

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 23, 2001

+ + + + +

The Public Hearing convened in Room 220 South,  
441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice  
at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson (10-9-01)
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Commissioner
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Sheri M. Pruitt, Secretary, BZA  
Beverly Bailey, Office of Zoning  
John K. A. Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning  
Ellen McCarthy, Deputy Director,  
Office of Planning  
Jennifer Steingasser, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

(9:40 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. The hearing will please come to order.

This is the October 23rd public hearing of the Board of Zoning Adjustments of the District of Columbia. My name is Jeff Griffis. The Chairperson joining me today is Vice Chair Anne Renshaw, and representing the National Capital Planning Commission is David Levy. We are anticipating a fourth member after 10:30 this morning.

Copies of today's hearing agenda are available to you. They are located at my left, at the door where you came in.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming 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 exceptions and variances is: first, statement and witnesses of the applicant; second, government reports, including Office of Planning and Department of Public Works, et cetera; third, report of the Advisory Neighborhood Commission; fourth, parties or persons in support; fifth, parties or persons in opposition, and, sixth, closing remarks by the applicant.

1                   Cross examination of the witnesses is permitted  
2 by the applicant or parties. The ANC within which the property  
3 is located is automatically a party in the case. The record  
4 will be closed at the conclusion of each except for materials  
5 specifically requested by the Board, and the staff will specify  
6 at the end of the hearing exactly what is expected.

7                   The Sunshine Act requires that the public hearing  
8 on each case be held in the open before the public. The Board  
9 may, consistent with the rules and procedures of the Sunshine  
10 Act, enter Executive Session during and/or after the public  
11 hearing on a case for purposes of reviewing the record or  
12 deliberating on the case.

13                   The decision of the Board in these contesting  
14 cases must be based exclusively on the public record. To avoid  
15 any appearance to the contrary, the Board requests that persons  
16 present not engage the members of the Board in conversation.  
17 Please turn off all beepers and cell phones at this time, so as  
18 not to disrupt these proceedings.

19                   The Board will now consider any preliminary  
20 matters. Preliminary matters are those which relate to whether  
21 a case will or should be heard today, such as requests for  
22 postponement, continuance, or withdrawal, or whether proper or  
23 adequate notice of the hearing has been given.

24                   If you are not prepared to go forward with the  
25 case today or if you believe that the Board should not proceed,

1 now is the time to raise such a matter.

2 I would first go to the staff to see if there are  
3 any preliminary matters.

4 MS. BAILEY: Good morning. There is, Mr.  
5 Chairman. This concerns the first case, Application 16772.  
6 That application was withdrawn and no further action is required  
7 by the Board.

8 CHAIRPERSON GRIFFIS: Thank you very much.

9 In which case let us move on and call the first  
10 case.

11 MS. BAILEY: Application No. 16774 of Roger and  
12 Vicky Sant, pursuant to 11 DCMR 3104.1 for a special exception  
13 to allow an addition to a single-family dwelling under Section  
14 223, not meeting the rear yard requirements, Section 404, in an  
15 R-1-B District at premises 1710 Hoban Street, Northwest, Square  
16 1347, Lot 1.

17 All those wishing to testify, please stand.  
18 Raise your right hand, sir.

19 (Witness sworn.)

20 MS. BAILEY: Thank you. Please come to the  
21 table.

22 Mr. Chairman, while the Applicant's  
23 representative is coming to the table, I just wanted to put on  
24 the record that this property was posted late. The Applicant  
25 did indicate that it was properly posted, but the affidavit of

1 posting was received in the Office of Zoning late. So that  
2 would need to be waived into the record.

3 CHAIRPERSON GRIFFIS: Okay, good. Board members  
4 need any explanation information on that?

5 MEMBER LEVY: Just a clarification, if I could.  
6 It was posted for the proper amount of time? It was just  
7 received late? Is that what I heard? The notice was received  
8 late?

9 MS. BAILEY: Yes. The Applicant indicated that  
10 it was posted for the required for 15 days, but it was received  
11 in our office one day late.

12 MEMBER LEVY: Oh, thank you.

13 MS. BAILEY: Yes.

14 CHAIRPERSON GRIFFIS: Very good. Then if that's  
15 a consensus, we'll waive the rules. Good.

16 Give me 30 seconds to get organized here.

17 You can begin, if you would. State your name and  
18 address, and you're going to need to turn on your mike when you  
19 speak.

20 MR. HORSEY: My name is Outerbridge Horsey with  
21 Horsey and Thorpe, Architects. Our offices are at 1228-1/2 31st  
22 Street, Northwest, in the District.

23 Good morning, Mr. Chair and members of the Board.

24 I would like to first apologize for my oversight in submitting  
25 the affidavit a day late, and thank you for waiving the rules.

1 I'm here on behalf of Vicky and Roger Sant, the  
2 owners of the property on Hoban Road. The proposal is for an  
3 addition to the house which actually occurs on the side of the  
4 house. Because it's a corner lot, the Zoning Administrator's  
5 Office has determined, based on their guidelines, that this is,  
6 in fact, in the rear yard. The reason they determined that is  
7 that, when they have a corner, they take whichever street  
8 frontage puts the property most in compliance with the zoning  
9 regulations. In this case, had they determined that Hoban Road  
10 was the frontage, then the existing garage would have been  
11 located in the side yard, which would have been a violation of  
12 the Zoning Code.

13 So in determining it had to allow this, the  
14 frontage, it put the garage, existing garage, in the rear yard;  
15 thus, leaving only about 10 feet of rear yard remaining. Our  
16 proposal is to in-fill that space between the main house and the  
17 existing garage that you see here on the site plan and here in a  
18 larger version, and thus, eliminating, for practical purposes,  
19 any rear yard. In fact, the lot coverage is quite generous,  
20 existing, and the actual rear yard is quite large.

21 I can go through this to any extent that you'd  
22 like. Let me just show you the elevations.

23 In terms of the front elevation, this is the  
24 Hoban Road elevation. Here you see the one-story addition  
25 that's the subject of a special exception in the rear. We see

1 it over here. There's also some other proposed additions to the  
2 house which are in compliance with the zoning regulations.

3 This shows it from the side, from this side over  
4 here. It's on the west side. We've been in contact with the  
5 neighbors, the adjacent neighbors or any other neighbors, have  
6 any objection to the proposal, and they've presented to the ANC.  
7 They've also given it unanimous total support.

8 Are there any questions? I won't take any more  
9 of your time than necessary.

10 CHAIRPERSON GRIFFIS: Thank you.

11 Any questions, Board Members, as we get into  
12 this?

13 VICE CHAIRPERSON RENSHAW: No, Mr. Chairman, it  
14 looks very straightforward. I see that we have a letter of  
15 support from an abutting property owner, John Foyer. Do we have  
16 any other letters of support or just Mr. Foyer?

17 MR. HORSEY: I understand that the ANC  
18 Commissioner -- Mr. Foyer lives directly to the west here --  
19 that the ANC Commissioner for this District, Lynn Levine, spoke  
20 with the other neighbor, and he affirmed that he had no  
21 objections.

22 VICE CHAIRPERSON RENSHAW: All right, thank you.

23 CHAIRPERSON GRIFFIS: I want to just compliment  
24 you on the completeness. First of all, the drawings that  
25 illustrate what is proposed, it's very clear, and I think it's

1 very straightforward.

2 If there's no any other information, no other  
3 questions, then why don't we move on to government reports. Do  
4 we have an office -- I may have to check this. We don't have in  
5 my file in the office a planning report. I don't believe one  
6 came in. We do have a letter from the ANC, if I'm not mistaken.

7 VICE CHAIRPERSON RENSHAW: That's right.

8 CHAIRPERSON GRIFFIS: Ms. Renshaw, do you want to  
9 just read the statement of support, please?

10 VICE CHAIRPERSON RENSHAW: This is Advisory  
11 Neighborhood Commission 2E. The letter is dated October 15th,  
12 2001, and it's signed by Peter Pulsifer, the Chair of the ANC.

13 He states that at its regularly-scheduled and  
14 duly-noticed public meeting on October 2nd, 2001, with all  
15 Commission members present, ANC-2E voted unanimously to pass the  
16 following motion: "ANC-2E supports granting a special exception  
17 for the property at 1710 Hoban Road, Northwest, to allow an  
18 addition to the single-family dwelling," and Mr. Pulsifer asks  
19 that great weight be given to ANC-2E's action.

20 CHAIRPERSON GRIFFIS: Are there persons or  
21 parties in support of this case?

22 (No response.)

23 Any in opposition?

24 (No response.)

25 Well, then we can move quickly on to closing

1 remarks.

2 MR. HORSEY: I respectfully request the Board's  
3 approval for this proposal. I'm happy to answer any further  
4 questions.

5 VICE CHAIRPERSON RENSHAW: Yes, what is your  
6 timetable?

7 MR. HORSEY: The timetable is uncertain for a  
8 number of reasons, mostly economic at this point. If all things  
9 go as everyone would like, I would anticipate construction  
10 sometime in the spring.

11 VICE CHAIRPERSON RENSHAW: All right, and to be  
12 finished up by next summer?

13 MR. HORSEY: I would say by the fall.

14 VICE CHAIRPERSON RENSHAW: By the fall?

15 MR. HORSEY: Yes. It's a fairly large project.  
16 This proposal before you is quite small, but the whole entire  
17 project is significantly larger.

18 CHAIRPERSON GRIFFIS: I imagine that you're  
19 requesting a bench decision today?

20 MR. HORSEY: Yes, please.

21 CHAIRPERSON GRIFFIS: Very good.

22 Concerns? Comments by Board members?

23 (No response.)

24 In which case, I would move the granting of the  
25 special exception to allow the addition to the single-family

1 dwelling under Section 223 for Case Application No. 16774. This  
2 application is not meeting the rear yard requirements, per  
3 Section 404, at premises 1710 Hoban Road, Northwest.

4 I would look for a second.

5 VICE CHAIRPERSON RENSHAW: Second.

6 CHAIRPERSON GRIFFIS: Very good. I think that  
7 this case is very straightforward and has duly made the  
8 establishment of the front yard, of course, set the parameters  
9 for the case and the special exception. It is in compliance  
10 with the lot area and the lot width, and I think under 223, the  
11 light and air and availability to neighboring properties will  
12 not be unduly affected, as are the other conditions. I think it  
13 does establish the fact that it is within harmony with the  
14 zoning regs., the zoning map, and will not impose any undue or  
15 adverse effects on the neighboring properties.

16 Discussion?

17 (No response.)

18 All in favor?

19 (Chorus of ayes.)

20 Opposed?

21 (No response.)

22 MS. BAILEY: Staff will record the vote as 3 to 0  
23 to approve the application. The motion was made by Mr. Griffis,  
24 seconded by Mrs. Renshaw. In agreement is Mr. Levy, Mr.  
25 Parsons, who's not present, and the third mayoral appointee is

1 not present in that voting.

2 Mr. Chairman, if I may just take a moment to  
3 remind Mr. Horsey that the order, once you receive it, it's not  
4 indefinite. There is a time constraint. So you want to be  
5 careful and not put your construction off for an exorbitant  
6 amount of time. I believe that's six months, is it not, Ms.  
7 Sansone?

8 MS. SANSONE: Ms. Bailey, it's two years.

9 MS. BAILEY: Two years? This is a special  
10 exemption. Is it two years now?

11 MS. SANSONE: Yes, it's a two-year requirement.

12 MS. BAILEY: Okay.

13 MR. HORSEY: Two years to the issuance of the  
14 building permit?

15 SECRETARY PRUITT: No, two years just to apply  
16 for your permit. So you still have a lot of time.

17 CHAIRPERSON GRIFFIS: Good information. Thanks.

18 Any other comments?

19 (No response.)

20 Very good. Mr. Horsey, thank you very much.

21 MR. HORSEY: Thank you.

22 CHAIRPERSON GRIFFIS: And I believe we're ready  
23 for the next case.

24 MS. BAILEY: Application No. 16775 of the  
25 National Medical Association, pursuant to 11 DCMR 3103.2 for a

1 variance to allow a certificate of occupancy to be issued to the  
2 nonresidential space in advance of the required residential  
3 space in a combined lot development under Subsection 1706.13, a  
4 variance from the time limit for the issuance of a C of O under  
5 Subsection 1708.1(f), a variance from the rear yard requirements  
6 under Section 774, a variance from the off-street parking  
7 requirements under Section 2101, a variance from the loading  
8 berth requirements under Section 2201, and pursuant to 11 DCMR  
9 3104.1 for a special exception from the roof structure  
10 provisions under Subsection 411.11 to allow the construction of  
11 a new office building in a DD/C-2-C District at premises 1012  
12 10th Street, Northwest, Square 342, Lot 57.

13 All those wishing to testify today, please stand  
14 and raise your right hand.

15 (Witnesses sworn.)

16 MS. BAILEY: Thank you.

17 CHAIRPERSON GRIFFIS: Good morning, gentlemen.

18 MR. GLASGOW: Good morning, Mr. Chairman, members  
19 of the Board. For the record, my name is Norman Glasgow, Jr.,  
20 the Law Firm of Holland and Knight, representing the Applicant  
21 in this case.

22 Here with me today is Ms. Lisa Jackson of the  
23 same law firm. She's in the first row back here. Seated to my  
24 immediate right is Mr. Rudolph Williams, the Executive Director  
25 of the National Medical Association, and seated in the first

1 row, to my far right, is Mr. Marshall Purnell of the  
2 architectural firm of Devroux and Purnell, and Mr. Steven Sher,  
3 Land Planner with Holland and Knight.

4 Mr. Purnell and Mr. Sher are offered as expert  
5 witnesses in their respective areas of expertise of architecture  
6 and land planning. Both have previously been accepted as  
7 experts by the Board in other cases.

8 With the permission of the Board, I'd like to  
9 give a brief opening statement before proceeding to the  
10 testimony of the witnesses.

11 The site is located on the west side of 10th  
12 Street between K and Massachusetts Avenue in the DD/C-2-C  
13 District, and it's in Housing Priority Area B. The purpose of  
14 this application is to permit the National Medical Association,  
15 an association of African-American doctors which has been  
16 located in the District of Columbia for approximate 100 years,  
17 to maintain its occupancy in the city.

18 Due to the small site in terms of lot area and  
19 lot width, variances are necessary from the parking and loading  
20 requirements of the regulations, and a special exception is  
21 needed for the roof structure setback and also a rear yard  
22 variance. We have also requested a variance from the timing  
23 requirements for housing linkage because we are in a position  
24 where we want to go forward at this point in time and are not  
25 currently linked with a housing development project, but we do

1 have an agreement with Mr. Douglas Jamal to link with his  
2 project in Square 517. But he does not have a committed  
3 timeframe as to when that project would move forward. So we  
4 need that last variance from those timing provisions in order to  
5 permit this nonprofit office use to proceed.

6 The Association has been located at this site  
7 since 1982, with the permission of the Board, and desires to  
8 rebuild and expand its offices, provide a museum, and to  
9 continue to utilize the site. In doing so, the Association was  
10 in the anomalous position of having to consider construction of  
11 a mixed-use building on its site, which is not large enough or  
12 feasible to do, given the programmatic needs of the Association  
13 or potentially being in a position of having to leave the  
14 District of Columbia, as it is not in a position to afford land  
15 prices within the city, but is able to rebuild on its own site.

16 Fortunately, through the efforts of Mr. Purnell  
17 and Mr. Douglas Jamal, who has a housing requirement on his  
18 property in Square 517 and who has recorded a covenant limiting  
19 development of the Square 517 site to residential, he has  
20 committed to entering into a combined-lot development covenant  
21 for the site and then is amenable to doing so without charge to  
22 the Association, so that it may continue in the District of  
23 Columbia.

24 It is in this context and with this knowledge  
25 that the variance relief was requested from the timing

1 requirements, and we greatly appreciate the agreement of Mr.  
2 Jamal to aid in this fashion. Therefore, the Applicant  
3 understands and is submitting this request with the  
4 understanding that there would be a condition in the Board's  
5 order that the combined-lot development covenant be recorded  
6 prior to the issuance of building permits for the construction  
7 of the Association's new building.

8 Also, in proceeding in this fashion, we had  
9 proceeded with the ANC and have a letter of support from the  
10 ANC, which I believe should be in your file, for the granting of  
11 this relief.

12 And I believe the members of the Board should  
13 have a copy of the Statement of Applicant that was submitted  
14 previously. If there are no preliminary questions, I'd like to  
15 proceed with the testimony of the witnesses in this case.

16 I would like to first call Mr. Williams. Mr.  
17 Williams, would you please identify yourself for the record and  
18 proceed with your testimony?

19 MR. WILLIAMS: Good morning. My name is Rudolph  
20 M. Williams. I am Executive Director of the National Medical  
21 Association. I am very proud to represent that organization  
22 this morning and stand before you.

23 The National Medical Association is the largest  
24 and oldest African-American physicians' national organization  
25 representing African-American physicians and the patients that

1 they serve. We've been around since 1895. We're a 105-year, or  
2 106- or 107-year-old organization.

3 We have been in the District of Columbia for  
4 almost 100 of those years or more than 100 of those years. We  
5 really can't remember back that far.

6 (Laughter.)

7 We have been located at 1012 10th Street for the  
8 past 20 years. We built that building. We moved into it. We  
9 built it because we wanted to be part of the Washington, D.C.  
10 landscape and a part of its infrastructure. We moved in there  
11 at a time when the neighborhood was not what it is today and not  
12 what it's going to be tomorrow.

13 We're very proud of where we are and what we do.

14 As an organization, we represent, as I said earlier, the 25,000  
15 African-American physicians in this country. More importantly,  
16 we represent the patients that they serve.

17 Our programs include, and are not limited to,  
18 programs in bioterrorism. This is new. I bring that up first  
19 because at six o'clock this morning I'm in my office talking to  
20 CDC about the Postal Service in the Northeast part of the USA,  
21 making contacts and moving things through, because one of my  
22 members happens to be the Medical Director for the New York/New  
23 Jersey area, and she needed some contacts done. This is what we  
24 do.

25 We deal in cultural competence, making sure that

1 patients of African-American descent and other minorities, as  
2 well as the majority population, are seen by physicians who  
3 understand the differences in where they come from, what they  
4 do, and how they live.

5 We deal in clinical trials. If you'll remember,  
6 not very many years ago there was a big hue and cry about the  
7 fact that only white men were involved in clinical trials on new  
8 drugs, no women or minorities. We're changing some of that.  
9 We're doing a lot of that. We've spent well over a million  
10 dollars working on that in the last two or three years, and  
11 we're happy to say that there have been some changes made.

12 We also have an immunization project going on,  
13 adult and childhood. That's especially important in a region  
14 like the District of Columbia, where you have an awful lot of  
15 immigrants who come in without the appropriate immunizations.  
16 We're doing these things and many more.

17 Racial and ethnic disparities, our whole purpose  
18 is to see that there is zero disparity and 100 percent access.  
19 That's our motto. That's our claim. This is what we've done.

20 I told you that we've been located here -- and  
21 I'm going to follow the script from now on for the rest of it.  
22 I can't read very well this morning, but I can talk okay.

23 Not many organizations can boast that they've had  
24 that sort of long relationship with the District, and we'd like  
25 to have it continue. We've made an investment in the area long

1 before the area became what it is today. The construction of  
2 the new Convention Center and the other development going on in  
3 the Mt. Vernon area make it a highly desirable area now. We  
4 don't want to move. I can't afford to move, frankly. I don't  
5 have the money.

6 We looked at buildings at 8th and H. We looked  
7 in Southeast. We've looked everywhere, and I can probably get  
8 one there, but it's not as desirable as where we are, nor is it  
9 affordable. We want to stay where we are and participate and  
10 contribute to the development of that particular area.

11 When we moved into that building, we had nine  
12 employees. I've got 45 now. I'm growing every day. This  
13 bioterrorism thing is going to make me hire another 10 people  
14 just to keep up with what's going on and to educate the 25,000  
15 physicians that I just told you about, because we've got to  
16 train them. Along with the CDC and the HHS and everybody else,  
17 we've got to train our physicians.

18 Those physician numbers are growing every day,  
19 too. The staff has grown. Our space needs have grown. I've  
20 got people sitting on top of each other, and I need to do  
21 something about that. I've got a building that's 20 years old,  
22 and I'll be honest with you, we didn't keep it up as well as we  
23 should have over those first few years. We're making the  
24 changes now, but it makes more sense to do what we've proposed  
25 than to spend a million dollars to make the renovations and the

1 changes we need to make, and still not have enough space to do  
2 what we need to do, and I'm growing.

3 We need that space now. I've told you about all  
4 the programs we have and the kinds of things that we're doing.  
5 We'd like to ask the Board that, because we've stuck it out  
6 until relatively recently, until the development has come along,  
7 we need the Board's help in making sure that our organization  
8 can remain in the District of Columbia. We need to be here. We  
9 need to be near the center of government. We need to be near  
10 the heartbeat of America. Regardless of who tries to move us  
11 out, be they terrorists or anybody else, we're not going any  
12 place if we don't have to.

13 So, with that in mind, I think that that's about  
14 all I had in the script to say. We respectfully request that  
15 our variances and the particular questions that we ask be  
16 granted, and that we be allowed to go about our work, because we  
17 really need to get going on it.

18 Good morning.

19 CHAIRPERSON GRIFFIS: Thank you very much, Mr.  
20 Williams.

21 MR. GLASGOW: Thank you. I'd like to call the  
22 next witness, Mr. Steven Sher.

23 CHAIRPERSON GRIFFIS: Excuse me, Mr. Glasgow. I  
24 understand that you're offering two expert witnesses today, is  
25 that correct?

1 MR. GLASGOW: Yes, sir, that's correct.

2 CHAIRPERSON GRIFFIS: We want be of absolute  
3 correct procedure. So I would entertain any discussion or  
4 questions.

5 Mr. Purnell's resume, has any documentation been  
6 submitted?

7 MR. GLASGOW: I believe Mr. Purnell has been  
8 accepted as an expert previously.

9 CHAIRPERSON GRIFFIS: Indeed, indeed.

10 MR. GLASGOW: And we do have --

11 VICE CHAIRPERSON RENSHAW: It would be good to  
12 include that in the file in any case.

13 CHAIRPERSON GRIFFIS: Yes, just to have it in  
14 this case.

15 That said, first of all, I have no objection to  
16 either of them being accepted as expert witnesses. In my short  
17 tenure, of course, I have some experience hearing these folks,  
18 and I am aware of Mr. Purnell's excellent reputation in the  
19 field of architecture in this city.

20 If there aren't any other questions or  
21 comments --

22 MEMBER LEVY: The only reason I brought it up was  
23 because I would just like to see -- I don't have any objections  
24 offhand to Mr. Purnell. I'd just like to see his resume.

25 CHAIRPERSON GRIFFIS: Then why don't we take 10

1 seconds while it's passed down.

2 VICE CHAIRPERSON RENSHAW: Well, perhaps we could  
3 proceed with Mr. Sher, whose background in consulting is well-  
4 known to all of us --

5 CHAIRPERSON GRIFFIS: Fabulous idea.

6 VICE CHAIRPERSON RENSHAW: -- and then go to Mr.  
7 Purnell when we get his resume.

8 CHAIRPERSON GRIFFIS: That's why three heads are  
9 always better than one. We can be a little bit more  
10 expeditious.

11 So there is a consensus that we will accept Mr.  
12 Sher as an expert witness, and, Mr. Glasgow, you can move on  
13 then.

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

16 MR. SHER: Good morning, Mr. Chairman, members of  
17 the Board. For the record, my name is Steven E. Sher, the  
18 Director of Zoning and Land Use Services with the Law Firm of  
19 Holland and Knight. I have submitted for the record an outline  
20 which I believe you have at this point. As is the normal  
21 custom, I will summarize. However, given the inverted order  
22 here, I'm going to do a little bit more to make sure the Board  
23 understands the nature of the property in the case before Mr.  
24 Purnell comes on to describe the building itself.

25 This is a piece of property that's located on the

1 west side of 10th Street between K Street and Massachusetts  
2 Avenue, Northwest. It's one block west of Mt. Vernon Square.  
3 The site fronts on a 12-foot-wide east/west alley which connects  
4 10th and 11th Streets, an 11.75-foot-wide north/south alley that  
5 connects out to Mass. Avenue.

6 The site area is only 3,259 square feet. That's  
7 less than what you would find in most detached single-family  
8 dwellings, but that's the size of the site. It's 34 feet 8  
9 inches wide by 94 feet deep.

10 It is in an area which contains a mix of building  
11 types mostly devoted to commercial uses, which has seen,  
12 frankly, little significant new development in recent years.  
13 The major exception to that, of course, is the new Convention  
14 Center currently being constructed on the five-and-a-half blocks  
15 bounded by 7th, 9th, K, and N Streets, Northwest, well under  
16 construction and anticipated to open in 2003.

17 At the back of my outline there are two aerial  
18 photographs, the first of which focuses on the square itself.  
19 The second is the more broad area. It's a photograph that goes  
20 back to, I think, 1995, so you don't see the Convention Center  
21 under construction, but it is that parking lot area on the upper  
22 righthand corner of the photograph. The subject site is dead in  
23 the middle of this particular photograph.

24 In the remainder of our square, the block bounded  
25 by 10th, 11th, K, and Mass., we have the CATO Institute Office

1 Building, which is at the corner of 10th and Mass., immediately  
2 north of our site; the American Road and Transportation Builders  
3 Association office, which is to the northwest of our site at the  
4 corner of 11th Street and Mass. Avenue. There's a parking lot  
5 directly to the west on 11th Street, followed by the American  
6 Youth Hostile. A little bit to the south of that there are some  
7 small buildings, mostly vacant, along the north side of K  
8 Street, and then there is the Carpenters Union Office Building  
9 at the corner of 10th and K across the alley to the south of  
10 where we are.

11 CHAIRPERSON GRIFFIS: Can I interject --

12 MR. SHER: Yes, sir.

13 CHAIRPERSON GRIFFIS: -- to make sure the Board  
14 members are oriented on your larger aerial photograph because  
15 the site is not labeled? I would just illustrate this is the  
16 site here, if I'm not mistaken. The CATO Institute is to the  
17 north.

18 MR. SHER: Right, CATO is at the corner, which is  
19 that sort of square building with the offset winter garden that  
20 faces Mass. Avenue, and directly to the south of that you can  
21 see it's labeled with the numbers "3259," which is the lot area  
22 of the lot.

23 CHAIRPERSON GRIFFIS: Okay, and actually we're  
24 pointed to the larger aerial, which is less descript. Okay.

25 MR. SHER: This is the one that shows the square

1 by itself pretty much with just the surrounding streets.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. SHER: And then the larger one shows the  
4 vicinity which includes, as I said, the Convention Center site  
5 at the upper righthand corner, where these parking lots are.

6 CHAIRPERSON GRIFFIS: Good. Is that clear to  
7 everybody?

8 MR. SHER: My apologies.

9 I think we've been around the square, and I don't  
10 think I need to go into great detail about what the surrounding  
11 uses and developments are. As you can see from the aerial  
12 photo, it's still an area with a lot of vacant land in it  
13 devoted to parking lots, some of which have been planned for new  
14 developments which have not yet occurred, but it is mostly,  
15 predominantly a commercial neighborhood until you get to the  
16 north side of Mass. Avenue and begin to go into those blocks  
17 further up.

18 We are in the DD/C-2-C District, and the  
19 significant aspect of that, of course, is "DD," the Downtown  
20 Development District, and that applies to all new buildings,  
21 which would be the case with what we propose to construct here.

22 The height allowed under the DD is the maximum  
23 permitted under the Act of 1910, which essentially is the width  
24 of the street plus 20 feet. In this case, 10th Street is 85  
25 feet wide. It's actually one of the narrower streets in the

1 downtown grid. So it permits a height of only 105 feet,  
2 notwithstanding that in other places heights are allowed at  
3 greater height than that. So we can't get to 130, which would  
4 be the case if we fronted on either Mass. Avenue or K Street.  
5 But because we have frontage only on 10th Street, we're allowed  
6 85 plus 20, or 105 feet.

7 The site is in Housing Priority Area B. It's not  
8 in any of the other Downtown Development District subareas. The  
9 maximum FAR in Housing Priority B is 8, and there is a minimum  
10 of 4.5 FAR required to be developed, devoted to residential use.

11 That requirement for residential use can be satisfied onsite or  
12 it may be satisfied by combined-lot development, using another  
13 site in Housing Priority Area B.

14 Our proposed development, as you've heard, is an  
15 office building for the National Medical Association, will have  
16 gross floor area of about 25,000 square feet or 7.75 FAR. So  
17 we're below the maximum permitted FAR. In any event, we're at  
18 the 105-foot height. We have one handicapped parking space and  
19 one service delivery loading space at grade in the rear.

20 The relief that we need from the Board falls into  
21 five areas. We have four variances and one special exception.  
22 We need a variance from the rear yard requirement. The minimum  
23 requirement is 15 feet. We are providing 10 feet. We need a 5-  
24 foot variance on the rear yard.

25 We need a variance from the offstreet parking

1 requirements. The minimum required is 13. As I've indicated,  
2 we have one at the rear. So we need a variance for 12.

3 We have a requirement for one loading berth and  
4 we are not providing it. So we need a variance on that.

5 And we need the variance, as Mr. Glasgow  
6 described in his opening statement, from the requirement that  
7 the residential development in the combined-lot development  
8 scenario precede or go forward, or certainly go no later than  
9 the office development which is proposed here. As we have  
10 indicated, it is our intention to proceed with the office  
11 development, whereas Douglas Development's residential  
12 development will not proceed until a later time. So we need a  
13 variance on that timing differential.

14 And, lastly, we need a special exception to  
15 permit the roof structure not meeting the one-to-one setback  
16 from the edge of the roof.

17 I'm now going to turn to page 6. You know what  
18 the standards for a variance are. So I'm not going to repeat  
19 those.

20 Compliance with those standards: It is a three-  
21 part test. We must demonstrate exceptional, extraordinary  
22 situation or condition, practical difficulty upon the owner --  
23 these are all area variances -- and, lastly, that there is no  
24 detriment to the public good.

25 The basic genesis for all of our variance

1 requests comes from the fact that the property is exceptionally  
2 narrow and small for almost any development that you would  
3 conceive of on this site. As I said before, it's less than 35  
4 feet wide and it is only 3,259 square feet. It's a land-locked  
5 site. It cannot be expanded. It's bounded by a street on the  
6 front, alleys on the south and the west, and the CATO Institute  
7 property on the north. There's no way any additional land could  
8 be acquired. So that's the site. It's kind of that's the hand  
9 we're dealt. That's the size of the property, and it's smaller  
10 than any other lot in the square or in the majority of the area.

11 Under the Downtown Development District, that  
12 relatively small site generates a requirement for a relatively  
13 small amount of residential FAR. It's only 14,000 square feet.

14 Now I don't know whether that sounds like a lot or not, but in  
15 multi-family residential terms that's not a lot of density to  
16 have to try and put somewhere.

17 The owner has an agreement with the Douglas  
18 Development Company to provide that residential in square 517,  
19 which is the block bounded by 4th, 5th, H and I Streets and  
20 Massachusetts Avenue. It's one block southeast of Mt. Vernon  
21 Square, where we are one block west of Mt. Vernon Square. So  
22 it's not very far away. It is in the same Housing Priority  
23 Area, which the regulations allow, Housing Priority Area B.

24 Douglas has agreed to allow that housing to be  
25 provided without cost to the Association. Now that was an

1 agreement that Mr. Jamal came to with the Association to assist  
2 them in being able to stay in the city and on this site.

3 His property in square 517 is dedicated to  
4 housing by virtue of approval of the plan unit development for  
5 the former Woodward and Lothrop Department Store Building at  
6 10th and F -- 10th, 11th, F and G Streets.

7 The Zoning Commission understood that this site  
8 in square 517 would be developed when market conditions allow.  
9 So it is an area where housing has been planned, where many  
10 projects have been before this Board for approval of relief of  
11 one sort or another to allow that to occur, but it is an area  
12 where the market is catching up to the plans. At the moment  
13 there was an official ground-breaking for the first of those  
14 projects, the Avalon Bay Project, but construction is not yet  
15 moving forward at a pace that suggests we know when that  
16 development of square 517 is going to occur.

17 As you heard Mr. Williams speak before, the  
18 Association has needs that it needs to address in the short-term  
19 future, and therefore, we are in the position where the office  
20 development is going to proceed in advance of the housing, and  
21 that is why we need a variance from the Board.

22 That amount of residential that we are required  
23 to provide, the 14,666 square feet, is not a large enough amount  
24 of housing by itself to make any linked residential project  
25 proceed. The project in square 517 will contain somewhere

1 between 200,000 and 350,000 square feet, depending on the  
2 ultimate design of that site and how many square feet can get on  
3 there.

4 This is 14,000 out of that number. So it's  
5 somewhere around 1/12th to 1/20th of that entire project. The  
6 feasibility of being able to go forward with the square 517  
7 project is not dependent on this 14,000 square feet. It's  
8 dependent on the overall market to be able to build 200,000 to  
9 350,000 square feet. It's like the tip of the tail wagging the  
10 dog. So no matter what the National Medical Association does,  
11 it is not going to be able to drive the timing of development on  
12 the square 517 project.

13 In terms of the practical difficulty, even as  
14 proposed, our development cannot meet the full FAR. We are at  
15 7.75 FAR, a little bit less than the 8 provided. The needs of  
16 the owner cannot be met with a smaller building. Having to set  
17 back the building at the rear 15 feet instead of 10 feet, or 5  
18 additional feet, significantly adversely impacts the interior of  
19 the building, and Mr. Purnell will demonstrate that in a moment.

20 So having to push that building 5 feet further into the site  
21 really substantially creates a problem with trying to  
22 accommodate any kind of reasonable office space on that  
23 property.

24 The site is not wide enough to allow parking or  
25 loading in the building. It's less than 35 feet wide. If you

1 had a 19-foot wide parking space take out the thickness of the  
2 walls of the building, you don't even have enough space to have  
3 a ramp -- excuse me -- an aisle where you could get a car in  
4 that building, turn into the parking space, and then somehow get  
5 out of the building again. You can't possibly have underground  
6 parking because you can't have ramps that would meet the  
7 required turning radius within that less than 35 feet.

8 The same is true for loading. Even if you  
9 decided somehow you were not going to have anything on the first  
10 floor other than parking or loading and at the front perhaps, a  
11 lobby to get you up to the upper floors, you just don't have  
12 enough space, given the narrow width and small size of the site,  
13 to accommodate the parking and loading on the site.

14 Remembering again that this is in the DD and that  
15 residential use is required, there's absolutely no way you could  
16 get both residential and office use on this site. You'd have to  
17 have far too much infrastructure to handle the floorplate that  
18 you can possibly get in this building. So that the only way  
19 that you can proceed with development on this site is to put the  
20 residential somewhere else, on a combined-lot scenario,  
21 somewhere else in Housing Priority Area B. The size of the lot  
22 is just too small to accommodate the combination of residential  
23 and commercial.

24 I'm not aware of any projects that have actually  
25 proceeded in that manner in the more than 10 years that the

1 regulations have been in effect. So we have a situation that is  
2 exceptional and creates the practical difficulty for the owner  
3 because the only way it can proceed is to put the housing  
4 somewhere else, and I don't know that there's a way to do that  
5 right now at this point in time.

6 As to how does that stack up to the public good,  
7 well, the adjoining building to the north, the CATO Institute,  
8 is set back from our building by 20 feet. So it's not going to  
9 be impacted by our pushing our rear yard back an additional 5  
10 feet. The site is bordered by alleys, particularly on the west  
11 side, so that the effective width between the rear of our  
12 building and any building that might get built on the other side  
13 of the alley is more than 15 feet. In fact, it's more than 20  
14 feet.

15 So the way you measure the rear yard in a C-2-C  
16 District is different than if this were a C-3-C or C-4 District.

17 If it were a C-3-C or C-4, we wouldn't need a variance at all  
18 because you can measure from the center line of the alley. You  
19 can't do that in C-2-C. But we have that additional effective  
20 open area behind our building to the west.

21 The parking and loading demands for this building  
22 are small. As we said, it's only a 25,000-square-foot building.

23 It's in downtown. You have Metro rail and Metro bus service in  
24 the area. There are many offstreet parking facilities both in  
25 lots and garages in the area.

1           Service can be provided to the building through  
2 the rear, and any loading, which we expect will be minimal after  
3 the basic move-in of the building once it's done, can be  
4 accommodated through a loading zone in the front.

5           The covenant that will be in place -- or excuse  
6 me -- the covenant that is in place assures that the square 517  
7 property will be devoted to residential use. As Mr. Glasgow  
8 indicated in his opening statement, the Applicant is agreeable  
9 to a condition that would require us to record the covenant on  
10 the National Medical Association property and the square 517  
11 property, binding those two so that the residential will  
12 ultimately be provided on square 517. We're agreeable to have  
13 that covenant in place before we get a building permit to start  
14 on the construction of the new office building.

15           With respect to the special exception standards  
16 on the roof structure, the normal requirement for a roof  
17 structure is that the paths be set back one-to-one from the edge  
18 of the roof that it's located on. Again, this is a 35-foot wide  
19 building. If we built an 18.5-foot penthouse and set it back  
20 for one-to-one on each side, it's 37 feet. We only have 35  
21 feet. Our penthouse is only 15 feet. If we had to set that  
22 penthouse back 15 feet, we have a 4-foot 8-inch wide elevator at  
23 the top.

24           The only practical solution here is to put that  
25 core on one side of the building or the other. The core is

1 located on the north side of the building. We meet the setback  
2 requirements from the front, from the rear, from the south, but  
3 it is located on the north wall of the property, so we do not  
4 meet the one-to-one setback requirement on that side. There's  
5 no feasible to provide a roof structure that meets that setback  
6 requirement, given the narrow width of the lot. You just can't  
7 do it. You've got to either put it on one side or the other  
8 side, and in that case you don't meet the setback requirements.

9 The property is surrounded by streets or alleys  
10 on all sides except for the north. The building on the north is  
11 set back that 20 feet already. The height of that building on  
12 the north is 90 feet. The height of our building is 105 feet.  
13 So it's not this huge disparity where the penthouse on that  
14 north wall is going to have any adverse impact on CATO. In  
15 fact, I think we have a letter from the CATO Institute stating  
16 they have no objection to the granting of the relief that we've  
17 sought here. I think that's about to make its way into your  
18 file at the moment. We just got that one. Again, because of  
19 where the CATO building is and the angles of sight here, there  
20 are limited areas where you're going to be able to see that  
21 structure.

22 So, therefore, I conclude that the subject  
23 property is affected by exceptional conditions because of the  
24 small size, narrow width, and the small amount of residential  
25 required as a result of the regulations; that the strict

1 application of the regulations would prevent any development of  
2 this site for any use in the area, where little new construction  
3 has occurred and where city policies encourage new construction.

4 The variances can be granted without substantial detriment to  
5 any surrounding properties. The roof structure meets all the  
6 setback requirements except one, and no roof structure could be  
7 constructed without relief in some fashion. I suggest to you  
8 that the application should be granted.

9 CHAIRPERSON GRIFFIS: Thank you, Mr. Sher.

10 Do you want to move on or do you want to  
11 entertain questions now, Mr. Glasgow?

12 MR. GLASGOW: Yes, it's up to you, Mr. Chair.

13 CHAIRPERSON GRIFFIS: That would be tremendous.  
14 I have a couple of quick questions to delve into, and I think  
15 other Board members might.

16 Can you tell me, first of all, what is the total  
17 FAR residential that's moving? If I am estimating it all,  
18 roughly 3,000-square-foot site, you're moving 14,665 --

19 MR. SHER: I'm sorry, 14,666.

20 CHAIRPERSON GRIFFIS: I don't have a calculator.

21 MR. SHER: All of the residential will --

22 CHAIRPERSON GRIFFIS: So it's 4.5 FAR's is what  
23 you're saying?

24 MR. SHER: 4.5 FAR, that's correct.

25 CHAIRPERSON GRIFFIS: Okay.

1 MR. SHER: And the exchange of that is the 14,666  
2 square feet of commercial that is allowed as a matter of right  
3 on the other site. It's not going to get built there. It's  
4 going to become office space for the National Medical  
5 Association.

6 CHAIRPERSON GRIFFIS: I see.

7 MR. SHER: That's the theory behind the combined  
8 lot.

9 CHAIRPERSON GRIFFIS: I see. Actually, when it  
10 goes down to 517, it translates into the actual square footage,  
11 which is the FAR coming off of this site?

12 MR. SHER: Right.

13 CHAIRPERSON GRIFFIS: I think that's clear. Do  
14 you know offhand, not that you necessarily have to, what is the  
15 FAR allowed on 517?

16 MR. GLASGOW: On 517 there is no FAR limitation.  
17 It's DD/C-2-C. It's in the Housing Priority Area, and the  
18 Zoning Commission just recently took the FAR limits off of that,  
19 and we have a 27,000-square-foot site down at Massachusetts  
20 Avenue.

21 CHAIRPERSON GRIFFIS: Okay. Other questions?

22 VICE CHAIRPERSON RENSHAW: I'll ask a question  
23 about parking. You propose one parking space for handicapped,  
24 is that correct?

25 MR. SHER: Yes, Ma'am.

1 VICE CHAIRPERSON RENSHAW: The organization has  
2 grown tremendously over the years. Can you give me any  
3 information as to the number of employees, and you're now at  
4 40 --

5 MR. SHER: Forty-five.

6 VICE CHAIRPERSON RENSHAW: Forty-five employees.  
7 How many of those employees take the Metro, how many are  
8 dependent on parking in the vicinity, and your arrangements with  
9 parking facilities to absorb the cars of your employees?

10 MR. WILLIAMS: Currently, out of the 45 employees  
11 that we have, approximately 30 to 35 of them take public  
12 transportation every day. About 10 -- that includes me and, oh,  
13 about seven or eight of the other people -- drive and park in  
14 various spaces.

15 I've brought along with me today, which is  
16 something that can be entered into the record, a letter from  
17 Colonial Parking, which is right next door and across the street  
18 from us, that grants us or says that they will provide for us  
19 parking for at least 12 cars, whenever we're ready to go. We've  
20 got to pay for it, but that's part of the deal, the cost of  
21 doing business.

22 VICE CHAIRPERSON RENSHAW: All right, thank you.

23 MR. WILLIAMS: You're welcome.

24 CHAIRPERSON GRIFFIS: You're going to enter that  
25 in now, which is a letter from the parking? We also submitted a

1 letter from CATO, and do we have an exhibit? Exhibit 27 is the  
2 letter from CATO supporting the variance. Mr. Edward Crane --  
3 yes, there it is. The letterhead doesn't reproduce very well.

4 MR. WILLIAMS: Mr. Crane is the President of  
5 CATO.

6 MEMBER LEVY: Mr. Chairman, I just wanted to  
7 point out that the text of the letter confirms that the CATO  
8 Institute has no objections to a larger building and they're  
9 supporting a variance to move the residential space, but they're  
10 reserving the right to object to other variances. So I just  
11 want to point out that there's no mention in this letter of the  
12 roof's setback, roof structure setback issue.

13 MR. GLASGOW: Mr. Levy, we interpreted that  
14 letter that, if we file a case in the future -- they're aware of  
15 the plans that we have for this case. They just didn't go  
16 through all the different variances or special exceptions for  
17 this case. I think what they were saying is that, if you file a  
18 case two years from now and are asking for different relief, we  
19 want to look at that at the time that it occurs.

20 CHAIRPERSON GRIFFIS: It appears they wanted to  
21 write a short letter, but not give you carte blanche in  
22 everything else that happens.

23 Can you just give us an indication of the date of  
24 the plans that they reference in the letter? I think that will  
25 focus us a little bit. The date of the plans would be the most

1 important or the date at which CATO was presented the plans for  
2 review.

3 MR. WILLIAMS: Around October 1.

4 CHAIRPERSON GRIFFIS: They were presented the  
5 plans October 1?

6 MR. WILLIAMS: Somewhere around that date.

7 CHAIRPERSON GRIFFIS: And the date on the plans  
8 that they reviewed?

9 MR. WILLIAMS: Marshall, wasn't that around the  
10 same time?

11 MR. PURNELL: Yes, around the same time.

12 CHAIRPERSON GRIFFIS: Would it be the plans that  
13 are submitted in this case?

14 MR. WILLIAMS: Yes, it would be. Exactly.

15 CHAIRPERSON GRIFFIS: Indeed, in which case the  
16 plans dated as part of the case are July 12th, 2001. Does that  
17 make it clearer, Mr. Levy. I think, well, it makes it clearer  
18 for me.

19 MEMBER LEVY: Yes, I don't have any -- I just  
20 wanted to point out what we're looking at. I don't have any  
21 concerns.

22 CHAIRPERSON GRIFFIS: I think it's an excellent  
23 point, and it is current plans is what they're talking about.  
24 Very good. So we can move on.

25 MR. GLASGOW: The next witness is Mr. Marshall

1 Purnell.

2 CHAIRPERSON GRIFFIS: Indeed, let us, if we've  
3 had time to review Mr. Purnell's resume while he gets set up, he  
4 is being offered as an expert witness.

5 Questions or comments on the documents received?

6 MEMBER LEVY: Mr. Chair, since I brought it up,  
7 I'll just comment that I have no objections to Mr. Purnell as an  
8 expert witness --

9 CHAIRPERSON GRIFFIS: Very good.

10 MEMBER LEVY: -- based on the resume that was  
11 submitted.

12 CHAIRPERSON GRIFFIS: If Ms. Renshaw has no  
13 concerns --

14 VICE CHAIRPERSON RENSHAW: Perhaps Mr. Purnell  
15 would just give us a brief overview of the amount of  
16 architectural work you do in the District of Columbia?

17 MR. PURNELL: That would be fine. My firm is in  
18 its 28th --

19 CHAIRPERSON GRIFFIS: Hold on just a moment. We  
20 have a technical difficulty. We'll get this figured out.

21 MR. PURNELL: My name is Marshall Purnell. I'm a  
22 practicing architect in the District of Columbia. My firm,  
23 Devroux and Purnell, is in its 28th year in continuous  
24 operation in the District of Columbia.

25 Recent projects that we have completed are new

1 PEPCO headquarters office building at 9th and G Streets.  
2 They've just moved in this month. We were one of the prime  
3 architects on the MCI Arena. We are one of the prime architects  
4 on the new Convention Center. We are the architects for this  
5 room you are sitting in and this whole building in terms of all  
6 the interior spaces for this 585,000-square-foot building.

7 CHAIRPERSON GRIFFIS: Oh-oh.

8 (Laughter.)

9 That doesn't make you available for complaints or  
10 comments, does it?

11 (Laughter.)

12 MR. PURNELL: Under duress.

13 (Laughter.)

14 And we are involved in a number of other sports  
15 complex and smaller office projects: the new sports complex out  
16 at FedEx Field, a \$30 million project we have completed. We've  
17 done corporate headquarters for Freddie Mac in McLean, Virginia;  
18 corporate headquarters for Crestar Bank. We have practiced  
19 here, the Soviet Union, Yugoslavia, Turkey, Bahamas, all over.

20 VICE CHAIRPERSON RENSHAW: I think that your  
21 review of your qualification is quite complete.

22 MR. PURNELL: Thank you.

23 VICE CHAIRPERSON RENSHAW: Thank you.

24 CHAIRPERSON GRIFFIS: I would take that as a  
25 consensus that we've bestow on Mr. Purnell the privilege of

1 being an expert witness today.

2 MR. PURNELL: And I am grateful.

3 CHAIRPERSON GRIFFIS: Thank you.

4 MR. PURNELL: Before I get into the plans -- and  
5 I think Mr. Sher did an excellent job of sort of reviewing the  
6 numbers, as zoning attorneys do -- but I wanted to share with  
7 you a little background as to why we're at this table, because  
8 it has nothing to do or little to do with us trying to go  
9 through the numbers, and this and that.

10 I was called to work with the National Medical  
11 Association about a year ago in terms of them trying to solve  
12 this problem of more space. At the time they were looking at  
13 alternatives in terms of buying a building that was already up  
14 somewhere, and we looked at a number of buildings in the  
15 District of Columbia because that was their priority. Quite  
16 frankly, the pricing on these structures was tremendous, you  
17 know, in the neighborhood of \$13 million, \$13.5 million for one  
18 building that was no larger than the building we're intending to  
19 build right now, and then \$8.5 million for a building that's a  
20 little smaller.

21 It got to the point where I approached the  
22 Executive Director at that time, and subsequently Rudy, and I  
23 said, "I think" -- I wasn't involved at the beginning in terms  
24 of them making the decision they wanted to actually move. When  
25 I came in, it was to renovate whatever they came into and

1 whatever they moved to, and make it work for them.

2 I pulled the Executive Director and Rudy to the  
3 side one day and said, "Do you like where you are?" And they  
4 said, "Yes, but we can't stay here because the building's too  
5 small." I said, "Well, tear it down and build a bigger one."  
6 And the lightbulb went off and nobody had realized that. I  
7 said, what you have invested here is you already own the land,  
8 and when you go to buy property almost anywhere, whether it's an  
9 office building or a house, a good portion of what you're  
10 spending is to buy, purchase the rights of the land as well as  
11 the structure on the land.

12 So, with that, they asked me to perform a pro  
13 forma, I mean to put together some numbers as to what they could  
14 build on that particular site. I did look at the zoning, the C-  
15 2-C, the DD, and the first thing I did was said, okay, if we've  
16 got to do this all office, what is the most efficient size  
17 building we could put on that space with the least amount of  
18 variances other than the housing requirement. I had no idea how  
19 to get rid of the housing requirement at that particular time,  
20 and my intent was, first of all, does an office building work on  
21 this particular site, a building of the size that would  
22 accommodate their future needs and their growth?

23 Once we develop that, then we went into sort of a  
24 strategy session with regards to, under a combined-lot  
25 development, who was building housing? Then that's when we

1 contacted Doug Jamal, but our firm has had a relationship with  
2 him off and on over the years. When he found out that this was  
3 the organization that we were talking about, the National  
4 Medical Association -- I know combined-lot development, sort of  
5 the price of that FAR is usually \$25-\$30 a square foot. In  
6 other words, they would normally be paying Doug Jamal \$25-\$30  
7 per square foot times that 14,000 square feet to be able to do  
8 this. When he found out it was the National Medical  
9 Association, he said, "We're not going to do this for any charge  
10 basically. This is something that this organization needs to be  
11 in the District of Columbia."

12 I didn't approach him with that request, but  
13 that's something that really he felt, when he found out about  
14 this organization and what their mission was, that he came to  
15 the table with, which really makes this whole thing work for NMA  
16 in terms of financially, the feasibility of making it work for  
17 them.

18 With that, I'd like to just point out a couple of  
19 things with regards to the plans. We talked about a variance  
20 for the loading. There is both a loading and a service bay  
21 requirement, a service bay being a 20-foot bay, a loading bay  
22 being a little larger than that, I think a 30-foot bay.

23 For a building this size, you can load from a  
24 service bay in terms of the size of the truck that would  
25 probably get into the space. So we did provide a service bay to

1 the rear of the building.

2 We also looked at the parking. We knew we could  
3 not park under the building because you can't turn a car around  
4 in 34 feet -- or actually it's less than 34 feet. When you put  
5 the thickness of the walls and you put the elevator core off of  
6 one side, you wind up with it being about 22 feet.

7 So we said, if we're going to put parking in the  
8 back, let's put the handicapped space in the back. So we put  
9 the handicapped space in the back. We needed a place for the  
10 trash. In that 34-foot-wide we put a space where you could  
11 actually come in and pick up the trash or the dumpster at that  
12 point.

13 So that left the variance for the general  
14 parking, 12 cars. When I was making presentation for the  
15 Convention Center to the ANC and to all the particular agencies  
16 that were reviewing it, one of the questions that came up was,  
17 you're building 2.1 million square feet; where is the parking?  
18 We made a case for there being more than 5,000 parking spaces  
19 within a five-to-eight-minute walk around the building. Our  
20 project is probably within a minute-and-a-half walk of the  
21 Convention Center, and we need 12 spaces. So if there are 5,000  
22 spaces available for the Convention Center within a five-minute  
23 walk, within that same five-minute walk we need 12. So I think  
24 we can provide the parking offsite in a paid garage, and the  
25 National Medical Association is willing to do that as well.

1           So that's the practicality of what we have  
2 designed. Steve mentioned the fact that we have a setback  
3 variance that we're asking for, and that is only because the  
4 elevator overrun is 12 feet above the roof. We can use package  
5 condenser units for the air conditioning and not do a large 18-  
6 foot-high penthouse for a building this size. We can do units  
7 on each floor and have more package units on the roof that are  
8 much smaller and lower than the 12-foot-high elevator overrun.

9           So on the north side of the building, where the  
10 elevators go up, we need about 12, 13, about 12 feet actually  
11 minimum is what we need to have the elevators be able to go up  
12 and the overrun on electric elevators. If were a building that  
13 was a little lower, we wouldn't need that because we would be  
14 using hydraulic elevators and we wouldn't necessarily need an  
15 overrun. So that's the only requirement that we need on the  
16 setback.

17           I might also mention that that 20 foot of space  
18 between our building and National Medical Association was at one  
19 time owned by the National Medical Association -- oh, by CATO,  
20 between our building and CATO was at one time owned by the  
21 National Medical Association. They sold it to CATO, so CATO  
22 could do their project and do their building.

23           They have used that 20-foot space to provide a  
24 ramp to go down to underground parking. So they are using the  
25 entire lot from the face of our building all the way out to

1 Mass. Avenue at below ground for parking. So there's a 20-foot  
2 at-grade separation between the two buildings, but their ramp to  
3 their parking goes down right alongside of our building.

4 I called the original architect of the CATO,  
5 which is Helmuth, Obata & Kassabaum. I talked with Robert Barr,  
6 and I asked him, was the foundation wall to that ramp designed  
7 to take weight in terms of another building or some structure  
8 above that at any point in the future? And he told me it was  
9 not. So there is no possibility, without tearing up the whole  
10 garage and building on top of that, for them to put something on  
11 that face of that wall.

12 I was just concerned with that in terms of the  
13 amount of openings we would put on the north side of our  
14 building. We are still within the zoning allowable, but I was  
15 just concerned that, if at some point CATO decided to expand,  
16 would they and could they do it on that side, and it's highly  
17 unlikely that they could because structurally they could not do  
18 it that way, unless they tore down the building, too, and  
19 started over.

20 So we have researched this in terms of this plan  
21 and how it works with this particular site in terms of what's  
22 allowable. We feel that we are asking for the minimum  
23 requirements to make this project work for NMA as an office  
24 structure, meeting their needs into the 21st century.

25 Do you have the plans in front of you?

1 CHAIRPERSON GRIFFIS: Yes.

2 MR. PURNELL: At ground floor the parking that we  
3 are providing to the rear is the handicapped space, the service  
4 bay, and the trash bay, all to the rear of the building at this  
5 point.

6 The setback at grade is actually 20 feet at  
7 grade. That's what we're providing. We're taking that up to  
8 the third level of the building, and then stepping back over  
9 that 10 feet back into what would be the rear yard setback.  
10 That's what the dotted line is indicating.

11 So, instead of having the 15-foot setback all the  
12 way up through to the sky, which is what a rear yard setback  
13 technically is, we are providing 20 feet of setback for the  
14 first two levels of our building, which will allow us to get a  
15 service bay and get the head room to be able to pull a large  
16 truck in there, get a trash truck in there, to get the  
17 handicapped space in there, and then we step back 10 feet to  
18 provide adequate office space above.

19 On the next sheet, you will see on your typical  
20 floor plan we have two offices across the rear, three offices  
21 across the front, and an open space plan. This is generic at  
22 this time because we have not designed the actual interior, but  
23 this begins to identify what their programmatic needs are on  
24 sort of a typical floor.

25 I'll move to the elevations because they speak

1 more to what is going on with the project. This east elevation  
2 is the front of the building. This is the elevator overrun that  
3 I spoke of at that point, and you will see from the south  
4 elevation, which is the elevation off of the alley, that we do  
5 have windows on that side. We do meet the bulk plane setbacks  
6 from the front of the building and naturally from the rear of  
7 the building.

8 Then if you move to the north elevation, which is  
9 from the CATO side, you'll see this is the elevator tower. It's  
10 highlighted in color just so -- it's not necessarily indicated  
11 that we will define it by making it a different color, as it is  
12 right now, but I thought it would be easier for you to identify  
13 that particular mass if we made it a different color in this  
14 elevation here.

15 The same is here. You can begin to see it from  
16 the west, which is the rear of the building, that we do meet the  
17 bulk plane setbacks off the alley, and this is a section at this  
18 point down here that shows the nine stories with one level below  
19 ground that we would probably use for storage in the building.

20 CHAIRPERSON GRIFFIS: Mr. Purnell, if I could  
21 interrupt you, you did indicate, obviously, the colors are  
22 matching what will be the final materials, but you have  
23 indicated on your drawings -- and I'm not sure if they're in  
24 concrete, so to speak, but you have granite, granite base  
25 introduction; you're doing metal, aluminum, wall-out windows,

1 and --

2 MR. PURNELL: The idea being at this point that  
3 the face of the building would be, where you see the solids,  
4 would be granite. We will have glass and we will have an  
5 aluminum frame sash where we have metal showing.

6 CHAIRPERSON GRIFFIS: And perhaps some pre-cast  
7 concrete. We don't need to delve into it because it's, frankly,  
8 not --

9 MR. PURNELL: Pre-cast will probably be other  
10 facades other than the front of the building.

11 CHAIRPERSON GRIFFIS: Sure, okay.

12 VICE CHAIRPERSON RENSHAW: Mr. Purnell, what is  
13 the measurement of the public alley behind the building? You've  
14 got 12 feet, a 12-foot public alley on the side, and what is the  
15 dimension of the alley in the back?

16 MR. PURNELL: I think it's 11.75.

17 CHAIRPERSON GRIFFIS: 11.75?

18 MR. PURNELL: 11.75, and abutting the alley is a  
19 surface parking lot as well.

20 VICE CHAIRPERSON RENSHAW: At present are you  
21 parking behind the building, Mr. Williams?

22 MR. WILLIAMS: No, we are not. One or two of our  
23 employees use that lot; we buy into it. Otherwise, we use other  
24 lots in the area. I am parking behind the building or to the --  
25 what is that, the south side, behind the Carpenters Building. I

1 have a rented space there that I use.

2 MR. PURNELL: I might say that there is a ramp  
3 right now behind the building. It goes down to the lower level,  
4 which is not a legal parking space whatsoever. That's the only  
5 sort of hardened area behind the building right now.

6 VICE CHAIRPERSON RENSHAW: I should put on record  
7 that I like the looks of your present building. It has a very  
8 modern touch to it, and I'm glad, Mr. Purnell, you went over  
9 your architectural plans here because I was looking to see if  
10 that same feeling of light is going to be translated into these  
11 new drawings. The front of this, the east elevation, looks to  
12 be maximizing the use of the glass.

13 MR. PURNELL: Yes.

14 VICE CHAIRPERSON RENSHAW: It carries over with  
15 the kind of feeling that your building holds at the present  
16 time.

17 MR. WILLIAMS: Thank you. We agree with you 100  
18 percent. We just need it to stop leaking.

19 (Laughter.)

20 VICE CHAIRPERSON RENSHAW: Ah, that's the  
21 problem?

22 MR. WILLIAMS: Yes.

23 VICE CHAIRPERSON RENSHAW: All right.

24 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw.

25 You didn't know that we double as a design review

1 board also, but we like to give our opinion, and I think it is  
2 important.

3 (Laughter.)

4 VICE CHAIRPERSON RENSHAW: It is so tempting.

5 CHAIRPERSON GRIFFIS: Mr. Purnell, you made, I  
6 think, a strong case, but didn't address it directly, although  
7 the other witnesses did, that in fact the residential component  
8 of trying to put in a building of this size in terms of  
9 footprint would be next to impossible being a mixed-use  
10 building, is that correct?

11 MR. PURNELL: That's correct, because separating  
12 the uses, you'd almost have to just stratify the building by  
13 floors. I don't know if the residential would be very desirable  
14 at all if there was office space below or above you. I don't  
15 know if you'd want to --

16 CHAIRPERSON GRIFFIS: And oftentimes when you do  
17 a mixed-use building like that, you have dedicated elevators and  
18 corridors for the residential and commercial that would  
19 essentially fill out this footprint.

20 MR. PURNELL: That's what I mean by separating  
21 the uses.

22 CHAIRPERSON GRIFFIS: Indeed.

23 MR. PURNELL: You usually have separate entrances  
24 as well for the commercial and for the residential, and it would  
25 be almost next to impossible in 34 foot to get adequate

1 separation, and no one would want to enter the residential from  
2 the alley from the rear or from the south side. So you'd almost  
3 be stuck with 34 feet wide trying to separate two entrances and  
4 two elevator cores.

5 You will note that all the elevators, the stairs,  
6 and all the bathrooms are all stripped along the north wall for  
7 efficiency, instead of moving them around the building in  
8 different places.

9 CHAIRPERSON GRIFFIS: Right, I think that's  
10 important.

11 We are, of course, looking at the rear yard, the  
12 parking and the loading, for the variances. I'm wondering --  
13 what was I wondering? Indeed, the service space in back, it  
14 looks like from your ground-floor plan that you actually are  
15 bringing -- and my understanding is, obviously, if it's your  
16 trash pad, too, your dumpsters will be there, the pickup will be  
17 on the public alley. Are you walking through, programmatically  
18 walking through, the museum or are you anticipating that  
19 obviously these aren't full-done plans? Is that access being  
20 anticipated, that that's the way you will exit the building to  
21 hit the service pad and also the trash?

22 MR. PURNELL: Yes, the short walls you see on the  
23 45-degree diagonal are basically walls to indicate that you  
24 could open the museum up and close it off.

25 CHAIRPERSON GRIFFIS: I see.

1 MR. PURNELL: So that creates a corridor at that  
2 point.

3 CHAIRPERSON GRIFFIS: Indeed. So that corridor  
4 will come directly from the front lobby to the back?

5 MR. PURNELL: Exactly. We were trying to show  
6 NMA, in the event of a museum or a social function, how the  
7 ground floor could work to their benefit.

8 VICE CHAIRPERSON RENSHAW: Would you describe a  
9 bit for us the street-scape in front of your building, how  
10 that's going to look?

11 MR. PURNELL: It is a brick sidewalk now, and I  
12 think that is the D.C. standard brick paver. We will continue  
13 with the D.C. standard brick paver from the back of the curb, a  
14 granite curb, to the face of our building. It's in disrepair  
15 right now.

16 VICE CHAIRPERSON RENSHAW: And you have a  
17 sculpture on your plans. Is that --

18 MR. PURNELL: Yes.

19 VICE CHAIRPERSON RENSHAW: That's outside?

20 MR. PURNELL: Yes. Within our property line, NMA  
21 has this larger-than-lifesize Ed Duwight sculpture called "The  
22 Doctor" that he executed some years ago. This is an incredible  
23 piece of work. I think it's about seven-and-a-half or eight-  
24 feet tall of a country doctor with his bag, the old, old guy.  
25 They have not had an adequate place to display this to the

1 public. So right from the outside, we have tried to identify a  
2 place, location, for this incredible piece of work right at the  
3 front door of the building, which we intend to light with an  
4 appropriate lighting and to have it really right at the entrance  
5 of the building to make that statement about who this person is  
6 and what this organization is all about.

7 CHAIRPERSON GRIFFIS: Excellent.

8 MR. WILLIAMS: Point of clarification: It's not  
9 such an old, old guy.

10 (Laughter.)

11 CHAIRPERSON GRIFFIS: That will be duly reflected  
12 in the record.

13 Okay, I would suggest that we move on to the  
14 government reports at this time.

15 MEMBER LEVY: If I could, just one quick question  
16 for the architect?

17 CHAIRPERSON GRIFFIS: Yes.

18 MEMBER LEVY: Thanks.

19 Mr. Purnell, on your drawing A-1, where you show  
20 the ground-floor plan --

21 MR. PURNELL: Yes.

22 MEMBER LEVY: -- I just have a question about  
23 what appears to be a wall that's an extension of the building at  
24 the top of the trash pad.

25 MR. PURNELL: Yes.

1                   MEMBER LEVY: I guess where I'm confused is that  
2 we're asking for a 10-foot rear yard, and that appears to extend  
3 into the rear yard. So I'm wondering if that's part of the  
4 building structure.

5                   MR. PURNELL: Well, it's not structural at all.  
6 What we anticipate that being is a wall that's about 4- or 5-  
7 feet high that really just separates a person exiting that door,  
8 and that's a fire exit to begin with, but exiting that door, so  
9 that they're not confronted with the trash bin right there and  
10 the dumpster.

11                   MEMBER LEVY: Right.

12                   MR. PURNELL: It doesn't have to be there. I  
13 mean, it's just -- I know just what it is. If someone's  
14 thinking that we're going to keep these two things separated in  
15 case the event of somebody has to come out of there in an  
16 emergency, you don't want the trash dumpster in front of the  
17 door.

18                   MEMBER LEVY: Right, and from a design  
19 perspective, I don't see a problem with it. What I'm wondering  
20 is if the variance that's requested is to go from a 15-foot rear  
21 yard to a 10-foot rear yard, is that a problem?

22                   CHAIRPERSON GRIFFIS: I don't think if, as  
23 indicated with a wall at a 4-foot height, that it would not  
24 constitute a structure.

25                   MR. PURNELL: We could shorten it to the 10 feet.

1 I mean, it's drawn a little longer than that, but it's clearly  
2 just an indication that we want to separate the pedestrian use  
3 of exiting with the uses that are in the back of the building,  
4 and that can be done with a fence. It can be done any number of  
5 -- it could be done with bollards. It can be done --

6 MEMBER LEVY: Again, I don't have any problem  
7 with it. I just want to make sure that it's the correct relief  
8 that's being reflected.

9 CHAIRPERSON GRIFFIS: Perhaps Ms. Sansone can  
10 correct us if we're wrong, but my understanding is that that  
11 would not, in fact, require an additional variance to the rear  
12 yard because it would not be a structure built within the rear  
13 yard, based on the fact of its height. Then I think,  
14 additionally, it is very appropriate, if not essential, in order  
15 for the trash dumpsters not to roll into the means of egress in  
16 that area and also to provide a screening in the back. But, Ms.  
17 Sansone, if you have other --

18 MS. SANSONE: No, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Okay. So the clarification  
20 is that this wall is drawn on a, one, perpendicular to the  
21 ground-floor plan exterior wall, does not meet up with the  
22 overhang on the third floor?

23 MR. PURNELL: Not at all.

24 CHAIRPERSON GRIFFIS: It, in fact, just projects  
25 out from the building at a height of anywhere from 4 to 6 to 8

1 feet perhaps?

2 MR. PURNELL: As you may know, Mr. Griffis, it  
3 could have been shown as an open line, which would indicate that  
4 it wasn't a full-height wall.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. PURNELL: But the intent here is really just  
7 to make sure that a person exiting is not confronted with -- and  
8 we can do it with a high curb; we can do it with bollards.  
9 There's a number of solutions you can come up with to separate  
10 these two uses.

11 CHAIRPERSON GRIFFIS: Right.

12 If there's not anything further, as we have been  
13 joined with several people from the Office of Planning, I would  
14 move to the Office of Planning and note that Mr. Altman and Ms.  
15 McCarthy have joined us today. We do appreciate that.

16 DIRECTOR ALTMAN: Thank you, members of the  
17 Board. I'm going to be very brief because I actually have to  
18 leave for an 11 o'clock meeting.

19 MS. BAILEY: Mr. Chairman -- excuse me, Mr.  
20 Altman --

21 CHAIRPERSON GRIFFIS: Do we need to waive in the  
22 report?

23 MS. BAILEY: Yes, we do.

24 CHAIRPERSON GRIFFIS: Indeed, if there's not any  
25 objection to it, we waive the acceptance of the report. Thanks.

1 Mr. Altman, please.

2 DIRECTOR ALTMAN: Thank you. I'm just going to  
3 make a couple of brief remarks. I'm really only here today to  
4 speak to the housing aspect of the proposed variance. Jennifer  
5 Steingasser and Ellen McCarthy will go through the rest of the  
6 details of the report. I just want to provide a little bit of  
7 background because it is a very complex issue that we've been  
8 dealing with, well, since I've been here for two years, but the  
9 larger community has been trying to address for a number of  
10 years.

11 I want to say, first, that we're very supportive  
12 of the National Medical Association and what they are proposing  
13 to do in constructing their headquarters in the city. I think  
14 that's very exciting, the new building. This is the kind of  
15 association we like here, and we want to do everything we can to  
16 support their proposed project.

17 As Jennifer Steingasser goes through the report,  
18 you will see that we support all the requested variances but  
19 one. We support all of the rear yard parking, loading berth  
20 requirements variances. We support the housing arrangement that  
21 they would like to enter into with Douglas Jamal, his site.

22 The only place where we have concern and where  
23 we're not recommending support has to do with the timing  
24 provision; that is, the variance from the timing provision of  
25 the housing requirement. Let me just give a little bit of

1 background on that.

2 For the past, oh, year and a half, we have had a  
3 concerted effort with the downtown housing community, with the  
4 development community, with the advocates, and with the Zoning  
5 Commission, to work on downtown housing regulations. I think it  
6 was acknowledged certainly by the development community and by  
7 the Zoning Commission that the current regulations were often  
8 onerous; that the intent of those regulations to produce housing  
9 downtown often did not result in the production of housing as  
10 was intended.

11 Therefore, they looked at, how can we revise  
12 these regulations to provide flexibility that, on the one hand,  
13 could allow the commercial development to move forward, but at  
14 the same time provide a guarantee that housing would, in fact,  
15 be built and that there was, in fact, funding for that housing  
16 to be built.

17 The previous requirements were that, in essence,  
18 that you would not be able to build your commercial development  
19 until you had the vote with the Housing Development, and often  
20 that meant you were in somewhat of a stalemate until such time  
21 as either the housing was constructed before the commercial  
22 could proceed, but often it was somewhat of a chicken-and-egg  
23 situation that really could stymie both and, therefore, thwart  
24 the intent of what the regulations were intended to do.

25 So the task that we set out to do in the past

1 year and a half was to revise those regulations, recognizing, as  
2 is the case here, that often these sites are too small to  
3 accommodate the housing, and, in fact, we support their case  
4 that housing on this site would be very difficult to do, I think  
5 for all the reasons that Mr. Purnell articulated and that Mr.  
6 Griffis qualified, which is that not all sites really are  
7 perfect for a combined housing mixed-use project.

8 So, therefore, the question was, if you're going  
9 to have the housing offsite, and if part of the problem is that  
10 waiting on the construction for that housing before you can do  
11 the commercial development did not seem practical, what's  
12 another mechanism? Therefore, we looked at the escrow  
13 provision, which we spend much time, as John Parsons can attest  
14 to, numerous hearings, lots of discussion with the Zoning  
15 Commission about how to address this, numerous revisions and  
16 proposals from all sides in the community, development community  
17 and advocates, as to what was the right formula, the right  
18 formula to guarantee the right amount, so that there was sort of  
19 a minimum amount of funds that would be available for housing,  
20 to ensure that, in fact, housing could be constructed at a  
21 certain date, that there would be financing in place to do that,  
22 and, secondly, what the timing was.

23 The proposed way to deal with that is the idea of  
24 the escrow account, which is that there is a certain base amount  
25 of funding that's calculated. That funding is put into an

1 account. That is there for five years. After five years, if  
2 the housing has not been constructed, that that fund has not  
3 been drawn down upon, you can then come forward and request a  
4 variance, request an extension, in essence, not a variance, for  
5 a number more years in order to construct that housing. I'll  
6 let John Parsons speak to this since he is on the Zoning  
7 Commission and was very involved in the negotiation of this.

8 But that was the basic mechanism, was to  
9 essentially have an escrow account. That allowed the commercial  
10 development to proceed. It didn't have to wait for the housing  
11 to be completed.

12 At the same time, it guaranteed that there was an  
13 amount of money for that housing that was an account that would  
14 be drawn down upon. If the person on the other side, site B,  
15 the one who's going to develop the housing, does not use that  
16 money within the five years or with an extension, then that  
17 money could be, would be lost. In other words, it would go to  
18 housing production, so that housing could still be built.

19 So it was meant to be an incentive so that  
20 housing would be built earlier rather than later, so that,  
21 therefore, you wouldn't essentially use it or lose it, and  
22 presumably you wouldn't want to lose that amount of money that's  
23 sitting in an account if you can build the housing. We tried to  
24 provide enough time that it would be through an economic cycle.

25 So, therefore, five years was important.

1           So having said that, that is why I wanted to  
2 provide some background. It's a very complicated issue. It's  
3 one we've spent a lot of time grappling with.

4           The intent and the reason we spent so much time  
5 with this is that we did hear from the development community, as  
6 well as from the advocates, that one of the things that most  
7 concerned them about the downtown housing regulations, in  
8 addition to the fact that they weren't necessarily being as  
9 successful in producing housing as they had hoped, was that we  
10 needed a certain and predictable -- I think you've often heard  
11 from the development community; they call it the "UPC," which is  
12 the understandable, predictable, and competitive mantra which  
13 says: How do we have regulations that people know what they  
14 are, that they seem to work, and that people can then abide by  
15 them and know what the rules are, so that they don't, in fact,  
16 have to come and get variances from you from all these various  
17 requirements with respect the DTD, the downtown housing  
18 requirement.

19           So I just wanted to provide background because we  
20 have been very supportive of this project. We think it's a very  
21 good project. Our concern was with this one -- we support, in  
22 fact, the relationship -- in fact, I think we were helpful in  
23 trying to make suggestions about how this combined lot in terms  
24 of the transaction and identifying Doug Jamal and others  
25 downtown, so that this could be consummated.

1           It is with the one provision where our concern  
2 lies, the variance from the timing. The Zoning Commission, as  
3 you know, adopted the regulations, I believe, on September 17th.

4           Those are due to be finalized, I believe, in mid-November, in  
5 which case this will be operative, and it's not very long off in  
6 order to have what I think a system in place that can work for  
7 everyone in the city and allow the commercial to go forward,  
8 allow housing to be built, and at the same time respect that  
9 there is a process that has been very hard worked on.

10           If I can answer any questions before I go, I  
11 would be happy to do so.

12           CHAIRPERSON GRIFFIS: Thank you very much, Mr.  
13 Altman.

14           First of all, I just wanted to clarify, you are  
15 not suggesting that we deny the housing timing variance, but, in  
16 fact, establish an escrow account if we move ahead to approve  
17 that?

18           DIRECTOR ALTMAN: We are recommending the denial  
19 of that variance, a variance from that particular provision, to  
20 waive that requirement. What we are suggesting is that there  
21 should be a housing escrow account, which is in keeping with the  
22 provisions that the Zoning Commission adopted on September 17th  
23 and will be final.

24           COMMISSIONER PARSONS: Mr. Chairman, if I could?

25           CHAIRPERSON GRIFFIS: Yes.

1 COMMISSIONER PARSONS: Thank you, Mr. Altman, an  
2 excellent summary of where we are.

3 Now, as I understand it, an escrow account in you  
4 calculations is about \$318,000 and change?

5 DIRECTOR ALTMAN: Actually, it's \$219,000.

6 COMMISSIONER PARSONS: Okay. Well, that's a  
7 change in your report.

8 DIRECTOR ALTMAN: Yes, it was. We recalculated.  
9 That was a mistake. So we've already discounted -- no.

10 (Laughter.)

11 COMMISSIONER PARSONS: Now comes an apparent  
12 commitment by Mr. Jamal to do this at no cost, as reported in  
13 your report. Then, further, is a letter that we received this  
14 morning that doesn't seem to go that far. Have you seen that  
15 letter?

16 DIRECTOR ALTMAN: Just received it; just read it  
17 as well.

18 COMMISSIONER PARSONS: Yes, and I don't know  
19 whether we ought to get a dialog between you and the Applicant,  
20 but it seems to fall short. Of course, the zoning regulations  
21 really didn't contemplate somebody supporting housing at no cost  
22 to the sender. So this is a new wrinkle for us.

23 DEP. DIR. MCCARTHY: Well, actually, Mr. Parsons,  
24 the zoning regulations did, and that's what makes it a problem  
25 for us to suggest extending additional flexibility in this case,

1 because, if you'll recall, one of the reasons that the  
2 Commission ended up insisting on the escrow was a concern that  
3 there could be less than arm's length transactions, somebody who  
4 owns both lots and who says, oh, okay, I just want my additional  
5 commercial density on this lot and I am going to build all of my  
6 housing on this other lot at some point in time.

7 COMMISSIONER PARSONS: Yes, all right.

8 DEP. DIR. MCCARTHY: And so the Commission wanted  
9 some guarantee of the fact that enough money would have to be  
10 put into escrow to make that a real transaction.

11 I think in this case what's important to note is  
12 this Applicant would only be entitled to 3.5 FAR on that site  
13 under the existing regulations, a 3.5 FAR of commercial density.

14 In effect, they're getting the additional almost 3 FAR of  
15 commercial density on this site in exchange for this transaction  
16 of their housing being accepted on another site.

17 So we thought it not unreasonable that, since  
18 that \$219,000 could be financed as part of their building,  
19 especially if it's done through revenue bonds, which is at least  
20 one thing the Applicant is exploring, and we've checked that out  
21 with bond counsel, that that would be a permissible expense. We  
22 thought by the time you financed that over 40 years on a bond  
23 transaction with 200 basis points off, you're not talking about  
24 an excessive burden.

25 COMMISSIONER PARSONS: So what if Mr. Jamal

1 offered up the \$219,000?

2 DEP. DIR. McCARTHY: That would be fine.

3 COMMISSIONER PARSONS: I thought it would, but  
4 that's why I asked.

5 (Laughter.)

6 So a letter to that end would get us through  
7 this, wouldn't it?

8 DEP. DIR. McCARTHY: Right, and we've also  
9 suggested to the Applicant to get a letter of credit from a  
10 financial institution that would be backed by that housing and  
11 which could be offered up, could provide the escrow, but the  
12 Applicant wouldn't have to provide the full \$219,000. They  
13 could just do whatever kind of collateral guarantee the bank was  
14 insisting on.

15 COMMISSIONER PARSONS: Okay, thank you.

16 CHAIRPERSON GRIFFIS: One comment and one quick  
17 question, and I know, Mr. Altman, you may have to leave.

18 Actually, unless we have other questions for Mr.  
19 Altman -- I mean, we'll drill the other folks that you leave  
20 behind.

21 (Laughter.)

22 DIRECTOR ALTMAN: Please do.

23 I just want to say, and I have to leave, but that  
24 we are happy to work with the Applicant to support them and Mr.  
25 Jamal and anyone else to try to create a transaction or an

1 agreement that can work for them and still respect the escrow  
2 account tradition that I think we worked very hard to establish  
3 over this past year.

4 CHAIRPERSON GRIFFIS: And I don't know if you  
5 need to stay for this or not, but I just wanted to make perfect  
6 clarification for the Board members that we're actually kind of  
7 bantering about proposed regulations, and I think it is  
8 straightforwardly stated in the OP report, but actually this  
9 case is vested under the existing regulations. So we are kind  
10 of treading new waters. So I think taking our time and  
11 exploring this, but also just to realize that the regulations  
12 and the formula of the escrow has not been at this point.

13 DIRECTOR ALTMAN: Yes, and I think --

14 DEP. DIR. MCCARTHY: No, it has been adopted.

15 CHAIRPERSON GRIFFIS: I'm sorry, yes.

16 DEP. DIR. MCCARTHY: It was adopted on the 17th.  
17 It just is awaiting final rulemaking advertising.

18 CHAIRPERSON GRIFFIS: Exactly.

19 DEP. DIR. MCCARTHY: The text -- there aren't  
20 going to be any changes in the wording on that portion of the  
21 regs.

22 CHAIRPERSON GRIFFIS: I don't have my legal  
23 nomenclature down yet, but I'm getting there.

24 DIRECTOR ALTMAN: But that also was -- so that we  
25 are very close, having worked so hard with the Zoning Commission

1 that adopted it, that you're very close to that November  
2 finalization. Although I appreciate the legal issue, we're also  
3 trying to work with them, given what the Commission adopted.

4 CHAIRPERSON GRIFFIS: Exactly, good.

5 A quick followup then. You may be able to answer  
6 this, and actually I would go to you first.

7 Is all the properties in any of the TDR's that go  
8 for this escrow formula, is it a singular formula or does it  
9 change based on lot size or FAR? For instance, if we go with  
10 \$318,451, as first indicated in the planning report, I'm looking  
11 at a roughly \$21-a-square-foot amount. Is that the formula that  
12 actually happens, or can you give me some idea?

13 COMMISSIONER PARSONS: I'm going to throw that  
14 back to Ellen because I'm not sure what the difference is;  
15 \$219,000, \$318,000, is that a typo or what?

16 DEP. DIR. MCCARTHY: What happened was the  
17 regulations provide for -- the formula is based on the assessed  
18 value, but there's a cap of, I believe it's \$15 a square foot.  
19 When our housing numbers guy did the calculations first, he did  
20 it based on the formula before it was recently revised. The  
21 very last rule passed by the Board inserted the maximum of the  
22 \$15 or \$17, whatever it was. So when he then went back and  
23 recalculated, realizing that cap applied in this instance,  
24 that's how we got to the \$219,000. So the \$219,000 is the  
25 correct number, based on the latest version that was passed by

1 the Zoning Commission.

2 CHAIRPERSON GRIFFIS: Okay, good. I take it that  
3 that was the full OP report unless --

4 DEP. DIR. McCARTHY: Well, Ms. Steingasser was  
5 prepared to address the other variances, which, as you know from  
6 the report, we had supported. If you want us to go over those,  
7 we could, or we could just answer any questions that the Board  
8 has.

9 CHAIRPERSON GRIFFIS: It would be my preference  
10 that we just direct questions to the OP. I'm not sure we need  
11 to reiterate the rear yard parking/loading, unless other Board  
12 members feel differently, in which case I would be happy to do  
13 it.

14 (No response.)

15 Fine. In that case, do we want to direct  
16 questions? I mean, we do have a great resource, as Mr. Altman  
17 said, Mr. Parsons, with us. So we can also put questions to  
18 him.

19 VICE CHAIRPERSON RENSHAW: Well, perhaps either  
20 Mr. Parsons or the Office of Planning, just to clarify in my  
21 mind this problem with the escrow account in the amount of  
22 \$219,000, is that going to delay the project at all?

23 DEP. DIR. McCARTHY: No. What happens is, as the  
24 Applicant indicated in the letter with Mr. Jamal, in any  
25 instance a covenant would have to be drawn up where Mr. Jamal

1 would agree to accept that additional housing, and that would be  
2 an additional zoning requirement which would run with his land.

3 So the way the escrow works is it's the second  
4 half of that. The covenant gets drawn up. The housing site  
5 agrees to adopt or to accept the additional housing as a  
6 requirement forever after on that site, and in exchange the  
7 money is transferred from the sending site to the receiving  
8 site.

9 And I guess I should add, echo what Mr. Altman  
10 said, that we would be happy to work with the Applicant, with  
11 the Zoning Administrator, with the Office of Corporation  
12 Counsel, to be sure that that could be transacted as quickly as  
13 possible. Our concern was the ink basically isn't dry on these  
14 new regulations. So to provide a variance from those the first  
15 case out off the bat, particularly since there's a case very  
16 similar to this coming up next week, we were just concerned  
17 about the precedent that that would set.

18 MEMBER LEVY: A question for Ms. McCarthy also:  
19 What I'm wondering is, if the Applicant were not to establish an  
20 escrow account and the Jamal project were to fall through or not  
21 to proceed, what, then, would happen to the residential housing  
22 requirement?

23 DEP. DIR. McCARTHY: Well, that was one reason  
24 for our concern, because Mr. Jamal made it clear to the  
25 Commission, I think, that he was not personally intending to do

1 the housing on the 517 site; that he would bring in somebody  
2 else to do that housing because that wasn't his particular line  
3 of expertise. So that's what we had mentioned to the  
4 Applicant's counsel when we spoke before, was our reluctance to  
5 go along with that, absent any guarantee that whoever ends up  
6 owning the land would have that requirement. The letter that  
7 Mr. Jamal sent I don't think gives anybody certainty that all  
8 the legal "i's" are dotted and "t's" crossed to make sure that  
9 that would occur.

10 MEMBER LEVY: So even then if the covenant were  
11 executed with Mr. Jamal and his project then didn't go forward,  
12 the housing could possibly not be constructed?

13 DEP. DIR. McCARTHY: Well, I think that would  
14 depend on the covenant, and the Applicant's counsel, and perhaps  
15 our Office of Corporation Counsel, would be more able to deal  
16 with the legal aspects of that. I think a lot would depend on  
17 how that covenant were drawn up. But if it were to go with the  
18 land and if it were to agree to encumber itself with an  
19 additional encumbrance of zoning, then, depending on whether the  
20 covenant met legal muster, that could be an enforceable  
21 covenant.

22 MEMBER LEVY: Okay, thanks.

23 CHAIRPERSON GRIFFIS: Any further questions?  
24 Comments?

25 Do we have any other government reports? I don't

1 see any other --

2 VICE CHAIRPERSON RENSHAW: We have a report from  
3 ANC-2F.

4 CHAIRPERSON GRIFFIS: Indeed, which would be Item  
5 No. 3.

6 VICE CHAIRPERSON RENSHAW: It is dated October  
7 19. This is Exhibit No. 25. The letter is signed by David  
8 Stevens, the Chair of ANC-2F, and it states that ANC held a  
9 regularly-scheduled meeting on October the 3rd and a quorum was  
10 present, and the ANC voted unanimously 5-to-0 to support the  
11 Applicant's request for variance and special exception relief to  
12 build a new headquarters building at its existing site at 1012  
13 10th Street, Northwest, with the proviso that the Association  
14 lease 12 parking spaces offsite, so that the required number of  
15 spaces is provided for the building, and in paren: 12 offsite  
16 and 1 onsite space.

17 The letter continues with a discussion of the  
18 variance and the special exception, and ends with the hope that  
19 the requested relief will enable the Association to remain in  
20 the District of Columbia, and Mr. Stevens thanks the Board for  
21 giving great weight to its views.

22 CHAIRPERSON GRIFFIS: Thank you.

23 Are there persons and parties in support here to  
24 testify today?

25 (No response.)

1 In opposition?

2 (No response.)

3 In which case, before you go into that, do we  
4 want to take a moment before closing remarks and just ask any  
5 other further questions of the Applicant, get more  
6 clarification? We did jump into the government reports  
7 particularly to accommodate.

8 MEMBER LEVY: I would like to ask, just for  
9 clarification, a quick question. The Applicant is requesting  
10 two variances relative to timing. One is the residential -- or  
11 excuse me -- the commercial -- the non-residential in advance of  
12 the residential. The other is a variance from the time limit  
13 for the issuance of Certificate of Occupancy. I'm unclear on  
14 that second point what relief is being requested there. So  
15 perhaps that's a question for the Applicant or the Applicant's  
16 attorney.

17 MR. SHER: I think it's really only one variance.  
18 It's Section 1706.1(3) and let me read that specifically, so  
19 that you all know exactly what it says. It says, "If a  
20 development project includes both required residential uses and  
21 non-residential uses, whether on the same lot or in a combined-  
22 lot development, no Certificate of Occupancy shall be issued for  
23 the non-residential space -- i.e., the office space -- until a  
24 Certificate of Occupancy has been issued for the residential  
25 space."

1                   So that's the variance. We want to be able to  
2 proceed to build the office building and occupy it, obviously --  
3 we don't want to build it and leave it sit it there. We want to  
4 be able to get the Certificate of Occupancy for the office  
5 building ahead of the Certificate of Occupancy for the  
6 residential building.

7                   We don't know precisely when Mr. Jamal, or  
8 whoever it is who's going to build the residential, will  
9 actually construct it. So that's the variance that we need.  
10 It's really one variance. When we say "timing," that's the  
11 issue.

12                   MEMBER LEVY: Okay. There's a reference, if I  
13 could just follow up on that. It says 1708.1 -- oh, I'm sorry,  
14 paragraph (f).

15                   SECRETARY PRUITT: Mr. Levy?

16                   MEMBER LEVY: Yes?

17                   SECRETARY PRUITT: I may be able to help clarify  
18 or cause some more confusion.

19                   MEMBER LEVY: Yes?

20                   SECRETARY PRUITT: This application was self-  
21 certified, and that was one of the numbers that was actually  
22 listed on the certification, if you look at Exhibit No. 4.

23                   MEMBER LEVY: Okay.

24                   MR. SHER: The difference is that 1708.1(f)  
25 actually allows for some lag time between Certificates of

1 Occupancy, but 1706.1(3) is more restrictive than 1708.1. So  
2 that if you were doing a combined-lot development that involved  
3 transferring arts uses from one site to another or retail uses  
4 from one site to another, 1708.1(f) would govern, and it would  
5 say you actually have three years after the C of O is issued to  
6 do the other.

7 But the housing is more restrictive. 1706.1(3)  
8 says you have to have the C of O for the housing on or before  
9 the time you get the C of O for the non-residential. So by  
10 getting the variance from the one, you get the variance from the  
11 other, because if you can meet the one, you've met the other.

12 It's really only one variance. We are seeking  
13 permission to build and occupy the office space before we occupy  
14 the residential space or somebody else occupies the residential  
15 space. Okay?

16 MEMBER LEVY: Thanks.

17 CHAIRPERSON GRIFFIS: Thank you very much.

18 One quick clarification: I just want to make  
19 sure that I understood correctly that simple thing regarding the  
20 parking. We have heard from the ANC, and in the case filed by  
21 the Applicant it indicates that "the Applicant proposes and said  
22 to provide one handicapped space onsite and lease twelve spaces  
23 in nearby parking lots and garages, consistent with the  
24 understanding of the ANC-2F."

25 I guess the question is, how are you going to

1 ensure or what provisions are you going to make in order to have  
2 those spaces? I understand that the comment has been made that  
3 there are 5,000 parking spaces in the general area, but I think  
4 the OP report also mentioned, if I remember correctly, the fact  
5 that parking demand will start to increase as the development  
6 continues, especially of the Convention Center.

7 I'm not sure I have an answer to it. So I put it  
8 to you.

9 MR. GLASGOW: Sure. We were intending that the  
10 Board would impose a condition that we have all times 12 parking  
11 spaces leased for use of the National Medical Association.

12 CHAIRPERSON GRIFFIS: And you'd figure out how  
13 that happens?

14 MR. GLASGOW: Right, because we assume that over  
15 a period of time -- for instance, we have a parking lot directly  
16 behind us right now. It may be that you start out with 12  
17 spaces there, and when there's a building built there, that you  
18 get the 12 spaces within the building or in a building a block  
19 away.

20 CHAIRPERSON GRIFFIS: Good. Okay, thank you.

21 Mr. Parsons, anything?

22 COMMISSIONER PARSONS: Well, first I want to  
23 apologize for being late. So I missed a major part of your  
24 presentation. I just arrived when Mr. Purnell was finishing.

25 And you may have covered this in your discussion

1 about Mr. Jamal's letter, but you've heard the dialog or the  
2 discussion we've had up here about this \$219,000. I don't know  
3 whether you agree with that figure, but, in any event, do you  
4 see any cure to this, to respond to the Office of Planning's  
5 recommendation?

6 MR. GLASGOW: We were going to call Mr. Sher as a  
7 rebuttal witness on a couple of points, but I'm happy to address  
8 that question that you have first.

9 It has been an interesting dilemma, if you will.  
10 If you look at part of the Office of Planning report, they sort  
11 of indicate that we feel it's a real problem for us to have to  
12 deal with the \$219,000 or we wouldn't be debating about it  
13 today. We would have figured out a way to put the money up and  
14 be done with it and come in here and had a five-minute  
15 presentation and say, "We're submitting on the record; they're  
16 submitting on the record. We can all go about our business."

17 If you look at page 9 of the OP report, where it  
18 says "Recommendation," it says, "OP recommends approval of the  
19 basic agreement between the Applicant and the housing developer  
20 on square 517, Douglas Jamal."

21 And by the way, Mr. Parson, if there's any  
22 clarification that we need from Douglas that he's going to do it  
23 without charge, I mean, we can get that into the record. We  
24 thought his letter was clear on that, that he wasn't expecting  
25 any compensation. He's saying, "I'll enter into a combined-lot

1 development with you." Sorry to get off on that side point.

2 Its says, "However, OP recommends that NMA pay  
3 the required amount into the housing escrow fund to ensure that  
4 housing will be built. At such time" -- and we've told them  
5 that there's a problem with that. So they're trying to be  
6 helpful, but we're just not there.

7 "As such time as the housing is built, with the  
8 developer having agreed not to charge the Applicant, the escrow  
9 money would be returned to the Applicant. So we'd get our money  
10 back a few years later, or whenever it is, and everybody would  
11 understand that, that this money is not going to be gone for  
12 some other purpose. We're saying that's a problem for us.  
13 You're making us put up \$219,000. It's a problem, with  
14 everybody recognizing we're going to get it back at the end of  
15 the day. So please give us a variance and not put us through  
16 that pain.

17 This is additional funds, cash, that would have  
18 to be raised, put in an escrow account. Letters of credit must  
19 be backed up by cash or collateral by the bank. You just don't  
20 go out and pay a few dollars and get a letter of credit for  
21 \$219,000. That's not the way that it works. If you bond it, if  
22 it's part of your bond, you still have to pay it off with  
23 whatever the interest rate is over a period of time.

24 If we are able to finance this office building,  
25 which is going to be, I think, about a \$6 million project, from

1 what I understand, and if we're about to put down 10 percent,  
2 this is a couple of million dollars worth of financing that we  
3 have to set over to the side, just as if it's not there, and  
4 start from scratch on getting another \$219,000 together. It's  
5 not a simple problem or, as I said, if this was a different  
6 organization, different size, different piece of property, we  
7 may have just said, okay, fine, we'll deal with it; we'll put up  
8 the \$219,00.

9 We are very fortunate that Mr. Purnell had the  
10 relationship with Douglas where they had a discussion and  
11 Douglas said, fine, I'll do this to help them out and keep them  
12 here.

13 We believe that if the Board crafts an order with  
14 the appropriate conditions in it, given the very unique nature  
15 of what it is that we have -- as you pointed out, we knew that  
16 there may be applicants and developers who own two different  
17 pieces of property and the escrow and all of that that Ms.  
18 McCarthy talked about, and we understood that there was an issue  
19 and a problem there. But this is completely outside the scope  
20 of that type of scenario.

21 I haven't been in a situation where somebody just  
22 stepped up and said, "Here, I'll give you a combined-lot  
23 development, no strings attached, no cash, just have it." And  
24 I'm not expecting to be fortunate enough to have a situation  
25 where that just happens again. It's not a market transaction.

1 I think it's because of the 100-year history and  
2 the discussions Mr. Purnell had with Douglas that he was just  
3 willing to say, "I'll do this."

4 COMMISSIONER PARSONS: Are you 100 years old?

5 (Laughter.)

6 What 100-year history?

7 MR. GLASGOW: Hundred-year history of the  
8 organization in the District of Columbia.

9 COMMISSIONER PARSONS: I'm sorry. See, I did  
10 miss some testimony.

11 (Laughter.)

12 MR. GLASGOW: Yes. So we've got some issues, and  
13 we think the Board and the conditions in the order can,  
14 hopefully, address OP's problem that there won't be 15 variances  
15 on this issue, and that this is a unique situation and  
16 condition.

17 CHAIRPERSON GRIFFIS: Thank you.

18 Mr. Purnell wanted to add one item.

19 MR. PURNELL: As far as I know, and I'm not a  
20 lawyer, but I think Doug is willing to commit the site with a  
21 covenant that says, the housing will be built there either by  
22 him or with someone else. You can, in effect, ensure that the  
23 housing happens by legally putting the covenant on the site. So  
24 whether it's Doug or anyone, they would have to build the  
25 residential. Therefore, the cash wouldn't have to necessarily

1 happen. I would imagine you can legally construct an agreement  
2 for that.

3 MR. GLASGOW: Yes.

4 COMMISSIONER PARSONS: I guess that's what  
5 everybody would urge you to do, is this letter simply says  
6 they'll assist the Association, or he will, and there's got to  
7 be some other instrument created by all of you good folks.

8 MR. GLASGOW: Yes, sir. There would be, in the  
9 combined-lot development covenant -- I think Ms. McCarthy, as  
10 she was discussing the start, had indicated, yes, there's a way  
11 through the combined-lot development covenant. That housing  
12 shall be provided, and that's the understanding.

13 CHAIRPERSON GRIFFIS: Mr. Sher, did you have  
14 anything to add at this point in time?

15 MR. SHER: Some of what I would have said we've  
16 been around a little bit already, but I think there are a few  
17 things the Board needs to take into account.

18 Again, we're here under regulations that we just  
19 read 1706.1(3) from which we need a variance. The existing  
20 regulations -- we filed this application back in July. The  
21 regulations in effect today are those regulations.

22 The escrow account is coming, but, frankly,  
23 there's nothing that I can find in the Zoning Commission's  
24 record available to the public that tells me what those  
25 regulations are. You may have seen them and discussed them. I

1 can't get them. Corporation counsel's working on them. I don't  
2 know whether we can comply with those regulations or not. You  
3 don't know, the Board doesn't know whether anybody can comply  
4 with those regulations or not, because they're not the  
5 regulations that are in effect today.

6 So I think we need to sort of take a half a step  
7 back from what may be coming or how that may apply in the  
8 future, and look at where are we today and what is the  
9 Applicant's burden under the current regulations? I don't think  
10 there's any dispute that the regulations in effect when the  
11 Board makes the decision is what's going to govern.

12 Here we are under the requirement that right now,  
13 today, the residential has to go at the same time or before. We  
14 have to occupy it, to be precise, the residential at the same  
15 time or before we get the C of O for the office.

16 I know Mr. Parsons wasn't here, and I'll just say  
17 it real quickly again: 14,666 square feet is the amount of  
18 residential we have to find. That amount of residential by  
19 itself is not going to make an apartment project. It's part of  
20 a larger project, and the Douglas Development Project will be  
21 somewhere between 200,000 and 350,000 square feet. It's a very  
22 small piece of that project, and in and of itself, whether there  
23 was an escrow there or not, would not make a project in square  
24 517 go forward. That project will only go forward when there is  
25 a market to sell or lease those units, when a lender looks at

1 that market and says, yes, I believe that Developer A or a prime  
2 or a sub-prime, if it's two or three people removed, has got the  
3 capital to build that building and to make money, and my loan  
4 will be protected.

5 It's not going to happen by \$200,000 from the  
6 National Medical Association or anything else, and it's not  
7 going to happen from \$200,000 from the National Medical  
8 Association because everybody concedes that that \$200,000 isn't  
9 going to go for the housing. It's going to get put in an escrow  
10 account and it's going to get given back to the Association when  
11 the housing gets built. So that's not part of any economic  
12 equation in this case.

13 All that you're saying is that you're making a  
14 nonprofit membership organization go to extraordinary burdensome  
15 lengths to find money that it doesn't have, to put it in an  
16 escrow account that the other property owner says he doesn't  
17 want or need, and isn't going to use.

18 Even if it's not Douglas Development itself that  
19 builds that project, if Douglas sells it to some other  
20 residential developer -- and I won't name names because I don't  
21 know who it's going to be -- that person is going to buy that  
22 site, knowing full well that it's burdened by the existing  
23 covenant which says it can only be used for residential use, and  
24 we have committed that we will agree, we have agreed, that  
25 before we get our building permit, we will have recorded on that

1 property and on our property the legal documentation to saying  
2 the housing, when it gets built, will be accounted for over  
3 there.

4 I guess I should be pointing over there, as  
5 opposed to that way, because it really is over there. Square  
6 517, it's thataway, I think.

7 CHAIRPERSON GRIFFIS: You're right.

8 MR. SHER: Yes, I'm pointing the wrong way.

9 COMMISSIONER PARSONS: Do you want to clarify  
10 that for the record?

11 (Laughter.)

12 MR. SHER: Yes. You know, John, I get excited.

13 I'm pointing northeast.

14 In any event, the escrow, if it were established,  
15 has no bearing on housing because it's not going to be used for  
16 the housing. Everyone understands that. If somehow somebody  
17 finds \$200,000 in three years, five years, ten years, it's all  
18 going back to them anyhow. So why burden an applicant in this  
19 particular scenario with this particular set of facts in that  
20 manner?

21 Does that do it? I think so.

22 CHAIRPERSON GRIFFIS: Thank you.

23 Mr. Glasgow, I'm sorry, I may have skipped over  
24 too quickly if you had questions of the Office of Planning or --  
25 actually, that would be the only government report today, but I

1 think you've covered it.

2 MR. GLASGOW: We believe so, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. GLASGOW: I'm it's just we all want to get to  
5 the same point.

6 CHAIRPERSON GRIFFIS: Exactly.

7 MR. GLASGOW: It's how do we get there, and  
8 there's difference of views on that. I think they've well  
9 articulated what their concerns are. I'm glad we had an  
10 opportunity to hear that from them.

11 I think that through the Board's order we can put  
12 the conditions in there that address their concern and make sure  
13 how this is going to be used and what the covenants are. And  
14 either we can meet those conditions or we can't. We believe,  
15 obviously, that we can. We're very confident that we can, given  
16 the relationship that we have with respect to Douglas Jamal and  
17 this, and that the covenants will secure the rights and  
18 responsibilities.

19 CHAIRPERSON GRIFFIS: In which case, if you're  
20 prepared, we can move on to closing remarks.

21 MR. GLASGOW: I think we've covered everything.  
22 We're ready for disposition by the Board.

23 CHAIRPERSON GRIFFIS: Yes, then I would ask  
24 everyone's indulgence that we take a 10-minute recess. Quite  
25 frankly, I'm going to have a restroom break.

1 (Laughter.)

2 And we'll make it right back up here.

3 (Whereupon, the foregoing matter went off the  
4 record at 11:35 a.m. and went back on the record at 11:46 a.m.)

5 CHAIRPERSON GRIFFIS: Okay, thank you very much.

6 We are back from our short recess and actually had a moment to  
7 coordinate here.

8 Upon recessing, Mr. Glasgow, you indicated that  
9 you were finished closing remarks and that the case has been  
10 presented before us, correct? I'll just give you another  
11 opportunity, if there's anything else you want to add.

12 MR. GLASGOW: No, I think the issues have been  
13 put before the Board for your disposition.

14 CHAIRPERSON GRIFFIS: Thank you.

15 Let me first make a quick comment on the case. I  
16 think it has been presented very clearly. This is a very strong  
17 case, in my mind, speaking as only one member of this Board.

18 However, I think the National Medical Association  
19 is a very valuable asset to this city, not to mention that it  
20 has been a valuable asset for decades, if not close to a century  
21 or over. I think that's an important part.

22 I think OP said it very clearly many times in  
23 their report. The fact of the matter is that this is what we're  
24 trying to encourage in the city, no matter what the zone, no  
25 matter what the area, but specifically in the DD area, that we

1 are looking to have businesses and associations grow and expand  
2 and be able to stay within the city, if not within their own  
3 building or specific area.

4 To that, I think the case has been presented well  
5 regarding the variances of the rear yard, the parking, the  
6 loading the special exception for the roof structure. Well,  
7 there it is -- especially since for the roof structure, I think  
8 it's incredibly clear.

9 Our issue does come down to the complication  
10 around the housing timing variance. I wanted Mr. Parsons  
11 perhaps to weigh in on this, but I wanted to stress for the  
12 record again that Ms. McCarthy from the Office of Planning made  
13 a comment that perhaps this would be a precedent-setting case in  
14 terms of the housing timing variance with regard to the new  
15 regulations that are a small wave behind us, if that's a legal  
16 term.

17 And I wanted to clarify the fact that this case  
18 is actually vested under the current regulations and that this  
19 Board has, in fact, read and reviewed the current regulations in  
20 preparation for this case. But it is not missed by these Board  
21 members that we have a changing time and that there has to be  
22 some sort of reasonable and rational way to make this project  
23 work, in light of what is coming up and in light of the whole  
24 formula, rather the whole parameters and issues for TDR's and  
25 the residential components downtown.

1 I may have just hit that much too hard for Mr.  
2 Parsons to even add onto it, but I would give you the  
3 opportunity, if you wanted to.

4 COMMISSIONER PARSONS: Well, thank you. It's  
5 tough. I was thinking during the break that if we had heard  
6 this case in July, and the community-at-large hadn't proceeded  
7 as they have, that the answer probably would be no, at least for  
8 me, for this relief.

9 So what we're doing is taking -- we're aware of  
10 what's going on all summer, and now almost toward final  
11 regulations that there is relief coming. So it's tough for me,  
12 having spent so much time on this, to go back to July and say,  
13 well, the regulations at the time were this and we should be  
14 evaluating it on that.

15 So I would agree with you, it's not precedent-  
16 setting for the forthcoming regulations. Second, it is very  
17 unique, as Mr. Glasgow has pointed out. But I think we have to  
18 take into account what's going on, and that's been much of the  
19 testimony here.

20 So I would urge, because we already have, and  
21 you've agreed to, Mr. Glasgow, that prior to our decision some  
22 more material gets into the record about Mr. Jamal and what he's  
23 going to do and isn't going to do, and what assistance means. I  
24 don't mean in the form of a condition in the order as much as I  
25 do additional paper into the record about just what this means.

1 By the way, that would also give me the  
2 opportunity to review the transcript of the hearing that I  
3 missed this morning. So I would urge -- and I agree with  
4 everything you said about the rest of the variances for the  
5 case, that everything seems in order, at least from my  
6 perspective, and that we could decide this probably -- well, I'm  
7 not going to predict when we'd decide it, but I'm certainly not  
8 ready to do it today.

9 CHAIRPERSON GRIFFIS: Very good. Any other  
10 comments?

11 MEMBER LEVY: Is there anything that we need also  
12 from the Office of Planning during that time? Is there anything  
13 that they could provide that would be helpful? Just a thought.

14 COMMISSIONER PARSONS: I'm glad you said that.  
15 What I had meant is a joint product, if you will.

16 MEMBER LEVY: Right.

17 COMMISSIONER PARSONS: Certainly the two of them  
18 working together could bring us something they both agree on,  
19 hopefully.

20 CHAIRPERSON GRIFFIS: I think it's fairly clear,  
21 and I am not as familiar with the regulations that are going to  
22 be coming up to us at some point, but it's obviously clear that  
23 the escrow account is some sort of more incentive, but  
24 insurance. I think the Applicant has certainly set forth the  
25 fact of how even unique it is to establish a monetary insurance

1 on this case.

2 Be that as it may, in front of us, we would be  
3 looking for, I think as Mr. Parsons is saying, the insurance  
4 that this happens. I think, Mr. Glasgow, you stated, and I  
5 think the Office of Planning was clear, that it looks as though  
6 the Applicant and parties and the Board want to make this  
7 happen. We now need to make sure that it is fairly ironclad  
8 that it goes forward.

9 So to that, I would set this for a decisionmaking  
10 as quickly as possible, but based on allowing the Applicant time  
11 to establish the paperwork necessary that would outline specific  
12 details and requirements, if they came forth in a site covenant  
13 or whatever it is that would ensure the residential development  
14 on parcel 517.

15 That would put us to what date exactly?

16 MEMBER LEVY: Excuse me, Mr. Chair, if I could  
17 interrupt just quickly?

18 CHAIRPERSON GRIFFIS: Yes. Absolutely.

19 MEMBER LEVY: It's hard to tell where the voice  
20 is coming from.

21 CHAIRPERSON GRIFFIS: Indeed.

22 MEMBER LEVY: I just wanted to make sure that  
23 we're clear whether or not we are talking about -- whether what  
24 we're talking about has anything to do with the escrow account  
25 or not, what we're looking for from the Applicant. Perhaps it's

1 clear to others, but I'm not sure it's clear to me.

2 CHAIRPERSON GRIFFIS: Well, I think you should  
3 take the opportunity to make a statement on your feeling of  
4 that. My feeling is this: that what this Board should be  
5 looking at is the end goal, the end product. If that happens to  
6 come down to the fact that an escrow account is needed to be  
7 made, that an escrow account then is established by parcel A,  
8 the sender, or parcel B, the receiver, so be it. If, in fact,  
9 that the Office of -- and I think Mr. Parsons has indicated --  
10 the Office of Planning should be a part of this, they're are  
11 obviously a major factor in this. If there are feelings that a  
12 letter of site covenant suffices all this in the negotiation, so  
13 be it.

14 So I would not at this point be so directive as  
15 to say, deal with the escrow -- I think the escrow will have to  
16 be dealt with. It's here; it's in front of us. We know that it  
17 is a provision that could be done -- if that makes it clear.  
18 You can certainly add onto that.

19 MEMBER LEVY: No, I just wanted to be clear that  
20 we're looking for the Applicant and Office of Planning to pursue  
21 some options, some language that would make us comfortable with  
22 the covenant that would be signed. I think your explanation is  
23 good.

24 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

25 CHAIRPERSON GRIFFIS: Yes?

1 VICE CHAIRPERSON RENSHAW: I just want to add to  
2 the record and say that I, too, am looking for the language vis-  
3 a-vis a drafting of a covenant, some material that would get  
4 into our record that would hone down the residential aspect of  
5 this in a more definitive way.

6 I'm not looking for the money, the \$219,000,  
7 because, quite frankly, putting aside \$219,000 is not going to  
8 get this organization to where we need it to be. Mr. Williams  
9 had opening remarks that I'd just like to quickly draw your  
10 attention to where he spoke about the very critical and crucial  
11 mandate of his organization in bioterrorism training for his  
12 25,000-member physicians. This is an immediate need. So if  
13 there is any money floating around, I would like to see it  
14 directed towards where we need it to be, and that is the  
15 training of these physicians in bioterrorism.

16 If we can seal the deal here with some kind of  
17 language in a covenant that you could bring back to us prior to  
18 our decision date, I think that that would be the way to go  
19 here.

20 CHAIRPERSON GRIFFIS: Thank you very much.

21 Oh, I'm sorry.

22 COMMISSIONER PARSONS: Mr. Chairman, I was  
23 jesting about Mr. Jamal offering up the \$219,000 at all. I know  
24 there were some snickers about that, not from my panelists here.  
25 It was heard in the room. Certainly that would cure this, but

1 I agree with what's been said about whether the burden should be  
2 on the Association or not. I don't think so, but it certainly  
3 would be cured by that.

4 CHAIRPERSON GRIFFIS: Yes, and I did take that  
5 seriously, and I think that is, obviously, an option that should  
6 be pursued, but we don't have that in front of u.

7 COMMISSIONER PARSONS: No.

8 CHAIRPERSON GRIFFIS: And so there it is. Let us  
9 talk dates.

10 SECRETARY PRUITT: Mr. Chairman, based on your  
11 previous discussion, it looks like the best decision date would  
12 be in December, to allow the Applicant actual time to talk with  
13 OP, because the November decision date is two weeks away, less  
14 than two weeks away.

15 MR. GLASGOW: If I could suggest, we think that  
16 we can be ready with Mr. Jamal and have a discussion with OP,  
17 and at least give us the opportunity to have the case decided in  
18 November.

19 CHAIRPERSON GRIFFIS: What November date are you  
20 looking at?

21 SECRETARY PRUITT: That is November 6th. That  
22 means you have to have everything to us by Friday.

23 CHAIRPERSON GRIFFIS: No, that doesn't seem  
24 realistic.

25 SECRETARY PRUITT: That's why I --

1 VICE CHAIRPERSON RENSHAW: Well, can Mr. Glasgow  
2 meet that date?

3 SECRETARY PRUITT: Friday or, at the very, very  
4 latest, that Tuesday, a week from today.

5 MR. GLASGOW: Yes, a week from today we can meet.  
6 Yes, Tuesday, the 30th, we can meet.

7 CHAIRPERSON GRIFFIS: Does the Office of Planning  
8 have any remarks on that? I mean, I don't want to put you guys,  
9 everyone, in a bind by a week. I mean, maybe we -- I understand  
10 that you want to do it and think you can, but, obviously, there  
11 are other parties and people involved in this. A week seems to  
12 be fairly quick. If it can happen, fantastic, but let's be  
13 realistic, is my point.

14 MS. STEINGASSER: Speaking for OP, I believe a  
15 week is a little optimistic. I'm not sure how we would get all  
16 the parties together, get the information drafted, get it  
17 reviewed, and get it analyzed, get it written, and get it back  
18 to you. It just doesn't seem like a realistic --

19 CHAIRPERSON GRIFFIS: Ms. Pruitt, how much  
20 flexibility do we have in the decisionmaking? If we scheduled  
21 it for the 6th, if it doesn't happen, we'd move it to the 13th?

22 SECRETARY PRUITT: Yes, you could do it for -- it  
23 could be on your public meeting agenda and then have it deferred  
24 for another month. I mean, you could do it that way, too.

25 CHAIRPERSON GRIFFIS: Okay.

1 SECRETARY PRUITT: In the hopes that they could  
2 make it.

3 CHAIRPERSON GRIFFIS: Is that appropriate?

4 MS. STEINGASSER: That would be fine.

5 CHAIRPERSON GRIFFIS: We won't be too nasty if  
6 you guys can't make it by the 6th.

7 MS. STEINGASSER: Well, we can only -- as quick  
8 as we can get it, we will try to do that.

9 CHAIRPERSON GRIFFIS: I think that's great. I  
10 think that motivates everybody involved. We've put it on the  
11 6th. If it happens on the 6th, then the issue is done. If not,  
12 we'll deal with it.

13 SECRETARY PRUITT: And then the Applicant would  
14 have to us whatever written copies -- whatever information by  
15 the 30th.

16 MR. GLASGOW: Yes.

17 SECRETARY PRUITT: Thank you.

18 CHAIRPERSON GRIFFIS: Right, the 30th of October.

19 And, Mr. Glasgow, I'm sure you are aware, but I want to  
20 underscore the fact that the Board has to read it. We have to  
21 read it, you know, after our kids are in bed and the kitchen's  
22 cleaned and all that, in our spare time.

23 So ahead of time is fabulous, but we obviously  
24 need it. It will help the case in general if we are prepared  
25 and not having to take up the time to deal with all of it.

1                   Good, then we are set. Do you want to just read  
2 it, if you wouldn't mind, Ms. Pruitt?

3                   SECRETARY PRUITT: Sure. As it stands right now,  
4 this case is scheduled for a decision on November 6th in the  
5 morning with submissions due by October 30th. Actually, Mr.  
6 Glasgow, if you could get it to us very early in the day or late  
7 on Monday evening, then we can actually hand-deliver it to all  
8 the Board members at the meeting, the BZA hearing that day on  
9 the 30th. Thank you.

10                  CHAIRPERSON GRIFFIS: Great.

11                  Yes, Mr. Williams?

12                  MR. WILLIAMS: I would just like to thank the  
13 Board one last time for allowing us to come before you, and we  
14 appreciate immensely your consideration and things that you have  
15 done with this.

16                  Please stop by and see us sometime. We are the  
17 National Medical Association, and we want to be friends to  
18 everybody in town.

19                  CHAIRPERSON GRIFFIS: Good.

20                  MR. WILLIAMS: Thank you.

21                  CHAIRPERSON GRIFFIS: Thank you very much, Mr.  
22 Williams. We appreciate you being here today.

23                  VICE CHAIRPERSON RENSHAW: If you have a picture  
24 of that sculpture to pass around when you're here, we'd like to  
25 see it. Thanks.

1 MR. PURNELL: I will. I will.

2 MR. WILLIAMS: That sculpture is in Atlanta.  
3 It's an 8,000 -- it's on the Moorehouse campus because our  
4 building won't support it currently.

5 VICE CHAIRPERSON RENSHAW: But it will be brought  
6 here?

7 MR. WILLIAMS: It will be brought here and it  
8 will be put in the lobby for everyone to see. The museum, in  
9 and of itself, should be wonderful. D.C. has museums, but it  
10 does not have one on African-American medicine.

11 CHAIRPERSON GRIFFIS: Okay, lest we think the  
12 morning is over, why don't we call one more case?

13 MS. BAILEY: Ready, Mr. Chairman?

14 CHAIRPERSON GRIFFIS: Indeed.

15 MS. BAILEY: Application No. 16776 of Thomas  
16 Hansson, pursuant to 11 DCMR 3103.2 for a variance from the  
17 nonconforming structure provisions under Subsection 2003.1 and a  
18 variance from the open court requirement under Section 406, to  
19 allow an addition to an apartment house in a DCOD/R-5D District  
20 at 1607 16th Street, Northwest, square 193, lot 144.

21 All those wishing to testify, please stand and  
22 raise your right hand.

23 (Witnesses sworn.)

24 MS. BAILEY: Mr. Chairman, the Applicant brought  
25 to my attention that there is a mistype on this application.

1 Section 2003.1 should read "2001.3."

2 I'm sorry, please help me with your name.

3 MR. SMITH: Jim Smith.

4 MS. BAILEY: Jim Smith. Mr. Smith, can you  
5 explain how that mistake came about?

6 MR. SMITH: I can. I had my secretary type the  
7 application based upon the self-certification form that Greg  
8 Zahn and Gladys Hicks prepared. I reviewed it, but I didn't  
9 catch that we had accidentally typed "2003.1" instead of  
10 "2001.3." I really didn't understand that until last night  
11 about 10:30 or 11 o'clock when I was reviewing my notes for the  
12 case I noticed that and I thought, oh-oh. So it's a preliminary  
13 matter.

14 I think that both paragraphs deal with  
15 nonconformity, although in a different intent. So that I think  
16 that the case could go forward, and I apologize for any problem  
17 I might have caused.

18 CHAIRPERSON GRIFFIS: Thank you for bringing that  
19 to light. Let me just see if any other Board members had that  
20 mistake. I think I was reading actually as 2001 because it did  
21 say "nonconforming structures" and not "use." As I quickly  
22 review what's in front of us, I don't believe there's any use  
23 being talked about in this case.

24 MR. SMITH: There is no use in this case for  
25 discussion.

1 CHAIRPERSON GRIFFIS: If there isn't a huge  
2 amount of bewilderment based on this typographical error for the  
3 application, I believe we have the jurisdiction to proceed with  
4 this then, is that correct?

5 SECRETARY PRUITT: Yes. I would just suggest  
6 that the Board on the record say that they amend it to include  
7 2001.3, that it was a typo, and then actually officially amend  
8 the record.

9 CHAIRPERSON GRIFFIS: So moved.

10 COMMISSIONER PARSONS: Second.

11 CHAIRPERSON GRIFFIS: All in favor.

12 (Chorus of ayes.)

13 Opposed?

14 (No response.)

15 Thank you very much. Then the record would  
16 reflect that this is an application under Subsection 2001.3.

17 MR. SMITH: Thank you, sir.

18 CHAIRPERSON GRIFFIS: Are we ready? Okay.

19 MR. SMITH: Good morning, Mr. Chairman --

20 CHAIRPERSON GRIFFIS: Good morning.

21 MR. SMITH: -- and distinguished Board members.  
22 Some of you I've been before and some of you I have not been  
23 before. We hope this is a good experience.

24 For the record, my name is James F. Smith of the  
25 firm Mr. Permit, LLC, and I live at 6 Logan Circle, Northwest,

1 Washington, D.C. I'm joined here today by a small team,  
2 including especially the Applicant, Mr. Thomas Hansson, who's  
3 sitting here to my right. He's the owner of the subject  
4 property.

5 On my left is Mr. Kelly Kane of Zahn Design  
6 Architects, who will talk to us about the plans for the project.

7 Also with me this morning is a distinguished colleague that I  
8 can't recognize enough for how much help she's given to my  
9 business and to our city, Ms. Gladys Hicks, who will talk about  
10 the zoning issues.

11 As a preliminary statement --

12 CHAIRPERSON GRIFFIS: If I might?

13 MR. SMITH: Yes.

14 CHAIRPERSON GRIFFIS: Would you like to be  
15 addressed as "Mr. Permit" or Mr. Smith"?

16 (Laughter.)

17 MR. SMITH: Mr. Smith.

18 CHAIRPERSON GRIFFIS: Very good.

19 MR. SMITH: Only the permit people call me "Mr.  
20 Permit."

21 CHAIRPERSON GRIFFIS: Indeed, indeed.

22 If I can, just the others in the audience, let me  
23 just get an indication of how this is going to progress. Are  
24 there parties in opposition today?

25 VOICE FROM AUDIENCE: Potentially.

1 CHAIRPERSON GRIFFIS: Reserve the right to be in  
2 opposition.

3 VOICE FROM AUDIENCE: I reserve the right.

4 CHAIRPERSON GRIFFIS: Okay, sir, but you have  
5 not, in fact, submitted a letter for party status or anything of  
6 that nature? Very good. Thank you.

7 Sorry for the interruption, Mr. Smith. Please  
8 continue.

9 MR. SMITH: Okay. The subject property is an  
10 eight-unit apartment building known legally as premises 1607  
11 16th Street, Northwest, Washington, D.C., located in square 0183  
12 on lot 144.

13 The property had an interesting writeup in the  
14 book, "Sixteenth Street Architecture," and there was an anecdote  
15 about one of the owners that I thought would be appropriate to  
16 lead the discussion. I'm going to quote from the book.

17 "The house was built in 1880 and cost \$5,250 when  
18 it was built. Mr. Brooks sold the house in 1886, six years  
19 later, to Ms. Charlotte B. Johnson, who extended the back of the  
20 building." Originally, it was a one-block building instead of  
21 three blocks, "blocks" meaning the massing of the building.

22 "At the time Mrs. Johnson bought it, it was a  
23 plain Italianate building, and she had the front changed by  
24 architect T. F. Schneider," -- who is well-known to Washington,  
25 D.C. architects and people interested in that -- "to put a new

1 brick-and-stone front with a semicircular two-story bay," which  
2 is a very typical Schneider building. You can tell Schneider  
3 from everybody else because of that in most cases.

4 "In 1902 the house came in possession of Nanny  
5 Phillips, the mother of Dr. William Phillips, who was the  
6 Department of Medicine Director of the George Washington  
7 University."

8 Now this is where it gets interesting: "In 1911  
9 they sold their house to a Senator John Sharpe Williams. He was  
10 a Democrat from Mississippi and had been a Member of the House  
11 of Representatives from 1893 to 1909 before becoming a Senator  
12 in 1911. He served in the Senate until 1923, and was a member  
13 of the Foreign Relations and Finance Committees."

14 Now the reason why I brought up this guy's name  
15 is very interesting. He was linked to the development of 16th  
16 Street because, according to Mrs. John B. Henderson, who had  
17 16th Street renamed "The Avenue of the Presidents" -- it  
18 actually happened for six months -- "after a long campaign, she  
19 had succeeded in having the name that was approved in August one  
20 year made official, but she said, at the end of three years, 'a  
21 scourge worst than consumption or anemia struck us.'

22 "She continued, 'Senator John Sharpe Williams of  
23 Mississippi had so lately and quietly purchased a house on the  
24 street that we most unintentionally, regretfully, and  
25 unfortunately were ignorant of the fact.'

1 "For being slighted, irate was a poor name for  
2 his indignation. So to speak, he shook his Senatorial in the  
3 faces of the women of former 16th Street saying he would show  
4 his influence by taking the new name away from them, and he did  
5 so."

6 So what Senator Sharpe did was take the name  
7 back, "Avenue of the Presidents," and rename it "16th Street"  
8 because he was slighted.

9 "He later sold the house in 1919 to Dr. John  
10 Nichols, and Dr. Nichols or his estate ran the building until  
11 1955. At that time the building was sold to George Schuler,"  
12 the estate of George Schuler. Someone purchased the building,  
13 and Dr. Hansson has since purchased the property.

14 What we would like to do now is to go into some  
15 of the aspects of this case. Dr. Hansson will talk about his  
16 reason for buying the property and what his development  
17 intentions are for it.

18 CHAIRPERSON GRIFFIS: If I could, Board members,  
19 if it would satisfy you, I think we could probably condense some  
20 of this. I think the information in front of us is fairly  
21 clear. I don't think we need to have this very long and drawn  
22 out, although anything you want, of course, say it. But I guess  
23 my point is you could probably pretty much expedite this. I  
24 think we will have questions that we can answer or have  
25 answered.

1 MR. SMITH: Okay. So I can cut this and condense  
2 it to about 10 minutes?

3 CHAIRPERSON GRIFFIS: That would be fabulous.

4 MR. SMITH: Okay.

5 CHAIRPERSON GRIFFIS: If that's in agreement with  
6 the rest of the members? Very good. Thank you.

7 DR. HANSSON: Good afternoon. I just want to be  
8 quick here.

9 I moved to D.C. in 1992 to do my residency at GW  
10 University, and basically had been living around the area of  
11 16th Street for a few years on and off. I had been looking for  
12 a permanent place to live, and preferably looking for a historic  
13 place that I could renovate and keep up.

14 I initially met Mr. Karis, who owned the  
15 building. That was in 1998, and he owned several buildings in  
16 the area that he's sold because he was looking to retire. So an  
17 opportunity presents itself when he was selling the 1607  
18 property.

19 Currently, the building has eight units. There's  
20 five one-bedroom apartments which are quite small, about 600  
21 square foot, and then there's three on the back. There's three  
22 one-room apartments which are about probably 300 to 400 square  
23 feet.

24 I've been looking at -- there's an area of five  
25 houses along that street between Q and Church Street, and they

1 all have been renovated and extended out in the back. The  
2 building of 1607 is the only one that has not been renovated and  
3 been made up-to-speed with the rest of the neighborhood.

4 So my plan was to reduce the number from eight  
5 units, eight small-unit apartments, to make them a larger four  
6 two-bedroom units. So it would be one apartment on each floor  
7 instead of two on each floor at the moment. It would be about  
8 1200 square feet each.

9 There's an area in the back which extends out.  
10 This is 16-foot by 10-foot wide that has been there for years.  
11 What I'm looking to is making an addition on top of this.

12 The problem is that this area is only 10-foot  
13 wide, and counting in, when you put the walls in, it looks like  
14 the room is only about 7- to 8-foot wide. Realistically, it's  
15 hard to use this as any type of bedroom or any type of practical  
16 space for an apartment or a bedroom as such.

17 CHAIRPERSON GRIFFIS: Can you indicate on the  
18 plans which area you're talking about for that?

19 DR. HANSSON: Yes.

20 CHAIRPERSON GRIFFIS: I'm sorry, I may be  
21 preempting things here.

22 Hold on a second. You need to talk into a mike  
23 if you're going to be up there.

24 MR. KANE: Can you hear me?

25 CHAIRPERSON GRIFFIS: Yes.

1 MR. KANE: This is what we're talking about right  
2 now. This is an existing storage space that is only about 10-  
3 feet wide and 16-feet long. So what we're hoping to do is to  
4 extend it beyond, increasing it to 14 feet.

5 MR. SMITH: To match the existing court.

6 MR. KANE: It matches the existing 16-foot court.

7 MR. SMITH: We have only one zoning issue for our  
8 renovation, which is that we have a nonconforming building  
9 because of the width of the court. We feel that because this is  
10 an R-5-D property, that the zone was really intended for wider  
11 lofts than 20 feet. Because if you just take an open court  
12 dimension of 10 feet minimum and put it onto the lot, you only  
13 have 10 feet of gross building left without counting the walls.  
14 So that's really why we're here.

15 Because the existing building was nonconforming  
16 because the existing court is about 6-foot-4 in width, then what  
17 happens is we have to come before the Board of Zoning Adjustment  
18 for any modification to the building. So we decided to go ahead  
19 and ask for extending out the building to the full width of the  
20 court.

21 To address the zoning issues, Ms. Hicks has a  
22 brief statement, I think, about some of the calculations and  
23 answers that you all are probably anticipating.

24 CHAIRPERSON GRIFFIS: Let me just clarify your  
25 last statement. We're looking at, then, a variance from Section

1 2001.3, paragraph (c), which is nonconformity?

2 MR. SMITH: Yes.

3 CHAIRPERSON GRIFFIS: And that nonconformity  
4 comes in play in this with the open court.

5 MR. SMITH: That's correct.

6 CHAIRPERSON GRIFFIS: Okay, go ahead. Thank you.

7 MS. HICKS: For the record, my name is Gladys  
8 Hicks. I am zoning consultant.

9 The zoning classification is DCOD/R-5-D,  
10 residential. As Dr. Hansson has gone over, it's an eight-unit  
11 apartment building at 1607 16th Street, Northwest, and he wants  
12 to convert and downsize to four units.

13 When I first was contacted about the case by Greg  
14 Zahn Design/Build, we went over the court requirements. Once I  
15 got the drawings and builder's plats and did the calculations,  
16 as are shown on the calculation sheet, the only area of relief  
17 required is Section 406.1, the open court width requirement, and  
18 Section 2001.3, the nonconforming section, to allow an addition  
19 onto an existing nonconforming structure.

20 The only reason why the structure is  
21 nonconforming is because of the open court width that is  
22 existing. There is an existing court of 6.33 feet in width.  
23 Ten-foot width minimum is required, which leaves an addition, if  
24 you want to maintain the 6.33-foot addition with that particular  
25 -- with still the same setback, would leave a deficiency of 3.67

1 feet.

2                   There are a number of things that are -- there  
3 are three standards which the Board looks at or three conditions  
4 the Board looks at on existing properties that require  
5 variances. The first is whether the property is unique because  
6 of its size, shape, topography, and other extraordinary or  
7 exceptional situation or condition; the owner would encounter  
8 exceptional practical difficulties as a result of the strict  
9 application of the regulations to his particular property, and  
10 the third variance that the variance would not cause substantial  
11 detriment to the public good, not impair the intent.

12                   In looking at this case, I felt like there are a  
13 lot of things that are unique about the property. One is that  
14 it is well-maintained on 16th Street. It has a beautiful brick  
15 exterior. There are a number of finite exterior features that  
16 are listed in fine arts, a book that Mr. Smith has, but it is in  
17 an historic district. That in itself makes the property unique.

18                   If you look throughout the city, there are a  
19 number of properties that have not been well-maintained that are  
20 historic. I think it's good whenever anyone wants to maintain  
21 or improve on whatever is existing without being detrimental to  
22 the surrounding neighborhood.

23                   The court is still wide enough to provide  
24 sufficient light, air, and ventilation. I feel like that what  
25 has been proposed by the architect would meet the three-pronged

1 test.

2 There is a practical difficulty in that putting  
3 an addition on smaller than what is proposed would not render  
4 the interior space as usable, if keeping the same 6.33 feet  
5 setback.

6 There is a 20-foot wide alley to the rear. The  
7 property fronts on 16th Street.

8 This application is in compliance with all other  
9 requirements: the lot occupancy floor ratio. Even though a  
10 parking waiver was requested and approved by Historic  
11 Preservation, there are two off-street parking spaces which meet  
12 the regulations to the rear of the property.

13 That concludes my presentation on the zoning.

14 MR. SMITH: Shall we summarize now in about 10  
15 minutes?

16 CHAIRPERSON GRIFFIS: You can summarize the  
17 witnesses, if you feel the need, but not closing remarks. We're  
18 going to run through a few other things.

19 In terms of government reports, we go to the  
20 first to the OP, which I do not have -- okay, we don't have an  
21 OP report. Then we would move to the third item, the ANC-2B,  
22 which has filed a letter.

23 Ms. Renshaw?

24 VICE CHAIRPERSON RENSHAW: The letter is dated  
25 October 15th and it's signed by Vince Micone, the Chairperson,

1 and he states that, at ANC-2B's meeting on October the 10th, the  
2 ANC considered the application by Thomas Hansson for a variance  
3 from the nonconforming structure provisions under -- and he  
4 cites 2003.1 -- and the variance from the open court requirement  
5 under Section 406, to allow an addition to an apartment house at  
6 this location.

7 With seven of seven Commissioners in attendance,  
8 a quorum of a duly-called public meeting, the following motion  
9 was unanimously approved: that ANC-2B supports BZA Application  
10 16776 by Thomas Hansson at 1607 16th Street for variances to  
11 allow an addition to a nonconforming structure and to extend a  
12 nonconforming open court." And that is the substance of the  
13 letter, Mr. Chair.

14 CHAIRPERSON GRIFFIS: Great. Thank you.

15 Before we move on to persons and parties in  
16 support or in opposition, I would just like to take a few  
17 moments to run through and have some Board questions that we may  
18 before we just scream through this case.

19 That is one clarification. This is not a  
20 designated landmark, is that correct?

21 Use the mike, please.

22 MR. SMITH: It's not a designated landmark. It's  
23 within the 16th Street Historic District, however.

24 CHAIRPERSON GRIFFIS: Great. And it has been  
25 established as a contributing building --

1 MR. SMITH: Right.

2 CHAIRPERSON GRIFFIS: -- which is how you got  
3 your parking waiver?

4 We do have an HPRB staff report and  
5 recommendation, which I'm sure you are very familiar with.

6 MR. SMITH: Yes.

7 CHAIRPERSON GRIFFIS: My question -- and I think  
8 there will be others -- if I recall correctly, there seems to be  
9 some discussion between the owner and the HPRB staff as to the  
10 rooftop addition. As I was looking at the drawings, I think the  
11 top balcony. Be that as it may, I don't care about the details.

12 My question would be this: If it is built as drawn, not  
13 necessarily as it's done as recommended with HPRB, are there  
14 other issues that will be before the BZA or is it the  
15 application is as presented in the drawings here, and as far as  
16 you know from self-certification, you have all of the issues?

17 MR. SMITH: The staff report was done prior to  
18 the draft of the plans that we're showing to you today and is in  
19 your package. They did not do a second staff report. They  
20 usually just do one. So Steve Colcott did a staff report. The  
21 architect changed the drawings and has met the requirements of  
22 HPRB at this point with our submission. So the drawings you are  
23 looking at are the final drawings that they have approved.

24 CHAIRPERSON GRIFFIS: Okay. So these are not,  
25 just to say it again a different way, these plans before us, as

1 submitted, are not the ones that were written that were the  
2 basis of the staff report that we have in this application?

3 MR. SMITH: Correct. The drawings have been  
4 changed to reflect all of the requirements of HPRB.

5 CHAIRPERSON GRIFFIS: Great. Mr. Levy, did you  
6 have questions on the HPRB report?

7 MEMBER LEVY: Just to make this as painful as  
8 possible, I'll just specifically: The drawings were changed  
9 specifically to reflect the concerns about the front roof deck  
10 and the front roof deck was eliminated?

11 MR. SMITH: The front roof deck was modified to  
12 be acceptable to HPRB -- it's eliminated, yes.

13 MEMBER LEVY: It's been eliminated? Okay, thank  
14 you.

15 MR. SMITH: There's one other small item I would  
16 like to bring to the Board's attention. There is a small,  
17 nonconforming, illegal window in 1609 16th Street party wall  
18 that -- can you show where that window is located? -- that is  
19 not allowed by regulations to be in that location.

20 CHAIRPERSON GRIFFIS: It's on the building, the  
21 adjacent building?

22 MR. SMITH: The adjacent building.

23 CHAIRPERSON GRIFFIS: But the penetration is on  
24 the building --

25 MR. SMITH: So whether or not you granted the

1 relief, should Mr. Hansson decide to build as a matter of right  
2 on top of that structure and provide a 10-foot wide addition,  
3 then the window would get covered up, regardless of whether  
4 there was a full width to the open court addition or one that  
5 was scaled back to be more in conformity?

6 CHAIRPERSON GRIFFIS: Right, but that's on the  
7 common property line?

8 MR. SMITH: The common property wall.

9 CHAIRPERSON GRIFFIS: Right. Would perhaps the  
10 owner of 1609 16th Street, Northwest, be here today?

11 MR. SMITH: I believe he is.

12 CHAIRPERSON GRIFFIS: Okay. If there aren't any  
13 other questions for the Applicant, why don't we call any persons  
14 or parties in support?

15 (No response.)

16 Persons or parties in opposition?

17 Very good, sir. If you wouldn't mind just making  
18 room for the gentleman -- you don't need to leave, but just give  
19 him a seat.

20 If you would, sir, when you sit down, please  
21 state your name and your address for the record.

22 MR. CUNNINGHAM: My name is Jose --

23 CHAIRPERSON GRIFFIS: Okay, hold on just a  
24 second. Thank you.

25 MR. CUNNINGHAM: My name is Jose Cunningham. I

1 am co-owner of the property located at 1609 16th Street, along  
2 with Gregory S. Nelson.

3 CHAIRPERSON GRIFFIS: Good, go ahead, sir.

4 MR. CUNNINGHAM: I'm here really just as an  
5 interested citizen. I must state, at least just to start with,  
6 that Dr. Hansson and I are certainly friendly neighbors. We  
7 talk all the time. He's been kind enough to have informed me of  
8 some of the work that he had planned moving forward.

9 My impression was -- and I think I heard this  
10 certainly from Ms. Hicks -- that there was kind of a three-  
11 pronged test that needed to be developed for any variances. The  
12 one, of course, had to do with uniqueness. As I understand just  
13 from the presentation given today -- and I'm not a lawyer; I  
14 don't know anything really about the regulations here -- but it  
15 had something to do with the open court requirements. As I  
16 understand it, all of the properties along our block in that  
17 historic district would face the same open court requirements.  
18 I don't necessarily know or understand, I guess, from a layman's  
19 perspective why that would be unique.

20 In terms of the difficulty question for the  
21 owner, obviously, the one point that I guess is being stressed  
22 here is that it has to do with the size of the units when in  
23 fact a Certificate of Occupancy today, when, as I understand,  
24 it's being brought down to four.

25 Then in terms of just bearing either the

1 community or the neighborhood in general, the plan calls for the  
2 property -- I don't know about the property that I'm in -- right  
3 now has similar writeups, if not perhaps even more in that  
4 particular book. It was on the house tour this weekend in the  
5 DuPont Circle House Tour. "The Day the Earth Stood Still" movie  
6 was filmed there. So it does have some uniqueness, I suppose.

7 But it has a number of things, including a  
8 private patio in the back that right now has absolutely no -- no  
9 one is really able to look into that patio. It's quite pleasant  
10 and serene and quiet. Under the proposed modifications, there  
11 would, in fact, be a couple of patios in the back of Dr.  
12 Hansson's unit that would look into our unit.

13 Because Mr. Nelson and I are having the house  
14 refinanced this month, or trying to have it refinanced, we had  
15 an appraisal come out over the weekend, and on Sunday he  
16 indicated that if the work did go forward, there would be some  
17 degradation or some slight modification to the overall value of  
18 our property by having to brick up this nonconforming window, as  
19 was already pointed out, as well as kind of the privacy that we  
20 have in our back yard today.

21 So that's really all I have to say. As I have  
22 mentioned to Dr. Hansson all along, it's our primary investment  
23 vehicle. We've been in the neighborhood about a year and a  
24 half. In addition Dr. Hansson's property, which he's kept up  
25 actually extremely well, we have a church on the other side of

1 our property, The Church of the Holy City, I believe, and we do  
2 the landscaping at our cost for the church, just to kind of  
3 provide our goodwill to the neighborhood.

4 CHAIRPERSON GRIFFIS: Good. Thank you.

5 MR. CUNNINGHAM: Thank you.

6 CHAIRPERSON GRIFFIS: I do want to clarify that  
7 this is a variance, so there is a three-pronged test that needs  
8 to be met. That is, as you indicated, uniqueness, but I want it  
9 to be clear that there is an exceptional and practical  
10 difficulty or exceptional undue hardship that needs to be  
11 proven. Then the third, of course, would be that there would  
12 not be any detriment to the public good or substantially  
13 impairing the intent of the zoning map regulations, and that's  
14 just a paraphrase --

15 MR. CUNNINGHAM: It has nothing to do with the  
16 value of the property then, just the zoning?

17 CHAIRPERSON GRIFFIS: Well, I'd don't know if  
18 I'll digress in terms of all that, but let me just say,  
19 generally speaking, oftentimes there is testimony that goes to  
20 property values. I believe that that is being talked about with  
21 regard to not substantially impairing or having substantial  
22 detriment to the public good. So we take that under  
23 consideration, and anything you say, of course, in your  
24 testimony would. What I wanted to do was just clarify generally  
25 the variance test.

1 A question for you, sir: The images that are on  
2 the easel now, your property is being shown -- and I'm looking  
3 at a front elevation, obviously, from 16th Street of the  
4 Applicant's property, 1607. At the rear, which is the center  
5 photograph of 1607, to the right is your property, 1609.

6 MR. CUNNINGHAM: Precisely.

7 CHAIRPERSON GRIFFIS: And then if we go to the  
8 further photograph, there is actually, it looks like, an  
9 accessory garage structure?

10 MR. CUNNINGHAM: That's true.

11 CHAIRPERSON GRIFFIS: That's yours?

12 MR. CUNNINGHAM: That is.

13 CHAIRPERSON GRIFFIS: Okay. So your property  
14 extends all the way down. If I'm correct -- and correct me if  
15 I'm not -- it looks like that structure is connected to your  
16 primary structure?

17 MR. CUNNINGHAM: It is not, no.

18 CHAIRPERSON GRIFFIS: It is not?

19 MR. CUNNINGHAM: It is a separate --

20 CHAIRPERSON GRIFFIS: Is that totally open to the  
21 alley then?

22 MR. CUNNINGHAM: It is -- yes, the garage door,  
23 if I could point here, the garage door is here --

24 CHAIRPERSON GRIFFIS: Actually, what I'm talking  
25 about is the alley side wall.

1 MR. CUNNINGHAM: Oh, the alley is here. The  
2 alley is here, and the garage is here, and then that private  
3 area that I was talking about, our back garden, is between the  
4 garage and the actual --

5 CHAIRPERSON GRIFFIS: If you walked out from that  
6 photograph, taking that photograph, if you walked up straight to  
7 1607, on the right would be your property? There would be a  
8 brick walk that's a garage?

9 MR. CUNNINGHAM: Right.

10 CHAIRPERSON GRIFFIS: Is that garage, that wall,  
11 connected to your property by a physical wall? Actually, it may  
12 be easier if you just bring the photographs up.

13 Yes, this is it.

14 MR. CUNNINGHAM: That's the garage, and there is  
15 a wall that goes between the garage and my property.

16 CHAIRPERSON GRIFFIS: That is it; that is exactly  
17 my question. It was not clear, but it is clear when it's looked  
18 up. The garage is attached to your primary property with a  
19 brick wall, which looks to be roughly 7.5-feet high, and it has  
20 a topping of a wood fence --

21 MR. CUNNINGHAM: Right.

22 CHAIRPERSON GRIFFIS: -- totally enclosed  
23 structure that brings it up probably to, I'd say that's probably  
24 10, 10.5 feet. Okay.

25 Did everyone see that?

1 I didn't have any other questions. Any other  
2 questions?

3 (No response.)

4 MR. CUNNINGHAM: Thank you for your  
5 consideration.

6 CHAIRPERSON GRIFFIS: Actually, why don't you  
7 sit --

8 COMMISSIONER PARSONS: I have a question on this  
9 visit by your appraiser.

10 CHAIRPERSON GRIFFIS: Don't get up because you're  
11 going to have other things to do.

12 COMMISSIONER PARSONS: This nonconforming window,  
13 which could be blocked up in any event, whether we act or not --

14 MR. CUNNINGHAM: That's my understanding.

15 COMMISSIONER PARSONS: Did he seem to put some  
16 kind of value on that? Because it's nothing you can control  
17 really. A window is punched through to a bedroom or --

18 MR. CUNNINGHAM: It's to my office.

19 COMMISSIONER PARSONS: Oh, I see.

20 MR. CUNNINGHAM: And so it is a very well-lit  
21 office that would, in fact, a reduction in light in the room.

22 COMMISSIONER PARSONS: So is there another window  
23 in that room?

24 MR. CUNNINGHAM: There are other windows,  
25 absolutely.

1 COMMISSIONER PARSONS: I see.

2 MR. CUNNINGHAM: Yes, in fact, on two sides.

3 COMMISSIONER PARSONS: So I'm curious as to why  
4 he thought that might be detrimental.

5 MR. CUNNINGHAM: He just thought in terms of  
6 overall value and impact on the property, that particular piece,  
7 in addition to the privacy issue from the garden that's between  
8 the garage and the actual edifice itself.

9 COMMISSIONER PARSONS: There's often a difference  
10 between appraised value and desirability --

11 MR. CUNNINGHAM: Right, exactly.

12 COMMISSIONER PARSONS: -- and marketability. So  
13 I'm not quite sure where --

14 MR. CUNNINGHAM: And, in fact, his report isn't  
15 even due until -- well, the report on the existing structure is  
16 not expected to be released until sometime today, because we're  
17 just in the middle of trying to refinance, but he did mention  
18 that it would have a reduction in overall value.

19 COMMISSIONER PARSONS: Thank you.

20 CHAIRPERSON GRIFFIS: You indicated on 1609, I  
21 understand that your office would then be on the second level on  
22 the rear?

23 MR. CUNNINGHAM: Yes.

24 CHAIRPERSON GRIFFIS: This 1609 would be actually  
25 a close proximity -- we don't have drawings -- a mirror of 1607,

1 and that would put a courtyard on the other side of your  
2 property, is that correct? And that's how you get two sides  
3 with windows in your office?

4 MR. CUNNINGHAM: On the other side there's a  
5 church. On the other side of my property or?

6 CHAIRPERSON GRIFFIS: Do you have a courtyard?  
7 Is it similar in plan?

8 MR. CUNNINGHAM: Here's one side with windows  
9 here and then there are windows on the other side.

10 CHAIRPERSON GRIFFIS: Wait. I have a Sanborn  
11 right here. All right, we have Exhibit No. 6, is what we're  
12 looking at, which is the Sanborn map, which basically it shows  
13 the footprint, a view of that.

14 My question was, you indicated that you had light  
15 on three sides of your office. That would indicate to me that  
16 you have three unencumbered or unbuilt-up sides, and it does, in  
17 fact, show that here.

18 Very good. Mr. Smith, did you have questions for  
19 the -- well, we don't have cross of just testimonies. Well,  
20 then, we can move on, unless there's other questions. Yes?

21 MS. SANSONE: Mr. Chairman, a cross examination  
22 is allowed of persons that testify.

23 CHAIRPERSON GRIFFIS: Oh, great. Thank you. We  
24 have our lawyer here, which is always important when I'm in  
25 control

1 MR. SMITH: I have no questions.

2 CHAIRPERSON GRIFFIS: Great. Okay, then we would  
3 go to closing remarks.

4 MR. SMITH: I'd like to make the summary  
5 statement on behalf of the team. Section 3103.2 of the zoning  
6 regulations reads as follows:

7 "As set for the D.C. Code, Subsection 5-24-G-3,  
8 1981, and where by reason of exceptional narrowness,  
9 shallowness, or shape of a specific piece of property at the  
10 time of the original adoption of the regulation, or by reason of  
11 exceptional topographical conditions, or other extraordinary or  
12 exceptional situations or conditions of a specific piece of  
13 property, the strict application of any regulation adopted under  
14 the D.C. Code results in peculiar and exceptional practical  
15 difficulties to or exceptional and undue hardship upon the owner  
16 of the property, to authorize, upon an appeal relating to the  
17 property, a variance from the strict application as to relieve  
18 the difficulties or hardship."

19 The owner of this property has an extraordinary  
20 and exceptional situation hardship due to the fact that the  
21 subject property is in a high-density residential zone, and the  
22 buildings are actually built to about an R-5-B, which is a mid-  
23 level zone. The original intent of the R-5-D to have a wide  
24 court was contemplating lots that generally have a width of  
25 greater than 20 feet. In this case we have a lot that has a

1 width of 20 feet, and applying the strict zoning open court  
2 width to that would make it a 10-foot wide court, resulting in a  
3 10-foot wide building or a building extension. This, we feel,  
4 causes an undue hardship.

5 In addition, we have a hardship because the  
6 property is historic and we cannot remove part of the rear  
7 building to make the whole thing 10 feet because we talked to  
8 Steve Colcott about doing that, and he said, "You're not tearing  
9 down any 1880 building or part of it."

10 In addition, due to the fact the building is  
11 existing -- I just covered that -- falls under the jurisdiction  
12 of D.C. law 2-144, it is contributing in nature to the historic  
13 district.

14 The Applicant is seeking relief from Subsection  
15 406.1 for courts. Our proposal would not increase the size of  
16 the building for the purposes of percent lot occupancy  
17 calculations or any other calculation. It only extends the  
18 nonconformity of the open court.

19 The existing building -- there will be no adverse  
20 impacts created due to the addition which is the subject of the  
21 application today except for the one window of the adjacent  
22 property, which we have a matter of right to cover up at any  
23 rate because it is a illegal window.

24 Immediately surrounding this building on the  
25 northern and southern sides are similar buildings with similar

1 court conditions and lot buildouts. There are no neighbors  
2 which will be blocked from available sunlight except for the one  
3 window we before mentioned. There will be no noise created as a  
4 result of this project. There will be no air blockages or  
5 airflow modifications to adjacent properties as a result of this  
6 proposal.

7 And, finally, returning to the zoning  
8 regulations, Section 3103.2, which further states: "provided  
9 that relief can be granted without substantial detriment to the  
10 public good without substantially impairing the intent, purpose,  
11 and integrity of the zone plan as embodied in the zone  
12 regulations and map."

13 The proposal before us today is for a conforming  
14 use as a four-story residence in an R-5-D zone. While the  
15 building itself is not conforming due to the fact that it has a  
16 nonconforming court, extension of the nonconformity will cause  
17 no public harm, should this proposal be granted, and the intent,  
18 purpose, and integrity of the zone plan as embodied in the zone  
19 regulations and map will not be harmed in any way."

20 For the record, we would also like to concur and  
21 recognize that ANC-2B, as well as other surrounding neighbors  
22 and property owners and the Historic Preservation Review Board,  
23 by the action of the ANC and through the citizens, all agree.

24 Finally, should the Board consider approving our  
25 application today, we would ask respectfully we could have a

1 summary order bench decision.

2 CHAIRPERSON GRIFFIS: Discussion of the Board?

3 MEMBER LEVY: I would if I could ask for  
4 clarification on the window of the adjoining property. I'm a  
5 bit confused on illegal versus nonconforming. I need some  
6 clarity on that from somebody.

7 CHAIRPERSON GRIFFIS: I can give you pure  
8 speculation, but that may not -- I think she's looking for  
9 something.

10 MS. SANSONE: Mr. Chairman, I believe the  
11 distinction is that a nonconformity -- well, as used in the  
12 zoning regulations, a nonconforming structure is one that was  
13 legal at the time it was constructed, but subsequently the  
14 zoning regulations were adopted or amended, and now that  
15 structure no longer meets the requirements of the new  
16 regulations. An illegal structure, illegal window is one that  
17 was built without ever complying with the law that was in effect  
18 at the time that it was built.

19 I don't know if nonconforming here is being  
20 perhaps used in connection with the Building Code rather than  
21 the zoning regulations. I'm not really sure what the Applicant  
22 meant when they used the term "nonconforming" to discuss the  
23 window.

24 CHAIRPERSON GRIFFIS: We can get clarification on  
25 that because it's my understanding that it's actually the

1 Building Code.

2 MR. SMITH: That's correct. We misused the word.

3 I think we meant to say "illegal" window instead of a  
4 nonconforming window.

5 CHAIRPERSON GRIFFIS: Right. Does that clarify  
6 it for you, Mr. Levy?

7 MEMBER LEVY: I guess I would just add to that  
8 that the Applicant's representative, I believe -- correct me if  
9 I'm wrong -- stated that you could cover that window up as a  
10 matter of right because it's an illegal window. Is that, Mr.  
11 Smith, what you said?

12 MR. SMITH: That's correct. I've had several  
13 other cases where this has happened.

14 MEMBER LEVY: So I guess I would ask --

15 MR. SMITH: Because the window is on the party  
16 wall. It's on the property line. It's not a window that has a  
17 small bit of property in front of it or anything. It's actually  
18 encroaching upon the property, since it's a party wall, half of  
19 the window is actually the Hansson property and the other half  
20 of the window opening is the 1609 property.

21 So because party line windows are not allowed,  
22 then I've had a couple of cases where developers have just  
23 bricked them up, and there's no action or condition that the  
24 person next door could do anything about it, absent a covenant  
25 which might allow something like that to happen.

1 MEMBER LEVY: Okay, thank you. Thanks.

2 CHAIRPERSON GRIFFIS: Anecdotally, I would say  
3 that buildings oftentimes that are built on property lines,  
4 large commercial buildings, that do put in some sort of  
5 fenestration put it in at their own risk, knowing when a new  
6 building, an adjacent building, goes up, if it's built to its  
7 maximum, it will get covered up, but they may, in fact, enjoy  
8 the fenestration and windows for the time-being if there's an  
9 empty law.

10 VICE CHAIRPERSON RENSHAW: Just a question: Did  
11 Mr. Cunningham purchase his property with the window in that  
12 back room? And he shakes his head yes.

13 CHAIRPERSON GRIFFIS: Questions or any other  
14 comments?

15 (No response.)

16 Motions? Direction? Comments?

17 (No response.)

18 Are we prepared to decide this today? I note a  
19 bit of hesitancy on the Board.

20 COMMISSIONER PARSONS: It's just that nobody  
21 wants to go first, so I will.

22 (Laughter.)

23 I would very simply move approval of this  
24 application.

25 VICE CHAIRPERSON RENSHAW: I'll second.

1 CHAIRPERSON GRIFFIS: Very good. Discussion?

2 (No response.)

3 Elaboration?

4 (No response.)

5 Let me just jump on it then. Of course, we have  
6 noted that this is a variance from nonconforming structure  
7 provisions under Subsection 2001.3 and then a variance from open  
8 court requirements under Section 406 to allow an addition to an  
9 apartment house at 1607 16th Street, Northwest.

10 I am in agreement with Mr. Parsons and Ms.  
11 Renshaw, who has seconded the motion, that the variance case  
12 has been met in terms of uniqueness, and there are several and  
13 the case will stand, but let me briefly reiterate, first of all,  
14 the historic nature of the building in the District that it's  
15 in.

16 Also, I think Ms. Hicks brought up an excellent  
17 point of the condition of the architectural detailings.  
18 Although one could say that all the adjacents have architectural  
19 details, this has unique to it architectural details, and their  
20 condition, which I have not heard of before, is a unique aspect,  
21 but I encourage it, because it is true, that condition of some  
22 of the historic structures needs to be taken into account.

23 The hardship in terms of one building to a matter  
24 of right with an historic property within a historic district,  
25 and also the usability of what would be allowed based on the

1 conditions of the site, and, most importantly, on the historic  
2 Board and staff, can be very practically difficult, frankly.

3 The adversity, I think we have heard today from  
4 the neighbor on the adjoining property of perhaps some issues  
5 that I would hope would not come to fruition as stated in terms  
6 of the value of the adjacent property or the loss of privacy.  
7 Looking at the drawings, I think the amount of privacy that will  
8 be maintained by the adjoining property would be more than  
9 satisfactory, and I think the impact on the back part, and the  
10 addition actually is an improvement on the condition that's  
11 showing in the photographs at this point.

12 Also, which was indirectly stated, but I think it  
13 ought to be important to say in terms of adverse impact,  
14 reducing the number of units in the building, reducing the  
15 density of the property, I think is also not an adverse, but  
16 actually a positive condition of the property and the further  
17 use of it.

18 Most importantly, I think, which really goes to  
19 this -- and then I'll stop -- the light and air aspect of non-  
20 adverse conditions and such that are often talked about, this is  
21 building upon a courtyard that essentially already is there in  
22 its nonconformity. It is not, in my mind -- and I'm not talking  
23 about regulations, but expanding upon or, frankly, making a  
24 worse a condition that already exists, and therefore, I think  
25 the case has been made.

1                   Perhaps that's too wordy, but if there's not  
2 anything else, I would call for all those in favor.

3                   (Chorus of ayes.)

4                   And opposed?

5                   (No response.)

6                   Set for the vote?

7                   MS. BAILEY:    Mr. Chairman, before I call the  
8 vote, I do have a question, if it's okay.

9                   CHAIRPERSON GRIFFIS:  Yes.

10                  MS. BAILEY:  And that is, the drawings that were  
11 discussed to reflect the comments of HPRB, the ones that are on  
12 the easel, are those drawings in the record, Mr. Chairman?

13                  CHAIRPERSON GRIFFIS:  Yes, I believe A-1 is on  
14 the easel right now, and we have that in our set.  We would just  
15 ask the Applicant just to confirm the fact that the presentation  
16 exhibits are the same as submitted.

17                  MR. SMITH:  The drawings in your package and the  
18 drawings before you on the easel match.

19                  CHAIRPERSON GRIFFIS:  Great.  And then the point  
20 -- I think you brought up HPRB -- the point in fact, and now I'm  
21 getting tired, but the report that we have in front of us from  
22 HPRB was not based on the plans that we have in front of us.  
23 Therefore, the Applicant has testified to the fact that they  
24 have made changes in the plans that are now acceptable to the  
25 Historic Preservation Board.

1 MS. BAILEY: Thank you, Mr. Chairman.

2 The vote is recorded is 4-0-1. The motion was  
3 made by Mr. Parsons. Mrs. Renshaw seconded it. Mr. Griffis, Mr.  
4 Levy in agreement, and the third mayoral appointee not present,  
5 not voted. Bench decision, approved, summary order.

6 CHAIRPERSON GRIFFIS: Thank you very much.

7 MR. SMITH: Thank you. Have a nice rest of the  
8 day.

9 CHAIRPERSON GRIFFIS: Indeed. This, then,  
10 concludes, if I'm correct, our morning session, October 23rd.

11 (Whereupon, the foregoing matter went off the  
12 record at 12.51 p.m. and went back on the record at 1:40 p.m.)

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(1:40 p.m.)

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. This is the afternoon session on the 23rd of October. The hearing will please come to order.

This is the public hearing of the Board of Zoning Adjustments for the District of Columbia. My name is Jeff Griffis, Chairperson. Joining me today is Ms. Anne Renshaw, Vice Chair; David Levy, representing the National Capital Planning Commission, and Ms. Carol Mitten, representing the Zoning Commission.

Copies of today's hearing are available to you. They are located to my left near the door where you came into the room.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at 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 and procedure for special exceptions and variances is, first, the statement of witnesses of the Applicant; two, the government reports, including Office of Planning, Department of Public Works, et cetera; third, report of the Advisory Neighborhood Commission; fourth, parties and persons in support; fifth, parties and persons in opposition,

1 and, sixth, closing remarks by the Applicant.

2 This afternoon we will be doing a continuation of  
3 an appeal from last week, and I will get to that specifically  
4 where we left off.

5 Cross examination of witnesses is permitted by  
6 the Applicant or parties. The ANC within which the property is  
7 located is automatically a party in the case.

8 The record will be closed at the conclusion of  
9 each case except for any material specifically requested by the  
10 Board, and the staff will specify at the end of the hearing  
11 exactly what is expected.

12 The Sunshine Act requires that the public hearing  
13 on each case be held in the open before the public. The Board  
14 may, consistent with its rules and procedures under the Sunshine  
15 Act, enter into Executive Session during or after the public  
16 hearing on a case for purposes of reviewing the record or  
17 deliberating on the case.

18 The decision of the Board in these contested  
19 cases must be based exclusively on the public record. To avoid  
20 any appearance to the contrary, the Board requests that persons  
21 present not engage the members of the Board in conversation.

22 Please turn off all beepers and cell phones, an  
23 excellent reminder, at this time, so as not to disrupt the  
24 proceedings.

25 The Board will make every effort to conclude

1 public hearings as near as possible to 6:00 p.m. If any  
2 afternoon cases are not completed by 6:00 p.m., the Board will  
3 assess whether it can complete the pending cases or cases  
4 remaining on the agenda.

5 As some of you may recall that were here last  
6 week, we have made a special provision to continue the appeal,  
7 No. 16764 today, and we will be hearing all the cases in the  
8 afternoon, and hopefully will have the time to do so.

9 At this time do we need to call the appeal or  
10 shall I just talk about where we left off and jump right into  
11 it.

12 SECRETARY PRUITT: Technically, we don't need to  
13 call the appeal because you're just continuing it.

14 CHAIRPERSON GRIFFIS: Let's do that in the most  
15 efficient way to save up some time. I will just give a brief  
16 overview.

17 At the conclusion of last week's hearing of the  
18 representatives of the Zoning Administrator's Office completed  
19 their presentation to the Board. When the hearing resumes  
20 today, at this time Mr. Draude is to continue his cross  
21 examination of the government officials with the ZA's office.  
22 Thereafter, we will follow the regular scheduled programming.  
23 The Intervenor will present their case, and we'll go from there.

24 Mr. Brown, I believe you wanted to say something  
25 indicated by that mike being turned on.

1 MR. BROWN: Yes, Mr. Chairman. Patrick Brown  
2 for the Intervenor.

3 I'd like to briefly renew before the Board my  
4 motion to dismiss on the timeliness issue. The Applicant or the  
5 Appellant, Mr. Grinstead, has presented his case-in-chief.  
6 Again, accepting that and having had the opportunity to review  
7 the transcript, which hopefully the Board has also, he lays out  
8 a chronology of events that, accepting that on its face, that  
9 appeared between October of 2000, when he had full knowledge of  
10 what was being built there and actually reviewed the plans, and  
11 in fact then a permit had been issued and construction had  
12 started, and then waited until June 28th of 2001, eight months  
13 later, to file the appeal.

14 Under the Waste Management case which I provided  
15 the Board a copy of last week, because it I believe remains  
16 unpublished, the Court of Appeals' latest ruling sets the two  
17 months as bright-line test for the reasonableness standard,  
18 barring something that affirmatively prevented the Appellant  
19 from filing the appeal.

20 In this case he chose not to file the appeal and  
21 pursue avenues through DCRA, but the Court again addressed it  
22 very clearly, that just because you thought some other avenue  
23 was better doesn't excuse you from meeting your burden to file a  
24 timely appeal.

25 Again, it's not a close call, again, October 2000

1 to June 28th of 2001, during the period of time -- and this goes  
2 to laches, which is a defense as well for my client -- this  
3 house was built, and the house is built now. But certainly by  
4 the time the appeal was filed on June 28th, Mr. Wahabi will  
5 testify that the house was completed and all that was being done  
6 at that point was the interior trim and finish work. So that on  
7 reliance on the permits that were issued, without any knowledge  
8 that this matter was still up in the air, he built the house  
9 that's finished and ready, quite frankly, to be sold or occupied  
10 at this point.

11 So I think on timeliness it's as clear as I've  
12 seen and very hard, impossible in my view, for the Board to  
13 ignore the timeliness argument and the prejudice that my client  
14 has suffered, having expended hundreds of thousands of dollars  
15 to build a house, only to find out in the latter stages that  
16 it's subject to this appeal.

17 So I'd like, and I think it's appropriate, to  
18 revisit the timeliness issue, which, as the Court of Appeals  
19 makes clear, removes jurisdiction from the Board, that an  
20 untimely appeal is one that the Board has no jurisdiction to  
21 decide. Again, taking the facts as they exist in the record  
22 already, the Board would be hard-pressed to decide otherwise.

23 CHAIRPERSON GRIFFIS: Thank you, Mr. Brown. So  
24 just to clarify, you're asking us to entertain your Summary of  
25 Opposition, which was actually submitted and is Exhibit 24, for

1 Board members, and it's the first three, essentially the first  
2 three issues of that, which is -- and I will read:

3 "This appeal was untimely and must be dismissed  
4 for lack of jurisdiction. Second, this appeal is barred by the  
5 doctrine of estoppel and must be dismissed. And, third, appeal  
6 is barred by the doctrine of laches and must be dismissed."

7 Mr. Brown, I think that we would indulge that  
8 request to look at this, and I would open up to the Board to get  
9 a feel and reaction at this point on which direction we want to  
10 take.

11 MR. DRAUDE: Mr. Chair?

12 CHAIRPERSON GRIFFIS: Yes?

13 MR. DRAUDE: I would like to be heard and have an  
14 opportunity to brief it before you make a decision, but whenever  
15 you think that's appropriate.

16 CHAIRPERSON GRIFFIS: Good. Thank you. I  
17 believe you made that request last week that I think we're all  
18 aware of.

19 Board members?

20 MR. BROWN: Mr. Chairman, can I just -- the  
21 three issues you've properly identified, timeliness, laches, and  
22 estoppel, I think taking them first and foremost, the timeliness  
23 issue, which again goes to the Board's jurisdiction or right to  
24 hear this case, start there, and I think that's a simpler  
25 evaluation. Then, obviously, in the unlikely event it should be

1 necessary, we can look at the other issues, laches and estoppel.

2 CHAIRPERSON GRIFFIS: Very well.

3 Ms. Mitten?

4 COMMISSIONER MITTEN: Mr. Chairman, on the issue  
5 of timeliness, one of the things that concerns me in the Motion  
6 to Dismiss is the circumstances that led up to the filing of the  
7 appeal. As was laid out, and I don't think is disputed, Mr.  
8 Grinstead had made numerous attempts, some in writing and some  
9 by making telephone calls, to get some kind of response from  
10 DCRA. I don't think that it was clear that the issues that he  
11 had raised had not been addressed until the letter was sent  
12 finally from DCRA on May 14th, 2001.

13 So, in terms of this lengthy period of time that  
14 seems to have lapsed, I don't think it was clear that the issues  
15 that Mr. Grinstead had raised still remained until May 14th, and  
16 it was only at that time that it was also made clear by the  
17 letter from Denzil Noble what Mr. Grinstead's recourse would be.

18 So I don't think that it really is this large  
19 expanse of time. I think he truly became notified that his  
20 concerns had not been addressed on May 14th.

21 CHAIRPERSON GRIFFIS: Thank you.

22 MEMBER LEVY: I would agree with Ms. Mitten,  
23 specifically on the point that I don't believe -- that I think  
24 that when Mr. Grinstead was clear of the issues at hand, he  
25 acted in a fairly timely fashion to take action, and that would

1 be after the May 14th letter.

2 VICE CHAIRPERSON RENSHAW: And, Mr. Chairman, I  
3 find it troubling that it took DCRA so long to answer two  
4 letters that had been sent to them, one dated October the 7th  
5 and the other February 19th, and the response was dated on May  
6 the 14th. You can understand, or one can understand, that a  
7 situation that is troubling the abutter, the abutter would take  
8 a course of action that would be the least onerous to the  
9 abutter, and that is to try to get some satisfaction from the  
10 permitting agency as to what are the problems here and get some  
11 recognition that there are matters to address.

12 I feel that Mr. Grinstead had made really a good  
13 effort in trying to get DCRA to react in a timely fashion. The  
14 response just was not forthcoming. So I can well understand a  
15 delay and do not feel that this Motion to Dismiss is warranted.

16 CHAIRPERSON GRIFFIS: Thank you very much. I  
17 think that's a fairly clear polling, I must say, of the Board.

18 MR. BROWN: Mr. Chairman, could I interject?

19 CHAIRPERSON GRIFFIS: Briefly, yes, Mr. Brown.

20 MR. BROWN: And I understand the points each of  
21 the Board members are making, but the Court of Appeals, who we  
22 all have to pay attention to, measures not from when DCRA  
23 responds to his letters or he's satisfied that, in fact, all  
24 those issues have been addressed. In fact, their standard is  
25 "when the party appealing" -- and I'm quoting -- "is chargeable

1 with notice or knowledge of the decision complained of."

2 In this case he's filing an appeal of the  
3 issuance of this building permit on October 13th, 2000. It's  
4 clear -- and we've got to listen to the Court of Appeals -- that  
5 he knew the building permit had been issued and he's chargeable  
6 with that knowledge in October of 2000, given his correspondence  
7 and his testimony. So that's the standard that needs to be  
8 applied.

9 I'm not making excuses or attempting to make  
10 excuses for the fact that DCRA was not more responsive. That's,  
11 quite frankly, and later on in the decision the Court of Appeals  
12 in a little bit different context makes it clear that that's  
13 irrelevant. That he chose to hook his wagon to DCRA rather than  
14 the appeal process doesn't excuse him from meeting his burden.

15 Then looking at it in the practical sense, we're  
16 giving every benefit, it sounds like, to Mr. Grinstead, to the  
17 extreme prejudice of my client, who has to wait around eight  
18 months, spend hundreds of thousands of dollars building a house  
19 without any knowledge that this is coming down the road. And,  
20 lo and behold, he's done with this house, and the appeal is  
21 filed, and it's been many months since the appeal was filed.  
22 He's sitting still in limbo, having invested a large sum of  
23 money.

24 So I think focusing in on when Mr. Grinstead was  
25 chargeable, had notice, and that was certainly October of 2000

1 that the city had issues a building permit, and not when he had  
2 all his questions answered by DCRA.

3 CHAIRPERSON GRIFFIS: Right, I think that's well  
4 said. Frankly, I would ask Ms. Sansone if she had comments on  
5 that cited court case, and with the fact that BZA rules and  
6 procedures don't specify a specific time limit on appeals.

7 MS. SANSONE: Yes, Mr. Chairman. I think Mr.  
8 Brown's correctly stated the law in that the Board should look  
9 at when Mr. Grinstead had knowledge, or reasonably should have  
10 had knowledge, that DCRA had made a decision. Now the question  
11 is: Is the decision the issuance of the permit or did DCRA's  
12 actions somehow lead Mr. Grinstead into thinking that DCRA might  
13 take some follow-up action on this permit? At what point did  
14 DCRA's decision become final such that Mr. Grinstead could know  
15 he should file an appeal or a reasonable person should know that  
16 was the point at which he should file the appeal?

17 Now what's clear from the Waste Management case  
18 is that you cannot pursue other avenues of trying to resolve  
19 your concerns, such as private negotiations or going to the D.C.  
20 Council or trying to achieve a political solution, if your  
21 remedy is really to appeal. But here Mr. Grinstead was trying  
22 to arrive at some final conclusion with DCRA, and that's really  
23 for the Board to determine, was this a reasonable course of  
24 action? At what point should he have known that DCRA's decision  
25 on that permit was really the final decision, such that the

1 appeals period of time, which the Court has indicated should be  
2 about 60 days, should begin to run?

3 CHAIRPERSON GRIFFIS: Thank you very much, and I  
4 believe that Ms. Mitten spoke to that issue when she indicated -  
5 - and correct me if I'm wrong -- the letter back from Mr. Noble  
6 that was May 14th, I believe, that indicated that the property  
7 was not in any violation, that the recourse would be for an  
8 appeal. Is that correct?

9 COMMISSIONER MITTEN: Yes, and I think what's  
10 complicating the circumstances is that we have a situation where  
11 it's not uncommon when issues are raised about construction,  
12 that there are sometimes additional permits that are issued to  
13 correct situations that are called to the attention of the  
14 Zoning Administrator. So it wouldn't be, I don't think it would  
15 be out of the question that it would be an expectation, even  
16 after a permit had been issued, that if there was an additional  
17 concern raised and the Zoning Administrator felt that that  
18 concern was legitimate, that there would be some kind of action  
19 taken. I think it's been fairly common in the dealings of this  
20 Board that we've seen those kinds of circumstances.

21 Then we have the issue in February where a Stop  
22 Work Order, in fact, was issued. So there's all these things  
23 that make people think that the actions that they're taking  
24 through DCRA are somehow going to bear some fruit of some kind,  
25 and it really isn't until May 14th that it's clear that that

1 course of action has not borne any fruit.

2 So, I mean, I don't know how much of this really  
3 just arises out of a circumstance in this city that, once a  
4 permit is issued, that it's sort of like everybody agrees that  
5 that's it; we've made our final decision, because remedial  
6 permits or corrective permits are often issued. So I think that  
7 that bears on this decision.

8 CHAIRPERSON GRIFFIS: I think that's very well  
9 said. I'd also want to just perhaps round out the perspective,  
10 I think Mr. Brown has clearly stated that we don't want to --  
11 well, I'm extrapolating, in fact, on his statement that we don't  
12 want to get into a situation where appeals are made whenever it  
13 comes to be convenient or for whatever concern it is, and  
14 therefore, any sort of development is heavily burdened and  
15 perhaps could get appealed and appealed and appealed on  
16 different notions. Certainly that's not a circumstance or  
17 environment that we're trying to create here.

18 But I tend to agree that timeliness of actions  
19 and the directness of action was being pursued on this, and that  
20 would be the last I say. I would entertain direction from Board  
21 members if they want to continue discussion on this, table it,  
22 or other.

23 COMMISSIONER MITTEN: Mr. Chairman, I would move  
24 that we deny the motion to dismissed based on the timeliness  
25 issue in this case.

1 VICE CHAIRPERSON RENSHAW: Second.

2 CHAIRPERSON GRIFFIS: Discussion?

3 (No response.)

4 All in favor?

5 (Chorus of ayes.)

6 Opposed?

7 (No response.)

8 MR. BROWN: Thank you.

9 CHAIRPERSON GRIFFIS: Okay, thank you, Mr. Brown.

10 All right, we can commence then where we left  
11 off, and that would be in the cross examination, I believe, of  
12 the government officials.

13 And while we have a brief moment of silence here,  
14 I will fill it. As we left off last week, I know that we were  
15 concerned with time, and I just want to underscore, say it  
16 again, we have an incredible schedule this afternoon, two very  
17 heavy cases that follow this one. We have gone out of our way  
18 to reschedule this immediately for the following week. So that  
19 I would just request everybody be expeditious in their time,  
20 take what is absolutely needed, but let us proceed with great  
21 diligence on this.

22 I believe as we left off, Mr. Draude, that you  
23 indicated, with an extra week, you might even become more  
24 concise with some of your cross examination. So be that as it  
25 may --

1 MR. DRAUDE: Well, I've limited it down to four  
2 subjects --

3 CHAIRPERSON GRIFFIS: Fantastic.

4 MR. DRAUDE: -- three of which I think are fairly  
5 short.

6 CHAIRPERSON GRIFFIS: I thank you very much.

7 CROSS EXAMINATION OF MR. BELLO

8 BY MR. DRAUDE:

9 Q Mr. Bello, you have before you the wall test  
10 report that we previously marked as Exhibit 25, the one that has  
11 your handwriting on it?

12 A Yes, sir.

13 Q All right. You gave some testimony -- this is an  
14 irregularly-shaped lot, as you see, and I think I asked you a  
15 question about, given that, how do you, under the zoning  
16 regulations, how do you measure the width of that lot? And I  
17 believe you gave two possible alternatives. The first was to  
18 simply measure it across the front of the lot at the street, is  
19 that correct?

20 A That's correct.

21 Q All right. What is that dimension using that  
22 survey?

23 A It's 39.27.

24 Q Feet, 39.27 feet?

25 A That's correct.

1 Q And I believe the second alternative you gave as  
2 a way to measure the lot width was to measure an average. Don't  
3 let me put words in your mouth. Is that what your testimony  
4 was?

5 A That's correct.

6 Q All right, using that Wall Test Survey, can you  
7 tell me what the lot width is using that method?

8 A Well, that will be difficult to do right here,  
9 but, obviously, I think that previous testimony points to the  
10 fact that --

11 Q What average are you talking about?

12 A I think previous testimony points to the fact  
13 that this is an exercise that the Zoning Administrator would  
14 have undertaken before issuing a consent letter for the  
15 buildability of the lot.

16 Q Well, that may or may not be true. My question  
17 is to you, as the Zoning Administrator's representative here  
18 under oath, tell me how you measure the lot width of this  
19 irregular lot.

20 A Well, one process that we employ is to draw a  
21 straight line across the width of the lot at 10-foot intervals,  
22 add up the total linear distance of those lines and divide by  
23 the number of lines.

24 Q All right. Looking at Sheet A-3 of the permit  
25 drawings, which is up on the easel, it's titled "Front

1 Elevation," I believe that you testified that when you reviewed  
2 these drawings, you determined, in addressing the question of  
3 height, you scaled this drawing, and you scaled from the height-  
4 measuring point to the peak of the roof. Is that what you did?

5 A Well, the height measurement as allowed under the  
6 regulations is to the ceiling of the top story. I only  
7 mentioned that with respect to considering the worst-case  
8 scenario.

9 Q Well, I didn't ask you whether that's the way you  
10 should do it under the Zoning Act. You did, in fact, do that?  
11 You testified that you did, in fact, scale from the height-  
12 measuring point to the peak of the roof, correct?

13 A Yes, from the measuring point allowed.

14 Q All right. Will you show us on the drawing  
15 that's on the easel, and take that microphone with you, the  
16 height-measuring point that you used?

17 A That will be the top of the elevator dome area --

18 Q I would ask you to go to the easel, point to  
19 that, take that microphone with you, take a pencil with you, and  
20 mark the height-measuring point that you used.

21 (Witness walks to easel.)

22 A That will be a point right here (indicating).

23 Q All right, and can you tell us by scaling that  
24 draw what is the height to the peak of the roof from that point?

25 A You'd be looking at about 36 feet approximately.

1 Q All right, thank you.

2 You gave some testimony regarding the off-street  
3 parking requirements. I believe you said that the garage was  
4 excavated to comply with the off-street parking requirements.  
5 Do you recall that testimony?

6 A Yes, sir.

7 Q Do the zoning regulations allow an additional  
8 story on a building to meet the off-street parking requirements?

9 A No, it does not.

10 Q Let's turn to the question of the front of the  
11 building. The zoning regulations say that the height of a  
12 building in this District is measured from the middle of the  
13 front of the building. I know you testified about this, and Mr.  
14 Johnson said a few things about this, but I'm going to ask you  
15 again to tell me, what is your definition of the front of the  
16 building?

17 A The consistent interpretation has been that the  
18 front of the building would be the entire width of the structure  
19 on the lot.

20 Q All right. So the front of the building is  
21 measured at the widest point of the structure, is that correct?

22 A The front of the building is the entirety of the  
23 width of the building.

24 Q Measured at what point? The front, the back, or  
25 the widest point?

1 A That would be the front.

2 Q Well, doesn't that beg the question?

3 A Perhaps I'm misunderstanding your question. If  
4 you would repeat the question -- the front of the building spans  
5 the entire width of the existing structure or the proposed  
6 structure.

7 CHAIRPERSON GRIFFIS: Perhaps you could rephrase  
8 the question.

9 BY MR. DRAUDE:

10 Q Well, just in case you can't see the site plan,  
11 Mr. Bello, I will tell you that the facade of the building that  
12 faces the street generally faces north. There's a north arrow  
13 on the site plan. Do you recall that? Would you like to check  
14 that?

15 A The front of the building -- I'm not sure that I  
16 see the north arrow, but the front of the building would be --

17 Q Well, just go up there and look at it. I'm going  
18 to refer to that as the north facade. That's the only reason  
19 I'm asking it.

20 A That's fine, if the facade is --

21 Q The part of the building that is on the side of  
22 the building nearest the street is the north facade, if you'll  
23 just accept that as my way of describing things, and the  
24 opposite facade is the south facade. All right? Why is the  
25 north facade the front of the building?

1           A           I think you'd have to define for me what you  
2 refer to as the north or the south facade.

3           Q           I just did. The north facade is the part that  
4 closest to the street. Why is that the front rather than the  
5 south facade being the front?

6           A           Because that would not span the entirety of the  
7 width of the structure.

8           Q           Is the north facade part of the front of the  
9 building?

10          A           I'm failing to follow your questioning, quite  
11 frankly.

12                   MR. BROWN: Mr. Chairman, I object. I mean, Mr.  
13 Draude's inserting new terms and concepts, and I think we're  
14 getting pretty far afield of what the zoning regulations talk  
15 about, which is the front and the rear.

16                   MR. DRAUDE: Well, that's what I'm asking him  
17 about, the front.

18                   CHAIRPERSON GRIFFIS: If I'm following your line  
19 of questioning, you're trying to establish how it was indicated  
20 that that was the front facade?

21                   MR. DRAUDE: That's correct, or a part of the  
22 front facade, as opposed to the south facade, which is described  
23 on these drawings as being the rear. Now why is that? Because  
24 the south facade is just as wide as what Mr. Bello contends is  
25 the front of the building.

1 CHAIRPERSON GRIFFIS: I think if you could  
2 perhaps clarify a little bit, because, frankly, you're losing me  
3 a little bit in terms of connecting a width, if I follow you,  
4 connecting a width to a primary or front facade, and maybe  
5 that's where you're trying to go with it, maybe not, but --

6 MR. DRAUDE: That's not where I'm -- all I'm  
7 trying to establish, and maybe I'll just establish this, since  
8 Mr. Bello doesn't seem to understand --

9 CHAIRPERSON GRIFFIS: Well, you need to ask him.

10 BY MR. DRAUDE:

11 Q Under the zoning regulations and common sense --

12 MS. BROWN: I'm going to object to Mr. Draude's  
13 testimony here.

14 CHAIRPERSON GRIFFIS: Indeed, I was --

15 MR. DRAUDE: All right, well, I'll go back to  
16 asking questions.

17 CHAIRPERSON GRIFFIS: Well, I would phrase it in  
18 a question certainly, sir, for cross examination.

19 BY MR. DRAUDE;

20 Q All right, Mr. Bello, you see that there's a  
21 chimney? Let me ask you, what is the width of the front of the  
22 building? And you may look at the site plan or whatever other  
23 drawings you wish to.

24 A It's 4 to 6 feet.

25 Q All right.

1 A It's 4 to 6 feet.

2 Q You see that there's a chimney on the west side  
3 of the building at the rear of the building?

4 A Yes, sir.

5 Q Does the side of that chimney, which is parallel  
6 to the 11-foot dimension, the 11-foot facade on the rear wing,  
7 does that side of that chimney count as part of the front of the  
8 building?

9 A No, sir, because the chimney is treated as a  
10 projection allowed into a side yard.

11 Q Well, if you'd want to go look again, you'll find  
12 that that chimney does not project into the side yard.

13 A My point is that it's a projection.

14 Q And how does that differ from the rear wing,  
15 which itself is a projection?

16 A The rear wing can hardly be referred to as a  
17 projection because it's an essential part of the building  
18 proper.

19 Q Well, why is it essential as opposed to the  
20 chimney? Isn't it simply some matter of what the architect drew  
21 up?

22 A I think it's essential because it's part of the  
23 structure that provides shelter. If you'll refer to Section  
24 199, the definition of what constitutes a building is clearly  
25 delineated.

1 Q All right. Well, just to finish that, there's  
2 also a chimney on the east side of the building, which is not  
3 shown on the site plan, but you're aware that it is shown on the  
4 plans, correct?

5 A Correct.

6 Q And would your testimony regarding that chimney  
7 and its relationship to whether is or is not part of the front  
8 of the building be the same as your testimony regarding the west  
9 chimney?

10 A Absolutely.

11 MR. DRAUDE: I have no further questions.

12 CHAIRPERSON GRIFFIS: Thank you very much.

13 MR. BROWN: Mr. Chairman, I have a couple of  
14 quick questions.

15 CROSS EXAMINATION OF MR. BELLO

16 BY MR. BROWN:

17 Q In your earlier testimony last week, Mr. Bello,  
18 you indicated that, quote, "This permit application has been  
19 given very strict scrutiny", end quote, as a result of the  
20 inquiries that were made, is that correct?

21 A I believe that I personally filtered calls before  
22 we issued any building permit for that site.

23 Q So your testimony would be that this permit got  
24 more than would be typical level of scrutiny for a single-family  
25 dwelling permit?

1 A Absolutely, sir.

2 Q As to the lot width issue, you indicated in your  
3 testimony that there was a zoning confirmation letter that the  
4 Zoning Administrator, Mr. Johnson, signed, is that correct?

5 A That is correct.

6 Q And in that letter, was the lot width confirmed  
7 as greater than 60 percent -- 60 feet? Excuse me.

8 A On average, yes.

9 Q Yes, on average.

10 A Yes.

11 Q Also in that letter, the lot area being less than  
12 7500 but greater than 80 percent of that number was also  
13 confirmed in that letter?

14 A That is correct.

15 CHAIRPERSON GRIFFIS: Mr. Brown, for my  
16 clarification, what letter are you referring to?

17 MR. BROWN: He referred to it in his testimony.

18 I'm going to introduce it as an exhibit in our testimony.

19 CHAIRPERSON GRIFFIS: Great, as long as we get  
20 that in, that would be helpful.

21 MR. BROWN: Yes.

22 BY MR. BROWN:

23 Q And there seemed to be some confusion. When you  
24 indicate that measuring the height of the building from the  
25 finish grade, the center of the middle, the middle of the front

1 of the building to the peak of the roof is worst-case scenario,  
2 are you indicating that by definition the top of the ceiling of  
3 the top floor has to be somewhere below, in linear measurement  
4 shorter than the peak of the roof?

5 A That's correct and less than 40 feet.

6 Q So that if, in fact, measuring from finish grade  
7 to the peak of the roof is less than 40 feet, by definition it  
8 follows that from grade to the ceiling of the top story is less  
9 than 40 feet?

10 A That is correct.

11 Q There's no way that that measure can be greater  
12 than 40 feet?

13 A That's absolutely right.

14 Q Again, and you pointed out your measuring point  
15 in the center of the front on drawing A-3. You used that point  
16 for measuring the linear height, correct?

17 A That is correct.

18 Q You also used that middle point for purposes of  
19 making a determination of whether the structure had a cellar or  
20 a basement, is that correct?

21 A As Section 199 allows, that's correct.

22 Q And in making that determination, you determined  
23 that the measurement from finish grade to the top of the lower  
24 floor was less than 4 feet?

25 A Yes, sir.

1 Q And as a result of that measurement being less  
2 than 4 feet, that is a cellar?

3 A That's correct.

4 Q And cellar is a defined term in the zoning  
5 regulations?

6 A Yes, sir.

7 Q And for purposes of the story limitations in an  
8 R-1-A zone, a cellar does not count as a story?

9 A It certainly does not. The number of stories is  
10 determined from the point of measurement.

11 Q Okay. So that looking at the drawing -- and if I  
12 could -- again, your measuring point is the red dot here  
13 (indicating)?

14 A That is correct, sir.

15 Q And you've indicated that from finish grade to  
16 the line here to the top of the lower level is a cellar, a non-  
17 storage cellar?

18 A That is correct.

19 Q Then from here to the ceiling of the first  
20 floor --

21 A First floor.

22 Q -- is that a story?

23 A That's one.

24 Q All right. And then going here (indicating)?

25 A Two, and the attic is the third story.

1 Q So this is, according to the defined zoning  
2 regulations, this is a three-story building?

3 A Yes, sir.

4 Q Mr. Gresham in his testimony indicated that in  
5 determining cellar you could have in a single-family dwelling,  
6 you could have partially cellar and partially not cellar.  
7 That's incorrect, is that right? You make one determination at  
8 your mid-point and the property is either a cellar or not, is  
9 that correct?

10 A Well, for purposes of height measurement and  
11 determination of number of stories, then that's not relevant.

12 Q Okay. And Mr. Draude asked you a question. In  
13 this case, providing the parking, did it create a fourth story  
14 in this building by providing the excavation to provide the  
15 parking in the two-car garage?

16 A No, sir.

17 MR. BROWN: That's all the questions I have.

18 COMMISSIONER MITTEN: Mr. Chairman, can I just  
19 ask Mr. Bello a follow-up question?

20 Given that the front of the building is not a  
21 defined term in the ordinance, did you rely on Webster's  
22 Dictionary for the definition of front?

23 MR. BELLO: Yes. Yes, Ma'am.

24 COMMISSIONER MITTEN: Is that something that you  
25 are going to submit to the record, because I think we had talked

1 about that the last time?

2 MS. BROWN: I have copies here, and Mr. Brown has  
3 copies as well. I believe he was going to introduce copies as  
4 part of his case.

5 COMMISSIONER MITTEN: Could we see those now  
6 while we have Mr. Bello here, given that he relied on it?

7 MR. BROWN: I've attached the cover --

8 COMMISSIONER MITTEN: Make sure you're on a mike  
9 when you talk.

10 MR. BROWN: I've attached the cover of the book.  
11 It's a little dark, but you can make it out that it is, in  
12 fact, the Webster's Unabridged Dictionary of the English  
13 Language, and then the definition of "front" is there,  
14 referencing you to the second definition. They're numbered 1  
15 through 34, but the second one --

16 COMMISSIONER MITTEN: Right. Well, I'm going to  
17 ask a question of Mr. Bello before you have a chance to help him  
18 out.

19 Which of these, given that there are 34 different  
20 definitions of "front," which one did you rely on?

21 MR. BELLO: Well, that would be the second one  
22 that's most appropriate to this situation, and the issue is  
23 basically what portion of the building faces the property lot  
24 line that abuts the street.

25 COMMISSIONER MITTEN: Okay, but that's not

1 exactly what this says, but you're saying you relied on No. 2?

2 MR. BELLO: Yes, sir -- yes, Ma'am. I'm sorry.

3 COMMISSIONER MITTEN: That's okay. That's what I  
4 was interested in, is which of these.

5 Thank you, Mr. Chairman.

6 MR. DRAUDE: I would like to ask, since this was  
7 not put in during his direct examination and is now being put in  
8 after my cross, I would like to ask one or two questions about  
9 this.

10 Actually, let me ask whether it has been marked  
11 as an exhibit. I have no objection to putting it in as exhibit.

12 Perhaps we should give it a number, so that we know what we're  
13 talking about.

14 CHAIRPERSON GRIFFIS: If I'm not mistaken, it  
15 will be No. 30.

16 [Whereupon, the above-referred-to  
17 document was marked as Exhibit 30 for  
18 identification and received in  
19 evidence.]

20 CROSS EXAMINATION OF MR. BELLO

21 BY MR. DRAUDE:

22 Q Mr. Bello, when was the first time you saw this  
23 document?

24 A This particular copy?

25 Q Yes.

1           A       Right here, where we have a copy in the office  
2 that we rely on constantly.

3           Q       Do you have this dictionary in the office?

4           A       Absolutely.

5           Q       Are you sure?

6           A       I don't think I could be any more absolute.

7                   COMMISSIONER MITTEN: Asked and answered.

8                   BY MR. DRAUDE:

9           Q       All right, you relied on definition No. 2.  
10 Please read that into the record.

11          A       "The part or side of anything as a house which  
12 seems to look or to be directed forward.

13          Q       All right. Now you said, in answer to Ms.  
14 Mitten's question, that you read that to mean -- and I don't  
15 want to put words in your mouth, but this is what I wrote down  
16 -- you read that to mean that the front is that portion of the  
17 building that faces the property line that abuts the street. Is  
18 that what you said?

19          A       That's correct.

20                   MR. DRAUDE: Thank you very much. No further  
21 questions.

22                   MS. BROWN: Mr. Chairman, I just have a quick  
23 question on redirect.

24                   CHAIRPERSON GRIFFIS: Indeed.

25                   REDIRECT EXAMINATION OF MR. BELLO

1 BY MS. BROWN:

2 Q Mr. Bello, can you go to what is currently on the  
3 easel as A-3 and show us which portion is the portion that fits  
4 this definition that you have just gone through that was used in  
5 your determination for permit issuance?

6 A Can I mark this up?

7 MR. DRAUDE: Yes, go right ahead. Sure. It's my  
8 drawing, but you can do it.

9 (Laughter.)

10 MR. BELLO: That would be that point to that  
11 point (indicating).

12 BY MS. BROWN:

13 Q And in the span of that point to that point,  
14 there are recessed areas in that house, is that not correct?

15 A That's correct.

16 Q And how many recessed areas are there in that  
17 house?

18 A Three.

19 Q Okay. Can you show me which portions.

20 A This point to this point, this point to point,  
21 and this point to point (indicating).

22 Q Which part is the foremost portion facing the  
23 street?

24 A That would be this point (indicating).

25 Q Okay. So, essentially, the middle of the house

1 is the closest portion to the street?

2 A That is correct.

3 Q The portion above the garage is the next closest  
4 to the street?

5 A That's correct.

6 Q And the portion which Mr. Gresham defined or  
7 described as the wing is the furthestmost portion?

8 A That is correct.

9 Q Okay, but in issuing the permit, what was looked  
10 at was the front as interpreted by your office, by the Zoning  
11 Administrator?

12 A Which spans the entire width.

13 MS. BROWN: I have nothing further.

14 CHAIRPERSON GRIFFIS: Thank you. Thank you for  
15 clarifying the points for the record.

16 I just want to also add to the record, so that  
17 when we read the transcript, the stated "point to point" is  
18 actually from the corner coining on the lefthand side of A-3-2,  
19 the furthest-most coining element on the righthand side.

20 MR. DRAUDE: Mr. Chair, I want to use this in my  
21 closing argument, but I'd have no objection to having this  
22 marked and put in the record, if you'd like to present it. He's  
23 been marking it up, and I have no objection to that.

24 CHAIRPERSON GRIFFIS: I think that makes sense.

25 MS. BROWN: The District has no objection. We'd

1 welcome that.

2 CHAIRPERSON GRIFFIS: Good. At the end we're  
3 going to gather everything that's been -- because it seems to me  
4 I've seen A-3 three or four times now and it keeps showing up  
5 fresh.

6 (Laughter.)

7 So we look at some of them.

8 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I would  
9 just like to ask Mr. Brown, please, what edition of the  
10 dictionary is this?

11 MR. BROWN: I'm not so sure I can make it out.  
12 I can't tell you offhand.

13 VICE CHAIRPERSON RENSHAW: I just wondered if  
14 this dictionary edition coincides with the tenure of Mr. Bello  
15 as far as this definition is not new to Mr. Bello. It has been  
16 with Mr. Bello for the duration of his employment.

17 MR. BROWN: This was not a brand-new edition.  
18 It's not the oldest edition, either -- in one of my partner's  
19 offices. They haven't let me have my own yet.

20 VICE CHAIRPERSON RENSHAW: They have not?

21 MR. BROWN: No, they have not.

22 VICE CHAIRPERSON RENSHAW: So this is an oldie  
23 but a goodie?

24 MR. BROWN: Yes, but it's not from the dark  
25 ages. I could tell you which edition it is on the date, if

1 you'd like to know. It certainly, I think, covers the period of  
2 time, the 11 years that Mr. Bello indicates he's been in the  
3 Zoning Administrator's office.

4 COMMISSIONER MITTEN: Actually, what would  
5 probably be the best thing is that, if we had a copy of the  
6 dictionary page from Mr. Bello's office, because then we'd know  
7 exactly what he relied on, if we could get that.

8 MR. BELLO: I can provide that.

9 CHAIRPERSON GRIFFIS: I think, then, we would  
10 move on to the Intervenor, the Intervenor presenting the case,  
11 unless there's other redirect.

12 MR. DRAUDE: I know you have the discretion to do  
13 that, but I believe that the rule indicates the ANC is next.

14 CHAIRPERSON GRIFFIS: Did I skip over numerous  
15 things? I tell you, thank you for calling that to the attention  
16 of me. In fact, I should probably review the manual in front of  
17 me.

18 MR. DRAUDE: Well, I know that Mr. Maudlin is  
19 here from the ANC and anxious to present his reports.

20 MR. BROWN: Mr. Chair, I think it would be  
21 appropriate to allow the ANC to go forward at this point.

22 CHAIRPERSON GRIFFIS: I'm sorry for the  
23 confusion. There is some question I guess in my mind in terms  
24 of the proper procedure and chronology of this. First being the  
25 Appellant's case, as indicated 31-17-11 of the regs., the Zoning

1 Administrator or the government official, and then we were to go  
2 to the owner or operator, which is in fact the Intervenor in  
3 this, which is what I was referring to going to that. I don't  
4 think we've heard any objection.

5 MR. BROWN: I'd be happy to defer to --

6 SECRETARY PRUITT: Mr. Chair, I think just a  
7 little clarification might help. Actually, after the ANC, there  
8 is an Intervenor's case, and that's because you can have another  
9 Intervenor aside from the owner. So the owner would go prior to  
10 any other Intervenor, and that's sort of why it gets a little  
11 confusing.

12 CHAIRPERSON GRIFFIS: Right, which was my first  
13 assertion that it would be.

14 SECRETARY PRUITT: Right.

15 CHAIRPERSON GRIFFIS: But rather than cause  
16 consternation, if there's no objection, we could hear from the  
17 ANC and move on. Then that would be fabulous.

18 MR. MAUDLIN: Do you want to hear from the ANC  
19 now, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. MAUDLIN: Thank you, Mr. Chairman. My name  
22 is Robert V. Maudlin. I'm the ANC Commissioner 3F03, and my  
23 single-member District includes 2944 Chesapeake Street.

24 The ANC-3F filed its report with the BZA on  
25 September 18th, which included Resolution 01-19 in support of

1 the appeal, and that resolution was adopted by the ANC by a vote  
2 of 7-0-0.

3 On October 16th, ANC-3F filed a supplemental  
4 resolution, Resolution 01-21, which focused on the height issues  
5 in this proceeding. That resolution was adopted 6-0-0.

6 As noted in both resolutions, the ANC is in  
7 support of the appeal, and I was directed by the ANC to  
8 represent the ANC at this hearing.

9 Resolution 01-21 notes that 12 DCRM Sections  
10 107.15(1) provides that plans are to depict the shape,  
11 dimensions, and topography of the lot to be built upon in  
12 sufficient detail to allow determination of heights above  
13 existing and proposed finish grade of all proposed structures,  
14 so as to allow determination of compliance with pertinent height  
15 limitations of Title 1-1 DCMR zoning regulations.

16 Also, in Section 107.5, Sub 4 provides, "The  
17 elevations of all existing proposed structures fully dimensioned  
18 so as to define without ambiguity the dimensions of said  
19 structure."

20 And then going on to 107.15(6) provides, "Other  
21 information necessary to determine compliance with Title 1-1  
22 DCMR zoning regulations.

23 It's our opinion that the plans that were filed  
24 for this project did not conform to those requirements inasmuch  
25 as Mr. Bello here noted that he needed to scale certain

1 dimensions off of these plans to determine whether or not they  
2 complied with the zoning regulations.

3 Also, the plans for this project failed to define  
4 the middle of the front of the building or the height of the  
5 building from finish grade level as the middle of the front of  
6 the building to the ceiling of the top story.

7 It seems to us that the major issue in this  
8 proceeding is the meaning of "middle of the front of the  
9 building." As we know, since "front" is not defined in the  
10 zoning regulations, Section 199.2(g) provides that the meaning  
11 given in Webster's Third New International Dictionary be used.  
12 Some of that as just entered as an exhibit. I have copies here  
13 that were taken from the current issue of Webster's Third  
14 International Dictionary as on display at the public library.

15 I would be happy to introduce this as an exhibit,  
16 if you want it, sir. I don't know if it's the same edition and  
17 copy that was entered previously or was the copy that was being  
18 used by Mr. Bello in his defining what the front is.

19 CHAIRPERSON GRIFFIS: Do you want to take a  
20 second and give a copy to Mr. Brown and Ms. Brown?

21 MS. BROWN: Mr. Chair, just for the record, the  
22 zoning regulations specifically state "words not defined in this  
23 section shall have the meaning given in Webster's Unabridged  
24 Dictionary."

25 MR. MAUDLIN: This is the Unabridged Dictionary,

1 as noted right here, Webster's Third New International  
2 Dictionary of the English Language Unabridged.

3 CHAIRPERSON GRIFFIS: Right, I think the  
4 clarification is the fact that 199.2 doesn't indicate that it's  
5 the Third Edition. It's the Unabridged.

6 MR. MAUDLIN: The Third in the Unabridged  
7 Dictionary, it's my understanding the Third Edition is the one  
8 that is in publication now. The Second Edition I think -- I  
9 think the Third Edition's been out for probably 30 years or so.

10 CHAIRPERSON GRIFFIS: I think that's clear, and  
11 your point being that this is the current edition of the  
12 Webster's Unabridged. If there are no objections, we would take  
13 that in and make it No. 30.

14 [Whereupon, the above-referred-to  
15 document was marked as Exhibit 31 for  
16 identification and received in  
17 evidence.]

18 MR. MAUDLIN: If the members of the Board would  
19 like copies --

20 CHAIRPERSON GRIFFIS: I just want to get a quick  
21 comment on this submission.

22 MR. MAUDLIN: Going to the --

23 CHAIRPERSON GRIFFIS: I'm sorry, let me just  
24 pause for a moment.

25 MR. MAUDLIN: Oh, I'm sorry.

1 CHAIRPERSON GRIFFIS: If there's not any  
2 objections, we'll enter that.

3 While we have this moment, briefly, while they  
4 review and we don't move on, we do need to weigh then the ANC  
5 report. We absolutely appreciate your being here in person and  
6 testifying, but dispense of the quick regulation. If there is  
7 not any objection, I would say we waive the rules to accept the  
8 ANC-3F report.

9 COMMISSIONER MITTEN: Well, just so we're clear,  
10 the original September 18th report was filed timely, and it's  
11 the supplemental October 16th report that we're waiving our  
12 rules for.

13 MR. MAUDLIN: That's correct, sir. We met on the  
14 15th and that resolution was adopted. It was filed early the  
15 next morning, which was the day of the previous hearing on this  
16 matter.

17 MR. BROWN: Mr. Chair, no objection from my  
18 client.

19 CHAIRPERSON GRIFFIS: Any other objections?

20 (No response.)

21 I would say that's a consensus then to waive the  
22 rule and accept the report. Thank you.

23 MR. MAUDLIN: Thank you, sir.

24 CHAIRPERSON GRIFFIS: And then we're getting  
25 that -- oh, well, we'll let them sit for a minute.

1 Thank you very much for that pause. Go ahead.

2 MR. MAUDLIN: Are you ready to go forward, sir?

3 "Front" is defined in Webster's on page 914,  
4 definition 2, quote, "Something that confronts or faces forward:  
5 as, one: a face of a building: especially the face that  
6 contains the principal entrance." We feel from this that the  
7 35-foot dimension of the building is the front of the building.

8 But going further in the definition of the front  
9 the word "face" is used, and that is face as defined on page  
10 811, definition 7: "the facade especially of a building." Then  
11 it goes on under definition 7(f): "any of a plane surface that  
12 bound a polyhedron (as crystal) or other geometric solid." We  
13 take that to mean that even though is not a cube, is not a  
14 regular shape such as a crystal, that this projection out toward  
15 the street, the front, is what should be measured rather than  
16 the total width of the building as viewed from the rear.

17 Taking this one step further, where they use the  
18 word "facade," this definition of a facade is under 1(a): "the  
19 front of a building" and (b): "a face (as a flank or rear  
20 facing on the street or port (of a building that is given  
21 emphasis by special architectural treatment)." Certainly this  
22 35-foot projection on the front of this house, the front of the  
23 house, is given special architectural treatment. So we don't  
24 feel that there can be any real argument as to what the front of  
25 the building is.

1                   The plot plan on drawing C-S, which is not up  
2 there now, but the one that we have been looking at -- and I  
3 have or I had copies --

4                   CHAIRPERSON GRIFFIS:     Right, I think we have  
5 copies.

6                   MR. MAUDLIN:     I think you have copies of this,  
7 sir.

8                   CHAIRPERSON GRIFFIS:     We do have.

9                   MR. MAUDLIN:     It's been talked about.     This is  
10 blown from -- this is just a copy of what is up there, in the  
11 corner C-S.

12                  CHAIRPERSON GRIFFIS:     That is fine.     We all have  
13 Sheet C-S in front of us.

14                  MR. MAUDLIN:     But we feel clearly that this must  
15 be the front of the building, this 35-foot dimension across  
16 here.

17                                 It's our position that if the drafter of the  
18 regulation had intended that the 46-foot dimension be used as  
19 the front of the building, that he or she would have used the  
20 term "front elevation."     Front elevation is used in these  
21 drawings to depict the front elevation of the building, but the  
22 front elevation is not necessarily the same as the front of the  
23 building.

24                                 I think we're all familiar, or at least people as  
25 old as I am are familiar, with the Woodie's Building, the old

1 Woodie's Building on F Street. If you look at the F Street  
2 facade of that building and determine what the front is, I think  
3 that any reasonable person would declare it's what you're seeing  
4 there in the front, even though there's a section there that's  
5 another building and behind that Woodie's takes up the whole  
6 block on G Street, where on F Street it takes up maybe 90  
7 percent of it.

8 So I think the fact that there's a projection  
9 from this structure in the rear, set back 20-some-odd feet, I  
10 don't see how you can take that into consideration as to what is  
11 the front of the building. I think it's crystal clear that the  
12 front of the building is 35-feet wide.

13 If we look at the definition of elevation in  
14 Webster's Dictionary on page 735, it says, "A geometric  
15 projection (as of a building) on a plane perpendicular to the  
16 horizon." So I think clearly that if whoever was drafting this  
17 regulation that we're using meant anything other than what we're  
18 saying the front is, they would have used that terminology  
19 "front elevation." I think it's as simple as that.

20 With that, sir, I know that you're pushed for  
21 time, and I'll stop at that point.

22 CHAIRPERSON GRIFFIS: Thank you very much. I am  
23 not clear on what you're saying has not been called the front  
24 elevation. If I'm looking at A-3, the drawings are indicated  
25 "front elevation."

1 MR. MAUDLIN: Front at -- exactly, sir.

2 CHAIRPERSON GRIFFIS: And you're indicating that  
3 there is a difference between front elevation and in fact a front  
4 of a building?

5 MR. MAUDLIN: Correct, sir. And I think if the  
6 drafter of the regulation had intended that the front elevation,  
7 that we be looking for the middle of the front elevation, the  
8 drafter of the regulation would have used that terminology  
9 "front elevation" rather than the middle of the front of the  
10 building.

11 CHAIRPERSON GRIFFIS: Okay, that's clear.

12 MR. MAUDLIN: I mean, front elevation is  
13 certainly a term of art and it's used. It's used on these  
14 drawings. It's used, I think, on probably most architectural  
15 drawings.

16 CHAIRPERSON GRIFFIS: I must say that's my  
17 mistake because you were saying "drafter, " and I was looking at  
18 who was drawing these drawings as drafter, not the regulations.

19 MR. MAUDLIN: No, no, whoever is the drafter of  
20 the regulation.

21 CHAIRPERSON GRIFFIS: That's clear. Thank you.

22 MR. MAUDLIN: Thank you.

23 CHAIRPERSON GRIFFIS: Any other questions of the  
24 ANC member?

25 COMMISSIONER MITTEN: I just want to make sure

1 that we're going to get Mr. Mauldin's definition in the record  
2 because his was different; the definition he read was different  
3 than any of those that I saw in Mr. Brown's --

4 MR. MAUDLIN: That was my feeling when I heard  
5 what was presented here right before I did. I'll be happy to --

6 CHAIRPERSON GRIFFIS: If you wouldn't mind, if  
7 there's no objection, it's been read into the testimony, so it  
8 is in fact part of the case.

9 MR. MAUDLIN: Assuming I read it correctly. I  
10 would just as soon have this entered.

11 CHAIRPERSON GRIFFIS: All right, let me just give  
12 an opportunity to -- did you have a comment, Mr. Brown?

13 COMMISSIONER MITTEN: Can we get this into the  
14 record?

15 MR. BROWN: If I could, if Mr. Mauldin could  
16 just -- and do you all have copies of this?

17 CHAIRPERSON GRIFFIS: No, that's all we're  
18 dealing with right now. We just want to get copies. If you  
19 don't have any objection, I would ask that you bring it up to  
20 staff and we distribute that as Exhibit 31.

21 MR. BROWN: Absolutely. I think if Mr. Maudlin  
22 could make sure he points us to exactly where he's reading  
23 because it's almost a half a page.

24 CHAIRPERSON GRIFFIS: If we can get it up here.  
25 Okay.

1 MR. MAUDLIN: This is elevation.

2 COMMISSIONER MITTEN: Just wait a minute, so we  
3 can all go through this exercise together.

4 MR. MAUDLIN: All right. The pages are in here  
5 in numerical order, and I started with page 9-14, which is the  
6 last page that you have, where the definition of front is in the  
7 lefthand column. You'll see an arrow down about halfway down  
8 the page, 2: "something that confronts or faces forward: as a  
9 (1) face of a building: especially the face that contains the  
10 principal entrance." And I believe that is what I quoted  
11 earlier, from this definition for front.

12 I went from front to face, which begins on page  
13 8-11, which is the third sheet you have, in the righthand  
14 column, coming down about a third of the way down the column,  
15 under (b) -- actually this (b) is under 6; it's 6(b): "the  
16 facade especially of a building."

17 Then if we go down in this middle column of that  
18 page at the bottom, we have the definition of facade under 1(b):  
19 "a face (as a flank or rear facing on a street or court (of a  
20 building that is given emphasis by special architectural  
21 treatment))."

22 And as you'll see, once we've reached that point,  
23 facade goes back to face. We sort of have a circular definition  
24 here, but it's certainly my feeling that going through this  
25 exercise of using Webster's Dictionary for the definition, that

1 we have to conclude that the face of this, the front of this  
2 building is the 35-foot dimension.

3 As I say again, if the drafter, whoever drafted  
4 this regulation, the design regulations, had intended for  
5 something other than that and they wanted to include the  
6 complete width of the building measured from the rear, from the  
7 front, what-have-you, they would have used the word "front  
8 elevation." I mean there's nothing mystical about that term.

9 So I feel that when the regulation was drafted,  
10 the drafter did not have in mind taking the 46-foot dimension.  
11 They were looking at the front of the building. It comes out;  
12 it's away. This wing back here, as I say, is set back 20-some-  
13 odd feet, and you'd have all kinds of projections on buildings  
14 back there, whereas the front is the front.

15 MR. BROWN: Mr. Chairman, I think if you focus  
16 on our inquiry on front, both my version and Mr. Maudlin's  
17 version, they essentially say the same thing. Where I get  
18 troubled as we follow the bouncing ball through this Webster's  
19 to start defining the definition, and besides hiding my  
20 confusion and probably others, I think that goes beyond the  
21 direction of the zoning regulations, which is we're focusing in  
22 on the definition of front.

23 The two definitions -- and they're not --

24 CHAIRPERSON GRIFFIS: If I may just interrupt  
25 you, do you want to put this in a --

1 MR. BROWN: Well, I guess I'm objecting to going  
2 beyond just the definition of front because then we're starting  
3 to define terms that aren't at issue here --

4 CHAIRPERSON GRIFFIS: I see.

5 MR. BROWN: -- other than in the definition that  
6 we're relying on. I mean I just --

7 CHAIRPERSON GRIFFIS: Well, it brings up an  
8 interesting point. I'm not sure what is the legal standing of  
9 how far into Webster's do we go to define the words, but,  
10 obviously, my common sense would tell me, if a definition  
11 indicates words, that you could then go define those words that  
12 were part of the definition. I understand where you're going,  
13 and I think we can heed that when we look at both of these. I  
14 don't think it's an extreme and drastic difference between what  
15 we're asked to look at here.

16 But if I'm not mistaken, you now have an  
17 opportunity to direct questions, and actually we start with Ms.  
18 Brown, to the ANC. Perhaps you want to delve into that, Mr.  
19 Brown, further at that point.

20 CROSS EXAMINATION OF MR. MAUDLIN

21 BY MS. BROWN:

22 Q Mr. Maudlin, the ANC did not have before it the  
23 Webster's Dictionary on September 10th when it met and decided  
24 its position on this matter?

25 A That's absolutely correct.

1 Q And you're certainly not holding yourself up as a  
2 zoning regulation expert in the District of Columbia, are you?

3 A I certainly am not.

4 Q So what you're speaking with is simply your  
5 personal feeling with respect to what is a front?

6 A It's certainly my personal feeling, and I would  
7 think it would be the feeling of any reasonable person looking  
8 at what is before us to look at.

9 Q Okay. But, again, this is your personal opinion  
10 as opposed to anything grounded in law?

11 A I am not testifying as an expert on anything.  
12 It's certainly my opinion, and I think to me it's very clear.

13 Q Just so I understand the ANC's position, is it  
14 based on the recessed portions that you conclude that the front  
15 is 35 feet? Is it based on the -- because, as you know, this is  
16 a multi-layered house. I'm just trying to figure out how you  
17 all determine which of the three portions equals the front,  
18 because there are three portions facing front.

19 A Well, I think that, looking at the plot diagram,  
20 which I think is a little bit misleading because this  
21 projection, this 14-foot projection is noted on here as a porch,  
22 and really the face of the house over the garage and over the  
23 front entrance, I believe the offset there is about 2 feet.  
24 We're talking about this rear offset going back 20-some-odd  
25 feet. It just appears to me, my opinion, that the front would

1 be this 35-foot dimension across the front, and I think when you  
2 look at the photographs, you can see that there is some variance  
3 in there, but it's a minor variance of several feet compared to  
4 a variance here of 20-some feet going back to this rear  
5 projection.

6 Q So it's your testimony that a small variance  
7 would count as the front, but a larger variance would not count  
8 as the front?

9 A I think that's a reasonable determination, yes.  
10 There are very few buildings I think that you'll find -- well,  
11 some office buildings -- that have a flat front plane or side of  
12 the building. Most houses, most buildings, windows can be set  
13 back, porches can be set up. There are variations in that  
14 elevation.

15 MS. BROWN: I have nothing further.

16 CHAIRPERSON GRIFFIS: Mr. Brown?

17 MR. BROWN: I have just a quick question.

18 CROSS EXAMINATION OF MR. MAUDLIN

19 BY MR. BROWN:

20 Q In your definition, the critical portion of it is  
21 the concept of the facing forward, is that correct?

22 A Correct.

23 Q All right. This part of the house here I'm  
24 pointing to, which direction is that facing?

25 A It's facing north.

1 Q Is it facing to the rear or is it facing forward,  
2 this portion here, which is basically where the garage and the  
3 window.

4 A It's facing forward, the face. That is the face  
5 of the house.

6 Q But it's facing forward, right? Correct? The  
7 front porch is facing forward also?

8 A Correct.

9 Q This is also facing forward?

10 A Correct.

11 Q That's all I --

12 A But it's not the front.

13 CHAIRPERSON GRIFFIS: Anything else?

14 MR. BROWN: That's it. Thank you.

15 CHAIRPERSON GRIFFIS: Mr. Draude, did you want  
16 to --

17 MR. DRAUDE: No.

18 CHAIRPERSON GRIFFIS: Very good. In which case,  
19 now that I have been jumbled around on this, indeed, we are now  
20 ready for the Intervenor.

21 And while Mr. Brown gets ready, Ms. Pruitt, if  
22 you could refresh my memory, it seems to me last week we  
23 established some time guidelines. What do we have it down to 30  
24 seconds or so? Wait a minute.

25 (Laughter.)

1                   SECRETARY PRUITT:   When I actually went back to  
2 look at my notes, I didn't have any timelines on them, but  
3 conferring with other Board members, I understand it was 30  
4 minutes.

5                   CHAIRPERSON GRIFFIS:   It was my recollection that  
6 we had 30 minutes.   Well, frankly, last week the timer wasn't  
7 working.   So we were being fairly flexible, but giving the  
8 direction, trying to keep within that scope.

9                   Mr. Brown, do you think you'd have any problem  
10 putting your case together in half an hour at the last step of  
11 it?

12                   I think that hand mike might be on, which is why  
13 we're getting feedback, is that not right?

14                   Is that okay, 30 minutes?

15                   MR. BROWN:   I see no problem, subject to your --

16                   CHAIRPERSON GRIFFIS:   Right, and as we talked  
17 about last week, obviously, we won't subtract any time that we  
18 encumber on that.   So whenever you're ready, go ahead.   It is  
19 about 10 after 3:00 at this point, just to keep everyone on the  
20 understanding.   Thank you.

21                   MR. BROWN:   Again, Patrick Brown, Green, Styman,  
22 Delorman, Lutz, counsel for the Intervenor property owner.

23                   With me to my left is the owner, one of the  
24 owners, Mr. William Wahabi, and also to my right is the  
25 architect of record -- I've also submitted his resume to the

1 Board -- Richard Lessard.

2 I would like to, as a preliminary matter, have  
3 Mr. Lessard, his resume, I'd like to have him qualified as an  
4 expert witness to focus in on that issue.

5 If you'd turn to the second page, you'll see,  
6 going on almost through the following page, a quite long list of  
7 single-family dwelling experience here in the District of  
8 Columbia, as well as being an architect actively practicing in  
9 the District since at least 1976. Subject to issues by Mr.  
10 Draude, I think --

11 CHAIRPERSON GRIFFIS: I have absolutely no  
12 objection to accepting and look for quick comments from Board  
13 members as they review. It's obvious that Mr. Lessard is a  
14 registered architect in the District of Columbia and has an  
15 impressive and lengthy single-family resume, and I think perhaps  
16 even other types of architecture in this. I would not have a  
17 problem.

18 Ms. Mitten?

19 COMMISSIONER MITTEN: All I would ask is that --  
20 and I haven't heard it specifically articulated yet -- what  
21 exactly are you seeking to have him qualified as an expert in?

22 MR. BROWN: Certainly in the zoning issues.  
23 He's the architect of record. He's going to take you through  
24 the plans, but also, very specifically -- and he's been hands-on  
25 in the specific zoning issues that relate to this case,

1 certainly as it relates to this case, but in other matters.

2 So, unlike Mr. Gresham, who had a general  
3 architecture background that was impressive, Mr. Lessard has had  
4 his arms around the zoning regulations on an operating basis  
5 very much like Mr. Bello did, except for -- what? -- 15 years  
6 longer.

7 COMMISSIONER MITTEN: So it's the D.C. zoning  
8 regulations and architecture, residential architecture?

9 MR. BROWN: Residential architecture.

10 COMMISSIONER MITTEN: Okay, I just want to be  
11 precise about this since we were hard on Mr. Gresham, and I just  
12 want to be precise. And I have no objection to what Mr. Lessard  
13 is being proffered an expert in.

14 CHAIRPERSON GRIFFIS: Just for complete clarity  
15 then, would you agree with the fact that on all of the listed  
16 residential projects that you've done here in the District of  
17 Columbia that you, in fact, were also responsible for the  
18 design, review, and analysis based on each of those projects?

19 MR. LESSARD: Mr. Chairman, my name is Richard  
20 Lessard, an architect in the District of Columbia. In terms of  
21 expert in zoning, Mr. Gresham's lawyer -- hence, Grinstead I  
22 guess -- had said that you cannot do any plans without doing  
23 research first in the zoning. In every case I did research in  
24 the zoning codes of these items along with legal counsel and  
25 along with reviewing interpretations of our interpretations with

1 the Zoning Administrator in all cases to determine that our  
2 zoning assumptions were correct before proceeding with the  
3 drawings.

4 CHAIRPERSON GRIFFIS: Thank you.

5 Comments or concerns?

6 MR. BROWN: No objection.

7 CHAIRPERSON GRIFFIS: All right, fine. I would  
8 establish then that we will look to Mr. Lessard as an expert in  
9 architecture.

10 MR. BROWN: And Mr. Draude properly asked if  
11 we'd mark this, give it an exhibit number, which I think we're  
12 in the thirties somewhere for exhibit numbers.

13 VICE CHAIRPERSON RENSHAW: We have to give an  
14 exhibit number to 3F's submission of the dictionary. I think  
15 that was 32 -- 31.

16 CHAIRPERSON GRIFFIS: If the ANC submit?

17 VICE CHAIRPERSON RENSHAW: Of 3F's submission.

18 CHAIRPERSON GRIFFIS: Yes, it is 32. Let me see,  
19 I wrote it down. I'm sorry, it's 31. The ANC submission is 31,  
20 is that correct? Right, 31.

21 Thirty-two.

22 [Whereupon, the above-referred-to  
23 document was marked as Exhibit 32 for  
24 identification and received in  
25 evidence.]

1 CHAIRPERSON GRIFFIS: Okay, I think you're all  
2 set.

3 MR. BROWN: Having had Mr. Lessard qualified,  
4 I'd like to turn to Mr. Wahabi for a brief testimony and then go  
5 back to the architectural and zoning issues.

6 Just to put this case in context, this is a case  
7 where, as Mr. Bellow pointed out, these plans have been given  
8 repeated and rather unusual scrutiny because they were  
9 challenged almost -- they were actually challenged long before  
10 the permit was even issued, when Mr. Grinstead was looking at  
11 the plans on file.

12 So that a lot of care has gone into the  
13 subsequent review of these plans, but one of the important  
14 points is that a lot of work went into the review of these plans  
15 long before Mr. Wahabi even owned this property, as Mr. Lessard  
16 will testify. In each case the zoning regulations have been  
17 applied and re-applied, and all have come out consistently with  
18 the compliance being found complete.

19 Critical in this matter, particularly as it  
20 relates to the laches defense, is that, as Mr. Wahabi will  
21 testify, unbeknownst to him, he began construction of this house  
22 with a valid permit, relied on that permit in good faith, and  
23 spent eight months building a house to the point where he was  
24 working on the interior trim. The exterior was done. The house  
25 was as high as it's going to be, as wide as it's going to be, as

1 deep as it's going to be. The driveway was done, various other  
2 elements, at great expense.

3 And then, lo and behold, this appeal is filed, to  
4 his extreme prejudice, and then we're now another four months  
5 later considering the matter and probably some time away from a  
6 decision.

7 DIRECT EXAMINATION OF WILLIAM WAHABI

8 BY MR. BROWN:

9 Q Mr. Wahabi, state your address for the record.

10 A It's 2944 Chesapeake Street, Northwest.

11 Q BROWN: And you and a partner purchased this  
12 property in mid-2000?

13 A Yes.

14 Q Prior to purchasing it and then after you  
15 purchased it, you continued to do due diligence and look at the  
16 zoning and other issues to determine that the lot was --

17 MR. DRAUDE: I'm going to object to the leading  
18 questions. It's his own witness. He's testifying; the witness  
19 is just saying yes or no.

20 MR. BROWN: I think it's appropriate under the  
21 circumstances. My client is not a professional witness. He's a  
22 builder and a little -- I think it's more important that we get  
23 his testimony focused, and if I can do so by giving a little  
24 assistance, I think that's appropriate.

25 CHAIRPERSON GRIFFIS: Yes, I think we can give

1 you a little latitude there.

2 BY MR. BROWN:

3 Q Again, you researched this property before you  
4 bought it?

5 A That's correct.

6 Q Yes. And you determined that it was a buildable  
7 lot?

8 A Yes, sir.

9 Q And you determined that, prior to issuing the  
10 building permits, that they would be in compliance with the  
11 zoning regulations?

12 A Yes, that's correct.

13 Q You received a building permit in October of 2000  
14 to start construction of this house?

15 A Yes.

16 Q And you did so --

17 A Yes.

18 Q -- shortly after the building permit was issued?

19 A That's correct.

20 Q You had contact with Mr. Grinstead before the  
21 building permit was issued?

22 A Yes.

23 Q After the building permit was issued, and that's  
24 in mid-October through actually July of 2001, did you have any  
25 contact with Mr. Grinstead?

1 A No.

2 Q So you were unaware that he was still interested  
3 in this building permit?

4 A I was aware in March that he inquired about  
5 property lines and a Stop Work Order was issued. That's how I  
6 got to know that he was concerned about the property lines.

7 Q Okay.

8 A That issue, I'm aware of it.

9 Q But no direct conversation between you and him?

10 A No. No.

11 Q All right. The appeal was filed on June 28th of  
12 2001. You didn't get a copy until early July, is that correct?

13 A That's right.

14 Q Okay. Describe in the first week of July 2001  
15 the state of the construction of the property.

16 A Basically, we were doing the finishing, trims,  
17 grade-in, just interior finishing.

18 Q So the exterior of the house was completed?

19 A Yes.

20 Q Okay. The retaining walls in the front had been  
21 built?

22 A No, the retaining wall, not yet. The driveway,  
23 yes, as.

24 Q All the windows were in the house?

25 A Oh, yes.

1 Q If you can, an approximation of how much money  
2 you had expended on construction between when the permit was  
3 issued and the first week of July of 2001?

4 A Over one-half million.

5 Q Before we move on, clarify one point that was  
6 made in Mr. Draude's testimony, Mr. Grinstead's testimony. You  
7 put up temporary fences along the sides and rear of the  
8 property?

9 A Yes.

10 Q Those fences were constructed inside the property  
11 line?

12 A Yes.

13 Q So that measuring from any part of the building  
14 to those fences would not give you an accurate depiction of the  
15 site dimensions, the side yard, rear?

16 A No.

17 Q Did you have prepared for you by Mr. Ken West  
18 this document that copies have been submitted to the Board?  
19 It's a location survey for this property.

20 A Yes, I did.

21 Q And does that accurately show the relationship?

22 MR. BROWN: Mr. Draude, did you get a copy? I  
23 passed one down to you.

24 MR. DRAUDE: I may have gotten the full-size  
25 copy.

1 BY MR. BROWN:

2 Q And you had this prepared by Mr. Ken West, the  
3 licensed surveyor?

4 A That's correct, yes.

5 Q And it accurately -- the purpose of this document  
6 is to accurately reflect the measurement between the existing  
7 house and the property lines?

8 A That's correct, yes.

9 Q Thank you.

10 MR. BROWN: I'd like if we could have that  
11 marked as Exhibit, I believe, 33.

12 CHAIRPERSON GRIFFIS: Correct, yes, 33.

13 [Whereupon, the above-referred-to  
14 document was marked as Exhibit 33 for  
15 identification and received in  
16 evidence.]

17 MR. BROWN: I don't have any further questions  
18 or testimony from Mr. Wahabi. If it would simplify matters to  
19 allow the Board to ask him questions now and cross examination  
20 and we can move to Mr. Lessard, and then we'll be done.

21 CHAIRPERSON GRIFFIS: If that's your preference,  
22 sure.

23 VICE CHAIRPERSON RENSHAW: I have a question, Mr.  
24 Chairman.

25 Mr. Brown, you asked your client that about

1 October of 2000 he got the okay to build and that he had some  
2 contact with Mr. Grinstead, and Mr. Wahabi said yes, but what  
3 was the contact that he had with Mr. Grinstead? Would he  
4 elaborate on that contact?

5 MR. BROWN: And you're saying prior to the  
6 issuance of the building permit or after the issuance of the  
7 building permit?

8 VICE CHAIRPERSON RENSHAW: No, you had said that  
9 approximately October of 2000 there was the okay to build, and  
10 that at that time had Mr. Wahabi had any contact with Mr.  
11 Grinstead, and the answer was yes. And I would like to know  
12 what contact was made.

13 MR. WAHABI: Yes, we had a meeting with Mr.  
14 Grinstead approximately a week before the building permit was  
15 issued. I give them, Mr. and Mrs. Grinstead, two copies of the  
16 plans and we talked about -- they asked me about the garage, how  
17 many car garage, parking space, and where the container would be  
18 set, and all that. That's the only meeting I had with Mr.  
19 Grinstead. That approximately was the first week of October.

20 VICE CHAIRPERSON RENSHAW: And you gave him two  
21 copies of the plan, and did he ask you to do anything at that  
22 point? Did you exchange question and answers back and forth?

23 MR. WAHABI: Yes. He expressed to me that they  
24 don't like that lot to be built, and we went to the back of the  
25 house; they showed me the way it looks. There's trees there.

1 And I told them that I understand that and I would like to -- I  
2 can turn it over to them and they can manage the neighborhood  
3 and buy it together for the cost of it, and they said that's a  
4 good idea and they would let me know. I never heard from them.

5 The discussion was, besides the two questions,  
6 they asked me about the parking space and the containers, if we  
7 proceed with it, what will be set. That basically was -- the  
8 conversation was minimum, lasted about seven to eight minutes,  
9 less than ten minutes, and that's it.

10 VICE CHAIRPERSON RENSHAW: Was there any  
11 discussion at all about the height?

12 MR. WAHABI: No, not the --

13 VICE CHAIRPERSON RENSHAW: The size of the home?

14 MR. WAHABI: No. He told me the house was big.  
15 The height issue, I've never been aware of it until September  
16 the 10th of 2001. Never anybody brought it to my attention.

17 CHAIRPERSON GRIFFIS: Please, Ma'am, if you can -  
18 - otherwise, we're going to have to ask you to leave (speaking  
19 to someone in the audience). Please, there shouldn't be any  
20 sort of comments from the --

21 VICE CHAIRPERSON RENSHAW: So, Mr. Wahabi, just  
22 to go over this, on September the 10th, 2001, you became aware  
23 of the height issue?

24 MR. WAHABI: That's correct, yes.

25 VICE CHAIRPERSON RENSHAW: And you stated that in

1 March you became aware that Mr. Grinstead was concerned about  
2 the property lines?

3 MR. WAHABI: That's correct, yes.

4 VICE CHAIRPERSON RENSHAW: And that a Stop Work  
5 Order was issued, but you had no direct conversation with Mr.  
6 Grinstead about this?

7 MR. WAHABI: That's correct, none.

8 VICE CHAIRPERSON RENSHAW: All right.

9 CHAIRPERSON GRIFFIS: Any other questions from  
10 the Board?

11 MEMBER LEVY: Just to follow up, Mr. Wahabi,  
12 during your meeting in, I believe you said it was, early October  
13 or second week of October, at that time were the building -- did  
14 you have a complete set of building plans? You hadn't yet filed  
15 for the permit, I believe you said.

16 MR. WAHABI: Yes, we did file for permit back in  
17 June 30th.

18 MEMBER LEVY: Okay. So the building plans were  
19 obviously available at that time?

20 MR. WAHABI: That's right.

21 MEMBER LEVY: Did you share those with the  
22 Grinsteads?

23 MR. WAHABI: Yes. In fact, I gave them two  
24 copies.

25 MEMBER LEVY: Full copies, including the

1 elevations?

2 MR. WAHABI: Yes, the entire set, yes.

3 MEMBER LEVY: Okay, thanks.

4 CHAIRPERSON GRIFFIS: Cross?

5 CROSS EXAMINATION OF MR. WAHABI

6 BY MR. DRAUDE:

7 Q Mr. Wahabi, you said that you thoroughly  
8 researched this property prior to purchasing it?

9 A Yes.

10 Q When did you purchase it?

11 A I think in April or May 2000.

12 Q All right, and let me ask you, and make a  
13 distinction for you. If you follow this, fine, and if you  
14 don't. You entered into a contract to purchase this property  
15 and at some subsequent time you then went to settlement? Is  
16 that the way it worked?

17 A That's correct.

18 Q All right. When did you enter into the contract  
19 to purchase the property, approximately?

20 MR. BROWN: Mr. Chairman, he's going pretty far  
21 afield of his direct testimony.

22 MR. WAHABI: I believe in March --

23 MR. DRAUDE: Well, you know, he testified that he  
24 researched it prior to buying it. So I'm trying to find out  
25 what he meant by prior to buying it. Was it prior to contract,

1 prior to the settlement, when? All he has to do is tell me the  
2 dates, and we can go on.

3 BY MR. DRAUDE:

4 Q Do you know when you signed the contract to  
5 purchase the property, approximately?

6 A Probably in March.

7 Q Of 2000?

8 A That's right.

9 Q All right. Do you know when you went to  
10 settlement on that purchase?

11 A In June.

12 Q In June of 2000?

13 A June or July.

14 Q June or July of 2000?

15 A That's right.

16 Q Would it help you to fix that more precisely to  
17 tell you that the permit drawings are dated June 26th, 2000?

18 A Yes.

19 Q Did you settle prior to applying for the permit?

20 CHAIRPERSON GRIFFIS: If I could just interrupt,  
21 I'm not really sure where you're going, but I understand your --

22 MR. DRAUDE: I'm trying to get the dates  
23 straight; that's all.

24 CHAIRPERSON GRIFFIS: I know; the dates, to what  
25 end? I mean, if it goes, it seems to me in my mind we're going

1 to time limits on things.

2 MR. DRAUDE: No, I'm not talking about.

3 CHAIRPERSON GRIFFIS: Indeed.

4 MR. DRAUDE: I'm trying to -- I'm going to end up  
5 asking him about the research that he did prior to the time that  
6 he bought the property, and I'm trying to nail down what that  
7 time is. That's all. Right now he says he settled in June or  
8 July.

9 CHAIRPERSON GRIFFIS: If we could get there  
10 quickly, because I'm not sure where --

11 MR. DRAUDE: All right, let's just leave it he  
12 settled --

13 CHAIRPERSON GRIFFIS: I'm not sure of the  
14 importance of --

15 BY MR. DRAUDE:

16 Q You settled sometime in June or July of 2000, is  
17 that correct?

18 MR. BROWN: Well, Mr. Chairman, I think the  
19 gentleman who was involved in this due diligence is Mr. Lessard.

20 I think we'd be in more productive territory if the man who was  
21 the expert doing the due diligence and reporting to the property  
22 owner rather than at this point badgering my client -- I  
23 think --

24 MR. DRAUDE: That's not an objection. Just let  
25 me ask the questions. We would have been done by now if you

1 would stop interrupting.

2 MR. BROWN: Well, I think I'm objecting on sound  
3 ground. The gentleman who did the due diligence is here. He's  
4 a licensed professional. He's now an expert witness.

5 CHAIRPERSON GRIFFIS: Right. Let's get to, let's  
6 try to get to this issue very quickly in terms of what you're  
7 trying to establish.

8 BY MR. DRAUDE:

9 Q Mr. Wahabi, you testified that you determined  
10 prior to buying the lot that it was a buildable lot. Did you do  
11 that personally?

12 A Well, I find that they have a letter from the  
13 Administrator, they have plans.

14 Q Who is they?

15 A The seller.

16 Q The seller, okay.

17 A And confirming with his architects, and become my  
18 architect, I thought, and confirming with all the people that  
19 work on that lot from real estate to my attorney in Alexandria,  
20 and we gathered all the information that was available at the  
21 time, that it is buildable and they have plans that fit the  
22 property. And I was satisfied it met the code, is it buildable,  
23 and with that confidence we went ahead in planning, continued to  
24 finish the plans prior to settlement. So it was pretty clear  
25 that everything was within the code.

1 MR. DRAUDE: All right, no further questions.

2 MR. BROWN: Does the Board have anything more  
3 for my client?

4 VICE CHAIRPERSON RENSHAW: Yes, just one more  
5 question, Mr. Chairman. That is, I just would like to have you  
6 clarify for me, when you purchased this piece of property, was  
7 the piece of property absolutely flat ground or was it an  
8 embanked piece of property, in other words, an embankment, a  
9 raised piece of property? What was it?

10 MR. WAHABI: Yes, it is raised approximately  
11 about, in front about 6.5 feet, in the back about 10 feet. It  
12 has a slope in it and raised.

13 VICE CHAIRPERSON RENSHAW: Thank you.

14 MR. BROWN: And, Ms. Renshaw, to follow up on  
15 that, that's one of the points I think Mr. Lessard will touch  
16 upon, the topography of the site.

17 VICE CHAIRPERSON RENSHAW: It just wasn't clear  
18 up to this point. Thanks.

19 MR. BROWN: Yes, understood.

20 And if I could, to help push things along, I'm  
21 going to try to direct Mr. Lessard's testimony.

22 DIRECT EXAMINATION OF MR. LESSARD

23 BY MR. BROWN:

24 Q Mr. Lessard, you were involved in this project  
25 prior to the current owner's acquiring the property?

1           A           Yes, I worked for the initial developer who  
2 bought the property, which was owned by originally Benjamin  
3 Segal and Ester Segal, lot No. 856, and I was asked by the  
4 contract purchaser of that lot if this lot could be subdivided.

5           We then subsequently met with the contract purchaser's  
6 attorneys -- at the present time was at Wilkes and Artiss -- and  
7 went through the lot and we ascertained that we felt that we  
8 could subdivide it to a proper lot.

9           We then, Wilkes and Artiss at that point wrote a  
10 letter to Mr. Johnson going through our analysis of the lot, and  
11 I went down and we reviewed this with Mr. Bello to see if this  
12 was a lot, and that we were all in agreement that this was a  
13 subdividable lot under the Zoning Code.

14           There is a letter that we received at this time,  
15 the contract purchaser received at this time, signed by Mr.  
16 Johnson. At that time then we proceeded with the subdivision of  
17 the lot, and the contract purchaser, after he purchased the lot,  
18 he subdivided it and sold it to Mr. Wahabi.

19           Mr. Wahabi then contracted with us to do a set of  
20 drawings for a single-family house on the subdivided lot, which  
21 is lot No. 30 in square 2256. We at that time also did  
22 additional research. This, as Ms. Renshaw had said, was this a  
23 flat lot? No, it wasn't. It was a very -- not only it wasn't  
24 flat, it was also a unique lot. When we subdivided it, it was a  
25 uniquely-shaped lot that we felt like had some opportunities.

1                   So when we proceeded with this, the lot did slope  
2 up approximately 6.5 feet and then in the rear over 10 feet from  
3 the front of the Chesapeake Street.

4                   MR. BROWN:     Can I interrupt?  I've submitted --  
5 Mr. Lessard, and we've previously referred to this May 14th --  
6 March 14th, 2000 letter.  It's from Wilkes & Artiss to Mr.  
7 Johnson in which he countersigns, and it goes through and  
8 establishes the site, and that in fact it's a buildable lot  
9 based on 80 percent of the lot width, an average of the lot  
10 width, which is greater than 60 feet, and that it's 80 percent  
11 of the minimum lot area.  So that it complies with Section 401.2  
12 as, quote, "a buildable lot."

13                   I think it's Exhibit 33 now.  Thirty-four?

14   [Whereupon, the above-referred-to  
15 document was marked as Exhibit 34 for  
16 identification and received in  
17 evidence.]

18                   BY MR. BROWN:

19                   Q       And, Mr. Lessard, you have a board, too, that I  
20 think it would be helpful to, one, show the topographic history  
21 of the site as well as just run them through quickly the average  
22 lot width calculations and the lot occupancy.

23                   CHAIRPERSON GRIFFIS:     And all this on these  
24 boards we currently have in the record, correct?

25                   MR. BROWN:     This was introduced last week.

1 CHAIRPERSON GRIFFIS: Right, exactly.

2 MR. BROWN: It's a smaller version, but it has  
3 not been reduced, so the scale should be intact.

4 CHAIRPERSON GRIFFIS: Okay. This exhibit was in  
5 the twenties.

6 MR. LESSARD: This exhibit that we're looking at,  
7 Exhibit No. 26, is a site plan showing the house located on the  
8 site in somewhat of a pie along the cul de sac of Chesapeake  
9 Street.

10 The site, when we developed it, we basically drew  
11 our 8-foot -- drew our setbacks along the 8-foot side yards  
12 along the property lines, and then developed the house within  
13 the setbacks of the side property lines and the rear property  
14 line.

15 The red lines on this exhibit here indicate how  
16 we ascertained the average width of the lot at 10-foot intervals  
17 from Chesapeake Street to the rear property line, along here,  
18 and then there's calculations on the side of the sheets that we  
19 did. We reproduced this. This was done -- we did it for Mr.  
20 Bello. At the time we had something similar to that, but that  
21 document was not available. So we reproduced this.

22 CHAIRPERSON GRIFFIS: So if I could ask a  
23 clarification question, then at 10-foot intervals you're drawing  
24 lines that are parallel to one of the lot lines, which it looks  
25 like from this distance the rear lot line parallel?

1 MR. LESSARD: Yes, sir.

2 CHAIRPERSON GRIFFIS: Okay, so at that 10 feet,  
3 and then you basically take the average of all those at 10-foot  
4 intervals to establish the average width of the lot itself?

5 MR. LESSARD: Yes, sir.

6 MR. BROWN: And, Mr. Chairman, Mr. Bello  
7 testified that that's a standard practice in unusually-shaped  
8 lots. It's obviously not necessary in a rectangular or square  
9 lot. That process has been approved by the Court of Appeals.

10 MR. LESSARD: One of the notes on this drawing  
11 shows the setbacks of 8-foot on either side yard. The normal  
12 practice of a contractor building a house, after he sets the  
13 corners of the property where you can ascertain the corners of  
14 the building to the property lines, the rear and the side, there  
15 is a wall check done.

16 This wall check has been entered into evidence on  
17 one of the other exhibits, which a lot of times -- not a lot of  
18 times -- sometimes the wall checks are not always the same, but  
19 that's the District's way of checking to make sure at least you  
20 have a minimum setback.

21 So in some cases the wall check on the corner  
22 that would be the northeast corner, looking on the northwest  
23 corner of the building, of the porch which had the offset of 8  
24 feet was in fact initially 7.97, was adjusted to 8.03 on the  
25 secondary checking by the Office of the Surveyor. The next

1 corner which we had 8 foot was actually at 8.57. I just wanted  
2 to point that out.

3 BY MR. BROWN:

4 Q And could you briefly describe the lot occupancy,  
5 and you calculated it both previously and rechecked it lately.  
6 What is the percentage lot occupancy?

7 A The minimum is 40 percent, and we're -- I don't  
8 have that exactly. I believe we're at 2159 square feet. The  
9 lot size is 6723, and we're at 32.1 percent lot occupancy on  
10 this building.

11 Q And then, if you could, show the topographic  
12 conditions, particularly in the front, and the maintenance of  
13 the existing topography as part of the development plan.

14 A Okay. Along Chesapeake Street, the elevation at  
15 Chesapeake at the property line is approximately 62 feet in the  
16 center, which is here. At the street itself it's at 58 at the  
17 curb-line. At the rear property line it is approximately 72-73  
18 feet at the rear property line.

19 Q And in order to construct the driveway and the  
20 required parking, you had to excavate into the existing  
21 topography, but you maintained that topography on either side of  
22 the required driveway?

23 A Yes, we did. In addition, Mr. Wahabi, when we  
24 began the design of it, we had informed him that he only was  
25 required one parking space in the building under the Zoning

1 Code. I also live on a cul de sac in Washington, D.C. I urged  
2 him to build a two-car garage, so that you wouldn't have cars,  
3 you know, more cars parked on it because everybody has two cars,  
4 especially with a family it's probably three cars that they have  
5 in this.

6 So we looked at it and we felt that where the  
7 front of the building was that we were able to put a two-car  
8 garage. If I had known we were going to have this much  
9 problems, I would have moved the garage doors over to the left,  
10 if this would have been a problem, if we would have known about  
11 it. We would have still been able to do this project, even if  
12 we moved the door over.

13 Q Can you, using our version of A-3, the permit set  
14 you have here, I believe --

15 A I think these are the same. The drawings, both  
16 drawings are the same. Both drawings are the same, yes.

17 Q Yes. And if you could take the Board through  
18 first the determination of the middle of the -- back up. In  
19 developing your plans, you consulted more than once with the  
20 Zoning Administrator to ensure compliance at various stages of  
21 the development process?

22 A Yes, we did.

23 Q Okay. Could you take us through, starting with  
24 the determination of the middle of the front, and how you went  
25 about establishing compliance with the 40-foot and three-story

1 height requirement?

2 A On the contract documents here that we're looking  
3 at on Sheet A-3, we always felt that the front of the building  
4 was the 46-foot dimension. From the lefthand corning to the  
5 farthest righthand corning was the 46 feet. Then the front of  
6 the building would be, then, basically 23 feet, which is very  
7 similar to the point which Mr. Bello had pointed on the lower A-  
8 3 with the pink marking, which I believe was going to become an  
9 exhibit, which places us to a dot that we have on this  
10 particular drawing, on A-3.

11 On the contract documents that we had produced as  
12 we're producing working drawings, that we felt that this was  
13 where the grade was going to end up, and there was a slight  
14 variation in the as-built which we prepared for the Board, but  
15 in this case we're about a foot from the ceiling of the lowest  
16 level of the cellar. On the contract documents, it's  
17 approximately 33 feet from that point to the line that indicates  
18 the ceiling, the uppermost ceiling of the attic space.

19 Q And making that measurement just a worst-case  
20 scenario to the peak of the roof, it's still less than 40 feet?

21 A It's still less than 40 feet, and we went over  
22 the construction of the building. The actual grade line to the  
23 ceiling is 37 -- no, it's 3 foot 2 inches, the actual grade  
24 line. It was adjusted in the field, and the height from the  
25 grade line to the ceiling of the attic space was 37 feet 2.5

1 inches that we checked two weeks ago.

2 MR. DRAUDE: Could you say that number again?

3 MR. LESSARD: From the front of the building to  
4 the under side of the ceiling of the cellar was 3 foot 2 inches.

5 MR. DRAUDE: The other one?

6 MR. LESSARD: Okay. Then from the grade from the  
7 front of the building to the ceiling of the attic was 37 feet  
8 2.5 inches.

9 MR. DRAUDE: Thank you.

10 BY MR. BROWN:

11 Q Just to reiterate, you've confirmed and went  
12 through this with the Zoning Administrator's office prior to  
13 submitting the permit application?

14 A Yes, we did.

15 Q If you could, having determined the height, tell  
16 us the side yard. On either side of the property, one in the  
17 front and one in the rear, there are chimneys constructed.

18 A Yes, there's chimneys on both the east and the  
19 west side, and the chimney projection which is allowed in the  
20 Zoning Code, in some cases it was within the 8-foot, in some  
21 cases because of the pie-shapeness of this lot they weren't part  
22 of the 8-foot. They weren't a problem in either case.

23 Q So the chimneys in both cases both comply with  
24 the 8-foot side yard requirements?

25 A Well, for example, looking at back at the exhibit

1 of the site plan, which is Exhibit No. 20, in the twenties, the  
2 chimney on the east side projects only slightly in the area --  
3 projects into the 8-foot side yard on the east chimney, but on  
4 the west chimney it almost is all the way off the 8-foot. So  
5 that you can see -- this is very hard to see from where you are  
6 -- but if we project the side, if we project the 8-foot along  
7 the corner of the building here, that chimney's not, even the  
8 projection was not outside that 8-foot.

9 Q And they have been, I believe, previously  
10 submitted, but a wall check test is typically part of the  
11 construction process?

12 A Yes, it is.

13 Q And it's field verification that the house is  
14 being built in accordance with the plans as it relates to side  
15 yards?

16 A Yes.

17 Q And other --

18 A It relates to the placement of the house or  
19 placement of the building on the property.

20 MR. BROWN: And, Mr. Chairman, I believe this  
21 was entered by Mr. Draude, but in a reduced version. I've given  
22 the Board a full-size version of the wall test dated -- what is  
23 it dated? -- March 30th, 2001.

24 MR. LESSARD: The other issue on the wall checks,  
25 Mr. Chairman, is that at times the wall checks on a building can

1 be done at various times and you might not have all the wall  
2 checks done because all the walls might not be up at the same  
3 time. So we have actually -- I have two wall checks on our  
4 board right here. One is one introduced into evidence, which  
5 doesn't show the rear yard wall check. Subsequently, they went  
6 back and, when they had those walls up to a sufficient height,  
7 they called the Surveyor's Office to come out and do the rear  
8 wall checks. I don't know if you want to enter that into  
9 evidence, or if that is in evidence.

10 CHAIRPERSON GRIFFIS: Exhibit No. 33, correct?

11 MR. BROWN: Yes, we gave you a current version  
12 of that.

13 CHAIRPERSON GRIFFIS: Each of these is stamped by  
14 Ken West. He's alleged the plan surveyor.

15 MR. LESSARD: That's correct.

16 BY MR. BROWN:

17 Q Mr. Lessard, during the wall check process, the  
18 front, one of the front side yards was originally referenced at  
19 7.97 feet?

20 A Yes.

21 Q As you can see on the March 30th wall test  
22 report, as a result of resurveying, that was corrected to 8.03  
23 feet?

24 A That was what we have here, but I wasn't involved  
25 in the wall checks. So I can't really answer that.

1 Q Okay. On the rear yard, and there's a bay in the  
2 rear of the property, that was shown on the plans that you  
3 submitted for permits?

4 A Yes, it was.

5 Q And, again, did you take care in the design of it  
6 to ensure compliance with the rear yard?

7 A Yes, we did.

8 Q And the rear yard requirement is 25 feet?

9 A Yes, it is.

10 Q And in consultation with the Zoning  
11 Administrator's office, the bay, as it was planned and  
12 constructed, is within the 25-foot requirement as well as what  
13 Mr. Bello indicated was the Zoning Administrator's flexibility?

14 A Yes, it was.

15 Q So that prior to submitting or prior to receiving  
16 the permit, you had confirmed that the rear yard with the bay  
17 would be in compliance?

18 A Yes. Yes, sir.

19 Q In measuring the rear yard, as shown in the  
20 various wall checks, both where it's dimensioned or not, you  
21 don't count the fence, the tennis court fence, that intrudes  
22 into the property as the property line, is that correct?

23 A No, we do not, did not.

24 Q The rear yard complies both in a straight linear  
25 calculation, as shown on the wall test reports, but you can also

1 obtain compliance through an average rear yard calculation?

2 A We did it by the -- we did it the other way, but  
3 we could have done it either way.

4 Q On the part of the house that Mr. Draude has  
5 incorrectly referred to as a wing, that is set back from the  
6 furthest-most portion of -- the porch part of it is set back  
7 from the deepest part of the side yard of that building, so that  
8 there would be no violation of the side yard both by the roof or  
9 the footing of the porch area?

10 A That is correct. Because of the unique shape of  
11 this lot, it was necessary to offset that wing.

12 Q This house has various window wells. Window  
13 wells are not counted as a projection into a -- or not counted  
14 in a side or rear yard, is that correct?

15 A That is correct.

16 Q And you confirmed that with the Zoning  
17 Administrator in the planning process?

18 A That is correct.

19 Q Retaining walls are not counted in a side or rear  
20 yard?

21 A That is correct.

22 Q And, again, you confirmed that with the Zoning  
23 Administrator?

24 A That is correct.

25 MR. BROWN: That's it. We'd welcome any

1 questions from the Board.

2 CHAIRPERSON GRIFFIS: Any questions for Mr.  
3 Lessard?

4 COMMISSIONER MITTEN: I have just a couple.

5 Mr. Lessard, when exactly was lot 30 subdivided  
6 or was lot 856 subdivided into lot 30? Approximately, if you  
7 don't have it.

8 MR. LESSARD: Well, actually I have a copy of the  
9 report. It's subdivision plat, 12:50 p.m., May 4th, 2000. I'd  
10 be happy to submit that for the record.

11 COMMISSIONER MITTEN: All I was looking for was  
12 the date, so I don't think we need to put any more paper in the  
13 record.

14 (Laughter.)

15 And, also, just for my clarification, am I  
16 correct in saying that tax lot 856 and tax lot 859 were not part  
17 of any record lot prior to the subdivision? Is that correct?

18 MR. BROWN: We're checking, Ms. Mitten.

19 COMMISSIONER MITTEN: Okay.

20 MR. LESSARD: I don't have my file here. I  
21 really can't tell you exactly which is 850-whatever. It's just  
22 that on square No. 2256 on the subdivision plan this was all one  
23 lot.

24 COMMISSIONER MITTEN: Well, see, that's my  
25 question that I'm missing, I think I'm missing something, which

1 is, when you speak of what used to be tax lot 856 and tax lot  
2 859 as part of one lot, that was one record lot, or what's my  
3 disconnect?

4 MR. LESSARD: Mr. Brown may have the documents in  
5 his file. I don't have my documents with me.

6 MR. BROWN: It was actually two -- I'm sorry,  
7 I'm trying to find it -- it was two separate tax lots. Again,  
8 I'm referring to the base map, and this is one from the 1960's.

9 It was in two separate tax lots. The vacant property which my  
10 client purchased and is now developed was 856. The adjoining,  
11 again, in single ownership was 859, and there was a house built  
12 on that.

13 COMMISSIONER MITTEN: Okay, so I'm just trying to  
14 get -- I got that part. I'm with you that far.

15 MR. BROWN: Okay.

16 COMMISSIONER MITTEN: And I'm just trying to make  
17 sure that I understand that those two tax lots were not part of  
18 some other record lot prior to subdivision. That's what I'm  
19 trying to sort out. Was there a record lot that existed that  
20 included tax lot 856 and tax lot 859?

21 MR. BROWN: My client says no. I have no  
22 record. The farthest record I go back is the two separate tax  
23 lots.

24 COMMISSIONER MITTEN: Is that something that we  
25 can get some clarification on? Can you help us with that?

1 MR. BROWN: Sure.

2 COMMISSIONER MITTEN: Okay, that would interest  
3 me.

4 And now I just have one question that I hope is  
5 not too tedious for Mr. Lessard. Drawing A-1.1, this is on the  
6 issue of the projection of the bay at the rear. Given that we  
7 don't have that actual dimension on a drawing, at least not  
8 that's in the record, but when I look at the first floor plan,  
9 there are some dimensions on the bay, and it's the angle  
10 dimension, the width of the angle dimension is 3 feet 1 inch on  
11 both sides, and then the center is 4 feet 2 inches. Do you see  
12 where I'm speaking of? The width of the angle portion is 3 feet  
13 1 inch, and then the center part is 4 feet 2 inches.

14 MR. LESSARD: Yes.

15 COMMISSIONER MITTEN: Now it looks to me -- and  
16 you could correct me if I'm wrong -- that the angle on the bay  
17 is a 45-degree angle. Is that --

18 MR. LESSARD: That is correct.

19 COMMISSIONER MITTEN: So, then, if I remember my  
20 geometry correctly, if we were to attempt to figure out what the  
21 projection of the bay is, so we have sort of the -- if we're  
22 creating a triangle for measurement purposes, we would basically  
23 be creating an isosceles triangle with two 45-degree angles and  
24 a 90-degree?

25 MR. LESSARD: It would be 3 foot 1.

1 COMMISSIONER MITTEN: Okay. So isn't that the  
2 projection of the bay into the rear yard?

3 MR. LESSARD: That is correct, but the projection  
4 -- I believe what was actually built was it only projected 2  
5 foot 5 and a quarter.

6 COMMISSIONER MITTEN: Do you have an as-built  
7 drawing that shows that?

8 MR. LESSARD: The only other drawing of the front  
9 facade that we had done two weeks --

10 COMMISSIONER MITTEN: Is that something that you  
11 could get to us?

12 MR. LESSARD: Absolutely.

13 COMMISSIONER MITTEN: Thank you.

14 MR. LESSARD: If you don't mind, I may have a  
15 civil engineer do that.

16 COMMISSIONER MITTEN: Any way we can get the  
17 accurate measurement into the record would be well-received.

18 CHAIRPERSON GRIFFIS: Did you want an entire plot  
19 or just a plot of that, the measurement of that back, the rear  
20 bay?

21 COMMISSIONER MITTEN: Well, you know, one of the  
22 issues is whether or not this structure is in compliance with  
23 the rear yard. So really that's the focus of my inquiries.

24 MR. BROWN: Right. So I would say, Ms. Mitten,  
25 if we were -- this drawing which we submitted earlier, which

1 goes to the wall rather than the bay, if we were to have this  
2 drawn to the bay --

3 COMMISSIONER MITTEN: That would do it?

4 MR. BROWN: We can certainly do that.

5 VICE CHAIRPERSON RENSHAW: Mr. Chairman, a few  
6 questions for Mr. Lessard.

7 Back in about October 7th of 2000 Mr. Grinstead  
8 wrote to Mr. Lourenco, who was then the Zoning Administrator,  
9 that, quote, "Our principal concern with respect to the  
10 application is that the size and height of the house to be  
11 constructed violates existing zoning restrictions in this R-1-A  
12 district.

13 So I would like to know, as the architect on this  
14 project, when you draw up architectural plans for a client, do  
15 you take into account the proportions of the surrounding homes?

16 MR. LESSARD: Being an architect who has done  
17 extensive housing in Washington since basically 1976,  
18 principally, we are bound by the Zoning Code and the setbacks  
19 and height restrictions and the terminology of the Zoning Code.

20 As an architect, I try to take into account the  
21 surrounding areas, but in this case -- and I have a person -- in  
22 this case, no, we didn't, and the reason why is that the market  
23 in Washington has basically, in my opinion, has driven the size  
24 of this house, the size of houses in Washington, in various  
25 jurisdictions, which I would imagine that has come up before you

1 many times before.

2 I lived on a street that had the smallest house  
3 in the neighborhood, and we had the second smallest in the  
4 neighborhood, and then the adjacent property owners sold the  
5 smallest house and built a lot bigger house, all within zoning  
6 codes. That actually helped the property value of my small,  
7 little house. So, as an architect, I applauded it, even though  
8 my neighbor said, "Aren't you upset that the house next door is  
9 so big?"

10 So the answer to this question is, in this case,  
11 no, we built it according to what was in the Zoning Code, what  
12 we're allowed, and what the size of the market dictated, by what  
13 Mr. Wahabi said what precise house you need to build on this  
14 house, and we gave him parameters to build from, and we built  
15 within those parameters.

16 VICE CHAIRPERSON RENSHAW: So, then, I take it  
17 Mr. Wahabi said to you that he wanted -- I'm interpreting this,  
18 and you tell me if I'm right or wrong -- that he said he wanted  
19 to get the maximum of house on that particular piece of  
20 property?

21 MR. LESSARD: Yes, Ma'am.

22 VICE CHAIRPERSON RENSHAW: And, therefore, then  
23 this is a market-driven decision, that he wanted to sell a house  
24 for "X" amount of dollars, so therefore, could you put this size  
25 house that would be that amount of dollars on that property?

1 MR. LESSARD: Yes.

2 VICE CHAIRPERSON RENSHAW: All right. You have  
3 described the piece of land, that it rose from the street and it  
4 was greater in the back than it was in the front. So you  
5 excavated straight in for the garage, am I correct?

6 MR. LESSARD: Straight in only for the garage,  
7 yes.

8 VICE CHAIRPERSON RENSHAW: Only for the garage  
9 and for that basement or cellar floor, as the terminology is  
10 bandied about?

11 MR. LESSARD: Yes.

12 VICE CHAIRPERSON RENSHAW: What I'd like to know,  
13 did you consider going down, excavating down into the property,  
14 in order to lower the house, or was that not a consideration at  
15 all?

16 MR. LESSARD: Basically, Mr. Wahabi wanted to  
17 house where we ended up finally placing it within the space or  
18 on the lot, in terms of the elevation of the first floor.

19 VICE CHAIRPERSON RENSHAW: And what was his  
20 decision for doing it that way?

21 MR. LESSARD: You'd have to ask Mr. Wahabi.

22 VICE CHAIRPERSON RENSHAW: Mr. Wahabi, what was  
23 the decision for doing it that way, for excavating straight and  
24 not going down in order to lower the house, since you knew back  
25 in October that Mr. Grinstead had a problem with the height, as

1 expressed in this letter of October 7th?

2 MR. WAHABI: The cellar and the back of the  
3 building had already been low to grade, sent them below the  
4 grade, and the side of the house, the optimum for the side would  
5 be only about 6 inches above the grade. So in terms of going  
6 any farther down would not be really done.

7 Then also we have tennis courts in the back, so  
8 much water coming through the property pouring down probably  
9 when there was rain. It's not feasible to have the cellar any  
10 lower than it is; otherwise, it would flood all the time.

11 VICE CHAIRPERSON RENSHAW: All right, I didn't  
12 see any pictures, I don't remember any pictures in our file  
13 about a tennis court. So I'm a bit confused as to what that  
14 was.

15 MR. BROWN: That's not on his property. The  
16 tennis court belongs to the property behind his.

17 VICE CHAIRPERSON RENSHAW: Oh, I see.

18 MR. BROWN: There's no tennis court on his  
19 property.

20 VICE CHAIRPERSON RENSHAW: And I want to sum up  
21 here, it's a drainage decision that made you place the house as  
22 it's placed?

23 MR. WAHABI: Yes, water was a big factor. In  
24 civil engineering, when you have topography, in calculating the  
25 depth as deep as you can get, the cellar is totally underground

1 actually.

2 BY MR. BROWN:

3 Q Could I follow up with one point Mrs. Renshaw  
4 made with Mr. Lessard? This house -- you're subject to the  
5 zoning regulations -- this house could have been taller and  
6 still complied with the regulations?

7 A Yes, it could have.

8 Q And this house could have had a lot more bulk, a  
9 higher lot occupancy by almost another third?

10 A Yes, it could have.

11 Q So this was not the biggest, tallest house that  
12 could have been built on this site?

13 A No, it could have been bigger and taller.

14 CHAIRPERSON GRIFFIS: Any other questions from  
15 the Board?

16 (No response.)

17 Very well. Cross examination?

18 MR. DRAUDE: Mr. Chair, would you entertain a  
19 five-minute break, if I can review my notes here and narrow down  
20 my cross?

21 CHAIRPERSON GRIFFIS: Actually, why don't we wait  
22 to see if Ms. Brown has anything?

23 MR. DRAUDE: All right. I can then organize our  
24 rebuttal and reduce it somewhat, too.

25 CHAIRPERSON GRIFFIS: Okay. Ms. Brown, did you

1 have anything?

2 MS. BROWN: I have no cross examination.

3 CHAIRPERSON GRIFFIS: Then we get a five-minute  
4 break, just one, five minutes.

5 (Whereupon, the foregoing matter went off the  
6 record at 4:10 p.m. and went back on the record at 4:20 p.m.)

7 CHAIRPERSON GRIFFIS: If I could just get  
8 everyone's attention again, I want to just review quickly. I  
9 know there are two other cases in the afternoon. We are at  
10 4:25. Case No. 16770, Capital Park Association, and 16766, The  
11 1421 Trust. We are anticipating hearing both of those cases  
12 today

13 So, with that in mind, it's 4:25, I am hoping to  
14 start the first case of the afternoon at somewhere after 4:45,  
15 close to five o'clock, if that is at all feasible. I think it  
16 should be, obviously, as soon as possible. So there it is for  
17 those in the other cases. Thank you.

18 And we will continue, then, with cross  
19 examination and then move to rebuttal and closing statements.

20 MR. DRAUDE: Thank you, Mr. Chair.

21 CROSS EXAMINATION OF MR. LESSARD

22 BY MR. DRAUDE:

23 Q Mr. Lessard, looking at Exhibit 33, which is that  
24 document right in front of you, this one, the wall test  
25 report --

1 A Yes, sir.

2 Q On the west side of the building, the building as  
3 built in fact includes a porch on the west side of the building  
4 that fronts out from the 11.05-foot dimension, does it not?

5 A Yes, it does.

6 Q That porch is not shown on this wall test report?

7 A That is correct.

8 Q All right. Turning your attention to the lot  
9 width, you've testified to your calculations of the lot width of  
10 this irregular lot using the 10-foot intervals. After going  
11 through that analysis, what was the lot width that you came up  
12 with?

13 A The average was 67.80.

14 Q Sixty-seven point eight zero feet?

15 A Feet, yes, sir.

16 Q All right. Referring to -- where is that? --  
17 referring to the drawing that's up on the easel right now, this  
18 is a copy of A-3, which has red markings that you made during  
19 the testimony. As I understand it, it shows, this shows the  
20 height-measuring points that you used?

21 A Yes, sir.

22 Q And it shows that from that point -- well, it  
23 shows that the house line up here, which I understand your  
24 testimony to be is the ceiling of the top story --

25 A Yes, sir.

1 Q -- and the dimension from the height-measuring  
2 point to that ceiling was 37 feet 2.5 inches?

3 A Yes, sir.

4 Q You see that from the ceiling the line that  
5 indicates the ceiling on the top story?

6 A Yes, I do.

7 Q Is it below the peak?

8 A Yes, it is.

9 Q Did I request during the break that you scale the  
10 distance from that line to the peak?

11 A It scales 3 feet, sir.

12 Q Thank you very much.

13 MR. DRAUDE: Mr. Chair, I'd like to have this  
14 sheet marked and put in the record as an exhibit.

15 CHAIRPERSON GRIFFIS: Are we at -- what number  
16 are we on?

17 MS. BAILEY: We're at 34, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Thirty-four?

19 MS. BAILEY: So the next one would be 35.

20 CHAIRPERSON GRIFFIS: Do you have a problem with  
21 that?

22 MR. DRAUDE: No.

23 CHAIRPERSON GRIFFIS: Whose drawing --

24 MR. DRAUDE: Can I leave it up there?

25 CHAIRPERSON GRIFFIS: Yes, yes, don't break in it

1 now. I can't use the large one unless you've got small copies  
2 anyway. For my clarification, whose drawing is that?

3 MR. BROWN: That is our as-built drawing as  
4 opposed to the permit drawing.

5 SECRETARY PRUITT: Mr. Brown, is it marked "as-  
6 built" on the drawing somewhere in a title block?

7 MR. BROWN: I do not believe --

8 MR. DRAUDE: Let me just identify it. It's  
9 drawing A-3. It says, in the revision block, it says, "Changes  
10 5/17/01."

11 CHAIRPERSON GRIFFIS: I don't think that's  
12 pertinent. We'll see that when it comes in. Actually, if you  
13 want, you could just mark that as No. 34, so we can reference  
14 it.

15 MS. BAILEY: Mr. Chairman, that would be 35.

16 CHAIRPERSON GRIFFIS: Thirty-five.

17 [Whereupon, the above-referred-to  
18 document was marked as Exhibit 35 for  
19 identification and received in  
20 evidence.]

21 MR. BROWN: Could I follow up with Mr. Lessard?

22 MR. DRAUDE: I have no further questions on cross  
23 examination.

24 CHAIRPERSON GRIFFIS: Do you have redirect?

25 MS. BROWN: Mr. Chairman, I do not wish to cross

1 examine Mr. Lessard. However, Mr. Draude has brought into mind  
2 one question that was not actually covered during the direct  
3 examination.

4 CROSS EXAMINATION OF MR. LESSARD

5 BY MS. BROWN:

6 Q Mr. Lessard, is there any deviation between the  
7 height of the as-built drawings that you just scaled for Mr.  
8 Draude and indicated -- well, you made some indications --  
9 versus the drawings that were submitted for permitting? Is  
10 there any difference in the drawings that were submitted for the  
11 permit process as opposed to the drawing that was just referred  
12 to?

13 A Yes, as you can see, the as-built drawings were  
14 slightly different than the permit drawings.

15 Q And that difference with respect to the height,  
16 the highest point of the building, is there any change in there?

17 A It's still under the 40-foot height restriction  
18 and it's still under 4 feet between the outside grade at the  
19 middle of the house and the ceiling of the lowest level.

20 Q But it is slightly higher than the permit  
21 drawing?

22 A Yes, as the permit drawing, yes.

23 MS. BROWN: That's all I have.

24 MR. BROWN: Can I follow on one question?

25 REDIRECT EXAMINATION

1 BY MR. BROWN:

2 Q Mr. Draude focused in on the measurement between  
3 the ceiling of the top story to the peak of the roof. Other  
4 than our worst-case scenario discussions, that's an irrelevant  
5 measurement because the measurement to the measuring point for  
6 height purposes is less than 40? It's 37 feet?

7 A Yes, that's true.

8 Q Also, Mr. Draude asked you about on the side of  
9 the building, that portion facing forward, dimension 11.05 feet,  
10 as not being, the porch on that not being referenced in the wall  
11 check test. Is that because no part of that structure, the  
12 foundation and/or the roof, extends beyond the side yard of the  
13 building as referenced there at 8.57?

14 A All it represents -- see, I'm not sure because I  
15 don't know what was in the mind of the civil engineer, but all  
16 it represents is that particular part of the building did not go  
17 down to the cellar level.

18 Q On that, there are footings underneath that  
19 porch?

20 A Yes.

21 Q Okay.

22 CHAIRPERSON GRIFFIS: Anything else, Mr. Brown?

23 MR. BROWN: Just closing remarks, which I would  
24 like to hold until after Mr. Draude.

25 CHAIRPERSON GRIFFIS: Yes, I'm not sure. That

1 would be a slight deviation from the rules, but given  
2 particularly the continuation of this case, it might be  
3 appropriate, but not --

4 MR. DRAUDE: Well, this is the conclusion on his  
5 case. So go ahead and make your closing remarks.

6 CLOSING STATEMENT BY MR. BROWN

7 MR. BROWN: If I could, Mr. Chairman, a comment  
8 was made at the break where great umbrage was taken with the  
9 design of this building, and that's a subjective measure where  
10 some people may agree or disagree. But what we're faced with is  
11 a situation where the Board is forced to apply the zoning  
12 regulations. Those are objective standards, how many feet of  
13 this, how many inches of that. We have gone through, and  
14 through the various issues, defining the front of the building,  
15 how the front for measuring purposes is defined. There's not a  
16 whole lot of fudge in any of this, and then it's subject to  
17 definitions of what counts as a story and what doesn't.

18 Then the day comes and you've asked for several  
19 pieces of very specific information, which we'll confirm out,  
20 but the challenged faced is not whether you like this building  
21 or don't. That's largely irrelevant. It's whether, in fact, as  
22 you're defining the height, the side yards, the rear yards, the  
23 various factors from a zoning standpoint, you've got to look at  
24 the testimony.

25 In each and every instance, whether it was Mr.

1 Bello, Mr. Lassard, who went to extraordinary lengths to make  
2 sure this was appropriate, in every instance the objective  
3 standard is established and the objective standard is met. So I  
4 think focusing and being mindful of that, the Board has a much  
5 easier, clearer task, particularly there's been some information  
6 requested which I think will make it even clearer, particularly  
7 the bay window. But, again, it's an objective standard, and one  
8 ought to be applied, rather than subjective factors.

9 CHAIRPERSON GRIFFIS: Thank you, Mr. Brown.

10 Rebuttal? Are you ready for rebuttal and closing  
11 statement?

12 MR. DRAUDE: Yes.

13 CHAIRPERSON GRIFFIS: Very good.

14 MR. DRAUDE: We will first recall Darrel  
15 Grinstead.

16 REBUTTAL EXAMINATION OF MR. GRINSTEAD

17 BY MR. DRAUDE:

18 Q Referring to the bay that is on the rear side of  
19 the building, will you personally measure the projection of that  
20 bay from the rear of the yard towards the rear lot line?

21 MR. BROWN: I object. We went through this  
22 earlier. Their photograph showed that drawing a dimension from  
23 the bay to a fence, we've presented evidence that that fence is  
24 not the property line. So we've already been through that, and  
25 also the Chair raised the point that he objects or was concerned

1 about dimensions trying to be drawn from non-surveyors in  
2 photographs. We've been down this territory before.

3 We have agreed to provide a civil engineer-  
4 certified measurement, which beats and is more reliable and --

5 CHAIRPERSON GRIFFIS: Let me interrupt you there,  
6 Mr. Brown. I think I understand your objection, and then I  
7 would give you some latitude just to get to the position of  
8 where you're going with the point, in that this witness is not  
9 before us an expert surveyor. So speaking to what he measured  
10 and didn't --

11 MR. DRAUDE: Let me just say you don't have to be  
12 a surveyor to physically measure something. But if we are, in  
13 fact, going to have a surveyor draw that bay as built, not on  
14 the plans, because it wasn't built in accordance with the plans,  
15 as built with a surveyed measurement of what its dimensions are,  
16 and we get that in the record, we'll forget this.

17 CHAIRPERSON GRIFFIS: That's what we've asked  
18 for.

19 MR. DRAUDE: Okay.

20 CHAIRPERSON GRIFFIS: And I would bring up only  
21 to the fact that, frankly, if we have on person measure it,  
22 there's no reason why we all shouldn't go out and measure it.  
23 Even on the wall test that is submitted, we've had a  
24 professional surveyor that has done it twice and come up with  
25 two measurements.

1                   So my only point is, I would love to hear what  
2 the actual measurement was. I'm not sure how substantive and  
3 how useful it will be for us in deliberating this case. So, as  
4 that is, let's continue.

5                   MR. DRAUDE: All right, well, let me ask -- my  
6 next question is about the east chimney. The same question:  
7 Can we add the east chimney to that updated wall survey?

8                   COMMISSIONER MITTEN: Mr. Chairman, I think what  
9 would be helpful is anything that is not on the wall test check  
10 that is a projection, so we would have the two chimneys, the  
11 bay, and then we can put this all to bed. We'll know exactly.

12                  CHAIRPERSON GRIFFIS: Right, right. I just want  
13 it to be clear, and it will be clear, obviously, what the  
14 chimney is and how it's different than the actual structure or  
15 the foundation wall, which is actually what the wall test would  
16 do, is go to the wall, which is establishing a dimension point  
17 for our zoning regulations.

18                  If we want to have a dimension of a chimney on a  
19 wall test or some sort of site plan, it needs to be delineated  
20 very clearly, and I'm not sure what that goes to.

21                  COMMISSIONER MITTEN: I think it goes to that  
22 there is a limit to the amount that the projection may be.

23                  CHAIRPERSON GRIFFIS: I see. So what are the --  
24 okay.

25                  MR. BROWN: Mr. Chairman, we have no objection

1 to -- can I clarify? We'll do the chimneys. We'll do the bay.  
2 We've already got on the drawing the outer walls.

3 MR. DRAUDE: And the porch.

4 MR. BROWN: And the porch.

5 MR. DRAUDE: On the west side.

6 MR. BROWN: That's right. There's no need --

7 CHAIRPERSON GRIFFIS: Let me just interrupt. How  
8 is the wall test going to be done for the porch? It's going to  
9 go to the footings? Is it on piers? I mean, is it a poured  
10 foundation? Isn't that -- it would be my recollection --

11 MR. DRAUDE: Mr. Lessard testified that it's on  
12 footings.

13 CHAIRPERSON GRIFFIS: Right. So what you're  
14 asking for is the measurement to the footings.

15 MR. DRAUDE: The dimensions of the porch.

16 CHAIRPERSON GRIFFIS: Or foundation wall. Sorry.

17 MR. DRAUDE: Yes. Yes, that's all.

18 CHAIRPERSON GRIFFIS: Okay. I just want to be  
19 clear on what you're asking for.

20 Ms. Brown, did you have a comment on that?

21 MS. BROWN: I simply was going to state the  
22 District has no objections to the additional additions to the  
23 survey. There has been testimony that the projections are  
24 exactly what they are, projections, and they don't count.

25 CHAIRPERSON GRIFFIS: Okay, let's go.

1 BY MR. DRAUDE:

2 Q Mr. Grinstead, on the site plan at the rear of  
3 the property there is a triangular piece of fence that is  
4 labeled on the site plan "joint tennis court." Are you familiar  
5 with that physically?

6 A Yes.

7 MR. BROWN: I object. We've been through this  
8 before. I mean, we're asking him to comment on site surveying  
9 issues.

10 MR. DRAUDE: I haven't even asked the question  
11 yet. Why don't you just sit down, Mr. Brown, and stop  
12 interrupting.

13 CHAIRPERSON GRIFFIS: I'll handle it. Thanks  
14 much.

15 Perhaps if you want to establish, ask him both at  
16 the same time, so that's --

17 MR. DRAUDE: I'm going to ask him what's there.

18 CHAIRPERSON GRIFFIS: Something based on, of  
19 course, the tennis court fence. Let's continue.

20 MR. DRAUDE: All right.

21 BY MR. DRAUDE:

22 Q Are you familiar with that tennis court?

23 A Yes, I am.

24 Q What is in that triangular space that is shown on  
25 the site plan?

1           A           It's a fully-paved tennis court surrounded by a  
2 fence of, I would say, roughly 8 to 10 feet, and it is built,  
3 that part of the tennis court is built on a retaining wall that  
4 protrudes into the back yard, what otherwise would be the back  
5 yard of this house.

6           MR. DRAUDE:     All right, I have no further  
7 questions for Mr. Grinstead.

8                         Anything else?   Okay, Mr. Gresham.

9                         What's the drawing number of the front elevation?

10           CHAIRPERSON GRIFFIS:   A-3.

11           REBUTTAL EXAMINATION OF MR. GRESHAM

12           BY MR. DRAUDE:

13           Q           The front elevation, drawing A-3 -- don't get up  
14 -- at my request, have you scaled on that drawing the distance  
15 from the grade, the finish grade in front of the garage doors to  
16 the peak of the roof?

17           A           Yes, I have.

18           Q           And what did you get?

19           A           Forty-six feet 8 inches.

20           Q           All right.   One for you, one for Mr. Brown, Ms.  
21 Brown, one for me.

22           MR. BROWN:     I'm not sure it's appropriate to be  
23 entering additional exhibits in this phase of the case.

24           CHAIRPERSON GRIFFIS:   Ms. Sansone or others, do  
25 you have direction on similar evidence during rebuttal?

1 MS. SANSONE: Mr. Chairman, we don't follow the  
2 formal rules of evidence in these hearings. The only question  
3 would be is it irrelevant, immaterial, or perhaps prejudicial in  
4 some way. But if the information is helpful and it relates to  
5 rebuttal, then it's appropriate.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. DRAUDE: Let me just tell you what these are.  
8 There was testimony from Mr. Johnson, and perhaps from Mr.  
9 Bello, in terms of determining what is part of the front of the  
10 building, that it depends to some extent on what you can see  
11 from some point, a little undefined point.

12 We have now had, Mr. Gresham has gone out taken  
13 four additional photographs. He's about off the north facade of  
14 the building, and I'm going to have him identify them and put  
15 them in the record, for whatever their use.

16 But I tell, I think Mr. Johnson is plainly wrong,  
17 that the definition of what is the front of the building cannot  
18 possibly turn on what you can see from some point, but that was  
19 his position. Therefore, I would like to put these in evidence.

20 MR. BROWN: In the absence of Mr. Johnson, I  
21 think that's inappropriate. Also, if you look at these photos,  
22 I don't know where they were taken, but, clearly --

23 MR. DRAUDE: We're going to tell you that.

24 CHAIRPERSON GRIFFIS: Let him finish, please.

25 MR. BROWN: They were taken from some place

1 other than the center of the front of this property because you  
2 can see in every vantage point that, in looking at them, the  
3 front door is to the right side of the picture. So, again, I  
4 think it is inflammatory and unrealistic, even accepting, trying  
5 to accept Mr. Johnson's point, where he's not here to make it.

6 I have photos that I can show that, quite  
7 frankly, are a different vantage point that show the complete  
8 opposite of this. I don't think that's appropriate for me to do  
9 so, nor for him. But, obviously, if he does, I'm going to want  
10 to, and I would be happy to submit those for the record.

11 MS. BROWN: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes, Ms. Brown.

13 MS. BROWN: The District of Columbia would object  
14 to the photographs for essentially the same reasons. The  
15 photographs do not depict an accurate center. The picture Mr.  
16 Johnson, who physically went out to the premises, and at the  
17 risk of testifying I accompanied him, has photographs which were  
18 taken from yet a different vantage point, which demonstrate that  
19 this wing is actually, when you look at it from one angle -- and  
20 we didn't submit it for fear of confusing the Board -- if you  
21 take it from a different angle, the way it looks like that, it  
22 is clearly at the front. So the photographs really don't lend  
23 anything except confusion and prejudice.

24 CHAIRPERSON GRIFFIS: I would be very afraid of  
25 confusing the Board, actually, Ms. Brown, but this is the

1 situation: In that these have already been passed out to me,  
2 it's kind of hard for me to reject these now as evidence. I  
3 would take them, and this is under the direction as such.

4 One, in your rebuttal, we're going to need to go  
5 into new information with this evidence, with these photographs.

6 I'm going to need to know -- in fact, I would ask you to submit  
7 a site plan that indicates where these are taken from. Based on  
8 the number that you give, you can give me the viewpoints.

9 Then I would ask Mr. Brown and Ms. Brown also to  
10 submit photographs. I don't know how they're going to --

11 MR. DRAUDE: Mr. Chair, may I try to shortcut  
12 this?

13 CHAIRPERSON GRIFFIS: Sure.

14 MR. DRAUDE: It is our position that the front of  
15 the building, for purposes of the zoning regulations, cannot be  
16 defined in terms of what you can see from some particular point,  
17 because it's all relative.

18 CHAIRPERSON GRIFFIS: Indeed, and I'm very aware  
19 of what your point is.

20 MR. DRAUDE: And if everybody will stipulate to  
21 that, then we don't have to look at these photos; we don't have  
22 to look at anything else.

23 CHAIRPERSON GRIFFIS: Well, if you think that  
24 goes directly to your case, and I'm not unaware of what your  
25 position is, then I cannot, as one Board member that has to

1 deliberate on that, how am I supposed to look at your pictures  
2 and hear your case without seeing others and hearing their  
3 positions?

4 MR. DRAUDE: All right, that's fine.

5 CHAIRPERSON GRIFFIS: All I'm asking for is a  
6 fair attempt at others to submit photos.

7 MR. DRAUDE: All right, I have no problem with  
8 that. Let's just get these photos in. We'll tell you where we  
9 took them from, and we'll be done with it.

10 CHAIRPERSON GRIFFIS: And just to be clear, Ms.  
11 Brown and Mr. Brown, I would also ask that there's a site plan  
12 that indicates where photographs are taken from, if that's  
13 clear. If not, I can make it further.

14 MR. BROWN: No, it's clear. It's clear. Well,  
15 but I think to put us on an equal playing field that both sides,  
16 or all three parties, provide that information in documentary  
17 form by some filing deadline, rather than testimony here that I  
18 object to because --

19 CHAIRPERSON GRIFFIS: That's what I'm asking for.  
20 Was I not clear?

21 MR. BROWN: It was clear to me, but I think Mr.  
22 Draude was hoping to continue to present evidence on this  
23 matter, and I don't think that's appropriate at this point.

24 MS. SANSONE: Mr. Chairman, if Mr. Draude wishes  
25 to present evidence at this point, Mr. Brown would have the

1 opportunity to cross exam now at the hearing.

2 CHAIRPERSON GRIFFIS: Right.

3 MS. SANSONE: It seems like it would be to the  
4 Board and Mr. Brown's --

5 CHAIRPERSON GRIFFIS: Yes. No, I'm sorry, I just  
6 caught your last point. You would not expecting that he would  
7 be dealing with these photographs at this point, is that  
8 correct?

9 MR. BROWN: Yes. Based on what you're  
10 indicating, I think, and an even playing field, we'll both  
11 submit our photos, along with the vantage point of those photos,  
12 on the same plane, and they should be fairly clear to people,  
13 rather than opening up testimony and cross examination with a  
14 room full of people waiting for their cases.

15 MS. BROWN: Mr. Chairman, I have a suggestion  
16 that the Board may or may not receive. For purposes of putting  
17 everyone on an even playing field, perhaps, if necessary, the  
18 photographs submitted by the District and Mr. Wahabi can be  
19 accompanied by a sworn statement indicating testimony similar to  
20 -- not anything in-depth, but simply indicating where they were  
21 taken.

22 I don't know that the site plan, having the  
23 markings on the site plan may be more confusing. Perhaps  
24 because I am a layperson, I'm a legal person, I don't see it  
25 that way. So perhaps a statement accompanying the photographs

1 would allow everybody to demonstrate.

2 CHAIRPERSON GRIFFIS: And that's fine, a  
3 narrative, I would say, but I'm not sure that goes directly to  
4 what Mr. Brown is talking about, dealing with these today, or  
5 would that suffice, if you were allowed to put in the statement  
6 with your photographs?

7 MR. BROWN: That's fine, but we ought to be on  
8 an even playing field, rather than going down a protracted  
9 discussion today, which I don't think they're prepared to  
10 properly document in accordance with what the Board wants.  
11 Let's do it in a post-today hearing filing and move on.

12 MR. DRAUDE: And that's fine. We will put these  
13 four photographs in evidence with a document indicating the  
14 location from which they were taken, and that's a post-hearing  
15 submission.

16 CHAIRPERSON GRIFFIS: Great. Thank you.

17 MR. DRAUDE: That's all. I guess I only asked  
18 him one, but that's all there is.

19 CHAIRPERSON GRIFFIS: Good.

20 MR. DRAUDE: And I'm ready to make my closing  
21 argument.

22 CLOSING STATEMENT BY MR. DRAUDE

23 MR. DRAUDE: Mr. Chair and members of the Board,  
24 I'll try to sum up for you our position on the major issues in  
25 this case, based on the evidence as it has been put in.

1           The first issue I wish to address, probably the  
2 major issue in the case, is: What is the front of the building?

3           Because the zoning regulations state that you will measure both  
4 the height and count the stories from the middle of the front of  
5 the building.

6           The D.C. Court of Appeals has said repeatedly  
7 that the zoning regulations should be interpreted in a  
8 straightforward manner and that the Zoning Administrator and the  
9 BZA should not adopt strained interpretations in order to  
10 justify a particular result.

11           So let's start with the zoning regulations. The  
12 pertinent section is Section 199, which includes the definition.

13           The pertinent definition is "building height of." As we noted  
14 previously, the height measurement point for a building in this  
15 District is the middle of the front of the building.

16           That, however, is not the only place where this  
17 regulation uses the term "front." Two, three paragraphs down  
18 the word is used again. And it states, "If a building fronts on  
19 more than one street, any front may be used to determine the  
20 height."

21           Now I suggest to you that that indicates that the  
22 zoning regulations are using the term "front" as referring to  
23 that part of the building that fronts on a street. We refer to  
24 the dictionary definitions, and I'm not sure we actually got the  
25 right dictionary definitions in, but, as you know from your own

1 experience and from reading those, the dictionary will include  
2 just about every conceivable definition of the word "front."

3 But I think that we can eliminate some of the  
4 confusion by accepting Mr. Bello's testimony on cross  
5 examination here today. Upon reading the dictionary, he stated,  
6 and I quote, "Front means that portion of the building that  
7 faces the property line that abuts the street." Now let us look  
8 at what that means on this project.

9 I would suggest to you that the rear wing, what  
10 we call the rear wing -- and let us not get hung up over whether  
11 wing is a technical term; we use it to refer to that portion of  
12 the building that extends to the west at the rear of the  
13 building. That rear wing does not front on a street. It does  
14 not front on a property line that abuts the street, and I will  
15 illustrate that for you.

16 Looking now at the site plan, Drawing C-S, you  
17 will see that if you place a straight edge along the western  
18 side of the building in front of the wing, that that straight  
19 edge runs right down to the corner of the property. That means  
20 that this portion of the wing, the 11-foot dimension portion,  
21 does not front on the street. It fronts on Mr. Grinstead's  
22 property. It does not front on the street. It does not face on  
23 the street. It faces on Mr. Grinstead's property.

24 It is true that, given the current configurations  
25 of the two properties, that you can, in fact, stand in the

1 street and see that facade, that 11-foot facade, but that does  
2 not mean it fronts on that street. And I will give you an  
3 illustration by analogy.

4 What we have here is --

5 COMMISSIONER MITTEN: Dr. Draude, my  
6 understanding of a closing statement is that you are meant to  
7 summarize the case that you have put on, and this strikes me as  
8 something that you should have put on as part of your case. I  
9 think that we need you to summarize what you have already  
10 argued.

11 MR. DRAUDE: Mr. Gresham testified to this. Mr.  
12 Gresham, when I just stood here --

13 COMMISSIONER MITTEN: Well, you were just  
14 attempting to introduce something new.

15 MR. DRAUDE: Well, I'm going to give you an  
16 analogy.

17 COMMISSIONER MITTEN: And I'm suggesting to you,  
18 and I'd appreciate maybe Ms. Sansone weighing in on the  
19 appropriateness of it, that that's not what the closing  
20 statement is meant to accomplish.

21 MR. DRAUDE: The closing statement is meant to  
22 accomplishment, to make the argument on behalf of the client  
23 based on the evidence and regulations. It's not simply a  
24 summary of the evidence. It's a point to take the evidence that  
25 came in at disparate points, gather it all together, and give

1 the analysis, the legal analysis, based on the facts. And  
2 that's all I'm trying to do.

3 COMMISSIONER MITTEN: Ms. Sansone, can you weigh  
4 in on the appropriateness of introducing new exhibits in the  
5 closing statement?

6 MR. DRAUDE: This is not an exhibit. This is the  
7 same as me drawing on a white board, making an argument.

8 MR. BROWN: I think that's a stretch. He's  
9 offering a new exhibit.

10 CHAIRPERSON GRIFFIS: Actually, let's hear from  
11 our corp. counsel quickly and maybe we'll get some --

12 MS. SANSONE: Yes, there should be no new  
13 evidence in the closing statement. It can be more than a  
14 summary. Mr. Draude can attempt to pull all the pieces of the  
15 evidence in the record together and make his arguments. I think  
16 he can point to things on the exhibits, but there should be no  
17 new exhibits brought in at this point, no new evidence.

18 CHAIRPERSON GRIFFIS: Thank you.

19 MR. DRAUDE: All right, let's look at the site  
20 plan, C-S. You can see, if you look at the side yard lines and  
21 the outline of the building, that the front of the building, a  
22 35-foot dimension of the front of the building, given the lot  
23 lines, is as close to the street -- given not the lot lines,  
24 given the side yards -- is as close to the street as it can get.  
25 It occupies the entire middle whole width of the front of the

1 building abutting the street.

2 I will briefly say what I said in connection with  
3 the photographs, which is that there was some testimony during  
4 the Zoning Administrator's portion of the case regarding what  
5 you can see, what part of various facades you can see standing  
6 in front of the building and standing where.

7 I want to make it absolutely clear that we  
8 completely reject that approach as being any kind of rational  
9 way of interpreting the zoning regulations, because it's totally  
10 relative. It's relative to where you're standing. There's  
11 nothing in the zoning regulations that suggests that you  
12 determine the front of the building by deciding what you can see  
13 from some particular point.

14 In summary, as I think you may have seen from the  
15 ANC's representative's presentation, any common-sense  
16 straightforward look at this house will tell you that the front  
17 of this house is the facade with the 35-foot dimension; that the  
18 wing is part of the rear of the house; that the 11-foot facade  
19 does not front on the street. It does not abut a property line  
20 or front on a property line that abuts the street.

21 The front of the middle of the building, the  
22 middle of the front of the building is the middle of the 35-foot  
23 dimension. It is plain from the drawings that that falls at the  
24 location of the garage. Mr. Bello admitted that the garage, the  
25 portion of the lower level of the building occupied by the

1 garage is a basement and not a cellar, and that a basement  
2 counts as a story. That's at pages 126 through 129 of the  
3 October 16th transcript.

4 If you accept that the height-measuring point is  
5 at the location of the garage, at the middle of that 35-foot  
6 dimension, you count four stories. It is a four-story building.

7 If you accept that the height-measuring point is at the garage,  
8 the measurement from there to the peak of the roof done by Mr.  
9 Gresham is 46 feet and some inches. The ceiling of the top  
10 floor, according to Mr. Lessard's testimony, is 3 feet below  
11 that.

12 That means, measuring from the finish grade in  
13 front of the garage to the ceiling of the top floor, is 43 feet  
14 some inches. It exceeds the 40-foot limit.

15 There are encroachments in the rear yard and the  
16 side yards that exceed the permissible dimensions allowed by the  
17 zoning regulations. We would like to have a survey put in after  
18 the close of the record that will give us the exact numbers, and  
19 you can look at those.

20 The project does not meet the minimum lot  
21 dimensions. Clearly, it's unquestioned; it's not 75-foot wide  
22 and it doesn't meet the 75 -- it's not 7,500 square feet.

23 The owner and the Zoning Administrator rely an  
24 exception to that, but that exception applies only if the  
25 project or the building complies in all other respects with all

1 requirements of the zoning regulations, and this one does not.

2 The Zoning Administrator or the architects have  
3 made erroneous and strained interpretations of the zoning  
4 regulations in order to get this house in the size Mr. Wahabi  
5 wanted onto this lot. The result is a house that is far out of  
6 scale with the neighboring properties, as Mr. Grinstead and the  
7 ANC representative testified, and as the photographs show that  
8 were introduced with the Appellant's supplemental statement.

9 I, therefore, request that the Board grant the  
10 appeal, and I also request an opportunity to submit proposed  
11 findings of fact and conclusions of law. Although the Board has  
12 ruled on the timeliness issue, you did not rule on the laches  
13 issue. Mr. Brown submitted a brief on that issue. I would like  
14 the opportunity to submit a brief at the same time the findings  
15 and conclusions are due to address the case law that Mr. Brown  
16 addressed in his memorandum.

17 And I have nothing further unless there are  
18 questions from the Board.

19 CHAIRPERSON GRIFFIS: Thank you. Any quick  
20 questions?

21 (No response.)

22 Then let's move on.

23 SECRETARY PRUITT: Next, timeline, timeline  
24 issues.

25 CHAIRPERSON GRIFFIS: We need to set up a

1 timeline and also just review some of the submittal documents  
2 that we have been asked for. Everything that we have here today  
3 we'd like to submit it in and we'll put exhibits on, because I  
4 know we've marked up A-3's.

5 What are we talking for times?

6 SECRETARY PRUITT: In reviewing the calendar,  
7 there are two options. I don't think we can make the first one,  
8 which would be November 6th would be a decision date, which  
9 would mean that all information -- and I have right now for me  
10 five items that the Board has requested.

11 CHAIRPERSON GRIFFIS: Okay, let's review them.

12 SECRETARY PRUITT: They would have to be in,  
13 though, by this Friday, and I don't know if that can be done.

14 I'm seeing no from one of the parties. So then  
15 the next one would be the decision on the 4th, which would give  
16 you much more time to do submissions and responses.

17 MR. BROWN: December 4th?

18 SECRETARY PRUITT: Yes. So let's wait until the  
19 December 4th date.

20 The information I have requested from the Board  
21 is information concerning the subdivision of the lots, the tax  
22 lots; plan as as-built drawing with measurement of rear bay  
23 projection. Mr. Bello is to provide a copy of the definition  
24 from the dictionary that he used to determine "front." A survey  
25 drawing of all projections; i.e., chimneys, bay, porch.

1 CHAIRPERSON GRIFFIS: Yes, I think we can scratch  
2 an as-built because it's going to be redundant if we get a  
3 survey with all projections.

4 SECRETARY PRUITT: Okay.

5 CHAIRPERSON GRIFFIS: As long as we note that  
6 it's an indication that we need the projection out from the pay,  
7 which I think is clear.

8 SECRETARY PRUITT: Okay. Then I have photos from  
9 the Intervenor and DCRA and the Appellant -- well, we already  
10 have it from the Appellant -- of the front of the building,  
11 including a site plan documenting where photos were taken.

12 So we can get rid of an as-built drawing of the  
13 rear projecting bay because that would be included in the survey  
14 drawing of all projections.

15 CHAIRPERSON GRIFFIS: Great.

16 MS. BAILEY: Are we going to ask for findings of  
17 fact?

18 SECRETARY PRUITT: Well, those are just the  
19 things that I had for -- I didn't know if the Board had anything  
20 else that it requested. I don't think so.

21 CHAIRPERSON GRIFFIS: Any other information that  
22 we're asking?

23 (No response.)

24 Okay. No, I don't think so.

25 SECRETARY PRUITT: Then based on that, if we have

1 a decision for December 4th, these submissions should be due  
2 November 13th, with responses by the 27th and findings of fact  
3 at the same time. No, excuse me. Let me go back because you  
4 need some time in between.

5 Let's say the 13th for submission; responses on  
6 the 20th, with draft findings on the 27th, so that you have time  
7 to incorporate all the new information.

8 MR. DRAUDE: The findings were the 27th?

9 SECRETARY PRUITT: Excuse me? I'm sorry, I  
10 didn't hear you.

11 MR. DRAUDE: The findings are on the 27th?

12 SECRETARY PRUITT: Correct

13 MR. DRAUDE: Okay.

14 SECRETARY PRUITT: For a decision on December  
15 4th.

16 MR. BROWN: And responses on the 20th?

17 SECRETARY PRUITT: Correct.

18 Let me go over it one more time just for clarity.

19 All submissions would be due on November 13th. Responses to  
20 submissions are due November 20th. Draft findings of fact would  
21 be November 27th, with a decision for the December 4th meeting  
22 in the morning.

23 MS. SANSONE: I think maybe we need to clarify  
24 that one of the submissions is the brief on laches, due on  
25 November 13th.

1 SECRETARY PRUITT: Thank you, yes.

2 MR. DRAUDE: I can submit it whenever, but I had  
3 suggested when the findings come in, but I don't really care at  
4 this point.

5 MR. BROWN: I'd like an opportunity to have him  
6 file it on the 13th and then I can respond to it, rather than in  
7 the findings of fact/conclusions of law. It's a little late in  
8 the game.

9 SECRETARY PRUITT: That sounds appropriate. So  
10 we'll add that as the fifth item, brief on latches from  
11 Appellant.

12 CHAIRPERSON GRIFFIS: We're all set? You guys  
13 are all clear on what's happening?

14 MR. BROWN: Absolutely.

15 CHAIRPERSON GRIFFIS: Fabulous.

16 MR. DRAUDE: We need to give these to the staff  
17 to put in the record.

18 CHAIRPERSON GRIFFIS: Yes, exactly, if we just  
19 get them over in this general direction, that would be  
20 tremendous. Thank you very much.

21 I would ask the representatives for the next two  
22 cases to just come up quickly to the table, and that is  
23 Application 16770 and 16766, the Capital Park Associates and The  
24 1421 Trust.

25 Ms. Pruitt, if I'm not mistaken, the next case is

1 the Capital Park Associates?

2 SECRETARY PRUITT: I believe so.

3 CHAIRPERSON GRIFFIS: Okay. Listen, I want to  
4 throw this out here and get some comment back. I'm terribly  
5 sorry. Obviously, you saw we had a very complex appeal that's  
6 going on.

7 I would like to hear both of these cases today.  
8 We have Board members that are going to be shifting in and out  
9 in order to maintain a quorum in order to continue. But to  
10 that, I need to ask you if, first of all, that is acceptable at  
11 this point. If not, we can look at new date and rescheduling.

12 I would go first to 16766, The 1421 Trust,  
13 because you're second on the agenda.

14 MR. DONOHUE: We'd like to go forward today as  
15 well, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Okay, and so you're  
17 available to stay for the time that it allows or is required?

18 MR. DONOHUE: Yes, sir.

19 CHAIRPERSON GRIFFIS: Okay, great. Then the  
20 Capital Park Associates, it's okay to start now?

21 MR. COOK: We're prepared to proceed today.

22 CHAIRPERSON GRIFFIS: Fabulous. Okay. Then we  
23 will do so.

24 MR. DONOHUE: We have a lot of friends here with  
25 us, with the second Applicant, 16766.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. COOK: Terrence Cook on behalf of the first  
3 Applicant, 16770.

4 CHAIRPERSON GRIFFIS: And that's Terrence Cook?

5 MR. COOK: C-O-O-K.

6 CHAIRPERSON GRIFFIS: Indeed. Then so, people in  
7 the audience, as I look at, you're here for one or the other  
8 cases? Can everyone raise their hands who's here for the  
9 Capital Park Associates?

10 (Show of hands.)

11 And that would make the assumption that the  
12 others are for the second case.

13 Very good. And did you all hear and understand  
14 that we're continuing with both cases today? Obviously, I can't  
15 predict on how long the first case will go, but I would estimate  
16 that the second case does not start until after 6:00.

17 The only other complication with all this is we  
18 need three members for a quorum; otherwise, we're all somewhat,  
19 rhetorically speaking, into the wind.

20 So we may need to recess briefly while -- I  
21 understand Mr. Parsons is joining us, but at some point Mr.  
22 Parsons will be shifting out and a new member will be coming in.

23 So that's the only thing that will delay from our end, as I  
24 anticipate.

25 With that all understood, let's go and use the

1 time that we have. Thanks very much.

2 Ms. Bailey is dealing with the last case, and as  
3 soon as she gets ready and ordered, we'll call the next case.

4 MS. BAILEY: Mr. Chairman, are we going on with  
5 Capital Park Associates next?

6 CHAIRPERSON GRIFFIS: Indeed, thank you, yes.

7 MS. BAILEY: Okay. Application 16770 of Capital  
8 Park Associates, Inc., pursuant to 11 DCMR 3103.2 for a variance  
9 from the height provisions under Section 400 to allow the  
10 construction of a roof-mounted antenna equipment shelter, and a  
11 variance to allow said equipment shelter to be located on an  
12 apartment building that is nonconforming as to height under  
13 Subsection 2001.3 in the R-5-C District at premises 301 G  
14 Street, Southwest, square 540 and lot 110.

15 All those wishing to testify, please stand. All  
16 those persons testifying in this case, please stand and raise  
17 your right hand.

18 (Witnesses sworn.)

19 CHAIRPERSON GRIFFIS: Thank you very much. We  
20 don't have any preliminary matters in this, correct?

21 MS. BAILEY: No, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: I'm sure you would have  
23 told me if we did.

24 MS. BAILEY: Let me make sure. Let's see, we do  
25 have a report from the Office of Planning, and that needs to be

1 waived in, and the ANC does recommend denial, and the waiver is  
2 needed to accept the report into the record.

3 CHAIRPERSON GRIFFIS: Okay. Why don't we just  
4 dispense of that now, if members are so inclined, that we waive,  
5 that we accept both reports?

6 Let's begin.

7 MR. COOK: Mr. Chairman and members of the board,  
8 for the record, my name is Terry Cook. I'm with the Law Firm of  
9 Cole, Raywid and Braverman, and I'm representing the Applicants  
10 in this matter.

11 With me at counsel table this evening is John  
12 Kelley. John is a site acquisition consultant with Think  
13 Wireless, a consultant to Nextel Communications in this matter.

14 I'd also like to just introduce my witnesses:  
15 Mr. Abul Azad -- I'm sorry, Mr. Azad Abul -- excuse me -- is an  
16 RF engineer with Nextel. Mr. Dave Dudman is a construction  
17 manager with Nextel, and Ms. Shirley Paul is the General Manager  
18 for the Managing General Agent of the Capital Park Associates,  
19 Inc., the owners of the building that is the subject of this  
20 application.

21 CHAIRPERSON GRIFFIS: If I'm not mistaken, you  
22 were requesting for all to be introduced as expert witnesses?

23 MR. COOK: No, no, I was just telling who our  
24 witnesses are.

25 CHAIRPERSON GRIFFIS: I thought saw the

1 background information on people. Okay.

2 MR. COOK: Right. I will, in deference to the  
3 hour and to the case that's yet to be heard, I will attempt to  
4 be as brief as possible, consistent with my duty to present my  
5 client's case.

6 Nextel Communications has joined with Capital  
7 Park Associates, the owners of the building at 301 G Street, in  
8 this application to request a height variance. The subject  
9 property is the Capital Park Towers apartment building located  
10 at 301 G Street, Southwest. That building includes 289  
11 apartment units and its continued use as an apartment house will  
12 not be affected by this application.

13 The Applicants request a variance to permit the  
14 location of an equipment shelter on the roof of the Capital Park  
15 Towers apartment building. The equipment shelter is a necessary  
16 component of a wireless radio link that Nextel proposes to  
17 install on that building's roof.

18 Nextel proposes to install a prefabricated  
19 equipment shelter that will measure 20 feet in length, 12 feet  
20 in width, and 10 feet 6 inches in height on the roof of the  
21 subject property. That equipment shelter itself will be placed  
22 upon a steel support structure approximately a foot-and-a-half  
23 high, so that the uppermost portion of the roof of the equipment  
24 shelter will actually be about 13 feet 4 inches above the roof  
25 deck.

1                   The main roof of the subject building is 86 feet  
2                   6 inches high. This building was constructed under the city's  
3                   Urban Renewal Plan which permitted construction at that height.

4                   Subsequently rezoned to R-5-C, which limits the height of new  
5                   structures to just 60 feet, the building became a legal  
6                   nonconforming structure devoted to a conforming use.

7                   Under the restrictions set forth in Section  
8                   2001.1 of the zoning regulation, Nextel's placement of an  
9                   equipment structure on the building's roof would be deemed an  
10                  extension or enlargement of an existing nonconforming aspect of  
11                  the structure; i.e., its height. Accordingly, the Applicants  
12                  seek a variance from the strict application of this height  
13                  limit, as stated in Section 400.1 of the zoning regulations and  
14                  its limitation of 60 feet on the height of structures in the R-  
15                  5-C District.

16                  This particular location was selected to allow  
17                  Nextel's base station to efficiently handle signal handoffs from  
18                  its neighboring sites and to provide additional capacity on the  
19                  heavily traveled Southwest Freeway, and along portions of South  
20                  Capitol Street. Copies of the specification sheets for the  
21                  equipment that will be placed on the roof have been provided as  
22                  part of our application.

23                  Assuring reliable, consistent access to wireless  
24                  telecommunications, free of dead zones and dropped calls, is the  
25                  goal of Nextel's network design. This proposed base station

1 will greatly improve the Applicants' coverage of the city's  
2 southwest quadrant where current high level of call traffic  
3 often hinders network access.

4 For many, wireless telecommunications is evolved  
5 beyond mere convenience to become a necessary tool of modern  
6 commerce and a highly-desired personal safety link. The  
7 proposed base station will improve the quality of wireless  
8 service and benefit all who have made mobil communication a part  
9 of their modern, everyday life.

10 Building rooftops and other tall existing  
11 structures are preferred base station location by both the  
12 wireless communications industry and local governments who  
13 struggle to accommodate the need for antenna sites while  
14 remaining sensitive to the need to minimize the visual intrusion  
15 that sometimes accompanies the placement of these facilities.  
16 In this case, the site selected by Nextel is particularly well-  
17 suited to the proposed use.

18 It is widely acknowledged that access to reliable  
19 wireless telecommunications service is in the public interest.  
20 because each cell site in a carrier's network must work  
21 strategically and must be placed in connection to work  
22 efficiently with its neighboring or handoff sites, each location  
23 is carefully selected to cover just enough, but not too much  
24 area. That is why certain locations work as potential cell  
25 sites and others do not. When searching for a site on which to

1 locate a base station, service providers do not have unlimited  
2 flexibility.

3 In this case Nextel has located a property in  
4 just the right location to serve as a platform for a base  
5 station to fill a gap in its coverage and to increase its call-  
6 handling capacity in the southwest quadrant. As it happens, a  
7 variance is needed to make the rooftop of this particular  
8 property usable for Nextel's purposes.

9 When a wireless provider has inadequate  
10 facilities and requires a variance to make a specific property  
11 available in order to improve its service, the BZA may consider  
12 the needs of the Applicant and the fact that the property  
13 occupies a unique space suited to serving the Applicants' needs,  
14 as coming within the ambit of other extraordinary and  
15 exceptional situation or condition of a particular piece of  
16 piece of property.

17 At this point, Mr. Chairman, I'm going to request  
18 Mr. Kelley to take us briefly through a description of the  
19 facility as proposed for the rooftop of this building.

20 John, for the record, would you first state your  
21 name and address?

22 MR. KELLEY: My name is John Kelley, and I work  
23 with a company called Think Wireless. We're at 11931 Tech Road  
24 in Silver Spring, Maryland.

25 The shelter which Nextel requires to house its

1 base radios is proposed to be placed on the roof of the building  
2 at 301 G Street, between the central and eastern penthouses.  
3 This is an elevator mechanical room and H/VAC equipment  
4 penthouse. This is a stairwell penthouse, and the western end  
5 also has a stairwell penthouse.

6 It's a 10-foot by 20-foot prefabricated shelter  
7 that will be placed on a steel frame to spread the weight over  
8 the structural columns below. So it will be raised slightly  
9 above the roof of the building, which also allows for  
10 maintenance work or reroofing under the structure.

11 It's set back 31 feet from both of the nearest  
12 walls of the structure, and Nextel proposes to place two of its  
13 three sectors of antennas on the wall of the structure, flush-  
14 mounted on the wall. The third sector is over on the far  
15 western end on a sled mount.

16 If you look at the second display here of the  
17 facade, the north facade of the building, you can see that the  
18 existing penthouses rise above the structure, and Nextel's is  
19 virtually level with the top part of the cooling tower that is  
20 part of the central penthouse.

21 If you look at these red lines here, we've  
22 indicated what the line of sight is for someone at the nearest  
23 street. You can see the 90-foot-or-so height of this building  
24 makes it very difficult, if not impossible, to see the structure  
25 until you're well away from the building.

1           We're also providing some photographs. Here we  
2 see the northern facade of the building, looking at the western  
3 penthouse, the central penthouse. The area that's proposed for  
4 the location of the shelter is out of view here. It's this area  
5 here as we're looking north toward the building, and here is a  
6 shot from this central penthouse towards the east and that  
7 eastern stairwell, and this is the area we propose to place the  
8 shelter.

9           Just for illustrative purposes, I photographed  
10 another existing Nextel installation on the top of a residential  
11 building at 5406 Connecticut, where you can see the Nextel  
12 shelter, and on that shelter are flush-mounted antennas. These  
13 two units are air conditioner units here, but these are the  
14 antennas, in the same fashion we're proposing on 301 G. In the  
15 instance of 301 G, however, we'll finish the building to match  
16 the existing brick finish of the building, unlike what you see  
17 up here.

18           Thank you.

19           MR. COOK: If I may, Mr. Chairman -- John, just  
20 very quickly, will the installation at 301 G meet all the  
21 required setbacks?

22           MR. KELLEY: That is correct, yes.

23           MR. COOK: Okay. And the photograph of the  
24 shelter that you have provided for illustration purposes, that  
25 shelter seems to be located fairly close to the edge of the

1 building. Is that going to be the location of the proposed  
2 shelter or will the proposed shelter be set farther back toward  
3 the side?

4 MR. KELLEY: If I go to this roof plan, you can  
5 see that the shelter here, the shelter in the photograph was set  
6 back the height, which is 10 feet 5.5 inches, of the shelter  
7 itself, but we're set back 31 feet from both of these two  
8 facades. So we're well in the center of the existing building,  
9 in fact, offering less of a profile from this direction than the  
10 central penthouse.

11 MR. COOK: Mr. Chairman, I'd like to ask Mr. Azad  
12 Abul to come forward and present some testimony on behalf of the  
13 application.

14 Azad, would you please first state your name and  
15 address?

16 MR. AZAD: Yes. Hello. My name is Abul Azad,  
17 Senior RF Engineer from Nextel Communications in the Baltimore-  
18 Washington market.

19 MR. COOK: Azad, you are an RF engineer, correct?

20 MR. AZAD: That is correct.

21 MR. COOK: And your job requires that you assist  
22 in the identification of prospective radio link sites and in the  
23 assessment of their effectiveness, is that correct?

24 MR. AZAD: That is correct.

25 MR. COOK: Could you please explain to the Board

1 why this property at 301 G street has particular appeal to  
2 Nextel as a radio link site?

3 MR. AZAD: Sure. The main reason why this site  
4 was the original design is we have a site, VC-484 Navy Yard,  
5 which is just about a half-a-mile or so east of -- I'm sorry,  
6 west of the current location of this site. What happens is the  
7 site is currently physically maxed out as to the radio loading  
8 channel capacity as to how many customers we can support at this  
9 point. So until we further add another new site, so when a  
10 customer calls they don't get a busy signal, that is the main  
11 purpose.

12 So this site will quite a bit -- there's very  
13 heavy traffic on the 295/395 freeway and also South Capitol  
14 Street. That's where most of the traffic is coming from, which  
15 is causing our Navy Yard site to load up to the maximum  
16 capacity.

17 MR. COOK: Was there another facility in the  
18 immediate vicinity that might have worked for you?

19 MR. AZAD: Yes, the original site we had looked  
20 at was right across from this building on the other side of 395,  
21 where NASA's office is. Unfortunately, I believe there were  
22 access issues and APEX site property management, who was  
23 managing it at that time, was also selling the property, which  
24 also limited our access to the building.

25 MR. COOK: When you say "access issues," Nextel

1 requires 24/7 access, is that correct, 24 hours a day, seven  
2 days a week?

3 MR. AZAD: That is correct, 24 by 7 for any  
4 emergency work.

5 MR. COOK: And the occupants of that building,  
6 you mentioned NASA, is the Comptroller of the Currency also in  
7 that building?

8 MR. AZAD: That is correct.

9 MR. COOK: All right, thank you.

10 Mr. Chairman, one of the anomalies of this  
11 particular site is that, if this building had been constructed  
12 last year and built to its lawful height of 60 feet, the  
13 facility that we've described to you could have been installed  
14 on this rooftop with administrative review and a building  
15 permit.

16 The curious thing here is that we have a building  
17 that is higher than is currently permitted because of a rezoning  
18 subsequent to its construction, but it is the very height of  
19 this building that makes it attractive for the purpose Mr. Azad  
20 just described.

21 As I think the Board would acknowledge, the  
22 typical preference of local governments in the siting of  
23 wireless facilities is to put these facilities, wherever  
24 possible, on existing structures. Frankly, the higher a  
25 rooftop, the better in terms of mitigating the visual impact on

1 those who might view the facility from the ground.

2 So here we have a site that is, I believe, in all  
3 respects a very attractive and appropriate site for a use such  
4 as described by Mr. Azad, but we are hung up, frankly, on the  
5 issue of the building exceeding its now-permitted height.

6 We believe that permitting this variance will  
7 have no adverse effect on the community. This is an area  
8 variance. As you all know, the standard for an area variance is  
9 peculiar difficulties, not hardship. The peculiar difficulties  
10 here, frankly, arise from the rezoning of the property and its  
11 height, which now exceeds the permitted height.

12 There is no way that that can be remedied  
13 structurally. One cannot lop off three stories of a building to  
14 bring it down to a permitted height. But, again, a very  
15 important point that I have to emphasize is, if this building  
16 were only 60 feet, we wouldn't be here today.

17 With that, I would very much appreciate the  
18 Board's favorable consideration of this application. I am more  
19 than happy to answer any questions you may have. Thank you.

20 CHAIRPERSON GRIFFIS: Thank you, Mr. Cook.

21 I think that is very straightforward in terms of  
22 both the uniqueness of the height based on the renewal -- I  
23 guess it was program -- that it was built under to get the  
24 heights, which also makes it an attractive piece for the  
25 transmission and the equipment, which goes, as I was going to

1 ask, but I think you've adequately stated the peculiar  
2 difficulties of that. I think it's fairly clear from the  
3 photographs that are showing the setbacks on the roof plan that  
4 there would be no visual detriment, but we can go further into  
5 all that.

6 Any questions from the members at this point?  
7 Any clarifications?

8 MEMBER LEVY: Just a quick question: The antenna  
9 that's located on a sled on the corner of the building, we  
10 haven't talked at all about the size of that or the height.  
11 What is the height of that structure?

12 MR. COOK: Mr. Levy, you're correct, I didn't get  
13 into the specifics of that because, quite candidly, the antennas  
14 are really not the issue. It's the height variance that's the  
15 issue here. The antennas are permitted by right.

16 But, to answer your question, the antenna that  
17 you described on the sled would be 10 feet above the roof deck,  
18 and they are set back to the minimum one-for-one required  
19 setback.

20 MEMBER LEVY: Thanks. That's my question.

21 CHAIRPERSON GRIFFIS: Did we have -- wasn't there  
22 a submitted image of that? Maybe I'm getting cases mixed up  
23 perhaps. I know we have images of the actual enclosure, but the  
24 image of the 10-foot, what does it physically look like?

25 MR. COOK: There was a drawing submitted, an

1 engineering drawing submitted.

2 CHAIRPERSON GRIFFIS: Yes, that's right.

3 MR. COOK: It basically is a triangular steel  
4 frame.

5 CHAIRPERSON GRIFFIS: Yes, I'll find it later.  
6 That brings me back.

7 Okay, let's move on to government reports. I  
8 believe Office of Planning is with us. Indeed.

9 MS. STEINGASSER: Yes, sir. I'm Jennifer  
10 Steingasser with the Office of --

11 SECRETARY PRUITT: Excuse me, Mr. Chairman,  
12 before you go forward, we do need a waiver.

13 CHAIRPERSON GRIFFIS: Sure. Oh, we do. No, no,  
14 no. I'm sorry, we did take care of that and the ANC. So I  
15 think we're all set. Some things get done just like that.

16 Okay.

17 MS. STEINGASSER: Okay. My name is Jennifer  
18 Steingasser. I'm with the Office of Planning.

19 Our review of this application was relative to  
20 the variance request for just the cabinet and the zoning  
21 criteria. We did recommend approval of the cabinet. We felt  
22 that met the exceptional situation and conditions of the  
23 property by virtue of being constructed as an Urban Renewal  
24 Project with this height specific to the site that is no longer  
25 applicable under the current zoning of R-5-C.

1           We felt that this particular situation precluded  
2 the building from using its rooftop, which it would otherwise be  
3 entitled to use. We felt that a practical difficulty resulted  
4 in the constraints on the use of the use, which, as the  
5 Applicant explained, normally would be an administrative and  
6 building permit review.

7           We agreed with their placement of the cabinet as  
8 having minimal visual impact. It exceeds all setback  
9 requirements in its place, such that it would be in line with  
10 the other rooftop penthouses.

11           We felt that the application upheld the integrity  
12 of the zone plan as intended. The height's no taller than  
13 existing penthouse. The cabinet is located to minimize its  
14 visibility. The cabinet would not affect the residential use of  
15 the building, as described in the R-5-C zone, and the cabinet  
16 allows through this procedure an architectural control that is  
17 normally requested through roof structures of Section 411.

18           We also felt that the use of the roof for the  
19 placement of antennas and their associated equipment cabinets is  
20 consistent with the intent of antenna regulations, as set out in  
21 Section 2520, and we do recommend approval of the application.

22           CHAIRPERSON GRIFFIS: Thank you.

23           Any questions for Planning?

24           COMMISSIONER PARSONS: No questions.

25           CHAIRPERSON GRIFFIS: Question from the

1 Applicant?

2 (No response.)

3 Fabulous.

4 We do have any ANC report which we have waived  
5 in, ANC-2D, which recommends denial of the application. If you  
6 have it in front of you, do you want to just summarize some of  
7 the issues brought up in the letter that's before us.

8 I'm sorry, I should probably make sure absolutely  
9 that the ANC member is not here. Okay.

10 MEMBER LEVY: Okay. ANC-2D, properly-noticed  
11 meeting of October 15th, the ANC considered this Application No.  
12 16770. Mr. Cook appeared on behalf of the Applicant, made a  
13 presentation. Following extended discussion, the ANC voted 4-  
14 to-1 to recommend denial, with a quorum present.

15 The Commission's opposition is based on the  
16 following grounds:

17 "One, the Applicant has not met the hardship test  
18 for a variance. The only hardship involved is that the  
19 Applicant will be denied the additional revenue that rental of  
20 the roof to Nextel Communications would bring."

21 CHAIRPERSON GRIFFIS: Let's go to two.

22 MEMBER LEVY: No. 2, "The Applicant and Nextel  
23 have not exhausted alternative possibilities for an equipment  
24 shelter at 301 G" -- I guess that's 301 G Street? -- "in an  
25 apartment or elsewhere in the building or other locations in the

1 area."

2 And, three, "Granting this variance would not set  
3 a policy precedent for similar structures on other buildings in  
4 Southwest, but would establish a legal and competitive precedent  
5 for all the other carriers to place equipment shelters housed in  
6 this building."

7 "We are also concerned that the roof-mounted  
8 equipment is not going to benefit the residents of the building  
9 by reducing rents or providing any other tenant advantages or  
10 benefit residents of neighboring buildings unless they happen to  
11 be Nextel subscribers."

12 "The proliferation of such shelters and equipment  
13 constitute an environmental and aesthetic blight. The claims of  
14 the Applicant that the health threats of the equipment are  
15 minimal begs the question of the impact of cumulative exposure  
16 from multiple sources."

17 "There was, moreover, no evidence that the  
18 community generally wanted this variance."

19 Signed by the Chairman, Andy Litski.

20 I'm losing my voice.

21 So, basically, they're concerned that the  
22 Applicants' not met the hardship test. They haven't exhausted  
23 alternate locations. They're worried about setting a policy  
24 precedent for other structures, and they appear to have some  
25 health concerns regarding cumulative exposure from multiple

1 antenna sources.

2 CHAIRPERSON GRIFFIS: Do you want to speak  
3 briefly to those topics?

4 MR. COOK: Just very briefly, Mr. Chairman. Let  
5 me start with the last one first, the health effects issue. We  
6 did, to the best of our ability at the ANC meeting, try to  
7 address the concerns that a couple of the folks raised with  
8 respect to RF emissions. As I believe everybody on the Board  
9 knows, consideration of health effects issues is not really an  
10 appropriate area of inquiry by local governments in situations  
11 like this.

12 But, again, prefacing my remarks with the  
13 statement that the antennas are not really the subject of this  
14 variance application, we did explain to the ANC and, as you will  
15 see as part of the record submitted in this case, we did file an  
16 assessment of the antenna and the RF issue by a health effects  
17 expert. A copy of that is in the file. That individual  
18 concluded that this facility will operate well within and below  
19 permitted minimums adopted by the FCC Guidelines.

20 I will also mention we always run into concerns,  
21 and we certainly appreciate the legitimacy of those who express  
22 them, about health effects. But, as you all know, the D.C.  
23 Antenna Commission is dealing with that, among other issues that  
24 it's dealing with.

25 I am participating as a member of that

1 Commission. Each site has to be evaluated based upon its  
2 individual RF characteristics, and the report that we've  
3 submitted clearly explains that we are operating well within the  
4 limits there.

5 Moving quickly to the other issues --

6 CHAIRPERSON GRIFFIS: While I have you on that --

7 MR. COOK: Yes.

8 CHAIRPERSON GRIFFIS: Would you have the letter  
9 from Invertex -- I think that's the way you say it -- August  
10 30th?

11 MR. COOK: Correct.

12 CHAIRPERSON GRIFFIS: Which indicates and kind of  
13 goes through the health, and I agree with you on the fact that  
14 we do not have jurisdiction over health codes, the requirements,  
15 et cetera. One of the things that they did notice in that is  
16 that they recommended signage to be placed based on whatever the  
17 time that you have and proximity.

18 Is my understanding correct that you intend to  
19 have such signage on that?

20 MR. COOK: Absolutely. This is not a rooftop  
21 that is open to public access, but you do need some signage to  
22 take care of occupational workers.

23 CHAIRPERSON GRIFFIS: But, if I'm not mistaken,  
24 it's a great view. So you may have --

25 MR. COOK: It looks like it.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. COOK: Very quickly, with respect to some of  
3 the other concerns, the hardship issue, I believe we addressed  
4 in my summary comments. We certainly do speak to it in our  
5 statement of justification. That's part of the record.

6 The hardship is not the standard in this case.  
7 It is practical difficulties, and I will just let that suffice  
8 as a response, unless anyone has a follow-up question there.

9 In terms of whether or not this would establish a  
10 precedent, it's my understanding and view that variance requests  
11 are each considered on their own merits, and in granting a  
12 variance in this case does not necessarily mean that it's open  
13 season this roof for telecom carriers, but I would respectfully  
14 submit that, even if that were the case, that would not be a  
15 sufficient basis on which to deny this application. We think  
16 we've made our case for a variance.

17 As I say, if this building were lower, 30 feet,  
18 36 feet lower -- excuse me -- 26 feet lower, Nextel or other  
19 carriers could presumably locate on it. So we believe that that  
20 concern is misplaced.

21 What was the other? I think the other concern  
22 had to do with the fact that some of the folks believe that the  
23 tenants are not deriving an economic benefit from this  
24 installation. Candidly, folks who live in the building rent  
25 apartment space; they don't have an ownership interest or even a

1 lessee interest in the roof. The building is owned by Capital  
2 Associates, Inc., and the rooftop is now an asset. Once it was  
3 a wasted asset, but now it is an asset. I respectfully believe  
4 that the property owner has a right to use its rooftops in any  
5 manner permitted it under the Zoning Code.

6 Thank you.

7 COMMISSIONER PARSONS: Mr. Chairman, I wonder if  
8 you could continue on and discuss this issue of whether it's  
9 possible to locate it in an apartment or elsewhere within the  
10 building. That was one of their points.

11 MR. COOK: I'll be glad to do that. If I may, I  
12 would like to invite Ms. Shirley Paul, who is a representative  
13 of the owner and is here today. She is registered as a witness,  
14 and perhaps ask her to respond to that.

15 Ms. Paul? Just state your name.

16 MS. PAUL: Shirley Paul.

17 MR. COOK: And your address.

18 MS. PAUL: My business address is 301 G Street,  
19 Southwest.

20 MR. COOK: And, Ms. Paul, you are the General  
21 Manager for the managing agent of the Capital Park Towers  
22 apartment?

23 MS. PAUL: That's correct.

24 MR. COOK: Okay. You heard Mr. Parsons'  
25 question. Could you please respond to that, as to how the

1 building owner would feel about making an apartment unit  
2 available for the storage of equipment?

3 MS. PAUL: We are a residential community and we  
4 intend to keep it a residential community. We could not take an  
5 apartment to put the equipment in.

6 COMMISSIONER PARSONS: And there's nowhere else  
7 in the building?

8 MS. PAUL: No, sir.

9 COMMISSIONER PARSONS: All right, but,  
10 technically, this could be done? There's no reason for this  
11 mechanical equipment to be on the roof? The antennas, yes, but  
12 not the equipment in the penthouse, right?

13 MR. COOK: Actually, there is good reason for it  
14 to be there. If you'll permit me, I'll explain it or I can  
15 bring up a construction engineer.

16 COMMISSIONER PARSONS: That's all right.

17 MR. COOK: The equipment structure, the equipment  
18 shelter, houses the radio and switching equipment that operates  
19 the antenna. Co-axial cable has to run from the inside of the  
20 equipment shelter to the antenna locations themselves.

21 If, for example, the equipment shelter in this  
22 case were placed on the ground, say, near the base of the  
23 building, that would literally mean that a co-axial cable run  
24 would have to be run up the side of the building, an eight-story  
25 building. This particular building, if you will recall from the

1 photographs, each apartment unit has a balcony. So there are  
2 all of these outcroppings, if you will, balconies along the  
3 building.

4 You would literally have to snake in one fashion  
5 or another co-axial cable up the side of the building. There  
6 are no -- and our construction manager has verified this --  
7 there is no existing duct or cable run within the building in  
8 which he could run that cable. So I would submit that we're  
9 looking at an aesthetic issue in terms of running cable up the  
10 facade of a building.

11 Beyond that, the shear distance of that cable run  
12 would degrade the co-ax signal. That's a very long way to run a  
13 co-ax signal. Presumably, if it could be done, there would have  
14 to be boosters and whatnot associated with pumping that signal  
15 through. So there are some real practical considerations.

16 The other factor is that building is heavily  
17 developed with parking space both beneath the building and all  
18 around the building. Again, it presents a practical difficulty  
19 in locating an area to place an equipment shelter.

20 COMMISSIONER PARSONS: Okay, thank you.

21 CHAIRPERSON GRIFFIS: What sort of equipment is  
22 in that in terms of, if you put it into an apartment, does it  
23 vibrate? Does it make noise? I mean, you said that there are  
24 actually air-cooling attachments on that. Obviously, it needs  
25 to be at a special temperature. Just to flesh out the whole

1 realm of that, can you paint a picture of what that room would  
2 be if it was an apartment?

3 MR. COOK: Well, maybe I'll --

4 CHAIRPERSON GRIFFIS: Just talk to this, I mean,  
5 in terms of the equipment in terms of vibration creation, in  
6 terms of temperature, differential in terms of any sort of noise  
7 or impact.

8 MR. COOK: If I may invite another witness up?

9 CHAIRPERSON GRIFFIS: Please.

10 MR. COOK: Dave? State your name and address,  
11 please.

12 MR. DUDMAN: Hello. I'm Dave Dudman. My address  
13 is 6013 Mustang Drive in Riverdale.

14 MR. COOK: And, Dave, you're a construction  
15 manager for Nextel?

16 MR. DUDMAN: Yes, I am.

17 MR. COOK: Okay. You heard Chairman Griffis'  
18 question?

19 MR. DUDMAN: The temperature of the room would be  
20 controlled by air conditioning. The radios emit a tremendous  
21 amount of heat. So we keep them cool.

22 There would be a series of racks. We would  
23 pretty much have to gut their building -- I mean gut the room  
24 and convert it into a communications center --

25 CHAIRPERSON GRIFFIS: Right.

1 MR. DUDMAN: -- which would cause maybe not an  
2 overall impression, but the construction would be -- it would  
3 bother all the residents on that floor for a while until it was  
4 finished.

5 CHAIRPERSON GRIFFIS: And then, and then we'll  
6 put this to rest, but you would basically have some sort of air-  
7 cooling systems, whether they're HAC, whatever they are, running  
8 constantly?

9 MR. DUDMAN: Yes.

10 CHAIRPERSON GRIFFIS: That would, obviously,  
11 create some noise, perhaps some vibration. They look pretty  
12 massive just for a small square footage. Obviously, you just  
13 indicated there's a heat load that's created.

14 MR. DUDMAN: That is a different type of a unit  
15 than what we would use.

16 CHAIRPERSON GRIFFIS: Yes, I know, but in terms  
17 of comparison for as much detail as we need --

18 MR. DUDMAN: Yes, right.

19 CHAIRPERSON GRIFFIS: -- I think it goes there,  
20 right?

21 MR. DUDMAN: Agree.

22 CHAIRPERSON GRIFFIS: Okay. Have I absolutely  
23 slammed that one down then?

24 (Laughter.)

25 All right. Okay.

1 MR. COOK: I have no further comments, Mr.  
2 Chairman.

3 CHAIRPERSON GRIFFIS: Indeed. Are there persons  
4 or parties in support giving testimony today on this case?

5 (No response.)

6 Persons or parties in opposition this evening?

7 (No response.)

8 I will bring to light I believe this is submitted  
9 in the case, and it is written on the announcement of the  
10 application. It's one by a Margaret -- I'm going do terrible  
11 justice to this name, I'm afraid -- but Creten, I believe,  
12 C-R-E-T-E-N, 31 G Street, Southwest, and it is handwritten on  
13 top. It says, "I object to this. No exception to the height of  
14 building, especially in view of the recent plane crashes into  
15 highrise buildings."

16 Just so we all review that, and I think that is  
17 obviously a concern that's been stated. In terms of the  
18 parallel between plane crashes of September 11th and this  
19 building, I don't think that this increasing the height so  
20 dramatically to make this a target, if we have any other  
21 targets. But be that as it may, if you want to follow up -- you  
22 don't necessarily need to.

23 Just to be clear, we did call for parties in  
24 opposition who are testifying. We don't have any this evening.  
25 We do have, obviously, the ANC and the one note that was read.

1                   And I think we could move on to closing remarks,  
2 if everyone is ready. Very well, we'll turn it over.

3                   CLOSING STATEMENT BY MR. COOK

4                   MR. COOK: Just very briefly, Mr. Chairman, I  
5 would commend the report of the Office of Planning, which  
6 obviously we believe correctly concludes that the granting of  
7 this variance will have no deleterious impact on the surrounding  
8 community, and that the circumstances, the peculiar difficulties  
9 arising from the rezoning property and the lowering of its  
10 permitted height justify, under the facts and circumstances of  
11 this case, the granting of the requested variance. We request  
12 action by the Board this evening on that matter.

13                   CHAIRPERSON GRIFFIS: Thank you, Mr. Cook.

14                   A quick reading on the Board, are we prepared to  
15 move ahead on this? Fabulous.

16                   I would just expedite things, then make a motion  
17 to approve Application No. 16770 for a variance from the height  
18 provisions under Section 400 to allow the construction of a  
19 roof-mounted antenna, equipment shelter, and a variance to allow  
20 said equipment shelter to be located on an apartment that is  
21 nonconforming as to height under Subsection 2001.3 at premises  
22 301 G Street, Southwest.

23                   MEMBER LEVY: Second.

24                   CHAIRPERSON GRIFFIS: Thank you, and I think I  
25 will not reiterate, because I think the case has been clearly

1 made and supported by the Office of Planning report that the  
2 uniqueness, practical difficulty, and that no detriment has been  
3 laid out and proven.

4 I think we should take great note that the ANC  
5 did take the time to meet and to meet the Applicant. I think  
6 the Applicant has addressed the points that were raised by the  
7 ANC to my satisfaction, and I hope to theirs, when they  
8 understand the full impact and the realities of what's happening  
9 here.

10 Any other discussion?

11 (No response.)

12 All in favor?

13 (Chorus of ayes.)

14 Opposed?

15 (No response.)

16 Staff will record the vote, when ready.

17 MS. BAILEY: Mr. Griffis made the motion. Mr.  
18 Parsons seconded it. Mrs. Renshaw, Mr. Levy in agreement.

19 MEMBER LEVY: I seconded it.

20 MS. BAILEY: Mr. Levy, you seconded it?

21 MEMBER LEVY: Yes.

22 MS. BAILEY: It's kind of hard to know what's  
23 going on on this side.

24 MEMBER LEVY: I can imagine.

25 MS. BAILEY: The vote is 4-0-1 approval, summary

1 order.

2 Anne is gone? Okay, 3-0-2, summary order, bench  
3 decision.

4 The vote is 3 -- did three people vote for this?  
5 -- 3, no opposition, and Mrs. Renshaw and third mayoral  
6 appointee not present.

7 Did I confuse you, Mr. Griffis?

8 CHAIRPERSON GRIFFIS: Me? No. Absolutely not.

9 (Laughter.)

10 I'm all set. I think that's it. Thank you very  
11 much.

12 MR. COOK: Thank you.

13 CHAIRPERSON GRIFFIS: If you wouldn't mind then,  
14 we'll recess until 6:05. Okay, we're just waiting for the third  
15 member to come in.

16 (Whereupon, the foregoing matter went off the  
17 record at 5:50 p.m. and went back on the record at 6:05 p.m.)

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E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:05 p.m.)

CHAIRPERSON GRIFFIS: It looks like we do have a quorum, so we can start again, if Ms. Bailey would be so kind as to call our last case.

MS. BAILEY: Application No. 16766, of The 14421 Trust, dba Nastos Construction, pursuant to 11 DCMR 3104.1 for a special exception to allow the construction of a telecommunications facility, antennas other than commercial broadcast antennas and equipment shelter, under Section 212 in a C-M-1 District at premises 1421 Kenilworth Avenue, Northeast, square 5164, lot 12.

All those wishing to testifying, please stand and raise your right hand.

(Witnesses sworn.)

MS. BAILEY: Thank you.

CHAIRPERSON GRIFFIS: Thank you, Ms. Bailey.

Okay, I don't think we need to take up anything immediately, so we'll turn it to you.

MR. DONOHUE: Mr. Chairman, the Office of Planning did support a report, which I hope is in your packet, and dated October 23rd. You do not have a revised set of plans, but the Applicant met with the Office of Planning actually rather late in the day on Friday. We have agreed to amend our application reducing the overall height of the pole, and the

1 Office of Planning report supports that recommendation. I just  
2 want to raise that as a preliminary. Hopefully, you have that  
3 report in your record.

4 SECRETARY PRUITT: You should have gotten it  
5 probably Friday or earlier this morning. It's a supplemental  
6 report.

7 CHAIRPERSON GRIFFIS: And dated October 23rd?

8 SECRETARY PRUITT: Yes.

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. DONOHUE: Secondly, Mr. Chairman, let me  
11 introduce the team, and then I'm going to ask for the Board's  
12 indulgence. The representative of the landlord is here. He's  
13 got a daycare situation, so I want to shuffle the order a little  
14 bit and ask Mr. Bruce Manas to speak very briefly, but let me go  
15 through who we are very quickly.

16 CHAIRPERSON GRIFFIS: Great.

17 MR. DONOHUE: My name is Ed Donohue, outside  
18 counsel with AT&T Wireless services, with the Law Firm of Cole,  
19 Raywid and Braverman. To my left is Emily Nelms, who is the  
20 Site Acquisition Manager with Bechtel. Bechtel is the Project  
21 Manager for AT&T Wireless deployment. To Emily's left, the  
22 aforementioned Mr. Manas, who is the Chief Financial Officer  
23 with Nastos Construction. Finally, to my right, Mr. Jonathan  
24 Branch, who is RF or radio frequency engineer with AT&T  
25 Wireless.

1 In terms of timing, after we get Mr. Manas in his  
2 car and back to his daycare --

3 CHAIRPERSON GRIFFIS: Indeed.

4 MR. DONOHUE: -- my goal is to have two speakers,  
5 and two speakers only, and move through this very rapidly. So  
6 for your time and purposes, I think on direct we can be inside  
7 10 minutes. Was that what we said, Beverly?

8 CHAIRPERSON GRIFFIS: Okay. Absolutely take the  
9 time that you need, but I absolutely understand the daycare  
10 situation. So let's move to that.

11 MR. DONOHUE: Very good. Thank you. We  
12 appreciate it.

13 MR. MANAS: My name is Bruce Manas. I live at  
14 600 Rusty Lane, Nodington, Maryland. I'm currently the Chief  
15 Financial Officer at Nastos Construction as well as the  
16 Administrator of The 1421 Trust. The 1421 Trust is the  
17 mortgage-holder of the building, and we have occupied, Nastos  
18 Construction has occupied the building for approximately three  
19 years.

20 I've been with the company for almost a year now,  
21 and we are basically a small construction business, renovation,  
22 restoration, commercially-based. We perform at least 50, almost  
23 60 percent, of our work within the District of Columbia. We are  
24 a minority business enterprise, a local, small disadvantaged  
25 business enterprise by the District of Columbia. We are Small

1 Business Administration 8(a)-certified also.

2 Our job, basically what we continue to do is  
3 continue to work within those programs in order to grow. Back  
4 in March of this year, we were presented with a proposal to  
5 enter into a lease agreement for a cellular tower with AT&T.  
6 After consideration, the fact that we are a small construction  
7 firm, we could make use of the rental income that would come  
8 from this.

9 MR. DONOHUE: Mr. Chairman, I meant to say, and I  
10 promised Bruce that I would do this, that his testimony really  
11 doesn't go to the nature of the facility or its setup within the  
12 network. I really just wanted to have him give you the owner's  
13 perspective, if you will.

14 So if there are no questions for Mr. Manas, I  
15 think I'd like to ask if the Board will excuse him.

16 CHAIRPERSON GRIFFIS: I think that's fine.

17 MR. MANAS: Thank you very much.

18 CHAIRPERSON GRIFFIS: Thank you. Drive safely.

19 MR. DONOHUE: Thank you, Mr. Chairman.

20 My first witness is Emily Nelms. Emily is  
21 Acquisition Manager, as I said, with Bechtel. Her areas of  
22 responsibility are the District of Columbia and various counties  
23 within Maryland. Bechtel is Project Manager for AT&T Wireless'  
24 deployment, and the scope of Emily's testimony is to describe to  
25 you the lay of the land, if you will, and the search for a site

1 for cellular -- for wireless. I beg your pardon.

2 Emily's testimony also goes to things like the  
3 nature of the compound, access, et cetera. Emily's testimony  
4 will not cover things like RF or radio frequency, coverage,  
5 objectives, signal strength, et cetera. That's the second  
6 witness, Mr. Jonathan Branch.

7 Without further ado, I guess, Emily, let me ask  
8 you to begin, and I'll ask you some questions.

9 MS. NELMS: I am Emily Nelms with Bechtel  
10 Communications, Project Manager for AT&T Wireless in the  
11 Washington area.

12 The first thing, I wanted to give you an idea as  
13 to the area that we're talking about. This is an overhead taken  
14 a number of years ago. The Nastos Construction site is right  
15 here in what is already considered the Kenilworth Industrial  
16 Park. It is close to, as you can see, Kenilworth Avenue,  
17 weaving in and out of town, the railway station, and the  
18 Deanwood Metro Park and the Metro station.

19 Surrounding this area of Nastos Construction is  
20 the property that will be purchased by the owner's relative, and  
21 it's all light to medium, leaning toward the heavy construction  
22 with equipment, large pieces of equipment and other  
23 construction-related items.

24 Along the railroad tracks there are already some  
25 electrical utility lines that run the length of the tracks, I

1 suppose to feed the trains going in that area. They are all  
2 standing up on the elevated -- because this is somewhat elevated  
3 to the location of our pole and the Nastos Construction site.

4 The coverage objective for this location is to  
5 cover the main roads and the surrounding community, the main  
6 roads being Kenilworth Avenue, Minnesota Avenue, the subway as  
7 it passes by, and the neighbors surrounding, including Eastern  
8 Avenue and the corridors around. I believe it will give some  
9 good coverage into the Park also, where you want to make sure  
10 that there's some safety and where there are safety concerns.

11 We find that there's approximately 100,000 cars  
12 that pass by this area a day, requiring additional channels to  
13 offer service to these customers, reliable service, what AT&T  
14 considers reliable service to the customers that are in the area  
15 and passing through the area.

16 How we come about finding a site is the RF  
17 Engineering Department designs the network and they say, well,  
18 we have some coverage issues and signal reliability issues in a  
19 certain area. They will then give us what they call search  
20 ring, and the search ring encompasses an area around where we  
21 should go and look for a particular communication site. In this  
22 case the search ring covers pretty much this area.

23 We then go and look in the area to see if there  
24 are any existing tall structures like transmission towers, water  
25 tanks, tall buildings, existing monopoles, and anything else

1 that sticks up that we could put antennas on. In this case  
2 there really were no existing tall structures.

3 So we went to -- the initial place was the Ron  
4 Brown Middle School to see if we could place some kind of a  
5 structure on their property. They were not an amenable  
6 landlord.

7 We then went to Deanwood Park, which has some  
8 light standards, and we thought we would use a light standard as  
9 a structure, replace it with a taller structure, and use that.  
10 But the citizens in this area were not very pleased about that,  
11 and they thought that what we should do is move to the more  
12 industrial area, which is already in their neighborhood and is  
13 considered the Kenilworth Industrial Park.

14 We then went over to this industrial area and  
15 talked to the landlords and found Nastos to be, one, a willing  
16 landlord and, two, a landlord that had the property and the  
17 access for us to get our equipment in and out of the property,  
18 and made a contract with Mr. Nastos or the Nastos family.

19 The pole will be approximately 100-feet tall, and  
20 I think you've read in your supplement that that's the case at  
21 this point, and will accommodate not just AT&T, but at least two  
22 additional carriers on that site.

23 The compound itself will be fenced in. Nastos  
24 Construction is fenced in. This is kind of the blowup of  
25 Nastos' site. The Nastos property is already fenced in, and we

1 will fence an additional portion of that property to accommodate  
2 the pole, AT&T's equipment area, and any other carriers that  
3 have equipment to go in the area.

4 The area itself is fairly well-screened from view  
5 because there are a number of trees here that screen it. There  
6 is the elevated subway line and train lines, the Metro station,  
7 and the industrial park and the road. So there is not a -- we  
8 don't believe there will be a great view intrusion to looking at  
9 that pole.

10 Again, the compound will hold additional  
11 carriers, and we feel that this is probably one of the best  
12 locations to place a pole, in an existing industrial area which  
13 already has things like gas stations and construction sites and  
14 other paraphernalia.

15 In our view, the present character and future  
16 development of the neighborhood will not be adversely affected.

17 Further, we believe that the special exception is in harmony  
18 with the general purpose and intent of the zoning regulations  
19 and maps, and will not adversely affect the neighboring  
20 properties.

21 MR. DONOHUE: And that was in your own words,  
22 right?

23 MS. NELMS: That was in somebody's words.

24 (Laughter.)

25 CHAIRPERSON GRIFFIS: Familiar words, yes.

1 MR. DONOHUE: Ms. Nelms, if you would, please,  
2 how would you characterize the decision to build a new  
3 structure, be it a tower or a pole, versus going on an existing  
4 structure?

5 MS. NELMS: Well, we looked for existing  
6 structures in the area, and in this particular area that we were  
7 given to find some place to put a communication site, there are  
8 no tall structures. So we had to think about building some kind  
9 of a structure.

10 MR. DONOHUE: Is it fair to say that it's a case  
11 of last resort to build a new structure?

12 MS. NELMS: It's definitely a case of last  
13 resort. When you start to build new structures, that's the most  
14 expensive case. So we much prefer being on existing structure.

15 MR. DONOHUE: Are you aware of meetings with the  
16 community, be it the ANC or any of the civic associations in the  
17 area?

18 MS. NELMS: Yes, we did meet with the civic  
19 associations and ANC, and I guess as you can see today, there is  
20 no objection to our placement of the pole. In fact, they are  
21 the ones who suggested that we go to the industrial site, which  
22 we did on their suggestion.

23 MR. DONOHUE: Thank you.

24 CHAIRPERSON GRIFFIS: Would you entertain  
25 questions at this point?

1 MR. DONOHUE: Certainly.

2 CHAIRPERSON GRIFFIS: Can you just talk briefly  
3 about the site context? You mentioned, I think someone  
4 mentioned quickly, that the adjacent property was going to be  
5 purchased the host owner, if that's correct?

6 MS. NELMS: I think his relative.

7 CHAIRPERSON GRIFFIS: Well, okay, the relative.  
8 Good.

9 If I'm looking at your site plan, which is  
10 submitted, Exhibit No. 9, it's listed 1491 Kenilworth. Is that  
11 the site that's going to be purchased?

12 MS. NELMS: I don't know the address, but the  
13 site is going to come and wrap around. It wraps around the  
14 whole piece of property.

15 CHAIRPERSON GRIFFIS: Okay, great. Then that  
16 actually extends out to the adjacent avenue?

17 MS. NELMS: Yes.

18 CHAIRPERSON GRIFFIS: Okay. Then can you paint  
19 the picture, just a larger site, what happens up the blocks?  
20 Frankly, what I'm looking towards, where's the residential  
21 start?

22 MS. NELMS: The residential is across 295. There  
23 is some residential on Olive Street here. The buildings closest  
24 here are little businesses that are shady maybe. You know,  
25 they're welding companies and things that are --

1 CHAIRPERSON GRIFFIS: Home businesses maybe --  
2 no, I won't say that.

3 MS. NELMS: No, they're little businesses.

4 CHAIRPERSON GRIFFIS: There's commercial use on  
5 that which is --

6 MS. NELMS: Down here there are some homes, but  
7 there are trees that are in the way, and this pole is sort of  
8 down because this property kind of --

9 CHAIRPERSON GRIFFIS: You may not know, but  
10 approximately what's the distance to the residential homes from  
11 this site?

12 MS. NELMS: I don't know what the distance to  
13 here would be across Kenilworth. Oh, boy, coming from here to  
14 over here (indicating). I don't know. I really don't know.

15 MR. DONOHUE: I believe the Office of Planning  
16 gave us a number of approximately 280 or 285 feet, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Okay, that's probably why  
18 I'm trying to revisit it, because it was in my mind. Good.

19 MR. DONOHUE: There are some photographs that are  
20 in the record, and they're on the back side of that board, that  
21 might give you some context as well.

22 MS. NELMS: This is Kenilworth Avenue, and this  
23 is Nastos building here. Our site would be over there. This,  
24 again, is the access road in front of Nastos, which is right  
25 here, and this is Kenilworth. This is the entrance from Olive

1 Street into area where our compound would be here in the corner  
2 of their property. Then we have enough room to get around their  
3 building with their large trucks. This is the building.

4 CHAIRPERSON GRIFFIS: Do we have all those  
5 submitted?

6 MR. DONOHUE: Yes, sir.

7 CHAIRPERSON GRIFFIS: It must be late in the  
8 evening. That's what I'm looking at. Do you see the center one  
9 on the lower which is the avenue? Okay, not a big deal.

10 MR. DONOHUE: It's the submission of October 9th.

11 CHAIRPERSON GRIFFIS: No, I have it and I'm  
12 looking. I'm just not seeing those immediately, but I have the  
13 rest of these. Okay. That's fine.

14 MR. DONOHUE: Mr. Chairman, the second witness is  
15 Mr. Jonathan Branch. Jonathan Branch is a radio frequency, RF,  
16 engineer with AT&T Wireless. He's been with the company for  
17 five-and-a-half years. I did submit his resume into the record.

18 Mr. Branch has been with me on numerous occasions in area  
19 jurisdictions representing this company in similar proceedings.

20 He has been qualified as an expert in a number of proceedings,  
21 and I would like the Board, if it would, agree that he's  
22 considered to be an expert in radio frequency or RF system  
23 design.

24 CHAIRPERSON GRIFFIS: Let us take a moment to  
25 pull out that resume. Oh, yes, indeed, 10-2 is what we're

1 looking at for Mr. Jonathan Branch. I have reviewed this, and  
2 it is impressive. In fact, I started to learn the definition of  
3 RF engineer on this one.

4 Do you want to take a minute and look at it? Or  
5 any questions? Comments?

6 COMMISSIONER MITTEN: I don't have any questions.

7 CHAIRPERSON GRIFFIS: It's obviously a lengthy  
8 and substantial resume based on the work that Mr. Branch has  
9 done as an RF engineer, and I would accept him as an expert  
10 witness at this point.

11 MR. DONOHUE: Thank you, Mr. Chairman.

12 Jonathan, would you please use the maps that you  
13 have up there and describe, if you would, the coverage  
14 objectives, with particular reference to the handoff, the  
15 adjacent sites, the handoff sites, and describe for the Board  
16 how this proposed site fits within the network?

17 MR. BRANCH: Yes. Okay, what we can see here is  
18 the depiction of our network in the area of the Nastos property.

19 These are the adjoining sites that we currently have on the  
20 air.

21 The purpose in any wireless network is that you  
22 want to have your cell siting roughly equal distance, evenly  
23 spaced, and what you want to do for the end-user is provide a  
24 seamless, contiguous coverage, quality and capacity, where  
25 needed.

1                   So in this area, the surrounding sites that we  
2                   have are World Recycling, which is this site here. Our antenna  
3                   height on that is 100 feet. That's a monopole that we have to  
4                   the south of Route 50.

5                   P.G. Hospital is this site No. 044. That's in  
6                   the existing tower that we're co-located on, and that's off GW  
7                   Parkway. That's 1.56 miles away.

8                   The next site, No. 17, that's a rooftop location  
9                   at the Ft. Lincoln complex at South Dakota and Route 50.

10                  This is site 120, a taxi tower, an existing  
11                  lattice tower that we're co-located on at 100 feet.

12                  And, finally, Capital View apartments here, it's  
13                  a rooftop, an existing rooftop building where we're located  
14                  that's on East Capitol.

15                  What you can see from this diagram is that the  
16                  existing sites that we have on the network in this area create a  
17                  ring, and in the middle we have a gap. The purpose of the  
18                  Nastos property is to fill in that gap, minimizing any coverage  
19                  concerns and also providing additional capacity, more channels  
20                  for users along 295 going to the Kenilworth corridor.

21                  So this is the location without the Nastos  
22                  property and with the coverage all shown.

23                  Okay, the next exhibit just shows the physical  
24                  location of the Nastos Construction, and you can see how it's in  
25                  the middle of that gap, then the location of the proposed Nastos

1 site with the coverage filled in.

2 The height of the surrounding neighbors are all,  
3 with the exception of Capital View, attain a height of 100 feet.

4 That's the height that we're proposing at Nastos Construction.

5 What that does is that we have even spacing between the sites,  
6 and we also have a comparable height between the sites. That  
7 means that all of the sites are going to cover an approximately  
8 roughly equal area. We're not going to have like a site that's  
9 too tall or too short relative to its neighbor. So we're going  
10 to be able to meet all of our objectives for coverage and  
11 quality and capacity in the area.

12 At one point we had filed for a taller height of  
13 149 feet, but we were able to make a concession down to 100 feet  
14 because at one point, with site 17, Ft. Lincoln, we had had some  
15 landlord issues, and there was some discussion about  
16 decommissioning that site, but those issues were resolved. So  
17 that's no longer the case. Since we're keeping that site in the  
18 network, then we're able to, of course, have a lower height at  
19 the Nastos Construction location.

20 So that's basically it. This site is where it  
21 is, at the height it is, to meet our needs for spacing, for  
22 coverage long the major highways, and to provide quality and  
23 capacity for the network in that area.

24 As it was stated previously before, the  
25 relocation to the industrial area closer to Kenilworth was

1 recommended by the ANC. So that's been the progression of this  
2 siting of the site, to move to that industrial area.

3 MR. DONOHUE: Mr. Branch, is it your testimony  
4 that the location characteristics of the antenna as proposed is  
5 reasonably necessary for the intended use of the antenna?

6 MR. BRANCH: Yes.

7 MR. DONOHUE: Thank you.

8 Mr. Chairman, like the earlier application, we  
9 had a health report prepared. We find that it's prudent in any  
10 of one of these cases to have an expert give the Board its  
11 assessment on whether the facility complies with applicable  
12 standards, specifically the FCC Guidelines.

13 We took an additional step and have the author  
14 here this evening. Ms. Steingasser from the Office of Planning,  
15 and perhaps some others know that Allen Rosner has been with us  
16 at some of the Task Force meetings in order to try to help  
17 facilitate some of the discussions about the health effects. It  
18 was not my intention to call Mr. Rosner in for direct, but if  
19 the Board would like to, he is available for questions. His  
20 report is in the record.

21 CHAIRPERSON GRIFFIS: I think it's okay.

22 MR. DONOHUE: That's all we have on direct.

23 CHAIRPERSON GRIFFIS: Great.

24 Questions?

25 (No response.)

1           Let me just jump in quickly and we'll probably  
2 get to it, and I do want to turn to OP on this, but you made  
3 several statements about meeting with the ANC, and the ANC being  
4 in support. I'm looking at my documents. We don't have  
5 anything written from ANC at this point.

6           You may not be able to tell me. Well, what do  
7 you know about that?

8           MR. DONOHUE: Ms. Nelms' testimony on the ANC was  
9 a bit overbroad. The meetings that were held about a year ago  
10 were with ANC-7C. She referenced the initial efforts that we  
11 made on a middle school and at Deanwood Park. On that ANC took  
12 a particular position in opposition. That application was never  
13 filed.

14           This Nastos site is in ANC-7D. I, myself, and my  
15 paralegal and one of my colleagues have made a number of  
16 attempts to try to meet with the ANC to get its sense, including  
17 some conversations over the summer, some letters, and some phone  
18 calls in the early part of October, but we have not met with  
19 ANC-7D. However, I can tell you it's not from lack of trying,  
20 because I always am concerned that the ANC file something and we  
21 have not had a chance to meet.

22           The group that we did meet with was the Eastland  
23 Gardens Civic Association. To my knowledge, that group did not  
24 take a position either. They excused us at the end of the  
25 presentation, and I don't believe they have filed anything.

1           The final group, it was suggested to us by a  
2 Council member that we ought to meet with the Deanwood -- I  
3 apologize if I'm getting these wrong -- the Deanwood Civic  
4 Association, I believe it is. And there was a meeting scheduled  
5 with the Deanwood group, and I was there and prepared to go  
6 forward with a presentation, and that meeting never took place.

7           A couple of the members showed; the Chair did not show, and it  
8 was never rescheduled, to my knowledge.

9           So that's the lay of the land in terms of the  
10 civic meetings.

11           CHAIRPERSON GRIFFIS: The Eastland Gardens Civic  
12 Association, generally, are they the residential across  
13 Kenilworth?

14           MR. DONOHUE: They're actually on either side of  
15 Kenilworth.

16           CHAIRPERSON GRIFFIS: They do straddle  
17 Kenilworth?

18           MR. DONOHUE: Yes.

19           CHAIRPERSON GRIFFIS: Okay.

20           MR. DONOHUE: Yes, and they met and it was a  
21 frank exchange. We had the same exhibits as we've shown here  
22 tonight. We had RF and we had Site Acquisition, and we  
23 described what we had done. As I said, I don't have anything  
24 further from them. That meeting was September the 18th.

25           CHAIRPERSON GRIFFIS: Okay. In terms of the ANC,

1 did they not have regularly-scheduled meetings?

2 MR. DONOHUE: That's correct. There's not a  
3 regularly-scheduled meeting. There's not a meeting that you can  
4 reference on the website and try to see if you're on the agenda.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. DONOHUE: And after better than a half dozen,  
7 maybe eight or nine, phone calls, we felt that they didn't want  
8 to meet with us.

9 CHAIRPERSON GRIFFIS: Okay, but you made contact  
10 with them?

11 MR. DONOHUE: Oh, yes, we did.

12 CHAIRPERSON GRIFFIS: Thanks.

13 We'll go to the Office of Planning.

14 MS. STEINGASSER: Yes, sir, I'm Jennifer  
15 Steingasser with the Office of Planning. I did the report on  
16 this project.

17 The Office of Planning looks very closely at any  
18 kind of application for a monopole tower. We prefer that all  
19 antennas use existing structures, rooftop mounts, anything  
20 besides a pole or tower that's going to break the skyline.

21 We did, however, agree with the Applicants'  
22 information and technical evidence that in this case with this  
23 topography in this area, there were no existing structures that  
24 would provide the elevation mounts needed to provide their  
25 coverage. So we did approach the case with a skeptical eye. We

1 went through the regulations, starting with Section 2520, which  
2 sets out the intent of antenna regulations and talks about,  
3 because of their shape, size, construction, location, how they  
4 may affect health, safety, welfare, the population, and detract  
5 from the street-scape, landscape, skyline, scenic beauty, or  
6 aesthetic interests of Washington, D.C., as a city and its role  
7 as the nation's capital. Those particular issues come up when  
8 go you to Section 212, which sets out the special exception  
9 standards that must be met for a monopole.

10 We went through those, we looked at these  
11 locations and related conditions as they apply to these issues  
12 and found that, as regards health, safety, and welfare, we  
13 concluded, based on our review of the information provided by  
14 the Applicant and the FCC standards and the limitations on  
15 exceeding their RF standards, that it need met the health,  
16 safety, and welfare requirements.

17 We felt that regarding neighborhood quality and  
18 the scenic beauty of the nation's capital, that it also met  
19 those standards. We looked at Kenilworth Avenue as a special  
20 street, which it is designated in the federal elements of the  
21 Comprehensive Plan for the National Capital. There are areas  
22 where it's hard to imagine why it's a special street, but it is  
23 designated and it does merit that review.

24 (Laughter.)

25 So we paid the special attention to the street,

1 and we felt that in this particular location the Applicant had  
2 done a good job of locating the pole in an industrial area with  
3 an industrial character. It was a well-established industrial  
4 character, and the industrial nature of the pole integrated well  
5 into that particular location.

6 We, further, looked at the surrounding  
7 neighborhoods that are to the west and north of the site. It's  
8 probably about 150 feet to the nearest residential unit, and  
9 that would be north, perpendicular to the little red arrow, as  
10 they're showing there, just north of the site. It's a small,  
11 little four- or five-plex brick unit, one story. There was no  
12 evidence of any residents, but it was a residential unit.

13 All the residential property on the west of  
14 Kenilworth Avenue, which is the property that I toured the site  
15 with the Applicant's 106 consultant and the city's archeologist,  
16 and the area is heavily wooded. The trees are closely space,  
17 and the foreground is fairly well viewed -- I'm sorry -- fairly  
18 well screened from the view of what they anticipated for the  
19 antenna height. They were assessing based on 149 feet. I, of  
20 course, was looking at a slightly lower elevation.

21 As we moved through that area, we got to the  
22 issue of height and looked at the height as proposed, and it has  
23 always been our stance that we would support the least height  
24 needed to provide the service required. In this case we did  
25 meet -- I originally set out, based on a zoning criteria, and

1 arrived at 85 feet.

2 After having met with the Applicant on Friday, as  
3 stated, they provided the similar maps that you see showing the  
4 hole in their service coverage and the elevations of the  
5 surrounding towers that they were going to be balanced with.  
6 Based on that information, we were comfortable raising our  
7 recommendation to 100 feet for the tower, and the Applicant  
8 agreed that that was a serviceable height. We felt that met the  
9 criteria of Section 212(6), which is reasonably necessary for  
10 the intended use of the application.

11 We didn't feel there was anything about the  
12 monopole that affected the present character or future  
13 development of the neighborhood and that there is no adverse  
14 effect that would be caused by the location of the tower. The  
15 neighborhood is surrounded, both the industrial and the small  
16 residential, by the railroad tracks on one side, Kenilworth  
17 Avenue on the other. There are some high-voltage transmission  
18 lines that run what we estimate to be about 75-80-feet high.  
19 The Metro runs through there. It's also elevated, and the  
20 skyline is further pierced by several high-elevated sports field  
21 lights, stadium-type lighting. So we felt that the introduction  
22 of this monopole would not adversely affect the skyline as  
23 required by 2520, and we do recommend approval of the  
24 application with the height limit of 100 feet.

25 CHAIRPERSON GRIFFIS: Great. Thank you very

1 much.

2 Any questions from the Board for OP?

3 (No response.)

4 Any questions of OP at this point?

5 MR. DONOHUE: Mr. Chairman, I'd just like to say  
6 for the record that I would like to apologize to the Office of  
7 Planning. It had to submit a report without the benefit of our  
8 technical information and our maps, and Jennifer indulged us and  
9 met with us late on Friday. We literally had a difficulty with  
10 software that we were unable to produce the maps that we always  
11 produce for these meetings and always pride ourselves on being  
12 ready to go. So no questions, but simply say I apologize for  
13 the lateness of the delivery.

14 CHAIRPERSON GRIFFIS: And I'm sure they  
15 appreciate that.

16 Let's move on then. Anybody here to testify in  
17 support?

18 (No response.)

19 Any here to testify in opposition?

20 (No response.)

21 Being the last case, this is your last chance.  
22 Okay.

23 I had one question, and it may be a little bit  
24 offbase or out of context here. Generally speaking, with  
25 monopoles and antennas, et cetera, there is often opposition.

1 Has there ever been an entertaining some sort of attribute that  
2 would be attendant to these -- for instance, what strikes me is  
3 like putting an eagle's nesting spot on top of these things or  
4 something like that. Again, it's a little bit frivolous  
5 question, but why not? It's after 6:30, right?

6 MR. DONOHUE: There are often suggestions to that  
7 effect, and you'd be surprised, eagle's nest actually falls  
8 within pretty same. The consensus often is at the end of day  
9 you ought to let it look like what it looks like.

10 The exception is within a stand of trees, the  
11 tree poles can make sense. Some church properties will  
12 accommodate a cross, and sometimes that works. I can tell you  
13 in a few cases it failed miserably. Sometimes flag poles in  
14 very narrow circumstances because it's a different system  
15 design. But at the end of the day most of the boards conclude  
16 that, as utilitarian as these things are, that they probably  
17 ought to be left the way they are.

18 CHAIRPERSON GRIFFIS: Well, then, that's all I  
19 have. Thank you. I appreciate that indulgence.

20 MR. DONOHUE: Yes, sir.

21 CHAIRPERSON GRIFFIS: Anything else you need to  
22 cover before we move for closing remarks?

23 (No response.)

24 Fabulous. Then we'll turn it over to you again.

25 MR. DONOHUE: Very briefly, Mr. Chairman, we

1 agree and support the Office of Planning's supplemental report,  
2 which recommends approval. I certainly note the number of  
3 references in OP's characterization of the area as industrial.  
4 It's about as industrial as it can get.

5 This was the suggestion of ANC-7C, to go to the  
6 commercial corridor, and I think it was a good one. Frankly,  
7 I'm pleased that my client was willing to make the  
8 accommodations and move toward the commercial. This is the CM  
9 District, one of the heaviest zoning categories in the District.

10 I guess, in sum, we have met our burden of proof  
11 on the special exception standards and ask the Board's  
12 concurrence along those lines.

13 CHAIRPERSON GRIFFIS: Thank you. I appreciate  
14 that. First of all, this is a special exception case, and I  
15 think that has been made.

16 We have a little bit of technical difficulty in  
17 terms of progressing on this in that Ms. Mitten has gone out of  
18 her way to create a quorum, so that we could finish this  
19 tonight, but was not scheduled to sit in on this. So she's  
20 going to ask a few questions to bring her up-to-speed at this  
21 point.

22 COMMISSIONER MITTEN: Right. I didn't know that  
23 you all were going to go for a bench decision. So, given that I  
24 haven't read the record because I wasn't scheduled to sit on  
25 this, I'm just going to ask a few questions that are probably

1 answered in the record, and then I can feel that I'm up-to-  
2 speed.

3 This is a facility that's going to have the  
4 capacity to have 12 antennas? Is that what I briefly read?

5 MR. DONOHUE: That's correct.

6 COMMISSIONER MITTEN: Okay. I believe Ms. Nelms  
7 said that the compound will hold additional carriers. Does that  
8 mean that there will be different carriers among the 12 or there  
9 will be something in addition to the 12?

10 MR. DONOHUE: Generally speaking, if an  
11 additional carrier were to come on, its platform would come at a  
12 height below the optimal height, which is 100 feet. The rule of  
13 thumb in the industry is a 10-foot separation. So should a  
14 subsequent carrier want to co-locate on the pole, the platform  
15 would be at a height 10-feet below the 100-foot height. The 12  
16 antennas that are proposed in this application are all AT&T  
17 wireless sectorized antennas.

18 COMMISSIONER MITTEN: Can you just refer me to  
19 something that's going to illustrate the configuration or do you  
20 have a drawing, so that I understand better what you just said  
21 with a photo or a drawing?

22 MR. DONOHUE: The large version -- excuse me --  
23 the antennas are right here at 100 feet. This shows a  
24 triangular design, four antennas on a face. I'm hoping that  
25 there's a page 2 of this that shows a bird's eye view of the 12.

1 MEMBER LEVY: If I could jus chime in, I mean, is  
2 that what we see in the top corner?

3 MR. DONOHUE: Yes, sir -- well, no, actually --  
4 yes.

5 MEMBER LEVY: Okay.

6 COMMISSIONER MITTEN: I found it.

7 MR. DONOHUE: Yes, that's where we have it.

8 COMMISSIONER MITTEN: So then when someone would  
9 be added to the pole, they'd just get another chunk down -- work  
10 your way down the pole, right?

11 MR. DONOHUE: Right. Usually referred to as  
12 another platform.

13 COMMISSIONER MITTEN: Okay. Then in terms of the  
14 analysis that was done, the health analysis that was done, did  
15 that analysis anticipate like full utilization of the pole or  
16 just what's being proposed at this point?

17 MR. DONOHUE: The standard in the industry is to  
18 evaluate what's being proposed. So it would show for all 12  
19 antennas, the maximum permitted exposure from these 12.

20 COMMISSIONER MITTEN: All right. But will there  
21 be any -- you won't come back to us as additional platforms are  
22 added, is that correct?

23 MR. DONOHUE: That's correct.

24 COMMISSIONER MITTEN: So we wouldn't really have  
25 the fullest sense in terms of the health effects if this pole

1 was at full utilization?

2 MR. DONOHUE: Well, there's two ways to answer  
3 that question. I'm sorry to be obtuse, but the antennas that  
4 are proposed here are what are called categorically excluded.  
5 The insulation height above 30 feet allows us to take advantage  
6 of the FCC's rule that says you don't have to prove that they  
7 meet the guidelines. We always do, particularly when we're  
8 talking about a new pole because we think it's prudent and,  
9 frankly, we think it's the easier way home. They fall so far  
10 below the guidelines that there's never a debate.

11 Some jurisdictions won't require subsequent  
12 carriers to demonstrate that they meet the levels. Some don't.

13 It really depends, and I don't know whether the District has  
14 faced this or not on a pole case. Perhaps it hasn't.

15 COMMISSIONER MITTEN: Okay.

16 MR. DONOHUE: But for a second carrier, that can  
17 be a condition of approval, to have them demonstrate that the  
18 additional antennas wouldn't exceed the levels.

19 COMMISSIONER MITTEN: Okay. Let me then maybe  
20 just ask a question to Ms. Steingasser, which is: Does the  
21 Office of Planning, given that we're still, the Zoning  
22 Commission is still eagerly awaiting the proposed antenna  
23 regulations and getting even more educated than we already are,  
24 but is there any concern on your part that when this pole  
25 reaches full utilization, that there will be any health effects

1 that are of concern?

2 MS. STEINGASSER: No. The FCC requires that all  
3 carriers certify that each location meets both cumulative and  
4 individual standards. So as the third, second or third  
5 applicant comes to attach it, to apply it to this site, they  
6 would have to establish that they were still within compliance  
7 with each cumulative level.

8 COMMISSIONER MITTEN: And who are they going to  
9 be certifying that to?

10 MS. STEINGASSER: Well, it would be certified to  
11 the FCC.

12 COMMISSIONER MITTEN: Oh, okay.

13 MS. STEINGASSER: Under the new regs., we are  
14 going to require that they submit copies of those to us as well.

15 COMMISSIONER MITTEN: Okay. I think I understand  
16 it. Thank you.

17 CHAIRPERSON GRIFFIS: Did you have any other  
18 questions or comments? Are you, the "loose poll," ready to  
19 proceed?

20 (Laughter.)

21 MEMBER LEVY: If it was a joke, I'm too tired to  
22 even hear it at this point.

23 CHAIRPERSON GRIFFIS: Yes, I know. I've got to  
24 cut this out.

25 MEMBER LEVY: It probably wasn't very funny

1 actually.

2 CHAIRPERSON GRIFFIS: No, it probably was not.

3 (Laughter.)

4 But at least I get a kick out of it.

5 Okay, well, I would then make a motion for the  
6 approval of Application No. 16766 for the special exception to  
7 allow the construction of a telecommunications facility,  
8 antennas other than commercial broadcast antennas and equipment  
9 shelter, known in this application as a monopole, under Section  
10 212 at premises 1421 Kenilworth Avenue, Northeast, and this  
11 special exception is to allow the construction of a 100-foot  
12 height, as established in the OP report and in the case  
13 documents. And that's it.

14 MEMBER LEVY: And I'll second that.

15 CHAIRPERSON GRIFFIS: Thank you very much.

16 Discussion?

17 (No response.)

18 What a glorious thing; we're about to end at  
19 6:50. I would then ask all those in favor.

20 (Chorus of ayes.)

21 And opposed?

22 (No response.)

23 Very good. We will record the vote when staff is  
24 ready.

25 MS. BAILEY: Mr. Chairman, if you can just

1 indulge me for a moment?

2 CHAIRPERSON GRIFFIS: Of course.

3 MS. BAILEY: During the break I checked with the  
4 Director and Mrs. Reed is, indeed, off the Board as of this  
5 hearing.

6 CHAIRPERSON GRIFFIS: Thank goodness we cleared  
7 that up.

8 MS. BAILEY: So her vote is not considered.

9 The motion was made by Mr. Griffis, seconded by  
10 Mr. Levy. Mrs. Mitten in agreement. So the vote is -- Mrs.  
11 Renshaw is not present, not voting. The vote is 3-0-2, bench  
12 decision, summary order.

13 CHAIRPERSON GRIFFIS: Thank you very much. I  
14 thank you all. Especially, I do, indeed, thank you for staying  
15 so late and getting this done, and I'm glad that we could do it.

16 This will then end the October 23rd afternoon  
17 session.

18 (Whereupon, at 6:51 p.m., the hearing was  
19 concluded.)

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