

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 13, 1999

+ + + + +

The Board met in Hearing Room 220 south at 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:50 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
JERRY GILREATH	Board Member
ROBERT SOCKWELL	Board Member

OFFICE OF ZONING STAFF PRESENT:

Sheri M. Pruitt,	Secretary, BZA
Beverly Bailey,	Office of Zoning
Mika Dorsey,	Office of Zoning
Paul Hart,	Office of Zoning
John Nyarku,	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Janice Skipper, Esq.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

C-O-N-T-E-N-T-S

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS .....	5
<u>APPLICATION OF EXXON CORPORATION:</u>	
.....	<u>16493</u>
..... CHRISTOPHER H. COLLINS, Esq.	9
Wilkes, Artis, Hedrick & Lane	
1666 K Street, N.W.	
Suite 1100	
Washington, D.C. 20006-2897	
(202) 457-7800	
 <u>WITNESSES</u>	
..... TERRI LEVINE	12
..... BHOOPENDRA PRAKASH	14
..... ROBERT L. MORRIS	19
..... JAMES BERRY	34
..... FLORENCE ROBINSON	40
..... LEE ANTHONY BROWN	42
..... KEITH CREDIT	56
 <u>APPLICATION OF EXXON CORPORATION:</u>	
.....	<u>16494</u>
..... CHRISTOPHER H. COLLINS, Esq.	82
Wilkes, Artis, Hedrick & Lane	
1666 K Street, N.W.	
Suite 1100	
Washington, D.C. 20006-2897	
(202) 457-7800	
 <u>WITNESSES</u>	
..... TERRI LEVINE	83
..... BHOOPENDRA PRAKASH	90
..... ROBERT L. MORRIS	95
 <u>APPLICATION OF ALMA NEWSOME</u>	
.....	<u>16495</u>
	129

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

WITNESSES

C-O-N-T-E-N-T-S (Cont.)

<u>AGENDA ITEM</u>	<u>PAGE</u>
..... WILLIAM WASHINGTON	129
..... ALMA NEWSOME	139

AFTERNOON SESSION

PRELIMINARY MATTERS .....	147
---------------------------	-----

APPLICATION OF H AND M ENTERPRISES

.....	<u>16496</u>	153
-------	--------------	-----

WITNESSES

PATRICIO LAVERDY.....	154
-----------------------	-----

APPLICATION OF 2125 S STREET, LLC

.....	<u>16497</u>	187
-------	--------------	-----

..... CHRISTOPHER H. COLLINS, ESQ.	188
------------------------------------	-----

Wilkes, Artis, Hedrick & Lane  
1666 K Street, N.W., Suite 1100  
Washington, D.C. 20006-2897  
(202) 457-7800

WITNESSES

..... LAWRENCE SMITH	194
----------------------	-----

..... RACHEL CHUNG	201
--------------------	-----

..... LINDA BUMBALO	220
---------------------	-----

APPLICATION OF 800 8<sup>TH</sup> STREET, N.W., LLC AND CHINESE CONSOLIDATED BENEVOLENT ASSOCIATION

.....	<u>16498</u>	238
-------	--------------	-----

..... NORMAN M. GLASGOW, JR., ESQ.	240
------------------------------------	-----

Wilkes, Artis, Hedrick & Lane  
1666 K Street, N.W., Suite 1100  
Washington, D.C. 20006-2897  
(202) 457-7800

WITNESS

..... ERIC COLBERT	
--------------------	--

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

9:46 a.m.

CHAIRPERSON REID: Good morning. The hearing will please come to order. This is the September 13<sup>th</sup> Public Hearing of the Board of Zoning Adjustment. Joining me today is Robert Sockwell and Jerry Gilreath, and we don't have a member of the just one second, please well, let me just wing this, my opening remarks were being redone and they apparently have not been finished properly, so just let me wing it.

Copies of today's agenda are available to you. They are located to my left near the door. All persons planning to testify 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 forward to speak to the Board, please give both cards to the reporter, who is sitting to my right.

The order of procedure for special exception and variance cases are statement and witnesses of the Applicant, government reports, including Office of Planning, Department of Public Works, the ANC, et cetera, persons or parties in support, persons or parties in opposition, closing remarks by the Applicant. Cross examination of witnesses is permitted by persons or parties who have direct interest in the case. The record will be closed at the conclusion of each case, except for material specifically requested by the Board, and the staff

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 will specify at the end of the hearing exactly what is  
2 expected.

3 The decision of the Board in these contested  
4 cases must be based exclusively on the public record. The  
5 Board, with any appearance to the contrary, will request that  
6 persons present not engage with the Board in conversation.

7 Please turn off all beepers and cell phones at  
8 this time, so as not to disrupt the proceedings.

9 The Board will consider preliminary matters.  
10 Preliminary matters are those which relate to whether a case  
11 will or should be heard today, due to request of postponements,  
12 continuance or withdrawal, whether proper and adequate notice  
13 of hearing has been given. If you are not prepared to go  
14 forward with the case today, or if you believe that the Board  
15 should not proceed, now is the time to raise such a matter.  
16 Are there any preliminary matters? Please come forward.

17 Does staff have any preliminary matters?

18 MS. PRUITT: Yes, Madam Chair. The first case on  
19 your agenda this morning, 16417, in your file there s a request  
20 for a postponement to the next first available hearing date.

21 CHAIRPERSON REID: Okay. Lord knows, I have no  
22 problem with it.

23 MR. GILREATH: Madam Chair, did they give a  
24 reason, are they trying to resolve some design difficulties, I  
25 presume it was a good purpose or a good reason.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PRUITT: They sort of explained in the letter  
2 the issues that they had. This has been an application, you  
3 have not heard it yet, but it s been an application that s had  
4 some concerns. It s a non-profit, they originally came in  
5 requesting relief, they self-certified, they originally came  
6 in, I believe, requesting relief that was not necessary, and  
7 not necessarily the correct relief they needed. So, they went  
8 back and they actually have counsel now, and they are trying to  
9 work to resolve and get everything done, and get a very clean  
10 and tight case.

11 MR. GILREATH: Do a little housekeeping of the  
12 proposal.

13 MS. PRUITT: Right, clean and tight case before  
14 they come.

15 CHAIRPERSON REID: I think they asked for 90  
16 days?

17 MS. PRUITT: No, it just says the request, that  
18 the above application be rescheduled for the next available  
19 Board meeting, public hearing.

20 CHAIRPERSON REID: No, well, wait a minute.

21 MR. SOCKWELL: They asked for 90.

22 CHAIRPERSON REID: Where are you reading from,  
23 Ms. Pruitt-Williams?

24 MS. PRUITT: I have a letter dated the 16<sup>th</sup>.

25 CHAIRPERSON REID: Well, there s a subsequent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 letter of September 24<sup>th</sup>.

2 MS. PRUITT: Well, the first available hearing  
3 date, whether it s 90 days or not, is December 8<sup>th</sup>.

4 MR. SOCKWELL: Yes, but they are asking for 90  
5 days.

6 CHAIRPERSON REID: They want 90 days, so then  
7 that would put it in January, 2000, would it not?

8 MS. PRUITT: October yes, it should yes, the  
9 first available one is December 9<sup>th</sup>, but we can put it for any  
10 time in January that

11 CHAIRPERSON REID: No, okay, they are not asking  
12 for the first available, they are asking for a 90-day  
13 postponement.

14 Then, yes, from today s date, or the date of the  
15 September well, I guess it s from today s date, the date of  
16 the hearing, so that would put it at January.

17 MS. PRUITT: January.

18 CHAIRPERSON REID: Year 2000.

19 MS. PRUITT: And, that is available.

20 CHAIRPERSON REID: All right.

21 MS. PRUITT: So, let me verify what dates we have  
22 for BZA on that. Well, the first available hearing date in  
23 January is the 5<sup>th</sup>, but that s not 90 days, to be 90 days it  
24 would have to be on the 19<sup>th</sup>. That s your second scheduled  
25 meeting.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Okay.

2 MS. PRUITT: So, it s been continued to January  
3 19<sup>th</sup>, the first case on the agenda.

4 CHAIRPERSON REID: Thank you.

5 MS. PRUITT: And, that concludes staff s issues  
6 for preliminary matters.

7 CHAIRPERSON REID: All right.

8 Please call the first case, the second case I  
9 guess it would be, the first case has now been postponed.

10 MS. PRUITT: Case No. 16493, Application of Exxon  
11 Corporation, pursuant to 11 DCMR 3108.1, for a special  
12 exception under Subsection 706 to allow the expansion of a  
13 formerly operated service station with four new fuel dispensers  
14 beneath a canopy with a convenience store on a site in a C-2-A  
15 District at premise No. 5 Q Street, N.W. (Square 3100, Lot 48).

16 All those planning to testify, would you please  
17 stand and raise your right hand?

18 Please, be seated.

19 CHAIRPERSON REID: Yes, Mr. Collins.

20 MR. COLLINS: Good morning, Madam Chairperson and  
21 members of the Board. My name is Christopher Collins with  
22 Wilkes, Artis, Hedrick & Lane. With me to my left is Sarah  
23 Shaw with Wilkes, Artis, and to my right is Terri Levine, a  
24 Market Investment Specialist with Exxon Corporation.  
25 Continuing on down the table, Mr. Bob Morris, who is a Traffic

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and Transportation Consultant in this case, and finally Mr.  
2 Bhoopendra Prakash, who is with The Plan Source, the consulting  
3 engineers for this project.

4 This is an application for an expansion of an  
5 Exxon gasoline station at the northwest corner of N. Capitol  
6 and Florida.

7 CHAIRPERSON REID: Mr. Collins, just one second  
8 before you continue. I just want to get an idea as to this  
9 case.

10 Is there anyone here in opposition to this case?  
11 One person in opposition. And, in support? One person.

12 UNIDENTIFIED SPEAKER: And, I have reservations.  
13 I am supporting with reservations.

14 CHAIRPERSON REID: Okay, all right.

15 All right.

16 MR. COLLINS: Thank you.

17 This is an application for expansion of an Exxon  
18 gasoline station at the northwest corner of N. Capitol and  
19 Florida, N.W., but the expansion is very limited. In this  
20 case, as we ll show you later, as we get through the exhibits,  
21 the Zoning Administrator has confirmed that the only reason for  
22 special exception relief in this gasoline station application  
23 is because of the increase in the number of gasoline dispensers  
24 from three to four, and that s at page 11 of his statement.

25 The gas station has been a gas station has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 been at this site for almost 60 years. The site is currently  
2 vacant. It was last rebuilt as an Exxon facility in 1979, or  
3 thereabouts, with a canopy, with three gasoline dispensers and  
4 an attendant s kiosk, and a small restroom building on the west  
5 side of the site.

6 The proposal now is to remove all of those  
7 improvements and to build a new facility. There will be a new  
8 canopy that is smaller than the existing canopy and the kiosk  
9 and, therefore, the Zoning Administrator has determined that  
10 that does not constitute an expansion of the station and that s  
11 permitted.

12 There s a new convenience store to be located on  
13 the west side of the property. The convenience store is a  
14 matter of right use in this C-2-A Zone. The Zoning  
15 Administrator has confirmed that that s a matter of right.

16 He has determined, as the letter on page letter  
17 that he confirmed shows, that the expansion from three pumps to  
18 four pumps does require special exception approval.

19 You have the statement before you. We will go  
20 through that with our witnesses, but I d just to review the  
21 exhibits with you, if I may. The exhibits, Exhibit on pages  
22 seven and eight of the statement, show the maps indicating the  
23 location of the property at the intersection of N. Capitol and  
24 Florida on the northwest corner, page nine shows the zoning map  
25 for the area, page ten is the surveyor s plat of the property,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 page 11 is the letter that was confirmed by the Zoning  
2 Administrator, and if you look at the last sentence of the  
3 second full paragraph on the first page of that letter, special  
4 exception relief is only required because of the increase in  
5 number of fuel dispensers from three to four.

6 The plans for the project are attached at the  
7 beginning of page 13. The prior BZA order for the use of the  
8 station from 1961 is attached at page 16. Then the testimony  
9 of the witnesses begins at page 22.

10 At this time, if there aren't any preliminary  
11 questions I'd like to go to the witnesses and their testimony.

12 Any questions? Okay.

13 The first witness is Terri Levine, who is a  
14 Market Investment Specialist with Exxon.

15 Whereupon,

16 TERRI LEVINE

17 was called as a witness by Counsel for the Applicant, and  
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 MR. COLLINS: Ms. Levine, would you please  
21 identify yourself for the record and proceed with your  
22 testimony?

23 MS. LEVINE: My name is Terri Levine. I'm with  
24 Exxon Corporation, and my home address is 8301 Ashford  
25 Boulevard in Laurel, Maryland.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 We are proposing reauthorization of the facility  
2 at 5 Q Street, and this property, as Chris described, is on the  
3 northwest corner of Q, Florida and N. Capitol. We have about  
4 18,000 square feet of property at this location, and it s been  
5 an Exxon property since the 1930s.

6 Currently, the facility is closed down. It s a  
7 kiosk with three fueling dispensers. It s a motor fuel only  
8 operation, and we would like to modernize and reopen this  
9 facility.

10 Currently, we have a strong emphasis on  
11 upgrading our stations in the District of Columbia. We are  
12 right now finishing construction at a store on Connecticut and  
13 Nebraska Avenue, N.W., and we are beginning construction at  
14 another store on Connecticut and Porter Street, also in  
15 northwest.

16 Our proposal is for a convenience store,  
17 approximately 2,500 square feet, with four fueling dispensers  
18 which will have the capacity to fuel eight cars at any one  
19 time, and replacement of the underground storage tanks.

20 CHAIRPERSON REID: Is that it?

21 MS. LEVINE: Unless you have any questions.

22 CHAIRPERSON REID: Okay, thank you.

23 Board members, do you have any questions so far?

24 Okay.

25 MR. GILREATH: One additional dispenser, is that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to increase the number of cars significantly pulling in  
2 and pulling out in terms of impacting traffic?

3 MR. COLLINS: That will be addressed by Mr.  
4 Morris in his testimony.

5 MR. GILREATH: Very good, thank you.

6 MR. COLLINS: The next witness will be Mr.  
7 Bhoopendra Prakash, who is the consulting engineer for the  
8 project.

9 Whereupon,

10 BHOOPENDRA PRAKASH

11 was called as a witness by Counsel for the Applicant, and  
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 MR. COLLINS: Mr. Prakash, would you please  
15 identify yourself for the record and proceed with your  
16 testimony?

17 MR. PRAKASH: Good morning, Madam Chair, members  
18 of the Board. My name is Bhoopendra Prakash. I m an engineer  
19 representing this project. My home address is 12843 Parapet  
20 Way, Oak Hill, Virginia.

21 I request your attention to page 13 of your  
22 document. This board represents a blow-up of the store as it  
23 exists today, N. Capitol Street northbound, Q Street, Florida  
24 Avenue, northwestern quadrant of the intersection.

25 The existing outline of the property is shown in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 bold black, showing only one major building, which is the  
2 canopy centrally located on site, under which there is a pay  
3 phone or a kiosk.

4 As per Terri Levine s testimony, we propose to  
5 upgrade with new construction as shown on this color board.  
6 The new canopy will be approximately in the existing location,  
7 with the convenience store situated on the westerly side, or  
8 the rear side of the property. All entrances to the site shall  
9 remain unchanged.

10 We propose parking in

11 CHAIRPERSON REID: Excuse me. What you need to  
12 do is, if you can kind of turn that in such a way that either  
13 turn in such a way that it can be seen here, because I think  
14 that this particular citizen had come to get an understanding  
15 as to what you were doing, and I don t think she can see. So,  
16 if you d like, you can come over here, and then you can see  
17 what they are proposing, because it seems like you are  
18 camouflaging the view.

19 MR. PRAKASH: Continuing, parking will be  
20 situated directly in front of the store, and the pump islands  
21 under the new and rebuilt canopy.

22 Keeping the entrances in the existing location,  
23 bright lighting will be around the periphery of the site to  
24 provide adequate and safe lighting in the interest of improving  
25 security.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We further propose that the underground tanks  
2 will be reconstructed, new tanks will be installed around the  
3 vicinity of the existing location of the tanks, not a  
4 significant change. Due to the new configuration, it is  
5 essential that the tanks be located or turned somewhat to stay  
6 away from the new canopy.

7 There is an existing stand of mature trees  
8 between the proposed location of the convenience store and  
9 existing homes to the north side of the property. We further  
10 proposed to landscape the green space in front of the property  
11 at the intersection of N. Capitol and Q Street.

12 We believe this application, as presented  
13 graphically in this plan, does meet the intent of Section 726  
14 of the Zoning Regulations, namely, the plan was, indeed,  
15 submitted and accepted by the Office of Planning. In terms of  
16 the required setbacks, the gasoline station component of this  
17 development, which is the canopy and dispenser pumps, are,  
18 indeed, proposed to be set back 25 feet away from the  
19 residential properties.

20 MR. COLLINS: Mr. Prakash, can you refer to the  
21 plan which shows the line, in putting the radius, to indicate  
22 the 25-foot setback on the proposed construction?

23 MR. PRAKASH: First of all, the property line is  
24 identified in the solid black lines to the north of the  
25 property, setback 25 feet away from this residential property

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 line, and this residential property line, both of which are in  
2 the northwestern side of the property. A 25-foot setback line  
3 identified on sheet 14 of your document creates a setback  
4 envelope out of which the canopy and service station operation  
5 is set back, and in that regard we believe we do meet the  
6 intent of the Zoning Regulations.

7 I would defer to

8 MR. COLLINS: Excuse me, is this the same set of  
9 plans that the Zoning Administrator reviewed in making his  
10 determination of special exception relief?

11 MR. PRAKASH: Yes, sir, indeed.

12 MR. COLLINS: Thank you.

13 MR. PRAKASH: In terms of design appearance,  
14 lighting and screening, we do plan to comply with maintaining  
15 the existing screening, increasing and improving the landscape  
16 presentation in front of the property, and site lighting will  
17 be presented along the periphery in a down lit manner, whereby,  
18 lighting is not scattered all over the property or beyond the  
19 property.

20 Parking, of course, is accessible to the store,  
21 directly in front, in a safe and friendly, customer-friendly  
22 manner.

23 With respect to Section 2302 of the Zoning  
24 Regulations, again we believe we comply, or this project  
25 complies. Honoring the setback requirements of 25 feet from

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the residential lot lines, entrances being where they currently  
2 exist shall remain effectively more than 25 feet away from the  
3 residential properties, entrances are required to be 40 feet or  
4 more from the intersection of the street, and we do comply, and  
5 there are no grease pits associated with this project.

6 With that, if you have any questions I would be  
7 happy to address them.

8 CHAIRPERSON REID: Do you have anymore witnesses,  
9 Mr. Collins?

10 MR. COLLINS: Yes, I do, Mr. Morris.

11 CHAIRPERSON REID: Oh, that s right, one more,  
12 wasn t he the traffic consultant? Okay.

13 Whereupon,

14 ROBERT L. MORRIS

15 was called as a witness by Counsel for the Applicant, and  
16 having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 MR. COLLINS: Mr. Morris, will you please  
19 identify yourself and proceed with your testimony?

20 MR. MORRIS: Good morning, Madam Chairperson and  
21 members of the Board. I m Robert L. Morris, traffic engineer  
22 and transportation planner. I have prepared a report, which I  
23 believe is in the material in front of you, so I will touch on  
24 the highlights, and I ll be happy to expand with any questions  
25 you may have.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I ve indicated what the existing conditions are  
2 at the subject location, and I have shown what the effect would  
3 be of the proposed improvement. I would note that this service  
4 station is complementary to an existing Exxon station  
5 diagonally across the intersection of N. Capitol Street and  
6 Florida Avenue. I say it s complementary for this reason, the  
7 existing station draws its traffic principally from northbound  
8 on N. Capitol Street and eastbound on Florida Avenue. This  
9 service station would draw its customers from southbound on N.  
10 Capitol Street and westbound on Florida Avenue. So, to that  
11 degree, there s no redundancy in service there, they are  
12 complementary.

13 The subject site would generate approximately 35  
14 inbound trips and outbound trips in each peak hour. In  
15 response to Mr. Gilreath s earlier question, the addition of  
16 one gasoline pump would not significantly increase the number  
17 of trips. There could be a few more trips because the site is  
18 more attractive, but it would not add any traffic onto the  
19 streets. As the Board knows I m sure, people go to get  
20 gasoline principally as part of another trip purpose. They  
21 stop by to get gas on the way to work, or home from work, or  
22 some other trip purpose, so the proposed use of this property  
23 would have no adverse impact in terms of traffic operations,  
24 and from a traffic engineering viewpoint it would be an  
25 appropriate use of the property and the expansion of one

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 gasoline pump would be appropriate.

2 CHAIRPERSON REID: Okay.

3 MR. GILREATH: Do your calculations include, not  
4 only the people pulling up to the pumps, but the people who  
5 would be going to the convenience store, so your calculations  
6 include all of these people coming in?

7 MR. MORRIS: That s correct, sir.

8 MR. GILREATH: Okay, fine.

9 CHAIRPERSON REID: Mr. Sockwell?

10 MR. SOCKWELL: I have one first question. Is the  
11 diagonal Exxon station on the southeast corner also a company-  
12 owned facility?

13 MS. LEVINE: Yes, sir, that is a company-owned  
14 facility, but it is operated by a dealer, it is not operated by  
15 Exxon.

16 MR. SOCKWELL: Okay, but it s an Exxon station  
17 owned by the company?

18 MS. LEVINE: Yes.

19 MR. SOCKWELL: Okay.

20 And, your name again is?

21 MS. LEVINE: Terri Levine.

22 MR. SOCKWELL: Levine.

23 Ms. Levine, the principal use of this property,  
24 bringing it back on line as a gas station, is to be a gasoline  
25 service station, am I correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. LEVINE: That is correct.

2 MR. SOCKWELL: And, the convenience store portion  
3 is really a subordinate use to the primary use, which is a  
4 gasoline service station, correct?

5 MS. LEVINE: Yes, we consider it to be an  
6 ancillary use. It provides additional needs for the customer  
7 as they are traveling to our facility.

8 MR. SOCKWELL: On that basis, I have a difficulty  
9 with the interpretation of the ordinance by the Acting Zoning  
10 Administrator, in that he stated that, in his letter, that the  
11 property is apparently used only, it says here, let s see

12 MR. COLLINS: At page 11?

13 MR. SOCKWELL: yeah, let me see

14 CHAIRPERSON REID: This is Mr. Collins letter.

15 MR. SOCKWELL: Oh, no, I m looking for Mr.  
16 Lorenzo s letter. Give me just a second.

17 Well, actually, what he did was, he signed he  
18 signed I think Mr. Lorenzo confirmed Mr. Collins letter on  
19 page 12.

20 CHAIRPERSON REID: Right.

21 MR. SOCKWELL: And, basically, the convenience  
22 store is a matter of right in a C-2-A Zone, therefore, a  
23 special exception lease is not necessary for the convenience  
24 store.

25 On page four of your descriptive, Mr. Collins,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you state that the Acting Zoning Administrator has interpreted  
2 this requirement to mean that structures serving only as a  
3 gasoline service station may not be located within 25 feet of a  
4 residence district, unless separated from the residence  
5 district by a street or alley, and that the convenience store,  
6 further, is a matter of right use and not required to meet the  
7 setback.

8 In the description that Ms. Levine gave, the  
9 primary use of the property is for a gasoline service station.

10 The control, and cash registers, and any sale of antifreeze,  
11 motor oil, power steering fluid, will take place in the  
12 convenience store portion of the facility, which is, in fact,  
13 the office and control point for the gasoline station, am I not  
14 correct?

15 MS. LEVINE: Yes, you are correct. The cashiers  
16 operate inside the convenience store. However, gasoline sales  
17 can occur at the pump.

18 MR. SOCKWELL: True, but gasoline sales will also  
19 occur, and will be other products generally sold in the  
20 convenience store that deal with automobiles, will be sold  
21 within the convenience store. And, if the convenience store  
22 portion of the operation were to be proven unsuccessful and  
23 closed, what would be left would be a gasoline service station,  
24 which cannot operate without the part of the facility that is  
25 within the building. Am I not correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. LEVINE: It could be easily adapted to  
2 operate without the convenience store.

3 MR. SOCKWELL: But, as it is designed, it is not  
4 designed to be adapted, it is designed as presented, am I not  
5 correct?

6 MS. LEVINE: That is correct.

7 MR. SOCKWELL: Okay.

8 So, what I m saying is that, if we go to Section  
9 2302.2 of the ordinance, no portion of the structure or  
10 premises to be used for any of the uses listed in 2302.1 shall  
11 be located within 25 feet of a residence district, unless  
12 separated from that residence district by a street or alley.  
13 The alley actually does not separate the property, it intrudes  
14 upon the property, but in reality it doesn t separate the  
15 residence district from the property completely. Therefore, I  
16 think that it is not effectively a separation.

17 And, I believe that the Zoning Administrator has  
18 assumed that the convenience store acts independently of the  
19 gasoline station function, which it really does not. It is  
20 part of the gasoline station function building that is devoted  
21 to convenience store use, that building being the principal  
22 point of control of the pump activities.

23 Now, although all pumps allow credit card sales,  
24 and some actually allow cash sales, the convenience store is  
25 primarily the control building for the facility, and will also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 operate for the sale of additional automobile-oriented  
2 products, as well as the convenience store elements that would  
3 be in incorporated within it.

4 And, just to go a little bit further in  
5 definition, Webster s Third New International Dictionary states  
6 that premises is a can be considered land conveyed by deed,  
7 or property and the building on it. And, in Section 2302, the  
8 term premises is used specifically within the definition  
9 requiring the 25-foot separation. And, on that basis, I have  
10 trouble with the Zoning Administrator s interpretation of  
11 things, and the design clearly places portions of the building  
12 within 25 feet of the residence district. What we don t want  
13 to do is have an interpretation of the ordinance that is loose  
14 enough to prevent being able to effectively enforce the statute  
15 as it is written, in the circumstance where you have a facility  
16 that carries a dual purpose, but the primary purpose is in  
17 conjunction with the rebuilding of the facility as a gasoline  
18 service station. That s my principal comment on that.

19 MR. COLLINS: May I respond, because what you ve  
20 raised, Mr. Sockwell, are legal points and I would like to  
21 respond appropriately.

22 MR. SOCKWELL: I would like for you to.

23 MR. COLLINS: You ve raised several issues about  
24 the location of the convenience store within 25 feet. If you  
25 look at the map at page 14, you will see the outline that Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Prakash has described where we inscribed a 25-foot setback line  
2 to allow the make sure that the above-grade improvements met  
3 the letter of the regulation.

4 And, there is an alley which separates this  
5 property from the adjacent residential area, and we took the  
6 using a compass with a 25-foot radius, we drew marks around and  
7 connected the arcs to create this 25-foot setback. So, we have  
8 done what and the Zoning Administrator has reviewed this, and  
9 has reviewed this set of plans, and has made the ruling in the  
10 letter that you ve referenced.

11 The convenience store could be built, we could  
12 do this in stages, we could build the convenience store today  
13 without even coming here, and we could sell auto products, we  
14 could sell anything. There s nothing in the regulations which  
15 governs what you can sell in a convenience store. We could  
16 build that today. We could then come back here for special  
17 exception to add one more dispenser to the dispensers we have  
18 today and to decrease the without even asking you to decrease  
19 the size of the canopy.

20 He has made his ruling that this what we have  
21 gone forward with. We have used the certification method for  
22 this case, but as we do in all our cases we confirm the ruling  
23 with the Zoning Administrator. We must abide by what he tells  
24 us.

25 The language in the regulations is the same

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 language that has existed in the regulations since May 12,  
2 1958, and has been interpreted this way since that time. We  
3 did attach two other cases for this that allowed the expansion  
4 of this station, two post- 58 orders, order Appeal No.  
5 626936272, and then Application No. 12916.

6 The relief that we are requesting in here is  
7 identical to the special exception relief that we requested, or  
8 Exxon requested, back in 1961 and 1979. If, Mr. Sockwell, what  
9 you are saying is that because the land is within 25 feet of a  
10 residence district then what you are suggesting is that we  
11 would also have to apply for a variance, to have a variance  
12 from the 25-foot requirement because the land is less than 25  
13 feet from a residence district, unless separated therefrom by a  
14 street or alley, which some of it is.

15 MR. SOCKWELL: Yes.

16 MR. COLLINS: You ll notice in the 1979 order,  
17 there was no request for a variance, and no application for a  
18 variance, and no variance relief granted. In 1961, there was  
19 also no variance relief requested nor granted, and the  
20 application was approved.

21 The interpretation of the regulations has been  
22 consistent since that time.

23 MR. SOCKWELL: Mr. Collins, if the regulation  
24 states structure or premises, does it not separate the  
25 structure and the premises into two elements, not necessarily

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 being one and the same, but being interpreted as inclusive of  
2 both structure and land?

3 MR. COLLINS: The Zoning Administrator is charged  
4 by law, it was Reorganization Order No. 55, with interpreting  
5 the Zoning Regulations. We must follow what he has  
6 interpreted. We have to go with what he said. The regulation  
7 for this site has been interpreted consistently since May 12,  
8 1958, including the 1961 approval and the 1979 approval.

9 MR. SOCKWELL: Okay. Accepting the Zoning  
10 Administrator s statement as being correct, would you, as an  
11 attorney, by definition, a land-use attorney, believe that  
12 structure and premises mean exactly the same thing?

13 MR. COLLINS: I am bound by the interpretation of  
14 the Zoning Administrator.

15 MR. SOCKWELL: Okay.

16 MR. COLLINS: If what you are suggesting

17 MR. SOCKWELL: Okay, that s fine, Chris, you  
18 don t have to go any further.

19 MR. COLLINS: let me just go a little beyond  
20 that.

21 If you look at the pattern of the location of  
22 gasoline stations, they are usually on arterials in Washington,  
23 N. Capitol Street, Florida, Georgia, Wisconsin, all the major  
24 arterials. All those arterials have a zoning pattern that has  
25 the C-2-As, typically it s a C-2-A Zone that s very shallow,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that s one lot deep, with residential behind. It s that way  
2 throughout the city.

3 If what you are suggesting is that we need to  
4 apply for a variance every time we put a gas station in place,  
5 or expand a gasoline station, you d have a pattern of asking  
6 for the special exception that was designed to apply to  
7 gasoline stations, plus a variance.

8 MR. SOCKWELL: It wouldn t be every single, it  
9 wouldn t be applied only to gas stations, but it would be  
10 applied to property and designated use. The parking on the lot  
11 can t be differentiated between service station uses and  
12 strictly convenience store uses, depending upon what one might  
13 come there to do, but the way the ordinance is written and,  
14 perhaps, the way that it is interpreted, are not necessarily  
15 the same, if one tries to take the ordinance in a more liberal  
16 interpretation, strictly for the purposes of applying the rule.

17 But, I am just concerned that it tends to allow a use to exist  
18 that if changed from the convenience store portion, if the  
19 convenience store portion went away, the gasoline station would  
20 still be operating out of that building. The cash register  
21 would still be there, the pump controls would still be there,  
22 and any other necessary equipment that s not located in an  
23 independent kiosk, which could be built on the site if the  
24 convenience store building were removed or had not existed at  
25 all, and all of that is going to take place in a building that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 physically extends to within less than 25 feet of the  
2 separating alley, if we choose to call it that.

3 MR. COLLINS: I ll be the first to admit that the  
4 Zoning Regulations are not a model of clarity.

5 MR. SOCKWELL: True.

6 MR. COLLINS: And, that s really the reason that  
7 zoning lawyers exist.

8 MR. SOCKWELL: True.

9 MR. COLLINS: And, here we have consistent  
10 interpretation from the Office of the Zoning Administration  
11 going back through any number of holders of that position  
12 throughout the last 41 years.

13 MR. SOCKWELL: Well, at least the several cases  
14 that you cited were consistent with your argument. I don t  
15 know that under the Zoning Ordinance in the last 41 years  
16 they ve all been decided that way

17 MR. COLLINS: No.

18 MR. SOCKWELL: but I m sure that you know more  
19 about that than I.

20 MR. COLLINS: The most recent holder of the  
21 position before Mr. Johnson has certainly interpreted it that  
22 way. Mr. Johnson has only been in office for about 45 days and  
23 has not had, to my knowledge, a case involving a gasoline  
24 station.

25 However

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: And, Mr. Lorenzo s primary  
2 expertise was that of engineering, not of zoning.

3 MR. COLLINS: However, he was the Acting Zoning  
4 Administrator.

5 MR. SOCKWELL: At the time.

6 MR. COLLINS: And, had the authority to make that  
7 decision.

8 MR. SOCKWELL: And, as Mr. Johnson, who has been  
9 there for hardly any time at all, would be then the designated  
10 authority, whether he understood the Zoning Ordinance or not.

11 MR. COLLINS: At the time his decision was made,  
12 Mr. Johnson was not with the District of Columbia government.

13 The building let me get back to the building,  
14 the building does meet the setback requirement that you have  
15 suggested. It is separated by a street or alley from the  
16 adjacent residential district.

17 And so if but, I do agree with you if the  
18 convenience store were to shut down and Exxon were to build  
19 service bays in that building, Exxon would have to come back to  
20 this Board, there s no question about that.

21 MR. SOCKWELL: And, even if they didn t build  
22 service bays, they just have one big office.

23 MR. COLLINS: They had one big vacant structure,  
24 and they had the I don t think, and I can ask Ms. Levine to  
25 look into this, but I don t think that if for some reason the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 convenience store shut down and became totally vacant that  
2 Exxon cash register operation would expand to fill that whole  
3 building. I just don t think that would occur.

4 CHAIRPERSON REID: All right.

5 MR. SOCKWELL: Where are the cash registers  
6 located within the building, by the way?

7 MS. LEVINE: The cash registers are fairly  
8 central to the building.

9 MR. SOCKWELL: Okay.

10 CHAIRPERSON REID: All right. Let me see, you  
11 may sit back over there now. All right.

12 Do you want to go back now so that I can bring  
13 up the other people?

14 Is there anyone here from the ANC, and I don t  
15 think we have any government reports. I don t think so.

16 MR. GILREATH: Madam Chair, if we can anticipate  
17 that in the future OP may be able to start giving us reports?  
18 I presume this is a result of being short staffed.

19 CHAIRPERSON REID: I hope so, and I ve been  
20 assured by the Zoning Director that with the new, more  
21 efficient policies, and computers, and people being put in  
22 place, that we would be able to start getting them.

23 MR. GILREATH: It would be helpful

24 CHAIRPERSON REID: Yes, it would

25 MR. GILREATH: in cases like this.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: I agree.

2 Yes, sir.

3 Whereupon,

4 JAMES BERRY

5 was called as a witness by Counsel for the Applicant, and  
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 MR. BERRY: Good morning. My name is James  
9 Berry, I m the Chairman of ANC-5C. I should say to you that  
10 the ANC-5C considered this and other matters on Saturday,  
11 October 9<sup>th</sup> at a public meeting. Unfortunately, we lost our  
12 quorum, due to an emergency situation on the part of one of our  
13 members just before we were going to vote on this matter.

14 So, I m not so sure if now is the appropriate  
15 time for me to testify on behalf of the ANC, but I wanted to  
16 testify for my single-member district and also as the President  
17 of Bates Area Civic Association.

18 CHAIRPERSON REID: Well, at this time well, I  
19 guess you can do both at the same, but basically this is the  
20 ANC and as a single-member district representative you may  
21 testify.

22 MR. BERRY: Okay.

23 Well, I wanted to say generally that we had, as  
24 I said, ANC-5C considered this matter and we had a good deal of  
25 debate about it, and largely our concerns involved the public

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 safety concerns, lighting, what we thought might be a situation  
2 of loitering and those kinds of issues.

3 We were also concerned about the actually, the  
4 prospect of alcohol being sold at that location. There were  
5 certain concerns raised about that, and we have since that  
6 meeting I talked with Mr. Collins and others and we've been  
7 assured that those won't be issues.

8 I should also say that about ten years ago I was  
9 a part of a group that opposed a similar action on the Exxon  
10 station on the southwest corner, southeast corner, the one  
11 about which we spoke, and at that time we were concerned about  
12 loitering, we were concerned about the drug activities, we were  
13 concerned about traffic, we were concerned about economic  
14 development, and just a whole range of issues. We lost.

15 But, I must say to you that Exxon was  
16 responsible in adhering to all of the commitments that they  
17 made to us in terms of maintaining the place, making sure that  
18 the lighting was appropriate, making sure that the convenience  
19 store, which we thought was going to be an attraction to drug  
20 dealers and open to drug users and others with people hanging  
21 out, I mean, none of that happened.

22 And, I say that to say that we approach it with  
23 the same faith that they will be serious and committed to the  
24 goal of making this work, and making it work in a user friendly  
25 way, not just for the customers, but for those of us who live

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 around it.

2 But, I just wanted to lend my support to the  
3 efforts, although I know that we didn't meet the minimum  
4 requirements with great weight, I wanted to share that  
5 experience with you and hope that it might inform your  
6 decision.

7 CHAIRPERSON REID: Thank you.

8 MS. PRUITT: Excuse me, sir, could you identify  
9 the civic organization you are with again, please?

10 MR. BERRY: I'm sorry, I'm the President of the  
11 Bates Area Civic Association.

12 MS. PRUITT: Base?

13 MR. BERRY: Bates, B-A-T-E-S.

14 MS. PRUITT: Bates.

15 MR. BERRY: Bates Civic Association, which is  
16 bounded by Florida Avenue, N. Capitol Street, New Jersey Avenue  
17 and New York Avenue.

18 CHAIRPERSON REID: And, you are testifying in  
19 support?

20 MR. BERRY: Yes, essentially.

21 CHAIRPERSON REID: On behalf of the Bates Civic  
22 Association

23 MR. BERRY: Yes.

24 CHAIRPERSON REID: as well?

25 MR. BERRY: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Now, do you have anything from  
2 the association that authorizes you to speak on behalf of that  
3 organization?

4 MR. BERRY: I don t have anything in writing, I  
5 can do that. I m the President of the organization.

6 CHAIRPERSON REID: Okay, I would appreciate that,  
7 because we need something in writing for the record.

8 MR. BERRY: Sure, we can do that.

9 CHAIRPERSON REID: And, since the next segment  
10 would be persons or parties in support, then I guess you just  
11 ditto that for the Bates Street Civic Association

12 MR. BERRY: Sure.

13 CHAIRPERSON REID: is that correct?

14 MR. BERRY: Yes.

15 CHAIRPERSON REID: All right, thank you.

16 MR. BERRY: Okay.

17 CHAIRPERSON REID: Any other persons in support  
18 of the application, please come forward. I m sorry, sir, can  
19 you please come back up, Mr. Sockwell had a question.

20 MR. SOCKWELL: You are the single-member district  
21 representative, ANC single-member district?

22 MR. BERRY: 5C-01.

23 MR. SOCKWELL: 5C-01.

24 And, as your experience the facility at the  
25 southeast is more than well run?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BERRY: That s my experience, yes.

2 MR. SOCKWELL: Uh-huh.

3 MR. BERRY: And, I was going to add there, one of  
4 the things we were concerned about at that time also was the  
5 loss of mechanical services. I mean, that was one of the few  
6 places where they had where you could get a tire changed, da,  
7 da, da, da.

8 But, they ve really done, I think, an adequate  
9 job of maintaining and addressing the concerns that we raised,  
10 and previously before the Gasoline Advisory Control Board at  
11 that time.

12 MR. SOCKWELL: Okay.

13 That was my only question.

14 CHAIRPERSON REID: Okay.

15 Persons or parties in opposition to this  
16 application, please come forward.

17 MS. ROBINSON: I m not speaking for or against,  
18 do I just speak after him?

19 CHAIRPERSON REID: You can come up right now and  
20 speak, you are in between, so I ll let you speak between the  
21 support and the opposition.

22 Whereupon,

23

24 was called as a witness by Counsel, and having been first duly  
25 sworn, testified as follows:

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

## DIRECT EXAMINATION

1  
2 MS. ROBINSON: Good morning. I am Ms. Florence  
3 A. Robinson, a D.C. taxpayer and voter, who have lived on  
4 Florida Avenue, N.W., for many years, and will object to  
5 Exxon s application to operate a convenience store on Square  
6 31, Lot 48, known as 5 Q Street, N.W., if, and I repeat, if  
7 alcohol if Exxon plans to sell any kind of alcoholic  
8 beverage.

9 CHAIRPERSON REID: Ms. Robinson, first give us  
10 your address.

11 MS. ROBINSON: I m sorry, beg your pardon?

12 CHAIRPERSON REID: Give us your address.

13 MS. ROBINSON: I m sorry, 45 Florida Avenue, N.W.

14 CHAIRPERSON REID: Okay.

15 Now, Ms. Robinson, in looking over your letter,  
16 basically, the issue was in regard to them selling alcoholic  
17 beverages and I think that the single-member district  
18 representative established for us that he had had conversation  
19 with Exxon and they had assured them that that would not be the  
20 case.

21 MS. ROBINSON: Right, and my only reason for  
22 wanting to bring this directly before you, hearing Mr. Collins  
23 say that they could build the could have built the  
24 convenience store, and also learning that people have come to  
25 you for variance, I want this body to know that I personally,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and those that I spoke with, feel that at no point, not only  
2 Exxon, but no establishment should ever be granted the right to  
3 sell any type of alcoholic beverage, be it beer, wine, or any  
4 name that has alcohol in it, on the same premises.

5 CHAIRPERSON REID: Okay.

6 Now, Ms. Robinson, you are getting into a lot of  
7 different things. One is that we are only considering this  
8 application and what they intend to do. Okay.

9 Now, as far as subsequent applications are  
10 concerned, and for subsequent uses, then that is something that  
11 will be taken up at that time, it cannot be taken up here, and  
12 then also, I don't know if that issue will probably be  
13 presented to the ABC Board, rather than the BZA. So, I think  
14 that what I'm hearing is that if there is no alcoholic  
15 beverages being sold or transacted by this Applicant than you  
16 do not have any objection.

17 MS. ROBINSON: Right, and I also understand they  
18 are taking no additional homes. If those two things don't  
19 exist, I have no objection whatsoever.

20 CHAIRPERSON REID: Thank you.

21 Thank you very much for your testimony.

22 MS. ROBINSON: And, thank you for hearing me.

23 CHAIRPERSON REID: Thank you.

24 MR. SOCKWELL: Ms. Robinson, if they post if  
25 they ever decide to sell alcoholic beverages, the premises will

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have to be posted.

2 MS. ROBINSON: Oh, by the ABC Board.

3 MR. SOCKWELL: By the ABC Board. So, there would  
4 be notice, and I m sure the ANC would be well aware of it.

5 MS. ROBINSON: Okay, so I would get the same type  
6 of application notice that I got on this if they decide they  
7 want to sell it.

8 MR. SOCKWELL: Yes.

9 MS. ROBINSON: Okay. Thank you very much.

10 Whereupon,

11 LEE ANTHONY BROWN

12 was called as a witness by Counsel for the Opposition, and  
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 MR. BROWN: Good morning, my name is Lee Anthony  
16 Brown. I m a homeowner at 16 Quincy Place, N.W., Lot No. 29,  
17 Square 3100. My property adjoins the lot right here.

18 I d like to bifurcate, I guess, my opposition.  
19 I do have very grave reservations for the convenience store,  
20 but I am totally opposed to an additional fuel dispenser, I  
21 guess the 706 exception that Exxon seeks.

22 As I just stated, my house is right next to the  
23 lot, and presently I believe that there will basically I have  
24 structural soundness concerns, and I do believe the presence,  
25 the construction, the proposed construction on the lot,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 building the convenience store, demolishing the present  
2 asphalt, lifting up the canopy, and certainly rotating the  
3 tanks underground, could affect the structure of my house, and  
4 certainly the property.

5 And, you know, as it stands I feel that we  
6 should, you know, delay granting any sort of exemption until we  
7 can determine, and I guess maybe by an independent engineer or  
8 some sort of structural examiner, on whether or not my property  
9 is going to be affected by the construction that s going to go  
10 on there.

11 Also, I have noise pollution concerns. There is  
12 already an Exxon in the southwest corner of that intersection,  
13 and I don t want another, you know, convenience store and gas  
14 station in that area, where you are going to have so many  
15 people driving in, driving out, you have these cars, these huge  
16 radio sound systems, my house is right next to it, and, you  
17 know, I think a neighborhood can only take so many, you know,  
18 so many gas stations in the area.

19 Basically, I don t want to be here three years,  
20 six years or nine years from now complaining about the noise  
21 that this additional convenience store has generated, so I do  
22 think that we should, you know, delay granting an exemption  
23 until we can find out what s going to go on.

24 I do question Mr. Morris concerns that an  
25 additional fuel dispenser would create minimal increase in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 traffic to this area. I dispute that wholeheartedly, simply  
2 because you have the N. Capitol thoroughfare, you've got  
3 Florida Avenue that leads into New York Avenue, which is 50,  
4 and that intersection is roughly three quarters of a mile from  
5 New York Avenue and 395, as well as all the other sort of  
6 commercial development that's leading through U Street and  
7 into, you know, other parts of the city.

8 So, that's a problem for me. I just don't want  
9 to be here three years from now saying, hey, we let them come  
10 here, they had there are a lot of short-term benefits  
11 associated with having businesses in our neighborhood, but I  
12 think that the Board should exhibit a certain degree of  
13 reservation to find out what type of business.

14 As it stands, we have one, two, three, I think  
15 four, possibly five, gas stations within a six-block area. I  
16 don't think any of you want six gas stations, four gas station,  
17 within your homes. And, you know, I understand that they are  
18 business, they can do whatever they want on their land, but I'm  
19 totally opposed to an additional fuel dispenser.

20 You know, and I do have concerns about the type  
21 of construction that's going to occur on that lot and how it  
22 could affect the structural soundness of my house, more than  
23 anything else.

24 I think that's and that was one thing I really  
25 wanted to say, is that I think the City has made a commitment

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 toward making New York Avenue a technology corridor shall we  
2 say, and I certainly believe that an additional gas station in  
3 this area would all but, you know, make our neighborhood the  
4 petroleum corridor, if you will. And, you know, I m just  
5 asking you to delay granting an exemption until we can find  
6 out, number one, how much more noise are we going to receive,  
7 because we are; and then two, you know well, really, number  
8 one, is it going to affect my property adversely, and I m  
9 saying yes, it will affect everyone, including Ms. Robinson,  
10 including Lee Brown s property, including everyone who has a  
11 lot that is adjacent to that sort of construction that is going  
12 to go on. Two, I just don t think it s really the right sort  
13 of commercial development that this neighborhood is seeking. I  
14 think it would entrench the sort of gas station, truck stop  
15 mentality that that neighborhood is presently facing. Right  
16 now, there s emerging commercial development within that area,  
17 and I think the gas station will just, basically, create a here  
18 today, gone tomorrow sort of mentality in that area.

19 That s it, really.

20 CHAIRPERSON REID: Okay.

21 MR. SOCKWELL: What is your name again, sir?

22 MR. BROWN: Lee Anthony Brown.

23 MR. SOCKWELL: Mr. Brown.

24 Mr. Brown, which home do you own, and what is  
25 your lot number?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BROWN: It s 31 the lot number is 29, and  
2 the square is 3100.

3 MR. SOCKWELL: But, your address is

4 mR. BROWN: 16 Quincy Place, N.W.

5 MR. SOCKWELL: Okay, and you abut the property on  
6 the

7 MR. BROWN: The north side. I don t think I m  
8 due north. There s a utility pole I think on the there s a  
9 utility pole and I believe that corresponds with Lot No. 27,  
10 and then there s Lot No. 28, and then there s Lot No.

11 MR. SOCKWELL: Twenty-nine.

12 MR. BROWN: yes, I think so.

13 MR. SOCKWELL: So, you are the third house along  
14 Quincy?

15 MR. BROWN: Yes.

16 MR. SOCKWELL: So, that would make you Lot No.  
17 29, okay.

18 MR. GILREATH: Could the witness show on that map  
19 approximately, are you north of the buffering area, or behind  
20 the

21 MR. SOCKWELL: It s behind the trees.

22 MR. BROWN: Right here.

23 MR. SOCKWELL: So, you are behind, say, the  
24 second tree from the right?

25 MR. BROWN: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: Which would be approximately where  
2 you are by my estimation.

3 And, you have the alley between you and

4 MR. BROWN: Actually, I think we need to  
5 establish one thing. There is a phantom alley, a paper alley  
6 if you will.

7 MR. SOCKWELL: Well, it s obviously land locked,  
8 but

9 mR. BROWN: There s no alley. If there was a  
10 land lock easement, it doesn t exist anymore, and it s safe to  
11 assume that the previous homeowners, my neighbors, and my  
12 predecessor, or someone for them, acquired, they basically  
13 assumed access. And so, you basically have Exxon s fence,  
14 maybe a few inches, maybe 18 inches, I m not sure, and my  
15 fence.

16 I was doing some work in my yard, and I saw, I  
17 guess, a cut-down telephone pole in my yard, kind of right  
18 along the line with the corner telephone pole, so I guess it s  
19 safe to assume that my lot encroaches on that public space.  
20 So, when you start talking about that 25-foot radius, maybe,  
21 you know, it should be not at the point of my present lot, but  
22 at the point of the end of the alley.

23 MR. SOCKWELL: Does your how long have you  
24 owned the property?

25 MR. BROWN: I ve owned the property about 45

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 days, a month and a half, two months.

2 MR. SOCKWELL: Does your deed appear to include  
3 does your described plat for your deed show that public space?

4 MR. BROWN: Yes, it does.

5 MR. SOCKWELL: Okay.

6 So, you actually do have an encroachment, and  
7 probably some of the other neighbors fences align with your  
8 own, which means it s public space, although it may be  
9 effectively in your yard, probably still exists.

10 MR. BROWN: Yes.

11 MR. SOCKWELL: Okay.

12 So, as far as from the surveyor s standpoint  
13 it s an alley, and it is, therefore, a physical barrier between  
14 your property and the Exxon station, regardless of where your  
15 fence is.

16 MR. BROWN: Yes, sir.

17 MR. SOCKWELL: The other question is, you ve had  
18 the property only 45 days, so you have no experience with the  
19 previous gas station use that was there.

20 MR. BROWN: I

21 MR. SOCKWELL: Not as a property owner.

22 MR. BROWN: yes, sir.

23 MR. SOCKWELL: You may have purchased gas there.

24 MR. BROWN: I lived about three blocks away  
25 previously for five years.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: Okay, so it wouldn't have made a  
2 difference. All I'm trying to get to is that your two  
3 things, your question about the additional fuel dispenser,  
4 generally speaking, it would be somewhat difficult to ascertain  
5 the increase in traffic that a fuel dispenser would create,  
6 because more often than not if a person needs gas he will queue  
7 behind whatever cars are at the dispenser, or will go look for  
8 another gas station. That may not be a particular problem.

9 The noise issue is one that they apparently have  
10 attempted to deal with by leaving the natural buffer of trees,  
11 which they might be in a position to enhance with other lower  
12 denser vegetation, depending upon how they respond to you.

13 The structural concerns that you mentioned, as  
14 an architect I would think the structural concerns that you  
15 have are virtually minimal, the reason being that the tanks are  
16 well outside of an area of influence if you drew a 45 degree  
17 angle from your basement perimeter at the bottom of the  
18 basement, so you would find that that is sufficient for WMATA  
19 in any construction near metro tunnels and should be consistent  
20 with a line of influence for your own property.

21 The building that would be the convenience store  
22 is going to be on a mat foundation, that is a slab on grade.  
23 They are not going to be digging anything out of there that's  
24 going to destabilize your property.

25 Do you have a full basement?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BROWN: Yes, I do. Actually, when I bought  
2 the house the inspection was contingent, I mean, actually  
3 buying the house was contingent upon them filling a sink hole,  
4 and, you know, I m not an architect, I m not an engineer, and  
5 that s the reason why I m here. That s simply it, really.

6 MR. SOCKWELL: Those structural concerns probably  
7 are minimal.

8 MR. BROWN: Okay.

9 MR. SOCKWELL: Unless they decide to put an  
10 office building up there in the future, then you might be very  
11 concerned.

12 CHAIRPERSON REID: And, we ll also, since you are  
13 not a party to the case, the issue that you raised we ll make  
14 sure that when the Applicant comes up for closing remarks that  
15 we will further determine the intent and to have them respond  
16 to some of the concerns that you have raised.

17 MR. BROWN: Well, I think, since we I don t  
18 think we can truly get a grasp on the increase in traffic, but  
19 I think we all live in the District of Columbia, and we ve gone  
20 in and out of the District of Columbia, and we know I think  
21 it s probably best to assume the worst when you are dealing  
22 with traffic.

23 So, when you start talking about, you know, allowing for  
24 items such as a fuel dispenser that can increase traffic, we  
25 are sure to assume the worst. I ve lived in that area for five

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 years, and traffic at times is ridiculous, and I can see why.  
2 Their building an additional station on diagonal lots is  
3 because it s extremely difficult to make a left on N. Capitol  
4 if you are going southbound or northbound, and I can see their  
5 argument that these are complementary stations.

6 For myself, you know, as a homeowner in this  
7 area, you are saying to yourself, wow, there s a gas station at  
8 P and Florida Avenue, okay, it s Amoco, okay, there s an  
9 independent gas station on there s, I think, another Amoco on  
10 Florida and Rhode Island and 3<sup>rd</sup>, there s another one around the  
11 corner, and there s another one around the corner, you say, my  
12 God, how much gas can you possibly have at your disposal as a  
13 homeowner. You know, there are a lot of other people that are  
14 coming in and out of this area here, and I m saying, okay,  
15 cool, they can do this, you know, as it stands, let them, if  
16 they want to build a new convenience store with three fuel  
17 dispensers, let them do it, but don t let them, you know, have  
18 an exemption for another fuel dispenser. That s all I m  
19 saying. That s my opposition.

20 MR. SOCKWELL: mr. Brown, you do not feel that  
21 the convenience store itself would be a greater increase  
22 would provide a greater increase in traffic than one fuel  
23 island?

24 MR. BROWN: Actually

25 MR. SOCKWELL: The convenience store itself

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 presents an entirely different promotional opportunity and will  
2 certainly change the entire appearance of the site from a  
3 visible standpoint to oncoming traffic in any direction.

4 MR. BROWN: I think you are totally right, but  
5 this hearing isn't about opposing a convenience store, correct?

6 MR. SOCKWELL: No.

7 MR. BROWN: And, I do think

8 MR. SOCKWELL: The convenience store is part of  
9 the gas station.

10 MR. BROWN: actually, I do think you raised  
11 some very valid points, on point of sale, and, you know, if  
12 they are going to, you know, build additional fuel dispensers,  
13 and if they don't have the ability to have point of sale at the  
14 pumps, then, you know, I think the issue that you raised about  
15 structure and premises are very valid.

16 But, I think that the convenience store will  
17 increase the number of you know, the number of persons that  
18 will come to that lot, and it, of course, will create greater  
19 noise for me and my neighbors. However, they are seeking  
20 exemption under 706, and that's the number of fuel dispensers.

21 And, as I said initially, I do have grave reservations about  
22 what they are doing, but I am totally opposed to the 706  
23 exemption.

24 CHAIRPERSON REID: All right, thank you very much  
25 for your testimony.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BROWN: All right.

2 CHAIRPERSON REID: Closing remarks by the  
3 Applicant?

4 Sir, do you have a question? If so, you can ask  
5 staff.

6 MR. CREDIT: Okay, I m sorry, Madam Chair. I  
7 just wanted to know if it was possible, I m not one of the  
8 noted testifiers, but if I could address the body I would  
9 appreciate it.

10 CHAIRPERSON REID: Okay.

11 Well, what are you, in support or in opposition?

12 MR. CREDIT: I would probably have to say it s in  
13 opposition, in opposition, but I m open.

14 CHAIRPERSON REID: All right.

15 Mr. Collins, I m sorry, you can come forward.  
16 You have a right to speak, yes, definitely.

17 Sir, you have to be sworn in.

18 MS. PRUITT: Raise your right hand.

19 Okay, thank you, please be seated and continue.

20 CHAIRPERSON REID: Okay, now, when you were  
21 asking the recorder, what did he say?

22 MR. CREDIT: That I needed to address the body.

23 CHAIRPERSON REID: Right, it s usually to the  
24 staff, but okay.

25 Go ahead.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Whereupon,

2 KEITH CREDIT

3 was called as a witness by Counsel for the Opposition, and  
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 MR. CREDIT: Thank you, Madam Chair, and members  
7 of the body. As I had mentioned earlier, I was not a noted  
8 testifier to this hearing. My name is Keith Credit, and I m  
9 with the North Capitol Neighborhood Development CDC. Our  
10 office is at 1330 N. Capitol Street, just a half a block north  
11 of the intersection of New York Avenue and N. Capitol Street.

12 CHAIRPERSON REID: Were you here for the  
13 presentation?

14 MR. CREDIT: No, ma am, I was not.

15 CHAIRPERSON REID: Have you looked at the record?

16 MR. CREDIT: Have I looked at the record?

17 CHAIRPERSON REID: Are you aware of the essence  
18 of the presentation that was made by the Applicant this  
19 morning?

20 MR. CREDIT: No, ma am, I was not.

21 CHAIRPERSON REID: All right. You can go ahead  
22 and testify, unless the purpose of the hearing is, in all  
23 fairness, to give everyone an opportunity to be able to  
24 present, and it may well have been that some of the testimony  
25 made here this morning by the Applicant would have clarified

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for you some of the issues that you might have. All right.

2 MR. CREDIT: Thank you, Madam Chair, and I  
3 certainly appreciate the concerns expressed in the short time  
4 that I was here, and I am aware of Mr. Brown, although he and I  
5 have not met we have had a couple of conversations, I m fairly  
6 new to North Capitol Neighborhood Development, but it s obvious  
7 when one travels north on N. Capitol Street towards the  
8 intersection that there is a very strong presence of the  
9 Applicant.

10 And, as I had mentioned when you first asked me,  
11 was I in opposition, and I maybe waffled a little bit in terms  
12 of saying that I am open to some discussion or conversation.  
13 And, as you all may know, CDCs in their missions attempt to  
14 work with bridging gaps between businesses and residences and  
15 the city. And, I would have to say from a personal standpoint  
16 I would have a concern about an over abundance of any  
17 particular type of use, and, in particular, one such as this,  
18 and some of the implications as it would impact on traffic  
19 patterns and the environment.

20 However, I would also like to just leave for the  
21 record some thoughts or some suggestions for the Applicant and  
22 the body, and I mean this in the spirit of trying to work with  
23 you and respecting your rights as a property owner and as an  
24 obviously large, viable business in this area.

25 And, let me just preface it by saying, I would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have hoped that there had been some background on the impact  
2 environmentally and traffic-wise that occurred in the area when

3 I m assuming this now in the past both facilities were  
4 operational. And, if there is any empirical data that would  
5 make clear what those impacts are, I would hope and assume that  
6 that s clearly stated in the record.

7 But, if I were to just look at the two  
8 facilities separately, I think there could be an approach that  
9 could at least personally satisfy me, and I guess I m just  
10 speaking for myself and in part for the organization, and that  
11 pertains to with the southeast corner facility, which is  
12 currently operational. I had asked a question of someone else  
13 here

14 CHAIRPERSON REID: Wait one second, this is the  
15 facility.

16 MR. CREDIT: concerning the northwest facility.

17 CHAIRPERSON REID: Right, so we cannot, we  
18 cannot, in this particular hearing, be concerned about the  
19 other Exxon station on the southeast corner, because this  
20 hearing is not for that particular site. We can only, and I  
21 mean specifically, deal with the site on the northwest corner  
22 for which we are basically addressing at this time, only.

23 MR. CREDIT: I appreciate that, Madam Chair, and,  
24 therefore, I could not make any, even an indirect reference to  
25 the currently operational facility? I can deal with them

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 separately on that.

2 CHAIRPERSON REID: All right.

3 MR. CREDIT: But, it takes somewhat away some of  
4 the concerns that I would express, so I will just leave this  
5 simple thought with the Applicant, in light of the extensive  
6 presence that you all have in that specific part of the  
7 commercial corridor, would there be, has there been  
8 consideration for, perhaps, making available or being open to  
9 discussion with the existing businesses, the CDCs and other  
10 property owners, means by which that portion of the corridor  
11 could be improved from a physical standpoint? And, would you  
12 also be open to considering, instead of building a convenience  
13 store at the northwest facility, of, perhaps, looking at some  
14 of the vacant properties in that block and putting the  
15 convenience store there, perhaps, as a joint venture or just  
16 stepping out individually?

17 CHAIRPERSON REID: The question that you are just  
18 are kind of like throwing out, because obviously you cannot  
19 direct the question to this Board, and that is a matter that I  
20 would think that I don't think that you were precluded from  
21 having been able to discuss that with the Applicant prior to  
22 this hearing.

23 MR. CREDIT: Okay.

24 CHAIRPERSON REID: Is that not correct?

25 MR. CREDIT: I would tend to agree, Madam Chair,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and if I m speaking out of order I

2 CHAIRPERSON REID: Before or after, but that is,  
3 again, that is not the issue before us today. We are only  
4 dealing with the site, the site on the northwest corner, and  
5 issues that are germane to that particular site. And, anything  
6 else you certainly have a right to discuss with them outside of  
7 this hearing, but that does not pertain to the hearing.

8 MR. CREDIT: Okay, and I will certainly take that  
9 and hopefully can continue some dialogue with the Applicant,  
10 and, again, I appreciate the indulgence of the Commission, and  
11 I apologize if I went beyond the scope of the hearing.

12 CHAIRPERSON REID: Thank you.

13 MR. CREDIT: Thank you.

14 CHAIRPERSON REID: Okay.

15 Closing remarks by the Applicant?

16 MR. COLLINS: Madam Chairman and members of the  
17 Board, you have heard the testimony of the Applicant,  
18 specifically, how the application meets all the enumerated  
19 requirements for special exception approval, including  
20 everything in Section 706 and Section 2302 from the  
21 Regulations.

22 We have spoken, I have spoken and other members  
23 of the team have spoken, with Mr. Berry from the ANC by  
24 telephone. Also, I want it to be known that Mr. Brown, who  
25 spoke earlier, did represent a different position to us on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 telephone. I spoke to him twice on the telephone, and Ms.  
2 Levine spoke to him once on the telephone. His opposition is  
3 based upon, today, the additional fuel dispenser and the  
4 increase in traffic that that might have. That was never once  
5 expressed to us in the several conversations that we had. In  
6 our conversations with Mr. Brown, he expressed concern about  
7 structural integrity of his property, in that he had sink hole  
8 in his backyard and was concerned about any excavation that we  
9 might have on our property that might have an impact on his  
10 property.

11 After checking with Ms. Levine, I called him  
12 back and assured him that as Mr. Sockwell mentioned on the  
13 convenience store there will only be footers going down several  
14 feet, we are not digging a below-grade cellar there. We are  
15 replacing and turning the tanks somewhat, but as Ms. Levine  
16 mentioned to me, and having checked with her structural people,  
17 that anything short of blasting in that area would not have an  
18 impact on Mr. Brown s property. I called him back and offered  
19 that we would take photographs of his property, like before and  
20 after, that we would have the geotechnical people get in touch  
21 with him to discuss this issue, that there was an existing  
22 chain link fence along the property line there, that we would  
23 replace that with a board on board fence to shield the view.

24 I do want to point out several things. This is  
25 a major intersection of two major arterials in the City. It is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 in a C-2-A Zone, and the definition of the C-2-A in the Zoning  
2 Regulations is that the C-2-A Zoning District is designed to  
3 provide facilities for shopping and business needs, housing and  
4 mixed uses for large segments of the District outside the  
5 central core. The C-2-A Districts permit development to medium  
6 proportions and are located in the low to medium-density  
7 residential areas with access to main highways or rapid transit  
8 stops. This is the epitome of a C-2-A Zone.

9 The C-2-A Zone permits a whole host of retail  
10 uses, including anything from a dry cleaners, to a car wash, to  
11 all sorts of retail uses in the zone. Those could be put as a  
12 matter of right without even coming before this Board. There  
13 are a number of uses that are more would have more potential  
14 adverse impact with no requirement for any type of the  
15 treatment that we are providing on this site.

16 The site, as was pointed out, is right down the  
17 street from Florida Avenue and New York Avenue, the  
18 intersection, another major arterial. This is a major business  
19 area of the City. It s a major transportation area of the  
20 City.

21 The only issue that would be, I guess, before  
22 this Board that Mr. Brown mentioned was the additional fuel  
23 dispenser. You have expert testimony in the record on this  
24 case from Mr. Morris concerning the lack of adverse impact from  
25 traffic. The record indicates, his testimony indicates that,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and in partial response to Mr. Credit s testimony or  
2 suggestions, the traffic that is drawn to this station will be  
3 principally from southbound N. Capitol and westbound Florida,  
4 which is wholly different, entirely different from the traffic  
5 that will be drawn to the station diagonally across the  
6 intersection.

7 So, there is you have expert testimony on the  
8 traffic and transportation issues. You have testimony on all  
9 the other sections of the Zoning Regulations and how we meet  
10 those sections of the Regulations.

11 Anything that happens on this site will require  
12 construction. We are not putting up a camping area. Anything  
13 that we do will require some construction. This will require  
14 very little below grade construction, replacing tanks and  
15 putting footers in.

16 CHAIRPERSON REID: Mr. Collins, how long do you  
17 anticipate that taking?

18 You have to come forward and get on the mike,  
19 please.

20 MS. LEVINE: Total construction takes typically  
21 between three to four months.

22 CHAIRPERSON REID: And, during that time period,  
23 are you saying that the disruption or the noise do you seek  
24 to minimize that?

25 MS. LEVINE: Absolutely, we do take efforts to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 minimize it, do the majority of our louder activities in the  
2 afternoon hours, rather than in the morning or evening, when  
3 people are trying to get some sleep, or when children are  
4 sleeping.

5 CHAIRPERSON REID: What hours well, give me the  
6 times, please.

7 MS. LEVINE: Most work, they typically mobilize  
8 around 7:00 a.m., and conclude work around 5:00 p.m.

9 CHAIRPERSON REID: I thought you just said not  
10 early in the morning.

11 MS. LEVINE: Well, they ll mobilize in the  
12 morning, hold their meetings, and then the heavier construction  
13 begins typically around 9:00, after people have left for work.

14 CHAIRPERSON REID: Oh, because that s what I  
15 wanted to know, the construction part starts at around 9:00?

16 MS. LEVINE: Correct.

17 MR. SOCKWELL: Madam Chair, the Applicant will be  
18 bound by the requirements of the building code on hours of  
19 construction and would have to apply for evening construction  
20 as a separate allowed condition of their permit.

21 CHAIRPERSON REID: You didn t Ms. Levine, did  
22 you say evenings? I think you said end at 5:00.

23 MS. LEVINE: Yes, we will not be applying for  
24 evening construction.

25 CHAIRPERSON REID: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: You said something about not  
2 affecting people s sleeping, and that gave the impression that  
3 you might be applying for night construction.

4 MS. LEVINE: No. We will not be doing any  
5 construction during that time.

6 CHAIRPERSON REID: What other things are you  
7 doing to try to mitigate any adverse impact during the  
8 construction period?

9 MS. LEVINE: Well, we will be following all  
10 regulations. As part of that, we will apply sediment and  
11 erosion control to keep the site clean, make sure that our  
12 construction is limited to our property, and not imposing on  
13 anyone s adjoining properties or the streets.

14 CHAIRPERSON REID: Okay.

15 MR. SOCKWELL: And, all of that is required under  
16 the building permit as well, those are not anything that you  
17 are offering, those are just your specific requirements to  
18 build.

19 MS. LEVINE: That is correct.

20 CHAIRPERSON REID: So, basically, you are going  
21 to just be in compliance with the existing municipal  
22 regulations in regard to construction, correct?

23 MS. LEVINE: Yes.

24 CHAIRPERSON REID: And, not necessarily offering  
25 anything more than that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. LEVINE: We are not offering anything in  
2 addition. The regulations in place are fairly strict, and  
3 require that we do respect our neighbors.

4 CHAIRPERSON REID: But, you will adhere to that.

5 MS. LEVINE: Yes, ma am.

6 CHAIRPERSON REID: Okay.

7 Mr. Collins, I understand that there has been  
8 some discussion with you, and with the ANC, and some of the  
9 other neighbors, in regard to alcohol

10 MR. COLLINS: Yes.

11 CHAIRPERSON REID: being sold or made  
12 available at that particular site.

13 MR. COLLINS: Yes. As a matter of fact, I met  
14 Ms. Robinson for the first time this morning, and she expressed  
15 that concern and handed me a copy of her letter, and I  
16 mentioned to her that as Exxon has stated in the past they will  
17 not be selling alcoholic beverages at this site.

18 CHAIRPERSON REID: Is there any station where  
19 there is alcoholic beverages actually sold at the gas station?

20 MR. COLLINS: I m not familiar with any.

21 CHAIRPERSON REID: I mean, Ms. Levine, are any of  
22 your stations, that you know of, set up to dispense alcoholic  
23 beverages?

24 MS. LEVINE: None that I m aware of.

25 CHAIRPERSON REID: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Do you have further remarks, Mr. Collins?

2 MR. COLLINS: Madam Chair, we simply state that  
3 we have we believe we ve met all the requirements for special  
4 exception relief and request approval of the application.

5 Thank you.

6 CHAIRPERSON REID: Did you not say that you had  
7 agreed to, you met with Mr. Brown, Mr. Brown, that you had  
8 agreed to replace the chain link fence with a wood on wood  
9 fence, so as to be able to give greater privacy?

10 MR. COLLINS: I offered that after discussing it  
11 with Exxon, in my telephone conversation to him I did offer  
12 that. We offered to monitor the property during construction  
13 by taking photographs of the property, so you d have a before  
14 and after type situation which is not unusual in a construction  
15 scenario.

16 CHAIRPERSON REID: And, what was the response to  
17 those proffers that you made?

18 MR. COLLINS: Well, my impression from that  
19 conversation was that he was satisfied, and then I offered to  
20 have Ms. Levine contact him for some specifics, and she did.

21 CHAIRPERSON REID: No, my question was, when you  
22 offered to do these things, was that made a part of an  
23 agreement, that you are going to, or he didn t say, oh, well, I  
24 don t think that s necessary, or what was the outcome of that  
25 after you proffered?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. COLLINS: My impression was that he accepted  
2 that offer and we were simply going to follow up. There was  
3 nothing in writing. There were several conversations, and my  
4 impression from the second conversation was that he was  
5 satisfied with what I told him.

6 CHAIRPERSON REID: Well, I guess, Mr. Collins,  
7 what I m trying to get to is, do you intend to, is that your  
8 intention, is that part of your plan, to replace the chain link  
9 fence with a wood on wood fence on the back perimeter, so as to  
10 give additional camouflage, I guess, to the privacy to the  
11 persons or people whose properties their backs abut the subject  
12 property?

13 MR. COLLINS: Yes, we offered it, and we will not  
14 rescind the offer.

15 CHAIRPERSON REID: Okay.

16 And, are you also going to take pictures, do you  
17 think that s necessary?

18 MR. COLLINS: Only if we can only do it if he  
19 thinks it s necessary we ll do it, but we can t do it unless he  
20 lets us on his property.

21 MR. SOCKWELL: Mr. Collins, one question, on the  
22 what is the exact width of the alley or public space behind?

23 MR. COLLINS: I believe let me just check, I  
24 think I know but I don t want to hazard a guess.

25 MR. SOCKWELL: Sure.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   It looks like somewhere between eight and ten  
2 feet, maybe.

3                   MR. COLLINS: I think that s correct. I m  
4 checking, I m looking at the maps attached to the application  
5 from pages eight and nine, but it appears to be somewhere  
6 between eight and ten.

7                   MR. SOCKWELL: Yes, but the issue is really that  
8 Mr. Brown s fence and Mr. Brown s actual separation from your  
9 property are two different items, because he said his fence is  
10 about 18 inches off of your property, but his property actually  
11 ends maybe ten feet away from your property.

12                  MR. COLLINS: That s right.

13                  MR. SOCKWELL: So, there may be a use issue with  
14 regard to its proximity, but the actual proximity is greater  
15 than it appears.

16                  MR. COLLINS: Yes.

17                  MR. SOCKWELL: The distance is greater than it  
18 appears.

19                  MR. COLLINS: That s correct. The fence that we  
20 spoke of we will put on our property line.

21                  CHAIRPERSON REID: In addition to that, you also  
22 have indicated those four trees, or four shrubbery, are they  
23 trees, what exactly are those going to be?

24                  MR. COLLINS: Those are existing trees.

25                  CHAIRPERSON REID: Oh, I see, they are already

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there.

2 MR. COLLINS: Yes.

3 CHAIRPERSON REID: Those trees also help to kind  
4 of buffer the impact, I would assume.

5 MR. COLLINS: Yes.

6 MR. SOCKWELL: Are they that substantial as Mr.  
7 Prakash has shown, or are they, you know yes?

8 MR. PRAKASH: My estimate is from my visual  
9 inspection, is that the trees are in the order of 25 feet high.

10 MR. SOCKWELL: Okay.

11 CHAIRPERSON REID: Okay.

12 MR. GILREATH: The height of the fence, assuming  
13 that the other party agrees to it, would that be a stockade  
14 fence, about eight feet, or will that be negotiated with him  
15 what the height will be?

16 MR. COLLINS: We are talking about a six-foot  
17 fence. The limitation in the building code does not allow an  
18 eight-foot fence.

19 MR. GILREATH: It will go six feet, okay.

20 MR. SOCKWELL: But, the building code will allow  
21 seven on the property line, ten, or anything more than ten feet  
22 in from the property line or an interior lot line, you can have  
23 that s more than ten feet off the lot line, can be of any  
24 height.

25 MR. COLLINS: Right. We are fairly limited on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 how far we can go.

2 MR. SOCKWELL: Right, so you can give him seven  
3 if you have to?

4 MR. COLLINS: If we have to.

5 CHAIRPERSON REID: You don t have to, I mean,  
6 it s up to

7 MR. SOCKWELL: If you want to.

8 CHAIRPERSON REID: if you want to. You don t  
9 have to give them seven if you don t want to, we just have to  
10 ascertain the height of the fence.

11 MR. COLLINS: The terrain goes up at that point,  
12 and there are some retaining walls in that area that  
13 essentially would on top, where the retaining walls exist the  
14 fence would be on top of that.

15 CHAIRPERSON REID: So, we are saying six?

16 MR. COLLINS: And, we thought six was sufficient.

17 MR. SOCKWELL: So, six feet of crude oil stays  
18 high, or seven feet of crude oil prices stay high, six feet if  
19 it goes down.

20 MS. PRUITT: Excuse me, Madam Chair, just for  
21 point of clarification. Would the fence go along all the  
22 property owners along that side or just Mr. Brown s?

23 CHAIRPERSON REID: I thought that we indicated,  
24 my question was, the lot lines

25 MS. PRUITT: Well, I wasn t clear, that s why I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wanted to be sure.

2 CHAIRPERSON REID: my understanding was it was  
3 to be the lot lines that abutted the neighbors whose backs were  
4 at the property line, and maybe we need to clarify exactly how  
5 far the existing fence, whatever the existing fence is what  
6 you were saying you'd replace, right? And, the existing fence,  
7 looking at the page, what is it, 13?

8 MR. SOCKWELL: That's correct, page 13.

9 MR. COLLINS: Seven gives you a good idea of the  
10 properties.

11 CHAIRPERSON REID: Page seven? Okay, page seven.

12 MR. COLLINS: Well, Mr. Sockwell, page 13 shows  
13 the existing condition plans.

14 MR. SOCKWELL: Okay.

15 MR. COLLINS: And, I'm sorry for interrupting,  
16 but what we are doing is replacing all the chain link with  
17 stockade.

18 CHAIRPERSON REID: And that is, where is the  
19 chain link fence?

20 MR. COLLINS: If you look on page 13, you'll see  
21 on the western property line, on the left-hand side of the  
22 page, you'll see, and, Mr. Sockwell, if you could assist with  
23 your expertise here, you'll see the location of the chain link  
24 fence going north.

25 CHAIRPERSON REID: Right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DOCTOR CARSON: And then, going east along the  
2 line.

3 CHAIRPERSON REID: That s what s going to be  
4 replaced.

5 MR. COLLINS: Yes, that s right.

6 CHAIRPERSON REID: All right.

7 MR. SOCKWELL: And then, runs to there, but it  
8 doesn t go all the way to here.

9 CHAIRPERSON REID: Okay, so then, basically, it  
10 is it will be replaced as reflected, as the chain link, you  
11 will replace the chain link as reflected on page 13 in your  
12 drawings.

13 MR. COLLINS: Exhibit E, page 13.

14 CHAIRPERSON REID: Exhibit E, okay. All right,  
15 good enough.

16 So, do you want a summary order, bench decision,  
17 is what you are asking, Mr. Collins?

18 MR. COLLINS: Yes, please.

19 CHAIRPERSON REID: Okay.

20 MR. GILREATH: Madam Chair, I think that the  
21 Applicant has adequately met the burden of proof. We are  
22 certainly appreciative of the concerns of the property owners.  
23 However, I feel the trees and the stockade fence and so forth,  
24 plus this theoretical alley and what have, is sufficient to not  
25 pose any real hardship. This property has been used as a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 filling station before and so forth, it s major arterial, and  
2 the zoning and so forth, I feel that we can allow this  
3 additional dispenser, because that s really what the other is  
4 a matter of right, as I understand it, so I recommend that we  
5 approve the application.

6 CHAIRPERSON REID: All right.

7 Mr. Sockwell?

8 MR. SOCKWELL: While I have my reservations as  
9 regards the Zoning Administrator s interpretative powers in  
10 this issue, I will not disagree with the fact that the  
11 neighborhood has been previously impacted for many years with  
12 both gas stations, that having used the Exxon station to the  
13 southeast I know that Exxon Corporation has apparently, at  
14 least through its dealer at that station, kept it very much  
15 clear of undesirable traffic and issues.

16 I think that one additional fueling island is  
17 not going to make or break any traffic continuums, and I do  
18 believe that the neighborhood impacts will be minimized  
19 visualized by the stockade fence, which will certainly provide  
20 a light barrier.

21 I think that the Applicant has met the  
22 requirements to be able to establish or reestablish the  
23 gasoline station use with the convenience store.

24 CHAIRPERSON REID: Were you going to second?

25 MR. SOCKWELL: Yes, I ll second.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: I concur with my colleagues.  
2 I feel that they have met the burden of proof, and that while  
3 we have been proffered today with concerns by community members  
4 I feel that the Exxon Corporation, the Applicant, has moved to  
5 tried to dispel the perception of adverse impact in regard to  
6 noise or trash, litter, loitering around the facility. The  
7 aspect that they are not serving any alcohol, or selling any  
8 alcohol, has been established that they will not, nor does any  
9 Exxon station actually sell alcoholic beverages, and I think  
10 that we can, within the aspect of the application and order, we  
11 can then condition it so that the construction would be in  
12 compliance with the typical D.C. construction, is it code, and  
13 that, now the hours we can I don t think that okay, so then  
14 we can basically condition the construction hours to be from  
15 9:00 to 5:00 Monday through Friday?

16 MR. COLLINS: I think Ms. Levine mentioned that  
17 they arrive on the site at 7:00, and that the heavy  
18 construction

19 CHAIRPERSON REID: No, no, I said construction.  
20 Now the meeting time, I was not adding that as construction  
21 time. My understanding from Ms. Levine was that they would  
22 mobilize at 7:00, and have meetings, what have you, but the  
23 actual construction itself, the construction work itself would  
24 not start until 9:00, and that s what I was specifically trying  
25 to address.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. COLLINS: I just want to make sure that  
2 there s no future misinterpretation if there s a condition in  
3 the order that says construction between 9:00 and 5:00, that if  
4 they mobilize at 7:00 someone might say that, no, that means  
5 you can t be here until 9:00.

6 MR. GILREATH: Madam Chair, I think that can be  
7 clarified by saying heavy construction will not begin until  
8 9:00.

9 CHAIRPERSON REID: Okay.

10 MS. PRUITT: Madam Chairman, you have the  
11 building code permit that will supercede, so in one sense I  
12 believe it s already taken care of, and if we start  
13 conditioning it it makes it a little bit more confusing and  
14 difficult.

15 MR. SOCKWELL: Yes, under the building code, I  
16 believe that the end of construction would be 6:30 p.m., and  
17 you would have to apply separately for night construction. I  
18 think the beginning construction is probably allowed at 7:00  
19 a.m., it s either 7:00 or 8:00 a.m.

20 MR. COLLINS: It s 7:00.

21 MR. SOCKWELL: Yes, so you d be bound under the  
22 building code, but if you wished to be neighbor friendly you  
23 would probably want not to initiate excavation and heavy noise-  
24 making construction before at least 8:00 a.m.

25 CHAIRPERSON REID: Well

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: And, 9:00 a.m., would be preferred  
2 probably, but we don't want to I don't know that we can  
3 condition that, because the building code does bind them under  
4 the permits that are issued, unless we change that.

5 CHAIRPERSON REID: Previously, we have had  
6 construction plan where the Applicant has proffered to us what,  
7 in fact, they would be amenable to doing, particularly in an  
8 environment where there's opposition. And, even though they  
9 are allowed to start at 7:00, if they willingly agree to not  
10 start heavy construction until 9:00, I don't think there's a  
11 problem with putting that as a condition.

12 MS. PRUITT: The concern is not to have too much  
13 ambiguity, and what Mr. Collins raised, that the community may  
14 say, well, I've read the you know, you say this, and you are  
15 here earlier, and it may cause more problems.

16 CHAIRPERSON REID: Right, heavy construction not  
17 to start before 9:00, and you said you would terminate at 5:00,  
18 even though you can terminate at 6:30, that's certainly would  
19 signal to the community that you are making accommodations to  
20 them, you know, to be good neighbors, and I think that would be  
21 great if you are agreeable to that.

22 And, the other issue was the chain link fence,  
23 that you would install, you would replace existing chain link  
24 fence with a six-foot wood on wood fence, as reflected on page  
25 13 of Exhibit

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: E.

2 CHAIRPERSON REID: E.

3 Now, with regard to the pictures before and  
4 after, I don't think that I will I would suggest putting that  
5 as a condition, that's up to you if you want to do that, or if  
6 Mr. Brown wants you to do that, you'll have to work that out,  
7 but I don't want to make that a condition of this order.

8 Anything else?

9 Okay, all in favor?

10 (Ayes.)

11 CHAIRPERSON REID: Opposed?

12 MS. PRUITT: Staff will record the vote as 3/0 to  
13 approve, motion made by Mr. Gilreath and seconded by Mr.  
14 Sockwell.

15 Is this a summary order, Madam Chair?

16 CHAIRPERSON REID: Summary order, you should have  
17 it, your order out in about two weeks or three weeks.

18 MR. COLLINS: Thank you.

19 CHAIRPERSON REID: Next case, please.

20 MS. PRUITT: The next application is 16494,  
21 application of Exxon Corporation, pursuant to 11 DCMR 3108.1  
22 for a special exception under subsection 706 to allow the  
23 expansion of a gasoline service station with convenience store  
24 on a site in a C-2-A District, at premise 5515 South Dakota  
25 Avenue, N.E., Square 3760, and Lots 812 and 814.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 All those planning to testify would you please  
2 stand and raise your right hand?

3 Please, proceed.

4 CHAIRPERSON REID: Is there anyone here to  
5 testify in opposition to this case? Are there persons here in  
6 support of the case? Okay.

7 Mr. Collins, in this particular case, you are  
8 it, just the Applicant is here today, so we can basically  
9 expedite and you can give us the highlights of your  
10 application, and we ll ask questions. Basically, we ve read the  
11 materials that have been submitted, and if there is anything  
12 that we need to clarify we ll just question the witnesses.

13 MR. COLLINS: Thank you, Madam Chairperson and  
14 members of the Board. My name is Christopher Collins with  
15 Wilkes, Artis, Hedrick & Lane. Seated behind me is Sarah Shaw,  
16 also of our office. To my right are the three witnesses in  
17 this case, Terri Levine, a Market Investment Specialist with  
18 Exxon, Bob Morris who is our traffic and transportation expert  
19 witness, and mr. Bhoopendra Prakash from the Plan Source, who  
20 is the consulting engineer in this application.

21 Being mindful of your opening statement, Madam  
22 Chairperson, we will attempt to move this along as quickly as  
23 possible. This is an expansion of an existing Exxon service  
24 station. This expansion will include the acquisition of  
25 adjacent property that was originally built as a fast-food

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 restaurant and it was converted subsequently to a veterinary  
2 clinic, and is presently vacant. That site is around the same  
3 size of the existing site, a little bit smaller. Exxon was  
4 given the opportunity to purchase that site to expand their  
5 existing location, and this is all at the corner of South  
6 Dakota Avenue and Kennedy Street, N.E.

7 The site was zoned C-1, and then through the  
8 Comprehensive Plan and the zoning Consistency Project from the  
9 Zoning Commission it was rezoned to C-2-A. It presently is a  
10 C-2-A Zone.

11 There s an existing three-bay facility at the  
12 corner, and then to the north of the site is the vacant  
13 building I mentioned, the veterinary clinic. The idea is to  
14 consolidate both sites, to remove all improvements and to build  
15 a matter of right convenience store with a canopy and six  
16 dispensers.

17 The special exception approval is necessary  
18 because of three things. We are expanding the site of the gas  
19 station. We are expanding the number of dispensers from four  
20 to six, and we re putting up a canopy where there presently is  
21 none.

22 Unless there are any specific questions of me,  
23 I d like to go to our first witness, Ms. Levine.

24 Whereupon,

25 TERRI LEVINE

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was called as a witness by Counsel for the Applicant, and  
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 MR. COLLINS: Ms. Levine, would you please  
5 identify yourself for the record and briefly summarize your  
6 testimony?

7 MS. LEVINE: My name is Terri Levine. I m with  
8 Exxon Corporation. My home address is 8301 Ashford Boulevard in  
9 Laurel, Maryland.

10 Madam Chairperson and members of the Board, as  
11 Chris described we are proposing to modernize our facility at  
12 the northwest corner of South Dakota and Kennedy.

13 Our current property is approximately 16,000  
14 square feet with a three-bay facility and four multi-product  
15 dispensers. We ve recently acquired the additional property,  
16 which is an additional 14,000 square feet, giving us a total of  
17 approximately 30,000 square feet.

18 We d like to utilize this property to modernize  
19 our facility with a new convenience store, approximately 3,200  
20 square feet, and six new dispensers under a canopy which is not  
21 on the site currently. We plan to reuse our existing  
22 underground tanks. They were recently upgraded in 1990 and  
23 replaced.

24 Mr. Bhoopendra Prakash will give you some  
25 further description of our site plan. If you have any questions

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I d be happy to entertain them.

2 CHAIRPERSON REID: Ms. Levine, what would be the  
3 hours of operation?

4 MS. LEVINE: We are requesting 24-hour operation  
5 at this site.

6 CHAIRPERSON REID: Okay, is that in this  
7 application, hours of operation?

8 MR. COLLINS: It does not mention that.

9 CHAIRPERSON REID: Okay, and, as well, to refer  
10 back to the previous case, it didn t specify there either.

11 MR. COLLINS: No, that s correct.

12 Exxon is prohibited by law from dictating the  
13 hours of operation to its dealers.

14 CHAIRPERSON REID: I thought that was a station  
15 that was owned by Exxon.

16 MR. COLLINS: Exxon owns all the facilities, but  
17 the dealer owns the business, and that s governed by a specific  
18 law in the City. Companies are not allowed to own stores in  
19 Washington, D.C.

20 CHAIRPERSON REID: Oh, okay.

21 MR. SOCKWELL: So, that means Exxon has no  
22 control.

23 MR. COLLINS: Of the hours of operation?

24 MR. SOCKWELL: Or anything else of an operational  
25 nature.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: That s correct.

2 MS. LEVINE: If I can address that.

3 MR. SOCKWELL: Yes.

4 MS. LEVINE: We own the properties. We have a  
5 lease agreement with the dealer that operates the facilities,  
6 so that we are not both an owner and an operator of the  
7 property.

8 However, we are under contract with our dealers,  
9 and we do have some legal rights to maintain high operational  
10 quality of the site. We have yearly audits that we participate  
11 in to make sure that the sites are being maintained, they are  
12 being operated properly. We have a regional territory manager  
13 that acts as a counselor to each one of our dealers in the  
14 District.

15 MR. SOCKWELL: But, that is primarily for the  
16 maximization of revenue, is it not?

17 MS. LEVINE: It s for brand consciousness, to  
18 maintain quality facilities, clean facilities. It is not  
19 simply to receive rent, it is an actual counselor for  
20 operations.

21 CHAIRPERSON REID: So, this facility is wanting a  
22 24-hour operation, and the previous one was as well?

23 MS. LEVINE: Yes, ma am.

24 MR. SOCKWELL: Excuse me, the South Dakota and  
25 Kennedy facility was a 24-hour operation?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. LEVINE: I believe it is.

2 CHAIRPERSON REID: No, no, I m sorry, Mr.  
3 Sockwell, what I was referring to was the previous application,  
4 the one on N. Capitol and Q Street, that that was also and,  
5 it dawned on me when I was asking about this particular  
6 application and its hours of operation that I did not remember  
7 hearing any specification as far as the hours of operation on  
8 the previous one, and she just basically answered that in both  
9 instances they are 24-hour operations.

10 MR. SOCKWELL: I didn t ask the question on the  
11 previous one, because I assumed it to be 24 hour, it had been  
12 in the previous operation, and as is the southeast corner  
13 operation there.

14 CHAIRPERSON REID: Okay. All right.

15 MR. SOCKWELL: It was not a concern for that  
16 location.

17 CHAIRPERSON REID: So, this is a proposed 24-hour  
18 operation of the gas station.

19 Is there, let s see, I m trying to think of that  
20 intersection, is there another any other 24-hour gas station  
21 there on Riggs Road across the street?

22 MR. COLLINS: Riggs Road is up. This facility is  
23 actually at the beginning of the ramp if you are going

24 CHAIRPERSON REID: Right, I know where that  
25 veterinarian hospital was sitting there for many years.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: Right.

2 CHAIRPERSON REID: That s where it is.

3 MR. COLLINS: Right, exactly.

4 CHAIRPERSON REID: Yeah, I know where it is, but  
5 it seems to me that there was, right on that diagonally across  
6 there s a shopping center, and I thought that I remembered  
7 there being a gas station right there.

8 MR. SOCKWELL: There s one right at the line, at  
9 Riggs and Eastern.

10 MR. COLLINS: Yes, there s one at Riggs and  
11 Eastern. That s a Gulf station.

12 CHAIRPERSON REID: Just a little further up.  
13 Okay. All right.

14 MR. COLLINS: At least it was a Gulf Station.

15 MR. GILREATH: I need a little clarification. You  
16 said something about four bays, do you mean automotive repairs  
17 take place there, too?

18 MR. COLLINS: A three bay, right, automotive  
19 repair, right.

20 MR. GILREATH: So, there will be repairs.

21 MR. COLLINS: No, there will not be repairs.

22 CHAIRPERSON REID: The bays are for what?

23 MR. COLLINS: We re eliminating the repair bays.

24 MR. GILREATH: Oh, they are being eliminated?

25 MR. COLLINS: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GILREATH: So, it s just gas dispensing and  
2 the convenience store.

3 MR. COLLINS: Exactly.

4 MR. GILREATH: Very good.

5 CHAIRPERSON REID: Oh, okay. All right.

6 Go ahead, proceed.

7 MS. LEVINE: To reply to one of Mr. Sockwell s  
8 additional comments, we also have a program called Commitment  
9 Tax Lots, where we offer our dealers a rebate, a reimbursement  
10 program for high-level performance in the neighborhoods,  
11 additional landscaping, plantings, cleanliness, lighting, noise  
12 control, any sort of recommendations that they receive from  
13 their local neighbors in addition. So, we do have a program  
14 actually to encourage, not just to enforce, good behavior on  
15 our sites.

16 CHAIRPERSON REID: Okay.

17 MS. LEVINE: Are there any additional questions  
18 at this time?

19 CHAIRPERSON REID: I have none.

20 MR. SOCKWELL: Nothing further.

21 MR. COLLINS: The next witness is Mr. Bhoopendra  
22 Prakash, who will review quickly for you the existing and  
23 proposed conditions.

24 Whereupon,

25 BHOOPENDRA PRAKASH

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was called as a witness by Counsel for the Applicant, and  
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 MR. PRAKASH: Madam Chairperson and members of  
5 the Board, my name is Bhoopendra Prakash. I live at 12843  
6 Parapet Way, Oakhill, Virginia, engineer representing the  
7 project.

8 The site being located in the northwestern  
9 quadrant of the Kennedy Street/South Dakota intersection, there  
10 are two principal buildings on site separated by a lot line.  
11 We propose to reconstruct the site with a canopy and fuel  
12 islands on the easterly side of the property, with a  
13 convenience store I the order of 3,000 square feet situated on  
14 the northwesterly side of the store.

15 Entrances along South Dakota Avenue will be  
16 modified. There are currently four entrances, two of which  
17 shall be consolidated into one to provide, I believe, a safer  
18 access to the station.

19 Landscaping will be improved at the intersection  
20 for better visibility. The store will be constructed of glass  
21 in front for visibility and safety, peripheral down lit, down-  
22 focusing yard lights will be placed for a better appearance,  
23 and safety, and security. Setbacks will be honored from the  
24 residential zone, in the order of 25 feet.

25 In summary, in terms of filing with the Office

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of Planning, honoring the setbacks, presenting a better  
2 coordinated plan for design appearance, some screening and  
3 lighting, maintaining entrances set back safety from  
4 intersections and residential areas, I believe this project  
5 meets the intent of the Zoning Regulation, Section 726, as well  
6 as Section 2302.

7 I thank you. If you have any questions, I ll be  
8 happy to answer them.

9 MR. COLLINS: I have one question, Mr. Prakash.  
10 Will there be any grease pits or hoists associated with this?

11 MR. PRAKASH: There will be no grease pits  
12 associated with this project.

13 MR. SOCKWELL: Mr. Prakash? Mr. Prakash?

14 MR. PRAKASH: Yes, sir.

15 MR. SOCKWELL: The building to the right, to your  
16 right, that one, what is in there?

17 MR. PRAKASH: This is a canopy.

18 MR. SOCKWELL: That s just a canopy.

19 MR. PRAKASH: Aerial in nature, with pumps under.

20 MR. SOCKWELL: Okay, so that s just a canopy.

21 The previous gas station was oriented so that  
22 all of the activity and the principal illumination was along  
23 the South Dakota Avenue frontage, and the service bays were  
24 entered to the left side of the the service bays for the  
25 operation, yeah, were entered to the left side of the building,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or in that case I guess that s facing north or something,  
2 anyway, yeah, they were in this corner over here of the  
3 building, and most of the parking was done along the left edge  
4 or along the right side there.

5 Now, your new facility design first, and also  
6 the lighting was fairly limited in intensity, and the facility  
7 was not operated as a 24-hour facility, in fact, at night I  
8 think it closed probably at 9:00 p.m. Does that sound pretty  
9 reasonable to your recollection, Ms. Levine?

10 MS. LEVINE: Yes, it does, the bays were not open  
11 24 hours.

12 MR. SOCKWELL: Right.

13 And, it almost invariably had two or three MGBs  
14 or a Triumph TR-6 under repair at any given time.

15 The new facility, as shown in your photograph,  
16 is going to be oriented to present a lot of light in the  
17 direction of the residential homes on the opposite side of  
18 Kennedy Street, as well as it may tend to bleed a great deal of  
19 light toward the residential properties in the I guess that s  
20 the south, southern, eastern, whichever, where is your north  
21 arrow.

22 MR. PRAKASH: Northeastern.

23 MR. SOCKWELL: Yes, northeastern direction then,  
24 and you mentioned that down-facing lights would be provided.  
25 What type of fencing are you providing at the perimeter of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 site?

2 MR. PRAKASH: Because the residential property is  
3 higher

4 MR. SOCKWELL: Which it is.

5 MR. PRAKASH: then the this property, an  
6 opaque fencing, in my opinion, is not necessary, and

7 MR. SOCKWELL: You don t think that the visual  
8 impact of a gasoline station, as one looks across one s  
9 property, is a significant change to the view of the rear of a  
10 building, which is what was generally the view previously, and  
11 a much smaller facility, in fact.

12 MR. PRAKASH: Mr. Sockwell, I believe because the  
13 line of site is going to be higher than a six or an eight-foot  
14 fence, from the residential property, I believe opaque fencing  
15 is not as important as the need for a regular fence that  
16 prevents pedestrian access between the two sites, or the two  
17 sets of properties.

18 CHAIRPERSON REID: Thank you.

19 MR. PRAKASH: Thank you.

20 MR. COLLINS: The next witness is Mr. Morris.

21 Whereupon,

22 ROBERT L. MORRIS

23 was called as a witness by Counsel for the Applicant, and  
24 having been first duly sworn, testified as follows:

25 DIRECT EXAMINATION

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: Mr. Morris, will you please proceed  
2 with your testimony?

3 MR. MORRIS: Good morning, Madam Chairperson,  
4 members of the Board. I am Robert L. Morris, traffic engineer  
5 and transportation planner. My home address is 9109 Rouen  
6 Lane, Potomac, Maryland 20854.

7 I have prepared a traffic analysis, which I  
8 believe you have in front of you.

9 CHAIRPERSON REID: Mr. Morris, before you  
10 continue, did you have a replacement for the page 23 that gave  
11 basically your no, I m sorry, your page four, that outlined  
12 your conclusions, because they are blurred.

13 MR. MORRIS: Oh, dear.

14 MR. COLLINS: Oh, yeah.

15 CHAIRPERSON REID: I couldn t garner what, in  
16 fact, you were laying out for us, the effect of the  
17 improvement.

18 MR. MORRIS: I have the original here. I can  
19 if somebody can copy that, or I can read it to you, it s very  
20 short.

21 CHAIRPERSON REID: Well, I ll tell you what, why  
22 don t you just highlight it and then give it to staff so that  
23 we could have a clear copy for the record.

24 MR. MORRIS: I d be happy to do that, certainly.

25 CHAIRPERSON REID: Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MORRIS: What I have shown there is that  
2 typically with the improvement that is proposed on this site,  
3 that you could expect about five to seven more cars entering  
4 the site during the peak hours, and I have noted that the great  
5 majority of trips coming to a gasoline service station are  
6 pass-by trips, and that, therefore, the additional five to  
7 seven trips wouldn't have any impact on existing conditions,  
8 and even if they were all new trips you would still have an A  
9 level of service at the intersection of South Dakota and  
10 Kennedy, and the bottom line was that from a traffic  
11 engineering viewpoint that would be an appropriate use of the  
12 property.

13 And, I'll be happy to supply this for copies to  
14 be made.

15 I would note further, Madam Chairperson, that  
16 while there could be additional trips coming to the site, as I  
17 mentioned, these will probably be all or the great majority  
18 pass-by trips. The previous use as a veterinary clinic, would  
19 have had all primary purpose trips, so actually the proposal  
20 that's before you represents a net trip reduction from what  
21 existed in the past with the veterinary clinic.

22 CHAIRPERSON REID: Repeat that again, please.

23 MR. MORRIS: The veterinary clinic that existed  
24 on the lot where the convenience store will now be located,  
25 would have had all primary purpose trips. People don't just

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 happen to stop in a veterinary clinic because they are passing  
2 by.

3 CHAIRPERSON REID: Right.

4 MR. MORRIS: Whereas, with the convenience store  
5 they will. So, that on the proposed use would represent a net  
6 reduction in total trips.

7 CHAIRPERSON REID: I understand.

8 MR. SOCKWELL: So, you are saying that there  
9 would be fewer people coming to the convenience store than  
10 would have come to the veterinary clinic?

11 MR. MORRIS: No, I didn't say that, sir.

12 MR. SOCKWELL: What are you saying?

13 MR. MORRIS: I said that the trips going to the  
14 veterinary clinic would all be primary purpose trips, that  
15 people

16 MR. SOCKWELL: Right, I understand what you  
17 meant.

18 MR. MORRIS: would be added to the street  
19 system because they are going there. People going to the  
20 convenience store, they stop by, they get gas, and as they are  
21 getting gas they pick up whatever purchase, a loaf of bread or  
22 whatever it may be, get back in their car and leave. People  
23 don't normally drive from home to go to a convenience store in  
24 a service station and then go back home again. It's not a  
25 primary purpose trip. So, it doesn't add traffic to the street

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 system.

2 MR. SOCKWELL: That s interesting because I do,  
3 and

4 MR. MORRIS: You are the exception.

5 MR. SOCKWELL: No, I m not, and my neighbors do.

6 MR. MORRIS: And, you don t get gas at the same  
7 time?

8 MR. SOCKWELL: No, go there specifically for two  
9 purposes. This convenience store, one of the purposes I m sure  
10 you are going to have in your convenience store is you are  
11 going to operate a lottery ticket facility, will you most  
12 likely, or your dealer will. Almost every Exxon station has  
13 one, which means that you suddenly become a primary purpose  
14 facility for the purpose of picking up lottery tickets. As  
15 well, you will be selling milk, bread and certain other staples  
16 which make that facility a primary purpose facility.

17 Not necessarily can you just arbitrarily assume  
18 that all customers are coming to that facility for gas and  
19 occasional essentials, as they come for gas. You can t do  
20 that, because you have to know what s going in there.

21 MR. MORRIS: May I respond, sir?

22 MR. SOCKWELL: Please.

23 MR. MORRIS: I did not arbitrarily assume it.

24 MR. SOCKWELL: Did Ms. Levine give you the  
25 specifics of what would be operated there?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MORRIS: No, sir.

2 MR. SOCKWELL: So, you took a general case.

3 MR. MORRIS: Based on experience, I have dealt,  
4 in the past 40 years that I've been in business, I've with  
5 many, many gasoline stations, and I talk to gasoline service  
6 station operators and owners, and this is what they tell me.

7 They tell me that typically if you put in a  
8 convenience store, you will increase your patronage by ten to  
9 15 percent.

10 MR. SOCKWELL: Have you ever stopped at a gas  
11 station at 7:50 p.m., or at 8:50 p.m., on a weeknight?

12 MR. MORRIS: I'm sure I must have.

13 MR. SOCKWELL: At those times, those are the  
14 times when the lottery closes its drawings, that's when all the  
15 cars are parked around the convenience store, none of them at  
16 pumps, all of those people are lined up inside the store for  
17 one purpose, and one purpose only, and that's to get their  
18 last-minute lottery tickets.

19 MR. MORRIS: It's also not the peak hour.

20 MR. SOCKWELL: It can be a peak hour for their  
21 activity, but what you basically stated is that you've  
22 discounted that there's any primary purpose there, that's all,  
23 and I don't believe that that is a fair assumption. And, the  
24 other thing is that it's, the convenience store is located in a  
25 residential neighborhood, where the convenience becomes very

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 important.

2 CHAIRPERSON REID: Thank you, Mr. Morris.

3 All right, Mr. Collins, does that conclude your  
4 presentation?

5 MR. COLLINS: Yes, it does. I d just like an  
6 opportunity for closing remarks.

7 CHAIRPERSON REID: Okay, there does not appear to  
8 be anyone here. I don t think that we received a letter from  
9 the ANC.

10 MR. GILREATH: We received a letter from someone.

11 CHAIRPERSON REID: We have some letters of  
12 opposition, and I m going to get to that, but right now the ANC  
13 did not weigh in on this particular application, so when they  
14 don t we conclude that they have no objection, because if so  
15 they would be here, or they would write and let us know.

16 No government reports. We did receive no  
17 letters of support, but we did receive two letters of  
18 opposition, and the issues that were raised primarily were  
19 those of an anticipation of noise and traffic, and a problem  
20 with there being an increased probability of there being  
21 traffic accidents, and specifically this was cited from Ms.  
22 Herman Beecher and Inez I m sorry, Belcher. Can you address  
23 those concerns?

24 MR. COLLINS: Mr. Morris, I m handing you a copy  
25 of the letter from Mr. & Mrs. Belcher, would you just take an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 opportunity to scan that letter and provide any comments you  
2 might have?

3 And, while he s doing that, I d just like to  
4 state for the record that in terms of the ANC, we did reach out  
5 and contact each of the ANCs, there s more than one involved in  
6 this application, several across the street, and we received no  
7 response. At what point, someone did mention that they would  
8 contact the appropriate person and get back to us, but we did  
9 do what we could do.

10 CHAIRPERSON REID: But, to your knowledge, Mr.  
11 Collins, the ANC did not object.

12 MR. COLLINS: We don t know, if anything, the ANC  
13 took any action at all. We tried to contact them and, you  
14 know, get on their agenda, and we never received any word from  
15 them one way or the other.

16 CHAIRPERSON REID: Okay.

17 MR. MORRIS: The comments here refer to the  
18 increase in traffic that would be generated by the proposed  
19 facility, and the dangerous condition of the existing  
20 intersecting of South Dakota and Kennedy Street. As I  
21 testified previously, the service station draws its customers  
22 principally from people passing by. The same would hold true  
23 for the convenience store. I don t argue with Mr. Sockwell on  
24 that issue, I merely point out that experience has shown that  
25 most of the people going to the convenience center are pass-by

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 trips, whereas, the previous use were all, not most, but all  
2 primary purpose trips, and I cannot quantify the difference  
3 between the primary purpose trips that Mr. Sockwell refers to  
4 for the convenience store with the number of trips going to the  
5 veterinary clinic, but I would submit that the very slight  
6 increase in traffic that would be generated by this proposed  
7 use, which as I say ten to 15 percent, is not going to  
8 aggravate the existing conditions. And, my bottom line holds  
9 that this is an appropriate use of the subject property from a  
10 traffic engineering viewpoint.

11 MR. SOCKWELL: One thing that I might say is that  
12 the fact that no business has lasted in that adjacent building  
13 for more than year, as long as I ve lived in Washington, from  
14 Bar and Q back in the 70s, the trips obviously were very  
15 insignificant for that particular building, over most of its  
16 life.

17 CHAIRPERSON REID: I think there was a KFC at  
18 that building at one time, too.

19 MR. SOCKWELL: It didn t last a year.

20 CHAIRPERSON REID: Yes, I remember.

21 Mr. Morris, to your knowledge, and when you do  
22 your research of a particular site, is there an indication of  
23 there having been traffic accidents there, several, an  
24 unusually high amount of traffic accidents?

25 MR. MORRIS: This is not one of the high accident

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 locations that is published by the Department of Public Works  
2 periodically, but I don't question what the neighbors say, that  
3 there are accidents that occur at this intersection.

4 The point I make is that there's no significant  
5 increase in traffic as a result of this proposed use, and  
6 there's no reason why there should be any increase in  
7 accidents. There is certainly

8 CHAIRPERSON REID: But, wait a minute, Mr.  
9 Morris, if you are aware of the fact that there is a high  
10 probability of accidents being there, would you not make  
11 recommendations in your report to methodologies that would  
12 help to abate that kind of occurrence, in that it would occur  
13 to me that from the applicant's standpoint it would certainly  
14 increase their liability, that corner. And so, if there are a  
15 lot of accidents, I'm not a traffic analyst, but if there are a  
16 lot of accidents on any particular given corner, then there's  
17 typically something that's driving that. Has any research that  
18 you delve in trying to find out what may have been causing that  
19 problem, and to make suggestions to the Applicant as to what  
20 they can do to try to mitigate that particular adverse impact,  
21 location-wise?

22 MR. MORRIS: Well, obviously, I can't answer your  
23 question with any specificity, because I haven't made an  
24 analysis of what causes what the reasons are for the  
25 accidents.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think I can state with confidence, without  
2 getting specific data, that you have a whole lot more accidents  
3 at the intersection of N. Capitol Street and Florida Avenue  
4 than you have at this location.

5 I, frankly, don't know what a gasoline service  
6 station could do to mitigate accidents at an intersection,  
7 unless there is some indication that the accidents are caused  
8 by vehicles entering or leaving the gasoline station, and  
9 that's normally not the case. The accidents that typically  
10 occurred at intersections are between vehicles colliding going  
11 on different paths on the intersecting streets.

12 MR. SOCKWELL: Mr. Morris.

13 MR. MORRIS: Yes.

14 MR. SOCKWELL: With great respect for your  
15 abilities and long years of involvement, I can tell you from  
16 personal experience what may cause the accidents in that  
17 vicinity. Coming off of Riggs Road, turning south from the  
18 eastern direction, most cars exceed the speed limit coming down  
19 the ramp onto South Dakota Avenue by, I would say, ten to 20  
20 miles per hour.

21 Now, should someone want to stop at the bottom  
22 of the ramp to make a left turn, to get into the gas station,  
23 because of the convergence of lanes there's a good chance that  
24 an accident could occur, especially in a much more well-lit gas  
25 station with a convenience store.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   On the other side going in the north direction  
2                   on South Dakota Avenue, because there is a left-turn light to  
3                   take you onto Riggs Road going west, people tend to speed up to  
4                   make that light before it changes, which means that because  
5                   they are accelerating for someone to slow down to try to get  
6                   into the gas station could cause accidents at that  
7                   intersection. These are things that have been going on for  
8                   many years, and it is a condition of the down slope going to  
9                   the south and the fact that people want to get through the  
10                  lights that are further down the street, and on the fact that  
11                  the left-turn light, which is to control for people going on to  
12                  Riggs Road west, is a factor.

13                  The possibility would be, and it has been  
14                  proposed in other projects seeking to build more intensive use  
15                  facilities with turnouts, is that an evaluation could be done  
16                  at the end of a given period and signalization would be one of  
17                  the solutions that could be recommended, i.e., if there are  
18                  accidents if the accidents increase, then signalization would  
19                  be the solution, signalization would normally be paid for by the  
20                  Applicant and not by the City, based on their previous history,  
21                  but that is what has been recommended and has occurred in several  
22                  instances.

23                  MR. MORRIS: Mr. Sockwell, with great respect I  
24                  disagree with you.

25                  MR. SOCKWELL: Well, I can give you some cases.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MORRIS: Well, if you will permit me to  
2 respond. Traffic signals can reduce accidents between vehicles  
3 going across paths, they increase accidents with rear-end  
4 collisions. And, when you are talking about people speeding up  
5 to make a green light when they want to make a left turn at  
6 Riggs Road, that s where you get the accidents. People try to  
7 go too fast and then suddenly stop and the car behind them hits  
8 strikes them.

9 So, your solution to the accident situation is  
10 not necessarily addressed by a traffic signal.

11 MR. SOCKWELL: So, you don t believe that staged  
12 traffic signalization has any impact on accidents?

13 MR. MORRIS: I m sorry, staged?

14 MR. SOCKWELL: Yes, traffic signals are usually  
15 coordinated.

16 MR. MORRIS: Oh, you are talking about  
17 interconnected signals?

18 MR. SOCKWELL: Yes. You don t believe the  
19 traffic signals would have any impact on that, you don t think  
20 that stop signs would have any impact on that?

21 MR. MORRIS: You have a stop sign on Kennedy  
22 Street, obviously.

23 If you installed a signal and interconnected it,  
24 as you are suggesting, you know, we are dealing with  
25 hypotheticals, neither you nor I know what the accidents are at

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this intersection, what causes the accidents.

2 MR. SOCKWELL: Right.

3 But, the question would be raised, if an  
4 approval of the proposed project had a stipulation in it that  
5 the number of accidents occurring at that intersection  
6 increased significantly over the period of, say, 12 months,  
7 that the Applicant would be bound to look into specific  
8 solutions, such as traffic signalization.

9 MR. MORRIS: It would depend on what kind of  
10 accidents, if the accidents are coming in or out of the  
11 gasoline station.

12 MR. SOCKWELL: Yes.

13 MR. MORRIS: I would note, Mr. Sockwell, that we  
14 are improving the safety conditions by eliminating one of the  
15 driveways into this site.

16 MR. SOCKWELL: But, the driveway is being  
17 eliminated because of the change in the site plan. It has  
18 absolutely nothing to do with anything else. The site plan for  
19 the original building allowed a way in and a way out, and a way  
20 to wrap around that building.

21 In this case, your change is really based upon  
22 the site plan. I wouldn't want to try to put a very good site  
23 planning design to scrutiny for some obviously unrelated  
24 reason.

25 MR. MORRIS: Of course, access relates to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 site plan. The point is that instead of four places of  
2 conflict you would now have three, and that clearly is a safety  
3 improvement.

4 As far as putting a traffic signal in, as I m  
5 sure you know there s a Manual on Uniform Traffic Control  
6 Devices which state what the warrants are for a traffic signal,  
7 having to do with accidents, and the mere fact that you have a  
8 certain number of accidents does not warrant the installation  
9 of a traffic signal. It s only warranted when the traffic  
10 signal would actually reduce the number of accidents because of  
11 the types of accidents.

12 MR. SOCKWELL: Or might prevent accidents, or  
13 might better channel the traffic.

14 MR. MORRIS: No. No, sir, I m sorry, those would  
15 not be warrants according to the manual that the Department of  
16 Public Works specify.

17 MR. SOCKWELL: No, they didn t go by it in other  
18 cases, that certainly doesn t mean that it s the panacea for  
19 solutions.

20 MR. MORRIS: Okay.

21 MR. GILREATH: Madam Chair, I certainly safety  
22 is something that we should be mindful of, but I m not sure  
23 that we should burden the Applicant. If, indeed, there s some  
24 kind of potential safety problem there, this DPW, there s some  
25 kind of the City after the analysis making a determination. To

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 simply say they are responsible, I think maybe that we are  
2 exceeding appropriate limits. They can certainly cooperate  
3 with the City in studying it, but

4 CHAIRPERSON REID: Well, at this point, I think  
5 we are just putting it out on the floor. We have not made any  
6 motions or anything.

7 MR. GILREATH: Well, as long as we don't unduly  
8 burden them saying it's their responsibility, the safety of  
9 this intersection.

10 CHAIRPERSON REID: Well, no, we have not gotten  
11 to that point.

12 MR. SOCKWELL: This is just a discussion of  
13 whether the use itself may or may not.

14 MR. GILREATH: Okay.

15 CHAIRPERSON REID: Just, basically, addressing  
16 the concerns from one of the letters of opposition that I guess  
17 Mr. Sockwell wanted to try to find out, and I did too, if, in  
18 fact, this could be addressed, are there any means or ways to  
19 be able to try to mitigate the problem, or just to kind of get  
20 an idea where his mind was in regard to this issue.

21 The other letter

22 MS. PRUITT: Excuse me, Madam Chair, may I follow  
23 up with a question?

24 CHAIRPERSON REID: Sure.

25 MS. PRUITT: Mr. Morris, what's the level of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 service at the nearest intersection?

2 MR. MORRIS: A.

3 MS. PRUITT: A, and will that change as a result  
4 of the gas station, do you believe?

5 MR. MORRIS: No, it will not.

6 MS. PRUITT: Thank you.

7 CHAIRPERSON REID: Okay.

8 The other letter was in regard to trash, and  
9 litter, and loitering, and I think that this is basically an  
10 anticipation of the gasoline station being put there and  
11 probably they are not aware of the track record that Exxon has  
12 as far as what we have heard here today in regard to the manner  
13 in which they keep their facilities in terms of cleanliness,  
14 and in terms of trash removal, or discouraging loitering. So,  
15 I don t think that that is something that is of paramount  
16 importance in this issue. But, nonetheless, it had been raised  
17 so we thought that we would bring it to your attention, that  
18 this was something indicated by Ms. Shirley Bryant, and if you  
19 could just, for the record, indicate what you know, what your  
20 usual procedures are then that would address that particular  
21 issue.

22 MS. LEVINE: Madam Chairperson, in response to  
23 the issues of trash and collection on site, the first thing I  
24 would bring to your attention is that with the current bay  
25 facility we have a lot of storage of cars, storage of tires,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 used auto parts, and by removing those service bays that  
2 storage will no longer be necessary.

3 So, the trash that we are now really talking  
4 about is more going to be related to wrappers, some packaging,  
5 that might be disposed of, quickly consumable items on the  
6 property, soda bottles, candy bars. To that end, what we do is  
7 we will provide trash receptacles outside of the convenience  
8 store, inside of the convenience store, and at every fueling  
9 dispenser, so that we provide a lot of opportunities for the  
10 customer to go ahead clean up after themselves and throw out  
11 their trash in an appropriate manner.

12 CHAIRPERSON REID: Is the site monitored  
13 periodically to make sure that the customers are you ve  
14 probably seen, as I have, somehow throw a candy wrapper right  
15 beside a trash can.

16 MS. LEVINE: And, I understand that as well, but  
17 the sites are monitored. One thing that

18 CHAIRPERSON REID: How often?

19 MS. LEVINE: they are monitored throughout the  
20 day by the cashiers and by the operators of the facility. On a  
21 global basis, Exxon does, as I previously mentioned, audit the  
22 stores to make sure that that s being maintained.

23 CHAIRPERSON REID: Continuously monitored.

24 MS. LEVINE: To make sure that that s being  
25 maintained, we offer incentive programs to encourage that type

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of compliance, but we really do employ quality operators that  
2 understand that they need to respect their neighbors, that  
3 understand the image that Exxon would like to portray to the  
4 community. And, as a result, we do typically have daily  
5 monitoring, constant monitoring, of our sites.

6 MR. SOCKWELL: Madam Chair, to the best of my  
7 knowledge Exxon has always had clean stations.

8 CHAIRPERSON REID: Okay.

9 MR. SOCKWELL: At least the ones that I've been  
10 to have always been clean.

11 CHAIRPERSON REID: All right.

12 So now, we have closing remarks from Mr.  
13 Collins, please.

14 MR. COLLINS: Thank you, Madam Chairperson,  
15 members of the Board. We do believe that we have met all of  
16 the requirements for special exception approval. We have gone  
17 through, by testimony and by written submission, all of the  
18 requirements for special exception approval for this gasoline  
19 station. It is in the C-2-A zone.

20 We are removing, by consolidating two sites into  
21 one, we are removing, for the life of this gas station, an  
22 opportunity for someone else to develop the adjacent site where  
23 the veterinary clinic was, into some other use which itself may  
24 become, or might have been otherwise, a primary trip generator.  
25 We are removing the additional curb cut along South Dakota

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Avenue that otherwise might have served that other use, so that  
2 we are consolidating the number of curb cuts along South Dakota  
3 from three to two.

4 Mr. Morris has testified that there will be an  
5 increase of approximately five to seven cars in the peak hour,  
6 and if the peak hour is 60 minutes that means one additional  
7 car every nine to 12 minutes, which is not a significant  
8 increase in the number of vehicles. He had testified that the  
9 level of service at this intersection would remain at level of  
10 service A, which it is right now, which is the lowest level of  
11 service measurable.

12 In terms of trash, you have heard Ms. Levine  
13 just now talk about all the measures that Exxon can take, and  
14 will take, and has taken in all its other stations to make sure  
15 and ensure that its stations are very clean and orderly. The  
16 point that this will be a change from a bay facility with the  
17 repairs to a non-bay facility will significantly increase the  
18 cleanliness of the site. Also from an environmental protection  
19 standpoint, you will not have cars dripping petroleum products  
20 on the surface, which may get washed into the streets while  
21 they are awaiting repairs, and otherwise rusting, and otherwise  
22 cluttering of the site.

23 So, for all the reasons we think this will be an  
24 improvement over the existing condition on both properties. It  
25 will return the now vacant lot to a productive use in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 neighborhood, and it represents a significant economic  
2 investment by Exxon on this site. And, for all those reasons,  
3 and the reasons we stated in our testimony, we would request  
4 that you approve this application.

5 Thank you.

6 MR. SOCKWELL: Mr. Collins?

7 MR. COLLINS: Yes, sir.

8 MR. SOCKWELL: You approached the Advisory  
9 Neighborhood Commission you said, who was the ANC Commissioner  
10 that would be the chair of that ANC that you submitted to?

11 MR. COLLINS: Actually, it was Ms. Shaw who  
12 called the ANC offices, and alerted them. You look in the  
13 phone book, you look at the ANC, we don't call the chair, we  
14 call the office, and the ANCs were all contacted, and in one of  
15 the ANC s, please forgive me, I have a memo to the file which I  
16 can refer to. Excuse me for a second it was ANC-4B, which is  
17 the primary ANC, Ms. Shaw left a message with the SMD, Single  
18 member District Commissioner, Amy Hatcher, on the 27<sup>th</sup> of  
19 September, and then also spoke with Mr. Frank Jackson on that,  
20 and they informed us that actually, Mr. Jackson mentioned  
21 that he does not see that this would be a problem, thinks it  
22 would be an improvement to the site, and he said the ANC might  
23 not even need to consider it. That was on the 27<sup>th</sup> of  
24 September.

25 MR. SOCKWELL: Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Mr. Collins, again, are you  
2 looking for a bench decision, summary order?

3 MR. COLLINS: Yes, please, Madam Chairperson.

4 CHAIRPERSON REID: All right.

5 MR. GILREATH: Madam Chair, this is somewhat  
6 similar to the other case in terms of the use and so forth. I  
7 feel the Applicant has adequately met the burden of proof. I  
8 think that by eliminating the automotive repair, the grease  
9 pit, the parked cars and so forth, it probably is an  
10 improvement, and the building that was there before this clinic  
11 was a vacant building, I presume, so that will be eliminated.

12 So, overall, I think the situation would be  
13 better. In terms of the lottery use, I agree with Mr.  
14 Sockwell, I think that will increase a bit but will not be  
15 during peak hours. This seems to occur, as I understood Mr.  
16 Sockwell, in the evening, so that does not really impact the  
17 traffic, and I feel that they've adequately met the burden of  
18 proof and that I recommend that we approve the application.

19 MR. SOCKWELL: Let me ask one more question  
20 briefly, that is, telephones outside of the convenience store  
21 and/or along the site, where are they to be located and how  
22 many?

23 MR. PRAKASH: As proposed, two telephones are to  
24 be located in northeastern side of the property, shown by that  
25 outline.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: The telephones are usually the  
2 point at which any illicit activity will take place, especially  
3 if they are placed remotely from a control point. Is it  
4 possible that the telephones could be relocated to the left or  
5 right front of the convenience store building where they would  
6 be more in a controlled location, more visible, where the  
7 activity that takes place at those phones would be more  
8 visible?

9 MS. LEVINE: Yes, sir, we d be willing to  
10 relocate the telephones, if that was a request of the Board.

11 CHAIRPERSON REID: Okay. That was one of the  
12 issues that was also raised, that I failed to mention, in one  
13 of the letters, I think the Belcher letter, that they were  
14 concerned about the telephones attracting illicit activity and  
15 loitering.

16 MR. GILREATH: Madam Chair, one of the things I  
17 failed to mention, I gather that, perhaps, there is a safety  
18 problem in this area, I m not sure who takes the initiative,  
19 whether the ANC, is DPW the appropriate body that investigates  
20 areas where they have a high rate of accidents? I think it  
21 should be looked at by the appropriate governmental authorities  
22 of the District of Columbia, but we should not put the burden  
23 on them, but hopefully they would cooperate in any kind of  
24 analysis and so forth and any measures that could reasonably be  
25 taken to reduce the accident rate there, if, indeed, there is.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 We don t even know that.

2 MR. SOCKWELL: Well, the police department would  
3 probably have reports on the collision accidents, those that  
4 had been reported, and pedestrian or other, or injury  
5 accidents.

6 MR. GILREATH: Well, is there somebody or some  
7 office whereby ANC or if, indeed, Exxon felt that there was  
8 undue safety problems there, they could request an analysis be  
9 made? Someone has to be able to come out, analyze, dig up the  
10 data, and determine whether or not there s a real problem, if  
11 there is, what measures should be taken to alleviate it.

12 MR. SOCKWELL: Mr. Morris, that would probably be  
13 Bureau of Traffic Services, wouldn t it?

14 MR. MORRIS: Yes, sir, it would.

15 MR. GILREATH: Now, who should take the  
16 initiative I don t know, but maybe the ANC, or you could use  
17 your good auspices to encourage them. First of all, we need to  
18 determine, I guess, whether or not there s a real accident  
19 safety problem. Maybe it would be analyzed and say it s no  
20 worse than the others, it s within acceptable limits,  
21 everything considered. How that should be addressed, I don t  
22 know, but ideally someone should look into it.

23 MR. SOCKWELL: Since we don t have any data, and  
24 apparently none was presented as to any accident history in the  
25 vicinity of the inter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON REID: Did you second this motion?

2 MR. SOCKWELL: yes. Well, I can.

3 CHAIRPERSON REID: Please, do.

4 MR. SOCKWELL: I ll second the motion.

5 CHAIRPERSON REID: Okay.

6 I concur with my colleagues. I feel that the  
7 Applicant has met his burden of proof. They have shown how  
8 they are in compliance with Section 706 and Section 2302 of the  
9 Zoning Regulations. I feel that granting them relief is in  
10 harmony with the general purpose and intent of the Zoning  
11 Regulations and map, and that it would not adversely affect the  
12 use of the neighboring property.

13 All in favor?

14 (Ayes.)

15 CHAIRPERSON REID: We didn t want any conditions.

16 MS. PRUITT: I was just going to ask, was there a  
17 condition that telephones be relocated to the front?

18 MR. SOCKWELL: Yes, the condition is that the  
19 telephones be relocated to the face of the

20 MS. LEVINE: Convenience store?

21 MR. SOCKWELL: convenience store building.

22 MS. PRUITT: Will those phones also be outgoing  
23 calls only, or

24 MR. SOCKWELL: No, they are probably going to be  
25 either Bell or somebody, whoever pays them the most to put them

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 up there.

2 CHAIRPERSON REID: Well, when you say outgoing  
3 phones, there

4 MS. LEVINE: There are some public phones that  
5 don t allow you to receive calls.

6 CHAIRPERSON REID: well, I think that would  
7 probably be helpful.

8 MS. LEVINE: And, the reason they don t do that  
9 is so that you don t have people hanging

10 CHAIRPERSON REID: Hanging around waiting for  
11 calls.

12 MS. LEVINE: Right.

13 MR. SOCKWELL: The restriction would be a revenue  
14 issue, albeit it minor, to Exxon, but I don t know whether we  
15 can restrict them from outgoing.

16 MS. PRUITT: Well, I know there s a lot of gas  
17 stations and a lot of public telephones do have that  
18 restriction.

19 CHAIRPERSON REID: Do you have any problem with  
20 that, Ms. Levine?

21 MS. LEVINE: I would appreciate the opportunity  
22 to allow incoming calls.

23 CHAIRPERSON REID: All right, well, let s see  
24 what we can do to compromise here, you have a complaint about  
25 the incoming I mean, about the telephones, and the loitering,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and the attraction of illicit behavior, illicit activity, you  
2 have two telephones, we have two telephones, right, so what  
3 about having one telephone, if you are going to allow incoming  
4 calls, and why, what s important to you about the incoming  
5 calls because it seems to me that if in Washington this is a  
6 method by which property owners and proprietors have been able  
7 to dissuade illicit activity, you know, them coming to the site  
8 and using that as their outpost of their office to receive  
9 calls or conduct business, I m speaking of the illicit drug  
10 people, or prostitutes, or whatever, then is there some reason  
11 why you specifically would like to have incoming calls at a  
12 telephone booth?

13 MR. SOCKWELL: It s a revenue issue, I m sure.

14 CHAIRPERSON REID: I don t think that Exxon is  
15 really hurting in terms of one telephone.

16 MR. SOCKWELL: Madam Chair, let me just say this,  
17 we live in the day of the beeper, and virtually every  
18 individual that we would want to restrict from using the  
19 incoming call privilege would probably have a beeper available  
20 to him or herself, and I think that it really is a limited  
21 value restriction today.

22 CHAIRPERSON REID: What, having incoming calls?

23 MR. SOCKWELL: Not having taking the incoming  
24 call capability away from the phone, because all they have to  
25 do is get their beeper and then call from wherever.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Oh, a cell phone, most  
2 everyone today has a cell phone.

3 MR. SOCKWELL: If they can call out, once they  
4 know who to call, they can call back out using the phone.

5 CHAIRPERSON REID: Yeah, I just wanted to find  
6 out what rationale you had for wanting to have the incoming  
7 calls.

8 MS. LEVINE: As Mr. Sockwell said, we do live in  
9 an age of technology right now, and most people do own beepers,  
10 and cellular phones. However, for the customer that does not,  
11 in the event that they needed to page someone, for example, and  
12 receive a return call that might not have a cellular phone, or  
13 whose battery might have run out, it does provide a service to  
14 allow that phone call to come in.

15 You know, again, we are not offering service  
16 facilities other than those that might be minor in nature that  
17 a cashier could help with, and in the extent that they might  
18 have to call AAA and wait for a return call, their battery  
19 died, their cell phone is not working, it just provides an  
20 additional service. It really is not a revenue stream.

21 MR. SOCKWELL: Well, sometimes, it depends on who  
22 you are renting from.

23 CHAIRPERSON REID: What about one phone, rather  
24 than two phones.

25 MS. LEVINE: I would be acceptable to one phone.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We would just like to have the service available to our  
2 customers.

3 CHAIRPERSON REID: All right, then why don t we  
4 condition it to move the phones to the front of the convenience  
5 store, one, and two, one phone rather than two.

6 MR. GILREATH: Madam Chair, I can visualize a  
7 situation whereby that it s raining and one person is trying to  
8 use one person is using the phone, and you are standing there  
9 waiting and this person has a long conversation and what have  
10 you. It seems maybe one or two, I don t think is really that  
11 significant, I think two provides some convenience to give the  
12 second person an opportunity.

13 If you have a situation whereby you are at a  
14 filling station waiting to use the phone

15 CHAIRPERSON REID: I agree, but then you can also  
16 envision two phones, two people on the phones and someone  
17 standing in the rain waiting in long conversations, but I think  
18 that what I m concerned about is that particular area, Mr.  
19 Gilreath, is one that is generally notorious for illicit  
20 activities. Right there coming off Kennedy Street is one of  
21 the most notorious in the City, and I think that s where the  
22 apprehension of the neighbors is coming from, they don t want  
23 to give these

24 MR. GILREATH: People.

25 CHAIRPERSON REID: people, give these persons

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 license to then take up right there at that gas station,  
2 because it s a new place, it gives them another place to be  
3 able to hang out, and that s what I was just trying to see, if  
4 we could mitigate that. And, even though it may cause  
5 situations where there are two people standing, or another  
6 person standing, and a person is on the telephone, I think that  
7 that s better than having those people take up at that  
8 particular gas station, and they will.

9 MR. GILREATH: Okay, as long as Ms. Levine has no  
10 problem with it, and as I understand it you are talking in  
11 terms of public safety and so forth

12 CHAIRPERSON REID: Right.

13 MR. GILREATH: so, I will go along with that.

14 CHAIRPERSON REID: Right. I think that s the  
15 only reason why, other than that there would be no reason to  
16 limit the telephone to one, and I highly don t agree with the  
17 idea of not allowing any incoming calls, so I ll go along with  
18 incoming calls if it s only one telephone.

19 MR. GILREATH: I accept that.

20 MR. SOCKWELL: Since we got on public safety, we  
21 might as well take it to the limit. In some of your stations I  
22 know you have a, or at least some companies, I believe that  
23 Exxon does it, has sort of a special police department decal  
24 for them to know that they can use that station for certain  
25 things, community services type connection, how do you work

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that?

2 MS. LEVINE: It is typically up to the individual  
3 operator, in all honesty. That s not something that we  
4 enforce, it is something we encourage. Often times, we ll have  
5 basic office center facilities available inside the store, a  
6 fax, a copy machine, and we will typically even encourage the  
7 local police to come in, use the facilities, offer them a cup  
8 of coffee or a glass of soda, so that they can have a presence  
9 on the site, but it s not something that we enforce, it s  
10 really done on a store-by-store basis.

11 MR. SOCKWELL: And, it s all dealer controlled?

12 MS. LEVINE: Correct. It s not something we can  
13 require our dealers to do, but it is something we encourage,  
14 and if the local police are in favor of it, and they would like  
15 to, you know, have those facilities available to them, we do  
16 offer that up.

17 MR. SOCKWELL: It sounds like being an Exxon  
18 dealer gives one a lot of freedom to operate one s facility as  
19 one sees fit.

20 MR. COLLINS: In accordance with the agreements.

21 CHAIRPERSON REID: All in favor?

22 (Ayes.)

23 CHAIRPERSON REID: Opposed?

24 MS. PRUITT: Staff would record the vote as 3/0  
25 to approve, motion made by Mr. Gilreath, seconded by Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Sockwell, with the condition that one telephone be relocated to  
2 the front of the convenience store.

3 CHAIRPERSON REID: Okay.

4 Next case, please.

5 Mr. Collins, your order should be out within  
6 about two, two or three weeks, hopefully, about two weeks.

7 MR. COLLINS: Great, thank you very much.

8 MS. PRUITT: The next case on the agenda is  
9 16495, application of Alma Newsome, pursuant to 11 DCMR 3108.1  
10 for a special exception under subsection 333.1 for the  
11 construction of a new principal storage structure on an alley  
12 lot of an existing structure in an R-4 District at premises  
13 1140 Morse Street, N.E. (Square 4065, Lot 802).

14 All those planning to testify would you please  
15 stand and raise your right hand?

16 Please, be seated, sir.

17 Whereupon,

18

19 was called as a witness by Counsel for the Applicant, and  
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 MR. WASHINGTON: Good morning, Madam Chair and  
23 members. My name is William Washington. I m acting as the  
24 agent for my client. My address is 10101 Lintford Terrace, and  
25 that s Lanham, Maryland.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Madam Chair, my client, Ms. Alma Newsome, she  
2 lives at 1140 Morse Street, N.E., and at the rear of her  
3 property she owns a lot, and which is called an alley lot, and  
4 at the rear of that property, when they first purchased, her  
5 and husband, there was a garage there. And, after several  
6 years, the garage had erosion and was falling down.

7 In lieu of that, her husband built a storage  
8 shed. Now, I grant you Ms. Newsome s husband did not follow  
9 the procedure and get a permit for that, but prior to that Ms.  
10 Newsome, she d been getting several letters and complaints from  
11 an inspection board. They ve been coming by saying that you  
12 have to get a permit for the shed that they erected in the back  
13 of her property.

14 And, you know, today we just want to know if we  
15 can have favor, or if we can be granted to proceed with the  
16 process to get a permit so she can be issued the storage shed.

17 And, we have a letter from neighbors, you know,  
18 concerning this issue, and we have a list of 17 nearby property  
19 owners signing this document, you know, stating that, you know,  
20 they signed and they agreed that the shed is in the back of her  
21 property, it is not a nuisance. By the way, she has the area  
22 fenced off, and she grows vegetables and all kind of stuff back  
23 there, so we just want to know if, you know, the Board would  
24 grant her wish that she can proceed with the permit for a shed.

25 CHAIRPERSON REID: The petition that you said

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that you had, did you submit that as part of the record,  
2 because I didn't see it.

3 Those are from property owners?

4 MR. WASHINGTON: Yes.

5 CHAIRPERSON REID: Give it to staff, property  
6 owners who are in support of your application.

7 MR. WASHINGTON: Right.

8 CHAIRPERSON REID: Okay.

9 And, you say that she wants she also has a  
10 garden on this land?

11 MR. WASHINGTON: Yes, there's a garden.

12 CHAIRPERSON REID: And, she wants to convert this  
13 now to a

14 MR. WASHINGTON: Storage shed.

15 CHAIRPERSON REID: a storage shed.

16 Here's my question, I'm a little confused here  
17 because it looks like you have steps, and a window, and a door,  
18 and does anyone live there?

19 MR. WASHINGTON: No.

20 CHAIRPERSON REID: Has anyone ever lived there?

21 MR. WASHINGTON: No.

22 MR. GILREATH: Is there an air conditioning unit  
23 there? Is this used for a work area as well?

24 MR. WASHINGTON: The Applicant, it was a storage  
25 shed, but he also did some office work in there too, so he had

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a chair and table and all that kind of set up in the storage  
2 shed, too.

3 MR. SOCKWELL: Mr. Washington, is there any  
4 plumbing in this building?

5 MR. WASHINGTON: No, it s not.

6 MR. SOCKWELL: So, there s no running water?

7 MR. WASHINGTON: No, it s not.

8 CHAIRPERSON REID: No heat?

9 MR. WASHINGTON: Yes, it s got heat.

10 CHAIRPERSON REID: Air conditioning. Heat and  
11 air conditioning.

12 MR. WASHINGTON: Yes.

13 CHAIRPERSON REID: Okay.

14 So, you are asking for a storage shed, but the  
15 use is actual for other than storage, is that what I m hearing?

16 MR. WASHINGTON: Well, no, we are asking for a  
17 storage shed.

18 MR. GILREATH: You are saying it was previously  
19 may I ask, is the, I guess if you will, the husband is deceased  
20 now, he used it and this lady here is simply saying she now  
21 wants to use it solely for storage, is that what you are  
22 asking?

23 MR. WASHINGTON: Right, that s correct.

24 MR. SOCKWELL: When was it constructed?

25 MR. WASHINGTON: It was constructed, she told me,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ten years ago.

2 CHAIRPERSON REID: See now, just one second, give  
3 me one second what we were looking at, Mr. Washington, is on  
4 your computation sheet, this sheet right here

5 MR. WASHINGTON: Uh-huh.

6 CHAIRPERSON REID: - can you pull it out,  
7 please?

8 MR. WASHINGTON: I don t have that before me. I  
9 don t have it.

10 CHAIRPERSON REID: You don t?

11 MR. GILREATH: He can use mine, if he wants.

12 CHAIRPERSON REID: Okay.

13 MR. WASHINGTON: Thank you.

14 CHAIRPERSON REID: Okay. Your application says  
15 storage building right here.

16 MR. SOCKWELL: but, it says, Proposed: one  
17 dwelling unit, and that would mean that you are asking for a  
18 residential unit as that storage building.

19 CHAIRPERSON REID: Who filled this out?

20 MR. WASHINGTON: That must have been a mistake.

21 MS. PRUITT: That s what is submitted to DCRA,  
22 which then triggers it to us.

23 CHAIRPERSON REID: No, but who filled it out is  
24 my question.

25 MS. PRUITT: Oh, I m sorry, I didn t hear that.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Did you fill it out, Mr.  
2 Washington?

3 MR. WASHINGTON: Let me see.

4 CHAIRPERSON REID: Come and take a look at it.

5 MS. PRUITT: It s the application you gave to  
6 DCRA.

7 MR. SOCKWELL: It s this, that yellow part, he s  
8 asking for a dwelling unit.

9 MS. PRUITT: I know, I read that, I understand  
10 exactly your concern.

11 CHAIRPERSON REID: Did you fill that out?

12 MR. WASHINGTON: No, I didn t fill it out, but I  
13 was there present when I tried to submit this for permit.

14 CHAIRPERSON REID: So, were you aware of the fact  
15 that they had put in here that

16 MR. WASHINGTON: No, I didn t, I wasn t aware  
17 that they put down one dwelling.

18 MR. SOCKWELL: Okay, it makes it seem that the  
19 storage building is being requested as a residential unit,  
20 rather than as a non-residential storage building.

21 MR. WASHINGTON: Well, that was an oversight on  
22 my behalf, but it s not used as a dwelling.

23 CHAIRPERSON REID: Okay.

24 Mr. Washington, your application is being  
25 submitted under Regulation, I think it s 333, 331.1, did you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I did not see in your application where you addressed that, how  
2 you comply with 333.1. Are you familiar with that regulation?

3 MR. WASHINGTON: No, I m not.

4 CHAIRPERSON REID: All right, then let s take a  
5 look at it. All right, here, come forward and look at 333.1,  
6 each section, you have one, two, three, four and five, and look  
7 at each one and then tell us how you or if you are in  
8 compliance with that particular subsection.

9 MR. WASHINGTON: I think we followed all the  
10 agreements on it, sections on here.

11 CHAIRPERSON REID: Mr. Washington, what I m  
12 asking you to do, first of all, it should have done before you  
13 came, okay, so what we are trying to do is to assist you in  
14 making your case, and what I need you to do, I will give you  
15 the regulations, look at each one, and tell us how you comply  
16 with each one of those four or five that I just gave you, after  
17 reading each one, and tell us about it.

18 MR. WASHINGTON: I need some time to look at this  
19 so I can state the case. I need some time to review each one  
20 of them and look at my file and see how it presents that case,  
21 because I can t just go before and read this.

22 CHAIRPERSON REID: We can do it now.

23 MR. WASHINGTON: Okay.

24 CHAIRPERSON REID: It s not as complicated as you  
25 might think. Basically, it s asking you, 333.1, storage of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 wares or goods, parking lot, parking garage or public storage  
2 garage not otherwise permitted under provisions of the chapter,  
3 or an alley lot, so referred on the records of the lender,  
4 reported on the records of the District Finance Office, on or  
5 before November 1 shall be permitted in the R-4 District if  
6 approved by the BZA. You are here, so you are complying with  
7 that, correct?

8 MR. WASHINGTON: Right.

9 CHAIRPERSON REID: Number two, 333.2, no storage  
10 use authorized in the section shall be located in a building  
11 containing more than 2,500 square feet of gross floor area.  
12 Does your building contain more than 2,500 square feet?

13 MR. WASHINGTON: No, it s less than 2,500.

14 CHAIRPERSON REID: All right.

15 MR. SOCKWELL: I think it s approximately 400  
16 square feet.

17 CHAIRPERSON REID: Four hundred, so it s no where  
18 near, okay, so you meet that requirement.

19 MR. WASHINGTON: Okay.

20 CHAIRPERSON REID: Number 333.3, any use  
21 authorized in the section shall not be likely to become  
22 objectionable because of noise, traffic or number of employees.  
23 You submitted the petition, basically from your neighbors, so  
24 it s saying they have no objection, as a matter of fact they  
25 support your application.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. WASHINGTON: Okay.

2 CHAIRPERSON REID: So, you comply with that.

3 Then 333.4, the alley upon which the use is to  
4 be located shall be readily negotiable by any trucking  
5 necessary for the proposed operation.

6 MR. SOCKWELL: You ve got 20 foot and 15 foot  
7 alleys all around it.

8 CHAIRPERSON REID: So, he complies with that.

9 MR. SOCKWELL: So, he complies with that.

10 CHAIRPERSON REID: 333.5, the hours of active  
11 operation shall be arranged so as not to prove disturbing or  
12 otherwise objectionable to persons residing around the  
13 perimeter of the square in which it is located.

14 MR. SOCKWELL: And, what is Ms. Newsome going to  
15 do in the building, basically?

16 Whereupon,

17 ALMA NEWSOME

18 was called as a witness by Counsel for the Applicant, and  
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 MS. NEWSOME: Just store

22 CHAIRPERSON REID: Give your name and your  
23 address, ma am.

24 MS. NEWSOME: oh, my name is Alma Newsome, and  
25 I live at 1140 Morse Street, N.E.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 We are just going to store like household stuff  
2 that we got rid of, getting ready to throw out, stuff like  
3 that.

4 MR. SOCKWELL: And, you ll probably because you  
5 have an air conditioning unit in there, you ll

6 MS. NEWSOME: Well, at that time when my husband  
7 put the air conditioning unit it, because he used to be out  
8 there, but he s dead and gone so nobody is out there now.

9 MR. SOCKWELL: Okay.

10 CHAIRPERSON REID: Okay.

11 MR. GILREATH: Just a hypothetical, but suppose  
12 that one of your children or your grandchildren wanted to move  
13 in with you and wanted to use this as an office, should we  
14 place some kind of restriction, say this is just a storage  
15 area?

16 CHAIRPERSON REID: We can do that.

17 MR. GILREATH: As long as it s used for storage,  
18 I have no problem with it.

19 MR. SOCKWELL: Storage and related activities.

20 MR. GILREATH: Okay, fine.

21 MS. NEWSOME: Basically, that s what I want it  
22 for, just for storage. It s not going to be used for an  
23 office.

24 MR. SOCKWELL: We are not going nobody is going  
25 to be upset if you want to move your sewing machine out there.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. NEWSOME: No.

2 CHAIRPERSON REID: All right.

3 So, moving on, the ANC has not submitted a  
4 report, so we

5 MR. GILREATH: Yes, they did.

6 CHAIRPERSON REID: they did?

7 MR. GILREATH: It s right here. They have no  
8 objections.

9 CHAIRPERSON REID: Okay, we are just hot off the  
10 press, we ll just have to waive our record to accept this into  
11 the record, will this go by consensus?

12 MR. SOCKWELL: Yes.

13 CHAIRPERSON REID: All right, then the ANC-5B is  
14 saying that there was a unanimous decision on the application,  
15 there was no opposition, and let s see if there was a quorum  
16 present well, it says a unanimous decision, but it doesn t  
17 say there was a quorum present, but, nonetheless, obviously  
18 they are in favor of your application. Okay.

19 MS. PRUITT: Excuse me, Madam Chair, they do say  
20 proper notice on D it says, Six members of the ANC  
21 constitute a quorum.

22 CHAIRPERSON REID: Oh, I m sorry, there was a  
23 quorum present.

24 MS. PRUITT: Okay, so you can give it great  
25 weight.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: And so, therefore, your  
2 application will be given the great weight to which it is  
3 entitled.

4 And, Mr. Washington, don t leave without giving  
5 us back our page, okay?

6 MR. WASHINGTON: Okay.

7 MR. SOCKWELL: Yes, that s my personal page.

8 DOCTOR WASHINGTON: Okay, thank you very much.

9 CHAIRPERSON REID: And, there are no letters of  
10 opposition, but we do have support. We have a petition with 27  
11 signatures, 17 signatures of neighbors who are in support of  
12 the application.

13 No persons have appeared here in support nor in  
14 opposition. So, we are getting down to closing remarks by the  
15 Applicant. At this time, basically, you have an opportunity to  
16 give us your last remarks.

17 MR. WASHINGTON: Okay.

18 First of all, we received a letter from a  
19 neighbor, they said, due to the Newsome s property in the back,  
20 with the fence around it, it s been keeping old cars,  
21 loitering, people drinking, because she has that area  
22 surrounded fenced in, and they feel as though with the shed in  
23 the back it s not causing any kind of nuisance to the area.

24 And, given granted that we can have this, you  
25 know, apply for this permit for the shed, I think Ms. Newsome

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would be very appreciative, because it seems like she s been  
2 going through an ongoing battle trying to acquire this permit  
3 so she can have the shed in the back.

4 And, I think it would be a memorial type thing,  
5 since her husband built it, and it s something, a memory left  
6 from him.

7 So, I would just thank the Chairperson for  
8 giving us a grant so we can proceed with the permit process.

9 CHAIRPERSON REID: Okay, all right, thank you  
10 very much. Excuse me one second.

11 All right. Would you like to have a bench  
12 decision, summary order, which means you get a response today?

13 MR. WASHINGTON: We d like to get a response  
14 today.

15 CHAIRPERSON REID: Okay.

16 Board members, I would move that we approve this  
17 application. I think that the Applicant has demonstrated that  
18 they have met their burden of proof under Subsection 333 of the  
19 Zoning Regulations. There does not appear to be any adverse  
20 impact. The community has basically supported them with a  
21 petition. The ANC is also in support of this application. I  
22 think that the only we can condition the special exception  
23 with a stipulation that it be used for storage only

24 MR. SOCKWELL: And related uses.

25 CHAIRPERSON REID: and related uses, and I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 feel that it does not impair the intent or harmony of the  
2 Zoning Regulations or map.

3 Did I hear a second?

4 MR. GILREATH: I second the motion, and if at  
5 some future time, here again, if your grandchildren, one of  
6 them wanted to open it and make this be used as an office,  
7 they d have to come back in and get a special exception. So,  
8 it would have to be used for storage and related uses. And,  
9 any kind of office use, would that be correct, Ms. Pruitt,  
10 that if, indeed, there was the intent to use this for an office  
11 at some other time it would be necessary to come back in and  
12 ask for relief from us.

13 MR. WASHINGTON: Okay.

14 MR. GILREATH: I second the motion.

15 CHAIRPERSON REID: All in favor?

16 (Ayes.)

17 CHAIRPERSON REID: Opposed?

18 MS. PRUITT: Staff would record the vote as 3/0  
19 to approve, motion made by Ms. Reid and seconded by Mr.  
20 Gilreath, with the condition that it be used for storage and  
21 related uses only.

22 CHAIRPERSON REID: Okay, thank you, and you  
23 should have your response, your order back, in about two weeks.

24 MR. SOCKWELL: Don t forget to go for that  
25 building permit and continue that process.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. WASHINGTON: Oh, yes, so I m going to have to  
2 get the order from you all first.

3 MR. SOCKWELL: Right.

4 MR. WASHINGTON: Okay.

5 MS. PRUITT: Correct, so once the order we will  
6 actually mail it to Ms. Newsome, and then from there we then  
7 send the file to DCRA so that you can get your permit.

8 MR. WASHINGTON: Okay.

9 CHAIRPERSON REID: That concludes the morning  
10 session for the Board of Zoning Adjustment for September 13,  
11 1999.

12 MR. GILREATH: What time are we going to  
13 reconvene?

14 CHAIRPERSON REID: We will reconvene at

15 MR. GILREATH: 1:15 maybe?

16 CHAIRPERSON REID: That s fine with me.

17 1:15, is that Ms. Pruitt-Williams, Mr. Hart?

18 MS. PRUITT: That s certainly your call.

19 CHAIRPERSON REID: Okay, we ll resume at 1:15.

20 Does that give you enough time? John?

21 MR. SOCKWELL: The sooner we get out of here this  
22 afternoon the happier I ll be.

23 MR. GILREATH: I ll go along with that.

24 (Whereupon, the hearing was recessed at 12:44  
25 p.m., to reconvene at 1:15 p.m., this same day.)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:30 p.m.

CHAIRPERSON REID: Good afternoon, ladies and gentlemen. The hearing will please come to order. This is the October 13<sup>th</sup> Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross-Reed, Chairperson. Joining me today are Robert Sockwell and Jerry Gilreath, representing the National Capitol Planning Commission.

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. When coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception and variance cases are, one, statement and witnesses of the Applicant, two, government reports, including Office of Planning, Department of Public Works, ANC, et cetera, three, persons or parties in support, four, persons and parties in opposition, five, closing remarks by the Applicant.

Cross examination of witnesses is permitted for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 persons or parties with direct interest in the case.

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

6 Decision of the Board in these contested cases  
7 must be based exclusively on the public record. The Board,  
8 with any appearance to the contrary, the Board requests that  
9 persons present not engage members of the Board in  
10 conversation.

11 Please turn off all beepers and cell phones at  
12 this time, so as not to disrupt these proceedings.

13 The Board will now listen to any preliminary  
14 matters. Preliminary matters are those which relate to whether  
15 a case will or should be heard today, such as request for  
16 postponement, continuance or withdrawal, or whether proper and  
17 adequate notice of the hearing has been given, if you are not  
18 prepared to go forward with a case, or if you believe that the  
19 Board should not proceed, now is the time to raise such a  
20 matter. Are there any preliminary matters? Does staff have  
21 any preliminary matters?

22 MS. PRUITT: Yes, Madam Chair, the staff has two.  
23 We ll start with the easy one, 16499. You have before you a  
24 letter from the Applicant withdrawing this application.

25 CHAIRPERSON REID: We do?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PRUITT: Yes, it should have been given to  
2 you this morning, it came very late last night from Mr. Gell.

3 We can get you an extra copy if you can t find  
4 your s.

5 CHAIRPERSON REID: Do you have it, Mr. Sockwell?

6 MR. SOCKWELL: No.

7 MR. GILREATH: I don t have it either.

8 CHAIRPERSON REID: We don t have it. We have not  
9 been given it yet.

10 Steven Gell, is he here?

11 MS. PRUITT: No, Mr. Gell is not here.

12 CHAIRPERSON REID: The attorney is not here?

13 MS. PRUITT: No.

14 CHAIRPERSON REID: All right, this is a request  
15 for withdrawal on an application for two special exceptions for  
16 the Jewish Primary Day School at 5000 14<sup>th</sup> Street, to permit a  
17 private elementary school and a child development center, and  
18 that s it. This is a withdrawal.

19 MS. PRUITT: Correct, that s what I stated, we  
20 have a question of withdrawal.

21 CHAIRPERSON REID: Oh, I thought I don t know  
22 why I was thinking you meant a postponement.

23 MS. PRUITT: No, we get so many of them, I know.  
24 This is very simple, it s a request for withdrawal.

25 CHAIRPERSON REID: So, do we have to move to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 accept the withdrawal?

2 MS. PRUITT: I believe, I m not sure if this man  
3 is speaking in reference to this case.

4 CHAIRPERSON REID: Are you in reference to this  
5 case, No. what s the case number?

6 MS. PRUITT: 16499.

7 CHAIRPERSON REID: Okay.

8 So, there s no one here that is involved with or  
9 has had any participation with that particular case? All  
10 right, there are residents here who came to testify in regard  
11 to the

12 MS. PRUITT: It s the Jewish Primary Day School.

13 CHAIRPERSON REID: the World Affairs Executive  
14 Council/Jewish Primary Day School, this case has been  
15 withdrawn.

16 The only information that we have, ma am, is  
17 that there is a request for withdrawal. There is nothing else,  
18 there is no we don t know anything more than that. So, any  
19 questions I suppose would be directed directly to them, and we  
20 move to accept their withdrawal.

21 MR. SOCKWELL: I second the motion.

22 CHAIRPERSON REID: All in favor?

23 (Ayes.)

24 CHAIRPERSON REID: Opposed?

25 MS. PRUITT: Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Please call the next case.

2 MS. PRUITT: Actually, there s another item.

3 CHAIRPERSON REID: All right.

4 MS. PRUITT: I took the easy one first.

5 CHAIRPERSON REID: Okay.

6 MS. PRUITT: Silly me.

7 On the first application, 16496, it s really  
8 more of a clarification, and the notice was written a little  
9 confusingly because we got some very confusing information from  
10 the Zoning Administrator.

11 CHAIRPERSON REID: Okay.

12 MS. PRUITT: It is advertised, we have advertised  
13 for a special exception and a variance both, so in the case of  
14 notice that we are adequate and okay with that, it s just that  
15 you are looking for a special exception from 354.1 and a  
16 variance from 354.4.

17 MR. GILREATH: Has the Applicant expressed any  
18 do we have to use both of these, or we can approve only one?

19 MS. PRUITT: Yes, you have to approve both of  
20 them.

21 MR. GILREATH: Oh, I see, both are required.

22 MS. PRUITT: Both are required. You have two  
23 letters from Mr. Nunley, the Zoning Administrator, stating that  
24 one was only required, subsequent to that he sent another one  
25 stating it could be done in the alternative.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 After actually talking with Corp. Counsel, it is  
2 believed, and I think the Applicant will concur, that they have  
3 no problem with the special exception end of it, special  
4 exception for the use, and a variance from the frontage I m  
5 sorry, I don t have my regs directly in front of me.

6 CHAIRPERSON REID: The window.

7 MS. PRUITT: The window, yes, so that s how this  
8 case should be proceed.

9 MR. SOCKWELL: By the way, the first letter was  
10 actually signed for Mr. Nunley by Mr. Bello.

11 MS. PRUITT: Right.

12 MR. SOCKWELL: So, that may have had something.

13 MS. PRUITT: Yes, I m not sure, we weren t able  
14 to track that down, but it s, for the most part, clear as mud  
15 right now.

16 CHAIRPERSON REID: Are you referring to this July  
17 15<sup>th</sup> letter, because that letter specifies there to be a special  
18 exception and a variance, from Nunley, the Nunley letter.

19 MS. PRUITT: Right.

20 Staff had several communications with that  
21 office, and a couple of letters, so what I just wanted to be  
22 clear is that what has been advertised for is acceptable and we  
23 can correct the application to reflect the exact sections that  
24 are needed. But, a special exception and a variance are both  
25 needed, just not the ones that were initially cited.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Okay.

2 MS. Pruitt, I m sorry, Mr. Sockwell was talking  
3 to me, we are going to this case will involve a special  
4 exception under 350.4.

5 MS. PRUITT: Correct.

6 CHAIRPERSON REID: And a variance under 354.4.

7 MS. PRUITT: Correct.

8 CHAIRPERSON REID: All right, we are all on the  
9 same page then. Okay.

10 MS. PRUITT: Right.

11 CHAIRPERSON REID: All right.

12 MS. PRUITT: That concludes staff s preliminary  
13 matters. Thank you.

14 CHAIRPERSON REID: Do you want to call the case,  
15 please?

16 MS. PRUITT: Yes.

17 The first case on the agenda is 16496,  
18 application of H and M Enterprises, pursuant to 11 DCMR 3108.1,  
19 for a variance from Subsection 354, and a variance under 3107.1  
20 under Subsections 354.4 to allow a retail florist shop within  
21 an apartment house in an R-5-D District at premises 1629  
22 Columbia road, N.W. (Square 2589, Lot 476).

23 All those planning to testify, please stand and  
24 raise your right hand.

25 Please, be seated and start.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Give your name and address,  
2 please.

3 Whereupon,

4 PATRICIO LAVERDY

5 was called as a witness by Counsel for the Applicant, and  
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 MR. LAVERDY: The address is 1629 Columbia Road,  
9 N.W. My name is Patricio

10 mS. PRUITT: No, we need your home address and  
11 your name.

12 MR. LAVERDY: Oh, okay. My name is Patricio  
13 Laverdy, the address is 9916 Hemlock Woods Lane, Burke,  
14 Virginia 22015.

15 CHAIRPERSON REID: Okay, go ahead.

16 MR. LAVERDY: We are here to request the approval  
17 from the Board of Zoning and Adjustment so that I may operate a  
18 retail flower shop on the lobby level of this apartment  
19 building on 1629 Columbia Road, N.W.

20 I have been told by the Zoning Review Branch  
21 that I may not get Certificate of Occupancy unless BZA approves  
22 a special exemption to allow a commercial use in an apartment  
23 building, Section 354, and a variance to allow the commercial  
24 end use to be visible from the sidewalk.

25 The building that is called the Park Plaza has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 eight floors and five sections and 276 apartment units. The  
2 central section, first floor has the lobby, and on the left  
3 side are administrative offices for the building. On the right  
4 side is a small 280-square foot room in which I hope to have my  
5 flower shop. This is a good location for my business there,  
6 because there are so many people living there in the building.

7 Most of my customers will come from the building, and though I  
8 hope that some people on the outside will come and use my  
9 business. I also want to get my business license so I can be  
10 part of the FTD system.

11 I include a map of the building to show my  
12 space. The room I want to use is a very small room, it could  
13 not be used for an apartment. It could be used as an office,  
14 but H and M Enterprises, the owner and manager of the building,  
15 already had an office there in the lobby so it s not necessary.

16 The room is a good place for business with not many customers  
17 going in and out of there, and I do not think that this  
18 business will hurt the building or the community. It is  
19 something that we need, and we will provide good service.

20 My flowers come from Ecuador, and they are roses  
21 and lilies of many unusual types that you cannot get everywhere  
22 in the City. It is true that my business has a window that  
23 faces the street and is visible from the sidewalk, and it looks  
24 like it s a window of a large apartment building, it is hard to  
25 see into the window because of the reflection and things cannot

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 be seen from the outside, so I do not think this is a very big  
2 problem.

3 The variance will not be necessary if I cover  
4 the window, but what will not look good inside, the outside  
5 would not look good of the building. The photos that are with  
6 the statement show that you cannot see from the window that  
7 much.

8 Some other businesses have been approved by the  
9 Board of Zoning Adjustment to operate in a building. There s a  
10 retail pet food store there, the number is, the BZA number is  
11 16381, a processing and dry cleaning station was approved, BZA  
12 number 8550, and a deli is there, the approval is number 8527,  
13 and I included copies there of these orders, and I hope that  
14 you can approve my flower shop business.

15 Also, this is work that I can do very well to  
16 support my family, and this is good for the neighborhood, and I  
17 will not cause any harm.

18 Thank you.

19 CHAIRPERSON REID: Questions?

20 MR. SOCKWELL: Mr. Laverdy, you stated that the  
21 building has 276 apartment units and is an eight-story  
22 building, and you expect to derive most of your business  
23 service from the residents of the building.

24 MR. LAVERDY: Yes, sir.

25 MR. SOCKWELL: In providing the service to your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 shop, in other words, flowers and accessories entering and  
2 exiting in bulk as you stock your shelves, where will that come  
3 from?

4 MR. LAVERDY: There is a large sized alleyway in  
5 the back of the building, as you can see on the illustration  
6 there, there s plenty of room there, and we do have a parking  
7 space and there s a service elevator going up there.

8 MR. SOCKWELL: Thank you.

9 MR. GILREATH: One question, you said the  
10 building has had other businesses, the only other commercial  
11 activity now is the pet shop, these other uses occurred  
12 earlier? So, if I were to go in the building now, what retail  
13 activities would I see other than the pet shop?

14 MR. LAVERDY: Right now, if you go there, there s  
15 a deli store down the bottom, down in the basement, and the pet  
16 shop is there, and the dry cleaning there.

17 MR. GILREATH: Dry cleaning, all three of those  
18 then.

19 MR. LAVERDY: There s three up there.

20 MR. GILREATH: Okay, fine, thank you.

21 CHAIRPERSON REID: For your variance, what you  
22 need to do is to be able to demonstrate that you have met your  
23 burden of proof in regard to a three-prong test, such that you  
24 would be granted a variance, and I don t think I ve heard that  
25 so far. What is it about your property that is unique or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 different, such that it would cause you a practical difficulty  
2 to comply with the existing Zoning Regulations?

3 MR. LAVERDY: Well, we require the business  
4 license, so we need to go through paperwork with the City. Is  
5 that what you are asking?

6 CHAIRPERSON REID: Well, what is it no, what is  
7 it that is unusual about your property, this particular site,  
8 that it could not be used for a matter of right use?

9 MR. LAVERDY: Well, it can t be an apartment,  
10 because it s too small. They have a management company there,  
11 they have these offices there, they have two offices instead of  
12 one.

13 CHAIRPERSON REID: That s what they had?

14 MR. LAVERDY: They had right there next to the  
15 next to at the other side of the building in the same lobby  
16 here there is two offices there. So, the place, I don t think  
17 they can use it as an office, because it s a very small place.

18 CHAIRPERSON REID: Okay.

19 MR. SOCKWELL: I think what staff is getting  
20 ready to say is that, Mr. Laverdy, you stated that you would  
21 not need the variance if you covered your window, the window  
22 that faces the outside of the building, correct, because your  
23 entrance

24 MS. PRUITT: And, it s existing.

25 MR. SOCKWELL: and it s existing your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 entrance, or the entrance to your shop, is from the interior  
2 lobby of the building.

3 MR. LAVERDY: Yes, sir.

4 CHAIRPERSON REID: Well, wait a minute, let me  
5 understand this. Even though he is saying that he doesn't  
6 think he needs a variance, I think that

7 MS. PRUITT: But, it's a variance from this one  
8 particular part, which is that no part of the adjunct or  
9 existing entrance to the adjunct shall be visible from the  
10 sidewalk.

11 CHAIRPERSON REID: I'm sorry, just one second,  
12 please.

13 Okay, MS. Pruitt-Williams, help us out here,  
14 because in the agenda it says a variance from Subsection

15 MS. PRUITT: that's what I said, don't look at  
16 that, because it was confusing, that was done 40 days ago, or  
17 more than 40 days ago, when we had cursory information from the  
18 Zoning Administrator. So, what you need to look at is, it's a  
19 special exception from Section 354.1, which states, Sale of  
20 the following convenience, commodities and services as  
21 accessory uses and appropriate adjuncts to an apartment house  
22 which are designed to serve tenants' daily living needs shall  
23 be permitted in an R-5 District if approved by the BZA.  
24 That's your special exception section.

25 The variance is from Section 354.4, No part of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the adjunct or the entrance to the adjunct shall be visible  
2 from the sidewalk.

3 CHAIRPERSON REID: Okay, so, basically, the  
4 agenda is incorrect and should say special exception.

5 MS. PRUITT: Yes, that was the whole preliminary  
6 issue I was trying to address.

7 CHAIRPERSON REID: All right, but, you know what,  
8 I didn't

9 MS. PRUITT: It's very confusing, I agree.

10 CHAIRPERSON REID: Yes.

11 Okay. Now, so we don't need right here we  
12 just need a special exception.

13 MS. PRUITT: You need a special exception from  
14 Section 354.1 and a variance from Section 354.4.

15 CHAIRPERSON REID: Okay.

16 The variance from 354.4

17 MS. PRUITT: And, that states that, No part of  
18 an adjunct or entrance ...

19 CHAIRPERSON REID: That's what we need to  
20 address.

21 MS. PRUITT: Right.

22 CHAIRPERSON REID: However, Mr. Sockwell just  
23 pointed out that the Applicant has stated that he didn't feel  
24 he needed a variance.

25 MS. PRUITT: I believe his statement was he

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 didn't need a variance if he covered the window, but he would  
2 prefer not to for aesthetic, and business, and

3 CHAIRPERSON REID: But, the point I'm making is  
4 that, here what we have before us is a variance, so

5 MS. PRUITT: I'm sorry, I'm not meaning to speak,  
6 but I believe that he's stating that if he were to cover it he  
7 wouldn't even be here, but he wants to leave it open.

8 CHAIRPERSON REID: Okay.

9 MS. PRUITT: So, therefore, he needs a variance.

10 CHAIRPERSON REID: All right.

11 MS. PRUITT: Is that correct, sir?

12 MR. LAVERDY: Yes, ma'am.

13 CHAIRPERSON REID: All right.

14 MR. GILREATH: Can we take this in two parts,  
15 dealing with the special exception first, then the variance?

16 CHAIRPERSON REID: Sure.

17 MS. PRUITT: I believe you've dealt with the  
18 special exception.

19 MR. GILREATH: Oh, we already dealt with it.

20 MS. PRUITT: And now you are moving on to the  
21 variance.

22 CHAIRPERSON REID: Well now, at first we were  
23 doing 350.4 as a variance, but now with that clarified here, I  
24 guess we can deal with the first relief that's being requested,  
25 and that is the 350.4 special exception.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 All right. Now

2 MR. GILREATH: I think we should try to get  
3 through that and then see where we come out on the other one.

4 MR. SOCKWELL: It s 354.4.

5 CHAIRPERSON REID: No, 350.4 is the special  
6 exception.

7 MS. PRUITT: 354.1.

8 MR. SOCKWELL: 354.1.

9 CHAIRPERSON REID: No.

10 MS. PRUITT: Yes.

11 CHAIRPERSON REID: As the special exception?

12 MS. PRUITT: Yes.

13 MR. SOCKWELL: Yes, 354.1.

14 MS. PRUITT: 354.4 is the variance.

15 CHAIRPERSON REID: Okay, 354.4 is the variance  
16 and the special exception is 3

17 mS. PRUITT: 354.1.

18 CHAIRPERSON REID: I see, so we are not dealing  
19 with 350 anything.

20 MS. PRUITT: Correct.

21 CHAIRPERSON REID: Oh, all right.

22 MR. GILREATH: It seems to me the special  
23 exception will require less weighty proof and we are ready to  
24 deal with that, and get through that, we get through that  
25 successfully, then we can go on to the other.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Okay, all right.

2 So, he demonstrated that the use is an adjunct  
3 use, and that this is why you are here before the Board of  
4 Zoning Adjustment.

5 Okay. Now, for the variance, for the 354.4, and  
6 I think that specifically for the one that relates to the  
7 signage, right?

8 MR. LAVERDY: Right.

9 CHAIRPERSON REID: You want to keep the signs,  
10 keep the window.

11 MR. LAVERDY: Yes, ma am, that would help a great  
12 deal.

13 MR. GILREATH: Do you want to put some kind of  
14 sign in the window that says florist shop, so people can see  
15 this from the street?

16 MR. LAVERDY: That would help, yes, sir, that  
17 would help for the people in the building, you know, and

18 MR. GILREATH: Well, is your preference then, you  
19 would like, ideally, rather than covering the window, what have  
20 you, to actually have a sign there that says your florist shop,  
21 so people walking by the sidewalk say I can go in there and buy  
22 flowers, is that what you are or can you forego any kind of  
23 sign in the window?

24 MR. LAVERDY: No, yeah, hopefully, we can put up  
25 a small, very small sign there, at least for the wiring system,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the FTD system, that s all we are required.

2 MS. PRUITT: Excuse me. Mr. Laverdy, this window  
3 is not the primary, on the same side as the primary entrance to  
4 the building, is that correct, is not?

5 MR. LAVERDY: No, it s not.

6 MS. PRUITT: Okay, I just wanted to ask for  
7 clarification, it s on the side street.

8 And, it s an existing window?

9 MR. LAVERDY: Yes, ma am.

10 MS. PRUITT: And, is it covered now? I mean,  
11 what is in that space now?

12 MR. LAVERDY: Well, just office stuff.

13 MS. PRUITT: So, it s exposed now and it s like  
14 an office?

15 MR. LAVERDY: Yeah, it is, this building has been  
16 there since

17 CHAIRPERSON REID: Okay.

18 Now, in order for us to grant you this variance,  
19 the special exception I don t think we have a problem with, I  
20 think that we ve kind of agreed with that, but the variance  
21 aspect of it, in that you want your window is visible from  
22 the sidewalk, one, and two, you have not I have not heard yet  
23 you demonstrate to us how what it is about your particular  
24 store, that particular parcel at that particular, is it an  
25 apartment now?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LAVERDY: Well

2 CHAIRPERSON REID: What is it about the space  
3 that is unusual or unique such that it would cause you some  
4 type of practical difficulty to comply with the existing Zoning  
5 Regulations, in other words, for a matter of right use?

6 MS. PRUITT: It s not a use.

7 MR. LAVERDY: It s not a use.

8 MS. PRUITT: This is an area variance, it s  
9 considered an area, it s not a use variance, so it s a  
10 different standard.

11 CHAIRPERSON REID: Okay.

12 Did I say area?

13 MS. PRUITT: No, you said use, and use, the  
14 criterion for a use variance is different.

15 CHAIRPERSON REID: I don t mean use, I mean area.

16 MS. PRUITT: Right, exactly, but I just wanted to  
17 clear the record.

18 CHAIRPERSON REID: Okay.

19 MR. SOCKWELL: Would you restate the

20 CHAIRPERSON REID: But, he still has to  
21 demonstrate how

22 mS. PRUITT: The practical difficulty of how the  
23 window poses a practical difficulty, that s what he needs to  
24 address.

25 CHAIRPERSON REID: Okay, all right, that s better

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 wording than just how is it that it poses a practical  
2 difficulty.

3 MR. LAVERDY: Well, I would think that to comply  
4 with the Zoning Board we would, you know, put up a small sign,  
5 I don t know, it would be helpful for us to it s a very small  
6 place, and there s a door that faces to the lobby, and just a  
7 window there. The window is outside, it s been there for  
8 years, if we can put the small sign that would help.

9 CHAIRPERSON REID: It would help what?

10 MR. LAVERDY: It would help on our business. The  
11 primary is serving to the people in the building.

12 CHAIRPERSON REID: Right.

13 MR. LAVERDY: And, you know, people from the  
14 outside on Columbia Road, if they wanted to buy flowers from  
15 our flower shop, they are welcome too. So, that s not, you  
16 know

17 MR. GILREATH: It sounds like the Applicant  
18 really is wanting a little bit of advertising, this FTD sign in  
19 the window, to let potential patrons outside know about it and  
20 would come in, so we are really talking about an advertising  
21 sign in the window.

22 MR. SOCKWELL: Mr. Laverdy?

23 MR. LAVERDY: Yes, sir.

24 MR. SOCKWELL: What in part you are saying is  
25 that you have a window in your space, that window just happens

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be part of your space.

2 MR. LAVERDY: Yes.

3 MR. SOCKWELL: It s also the way that you will  
4 get natural light, and if necessary, is it an operable window?

5 MR. LAVERDY: Yes, sir.

6 MR. SOCKWELL: You could possibly get ventilation  
7 at some time if it didn t negatively affect things, and if you  
8 use the window for its accepted purpose it will provide some  
9 visibility into your shop, because you would have to open the  
10 blinds in order to get the benefit of the light, and you would  
11 have to at least open the window to get the benefit of the  
12 ventilation.

13 So, if all of those things are true, what you  
14 are hoping is that you would be allowed to use the window for  
15 its intended purpose, and gain some minor added benefit from  
16 having access to a sign in that window. Is that pretty much  
17 what you are saying?

18 MR. LAVERDY: Exactly, yes, sir. Yes, sir,  
19 exactly.

20 MR. SOCKWELL: Thank you.

21 CHAIRPERSON REID: So, the practical difficulty  
22 is okay, you are saying that the practical difficulty is, if  
23 you don t have the window you don t have air?

24 MR. LAVERDY: Well, you know

25 CHAIRPERSON REID: Or circulation?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LAVERDY: right now, for example, the  
2 building, the heat is not on so we have pretty warm weather,  
3 and sometimes we can use light.

4 CHAIRPERSON REID: Okay, well that s what we  
5 just need to establish the need for the window, I guess.

6 MR. SOCKWELL: So, the practical difficulty is  
7 that if you have a window it s difficult not to use it for its  
8 intended purpose, which is to let light into the space.

9 MR. LAVERDY: Exactly.

10 CHAIRPERSON REID: And air.

11 MR. SOCKWELL: And air, and if it s difficult not  
12 to use the window for its intended purpose, it s certainly  
13 difficult to be completely invisible as a flower shop that has  
14 a window that would be used for its intended purpose.

15 MR. LAVERDY: Yes.

16 CHAIRPERSON REID: And, the size of the space is

17

18 MR. LAVERDY: It s 280 square feet.

19 CHAIRPERSON REID: which is substandard for  
20 other units in that building.

21 MR. LAVERDY: If you are referring to the size of  
22 the apartments they have there.

23 CHAIRPERSON REID: Well, yes, I m referring to  
24 other units.

25 MR. LAVERDY: No, that would be the size of a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 kitchen in a regular apartment.

2 CHAIRPERSON REID: That s the whole point I m  
3 making, is that the size of this space is substandard in  
4 comparison to the other units in the building.

5 MR. LAVERDY: Yes, ma am.

6 CHAIRPERSON REID: Okay.

7 MR. GILREATH: Well, Madam Chair, I can see the  
8 window, he needs that for lighting and ventilation, so I can  
9 see keeping the window available and open and so forth, but I m  
10 having a problem with also putting an FTD sign in the window,  
11 which to me crosses the line over into advertising. So, he s  
12 advertising from the window.

13 CHAIRPERSON REID: Well

14 MR. GILREATH: If he just didn t advertise, as  
15 far as I m concerned the window isn t a difficulty, and I think  
16 he could go ahead and do. But, the advertising is what s  
17 causing the problem for me.

18 CHAIRPERSON REID: Well, look at other things, I  
19 wanted to ask MS. Pruitt-Williams, under this 354.4 and .5,  
20 that does not take into account the aspect of the business  
21 being used by the tenants in the building only?

22 MS. PRUITT: I m sorry, can you repeat that?

23 CHAIRPERSON REID: Okay.

24 Under 354.4 and .5, that we are talking about a  
25 variance from those two subsections of the section.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PRUITT: Actually, the Zoning Administrator  
2 didn't cite 354.5, so you are really only looking at 354.4  
3 only.

4 CHAIRPERSON REID: Oh, so we are not even dealing  
5 with a sign at all.

6 MS. PRUITT: Correct.

7 CHAIRPERSON REID: So, we can't even entertain  
8 that.

9 MS. PRUITT: Well, I guess the point is, when the  
10 Zoning Administrator looked at it, there was no indication that  
11 signage would be in the window, so there was no need for him to  
12 then look to seek a variance.

13 CHAIRPERSON REID: When you applied, when you  
14 sent in your application, sir, did you indicate that you wanted  
15 to put that little sign in the window?

16 MR. LAVERDY: No, I did not. I didn't indicate  
17 anything.

18 CHAIRPERSON REID: Okay, so since you didn't ask  
19 for it, then he didn't indicate that you needed to have a  
20 variance from the subsection as well, and verbally you are  
21 asking us to allow that, but we can't.

22 MR. GILREATH: What would be the problem with  
23 having advertising?

24 MS. PRUITT: Well, you can amend a Janice and  
25 I, our Corp. Counsel and I, were speaking about this earlier,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you can amend, at least the regs allow you to amend appeals,  
2 and we were still trying to get a determination on the actual  
3 application.

4 MS. SKIPPER: Well, the particular provision does  
5 not cover applications, it was you have the ability to amend  
6 appeals, and this is not an appeal. I would say at this point  
7 it should not be accepted.

8 CHAIRPERSON REID: Well, in other words, if the  
9 sign is important to you, then you are going to have to go back  
10 and get a read from the Zoning Administrator, at least in  
11 regards to if you can get a variance from the provisions of  
12 Subsection 354.4, that pertains to signage. That s not what  
13 you are appearing today for.

14 MR. LAVERDY: No.

15 CHAIRPERSON REID: That s not even

16 MR. LAVERDY: The sign is not it will help, but  
17 it s not really important. It will help for the

18 CHAIRPERSON REID: Okay, well, we can t deal with  
19 the sign at all.

20 MR. LAVERDY: Okay.

21 CHAIRPERSON REID: Now, your services are going  
22 to be primarily for the tenants in the building.

23 MR. LAVERDY: Yes, ma am.

24 CHAIRPERSON REID: Okay, but you also stated here  
25 today that you intend to, or you d like to try customers other

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 than those that reside in that building, right?

2 MR. LAVERDY: Yes, ma am, yes.

3 CHAIRPERSON REID: Okay.

4 MR. GILREATH: Madam Chair, the Zoning  
5 Administrator, he said he wanted the sign, and the Zoning  
6 Administrator quoted the other if he had told the Zoning  
7 Administrator he wanted a sign in the window, what within the  
8 provision part of that, there s no point in him going back.

9 CHAIRPERSON REID: 354, that s not what this is  
10 referring to.

11 MR. GILREATH: What does it say, because there s  
12 no point in going back

13 CHAIRPERSON REID: It says, No sign or display  
14 indicating the existence of the adjunct shall be visible from  
15 the outside of the building.

16 MR. GILREATH: Well, that requires a variance  
17 now? Can you read that again, make sure what I m saying is,  
18 there s no point in him going back to the Zoning Administrator  
19 and getting it if we felt we could not respond favorably. That  
20 would just be an exercise in futility.

21 CHAIRPERSON REID: Then he has another one  
22 regarding the 354.8, where he s saying that he would stipulate  
23 that the adjuncts authorized under this section are intended to  
24 supply tenants of the apartment house with commodities or  
25 services supplementary to those established in commercial

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 districts, but in order to protect the value and stability of  
2 these visitors the Board shall give consideration to the  
3 following: for extending to the commercial district, adequacy  
4 and convenience of parking spaces, adequacy and scope of  
5 commodities and services provided with those commercial  
6 districts, and the size compared to the apartment house, since  
7 the tenants of the apartment house will be expected to furnish  
8 potentially all of the financial support of the requested  
9 adjunct.

10 But, what I m saying is that, he s testifying  
11 here today that he intends to go outside of the building, so  
12 he d have to have a variance from that subsection as well.

13 MR. SOCKWELL: Well, the sections are not so  
14 specific that they don t allow

15 CHAIRPERSON REID: You can?

16 MS. PRUITT: Yes.

17 MR. SOCKWELL: yeah, the only

18 MS. PRUITT: It s an adjunct, it s in addition to  
19 the commercial district, it s supposed to supplement it. I  
20 mean, it s not to say that he can t draw people from the  
21 surrounding community, but should primarily serve as or be a  
22 convenience to the apartment building, but you cannot limit it  
23 only to people within the apartment building. There are quite a  
24 few apartment buildings in that area that have services on  
25 their first floors like that, little delis, dry cleaners, I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mean very convenient stores that are servicing that apartment  
2 building but are used by other people.

3 MR. SOCKWELL: Yes. I mean, Section D under  
4 354.8 specifically states that the size of the apartment  
5 building is a factor. We are talking about a 274-unit  
6 apartment building, which is by almost all standards a very  
7 large building. And, while it might not be able to support his  
8 business 100 percent, it s a lot larger than a ten, a 15, or  
9 20, or 50 or 100-unit building.

10 CHAIRPERSON REID: And also it says, ... or  
11 substantially all of the financial support of the requested  
12 adjunct.

13 MR. SOCKWELL: Right.

14 CHAIRPERSON REID: So, perhaps, the operative  
15 word here is substantially.

16 MS. PRUITT: And, these are commodities and  
17 service supplementary to those established in commercial  
18 districts. So, it s not that it can t it s exclusive of it,  
19 it s supplementary to the district.

20 CHAIRPERSON REID: Okay.

21 MS. PRUITT: So, you know, if you have one in  
22 there it doesn t mean you can t have another somewhere else.

23 MR. SOCKWELL: And, Madam Chair, if we refer to  
24 the matter of right aspects of convenience stores in  
25 apartments, since you didn t ask for a variance from 354.5,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 which states that, No display or sign advertising your  
2 business shall be visible from the outside of the building, you  
3 would be forced to comply with that anyway, so you are really  
4 restricted on your outside advertising. I mean, it doesn't  
5 restrict you from putting flyers on cars, or meeting with the  
6 adjacent establishments that might use your business, but it  
7 does state that you can't show from the outside of the building  
8 that your business exists within the building in a sign or  
9 display manner.

10 CHAIRPERSON REID: Visible from the outside.

11 MR. SOCKWELL: Visible from the outside. It just  
12 specifically states that.

13 CHAIRPERSON REID: But, he can have an interior  
14 sign

15 MR. SOCKWELL: To the lobby, or whatever is  
16 allowed by your management, and certainly you can use any other  
17 means of advertising your business that isn't a display or sign  
18 that would not affect the specifics of the regulations, which  
19 are that you can't have anything showing that's like a display  
20 sign, placard, billboard, et cetera.

21 MR. GILREATH: So, actually what we are saying  
22 that you would not be able to put that FTD sign in your window,  
23 it would have to go elsewhere, not an exterior sign. Do you  
24 have any alternative, can you do it in the lobby or some other  
25 place other than the window?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LAVERDY: No, sir.

2 CHAIRPERSON REID: Well, the people in your  
3 building would know, one, and then I guess as Mr. Sockwell  
4 said, I guess you would be confined to flyers, or paper, can he  
5 advertise in the paper?

6 MS. PRUITT: Yes.

7 CHAIRPERSON REID: Newspaper advertising, or  
8 local store I mean, local advertising like at the Safeway,  
9 or, you know, various grocery stores, they have, you know,  
10 billboards and bulletin boards and things of that nature. But,  
11 you just couldn't put a sign you'd just have to find a more  
12 creative way of letting people know where you are.

13 MR. LAVERDY: Yes, well, my guests will do, yes,  
14 ma'am.

15 CHAIRPERSON REID: Okay.

16 Now, the other thing is, adverse impact, would  
17 approving your application cause any adverse impact in regard  
18 to noise, traffic, any type of nuisance whatsoever to the  
19 surrounding tenants in the building, I guess?

20 MR. LAVERDY: No, ma'am, peoples in the building  
21 they are happy that we're there.

22 CHAIRPERSON REID: So, you haven't gotten any  
23 complaints?

24 MR. LAVERDY: No, ma'am.

25 CHAIRPERSON REID: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: What will your hours of operation  
2 be and days?

3 MR. LAVERDY: It will be from 9:00 to 6:00 Monday  
4 through Friday, and 9:00 to 4:00 on Saturdays. We probably  
5 will be closed on Sunday.

6 MR. GILREATH: When you go into the lobby of your  
7 building, is there a sign that says there s a delicatessen in a  
8 certain place, and a pet shop, is there kind of indication so  
9 that the tenants of the building will know where to go for this  
10 service?

11 MR. LAVERDY: In the lobby entry to the building,  
12 no, there are not, sir. There are huge signs on the Harbor  
13 Street side of the building, there s a deli, and a large  
14 grocery store there, and the pet food shop there, the dry  
15 cleaners, the same building. So, what happened is, it happened  
16 that a little spot up there is in the lobby area, so that s why  
17 all this trouble is coming.

18 MR. GILREATH: Well, do you know at this point  
19 whether the owner of the building or the manager would permit  
20 you to have some kind of sign in the lobby so that all the  
21 tenants in the building would know that you provide that  
22 service?

23 MR. LAVERDY: Oh, certainly, yes, Mr. Bernstein  
24 has been, the owner, has been very, very nice to us, and, you  
25 know, give us the opportunity to be there.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. GILREATH: Well, do you think if, indeed, you  
2 kept the sign to someplace in the interior of the building and  
3 using advertising, say in the neighborhood newspapers or  
4 whatever, this would be viable, you would make it a viable  
5 thing? We don't mind, at least I have no problem approving  
6 this, on the other hand if you feel that your business would  
7 not be viable I'm not sure you want to go forward unless you  
8 have if you have to have that FTD sign in the window there,  
9 you know, I could not support that, but if you feel your  
10 business can make a go of it without that, then I, for one, am  
11 supportive.

12 CHAIRPERSON REID: You know, what occurred to me  
13 is, and Mr. Sockwell you probably know the answer to this  
14 better than I, the sign that stated florist, or whatever  
15 what's the name of your florist shop?

16 MR. LAVERDY: Park Plaza Florist.

17 CHAIRPERSON REID: Park Plaza Florist, okay, so  
18 isn't a sign typically a business sign? Now, the FTD, is that  
19 like a little decal?

20 MR. SOCKWELL: It's a flying Mercury guy.

21 MR. LAVERDY: It's a Mercury guy.

22 CHAIRPERSON REID: Yeah, isn't it like a decal?  
23 It's not a sign.

24 MR. SOCKWELL: It can be a sign illuminated, or  
25 it can be a decal.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GILREATH: They often are neon, at night you  
2 can see it from the window with different colors, it catches  
3 your eye.

4 CHAIRPERSON REID: Because I m wondering if, like  
5 I said, I don t know, but if it s a decal that could be put on  
6 the window, and this is not a business sign, it s a decal, FTD  
7 decal

8 MR. LAVERDY: May I say something?

9 CHAIRPERSON REID: Yes.

10 MR. LAVERDY: Yeah, it sure is a small decal  
11 there, but if I don t I don t really have to have that, you  
12 know. I don t really have to have that logo there.

13 CHAIRPERSON REID: I don t have a problem with  
14 that. We are not saying that we would give you permission to  
15 do that, but I m just saying I personally don t have a problem  
16 with that.

17 MR. GILREATH: Well, I think a decal is still  
18 advertising, and it s making an appeal to the people on the  
19 street. But, if he can put some kind of interior sign in the  
20 lobby or what have you for the tenants of the building, it s a  
21 very large building, and that would keep most of the business,  
22 and then advertising and letting people know about it, I  
23 wouldn t have any problem with something like that.

24 MR. SOCKWELL: I think maybe, because we can t  
25 override the regulation in an effective way, and certainly we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 want to help you with what you are doing, but I think that your  
2 best and most likely opportunity is to put something very  
3 attractive as a floral display in the window, and along with  
4 the other things that you put out as flyers, and leaflets, and  
5 advertising other than signs and billboards, you ll be getting  
6 people to look to see where in the building this florist shop  
7 is. And, when they see your floral display in the window,  
8 they ll probably make that assumption. We would hope so, but  
9 we can t grant you a sign.

10 MR. LAVERDY: Well, that will be fine. I ll  
11 agree with you on that matter. I will put something in the  
12 lobby, you know, for that. We have a very small budget, so  
13 hopefully this takes off.

14 CHAIRPERSON REID: Okay.

15 MR. GILREATH: I agree with Mr. Sockwell, that  
16 the window, there s nothing to prohibit you from putting  
17 several types of flowers, I mean, as long as you don t say what  
18 it is, this would be your own interior decoration.

19 CHAIRPERSON REID: Floral arrangements.

20 MR. GILREATH: Any kind of floral arrangement, as  
21 long as there is nothing to say you are advertising. As far as  
22 you are concerned, it is just interior decoration, but you are  
23 free to put any kind of floral display in there as long as  
24 there s nothing to indicate you are soliciting business from  
25 the outside.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LAVERDY: Sure.

2 CHAIRPERSON REID: Okay.

3 Thank you.

4 Is there anyone else here today who is here for  
5 this particular case, 16496? Okay.

6 Do we have a letter from the ANC? I don't  
7 remember seeing one. The ANC, it's LC, I think, did not, to my  
8 knowledge, has not submitted anything, so typically we assume  
9 that they don't have any objection.

10 And, we don't have any government reports, no  
11 one is here in support, no one is here in opposition, so could  
12 we have your closing remarks, sir?

13 MR. LAVERDY: I would thank you for what you are  
14 doing, and also just to show you the faith these people had in  
15 us, we collected some signatures there, mostly the people in  
16 the building that signed it all.

17 MS. PRUITT: That was submitted earlier and was  
18 copied.

19 CHAIRPERSON REID: Oh, okay.

20 MS. PRUITT: It was just submitted today, this  
21 morning.

22 CHAIRPERSON REID: Okay. Well, we'll make note  
23 of the fact that you do have a petition from these are people  
24 who all live in the Park Plaza who are in support of your  
25 particular application?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LAVERDY: Yes, ma am.

2 CHAIRPERSON REID: Okay. All right.

3 Would you like to have a summary order, bench  
4 decision, which means that you get your response today?

5 MR. LAVERDY: Oh, certainly, go ahead.

6 CHAIRPERSON REID: All right.

7 MR. GILREATH: Madam Chair, I feel the Applicant  
8 has made his case that this florist enterprise can function  
9 appropriately without any kind of detriment or conflict with  
10 the regulations and so forth, as long as he does not put  
11 advertising in the window and, therefore, I recommend that we  
12 approve his application.

13 CHAIRPERSON REID: Both, the special exception  
14 and for the variance, correct?

15 MR. GILREATH: Well, what s the variance for?

16 MR. SOCKWELL: The variance is a visibility issue  
17 with regard to the window.

18 MR. GILREATH: Oh, just the window, okay.

19 CHAIRPERSON REID: Right.

20 MR. GILREATH: Okay. My motion includes both the  
21 proposed special exception and the variance.

22 MR. SOCKWELL: Second.

23 CHAIRPERSON REID: Okay. I agree, I think that  
24 the Applicant has met his burden of proof, that he s  
25 demonstrated that his particular application could be approved

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 without any adverse impact, and as a matter of fact he has  
2 quite a bit of support from the tenants who live in the  
3 building, and that he has shown that there s a practical  
4 difficulty predicated upon the size of the space that he would  
5 like to use for the florist shop, and that giving the relief  
6 would not impair the intent or purpose of the Zoning Map or the  
7 Zoning Regulations.

8 All in favor?

9 (Ayes.)

10 CHAIRPERSON REID: Opposed?

11 MS. PRUITT: Staff would record the vote as 3/0  
12 to approve, motion being made by Mr. Gilreath, seconded by Mr.  
13 Sockwell, with hours of operations from 9:00 to 6:00 p.m.,  
14 Monday through Friday, and 9:00 to 4:00 on Saturday.

15 MR. LAVERDY: Yes, ma am.

16 CHAIRPERSON REID: Okay.

17 Before the next case, we need to take a short  
18 three-minute recess.

19 (Whereupon, at 2:18 p.m., a recess until 2:21  
20 p.m.)

21 MS. PRUITT: The next case on the agenda is  
22 16497, application of 2125 S Street, LLC., pursuant to DCMR  
23 3107.2, for a use variance under Section 320.3 to allow the  
24 renovation and conversion of a vacant private school and church  
25 into an eight-unit condominium which exceeds the lot occupancy

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 requirements; and an area variance from Section 2001.3(a)(b)(c)  
2 to allow an enlargement and an addition to a nonconforming  
3 structure in an R-3 District at premises 2125 S Street, N.W.  
4 (Square 2532, Lot 49).

5 All those planning to testify, could you please  
6 stand and raise our right hands?

7 Thank you, please be seated.

8 CHAIRPERSON REID: How many people are here that  
9 are in opposition to this application? How many are in support  
10 of the application? All right, thank you.

11 MR. COLLINS: Good afternoon, Madam Chairperson  
12 and members of the Board. My name is Christopher Collins with  
13 Wilkes, Artis, Hedrick and Lane. Seated to my left is Sarah  
14 Shaw from our firm. To my right is Larry Smith from Cranberry  
15 Hill Associates, who is a developer for the project, and to my  
16 far right is Rachel Chung with the firm of Sorg and Associates,  
17 the architects for the project.

18 This is an application for use variance and area  
19 variance relief to convert a former school building to a  
20 condominium apartment building in an R-3 Zone. While the  
21 relief may appear complicated and certainly our statement is  
22 fairly thick, the case is quite simple. The relief is  
23 necessary for two main reasons. Number one, we are turning an  
24 old school building into an apartment house in an R-3 Zone  
25 where apartment houses are not located, but where there are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 other apartment buildings, and we ll talk about that a little  
2 bit later. Secondly, there are two additions to the building  
3 that are being added in order to allow this building to be used  
4 as an apartment house with on-site parking, and the addition of  
5 these two improvements, these two small minor additions,  
6 generates several different variance requirements. The  
7 building is a nonconforming structure and certain conditions  
8 are permitted, but because this building is nonconforming in so  
9 many respects these small additions generate variances from  
10 each one of those subsections, 2001.3(a)(b)(c).

11 The building was built in 1905 as the Holton  
12 Arms School, the original site of the Holton Arms School, a  
13 school for girls, and was used as such until 1963. In 1966 it  
14 was occupied by the Institute for Modern Languages, until 1973,  
15 and then in 1974 through 1995 was owned and occupied by the  
16 founding Church of Scientology. The Church of Scientology  
17 moved out in 95, and relocated to a site just off Connecticut  
18 Avenue on R Street.

19 This is an application for variance relief, and  
20 the tests for variance relief are set forth in our statement.  
21 The building has a unique or exceptional situation or  
22 condition, it is the first school building built in the  
23 Sheridan-Kalorama area specifically for school use. The strict  
24 application of the use regulations would impose an undue  
25 hardship, and strict application of the area regulations would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impose a practical difficulty, our witnesses will go through  
2 that in a bit. And, we believe that relief can be granted  
3 without substantial detriment to the public good.

4 I d like to review quickly the exhibits with you  
5 that are attached to our statement. At pages ten and 11 of our  
6 statement are the based and Sanborn maps. You can see the site  
7 is just west, approximately half a block west of Connecticut  
8 Avenue on the north side of that street. The zoning map on  
9 page 12 indicates the property in the R-3 Zone. Page 13 has a  
10 1919 photo of the site when it was the early days of the  
11 school. Page 15 is the rendering o the building, also on the  
12 easel before you now is that same rendering.

13 The prior certificates of occupancy for the  
14 building are at pages 16 through 27. You can see that it was,  
15 in addition to the school, the Institute for Modern Languages.

16 George Washington university had a certificate of occupancy  
17 for use of the building for about six months, then the Church  
18 of Scientology had it for the most recent occupant.

19 There was a BZA Order No. 11872, dealing with an  
20 appeal challenging the Church of Scientology s occupancy of the  
21 building, that was determined in favor of the Church of  
22 Scientology. I simply add that for your informational  
23 purposes.

24 There was a fire in the building in early 1996,  
25 which created half a million dollars of damage, and we include

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the fire investigation report, page 40 to 42.

2 This case has also been before the Historic  
3 Preservation Review Board on several occasions, and the most  
4 recent HPRB staff report dated July 22, 1999, appears at pages  
5 43 and 44.

6 The Sheridan-Kalorama Historic District  
7 nomination form appears in pertinent part at pages 45 through  
8 47, and that is the part which indicates that the building was  
9 the original Holton Arms School and it was the first school  
10 building built for school purposes in the Sheridan-Kalorama  
11 area.

12 I did mention that there are other apartment  
13 houses in this R-3 Zone. This north side of S Street in the R-  
14 3 Zone is quite unusual, in that the majority of the uses on  
15 the north side of S Street are not single-family, row-dwelling  
16 uses. The majority of them are uses that are either use  
17 variance uses or uses permitted by special exception. There  
18 are several schools, the Kingsbury School, the Institute for  
19 Modern Languages, and there are three apartment buildings, the  
20 BZA orders in include three apartment buildings to the east,  
21 the immediate east of this site, all having gone through this  
22 Board seeking the same type of approval, including one building  
23 that was formerly a school building.

24 Pages 71, 72 and 73 are the outlines of  
25 testimony of our three witnesses. I did introduce two, we have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 a third witness who will appear through affidavit. He is  
2 currently in California, and I would like at the appropriate  
3 time to introduce that affidavit.

4 And, unless you have any questions, at this time  
5 I d like to go to the witnesses.

6 CHAIRPERSON REID: Questions?

7 MR. COLLINS: Okay. The first witness, I d like  
8 to introduce the affidavit of Mr. Lee O Hara. Mr. O Hara is  
9 the or was the real estate agent working on behalf of the  
10 Church of Scientology, and if you could please we just  
11 submitted ten copies of that affidavit right now, and if you  
12 could just please take a minute to review that affidavit and  
13 I d be happy to attempt to answer any questions of the other  
14 members would be happy to attempt to answer any questions you  
15 might have.

16 MR. GILREATH: Do we need some kind of response  
17 on this, or do we say we accept it?

18 CHAIRPERSON REID: No, unless you have any  
19 questions.

20 MR. GILREATH: I don t have any questions on it.

21 CHAIRPERSON REID: All right.

22 Okay. Now, are you going to make any statement  
23 or are you just basically submitting this as your testimony?

24 MR. COLLINS: That is the testimony of Mr.  
25 O Hara, who is not able to be with us today. He s in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 California.

2 CHAIRPERSON REID: Oh, okay, I m sorry, I thought  
3 that this was Lee O Hara.

4 MR. COLLINS: No, no, Mr. Lee O Hara, I m sorry  
5 this is Sarah Shaw from our office.

6 CHAIRPERSON REID: Oh, okay, all right, so this  
7 is the reason why you okay, he s not here.

8 MR. COLLINS: He is not here.

9 CHAIRPERSON REID: Okay.

10 I had a couple of questions of him.

11 MR. COLLINS: Although it wouldn t be testimony,  
12 perhaps I could answer the questions. I did speak extensively  
13 with him.

14 CHAIRPERSON REID: Well, I wanted to know, it was  
15 indicated there were five contracts on the property, and I  
16 wanted to ask him what happened to those contracts.

17 MR. COLLINS: After the study periods they  
18 determined not to move forward.

19 CHAIRPERSON REID: Why, that s what I wanted to  
20 find out, what was it about I mean, five contracts and all of  
21 them to peter out, it just struck me as unusual and I wondered  
22 what was it about the due diligence period that caused them to  
23 pull out?

24 Yes, give your name and your address, please.

25 Whereupon,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 LAWRENCE SMITH

2 was called as a witness by Counsel for the Applicant, and  
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 MR. SMITH: My name is Lawrence Smith from 328  
6 Border Road, Concord, Massachusetts. I m the developer for  
7 this project. I ve been a licensed real estate broker since  
8 1977 and a developer since 1980. I ve testified before the  
9 Board on the Phillips Road, our other project in Georgetown,  
10 rear yard variance and conversion of the Phillips School to  
11 condominiums in Georgetown.

12 I do know that the other contracts were all  
13 contingent on zoning. Our s was the only contract that did not  
14 require the contingency of zoning approval, so we purchased the  
15 property and that s why the Church of Scientology went forward  
16 with our s versus the others.

17 CHAIRPERSON REID: Thank you. Okay.

18 MR. COLLINS: If there are no questions based on  
19 the affidavit, I d like to then go to our next witness, Mr.  
20 Lawrence Smith.

21 Mr. Smith, would you continue, you ve identified  
22 yourself for the record, would you please proceed with your  
23 testimony?

24 MR. SMITH: Yes.

25 In 1998, I was asked to take a look at the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Holton Arms School as a potential acquisition for a company  
2 called the Ibis Company, which is a Dutch real estate  
3 developer. The property was we performed our due diligence,  
4 we purchased the property in July of 98 under 2125 S Street  
5 LLC. We initially looked at the we hired the firm of Sorg  
6 and Associates and initially looked at the possibility of  
7 converting the structure to the home or the headquarters of Phi  
8 Beta Kappa, which would be by special exception.

9 We took that proposal before the ANC, the ANC  
10 overwhelmingly denied that use. They did not want to see a  
11 commercial use. They did not want to see anything that was  
12 non-residential use. That was one setback. We also found that  
13 in the inspector s report, or the fire report in 1996, there  
14 was a supplement from the inspector that basically would  
15 require any upgrading of the facility to commercial code  
16 application, so the structure, the electrical, the life safety,  
17 everything would have to be brought up to the current code, and  
18 he even referenced the ADA requirements.

19 Any commercial use, therefore, was going to  
20 require the floor loading structure to be double joisted up and  
21 significant improvements, an elevator put in, handicap  
22 accessibility, et cetera, and it basically made the commercial  
23 undertaking almost uneconomic in this project.

24 So, after hearing from the ANC as far as the  
25 use, and looking at the economics, we pursued a residential

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 conversion of the structure to condominiums.

2 I might add, we did look at the possibility of  
3 selling it as a single-family residence, but it s just not what  
4 the market would evolve. This is a 16,000 square foot  
5 structure, the market doesn t have any indication that houses  
6 or single-family units over 6,000 square feet would be at all  
7 marketable.

8 We looked at some of the other matter of right  
9 usages and felt that they were not feasible for a return on the  
10 investment.

11 We then proceeded to have Sorg and Associates  
12 design the building for the maximum number of units that we  
13 could get with compensatory parking. We ve come up with eight  
14 units, we have five parking spaces. There are five two bedroom  
15 units and three one bedroom units. We ll be marketing the two  
16 bedroom units with a parking space in the structure.

17 I might add that there is not a parking  
18 requirement in this district.

19 We met four times with the ANC. We brought the  
20 residential project back to the ANC actually three times, and  
21 we ve just gotten the ANC to well, they ve submitted a letter  
22 which speaks for itself, but we feel that the ANC was in  
23 support of our project.

24 The HPRB has reviewed the plans and they have  
25 approved our project as we ve presented it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I would like to address the letter that the ANC  
2 submitted. The first two pages of the ANC letter, you know,  
3 we ve agreed to everything that was referenced that we ve been  
4 in agreement with. On the third page of the ANC letter it  
5 talks about the two issues that were subject to or that we had  
6 not agreed to. I d like to address those two points now.

7 The first point dealing with the removal of  
8 trees and planting of trees in the area, we are in agreement  
9 that that would be acceptable, but it is subject to the D.C.  
10 Public Space Department, so Mr. Beck, who basically tells us  
11 where he wants us to plant our trees, it s really subject to  
12 his approval. I suspect with this letter he would allow us to  
13 do that, so, again, it would be subject to a D.C. Public Space  
14 permit.

15 Closing the alley, point two, I talked with our  
16 contractor and we don t have any problem with everything that s  
17 written here, with the exception is we wanted to allow five  
18 days notice as opposed to ten days notice. Five days is a  
19 little bit more reasonable when you are with a contractor, ten  
20 days is an awfully long time to schedule work out ahead. So,  
21 they just amended that to or we d like to amend it to, say,  
22 five days.

23 Everything else in the letter is acceptable,  
24 and, you know, we ve appreciated the dialogue we ve had with  
25 the ANC.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           Finally, I d just like to add that, you know, we  
2 are ready to proceed. We are anxious to proceed, as are the  
3 neighbors, with the conversion of this building. It s really  
4 been sitting since 1986, since the fire, and it s in poor  
5 condition and we d like to see it under construction as soon as  
6 possible.

7           CHAIRPERSON REID: Questions from Board members?

8           MR. SOCKWELL: I was looking for the statement  
9 about trees that you said was contained within the ANC.

10          MR. SMITH: Yes, the third page.

11          MR. SOCKWELL: Third page, yeah.

12          The trees that you are removing are curb trees  
13 or trees behind the sidewalk?

14          MR. SMITH: They are behind the sidewalk but they  
15 are in public space, so, again, even that is subject to

16          MR. SOCKWELL: Generally, Bill Beck doesn t have  
17 any jurisdiction to discuss with regard to trees behind the  
18 sidewalk. Trees that are maintained by the City are generally  
19 the ones that are the curb trees.

20          MR. SMITH: Okay.

21          MR. SOCKWELL: The ones behind the sidewalk are  
22 generally the maintenance responsibility of the property owners  
23 that abut the public sidewalk. And, Chris, you can respond to  
24 that, I mean I deal with Bill Beck a lot, but you may want to  
25 add something.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: We will do whatever he tells us to  
2 do on this one.

3 MR. SOCKWELL: Yeah, and he may not tell you to  
4 do anything.

5 MR. COLLINS: Right.

6 MR. SOCKWELL: He may give you carte blanche on  
7 the trees behind the sidewalk, he usually does. So, it may be  
8 more your responsibility than you think.

9 MR. COLLINS: Okay.

10 MR. SMITH: Well, maybe I can convince him that  
11 the Georgetown trees that we took down we could plant them up  
12 on S Street.

13 MR. SOCKWELL: That might work.

14 CHAIRPERSON REID: Next witness.

15 MR. COLLINS: Any other questions?

16 CHAIRPERSON REID: No.

17 MR. COLLINS: Thank you.

18 The last witness is Rachel Chung, who is with  
19 the firm of Sorg and Associates.

20 Whereupon,

21 RACHEL CHUNG

22 was called as a witness by Counsel for the Applicant, and  
23 having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 MR. COLLINS: MS. Chung, would you please

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 identify yourself for the record and proceed with your  
2 testimony?

3 MS. CHUNG: Good afternoon. My name is Rachel  
4 Chung, 7500 Buena Vista Terrace, Derwood, Maryland 20855. I m  
5 an associate at Sorg and Associates, and as Larry has mentioned  
6 he has contracted us to do the design and construction of 2125  
7 S Street.

8 At this time, I d like to briefly describe the  
9 existing building. Lot 49 consists of this area, and the main  
10 building was built, like Chris Collins has stated, 1905 by  
11 Whitey Wood in this area. Subsequent to that, there were many  
12 additions to the rear. This T-shaped building acted as a  
13 gymnasium. This three-story addition actually on Lot 12 was a  
14 garage and laboratory, and there were small wood frame  
15 structures that connected the main building with the T building  
16 that were two story or one and a half stories. The main  
17 building is a five-story masonry, wood frame construction. The  
18 majority of the add ons are wood frame.

19 Like I said, this is a five-story structure that  
20 was housed to be originally for the Holton Arms School s  
21 educational facility mainly for women, or only for women.

22 Right now I d like to quickly go over the  
23 proposed design. This is a rendering of the original building.

24 What we propose to do is restore the exterior and design a new  
25 front facade to match the original door that was originally

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 designed by Whitey Wood, and when we go into the interior, the  
2 entire facility will consist of eight units. Five of the units  
3 will be two bedroom and three of the units will be one bedroom,  
4 and the two bedroom units will have the parking spaces in the  
5 rear. When you enter the first level, there are two units in  
6 either side. One will be a one bedroom unit and the other will  
7 be a two bedroom unit. The main connector building that houses  
8 the vertical circulation, the elevator and the means of egress  
9 stairs is a new structure, and the existing structure in the  
10 rear will house five parking spaces.

11 MR. COLLINS: Before leaving that, can you  
12 describe, is it correct that the floor plan on the left is the  
13 lower level?

14 MS. CHUNG: Yes, I m sorry. This is the lower  
15 level, which is the lower level of the second unit, which is a  
16 two bedroom unit. The lower level will also have the services  
17 coming in and additional storage to the rear for the eight  
18 units.

19 On the second and third floor, relatively the  
20 same. The main portion of the building will house two bedroom  
21 units, and the rear portion will be a one bedroom unit. This  
22 will become like a penthouse, the entire floor will be devoted  
23 to one unit.

24 MR. COLLINS: And, that s true for both the  
25 second and third floors?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. CHUNG: Yes.

2 And, the last two floors, the fourth floor has  
3 two units, both are two bedroom units, and the fifth floor is  
4 actually part of the fourth floor units, in that they have  
5 lofts into those spaces.

6 MR. COLLINS: So, on the fourth and fifth floor  
7 there s two units, each of which are two stories?

8 MS. CHUNG: Yes.

9 The variances that we are trying to get today,  
10 as Chris has mentioned, the first one is our use variance. It  
11 does meet a special exception. It was built originally as a  
12 school facility, and it was, I believe, the first school  
13 facility in the Sheridan-Kalorama neighborhood. The existing  
14 structure, the load bearing walls and the way that it is laid  
15 out implies that it was something other than a residential use.

16 There are large rooms, there is large assembly spaces,  
17 classrooms and things like that, that because of the fire and  
18 also the load occupancies, the live load and dead load, if we  
19 were to design something that was a matter of right we would  
20 have to either increase substantially the structure or remove  
21 the floor framing system entirely and replace it with new.  
22 That s one thing. The other thing, which we did look at that  
23 scenario initially, and when we met with ANC they were  
24 adamantly opposed to a use besides residential. But, that s  
25 the first variance we are looking for.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           The second variance encompasses basically two  
2 things, it s an area variance. Because we are removing these  
3 two stories and one and a half story elements, and providing a  
4 new connector building that will house vertical circulation,  
5 i.e., the stairs and the elevator, any hallways leading to both  
6 levels on either side. We are removing this portion of the  
7 building and creating an open court.

8           Because we are creating an open court, and what  
9 is required for the height or actually the width of an open  
10 court, we are exceeding the height limit or we are not meeting  
11 the width limit of the open court. If we were to meet the  
12 width of the open court that connector building would only go  
13 up to the third floor and not the fourth floor, and that would  
14 go against building code, not having an egress stair for all  
15 the floors to serve. That s one.

16           Also, the other area variance that is in the  
17 rear, right now the building, existing rear building on the  
18 first level we are proposing five parking spaces. Because the  
19 clear space in between only allows for 17 feet, and the  
20 District requires 19 feet for parking, we need to increase that  
21 area just on the lower level for maneuverability, for parking  
22 space, and for security for these garages that we re providing  
23 in the lower level. So, what that will mean is we are removing  
24 the alley wall and providing, basically, a shed roof on the  
25 first level, and that building, that exterior wall of the shed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 roof will act as the garden wall that was originally there.  
2 That garden wall, or that shed roof, would be not very visible.

3 It will be part of the alley wall that was originally there.

4 The height of the connector building requires us  
5 to have it go up to the fourth floor because of the stair we  
6 have. We need to means of egress in this building. We have  
7 one here servicing this area, and we have another here  
8 servicing this area. If it didn t go up to the fourth floor we  
9 couldn t reach the fourth floor apartment, and they would only  
10 have one means of egress, and they are required to have two.

11 So, if we were to only go up to the third floor,  
12 which we would meet the area open court width requirement, we  
13 would not meet building code.

14 I can briefly talk to you about we ve done  
15 studies to see if we can design the facility in a matter of  
16 right use or special exception use, and on page five of the  
17 statement it lists the matter of right and special exception  
18 uses, and I ll briefly talk about a few of those and the  
19 impracticality and hardship that we would face to meet these  
20 requirements.

21 CHAIRPERSON REID: We ve read this.

22 MS. CHUNG: Okay.

23 CHAIRPERSON REID: So, if you could just  
24 highlight it.

25 MS. CHUNG: Briefly, as Larry Smith has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mentioned, a matter of right single-family row house, quite  
2 honestly the 16,000 square feet is extremely large for a  
3 single-family dwelling. There are estates, but usually they  
4 have grounds, they have drop offs, they have large areas of  
5 parking for large vehicles, it doesn't make sense to have  
6 something, a single-family dwelling in a row-house situation  
7 that has 16,000 square feet.

8           Regarding converting it back to a school,  
9 although currently the structure or the building is laid out in  
10 these large assembly spaces or classrooms, the building does  
11 not meet code. The floor loads, the dead and live loads, would  
12 have to be looked at. More than likely, it would be more  
13 economical probably to replace the floor system instead of  
14 beefing them up. And, frankly, the way that schools, current  
15 school systems work, with their high tech, their AV equipment,  
16 the way that this building is situation it is not suitable for  
17 the type of school that we are currently looking at to be  
18 housed here.

19           Regarding child care centers, Sorg and  
20 Associates has designed and built numerous child care  
21 facilities, and it is very impractical to expect children,  
22 infant age to preschool, kindergarten age, to go up and down  
23 elevators to go to the different classrooms, the play areas.  
24 There is no exterior play area here. There is no drop off for  
25 the parents, so we feel it's very impractical to have a child

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 care development center here.

2 MR. COLLINS: Do you have a similar conclusion  
3 with regard to all of the other matter of right and special  
4 exception uses, that they are impractical for conversion and  
5 wouldn't, in your professional opinion as an architect,  
6 wouldn't be a viable use, wouldn't be economically feasible?

7 MS. CHUNG: Correct. Not only is it not  
8 economically feasible, just constructability at this particular  
9 setting, it seems very impractical to put anybody but multi-  
10 family dwellings here.

11 MR. COLLINS: Referring to pages three and seven  
12 of the statement of the Applicant that was submitted, is it  
13 correct that you incorporated in your testimony that these, in  
14 fact, are the areas of relief and the reasons that we need  
15 these areas of relief, looking first at page three, or the  
16 listed variance reliefs there, and then looking at page seven,  
17 at the top of the page, to indicate what is required for these  
18 different areas of area variance relief?

19 MS. CHUNG: Yes, I concur.

20 DOCTOR CARSON: All right, thank you.

21 You've spoken about the uniqueness of the  
22 building, the exceptional situation or condition, you've spoken  
23 about the undue hardship which would support the use variance,  
24 you've spoken about the strict application of the regulations  
25 imposing impractical difficulty if we were not able to add

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 these two small additions to the building. In terms of the  
2 width of the open court and the roof extension of the garage,  
3 do you have an opinion about whether this would belief in  
4 your professional opinion as an architect, would cause any  
5 potential detriment to the public good?

6 MS. CHUNG: No, I wouldn't. If I can refer back  
7 to the prospectus, in the building facade we are proposing to  
8 restore it, restore the masonry exterior walls, replace the  
9 wood double-hung windows with wood double-hung windows, and  
10 repair the roof as necessary.

11 In the rear, the existing masonry structures  
12 that are going to remain, we also intend to restore the  
13 exterior facade. The new connector building that you see in  
14 gray at the bottom of this area, will not be seen from  
15 obviously the front street scape, as well the rear. If you  
16 were the neighbor, you might be able to see it, or if you were  
17 coming in this courtyard area you will be able to see it, but  
18 from the rear facade you probably wouldn't see that either.

19 Regarding the rear garage extension, we tried to  
20 incorporate that with the rear alley. It would all be brick,  
21 and within that alley you would see many garages abutting the  
22 alley in numerous other properties. So, no, I don't think it  
23 will have an adverse effect and, actually, what we are  
24 proposing I think will bring that area up to you know, it  
25 will be kind of wonderful because right now it's vacant, it has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a lot of damage.

2 MR. COLLINS: Do you have any elevations which  
3 might indicate how those things would not be readily visible  
4 from public space?

5 MS. CHUNG: This side elevation, which we are  
6 looking in this corner, if you can see this key plan.

7 MR. COLLINS: Looking from the west toward the  
8 building?

9 MS. CHUNG: Looking from the west, correct, on  
10 this side is the main building. Excuse me, this side is the  
11 main building and this side is the key building where we were  
12 housing the single units and the garages below.

13 On one facade, where the hallway and corridor  
14 was, we had a curtain wall system which would let light in  
15 through that narrow areaway, or the narrow courtyard, and the  
16 other side would be masonry.

17 It is in the same plane and same elevation as the T building in  
18 the rear, so we are protruding above that.

19 And, regarding the garage, we have an extension  
20 on the rear. This would be, the exterior facade of the garage  
21 would act as the garden wall or alley wall that was originally  
22 there.

23 And, this is the rear elevation, and you would  
24 barely see, actually at street level you would barely see the  
25 roof. At the straight-on elevation, what you see is some roof,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 but when you are walking down the street, or if you are driving  
2 down the street, it would be very difficult to see the roof.

3 MR. COLLINS: All right, thank you.

4 MR. SOCKWELL: MS. Chung, you are licensed to  
5 practice in the District of Columbia?

6 MS. CHUNG: I am actually working on my  
7 licensing.

8 MR. SOCKWELL: You made some assertions about the  
9 structural issues and beefing up the structure. Quite often,  
10 these older buildings, because they use a larger dimension of  
11 lumber in their floor systems, actually have a higher  
12 structural load capacity than would a modern building.

13 MS. CHUNG: Correct. We have a structural  
14 engineer consultant on board. They are, you know, 2 x 12s or  
15 2 x 14s, and they are larger members. However, live load  
16 combination of live load and dead load for residential and  
17 commercial is almost twice as much. Now, to get the quality of  
18 the type of units that we are designing, and Larry Smith is  
19 trying to sell, we are even beefing up the joists, the existing  
20 joist as it is, because of sound, or any creaking, but there is  
21 a chance, we have not gone into that investigation, thorough  
22 investigation to see extensively how much it would take to  
23 bring those up to code.

24 MR. SOCKWELL: So, you are saying that a  
25 residential live load would be greater than the live load of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. CHUNG: No, no, what I m saying is,  
2 commercial live load plus dead load. Dead load, it s similar,  
3 but actually the live load is almost twice in certain  
4 instances. I know that bedroom areas and, you know, dwelling  
5 areas, and corridor areas are slightly different, but  
6 generally, on average, it s almost twice as much in a  
7 commercial.

8 MR. SMITH: A hundred pounds.

9 MR. SOCKWELL: Versus 40 or

10 MR. SMITH: A hundred pounds versus 40, or, you  
11 are right, in fact, a lot of the structure does hit almost 60,  
12 but it doesn t meet the 100 pound live load for commercial.

13 MR. SOCKWELL: To what extent is your court  
14 deficiency in percentage of what would be required, based on  
15 that?

16 MS. CHUNG: Because we remove that addition and  
17 created the new connector building that goes up to the fourth  
18 floor, what s required for the width is four inches a foot of  
19 height, but not less than, I believe it s six feet. However,  
20 we only have about 13 12 feet, 7, and what would be required  
21 is 18.5 feet.

22 Now, like I was saying earlier, we would meet  
23 the width requirement if it only went up to the third floor.

24 MR. SOCKWELL: The adjacent property on the court  
25 side, where you have your deficiency, is how close to the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 property line?

2 MS. CHUNG: It s

3 MR. SOCKWELL: Is it abutting?

4 MS. CHUNG: Yes.

5 MR. SOCKWELL: Totally abutting.

6 MS. CHUNG: It s their party wall.

7 MR. SOCKWELL: But, it s a separate lot.

8 MS. CHUNG: Yes.

9 CHAIRPERSON REID: And, you own the sites on both  
10 sides.

11 MS. CHUNG: Yes, we actually own

12 MR. SMITH: Yes, we have no objection.

13 MR. SOCKWELL: That really wasn t the reason for  
14 the question. The question was basically looking at the  
15 adjacencies and whether or not that affects significantly light  
16 and ventilation, privacy issues, for your units.

17 MS. CHUNG: Right now, the proposed design for  
18 this adjacent lot to the east is basically restoration. Because  
19 we are removing that, this court will be sharing a court or  
20 another open space on either side, so we are not, you know,  
21 narrowing that court even more. So, it actually works in our  
22 favor, that this is kind of an open court and this is kind of  
23 an open court, so there s light coming in.

24 MR. SOCKWELL: From a fire separation distance  
25 standpoint, that doesn t cause you any problems with code?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. CHUNG: No. This no.

2 MR. SOCKWELL: Remember, you are only allowed, by  
3 code, to take the property line, you can't take necessarily the  
4 fact that your building adjacent is pulled back. That's not

5 MS. CHUNG: Yes, this area you are talking about.

6 MR. SOCKWELL: Yes, I'm talking really at the  
7 property line, between the property line and your interior  
8 wall, which is perpendicular to the which is parallel to the  
9 property line, that wall, yes.

10 MS. CHUNG: Right, correct.

11 MR. SOCKWELL: Which is the back edge of your  
12 elevator shaft wall?

13 MS. CHUNG: Yes, and that's almost 13 feet away.

14 MR. SOCKWELL: Okay.

15 And, you spoke to the impracticality of other  
16 uses, although the other uses were not something that you  
17 studied, I'm sure, because you intended to convert this to  
18 condominiums from the outset.

19 MS. CHUNG: Well, originally we were contracted,  
20 as Larry Smith has stated, the Phi Beta Kappa with the Church  
21 of Scientology, to study that use. It was mainly a non-profit  
22 office use, and we met along with Larry Smith, and the ANC, and  
23 we were adamantly or, they adamantly rejected our proposal  
24 for anything but residential.

25 MR. SOCKWELL: To what extent was the fire damage

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to the structural systems of the building?

2 MS. CHUNG: I believe I know that it was the  
3 third floor, or the rest of the roof on the main portion of the  
4 building, because there was fire damage, there was water  
5 damage, a lot of the roof was exposed, a lot of water damage  
6 obviously went all the way to the lower floors. Currently,  
7 they've rebuilt it, but it's basically temporary, it's not a  
8 final they did not rebuild it to meet the building code, I  
9 don't think.

10 MR. SOCKWELL: Nor was it properly quite an in-  
11 kind rebuild?

12 MS. CHUNG: Regarding the roof, the actual finish  
13 of the roof, it probably was, but the structure, the framing,  
14 and the roof framing system, no.

15 MR. SOCKWELL: You said that you have five two  
16 bedroom units with parking, and three one bedroom units, I  
17 assume, without parking.

18 MS. CHUNG: Correct.

19 MR. SOCKWELL: And, let's see here, in that area,  
20 since you made a statement specifically that it does not make  
21 sense to make a 16,000 square foot single-family dwelling, what  
22 is the square footage of the dwellings that are adjacent in the  
23 surrounding neighborhood?

24 MS. CHUNG: There is, actually, a single-family  
25 dwelling adjacent at Lot 9, it's about 4,000, 5,000 square

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 feet.

2 MR. SOCKWELL: And, you and your client have  
3 decided determined that through investigation that you cannot  
4 make a financially viable project with matter of right zoning  
5 as your restriction.

6 MR. SMITH: Yes.

7 MR. SOCKWELL: And the other restrictions that  
8 would be imposed upon you.

9 MR. SMITH: Yes, both matter of right and special  
10 exception.

11 MR. SOCKWELL: What s the approximate square foot  
12 sales price of these units, as you ve proposed them?

13 MR. SMITH: Approximately, \$400 a square foot.

14 MR. SOCKWELL: Which is pretty close to the  
15 market seems to be ranging \$350.00 to \$500.00, so you are on  
16 the upper side.

17 Okay, I don t have any other questions. Thank  
18 you.

19 MR. COLLINS: That ends our presentation. I d  
20 like to have an opportunity for a closing statement.

21 CHAIRPERSON REID: Sure.

22 Government reports, we had a letter that was  
23 submitted from the D.C. Historic Preservation Review Board in  
24 support of the application, a letter dated, huh, I don t see a  
25 date on it, February 13<sup>th</sup>? No, no, no, this is 89, this is an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 older one, but we had one I think we had one for 99.

2 MR. GILREATH: Page 43.

3 CHAIRPERSON REID: Page 43, right, which was the  
4 most recent one, and that was dated July 25, 1999, and  
5 basically, in essence, it states that it s in approval of this  
6 application.

7 The ANC submitted a letter, ANC-1C, and in their  
8 letter they come out in support of the application. There was  
9 a quorum present, vote taken, and they state that it s our  
10 understanding that at the September 22, 1999 meeting the  
11 developer agrees to the following request. These are requests  
12 in regards to hours of construction and noise abatement,  
13 parking, rat abatement, dumpster for construction and removal  
14 of the trees.

15 Now, also closing the alley, was there an  
16 agreement drawn up to these issues that were signed by the ANC  
17 and the developer?

18 MR. COLLINS: There is no formal written  
19 agreement. We simply agreed on the record to abide by those.  
20 The letter reflects that everything on page two is agreed to,  
21 and the letter reflects on page three that there were things  
22 that were not agreed to, although Mr. Smith testified today  
23 that he has agreed to the items on page three as modified by  
24 his testimony.

25 Specifically, on the issue of the trees we said

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that we would Mr. Smith said that he would agree with  
2 paragraph number one on page three of the letter, but that  
3 would be subject to whatever DPW tells us we need to do.

4 CHAIRPERSON REID: Sure.

5 MR. COLLINS: And then on the second item, he  
6 agrees with that, but requested the ability to give five days  
7 notice instead of ten because of the vagaries of the  
8 development process.

9 CHAIRPERSON REID: Okay.

10 Well, basically, this will be made a part of the  
11 order, not as a condition, just reflected in the order, the  
12 conditions that the terms of the agreement can be

13 mS. PRUITT: Can be made conditions, yes.

14 CHAIRPERSON REID: This is a variance.

15 MS. PRUITT: You can reflect it in the order,  
16 yes.

17 CHAIRPERSON REID: Reflect it in the order.

18 Okay.

19 All right, thank you.

20 And, there s no one from the ANC here? Oh, I m  
21 sorry, please, come forward. I thought I had asked earlier.  
22 Okay, were you sworn?

23 MS. BUMBALO: Yes.

24 CHAIRPERSON REID: Okay.

25 Whereupon,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 LINDA BUMBALO

2 was called as a witness by Counsel for the ANC, and having been  
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 MR. BUMBALO: My name is Linda Bumbalo, I live at  
6 2103-1/2 F Street, N.W., Washington, D.C., 20008. I am ANC  
7 chair for the Sheridan-Kalorama ANC-1D and also the single-  
8 member district in which this is located.

9 I won t read the whole letter, but as you noted  
10 we did have a duly noticed public meeting with a quorum, two of  
11 the two commissioners present.

12 The second paragraph of the letter requests that  
13 the record be corrected. The record states that this property  
14 is in ANC-1C and it is not, it is in 1D, so I would ask that  
15 that be done.

16 And, it was motioned and passed to support the  
17 application only if all of the conditions outlined in the  
18 letter were agreed to by the developer, and today I believe I  
19 have heard that these things are agreeable.

20 There is one modification that I would ask for  
21 in terms of the alley closing, that the notice be five business  
22 days, and you will see that also there are two requests  
23 actually in that, one is the notice and one is that the  
24 developer provide for trash collection, receptacles on his  
25 property when the trash cannot be collected.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I would ask that this agreement be in writing  
2 between the parties. I would like that to be done.

3 CHAIRPERSON REID: Well, that would be a request  
4 to the Applicant.

5 MR. BUMBALO: Okay.

6 CHAIRPERSON REID: And then, that could be once  
7 it is drawn up and then it s signed by both entities, it can  
8 then be made a part of the record.

9 MR. BUMBALO: Part of the record, yes.

10 MS. PRUITT: Yes, but I guess I would just  
11 caution that any of the conditions you have to think about how  
12 they would be enforced.

13 CHAIRPERSON REID: Well, we are not putting any  
14 conditions in.

15 MS. PRUITT: Okay, in that sense then

16 CHAIRPERSON REID: Yeah, we are not putting any  
17 conditions in.

18 MS. PRUITT: this would be a private agreement  
19 between

20 MR. BUMBALO: Rather than conditions as part of  
21 the order?

22 CHAIRPERSON REID: Well, it s a variance, and we  
23 can t

24 mS. PRUITT: We generally don t.

25 CHAIRPERSON REID: generally can t condition a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 variance, so if you have an agreement that s drawn up between  
2 the two entities, then

3 mS. PRUITT: It can be made part of the record.

4 CHAIRPERSON REID: yes, we will make it a part  
5 of the record, and then, of course, if there s a breach then  
6 you have other recourse.

7 MR. BUMBALO: If it s not part if it s not a  
8 written agreement between the two of us, then would it be  
9 conditions of the order?

10 MS. PRUITT: I m sorry, I m not sure I  
11 understand.

12 MR. BUMBALO: Well, I thought you said you were  
13 going to make conditions part of the order.

14 CHAIRPERSON REID: No, what I said was, what we  
15 said was, we would have these issues reflected in the order,  
16 and then you came forward and you said that you d like to have  
17 a separate agreement drawn up. And, I was saying to you that  
18 that s not we would not basically stipulate that you had to  
19 do that. If the two entities decided they wanted to do it,  
20 sure, you certainly can do that, and that can be submitted as a  
21 part of the record. And, if, in fact we cannot condition, we  
22 cannot impose that on the Applicant, however, the idea is, an  
23 agreement is an agreement, and if it s written and signed by  
24 both entities then you do have recourse in the event there is a  
25 breach.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BUMBALO: No, my question was, if there is no  
2 written agreement, then what happens to these conditions?

3 CHAIRPERSON REID: There are not conditions. You  
4 didn't as a matter of fact, they are not even presented to us  
5 as conditions. These are it says that the developer has  
6 agreed to the following requests, it did not say that we want  
7 to condition the order.

8 MR. BUMBALO: Well, I said, in the last sentence,  
9 there was a motion passed to support the application only if  
10 all of the conditions outlined above are agreed to by the  
11 developer. That was part of our resolution.

12 CHAIRPERSON REID: Oh, I see, I didn't really  
13 note that. Nonetheless, still the fact remains that with a  
14 variance we do not have the authority to condition a use  
15 variance.

16 MR. BUMBALO: Well, I'll have to take your word  
17 for it.

18 CHAIRPERSON REID: Special exceptions we can.

19 MR. BUMBALO: Okay.

20 CHAIRPERSON REID: But not a variance.

21 MR. BUMBALO: Okay.

22 Well, I would like to go over those, I would  
23 like to point out, the drawing of the front of the buildings,  
24 there is no building actually at the current time to the west.  
25 That's an empty lot that belongs to the developer, and the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 other side is a townhouse that he intends to renovate. So, as  
2 I pointed out in my letter, this probably is at least a three-  
3 year project that the neighborhood would be disrupted, maybe  
4 longer, I don't know, because I'm not quite sure what the  
5 scenario is for the development of this.

6 But, as I said, we asked for hours of  
7 construction and noise abatement be strictly adhered to, and a  
8 condition be imposed by the developer on the contractor to  
9 prevent any noise whatsoever by trucks or contractors outside  
10 of these hours at the site, and on the street, and in the alley  
11 by any persons connected with the application, and that there  
12 be provision on site for locked work boxes for the construction  
13 workers, so that they do not need access to their trucks, to  
14 their vehicles, they can be parked off site and we would  
15 encourage that to be a universal garage or any other private  
16 garage nearby.

17 The developer, I believe, has already begun rat  
18 abatement and has agreed to continue that. The dumpster would  
19 be placed within a fenced area, because he intends to close off  
20 the sidewalk and fence in the front of it. It would be covered  
21 tightly and secured during non-construction hours and be  
22 emptied as soon as it is full.

23 And then the trees, we've talked about those.  
24 Three trees are between the sidewalk and the building, and  
25 closing the alley is the major, major issue. There are six to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 seven different trash private collectors in the city come down  
2 that alley, and there are approximately 40 to 50 garages and  
3 open parking spaces back there, you know, it is essential that  
4 we be given adequate notice, and that provision be made where  
5 trash cannot be collected, that the contractor take care of  
6 that, or the developer take care of that, by providing  
7 receptacles on his site. We are willing to walk there to take  
8 our garbage.

9 Also, subsequent, which is the third to last  
10 paragraph, subsequent to the ANC meeting it was learned that  
11 Bell Atlantic actually has some kind of relay box or whatever  
12 the technical term is located inside the building, and it  
13 provides, I checked with the public utilities, and it serves  
14 the buildings located at 2119, 2121, which is actually the  
15 developer s property, and 2129 S Street, and I just request  
16 that there will be no disruption in service or at least that  
17 the developer give those people notice if there is going to be  
18 disruption.

19 MR. SOCKWELL: Well, the phone company actually  
20 would not want there to be a disruption in service, because to  
21 the best of your knowledge those are the only properties served  
22 by that

23 MR. BUMBALO: The Office of the People s Counsel  
24 investigated that for me, and that s what they the  
25 information that they got from Bell Atlantic.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: Yes, well you do want to make sure  
2 that that s taken care of, because I live in a similar  
3 situation where the box is on somebody else s property, and it  
4 serves a lot of units.

5 CHAIRPERSON REID: Okay.

6 Any other questions for this Applicant, witness?

7 MR. GILREATH: The witness said that she  
8 estimated the construction time to be three years. For the  
9 developer, is that a reasonable time, or do you think you ll be  
10 doing less time than that?

11 MR. SMITH: We re hoping to start as soon as we  
12 can get the order, actually the demolition center. On the two  
13 side lots we ve just filed to this Board for two variances on  
14 the vacant property, one of them being a height variance, it s  
15 a three-story neighborhood and surrounded by four and five  
16 story buildings. And, the matter of right renovation on Lot 9,  
17 we planned on going forward subsequent to this.

18 So, it s timetable to be complete by December of  
19 the year 2000, so we ve got a one-year horizon, it s really  
20 just dependent upon how long it takes to get the use variance  
21 for the surrounding lot.

22 MR. GILREATH: That s good to hear, that would  
23 reduce the amount of inconvenience then.

24 MR. BUMBALO: Yes. We were not clear of the  
25 sequence or whether they are sequential, or consecutive, or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 concurrent or what.

2 CHAIRPERSON REID: I think those are the tweaking  
3 details that you need to sit down and work out with the  
4 developer and to make sure that you have them all contained  
5 within the agreement.

6 MR. SOCKWELL: MS. Chung, how far along is Sorg  
7 and Associates with construction documents on this?

8 MS. CHUNG: We are actually in the process of,  
9 I d say about 75 percent of the permit drawings. So, as Larry  
10 Smith has purchased the property, not contingent on getting the  
11 variance, we ve also proceeded with our design and construction  
12 documents to this date.

13 MR. SMITH: We do have demolition plans that are

14  
15 MS. CHUNG: Yes, we have demolition plans that  
16 are ready to go to the permit office to get a demolition permit  
17 this week.

18 MR. SOCKWELL: And, your

19 MS. CHUNG: For the main building.

20 MR. SOCKWELL: for the main building.

21 MS. CHUNG: Yes, or actually, this lot.

22 MR. SOCKWELL: Yes, so your construction  
23 documents are 75 percent complete.

24 MS. CHUNG: Yes.

25 MR. SOCKWELL: And, on the adjacent lot that s

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       been

2                   MS. CHUNG: Both, all three lots, Lot 12, 49 and  
3       9, they are approximately 75 percent complete.

4                   MR. SOCKWELL: Okay.

5                   So, you are well beyond the schematic and design  
6       development.

7                   MS. CHUNG: Yes.

8                   MR. SMITH: And, we ve already retained a  
9       contractor for the work as well.

10                  MR. SOCKWELL: And, the contractor will be  
11       amenable to the agreement requirements desired by the ANC?

12                  MR. SMITH: I faxed him a letter as soon as I got  
13       it. He is, he is amenable.

14                  MR. SOCKWELL: Okay, thank you.

15                  CHAIRPERSON REID: All right, thank you.

16                  Persons or parties in support of the  
17       application, please come forward.

18                  Persons or parties in opposition to the  
19       application?

20                  Closing remarks by the Applicant.

21                  MR. COLLINS: Just a few points, Madam  
22       Chairperson, members of the Board. This will be, we think, the  
23       best solution for this building. It s a residential use, in a  
24       residential zone, in a residential neighborhood. The building  
25       has had a history of non-residential use, it s been vacant for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a number of years, it s boarded up, it s an eye sore, and this  
2 is an appropriate solution to bring this property back to a  
3 productive use in the future.

4 The apartments are generous in size and they are  
5 logical in layout. As you ve seen through MS. Chung s  
6 testimony, there is on-site parking. Parking is not required  
7 for this building because it s in a Historic District, it s a  
8 change of use. We are providing parking, which is something  
9 that is value off-site parking is valued very highly in that  
10 neighborhood. There s a lot of competition for on-street  
11 parking.

12 The additions that we ve planned for the  
13 building are not readily visible from public space, as MS.  
14 Chung mentioned, including the new connector building between  
15 the front and rear buildings, and the small extension of the  
16 parking garage at the lower level at the rear.

17 You ve heard about the impracticality of other  
18 uses, the practical difficulty of other uses, both from a  
19 marketing standpoint through the affidavit of Mr. O Hara, from  
20 a design standpoint through the testimony of MS. Chung, and  
21 from a development standpoint through the testimony of Mr.  
22 Smith. We think for all the reasons stated in our presentation  
23 that we meet the requirements for variance relief in this case  
24 and we respectfully request that you grant the application.

25 Thank you.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Mr. Collins, in regard to the  
2 affidavit that was submitted by the real estate broker?

3 MR. COLLINS: Yes.

4 CHAIRPERSON REID: You were submitting him  
5 proffering him to us as an expert witness to the affidavit?

6 MR. COLLINS: Submitting through affidavit, I did  
7 not request that he be submitted as an expert, but if you

8 CHAIRPERSON REID: I d like a resume background  
9 on his to reflect his experience with the District of  
10 Columbia. The affidavit was signed in New York, and I d just  
11 like to get some information pertaining to his ability to  
12 testify as to the real estate market and his experience here in  
13 the District of Columbia.

14 MR. COLLINS: Sure. He was not proffered as an  
15 expert, and he s experienced with real estate worldwide. He  
16 does work for he s not with the Church of Scientology, but he  
17 does work for the Church of Scientology around the world.

18 CHAIRPERSON REID: I understand, but I d just  
19 like I would like to see that, if you wouldn t mind having  
20 this submitted to the record.

21 MR. COLLINS: All right.

22 CHAIRPERSON REID: Okay.

23 MR. SOCKWELL: Another question, Mr. Collins, you  
24 said that because of the historic status of the building no  
25 parking is required for this use, pursuant to Section 2100.5?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLLINS: Yes, sir.

2 MR. SOCKWELL: And so, the proper request for  
3 waiver of parking and loading

4 MR. COLLINS: Will happen during the building  
5 permit application process, but these things are typically  
6 it s simply a notation more than it is an approval. We are  
7 entitled to it under Section 2100.5 and the paper work will be  
8 submitted with the application.

9 CHAIRPERSON REID: That s a Historic District.

10 MR. SOCKWELL: Yes.

11 If you would submit a copy of that document to  
12 the record when you when it s been filed?

13 MR. COLLINS: Sure.

14 MR. SOCKWELL: Thank you.

15 CHAIRPERSON REID: Okay.

16 Any further questions?

17 MR. GILREATH: No further questions.

18 CHAIRPERSON REID: No more questions. Okay.

19 All right, Board members, I think that I d like  
20 to move that this application be approved. I think that the  
21 applicant has demonstrated that he s met the burden of proof  
22 and that he s in compliance with the regulations under the  
23 District of Columbia as they pertain to a variance.

24 He cited that the unusual and unique conditions  
25 apparently stems from the fact that after a number of years of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 trying to market the property and to find a user for the  
2 property, it was a very difficult endeavor, and that of the  
3 five contracts that they received on the property they were not  
4 able to get past the due diligence and the contingency for the  
5 zoning. And, that is the practical hardship that they  
6 proffered to us.

7 The adverse impact aspect stems from the letter  
8 that we got from the ANC, in which they basically stipulated  
9 that certain conditions be met before they would give their  
10 approval. However, the Applicant and the ANC have met and have  
11 basically come to a meeting of the minds as to this agreement,  
12 that they will then submit to the record. It will not be  
13 conditioned. We are not allowed to condition the order itself  
14 as such, but the issues that were raised will definitely have  
15 been addressed and they will be reflected therein.

16 There were no other persons that appeared to  
17 voice any opposition.

18 I don't feel that granting this particular  
19 application, relief of this application, will impair the intent  
20 or the integrity of the Zoning Regulations and maps.

21 MR. GILREATH: Madam Chairman, I concur. I feel  
22 that much of this variance relief is a result of the  
23 nonconforming use of a very old building, and to be able to  
24 restore this, which is in disrepair now, actually is to the  
25 betterment of the neighborhood, and I think they've made their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 case very convincingly, and I second the motion that the  
2 application be approved.

3 CHAIRPERSON REID: Okay.

4 MR. SOCKWELL: I feel that the application, from  
5 the visual elements, will be a retention of the character of  
6 the neighborhood, without substantial impacts from the street  
7 side, and with noticeable, but seemingly appearance from the  
8 non-street facades of the building.

9 I do feel that the ANC s issues tended at the  
10 conclusion of their negotiations with the developer to be more  
11 construction sequence related issues than substantive building  
12 issues, and that s a good sign that the neighborhood is in  
13 general concurrence with the design that s been presented.

14 So, I have no concerns about it.

15 CHAIRPERSON REID: And also, I don t know if I  
16 said when I made the motion, that in regard to the uniqueness,  
17 that the building had been built specifically to house a school  
18 or an academy, and did not, therefore, lend itself to many  
19 other uses.

20 MR. GILREATH: No further comments.

21 CHAIRPERSON REID: All in favor?

22 (Ayes.)

23 CHAIRPERSON REID: Opposed?

24 MS. PRUITT: Staff would record the vote as 3/0  
25 to approve, motion made by MS. Reid, seconded by Mr. Gilreath.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   And, I just wanted to verify that you are  
2 requesting that the Applicant submit a copy of documentation of  
3 historic designation and, therefore, no parking required for  
4 the record, and a copy of I m sorry, I didn t catch the  
5 person s name, resume?

6                   MR. COLLINS: Mr. O Hara, Lee O Hara.

7                   MS. PRUITT: O Hara, okay. Thank you.

8                   CHAIRPERSON REID: Mr. Collins, you did pretty  
9 well today, didn t you?

10                  MR. COLLINS: Yes.

11                  CHAIRPERSON REID: You are batting 100, aren t  
12 you?

13                  MR. COLLINS: Right, right, I hope the Red Sox do  
14 that well tonight.

15                  Thank you.

16                  CHAIRPERSON REID: He asked for a summary order,  
17 bench decision.

18                  MS. PRUITT: I m sorry, and it will be a summary  
19 order.

20                  CHAIRPERSON REID: Yes.

21                  MS. PRUITT: I just wanted to verify so that

22                  MR. COLLINS: Yes, thank you.

23                  CHAIRPERSON REID: You are quite welcome.

24                  Excuse me, with that agreement, do you think we  
25 should have a full order?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PRUITT: Excuse me?

2 CHAIRPERSON REID: I said, with that agreement,  
3 with those conditions reflected, don t you think we should have  
4 a full order?

5 MS. PRUITT: That s why I was asking.

6 CHAIRPERSON REID: Okay.

7 Mr. Collins, in view of the fact that we  
8 discussed the agreement, and that was going to be reflected in  
9 the order, then that would have to be a full order rather than  
10 a summary order, correct?

11 MR. COLLINS: We could do that, or we could do a  
12 summary order and at the provision where you have the ANC  
13 discussion, that could be a full discussion of the ANC issue.

14 CHAIRPERSON REID: Okay.

15 MR. COLLINS: And, the Board has done that in the  
16 past.

17 CHAIRPERSON REID: You would like that? All  
18 right, okay, fine. I just wanted to make sure that we

19 mS. PRUITT: We will early expedite everything.

20 CHAIRPERSON REID: Okay.

21 MR. COLLINS: And, let the record reflect as my  
22 partner said, that I m not batting 100, I m batting 1,000. If  
23 I was batting 100, I guess I d have a problem.

24 CHAIRPERSON REID: Okay.

25 Please call the last case of the day.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. PRUITT: Yes, the last case of the day is  
2 16498, application of 800 8<sup>th</sup> Street, N.W., LLC, and the Chinese  
3 Consolidated Benevolent Association, pursuant to 11 DCMR 3108.1  
4 for special exceptions under Section 774.2 to waive the rear  
5 yard requirements; Sections 411.11 to approve the elevator  
6 machine room which does not meet the normal setback  
7 requirements; and pursuant to 11 DCMR 3107.2 for variances from  
8 Section 773.7 to have residential recreation space on a roof  
9 with a dimension less than twenty-five feet; and Section 2101.1  
10 to have fewer than the minimum number of required parking  
11 spaces; and Section 2117.4 to provide parking access by a car  
12 elevator rather than an improved driveway, and finally, Section  
13 2205.3 to have less than the one required loading berth in a  
14 DD/C-3-C District at 800 8<sup>th</sup> Street, N.W., (Square 404, Lots 800  
15 and 801).

16 All those planning to testify would you please  
17 stand and raise your right hands?

18 Please, be seated.

19 MR. GILREATH: MS. Pruitt, where it says a  
20 variance from 773.7 to have residential recreational space on  
21 the roof, that has been dropped, has it not?

22 MR. GLASGOW: Yes, it has been dropped.

23 MR. GILREATH: That s my understanding.

24 MR. GLASGOW: That has been dropped, Mr.  
25 Gilreath.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GILREATH: Did you get that?

2 CHAIRPERSON REID: No, I didn't.

3 MR. GILREATH: The requested variance for  
4 residential recreation space on the roof, et cetera, of less  
5 than 25 feet has been dropped. They are not going to put any  
6 kind of residential use up there.

7 CHAIRPERSON REID: Oh, when did that happen?

8 MR. GILREATH: It was something I saw it in one  
9 of the letters, I think one that was passed out today.

10 CHAIRPERSON REID: Oh, it was, I don't have it  
11 here.

12 Mr. Sockwell?

13 MR. GILREATH: I saw it someplace, it was in the  
14 material, I'm quite sure.

15 CHAIRPERSON REID: I don't think we got anything  
16 today from this Applicant.

17 MR. GILREATH: Reading through, I came across  
18 that, it's one of the letters.

19 CHAIRPERSON REID: Mr. Glasgow, hi, good morning, or good  
20 afternoon, how are you?

21 MR. GLASGOW: Good afternoon.

22 CHAIRPERSON REID: You are the last case of the  
23 day. Thank you for your indulgence.

24 Mr. Gilreath said that you had withdrawn one of  
25 the variance requests?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GLASGOW: Yes, that request is no longer  
2 necessary.

3 CHAIRPERSON REID: Okay, that was for the  
4 recreational space.

5 MR. GLASGOW: Residential recreation space.

6 CHAIRPERSON REID: Okay, so we are dealing with  
7 how many now, three?

8 MR. GLASGOW: We have two special exceptions and  
9 three area variances. We have a roof structure setback special  
10 exception, rear yard waiver special exception, number of  
11 parking spaces variance, access to parking space variance, and  
12 loading berth variance.

13 CHAIRPERSON REID: Okay.

14 You don't there does not appear to be any  
15 opposition to your application. I didn't note any in the file,  
16 any letters of opposition, so if you'd like you can expedite  
17 your presentation.

18 MR. GLASGOW: Sure, we'd be happy to.

19 CHAIRPERSON REID: Yes, and we can get through it  
20 relatively quickly. And, I suppose you will present it in such  
21 a fashion that you can capsule the special exceptions and the  
22 variances and demonstrate how you are in compliance with them,  
23 and how you meet the burden of proof.

24 MR. GLASGOW: Sure. I think we can do that in a  
25 fairly brief fashion. I assume everyone has a copy of our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 statement of Applicant that we filed.

2 CHAIRPERSON REID: Yes.

3 MR. GLASGOW: Thank you.

4 With respect to the first, we ll start with  
5 the two special exceptions and in the statement, all fo the  
6 special exceptions and variances are discussed in the statement  
7 of the Applicant in pages one through 19. We just wanted to  
8 make sure that we had covered all of those for the record, and  
9 I will have one of the witnesses just adopt that as his  
10 statement.

11  
12 We have a plat of the property. This case  
13 really stems from the small size of the site and the dimensions  
14 of the site, and that is going to also go to the uniqueness of  
15 the property. We have a C-3-C site that is slightly over 4,000  
16 square feet in size. We have a very small building for the  
17 size of the building that we have, it s 120 foot tall building  
18 which is only 34,000 square feet in gross floor area, and in  
19 looking at the size of the site, which is only 47 feet wide,  
20 when you look at the roof structure and the requirements for a  
21 roof structure setback we ve had several cases that have been  
22 before this Board historically, and once you get below about 60  
23 feet in width it is extremely difficult to not request a roof  
24 structure setback. And so, we have made the determination that  
25 the most appropriate portion of the site for the roof structure

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be pushed to is the western frontage, where it butts up  
2 against another substantial building, which is the building  
3 where the U.S. Mint is located.

4 We set back from the south, north and east  
5 frontages more than the required setback, so it s only that  
6 western frontage where we have the roof structure setback for  
7 that special exception.

8 Then, with respect to the rear yard waiver,  
9 there s a series of requirements in the requirements, most  
10 dealing with window separation from habitable rooms in  
11 residential buildings. There are no residential buildings  
12 around us that we impact, and that will be testified to by the  
13 architect.

14 With respect to the variances, what we ve  
15 determined to try to do, that even normally with this size of  
16 site we come in and we ask for a waiver from the parking  
17 requirements because it is very difficult to build any type of  
18 in fact, it is economically not feasible to build a ramping  
19 system to access the parking spaces, so that instead of just  
20 coming in and saying we don t want to provide any parking, we,  
21 because of the small size of the building, we do believe that  
22 an elevator system is reasonable, we provide two levels of  
23 parking, we actually, with the vault space that we have,  
24 provide the required number of spaces, more than the required  
25 number of spaces, but we do not have the access to them, we do

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 not have the required number of spaces on our own site, so that  
2 we need those two variances.

3 The third is the loading berth, putting a  
4 loading berth in a building of this small size is extremely  
5 difficult, and it s not practical. What we do have is, we have  
6 you can have loading zones and commercial zones. With a  
7 loading zone for this size building we believe that we can  
8 readily accommodate any loading that we have with a loading  
9 zone at the front door, which is very common in the downtown  
10 area and in the commercial districts.

11 Also, if you look at the rear yard, if we were  
12 required to provide a rear yard, depending upon whether we  
13 provided the rear yard on the north or the west side of the  
14 building, you would lose somewhere around 28 or 21 percent of  
15 the entire building area, and given a 34,000 square foot  
16 building we do not have 28 or 21 percent to spare.

17 With that brief overview, what I d like to do is  
18 call our one witness and introduce the compatriots up here on  
19 the table, Mr. Dennis Hughes, of the law firm of Wilkes, Artis,  
20 Hedrick & Lane seated to my left, Mr. Glenn Golonka, who is the  
21 developer of the project seated to my immediate right, and on  
22 my far right is Mr. Eric Colbert.

23 I d like to call Mr. Eric Colbert as a witness.

24

25 Whereupon,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ERIC COLBERT

2 was called as a witness by Counsel for the Applicant, and  
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 MR. GLASGOW: Mr. Colbert, have you had an  
6 opportunity to review the statement of Applicant?

7 MR. COLBERT: Yes, I have.

8 MR. GLASGOW: All right, and do you adopt the  
9 statement of Applicant as your testimony with respect to the  
10 burden of proof and its description of the areas of relief?

11 MR. COLBERT: Yes, I do.

12 MR. GLASGOW: All right.

13 With that, Madam Chair, we can either go through  
14 a brief description of the project or if there are questions of  
15 the Board members, answer the questions of the Board members.

16 CHAIRPERSON REID: I think that I d like to do  
17 both, a brief description of the project, and then we ll the  
18 Board members will now have an opportunity to ask questions.

19 MR. GLASGOW: Mr. Colbert?

20 MR. COLBERT: Hello, Madam Chairperson and  
21 members of the Board. My name is Eric Colbert, and I live at  
22 3829 Fessenden Street, N.W., and I m very happy to be able to  
23 present this drawing today because my firm has had a very  
24 successful relationship with Ms. Wong, the developer, and  
25 Glenn, and we did the other very handsome development with them

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 at 7<sup>th</sup> and A Street, and Ms. Wong has been very active in the  
2 community, you know, improving Chinatown and trying to do a  
3 good job of that. And, I think this is a very important project  
4 because as you can see, you know, development is encroaching  
5 from the west, and the photos I have here show the orientation  
6 of the currently being completed Mint building, and as you can  
7 see the Mint building has a blank wall that s made out of and  
8 is facing our property. And, we feel very confident that

9 CHAIRPERSON REID: I m sorry, Mr. Colbert, what  
10 did you say, a blank wall that s what?

11 MR. COLBERT: This is the end of the Mint  
12 building that s currently being completed, and that s the wall  
13 that we are going to be going up against with our proposed  
14 development.

15 CHAIRPERSON REID: Okay.

16 MR. COLBERT: And, this is a drawing showing the  
17 Mint building coming up to this point, and then this is our  
18 building here. So, I think that it s a very friendly business,  
19 in the sense that it articulates, you know, provides an end to  
20 that block, and is very in keeping with the scale and yet it s  
21 actually a diminutive version of the large Mint building. It s  
22 different articulated, but the massing of it I think helps to  
23 complete the block.

24 Our penthouse here is lower than the Mint  
25 penthouse, and actually our permitted 120 foot height is based

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on the width of 8<sup>th</sup> Street, and that s to the bottom of the  
2 penthouse, but actually the way we have it designed the 120  
3 foot height is actually to the top of the penthouse. So, we  
4 are not asking for any variance in terms of height  
5 consideration. As a matter of fact, the building is actually  
6 lower than permitted.

7 This is a drawing of our proposed building, and  
8 we ve designed this with rich materials, we are going to have  
9 cast stone banding to give it a historic look, but with some  
10 very subtle Oriental suggestions, but we want the building to  
11 have a wide appeal so we ve given it a kind fo classical look  
12 that we think will fit in with the Mint building and the other  
13 older buildings in the area.

14 This is a site plan, and this is our proposed  
15 building. There s considerable yard here that in the future  
16 may be developed as different options for public space,  
17 including possibly a sidewalk café, but at this point, you  
18 know, there is a lot of openness around the building, and then  
19 there s an alley here that separates us from the existing  
20 church.

21 And, the restaurant entrance will be on the  
22 corner, and then the office building, I guess, will be on the  
23 west side of the building.

24 As this is a facade that s facing north toward  
25 the church, and we fully articulated this, we don t have any

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 facades on the building that we are going to consider to be  
2 minor facades that we are not going to articulate. We have  
3 windows, and brick, and cast stone on all our orientations.

4 This is a plan of the garage level. We have two  
5 levels. And, as Chip correctly pointed out, even though we are  
6 asking for a consideration with regard to parking, we actually  
7 provide the required number. This is the edge of our property,  
8 and so what we are doing is vaulting so that we are going to  
9 create ten spaces per level to provide a total of 20 spaces,  
10 and the zoning requirement here is 18, given the current uses.

11 This is the typical floor plan oh, this is the  
12 first floor plan, I m sorry, this is the entrance lobby, and  
13 then the plan is to have a restaurant that will occupy the  
14 remainder of the first floor and also the second floor, and  
15 we re going to have an opening so that there will be we are  
16 intending to have one restaurant and there will be openness  
17 from the first floor to the second floor, and actually I would  
18 like to point out that the Starbucks that is also in the other  
19 building that they ve just completed a two-story restaurant  
20 there, and they ve been very successful with that.

21 This typical floor plan I think can tell you,  
22 you know, give you an idea of why it s important for us to have  
23 the core on one side. This is we don t have any opportunity  
24 for windows here, and to make you know, we are only 47 feet  
25 wide, to make an office building work you need to have a layer

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of offices and then a layer for corridors and support staff and  
2 so forth. So, if we were required to push the core to the  
3 middle of the building we would probably even need a zoning  
4 relief for that, because we probably couldn't get the one-to-  
5 one setback required because of the narrowness of the building,  
6 and it makes sense to have it on the west side because we are  
7 abutting a larger structure and we think that that will be the  
8 least impact.

9 The main visibility for this building is going  
10 to be, probably one of the most important vistas is as you come  
11 out of the Metro station, people that are going to the MCI  
12 Arena and the new gallery, you know, development in that area,  
13 and from the Metro you come up and you'll see this, so from  
14 that perspective it is important for us to have these elevators  
15 set back as much as possible.

16 This is in order to not make the building, you  
17 know, to help ease the scale of the building, the top floor, as  
18 Chip mentioned, is going to be set back, so we are going to  
19 have a balcony all the way around, and that will help us rehab  
20 an alignment here with the Mint. They have a strong cornice  
21 line here, and we will also, and then this floor will be set  
22 back to kind of reinforce some of the important architectural  
23 lines that are created on the block.

24 CHAIRPERSON REID: Mr. Colbert, going back to the  
25 parking, did you say, how many spaces did you say that you are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to be providing?

2 MR. COLBERT: Twenty, but some of them aren't  
3 don't qualify as zoning required parking because they are  
4 actually public spaces.

5 CHAIRPERSON REID: Oh, okay. All right.

6 MR. COLBERT: Because they are in the vault.

7 CHAIRPERSON REID: Okay.

8 MR. SOCKWELL: If I might interject, you said  
9 that you were providing 18 you said something about 18  
10 spaces.

11 MR. COLBERT: And, I'm saying that the zoning  
12 computations for this building would require a total of  
13 approximately 18 spaces, and we're providing 20, so we feel  
14 that from a practical perspective we are providing a ratio.  
15 And, if this weren't in the C-3-C Zone, if this were in the C-4  
16 Zone for a lot under 5,000 square feet, zero parking would be  
17 required. So, we feel very confident about the actual number  
18 of parking that we are providing, in terms of its adequacy with  
19 the zoning requirements.

20 MR. SOCKWELL: All right, because under zoning,  
21 as you know, required spaces cannot be provided in a vault.

22 MR. COLBERT: That's correct.

23 CHAIRPERSON REID: Right.

24 MR. COLBERT: That's why we need the relief.

25 CHAIRPERSON REID: And, if I understand you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 correctly, to comply with the Zoning Regulations with regard to  
2 the parking, there s not enough space there to permit you to  
3 comply with

4 MR. COLBERT: Yes.

5 CHAIRPERSON REID: with being able to  
6 provide the parking in the building on the designated site,  
7 that s my understanding of basically your variance request.

8 MR. COLBERT: Yes. What happens is, this is a  
9 drawing of our garage level, and what we are doing here is, we  
10 are providing an elevator for the cars. Unfortunately, because  
11 of the ramping, it would be virtually impossible for us to  
12 provide a ramp in this building that would allow us to serve  
13 two levels of parking, because by the time we are able to  
14 provide the ramp itself there would literally be no space left  
15 over for parking.

16 CHAIRPERSON REID: Right.

17 MR. SOCKWELL: Unless it s motorcycles.

18 MR. COLBERT: Yeah, exactly. I mean, this is an  
19 obviously much more expensive solution than building a ramp, so  
20 the owner is not necessarily trying to take the cheap way out.  
21 They are really going the extra step to try to, you know, be a  
22 good neighbor for the community.

23 MR. GILREATH: You said that some of the parking  
24 would be in public space, I guess in vaults or what have you,  
25 do you have to have permission or does this belong to the D.C.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 government, you say public space, what do you mean public  
2 space?

3 MR. COLBERT: Yes, we have to the parking will  
4 be underground, but it will be underneath what appears to be a  
5 side yard to the building, but it s actually public space, and  
6 we will have to rent that from the city, and to make a  
7 determination that it was feasible to do that we had a surveyor  
8 go there and check the location of the utilities to make sure  
9 that there were no utilities in that area so that we could do  
10 that.

11 And, 8<sup>th</sup> Street is kind of unusual, because the  
12 street itself is not extremely wide, but there s a lot of width  
13 between the curb and the building property line, so that s what  
14 allows us to get this extra space underneath.

15 MR. SOCKWELL: And, Mr. Gilreath, that s because  
16 8<sup>th</sup> Street is a vista street.

17 MR. GILREATH: What kind of street?

18 MR. SOCKWELL: It s a vista street.

19 MR. GILREATH: Oh, yes, okay.

20 MR. SOCKWELL: We had a lot of problems at Tech  
21 World.

22 CHAIRPERSON REID: In regard to the variance  
23 relief request under Section 2117.4, which requires that there  
24 be accessibility of parking spaces from improved streets or  
25 alleys, and instead you are going to provide a car elevator

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rather than a driveway.

2 MR. SOCKWELL: That actually it s still,  
3 there s accessibility from the streets, but it s not a ramp,  
4 it s an elevator, so they ll drive into the elevator from the  
5 private street from the public street, and then be dropped  
6 down to the level of parking, or the two levels of parking.

7 CHAIRPERSON REID: Thank you, Mr. Sockwell.

8 MR. SOCKWELL: But, it is accessible from the

9 CHAIRPERSON REID: But, that s not my question.

10 MR. SOCKWELL: Oh, I m sorry.

11 CHAIRPERSON REID: A car elevator, what s that?

12 MR. COLBERT: The way it will work is

13 CHAIRPERSON REID: I m not familiar with that.

14 MR. COLBERT: the people that I think  
15 there s one at Ford s Theatre, the people that have these  
16 spaces, and this is not my understanding is this won t be  
17 open to the public like a typical garage where, you know, it s  
18 operated by one of the larger parking places, the folks that

19 CHAIRPERSON REID: I m just not familiar with a  
20 car elevator.

21 MR. COLBERT: Right. The folks that will be  
22 there will have like monthly contracts, and they ll have a  
23 clicker, like you have for like a garage door, like a remote  
24 thing, and so as they are approaching it they ll push the  
25 button and it will call the elevator and open the doors, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 then they ll have another button that they can press that will,  
2 you know, whether they want to go on the lower level or the  
3 upper parking level, it will automatically take them to that  
4 level and then the doors will open and they can drive to their  
5 parking space.

6 CHAIRPERSON REID: Oh, okay, interesting.

7 MR. SOCKWELL: Madam Chair, there are parking  
8 elevators primarily in buildings that were designed as parking  
9 structures, rather than as residential buildings or as office  
10 buildings. And, you just drive on and it takes you up to the  
11 floor, it s just a big it s like a huge hospital elevator,  
12 about the same shape.

13 Mr. Colbert, I need to ask you one question  
14 about the vault. Will you go back to the plan that shows the  
15 vaulting? Yes.

16 Now, that vault area is under what?

17 MR. COLBERT: This is our property line.

18 MR. SOCKWELL: So, you are vaulting under what  
19 would really be what we call parking in the public space?

20 MR. COLBERT: That s correct.

21 MR. SOCKWELL: Okay. All right, I wasn t quite  
22 sure, I just didn t catch it when you showed it.

23 MR. COLBERT: Yes. This is our site plan, this  
24 is the building itself, and you can see we ve got all this area  
25 between our building and the sidewalk.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SOCKWELL: Right.

2 MR. COLBERT: And, it won't extend out beyond  
3 that.

4 MR. SOCKWELL: I used to know the numbers by  
5 heart, not anymore, the two component numbers of your public  
6 space.

7 But, okay, so now I understand exactly where all  
8 that goes. Okay.

9 Thank you.

10 CHAIRPERSON REID: All right.

11 MR. GILREATH: Can you address the loading berth,  
12 there's a question, I think, you are proposing you have a sign  
13 in front of the building which would say no parking, loading or  
14 something, that's kind of the material and so forth for the  
15 building would be unloaded?

16 MR. COLBERT: Well, most it's my understanding  
17 that most office buildings, when people move in and out, they  
18 go through the front door in any case, and so what we propose  
19 here is that along the street we would just have a no parking,  
20 loading zone permanently, and so that in instances where that  
21 occurs that, you know, trucks would be there on a daily basis,  
22 you know, Federal Express, which comes to the front door of the  
23 building anyway, would go to that location.

24 MR. SOCKWELL: The one area about having a  
25 curbside loading condition is that it requires public sidewalk

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be crossed with the heavier aspects of in and out movement  
2 to the building, and that s one of the reasons why loading  
3 would be normally pushed to the rear of the building, alley  
4 access, loading docks, et cetera. And, while you are quite  
5 right that very often offices are moved primarily at night,  
6 directly out the front doors, evidenced by K Street and just  
7 about everyplace else you can imagine, it does on that that  
8 is going to be a very strong pedestrian street in the future,  
9 with the new buildings that are going up all around you. And,  
10 it is something that you would want to be very careful, or the  
11 owner would want to be very careful to control in terms of the  
12 time of major loading for in and out movement of tenants and  
13 material.

14 MR. COLBERT: That s correct.

15 One thing I d like to point out is that we have  
16 a designated trash area here, there is an alley behind our  
17 building, and we are going to have this driveway to the  
18 elevator, so a trash truck can back up here and they can gain  
19 easy access to the trash area without disturbing the public.

20 MR. SOCKWELL: Now, there won t be a rollaway  
21 dumpster back up in there, will there?

22 MR. COLBERT: No.

23 MR. SOCKWELL: Okay.

24 That s not a through alley as I recall, is it,  
25 or is it?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COLBERT: It s a private alley.

2 MR. SOCKWELL: It s a private alley, okay.

3 And, it s designated, Mr. Glasgow, for the use  
4 of the adjoining property owners, both, rather than just one?

5 MR. GLASGOW: I believe it s just for you all?

6 MR. COLBERT: It s for all three properties.

7 MR. GLASGOW: For all three properties, the Mint  
8 that s located to the west

9 MR. SOCKWELL: Usually private alleys are derived  
10 of the adjacent properties, not always all of them, but almost  
11 always through some agreement, usually dating back to the  
12 1800s, would be designated for the use of certain property  
13 owners and not necessarily for certain other property owners.  
14 So, you do have access to it?

15 MR. GLASGOW: Yes.

16 MR. SOCKWELL: That s all that matters.

17 MR. COLBERT: There are required emergency egress  
18 doors here, so this would always have to remain open.

19 MR. SOCKWELL: Where?

20 MR. COLBERT: Back here from the other building.

21 MR. SOCKWELL: Okay, very similar to a condition  
22 on 18<sup>th</sup> Street that we are dealing with.

23 CHAIRPERSON REID: Okay.

24 Any other questions?

25 MR. GILREATH: No questions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: Did we receive a letter from  
2 the ANC on this particular application?

3 MS. PRUITT: I don t believe so. You have the  
4 original file, I have none in mine.

5 CHAIRPERSON REID: I didn t see one. Let s see,  
6 they were noticed in July, and it doesn t appear that we  
7 received anything.

8 MR. GILREATH: I don t recall seeing a letter  
9 from the ANC.

10 CHAIRPERSON REID: Okay. Well, when we don t  
11 hear from the ANC we assume that they are

12 MR. SOCKWELL: Chinese Consolidated Benevolent  
13 Association has written a letter.

14 CHAIRPERSON REID: that they are not opposed  
15 to the application, and I don t think we have any other  
16 government reports.

17 There s no one here to testify in support of the  
18 application, nor is anyone here to testify in opposition.

19 What letter were you referring to, Mr. Sockwell?

20 MR. SOCKWELL: There s a letter in the file from  
21 the Chinese Benevolent Chinese Consolidated Benevolent  
22 Association at 803 H Street, N.W., stating that this is to  
23 oh, this is just authorizing Wilkes, Artis to represent them.

24 CHAIRPERSON REID: Oh, okay.

25 MR. SOCKWELL: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON REID: That s your client.

2 All right.

3 Closing remarks by the Applicant.

4 MR. GLASGOW: I believe we ve submitted testimony  
5 and evidence to meet our burden of proof, and we would like to  
6 have a bench decision if we could, with a summary order.

7 CHAIRPERSON REID: Okay.

8 MR. SOCKWELL: I d like to say, this must be a  
9 very important building for Chinatown, because it s a very  
10 constrained site, and it s a very limited floor plate. It s  
11 requiring numerous unusual and not necessarily inexpensive  
12 adjustments to meet your goal, and while at its height it s a  
13 very compact building, so obviously the client has a very  
14 strong feeling about making a statement in Chinatown for a  
15 modern and useful building.

16 CHAIRPERSON REID: Mr. Sockwell, are you making a  
17 motion?

18 MR. SOCKWELL: I move that we approve the  
19 application as submitted.

20 CHAIRPERSON REID: Okay, and would you speak to  
21 how he s met his burden of proof?

22 MR. SOCKWELL: He appears to have met the  
23 requirements, I guess I should go down

24 CHAIRPERSON REID: For the special exceptions.

25 MR. SOCKWELL: for the special exceptions, I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 should go down through the specifics. Waiving the rear yard  
2 requirements seems to be a reasonable allowance, based on the  
3 particular constraints of the site.

4 CHAIRPERSON REID: And, that s one of the two  
5 special exceptions that they are asking relief on.

6 MR. SOCKWELL: Yes.

7 The elevator machine room not meeting normal  
8 setback requirements, again, would be consistent with the  
9 narrowness of the site, and the intention to push it as far and  
10 as unobtrusive a location as possible seems to be, without  
11 question, a reasonable request.

12 The variance to have fewer than the minimum  
13 number of required parking spaces, based on the difficulty of  
14 achieving a typical access route from the street, with the  
15 narrowness and small size of the site, which creates particular  
16 constraints seems to have been proven as a particular hardship  
17 request, and one that has no practicable solution other than an  
18 elevator.

19 The variance regarding access to the required  
20 spaces, again, would not be inconsistent with the variance for  
21 the number of cars, based on the constraints of the site.

22 CHAIRPERSON REID: Isn t that being accomplished  
23 by that car elevator?

24 MR. SOCKWELL: Yes, and that the car elevator is  
25 an acceptable means of reaching those spaces in this situation,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I can believe that they have met the burden of proof, that an  
2 elevator is the only practical method of achieving access.

3 The variance to have less than the one required  
4 loading berth, while a more difficult one to deal with for me  
5 is proven by the fact that the number of square feet in the  
6 floor plate, especially at the first floor, and the fact that a  
7 loading berth might even exceed, I don't know what your  
8 what's your floor to floor from the first to second?

9 MR. COLBERT: Eleven feet.

10 MR. SOCKWELL: Eleven feet, pushes the capability  
11 of actually getting a truck of any size underneath the  
12 structure at that level to a rather interesting feat, perhaps,  
13 and I think that all of this is based upon what you have to  
14 work with and trying to maximize the amount of space that you  
15 can put in the building, keeping the floor plate, floor to  
16 floor heights as high as possible, but reasonable enough to get  
17 a square footage that gives you an economically feasible  
18 building.

19 So, I agree with all of these.

20 CHAIRPERSON REID: I would second the motion. I  
21 think that also there does not appear to be any adverse impact,  
22 which is evidenced by the fact that we don't have any letters  
23 of opposition or anyone who appeared here opposed to the  
24 application today. So, adverse impact in regard to parking,  
25 traffic, noise, lights, or any other nuisance does not appear

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to be apparent, and I feel that granting the application will  
2 not impair the intent and integrity of the Zoning Regulations  
3 or the maps.

4 MR. GILREATH: I would like to commend the  
5 Applicant, I think that they ve come up with a very imaginative  
6 solution to this. I think the compatibility with the adjacent  
7 building and so forth, in terms of the architectural style, is  
8 very impressive and very compatible, and I would just like to  
9 commend them, and I feel that the variances and special  
10 exceptions required are reasonable, and that they are fully  
11 justified given the unique narrowness of the lot area and so  
12 forth, that they ve really done a superb job and I fully  
13 support the application.

14 CHAIRPERSON REID: All in favor?

15 (Ayes.)

16 CHAIRPERSON REID: Opposed?

17 MS. PRUITT: Staff would record the vote as 3/0  
18 to approve, motion made by Mr. Sockwell and seconded by Ms.  
19 Reid.

20 CHAIRPERSON REID: All right, thank you.

21 MS. PRUITT: And, summary order.

22 CHAIRPERSON REID: Summary order, and you should  
23 have your order in about two weeks.

24 Okay, and that concludes the day s hearing of  
25 the Board of Zoning Adjustment.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

Thank you.

(Whereupon, the hearing was concluded at 4:10

p.m.)

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701