the property
8 and then that estimated over a period of time.
9 He does indicate that obviously it would be a
10 financial hardship for him to be able to pay for
11 a mortgage of that degree without having two
12 additional rental units. This question I think
13 then brings in my mind whether or not the
14 applicants personal financial circumstances and
15 his desire to retire in two years or his pension
16 are not things that we can consider. We cannot
17 consider individual circumstances because
18 whatever relief we give runs with the land it
19 does not run with the individual persons
20 circumstances. That being said I go back
21 potentially to whether or not the applicant has
22 shown other evidence or other information that

1 would support that financial difficulty or that
2 economic hardship which is connected to the
3 practical difficulty, the uniqueness of having a
4 rooming house and I think that his argument that
5 the property sat on the market for six months,
6 the letter from another investor indicating that
7 they could not obtain financing also supports his
8 argument that it's not just him who could not
9 afford these payments but it's the general public
10 that would have a challenge doing that and that
11 the property sat on the market for that period of
12 time because of those factors thus connecting the
13 first and the second prong. That being said I
14 think that there would not be any detriment to
15 the public good or to the zone plan this would be
16 a reduction in the density from a large rooming
17 house to simply a three unit dwelling and the
18 relief in regards to court width I find no issues
19 with nor do I find any concern with the off
20 street parking, there is sufficient off street
21 parking and there the property is close to a
22 metro and would provide alternative means for

1 transportation. That being said we also have
2 three letters of support in the record and we
3 also have a letter of support from the ANC which
4 would be given great weight. That being said I
5 think that this case is a very factual
6 circumstance and it just barely in my mind passes
7 the threshold which as I said a very high
8 threshold for satisfying a variance but I feel
9 that it does and I would be in favor of
10 supporting the application. That's my analysis
11 but at this time I would like to open up the
12 floor to additional deliberation from other Board
13 Members.

14 MR. TURNBULL: Madam Chair I would agree
15 with your comments, your analysis of this, I
16 think it was an excellent analysis and on a very
17 difficult situation with the variance. I think
18 it's awkward for us to look at a property like
19 this, I think, it's sort of like a balance scale
20 and you look at both of them and you can see OPs
21 reaction strict interpretation of the
22 regulations. You begin to wonder at times

1 whether a rooming house should even be permitted
2 I guess, but it is permitted. I think that no
3 matter what even if you wanted to change this to
4 just a single family residence you would have to
5 gut the insides, there's a significant amount of
6 renovation that would have to be done with the
7 amount of walls that it had and even to bring
8 this building probably up to code, so there is a
9 significant amount of construction that would
10 have to be done and I think even the cost for
11 adding the third floor is not much additional to
12 the second floor, or just gutting the whole
13 thing. So I think there is a practical
14 difficulty in one sense, or there is a uniqueness
15 with this site in that with it's current
16 configuration as a rooming house to unless you
17 were going back even if you were going back to I
18 think to change it to a rooming house you'd still
19 have a lot of work to probably to bring this up
20 to code. But going to a single family residence
21 or to a flat, there's a significant amount of
22 renovation and remodeling that would have to be

1 done. I think in one, I have a little bit of
2 trouble as looking this as is this really a
3 uniqueness to it, but I think in this particular
4 case and I think and I want to stress for the
5 record that in this particular case, this could
6 be considered a uniqueness to it and then
7 following up on that then there is a practical
8 difficulty on how you afford to be able to do
9 this kind of a renovation. So I was going to say
10 I've struggled with this but in, I would agree
11 with your analysis and I would be in favor of
12 granting this.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much, any further deliberation? Seeing none then
15 I'll submit a motion, a motion to approve
16 Application No. 18115 for a variance from the
17 minimum lot area requirements under (Subsection
18 401.11) a variance from the lot occupancy
19 requirements under Section 403, and a variance
20 from the court requirements under Section 406,
21 and a variance from off street parking
22 requirements under Section 2101.1 and to allow

1 the conversion of a 12 unit rooming house into a
2 3 unit apartment building with a new third story
3 addition in an R-4 District.

4 MR. TURNBULL: Second.

5 CHAIRPERSON MOLDENHAUER: Motion has been
6 made and seconded all those in favor say aye.

7 CHORUS: Aye.

8 MR. MOY: The staff would record the vote
9 as 3 to 0 to 2 this is on the motion of the
10 Chairperson Ms. Moldenhauer to approve the
11 Application this was the amended relief for
12 variance under minimum lot area 401, court
13 requirements 406, off street parking requirements
14 2101.1, and the non-conforming structure
15 provisions 2001.3. Second motion Mr. Turnbull,
16 also support of the motion Mr. Hinkle and no
17 other Board Members participating so again the
18 final vote is 3 to 0 to 2 to approve.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much Mr. Moy seeing that there's no opposition in
21 this case we'd like to waive our requirements and
22 request a summary order.

1 MR. MOY: Very good thank you Madam
2 Chair. The staff would also like to take a step
3 back on the previous case on the Sikder case
4 which was Application 18090; it's the staffs
5 understanding from the Boards decision that staff
6 would be directed to prepare a procedural order
7 that outlines the directions given by the Board
8 which would be sent to all the parties and the
9 applicant.

10 CHAIRPERSON MOLDENHAUER: Yes that is
11 correct Mr. Moy. I believe that concludes our
12 morning public meeting and what we'll do is we'll
13 take a quick five minute recess and then we will
14 begin our cases for the morning, thank you.

15 Morning Break

16 CHAIRPERSON MOLDENHAUER: This meeting
17 will please come to order good morning ladies and
18 gentleman. This is the November 16, 2010, Public
19 Meeting of the Board of Zoning Adjustments for
20 the District of Columbia. My name is Meredith
21 Moldenhauer, Chairperson, joining me today to my
22 right is Jeffrey Hinkle, Representative of the

1 National Capital Planning Commission, to my left
2 is Nicole Sorg, Vice Chair and Mayoral Appointee,
3 and to her left is Michael Turnbull,
4 Representative of the Zoning Commission. Copies
5 of today's meeting agenda are available to you
6 and are located to the left in the wall bin near
7 the door. Please be advised this proceeding is
8 being recorded by a court reporter and is also
9 being webcast live. Accordingly we must ask you
10 to refrain from any disturbing noises or actions
11 in the hearing room. When presenting information
12 to the Board please turn on and speak into your
13 microphone first stating your name and home
14 address. When you are finished speaking please
15 turn off your microphone so that your microphone
16 is no longer picking up sounds or background
17 noise. All persons planning to testify either in
18 support or in opposition are to fill out two
19 witness cards these cards are located to my left
20 on the table near the door and on the witness
21 tables. Upon coming forward to the Board please
22 give both cards to the court reporter sitting to

1 my right, the order of procedures for special
2 exceptions and variances are as follows: 1.
3 Statement and witness of the applicant and
4 applicant. 2. Parties and persons in support 3.
5 Parties and persons in opposition. 4.
6 Government reports including the Office of
7 Planning and Department of Transportation. 5.
8 Reports from the ANC. 6. Rebuttal and closing
9 statements of the applicant. Pursuant to Section
10 3117.4, 3117.5, the following time constraints
11 will be maintained; the applicant appellant
12 persons and parties except an ANC in support
13 including witnesses will be given permitted 60
14 minutes to present its case. Apelles's persons
15 and parties except an ANC in opposition including
16 witnesses will be given 60 minutes collectively.
17 Persons testifying whether in support or in
18 opposition will be given three minutes and
19 organization will be given 5 minutes. These time
20 constraints do not include cross examinations, or
21 questions from the Board. Cross examination of
22 witnesses is permitted by the applicant and

1 parties. The ANC within which the property is
2 located is automatically a party to a special
3 exception or variance case. Nothing prohibits
4 the Board from placing a reasonable restriction
5 on cross examination including time limitations,
6 limitations on the scope. The record will be
7 closed at the conclusion of each case except it
8 will remain open for any materials specifically
9 requested by the Board. The Board and the staff
10 will specify at the end of each hearing exactly
11 what is expected and the date when the person's
12 material must be submitted to the Office of
13 Planning. After the record is closed no other
14 information will be accepted by the Board. The
15 Sunshine Act requires that the public hearing on
16 each case be held in the open before the public.
17 The Board may consistent with its rules and
18 procedures and the Sunshine Act enter into
19 Executive Session during or after a public
20 hearing on a case for purposes of reviewing the
21 record or deliberating on a case. The decision
22 of the Board contested cases must be based

1 exclusively the public record to void any
2 appearance to the contrary the Board requests
3 that persons present not engage the members of
4 the Board in conversation. Please turn off all
5 beepers and cell phones at this time as to not
6 disturb these proceedings. At this time the
7 Board will consider any preliminary matters,
8 preliminary matters relate to whether a case
9 should or will be heard today such as a request
10 for postponement, continuance or withdrawal or
11 whether proper or adequate notice of a hearing
12 was given. If you are not prepared to go forward
13 now please let me know and if the Board should
14 believe that we should postpone the proceeding
15 now is the time to raise such a matter. Mr.
16 Secretary do we have any preliminary matters?

17 MR. MOY: The Staff is not aware of any
18 preliminary matters this morning Madam Chair.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much then all individuals in the audience wishing
21 to testify if you'll please rise Ms. Bailey will
22 administer the oath.

1 MS. BAILEY: Please raise your right
2 hand, do you solemnly swear or affirm that the
3 testimony that you'll be giving today will be the
4 truth the whole truth and nothing but the truth?

5 CHAIRPERSON MOLDENHAUER: We can call the
6 first case and the parties can step forward.

7 **CASE NO. 18132 ANC-3E**

8 MS. BAILEY: Madam Chair, Members of the
9 Board to everyone good morning. The first case
10 is Application 18132 it's the application of John
11 L. Lemoine, pursuant to 11 DCMR, Section 3104.1
12 for special exception to allow a rear addition to
13 an existing one family semi-detached dwelling
14 under Section 223 not meeting lot width that's
15 Section 401, side yard Section 405 and non-
16 conforming structure requirements 2001.3. The
17 property is zoned R-1-B it's located at 5011 Belt
18 Road, N.W. (Square 1756, Lot 848).

19 CHAIRPERSON MOLDENHAUER: Good morning if
20 the parties would please introduce themselves.

21 MR. TRESEDER: Good morning my name is
22 Paul Treseder, I'm the architect.

1 MR. LEMOINE: John Lemoine, 5011 Belt
2 Road, N.W.

3 CHAIRPERSON MOLDENHAUER: Good morning
4 Mr. Lemoine, we've reviewed the record and this
5 is a 223 case and we think that the record is
6 actually quite full on this application and I
7 will ask if you would like to either rest on the
8 record or if you'd like you can present any
9 additional information that's not already in the
10 record.

11 MR. LIMOINE: I think I would rest on the
12 record.

13 CHAIRPERSON MOLDENHAUER: Thank you; do
14 any Board Members have any questions for the
15 applicant? Seeing none then at this point in time
16 we'll turn to any individuals in the audience who
17 are in support or in opposition at this case.
18 Seeing none I will turn to the Office of Planning
19 for their report.

20 MR. GOLDSTEIN: Good morning Madam Chair,
21 Members of the Board, my name is Paul Goldstein,
22 for the record, with the Office of Planning. I'm

1 going to follow the pattern, I'm going to rest on
2 the record and say that we're supportive of the
3 relief that's requested and I'm not available for
4 any questions, thank you.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much Mr. Goldstein. Your record, we have your OP
7 report as "Exhibit No. 23" which we've already
8 reviewed and I think you clearly articulate the
9 standards under 223 and the fact that the
10 applicant has satisfied those. Do any Board
11 Members have any specific questions for the
12 Office of Planning? Seeing none, does the
13 applicant have any questions for the Office of
14 Planning?

15 MR. LEMOINE: No.

16 CHAIRPERSON MOLDENHAUER: Thank you, then
17 at this point in time we will turn to the ANC is
18 anybody present from ANC 3E, seeing nobody in the
19 audience present from ANC-3E I'll indicate that
20 we have "Exhibit No. 21", which is a letter
21 stating that the ANC is in support of the
22 application indicating that they had a meeting on

1 October 14, 2010, at which time this applicant
2 and the next applicant both presented their cases
3 that they had no opposition in the audience and
4 that the ANC had a property notice and with a
5 corum presented voted 5 to 0 to approve the
6 application, this resolution which is in our
7 records satisfied the standards under our rules
8 and thus will be given great weight. We also
9 have other letters of support both from the
10 adjacent property owner in this case and we'll
11 then now turn back to the applicant for any
12 closing remarks.

13 MR. LEMOINE: No remarks, thank you.

14 CHAIRPERSON MOLDENHAUER: Thank you, then
15 what we'll do at this point in time we'll
16 conclude the hearing and we'll enter into
17 deliberation immediately. That being said I'll
18 start this off this is a 223 special exception
19 relief for a minimum lot width, minimum side yard
20 and addition to an existing non-conforming
21 structure. All incorporate OP's outline of the
22 standard for 223 into my deliberation but also

1 just indicate that this is a really straight
2 forward case, we also have our next applicant
3 where it's a unique situation where there's
4 actually, it's a semi-detached property and the
5 portion of these semi-detached properties which
6 are attached their trying to build to the rear of
7 those connecting to both those properties having
8 no side yard and both the applicant and the next
9 applicant have agreed to each other that they
10 both wanting to improve the property it's
11 obviously an opportunity to expand and I think at
12 the same time that there's going to be no concern
13 about light and air or use and enjoyment of the
14 property seeing that these attached property
15 owners have agreed and are working together which
16 is great to see and that the ANC is in support
17 and that the Office of Planning is in support.
18 That being said I too find that the applicant
19 satisfies the requirements and if there's no
20 additional deliberation I will submit a motion.
21 Seeing none, then I will submit a motion to
22 approve Application No. 18132 for a special

1 exception to allow rear yard addition to an
2 existing one family semi-detached dwelling under
3 section 223 not meeting the lot width under 401,
4 side yard under 405 and non-conforming structure
5 under 2001.3 at premises 5011 Belt Road, N.W.

6 The motion has been made is there a second?

7 MS. SORG: Second.

8 CHAIRPERSON MOLDENHAUER: The motion has
9 been made and seconded all those in favor say
10 aye.

11 CHORUS: Aye.

12 MR. MOY: The staff would record the vote
13 as 4 to 0 to 1; this is on the motion of the
14 Chairperson Ms. Moldenhauer to approve the
15 application for a special exception under 223 not
16 meeting lot width, side yard, non-conforming
17 structure requirements. Seconded motion Ms.
18 Sorg, the Vice Chair, in support of the motion
19 also Mr. Hinkle, Mr. Turnbull and no other Board
20 Members participating, so again the final vote is
21 4 to 0 to 1.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Moy, seeing that there's no opposition
2 and the ANC is in support I'd like to waive our
3 requirements and request a summary order of the
4 issue.

5 MR. MOY: Very good thank you.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much.

8 **CASE NO. 18133 ANC-3E**

9 MS. BAILEY: Madam Chair, the next case
10 is Application 18133 Ari Zentner, pursuant to 11
11 DCMR Section 3104.1 for special exception to
12 allow a rear addition to an existing one family
13 semi-detached dwelling under Section 223, not
14 meeting the lot width Section 401, side yard
15 Section 405, a non-conforming structure
16 requirements Section 2001.3 The property is
17 located at 5009 Belt Road, N.W. (Square 1756 on
18 Lot 805) it is zoned R-1-B.

19 CHAIRPERSON MOLDENHAUER: Thank you;
20 parties can please introduce themselves for the
21 record.

22 MR. ZENTNER: Air Zentner, 5009 Belt

1 Road, N.W.

2 MR. TRESEDER: Paul Treseder, Architect.

3 CHAIRPERSON MOLDENHAUER: Thank you, if
4 you as I indicated earlier these are parallel
5 cases but we have to address each of them
6 separately but I think as similar as the last
7 case this case has got a full record so I'll ask
8 if you'd like to present additional information
9 or rest on the record?

10 MR. ZENTNER: Rest on the record.

11 CHAIRPERSON MOLDENHAUER: Thank you; do
12 any of the Board Members have any questions for
13 the applicant? Seeing none, then I'll ask if
14 there's any individuals in the audience in
15 support or in opposition of this case. Seeing
16 none then we'll turn to the Office of Planning
17 for their report.

18 MR. GOLDSTEIN: Paul Goldstein again with
19 the Office of Planning and we will rest on the
20 record and say that we support the relief that's
21 requested and are now available for any
22 questions?

1 CHAIRPERSON MOLDENHAUER: Thank you Mr.
2 Goldstein, are there any questions from the
3 Board? Seeing none then thank you. Does the
4 applicant have any questions for the Office of
5 Planning?

6 MR. ZENTNER: No thank you.

7 CHAIRPERSON MOLDENHAUER: Okay then at
8 this point in time we will turn to the ANC and I
9 believe the ANC is not present I'll indicate that
10 we also have a resolution in this case which is
11 "Exhibit No. 20" for this application and this
12 indicates that a properly held and noticed
13 meeting with a corum present on October 14th, the
14 ANC voted 5 to 0 to approve this application and
15 that satisfied their standard and will be given
16 great weight. That being said I will turn back
17 to the applicant for any closing remarks.

18 MR. ZENTNER: No remarks.

19 CHAIRPERSON MOLDENHAUER: Okay thank you
20 very much, at this point in time we will conclude
21 this hearing and we will open up our deliberation
22 and I will start us off, I think I indicated this

1 is a parallel case to the prior case it's a 223,
2 Office of Planning is in support. The adjoining
3 property owner is in support of this application,
4 the ANC is in support and I think they satisfy
5 the requirements, I'll incorporate OP's record
6 which is our "Exhibit No. 23" their analysis into
7 my analysis in this case and I will submit a
8 motion is everybody is, there's no official
9 further deliberation. Seeing no further
10 deliberation then I will submit a motion in
11 Application No. 18133 for special exception to
12 allow a rear addition to an existing one family
13 semi-detached dwelling under Section 223 not
14 meeting the lot width under 401, side yard under
15 405 and non-conforming structure under 2001.3,
16 requirements at the premises 5009 Belt Road, N.W.
17 a motion has been made is there a second.

18 MS. SORG: Second.

19 CHAIRPERSON MOLDENHAUER: A motion has
20 been made and seconded, all those in favor say
21 aye.

22 CHORUS: Aye.

1 MR. MOY: Staff would record the vote as
2 4 to 0 to 1; this is on motion of Chairperson Ms.
3 Moldenhauer, seconded by the Vice Chair Ms. Sorg,
4 also in support of motion Mr. Hinkle and Mr.
5 Turnbull, no other members participating. Again,
6 this is a final vote of 4 to 0 to 1 to approve
7 special exception relief Section 223 not meeting
8 Sections 401, 405 and 2001.3.

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much Mr. Moy, seeing that there's no opposition
11 in this case and the ANC is in support we'd like
12 to waive our requirements and request that a
13 summary order be issued.

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

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much. The last two cases are perfect examples of
18 what could go on our expedited calendar just as a
19 little reminder to all of those in the audience
20 that are listening. That being said we can hear
21 our next case.

22 **CASE NO. 18134 ANC-3C**

1 MS. BAILEY: Madam Chair the last case of
2 the morning is the Application of Karl Thompson
3 and it's Application No. 18134 it's pursuant to
4 11 DCMR Section 3104.1 for special exception to
5 allow a two story plus basement rear addition to
6 an existing one family dwelling under Section 223
7 not meeting the side yard requirement in Section
8 405, the property is located in the R-1-B
9 District at 2905 34th Street, N.W. (Square 2118,
10 Lot 22).

11 CHAIRPERSON MOLDENHAUER: Thank you very
12 much Ms. Bailey if the parties can please step
13 forward. Good morning if you could turn on your
14 microphone and introduce yourself.

15 MS. TREACY: Jane Treacy, Treacy and
16 Ingleburger Architects.

17 MR. THOMPSON: Karl Thompson, 2905 34th
18 Street.

19 CHAIRPERSON MOLDENHAUER: Good morning
20 how you both doing? This is another 223 and I
21 think that there is sufficient information in our
22 record so I'll ask if you'd like to rest on the

1 record?

2 MR. THOMPSON: Yes rest on the record.

3 CHAIRPERSON MOLDENHAUER: Thank you, that
4 being said I will ask any Board Members if they
5 have any specific questions for the applicant?
6 Seeing no questions then at this point in time
7 we'll turn to see if there are any individuals in
8 the audience in support or in opposition of this
9 case. Seeing none, then we will turn to the
10 Office of Planning for that report.

11 MS. JACKSON: Good morning Chair, Members
12 of the Board, for the record my name is Arlova
13 Jackson with the Office of Planning. I would be
14 happy to reset on the record also, I only point
15 out that we have added a form of relief to that
16 request of the 2001.3 wasn't initially included
17 because it is a non-conforming structure but
18 other than that we recommend approval of the
19 request found that it meets the standards found
20 in Section 223 and would be happy to answer any
21 question you have.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much and I think that your simply adding one of
2 the elements under 223 that would be seeking
3 relief so I don't think there's an issue in
4 regards to notice, it would still be a notice
5 requirement under 223. That being said I do
6 think that it is an addition to a non-conforming
7 structure so that would also be required. I
8 don't have any other specific questions for the
9 Office of Planning, do any other Board Members?
10 No, and thank you for pointing that out on the
11 record I appreciate that. That being said we'll
12 turn to the ANC, is anybody present from ANC 3C?
13 Seeing no one present I'll reference that we do
14 have a letter from the ANC indicating that they
15 had a meeting on October 18th that was duly
16 noticed and that they voted unanimously to
17 approve this application, unfortunately however
18 they don't indicate that a corum was present and
19 that is required under our rules in order to give
20 it great weight so we will not be able to give
21 their support great weight but we will be able to
22 recognize it as a letter of support. That being

1 said, we also have letters in our record "Exhibit
2 No. 21" from other neighbors which are adjoining
3 right next to on Garfield Street this property.
4 That means it will turn back to the applicant for
5 any closing remarks.

6 MR. THOMPSON: No remarks.

7 CHAIRPERSON MOLDENHAUER: Okay thank you.
8 Then what we'll do is we'll conclude this
9 hearing and we'll enter into deliberation on this
10 case. This is a 223 to permit a rear addition to
11 a single family home on 34th Street and their
12 seeking side yard relief in addition to a non-
13 conforming roof structure, all incorporated in
14 the OP's report and I think that they clearly
15 articulated the reasons why there's not going to
16 be any negative impact or undue effect on the
17 light and air indicating that the property, the
18 addition would be in an alley and that it would
19 be, the addition would be along the adjacent
20 garage to the south and that there would be no
21 effect on any of the other properties, they also
22 talk about the privacy, and use and enjoyment,

1 they talk again about the fact that this is along
2 a wooden privacy fence in the rear, and so I
3 think those factors are well articulated in the
4 Office of Planning report and also in the case
5 file in general and they support the application
6 and I see no reason why we wouldn't approve the
7 application and the ANC voted to supported and
8 while we don't give it great weight we will
9 recognize it's support. We will recognize our
10 "Exhibit No. 21" which includes neighboring
11 support of the applicant, that being said I'll
12 open up the floor to any additional deliberations
13 from Board Members. Seeing none then I'll submit
14 a motion, a motion to approve Application No.
15 18134 for a special exception to allow a two-
16 story plus basement and rear addition to an
17 existing one family dwelling under Section 223
18 not meeting the side yard under Section 405 and
19 providing an addition to a non-conforming
20 structure under Section 2001.3 at premises 2905
21 34th Street, N.W. a motion has been made is there
22 second?

1 MR. TURNBULL: Second.

2 CHAIRPERSON MOLDENHAUER: A motion has
3 been made and seconded, all those in favor say
4 aye.

5 CHORUS: Aye.

6 MR. MOY: The Staff would record the vote
7 at 4 to 0 to 1 this is on the motion of the
8 Chairperson Ms. Moldenhauer, seconded by Mr.
9 Turnbull, this is to approve the special
10 exception request under 223 not meeting side yard
11 405. Also in support of the motion Ms. Sorg,
12 Vice Chair, and Mr. Hinkle. No other Board
13 Members participating so again the final vote is
14 4 to 0 to 1.

15 CHAIRPERSON MOLDENHAUER: Thank you very
16 much Mr. Moy and seeing that we have no
17 opposition in this case I would like to waive our
18 requirements and request a summary order.

19 MR. MOY: Very good thank you.

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much, and then that actually at fabulous 10:33
22 concludes our morning agenda and we will

1 reconvene at 1 o'clock, thank you.

2 **AFTERNOON SESSION**

3 CHAIRPERSON MOLDENHAUER: Good Afternoon,
4 this hearing will please come to order this is
5 the November 16, 2010, Public Hearing of the
6 Board of Zoning Adjustments for the District of
7 Columbia.
8 My name is Meredith Moldenhauer, Chairperson.
9 Joining me today to my left will be Nicole Sorg,
10 Vice Chair, Mayoral Appointee to my right is
11 Jeffrey Hinkle, Representative of National
12 Capital Planning Commission, and to my left is
13 Michael Turnbull, Representative of the Zoning
14 Commission. Copies of today's meeting agenda are
15 available to you and are located to my left in
16 the wall bin near the door. Please be advised
17 this proceeding is being recorded by a court
18 reporter and is also being webcast live.
19 Accordingly we must ask you to refrain from any
20 disturbing noises or actions in the hearing room.
21 When presenting information to the Board please
22 turn on your microphone and first state your name

1 and home address, when you're finished speaking
2 turn off your microphone so that your microphone
3 is no longer picking up sounds or background
4 noise. All persons planning to testify either in
5 favor or in opposition are to fill out two
6 witness cards these cards are located to my left
7 on the table near the door and on the witness
8 tables. Upon coming forward please provide both
9 witness cards to the court reporter sitting to my
10 right. The order of procedure for special
11 exceptions and variances are as follows: 1.
12 Statement of the applicant and applicant's
13 witnesses. 2. Persons and parties in support.
14 3. Persons and parties in opposition. 4.
15 Government reports including the Office of
16 Planning and the Department of Transportation.
17 5. Reports from the ANC. 6. Closing remarks
18 and rebuttal from the applicant. Pursuant to
19 Section 3117 and 3117.5 the following time
20 constraints will be maintained. The applicant
21 appellant persons and parties except an ANC in
22 support including witnesses will be given 60

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

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

1 given. If you are not prepared to go forward
2 today or you believe the case should be postponed
3 now is the time to raise such a matter. Mr.
4 Secretary do we have any preliminary matters?

5 MR. MOY: Madam Chairperson, to the
6 Staff's understanding there's been a motion for a
7 continuance to case No. 18124 in the afternoon
8 session.

9 **CASE NO. 18124 ANC-3F**

10 CHAIRPERSON MOLDENHAUER: Wonderful, lets
11 swear in the witness then we'll call that case
12 first and change the agenda. Before we call that
13 case then all individuals wishing to testify will
14 you please stand and Ms. Bailey will administer
15 the oath.

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

21 CHAIRPERSON MOLDENHAUER: We can call
22 Adams-Connecticut 1 LLC.

1 MS. BAILEY: Good afternoon Madam Chair
2 and to everyone good afternoon as well. The
3 first case is Application No. 18124 of Adams-
4 Connecticut 1 LLC, is pursuant to 11 DCMR Section
5 3103.2 for a variance from the off street
6 parking requirements under (Subsection 2101.1) to
7 construct an apartment building with ground floor
8 retail, the premise is 4469 Connecticut Avenue ,
9 N.W. the property is also known as (Square 2046,
10 Lot 803) and it is zoned C-3-A, are the parties
11 here for that case?

12 CHAIRPERSON MOLDENHAUER: Good afternoon
13 we'll start to my left you want to introduce
14 yourselves.

15 MS. GORDANO: Cynthia Gordano with Saul-
16 Ewing Law Firm representing the B.F. Saul Company
17 which is located adjacent to the subject
18 property.

19 MS. PERRY: I'm Karen Perry chair of ANC-
20 3F.

21 MR. YURECHKO: Doug Yurechko, hear on
22 behalf of the applicant Adams-Connecticut 1 LLC.

1 MS. BRAY: Kinley Bray with the law firm
2 of Arrant-Fox here on behalf of the adjacent
3 property owner Park and Shop LLC, and Metro
4 Montessori School LLC the tenant next door to the
5 subject site.

6 CHAIRPERSON MOLDENHAUER: Okay thank you,
7 I have the our new "Exhibit No. 38" which was
8 received today indicating that the Park and Shop
9 and the Montessori School in conjunction with
10 some of the other the B.F. Saul Company and the
11 ANC were requesting a postponement. What I'll do
12 is Mr. Yurechko, I'm going to turn to you as the
13 applicant and if you can just provide on the
14 record whether you are consenting or in
15 agreements with this consent to postpone?

16 MR. YURECHKO: We are in agreement.

17 CHAIRPERSON MOLDENHAUER: Okay, so then
18 everybody's in agreement everyone will be
19 available for a January 11th, 1 p.m. calendar date
20 is that correct. I'm seeing shaking of all heads
21 so we can get that on the record. Wonderful so
22 then what we'll do is we'll postpone this case to

1 January 11th in the afternoon session, thank you
2 all very much.

3 **CASE NO. 18135 ANC-6C**

4 MS. BAILEY: Application 18135 of W2007
5 100 K Street Realty LLC, pursuant to 11 DCMR
6 Section 3104.1 for special exception from the
7 parking requirements under Section 2108 and a
8 special exception from the roof structure set-
9 back requirements under Sections 411 and 770.6 to
10 allow the development of an office building with
11 ground floor retail use at premises 100 K Street,
12 N.W. (Square 713, Lot 50) and air rights above
13 Lot 49 the property is zoned C-3-C.

14 CHAIRPERSON MOLDENHAUER: Good afternoon,
15 you can please introduce yourself for the record.

16 MS. SHIKER: Members of the Board good
17 afternoon my name is Christine Shiker with the
18 Law Firm of Holland & Knight, representing the
19 applicant in this BZA case for special exception
20 relief for the property located at 100 K Street,
21 N.E. I'm joined today by Peggy Crowley and
22 Colleen Scott representing the applicant, Dale

1 Stewart of Core Architecture and Design, the
2 project Architect, Osborne George from O.R.
3 George and Associates, the Traffic Consultant,
4 and Steven Sher from the Law Firm of Holland &
5 Knight the Director of Zoning and Land Use
6 Services. 100 K Street is located at the
7 northeast corner of the intersection of First and
8 K Street, N.E. and consists of surface parking
9 lot at lot 50 and the air rights about lot 49
10 which is the Wamada(ph sp) Facility it's a one
11 story structure the site abuts the Greyhound Bus
12 Site to the north and the elevated tracks
13 immediately to the east. The applicant proposes
14 the construction of a commercial office building
15 with ground floor retail the site is zone C-3-C
16 and is located within the North Capital TDR
17 Receiving Zone it is located in the heart of NOMA
18 which is being developed with high density
19 commercial, residential and mixed use
20 developments. The applicant seeks two areas of
21 relief; the first is a special exception to
22 reduce the number of parking spaces by 20 spaces

1 as reduction of approximately 18% pursuant to
2 Section 2108 of the Zoning Regulations. The
3 second is a special exception for the roof
4 structure set-back along the south frontage of
5 the project pursuant to Sections 411 and 770.6 of
6 the regulations. You should have received a
7 prehearing submission which sets forth in detail
8 the project, the special exception relief
9 requested and how the applicant meets the burden
10 of proof for each area of relief requested. In
11 furtherance of that at tab D there was a report
12 prepared by the traffic consultant setting forth
13 each element of the special exception for Section
14 2108 for the parking reduction and stating how
15 the applicant satisfies that standard? We're
16 pleased to have the Office of Planning's support
17 for the project, we have also spoken with Jeff
18 Jennings at DDOT, DDOT does not intend to file a
19 report but they indicated they have no objection
20 to the project and that's also reflected in the
21 Office of Planning's report, we're also pleased
22 to have unanimous support of ANC-6C and that

1 letter of support can be found at Tab E to your
2 prehearing submission. We believe that the
3 submission and the record before you satisfies
4 the burden of proof for this special exception
5 relief requested. Given the strong support of
6 OP, not objections from DDOT, and the support of
7 the community we would offer to present an
8 abbreviated presentation or to rest on the record
9 for whatever the Board chooses, thank you.

10 CHAIRPERSON MOLDENHAUER: I think we can
11 probably do an abbreviated version I do know we
12 have a couple of questions and I don't know if
13 they are questions that maybe you'd like to
14 address or whether they're questions Mr. Sher
15 would like to address, but what we'll do is I
16 think I'll go down the line for Board Members and
17 we can kind of present some of the questions we
18 have initially and then you can focus your
19 presentation based on that. One question I have
20 I know that it's been a recent, in a court of
21 appeals, in a recent decision by this Board in
22 regards to the party wall issue and the lack or

1 the potential lack of required relief for
2 setback, I know that some of the prior cases
3 talked about a building that already existed,
4 this is a slight different but I think I'd like
5 to just hear the argument in the presentation of
6 the exact application here where there is no
7 building right now, there's nothing in that case
8 there's obviously a pre-existing building that
9 was abutting the property but there was an area
10 where there could have been an additional height
11 that could have eventually built here, we have
12 nothing and I just want to have you discuss that
13 issue and explain how that case interpretation
14 is applied here to confirm that this is a party
15 wall and is not considered an exterior wall to
16 the property. In addition to that I think that
17 potentially other Board Members had some question
18 about the design and the current windows that are
19 on that one, I guess it's the north side of the
20 building and the elevation of that. Let me turn
21 to some other Board Members and see if they have
22 any other questions to kind of help focus the

1 presentation.

2 MR. TURNBULL: Thank you Madam Chair, we
3 have some wonderful renderings of the K Street
4 First Street elevations but the north elevation
5 is totally devoid of any real significant
6 information for us to look at other than 83.02
7 which is just a cartoon which sort of shows that
8 you've got windows at risk on that elevation. It
9 also looks like you have louvers that would be at
10 risk if there was another building built. I
11 think we need some, more information on that
12 north elevation which would be at risk from what
13 we're looking at, but again we have very little
14 information on it.

15 CHAIRPERSON MOLDENHAUER: Based on those
16 comments I'll turn it back to you, oh there's one
17 more comment from a Board Member and then we'll
18 allow you to begin your presentation, how you see
19 fit.

20 MS. SORG: Thank you Madam Chair, on
21 another topic I agree I have the same questions
22 about the setback portion of this application but

1 in regards to the parking portion I think since
2 we haven't received a report at least to my
3 knowledge from DDOT it would be good to hear
4 about what your conversations were with them and
5 how it all went down.

6 MS. SHIKER: Okay thank you, as a
7 preliminary matter I'd like to go ahead and
8 qualify my experts and have them accepted as
9 expert witnesses. We have three experts here, it
10 sounds like we're probably only going to need two
11 of them but I'll go ahead and qualify all three
12 of them. Mr. Stewart our Project Architect is an
13 expert in architecture and design. His resume
14 was submitted at Tab G of the prehearing
15 submission. Mr. George is submitted as an expert
16 in transportation planning and engineering, his
17 resume can be found at Tab H, and then Mr. Sher
18 is an expert in zoning and land use and his
19 resume can be found at Tab I. Each of these
20 expert witnesses have previously been accepted by
21 the Board as expert and I would request that you
22 accept them today.

1 CHAIRPERSON MOLDENHAUER: We'll provide
2 the Board Members a quick second to review
3 everything. I think that we've all had a chance
4 to review it and we will qualify all three as
5 experts and you can proceed.

6 MS. SHIKER: I would ask Mr. Stewart and
7 Mr. Shur to go ahead and come up to the podium.
8 I'll answer some of the two legal and technical
9 questions and then I will turn it over, we do
10 have a PowerPoint presentation and we can address
11 some of the Board Members questions regarding the
12 design of the building. With respect to the
13 first question that you had and that deals with
14 the finding in BZA Case 17109 that was an appeal
15 by the Kalorama Citizens Association for setback,
16 the Board in that decision found that a wall on a
17 lot line was not determined to be an exterior
18 wall, or street wall and it would not require a
19 setback. The defining characteristic of that
20 decision by the Board was that it was a lot line
21 wall or party wall capable of being abutted in
22 this case the only façade that does not have the

1 setback, we're asking for the relief on the south
2 but the one we're not asking for the relief on
3 the north it is a party wall with the Greyhound
4 site, that site is zoned C-3-C it's within the
5 North Capital TDR Receiving Zone, it is
6 envisioned that that site will be developed at
7 some point and again the defining characteristic
8 in the BZA's decision was that it would be a lot
9 line or capable of being a party wall it didn't
10 have to actually at that time be a party wall and
11 I think that can be found, I have the order right
12 here from the BZA case and I can redo the
13 language or you can look at it yourself.

14 CHAIRPERSON MOLDENHAUER: We all have a
15 copy of it right now.

16 MS. SHIKER: It says that the type of
17 wall has been considered a party wall or common
18 division wall and it goes on to say what
19 distinguishes an exterior wall for zoning
20 purposes is not whether it is exposed to the
21 element but whether it's setback from a property
22 line. So in this case while it's exposed to the

1 element, it is not setback from the property line
2 and thus you are not required to have a setback
3 on that under either zoning regulations or the
4 1910 Height Act. CHAIRPERSON MOLDENHAUER:

5 Thank you, you can continue.

6 MS. SHIKER: Thank you, and then with
7 respect to our conversations with DDOT we have
8 talked with Mr. Jeff Jennings at DDOT it sent to
9 me an email that he would not file a report
10 because he didn't have an objection to the case
11 and I believe that he passed that conclusion onto
12 the Office of Planning and it was noted in their
13 report as well. We have been in contact with them
14 several times and the only questions that were
15 raised were with the development of the public
16 space and the location of bike racks in the
17 public space which is subject to this hearing
18 today. With that I will ask Mr. Stewart to go
19 ahead and talk about the elevations with specific
20 focus on the North elevation, and I will step up
21 and pass-out copies of the pictures that he will
22 be showing.

1 MR. STEWART: Good afternoon everyone,
2 what I've pulled up on the screen that you're
3 looking at is the elevation drawing of that north
4 elevation. What you'll see is that in the center
5 of this building is where the core elements are
6 located and the windows to the left and right of
7 that are the windows that are a risk. What you
8 can see is that the facades of the east and west
9 elevations are wrapped partially around and then
10 (INAUDIBLE) windows occupy the area in the
11 center. This is a rendering from the northeast
12 corner from the opposite side of the Metro tracks
13 that shows the eastern elevation and partial
14 north elevation and then you can see from the
15 office at that corner a rendering of the north
16 elevation as well.

17 MS. SORG: Can you go back to the
18 previous slide?

19 MR. TURNBULL: It's a little difficult to
20 get a good feel since it's in shade.

21 MR. STEWART: It actually doesn't look
22 quite so dark on the computer screen.

1 MR. TURNBULL: I guess I'm just concerned
2 why if those would all be removed plus the
3 louvers there's a significant amount of work
4 involved in doing that.

5 MR. STEWART: Well those windows are at
6 risk so should there be a building built on that
7 north side they would be moved and covered over.

8 MR. TURNBULL: And the same with the
9 cooling tower.

10 MR. STEWART: Well the cooling tower
11 doesn't affect those because those louvers at
12 that point at the penthouse are architectural
13 features they're not required for functionality.

14 MR. TURNBULL: They're not required,
15 what's at the closet end on the penthouse?

16 MR. STEWART: Those, the primary cooling
17 tower is located on the opposite end, on this end
18 there's the generator and some other smaller HVAC
19 elements.

20 MR. TURNBULL: All those louvers also just
21 decorative?

22 MR. STEWART: Yes, also looked a little

1 bit preliminarily at the Greyhound site, we also
2 feel that that site in all likelihood when it's
3 developed because of the size of the site in all
4 likelihood the southern part of the site which
5 abuts this building the development will probably
6 setback from this building so that the Greyhound
7 site can benefit from the ability to have windows
8 on that side of the building as well. To not do
9 so would create a building that was very deep and
10 very dark. So in all likelihood even though
11 these windows are at risk we feel that in
12 likelihood future buildings would be setback from
13 this building.

14 MR. TURNBULL: What's the exterior wall
15 treatment?

16 MR. STEWART: Exterior wall is metal
17 panels?

18 MR. TURNBULL: It is metal panels similar
19 to what's on the other sides; you've got a couple
20 of different facades going on.

21 MR. STEWART: Yes, the southern side
22 elevation which has the louvers but it has a

1 glass wall and curtain wall system that's very
2 similar to the east and west but then wraps
3 around to the north side and metal panels on the
4 north side.

5 MR. TURNBULL: So these metal panels are
6 similar to some on the ends?

7 MR. STEWART: Similar in finish. With the
8 way that this end elevation, this rendering was
9 done not really for presentation so much as
10 information and the end of this elevation really
11 a glass wall there are really no metal panels on
12 that west side.

13 MR. TURNBULL: Those aren't metal panels
14 at this end?

15 CHAIRPERSON MOLDENHAUER: Do we have a
16 pointer maybe that could help or if one of the
17 speakers could actually get up and have the
18 mobile, okay, thank you that helps.

19 MR. STEWART: This also represents, these
20 are metal panels here and these are the glass
21 windows and the metal panels on the back are
22 similar to these.

1 MR. TURNBULL: So the spandrel panels
2 here are similar to the panels on the north
3 elevation?

4 MR. STEWART: Same material yes.

5 CHAIRPERSON MOLDENHAUER: Mr. Turnbull do
6 you have more questions?

7 MR. TURNBULL: Well yeah I'm just kind of
8 mulling around I mean we're treating this as a
9 party wall.

10 CHAIRPERSON MOLDENHAUER: I don't like
11 using it, just for my personal, I don't like
12 using the word party wall, based on Kalorama it's
13 a property line, not party wall, I mean to me
14 legally party wall has a specific definition and
15 a different definition which is not applicable
16 here at all. If I do think that this applies I
17 would apply it based on the fact that it's a
18 party line wall built on the party line. I don't
19 mean to be persnickety but I just want to make
20 sure that's on the record.

21 MR. TURNBULL: I guess I feel like I got
22 a catch-22 where we're treating this as a lot

1 line although it's from the architects discussion
2 your going to be seeing this elevation very
3 prominently even though something could be
4 developed there, so this exterior lot line
5 elevation is going to be something, I guess I'm
6 always concerned about elevations that get hidden
7 and are not hidden, we have a lot of them, I mean
8 we often go down and get lesser materials for
9 areas that are either in an alley or hidden which
10 is fine. So I guess we've got an exterior
11 elevation which is interior and we're asking to
12 look at it from one view point but from a design
13 standpoint we're looking at it as another view so
14 it's not become a very prominent elevation in the
15 sense that it is a very visible elevation. So I
16 begin to worry about the type of materials that
17 are there and the types of finishes and how that
18 then effects the rest of the development and your
19 overall experience or the overall, the total
20 effect of this building as a three dimensional
21 building and how it really effects everything
22 else. I was worried that we were just getting a

1 very minimal finish. I mean if these panels are
2 going to be the same finish as on the other sides
3 of the building I'm okay with that. It just that
4 then if this building does, if the other
5 buildings that are next to it, do get set back
6 then the it seems like your manipulating the, the
7 setback.

8 CHAIRPERSON MOLDENHAUER: I think also if
9 you're coming off of, and correct me if my
10 geographical understanding is wrong but I think
11 if you're coming off of North Capital and you're
12 driving towards this building this is the
13 elevation that you will see first and foremost.
14 Whether a building is built on the Greyhound or
15 if there's a distance remaining there. So I
16 agree with you Mr. Turnbull the question of
17 course that elevation is getting built on a
18 property line but the question is a matter of
19 what are the materials, what are the aspects of
20 the elevation? Do you have a slide showing the
21 roof elevation, showing what the necessity is to
22 have, can you walk through that and I know it's

1 in part of your record about the elevator core
2 and the necessity for that location but can you
3 walk through that and how this party property
4 line lack of set back is necessitated by the
5 design and by the elevator core that would be
6 helpful.

7 MR. STEWART: This is K Street down here,
8 First Street runs up this way; this is the north
9 elevation property line wall. In order to make
10 this site work which is a very rectangular site
11 we decided not to do because it's a corner lot,
12 not to do a rear yard that would make the site
13 even narrower or shorter, do a courtyard instead.
14 So by putting the courtyard in the middle we've
15 also been able then to create two wings of the
16 building which are approximately 10,000 square
17 feet each so that when this building is sold as
18 office condominiums that give maximum flexibility
19 for individuals tenants to have individual
20 identity off the elevator core. That meant that
21 also was because of the narrowness of the site
22 and the potential for this to be a dark wall

1 anyway we wanted to push the core as far north as
2 we could so that we when we enter, we enter at
3 that location and the core at that point will
4 then be able to circulate to the two sides. So
5 that's how the penthouse moved to the north wall.
6 If you look at the roof plan you'll see that's
7 the whole penthouse structure up here, up above,
8 we've landscaped with green roof and paving that
9 upper level of the roof terrace to that people
10 can access the terrace in these locations. What
11 the snake like element is is actually a raised
12 thickened planting bed so that we could put tall
13 grasses and so forth on the roof. But you can
14 start to see that what that's done is because of
15 the depth of the elevator and the need for
16 mechanical spaces in the back. We have limits
17 how far we can setback that penthouse. You start
18 to see in this diagram how that roof of the
19 penthouse is here where the exterior wall is
20 there, it shows that limitation.

21 CHAIRPERSON MOLDENHAUER: Would it be
22 possible to make the court smaller, to provide

1 more than 12 feet?

2 MR. STEWART: No because if you make the
3 court smaller it doesn't meet the definition of
4 court.

5 CHAIRPERSON MOLDENHAUER: Do any Board
6 Members have any other questions, if not I will
7 turn back to you if you want to provide any
8 additional information to your basic
9 presentation, I know we're kind of battering you
10 with different questions at this point in time.

11 MR. STEWART: We've kind of jumped back
12 and forth and to answer your specific questions I
13 don't think I need to unless you'd like to know
14 more about the ground plane or it's basis.

15 CHAIRPERSON MOLDENHAUER: I think that's
16 been sufficient provided for in the presentation.
17 What we can do now, I think we're all kind of
18 mulling over the plans and looking at things
19 there maybe some more questions as we go through
20 the rest of the hearing, we may call on you again
21 but I think if you want you can continue on with
22 any other witnesses you have at this point.

1 MS. SHIKER: At this point unless the
2 Board would like to hear from the traffic
3 consultant or Mr. Sher to summarize how we meet
4 the standard of proof we would rest on the
5 submissions and the testimony so far.

6 CHAIRPERSON MOLDENHAUER: Thank you, then
7 Ms. Sorg you had some questions on parking do you
8 have any other questions.

9 MS. SORG: She addressed the question.

10 CHAIRPERSON MOLDENHAUER: Actually I have
11 a question about parking and it just goes too
12 generally. I know that DDOT is working with you
13 and they haven't had any general comments but in
14 requesting the relief one thing that we see a lot
15 and their commented obviously on the parking and
16 the bicycle racks. One thing that we see lots of
17 time with trying to have a reduction in parking
18 this is not a very exception reduction but it is
19 a reduction, and encouraging bikes and everyone
20 probably seen the bikes racks that have gone up
21 all throughout the city. One thing that we see a
22 lot of new buildings providing to encourage

1 bicycle transportation is shower rooms or
2 facilities. I was trying to look through the
3 plans and not being an architect myself I didn't
4 see them on the plans are they there? They are
5 okay.

6 MS. SHIKER: We are providing bike parking
7 in excess of what is required within the garage
8 there will be access to the showers on the first
9 floor of the building, we're also working with
10 DDOT to put additional bike parking in the public
11 space.

12 CHAIRPERSON MOLDENHAUER: If you can
13 identify where the showers are on the, like I
14 said I'm not an architect.

15 MR. STEWART: The entrance in this
16 location, the ground floor plan.

17 CHAIRPERSON MOLDENHAUER: A101.

18 MR. STEWART: This is the lobby entrance
19 at this location with the elevator bank back
20 here. Over to the side this whole area over here
21 is the fitness center and in the back of there,
22 there is showers and bathrooms there, they have

1 access either through the main lobby or through
2 this back corridor.

3 CHAIRPERSON MOLDENHAUER: Thank you it
4 wasn't specifically labeled on the plans but now
5 by showing that it's more obvious to me at this
6 point. Then at this point if there's no further
7 witness testimony we'll move forward and I'll ask
8 if there's any individuals in the audience in
9 support or in opposition of this case, seeing
10 none then we'll turn to the office of planning
11 for their report.

12 MR. COCHRAN: Thanks Madam Chair, OP is
13 ready to stand on its report unless you have
14 questions or if you prefer I can go through and
15 summarize it briefly.

16 CHAIRPERSON MOLDENHAUER: I don't think
17 it's necessary to summarize it briefly, I don
18 have some questions for you though. I guess one
19 of them has to do with the Kalorama case and the
20 property line definition and that and the broader
21 interpretation of what is an exterior property
22 line in regards to requirements of set backs. We

1 heard the architect testify and obviously it's
2 not, it's a hypothetical area, a crystal ball
3 reading into the future as to what potentially
4 could happen to the Greyhound site but their
5 testimony that potentially based on the size and
6 I guess the layout of that side that most likely
7 a developer would not build the property line
8 there and that this wall would be exposed as
9 potentially an exterior wall even though it would
10 be defined under Kalorama as a property wall.
11 Based on that do you have does OP have any
12 interpretation or perspective on how that would
13 affect your desire to see or not see a rear
14 structure setback on that wall?

15 MR. COCHRAN: No as our report said we do
16 view it as a comparable to a party wall with
17 those requirements. It does in practical terms
18 pose some situations that the future developer of
19 the northern property would have to respond to it
20 would certainly impose some constraints but none
21 that aren't permitted by the zoning regulations.

22 CHAIRPERSON MOLDENHAUER: Thank you do

1 any Board Members have any other questions for
2 OP?

3 MR. TURNBULL: I guess what's frustrating
4 is that I think we should have had more on the
5 north elevation from the get go. We really
6 should have had pictures I think it would have
7 explained a lot more. I guess what I get
8 concerned about is when I see a building in the
9 round and I see the fourth elevation as suddenly
10 becoming precast panels but which is now planned
11 to be viewed all the time, so I think to make our
12 job a little easier it would be good to see those
13 what your real intent is on that elevation. I
14 think it makes our job for understanding what
15 your trying to do all that more easier. Now that
16 you've explained that the north elevation is
17 really the same or similar prefinished panels as
18 on the other elevation that's fine, I think your
19 still at risk at some point if the developer to
20 the north wants to go right up you've lost those
21 panels but I think from another standpoint, from
22 an esthetic standpoint is what people are going

1 to see, it's obviously a lot better to have those
2 kinds of architectural, that kind of detailing
3 goes a lot further than just simply precast
4 panels up there. I would just say I wish we would
5 had had that I think we were struggling with that
6 and looking at it and I don't think we need to
7 have. It raises some questions when we see what
8 looks like an interpretation of the zoning
9 regulations saying that we can build right up to
10 it and you get something in your mind as to what
11 you plan to do and then when you actually as I
12 say the north elevation that we had in our
13 documents is minimal it was just basically a
14 cartoon. So I think for us to really look at it,
15 it would have been better for us to really, I
16 mean I like the idea of the panels, I think that
17 the prefinished aluminized panels up there is as
18 I say we'll be a lot better than simply concrete
19 or worse case scenario block, but I guess that
20 was only one of my concerns.

21 MS. SORG: Actually I had another
22 question, one thing first is that we've seen

1 those elevations and you did produce those
2 renderings we don't actually have them, still, I
3 think. I guess I missed this in your
4 presentation; the metal panel that continues from
5 the First Street side only goes back to where the
6 beginning of the elevator core is?

7 MR. STEWART: On the north side?

8 MS. SORG: Yeah and then you have...

9 MR. STEWART: It goes back, well I can't
10 see it. The glass curtain wall goes partly
11 around the corner but the elevator core really
12 starts at this point, the elevator machine core,
13 so there are these windows that are on the north
14 side but the core elevator is in this location.
15 Well that brings up a follow up question. What
16 is the material then beyond that, are those
17 panels or aluminum?

18 MR. STEWART: These are all painted
19 aluminum panels.

20 CHAIRPERSON MOLDENHAUER: I would
21 actually like to ask, I don't think that we're
22 going to make a decision on this case today and I

1 think that I would like to see in our record some
2 better renderings of this north side just to show
3 exactly what you're describing today to be added
4 and supplemented to the record. I think that
5 would just help all the Board Members as well.
6 So I think that can be easily provided and we can
7 hopefully make a decision very quickly
8 thereafter. I think that would be something that
9 would be helpful. Do any Board Members have any
10 other questions? Seeing none, I believe Ms.
11 Bailey's making copies of those additional
12 drawings, we'll take a look at those, I don't
13 have that right now but I think that would be
14 helpful as well. At this point in time we'll
15 turn to the ANC is somebody from the ANC-6C
16 present? Seeing nobody in the audience we have
17 our "Exhibit No. 26" in the record which
18 indicates that on October 13, 2010, a regularly
19 scheduled, duly noted meeting with a corum
20 present of 7 out of 9 commissioners the ANC voted
21 7 to 0 to 0 to support the application. So that
22 letter satisfies our requirements and it will be

1 receiving great weight. That being said at this
2 point in time we will turn back to the applicant
3 for any closing remarks.

4 MS. SHIKER: That concludes our
5 presentation, we will submit the material that
6 have been requested which is a detailed
7 description of the materials for the north façade
8 along with the renderings of the north façade and
9 we believe that the burden of proof has been
10 satisfied for the two special exceptions that
11 were requested, the parking reduction and the
12 roof structure setback which is in compliance
13 with the current interpretation of the zoning
14 regulations and we'd request that the Board
15 approve this case at it's earliest convenience,
16 thank you.

17 CHAIRPERSON MOLDENHAUER: Do any before I
18 close the record, do any Board Members have any
19 follow up questions, I know we're kind of all
20 perusing through the new diagram we just got,
21 I'll give everyone just a few moments.

22 MS. SORG: I just have one question now

1 that we're looking at the renderings of the
2 multiple facades at the same time. It looks like
3 there is a type of types of metal panel on many
4 of the facades including on the interior of the
5 courtyard and then the First Street side and then
6 the north side as well as perhaps, is it all the
7 same.

8 MR. STEWART: All of the metal panels are
9 the same painted silver with the exception of the
10 wall at the center of the courtyard which is a
11 white metal panel.

12 MR. SHIKER: I would like if the Board
13 would allow the architect to explain a bit more
14 what he testified to with respect to the views
15 once the Greyhound side is developed even if a
16 building is not constructed to the lot line it is
17 my understanding and I'll let Mr. Stewart state
18 that there would be very little visibility of
19 this wall with the exception of the first portion
20 of it, given almost any development plan on that
21 side even with a setback.

22 MR. STEWART: Yeah I think there maybe a

1 slight misunderstanding of what I was talking
2 about when we talked about the future development
3 of Greyhound. When I talked about there being a
4 setback from this building if there is, it's
5 probably not going to be more than a minimal
6 amount so that end of the building of the
7 Greyhound building also gets light, so assuming
8 that that building is next to this building
9 really all you will see as you travel south on
10 First Street is probably the first day or two of
11 this end of the north side. Because you're
12 traveling south that's why this façade has been
13 turned with a glass façade on that corner. This
14 part of the building if you think of a Greyhound
15 building coming out to this point and being this
16 tall, all of that end of the building will be
17 blocked, so this façade really only is visible
18 until such time as the Greyhound building is
19 built.

20 CHAIRPERSON MOLDENHAUER: Thank you, do
21 Board Members have any final questions or request
22 for supplemental information if any. That being

1 said, why don't we I think it just couldn't be
2 helpful so if we actually have it also as part of
3 the record, to supplement the record with the
4 documents (INAUDIBLE) of some more detailed
5 diagrams of that north wall including the
6 materials on that as you stated and why don't we
7 have those submitted to our office by, with the
8 Thanksgiving Holiday coming do you think you
9 could get that to us prior to leaving for the
10 holiday so by next week the 24th so then, is the
11 Office of Zoning open on the 24th, they are. So
12 Wednesday the 24th by close of business any
13 additional submissions and then we'll put this on
14 the calendar for a decision on November 30th,
15 thank you that concludes this hearing. Ms. Bailey
16 whenever you're ready you can call the next and
17 last case for the day.

18 **CASE NO. 18137 ANC-3B**

19 MS. BAILEY: Madam Chair this Application
20 of Chipotle Mexican Grill and the number is 18137
21 it's pursuant to 11 DCMR Section 1533.1 and
22 3104.1 for a special exception to establish a

1 fast food establishment under Section 733 in the
2 NOPD (Naval observatory precinct Overlay
3 District)C-2-A, premises 2338 Wisconsin Avenue,
4 N.W. (Square 1300, Lot 815).

5 CHAIRPERSON MOLDENHAUER: Thank you if
6 the applicant would please introduce herself.

7 MS. SAUM: My name is Jennifer Saum and
8 I'm here to represent Chipotle Mexican Grill, I'm
9 with Galvin Faher(ph sp) Architects in Columbus,
10 Ohio.

11 CHAIRPERSON MOLDENHAUER: Okay Ms. Saum,
12 my first question is for a preliminary issue was
13 I have a letter of authorization from Chipotle
14 Mexican Grill who is the tenant but one of the
15 things that we require actually that there's a
16 letter of authorization from the actual property
17 owner where here would be the landlord. I don't
18 believe your application contains that, is that
19 correct?

20 MS. SAUM: If it wasn't there then I
21 believe no it did not.

22 CHAIRPERSON MOLDENHAUER: So that would be

1 something that you'll have to leave the record
2 open for and you'll have to get a letter from the
3 landlord providing authorization as a supplement
4 to the record.

5 MS. SAUM: Okay.

6 CHAIRPERSON MOLDENHAUER: That being said
7 we can continue, I think that this is a fairly
8 straight forward case, I think that we have a
9 couple of questions about some of the trash
10 issues but other than that I think we can just go
11 into questioning rather than having you present
12 the entire aspect of the case.

13 MS. SAUM: Okay essentially we're looking
14 for a special exception to allow a Chipotle
15 Mexican Grill which is a fast food restaurant, in
16 the zoning district, the C-2-A District with the
17 NOPD Overlay. Chipotle will not have a drive
18 through at this location and there are 24
19 interior seats with minimal patio seats on the
20 outside.

21 CHAIRPERSON MOLDENHAUER: And the patio
22 seats as shown in one of the exhibits would be on

1 the parking lot side not on the Wisconsin side
2 correct?

3 MS. SAUM: Correct, as far as any other
4 concerns with respect to the special exception I
5 believe the Chipotle Mexican Grill meets a
6 majority of those if not all of those
7 requirements. We're not required to provide any
8 additional parking since we're less than 3,000
9 square feet; I know there is a shared parking lot
10 in the back of the building that is shared
11 amongst all of the tenants. I guess at this time
12 I would open up to any questions from the Board,
13 do you have any specific questions for me?

14 CHAIRPERSON MOLDENHAUER: Okay, there are
15 some factors under 733 that this application does
16 not satisfy such as the fact that this property
17 is actually in a combined lot or the lot is in
18 multiple Districts including matter fact that its
19 actually adjacent to an R-3 zone, do you think
20 that having a fast food establishment would have
21 a negative impact on the residential portion of
22 the community which is to the rear.

1 MS. SUAM: No I do not believe it will,
2 we do not have any other speakers at this
3 establishments, low lighting levels, I mean with
4 Bruegers Bagels a couple of doors down which I
5 believe they are also considered a fast foot
6 restaurant establishment, I don't believe that we
7 will negatively impact the neighborhood.

8 CHAIRPERSON MOLDENHAUER: Okay, the trash
9 dumpster and enclosure, that from my record is
10 going to be relocated potentially by the
11 landlord, have you had communications you know
12 where that's going to be relocated to?

13 MS. SAUM: Is it alright if I bring the
14 land owner up to speak?

15 CHAIRPERSON MOLDENHAUER: Absolutely,
16 yes.

17 MR. ISEN: Good afternoon my name is
18 Richard Isen; I represent the landlords who are
19 the Isen Brothers General Partnership, which I am
20 one of the Isen brothers. I will answer to the
21 best of my ability whatever question you have.

22 CHAIRPERSON MOLDENHAUER: Wonderful well

1 then we probably won't need to supplement the
2 record I'll just ask you right now if you
3 authorize Ms. Saum to represent you in
4 conjunction with your potential tenant?

5 MR. ISEN: Yes.

6 CHAIRPERSON MOLDENHAUER: Okay, so then
7 that addresses the first issue, thank you for
8 stepping forward. The second question then is
9 right now from my understanding correct me if I'm
10 wrong the trash dumpster is located I guess to
11 the far side of the property closest to where you
12 enter, from the 37th Street, is that correct.

13 MR. ISEN: The current trash dumpster
14 enclosure is actually nearest to the buildings.

15 CHAIRPERSON MOLDENHAUER: Oh it is
16 nearest to the buildings, okay.

17 MR. ISEN: See there's a retaining wall
18 and that's like the rear wall of the current
19 dumpster then it's built out currently with wood
20 and that's where the dumpsters are right now it's
21 just Bruegers.

22 CHAIRPERSON MOLDENHAUER: Just for

1 clarification, is this the location of the old
2 Blockbuster?

3 MR. ISEN: It's in the same little...

4 CHAIRPERSON MOLDENHAUER: It's in the
5 same complex so the parking then is that same
6 shared parking as the old Blockbuster.

7 MR. ISEN: This used to be Pizza Hut.

8 CHAIRPERSON MOLDENHAUER: Yes, I was just
9 trying to get my bearings and we were having a
10 discussion looking at things and trying to get
11 our bearings on things.

12 MR. ISEN: This would be the current
13 dumpster right behind where Pizza Hut was.

14 CHAIRPERSON MOLDENHAUER: And that is
15 right now adequately fenced, I believe there's a
16 fence on that dumpster currently, on all sides?

17 MR. ISEN: Yes.

18 CHAIRPERSON MOLDENHAUER: And in regards
19 to the parking I know that it's a matter of
20 whether there's sufficient off street parking.
21 Does Bruegers utilize the majority of the spaces
22 right now or are there typically spaces available

1 for another tenants customers?

2 MR. ISEN: I mean there's typically
3 spaces available, people come in and out, people
4 are there for an hour, two hours tops so there's
5 constantly people going in an out.

6 CHAIRPERSON MOLDENHAUER: I don't have
7 any other questions for the applicant or his
8 agent; is there any questions from the Board
9 Members? Seeing none thank you both, do you have
10 any additional information that you would like to
11 supplement for the Board or supply the Board?

12 MS. SAUM: No.

13 CHAIRPERSON MOLDENHAUER: Okay, then at
14 this point in time I'll look to the audience to
15 see if there are any individuals in support or in
16 opposition, seeing nobody in the audience in
17 support or in opposition, we'll then turn to the
18 Office of Planning for their report.

19 MR. JACKSON: Good afternoon Madam Chair,
20 Members of the Board. My name is Arthur Jackson,
21 I'm a Development Specialist at the D.C. Office
22 of Planning and I'm here to answer any questions

1 about our report which is before you. I can
2 basically summarize it by saying that we
3 generally think that the application meets the
4 standards for approval, we just had questions
5 about the final determination of how the dumpster
6 arrangements be finalized and we stated that in
7 our report. So that concludes our summary of
8 what we provided before you and we're available
9 to answer questions.

10 CHAIRPERSON MOLDENHAUER: Well my question
11 Mr. Jackson would be based on the testimony from
12 the landlord would you be able to now review the
13 733 standard and is your analysis that they would
14 satisfy their standards.

15 MR. JACKSON: He hasn't provided any more
16 information.

17 CHAIRPERSON MOLDENHAUER: Well then can
18 you maybe expound upon what exactly you would
19 need clarification on in regards to the dumpster
20 that would provide you with more information and
21 maybe you could direct me to the report.

22 MR. JACKSON: Sure if you look at the

1 applicant submitted a set of photographs if you
2 look at the set of photographs provided by the
3 applicant, the very back photograph the Brueggers
4 Bagel Bakery and the fenced in enclosure, that's
5 on the back page, okay now if you look on the
6 next to the last page the one that has the front
7 of the building where the lease sign is and it
8 has the actual rear door of the proposed use.
9 You know that the fence that's an enclosure area
10 is right next to the building. My understanding
11 is that in order to put a patio out there they
12 really need to remove that fence, and this fence
13 wasn't actually, right now it's just being used,
14 it seems to be used for storage of equipment
15 rather than dumpsters. So my question is since
16 the existing dumpster enclosure appears to be
17 filled with two large dumpsters and this was
18 going to be relocated, what are the plans of the
19 relocation of the portion that's closest to the
20 building and furthermore since existing enclosure
21 does not meet the standards of the regulation
22 would the relocated dumpster be more in line with

1 the standards of the regulations. At this point
2 I haven't seen anything showing me, I haven't got
3 additional information to address those
4 questions.

5 CHAIRPERSON MOLDENHAUER: Then I'm going
6 to turn back to the applicant and if you can
7 address those questions please with more
8 specificity.

9 MS. SAUM: The area of the dumpster or
10 the current enclosures, there's two there
11 currently, the one with the two dumpsters and the
12 one storing equipment. The smaller one is the
13 one that's going to be completely removed by the
14 landlord in order to provide the area for
15 Chipotle's patio. As far as the larger enclosure
16 that is currently only being used by Brueggers
17 right now, so the believe that they'll be able to
18 adequately support both Bruegers and Chipotle
19 those two dumpsters in that existing enclosure.

20 MR. JACKSON: So you're saying that
21 Chipotle would be sharing not only the space but
22 the dumpster that's in the space.

1 MS. SAUM: Not the dumpster, there will be
2 two dumpsters in there but yes the space, the
3 enclosure itself.

4 MR. JACKSON: I guess my confusion is
5 that it appeared to me that those two large
6 dumpsters basically filled the space, now maybe
7 that was the wrong interpretation. Is there space
8 inside of that?

9 MR. ISEN: Yes sir we looked into that
10 the dumpsters that Bruegers has they are actually
11 more on the small side and their on wheels they
12 move around and we were told there was plenty of
13 room for another one so that they could share the
14 space and put a little wall down the middle of it
15 so they could each have their own gate.

16 MR. JACKSON: Okay so there is, my
17 observation on site was that it appeared although
18 it's entirely enclosed it appeared that the two
19 large dumpsters occupied most of the space so the
20 idea of a third dumpster coming in there didn't
21 seem to be possible but based on your
22 explanation, so your saying that you'll be

1 removing the smaller area that appeared to
2 enclosure for equipment, that's where your
3 outdoor sitting would be, and your retaining the
4 existing enclosure, you'll just be adding
5 Chipotle's dumpsters into that space?

6 MR. ISEN: Yes sir.

7 MR. JACKSON: Okay based on if that's the
8 additional information required and we think in
9 terms of additional description, the, lets go
10 back to this photograph of the, just in terms of
11 additional explanation. You note that there's a
12 building next to Chipotle that sits up on a hill.
13 There's an incline, a difference in elevation,
14 all the residents to the rear next to adjacent
15 street, and the businesses to the front along
16 Wisconsin Avenue are all at a higher elevation.
17 So that on the same side as the proposed use the
18 businesses next door and the residents are at a
19 higher elevation. There's a hillside that goes
20 up and there's fences along those businesses so
21 the existing location of the dumpsters would not
22 impact those businesses. Furthermore the

1 residents that are across the parking lot are way
2 across the parking lot in fact they're all the
3 way across, it's a high rise building. So the
4 location does not seem even though the gates of
5 this dumpster enclosure would open towards those
6 residents it's further away than it would have
7 been if there had been an alley between the
8 dumpster location and the residential district.
9 So I think the residents to the south are
10 adequately protected, the residents businesses to
11 the north are protected by the (INAUDIBLE) of the
12 property and so I think to grant with the
13 additional information provided to grant a waiver
14 of the standards for the enclosure and not
15 opening to residential uses would not be
16 detrimental to the neighboring properties or
17 adjacent uses. So we would support the waiver
18 based on additional information.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much; do any Board Members have any questions for
21 the Office of Planning? Thank you. Does the
22 applicant have any questions for the office of

1 planning, if you could just indicate that on the
2 record?

3 MS. SAUM: No I do not.

4 CHAIRPERSON MOLDENHAUER: Then at this
5 point in time we can turn back to the applicant.

6 I'm actually going to ask the applicant to
7 supplement the record with an actual
8 architectural sketch or diagram of the site
9 including the rear showing the existing trash
10 dumpster locations identifying which ones will be
11 removed and then also providing for a scale
12 demonstration of how three dumpsters can fit into
13 the current existing larger dumpster. Also
14 showing if there will be any potential cover, top
15 cover to that dumpster in regards to elevations
16 as OP you described in other words shading that
17 from the view of rear properties to the north.
18 I'm not sure if you wee planning on putting any
19 sort of a cover over the top of the top section
20 of the dumpsters if their going to roll out or if
21 their not. If your not planning on that then I
22 would just like a description of how the

1 applicant does not believe that it would be
2 visible by the elevation of things, how that
3 would not be something that would create a
4 detriment to those neighboring properties to the
5 north in regards to the dumpster visibility.
6 That's all I have I think that will clarify in my
7 mind and provide a fuller record so that we have
8 a demonstration exactly addressing some of these
9 points under 733 as to where the dumpster will go
10 and how that will be provided. Since there would
11 be potentially two fast food establishments be
12 permitted in the zone right next door to each
13 other. What would be your timeframe potentially
14 that you would be able to pull that together and
15 get that to our office to supplement the record.
16

17 MS. SAUM: I would probably need some
18 additional information from the landlord. If we
19 get some additional information on the dumpster
20 enclosure as far as actual dimensions on the
21 inside, outside any screening walls they plan to
22 build down the center and then from there I

1 should be able to provide you something. If I
2 get that information this week I could probably
3 get you something before the Thanksgiving
4 Holiday.

5 CHAIRPERSON MOLDENHAUER: Well I'm going
6 to look at the landlord and obviously I think
7 it's in his best interest to get that information
8 and will you work with Ms. Saum and make sure
9 that's obtained by the end of this week so she
10 can get that information to us by the 24th which
11 is next Wednesday.

12 MR. ISEN: We can go over there right now
13 if you like.

14 CHAIRPERSON MOLDENHAUER: Okay I always
15 like making sure that their reasonable deadlines
16 and that we're not going to be passing deadlines.
17 So I will require that any supplemental
18 information as I left the record open for are
19 provided by November 24th and we will put this on
20 the calendar for a decision on November 30th.

21 MS. SAUM: Will I need to be present at
22 the decision?

1 CHAIRPERSON MOLDENHAUER: You will not,
2 anybody can, these programs are webcast live you
3 can logon to the website and view the decision
4 from the internet and have an idea obviously how
5 the decision has been rendered and then the
6 office of zoning will provide a copy of the order
7 once its finalized.

8 MS. SAUM: Thank you.

9 MR. MOY: Madam Chair, just for a second
10 for the submission for the deadline of Wednesday,
11 November 24th, the applicant can file before 12
12 o'clock noon (INAUDIBLE) there's some speculation
13 that the day before Thanksgiving (INAUDIBLE),
14 thank you.

15 CHAIRPERSON MOLDENHAUER: Mr. Moy I think
16 we also made the prior applicant have a deadline.

17 MR. MOY: I've already...

18 CHAIRPERSON MOLDENHAUER: Okay good, just
19 wanting to make sure we're all on the same page.

20 Okay fabulous, well then what we'll do is you'll
21 have the deadline of noon I just want to make
22 sure that's on the record. Noon on November the

1 24th and we'll schedule this for a decision on
2 November 30th. Do any Board Members have any last
3 questions or any additional information that they
4 would like to see from the applicant. Seeing
5 none, then we will conclude this hearing except
6 for those documents specifically requested, thank
7 you. That concludes our day and we will
8 reconvene following the holiday on November 30th.
9 (Conclusion of meeting)

10

11

12

13

14

15

16

17

18

19

20