

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING
April 12, 2011
Start: 9:46am - End: 2:50pm

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

Board Members

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

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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
4 and gentleman. This is the April 12, 2011,
5 Public Meeting of the Board of Zoning Adjustments
6 for the District of Columbia. My name is
7 Meredith Moldenhauer, Chairperson, joining me
8 today to my far right is Jeffrey Hinkle,
9 Representative of the National Capital Planning
10 Commission, to my immediate right we have a new
11 Mayoral Appointee Mr. Lloyd Jordon, I'd like to
12 thank him, and this is his first day today. To
13 my left is the Vice Chairperson Nicole Sorg,
14 Mayoral Appointee; to her left is Greg Selfridge,
15 Representative of the Zoning Commission. Copies
16 of today's meeting agenda are available to you
17 and are located to my left in the wall bin near
18 the door. We do not take any public testimony at
19 our meeting unless the Board asks someone to come
20 forward. Please be advised this proceeding is
21 being recorded by a court reporter and is also
22 being webcast live, accordingly we must ask you

1 to refrain from any disturbing noises or actions
2 in the hearing room. Please turn off all cell
3 phones and beepers at this time as to not disturb
4 these proceedings. Mr. Secretary, do we have any
5 preliminary matters?

6 SECRETARY MOY: Good morning Madam Chair,
7 we do but Staff would suggest that the Board
8 address those matters as I pull the case.

9 CHAIRPERSON MOLDENHAUER: Wonderful then
10 I think we're going to hear some of the cases out
11 of order if you can call the first case.

12 **Application No. 18183**

13 MR. MOY: Again, good morning Madam
14 Chairperson, Members of the Board. Also the
15 Staff welcomes Mr. Lloyd Jordan to the BZA. With
16 the first Board action would be Application No.
17 18183 of 1515 14th Street; pursuant to 11 DCMR
18 3103.2 and 3104.1 for a variance from the open
19 court width requirements under (subsection
20 776.1), a variance from the roof structure height
21 and limitations under (subsection 1902.1 sub A),
22 a variance from the off-street parking

1 requirements under (subsection 2101.1), a special
2 exception from the roof structure requirements
3 under Section 411, and a special exception from
4 the rear yard requirements under (subsection
5 774.2) to allow an addition to and renovation of
6 an existing building for retail service arts and
7 office use in the ARTS/C-3-A District. This is
8 at premises 1513-1521 14th Street N.W. the
9 property is located in (Square 241, Lot 129). As
10 the Board will recall at its decision meeting on
11 April 5, 2011, the Board deliberated and
12 rescheduled its decision for April 12th. The
13 Board asked for additional information from the
14 Applicant, and that filing Madam Chair is in your
15 case folders identified as "Exhibit 43". This
16 was submitted yesterday Monday April 11th. With
17 that the Board is to act on the merits of the
18 multiple variance and special exception relief.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much Mr. Moy. What we'll do is I will just
21 address the material that we received. The first
22 is as indicated "Exhibit No. 43". I think this

1 was going to Mr. Selfridge for some of your
2 questions as well as other Board Members
3 questions regarding DDOT's input. The Applicant
4 identified, I think, some very important sections
5 in the transcript in regards to OP's reference to
6 DDOT's decisions and their internal discussion
7 with DDOT regarding the loading. In addition to
8 that in regards to DDOT's recommendations in
9 reference to the bike path, bike spaces and also
10 in regards to the installation of the digital
11 screen to demonstrate the nearest transportation
12 facility as a mitigation measure. In addition to
13 that they also provided some relevant email
14 exchanges back and forth between OP and the DDOT
15 representative Jeff Jennings regarding their
16 discussion, I think, most poignantly about the
17 loading. It was very interesting about their
18 reference to this new potential program for pay
19 for unloading zones. I think that really kind of
20 had more to do with the transportation study
21 which talked about unloading on 14th Street,
22 versus potentially granting, or providing the

1 unloading in the alley. There was also an email
2 which specifically identified DDOT's concerns of
3 the potential impact on the neighbors and the
4 residents in the abutting alley. Then in
5 contrast to the concern about loading on the
6 street and then this new program they have. I
7 think overall it was indicated that we have
8 additional information in the record showing that
9 DDOT does support the application the way it is
10 and that they didn't really have a problem.
11 There was really very limited discussion; it
12 appears to be at least in the email exchanges
13 that have been provided regarding the off-street
14 parking. The fact that obviously this project is
15 going to go to zero off street parking due to the
16 fact that the limited parking that would be
17 provided at this property would be through a car-
18 lift, which is not then considered standard
19 parking or does not satisfy the standard parking
20 requirements.

21 That being said I'm just going to outline
22 the issues that are still fresh for discussion.

1 I think we kind of discussed a lot of the other
2 ones in the prior deliberation. The only other
3 issue that was identified or discussed in this
4 letter was the communication with the Matrix
5 Condominium Association. Their concern was over
6 the relief for the special exception for the roof
7 structure and potentially the ability to try to
8 discuss that with them. The fact is that the
9 Applicant is indicating that the Condo Board did
10 not respond and did not accept their offer to sit
11 down for a meeting. That being said I'll open it
12 up for discussion on this new submission and on
13 these outstanding issues.

14 MR. SELFRIDGE: Thank you Madam Chair. I
15 want to thank the Applicant for providing this
16 submission on April 11th, it just provided a
17 little more background particularly that talked
18 about the loading which was an issue that I think
19 came up between the actual hearing and the
20 decision meeting. So that provided some
21 clarification, and on the parking as well. I
22 don't think it was as much a matter of not

1 believing the conversation occurred but getting
2 DDOT on the record, so this is helpful in that
3 respect, getting something in writing that we
4 could include. I'm satisfied and certainly don't
5 need to belabor this any further.

6 CHAIRPERSON MOLDENHAUER: Any further
7 deliberation from Board Members? If not I think
8 what I'll do is I'll incorporate our discussion
9 from last time. I think last time I was at a
10 point where I felt pretty comfortable with the
11 record. I think I had articulated all of the
12 reasons for this Applicant having satisfied the
13 different standards for the multiple variances
14 and special exceptions. So I will incorporate my
15 prior deliberation and prior discussion on those
16 standards and I think the other Board Members
17 feel that this additional submission has
18 addressed any of their final concerns. I'll then
19 submit a motion, a motion to approve Application
20 No. 18183 of 1515 14th Street, LLC pursuant to 11
21 DCMR 3130.2 and 3104.1 for a variance on the open
22 court width requirement under (subsection 776.1),

1 a variance from the roof structure height
2 limitation under (subsection 1902.1A), a variance
3 from the off street parking requirement under
4 (subsection 2101.1), a special exception from the
5 roof structure requirement under Section 411 and
6 a special exception for the rear yard requirement
7 under (subsection 774.2) to allow an addition and
8 renovation of an existing building for retail
9 service, arts and office use. A motion has been
10 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: Staff would record the vote as 3
17 to 0 to 2 this is on the motion of the
18 Chairperson Ms. Moldenhauer to approve the
19 application for the multiple variance and special
20 exception relief. Seconded by Mr. Hinkle, also
21 in support of the motion Mr. Selfridge, two other
22 Board Members did not participate. So again the

1 vote to approve is 3 to 0 to 2.

2 CHAIRPERSON MOLDENHAUER: Thank you Mr.
3 Moy. I believe that there is no formal
4 opposition; we had some opposition in witnesses
5 but no party status. That being said we'd like
6 to waive our requirements and ask that a summary
7 order be issued.

8 MR. MOY: Thank you very much Madam
9 Chair.

10 **Application No. 18190**

11 MR. MOY: The next item for Board Action
12 I believe Madam Chair is Application No. 18190 of
13 ASG Group, Inc - Esther's Childcare and
14 Development Center; pursuant to 11 DCMR 3104.1
15 for a special exception to permit a child
16 development center. This is for 45 children ages
17 5 years and younger and 12 staff. Presents under
18 Section 205 in the R-1-B District at premises
19 3015 25th Street, N.E. (Square 4288, Lot 820). On
20 March 29, 2011, the Board completed public
21 testimony, closed the record, and scheduled its
22 decision on April 12th of this year. The Board

1 did not request any additional information
2 because the record was full. The Board is to act
3 on the merits of the special exception request
4 under Section 205. That completes the Staff's
5 briefing Madam Chair.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much Mr. Moy. What we have is we have a CDC
8 application requesting special exception relief
9 under 205. Yes, 205 provides us with a lengthy
10 standard in regards to how we would evaluate a
11 CDC in an area. While this is a special
12 exception we have to insure that the Applicant
13 can satisfy all the different standards under
14 205. That being said I'll go through those
15 different standards and also identify the
16 different issues that were brought up in this
17 case. In general I'll just make a couple of
18 comments.

19 We have an Office of Planning Report
20 which does recommend approval of the application
21 with about 9 different conditions. We had
22 numerous party status applicants submit a request

1 for party status we had 5 requests for party
2 status and we ended up hearing from, 2 of them
3 consolidated and thus 3 of them were present so
4 we had 2 party status applicants opposing the
5 application. We also heard from a number of
6 individual witnesses. We had 7 individual
7 witnesses testify in opposition of this case. We
8 also have an ANC report which is our "Exhibit No.
9 39" in opposition as well and this received great
10 weight. This indicated there was a properly held
11 meeting with a quorum present on February 3,
12 2011, and with a unanimous vote they decided not
13 to approve the application. They gave reasons
14 for this, the narrow stature of 25th Street and
15 the impact on the traffic flow. The impact on
16 property values which I don't consider to be as
17 significant of an issue in regards to a special
18 exception standard. The close proximity to the
19 adjacent properties I do consider to be an
20 important factor. The safety of children due to
21 the short distance and narrow nature of the
22 street, which goes to the public safety. That

1 being said I'll now go to how the Applicant
2 addressed some of these different standards under
3 205. Under 205.2 the facility should be capable
4 of meeting all applicable code and licensing
5 requirements. We do have a letter in our record
6 from OSSE indicating that they do satisfy those
7 standards. Next we have under 205.3 the center
8 shall be located and designated to create no
9 objectionable traffic condition and no unsafe
10 conditions for pick up and drop off. Now this
11 one OP indicated that there would be no
12 objectionable traffic conditions however I think
13 that we do have a lot of information in our
14 record as I indicated from the party status
15 individuals as well as from the individual
16 witnesses that there exists currently a very
17 narrow street. We actually have pictures in the
18 record which were provided by some of the party
19 status and individuals in opposition. I really
20 heard nothing to contradict those facts by the
21 Applicant. I felt that there was a lot of
22 information presented by the party status

1 opposition but then the Applicants were very
2 reluctant to kind of provide us a really strong
3 response to that to kind of counter, that
4 evidence, and those facts that were being
5 presented in regards to the narrowness of the
6 street and the current challenges of driving up
7 and down that street. Based on the pictures the
8 testimony and also the parking and traffic issues
9 if you were going to have a potential group of 45
10 children coming to and from this facility during
11 morning hours or evening hours after pick-up and
12 drop off. That being said I'll go to the next
13 factor which is 205.4 the center or facility
14 should provide sufficient off street parking to
15 meet reasonable needs of teachers and other
16 visitors. This standard is one where it gives us
17 as Board Members a little more latitude. There's
18 no specific requirement, here OP's indicating
19 that one space for every 4 staff members or 3
20 spaces total would be sufficient if they were to
21 apply a general standard. However I think for
22 having such a large number of staff in a

1 residential community where they're going to be
2 parking and right now the application will be for
3 a maximum of 12 staff members and to only have 3
4 parking spaces I think presents a potential
5 problem. I think that we've seen other CDC
6 applications where maybe they're going to have 7
7 staff members and 3 it seems a little more
8 reasonable. This, I feel like with 12 staff
9 members it's just a lot. Again, I don't think
10 the Applicant really provided a lot of counter
11 evidence to some of the concerns that were
12 brought up in regards to potentially how the
13 staff was going to be staggered, things to that
14 effect. I didn't get a sense that there was
15 really a specific game plan in place to
16 potentially mitigate those concerns of the
17 neighbors that I heard and I felt were based out
18 of some substance. Next we have 205.5 the
19 facility including any outdoor play space
20 provided shall be located and designed that
21 there's no objectionable impact on adjacent or
22 nearby properties due to noise activity, visual

1 or other objectionable conditions. Again, the one
2 thing that first caught my eye, I asked the
3 Applicant about this right away was the close
4 proximity of some of these homes. Obviously we
5 live in a city, houses are very close together,
6 however I think that when you're talking about
7 having 45 some odd children playing outside
8 throughout the period of a day and the rear of
9 the property is fairly close by we did have the
10 neighbor testify as to her concern about that as
11 well. There was really no specific issues
12 brought up about noise by any of the opposing
13 parties but I do think there is a potential
14 problem there in regards to how it would
15 adversely neighboring properties.

16 So I'll leave that for further
17 deliberation or discussion by other Board
18 Members. Under 205.6 the Board may require
19 special treatment in the way of design,
20 screening, building. I think OP doesn't
21 recommend anything they found no major issue but
22 maybe that's something we can discuss in more

1 detail. 205.7 any off site play area shall be
2 located as not to result in any endangerment to
3 individuals in attendance to center and traveling
4 between the play area and the center facility.
5 They indicate that the proposal does not utilize
6 any off site play areas so that's not something
7 we have to consider in this application. Under
8 205.8 the Board may approve more than one child
9 development facility or adult day treatment
10 facility in a square or within 1000 feet of any
11 child development center or adult treatment
12 facility only when the Board finds that the
13 cumulative effect of these facilities will not
14 have any adverse impact. OP indicates there's no
15 other child development center within 1000 feet.
16 Then the last factor is 205.9 before taking
17 final action on the application for use of a
18 child or elderly development center or adult day
19 facility the Board shall submit the application
20 to the D.C. Department of Transportation and
21 Human Services. That was done and OP indicated
22 that the notes are above in regards to the

1 traffic issue and that DDOT had no major concerns
2 in that regard, regarding impact. That being
3 said I do have my concerns about approving this
4 application but what I'll do now I've kind of
5 gone through the different areas and identified
6 my different concerns in regards to different
7 problems. I'll open it up for further
8 deliberation.

9 MS. SORG: Thank you Madam Chair I too had
10 some concerns about this application and I think
11 that your discussion laid out in good detail your
12 concerns which I share. I won't repeat but to
13 fill in a couple of places I think that you
14 invited greater discussion in 205.2 regarding the
15 centers ability to meet applicable codes and
16 licensing requirements. I think I would note
17 that my reading of OSSE's letter indicates their
18 favor for the application but that it would be
19 based on also their ability to meet, get the
20 certificate of occupancy and so forth. Although
21 those things are not specifically under our
22 purview as parts of different codes it looks to

1 me through my reading of what we have in our file
2 that the intensity of use here for this rather
3 small footprint seems a little concerning,
4 actually not just a little bit concerning.
5 Regarding 205.5 I think while I agree that in the
6 testimony there wasn't a specific calling out of
7 objections to noise, I think the standard
8 indicates other objectionable conditions voiced
9 which I think there were many by, if you look at
10 the party status members as well as the
11 individuals from whom we received letters of
12 opposition were located in every property with a
13 view to the center. I think that to me that
14 shows that part of the test. I won't add
15 anything else, just those few other comments but
16 I agree with your assessment.

17 CHAIRPERSON MOLDENHAUER: Any other
18 deliberation.

19 MR. HINKLE: Yeah thank you Madam Chair,
20 I think yourself as well as Ms. Sorg were pretty
21 thorough in your analysis and I certainly agree
22 with your conclusions. I just wanted to add that

1 my two particular issues were how the application
2 relates to a 5.3 and to a 5.4 in terms of
3 objectionable traffic as well as sufficient off
4 street parking. We've heard a lot from the
5 adjacent neighbors and their testimony that
6 parking and traffic on the street is relatively
7 difficult and current insufficient in terms of on
8 street parking. As you mentioned they're
9 contemplating 12 employees I think 2 parking
10 spaces for employees as well as visitors is
11 insufficient for this use, and I do have some
12 serious concerns about the adequacy of what's
13 being provided.

14 CHAIRPERSON MOLDENHAUER: That being said
15 I just in general, I typically am very
16 encouraging of any sort of CDC child development
17 center in areas, I think they're greatly needed
18 throughout the city. I think that it's
19 unfortunate that this Applicant did not address a
20 lot of these concerns and maybe did not do, a lot
21 of time we really encourage Applicants to work
22 with the neighbors and try to address some of the

1 understandings and concerns prior to coming
2 before us and I think that was not done by this
3 Applicant. Maybe they could have modified their
4 application or addressed some of these issues
5 during the hearing in a more satisfactory manner.

6 If they had actually done more discussion with
7 the neighbors and had an opportunity to kind of
8 talk with them. In addition I think that a brand
9 new CDC asking for such a large number of 45
10 children plus 12 staff not having seen the CDC
11 operate intentionally have maybe no impact or
12 having minimal impact on the community in advance
13 prior to asking for such a large initial granting
14 for the number of children and number of staff
15 members. We really have no choice but to deny
16 this application in my view based on the fact
17 that the Applicant has failed to satisfy its
18 burden under multiple sections of the 205
19 standard. That being said is there any further
20 deliberation?

21 MR. JORDAN: Madam Chair just for the
22 record I want it noted that I'm not participating

1 in deliberation because the evidence to do so is
2 prior to my appointment.

3 CHAIRPERSON MOLDENHAUER: That being said
4 I'll submit a motion. A motion to deny
5 Application No. 18190 for special exception
6 relief for a CDC under 205. The motion has been
7 made is there a second?

8 MS. SORG: Second.

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

12 CHORUS: Aye.

13 MR. MOY: Before I read back the final
14 vote there is an absentee ballot from a
15 participating member on this application who is
16 Mr. Conrad Schlater. His absentee vote is to
17 deny the application. That would give a final
18 vote of 4 to 0 to 1. This is on the motion of
19 Chairperson Moldenhauer to deny the application
20 seconded by Ms. Sorg, also in support of the
21 motion Mr. Hinkle. So again that's 4 to 0 to 1
22 to deny the application, no other Board Member

1 participating.

2 CHAIRPERSON MOLDENHAUER: Thank you very
3 much Mr. Moy.

4 **Application No. 18187**

5 MR. MOY: The next application for Board
6 Action is Application No. 18187 of Brandywine
7 Apartments of Maryland, LLC; pursuant to 11 DCMR
8 3103.2 for variance to allow the extension of an
9 existing non-conforming dental office within a
10 306 unit apartment building under (subsection
11 2002.3) in the R-5-D District at premises 4545
12 Connecticut Avenue, N.W.. Property located in
13 (Square 2039, Lot 1). On March 29, 2011, the
14 Board completed public testimony, closed the
15 record and scheduled its decision on April 12th.
16 The Board requested additional information to
17 supplement the record from the Applicant, Office
18 of Planning and parties to the record by April 7,
19 2011. Madam Chair there are 2 filings in your
20 case folders, the first is from the Applicant
21 their post hearing document is identified as
22 "Exhibit 35". ANC 3-F-02 filing is identified as

1 "Exhibit 34". The Board is to act on the merits
2 of the request for variance relief. That
3 completes the Staff's briefing Madam Chair.

4 CHAIRPERSON MOLDENHAUER: Thank you very
5 much Mr. Moy. We have both of those documents
6 and we don't typically take public testimony
7 during our decisions but I do see that Mr. Jesick
8 joined us here and I know that we have not
9 received a supplemental OP report so I will
10 actually ask if there's anything that he is going
11 to be adding or...

12 MR. JESICK: Good morning Madam Chair,
13 I'm surprised to hear you haven't received the
14 report I have a date stamped copy submitted to
15 the Office of Zoning April 7th, that I can
16 certainly update the Board on the information.

17 CHAIRPERSON MOLDENHAUER: I would greatly
18 appreciate that, I'm sorry but we don't have a
19 copy of that. I would appreciate if we could
20 just maybe get a quick oral summary of that.

21 MR. JESICK: Certainly.

22 CHAIRPERSON MOLDENHAUER: Thank you.

1 MR. JESICK: At the public hearing the
2 Board asked the Office of Planning to do further
3 research on how this particular use would be
4 viewed under the proposed Zoning Regulations.
5 Staff conferred with Mr. Travis Parker in the
6 Office of Planning who is the Project Manager for
7 the Zoning Review. We also conferred with the
8 Office of the Attorney General. Looking at the
9 latest draft zoning text, and I want to emphasize
10 that this is very draft and could be subject to
11 change before the new Zoning Regulations are
12 approved. This type of dentist office use would
13 be considered in the service use category and the
14 service uses in a residential zone could be
15 permitted as a matter of right if they meet a
16 number of criteria, they have to meet all the
17 criteria. In this case the dentist office would
18 not meet all the criteria so it would remain
19 therefore a non-conforming use and it would
20 remain subject to prohibitions on the expansion
21 of the non-conforming use or at least would need
22 to seek further variance just as it is in the

1 present day.

2 CHAIRPERSON MOLDENHAUER: Thank you very
3 much I appreciate that. That having been said I
4 think what we'll do is I'll go back to the
5 additional submissions that we did receive, the
6 one from ANC 3-F which is the neighboring ANC,
7 letter in opposition indicating the concerns that
8 were brought up, I'm sorry ANC 3-F-02 which is
9 one of the Single Member Districts in the ANC 3F
10 indicating the concerns of Ms. Perry Commissioner
11 and identifying in more detail what transpired at
12 the ANC meeting in which ANC 3-F did vote to
13 support the application and that letter is our
14 "Exhibit No. 28" which would receive great weight
15 it satisfies our standards. I think that she
16 identifies some general concerns with granting
17 this type of relief and provides us some more
18 detail on the ANC support as well the ANC's
19 letter which is our "Exhibit No. 28" does
20 indicate that some of their reasoning and
21 rationale behind them providing them support was
22 with full compliance with the Americans with

1 Disabilities Act. That being said I'll now turn
2 to the supplemental information we received from
3 the Applicant. Before I do that I'm just going
4 to note that the Office of Planning does
5 recommend denial of this application which is our
6 "Exhibit No. 29" indicating that based on their
7 review of this case they find that the property
8 does not exhibit any unusual shape, topography or
9 dimensions and that the property is similar to
10 other apartment buildings located in it's
11 vicinity. There are no extraordinary conditions
12 associated with the lot. The floor area proposed
13 for expansion is currently used for conforming
14 residential apartment use. That being said we
15 received a submission from the Applicant
16 providing us with some additional analysis on the
17 question of whether or not this application
18 satisfies the first prong of the variance test.
19 As the Applicant concedes the first prong has to
20 go to the uniqueness of the entirety of the
21 Brandywine Apartment Building. In that aspect
22 the Applicant tries to articulate certain types

1 of, I think confluence of factors for why this
2 property would have an extraordinary or
3 exceptional situation. One of the things that
4 they do indicate is that the onsite dental office
5 is an amenity that is exceptional and provides
6 some history on the construction of the building
7 and the age of the building, and the fact that
8 that has been an amenity for many, many years. I
9 do find that that it's a contradiction based on
10 the fact that on page 2 of the supplemental
11 report the Applicant indicates that the
12 Brandywine Apartment Building is one of several
13 large apartment buildings located in the
14 immediate adjacent 2 to 3 blocks stretch of
15 Connecticut Avenue which contain onsite dental
16 offices. As one of the factors that is being
17 submitted as to why the property would be
18 exceptional is that also being articulated as a
19 factor as to why it's conforming or consistent
20 with other properties in the area and it's not an
21 exceptional circumstance. I think that some of
22 the other confluence of factors which are being

1 articulated by the Applicant that would lead to
2 the property as a whole being exceptional it
3 potentially maybe be the configuration, the fact
4 that this building was built many years ago with
5 this office building in the basement, the unique
6 configuration of that ground level. Then
7 potentially the history of the building, the fact
8 that the smaller 1 bedroom and 2 bedroom units
9 had previously been converted from a dental
10 office into residential and now want to be
11 converted back. So I think that the
12 configuration could also be considered maybe a
13 factor there. However I'm having a hard time
14 having those three elements as confluence of
15 factors really satisfy that first prong in my
16 mind. I'll ask other Board Members to chime in
17 on that as we go forward. I think that if the
18 Applicant does satisfy the first prong I think
19 the second prong is, there is evidence of an
20 economic hardship for the Applicant. The only
21 question here that I see is does that hardship
22 relate potentially to unit 419 or does it

1 actually relate, which is the dentist office, or
2 does it relate to the small studio apartment and
3 the standard 2 bedroom apartment which they want
4 to expand into. I think that's potential concern
5 in my mind that the undue hardship is more a
6 matter of the dental suite rather than an undue
7 hardship of maintaining the other 2 units as
8 continuing to be residential which is a
9 conforming use in this zone. That being said I
10 do see no issue in regards to public policy or
11 any type of impact that this would have on the
12 Zoning Plan if this application was approved.
13 This is just a matter of do they really satisfy
14 the standard. I think that it's interesting,
15 it's obviously maybe not specifically applicable
16 but I think that it is interesting that even
17 under potentially the new ZRR that this would not
18 be potentially a permitted use, but I don't know
19 if that has any specific weight into my final
20 decision. That being said I'll open up the floor
21 to any further deliberation, kind of going
22 through the first two prongs of the variance

1 test.

2 MS. SORG: Thank you Madam Chair before I
3 go through the prongs of the variance test and my
4 the prongs of the variance test and my thoughts
5 on that, I would say with regard to OP's update
6 and the ZRR I think to me that doesn't have
7 relevance where obviously we need to work on the
8 regulations that we have plus we also don't know
9 what the standards for exception would be
10 regarding those service uses so to me that's kind
11 of not in the discussion. To start with the
12 first prong of the variance test I think, as you
13 know, I think it's a close one. But to me I get
14 over the hump through this confluence of factors,
15 and I can see the unusual nature of this property
16 in the combination of while there may be other
17 dental offices in residential uses in the close
18 in vicinity I think it's an unusual use if you go
19 out further and certainly across the city. You
20 know we've had cases recently that have hinged on
21 those kinds of readings of the area where hotel
22 cases for example when you look in one block or

1 two blocks it looks like there's a lot of hotels
2 but when you look at 5 blocks, 6 blocks, 10
3 blocks the hotel rooms per capita you have a very
4 different picture. I mean even personally as
5 someone who used to drive to this exact area to
6 go to the doctor as a child 8 miles away, halfway
7 across the city. It's clearly a fairly unique
8 use in these types of areas. Additionally I
9 think the fact that the area under this proposal
10 was originally intended for use as a dental
11 office and was configured structurally through
12 the plumbing and electrical systems to be that
13 way does play into the uniqueness of the
14 property as a whole to me. As well that you know
15 this area existed as dental office for the great
16 majority of the life of the building, so to me
17 that sort of, you know the fact that it's not
18 usual to find this type of use in these sorts of
19 buildings as well as the area devoted to this and
20 it's specific history I find to be unusual and
21 the confluence of factors gets me over that first
22 hump. After that I think that that it's

1 important in the second prong not to confuse
2 what's required by the dental office with the
3 interest of the owners. I think as you rightly
4 pointed out. But I see here that we saw in
5 testimony that not only have the property owner
6 been unable to rent the spaces for residential
7 for over a year they've been vacant, they also
8 testified it was either in the testimony or in
9 the supplemental information that they have a
10 number of units that are vacant. So to, you know
11 the standard is to allow the property owner to
12 have a reasonable benefit from putting this to
13 the residential use. I think that they, to me,
14 have shown that there is a hardship imposed by
15 trying to put this back into that use. I agree
16 with your analysis on the third prong and I think
17 in general what I wanted to comment on was, I
18 think that these regulations of non-conforming
19 uses are meant not only to limit these uses but
20 also to protect them. There's a lot of case law
21 in precedent that shows that when regulations
22 such as ours or when these non-conforming uses

1 get shut down based on these regulations as seen
2 as an invasion of property rights, it's seen as a
3 taking and so forth. I think there is also
4 something to be said for curtailing these uses
5 and limiting them in such a way so as to limit
6 the ability of these businesses to remain, it
7 kind of waves around that line to me. If I was
8 an architect operating out of a small room since
9 1950 and didn't have room for a plotter and
10 couldn't get one it would in effect put me out of
11 business. So I think that we can look at one of
12 the standards which is 2002.4 which I think is
13 connected with that, that there's a provision
14 that allows for and in generalized language I
15 think modernization and compliance which is
16 something that we heard a lot about in the
17 testimony here and so my thinking goes along the
18 line of when does limiting modernization and
19 compliance with ADA and other codes and
20 regulations cross the boundary of over-regulating
21 a use that has existed and needs to be protected.
22 In addition I would note here that the ANC is

1 supportive of the application. I think that
2 we've seen, to me the evidence that there is a
3 stock of available rental housing in this area
4 and in this building in fact overcame the
5 opposition in that area as well. We've seen no
6 other opposition to the case and have seen in
7 testimony and it's been noted for us that the
8 community values this use and wants it to
9 continue, thank you.

10 CHAIRPERSON MOLDENHAUER: Any addition to
11 the deliberation from Board Members?

12 MR. HINKLE: Yeah I'll just be quick Madam
13 Chair. I'm in agreement with Ms. Sorg in terms
14 of the first prong I think that they've just
15 reached the level of having a confluence of
16 factors actually making this property unique and
17 I would just add that separate from this going
18 directly into the dental office but there is an
19 outdoor pathway and exterior entrance to this
20 unit which I think it unique to this building.
21 Also the issue, and we heard this during the
22 testimony as well it' discussed in the

1 supplemental information that there's an issue of
2 the windows these are kind of ground floor units,
3 they're partially below ground, the windows to
4 the units are smaller it makes it more difficult
5 to rent these units as residential spaces. I
6 think that's a factor as well in terms of the
7 uniqueness of the building and then getting down
8 to the difficulty of what to do with these
9 spaces. Again is the second prong and we heard
10 testimony how difficult it is to rent this one
11 unit that apparently was previously part of the
12 dental office and then it was made into a studio
13 just looking at the floor plans that were
14 provided it's kind of an odd shape, it's
15 triangular, it's very small. We've heard that
16 it's been vacant for awhile, it's difficult to
17 rent. I can understand how that factors into
18 some financial difficulties in terms of
19 maintaining that as a residential unit. For the
20 third prong I don't think that there's an impact
21 to the public good, I don't think there's any
22 impact to the Zoning Regulations themselves and

1 in fact as Ms. Sorg noted I think this is truly a
2 benefit not only to the residents of the building
3 but also to the neighborhood and the community as
4 well. That's all I have for now.

5 MR. JORDAN: Madam Chair, also for the
6 record I want to note that I'm not participating
7 in this deliberation for the same reason as I
8 have not been subject to the evidence.

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much.

11 MS. SORG: Madam Chair would you mind I
12 wanted to add one other thing that I meant to say
13 and I thank Mr. Hinkle for adding his comments.
14 Another part of my analysis in thinking about the
15 discontinuation of preexisting, non-conforming
16 uses especially in this case. We've seen how
17 difficult it is for this preexisting use to
18 operate in its current configuration and my
19 concern is that we may be going against the
20 regulation, the portion of the regulation that
21 protects the non-conforming use as I believe it
22 does to an extent by denying this application and

1 possibly forcing out it's tenant and then, you
2 know because the use goes with the property. The
3 practice itself is done by this doctor who
4 currently does the dental practice but I think we
5 could in effect be shutting down this use if that
6 dentist were to vacate and the property owners
7 were unable to find another user. That's all I
8 want to say.

9 CHAIRPERSON MOLDENHAUER: I appreciate
10 that and I see your point. I don't agree with, I
11 think the conclusion is much, I find that if a
12 non-conforming use cannot be used anymore than
13 potentially as long as there's the ability to use
14 it for a conforming use. I think in this case
15 here there is evidence that this space could not
16 be used for the permitted use within the zone. I
17 think that there's evidence presented by the
18 Applicant and then no contrary evidence to that
19 same issue that the use could be used as a
20 residential use. They indicated that they've had
21 a hard time leasing out that space that there
22 would be a hardship associated with potentially

1 changing over the current existing residential
2 units or continued residential use. So I think
3 that in that regard I think that both you and Mr.
4 Hinkle have swayed me in regards to the
5 confluence of factors. I think that I still feel
6 as though this is a very, a weaker case in my
7 view but I think at that same time the relief
8 that they're seeking is very small considering
9 that we're talking about two apartments in a 306
10 unit building. So I think that one of the ways
11 that this other case law which allows us to
12 compare the degree of support for a case in
13 regards to then the degree of relief that's being
14 requested. I think here the degree of relief
15 that's being requested is more minimal and that
16 with the fact that they do present with a
17 confluence of factors and that there is clear
18 undue hardship and that there is no major impact
19 to the Zoning Plan. We have ANC support, as I
20 indicated previously while we do have a lot of
21 opposition from individuals (inaudible) we do
22 have ANC support which will receive great weight.

1 We don't have OP support but I think that Board
2 has articulated its reasons potentially why we
3 would disagree with the office of planning in
4 this instance. That being said I'll look to see
5 if there's a motion.

6 MR. MOY: Pardon me Madam Chair for
7 interrupting but before a motion is made. I just
8 want to note for the record that in the official
9 record there's no filing of an OP supplemental
10 report but with the Board's approval Staff will
11 include that in the record.

12 CHAIRPERSON MOLDENHAUER: I appreciate
13 that yes and I think we heard from OP that he had
14 a stamped copy of one so once that is obtained we
15 should include that in the record as well.

16 MR. MOY: Thank you Madam Chair.

17 CHAIRPERSON MOLDENHAUER: Thank you for
18 clarifying that. That being said I'll submit a
19 motion to approve Application 18187 for
20 Brandywine Apartments of Maryland LLC; pursuant
21 to 11 DCMR 3103.2 for variance to allow an
22 extension of an existing non-conforming dental

1 office within 306 unit apartment building under
2 (subsection 2002.3) in R-5-D District at premises
3 4545 Connecticut Avenue, N.W. A motion has been
4 made is there a second?

5 MS. SORG: Second.

6 CHAIRPERSON MOLDENHAUER: A motion has
7 been made and seconded, all those in favor say
8 aye, aye.

9 CHORUS: Aye.

10 MR. MOY: Before Staff gives a final vote
11 Madam Chair I do have an absentee vote from
12 another participate on this application.
13 Chairman Anthony Hood from the Zoning Commission
14 and his absentee vote is to approve the
15 application. So with that the final vote will be
16 4 to 0 to 1 this on the motion of the Chairperson
17 Ms. Moldenhauer to approve the variance relief
18 under subsection 2002.3. Second the motion Ms.
19 Sorg, also in support of the motion Mr. Hinkle.
20 No other Board Members participating so again the
21 final vote is 4 to 0 to 1 to approve.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Moy. Seeing that we have no specific
2 parties in opposition to this case the Board will
3 request that we waive our requirements and ask
4 that a summary order be issued.

5 MR. MOY: Very good thank you Madam
6 Chair.

7 **Application No. 17827**

8 MR. MOY: The next item for Board Action
9 is a motion for a two year extension of the
10 validity of the order to Application No. 17827.
11 This is of Jobs Partnership of Greater
12 Washington, pursuant to Section 3130 of the
13 Zoning Regulations. The Original application was
14 approved on February 24, 2009, and that
15 application the relief was pursuant to 11 DCMR
16 3104.1 and 3103.2 for a special exception to
17 allow a job training program as a church program
18 to be housed in a new addition to the New
19 Commandment Baptist Church under Section 216 and
20 variances from the required number of off street
21 parking spaces under (subsection 2101.1) and from
22 the required size of parking spaces under

1 (subsection 2115.1) in the R-4 Dist and variances
2 from the required number of off street parking
3 spaces under (subsection 2101.1) and from the
4 required size of parking spaces under (subsection
5 2115.1) in the R-4 District at premises 625 and
6 633 Park Road, N.W. (Square 3038, Lots 81 and
7 831). On March 10, 2011, the Applicant filed
8 their request for this two year extension. That
9 filing is identified in your case folders Madam
10 Chair as "Exhibit 46". This order expired on
11 March 2, 2011.

12 MS. GLAZER: Mr. Moy excuse me I think it
13 was March the 12th? I believe it was March 12th
14 that the order expired.

15 CHAIRPERSON MOLDENHAUER: The order
16 expired on March 12, 2011.

17 MR. MOY: Okay thank you I stand
18 corrected. There is also a second filing from
19 the Applicant and that filing is identified as
20 "Exhibit 50" which is dated March 29, 2011. The
21 next 2 filings, one from ANC C-1-A this is
22 identified as "Exhibit 53" in support of the

1 request for the extension. Finally there is a
2 report from the Office of Planning identified as
3 "Exhibit 51". So with that the Board is to act
4 on the merits of the request to extend the
5 validity of the order pursuant to Section 3130
6 and specifically the requirements as described in
7 (subsection 3130.6 sub A through Sub C). That
8 completes the Staff's briefing Madam Chair.

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much Mr. Moy we do have those two additional
11 submissions and we've reviewed those and taken in
12 our record "Exhibit 52 and 53" a letter from
13 Council Member Jim Graham as indicated on the
14 record in support, and we've read that and
15 acknowledge his support and appreciate his
16 submission. In addition to that we have "Exhibit
17 No. 53" which is from ANC 1-A indicating that
18 they as well support the time extension requested
19 and ask the Board to approve that. Again we
20 appreciate the ANC taking their time to review
21 this application and to provide us with the
22 submission. Both of those will be taken into

1 consideration. We have before us a request for a
2 two year extension and under 3130.6 we have to
3 evaluate whether the Applicant has satisfied the
4 standards in providing us with substantial
5 evidence to show that they have; 1. The project
6 is not being substantially modified. 2. That
7 they have shown good cause as to why the
8 application should be extended. Here they're
9 identifying for financial reasons that none of
10 the material facts in the case has been changed
11 or that the project remains approved and they
12 have submitted an exhibit showing that financing
13 to begin construction has been provided but took
14 some time to obtain, unable to obtain their
15 financing as necessary. We have "Exhibit C of
16 exhibit 48" which includes a specific letter from
17 the Applicant. We've been asking for letters
18 from the Applicant or from the banks to be direct
19 evidence and this is a letter directly from,
20 signed by Reverend Steven Tucker the President of
21 Jobs Partnership Greater Washington. This to me
22 would satisfy our standards identifying the

1 financial challenges that they've had in
2 obtaining financing. That being said my only
3 concern with this application is our need to
4 waive the requirement of 3130.9 which would have
5 required an indicated by Mr. Moy the fact that
6 this application should have been filed at least
7 30 days prior to the expiration of the order.
8 The application was filed on March 10th and the
9 order expired on March 12th, that's two days
10 before the application expired. Obviously I
11 think Applicant and its counsel knew the
12 application was coming up on expiration and
13 should have taken the required steps to file this
14 within 30 days. We have in our record
15 information; we have two other cases that address
16 the same issues, so we'll be repeating this later
17 on in the morning as well. But there was some
18 potential ambiguity or unclear nature in regards
19 to the text of 3130.9 as to whether or not an
20 Applicant can potentially file anytime up until
21 the expiration or if they actually are required
22 to file an extension 30 days prior. Based on my

1 reading and I'll ask other Board Members to
2 contribute to the interpretation of this. I
3 think it's clear that any application for an
4 extension has to be filed 30 days prior. That
5 being said I think that they show good cause as
6 to why this would not prejudice. I think that
7 there's limited good cause as to why they didn't
8 file it on time which is 30 days prior. Their
9 statements that the regulations were unclear will
10 be accepted this time but I think from now on
11 this is a general notice to all applications out
12 that there is a requirement to file any extension
13 30 days prior to the expiration of the order. So
14 whether it's putting everything on ticklers and
15 making sure someone knows when an order expires
16 or making sure that those applications get in for
17 an extension if one is needed 30 days prior to
18 the expiration. That being said I think that,
19 while we have identified this previously as an
20 issue I think that we will find good cause here,
21 I would find good cause, we'll see what the other
22 Board Members have to say and grant that waiver

1 of 3130.9. But as I said I think they do satisfy
2 the other standards for an extension as well.

3 MS. SORG: Thank you Madam Chair;
4 regarding 3130.9 to me it's pretty clear, 30
5 days. I think your warning is a good thing to
6 let people know and I agree with your analysis
7 and I can see good cause in this case to waive
8 that as well as the merits of extending the
9 application. I would also note that in "Exhibit
10 C" the letter from the Jobs Partnership they go
11 through the narrative of their dependence on
12 public financing and the way that they've been
13 trying to work with (inaudible) during a
14 transitional period, so I'm in support as well.

15 MR. HINKLE: Thank you Madam Chair just
16 real quick on 3130.9. I too think it's very
17 clear that there's a requirement to submit within
18 30 days prior to the expiration of the order, I
19 think that's pretty straight forward. But in
20 this case if we waive that requirement I don't
21 think there's any prejudice to any party, that's
22 all I have to say.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much. That being said I will submit a motion I
3 believe as Mr. Lloyd Jordan has mentioned earlier
4 he's not participating in this case. But what
5 I'll do is I'll submit a motion, a motion to
6 approve application 17827 of Job Partnership of
7 Greater Washington for a 2 year extension under
8 Section 3130.6 and also to waive our requirements
9 for the requirement to file within 30 days prior
10 to the expiration of the order under Section
11 3130.9. A motion has been make is there a
12 second?

13 MS. SORG: Second.

14 CHAIRPERSON MOLDENHAUER: A motion has
15 been made and seconded. All those in favor say
16 aye.

17 CHORUS: Aye.

18 MR. MOY: Staff would record the vote as
19 3 to 0 to 2 this on the motion of Chairperson Ms.
20 Moldenhauer to approve the request for a two year
21 extension of the order as well as waiving the
22 requirement under Section 3130.9. Second the

1 motion Ms. Sorg, also in support of the motion
2 Mr. Hinkle. No other Board Members participating
3 so again final vote to approve is 3 to 0 to 2.

4 CHAIRPERSON MOLDENHAUER: Thank you very
5 much Mr. Moy and if we could have a summary order
6 issued.

7 MR. MOY: Terrific, thank you Madam
8 Chair.

9 **Order No. 17794**

10 MR. MOY: The next motion before the
11 Board is a motion for minor modification. This
12 is to Order 17794 of NH Street Partners Holdings,
13 LLC and waiver of the two year time limitation
14 for filing. This is pursuant to Section 3129 of
15 the Zoning Regulations. The original application
16 was approved on July 29, 2008. In the original
17 application Madam Chair that relief was pursuant
18 to 11 DCMR 3103.2 for a variance from the floor
19 area ratio requirements under Section 631 and a
20 variance from the required ground level public
21 space requirements under Section 633. This was
22 to permit the renovation and expansion of an

1 existing office building with ground floor retail
2 in the C-R District at premises 1200 New
3 Hampshire Avenue, N.W. property located in
4 (Square 70, Lot 195). On March 22nd of this year
5 the Applicant filed the request for minor
6 modification and the waiver the two year filing
7 period. This filing Madam Chair is identified in
8 your case records as "Exhibit 29" a subsequent
9 filing into the record was from the Office of
10 Planning and their document dated April 5, 2011,
11 is identified as "Exhibit 30". Staff notes for
12 the record that, well I'll let that go. The
13 other filing Madam Chair is from ANC 2-A, no
14 rather there's been no response from ANC 2-A to
15 the request for the modification of the plans.

16 CHAIRPERSON MOLDENHAUER: Thank you very
17 much Mr. Moy.

18 MR. MOY: That completes the Staff's
19 briefing, thank you.

20 CHAIRPERSON MOLDENHAUER: Okay thank you,
21 I appreciate that. I am going to turn this over
22 to start off our deliberation to Ms. Sorg.

1 MS. SORG: Thank you Madam Chair. I
2 think that basically what we've got here is a
3 little bit of a trade off with regard to the
4 relief. The modifications are two-fold, one is a
5 slight increase in the request for greater gross
6 floor area which actually comes out to be about
7 340 square feet, so a rather de minimis amount
8 given the scale of the renovation and addition in
9 this project. This basically sounds like it came
10 up from some sort of layered changes in the
11 interior renovation portion so it's not the
12 increase in the square feet that's requested is
13 not going towards the retail portion that's going
14 out into public space. In addition they are
15 reducing the need previously relief from 633 by
16 1%, I believe. So we've got the original and
17 modified plans in our record you can see that to
18 me the changes are fairly small. The additional
19 floor area is about equal to .1% of the total
20 floor area. So I see no reason to delay this and
21 would be in support of the application.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much I agree with you. I think that the
2 modification here is actually very minor. We
3 have sometimes where we have applications and
4 they say oh it's a minor modification and we have
5 5 or 6 different changes that are happening and
6 all these different types of relief that are
7 being sought. This I think is actually a very
8 clear minor modification where the relief that's
9 being changed, obviously the plans have been
10 changed significantly but the relief that's being
11 changed in regards to the modification and our
12 standard is roughly .1% of the floor area, the
13 permitted sight and so I think that's minor. The
14 other issue that we had to address is the fact
15 that this is beyond the two year period for minor
16 modifications. Typically you have two years to
17 file your building permit and to vest the order
18 and during that period time typically it's the
19 process where you think that during that time
20 plans would change, things would change. I think
21 the Applicant has articulated in their pre-
22 submittal, "Exhibit No. 29" sufficient reasons as

1 to why this didn't occur in that I think a
2 typical fashion. I think that for those reasons
3 there has been good cause shown and that we have
4 the ability under our Regs to waive certain
5 requirements and I think here since the
6 application has been filed for a building permit
7 back on June 26, 2010 prior to the expiration day
8 order and that all that would be required of us
9 would be to waive the fact that a minor
10 modification could be approved after the two year
11 grace period had elapsed. I don't see that as
12 being anything that would create any undue
13 prejudice or this application is duly noted there
14 has been no additional submission for parties in
15 regards to any concerns with these changes. That
16 being said I agree with Ms. Sorg whole heartedly
17 in support of this application. Is there any
18 additional deliberation? Then is there a motion?

19 MS. SORG: Yes thank you Madam Chair. I
20 would submit a motion to approve Application No.
21 17794 for 1200 New Hampshire Avenue, N.W. to
22 approve their request for minor to modify the

1 variance relief granted under Order No. 17794 to
2 increase gross floor area for the building.

3 CHAIRPERSON MOLDENHAUER: A motion has
4 been made is there a second?

5 MR. HINKLE: Second.

6 MS. GLAZER: Excuse me, I'm sorry to
7 interrupt but shouldn't there be a second motion
8 to waive from what the Board to waive the two
9 year time period for filing the request as
10 recorded by Section 3129.3?

11 CHAIRPERSON MOLDENHAUER: Yes I'll ask
12 Ms. Sorg to just modify her motion.

13 MS. SORG: Thank you for noting that, and
14 to approve the requested waiver from the
15 requirements of 3129.3.

16 CHAIRPERSON MOLDENHAUER: Is the modified
17 motion seconded?

18 MR. HINKLE: Second.

19 CHAIRPERSON MOLDENHAUER: Motion has been
20 made and seconded. All those in favor say 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 Vice
2 Chairperson Ms. Sorg to approve the application
3 request for extension a two year extension as
4 well as waiver of the filing time requirements.
5 Second the motion Mr. Hinkle. Also in support of
6 the motion Chairperson Moldenhauer. No other
7 Board Members participating. So again the final
8 vote is 3 to 0 to 2.

9 CHAIRPERSON MOLDENHAUER: Thank you very
10 much Mr. Moy. The Board would waive our
11 requirements and request a summary order.

12 MR. MOY: Very good thank Madam Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you.

14 **Application No. 18116**

15 MR. MOY: The next case for decision is
16 Application No. 18116 of Kerry Bedard. This is
17 pursuant to, 11 DCMR 3103.2 for a variance from
18 the floor area ratio requirements under Section
19 402, a variance from the lot occupancy
20 requirements under Section 403, a variance from
21 the rear yard requirements under Section 404, and
22 a variance for non-conforming structure

1 requirements under (subsection 2001.3). This is
2 for the construction of a rear addition including
3 garage serving a one family row dwelling in the
4 DC/R-5-B District, this is at premises 2023 N.
5 Street, N.W.. Property located in (Square 97, Lot
6 47).

7 What's before the Board Madam Chair in
8 your case folders is an email correspondence
9 dated April 4, 2011 to the Office of Zoning where
10 the Applicants are requesting that the Board
11 postpone its decision. The Board's earlier
12 decision on this, there have been two, December
13 7, 2010 and February 1, 2011. The Board had
14 extended or tabled its decision then. But the
15 Applicant again is asking for the Board to
16 postpone its decision again to a date in mid-July
17 2011, that's identified as "Exhibit 34" in your
18 case folders. So that would complete the Staff's
19 briefing Madam Chair.

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much Mr. Moy, a note for the record that Mr.
22 Michael Turnbull has joined us for this morning

1 and for the test of the day for these
2 deliberations. I'll just indicate that our
3 "Exhibit No. 34" actually indicated that they
4 want the latest available date in the month of
5 July and I have no problem with providing this
6 extension. This extension is indicated as
7 specifically for additional FMA relief pursuant
8 to the Regs and so I think that we should provide
9 the time frame for the Applicant to pursue that
10 type of permitted relief as she may be eligible.
11 That being said now that we're only having one
12 decision date per month we're having them at the
13 beginning of the month so if she wanted to have
14 this extended to the last possible date of July
15 it would actually be the very earliest in July so
16 what I recommend doing is we don't have meetings
17 in August because of our August recess. We can
18 put this on the first date for September which
19 will be our decision date for September. It will
20 be September 13, 2011 and if it's determined that
21 she wishes the Board to hear this case on the
22 merits earlier than that she can always petition

1 that we put it on an earlier decision prior to
2 that. But otherwise we'll set this for September
3 13th.

4 MR. MOY: Thank you Madam Chair. So that
5 decision date was set for September 13, 2011.

6 **Application No. 17600-A and 17606-B**

7 MR. MOY: That would be a Board Action on
8 the Motion to Application Nos. 17600-A of Ft.
9 Totten North, LLC. Formerly known as Dakota
10 Square, LLC. And 17606-B of Ft. Totten South,
11 LLC formerly Dakota Points, LLC for an emergency
12 request to extend the expiration date of these
13 two orders pursuant to, Section 3130 of the
14 Zoning Regulations. The original two applications
15 Madam Chair were approved and issued on March 21,
16 2007 and May 9, 2007 respectively. The first two
17 year extension of these two orders were approved
18 and issued on April 7, 2009. I'm not going to
19 read the original application notice for the two
20 cases Madam Chair. The filing request from the
21 Applicant was on March 8, 2011 and that document
22 in your case folder is identified as "Exhibit

1 39". The request for extension has been served
2 on all the parties to the original application.
3 There have been no responses from parties or ANC-
4 4-B as of today. Lastly the Office of Planning
5 filed its report identified in your case folders
6 as "Exhibit 40". So I think with that, I think
7 the Staff will conclude by saying the Board is to
8 act on the merits of the request to extend the
9 validity of the two orders Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much Mr. Moy and so we have a preliminary matter
12 in this case. There's two issues actually that
13 are kind of preliminary in this case. The first
14 one would be potentially the requested waiver for
15 the application indicated they were requesting a
16 waiver under (subsection 3130.6) for a second
17 extension. However after reviewing this I think
18 that the law is perspective in nature and thus
19 there would be no need to issue a waiver on that
20 requirement since the prior extension had been
21 issued in I believe March 24, 2009, but the new
22 law didn't go into effect until June 5, 2009.

1 That being said I don't think that relief is
2 required here. Next would be a preliminary issue
3 as we addressed earlier and as I said we were
4 going to be addressing it again is the question
5 of whether or not the application was filed
6 timely indicating that under (subsection 3130.9)
7 the application is required to be filed 30 days
8 prior to the expiration of the order. Here one of
9 the applications was filed timely seeing as Ft.
10 Totten South order does not expire until May 9th,
11 thus it was filed, this application was filed
12 timely in that regard. The other application,
13 Application Ft. Totten North, the order expired
14 on March 21, 2011 and that application was not
15 timely. So the agent on behalf of the Applicant
16 submits a similar argument in regards to, some of
17 the potential confusion as to whether they have
18 good cause shown as to why this application
19 should be waived under Section 3130.9. Again I
20 think that for purposes of this hearing we are
21 notifying Council and any other individual's ore
22 the general public that this requirement is

1 clear. I think in the Board's mind as previously
2 stated, I know Board Members feel free to chime
3 in. We have another Board Member participating
4 on this case as well. The Zoning Commissioner
5 maybe able to shine a little additional light on
6 that issue. It's pretty clear that you have to
7 file those applications 30 days prior to the
8 expiration of the order. That being said now
9 looking at the merits of the two year extension
10 we have I think sufficient evidence in regards
11 to, you know, substantial evidence in the record
12 going to (subsection C) stating whether the
13 Applicant demonstrates that there's good cause
14 for the extension with substantial evidence
15 identified either in Section 1, 2, or 3. Here I
16 think that there is evidence that there is
17 existing pending litigation or other such
18 condition, circumstances or factors beyond the
19 reasonable control of the Applicant. I think
20 that based on the submission and the land
21 disposition agreement and the relationship in
22 this case between the Applicant DDOT and the

1 government in trying to work in conjunction with
2 each other. There is evidence that this delay on
3 one part is a delay from the other parties and so
4 I think that's spelled out and I don't need to go
5 through everything the submission "Exhibit No.
6 39" by the Applicant does provide sufficient
7 evidence in that regard to a need a for an
8 extension and based on the fact that is beyond
9 their control. That being said I'd like to open
10 up the floor to additional deliberation from
11 Board Members.

12 MR. TURNBULL: I can't imagine our Zoning
13 Regs are unclear but that being said I heard your
14 comments on the last case. I will bring it up to
15 the Zoning Commission and OAG and the Office of
16 Planning to see if we can tweak that regulation
17 3130.9.

18 CHAIRPERSON MOLDENHAUER: I appreciate
19 that I think that there's really no need to tweak
20 I think that it's pretty clear. If there's a
21 tweak that may assist I think it's always in the
22 best interest of everybody, the citizens and the

1 public to have maybe something like that done.
2 That being said is there any further deliberation
3 on this case?

4 MS. SORG: Thank you Madam Chair I have
5 nothing to add to your deliberation, I agree and
6 will be in support of the application as well.

7 CHAIRPERSON MOLDENHAUER: Wonderful then
8 what I will do is when I submit this motion, what
9 I'm going to recommend is I'm going to submit a
10 motion to, the Applicant had actually act kind of
11 two cases, one in the alternative to do a two
12 year extension of the orders or potentially to
13 toll. I think that tolling is not appropriate; I
14 think that a two year extension would be. So I'm
15 going to submit a motion to grant a extension and
16 in that extension I'm going to recommend since
17 there were two separate orders here previously,
18 one from March 21, 2011, and one from May 9,
19 2011, to consolidate the orders and to assume the
20 Ft. Totten North Order into the Ft. Totten South
21 Order so that they will be both extended two
22 years from May 9, 2011. A motion to grant that

1 extension pursuant to (subsection 3130.6) and to
2 waive requirements under 3130.9 a motion has been
3 made is there a second?

4 MS. SORG: Motion has been made and
5 seconded, all those in favor say aye.

6 CHORUS: Aye.

7 MR. MOY: Staff would record the vote as
8 4 to 0 to 1 this on the motion of Chairperson Ms
9 Moldenhauer to approve, as the Chair has stated
10 on the extension and the consolidation of the two
11 orders into one order. These are specifically to
12 the Ft. Totten South Order and also waive the
13 requirements of the time filing under 3130.9 for
14 approval. Second the motion Ms. Sorg. Also in
15 support of the motion are Mr. Hinkle and Mr.
16 Turnbull. No other Board Members participating.
17 Again the final vote would be 4 to 0 to 1.

18 MS. GLAZER: Madam Chair I'm just going
19 to ask since this is not really a summary order
20 if the Board would consider suggesting that Staff
21 work with OAG on this order?

22 CHAIRPERSON MOLDENHAUER: I think that's

1 a great option. What I would recommend is a
2 hybrid of sorts where OAG and Staff work to
3 efficiently get out an order but at the same time
4 to insure that the nuances of this order are
5 addressed.

6 MR. MOY: Very good thank you Madam
7 Chair.

8 CHAIRPERSON MOLDENHAUER: Thank you. I
9 believe that then concludes our morning Public
10 Meeting. This hearing will please come to order.
11 Good morning ladies and gentleman, this is the
12 April 12, 2011, Public Hearing of the Board of
13 Zoning Adjustments for the District of Columbia.
14 My name is Meredith Moldenhauer, Chairperson,
15 joining me today to my far right is Jeffrey
16 Hinkle, Representative of the National Capital
17 Planning Commission, to my right is our new
18 Mayoral Appointee Mr. Lloyd Jordan, to my left is
19 the Vice Chairperson Nicole Sorg, Mayoral
20 Appointee and to her left is Michael Turnbull,
21 Representative of the Zoning Commission. Copies
22 of today's meeting agenda are available to you

1 and are located to my left in the wall bin near
2 the door. Please be advised this proceeding is
3 being recorded by a court reporter and is also
4 being webcast live. Accordingly we must ask you
5 to refrain from any disturbing noises or actions
6 in the hearing room. When presenting information
7 to the Board please turn-on and speak into your
8 microphone first stating your name and home
9 address. When you are finished speaking please
10 turn-off your microphone so that your microphone
11 is no longer picking up sounds or background
12 noise. All persons planning to testify either in
13 support or in opposition are to fill out two
14 witness cards these cards are located to my left
15 on the table near the door and are also on the
16 tables in front of me. Upon coming forward to
17 speak to the Board please provide both cards to
18 the court reporter sitting to my right. The order
19 of procedures for special exceptions and
20 variances are as follows: 1. Statement of the
21 Applicant and Applicant's Witnesses. 2. Parties
22 and persons in support. 3. Parties and persons in

1 opposition. 4. Government Reports including
2 Office of Planning and Department of
3 Transportation. 5. Reports from the ANC. 6.
4 Rebuttal and closing statements of the Applicant.
5 Pursuant to Section 3117.4 and 3117.5 the
6 following time constraints will be maintained,
7 the Applicant/Appellant persons and parties
8 except an ANC in support including their
9 witnesses will be given 60 minutes collectively.
10 The Appellees persons and parties except an ANC
11 in opposition including witnesses will be given
12 60 minutes collectively. Individuals will be
13 given 3 minutes and associations or organizations
14 will be given 5. These time restrictions do not
15 include cross examinations or questions from the
16 Board. Cross examination of witnesses is
17 permitted by a party or an Applicant in the ANC
18 within which the property is located is
19 automatically a party to a special exception or
20 variance case. Nothing prohibits the Board from
21 placing reasonable restrictions on cross
22 examination including time limitations or

1 limitation on the scope of cross examination.
2 The record will be closed at the conclusion of
3 each case except for any materials specifically
4 requested by the Board. The Board and the Staff
5 will specify at the end of each hearing exactly
6 what is expected and the date when the material
7 must submitted to the Office of Zoning. After the
8 record is closed no other information will be
9 accepted by the Board. The Sunshine Act requires
10 that a public hearing on each case be held in the
11 open before the public pursuant to Section 405B
12 and 406 of the Open Meeting Amendment Act of
13 2010, the Board may consistent with its rules and
14 procedures and the Open Meeting Amendment Act
15 enter into closed meeting or closed emergency
16 meeting on a case for purposes of seeking legal
17 counsel in a case per Section 405B4 and or
18 deliberating on a case pursuant to Section 405B-
19 13 of the law but only after providing the
20 necessary public notice and taking a roll call
21 vote. The decision of the Board in these
22 contested cases must be based exclusively on

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

17 MR. MOY: Good morning Madam Chairperson.
18 Yes we do we have preliminary matters that Staff
19 would suggest taking up when I call the case.
20 But there are two larger motions before calling
21 the cases for the morning. The first is there's
22 a request for a postponement to Application No.

1 18197 and second preliminary matter is that we
2 have application No. 18202 which is not scheduled
3 for today but the reason why I'm presenting it,
4 my secretary's report is that it's attended to
5 the Applicant's request to not write her name on
6 the posting sign. I would like to bring that for
7 consideration and possible vote by the Board.

8 CHAIRPERSON MOLDENHAUER: Wonderful well
9 why don't we do this, we'll swear in witnesses
10 and we'll then first hear 18202, then we'll hear
11 18197 in regards to the postponement and then
12 we'll go on with the agenda. All individuals
13 wishing to testify today Mr. Moy will administer
14 the oath.

15 MR. MOY: Would you please stand please.
16 Do you solemnly swear or affirm that the
17 testimony you're about to present in this
18 preceding is the truth, the whole truth and
19 nothing but the truth? Ladies and gentlemen you
20 may consider yourself under oath. Madam Chair I
21 don't have that record before me since it wasn't
22 scheduled for today but this is Application No.

1 18202 of Christine Millican and other than that
2 what I've already stated for the record that's
3 all I have Madam Chair.

4 CHAIRPERSON MOLDENHAUER: I appreciate
5 that, thank you. What we'll do is we'll discuss
6 this as a group and then we'll vote on the
7 request before us. We have a letter submitted to
8 us on April 8th from that Applicant requesting
9 that she not be required to follow the
10 regulations as are stated including her name
11 being placed on the poster. I personally I
12 sympathize with her but at the same time there's
13 no specific incident that she's giving. She's
14 just giving a general concern. This isn't as
15 though there's a specific person that she's
16 having a concern with or maybe there's a
17 temporary restraining order against or to that
18 effect. This is just a general concern and I
19 think that all applicants are required to meet
20 these standards and to post that requirement. I
21 think that it would be a bad precedent to permit
22 somebody to waive that requirement especially

1 considering it doesn't state exactly how big she
2 has to print her name; it just says the name has
3 to be there. A lot of times we hear concerns
4 from neighbors that I couldn't even see what it
5 was saying because it was posted all the way on
6 the property and I couldn't really read it.
7 There's no need for her to really post it at the
8 front of her house in regards to the front. The
9 sidewalk of her house but she can post it all the
10 way back on the brick façade of her house so that
11 it's not potentially as accessible to people
12 walking by. That's my evaluation of it and I
13 think obviously there are a lot of things to
14 consider and I want to make sure that everyone
15 has a chance to talk about this. It is a unique
16 request with some unique concerns. I will open
17 up the deliberation to other Board Members.

18 MS. SORG: Thank you Madam Chair. I
19 understand your concerns regarding precedent, you
20 know, I read this letter and I'm sympathetic to
21 her concerns. For any passerby to readily be
22 able to see somebody's full legal name as well as

1 their address in this age of identity theft and
2 technological ability to find out information
3 about people. I'm sensitive and in addition I
4 would note any time a project comes before us
5 that's a developer project, an apartment
6 building, a condo unit, they're name so that you
7 might have to work pretty hard to figure out who
8 the developer is. So you know, I think those
9 larger organizations have the opportunity to kind
10 of put their names in the background by calling
11 things like First Street, LLC, based on concerns
12 which are certainly not the same but wanting to
13 protect their privacy. I also think that these
14 applications are based on the property, the
15 regulations and the law. So I personally, you
16 know, and not on the specific name of the
17 Applicant I don't think that's material to what's
18 being considered under our cases. I would
19 actually be in support of allowing or waiving
20 this right for this Applicant.

21 MR. JORDAN: Madam Chair I would agree
22 with that and I think it might be something that

1 needs to be revisited at some point because of
2 all the reasons that you have just talked about
3 because it could be a major concern that we have
4 not really looked at. And possibly following up
5 with someone based on getting their name and
6 address.

7 MR. HINKLE: Madam Chair I tend to agree
8 with you I think this would set a precedent and
9 open up the door for a lot of different requests
10 to waive one requirement or the other and I do
11 have concerns about waiving this requirement.

12 MS. GLAZER: Madam Chair, Members of the
13 Board I just wanted to point out the sections
14 that are relevant here so that the Board can take
15 a look at them. The first Section would be
16 3113.16 which states the posting requirements and
17 includes the name of the Applicant as well as the
18 address and other information about the property
19 that is supposed to be on the sign. You also
20 might want to take a look at 3100.5 which is the
21 waiver provision you're all familiar with which
22 states certain sections are not waiveable and by

1 my quick reading 3113 is not one of those
2 sections. So if the Board determines that it
3 wants to waive it, it in fact is waiveable.
4 That's all I have to say.

5 MR. TURNBULL: Madam Chair I think the
6 posting only, the only real thing is the name of
7 the individual on the address, there's no phone
8 number, there's no email address, there's
9 nothing. I mean people could find that out by
10 looking in a directory or whatever. I don't
11 think there's really anything here that's that
12 detrimental. I would not be willing to waive it
13 I think right now.

14 CHAIRPERSON MOLDENHAUER: I appreciate
15 everybody jumping in on this. As I said I think
16 it is a very unique request and we really need to
17 talk about it. I agree with Mr. Turnbull and Mr.
18 Hinkle. I think that there's really nothing here
19 that we have public records, a whole bunch of
20 other documentations that are provided throughout
21 the city that would provide your name and your
22 address at the same time. Whether it's posted

1 specifically on your property I think, to me I
2 don't see a specific concern especially
3 considering the letters just raising a general
4 concern with it. To me I feel like if the
5 applicant had a specific personal concern I would
6 be much more sympathetic to this but I think that
7 by just having a general concern that there's
8 really no, in my view, issue with having a name
9 and a property addressing being identified. Your
10 right there's no phone number, there's no contact
11 information or email address. It only simply
12 provides some general information and it doesn't
13 require, I think that there's ways that if the
14 Applicant is concerned and it says the name of
15 the Applicant they could put their first name and
16 or last name and still comply with the reading of
17 the rules and we wouldn't have to provide a
18 waiver.

19 MR. JORDAN: Madam Chair in reading this
20 provision I do think we don't have discretion
21 however I think this is something that I would
22 ask that gets examined by the Zoning Commission

1 because I think, times have changed and there's a
2 lot of different things we have in regards to
3 security that we didn't have before. I do read
4 this as not having the ability or the discretion
5 to do this.

6 CHAIRPERSON MOLDENHAUER: I know the
7 Board Members are reviewing their Regs and taking
8 a look at everything so I'll just give a few more
9 minutes and see if there's any additional
10 deliberation on this issue. Any final comments
11 on this issue before I do a motion and request a
12 vote.

13 MR. TURNBULL: Madam Chair I think my
14 opinion still stands the way the Regs are written
15 right now we really can't waive it. I would say
16 that the Zoning Commission we would be willing to
17 look at this with OP and OAG and see if there's
18 anything we can do in the future on the language.

19 CHAIRPERSON MOLDENHAUER: Wonderful I
20 think that's a very smart with the ZRR going on
21 it's something that I think maybe can be easily
22 reviewed and looked at and some modifications can

1 be made.

2 MS. SORG: Madam Chair and Mr. Turnbull I
3 do actually think that we could desire to waive
4 this requirement and my opinion continues to be
5 that I think the Applicant in her letter does
6 make a good point, but I don't have any different
7 things to add, thank you.

8 CHAIRPERSON MOLDENHAUER: Well that being
9 said I think that we've fully deliberated this
10 question and what I'll do is I will submit a
11 motion to deny the request and instruct the
12 Applicant of Zoning Case 18202 to post and comply
13 with the requirements that obviously we will take
14 up her late posting by one day which I don't see
15 that there will be a problem with waiving that
16 requirement at the hearing in two weeks when we
17 have her case before us. That being said a
18 motion has been presented is there a second.

19 MR. JORDAN: Second.

20 CHAIRPERSON MOLDENHAUER: A motion has
21 been made and seconded. All those in favor say
22 aye.

1 CHORUS: Aye.

2 CHAIRPERSON MOLDENHAUER: All those
3 opposed.

4 MS. SORG: Opposed.

5 MR. MOY: Sorry Madam Chair with a full
6 Board I can't count that high anymore. I'm on a
7 learning curve now unfortunately. So the staff
8 would record the vote as 4 to 1 to 0 this on the
9 motion of the Chairperson Ms. Moldenhauer to deny
10 the request and instruct the Applicant to comply
11 with the time requirements for posting. Seconded
12 the motion Mr. Jordan also in support of the
13 motion Mr. Turnbull, and Mr. Hinkle and opposed
14 to the motion Ms. Sorg. So again the vote is 4 to
15 1 to 0, the motion carries.

16 CHAIRPERSON MOLDENHAUER: Thank you and I
17 would request a summary order on that and at the
18 same time if we can email and contact the
19 Applicant directly this would be fine for some
20 sort of summary response correct?

21 MR. GLAZER: Madam Chair it's completely
22 up to the Board. I'm not sure when this case is

1 on.

2 CHAIRPERSON MOLDENHAUER: It's on in two
3 weeks.

4 MS. GLAZER: It's on in two weeks I mean
5 the Board could just direct Staff to notify her
6 and incorporate it into the order.

7 CHAIRPERSON MOLDENHAUER: Very well then,
8 what we'll do is we will just simply instruct
9 Staff to notify her via email and via telephone
10 to inform her of this decision as well as then
11 we'll incorporate this in the final decision.

12 MR. MOY: Staff will do that thank you
13 Madam Chair.

14 CHAIRPERSON MOLDENHAUER: I appreciate
15 that.

16 MR. MOY: The other item on your agenda
17 before moving to the scheduled cases Madam Chair
18 is 18197.

19 CHAIRPERSON MOLDENHAUER: Oh yes Mr. Moy
20 that case we have a preliminary motion requesting
21 a postponement in our "Exhibit No. 24" indicating
22 that the Applicant has some medical reasons or

1 requesting a postponement I see no reason why we
2 can't postpone this case. What we'll do is we
3 will look to...

4 MR. MOY: Madam Chair if you need him to
5 speak he is here this morning.

6 CHAIRPERSON MOLDENHAUER: Oh he is please
7 come forward. Thank you Mr. Moy I appreciate you
8 notifying the Board of that. Good morning if you
9 could turn on your microphone and introduce
10 yourself for the record.

11 MR. MR. SISSEN: My name is Charles
12 Sissen; I'm the managing member of 1211 10th
13 Street, LLC which owns the property at 1211 10th
14 Street for which the variances are being
15 requested.

16 CHAIRPERSON MOLDENHAEUR: Okay and so Mr.
17 Sissen what was the time frame that you were
18 looking to have this postponed till?

19 MR. SISSEN: Well unfortunately I do have
20 some medical issues that I need to address I had
21 a difficult case of colon cancer and I'm
22 following up with medical treatment out in the

1 Midwest at Mayo Clinic so it's going to take me a
2 couple of weeks to go out and come back. Then I
3 would like to address a couple of issues that the
4 Office of Planning had raised. So I was thinking
5 perhaps just after the middle of May. I don't
6 want to delay it very long but unfortunately
7 logistics require that I not address it
8 immediately. I was proposing May the 22nd if
9 that's a Board date.

10 CHAIRPERSON MOLDENHAUER: So the 21st
11 would be a hearing date, yeah why don't we go
12 ahead and we'll put on the calendar for the 1pm
13 session and right now you'd be the second case on
14 the calendar. I think it's best to actually put
15 you off to June 21st.

16 MR. SISSEN: Is there any possibility of
17 it being earlier than that?

18 CHAIRPERSON MOLDENHAUER: Oka so actually
19 what we'll do is we'll do you for the afternoon.

20 I will reschedule you for the May 24, 2011
21 afternoon case and you'll be the third on the
22 calendar.

1 MR. SISSEN: Thank you very much Madam
2 Chair.

3 MR. MOY: Thank you Madam Chair then the
4 case of 18197 has been rescheduled for the public
5 hearing to the afternoon of May 24, 2011.

6 CHAIRPERSON MOLDENHAUER: Thank you.

7 **Application No. 18195**

8 MR. MOY: That being said then the first
9 and next case before the Board is Application No.
10 18195 of Nancy Green-Johnson pursuant to 11 DCMR
11 3103.2 for a variance from the lot occupancy
12 requirements under Section 403, and a variance
13 from the non-conforming structure provisions
14 under (subsection 2001.3) to reconstruct a flat,
15 a (two family dwelling) with attic addition in
16 the R-4 District at premises 218 Morgan Street,
17 N.W. (Square 555, Lot 80).

18 CHAIRPERSON MOLDENHAUER: Thank you if
19 the party's present can they please step forward.
20 Good morning how are you both doing, if you can
21 introduce yourself with your name and your home
22 address.

1 MS. GREEN-JOHNSON: Okay, Nancy Green-
2 Johnson 218 Morgan Street, N.W.

3 MR. MACKAY: I'm Gordon MacKay my home
4 address is 36711 Jeb Stewart Road, Purcerville,
5 VA.

6 CHAIRPERSON MOLDENHAUER: And Mr. MacKay
7 you are the architect?

8 MR. MACKAY: No I work for the architect
9 I'm the representative for Jenkins Restoration
10 doing reconstruction.

11 CHAIRPERSON MOLDENHAUER: Thank you for
12 clarifying that. Good morning Ms. Green-Johnson
13 we have your application before us and I think
14 that in my view and I'll ask Board Members if
15 they have any questions for you. I think that
16 the record is fairly full. In regards to the
17 variance test there's a unique circumstance.
18 I'll ask if you have any additional information
19 that you would like to provide or present to the
20 Board at this time.

21 MS. GREEN-JOHNSON: No I don't.

22 CHAIRPERSON MOLDENHAUER: Do any Board

1 Members have any specific questions for the
2 Applicant?

3 MR. TURNBULL: I was just wondering if
4 you could talk about the attic, the relief that
5 you're looking for.

6 MS. GREEN-JOHNSON: Prior to the accident
7 the attic we had you could enter the attic and
8 you could walk as you walk towards the back as
9 the roof began to slope you had to duck so we're
10 just asking to even that roof.

11 MR. TURNBULL: Okay this could be a walk
12 up attic.

13 MS. GREEN-JOHNSON: It was already walk-
14 up...

15 MR. TURNBULL: It was a walk up?

16 MS. GREEN-JOHNSON: Yeah it was a walk-
17 up, it was already a walk-up.

18 MR. TURNBULL: You're just making it
19 higher then?

20 MS. GREEN-JOHNSON: We're just making it
21 higher in the back of the home.

22 MR. TURNBULL: How much more is that do

1 you think?

2 MR. MACKAY: Well before it sloped to the
3 back all the way down to the back and now it's
4 going to be peaked and not very tall but
5 continued straight back as a gabled roof toward
6 the back instead of a sloped roof.

7 MR. TURNBULL: How does that relate to
8 your neighbors as far as drainage, the gutters
9 and all that, any impacts?

10 MR. MACKAY: On one side there's an alley
11 for there's no impact there and the front half of
12 the house the Historic Review has kept identical.
13 The back half on the right side there's an alley
14 way. On the left side they'll need to build a
15 little cricket in there. When the neighbor
16 rebuilds it's currently vacant, the lot is empty.

17 MS. GREEN-JOHNSON: Because the neighbor
18 was rehabbing his home which destroyed my home
19 and he was going to do the same thing to his home
20 at 216.

21 MR. TURNBULL: We're you home at the
22 time?

1 MS. GREEN-JOHNSON: Yes sir.

2 MR. TURNBULL: What did it just begin to
3 collapse?

4 MS. GREEN-JOHNSON: Yeah crumbling, yeah.
5 We were inside my sons had just came home from
6 college and my whole family was actually in the
7 house, we just made it out.

8 MR. TURNBULL: It's not relevant but did
9 you have to move out and get things.

10 MS. GREEN-JOHNSON: Yes, we lost
11 everything.

12 MR. TURNBULL: Okay thank you.

13 CHAIRPERSON MOLDENHAUER: I appreciate
14 that it wasn't on the record. I have a
15 preliminary question for you. I just was going
16 through the file and I don't see an affidavit of
17 posting, a posting of a big orange sign on the
18 top of your property for 14 days, did you do
19 that?

20 MS. GREEN-JOHNSON: Yes we put both of
21 the posters up there, right behind the fence.

22 CHAIRPERSON MOLDENHAUER: Okay you put

1 them up did you get a copy of that and fill out
2 an affidavit and submit that to the Office of
3 Zoning.

4 MS. GREEN-JOHNSON: No I didn't do that
5 part but I posted them. I came and picked them
6 up and posted them as I was told to.

7 CHAIRPERSON MOLDENHAUER: What date did
8 you post them on.

9 MS. GREEN-JOHNSON: I posted them, we
10 picked them up the Friday, and I think it was the
11 18th of March or something like that. I did it
12 more than 15 days prior to.

13 CHAIRPERSON MOLDENHAUER: So what we will
14 have to do. The Board would have to discuss
15 potentially waiving, there's a requirement for
16 you to actually sign an affidavit attesting and
17 swearing that you did post that and then showing
18 documentation and pictures. I think that I would
19 be fine; I'll ask the Board Members if they're
20 fine considering that actual notice was provided.
21 Seeing that you are testifying now, under oath
22 that you did post it on the 18th. All we're doing

1 is we're missing the actual affidavit but I think
2 that it is something that we are permitted under
3 Section 3100.6 to waive and so I'd ask the other
4 Board Members if they are okay with waiving that
5 requirement based on the statements from the
6 Applicant.

7 MR. TURNBULL: Madam Chair I would be in
8 favor of waiving it.

9 MR. HINKLE: I would be in favor as well.

10 CHAIRPERSON MOLDENHAUER: Seeing a
11 consensus by shaking of head the Board then as a
12 consensus we will waive that requirement but I
13 just wanted to make sure procedurally that we
14 move on we address that issue. Are there any
15 other questions for the Applicant regarding the
16 relief that she's seeking? Seeing none I'll then
17 ask if there are any individuals in the audience
18 in support or in opposition of this case. Seeing
19 none I'll then turn to the Office of Planning for
20 their report.

21 MR. JESICK: Thank you Madam Chair,
22 Members of the Board my name is Matt Jesick. The

1 Office of Planning is happy to support this
2 application for a variance. We find that it
3 meets the three part variance test. That there
4 is a unique circumstance certainly that
5 circumstance imposes a practical difficulty on
6 the Applicant. There would be no detriment to
7 the public good or to the intent of the Zoning
8 Regulations. So we recommend approval of the
9 application and I'd be happy to take any
10 questions.

11 CHAIRPERSON MOLDENHAUER: Thank you does
12 the Applicant have any questions for the Office
13 of Planning?

14 MS. GREEN-JOHNSON: No.

15 CHAIRPERSON MOLDENHAUER: Do any Board
16 Members have any questions for the Office of
17 Planning?

18 MS. SORG: Thank you Madam Chair I just
19 have one question. I can agree with OP that this
20 property does meet the variance test for me also.

21 But just out of curiosity I wanted to ask about
22 the possibility of hearing this under 223. The

1 previous structure was non-conforming and it's
2 gets to be replaced in its same condition. So
3 can you discuss that a little bit.

4 MR. JESICK: It was I guess our thought
5 and the Office of Planning that it could
6 potentially be reviewed under 223 which is
7 certainly a lower burden of proof for an
8 Applicant. We tried to confirm that information
9 with DCRA but were unable to do so by the time
10 our report was required to be submitted. So I
11 think this issue could stand some further
12 examination in the future, if God forbid another
13 case like this comes before us. I would be
14 satisfied reviewing this under 223 but not
15 knowing what would happen when they got to the
16 building permit stage we just wanted to be very
17 safe and review it as a variance just in case.

18 CHAIRPERSON MOLDENHAUER: In my review of
19 this I would think that the only way to review
20 this under a 223 would be if the Applicant
21 actually built the house or started building the
22 house as it was existing and then after the house

1 was either substantially built then apply for 223
2 at that point in time. I think that it is
3 appropriate in my view that this actually be
4 before us as a variance test. I don't know if OP
5 wants to comment on that, that's just my
6 understanding based on the facts of the case.
7 Since there's no structure at all existing
8 currently due to the sad circumstances of the
9 house collapsing and the Applicant would have to
10 actually do two parts process in order for this
11 to actually come under 223?

12 MS. GLAZER: Madam Chair I wanted to just
13 refer the Board to "Exhibit 5" which is the ZA
14 referral letter which states that it's being
15 referred for building permit plans for the
16 "reconstruction of a flat for the subject
17 property". So it doesn't really sound like an
18 addition that would qualify under 223.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much I appreciate that. Do Board Members have
21 any other questions? Maybe looking at that issue
22 or any other issues that they want to address

1 with OP?

2 MR. TURNBULL: We're not in a historic
3 area though. Is it?

4 MR. MACKAY: I want to say it's the Mt.
5 Vernon Triangle Historic District.

6 MR. TURNBULL: Oh it is, okay. So
7 basically you're reconstructing it fairly close
8 to what it was.

9 MS. GREEN-JOHNSON: Exactly.

10 MR. TURNBULL: Other than the change in
11 the height of the attic part. Okay it looks very
12 good, thank you.

13 CHAIRPERSON MOLDENHAUER: Any other
14 questions from Board Members? Thank you very
15 much at this point in time we would turn back to
16 the Applicant for any closing remarks.

17 MS. GREEN-JOHNSON: No I just think that
18 we're at the conclusion of this whole trauma just
19 trying to get the house back up, basically.

20 CHAIRPERSON MOLDENHAUER: Thank you any
21 final questions from Board Members or the
22 Applicant? Seeing none, thank you. What we'll

1 do at this point in time is we'll conclude the
2 hearing and we're going to go immediately into
3 deliberation on the case. I will start us off in
4 discussion and deliberation of this case on the
5 merits. What we have before us is we have a
6 request for a variance relief to construct a non-
7 conforming attic while rebuilding as a matter of
8 right collapsed flat at property 218 Morgan
9 Street, N.W. Under the variance standard we have
10 to determine that the property has an exceptional
11 or unique situation or condition. I think that
12 as OP indicates in their report the property does
13 have a very unique history here and the fact that
14 the property was collapsed due to no fault of the
15 owner but rather due to a neighboring property
16 and a faulty underpinning. That being said the
17 Applicant's specific relief is to try to enhance
18 the attic and which would have been permitted if
19 the building had not been collapsed under a 223
20 standard thus the hardship I think and the relief
21 being sought here does directly relate to the
22 uniqueness of the property. So I would see no

1 problem with granting this. As OP indicates that
2 there is, they see no substantial detriment to
3 the public good or to the impairment of the Zone
4 Plan. We have a letter in our record from ANC 6-
5 C. Is there anyone present actually from ANC 6-
6 C, seeing no one. We do have a letter in our
7 record which is "Exhibit 22" which would receive
8 great weight indicating that notice was duly made
9 a properly scheduled meeting with a quorum
10 present and at 7 out of the 9 Commissioner were
11 present and all 7 voted unanimously to approve
12 and recommend that this application be permitted
13 to rebuild the building with the addition to the
14 attic height. That being said I see no problem
15 with granting this application. I'll open up the
16 floor to additional deliberation from Board
17 Members.

18 MS. SORG: Thank you Madam Chair I don't
19 have anything to add to your analysis. I'm still
20 not convinced that this couldn't be reviewed
21 under 223 but as OP given the nature of the
22 project is reconstructing, but regardless of that

1 I think OP's strategy of going with the higher
2 standard of relief, just in case, is a good one.

3 So I'm alright with that, thank you.

4 CHAIRPERSON MOLDENHAUER: Any other
5 deliberation.

6 MR. TURNBULL: I would agree with both
7 you and the Vice Chair on this and hopefully the
8 Applicant is being covered moneywise by other
9 than your own funds but I think I would vote to
10 approve this.

11 CHAIRPERSON MOLDENHAUER: If there's no
12 final deliberation then I'll submit a motion. A
13 motion to approve Application 18195 for Applicant
14 Nancy Green-Johnson pursuant to 11 DCMR 3103.2
15 for a variance from a lot occupancy requirement
16 under Section 403 and a variance for a non-
17 conforming structure requirement of (subsection
18 2001.3) to reconstruct a flat with an attic
19 addition in the R-4 District at premises 218
20 Morgan Street, N.W.. A motion has been made is
21 there a second?

22 MR. JORDAN: Second.

1 CHAIRPERSON MOLDENHAUER: A motion's been
2 made and seconded. All those in favor say aye.

3 CHORUS: Aye.

4 MR. MOY: Staff would record the vote as
5 5 to 0 to 0. This on the motion of Chairperson
6 Ms. Moldenhauer to approve the variance request
7 from lot occupancy 403 a non-conforming structure
8 provisioned under 2001.3. Seconded the motion
9 Mr. Jordan. Also in support of the motion are
10 Mr. Hinkle, Ms. Sorg, and Mr. Turnbull. Again
11 the vote is to approve 5 to 0 to 0.

12 CHAIRPERSON MOLDENHAUER: Good luck with
13 everything and I hope this is the end of
14 obviously a very unpleasant circumstance. I
15 think that we will definitely waive our
16 requirements and ask for a summary order to be
17 issued.

18 MR. MOY: Thank you so much.

19 **Application No. 18196**

20 MR. MOY: The next application for Board
21 Action is Application No. 18196. This is of
22 Timothy Sullivan, pursuant to 11 DCMR 3104.1 for

1 a special exception for a rear deck addition to a
2 one family row dwelling under Section 223 not
3 meeting the lot occupancy Section 403
4 requirements in the R-4 District at premises 1605
5 H Street, S.E. The property is located in (Square
6 1092-S, Lot 15).

7 CHAIRPERSON MOLDENHAUER: Good morning
8 how are you doing? If you could introduce
9 yourself for the record.

10 MR. SULLIVAN: Timothy Sullivan owner of
11 1605 H Street, S.E.

12 CHAIRPERSON MOLDENHAUER: Thank you. We
13 have your application before us; we have your
14 affidavit of posting. This is a 223 application
15 I think that from reading the record I don't have
16 that many questions for you. I think that this
17 is a fairly full record but I'll see if there's
18 anything that you would wish to supplement the
19 record with orally this morning?

20 MR. SULLIVAN: I have letters from the
21 two adjacent property owners saying that they do
22 not object to the proposed addition and special

1 exception application so I have copies of those
2 if the Board would like to see those.

3 CHAIRPERSON MOLDENHAUER: I would Mr.
4 Sullivan that's actually one of the questions I
5 was going to ask you about. That's great that
6 you pre-empted my question. If you could provide
7 that to Mr. Moy and he will make copies if
8 there's not copies already made for all of us,
9 there are okay. Thank you very much Mr. Sullivan
10 and do you have anything else that you would like
11 to supplement the record with?

12 MR. SULLIVAN: No not at this time.

13 CHAIRPERSON MOLDENHAUER: Okay, do Board
14 Members have any specific questions of the
15 Applicant regarding the deck?

16 MR. TURNBULL: Just a couple, as I
17 understand your drawings and looking at the back
18 of your parking pad, the pad kind of like steps
19 down a bit, it's two steps lower.

20 MR. SULLIVAN: That's correct.

21 MR. TURNBULL: What is it, is it asphalt
22 or concrete?

1 MR. SULLIVAN: It's concrete.

2 MR. TURNBULL: It's concrete so you'll be
3 digging, you'll be making your foundations into
4 the concrete and going down?

5 MR. SULLIVAN: That's correct.

6 MR. TURNBULL: I'm just assuming now that
7 since there is this depression that ran water
8 from the deck is going to go down and is there a
9 drain or does it just goes to the alley or what?

10 MR. SULLIVAN: It will just go to the
11 alley as it currently does now.

12 MR. TURNBULL: As it does now, okay. I
13 just wanted to be sure that from the standpoint
14 of your neighbors that there's no additional
15 water or anything being drained off the one side.
16 It doesn't look like it but I just wanted to
17 verify that.

18 MR. SULLIVAN: That would be my
19 understanding is that it would go through the
20 deck and drain out the parking pad to the alley.

21 MR. TURNBULL: Okay, do you see at any
22 point in time adding lighting on the deck.

1 MR. SULLIVAN: Not at this time I mean
2 there are already two lights by the door. I
3 don't anticipate putting additional lighting on
4 the deck.

5 MR. TURNBULL: I just wanted to be sure
6 that if there is lighting that it's down lighting
7 and not spillage over to as many of your
8 neighbors, just try to be localized lighting on
9 that.

10 MR. SULLIVAN: Right we wouldn't want to
11 impose any additional lighting in the area.

12 MR. TURNBULL: Okay, alright, thank you.

13 MR. SULLIVAN: You're welcome.

14 CHAIRPERSON MOLDENHAUER: Thank you Mr.
15 Turnbull for your questions. Are there any other
16 questions from Board Members of the Applicant?
17 Seeing none then at this point in time I'll look
18 to see if there are any individuals in the
19 audience in support or in opposition. Seeing no
20 one, we'll turn to the Office of Planning for
21 their report.

22 MR. GOLDSTEIN: Good morning Madam Chair,

1 Members of the Board. For the record my name is
2 Paul Goldstein with the Office of Planning. The
3 Office of Planning recommends approval of Section
4 223 special exception relief to permit a rear
5 deck addition that does not comply with 403.2
6 which is the maximum lot occupancy requirement.
7 Beyond that I'm willing to rest on the record and
8 answer any questions that the Board might have,
9 thank you.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much Mr. Goldstein for your report. I think that
12 your report addressed all the issues and I was
13 happy to see the additional supporting letters
14 were provided for our record as well. That being
15 said does the Applicant have any questions for
16 the Office of Planning?

17 MR. SULLIVAN: No.

18 CHAIRPERSON MOLDENHAUER: Do any Board
19 Members have any specific questions for the
20 Office of Planning? Seeing none, thank you very
21 much.

22 MR. TURNBULL: Madam Chair just to

1 confirm one item. You still like some of your
2 neighbors intend to park underneath that, still
3 use that pad as a parking spot?

4 MR. SULLIVAN: Yes but if anything the
5 car probably wouldn't go under the deck because
6 the length of the deck coming out would only go a
7 foot or two onto the parking pad. I wouldn't be
8 really parking under the deck.

9 MR. TURNBULL: Okay, thank you.

10 CHAIRPERSON MOLDENHAUER: It's going to
11 be the deck and then your parking pad, that's how
12 I understood it.

13 MR. SULLIVAN: The deck would go a little
14 over a little onto the parking pad but not enough
15 where I'd be parking underneath it.

16 CHAIRPERSON MOLDENHAUER: Any other
17 questions? Seeing none, I'll see if there's
18 anybody in the audience from ANC 6-B present.
19 Seeing no one I'll indicate we have "Exhibit No.
20 22" in our record which indicates that at a
21 properly held and noticed meeting with a quorum
22 present on March 8th, ANC 6-B voted unanimously 9

1 to 0 to support the Application this would
2 receive great weight. That being said I'll turn
3 back to the Applicant for any closing remarks.

4 MR. SULLIVAN: I have no closing remarks.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much and at this point in time we'll conclude the
7 hearing and what we'll do is we'll enter directly
8 into deliberation on this case. For deliberation
9 this is a 223 which is a lower standard for a
10 special exception relief for an addition. The
11 Applicant is seeking to put on a deck addition.
12 I'll incorporate Office of Planning's analysis
13 for our record. I think there are no indications
14 that there's going to be any undue effect of
15 light and air to the neighbors or any privacy or
16 enjoyment. We do have now in our records new
17 submission with the two neighboring property
18 owners indicating that they have no objections
19 from both the property owner at 1603 H and 1607
20 H, S.E. We also have ANC's support, OP's support
21 and I see no reason why this application does not
22 satisfy 223 and I would recommend support. I

1 will see if any Board Members have any additional
2 deliberation or comments.

3 MS. SORG: Thank you Madam Chair I have
4 nothing to add and I would be in support of the
5 motion.

6 CHAIRPERSON MOLDENHAUER: Wonderful then
7 I will submit a motion, a motion to approve
8 Application No. 18196 of Timothy Sullivan
9 pursuant to 11 DCMR 3104.1 for a special
10 exception for a rear deck addition to a one
11 family row dwelling under 223 not meeting the lot
12 occupancy of 403 requirements in a R-4 District
13 at the premises 1605 H Street, S.E. A motion has
14 been made is there a second?

15 MS. SORG: Second.

16 CHAIRPERSON MOLDENHAUER: That motion has
17 been made and seconded, all those in favor say
18 aye.

19 CHORUS: Aye.

20 MR. MOY: Staff would record the vote as
21 5 to 0 to 0. This on the motion of Chairperson
22 Moldenhauer to approve the application for

1 special exception relief under 223, not meeting
2 the lot occupancy requirements under 403. Second
3 the motion Ms. Sorg, also in support of the
4 motion Mr. Hinkle, Mr. Jordan and Mr. Turnbull.
5 So again the vote is 5 to 0 to 0.

6 CHAIRPERSON MOLDENHAUER: Thank you very
7 much Mr. Moy. Seeing that we have no opposition
8 in this case I would request that a summary order
9 be issued.

10 MR. MOY: Very good thank you Madam
11 Chair.

12 CHAIRPERSON MOLDENHAUER: That concludes
13 our hearings for this morning. We will reconvene
14 at 1 o'clock, thank you.

15 **P.M. Session**

16 CHAIRPERSON MOLDENHAUER: Good afternoon
17 ladies and gentleman. This is the April 12, 2011,
18 Public Hearing of the Board of Zoning Adjustments
19 for the District of Columbia. My name is Meredith
20 Moldenhauer, Chairperson, joining me today to my
21 right is Jeffrey Hinkle, Representative of the
22 National Capital Planning Commission, to my

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

1 the court reporter sitting to my right. The order
2 of procedures for special exceptions and
3 variances are as follows: 1. Statement of the
4 Applicant and Applicant's Witnesses. 2. Parties
5 and persons in support. 3. Parties and persons in
6 opposition. 4. Government Reports including
7 Office of Planning and Department of
8 Transportation. 5. Reports from the ANC. 6.
9 Rebuttal and closing statements of the Applicant.
10 Pursuant to Section 3117.4 and 3117.5 the
11 following time constraints will be maintained,
12 the Applicant/Appellant persons and parties
13 except an ANC in support including their
14 witnesses will be given 60 minutes collectively.
15 The Appellees persons and parties except an ANC
16 in opposition including witnesses will be given
17 60 minutes collectively. Individuals will be
18 given 3 minutes and associations or organizations
19 will be given 5. These time restrictions do not
20 include cross examinations or questions from the
21 Board. Cross examination of witnesses is
22 permitted by a party or an Applicant in the ANC

1 within which the property is located is
2 automatically a party to a special exception or
3 variance case. Nothing prohibits the Board from
4 placing reasonable restrictions on cross
5 examination including time limitations or
6 limitation on the scope of cross examination.
7 The record will be closed at the conclusion of
8 each case except for any materials specifically
9 requested by the Board. The Board and the Staff
10 will specify at the end of each hearing exactly
11 what is expected and the date when the material
12 must submitted to the Office of Zoning. After the
13 record is closed no other information will be
14 accepted by the Board. The Sunshine Act requires
15 that a public hearing on each case be held in the
16 open before the public pursuant to Section 405B
17 and 406 of the Open Meeting Amendment Act of
18 2010, the Board may consistent with its rules and
19 procedures and the Open Meeting Amendment Act
20 enter into closed meeting or closed emergency
21 meeting on a case for purposes of seeking legal
22 counsel in a case per Section 405B4 and or

1 deliberating on a case pursuant to Section 405B-
2 13 of the law but only after providing the
3 necessary public notice and taking a roll call
4 vote. The decision of the Board in these
5 contested cases must be based exclusively on
6 public record, to avoid any appearance to the
7 contrary the Board requests that persons present
8 not engage the members of the Board in
9 conversation. Please turn off all beepers and
10 cell phones at this time as to not disturb these
11 proceedings. At this time the Board will
12 consider any preliminary matters, preliminary
13 matters relate to whether a case should or will
14 be heard today such as a request for
15 postponement, continuance or withdrawal or
16 whether proper or adequate notice of a hearing
17 was given. If you are not prepared to go forward
18 today or you believe that the Board should not
19 proceed, now is the time to raise such a matter.
20 Mr. Secretary, do we have any preliminary
21 matters?

22 MR. MOY: Good afternoon Madam Chair we

1 do have a request to postpone application and
2 that is that third case in the afternoon which is
3 Application No. 18184.

4 CHAIRPERSON MOLDENHAUER: Thank you Mr.
5 Moy we'll call that case first then on the
6 calendar. All individuals wishing to testify
7 today please rise and Mr. Moy will administer the
8 oath.

9 MR. MOY: Do you solemnly swear or affirm
10 that the testimony you're about to present in
11 this preceding is the truth, the whole truth and
12 nothing but the truth. You may consider yourself
13 under oath.

14 CHAIRPERSON MOLDENHAUER: Thank you Mr.
15 Moy we'll call the first case it will be the last
16 case that was initially on the calendar.

17 **Application No. 18184**

18 MR. MOY: Yes indeed that would be
19 Application No. 18184 of Sassan Gharai, pursuant
20 to 11 DCMR 3103.2 for a variance from the height
21 limitation under Section 400. A variance from
22 the floor area ratio requirements under

1 (subsection 402.4) a variance from the lot
2 occupancy requirements under (subsection 403.2)
3 and a variance from the side yard requirements
4 under (subsection 405.9) to allow the
5 construction of a new 16 unit apartment building
6 in the R-5-B District at premises 1421 Florida
7 Avenue, N.W. (Square 2660, Lot 237). That
8 document from the Applicant Madam Chair is your
9 "Exhibit 34".

10 CHAIRPERSON MOLDENHAEUR: Thank you very
11 much Mr. Moy. Yes we have, before us we have a
12 request from both the Applicant and from the
13 individual requesting party status to postpone
14 the case. I see no reason then why we should not
15 postpone this case. Then looking at our agenda
16 and our calendar it was requested postponed 60
17 days from the initial postponement which was
18 March 29th, which would land us at the end of May.

19 I think it looks like May is pretty full so we
20 can probably put this on for the first day then
21 in June. Why don't we actually put this on the
22 calendar for June 21st in the morning? Are any

1 individuals in the audience present for this
2 case? You need to just step forward.

3 MR. BROWN: Yes my name is Michael Brown;
4 I live at 1424 Belmont Street, N.W. Washington,
5 D.C. 20009. I'm in opposition to this motion for
6 relief.

7 CHAIRPERSON MOLDENHAUER: Okay so you're
8 just an individual in opposition and so you
9 haven't sought party status have you?

10 MR. BROWN: Yes I did seek party status.

11 CHAIRPERSON MOLDENHAUER: What we're
12 going to do is, will you be available on June
13 21st?

14 MR. BROWN: I believe so, I believe so at
15 this time, I'm not certain because I did plan a
16 trip back but I believe I'll be here.

17 CHAIRPERSON MOLDENHAUER: Then I think
18 what we'll do is we'll postpone this to June 21st
19 in the morning session, the 9:30 session will be
20 the third case on the docket for that day. We'll
21 address party status request, we haven't
22 addressed any of that information just yet.

1 We'll address all of that at that hearing.

2 MR. BROWN: Thank you very much, have a
3 good day.

4 **Application No. 18198**

5 MR. MOY: Alright Madam Chair if there
6 isn't anything for the Board then I'll call the
7 first case for the afternoon.

8 CHAIRPERSON MOLDENHAUER: Thank you very
9 much Mr. Moy.

10 MR. MOY: That would be 18198, this is
11 the Application of the Vestry of St. Columba's
12 Episcopal Church, pursuant to 11 DCMR 3104.1 for
13 a special exception to permit a child development
14 center this is for 90 to 120 children, ages 2yrs
15 6mos to 5yrs old and 25 staff present under
16 Section 205 in the R-1-B District at premises
17 4201 Albemarle Street, N.W. (Square 1677, Lot 7).

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much Mr. Moy. If the parties could introduce
20 themselves for the record.

21 MS. BERRY: I'm Julia Berry; I'm the
22 Director of St. Columba's Nursery School.

1 MR. KEYS: Good afternoon Madam Chairman,
2 I'm George Keys and I'm representing St.
3 Columba's Vestry.

4 CHAIRPERSON MOLDENHAUER: Good afternoon
5 to both of you. What we can do is I can turn it
6 over to you to present your case under this
7 request for an expansion of the CDC.

8 MR. KEYS: Thank you Ms. Moldenhauer.
9 Members of the Board I think this is a fairly
10 straight forward application. It comes on the
11 heels of relief granted by the Board in 2006. At
12 that time the school, the St. Columba's Nursery
13 School was under a 10 year operation window and
14 had to come back seeking further extension of
15 it's time to operate. At that time the Board
16 decided that given the longstanding relationship
17 of St. Columba's Nursery School in the
18 neighborhood that there was no point in coming
19 back at 5 or 10 year intervals to seek further
20 approval. The Board simply granted the relief
21 requested with an unrestricted time period.
22 However circumstances change, environments change

1 and the school in evaluating its program, its
2 role and its needs recognized that some
3 modification had to be made in the operating
4 parameters. So this request comes to you
5 recognizing that changed environment and we have
6 Julia Berry the Executive Director who will be
7 able to address all of the pertinent issues that
8 affect the school that occasion this application.

9 I would point out that under the standards in
10 Section 205 really nothing has changed in the
11 environment surrounding the school. We are here
12 seeking an upward adjustment in enrollment. We
13 are here to seek an extension of operating hours
14 to cover the full day period including the after
15 school programs that parents seem to expect these
16 days. We also would be asking that the Board
17 consider an adjustment in the ages of the
18 children. Both to take in a slightly younger
19 intake and a slightly older upper end for the
20 school. The Board is certainly in the package we
21 tried to assemble the information that the Board
22 needs to look at. We have also and I hope the

1 record has been supplemented by the ANC with
2 their resolution in support as well as an
3 agreement that was attached which the Board needs
4 to look at to see if it's appropriate to be
5 incorporated into the order that would come out
6 of this case. If there are no questions of me in
7 terms of the basis of the application I'd like to
8 introduce Julia Berry and ask her to present the
9 applicants statement with respect to this
10 application.

11 MS. BERRY: Thank you Mr. Keys. Madam
12 Chair and Board thank you for having me here
13 today. Mr. Keys helped me prepare sort of a
14 picture, snap shot picture of St. Columba's and
15 how we operate these days. St. Columba's Nursery
16 School is a program of St. Columbus Episcopal
17 Church. While we run generally speaking very
18 independently of Church operations we are in fact
19 part of the Church programming and my Board of
20 Governors is directly responsible to the Vestry
21 of the Church. So any issue of consequence need
22 to be approved by our Vestry. The Nursery School

1 itself occupies the entire first floor of St.
2 Columba's Church Buildings. We were founded as a
3 Parrish outreach program in 1959, so this is the
4 end of our 52nd year as being a nursery school.
5 At that time there were 60 children who were ages
6 3 and 4 and who came to nursery school for 3
7 hours in the morning the hours of the operation
8 were from 9 to noon. In its first decade St.
9 Columba's admitted its first special needs child
10 a little girl with severe facial malformation who
11 had been rejected by many nursery schools in the
12 city as being so frightening to look at that they
13 didn't feel that they could accommodate her and
14 keep the other children in the program calm.
15 That was our footstep into mainstreaming
16 including children with all kinds of special
17 needs and challenges. A proud tradition that we
18 have at St. Columba's about 25% of our spaces
19 each year are reserved and filled by children
20 with a variety of challenges and needs. We are
21 known not only locally but nationally as a school
22 of excellence in inclusive practice. In addition

1 to be known for our inclusion practices we're
2 known as a great neighborhood resource. We serve
3 not only our Parrish families but our
4 neighborhood kids as well. We do seek diverse
5 population so we happy take children from across
6 the city whenever we can. Children of all
7 cultures, races, ethnicities and socioeconomic
8 status. My Board each year sets aside a
9 significant sum of money for financial aid. In
10 the last 5 years when I have been there as
11 Director it has ranged from 70 to 90,000 dollars
12 a year in award grants. We are now expanded to
13 90 children that happened in 1989. We built a
14 wing on the Church and not surprisingly 70% of
15 our kids when you granted an extension of our
16 hours at that time, now stay for our lunch
17 program but go home before 4 o'clock which is the
18 end of our day. Throughout our 52 years we've
19 remained true to our belief that a child's best
20 preparation in life is learning how to get along
21 with one another, how to collaborate and
22 cooperate, how to figure out and solve their own

1 problems whenever they can but to know how to ask
2 for help when they need it. Our curriculum has
3 remained true to that mission and we spent half
4 of our day outdoors on our playgrounds. It's one
5 of the reasons the neighborhood loves our campus
6 so much. Our playgrounds are expansive, shady
7 and filled with wonderful things for kids to
8 do... Our curriculum boasts one of the most
9 nifty and probably youngest environmental Science
10 programs in the city. As a new teacher myself
11 there in 1988, when I got my first teaching job
12 having been an oil spill clean-up specialist in
13 Alaska for many years I learned how to be a
14 Science Teacher and taught Science at a couple of
15 Episcopal Schools and have written about Science
16 based on my experience on this great campus and
17 with the teachers there. We are now certified by
18 the D.C. Office of the State Superintendent of
19 Education as a training site for environmental
20 education and in 8 core areas in child
21 development, practice in administration of
22 schools for early childhood. We currently have

1 108 children enrolled in morning and afternoon
2 programs and a staff of 18 full or part-time
3 teachers and administrators. We offer a variety
4 of programs our core program, our traditional 3
5 hours is still in place and it's available to
6 both 3 and 4 year olds. We also offer a core
7 program in the afternoon so as one set of 3 year
8 olds leaves the building for lunch another small
9 set of kids come in the afternoon and fills up
10 that extra space that we have. They have school
11 from 12:30 to 3:30. Both 3 year olds and 4 year
12 olds can also opt for our longer core plus day
13 which brings them in our doors at 8:30 and sends
14 them home about 2:10. If a family needs a full
15 school day we offer a program called rest and
16 play which is an extended day program which
17 allows children to stay till our 3:30 dismissal
18 time. We've also begun offering a very short
19 window for kids to arrive early if parents need
20 to be downtown at their jobs before the 8:30
21 time. Our demographics in the market place for
22 admission has changed quite significantly in the

1 5 years since I started being director at St.
2 Columba's. Of course the economic unsettledness
3 in the community has caused a lot of families to
4 turn over. At the end of our admissions season
5 last year we were surprised to find ourselves
6 fully enrolled for both the morning and the
7 afternoon program. The last 3 or 4 years I had
8 to recruit quite heavily into the summer to fill
9 up the p.m. program. We were happy to have
10 really good yield from our acceptance letters.
11 As with any school in the District you have to
12 over admit slightly because you know that you're
13 going to have a few families who will move away
14 over the summer and expect to fill some spots in
15 the fall. We were right on capacity this year
16 and then we had two families who had anticipated
17 moving away, stay each with 2 children themselves
18 and a little boy who had to withdraw from school
19 the previous year to fight his Leukemia with a
20 bone marrow transplant recovered miraculously,
21 quickly and joined us mid-year. So we've been a
22 little bit over our occupancy this year and then

1 lost a few children along the way as their
2 parents moved. Our program used to be
3 significantly larger; we used to be able to fill
4 3 or 4 afternoon classrooms. The most significant
5 change has been the implementation of D.C.'s
6 Universal Pre-K. In our little section of Ward
7 Three the 5 or 6 elementary schools that our
8 children typically go to, the availability of
9 free all day Pre-K has gone from fewer than 200
10 seats to more than 1,000 in the last 4 years.
11 This means that a fair number of our families who
12 may have settled their little ones in 2 year old
13 programs expecting to come to St. Columba's as
14 3's and 4's find that they need to go to Pre-K at
15 4 years old. They are not really willing to be
16 in a 2 year old program 1 year, move their child
17 to St. Columba's for a 3 year old year and then
18 again change schools to go somewhere else at 4.
19 So we're finding that families that we would have
20 expected would come to us are choosing not to.
21 All schools struggle with these kinds of things.
22 Everyone plans their budget around perfectly

1 filled enrollment and to the under enrolled has
2 its consequences both for teachers salaries and
3 financial aid. So the crystal ball has to work
4 pretty well when you do admissions. In some ways
5 these new challenges that the D.C. Public School
6 has presented to us and the changes in families
7 needs have made a lot more innovative about our
8 programs, our core plus and our rest and play
9 program have been hugely appreciated by our
10 families in the neighborhood. It's brought up a
11 more diverse group of families into the school
12 people who work full time or part time who can
13 manage with a variety of days. So we're grateful
14 for it in some ways but we are still keeping our
15 polishing cloth out to make sure that we
16 understand what kinds of challenges lay ahead for
17 us. It's really this reason that we're here
18 today. We're asking that you will consider
19 allowing us to lower our enrollment age to 2yrs.
20 6mos that number was chosen because the
21 Department of Health Regulations and Ratios are
22 required for teachers to children is one that we

1 can meet. It's 6 to 1 for this age group rather
2 than 8 to 1 for slightly older children and 10 to
3 1 for 4's. This is an age range that DCHS has
4 asked us to investigate because there's a
5 tremendous need for more spaces for younger
6 children and we know that we can do a good job.
7 We've also asked that you expand the upper end of
8 our age range to include children through the end
9 of their 5th year. I have been asked by the ANC
10 to tell you as I told them, that we have always
11 allowed children who are enrolled in a school who
12 turn out to be late bloomers or perhaps
13 developmentally delayed and who need a third year
14 of nursery school to be ready for Kindergarten to
15 stay in our program. We have no intention of
16 admitting new students at age 5 knowing that
17 we'll have to turn them out when they turn 6 but
18 we would like to be able to keep our children
19 through the end of the 5th year as we have. This
20 is really a technical adjustment and again
21 something that the Department of Health has asked
22 us to ask you for. If we could have a few more

1 students in our head count we could fully fill
2 the current classrooms that we have up to the
3 license ratio of children either 10 to 1 or 8 to
4 1 with the sizes of the classrooms that we have.
5 It would be immeasurably helpful for my budget.
6 I would also allow us to put in place in our
7 empty classroom a small group of 2 ½ year olds
8 and young 3's. Which again would serve our
9 population, improve my budget line, and give us
10 some flexibility in terms of our ongoing
11 enrollment? We probably will not fill the
12 remaining 14 to 18 spots that the 120 number
13 gives us but it would give us an opportunity to
14 look in the existing building to see if we can't
15 create some more space and bring more children
16 into the program. For the most part we expect
17 that that slice of cushion that we'll have so to
18 speak will remain unfilled for I don't know how
19 long. Our expanded hours I think that's a pretty
20 obvious change. We have started an early arrival
21 program it would be helpful if they could start
22 at 7:30 and not 8:00. We know that there are a

1 fair number of families who don't bother to apply
2 to St. Columba's because we can't offer a full
3 extended day program until the end of the parent
4 work day. Having that flexibility should we find
5 the demand is there and would allow us to operate
6 until 6:30 would be really terrific. Coming
7 before you, having Mr. Keys help me making the
8 application are all very expensive and time
9 consuming things and so on. As I'm thinking
10 strategically and what I might envision in the
11 next 5 years this change would be real useful to
12 have in place. I did mention that the Department
13 of Health has been very encouraging of me to come
14 to you to make these changes. They know that our
15 city could use more spaces. We have an excellent
16 staff who are accredited by the National
17 Association for the Education of Young Children.
18 We know it would be a really great thing to
19 expand our program. Our traffic patterns are
20 always something that comes up for question; I
21 know that's probably the biggest neighborhood
22 beef for most of the schools where transportation

1 is an issue. One of the most unique aspects of
2 St. Columba's Nursery School back in the late 50s
3 and early 60's is that, first is required all of
4 the children to come to schools every day of the
5 week. There was no 2 day program, or 3 day
6 program it was 5 days because the Director
7 believed that that consistency would make for a
8 better experience for the children in terms of
9 their separation and owning their own school at
10 the time. In addition to that she, I think,
11 invented the Kiss and Ride System for the Metro
12 because the children at St. Columba's are dropped
13 off at the curb either by their walking parents
14 or driving parents, greeted by teachers and
15 walked into the building so that they can get a
16 crisp start to their day. There's no hanging on
17 to coattails or crying, Mommy, Mommy please don't
18 leave me. Children march into school, hang up
19 their stuff and get right to work. That has
20 allowed us to run a very crisp 10 to 15 minute
21 long carpool window both for arrival and
22 dismissal.

1 MR. KEYS: Ms. Berry can I interrupt you
2 just for a moment. As you discuss the drop off
3 arrangements could you just orient the Board to
4 the location of the school in relation to the
5 public streets and sort of the advantageous
6 situation that you've got because of the..

7 MS. BERRY: St. Columba's occupies the
8 full width of the block between Albemarle Street
9 and Butterworth Place. We have a nice parking
10 lot off of Butterworth. We are able to divide
11 all of our arrival and dismissal times in half so
12 that only 50% of the population will carpool from
13 either side of the building. With the staggered
14 arrival times and the staggered dismissal times
15 there is rarely a time at either arrival or
16 dismissal that there are more than maybe 6 cars
17 waiting in line for that quick buckle up or
18 unbuckle. I think that accommodation was made
19 when we put the new wing of the building in and
20 expanded our number from 60 to 90 and it's worked
21 very, very well. We also always have our carpool
22 arrivals come down from the busy 42nd Street

1 entrances to both Butterworth and Albemarle to
2 limit the neighborhood traffic on 43rd and below.
3 Again that keeps us with a nice circular
4 pattern. We've chosen times for our arrival and
5 dismissal that nest in between the times that
6 Janie Schools arrivals and dismissals happen. So
7 we almost never have any confluence of traffic
8 between our 2 schools.

9 MR. KEYS: Ms. Berry where is Janie in
10 relation to St. Columba's?

11 MS. BERRY: It is one block east, its
12 right behind the new Tinley Library at Albemarle
13 and Wisconsin. Its border on 42nd Street it's
14 just kitty-corner across from St. Columba's
15 Church Entrance at 42nd and Albemarle. Parking is
16 another question that comes up and is often
17 discussed. We have as I mentioned 18 full time
18 and part time staff members not all of them work
19 every day. We have 11 designated spots, lined
20 spots along the curb in our parking lot for staff
21 but we can easily part 14 or 15 cars, stadium
22 parking. So all of the Staff that drives is able

1 to park off street and in our lot. Would you
2 like to hear about our playgrounds? We have two
3 large beautifully furnished playgrounds. We just
4 renovated them, that was my first project in 2006
5 and 7 when I first came to the BZA as a matter of
6 fact. Huge sandboxes, climbing trees, we can
7 easily flood our sandboxes with the hoses, we
8 have gardens everywhere and we do a fair amount
9 of composting. Our neighborhood has bought into
10 our gardening program and we have a neighborhood
11 gardening club and we are Monarch Butterfly
12 designated site by the National Organization of
13 Monarchists. We're also a national back yard
14 wild life refuge because of the many trees and
15 flowers that we've planted. It's a great
16 pleasure for us to have our neighbors use our
17 playgrounds; they are unlocked and available and
18 posted as available to our neighbors and friends
19 after hours. If you could come to school right
20 after the closing bell you'd see the kids from
21 Janie and the neighborhood lined outside our gate
22 waiting to flood into the playground. It's been

1 very advantageous for us because it means that
2 the neighborhood (inaudible) serves if the middle
3 schoolers and high schoolers come and smoke on
4 our playground or ride their skateboards the list
5 serve lights up and the neighbors alert their
6 mothers and make them go play elsewhere. We've
7 had a lot of lovely interactions and community
8 picnics and many other events that have brought
9 St. Columba's and the neighborhood together in a
10 really nice way. One of the things that is
11 included in our voluntary agreement is that we
12 will make our best efforts to always keep our
13 neighborhood access open even if we have an
14 extended hours program and the Vestry and the
15 nursery school are committed to doing that to the
16 best of our ability. I want to reassure you that
17 we value our neighbors very, very highly and we
18 know that there are many schools that avail
19 themselves of recreation and public parks
20 downtown and we think that we can find a solution
21 if there are any issues to sharing our space
22 after hours. MR. KEYS: Ms. Berry is

1 the existing recreation space for your children,
2 is it large enough to accommodate the increased
3 enrollment you anticipate?

4 MS. BERRY: Oh we could have twice this
5 number of children in our program with our
6 existing playground space. So as always this is
7 an interesting process to go through. I want to
8 say that overall I felt much supported by the ANC
9 and the process itself was quite doable. Mr.
10 Fruman who is the head of ANC 3-E was very kind
11 to meet with me early on and hold my hand a bit
12 as I got myself organized to make sure that I was
13 following proper procedures and understood how
14 things would go along and he made an arrangement
15 with his Commissioners to meet with me privately
16 as well to share their thoughts. That's how our
17 voluntary agreement first began to be flushed
18 out. We came to some general terms in our
19 private meeting and they wrote up the language
20 and Mr. Keys and I spent a fair amount of time on
21 the phone and our email clarifying the language
22 and discussing the intent and the purpose of many

1 things that they have asked us to commit to, to
2 abate any impact on the neighborhood. I did
3 point out to them that I thought our impact would
4 mostly be positive and they agreed and they were
5 very supportive of our application. They did ask
6 us for a fair number of things. You'll be happy
7 to know that the majority of the items that are
8 on our list are already taken care of. We've
9 installed two bike racks for community use and I
10 wish you could see the scooters and the tricycles
11 and the various types of vehicles that are
12 already parked there. We've hammered our
13 agreement with Laurel (inaudible) at Janie School
14 to do some consulting and collaboration in the
15 future. We've amended our admission policy to
16 include a wait list preference for families who
17 work within a quarter mile of the school and it's
18 a lovely change because it means that we can
19 preferentially chose particularly the children of
20 nannies and childcare workers who take care of
21 many of our enrollees and who bring their
22 children to work with them each day. I'm really

1 delighted with that. Of course we do value our
2 neighbors and will continue to keep them in our
3 hearts and on our playground. A little more
4 challenging for me is the public bench and the
5 transportation subsidy. I have met with Marlene
6 Berlin at Ion House and we have the specs for the
7 bench and we've chose a location for it.
8 Truthfully I think it's a wonderful idea. It
9 will require that I do some personal fund raising
10 it's likely to cost 2 to 3,000 dollars to
11 purchase this particular bench, go through the
12 permitting application and the engineering and
13 get it installed. Likewise the public
14 transportation subsidy for my teachers. My
15 budget for next year was hammered out in October
16 and approved in January so I don't have funds in
17 my budget at this time to complete those
18 particular items quickly without taking away from
19 financial aid, teachers' salaries or program
20 monies. The last item that to support this
21 application the ANC has asked that we report back
22 to them annually that we have complied with the

1 certificate of occupancy enrollment caps. This
2 is something I'm willing to do but unsure of why
3 precisely they want me to report to them the
4 Department of Health, of course, monitors my
5 enrollment every year as part of my licensing and
6 so it is taken care of. As I described earlier
7 the enrollment process has a few vagaries in it
8 and is often a little unpredictable and so we
9 wondered if there was some way to, if there was
10 any way to incorporate some amount of flexibility
11 just to make sure we don't get in trouble with
12 the ANC. Sometimes we have a few, 1 or 2, 3 or 4
13 extra children that we didn't intend to have as
14 part of our morning class. Anyway I do
15 appreciate your time and your ear and I'm
16 grateful for this opportunity to present to you
17 and I am of course happy to answer any questions
18 that you might have or me about the nursery
19 school...

20 CHAIRPERSON MOLDENHAUER: Thank you very
21 much. I think that was a very thorough
22 presentation. I don't have any very specific

1 questions at this time. I guess my only question
2 would be potentially either Ms. Berry or Mr.
3 Keys, I see that the voluntary agreement under
4 Section 7 requires that this be included in the
5 BZA order. Does the Applicant concede, the
6 Applicant's already signed this, I see you've
7 already signed it. So you've already agreed to
8 that, is that correct?

9 MR. KEYS: That's correct, it's up to the
10 Board's discretion as to whether it goes in or
11 not. We would simply say that we were able to
12 come to an accord with the ANC with respect to
13 this. These are things that are doable though
14 with some pain as Ms. Berry indicated.

15 CHAIRPERSON MOLDENHAEUR: But you've
16 already signed the agreement. Do Board Members
17 have any other questions?

18 MR. JORDAN: A couple of things, one are
19 these are special education or special assistance
20 students, I know you mentioned something like
21 that, you just have a few.

22 MS. BERRY: Right, St. Columba's is a

1 school for typically developing regular old kids
2 but we do save a percentage of our spots during
3 admission season to make sure that we have
4 included children with identified needs. Then
5 because we do a fair amount of screening and have
6 a strong expertise in, I'm not going to say
7 diagnostic work, because we're not
8 diagnosticians, but typically about 25% of our
9 student population has some kind of issue.
10 Speech or language, development delay, and
11 medical issues, so we figure out how to make our
12 typical program work for kids who have
13 extraordinary circumstances.

14 MR. JORDAN: Then the other thing, toward
15 the end you said typically sometimes we have
16 extra couple of students that we didn't count on,
17 I didn't understand what that meant?

18 MS. BERRY: Well when you do admissions
19 and you want to end up with a number of 90 at the
20 end of the process you usually have to send our
21 95 or 98 letters say we'd love to have you in the
22 program and then you hope that only 90 of them

1 write back and say yes we'd like to come. Some
2 years you get 96 letters back and then you think
3 oh gosh I hope 5 kids move away to live at
4 Grandma's house over the summer. Almost all of
5 the time it works out perfectly, but not all the
6 time.

7 MR. JORDAN: And lastly about the
8 voluntary agreement and maybe I'm sensing too
9 much that there's a waiver in your mind but the
10 ANC when they enter into these things they intend
11 these things to be in fact held in place and to
12 be enforceable and that's something that we
13 certainly give great weight too but I thought
14 something else was going on when you say well
15 it's up to us and this is what they're asking. I
16 want to make sure that you understand that,
17 that's an agreement that they entered probably in
18 good faith with you to do so.

19 MS. BERRY: Oh yes, certainly.

20 MR. JORDAN: And in that regard, I think
21 it's number 4B I wasn't clear what that was and I
22 don't know if that needs to be ironed out with

1 you guys later on, with the ANC because I don't
2 want you to have this as possibly part of the
3 order and you get flagged on it. I'm not clear
4 as to what it really meant. I think it might be
5 some words missing or something. It says invite
6 Pre-K Teachers in St. Columba's professional
7 development. I don't understand what that means.

8 MS. BERRY: Well what the ANC originally
9 asked me to do was buy a full day of time from an
10 OT who works with us and give it to Janie School
11 to do screening and I said when I can't buy Lynn
12 Balls or Martin's time, and I'm not sure that the
13 Principal wants it. So I went up to Janie and
14 Laura (inaudible) the Principal and I met and she
15 said here's what I would really like for us to do
16 together. I'd really like you to come up and
17 consult with me about our new playgrounds we're
18 under construction, we're going to be building
19 this new Pre-K space, can you be my consultant
20 and I said I'd be delighted. Then she said it
21 would be really great if our teachers could get
22 together on some kind of regular basis. If you

1 do professional enrollment could you invite my
2 Pre-K staff down to share in your PD and I said
3 of course. She said maybe we could all get
4 together and have coffee and talk about early
5 childhood issues and I said that would be great.

6 MR. JORDAN: I just want to make sure
7 that you had it clear that you guys had an
8 understanding what that meant because it kind of
9 left me. So you're going to invite them over for
10 professional development time.

11 CHAIRPERSON MOLDENHAUER: Any other
12 questions from Board Members, Mr. Turnbull?

13 MR. TURNBULL: Thank you Madam Chair.
14 Just going back about request for inclusion of
15 terms in the Zoning Order and I guess I looked at
16 OAG I don't know to what extent we can
17 incorporate a lot of these issues.

18 MS. GLAZER: I'm sorry generally the
19 Board does not incorporate the ANC agreements if
20 there's a full order it could be mentioned as a
21 finding of fact, but generally it does not
22 incorporate that because it only has conditions

1 that are enforceable.

2 MR. JORDAN: Between the parties.

3 MS. GLAZER: Yeah, and this is solely
4 between the parties, between the ANC and the
5 Applicant.

6 CHAIRPERSON MOLDENHAUER: We couldn't
7 make it one of the conditions? Upholding the
8 voluntary agreement that was executed? I feel
9 like the ANC letter, and maybe we can discuss
10 this more when we get into deliberation and then
11 it might be a better time. I feel like the ANC
12 letter specifically references this voluntary
13 agreement as reasons for their support. Maybe
14 this is more of a discussion during the
15 deliberation portion.

16 MS. GLAZER: As you wish we can talk
17 about it then, if you don't want to talk about it
18 now but my position is pretty much the same about
19 the incorporation. The conditions should be
20 specific and enforceable and relate to the
21 Board's conditions, not relate to whatever terms
22 have been agreed to between the ANC and the

1 Applicant.

2 MR. JORDAN: Madam Chair I know we're
3 still (inaudible) the case but during
4 deliberations I would like to have discussions on
5 this.

6 CHAIRPERSON MOLDENHAUER: Are there any
7 other questions for the Applicant?

8 MR. TURNBULL: I wanted to get back to
9 the parking issue. You had mentioned I think in
10 the OP Report and it's in your page 2 in the
11 booklet. You said 11 of the 24 parking spaces
12 are 11 of the 24 spaces in the Church parking
13 area are allocated for nursery use. But when you
14 were talking you mentioned on street parking?

15 MS. BERRY: I did not intend to mention
16 on-street parking. All of my staff parks in the
17 parking lot, either in the marked 11 spaces or we
18 Stadium Park behind..

19 MR. TURNBULL: So with the new students
20 and extra staff you don't need any more space.
21 You can live with what you have?

22 MS. BERRY: Absolutely.

1 MR. KEYS: Mr. Turnbull we're authorized
2 now pursuant to the 2006 order of the Board 25
3 staff and she's well below that and doesn't
4 anticipate requiring more staff to accommodate
5 the enrollment increase. The parking regulations
6 require 1 space per 4 staff members so she has 11
7 available. Theoretically you could support a
8 staff of 44 so we're well able to accommodate the
9 Zoning Standards.

10 MR. TURNBULL: I was just a little bit,
11 maybe I misheard but I thought you mentioned on-
12 street parking...

13 MS. BERRY: You know I think I did say
14 the word curb but we have the curb lane I our
15 parking lot, I apologize for that.

16 MR. TURNBULL: The other thing which you
17 had started to mention was is this part of a
18 transportation demand management plan you have
19 for subsidizing or money.

20 MS. BERRY: I believe the intention of
21 the ANC was to encourage me to encourage my
22 faculty members to use public transportation to

1 commute to work in the neighborhood. I do have 3
2 or 4 teachers who either walk or take the Metro
3 everyday because they don't own cars and they
4 live downtown. Truthfully I think it's a great
5 idea to provide employees who use public
6 transportation with a subsidy, it's just not
7 budgeted yet. So I'm going to have to figure out
8 how to do that since I agreed that I would.

9 MR. TURNBULL: Does that fall under item
10 3 in the voluntary agreement? No I guess it..

11 MS. BERRY: Yes geographical and public
12 transit preferences the center shall provide a
13 transit benefit to its staff in use for
14 committing to the center.

15 MR. TURNBULL: So there's no number on
16 any..

17 MR. KEYS: The benefit is unspecified,
18 and that was compromise language that we came to
19 with the ANC.

20 MR. TURNBULL: Well until you actually
21 get going with this program I think it should
22 probably remain that way until you can figure out

1 and especially I understand you have a bunch of
2 problems trying to implement a plan that you
3 hadn't been planning for a year. Okay so
4 basically now it's a good faith effort to help
5 out as much as you can.

6 MS. BERRY: Yes.

7 MR. TURNBULL: Okay thank you.

8 CHAIRPERSON MOLDENHAUER: Any other
9 questions from Board Members? Seeing none, thank
10 you. At this time I'll look to the audience to
11 see if there are any individuals in support or in
12 opposition to this case.

13 MR. KEYS: Ms. Moldenhauer. I could
14 either wait until the end or make some closing
15 remark or I could address it now, your
16 preference.

17 CHAIRPERSON MOLDENHAUER: Typically yea
18 what' well do is we'll have the Applicant make
19 their initial opening statement. We head from
20 your witness, the Applicant and then we'll have
21 closing remarks at the end potentially maybe
22 addressing any of the other issues that may come

1 up by OP or anybody else. I see no one in the
2 audience in support or in opposition. We'll turn
3 to the Office of Planning for their report.

4 MS. THOMAS: Good afternoon Madam Chair,
5 Members of the Board. I'm Karen Thomas with the
6 Office of Planning. We are recommending approval
7 of the special exception request for extending
8 the child development center at the Vestry of St.
9 Columba's Episcopal Church. Specifically the
10 approval will extend to increasing the number of
11 students from 90 to 120 for 2 ½ year olds through
12 the end of the 5th year. During the hours of
13 operation from 7:30am to 6:30pm Monday through
14 Friday. We believe the Application met the
15 standards of Section 205 and is a long standing
16 center for the past 52 years we do not anticipate
17 any adverse impacts to the surrounding
18 neighborhood as a result of the proposed
19 expansion and therefore we would stand on the
20 record and I would be happy to take any questions
21 you may have.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much, does the Applicant have any questions for
2 the Office of planning. You can just put that on
3 the record.

4 MR. KEYS: No Madam Chair, no questions
5 for the Office of Planning.

6 CHAIRPERSON MOLDENHAEUR: Thank you I
7 appreciate it. Do any Board Members have any
8 questions for the Office of Planning? Seeing
9 none thank you I think it was a very thorough
10 report. At this point in time we'll turn to see
11 if anybody's present from ANC 3-E in the
12 audience. Seeing no one we've already made
13 reference to it but I'll just state for the
14 record that we do have our "Exhibit 32" which is
15 a letter indicating that the ANC 3E issued a
16 resolution in support. The resolution is
17 attached and it qualifies to satisfy our
18 standards. It indicates there was a quorum
19 present and at a regularly scheduled meeting on
20 March 10, 2011 the ANC voted 5 to 0 to approve
21 the application This resolution incorporates in
22 reference as a voluntary agreement that was

1 agreed to by the parties and which is attached
2 and we have a copy of as well. At this point in
3 time we'll turn back to the Applicant for any
4 closing remarks.

5 MR. KEYS: Thank you Madam Chair, I think
6 the case, as I said before, I think it's self
7 explanatory, the Board is familiar with this
8 property over the long history of supervision by
9 the Board of its development. We have satisfied
10 all the requirements of Section 205 and I would
11 ask the Board to consider in terms of the
12 enrollment cap, I think this was the crucial bit
13 of Ms. Berry's testimony is that her goal as a
14 non-profit to meet her budget numbers is to come
15 as close to that 120 as possible. In order to do
16 that she has to oversubscribe to be assured of
17 getting to a number close to that. Occasionally
18 you're going to miss, you're going to be
19 oversubscribed and you're going to have 1 or 2
20 students you hadn't planned on or hadn't
21 anticipated. You're going to break your
22 enrollment cap. I think what we would ask the

1 Board to consider in fashioning the order to
2 allow some degree of flexibility whether
3 expressed in a percentage basis but to allow that
4 fluctuation which can occur through no direct
5 consequence or fault of the St. Columba's either
6 through unexpected parent decisions at the last
7 minute, recognition of a student's needs to
8 remain in this school. There has to be some
9 accommodation here. I say particularly in the
10 context of the voluntary agreement that requires
11 us to certify compliance to the ANC on a periodic
12 basis.

13 CHAIRPERSON MOLDENHAUER: Mr. Keys I'll
14 ask my question to you, I have a problem with
15 that in general because we have a lot of CDC's
16 that come before us and they always have a
17 specific number. Here obviously if you have 120
18 maybe then you have to always reach for 115 and
19 then you're giving yourself that additional 5
20 flexibility or that leverage. If we were to give
21 you flexibility up to 125 what's to say that
22 you're not going to then go over the 125 mark.

1 To me there's a lot of other CDC's out there and
2 I've never heard them asking for such a
3 flexibility in that regard.

4 MR. KEYS: I understand your concerns
5 Madam Chair.

6 CHAIRPERSON MOLDENHAUER: Thank you, are
7 there any other closing remarks that you would be
8 asking in regards to any of the other conditions
9 that were proposed by the Office of Planning?

10 MR. KEYS: No those are consistent with
11 our application.

12 CHAIRPERSON MOLDENHAUER: Based on
13 comments earlier from OAG I would prefer to maybe
14 even incorporate this voluntary agreement but we
15 may have some procedural issues with that. If we
16 don't would the Applicant concede or feel
17 comfortable with us including Section 3 as a
18 condition and the terminology that you've agreed
19 to there, and Section 6.

20 MR. KEYS: Those would be acceptable.

21 CHAIRPERSON MOLDENHAUER: Do Board
22 Members have any other questions?

1 MR. TURNBULL: I think page 6 of the OP
2 report has a list of some of the conditions that
3 are you looking to add more then?

4 CHAIRPERSON MOLDENHAUER: I was asking
5 the Applicant if they would be willing to add or
6 if they would have any concerns with adding more.
7 I also asked the Applicant if they were fine
8 with the ones that were identified on page 6 of
9 the OP report.

10 MR. TURNBULL: Oh okay I didn't catch
11 that.

12 CHAIRPERSON MOLDENHAUER: Any final
13 questions from Board Members? Seeing none then
14 thank you very much, at this point in time we'll
15 conclude the hearing. What we'll do is we'll
16 actually enter into deliberation on this case.
17 What I'll do is I'll start us off, I think that
18 this is a fairly straight forward with a very
19 long history of CDC BZA approval over a multitude
20 of years. This is a request to increase the
21 number of students from 90 to 120 along with an
22 increase in the hours of operation and the age

1 ranges for the children. That being said I think
2 that we have a letter of support from the ANC.
3 We have a letter of support from the Office of
4 Planning. I'll incorporate by reference Office
5 of Planning's evaluation of all of the different
6 elements of 205. I agree with their analysis and
7 I'll incorporate that into the record. In
8 addition to that I think that what I would
9 recommend is incorporating the conditions
10 identified on the last page of the OP report,
11 modifying them slightly so that number 4 would be
12 at least 6 parking spaces shall be reserved for
13 the schools use during operating hours. Then I
14 would also because I think that the voluntary
15 report while OAG recommended that we not
16 incorporate it completely I would actually we
17 just incorporate it completely. I know we don't
18 typically do that but I feel that it's
19 conditioned upon their support. So I would say
20 maybe let's just do the whole thing, other Board
21 Members say no let's not do the whole thing. I
22 would say I would actually read into the record

1 Section 3 of the voluntary agreement as a
2 condition thus they were addressing some of the
3 potential traffic concerns. Reducing traffic
4 concerns by having more local children attending
5 the school center which I think is what Section 3
6 is identifying the bicycle racks. The Applicants
7 indicated they've already actually complied with
8 this. Then the transit benefit which is
9 something that we have on a lot of other cases
10 where we require Applicant's to provide such
11 transit benefits and then other instances we
12 actually are more stringent with the Applicant
13 and we actually provide specific values and
14 dollar assessments. So I think by simply
15 incorporating that Section you would be providing
16 a little bit of flexibility to the Applicant.
17 Number 5 I don't think you would have to actually
18 include because they have to satisfy the
19 enrollment levels that we give and if they
20 violate that they're violating our order in
21 general. I think that would be duplicating the
22 actual number that we're asserting in our order.

1 So then I would just simply recommend including
2 number 6 which encourages, I think, a continued
3 communication and correspondence especially
4 because I wouldn't actually recommend this not be
5 termed. So I think providing a recommendation
6 for them to meet with the ANC annually provides
7 for an opportunity for the community and the
8 Applicant to get together and discuss any
9 potential problems they're having and would
10 counter any need to turn the approval. That
11 being said I'll open up the floor to additional
12 deliberation.

13 MS. BERRY: Madam Chair I just want to
14 point out I don't have any problems in the
15 language in paragraph 3 of the voluntary
16 agreement but I think the language in paragraph
17 is somewhat vague and would be difficult to
18 enforce at least by the Office of Zoning.

19 CHAIRPERSON MOLDENHAUER: Okay I think
20 the Board; we can talk about that in little more
21 detail.

22 MS. SORG: Thank you Madam Chair, of

1 course I also agree with yours and OP's analysis
2 that this center obviously meets and has met
3 through its long history the conditions of its
4 operation. Regarding incorporating the ANC
5 voluntary agreement, I think this school has been
6 here for 52 years and I think they've been
7 operating that long, working that long and
8 continue to receive their special exceptions from
9 the BZA each of these times and so to tell them
10 how to work with their community that they've
11 been working with for over half a century I think
12 is not our place. So I think for my part
13 certainly I would not be in favor of
14 incorporating the voluntary agreement in its
15 entirety. Additionally I agree with OAG's
16 comments about clause No. 6 I find that that's
17 something that's sort of further out of our
18 range. Also I don't think 6, its number 5 that
19 has an annual requirement, it's not number 6. I
20 think I agree also that it's a little bit vague
21 like what's reasonable here, what's reasonable as
22 a response, what's reasonable as a request. To

1 me this seems a little bit hazy for us to get
2 into. Ideally I probably wouldn't personally
3 include anything from No. 3 either but I think if
4 what you're suggesting is including No. 3 as a
5 good faith effort to provide public transit
6 benefits I think I could get behind that. So
7 that's about all I have to say, thank you.

8 CHAIRPERSON MOLDENHAUER: Any further
9 deliberation?

10 MR. JORDAN: Yes Madam Chair regarding
11 the ANC, the voluntary agreement. I just think
12 that we really need to try to resolve that at
13 some point and I know that certainly the District
14 and a District Council and the laws and
15 (inaudible) particularly directly incorporates
16 voluntary agreements. I agree with you Madam
17 Chair that if we negate the voluntary agreement
18 then do we have a responsibility to either go
19 back to the ANC and say that well we understand
20 your approval was based upon these conditions but
21 now it's really for not, and if that is we've got
22 to get a better understanding of what that is.

1 The other thing that opens the door is that
2 you've actually, the party has actually entered
3 into a voluntary agreement. Is it enforceable
4 without us, so it's still there? I think that
5 it's something that we need to consider. I think
6 when you entered into it; you had the discussion
7 that it would be entered into this order. I
8 think it doesn't change your circumstances
9 because you're already bound by it. I just think
10 it's something that we can do and should do.
11 I've seen it done; I know it's done at ABC on a
12 regular basis.

13 MS. SORG: Madam Chair and Mr. Jordan. I
14 agree with you Mr. Jordan that the agreement is
15 something that obviously the Applicant is bound
16 by in their relationship to the ANC. I would
17 note in the letter that they say that their
18 resolution rests only in part on this agreement.
19 Also I'm not certain that it's our job to, or we
20 want to be in the business of policing the
21 relationship between the Applicant and the ANC
22 and I'm not sure I'm comfortable with stepping so

1 much into that role. To my knowledge I haven't
2 seen us enter into this kind of role, at least in
3 my tenure here, thank you.

4 CHAIRPERSON MOLDENHAUER: I think that in
5 the past we have not and I think traditionally we
6 have not the BZA incorporated resolutions or
7 voluntary agreement into our orders. I think
8 there are times where people have construction
9 agreement things like that because based on our
10 regulations we actually have to relate any
11 conditions to the conditions or the standards of
12 each relief that's being sought. Lots of times
13 with these voluntary agreements as it is here
14 there are issues that are completely unrelated
15 such as the bench or such as the cooperation with
16 Janney which have nothing to do really with the
17 standards of 205 as it relates to expanding a CDC
18 use. So in that regard I agree with OAG I
19 understand, I think that maybe that's something
20 that the Zoning Commission as our, the body which
21 potentially amends or rights in looking at the
22 ZRR maybe someday want to consider. I know that

1 a lot of, when looking at PUDS or other things
2 that the Zoning Commission looks at, they do
3 incorporate things to this effect in more detail
4 into their orders. Maybe it's something they
5 want to do; maybe they don't want to do it. I
6 think maybe that discussion can be had in a
7 larger context than for this one case. For this
8 one I again, I think that it's important to make
9 sure that we address those issues that are
10 relevant to the 205 standards and to me that has
11 to do with the traffic issues that are addressed
12 in Section 3 the bicycles and then the transit
13 benefits. While having identified No. 6 I do
14 agree with Ms. Sorg that it is slightly vague and
15 maybe we just simply want to encourage or see
16 that the center shall, the Applicant shall attend
17 an ANC meeting annually and if there's nothing
18 that needs to be addressed at the agenda, there's
19 nothing that needs to be addressed at that
20 meeting. I think that it can't hurt to
21 potentially encourage a continual relationship.
22 I've thrown that condition out before, I have had

1 other Board Members who disagreed with me before
2 but I still think that it's an important thing to
3 potentially throw out there. Because while yes
4 they have had a good relationship you never know
5 how the community can change and evolve and
6 without putting a term on it, I think that it's
7 positive to encourage continued relationships.
8 You never know right now this Applicant has a
9 great principal it sounds like; they had a lot of
10 amazing individuals that have been running it.
11 All of a sudden they make change and then there
12 may be a change on how the institution is run and
13 we can't predict that. That's where I think
14 putting something to that effect just protects
15 the community I that regard. I will stop talking
16 now if there's any additional deliberation.

17 MR. HINKLE: Yeah thank you Madam Chair I
18 would be in agreement to consider adding No. 3 as
19 part of our condition but I do have concerns
20 about adding some of the other terms within the
21 voluntary agreement as part of our conditions for
22 approval for this application. I don't think

1 some of these elements fall under our review
2 under 205 that include No. 6, the attendance of
3 the ANC Meetings; I'm not comfortable that we
4 have a role in that.

5 CHAIRPERSON MOLDENHAUER: Mr. Turnbull do
6 you have any feelings. The ANC is the last issue
7 that we're all kind of discussing.

8 MR. TURNBULL: Well Madam Chair I think I
9 wouldn't incorporate this whole thing and we
10 don't even do that in a Zoning Agreement where
11 PUD it's very finite. The items are clearly
12 defined what the amenities are, how they're going
13 to be (inaudible) who's going to get it and how
14 they're going to do that. I would say what we do
15 often have is on a typical PUD is we have the
16 Office of Planning report and then we probably
17 get the Department of Transportation and they
18 often put in or specify some of this language. I
19 feel very comfortable with No. 3 to me that's the
20 one that kind of makes sense and I would let the
21 others go. I don't want to get into covenants
22 and resolutions. I think that's beyond our role,

1 but I would agree with No. 3.

2 CHAIRPERSON MOLDENHAUER: Any further
3 deliberation then? Seeing a consensus of the
4 Board what I will do is I will submit a motion, a
5 motion to approve Application 18198 for a child
6 development center at 4201 Albemarle Street, N.W.
7 pursuant to 3104 and 205 to expand the operation
8 of the existing child development center to
9 increase the number of attendees from 90 to 120.
10 The lower age of entry shall be 2 ½ and the
11 extent of their attendees through the end of the
12 year of their 5th year. In addition extending the
13 operating hours from 7:30am to 6:30pm Monday
14 through Friday. The staff shall not exceed 25
15 and at least 6 parking spaces shall be reserved
16 for the schools use during operating hours. The
17 children shall be escorted into the building by a
18 staff member when they are dropped off. All
19 outdoor activities shall take place under staff
20 supervision. The Applicant will make a good
21 faith effort to minimize commuter traffic
22 associated with the centers operation to that and

1 the center will give preferential wait list
2 treatment to children who live within .5 miles of
3 the center as well as children who have parents
4 employed within .25 miles of the center. The
5 center will provide a free stroller parking for
6 parents who wish to drop off their children at
7 the center and continue on to use public
8 transportation as well as bicycle racks for staff
9 and parents. The center likewise will provide a
10 transit benefit to its staff for use in commuting
11 the center for work or work related events. The
12 center will mention these comments in the next
13 version of its staff and parent hand outs in all
14 future versions. A motion has been made with
15 conditions, is there a second?

16 MR. JORDAN: I'll second.

17 CHAIRPERSON MOLDENHAUER: A motions been
18 made and seconded. All those in favor say aye.

19 CHORUS: Aye.

20 MR. MOY: Staff would record the vote as
21 5 to 0 to 0. This on the motion of the
22 Chairperson Moldenhauer to approve the

1 application for a CDC under Section 205. Seconded
2 the motion Mr. Jordan, also in support of the
3 motion Mr. Hinkle, Ms. Sorg, and Mr. Turnbull.
4 So again the final vote is 5 to 0 to 0 to
5 approve. Also with the conditions as cited by the
6 Chair.

7 CHAIRPERSON MOLDENHAUER: Since there's
8 no opposition we'll waive our requirements and
9 ask that a summary order be issued.

10 MR. MOY: Yes thank you Madam Chair.

11 **Application No. 18199**

12 MR. MOY: The next and last action of the
13 Board goes to Application No. 18199. This is the
14 application of the Church of Jesus Christ,
15 pursuant to 11 DCMR 3104.1 for a special
16 exception to permit a child development center.
17 This is 80 children, 30 of which are under 2 yrs
18 old and 14 staff persons under Section 205. In
19 the R-1-B District at premises 3456 Pennsylvania
20 Avenue, S.E. Property is located in (Square
21 5528, Lot 30).

22 CHAIRPERSON MOLDENHAUER: Good afternoon,

1 how are you doing? You can introduce yourself
2 for the record.

3 MS. GOLDRING: My name is Anora Goldring
4 and I'm the Director of the Lena Sears Child
5 Development Center which is located within Church
6 of Jesus Christ.

7 CHAIRPERSON MOLDENHAUER: We have your
8 application before us and if you like I think
9 your application is fairly full but if you'd like
10 to provide any additional information that we
11 currently don't have in the record, now is the
12 time where you can provide the Board with any
13 additional information.

14 MS. GOLDRING: Okay I would like to
15 submit some letters from some previous parents
16 and also some of our current parents in support
17 of the child development center.

18 CHAIRPERSON MOLDENHAUER: Wonderful thank
19 you. Thank you if you want to maybe provide us
20 with a little bit of an oral statement as to what
21 you just handed out while we take a second to
22 review everything.

1 MS. GOLDRING: Lena Sears Child
2 Development Center has been in existence for
3 almost 18 years and during that tenure of time we
4 have provided our families with quality childcare
5 services. A lot of our parents have come to us
6 by word of mouth meaning other parents talking
7 about the center and how please they have been
8 with the daycare center. So what I have
9 submitted was just letters of recommendations and
10 letters of previous experiences and the success
11 that their children are now having at Lena Sears
12 or from previous parents where the children are
13 in other facilities, other public schools systems
14 and are doing exceptionally well. Either they
15 are just performing above board or there have
16 been instances where the school system wants to
17 skip their child to the next grade level. We
18 provide computer technology, Christian Education,
19 sign language, Spanish and French to our
20 children. We provide a curriculum that is
21 encouraged through the National Association of
22 Education of Young Children. The creative

1 curriculum and also the BECA curriculum which
2 focused on the academics. I have been at the
3 facility for almost 12 years come August 16 and
4 my children also attended, my two children also
5 attended this school. At one point I just had my
6 son there and he did so well at 2 years old and I
7 felt a little guilty because being in the
8 educational field I felt like I didn't have the
9 time to kind of invest in him as I desired. But
10 because the curriculum really worked, he was
11 really flourishing so I took my daughter from her
12 grandmother and brought her into the program as
13 well. So what you're looking over is just a
14 small sample of the families that we have touched
15 throughout the years. Again we don't do a lot of
16 advertising most of our clientele comes from
17 other parents just talking about the day care
18 center. We do have a capacity for 80 children as
19 was stated in the application. Initially when we
20 started in 1993 there were some concerns through
21 the ANC about the noise level from the children
22 coming from the playing. There were also

1 concerns about fumes from cars but as far as I
2 know those are no longer issues. I did not
3 attend the last meeting which was held on March
4 17th, but the Churches Administrator Charlene
5 Belton attended that meeting and also Steven
6 Leslie who serves as the Comptroller of the
7 daycare center. From what they relayed to me
8 everything went in our favor. Unfortunately we
9 don't have the report to submit from the ANC
10 today. I'm thinking it may just take them a
11 little while because we just had the meeting
12 March 17 so it may take them a little while to
13 get the report together so we don't have that to
14 submit today. So I don't know what to do about
15 that part but it's a good place for children,
16 it's a warm nurturing environment. I just believe
17 families need that type of interaction with
18 children especially being as young as they are.
19 It's already hard enough for parents to leave
20 their children with someone else. It's just a
21 great asset to leave your child in a place where
22 they're love and cared for.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much. Were there any concerns since we don't
3 have an ANC letter do you know if there were any
4 general concerns raised by the ANC at that
5 meeting or discussed at that meeting?

6 MS. GOLDRING: As far as I know there
7 wasn't any. As a matter of fact the Churches
8 Administrator told me things they just went very
9 fast. As far as addressing the issue the of the
10 noise level we don't have all the kids out at
11 once. We have a class at a time on the
12 playground so there's not a lot of noise. I
13 think those initial fears of cars coming in and
14 out of the neighborhood and the fumes were
15 subsided because it hasn't been a problem.

16 CHAIRPERSON MOLDENHAUER: The condition
17 that OP has in their report in regards to pick up
18 and drop off occurring on the one way driveway
19 access by ramp at Pennsylvania Avenue and exiting
20 on 38th Street is that what you're currently
21 doing?

22 MS. GOLDRING: Some of the parents, now

1 there's a restriction on 38th Street I think from
2 like 6 to 9 parents cannot use that as an
3 entrance point so they have either come down the
4 ramp or drive down to the next block which is
5 Texas Avenue and just do a little square and come
6 in through the driveway. So as far as drop off
7 and pick up it's been a very smooth transition,
8 very smooth. There haven't been any problems.

9 CHAIRPERSON MOLDENHAUER: And you post
10 that so the parents know that's the traffic
11 patterns that are encouraged?

12 MS. GOLDRING: Yes and it's also posted
13 in our parent handbook.

14 CHAIRPERSON MOLDENHAUER: I have no other
15 questions for the Applicant. Do any Board
16 Members have any other questions?

17 MR. JORDAN: Yes Madam Chair just a quick
18 one how many students to you have now?

19 MS. GOLDRING: Right now I think we have
20 about 50 it kind of fluctuates a little bit. The
21 highest we've ever had was 72 and right now we
22 have about 50 I think because of the economy and

1 some parents losing jobs and so the enrollment
2 has gone down.

3 MR. JORDAN: The number of staff?

4 MS. GOLDRING: Right now we have 11 and
5 we're hoping we can extend that to 14.

6 MR. JORDAN: Thank you.

7 CHAIRPERSON MOLDENHAUER: Any other Board
8 questions?

9 MS. SORG: Thank you Madam Chair I just
10 have one question. The condition on the previous
11 approval that says the Applicant shall work
12 cooperatively and collaboratively with the
13 community so on and so forth. Was that discussed
14 at the ANC meeting did you touch on that at all?

15 MS. GOLDRING: That I am not certain if
16 it was discussed at all. It would have been the
17 responsibility of the Executive Director to
18 attend those meetings unfortunately he is gravely
19 ill he's been fighting cancer for the past two
20 years and on top of that dealing with dialysis so
21 he's right now in a state where he may pass any
22 day now.

1 MS. SORG: I'm sorry.

2 MS. GOLDRING: But that would have been
3 job to do.

4 MR. JORDAN: Just one last question if I
5 may. You said that it seemed like everything
6 went in your favor does that mean did they vote
7 and vote in favor to your understanding or just
8 had good discussion about you?

9 MS. GOLDRING: No they voted in our favor
10 and for what I understand it just went very fast,
11 all in favor yay, yes, any kind of move like
12 that.

13 CHAIRPERSON MOLDENHAUER: Any other
14 questions from Board Members, Mr. Turnbull?

15 MR. TURNBULL: We do have a letter from
16 Valerie Ware basically agreeing that to continue
17 on. Let me understand a little bit more about
18 the parking and how you come in and out. I'm
19 looking at a little map here. Now you had said
20 you come in off of Pennsylvania Avenue or 38th
21 Street, how do you?

22 MS. GOLDRING: You can enter the facility

1 by way of 38th but there is a traffic restriction
2 like from 6 to 9 you cannot enter by way of this
3 street, but where it says site, there is an
4 opening where there's a ramp that goes directly
5 down into the parking lot that you can take that
6 ramp and enter the parking lot that way and enter
7 the day care center. Then that next block which
8 is Texas Avenue you can enter that way as well.
9 You would kind of drive around and enter the back
10 way of 38th Street and then drive into the parking
11 lot.

12 MR. TURNBULL: That's the same way for
13 drop off and pick-up?

14 MS. GOLDRING: Yes.

15 MR. TURNBULL: And the playground is the
16 fenced area, I don't know what direction it is
17 but I see the existing parsonage and I see the
18 existing church and then I see an existing
19 sidewalk is that the play area over there?

20 MS. GOLDRING: Right where 38th Street
21 is. That little building there that's the annex
22 and right next to that that little space where

1 the arrow is pointing that's where the playground
2 is. So you can actually open up the door of the
3 building and then walk right onto the playground.

4 MR. TURNBULL: So the kids, I'm just
5 looking at, you have a substantial parking lot
6 back there. Kids get, where actually is there a
7 designated area here where they actually get
8 dropped off and someone is there to greet them to
9 come into the building.

10 MS. GOLDRING: Most of the parents will
11 park their car and just walk the children in.
12 I've seen cases where parents will pull up right
13 in front of the door and walk their child in. I
14 know it is a large parking lot but most of the
15 parents don't park way in the back. Most of them
16 park close and there's plenty of space. So they
17 select the spaces that are closer to the
18 entrance. Again they will either park close and
19 walk them in or they will pull right up to the
20 door and someone will walk them in.

21 MR. TURNBULL: I just want to be sure,
22 there's supervision by the parking. I'm just

1 concerned about kids going into a parking lot,
2 but this sounds like it's supervised that the
3 parents are there to take them in.

4 MS. GOLDRING: Always, we don't accept
5 kids unless there's a parent that bring them in
6 not like open the door and run in. They have to
7 bring them in and once they enter the facility
8 they have to sign them in. They have to sign
9 their name, the child's name and the time that
10 they drop them off. It's the same procedure when
11 they come to pick them up. They have to come
12 sign the child out and the time that they took
13 them out of the facility.

14 MR. TURNBULL: Okay, alright good, thank
15 you.

16 MS. GOLDRING: You're welcome.

17 CHAIRPERSON MOLDENHAUER: I guess the
18 only other comment I would have and I don't know
19 if this, it may not warrant a response but just
20 to put on the record for everybody. We have
21 "Exhibit No. 5" which is the authorization letter
22 from the Executive Director Mr. Brown, but it

1 only indicates it's providing you Ms. Goldring,
2 the Director the permission to file the
3 application but not actually to be here before
4 the Board to present on behalf of the hearing.
5 Typically what we've been trying to do is we've
6 been trying to have these authorization letters
7 be more specific. However I think that hearing
8 the testimony that Mr. Brown is very ill and
9 potentially as indicated close to passing away
10 any day now. I would be willing to provide an
11 exemption here indicating that you are the
12 Director and so you do have vested authority to
13 act on behalf of the agency based on your
14 position itself. So that being said are there
15 any final questions for the Applicant? We can
16 also ask them at the end of the hearing as well.
17 Seeing none at this time what we'll do is see is
18 there any individuals in the audience in support
19 of in opposition of this case? Seeing none, then
20 we'll turn to Office of Planning for their
21 report.

22 MR. MORDFIN: Good afternoon Chair,

1 Members of the Board I'm Stephen Mordfin with the
2 Office of Planning. The subject application is
3 in conformance with the criteria for the granting
4 of the special exception for a child development
5 center because the Child Care Licensing Unit of
6 OSSE has recommended approval of the application.
7 Pick up and drop off continue to be from the
8 parking lot with vehicles entering from
9 Pennsylvania Avenue and exiting on to 38th Street.
10 DDOT had no comments on the application. Four
11 parking spaces are required and 40 are provided.
12 The outdoor play space is fenced and buffered by
13 trees and use of it will be staggered throughout
14 the day so that all the children would not be on
15 it at any one time. No off site play areas are
16 proposed. The Office of Planning is unaware of
17 any other child development centers within the
18 square or 1000 square feet. If the ANC is in
19 agreement OP would recommend the approval not be
20 subject to a time limit and that the meetings
21 between the Applicant, the ANC and the community
22 not be required. Therefore the Office Planning

1 recommends that the application be approved
2 subject to the following conditions. That the
3 number of children not exceed 80 and the number
4 of employees not exceed 14. The ages of the
5 children shall be from infants to age 5. Hours
6 of operation shall be Monday through Friday 6am
7 to 7pm. Forty onsite parking spaces shall be
8 provided. Outdoor playtime shall be staggered so
9 that all the children shall not be on the play
10 area at any one time. Diligent effort shall be
11 taken by the Applicant to reduce noise in the
12 play area when the children are escorted through
13 the neighborhood. Drop off and pick up shall
14 occur at the entrance of the building from the
15 parking lot and circulation shall be one way with
16 access from Pennsylvania Avenue and exiting out
17 of 38th Street. The Applicant should mitigate soil
18 erosion on 38th Street, I'm not sure this has been
19 accomplished by the Applicant with landscaping.
20 The property shall be kept free of refuse and
21 debris at all times.

22 CHAIRPERSON MOLDENHAUER: Does the

1 Applicant have any questions for the Office of
2 Planning?

3 MS. GOLDRING: NO.

4 CHAIRPERSON MOLDENHAUER: Board Members
5 I've got a couple of questions. Mr. Mordfin I
6 guess the second to the last condition about the
7 mitigating of soil erosion? How do you relate
8 that to one the conditions or what's the
9 reasoning for that condition?

10 MR. MORDFIN: Well the reason for keeping
11 that is because it was in there before. The
12 Board had approved it as part of it before. I
13 realize that it doesn't directly relate to the
14 criteria contained within the Zoning Regulations.
15 I think it was in there more to ensure that,
16 because from 38th Street they do have the
17 playground area there and I don't know from
18 before how much of the use affected all of that.
19 So I don't know exactly how that impacted, how
20 the day care center impacted the erosion that had
21 been occurring there or not.

22 CHAIRPERSON MOLDENHAUER: In regards to

1 the second half of that, the landscaping on the
2 site shall be maintained in a neat and health
3 growing condition. Did you visit the site?

4 MR. MORDFIN: I did not visit the site; I
5 did see photographs and things. There is the
6 landscaping data purposely which I think is to
7 buffer it from the community to absorb the noise.
8 There are mature trees around the playground.

9 CHAIRPERSON MOLDENHAUER: I think that
10 maybe going more towards the issue of buffering
11 the noise and to Section 205.6. I don't have any
12 other questions for the Office of Planning.
13 Thank you very much for your thorough report. Any
14 other questions from Board Members?

15 MR. JORDAN: Yes I guess the third bullet
16 from the end. How does that relate to what we
17 should be doing here? Condition that they attend
18 the meeting ANC and the community?

19 MR. MORDFIN: Oh the, that had to do with
20 the meetings between the neighborhood and the
21 Civic Association. One of the criteria is that
22 the center shall not be located or designed to

1 create objectionable traffic conditions or unsafe
2 conditions or that the Board shall require
3 special treatment to protect adjacent nearby
4 properties and I think that was the purpose of
5 that to make sure that the neighbors who live
6 nearby didn't feel adversely impacted by this
7 daycare center. In the previous application
8 apparently there were some issues between the
9 community and this daycare center.

10 CHAIRPERSON MOLDENHAUER: Thank you very
11 much. One of the things we've referenced the
12 Applicant's referenced is the ANC report. Have
13 you heard any word on that from your
14 communication with the ANC Commissioners?

15 MR. MORDFIN: I did contact them; I did
16 not receive any responses.

17 CHAIRPERSON MOLDENHAUER: Okay thank you.
18 Then at this point in time there seems to be no
19 other questions of the Office of Planning. Is
20 there anybody in the audience here on behalf of
21 ANC 7-B? Seeing no one present I'll turn back to
22 the Applicant for any closing remarks. I'd like

1 to ask if you would be willing to potentially
2 hold off on a decision today and wait for the ANC
3 report to come into our file. If you would work
4 with the ANC to make sure they actually issue
5 some sort of report so we understand where they
6 stand, is that something you would be willing to
7 do?

8 MS. GOLDRING: That's not a problem.

9 CHAIRPERSON MOLDENHAUER: Wonderful. Do
10 you have any other closing remarks that you'd
11 like to make to the Board?

12 MS. GOLDRING: No just that it's a
13 wonderful daycare center. I know daycare centers
14 sometimes get a bad reputation and sometimes you
15 did have some bad ones that are out there. I've
16 been very fortunate to work at one that really
17 caters to the needs of the children. That's all.

18 CHAIRPERSON MOLDENHAUER: Do Board
19 Members have any final questions for the
20 Applicant? Seeing none then what I'd like to do
21 is I'd like to put this on this on the schedule
22 for decision in May and ask that the Applicant

1 work diligently with the ANC to ensure that we do
2 get a written resolution from them as part of our
3 record. That way there maybe can be some clarity
4 and some cleaning up of those conditions so that
5 maybe we don't have to add all of those things if
6 we get the positive support in writing from the
7 ANC. That being said we have a decision date on
8 our calendar for May 17, 2011. We will schedule
9 this for decision for May 17, 2011 and we'll
10 leave the record open until Friday, May 13th for
11 any additional submissions and for the ANC
12 report. If you can work to make sure that you
13 get that into our record prior to the 13th. Thank
14 you. Mr. Moy I believe that completes our
15 calendar for the day.

16 MR. MOY: I believe so Madam Chair.

17 CHAIRPERSON MOLDENHAUER: Wonderful, well
18 then thank you and we will reconvene on April
19 26th.

20 MS. GLAZER: Madam Chair is the record
21 open only for an ANC report?

22 CHAIRPERSON MOLDENHAUER: Yes.

1 MS. GLAZER: Thank you.

2 CHAIRPERSON MOLDENHAUER: Thank you.

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