

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING
December 14, 2010
9:29 a.m. through 2:32 p.m.

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

Board Members

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

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Conclusion of Meeting
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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 December 14, 2010, Public
5 Meeting of the Board of Zoning Adjustments for
6 the District of Columbia. My name is Meredith
7 Moldenhauer, Chairperson, joining me today to my
8 right is Jeffrey Hinkle, Representative of the
9 National Capital Planning Commission and to my
10 left is Conrad Schlater, our representative of
11 the Zoning Commission. Copies of today's meeting
12 agenda are available to you and are located to my
13 left in the wall bin near the door. We do not
14 take any public testimony at our meetings unless
15 the Board asks someone to come forward. Please
16 be advised this proceeding is being recorded by a
17 court reporter and is also being webcast live,
18 accordingly we must ask you to refrain from any
19 disturbing noises or actions in the hearing room.
20 Please turn off all cell phones and beepers at
21 this time. Mr. Secretary, do we have any
22 preliminary matters?

1 SECRETARY MOY: There are no major
2 preliminary matters to speak of for this
3 morning's session Madam Chair.

4 CHAIRPERSON MOLDENHAUER: Thank you then
5 we'll proceed with our first case for decision.

6 **Application No. 18114**

7 MR. MOY: The first is Appeal No. 18114,
8 this is a Ward Five Improvement Association,
9 pursuant to 11 DCMR 3100 and 3101 from an April
10 21, 2010, decision by the Zoning Administrator to
11 grant certificates of occupancy, these are
12 numbers 1001838 and 1002471 for a restaurant with
13 a nightclub not a sexually oriented business
14 establishment in the C-M-2 District at premises
15 2127 Queens Chapel Road, N.E. the property is
16 located (Square 4258, Lot 34) As the Board will
17 recall on December 7, 2010, the Board tabled it's
18 decision to December 14th because of the lack of a
19 required quorum the Board Members participating
20 to recap Madam Chair the Board allowed briefs
21 into the record from the parties, these briefs
22 are in your folders identified from the three

1 filings as followed, the first is from the
2 Appellant's closing argument identified "Exhibit
3 30" dated December 1, 2010, the second filing is
4 from the Appellee DCRA dated November 29, 2010,
5 identified as "Exhibit 28" and finally the
6 closing statement from the intervener the
7 property owner dated December 1, 2010, filed as
8 "Exhibit 31", the Board is to act on the
9 substantive merits of the appeal and the Board
10 should also act on the two or three motions to
11 this appeal and that completes the Staff's
12 briefing Madam Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much Mr. Moy. What we'll do is we'll first
15 address some of the preliminary matters before
16 getting to the merits of the case. First is a
17 question of standing which has been raised by
18 both the intervener and DCRA whether or not the
19 Appellant had standing as an association asking
20 an association be required that one of its
21 members actually had standing in it's own right
22 and thus in this case the Appellant indicates

1 that the association has a membership of the
2 First Church Apostle Church which is located at
3 2130 24th Place, N.E. and that it is an abutting
4 property owner and thus would have had standing
5 in it's own right and that it and two other
6 members of the association live just down the
7 street from the Stadium Club. I think the later
8 factor of the two other member I don't think is
9 specific enough to satisfy the standard but I
10 think that the first statement and the assertion
11 but at the hearing and in the motions that the
12 First Church is a member of the association do
13 satisfy the standards and that if the burden will
14 then have switched back to the individuals, the
15 moving parties and to show that potentially this
16 membership was either not valid or was not valid
17 at the time, I think that there was not enough
18 evidence to counter that and I think we have
19 sufficient information in our record to show that
20 is, that the Church would have had standing in
21 it's own right and assertions under oath before
22 this Board is sufficient to satisfy standing in

1 my opinion but what I'll do is I'll open up the
2 Board for questions or for the deliberation on
3 this point so we can move forward. Seeing none
4 then I think we're all in agreement for standing
5 and we'll move forward then. The next question
6 would be timeliness, the question before us is
7 whether or not the appeal is timely due to the
8 fact that there is a April 2, 2010, initially of
9 temporary C of O and then the appeal is for the
10 April 21st I believe it is C of O and the question
11 was brought on motion by DCRA of timeliness. I
12 think there is no evidence in our record that the
13 Appellant had knowledge of this initial C of O
14 and we have to determine whether the Appellant
15 had knowledge or should have known of this C of
16 O, the night club and restaurant had not yet
17 opened until later on around the 20th and the 21st
18 the date of the second C of O and thus I think
19 this appeal is timely and there's nothing that
20 would lead us to believe that he had knowledge
21 all of the correspondents that we see back and
22 forth, the emails to DCRA all seem to start

1 generation, start to occur from the Appellant
2 after the time in which the nightclub actually
3 opened, so I don't see an issue with timeliness,
4 I think that there's no information in our record
5 that he had knowledge of that prior C of O since
6 they had not yet opened. That being said I'll
7 open up the floor and I'm seeing shaking heads is
8 there any additional deliberation on that issue?
9 Seeing no additional deliberation on that issue
10 then I think all three Board Members are in
11 agreement that the appeal passes this question of
12 timeliness and that motion would then be denied.
13 Then the question is we go to the merits of the
14 case question of whether or not the ZA erred on
15 issuing the temporary C of O and then issuing the
16 final C of O, the appeal was revised that both
17 the temporary and the final C of O are under
18 appeal today and we look to the definition of a
19 SOBE and whether or not the ZA had reasonable
20 information to believe or should have potentially
21 conducted any further investigation to determine
22 whether or not the application before him

1 qualified as a SOBE or did not qualify as a SOBE
2 under the definition we have to look at pretty
3 much, what it is a two pronged test under 199.1
4 as to live performances and whether or not a
5 substantial portion of those live performances
6 relate to specified sexual activities and
7 specified anatomic areas, specified anatomic
8 areas is defined in the regs as parts or less A
9 then completely or opaquely covered human
10 genitalia and I think that the ZA understood and
11 new that the performers were going to be fully
12 nude and so thus the ZA understood that portion
13 of the SOBE definition would be satisfied and
14 then the question is he had to determine whether
15 or not since it's an and whether and if there
16 were going to be specific sexual activities. The
17 specific sexual activities has been another two
18 pronged test and the ZA had to determine whether
19 both A acts of human masturbation, sexual
20 intercourse or sexual stimulation or arousal,
21 sodomy or bestiality occurred and I think that
22 based on the record that there was confirmations

1 that there was acts of sexual stimulation and
2 arousal and especially based on California Steak
3 House in which they go through and discuss this
4 definition again talking about nude dancing and
5 sexual stimulation, the fact that order states
6 that if the ZA meant that sexual stimulation or
7 arousal had to include touching there would have
8 been no need to separate and identify it on the
9 list of activities so I think that based on the
10 prior case law in the California Steak House case
11 the ZA then said okay well A is definitely
12 satisfied and now the crux of the case is then
13 under B and is B fondling or other erotic
14 touching of human genitalia, buttocks or breasts
15 occurring at the establishment. So we now have
16 to go to what type of information the ZA had
17 before him at the time he made this decision both
18 initially, when he made the decision to grant the
19 temporary C of O and then when he made the
20 decision, the later decision on, June 22, so the
21 question of what information did the ZA have
22 before him on June 22, when he was confirming

1 that this establishment was acting under either a
2 SOBE or under a non-SOBE and I look at both the
3 testimony and also the ZA indicated that he
4 discussed information with the applicant that he
5 reviewed the plans in this case which was very
6 different than many of the other C of O I know
7 the ZA reviews. A numerous amount of C of O's at
8 one time but he obviously did not, could not tell
9 the physical layout of the plans whether or not
10 this glass prong of the SOBE standard was being
11 satisfied or not. So he had discussions with the
12 applicant which obviously go above and beyond the
13 typical approval process of any C of O. The he
14 asked for in an email based on a FOIA we have he
15 asked for a letter from the applicant and
16 unfortunately in this letter I see nothing that
17 actually addresses the standard. This is an
18 April 1, 2010, letter from the owner, Keith
19 Fornay, and it says, it references there are only
20 3 feet corridors between the patrons and all new
21 dancers, there will be no contact of sexual
22 nature between the patron and the dancer

1 performing in the club and there will be no
2 contact rule of naked dancing and a patron
3 occurring. This to me in no way shape or form
4 addresses the actual prong which is eluding me as
5 to how the ZA would make a rationale decision as
6 to whether or not this is a SOBE. It doesn't
7 address the dancer's activities, whether the
8 dancers will be touching themselves or engaging
9 in fondling or other erotic touching. So I think
10 that falls short in my mind and then we have in
11 the transcript under page 310 of the transcript
12 there was questions from the Board and the Board
13 asked the ZA as to whether or not he goes out and
14 conducts checks and he said he doesn't typically
15 do that however in the absence of a complaint or
16 any evidence that brought to my attention I don't
17 just go out. Then the Board asked the question
18 do you go out sometimes when you get a complaint
19 and review. His answer, Mr. LeGrant's answer was
20 absolutely. I think that again raises a question
21 of an error of the ZA, we have evidence in the
22 record that the Appellant while maybe not brining

1 up the exact issue of fondling or erotic touching
2 he does raise questions and raise complaints in
3 regards to whether or not this C of O was issued
4 correctly prior to the final issuance of the C of
5 O we also have the notice from the Office of
6 Zoning which is in our record "Exhibit No. 5"
7 which states that on June 15th the ZA had notice
8 of this appeal prior to the issuance of that
9 final C of O and I would come down to the fact
10 that he erred in not conducting further
11 discussions or due diligence between that time
12 frame when he had then received complaints, have
13 received notice of appeal. I think that even
14 initially that initial letter from the property
15 owner was not sufficient to address the exact
16 question as to whether or not this establishment
17 was in fact were it not a sexually oriented
18 business establishment. That being said I'm
19 going to open up the floor to further
20 deliberation.

21 MR. HINKLE: Yes thank you Madam Chair I
22 think you were pretty thorough in your analysis.

1 As you mentioned there were temporary C of O's
2 issued before the club opened, one on April 2nd,
3 and one on April 25th, and you know when issuing
4 these C of O's we heard that the ZA looked at the
5 application, the floor plans as you mentioned,
6 the letter written by Mr. Fornay as well as
7 representations from him in person. He also
8 looked at the relevant zoning regulations in
9 particular those having to do with a SOBE and at
10 the time I don't think that based on his
11 experience and his expertise that the Zoning
12 Administrator actually erred in issuing these C
13 of O's and this is because under the definition
14 as you mentioned of a SOBE that sexual activity
15 is to occur for it to be a SOBE, but we do have a
16 unique situation here in that the club was
17 operating under a temporary C of O when the final
18 C of O was issued on June 22nd. Regardless of the
19 testimony that we did here about specified sexual
20 activities that were occurring at the club prior
21 to the issuance of a permanent C of O in June I
22 do find it a bit remarkable that the Zoning

1 Administrator did not visit the club during
2 business hours to verify that it was not
3 operating under the definition of a Sexually
4 Oriented Business Establishment within the
5 regulations. As you mentioned we also learned
6 that there were emails exchanged before the
7 issuance of the final C of O between Mr. Padou
8 and the DCRA and subsequently the zoning
9 administrator. These emails did relate Mr.
10 Padou's concerns about specified sexual activity
11 occurring at the club prior to the issuance of
12 the final C of O. You also noted that the zoning
13 administrator learned of the appeal itself prior
14 to the issuance of the final C of O and for me I
15 think these facts should have caused some concern
16 with the zoning administrator and I do think he
17 should have done additional research in how the
18 club was operating and whether it was in fact
19 operating as a sexually oriented business
20 establishment. I think that if, had the Zoning
21 Administrator visited the club during the
22 business hours prior to the issuance of the final

1 C of O and found that it was not operating as a
2 sexually oriented business then we would be
3 having a different conversation right now. But
4 as such I do believe that there was an error in
5 issuing the final C of O and I would like to hear
6 what my other colleague thinks.

7 MR. SCHLATER: Thank you, I have to say
8 this is the first case I've encountered that
9 surrounds the definition of the sexually oriented
10 business establishment and frankly don't like the
11 definition the way it's written in the zoning
12 regs today it's counter intuitive frankly and
13 that nude dancing does not equal a sexually
14 oriented business establishment but the fact
15 remains that given the regs that we have before
16 us that nude dancing does not equal a sexually
17 oriented business establishment, fundamentally
18 what we're here to determine today is whether or
19 not the Zoning Administrator granted the
20 certificate of occupancy rightly. I'm falling
21 down on the side of the Zoning Administrator in
22 this particular case. When you look at the

1 information that the Zoning Administrator had he
2 actually did more investigation into this
3 particular case than he does not most C of O's
4 that come before him, he had meetings with the
5 applicant for the C of O, he spent a fair amount
6 of time going through the actual definition of
7 the regs, so he went through said does this
8 establishment going to meet the test. I think
9 where he came out was that specified sexual
10 activities were not going to occur at this club
11 and so I think Madam Chair and Mr. Hinkle I think
12 you raise an issue about process and what's the
13 right process for the Zoning Administrator to go
14 through to make that determination? Did the
15 Zoning Administrator have sufficient
16 information at that time to make that
17 determination, the only way I can evaluate that
18 is through the record which I've reviewed
19 thoroughly and subsequent to the Zoning
20 Administrator making that evaluation we've had a
21 lot of information that's been given to us around
22 the nightclubs rules and how it operates and why

1 it operates the way it does and for me it seems
2 like what the owner of the Stadium Club has done
3 is set up an establishment that's designed to go
4 right up to the line of what a sexually oriented
5 business establishment is and not cross that
6 line. If you read the rules of the club I think
7 it's clear that you know, specified sexual
8 activities are not supposed to occur within the
9 establishment. Now I think there is some
10 evidence on the record that there have been
11 instances where those rules have been broken and
12 I think it's up for the Zoning Administrator from
13 an enforcement perspective to figure out whether
14 or not that means the certificate of occupancy
15 should be revoked. From the a standpoint of
16 whether the C of O was issued properly my
17 judgment is that the Zoning Administrator rules
18 correctly, I don't want to get into what process
19 he goes through every time in evaluating SOBE C
20 of O or any other C of O, my sense is if we asked
21 the Zoning Administrator to go back out there and
22 investigate today based on the record and the

1 information we have on the record that he would
2 go out there and he would do his investigation
3 and he would say this is not a SOBE. So I think
4 we're hung up on process right now, I think that
5 the reality is that this club is not a SOBE it's
6 a nude dancing establishment, it's a nightclub,
7 and it's a restaurant. I think the Zoning
8 Administrator was in the right in this one.

9 CHAIRPERSON MOLDENHAUER: Well obviously
10 I think that, you know, I disagree I think that
11 this question of we have to review, we have to
12 step into the shoes of the ZA and evaluate what
13 information he had at the time and I think that
14 at the time he had information that questioned
15 whether or not the prior information he had which
16 is discussions with the property owner, he didn't
17 go back after receiving complaints, after
18 receiving the appeal and having emails from Nick
19 Magett forwarded, none of these emails were
20 directly sent to Mr. LeGrant the record is clear
21 on that however he did have these emails
22 forwarded to him and that there were some

1 concerns. He then did not go back and engage in
2 a conversation with the applicant confirming if
3 he done that maybe he would have gotten a copy of
4 those rules, he would have gotten additional
5 information, and he did not do that. He did not
6 go and coordinate with the complainant and
7 determine exactly what information the
8 complainant had or maybe didn't have at that
9 time. I think that in the situation such as this
10 where the definition as you said I don't think
11 the definition is perfect but we deal with what
12 we have before us in the regulations, cannot be
13 evaluated based on the plans, he can't look at
14 them and say okay yeah, there's a dishwasher,
15 there's not a dishwasher, this is a fast food
16 establishment, he can't look at the cueing lines,
17 he has to really go on the assertions of the
18 property owner and I think that by having
19 complaints beforehand he should have raised the
20 level and maybe he did additional scrutiny, I
21 agree with you, he doesn't have conversations
22 with every C of O applicant but he didn't do any

1 of that activity prior to issuing the final C of
2 O and that's where I have a problem.

3 MR. SCHLATER: Madam Chair you did
4 mention the letter from Keith Fornay to Matt
5 LeGrant on April 1, and I agree that letter does
6 not go into the specific prongs of what a
7 sexually oriented business establishment is, but
8 it does state plainly, Mr. Fornay states plainly
9 as we indicated the club will be in strict
10 compliance with the zoning as well as the ABC
11 liquor license requirements, then it goes through
12 some of the measures that are being taken to stay
13 in compliance with those regulations. So I don't
14 know what else Mr. LeGrant has to go on. I think
15 when somebody fills out a C of O application
16 that's a legal document, they're stating we are
17 going to comply with the zoning regulations and I
18 don't know that Mr. LeGrant had to do, I just
19 don't think he had to go any further than this,
20 he had already gone pretty far in his
21 investigation and I don't know, that letter to me
22 is evidence that Mr. LeGrant had done more

1 investigation and had received additional
2 assurances that this was not going to be more
3 than a nude dancing establishment.

4 CHAIRPERSON MOLDENHAUER: But don't you
5 see that this letter, I think that this letter is
6 actually clearer in conjunction with some of the
7 emails back and forth that there's a confusion
8 that maybe by the ZA or maybe by the property
9 owners as to what would be in compliance. They
10 talk about the three foot corridor between the
11 patron and the nude dancer, the zoning regs and
12 the SOBE definition talk nothing about the
13 distance, it talks about whether there will be
14 physical contact with the patron and the dancer,
15 that's not even really part of the, you know,
16 when we're looking at nude dancing, we're looking
17 that nude dancing satisfies the sexual arousal
18 elements, the question really is, is there going
19 to be fondling or touching, they don't address
20 that issue at all. Furthermore in the email from
21 the Appellant Mr. Padou to Linda Argo and then
22 back and forth Mr. Magett responds on behalf of

1 the Director Argo who oversees the ZA and says
2 that the C of O is in compliance and is operating
3 within the scope of it's C of O because so long
4 as the performers are at least 18 inches off of
5 the floor and at least 3 feet and not touching
6 the customers, I think that there's a clear error
7 here that the ZA and maybe even the property
8 owner or whatever at the time based on the record
9 shows that there's an error in what their
10 understanding was when evaluating this, that
11 somehow they thought the distance between the
12 patrons or the physical touching of the patrons
13 would satisfy or not satisfy SOBE when that has
14 nothing to do with, my review of the definition
15 of a SOBE as it is it has to do with whether or
16 not the dancers will be physically fondling
17 themselves and things to that effect. Obviously
18 to me that shows that there was an error.

19 MR. SCHLATER: I think you're right Madam
20 Chair in that there is confusion in terms of the
21 ABRA Regulations and the Zoning Regulations
22 sometimes they get conflated just like sometimes

1 building code regulations get confused with
2 zoning regulations, that's something that
3 happens. The real question in my mind is, is
4 this a SOBE or not? Based on the evidence before
5 me I'm not seeing that it is a SOBE, I see rules
6 that specifically talk about the dancers not
7 being allowed to touch themselves, I read
8 testimonies specifically about how they enforce
9 those rules and that indicates to me that there
10 is a knowledge of what is required under the
11 zoning regulations for this. I agree that, that
12 email that you pointed out is confusing the
13 issue.

14 CHAIRPERSON MOLDENHAUER: I think that
15 the question, you're looking at evidence that
16 goes to the current operation which you talk
17 about as an enforcement issue. I'm looking at
18 this as simply as what did the ZA have
19 potentially beforehand or had potential
20 information that he could have gotten at the
21 time. He didn't ask for a copy of the rules. He
22 should have gone back and gotten a copy of the

1 rules, he should have asked for more information
2 but he didn't. There was a complaint and there
3 was information that did not specifically go to
4 the prongs of the standard that he was required
5 to enforce prior to issuing a C of O.

6 MR. SCHLATER: I guess the question is
7 from a process standpoint if you read the ZA's
8 prehearing statement it says that DCRA's
9 interpretation of 11 DCMR 199.1 is that a nude
10 dancing establishment is not considered a SOBE
11 under the zoning regulations. Further DCRA only
12 issued a C of O for the Stadium Group after
13 receiving assurances from the clubs owner that
14 the club would be operated in compliance with the
15 zoning regulations. Then subsequently see letter
16 of Keith Fornay attached here as "Exhibit C",
17 specifically DCRA understood that the performance
18 would be limited to nude dancing period. I guess
19 my question is how are we going to arbitrarily
20 set the bar of what activities the zoning
21 administrator should undertake in order to make
22 this determination. I'm uncomfortable with

1 dictating the process for the Zoning
2 Administrator, all I see is that the Zoning
3 Administrator did go through a process and
4 collected a substantial amount of information and
5 then made an informed judgment and I'm also
6 confident that he understood based on the, I
7 forget what the case is, the California
8 Steakhouse Case, that he did understand what in
9 fact the zoning regulations intended with respect
10 to SOBE. I understand where you're coming from
11 Madam Chair; I'm just a little uncomfortable
12 raising the bar for the zoning administrator on
13 this particular issue.

14 CHAIRPERSON MOLDENHAUER: Just one last
15 point I don't think I'm raising the bar for the
16 zoning administrator going back to the
17 transcript, the zoning administrator stated that
18 he personally would absolutely conduct spot
19 checks or other discussions or review if he had a
20 complaint that again is on page 310 of the
21 transcript. I'm not raising it he's saying that
22 based on the facts of the case that he would have

1 done that but then he didn't do that in this case
2 when he did have complaints and he did have an
3 appeal on his desk. That being said I don't know
4 if we're going to get much further so why don't
5 we submit a motion, I think we'll go through the
6 process but I think what's going to happen is
7 we're going to be at a standstill because it's
8 going to be a 2 to 1 vote and then what we'll
9 have to do is since we don't have, we'll have to
10 either potentially wait for a third member of
11 the, the mayor to appoint a third individual to
12 this case that we can make a final decision.
13 That being said maybe what we'll do is we'll try
14 to articulate some points and I think what I'm
15 going to do is I'm just going to jump through
16 this and we'll articulate maybe some points that
17 we can see, to maybe go back and ask the parties
18 to submit additional briefs based on this
19 discussion that maybe can provide some additional
20 insight or some additional maybe from my
21 perspective maybe looking at what authorities the
22 ZA has under maybe his regs to confirm or maybe

1 to challenge his authority to conduct any further
2 reviews something to that effect and address some
3 of these kind of discussions back and forth
4 because otherwise this case will stand in a
5 pretty much at a standstill until we get an
6 additional member appointed by the mayor. So
7 that being said I'll actually go through formal,
8 go ahead.

9 MR. SCHLATER: One thing Madam Chair, I
10 will say that if the Zoning Administrator were to
11 go back out, I guess the question I would have
12 for you is if the Zoning Administrator were to go
13 back out to the Stadium club and do that
14 investigation and determined in his reasonable
15 judgment that this was not a SOBE and then were
16 to reissue the C of O on that basis or confirm
17 his issuance for the C of O on that basis would
18 that make you comfortable that the process has
19 been followed?

20 CHAIRPERSON MOLDENHAUER: Yes I think
21 that there are certain things that the ZA could
22 and should do in the future if based on where I'm

1 standing on my determination of the case and if
2 that occurs and he says okay, when we did a spot
3 check or we got additional confirmations from the
4 property owner that these activities are not
5 occurring and as you indicated I agree with you I
6 think the property owner is really trying to walk
7 this really thin line between where the dancers
8 are not engaging in any of the section B of
9 sexually specific activities and if he went out
10 there and said okay when I went out there and
11 observed or when they submitted additional
12 confirmation or whether he then received
13 potentially some of the affidavits that we have
14 in this case which contradict the applicants
15 statements and he fully reviewed those he could
16 say it is or it is or not a SOBE, then at that
17 point if he says when I went out there, or when
18 we went out there, there was none of those
19 activities occurring, then the issues a non SOBE
20 C of O and it would then be an enforcement issue.
21 I'm not looking at the question of enforcement
22 I'm looking simply at based on the information

1 that he had done and correctly issue a final C of
2 O. Are you trying to suggest maybe a course of
3 action between obviously our final, when we do
4 our motions and we hit a standstill?

5 MR. SCHLATER: I'm just trying to find a
6 way so that we can get resolution on this case.
7 I feel uncomfortable dictating to the ZA how his
8 process should be undertaken, but I guess what
9 I'm saying if it's just a matter of process then
10 maybe that's a path the ZA should consider.

11 CHAIRPERSON MOLDENHAUER: Lets do this
12 I'm going to submit a motion a motion to grant
13 the appeal, is the motion seconded?

14 MR. HINKLE: Second.

15 CHAIRPERSON MOLDENHAUER: The motion's
16 been seconded, all those in favor say aye, aye.
17 All those opposed. Motion then fails for lack of
18 since it's a 3 to 1 vote.

19 MR. SCHLATER: I'd like to move that we
20 deny this appeal.

21 CHAIRPERSON MOLDENHAUER: Motions been
22 made is there a second? Motion fails for a lack

1 of a second. Now if there are any motions as to
2 maybe actions or information that we could
3 receive. What we'll do is we'll leave the record
4 open for the next 30 days so Mr. Moy 30 days from
5 now would be?

6 MR. MOY: A little on the short end of 30
7 days would be January 11th, but I would suggest
8 January 25th.

9 CHAIRPERSON MOLDENHAUER: Okay, so we'll
10 leave the record then open until January 25th
11 potentially to receive any additional information
12 or for potentially the ZA to maybe take on his
13 own some additional action which then we may be
14 able to consider at that point in time, I think
15 we'll leave it open at that point we'll leave
16 open I think based on our discussion and
17 deliberation I think all the parties understand
18 maybe how they could supplement the record and we
19 will then come back after that date. What we'll
20 do is we'll give ourselves two weeks after that
21 date, what would that be Mr. Moy, two weeks after
22 the 22nd?

1 MR. MOY: That would be...

2 CHAIRPERSON MOLDENHAUER: So we'll leave
3 the record until January 21st and then...

4 MR. MOY: Okay here we go, that takes us
5 to February the 8th.

6 CHAIRPERSON MOLDENHAUER: Okay then we'll
7 put this back on decision for February the 8th.
8 Thank you, next case for decision.

9 **Application 18147**

10 MR. MOY: That would be Application No.
11 18147, Eun Sun Kim pursuant to 11 DCMR 3104.1 for
12 a special exception to allow a fast food
13 establishment under Section 733 in the C-2-A
14 District at premises 1100 Eastern Avenue, N.E.
15 (Square 5200, Lot 805). On December 7, 2010, the
16 Board completed public testimony, closed the
17 record and scheduled its decision on December
18 14th, the Board requested that the applicant
19 submit additional information to supplement the
20 record by December 9' 2010, the applicant filed
21 his post hearing document on that date and that
22 document is identified at "Exhibit 30" in your

1 case folders. The Board is to act on the
2 substantive merits of the special exception
3 relief and that completes the Staff's briefing
4 Madam Chair.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much, there will be no testimony from any of the
7 applicants during this portion, I am not on this
8 case so I'll turn to Mr. Hinkle to start off the
9 deliberation.

10 MR. HINKLE: Thank you Madam Chair. The
11 applicant in this case as we heard is proposing
12 to operate a fast food establishment in an
13 existing building; the building has housed a
14 carry out restaurant under a C of O to operate a
15 seafood store and carryout. The applicant has a
16 new leasee of the property has applied for a new
17 C of O for a fast food establishment. In a
18 letter dated September 24, 2010, which is our
19 "Exhibit No. 4" the Zoning Administrator denied
20 the applicant the request and referred him to the
21 Board for zoning relief as a special exception
22 under Section 733. I want to point out that we

1 do have a letter from the property owner Mr.
2 Fredric Ensy; this is dated October 12, 2010,
3 which is our "Exhibit 21", that authorizes this
4 applicant to file this application with the
5 Board. Section 733 allows the Board to approve a
6 fast food restaurant subject to a few provisions
7 which are in place to ensure that the fast food
8 establishment does not become objectionable to
9 the neighborhood and these include separation
10 from residential districts some provisions to
11 screen the trash as well as have sufficient
12 parking among other provisions. Also under
13 Section 733 the Board may impose conditions on
14 the establishment which ensure that nearby
15 properties are protected. As part of the file
16 the Board received a letter from Ms. Sylvia Brown
17 which was dated December 3, 2010, I don't have an
18 exhibit number for that, but Ms. Brown is the
19 Commissioner for ANC-7-C-04 and this letter
20 requests that the applicant take a number of
21 actions, these included removing the railing from
22 the stores entrance and perimeter, prominently

1 displaying no loitering signage on the premises,
2 installing secure fencing for the trash
3 collection area as well as finalizing the
4 business hours and days of the week among many
5 other provisions. So at the hearing on December
6 7th Ms. Brown did testify not representing the
7 full ANC but as the ANC Commissioner for the
8 property that she has been working with the
9 applicant to address some of the issues outlined
10 in her letter. We also heard from Mr. Young the
11 applicant, representing the applicant at the
12 hearing, that they have begun to work on the site
13 to address these issues in particular they have
14 removed the trash dumpster from the parking lot
15 to the side of the building and place wooden
16 slats within an existing chain link fence, and
17 they have placed no loitering signs on the
18 premises, they have also looked into removing the
19 railings at both the buildings entrance and the
20 perimeter. We also have heard some proposed
21 hours of operation for this facility during the
22 hearing. We also have an Office of Planning

1 report which is our "Exhibit 25", and heard from
2 OP at the hearing that they were unable to
3 recommend approval of the applicant pending some
4 clarification in particular they were looking for
5 some clarification on the exact proposed location
6 of the dumpster, the method of screening the
7 dumpster, the adequacy of facilities for the
8 removal of the garbage and the proposed hours of
9 operation. I believe once we heard some
10 testimony at the hearing the representative of
11 the Office of Planning was satisfied with some of
12 the testimony in regards to these issues. So as
13 noted by Mr. Moy at the end of the hearing the
14 Board then left the record open for the applicant
15 to provide some additional writing or some
16 clarification on some items. These included
17 providing the hours of operation, trash
18 collection times during the week, days and times
19 of food deliveries, proposal to repair, replace
20 the existing chain link fence with wooden slats
21 around the trash refuse container, the removal of
22 the existing metal guardrail and how the

1 applicant proposes to relocate the refuse
2 dumpster. In a letter dated December 9' 2010,
3 which is our "Exhibit 30", Mr. Young did respond
4 to the Board to I think which his best ability
5 was given the limited time to respond. In this
6 letter he stated that the hours of operation are
7 from 8 to 8 Monday through Saturday, that the
8 chain link fence with slats will be improved by
9 January 15, 2011, in accordance with ANC and Ms.
10 Deborah Jones, that the railing in the parking
11 lot will be removed by January 15, 2011, and the
12 remaining poles are in discussion with Ms.
13 Deborah Jones for further arrangements, that the
14 trash collection is on every Thursday between 11
15 am and 2pm and the size of the trashcan is two
16 cubic yards and that the delivery hours are from
17 10 am to 2 p.m. I'm actually satisfied with
18 these efforts that the applicant has been making
19 as such I would be inclined to support this
20 application with some conditions related to it,
21 and that is that the hours of operation would be
22 from 8 am to 8 pm, that the fence around the

1 dumpster be improved in accordance with the ANC,
2 that the railings in the parking lot to be
3 removed and that the trash is collected at a
4 minimum of once per week.

5 MR. SCHLATER: Mr. Hinkle as I recall
6 there was more than one railing in the lot, there
7 was one immediately in front of the entrance and
8 I think there were some others located on the
9 property. All of them would be removed?

10 MR. HINKLE: That's correct.

11 MR. SCHLATER: I support your analysis on
12 this I think the applicant has met the test for
13 special exception in this case. The only place
14 where they have not met the threshold is on the
15 enclosure of the trash, which I think per our
16 zoning regulations needs to be a brick enclosure,
17 but there's been an arrangement worked out
18 between, as long as that enclosure is built in
19 conformance with the wishes of the ANC and
20 there's a deal that's worked out there, I think
21 I'm comfortable letting this application move
22 forward and approving the special exception.

1 MR. HINKLE: Thank you and I think I
2 would like to make a motion for this, motion for
3 the Board to approve Application No. 18147 of Eun
4 Sun Kim for a special exception to allow a fast
5 food establishment under section 733 in the C-2-A
6 District at premises 1100 Eastern Avenue, N.E.
7 This motion would be to keep the trash dumpster
8 enclosed by the side of the building and screened
9 by a chain link fence with wooden slats, with the
10 Board waiving the requirements of Section 733.4
11 for a brick enclosure. And with the following
12 conditions; that the hours of operation are from
13 8am to 8pm and that the fence around the dumpster
14 be improved in accordance with the ANC, that the
15 railings both in front of the structure as well
16 as along the perimeter of the parking lot be
17 removed and that the trash is collected a minimum
18 of once per week.

19 MR. SCHLATER: Second.

20 CHAIRPERSON MOLDENHAUER: Motions been
21 made and seconded, all those in favor.

22 CHORUS: Aye.

1 CHAIRPERSON MOLDENHAUER: I believe we
2 have an absentee ballot Mr. Moy?

3 MR. MOY: Yes Madam Chair before I give
4 the final vote, the other participant on the
5 application is Ms. Nicole Sorg and her absentee
6 ballot is to approve the application with such
7 conditions that the Board may impose, so that
8 would give a final vote of 3 to 0 to 2 on the
9 motion of Mr. Hinkle to approve the special
10 exception relief under Section 733 with the
11 conditions as proposed and seconded the motion of
12 Mr. Schlater and again Ms. Sorg to approve and of
13 course approval in support of the motion. So the
14 final vote again is 3 to 0 to 2 to approve.

15 CHAIRPERSON MOLDENHAUER: Thank you very
16 much Mr. Moy and seeing that there is no
17 opposition in this case the Board would also want
18 to raise the requirements and issue a summary
19 order.

20 MR. MOY: Very good thank you Madam
21 Chair.

22 CHAIRPERSON MOLDENHAUER: That being said

1 what we're going to do is we're going to take a
2 quick five minute recess, we have two foreign
3 mission cases that we will first decide after
4 this and then we will go into some additional
5 decision cases for the morning and then after
6 those decision cases are finalize we have two
7 cases for the morning that we'll get to at that
8 point in time, thank you.

9 Recess

10 CHAIRPERSON MOLDENHAUER: Okay we're
11 reconvening the morning decision cases and we'll
12 have the next case on the morning decision
13 agenda.

14 **Application No. 18131**

15 MR. MOY: Yes good morning Madam Chair,
16 Members of the Board, these next two cases are
17 chancery cases as you said the first being
18 Application No. 18131 of the Embassy of the
19 Peoples Republic of China, this is pursuant to 11
20 DCMR 1002 to permit the construction of a new
21 chancery and embassy staff residential building
22 as a replacement for an existing chancery and

1 embassy staff residential building in the R-1-B
2 and R-5-D District at premises 2300-2310
3 Connecticut Avenue N.W.(Square 2526, Lot 197) On
4 November 9, 2010, the Board completed public
5 testimony closed the record and scheduled it's
6 decision on December 14th, the Board allowed the
7 record to remain open for the filing of a comment
8 letter from the Commission of Fine Arts by
9 November 30, 2010, and any responses to that
10 letter from the applicant. Madam Chair in your
11 case folders there are two filings, the first is
12 a letter from the Commission of Fine Arts, dated
13 November 29, 2010, identified as "Exhibit 52",
14 the second filing is the applicants response
15 dated December 1, 2010, identified as "Exhibit
16 53" in your case folders. The Board is to act on
17 the substantive merits of the application and
18 that will complete the Staffs briefing Madam
19 Chair.

20 CHAIRPERSON MOLDENHAUER: Thank you I'll
21 start off our deliberation on this chancery case
22 before us and we are looking at the proposed

1 replacement of a chancery and an embassy staff
2 residents for the government of the people of
3 China and they're looking for relief under 402
4 for maximum far rear yard and roof structures of
5 an unequal height, loading berth relief and also
6 extend the regulations of the R-5-D District into
7 the R-1 District. I will incorporate the
8 analysis of the Office of Planning report in my
9 review and I think that in reviewing the
10 different standards for a foreign missions case
11 we look to the different agencies in which they
12 have authority to advise us on how to review both
13 the security issues and the potential issues of
14 historic preservation landmarks so based on that
15 I'll reference our letters in the report from the
16 Department of State and their letters of support
17 and consideration of the joint efforts both here
18 and abroad in regards to trying to approve this
19 application, and in addition to that we have then
20 the Board has to consider issues of adequate off
21 street parking and extend which areas will be
22 served the public transportation to reduce

1 parking requirements and in that case that's also
2 determined by the Secretary of the State and in
3 reviewing that I think there's been sufficient
4 parking, there was discussions of off street
5 parking and bicycle parking and bicycle racks I
6 think that was addressed sufficient at the
7 hearing and in the record we received additional
8 documentation showing the type of bike racks that
9 were going to be provided. In addition to that
10 the property is located very near to both DuPont
11 Circle Metro and Woodley Park Metro. We also
12 then take into consideration the municipalities
13 of the Mayor and in that regard the Office of
14 Planning has submitted their recommended approval
15 and we then take a look at some of the other
16 letters that we have, we have letters of support
17 from the Sheridan Kalorama Historical Association
18 and other neighboring properties. Any concerns
19 that we received in regards to this project I
20 think were mostly based on construction and
21 timing and issues to effect that we really don't
22 consider as part of our review but in general

1 everything that we did receive in regards to this
2 application were letters of support from the
3 neighboring community including individuals from
4 the Woodward which is the neighboring apartment
5 building nearby and we have two or three
6 different letters of support from that
7 condominium nearby and as I said any of their
8 concerns were mostly touching on issues that are
9 not part of our deliberation process in these
10 types of cases. That being said we also left the
11 record open in this case as Mr. Moy indicated for
12 a letter from the CFA and we received that prior
13 to this hearing and it was dated November 29'
14 2010, and its our "Exhibit No. 53" and in that
15 letter the CFA reviewed and approved the concept
16 and design so we can consider that as well. That
17 being said I see no issues with approving this
18 application or rather not disapproving this
19 application. That being said I'll open up the
20 floor to any further deliberation.

21 MR. MAY: I agree with the chair there's
22 no reason not to move ahead and not disapprove

1 the application at this time.

2 CHAIRPERSON MOLDENHAUER: Okay well then
3 I will submit a motion to not disapprove
4 Application No. 18131 for a requested special
5 exception relief at 2300 and 2310 Connecticut
6 Avenue, N.W. for relief under 4021, 4041, 41111,
7 2001.1 and 2514.2, a motion has been made is
8 there a second?

9 MR. ACOSTA: I second.

10 CHAIRPERSON MOLDENHAUER: Motion has been
11 made and seconded, all those in favor say Aye.
12 Aye.

13 CHORUS: Aye.

14 MR. MOY: Madam Chair before I give a
15 final vote count there is also an absentee ballot
16 from another participating Board Member Ms.
17 Nicole Sorg and her absentee vote is to approve
18 or rather to not disapprove the application with
19 any conditions that the Board may impose, so that
20 would give a total final vote of 4 to 0 to 1,
21 this on the motion of the Chair Ms. Moldenhauer,
22 seconded by Mr. Acosta, in support of the motion

1 Mr. May and of course Ms. Sorg, so again the
2 final vote count is 4 to 0 to 1.

3 MS. NAGELHOUT: Madam Chair I just want
4 to weigh in a second. You moved to grant all the
5 relief, the zoning issues, your obviously moving
6 to grant not to disapprove location of the
7 chancery, the whole application in total, I just
8 want to make sure, thank you.

9 **Application No. 18136**

10 MR. MOY: The next chancery case is
11 Application No. 18136, this is of the Government
12 of the United Arab Emirates pursuant to 11 DCMR
13 1002, to permit the renovation and expansion of
14 an existing embassy building for chancery use in
15 the D/R-3 District, that premise is 2406
16 Massachusetts Avenue, N.W., property is in
17 (Square 2507, Lot 52), on November 9, 2010, the
18 Board completed public testimony, closed the
19 record and scheduled it's decision on December
20 14th, again here the Board allowed the record to
21 remain open for receipt of a comment letter from
22 the Commission of Fine Arts. And the applicant

1 the ability to respond. Madam Chair the only
2 filing in your case folders is a letter from the
3 applicant dated December 10, 2010, identified in
4 your case folders as "Exhibit 36". The Board is
5 to act on the substantive merits of the
6 application and that completes the Staff's
7 briefing Madam Chair.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much Mr. Moy. As you indicated we have not yet
10 received a response yet from the CFA, we left the
11 record specifically open for that. That being
12 said even though we do have a request to continue
13 on for final deliberation today I think what
14 we're going to do is while still working within
15 our requirements for finalizing a decision in
16 this case I think we can postpone the decision
17 providing the CFA enough time to provide us any
18 sort of input after their January meeting. Set
19 this for decision on January, I believe...

20 MR. MOY: Yes I believe it would be
21 January 25th.

22 CHAIRPERSON MOLDENHAUER: January the

1 25th and that way we will then be able to finalize
2 this decision on time.

3 MR. MOY: Again Madam Chair just to
4 remind the Board that meeting would our decision
5 meeting also would begin at 1 o'clock on January
6 25th.

7 CHAIRPERSON MOLDENHAUER: Yes, seeing a
8 potential question from the attorney in this case
9 I'll permit him to step forward and we'll hear
10 from him briefly.

11 MR.FIOLA: I guess I would ask you to
12 think about approving, or not disapproving this
13 case absent CFA, we filed the application as we
14 were told by the State Department, they didn't
15 take it up, I don't know if they'll take it up in
16 January, I don't know if they'll take it up ever
17 so we made the application and we're going to CFA
18 and their issues are going to be design related I
19 would suggest which I'm not sure is what the BZA
20 is charged with looking at, so I guess I would
21 ask the Board to think about approving it and if
22 CFA does something that changes this approval

1 we'll have to come back to you but I guess I
2 don't anticipate that.

3 CHAIRPERSON MOLDENHAUER: I think the
4 reality is that we left the record open
5 specifically for the applicant to submit
6 information timely and I think that while your
7 information may have been submitted I think that
8 based on the timeframe for the CFA it was
9 submitted maybe after they were able to get it
10 onto the November Meeting. We had a case right
11 before this that had the same date and they were
12 able to submit it and they got a letter back from
13 the CFA so what we're trying to do is since
14 there's no meeting in December for the CFA and
15 obviously this was not yet able to be put on the
16 CFA's agenda for November we're leaving it open
17 so that if the CFA decides to put it on their
18 agenda for January we can then make the decision
19 right after that. We're still within the
20 timeframes that we're obligated to make a
21 decision on a foreign mission case so that being
22 said I don't think that we are prejudicing this

1 applicant that much by just simply waiting an
2 additional one month and so I see no reason why
3 we need to push ahead if there are comments then
4 obviously we need to review those agencies
5 decisions in part of our deliberation. Do any
6 Board Members have any additional thoughts on
7 that issue?

8 MR. MAY: I would concur with your
9 statement Madam Chair.

10 MR. ACOSTA: Yeah I would also, I think
11 the key thing here is that the application or the
12 information just didn't get to CFA in time to get
13 it on the agenda, submitting is on the 15th of
14 November when their meeting is on the 18th is not
15 enough time for them and we just want to make
16 sure we have the benefit of their input.

17 MR. FIOLA: Not to start an argument but
18 we were told by the Statement Department not to
19 file a CFA they were working out an arrangement
20 between the Federal Agencies so we held off
21 filing and that's why we're late.

22 MR. MAY: I appreciate that so I

1 understand that it may not have been in your
2 control, nonetheless we still want to get the
3 input from the Commission.

4 CHAIRPERSON MOLDENHAUER: So that being
5 said what we'll do is we'll leave the record
6 open and we'll make this decision then on I
7 believe it was January 25th at 1 o'clock, we have
8 training in the morning. So thank you then that
9 concludes that decision and we'll revisit that.
10 The next case for deliberation.

11 **Application No. 18141**

12 MR. MOY: Yes Madam Chair that would be
13 Application 18141 of Jubilee Housing, LLC,
14 pursuant to 11 DCMR 3103.2 for a variance from
15 the floor area ratio requirements under
16 (Subsection 771.2) to allow additions to an
17 existing building for office use in the C-2-B
18 District at premises 2448 18th Street, N.W.
19 (Square 2551, Lot 42). On November 30, 2010, the
20 Board completed public testimony, closed the
21 record and scheduled this decision on December
22 14th, the Board requested additional information

1 to supplement the record by Wednesday December
2 8th, from both the applicant and ANC 1-C, Madam
3 Chair there are two filings in your case folders,
4 the first is from the applicant dated December
5 8th, 2010, identified as "Exhibit 33", the second
6 filing is the ANC 1-C letter dated November 30,
7 2010, this was initially filed through email on
8 November 30th identified in your case folders as
9 "Exhibit 32", the Board is to act on the
10 substantive merits of the variance relief from
11 the FAR under FAR requirements under (Subsection
12 771.2). That completes the Staff's briefing
13 Madam Chair.

14 CHAIRPERSON MOLDENHAUER: Thank you very
15 much Mr. Moy. As indicated on the record this
16 case is before us for a variance and during the
17 hearing we heard an extended discussion from the
18 applicant regarding the need for this renovation,
19 the fact that the existing condition and layout
20 of the building created this exception
21 circumstance and that the need for the upgrade
22 was imperative and it would create a need for a

1 level three alteration. I think the Board during
2 the time of the hearing was still fighting with
3 whether or not this applicant satisfied the
4 standards of a variance and obvious the variance
5 test is one of the more strenuous or strict
6 standards that we have to apply in these cases.
7 That being said we were looking to see if
8 potentially we could apply Monaco as the Jubilee
9 Housing LLC is a non-profit association but
10 seeing that they don't know the exact tenant that
11 will be involved and even though they have made
12 assurances that they will use the building for
13 the similar mission I think there has been some
14 other cases where the commission and the BZA have
15 both confirmed that Monaco is not that broad and
16 that it does not extend potentially to the
17 mission of a nonprofit or the desires of
18 nonprofit but rather the needs of a nonprofit and
19 since we cannot specifically say that I don't
20 think that we can provide the flexibility of the
21 Monaco Standard here, that being said we'd have
22 to determine whether on it's own this property

1 based on it's layout based on the prior
2 conditions of the property, based on the
3 additional submission we have photos from the
4 architect showing the structural instability as
5 testified by the architect of the staircases, the
6 collapsing ceilings that appears to be the other
7 extreme conditions in the property and I would
8 say that while I think this case is very thin, I
9 think it just barely satisfies the standards
10 based on a confluence of factors, one being the
11 initial layout, two being the condition of the
12 property at the time the property owner obtained
13 it and then three being the requirements for an
14 elevator which then again goes back to the first
15 issue of creating this challenging layout and
16 that they have to require to have an elevator
17 based on a level three alterations as provided by
18 the architect in the most recent submission, they
19 outline the extended building code requirements
20 and how that is an obligation since they are
21 going to be altering a work area that exceeds 50%
22 of the aggregate area. Based on the fact that

1 the building has structural issues which must be
2 addressed for any use and I think that's an
3 important issue to for any use. I think that the
4 property does satisfy the first prong and I think
5 the first prong is inherently related to the
6 practical difficulty for the applicant to satisfy
7 these requirements and conform with the building
8 code standards and then I don't see any negative
9 impact of any impact on the intent of the zone
10 plan or the neighborhood, in face we have one of
11 the additional submissions that we had was the
12 ANC's letter of support and we have as our
13 "Exhibit No. 32" a motion from ANC 1-C supporting
14 the application and they indicate at a duly held
15 public meeting on November 3rd with a quorum of 6
16 to 8 that they voted unanimously to support this
17 application so that would receive great weight
18 and that would be something that we would
19 consider. In addition to that there was support
20 of the community in general of this application
21 and I would be willing to submit a motion to
22 approve but I'll first see if there's any further

1 deliberation.

2 MR. HINKLE: No Madam Chair I think your
3 analysis was pretty clear and I am certainly in
4 agreement with your conclusions.

5 CHAIRPERSON MOLDENHAUER: So then I'll
6 submit a motion to approve Application No. 18141,
7 for variance relief pursuant to Section 771.2 to
8 allow 3.1 FAR to be devoted to office use in a C-
9 2-B District at 2448 18th Street, N.W., a motion
10 has been made is there a second?

11 MR. HINKLE: Second.

12 CHAIRPERSON MOLDENHAUER: Motion has been
13 made and seconded all those in favor say aye,
14 aye.

15 CHORUS: Aye.

16 MR. MOY: Madam Chair, before I give the
17 final vote we have two absentee ballots from two
18 participants on the application. The first
19 absentee ballot is from Mr. Gregory Selfridge and
20 his absentee vote is to approve the application
21 with any conditions that the Board may impose.
22 The second absentee ballot is from Ms. Sorg who

1 participated and her absentee vote is to approve
2 with any conditions the Board may impose that
3 would give a final vote of 4 to 0 to 1, no other
4 Board Members participating, this is on the
5 motion of the chair to approve the application,
6 seconded by Mr. Hinkle and of course in support
7 of the motion, Ms. Sorg and Mr. Selfridge.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much Mr. Moy with no opposition in this case we'd
10 like to waive our requirements and ask for a
11 summary of order to be issued.

12 MR. MOY: Very good thank you.

13 **Application No. 18138**

14 MR. MOY: The next case for Board action
15 is Application No. 18138 of St. Paul's Rock Creek
16 Parish, pursuant to 11 DCMR 3104.1 for a special
17 exception to allow a private school and child
18 development center 120 students ages 2.5 through
19 12 years and 18 staff members, under Sections 205
20 and 206 in the R-3 District at premises 210
21 Allison Street, N.W., no new construction is
22 proposed, this property is on (Parcel 11/037), on

1 November 30, 2010, the Board completed public
2 testimony, closed the record and scheduled it's
3 decision on December 14th, the Board left the
4 record open to allow ANC 4-C to file it's letter
5 of resolution, Madam Chair there is a filing in
6 your case folders from ANC 4-C dated December 7,
7 2010, identified as "Exhibit 37". With that the
8 Board is to act on the substantive merits of the
9 special exceptions to allow a private school and
10 a child development center under Sections 205,
11 and 206, that complete the Staff's briefing Madam
12 Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much Mr. Moy. We have a case before us that I
15 think is fairly straight forward the major issue
16 we had in this case was an issue of traffic
17 concerns and how this new school would be
18 operated in regards to the access to the property
19 and flow through that neighborhood. We had a
20 discussion with the DDOT representative at the
21 hearing, discussions with the applicant, their
22 traffic expert and I think at the end of the day

1 it came down that it would be, the way that the
2 applicant submitted it's recommended traffic flow
3 was sufficient, I think that their recommendation
4 to gain access from Rock Creek Road going into
5 the school would be sufficient and as exiting the
6 school exiting on Allison Street. There were
7 some concerns from DDOT about the Webster Street
8 left hand turn access for those individuals
9 coming potentially from the south on Rock Creek
10 taking a left at Webster, but I think at the end
11 of the day during the discussion ended up
12 determining that was not an issue for the
13 applicant but more an issue for DDOT that
14 intersection potentially had been one that DDOT
15 already had prior concerns about and they were
16 going to be keeping an eye on that. We had
17 letters in our record from some of the neighbors,
18 we had a party status application but the
19 individual did not attend the hearing and the
20 applicant indicated that they had internal
21 discussions with that concerned neighbor and
22 potentially assuaged some of her concerns but

1 they were concerned about access through the
2 neighborhood and Allison Street and I think by
3 confirming that it was going to be a one in at
4 the Rock Creek and only out at the Allison Street
5 would reduce any potential traffic flow through
6 the neighborhood and would also satisfy some of
7 the concerns of DDOT. That being said they were
8 really, since this is a 83 acre plot of land that
9 St. Paul's Church, Rock Creek Parish has, there's
10 really no concerns on the other elements of our
11 203 analysis for special exception for a child
12 development center in my mind in regards to off
13 street parking concerns, noise from potential
14 outdoor play spaces and any concerns about
15 screening or fencing, I think in my view this is
16 a great combination of two good purposes, you
17 know to be able to use an area that the church
18 does not currently use for a child development
19 center and I think that any potential concerns of
20 the neighborhood will be worked out in a period
21 of time. That being said I think when we get to
22 the point of approval with conditions I think we

1 will condition this on a shorter timeframe based
2 on the fact that we currently don't know, right
3 now there is no such use at the church there are
4 some concerns about traffic flow to make sure
5 that any concerns that may occur are able to be
6 addressed quickly through a short termed approval
7 and then they can come back and if there are no
8 issues after that period is up then obviously
9 this can move forward. That being said I would
10 recommend approval, and I'll just kind of outline
11 some of the conditions that I would most likely
12 recommend and then we can discuss those.

13 Approval for 120 children ages 2.5 to 12 with
14 hours of operation from 8am to 6pm with access
15 into the facility from Rock Creek and Webster
16 Street and access out of the facility from
17 Allison Street. I would recommend and this will
18 be a discussion potentially anywhere from a three
19 to a five year term and so I'll leave that up for
20 discussion and I'll open up the floor for any
21 further deliberation.

22 MR. HINKLE: Yeah, thank you Madam Chair,

1 you know I think this is a good use for the site,
2 it seems appropriate and I think the proposed use
3 also meets many of the provisions under Section
4 205 for the special exception. I also continue
5 to have some concerns about the traffic and we
6 have heard from some neighbors about their
7 concerns as well so I think the condition to
8 restrict traffic flow for entering the site on
9 Webster Street and exiting the site on Allison is
10 appropriate. I'm also up for a shorter term on
11 this, I think simply because it is a new use at
12 the site and the concerns about traffic I do
13 think a shorter term would allow some recourse to
14 the neighborhood if there are some issues that
15 come up. With that being said otherwise I would
16 support the application with the conditions that
17 you said.

18 CHAIRPERSON MOLDENHAUER: Okay so I'll
19 submit a motion, a motion to approve Application
20 No. 18138 at 211 Allison Street, N.W. for a
21 special exception pursuant to 205 and 206 to
22 permit a child development center and a private

1 school within the R-3 District with conditions of
2 120 children from 2.5 to 12 years old from 8am to
3 6pm for a five year term. Motion has been made
4 is there a second.

5 MR. HINKLE: Madam Chair did you want to
6 add the condition about the access?

7 CHAIRPERSON MOLDENHAUER: Yes and I'll
8 incorporate my prior references of the condition
9 of the entrance only on Rock Creek and Webster
10 and exit only on Allison, thank you. The motion
11 has been made is there a second?

12 MR. HINKLE: Second.

13 CHAIRPERSON MOLDENHAUER: Second, all
14 those in favor say aye, aye.

15 MR. MOY: Before Staff gives a final vote
16 count Madam Chair there are two absentee ballots
17 in the record from two participating members on
18 the application. The first from Gregory
19 Selfridge and his absentee ballot is to approve
20 the application with such conditions as the Board
21 may impose, the second absentee ballot is from
22 Ms. Nicole Sorg and her absentee vote is to

1 approve with such conditions as the Board may
2 impose. So Staff would record vote as 4 to 0 to
3 1, this on the motion of the Chair Ms.
4 Moldenhauer to approve the application under the
5 conditions of 120 children ages 2.5 to 12 years
6 old, I believe 18 staff members, hours of
7 operation 8am to 6pm, this is for a five year
8 term and I believe for access to the property
9 from Rock Creek and exit on Allison, and that
10 completes the conditions. Second the motion Mr.
11 Hinkle and again the final vote is 4 to 0 to 1.

12 CHAIRPERSON MOLDENHAUER: Seeing that
13 there's no opposition we would like to request a
14 summary of order.

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

17 CHAIRPERSON MOLDENHAUER: I think we have
18 one final case for decision?

19 **Application No. 17806**

20 MR. MOY: Yes absolutely and that is the
21 motion for a two year extension of the validity
22 of the order to Application No. 17806-A of Mid-

1 Atlantic Realty Partners, LLC pursuant to Section
2 3130 of the Zoning Regulations. The original
3 application which was approved on September 9,
4 2008, read as follows; pursuant to 11 DCMR 3103.2
5 for a variance for the lot occupancy requirements
6 under Section 772 a variance from the rear yard
7 requirements under Section 774 variance from the
8 limitation on compact parking spaces under
9 Section 2115.2 and a variance from the off street
10 parking loading requirements under (Subsection
11 2201.1) all this to permit the construction of a
12 multiple dwelling residential building with
13 ground floor retail in the DD/C-2-C District at
14 the Southeast corner at the Intersection of 6th
15 and K Street, N.W., (Square 484, Lot 23, 811-813,
16 and 826). At the Boards public decision meeting
17 on September 28, 2010, the Board convened and
18 granted the applicants request that the Board
19 delay or table it's decision under October 19,
20 2010, there have been subsequently two other
21 extensions of the Boards decision September 28th
22 and December 19th as I just read. There is a

1 filing from the applicant in your case folders
2 Madam Chair that arrived at the office yesterday
3 December 13, 2010, identified as "Exhibit 35",
4 the Board is to act on the substantive merits of
5 the request to extend the validity of the order
6 pursuant to Section 3130. That completes the
7 Staff's briefing Madam Chair.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much Mr. Moy. As you indicated this case is
10 before us for a requested extension in regards to
11 our standards under Section 3130.6 we have to
12 review whether or not these are, there has been
13 any substantial changes and the applicant has
14 submitted sufficient documentation to indicate
15 that there are not and in addition to that we
16 have a affidavit in support of the two year
17 extension of time stating that there is a report
18 and they actually have the attached report from
19 Cassidy Truly stating that they've had challenges
20 obtaining financing and that they've indicated a
21 number of lenders that they've actually
22 contacted, this would satisfy our new higher

1 standard and I see no issues now that we've
2 resolved some of the procedural issues with this
3 case to grant this application. That being said
4 I'll open up the floor for any further
5 deliberation on this. Seeing none then I'll
6 submit a motion, a motion to approve a request
7 for an extension under Application 17806.A, the
8 motion has been made is there a second?

9 MR. HINKLE: Second.

10 CHAIRPERSON MOLDENHAUER: The motion has
11 been made and seconded, all those in favor say
12 aye, aye.

13 MR. MOY: Madam Chair again as in the
14 proceeding applications we also have an absentee
15 ballot from a participate on this application and
16 it is from Mr. Michael Turnbull, his absentee
17 vote is to approve with any conditions the Board
18 may impose so that would give a final vote of 3
19 to 0 to 2, motion on the Chairperson Moldenhauer
20 to approve the request for a two year extension,
21 seconded by Mr. Hinkle, no other Board Members
22 participating again 3 to 0 to 2.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much Mr. Moy. I will request that we waive our
3 requirements and issue a summary order for that.

4 MR. MOY: Very good, thank you Madam
5 Chair.

6 CHAIRPERSON MOLDENHAUER: I believe that
7 concludes our morning meeting.

8 **Morning Hearing**

9 CHAIRPERSON MOLDENHAUER: This hearing
10 will please come to order, good morning ladies
11 and gentleman, this is the December 14, 2010,
12 Public Hearing of the Board of Zoning Adjustments
13 for the District of Columbia. My name is Meredith
14 Moldenhauer, Chairperson, joining me today to my
15 right is Jeffrey Hinkle, Representative of the
16 National Capital Planning Commission and to my
17 left is Peter May, representative of the Zoning
18 Commission. Copies of today's meeting agenda are
19 available to you and are located to the left in
20 the wall bin near the door. Please be advised
21 this proceeding is being recorded by a court
22 reporter and is also being webcast live.

1 Accordingly we must ask you to refrain from any
2 disturbing noises or actions in the hearing room.
3 When presenting information to the Board please
4 turn-on and speak into your microphone first
5 stating your name and home address. When you are
6 finished speaking please turn-off your microphone
7 so that your microphone is no longer picking up
8 sounds or background noise. All persons planning
9 to testify either in support or in opposition are
10 to fill out two witness cards these cards are
11 located to my left on the table near the door and
12 on the witness tables. Upon coming forward to
13 speak to the Board please give both cards to the
14 court reporter sitting to my right. The order of
15 procedures for special exceptions and variances
16 are as follows: 1. Statement and witness of the
17 applicant and applicant. 2. Party's and persons
18 in support 3. Party's and persons in opposition.
19 4. Government reports including the Office of
20 Planning and Department of Transportation and
21 other relevant agencies. 5. Reports from the
22 ANC. 6. Rebuttal and closing statements of the

1 applicant. Pursuant to Section 3117.4, and
2 3117.5, the following time constraints will be
3 maintained; the applicant appellant persons and
4 parties except an ANC in support including
5 witnesses will be given permitted 60 minutes
6 collectively to present its case. Apelles's
7 persons and parties except an ANC in opposition
8 including witnesses will be given 60 minutes
9 collectively. Persons testifying whether in
10 support or in opposition will be given three
11 minutes and organization will be given 5 minutes.
12 These time constraints do not include cross
13 examinations, or questions from the Board. Cross
14 examination of witnesses is permitted by the
15 applicant and parties. The ANC within which the
16 property is located is automatically a party to a
17 special exception or variance case. Nothing
18 prohibits the Board from placing a reasonable
19 restriction on cross examination including time
20 limitations, limitations on the scope. The
21 record will be closed at the conclusion of each
22 case except it will remain open for any materials

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

1 should or will be heard today such as a request
2 for postponement, continuance or withdrawal or
3 whether proper or adequate notice of a hearing
4 was given. If you are not prepared to go forward
5 now please let me know and if the Board should
6 believe that we should postpone the proceeding
7 now is the time to raise such a matter. Mr.
8 Secretary, do we have any preliminary matters?

9 MR. MOY: Madam Chair there are issues as
10 to affidavit of posting and party status but
11 staff would suggest that the Board address those
12 issues when we call the case.

13 CHAIRPERSON MOLDENHAUER: Very good, all
14 individuals wishing to testify today if you could
15 please stand and Ms. Bailey will administer the
16 oath.

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

21 CHAIRPERSON MOLDENHAUER: We will call
22 the first case and the party in the first case

1 you can please step forward and take a seat at
2 the table.

3 **Application No. 18149**

4 MS. BAILEY: Members of the Board good
5 morning, to everyone good morning as well. The
6 first case is Application 18149, it's of Michael
7 and Rosette Malone and it's pursuant to 11 DCMR,
8 Section 3104.1 for special exception to construct
9 a one story rear screened in porch addition to an
10 existing one family semi-detached dwelling under
11 Section 223, not meeting the lot occupancy
12 Section 403, side yard Section 405, and court
13 requirements at Section 406. In addition the
14 non-conforming structure requirements (Subsection
15 2001.3), the property is located at 623 C Street,
16 N.E., it is zoned R-4 and it's located in (Square
17 865, Lot 825).

18 CHAIRPERSON MOLDENHAUER: Good morning,
19 if you both could introduce yourself for the
20 record.

21 MR. MALONE: My name is Michael Malone,
22 this is my wife Rosette, and we own and reside at

1 property 623 C Street, N.E. We bought that
2 property is 1998, it came with a deck at the rear
3 of the house, and the deck is the width of the
4 house and extends from the rear of the house 10
5 feet. Regrettably it's difficult to use the deck
6 because of the mosquito problem in Washington,
7 we've tried the various techniques of citronella
8 candles and incense sticks and foggers and an
9 electric mosquito trap but none of those really
10 work and so we decided what the solution was, was
11 to screen in the deck and we retained the
12 services of Jennifer Fowler an Architect whose
13 designed a structure and has helped us with the
14 application process. We approached our neighbor
15 to the east, our house is attached to his house,
16 and he has no objection and has signed a letter
17 to that effect. We have approached the neighbor
18 to our west, that house is owned by a father and
19 a daughter, the daughter lives in the house the
20 father lives in Richmond, VA. The father is
21 somewhat concerned that the structure will make
22 his deck feel closed in; we've tried to work with

1 him on this over the past several months. We've
2 asked Jennifer to lower the roof line of the
3 screened in porch which she's done and I've tried
4 to erect a string line to indicate the roof line
5 of the screened porch so he would have some idea
6 what it looked like. His house extends six feet
7 beyond the rear of our house and his deck is then
8 beyond that distance. There is also a three foot
9 setback from our property line and another three
10 feet to his deck so there's a six foot distance
11 between his deck and the proposed screened porch.
12 There's also a large tree limb that extends
13 across from a tree in our house backyard across
14 to his property, that limb will be removed so
15 that will increase his light and I think there
16 will be a minimum impact on light and privacy and
17 air. I think the record is fairly complete; I
18 would rest on the record I believe. I would
19 point out that we've appeared before the ANC and
20 they voted unanimously to support our proposal,
21 we've appeared before the Capital Hill
22 Restoration Society, they too have voted

1 unanimously to support the proposal of the
2 Historic Preservation Organization is going to
3 sign off on the staff level after this meeting.

4 CHAIRPERSON MOLDENHAUER: Thank you, one
5 question I have procedurally is that we just
6 received your affidavit of posting on December
7 10th and we're supposed to receive that in advance
8 of the hearing by 15 days it said that you
9 obviously, you posted it on it looks like on the
10 30th which is insufficient time, but is there a
11 reason why this was late being provided to our
12 office?

13 MR. MALONE: I don't understand the
14 question I followed the rules I think it said
15 that I was to bring in a notarized copy five days
16 before this meeting which I did. With the
17 pictures and all of that.

18 CHAIRPERSON MOLDENHAUER: I don't have
19 the pictures attached, I just got this yesterday.

20 MS. BAILEY: Madam Chair there is pictures
21 in the file and I'll get it for you, just to
22 clarify the applicant did file one day late it's

1 due five days prior to the hearing it was to have
2 been received on the 9th, the applicant did file
3 it on the 5th so it's just one day late but we did
4 receive it last Friday.

5 CHAIRPERSON MOLDENHAUER: So procedurally
6 I mean was there a miscalculation on the
7 timeframe.

8 MR. MALONE: Since it was posted previous
9 to that I think we have no problem with waiving
10 our requirements I just want to make sure that we
11 address the issue. I see the pictures now, for
12 some reason I didn't have that in my record,
13 thank you very much. Do any Board Members have
14 any other questions for the applicant in regards
15 to the 223 Standard? Seeing none, thank you very
16 much, the Board has no questions. At this point
17 in time we'll turn to see if there's any
18 individuals in the audience in support or in
19 opposition of this case? Seeing none, then we'll
20 turn to the Office of Planning for their report.

21 MS. JACKSON: Good morning Madam Chair,
22 Members of the Board, for the record, my name is

1 Arlova Jackson with the Office of Planning, I'll
2 just be brief and say that the Office of Planning
3 recommends support of the requested special
4 exception and find it meets the standards for 223
5 approval. I'd be happy to take any questions you
6 have at this time.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much, is there any questions from the applicant
9 for the Office of Planning?

10 MR. MALONE: No.

11 CHAIRPERSON MOLDENHAUER: Do any of the
12 Board Members have any questions for Ms. Jackson?
13 Seeing none, thank you I think your report was
14 very full and I have no other questions. That
15 being said then is anybody present today from ANC
16 6-C? Seeing no one present I'll indicate that we
17 do have as the applicant indicated also "Exhibit
18 No. 25" which is a letter from ANC C-6 dated
19 December 13th stating that the ANC on December 6th
20 had a regularly scheduled duly notice meeting and
21 with a quorum of 7 out of 8 the Commission voted
22 7 to 0 to unanimously support this application.

1 That being said this letter will receive great
2 weight in support of this application. At this
3 point in time we'll turn back to the applicant
4 for any potential closing remarks.

5 MR. MALONE: I have none.

6 MS. MALONE: We hope you'll approve our
7 application.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much then at this point in time we'll conclude
10 the hearing and we'll enter into deliberation of
11 this case immediately. I will start us off we're
12 here with a 223 for a permitted rear addition to
13 a single family semi-detached house at 623 C
14 Street, N.E., this is a 223 Standard which we
15 need to evaluate whether or not the addition will
16 have any negative or substantial adverse effects
17 on the use or enjoyment of it's abutting
18 neighbors and whether it will have any impact on
19 the use and privacy of it's neighbors. I think
20 that we have a letter of support from one of the
21 adjoining neighbors in support which is our
22 "Exhibit No. 9", we also heard testimony from the

1 applicant that there was some concerns from the
2 other property owner but I don't believe they
3 would rise to the level of substantial adverse
4 impact or any unduly compromise their use or
5 privacy, I think that the applicant has taken
6 sufficient steps to try to accommodate some of
7 those concerns, the applicant indicated that they
8 were working with their architect to change some
9 of the roof heights and that layout in addition
10 to reducing the tree foliage by this addition
11 which will increase and kind of counteract some
12 of the potential effects of the screened in porch
13 and so that being said with the ANC's letters of
14 support I would be in favor of supporting this
15 application. I'll turn to see if any of my Board
16 Members have any additional deliberations?

17 MR. MAY: I would just comment that I
18 think this is a very modest request and it's been
19 well designed and well thought out and I think
20 the applicant has taken all the necessary steps
21 to seek approval not just from the Board but from
22 neighbors and the ANC and everyone else who has

1 an interest in the development of properties in
2 this neighborhood so I think this is a very
3 easily, fully supportable application.

4 CHAIRPERSON MOLDENHAUER: I agree, thank
5 you very much Mr. May. Any additional
6 deliberation? Seeing none then I'll submit a
7 motion, a motion to approve Application No.
8 18149, under 11 DCMR 3104.1 for special exception
9 to construct a one story rear screened in porch
10 addition to an existing one family single
11 detached dwelling under Section 223, not meeting
12 the lot occupancy under 403, side under 405,
13 court under 406, and non-conforming structure
14 under 2001.3, requirements in the R-4 District at
15 premises 623 C Street, N.E. Motion has been made
16 is there a second?

17 MR. HINKLE: Second.

18 CHAIRPERSON MOLDENHAUER: The motions
19 been made and seconded, all those in favor say
20 aye, aye.

21 CHORUS: Aye.

22 MR. MOY: Staff would record the vote as

1 3 to 0 to 2, this on the motion of the Chair Ms.
2 Moldenhauer approve the application request for a
3 special exception in 223 not meeting lot
4 occupancy 403, side yard 405, and open court
5 requirements under Section 406. Second of motion
6 Mr. Hinkle, in support of the motion Mr. Peter
7 May, no other Board Members participating. Again
8 the vote count is 3 to 0 to 2.

9 CHAIRPERSON MOLDENHAUER: Seeing that the
10 applicant has supported the ANC in no opposition,
11 no party's in opposition then we will request a
12 waiver of our requirements and summary order to
13 be issued.

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

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much.

18 MS. MALONE: Thank you very much.

19 CHAIRPERSON MOLDENHAUER: We can call the
20 next case.

21 **Application No. 18150**

22 MS. BAILEY: Madam Chair the second

1 hearing case of the day is Application 18150 it's
2 the application of Mariana Darwazeh and is
3 pursuant to 11 DCMR Section 3104.1 for a special
4 exception to construct a rear addition to an
5 existing one family detached dwelling under
6 Section 223, not meeting the Lot occupancy and
7 rear yard requirements that's Section 403 and
8 Section 404. The property is zone R-1-B it's
9 located at 4626 Charleston Terrace, N.W., (Square
10 1368, Lot 57).

11 CHAIRPERSON MOLDENHAUER: Thank you very
12 much, if the party could please introduce
13 themselves for the record?

14 MR. GHAZI: My name is Toni Ghazi I'm
15 here representing Mariana Darwazeh.

16 CHAIRPERSON MOLDENHAUER: I believe we
17 also have a request for a party status, of a
18 party status applicant is in the audience they
19 can come forward as well. We will first address
20 party status application. If you could introduce
21 yourself on the record please.

22 MS. HORVATH: Sure my name is Catherine

1 Horvath; I live at 4622 Charleston Terrace.

2 CHAIRPERSON MOLDENHAUER: Okay but we
3 have a (INAUDIBLE) our "Exhibit 24" the party
4 status request and I see that based on my review
5 of this request that the party status applicant
6 satisfies our standards and I would be willing to
7 grant the party status request, do any Board
8 Members have any other concerns? Seeing none
9 then I will first grant your party status and
10 you'll now be a party in the case. That being
11 said what we'll do is we're going to start off,
12 we'll let the applicant submit his case then at a
13 certain point I'll turn to you and then you can
14 present your case and your concerns, so first
15 I'll turn back to Mr. Ghazi to present on behalf
16 of the applicant.

17 MR. GHAZI: We're proposing to extend the
18 deck about 6 feet out, it's about 6 feet right
19 now, it's pretty tight you can barely put a table
20 and some chairs so we just want to push it out
21 about 6 feet to be a total of 12, it's as simple
22 as that.

1 CHAIRPERSON MOLDENHAUER: Are you aware
2 of the concerns of Ms. Horvath?

3 MR. GHAZI: I got a voicemail last night.

4 CHAIRPERSON MOLDENHAUER: Okay so what
5 we'll do is we'll turn back to you, you'll have
6 an opportunity to have a rebuttal at the end and
7 you can address some of those concerns at that
8 point. That being said do you have any other
9 testimony in regards as to how your client
10 satisfies the 223 Standard?

11 MR. GHAZI: We're willing to meet
12 whatever we need to do to get this exception;
13 we're willing to work with the neighbor and with
14 you guys.

15 CHAIRPERSON MOLDENHAUER: Okay then at
16 that point we will then turn to Ms. Horvath for
17 your presentation unless any Board Members have
18 any questions.

19 MR. MAY: Thank you, I'm just trying to
20 understand what's in the drawings, the drawings
21 are kind of minimal to really understand what's
22 being proposed here. It looks like, are you

1 replacing the entire existing deck structure?

2 MR. GHAZI: If we do extend it we
3 probably would redo the old deck. You see the L
4 shape that's the existing and where it shows the
5 dash line is the new.

6 MR. MAY: I understand the extend of it
7 I'm just sort of wondering sort of structurally
8 how this is going to work. It looks like there's
9 a rather than adding columns your planning to
10 support this from a rod that attaches to the
11 building itself is that right.

12 MR. GHAZI: You know what the architects,
13 I'm not an architect myself I'm not sure how to
14 answer this but they were going to build it in a
15 way where it's structurally sound because we have
16 a bedroom below that, it was going to be pretty
17 for the neighborhood.

18 MR. MAY: The basic point that I was
19 trying to get at are there going to be columns
20 added to support his extended deck?

21 MR. GHAZI: Yes.

22 MR. MAY: There will be because they

1 don't show up in the drawings. It's very hard to
2 tell exactly what's happening here, not that it
3 necessarily has that much bearing on it, it's
4 just that when I look at the drawings and see a
5 something that doesn't look like it will stand up
6 based on what's drawn here, that's why I'm
7 curious about how it actually will be because
8 this is supposed to be representative of what
9 work you're actually going to do.

10 MR. GHAZI: I may not be the right person
11 but I can get you is the answer through the
12 architect.

13 MR. MAY: Well depending on what the
14 issues are we may need that. I'll have questions
15 for the Office of Planning, I think that's it.

16 CHAIRPERSON MOLDENHAUER: Any other
17 questions from Board Members for the applicant.
18 Not at this time, then what we'll do is move
19 forward to see any comments and presentations
20 from Ms. Horvath.

21 MS. HORVATH: Okay I am a neighbor of the
22 abutting property and the property was purchased

1 about a year ago and has not been inhabited since
2 that time. I am a neighbor on two sides of the
3 property; I am along side one side of the
4 building and along side the back so it would
5 affect my property on two sides. I have not seen
6 drawings of the proposed project but realize that
7 they're asking for an extension out the back
8 which would then come closer to my property line.

9 When we bought the property we knew that both
10 our property and the property beside us were kind
11 of at the limits of square footage and so that
12 was fine with us but we're not happy by the fact
13 that it would affect our property and possibly
14 our property value and our use of our property on
15 two sides.

16 CHAIRPERSON MOLDENHAUER: How exactly do
17 you see this affecting your use?

18 MS. HORVATH: Well I have three children,
19 we use the back side, the back part of our
20 property for our children's use, they play back
21 there, we have a garden back there, light issues,
22 again I didn't know what kind of structure they

1 wanted to add on to the property, the variant
2 just says that they wanted to add to the rear of
3 the property so I wasn't sure exactly how that
4 would effect it but it could effect...

5 CHAIRPERSON MOLDENHAUER: Have you seen
6 the plans at all?

7 MS. HORVATH: No.

8 CHAIRPERSON MOLDENHAUER: Have you talked
9 with the architect or...

10 MS. HORVATH: They have not approached us
11 at all; we just got the notice from the city.
12 There's nobody living in the home so there's no
13 way to contact anybody.

14 CHAIRPERSON MOLDENHAUER: Do any Board
15 Members have any questions for Ms. Horvath.

16 MR. MAY: No I would just note for your
17 information when you get a notice like that you
18 can get further information about the project
19 from the Office of Zoning and they're very
20 helpful in providing that information to
21 applicants and neighbors of applicants and so on
22 so your not limited to simply receiving the

1 letter and then showing up today, you could see
2 exactly what we have to look at in advance.

3 CHAIRPERSON MOLDENHAUER: With that being
4 said, are there any other comments?

5 MR. HINKLE: I just have a question,
6 what's between your properties on both sides, so
7 in the back and along the side?

8 MR. HORVATH: Our driveway and our front
9 porch and walkway abut their property line and
10 then there's maybe on one side there's like a
11 wall, a brick wall and then farther down the
12 property there's maybe about four feet of yard.
13 Then on the backside of the property they have
14 and I may be off on my calculations but maybe 10
15 feet of yard and then it abuts our backyard.

16 MR. HINKLE: Are there fences between the
17 two properties or landscaping?

18 MS. HORVATH: No.

19 MR. HINKLE: Thank you.

20 CHAIRPERSON MOLDENHAUER: Would you
21 prefer to see landscaping, I mean are you
22 concerned about the new property owners using the

1 deck and looking on to the area where your rear
2 property kind of hugs the backside of the
3 applicant's property.

4 MS. HORVATH: Right, yes I mean privacy
5 and then just a larger structure next to us, you
6 know right now it fits the zoning requirements
7 and I don't feel like it should be an exception.

8 CHAIRPERSON MOLDENHAUER: Do you have
9 anything further?

10 MS. HORVATH: I don't think so.

11 CHAIRPERSON MOLDENHAUER: Mr. Ghazi do
12 you have any questions for Ms. Horvath?

13 MR. GHAZI: No but I just want her to
14 know we would be more than willing to show her
15 the plans and if we need to like reduce the deck
16 a little bit to make you happy and you know we
17 can meet with the architects and he can give you
18 a good visual of what's going on maybe that will
19 help because I can see here this says to
20 construct a rear addition and it gives you the
21 impression we're building a whole new section
22 when it's just literally floating kind of, maybe

1 that will help we're willing to work with each
2 other.

3 CHAIRPERSON MOLDENHAUER: Lets continue
4 on with the rest of the hearing but I think maybe
5 what I would be inclined to do is probably be ask
6 this case to be continued to another date and
7 during that time recommend both parties exchange
8 information, that the architect and Mr. Ghazi
9 have an opportunity to talk to Ms. Horvath and
10 discuss any concerns that way, it seems as though
11 Mr. Ghazi your saying that the applicant is
12 willing to work with their neighbors so I think
13 that would be recommended if they're willing to
14 do that then probably what we'll do is we'll
15 postpone this case. Actually why don't we do
16 that right now and that way if Office of
17 Planning, if there are some changes to the
18 design, Office of Planning then can review that
19 and if there is potentially any supplemental
20 report to your report obviously those can be
21 addressed.

22 MS. HORVATH: I agree.

1 MS. NAGELHOUT: Madam Chair, two things I
2 just want to be sure, whatever plans come to the
3 Board are the plans that you have to build, so in
4 other words as Mr. May said if your not showing
5 pillars and your going to have pillars, if
6 they're not on there you can't build them, it
7 sounds silly, but in other words whatever comes
8 to the Board is it, so you have to give us
9 basically the final. The other thing is now that
10 you have party status anything that gets filed in
11 the record with the Board, anything you file you
12 must also give a copy to Ms. Horvath, anything
13 you file assuming you send anything to the Board
14 would also have to be given, so in other words
15 your kind of equal now with this, just so you
16 know, I just want to explain that, okay.

17 MR. GHAZI: Thank you.

18 CHAIRPERSON MOLDENHAUER: And obviously
19 that's one of the reasons why we're going to
20 postpone so that way if there are any revisions
21 to the plans those are then finalized then we get
22 a copy of those revisions in our record because

1 our approval would be subject to the plans and as
2 you heard you cannot build but for those
3 documentations that we see or the plans that we
4 see. So that being said based on the current,
5 what would be your availability? I guess we
6 don't have, this is our last hearing until the
7 new year, so what we'll do is we will let's put
8 this on the calendar for the morning of January
9 11th, and I think that will give both parties
10 sufficient time to get together to hopefully
11 maybe have two different, one back and forth,
12 maybe some revisions, maybe there's no revisions
13 necessary I don't know that would be up to both
14 of you. But then what we'll do is we'll come
15 back if any of your concerns are addressed you
16 can then withdraw your party status request, if
17 they're not addressed then we'll come back, we'll
18 readdress, you'll have more of an understanding
19 of exactly what concerns potentially you may
20 have. Does that sound like sufficient time for
21 you Mr. Ghazi?

22 MR. GHAZI: Yes that's fine.

1 CHAIRPERSON MOLDENHAUER: Wonderful, well
2 then that being said we'll reconvene, is there a
3 problem with the January 11th?

4 MR. MOY: Just for Staff clarification
5 Madam Chair, you moved this hearing of the
6 application to the morning of January 11th or were
7 you thinking the afternoon of January 11th?

8 CHAIRPERSON MOLDENHAUER: I was thinking
9 the morning but if that looks too full for...

10 MR. MOY: Well one of the two cases in the
11 morning is an appeal case and I haven't had the
12 chance to see what the status of that is.

13 CHAIRPERSON MOLDENHAUER: Okay well then
14 we can put it in the afternoon so it will be the
15 second case in the afternoon, afternoon starts at
16 1 o'clock. So then this would be moved to
17 January 11th, the 1 o'clock slot. Okay that being
18 said that then concludes this hearing and that
19 also concludes our morning. We will reconvene at
20 1 o'clock.

21 **Afternoon Session**

22 CHAIRPERSON MOLDENHAUER: The hearing

1 will please come to order, good afternoon ladies
2 and gentleman this is the December 14, 2010,
3 Public Hearing of the Board of Zoning Adjustment
4 of the District of Columbia. My name is Meredith
5 Moldenhauer, Chairperson, joining me today to my
6 right Jeffrey Hinkle, Representative the National
7 Capital Planning Commission, and representing the
8 Zoning Commission is Greg Selfridge. Copies of
9 today's meeting agenda are available to you and
10 are located to the left in the wall bin near the
11 door. Please be advised this proceeding is being
12 recorded by a court reporter and is also being
13 webcast live. Accordingly we must ask you to
14 refrain from any disturbing noises or actions in
15 the hearing room. When presenting information to
16 the Board please turn on and speak into your
17 microphone first stating your name and home
18 address. When you are finished speaking please
19 turn off your microphone so that your microphone
20 is no longer picking up sounds or background
21 noise. All persons planning to testify either in
22 support or in opposition are to fill out two

1 witness cards these cards are located to my left
2 on the table near the door and on the witness
3 tables. Upon coming forward to speak to the
4 Board please give both cards to the court
5 reporter sitting to my right. The order of
6 procedures for special exceptions and variances
7 are as follows: 1. Statement and witness of the
8 applicant and applicant. 2. Parties and persons
9 in support 3. Parties and persons in opposition.
10 4. Government reports including the Office of
11 Planning and Department of Transportation and
12 other relevant agencies. 5. Reports from the
13 ANC. 6. Rebuttal and closing statements.
14 Pursuant to Section 3117.4 and 3117.5 the
15 following time constraints will be maintained;
16 the applicant appellant persons and parties
17 except an ANC in support including witnesses will
18 be given permitted 60 minutes collectively to
19 present its case. Apelles's persons and parties
20 except an ANC in opposition including witnesses
21 will be given 60 minutes collectively. Persons
22 testifying whether in support or in opposition

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

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

1 now please let me know and if the Board should
2 believe that we should postpone the proceeding
3 now is the time to raise such a matter. Mr.
4 Secretary, do we have any preliminary matters?

5 MR. MOY: Not for this afternoon Madam
6 Chair.

7 CHAIRPERSON MOLDENHAUER: Thank you then
8 all individuals wishing to testify please stand
9 and we will administer the oath.

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

14 CHAIRPERSON MOLDENHAUER: We will call
15 our first and only case for the afternoon.

16 **Application No. 18140**

17 MS. BAILEY: Madam Chair good afternoon,
18 to everyone good afternoon. The first case is
19 Application 18140 it's the application of Jeffrey
20 S. Nestler and it's pursuant to 11 DCMR Section
21 3103.2 for a variance to convert a one family
22 semi-detached dwelling to a flat under

1 (Subsection 320.2) or alternatively pursuant to
2 11 DCMR, Section 3104.1 for special exception
3 under (Subsection 202.10 to allow an accessory
4 apartment in a single family dwelling in the D-R-
5 3 District at premises 2119 R Street, N.W.
6 (Square 2514, Lot 23).

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much, good afternoon, if you could introduce
9 yourself for the record.

10 MR. NESTLER: Good afternoon, Jeffrey
11 Nestler address is 2119 R Street, N.W.
12 Washington, DC 20008.

13 CHAIRPERSON MOLDENHAUER: Good afternoon,
14 we're here today continuing a prior case, we
15 received your submission amending your request
16 and I think that we have quite a full record
17 before us now in regards to the new relief that's
18 being sought, the only thing that I would say, I
19 think that you had previously included with the
20 new submission you don't specifically address the
21 practical difficulty, I think you kind of address
22 some of it in the first prongs but I think if you

1 could address that very quickly I think that
2 would help the Board and then we could probably
3 move forward.

4 MR. NESTLER: Yes Madam Chair and thank
5 you for accommodating me on such short request
6 after our last hearing, I appreciate that. To go
7 right to your point and cut the practical
8 difficulties if that's what the Board would
9 request. The house has been set up as a two
10 family structure since at least 1976, according
11 to the prior owners and when they purchased it in
12 1976, it was already set up that way and people
13 were living in the basement as a separate unit
14 and they continue doing so. There is a separate
15 entrance, a separate kitchen, a separate laundry
16 room and a back door for the accessory apartment.
17 In order to convert the basement apartment into
18 back into the regular house to make it a single
19 family home there's many gas lines and electrical
20 lines that would have to be moved for the kitchen
21 and laundry areas and also the entire kitchen
22 would have to be dismantled and the laundry area

1 upstairs so obviously we would only need one
2 laundry area in the entire single family house,
3 laundry would have to be removed. There's a back
4 door for the unit would have to be taken out and
5 the stairwell would have to be converted back
6 into a useable fashion for a single family home.
7 Right now there's a door at the bottom of the
8 stairwell for the basement unit and a door at the
9 top of the stairwell for the upstairs unit both
10 leading to a common back door leading to the
11 outside. All would have to be kind of taken out
12 and gutted to make it a useable single family
13 area. In addition the house is quite large it's
14 already three stories and a full walk up attic
15 with about 800 or 900 square feet it's a full
16 foot print of the house, plenty of storage there
17 and also an area that can be converted later on
18 into a useable floor space for the house. The
19 house is already very large in order to
20 accommodate myself and my family and any domestic
21 workers who we plan to hire who could actually
22 live in our house on their own floor on the main

1 part of the house, therefore leaving the basement
2 totally vacant and useless from our perspective
3 and not able to provide any income or any kind of
4 a use, and in order to pay our mortgage payments
5 having the income from the basement rental unit
6 would be very important.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much, having said, I don't feel the need for the
9 applicant to go through any of the other aspects
10 of the standard thing, do any Board Members have
11 any other questions?

12 MR. SELFRIDGE: No Madam Chair, the
13 record I think as you indicated is very full.
14 I'm certainly comfortable with what we have in
15 front of us.

16 CHAIRPERSON MOLDENHAUER: Okay well
17 then, thank you, at this point in time we'll see
18 if there's any individuals in the audience in
19 opposition, seeing none we'll then turn to the
20 Office of Planning.

21 MS. BROWN-ROBERTS: Good afternoon Madam
22 Chair and Members of the Board, Maxine Brown-

1 Roberts for the record representing the Office of
2 Planning. We did not submit a supplement to the
3 application because of course we just got it a
4 few days ago but we to are in concurrence with
5 the arguments that were submitted by the
6 applicant and we believe that they have met the
7 requirements of the area variance and also all
8 the requirements of the special exception under
9 Section 202.10, and therefore we recommend
10 approval of the requested variance and special
11 exception, thank you Madam Chairman.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much does the applicant have any questions for
14 the Office of Planning?

15 MR. NESTLER: No.

16 CHAIRPERSON MOLDENHAUER: Do any other
17 Board Members have any questions for the Office
18 of Planning? Then at this point I will turn to
19 ANC 2-D and not seeing anyone in the audience and
20 seeing that they had lacked quorum, I'll ask the
21 applicant did you have any further communication
22 with them between the prior hearing and this so

1 you can letter of support from them?

2 MR. NESTLER: I haven't had any further
3 communication regarding this specific aspect of
4 the hearing, I have been in contact with the two
5 commissioners of the ANC, sorry with the one
6 existing Commissioner of the ANC and the incoming
7 Commissioner of the ANC who is David Bender who
8 will be sworn in in January both of whom have
9 expressed their support to me including both of
10 them have submitted letters through me to the
11 Commission supporting the application and so the
12 ANC has not as you indicated been able to have a
13 quorum and to vote favorably on the application
14 but if the Board was inclined we could postpone
15 this hearing until January until the ANC did have
16 a quorum and I'd be confident, I think I could
17 return with a full endorsement of the ANC if that
18 would be to the Board's wishes.

19 CHAIRPERSON MOLDENHAUER: I don't think
20 that would be necessary for me, I'll see how the
21 rest of the Board Members feel but I just wanted
22 to see if there was any additional information

1 and I appreciate that update. That being said
2 and seeing no one present from the ANC at this
3 point in time we would turn back to the applicant
4 for any closing remarks or any questions from the
5 Board Members. Seeing no questions from Board do
6 you have any closing remarks?

7 MR. NESTLER: I would appreciate the
8 Board granting my request for an area variance
9 under 202.10 and then a special exception also
10 under 202.10 to allow an accessory apartment in
11 my single family house, thank you.

12 CHAIRPERSON MOLDENHAUER: Thank you, then
13 at this point in time we'll conclude the hearing
14 and what we'll do is I think all the Board
15 Members I think we're fine with entering directly
16 into deliberation on this case. I will start us
17 off in deliberation. We're here before with a,
18 we have an applicant who has revised his request
19 previously there was a request for an area
20 variance which we reviewed as most requiring a
21 use variance but the applicant submitted
22 supplemental material which is our "Exhibit No.

1 25", which states that the applicant is revising
2 it's request and rather seek an area variance
3 under 202.10 and a special exception under 3104
4 for an accessory apartment unit. First the
5 applicant would require an area variance to
6 obtain a relief from the requirement that 202.10
7 is only applies to non-detached dwellings and
8 this is a semi-detached property. That being
9 said the applicant has submitted I think
10 sufficient information to show that there's a
11 confluence of factors that would lead this
12 property to being exceptional. Those being; That
13 this is a end unit where it's actually partially
14 detached on one side but obviously not fully
15 detached otherwise it would have satisfied that
16 standards, in addition to that the applicant
17 argues that the shape of the lot is unique, I
18 don't find the actual shape of the lot is unique,
19 I rather find that the shape of the building is
20 unique, I think that having two, I think that the
21 shape of the lot for a corner lot is actually
22 quite common at times while it may not be common

1 on that square, I feel that it's common in other
2 areas of the city but I think that the shape of
3 the property with having two separate
4 encroachments and the two bay window type
5 structure I think is a unique shape of the
6 building. In addition to that I think that the
7 lot neighbors and the neighboring properties as
8 the applicant articulates is exception in the
9 fact that this is the only single family use on
10 the surrounding four sides of the property that
11 all the uses are apartment complex, restaurant,
12 or studio and office building. I think that is a
13 unique aspect in an R-3 Zone. Also the
14 arrangement of the layout, the layout being the
15 fact that it's an already existing flat, the
16 applicant testified that it was in existence
17 since 1976, but there also it could have been in
18 existence potentially even as far back as 59' but
19 there's no way of telling that, if there was a
20 way to prove that then it would be a permitted
21 non-conforming use but in this situation there's
22 really no way of being able to go back and

1 determine that and so I think that in addition to
2 the fact that it's already laid out this way the
3 applicant purchased it that way and that creates
4 a confluence of factors. I don't include the
5 Pepco treatment because I don't believe that's
6 something that's specific to the property but
7 rather potentially a secondary issue. In regards
8 to the practical difficulty I think that there is
9 the practical difficulty of incorporating this
10 basement space on the layout that pre-existed
11 into the single family home, the economic
12 challenges and practical difficulty that the
13 applicant stated in regards to having to go
14 through the exceptional construction and that the
15 property was built with the understanding that
16 potentially it could be used as a flat, and then
17 last potentially the issue of waste that if the
18 property was not used or was not permitted to be
19 a flat that this would be just unusable space
20 which is never something that the Board or that
21 the Zoning Regs want to see. That being said I
22 don't see any potential impact of inconsistency

1 with the zone plan, OP confirms their evaluation
2 as the prior evaluation as the prior evaluation
3 was on an area variance, and they reviewed those
4 standards and had already agreed to that as well.
5 Then in regards to applying the 202 standard now
6 that we kind of get past the area variance and
7 are able to get into the prongs of a 202 relief
8 for an accessory apartment building. The
9 applicant in it's submission and I'll incorporate
10 that for purposes goes through A through H and
11 indicates that he satisfies B through H and only
12 requests a waiver of one which is permitted under
13 202.10-I a waiver of at least two of the
14 different criteria and here the property lot is
15 1,533 square feet which is less than the required
16 4,000 and so that would need to be waived and
17 there's no standard that needs to be proved in
18 order for the waiver to occur its simply that as
19 long as there's simply waiving less than two and
20 so I see no problem with approving this
21 application, I feel that they satisfy the special
22 exception standards, this is in harmony with the

1 intent and integrity of the zoning plan harmony
2 with the area, and there would be no substantial
3 impact or negative impact to the public good.
4 That being said I'll look to my other Board
5 Members for any additional deliberation.

6 MR. SELFRIDGE: Well summarized Madam
7 Chair I certainly think you covered it all.

8 CHAIRPERSON MOLDENHAUER: Okay then what
9 we'll do is I'll submit a motion if there's no
10 additional deliberation. Motion to approve
11 Application No. 18140 for area variance under
12 Section 3103.2 and 3020.2 to permit special
13 exception for 202.10 to allow a accessory
14 apartment building in a one family semi-detached
15 dwelling at property address 2119 R Street, N.W.
16 Motion has been made is there a second?

17 MR. HINKLE: Second.

18 CHAIRPERSON MOLDENHAUER: Motion has been
19 made and seconded all those in favor say aye,
20 aye.

21 CHORUS: Aye.

22 MR. MOY: The Staff would record the vote

1 as 3 to 0 to 2 this on the motion of the
2 Chairperson Ms. Moldenhauer to approve the
3 application for the area variance and special
4 exception relief seconded by Mr. Hinkle, also in
5 support Mr. Selfridge. No other Board Members
6 participating. Again the final vote is 3 to 0 to
7 2.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much Mr. Moy and seeing that there's no
10 opposition in this case we would like to waive
11 our requirements and request a summary order.

12 MR. MOY: Very good, thank you.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much and that concludes our day today so thank
15 you.

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