

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC MEETING & PUBLIC HEARING
OF THE BOARD OF ZONING ADJUSTMENT

9:38 a.m. to 3:15 p.m.
Tuesday, December 13, 2011

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220-South
Washington, D.C. 20001

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MERIDITH MOLDENHAUER, Chairperson
NICOLE SORG, Vice-Chairperson
JEFFERY HINKLE, National Capital Planning
Designee
LLOYD JORDAN, Mayoral Appointee
ANTHONY HOOD, Zoning Commission

Office of Planning:

ARTHUR JACKSON
KAREN THOMAS
STEPHEN MORDFIN
STEVE COCHRAN
MAXINE BROWN-ROBERTS

Also Present:

CLIFFORD W. MOY, Secretary to the Board
MARY NAGELHOUT, ESQ.,
Office of Attorney General

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

2 CHAIRPERSON MOLDENHAUER: Hearing will
3 please come to order. Good morning, ladies and
4 gentlemen.

5 We are located in the Jerrily R. Kress
6 Memorial Hearing Room at 441 4th Street,
7 Northwest. This is December 13th, 2011, public
8 hearing of the Board of Zoning Adjustment for the
9 District of Columbia.

10 My name is Meredith Moldenhauer,
11 Chairperson. Joining me today is Vice-
12 Chairperson Nicole Sorg, Mayoral appointee. To
13 my right is Lloyd Jordan, Mayoral appointee. And
14 to my far right is Jeffrey Hinkle, representative
15 of the National Capital Planning Commission. And
16 to my far left is Chairman Anthony Hood,
17 representative of the Zoning Commission.

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

1 to refrain from any disturbing noise or actions
2 in the hearing room.

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

9 All persons planning to testify either in
10 favor or in opposition are to fill out two
11 witness cards. These witness cards are located
12 to my left in the wall bin near the door and on
13 the tables in front of you. Upon coming forward
14 to speak to the Board, please provide both cards
15 to the court reporter sitting to my right.

16 Also, if you wish to file any written
17 testimonial material or any additional
18 supplemental documentation today, please submit
19 an original along with 12 copies to the Secretary
20 for distribution. If you do not have the
21 requisite number of copies, you can go across the
22 hall to the Office of Zoning and make those

1 copies.

2 The order of procedures for special
3 exceptions and variances are as follows: one,
4 statement of the Applicant and Applicant's
5 witnesses; two, parties and persons in support;
6 three, parties and persons in opposition; four,
7 reports of the ANC; five, government reports;
8 six, rebuttal and closing statements.

9 Pursuant to Section 3117.4 and 3117.5,
10 the following time constraints will be
11 maintained: The Applicant, appellant, persons,
12 and parties, except an ANC, including their
13 witnesses will be given 60 minutes collectively.
14 Appellees, persons, and parties, except the ANC
15 and opposition, including their witnesses will be
16 given 60 minutes collectively. Individuals will
17 be given 3 minutes, and organizations will be
18 given 5.

19 These time restrictions do not include
20 cross-examination or questions from the Board.
21 Cross-examination of witnesses is permitted by a
22 party in a special exception or a variance case.

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1 The ANC in which the property is located is
2 automatically a party in such cases. Nothing
3 prohibits the Board from placing reasonable
4 restrictions on cross-examination, including
5 limitations on time and the scope of cross-
6 examination.

7 The record will be closed at the
8 conclusion of each case except for any materials
9 specifically requested by the Board. The Board
10 and the staff will specify that material which
11 shall be submitted and the date when such person
12 must submit that to the Office of Zoning. The
13 record will be closed and no other information
14 will be accepted from the Board after a hearing
15 has been closed.

16 The District of Columbia's Administrative
17 Procedures Act requires that a public hearing on
18 each case be held in the open before the public.
19 Pursuant to Section 405(b) and 406 of the Act,
20 the Board may, consistent with the rules and the
21 procedures and the Act, enter into a closed
22 meeting on a case for purposes of seeking legal

1 counsel pursuant to Section D.C. Code 2-575(b)(4)
2 and/or deliberating on a case per D.C. Code 2-
3 575(b)(13) but only after providing the requisite
4 public notice and in the case of an emergency
5 closed meeting, taking a roll-call vote.

6 The decision of the Board in these
7 contested cases must be based exclusively on the
8 record. To avoid any appearance to the contrary,
9 the Board requests all parties present not engage
10 members of the Board in conversation.

11 Please turn off all beepers and cell
12 phones at this time as to not disturb these
13 proceedings.

14 The Board will now consider any
15 preliminary matters. Preliminary matters are
16 whether a case will or should be heard today, are
17 such as requests for postponement and
18 continuance, or withdrawal, or whether proper
19 adequate notice for a hearing has been given.

20 If you're not prepared to go forward
21 today or if you believe the Board should not
22 proceed, now is the time to raise such a matter.

1 Mr. Secretary, do we have any preliminary
2 matters?

3 MR. MOY: Madam Chair, there are a couple
4 of slight preliminary matters to the second case
5 in the morning, but I would suggest that the
6 Board address those when I call the case.

7 CHAIRPERSON MOLDENHAUER: Okay. Thank
8 you. Then all individuals wishing to testify
9 this morning, if you can please stand, and the
10 oath will be administered.

11 MR. MOY: Do you solemnly swear or affirm
12 that the testimony you're about to present in
13 this proceeding is the truth, the whole truth,
14 and nothing but the truth?

15 [No audible response.]

16 MR. MOY: Ladies and gentlemen, you may
17 consider yourself under oath.

18 CHAIRPERSON MOLDENHAUER: Thank you very
19 much, Mr. Moy. We can call the first case. And
20 just as a general matter, we're going to switch
21 around the cases today from the calendar. We'll
22 call Bassett. Then we'll call the IMF case, and

1 then we'll call the Donna Gedeon case.

2 Application No. 18288

3 MR. MOY: Good morning, Madam

4 Chairperson, members of the Board. The first
5 case then for action is Application No. 18288.

6 This is the application of Scott and Diane
7 Bassett, pursuant to 11 DCMR 3104.1, for a
8 special exception to allow an addition to an
9 existing one-family semidetached dwelling under
10 Section 223, not meeting the lot area and width
11 requirements (Section 401), lot occupancy
12 requirements (Section 403), side yard
13 requirements (section 405) and the nonconforming
14 structure requirements under Subsection 2001.3 in
15 the §-3 District at premises 3127 P Street, N.W.
16 Property located at Square 1270, Lot 12.

17 Staff understands that the more recent
18 updated plans for attached as Tab A in your
19 Exhibit 28. That completes the status briefing,
20 Madam Chair.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much, Mr. Moy. And if the parties would please

1 introduce themselves for the record.

2 MS. PRINCE: Allison Prince with Goulston
3 and Storrs here on behalf of the Bassetts.

4 MR. KIRWAN: I'm William Kirwan with Muse
5 Architects.

6 CHAIRPERSON MOLDENHAUER: Thank you. And
7 before us we have a 223 for lot area, lot with
8 side yard, lot occupancy, and expansion of a
9 nonconforming use.

10 I think that for a 223 case, especially
11 in Georgetown, I think that the record is quite
12 full for this. Let me just see, is there anybody
13 here in the audience either in support or
14 opposition of this case?

15 Okay. Were you sworn in? No. Okay.
16 Can you stand to be sworn in?

17 MR. MOY: Do you solemnly swear or affirm
18 that the testimony you're about to present in
19 this proceeding is the truth, the whole truth,
20 and nothing but the truth? Thank you.

21 CHAIRPERSON MOLDENHAUER: So then what
22 we'll is if there's anything else that you want

1 to add, you can add it now or you can potentially
2 address whether the individual in the audience is
3 in support or in opposition, those comments that
4 were made.

5 Okay. You'll have to wait your turn, and
6 then we'll ask you to come forward in a moment.
7 You'll be on the record.

8 MS. PRINCE: How about I proceed with a
9 brief statement? And the architect can go
10 through the plans quickly, and then we can answer
11 any questions you may have?

12 Good morning, members of the Board. I'm
13 Allison Prince with the law firm of Goulston and
14 Storrs. With me today is Cary Kadlecek also of
15 Goulston, Scott and Diane Bassett, the
16 homeowners, are directly behind me, and William
17 Kirwan of Muse Architects is to my right.

18 The case before you is a simple one. The
19 owners of this Georgetown semidetached dwelling
20 would like to update their house to modern
21 standards. Accordingly they need special
22 exception relief under Section 223. This is

1 really precisely the kind of case that 223 was
2 intended to address when it was created several
3 years ago.

4 Even though this house is in a
5 neighborhood dominated by row dwellings, this
6 house technically is not a row dwelling. And
7 that's why we're here today. It has a
8 nonconforming 2.7 foot side yard. So
9 technically, it's a semidetached dwelling.

10 Were it a row dwelling, we wouldn't even
11 be here because the 60 percent lot occupancy
12 limit would pertain, but because of this 2.7 foot
13 side yard, we're technically a semidetached
14 dwelling, so the lesser 40 percent requirement
15 pertains.

16 The proposed three-story addition will
17 add living space and bedrooms to the existing
18 house. It will increase the lot occupancy to 56
19 percent, which, as I said, would be permitted for
20 a row dwelling. And it will extend the 5-foot
21 wide portion of the side yard. The side yard is
22 2.7 feet, but then as we go deeper into the lot,

1 it's 5 feet.

2 The Bassetts have gone to extraordinary
3 lengths to be good neighbors in planning for this
4 addition. And as a result they have received a
5 lot of support for it. They've reached out to
6 their adjacent neighbors multiple times. They've
7 held an open house for nearby neighbors to
8 explain the addition. In fact, the Bassetts made
9 several changes to the plans to accommodate
10 concerns and requests from the neighbor to the
11 east.

12 In addition, the neighbor to the west
13 wrote a letter of support which is in the record
14 today. We have full support from the Office of
15 Planning, and we have full support -- unanimous
16 support -- from ANC-2E. And finally, we have
17 full support from the Old Georgetown Board. So
18 the addition has been fully reviewed by the Old
19 Georgetown Board.

20 Bill Kirwan, the project architect, can
21 provide you with a brief overview. And then
22 we're available for questions, and the owners are

1 available for questions as well.

2 MR. KIRWAN: Thank you. Just to quickly
3 familiarize you with the characteristics of the
4 block, 3127 P Street is right here in the middle
5 of the block, identified by the red dot. The
6 block is characterized by many types of two- and
7 three-story row and semidetached dwellings on
8 both sides of the street.

9 There is the Presbyterian Congregation of
10 Georgetown which has a complex of buildings
11 further to the east. And then there's the Bowie-
12 Sevier residence which sits to the north of the
13 property with its large grounds associated with
14 it that actually come down and touch P Street
15 through a little garden gate.

16 The original house at 3127 P Street,
17 which is this front rectangle here, was built in
18 1885. A subsequent addition to the house was
19 built to the rear in what is only known to be the
20 first couple of decades after the original house
21 was built.

22 What the Bassetts want to do is add two -

1 - well, renovate the entire house. It is in need
2 of renovations because it hasn't been touched
3 probably for about 40 or 50 years -- and add two
4 additions to the house, one a two-story addition
5 to the rear of the house and a third story
6 addition to the back block of the existing house.

7 In beginning to test out the programmatic
8 requirements of the Bassetts, which was to
9 renovate this house, provide additional space for
10 modern living, and add an additional bedroom to
11 the four-story house to make it five -- four-
12 bedroom house to make it five bedrooms, we looked
13 at the characteristics of the immediate neighbors
14 on the block.

15 And two doors down from the Bassetts
16 there is a residence which did an addition, you
17 know, probably in the past 20 years, toward the
18 rear of the house, and added a third story
19 addition to the back portion and built to this
20 rear plane location here. And that rear plane is
21 very close to the existing rear plane of their
22 neighbor to the east. So we sort of used that

1 established line, you know, ignoring the actual
2 setback line which would allow us to build back
3 further, but utilized that plane to, again,
4 protect the light and air to the neighbors -- of
5 the immediate neighbors on the block.

6 And as Allison has described, because the
7 existing lot and the structure sitting on it is a
8 nonconforming -- really anything we do to the
9 house to expand it extends that nonconformance.

10 So just in detail, we're adding a 12 by
11 18 addition footprint on the back of the house
12 that's two stories. It's a family room on the
13 first floor and a master bedroom on the second.
14 And there's a small basement bedroom on the
15 basement level.

16 Again, the second floor has the master
17 bedroom above the family room below, and then
18 we're building this third story addition over the
19 back portion of the house. And in working with
20 the Old Georgetown Board, we kept that third
21 story addition to that back block, again, to
22 minimize views from P Street. There is only a

1 minimal sliver of a view down through that 2 1/2
2 foot wide side yard, but really that only occurs
3 at one point as you're walking down the sidewalk.

4 Then I'll just shift these elevations
5 over. So, again, the project was to pick up on
6 the characteristics of the existing house, extend
7 the masonry of the existing house, the punched
8 openings, the double-hung windows, again, the
9 scale and character and the detailing that we
10 find on the existing residence. Extend those
11 details into the addition.

12 There are some windows on the side of the
13 addition that face the neighbor's solid brick
14 wall to the east. And then there's a -- and the
15 third story actually has a solid side as well of
16 masonry, so there are no windows facing the
17 neighbor to the east or to the west.

18 Then the rear elevation shows the windows
19 on the master bedroom level, French doors on the
20 first floor family room level, and then the third
21 story addition has a bank of windows looking to
22 the north.

1 In working through the Old Georgetown
2 Board process and to respond to some concerns of
3 the neighbor to the west, the Bassetts actually
4 lowered the height of their third story addition
5 2 feet from what was originally presented to the
6 Old Georgetown Board at the preliminary hearing,
7 again, to -- roughly in line with the center sash
8 bar of their double hungs to again improve the
9 light and air that they receive from the side to
10 those windows, but those windows on their
11 property face the north, not to the west.

12 And again, this section drawing shows the
13 relationship of the Bassett's third story
14 addition to the neighbor's third story and their
15 windows and sort of addresses the concerns that
16 they -- that were worked through at the Old
17 Georgetown Board hearing.

18 So, in my professional opinion, I believe
19 there is no impact to light and air afforded to
20 the neighbors' properties due to the
21 configuration of the additions not extending back
22 beyond that plane established by the neighbors to

1 the east and to the west. We think there's no
2 impact to the privacy because of the window
3 placements of the Bassett's property are facing
4 the north on the three-story addition that's
5 visible from the neighbors, and where they are
6 positioned on the east-facing side of the
7 Bassett's property is looking directly out onto
8 the solid brick wall of the neighbor's --
9 neighbor to the east.

10 I believe there's no effect on the
11 character, scale, or pattern of the houses
12 because the design, as approved by the Old
13 Georgetown Board, is sensitive to the context and
14 the patterns of the neighboring historic
15 buildings.

16 I believe the additions are in harmony
17 with the purpose and the intent of the zoning
18 regulations and zoning map because, one, the
19 existing house was rendered nonconforming
20 following the enactment of zoning regulations, so
21 it was inherently nonconforming as we found it.

22 The additions were located to follow the

1 patterns of the neighboring houses. The
2 additions are modest in scale and were further
3 reduced in scale in response to neighbor
4 concerns, and the building use will remain a
5 single-family residential use. Thank you.

6 MS. PRINCE: That completes our
7 presentation. If you have any questions, we'd be
8 happy to answer them.

9 CHAIRMAN MOLDENHAUER: Thank you very
10 much. Do board members have any questions at
11 this time?

12 [No audible response.]

13 CHAIRMAN MOLDENHAUER: Seeing none, then
14 I'll ask -- I believe there was one individual
15 that was going to be potentially in support or in
16 opposition. If she can come forward?

17 You need to turn on your microphone.
18 Can you, first, state your name and home address,
19 then whether you're in support or in opposition,
20 and then you'll be provided time to present.

21 You have to push it.

22 MS. DOLEMAN: Marlin Doleman. We're the

1 neighbors to the east at 3125 P Street and just
2 wanted to make a general comment in support of
3 the back addition. And, you know, I don't think
4 that extending the existing nonconforming side
5 yard is any problem for us.

6 CHAIRMAN MOLDENHAUER: Okay. So you have
7 no issues with the windows or anything else?

8 MS. DOLEMAN: None.

9 CHAIRMAN MOLDENHAUER: Okay. Thank you
10 so much then for coming down.

11 Then at this point in time we'll turn to
12 the Office of Planning for their report.

13 MR. MORDFIN: Good morning, Chair,
14 Members of the Board. I'm Stephen Mordfin with
15 the Office of Planning.

16 And the subject applications in
17 conformance with the special exception variance,
18 the special exception criteria pursuant to
19 Section 223, because semidetached dwellings are
20 permitted within the R-3 district, the building
21 addition would not unduly affect light and air
22 and would have no effect on afternoon sun to

1 adjoining properties to the east or west because
2 the addition would not extend beyond the dwelling
3 to the east.

4 The proposed addition would have no
5 windows on the west side, and windows on the east
6 side would be set back a minimum of 5 feet from
7 the side lot line with none on the third floor,
8 therefore, privacy and use of enjoyment of
9 neighboring properties would not be unduly
10 compromised.

11 The addition would be minimally visible
12 from 32nd street and similar in character, scale,
13 and pattern of houses. Therefore, it would not
14 visually intrude upon the character, scale, and
15 pattern of houses.

16 The proposed lot occupancy is 56.3
17 percent, less than the maximum of 70 percent
18 permitted. The Office of Planning does not
19 recommend any special treatments, and the
20 proposal would not permit the introduction or
21 expansion of a nonconforming use. Therefore, the
22 Office of Planning recommends approval of the

1 application. Thank you.

2 CHAIRPERSON MOLDENHAUER: Thank you very
3 much for your report.

4 Does the Applicant have any questions for
5 the Office of Planning?

6 MS. PRINCE: No questions for the Office
7 of Planning.

8 CHAIRPERSON MOLDERHAUER: Okay. Do any
9 board members?

10 Seeing none, then we'll move forward.
11 I'll see if there's anybody in the audience from
12 ANC-2E.

13 Seeing no one, I'll just indicate that we
14 have Exhibit 26 in our record, which indicates
15 that ANC-2E met at a regularly scheduled meeting
16 which was duly noticed on October 31st at which
17 seven commissioners, which represented a quorum,
18 are present, and they voted to support the
19 application.

20 That being said, that letter would
21 receive great weight.

22 At this point in time we'll turn back to

1 the Applicant for any closing remarks.

2 MS. PRINCE: We appreciate your time this
3 morning. I think we've really thought through
4 the burden of proof very thoroughly here, and I
5 believe we meet it. This is exactly the kind of
6 case that the Commission had in mind when Section
7 223 was adopted in the first place; although, I
8 believe we'd meet a variance standard here
9 because the side yard condition is quite unusual.

10 The construction for this project is
11 under way, the renovation portion of the house,
12 so we'd really appreciate your quick action on
13 this application.

14 CHAIRPERSON MOLDENHAUER: Thank you very
15 much. If there's no other questions from Board
16 members, then that concludes this hearing. We'll
17 enter into deliberation.

18 Even though this is a fairly
19 straightforward 223 request, it's always great
20 when we see ANC support, OP support, and a letter
21 from the neighbor to the west, and then we had
22 testimony, which I appreciate, you know, someone

1 taking the time to come down and present support
2 to the east. And that's always very positive,
3 especially when you're dealing with additions
4 with windows and things of that effect. You want
5 to make sure that, you know, there is no issue
6 with light and the air, or anything to that
7 effect.

8 But that being said, I'm in support of
9 the application, and I see no issues. And I
10 think the Applicant has satisfied the standards.

11 Is there any additional comments or
12 deliberation from other Board members that they'd
13 like to add?

14 MS. SORG: Madam Chair, I would just add
15 one comment which is to say that I appreciate the
16 sensitivity, I think, and thoughtfulness of the
17 design here with regard to the exterior materials
18 and a way of adding to this historic property for
19 this era, current era. So I would also be in
20 support. Thank you.

21 CHAIRPERSON MOLDENHAUER: Thank you very
22 much, Ms. Sorg.

1 That being said, then I think I'll submit
2 a motion, a motion to approve Application 18288
3 pursuant to 11 DCMR 3104.1 for a special
4 exception to allow an addition to an existing
5 one-family semidetached dwelling under Section
6 223, not meeting the lot area and width
7 requirements under 401, lot occupancy
8 requirements under 403, side yard requirements
9 under 405, and the nonconforming structure
10 requirements under Section 2001.3 in the R-3
11 District at premises 3127 P Street.

12 A motion has been made. Is there a
13 second?

14 MS. SORG: Second.

15 CHAIRPERSON MOLDENHAUER: Motion has been
16 made and then seconded. All those in favor say,
17 "Aye."

18 [Chorus of ayes.]

19 MR. MOY: Staff would record a vote as 5
20 to 0 to 0. This on the motion Chairperson
21 Moldenhauer to approve the application per the
22 relief that she cited. Second the motion of

1 Vice-Chairperson Ms. Sorg. Also in support of
2 the motion, Mr. Hood, Mr. Jordan, and Mr. Hinkle.
3 Again, the final vote is 5 to 0 to 0. The motion
4 carries.

5 CHAIRPERSON MOLDENHAUER: Thank you very
6 much, Mr. Moy. And seeing that there is no
7 opposition in this case, we'd like to ask that a
8 summary order be issued.

9 MR. MOY: Thank you, Madam Chair.

10 CHAIRPERSON MOLDENHAUER: Thank you.

11 Application No. 18283

12 MR. MOY: The next application, I
13 believe, Madam Chair, is Application No. 18283.
14 This is the application of the International
15 Monetary Fund as publicly advertised. The
16 Applicant reads as follows: Pursuant to 11 DCMR
17 3104.1 and 3103.2, for a variance from the
18 parking requirements under Section 2101, and a
19 special exception from the roof structure
20 requirements under Section 411, to permit the
21 redevelopment of an existing apartment house in
22 the DC/R-5-E District at premises 1250 New

1 Hampshire Avenue, N.W., property located at
2 Square 70, Lot 186.

3 CHAIRPERSON MOLDENHAUER: Thank you very
4 much, Mr. Moy. If the parties can please
5 introduce themselves for the record?

6 MS. SHIKER: Good morning. I'm Christie
7 Shiker with the law firm of Holland and Knight.
8 To my right is Pam Rosen from the International
9 Monetary Fund. Further to my right is Steven
10 Sher from Holland and Knight as well. On my left
11 is John Edwards with Bonstra/Haresign Architects.
12 And then further to my left is Jami Milanovich
13 from Wells and Associates, our traffic consultant
14 for this project.

15 CHAIRPERSON MOLDENHAUER: Thank you very
16 much. I think that all the board members have
17 read the record. And I've kind of done a quick
18 little assessment, and I think that, you know, we
19 all feel fairly comfortable with what's been
20 submitted so far. I think that, you know, the
21 relief that you're asking for for four parking
22 spaces is minor, and that considering that the

1 structure's not really being modified, other than
2 interiorly, I think that in regards to the roof
3 structural relief, I think that's also not
4 something that most board members have a
5 significant issue with since that's only a
6 special exception standard.

7 But why don't I see if you have anything
8 additional to add, if you have any additional
9 tests or anything you'd like to add.

10 MS. SHIKER: I think we'll stand on the
11 record, given how complete it is. Thank you.

12 CHAIRPERSON MOLDENHAUER: Thank you.
13 Then I'll ask is anybody in the audience in this
14 application either in support or in opposition of
15 this case?

16 Seeing none, then I'll turn to the Office
17 of Planning for their report.

18 MS. THOMAS: Good morning, Madam
19 Chairman, Members of the Board. I'm Karen Thomas
20 with the Office of Planning.

21 We do believe the Applicant has met the
22 test for area variance and special exception

1 relief, and I'll stand on the record of our
2 report. Thank you.

3 CHAIRPERSON MOLDENHAUER: Thank you very
4 much. Your report was very thorough.

5 Does the Applicant have any questions for
6 the Office of Planning?

7 MS. SHIKER: We do not.

8 CHAIRPERSON MOLDENHAUER: Do Board
9 Members have any questions?

10 Seeing none, then at this point in time
11 we'll turn to see if there's anybody present from
12 ANC-2B.

13 Seeing no one, I will just indicate that
14 we have Exhibit 26 in our record which indicates
15 that at a regularly scheduled and properly
16 noticed meeting on October 12th, 2011, 7 out of 9
17 Commissioners, which represented a quorum, were
18 present, and they voted to approve the
19 application 7 to 0. So that letter would receive
20 great weight.

21 We also have another agency weighing in.
22 We have a DDOT report in our record, which goes

1 to the issue of the parking relief. And they
2 indicate that they have no objection in their
3 submission as well to the reduction of four
4 spaces. And that's our Exhibit 28.

5 That being said, I'll turn back to the
6 Applicant for any closing remarks.

7 MS. SHIKER: Madam Chair, Board Members,
8 based on the evidence in the record, we believe
9 that we have satisfied the standards for area --
10 for the parking variance area relief that we've
11 requested as well as the special exception for
12 the roof structure. And we would ask that the
13 Board grant this application at its earliest
14 convenience. Thank you.

15 CHAIRPERSON MOLDENHAUER: Thank you very
16 much.

17 Do Board Members have any final questions
18 or any comments? If I don't see any, then at
19 this point in time we'll conclude the hearing,
20 and we'll enter into deliberation.

21 I will incorporate Office of Planning's
22 thorough report -- I think that it's, you know,

1 clear that Office of Planning outlines how the
2 Applicant satisfies as well as the Applicant's
3 submissions, the standards for the variance for
4 the parking requirement and the special exception
5 for the roof structure relief.

6 That being said, we also, as I indicated
7 during the record, we have support from DDOT and
8 -- or rather no objection from DDOT and support
9 from the ANC.

10 And so I would -- I see no objection in
11 this application. I think that four parking
12 spaces is very minor. The relief that they're
13 seeking on the roof is also, I think, minor and
14 is the special exception standard, which I think
15 that they satisfy.

16 Is there any additional comments or
17 deliberation?

18 MS. SORG: Madam Chair, I agree with you.
19 I would just add -- I mean, in that there's no
20 very specific circumstance that, you know, of the
21 existing building and the -- and, you know, where
22 would you put more parking spaces? It's pretty

1 tight over here in this neighborhood on this lot
2 and what's going on here. So I would say, you
3 know, it's a very clear case where the -- you
4 know, where there is a clear exceptional
5 situation that has part -- you know, mostly to do
6 with an existing building that leads, you know,
7 directly to the practical difficulty. And then
8 also, of course, to note that with regard to the
9 special exception relief primarily requested
10 based on renovations that will help the Applicant
11 meet ADA code. That's all.

12 CHAIRPERSON MOLDENHAUER: Thank you very
13 much.

14 Is there any additional comments from
15 Board Members? Seeing none, then I'll submit a
16 motion, a motion to approve Application 18283
17 pursuant to 11 DCMR 3104.1 and 3103.2, for a
18 variance from the parking requirement under
19 Section 2001.1 [sic], and a special exception
20 from the roof structure requirement under Section
21 411, to permit the redevelopment of an existing
22 apartment house in the DC/R-5-E District at

1 premises 1250 New Hampshire Avenue. A motion has
2 been made. Is there a second?

3 MR. HINKLE: Second.

4 MS. SORG: Second.

5 CHAIRPERSON MOLDENHAUER: Mr. Hinkle gets
6 it. Motion's been made and seconded. All those
7 in favor say, "Aye."

8 [Chorus of ayes.]

9 MR. MOY: Staff will record the vote as 5
10 to 0 to 0. This on the motion that Chairperson
11 Moldenhauer to approve the application for the
12 variance relief, decide a variance relief and the
13 special exception relief. Second the motion, I
14 believe, is Mr. Hinkle, this time. Also in
15 support of the motion Mr. Hood, Ms. Sorg, and Mr.
16 Jordan.

17 And so, again, the final vote is 5 to 0
18 to 0. The motion carries.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much, Mr. Moy. And seeing that there's no
21 opposition in this case, we'd like to ask for
22 that summary order to be issued. Thank you.

1 MR. MOY: Yes. Thank you.

2 Application No. 18286

3 MR. MOY: The next application before the
4 Board in its morning session is Application
5 Number 18286. This is the application of Donna
6 Gedeon, pursuant to 11 DCMR 3103.2, for a
7 variance from the use provisions to allow a
8 catering and meal delivery establishment in the
9 basement and a portion of the first floor under
10 Subsection 201.1, in the R-1-B District, at
11 premises 1204 Ingraham Street, N.W., property
12 located in Square 2930, Lot 74.

13 With this application, Madam Chair, there
14 is a party status request, as well as a potential
15 preliminary matter as to the number of days
16 required for the notice of posting on site.

17 So, that completes the staff's brief,
18 Madam Chair.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much, Mr. Moy.

21 If the party status applicant can please
22 come forward to the table.

1 MR. JORDAN: Madam Chair, what did Mr.
2 Moy say about the notice posting?

3 CHAIRPERSON MOLDENHAUER: The notice
4 posting, but I first want to address the party
5 status, who is the party status individual issue.

6 Is Mary Blake not present? Okay. You
7 had requested party status, so if you can come
8 forward to the table.

9 First, we will start with applicant. You
10 can turn on your microphones and introduce
11 yourselves for the record.

12 MS. GEDEON: Donna Gedeon.

13 CHAIRPERSON MOLDENHAUER: Ms. Blake, is
14 you can introduce yourself.

15 Your microphone is not on.

16 MS. BLAKE: Mary Blake. I live at 1212
17 Ingraham Street.

18 CHAIRPERSON MOLDENHAUER: Ms. Blake, you
19 have applied for party status, and you are four
20 houses away. I think that that would be, in my
21 view, within the proximity of someone that would
22 be affected potentially, the relief that is being

1 sought.

2 I see no issue with granting Ms. Blake
3 party status. Do any Board members have any
4 issue?

5 [No audible response.]

6 CHAIRPERSON MOLDENHAUER: Ms. Gedeon, do
7 you have any challenges to Ms. Blake being a party
8 in this case in regards to standards?

9 MS. GEDEON: No.

10 CHAIRPERSON MOLDENHAUER: Thank you.

11 So, Ms. Blake, you are being granted
12 party status, which means that during the case,
13 you could potentially ask questions or what is
14 called cross-examination of the Applicant or any
15 of her witnesses, and then you will also be given
16 60 minutes to call any of your own witnesses that
17 you like, and then you will also be given 60
18 minutes to call any of your own witnesses that
19 you like and present your case in opposition.

20 You may not need that full time, but I
21 just wanted you to understand what your rights
22 are under that conflict of party status.

1 So, that being said, we have a
2 preliminary matter which Mr. Moy indicated
3 earlier, which is the issue of the timeliness of
4 the notice that you submitted. You posted -- the
5 regs require that you post a notice on your
6 property of the hearing at least -- and correct
7 me if I am wrong, Mr. Moy -- 15 days prior to the
8 hearing, and today is the 13th, and we received
9 this notification on the 1st, so obviously, there
10 was only 13 days.

11 Can you explain, one, maybe was it posted
12 prior to that and you only got us the affidavit
13 late, or is there a reason why it was not posted
14 timely?

15 MS. GEDEON: The 15 days came about right
16 after Thanksgiving, and I was out of town for
17 that time period, but as soon as the Zoning
18 Office called me, I picked it up the same day and
19 placed it on the property, so it was just a
20 matter of I guess logistical with the late
21 period.

22 CHAIRPERSON MOLDENHAUER: Okay. Ms.

1 Blake, do you have any comments about this issue
2 of potentially waiving the late posting?

3 MS. BLAKE: No.

4 CHAIRPERSON MOLDENHAUER: I also think
5 that obviously, we have individuals in
6 opposition, we have indicating that obviously,
7 there has been enough actual notice of the case
8 as well. We have an ANC report in this case.
9 So, I don't see any issue with waiving that
10 requirement. So, I will waive the 15-day
11 requirement and consider the posting to be
12 sufficient for purposes of moving forward with
13 this case today.

14 That being said, I am going to turn to
15 you, the Applicant, and ask if you can, you know,
16 go through and explain why you believe that you
17 satisfied the standards of a variance and, you
18 know, if maybe if you have had a chance to read -
19 - have you had a chance to read Ms. Blake's
20 concerns in her opposition?

21 MS. GEDEON: No, I have only seen the
22 notice of the ANC and then the Office of

1 Planning.

2 CHAIRPERSON MOLDENHAUER: Obviously, if
3 you want to address any of the issues in regards
4 to ANC's report, as well, that would be helpful.

5 : I am sorry, I am the ANC Commissioner.

6 CHAIRPERSON MOLDENHAUER: You will have
7 an opportunity to present your report in the
8 course of the hearing. Okay. Wonderful, thank
9 you for being here.

10 MS. GEDEON: So, should I just start with
11 background information? Okay.

12 I guess I am here to request that I hope
13 that the hearing decision will be in line with
14 the Office of Planning recommendation to use the
15 basement portion. Originally, I had the basement
16 and maybe a portion of upstairs, but I would only
17 need the basement portion for catering purposes,
18 and it would be small-scale catering.

19 I purchased the property in August. It
20 was I guess previously on the market for year,
21 left unsold. I thought it had a lot of
22 potential. Prior to my purchasing it, I think it

1 was vacant since maybe '06, '07, and it had the
2 prior history of commercial usage before becoming
3 vacant, and I guess within that time period there
4 were different Certificates of Occupancy between
5 Planning and Taxation, it was being taxed at 100
6 percent commercial, so I saw that record on file.

7 Anyway, I purchased the property. The
8 entire east side of the property backs to a
9 commercial lot on Georgia Avenue, and then my
10 property is the only property on the block that
11 impacts entirely to the large commercial Popeye's
12 lot.

13 So, when I enter my property, I don't
14 enter and actually come past the neighborhood,
15 the neighbor's properties, I enter right from
16 Georgia Avenue by Popeye's, that go right into
17 the back of my lot area.

18 The basement is, like I said, it's
19 separately metered, it has a double-door front
20 entrance and a large commercial door in the back.
21 Presently, I haven't used the basement, because
22 it's basically set up as -- like just large open,

1 almost like office space.

2 My plan for the basement, which is to be
3 use it as very small-scale, home occupant
4 catering, and nowhere near like large-scale
5 restaurant usage. It would be like probably
6 small birthday parties, something like that, just
7 to sort of test and see if that is something that
8 I would even want to pursue part time, and if it
9 ever got to the point where, you know, I wanted
10 to move to the next direction, then, of course, I
11 would seek a commercial C-1 property.

12 So, as far as noise, trash, parking
13 issues, I have my own driveway in the back, and
14 there wouldn't be additional employees for the
15 home occupancy, so it wouldn't be any concern as
16 far as taking up additional parking spaces or
17 trash.

18 I tend to actually go around picking up
19 trash from my yard in the front of my house all
20 the time, so I am very aware of that. There
21 wouldn't be any exterior modifications as far as
22 like any type of commercial type modifications.

1 It would still be totally residential exterior.

2 As far any hardships to neighbors, just I
3 know like different people that have a home
4 occupancy as far as like wedding planners and
5 caterers, and, you know, and the type of
6 businesses that they have, and some of them are
7 in totally residential areas.

8 I don't see how any of the neighbors
9 would be adversely affected, because like I said,
10 my property backs at a commercial area. I
11 wouldn't even come past their property. There
12 wouldn't be visitors or employees. It would just
13 be small scale, like it someone had a birthday
14 party for 10 kids, and I made like a couple
15 platters.

16 So, based on that, I hope that you will
17 decide with the Planning Board recommendations.

18 CHAIRPERSON MOLDENHAUER: Thank you. I
19 just have a couple of questions. My
20 understanding was it was potentially, the
21 building was set up almost as apartments. Is it
22 an apartment layout, or is it all single-family

1 home on the top level? Would you describe that a
2 little bit to me?

3 MS. GEDEON: It was laid out, it is
4 basically a corner, it's semidetached, so there
5 is no additional structure besides the sort of
6 commercial car lot that's on the side. So, it's
7 the last house on the corner.

8 Basically, from the street level, you
9 walk straight into the basement, there is a
10 double-door entrance, and you walk straight
11 through the property to like a large commercial
12 push door that's in the back.

13 If you go up the step, and it's two
14 meters that was already approved through I guess
15 the District of Columbia office, because Pepco
16 wants two separate meters, so the basement is
17 metered separately. It's 1204A and 1204B.

18 You walk up the steps to the top unit,
19 which is two-floor residential.

20 CHAIRPERSON MOLDENHAUER: And that's
21 where you reside?

22 MS. GEDEON: Yes. So the basement is

1 just empty space, and there is no connection, and
2 it wouldn't be -- it wouldn't be easy to modify,
3 because of the actual configuration and the way
4 the electrical is set up, I mean it would be very
5 costly.

6 I know that I guess, I mean I heard a
7 comment as far as, okay, well, I bought it like
8 this, I am sort of stuck with it, but, you know,
9 based on the location of the property and how it
10 is designed, that is why I was asking for the
11 special exception.

12 CHAIRPERSON MOLDENHAUER: How many
13 parking spaces do you currently have?

14 MS. GEDEON: I have one of those long
15 lots, so right now it could fit probably up to
16 three cars, and I can always move the fence and
17 extend it to however many cars I need. But I
18 don't plan in having more than two cars in the
19 back.

20 CHAIRPERSON MOLDENHAUER: And you can
21 access the rear of the property from the alley?

22 MS. GEDEON: Yes, the alley is right from

1 Georgia Avenue, I turn in, Popeye's is right
2 there. When I park in my lot, I don't even face
3 any other properties, I face Popeye's, and their
4 customers can see me coming in and out of my
5 kitchen door.

6 CHAIRPERSON MOLDENHAUER: I don't have
7 any other questions at this time.

8 Do any of the Board members have any
9 questions of the Applicant?

10 MR. JORDAN: Yes. Do you know what the
11 use of the basement was before you purchased?

12 MS. GEDEON: I know it was vacant for a
13 number of years. I mean the history that I was
14 told, just I guess sort of word of mouth history,
15 that it might have been, it was once a commercial
16 property, entirely commercial, like some kind of
17 Acme commercial company, and then a builder
18 purchased it, and went bankrupt.

19 So, then, probably in 2007, and I did
20 hear that he had several lots of the block, and I
21 don't know if he was trying turn it into condos
22 or apartments, but I just know he went bankrupt,

1 and so now they are I guess being sold, but
2 that's really all that I know as far as how it
3 was being used, but I mean basically on how it is
4 configured now, it appears that how it was
5 designed was to be residential upstairs and
6 commercial on the bottom.

7 MR. JORDAN: And when you bought the
8 property, was it your intent to have catering in
9 the basement?

10 MS. GEDEON: It was my intent to see if I
11 can have some kind of office usage, because it is
12 set up as two separately metered properties, so
13 right after I purchased it, I was just thinking,
14 okay, what can I do with this basement space, and
15 I was like okay, let me ask for that, because i
16 do like as far as I mean I work full time for the
17 Federal Government, but if there was within the
18 family, that there was like an event, and I
19 helped to plan that, and then it worked, and I am
20 like okay, it can be part of like sort of like
21 holiday committee and make some dishes and things
22 like that, so just I wanted to explore my hobby

1 to see if it was feasible to have it, and that's
2 why I wanted to start with the home occupancy and
3 then, you know, test that out, because as you
4 know, I mean to secure commercial space just for
5 something that you are doing like once or twice a
6 month, wouldn't even be feasible.

7 MR. JORDAN: So, you inquired to what you
8 could possibly use the basement for prior to your
9 purchase?

10 MS. GEDEON: No prior to my purchase, no,
11 because prior to my purchase, I actually listed
12 as -- it had a dual listing as commercial
13 residential, but after -- and then I saw that it
14 was listed, the taxation, which sort of defaults
15 when you are purchasing, you look at the tax
16 record and what the tax amount is, so I thought
17 it had some type of commercial usage. After I
18 purchased it, that's when I learned that, okay,
19 Taxation has it as commercial, Zoning has it as
20 R-1-B, and that there was a prior history of CNOs
21 on record.

22 MR. JORDAN: And so you said you work

1 full time for the Federal Government, so you are
2 going to be doing this part time?

3 MS. GEDEON: Exactly, yes. I mean there
4 is no way I could do that on a full-time basis,
5 so it would strictly be part time, like I said,
6 probably once or twice a month, if that, you
7 know, if I had that type of business.

8 MR. JORDAN: Do you plan for people to
9 come to the property?

10 MS. GEDEON: No. I work full time and I
11 have family obligations, so as far as people
12 coming to the property, no. I know I did have on
13 there catering and meal service delivery. The
14 meal service delivery is something I am not even
15 considering.

16 It was like, you know, when I was told to
17 write the letter, they said, well, put everything
18 you are interested in, and I was like, well, you
19 know, and I sort of just listed it that way, but
20 it would only be for catering as needed.

21 MR. JORDAN: Thank you, Madam Chair.

22 CHAIRPERSON MOLDENHAUER: Any follow-up

1 questions? Ms. Sorg.

2 VICE-CHAIRPERSON SORG: Thank you, Madam
3 Chair. Just as a follow-up, that was one thing I
4 was going to ask you about is the catered dinners
5 to go, because that was something that perked a
6 little bit, in my opinion, you know, a lot of
7 meals, so you are not planning to prepare meals,
8 have people drive up to the driveway?

9 MS. GEDEON: No, no, not whatsoever.

10 VICE-CHAIRPERSON SORG: Okay.

11 MS. GEDEON: My evenings are -- no, I am
12 not planning on that at all, just very small-
13 scale catering. I mean anytime if I was ever
14 going to consider something like that, it would
15 be after several years and when I would secure
16 commercial space for something like that.

17 I just happened to see something where a
18 chef, you know, like once a month, it would be
19 just holiday delivery, and I think oh, that was
20 interesting, so that was added, but maybe that
21 caused some alarm bells, and so no, that is not
22 something I am pursuing.

1 VICE-CHAIRPERSON SORG: So, then the
2 operation of the business would be as you are
3 describing it -- and correct me if I am wrong --
4 is the preparation of food, and then you would
5 deliver it to a site?

6 MS. GEDEON: Correct, exactly.

7 VICE-CHAIRPERSON SORG: And then would
8 you plan to build a kitchen in the basement area,
9 how would you be outfitting the area or
10 renovating it, if at all, for the home --

11 MS. GEDEON: I don't think so.

12 VICE-CHAIRPERSON SORG: -- occupation?

13 MS. GEDEON: It would be a kitchen in the
14 basement.

15 VICE-CHAIRPERSON SORG: I don't believe
16 you submitted any plans, did you?

17 MS. GEDEON: No, because I was told that
18 you would have to have the special exception
19 before you would move forward with any other
20 plans. I wouldn't want to -- I mean I wasn't
21 going to build anything in the basement and then
22 find out I couldn't use it for that.

1 VICE-CHAIRPERSON SORG: Sure. Okay.

2 CHAIRPERSON MOLDENHAUER: I just wanted
3 to ask OAG, we don't need plans for this type of
4 approval, I mean typically, we approve projects
5 based on plans, is this a special type of release
6 that wouldn't require -- you can get back with me
7 on that.

8 If there isn't any other questions from
9 Board members, then, at this point in time, that
10 completes that Applicant's presentation. Does
11 that complete the Applicant's presentation?

12 MS. GEDEON: Yes, it does.

13 CHAIRPERSON MOLDENHAUER: Then, I will
14 turn to Ms. Blake. Before you begin, I just want
15 to make sure, you were sworn in correctly, did
16 you stand and --

17 MS. BLAKE: No, I didn't stand.

18 CHAIRPERSON MOLDENHAUER: You did not
19 stand at the time. If you can stand, then, and
20 be sworn in right now, thank you.

21 Mr. Moy, if we can swear in --

22 MR. MOY: I am sorry, yes.

1 Do you solemnly swear or affirm that the
2 testimony you are about to present in this
3 proceeding is the truth, the whole truth, and
4 nothing but the truth?

5 MS. BLAKE: Yes.

6 MR. MOY: Thank you.

7 CHAIRPERSON MOLDENHAUER: Ms. Blake, now
8 is an opportunity for you to present your
9 concerns and your opposition, and if you have any
10 individuals that you want to call as additional
11 witnesses, you can do that, as well.

12 MS. BLAKE: All right. Like I said, I
13 live at 1212 Ingraham Street, which is five homes
14 from the corner home, four or five homes from the
15 corner house. I have a history there. I have
16 been there, I have lived there the majority of my
17 life.

18 It used to be a commercial property. In
19 2007, it was brought to the Board for rezoning
20 because it was Ace Garage Company that was owned
21 by three other homes across the street -- two
22 other homes, which had an office in the basement

1 of the corner house, of 21204, being that the
2 young man who bought the property with the four
3 houses wanted to turn the houses into condos,
4 four-level condos.

5 At that time we had the block rezoned
6 because in the past, it was four houses -- five
7 houses in was commercial and then residential
8 from that point. That was back in the '60s from
9 my understanding. I am a little younger for that
10 part, but I have lived there since I was almost
11 five years old, and for me personally, to have
12 commercial after we did all the planning, the
13 neighbors had come together, we had it rezoned to
14 have it completely residential. That's why the
15 young man previous to this was bankrupt because
16 he could not put the condos in the property that
17 he had wanted to.

18 I am just concerned because of, one, if
19 there is extra cooking or catering even on a mild
20 modification, you would need some assistance,
21 which would also bring in more traffic. We are
22 adjacent to Georgia Avenue, which has a plethora

1 of -- I don't want to say -- carryouts, Popeyes,
2 any kind of food establishment which brings in
3 rodents that we have to pay for now, and to bring
4 in an extra set would just cause, in my opinion,
5 would cause more destruction.

6 The property in the rear where the yard
7 is or where the parking level is, it would have
8 to be, in order for her to park, or to have
9 additional parking, you would also have to have
10 that ground removed, the yard would have to be
11 leveled off, because it sets adjacent.

12 Some houses have garages, some don't,
13 some have driveways where you just park up, but
14 then you also have to walk up several steps to a
15 yard, which is across the whole block, so you
16 would have to level off that grass or did that
17 out in order to cement it in to make more parking
18 available.

19 CHAIRPERSON MOLDENHAUER: This is not an
20 opportunity for you to comment. You will be able
21 to respond at a later point in time.

22 Ms. Blake, you can continue.

1 MS. BLAKE: Oh, okay. And then also,
2 one, my neighbors and I also thought that because
3 it had been rezoned, but it was never put on the
4 books before she purchased the property, or
5 whatever, that it was rezoned to be totally, 100
6 percent residential, but that never occurred, and
7 we have brought some of the paperwork for that.

8 I am just kind of concerned that, you
9 know, it would bring in extra confusion, extra
10 traffic, extra rodents.

11 CHAIRPERSON MOLDENHAUER: Do you have
12 anything else you would like to add?

13 MS. BLAKE: No.

14 CHAIRPERSON MOLDENHAUER: No? Okay.
15 Thank you so much for providing this testimony.

16 Do any Board members have any questions
17 for Ms. Blake?

18 VICE-CHAIRPERSON SORG: Thank you, Madam
19 Chair.

20 I did have one question. In Ms. Gedeon's
21 testimony just now, we heard a couple of sort of
22 differences from at least what the Board had

1 gotten in her application, and I am wondering if
2 any of your opinions that you are sharing are
3 changed by how she is describing today the
4 changes in what she is looking at, how she is
5 looking at operating in here.

6 MS. BLAKE: I mean I am not trying to
7 discourage anybody from doing anything
8 creatively, but I think it would alter our block
9 a lot, you know. We are basically, there is
10 children, I mean, you know, there is traffic,
11 like I say, a lot of traffic off of Georgia
12 Avenue, and we are primarily a quiet, organized
13 neighborhood.

14 You can't tell by today with our members,
15 but an affidavit would have been filed if we had
16 known in time, because a lot of neighbors didn't
17 get the letters. In fact, I didn't get one, I
18 was given one by another neighbor to say that
19 there was a hearing today.

20 So, I think it would be a lot of -- it
21 would upset a lot of people in our block.

22 CHAIRPERSON MOLDENHAUER: Any other

1 questions from Board members?

2 Seeing none, thank you very much for
3 coming down here obviously.

4 At this point, I will turn to the Office
5 of Planning for their report.

6 MS. BLAKE: Excuse me.

7 CHAIRPERSON MOLDENHAUER: Yes?

8 MS. BLAKE: Also, Harold Brooks was here
9 to --

10 CHAIRPERSON MOLDENHAUER: Did you have
11 witnesses that you wanted to call?

12 MS. BLAKE: Yes.

13 CHAIRPERSON MOLDENHAUER: Okay. If you
14 have any witnesses, you can call them now.

15 MS. BLAKE: Harold Brooks.

16 CHAIRPERSON MOLDENHAUER: Okay.

17 MR. BROOKS: Good morning.

18 CHAIRPERSON MOLDENHAUER: Mr. Brooks,
19 were you sworn in?

20 MR. BROOKS: Yes, I was.

21 CHAIRPERSON MOLDENHAUER: Okay.

22 MR. BROOKS: We are here again --

1 CHAIRPERSON MOLDENHAUER: Please identify
2 your name and home address first.

3 MR. BROOKS: Harold Brooks. I am at 1215
4 Hamilton Street, N.W.

5 CHAIRPERSON MOLDENHAUER: Thank you.

6 MR. BROOKS: We are here again to support
7 Mary in opposing this change in the zoning. We
8 fought about this a few years ago, because of the
9 attempt to build a condo, condos in our
10 neighborhood. One of the reasons we are very
11 concerned about even a slight change in this is
12 that once this is opened again, we are going to
13 have to fight another fight somewhere else in
14 regards to somebody putting in a zoning change
15 for a residential neighborhood and buying a home
16 with intentions of putting in a business.

17 This is what we cannot allow to take
18 place. That is why we are fighting with this
19 thing as hard as we can now. We want people to
20 buy commercial. That is what Georgia Avenue is
21 for, plenty of places there where people can buy
22 commercial, and we will support that thoroughly,

1 but not buying a home that we have seen and
2 fought for to make it residential, to keep
3 residential, and then have it slip back into a
4 commercial property.

5 What I did pick up with Ms. Gedeon, she
6 stated that she wants to start off with a small
7 business, but she is holding out that she will
8 change and go forth with a full commercial
9 project if she sees it deeming necessary.

10 Now, the paid-for home that she has
11 bought over the neighborhood, which is just a few
12 hundred thousand dollars, you are going to have
13 to make some decent money in catering. It can't
14 be anything small.

15 So, in order to do that, you have got to
16 have employers -- employees, people working for
17 you, if she is working full time, so you are
18 going to have to hire people. They are going to
19 need a place to park.

20 This is what we are looking at. It's a
21 lot more in running a business than just simply
22 doing something small out of your kitchen and

1 think that you can do it commercially in this
2 area. Washington, D.C. is very expensive. So,
3 we are talking about business licenses, property
4 taxes, we are talking about a great deal of
5 issues that the neighbors are concerned about,
6 and these are large homes.

7 We have issues where different agencies
8 are coming in, and they want to put in nursing
9 homes in these large houses, and so we have to
10 really stay vigilant in our neighborhood to make
11 sure that this doesn't take place, that we are
12 not asleep at the wheel.

13 We would have liked to have been notified
14 earlier. I got a notice, and I thank you for
15 giving me the notice, but like as Mary has
16 stated, Mr. Blaylock is back here also, and Ms.
17 Nickens [ph]. None of them were notified about
18 this property change, and the sign that was
19 placed, was placed in a place where you could not
20 see it from the street.

21 I called and looked for the sign to be
22 placed, and I didn't see it up there. I called

1 and I talked to the Board about that, and they,
2 in turn, called Ms. Gedeon about that sign, it
3 was then placed, but obviously placed a few days
4 later.

5 This is a sign, if you are doing
6 business, and you are going to do business right,
7 they need to start off right, letting people know
8 in the neighborhood what you want to do, making
9 it clear. It didn't sound clear what Ms. Gedeon
10 wants to do with this property in regards to what
11 floor she wants to use, whether she is living
12 there or not.

13 We have been hearing a lot of maybes, but
14 what we want to know is, and we are assuming that
15 this will be a full-fledged commercial business
16 that will be very, very I am sure busy in order
17 for her to maintain that property and keep that
18 property and the sales going for that property.

19 So, we look to have the Board to not
20 reverse its decision it made a few years ago and
21 stopping this. The City paid for this, and we
22 don't want to see the City spend money after

1 money going back and forth over property that
2 they have already deemed residential to go back
3 to commercial. This is something that we don't
4 think that it is money well spent by the City,
5 and we appreciate that consideration and not
6 allowing this to take place.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much.

9 Do you Board members have any questions
10 for this witness?

11 MR. JORDAN: Yes. Where is your house in
12 relation to this property?

13 MR. BROOKS. I am on Hamilton Street, so
14 I am behind her, I am about six doors above her.

15 MR. JORDAN: And prior to the prior use
16 of the basement was, as I understand, an office
17 building for an auto parts?

18 MR. BROOKS: It was a garage door place,
19 and that was back, oh, gee, about 40 years ago
20 when they were using that. So, in recent
21 history, it has been a long time since that was
22 used as a commercial --

1 MR. JORDAN: Do you have knowledge of the
2 just prior use like in 2007?

3 MR. BROOKS: 2007? Nothing, nothing,
4 vacant.

5 MR. JORDAN: Or prior to that, in the
6 year 2000?

7 MR. BROOKS: Vacant, nothing
8 businesswise.

9 CHAIRPERSON MOLDENHAUER: Do Board
10 members have any other questions?

11 MR. HOOD: Madam Chair, I just wanted to
12 talk about the notice.

13 You mentioned that you didn't see the
14 placard --

15 MR. BROOKS: No, but --

16 MR. HOOD: Where was it positioned,
17 because the pictures that we have and the exhibit
18 shows that it was positioned like on an iron
19 fence?

20 MR. BROOKS: Exactly. You had to really
21 stop and look for it. It was an iron fence that
22 was running parallel to another iron fence. You

1 had to drive up the street and really stop to see
2 that. You couldn't see that unless you were
3 really walking up to the property to see what the
4 notice stated. It was a placard on some
5 cardboard with black writing, so if you really
6 weren't looking to see that this was an official
7 notice, you would not think of this as being a
8 notice.

9 So, again, the neighbors were almost
10 caught by surprise by this. This is something
11 that if you are going to do business, fine, let's
12 do business. I have run a couple corporations.
13 I understand about business.

14 MR. HOOD: Okay. Let me ask this. Don't
15 we also do within 200 feet, send a notice? We
16 have something here, Mr. Brooks, that says that
17 you got a notice.

18 MR. BROOKS: I got a notice, yes.

19 MR. HOOD: Oh, so you did get a notice.

20 MR. BROOKS: I got a notice, yes, but --

21 MR. HOOD: But I thought your testimony
22 was that it was a surprise, and it looks like a

1 whole lot of people got a notice.

2 MR. BROOKS: Well, a lot of them, Ms.
3 Nickens, who didn't get a notice, is at 13th and
4 Hamilton Street, didn't get a notice.

5 MR. HOOD: Is she within 200 feet?

6 MR. BROOKS: No, she is not within 200
7 feet.

8 MR. HOOD: She wouldn't get a notice.

9 MR. BROOKS: She wouldn't get a notice.

10 MR. HOOD: You have to be within 200 feet
11 to get a notice, and all these people right here
12 got a notice, so we want to, you know, I think
13 the office properly noticed according to what we
14 have here.

15 MR. BROOKS: Okay, all right.

16 MR. HOOD: I just want to make sure,
17 because that is important, I agree with you.

18 MR. BROOKS: Yes, it is, yeah.

19 MR. HOOD: But I think the office did its
20 due diligence --

21 MR. BROOKS: Okay.

22 MR. HOOD: -- in the process from what I

1 have here as far as giving proper notice within
2 200 feet.

3 MR. BROOKS: Okay, within 200 feet.

4 MR. HOOD: I have a list of names here.

5 MR. BROOKS: Okay. Thank you, Mr. Hood.

6 CHAIRPERSON MOLDENHAUER: And, Ms. Blake,
7 it looks like your notice actually went to the
8 property owner who lives in Silver Spring.

9 MS. BLAKE: That's my parents.

10 CHAIRPERSON MOLDENHAUER: Okay, but you
11 are not on the record right now. Actually, if
12 you want to come back down, you could speak on
13 the record, on the microphone.

14 MR. HOOD: If I could, it is still part
15 of your case, so you can still stay up here.

16 CHAIRPERSON MOLDENHAUER: Yes. Thank you
17 very much.

18 You have to turn on your microphone.

19 MS. BLAKE: Sorry. My parents own the
20 property. They are of age, and I have been living
21 there since the '60s. They moved on, I have
22 lived in the house as being an adult. When the

1 notices were sent out previously, it was sent to
2 the home, not to my parents, because I usually do
3 their work. One is on dialysis, and the other
4 one has had a heart attack.

5 CHAIRPERSON MOLDENHAUER: The notices
6 properly go out to the property owner even if the
7 owner is not residing in the property. So, that
8 is why it went out to your parents' address in
9 Silver Spring.

10 MS. BLAKE: Oh, because they didn't know
11 anything. I am not arguing --

12 CHAIRPERSON MOLDENHAUER: I am saying
13 that obviously, it went out there, so that may be
14 the reason why you had problems getting your
15 notice.

16 MS. BLAKE: Can I make one other comment?

17 CHAIRPERSON MOLDENHAUER: Sure.

18 MS. BLAKE: When Mr. Jordan asked about
19 what the prior use was for that, even though it
20 was owned by Ace Garage Company, the house at
21 1204 was used as their office, not used for
22 bringing in materials or used as actual working

1 out of that building as far as supplies. It was
2 used as an office.

3 He owned three properties. The other two
4 buildings, which had a leveled off back yard,
5 cemented garage, which was also part of that
6 original property before it was split it through
7 the bankruptcy. So, that is why that basement
8 was vacant, it wasn't set up for any kind of
9 commercial use really other than using it, you
10 could use as walk in and out, and use his, you
11 know, supply his paperwork, not even secretary
12 services were used for that property.

13 CHAIRPERSON MOLDENHAUER: Okay. Any
14 other questions from Board members?

15 VICE-CHAIRPERSON SORG: Madam Chair, I
16 just have one other question actually, maybe for
17 both Mr. Brooks and Ms. Blake.

18 You both talked about sort of I think
19 mainly two issues here. One is reestablishing
20 the residential use along the block in the
21 neighborhood, which it sounds like you have
22 definitely organized as a neighborhood coalition

1 to try and work for, and also about some concerns
2 about the particular nature of this home
3 occupation having to do with its service.

4 So, the question, my question is sort of
5 if Ms. Gedeon was proposing a strictly office use
6 that required no one to come to the property,
7 would you have an objection to that? I am trying
8 to get to the nature, the specific nature of what
9 the objection is.

10 MS. BLAKE: If it was used for an office?

11 VICE-CHAIRPERSON SORG: Sure.

12 MS. BLAKE: I really wouldn't see any
13 concern, because, one, I wouldn't fear of maybe a
14 fire or any of that, I wouldn't be concerned with
15 the rodents that would be coming when there is
16 food concerned, and the consumption of the trash
17 that comes with it.

18 You also have to have the traffic coming
19 in as far as bringing in the food and the
20 materials to have it, you know, whether it's
21 daily, weekly, or monthly.

22 CHAIRPERSON MOLDENHAUER: You mean

1 deliveries?

2 MS. BLAKE: Yes.

3 CHAIRPERSON MOLDENHAUER: And Mr. -- I
4 mean Brooks, I apologize.

5 MR. BROOKS: That's all right. My
6 response would be no, not to let that go
7 commercial, because if she doesn't make it in
8 this business, and she decides to sell it, this
9 property now has been changed to commercial, so
10 the next buyer can do what they want in regards
11 to building it commercial if you change the
12 zoning to commercial.

13 CHAIRPERSON MOLDENHAUER: I just want to
14 make sure that this is clear, though. I mean
15 that is actually not accurate, and I want to make
16 sure that you understand exactly, so that
17 everyone is on the same page here.

18 This area was rezoned to an R-1-B, which
19 is one of the lowest levels of zoning. If this
20 was approved, it would only be approved for the
21 basement, and it would only be approved for care,
22 so no other I mean potential use would be able to

1 be used if they didn't then come back for another
2 request.

3 So, if the business did not, you know, do
4 well, and she decided she was just going to start
5 working on her Federal job, then, you know, or
6 let's say she wanted to go and use it as an
7 office building, they would still have to come
8 back before our Board to potentially get that
9 approved, and if she wanted to sell it, the only
10 use that could be used would be a catering use,
11 no other use, other than coming back before our
12 Board again.

13 MR. HOOD: Madam Chair, can I just add a
14 rezoning wouldn't come in front of this Board,
15 that would go in front of the Zoning Commission,
16 and they would not just rezone one house. The
17 regs do not allow us to rezone one house, so I
18 don't think your fears -- and I understand
19 exactly what you are saying, believe me -- I
20 think there is another process she would have to
21 go through, but can I just ask this quick
22 question?

1 Was there ever a time where Ms. Gedeon
2 ever met with you all today?

3 MS. BLAKE: I have never seen her prior
4 to this day.

5 MR. BROOKS: This is the first time I
6 have seen her.

7 MR. HOOD: Sometime that would help out
8 if you bring a case and you meet with the
9 community, because I think some of this rezoning,
10 I remember encroachment upon leaving Georgia
11 Avenue, sometime you have better results when you
12 sit down and talk with the community and exactly
13 explain to them what you probably explained to us
14 today, and I am not saying you did or didn't, but
15 it looks like you haven't spoke to some of the
16 nearby neighbors.

17 Madam Chair, if that is appropriate, if
18 not --

19 CHAIRPERSON MOLDENHAUER: I want it to be
20 questions for Ms. Blake and Mr. Brooks, you will
21 have an opportunity at the end to respond to all
22 of this, and you will be given plenty of time,

1 and we will be able to ask you some more
2 questions, as well.

3 MR. JORDAN: The only thing I wanted to
4 say, not to beat a dead horse, because I saw some
5 still look in the face, the property, if this was
6 approved, the property is not being rezoned, the
7 area is not being rezoned, okay, so we are clear.

8 She is asking for just the basement part to be
9 allowed for this use for this particular purpose,
10 but the zoning stays the same, and I saw even
11 with the explanations, you are still kind of --
12 but the zone will still be the same.

13 MR. HOOD: I still see some unreadiness.

14 MS. BLAKE: I think that is just my
15 personal fear, because even with her back yard,
16 and she is saying pulling up parking lot, again,
17 I don't have pictures, I am sorry I don't have,
18 but she was saying that the parking lot where the
19 commercial property is facing Georgia Avenue,
20 there is a brick, a cement wall that holds up the
21 structure of the yard, so for her to even pull
22 her yard down for parking, whether it's one, two,

1 or three cars, it would have to be leveled off,
2 which would just send ours kind of escalating or
3 gradually going down, as well, in the back yard.
4 That would be a concern for me, as well.

5 I don't know, maybe I am paranoid, but I
6 speak for myself and the neighbors that had to go
7 to work, you know, there were concerns on both
8 sides of 1210 and 1214.

9 CHAIRPERSON MOLDENHAUER: Thank you.
10 Is there any other individual that you
11 want to have testify as part of your case?

12 MS. BLAKE: Yes.

13 CHAIRPERSON MOLDENHAUER: So, do you want
14 to have him come forward, please come forward,
15 sir. You can sit down at the chair to the right
16 of Ms. Blake. You have not been sworn in yet,
17 so, Mr. Moy, if you can swear this gentleman.

18 MR. MOY: Yes, of course.

19 Do you solemnly swear or affirm that the
20 testimony you are about to present in this
21 proceeding is the truth, the whole truth, and
22 nothing but the truth?

1 MR. BLAYLOCK: I do.

2 MR. MOY: Thank you, sir.

3 CHAIRPERSON MOLDENHAUER: Sir, can you
4 please start by introducing yourself with your
5 name and home address.

6 MR. BLAYLOCK: I am sorry. My name is
7 Walter Blaylock, B-l-a-y-l-o-c-k, and I reside at
8 1217 Hamilton Street, N.W.

9 My first question is to Mr. Hood. You
10 said you sent out notices to all of the residents
11 within 200 feet of the property in question. I
12 canvassed people immediately behind me, residents,
13 I mean the property in question, and they said
14 they did not receive this message.

15 MR. HOOD: Mr. Blaylock, you are at 1217,
16 what street? I am sorry.

17 MR. BLAYLOCK: Hamilton.

18 MR. HOOD: Hamilton. 1219 Hamilton,
19 Sylvia Hammond.

20 MR. BLAYLOCK: No, that's another
21 question, I mean another situation. Ms. Hamilton
22 lives, resides in California.

1 MR. HOOD: And your address again is 12 -
2 - Walter Blaylock.

3 MR. BLAYLOCK: Exactly, yeah, that's me.

4 MR. HOOD: I see your name on the list.

5 MR. BLAYLOCK: Yeah, but what about 1209,
6 1211?

7 MR. HOOD: I see 1210, 1213, 1219.

8 CHAIRPERSON MOLDENHAUER: 1211, as well.

9 MR. HOOD: And the reason why I brought
10 that up, because when I first got on the
11 Commission, that was an issue, and this office
12 has worked hard to give people public notice,
13 because at the end of the day, we are residents,
14 too, and I think it is unfair when we are not
15 properly noticed, and that has been a tickler for
16 this office for at least the 13 years I have been
17 here, is to make sure residents of this city get
18 proper notice, and that is why we do this.

19 MR. BLAYLOCK: My primary concern is the
20 number of people that would be employed at this
21 residence.

22 CHAIRPERSON MOLDENHAUER: Let's do this

1 here. I think I am hearing from Board members
2 that, you know, there is definitely some concern,
3 and you all were in the audience when the prior
4 cases went forward.

5 Let's talk a little bit, the Georgetown
6 case, that was a good example of the property,
7 talking to the neighbors and getting some
8 feedback. I did also look up at one of our OAG
9 provided me with some reference that if we review
10 this application, and if we potentially were to
11 approve it, approvals of an application under
12 Section 3125.7 of our regs require that approval
13 of plans be submitted for construction of a
14 building or any renovations or alterations, and
15 from what I understand from the Applicant, your
16 planning, if you would, if this potentially would
17 be approved, not saying it would be, but if it
18 was approved, that you would be doing renovations
19 in the basement, is that correct? Can you
20 respond to me?

21 MS. GEDEON: I am sorry.

22 CHAIRPERSON MOLDENHAUER: That's okay.

1 Is that correct, you would be doing?

2 MS. GEDEON: It would just be upgrading
3 to a kitchen, it wouldn't be any type of major
4 construction, but yes, it would be --

5 CHAIRPERSON MOLDENHAUER: But you would
6 be doing some sort of construction and putting in
7 a kitchen.

8 MS. GEDEON: Yes, adding a kitchen.

9 CHAIRPERSON MOLDENHAUER: My issue would
10 be we wouldn't be able to decide this case today
11 anyway, because we would need very basic plans.
12 I am not talking about, you know, going out and
13 hiring a huge architectural firm, I mean having
14 plans that would show a kitchen and where it
15 would be, and how that would change potentially
16 the basement.

17 So, what my recommendation would be is
18 why don't we allow the ANC to present their
19 testimony, and Office of Planning, just to get
20 some perspective, and we will finish up the
21 hearing, but what I think I am going to do is I
22 am going to actually continue this hearing to

1 another date, allowing the neighbors -- and you
2 indicated that you live there as a primary
3 resident, is that correct -- so, you are there,
4 you are living there full time, you know, get to
5 know your neighbors, and maybe sit down, you
6 know, maybe have some eggnog and talk a little
7 bit about what your concerns are, and maybe if
8 there is a way -- there may not be a way -- we
9 always encourage conversation, but we do know
10 that sometimes it may not produce something, but
11 we hope it does, where maybe you can offer, you
12 know, confirm, show that you have a pest control
13 rodent extermination system, talk to them about
14 parking, explain to them again about the scale of
15 the project, about the employees, the fact that
16 you -- the representations that you have made to
17 us, and have more of a dialog.

18 No matter what, you need to have plans,
19 so we have to continue this no matter what.

20 MS. GEDEON: Okay.

21 CHAIRPERSON MOLDENHAUER: At this point,
22 I was going to say that I did actually speak to a

1 few neighbors. I mean one of the conversations
2 was similar to what was presented here, where
3 they were like no commercial, you are rezoning,
4 and I tried to explain no, this is a home
5 occupation, this is not changing the zoning, and
6 it seems like that point just wasn't -- it wasn't
7 understood, and even though I tried to explain
8 it.

9 Some of the neighbors aren't concerned,
10 because, like I said, my house backs to the whole
11 Georgia Avenue commercial area, and then I spoke
12 to a few residents, one resident said, okay,
13 well, I don't care because you are just -- I mean
14 because it's your, you know, I know plenty of
15 people that do catering on the side, it's not
16 like you are building a business.

17 And as far as, like I said, I do work
18 full time for the Federal Government, I purchased
19 the property based on that salary, so I just
20 heard comments like okay, I am going to have to
21 hire all these people for it to be, you know, a
22 viable business because I need money, and that's

1 not the case. I mean it's not the case where I
2 have to go out and hire, I don't need to hire
3 anyone to do a small-scale catering.

4 As far as the lot, my lot is not two
5 levels, like I said, my property is at the end,
6 so I mean I guess obviously, she hasn't seen my
7 back yard, it's not two levels. The driveway is
8 just slightly raised, but it's not two levels.

9 I mean if I were to move the wooden
10 fence, you can go straight from the alley, pull
11 straight up to the deck. There is just a few
12 things that I would like --

13 CHAIRPERSON MOLDENHAUER: I think if you
14 would provide us pictures of that --

15 MS. GEDEON: There were some pictures --

16 CHAIRPERSON MOLDENHAUER: We don't have
17 pictures of the actual, the rear, to be able to
18 show the ability to maybe pull up, you know, if
19 you have to load platters or things like that,
20 the ability to do that, you know.

21 MS. GEDEON: I did provide pictures of
22 the back --

1 MR. JORDAN: Let me try to help you here,
2 if I may, Madam Chair. The Chair is giving you
3 the opportunity, throwing you a bone to have
4 conversation --

5 MS. GEDEON: Okay. I just wanted --

6 MR. JORDAN: -- and sending you some
7 signals. I am just trying to help you, so that
8 you know what the Chair is doing.

9 MS. GEDEON: Thanks. Okay.

10 CHAIRPERSON MOLDENHAUER: Yes, I
11 appreciate that, because I am trying to provide
12 an opportunity for everyone to work together, an
13 opportunity, where we are not going to decide
14 this today, where I think that there is some
15 limiting information that we have.

16 We talked about, you know, essentially
17 discussing with the neighbors or presenting to us
18 at the continued hearing, information regarding
19 extermination, and also there may be some issues
20 regarding trash or providing some additional
21 information as to how you are going to deal with
22 that, because the neighbors have identified, you

1 know, and the party status, have identified
2 something which is valid, that if we were to
3 grant this, that we are not limiting the scope of
4 what catering you could do.

5 So, you could potentially, if things go
6 well, increase the scale, and because of that,
7 these are the things that we want to make sure
8 that we are protecting against, such as trash and
9 rodents, things to that effect.

10 So, those are the things that I would
11 recommend that you think about and provide
12 additional evidence to us, and hopefully, have a
13 conversation and meet with these individuals
14 prior to a continued hearing.

15 But that being said, we are going to put
16 this on pause. I am going to just simply ask
17 Office of Planning to give maybe a brief report,
18 because obviously, this is going to be continued,
19 so if there is any additional supplemental
20 information we may get from the Applicant between
21 now and then.

22 MR. JACKSON: I think there have been

1 some issues raised that need additional
2 background, so I was going to provide additional
3 background and also touch on a couple of key
4 points that might be pertinent in your continued
5 negotiations.

6 First of all, the history of the
7 property. The Office of Planning pulled some of
8 the COs on the property, and in 1959, the
9 basement was a retail sales, oil burner and
10 refrigerator controls operation. That had been
11 the basement in the building in 1950s, and then
12 in 1984, there was the headquarters for a
13 consulting business. Apparently, that was on the
14 second floor, and then in 2006, the CO was issued
15 for an office use on the second floor.

16 Then, after that, permits were issued for
17 renovation of the building to renovate the top
18 two floors back to residential and to continue
19 the use of the ground floor as office, and we
20 know that because that was what was spelled out
21 in the permit application.

22 So, it has been used for retail, office,

1 health institution maybe, and the last use,
2 office, nonresidential use on the property was
3 office, and, of course, then, after that, the
4 assessors indicate that the property was vacant.

5 Now, the Applicant is asking for a
6 catering use, and I think it would be worth
7 reading the definition of caterer. A caterer
8 under the Zoning Regulation is a person or
9 business that prepares and provides food or
10 beverages, or both, along with the necessary
11 accessories for serving these products for
12 ordinary home consumption.

13 The home and beverages are provided for
14 events that are located off the business
15 established premises, so it is always off site.
16 Any establishment that receives more than 75
17 percent of its sales from orders placed less than
18 three hours in advance are not considered a
19 catering establishment. So, a caterer prepares
20 food to go off site, and the orders are always
21 received at least three hours in advance to meet
22 that definition.

1 So, the Certificate of Occupancy that
2 they applied for originally was denied. It was
3 denied because this is not recognized as an
4 acceptable accessory use. So, she wants to, her
5 explanation to us, the Office of Planning,
6 indicated that she wants to establish this as a
7 home occupation.

8 So, what is a home occupation? Well, let
9 me go to the Zoning Regulations. The home
10 occupation is uses that are allowed as accessory
11 to residential use. What is accessory? Well,
12 the word "accessory" means that it has to be a
13 small component of the overall use of the site.

14 So, if you have -- you may know people
15 who have homes, and they have a small room where
16 they do most of their tax -- they do tax returns,
17 okay, that is a home occupation.

18 This use doesn't qualify as a home
19 occupation because her ground floor is one-third
20 of the building, almost 500 square feet. Home
21 occupations are limited to a much smaller, 250.
22 square feet. Now, as an aside, this is Office of

1 Planning's report, specifically says limits the
2 use to the ground floor. That way, it does not
3 creep, it doesn't creep and start to get two
4 floors and three floors, it will always be one
5 floor. So, the approval would be for one-floor
6 use, that would a third of the size of the
7 building, but still be minor compared to the
8 other uses.

9 So, during our discussion with the
10 Applicant, what we did was we gave them a list of
11 the standards for home occupation. They went
12 through each one and said which ones they would
13 operate in accordance with. They met all the
14 standards.

15 So, what she is proposing in terms of the
16 scale of issues would be consistent with what the
17 regulations would require for a home occupation.
18 That was her presentation to us.

19 With regard to the parking on site, if I
20 could refer the Board to the aerial photograph
21 and zoning map in the back of the application,
22 you note that the site in question is right on

1 the edge of the C-2-A zoned district, but to the
2 south of there, there is a gray area that is the
3 parking lot.

4 Okay. That gray area, based on the scale
5 of the aerial, that gray area is roughly 18 feet
6 by 36 or 40 feet. It appears to be large enough
7 for four vehicles, is a unusually large rear
8 parking pad, and I assume that was because the
9 office use is expected to have more cars on the
10 site.

11 This is obviously large enough to provide
12 the two spaces the Applicant is proposing, and
13 some space to have dumpsters and all right there,
14 that would easily be accessible from the road.

15 So, in brief, that was just background to
16 give you a little more background about the
17 Office of Planning's discussions with the
18 Applicant. I would also note that the Applicant
19 cannot use the first floor for a garage. That
20 was something we asked her about, because there
21 is no curb cut along the street. You can't drive
22 a car up there and back, and the Department of

1 Transportation would not allow an additional curb
2 cut along the street, because it is too close to
3 the intersection.

4 So, that is again additional background.

5 With that, our report is available on line, and
6 if you like, I can just go to the Office of
7 Planning's web site, if it is not there now, it
8 will appear as a PDF on line. You can download
9 it and read it, but essentially, we just look at
10 the unique circumstances, that she has a floor
11 that is not connected to the upper floors.

12 The undue hardship is that it is
13 difficult to use the entire building for any one
14 use because it is separated. We think that the
15 scale of the proposal they are presenting is
16 consistent with the home occupation, which is
17 something that would be normally allowed in a
18 residence, and on that basis, we are supporting
19 it, we recommend approval.

20 But again I think it is good thing for
21 the Applicant and neighbors to continue to
22 discuss in more specificity is always good, and

1 if she can put together, hopefully, they will be
2 able to put together the case that deals with the
3 specifics of your concerns, such that there will
4 be a strong one to present to the Board.

5 We are available to answer questions, but
6 that concludes our brief summary with background.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much.

9 Does the Applicant have any questions for
10 the Office of Planning?

11 MS. GEDEON: No.

12 CHAIRPERSON MOLDENHAUER: Can you put
13 that on the record, please? I appreciate that.

14 MS. GEDEON: No, I do not.

15 CHAIRPERSON MOLDENHAUER: Ms. Blake, do
16 you have any questions for the Office of
17 Planning?

18 MS. BLAKE: No.

19 CHAIRPERSON MOLDENHAUER: Can you also --
20 I don't know if your microphone is on --

21 MS. BLAKE: No.

22 CHAIRPERSON MOLDENHAUER: Thank you.

1 Do Board members have any questions?

2 CHAIRPERSON MOLDENHAUER: I don't see
3 any.

4 At this point in time, we will turn to
5 the ANC report.

6 MS. MYERS: Good morning. My name is
7 Janet Myers. I am the ANC Commissioner for 4CL2.

8 I am here representing the 4C Commission. My
9 address is 5005 13th Street, N.W., Washington,
10 D.C., and the zip code is 20011.

11 I am here today, and I am glad that Madam
12 Chair and Commissioner Hood, you made the
13 statements about allowing the residents an
14 opportunity to speak to the Applicant.

15 That is one of the reasons why the ANC
16 protested the application, not necessarily that
17 we don't support Ms. Gedeon's catering business.
18 What our concern was that the community had not
19 had an opportunity to vet this out.

20 Ms. Gedeon approached me in August at one
21 of our ANC community meetings, and at that time,
22 when she expressed to me that she was trying to

1 get explore doing a catering business in her
2 basement part of her home, what I expressed to
3 her was that she would need to at least get in
4 contact with her neighbors, that along with her
5 application we received at the ANC, was the
6 addresses of each of the neighbors that would be
7 greatly impacted, and I suggested to her that she
8 perhaps start a dialog with the community.

9 She did appear at the last month,
10 November ANC community meeting as a whole, and as
11 well as some of the residents that were in
12 opposition of her having this establishment. At
13 that time, what we expressed, what I expressed as
14 -- I am the Vice-Chair, and I was actually
15 chairing that meeting -- I expressed to Ms.
16 Gedeon that as a commission, we did not feel
17 comfortable at this time in supporting her
18 application because it had not been vetted out
19 with the community.

20 What I offered to her was to ask for
21 consideration to postpone it to allow me to have
22 a community meeting that would involve her and

1 the residents that would be impacted.

2 The other commissioners had agreed to
3 participate, and we, in fact, offered to perhaps
4 have someone from Zoning and the Office of
5 Planning to come out to that community to
6 reassure the community about the zoning process,
7 as well as Office of Planning to explain what
8 their position would be in this effort.

9 So, actually, essentially what you are
10 granting her today is essentially the reason why
11 I took off to come down to support an ask that,
12 because as my fellow commissioners, that is what
13 we would really like to do is to allow the
14 community and Ms. Gedeon an opportunity to come
15 together.

16 The Georgetown presentation, I was there
17 for that, and that is essentially what I had
18 discussed to her was, you know, this community
19 has really been saturated with churches and
20 businesses and residents buying homes and
21 converting them to schools and small businesses,
22 so it has been a history, and the 4C02 community,

1 if you look at the zoning map, it looks like it
2 is the largest ANC Commission, but essentially,
3 it is one of the largest, it is large because we
4 have most of the churches, most of the
5 businesses, and the schools that have been
6 converted, we have I believe three schools that
7 have been converted that were residence, that
8 have been converted to schools, and so I
9 understand the sensitivity of the community, and
10 I do actually have their documentation, and I
11 would like to present to you, where it was
12 rezoned and remapped, and all of that.

13 They did, and they took a lot of time in
14 2006 to assure that this property wasn't going to
15 be re-commercialized.

16 And so I am sensitive to the residents,
17 and I am sensitive to Ms. Gedeon, because as an
18 ANC Commissioner, we support our residents, and
19 we support the small businesses and the mom and
20 pop businesses in the community, and, you know, I
21 don't think it's anything personally, as I
22 explained to Ms. Gedeon, I don't think it's

1 anything personally per se against her, it's just
2 that the history of what the community has gone
3 through as far as the businesses, and so to be
4 more sensitive to allow the community to come
5 together, and at least allow, you know, there are
6 so many people that moved in the community that
7 are not aware of the history.

8 Perhaps the same way that at Georgetown,
9 they allow the community to take a tour, to come
10 and see exactly what she is trying to do, and I
11 think that, you know, that this dialog needs to
12 take place.

13 So, I am glad that you are granting this
14 opportunity, because I think it's a win/win for
15 the ANC, it's a win/win for the community, and
16 it's a win/win for Ms. Gedeon.

17 This is the practice that we have been
18 trying to do in the 4C Commission is whenever a
19 business is being established, that we try to do
20 like a building, use the green, man, we try to do
21 all kinds of things to bring the community
22 together, to make it so that we can all co-exist

1 together.

2 CHAIRPERSON MOLDENHAUER: Thank you very
3 much for coming down and presenting.

4 Are there questions from Board members?

5 MR. HOOD: She had a copy of the order.
6 I am just curious, the order of the rezoning.
7 Could we submit that?

8 CHAIRPERSON MOLDENHAUER: Yes,
9 absolutely, yes.

10 MR. HOOD: I really would like to see
11 that, because we work hard down here, I am just
12 curious if I was around during that time, if we
13 can give it to staff, that would be great.

14 Commissioner, I will give you a chance to
15 go back to the mike, I also wanted to know from
16 Commissioner Myers when was their next ANC
17 meeting.

18 MS. MYERS: Our next ANC meeting actually
19 is tomorrow, 6:30, at the Petworth Library.

20 CHAIRPERSON MOLDENHAUER: Wonderful, and
21 is there any way that you could get an emergency
22 matter added to that?

1 MS. MYERS: Yes, I can go back -- I am
2 the Vice- Chair -- but I can go back and check
3 with the Commissioners.

4 CHAIRPERSON MOLDENHAUER: Ms. Gedeon,
5 would you -- I mean I know you have got probably
6 a lot of work to do, but would you be able to
7 maybe pull together a lot of this information and
8 being able to present tomorrow would obviously
9 benefit you, because that means that maybe we can
10 come back before the Board at a sooner date
11 rather than having to wait until their January
12 meeting.

13 MS. GEDEON: All right. I can be there
14 tomorrow.

15 MS. MYERS: I am sorry, can I just say
16 one thing? She did come last month, Ms. Gedeon
17 came last month to the Commission and presented.
18 She did do a presentation before the 4C
19 Commission.

20 CHAIRPERSON MOLDENHAUER: Yes, but I
21 think that what we are saying is that the Board
22 is going to need some additional documentation,

1 and that additional information may be beneficial
2 to present to the community, as well.

3 As I said earlier, that would be
4 information about, you know, confirming the
5 information about the parking, and obviously, I
6 know you have presented that, but there obviously
7 were still questions today also maybe clarifying
8 that issue of parking, clarifying the issue of
9 employees, clarifying the issue of trash and
10 maybe an extermination service and things to that
11 effect to address some of those issues.

12 So, Ms. Gedeon, if you are available,
13 then, to go tomorrow, I think that would be
14 obviously fantastic.

15 Do any Board members have concerns about
16 that?

17 VICE-CHAIRPERSON SORG: Madam Chair, I
18 just want to sort of, I think I want to voice
19 maybe a slightly different opinion. I know that
20 you are sort of working on a trajectory or
21 schedule here, but I think that Ms. Gedeon should
22 be aware that the additional information that

1 this Board would be looking for is significant.

2 For example, the regulation that the
3 Chair cited earlier that requires us to approve
4 plans for any renovations no matter how minor
5 they are to the basement that you are planning to
6 use here.

7 It is a regulation that we cannot ignore,
8 and that is something that will take you some
9 time, and part of the reason for that requirement
10 is that when you show us the kind of kitchen that
11 you are going to put in this place, we are going
12 to know are you showing us a 16-burner stove or
13 are you showing us a 4-burner stove just like in
14 the kitchen upstairs.

15 I think those kind of documentation as
16 complete as it can be, and this is my opinion,
17 will help you, because personally, I feel from
18 your testimony that you, yourself, still have
19 some questions about what you are planning on
20 doing here, and then exercise in providing more
21 complete documentation that the Chair is asking
22 for and that is also required in these

1 proceedings may help you flesh out a little bit
2 more what you are thinking and also how you want
3 to talk about that, and will really I think help
4 the residents that have come down here today, who
5 clearly have a very long history of organizing in
6 this neighborhood, and will help you work more in
7 conjunction with Ms. Myers, too, I recommend for
8 your position and for the organizing force that
9 you are trying to bring here.

10 So, I would just caution this Board from
11 trying to, you know, rush any schedule. I don't
12 think that that is what we are doing necessarily,
13 but so that we make sure that the Applicant is
14 fully aware of the significant nature of what we
15 will be looking for in our next hearing.

16 Thank you, Madam Chair.

17 MR. HOOD: Madam Chair, I also would like
18 to add to our Vice-Chairman Sorg, as I looked at
19 the order as being one of the participants who
20 voted for the rezoning along with and I see Mr.
21 Brooks and Ms. Blake's name in this order, I just
22 remembered. I really think that it is key that

1 that negotiation take place or try to at least
2 work it out and get a full understanding.

3 I am not saying which way it is going to
4 go or not, but I do agree with the Vice-Chair
5 that maybe we shouldn't rush this. I don't
6 remember how long this rezoning took, but looking
7 at the order, my colleagues and I, I am sure we
8 vetted it and I understand the harmful
9 encroachment upon the homes in the neighborhood
10 and changing the character and some other things,
11 but I think with a clear understanding of what is
12 exactly taking place and what is going on, I
13 think that a meeting of the minds or meeting has
14 to be had even though we still have to apply the
15 rule, I understand that.

16 But I also would agree with Ms. Sorg,
17 maybe we shouldn't look at the Commission meeting
18 tomorrow and think everything is going to happen,
19 maybe we need to go look at January's meeting,
20 and give everybody an opportune time to be able
21 to weigh in.

22 Thank you, Madam Chair.

1 CHAIRPERSON MOLDENHAUER: I agree with
2 both Vice-Chair Sorg and with Mr. Hood. I was
3 trying to accommodate the schedules, but I think
4 what we will do is we will push this off then and
5 I will set it for a decision -- set it for a
6 continued hearing. I am trying to also see when
7 potentially Mr. Hood is going to be back with us.

8 Mr. Hood, you are not back with us until
9 March. Would you be willing to come in for this
10 hearing?

11 MR. HOOD: If we could put that towards
12 the end, or I will make it for this.

13 CHAIRPERSON MOLDENHAUER: Okay. I am
14 looking at the 24th of January.

15 MR. HOOD: Either the first case or the
16 last case.

17 CHAIRPERSON MOLDENHAUER: Why don't we
18 put this as the first case for the 24th of
19 January, so it will be 9:30 a.m., first case on
20 the calendar, which would mean that any
21 additional submissions to our office would have
22 to be submitted to our office no later than

1 January -- let me see here -- no later than
2 January 19th.

3 So, that means that if the ANC has any
4 submission, the 19th, everything has to be in by
5 the end of the 19th. Obviously, you will be
6 submitting plans, you will be submitting
7 additional information by the 19th, and if there
8 is any additional comment by -- if you are
9 satisfied and want to withdraw your opposition,
10 if you don't want to withdraw your opposition,
11 and you still have some concerns, and you want to
12 present any additional written submissions, the
13 19th is required for all parties.

14 Any additional information that you
15 provide, I would ask that you submit a copy to
16 Ms. Blake, since Ms. Blake is a party to the
17 case. Okay?

18 Are there any questions?

19 MS. GEDEON: I just have a question. So,
20 when does the ANC meet in January?

21 MS. MYERS: We meet the second Wednesday
22 of every month.

1 CHAIRPERSON MOLDENHAUER: So, that would
2 be the 10th -- no 11th, the second Wednesday.
3 The 4th is your first Wednesday, and the 11th is
4 your second Wednesday.

5 MS. GEDEON: Okay. So, any plans that I
6 have, I would submit it to the ANC, and then also
7 submit it to --

8 CHAIRPERSON MOLDENHAUER: The BZA, Office
9 of Zoning, by the 19th.

10 MS. GEDEON: Okay. Do I just put the
11 case number of attention?

12 CHAIRPERSON MOLDENHAUER: The case number
13 is fine.

14 MS. GEDEON: Okay.

15 MS. MYERS: And we would probably have
16 you come back in to meet before the Commission
17 because the Commission may want to change their
18 opposition as well.

19 MS. GEDEON: Okay.

20 CHAIRPERSON MOLDENHAUER: Thank you all
21 for coming down, and this case then will be
22 continued, and the record will be left open for

1 additional submissions.

2 Thank you.

3 MS. GEDEON: Thank you.

4 CHAIRPERSON MOLDENHAUER: We are finished
5 for the morning, so we will reconvene at one
6 o'clock.

7 [Luncheon break.]

8 CHAIRPERSON MOLDENHAUER: This hearing
9 will please come to order.

10 Good afternoon, ladies and gentlemen. We
11 are located in the Jerrily R. Kress Memorial
12 Hearing Room. Today is December 13th, 2011,
13 Public Hearing in the Board of Zoning Adjustment
14 for the District of Columbia.

15 My name is Meridith Moldenhauer,
16 Chairperson. Joining me today, to my right, is
17 Lloyd Jordan, Mayoral Appointee. To my left is
18 Vice-Chairperson Nicole Sorg, Mayoral Appointee.
19 To my far left is representative of the Zoning
20 Commission, Chairman Anthony Hood.

21 Copies of today's agenda are available to
22 you and are located to my left on the wall bin

1 near the door.

2 Please be advised this proceeding is
3 being recorded by a court reporter and is also
4 being webcast live. Accordingly, I must ask you
5 to refrain from any disturbing noise or actions
6 in the hearing room.

7 When presenting information to the Board,
8 please turn on your microphone, first stating
9 your name and home address. When you are
10 finished speaking, please turn off your
11 microphone, so that your microphone is no longer
12 picking up any sounds or background noise.

13 All persons planning to testify either in
14 favor or in opposition are to fill out two
15 witness cards. These witness cards are located
16 to my left on the table near the door, on the
17 tables in front of you. Please provide the
18 witness card to the court reporter sitting to my
19 right, at the time that you testify.

20 All individuals wishing to file any
21 additional written testimony not provided already
22 to the Board, or any supplemental documentation

1 today, must submit an original along with 12
2 copies to the Secretary for distribution. If you
3 do not have the requisite number of copies with
4 you, you can go across the hall to the Office of
5 Zoning copy machine and make copies prior to your
6 hearing.

7 The order of procedures of special
8 exceptions and variances are as follows: one,
9 statement of the Applicant and Applicant's
10 witnesses; two, parties and persons in support;
11 three, parties and persons in opposition; four,
12 reports of the ANC; five, government reports; and
13 six, closing and rebuttal statements of the
14 Applicant.

15 Pursuant to Section 3117.4 and 3117.5,
16 the following time constraints will be
17 maintained. The Applicant, Appellant, persons
18 and parties except the ANC including their
19 witnesses will be given 60 minutes collectively.
20 The appellees, persons and parties, except the
21 ANC in opposition, including their witnesses,
22 will be given 60 minutes collectively.

1 Individuals will be given 3 minutes, and
2 organizations will be given 5.

3 These time restrictions do not include
4 cross-examinations or questions from the Board.
5 Cross-examination of witnesses is permitted by
6 the Applicant or party. The ANC within which the
7 property is located is automatically a party to a
8 special exception or a variance case.

9 These time restrictions do not include
10 cross-examinations or questions from the Board.
11 Cross-examination of witnesses is permitted by an
12 Applicant or party. Nothing prohibits the Board
13 from placing reasonable restrictions on
14 cross-examination, including limitations on time
15 and the scope of cross-examination.

16 The record will be closed at the
17 conclusion of each case, except for any material
18 specifically requested by the Board. The Board
19 will specify the time when that information must
20 be submitted to the Board, and individuals must
21 submit it by that date. After the record is
22 closed, no other information will be accepted by

1 the Board.

2 The District of Columbia's Administrative
3 Procedures Act requires that a public hearing be
4 held in the open before the public. Pursuant to
5 Section 405(b) and 406 of the Act, the Board may,
6 consistent with the rules and procedures and the
7 Act, enter into a closed meeting for purposes of
8 seeking legal counsel on a case per D.C. Code
9 2-575(b)(4) and/or deliberating on a case
10 pursuant to D.C. Code 2-575(b)(13), but only
11 after providing the necessary Public Notice and
12 in the case of emergency closed meeting holding a
13 roll call vote.

14 The decision of the Board must be based
15 exclusively on the record. To avoid any
16 appearance to the contrary, the Board requests
17 that parties present not engage members of the
18 Board in conversation.

19 Please turn off all beepers and cell
20 phones at this time as to not disturb these
21 proceedings.

22 The Board will now consider any

1 preliminary matters. Preliminary matters are
2 those that relate to whether a case will or
3 should be heard today, such as a request for a
4 postponement, continuance or withdrawal, or
5 whether proper adequate notice of a hearing has
6 been given.

7 If you are not prepared to go forward
8 today or if you believe that the Board should not
9 proceed, now is the time to raise such a matter.

10 Mr. Secretary, do we have any preliminary
11 matters?

12 MR. MOY: Madam Chair, there is a
13 potential preliminary matter to the last case in
14 the afternoon. The staff would suggest that the
15 Board address that when I call the case.

16 CHAIRPERSON MOLDENHAUER: Thank you.
17 Then, all individuals wishing to testify, if you
18 can please stand and the oath will be
19 administered.

20 MR. MOY: Do you solemnly swear or affirm
21 that the testimony you are about to present at
22 this proceeding is the truth, the whole truth,

1 and nothing but the truth?

2 [Witnesses sworn en masse.]

3 MR. MOY: Ladies and gentlemen, you may
4 consider yourself under oath.

5 CHAIRPERSON MOLDENHAUER: Mr. Moy, why
6 don't we call the last case first for the day.

7 Application No. 18254

8 MR. MOY: Good afternoon, Madam
9 Chairperson, members of the Board, that would be
10 Application No. 18254. This is the application of
11 Brian O'hora, pursuant to 11 DCMR 3104.1 and
12 3103.2 for a variance from the alley width
13 requirements under Subsection 2507.2, variances
14 from the lot occupancy requirements under
15 Subsections 403.2, and 772, variances from the
16 rear yard requirements under Sections 404, and
17 774, variances from the side yard requirements
18 under Sections 405 and 775.2, a variance from the
19 floor area ratio requirements under Subsection
20 2514.1(d), and a special exception from the
21 density transfer provisions under Subsection
22 2514.2. All of this is to allow the construction

1 of a three-story, one-family dwelling on an alley
2 lot in the R-4 and C-2-A Districts at premises
3 1303 Linden Court, N.E., property located in
4 Square 1027, Lot 814.

5 CHAIRPERSON MOLDENHAUER: Good afternoon.

6 If the parties will introduce themselves.

7 MR. HOENIG: My name is Michael Hoenig.
8 I am at 1318 G Street, N.E., Washington, D.C.
9 20002. This is my wife Margarita Orozco, at the
10 same address, and we were here to speak in
11 opposition to the variance request.

12 CHAIRPERSON MOLDENHAUER: Is the actual
13 Applicant present?

14 [No audible response.]

15 CHAIRPERSON MOLDENHAUER: Seeing that the
16 Applicant is not present, then, what we will do
17 is pursuant to Section 3100.6, I will provide
18 reasonable notice to dismiss this case for
19 failure to show up.

20 We are under the impression that
21 potentially they were interested in withdrawing
22 it, but we have not gotten any written

1 information about that, so we will provide them
2 adequate notice that we have the intention to
3 dismiss them for deficiency of providing
4 sufficient documentation in the case and for
5 failure to show.

6 We will rehear this case next week at
7 which time if they continue to fail to show up or
8 provide any additional submission, the case will
9 be dismissed.

10 So, put this on the calendar for December
11 the 20th.

12 MR. MOY: Thank you, Madam Chair.

13 Application No. 18287

14 MR. MOY: The next application before the
15 Board for action is Application Number 18287.
16 This is the application of CAS Riegler Real
17 Estate Development, pursuant to 11 DCMR 3104.1
18 and 3103.2, for a variance from the lot occupancy
19 requirements under Subsection 772.1, a variance
20 from the closed court requirements under Section
21 776, a variance from the nonconforming structure
22 provisions under Subsection 2001.3, a variance

1 from the street frontage limitations on
2 eating/drinking establishments under Subsection
3 1901.2, and a special exception from the rear
4 yard provisions under Subsection 774.2. All this
5 relief is needed for an addition to and
6 conversion of an existing building to a mixed-use
7 residential building with ground floor retail in
8 the ARTS/C-3-A District at premises 1324 14th
9 Street, N.W., property located in Square 211, Lot
10 32.

11 Madam Chair, in the record, the updated
12 drawings and plans are attached to Exhibit No.
13 24. I have with me to pass to the Board members,
14 which appears to be a new set of drawings.

15 Other than that, that completes the
16 staff's briefing, Madam Chair.

17 MR. JORDAN: Madam Chair, do we know if
18 those new sets of drawings and plans change any
19 of the recommendations and things we see from OP,
20 and is there something we need to get before we
21 proceed?

22 CHAIRPERSON MOLDENHAUER: I don't know.

1 Why don't we call the Applicant forward. They
2 can introduce themselves for the record, and I
3 think that will be one of the preliminary issues
4 that we ask.

5 MR. KADLECEK: Hi. I am Cary Kadlecek on
6 behalf of the Applicant. Just to clarify your
7 point, the drawings that were submitted were just
8 the PowerPoint presentation, but they are no
9 different than what we submitted in our
10 prehearing submission.

11 CHAIRPERSON MOLDENHAUER: They were
12 submitted to Mr. Moy. I don't believe that the
13 Board actually had gotten them yet. They will be
14 distributed in a moment.

15 MR. KADLECEK: Okay. There is the
16 PowerPoint presentation.

17 CHAIRPERSON MOLDENHAUER: Before we get
18 started, let's just go through -- there are a lot
19 of letters of support in this case, and we have
20 OP's partial approval. Obviously, I will ask
21 Board members. I think that maybe actually Ms.
22 Sorg was interested in getting an overview of

1 this case. Oh, no, I am sorry. I am getting the
2 cases confused now, too.

3 I don't think that there is as need to go
4 through everything, the only issue that, as OP
5 pointed out and as we also have a concern with in
6 my reading of the record, is your request for the
7 relief under 1901.6.

8 If you can, one, clarify what
9 measurements you have made to date, why you
10 believe you need this relief now, because my
11 understanding there was some level of confusion
12 potentially in regards to the prior way that the
13 linear feet was measured in regard to the entire
14 overlay zone versus now it is just a block
15 calculation.

16 So, my question is, is this relief that
17 is absolutely needed right now, or is this relief
18 that you are thinking may be needed between this
19 point and when you apply for your permit, that
20 there may be somebody that jumps ahead of you in
21 line? If that is the case, I definitely have
22 some questions about that.

1 If you can clarify that for me just to
2 make sure that we are all on the same page in
3 regards to how linear footage is measured in
4 regards to an eating establishment, a restaurant,
5 and then exactly the type of relief that you are
6 looking for.

7 MR. KADLECEK: Sure. My thought is that
8 we do this. I can give a brief introduction of
9 everybody who is with me. I have actually, in my
10 opening statement, I think some answers to your
11 questions. I anticipated that there would be
12 questions about this, and I would like to give a
13 brief overview of the project only because it has
14 changed since we filed our initial application.

15 We want to make sure the Board
16 understands how the project has changed and the
17 great length, in fact, that the Applicant has
18 gone to, to accommodate neighbor concerns in
19 getting the project that we have today.

20 So, just as a matter of introduction, I
21 am Cary Kadlecek with the law firm of Goulston &
22 Storrs. To my left is Kevin Riegler of CAS

1 Riegler Developers, the Applicant. To my right
2 is Jeff Goins. He is of PGN Architects. He is
3 the project architect. To his right is Tony
4 Hensley, also of PGN Architects.

5 I am going to skip the discussion about
6 the building parts of the relief, and I am just
7 going to go to the part of my opening statement
8 that deals with the frontage requirement.

9 To answer your initial question about how
10 it is measured, as you probably are aware, the
11 regulations were amended about a year and a half,
12 two years ago. The way it is measured now is
13 eating and drinking establishments are limited to
14 50 percent of any block, the linear feet of any
15 block.

16 So, you know, it depends on how long a
17 block is, on how many linear feet an eating or
18 drinking establishment can occupy.

19 The need for the variance relief in this
20 case arises essentially out of the uncertainty
21 inherent in the entitlement for a restaurant.
22 The Applicant designed the space specifically to

1 accommodate a restaurant, and they already have a
2 letter of intent signed with an established
3 restaurant planning to open another location in
4 this space.

5 Since a restaurant space is not entitled
6 for that use until a building permit is issued,
7 the Applicant bears a considerable risk in the
8 time between designing the restaurant and
9 obtaining the building permit.

10 As you can well understand, another
11 restaurant on the block could easily obtain a
12 Certificate of Occupancy during which time --

13 CHAIRPERSON MOLDENHAUER: I am just going
14 to jump in here. I do believe that actually the
15 identification no longer is at the CofO portion.
16 It is actually the permit.

17 MR. KADLECEK: Yeah, it is at the
18 building permit.

19 CHAIRPERSON MOLDENHAUER: I thought that
20 you were referring to the CofO.

21 MR. KADLECEK: No, I am sorry. I thought
22 I had mentioned building permit, but it is, in

1 fact, nontitled to it, obtains the building
2 permit, but there is still a lag time, the time
3 between basically designing the building and
4 actually getting your building permit, and even
5 filing for your building permit, as you know, can
6 take several months.

7 So, there is a period in which a
8 restaurant could, in fact, move in, in that
9 meantime, and get another building permit or get
10 a Certificate of Occupancy. For instance, in
11 this block, I don't remember exactly how much
12 linear footage is occupied. If today we were to
13 put in the restaurant, we would be okay, we would
14 be safe, but, of course, there is no way to
15 predict the future. It is close.

16 There is also another project that is in
17 the queue for a BZA case, that is just up the
18 block. We have no idea what their retail is
19 going to be, and that could also be depending on
20 how construction and financing works out, they
21 could get ahead of us in the queue.

22 So, our thought is, you know, the

1 developer has invested in a considerable amount
2 of time and money in designing specifically for
3 this space precisely because they have a letter
4 of intent signed with and a restaurant that is
5 genuinely interested, a local restaurant that is
6 genuinely interested in the space.

7 We respectfully disagree with the Office
8 of Planning in that they say it's not possible to
9 evaluate variance requests in this instance, and
10 we think it is for a couple of reasons.

11 The first is if we seek a variance once
12 the 50 percent limitation has been reached, at
13 that point it is too late, because the restaurant
14 will go anywhere, or it will go elsewhere, I
15 should say.

16 The time that they would have to wait to
17 go through the BZA process, as you know, is four
18 more months. They are not going to want to wait
19 if they can go to another available space without
20 having to wait for the BZA process, which is also
21 not certain.

22 So, if the Applicant has that certainty,

1 they can mark it effectively, the restaurant
2 space as they want, with the letter of intent to
3 the restaurant that is interested in occupying
4 the space.

5 Also, with respect to being able to
6 evaluate whether the restaurant has impacts, as
7 OP disagrees with us, the situation is if we were
8 to seek a variance or the worst case scenario
9 being that no more than 25 feet over the 50
10 percent limitation would be occupied, because
11 that is the width of our building, and we are
12 certain that it is going to be a restaurant that
13 would occupy it, so given those two factors, I
14 think we can reasonably have enough evidence and
15 understanding as to whether that overage of the
16 50 percent limitation can be successfully
17 evaluated and approved as a variance.

18 CHAIRPERSON MOLDENHAUER: I have some
19 major concerns and questions as to whether or not
20 we are in the position to be placeholding this
21 type of relief. I mean I don't think the relief
22 is actually already before us, and you are really

1 trying to hold your place in line, as you said.
2 You are not sure if another company is going to
3 jump ahead of you in regards to the building
4 permit process.

5 I understand that risk, but I don't know
6 if that is sufficient enough to satisfy the
7 relief that you are asking for.

8 What is the current percentage on the
9 block of linear feet that is already occupied by
10 a restaurant?

11 MR. KADLECEK: I forget exactly what it
12 is, but I believe it is about somewhere between
13 20 and 30 percent.

14 CHAIRPERSON MOLDENHAUER: And you said
15 that this establishment would take up 25 feet.

16 MR. KADLECEK: Twenty-five feet.

17 CHAIRPERSON MOLDENHAUER: What percentage
18 is that?

19 MR. KADLECEK: We are 25 feet, the total
20 block is 304 feet, so I guess that works out to
21 be about 6 percent. It's not very much, 6
22 percent or something like that or maybe 8

1 percent.

2 CHAIRPERSON MOLDENHAUER: Even right now,
3 and I am assuming that that 6 percent is also --
4 the narrowness of this building is comparable to
5 other establishments on the block, as well.

6 MR. KADLECEK: It is.

7 CHAIRPERSON MOLDENHAUER: So, even if you
8 had another establishment that maybe beat you to
9 the race in regards to filing a building permit,
10 that may only be another 6 percent. So, even if
11 you are at, you know, they are at 20 percent
12 right now, you have a lot of give.

13 MR. KADLECEK: Except the one, right. If
14 you can look in the slide over here, the project
15 that had the break in the street fabric there,
16 that is 60 feet wide.

17 CHAIRPERSON MOLDENHAUER: On the
18 submission that you just gave us?

19 MR. KADLECEK: Yeah, yeah, so you can see
20 there is a space to the right. That is 60 feet
21 wide. That is all going to be a new project with
22 obviously, the ground floor retain requirement in

1 the ARTS overlay. All 60 of those feet could, in
2 fact, be a restaurant, or a eating/drinking
3 establishment, and they could, in fact, go seek
4 the building permit before we do, in which case
5 they would be entitled, and I think that that
6 would push it over.

7 MR. RIEGLER: Based upon the retail
8 program.

9 MR. KADLECEK: Right, depending on what
10 their retail is.

11 MR. RIEGLER: And we with 100 percent
12 certainty are investing a lot of time, money, and
13 energy to create a restaurant shell, not just a
14 regular soft goods type retail shell along with
15 the local retailer who is committed and right now
16 hiring a lawyers and architects and engineer and
17 all the things to get through that process.

18 As Cary alluded to, I think we will beat
19 them to the punch, if you will, as far as permit,
20 but we just don't know, and so it's tough for
21 that local operator and us to make the business
22 decision to move forward with that lease without

1 some level of certainty. So, that was the
2 intention from our standpoint.

3 VICE-CHAIRPERSON SORG: Do we have the
4 letter of intent from the operator in our file?
5 Was that submitted?

6 MR. KADLECEK: I do not believe so, but
7 we can provide that.

8 VICE-CHAIRPERSON SORG: Okay.

9 MR. KADLECEK: Yeah.

10 VICE-CHAIRPERSON SORG: It was mentioned
11 in something.

12 MR. KADLECEK: It was in the prehearing
13 statement, yeah, or we mentioned it in the
14 prehearing statement.

15 VICE-CHAIRPERSON SORG: Okay.

16 CHAIRPERSON MOLDENHAUER: I think even
17 though it is not in the process of our typical
18 order, I think the Office of Planning has some
19 comments they want to add to this, so why don't
20 we just go ahead and I will go to the Office of
21 Planning's report, and you can present any
22 comments you have regarding this conversation

1 right now, and then also anything else you have
2 about the overall application.

3 MS. BROWN-ROBERTS: Thank you, Madam
4 Chairman. Just for the record, Maxine Brown-
5 Roberts from the Office of Planning. Because the
6 conversation is going on, I just wanted to put
7 something else in, so that you have that fact
8 instead of waiting to come back to me.

9 Generally, I will say that you, as
10 outline in our report, we are in support of the
11 other variance requests, and we don't have any
12 problem with the lot occupancy and the courts,
13 and all that is being requested.

14 However, I just want to make regarding
15 the linear square footage, I spoke to Desaray
16 [ph] on December 1st, and with the inception of
17 the new language in 1901.6, Desaray has started
18 keeping track for all the streets where they have
19 the frontages, and they keep track of how much
20 space is being used and how much is left over.

21 On December 1st, there was 112 feet left
22 for linear footage available for an eating

1 establishment along that street. The Applicant
2 has said that that one building is 60 feet,
3 therefore, there is 52 feet would be left over.
4 So, I think there is more than adequate, you
5 know, space for that to take place.

6 Thank you, Madam Chairman.

7 CHAIRPERSON MOLDENHAUER: Thank you very
8 much for that report. That also just helps us
9 with the figures, understand it a little bit
10 better.

11 Does the Applicant have any questions? I
12 know we are kind of taking this out of order a
13 little bit, but do you have any questions for the
14 Office of Planning?

15 MR. KADLECEK: Just one question. Do you
16 happen to know if that 112-foot measurement of
17 available space, if it includes the restaurant
18 just south of our site? I believe it's 1320.

19 CHAIRPERSON MOLDENHAUER: That's the PIG.

20 MR. KADLECEK: The PIG, right, because
21 that one is under construction, and I am not sure
22 if that was counted.

1 MS. BROWN-ROBERTS: I don't know.

2 MR. KADLECEK: Thank you.

3 CHAIRPERSON MOLDENHAUER: You are
4 building out this space specifically for a
5 restaurant. Can you maybe provide your architect
6 some testimony in regards to, I mean are you
7 doing special venting, I mean is that something
8 that is going into the design as is?

9 MR. GOINS: I am Jeff Goins from PGN
10 Architects.

11 I think that the main thing as far as the
12 restaurant, we are trying to fit it for like a
13 local restaurant, not a sandwich place, and they
14 have very large shaft requirements, so we are
15 providing, we are trying to locate a shaft that
16 is roughly 7 feet by 4 feet, that has to go
17 through the residential building, all the way
18 through the roof.

19 So, we are trying to do a lot of those
20 types of elements in the very beginning with the
21 restaurant client, and, you know, if Tony can
22 point to -- you will see we have kind of already

1 located that shaft to go through the building,
2 and to do that at a later date is very costly, if
3 not impossible.

4 MR. RIEGLER: From our standpoint, as
5 well -- Kevin Riegler, by the way, with CAS
6 Riegler. I got reminded to state my name when I
7 first spoke.

8 Outside of that, from a cost standpoint,
9 it is mainly the PEPCO, and Washington Gas, and
10 Water, heavy-ups that we are going to have to do

11 , so obviously getting the adequate
12 supply for all of those three attributes are
13 substantially increased by providing for a full-
14 service restaurant versus just again a soft goods
15 or some other commercial type operation.

16 MR. GOINS: I guess to summarize, too, we
17 are going to get a full engineering process for a
18 restaurant right now, and the design documents,
19 and the construction documents. So, we have
20 engineers onboard, we are meeting with PEPCO, so
21 I guess there is a lot of moving pieces that are
22 in play right now for the restaurant.

1 MR. RIEGLER: A work letter for the
2 tenants specifically, it is not a typical cold
3 dark shell, if you will, it's adequate HVC-RT
4 used on the roof, shaft locations, grease pits,
5 black iron, I mean everything that is very much
6 specific, and that's in our shell permanent
7 application.

8 CHAIRPERSON MOLDENHAUER: Do Board
9 members have any other questions for the
10 Applicant?

11 MR. JORDAN: I do. What I am sensing is
12 that you want us to land-bank this approval for
13 you to use to add quality and value to your
14 building, because you said that you are moving on
15 in your plans.

16 How do we know that others are not doing
17 the same thing, that they are not moving on in
18 plans to do restaurants, that would need the same
19 linear footage for a restaurant? I am letting
20 you know what I am thinking and what I am hearing
21 you say.

22 MR. RIEGLER: Are you referring to the

1 adjacent development that they pointed to, for
2 example?

3 MR. JORDAN: Particularly about your
4 request.

5 MR. KADLECEK: Right. I think I
6 understand what you are saying. I think the
7 difference is if a restaurant wanted to use an
8 existing space, they could go get a building
9 permit right now. They weren't going through the
10 entitlement process that we are going through
11 right now.

12 So, if they weren't doing any of these
13 other changes, they could go through that. They
14 could fit out the building now, make the
15 drawings, submit them, obtain the building
16 permit, get the building permit long before we
17 could have, but we have no idea of that process
18 happening. We don't know if that process is
19 happening at another site on the block.

20 MR. RIEGLER: Ultimately, you know, we
21 are the ones that are responsible to deliver a
22 restaurant shell to the tenant, and we are both

1 co-investing in that decision, and it is hard for
2 us to look that restaurateur in the eyes and say
3 we guarantee you that you will be able to have
4 your restaurant here.

5 So, it is really just trying to add that
6 level of certainty. Obviously, they can go to a
7 variety of locations along 14th Street, but those
8 are few and far between these days, so the
9 intention was to add that level of certainty.

10 MR. JORDAN: Even at that, can you tell
11 me, counselor, how does that fit our test that is
12 required for us to grant that?

13 MR. KADLECEK: Well, I think uniqueness,
14 I think is established for the site based on all
15 the other criteria presented. I think the
16 practical difficulty is just what we have been
17 talking about, the uniqueness of having to invest
18 all these very specific elements and accommodate
19 the historic concerns are incredibly expensive,
20 and not being able to build what the Applicant is
21 desiring would be incredibly expensive, and that
22 includes fitting out the restaurant space.

1 The restaurant space, I can't emphasize
2 this enough, is integral to the entire design.
3 As Mr. Goins just explained, you know, they are
4 not just delivering a retail shell. They are
5 incorporating a lot of very specific restaurant
6 type elements into the space.

7 I also think that an overarching theme
8 that differentiates this from any other sort of
9 request is the nature of the entitlement for
10 this. Once you get BZA approval for anything
11 else, lot occupancy, closed courts, whatnot, you
12 know, we are entitled to build that project, but
13 once we get BZA approval, we are still not
14 entitled for the restaurant use, which we have
15 integrated into the plans.

16 So, the nature of the entitlement is
17 different with a restaurant then it is with other
18 structural elements, and I think that is why the
19 nature of the request has to be a little
20 different.

21 MR. HENSLEY: Just picking up on what
22 Cary said, the one difference, and this 50

1 percent limitation, unlike anything else in
2 zoning, most of zoning you have a 50-foot height
3 limit or a 75-foot height limit, you know what
4 your side yard, your rear yard is, here, you
5 don't know, and you won't know until the next guy
6 comes in, and all of a sudden you are over this
7 magic number.

8 So, what we are trying to say, we are
9 trying to do some certainty on our hand, yes,
10 before we invest a couple hundred thousand
11 dollars in a restaurant space, so that we will
12 know eight months from now when we go to pull out
13 the restaurant space that we can do that use.

14 This is not a classic zoning situation.
15 We can control what happens on our lot, we can't
16 control what happens in the remainder of the
17 block.

18 MR. JORDAN: So, doesn't this open a door
19 potentially for others to run around to kind of
20 bank a variance for this thing, sort up and down
21 not only this block, but other areas that would
22 have the same, so then people then are banking

1 and holding the same opportunity.

2 It could be a year, two -- it could be
3 anything less than two years, of course, they
4 could be holding.

5 CHAIRPERSON MOLDENHAUER: That actually
6 brings up a really good point because if you are
7 allegedly banking this, and in connection with
8 specific relief, before the relief is even
9 needed, and that is my concern.

10 You are trying to bank something before
11 the relief is even needed. I would question
12 whether this is even right for this type or
13 relief at this point since you are still below
14 the threshold.

15 Then, what would happen in the future?
16 Let's say all of a sudden, you know, this was
17 dormant for a period of time, there was no
18 restaurant, and then all of a sudden in a couple
19 of years after that they wanted to put a
20 restaurant back in. Are you going to say you
21 could then go above the 50 percent, because you
22 had already banked it, and who knows?

1 To me, it leaves a lot of questions as to
2 what could happen in the future, and you are
3 reserving this before the relief is even
4 necessary.

5 MR. KADLECEK: I understand exactly what
6 you are saying, but with respect to the banking
7 issue, somebody can bank a restaurant space now.

8 They can just file and get a building permit for
9 a restaurant that they never intend to build, and
10 then hold on to that, and then they are entitled.

11 You know, that is no different than going
12 to the BZA --

13 CHAIRPERSON MOLDENHAUER: But they are
14 not actually asking for relief.

15 MR. KADLECEK: Well, fine, but I actually
16 think that we are, in a sense, our request is
17 more legitimate in the eyes of the law, because
18 it is actually being vetted by the BZA, whereas,
19 somebody who is just going in with no intention
20 of building a restaurant, and just banking that
21 space and holding onto it with effectively I want
22 to call it a fake building permit, never

1 intending to build the restaurant, so that they
2 can reserve that space, that seems more
3 disingenuous to me than actually going through
4 the public process and asking for this relief,
5 making the community on notice that, in fact,
6 there could be a restaurant on this block that
7 exceeds the 50 percent limitation.

8 VICE-CHAIRPERSON SORG: If I can jump in,
9 Madam Chair, I mean there are, to your point,
10 there are controls with regard to building
11 permits, as well. You can't get one and sit on
12 it without building something, it expires.

13 In that sense, I don't really follow
14 exactly, you know, that logic that this is
15 something, you know, that is more legitimate than
16 somebody who can go out to get a building permit.

17 CHAIRPERSON MOLDENHAUER: Let me ask you
18 a question about the practical difficulty. I
19 mean let's say that you did go ahead and take the
20 time to finish up the plans. You already have
21 invested a lot of money, I would say in these
22 plans that are specifically identified for a

1 restaurant.

2 So, you have already put in probably a
3 certain percentage, and you only have another
4 percentage to go forward after potentially the
5 relief would be or would not be granted.

6 Let's say that someone did jump ahead of
7 you and maximize even beyond that one project,
8 which is 60 percent, you know, of the linear
9 square footage. Then, there was another project
10 that also just went in, as you pointed out, you
11 know, didn't need relief, just went in and filed
12 a building permit right now.

13 How does that still create a practical
14 difficulty, because let's say, in a year from
15 now, or two years from now, you would still have
16 added value to your building, and one of these
17 restaurants could fail during that time frame,
18 and then you would be able to go forward and you
19 would still have the value in your building by
20 having that shaft existing already, and already
21 part of the structure of the building?

22 MR. RIEGLER: From my standpoint the

1 issue namely lies with the fact that we
2 literally, you know, as of yesterday, had a two-
3 hour conference call with the restaurateur and
4 their team to continue to work for, we had a
5 design kickoff meeting at PGN's offices last week
6 for their actual fit-out and coordination.

7 So, right now it is certainty, and I do
8 appreciate the skepticism, if you want to call it
9 that, on the banking concept, but right now it is
10 really just we are working hard to sign a lease,
11 go from LLI, lease with that restaurateur, and
12 one of the main concerns that they have is a
13 landlord who is required to deliver a shell, is
14 can you legally deliver me a restaurant space.

15 Without this certainty, obviously, given
16 the existing conditions, it is likely, but it is
17 not certain, and people are betting a lot of
18 money and time and resources on something that
19 should be certain, not likely.

20 So, that is honestly from outside of
21 zoning, from a business standpoint, that is our
22 reasoning.

1 CHAIRPERSON MOLDENHAUER: I just have one
2 more question. It really rolls off of that
3 comment. Can you be more specific and actually
4 give me a specific timeline which would be this
5 lag between when you would potentially get an
6 order and the time frame for the building permit?

7 You provided some generalities and
8 referred to that time frame or that lapse of
9 time, can you provide me with some more
10 specificity in that regard?

11 MR. GOINS: I think to finish the design
12 and engineering probably about three months, and
13 then permit, you know, we estimate three to four
14 months after that.

15 CHAIRPERSON MOLDENHAUER: I guess this is
16 the question, though, because you were saying the
17 permit process.

18 Wouldn't you vest or reserve your rights
19 at the time that the application was issued --
20 let me finish my thought and then you guys could
21 answer the question -- so it doesn't vest the
22 time that you apply for it, it only vests at the

1 time you get your permit, so somebody can do a
2 quick walk-through permit, you are saying that
3 that individual, even if they apply for the
4 permit at a later date, and if that is the case,
5 can you give me a reference to that? That would
6 be helpful.

7 MR. KADLECEK: I will get the regulation
8 for you. I will just read you what the
9 regulation says.

10 It says, "A building permit granted for a
11 use as an eating/drinking establishment issued in
12 accordance with Section 3202 authorizes the
13 subsequent issuance of a Certificate of Occupancy
14 for the specified eating/drinking establishment
15 provided that the Zoning Administrator has
16 determined that the use complies with Section
17 1901.6 at the time the building permit is issued
18 and that the construction has been completed in
19 accordance with the subject building permit."

20 So, it only vests once you have a
21 building permit for the restaurant that you will,
22 in fact, build and get the Certificate of

1 Occupancy for.

2 MR. RIEGLER: And I don't believe, at
3 least it is unclear to me, whether that means the
4 shell, the restaurant shell, if you were
5 building, which obviously has the intent, it is a
6 restaurant, it is very obvious with the shafts
7 and the like versus the actual tenants fit-out
8 which in those lease terms, you know, they have a
9 certain amount of time to deliver and get
10 permitted for their actual fit-out, and install
11 their kitchens, and all those kinds of things,
12 which is much further delayed than us who are,
13 you know, expert developers or whatever you want
14 to call it, that know the system versus a tenant
15 that doesn't necessarily have the same level of
16 urgency that we do.

17 CHAIRPERSON MOLDENHAUER: I would think
18 that it would be if your are identifying the use,
19 the initial, even if you are just doing the
20 initial buildout, you know, for the TI, you know,
21 had an improvement, so you would identify it as a
22 restaurant, and at that point in time, that would

1 be when the building permit even for that minor
2 work would be reserving the right for the
3 restaurant in regards to the linear square
4 footage, not in regard to the tenant full and
5 buildout.

6 MR. KADLECEK: I agree that would make
7 sense, but we have never gotten an interpretation
8 from the Zoning Administrator on exactly what
9 that means, so we don't know with certainty, so I
10 don't know if OP has --

11 CHAIRPERSON MOLDENHAUER: OP, have you
12 talked at all about this process with the ZA?

13 MS. BROWN-ROBERTS: No.

14 CHAIRPERSON MOLDENHAUER: Ms. Sorg, I
15 think you had a very interesting question you
16 were going to --

17 VICE-CHAIRPERSON SORG: Thank you, Madam
18 Chair. My question is can you go ahead and apply
19 for a building permit prior to gaining any relief
20 from us for the interior, you know, buildout or
21 demo or whatever of the restaurant, that they
22 don't have to necessarily proceed in tandem?

1 MR. RIEGLER: I suppose that's possible.

2 VICE-CHAIRPERSON SORG: If you were
3 looking for a placeholder in line.

4 MR. RIEGLER: Strategy, right. Yeah, I
5 mean to be honest, I guess we have been working
6 for, you know, X many months on getting this plan
7 together, and the intent has always been
8 restaurant, so we never attempted to game the
9 system, if you will. It was always, you know.

10 VICE-CHAIRPERSON SORG: Not to interrupt,
11 but I am certainly not suggesting that you game
12 the system.

13 MR. RIEGLER: No, no.

14 VICE-CHAIRPERSON SORG: Let me be clear.

15 MR. RIEGLER: No, I appreciate, sorry,
16 bad choice of words. The intent was always to
17 redevelop the property, do an addition, add
18 residential on top, all those kind of things, so
19 I guess we have always looked at any kind of
20 entitlements and approvals collectively as
21 opposed to doing that that way.

22 VICE-CHAIRPERSON SORG: Fair enough,

1 although it is not uncommon for people to apply
2 for different building permits I am sure, you
3 know, at different times, I am sure you are
4 familiar with that.

5 CHAIRPERSON MOLDENHAUER: I think I have
6 exhausted my questions for the Applicant. Do any
7 Board members have any other questions?

8 Seeing none, is there anything additional
9 that the Applicant would like to present at this
10 point in time?

11 MR. KADLECEK: Yes, I would just like to
12 add that while this restaurant variance is
13 important, and we do believe that it is really
14 quite important for the success of the project
15 and the success of the restaurant, we don't view
16 it as critical to the rest of the project as far
17 as relief, the other relief we are asking for is
18 concerned, meaning that if the Board so decides
19 that they want to sever that relief, that is
20 something that we could find acceptable.

21 I am not by any means saying that we
22 don't still want that relief, and I think that we

1 have legitimately proven the case that we are
2 warranted in receiving such relief, but we don't
3 want to jeopardize the entirety of the project
4 for the sake of this one area.

5 CHAIRPERSON MOLDENHAUER: Thank you. I
6 appreciate you modifying that potential
7 alternative on the record.

8 At this point in time, I will see if
9 there is any individuals in the audience in
10 support or in opposition to this case.

11 Seeing none, we have already taken OP's
12 testimony, unless there is any additional
13 supplemental comments that the Office of Planning
14 would like to provide, seeing none, as well,
15 then, I will turn to ANC-2F. Is there anybody in
16 the audience from ANC-2F?

17 Seeing no one, I will indicate that we do
18 have a letter in our record, which is our Exhibit
19 No. 26, which indicates that at a properly called
20 and duly noticed meeting on November 2, 2011,
21 with a quorum present, ANC-2F voted unanimously 5
22 to 0 to recommend approval of the pending relief,

1 and that is for all reliefs that the Applicant is
2 requesting. That letter would receive great
3 weight.

4 Also, for the record, at this point in
5 time, we have a letter from the Department of
6 Transportation, Exhibit 27, and they have no
7 objection to this case.

8 That being said, at this point in time,
9 we will turn back to the Applicant for any
10 closing remarks.

11 MR. KADLECEK: I have nothing really
12 further to add other than I think that the relief
13 that we are requesting with respect to lot
14 occupancy, court, and extension of a
15 nonconforming aspect or addition to an
16 nonconforming structure rather, I think the case
17 is clear, I think the record is very full on
18 that.

19 I think the fact that we have ANC
20 support, we have neighbor support, I would also
21 like to emphasize once again that the Applicant
22 worked very hard to work with the single member

1 representative of the ANC and the adjacent
2 neighbors in reaching a mutually agreeable
3 solution.

4 I know that that is something the Board
5 likes to see, and we are very proud of the fact
6 that we worked really well with then neighbors in
7 reaching that solution.

8 So, we eventually got letters of support
9 out of people who were initially in opposition,
10 so I think that was a great example of success in
11 working with the community.

12 With that, we request that the Board
13 approve the requested variances, and given the
14 short time frame that we are on, with respect to
15 the restaurant, and so forth, we request a
16 summary order. Thank you.

17 CHAIRPERSON MOLDENHAUER: Thank you very
18 much.

19 If there is no other questions from Board
20 members, then, we will enter into deliberation on
21 this case right now.

22 What we have before us is we have a

1 request for lot occupancy relief, closed court
2 relief, a nonconforming structure, an additional
3 nonconforming structure, and then an additional
4 request for a variance from the allowed
5 restaurant used on a linear square footage of a
6 lot in the ARTS overlay on 14th Street.

7 I will address the first three elements
8 of relief, the lot occupancy, closed court and
9 rear yard relief. I think that I will
10 incorporate Office of Planning's report. I
11 didn't see any issue, that the Applicant fully
12 addressed the elements in regards to a confluence
13 of factors for the exceptional situation on the
14 property in this regard. There are multiple, as
15 outlined in OP and in the Applicant's prehearing,
16 and initial submission.

17 That being said, I would definitely be
18 willing to approve an application for those three
19 elements, and as indicated by the Applicant and
20 as, you know, I think should definitely be
21 commended. We do see a lot of great letters of
22 support in this file. We have a letter from

1 James Cain and also from Justin and Michelle
2 Koleskey [ph]. It's great to see that, you know,
3 you guys have obviously have gone out there, done
4 a lot of hard work to get support from the
5 neighborhood.

6 You have a letter of support from the
7 ANC, Office of Planning supports those three
8 elements of relief, and I think that that is
9 definitely commendable. We had a case this
10 morning where there wasn't as much communication,
11 and that was a problem, and I think that it is
12 always good to see communication amongst the
13 developer and the community.

14 But that being said, as we I think were
15 pretty clear during the discussion in regards to
16 the hearing, I do have an issue with the relief
17 for the last element in regards to relief, for
18 the conditional relief on the allowable
19 restaurant use for the property.

20 I feel that the issue isn't ripe yet. I
21 feel that, you know, with having even looking at
22 the potential square footage, I just don't see

1 any uniqueness in that regard, because based on
2 the numbers right now, it doesn't even seem like
3 with potentially that 60 square foot in width
4 project, and with yours at 25 feet, it seems like
5 there may even still be the ability at 102 square
6 feet right now for both of those projects to be
7 able to move forward without maxing out the 50
8 percent on the block.

9 I can't see go ahead granting something
10 before the issue is before us. I think that
11 obviously, if this project moves forward, and for
12 some reason, you know, somebody does jump ahead
13 of you in line, and you come back for us, for a
14 review then, I think that, you know, there is
15 obviously now going to be a very unique history
16 that has been outlined and created by this case
17 in and of itself for that next review.

18 But I don't see it right now in regards
19 to granting that relief, and I will open up the
20 Board for any additional discussion or
21 deliberation on any of the elements if any Board
22 members wish to address that.

1 MR. HOOD: I would agree with your
2 analysis, Madam Chair, especially with the
3 denial, I believe that that is the way you are
4 going with the 1901.6. I am trying to think and
5 look back at what the Zoning Commission's intent
6 was when this was regulated.

7 I don't believe putting something in line
8 of succession was exactly the intent, and it will
9 be good to kind of make sure that gets tightened
10 up, because I am sure that that was not why that
11 rule was put in place to hold in abeyance or just
12 hold allotted time, and I just don't believe that
13 was the intent, so I will be supporting your
14 motion especially with the denial of 1901.6.

15 CHAIRPERSON MOLDENHAUER: Seeing no
16 additional discussion from Board members, I will
17 submit a motion, a motion to [pause] -- I am
18 being advised, I think this may be advisable to
19 the Applicant, and we will reopen it for a brief
20 period of time -- if you actually formally
21 withdraw that request, then, we can just go ahead
22 and give you a summary order at this point in

1 time, but we could not give you a summary order
2 if it was going to be a hybrid.

3 MR. KADLECEK: Yes, we will withdraw our
4 request for that variance in 1901.6.

5 CHAIRPERSON MOLDENHAUER: Fantastic. So,
6 with that amended application, I submit a motion
7 to approve Application 18287 pursuant to 11 DCMR
8 3104.1 and 3103.2 for a variance from the lot
9 occupancy requirements under Subsection 772.1, a
10 variance from the closed court requirements under
11 Section 776, and a variance from the
12 nonconforming structure provisions under
13 Subsection 2001.3 -- I just wanted to make sure,
14 because rear yard is withdrawn -- for an addition
15 to and the conversion of an existing building to
16 a mixed-use residential building with ground
17 floor retail in the ARTS/C-3-A District at
18 premises 1324 14th Street, N.W.

19 The motion has been made. Is there a
20 second?

21 MR. HOOD: Second.

22 CHAIRPERSON MOLDENHAUER: The motion has

1 been made and seconded.

2 All those in favor say "aye."

3 [Chorus of ayes.]

4 MR. MOY: The staff would record the vote
5 as 5 to 0 to 0. This is on the motion of
6 Chairperson Moldenhauer, second the motion Mr.
7 Hood, for relief from the three area variances,
8 Section 772.1, 776, 2001, and 2001.3, the other
9 Section 1901.6 being withdrawn by the Applicant.

10 In support of the motion, Ms. Sorg, Mr.
11 Jordan, and Mr. Hinkle. So, again, the final
12 vote is 5 to 0 to 0, and the motion carries.

13 CHAIRPERSON MOLDENHAUER: Mr. Moy, I
14 think Mr. Hood also was --

15 MR. MOY: Yes, I mentioned Mr. Hood
16 seconded the motion.

17 CHAIRPERSON MOLDENHAUER: Sorry. That's
18 right, he did second the motion.

19 That being said, then, I will request
20 that we waive our requirements and ask that a
21 summary order be issued.

22 MR. MOY: Very good. Thank you.

1 CHAIRPERSON MOLDENHAUER: Thank you.

2 MR. KADLECEK: Thank you.

3 Application No. 18289

4 MR. MOY: Then next application before
5 the Board is Application Number 18289. This is
6 the application of EQR-EYE Street LLC. This is
7 pursuant to 11 DCMR 3104.1, and 3103.2, for a
8 special exception relating to penthouse setback
9 and uniform height requirements under Subsections
10 771.1 and 411.11, a variance from the lot
11 occupancy requirements under Subsection 772.1, a
12 variance from the closed court requirements under
13 Subsection 776.4, and a variance from the floor
14 area ratio limitations for historic lots under
15 Subsection 1707.4, to restore historic buildings
16 and construct an addition to create a residential
17 and retail building with below grade parking in
18 the DD/C-2-C District. This is at premises 443-
19 459 I Street, N.W., Square 156 (sic), Lots 812-
20 815, and 876.

21 Staff understands from the record that
22 the Applicant amended the application to withdraw

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1 relief from Section 411.11, which is relating to
2 the penthouse setback requirements of Section
3 770.6(b).

4 With that, then, the updated plans are
5 under Exhibit 28.

6 That completes the staff's briefing,
7 Madam Chair.

8 The Applicant can clarify the relief
9 being sought. That would be useful.

10 MR. UTZ: Sure, I am Jeff Utz from
11 Goulston & Storrs. I am the representative of
12 the Applicant EQR-EYE Street LLC.

13 We did modify the relief for roof
14 structures that we are requesting. Previously,
15 it was a two-part special exception for the roof
16 structure. It was both the setback from the
17 exterior wall, the 1 to 1 setback from the
18 exterior wall facing the alley, and the non-
19 uniform height of the roof structure. Now, it is
20 just the uniform height for the non-uniform
21 height nature of the proposed roof structure.

22 CHAIRPERSON MOLDENHAUER: Thank you. I

1 think that was clear from your submission. Let
2 me also, I received a very late filing, I think
3 as of late last night, early this morning, in
4 regards to some additional submission on the
5 court information.

6 I don't believe -- I don't know if the
7 Office of Planning received that, did you?

8 MR. COCHRAN: Yes, we did, Madam Chair.

9 CHAIRPERSON MOLDENHAUER: Okay. And you
10 had a chance to read it all?

11 MR. COCHRAN: We got it before you did, I
12 am sorry.

13 CHAIRPERSON MOLDENHAUER: I just wanted
14 to make sure obviously, that they are aware of
15 that additional information, as well, so that you
16 can then present on that.

17 I think if you can give us a brief, I
18 don't think it has to be a complete, you know,
19 just a brief overview of the project and then
20 focusing mostly on the court relief that you are
21 requesting, as well, and I think the lot
22 occupancy to me is fairly clear especially since

1 you are only asking for the first and third
2 floor, which is the historical levels of the
3 building. I think that is clear for myself.

4 If any Board members have any questions,
5 they will jump in and ask, but if you can then
6 just focus on maybe a brief overview and then the
7 court.

8 MR. UTZ: Okay, sure. Also, as a
9 preliminary matter, our architects Lawrence
10 Caudle, we need to have him sworn in.

11 CHAIRPERSON MOLDENHAUER: Mr. Moy will
12 swear him in.

13 MR. MOY: Do you solemnly swear or affirm
14 that the testimony you are about to present in
15 this proceeding is the truth, the whole truth,
16 and nothing but the truth?

17 MR. CAUDLE: I do.

18 MR. MOY: Thank you.

19 MR. UTZ: Thank you. Again, I am Jeff
20 Utz of Goulston & Storrs, and with me today, to
21 my left, is Greg White of Equity Residential. He
22 is the representative of the Applicant itself,

1 EQR-EYE Street LLC. To my right is Lawrence
2 Caudle, the project architect.

3 Briefly, as you mentioned, we are here
4 requesting three variances, one special
5 exception. The project is going to be
6 approximately a 165,000 square foot residential
7 and retail structure.

8 There are basically five lots there.
9 There are currently four buildings and three of
10 these buildings are contributing to the historic
11 district that is in the Mount Vernon Square
12 Historic District.

13 As a result of these three historic
14 contributing structures, this site inherits a lot
15 of unique features that kind of flow into the
16 entirety of the design from that point forward.

17 This project has been reviewed and
18 approved by the Historic Preservation Review
19 Board, and we are, throughout the building permit
20 process, going to be working with the Historic
21 Preservation Office, and before I forget, I
22 wanted to ask if the Board is so inclined to

1 approve this, if you could possibly include
2 something along the lines of flexibility to work
3 with HPO staff as we go through the iterations of
4 the building permit plans, that would be
5 appreciated.

6 Do you want me to just go ahead and kick
7 into the specific, showing you exactly what the
8 specific relief requests are in the plans, would
9 that be helpful?

10 CHAIRPERSON MOLDENHAUER: If you can just
11 go through a very brief overview of the overall
12 concept for the project, and then the specific
13 relief.

14 MR. UTZ: Let me turn it over to Lawrence
15 Caudle then to address those points.

16 MR. CAUDLE: Good afternoon. You can
17 tell me to slow down or speed up as you will, but
18 just to give you some orientation to the site, of
19 course, we are in the Mount Vernon neighborhood
20 district.

21 The site is here, just to the east of the
22 convention center, just off of Massachusetts

1 Avenue, and this is I street right here. So,
2 this red block indicates where our site is.
3 Zooming in a little closer, you can see our
4 proximity to Massachusetts Avenue, but currently
5 right now, there is a vacant car lot to the left,
6 which is a site that can do 130 feet. There is a
7 reason to mention that later.

8 But right here, this our site where you
9 can see here are the two existing row houses and
10 here is the footprint of the warehouse
11 structures. Those are the three historic
12 structures. Actually, the third one is a
13 conglomeration of different warehouses that have
14 been combined over time, so there is a number of
15 demising walls within the structure that was
16 requested to remain.

17 In the street elevation here, you can see
18 that this is a noncontributing structure that
19 will be removed, but these are the two historic
20 townhouses which have been requested to remain,
21 as well as the existing warehouse structure here.

22 A little closer up at the townhouses,

1 some site elevation use of the existing warehouse
2 structure, and as you get to the rear alley, you
3 can see the original warehouse here, this
4 building from here to here is actually made up of
5 a number of different smaller warehouses, so
6 these buildings here are what are going to
7 remain.

8 You can see in this photograph that this
9 piece and anything to the right of that will be
10 demolished.

11 So, way back when the concept was
12 developed and worked through with the Historic
13 Preservation Office, essentially, this was the
14 resulting design, which hinged around kind of two
15 effects.

16 One is that the building is 110 feet
17 height as is the matter of right for this, you
18 can see next door is 130 feet height allowed, but
19 they required that the language of the project
20 take on this kind of low language which would
21 incorporate the warehouse and the townhouses, and
22 this vertical tower, which is to create the sort

1 of bookend. Then, the request was that the
2 concept be such that the new develop would spiral
3 up and away from the lower rise buildings.

4 Therefore, it mediated between the tall
5 and the lower by this glass cube here. I am
6 sorry these are not in color, but you can see
7 essentially the massing, which is the purpose of
8 the concept is there.

9 Once that was accomplished, the other
10 important aspect that the Historic Preservation
11 Office required is that there be a courtyard
12 here, such that the back of the townhouses, the
13 integrity of the back of the townhouses would
14 remain intact, so that no addition would go up
15 against to that.

16 CHAIRPERSON MOLDENHAUER: Can I just jump
17 in? Do we have a letter that actually says that
18 Historic is requesting that court?

19 MR. UTZ: I don't think there is a
20 letter, well, there is definitely not a letter in
21 the record. The staff report, yeah, we can
22 submit --

1 CHAIRPERSON MOLDENHAUER: I don't have
2 anything that says they are going to -- that was
3 one of my questions, what is the necessity for
4 that court, and if you are saying that someone
5 that Historic is asking for, I think that that is
6 crucial to have in our record, or at least for us
7 to see. We don't right now have anything that
8 actually says that.

9 You can continue. I jump in every now
10 and again.

11 MR. CAUDLE: That's fine.

12 Sorry, not to turn my back to anybody,
13 but here is a resulting ground floor plan. This
14 outline here is essentially the existing
15 warehouse structure, which goes the full depth of
16 the lot to the rear alley, and borders the side
17 alley, as well. This is I Street down here.

18 This is the footprint of the two existing
19 townhouses which have been requested to remain.
20 Here is the courtyard that resulted in this plan
21 to keep off of the rear, so that there are no
22 additions up to the back of the townhomes.

1 You can see what we have done is that
2 most of the services that support the new portion
3 of the structure and the rest of the developable
4 lot is basically on this smaller portion of the
5 site.

6 We have loading, we have bike storage, we
7 have ramps going down into low level garage, and
8 all the low level garage is only under the
9 undeveloped portion of the site. It was a little
10 too impractical to try to slip garage underneath
11 the existing buildings, as you might imagine.

12 The other point made by Historic was to
13 keep away as much as possible from the existing
14 demising walls in the building, so that is
15 another reason why we moved the court to our
16 building over to the left, and we tried to
17 minimize the intrusion of a new structure from
18 the towers above into the building, so we tried
19 to not touch as much of the existing demising
20 walls of the warehouse as possible.

21 Is that enough overview?

22 If it would be helpful, we could have the

1 architect step through the plans that were
2 submitted in that filing from yesterday, possibly
3 clearly explains the diagrams that were
4 submitted. Those diagrams show three options of
5 what complying closed courts in this situation
6 would look like.

7 CHAIRPERSON MOLDENHAUER: I think it
8 would be helpful to go through the diagram that
9 was submitted this morning. I just have a
10 question. I am looking at our submission, and I
11 don't have a -- I guess you are calling the
12 ground floor your first floor?

13 MR. UTZ: Yes.

14 CHAIRPERSON MOLDENHAUER: If you can walk
15 through that, that would be great.

16 MR. CAUDLE: Hopefully, you can see these
17 colored lines from where you are sitting. I know
18 there are a lot of lines here up on this board,
19 but what we tried to do in this exhibit, you
20 know, there is a lower court and an upper court,
21 but really it's, by nomenclature, very, very
22 slightly dimensionally different, that is why

1 there is two closed courts, but the effect is the
2 same, big picture standpoint.

3 If we were to provide a compliant
4 courtyard in terms of the actual square footage
5 of the court, if we were to orientate a compliant
6 courtyard more south starting from the back of
7 the townhouses, it would be of this
8 configuration.

9 If we tried to orientate to the east-
10 west, it would be this configuration, and if we
11 simply squared it off it would be this green
12 line. Hopefully, you can see that green line
13 where you are.

14 So, you can begin to see that if we were
15 to provide the compliant closed court for those
16 first three, four levels, we would severely begin
17 to handicap the efficiency of the building as it
18 rises up on the new portion of the site, which is
19 in direct contradiction to what Historic has
20 asked us to do in terms of pushing the
21 development up and away from the existing
22 buildings.

1 You can here in this section, partial
2 section at least, here is our tallest part of the
3 structure, the closed courtyard. This is the
4 back of the townhouse here, so if we completed
5 that section, the street would be out this way.

6 CHAIRPERSON MOLDENHAUER: It seems like
7 from the diagram that you are providing in regard
8 to the -- I would just go with the green line as
9 I think that is probably the most logical since
10 you are not then cutting off the rest of the
11 development from the other portion of the
12 building.

13 The actual court size that you are
14 providing, to me, seems a lot smaller, I mean
15 than the required. Can you explain to me why you
16 couldn't provide a larger court than the court?
17 I mean it looks like you are going to the
18 smallest possible and asking for a lot of relief,
19 why you couldn't provide more of a court, and ask
20 for less relief?

21 MR. CAUDLE: I think one of those reasons
22 is easily explained when you start to look at a

1 typical floor. If we did talk about just the
2 green, more of a square-shaped courtyard, you can
3 quickly see that from this standpoint, there is a
4 typical corridor.

5 Once we get to the typical corridor to
6 get to the rest of the development on the north
7 and south, there is basically nothing left here
8 in that case.

9 VICE-CHAIRPERSON SORG: Can I interject?
10 I am sorry. What is going on in that space?

11 MR. CAUDLE: In this space right here?
12 This is just a second level. On the ground
13 floor, there is amenity space that is --

14 VICE-CHAIRPERSON SORG: It is open --

15 MR. CAUDLE: It would typically be above
16 those units here, as well.

17 Then, you can see on the back side of the
18 building where we would end up, as we do already
19 in this north-south tower, that we would end up
20 with probably a single loaded corridor, as well,
21 once we start to clip this off. We have already
22 had to reorientate the units more elongated on

1 this side of the corridor as it was to be able to
2 get some efficiency out of the floor plate on
3 this side.

4 The other reason was in terms of getting
5 parking ramps into our courtyard is the garage
6 ramp comes in and off the alley, and we are just
7 diving in with the ramp here that just gets
8 underneath to a point where we are just fitting
9 in a corridor at the first floor ground level to
10 be able to get from one side or the existing
11 buildings to the new structure.

12 Here again you see in profile the
13 existing townhouses here on the street side.

14 MR. UTZ: We also just wanted to note for
15 the record that the currently unoccupied
16 percentage of all the property together is 46
17 percent open space, noncontributing structure
18 space that we are working with here, and then
19 also the locks all the way to the left of the
20 diagram all the way to the top left, that
21 property is only 45 feet wide, so it really is a
22 very kind of tight site to fit all these

1 corridors and elevator cords themselves and then
2 obviously, the units themselves along with the
3 compliant court dimensions, it is virtually
4 impossible when we inherit these sites, and then
5 obviously expanding them to the south and
6 expanding them to the east wouldn't be possible
7 because those are contributing structures that
8 cannot be demolished.

9 CHAIRPERSON MOLDENHAUER: Can we go back?
10 Can you just explain to me what the ramp has to
11 do with the court? If you can just go into a
12 little more detail about that, that would be
13 appreciated.

14 MR. CAUDLE: Yes, it has to do with the
15 slope of the ramp, which we don't want to get it
16 too uncomfortably steep, and then the pinch point
17 where we have a structure here. Let me refer
18 back to the floor plan.

19 A ramp is coming in underneath here, and
20 to get this corridor to connect us on the ground
21 floor and actually the next three floors up from
22 this side of the development to this side of the

1 development to get that corridor in there where
2 we are kind of getting to the point where if we
3 would have to divide more uncomfortably in this
4 ramp slope, so we are just fitting this corridor
5 in here, because we have a head height issue for
6 the vehicles and the vans to go back.

7 CHAIRPERSON MOLDENHAUER: But then
8 doesn't it have to do with the corridor access
9 and not the ramp, because you didn't need the
10 corridor, the ramp wouldn't be affected.

11 MR. CAUDLE: Well, that's true, but you
12 can see in this plan that the ramp also sort of
13 bifurcates where you would typically come across.
14 If it's not that issue, you have the loading
15 issue on that side.

16 VICE-CHAIRPERSON SORG: I guess we are
17 doing question and answer. We sort of like ran
18 over the presentation. How many units are in the
19 new portion of the building?

20 MR. UTZ: It's 174 units total.

21 VICE-CHAIRPERSON SORG: Including in the
22 warehouse and the historic homes. Okay, that's

1 fine.

2 Have you done or can you quickly do the
3 calculation of how many units you would lose if
4 you provided a conforming court or ballpark?

5 MR. CAUDLE: We would lose about 40
6 units.

7 VICE-CHAIRPERSON SORG: That was 40,
8 right?

9 MR. CAUDLE: Yes.

10 VICE-CHAIRPERSON SORG: How do you figure
11 5 for a typical floor?

12 MR. CAUDLE: It would be 2 here, 3, 4,
13 and 5 over in this corner, the units go in a
14 corner like so. They are pretty tight.

15 CHAIRPERSON MOLDENHAUER: Do Board
16 members have any other questions for this
17 witness?

18 Seeing none, does the Applicant have
19 anybody else that you would like to present at
20 this time?

21 MR. UTZ: No, we don't. That's it for
22 our presentation, but we are happy to answer any

1 other questions.

2 CHAIRPERSON MOLDENHAUER: Okay. I am
3 sure we will come back to some more questions.

4 Is anybody in the audience in support or
5 in opposition to this case?

6 Were you sworn in at the beginning of the
7 hearing? You don't have to have a written
8 statement, but if you haven't been sworn in, can
9 you stand up and Mr. Moy will administer the
10 oath.

11 MR. MOY: Do you solemnly swear or affirm
12 that the testimony you are about to present in
13 this proceeding is the truth, the whole truth,
14 and nothing but the truth?

15 MR. MARTIN: Yes.

16 MR. MOY: Thank you, sir.

17 CHAIRPERSON MOLDENHAUER: You can take a
18 seat. You can turn on the microphone, first,
19 stating your name and home address, and then you
20 can identify whether you are in support or in
21 opposition, and then you will be given three
22 minutes to testify, and if you haven't already

1 filled out two witness cards, when you are
2 finished, present those to the reporter.

3 MR. MARTIN: My name is Aaron Martin. I
4 am a life-long resident of the District of
5 Columbia. I live at 85 Hawaii Avenue, N.E.,
6 Washington, D.C.

7 I am in opposition to it, because I am an
8 artist, I am a jazz musician, and I practice and
9 play at a place called Gold Leaf, which is at 443
10 I Street.

11 My question is where am I going to
12 practice and where am I going to perform, et
13 cetera. It seems as though everyone thinks that
14 culture resides at the Kennedy Center, not just
15 there, it resides all over Washington, D.C., and
16 Gold Leaf is primarily the last one here. There
17 are no other places like Gold Leaf. It's a place
18 where a lot of artists can come and hone their
19 craft, become better.

20 It's a shame, because this is happening
21 all over, not just all over the City, but all
22 over the country, it is happening in New York. I

1 am a jazz musician. A lot of you probably know
2 who I am, but most of you probably don't know who
3 I am, but that is not important right now, you
4 know.

5 But this is very important to the life of
6 the City, because what is going to happen is that
7 we are going to end up with a city with no soul,
8 essentials are going to be ripped out, because
9 there are people that want to build places where
10 I can't live and where none of my friends can
11 live probably.

12 That is basically it.

13 CHAIRPERSON MOLDENHAUER: Thank you very
14 much, Mr. Martin.

15 MR. MARTIN: All right. You are welcome.

16 CHAIRPERSON MOLDENHAUER: Thank you so
17 much for coming down.

18 Do Board members have any questions?

19 VICE-CHAIRPERSON SORG: Where is this
20 Gold Leaf in relation to the project? Does
21 anybody know?

22 MR. CAUDLE: It's in this existing

1 building. I was just looking to see where we put
2 the floor plan. Let's see.

3 VICE-CHAIRPERSON SORG: So, this is a
4 music venue that is in the existing warehouse.

5 MR. CAUDLE: In the existing warehouse,
6 yes.

7 VICE-CHAIRPERSON SORG: What is the
8 square footage of the establishment?

9 CHAIRPERSON MOLDENHAUER: Does anyone
10 know the square footage?

11 MR. CAUDLE: There are a couple other
12 tenants in there, so I can't speak to the exact -
13 - so I don't know exactly how much Gold Leaf has.
14 The existing warehouse is about 10,000 square
15 feet, over two levels -- excuse me, 10,000 feet
16 per level.

17 [Pause.]

18 MR. UTZ: Would it be helpful if we had a
19 few words from the Applicant themselves, and they
20 just talked about the community?

21 CHAIRPERSON MOLDENHAUER: I think that
22 would probably be helpful.

1 MR. UTZ: Okay.

2 MR. HOOD: Actually, Madam Chair, Mr.
3 Martin, I did want to ask him a question, but I
4 will wait until he comes back.

5 CHAIRPERSON MOLDENHAUER: Here he is.

6 Mr. Martin, Chairman Hood has some
7 questions for you, so if you can come back down
8 and take a seat.

9 MR. MARTIN: Sorry, I had to get some
10 water to take a pill.

11 MR. HOOD: Mr. Martin, I am just curious.
12 In your displacement of Gold Leaf, did you work
13 with the ANC, were they aware of your concern?
14 The Advisory Neighborhood Commission?

15 MR. MARTIN: No.

16 MR. HOOD: I know Chairperson Werton and
17 Commissioner Silver, and I was very pro-
18 community, and I was just wondering. That was a
19 good time to not saying that you had the whole --
20 there are requirements to let you stay there. I
21 am just curious.

22 MR. MARTIN: I have no idea.

1 MR. HOOD: You have no idea.

2 How did you find out that the hearing was
3 going on today?

4 MR. MARTIN: Well, because of notices
5 that were posted on the property doors.

6 MR. HOOD: Okay. Well, I would be
7 interested in hearing from you. Thank you.

8 MR. WHITE: My name is Greg White. I am
9 here to represent Equity Residential. In terms
10 of neighborhood support, we did to out to the
11 community. We got support from ANC-6C. In
12 addition, we did a presentation and received a
13 positive reception from ANC-2C, as well as the
14 Mount Vernon Square neighborhood.

15 We are very happy to be here today. We
16 think this property may have fallen into some
17 disrepair, hit some hard times during the most
18 recent recession, and I think we are going to
19 make a very nice project of it when it is done.
20 Thank you.

21 CHAIRPERSON MOLDENHAUER: Do Board
22 members have any questions for Mr. White?

1 Seeing none, well, I will just ask, it's
2 obvious Mr. Martin coming down, there is no
3 intention to provide any sort of community rooms
4 or things to that effect on the site?

5 MR. WHITE: That is correct.

6 MR. UTZ: There would be the retail,
7 though. It would be approximately 2,800 square
8 feet retained on the site. The application is
9 trying to make that work and really kind of make
10 that an attractive amenity for the neighborhood
11 at that location. It is not required by the map
12 or any triangle overlay, and it is really
13 something that might be tough to pull off at that
14 location, but it is ultimately desired by the
15 community, ANC-2C, 6C, and the association were
16 happy to see that space in there, and I think
17 they did consider it an amenity space.

18 CHAIRPERSON MOLDENHAUER: That is nice.
19 I lived in this area for six years, and
20 especially that location in the corner, I think
21 of the establishment by the alley, you know, to
22 pull in the retail there.

1 I think we had another individual in the
2 audience that was going to testify.

3 MR. JORDAN: Let me ask a question first.

4 I thought the question that you were asking was
5 leading to more affordable community, a space for
6 a community to be able to use, I thought that was
7 what you were kind of asking.

8 CHAIRPERSON MOLDENHAUER: Yes.

9 MR. JORDAN: And not just in retail in
10 general, that may not be affordable to may not be
11 available to those in the community to do other
12 things.

13 MR. UTZ: The current scheme doesn't
14 contemplate additional community accessible
15 space. It's just an apartment, it's a market
16 rate apartment building, and it was in lieu of
17 having a space like that, I think to have this
18 retail.

19 CHAIRPERSON MOLDENHAUER: You just said
20 it's a full market rate, what about I-Z?

21 MR. UTZ: It's in the D-D.

22 CHAIRPERSON MOLDENHAUER: The D-D is

1 exempt from I-Z, yes, okay.

2 Sorry, is there any additional questions,
3 Mr. Jordan? No other questions? All right.

4 I think we had an individual in the
5 audience that wanted to testify. Please step
6 forward. You can sit down. Mr. Moy, if you can
7 swear in this gentleman.

8 MR. MOY: Do you solemnly swear or affirm
9 that the testimony you are about to present in
10 this proceeding is the truth, the whole truth,
11 and nothing but the truth?

12 MR. STEWART: I do.

13 MR. MOY: Thank you, sir.

14 MR. STEWART: My name is Luke Stewart. I
15 am also an occupant of Gold Leaf Studios, also, a
16 jazz musician, and have been a tenant since March
17 of 2009.

18 I just wanted to add, in addition to Mr.
19 Martin's testimony, that in addition to the
20 displacement of a thriving musician and artist
21 community, in a city where quite frankly, space
22 for specifically musicians, not just artists,

1 visual artists, but specifically musicians, is
2 very scarce for the development of our craft.

3 But in addition to the displacement of
4 these artists and musicians, there is also the
5 displacement of the Bicycle Space, which as the
6 architect put it, I think he said something like
7 unused space where the Bicycle Space is now
8 currently located.

9 That specific store has contributed to
10 the thriving cultural amenities of the community
11 and of the city at large. Also, there has been
12 some great collaboration between the Bicycle
13 Space and the tenants of Gold Leaf Studios.

14 Also, the parking lot also in question,
15 that is, to the west of the Bicycle Space, has
16 been used in the summer for farmers' markets,
17 which are also great, contribute cultural
18 amenities to the community, which will be lost in
19 this project.

20 CHAIRPERSON MOLDENHAUER: I don't know
21 what the Bicycle Space is. Can you tell me?

22 MR. STEWART: The Bicycle Space is just

1 to the left of those townhouses where, in their
2 photos, it shows that it is just some boarded up
3 building, it's not like that right now.

4 CHAIRPERSON MOLDENHAUER: What happens in
5 there?

6 MR. STEWART: What happens?

7 CHAIRPERSON MOLDENHAUER: I mean what is
8 it, do you park bikes there?

9 MR. STEWART: It's a bicycle repair shop
10 and bicycle retail store called Bicycle Space.

11 CHAIRPERSON MOLDENHAUER: Okay, got it.
12 Thank you.

13 MR. HOOD: Madam Chair, I hear the
14 testimony from the gentleman from Green Leaf, but
15 I also keep looking at this ANC letter, and we
16 talk about the benefits to community now, and I
17 am just concerned, and this is very unfortunate
18 that Green Leaf was not a part of the --

19 CHAIRPERSON MOLDENHAUER: Gold Leaf.

20 MR. HOOD: Gold Leaf, I am sorry. I am
21 actually in Southwest. I just think it's
22 unfortunate, I am hearing the gentleman from Gold

1 Leaf talk about the community, and I know this
2 was discussed at the ANC meeting, I think you
3 mentioned Mount Pleasant -- Mount Vernon, I am
4 all over the city, but anyway, and the gentleman,
5 Mr. -- who spoke about the community piece --
6 while it was good, but that wasn't helpful for
7 me.

8 But my issue is you have the support of
9 the ANC, and by law we are supposed to give great
10 weight. It is just unfortunate that Gold Leaf
11 was not involved with those discussions when that
12 was taking place, because I am hearing you all
13 saying what is taken away from the community, but
14 I am looking at the representatives of the
15 community who are elected officials, who are
16 saying that to restore historic buildings to
17 construct an addition in the residential retail
18 building with low grade parking, and they look at
19 this as a plus.

20 So, we are getting offset, it's right
21 here, exhibit.

22 CHAIRPERSON MOLDENHAUER: Well, 6 is no

1 longer the current established rezones to 2 now.

2 MR. JORDAN: But now in Ward 2.

3 MR. HOOD: When did that happen?

4 MR. UTZ: I think it is effective in
5 January 1st.

6 CHAIRPERSON MOLDENHAUER: So not yet.

7 MR. HOOD: So, right now where is the 6C
8 statement? They obviously have their buddies or
9 something.

10 MR. UTZ: We presented those and got the
11 letter from the current jurisdiction.

12 MR. HOOD: But you also got it from the
13 other ANC, where it is currently in, and where is
14 it currently going, correct?

15 MR. UTZ: They didn't want to do a letter
16 because they didn't have jurisdiction, but yes,
17 we went to 2C, as well.

18 MR. HOOD: But who has jurisdiction now?

19 MR. UTZ: 6C.

20 MR. HOOD: Okay. So, my comments are in
21 order until January the 1st, and then for ANCs, I
22 think it is November, but anyway I just feel like

1 the appropriateness of this probably should have
2 been vetted to the ANC, unfortunately, that is
3 just where I am, and I agree with you, we need to
4 have places for the arts, but it just that it
5 looks like the community is holding out, I am
6 sure.

7 I have worked a lot with Commissioner
8 Sill and others in that ANC, but I can tell you
9 that I am hearing your testimony and I am looking
10 at these support letters, and from the support
11 that has been put on the record.

12 Some people obviously want an
13 improvement, but it is just unfortunate you all
14 couldn't have been in on those discussions.

15 MR. EPTING: Let me add one more thing to
16 this discussion. The bicycle shop actually is
17 relocating, but in the neighborhood around the
18 corner. So, they are not without space.

19 CHAIRPERSON MOLDENHAUER: What location?
20 The old video store? There is the Rogue, and
21 then there is the video store on that block.

22 MR. UTZ: It's on that block, I don't

1 know if it's in that space, but the owner of the
2 bicycle shop was at the ANC meetings.

3 CHAIRPERSON MOLDENHAUER: Are they in
4 support of this? You said they were at the ANC
5 meetings, Mr. Utz, were they -- what was their --

6 MR. UTZ: They didn't oppose it.

7 CHAIRPERSON MOLDENHAUER: They didn't
8 oppose it.

9 MR. HOOD: Let me ask, the two gentlemen,
10 Madam Chair, can I just ask the two gentlemen, do
11 you live in the neighborhood, or do any of your
12 members live in the neighborhood, if you can just
13 speak on that?

14 MR. STEWART: No, it's entirely too
15 expensive in that neighborhood.

16 CHAIRPERSON MOLDENHAUER: Mr. Martin, you
17 can't speak if you are not on the record, so you
18 do have to come and get on the record, and answer
19 Chairman Hood's question, and turn on the
20 microphone and address it that way. You can't
21 just shout out from the audience.

22 MR. MARTIN: Sorry.

1 CHAIRPERSON MOLDENHAUER: You indicated
2 you don't live in the neighborhood?

3 MR. STEWART: No.

4 CHAIRPERSON MOLDENHAUER: And Mr. Martin,
5 I think you said Hawaii?

6 MR. MARTIN: Avenue.

7 CHAIRPERSON MOLDENHAUER: Which is not in
8 the neighborhood either.

9 MR. MARTIN: It's in Ward 5.

10 MR. STEWART: I am a former resident of
11 Ward 2, though. I lived on New Jersey Avenue,
12 1522 New Jersey Avenue for two years, one of
13 those years being during the time that I was an
14 occupant of Gold Leaf.

15 CHAIRPERSON MOLDENHAUER: And Gold Leaf
16 doesn't have a long-term lease I am assuming.

17 MR. STEWART: As of right now, from what
18 I understand from our property manager, who also
19 unfortunately couldn't be here, we have until
20 January 31st to vacate the building.

21 VICE-CHAIRPERSON SORG: Are there future
22 plans for Gold Leaf in relocation, or is it like

1 disbanding, or what is happening?

2 MR. MARTIN: Well, so far there are no
3 future plans. The place that is important to me,
4 I will give you an example. I will go there at 7
5 o'clock in the evening, on a Friday evening, and
6 I will stay there until maybe 9:00 Saturday
7 morning practicing. You know, it is not a hobby,
8 it's not something that I do because I love to do
9 it, I have to do it.

10 You know, there are other lead players
11 like you can't become, you can't hold your craft
12 the way they do it three or four hours a day,
13 that does not work, you know. So, I practice
14 seven, eight, nine, 10 hours. I am there
15 generally every evening. I will practice from
16 maybe 6:30, 7 o'clock, until 10 o'clock, 11
17 o'clock.

18 During weekends, I will stay there nine,
19 10 hours. We also have performances there. You
20 probably have never been to Capital Bob's Jazz
21 Loft [ph], but we are probably the first jazz
22 loft in the District. We have had some

1 incredible players there, probably some of you
2 may know some of them. I am imagining that you
3 probably don't, but we do this on a regular
4 basis.

5 VICE-CHAIRPERSON SORG: How many
6 residents are there or people who use Gold Leaf
7 for practice space kind of thing?

8 MR. STEWART: In terms of musicians, it's
9 upwards of over 20 people. I don't have an exact
10 number, but it's quite a few, in addition to the
11 visual artists who also rent space there.

12 VICE-CHAIRPERSON SORG: And what kind of
13 like how many artists are housed there, let's
14 say?

15 MR. STEWART: I believe that are
16 currently seven artists, six or seven artists,
17 and some of the spaces are shared, and they
18 collaborate, as well, and some of the spaces are
19 exclusive.

20 Also, in the downstairs, there is also a
21 retail clothing store.

22 VICE-CHAIRPERSON SORG: I just want to

1 make a comment for the record. I am not sure
2 what we, as a board, within our purview can do
3 about this, but I will say for myself, as
4 somebody who has been very much involved in the
5 arts, in the visual arts, in my own practice in
6 the District, I find it saddening and extremely
7 unfortunate that there is a prospect of
8 displacing upwards of like 30 artists here.

9 I mean for whatever that is worth, I
10 think that the cultural institutions in this
11 city, space is at a premium in this city, and,
12 you know, I have personally seen time and time
13 again galleries, artists, musicians, music venues
14 be displaced, and we do often see developers come
15 in even when they don't have to with plans to
16 help to preserve these amenities and community
17 benefits.

18 So, that is just my two cents.

19 MR. STEWART: Thank you. If you have any
20 suggestions, please let us know.

21 MR. HOOD: Look in Ward 5. I am just
22 saying let's look in Ward 5, and we can get rid

1 of some of this other stuff that we get, so I
2 would just suggest you look in Ward 5. I live in
3 Ward 5 also, so look in Ward 5.

4 CHAIRPERSON MOLDENHAUER: I appreciate
5 both of you guys coming down and presenting. I
6 think at this time we will move on.

7 Is there anybody else in the audience
8 here in support or in opposition?

9 At this time, we will turn to the Office
10 of Planning for their report.

11 MR. COCHRAN: Thank you, Madam Chair.

12 Before I begin OP's testimony, I would
13 just like to encourage the two gentlemen that
14 have just spoken to give our office a call. I
15 will give you my number later.

16 I know the building well. I actually
17 know some of the tenants and the previous
18 tenants, and I have to performances in the Space,
19 and have looked into the auto repair shop.

20 There is nothing that the Applicant is
21 doing that is not allowed by the zoning, so there
22 is no way in which the Board -- I am not on the

1 Board, so I can't speak for the Board -- but
2 there is nothing in the zoning regulations that
3 would encourage these kinds of uses to stay on
4 this site.

5 But our office is very concerned. These
6 are exactly the kinds of uses that we think lead
7 to a vibrant neighborhood, all of the uses in the
8 building, not just the ones that you mentioned,
9 and we are striving to understand how we can use
10 the zoning regulations and incentives to
11 encourage these kinds of uses to stay in the
12 city.

13 So, if you will give me a call, I am not
14 an expert in it, but we do have other people in
15 the office that may be able to help. No
16 guarantees whatsoever, but we have tried. There
17 are many where we have failed, but we can try
18 again. So, I will give you the number later.

19 CHAIRPERSON MOLDENHAUER: Thank you very
20 much for the report from Office of Planning. You
21 didn't get to give a report yet?

22 MR. COCHRAN: No, sorry.

1 CHAIRPERSON MOLDENHAUER: I got
2 distracted by the Chairman. [Laughter.]

3 MR. COCHRAN: That is easy to happen.

4 CHAIRPERSON MOLDENHAUER: If you can
5 please present your report, if there is any
6 additional. I mean I think you got a pretty
7 full report.

8 MR. COCHRAN: I will be very brief.

9 CHAIRPERSON MOLDENHAUER: But we also
10 want to maybe supplement on the closed courts.

11 MR. COCHRAN: Absolutely. Given that the
12 information that the Applicant supplied to us,
13 actually, it was last week, because they were
14 responding to us, and they wanted to be sure that
15 we thought they were being responsive to the
16 concerns that we had raised, so that is why we
17 saw it earlier, it's not favoritism.

18 So, given that, we do recommend that the
19 Board approve the requested relief for lot
20 occupancy, the roof structure in both of the
21 closed courts, and we think that the FAR that is
22 being requested is entire appropriate.

1 CHAIRPERSON MOLDENHAUER: Thank you very
2 much, and I apologize for my lack of realizing
3 you had not given the report.

4 Does the Applicant have any questions for
5 the Office of Planning?

6 MR. UTZ: No, we don't.

7 CHAIRPERSON MOLDENHAUER: Do any Board
8 members have any specific questions?

9 That being said, then, at this point in
10 time we will turn to see if there is actually
11 anybody in the audience from ANC-60?

12 Seeing no one, we will indicate that we
13 do have a letter in our record, Exhibit 26,
14 indicating that a duly noticed and regularly
15 scheduled meeting with a quorum present on
16 November 21st, the Commissioners voted 6 to 0 to
17 support the application, and that is for all
18 relief that was being requested.

19 We also, just for our record, have a
20 letter from DDOT, which is in our record, Exhibit
21 No. 30, which also evaluates the relief being
22 sought, and indicates that they have no objection

1 to the application.

2 That being said, we turn back to the
3 Applicant for any closing remarks. Obviously,
4 there has been a lot in regards to the Board's
5 authority in regards to relief and the concerns
6 that have been brought up by Gold Leaf, and I do
7 confirm the comments that were made by Vice-Chair
8 Sorg in regards to the concern about losing this
9 type of space in the area, and the fact that
10 obviously we do have a formal letter which would
11 receive great weight from ANC.

12 You indicated that you met with the Mount
13 Pleasant Neighborhood Association, but we don't
14 have a letter from them indicating their support.
15 I know that there is also the Downtown
16 Neighborhood Association, which is within this
17 jurisdiction that represents, has a very good
18 pulse of the community, and we don't see a letter
19 from them.

20 So, one of the elements of the standard
21 that we evaluate is whether this is going to
22 create any detriment to the public good, and I do

1 think that there has been issues raised about
2 that, and I think there is I think an element of
3 public good while there are some benefits
4 provided, unfortunately, our regs don't allow us
5 to evaluate those benefits.

6 We have had cases where there have been a
7 lot of great benefits and really no burden, and
8 we can't even evaluate that in regards to
9 providing greater weight to the third prong. It
10 is only an evaluation of a detriment to the
11 public good, and I think that here there has been
12 some question in that regard.

13 So, I would maybe want to wait and see
14 kind of get some additional letters and
15 confirming, and as I said, with ANC switching
16 over right now, I obviously give full weight to
17 ANC-6C's letter, but I think it would be
18 interesting considering some of the comments made
19 by Gold Leaf to maybe actually have in our
20 records, since there was representations about
21 the Mount Vernon Neighborhood Association, and I
22 do know a lot of the activity that they have done

1 in regards to supporting the outdoor community
2 center, the outdoor farmers' market in the lot
3 there.

4 I know that they have actually also
5 participated a great deal with the I Street hotel
6 that bids were being presented for that, which is
7 I believe the neighboring property here, which is
8 in that parking lot that would eventually be
9 developed.

10 I think that is kind of where I stand in
11 regards to maybe waiting to see some additional
12 information in regards to that third prong to
13 potentially evaluate that in relationship to some
14 of the testimony we heard today.

15 I will open it up to see if there is any
16 other comments from Board members in that regard.

17 VICE-CHAIRPERSON SORG: Madam Chair, I
18 don't know what the Applicant would bring forward
19 for the third prong, but I also would advocate
20 putting this for decision on another day just
21 because we did receive this application of the
22 courtyard relief pretty late for our Board, and

1 OP has changed their opinion based on that,
2 saying we got a lot of good information on that
3 in hearing, but I could use a little more time
4 just to sort of go ahead and review that because
5 I think it does add a lot to the argument there.

6 MR. UTZ: Can I say a few things about
7 the no harm to the zone plan and in regulations,
8 element of this in the community?

9 CHAIRPERSON MOLDENHAUER: The public
10 good, the zone plan actually, there is that kind
11 of a two-prong to that third prong, there is the
12 zone plan and the public good.

13 MR. UTZ: Right.

14 CHAIRPERSON MOLDENHAUER: Please, go
15 ahead.

16 MR. UTZ: The reason that there aren't
17 letters from Mount Vernon Square Neighborhood
18 Association, I was at all the meetings, and the
19 response was overwhelmingly positive at all of
20 them. Mount Vernon Square Neighborhood
21 Association, it wasn't a formal meeting. It was
22 actually a wine tasting, and we showed up and

1 presented for around two and a half hours, which
2 actually meant that we stayed there for quite a
3 while.

4 CHAIRPERSON MOLDENHAUER: There was a lot
5 of wine.

6 MR. UTZ: Yeah, but we didn't get to
7 participate in that part, so we really kind of
8 got into the details with a lot of folks from the
9 area, and the response across the board was very
10 supportive and very excited about this project,
11 but because it wasn't a formal meeting, that just
12 happened to be when that calendar fell in
13 relation to when this hearing date was, they
14 weren't able to put an official letter into the
15 record.

16 Similarly, ANC-2C, since it wasn't in
17 their jurisdiction, they didn't want to issue a
18 letter about it, and they were hesitant to do
19 that, but they were very happy when we went
20 before them, and they were glad we were there,
21 and very excited about the project, as well.

22 Then, ANC-6C, we met with them at the

1 Planning and Zoning Committee, the subcommittee
2 of that body, and we got unanimous support from
3 them, and similarly, they were excited about it,
4 and actually kind of pushing us to start. That
5 was the most frequent question we got was when
6 can you start, how soon can you start, can you
7 start tomorrow type thing.

8 Then, ANC-6C, the whole ANC was roundly
9 supportive of the whole thing. We think that
10 there is no harm to the public good or anything
11 along those lines, particularly, specifically,
12 relating to the four areas of relief.

13 The four areas of relief are very
14 narrowly drawn. It is the special exception for
15 the roof structure, and we can't see any public
16 harm resulting from that element of non-
17 uniformity of a height of a roof structure.

18 The closed court, particularly since it's
19 internal to the site, we don't see any public
20 harm there. The lot occupancy, as we have
21 discussed, it is actually a better use of the
22 site, it is more efficient use of the sites to

1 utilize 93.3 to 93.8 percent for those three
2 floors that we are using rather than kind of
3 carving out an unnecessarily large amount of
4 space on the ground level. Then, for the 6.0 FAR
5 limitation variance that we are asking for is
6 actually really just more of a technicality.

7 We don't think that there is any public
8 harm that stems from that particular very kind of
9 arcane topic that we dug out of the regulations,
10 and basically, we are asking for relief from
11 something that really doesn't affect the
12 community at all.

13 The FAR for the whole site is 8.0 FAR,
14 which is well under the actually unlimited FAR
15 that is permitted in the DD.

16 CHAIRPERSON MOLDENHAUER: Thank you. I
17 still think that we need to put this on the
18 calendar for a decision, and so it does give you
19 time if you want to supplement the record, we
20 will leave the record open.

21 MR. JORDAN: Madam Chair, also, as we
22 have talked to others, it might not be a bad

1 thing for you to talk to the surrounding
2 neighbors, people who use the Gold Leaf and et
3 cetera, to have conversations with them.

4 CHAIRPERSON MOLDENHAUER: We always look
5 favorably upon discussion and conversation. We
6 had a case this morning where we actually, in one
7 case, they had gotten all their neighbor's
8 support, and they had gone and had a site visit,
9 and I see obviously, you guys have done a lot of
10 communication, but I still think that we have
11 some time between now and when we have our next
12 decision day, and I think that it would provide
13 an opportunity to have some additional
14 discussion.

15 What we will do is we will put this on
16 deliberation for January 10th, it's a morning
17 decision day, and we will leave the record open
18 for any additional submissions from anybody.

19 MR. UTZ: Okay.

20 CHAIRPERSON MOLDENHAUER: Okay?

21 MR. UTZ: Sure.

22 CHAIRPERSON MOLDENHAUER: Thank you very

1 much then for coming down today, and we will
2 deliberate on this on January 10. Thank you.

3 That concludes our cases for today. We
4 will reconvene next week.

5 [Whereupon, at 3:15 p.m., the Public
6 Hearing was adjourned.]

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