

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + +

WEDNESDAY,

FEBRUARY 18, 1998

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The public hearing convened in Room 220, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:36 a.m., SHEILA CROSS REID, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson  
BETTY KING, Vice Chairperson  
SUSAN MORGAN HINTON  
JERRILY KRESS  
LAURA M. RICHARDS

STAFF PRESENT:

MADELIENE H. DOBBINS, Director  
TRACEY WITTEN ROSE  
JOHN NYARKU  
PAUL HART

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**C O N T E N T S**

	<u>PAGE</u>
<u>Case Number 16315</u>	
LaVern A. Lacy	9
Sean Harrigan	10
Postponement	11
<u>Case Number 16314</u>	
Tyrone Davis	12
Mildred Linzy	13
Concluding Remarks   Mildred Linzy	22
Board's Decision	24
<u>Case Number 16316</u>	
The Catholic University of America	25
Allison Prince, Esquire	26
Concluding Remarks   Allison Prince	29
Board's Decision	29
<u>Case Number 16317</u>	
1776 Massachusetts Avenue Associations, L.P.	30
Allison Prince, Esquire	30
Stuart Miller	33
Steven Muse	36
Robert L. Morris	51
Concluding Remarks   Allison Prince	58
Board's Decision	62
<u>Case Number 16288</u>	
Ira Clements	66
Michael Clements	66
Postponement	240

**CONTENTS** (Continued)

	<u>PAGE</u>
<u>Case Number 16318</u>	
Shew F. Hom and Sau W. Hom	68
Wai Hom	69
Cross-examination	92
Opposition	105
Louise Kinney	114
Elizabeth Noyes	115
Peter Seligmann	121
Susan Seligmann	213
Verna Movern	217
Concluding Remarks	224
Wai Hom	
Board's Decision	
<u>Case Number 16319</u>	
C. Austin Fitts	133
Ron M. Friday	134
Direct Examination	138
Opposition	152
Leslie Nettleford,	
Esquire	
Concluding Remarks	154
Ron M. Friday	169
Board's Decision	
<u>Case Number 16298</u>	
Trinity Housing Corporation of Washington	172
Gwendolyn R. Simmons, Esquire	173
Marion F. Brooks	175
Dr. Athel Q. Liggins	187
ANC-1A Report	182
Robert W. Tucker	179
Opposition	210
Sherrill Berger	
Postponement	
<u>Case Number 16299</u>	
Anoop Singh	225
Paul Gaiser	225
Board's Decision	222

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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(9:36 a.m.)

CHAIRPERSON REID: Good morning. The hearing will please come to order. Good morning, ladies and gentlemen. This is the February 18th public hearing of the Board of Zoning Adjustment of the District of Columbia.

Joining me today are Betty King; Susan Morgan Hinton, representing the National Capital Planning Commission. And representing the Zoning Commission is Jerrily Kress.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons wanting to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forth to speak to the Board, please give both cards to the reporter, who is sitting to my right.

The order procedure except for special exception and variance cases will proceed as follows: statement and witnesses of the applicants; government reports, including Office of Planning, Department of Public Works, ANC, et cetera; persons or parties in support; persons or parties in opposition; closing remarks by the applicant.

If an appeal application is on the agenda, it will be subsequent to this. The order procedure for appeal applications will be as follows: statement and witnesses of the applicants, the Zoning Administrator or other government official, the owner, lessee, or operator of property involved, if not, the appellant, the ANC within

1 which the property is located; intervenor's case, rebuttal and closing  
2 statements by appellant. Cross-examination of witnesses is permitted  
3 for persons or parties with direct interest in the case.

4 The record will be closed at the conclusion of each  
5 case except for any materials specifically requested. The Board and  
6 the staff will specify at the end of the hearing exactly what is expected.

7 The decision of the Board in these contested cases  
8 must be based exclusively on the public record. To avoid any  
9 appearance to the contrary, the Board requests that persons who are  
10 present not engage the members of the Board in conversations.

11 At this time, the Board will consider any preliminary  
12 matters. Preliminary matters are those which relate to whether a case  
13 will or should be heard today, such as requests for postponement,  
14 continuance, or withdrawal, or whether proper and adequate notice of  
15 the hearing has been given. If you are not prepared to go forward with  
16 the case today or if you believe that the Board should not proceed,  
17 now is the time to raise such a matter.

18 Does the staff have any preliminary matters?

19 MS. ROSE: Yes, Madam Chair. The staff has three  
20 preliminary matters this morning. The first case of the morning, 16314  
21 of Tyrone Davis, the affidavit of posting indicates that the property was  
22 posted on February the 11th, as opposed to February the 3rd. As  
23 required by the Board's rules, the applicant would need an eight-day  
24 waiver for the Board to proceed this morning.

25 Is the applicant present? Would you please come  
26 forward?

27 CHAIRPERSON REID: Would you please come

1 forward? You want to sit at the mike.

2 MS. LINZY: Mildred Linzy is my name, and I'm the  
3 one that posted the sign that was posted in the window. You said it  
4 wasn't posted in the proper time limit?

5 MS. ROSE: Timely, yes.

6 MS. LINZY: Do you remember when it was posted?

7 MS. ROSE: Yes.

8 MS. LINZY: It was posted on about February the -- I  
9 was here -- about February the 2nd. And I didn't bring the thing here  
10 until I took the pictures and everything and brought it here I think on  
11 that date that you quoted.

12 MS. ROSE: Okay. So maybe it was just erroneously  
13 filled out?

14 MS. LINZY: Yes because I did post it in -- it said five  
15 years prior to the hearing.

16 MS. ROSE: Right.

17 MS. LINZY: And it was posted five years prior to the  
18 hearing.

19 MS. ROSE: Fifteen days prior to the hearing.

20 MS. LINZY: Fifteen days or whatever. It was. It was  
21 posted in due time.

22 MS. ROSE: Okay.

23 VICE CHAIRPERSON KING: Is there any opposition  
24 in this case?

25 MS. ROSE: I don't know.

26 CHAIRPERSON REID: No, not according to the  
27 record that I have.

1 MS. ROSE: Is there anyone here in opposition?

2 CHAIRPERSON REID: Are we determining that it  
3 was posted in a timely fashion?

4 MS. ROSE: Yes.

5 CHAIRPERSON REID: Okay. All right. Thank you.  
6 You may be seated.

7 CASE NUMBER 16315

8 MS. ROSE: The next preliminary matter relates to  
9 16315. No affidavit of posting has been received. Is the applicant in  
10 the LaVern Lacy case present or a representative of the applicant?  
11 LaVern Lacy, the applicant's name.

12 VICE CHAIRPERSON KING: There was a  
13 postponement requested for that, was there not?

14 MS. ROSE: Exactly. So that might be the reason  
15 that it wasn't posted.

16 CHAIRPERSON REID: There was a letter in the file  
17 that requested a postponement.

18 DIRECTOR DOBBINS: Even when an applicant  
19 requests postponement, we ask them to send the representative to  
20 speak to the Board about any other reasons or to answer any  
21 questions that the Board might have.

22 CHAIRPERSON REID: There is no one present in  
23 the LaVern A. Lacy application? There is? Come forward, please.

24 MS. ROSE: Sir, a microphone so we'll pick you up.

25 CHAIRPERSON REID: Speak into the mike, please.

26 MR. HARRIGAN: Creative Energy is the company;  
27 correct?

1 CHAIRPERSON REID: Your name?

2 MR. HARRIGAN: Sean Harrigan, 7305 Baltimore  
3 Avenue.

4 We're just asking for a postponement. That's why I'm  
5 here on behalf of Creative Energy, on behalf of Lacy. That's what I  
6 was trying to tell you.

7 CHAIRPERSON REID: Okay.

8 VICE CHAIRPERSON KING: Did you post the  
9 property?

10 MR. HARRIGAN: Yes.

11 VICE CHAIRPERSON KING: When?

12 MR. HARRIGAN: Fifteen days prior to --

13 VICE CHAIRPERSON KING: Today?

14 MR. HARRIGAN: Today, yes. It was actually  
15 February 1st when we posted it. Everything, all of the paper, has  
16 been turned in. An emergency came up with the gentleman who  
17 handles all of this for our office. He couldn't make it.

18 I told him I would come in here and come down here  
19 because there needed to be a representative. And they told us you  
20 would give us a new date today.

21 CHAIRPERSON REID: Okay. And we also have the  
22 letter requesting a postponement from Barry Flats.

23 MR. HARRIGAN: Right. That's who I'm representing.

24 CHAIRPERSON REID: Do we give them another  
25 date?

26 DIRECTOR DOBBINS: The Board consensus is  
27 going to grant the postponement?

1 CHAIRPERSON REID: What is the position of the  
2 Board in this matter?

3 VICE CHAIRPERSON KING: Grant the  
4 postponement and give them another date.

5 CHAIRPERSON REID: Okay. By consensus, yes.

6 MS. ROSE: The new date will be May the 6th at 9:30  
7 a.m.

8 MR. HARRIGAN: May the 6th?

9 MS. ROSE: Yes.

10 MR. HARRIGAN: Okay. Thanks a lot.

11 MS. ROSE: The last preliminary matter relates to  
12 16317, 1776 Massachusetts Avenue Associates, Limited Partnership.  
13 We do not have an affidavit of posting in this case. Could you come  
14 forward?

15 The applicant is going to check for a copy of the  
16 affidavit in her file.

17 MS. PRINCE: Allison Prince with Wilkes, Artis,  
18 Hedrick and Lane.

19 We properly and timely posted and filed an affidavit.  
20 I'm just looking for our copy. I have a copy in the file if you would like  
21 for me to submit it for the record. It demonstrates that the property  
22 was posted properly.

23 MS. ROSE: Then the Board can proceed with this  
24 case.

25 CHAIRPERSON REID: Is that the end of the  
26 preliminary matters that you have?

27 MS. ROSE: That's all the preliminary matters, yes.

1 CHAIRPERSON REID: Are there any other  
2 preliminary matters for the Board?

3 (No response.)

4 CHAIRPERSON REID: Okay. The first case?

5 CASE NUMBER 16314

6 MS. ROSE: The first case of the morning is 16314,  
7 the application of Tyrone Davis, pursuant to 11 DCMR 3108.1, for a  
8 special exception under Subsection 2003.1 to change a  
9 nonconforming use (sewing shop, dress-making design with no more  
10 than 5 students, to another nonconforming use, sale of clothes, retail,  
11 or, in the alternative, pursuant to 3107.2, for a variance from the use  
12 provisions of Subsection 201.1 to allow the retail sale of clothes on the  
13 first floor of an existing structure in an R-1-B district at premises 3603  
14 18th Street, Northeast, Square 4204, Lot 191.

15 Would all persons planning to testify in this application  
16 please rise to take the oath? Would you raise your right hand?

17 (Whereupon, Mildred Linzy, witness in Case Number  
18 16314, was duly sworn.)

19 MS. ROSE: You may come forward and be seated.

20 MS. LINZY: Mildred Linzy, 5613 Duchaine Drive,  
21 Lanham, Maryland 20706.

22 MS. ROSE: Okay. You may be seated. Give your  
23 statement.

24 MS. LINZY: I'm here to try to get the shop opened up.  
25 I know it's not in the right zone and they said it would have to be  
26 rezoned. And I was going to use the shop as a boutique.

27 This shop would serve even the communities for the

1 elderly people that cannot get downtown or to a shopping center. And  
2 during the summer months, I plan to employ a couple of the  
3 neighborhood teenagers to work in the shop there.

4 And adjacent to the shop is a beauty shop. So it  
5 would not be out of line with what's there, and it would not deface any  
6 of the property or obstruct anything that's in that neighborhood. It  
7 would be strictly a boutique shop for ladies' apparel there in this  
8 facility.

9 CHAIRPERSON REID: Are you familiar with the test  
10 that you have to prove in order to be able to get your relief that you're  
11 requesting? Are you familiar with the procedure here?

12 MS. LINZY: I am not quite familiar with the  
13 procedures. I've gone through a lot of things here to get to this point.  
14 And from here henceforth I don't know any of the procedures that I  
15 would have to adhere to or go through.

16 DIRECTOR DOBBINS: Madam Chairman, if she  
17 would possibly describe the property, the way it looks, the --

18 CHAIRPERSON REID: We are going to help you to  
19 work through what steps that you need to go through in order to be  
20 able to present your case properly. The property that you are referring  
21 to needs to be described so that we can get a better idea as to what  
22 the property is and how it's situated and the layout.

23 MS. LINZY: Okay. The property is the first floor level  
24 of a -- I think at the top is an apartment dwelling there. Adjacent to  
25 that, it's a beauty shop.

26 It has a big display window in the front of the property.  
27 There are no steps leading up to the property. It's flat on the ground.

1 You enter directly from the street.

2 The property on the inside, it's a big, open space. It  
3 has a restroom, a dressing room, and another little utility room there.  
4 It has a front entrance and a back entrance to the property.

5 VICE CHAIRPERSON KING: You say it has a  
6 display window in front?

7 MS. LINZY: Yes, it does.

8 VICE CHAIRPERSON KING: Therefore, it is totally  
9 unsuitable for residential use?

10 MS. LINZY: It is unsuitable for residential.

11 CHAIRPERSON REID: Okay. You have to meet a  
12 three-pronged test in order to be able to get the relief that you are  
13 trying to obtain granted to you. And that would be to demonstrate that  
14 there is something unique or different about your property that would  
15 make it an unusual circumstance.

16 And I would suppose that, looking at the picture here,  
17 it appears that this building could not be used as residential because  
18 of the fact that it had previously been used commercially and that the  
19 design of it is not conducive to residential use.

20 MS. LINZY: Right. In the previous years, I think  
21 back, way back when, maybe 30 years ago, it was a restaurant there  
22 before it became the sewing shop with the five employees or five  
23 students in that particular place.

24 It was never used as a residential place. That  
25 particular shop was never used for residential purposes.

26 CHAIRPERSON REID: Are you aware of any  
27 adverse impact in the community or the neighborhood that granting

1 the application would cause; for example, traffic problems or any kind  
2 of parking problems or noise or anything that would be disruptive to  
3 the other people who live around you?

4 MS. LINZY: No. It would not be because mostly I will  
5 be doing this on appointments only. You know, it wouldn't be like a lot  
6 of traffic. And it's a small boutique shop. So it would not even attract  
7 teenagers or crowds or anything like that because I wouldn't be really  
8 catering to that type of clientele there.

9 CHAIRPERSON REID: Okay. Is it a neighborhood  
10 facility?

11 MS. LINZY: Yes, but they have other little shops and  
12 things in that area. As I stated, it's a --

13 VICE CHAIRPERSON KING: But you yourself will be  
14 catering to people in the neighborhood?

15 MS. LINZY: Yes, I would.

16 CHAIRPERSON REID: We were not sure as to the  
17 type of relief that you were requesting, whether or not it was a special  
18 exception or a variance. And we are now going to make a  
19 determination as to which type of relief you are actually requesting.

20 MS. LINZY: I thought I had made that a special  
21 exception.

22 CHAIRPERSON REID: Special exception is what you  
23 are asking for?

24 MS. LINZY: Yes, right. That's right.

25 CHAIRPERSON REID: Okay. I have no problem  
26 with that.

27 MEMBER HINTON: It sounded to me from the

1 description that the intent of the business is to serve the  
2 neighborhood, people who are in the neighborhood.

3 And that would make it a neighborhood facility, which  
4 would mean the relief that we could grant would be special exception,  
5 rather than variance.

6 CHAIRPERSON REID: Yes. Once we determine  
7 that it's a neighborhood facility, then that helps us to be able to guide  
8 you further.

9 VICE CHAIRPERSON KING: Have you had any  
10 conversations with residents in the neighborhood or with the advisory  
11 neighborhood commission or anything of that nature?

12 MS. LINZY: No, I haven't, only with just getting the  
13 addressees and things. And I talked to the people in the beauty shop  
14 next door but none of the neighbors. I have not.

15 CHAIRPERSON REID: The ANC was noticed on the  
16 8th of January. So they have been notified. They have not submitted  
17 anything to the record. So that's okay.

18 Any other discussion? Any other questions? Ms.  
19 Hinton?

20 MEMBER HINTON: No.

21 CHAIRPERSON REID: Ms. King, do you have any  
22 other questions?

23 VICE CHAIRPERSON KING: No. I'm ready to make  
24 a motion, if you wish.

25 CHAIRPERSON REID: All right.

26 DIRECTOR DOBBINS: Madam Chairman, if you're  
27 going to proceed with this as a special exception, --

1 CHAIRPERSON REID: A special exception.

2 DIRECTOR DOBBINS: -- you might want to ask  
3 about the operations in terms of the times and the days and things like  
4 that so you have testimony on record about that in the event that you  
5 need to make conditions associated with this.

6 CHAIRPERSON REID: What are your days of  
7 operation and the times of operation, for the record?

8 MS. LINZY: Okay. It will be Tuesdays through  
9 Saturdays, and the time will be from 9:00 to 5:00.

10 CHAIRPERSON REID: Are there any parties in  
11 support of this application? Parties in opposition? Okay. Seeing  
12 none, we don't have a report from the Office of Planning, do we? Do  
13 we have a report from the Office of Planning?

14 DIRECTOR DOBBINS: No, there's no report.

15 CHAIRPERSON REID: No report?

16 DIRECTOR DOBBINS: No staff report in the record.

17 But you probably want to ask also about parking to make sure that  
18 most of the traffic is either pedestrian traffic and neighborhood traffic --

19 CHAIRPERSON REID: Most of the people that come  
20 to your shop come from the neighborhood. Are they pedestrians or do  
21 they have to drive to your shop?

22 MS. LINZY: Oh, no. They would be walking. It's  
23 nearby for pedestrians.

24 CHAIRPERSON REID: Most of them are  
25 pedestrians?

26 MS. LINZY: Right, yes.

27 CHAIRPERSON REID: All right. How many people

1 work at your shop?

2 MS. LINZY: Well, starting off, it will be two people  
3 there.

4 CHAIRPERSON REID: Starting off?

5 MS. LINZY: Yes.

6 CHAIRPERSON REID: You mean that --

7 MS. LINZY: And then, like I said, in the summer  
8 months, we plan to hire, you know, a couple of the teenagers to do  
9 things around in the shop. So it will be four during the summer and  
10 two during the regular seasons.

11 CHAIRPERSON REID: Two to four?

12 MS. LINZY: Yes.

13 MEMBER KRESS: Two plus yourself or --

14 MS. LINZY: No. One plus myself.

15 CHAIRPERSON REID: And how do they get to the  
16 facility? Do they walk, too, or do they --

17 MS. LINZY: The person that will be working with me?

18 CHAIRPERSON REID: Yes.

19 MS. LINZY: It would be my husband. So we would  
20 come together.

21 (Laughter.)

22 CHAIRPERSON REID: Okay. And then the summer,  
23 the other two --

24 MS. LINZY: From the neighborhood.

25 CHAIRPERSON REID: In the neighborhood?

26 MS. LINZY: Right.

27 CHAIRPERSON REID: They would be walking as

1 well?

2 MS. LINZY: Right.

3 CHAIRPERSON REID: All right. Do you have any  
4 closing remarks?

5 MS. LINZY: No. Just I'm anxious about doing this  
6 because I think it would be a help to the community there, and it will  
7 alleviate some of the elder -- I understand that this is a community  
8 where we have elderly people. And they cannot get out to shopping  
9 centers and downtown, bus transportation or however. And I feel like  
10 this would be a community thing. And it will be a help to the  
11 community.

12 Plus, it will enhance, you know, the students or  
13 teenagers that are around for me to get the people in during the  
14 summer to work, during the Christmas season to work, where they will  
15 not have to travel or spend transportation money to get to other  
16 facilities to work.

17 So I think this would be a good community shop  
18 there. And it will enhance the community a great deal.

19 CHAIRPERSON REID: All right. You might want to  
20 request a summary order, which is a request for a decision today, a  
21 bench decision and summary order.

22 MS. LINZY: Pardon me?

23 CHAIRPERSON REID: You might want to request a  
24 bench decision.

25 MS. LINZY: Okay.

26 CHAIRPERSON REID: A bench decision means that  
27 you will get a response today; and a summary order, which means

1 you'll get an expedited order.

2 MS. LINZY: Okay. I would request --

3 CHAIRPERSON REID: So request -- okay.

4 MS. LINZY: I will request a decision today.

5 CHAIRPERSON REID: Okay. Board members?

6 VICE CHAIRPERSON KING: I would move that we  
7 grant the special exception. It's clear that the property is not useable  
8 for residential purposes. There seems to be not only no adverse  
9 community impact, but it seems to me that this operation would be an  
10 asset to the community and would due to the hours of operation and  
11 the small number of staff people involved not have a significant impact  
12 in terms of traffic and parking.

13 And, therefore, I move that we give a summary  
14 judgment and an expedited order in order to grant the application.

15 MEMBER KRESS: I agree, and I would second that  
16 motion.

17 DIRECTOR DOBBINS: Does the Board intend to put  
18 the conditions associated with number of employees and hours as  
19 part of the decision?

20 VICE CHAIRPERSON KING: It's a small shop and a  
21 small operation. I'm not sure that we need to. Do you think we need  
22 to?

23 DIRECTOR DOBBINS: I think you do. It's a special  
24 exception.

25 VICE CHAIRPERSON KING: Okay. The conditions  
26 are that the hour of operation shall be Tuesday through Saturday from  
27 9:00 a.m. to 5:00 p.m. and that there shall not be more than four

1 employees. Anything else?

2 CHAIRPERSON REID: Anything else?

3 (No response.)

4 CHAIRPERSON REID: Okay. Ready to vote? All  
5 those in favor?

6 (Whereupon, there was a chorus of "Ayes.")

7 CHAIRPERSON REID: Those opposed?

8 (No response.)

9 MS. ROSE: Staff will record the vote as four to zero  
10 with Ms. King, Ms. Kress, Ms. Hinton, and Ms. Reid to grant the  
11 application with conditions.

12 CHAIRPERSON REID: And to grant summary order?

13 MS. ROSE: And a summary order, yes. That's all.

14 Thank you.

15 CASE NUMBER 16316

16 MS. ROSE: The next application is 16316 of The  
17 Catholic University of America, pursuant to 11 DCMR 3108.1, for a  
18 special exception under Section 210 for further processing of an  
19 approved campus plan to allow additions to an existing dining hall at  
20 premises 620 Michigan Avenue, Northeast, Squire 3821, Lot 43.

21 Would all persons planning to testify in this application  
22 please rise to take the oath? Please raise your right hand.

23 (Whereupon, all witnesses in Case Number 16316  
24 were duly sworn.)

25 MS. ROSE: You may be seated.

26 CHAIRPERSON REID: There is a request from the  
27 ANC for waiver for late delivery. Do we have to deal with that as a

1 preliminary matter before we begin? No.

2 There is a letter from the ANC for waiver of the  
3 seven-day requirement. Do we want to vote on that or do we just --

4 VICE CHAIRPERSON KING: Grant it.

5 CHAIRPERSON REID: Grant the waiver? Okay. We  
6 will so waive for the ANC. All right.

7 Ms. Prince, do you want to continue? Ms. Prince,  
8 Board members feel that we have read the record and would like to  
9 probably expedite this particular hearing.

10 We are all familiar with the case. And we are going to  
11 check to see. If there is no opposition, then we'll basically just ask  
12 questions to clarify areas that may be cloudy and proceed in that  
13 manner.

14 Is there anyone here in opposition to this particular  
15 application?

16 (No response.)

17 CHAIRPERSON REID: All right. Board members? If  
18 you'll maybe just give a brief summation? Just make it --

19 MS. PRINCE: Sure.

20 CHAIRPERSON REID: Just give us the salient points  
21 for the record.

22 MS. PRINCE: I am Allison Prince with Wilkes, Artis,  
23 Hedrick and Lane.

24 This is a very minor special exception application  
25 involving a 3,500 square foot addition to the existing north dining hall  
26 on the campus of Catholic University.

27 The 1990 campus plan calls for such an addition.

1 This addition, however, is only a fraction of the size of what was  
2 originally proposed, which was 25,000 square feet.

3 Susan Purvi from Catholic is here to talk about it.  
4 Otherwise, I'm happy to submit her testimony for the record. Kenneth  
5 Terzian, the architect, is also here.

6 But, in summary, there really will be no adverse  
7 impacts. The building has an interior location. There will be no  
8 increase in enrollment, no change in traffic patterns, just simply no  
9 effect as a result of the addition.

10 So I urge you to grant immediate approval of the  
11 application if there is no opposition. We're not aware of any  
12 opposition.

13 VICE CHAIRPERSON KING: You've met with the  
14 ANC, have you? And this material that we waived in supports them?  
15 And there are no residential properties anywhere near, located  
16 anywhere near, the dining hall?

17 MS. PRINCE: Not anywhere near. The closest  
18 dividing property is Metro tracks.

19 CHAIRPERSON REID: Were you going to make a  
20 brief statement as well?

21 MS. PRINCE: If you'd like me to have the witnesses  
22 present their testimony, I can.

23 CHAIRPERSON REID: No.

24 MS. PRINCE: Otherwise, we can submit it for the  
25 record.

26 CHAIRPERSON REID: No. They don't have to.  
27 That's not necessary. I just thought if they desired to say something, I

1 would give them the opportunity.

2 MEMBER KRESS: I would just also note for the  
3 record that we did hear from Public Works. And Public Works stated  
4 that the project had no measurable adverse impact as well.

5 CHAIRPERSON REID: Any questions?

6 VICE CHAIRPERSON KING: No, none at all.

7 CHAIRPERSON REID: Ms. Hinton?

8 MEMBER HINTON: No questions.

9 CHAIRPERSON REID: No questions. Okay. We did  
10 receive a letter from the ANC, ANC-5C. And they are in support of the  
11 application. They had a -- wait one second. Let me see where that's  
12 in here. There is a quorum, and they are in support. They would be  
13 afforded the great weight that they are entitled to.

14 Are there any persons in support who would like to  
15 speak? We've already asked about opposition.

16 (No response.)

17 CHAIRPERSON REID: All right. Closing thoughts by  
18 the applicant?

19 MS. PRINCE: I would just ask for the Board's  
20 immediate approval of this application and the granting of a summary  
21 order.

22 CHAIRPERSON REID: Do you have a motion?

23 VICE CHAIRPERSON KING: I move that we issue a  
24 summary order approving this application. It is well within the  
25 framework of the approved campus plan. There is clearly no adverse  
26 community impact. And, in fact, the advisory neighborhood  
27 commission has supported it.

1 And Catholic University, unlike some of their brother  
2 and sister universities, has the luxury of having a much larger campus,  
3 not abutting dissatisfied neighbors. I congratulate them on that.

4 And I move that we grant the application and issue a  
5 summary order.

6 MEMBER KRESS: I second.

7 CHAIRPERSON REID: All those in favor?

8 (Whereupon, there was a chorus of "Ayes.")

9 CHAIRPERSON REID: All those opposed?

10 (No response.)

11 MS. ROSE: Staff will record the vote as four to zero  
12 with Ms. King, Ms. Hinton, Ms. Kress, and Ms. Reid to grant the  
13 application and issue a summary order.

14 CASE NUMBER 16317

15 MS. ROSE: The next application is 16317, the  
16 application of 1776 Massachusetts Avenue Associates, Limited  
17 Partnership, pursuant to 11 DCMR 3108.1 under Subsection 508.1, to  
18 construct a new office building in an SP-1 district at premises 1750  
19 Massachusetts Avenue, Northwest, Square 158, Lots 818, 47, 48, and  
20 49.

21 Would all persons planning to testify in this application  
22 please rise to take the oath? Would you raise your right hand?

23 (Whereupon, all witnesses in Case Number 16317  
24 were duly sworn.)

25 MS. ROSE: You may be seated.

26 MS. PRINCE: Good morning, members of the Board.  
27 I'm Allison Prince with Wilkes, Artis, Hedrick and Lane. And I'm here

1 today on behalf of 1776 Massachusetts Avenue Associates, Limited  
2 Partnership, owner of the subject site.

3 We are here today seeking special exception  
4 approval to allow for the construction of a new office building on a site  
5 that is currently used as a parking lot.

6 The proposed building will fill in the gap in the existing  
7 streetscape along Massachusetts Avenue, which is highlighted by  
8 numerous historic buildings. This site is located in two historic  
9 districts, the Dupont Circle and Massachusetts Avenue historic  
10 districts.

11 The design of the building has been granted  
12 conceptual design approval from the Historic Preservation Review  
13 Board. Last month the HPRB found that the building was highly  
14 compatible with the historic district.

15 As the architect will describe in much greater detail,  
16 the building has been designed in a manner that is sensitive to  
17 neighboring properties. For example, the lot occupancy at 50 percent  
18 allows for significant open space, far more open space than would be  
19 provided if they had built out to the permitted 80 percent lot  
20 occupancy.

21 Last month ANC-2B voted not to oppose the  
22 application. I should note that we didn't find a copy of the letter in your  
23 record, although one was sent to us. So if you don't have it, I have it  
24 for you.

25 MEMBER KRESS: We have it.

26 MS. PRINCE: Great. The Department of Public  
27 Works also expressed no opposition to the application with one

1 exception. DPW noted that the proposed semicircular drive does not  
2 comport with DPW's standards and recommended disapproval of that  
3 drive.

4 As you are aware, this Board does not have  
5 jurisdiction over public space. For that reason, we would urge you to  
6 allow the applicant to work through this issue directly with the  
7 Department of Public Works and the Historic Preservation Review  
8 Board, which are the two bodies that have the appropriate jurisdiction.

9 I should note that the Historic Preservation Review  
10 Board did grant conceptual design approval to the one-way drive in its  
11 meeting last month.

12 In summary, the proposed building has been  
13 designed in a manner that is sensitive and highly compatible with the  
14 existing neighborhood. The use, height, bulk, and design are in  
15 harmony with existing buildings.

16 There will be no dangerous or objectionable traffic  
17 conditions. And we strongly urge your favorable consideration of this  
18 application.

19 We have three witnesses: Stuart Miller from the  
20 limited partnership that owns the site; Steven Muse from Muse  
21 Architects, the project architect; and Bob Morris, the traffic engineer.  
22 I'd like to proceed now with the testimony of Stuart Miller if there are  
23 no questions.

24 MR. MILLER: Good morning, members of the Board.  
25 My name is Stuart Miller. And I am the Managing Agent of 1776  
26 Massachusetts Avenue Associates, Limited Partnership, owner of the  
27 subject site.

1                   The limited partnership also owns the 1776  
2 Massachusetts Avenue building immediately west of the subject site.

3                   As Ms. Prince has described, the property is currently  
4 being used as an accessory parking lot for 1776 Massachusetts  
5 Avenue. The lot contains approximately 35 parking spaces.

6                   Prior to its use as accessory parking for 1776 Mass.  
7 Avenue, the lot served as accessory parking for 1746 Massachusetts  
8 Avenue, a building located immediately east of the subject site that  
9 was formerly occupied by the Canadian Chancery.

10                  We are proposing the construction of a small,  
11 five-story office building that will be ideal for a single user. As  
12 architect Steven Muse will describe, the design of the building will be  
13 compatible with the Dupont Circle and Massachusetts Avenue historic  
14 districts, in which this property is located.

15                  The building relates well with its immediate neighbors  
16 and provides as an appropriate transition between the historic 1746  
17 Massachusetts Avenue building to the east and the larger and the  
18 more modern 1776 Massachusetts Avenue building to the west.

19                  We have made several efforts to ensure that the  
20 building will not create any adverse impacts on adjacent properties.  
21 For example, the building will occupy only 50 percent of the site while  
22 80 percent lot occupancy is permitted.

23                  In addition, the rear yard is greatly in excess of the  
24 minimum required under the zoning regulations. The generous rear  
25 yard will allow significant light and air into the interior of the square.

26                  The building design will be complemented by a small,  
27 semicircular driveway off of Massachusetts Avenue. We believe that

1 this driveway, which has been approved in concept by the Historic  
2 Preservation Review Board, is critical for the building.

3 The driveway will be extremely helpful to both the  
4 users of the building and the immediate neighborhood because it will  
5 reduce traffic congestion immediately in front of the building. The  
6 drive will also only be for one-way traffic. It will serve as a drop-off  
7 only, and parking will be prohibited in this driveway.

8 As the architect demonstrated to the Historic  
9 Preservation Review Board, the drive is highly consistent with the  
10 historic districts. We strongly urge you to approve the driveway as  
11 proposed with the strict ban on the parking in the driveway.

12 In summary, we believe we are proposing an  
13 appropriate, well-designed use for the site. The building will be an  
14 important addition to the streetscape and its use, height, bulk, and  
15 design will be in harmony with the existing uses and buildings in the  
16 neighborhood.

17 VICE CHAIRPERSON KING: Did Ms. Prince say that  
18 we didn't have the authority and should not fuss with the driveway?

19 MS. PRINCE: Well, we showed the driveway in the  
20 plans. And I would --

21 MR. MORRIS: You'll see it in the --

22 MS. PRINCE: I would ask your approval of the plans  
23 with full recognition that DPW and HPRB have ultimate jurisdiction of  
24 the driveway.

25 VICE CHAIRPERSON KING: Okay.

26 MS. PRINCE: So yes, technically we're not asking  
27 you to approve the driveway. We're asking you to do nothing with the

1 driveway. But it shows on the plans.

2 VICE CHAIRPERSON KING: Okay.

3 MS. PRINCE: If the Board has no questions for Mr.  
4 Miller, we can proceed with the testimony of Steven Muse, the project  
5 architect.

6 VICE CHAIRPERSON KING: I am going to have  
7 some questions about access to the parking, but I think it would be  
8 easier to do that after seeing the plans.

9 MS. PRINCE: Great.

10 MR. MUSE: I think you have a set of reduced  
11 drawings in front of you that might make it a little bit easier to follow  
12 the presentation that we're about to go through. If you don't have a  
13 set, we have some more copies with us here today.

14 What I'm going to do first is if you turn to Page 2, up in  
15 the upper left-hand corner, we're going to review some of the factual  
16 backup to this building that we're proposing today.

17 The lot, as Mr. Miller has described, is two lots east of  
18 the corner of 18th and Mass. Ave. It is immediately adjacent to the  
19 Moore House and to 1776 Mass. Ave.

20 It's a lot that's being used as a parking lot today. This  
21 lot is zoned SP-1, which is why we're here today. The lot size  
22 presently is slightly greater than 13,000 square feet.

23 The allowable lot occupancy is 80 percent. The  
24 floor-area ratio for this site is 2.5, which allows us to build a building  
25 slightly less than 33,000 square feet.

26 There's a height limit on the property of 65 feet, and  
27 there is an additional allowance of 18 and a half feet for architectural

1 and mechanical features.

2 There's no front yard required. There is no side yard  
3 required. But if we do produce a side yard, it has to be two inches in  
4 width for every foot of height in the building, which would be a side  
5 yard of ten feet, ten inches.

6 There is a rear yard requirement of two and a half  
7 inches of width for every foot of height. And, once again, at 65 feet,  
8 that gives us a 13-foot, 6-inch rear yard setback.

9 We do have parking required on the site. When you  
10 do the equation for parking and take the deduct allowed for the  
11 proximity to Metro, we are required to park 13 spaces on the site.

12 With that as the sort of zoning backup to what we're  
13 doing, what we're proposing is a 5-story building that occupies 53  
14 percent of the lot. And, once again, this is in or as related to the  
15 allowable 80 percent lot coverage.

16 We are proposing to build 32,870 square feet, which  
17 is the maximum allowed on the property. We're doing this with a  
18 building that is slightly greater than 7,000 square feet for the first 4  
19 floors and slightly less than 5,000 square feet for the fifth floor. We  
20 are proposing to build to the 65-foot height limit and also to build to the  
21 18-foot, 6-inch limit for the mechanical penthouse.

22 We have a two-level parking garage below grade.  
23 We're proposing to put 32 spaces on the property. And, once again,  
24 this is related to the 13 spaces that are required.

25 With that as sort of the zoning information behind  
26 what we're doing, I'll start with the site plan. Starting with the front of  
27 the property on Massachusetts Avenue, we are proposing to build to

1 the property line. We think this is very important to maintain the wall  
2 of buildings that exists presently along Massachusetts Avenue.

3 We think it's a terrific block of buildings. We've  
4 always seen this lot as what we call the missing tooth in the block.  
5 And we're proposing to fill that in with a wall at the front edge of the  
6 property.

7 To the east of the property next to the Moore House,  
8 we're also proposing to build right to the property line. The Moore  
9 House, as you know, sits back from the property line approximately  
10 ten feet for most of its distance. So this does give us a side yard to  
11 the east. And we're proposing to build to that property line.

12 There is a small portion of the Moore House that does  
13 come out to the property line and meets our property with a blank  
14 party wall. And we're proposing to build our building up against that  
15 party wall and put the core of our building against that side.

16 To the west of the property adjacent to 1776, we are  
17 proposing to have a side yard. This would be the ten-foot, ten-inch  
18 side yard, as required by zoning.

19 We're doing this for three reasons: number one, to  
20 allow the windows that exist presently on 1776 to remain; number two,  
21 to allow us to have windows on our building to that side; and, number  
22 three, we believe that the balance of the side yard created by the  
23 Moore House and the side yard that we'll be creating to the west gives  
24 a good balance to the presence of this building on the avenue.

25 And the fourth side is the south edge of the property.  
26 But, once again, we have a zoning requirement of a 13-foot, 6-inch  
27 setback. We are proposing to hold this building back an average of 65

1 feet from the rear property line.

2 We're doing this for several reasons as well. Number  
3 one, as I will mention in a few minutes, this helps us accommodate all  
4 parking and service off the rear of the property.

5 But, more importantly, this allows us to maintain a  
6 very wide and open courtyard to the rear of the property. This is a  
7 wedge-shaped block, and we have one of the deeper sites on the  
8 block. This allows us to maintain a good condition of light and air,  
9 which is both good for our building and also good for the neighbors.

10 With that as sort of the four edges of this building, this  
11 gives us two spaces to design. The first one is to the south. And, as I  
12 mentioned a few seconds ago, one of the nice things about this  
13 property is that we do have alley access off of 18th Street.

14 So ramping down to parking, the two levels of parking  
15 below this building and service on the main level of this building, we're  
16 able to access all of this off of the alley on 18th Street. So we don't  
17 have to have any access off of Mass. Ave.

18 VICE CHAIRPERSON KING: Where is 17th? Where  
19 is the alley that comes from 17th Street?

20 MR. MUSE: No. It's 18th. No. There's an alley off of  
21 18th that enters behind 1776 and ends in this property. It's not a  
22 through alley.

23 VICE CHAIRPERSON KING: And how did the cars  
24 proceed when they came in and came out?

25 MR. MUSE: When you're driving in off of 18th?

26 VICE CHAIRPERSON KING: Yes.

27 MR. MUSE: Then you're ramping down to parking

1 below.

2 VICE CHAIRPERSON KING: Now, is it possible in  
3 that alley to have two cars, one going in each direction? I mean, what  
4 if somebody is coming out when somebody else is coming in?

5 MR. MUSE: We have a ten-foot-wide alley. We also  
6 have dimension. But that's behind 1776. And we'll be working to use  
7 both of those together to accommodate the traffic through there.

8 VICE CHAIRPERSON KING: So two-way traffic will  
9 be possible in that alley?

10 MR. MUSE: Yes.

11 VICE CHAIRPERSON KING: The second space that  
12 we have to work with is the one in front of the building. And, as Mr.  
13 Miller mentioned, we are proposing a drop-off in this location.

14 We're doing this for two reasons. Number one, we  
15 believe that it's an important formal precedent. Most of the buildings  
16 along this side of Mass. Ave. do have this forecourt situation. Again, it  
17 is an important precedent to maintain formally in terms of the  
18 presence of this building on the avenue.

19 But, number two, unlike the other buildings, we have  
20 32 parking spaces below this building. We are not making a forecourt  
21 per se but making a single-lane drive, as you can see here on the  
22 drawing, as compared to the size of the one on the Moore House.

23 This would not be used for parking, simply used for  
24 drop-off. We feel that it would ease the traffic condition that exists  
25 presently on the avenue.

26 VICE CHAIRPERSON KING: In that regard, what  
27 does DPW object to about it? Why is it? Because clearly from the

1 written material I have seen, there is a preponderance of circular  
2 driveways in front of the buildings on that block. What does DPW  
3 object to?

4 MR. MUSE: They have requirements based on the  
5 angle of the drive coming into the property --

6 VICE CHAIRPERSON KING: I see.

7 MR. MUSE: -- and also the width of the drive.

8 VICE CHAIRPERSON KING: I see.

9 MR. MUSE: I think your comment is well-taken.  
10 None of the drives on this avenue conform to their requirements.

11 VICE CHAIRPERSON KING: And do they --

12 MR. MUSE: They're preexisting.

13 VICE CHAIRPERSON KING: Preexisting to the DPW  
14 regs? Is that it?

15 MR. MUSE: Yes.

16 VICE CHAIRPERSON KING: I see.

17 MR. MUSE: Moving to the next, one thing that I  
18 probably just should pass out to make it easier for you to view this, to  
19 put this in context, the site that we're dealing with is the parking lot in  
20 the center of that middle row.

21 We'll be glad to pass this row of photographs down so  
22 you can see the buildings that are in the immediate context. We have  
23 photographs of the buildings along our side of Mass. Ave., the  
24 condition behind our site to the south, and also the condition directly  
25 across the street on Massachusetts Avenue.

26 The next set of drawings is both the floor plan for  
27 Floors 2 through 4 and then the top floor, where, once again, we are

1 making a terrace on the south side of the building and reducing the  
2 square footage of that floor from about 7,000 square feet to about  
3 5,000 square feet.

4 The roof plan is a mechanical penthouse that all the  
5 mechanical equipment has been sized schematically and will all be  
6 held within this penthouse. And none of this equipment will be visible  
7 from the street.

8 Next plan is the two levels of parking down below,  
9 once again ramping off the deep section of the site to the south and  
10 accommodating 32 parking spaces below this building.

11 VICE CHAIRPERSON KING: Will those be used for  
12 visitors or for the workers in the building?

13 MR. MUSE: Both. The next drawing, the site section,  
14 might be the most telling about our strategy towards this site, coming  
15 in off of Massachusetts Avenue and creating a 65-foot wall to match  
16 the height limit.

17 Stepping back for the mechanical penthouse,  
18 stepping down with the rooftop terrace for the fifth floor, and stepping  
19 down to the very deep courtyard to the rear, once again, the average  
20 is 65 feet from the rear of the property, as opposed to the required  
21 13-foot, 6 inches, and then the two levels of parking below.

22 When designing the main facade of this building, we  
23 were looking at several different issues. First was the presence of a  
24 number of the really wonderful buildings along this block. We wanted  
25 our building at 1750 to match the presence that they did have.

26 And building to the 65-foot limit pretty much puts us at  
27 the cornice line of the Moore House to the east. And with adding the

1 side yard to the west to complement the ten-foot side yard between  
2 the Moore House and our site, we have what appears to be a  
3 freestanding presence, which, once again, is very much in keeping  
4 with the rest of the buildings along this block.

5 We have fit the five floors of our building within the  
6 height of the four floors of the Moore House. We have a ground floor  
7 of approximately 12 feet, 6 inches in height. And this allows us to  
8 align our ground floor cornice with the ground floor cornice of the  
9 Moore House. And we have introduced the arch over the entry to pick  
10 up some of the nicer arch features of the Moore House itself.

11 We have then compressed three floors of  
12 approximately nine feet of ceiling height into the midsection of this  
13 building and created another cornice at that point, which pretty much  
14 aligns with the cornice of the Moore House as well. We have topped it  
15 off with the penthouse of the building. And then we've set back to the  
16 mechanical penthouse itself.

17 While we looked to the east for the basic proportions  
18 of these facades. We looked to the west, to the idea that these office  
19 buildings really have to have more glass to function well as an office  
20 building.

21 We've entered this as a double-hung window system,  
22 of two windows in a bay to the left-hand side, three windows in the  
23 center, and two windows to the right. That gave us a system that  
24 allows for a lot of glass but still keeps the window system in scale with  
25 the more historic buildings on the block.

26 In looking at materials for this building, as you see  
27 from the photographs that we passed out, further to the east along

1 Mass. Ave., there are some really wonderfully rich masonry buildings,  
2 very deep reds and oranges, that we think are terrific to work with in  
3 the context of this block.

4 Our immediate neighbors and to the north side of the  
5 street is what we call the warm gray side of the street. It's limestone  
6 and pre-cast, very much in the warm gray materials. We have  
7 blended these two to come up with the material selection for this  
8 building.

9 The primary material will be a deep red masonry.  
10 What you see rendered in the drawing is slightly more orange than we  
11 would like to see it in the rendering. And I will talk about that in a  
12 second. It is intended to get very deep red masonry. And it will be  
13 complemented by the banding of limestone.

14 Now, with many Washington buildings, as you leave  
15 the primary facade and turn the corner, you sort of bail out into a  
16 different system. We're maintaining the same system of design  
17 throughout the four facades of this building.

18 So as we turn to the west and face 1776 Mass., you  
19 see that we have the same system of two windows to the front, seven  
20 in the middle, two windows paired next to it, capped by the mechanical  
21 penthouse, and then stepping down to the smaller section to the south  
22 of the site.

23 At the south elevation, the four-story section that you  
24 see here is the portion of the building that is projected to the south.  
25 We then step back to the top floor and to the mechanical penthouse;  
26 and on the east side of the building, a pair of windows to the south, a  
27 pair of windows to the north, and a blank section in the middle, where

1 we're up against the Moore House and where we put the core of the  
2 building.

3 This is a sketch that we made early on in the office to  
4 show Mr. Miller. The notion behind this was to show this section of  
5 the block and to show how this building would fit in. As I mentioned  
6 before, we have always seen this as the missing tooth of this block.  
7 And we always look at our work as only being successful if we've  
8 really made the whole block better and if this building really fits in well.  
9 That's what we've intended to do.

10 I think Mr. Miller liked this drawing, but, at the same  
11 time, we did go one step further with a rendering, which you have in  
12 front of you. We think it's a pretty good description of this building with  
13 three exceptions.

14 Number one, we feel that in the rendering, the  
15 balustrade is being shown heavier than we'd like it to be. What  
16 appears to be a single line is really meant to be much more voided  
17 than what we have here. And that's a detail that we're working on.

18 Number two, the masonry that you see, which is  
19 coming out slightly orangey in these photographs of this rendering, is  
20 intended to be a very deep red masonry.

21 And, number three, the drop-off in front -- this  
22 rendering was made before we really studied the drop-off. And it's not  
23 rendered as a single-lane drive, which is the intention of what you see  
24 behind the site plan.

25 And, with that, we'd be glad to answer any questions  
26 that you have.

27 VICE CHAIRPERSON KING: Where are you located

1 in relationship to 18th Street and, say, the Yeager Clinic and so forth?

2 Are you mid-block? Where are you in that block?

3 MR. MUSE: Eighteenth Street is -- yes?

4 MR. MORRIS: Yeager is right here.

5 VICE CHAIRPERSON KING: Oh, that's 18th Street?

6 MR. MORRIS: Yes.

7 VICE CHAIRPERSON KING: Oh, the Yeager Clinic  
8 is right there. So you're standing on 18th Street?

9 MR. MUSE: Standing on 18th Street.

10 VICE CHAIRPERSON KING: Okay. Great. I know  
11 where it is.

12 MR. MUSE: South side of Mass. Ave., standing on  
13 18th Street.

14 VICE CHAIRPERSON KING: And Sites is down at  
15 this end; right?

16 MR. MUSE: Yes.

17 VICE CHAIRPERSON KING: Okay. Thanks.

18 MR. MUSE: Once again, we'd be glad to answer any  
19 questions you have about this building.

20 CHAIRPERSON REID: Ms. Hinton?

21 MEMBER HINTON: No questions.

22 CHAIRPERSON REID: Ms. Kress?

23 MEMBER KRESS: I don't have a question. I would  
24 just like to make a comment. I did this morning on my way in stop and  
25 look at the site in the context of the preparation I had done for the  
26 meeting today.

27 And I personally feel that this is a as-designed very

1 appropriate design, that it's very well-scaled, fits nicely into the  
2 neighborhood in the context. And I think it would be a very good  
3 addition in that area.

4 MR. MUSE: Thank you.

5 MS. PRINCE: I would like to proceed with our final  
6 witness, Bob Morris, our traffic engineer.

7 MR. MORRIS: Good morning. I'm Robert L. Morris,  
8 traffic engineer and transportation planner; my home address, 9109  
9 Rouen Lane, Potomac, Maryland 20854.

10 I have prepared a traffic analysis, which I believe is in  
11 the material before you. I'll just touch on the highlights, if I may. The  
12 traffic volumes I've indicated in my report and shown the levels of  
13 service at adjacent intersections, Levels C and D, which are well  
14 within the acceptable limits as determined by the Department of Public  
15 Works.

16 The most important aspect for the transportation  
17 viewpoint is availability of public transportation. We have six buses  
18 that go through Dupont Circle. And, of course, we have the red line  
19 Metrorail station at Dupont Circle within a two-minute walk of this site.

20 Mr. Muse has gone over in detail the parking aspects.  
21 The circular driveway, I don't know if there's anything I can add to that.  
22 The very small trip generation that would result from this building  
23 would certainly have no adverse impact on traffic conditions in the  
24 area.

25 And so my bottom line is that from a traffic  
26 engineering viewpoint, this is an appropriate use of the subject site.

27 CHAIRPERSON REID: Are there any questions for

1 Mr. Morris?

2 MEMBER HINTON: I have one thing. Could you  
3 address the question about the alley since the official alley width is  
4 only ten feet, which won't allow two-way traffic?

5 How does the Board know that the space on this  
6 adjacent lot will always be available for traffic to get to this building?

7 MR. MORRIS: The owner of the adjacent property  
8 has provided that. And that I suppose could be a condition.

9 MS. PRINCE: Yes. We do have common ownership.  
10 So we're in a unique position to be able to control the use of that open  
11 space at the rear of 1776.

12 VICE CHAIRPERSON KING: And should the new  
13 building be sold to someone else, would there be an easement to  
14 allow the use of the 1776 property for --

15 MS. PRINCE: That is certainly something that could  
16 be considered if that's an issue for the Board.

17 MEMBER HINTON: It surprises me that it wasn't an  
18 issue for DPW. Is this normal that two-way traffic would be expected  
19 to use a ten-foot alley?

20 MR. MORRIS: Ms. Hinton, it is normal. Ms. King  
21 asked about the access from 17th Street, I believe. And if you're  
22 familiar with the alley, the alleys come in from both directions, but they  
23 don't connect.

24 And if you're familiar with that, it's a two-way alley.  
25 And it's a very narrow ten feet as you come out into 17th Street. And  
26 it's operated like that for many, many years.

27 VICE CHAIRPERSON KING: It doesn't go all the way

1 to the property of 1750?

2 MR. MORRIS: That's correct. It does not. Only the  
3 alley coming from 18th Street goes to 1750.

4 VICE CHAIRPERSON KING: And the two alleys are  
5 the same width. Is that correct?

6 MR. MORRIS: Well, they vary in width, but as you  
7 come in to 17th Street, it's, as I say, really a narrow ten feet. But this  
8 alley behind 1750 is ten feet plus, as already stated, the additional  
9 width from 1776.

10 MEMBER KRESS: What is that additional width? Do  
11 you know?

12 MS. PRINCE: About eight feet, as I recall.

13 MEMBER HINTON: So the parking that is on the lot  
14 now currently uses that alley to get into the parking lot?

15 MR. MORRIS: That's correct.

16 MEMBER HINTON: So basically this proposal isn't  
17 changing the number of cars that are going to be using the alley. Is  
18 that right?

19 MR. MORRIS: That's correct.

20 VICE CHAIRPERSON KING: How many parking  
21 spaces are there in the present lot?

22 MR. MILLER: Thirty-five.

23 VICE CHAIRPERSON KING: So it reduces by three,  
24 actually, except that there will be visitors.

25 MEMBER HINTON: That's all I have.

26 CHAIRPERSON REID: Okay.

27 VICE CHAIRPERSON KING: Where is the trash

1 pickup? Where is the dumpster?

2 MR. MORRIS: Seventeen seventy-six?

3 VICE CHAIRPERSON KING: Seventeen fifty.

4 MR. KIRWAN: Right here.

5 CHAIRPERSON REID: Do you have any other  
6 witnesses?

7 MS. PRINCE: I have no other witnesses.

8 CHAIRPERSON REID: Okay. All right. We'll move  
9 now to the staff reports, the report from the ANC. I didn't see a letter  
10 in my packet from the ANC.

11 MEMBER KRESS: I have it.

12 CHAIRPERSON REID: I think that I have it. I had a  
13 note that -- okay. We do have a letter from ANC-2B. And it states  
14 that they unanimously passed the application, resolution to grant the  
15 application, and that they're not opposed to the granting of the special  
16 exception to allow for construction at 1750 Mass. Avenue.

17 It does not indicate that there was a quorum present.  
18 So, therefore, while we acknowledge their submission, it cannot be  
19 afforded the great weight that they would normally be entitled to.

20 Okay. Persons in support of this application? Those  
21 that are in opposition to the application?

22 VICE CHAIRPERSON KING: We have two letters on  
23 record from Stuart Rubens and from Gordon Odgod.

24 CHAIRPERSON REID: Are you familiar with the  
25 opposition listed, these two letters, Ms. Prince?

26 MS. PRINCE: I am not familiar with the second letter.  
27 It was not in the record as of 4:00 o'clock yesterday.

1 CHAIRPERSON REID: Yes. We just received that.

2 MS. PRINCE: I am familiar with the letter from the  
3 resident of the Palladium. At the ANC meeting, the ANC after  
4 considering some of the comments from Palladium residents still  
5 voted unanimously to support the application.

6 The Palladium issues were light in air. They basically  
7 wanted the lot to be maintained as open space to preserve their  
8 views, which the ANC did not find particularly compelling. Nor did we.

9 CHAIRPERSON REID: That you talked to --

10 MS. PRINCE: We did. I spoke to the resident of the  
11 Palladium, who appeared at the ANC meeting. And his issue was he  
12 felt that the lot should be maintained as open space.

13 CHAIRPERSON REID: Yes.

14 MS. PRINCE: There wasn't a lot to work with.

15 CHAIRPERSON REID: Okay. In the other -- go  
16 ahead. You can go ahead.

17 VICE CHAIRPERSON KING: Do you want a copy of  
18 the Odgod letter so that you can respond to the issues? We might  
19 give them a minute to --

20 MEMBER KRESS: Particularly Number 3, particularly  
21 Item Number 3 at the bottom.

22 VICE CHAIRPERSON KING: Yes.

23 MS. PRINCE: This appears to be a letter from  
24 another Palladium resident. And that request in Number 3 appears to  
25 be quite reasonable. And since Mr. Miller represents 1776 as the  
26 owner of both sites, that's a commitment that we can make today.

27 MEMBER KRESS: Great.

1 CHAIRPERSON REID: Terrific.

2 VICE CHAIRPERSON KING: We can put that as a  
3 condition.

4 CHAIRPERSON REID: All right. Closing remark by  
5 the applicant? Make your closing remark.

6 MS. PRINCE: Except Mr. Miller is noting to me that,  
7 instead of 7:00 a.m., it needs to be 6:00 a.m.

8 MR. MILLER: Rush hour traffic.

9 MS. PRINCE: So that building cleaning crews would  
10 not be allowed to throw trash into dumpsters in areas facing residents  
11 during the hours of 11:00 p.m. to 6:00 a.m. So they can live with 6:00  
12 a.m. but not 7:00 a.m.

13 I have not had a chance to review the other  
14 conditions. Is there any other condition you'd like me to review?

15 VICE CHAIRPERSON KING: Well, I think I raised  
16 them. It was the question of the trash pickup and the entrance from  
17 the alley from 17th Street. But clearly that's not feasible because --

18 MS. PRINCE: Absolutely not feasible.

19 VICE CHAIRPERSON KING: -- it doesn't reach the  
20 property.

21 MS. PRINCE: Exactly. And the Mass. Ave. entrance  
22 is not an option.

23 CHAIRPERSON REID: Okay.

24 VICE CHAIRPERSON KING: Just Number 3.

25 CHAIRPERSON REID: Okay. Do you want to give  
26 your closing statement?

27 MS. PRINCE: I believe we've demonstrated that the

1 proposed building is compatible with the neighborhood and will  
2 present no adverse impact related to its use, height, bulk, or design.  
3 And you have the additional assurance that the HPRB retains final  
4 design authority over the building. We need to go back for final  
5 approval.

6 I don't think there will be any objectionable traffic  
7 conditions. DPW has reviewed this, as you know. There's just been  
8 this minor opposition in the form of two letters. No one has come  
9 down to request party status.

10 And, for that reason, we would greatly appreciate your  
11 immediate approval of the application and the grant of a summary  
12 order, if possible, because there's a lot of interest in the building. And  
13 we'd like to be in a position to proceed as soon as possible.

14 We've been not only to the ANC but also to the  
15 Dupont Circle Conservancy. And since we were at the HPRB last  
16 month, there has been a lot of notice of this proposal.

17 And we have received remarkably favorable  
18 comments considering this is the Dupont Circle neighborhood. And  
19 no opposition from ANC-2B is as good as it gets, as you know.

20 So, for that reason, we'd greatly appreciate your  
21 action.

22 VICE CHAIRPERSON KING: Is a summary order  
23 possible?

24 DIRECTOR DOBBINS: Yes. You have no opposition  
25 of any party in this case.

26 VICE CHAIRPERSON KING: No party.

27 CHAIRPERSON REID: Okay. Board members?

1                   VICE CHAIRPERSON KING: I move that we approve  
2 this application with a summary order. It's clear that they are well  
3 below the density and so forth that is permitted with a building of this  
4 type.

5                   We will not speak to the issue of the circular driveway,  
6 deferring to the Department of Public Works on that issue and, of  
7 course, on the historic preservation issues to the Historic Preservation  
8 Review Board.

9                   However, there seems to be no -- clearly there is no  
10 adverse impact on that neighborhood. Although we are sympathetic  
11 to the neighbors who would like to keep open space, it is not  
12 economically sound to require that the owners of the property not build  
13 anything on it. And I think that what is proposed will have the  
14 minimum impact on the neighbors.

15                  And, therefore, I would move that we approve it.

16                  MS. PRINCE: May I add one -- I forgot to mention I  
17 think it's built into your order, but just so that I have it on the record,  
18 we obviously need flexibility to address any final comments that come  
19 from HPRB.

20                  VICE CHAIRPERSON KING: Absolutely.

21                  MS. PRINCE: So perhaps that needs to be directly  
22 stated in the order.

23                  VICE CHAIRPERSON KING: As I mentioned, that  
24 was my intent in saying that we would defer to the Historic  
25 Preservation Review Board on final design because they are the  
26 arbiters of that in the historic district.

27                  And then the condition. We agree to establish a

1 condition that no trash can be put in the dumpsters between the hours  
2 of 11:00 p.m. and 6:00 a.m.

3 MEMBER KRESS: Or picked up.

4 VICE CHAIRPERSON KING: Or picked up. I mean,  
5 there must be silence in the matter of the dumpsters during those  
6 hours. As noted, well, we can't impose anything on 1776, but you  
7 might note the impact that your neighboring property is having. But for  
8 our condition, it would be incumbent upon 1750 that there be silence  
9 in the matter of the dumpsters during those hours.

10 DIRECTOR DOBBINS: Madam Chairman, members  
11 of the Board, I still think that so that it's very clear, the point that Ms.  
12 Prince made about the flexibility should be included as a specific  
13 condition, as opposed to just being stated in the order someplace.

14 VICE CHAIRPERSON KING: Okay. Would you --

15 DIRECTOR DOBBINS: And it would relate to the  
16 driveway, saying that it shall comply with the final design standards of  
17 HPRB and any public works regulations.

18 VICE CHAIRPERSON KING: I accept that. That was  
19 my intent, too.

20 DIRECTOR DOBBINS: Okay.

21 CHAIRPERSON REID: Okay.

22 MEMBER RICHARDS: I second it.

23 CHAIRPERSON REID: Okay. Are we ready to vote?

24 All those in favor?

25 (Whereupon, there was a chorus of "Ayes.")

26 CHAIRPERSON REID: Those opposed?

27 (No response.)

1 MS. ROSE: Staff would report the vote as four to  
2 zero, Ms. King, Ms. Reid, Ms. Kress, and Ms. Hinton, to grant the  
3 application and for the issuance of a summary order.

4 DIRECTOR DOBBINS: With conditions.

5 MS. ROSE: With conditions.

6 MS. PRINCE: Thank you.

7 CHAIRPERSON REID: That concludes the morning  
8 session. We're joined at 2:00 o'clock.

9 (Whereupon, a luncheon recess was taken at 10:51  
10 a.m.)

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(1:59 p.m.)

CHAIRPERSON REID: This hearing will please come to order. Good afternoon, ladies and gentlemen. This is the February 18th public hearing of the Board of Zoning Adjustment, the District of Columbia.

Joining me today are Betty King; Susan Morgan Hinton, representing the National Capital Planning Commission. And representing the Zoning Commission is Jerrily Kress.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forth to speak to the Board, please give both cards to the reporter, who is sitting to my right or in front of us.

The order procedure except for special exception and variance cases will proceed as follows: statement and witnesses of the applicants; government reports, including Office of Planning, Department of Public Works, ANC, et cetera; persons or parties in support; persons or parties in opposition; closing remarks by the applicant. Cross-examination of witnesses is permitted for persons or parties with direct interest in the case.

The record will be closed at the conclusion of each case except for any materials specifically requested. The Board and the staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any

1 appearance to the contrary, the Board requests that persons present  
2 not engage the members of the Board in conversation.

3 The Board will make every effort to conclude the  
4 public hearing as near as possible to 6:00 p.m. If the applicants'  
5 cases are not completed at 6:00 p.m., the Board will assess whether it  
6 can complete the pending case or cases remaining on the agenda.

7 At this time, the Board will consider any preliminary  
8 matters. Preliminary matters are those which relate to whether a case  
9 will or should be heard today, such as requests for postponement,  
10 continuance, or withdrawal, or whether proper and adequate notice of  
11 the hearing has been given. If you are not prepared to go forward with  
12 the case today or if you believe that the Board should not proceed,  
13 now is the time to raise such a matter.

14 Does the staff have any preliminary matters?

15 MS. ROSE: No, Madam Chair.

16 CHAIRPERSON REID: Okay. If not, is there anyone  
17 here who has a preliminary matter? Come forward, please.

18 CASE NUMBER 16288

19 MR. M. CLEMENTS: Good morning.

20 CHAIRPERSON REID: Excuse me. Talk into the  
21 mike. And state your name and address.

22 MR. M. CLEMENTS: I'm here on behalf of Ira  
23 Clements. I was here about 30 days ago to obtain an attorney. My  
24 name is Michael Clements. I'm here on behalf of Ira Clements.

25 He had obtained an attorney, Clinton Jackson. And I  
26 went to his office. I got a call this evening about 12:30 stating that he  
27 couldn't show up today. He had an emergency. And he wanted me to

1           come by and see if he could get one day next week because he  
2           couldn't show up.

3                         CHAIRPERSON REID: So basically you'd like to  
4           postpone in order to have your attorney represent you?

5                         MR. M. CLEMENTS: Yes. But his secretary stated to  
6           me that she didn't want to -- the last time you gave me a long time  
7           before we came back.

8                         CHAIRPERSON REID: Yes.

9                         MR. M. CLEMENTS: She wanted to know if it could  
10          be -- if you wasn't full, that he could appear next week.

11                        VICE CHAIRPERSON KING: No. We don't have a  
12          meeting next week.

13                        CHAIRPERSON REID: We don't meet until March.  
14          The next hearing date would be in March.

15                        MS. ROSE: No. It would be in May.

16                        CHAIRPERSON REID: In May?

17                        MS. ROSE: May the 6th.

18                        CHAIRPERSON REID: Oh, okay. It would have to  
19          be in May, the secretary has informed us. Would that be suitable for  
20          you?

21                        MR. M. CLEMENTS: Could I call him first --

22                        MS. ROSE: Yes.

23                        MR. M. CLEMENTS: -- and make sure?

24                        CHAIRPERSON REID: Okay. You want to call? If  
25          there's a possibility of them coming today, maybe we could go forward  
26          with the other cases and put you at the end.

27                        MR. M. CLEMENTS: Okay.

1 CHAIRPERSON REID: So do you want to check on  
2 that and --

3 MR. M. CLEMENTS: I'm going to see if she can send  
4 out someone else in his office because that's so far off.

5 CHAIRPERSON REID: Okay. And then we'll get  
6 back to you a little later to see what the status is.

7 MR. M. CLEMENTS: Okay. Thank you.

8 CHAIRPERSON REID: Thank you.

9 Are there any other preliminary matters?

10 (No response.)

11 CHAIRPERSON REID: Okay. We'll proceed with the  
12 first case.

13 CASE NUMBER 16318

14 MS. ROSE: Then the first case of the afternoon  
15 would be 16318, the application of Shew F. Hom and Sau W. Hom,  
16 pursuant to 11 DCMR 3107.2, for a variance from the use provisions  
17 of Subsection 201.1 to allow a two-unit apartment, two-family flat, on  
18 the first and second floors of an existing building in an R-1-B district at  
19 premises 3624 Norton Place, Northwest, Square 1914, Lot 46.

20 Would all persons planning to testify in this application  
21 please rise to take the oath? Please raise your right hand.

22 MS. ROSE: Are you going to be testifying or just  
23 representing him?

24 MR. W. HOM: Representing him.

25 MS. ROSE: Is he going to be testifying?

26 MR. W. HOM: My father doesn't speak English very  
27 well.

1 VICE CHAIRPERSON KING: Is he going to testify  
2 through you?

3 MR. W. HOM: Yes.

4 VICE CHAIRPERSON KING: Then he will need to  
5 take the oath.

6 MS. ROSE: Then he will need to take the oath.

7 MR. W. HOM: Okay.

8 MS. ROSE: Would you please stand and take the  
9 oath?

10 (Whereupon, all witnesses in Case Number 16318  
11 were duly sworn.)

12 MS. ROSE: You may be seated. Please state your  
13 name and home address.

14 MR. W. HOM: My name is Wai Hom. That's W-A-I.  
15 And I live at 11117 Snowshoe Lane, Rockville, Maryland, zip code  
16 20852.

17 MS. ROSE: Okay.

18 CHAIRPERSON REID: Proceed.

19 MR. W. HOM: Well, I am here to represent my father  
20 and to explain the facts and answer questions. Is it appropriate now  
21 to --

22 CHAIRPERSON REID: Yes.

23 MR. W. HOM: Okay. My father bought the subject  
24 property back in 1976. And at that time, the owner lived there as well  
25 as rented out the place. Essentially it was divided into three separate  
26 apartments. The owner lived in one and rented out other floors.

27 And so my father bought it in 1976 with the intent to

1 continue the property as a rental property. And it wasn't until this past  
2 summer that he found out through a friend that he needed to get a  
3 certificate of occupancy. And so he applied for one. And, of course,  
4 he got rejected because the house isn't zoned for that. And so we are  
5 going through this process for a zoning variance.

6 And I guess in talking with the various neighbors, I  
7 found out that the house had been used as a rental property not only  
8 by the previous owner but the owner before that, which takes it back  
9 into the mid 1950s at least, which --

10 CHAIRPERSON REID: Can you speak up just a little,  
11 please?

12 MR. W. HOM: Yes. So I know that the property has  
13 been rented out since at least the mid 1950s because the neighbor  
14 immediately next to the rental property moved in in 1956. And in  
15 talking with her, she said that essentially it was rented out then and  
16 probably prior to her moving in.

17 VICE CHAIRPERSON KING: How large is this  
18 house? How large? I'm not very good at square feet.

19 MR. W. HOM: Yes.

20 VICE CHAIRPERSON KING: But, I mean, how many  
21 rooms are there in each of the three floors? I mean, is it the same  
22 size and shape as the residential properties --

23 MR. W. HOM: Yes.

24 VICE CHAIRPERSON KING: -- that surround it?

25 MR. W. HOM: Yes.

26 VICE CHAIRPERSON KING: So that it's not larger or  
27 different in any way than the houses on either side which are

1 single-family homes?

2 MR. W. HOM: No, it's no larger or smaller. There's  
3 three rooms and a bathroom and a kitchen area on the first and  
4 second floor. And then there's a bathroom and a kitchen area in the  
5 basement. And it's essentially one big open area.

6 But I guess it's only for the first and second floor that  
7 my parents intend to rent out or are renting out.

8 VICE CHAIRPERSON KING: So it's a basement and  
9 two floors above ground? Is that it?

10 MR. W. HOM: Yes. And there's an attic, of course,  
11 but that's not rented out.

12 MEMBER HINTON: How many total units are in the  
13 building? Are there three units, two of which are rented?

14 MR. W. HOM: Yes.

15 CHAIRPERSON REID: Just a moment.

16 (Pause.)

17 CHAIRPERSON REID: Okay. Is there any other  
18 information that you would like to give us or any --

19 MR. W. HOM: I'm sorry? What was --

20 CHAIRPERSON REID: Is there anything else you'd  
21 like to say?

22 MR. W. HOM: Well, I guess I submitted some  
23 materials and from most of the surrounding neighbors stating that  
24 they're aware of the zoning variance and had no objections to it.

25 And I guess on the same block on the other side of  
26 the alley, there are other houses that are rental properties. But they're  
27 zoned R-5-B. And that's on Wisconsin Avenue.

1 CHAIRPERSON REID: Okay. We're going to try to  
2 help walk you through the process that you need to go through in  
3 order to be considered for the relief that you're asking for as far as  
4 variances are concerned.

5 And one thing is that you have to meet the burden of  
6 proof to demonstrate that there is -- we're going to help you through  
7 the procedure in regard to obtaining a variance or getting relief.

8 And that is that you're going to have to meet what we  
9 call a three-pronged test. You have to demonstrate that there is  
10 something unique or unusual about your property.

11 Mrs. King asked you: Was there anything about your  
12 property that was different from any of the other properties on that  
13 block or right next to you or behind you? And you said no.

14 I'm wondering if -- when you purchased the property,  
15 it had tenants in it; correct?

16 MR. W. HOM: Yes.

17 VICE CHAIRPERSON KING: Has there ever been a  
18 certificate of occupancy for this house?

19 MR. W. HOM: I went downtown and --

20 VICE CHAIRPERSON KING: In the 23 years that  
21 your father has owned it, has there been a certificate of occupancy?

22 MR. W. HOM: No. He was never aware that he  
23 needed to do this.

24 MEMBER HINTON: How many years?

25 MR. W. HOM: Since 1976. July of 1976 is when he  
26 bought it.

27 VICE CHAIRPERSON KING: Almost 22 years. And

1 your contention is that you have evidence that it was in the early '50s  
2 it was a rental property?

3 MR. W. HOM: Yes.

4 VICE CHAIRPERSON KING: In '56?

5 MR. W. HOM: I hope that two of my father's  
6 neighbors sent in, signed and sent in, a statement stating that it's  
7 been rented out since at least the mid '50s.

8 MEMBER HINTON: We have those in the record.

9 VICE CHAIRPERSON KING: Do we?

10 MEMBER HINTON: Two letters from neighbors, yes.

11 VICE CHAIRPERSON KING: Is that what we were  
12 just given?

13 MEMBER HINTON: No. They were in the very back  
14 couple of sheets of my package.

15 VICE CHAIRPERSON KING: Okay.

16 MEMBER HINTON: If I could ask a question?

17 CHAIRPERSON REID: Sure.

18 MEMBER HINTON: Is there one unit in the  
19 basement?

20 MR. W. HOM: Yes.

21 MEMBER HINTON: And then one unit on the first  
22 floor?

23 MR. W. HOM: First floor.

24 MEMBER HINTON: And one on the second?

25 MR. W. HOM: Yes.

26 VICE CHAIRPERSON KING: But you're not renting  
27 out the basement? You're not asking for a certificate of occupancy for

1 that?

2 MR. W. HOM: No, we're not.

3 VICE CHAIRPERSON KING: Can I see the letter  
4 from the neighbors who say it's been rented since the '50s? I didn't  
5 get a copy?

6 MEMBER HINTON: Yes.

7 CHAIRPERSON REID: Okay. Let's do this. Let's  
8 come back to the issue of uniqueness. We are going to come back to  
9 the issue of uniqueness or unusual circumstances and look at the  
10 second prong of the test, which would be --

11 MEMBER HINTON: Before we do that, can I have a  
12 question for the staff?

13 CHAIRPERSON REID: Okay.

14 MEMBER HINTON: I need to clear something up.  
15 Ms. Rose, if there are three units in the building, wouldn't they need to  
16 have a variance for all three units?

17 MS. ROSE: It sounds more like an apartment, as  
18 opposed to a flat, because a flat would just be two units. And I don't  
19 know if it was a misunderstanding between the applicant and the  
20 Zoning Administrator's office or when they filed for their permit, it  
21 ended up here. Maybe he didn't understand that there would be more  
22 than tow units because they're only renting out two.

23 MEMBER HINTON: Right.

24 MS. ROSE: But ultimately there's still three.

25 MEMBER KRESS: See, the confusion, for a  
26 single-family residence, you really don't need a C of O.

27 MS. ROSE: You don't need a C of O at all.

1 MEMBER KRESS: And so I think where they're  
2 getting confused is that they're thinking they don't need the C of O for  
3 their own residence but they do for the rental.

4 MS. ROSE: Right.

5 MEMBER KRESS: In this case where they're all in  
6 one building, that's not true. And you need a C of O for all three units.

7 MS. ROSE: Right.

8 VICE CHAIRPERSON KING: But is the basement  
9 unit inhabited at all?

10 MR. W. HOM: I'm sorry? What?

11 VICE CHAIRPERSON KING: Is somebody living in  
12 the basement?

13 MR. W. HOM: No.

14 VICE CHAIRPERSON KING: No. And you don't  
15 have any intention to rent it out?

16 MR. W. HOM: My parents use it as a storage area.

17 CHAIRPERSON REID: So that unit is storage, a  
18 storage area?

19 MR. W. HOM: Yes, but --

20 VICE CHAIRPERSON KING: It's not a --

21 MR. W. HOM: It still has a kitchen in it, but --

22 CHAIRPERSON REID: Yes, but it's not in use.

23 VICE CHAIRPERSON KING: And you don't intend to  
24 have it inhabited by --

25 MR. W. HOM: No. I guess when we got into this, I  
26 guess it was my parents' intent to disconnect the basement unit to see  
27 what would happen with the zoning variance. And if they had to

1 remove the second floor unit, then they would just do it all at once.

2 VICE CHAIRPERSON KING: Ultimately they want to  
3 have three units in it or they want to have two units?

4 MR. W. HOM: Two.

5 VICE CHAIRPERSON KING: Only two ever, ever,  
6 ever?

7 MR. W. HOM: Yes.

8 VICE CHAIRPERSON KING: No intention of ever  
9 having three?

10 MR. W. HOM: No.

11 VICE CHAIRPERSON KING: And the two units will  
12 be on the first and the second floor? The basement will never be  
13 inhabited?

14 MR. W. HOM: Sure, yes.

15 CHAIRPERSON REID: It never has been?

16 MR. W. HOM: No. It has in the past.

17 VICE CHAIRPERSON KING: It has been in the past?

18 MR. W. HOM: But my parents just over the years  
19 have needed it for storage and didn't need the rental income from that  
20 unit.

21 MEMBER KRESS: Then I guess we can proceed as  
22 if it is a flat, then. I was confused. But if they're not going to use that  
23 lower level, then we can proceed as a flat.

24 CHAIRPERSON REID: As I was saying, we'll come  
25 back to the first prong of the test. Now, the impact issue in regard to  
26 adverse impacts or a substantial detriment to the public good in regard  
27 to this particular application, we have received several letters of

1 support. And it does not appear that there is any problem as  
2 negatively impacting upon the neighborhood in regard to traffic or  
3 noise, light, parking.

4 VICE CHAIRPERSON KING: Did you read the stuff  
5 we just gave you?

6 MEMBER KRESS: We have a pile here --

7 VICE CHAIRPERSON KING: We just got a pile of  
8 letters in opposition.

9 MEMBER KRESS: -- that was just handed to us that  
10 is in opposition. I don't know if you've had -- we might want to break  
11 for a second so you can --

12 CHAIRPERSON REID: Oh, no, no, no, no. I'm sorry.  
13 What had happened was we just got a pile of things. The Board  
14 members and I talked and said that once we got through with this part,  
15 we would then recess for a few minutes so we could read it. And I  
16 had not read it. So that's a change in position.

17 All right. Then I guess we should do that now. Okay.  
18 Why don't we recess for about five or ten minutes?

19 VICE CHAIRPERSON KING: Oh, please not that  
20 long.

21 CHAIRPERSON REID: Five?

22 VICE CHAIRPERSON KING: Two. It's only half a  
23 dozen pages.

24 CHAIRPERSON REID: Five minutes so that we can  
25 look over the material and digest. Then we'll come back. Okay?

26 (Whereupon, the foregoing matter went off the record  
27 at 2:18 p.m. and went back on the record at 2:25

1 p.m.)

2 VICE CHAIRPERSON KING: Madam Chairman, can  
3 I ask a question?

4 CHAIRPERSON REID: Sure.

5 VICE CHAIRPERSON KING: The fact that this is in  
6 an historic district, although we have evidence that the multi-family  
7 use of the property predates the institution of the Cleveland Park  
8 historic district, what is the implication? I mean, does the Historic  
9 Preservation Review Board play a role in this or is it entirely --

10 MEMBER KRESS: No.

11 VICE CHAIRPERSON KING: It's entirely up to us?

12 MEMBER KRESS: It's entirely up to us.

13 VICE CHAIRPERSON KING: There's no impact of  
14 historic preservation rules?

15 MEMBER KRESS: You've read the case that's been  
16 made, but no, not of historic preservation rules.

17 VICE CHAIRPERSON KING: I mean, there aren't  
18 any special rules that apply that would impact on it?

19 MEMBER KRESS: No, not to my knowledge.

20 VICE CHAIRPERSON KING: Okay.

21 CHAIRPERSON REID: Okay. Mr. Hom?

22 MR. W. HOM: Yes?

23 CHAIRPERSON REID: Based on the materials that  
24 we've just received, -- and I apologize for that because we obviously  
25 would have not had them to discuss with you before -- we would like  
26 to go ahead with the case and to hear the whole case in its entirety.  
27 And then we'll be better able to assess the situation.

1 MR. W. HOM: Sure.

2 CHAIRPERSON REID: You do understand when I  
3 was explaining to you about the three-pronged test for your property?  
4 You should be able to demonstrate that the property has some unique  
5 and unusual condition and that it would pose undue hardship for you  
6 to be able to use it as a single-family home.

7 And then we go to the adverse impact and then look  
8 at whether or not it impairs the purpose and integrity of the zoning  
9 regulations. So let's just proceed to continue to have your witnesses  
10 to testify. And then we'll proceed through the case. Thank you.

11 MR. W. HOM: Okay.

12 CHAIRPERSON REID: We will proceed through the  
13 case. We will go ahead and proceed through the case at this time.  
14 So if you want to have -- can you come forward to a mike or --

15 VICE CHAIRPERSON KING: Is it not proper for the  
16 applicants to put on their case and then for the opponents to come  
17 afterwards? These people are here in opposition. You're here in  
18 opposition to the application?

19 CHAIRPERSON REID: Okay. No. I thought that you  
20 were a part of his.

21 Okay. Then we'll move now to government reports or  
22 staff reports.

23 VICE CHAIRPERSON KING: It is clear to me that Mr.  
24 Hom has not had an opportunity to make his case that there is  
25 something extraordinary about his property that would create a  
26 hardship if he were not able to have two rental units in it. I think he  
27 needs to be given an opportunity to do that.

1 MR. W. HOM: Well, I guess in preparing for coming  
2 before you, I looked over previous cases. Basically what I found was  
3 that if a property was used as a rental prior to the current zoning  
4 regulations that came into effect in 1958, that there was a hardship  
5 demonstrated, if I read the paperwork correctly, and that, even though  
6 it was not formally recognized through certificates of occupancy and  
7 that it was a nonconforming use, that the fact that it was used in  
8 places prior to 1958 was cause for a hardship --

9 VICE CHAIRPERSON KING: In your research, did  
10 you find that any of the previous owners who had rented out units  
11 there had a certificate of occupancy, particularly one that predated  
12 1958?

13 MR. W. HOM: In the cases that I looked at --

14 VICE CHAIRPERSON KING: No. I'm talking about  
15 your specific case.

16 MR. W. HOM: I'm sorry.

17 VICE CHAIRPERSON KING: Has there ever been, to  
18 your knowledge, a certificate of occupancy for this building to be used  
19 as a multiple dwelling?

20 MR. W. HOM: I made an inquiry at the place where  
21 you --

22 VICE CHAIRPERSON KING: Department of  
23 Consumer and Regulatory Affairs?

24 MR. W. HOM: Yes, at 614 H Street.

25 VICE CHAIRPERSON KING: H Street, yes.

26 MR. W. HOM: And they told me none had ever been  
27 issued before.

1 VICE CHAIRPERSON KING: I see. Your argument  
2 is, I take it, that you should be grandfathered in because this predates  
3 1958. But, on the other hand, it was never recognized as a multiple  
4 dwelling, prior to '58 or at any time since then.

5 MR. W. HOM: That's true, but I guess in at least two  
6 of the cases where variances were approved, there was no prior  
7 approval as a multiple flat or apartment unit.

8 VICE CHAIRPERSON KING: Which are the cases  
9 you're referring to? Do you have them there?

10 MR. W. HOM: One, two, nine, five, six.

11 VICE CHAIRPERSON KING: Can you enter them  
12 into the record? Can we see them? Will you give them to the  
13 secretary? Okay. Let's get these copied for the record. Thank you  
14 for bringing that to our attention, very apropos.

15 MEMBER HINTON: If I could just add, I think that  
16 what you're saying is the unique condition in your property is that it  
17 has been configured for two flats since the mid 1950s. And the  
18 hardship, then, to you as the owner would be to reconfigure the  
19 interior of the building in order to have it be only one residential unit.

20 Is that the hardship you would experience, that you  
21 would have to change the interior?

22 MR. W. HOM: We would have to change the interior.  
23 And then I guess my parents don't feel that they would generate  
24 enough income to cover expenses to rent it out as a single-family  
25 home. And I guess, really, the conversion should also include the  
26 basement.

27 MEMBER HINTON: I'm sorry? I couldn't hear the last

1 one.

2 MR. W. HOM: The conversion should also include  
3 the basement if we're denied the variance.

4 CHAIRPERSON REID: The conversion wouldn't.

5 MR. W. HOM: To remove the kitchens from the  
6 second floor and the basement.

7 CHAIRPERSON REID: Very well. Mr. Hom, is there  
8 anything else you'd like to say at this time?

9 MR. W. HOM: No.

10 CHAIRPERSON REID: Okay. You'll have an  
11 opportunity to have closing remarks.

12 VICE CHAIRPERSON KING: And cross-examination  
13 of any other witnesses.

14 CHAIRPERSON REID: Is there anyone in regard to  
15 this case who is seeking party status? Is there anyone who is here for  
16 this case who is seeking party status?

17 VICE CHAIRPERSON KING: That means that you're  
18 an immediate neighbor and have a vested interest.

19 CHAIRPERSON REID: Come forward, please. State  
20 your name and address for the record.

21 VICE CHAIRPERSON KING: Please into the  
22 microphone.

23 CHAIRPERSON REID: Talk into the mike, please.

24 MS. KINNEY: I am Louise Kinney, 3420 36th Street,  
25 Northwest. Thirty-sixth Street abuts the Norton Street property. And I  
26 have my full building lot on Norton Place, I mean.

27 VICE CHAIRPERSON KING: How distant are you

1 from 3624?

2 MS. KINNEY: I'm at the corner.

3 VICE CHAIRPERSON KING: And where are they?

4 MS. KINNEY: They're at the other corner. It's --

5 VICE CHAIRPERSON KING: Do you mean you're a  
6 block away from them?

7 MS. KINNEY: Norton Street is only one short block.

8 VICE CHAIRPERSON KING: I know it is. I drove it.  
9 You're at one end of the block, and they're at the other end of the  
10 block?

11 MS. KINNEY: Correct. But my lot would be the first  
12 house, my building lot. See, I have a building lot that's my side and  
13 back.

14 VICE CHAIRPERSON KING: Your property abuts the  
15 subject property, the applicant's property? No.

16 MS. KINNEY: I face 36th Street. Norton dissects  
17 36th. It's only one block long. I have a building lot on Norton Place.  
18 My back yard and side yard are a building lot. I just haven't built on it  
19 yet. But realtors are after them all the time. So it's clearly right and  
20 recorded as a building lot.

21 MS. NOYES: Elizabeth Noyes.

22 CHAIRPERSON REID: Just one moment, please.

23 (Pause.)

24 MEMBER KRESS: Practically, if we could assume  
25 that all three of these young women are in very near proximity,  
26 perhaps one of them could speak for the three of them in party status  
27 so we don't have three of them cross-examining.

1                    Maybe we could go ahead and identify where the  
2 other members or the other people --

3                    CHAIRPERSON REID: Okay. That's a good idea.

4                    MEMBER KRESS: -- live and then perhaps just to  
5 help us, rather than having three people who have --

6                    CHAIRPERSON REID: Have one spokesperson.

7                    MEMBER KRESS: -- and three people testifying --

8                    VICE CHAIRPERSON KING: No, no. What we are  
9 trying to do is expedite matters. Presumably, the three of you are  
10 working together. When we grant party status, that means anybody  
11 who has party status has the right to cross-examine other witnesses.  
12 And if there are three people cross-examining, it's going to prolong the  
13 process.

14                    What Ms. Kress has suggested is that if you're here  
15 together, if you work together on this issue, do you want to designate  
16 one of the three of you as a spokesperson who will represent you or  
17 do you each want to apply for separate party status and make your  
18 own separate statements?

19                    MS. KINNEY: I think we had originally decided that  
20 one of us would speak and the others would help. This has all  
21 happened very quickly. And so we don't have a game plan.

22                    VICE CHAIRPERSON KING: All right. Who was --

23                    MEMBER KRESS: That's a perfect game plan,  
24 actually.

25                    VICE CHAIRPERSON KING: That's perfect. That's  
26 great. We applaud.

27                    MS. KINNEY: In fact, we need each other.

1 MEMBER KRESS: No, no. That's fine.

2 VICE CHAIRPERSON KING: Who would be the  
3 spokesperson?

4 MS. NOYES: Is it okay if we say that the two of us  
5 live across the street in different houses?

6 CHAIRPERSON REID: Give your name and your  
7 address, please, individually.

8 MS. SELIGMANN: I am Susan Seligmann. And I live  
9 at 3613 Norton Place, which is directly opposite the Homs' dwellings.

10 MS. NOYES: And I'm Elizabeth Noyes. I live at 3611  
11 Norton Place, which is right across the street.

12 CHAIRPERSON REID: Which one will be the one  
13 who is going to represent the three of you?

14 MEMBER KRESS: In the primary way. That doesn't  
15 mean you can't --

16 MS. NOYES: In a primary, yes. Okay. We all --

17 MEMBER KRESS: We would like to declare you to  
18 have party status. And then one of you would be directing the  
19 cross-exam. But when you testify for yourselves, the others of you  
20 can add to that testimony if that's all right.

21 MS. SELIGMANN: My name is Susan Seligmann, as  
22 I stated for the record. Thank you very much for giving us the  
23 opportunity to come here before you today.

24 I brought a photograph of Norton Place from early  
25 days that hangs in my entry hall. And I just for the point of reference  
26 wanted to show it to you.

27 CHAIRPERSON REID: Excuse me. Excuse me.

1 This is cross-examination time. So after giving your name --

2 MS. SELIGMANN: We can't make a statement?

3 CHAIRPERSON REID: You will have an opportunity  
4 to make the statement, but we have to proceed in an order.

5 MS. SELIGMANN: I beg your pardon. I  
6 misunderstood. I'm sorry.

7 CHAIRPERSON REID: Yes. So this is the time for  
8 just cross-examination, where you --

9 VICE CHAIRPERSON KING: Is there anything that  
10 the --

11 CHAIRPERSON REID: No. This is the time where  
12 you are allowed to ask questions of the applicant only.

13 MS. SELIGMANN: We'll get there. We're working on  
14 it.

15 CHAIRPERSON REID: Now, do you have questions  
16 to ask the applicant, to cross-examine the applicant?

17 MS. SELIGMANN: Yes. Could we confer for a  
18 moment? Because we haven't had a chance to think in those terms.

19 CHAIRPERSON REID: Sure. Okay.

20 MS. SELIGMANN: I'm really sorry. We're unfamiliar  
21 with your procedures.

22 CHAIRPERSON REID: No problem. No problem.

23 MS. SELIGMANN: We're strictly residents.

24 (Pause.)

25 CHAIRPERSON REID: Are you ready now, Ms.  
26 Seligmann?

27 MS. SELIGMANN: I believe so. I think I have it.

1 CHAIRPERSON REID: All right. Mr. Hom, we ask  
2 you to please come to the mike so that she could direct her questions  
3 to you.

4 MS. SELIGMANN: Actually, I think Mr. Hom is a little  
5 too young to answer this question. I'm sorry.

6 CROSS-EXAMINATION

7 BY MS. SELIGMANN:

8 Q According to Mrs. Verna Movern, who is the end  
9 house on your block, the next to the end, she says that during the  
10 tenancy of the Wolfes, there were not two apartments in that building.  
11 And the Wolfes I guess owned it through this year. Is that right?

12 MS. KINNEY: No, no. Mrs. Wolfe sold it to the  
13 Homs.

14 BY MS. SELIGMANN:

15 Q When Mrs. Wolfe was owning, --

16 A Yes.

17 Q -- there were not apartments there. And I don't think  
18 you can answer it because it is a matter of age.

19 A So your question is --

20 VICE CHAIRPERSON KING: His father is here.

21 MR. W. HOM: When we moved into the  
22 neighborhood at 3626 Norton Place in 1965, Mrs. Wolfe definitely was  
23 renting out the basement. And I don't remember the man's name, but  
24 he was a very large man. That might trigger your memory. But she  
25 was definitely renting out the basement.

26 And I believe she lived on the top floor, the second  
27 floor. I'm pretty sure that before we bought it, that the first floor was

1 rented out also to various people.

2 When I spoke to Mrs. Movern, yes, her recollection  
3 was that, at least what she told me was that, when she moved in in  
4 the late or mid to late '50s, that the property had always been used as  
5 a rental of one type or another.

6 BY MS. SELIGMANN:

7 Q Well, I guess the real telling point is the issue comes  
8 down to the two kitchens. When did you put the two kitchens in?

9 A They were there prior to us buying the 3624 Norton  
10 Place property. And it's -- I guess if the Zoning Board will look at the  
11 sales contract, it does state that there are three kitchens. And two  
12 tenants come with the property or -- I don't know what the right term  
13 is.

14 VICE CHAIRPERSON KING: You may want to see  
15 the contract of sale, -- you can have my copy -- which talks of three  
16 refrigerators, three stoves, and all of the furniture and so forth. Have  
17 you seen it?

18 CHAIRPERSON REID: What year is reflected there,  
19 please?

20 VICE CHAIRPERSON KING: Nineteen seventy-six,  
21 June 18th, 1976.

22 MS. SELIGMANN: This is from '76?

23 VICE CHAIRPERSON KING: Yes. That is when the  
24 Homs bought the house.

25 MS. SELIGMANN: Oh, I see.

26 CHAIRPERSON REID: Okay. Next question, please.

27 BY MS. SELIGMANN:

1 Q So this property was purchased by your dad and mom  
2 in '76; correct?

3 A Yes.

4 Q Okay. It's our information from our neighbor, Mrs. --  
5 from Verna is that it was substantially different.

6 Are there three apartments there?

7 A Yes.

8 Q And you use three? You rent three?

9 A No. Two.

10 Q Where does the older gentleman live who does the  
11 tai-chi?

12 A He drifts in and out. And occasionally my parents will  
13 let him stay there, but --

14 Q I see him there a lot.

15 A Well, he bounces around a lot. He --

16 Q Does he pay rent?

17 A No.

18 Q Never?

19 A He's like a brother to my father. So my father doesn't  
20 charge him.

21 Q What is his name?

22 A I don't know what his name is.

23 CHAIRPERSON REID: I don't think that that is  
24 relevant to this particular proceeding.

25 MS. SELIGMANN: That there are three apartments  
26 and not two?

27 MEMBER KRESS: Yes. I think that's relevant.

1 CHAIRPERSON REID: My understanding is that  
2 there are two.

3 MEMBER KRESS: I think that's relevant.

4 MS. SELIGMANN: Yes. I think that's --

5 CHAIRPERSON REID: The guy's name?

6 MEMBER KRESS: Oh, the person's name, no.

7 CHAIRPERSON REID: No. That's what I was  
8 referring to.

9 MEMBER KRESS: Oh, I'm sorry.

10 CHAIRPERSON REID: I'm just trying to keep it  
11 relevant.

12 BY MS. SELIGMANN:

13 Q Isn't that correct there are three apartments there?

14 A There are three apartments in the building, but my  
15 parents only rent out two. They use the third one mostly as storage  
16 but also to let my father's kind of like his close cousin, brother stay  
17 there occasionally because there is still a bed there. But they don't  
18 charge him rent.

19 Q I see him almost every morning doing tai-chi in the  
20 alley and walking up and down the street with the paper. So I  
21 assumed he was your tenant. He's been there for a number of years.

22 A Well, yes. He actually has lived in my parents' house  
23 on occasion, too.

24 CHAIRPERSON REID: Next question? Are you all --

25 MS. SELIGMANN: We were just conferring for a  
26 moment -- I'm so sorry -- to see if there was anything further.

27 MS. SELIGMANN: Our question for you, Madam

1 Chairperson, is: What is the relevance of the date, '74 versus '58, in  
2 terms of the grandfathering issue?

3 It is an historic district. And certainly that changes the  
4 tone of things a bit as we proceed.

5 CHAIRPERSON REID: Nineteen fifty-eight is when  
6 the zoning regulations, the ones that we're operating under now, were  
7 enacted. So this is what he was referring to as far as it being before  
8 that date, which he is contending would allow him to be grandfathered.

9 MS. SELIGMANN: That was '54?

10 CHAIRPERSON REID: '58.

11 MS. KINNEY: '58, where the zonings were instituted.

12 MS. SELIGMANN: But you have no record of it being  
13 zoned as anything other than a single-family dwelling; correct?

14 MEMBER KRESS: You know, we're hopping ahead  
15 here, but there has been some misunderstanding. We are not  
16 rezoning any property. That's not what's going on. And from several  
17 of the letters -- and I'm hopping ahead, and perhaps I'm out of order  
18 here.

19 But I think it's very important you understand we're  
20 not talking -- before us is not rezoning. What's before us is to offer a  
21 variance and to allow this particular use. It will not touch or change  
22 the underlying zoning ever.

23 MS. SELIGMANN: What is the precedent of allowing  
24 --

25 MEMBER KRESS: There is a precedent. You have a  
26 point with your precedent. I'm sorry. I shouldn't be talking. I just want  
27 you to understand that we are not proposing to change the zoning or

1 he's not proposing to change the zoning. And what we're thinking and  
2 considering is not about changing the zoning.

3 CHAIRPERSON REID: Several of the letters of  
4 opposition refer to there being a rezoning issue, which is not the case.

5 MEMBER KRESS: This Board can't do that. Only the  
6 Zoning Commission can do that.

7 MS. SELIGMANN: If the variance were to be  
8 entertained, what would be the life expectancy of that? Would it be  
9 during the life of the current owners or would that be something that  
10 could convey in the event of a sale?

11 I think that's what's critical to us, that certainly the  
12 Homs are wonderful neighbors and --

13 MEMBER KRESS: We're out of order, but may I  
14 answer that?

15 MS. SELIGMANN: We don't want to wish them any  
16 harm. I mean --

17 MEMBER KRESS: It can convey, but the way it is, if,  
18 for example, this were grandfathered and we saw that it had existed  
19 prior to 1958 and presupposing a lot of things here now because I'm  
20 learning things as you're asking questions, we would look at that  
21 perhaps favorably and say we will allow this variance.

22 That variance, once in place, would transfer with the  
23 property, yes. But as soon as for one instant that, for example, if only  
24 two units were being used, instead of three, and we have a  
25 two-unit/three-unit problem that we've got to address, let's say, for  
26 example, if anyone ever moved in and was not renting, then that  
27 variance would be lost.

1                   You see what I'm saying? Once it is used in another  
2 manner, which is its rightful use, which is a single-family residence,  
3 then that variance would be lost.

4                   I doubt that would happen. This variance probably, if  
5 granted, would be given to that unit and stay unless there was a  
6 change in the neighborhood or someone wished to buy that house  
7 and totally renovate it and turn it into a single-family residence, which  
8 is, of course, a right.

9                   MEMBER HINTON: Ms. Kress, my understanding is  
10 what you have said is true for a nonconforming use, that if a  
11 nonconforming use is ever discontinued, the owner loses the right.  
12 But with a variance, once it's granted, it remains with the property  
13 forever.

14                  MEMBER KRESS: I'm sorry. I'm sorry. She's  
15 correct.

16                  MEMBER HINTON: And it could be converted back  
17 to a one-unit. And at any time because the variance was granted, it  
18 could be converted back to two or three units, whatever was granted.  
19 It could always go back. Once it's granted, it can never be taken  
20 away.

21                  MEMBER KRESS: I'm sorry. I was mixing it up with  
22 the grandfathering.

23                  CHAIRPERSON REID: With the nonconforming, yes.

24                  MEMBER KRESS: I was mixing it up with the  
25 grandfathering.

26                  CHAIRPERSON REID: Okay.

27                  MEMBER HINTON: If I could just add, that's part of

1        what's important about the date. Uses that exist before the zoning  
2        regulations change become what's called a nonconforming use. And  
3        they have a right to continue as long as they are used in that same  
4        way.

5                                And so that's why it's important to find out if this was  
6        used that way before the regulations were in order or if it somehow  
7        happened after the regulations were in place, then it's not a  
8        nonconforming use.

9                                MEMBER KRESS: It has to continuously have been  
10       used that way. This is what I was mixing. I was saying it incorrectly.  
11       If during the time period since 1958 there was a time where this was  
12       used as a single-family residence only, then that negates the  
13       grandfathering.

14                              MS. SELIGMANN: That is what Mrs. Movern can  
15       attest to. She's, unfortunately, not here. And you spoke, I believe,  
16       Ms. Hinton, directly to what my concern is, that the variance, in effect,  
17       is like rezoning because you have given something a change in status  
18       that forever will hold. And this is what has all of here and why the  
19       neighbors particularly are concerned. So I appreciate it.

20                              We're total novices at this, but we love our street. We  
21       love our historic district. And we want to come before you and just  
22       make an impression on you that it matters a lot to us.

23                              MEMBER KRESS: But your case is really to prove to  
24       us that at some point since the mid '50s, this was used as a  
25       single-family residence because that is the major issue?

26                              MS. SELIGMANN: Will we be given another  
27       opportunity to testify before you? Because I believe that we would

1 have to bring Mrs. Movern here because --

2 CHAIRPERSON REID: No, no. I thought you meant  
3 today that you would be able to. No. Sorry. Not after today. But  
4 also, for the record and also for your information, there was an  
5 appraisal that was done in 1976, at the time of the purchase, that also  
6 indicated that there were 3 kitchens and 3 baths at the premises.

7 MS. SELIGMANN: But that was in '76, which was a  
8 different issue than --

9 CHAIRPERSON REID: '76. I was speaking  
10 specifically of the time of their purchase of the property.

11 MS. SELIGMANN: I don't think we would dispute  
12 that. I think the problem is the continuous use prior to that; right?  
13 That's what our burden of proof is. So we have to establish that  
14 today; correct?

15 Excuse me. Mrs. Noyes would like me to be sure for  
16 the record that you understand that two adjacent properties, 3624 and  
17 also, I believe, 26, are owned by the Homs. And they live in one as a  
18 single-family dwelling with perhaps an apartment for this friend in  
19 there; and then the adjacent property. And they are semidetached.

20 MEMBER HINTON: And later in this hearing, you'll  
21 have a chance to put your case on the record. And that's when you  
22 can tell us everything from your point of view.

23 MS. SELIGMANN: Great. Thank you very much.

24 CHAIRPERSON REID: Do you have any further  
25 questions?

26 MS. SELIGMANN: At the moment, no. We would like  
27 to try to produce the longest, our 90-year-old, resident. So if we can

1 get her here, we will. Thank you.

2 CHAIRPERSON REID: All right. Thank you.

3 Now we move to the government reports and staff  
4 reports or ANC report. We have a letter from the ANC, ANC-3C, in  
5 which they have no objection to the application and defer the matter to  
6 the BZA regarding whether the use variance criteria had been met in  
7 this case. There was a quorum. The vote was four to three. And we  
8 will be able to give them the great weight to which they are entitled.

9 Are there persons or parties in support of this  
10 application? Okay. Now, persons or parties in opposition to the  
11 application? So now you come back.

12 MS. KINNEY: You want us up again?

13 CHAIRPERSON REID: Yes. This is your --

14 MEMBER HINTON: If I could just mention as you're  
15 coming up, there are two letters of support in the record.

16 CHAIRPERSON REID: Okay.

17 MS. KINNEY: Now what is our procedure?

18 MEMBER HINTON: Now is the time that you put your  
19 case on the record. This is when you understand what it is that's  
20 being requested and you tell us from your point of view what you think  
21 about it. And this is your chance to identify if the Board were to grant  
22 the application, how the neighborhood would be adversely impacted.

23 How would it be a problem for your neighborhood if  
24 this were to go ahead? Ms. Seligmann?

25 CHAIRPERSON REID: Thank you. You may begin.

26 MS. SELIGMANN: We can each speak at this point;  
27 right?

1 CHAIRPERSON REID: Sure. Give us your name.

2 MS. KINNEY: You will have to help us with the  
3 terminology. There are certain legal terms that we really don't  
4 understand.

5 The major thing that we're concerned with is the  
6 impact on the zoning that permitting multiple-dwelling houses would  
7 have. Cleveland Park is a very old neighborhood. It is an historic  
8 neighborhood, which I realize is not your concern, but it is our  
9 concern.

10 It is bordered by Wisconsin on one side, Connecticut  
11 on the other, and two cross streets that are very busy streets. It's a  
12 little pocket of serenity and charm.

13 Rosedale is an historic monument, landmark. That's  
14 the property on which Norton Street and all of our other streets are.  
15 And the houses are all part of the historic district.

16 These little houses up there at Wisconsin are very  
17 important to us and down at Connecticut because the merchants, of  
18 course, operate very successfully along Wisconsin Avenue and along  
19 Connecticut Avenue and they make inroads into our little pocket of  
20 peace, if you will, which we don't feel is necessary. And we feel that  
21 every one that is done just makes another problem.

22 What the history of Mr. Hom's house is I don't know. I  
23 hope we'll be able to clarify that. But even if there were this history,  
24 the neighborhood is very upset.

25 They did not understand the ramifications of all of this.  
26 Nor did I, and I still don't. People started telephoning me and started  
27 telephoning Susan and started telephoning Elizabeth to find out what

1 we could do about what they had done, which was sign this seemingly  
2 harmless "Could we have some tenants in our house with our parents,  
3 our senior citizen parents?" kind of thing.

4 And everybody likes the Homs. And they just went  
5 ahead and signed it. Then they got upset. And that's when all the  
6 brouhaha occurred. Within a week, we have gotten signatures from at  
7 least 30 people and still counting. The phone is still ringing because  
8 people feel absolutely militant about any encouragement or any  
9 exception.

10 Simply whether it technically or legally breaks the law,  
11 changes the law, it has an impact on it because it's a variance. And it  
12 means that you are setting up a new attitude for others to follow.

13 I don't see what else. Do we have any other major  
14 points? I have all the signatures. More will be coming in. But if  
15 they're not considered relevant to what you all have to do -- do you  
16 want copies of them? You've got copies of most of them, but more  
17 have come in in 24 hours.

18 What I say in the letter, the covering letter, was that  
19 we feel that the D.C. zoning laws are designed to help keep our  
20 communities intact and protected. Stop me if I'm wrong on any of  
21 these things.

22 Norton Place consists of a single-family block of 11  
23 residences and goes from the property of the Rosedale historic estate  
24 to Wisconsin Avenue. And it is our goal to protect these single-family  
25 residences and the domestic quality of this small tree-shaded street.

26 It serves as a buffer to the commerce and traffic of  
27 Wisconsin Avenue. That's one of the things the architects and zoning

1 people are usually talking about in their writing, what's a buffer to  
2 what. Well, our thin line of residences serves as a buffer to Wisconsin  
3 Avenue.

4 The parking is a great problem. Any extra residents  
5 add to the parking, the traffic. In Cleveland Park, we pretty much  
6 clean our own streets. We're a very close neighborhood. We fill our  
7 own potholes even. I don't think we're supposed to do, but some of us  
8 do it sub rosa.

9 We take care of each other. And we're pretty  
10 crowded as it is, and any extra families I think would change the  
11 complexion, if you will, of the neighborhood.

12 The people who signed, Mr. Horn wanted me to make  
13 it clear to you -- and several of them have written notes. We now  
14 have 100 percent of Norton Place does not want the extra residences.  
15 Whether they were there or will be there or have been there, they  
16 don't want multiple-residence dwellings or multiple-dwelling  
17 residences.

18 Their explanation was that they like these people and  
19 they really -- I didn't know them very well, and I was never  
20 approached, by the way. Nobody asked me to sign anything. So I  
21 didn't know about this.

22 Their explanation was that they did not fully  
23 understand the ramifications of the Horn application. And I can see  
24 where there could have been a problem.

25 I want to thank you all very much for letting us know,  
26 though, because, for some strange reason -- and I've been through  
27 many zoning battles in the many years that I've lived here. I'm one of

1 the few cave-dwellers alive in the area, I think.

2 I've always been notified and had plenty of  
3 information and could proceed in an orderly and ladylike fashion to  
4 say "Yea" or "Nay" or forget it entirely.

5 I didn't know anything about this until I heard from you  
6 all. And at least a dozen other people in the neighborhood said the  
7 same thing. And I think this is unfortunate.

8 I don't know why the Historical Society didn't call us, --  
9 I lecture for them; Sue is a member; Elizabeth is a member -- why we  
10 didn't get in on that. I called immediately when people started calling  
11 me to find out where these other hearings, these other steps have  
12 been.

13 So I apologize for that. And if we seem a little bit  
14 disorganized, it's because we are. We have been typing letters at  
15 night and collecting signatures. And we have I don't know how many  
16 more signatures than the ones that you all have.

17 MEMBER KRESS: May I ask a question?

18 CHAIRPERSON REID: Sure.

19 MEMBER KRESS: One of the things that you point  
20 out, and I think rightly so, in your letter is the issue of precedence. Are  
21 there many other homes in that area that have rentals in them that  
22 could come to us and ask for this same kind of thing if we did set a  
23 precedence here?

24 I mean, if you have been talking to all of your  
25 neighbors, this is very important because the only reason we would be  
26 considering this or I would be considering this is because it's the  
27 pre-1958 were that to be true. Are there a lot of others like that, do

1 you think, in this neighborhood that could also come to us and ask for  
2 this same thing?

3 MS. KINNEY: Without research, definitely I think that  
4 people -- it would open the door.

5 VICE CHAIRPERSON KING: No. Are there others  
6 that have had long-term rentals in their buildings?

7 MEMBER KRESS: Currently.

8 MS. KINNEY: Not that I know of. We're not  
9 supposed to do that. Everybody knows that when they buy a house.

10 MEMBER KRESS: But if you got everyone on that  
11 street to sign --

12 MS. KINNEY: Yes. We didn't get them to sign. They  
13 volunteered.

14 MEMBER KRESS: -- and they were volunteering,  
15 that would seem to implicate that they themselves are not having that  
16 rental unit. Isn't that correct or is that --

17 MS. KINNEY: That's the way it looks to me. We have  
18 about 36 signatures and, as I say, more coming. And I don't really  
19 know this data. I do know that people live there for years and years  
20 and years. These people get old, older, and want someone else in the  
21 house with them or maybe need the funds.

22 There must be reasons to use this as a precedent,  
23 "You let them do it. Let my mother do it."

24 MEMBER KRESS: But they could only do it if they  
25 had had this long-term lease prior to 1958. You see what --

26 MS. KINNEY: Well, I've done the history of Cleveland  
27 Park and Rosedale, just happen to have them with me. But I don't

1 know that. I don't know that. I don't see how I could find out unless  
2 they applied for a permit or whatever you --

3 MEMBER KRESS: Or you saw them walking in and  
4 out, as you have seen others of the same residence or something.  
5 You might have some indication.

6 MS. KINNEY: No. I think I only know one woman  
7 who has a Jamaican who lives in her top floor and takes care of her at  
8 night -- she has multiple sclerosis now -- and works days, I guess.

9 VICE CHAIRPERSON KING: But that is a resident  
10 employee.

11 MS. KINNEY: Yes.

12 CHAIRPERSON REID: That's not a separate unit.

13 MS. KINNEY: Yes.

14 VICE CHAIRPERSON KING: Not a rental unit.

15 MS. KINNEY: No. I don't know, but I would think it  
16 would be, could be, people who would want to use this. I would.

17 VICE CHAIRPERSON KING: But what Ms. Kress  
18 was saying is that the precedent that we would follow would be that  
19 there was an active rental unit uninterrupted since prior to 1958. And  
20 you're not aware that other neighbors on Norton Place have had  
21 uninterrupted rental units in operation in their houses since prior to  
22 1958?

23 So the precedent that we would be setting would be  
24 exclusive to that. If we did decide to look favorably on this application,  
25 it would only apply to somebody whose property had been a multiple  
26 dwelling for the last 40 years.

27 MS. KINNEY: Our only witness to that would be --

1 MS. NOYES: She's coming.

2 MS. KINNEY: She's in very bad shape.

3 CHAIRPERSON REID: Did you wish to speak?

4 MS. NOYES: Yes.

5 CHAIRPERSON REID: You have to speak into the  
6 mike. Give your name.

7 MS. NOYES: It's Elizabeth Noyes.

8 CHAIRPERSON REID: And the address?

9 MS. NOYES: Three, six, one, one Norton Place.

10 CHAIRPERSON REID: Okay.

11 MS. NOYES: Verna Movern is on her way. She has  
12 a crutch. It will take her a while to get here. She's going to get a cab.  
13 Her memory, she says that she used to have roomers, Mrs. Wolfe.

14 Verna lives directly next door to the building that we  
15 are discussing. Those two are attached. Verna is not attached. Mrs.  
16 Wolfe --

17 CHAIRPERSON REID: Excuse me. Excuse me. In  
18 regard to Ms. Movern, why don't we wait and let her --

19 MS. NOYES: Let her talk.

20 CHAIRPERSON REID: -- speak for herself?

21 MS. NOYES: Because she is not going to say what I  
22 thought she would.

23 CHAIRPERSON REID: Okay.

24 MS. NOYES: It's a lot vaguer. But I think it will come  
25 out --

26 CHAIRPERSON REID: But it's better to have her  
27 speak. Why don't we just wait a while until she comes and let her

1 speak?

2 MEMBER KRESS: And since you have party status,  
3 she will be like your witness. And so you can ask her questions to  
4 help her answer you.

5 CHAIRPERSON REID: She lives next door; correct?  
6 Did you say she lived next door to the subject property?

7 MR. W. HOM: Yes.

8 MS. NOYES: She lives next door to the Homs.

9 CHAIRPERSON REID: Okay.

10 MS. NOYES: And she's lived there since 1954.

11 MR. SELIGMANN: My name is Peter Seligmann. I  
12 live across the street from our very good neighbors the Homs.

13 I would just observe that there are -- I have observed  
14 -- I have only lived there since 1976. No. Wrong. When did we move  
15 there? Nineteen eighty-six. Nineteen eighty-six. Nineteen eighty-six,  
16 ten years later. I moved there in 1986.

17 And since then, I have seen other houses where there  
18 are tenants, but I have no idea. Not having been in the houses, I have  
19 no idea whether or not there are units. And I'm not sure they just are  
20 boarders that come down to use the common kitchen or the houses  
21 are divided into different units, whether they have a cooking plate or  
22 not, no idea.

23 And I think that is in one other house on the block,  
24 Norton Place. I don't know of any other situation like that, although I  
25 know that there would be -- I think everybody in times when they need  
26 to generate more revenue would love the idea of being able to have  
27 another tenant in the basement apartment.

1                   And probably many of these apartments do have the  
2                   ability to be converted into basement apartments to generate  
3                   additional income, which I've --

4                   MEMBER KRESS: But unless it's been continuous  
5                   without break since prior to 1958, we'll really come after somebody  
6                   who does that. You'll have some DCRA folks on your door.

7                   MR. SELIGMANN: Great. What I wanted to also  
8                   state was I have no idea, having not lived here in 1954 or in 1958, the  
9                   condition of when this house was converted from a single-family  
10                  dwelling into a multiple-family dwelling.

11                  And I think that it's very important since this is a very  
12                  important precedent and an important variance for the community that  
13                  the judging body understand that prior to -- because I don't think  
14                  anybody here knows. The Homs arrived in '76. We arrived in '86.  
15                  And I'm not even sure --

16                  MS. NOYES: '89.

17                  MS. KINNEY: '60s.

18                  MR. SELIGMANN: So we don't know what happened  
19                  in 1958.

20                  VICE CHAIRPERSON KING: There are letters in  
21                  evidence from people who say that it was a rental unit in the '50s.

22                  MR. SELIGMANN: Are there? We haven't seen  
23                  those.

24                  MS. SELIGMANN: We need to see them.

25                  MEMBER KRESS: May we ask you: Do you know a  
26                  G. Robert Lang or a John Geriakas, if I'm saying it right?

27                  MR. SELIGMANN: Geriakas? Yes.

1 MS. SELIGMANN: That's an interesting case.

2 MEMBER KRESS: These are the two letters that we  
3 have on our files saying that it's been rented out to multiple tenants  
4 since the mid 1950s.

5 MR. SELIGMANN: We know both of them, and they  
6 are both on Wisconsin Avenue and have apartment buildings in their  
7 houses on Wisconsin Avenue.

8 VICE CHAIRPERSON KING: Are you purporting that  
9 that disqualifies them from saying what happened in that --

10 MR. SELIGMANN: I am not purporting anything. I'm  
11 saying that --

12 VICE CHAIRPERSON KING: -- house in the 1950s?

13 MR. SELIGMANN: I have no idea what they know  
14 about 1950. I have no idea. I mean, I don't know when they moved  
15 there. I don't have any idea whether or not they have -- what firsthand  
16 knowledge they have.

17 I know that there is an interest on the commercial  
18 owners on Wisconsin Avenue to convert much of Wisconsin and the  
19 adjacent streets into multiple-family dwellings. We have entered into  
20 commercial properties, and there are other discussions about  
21 commercial properties that are single-family dwellings that are being  
22 converted to commercial properties on Wisconsin Avenue.

23 And we have had people come to us and ask whether  
24 or not we would oppose houses right on Wisconsin Avenue being  
25 converted to commercial, not to, Homs' but other properties.

26 So I don't know about the --

27 VICE CHAIRPERSON KING: If it should convey --

1 MR. SELIGMANN: I don't have any idea about the  
2 knowledge or the motivations of the people that are claiming that this  
3 house was multiple-family in the mid '50s, no idea.

4 The concern that I have as just a resident there is --  
5 and I really want to again go back. This is a very delicate situation for  
6 us because we have lived across from the Homs for ten years and  
7 think of them as very good neighbors. So we are concerned to doing  
8 anything that could be misinterpreted as malicious towards them  
9 because we don't feel that. We admire them and their family.

10 Our concern is that for ten years, we have made a big  
11 investment in the city and our community to make it a historic district  
12 and to raise our children. We have three daughters that we have  
13 raised on that street and are raising still.

14 And our concern is that the area, the investment that  
15 we have made will be impacted. Our concern is that the investment  
16 we have made in this community will be impacted by having a  
17 variance that will allow the street, the very small street, to begin to  
18 kind of memorialize multiple-family dwellings. And that's the main  
19 interest.

20 So although you have said that it's not a change of  
21 zoning, it's a permanent variance. It could be a precedent-setting  
22 variance. And that's our concern, and that's why we're here, because  
23 we do not want to have this community that we have invested so  
24 much into have a permanent change of character, advertently or  
25 inadvertently.

26 And we have no objection to people -- we don't object  
27 to the multiple people that are living across the street from us. They're

1 nice people. We'd just as soon have them be able to continue to live  
2 there but not have a change in variance and not have it be a  
3 demonstration that this is an adjustment to the zoning.

4 So that's really all I wanted to say.

5 CHAIRPERSON REID: Thank you, Mr. Seligmann.

6 The secretary informed me that you were not sworn in.

7 MR. SELIGMANN: Excuse me? Excuse me?

8 CHAIRPERSON REID: Our secretary just informed  
9 us that you were not sworn in. So do you mind standing and --

10 MEMBER KRESS: Swearing that what you have said  
11 is the truth.

12 CHAIRPERSON REID: Retroactively.

13 MS. ROSE: Raise your right hand.

14 (Whereupon, Peter Seligmann, a witness in Case  
15 Number 16318, was duly sworn.)

16 MEMBER HINTON: If you show that to us, you have  
17 to leave it in our record.

18 MS. SELIGMANN: Oh, I do?

19 MEMBER HINTON: Yes.

20 MS. SELIGMANN: And when can I get it back?

21 MEMBER HINTON: Never. It has to stay in the  
22 record.

23 MS. SELIGMANN: Okay. You can't see it. Thank  
24 you for advising me.

25 MS. NOYES: May I show my house?

26 MS. SELIGMANN: You have to leave it in the record.

27 MEMBER HINTON: You have to leave it in the

1 record.

2 MS. SELIGMANN: It's such a nice picture, Elizabeth.

3 Let's send it.

4 MS. KINNEY: I have something to say.

5 MS. NOYES: I have another picture that may be not  
6 as nice, but --

7 MS. SELIGMANN: I brought the photo, actually,  
8 because it's earlier this century and I wanted you to see the character  
9 of Norton Place. And it still remains like that.

10 I wanted one of my daughters, actually, to draw a  
11 picture for the body today, but she said, "Mom, just take that picture."  
12 So that's how that happened.

13 Our house happened to have been owned by one of  
14 the Hudson Valley painters named Girand. And it's a very important  
15 house within the historic neighborhood. We subsequently learned  
16 that. We bought it unwittingly because we love Norton Place.

17 I think the most important points that were made  
18 today and what I want to emphasize in terms of your thinking are the  
19 fact that the zoning issues along Wisconsin Avenue are critical. And  
20 this is the first creep that we've had into the streets along this area,  
21 along this area.

22 I worked on the down-zoning of Wisconsin when they  
23 wanted to change the character of the commercial area. And so I  
24 know how hard it is to keep something intact. And I really hope you'll  
25 consider keeping our zoning intact.

26 I don't know what we can do about our friends the  
27 Homs. I don't want them to lose their revenue or anything, but if that

1 has to come in order to keep our zoning, then I think we'll have to  
2 figure something out to help them.

3 I would say that the creeping has started around the  
4 corner. And the Geriakas property is the cornerstone of that. They  
5 converted a single-family home into numerous dwellings. I have no  
6 idea how many are in there. It's on the corner of Norton Place and  
7 Wisconsin. But I'd venture to guess there are at least eight.

8 So that's a single-family, attached dwelling on that  
9 corner opposite, the alley, where, in fact, the Homs live. So this is a  
10 problem that's going to start to invade this neighborhood. And to take  
11 a strong action today would be very important for that, for the future of  
12 our street.

13 The parking and the trash are the two most difficult  
14 aspects of allowing any kind of multiple use. These homes have  
15 garages, but they don't use them as garages. They are additional  
16 apartments. And the trash is a huge problem, particularly in that alley.

17 VICE CHAIRPERSON KING: Excuse me. Can I  
18 interrupt? Are you saying that the Homs, in addition to having the two  
19 floors and the possible third unit, also have a fourth unit in their  
20 garage? Is that what you just testified?

21 MS. SELIGMANN: No. The garage area would be  
22 what is converted into an apartment. I've never been in there.

23 VICE CHAIRPERSON KING: Has it been converted  
24 into an apartment? Is that what you're testifying?

25 MS. SELIGMANN: I've never been in there. So I  
26 don't know.

27 VICE CHAIRPERSON KING: I see. Thank you.

1 MS. SELIGMANN: But I've seen this man, this  
2 tenant, there, who is there all the time. So I don't know where he  
3 exactly lives, but he lives in the building, in addition to the two  
4 apartments that they enter from the front. See, they have to enter  
5 those flats from the front of Norton Place. So I see them. And then I  
6 see him in the alley.

7 I don't know if it's garage or basement, frankly.  
8 Excuse me. I should correct that.

9 MEMBER HINTON: Your reference to the inhabited  
10 garages was other garages along your block or along this alley?

11 MS. SELIGMANN: No. In the alley. But I don't know  
12 who lives in them or how it works, but garages get converted in there.

13 MS. KINNEY: May I explain that?

14 MEMBER KRESS: I have to say you do know that's  
15 an enforcement problem because I doubt very seriously anyone has  
16 come before us -- I think somebody here would know -- to have those  
17 garages.

18 Now, it doesn't mean you can't turn that garage into  
19 an extra space for yourself to use.

20 MS. SELIGMANN: Right.

21 MEMBER KRESS: But if you're turning it into a rental  
22 and it hasn't been continuously rented since prior to 1958, then you  
23 need to report that if that's troublesome to you because I believe that's  
24 probably existing in noncompliance.

25 MS. SELIGMANN: Okay. That's good. But the  
26 summary to my statement, I just want to say that I would urge you  
27 today to take whatever action necessary to protect the R-1-B

1 designation without a variance. It's really critical to those of us who  
2 have purchased our properties to live in single-family neighborhoods,  
3 and we appreciate your consideration.

4 Thank you.

5 CHAIRPERSON REID: Let me ask you a question.

6 On the one hand, I'm hearing you be very concerned about any  
7 change or any type of zoning relief that may come about as a result of  
8 this hearing today. But, on the other hand, I also hear you say that  
9 you are very fond of the Homs and that you're not trying to maliciously  
10 impact upon their lives.

11 My question then becomes: In the time that you have  
12 known them as neighbors, in regard to adverse impact, have you  
13 known or have you experienced any problems as far as noise, traffic,  
14 parking, trash, or the like?

15 MS. SELIGMANN: In terms of the Homs? No. If it  
16 were only the life expectancy --

17 CHAIRPERSON REID: Have any of you had any  
18 problems or noticed any problems with the Homs in regard to parking,  
19 traffic, noise, or trash, or anything that would cause you some  
20 disturbance or some disturbance in your community?

21 MS. SELIGMANN: Is this any provision in the law  
22 that would permit for their tenancy to offer that to continue and then  
23 revert back to single-family dwelling? Is there any provision? Is there  
24 a small provision? I understood that there was something --

25 CHAIRPERSON REID: Somebody write that for me  
26 on that. The secretary --

27 MS. SELIGMANN: -- available on that through their

1 ownership or something.

2 MS. ROSE: If this variance isn't granted, then it  
3 would have to be a --

4 CHAIRPERSON REID: No. I think her question was:  
5 After their use, once they -- as long as they're there --

6 MEMBER KRESS: Can we write a variance that  
7 basically says for this owner --

8 MS. ROSE: No.

9 CHAIRPERSON REID: Specifically.

10 MEMBER KRESS: -- as long as they're the owner --

11 CHAIRPERSON REID: And then after they sell, it  
12 would revert back to --

13 MEMBER KRESS: -- and then after they sell, it  
14 reverts. To my knowledge, there isn't, but that's the question she --

15 MS. ROSE: The variance runs with the land.

16 MEMBER HINTON: And there's no way to allow this  
17 kind of relief under special exceptions. There's no provision in the  
18 regs that would allow it. For special exception, we can put a time limit  
19 on it. But there's no special exception that would allow what the Homs  
20 are asking for. It has to be a variance, and that has to run forever with  
21 the land.

22 MS. SELIGMANN: But what they're asking for, is  
23 there another way to phrase it or is there another provision that you  
24 could --

25 MEMBER HINTON: Those are the two options that  
26 are open to us: special exception or a variance. There is not.

27 MR. SELIGMANN: If they had a special exception, it

1 could use a time limit?

2 MEMBER HINTON: The use that they're asking for is  
3 not allowed as a special exception. That alternative is not available.  
4 The only way this can be legally allowed is through a variance. And  
5 that has to be forever if it's approved.

6 MS. KINNEY: You asked if we thought the Homs had  
7 caused any unwelcome impact on the family. And my answer would  
8 also be not to my knowledge, but I live at the other end of the block.  
9 So I am not a good witness.

10 But I do know what the identical homes that stretch  
11 along Wisconsin Avenue in that block that is one side of Norton have  
12 done to the neighborhood, to the Cleveland Park neighborhood.  
13 They're all now businesses. That's a commercial strip. They're using  
14 the houses as businesses.

15 CHAIRPERSON REID: Excuse me. But we want to  
16 stay germane to this particular case and this --

17 MS. KINNEY: What we have seen is an example  
18 there. We are impacted is what I'm saying already.

19 CHAIRPERSON REID: Okay. Specifically we're  
20 referring to the subject property and this particular case. See, we  
21 wanted to make sure that we don't drift too far away.

22 MS. KINNEY: Well, I'm trying not to. They have all  
23 taken in tenants is the point.

24 CHAIRPERSON REID: Okay. Thank you.

25 MS. KINNEY: They have a business on one floor, a  
26 tenant in the basement, a tenant on the second floor. And the amount  
27 of traffic, trash, even though basically they seem to be relatively nice

1 people, is overwhelming. And it's right on that corner that is just  
2 crowded with everything now, --

3 CHAIRPERSON REID: Thank you.

4 MS. KINNEY: -- people cars, and so forth.

5 CHAIRPERSON REID: Thank you.

6 Okay. Now, we will move -- does that conclude the  
7 testimony of the opposition? That picture, is that something that you  
8 can leave with us?

9 MS. NOYES: Yes, I can.

10 CHAIRPERSON REID: If you'd submit it? Okay.

11 MS. NOYES: I would like to.

12 MS. KINNEY: Did you autograph it?

13 CHAIRPERSON REID: Would you tell us what it is?

14 MS. NOYES: It is my house.

15 CHAIRPERSON REID: Okay. Would you --

16 MS. NOYES: It is my house. And I think it's one of  
17 the original Sears and Roebuck houses that has been expanded. On  
18 both sides of that house, there are large, old, three-story homes. It's a  
19 little cottage in between two very large houses. And that's the  
20 neighborhood except across the street.

21 CHAIRPERSON REID: All right. If there's no more  
22 testimony, then we would move now to the cross-examination of the  
23 applicant.

24 VICE CHAIRPERSON KING: No, no.

25 CHAIRPERSON REID: Mr. Hom, I'd ask: Could you  
26 come back here? Mr. Hom, do you have any cross-examination of the  
27 opposition based on their testimony?

1 MR. W. HOM: No, I really don't have any questions  
2 for them, but since they are my parents' neighbors, my parents realize  
3 that this isn't directed directly towards them in a malicious manner.

4 CHAIRPERSON REID: This is questioning. Do you  
5 have a question based on anything that they have said or any of the  
6 testimony that they have given here today?

7 MR. W. HOM: I have no questions.

8 CHAIRPERSON REID: Okay.

9 MEMBER KRESS: May I ask one question?

10 CHAIRPERSON REID: Sure.

11 MEMBER KRESS: I just wanted to ask. Are you  
12 aware of the zoning surrounding Norton Street --

13 CHAIRPERSON REID: Place.

14 MEMBER KRESS: -- and that it does change on  
15 Wisconsin Avenue, it is a different zone?

16 MS. KINNEY: Oh, yes.

17 MEMBER KRESS: And that's why the larger  
18 residential is there. There's a very clean demarcation.

19 MS. KINNEY: Yes.

20 MS. SELIGMANN: Then it reverts back to  
21 single-family when you get on the other side of Norton; right?

22 MS. KINNEY: No.

23 VICE CHAIRPERSON KING: But there is a strip of  
24 Norton right by Wisconsin that is --

25 MS. KINNEY: Could I see that? Is it a --

26 MEMBER KRESS: Yes. This is R-5-B on one side  
27 and R-5-A on the other side of Norton.

1 VICE CHAIRPERSON KING: So the people who live  
2 on Norton Street right next to Wisconsin Avenue have different zoning  
3 than the rest of Norton Place?

4 MEMBER KRESS: Across the street is --

5 MS. NOYES: Which is a huge house with a yard.  
6 Oh, my goodness.

7 VICE CHAIRPERSON KING: But they have a  
8 completely different --

9 MS. NOYES: But they're zoned for something else.  
10 Yes, I would imagine along Wisconsin eventually that's going to be an  
11 apartment building.

12 CHAIRPERSON REID: Just a moment, please. Let's  
13 try to be considerate of one another. And one person can speak at a  
14 time. Thank you.

15 All right. You have no questions?

16 MR. W. HOM: I have no questions.

17 CHAIRPERSON REID: Okay. All right. Before  
18 concluding this case, we understand that there is Mrs. Movern, who  
19 will be coming. So we will temporarily set this aside and allow Ms.  
20 Movern to come and then bring you back up. And you will then have  
21 an opportunity to give your closing remarks after Mrs. Movern has  
22 spoken. Okay?

23 MR. W. HOM: Okay.

24 CHAIRPERSON REID: Thank you.

25 Next case?

26 MS. SELIGMANN: Thank you very much.

27 MS. KINNEY: Thank you.



1 CHAIRPERSON REID: Then he has to be sworn in.

2 MR. ROWAN: Okay. Very good.

3 MS. ROSE: Would you raise your right hand?

4 (Whereupon, Ron M. Friday, witness in Case Number  
5 16319, was duly sworn.)

6 MS. ROSE: Please be seated.

7 MR. FRIDAY: Good afternoon, Madam Chairperson  
8 and members of the Board. My name is Ron M. Friday. I'm here  
9 representing Application Number 16319. C. Austin Fitts. And we're  
10 here before you today to request a variance.

11 I'll just read this opening statement, and also I have  
12 some copies of the statement for you all here.

13 CHAIRPERSON REID: Mr. Friday, is there any  
14 authorization from the owner of the property to allow you to speak for  
15 him or her?

16 MR. FRIDAY: Yes. I filled out a registered agent -- a  
17 letter from the owner that should be in your -- it was given to your  
18 office, BZA office.

19 CHAIRPERSON REID: Just a moment.

20 MR. FRIDAY: Very good.

21 CHAIRPERSON REID: We'll check that.

22 MR. FRIDAY: Okay. Thank you.

23 CHAIRPERSON REID: Mr. Friday, do you have a  
24 copy of the authorization that you just discussed?

25 MR. FRIDAY: No, I don't have a copy with me.

26 VICE CHAIRPERSON KING: You're not referring to  
27 this piece of paper, are you?

1 MR. FRIDAY: No. No, ma'am. This is a letter from  
2 the owner.

3 MR. ROWAN: The letter was submitted at the same  
4 time the filing fee was filed. It may be attached.

5 CHAIRPERSON REID: We have it.

6 MR. FRIDAY: You have it? Okay. Very good.

7 CHAIRPERSON REID: All right. Very well.

8 MR. FRIDAY: May we proceed?

9 CHAIRPERSON REID: Okay. Mr. Friday, you need  
10 to ask for waivers for us to waive the rules to allow you to submit your  
11 statement.

12 MR. FRIDAY: What do you mean a "waiver"?

13 MEMBER HINTON: The statement of the applicant is  
14 due into the record 14 days before the hearing. So for you to submit  
15 any information today, you need a wavier.

16 MR. FRIDAY: Okay.

17 MEMBER HINTON: You need to ask for a waiver.

18 MR. FRIDAY: Okay. I would like to ask for a waiver  
19 to submit testimony today, Madam Chairperson.

20 CHAIRPERSON REID: We grant that waiver.

21 MR. FRIDAY: This is an application of C. Austin Fitts,  
22 pursuant to 11 DCMR 3107.2, for a variance from the provisions of  
23 Subsection 401.6 to allow the subdivision of land without street  
24 frontage; and a variance from the provisions of Subsection 2507.2 to  
25 allow construction, alteration, and repair for human habitation of an  
26 existing structure located on an alley lot which does not abut an alley  
27 that is 30 feet or more in width and does not have access to a street

1 through an alley or alleys not less than 30 feet in width in a  
2 DCOD/R-5-B district at premises 1720 and the rear of 1726 19th  
3 Street, Northwest, Square 110, Lot 58 and the remainder of Lot 39.

4 A little background. The premise is a single-family  
5 dwelling and is owned by C. Austin Fitts. It is one of just a handful of  
6 carriage houses still in existence in the District of Columbia. Such  
7 dwellings were the parking lots of their era and were, therefore, built to  
8 the rear of the main residencies.

9 This particular dwelling is bordered by 19th and 20th  
10 Streets, Northwest and R and S Streets, Northwest near Capital Hilton  
11 Hotel. By adding street frontage access to the premises by the alley,  
12 it's both simple and ample for purpose of mail delivery. And the  
13 United States Postal Service has provided the address of 1735 Frasier  
14 Court, Northwest.

15 For reasons that defy easy explanation, the premises  
16 rest on two lots with a dividing line that runs through the middle of the  
17 structure. Additionally, one of the two alleys that border the premise is  
18 less than 30 feet wide.

19 This combination of factors has a profound impact on  
20 Mrs. Fitts' ability to conduct common and necessary renovation and  
21 maintenance on the premise because under existing law, she cannot  
22 properly obtain a building permit because one alley is less than 30 feet  
23 wide unless she agrees to build a fire wall through the middle of her  
24 home to separate the two lots.

25 Further, she cannot simply ask the DCRA to combine  
26 the lots because of the lack of street frontage. This is clearly a  
27 Catch-22 situation that makes it impossible for the applicant to have

1 full use and enjoyment of the premises.

2 I'm going to ask Mr. Rowan to show you some of  
3 these things at the easel there.

4 DIRECT EXAMINATION

5 BY MR. ROWAN:

6 Q Mr. Friday, if you would, you're familiar with this  
7 residence and location?

8 A Yes, sir.

9 Q And do you have photographs of the location that  
10 might help the Board --

11 A Right, if I may.

12 Q -- to understand what we're looking at here?

13 A They are all numbered on the back.

14 Q The premises that we're talking about here today, is it  
15 accurate to say that it is reflected by the heavy border outline on this  
16 flat?

17 A That's correct.

18 Q And if you are to look at Photographs Number 1 and 3  
19 --

20 VICE CHAIRPERSON KING: Where are these  
21 photographs? Are these the ones --

22 MR. ROWAN: Okay. They're --

23 MR. FRIDAY: Yes. They're right here.

24 VICE CHAIRPERSON KING: Okay. Great. This is  
25 4.

26 MR. FRIDAY: We had Photograph 1. Excuse me.

27 VICE CHAIRPERSON KING: Photograph 1?

1 MR. FRIDAY: Photograph 1.

2 BY MR. ROWAN:

3 Q Do Photographs 1 and 3 accurately reflect a  
4 photograph of the carriage house taken from the 30-foot alleyway  
5 which fronts on 19th Street?

6 A Yes, it does.

7 Q And your other photographs that you have, 2 and 4,  
8 reflect photographs taken of the carriage house from the alleyway  
9 which fronts on S Street?

10 A Yes, it does.

11 Q And is it also accurate to say that the entirety of the  
12 premises that we're talking about here of these lots exist within the  
13 four walls of this carriage house?

14 A That's correct. It's one structure that sits on this lot.

15 MEMBER HINTON: Could you say that again,  
16 please?

17 MR. ROWAN: We wanted to make it clear that the  
18 premises -- this reflects the home. It's like a condominium.  
19 Everything that goes along with this lot exists within the walls of this  
20 structure. We're not here today talking about anything that would  
21 reflect on development of other property. This is it.

22 BY MR. ROWAN:

23 Q And is it your understanding that carriage houses are  
24 a rarity in the District of Columbia?

25 A That's correct. This particular dwelling is very unique  
26 in its style. I mean, it's a home that sits in the middle of an alley, quite  
27 frankly.

1           Q       And because of that fact, is it accurate to say that any  
2 effort by the homeowner to conduct ordinary maintenance that would  
3 require a building permit is stymied by the fact that: one, being in a  
4 location on an alley less than 30 feet, they can't get a building permit;  
5 and, two, that because this house happens to exist on two lots, that in  
6 order to do work within the house, the city would require a fire wall to  
7 be built similar to one built down the middle of this room?

8           A       That's correct.

9           VICE CHAIRPERSON KING: Mr. Rowan, I presume  
10 that your request variance would obviate the need for the fire wall. Is  
11 that what you're suggesting?

12           MR. ROWAN: Yes. If this line simply no longer  
13 existed, if the line through the middle of Ms. Fitts' home no longer  
14 existed, and this was one lot, that would eliminate the problem.

15           VICE CHAIRPERSON KING: Does the Board of  
16 Zoning Adjustment have the ability to merge lots, I mean, to change --

17           MEMBER KRESS: No. What we do is we basically --  
18 I'm sorry. I wasn't listening. That's done over at DCRA, but DCRA is  
19 basically saying: No, we can't do it for the various reasons stated. So  
20 what we can do is --

21           VICE CHAIRPERSON KING: Oh, I see. If we grant  
22 the application, then he can go to DCRA and get them --

23           MEMBER KRESS: And then allow --

24           MR. ROWAN: That's correct.

25           VICE CHAIRPERSON KING: And you'll allow him to  
26 merge two lots?

27           MR. ROWAN: Correct.

1 VICE CHAIRPERSON KING: Okay. That was my  
2 confusion. I wasn't aware that we had the power to merge lots, but we  
3 do have the power to unlock the door that will merge lots.

4 MR. ROWAN: Absolutely.

5 BY MR. ROWAN:

6 Q And, Mr. Friday, you have personally traveled to this  
7 location and are familiar with it?

8 A Yes, I have.

9 Q How would you characterize the ability of vehicles to  
10 move in and around this carriage house?

11 A Well, we can just go back to the photographs here.  
12 You can see that there are cars. This is Photograph 3 I'm holding.  
13 There are cars that are parked, at least three cars that are parked,  
14 across the alleyway that shows the width of the alley. And there's  
15 easy access, both to and fro, from this residency.

16 In fact, I believe in the days when this was probably  
17 built, you know, this probably was necessary, this provision, on the  
18 books because you had carriages then. And unless there was some  
19 reason we go back to carriages, it suits the purpose for easy access in  
20 and out the alleyway.

21 Q And you're saying that the requirement of 30 feet in  
22 an alley was to keep horses far enough apart --

23 A Yes, that's correct.

24 Q -- and turning radius?

25 A That's right. That's correct.

26 MEMBER KRESS: Could I ask you: Do you know  
27 why today the fire department requires certain widths in alleys?

1 MR. FRIDAY: Well, not exactly. I would imagine it's  
2 for their vehicles to get to a certain location. And in this alleyway, if  
3 you can, like I say, go back to Picture 3, it's clearly wide enough for a  
4 fire truck or an emergency vehicle to pass. So it shouldn't be a  
5 problem.

6 MEMBER KRESS: If the properties were merged or  
7 --

8 MR. FRIDAY: It doesn't affect the width of the alley.

9 MEMBER KRESS: Because then they wouldn't have  
10 to go down the narrower --

11 MR. FRIDAY: Right, right. It wouldn't affect the alley.  
12 It wouldn't affect it.

13 VICE CHAIRPERSON KING: Mr. Friday, have you or  
14 your client met with an advisory neighborhood commission -- I don't  
15 see anything in here -- or any of the neighbors and so forth? Have  
16 you met with the community to detect any objection to this?

17 MR. FRIDAY: No, we have not. It's my  
18 understanding that the ANC was notified through notice here from this  
19 office.

20 VICE CHAIRPERSON KING: That's correct.

21 MR. FRIDAY: And I don't know if you received  
22 anything.

23 VICE CHAIRPERSON KING: No, but you didn't --

24 MR. FRIDAY: To my knowledge, we hadn't --

25 VICE CHAIRPERSON KING: You didn't make any  
26 attempt to --

27 MR. FRIDAY: No, we had not.

1 VICE CHAIRPERSON KING: -- contact the  
2 neighbors?

3 MR. FRIDAY: No, we had not.

4 MR. ROWAN: I might add as an administrative  
5 matter that just prior to coming down here today, we received a fax  
6 from a neighbor. The neighbors who are in the area had no objection.

7 This particular neighbor, a Mr. Adams, also had no  
8 objection. He just wanted to make sure it was brought to the Board's  
9 attention for completeness of the record that he had brought a lawsuit  
10 against the former owner of the property years ago on an easement  
11 matter and just wanted to make sure that anything that was done here  
12 today wouldn't hurt his easement.

13 So, as a matter of courtesy, I told him I would bring  
14 this to your attention and provide his letter for the record. He indicated  
15 that he had sent a letter here, but I don't know if it has arrived yet. It  
16 wasn't here yesterday.

17 But there were no objections from the community.

18 BY MR. ROWAN:

19 Q Mr. Friday, if I may ask, this dwelling has been  
20 occupied for many years?

21 A Yes. It's been a single-family dwelling for some time.  
22 And the purpose and the use will stay the same. It won't change. So  
23 that's not an issue today.

24 MEMBER HINTON: Do you know how long it's been  
25 occupied as a single-family dwelling?

26 MR. FRIDAY: Not exactly. Mr. Rowan, do you have  
27 any knowledge of that?

1 MR. ROWAN: This goes back I think more than ten  
2 years. It's a renovated building, but at least ten years.

3 MEMBER HINTON: How were the original  
4 renovations done when you have had the same problem with one  
5 single family on two lots?

6 MR. ROWAN: Would you like me to answer that  
7 question directly or do it by question by the witness?

8 MEMBER HINTON: Testimony should come from the  
9 witness.

10 MR. ROWAN: All right.

11 BY MR. ROWAN:

12 Q Mr. Friday, to your knowledge, has a building permit  
13 been issued for renovation work on this particular dwelling?

14 A Yes, it has.

15 Q And was that building permit issued properly or in  
16 error, to your knowledge?

17 A Well, when we went before -- when I spoke with the  
18 Zoning Administrator regarding this matter, she explained to me that  
19 she wouldn't have anything to do with it, that it's a matter that must  
20 come before the BZA Board.

21 But when I researched the applicant's building permit,  
22 her zoning employee issued a permit. And her name escapes me  
23 now. But it was clearly done through the Zoning Office. It must have  
24 been, you know, they had an oversight or something.

25 And at that point, we were trying to get the matter  
26 resolved at that level, but she insisted that we come before you. And  
27 that's why we're here because we -- in fact, we had Mr. Nunley from

1 the Zoning Office visit the site with us on a visit. And he looked at the  
2 property, and he seen the things that had been done, security systems  
3 and stuff put in. And he was saying: Well, this looks like the work is  
4 being done already.

5 And we told him there was a building permit issued.  
6 And that's why we can't understand why we could not have gotten the  
7 lots combined there. And he said: If you had a building permit, I don't  
8 see why.

9 So we went back to the Zoning Administrator. She  
10 didn't want to do anything with it and referred us back to you guys.  
11 And that's why we're here.

12 MEMBER HINTON: Do you have a copy of that  
13 previous building permit?

14 MR. FRIDAY: I believe it was submitted with the --

15 VICE CHAIRPERSON KING: Isn't this it? I think --

16 MR. FRIDAY: Yes.

17 MEMBER HINTON: No. This is the current one.  
18 This is 1997. I thought you were talking about --

19 MR. ROWAN: That is the one that our client applied  
20 for.

21 MR. FRIDAY: Yes, right. Exactly.

22 VICE CHAIRPERSON KING: May 1997?

23 MR. ROWAN: Yes.

24 MR. FRIDAY: Correct.

25 MEMBER HINTON: My question is -- I'm sorry.  
26 Maybe I misunderstood what you said, but I thought you said about  
27 ten years ago, this structure was converted into a residential unit.

1 MR. ROWAN: I'm sorry. Not by our client. Our client  
2 bought the residence just a couple of years ago and has commenced  
3 a renovation project requiring the building permit that was issued and  
4 after finishing some of the work and going back to get additional  
5 permits was confronted with this issue and is sort of in the Catch-22  
6 position of having received a permit to do the work, now being unable  
7 to finish because somebody caught the fact that this is a carriage  
8 house and has these two problems of street frontage in an alley.

9 One of the reasons that we have asked for the  
10 variance on the issue of the building permit is simply because, even  
11 though the work was done properly by permit, it was a permit  
12 improperly issued. And we want to make sure that the residence is in  
13 full compliance with the law.

14 MEMBER HINTON: I don't think so. So there is more  
15 work that you need to do that you haven't been able to get a permit  
16 for?

17 MR. ROWAN: Eventually. I mean, within the interior  
18 of the house, there will be something that needs to be done.

19 VICE CHAIRPERSON KING: But all of this work has  
20 been done already?

21 MR. ROWAN: It has been done, yes.

22 BY MR. ROWAN:

23 Q And, Mr. Friday, would it be correct to say that Ms.  
24 Fitts was advised that in the future, for any building permit, that she  
25 will have to come before the BZA and go through this process?

26 A That's correct. That's correct.

27 VICE CHAIRPERSON KING: But should we grant

1 your application and should DCRA merge the lots, then --

2 MR. FRIDAY: We don't need to come back before  
3 you.

4 VICE CHAIRPERSON KING: -- then there would be  
5 no need to come back?

6 MR. ROWAN: Yes.

7 MR. FRIDAY: That's correct.

8 MR. ROWAN: That solves the problem.

9 VICE CHAIRPERSON KING: Carl, would you explain  
10 this to me? What is the easement? I mean, I've skimmed it, but  
11 would you explain to me what we are to avoid doing so that we don't  
12 screw up Mr. Adams?

13 MR. ROWAN: Okay. I don't think there's any issue at  
14 all. There was an easement issue that was raised, a title issue, with a  
15 prior owner that --

16 VICE CHAIRPERSON KING: Title to what?

17 MR. ROWAN: Title to an easement. I've just glanced  
18 at this while we've been sitting here. There was an easement in the  
19 back area of the dwelling.

20 MR. FRIDAY: Courtyards.

21 MR. ROWAN: Yes, to allow an individual whose  
22 home is right here to walk across this little piece of dirt that leads to  
23 the alley.

24 VICE CHAIRPERSON KING: And nothing that you're  
25 asking us to do today would in any way infringe Mr. Adams'  
26 easement?

27 MR. ROWAN: Absolutely not.

1 VICE CHAIRPERSON KING: I wanted that to be on  
2 the record.

3 MR. ROWAN: I have no further questions of Mr.  
4 Friday.

5 MR. FRIDAY: Yes. Well, just to sum up, I believe  
6 that this subject site is affected by a unique and exceptional condition.  
7 And, as previously stated, the premises is on a handful of carriage  
8 houses remaining in the District of Columbia. Its existence is the very  
9 definition of an exceptional situation of condition. Further, issues of  
10 street frontage and alley width are uniquely applicable to these very  
11 few structures.

12 The combination of these facts places a unique  
13 burden on the owner of the premises to either allow the unabated  
14 deterioration of the premises or engage in drastic alteration that would  
15 serve to destroy the unique characteristics of carriage houses that are  
16 the basis of their desirability.

17 So I guess, to summarize, the requested relief will  
18 have absolutely no detrimental impact on the common good. The  
19 issue of combining the lots is purely an administrative exercise with no  
20 public or zoning impact.

21 It should also be noted that the four walls of the  
22 premises encompass the entirety of the lots at issue. Variance relief  
23 would not convey any developmental rights or structural privileges  
24 outside of the premises.

25 So the applicant is requesting that the Board will grant  
26 relief and if we could possibly receive that today.

27 CHAIRPERSON REID: Very well. Is there anyone

1 here in support or opposition of this particular case? You're in  
2 support?

3 MS. NETTLEFORD: I'm actually --

4 VICE CHAIRPERSON KING: She refused to be  
5 sworn in. She hasn't been sworn in. You weren't sworn in, were you?

6 MS. NETTLEFORD: I was not sworn in. My name is  
7 Leslie Nettleford. I'm from the firm of Kass and Skalet. We're  
8 representing Mr. Adams' interest in this.

9 We did not have any knowledge prior to this time that  
10 you were actually going to enter it in. We have been trying to contact  
11 his office back and forth. So our only goal here today was just to  
12 make sure that Mr. Adams' interest was not changed in any way by  
13 this Court's granting this item.

14 And I believe you have a copy of the February 13  
15 letter. Copies were made. I was told that I needed to come in today  
16 in order to present this information.

17 And, just to sort of clarify, as you can see, there are  
18 two lots there. And it was Lot 805 that the previous owner -- they put  
19 a door in there. They put steps in there so they could have access to  
20 an alleyway. And the way the court held was that they were not  
21 permitted to do that.

22 So our whole purpose today was just to make sure  
23 that nothing was going to happen whereby Lot 805 would have an  
24 easement to that right-of-way that counsel previously pointed out to  
25 you.

26 VICE CHAIRPERSON KING: Do you feel that we  
27 have sufficiently entered it into the record that they have no intention

1 to interfere with the easement?

2 MS. NETTLEFORD: Right. You have made your  
3 statement, and he responded to it. So we're fine.

4 CHAIRPERSON REID: You're satisfied with that  
5 response?

6 MS. NETTLEFORD: Yes.

7 CHAIRPERSON REID: Government reports or ANC,  
8 staff reports? ANC-2B. I did not see anything in the record. They  
9 were noticed on January 8th, I think, but we have nothing from them.  
10 So they would not be given the great weight to which they would be  
11 ordinarily entitled.

12 So now we come to closing remarks.

13 MR. FRIDAY: Well, again, if I might thank the Madam  
14 Chairperson and the members of the Board for allowing us an  
15 opportunity to come before you. And we just ask that the Board  
16 render a full decision for us if you can. Thank you very much.

17 CHAIRPERSON REID: Board members?

18 VICE CHAIRPERSON KING: It seems to me that this  
19 is a classic example of extraordinary circumstances. I can't think of  
20 anything more extraordinary.

21 Since the ANC did not respond and there has been  
22 no appeal from anybody except Mr. Adams, whose interests seem  
23 according to his representative to be well-protected, I move that we  
24 grant the application and give the summary order.

25 MEMBER KRESS: I second that motion.

26 CHAIRPERSON REID: Okay. All those in favor of  
27 the motion?

1 (Whereupon, there was a chorus of "Ayes.")

2 CHAIRPERSON REID: Those opposed?

3 MEMBER HINTON: Before we vote, I think there's  
4 something that we need to talk about. It seems to me from the relief  
5 that's noted by the Zoning Administrator, that this property was  
6 illegally converted for human habitation. It never had a variance. It  
7 always needed a variance for that to happen.

8 VICE CHAIRPERSON KING: Oh, you mean years  
9 and years ago, prior to the current owner?

10 MEMBER HINTON: Well, prior to 1980, which is what  
11 the attorney has said. It happened about ten years ago. Whenever it  
12 happened, there was never a variance granted. And one needed to  
13 be granted for it to happen.

14 So what this Board needs to consider, you know that  
15 we cannot take into account --

16 VICE CHAIRPERSON KING: Oh, I see.

17 MEMBER HINTON: -- what is already existing. We  
18 have to base our decision on whether this variance to convert this  
19 building for human habitation is for -- that's what we've granting.

20 VICE CHAIRPERSON KING: That's the Number 2 on  
21 --

22 MEMBER HINTON: Right.

23 VICE CHAIRPERSON KING: Isn't it?

24 MEMBER HINTON: Right. And --

25 VICE CHAIRPERSON KING: Where is the book?

26 Let's look at 2507. Have you --

27 MEMBER HINTON: What it basically says is that --

1 VICE CHAIRPERSON KING: Oh, you've got it?

2 MEMBER HINTON: Yes.

3 -- should not happen on an alley that has less than 30  
4 feet wide.

5 VICE CHAIRPERSON KING: But, Susan, if we grant  
6 the first variance and if it becomes one plot of land, then they are  
7 fronting on an alley that's 30 feet wide. It's not --

8 MEMBER HINTON: Well, you have to read the  
9 regulation. It says that it has to have access to a street from an alley  
10 that's 30 feet wide, those two parts of it. Look in the reg.

11 So, even if they combine the lots, even if we grant the  
12 first variance, they still need the second variance.

13 VICE CHAIRPERSON KING: No, no. I understand  
14 that. But is this alley that says "To 19th Street, Northwest," arrow, not  
15 30 feet wide?

16 MEMBER HINTON: One of them is, but --

17 VICE CHAIRPERSON KING: Oh, that one is 30 feet  
18 wide, this one that's -- oh, I see.

19 MEMBER KRESS: So where does the other alley go  
20 that's 30 feet wide?

21 CHAIRPERSON REID: The one that goes to the --

22 VICE CHAIRPERSON KING: That's the only one  
23 that's 30 feet wide.

24 MEMBER KRESS: And it goes to where?

25 MR. ROWAN: That goes to --

26 VICE CHAIRPERSON KING: S Street?

27 MR. ROWAN: -- S Street. And then the other alley

1 goes out to 19th.

2 MR. FRIDAY: Right.

3 MEMBER KRESS: By combining the properties, to  
4 continue your thought, then the property itself can be considered with  
5 Variance Number 1 to be fronting on the 30-foot alley?

6 MEMBER HINTON: I don't think so.

7 VICE CHAIRPERSON KING: Susan --

8 MEMBER HINTON: If you look at the language, it  
9 says, "an existing structure." It doesn't say, "an existing property." So  
10 the ZA isn't saying that because it's two separate lots. The ZA is  
11 saying it's an existing structure.

12 VICE CHAIRPERSON KING: But, Susan, if this  
13 survey, which clearly must be, both lots front on one alley that is 30  
14 feet wide.

15 CHAIRPERSON REID: Yes, but that's the alley. And  
16 then the alley also --

17 MEMBER HINTON: That alley may not be 30 feet for  
18 its whole length. We have no map that shows that. I'm just --

19 VICE CHAIRPERSON KING: Oh, I see what you're  
20 saying.

21 MEMBER HINTON: If what you're saying is true, it  
22 doesn't need a variance at all. So that's what I'm trying to understand.

23 MEMBER KRESS: Yes, it does. It needs the  
24 variance absolutely because the one property is not large enough to  
25 be a part of the subdivision. I mean, they can't just go get the  
26 subdivision without us.

27 CHAIRPERSON REID: And if we concede that the

1 property abuts the alley, the 30 feet wide, and then that 30-foot alley --

2 VICE CHAIRPERSON KING: Mr. Friday, does the 30  
3 feet continue all the way to the street?

4 CHAIRPERSON REID: Just a moment, Mrs. King,  
5 please.

6 VICE CHAIRPERSON KING: I beg your pardon.

7 CHAIRPERSON REID: You'll have your opportunity  
8 in just a moment.

9 We can't ascertain whether or not that alley that's 30  
10 feet wide goes all the way to the street. Is that what the problem is,  
11 Ms. Hinton?

12 MEMBER HINTON: What I am saying is there are  
13 two reliefs that are noted. The first one has to do with the subdivision,  
14 which is 401.6, to allow subdivision of land without street frontage.  
15 That's the subdivision issue. It's subdivision of land. It has no street  
16 frontage.

17 The second one is to allow construction, alteration, or  
18 repair for human habitation of an existing structure located on an alley  
19 that does not abut an alley that is 30 feet or more in width. So that's  
20 what I'm trying to understand.

21 If we're being told that this alley is 30 feet all the way  
22 to a street, there's no need for that variance.

23 CHAIRPERSON REID: Why do you need a  
24 variance?

25 MEMBER HINTON: If there's a need for the variance,  
26 then there's something that we're not understanding.

27 MR. FRIDAY: May I speak, please?

1 CHAIRPERSON REID: Sure.

2 MR. FRIDAY: I think what happened here is that the  
3 department realized -- in fact, it's unfortunate that we are even here,  
4 as Ms. Hinton is even stating, because, really, the provision should  
5 have been one variance, and that variance would have been the street  
6 frontage, because the second one has already been addressed.

7 I mean, they have already been issued permits to  
8 conduct construction work at this site by the department. And we  
9 have the permits already on file.

10 But the Administrator, Zoning Administrator, did not  
11 want to rescind that. I mean, in fact, Mr. Nunley took ill. He was going  
12 to do a notice that would have reflected only one particular issue here.  
13 That would have been the street frontage.

14 But Mrs. Hicks refused to rescind that and said: You  
15 just go before the Board and leave it as it was. So, I mean, that's why  
16 we're here.

17 But it's not an issue, the construction part. That's  
18 already been addressed because, in fact, the habitation was there.  
19 She has been living there for --

20 MEMBER HINTON: The habitation, if it occurred  
21 without a variance, it is not legal. You have to understand that. It is  
22 not legal. It doesn't matter --

23 MEMBER KRESS: If it's not a --

24 MEMBER HINTON: It doesn't matter if it's been 10  
25 years. Ten years, 15 years, it doesn't matter. Without a variance, it  
26 was not legal. Okay?

27 And what you said about the permit, I don't

1 understand why the permit was issued without the variance. It seems  
2 to me that it should not have been.

3 And when the zoning officials found out that it was  
4 issued in error, they should have revoked it immediately. Sending you  
5 here after they've allowed you to do the work --

6 VICE CHAIRPERSON KING: Makes no sense.

7 MEMBER HINTON: Is ridiculous.

8 VICE CHAIRPERSON KING: No sense.

9 MR. ROWAN: That's part of our problem. We're  
10 dealing with a situation that occurs probably five times in the entire  
11 city, a carriage house. The zoning regulations are written for the  
12 99.99 percent of the houses that have street frontage. These are  
13 unique.

14 I would have to make a phone call back to my office  
15 to find out the entirety of the occupation of this house. I can only refer  
16 to the time that Ms. Fitts has been there and the time that the previous  
17 owner was there.

18 Perhaps -- I don't know if you have information since  
19 you are raising the issue about the previous owner how far that goes  
20 back. It may go back much farther.

21 All that we know is that our client has been going  
22 around in an ever-closing circle trying to figure out how to comply with  
23 the law with regard to a house that she lived in for years and is trying  
24 to fix up.

25 And she has no control over the size of the alleys at  
26 this point. She can't change it. I mean, there's nothing that she can  
27 do to change the character of the carriage house. And so we're here

1 today simply trying to figure out the most expeditious way to remedy a  
2 situation that has long existed and is going to in no way change the  
3 character of the neighborhood.

4 MEMBER HINTON: We need to verify whether this  
5 30-foot public alley does, in fact, have access to a street. Do you  
6 have a map that would show that?

7 MR. ROWAN: I do not have a map, although the  
8 photograph -- this alley has access to a street as it turns the corner.  
9 It's 30 feet wide all the way down to where it dead-ends and then turns  
10 left and then it's narrower than 30 feet in the little -- in a portion, like  
11 the driveway that leads to the street. But everything --

12 MEMBER HINTON: Well, then that's the problem.  
13 The regulation says it has to be 30 feet wide all the way to a street.  
14 So, from what you have just said, that's not the case. Is that correct?

15 MR. ROWAN: Yes, that's correct. That's correct.

16 MEMBER HINTON: Then that's why you need this  
17 variance.

18 MR. ROWAN: Yes.

19 MEMBER KRESS: And if that's the case, I have a  
20 concern about the fire department. I mean, I really have a concern  
21 about safety and fires in this alleyway that's now being inhabited.

22 And we don't have any reports from -- did the fire  
23 department -- well, they had to have signed off on this, too.

24 MR. ROWAN: Yes. The fire inspectors have  
25 inspected. They have set all the inspections. They've looked at the  
26 area. Large trucks of all types are back there every day doing work in  
27 the alleyway. There's absolutely no problem on getting to and from

1 the --

2 MEMBER KRESS: Do you know where the nearest  
3 fire hydrant is?

4 MR. ROWAN: Well, this property is -- in terms of  
5 worst-case scenario, no fire truck can get into the area. This is about  
6 25 feet to the street here, with hydrants on -- this is S Street.

7 MEMBER KRESS: See, this is really hard without a  
8 whole map here to see how this relates to everything. Unfortunately,  
9 the scale on the zoning maps are so small --

10 MR. ROWAN: Right.

11 MEMBER KRESS: -- that you can't really see  
12 anything.

13 MR. ROWAN: I'm not a fire expert, but I can tell you  
14 that the fire inspectors have come to this location, have walked it,  
15 have inspected it and approved it.

16 It's probably not the ideal situation to have any house  
17 in the alley, and there are only five of them that exist, to my  
18 knowledge, but that's where five families live around town.

19 Unfortunately, in the situation that they're in, they  
20 basically have a choice of selling and moving and leaving a vacant --  
21 actually, who could you sell it to if you can't -- I mean, not many  
22 people need it as a carriage house any more -- or letting it deteriorate  
23 until it just falls down around their ears or doing illegal, unpermitted  
24 work. And nobody wants to do that.

25 That's why we're here.

26 MR. FRIDAY: We're building a fire wall down the  
27 middle of the house.

1 CHAIRPERSON REID: Ms. King?

2 VICE CHAIRPERSON KING: I've made my motion. I  
3 stick by it.

4 MEMBER KRESS: Yes. I stand by the second. And  
5 the motion does apply to both 1 and 2, as put forth in Ed Nunley's  
6 letter. Both of those variances are needed and required.

7 I would just like to add to my second. I am somewhat  
8 consoled by the fact that you're only 25 feet away in the other  
9 direction, which we hadn't even asked, which hopefully and I know is  
10 within the lengths of fire hoses. I mean, I obviously care for the safety  
11 of the people in this city. So understand this isn't as easy as it looks  
12 on the surface.

13 MR. ROWAN: I might add that this going to 19 Street  
14 is a parking lot that's open. And you can drive right up to the building.

15 MEMBER KRESS: But it may not stay that way  
16 forever. Thank you.

17 CHAIRPERSON REID: Are we ready now for a vote?

18 MS. NETTLEFORD: Is it possible for me to make one  
19 more comment at this time? I just wanted to clarify. I wanted to make  
20 sure that it's clear that we don't have any problem with the  
21 construction that's going to take place because, as you stated, you're  
22 not going to be building any stairs out in there.

23 But basically you are also asking that the lots be  
24 combined.

25 MR. ROWAN: On paper.

26 MS. NETTLEFORD: On paper.

27 MR. ROWAN: Right.

1 MEMBER KRESS: On paper.

2 MS. NETTLEFORD: Okay. So there's not actually --

3 MR. ROWAN: No.

4 MS. NETTLEFORD: -- going to be any access  
5 between?

6 MR. ROWAN: No.

7 MS. NETTLEFORD: Because what I want to avoid is  
8 that later you say, "Well, Lots 58 and 805 are combined. It's just one  
9 big lot." Therefore, the easement affects this whole entire property.

10 MEMBER HINTON: That is exactly what is  
11 happening. If we grant this, Lots 58 and 805 will become one new lot.  
12 That's what this subdivision is for.

13 VICE CHAIRPERSON KING: Yes, but they have  
14 made it clear that they have no intention of interfering with the  
15 easement that was granted you by the court.

16 MR. ROWAN: We would state that for the record and  
17 that our client's only interest is being able to avoid coming back and  
18 spending your time to get a variance to have an electrician come in  
19 and do some work. That is the only interest. There's no interest in  
20 terms of --

21 MEMBER KRESS: Well, I need to ask the lawyers.  
22 And you're representing your client.

23 MS. NETTLEFORD: Right.

24 MEMBER KRESS: Is he word enough or do you  
25 need some legal document that carries this court case from a single  
26 piece of property over to the new combined property?

27 MS. NETTLEFORD: I think we would be more

1 comfortable if we had some agreement from the parties in writing  
2 because I just want it to be clear. I mean, this is reflecting two  
3 separate pieces of property. That's what this court order pertains to.

4 VICE CHAIRPERSON KING: Let's make it a  
5 condition of our motion that the owners, Ms. Fitts, shall give to Mr.  
6 Adams in writing an undertaking that his easement will survive the  
7 merging of the two lots --

8 MR. ROWAN: No problem whatsoever.

9 VICE CHAIRPERSON KING: -- and that that be a  
10 condition of our order.

11 MEMBER KRESS: I accept that as the seconder.

12 CHAIRPERSON REID: Okay.

13 MS. NETTLEFORD: That would be acceptable to us.

14 CHAIRPERSON REID: And that order will in no way  
15 impact upon the court order. Should we also include that?

16 VICE CHAIRPERSON KING: No. We don't --

17 MEMBER KRESS: I guess we need to call for the  
18 vote again.

19 CHAIRPERSON REID: Okay. Now are we ready to  
20 vote? Okay. All those in favor of the motion?

21 (Whereupon, there was a chorus of "Ayes.")

22 CHAIRPERSON REID: All those opposed?

23 (No response.)

24 MS. ROSE: Staff will record the vote as four to zero,  
25 with Ms. King, Ms. Kress, Ms. Hinton, and Ms. Reid, to grant the  
26 application and for the issuance of a summary order.

27 MEMBER KRESS: Oh, yes.

1 CHAIRPERSON REID: All right. Thank you.

2 MEMBER HINTON: We need witness cards.

3 MR. ROWAN: They're right here.

4 MEMBER HINTON: You really should hand your  
5 witness cards to the court reporter prior to testifying.

6 CHAIRPERSON REID: Just a moment, please.  
7 We're going to go back to Case Number 16318.

8 MS. SIMMONS: Excuse me. May I just interject  
9 something here? We are the fourth case on the agenda, and we have  
10 a witness who must leave. Well, I have two alternatives to propose:  
11 we change the order or we let her come under oath, and we read in  
12 the statement that she was going to give. Is either possible?

13 VICE CHAIRPERSON KING: Does she have the  
14 statement in writing?

15 MS. SIMMONS: She has the statement in writing.

16 VICE CHAIRPERSON KING: Well, we're not at the  
17 appropriate --

18 MS. SIMMONS: And I am proposing that she be put  
19 under oath and that we read it in so that she can leave. Of course,  
20 you won't be able to ask her any questions, but we'll try and get  
21 around that.

22 VICE CHAIRPERSON KING: Which case are you?

23 MS. SIMMONS: We are 16298, application of Trinity  
24 Housing Corporation of Washington.

25 VICE CHAIRPERSON KING: You're next after this?

26 MS. SIMMONS: Right. But she was -- well, she had  
27 to leave at 4:00. And she's staying as long as she can.

1 My name is Gwendolyn Simmons, and I am counsel  
2 for the applicant.

3 MEMBER KRESS: Are there parties? Have we  
4 identified: Are there parties to this? I mean, is that a problem  
5 because they --

6 CHAIRPERSON REID: Is there anyone in opposition  
7 to the application?

8 MEMBER KRESS: Yes. Is there anyone here in --

9 CHAIRPERSON REID: Is there anyone in opposition  
10 to --

11 VICE CHAIRPERSON KING: To the Trinity Housing  
12 Corporation.

13 CHAIRPERSON REID: -- the Trinity Housing  
14 Corporation, 16298, Case Number 16298? Opposition? Okay.

15 MEMBER KRESS: Well, we need to ask if you can  
16 qualify as a party. Otherwise he doesn't get to cross.

17 VICE CHAIRPERSON KING: The lady in yellow and  
18 the gentleman in the PAC --

19 MEMBER KRESS: Oh, I didn't see the lady in yellow.  
20 Excuse me.

21 VICE CHAIRPERSON KING: -- rugby shirt are the  
22 two people who are --

23 MEMBER KRESS: Can we determine if they're  
24 parties so we know whether we have that problem or not?

25 MEMBER HINTON: We really shouldn't be doing all  
26 of this before we call the case.

27 CHAIRPERSON REID: All right. We're going to

1 proceed. Unfortunately, we will not be able to bring the previous case  
2 up at this time because this case has to go forward because of a time  
3 problem. And we will bring you up as soon as we can.

4 MS. SIMMONS: Thank you.

5 CASE NUMBER 16298

6 MS. ROSE: The next application is 16298, the  
7 application of Trinity Housing Corporation of Washington, pursuant to  
8 11 DCMR 3108.1 and 3107.2, for a special exception under  
9 Subsection 213.1 to establish parking lots in a residential district, a  
10 variance from Subsection 213.2 to establish a parking lot that is not  
11 located in its entirety within 200 feet of an existing commercial or  
12 industrial district in a residential district, and a variance from  
13 Subsection 213.3 to establish a parking lot that is not contiguous to or  
14 separated only by an alley from a commercial or industrial district in a  
15 residential district for parking lots in the R-5-B district at premises  
16 1417, 1493, and 1507 Meridian Place, Northwest, Square 2684, Lots  
17 556, 557, and 558.

18 Would all persons planning to testify in this application  
19 please rise to take the oath? Please raise your right hand.

20 (Whereupon, all witnesses in Case Number 16298  
21 were duly sworn.)

22 MS. ROSE: You may be seated.

23 MS. SIMMONS: Shall I begin?

24 CHAIRPERSON REID: Yes, with your name and  
25 your address, please.

26 MS. SIMMONS: I am Gwendolyn R. Simmons. I am  
27 counsel for the applicant. I am with the firm of Hessel and Eloise, P.C.

1 They are located at 1050 17th Street, Washington, D.C.

2 As I mentioned, we are representing the applicant,  
3 Trinity Housing Corporation of Washington, and its sponsor, Trinity  
4 AME Zion Church, in these proceedings.

5 The applicant is seeking a special exception from 11  
6 DCMR, Subsection 213.1, pursuant to 11 DCMR 3108.1, and  
7 variances from DCMR Subsections 213.2 and 213.3, pursuant to 11  
8 DCMR 3107.2, in order to construct a parking lot on Square 2684,  
9 Lots 556, 557, and 558.

10 We intend to demonstrate here today that the  
11 property meets all the necessary standards set forth in the zoning  
12 regulations for the Board to grant the requested special exception and  
13 variances.

14 As we will explain, this property has been in limbo for  
15 at least the past 15 years and that, during that time, it has had at least  
16 2 owners and has been the subject of several proposals concerning its  
17 development.

18 We will present testimony that through  
19 time-consuming and painstaking analysis, both the applicant and the  
20 District of Columbia Redevelopment Land Agency, the former owner  
21 of the property, finally reached an agreement as to: how, subject to  
22 any necessary zoning modifications, the property should be  
23 developed; that all measures necessary to proceed with the  
24 development have been taken; and that all that remains before  
25 proceeding is the approval of this Board.

26 We will present testimony that in its present state, the  
27 property is not and cannot be of more than very little use to its owner

1 or to the community. We will show that the development of this lot as  
2 proposed will greatly enhance its use and benefit to the community.

3 First, Ms. Marion Brooks from the Department of  
4 Housing and Community Development will testify as to the history of  
5 the property, its former ownership by the Redevelopment Land  
6 Agency, and how it came into the possession of its current owner, the  
7 applicant. She will testify as to the Redevelopment Land Agency's  
8 determination as to the best use of the property and how the agency  
9 has restricted the property to that use.

10 Next Mr. Randall Marshall of the architectural firm of  
11 Navy, Marshall and Associates, P.C., which designed the parking lot,  
12 will give an overview of the proposed design and construction and will  
13 confirm that the parking lot will conform to all the regulations in 11  
14 DCMR, Section 2303.

15 Finally, Dr. Athel Q. Liggins, President of the Board of  
16 Directors of Trinity Housing Corporation of Washington and Chairman  
17 of the Board of Trustees of Trinity AME Zion Church, will testify to: the  
18 church's and the community's need for additional parking; how with  
19 the development of the lot, this need will be accommodated with the  
20 harmony and spirit of the zoning regulations; the community's  
21 involvement in the decision to develop the property as a parking lot;  
22 and the hardship the applicant, the church, and the neighborhood are  
23 undergoing and will continue to undergo unless the property is  
24 developed as proposed.

25 We will begin now with Ms. Brooks.

26 MS. BROOKS: Good afternoon. Madam Chair and  
27 members of the Board, I am Marion Brooks, a Real Property

1 Disposition Coordinator and Project Manager with the District of  
2 Columbia Department of Housing and Community Development. And  
3 I will be referring to them in the future as DHCD or the department.

4 The department provides staff for the District of  
5 Columbia Redevelopment Land Agency, RLA. And on behalf of  
6 DHCD and RLA, I have been extensively involved with the  
7 development and sale of Square 2684, Lots 556, 557, and 558, also  
8 known to us at DHCD as Parcel 20.

9 I would like to give a brief history of Parcel 20 and  
10 explain to you the role of DHCD and RLA in the development of the  
11 site. On March 11th, 1996, RLA, which owned Parcel 20, transferred  
12 the site to Trinity Housing Corporation of Washington pursuant to a  
13 sales contract and a special warranty deed.

14 Prior to its ownership by RLA, the site had been  
15 occupied by houses and apartment buildings. But, for at least 15  
16 years, the property had been vacant and undeveloped.

17 The middle lot, Lot 557, was and still is  
18 asphalt-paved. During RLA's ownership tenure, Lot 557 and Lot 558,  
19 which remained an undeveloped grassy area, were informally used for  
20 parking by Trinity AME Zion Church under a subsequent right of entry.

21 Originally RLA, in response to an unsolicited proposal  
22 from the church, planned to sell Parcel 20 to Trinity Housing  
23 Corporation of Washington, a nonprofit corporation sponsored and  
24 established by the church in order for the corporation to develop the  
25 property along with privately owned contiguous parcels into housing  
26 for the elderly. Unfortunately, the corporation was unable to purchase  
27 the land from the contiguous landowners, as planned, and the housing

1 project could not go forward.

2 RLA staff and the corporation then considered the  
3 possibility of a two-phase development, Phase 1 being a parking lot  
4 which in five years or more could be converted into three-bedroom  
5 townhouses, which would be Phase 2.

6 However, the RLA at a meeting of its board on April  
7 the 15th, 1993 directed the staff to reconsider the residential portion of  
8 the two-phase plan because the sites are located in a high-density  
9 residential area, where parking is a premium.

10 The staff followed the board's instructions and found  
11 that: one, there was a critical need for residential parking in the area  
12 compounded by the need for parking by the Trinity AME Zion Church  
13 members on Sundays and Wednesday nights. They also found that  
14 the city's urban renewal plan supported the use of the sites for  
15 accessory parking and that the size of the property, its configurations,  
16 and its lack of ready accessibility made it unfeasible for other types of  
17 development.

18 The staff then recommended to the board that the site  
19 be developed for accessory parking. On June 17th, 1993, the RLA  
20 board based on its own staff's recommendation approved the plan to  
21 develop the site into a parking lot for the church's and the community's  
22 use.

23 On March 11th, 1996, RLA and the corporation  
24 entered into a sales contract and special warranty deed, both of which  
25 restricted use of the property to a parking lot. Any other future uses  
26 must first be approved by RLA.

27 RLA and DHCD have expended a great deal of time

1 and energy analyzing the best use of Parcel 20. We determined that  
2 additional housing would be detrimental to the community because it  
3 would add to the existing congestion. We also determined that the  
4 accommodation of the churches and the surrounding residential  
5 community's parking demands would be the best use of Parcel 20  
6 under the circumstances.

7 Therefore, we wholeheartedly support the efforts of  
8 the church to obtain the Board of Zoning Adjustment's approval of its  
9 application for the special exceptions and variances necessary to  
10 develop this parcel.

11 Thank you very much.

12 CHAIRPERSON REID: Thank you. Do you have any  
13 questions?

14 MS. BROOKS: Does anyone have any questions?

15 CHAIRPERSON REID: Excuse me one second. Are  
16 any of the people who are in opposition seeking party status? Come  
17 to the mike and tell us how close you live to the property and how you  
18 qualify for party status. Speak in the mike.

19 MS. BERGER: Thank you very much.

20 I'm Sherrill Berger. And I'm a resident at 3510 Center  
21 Street, Northwest, in Washington, D.C. in the particular area of 16298  
22 application.

23 We need definition. We're just country bumpkins  
24 here. We don't quite know what goes on. So we need definition as to  
25 what your meaning of subject --

26 CHAIRPERSON REID: Well, party status is for those  
27 who are living next to or close to the subject property and which you

1 may be affected. And you will also get notices. And you can  
2 cross-examine.

3 MS. BERGER: Thank you very much.

4 Then I am a party.

5 CHAIRPERSON REID: How close are you to the  
6 subject property?

7 MS. BERGER: I am within 200 to 300 feet from the  
8 affected property.

9 CHAIRPERSON REID: How close exactly? That's  
10 too vague.

11 MS. BERGER: I live at 3510 Center Street, and the  
12 property is located directly at Meridian and Center Street, which is less  
13 than a block.

14 CHAIRPERSON REID: Okay.

15 MS. BERGER: Do you want the lot squares?

16 CHAIRPERSON REID: No, no. That's okay. All  
17 right. I said okay. You can have party status. I have no problem with  
18 it unless any of the Board members do.

19 MS. BERGER: I did receive a letter from the Board of  
20 Zoning. So I would think that that's evidence of my location.

21 CHAIRPERSON REID: Okay.

22 MR. TUCKER: My name is Robert Tucker. I am the  
23 chair and a commissioner of the area that they is requesting to have  
24 rezoned.

25 I am also here to request that a postponement be  
26 made until we talk to the community and get input from the community  
27 on this. And I have a letter stating that.

1 VICE CHAIRPERSON KING: You're from the  
2 advisory neighborhood commission?

3 MR. TUCKER: Yes, I am.

4 VICE CHAIRPERSON KING: Are you the  
5 commissioner in --

6 MR. TUCKER: I am a commissioner for single  
7 member district 1A-02 that the lot is in. And I'm also the chairperson  
8 for 1A.

9 MEMBER KRESS: Excuse me. And you're  
10 requesting a postponement?

11 MR. TUCKER: Yes, ma'am.

12 MEMBER KRESS: Again state your reason, please.

13 MR. TUCKER: May I read this to you?

14 CHAIRPERSON REID: What is it?

15 MR. TUCKER: It's my testimony.

16 VICE CHAIRPERSON KING: No. What is your  
17 reason?

18 MR. TUCKER: It's stating my reason for a  
19 postponement.

20 CHAIRPERSON REID: Okay.

21 MR. TUCKER: Okay. First, good afternoon. My  
22 name is Robert Tucker. I am the Chair of ANC-1A and a  
23 single-member District Commissioner of 1A-02. They're where the  
24 proposed parking lot is located.

25 I am here to request a hearing to be postponed for the  
26 following reason. At our regular scheduled meeting on Wednesday,  
27 February 11, at which a quorum was present, ANC-1A was unable to

1 make a decision related to the permit zoning changing to permit a  
2 parking lot in residential zoning because certain information was not  
3 available to us.

4 The plan for the improved lot, a copy of the  
5 agreement between Trinity AME Zion Church and ANC, incorporated  
6 by reference, in the land dispute of RLA Parcel 20.

7 Although Mr. Liggins, who represents Trinity Housing,  
8 was present at the meeting, he did not have these items for the ANC  
9 to consider. Another ANC meeting with residents of the affected  
10 community would be necessary before the ANC can come to a formal  
11 decision.

12 Two, having secured a copy of the above-mentioned  
13 Parcel 20 parking agreement, it appeared not to have been  
14 implemented. They have no sign of Lot 2 announcing community  
15 parking allowed between 10:00 p.m. and 6:00 a.m.

16 There is no community bulletin board located near the  
17 lot announcing activities sponsored by the church and within the  
18 community and stipulated regarding use of the lot. There are no  
19 security gates, nor have residents been issued access cards.

20 A copy of the agreement dated October the 8th, 1993  
21 is attached. It seems only reasonable to require that this plan be put  
22 into effect before any further zoning actions are taken since the  
23 disposition of public owner land on the 14th Street urban renewal plan  
24 required that there be a public benefit, community parking on the  
25 church lot, where that will benefit.

26 An informal arrangement will not work. This should  
27 be in writing and communicated to the community as outlined in the

1 agreement.

2 Thank you for your cooperation.

3 CHAIRPERSON REID: Board members, in regards  
4 to the request for the postponement, are these grounds in the opinion  
5 to --

6 MEMBER HINTON: If a plan of the parking lot was  
7 not available to the ANC, I would think that that would be sufficient.

8 CHAIRPERSON REID: Or the agreement. They  
9 have requested copies of the agreement.

10 MEMBER HINTON: I also wanted to ask the  
11 commissioner: Is it the goal of the ANC that an agreement will be  
12 signed before this hearing? Is that part of the reason you're asking for  
13 postponement?

14 MR. TUCKER: It is. Yes, it is. Plus, also I definitely  
15 want to get the input of the community in that area, especially on  
16 Meridian Place, where the parking lot is at.

17 You know, I took some pictures of the area if you all  
18 want to see them so you can get a general idea of exactly what it is  
19 that they're requesting here.

20 MEMBER HINTON: Normally wouldn't their  
21 opportunity to give input to the ANC have been at the ANC meeting?  
22 I'm assuming that meeting was noticed.

23 MR. TUCKER: Yes. We have a community first last  
24 Tuesday of every month. But this was not brought into our attention  
25 until we had our ANC meeting, which is every second Wednesday of  
26 the month.

27 MEMBER HINTON: So you want this community

1 meeting to occur to discuss this issue and have that opinion taken to  
2 the ANC before the ANC make --

3 MR. TUCKER: Make a decision. Yes, ma'am.

4 MEMBER HINTON: I understand. I understand the  
5 requirement.

6 MS. SIMMONS: If you look at Exhibit H-2 of our  
7 application, attached to -- yes?

8 CHAIRPERSON REID: Which letter?

9 MS. SIMMONS: Well, but you should -- I mean, may I  
10 please finish? Attached to Part 1 of the sales agreement is an  
11 agreement between the church and the ANC, which was signed,  
12 which is dated October 8th, 1993.

13 It states that at a meeting on September 17th, Ms.  
14 Berger, who was present at a meeting where this agreement was  
15 adopted --

16 CHAIRPERSON REID: Excuse me. Under Tab H, as  
17 in Harry?

18 MS. SIMMONS: Yes.

19 CHAIRPERSON REID: That's not what's under my  
20 Tab H.

21 MS. SIMMONS: That's the sales contract, H-2.

22 CHAIRPERSON REID: Okay. You're right.

23 MS. SIMMONS: Ms. Berger was at a meeting where  
24 it was decided that the property would be used as a parking lot and  
25 the terms under which it would be used.

26 I do not know when Mr. Tucker became chair of this  
27 ANC, but the point is the ANC as a body has already entered into the

1 agreement. I would like to further state -- and I may need Mr. Liggins'  
2 input on this, but he did attend the ANC meeting last week.

3 There was to be another ANC meeting last night, at  
4 which he would present the plans and whatever additional information  
5 the members wanted. He went to the meeting, waiting an hour.  
6 Nobody came. The door wasn't even open.

7 So they have had a chance to look at the plans had  
8 they wanted to. They had a chance to come down here and review  
9 the record had they wanted to. And they didn't do that.

10 Secondly, there was a comment on Mr. Tucker's part  
11 that the church has not honored the agreement into which it entered  
12 with the ANC. It can't honor that agreement until the exceptions and  
13 the variances are granted. It can't develop that lot and post signs as  
14 to its use and put a gate around it and landscape it and pave it or do  
15 any of that until the exceptions and the variances are granted.

16 So Mr. Tucker is, in effect, trying to defeat the very  
17 thing that would allow the church to honor the agreement. So we  
18 certainly oppose under these circumstances any postponements.

19 CHAIRPERSON REID: Okay. Just a moment. We  
20 have questions. Ms. Hinton?

21 MEMBER HINTON: I have two questions. Did I  
22 understand you to say that the plan for the parking lot was not  
23 available at the ANC meeting?

24 MS. SIMMONS: The plans were not available at that  
25 meeting. But, as I understand it, another meeting was scheduled for  
26 last night before this hearing, specifically for the ANC to view those  
27 plans.

1                   That meeting did not occur because the ANC was not  
2 there. Dr. Liggins was there with the plans.

3                   CHAIRPERSON REID: Who scheduled the meeting?

4                   MS. SIMMONS: Dr. Liggins?

5                   DR. LIGGINS: I beg your pardon?

6                   MS. SIMMONS: Who scheduled the meeting?

7                   CHAIRPERSON REID: Who scheduled the meeting?

8                   And do we have --

9                   DR. LIGGINS: They scheduled it the week before. It  
10 was a rainy night. I went to the meeting. They sent me a notice.

11                   CHAIRPERSON REID: Who? I'm sorry, sir. Who is  
12 "they"?

13                   DR. LIGGINS: The ANC.

14                   CHAIRPERSON REID: The ANC scheduled the  
15 meeting?

16                   DR. LIGGINS: Mr. Tucker and Mrs. McIntyre. Mrs.  
17 McIntyre called me at exactly 1:15 about a meeting at 7:00 o'clock,  
18 which I said, "Fine."

19                   CHAIRPERSON REID: Do you have any written  
20 notification of such a meeting?

21                   DR. LIGGINS: Do I have any written notification?

22                   CHAIRPERSON REID: Yes.

23                   DR. LIGGINS: Only thing from my secretary that  
24 gave me the slip indicating the time of the meeting. I have that.

25                   CHAIRPERSON REID: So the notification was by  
26 telephone? Is that what you're saying?

27                   DR. LIGGINS: Yes. It was notification by telephone.

1 And I attended the meeting. And at the time, I didn't know what they  
2 wanted. They didn't say.

3 When I got there, the main thing I was concerned  
4 about is how we can cooperatively work with this community to let  
5 them know that we are developing this land to enhance the beauty of  
6 the neighborhood as well as providing spaces so that their people  
7 when they come home at nighttime -- many of them said -- and I've  
8 talked to many of them. And they said that they couldn't find places to  
9 park. So now they use our lot.

10 We allow them to do that. That's fine. And this is for  
11 their own safety, too, because some of them had to walk two and  
12 three blocks even to get there if they didn't do that.

13 But last night, I went there. They were scheduled.  
14 And Mr. Tucker said and Mrs. McIntyre and the rest of them said if  
15 we're going to call down to zoning and see about postponing it. And if  
16 not, then we will have you to come back Tuesday night. And I said:  
17 Well, you let me know.

18 And they said: It's scheduled for Tuesday night.

19 And I brought the plans with me last night. And I have  
20 them with me now, the large plans.

21 CHAIRPERSON REID: Again, that was verbal?

22 DR. LIGGINS: Yes. And nobody was there. That's  
23 right.

24 CHAIRPERSON REID: Someone told you there was  
25 as meeting of the ANC. And then someone --

26 DR. LIGGINS: Well, at the meeting when they met,  
27 this was all decided. There was six ANC people there. And Mrs.

1 Berger was there. And they all decided that we would meet there last  
2 night.

3 CHAIRPERSON REID: On Tuesday, the 17th?

4 DR. LIGGINS: Yes, last night.

5 CHAIRPERSON REID: Okay.

6 DR. LIGGINS: And I brought all of the plans.

7 CHAIRPERSON REID: Okay.

8 MEMBER HINTON: I had one other question. You  
9 refer to an agreement that the ANC has signed. I don't find that in my  
10 Tab H.

11 MS. SIMMONS: Let me find it for you, if I may. May I  
12 approach?

13 MEMBER HINTON: Sure. I'm looking under H-2.

14 MS. SIMMONS: I apologize. The tab is there. There  
15 it is.

16 And I would also like to note Ms. Berger's presence at  
17 the meeting where that agreement was approved. Where is it?

18 MEMBER HINTON: It appears to be about almost  
19 halfway through. It's part of Exhibit E, at the bottom of the page.

20 MS. BROOKS: Madam Chairman, might I make a  
21 comment?

22 CHAIRPERSON REID: Just a moment. Just a  
23 moment, please, while we're looking at this agreement.

24 (Pause.)

25 CHAIRPERSON REID: Okay. We've read the  
26 agreement. It was signed by the ANC Commissioner Vivian Brown.

27 DR. LIGGINS: Yes, that's right.

1 CHAIRPERSON REID: Just a moment.

2 MEMBER HINTON: It seems to me that this  
3 agreement is limited to -- it states certain interim measures. And  
4 could you explain how that relates to the case that's in front of us  
5 today? This was signed in 1993. This is five years later.

6 MS. SIMMONS: It's five years later, but that's how  
7 long it's taken to put everything in place. The property was not  
8 transferred until 1995. And this agreement was an integral part of the  
9 transfer.

10 It was intended to demonstrate the community's  
11 agreement that the parcel be made into a parking lot upon its transfer  
12 from RLA.

13 MEMBER HINTON: Okay. I understand that.

14 MS. SIMMONS: This was a required part of the  
15 agreement.

16 MEMBER HINTON: And it relates to the transfer. But  
17 what's in front of the Board today is not the transfer of properties. Is  
18 that correct?

19 CHAIRPERSON REID: Correct.

20 MS. SIMMONS: What is --

21 MEMBER HINTON: Has the transfer occurred?

22 MS. SIMMONS: The transfer has occurred, yes. And  
23 I'm saying that the development of this parcel -- that one of the  
24 conditions to developing this parcel was that there be community  
25 agreement with the development of the parcel into a parking lot upon  
26 transfer. That's why this agreement is attached to the sales contract.

27 It was intended that the property be developed in that

1 manner upon its transfer.

2 MEMBER HINTON: I understand that. But I guess  
3 my point is that that does not negate any rights that the ANC has  
4 today to have or express an opinion about what's happening at this  
5 Board hearing. Just because something was agreed to in the transfer  
6 of land five years ago, that doesn't mean that they don't have a right to  
7 an opinion now.

8 MS. SIMMONS: And I think my point is they have  
9 had a chance to get the information that they have requested. And  
10 the meeting that occurred last week, I think procedurally what  
11 happened is that it was effectively continued until last night. But no  
12 one showed up last night until Dr. Liggins showed up.

13 Now, there were some problems with notice for this  
14 property, which were not the fault of the application. There was a  
15 problem with notices going out late from the Zoning Office.

16 We were concerned about that, especially insofar as  
17 the ANCs go. We asked if notices should be resubmitted. They said  
18 no, that the ANCs had proper notice from the previous time; if they  
19 wanted additional notice, they should have shown up at the first  
20 hearing so they would have known it was continued. In spite of that,  
21 we still sent letters, notice to both ANCs, telling them of this impending  
22 action.

23 In addition to that, Mr. Tucker is well-aware of the  
24 posting on the property. He was there when Mr. Liggins posted. They  
25 had notice. And they have had time to have their concerns  
26 addressed.

27 MEMBER HINTON: Except at the scheduled ANC

1 meeting to hear this and discuss this issue, the applicant did not bring  
2 the plans.

3 MS. SIMMONS: The applicant had no idea what they  
4 wanted. And once he found out, he certainly promptly complied.  
5 They were the ones who were not where they were supposed to be  
6 when he did comply with their request.

7 MEMBER HINTON: Only because the applicant  
8 didn't have the information at the time of the regularly scheduled  
9 meeting. Had the plans been there, there wouldn't have been a need  
10 for a second meeting.

11 MS. SIMMONS: The applicant had no way of  
12 knowing that they wanted to view the plans.

13 CHAIRPERSON REID: I think what Ms. Hinton is  
14 saying is when the applicant came to the meeting, then that would  
15 have been part of the preparation for the meeting in the first place.

16 MS. BROOKS: Excuse me. May I?

17 CHAIRPERSON REID: Okay. I'm sorry. You did  
18 ask.

19 MS. BROOKS: Yes. I think there's a little confusion  
20 here. The Redevelopment Land Agency requires, has a very strict  
21 requirement, by law to have community participation in all dispositions  
22 of their profits.

23 The irony of it is that the reason why we even have a  
24 parking lot is because the ANC at the time we were considering the  
25 housing unit objected to the housing because they said the housing  
26 would bring too much density and there was already some parking  
27 being done. And they would prefer to see parking being made to

1 allow people to have somewhere to park.

2 That is the impetus behind how we got to a parking lot  
3 development. It was from the community. And the community was  
4 actively involved under a different ANC chair.

5 It would seem to me -- and perhaps I'm wrong -- that  
6 the ANC if it's particularly just something they want, they should be  
7 bound by the actions of previous agency members, as opposed to  
8 every time a new ANC chair, a new ANC person comes in, everything  
9 has to start all over again.

10 Normally we don't put exhibits like ANC agreements  
11 into our land disposition agreement contracts, but because the use of  
12 this property for community and church property was so critical, the  
13 RLA board made sure that that was a part of the contract of sale,  
14 which is recorded downtown.

15 I just think it's kind of ironic that now the ANC is  
16 asking for a postponement to consider something that they said they  
17 wanted. They're upset because what is in the agreement hasn't  
18 occurred. As counsel pointed out, it cannot occur because those  
19 things that the church has agreed to do is a part of the development of  
20 the parking lot.

21 So I'm sure you all have your issues, but I think that  
22 we're not in opposition, unlike it may appear, because everybody  
23 wants a parking lot.

24 And the ANC may want to reconsider, but I don't think  
25 there are going to be any changes in what they want. They still want  
26 and need a parking lot. The church is willing to develop it for their use  
27 and the neighboring community.

1                   MEMBER HINTON: Well, I don't know how you can  
2                   make that statement. We've heard from the ANC that they're not  
3                   prepared to put a position into the record. So for you to say that you  
4                   think that they're going to --

5                   MS. BROOKS: No. I'm saying they already have put  
6                   a position into --

7                   MEMBER HINTON: Five years ago they put an  
8                   opinion in the record on the transfer of land. That's not what's in front  
9                   of us today.

10                  MS. BROOKS: I thought -- well, I'm not sure I --

11                  MS. SIMMONS: May I just -- I'm not sure I  
12                  understand the distinction. The transfer of land was based upon  
13                  developing the property into a parking lot. What is before you today  
14                  are measures that must be taken for that to occur. So I'm not sure I  
15                  understand the distinction.

16                  VICE CHAIRPERSON KING: This Board is not  
17                  bound by anything that has happened prior to this. You're bringing the  
18                  case to us asking for approval of an application. And we can listen  
19                  with great sympathy to everything that has gone before, but we cannot  
20                  be bound by any undertaking of DHCD or RLA or the church.

21                  I think the bottom line and what probably Mrs. Hinton  
22                  is getting at is that this body by law must give great weight to the  
23                  opinion of the advisory neighborhood commission.

24                  Now, it is true that every two years there are elections  
25                  and that advisory neighborhood commissioners come and go and so  
26                  forth. But if the young woman from DHCD is convinced that the ANC  
27                  is going to want to have a parking lot, it seems to me that in the

1 interest of harmony and so forth, that you might agree to a  
2 postponement -- I mean, it's been a long time coming already -- in  
3 order to satisfy the needs of your neighbors. That is something that  
4 the DHCD and RLA insists that there be that communication.

5 It occurred five years ago, but five years have come  
6 and gone. And this is a new group of people. I think they would profit  
7 from seeing your very handsome drawings and the planting and so  
8 forth that you anticipate. It looks to me to be something that would be  
9 welcomed by your neighbors.

10 But I think it's a mistake for you to oppose going to the  
11 neighbors to talk about it again since you have new leadership in the  
12 ANC.

13 MS. BROOKS: May I just say that I know the ANC  
14 indicated that they were in opposition to the hearing, but from the  
15 presentation of why they were in opposition, it didn't have anything to  
16 do with whether or not this should be a parking lot.

17 CHAIRPERSON REID: I think that what we're  
18 hearing from the ANC is that they would like to be considered and  
19 given the respect that they are due as the entity that represents the  
20 community interest. And they do not feel that has been done. This is  
21 what they're asking. They're asking to be recognized as such.

22 I don't think it's an issue as to the granting of the  
23 variance or not granting the variance. I think that it's more they want  
24 to be heard. And they don't feel that since it has been now five years  
25 since there was this "agreement," quote, unquote, if, in fact, which we  
26 would assume that it has changed, the ANC membership, or those  
27 people who were there has changed somewhat, that this entity that's

1 in existence today would like to review and be able to question any  
2 plans or any post that you may have. I think that's the bottom line on  
3 this.

4 MS. SIMMONS: May I just make one more point? If  
5 the property can't be used as a parking lot, it can't be used as  
6 anything. It does have that restriction put on it.

7 VICE CHAIRPERSON KING: Yes, but we have to  
8 give great weight to what the ANC says. And at the present time, the  
9 current chairperson of the ANC does not feel -- and I presume he was  
10 not part of the negotiations five years ago -- that he and his colleagues  
11 have sufficient information on which to make a recommendation pro or  
12 con, to which we will then be required to give great weight.

13 It would be a shame if they gave a negative opinion  
14 simply because they didn't have the information.

15 MS. SIMMONS: May I confer with Dr. Liggins for a  
16 moment?

17 (Pause.)

18 DR. LIGGINS: What I am bringing up at this point, I  
19 went through the neighborhood. And I was checking. Now, when I  
20 went to the meeting for the ANCs, there was only one person present  
21 from the neighborhood. And that was Ms. Berger.

22 But I went through the neighborhood. And I asked the  
23 people: What do you think about what we had proposed with you?  
24 We had a meeting. We had a community meeting with the people.

25 And they have given me several letters, which I have  
26 with me several today, of neighbors of Mrs. Berger's. And the people  
27 in the neighborhood, the community people, they all expressed a

1 desire to have the parking lot and what we're planning to do for them.

2 Now, we are a smaller representative of the  
3 community than maybe the ANC. And this is the reason why I wanted  
4 to bring this out because we contacted all the neighbors. We talked to  
5 them. They wrote letters to this effect. I have them, and I'll give them  
6 to you for your files if you want them. And here they are.

7 And so this is very important. I think if we're talking  
8 about the community people, the community people have expressed  
9 themselves here.

10 CHAIRPERSON REID: Mr. Liggins, I understand  
11 what you're saying. However, at this juncture, I think that the question  
12 on the floor is simply: Would you be not opposed to a postponement  
13 based on the testimony from the ANC representatives?

14 DR. LIGGINS: I would if they hadn't been notified in  
15 plenty of time and if we hadn't made all the preparations in the past,  
16 having community meetings at our church and all of these things and  
17 talking with the neighbors. I would say, "Well, we didn't do our  
18 homework."

19 But we did our homework. And we did everything that  
20 was necessary. And what we're trying to do, if the ANCs are  
21 representing the people and these are the people, then they would be  
22 pushing with us. We would all be on the same thing saying, "Let's  
23 develop that and move it right so that you can have a beautiful  
24 neighborhood there." It looks terrible now.

25 CHAIRPERSON REID: Mr. Liggins, is your answer  
26 yes or is it no?

27 DR. LIGGINS: I'm sorry?

1 CHAIRPERSON REID: Is it yes? Is your answer yes  
2 or no?

3 DR. LIGGINS: Yes or no? No, I would not be in favor  
4 of the postponement. No.

5 CHAIRPERSON REID: Okay. Thank you. All right.

6 MR. TUCKER: I would like to say something.

7 CHAIRPERSON REID: Very quickly, please,  
8 because we need to move forward with this case.

9 MR. TUCKER: Mr. Liggins claims he had a  
10 community meeting. We were never notified. And as far as the  
11 meeting he claimed that we were supposed to set with him, it was  
12 understood that if we could get a postponement through phone, we  
13 would call him and verify an emergency meeting.

14 We couldn't get a postponement through a phone.  
15 We didn't have an emergency meeting. I was told to be here to ask  
16 for a postponement.

17 DR. LIGGINS: That's not true.

18 MR. TUCKER: That is true. You never sent us a  
19 letter for communication as far as having a community meeting with  
20 you all. You all never communicated with the community or the ANC  
21 to let us know what you all are doing.

22 And I've been the chairman for this year, but I've also  
23 been a commissioner for two years.

24 CHAIRPERSON REID: Okay. Thank you.

25 MR. TUCKER: Thank you.

26 CHAIRPERSON REID: Very quickly, Mrs. Berger.

27 MS. BERGER: I'd like to make some clarification

1 here that in 1983, a group of us in the neighborhood --

2 CHAIRPERSON REID: This is just the issue of  
3 postponement.

4 MS. BERGER: I would like to have that the  
5 permanent variance be postponed until we have a community  
6 meeting.

7 CHAIRPERSON REID: Well, that was already on the  
8 floor.

9 MS. BERGER: Okay.

10 CHAIRPERSON REID: Thank you, Ms. Berger.

11 MS. BERGER: All right.

12 CHAIRPERSON REID: I think that what the Board  
13 has decided is to put it to a vote as to whether or not to grant the  
14 postponement. Is there a motion? Does anyone want to make a  
15 motion as to whether we should or should not grant the  
16 postponement?

17 (No response.)

18 CHAIRPERSON REID: Okay. I would move that we  
19 grant the postponement.

20 MEMBER HINTON: I'll second.

21 VICE CHAIRPERSON KING: Until a date certain?

22 MEMBER HINTON: Yes.

23 VICE CHAIRPERSON KING: What is the first date  
24 that we can reschedule?

25 MEMBER HINTON: My recommendation would be  
26 that we ask the ANC when the next regularly scheduled ANC meeting  
27 is and that we make it a date after that so that this issue can be

1 addressed at a regularly scheduled ANC meeting, that everyone will  
2 know in advance that it's going to be there.

3 CHAIRPERSON REID: And they will have time to  
4 have met with the communities addressing the concerns.

5 VICE CHAIRPERSON KING: No. The ANC. The  
6 question now is meeting with the ANC, which is a published meeting  
7 to which all of the community can -- let's not impose two meetings on  
8 them.

9 CHAIRPERSON REID: Okay.

10 VICE CHAIRPERSON KING: The ANC is  
11 responsible for getting a quorum, setting a date of a regular meeting,  
12 and publicizing it to the community.

13 I don't want to impose upon the applicants the need to  
14 have both a meeting with the ANC and a meeting with the, quote,  
15 unquote, "community."

16 CHAIRPERSON REID: My position was that it would  
17 be done simultaneously.

18 VICE CHAIRPERSON KING: Not simultaneously.  
19 Single meeting.

20 MEMBER HINTON: Could we ask, Commissioner,  
21 could you tell us when the next ANC meeting is:

22 MR. TUCKER: Our next scheduled ANC meeting is  
23 Wednesday, the 11th. But we're going to need time to have a  
24 community meeting, to get the flyers out, to let them know about the  
25 meeting for the community.

26 VICE CHAIRPERSON KING: The 11th of March?

27 MR. TUCKER: Yes, of March.

1 VICE CHAIRPERSON KING: That's three weeks  
2 from today.

3 MR. TUCKER: We really need April because when  
4 you're dealing with the community, you've got to get them to know  
5 what's going on.

6 Our next meeting is Tuesday, the 24th. That's the  
7 community. We have to let them know exactly what's going on then.  
8 We give them flyers. Every time we pass out a flyer for the community  
9 meeting, I put it in the mailboxes. Nobody never shows.

10 I would appreciate them bringing the plans then so  
11 the community would know. I can make sure they know.

12 MS. SIMMONS: You want them to bring the plans on  
13 --

14 MR. TUCKER: If you can bring the plans on  
15 Tuesday.

16 MS. SIMMONS: Dr. Liggins, are you available for a  
17 meeting on -- is it Tuesday evening?

18 MR. TUCKER: Tuesday at 7:00 o'clock p.m.

19 MS. SIMMONS: Tuesday evening at 7:00, this  
20 coming Tuesday.

21 DR. LIGGINS: This coming Tuesday evening?

22 MS. SIMMONS: Yes.

23 MR. TUCKER: When we get our monthly meeting.

24 DR. LIGGINS: I've met with them so many times, but  
25 okay.

26 MR. TUCKER: I've got the flyers going out --

27 MS. SIMMONS: Okay. We appreciate that. All right.

1 And then what about your ANC?

2 MR. TUCKER: Our ANC meeting is the 11th.

3 VICE CHAIRPERSON KING: The 11th of March.

4 MS. SIMMONS: You want --

5 MR. TUCKER: Of March.

6 VICE CHAIRPERSON KING: Do you need Dr.

7 Liggins or anybody else at the ANC meeting?

8 MR. TUCKER: I'm going to talk to the rest of the  
9 commission today because they're waiting to hear back of what  
10 happened. And I'll let them know that they've all got to be at our  
11 neighborhood meeting the 24th to see the plans if he brings the plans  
12 to the neighborhood meeting.

13 And that will also give the community a chance to see  
14 what's going on.

15 VICE CHAIRPERSON KING: May I make a  
16 suggestion --

17 MR. TUCKER: Yes, ma'am.

18 VICE CHAIRPERSON KING: -- that the ANC write an  
19 official letter and hand-deliver it to Dr. Liggins?

20 You live near there, don't you?

21 DR. LIGGINS: Well, they can send it to the church.

22 VICE CHAIRPERSON KING: Oh, hand-deliver a  
23 letter to the church expressing exactly when and where and what you  
24 want --

25 DR. LIGGINS: Absolutely.

26 VICE CHAIRPERSON KING: -- from the applicant, --

27 MR. TUCKER: Okay.

1 VICE CHAIRPERSON KING: -- where you want them  
2 to be, when you want them to be there, and what you want them to  
3 bring with them so that there can be no misunderstanding. And you  
4 can hand-deliver that in the next day or so so that he has it in hand  
5 well before the meeting next Tuesday.

6 CHAIRPERSON REID: What's the next available  
7 date after that, Ms. Dobbins?

8 DIRECTOR DOBBINS: The next date that you would  
9 have for assigning a case would be May 6th. Now, if you intend to  
10 add this to an existing agenda, you can also do that. The Board will  
11 decide how to deal with that.

12 Now, you have your meetings that have already been  
13 advertised and scheduled. The next one is March 4th. You have I  
14 think five cases on the afternoon. That's one of your -- is it 4th?  
15 Okay. So March 18th would be your next meeting date. Now, the  
16 Board will deal with this.

17 VICE CHAIRPERSON KING: I will not be available  
18 on the 18th.

19 DIRECTOR DOBBINS: You will not be? Did you  
20 want to redirect? That's a regular meeting date. Did you want to read  
21 the last half of the record in this case?

22 VICE CHAIRPERSON KING: I can.

23 DIRECTOR DOBBINS: Okay. You have I think four  
24 cases scheduled for March 18th.

25 VICE CHAIRPERSON KING: Put it on then, and I'll  
26 read the record.

27 DIRECTOR DOBBINS: You want to add that to the

1 end of the agenda March 18th. Is that correct?

2 MEMBER KRESS: I have no problem with it.

3 VICE CHAIRPERSON KING: The 18th is not the  
4 Howard conference plan, is it?

5 DIRECTOR DOBBINS: No. That's not coming yet.

6 VICE CHAIRPERSON KING: Okay.

7 DIRECTOR DOBBINS: All right. The Board has  
8 determined that this application, -- what is it? -- 16298, will be  
9 continued. This is a continuation until March 18th, the last case in the  
10 afternoon. The hearings start at 1:00. This will be Case Number 5,  
11 but it will be the last case.

12 MEMBER HINTON: It should be presented to stay  
13 until the end of the hearing.

14 MS. SIMMONS: I am assuming that Ms. Brooks  
15 would have to return. She's given her testimony.

16 DIRECTOR DOBBINS: I do insist that persons here  
17 will return, cross-examination or whatever.

18 MS. SIMMONS: Okay. Thank you.

19 CHAIRPERSON REID: I don't think we completed  
20 the rebuttal. Did we?

21 MEMBER HINTON: No because the parties. We  
22 didn't do the parties until afterwards. So the parties haven't had time  
23 to cross-examine.

24 DIRECTOR DOBBINS: There has been no  
25 cross-examination.

26 MEMBER HINTON: The parties have not crossed.

27 CHAIRPERSON REID: No. I mean the motion to

1 continue. Don't we have to vote on that? We had a motion.

2 VICE CHAIRPERSON KING: It was your decision.

3 DIRECTOR DOBBINS: You technically can --

4 CHAIRPERSON REID: For the continuation?

5 DIRECTOR DOBBINS: The continuation. You have  
6 decided to do it. So it's a consensus to continue the case.

7 CHAIRPERSON REID: Oh, okay.

8 DIRECTOR DOBBINS: The Board has a consensus  
9 to continue.

10 CHAIRPERSON REID: Thank you.

11 Now can we please have the case for Mr. Homs,  
12 16318?

13 DIRECTOR DOBBINS: Has it been read into the  
14 record? Has it been read already?

15 CHAIRPERSON REID: This is 16318. We just have  
16 to finish up the previous case.

17 MR. GAISER: My client has to leave. We've been  
18 here all day waiting in order.

19 MEMBER HINTON: This is the first case on the  
20 agenda. We want to finish that before we get to your case. They are  
21 ahead of you.

22 CHAIRPERSON REID: All right. Are we ready?

23 CASE NUMBER 16318 (Continued)

24 DIRECTOR DOBBINS: Just for purpose of the  
25 transcript, let's indicate that this is Application 16318. It's being  
26 continued from an earlier time this afternoon, the application of Shew  
27 F. Hom and -- I'm not sure how to pronounce all of these -- Sau W.

1 Hom.

2 CHAIRPERSON REID: Okay. And the witness  
3 needs to be sworn.

4 DIRECTOR DOBBINS: Are there witnesses who  
5 need to be sworn?

6 CHAIRPERSON REID: One, just one.

7 DIRECTOR DOBBINS: Okay. Please stand.

8 VICE CHAIRPERSON KING: Can she do it seated?

9 DIRECTOR DOBBINS: And would you raise your  
10 right hand? You don't have to stand.

11 VICE CHAIRPERSON KING: Don't stand. Don't  
12 stand.

13 DIRECTOR DOBBINS: Don't stand. Never mind.

14 VICE CHAIRPERSON KING: Just raise your right  
15 hand.

16 DIRECTOR DOBBINS: Please raise your right hand.

17 (Whereupon, Verna Movern, a witness in Case  
18 Number 16318, was duly sworn.)

19 DIRECTOR DOBBINS: You are sworn in, ma'am.  
20 Give your name and your address, please, ma'am? Would you give  
21 your name and your address, please, ma'am?

22 MS. MOVERN: Thirty-six twenty-two Norton Place,  
23 Northwest.

24 DIRECTOR DOBBINS: And your name?

25 MS. MOVERN: Verna Movern, M-O-V, as in Victor,  
26 E-R-N.

27 DIRECTOR DOBBINS: Thank you.

1 CHAIRPERSON REID: Do you want to give your  
2 testimony?

3 MS. MOVERN: Do you want to ask a question or  
4 what am I to do?

5 VICE CHAIRPERSON KING: Mrs. Movern, you have  
6 lived at your present residence for how long? When did you first move  
7 to Norton Place?

8 MS. MOVERN: I moved there in 1954. My sister and  
9 I bought it. In 1960, we bought it. We rented it, and then we bought it.  
10 And as long as I was there, I understood that the lady across the way  
11 -- there were seven detached houses. And there was maybe -- oh, I  
12 don't know -- maybe 20 feet between us. And there was a fence in  
13 between.

14 And, as we understood it, she rented rooms. And I  
15 never was aware that there were apartments. I wouldn't have any  
16 way of knowing because I never was there. But based on the  
17 turnover, they were mostly students. And I could tell by their  
18 demeanor. They were a little bit noisy and whatnot.

19 I never knew that there were apartments. I had no  
20 reason to go into the house to see whether they were.

21 VICE CHAIRPERSON KING: Did you know whether  
22 there were additional kitchens other than one central kitchen?

23 MS. MOVERN: I knew nothing about the inside of it.  
24 I just assumed that she was renting rooms. And I worked until 1970. I  
25 was employed. So, you know, I was only there, you know, in the  
26 evening.

27 VICE CHAIRPERSON KING: Yes.

1 MS. MOVERN: And there was some unpleasant,  
2 high music as young students, but that's all I knew. I knew nothing  
3 about the apartments. I wasn't in the house.

4 VICE CHAIRPERSON KING: Okay. And you've lived  
5 there uninterrupted since 1956? You've lived there for -- '54? Okay.

6 MS. MOVERN: We rented. And then I bought the  
7 house with my sister in 1960. And I'm still there.

8 VICE CHAIRPERSON KING: Good for you.

9 CHAIRPERSON REID: Mrs. Movern, basically you're  
10 saying that you were aware that there were tenants or someone living  
11 in the property, rentals, people were leasing at that property, but you  
12 never saw the interior to know how it was laid out?

13 MS. MOVERN: I never was in the house.

14 CHAIRPERSON REID: Okay. Thank you.

15 Any other questions, Board members?

16 MS. NOYES: May I add one thing? We brought a  
17 deed to the property from the city which mentions --

18 MS. KINNEY: Certified.

19 MS. NOYES: -- certified, which mentions nothing  
20 about apartments. And the man behind the desk said: This is the city  
21 deed. It would show apartments.

22 CHAIRPERSON REID: Okay.

23 MEMBER HINTON: While Mrs. Movern was still  
24 speaking, I just wanted to thank you for coming down. I know you  
25 made a special trip, and I'm sorry you had to wait so long.

26 MS. MOVERN: That's okay.

27 CHAIRPERSON REID: And, Mrs. Movern, to your

1 knowledge, there has already been someone renting space in that  
2 particular building during the entire time?

3 MS. MOVERN: That's the way I understood it. As I  
4 say, I was away during the daytime. All I saw was at night. And, as I  
5 stated, the demeanor of the people there would indicate, you know,  
6 that they were mostly students because of the proximity to the  
7 universities, you know, like Georgetown and so forth. That's all I can  
8 tell you.

9 CHAIRPERSON REID: Thank you. Thank you very  
10 much for your testimony.

11 MS. KINNEY: May I speak?

12 CHAIRPERSON REID: Quickly, can you, for the  
13 record?

14 MS. KINNEY: I just wanted to be sure that you  
15 realize we just went over and got that deed. It is not in the record and  
16 the --

17 CHAIRPERSON REID: We have it.

18 VICE CHAIRPERSON KING: We have it. It's on the  
19 record now.

20 MS. KINNEY: Good.

21 CHAIRPERSON REID: Thank you.

22 MS. MOVERN: So what happens?

23 VICE CHAIRPERSON KING: Mr. Hom has a right to  
24 cross-examine if he wishes to.

25 CHAIRPERSON REID: Just a moment. Mr. Hom, did  
26 you have any questions to ask of Mrs. Movern or any of the other  
27 witnesses?

1 MR. W. HOM: No, I don't.

2 CHAIRPERSON REID: Okay. Thank you. Thank  
3 you for your testimony.

4 Mr. Hom, you'll have an opportunity to give your  
5 closing statement.

6 Okay. Thank you very much.

7 MS. KINNEY: Thank you.

8 CHAIRPERSON REID: Mr. Hom, come up and give  
9 your closing remarks, please.

10 MR. W. HOM: Well, I guess, in closing, I'd like to say  
11 that we realize our neighbors' concerns and really understand and  
12 appreciate them due to the bad experience with the units at Wisconsin  
13 Avenue, along Wisconsin Avenue. But that's entirely a separate  
14 issue.

15 Exactly when the unit was converted, I tried to  
16 research that by going to the D.C. archives and the national archives,  
17 but there weren't any building permits on file.

18 And essentially my parents are law-abiding citizens.  
19 We are just trying to do what is legally correct. No one in their right  
20 mind would ever self-inflict this pain.

21 (Laughter.)

22 MR. W. HOM: You know, their intent is to follow the  
23 legal process and get the matter resolved, hopefully in their favor. We  
24 just ask that you take into consideration the uniqueness of the  
25 situation and the fact that its use possibly predates the current zoning  
26 regulations. And there really hasn't been much, if any, impact to the  
27 neighborhood.

1                   When I went to the ANC meeting, it was reported out  
2                   that many of the neighbors told did not realize that my parents  
3                   operated a rental property. And that's because they're very selective  
4                   in who they rent to.

5                   So, basically, my parents respectfully request that you  
6                   approve this variance request.

7                   VICE CHAIRPERSON KING: Mr. Hom, if, if -- and I  
8                   say "if" because we're not making a decision today, but if it were  
9                   determined that we could grant this but only for two units; therefore,  
10                  barring any use for residence, either of a paying tenant or a visiting  
11                  relative in the basement, would that be acceptable?

12                  MR. W. HOM: Yes. My parents discussed this.

13                  CHAIRPERSON REID: Okay? All right. Thank you,  
14                  Mr. Hom.

15                  MR. W. HOM: When would a decision be made?

16                  CHAIRPERSON REID: Ms. Dobbins, approximately  
17                  when? Our next regularly scheduled meeting?

18                  DIRECTOR DOBBINS: The decision date, you  
19                  mean?

20                  CHAIRPERSON REID: Yes.

21                  DIRECTOR DOBBINS: It would be at your March --  
22                  there's nothing outstanding, as far as I understand, related to this  
23                  case. The Board will consider a decision in this case at its March 4th  
24                  public meeting.

25                  If you intend to submit proposed findings of fact,  
26                  which is a draft order associated with the case, that would be due  
27                  February 25th.

1 MR. W. HOM: I'm sorry. What was that again?

2 DIRECTOR DOBBINS: An applicant has the right to  
3 submit for the Board's consideration a draft order, and it's called  
4 proposed findings of fact and conclusions of law. And that means it's  
5 a written document saying how you think or what you think the  
6 findings of fact and conclusions of law should be made by the Board.  
7 If you intend to submit that--

8 CHAIRPERSON REID: The Board members have  
9 informed me that they would be interested in disposing of this case  
10 today.

11 DIRECTOR DOBBINS: There are no parties in  
12 opposition?

13 VICE CHAIRPERSON KING: There are.

14 DIRECTOR DOBBINS: Okay. One party in  
15 opposition, and you're prepared to discuss the issues? That's fine.  
16 That's fine.

17 Mr. Hom, would you like to request a summary, a  
18 bench decision?

19 VICE CHAIRPERSON KING: A summary order can't  
20 be done because there's opposition.

21 DIRECTOR DOBBINS: Madam Chair, members of  
22 the Board, if you intend to dispose of this today, the applicant doesn't  
23 even have to be concerned about it. You just do what you need to do.  
24 So they don't have to request it. The Board if it's heard enough  
25 evidence and can make its decision can proceed with a bench  
26 decision.

27 CHAIRPERSON REID: Let me do this. Let me hear

1 from the Board members as to what they would like to do today as far  
2 as disposition is concerned and ask for a motion from the Board  
3 members. And let's see how we can proceed.

4 MEMBER HINTON: I'm prepared to decide today.

5 CHAIRPERSON REID: All right. Would you like to  
6 make a motion?

7 MEMBER HINTON: I would move approval of  
8 Application 16318 --

9 CHAIRPERSON REID: Is there a second?

10 VICE CHAIRPERSON KING: Yes. I second.

11 MEMBER HINTON: -- in support because I believe  
12 with the information that's available, it's been demonstrated that this  
13 property has had renters in it, multiple renters, and other residents at  
14 the same time since before the zoning regulations were enacted in  
15 1958.

16 And because it's been such a long-term use, that  
17 makes it a unique condition. And there would be an undue hardship  
18 on the owner at this time after 40-some years to have to change,  
19 reconfigure the interior of the property to put it back to a single-family  
20 residential unit.

21 I think that the opposition put a number of really  
22 important points on the record. And I would agree that this is R-1-B  
23 zoning. It is very low-density residential.

24 This is certainly not any indication by the Board that  
25 we would want the zoning or the character of the neighborhood to  
26 change, but I think because these units have been in the  
27 neighborhood for so long, that allowing them to continue will not

1 change the nature of the neighborhood.

2 In addition, this case could not be used as a  
3 precedent for other rental units to be added because the only reason  
4 that we are able to go ahead is that the rental units have been in  
5 existence for such a long period of time. And any party that would  
6 want to come forward and add a rental unit would not be able to use  
7 this case as a precedent. It simply wouldn't apply.

8 And we did have testimony from the opposition that  
9 the rental units have been in place for a long time and they have not  
10 caused any adverse impacts. No one could say anything that has  
11 happened because this one unit has been split into two. There was  
12 no parking, no noise, no trash, no adverse impacts that were identified  
13 or otherwise objectionable conditions to the neighborhood.

14 CHAIRPERSON REID: Thank you. Very good.

15 VICE CHAIRPERSON KING: And I would like to add  
16 a condition, as I indicated before, that the occupation of the house by  
17 people should be confined to the first and second floor, two separate  
18 floor-through units, with no either rental or guest accommodations  
19 made available anywhere else in the building.

20 MEMBER HINTON: I agree. I think that's very  
21 important that we make it clear in our order that only two units are  
22 allowed in the building: one on the first floor, one on the second floor.

23 MEMBER KRESS: I would just like to make one note  
24 on the issue of the creep, which is a big concern, which you did  
25 address. I would just like to again point out that the zoning on  
26 Wisconsin Avenue is different, more dense zoning. That is why what's  
27 built on Wisconsin Avenue and on that corner is different than the rest

1 of what's on Norton Street.

2 I think that's very important and that what we're doing  
3 is somewhat precedent-setting. It is in a very tight, confined way  
4 precedent-setting. So other miscellaneous kinds of housing or people  
5 deciding they want to do this will not be looked at in -- it will only be  
6 looked at in the way we're looking at it right now and that you've heard  
7 us describe today.

8 No one can just decide, "Oh, I'd like to rent out my  
9 basement apartment" without coming here and going through the  
10 same process this has gone through.

11 And their chances will be much less likely than the  
12 chance of succeeding than this project today. I can't say  
13 unequivocally they will not, but the chances are very slim that any  
14 other case coming before us unless it has been, as I said before, in  
15 continuous operation use in this manner since prior to 1958. I think  
16 anyone else is going to have a very difficult chance of having housing,  
17 additional housing, in their single-family residences.

18 I don't know if that helped or not.

19 CHAIRPERSON REID: The vote. All in favor?

20 (Whereupon, there was a chorus of "Ayes.")

21 CHAIRPERSON REID: All opposed?

22 (No response.)

23 CHAIRPERSON REID: Okay. At this point, we --

24 DIRECTOR DOBBINS: Staff will record the vote as  
25 four to zero to grant Application 16318 with one condition, Ms. Hinton,  
26 Ms. King, Ms. Kress, and Ms. Reid, to approve the application.

27 CHAIRPERSON REID: Okay. Thank you. The case

1 is closed now, ma'am.

2 MEMBER HINTON: You are a party. It will be sent to  
3 you.

4 CHAIRPERSON REID: You will receive the  
5 information regarding our decision. Okay. Thank you.

6 And we're going to take a brief, five-minute, recess.  
7 We're going to take a short, five-minute, recess. And we'll be right  
8 back.

9 (Whereupon, the foregoing matter went off the record  
10 at 5:30 p.m. and went back on the record at 5:37  
11 p.m.)

12 CHAIRPERSON REID: We're back. And we have  
13 the last case of the day.

14 CASE NUMBER 16299

15 DIRECTOR DOBBINS: The last case of the day,  
16 16299, the application of Anoop Singh, pursuant to 11 DCMR 3107.2,  
17 for a variance from the minimum side yard requirement of Subsection  
18 405.9 for an addition to an existing single-family structure in an R-1-B  
19 district at premises 4838 Van Ness Street, Northwest. This is Square  
20 1502, Lot 824.

21 Persons intending to testify in this case, please stand  
22 and take the oath. Raise your right hands, gentlemen.

23 (Whereupon, all witnesses in Case Number 16299  
24 were duly sworn.)

25 DIRECTOR DOBBINS: Thank you much. Have a  
26 seat.

27 CHAIRPERSON REID: Give your name and your

1 address, please.

2 MR. GAISER: My name is Paul Gaiser. I'm an  
3 architect with PGA Architects in Bethesda, Maryland. And with me is  
4 the owner and resident, Anoop Singh. We're here today to ask for  
5 approval for a variance into a side yard.

6 This variance proposal was presented to the ANC.  
7 And I believe you have a copy of their letter in front of you. Ms.  
8 Hinton, do you have that letter, and everyone on the Board?

9 VICE CHAIRPERSON KING: Yes. It's in the file.

10 CHAIRPERSON REID: Oh, okay. Yes, I do have it.

11 MR. GAISER: In the context of the letter, basically  
12 they're recommending that this be approved. It was voted four to O at  
13 the last ANC meeting.

14 To our knowledge, we have no opposition to this.  
15 Has there been anything submitted to the file concerning our position?  
16 We're not aware of any.

17 CHAIRPERSON REID: We are unaware of any.

18 MR. GAISER: The simple situation here is that we  
19 have a house whose distinguishing characteristic is that the kitchen is  
20 in the middle of the property, middle of the house itself. We're not  
21 asking for much space, just a small breakfast room bump-out.

22 We do have a high, six-foot, fence adjacent to this  
23 addition and the landscaping that virtually shields this addition from  
24 any view to the street.

25 It is a one-story addition. It's a very small bump-out.  
26 We have eight-foot minimum side yard setbacks on both sides. And  
27 the only other options that we have would be expensive ones,

1 extremely expensive ones, moving the kitchen to the back of the  
2 house or pushing the dining room back. We didn't feel that that was a  
3 good option.

4 VICE CHAIRPERSON KING: And you're required to  
5 have eight feet. And if you have the bump-out, how many feet will you  
6 have?

7 MR. GAISER: We're asking for a five-foot variance of  
8 an eight-foot setback. We would have three feet left. I have original  
9 pictures there. I don't know how good the pictures I sent in came out,  
10 but I could pass those around if you'd like to see our condition.

11 VICE CHAIRPERSON KING: Do we have your plan?

12 MR. GAISER: I would certainly hope so by this point.  
13 If not, I have copies of that as well.

14 VICE CHAIRPERSON KING: I don't have a plan. I  
15 mean, I don't have a --

16 MR. GAISER: Can I bring this up to you?

17 VICE CHAIRPERSON KING: Yes, please.

18 (Pause.)

19 VICE CHAIRPERSON KING: Next to the bump-out,  
20 as you call it, is that stairs going down to the basement?

21 MR. GAISER: That is correct.

22 MEMBER KRESS: Which is existing?

23 MR. GAISER: Which is existing. And we're building  
24 over a small portion of that.

25 CHAIRPERSON REID: Any questions, Board  
26 members?

27 MEMBER HINTON: So you're adding space for a

1 table with chairs and an additional door to the outside. Is that right?

2 MR. GAISER: We are moving the existing door to the  
3 outside, to the edge of the addition. That's correct.

4 MEMBER HINTON: And now that door will open  
5 towards the front of your lot?

6 MR. GAISER: That's correct.

7 MEMBER HINTON: And currently it opens towards  
8 the side?

9 MR. GAISER: Yes. And, again, we considered  
10 having it open to the side, but, again, to leave a three-foot-clear  
11 passage, we felt it was better to make that open towards the front.

12 Again, the pictures that I have up there show this  
13 six-foot-high fence. It seemed to us that it would be difficult to see this  
14 addition since it's a one-story bump-out, that hardly anyone would be  
15 aware of it.

16 MEMBER HINTON: And the height of the roof of the  
17 bump-out will be about what?

18 MR. GAISER: It's at the bottom portion of it. It's eight  
19 feet. And it's a shed roof that goes away from the property line,  
20 further diminishing the line of sight.

21 MEMBER KRESS: So how does this compare?  
22 Where is the height of the fence here?

23 MR. GAISER: The bottom of the shed roof is at eight  
24 feet. The fence is not drawn, but approximately a six-foot-high fence.  
25 You can see it better in the pictures that I've passed around.

26 MEMBER KRESS: Right. I was just trying to see it.  
27 So basically we've got the bottom to the eave is eight-foot and this

1 fence is six-foot?

2 MR. GAISER: That's correct.

3 MEMBER KRESS: And that looks like a 45.

4 MR. GAISER: Eleven feet, ten feet at the top of the  
5 roof, something like that.

6 MEMBER KRESS: Thank you.

7 MR. GAISER: The other pertinent point here is that  
8 visually because of the fireplace bump-out, which bumps out about  
9 two feet, a good portion of this addition will be hidden from the street  
10 as well.

11 VICE CHAIRPERSON KING: Where is that?

12 MR. GAISER: And that is shown on the plan or the  
13 pictures.

14 VICE CHAIRPERSON KING: Oh, I see.

15 MEMBER HINTON: Are you familiar with the three  
16 tests for a variance?

17 MR. GAISER: I am aware that you have to provide  
18 hardship.

19 MEMBER HINTON: Right. The first one is you have  
20 to identify some unique condition in the property that's creating a  
21 hardship to use it the way the zoning regulations would allow.

22 MR. GAISER: Right. I understand. And we consider  
23 that to be, at least in this case, exceptional narrowness.

24 MEMBER HINTON: Of what?

25 MR. GAISER: Of the property itself; in other words,  
26 two eight-foot side yard setbacks. Usually with side yard setbacks,  
27 you have a minimum on one side and more on the other side. We

1 have two eight-foot setbacks on either side. So we don't have many  
2 options to expand to the side.

3 MEMBER HINTON: That's not usual in the District of  
4 Columbia, is it? I mean, most side yards are required to be eight feet.

5 MR. GAISER: It's eight-foot at a minimum. That's  
6 correct.

7 MEMBER HINTON: Right. If you're going to talk  
8 about narrowness of the lot, you would need to show us that this lot is  
9 more narrow than all the other lots around it.

10 CHAIRPERSON REID: How does it compare with the  
11 other properties?

12 MR. GAISER: My sense is that the immediate  
13 property to the left is the same size lot. I don't know how big the  
14 house is. I think the houses in that block are all the same width. I  
15 don't know whether all the houses have eight-foot setbacks on both  
16 sides. I know they have eight-foot minimum, but I don't know whether  
17 they go to the property line.

18 My point here is that I'm aware that eight-foot is a  
19 minimum as far as a side yard setback, but I'm not aware that most  
20 houses in the District have eight-foot on both sides. And that's my  
21 point.

22 VICE CHAIRPERSON KING: Susan, you know, as  
23 he stated at the beginning of his testimony, the kitchen is in the middle  
24 of the house. And, of course, we all know, any of us who ever had  
25 anything done with a kitchen or bathroom knows, how catastrophically  
26 expensive it is to move a kitchen or a bathroom. Can we consider that  
27 to be a unique condition or difficulty?

1                   MEMBER HINTON: The applicant would have to  
2 demonstrate that it is. And unique by definition is the only one. So is  
3 this the only kitchen in the neighborhood that's in the middle of the  
4 house? That's their burden.

5                   So I don't know. And they're not really moving the  
6 kitchen. They're providing sort of an additional heating space.

7                   VICE CHAIRPERSON KING: That's true.

8                   MEMBER HINTON: It could be next to a kitchen in  
9 some other room.

10                  MR. GAISER: But not adjacent. In other words, a  
11 breakfast area by definition is typically adjacent to a kitchen. Frankly,  
12 our approach here is this is a very small bump-out. It's a very small  
13 project. To test the limits of the actual wording of the zoning variance  
14 is not our intent here.

15                  It's a very small bump-out. We're just looking for table  
16 space for two people in an existing kitchen without major expense is  
17 the bottom line.

18                  CHAIRPERSON REID: Yes, but Ms. Hinton is trying  
19 to guide you through this, discussing with you the need for meeting  
20 those three tests. So is there any other aspect of that property that  
21 would be deemed unique or unusual?

22                  MR. GAISER: I don't know. Could we have a  
23 minute?

24                  CHAIRPERSON REID: Yes.

25                  (Pause.)

26                  CHAIRPERSON REID: Yes?

27                  MR. SINGH: May I just say a few words? You know,

1 we have lived many years through having a very small kitchen area.  
2 And, to the best of our recollection, we have seen the houses inside  
3 next door. And we think our kitchen is smaller than each one.

4 VICE CHAIRPERSON KING: Are they all in the  
5 middle?

6 MR. SINGH: Yes. You know, the problem is, for  
7 example, it's so small, the kitchen, that there is no place for even a  
8 child to sit. And we really need to have them seated in one area to  
9 have their meals. And there is no place at this moment for even one  
10 child to sit.

11 By doing the small bump-out, we will be having just  
12 enough space for the two kids to sit, one of us to be there. And that's  
13 all it is.

14 But I do believe the kitchen is smaller slightly than the  
15 ones on each side. Now, I'm not sure if that helps you, but I think that  
16 is our recollection.

17 CHAIRPERSON REID: Let's see. Board members,  
18 can you think of how we can help him to meet this first test? That is  
19 kind of a stretch.

20 Lot size. The lot size is pretty uniform with the rest of  
21 the community, rest of the neighborhood?

22 MR. GAISER: The lot is 50 by 127.

23 MEMBER KRESS: I'm trying to be helpful. I don't  
24 know if it --

25 MR. GAISER: No. I understand. If we got you that  
26 information, would that be helpful in helping you make a decision?

27 MEMBER HINTON: What we're discussing is there's

1 pending rulemaking by the Zoning Commission that allows proposals  
2 like this to come in as a special exception, rather than a variance.

3 MEMBER KRESS: In a variance, you have to meet  
4 every --

5 MEMBER HINTON: And a special exception is you  
6 don't have to have a unique condition of your property. Basically you  
7 have to show that there wouldn't be adverse impacts to the  
8 community.

9 MR. GAISER: I understand.

10 MEMBER HINTON: It's a much easier regulation.

11 MEMBER KRESS: And burden of proof on your part.

12 MEMBER HINTON: Right. And so we're thinking that  
13 it might be in your best interest -- it's coming out within a month.

14 MEMBER KRESS: We are voting on it this coming  
15 Monday for final action. Then it needs to be published for 30 days.

16 DIRECTOR DOBBINS: No, no.

17 MEMBER KRESS: It's just published. It's done.

18 DIRECTOR DOBBINS: The 30 days are over.

19 MEMBER KRESS: I'm sorry. I was thinking we were  
20 still in the process.

21 DIRECTOR DOBBINS: The order has to be finalized  
22 and signed. And then it has to be published. So it could probably be  
23 final within the next two to three weeks.

24 MEMBER HINTON: Then to hear this under the new  
25 regulations, would it have to be renotified?

26 DIRECTOR DOBBINS: Yes.

27 MEMBER HINTON: But would it have to go back

1 through the Zoning Administrator?

2 DIRECTOR DOBBINS: No, I don't think so.

3 MEMBER KRESS: Would it have to go back to the  
4 ANC?

5 DIRECTOR DOBBINS: The ANC didn't one way or  
6 the -- they just said to approve it. We could probably get their stamp  
7 of approval, but what you probably want to do is set another hearing  
8 date, set it for another hearing date, when it's going to be advertised  
9 and just go through the whole process so you can give notice, so that  
10 you can hear the case.

11 At the time that the case is heard, it should be heard  
12 under the then existing regulations, which means you want the  
13 regulation to be final at the time you hear it.

14 So if there is no great hurry, we can probably put it on  
15 the May 6 agenda in the morning.

16 VICE CHAIRPERSON KING: It will be published by  
17 May 6?

18 DIRECTOR DOBBINS: Oh, sure.

19 CHAIRPERSON REID: And it would behoove you to  
20 do that --

21 VICE CHAIRPERSON KING: You know where we're  
22 going. It's going to be difficult for us to say yes to --

23 CHAIRPERSON REID: Yes because you can see us  
24 trying to really grasp, clutch straws to make this work. And you don't  
25 want to take the chance of it being denied based on --

26 MR. GAISER: I understand.

27 DIRECTOR DOBBINS: And at this point, I'd ask the

1 Board if it's their intent to waive an application fee.

2 MEMBER HINTON: Yes.

3 CHAIRPERSON REID: Yes.

4 DIRECTOR DOBBINS: That means the applicant can  
5 come back to me, and we can talk about how to get it processed as  
6 quickly as possible so that they can be here.

7 CHAIRPERSON REID: Did you all get that? That's  
8 important.

9 MR. GAISER: I'm sorry?

10 DIRECTOR DOBBINS: Oh, I was saying the Board  
11 has waived a new application fee. So I was suggesting that you come  
12 back to me after today and let us decide the best way to proceed with  
13 this.

14 MR. GAISER: Okay. That sounds great to us. We  
15 appreciate it. It is my understanding that we do not have to post a  
16 sign again, would have to post a sign?

17 DIRECTOR DOBBINS: You will. You will because it  
18 will be different relief. So I will tell you everything you need to do.  
19 You're going to be basically starting from scratch.

20 MR. GAISER: But we can get a date on May 6th?

21 DIRECTOR DOBBINS: We intend to put you on that  
22 agenda.

23 MR. GAISER: Okay.

24 DIRECTOR DOBBINS: That means it will be  
25 re-advertised, re-noticed, re everything.

26 VICE CHAIRPERSON KING: And you don't have to  
27 go back to the Zoning Administrator.

1 DIRECTOR DOBBINS: Right. I'm going to forward it.

2 MEMBER KRESS: And there is a very good chance  
3 you will have a bench decision that day.

4 MEMBER HINTON: You will want to make sure you  
5 read the new regulations and review your own application to make  
6 sure it fits in.

7 MR. GAISER: I understand. Will you have a draft  
8 copy of that available?

9 DIRECTOR DOBBINS: I do. I do.

10 MR. GAISER: Okay. Great.

11 DIRECTOR DOBBINS: It's been published as a  
12 proposed rulemaking. So I'll give you a copy of that.

13 MR. GAISER: Great.

14 MEMBER KRESS: When they make their decision,  
15 what should we do? Are we very sure that -- I'm very sure he should  
16 go this way, but he needs the right to make that decision.

17 DIRECTOR DOBBINS: Why don't you just defer this?

18 MEMBER KRESS: Just defer it was what I was going  
19 to say, rather than do anything else.

20 DIRECTOR DOBBINS: Defer this or indefinitely.

21 MEMBER KRESS: Defer it definitely.

22 DIRECTOR DOBBINS: Until we get something going  
23 in the other direction.

24 MEMBER KRESS: If the new application doesn't  
25 work for you and you want to come back and try under the old, you  
26 can still. We haven't turned you down.

27 CHAIRPERSON REID: Okay?

1 MR. GAISER: Thank you very much.

2 CHAIRPERSON REID: Thank you. All right. That's  
3 it.

4 CASE NUMBER 16288 (Continued)

5 CHAIRPERSON REID: Okay. Case Number 16288.  
6 He asked for a postponement, but then he didn't return. So we'll just  
7 go ahead and reschedule him for a time certain?

8 DIRECTOR DOBBINS: Okay. If you're going to  
9 postpone it to a date certain, that would also be May 6. And that fills  
10 up your morning. We will get a notice out to him.

11 CHAIRPERSON REID: Okay. Is that it?

12 DIRECTOR DOBBINS: So the Board has postponed  
13 Application 16288 to May 6, 1996 in the morning, with cases  
14 beginning at 9:30 in the morning.

15 CHAIRPERSON REID: Nineteen ninety-eight.

16 VICE CHAIRPERSON KING: Which will be his last  
17 postponement, don't you think?

18 DIRECTOR DOBBINS: '98.

19 VICE CHAIRPERSON KING: This is his second  
20 postponement. Don't you think --

21 MEMBER HINTON: Could we indicate in the letter  
22 that that's likely to be the last postponement since this is the third  
23 time? We've already entertained --

24 DIRECTOR DOBBINS: Okay. Last postponement.

25 CHAIRPERSON REID: This concludes today's  
26 hearing. Thank you.

27 (Whereupon, the foregoing matter was concluded at

1

5:57 p.m.)