

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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

PUBLIC MEETING AND PUBLIC HEARING  
July 12, 2011  
Start: 10:02am - End: 3:36pm

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

Board Members

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

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## 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 July 12, 2011, Public  
5 meeting of the Board of Zoning Adjustments for  
6 the District of Columbia.

7 My name is Meredith Moldenhauer,  
8 Chairperson, joining me today to my left Vice  
9 Chair Nicole Sorg, Mayoral Appointee, to my far  
10 right is Jeffrey Hinkle, Representative of the  
11 National Capital Planning Commission and to my  
12 right is Lloyd Jordan, Mayoral Appointee, and our  
13 Zoning Commissioner Representative is Konrad  
14 Schlater.

15 Copies of today's meeting agenda are  
16 available to you, and are located to my left in  
17 the wall bin near the door.

18 We do not take any public testimony at  
19 our meetings unless the Board asks someone to  
20 come forward.

21 Please be advised, this proceeding is  
22 being recorded by a court reporter, and is also

1 being webcast live.

2           Accordingly we must ask you to refrain  
3 from any disturbing noises, or actions in the  
4 hearing room. Please turn off all beepers and  
5 cell phones.

6           Mr. Secretary, do we have any preliminary  
7 matters?

8           MR. MOY: Good morning Madam Chairperson,  
9 we do, but Staff would suggest that the Board  
10 address those preliminary matters on a case by  
11 case basis.

12           CHAIRPERSON MOLDENHAUER: Thank you, we  
13 will call the first case for decision, for this  
14 morning.

15 **Appeal No. 18114**

16           MR. MOY: Yes, good morning Madam Chair,  
17 Members of the Board.

18           I believe the first action of the Board  
19 is Appeal No. 18114. This is of the Ward 5  
20 Improvement Association, pursuant to 11 DCMR 3100  
21 and 3101 from an April 21, 2010, decision by the  
22 Zoning Administrator to grant Certificates of

1 Occupancy, Nos. 1001838 and 1002471.

2           This is for a restaurant with nightclub,  
3 not a sexually oriented business establishment in  
4 the, C-M-2 District at premises 2127 Queens  
5 Chapel Road, N.E. (Square 4258, Lot 34).

6           As the Board will recall at its last  
7 decision meeting, on March 29, 2011, this appeal  
8 application the Board convened and deliberated  
9 the issues.

10           Vice Chairperson Sorg stated for the  
11 record; that she reviewed the full record to  
12 participate.

13           At the end of the deliberation the Board  
14 proffered two motions. The motions were made but  
15 each of the motions failed to carry for lack of a  
16 majority concurring vote, pursuant to 3125.2.  
17 Subsequently, the Board rescheduled its decision  
18 on July 12<sup>th</sup>.

19           As a preliminary matter Madam Chair, the  
20 Board has, in their case folders three filings.  
21 The first is from the Intervener, the property  
22 owner, who filed a motion to dismiss dated June

1 29, 2011, identified as "Exhibit 35".

2 Subsequently, the Intervener also filed a  
3 response to the Opposition to their motion to  
4 dismiss, which is identified as "Exhibit 38".

5 There are two responses to the Motion to  
6 Dismiss, one from the Appellant, and one from the  
7 Appellee, identified as "Exhibit 36 and 37",  
8 respectively.

9 Other than that Madam Chair, the Board is  
10 to act on the preliminary matters, and then on  
11 the merits of the appeal. That completes the  
12 Staff's briefing Madam Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you very  
14 much. I think what we should first do is; we'll  
15 discuss the motions that we have outstanding.

16 Those include the Intervener's Motion to  
17 Dismiss, then the Appellant's motion response,  
18 and also request to then, amend its complaint,  
19 and include the more recent Certificate of  
20 Occupancy, then the District's response to that,  
21 and then the Intervener's response to the  
22 Opposition as well.

1           I think, that due to the new facts we  
2 should admit all of these documents into the  
3 record. Then discuss whether or not, I think what  
4 we should do, is we should first discuss whether  
5 or not we wish to permit the Appellant to amend  
6 the complaint. I think that would obviously  
7 determine whether or not we grant a motion to  
8 dismiss or not. Then we will evaluate the Motion  
9 to Dismiss, and then go from there.

10           I think, that obviously given the fact  
11 that a new Certificate of Occupancy has been  
12 issued, the Intervener makes, I think, a valid  
13 argument, and its reply to the Appellant's  
14 opposition and the Motion to Dismiss.

15           Even if we were to make a decision on  
16 the merits of the entire case, as it stands  
17 today, and determine that the June 2010,  
18 Certificate of Occupancy was wrongly issued, or  
19 something to that effect. That wouldn't really  
20 matter, that would provide no relief because they  
21 still have a new valid Certificate of Occupancy  
22 from this summer, from June 2011.

1           Given that, I think that the request to  
2 amend, we've done that in the past, where we have  
3 allowed an Applicant to include a more recent  
4 amendment, or more recent issued Certificate of  
5 Occupancy, especially here, where the use, which  
6 is the major issue in the case, was not changed.

7           This was simply just a change in the  
8 required request to have some additional outdoor  
9 seating, and have an outdoor garden in the new  
10 Certificate of Occupancy.

11           Given the fact there was also an  
12 evaluation done, my opinion would be that we  
13 would permit the amendment, and allow the new  
14 Certificate of Occupancy to the Appellant to  
15 amend its appeal, and to include the new  
16 Certificate of Occupancy.

17           How do other parties feel on that first  
18 issue? I think we'll address this, one issue at  
19 a time.

20           MR. SCHLATER: Madam Chair, I think, I  
21 see how to structure this. I think it really  
22 depends where we're at on the overall case.

1           I think, if we're at a point where we  
2 could rule on the merits today, leaving aside the  
3 facts of the new Certificate of Occupancy. I  
4 think that would drive how we move forward with  
5 respect to the issue of the new Certificate of  
6 Occupancy.

7           Specifically, I think if Mr. Jordan, who  
8 presumably has read the record, and is prepared  
9 to vote, based on the facts before us, were in  
10 favor of denying the appeal, I'm not sure why we  
11 would need to get into the issue of the new  
12 Certificate of Occupancy?

13           CHAIRPERSON MOLDENHAUER: My question is,  
14 even if we were to... and go permit... and go through  
15 the deliberation process now, the evaluation that  
16 we would be doing, would be based on a hearing  
17 that was based on the ZA's decision in a prior  
18 Certificate of Occupancy.

19           There's a brand new Certificate of  
20 Occupancy in place, so there's a whole new  
21 evaluation process based on the District's  
22 motion. None of us have any facts, and we don't

1 know exactly what occurred.

2           Maybe, I think actually, the District may  
3 have followed some of the discussions we had. I  
4 think it might actually be a fairly quick  
5 deliberation process. After we hear more about  
6 what happened during that decision, or during  
7 that evaluation, issuing the new Certificate of  
8 Occupancy. However, we don't know what happened.

9           We're making a decision on what happened  
10 in the prior Certificate of Occupancy. Even if  
11 we decide one way or another, if we decide that  
12 the Certificate of Occupancy was granted properly  
13 back in June, we're making a decision based on a  
14 Certificate of Occupancy that's no longer in  
15 place.

16           MR. SCHLATER: I understand that, I'm  
17 just saying; based on the facts before us today,  
18 I feel comfortable, that the ZA followed the  
19 Zoning Regulations properly in issuing that  
20 Certificate of Occupancy, and I don't need  
21 further information on the process they went  
22 through, on the new Certificate of Occupancy. I

1 don't necessarily think that we need to...

2 We in essence have to have a brand new  
3 hearing on the new Certificate of Occupancy, and  
4 bring facts on, basically hit the reset button on  
5 the case.

6 CHAIRPERSON MOLDENHAUER: I guess my  
7 question is procedurally, we have to address the  
8 request of the Appellant. The Appellant  
9 requested to have the Appeal amended. How would  
10 you then address that motion? That request? You  
11 can't just simply say; well we're going to make a  
12 decision on the merits of the case previously,  
13 and we're not going to even look at that.

14 I mean, we have to address the motions  
15 and the preliminary matters that we have before  
16 us right now.

17 MR. SCHLATER: I would feel comfortable  
18 denying the request, and to amend the Appeal, and  
19 vote on the facts before us on the prior  
20 Certificate of Occupancy.

21 CHAIRPERSON MOLDENHAEUR: Let me open up  
22 the floor to other Board Members to see, to see

1 where people stand, in regards to potentially  
2 denying, or permitting the amendment to the  
3 Appeal.

4 MR. JORDAN: Madam Chair, before the  
5 record, I just want to go on the record to  
6 indicate that I'm going to recuse myself during  
7 these discussions, and until I get a legal  
8 opinion from my office regarding this particular  
9 case.

10 CHAIRPERSON MOLDENHAUER: So, I think Mr.  
11 Schlater does that change your opinion in any  
12 way, in how we address this? I think we have to  
13 make a decision on these preliminary matters.

14 MR. SCHLATER: I mean, if we're not  
15 prepared to move forward today. I think we  
16 should have a limited hearing on the new  
17 Certificate of Occupancy, I think that's fine.

18 CHAIRPERSON MOLDENHAUER: Do any Board  
19 Members...

20 MR. HINKLE: Yeah Madam Chair, I'm in  
21 agreement with your opinion, in that we have let  
22 in... we have addressed other requests to amend

1 these appeals, and I think it's appropriate in  
2 this case.

3 CHAIRPERSON MOLDENHAUER: So then, I  
4 think that what I'm hearing is; we probably have  
5 a consensus. I haven't heard from the Vice  
6 Chair, to my left. I'm assuming that by saying  
7 nothing that you are also in agreement.

8 What we'll do is, I think what we should  
9 do is, try to put this on an expedited review  
10 process.

11 I guess maybe I should look over at OAG.  
12 Do we have any timeframe in regards to noticing  
13 for a limited hearing?

14 MS. NAGELHOUT: I don't know, Cliff, you  
15 might be better at answering this.

16 MR. MOY: If...

17 MS. NAGELHOUT: Well the hearing was, you  
18 ended your hearings, and set it for decision  
19 making. As a practical matter you're probably  
20 going to meet your notice requirements anyway.

21 CHAIRPERSON MOLDENHAUER: Okay, so we  
22 could put this on the next available date, and we

1 don't have to worry about noticing the public.

2 MR. MOY: The only thought that I have in  
3 my mind Madam Chair, is whether or not, and for  
4 the life of me I can't recall, on whether or not  
5 the ANC had weighed in on this appeal. If so, you  
6 may want to allow at least 30-days.

7 CHAIRPERSON MOLDENHAUER: Well, we also  
8 have this August recess. So if we put it on the  
9 first day of September, I think that September  
10 13<sup>th</sup>, that would potentially, I mean I'd like to  
11 have it earlier. That also allows a significant  
12 period of time.

13 Mr. Schlater's here on the 20<sup>th</sup>. Will you  
14 either make yourself available earlier on the day  
15 before? Maybe we should just make it on the 20<sup>th</sup>?

16 MR. SCHLATER: That would be better.

17 CHAIRPERSON MOLDENHAUER: So, we'll set  
18 it instead of for September 13<sup>th</sup>, we'll set it for  
19 September 20<sup>th</sup>.

20 We'll have a limited hearing solely on  
21 the issue of, obviously the decision, or the  
22 review process, and the evaluation process of the

1 more recent Certificate of Occupancy that was  
2 issued.

3           Obviously, I will make sure it does not  
4 go beyond the scope of that information, that was  
5 provided to the ZA, and what the ZA did in order  
6 to potentially issue that new Certificate of  
7 Occupancy.

8           We will evaluate whether or not the ZA  
9 erred on the issuance of this new Certificate of  
10 Occupancy.

11           So then, procedurally what that means is  
12 that we are denying the motion to dismiss. We  
13 are then granting the motion to amend, and  
14 setting a limited hearing date.

15           MR. SCHLATER: I guess I don't feel  
16 comfortable voting against the Motion to Dismiss  
17 at this time. I think it's one of those things;  
18 I'd like to hear the evidence on the issuance of  
19 the new Certificate of Occupancy, before ruling  
20 on the Motion to Dismiss.

21           Actually, I think, I would be strongly in  
22 favor of the Motion to Dismiss, most likely,

1 based on what I've seen in the filings.

2 CHAIRPERSON MOLDENHAUER: I think, that  
3 based on the information that we have before us,  
4 I think, it's more appropriate to probably deny  
5 it, and then what we can do is, we can ask  
6 counsel potentially, if they want to, at the  
7 hearing submit an oral motion at that time to  
8 have a summary decision, or something to that  
9 affect.

10 MR. SCHLATER: I guess I just feel  
11 uncomfortable voting against the Motion to  
12 Dismiss. I don't want to cloud the record.

13 MS. SORG: Madam Chair, if I can jump in?  
14 I agree with Mr. Schlater on that.

15 Procedurally is it, you know can the  
16 hearing, the limited hearing that your suggesting  
17 be part of... prior to the decision of whether or  
18 not to deny or support the Motion to Dismiss, and  
19 also the amendment.

20 CHAIRPERSON MOLDENHAUER: Maybe OAG can  
21 jump in here. From my opinion it's more a matter  
22 of, it's a motion to dismiss. If we're asking

1 for a limited hearing, it's more a matter of  
2 having an oral argument on the Motion to Dismiss,  
3 rather than actually having a testimony from... but  
4 the question of an oral argument doesn't have  
5 testimony.

6 Is this a question more from the Board?  
7 Are we're looking for testimony from the ZA, in  
8 order to make the decision? Are we looking just  
9 for oral arguments from the lawyers?

10 If we're looking for actual testimony,  
11 then I don't think we can hold off on the Motion  
12 to Dismiss, because we're saying we're actually  
13 looking for more testimony. We're not granting  
14 the motion to dismiss early.

15 MS. NAGLEHOUT: You don't have to decide  
16 the Motion to Dismiss today. You could do both.  
17 You could do testimony and argument, and then  
18 decide it. You could ask them to renew the  
19 motion later, or you could just hold this one in  
20 abeyance.

21 You've already indicated you want a  
22 limited hearing, so I think that's...

1           MR. SCHLATER: And I think I feel the  
2 same way about the Appellant's motion to amend  
3 the appeal. I'd like to hear more evidence to  
4 see whether in fact... I'd like to hear more before  
5 I agree to do that.

6           CHAIRPERSON MOLDENHAUER: But, if we  
7 don't grant the motion to appeal, then the new  
8 Certificate of Occupancy isn't at issue. I  
9 think, procedurally we have to make the new  
10 Certificate of Occupancy an issue in order to  
11 have a limited hearing on it.

12           MS. SORG: Madam Chair, can we hear  
13 evidence on the issuance of the new Certificate  
14 of Occupancy in order to be able to rule on the  
15 motion to amend, and also the motion to dismiss?

16           MS. NAGELHOUT: I think you could. You  
17 could hold both these motions in abeyance. Have  
18 your limited hearing, and then vote on them. If  
19 you wanted to do it that way?

20           MR. MOY: So, in other words Madam Chair,  
21 you could hold both these items in abeyance and  
22 on the Boards own motion open a limited hearing.

1 MS. NAGELHOUT: Yeah, you can have more  
2 hearings... and argument on the motions.

3 CHAIRPERSON MOLDENHAUER: I think it  
4 would be cleaner. But if other Board Members are  
5 not... I'm trying to also think of a cleaner slate  
6 and to say; okay we're going to go forward with  
7 this, to make the new Certificate of Occupancy,  
8 an issue before us, before just having a hearing.

9 If Board Members feel more comfortable  
10 holding that in abeyance, rather than just simply  
11 making a decision today, we'll go forward, and  
12 we'll do that.

13 What we'll do is, we'll setup a limited  
14 hearing. We won't make any actual formal  
15 decisions on any of the motions before us. Then  
16 we'll just simply open the floor for the limited  
17 hearing. What I'd say is for September 20<sup>th</sup>. Mr.  
18 Moy do we have that clear now?

19 MR. MOY: Oh yes, I'm fine, the Staff's  
20 fine Madam Chair.

21 CHAIRPERSON MOLDENHAUER: Okay fabulous.  
22 We can move on to the next case.

1           MR. MOY: Before going to the merits of  
2 the separate applications Madam Chair, I wanted  
3 to take a step back for the Board to take action  
4 on the expedited review calendar.

5           What's before the Board are two  
6 applications on the calendar. The first is  
7 Application No. 18253 of Thomas Eichenberger, and  
8 Marian Wiseman, pursuant to 11 DCMR 3104.1 for a  
9 special exception to allow a rear addition to a  
10 one-family row dwelling under section 223, not  
11 meeting the court Section 406, and nonconforming  
12 structure (subsection 2001.3), requirements in an  
13 R-4 District at premises 213 8<sup>th</sup> Street, N.E.  
14 (Square 917, Lot 84).

15           The second application on the calendar is  
16 Application No. 18255 of Corinne Guttman,  
17 pursuant to 11 DCMR 3104.1 for a special  
18 exception under Section 223, not meeting the side  
19 yard (subsection 405.9), requirements to allow a  
20 rear addition to an existing one-family semi-  
21 detached dwelling in the R-1-B District at  
22 premises 4425 35<sup>th</sup> Street, N.W. (Square 1971, Lot

1 19).

2           As the Board is well aware expedited  
3 review calendar items are Zoning Applications  
4 where the applicant weighs the right to a public  
5 hearing, and applications are subject to either  
6 Board approval, or removal from the calendar for  
7 rescheduling to a future hearing date.

8           This is all pursuant to (subsections  
9 3118.3, .6, and .7) of the Zoning Regulations.

10           At the moment, Madam Chair, there are no  
11 filings in the record for requesting to remove  
12 either of these applications from the calendar.

13           The Board should act on the expedite  
14 review calendar. That completes the Staffs  
15 briefing Madam Chair.

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

18 **Application No. 18253**

19           We have the first case 18253. In this  
20 case as indicated by Staff, it's a request for a  
21 special exception. They are demolishing a deck,  
22 and then rebuilding the area with just an

1 addition, that's approximately the same size as  
2 the existing patio, with a new balcony.

3           This case is, I think, fairly straight  
4 forward. We don't have the ANC's formal  
5 resolution before us, but what we do have is our  
6 "Exhibit No. 25", which is indicated from the ANC  
7 6-A-03 Commissioner, indicating that, the  
8 Economic Development, and Zoning Committee, did  
9 unanimously vote to approve.

10           They're not having a meeting yet until  
11 later on this week. Obviously, they can't  
12 provide us with a letter that would give it great  
13 weight.

14           For the purpose of an expedited review  
15 calendar we have no letters of opposition in this  
16 file. We do see that while it doesn't get great  
17 weight, the ANC is in support.

18           I would see no problem in granting  
19 approval of this. In addition, April 2010,  
20 Historic Preservation reviewed, and approved the  
21 plans as well. I think the Office of Planning is  
22 also in support of this application, which is our

1 "Exhibit No. 24".

2 Is there any additional deliberation on  
3 this case?

4 MS. SORG: Madam Chair, I don't have  
5 anything to add. I would support a motion.

6 CHAIRPERSON MOLDENHAUER: Wonderful, I  
7 will submit a motion to approve Application No.  
8 18253, pursuant to 11 DCMR 3104.1 for a special  
9 exception to allow a rear addition to a one-  
10 family row dwelling, under section 223, not  
11 meeting the court under section 406, and the  
12 nonconforming structure under (subsection 2001.3)  
13 requirements in the R-4 District at premises 213  
14 8<sup>th</sup> Street, N.E.

15 A motion has been made is there a second?

16 MS. SORG: Second.

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

20 CHORUS: Aye.

21 MR. MOY: Staff would record the vote as  
22 4 to 0 to 1. This is on the motion of

1 Chairperson Moldenhauer, to approve Application  
2 No. 18253. Second the motion Ms. Sorg, the Vice  
3 Chair, and also in support of the motion, Mr.  
4 Lloyd, and Mr. Hinkle. No Zoning Commissioner  
5 participating.

6 Again, the final vote is 4 to 0 to 1.

7 Pardon me, Madam Chair did that also  
8 include Application No. 18255, right?

9 **Application No. 18255**

10 CHAIRPERSON MOLDENHAUER: No, not yet.

11 Next is review of Application No. 18255.

12 In this case we have the notice  
13 requirements that were submitted. We also have  
14 an ANC support letter which would receive great  
15 weight, it indicates that they support the  
16 application for the variance, and special  
17 exception, voted 7 to 0, and there are no  
18 concerns, this letter is our "Exhibit No. 22".

19 In addition to that we have an Office of  
20 Planning letter in support of this request. This  
21 property has mostly existing nonconforming  
22 conditions, except for the side yard which is

1 going to be expanded upon.

2 I see no problems in granting this  
3 application. Do any additional Board Members  
4 wish to add any discussions, or deliberations?  
5 Seeing none, I will submit a motion, a motion to  
6 approve Application 18255, pursuant to 11 DCMR  
7 3104.1 for special exception under section 223,  
8 not meeting the side yard under (subsection  
9 405.9), requirements to allow the rear addition  
10 to an existing single family semi-detached  
11 dwelling, at premises 4425 35<sup>th</sup> Street, N.W.

12 Motion has been made. Is there a second?

13 MR. HINKLE: Second.

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

16 CHORUS: Aye.

17 MR. MOY: Staff would record the vote as  
18 4 to 0 to 1. This is on the motion of  
19 Chairperson Moldenhauer, to approve Application  
20 No. 18255, as stated. Second the motion Mr.  
21 Hinkle, and also in support of the motion Ms.  
22 Sorg, and Mr. Jordan. No Zoning Commissioner

1 participating.

2           Again, the final vote is 4 to 0 to 1 to  
3 approve.

4 **Application No. 18114**

5           MR. MOY: The next application for Board  
6 action is; this is a motion for a second, two-  
7 year extension of the Validity of the Order to  
8 Application No. 17509-A of Bernard L. Renard,  
9 pursuant to section 3130 of the Zoning  
10 Regulations.

11           The original application was approved on  
12 May 22, 2007. The first extension request was  
13 approved on March 24, 2009, pursuant to the  
14 relief as amended.

15           The caption read as follows Madam Chair,  
16 pursuant to 11 DCMR 3103.2 for a variance from  
17 the lot area and lot width requirements under  
18 section 401, variance from the lot occupancy  
19 requirements under section 403, a variance from  
20 the court area, and width requirements under  
21 section 406, a variance from the nonconforming  
22 structure provisions under (subsection 2001.3),

1 and a variance from the accessory structure early  
2 setback requirements under (subsection  
3 2300.2(b)), to allow an addition to one of two  
4 row dwellings sharing the same lot, proposed for  
5 subdivision in the R-4 District at premises 521 -  
6 523 at Levin Street, S.E. (Square 973, Lot 67).

7           On May 9<sup>th</sup>, of this year, the Applicant  
8 filed for the second, two-year extension, to this  
9 order. That document Madam Chair is located in  
10 your case folders as "Exhibit 51".

11           The Board is also in receipt of a filing  
12 from the Office of Planning. Their report is  
13 identified as "Exhibit 53".

14           Other than that Madam Chair, there are no  
15 other filings. The Board is to act on the merits  
16 of the request to extend the validity of order  
17 17509-A, pursuant to Section 3130. And  
18 specifically requirements as described in  
19 (subsection 3130.6; sub (a) (c)).

20           That completes the Staff's briefing Madam  
21 Chair.

22           CHAIRPERSON MOLDENHAUER: Thank you very

1 much Mr. Moy.

2           Seeing that this is actually the first  
3 extension, since the new language was amended in  
4 June 5, 2009, we will review this as the first  
5 extension on that regulation, the first and only  
6 permitted extension.

7           In doing that, I think, that we have  
8 sufficient documentation. We have a letter from  
9 the Applicant himself, which is "Exhibit No. 51".

10           This goes into sufficient detail  
11 addressing the need for additional time based on  
12 the financial challenges this project has had.  
13 Thus, qualifying under subsection one would have  
14 to obtain sufficient project financing due to the  
15 economic, and market conditions beyond the  
16 Applicant's reasonable control.

17           I think that there's documentation here  
18 that shows that there's no substantial changes.  
19 And that the Applicant demonstrates a good cause  
20 for the extension, based on the submissions that  
21 we have in our record.

22           I see no issue in granting this

1 extension. I will open up the floor for  
2 additional deliberation. Seeing none, I will  
3 then submit a motion, a motion for Application  
4 17509-A to issue an extension, pursuant to 3103.2  
5 for a two-year extension from the order.

6 A motion has been made. Is there a  
7 second?

8 MS. SORG: Second.

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

12 CHORUS: Aye.

13 MR. MOY: Staff would record the vote as  
14 4 to 0 to 1, this on the motion of Chairperson  
15 Moldenhauer, to approve Application No. 17509-A,  
16 for the first two-year extension. Second the  
17 motion is Ms. Sorg, also in support Mr. Jordan,  
18 and Mr. Hinkle. No other members participating.  
19 Again the final vote is 4 to 0 to 1.

20 MR. MOY: Madam Chair, assuming that this  
21 order be written up as a summary order, waiving  
22 requirements?

1 CHAIRPERSON MOLDENHAUER: Yes, the Board  
2 would like to waive their requirements, and issue  
3 a summary order.

4 **Application No. 17926**

5 MR. MOY: The next item for Board action  
6 is another motion for a two-year extension of the  
7 validity of the order, only this is to  
8 Application No. 17926 of LT Propco, LLC, pursuant  
9 to Section 3130 of the Zoning Regulations.

10 The original application was approved on  
11 June 23, 2009. That application was, pursuant to  
12 the following; 11 DCMR 3104.1 for a special  
13 exception to locate parking spaces on a lot that  
14 is separate from the building that they are  
15 intended to serve, in accordance with (subsection  
16 2116.5).

17 The relief is sought to permit the  
18 construction of a new one-story retail  
19 development on land bounded by Western Avenue,  
20 N.W., 44<sup>th</sup> Street, N.W., and Jennifer Street, N.W.  
21 This is to use the existing surplus parking  
22 located on the existing Lord and Taylor parking

1 lot at 4423 Harrison Street, N.W. This is in the  
2 C-3-A, C-2-A, R-5-B and R-2 Districts. Property  
3 located in (Square 1660, Lot 811) and (Square  
4 1580, Lot 33).

5 On May 31, 2011, the Applicant filed the  
6 request for this two-year extension of  
7 application of Order No. 17926. That document,  
8 Madam Chair, is located in your case folders  
9 identified as "Exhibit 39".

10 There are two other filings in the  
11 record, first from the Office of Planning, their  
12 report, their evaluation, and that document is  
13 identified as "Exhibit 41".

14 There is a filing from ANC 3-E, and that  
15 is identified as "Exhibit 40" in your case  
16 folders.

17 Other than that, the Board is to act on  
18 the merits of the request to extend the validity  
19 of Order 17926, pursuant to Section 3130 of the  
20 Zoning Regulations, and specifically the  
21 requirements as described in (subsection 3130.6,  
22 sub(a)(c)). That completes the Staff's briefing

1 Madam Chair.

2 CHAIRPERSON MOLDENHAUER: Okay, we have  
3 before us another two-year extension request  
4 under 3130.6. We have a submission from the  
5 Applicant, our "Exhibit No. 42" which includes an  
6 affidavit from the Applicants and the Executive  
7 Vice President of the Applicant.

8 This I think, provides sufficient  
9 documentation to satisfy the good cause, and to  
10 also provide substantial evidence, to support the  
11 fact that there have been conditions outside of  
12 their control in regards to financing and leasing  
13 of the property.

14 They go into some detail about the  
15 challenges of the financing, and also the  
16 challenges of leasing commitments in Section 9 of  
17 the affidavit provided. Based on that, I find  
18 that to be good cause.

19 We have a letter from the Office of  
20 Planning in support. As Mr. Moy indicated we also  
21 have a letter, "Exhibit No. 40", indicating that  
22 the ANC is also not objecting to this. They

1 voted to support the resolution 5 to 0, with a  
2 quorum present at a regularly scheduled meeting.

3 So that would receive great weight. I see no  
4 issue in granting this extension.

5 I will open up the floor to any  
6 additional discussion from Board Members. Seeing  
7 none, then I would submit a motion to approve a  
8 two-year extension under 3130.6 for Application  
9 17926 of LT Propco, LLC. This is from the date of  
10 the expiring order, which I believe was  
11 yesterday.

12 A motion has been made is there a second?

13 MR. HINKLE: Second.

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

16 CHORUS: Aye.

17 MR. MOY: Staff would record the vote as  
18 4 to 0 to 1, this on the motion of Chairperson  
19 Moldenhauer to approve Order No. 17926, for their  
20 first two-year extension. Second the motion Mr.  
21 Hinkle, also in support of the motion Ms. Sorg,  
22 and Mr. Jordan. No other member participating.

1           Again the approval is on the vote of 4 to  
2 0 to 1.

3           CHAIRPERSON MOLDENHAUER: Again, we would  
4 like to waive our requirements, and ask that a  
5 summary order be issued.

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

8 **Application No. 18009**

9           MR. MOY: The next item for Board action  
10 is; a motion for a minor modification, of  
11 approved plans to Order No. 18009 of Samia El-  
12 Baroudy, pursuant to Section 3129 of the Zoning  
13 Regulations.

14           The original application which was  
15 approved on January 12, 2010, was pursuant to; 11  
16 DCMR 3104.1 for a special exception which would  
17 allow an addition to an existing one-family row  
18 dwelling under Section 223 of the Zoning  
19 Regulations, not meeting the lot occupancy  
20 requirements under Section 403, and lot area  
21 requirements under Section 401, in the R-3  
22 District at premises 3302 Prospect Street, N.W.

1 (Square 1205, Lot 822).

2 On June 1, 2011, the Applicant filed his  
3 request; this document is identified in your case  
4 folder as "Exhibit 40".

5 There was a subsequent filing in the  
6 record from the Office of Planning, dated July 6,  
7 2011, and that document is identified as "Exhibit  
8 41".

9 I think, with that Madam Chair, the Staff  
10 is going to just say; that the Board is to act on  
11 this relief. That completes the Staff's briefing  
12 Madam Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you very  
14 much Mr. Moy.

15 What we have before us, this was a fairly  
16 straight forward case when we initially heard the  
17 case, it's a 223. They then took their  
18 application to Historic Preservation, and the  
19 Commission of Fine Arts. Both of those agencies  
20 reviewed their application, and requested some  
21 additional changes.

22 They are back before us for some minor

1 modification, based on those modifications. Those  
2 included reduction in the one-story of the  
3 basement, and changing around and filling in of  
4 the open court.

5 I really don't see that this is...  
6 definitely a minor change. I don't really think  
7 this is going to affect the light, and air of the  
8 neighboring properties. Actually it will  
9 probably improve a lot of those conditions.

10 I don't think there's any negative impact  
11 on the neighborhood in regards to privacy or  
12 enjoyment, or on the aspects of the Zoning Plan.

13 Office of Planning has reviewed, and is  
14 in support of the application. We don't have any  
15 submissions from the ANC, I don't believe. They  
16 were previously in support of the application.

17 That being said I see no issue in  
18 granting this minor modification. I will open up  
19 the floor to additional deliberation from Board  
20 Members.

21 MS. SORG: Madam Chair, I agree with your  
22 analysis, and while there seems to be slight

1 changes in a few different areas of relief it  
2 seems to me that it is minor, and I would be in  
3 support of a motion.

4 I should... actually... I'm sorry, I should  
5 correct myself, a degree of relief, rather than  
6 area of relief is what I meant to say. I don't  
7 want to confuse things

8 CHAIRPERSON MOLDENHAUER: I just wanted to  
9 make sure I wasn't missing something, so I  
10 appreciate that clarification.

11 I think that based on that, I think I  
12 would submit a motion to approve a request for  
13 minor modification to Application 18009, pursuant  
14 to 3129 of the Zoning Regulations. A motion has  
15 been made is there a second?

16 MS. SORG: Second.

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

20 CHORUS: Aye.

21 MR. MOY: Staff would record the vote at  
22 4 to 0 to 1. This is on the motion of

1 Chairperson Moldenhauer to approve the request  
2 for minor modification, to Order No. 18009.  
3 Second the motion Ms. Sorg, also in support of  
4 the motion Mr. Jordan, and Mr. Hinkle. No other  
5 members participating. Again, the approval is  
6 based on a vote of 4 to 0 to 1.

7 CHAIRPERSON MOLDENHAUER: We would also  
8 like to waive our requirements and request a  
9 summary order be issued in this case.

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

12 **Application No. 17541 and 17540**

13 MR. MOY: The next item for Board  
14 decision in a long line of decisions this  
15 morning, it is a motion for minor modification.  
16 This is to approve plans to Order No. 17540 and  
17 17541. This is of the Capitol Hill Day School,  
18 pursuant to Section 3129 of the Zoning  
19 Regulations.

20 The original applications were approved  
21 on February 6, 2007, this was pursuant to the  
22 following; for Application 17540 of 11 DCMR

1 3103.2, for a variance from the lot occupancy  
2 requirements of Section 404, variance from the  
3 rear yard requirements under Section 403, and a  
4 variance from the floor area ratio requirements  
5 of Section 1203.3, of the Capitol Interest  
6 Overlay District, and pursuant to 11 DCMR 3104.1,  
7 for a special exception pursuant to 1202.1.

8 All this is to allow the construction of  
9 an addition to a private school, and pursuant to  
10 Section 206, to reconfigure the layout of an  
11 existing parking lot, at premises 210 South  
12 Carolina Avenue, S.E. in the CAP/R-4 District,  
13 (Square 765, Lot 803).

14 The other application is No. 17541. This  
15 was, pursuant to 11 DCMR 3104.1 for a special  
16 exception, pursuant to 206 and 1202.1.

17 To allow the continued operation of a  
18 private school for 30 students in the pre-  
19 kindergarten through 8<sup>th</sup> grade, and 5 faculty and  
20 staff members in the basement through the second  
21 floor, at premises 214 South Carolina Avenue,  
22 S.E. Again, this is in the CAP/R-4 District,

1 property located in (Square 765, Lot 802).

2           On June 1, 2011, the Applicant filed this  
3 request for minor modifications for both these  
4 applications.

5           These two documents are identified in  
6 your case folders as "Exhibits 124 and 70",  
7 respectively.

8           Also, there are subsequent filings in the  
9 record from the Office of Planning, dated July 5,  
10 2011, and these are identified as "Exhibits 125  
11 and 71", respectively.

12           The Board is to act on the merits of the  
13 Applicant's request for minor modifications for  
14 Application No. 17541 and 17540, pursuant to 3129  
15 of the Zoning Regulation. That completes the  
16 Staff's briefing Madam Chair.

17           CHAIRPERSON MOLDENHAUER: Okay, for this  
18 case we actually have some preliminary issues to  
19 discuss.

20           While there's a minor modification the  
21 order expired on June 11, 2011, and there was no  
22 request to extend issued.



1 Applicant to amend this application and include a  
2 request to extend under 3130.6, and provide the  
3 corresponding documentation for that.

4           We will set this then for decision. Our  
5 next decision date though is not until September  
6 due to our August recess. This will be put on  
7 our first decision date in September, which is  
8 September 13<sup>th</sup>, so the morning of September 13<sup>th</sup>,  
9 with a deadline to provide any additional  
10 submissions by September 6<sup>th</sup>.

11           I think what we'll do now, before the  
12 next cases; I'm not going to be participating in  
13 because I was not on those hearings. We will take  
14 a quick five minute recess, and will reconvene at  
15 10:37, for those decisions.

16 (Recess 5 minutes)

17           VICE CHAIR SORG: I think we are back on  
18 the record. Mr. Moy, I think if you're ready we  
19 can proceed with our remaining decisions for the  
20 morning meeting.

21 **Application No. 18209**

22           MR. MOY: Yes thank you Madam Chair.

1           The next item for Board action then would  
2 be Application No. 18209, this is of the  
3 Washington Tennis and Education Foundation, and  
4 the Government of the District of Columbia,  
5 pursuant to 11 DCMR 3104.1 for a special  
6 exception to allow the construction of a public  
7 recreation, and community center under  
8 (subsection 408.1), exceeding the maximum gross  
9 floor area in the R-5-A District at premises 100  
10 Stoddert Place, S.E., property located in (Square  
11 5407, Lot 807).

12           At its decision meeting on June 7, 2011,  
13 the Board deliberated, and then rescheduled its  
14 decision on July 12<sup>th</sup>, primarily to allow the..  
15 grant, the ANC's request that the Board delay its  
16 decision. This would allow the ANC additional  
17 time to meet on this application.

18           There are two, or rather three filings in  
19 the record at this point Madam Chair, in your  
20 case folders.

21           The first letter is from ANC 7-A, from  
22 Commissioner Thompson, and that document is

1 identified in your case folders as "Exhibit 38".

2 The second filing in your case folder is  
3 the Applicant's response, filed on July 5, 2011,  
4 and that document is "Exhibit 39".

5 Finally, as a preliminary matter, the  
6 office received a response to the Applicant's  
7 response. This is from ANC 7-A, Commissioner  
8 Carson Carr, as I said this morning July 12<sup>th</sup>, and  
9 that would be "Exhibit No. 40".

10 The Board is to act on the merits of the  
11 request for the special exception relief, which  
12 would allow for the construction of a public  
13 recreation, and community center, under  
14 (subsection 408.1), and to allow the required off  
15 street parking to be located in the front yard  
16 under (subsection 2116.5). That completes the  
17 Staff's briefing Madam Chair.

18 VICE CHAIR SORG: Thank you Mr. Moy. To  
19 take up the preliminary matter of the letter,  
20 from the ANC Single Member District that we  
21 received this morning. We need to make a  
22 decision as to whether or not the Board will

1 allow this into the record.

2           This letter was not among the items that  
3 were requested after our last meeting on this  
4 case, in which we requested only additional  
5 filing from the party in the case, which is the  
6 full ANC.

7           This is in effect a letter from an  
8 individual. As well as allowing for a response  
9 from the Applicant. In addition, this letter  
10 that was received untimely after the response  
11 date, which was on July 12<sup>th</sup>, I would move to, not  
12 accept this filing into our record, unless there  
13 are other comments.

14           MR. JORDAN: I'll second it.

15           VICE CHAIR SORG: All right, thank you,  
16 so we will not be allowing the letter received,  
17 which would have been, I guess, our "Exhibit No.  
18 40", by consensus.

19           Moving on to the merits of the case. I  
20 think that we are more than ready to deliberate  
21 on this case. I think I can start us off here.

22           We have given ample time for a case that

1 involves two special exceptions; one to allow  
2 public recreation community center use larger  
3 than 40,000 square feet under 408.1, and one  
4 additional special exception under 2116.6 to  
5 allow required parking in the front yard.

6           So, we have allowed a great deal of  
7 community comment in this case. I think with  
8 regard to the merits of the special exception it  
9 is to me, after the hearings we had, really quite  
10 straight forward.

11           I would note our Office of Planning  
12 report in "Exhibit No. 28". The requirement  
13 under 408.1 which allows the proposed building  
14 exceeding the allowable gross floor area by  
15 special exception, I think, meets the standard,  
16 and I'll incorporate the OP's analysis for the  
17 record.

18           In addition, in an analysis of the  
19 special exception to allow required parking in  
20 the front yard on this property, the Applicant  
21 needs three of the four requirements.

22           Having shown unusual topography, size and

1 shape of the lot, having shown clearly a lack of  
2 alley for appropriate ingress and egress, and  
3 also having shown that through their testimony  
4 that the location of required parking spaces  
5 elsewhere on the lot, would result in a less  
6 efficient use of the land area.

7 I think, that in addition to the analysis  
8 of the specific special exception requirements.  
9 I think we've seen this Applicant, who in my  
10 opinion is providing a great benefit to this  
11 community, as well as to the wider community of  
12 the city as a whole.

13 I think we've seen them working very hard  
14 with this community, and going to a number of  
15 meetings, offering to enter into agreement, and  
16 really bending over backwards in a lot of ways to  
17 be a good neighbor. Whether it's through,  
18 agreements that they have proposed, regarding  
19 land use issue, programmatic issues, or aiding  
20 the community in other ways.

21 I think that I can strongly support this  
22 application.

1           What I'll do is I'll open up to other  
2 Board Members regarding the merits, and then I  
3 think we can have a conversation thereafter about  
4 the proposed conditions. I do have some thoughts  
5 on that.

6           So that being said, I'll open up to other  
7 Board Members for their comments.

8           MR. JORDAN: Madam Chair, I would agree  
9 with everything you said. Just in addition I  
10 wanted to be clear. During the testimony that was  
11 given, even those that were in opposition, I  
12 asked some very pointed questions. Whether or not  
13 they were actually for, or against the expansion?

14           They were not really against the  
15 expansion. Whether or not, they thought this  
16 would have a benefit to the community? They said  
17 that it would.

18           Also, the question of whether or not,  
19 they felt it would be better off, that this  
20 facility was there, or not there? They all said  
21 clearly that it was better that it was there.

22           I think the issues that may have been

1 raised by the community were things that really  
2 weren't generated by this facility.

3 The facility in and of itself had tried  
4 to mitigate, not only its issues, that it may  
5 have had previously, based upon the way the land  
6 lays and the water flow, and what have you.

7 They've gone above and beyond, so I  
8 would agree with you in that regard.

9 VICE CHAIR SORG: Thank you very much Mr.  
10 Jordan, and thank you also, for bringing up that  
11 important point.

12 You know, for the record that we do have  
13 the ANC in this matter, the full ANC in this  
14 matter voting twice, on two separate occasions,  
15 to support the application.

16 Are there any further deliberations on  
17 the merits? Seeing none, then I think what we  
18 want to do is move on to the proposed conditions  
19 here.

20 Based on our processes as a Board,  
21 there's an understanding that conditions have to  
22 be fashioned so that, as far as reasonably

1 possible, that they are intended to mitigate a  
2 possible objectionable conditions, such as those  
3 enumerated in our regulations.

4           Meaning that we are bound to, unlike say  
5 a PUD in front of the Zoning Commission, we are  
6 bound to enumerate conditions that are directly  
7 related to not only the Zoning Regulations, which  
8 are under question, but also that are served to  
9 mitigate, clearly defined within the testimony,  
10 clear possible adverse impacts.

11           I find after having reviewed the various  
12 discussions by the ANC and the Applicant, as well  
13 as the proposed conditions in our "Exhibit No.  
14 35", submitted by the Applicant.

15           Many of the conditions that have been  
16 submitted do not, in fact, serve to.. would not,  
17 in fact, serve to identify adverse impacts. In  
18 addition may create enforcement issues for the ZA  
19 because of a few reasons. Either how they are  
20 written, or may in fact be unenforceable as they  
21 are outside of the purview of this Board.

22           So that being said, going back again to

1 the proposed conditions in our "Exhibit No. 35".

2           Of the 11 conditions that are proposed,  
3 that I believe, those that are relevant to, as I  
4 mentioned, both possible adverse effects that  
5 were indicated in the hearing, as well as those  
6 that are within the purview of the Board, I  
7 believe that condition number one, in which the  
8 Applicant agrees to estimate the cost of  
9 constructing an eight foot rod iron fence around  
10 the property does go to some identified possible..  
11 does go to some, identified possible adverse  
12 impacts.

13           To me, I believe, that condition number  
14 one in that proposal could be included in the  
15 impossible conditions in an order.

16           The only other condition that I believe,  
17 is within the purview of this Board, as well as  
18 having been shown, is something that may mitigate  
19 a possible adverse impact, that we've seen in the  
20 testimony is, condition number five. In which the  
21 Applicant agrees to light the pathways on the  
22 property.



1           You might be getting to this but I also  
2 wanted to note, that there is an agreement  
3 between the Applicant, and the adjacent property  
4 in terms of a number of conditions, that I think  
5 is separate from this action, that the Board is  
6 working on.

7           I just wanted to point that out; a lot of  
8 things that were proposed in this "Exhibit 35"  
9 are also in that agreement.

10           VICE CHAIR SORG: Thank you very much Mr.  
11 Hinkle for pointing that out. Of course, the  
12 Applicant as I mentioned, is working with the  
13 community outside of the purview of this Board,  
14 and any agreements that they make with various  
15 community organizations would be separate, and  
16 apart from the conditions that we would impose on  
17 a potential order here. I appreciate you  
18 mentioning that.

19           Also, I think we can feel very confident  
20 that this Applicant will continue to work  
21 closely, throughout the construction, as well as  
22 the life of this facility with the surrounding

1 community.

2           That being said, are there any further  
3 deliberations or comments on possible conditions  
4 in this case? Seeing none, I will submit a  
5 motion to approve Application No. 18209 for  
6 special exception relief in accordance with  
7 Section 408.1, to allow a public recreation, and  
8 community center use larger than 40,000 square  
9 feet, and 2116.6 to allow required parking in the  
10 front yard for the use proposed at the existing  
11 Benning Stoddard Recreation site.

12           This is including two conditions as  
13 written in our "Exhibit No. 35", conditions  
14 number one and five in that document, being  
15 included as an order.

16           A motion has been made is there a second?

17           MR. HINKLE: Second.

18           VICE CHAIR SORG: A motion has been made  
19 and seconded, all those in favor say aye.

20           CHORUS: Aye.

21           VICE CHAIR SORG: Mr. Moy can you please  
22 read back the vote.

1           MR. MOY: Yes Madam Chair. Before I read  
2 a final vote we do have, I am in receipt of, an  
3 absentee ballot from another participant on this  
4 application, who is Peter May, and his absentee  
5 vote is to approve the application with such  
6 conditions as the Board may impose.

7           That would give a final resulting vote of  
8 4 to 0 to 1. This is on the motion of the Chair  
9 Ms. Sorg to approve the application as stated,  
10 including conditions number 1 and number 5, as  
11 shown in "Exhibit No. 35". Second the motion Mr.  
12 Hinkle, and also in support of the motion Mr.  
13 Jordan, and of course, Peter May by absentee  
14 vote, and no other Board Members participating.  
15 Again, the final vote to approve is 4 to 0 to 1.  
16

17           VICE CHAIR SORG: Thank you very much Mr.  
18 Moy, and I think we'd like to waive our  
19 requirements, and call for a summary order in  
20 this case.

21           MR. MOY: Yes, very good, thank you Madam  
22 Chair.

1 **Application No. 18193**

2 MR. MOY: The next application for Board  
3 action is Application No. 18193. This is of  
4 Solomon Gramajo, pursuant to 11 DCMR 3103.2 for a  
5 variance from the use provisions to allow the  
6 conversion (cellar, and first floor, and attic  
7 for storage) of an existing one-family row  
8 dwelling for commercial use under (subsection  
9 330.5) in the R-4 District at premises 1324 Park  
10 Road, N.W., property located in (Square 2843, Lot  
11 36).

12 At its decision meeting on June 7, 2011,  
13 the Board deliberated, and rescheduled its  
14 decision on July 12<sup>th</sup>; this was to allow the  
15 Office of Planning sufficient time to submit  
16 supplemental information requested by the Board.

17 That filing Madam Chair is in your case folders,  
18 and it is identified as "Exhibit 37", it's dated  
19 June 29, 2011. There are no other filings in the  
20 record.

21 The Board is to act on the merits of the  
22 variance relief, and this would be from the use

1 provisions to allow the conversion of an existing  
2 one-family row dwelling for commercial use under  
3 (subsection 330.5). That completes the Staff's  
4 briefing, Madam Chair.

5 VICE CHAIR SORG: Thank you very much Mr.  
6 Moy. I think after having received the  
7 additional documents that we requested from the  
8 Office of Planning, I think we can go ahead and  
9 turn to deliberations on this case.

10 I think, over the course of the hearings  
11 that we've held on this case, the Applicant has  
12 worked very hard to submit all the evidence that  
13 we have requested.

14 After the first hearing we requested, for  
15 example, as was noted in the first OP report, in  
16 our "Exhibit No. 30", some evidence pertaining to  
17 elements of the use variance standard, regarding  
18 the time period in which the units have been  
19 vacant. Evidence of the Applicants endeavors to  
20 rent the units, and then estimates for loss of  
21 income, as well as estimates for the cost of  
22 noise attenuation measures.

1           I think subsequent to that filing by the  
2 Applicant, my opinion, and actually we heard from  
3 Office of Planning on the record after having  
4 received that evidence from the Applicant, that  
5 the addition of the additional evidence would  
6 have swayed towards support of the variance  
7 relief.

8           In my opinion after that, what we were  
9 left with, really was a question of, you know,  
10 were the uses that were potentially causing a  
11 unique condition in this property, operating  
12 legally. We are not allowed to grant relief  
13 based on exceptional conditions caused by illegal  
14 uses.

15           I think based on the Certificates of  
16 Occupancy, and supplemental report that the  
17 Office of Planning has submitted, that's in our  
18 "Exhibit No. 37". In addition the Applicant  
19 themselves, in a submission dated July 6<sup>th</sup>, which  
20 I don't have an exhibit number on, has also  
21 submitted those Certificates of Occupancy.

22           Therefore, to me I find, showing that the

1 Laundromat, the restaurant, and the hair salon,  
2 which are the three surrounding uses, do in fact  
3 have Certificates of Occupancy issued by DCRA.  
4 Therefore, I think we can go towards creation of  
5 an exceptional situation for the Applicant's  
6 property.

7 I think, you know, that we can definitely  
8 see that it's sandwiched between these commercial  
9 uses, as well as other retail uses on the street.  
10 The combination of that, the exceptional use, as  
11 well as, the practical difficulty that the owner  
12 has demonstrated through their efforts to rent  
13 the property. For me, this is enough to put me  
14 in support of the application.

15 I would also note that we have received a  
16 letter from the ANC in this case, that's ANC 1-A  
17 in our "Exhibit No. 36", in which they voted in  
18 their April 13<sup>th</sup> meeting to support the proposed  
19 application. This letter meets our standards for  
20 great weight.

21 Finally, I would note that there's been  
22 no opposition in this case.

1           So that being said, I would be in support  
2 of granting the approval in this case. I will  
3 now open it up for further comment.

4           MR. JORDAN: Madam Chair, I simply want  
5 to say, although I don't find it critical, not  
6 jumping up and down, by the fact of the evidence  
7 about the inability to market for the intended  
8 purposes. I understand based on the testimony  
9 and from their own documentation that they had  
10 not placed this property on the market for  
11 awhile. I guess maybe they got discouraged or  
12 something, sometime ago.

13           I just want to be sure, as we go forward  
14 that if we're faced with this type of situation  
15 again, that people actually have made some  
16 concerted effort to rent the property.

17           I think in this case, it's a little bit  
18 different because it's so surrounded by  
19 commercial use, on every other side, that I can  
20 support it.

21           Absence of their diligence in trying to  
22 actually market it for its intended purpose gives

1 me some hesitation. Again it's not critical to  
2 what I think is going to be a decision for me.

3 VICE CHAIR MS. SORG: Thank you very much  
4 for mentioning that Mr. Jordan. I agree with  
5 you, and I think in this case there is a specific  
6 confluence of factors, I think, that leads me  
7 sort of over the hump on that second prong of the  
8 variance test, that is as you note, a combination  
9 of the efforts to rent it, as well as, of the  
10 detriment of the operation of the surrounding  
11 commercial uses.

12 As well, I think, the cost that would be  
13 associated with mitigating the negative effects  
14 of the commercial uses, are there any further  
15 comments? Seeing none, I will submit a motion to  
16 approve Application No. 18193, pursuant to 11  
17 DCMR 3103.2 for a variance from the use  
18 provisions to allow the conversion in a cellar,  
19 first floor, and attic, for storage of an  
20 existing one-family, row dwelling for commercial  
21 use under (subsection 330.5) in the R-4 District  
22 at premises 1324 Park Road, N.W. A motion has

1 been made is there a second?

2 MR. HINKLE: Second.

3 VICE CHAIR SORG: A motion has been made  
4 and seconded, all those in favor say aye.

5 CHORUS: Aye.

6 VICE CHAIR SORG: Mr. Moy can you please  
7 read back the vote.

8 MR. MOY: Yes Madam Chair, before I do,  
9 we do have, the Board is in receipt of, an  
10 absentee ballot from another participant on this  
11 application, and that is Greg Selfridge. His  
12 absentee vote is to approve this application with  
13 any condition that the Board may impose.

14 That would give a final vote of 4 to 0 to  
15 1, this on the motion of Chair Sorg to approve  
16 the application under (subsection 330.5). Second  
17 the motion Mr. Hinkle, and also in support of the  
18 motion Mr. Jordan. No other Board Members  
19 participating. Again, the final vote is 4 to 0  
20 to 1.

21 VICE CHAIR SORG: Thank you very much Mr.  
22 Secretary. I think in this case also, we can

1 waive our requirements and ask for a summary  
2 order.

3 MR. MOY: Very good, thank you.

4 **Application No. 18205**

5 MR. MOY: The next, and final item for  
6 the Board for its public meeting today is  
7 Application No. 18205. This is of M. or Mohammed  
8 Sikder, pursuant to 11 DCMR 3103.2 for a variance  
9 from the lot area, and lot width requirements  
10 under Section 401, a variance from the lot  
11 occupancy requirements under Section 403, and the  
12 variance from the side yard requirements under  
13 Section 405.

14 This is to allow the construction of a  
15 new one-family detached dwelling, in the R-2  
16 District at premises 4209 Grant Street, N.E.,  
17 property located in (Square 5092, Lot 31).

18 On the 21<sup>st</sup> of June 2011, the Board  
19 completed testimony, closed the record, and  
20 scheduled its decision on July 12<sup>th</sup>. The Board  
21 did not request any supplemental information  
22 because the record was complete.

1           The Board is to act on the merits of the  
2 multiple variance relief. That completes the  
3 Staff's briefing Madam Chair.

4           VICE CHAIR SORG: Again, in this case we  
5 held off our decision, and requested supplemental  
6 information from the Office of Planning, which I  
7 think, we noted in our last meeting on this case.

8           This case is requesting variance relief  
9 from a number of provisions, under Section 401 to  
10 permit the development on an existing lot that is  
11 smaller than that which is required, as well as  
12 to permit development on existing lot where the  
13 lot width is narrower, significantly, on both  
14 those counts, than is required. As well as to  
15 permit under 403, to permit a lot occupancy of  
16 50.2 percent where a maximum of 40 percent is  
17 permitted, as well, under 405.9 to permit side  
18 yards of 3 and 5 feet respectively where 8 feet  
19 are required.

20           This is a fairly large amount of relief  
21 that's required to build this house on this lot.

22           So in my analysis leaving aside what

1 we've heard, and the significant, I would call it  
2 outrage really, from the community, as well as  
3 opposition from the ANC.

4           Leaving that aside, I think looking at  
5 the analysis under the variance test, for an  
6 application requesting what is a pretty high  
7 degree of relief, in a number of areas. Clearly  
8 as is mentioned in the Office of Planning report,  
9 which is our "Exhibit No. 24", clearly the lot in  
10 question does exhibit, uniqueness due to its  
11 shape.

12           I don't think, as the Office of Planning  
13 notes in their analysis, that the fact of a lot  
14 being created prior to the establishment of the  
15 Zoning Regulations, is in, and of itself  
16 necessarily part of that uniqueness.

17           In this case the lot is very narrow, it's  
18 got this funny triangle lot behind it, so I  
19 think, to me which is in separate ownership, to  
20 me, the application meets the first standard for  
21 the variance relief that's being requested.

22           Regarding the second prong, I do think

1 that this exceptional condition does lead to a  
2 difficulty on the lot. I think it's clear, that  
3 nothing could be built on the lot without relief  
4 being granted.

5           When we've encountered these cases before  
6 we've asked the question, you know, are there  
7 some lots that just shouldn't be built on? While  
8 that may be the case, I think we that we do have  
9 to stick to the variance test, and see where that  
10 gets us.

11           In addition, in similar cases, I think  
12 we've asked questions about, you know, if a  
13 project is proposed, or a property is purchased  
14 knowing that it's impossible to build on without  
15 relief, should that be considered?

16           Again, I'm not sure that those have a  
17 place for consideration, within the variance test  
18 itself. I think the second prong is also met in  
19 this case.

20           When we get to the third prong, of  
21 course, is where I think we run into trouble.  
22 What we've seen from the hearings, the testimony

1 of several witnesses, the opposition of the ANC,  
2 which is, I don't have an exhibit number for  
3 this, but which is contained in the letter of  
4 June 16<sup>th</sup>. That opposition meets our requirements  
5 for great weight and therefore we will give it  
6 great weight.

7 I think that there are a lot of issues  
8 brought up by the community that go towards,  
9 detriment to the public good, to build on this  
10 lot. Several trees would have to be removed, I  
11 think that there are certainly other concerns  
12 regarding light, and air, and privacy available  
13 to neighboring properties. As well as,  
14 controlling the bulk of structures in this area,  
15 which goes to, I think, whether or not there's  
16 impairment to the intent, purpose, and integrity  
17 of the Zoning Regulations, and Map.

18 So, this is the prong, I think, where  
19 this application really falters. While the  
20 Office of Planning, in their report, suggests  
21 several conditions which, I think, generally go  
22 towards adverse effects that are clearly

1 identified by the neighborhood, and are contained  
2 within that third prong reasoning.

3 I think that Office of Planning, having  
4 included these proposed conditions, shows that  
5 through an understanding and analysis of this  
6 case, there are, in fact, significant potential  
7 adverse impacts.

8 I don't think that many of these proposed  
9 conditions are conditions that can be rightly  
10 included. They would be right to include in a  
11 potential order, because they fall outside of  
12 their purview of this Board, and also, I think,  
13 several are contained, within our regulations,  
14 that may have to be met. As well as those things  
15 that may be included in the application itself.

16 I do think that the inclusion of those  
17 proposed orders, proposed conditions, show the  
18 great degree to which there is potentially a  
19 detriment to the public good.

20 I remain on the fence on this one, so I  
21 will open it up to further comment from Board  
22 Members.

1 MR. JORDAN: Well, I have great concerns  
2 about this application, and request, Madam Chair.

3 This is for a lot of reasons, and  
4 particularly regarding the uniqueness of this  
5 lot, yes the lots unique, but he bought into this  
6 lot, the way the lot was. He knew at the time  
7 that the particular shape, and dimensions of this  
8 lot was going to make it extremely difficult to  
9 put a house there. We have a lot of other lots  
10 in the District, if he wanted to do that.

11 Additionally, the practical difficulty in  
12 building something has not, to me, been shown. I  
13 think there's other ways that this property could  
14 be used, if he wanted to put a house there.

15 I think he's attempting also, to  
16 maximize his profit in this regard, and not one  
17 of trying to work with the practical difficulty  
18 of that lot. I think it hasn't been shown that  
19 all of the alternatives for development can be  
20 done where there's not a practical difficulty.

21 I think you hit it on the head, in  
22 regards to the detriment to the community. I

1 think the evidence there is overwhelming, that it  
2 has a severe detriment to this neighborhood.

3           The testimony was clear; you can't go  
4 beyond that testimony, as well as the ANC. That  
5 gives me some particular pause, because I am  
6 concerned about the... I'm trying to use a cleaner  
7 word, but let me say the approach, used by a  
8 developer, interacting with the community.

9           I don't think it's all with clean hands,  
10 when the ANC was not contacted, in regards to  
11 this development, prior to our first hearing on  
12 this matter.

13           The argument was that oh, I contacted the  
14 wrong ANC. When the new ANC, the proper ANC, was  
15 identified, had not made contact, and had not had  
16 discussions until this Board requested that, that  
17 conversation is held. When those conversations  
18 were held, he came to the meeting, and did not  
19 even present the plans at that meeting, I just  
20 don't understand that.

21           Continuing about the detriment to this  
22 community, and to the public good, this lot has

1 been there for awhile in this neighborhood, and  
2 it actually presents green space for this  
3 community. It has trees, and those trees are  
4 going to have to be removed to meet his request.

5 I'm just not comfortable, and that this  
6 is something that I can accept, and for the  
7 approval of this particular application.

8 VICE CHAIR SORG: Thank you very much Mr.  
9 Jordan. I think you bring up important points  
10 that we heard in the testimony. Are there any  
11 additional comments?

12 MR. HINKLE: Yeah, thank you Madam Chair.  
13 I'm generally in agreement with the discussion  
14 of both yourself and Mr. Jordan. I have to  
15 disagree in terms of Mr. Jordan's last statement.  
16 I'm not sure that a private property owner  
17 should be required to provide green space for a  
18 neighborhood.

19 I do think there's a lot of relief being  
20 requested here. Understanding that it's a small  
21 lot, and understanding that it's a narrow lot. I  
22 agree with the statement that was made, that I

1 think the developer is trying to maximize what he  
2 can put on this space.

3 I do think he made an effort to listen to  
4 comments of OP, and came back with a different  
5 scheme. I don't think he's there yet.

6 I'm not supportive of this application.  
7 I think the comments from the neighbors,  
8 especially the ANC are valid. They've made an  
9 attempt to work with this developer, and haven't  
10 been necessarily successful. That kind of guides  
11 me again, with the amount of relief, just not to  
12 be supportive of this application.

13 VICE CHAIR SORG: Thank you Mr. Hinkle.  
14 Yeah, I agree that while we can't control, or I  
15 think, include in our analysis the motives behind  
16 a purchasers buying up property, and also we  
17 can't control what potential and private property  
18 does for the community.

19 I do think that this is, at the end of  
20 the day a pretty high bar of relief in this case,  
21 and the Applicant simply hasn't quite gotten  
22 there under the prongs of the variance test.

1 This for a number of reasons that, I think, we've  
2 all laid out on the record. I think, that both  
3 of your comments indicating that the Applicant's  
4 efforts to work with the community, were, in a  
5 number of instances insufficient.

6 I also agree with your point Mr. Hinkle  
7 that while the Applicant did tinker with the  
8 plans in talking to OP, to me that really  
9 represents a false choice. The density that was  
10 presented in the various schemes remains the  
11 same. I think there is possibly, as Mr. Jordan  
12 mentioned additional options for development that  
13 have not necessarily been exhausted, in terms of  
14 reducing the degree of relief that's being  
15 requested here.

16 So, if there are no further  
17 deliberations, I will submit a motion. I will  
18 submit a motion to deny Application No. 18205,  
19 pursuant to 11 DCMR 3103.2 for variance from lot  
20 area and lot width requirements under Section  
21 401, and a variance from the lot occupancy  
22 requirements under 403, variance from side yard

1 requirements under Section 405, at premises 4209  
2 Grant Street, N.E.

3 A motion has been made is there second?

4 MR. JORDAN: I'll second it.

5 VICE CHAIR SORG: Motion has been made  
6 and seconded, all those in favor say aye.

7 CHORUS: Aye.

8 VICE CHAIR SORG: Mr. Moy can you please  
9 read back the vote?

10 MR. MOY: Yes Madam Chair. Before I do  
11 that, we also have an absentee ballot from a  
12 participant on this application who is, Greg  
13 Selfridge. His absentee vote is to deny the  
14 application so that would give a final vote of 4  
15 to 0 to 1. This on the motion of Chair Sorg to  
16 deny the application, second the motion Mr.  
17 Jordan, also in support of the motion Mr. Hinkle  
18 and of course Mr. Selfridge. No other Board  
19 Member participating. Again, the final vote is 4  
20 to 0 to 1 to deny.

21 VICE CHAIR SORG: Thank you very much Mr.  
22 Secretary. I believe that concludes our morning

1 public meeting.

2 MR. MOY: Yes indeed, thank you.

3 **P.M. Session**

4 CHAIRPERSON MOLDENHAUER: This hearing  
5 will please come to order. Good afternoon ladies  
6 and gentleman, this is the July 12, 2011, Public  
7 Hearing of the Board of Zoning Adjustments for  
8 the District of Columbia.

9 My name is Meredith Moldenhauer  
10 Chairperson, joining me today to my left is the  
11 Vice Chair Nicole Sorg, Mayoral Appointee, to my  
12 far right is Mr. Jeffrey Hinkle, Representative  
13 of the National Capitol Planning Commission, to  
14 my right Lloyd Jordan, Mayoral Appointee, and to  
15 my far left Mr. Greg Selfridge Representative of  
16 the Zoning Commission.

17 Copies of today's hearing agenda are  
18 available to you, and are located to my left in  
19 the wall bin near the door. Please be advised  
20 this proceeding is being recorded by a court  
21 reporter, and is also being webcast live.  
22 Accordingly, we must ask you to refrain from any

1 disturbing noises or actions in the hearing room.

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

8           All persons planning to testify, either  
9 in support or in opposition is to fill out two  
10 witness cards. These cards are located to my left  
11 in the wall bin near the door, and on the tables  
12 in front of you.

13           Upon coming forward to speak to the Board  
14 please give both cards to the court reporter  
15 sitting to my right.

16           The order of procedures for special  
17 exceptions, and variances are as follows: 1.  
18 Statement of the Applicant, and Applicant's  
19 Witnesses. 2. Parties, and persons in support. 3.  
20 Parties, and persons in opposition. 4. Government  
21 Reports including Office of Planning, and  
22 Department of Transportation. 5. Report from the

1 ANC. 6. Rebuttal, and closing statements of the  
2 Applicant.

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

8 Apelles persons, and parties except an  
9 ANC in opposition, including witnesses, will be  
10 given 60 minutes collectively.

11 Individuals will be given 3 minutes, and  
12 associations or organizations will be given 5.

13 These time restrictions do not include  
14 cross examinations, or questions from the Board.  
15 Cross examination of witnesses is permitted by  
16 all parties, and Applicants.

17 The ANC within which the property is  
18 located is automatically a party to a special  
19 exception, or variance case.

20 Nothing prohibits the Board from placing  
21 reasonable restrictions on cross examination  
22 including, time limitations, or limitation on the

1 scope of cross examination.

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

10           The Sunshine Act requires that a public  
11 hearing on each case be held in the open before  
12 the public. Pursuant to Section 405B and 406 of  
13 the Open Meeting Amendment Act of 2010, the Board  
14 may, consistent with its rules, and procedures,  
15 and the Open Meeting Amendment Act enter into  
16 closed meetings, or closed emergency meeting on a  
17 case, for purposes of seeking legal counsel in a  
18 case, per Section 405B-4, and or deliberating on  
19 a case, pursuant to Section 405B-13 of the law.

20           Only after providing the necessary  
21 public notice, and taking a roll call vote.

22           The decision of the Board in these

1 contested cases must be based exclusively on  
2 public record. To avoid any appearance to the  
3 contrary, the Board requests that persons present  
4 not engage the members of the Board in  
5 conversation.

6 Please, turn off all beepers, and cell  
7 phones at this time as to not disturb these  
8 proceedings.

9 The Board will now consider any  
10 preliminary matters.

11 Preliminary matters are those which  
12 relate to whether a case should, or will be heard  
13 today, such as a request for postponement,  
14 continuance, or withdrawal, or whether proper, or  
15 adequate notice of a hearing was given.

16 If you are not prepared to go forward  
17 today, or if you believe that the case should not  
18 proceed, now is the time to raise such a matter.

19 Mr. Secretary, do we have any preliminary  
20 matters?

21 **Application No. 18161**

22 MR. MOY: Madam Chairperson, only major

1 preliminary matter is the scheduled application  
2 of 18161 of Valeri Byrd. The office is in  
3 receipt of a letter from the applicant dated July  
4 6, 2011, withdrawing that case for the day.

5 CHAIRPERSON MOLDENHAUER: Thank you, then  
6 before we proceed, will all individuals wishing  
7 to testify this afternoon please stand, and the  
8 oath will be administered.

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

14 CHAIRPERSON MOLDENHAUER: Thank you very  
15 much. We can call the first case.

16 **Application No. 18232**

17 MR. MOY: The first application for Board  
18 hearing, and action, is Application No. 18232.  
19 This is the application of Herbert J. Sanborn,  
20 Jr., pursuant to 11 DCMR 3104.1, this for a  
21 special exception to allow an accessory apartment  
22 in an existing one-family semi-detached dwelling,

1 under (subsection 202.10) in the R-3 District at  
2 premises 1679 35<sup>th</sup> Street, N.W., property located  
3 in (Square 1294, Lot 805).

4 CHAIRPERSON MOLDENHAUER: Thank you very  
5 much. The Applicant can please step forward, and  
6 if you could turn on the microphone. Can you  
7 introduce yourself for the record please?

8 MR. SANBORN: Yes, my name is Herbert  
9 James Sanborn, Jr.; I reside at 1679 35<sup>th</sup> Street,  
10 N.W.

11 CHAIRPERSON MOLDENHAUER: Okay, thank  
12 you. At this point in time you can present your  
13 case. I think that we have a fairly full record  
14 in this case, so if you would like to add  
15 anything that's not already presented, now is the  
16 time to do so.

17 MR. SANBORN: Great, thank you very much.

18 I know that the ANC is negatively  
19 against this case already, due to an error on my  
20 part, not to my advantage. I was unaware of the  
21 ANC meeting and missed the meeting. I was given  
22 an opportunity at the last meeting though to

1 express my... or to more or less state my case.

2 I'm a long time resident of Washington,  
3 D.C. I was born at the Columbia Hospital for  
4 Women.

5 I'm an artist also, and have quite a few  
6 art works around Washington, D.C. I think of  
7 myself also as a Washington Artist.

8 I have found myself in a position with  
9 the sinking economy that I find it necessary to  
10 apply for a special exception to get an apartment  
11 in the upstairs rear bedroom of my home. It's  
12 just 25 percent of the property.

13 I find that my neighborhood, in  
14 particularly my block, I had left a paper with  
15 the panel, and it's a chart, more or less of the  
16 properties that are currently rented, and the  
17 properties that are owner occupied.

18 At this point in time, I've had four of  
19 my close neighbors offer letters of support for  
20 my project. I find when you look at this chart,  
21 everything on the chart that is painted blue, is  
22 basically a student group home. The orange

1 residence is mine, the ones in green, and the  
2 ones in green and blue hash marks are other  
3 owners who have supported me in this endeavor.

4           When I first came to this location, there  
5 was an appalling trash situation in the alley  
6 behind my property, and running all the way down  
7 the alley behind - parallel to 35<sup>th</sup> Street.

8           By appalling state, I more or less mean  
9 that there were huge piles of trash. I mean  
10 gigantic piles of trash, all the way up, and down  
11 this alley. It was a fairly disgusting situation  
12 with rats, and all of these very large piles of  
13 trash.

14           I did everything, I did the first couple  
15 of years to try to remedy the situation, as far  
16 as requesting that the owners of these properties  
17 more often than not were absentee owners, make a  
18 niche in the backyard of their homes so that  
19 trash collection containers could be put into  
20 these niches.

21           I also encouraged owners with a small  
22 list of 35<sup>th</sup> Street Household Trash Rules. On the

1 properties that were not owner occupied, I placed  
2 these on the fence behind the house, in order to  
3 try and remedy the rat situation, and the trash.

4 This raised the ire of one resident in  
5 particular, but in general, everyone else was  
6 very tolerant of this, and thought it was a great  
7 idea.

8 Today, the rear of that alley looks very  
9 clean. There is no trash in this alley as we  
10 speak. I did succeed in having virtually  
11 everyone contribute to the idea, and it's been  
12 cleaned up a lot, and I was very appreciative.

13 I received a letter from Jack Evans  
14 thanking me for my efforts in this regard. The  
15 only reason I'm saying this is because I'm a real  
16 advocate for, not necessarily reducing the number  
17 of students in my area, but trying desperately to  
18 co-exist.

19 I think there are two factors in this  
20 economy. One is that with the housing situation  
21 as it is there are many people that can't afford  
22 to buy homes, so rental apartments, whether it's



1           I currently live next door to a very  
2 difficult house at 1681 35<sup>th</sup> Street. We had to  
3 move our sleeping quarters down to the first  
4 floor, because we could not sleep at night,  
5 because of the noise generated.

6           I, for all these reasons am a very  
7 staunch advocate of trying to co-exist in this  
8 situation, and if I'm lost, or if the block loses  
9 me, it will lose one of very few owners who  
10 occupy the premises.

11           So that's the gist of my appeal.

12           CHAIRPERSON MOLDENHAUER: Thank you very  
13 much. I think that at this point then, if that  
14 concludes your statements, we'll look to Board  
15 Members to see if there are any questions from  
16 Board Members? Okay, sure.

17           MR. JORDAN: Let me ask you, you said;  
18 that you're an artist, and I think you use your  
19 art studio that's in the back? That's not a  
20 business for you, it's just a hobby or...?

21           MR. SANBORN: Well not at that location.  
22 I have another studio where I conduct most of my

1 business affairs, and everything. That studio is  
2 located in Maryland. That's basically a space  
3 which we occupy. At this point we might create  
4 there, but we don't sell from that space at all,  
5 it's not a commercial endeavor.

6 MR. JORDAN: All right, thank you.

7 CHAIRPERSON MOLDENHAUER: Any other  
8 questions from Board Members? Seeing none, at  
9 this point in time I will look to the audience,  
10 to see if there are any individuals in support,  
11 or in opposition of this case?

12 You need to step forward. Did you fill  
13 out the two witness cards? Okay if you can sit  
14 down, and then turn on the microphone, first  
15 stating your name, and home address. Now we can  
16 hear you. You'll be given three minutes to  
17 provide...

18 MS. Lamonte: Domineca LaMonte, 2352  
19 Nebraska Avenue, N.W. I own a house in the block  
20 where Mr. Sanborn owns his house. The address is  
21 1695, and it's one of a row of 8 townhouses.

22 Now my house, I must say Mr. Sanborn miss

1 to the fact that my house is not occupied by 18  
2 people. I rent the two apartments with a  
3 business license; I have two apartments, two  
4 flats, as this house has been zoned when they  
5 were built in 1909. I have two families living in  
6 it, two people upstairs, and two people with a  
7 child at the moment at the lower floor.

8 My house is not student housing. It is  
9 true that most of the other houses with the  
10 exception of one, of this row of houses, have at  
11 least 9 people in each house, they may even have  
12 more.

13 Unfortunately, this is one of the reasons  
14 why I really, I can't believe, the density in  
15 this block is going to be increased.

16 If I can see the one house which is  
17 attached to Mr. Sanborn's house, I mean that is  
18 overcrowded, and unfortunately the trash keeps on  
19 piling up in the back.

20 The rat problem in this block has existed  
21 from 1968, that's when I bought my house there.  
22 For awhile the rat problem went down because

1 there was a bunch of Ferrell cats which, I know  
2 were doing a very good service.

3 In 97', I just couldn't stand the noise  
4 and the overcrowded houses anymore, and I really  
5 just moved out, and I rented my house, leased my  
6 house.

7 Unfortunately I still have a big interest  
8 in the house, I love the house dearly. I mean I  
9 plan to go, and live back in the lower apartment.  
10 Also, because it has access, which could be used  
11 as wheelchair access?

12 I still have a great interest in my  
13 tenants leading a regular, normal life, without  
14 too much noise. I still go back, I still take a  
15 great interest in keeping the front decent, the  
16 back too, and I think my tenants do as well.

17 I really don't want to increase the  
18 density in this block. I think it is just at the  
19 very top. I can't tolerate the thought of it,  
20 unless the District intervened and applied the  
21 laws, which you know, the Council has passed a  
22 law about business license.

1           They say they are doing the right things  
2 about the rats, about cleaning the alley's, and  
3 trash collection. My experience here is that  
4 they really don't do it.

5           There is one individual in this row of  
6 houses who should have a business licenses, I  
7 believe the gentleman resides in Maryland, and he  
8 does not have a business licenses.

9           Most of these houses are packed with  
10 students, I agree with Mr. Sanborn. I'm sure  
11 that if Mr. Sanborn keeps on residing in this  
12 residence, and obtains the permission to have an  
13 apartment in there, as long as he resides in the  
14 residents, things will be fine. Because, he's not  
15 going to put up with a bunch of students,  
16 screaming, and yelling upstairs.

17           The moment Mr. Sanborn decides to sell  
18 the house as it has happened, and I've seen it  
19 because I lived in the house, 1695 for, since  
20 1968. I've seen the deterioration of the block.

21           I know if anybody buys another house with  
22 this zoning to apartments, we are going to have a

1 bunch of students moving in, or students, I don't  
2 care what. This again, is fine, as long as the  
3 Georgetown University would keep the students  
4 under control, and they are completely unable to  
5 do it.

6 CHAIRPERSON MOLDENHAUER: Thank you very  
7 much. I think your time had expired, but I  
8 appreciate you coming down, and talking about  
9 your concerns.

10 Just to address, just to make sure you  
11 understand, that if this relief was granted,  
12 owner occupancy would be one of the required  
13 conditions, under the general approval of this  
14 type of Zoning Relief. So, even if the property  
15 was sold, or transferred to somebody else, owner  
16 occupancy would still be a requirement under the  
17 type of relief that is before us today.

18 MS. LAMONTE: That changes things in my  
19 eyes. That is, you know if that then for some  
20 reason is going to be changed later on. I mean I  
21 don't know, I don't know, what point I can trust  
22 the District Government, the Department of

1 Regulatory Affairs because they've all let us  
2 down. Us meaning me, and I've been fighting from  
3 68'.

4 I see that all these houses should only  
5 have two flats in them, they have three, and I  
6 don't know how this has come about. I think the  
7 Zoning Commission must be responsible. The  
8 District must be responsible, and there is over-  
9 crowding, and it's just completely out of hand,  
10 you know.

11 CHAIRPERSON MOLDENHAUER: Again, I  
12 appreciate you coming down here. However, right  
13 now we're just focused on Mr. Sanborn's  
14 application not the rest of the block.

15 If you have any concerns, I think, that  
16 obviously they do have reviews for the Georgetown  
17 Campus Plan. That may be a better opportunity for  
18 you to voice your concerns to the Zoning  
19 Commission.

20 MS. LAMONTE: Excuse me, but Mr.  
21 Sanborn's application is really very much, tied  
22 in to the reasons why I'm opposed to this, to the

1 overcrowding. It's not that, you know the  
2 overcrowding is why I'm against it.

3 CHAIRPERSON MOLDENHAUER: I understand  
4 that, and I appreciate you coming down to voice  
5 your concerns, and the specific reasons for your  
6 opposition.

7 Is there anybody else in the audience  
8 either in support, or in opposition of this case?

9 Is there anybody present from the ANC for his  
10 case?

11 We have in our record a letter from ANC  
12 2-E indicating that they oppose the request for  
13 relief there. This letter illustrates that it  
14 was at a duly called meeting, with seven  
15 commissioners present, which represents a quorum.

16 They voted to oppose the application. This  
17 letter does receive great weight, and we will  
18 provide great weight to the letter, and the  
19 reasons they provide for their opposition.

20 At this point in time the Board will turn  
21 to the Office of Planning for their report.

22 MR. JACKSON: Good afternoon Madam Chair,

1 welcome back.

2 CHAIRPERSON MOLDENHAUER: Thank you.

3 MR. JACKSON: My name is Arthur Jackson  
4 of the D.C. Office of Planning, and I have a  
5 brief summary of our report which is before you.

6 We are basically standing on the record.

7 In the report we go through the  
8 conditions for approval, and we think the  
9 standards that are articulated in the regulations  
10 are met by the Applicant.

11 I would note, that the space that's  
12 specified for the apartment already exists, and  
13 has been renovated, but it has been inspected. I  
14 followed up with a call to the Zoning  
15 Administrator, and he explained that, this  
16 happens. The condition that's been applied,  
17 that's being recommended by the Office of  
18 Planning is such that the improvements can be  
19 inspected, and certified as being adequate.

20 He also indicated that the actual  
21 accessory apartment does not require a CO, but  
22 it's an accessory use that only requires that it

1 meet the building requirements.

2           This is the reason why the Office of  
3 Planning recommends approval, subject to  
4 condition that the Applicant secures a building  
5 permit for the accessory use, in accordance with  
6 the applicable building regulations.

7           As you noted, there have been some  
8 letters in opposition, but based on the standards  
9 that are currently in the regulations, and the  
10 comments from Historic Preservation Office,  
11 within the Office of Planning, we think the  
12 Applicant meets the standards for BZA approval.

13           That concludes the summary of the Office  
14 of Planning report, and we're available to answer  
15 questions.

16           CHAIRPERSON MOLDENHAUER: Thank you very  
17 much for your report. Does the Applicant have  
18 any questions for the Office of Planning?

19           MR. SANBORN: No, I appreciate them  
20 coming to look at my situation, to double check  
21 my crude drawings that I submitted.

22           I think I fully stated it in the

1 statement that you guys have.

2 CHAIRPERSON MOLDENHAUER: At this point  
3 in time I was just asking if you have questions  
4 for Office of Planning.

5 MR. SANBORN: No, nothing in particular,  
6 thank you.

7 CHAIRPERSON MOLDENHAUER: We'll turn back  
8 if you have any closing remarks. Do any Board  
9 Members have any questions for the Office of  
10 Planning? Seeing none, then at this point in  
11 time I'll turn back to the Applicant for any  
12 closing remarks, if you have any.

13 MR. SANBORN: Short of overstating my  
14 enthusiasm for being in the neighborhood, I think  
15 that Manetta and I, are more, or less on the same  
16 page as far as trying to co-exist in this  
17 neighborhood. I think we agree on that point.

18 Perhaps it was a slight many years ago,  
19 when I was trying to clean up the alley. Whatever  
20 it was, I think the point is, she is very  
21 vigilant, I am very vigilant, and we're trying to  
22 keep as many people on this block to be vigilant.

1           If my house were sold, I don't know who  
2 it's going to be sold to. It could be sold to  
3 some group of people who could get as much as  
4 \$10,000 a month from a building like this, in  
5 rentals, and be non-owner occupied.

6           My block would go further into being more  
7 or less a high density residential area. As long  
8 as my tenure is there, and my studio is there  
9 I'll do everything I can to try to keep the place  
10 quieter, and to try to keep the place cleaner,  
11 and that's all I can bring to the table, as far  
12 as my request is concerned.

13           CHAIRPERSON MOLDENHAUER: Thank you; are  
14 there any final questions from Board Members?

15           Thank you very much. At this point in  
16 time we'll conclude the hearing. As we conclude  
17 the hearing I think that we can go directly into  
18 deliberation on this case.

19           What we have before us, is we have an  
20 application under 202.10. This is a specific  
21 provision in the Regs which allows for accessory  
22 apartment use in this zone. So long as the

1 Applicant satisfies specific conditions.

2 I don't see this as a situation, this is  
3 not a situation, rather where we are permitting,  
4 or allowing the creation of a new apartment.  
5 This is not allowing a flat, this is simply  
6 allowing, and requiring that the Applicant stay  
7 as an owner occupant. Actually owner occupancy is  
8 condition number F, under this relief, and that  
9 the accessory apartment is less than 25 percent  
10 of the gross floor area.

11 Here Mr. Sanborn has satisfied all of the  
12 conditions as are articulated, and outlined by  
13 the Office of Planning. We are in deliberation;  
14 we are not, taking any additional discussions.

15 This is not something where, if there is  
16 any potential transfer that would allow this to  
17 change. Again, no matter what throughout the  
18 history of this property, owner occupancy would  
19 be required by this relief.

20 I think, that given that condition, I see  
21 that in my personal opinion, that would satisfy a  
22 lot of concerns that we heard in regards to

1 maintenance, taking care of it, keeping any  
2 concerns about overcrowding.

3           Obviously we're talking about only 25  
4 percent of the building. We're not talking about  
5 permitting the rental, or the accessory use of a  
6 large portion of this house, to be all of a  
7 sudden having additional, or multiple numbers of  
8 individuals to reside there.

9           There are limitations in the Regs, in  
10 regards to the number of occupants in the  
11 building. Under Section G, it indicates that the  
12 aggregate number of people may occupy the  
13 building including, the principal dwelling, and  
14 the accessory apartment combined, shall not  
15 exceed six. I think that also provides somewhat  
16 of a restriction. I think six is a high number,  
17 and it does provide some level of restriction.

18           I do look at the great weight letter from  
19 the ANC, however. I think we heard testimony  
20 that the Applicant could not be present for it.  
21 I think that also provides some reference. They  
22 do obviously incorporate the fact that this would

1 be owner occupied, but still nonetheless have a  
2 concern about the increased density, which is a  
3 similar echoed concern that we heard from Ms.  
4 LaMonte in her testimony, today, as well.

5 I think that as a special exception  
6 standard when the Applicant satisfies those  
7 elements that the Board is in a position where we  
8 really should consider granting relief. I think  
9 with OP's support, I think, that outweighs the  
10 concerns of the ANC in that regard.

11 I'll open up the floor to any additional  
12 deliberation.

13 MS. SORG: Thank you Madam Chair. I  
14 agree with your analysis, and I would just add a  
15 couple of things.

16 I think it sounds, from the testimony,  
17 and the evidence that we received in our file,  
18 that Mr. Sanborn is, in fact, someone who is  
19 working to preserve, and improve his block.

20 In fact the neighbor in opposition who  
21 came to testify mentioned something in that  
22 regard as well.

1           I also think that while the ANC letter  
2 satisfies our requirement for great weight, that  
3 the issues that are raised by the ANC in their  
4 letter are not relevant at all to the case. Which  
5 is an individual homeowner using less than 25  
6 percent of their principal dwelling for rental?

7           What's happening with Georgetown  
8 Students, and the Zoning rewrite, is not an issue  
9 here. I think that it's a clear matter of  
10 satisfying the standards, and I think the  
11 Applicant does so, very easily.

12           CHAIRPERSON MOLDENHAUER: Any further  
13 deliberation from Board Members? Seeing none,  
14 then at this point in time I would submit a  
15 motion. A motion to approve Application 18232  
16 under 11 DCMR 3104.1 for special exception to  
17 allow an accessory apartment in an existing one-  
18 family semi-detached dwelling under (subsection  
19 202.10), at 1679 35<sup>th</sup> Street, N.W. A motion has  
20 been made is there a second?

21           MS. SORG: Second.

22           CHAIRPERSON MOLDENHAUER: A motion has

1 been made and seconded. All those in favor say  
2 aye, aye.

3 CHORUS: Aye.

4 CHAIRPERSON MOLDENHAUER: Mr. Moy if you  
5 could read back the vote.

6 MR. MOY: Pardon for that, Madam Chair.  
7 It's always a pleasure when I have a full five  
8 member Board.

9 The Staff would record the vote as, 5 to  
10 0 to 0. This is on the motion of Chairperson  
11 Moldenhauer to approve the application, pursuant  
12 to Section 202.10. Second the motion Ms. Sorg,  
13 also in support of the motion, Mr. Selfridge, Mr.  
14 Jordan and Mr. Hinkle. Again the final vote is 5  
15 to 0 to 0 to approve.

16 CHAIRPERSON MOLDENHAUER: Thank you very  
17 much, and with ANC in opposition we won't be able  
18 to request a summary order, so thank you.

19 MR. MOY: That's correct.

20 **Application No. 18230**

21 MR. MOY: The next application before the  
22 Board is Application No. 18230. This is the

1 application of 1813-1815 M Street, LLC, pursuant  
2 to 11 DCMR 3103.2 this is for a variance from the  
3 rear yard requirements under Section 404, to  
4 allow a third floor addition to an existing  
5 building, serving a restaurant use in the DC/C3C  
6 District. This is at premises 1813 M Street,  
7 N.W., property located in (Square 139, Lot 73).

8 CHAIRPERSON MOLDENHAUER: Good afternoon,  
9 if you could please introduce yourself for the  
10 record.

11 MR. KEYS: Good afternoon Madam Chair, my  
12 name is George Keys. I'm with the firm of Jordan  
13 and Keys, PLLC, 1400 16<sup>th</sup> Street, Suite 710,  
14 Washington, D.C.

15 I'm here on behalf of, 1813-1815 M  
16 Street, LLC, the owner of the subject property.  
17 It's OZIO's, it's a restaurant, nightclub.

18 CHAIRPERSON MOLDENHAUER: There's a  
19 preliminary matter for the record. We had  
20 initially, a party status request by Ann Marie  
21 Capel, from the Jefferson Row Condominium. We  
22 received a letter dated July 11<sup>th</sup>, which is our

1 "Exhibit No. 32", indicating that party status  
2 request had been withdrawn. I just want to make  
3 sure that was provided for the record.

4 That being said I will turn to you Mr.  
5 Keys to present your case.

6 Just too kind of clarify; I know that  
7 there's been some confusion back and forth  
8 between the ZA initial referral, and the revised  
9 referral. Then OP's report in regards to what  
10 type of relief is actually required, whether it's  
11 a variance relief, or special exception relief.  
12 When the ZA revised his referral to the special  
13 exception it was, because of a plan change?

14 MR. KEYS: No it was not, it was really a  
15 closer look at the regulations. It's a confused...  
16 Section 774 is a confusing section of the  
17 Regulations as it applies to the C3C.

18 I think it befuddled our Architect, who  
19 designed the plans, and I think it eluded the  
20 DCRA, and in fact eluded the Zoning  
21 Administrators attention. He initially thought  
22 it was a variance.

1           I met with the Office of Planning, they  
2 persuaded me that special exception was obviously  
3 the way to go, it's a simpler burden of proof on  
4 the Applicant. When we filed the supplemental  
5 information that was filed on the 28<sup>th</sup> of June, we  
6 indicated that we would ask the Board to consider  
7 whether or not we can proceed as a special  
8 exception.

9           This really is a decision, I think, it  
10 would help us to make, if you made it now, so  
11 that we could shape our case.

12           I'm prepared to argue the special  
13 exception, and we're prepared to put evidence on  
14 support the variance, and we're also prepared as  
15 we indicated in the supplemental filing to make  
16 an argument for equitable estoppels, in this case  
17 based on the legal standards applicable to that  
18 doctrine. You please instruct us..

19           CHAIRPERSON MOLDENHAUER: You've got the  
20 kitchen sink ready.

21           MR. KEYS: I think that the appreciation  
22 we have because the variance is a higher standard

1 that a special exception is kind of a lesser, and  
2 included offense. That the community has been  
3 sufficiently noticed, that there is an action  
4 effecting property, and that to consider this as  
5 a special exception would not deny the community  
6 notice, and awareness of what's going on.

7 CHAIRPERSON MOLDENHAUER: I agree with  
8 you in regards to the notice issue. I do think,  
9 looking at this, that this is something that  
10 falls under 774. So I have no issue, and  
11 especially with the revised, this is a ZA  
12 referral. Since we do have in our record, the  
13 revised ZA reference OP has not incorporated the  
14 special exception standard into their report that  
15 we have. I have no issue with the notice since  
16 the community did receive notice for a variance.  
17 It's the same relief that's being sought. It's  
18 just rather how it's structured.

19 I have no issue with permitting this  
20 application coming under the 774 standard. Do  
21 any other Board Members have any concerns, or  
22 would like to make any statements in that regard?

1 Seeing none, then we will proceed with this case  
2 under review for special exception.

3 MR. KEYS: Thank you Madam Chair. The  
4 Applicant comes before the Board seeking a  
5 special exception under 774.2, and this is to  
6 eliminate the requirement for a rear yard. In  
7 the C3C Zone for property abutting an alley,  
8 Section 774.9A requires that a rear yard be  
9 provided above the 20 foot horizontal plane for  
10 property abutting the alley, and that the rear  
11 yard, be not less than 12 feet.

12 In this instance, the existing building  
13 as indicated in our various exhibits, the  
14 existing building occupied 100 percent of the  
15 lot. There was no rear yard. The existing  
16 building at the rear would have required... the  
17 addition that was proposed would have required a  
18 setback. That was not provided, yet a building  
19 permit was issued.

20 We are now in the position of having to  
21 come before the Board seeking to ratify, and  
22 confirm what has already been built. I think the

1 situation is one that will satisfy the special  
2 exception standard. I also want, and will take  
3 the time to acquaint the Board with the equitable  
4 issue here, that is, we think it's a situation  
5 that's ripe for estoppels against the government,  
6 given the error that was made.

7 I've got two witnesses, Mr. Christacos,  
8 the principal of the Applicant, and I have Robert  
9 Sockwell. Now Mr. Sockwell is an Architect, and  
10 I would like to offer him as an expert in  
11 Architecture for your consideration. I have his  
12 abbreviated resume that I would like to  
13 distribute to the Board.

14 CHAIRPERSON MOLDENHAUER: Please provide  
15 that to Mr. Moy.

16 I see no issue with Mr. Sockwell being  
17 determined to be an expert witness, for purposes  
18 of his Architectural opinion, for this case.

19 MR. KEYS: Thank you. Mr. Christacos,  
20 would you please provide your full name, and your  
21 home address for the record.

22 MR. CHRISTACOS: George Christacos, 6409

1 Val Street, Alexandria, VA, 22312.

2 MR. KEYS: Mr. Christacos, are you the  
3 principal owner of, 1813-1815 M Street, LLC?

4 MR. CHRISTACOS: Yes sir.

5 MR. KEYS: Mr. Christacos, could you  
6 provide the Board with a bit of your background,  
7 in relation to, operating business enterprises in  
8 the Washington, D.C. area.

9 MR. CHRISTACOS: I came to this country  
10 1961, from Greece; I worked as a waiter at the  
11 Knife and Fork Restaurant for 4 years.

12 In 1965, I managed to do my first  
13 establishment, which was the Circle One. After  
14 that I enjoy, a wonderful 45-years. Because I  
15 done 27 different locations in this town, and I  
16 had the most wonderful fun, and time doing them.

17 The last year when we decided to do the  
18 new addition because of the economics, we lost a  
19 tremendously amount of our business. I had to  
20 start with a completely new architectural  
21 structure engineers, which I never done before.  
22 Everybody ask me, retire, because the last job I

1 did was 10 years ago. I'm 74-years old, at 65 I  
2 said I'm not going to do anything else, but the  
3 economics put me back into the improvements, and  
4 thank God it worked very well.

5 MR. KEYS: Mr. Christacos, is it your  
6 testimony that this was your first working  
7 experience with the Architect, and with the  
8 General Contractor for this project?

9 MR. CHRISTACOS: Yes, it was not fun at  
10 all.

11 MR. KEYS: Mr. Christacos, what was the  
12 purpose of the original plan for the addition to  
13 the property?

14 MR. CHRISTACOS: The plan was, we lost  
15 about 50 percent due to the economics of a  
16 business. We thought since the roof tops are  
17 very popular, to get the roof top on the third  
18 floor over there, and put a roof top over there  
19 because it's been very popular.

20 As I mentioned, thank God it worked out  
21 beautifully because we operate in 6-weeks now in  
22 a temporary permits.

1 MR. KEYS: Did you commission the  
2 Architect to develop the plan for the roof top?

3 MR. CHRISTACOS: Yes sir.

4 MR. KEYS: Was the original plan for the  
5 rooftop an enclosed structure, or an unenclosed  
6 structure?

7 MR. CHRISTACOS: I don't know in the  
8 beginning it was closed, but he came to us with  
9 the building up, they brought me the idea of the  
10 retractable roof. And it worked very well; I  
11 think I'm very pleased with the results of it.

12 MR. KEYS: You were issued a building  
13 permit?

14 MR. CHRISTACOS: Yes sir.

15 MR. KEYS: The building permit that was  
16 actually issued called for building what, on the  
17 roof?

18 MR. CHRISTACOS: A what do you call it,  
19 an open space?

20 MR. KEYS: An open deck.

21 MR. CHRISTACOS: An open deck.

22 MR. KEYS: At some point in the process

1 of thinking you decided to change that approach.

2 MR. CHRISTACOS: Yes, we were with the  
3 Architect, they brought me this idea of the  
4 retractable roof. He went back to the Fine Arts,  
5 or what we call it, the Historical, since we're  
6 under Historical approval, he approved that, and  
7 I felt confident that the Architect knows what  
8 he's doing.

9 MR. KEYS: So after the issuance of the  
10 building permit, the Architect changed the  
11 drawings...

12 MR. CHRISTACOS: Yeah, changed the  
13 drawings, and proceed with all the plans, and we  
14 build the place up.

15 MR. KEYS: Right, and that plan, that  
16 revised plan, was presented to the Historic  
17 Preservation Review Board?

18 MR. CHRISTACOS: Yes sir.

19 MR. KEYS: In your mind, had the  
20 Architect... let me rephrase that question. Was it  
21 your assumption, that the Architect had secured  
22 the approvals needed to build the enclosed

1 retractable...

2 MR. CHRISTACOS: Absolutely, absolutely,  
3 because he presented to me, he offered to me, and  
4 I accept the... yes, yes sir. As I mentioned in  
5 all my past experience, you know, the Architects,  
6 Structural Engineers, they handle all the  
7 permits, and everything else.

8 MR. KEYS: Was it your Contractors  
9 responsibility to obtain the building permits?

10 MR. CHRISTACOS: Was doing the  
11 Architectural or structural guy.

12 MR. KEYS: Did he in fact obtain the  
13 permit for the enclosed roof?

14 MR. CHRISTACOS: I'm not sure if that  
15 included the permits, I'm not sure. But I know I  
16 see a lot of approvals.

17 MR. KEYS: What's the status of your  
18 relationship with the Contractor who was  
19 responsible for...?

20 MR. CHRISTACOS: Unfortunately, he came  
21 in crying, and I give him a loan to save his  
22 apartment, and then he disappears on me.

1           MR. KEYS: Mr. Christacos, how much did  
2 you spend in the process of making the  
3 improvements to the rear of this property?

4           MR. CHRISTACOS: Approximately about  
5 \$900,000.

6           MR. KEYS: Mr. Christacos, you were  
7 issued a temporary Certificate of Occupancy?

8           MR. CHRISTACOS: Yes sir.

9           MR. KEYS: Do you know when that expires?

10          MR. CHRISTACOS: Honestly, I don't know.  
11 After we come to you, I don't know how that  
12 works exactly.

13          MR. KEYS: K.

14          MR. CHRISTACOS: The people that felt so  
15 bad after all the mistakes was happened, they  
16 approved it, and the final decision was a mistake  
17 was done, so they give us the temporary until we  
18 straighten things out.

19          MR. KEYS: Thank you Mr. Christacos.

20                 Would the Board prefer that I go on to  
21 the next witness, or would you have any questions  
22 for Mr. Christacos?

1           CHAIRPERSON MOLDENHAUER: I think it's  
2 probably easier if you just go on to the next  
3 witness. Then we'll ask all the witnesses  
4 questions at the end. Thank you.

5           MR. KEYS: Mr. Sockwell, could you please  
6 state your full name, and home address for the  
7 record.

8           MR. SOCKWELL: My name is Robert N.  
9 Sockwell; I reside at 808 3<sup>rd</sup> Street, S.W.,  
10 Washington, D.C., 20024.

11          MR. KEYS: Mr. Sockwell, what is your  
12 connection with this particular project?

13          MR. SOCKWELL: I was brought on to assist  
14 Mr. Christacos initially, in a relationship to be  
15 developed with the Advisory Neighborhood  
16 Commission. Regarding an application for his  
17 liquor license modification, commensurate with  
18 the upgrading of the size of his facility based  
19 upon the addition, creating additional occupant  
20 load of 110 individuals.

21          MR. KEYS: Are you familiar with the  
22 filed plans that were originally filed for the

1 deck addition?

2 MR. SOCKWELL: Yes I am.

3 MR. KEYS: Are you familiar with the  
4 plans that were then subsequently filed to  
5 reflect the, as built structure?

6 MR. SOCKWELL: Yes I am.

7 MR. KEYS: I'd like to ask you to have a  
8 look at "Exhibit D-3"; it's one of the foldouts  
9 in the supplemental information filed by the  
10 Applicant.

11 I'm looking at drawing A-301.

12 MR. SOCKWELL: Uh-huh, I have it.

13 MR. KEYS: Could you explain to the Board,  
14 or orient the Board, what the drawing represents  
15 and depicts?

16 MR. SOCKWELL: The drawing represents a  
17 view of the east wall along the north south alley  
18 of the property. The property is abutted by 2  
19 alleys, a north south alley, and an east west  
20 alley, both approximately 10 feet wide.

21 The east wall depicts the existing  
22 facility, the existing roof line as it exists at

1 the east wall.

2           The roof line actually rises because  
3 there's a sloping roof in part of the building.  
4 And, 1813-1815 is a building that was comprised  
5 of 2 independent townhouses that at some point in  
6 the distant past were converted to one building.

7  
8           The lot apparently, was combined to make  
9 that a single structure, on a single lot of  
10 record. The original property as I've always  
11 known it, as a native Washingtonian, was as a  
12 restaurant. It was the only place that belly  
13 dancers actually performed as a legal form of  
14 exotic entertainment, if you want to call it  
15 that. Adriana was the featured dancer, I'm old.

16           MR. KEYS: Not to necessarily change the  
17 subject Mr. Sockwell, but let me ask you. Look  
18 at the date of the plan "Exhibit D-3", and what  
19 does this plan reflect?

20           MR. SOCKWELL: Well the plan reflects in  
21 specifics, the existing line of the parapet for  
22 the existing masonry wall, and the extended

1 surface to match, which created the  
2 understructure for a raised deck that was to be  
3 constructed under the original permit issued  
4 March 2, 2010.

5 This also included an enclosed stair  
6 tower structure at the rear, which would be for  
7 the left side of the sheet. That stair tower  
8 structure was for access and egress to the new  
9 space. In its location it encompasses a part of  
10 what would have normally been the rear yard.

11 MR. KEYS: So Mr. Sockwell, these are the  
12 plans that resulted in the building permit that  
13 was issued in March of 2010?

14 MR. SOCKWELL: They are.

15 MR. KEYS: Now where's the building in  
16 relation to the property line at the rear?

17 MR. SOCKWELL: The existing building, and  
18 a portion of the structure enclosing or wrapping  
19 the proposed deck as permitted, actually follow  
20 the property line at the rear of the structure in  
21 this view.

22 MR. KEYS: So in these plans, there is no

1 setback above the 20 foot horizontal plane?

2 MR. SOCKWELL: There is no setback in the  
3 existing height, as shown by dimension it's 21  
4 feet 1 inch. Everything above that either sets  
5 back to the property line, or close to the  
6 property line.

7 MR. KEYS: In order to comply with the  
8 regulations governing the rear yard requirement  
9 in C3C properties abutting an alley. How far  
10 would these improvements have had to have been  
11 pulled away from the property line, in order to  
12 meet Zoning?

13 MR. SOCKWELL: Based on the allowable  
14 point of measurement for a rear yard in this  
15 condition, abutting a rear alley, an alley  
16 through the property in the C3C Zoning District  
17 the rear wall of any built addition would have to  
18 have been setback into the property approximately  
19 7 feet to make up the portion, not accommodated  
20 by half of the width of the alley.

21 MR. KEYS: Okay. Now I'm going to ask  
22 you to take a look at what was submitted with the

1 initial application, to the Board for the  
2 variance.

3 I'm going to look at the equivalent plan.  
4 For the Board this is a document that was in the  
5 original application, it is Plan A-200, it's  
6 dated December 21, 2010.

7 Now Mr. Sockwell, could you describe what  
8 this plan depicts, and sort of relate it back to  
9 what we have just reviewed?

10 MR. SOCKWELL: Very simply, it depicts an  
11 increase in the vertical height of the enclosing  
12 east wall, and the apparent shaping as the wall  
13 goes to the west along the east west alley.

14 It depicts additional height, and  
15 enclosure to accommodate an operable skylight  
16 roof, and it abuts, and matches the height of the  
17 sloping roof of the existing front portion of the  
18 structure, as shown in this elevation.

19 What it does show, is again a projection  
20 into the rear yard area that would have been  
21 required as a setback from the Zoning  
22 Requirements for this particular site abutting an

1 alley in the C3C Zoning District.

2 MR. KEYS: Now, I know Mr. Sockwell you  
3 did not prepare either one of these plans but in  
4 your opinion is it reasonable to think that if  
5 the architect in question thought that the March  
6 plan was sufficient to obtain a building permit,  
7 was he reasonable to believe that this plan in  
8 December, would have been able to get a building  
9 permit, based the rear yard issue?

10 MR. SOCKWELL: From a code standpoint, it  
11 would have been highly likely that the architect  
12 would have seen no reason to revisit the Zoning  
13 Code for the rear yard.

14 If his understanding of C3C Zoning was  
15 sufficient, he would have known that he was not  
16 achieving anywhere near the 65 foot height limit,  
17 no limit on stories allowed within the C3C. It's  
18 a 90 foot height limit, 6.5 FAR. He would have  
19 known that he was well under the 90 foot height  
20 limit. Then could have proceeded erroneously to  
21 develop the modification to the original set of  
22 plans, and file it.

1 I do know that the architect has a very  
2 small office so he would not necessarily have had  
3 staff looking over his shoulder.

4 MR. KEYS: Now, this drawing, the A-200  
5 that was filed with the application for the  
6 variance. Does this represent what actually was  
7 built on the property?

8 MR. SOCKWELL: This drawing represents  
9 exactly what was built on the property, to my  
10 understanding.

11 MR. KEYS: Now, I'm going to ask you to  
12 look at another drawing in this package that  
13 shows the rear of the property, the rear  
14 elevation of the property. I'd like you to  
15 describe the fenestration at the rear. That's  
16 going to bear on the special exception test in  
17 this case.

18 MR. SOCKWELL: There are two windows  
19 depicted in the drawing which occur within the..

20 CHAIRPERSON MOLDENHAUER: Can you  
21 reference the page number again?

22 MR. SOCKWELL: 201, A-201. Same date,

1 December 21, 2010.

2 CHAIRPERSON MOLDENHAUER: Thank you.

3 MR. SOCKWELL: And we are talking about  
4 rear elevation number 1-B which is to the right  
5 of the page.

6 That depicts 2 windows which occur within  
7 the, as built, egress/access stair for the  
8 addition. They face north, across the 10 foot  
9 alley.

10 MR. KEYS: These windows then, are not in  
11 a public area?

12 MR. SOCKWELL: They are in what would be  
13 considered, vertical circulation space. It's an  
14 open stair at this point.

15 MR. KEYS: Now, there's another drawing  
16 here, I'd like you to make a similar set of  
17 comments about, and that's the side elevation  
18 showing the west elevation of the new addition,  
19 that's A-202 for the Board's reference.

20 MR. SOCKWELL: From your view of A-202,  
21 the darker shaded brick wall is the existing  
22 portion of the building. The lighter or unshaded

1 brick wall is the west wall, along the west face  
2 of the building. The projection there is a  
3 projection beyond the darker, shaded, gray area  
4 at the top, which is a continuation of the  
5 unshaded area that comes all the way to the  
6 property line, matching the exterior wall of the  
7 east portion of the building.

8           Again, I refer to the fact that the two  
9 buildings were put together to create one  
10 building, they were not built at the same time,  
11 or necessarily by the same builder. One building  
12 has a bump back that... one portion of the building  
13 has a bump back that sets it in about; I think  
14 two feet, maybe a little less than that.

15           At the addition, the addition was  
16 equalized, my feeling is that it was equalized  
17 for structural reasons to make is simpler to  
18 construct the framework that supports the  
19 superstructure of the addition.

20           MR. KEYS: Now, we don't have a drawing  
21 that shows exactly where the slice in the  
22 building would be that represents the required

1 rear yard, under the Zoning Regulations. Could  
2 you just sort of speak to the issue of what's in  
3 that rear yard area right now?

4 MR. SOCKWELL: Certainly. The rear yard  
5 area as has been incorporated into the existing  
6 structure would have been, and is back of the  
7 house area behind a bar. It contains a  
8 refrigerator, it contains a walkway, walking area  
9 for the bartenders to get out of the bar area, it  
10 contains some duct work for access from the  
11 rooftop mounted air conditioning, heating units  
12 to that floor, and to the floor below from the  
13 fact, that several of the units were relocated to  
14 the roof area.

15 It also is incorporated within the stair  
16 primarily that accesses the third floor from the  
17 floor below. So primarily what is located here  
18 is access to the third floor, and back of house,  
19 circulation, and storage area for one of the  
20 third floor bars, and for the third floor itself.

21 There's also a trap door that takes one down to  
22 the existing roof of the original building, which

1 is still in place, below this floor.

2 MR. KEYS: Now was this construction to  
3 complete this version of the building, the as  
4 built version of the building. Was this  
5 construction unusual or unique in any way? Were  
6 there any added expenses, items related to this  
7 construction?

8 MR. SOCKWELL: Well, in order to  
9 accommodate the skylight roof, in order to  
10 accommodate a column free space, which was the  
11 intent of the owner in building, just to give a  
12 slight history, a little bit more definition on  
13 the existing structures? Because they were two  
14 buildings put together they have a central  
15 separating wall that is a supporting wall of  
16 masonry, as would be typical of buildings  
17 constructed at that time, as row houses.

18 The only way that the owner could create  
19 a new space was to go up on the roof to get the  
20 kind of open space that he does not have in his  
21 current facility, anywhere, as complete as this.  
22 The result is that to create the space he had to

1 put the air conditioning units, duct work, other  
2 things that were being relocated somewhere. All  
3 of that is on top of this back of house  
4 circulation, and storage space.

5 Structurally, because of the use of the  
6 existing masonry walls as supporting elements for  
7 the framing, for the third floor, the cost  
8 associated with that, to complete the structure,  
9 is very high.

10 MR. KEYS: And, is that because it's  
11 steel constructed?

12 MR. SOCKWELL: It's steel, and concrete  
13 load bearing for the floor surface, the roof, and  
14 the heavy elements that are on top of the roof,  
15 as they are depicted looking like mushrooms up  
16 there on the side elevation.

17 MR. KEYS: Now, in order to comply with  
18 the Zoning Regulations, what would Mr. Christacos  
19 have to do to provide a rear yard across the rear  
20 of the building?

21 MR. SOCKWELL: Structurally he would have  
22 to remove a portion of roof, restructure it to

1 carry the load back down to the deck. He would  
2 have to mechanically reroute a great deal of duct  
3 work, electrical work, and he would have to find  
4 a location for the air conditioning units which  
5 could only be somewhere in front of, rather than  
6 behind the skylight roof, which would mean that  
7 on the floors below the duct work would have to  
8 be completely rerouted from the original  
9 location, when there was no third floor to a  
10 location that had never been contemplated in the  
11 construction of the building or its various  
12 renovations.

13           So, in my estimation the cost of  
14 relocating, and adjusting, while it would not  
15 affect the skylight roof itself, would be a major  
16 expense to the owner. Even the supply for the  
17 third floor would have to be relocated to the  
18 front, which is the right side then.

19           I don't know whether the roofs of the  
20 existing building would be able to take the load  
21 without steel structure being placed across,  
22 between the supporting walls.

1           The entrance to the third would have to  
2 be relocated because you wouldn't have that  
3 anymore. You would have to move the stair. It  
4 means the back of the building from about the  
5 second floor would have to be completely  
6 restructured, and much of the mechanical, in fact  
7 all of the mechanical, certain of the electrical,  
8 and other features would have to be reconfigured.  
9 It would be very expensive, let's put it that  
10 way.

11           MR. KEYS: Now, in the course of the  
12 development of this project did it come to your  
13 attention that the building permit, issued  
14 building permit, didn't match the construction  
15 that was done?

16           MR. SOCKWELL: Yes it did.

17           MR. KEYS: When was that? Can you date  
18 that?

19           MR. SOCKWELL: In September, when I  
20 became actively involved with the ANC, there was  
21 a meeting, I believe, on the 14<sup>th</sup> of September,  
22 which I was helping to prepare for to describe

1 the addition.

2 I requested copies of permits from Mr.  
3 Christacos, and plans that had been issued by the  
4 city. Well Mr. Christacos didn't have the plans,  
5 he didn't have the permits, and he was on the  
6 outs with his contractor.

7 I took it upon myself to go down to the  
8 city to the records room, and find out what they  
9 had. He said he had permits, I went to look for  
10 the permits, and what I found was not consistent  
11 with what he had up there.

12 It took awhile to find the permits  
13 because the records were in the lost part of the  
14 file. They had a permanent file on the drawing,  
15 which I got copies of. They finally found the  
16 folder where the permits were.

17 The architect had taken the proposed  
18 enclosed space through Historic Preservation, and  
19 had gotten approved. It had not been taken  
20 forward to construction documents, which would  
21 have modified the original permit issued in  
22 March, and my understanding of the way this may

1 have happened, I never spoke with the contractor  
2 because he was no longer there.

3 My understanding would be that the  
4 contractor secured, his name was on the permits  
5 that were issued as the agent. He secured  
6 certain permits; Mr. Christacos knew he had  
7 certain permits. At some point the dynamic of  
8 the addition space changed from an open deck to  
9 an enclosed structure, and the contractor  
10 continued to work. He didn't continue to secure  
11 the permits necessary to validate the  
12 construction.

13 MR. KEYS: Now, at Mr. Christaco's  
14 instruction, what did you do to correct the  
15 situation?

16 MR. SOCKWELL: I brought together his  
17 architect. Well first of all I brought together  
18 his architect, mechanical plumbing, electrical  
19 engineer, that I suggested, the original  
20 structural engineer for the project, and put them  
21 together to find out what had happened.

22 The structural engineer was not

1 knowledgeable about exactly what happened. The  
2 architect claimed that he was not involved with  
3 construction administration on the project, so he  
4 didn't know what had happened after he went to a  
5 certain point.

6 Mr. Christacos, the owner, who has many  
7 businesses of different types may have been  
8 unaware of the fact that he had been let down by  
9 his contractor, who was the responsible agent in  
10 the case of all the permits that were issued.

11 MR. KEYS: Did you again eventually file  
12 correct plans?

13 MR. SOCKWELL: Absolutely, I immediately  
14 moved to put the team together to prepare the  
15 drawings to meet the city's requirements. Those  
16 drawings were filed in December of 2010.

17 When they were filed, the first thing  
18 that popped up was Zoning Reviewed, and found an  
19 anomaly in the drawings that was unknown to  
20 anyone. There was a setback requirement that had  
21 not been met.

22 The original permit as it appeared from

1 the records that I reviewed for the deck, which  
2 included a projection into the rear yard which  
3 would have normally been illegal, unless brought  
4 before the Board. It had been approved with the  
5 projection, therefore I believe, it put the team  
6 that he had, that Mr. Christacos had, to sleep on  
7 the issue of a setback requirement.

8 MR. SOCKWELL: Okay Mr. Sockwell, I'd  
9 like you, and I'd like the Board, to look at the  
10 supplemental information that was filed by the  
11 Applicant, the last document. There are a series  
12 of seven photographs labeled "Exhibit E1-E7".

13 Mr. Sockwell you're familiar with these  
14 because you took these didn't you?

15 MR. SOCKWELL: I took those photographs,  
16 that's correct.

17 MR. KEYS: I'd like you to go through the  
18 photographs, one by one, just to orient the Board  
19 to where these photographs were taken from, what  
20 they are showing, and make reference to the  
21 little diagrams that you have on each page.

22 MR. SOCKWELL: I created a sketch on each

1 page to show the direction of the photograph, and  
2 the location with regard to the alley system,  
3 and/or the building.

4           The first photograph that I'm looking at  
5 is "Exhibit E1", and that shows a view out of one  
6 of the two windows that were discussed as facing  
7 the rear of the structure that was constructed.  
8 Those windows are actually within the stair  
9 enclosure, and are looking across the 10 foot  
10 alley at the building which is to the immediate  
11 north of 1813-1815 M.

12           The building is actually set far back  
13 from its rear property line, and has a parking  
14 lot for its business tenant users. You see an  
15 operating gate that's to the right side of the  
16 blue SUV which, when it's open, blocks the alley  
17 completely.

18           MR. KEYS: And, that is the nearest  
19 neighbor to the subject property?

20           MR. SOCKWELL: That's the only neighbor  
21 to the immediate rear of the subject property.

22           MR. KEYS: And, what's the use of that

1 building, do you know?

2 MR. SOCKWELL: It is a business; I do not  
3 remember the name of that one. Almost all of the  
4 buildings on the south side of the street are  
5 business occupancies at this time. That's  
6 Jefferson, these face Jefferson Place to the  
7 north, which is a one-way street running east,  
8 toward the Palm Restaurant.

9 The next picture depicts a better view of  
10 the deep setback of the building that actually  
11 would have abutted on the opposite side of the  
12 alley of 1813-1815 M. As you can see it's so far  
13 back that it allows for windows in the building  
14 that is to the west of it for both the second,  
15 and third floor which has a porch, a deck, with  
16 an awning. I believe that maybe 1818, I'm not  
17 sure, I'm pretty sure that's 1818 Jefferson which  
18 would be owned by a structural engineer, and  
19 operated as KCE.

20 MR. KEYS: That's in commercial use as  
21 well?

22 MR. SOCKWELL: That's in commercial use.

1           Then the next picture is just another  
2 picture from the fence line, looking at the  
3 building that directly abuts the OZIO Building at  
4 the rear alley.

5           The picture after that is a picture I  
6 took standing somewhat north of the east west  
7 alley, just shooting across the setback building  
8 that abuts 1813 M, and shows the windows of the  
9 building to the west of that.

10           MR. KEYS: Please identify the exhibit.

11           MR. SOCKWELL: Oh, I'm sorry, that was E4  
12 that I was looking at.

13           I'm now looking at E5 taken from a  
14 similar location from E4 shows the back wall of  
15 1813 M with the two windows that face the rear,  
16 and the minor overlap of the existing wall of the  
17 western portion of the existing building, and  
18 that is at the upper level. It also shows  
19 another adjacent building with a high wall.

20           MR. KEYS: Let me ask you a hypothetical  
21 question about the rear of the property. We're  
22 dealing now with a 10.5 foot alley that lies

1 between these two properties. If both properties  
2 respected the rear yard requirement above the 20  
3 foot horizontal plane, how far apart would the  
4 windows of the respective buildings be?

5 MR. SOCKWELL: Approximately 24 feet, I  
6 would think.

7 MR. KEYS: So 24 feet would represent  
8 Zoning Compliance, and that separation being for  
9 light, and air.

10 MR. SOCKWELL: Um-huh. Another thing  
11 about this particular site which is a particular  
12 hardship for C3C, for those who are aware, is  
13 that typically a C3C is a high density  
14 construction district for downtown businesses.  
15 It has a 90 foot height limit, a 6.5 FAR or 6.5  
16 times the area of the site. It allows 100  
17 percent lot occupancy, but it's normally bordered  
18 in the rear where there is an alley, by an alley  
19 that would be 20, or 30 feet wide.

20 In this particular area you have historic  
21 buildings, a C3C Zone, small sites, and no true  
22 ability to achieve a 6.5 FAR because the alley is

1 only 10 feet wide. If we had a 30 foot alley we  
2 would not be here. If we had a 20 foot alley we  
3 would only be asking for 2 feet. But because  
4 this is C3C with a 10 foot set of late 1800's era  
5 alley's the property is basically hamstrung for  
6 the ability to achieve additional bulk. Yet that  
7 does not relieve us from the requirement as it is  
8 set in the code. It is, in fact though, a major  
9 restriction to the site.

10           The next slide shows the building that is  
11 facing, its E-6, it shows the building that has  
12 the awning, and the sort of upper deck porch. It  
13 faces another building on the south side of the  
14 alley which is directly adjacent to 1813 M. That  
15 is deeply setback in its own site, and you can  
16 see two cars parked there because the building is  
17 deep enough into its own site to park actually  
18 four cars, front to back.

19           So that building, the one with the porch  
20 really has a straight shot to the rear of its  
21 across neighbor.

22           The next "Exhibit E7", depicts a position

1 taken to the west of the building with the awning  
2 looking up at OZIO's construction as it exists  
3 along the west wall. You can barely see the top  
4 of an air conditioning unit above the four  
5 windows that are in the stairwell area of the  
6 facility. So again, these windows are really to  
7 put light, and air into the stair, they're not  
8 part of the earning potential of the space.

9 MR. KEYS: I'd like you to go back for a  
10 minute to, I think this drawing. A picture, it's  
11 E1; it's the view across to the building that's  
12 to the immediate rear of the subject property.

13 We discussed previously that compliance  
14 with Zoning given this alley configuration would  
15 have about a 24 foot separation between the  
16 windows of two buildings across the alley.

17 MR. SOCKWELL: That would be at minimum  
18 taking half the alley, and the set back in each  
19 direction.

20 MR. KEYS: How far would you say that the  
21 windows from which these photographs are being  
22 taken, are from the windows on the, above, at a

1 comparable level, above a 20 foot plane in the  
2 opposite building?

3 MR. SOCKWELL: I would say that they're  
4 at least, probably 20 feet away, plus the alley,  
5 30 feet. I would estimate 30 feet. As you can  
6 see they're in bright sunshine so there are  
7 light, and air issues that are discussed in  
8 zoning which I think are not pertinent to this  
9 particular existing situation.

10 MR. KEYS: Thank you Mr. Sockwell. I've  
11 got no further questions of these witnesses, if  
12 the Board has any?

13 CHAIRPERSON MOLDENHAUER: Thank you very  
14 much. Do Board Members have any questions of  
15 either of these witnesses? Seeing none, then at  
16 this point in time does that concludes the  
17 Applicant's presentation?

18 MR. KEYS: Yes it does.

19 CHAIRPERSON MOLDENHAUER: Is there  
20 anybody in the audience in support or in  
21 opposition to this case? Seeing no one, we will  
22 then turn to the Office of Planning for their

1 report.

2 MR. JACKSON: Thank you Madam Chair,  
3 again, this is Arthur Jackson with the Office of  
4 Planning.

5 I'll briefly go through the Office of  
6 Planning's analysis for consistency with the  
7 standards for approval of a special exception,  
8 pursuant to 774.2, 774.3 talks about the Office,  
9 and apartment windows be separated, and contain  
10 facing windows a sufficient distance to provide  
11 air, and light, and to protect the privacy of the  
12 building occupants.

13 As stipulated in the testimony, the alley  
14 that exists between the properties is continuous,  
15 that the width of the alley goes, or the top of  
16 the building, and it does not appear if you refer  
17 to the aerial photograph on page 3 of the Office  
18 of Planning's report you can see where the  
19 shadows from the office tower next door cover the  
20 subject property, and neighboring properties  
21 across the alley.

22 Such that it does not appear that new

1 construction would affect the air, and light  
2 available to the neighbors because, the alley  
3 configuration has not changed, and there are  
4 larger buildings near, that also have an impact.

5 In terms of impact on neighboring  
6 properties, in terms of privacy, the testimony  
7 outlined how the windows in the corner that  
8 service the stairs, actually service the clear  
9 story, so that they give in light, and do not  
10 provide a lot of visibility.

11 The Applicant has proceeded to put  
12 different types of appliquéés on all the windows  
13 on the second floor, well let's say there are  
14 windows on the north side, and east side of the  
15 addition. Those all have appliquéés which limit  
16 the visibility out of the window to the buildings  
17 across the alley, so the privacy is not impacted.

18

19 So, 774.4 talks about determining  
20 distances between the windows facing each other,  
21 however, again the visibility is unaffected, and  
22 the light is unaffected by neighboring

1 properties, by the new addition.

2           Then we go to 774.5, this talks about the  
3 street functions, accuracy of off street service  
4 functions including parking, and loading.

5           The building is a contributing building  
6 to the Historic District. As such, since the  
7 addition is less than 25 percent it does not  
8 trigger requirement for additional parking on  
9 site.

10           The loading, and the building access  
11 points that currently exist in the building, were  
12 not changed as a result of the addition. Such  
13 that there were no changes, and there were no  
14 impacts on the loading, parking, and service  
15 needs to the building.

16           Then finally, we look to other agencies  
17 to see what their comments are about this new  
18 addition. As was noted the Historic Preservation  
19 Review Board reviewed this application, and  
20 approved it conditionally based on the Historic  
21 Preservation Office reviewing the final plans.

22           When I contacted the Historic

1 Preservation Office they did not have any  
2 concerns about the results of the final  
3 construction.

4           So based on the review of the standards  
5 we don't think this application has any issues  
6 relative to the standards for approval, and we  
7 therefore recommend approval.

8           CHAIRPERSON MOLDENHAUER: Thank you very  
9 much Mr. Jackson that was a very thorough report.  
10 Do any Board Members have any questions for the  
11 Office of Planning? We have one question.

12           MR. SELFRIDGE: So does the Applicant  
13 need to go before the Historic Preservation  
14 Review Board, or was it just a staff level  
15 review?

16           MR. JACKSON: It went before the Board.

17           MR. SELFRIDGE: So it did go before the  
18 Board, and the Board approved it, or it was just  
19 to the recommendation level?

20           MR. JACKSON: What the Board does is they  
21 will approve the plans, and concept. Then they  
22 could refer it for final approval of the

1 construction drawings to staff, or they might ask  
2 them to come back if there are any issues to be  
3 addressed.

4 MR. SELFRIDGE: So that's what was on the  
5 consent calendar, it was reviewed essentially? I  
6 don't know how the Board works that.

7 MR. SOCKWELL: A copy of the HPRB staff  
8 report, and recommendation, approved the  
9 construction documents when they were filed for  
10 building permit, for this particular completed  
11 thing.

12 CHAIRPERSON MOLDENHAUER: So you're  
13 saying it did not go to the Board?

14 MR. SOCKWELL: It didn't go back to the  
15 Board, it was designated for staff approval, as I  
16 understand it, or consent calendar approval as I  
17 understand. It was approved immediately when it  
18 was submitted.

19 MR. JACKSON: Okay, I just want to  
20 clarify, there was a Board hearing, the Board  
21 reviewed the report, and the plans submitted by  
22 the Applicant, and then gave conditional approval

1 of those plans but they referred the approval of  
2 the final construction drawings to the staff.

3 MR. SELFRIDGE: Staff for final approval.

4 MR. JACKSON: Right so staff looked at  
5 the actual plans for approval. There was one  
6 issue with the windows they wanted changed.

7 MR. SELFRIDGE: Okay.

8 MR. JACKSON: I think it was the size or  
9 the shape of them.

10 CHAIRPERSON MOLDENHAUER: So concept was  
11 approved by the formal Board, but then the final  
12 construction drawings were done by staff.

13 MR. SELFRIDGE: And they were never  
14 brought back before staff.

15 CHAIRPERSON MOLDENHAUER: No, before the  
16 Board, it was approved by staff.

17 MR. JACKSON: No, the staff did review  
18 the final construction drawings.

19 MR. SELFRIDGE: Okay, thank you.

20 MR. JACKSON: Of HPRB, I'm sorry, Historic  
21 Preservation Office.

22 CHAIRPERSON MOLDENHAUER: Any further

1 questions from Board Members? Seeing none, at  
2 this point in time I would ask if there's anybody  
3 in the audience from ANC 2-B? Seeing none, I'd  
4 just like to reference that we have "Exhibit No.  
5 26", a letter dated June 9, 2011, from ANC 2-B  
6 indicating that they have reviewed this  
7 application at their June 8, 2011, meeting, and  
8 that with a quorum present at a duly noted  
9 meeting they voted 7 to 0 to 1 to support the  
10 application for the relief of the Applicant for  
11 the third story addition.

12 That being said, at this point in time we  
13 would return back to the Applicant for any  
14 closing remarks.

15 MR. SELFRIDGE: Madam Chair, I'm sorry, I  
16 did have a couple of questions for Mr. Sockwell  
17 maybe if that's okay? I wanted to hear Office of  
18 Planning first.

19 CHAIRPERSON MOLDENHAUER: Sure,  
20 absolutely.

21 MR. SELFRIDGE: I'm just trying to  
22 understand the order of all this, it's very

1 confusing. If maybe we could walk through it for  
2 a minute, if you'll indulge me, Madam Chair.

3 CHAIRPERSON MOLDENHAUER: Absolutely.

4 MR. SELFRIDGE: So you went before ANC 2-  
5 B for liquor license approval, or to negotiate a  
6 new voluntary agreement. What triggered this  
7 whole thing? It seems to me that the ANC..

8 MR. SOCKWELL: The ANC is a party to just  
9 about every procedure in the District. I work  
10 with ANC 6 a lot, because that's where I live.

11 The liquor license application required  
12 ANC support; you have to go before them. So when  
13 I found out about that, to assist Mr. Christacos  
14 I presented his project to the ANC, at which time  
15 they stated that they did not entertain liquor  
16 license application changes for that area without  
17 a voluntary agreement being in place. Now, the  
18 word voluntary is a very small v, because it a  
19 required voluntary agreement.

20 MR. SELFRIDGE: Sure, sure.

21 MR. SOCKWELL: The Advisory Neighborhood  
22 Commission, then during that process I was trying

1 to find out what he had, and the Certificate of  
2 Occupancy issues began to come up, and I wanted  
3 to make sure I knew what was there. That's when  
4 I found out that the permits were not in proper..

5 MR. SELFRIDGE: ANC didn't point it out  
6 to you, you found the problem.

7 MR. SOCKWELL: No, no, no. I'm an  
8 investigator.

9 MR. KEYS: We should add that the fact  
10 that he's putting an addition onto a building,  
11 and has an alcohol license is a capacity  
12 increase. That considered a substantial change  
13 to the license. So he has to start a process  
14 over again that involves..

15 MR. SELFRIDGE: He has to reapprove for  
16 the license? Or reapply?

17 MR. KEYS: That's correct.

18 MR. SELFRIDGE: Okay, not that it's  
19 relevant here.

20 MR. KEYS: He's got to amend his license.  
21 We worked with the local community specifically  
22 the Jefferson Row Condominium, which was

1 potentially an objector in this proceeding, an  
2 adverse party. But we were able to resolve these  
3 issues with a voluntary agreement. That  
4 voluntary agreement is incorporated into the  
5 order of the ABC Board. So they're the  
6 enforcement mechanism for how we operate, hours  
7 of operation.

8 MR. SOCKWELL: Not that it matters so  
9 much, but Jefferson Condominium is located in a  
10 very high density, commercial corridor on the  
11 back side of it.

12 To OZIO's credit, they were more than  
13 willing to invite the ANC members down to OZIO,  
14 turn the music up, until I thought my ears were  
15 going to blow out, and have those people on their  
16 end listen to the music. They couldn't hear it  
17 with the roof open. In the winter time none of  
18 the other clubs have open roofs, so any sound  
19 they had would have been muffled.

20 CHAIRPERSON MOLDENHAUER: I just want to  
21 say that's not really one of the factors in the  
22 774, so I just want to make sure we understand

1 the limitations, and the scope of this hearing.

2 MR. SOCKWELL: I wasn't trying to put it  
3 into the code Madam.

4 MR. SELFRIDGE: So you're saying that the  
5 deck should have required a rear yard setback as  
6 well, or it should not have?

7 MR. SOCKWELL: The deck should have  
8 required a rear yard setback.

9 MR. SELFRIDGE: Is that what we're  
10 saying, that DCRA originally erred in issuing the  
11 building permit when the original plans went in  
12 for the deck? That should have triggered a  
13 variance or special exception relief?

14 MR. SOCKWELL: The crux of the problem  
15 was that, Zoning didn't review it.

16 MR. SELFRIDGE: It seems to me the  
17 problem was that you built an addition when you  
18 had a permit for a deck.

19 MR. SOCKWELL: No, no, what I'm saying is  
20 the problem that initially started this, and I  
21 wasn't there then, I wasn't working for this  
22 project in January of 2010, I was working for

1 this project in September in 2010.

2 MR. SELFRIDGE: After everything was  
3 built.

4 MR. SOCKWELL: If Zoning had caught the  
5 error, even though the situation of contractor,  
6 and what he did or didn't do, would not have been  
7 resolved under that contractor. Whatever was  
8 built would have probably followed the line of  
9 whatever was allowed in the original permit.

10 However, because there was no stop sign  
11 put on what they could build toward the rear of  
12 the property, the architect, whom I would fault  
13 personally, but not by name.

14 MR. SELFRIDGE: I think we have his  
15 drawings, so...

16 MR. SOCKWELL: Yeah, I know but we don't  
17 need to go there if we don't have to. The bottom  
18 line is, everybody screws up on the code. People  
19 make mistakes with the code all the time. I've  
20 been working with the code for 25 years, and  
21 there are still things that I don't catch unless  
22 I go back, and back, and back.

1           In this case it was a reading of the  
2 section on rear yard requirement. Now you see  
3 under C3C you can built to 100 percent of the  
4 lot. If you don't go any further than that to  
5 look to see whether the rear yard means that for  
6 C3C you've got to measure, and give something.  
7 Well if you don't know, and you don't go there,  
8 you miss it.

9           MR. SELFRIDGE: But the responsibility is  
10 to know, the same in C-2-A. In a lot of these  
11 zones you have to have rear yard requirements.

12           I'm not sure I buy the idea that because  
13 you can build to 100 percent lot occupancy it's  
14 easy to overlook the rear yard requirements.

15           MR. SOCKWELL: Unfortunately, it happens  
16 all the time, but the point is, it usually gets  
17 caught in Zoning, that's what Zoning's there for.

18           Because you design a mechanical system,  
19 doesn't mean the city has to approve it, because  
20 you design structurally, it doesn't mean the city  
21 has to approve it. The city is designated to  
22 review everything according to a set of

1 procedures, how the procedure fell down is not my  
2 responsibility, but I do know that there had been  
3 an unwritten procedure that some permits were not  
4 being reviewed by Zoning, and I don't know how it  
5 got to the stage that it did. I was only there  
6 to try to deal with one thing, and then find  
7 other problems.

8 MR. SELFRIDGE: Do we have a copy of the  
9 original building permit, it's probably in here,  
10 I just didn't see it.

11 MR. KEYS: It's attached in the  
12 supplemental information.

13 MR. SELFRIDGE: Is this the supplemental,  
14 the blue?

15 MR. KEYS: Yes it's the blue; it is  
16 "Exhibit B" is the original permit that was  
17 issued on March 2, 2010.

18 MR. SELFRIDGE: Mr. Pampinella (ph sp)  
19 was the contractor, so he was the agent who was  
20 responsible for getting the permit.

21 MR. SOCKWELL: To the extent that his  
22 relationship is written on every permit that they

1 had, he should have known as the contractor that  
2 he had to continue getting permits.

3 Any personal problems he had, should not  
4 have affected his performance.

5 MR. SELFRIDGE: That's fine, I understand  
6 Madam Chair. I guess what I heard which I didn't  
7 quite get, it was everybody else's fault, we  
8 didn't get a permit to build an addition, so I  
9 guess I'm trying to get my mind around that.  
10 Because it does seem like there's some  
11 responsibility from the ownership, or the  
12 ownership group to make sure this is right.

13 I've done projects like this before,  
14 rarely is the contractor who's responsible for  
15 getting the building permit, he may have an  
16 expediter who may have served that role, but  
17 ultimately the architect, and the contractor is  
18 going to say it's the owners responsibility to  
19 get a building permit. I just haven't heard  
20 that, and I guess that's what I'm having a little  
21 bit of trouble with, it seems to be everybody's  
22 fault except the ownership group on this.

1           Whether or not we agree that this  
2   qualifies under special exception, I just, maybe  
3   I'm sticking up for DCRA a little bit here,  
4   because I feel like they're not the only person,  
5   maybe who's culpable.

6           MR. SOCKWELL: I think people should  
7   stick up for DCRA. I've been around long enough  
8   to see Deputy Mayors not stick up for DCRA, when  
9   they should have.

10           The point is in many cases the contractor  
11   is the agent for whomever for building. I'm  
12   surprised that you don't know that. The point is  
13   there are circumstances that don't make it right,  
14   but there are circumstances that have legitimate  
15   reasons behind them.

16           MR. SELFRIDGE: Can you submit the agent  
17   agreement between the contractor, and the owner  
18   for me?

19           MR. SOCKWELL: I don't have that.

20           MR. SELFRIDGE: Usually you do have that;  
21   it accompanies this sort of relationship.

22           MR. SOCKWELL: If you're using AIA

1 documents, and things like that, yes. But there  
2 are thousands of...

3 MR. SELFRIDGE: It's a million dollar  
4 project, is what I heard, \$900,000 is what I  
5 heard.

6 MR. SOCKWELL: It evolved yes, I was not  
7 involved at the beginning, I can't tell you how  
8 that relationship started, and I can't tell you  
9 how it ended, I wasn't there, unfortunately I  
10 can't tell you.

11 MR. CHRISTACOS: Can I answer you this?

12 Maybe it's my fault totally because as I  
13 mentioned, the 45 years before that the people  
14 that I have working with, the architect, and  
15 structural engineers, they took care of that.

16 Maybe it's my ignorance; I didn't  
17 follow, to pay attention to this new people, who  
18 does what.

19 Every person, and I did 27 locations in  
20 this town, and I never had to deal with permits,  
21 or anything else. The architect, the structural  
22 engineer, they took care of everything.

1           Maybe my ignorance, but I figure out, I  
2 hired the people, I've done it for 45 years. It  
3 will not happen they will know what they're  
4 doing, the procedure, and I left it up to them,  
5 thinking that they're going to do what they're  
6 supposed to do, and that's the God's honest  
7 truth.

8           MR. SELFRIDGE: Thank you.

9           CHAIRPERSON MOLDENHAUER: Any other  
10 questions from Board Members? Okay thank you  
11 very much, and at this point then we will  
12 conclude the hearing, and we'll enter into  
13 deliberation on this.

14           MR. KEYS: Mrs. Moldenhauer, I didn't have  
15 a chance to close. I'll do it very quickly.

16           CHAIRPERSON MOLDENHAUER: That sounds  
17 good.

18           MR. KEYS: I think we've, I think the  
19 Office of Planning summarized the special  
20 exception standards quite well, and I think we  
21 can meet all of the obligations there, to  
22 establish that there's no impact on adjacent

1 properties.

2 I don't want to belabor the discussion  
3 about DCRA, or whatever, or who's responsible. I  
4 do want to say that the estoppels argument is one  
5 that applies in this situation. I would ask you  
6 to keep that in the background as you consider  
7 this special exception.

8 I'm going to reference the D.C. Court of  
9 Appeals Decision in; Interdonato versus D.C.  
10 Board of Zoning Adjustment, 429 A.2<sup>nd</sup> 1000, and  
11 that was a D.C. 1981 case.

12 The point is that the elements for  
13 estoppels to make the argument are as follows: An  
14 applicant has to have made expensive, and  
15 permanent improvements to property, made those in  
16 good faith, and I think that's the question,  
17 regardless of assigning responsibility for an  
18 error. The question is, was there good faith on  
19 the part of the Applicant, and I would submit  
20 that Mr. Christacos acted above board; there was  
21 no effort to hide, or to ignore requirements.

22 Evidence of that I would cite the fact

1 that they came before the HPRB, and presented the  
2 plan seeking approval, and I think Mr. Christacos  
3 was reasonable in relying on his contractor so  
4 they would follow through. They followed through  
5 initially in obtaining the proper building  
6 permits to build. That I think is our proffer of  
7 good faith in this case.

8           That we acted in justifiable and  
9 reasonable reliance, on the acts of the District  
10 Government, and again a permit was issued saying  
11 no rear yard was required, that was the act, the  
12 affirmative act that we relied on. Thinking that  
13 we could build out without regard to a rear yard  
14 requirement.

15           We had no notice that those improvements  
16 violated the regulations. We were all surprised  
17 to discover, after the construction was done,  
18 that there was a rear yard requirement applicable  
19 to this situation. In fact the Applicant brought  
20 it to the attention to the District when it filed  
21 its revised plan showing the, as built drawings.

22           Finally, that the equities favor the

1 petitioners. I think in this situation, and  
2 looking at the impact, the potential adverse  
3 impact of an addition that doesn't comply with  
4 rear yard requirements, it's miniscule, it  
5 doesn't really apply in the situation where  
6 you've got commercial properties adjoining an  
7 alley, and there's adequate separation from the  
8 buildings.

9           There's no question that privacy is being  
10 lost because of that. You relate that to the  
11 cost of bringing the property into compliance  
12 with the regulations.

13           I think the disproportionate amount of  
14 money that would have to be spent to cure this  
15 violation, suggests the equities are in the favor  
16 of the Applicant.

17           For all of those reasons I would  
18 encourage the Board to favorably consider this  
19 special exception request on behalf of the  
20 Applicant.

21           The Applicants temporary Certificate of  
22 Occupancy expires on October 12<sup>th</sup>, of this year,

1 so by that time we have to get a new Certificate  
2 of Occupancy. So I would encourage to the extent  
3 that an order can be facilitated, expedited, it  
4 would be very helpful to the Applicant, thank  
5 you.

6 MR. CHRISTACOS: I want to add something  
7 else to it by telling you, the job was inspected  
8 by D.C. Inspector when the steel went up, and  
9 everything else. So in my mind, I thought if he  
10 is passing everything else it must be okay. I  
11 mean this inspector up to the very end. So I  
12 feel that everything's okay.

13 MR. SCHLATER: Did you have a building  
14 inspector, or a third party inspector, do your  
15 inspecting? A D.C. City Building Inspector?

16 MR. CHIRSTACOS: Yes, and I can ask all  
17 of you if you can send somebody to see the  
18 project, I will appreciate before you make a  
19 decision.

20 CHAIRPERSON MOLDENHAEUR: We don't do site  
21 visits, but unfortunately I think at this point  
22 in time the hearing has been concluded. I think

1 this is a case where we can probably go into  
2 deliberation immediately.

3           What we have before us is we have a very  
4 unique situation where a building has already  
5 been created, or a third story has already been  
6 created.

7           We are here under two arguments, one  
8 where there is a request for special exception  
9 under 774, and then the second argument is an  
10 equitable estoppels argument.

11           This Board looks very unfavorably,  
12 typically, upon granting an equitable estoppels  
13 argument, so for that reason I would recommend..

14           We had a case right before I went on  
15 leave, where we had a builder that built a large  
16 structure, and it was a very challenging case in  
17 that regard because we don't typically review, or  
18 like granting equitable estoppels arguments,  
19 because I think for a lot of the reasons that Mr.  
20 Selfridge brought up.

21           For that purpose I think it would be best  
22 if we kind of take this into a two part process,

1 where we first evaluate the standard under 774.2  
2 for the special exception for the rear yard, and  
3 if for some reason that doesn't pass then we'll  
4 address, and maybe discuss the equitable  
5 estoppels argument.

6 I'll start us off with kind of walking  
7 through the deliberation for the 774.2 rear yard  
8 relief for special exception. This is a standard  
9 which permits such rear yard relief so long as  
10 the Applicant can satisfy some specific  
11 standards. Most of which go to the light, and  
12 air, whether or not the relief would provide any  
13 negative impacts, or create any impact on the  
14 light and air, of the properties which the  
15 windows of that property can look into, and  
16 privacy of the building occupants on the other  
17 side of the alley.

18 Here I think we heard the most focused  
19 aspect of that has to do with the testimony by  
20 Mr. Sockwell, in regards to the pictures that he  
21 took from "Exhibit E1-E7", which show the vantage  
22 points, and the view points from the two windows

1 that look on to the alley, and the large egress  
2 of those office buildings across the way. Based  
3 on that I don't see any potential impact in my  
4 mind in regards to the light, and air, and the  
5 protection of privacy, or in regards to the line  
6 of site in regards to habitable rooms, that would  
7 be visible, or would be able to be viewed from  
8 the windows on the rear of the alley.

9 I found it interesting that those two  
10 major buildings that are opposite the alley are  
11 both office buildings. The only potential  
12 opposition that we heard in this case was really  
13 from the Jefferson Condominiums, which was  
14 further down the street, which was about from my  
15 estimation about maybe three or four different  
16 lots down from where these windows are. In my  
17 mind that doesn't really come into play in  
18 regards to evaluating 774, and most of their  
19 concerns regarding noise, which again doesn't go  
20 to the specific elements which we are looking at.

21 We're looking at the privacy, and light,  
22 and air from the windows that are provided on the

1 rear of this property.

2 In addition to that, OP addressed that  
3 there really is no issue with 774.5 regarding  
4 parking. Since this increase does not change any  
5 of the parking, or loading requirements. Based  
6 on that, I personally would support relief under  
7 774.2.

8 I'll just also reference that we have a  
9 letter of support from ANC 2-B, and we have in  
10 our record the documentation that HPRB did review  
11 the plans, as built.

12 That being said I'll open this up for  
13 further deliberation from Board Members.

14 MS. SORG: Madam Chair, I don't have much  
15 to add, I agree with your position, I think that  
16 your analysis touches on all the points that we  
17 heard with the pretty exhaustive testimony on  
18 both the estoppels and the 774.2 relief.

19 I also agree with your opinion that this  
20 can be reviewed under 774, and that we needn't  
21 consider the estoppels in that sense.

22 I think that the Applicant, based on the

1 requirements under that section, meets the  
2 special exception criteria that are set forth as  
3 you described, so I would also be in support,  
4 thank you.

5 MR. JORDAN: Madam Chair, I also agree,  
6 and I just want to add to the record that there  
7 has been, the design of this building, and the  
8 building as it's situated today does not increase  
9 any additional impact, or change of impact to the  
10 other buildings in the neighborhood. And is all  
11 still in character, and that this is kind of an  
12 entertainment kind of restaurant, kind of  
13 hospitality, kind of area. I think that, I've  
14 heard nothing to the contrary that this building  
15 does not fit within the guidelines of 774.

16 MR. SELFRIDGE: Madam Chair, I support  
17 this application as well. I appreciate the  
18 clarifications by the Applicant. He to me comes  
19 across as a very credible individual. I had  
20 concerns about the whole way that this went down,  
21 but ultimately when reviewing it under 774; yeah  
22 I can support this application.

1           CHAIRPERSON MOLDENHAUER: Okay well that  
2 being said, I think what I'll do at this point is  
3 I will forgo any discussion on the equitable  
4 remedy, and we can maybe address this case via a  
5 motion to support the special exception under  
6 Section 774.2 to waive the minimum rear yard  
7 requirement setback, to allow a third floor  
8 addition to an existing building serving a  
9 restaurant use at premises 1813 M Street, N.W.

10           A motion has been made, is there a  
11 second?

12           MR. JORDAN: Second.

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

15           CHORUS: Aye.

16           MR. MOY: Staff would record the vote as  
17 5 to 0 to 0, this is on the motion of Chairperson  
18 Moldenhauer to approve the application from  
19 special exception Section 774.2, also Mr. Jordan  
20 second the motion, also in support of the motion,  
21 Mr. Selfridge, Ms. Sorg, and Mr. Hinkle. Again  
22 the vote to approve is 5 to 0 to 0.

1           CHAIRPERSON MOLDENHAUER: Mr. Moy because  
2 we have ANC approval, and the one party status  
3 application was withdrawn, the Board would like  
4 to waive the requirements, and ask for a summary  
5 order.

6           MR. MOY: Yes, very good, thank you Madam  
7 Chair.

8           CHAIRPERSON MOLDENHAUER: Thank you.

9           **Application No. 18231**

10           MR. MOY: The next application before the  
11 Board is Application No. 18231. This is the  
12 application of George T. Pedas, pursuant to 11  
13 DCMR 3104.1, for a special exception for a fast  
14 food restaurant under Section 733, in the CP/C-2-  
15 A District. This is at premises 3420 Connecticut  
16 Avenue, N.W., (Square 2069, Lot 47).

17           CHAIRPERSON MOLDENHAUER: Good afternoon,  
18 if the parties will please introduce themselves  
19 for the record.

20           MR. PEDAS: George T. Pedas, 5016 Warren  
21 Street, N.W. Washington, D.C.

22           MR. ALTHOUSE: I'm Matt Althouse, 855

1 Grandview Avenue, Suite 295, Columbus, OH.

2 CHAIRPERSON MOLDENHAUER: Okay Mr. Pedas,  
3 we have your application before us for a special  
4 exception. I think that this case is fairly well  
5 articulated in the record. I think that the only  
6 issues, if you want to provide any additional  
7 information would be maybe regarding the alley,  
8 and some of those conditions that OP had  
9 referenced.

10 I'll turn it over to you to present any  
11 additional information, but I think the record is  
12 quite full.

13 MR. ALTHOUSE: I do have an additional  
14 set of documents showing the proposed gate  
15 design, and location, if you'd like that.

16 CHAIRPERSON MOLDENHAUER: Yes, thank you,  
17 please provide them to Mr. Moy.

18 MR. ALTHOUSE: We've gone through the ANC  
19 process; we do have a recommendation letter. The  
20 only outstanding issue was the refuse dumpsters  
21 not being enclosed with a three sided brick, six  
22 foot tall enclosure.

1           As the Zoning Report shows it's a special  
2 circumstance where we're in a narrow alley  
3 belonging to the neighboring tenant, the Uptown  
4 Theater. The suggestion by the ANC was to  
5 propose a historically relevant screening gate;  
6 you can see that in your revised packet there.

7           I do have an image of Uptown Theater,  
8 very reminiscent of the gates design, very Art  
9 Deco. Also, in the revised packet is a support  
10 letter from Ann Brocket, at Historic  
11 Preservation, saying she will approve that upon  
12 building submission for a permit application?

13           CHAIRPERSON MOLDENHAUER: Anything  
14 further?

15           MR. ALTHOUSE: Nope.

16           CHAIRPERSON MOLDENHAUER: Then there will  
17 be questions from the Board, and I guess my one  
18 question would be, this is as you indicated the  
19 gate would be in the alley of your neighboring  
20 property owner. Do you have documentation that  
21 shows that they've agreed to this construction?

22           MR. ALTHOUSE: No.

1 CHAIRPERSON MOLDENHAUER: Have you had  
2 oral discussions with them regarding..

3 MR. PEDAS: It's the same ownership.

4 CHAIRPERSON MOLDENHAUER: It's the same  
5 landlord.

6 MR. PEDAS: Yes.

7 CHAIRPERSON MOLDENHAUER: So it's the  
8 same landlord that you have currently for your  
9 property.

10 MR. ALTHOUSE: Just a different parcel.

11 MR. PEDAS: There was also a motion  
12 detector, and lights that were going to be  
13 provided per the request of the ANC.

14 CHAIRPERSON MOLDENHAUER: So you've  
15 already had discussions then, with the landlord,  
16 and the property owner regarding this gated area,  
17 and the security lights?

18 MR. PEDAS: Yes.

19 CHAIRPERSON MOLDENHAUER: You have, okay.  
20 They obviously agreed to everything?

21 MR. PEDAS: Absolutely.

22 CHAIRPERSON MOLDENHAUER: Okay. I have

1 no other questions then for the Applicant.

2 Do any other Board Members have any  
3 questions for this Applicant? Seeing none, then  
4 at this point in time I'll turn to the audience  
5 to see if there is any individuals in the  
6 audience in support, or in opposition of this  
7 application? Seeing none, then we'll turn to the  
8 Office of Planning for their report.

9 MS. THOMAS: Good afternoon, Madam Chair,  
10 Members of the Board. Karen Thomas, with the  
11 Office of Planning. OP's only concern with this  
12 application again was with the trash situation,  
13 and it's screening, and we're satisfied with what  
14 has been proposed, and we recommend approval of  
15 this application. Thank you.

16 CHAIRPERSON MOLDENHAUER: Thank you very  
17 much. Does the Applicant have any question for  
18 the Office of Planning?

19 MR. ALTHOUSE: Nope.

20 MR. PEDAS: No, thank you.

21 CHAIRPERSON MOLDENHAUER: Do any Board  
22 Members have any questions for the Office of

1 Planning? Seeing none, then at this point in  
2 time I'll turn to ANC 3-C if anyone's present  
3 from ANC 3-C? Seeing no one, I'll reference that  
4 we do have ANC 3-C's resolution letter in our  
5 record, it's our "Exhibit No. 26", indicates that  
6 they had a meeting that addressed the special  
7 exception relief.

8           They opposed the application for the  
9 special exception relief based on the concerns  
10 about the trash, and about the gate, and the  
11 lights in that area. So this letter will receive  
12 great weight, however, I think that we have heard  
13 some information regarding, addressing those  
14 issues by the Applicant already.

15           That being said is there any closing  
16 remarks from the Applicant?

17           MR. ALTHOUSE: Just to clarify the  
18 resolution was opposed, unless the following  
19 conditions were included.

20           CHAIRPERSON MOLDENHAUER: Sorry.

21           MR. ALTHOUSE: That being the screen, and  
22 the lighting.

1           CHAIRPERSON MOLDENHAUER: Thank you; I  
2 appreciate that clarification, thank you.

3           The resolution will be given great weight  
4 based on the fact that its conditions have been  
5 met. Is there anything further?

6           MR. ALTHOUSE: Nope.

7           MR. PEDAS: No, thank you.

8           CHAIRPERSON MOLDENHAUER: Do any Board  
9 Members have any follow up questions for the  
10 Applicant? Seeing none, then at this time we  
11 will conclude this hearing, and we'll enter into  
12 deliberation on this case.

13           This is a case before us for special  
14 exception to permit a fast food establishment  
15 under Section 733, and 3104.

16           The Office of Planning, I think has gone  
17 through the extensive 733 requirements for fast  
18 food establishment in a C-2-A District.

19           I think that the Standards have been met  
20 as OP outlines them, and as I'd incorporate them.

21           OP does recommend some conditions which are  
22 paralleling the ANC 3-C's conditions, and

1 concerns.

2 I think that based on the sworn  
3 statements, and confirmations from the Applicant  
4 here in the record indicating that the landlord  
5 has approved, and has recommended that they will  
6 allow trash enclosures, and also the lighting  
7 requirements.

8 I would not recommend that those  
9 conditions actually be put into this, especially  
10 considering that while it is the same ownership,  
11 it's not the ownership of this specific parcel.

12 I think that the sworn statements of the  
13 Applicant, and Applicant's agent are sufficient  
14 for me.

15 That being said, I will open up the floor  
16 to additional comments from Board Members.  
17 Seeing none, then I think at this point in time  
18 we are primed, and ready maybe for a resolution  
19 or a motion.

20 I'll submit a motion to approve  
21 Application No 18231, of George Pedas, pursuant  
22 to 11 DCMR 3104.1 for special exception for a

1 fast food restaurant under Section 733, at  
2 premises 3420 Connecticut Avenue, N.W.

3 A motion has been made, is there a  
4 second?

5 MS. SORG: Second.

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

9 CHOURUS: Aye.

10 MR. MOY: Staff would record the vote as  
11 5 to 0 to 0, this on the motion of Chairperson  
12 Moldenhauer to approve the Application for the  
13 special exception relief under Section 733,  
14 second the motion Ms. Sorg. Also in support of  
15 the motion Mr. Selfridge, Mr. Lloyd Jordan, and  
16 Mr. Hinkle. So again the final vote is 5 to 0 to  
17 0 to approve.

18 CHAIRPERSON MOLDENHAUER: Thank you very  
19 much Mr. Moy. Seeing that there is no opposition  
20 in this case we would ask that a summary order be  
21 issued.

22 MR. MOY: Thank you.

1 CHAIRPERSON MOLDENHAUER: Thank you very  
2 much.

3 MR. PEDAS: Thank you.  
4 (15 minute break)

5 **Application No. 18251**

6 VICE CHAIR SORG: You can call the last  
7 case for today's public hearing.

8 MR. MOY: Yes, thank you Madam Chair.  
9 That would be Application No. 18251. This is the  
10 application of MM Washington Redevelopment  
11 Partners, LLC, pursuant to 11 DCMR 3103.2, and  
12 3104.1 for a variance from the apartment  
13 conversion requirements under (subsection  
14 330.5(e)), a variance from the lot area  
15 requirements under (subsection 401.3), and a  
16 special exception from the roof structure  
17 requirements under (subsection 411.11), to allow  
18 the renovation, and conversion of a vacant  
19 building last used as a public school into an  
20 apartment house in the R-4 District. This is at  
21 premises 27 O Street, N.W., property located in  
22 (Square 616, Lot 866).

1           VICE CHAIR SORG: Thank you Mr. Moy. I  
2 guess we can go ahead. The applicants are seated  
3 at the table. You can introduce yourself for the  
4 record. I'm sure the Chair will be back shortly  
5 and won't miss much.

6           MR. FREEMAN: Good afternoon, Members of  
7 the Board. For the record my name is Kyrus  
8 Freeman, I'm a partner with the Law Firm of  
9 Holland and Knight. I'm here on behalf of the  
10 Applicant MM Washington Redevelopment Partners,  
11 LLC.

12           Here with me today, starting to my  
13 immediate right, is Ms. Elizabeth Askew, on  
14 behalf of the Applicant. Mr. Steve Sher, the  
15 Director of Zoning and Land Use, at Holland and  
16 Knight. We would like to submit Mr. Sher as an  
17 expert in zoning, and land use planning. You  
18 have his resume. To our far right is Mr. Scott  
19 Matties, a principal of Cunningham, Quill  
20 Architects. We'd like to introduce him as an  
21 expert in architecture, and design, and you have  
22 his resume as well.

1           VICE CHAIR SORG: It looks like in our  
2 handy little book of people that we have agreed  
3 as experts, I don't actually have Mr. Matties  
4 resume, just kidding, look they give me 5 minutes  
5 and already I'm behind.

6           Oh I see, of course we have Mr. Sher in  
7 our record, and I think that we can agree to your  
8 submission of him as an expert, if we need to.

9           Unless there are any objections, I  
10 think we can similarly confirm Mr. Matties, as an  
11 expert in architecture, as a registered architect  
12 as the Applicant has submitted. And here she is,  
13 just in time.

14          CHAIRPERSON MOLDENHAUER: Thank you, so  
15 it looks like we've accepted all individuals as  
16 experts, and we're about ready to proceed. I  
17 think that in this case I just want to make sure  
18 that we're clear about the relief before we turn  
19 it over to the Applicant to get started.

20          One of the issues in this case that was  
21 brought to our attention, is the potential for  
22 variance relief under 330.5. I think that was

1 presented, this is a self certified application.

2 I guess out of an abundance of caution,  
3 and I'll turn to counsel to address this issue  
4 since the building was built pre-1958, but there  
5 was an addition in 71. Based on my review, and  
6 maybe you have other cases as to why you asked  
7 for this relief, that you know of?

8 Even if there is an addition, the  
9 building is still pre-1958, so there really would  
10 be no need for the variance relief under 330.5.  
11 So long as the other Board Members agree with my  
12 reading, or my perspective on that relief, then I  
13 would look to the applicant, and you can just  
14 simply amend the application to no longer include  
15 that variance relief as not being necessary.

16 MR. FREEMAN: Our reading of regulations  
17 is that you can convert a building, built prior  
18 to 1958, for an apartment use, which would apply  
19 to the major portions of the structure, which  
20 were built prior to 1958. However, a portion of  
21 the building is a gymnasium, which was  
22 constructed in 1971, so from a super technical

1 perspective, it's our view that we need an area  
2 variance to convert that portion that was  
3 constructed in 1971, to apartment use because  
4 that was after 1958.

5 CHAIRPERSON MOLDENHAUER: But even though  
6 there's an addition, I mean wouldn't you still  
7 consider the building. We're talking about a  
8 building overall; we're not talking about just  
9 the addition.

10 MR. FREEMAN: We're happy to withdraw  
11 that relief if it's the Board's determination  
12 that we don't need a variance for that 1971,  
13 portion of the building.

14 CHAIRPERSON MOLDENHAUER: In my opinion I  
15 would not think that you would need that relief.  
16 I would think that there's an addition obviously  
17 that occurred post the initial existence of the  
18 building. However, in reviewing this, that one  
19 section would not be carved out specifically for  
20 the relief necessary. I will see if other Board  
21 Members agree with me, or if they disagree with  
22 me, and some wish to see a presentation on that

1 relief.

2 MR. HINKLE: No I'm in agreement with  
3 that determination Madam Chair.

4 CHAIRPERSON MOLDENHAUER: Okay, so then I  
5 think we can move forward just on the area  
6 variance for the minimum lot area under 401.

7 MR. FREEMAN: Thank you Madam Chair, and  
8 we'll be brief this afternoon. Just a quick  
9 introduction, the manner in which I introduced  
10 our witnesses already. The manner in which the  
11 Applicant meets its burden of proof is set forth  
12 in our statement of the Applicant which is  
13 included as "Exhibit 29". It goes through a  
14 complete analysis of how we meet all the  
15 standards.

16 As you know the Office of Planning has  
17 also submitted a report indicating that we meet  
18 the standards for relief. They go through in  
19 detail, and indicate how we meet each of the  
20 prongs of the variance test.

21 As you will hear from our first witness  
22 Ms. Askew, the Applicant has worked extremely

1 hard with the community to gain support for the  
2 project.

3 I'd like to note, which I'm sure the  
4 Board has already seen, we have a number of  
5 letters of support including a recommendation  
6 from ANC 5-C, which is marked as "Exhibit 30".  
7 The ANC recommends approval of the application.

8 We have letters of support from the Bates  
9 Area Civic Association. The Hanover Area Civic  
10 Association, so Other's Might Eat, and Council  
11 Member Harry Thomas, Jr., so again they've been  
12 very proactive in reaching out to the community.

13 We're happy to report that we have the support  
14 from everybody in the area.

15 As indicated in our materials, and this  
16 was just for background purposes, we filed an  
17 application to designate the portions of the  
18 building constructed in 1912, 1928, and 1938, as  
19 a Historic Landmark. HPRB will be considering  
20 that application on July 28<sup>th</sup>.

21 However, if the Board determines to  
22 approve this Application today, which we hope you

1 do, we are asking that you grant us the  
2 flexibility to modify the design of the building  
3 to the extent necessary to address any comments  
4 from HPRB, so long as none of the Zoning Relief  
5 is changed.

6 So in summary we think the record  
7 includes ample evidence demonstrating how we meet  
8 the standard of proof for the requested variance,  
9 and special exception.

10 We're happy to precede either with all  
11 three of our witnesses, or to rest on the record,  
12 and answer any questions that the Board may have.  
13 Thank you.

14 CHAIRPERSON MOLDENHAUER: Just by a  
15 casual survey of the Board Members it does not  
16 seem that any Board Members have any specific  
17 questions, so I think if you'd like you can rest  
18 on the record.

19 MR. FREEMAN: Thank you Madam Chair, we  
20 will do that.

21 CHAIRPERSON MOLDENHAUER: Wonderful, then  
22 at this point in time the Board would turn to any

1 individuals in the audience in support or in  
2 opposition of this case? Seeing none, then we  
3 will turn to the Office of Planning for their  
4 report.

5 MS. THOMAS: Madam Chair, good afternoon.  
6 Karen Thomas, for the record, with the Office of  
7 Planning.

8 We have nothing further to add beyond  
9 what our report states, and I would be happy to  
10 stand on the record, and take any questions that  
11 you may have.

12 CHAIRPERSON MOLDENHAUER: Thank you very  
13 much Ms. Thomas. Do any Board Members have any  
14 questions for the Office of Planning regarding  
15 the relief being sought here? Seeing none, does  
16 the Applicant have any questions for the Office  
17 of Planning?

18 MR. FREEMAN: No Madam Chair.

19 CHAIRPERSON MOLDENHAUER: At this point  
20 in time we'll turn to see if anybody is in the  
21 audience from ANC 5-C. Seeing no one in the  
22 audience from ANC 5-C, as the applicant, and Mr.

1 Moy has already indicated we have "Exhibit No.  
2 33", which is a letter from ANC 5-C, dated June  
3 28, 2011. This is indicating that they had a duly  
4 called meeting on June 21, 2011, in which they  
5 voted unanimously to recommend approval for the  
6 relief being requested in this application. They  
7 indicate in the last paragraph that they had a  
8 quorum present, and thus this letter would  
9 qualify for great weight.

10 That being said we'll turn back to the  
11 Applicant for any closing remarks.

12 MR. FREEMAN: Thank you, Madam Chair; we  
13 don't have any closing remarks. We again, think  
14 we meet all the standards for approval, and would  
15 request a decision at the Board's earliest  
16 convenience. Thank you.

17 CHAIRPERSON MOLDENHAUER: Okay. I think  
18 then that we can do a bench decision on this  
19 case, and to start us off I will turn to Ms.  
20 Sorg.

21 VICE CHAIR SORG: Thank you Madam Chair,  
22 like the hearing in this case, I can make my

1 comments on the deliberation fairly brief.

2 I think the Office of Planning.. in this  
3 case; we are looking at two areas of relief for  
4 an Applicant who wants to convert a former school  
5 building with wings built in various eras into  
6 multi-family, residential housing for seniors.

7 There are two areas of relief that we're  
8 looking at. The first is a variance from the lot  
9 area to permit this conversion. The lot area  
10 that is in this property based on the regulation  
11 would allow a maximum of 56 dwelling units, and  
12 the Applicant is proposing 82, which according to  
13 the Applicant, and the Office of Planning, is  
14 about just shy of 300 square feet, or 288 square  
15 feet deficient from what the requirements under  
16 the regulation allow.

17 I think given the program here, the type  
18 of dwelling unit that we're looking at, and the  
19 understanding that we get from the Applicant's  
20 prehearing statements about the project itself,  
21 as well as the amenities that they are proposing  
22 to primarily locate in the gym building I can see

1 the variance case that is met, and I'll  
2 incorporate the Office of Planning's analysis of  
3 that in their report.

4 I think additionally, with regard to the  
5 special exception relief for roof structures, we  
6 can see from the drawings that were submitted, as  
7 we generally do, that they similarly meet the  
8 requirements of looking for the lowest possible,  
9 single roof structure height, as well as managing  
10 the views from the street of those roof  
11 structures.

12 Finally, as the Applicant mentioned  
13 they've got several letters of support from  
14 various organizations, and neighbors as well as  
15 the ANC.

16 So with that said, I think I can be in  
17 support of the application.

18 CHAIRPERSON MOLDENHAUER: Thank you very  
19 much Ms. Sorg, I am in agreement with you, and I  
20 think if there is any additional comments from  
21 Board Members? Seeing none, then is there a  
22 motion?

1           VICE CHAIR SORG: Sure, I'll submit a  
2 motion to approve Application No. 18251, for the  
3 apartment conversion, and alteration to an  
4 existing school building requiring relief from  
5 Section 330.5, and 401.3, area variance from lot  
6 area for an apartment conversion, and a special  
7 exception from Section 411.11, for roof  
8 structures, from setback requirements, and uneven  
9 roof structure, at 27 O Street, N.W.

10           CHAIRPERSON MOLDENHAUER: Thank you for  
11 the motion; I would just modify it that the 330.5  
12 relief is no longer going to be part of the  
13 application.

14           VICE CHAIR SORG: Oh, my mistake, thank  
15 you, so modified.

16           CHAIRPERSON MOLDENHAUER: So I would  
17 second that motion. Motion has been made, and  
18 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 is on the motion of Vice Chair  
22 Ms. Sorg, to approve the application for variance

1 relief from lot area (subsection 401.3), and  
2 special exception from the roof structure 411.11.

3 Second the motion Ms. Moldenhauer, the Chair,  
4 also in support of the motion Mr. Selfridge, Mr.  
5 Jordan, and Mr. Hinkle. Again the vote to  
6 approve is 5 to 0 to 0.

7 CHAIRPERSON MOLDENHAUER: Thank you very  
8 much Mr. Moy. Seeing that the ANC is in support  
9 of this application, and we have no parties in  
10 opposition we would like to waive our  
11 requirements, and request that a summary order be  
12 issued.

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

15 CHAIRPERSON MOLDENHAUER: Thank you very  
16 much.

17 (Whereupon, the hearing was concluded at 3:56pm)

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