

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 15, 2002

+ + + + +

The Public Hearing convened in Room 220 South,
441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice
at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner
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COMMISSION STAFF PRESENT:

Beverly Bailey, Office of Zoning
Paul O. Hart, Office of Zoning
John K. A. Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Maxine Brown-Roberts, Office of Planning
Steven Cochran, Office of Planning
Arthur Jackson, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq. UNITED STATES OF AMERICA

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

(1:05 p.m.)

CHAIRPERSON GRIFFIS: Okay. Good afternoon. And I would like to call to order the special public meeting of January 15th, 2002.

MS. BAILEY: Mr. Chairman, good afternoon. Members of the Board.

The special public meeting this afternoon, Mr. Chairman, concerns application number 16597 of Elaine Carrera. The Board heard this -- last heard this application on December 28th, 2001.

The Board at that time had requested that parties be given an opportunity to respond to concerns that the Board had raised at that time, namely, they, the Board, requested a report from the Office of Planning. That report did come in and the Office of Planning indicated that additional information would be needed to make a decision.

The decision on the application was scheduled for this morning at a special meeting and the decision is not before the Board at this time.

CHAIRPERSON GRIFFIS: Thank you very much. Is anyone here in the audience involved in this case at page 156 -- let me make sure I'm reading the right thing -- 16597, Elaine Carrera? Applicant is not here? Indeed.

Okay. As Ms. Bailey has well said, OP is sitting

1 on the fence on this one, so we don't know -- no. I mean, let
2 me rephrase that. This has been in front of us -- in fact, it's
3 been in front of this Board and there's our esteemed Vice Chair
4 has been involved in this for several years.

5 As we all know, reading this case and coming up
6 with a chronology, this is a particularly difficult one. We are
7 set for decisionmaking, this afternoon, Board members.

8 In and with the new information that was
9 submitted with the information that was not submitted by the
10 applicant, with the Office of Planning report that is, I think,
11 well put together but comes to the conclusion that they cannot
12 decide all of the issues because of the lack of information, I
13 would suggest that we postpone the decisionmaking on this case.

14 And I would stress, underline and perhaps write
15 it in bold that we do this one last time and set a
16 decisionmaking and dispense of it at that point.

17 I wish the applicant was here because I think we
18 could, at least, give a few further directions on this. But
19 they, not being present, I would just simply state that as they
20 will have to put in permit documents, as they have had problems
21 putting together this case even with the assistance of this
22 Board and, more importantly, the staff's only administrator, I
23 would recommend strongly that they utilize a designer or an
24 architect or a zoning expert at some point.

25 Is there any objection to that, moving this,

1 continue the decision at this point? Any comments, questions,
2 I'd take from the members.

3 COMMISSIONER HOOD: No objection, Mr. Chair, but
4 if that's a form of a motion, I'll second it.

5 CHAIRPERSON GRIFFIS: Right. Thank you very
6 much. As -- yeah, Ms. Renshaw?

7 VICE CHAIRPERSON RENSHAW: And it is agreed that
8 this will be the last postponement for this case?

9 CHAIRPERSON GRIFFIS: Yeah. I think in life
10 there's no guarantees, but I think this Board is probably of the
11 mind that that would clearly be the case.

12 Does OP -- you're here, and we appreciate that.
13 Did you want to make any comment on that?

14 MS. BROWN-ROBERTS: No.

15 CHAIRPERSON GRIFFIS: No need to.

16 MS. BROWN-ROBERTS: No.

17 CHAIRPERSON GRIFFIS: Okay. Great. Thank you
18 very much. In which case, I would ask those all in favor --

19 (Chorus of ayes.)

20 CHAIRPERSON GRIFFIS: Thank you. And any
21 opposed?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Great. We can just record
24 that. And I think we will just not pick a date on the bench
25 here, but schedule it with the applicant and notify those

1 involved.

2 MS. BAILEY: The vote is recorded as 4-0-1. The
3 motion made by Mr. Griffis. Mr. Hood seconded. Mr. Levy and
4 Mrs. Renshaw in agreement. Mr. Etherly not here in this case
5 and not participating at this point.

6 CHAIRPERSON GRIFFIS: Actually, we could probably
7 make a quick correction on that. I don't want to take a lot of
8 time, but Mr. Etherly was given the case file for today and I
9 believe did vote. And unless that would have been a problem,
10 maybe -- is that a difficulty?

11 MS. SANSONE: Mr. Chairman, if Mr. Etherly voted,
12 it probably will not present a problem because it's not a vote
13 on the merits of the case.

14 CHAIRPERSON GRIFFIS: Correct. Okay. Great.
15 Thanks. Just for sure clarification. Thanks, Ms. Bailey.

16 MS. BAILEY: Mr. Chairman, did you want me to
17 call that vote again?

18 CHAIRPERSON GRIFFIS: Just briefly, if you would,
19 just so we have it on the record.

20 MS. BAILEY: The vote is 5-0. The motion was
21 made by you. Mr. Hood seconded. Mr. Levy, Mrs. Renshaw and Mr.
22 Etherly in agreement to postpone this to a future date.

23 CHAIRPERSON GRIFFIS: Great. Thank you very
24 much. And that then ends the special public hearing of January
25 15, 2002.

1 And I will save on the gavelling and just call
2 and begin the public hearing, the afternoon of January 15, 2000.

3

4 So this hearing will please come to order. Good
5 afternoon, ladies and gentleman. This is the 15th of January,
6 2002. Public hearing of the Board of Zoning Adjustments of the
7 District of Columbia. My name is Geoff Griffis, Chairperson.

8

9 Joining me today is Ms. Anne Renshaw, our Vice
10 Chairperson. Representing the National -- oh, and I cannot get
11 by and in fact it hasn't been written in my great crib notes
12 here, also, Mr. Curtis Etherly is joining us as an appointee to
13 the Board. Representing the National Capital Planning
14 Commission is Mr. Levy and representing the Zoning Commission is
15 Mr. Anthony Hood.

16

17 Copies of today's hearing agenda are available to
18 you. They are located to my left near the door, the door you
19 did come in.

20

21 All persons planning to testify either in favor
22 or opposition are to fill out two witness cards. These cards
23 are located on each end of the table in front of us and also on
24 the table where you can pick up the agendas. Upon kind of
25 coming forward to speak to the Board, please give both cards to
the reporter, who is sitting to my right.

26

27 The order of procedure for special exceptions and
28 variances will be, first, statement of witnesses of the

1 applicant. Second, government reports, including Office of
2 Planning, Department of Public Works. Third would be the report
3 of advisory neighborhood commissions. And fourth, parties or
4 persons in support. Fifth would be parties of persons in
5 opposition. And finally, closing remarks by the applicant.

6 Cross examination of witnesses is permitted by
7 the applicant or parties. The ANC within which the property is
8 located is automatically a part in the case. The record will be
9 closed at the conclusion of each case except for any material
10 specifically requested by the Board and the staff will specify
11 at the end of the hearing 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 of procedure and the Sunshine
15 Act, enter executive session during or after the public hearing
16 on a case for purposes of reviewing the record or deliberating
17 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 of the contrary, the Board requests that persons
21 present not engage the members of the Board in conversation.
22 Please turn off all beepers or cell phones at this time so as
23 not to disrupt these proceedings.

24 The Board will make every effort to conclude the
25 public hearing, which is a good thing, because we want to

1 conclude it. However, we do, in our afternoon sessions, try and
2 conclude before six o'clock. Today, we are depending on how it
3 goes. We will have Board members that have other issues that
4 they cannot get out of this afternoon, so we may be losing a few
5 members early in the afternoon. But we will proceed and we will
6 let everyone know exactly what is happening before it happens.

7 At this time, I think we ought to consider if
8 there are any preliminary matters. Preliminary matters are
9 those that relate to whether a case will or should be heard
10 today, such as requests for postponement, continuance or
11 withdrawal, or whether a proper and adequate notice of the
12 hearing has been given.

13 If you are not prepared to go forward in a case
14 today, or if you believe that the Board should not proceed, now
15 is the time to raise such a matter. Before I open it up, I
16 would ask the staff if they have any preliminary matters for us
17 this afternoon?

18 MS. BAILEY: Yes, Mr. Chairman. It concerns the
19 first place, application number 16679, appeal of the Spring
20 Valley Wesley Heights Citizen's Association. The Board, at its
21 January 2nd, 2002 public meeting decided that no further
22 hearings will be held on the appeal until the D.C. Court of
23 Appeals make a decision on appeal number 16405. That's the
24 Charles Sisson case. That decision now is before the Board for
25 postponement on this application, Mr. Chairman.

1 CHAIRPERSON GRIFFIS: Okay. Thank you. If any
2 Board members want to comment on that. If not, I think that we
3 have, in fact, consensus on the postponement.

4 MS. BAILEY: That's the only preliminary matter
5 at -- there is another one. Excuse me. And it concerns
6 application number 16815 of Adams Alley, LLC. There was a
7 request for postponement on this application as well, Mr.
8 Chairman.

9 CHAIRPERSON GRIFFIS: Great. Thank you. And I
10 will take the moment while they get to the table, also, to say
11 we appreciate you being here, Ms. Bailey, and also Mr. Hart and
12 Mr. Nyarku, who is joining us as staff members.

13 Application of Adams Alley, LLC, is that correct,
14 16815? Yes, sir?

15 MR. EPTING: Yes, sir. John Epting, with Shaw,
16 Pittman, for the applicant. Paul Tommins from Shaw, Pittman is
17 also with me today. We filed a motion, December 18th, to
18 request a postponement for additional time to keep working with
19 the community, the ANC. We filed a protective motion on January
20 2nd, to delay the filing of the 14 day filing report, because
21 that's a substantive thing. We're still working with the
22 community. We did receive yesterday, and I have copies of, the
23 letter from the ANC supporting our request to postpone. And
24 that's where we are.

25 CHAIRPERSON GRIFFIS: Okay.

1 MR. EPTING: We ask for a date certain, but it
2 doesn't really matter. And we'd appreciate your help in this.

3 CHAIRPERSON GRIFFIS: Yeah. I don't believe the
4 Board has seen the letter from the ANC, but I understand that it
5 is in the office and we have copies of it that'll be -- I have
6 now been corrected. We have seen that. So I can say
7 unequivocally I have not, although, frankly it was shown to us
8 as we were walking in, but -- and it was outlined to me that
9 they were in fact supporting the continuance in order to keep
10 working, which, I think, shows, obviously and clearly, that
11 communication is there and that time is just needed.

12 Board members, any issues you see that would get
13 in the way of this motion for continuance? Okay. Then, I
14 think, I don't have any particular problem with that and think,
15 in fact, that from the looks of it, we don't have, obviously,
16 the full argument and application. But I think, from the looks
17 of it, this looks to be a pretty dynamic but complex project,
18 which obviously brings to matter the issues of communication and
19 discussion with the community and having the impact alleviated,
20 if not mitigated in some respects.

21 So without further delay, then, unless anyone
22 else needs a moment, I would move that we continue this to a
23 date to be established.

24 MS. BAILEY: Mr. Chairman?

25 CHAIRPERSON GRIFFIS: Yeah?

1 MS. BAILEY: Excuse. The applicant had requested
2 March 12th, if I'm not mistaken. And that could be accommodated
3 on the Board's calendar.

4 CHAIRPERSON GRIFFIS: Is that sufficient time?

5 MR. EPTING: That's fine.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. EPTING: I didn't want to be presumptuous.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. EPTING: So we took a stab at a date.

10 CHAIRPERSON GRIFFIS: Yeah, you're probably
11 better to give a date. Otherwise, it's just gonna float with
12 me. So March 12th, is that what you said, Ms. Bailey?

13 MS. BAILEY: Yes, Mr. Chairman, the last case in
14 the afternoon.

15 CHAIRPERSON GRIFFIS: Just give me a quick moment
16 here. Okay. March 12th, we do have two other cases. It would
17 be the last case in the afternoon. It seems like, having not
18 seen those -- I'm not -- I can't predict how long they'll take,
19 but I think we can get to it.

20 And again, this will take some time, which is my
21 concern, because of the issues involved, maybe not problematic,
22 but there seems to be a lot to pull together here, just in my
23 mind. So there it is. We postpone it to March 12th and call a
24 hearing then. All those in favor.

25 (Chorus of ayes.)

1 CHAIRPERSON GRIFFIS: Any opposed?

2 (No response.)

3 CHAIRPERSON GRIFFIS: Great.

4 MR. EPTING: Thank you very much.

5 CHAIRPERSON GRIFFIS: Certainly. We'll see you
6 on the 12th. And I understand that we will be getting something
7 from you 14 days in advance. Is that correct?

8 MR. EPTING: That's correct.

9 CHAIRPERSON GRIFFIS: Great. Oh, did I have a
10 second for that motion?

11 MS. BAILEY: I'll second it, if you didn't.

12 CHAIRPERSON GRIFFIS: Oh, fabulous. Let's just
13 rewind the tape. We'll splice that piece in. We'll put her
14 second first and then we'll -- I'm kidding -- so we don't have
15 any worry about that. Unless Corporation counsel think I should
16 do something differently.

17 MS. BAILEY: I think that's fine, Mr. Chair.

18 CHAIRPERSON GRIFFIS: Okay. Very good. Thank
19 you. Any -- Ms. Bailey, any other preliminary matters that you
20 have?

21 MS. BAILEY: No, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Okay. Then, are there any
23 other preliminary matters to be brought up by representatives
24 here in the audience today? Not seeing any indications there
25 would be, than we can proceed.

1 MS. BAILEY: The first case of the afternoon is
2 application number 16816, of Theodore J. Piccone, pursuant to 11
3 DCMR 3104.1 for special exception to allow an addition to a
4 single family dwelling under section 223, not complying with the
5 lot occupancy. That's section 403, rear yard section 404 and
6 side yard section 405, requirements in a NOPD/R-1-B District at
7 premises 3615 Davis Street, N.W., Square 1935, Lot 17. Sir,
8 would you please stand to take the oath.

9 WHEREUPON,

10 THEODORE J. PICCONE

11 was called as a witness by Counsel for the Agency and, having
12 been first duly sworn, assumed the witness stand, was examined
13 and testified as follows:

14 CHAIRPERSON GRIFFIS: Good afternoon.

15 MR. PICCONE: Good afternoon.

16 CHAIRPERSON GRIFFIS: If you wouldn't mind, just
17 give us your name and your address for the record.

18 MR. PICCONE: Theodore J. Piccone, address 3615
19 Davis Street, N.W.

20 CHAIRPERSON GRIFFIS: Great. And so you are,
21 obviously, the applicant and owner of the house, is that
22 correct?

23 MR. PICCONE: The homeowner, yes.

24 CHAIRPERSON GRIFFIS: Okay. Great. Let me --
25 before I turn it over to you, I just want to bring up one

1 preliminary matter, and it -- in the Overlay district, it is
2 required this be referred to the National Capital Planning
3 Commission. I'm sure you're aware of that.

4 MR. PICCONE: Mm-hmm.

5 CHAIRPERSON GRIFFIS: We do not have a report
6 from the NCPC at this time and therefore will not have a bench
7 decision today, but we'll set this for decisionmaking and it
8 will be based on when we get that report in.

9 And my understanding is, and I don't know all of
10 it, but my understanding of the workings of the NCPC, there's
11 certain times where they can -- they can act on this, and it may
12 be after February. And I can be corrected, if that's -- we will
13 miss our February decisionmaking, which is the first meeting of
14 every month. So it would probably be March that we'd be looking
15 at. But we will -- we'll give you specifics on that.

16 MEMBER LEVY: I can clarify on dates if --

17 CHAIRPERSON GRIFFIS: That'd be great. Our NCPC
18 representative.

19 MEMBER LEVY: NCPC has this item listed
20 tentatively on its agenda for February 7th. I believe it's the
21 first Thursday, which happens to fall two days after our
22 February decision meeting for the BZA.

23 CHAIRPERSON GRIFFIS: Okay. Good. And we should
24 also be clear, for your information, that Mr. Levy sits on this
25 Board, although as a representative of NCPC, he is not in fact

1 the NCPC staff member that would have reviewed this case at
2 NCPC, so you get great duplicated review, perhaps.

3 But, that being said, let us turn this over to
4 you and we are happy to see you here this afternoon and
5 appreciate you coming down. And please, you can start by your
6 statement.

7 MR. PICCONE: All right. I don't have a prepared
8 statement.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. PICCONE: And this is my first time before
11 the Board and actually my first time making any sort of permit
12 application before the District, so I apologize if I come across
13 as a novice on this.

14 I've been a homeowner in the District for the
15 last eight years, in my current house for three years, and
16 believe deeply in what you're doing and the importance of
17 reviewing these matters carefully.

18 We live in a neighborhood that is surrounded by
19 very busy streets, Wisconsin and Massachusetts Avenue, yet we
20 have some of the great aspects of living in the city, yet in a
21 neighborhood. And I feel very strongly, particularly as a
22 parent of three young children, the importance of trying to
23 preserve that character of my neighborhood and other
24 neighborhoods.

25 I think this particular project does fit the

1 character of the neighborhood and I can get right into the
2 details of it, if you'd like, and then we can -- I can ask
3 answer any questions you have.

4 The house itself was built in the early 1920's.
5 And it's a somewhat unique house, because it was built by a
6 family -- for an extended family. And the house used to contain
7 separate apartments for this extended family. And that
8 condition continued for over 50 years. The prior homeowner put
9 the house back into being one house. So instead of having these
10 multiple apartments -- which, over time, by the way, was not
11 kept within the family -- it's now a single family dwelling
12 again.

13 There's one major problem with the property. It
14 has a driveway that comes off the alley that is an excavated
15 piece of concrete leading to a garage underneath the house. The
16 -- it's the original driveway. It's falling apart. It's a
17 hazard because on either side of the wall, there is yard, and no
18 way of getting from one side of the yard to the other. So it
19 presents a hazard in terms of falling into the five foot
20 driveway. It's an extremely narrow driveway, so it's impossible
21 for a car to open its doors completely on either side, actually,
22 even if you pulled to one side very closely.

23 We have had, in addition, problems, since we've
24 been in the house, with rats, in part because of the condition
25 of the wall, in part because there is not a very secure

1 container for garbage in the area. There is not room, really
2 for it.

3 The other aspect of the neighborhood we're
4 pointing out, is that in our alley, and in virtually every alley
5 in the neighborhood, there are garages that are flush to the
6 alley, with virtually no extra space.

7 And I want to highlight for you that the design
8 of our garage, the proposal, is to bring the garage 14 feet away
9 from the alley, so it will not be imposing another structure
10 close up on the alley, but rather 14 feet back away from the
11 alley, leaving room for, for example, garbage storage.

12 The -- another feature of what I think is a
13 special circumstance here is to have some -- to expand the
14 outdoor use of the yard, which right now is very limited, and by
15 having a deck over the garage which will come out, which is
16 accessible directly from the first floor of the house. We will
17 be able to address one of the shortcomings.

18 And a shortcoming that is unique to our
19 neighborhood, as I can see it, which is very minimal useable
20 yard space. So we hope to address that problem by creating some
21 useable yard space and making it contiguous to the house, so
22 that you can circulate the house without this driveway cutting
23 through the middle of the property.

24 We -- something else to point out is that we have
25 quite a bit of shrubbery and trees around the property. And in

1 fact, since I've lived in the house, I've invested a lot of
2 money in adding new shrubbery to the property. Along the east
3 side of the house, which is where this structure will be, there
4 are two enormously large cedar trees and one smaller cedar tree.

5 And those will remain. We're not touching those.

6 In addition, at the corner of the property, the
7 northeast corner of the property, but on my neighbor's property,
8 there is a very large pine tree. That, of course, will not be
9 touched and we'll make sure it doesn't get damaged.

10 So, on top of that, we'll be adding new shrubbery
11 to minimize the appearance of the fencing, the privacy fencing
12 that we will put around the deck.

13 CHAIRPERSON GRIFFIS: Do you show on your
14 drawings any landscape plan of the kind of plantings or anything
15 of that sort? I mean, I don't see it here. Did you provide
16 that? Do you have that yet?

17 MR. PICCONE: I have an idea of a drawing that I
18 could show you now, but it does not reflect exactly the existing
19 trees, the large trees.

20 CHAIRPERSON GRIFFIS: Uh-huh. Okay. Actually,
21 before we -- do you mind being interrupted?

22 MR. PICCONE: No.

23 CHAIRPERSON GRIFFIS: Okay. I just want to
24 clarify the fact that what you're doing is you have a small
25 driveway, you stated, that's pretty much below the average grade

1 of your back, that pulls into the building.

2 You're actually going to fill that in, if I'm
3 looking at the plans correctly, with -- or actually, I don't
4 have that level, but that will be useable space inside your
5 house and you'll build a new structure of garage outside that
6 would project out from the main building?

7 MR. PICCONE: That's right. Thee existing garage
8 is also very narrow. We use it currently for storage and we
9 will continue to use it as storage.

10 CHAIRPERSON GRIFFIS: Right. So it stays
11 storage. But it would -- okay. And then you add the whole kind
12 of patio, fenced-in area that actually comes out towards the
13 front of the building?

14 MR. PICCONE: No, not towards the front of the
15 building exactly. If you mean the front of the house, no.
16 Towards the side, back, rear corner of the house.

17 CHAIRPERSON GRIFFIS: Okay. So the only impact
18 on the front is the new fencing?

19 MR. PICCONE: That's right.

20 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: Yeah?

22 VICE CHAIRPERSON RENSHAW: I think that the
23 applicant has brought some boards with him.

24 CHAIRPERSON GRIFFIS: Yes.

25 VICE CHAIRPERSON RENSHAW: I wondered if he would

1 just walk us through this design, because I'm a little confused
2 as to the access to the garage. I see the alley. I'm looking
3 at the plans. Do the plans have a number?

4 CHAIRPERSON GRIFFIS: Yeah, 83.4.

5 VICE CHAIRPERSON RENSHAW: Okay.

6 CHAIRPERSON GRIFFIS: Mr. Hood, is that where you
7 were going, also?

8 COMMISSIONER HOOD: I was going to actually say
9 that I haven't -- I didn't get us a copy of the plans, but my
10 colleague, let me look at his.

11 CHAIRPERSON GRIFFIS: Okay.

12 COMMISSIONER HOOD: I was going to ask staff if I
13 could get a copy of the plans.

14 CHAIRPERSON GRIFFIS: Great.

15 COMMISSIONER HOOD: And I was going to make a
16 suggestion, but I'll wait until after we see the board.

17 CHAIRPERSON GRIFFIS: Fabulous.

18 COMMISSIONER HOOD: Maybe that'll answer my
19 question.

20 CHAIRPERSON GRIFFIS: I think that's an excellent
21 idea, just to walk us through to get people familiar. And in
22 fact, if we could have somebody assist you in just pulling up
23 one of those easels for your board, that would be grand. And
24 what you can do is just set it up right here so we can -- so
25 everyone can see it. Yeah, that'd be grand. Oh, thanks, Ms.

1 Bailey, I didn't --

2 MR. PICCONE: Should I start with the existing
3 outdoor appearance?

4 CHAIRPERSON GRIFFIS: Yeah.

5 MR. PICCONE: The proposed?

6 CHAIRPERSON GRIFFIS: Let's -- if -- what's
7 always best for our purposes is to have them up at the same
8 time, so you can kind of show both, so people can get oriented.

9 And I think that's the problem with what's happening. One,
10 your elevations weren't labeled in terms of front or rear, and
11 so --

12 MR. PICCONE: Yes.

13 CHAIRPERSON GRIFFIS: Oh, and there's an existing
14 --

15 MR. PICCONE: Part of the problem with the --

16 CHAIRPERSON GRIFFIS: Okay. You know what, also
17 I'm just going to clarify something for you that you -- when you
18 speak, you have to always be on the record. In order to be on
19 the record, you have to be on a mike.

20 MR. PICCONE: Okay.

21 CHAIRPERSON GRIFFIS: Oh, great. And we're going
22 to get a cordless mike, here, but the ones on the table you can
23 pick up fairly easily. Okay. And then the other thing, while
24 you're setting up, is as you are showing us this, you are
25 introducing these to the record. Therefore, we will need copies

1 of these to actually go physically in that. So we will remind
2 you of that before we leave today. And it can be reduced like
3 you put in before, which is absolutely great.

4 Perfect. That would be grand. Yeah. And you
5 may just want to turn that one off, and that way we won't get
6 feedback.

7 MR. PICCONE: Good. Can you see if I stand here?
8 Okay?

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. PICCONE: Okay. This first drawing here
11 shows the existing front of the house and a view -- this is the
12 top -- and from the bottom, a view from the alley.

13 So this is a retaining wall here. And along here
14 are two very large trees. And here there's another smaller
15 tree. And there's a row of shrubbery here. So all this is all
16 filled in green, shrubbery.

17 CHAIRPERSON GRIFFIS: Okay. I'm going to
18 interrupt you all the way through this. And not being the
19 brightest one on this Board, I'll have most of the questions.
20 When we're looking at the front elevation, right now, the alley
21 is on the right side of that?.

22 MR. PICCONE: Yeah, that's right.

23 CHAIRPERSON GRIFFIS: Correct? So we're not
24 actually looking at the front elevation and rear elevation, but
25 rather the front elevation and the side elevation.

1 MR. PICCONE: Side elevation. That's right.
2 Yes. Even though, technically, this side here is called the
3 rear yard.

4 CHAIRPERSON GRIFFIS: Exactly.

5 MR. PICCONE: But the way the house is situated
6 on the lot --

7 CHAIRPERSON GRIFFIS: Exactly.

8 MR. PICCONE: -- it's the side yard, and that's
9 what we think of it as. The alley is along here. This is a
10 view from the alley. This is the entrance to the driveway and
11 then this is the garage. It's hard to get a sense of the depth
12 perspective. But this -- these garage doors are set way back.
13 This is an alcove section of the house, as is this, sort of a
14 separate wing of the house.

15 VICE CHAIRPERSON RENSHAW: Does your alley
16 driveway pitch down? Is that what happens from the alley? The
17 alley is off --

18 MR. PICCONE: The house is on a higher elevation
19 and in front of the house -- and the property, it's sloped over
20 to the right side of the house. So as you walk down the
21 sidewalk, it gets increasingly -- the slope increases. On the
22 alley side, it runs up here and so it's actually on alley level
23 when you enter the driveway. It does not slope down. It's
24 flat. And we would not change that aspect of it.

25 On this, to the right -- so there's a retaining

1 wall as you go down the driveway toward the garage, which we've
2 actually never used as a driveway. And we've been parking on the
3 street, and we look forward to not having to park on the street
4 after this.

5 To the right here is a small plot of grass.
6 Again, it's elevated up five feet. And then the neighbor's
7 fencing. Anything else about the existing drawing?

8 CHAIRPERSON GRIFFIS: No, I think -- yeah, we can
9 move on to the new.

10 MR. PICCONE: Okay.

11 MEMBER LEVY: Mr. Chair, I'd like to just ask the
12 occupant if you could -- would you put that up?

13 MR. PICCONE: Yeah, just at a higher place?

14 MEMBER LEVY: Yeah, I can't see the bottom from
15 where I'm sitting. Thanks.

16 MR. PICCONE: Okay. The proposal, and again
17 here, the perspective is somewhat difficult to see in this
18 drawing. But this is the front of the house and the project is
19 in the back rear corner of the house. So all you would see from
20 the street here is fencing at the top of the slope that ends at
21 the corner here.

22 The next level back would be the deck with the
23 beginning of fencing around the deck. And then this back line
24 here is the fencing along the neighbor's property.

25 CHAIRPERSON GRIFFIS: Good. And Mr. Cochran has

1 just brought to my attention, which we all are very aware of,
2 his Office of Planning report. And I only give this to you
3 because -- and have you seen the Office of Planning Report?

4 MR. PICCONE: I have.

5 CHAIRPERSON GRIFFIS: Okay. Good. It gives us
6 photographs that actually give the perspective that he's talking
7 about, so if it's informative, we can refer to it as you speak.

8 MR. PICCONE: Great. The view from the alley,
9 again, the retaining wall, this drawing is not exactly correct.

10 This circle here represents the height of this tree, but there
11 are two other much larger trees that go up as high as the
12 chimney, actually. They're huge cedar trees. And then a row of
13 shrubbery about this height along here.

14 So this is what it would like from the alley with
15 this new garage door here and fencing on top of the garage. The
16 elevation would be, as the OP report points out, would be no
17 higher than the water table of the first floor, so a
18 continuation from the first floor. Area for garbage here,
19 separate storage. Anything else I can point out about --

20 CHAIRPERSON GRIFFIS: Yeah. While we're on the
21 new elevation and -- I'm going to call it side. Well, actually,
22 I'll call it alley elevation so that we don't get confused.

23 First, you want to talk a little about materials?
24 The fencing that you keep referring to, I -- there's a note on
25 it and I can't read because it's too small. You might want to

1 discuss that a little bit.

2 Obviously, there's a new facade, if not more, on
3 the existing building that will allow you to walk out on top of
4 the proposed new garage. Can you talk to me a little bit about
5 what the material is there and as it relates to the existing?

6 And then, lastly, the planting is showing. I
7 imagine, from the shape of it, it's an evergreen of some sort.

8 MR. PICCONE: Yes -- well, these cones are
9 actually, this is all full of --- it's a variety of evergreen.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. PICCONE: But it's much fuller than it
12 appears here.

13 CHAIRPERSON GRIFFIS: Yeah. Yeah.

14 MR. PICCONE: But it's completely full.

15 CHAIRPERSON GRIFFIS: It's a nice graph.

16 MR. PICCONE: Filled in.

17 CHAIRPERSON GRIFFIS: The upside-down ice cream
18 cone.

19 MR. PICCONE: Right, exactly. And then, in
20 addition, yes, that circles shows this corner cedar tree and
21 then there are two more that are much higher.

22 CHAIRPERSON GRIFFIS: Right. So there's some
23 fullness there. Okay. So to building materials.

24 MR. PICCONE: Building materials for the surface
25 of the deck? Is that specifically --

1 CHAIRPERSON GRIFFIS: Well, actually, start with,
2 what is your fencing? Is it wood? Is it metal?

3 MR. PICCONE: Yes, it would be a wood fence.

4 VICE CHAIRPERSON RENSHAW: And how high?

5 MR. PICCONE: The height of the fence is six
6 feet.

7 CHAIRPERSON GRIFFIS: So there's a wood post and
8 pickets?

9 MR. PICCONE: Yes.

10 CHAIRPERSON GRIFFIS: What's the material of the
11 house?

12 MR. PICCONE: The material of the house is
13 stucco.

14 CHAIRPERSON GRIFFIS: It's a stucco, isn't it?

15 MR. PICCONE: Stucco in appearance with wood
16 frame windows and doors.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. PICCONE: And wood eaves and --

19 CHAIRPERSON GRIFFIS: And then the addition, the
20 new facade on that, on the addition to the top of the garage?

21 MR. PICCONE: The top --

22 CHAIRPERSON GRIFFIS: You have -- if I'm not
23 seeing -- maybe I'm not seeing correctly, but what I'm seeing in
24 the new elevation, alley elevation, right above the height of
25 that -- of your wood fencing --

1 MR. PICCONE: Yes?

2 CHAIRPERSON GRIFFIS: -- those are new doors and
3 windows?

4 MR. PICCONE: Oh. Oh, I'm sorry. What we
5 propose to do, this window remains exactly the same. It doesn't
6 get touched. These are existing windows with the door in the
7 middle. And actually, the windows wrap around, which you can't
8 see. We would propose to replace those windows, because they're
9 quite old, and put in a sliding glass door here for easy access
10 to the deck. And we propose to change this window to a door, a
11 single door.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. PICCONE: So that the deck is accessed two
14 ways, from this door and from sliding glass doors here.

15 CHAIRPERSON GRIFFIS: So in fact here --

16 MR. PICCONE: If I could just finish?

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. PICCONE: The one other change is this window
19 here is new --

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. PICCONE: -- the transom window above --

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. PICCONE: -- to keep in character

24 CHAIRPERSON GRIFFIS: Yeah. Right.

25 MR. PICCONE: -- with the rest of the house.

1 CHAIRPERSON GRIFFIS: So the fact of the matter,
2 the footprint of the building is not changing on that back?

3 MR. PICCONE: The footprint --

4 CHAIRPERSON GRIFFIS: You're not adding on? All
5 right. Let me be direct. The alley elevation I'm looking at is
6 missing a line, because it -- what it reads is if you start at
7 your new -- of your new double doors, with your transom, you
8 know, kind of scalloped light above?

9 MR. PICCONE: Yes.

10 CHAIRPERSON GRIFFIS: That reads flush all the
11 way across with two more windows. But in existing condition, it
12 actually sets back, as you just indicated. Your plans indicate
13 that it sets back, so it's a matter of technicality. But it's
14 missing a line --

15 MR. PICCONE: Okay. Do you mean -- do you mean
16 this?

17 CHAIRPERSON GRIFFIS: No. I'm --

18 VICE CHAIRPERSON RENSHAW: No. We don't have
19 drawings that show the window on the righthand side as --

20 MR. PICCONE: This window?

21 VICE CHAIRPERSON RENSHAW: -- existing and
22 remaining.

23 MR. PICCONE: Okay.

24 VICE CHAIRPERSON RENSHAW: You see? We have what
25 is the left elevation.

1 MR. PICCONE: Right. I see. Right. I apologize
2 for thatetail missing. This is all remains the same. This is
3 an -- as you can see from the photographs, this butts out from
4 the house as an alcove.

5 VICE CHAIRPERSON RENSHAW: All right. So the --

6 MR. PICCONE: And then this -- and this were set
7 back.

8 VICE CHAIRPERSON RENSHAW: So the righthand,
9 where there is a window above and a window a window below --

10 MR. PICCONE: Yes.

11 VICE CHAIRPERSON RENSHAW: -- what you said was
12 remaining is not depicted on the new elevations?

13 MR. PICCONE: That's right. Well, this one is --

14 VICE CHAIRPERSON RENSHAW: What?

15 MR. PICCONE: So it's really -- it's one of
16 these. This window would be the one that's actually set back.
17 It's --

18 VICE CHAIRPERSON RENSHAW: It's got to be --

19 CHAIRPERSON GRIFFIS: Okay. Well, this may not
20 work perfectly for the record here, but do you have a large
21 plan?

22 MR. PICCONE: I'm sorry. Larger than this?

23 CHAIRPERSON GRIFFIS: No, no, no. These
24 elevations, do you have a plan --

25 MR. PICCONE: I do --

1 CHAIRPERSON GRIFFIS: A side detail?

2 MR. PICCONE: Yes.

3 CHAIRPERSON GRIFFIS: Actually, why don't you
4 pull that up?

5 MR. PICCONE: Okay.

6 CHAIRPERSON GRIFFIS: And what we're going to
7 need to do is keep the existing -- this won't take long. I just
8 think we need clarification on it. Oh, I -- you know what?
9 That's great. I have it. But he needs to see it, too.

10 MR. PICCONE: Yeah.

11 CHAIRPERSON GRIFFIS: Thanks. I don't know if
12 this is -- all right. That's what we have on the record.
13 That's -- so that's great. Now, what I want to do is draw your
14 attention to -- go to the area that portrayed garage and deck.

15 MR. PICCONE: Yes.

16 CHAIRPERSON GRIFFIS: Go to your -- go to your
17 farthest -- and the top of the page I'm going to call north --
18 the farthest window there. On the back, on the alley elevation.

19 MR. PICCONE: It would be --

20 CHAIRPERSON GRIFFIS: That one. Right there.

21 MR. PICCONE: Right here. Yeah.

22 CHAIRPERSON GRIFFIS: Exactly. Okay. Now, that
23 one, point to it on the new alley elevation.

24 MR. PICCONE: It would be -- it would be this
25 window, but it's set back, because it's right -- it's right

1 below the one on the second floor. Nothing changes here.

2 CHAIRPERSON GRIFFIS: So on that -- on the
3 existing --

4 MR. PICCONE: So it's right below that -- that
5 window.

6 CHAIRPERSON GRIFFIS: Point to me to where --
7 point out the existing elevation. Where does your -- where do
8 your new doors start?

9 MR. PICCONE: The new sliding glass door?

10 CHAIRPERSON GRIFFIS: Yeah.

11 MR. PICCONE: This is -- this is window, then the
12 alcove begins, and it's window, door and then it wraps around
13 again. So in this drawing --

14 CHAIRPERSON GRIFFIS: Yeah.

15 MR. PICCONE: -- this would become door and
16 window here.

17 CHAIRPERSON GRIFFIS: Okay. Is three -- you have
18 a door, two windows on each side?

19 MR. PICCONE: Right.

20 CHAIRPERSON GRIFFIS: And one large double hung
21 window that's aligned. But you have two windows --

22 MR. PICCONE: That's recessed.

23 CHAIRPERSON GRIFFIS: -- and a door in the
24 alcove. Do you see where our -- my problem is?

25 MR. PICCONE: I do.

1 CHAIRPERSON GRIFFIS: Your -- the door should be,
2 if I'm lining up with the second floor, that you have three
3 windows in the alcove, right?

4 MR. PICCONE: Right.

5 CHAIRPERSON GRIFFIS: Go to the farthest right
6 window --

7 MR. PICCONE: Yeah.

8 CHAIRPERSON GRIFFIS: -- and go straight down to
9 the top of the garage. Now go to the existing. That's where
10 your door starts. So you have window one and existing door.
11 That's your door. Then you have one on the left. Now, how do
12 you get two new windows on the right of it?

13 MR. PICCONE: This would be -- yes, I understand.
14 That's incorrect.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. PICCONE: This is incorrect.

17 CHAIRPERSON GRIFFIS: Okay. So it's just drawn
18 incorrectly?

19 MR. PICCONE: Yes.

20 CHAIRPERSON GRIFFIS: It's not actually proposed.
21 And then, therefore, in that new elevation, there should be a
22 line that comes straight down right at that door?

23 MR. PICCONE: That's right.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. PICCONE: I apologize.

1 CHAIRPERSON GRIFFIS: No, and I may have taken
2 much too much time with that one, but --

3 MR. PICCONE: Okay. So could I just clarify, Mr.
4 Chair?

5 CHAIRPERSON GRIFFIS: Yeah, I wish you would,
6 because --

7 MR. PICCONE: It's just that drawing A4.1, the
8 lower elevation on A4.1 is not accurate relative to the plans on
9 A3.4 -- or excuse me, A2.1. No? I'm sorry. Where's the plan?
10 I'm sorry. A3.4 -- 2.4. So A3.4 is correct and the plan is
11 correct and the elevation is incorrect. That's right.

12 The elevation drawing of the window on the first
13 floor below the window on the second floor is not correct.
14 There should be an exact replica of that window below this
15 window and then this, below these three windows, there should be
16 door and a window here. This is actually, should be, a window.

17 CHAIRPERSON GRIFFIS: Okay. And you see our
18 confusion?

19 MR. PICCONE: Yes.

20 CHAIRPERSON GRIFFIS: Because what was submitted
21 to was, A4.1 -- and I'm just going to hold it up so you can see
22 it, and forgive me, I've marked on it -- but we're showing two
23 brand new windows where one exists. And what throws me, and
24 I've drawn a red line on mine -- this won't go on the record --

25 MR. PICCONE: Right.

1 CHAIRPERSON GRIFFIS: -- but there was no line
2 there. That reads substantially as a building out on it.

3 MR. PICCONE: Right, out. No, that's not the
4 intention. At one point, I think, part of the problem here was,
5 at one point we had considered in our drawings building out the
6 alcove and to push, to fill in that corner. And then we decided
7 not to and my architect, I think, failed to then revert back to
8 the correct placement of that line.

9 CHAIRPERSON GRIFFIS: Right. Okay. Well, I
10 think we now know and, frankly, the plan that is submitted will
11 obviously rule in terms of what the case is looking at. Okay.

12 MEMBER LEVY: Mr. Chair?

13 CHAIRPERSON GRIFFIS: That's absolutely fun.
14 Yeah?

15 MEMBER LEVY: I'd like to ask another question,
16 if you're --

17 CHAIRPERSON GRIFFIS: Oh, yeah, sure.

18 MEMBER LEVY: -- finished. Also, on your A4.1,
19 your elevations -- is it Mr. Piccone?

20 MR. PICCONE: Yes.

21 MEMBER LEVY: Mr. Piccone. The top elevation,
22 you pointed out there is some new fence, which is at the deck.
23 And then the line behind that, that's the existing fence at the
24 neighbor's property?

25 MR. PICCONE: This fence?

1 MEMBER LEVY: Yes.

2 MR. PICCONE: No, that would be new fence around
3 the deck.

4 MEMBER LEVY: And what's the fence just below
5 that in the drawing?

6 MR. PICCONE: Well, the deck, if you look at --
7 if I could look at 3.4, we need to have fencing around the deck
8 for safety reasons.

9 MEMBER LEVY: Right.

10 MR. PICCONE: So the back line on this drawing
11 would be along up here, along the neighbor's property.

12 CHAIRPERSON GRIFFIS: So the high line on the
13 elevation is actually the fencing around the top of the garage
14 and the low line is the terracing of the fencing as it comes
15 down. So it actually is informative to look at the alley
16 elevation and you can see it's one, two, three --

17 MEMBER LEVY: Oh, I see. Yeah.

18 CHAIRPERSON GRIFFIS: -- high to the fencing.

19 MEMBER LEVY: And all of that fencing is new, all
20 three --

21 CHAIRPERSON GRIFFIS: Right.

22 MEMBER LEVY: -- layers are new?

23 MR. PICCONE: Well, that's right. I mean, in the
24 existing property, of course, there is a fencing between our
25 properties, but this would be a new fence on top of the garage.

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MEMBER LEVY: So all that fencing constitutes --
I guess my question is, is all of that new fencing now visible
from the street whereas nothing was visible prior?

MR. PICCONE: Visible from the street would be
shrubbery in front of fencing. This would be new fencing.
Along the alley, there is a sort of wire fencing here with the
shrubbery, so that's changed from wire fencing to wood fencing.
And then this would be new fencing around the deck. Yes.

MEMBER LEVY: So it -- and presumably that's all
visible, or at least partially visible from Davis Street?

MR. PICCONE: Well, none of this would be visible
because --

MEMBER LEVY: Right.

MR. PICCONE: -- this is --

MEMBER LEVY: Well, but then you're top elevation
--

MR. PICCONE: -- depending on where you're
standing. But if you're looking in front of the house --

MEMBER LEVY: Yes.

MR. PICCONE: -- you would see three layers of
fencing.

MEMBER LEVY: Okay. Thanks.

CHAIRPERSON GRIFFIS: Mr. Hood?

COMMISSIONER HOOD: I just have a few questions.

1 CHAIRPERSON GRIFFIS: Yeah.

2 COMMISSIONER HOOD: Mr. Piccone, I'm going to
3 come away from that. I'll come back to the diagram. There's a
4 letter from Mr. Copeland, I guess one of your neighbors, that
5 has some concerns. First of all, the pine tree. Whose property
6 is the tree on?

7 MR. PICCONE: The tree I was referring to
8 previously --

9 COMMISSIONER HOOD: Right.

10 MR. PICCONE: -- is on my neighbor's property.

11 COMMISSIONER HOOD: Okay. And you said you were
12 not going to do any damage or anything to it?

13 MR. PICCONE: That's right.

14 COMMISSIONER HOOD: Are you aware of -- have you
15 had a study done, on arborist come out or anything, are you
16 aware that some time it may take up to five to ten years before
17 that tree -- actually, you know, whether that tree is damaged?
18 Have you found out where the roots are and have you went through
19 the extensive precautionary measures of making sure that that
20 tree is not damaged? Because I can assure you that if your
21 neighbor's tree is damaged, that's going to cause some bad
22 relations between you and your neighbors, so I just wanted to
23 caution you.

24 MR. PICCONE: Yeah.

25 COMMISSIONER HOOD: Because it can take up to

1 five years before you even know that you've damaged the tree.

2 MR. PICCONE: No, I appreciate that caution. I'm
3 -- I care deeply about the trees that line my property, so I
4 would go to some length to protect it.

5 We only have one property that abuts our
6 property. This is the house behind our house. And I've spoken
7 with Mr. Granell, David Granell, who might be known to some of
8 you. He used to be very active in zoning and planning issues,
9 particularly in our ANC. He was the ANC commissioner.

10 He has absolutely no objection to the project.
11 In fact, he didn't mention the tree at all. I mentioned the
12 tree because I care about the tree. His only concern was that
13 there be privacy fencing on top of that portion of the deck,
14 which actually would be here, that looks out on his backyard.

15 COMMISSIONER HOOD: Mm-hmm. And let me just say
16 this, Mr. Chair, and maybe you could help me along these lines.

17 I was looking more or less for a view, a projection or view,
18 from maybe the neighbor's or what they're seeing, because the
19 issue is whether or not it's an adverse impact.

20 And the only letter that I saw, and there may be
21 some more in the file that I missed, but the only one that I saw
22 had a few concerns to where things, because of the amount of
23 space. See, obviously your house is relatively large and it's
24 nice and it's some concern about that it's really pinpointing
25 that block.

1 MR. PICCONE: Yeah.

2 COMMISSIONER HOOD: And it's to keep adding on to
3 it is really taking away from the block. I mean, that's the ---
4 that's the discussions -- that's the discussion that's taking
5 place. I'm not saying that's true or false. My question to you
6 is, if it and are there any adverse impacts that you see with
7 this addition?

8 CHAIRPERSON GRIFFIS: Yeah.

9 COMMISSIONER HOOD: And also, Mr. Chair, I would
10 also -- I would just like to see a projection from your
11 neighbor's standpoint, what they'll be looking at.

12 MR. PICCONE: My neighbor right next door, and
13 went out to his backyard to look at what it would look like from
14 where he stands. He already has a privacy fence that runs up
15 six feet. So we're talking about an additional amount of -- I
16 think what it would be, about four or five feet. He wants that
17 privacy fencing, as do I. It was in the original plan.

18 The other -- the one neighbor who has raised
19 concerns, I have not spoken to him directly. But he lives
20 across the street and up from us, going west. And what he sees
21 from his property would -- he would not see any of this,
22 actually, from his property, except for the front fencing. He
23 would not see any of it --

24 COMMISSIONER HOOD: Okay. So that's my concern.

25 MR. PICCONE: -- from his property. It's not --

1 it doesn't abut our property. It's across the street and west.

2 This is north and east of the house.

3 And as the OP report points out, one very
4 important feature of this project is to give us some privacy, so
5 that right now we have such a small yard, we have oriented some
6 play equipment toward the west corner up here, which is on the
7 corner, which he, our neighbors, do see.

8 We're trying to change the orientation of the
9 property so we can use this side of the property, which frankly
10 I will not let my children use now because it's not safe.

11 COMMISSIONER HOOD: Okay.

12 MR. PICCONE: And so it will actually improve the
13 character of the neighborhood in that sense. Another point I'd
14 to make is that I have briefed, I'd say, six or seven neighbors
15 in our immediate neighborhood. And they're all not just
16 neutral, they're thrilled about the project, because the
17 existing situation is unattractive, is a hazard and also creates
18 these problems with the rats and that kind of control.

19 Our neighbors across the alley from us are new to
20 the neighborhood. I think they've been there a year or so.
21 They have put some effort into improving their property and
22 putting a new garage door on -- which would be exactly opposite
23 of this. So again, it would make it much more conforming to the
24 neighborhood.

25 I've briefed the head of the Massachusetts Avenue

1 Heights Citizens Association. She is in favor of the project
2 and offered to come down to see you all about it.

3 CHAIRPERSON GRIFFIS: Did they send in anything?

4 MR. PICCONE: I told her I didn't think it was
5 necessary. No.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. PICCONE: She -- the ball was in my court.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. PICCONE: She said, let me know if you need
10 anything. I will be happy to write a letter, do anything. And
11 with the holidays, I was not able to follow up on this.

12 COMMISSIONER HOOD: Well, Mr. Piccone --

13 CHAIRPERSON GRIFFIS: Go ahead.

14 COMMISSIONER HOOD: Mr. Piccone, I just wanted to
15 bring that up because the only thing I had in front of me was
16 from --

17 MR. PICCONE: Yeah.

18 COMMISSIONER HOOD: -- the neighbor who now
19 you're telling me who does not even see it. Obviously, he has
20 some dwarf issues that from other -- reasons other than what we
21 have here before us and I appreciate you putting that on the
22 record. But I'm dealing with exactly what I have here in front
23 of me.

24 MR. PICCONE: Right. Right.

25 COMMISSIONER HOOD: Thank you. Thank you, Mr.

1 Chair.

2 CHAIRPERSON GRIFFIS: And let me just -- and I'll
3 get to the other voters, because I think Mr. Hood brings up some
4 excellent points, the letter from Mr. Copeland. I wish Mr.
5 Copeland was saying he's not really sure whether he's for or
6 against because from the advertising, he couldn't tell what was
7 actually being done, but brought up some interesting points that
8 we should be concerned about and we've all read it.

9 I think Mr. Hood also focuses our attention to
10 photographs that are in the record in terms of the back and
11 adjacent properties and that screen fencing that you indicate
12 are there.

13 But I wanted to touch on specifically the tree
14 protection. I think Mr. Hood is well said, in any construction
15 is going to have impact on trees and trees are very important
16 everywhere, and especially in this neighborhood and this city.
17 And it's easy enough, frankly, to come out and get an arborist
18 that will actually map out the root system and the drip line and
19 the canopy of that tree, so that you don't necessarily impact
20 it.

21 So, with that advice, following up on Mr. Hood's
22 good point, I will turn it to Mr. Etherly, who I believe has
23 questions.

24 MEMBER ETHERLY: Thank you very much, Mr. Chair.
25 Mr. Piccone, you mentioned your conversation with one of your

1 adjacent neighbors. I'm taking a look at a photograph that is
2 part of, I believe, what is Exhibit Number 5, which includes
3 three pictures, looking from garage out to alley, and a picture
4 noted rear of garage.

5 For the benefit of my colleagues, I'm gonna kind
6 of direct your attention to it Mr. Piccone, because I wanted to
7 follow up on that conversation that you alluded to with your
8 neighbor.

9 You spoke with the neighbor who owns the property
10 that is noted there?

11 MR. PICCONE: Yes.

12 MEMBER ETHERLY: And for the benefit of my
13 colleagues, I'm pointing to the picture labeled rear of garage.

14 My question gets to the privacy fence issue. You noted that
15 your neighbor expressed excitement about that and I just wanted
16 to get a little more feedback on that.

17 Your neighbor is comfortable with the height of
18 the privacy fence as you're currently laying it out? And I
19 believe it's, what, seven feet, if I'm correct?

20 MR. PICCONE: Yeah. He requested, he said his
21 one concern was that there -- he wants to make sure that there's
22 a privacy fence for the part of the deck that looks out on the
23 backyard where there's no trees.

24 MEMBER ETHERLY: Okay.

25 MR. PICCONE: And I assured him that in fact that

1 is we have the same interests and the design calls for a privacy
2 fence. I've received mixed guidance as to whether it needs to
3 be six feet or seven feet, what the rules are on that, if you
4 have any clarification on that. But -- because I think the
5 drawings say seven feet --

6 MEMBER ETHERLY: Mm-hmm.

7 MR. PICCONE: -- if it's not allowed to be seven
8 feet, needs to be six feet, that would be acceptable to the
9 design of the project --

10 MEMBER ETHERLY: Okay.

11 MR. PICCONE: -- to the neighbor, to myself.

12 MEMBER ETHERLY: Okay. Okay. Thank you, Mr.
13 Chair.

14 CHAIRPERSON GRIFFIS: Thanks. More to that, I
15 don't think that that's a zoning issue, the height of the fence.
16 I don't -- so I don't think we're going to speak to that except
17 for our blatant opinions. We'll let you know on that. Other
18 than that, yeah, Mr. Levy?

19 MEMBER LEVY: A few more questions, Mr. Piccone,
20 about your plan drawing there, A3.4. There's a new -- a new
21 fence. Well, looking at Davis Street, labeled on the plan, what
22 is that that's shown that appears to be a foundation or
23 something along the bottom righthand side of the drawing, bottom
24 right corner? What is that?

25 MR. PICCONE: This is the existing retaining

1 wall.

2 MEMBER LEVY: That's existing? So Davis Street
3 is actually out in front?

4 CHAIRPERSON GRIFFIS: Beyond the retaining wall.

5 MEMBER LEVY: Yeah. I'm just confused by the
6 drawing, the lines on the drawing.

7 MR. PICCONE: Existing retaining wall.

8 MEMBER LEVY: Okay.

9 MR. PICCONE: Again, it's very sloped here.

10 MEMBER LEVY: Is that along the property line?

11 CHAIRPERSON GRIFFIS: His point is if, on the far
12 bottom right corner --

13 MR. PICCONE: Mm-hmm? Here?

14 CHAIRPERSON GRIFFIS: -- where you have the
15 retaining wall? Yeah. Carry those two lines where your finger
16 just was across west.

17 MR. PICCONE: You bet.

18 CHAIRPERSON GRIFFIS: Keep going across the
19 drawing.

20 MR. PICCONE: Yeah.

21 CHAIRPERSON GRIFFIS: And it is labeled that
22 Davis Street --

23 MR. PICCONE: Yeah.

24 CHAIRPERSON GRIFFIS: -- is actually within your
25 retaining wall. That's his confusion.

1 MEMBER LEVY: That's why I just wasn't sure if it
2 was a retaining wall.

3 MR. PICCONE: Now, the fence that's shown just
4 above that with a gate into it, that's new construction, shown
5 in front of the building restriction line.

6 MEMBER LEVY: I'm sorry. Say again.

7 MR. PICCONE: That's a fence.

8 MEMBER LEVY: This gate here?

9 MR. PICCONE: Yes. That's all new fencing in the
10 front yard. I'll call it the front.

11 MEMBER LEVY: Right.

12 MR. PICCONE: Okay.

13 VICE CHAIRPERSON RENSHAW: Just a question. I'm
14 going back to the photographs that Mr. Etherly brought to your
15 attention, showing the rear of your property. And I just wanted
16 to clarify that this property along the fence is your backyard?

17 MR. PICCONE: According -- technically that's --

18 VICE CHAIRPERSON RENSHAW: On your side --

19 MR. PICCONE: Again, the way the house is
20 situated on the property, it's called the rear yard, but -- yes.

21

22 VICE CHAIRPERSON RENSHAW: And you have been
23 fearful of the children falling into this area --

24 MR. PICCONE: Yes.

25 VICE CHAIRPERSON RENSHAW: -- where the driveway

1 is now?

2 MR. PICCONE: Exactly. And the inability to
3 circumnavigate the house. There's no way of getting from the
4 garage -- from the driveway up to the righthand side.

5 VICE CHAIRPERSON RENSHAW: So your new garage is
6 going to be sitting in front of the doors of this old garage?

7 MR. PICCONE: That's right.

8 VICE CHAIRPERSON RENSHAW: Ah. Takes a while to
9 read through these --

10 MR. PICCONE: Right.

11 VICE CHAIRPERSON RENSHAW: -- photographs and
12 plans. So the distance of your -- from the alley to your new
13 garage door is going to be what?

14 MR. PICCONE: Fourteen feet.

15 VICE CHAIRPERSON RENSHAW: Fourteen feet versus
16 what is it now?

17 MR. PICCONE: I believe it's 20 some feet. I
18 need to consult a more detailed drawing that I don't have at my
19 fingertips. And I'd like to get back to you on that. I mean
20 it's --

21 CHAIRPERSON GRIFFIS: Well, for illustrative
22 purposes, which I think is more important -- well, Ms. Renshaw
23 can answer that.

24 MR. PICCONE: Twenty -- I'm sorry, 22 feet.

25 VICE CHAIRPERSON RENSHAW: Thanks.

1 CHAIRPERSON GRIFFIS: Yeah. But what is shown as
2 post shade or filled in that area, which is the new, is a
3 projection out?

4 MR. PICCONE: That's right.

5 CHAIRPERSON GRIFFIS: Okay. Any other questions?

6 All right. And we probably will have more. However, let me
7 just also remind that we're looking at a special exception here,
8 even though we seem to be tracking it through even worse than
9 that. But I think it's very informative for us to get all the
10 information before we actually move on.

11 But I would say that we move to the Office of
12 Planning, because I think they've done a good report here and
13 they can probably shed some light on things that are still
14 shadowy for us. Mr. Cochran, are you here? Are you -- this is
15 your report, correct?

16 MR. COCHRAN: That's right.

17 CHAIRPERSON GRIFFIS: Thank you.

18 MR. COCHRAN: For the record, my name is Steven
19 Cochran. I'm with the Office of Planning. Thank you for the --
20 for raising the level of expectations on my report, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Uh-huh.

22 MR. COCHRAN: The Office of Planning does
23 recommend in favor of it. Let me just give you a couple of
24 contexts and background points.

25 With respect to your having to go to a final

1 decision meeting, I have talked to National Capital Planning
2 Commission staff. And while they do agree that, of course, this
3 should have been reviewed by staff prior to now, they also
4 realize that it's -- given that it's a one-story addition not
5 visible from the observatory, et cetera, et cetera, there's not
6 likely to be any problem with respect to impact on the
7 observatory, the vice presidential mansion, security of Mr.
8 Cheney, et cetera.

9 Okay. But given that there will now be a
10 decision meeting, that does give the opportunity for additional
11 consideration of some points that you have brought up, you and
12 your Board members have brought up this afternoon, that have
13 also been of concern to the Office of Planning.

14 For the purposes of what I'm talking about, I'd
15 like to use the designation of front, rear, side, et cetera, as
16 they are -- would actually be designated by the zoning
17 regulations.

18 With the front yard actually being on -- what
19 would it be? What's the street immediately -- 36th.

20 MR. PICCONE: 36th Place.

21 MR. COCHRAN: Which is the -- the front yard is
22 actually the one --

23 CHAIRPERSON GRIFFIS: So now you're really going
24 to throw us off there, Mr. Cochran. I mean, I can't believe --
25 the whole thing --

1 MR. COCHRAN: Mr. Chair, which do you prefer?
2 Which is easier for you all?

3 CHAIRPERSON GRIFFIS: Well, your -- actually,
4 it's probably going to be easier to refer to the drawings as
5 they're labeled.

6 MR. COCHRAN: Okay.

7 CHAIRPERSON GRIFFIS: Which would mean, we're
8 looking at alley elevation --

9 MR. COCHRAN: Okay.

10 CHAIRPERSON GRIFFIS: -- and then front elevation
11 --

12 MR. COCHRAN: Right.

13 CHAIRPERSON GRIFFIS: -- is actually what you
14 would -- and let me just get you clear. The front, what's
15 labeled here as the front of it, is actually what you would be
16 calling or referring to as the side elevation.

17 MR. COCHRAN: Right.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. COCHRAN: Technically, this to the left,
20 which is 36th --

21 CHAIRPERSON GRIFFIS: Right, is the front.

22 MR. COCHRAN: -- is the front.

23 CHAIRPERSON GRIFFIS: Yeah.

24 MR. COCHRAN: What we're seeing as a -- the major
25 facade is one of the side yards. The area where you're seeing

1 all the fencing, which is to the right of the main elevation --

2 CHAIRPERSON GRIFFIS: Right.

3 MR. COCHRAN: -- is in fact the rear yard.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. COCHRAN: And the yard that's very narrow,
6 that's behind the main block of the house, is --

7 CHAIRPERSON GRIFFIS: A side.

8 MR. COCHRAN: -- another side yard.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. COCHRAN: Okay. But that opens up some
11 possibilities for discussion. I just wanted to make it clear
12 why in a minute. If there were no fencing, you basically
13 wouldn't see anything from the street.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. COCHRAN: So it's a curious case where, in
16 terms of the impact on the neighborhood, you're basically
17 reviewing not so much an addition as fencing.

18 We had discussed the fencing with Mr. Piccone. I
19 see today that he did take some of our comments under advisement
20 and the fencing is much less labored than it had been
21 previously.

22 If, and this is my first 223 case, if it is
23 within the Board's jurisdiction to do so, then I would suggest
24 that you may ask the applicant to paint the fencing the same
25 color as the house, something like that, so that it blends in as

1 much as possible with the landscape and with the house.

2 You'll notice that the OP report had asked the
3 applicant to submit some more detailed landscape drawings. I
4 hope that you will be asking the applicant to submit them before
5 your decision meeting, because hiding the fence and making it
6 seem as though it fits into the hillside is probably the primary
7 design issue, much more so than whether you have Palladian
8 window or a sliding glass door on the alley side of the
9 structure, which no one will see anyway.

10 If, again, it's within your jurisdiction, since
11 this is technically the front yard, where Mr. Piccone, as the
12 only letter that questioned whether there should be support for
13 this, mentioned, the technical front yard on 36th Place does
14 have some very festively colored play equipment in it.
15 Everybody else on 36th Street looks at that from their front
16 yard.

17 So, again, if it is within your jurisdiction,
18 Office of Planning would suggest that you tie this, the
19 recommended approval, to moving that equipment into within the
20 fenced area. And I think that would probably take care of
21 anyones objections.

22 You know, I don't know whether you can call it an
23 inappropriate use of the front yard or not. Again, it's -- a
24 223 case is new to me. You've been getting into a level of
25 design review that has surprised me with its attention to detail

1 and its level of sophistication today. So I -- if you want to
2 go along that -- down that road, I'd encourage you to go even a
3 little bit further with it.

4 CHAIRPERSON GRIFFIS: Let me -- let me just bring
5 up quickly, in terms of our jurisdiction, 223.4 indicates that
6 the Board may require special treatment in the way of design,
7 screening, exterior/interior lighting, building materials or
8 other features for the protection of adjacent and nearby
9 properties, which is why we spend so much time, one,
10 understanding, and then two, talking about the materials. And I
11 think we will go further into that. But also let me just, I
12 think, hopefully, quash the playground equipment, so that we
13 don't delve too far into that.

14 MR. COCHRAN: Okay.

15 CHAIRPERSON GRIFFIS: I think it's so far out of
16 what we have to do, in terms of our regulation. First of all,
17 it's not a permanent structure.

18 MR. COCHRAN: Right.

19 CHAIRPERSON GRIFFIS: Doesn't go to the land. I
20 can't tell this applicant how to set up their patio furniture or
21 their children's playground equipment, or design the interior of
22 their house, necessarily.

23 But I think your point is well said and I think
24 the applicant made the point, of part of the reason why
25 enclosing this other side, rear yard, was to make it a safe

1 place, so that the kids could play, so that my assumption was
2 that the equipment would be moving in that direction.

3 MR. COCHRAN: Right.

4 CHAIRPERSON GRIFFIS: So --

5 MR. COCHRAN: Frankly, what -- yeah, we mentioned
6 in -- sorry. I'm sorry.

7 CHAIRPERSON GRIFFIS: Go ahead.

8 MR. PICCONE: Not to belabor this point, but just
9 to give you a feeling for how I treat being a homeowner, I mean,
10 we struggled with this issue on the play equipment and wanted to
11 put it on the other side of the property, but did not feel it
12 was safe. In addition to putting the play equipment there, I've
13 invested an enormous amount of money putting all new shrubbery
14 along the sidewalk, so that neighbors on 36th Place first see
15 shrubbery.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. PICCONE: And including on the corner,
18 putting on trees that will grow higher. So I've taken that into
19 account.

20 CHAIRPERSON GRIFFIS: And this equipment is
21 portable, correct?

22 MR. PICCONE: It's portable and it's made of --
23 it's the color of wood and it has a green awning and is not a
24 bright yellow fluorescent kind of thing at all.

25 CHAIRPERSON GRIFFIS: I like that kind of bright

1 fluorescent stuff. There is a great park up -- wait a minute.
2 We won't go into that. Okay.

3 MR. COCHRAN: All right. Now --

4 CHAIRPERSON GRIFFIS: Any questions or further,
5 Mr. Cochran?

6 MR. COCHRAN: I just wanted to go through the
7 relief test real briefly.

8 CHAIRPERSON GRIFFIS: Yeah, indeed. That's
9 probably pertinent.

10 MR. COCHRAN: Yup. Does it have a substantial
11 adverse impact on the use or enjoyment of any abutting or
12 adjacent dwelling or property in particular? Is light or air
13 unduly affected?

14 The Office of Planning has reviewed it and
15 certainly feels that it would not have any adverse impact on
16 adjacent properties. In fact, everything has been worked out
17 with the owners of adjacent properties.

18 The only comment has been from a neighbor who
19 lives basically a block away and who has not seen the design,
20 but who was simply alarmed conceptually on the basis of anything
21 going in, which is, you know, understandable. It's -- because
22 of its situation on the site, the house is unusual for the
23 neighborhood. It's basically placed kind of wumpus, which makes
24 it appear larger than it actually is.

25 Will the privacy, enjoyment, et cetera of

1 neighboring properties be unduly compromised? No, especially
2 with the privacy fence that the neighbor to the north has
3 requested.

4 Would the addition together with the original
5 building as viewed in the street alley and other public way
6 substantially or visually intrude upon the character, scale and
7 pattern of houses along the street frontage? Certainly not on
8 the alley.

9 On Davis Place, it simply depends on whether the
10 landscaping and the treatment of the fencing helps the fencing
11 disappear. What appears in a two dimensional drawing to be a
12 very intrusive fence at the rear of the deck, is quite removed
13 from Davis Place.

14 It's -- and there are existing trees, as Mr.
15 Piccone has mentioned. It's not going to be particularly
16 visible, but it's still important to try to screen it as much as
17 possible with vegetation.

18 And so that concludes our report.

19 CHAIRPERSON GRIFFIS: Great. Thank you. Board
20 members, question of Office of Planning?

21 MEMBER LEVY: Mr. Chair?

22 CHAIRPERSON GRIFFIS: Yeah?

23 MEMBER LEVY: Thanks. Mr. Cochran, subsection
24 223.2(c), which you just talked about relative to Davis Place --
25 which is that the addition as viewed from the street will not

1 substantially visually intrude upon the character, scale and
2 pattern of houses along the street -- my concern, and what I've
3 been getting at with my questions about the fencing, is if in
4 fact that's not an issue from Davis Street itself, given that
5 the fencing is in the -- what's identified here as the front of
6 the building. Did you evaluate it from that or am I incorrect?

7 Did you say Davis Street and I was thinking --

8 MR. COCHRAN: I believe I said Davis. I'm not
9 sure.

10 MEMBER LEVY: Okay. So you don't feel that it is
11 intrusive from Davis Street, visually?

12 MR. COCHRAN: I feel that there is the
13 possibility, if the fencing is not handled appropriately, for it
14 to be somewhat intrusive. The actual structure? Absolutely
15 not. The fencing has been --

16 MEMBER LEVY: Right.

17 MR. COCHRAN: -- toned down in its design. There
18 have been an attempt to echo the semi-Palladian treatment of the
19 windows and it's a much simpler design now that I'm looking at.

20 But with -- absent landscaping plans, I can't,
21 without -- I cannot absolutely state that the Office of Planning
22 feels that it will blend completely into the landscape the way
23 that it should

24 MEMBER LEVY: And I guess, Mr. Chair, I would ask
25 whether -- I can see how the fencing that's connected to the

1 addition that's on the deck would be considered part of the
2 project that's under review here. Is the fencing, you know, I
3 would ask, is the fencing in front, along Davis Street, also to
4 be considered part of the addition? And if so, I would say that
5 I would also need to see the landscaping plan, to make a
6 decision as to whether it's intrusive from Davis Street.

7 CHAIRPERSON GRIFFIS: I see. I think you make
8 two good points. One, we probably should have less focus on
9 that fencing. Two, landscaping, of course, would be part of the
10 screening of the addition. And I'm looking -- I mean, it is
11 kind of all combined. So we can spend brief moments on that.

12 Let me make a quick point, though, while it comes
13 to me, in terms of what's labeled as the front elevation.

14 We're spending a lot of time looking at a flat
15 elevation and not seeing the depth. People have talked to that,
16 of how this fencing actually steps back from each other. And it
17 has just struck me that, although these drawings, they're not
18 finished, they're not, you know, they weren't made for
19 presentation. That's pretty understandable.

20 Okay. I won't say anything nasty, but what
21 strikes me as what's happening, and I think perhaps the design
22 intent here, if you look at the front elevation, the lightest
23 line is actually the ground line, which for our presentation
24 should have been incredibly bold and strong, because then we
25 read a retaining wall.

1 And if you look at what's happening, that fencing
2 is actually, as it steps back, it's tiering, just as the site
3 is. So it cascades towards the street level.

4 And I think -- it's helpful, although we don't
5 have larger color photographs to look at, the Office of Planning
6 site photos -- and just to kind of picture what is going to
7 happen. As the street is dropping away, this building is rising
8 out. And as that wall rises out, it steps back and there's
9 another tier, and it steps back, another tier, and it steps
10 further back to the garage, which is the screen, which, I think,
11 actually is fairly delicate and I think can be done very
12 successfully, if the materials and colors are chosen correctly.

13 But that moves a little bit away from what you're
14 saying, Mr. Levy, but the fact that I think we need to focus on
15 it, as it's attendant to the entire addition.

16 MEMBER LEVY: Well, actually, I find your
17 comments to be helpful. And I guess I would ask maybe for a
18 clarification from counsel as to whether that fence, or if you
19 would have an opinion, Ms. Sansone, as to whether that fence is
20 even under consideration, the front fence along Davis Street, as
21 part of the case that's before us today?

22 MS. SANSONE: Mr. Levy, if the proposed addition
23 would impact on the appearance or character of the neighborhood,
24 the scale considerations such as that, that are relevant to
25 zoning, then issues involving the appearance of the fence can be

1 considered and can be included in any conditions the Board might
2 wish to attach to the special exception approval.

3 MR. COCHRAN: Mr. Chair? Could I suggest a
4 possible line of inquiry, which is to ask the applicant to
5 comment on the possibility of having the fencing basically
6 continue the line or the plane of the main facade, as opposed to
7 pulling it out towards Davis?

8 MR. PICCONE: Well --

9 CHAIRPERSON GRIFFIS: Yeah. I mean, that's an
10 interesting point. Let me just -- placement is what Mr. Cochran
11 might be --

12 MR. PICCONE: Yeah.

13 CHAIRPERSON GRIFFIS: -- moving us to. Mr. Levy,
14 to your point, I would say, if that fence on the front area that
15 was not on the garage or not on these drawings, it would still
16 be a full application. But by the fact that they've show us
17 these --

18 MR. PICCONE: Yeah.

19 CHAIRPERSON GRIFFIS: -- it is now part of it.

20 MR. PICCONE: And that's what I'm grappling with.

21 CHAIRPERSON GRIFFIS: So -- and I think we ought
22 to -- and -- well, I think that ought to be part of our thought
23 process here. Let me go down -- you gentlemen have anything?
24 I'm sorry, because I'm focused on these boards, so I don't --
25 okay. Ms. Renshaw? I'm sorry. Go ahead.

1 VICE CHAIRPERSON RENSHAW: Yes. I have a
2 question for, well, Mr. Cochran or the applicant, and it has to
3 do with section 223.4, since the Board may require special
4 treatment concerning exterior or interior lighting.

5 Exterior lighting is a concern to me because it
6 is also intrusive, often intrusive, onto neighborhoods --
7 neighbors' properties. And so I'd like to get an idea from you
8 as to what kind of exterior lighting there is going to be with
9 this new fence arrangement and the new deck. Mr. Cochran, did
10 you go into that with the applicant?

11 MR. COCHRAN: I did not, Ms. Renshaw.

12 VICE CHAIRPERSON RENSHAW: Okay. Mr. Piccone,
13 could you tell us how you're going to light the exterior of this
14 area and whether there will be spillover into your neighbors'
15 property?

16 MR. PICCONE: We have not developed designs for
17 exterior lighting, but if I could comment on the existing
18 lighting?

19 In this corner right here, there is a street lamp
20 that's extremely bright, so that when I get up at night, it
21 beams into my bedroom window and I need to pull the shade.
22 That, of course, affects my neighbor as well, because it's right
23 on the border between our two properties.

24 In addition, in front of our house, across the
25 street, there's another very bright street lamp, to the point

1 where -- most the time I feel I don't even need my light here in
2 front of my house because it's so bright.

3 In terms of existing exterior lighting that I
4 control, I have one that's not shown here, hanging over the
5 front door, that I use. I have one on the side, because there's
6 a side door over there. And I have one on this side that are --
7 the two side ones activate only when -- it's a motion sensor,
8 which is I like that very much, that feature, and that's
9 probably what I would want to do.

10 The intent of the deck is to use it as -- for
11 enjoyment, and enjoyment for me means not having bright lights
12 on the deck facility. So I don't intend to do anything that
13 would change the current character of the lighting.

14 VICE CHAIRPERSON RENSHAW: Okay.

15 CHAIRPERSON GRIFFIS: We'd anticipate an exterior
16 light at the back, at the new doors, the sliding glass doors.
17 And --

18 MR. PICCONE: There is -- there already is --

19 CHAIRPERSON GRIFFIS: Right.

20 MR. PICCONE: -- existing a light up here. That's
21 a motion sensor one.

22 CHAIRPERSON GRIFFIS: Oh, I see. Well --

23 MR. PICCONE: So --

24 CHAIRPERSON GRIFFIS: Well, before that, and I
25 don't think we'll put this in any order that comes up, but

1 before that, I think, with -- and I'm very familiar. My
2 property is the same with a streetlight in front and in back.

3 But with lighting, even with that kind of flood,
4 environmental light, it's also very soothing to control light at
5 sources where you want it to be. So I think it might be, in
6 fact, very -- what would be the word?

7 Anyway, I think it would be a nice feature in the
8 back side, actually, as from the view from the street, but also
9 from the use, is some well placed lighting sources on the house
10 that might even illuminate the enclosed area.

11 But I don't see any major impact on -- because,
12 you know, we gotta keep going back to the photographs here of
13 the site. And it is fairly densely leaved and the adjacent
14 neighbors are not very close. So anyway, there it is.

15 MR. PICCONE: If I could just mention, I would
16 think I would put some sort of light --

17 CHAIRPERSON GRIFFIS: Indeed.

18 MR. PICCONE: -- near the entrance of the garage.

19 VICE CHAIRPERSON RENSHAW: Well, it's good to
20 have your explanation of how you are going to handle this. And
21 I'm sure that you're aware that your neighbors -- of your
22 neighbors' concerns.

23 MR. PICCONE: Sure. Absolutely.

24 VICE CHAIRPERSON RENSHAW: Yeah.

25 CHAIRPERSON GRIFFIS: Any other questions of

1 Office of Planning? Did you have questions of Office of
2 Planning before they continue on? You have questions of Office
3 of Planning or Mr. Cochran? Let's --

4 MR. COCHRAN: I just wanted to --

5 CHAIRPERSON GRIFFIS: Yeah.

6 MR. COCHRAN: -- bring back that same point about
7 the fencing. And one of the Board members asked about the
8 retaining wall earlier. This is simply something that I had not
9 picked up earlier, picked up on in reviewing it. I'm sorry.

10 I am not clear about whether the existing slope
11 down of what, for all intents and purposes, is your side yard,
12 except for regulatory purposes, is your -- I mean your front
13 yard. Excuse me. It's, for regulatory purposes, your side
14 yard.

15 Are you building up that part of the yard so that
16 it -- it would appear from the alley that it's level now. Your
17 fencing is on the left side of the alley elevation. Your
18 fencing is even. It would appear, then, that you're raising up
19 the level of that part of the yard and in order to make a play
20 space? I'm more confused.

21 MR. PICCONE: No, maybe --

22 MR. PICCONE: One of the photographs of the front
23 might be able to show it better, but the slope of the front of
24 the house here is quite steep as you continue down the sidewalk.

25 In fact, I had considered at one point putting a

1 retaining wall along the front of the house, in part to help
2 shore up the slope of it and to give us some more useable yard
3 along that front area, and decided not to for a variety of
4 reasons.

5 But what I did do was I put some footing, minimal
6 footing, along the front of the slopes, so that the dirt was not
7 sliding into the sidewalk. So along this slope here, there's a
8 -- what's the word I want -- a block to anchor it and then
9 there's dirt. And it's filled increasingly with shrubs as I add
10 more and more shrubbery to the property.

11 So already existing in this part of the yard,
12 there are various shrubs, starting -- actually, there's a new
13 tree here, shrubs here and a set of shrubs here, and then this
14 very large corner tree here, and a shrub in front of the corner
15 tree.

16 So my intent is to, at the top of the slope, put
17 the fence there, with greenery in front of it. And so I don't -
18 - so, in order to -- there may be some filling in of dirt to
19 minimize the slope at the top of the grade, but here, this has
20 not changed. This remains the same. It doesn't slope until you
21 get here and it's a narrow, sharp slope. I don't know if I
22 answered your question.

23 MEMBER LEVY: That raises a new question, Mr.
24 Chair, just for clarification. So there's an existing retaining
25 wall, Mr. Piccone, at the alley but not along Davis Street?

1 MR. PICCONE: Right.

2 MR. JACKSON: Is that correct? Okay. Thanks.
3 Actually, if I could follow up on that. What, then, are you
4 showing as a retaining wall along Davis Street on the plan?

5 MR. PICCONE: It's -- this --

6 MEMBER LEVY: The drawing is incorrect?

7 MR. PICCONE: This is -- this wall here does not
8 exist.

9 MEMBER LEVY: Are you planning on building that
10 wall?

11 MR. PICCONE: No. Retaining wall stops here.

12 CHAIRPERSON GRIFFIS: So that is a new retaining
13 wall on the --

14 MR. PICCONE: Yeah. For --

15 CHAIRPERSON GRIFFIS: -- proposed deck plan that
16 you're showing, 834, actually from the cut line -- cut line is
17 the diagonal line on the sheet all the way around.

18 MR. PICCONE: Yeah. This is -- if I -- this
19 should not be shown here. I'm not proposing a retaining wall
20 there.

21 CHAIRPERSON GRIFFIS: Okay. Okay.

22 VICE CHAIRPERSON RENSHAW: But it seems to show
23 up here. Mr. Piccone, that seems to show on -- I can't read
24 what drawing I'm looking at but --

25 CHAIRPERSON GRIFFIS: Front elevation.

1 VICE CHAIRPERSON RENSHAW: Front elevation, the
2 new elevation on the top, it looks as a though you've got a
3 retaining wall.

4 MR. PICCONE: I'm not an architect. I'm sorry --

5 VICE CHAIRPERSON RENSHAW: Oh.

6 MR. PICCONE: -- if the drawings aren't
7 representative. This is -- I can't think of the word for it.
8 Your photographs should show it. This is blocking. That's
9 eight -- you know, six inches. And then it's dirt and then
10 there's another block. It's not a retaining wall.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. COCHRAN: There is a slight edge to the -- to
13 basically keep the dirt from going onto the sidewalk right down
14 there. What you're looking at here is really where the slope
15 is, for the, pretty much for the front/side yard.

16 This is, if you want to call it, like a water
17 table on the house, which, if you look on the figures 1 and 2,
18 you'll see a fairly thick band of stucco with a shadow line
19 that's just underneath these windows. That's what that line is.

20 So the front yard -- whatever you want to call
21 it, the front or the side yard. The one that's in front of the
22 main elevation of the house starts right about there. That's
23 probably -- the level is right about there.

24 CHAIRPERSON GRIFFIS: What's the implication of a
25 new -- well, I mean, I guess it's not being proposed, although I

1 was reading that as kind of sweet, with a nice retaining wall
2 around there, the alley and all that. But, I mean, there's no
3 zoning implications for that.

4 MR. LEVY: That is just a matter, Mr. Chair, of
5 giving clarification as to what we're looking at.

6 CHAIRPERSON GRIFFIS: Yeah. Right.

7 MR. LEVY: I think it's -- the drawings are just
8 a bit confusing.

9 CHAIRPERSON GRIFFIS: Right. Indeed. Okay.
10 What else?

11 VICE CHAIRPERSON RENSHAW: So, Mr. Chairman, I
12 just wanted to go back that we are not looking at the applicant
13 building up the yard in these photographs. On the new
14 elevation, on the righthand side, where the property turns and
15 goes up the alley, you are not building up that area?

16 MR. PICCONE: Can you clarify what building up
17 means?

18 VICE CHAIRPERSON RENSHAW: Building up, making it
19 level, instead of sloping down.

20 MR. PICCONE: Right. No, we're not doing that.

21 VICE CHAIRPERSON RENSHAW: Okay. Thank you.

22 CHAIRPERSON GRIFFIS: In fact, it may be shown
23 that way because the -- well, this is a technical thing, but
24 would the elevation they --

25 The architect may be taking the section at that

1 dark line that's running across that he's made level, just for
2 ease, frankly, I would assume. That is the grade he wants to
3 take the elevation. So everything that's lighter is actually in
4 front of the actual elevation. So it's a cut right to it.
5 Anyway, little bit, maybe, too technical than what we need to
6 deal with here.

7 So, other -- Mr. Cochran, thank you very much.
8 Let's move on. We do have an ANC report.

9 VICE CHAIRPERSON RENSHAW: Yes. Mr. Chairman, we
10 have a report from the chairman of ANC 3C, Nancy J. McWood. The
11 letter is not dated, although there is a stamp-in date of -- I
12 think it's January 4th. It's very faint on my copy.

13 CHAIRPERSON GRIFFIS: Yeah, I agree.

14 VICE CHAIRPERSON RENSHAW: It states that at the
15 regularly scheduled December meeting, but we don't have a date
16 of when that meeting took place.

17 A quorum was present and the commission did
18 consider this application. And the ANC Planning and Zoning
19 Committee had reviewed this in advance and it was reviewed at
20 this December meeting. And the commissioners approved a motion
21 expressing no objection to the application. So that is the
22 status, ANC 3C says no objection.

23 CHAIRPERSON GRIFFIS: Great. And is it your --
24 this goes to, frankly, a larger issue, but in terms of just
25 stating at a regularly scheduled meeting, it is your

1 understanding that then it was then advertised correctly, being
2 a regularly scheduled meeting?

3 VICE CHAIRPERSON RENSHAW: It should have been
4 advertised correctly. I know Chairman McWood is very
5 conscientious about that.

6 CHAIRPERSON GRIFFIS: Okay. But that's an
7 assumption we're making?

8 VICE CHAIRPERSON RENSHAW: That's an assumption I
9 am making from ANC, regular dealings.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. PICCONE: May I enter something on the record
12 on that point?

13 CHAIRPERSON GRIFFIS: Yeah.

14 MR. PICCONE: The notice of the hearing was
15 posted in the Northwest Current, the Georgetown Current.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. PICCONE: In addition, I can submit for the
18 record the official notice and draft agenda of the regularly
19 scheduled public meeting of the ANC 3C.

20 VICE CHAIRPERSON RENSHAW: That would be helpful.

21 MR. PICCONE: The date of the meeting was Monday,
22 December 17th at 7:30 and it does cite this application on the
23 agenda. And, in fact, a discussion was held. I brought the
24 drawings. I presented it. We had half an hour of Q's and A's.
25 Nothing like the detail we've gone into here and, in fact, was

1 not a good dry rehearsal for me at all. But, nonetheless,
2 resulted in a decision of no objection.

3 CHAIRPERSON GRIFFIS: Great. Actually, that
4 would be good information to have in and I think if we somehow
5 can facilitate just noting -- we have in the regulations certain
6 things that the ANC has to present us in order to get full
7 weight, and which is why we're bringing up some of the specific
8 issues that 3C has run into at this point.

9 Okay. And if you -- do you have a copy you can
10 leave right now?

11 MR. PICCONE: This is my only copy. We can make
12 one, right?

13 CHAIRPERSON GRIFFIS: Yeah. Okay. You can
14 submit that with other information. Let's see.

15 MEMBER LEVY: Mr. Chair?

16 CHAIRPERSON GRIFFIS: Yes, Mr. Levy?

17 MEMBER LEVY: Could I back up just briefly,
18 before we get too far?

19 CHAIRPERSON GRIFFIS: Uh-huh.

20 MEMBER LEVY: I had a -- I have a question of Mr.
21 Piccone.

22 CHAIRPERSON GRIFFIS: Yup.

23 MEMBER LEVY: In my file, I have two surveys that
24 are slightly different and I just want to know which one
25 represents the project. One is Exhibit 3 and one is Exhibit 3A,

1 both dated the same date. They have different footprints shown
2 for the addition.

3 CHAIRPERSON GRIFFIS: Okay. And while he finds
4 that in his files, let me just run through the rest of what --
5 we do not have any other government reports related to this? Is
6 that correct? I think that is.

7 And let me just ask if anyone else is here
8 related to this case, persons in support or opposition of
9 application of Theodore J. Piccone, 16816? Not seeing any
10 responses --

11 MR. PICCONE: I would have to see exactly what
12 you have to compare with what I have, but we're talking about
13 the surveyor? The survey? I'm sorry. The --

14 CHAIRPERSON GRIFFIS: Right.

15 MEMBER LEVY: Well, yeah, ours are a slightly
16 different size than yours. One is -- they're both labeled the
17 same, pretty much the same, except for the drawing is different.

18 MR. PICCONE: May I approach and look? Because I
19 only have the one. I don't have this. Right. I don't know.

20 VICE CHAIRPERSON RENSHAW: The numbers appear to
21 be different on these two.

22 MEMBER LEVY: Right. The dimensions are
23 different as well. The shape of the deck is different, or the
24 garage.

25 VICE CHAIRPERSON RENSHAW: It's 3. The applicant

1 is saying that --

2 MEMBER LEVY: Exhibit 3.

3 VICE CHAIRPERSON RENSHAW: -- Exhibit 3 is the
4 accurate one.

5 MEMBER LEVY: Is Exhibit 3A a prior design
6 concept?

7 MR. PICCONE: Yes. We submitted an amended
8 version.

9 MEMBER LEVY: Great. Thank you for clarifying
10 that. Mr. Chair?

11 CHAIRPERSON GRIFFIS: Uh-huh.

12 MEMBER LEVY: Just to put us back on track, if I
13 can move on from that?

14 CHAIRPERSON GRIFFIS: Yeah.

15 MEMBER LEVY: Just to make note and I think that
16 perhaps Mr. Cochran referred to it, or someone earlier, that
17 there is a letter in the file from a person in opposition.

18 CHAIRPERSON GRIFFIS: Indeed.

19 MEMBER LEVY: We should address --

20 CHAIRPERSON GRIFFIS: Yeah.

21 MEMBER LEVY: -- this point.

22 CHAIRPERSON GRIFFIS: Do you want to pick that
23 up?

24 MEMBER LEVY: There's a letter dated December
25 2nd, 2001, from a Mr. Copeland, who lives at 3624 Davis Street,

1 who expresses that he apparently hasn't seen the plans and
2 doesn't really know the -- sorry?

3 VICE CHAIRPERSON RENSHAW: I thought that Mr.
4 Hood covered that?

5 MEMBER LEVY: Did you Mr. Hood? I'm sorry.

6 CHAIRPERSON GRIFFIS: Yeah, Mr. Hood did bring it
7 up but --

8 COMMISSIONER HOOD: I thought maybe you just
9 wanted to reiterate --

10 CHAIRPERSON GRIFFIS: Yeah.

11 COMMISSIONER HOOD: -- all of the letter, but I
12 thought we kind of touched on that.

13 MEMBER LEVY: Oh, we did. I was --

14 COMMISSIONER HOOD: That's where I was.

15 MEMBER LEVY: I'm sorry. I was -- given that we
16 were just calling for persons in opposition, I just thought --

17 CHAIRPERSON GRIFFIS: No, and I think it's
18 pertinent. I think you could summarize.

19 MEMBER LEVY: Okay.

20 CHAIRPERSON GRIFFIS: Because we -- Mr. Hood
21 brought it up --

22 MEMBER LEVY: I'm sorry.

23 CHAIRPERSON GRIFFIS: -- and related it to some
24 of his issues and I think there are perhaps more, but if you
25 would just summarize it, that'd be --

1 MEMBER LEVY: Well --

2 CHAIRPERSON GRIFFIS: Make sure we've touched on
3 it all.

4 MEMBER LEVY: The -- Mr. Copeland, who wrote the
5 letter, appears to say that he's not really familiar with the
6 project, not having seen the project drawings, but has some
7 concerns about the large size of the house on the lot.

8 And his summary is, without knowing -- without,
9 quote, without knowing what is proposed or whether he, being the
10 applicant, has somehow acquired the acquiescence of his other
11 neighbors, it seems to me that any proposed modification must be
12 a detriment to the neighborhood.

13 So he's talking about the size of the house and
14 the yard being small, primarily.

15 CHAIRPERSON GRIFFIS: Right. Indeed. And I
16 think, you know, I think what he does is wake us to and focus
17 our attention to the adverse impact or use of adjacent
18 properties. And I think his concerns are very valid and we take
19 that into our deliberative process -- or processes, perhaps is
20 more correct.

21 Okay. Anything else?

22 MR. PICCONE: May I comment on that? I mean, I
23 think we reviewed earlier how this particular project actually
24 addresses his particular concerns by minimizing impact on the
25 neighborhood and reorienting activity to the back rear corner of

1 the property, with privacy landscaping and fencing.

2 So I think it's actually a kind of an advantage
3 to neighbors, particularly on that part of the neighborhood, as
4 a result. Thank you.

5 CHAIRPERSON GRIFFIS: Well, and I think clearly
6 the letter anticipates a large addition to the structure itself
7 and this, although it is an addition, it is obviously minimized
8 by the fact that it's, frankly, below -- primarily below grade.
9 Okay.

10 MEMBER LEVY: Mr. Chair?

11 CHAIRPERSON GRIFFIS: Yeah?

12 MEMBER LEVY: I feel compelled just to build on
13 that quickly by just pointing out, in all fairness to Mr.
14 Copeland, since he did submit a letter --

15 CHAIRPERSON GRIFFIS: Yeah.

16 MEMBER LEVY: -- that his address his 3624 Davis
17 Street.

18 CHAIRPERSON GRIFFIS: Good.

19 MEMBER LEVY: The applicant's address is 3615
20 Davis Street.

21 CHAIRPERSON GRIFFIS: Right.

22 MEMBER LEVY: So perhaps not directly across the
23 street. Basically across the street, would that be fair to say,
24 Mr. Piccone?

25 MR. PICCONE: Across the street and west of the

1 property --

2 MEMBER LEVY: West.

3 MR. PICCONE: -- which is the exact opposite of
4 where the proposed structure would be.

5 MEMBER LEVY: Okay. Thank you.

6 MR. PICCONE: Away from the proposed structure.

7 MEMBER LEVY: Thanks. Thank you, Mr. Chair.

8 CHAIRPERSON GRIFFIS: Indeed. Board members, are
9 there any other questions of the applicant? In which case,
10 we'll give you an opportunity for closing statements.

11 MR. PICCONE: Thank you very much. Well, as I
12 said, I was -- ideally would have been more prepared with, I
13 think, more detailed drawings that address some of your
14 concerns. And I apologize for the time it took to walk you
15 through some of the details to get the orientation right.

16 It is a unique property. I acknowledge that.
17 And what we are trying to do is make it more in conformity with
18 the neighborhood in the sense of having a garage that's useable.

19 We are one of the only properties in that neighborhood in that
20 situation. And in that sense, I see it, and most of my
21 neighbors I've spoken to see it, as an improvement to the
22 neighborhood. And I hope that the Board will take that into
23 account in evaluating the application.

24 The design features we've talked about largely
25 revolve around not the main structure -- which is a two car

1 garage that, as you pointed out to be mostly below grade -- but
2 rather the privacy fencing and landscaping around the property.

3 I think we've had some discussion about to what
4 extent that's relevant. I think I feel a little clearer on how
5 it is relevant. I think it is.

6 The drawings, I think, do not take into account
7 the landscaping that already exists and that will not change,
8 and that in fact will be added to. So it will become -- the
9 design, as much as possible, will blend in.

10 The -- I think it's -- the only other point I
11 would make would be if you could, as a result of this hearing,
12 you could review with me the next steps, in particular what
13 additional documentation or materials you'll need. Thank you
14 very much.

15 CHAIRPERSON GRIFFIS: Great. Thank you. And I
16 think that brings us right to the point. As we stated, as we
17 started this, we will set this for decisionmaking. We will set
18 it as close to the -- we will set it immediately after the
19 receipt of the NCPC report.

20 Unless you want to speak to -- when -- how far
21 along are these drawings in terms of permitting and construction
22 schedule? Do you know? And is the Silver Spring architect
23 still the architect of record?

24 MR. PICCONE: He is, but frankly I have held off
25 on going to the next level of --

1 CHAIRPERSON GRIFFIS: Right.

2 MR. PICCONE: -- detail until we got to this
3 stage. So I have not moved further on that.

4 CHAIRPERSON GRIFFIS: Okay. No, and that's
5 understandable. All right. So -- but in that sense -- well.
6 Okay. So we will set it for as quickly after the receipt of
7 NCPC as we find it.

8 Okay. The first that I have notes, in terms of
9 required documentation, frankly, it would be -- we -- I think we
10 have to have just updated elevations, alley elevation and the
11 front elevation as it's labeled for you on your drawings, and
12 the plan. Ands that's -- they don't need -- they should not
13 change, frankly, from what you bring, but clear up and clarify,
14 I mean, some of the elevation issues and things like that.

15 I think -- I don't think it has to be a finished
16 -- and maybe other Board members can comment -- but I don't
17 think we have to have a full-blown landscape plan. But some
18 idea of size and types of planting and placement.

19 So the most informative in landscape plan is --
20 in plan -- showing where it is.

21 MEMBER LEVY: Mr. Chair?

22 CHAIRPERSON GRIFFIS: Yeah?

23 MEMBER LEVY: To add to that point --

24 CHAIRPERSON GRIFFIS: Uh-huh?

25 MEMBER LEVY: -- I would find it helpful as well,

1 Mr. Piccone, to have an indication of existing -- that the
2 landscape plan should include existing plantings that will
3 remain.

4 CHAIRPERSON GRIFFIS: Yeah.

5 MEMBER LEVY: And it would be helpful, although
6 perhaps there was a drawing in the OP report, but it would be
7 helpful to get a feel for what that -- how that would read in
8 elevation also, what it would look like from the street.

9 CHAIRPERSON GRIFFIS: Right.

10 MEMBER LEVY: If you have anything.

11 VICE CHAIRPERSON RENSHAW: And an indication of
12 the neighbor's tree. I think it was the pine tree, you said.

13 CHAIRPERSON GRIFFIS: Okay. So we're piling on
14 the landscape plan there, which is important in terms of context
15 and all that. And if it's not -- I would not make this a
16 requirement of documentation, but a recommendation, in the
17 landscape plan, that if you get a landscape architect or whoever
18 does it, that there's some topographical lines that are shown.
19 That will actually help you tell your story about what is
20 happening there.

21 I think we were talking about fencing and I think
22 I want to be fairly directive in terms of that. It would be --
23 it would be valuable to have an enlarged elevation of the
24 fencing. I mean, right now, it looks very solid. You've
25 indicated it's wood, although the pattern for me, and it's my

1 opinion, of course, made it look more -- it felt more metal, you
2 know, or ornamental of some sort.

3 I think -- the comments that I'm hearing, and
4 others can correct me, but from the neighbor and from OP and
5 also from this Board, that that has to be minimized. And how
6 you minimize that is up to you and your designer, but material
7 and color are going to be important.

8 So I would I think that we'd look for not just an
9 enlarged elevation of the fencing and say it's green, but talk
10 to us about why it is solid, solid wood at the height it is and
11 it's green because of, you know. Simple matter, so that we can
12 understand.

13 And it may be different, in terms of, you know, a
14 wood solid around the top of the garage for privacy and maybe a
15 less private fence around the play area. Whatever it is.
16 That's up to you. Although we may want to control everything,
17 we won't. We promise.

18 Moving equipment was brought up, which we will
19 not have any comment on, in terms of documentation to be
20 submitted.

21 You're going to submit the ANC information that
22 you have. You've also indicated that Exhibit Number 3 is the
23 existing plat.

24 And that's all I have at this point that we were
25 going to require in terms of submission, unless other Board

1 members have other -- seems to be quite a lot, but actually it
2 isn't. It all boils down to the same issue, so --

3 That's it?

4 MEMBER LEVY: Just a point of clarification, if I
5 could?

6 CHAIRPERSON GRIFFIS: Uh-huh?

7 MEMBER LEVY: On the NCPC review schedule,
8 although I'm not personally reviewing the project --

9 CHAIRPERSON GRIFFIS: Yeah.

10 MEMBER LEVY: -- and I won't personally see the
11 recommendations of NCPC until the other Board members do --

12 CHAIRPERSON GRIFFIS: Right.

13 MEMBER LEVY: -- until they're available to the
14 public, my understanding of the NCPC schedule is that those will
15 be available to the public on the 7th of February.

16 CHAIRPERSON GRIFFIS: Oh. Okay.

17 MEMBER LEVY: Just in terms of helping us set a
18 decision --

19 CHAIRPERSON GRIFFIS: Is it possible for NCPC to
20 send it to the applicant, or is that review -- I don't know what
21 you call it over there, but will they send a copy to Mr. Piccone
22 or will he have to go pick it up?

23 MEMBER LEVY: I don't think they would do that
24 automatically.

25 CHAIRPERSON GRIFFIS: Okay.

1 MEMBER LEVY: I think they would report back to
2 the Office of Zoning.

3 CHAIRPERSON GRIFFIS: I see.

4 MEMBER LEVY: But it's -- just, you know, if
5 they're NCPC procedures, it's possible for Office of Zoning to
6 obtain that --

7 CHAIRPERSON GRIFFIS: Indeed.

8 MEMBER LEVY: -- after the commission meeting on
9 the 7th.

10 CHAIRPERSON GRIFFIS: Indeed. Ms. Bailey, do you
11 know, if we got that letter from NCPC, would we send it to the
12 applicant right away?

13 MS. BAILEY: No, sir, we don't.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. BAILEY: The information is placed in the
16 file and he's welcome to come in and review it at any time.

17 CHAIRPERSON GRIFFIS: Okay. Well, then, for your
18 edification, I mean, it's certainly worth knowing of it. Go
19 ahead.

20 MR. PICCONE: Point of clarification. February
21 7th is a decision date or a hearing date or both? And do I need
22 to be present for a hearing?

23 MEMBER LEVY: I don't know how it would be -- it
24 could be placed on the calendar two ways. It could be placed
25 for commission action or it could be delegated to the executive

1 director. Either way, the decision wouldn't be public until
2 February 7th. If it's on the commission agenda, you could
3 theoretically sign up to speak.

4 CHAIRPERSON GRIFFIS: But he can call in to NCCP
5 and get that information, correct?

6 MEMBER LEVY: Yes, or you can -- it's on the
7 website, as well.

8 CHAIRPERSON GRIFFIS: Oh, on the website?

9 MEMBER LEVY: Yeah.

10 CHAIRPERSON GRIFFIS: Okay.

11 MEMBER LEVY: Either way.

12 MR. PICCONE: Thank you.

13 MEMBER LEVY: Yeah.

14 CHAIRPERSON GRIFFIS: Great. What else do we
15 have? Anything? I don't think so. I would just keep the
16 record open. If you are so inclined -- you indicated that there
17 are several Association of Mass. Ave. neighbors, things like
18 that -- if they -- if you get notes, letters, signed and dated,
19 that would be perfectly appropriate to add to the record and
20 possibly helpful.

21 To that, then, I would move on this. Yeah?

22 MS. BAILEY: Excuse me. Before you move, I just
23 wanted to know, did you want to tentatively set it for March
24 5th, at the public meeting, just so we can have a date in place?

25 CHAIRPERSON GRIFFIS: You know, I think that's

1 very appropriate. Thank you, Ms. Bailey. And that will give
2 you a little bit more help. Are you available that -- not that
3 you have to be here for a decision. And can you, do you think,
4 provide this information by then? And actually, it would be
5 before that, seven days before, if I'm not mistaken.

6 MR. PICCONE: I see no problem with submitting
7 the material that's been requested by seven days before March
8 5th.

9 CHAIRPERSON GRIFFIS: Okay. Yeah, it gives you
10 about a month and a half to pull that together. Okay. I wasn't
11 moving, in terms of a motion, but moving on with this.

12 And I don't know how other Board members are
13 deliberating on this case, Mr. Piccone, but I think this is a --
14 frankly looks to be a very exciting and a positive addition to
15 that. We have, I think, put our concerns to you very directly
16 and we appreciate your time this afternoon. And we'll look
17 forward to that, the submission of that information.

18 Anything else we need? Not seeing anything, we
19 thank you very much and we'll see you possibly on the 5th.

20 MR. PICCONE: Right.

21 CHAIRPERSON GRIFFIS: Great.

22 MR. PICCONE: Thank you very much.

23 CHAIRPERSON GRIFFIS: Thanks.

24 (Whereupon, the foregoing matter went
25 off the record at 2:50 p.m. and went

1 back on the record at 3:05 p.m.)

2 CHAIRPERSON GRIFFIS: And Ms. Bailey, when you're
3 ready, we can call the next case.

4 MS. BAILEY: The application of the last -- the
5 last application of the afternoon is number 16785 of 33 New York
6 Avenue, LLC, pursuant to 11 DCMR 3103.2 for a variance from the
7 off-street parking requirements under section 2101 for a public
8 hall use in the C-3-C District at premises 39 New York Avenue,
9 Northeast, Square 6721, Lot 18.

10 Sir, are you testifying on this case? Would you
11 please come forward?

12 Mr. Chairman, this is a continuation of the
13 public hearing that was held previously, on November 13th. At
14 that time, the applicant was sworn in, so it's not necessary to
15 do it again.

16 There were several items that were requested from
17 the applicant in addition to the Office of Planning. Those
18 items have -- most of those items have been provided and the
19 case is now ready to go forward at this time.

20 CHAIRPERSON GRIFFIS: Thank you very much, Ms.
21 Bailey. Good afternoon, sir. If you wouldn't mind just
22 introducing yourself again for the record and give your address.

23 MR. BUNDU: Good afternoon, Mr. Chair. Good
24 afternoon, both of us. My partner or my advisor just stepped
25 out to get his car out from the street.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BUNDU: But he's covered to rush hour. But
3 he has a written statement and I don't know whether we can wait
4 for him --

5 CHAIRPERSON GRIFFIS: Oh, indeed. Yeah, that's
6 not a problem at all. I think we can wait a couple of minutes
7 for him to return. You say he was going to move his car?

8 MR. BUNDU: Yes, please.

9 CHAIRPERSON GRIFFIS: Okay. Well, we may have to
10 wait until next Tuesday to find parking now in rush hour
11 downtown, but I think we can give it a minute or so.

12 In which case, yes, I would ask the Board,
13 actually, to step back into the office and we have some business
14 not pertaining to this case that we can conduct now. And then
15 we will come back out. Thanks.

16 MR. BUNDU: Thank you.

17 (Whereupon, the foregoing matter went
18 off the record at 3:09 p.m. and went
19 back on the record at 3:16 p.m.)

20 CHAIRPERSON GRIFFIS: Okay. We are back. Good
21 afternoon. Let me just have you turn on your mike and introduce
22 yourself. And your presence here assures us that your car is
23 safely and legally parked, so we're all very happy about that.

24 MR. ENIOLA: Thank you very much for your
25 concern.

1 CHAIRPERSON GRIFFIS: Indeed.

2 MR. ENIOLA: My name is Tao, T-A-O, and the last
3 name is Eniola, E as in Edward, and I-O-L-A. I'm the director
4 for operations for African Community Center and I'm here today
5 on behalf of the African Community Center.

6 CHAIRPERSON GRIFFIS: Excellent. Thank you. And
7 this is, as was stated when you were not here, but this a
8 continuation of the hearing that we previously started. We did
9 have you -- we asked for submission of information. And I think
10 what I'd like to do today is focus on those specific submissions
11 and some of the Board's questions and your responses to that.
12 And I think we can probably get through this fairly quickly.

13 However, previously in the hearing, was this
14 Board -- except for our newest member, Mr. Curtis Etherly, and
15 I'd like to introduce you to him. And I believe he has just a
16 quick comment to make.

17 MR. ENIOLA: Okay.

18 MEMBER ETHERLY: Thank you very much, Mr.
19 Chairman. I just, for the record, I have read the file in its
20 entirety and I am prepared to participate in the hearing on the
21 case.

22 CHAIRPERSON GRIFFIS: Great. Thank you very
23 much.

24 MEMBER ETHERLY: Thank you, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: All right. Let's jump

1 right into this. We had asked for an outline -- first of all,
2 the three-prong test that we had gone through in terms of the
3 area variances. I think that the pertinent one, I want you to
4 address that.

5 You have submitted a written statement, but it
6 would be good to illuminate on that. The -- also, the other
7 piece to it is we need -- I feel, in reading the new
8 submissions, there's some conflicting information about the
9 parking. And I'd like that to be addressed as you will, and, of
10 course, in terms of the contract that you have and the
11 availability.

12 It would also go -- I think that opens up a lot
13 of issues, actually. And then we do have an Office of Planning
14 supplemental report and we do have the Office of Planning
15 representative here. So we will hear from them additionally.
16 But I would suggest in this situation that we -- I'm going to
17 suspend a little bit of the order of things.

18 I will note for the record that there appears --
19 there is no one else here. As people come in, I will ask if
20 they are here in support or opposition. But at this point, I do
21 not see any persons here to contribute in this.

22 So with that, let me turn it over to, and you may
23 have an opening statement or you may just want to jump in and
24 start addressing those issues.

25 MR. ENIOLA: Good afternoon, ladies and

1 gentleman. I think my statement that I had, it was submitted in
2 my report regarding the previous meeting we had here on November
3 3rd, 2001.

4 And in that statement that I submitted to the
5 Board, I think it was pretty much clear, which two exhibits,
6 that our purpose in being here is actually parking variance.
7 And the second request from the Board to us was a letter from
8 our landlords stating the hardship of our primary purpose of 39
9 New York Avenue in the first place.

10 Having said that, I think we specifically,
11 Commissioner Hood, the last time we were here, stated very
12 clearly, say, your best bet in getting your application forward
13 is by getting in touch with the ANC and get rid of your
14 conflicts, if there were any.

15 Thereafter, I think we received -- excuse me -- a
16 letter from the Board, directing us back to ANC. After our
17 efforts that made and we couldn't get a hold of anyone over
18 there, we finally sent a letter to the commissioner over there.

19 Ms. -- excuse my -- I don't know how to pronounce the last
20 name, but the first name is Yvette.

21 So thereafter, we got a letter dated December 6,
22 for a meeting, which is the subcommittee meeting of the 6A. So
23 that meeting went on there and on that day, we presented the
24 same application and the hearing was heard. A firm was called
25 and they approved the application completely unopposed.

1 And thereafter, they told us that there will be
2 another meeting on January 3rd at 601 15th Street, Northeast, at
3 which time the entire ANC will meet, at which time they will
4 vote again on the same application.

5 So on that -- that was on the 3rd of January. We
6 will there, at regularly scheduled time, and unfortunately we
7 couldn't hold a meeting on that day because the ANC itself
8 failed in reserving their space.

9 And so that meeting has been postponed to this
10 coming Thursday. However, before we left there, we were told
11 that, well, our application has been recommended for approval as
12 a result of the earlier meeting of December. So they were also
13 supposed to have sent me a copy on the 4th of January this year,
14 of that approval.

15 Unfortunately, I did not get it before submitting
16 the report that you have in front of you. So I had very little
17 choice except to ask for a waiver that, in the event that that
18 report is not with you, I could submit that report to the Board
19 today.

20 CHAIRPERSON GRIFFIS: Do you know if it was done?

21 MR. ENIOLA: Yes, it was. And in fact, I just
22 checked with Ms. Bailey over here and I believe she has it in
23 the file.

24 CHAIRPERSON GRIFFIS: Oh. Okay.

25 MR. ENIOLA: Yeah. Other than that, we have the

1 permission for using the -- excuse me on that. We are going to
2 be signing a lease based --

3 CHAIRPERSON GRIFFIS: Okay. Yeah, we do. I'm
4 sorry. I thought you were referring to the full ANC action.

5 MR. ENIOLA: Oh, no. No, sir.

6 CHAIRPERSON GRIFFIS: You only have the
7 subcommittee action that was -- right. Okay.

8 MR. ENIOLA: No, sir. Yeah. We already -- most
9 of our application was for a parking variance. We had a meeting
10 with the New York lounge who actually occupies 33 New York
11 Avenue for their business purposes.

12 Meanwhile, the operation of the lounge itself is
13 on New York Avenue, 1943 Northeast. And we came to a mutual
14 agreement at which time we had obtained the key to the parking
15 lot, that they do not use this parking lot during the weekend
16 that we intend to use it. And in the event that our application
17 is approved by the Board here, we are ready to sign a lease.

18 The time is from four o'clock on Friday until
19 12:00 p.m. Sunday morning. So this is -- and I think we
20 submitted a letter from them as well. So we have the key here
21 and I think that is the only thing we needed to report here.

22 In addition to that, we tried to work with the
23 Office of Planning as best as we could, except that they refer
24 us to a Mr. Chin, Robert Chin, down at 941.

25 And upon talking to Mr. Chin, whose telephone

1 number I also listed in my opening letter, it says that where
2 they have no concern regarding to any other kind of parking,
3 handicap or whatever, not until application for certificate of
4 occupancy is submitted to them. So with respect to the Board,
5 we have tried on that. We cannot do anything on that.

6 What the fire department recommends that we do,
7 while they were there for inspection, we had already done. And,
8 in fact, I think the fire department also recommends that this
9 application be approved.

10 CHAIRPERSON GRIFFIS: Can you give a little
11 detail on that? What, in fact, what sort of improvements have
12 you made to the property that would bring it into fire code
13 compliance?

14 MR. ENIOLA: Well, as far as the fire department
15 was concerned, they were only concerned about posting an exit, a
16 lighted exit door, and the two entrances --

17 CHAIRPERSON GRIFFIS: Uh-huh?

18 MR. ENIOLA: -- as well as this fire extinguisher
19 --

20 CHAIRPERSON GRIFFIS: Right.

21 MR. ENIOLA: -- sprayers, to get some more, and
22 to replace a door -- a fire door. And that has already been
23 done. So that's, you know, that's the chores that upon approval
24 of -- upon completion of that, they approved it.

25 CHAIRPERSON GRIFFIS: Right. Okay. Well, in

1 fact, the letter that they submitted to us on the record
2 indicates that they would not object or they favor approval of
3 the application --

4 MR. ENIOLA: Yes.

5 CHAIRPERSON GRIFFIS: -- if a condition is made
6 that the building is brought up to all fire code compliant
7 standards. So, I mean, that's -- it's kind of a hard thing to
8 put on us in that we're not sure what is out of compliance or
9 not.

10 But I think it's obviously -- you have to do it
11 anyway to occupy the space. And I think, if I recall correctly,
12 and I know I do, from last, there was an awful lot of concern.
13 There was an awful lot of concern about two means of egress off
14 the second floor for an assembly space.

15 Again, that steps out of the zoning regulations,
16 but it certainly brings us to a concern about the functioning of
17 the property.

18 MR. ENIOLA: Well, Mr. Chair, if I may say
19 something, I think there are certain things that I discussed
20 with the Office of Consumer Regulatory Affairs regarding that
21 certificate of occupancy. And according to Mr. Billow over
22 there, is that certain -- well, before they can approve a
23 certificate of occupancy, there are all the steps that they go
24 through. That part of it is under their jurisdiction, not under
25 the jurisdiction of the Zoning Board. I don't know anything

1 about that. So --

2 CHAIRPERSON GRIFFIS: The certificate of
3 occupancy is under their jurisdiction, which --

4 MR. ENIOLA: Yes, that's what I'm told by Mr.
5 Billow.

6 CHAIRPERSON GRIFFIS: Well, that's -- that's
7 absolutely true.

8 MR. ENIOLA: So I have no -- I don't know
9 anything about that.

10 CHAIRPERSON GRIFFIS: No, that's absolutely true.
11 The issue -- they are separate but aligned. And more often --
12 in fact, what is required for submission and review by the BZA,
13 this Board --

14 MR. ENIOLA: Yes?

15 CHAIRPERSON GRIFFIS: -- is permit documents,
16 meaning that there is allotted for -- and I'm speaking generally
17 here --- but for additions or new construction. So we're
18 looking at things that are in the process of DCRA that are going
19 through those reviews and it is sent to us because it has
20 problems with zoning.

21 In that we're talking a little bit of use here
22 and occupancy and then parking, there -- I understand the
23 specifics and why it isn't necessarily concurrent.

24 MR. ENIOLA: Right.

25 CHAIRPERSON GRIFFIS: But talk to me about what

1 is then proposed for the space, because if I'm not mistaken,
2 there has been some conversations with you about actually
3 establishing the occupancy level of this. And are you proposing
4 to do any sort of renovations of the space? Have you proposed
5 to put in fixed seating, which I think is one of the discussions
6 that has been --

7 MR. ENIOLA: Yes, we intend to -- in fact, we
8 intend to comply completely with Consumer Regulatory Affairs
9 regarding that certificate of occupancy. In addition to that,
10 presently we have not done anything about --

11 CHAIRPERSON GRIFFIS: But let me -- before you
12 move off that. That means, you're saying, that you are in fact
13 installing a certain amount of fixed seating?

14 MR. ENIOLA: We have --

15 CHAIRPERSON GRIFFIS: And that's how you're
16 establishing your occupancy?

17 MR. ENIOLA: We are willing to do all that, is
18 what I'm saying. We have yet to start doing any kind of
19 construction.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. ENIOLA: Yeah.

22 CHAIRPERSON GRIFFIS: Well, that's where it's
23 going to get problematic for us, because our parking, if I'm not
24 mistaken, and the zone and regulations will be based on the
25 occupancy of that space and that's how we calculate how many

1 parking spaces are required.

2 MR. ENIOLA: Well, Mr. Chair, if I may say this,
3 there is already a certificate of occupancy on the building --

4 CHAIRPERSON GRIFFIS: Uh-huh.

5 MR. ENIOLA: -- which is for the purpose of
6 office uses. However, the hall, which is, if I'm not mistaken,
7 is about 2,000 square feet. We only require that we are going
8 to be using it only for meetings on the weekends.

9 So, in essence, if not for the purpose of the
10 meetings, because we are trying to do what I think is right,
11 with my acquaintances with the District of Columbia government,
12 that where you do not start getting yourself in gathering people
13 together without having a sort of a safe place to put them. And
14 to making sure that you follow the rules and the regulations and
15 there's no, excuse my language, no public nuisance.

16 I think, you know, if I'm correct, that is what
17 I'm trying to follow here so that I abide by all these rules and
18 regulations. We're here. So that in the event that this Board
19 says, well, look, there is a parking space which we are now
20 committed to leasing in the event of this approval, which is
21 enough to occupy the people that we're needing. We are not
22 going to use more than 45 people. In fact, the Sierra Leone
23 ambassador himself was intending of coming here today to testify
24 on our behalf. Unfortunately, he was called to Sierra Leone --
25 so -- he cannot be here today.

1 CHAIRPERSON GRIFFIS: Indeed. Okay. But --
2 well, there's several things to that.

3 MR. ENIOLA: Please.

4 CHAIRPERSON GRIFFIS: First, you've stated that
5 the space is 3,000 square feet. And I don't care specific, it's
6 plus or minus 3,000 square feet. But based on my poor math, to
7 establish the occupancy of that space, you would go on seven
8 square feet for standing room, meaning no fixed seats. It's
9 just meeting hall, open space.

10 MR. ENIOLA: Okay.

11 CHAIRPERSON GRIFFIS: That puts your occupancy
12 well over 400. Now, I understand in nreality, you'd probably
13 never pack 400 people up there.

14 MR. ENIOLA: Oh, no. Not even that much.

15 CHAIRPERSON GRIFFIS: But my point is, for
16 building code, which is not our jurisdiction, but for building
17 code and most importantly our jurisdiction for zoning, that's
18 how we set. There's certain things that we have to give relief
19 to, and that goes directly to your case in terms of parking.

20 MR. ENIOLA: I see.

21 CHAIRPERSON GRIFFIS: And that's why -- it goes -
22 - there's two pieces to it. First of all, how would we be
23 assured or ensured that there would be 45 people up there?
24 Secondly, in the same point of it, and it's all -- I mean, I
25 think the use is -- it's not out of the ordinary use and it may

1 well fit in this area. I can't speak for the entire Board as
2 we've not deliberated, but we need to get the specifics and the
3 details.

4 So the other piece is, you have stated over and
5 over, and it's fairly clear in your statements, that this is for
6 weekend use only.

7 MR. ENIOLA: Yes.

8 CHAIRPERSON GRIFFIS: Well, how do we actually
9 know that?

10 MR. ENIOLA: Well, Mr. Chair, during the week the
11 -- most of the people that are coming to the meeting on weekends
12 are at work. And the only time they can attend our meetings is
13 only on weekends. That is number one.

14 Secondly, the space, the other part of the very
15 same floor that we're talking about, is going to be used for
16 office purposes. In other words, conducting business.

17 CHAIRPERSON GRIFFIS: Are they your offices?

18 MR. ENIOLA: Well, my office -- my own personal
19 office is going to be moved up there.

20 CHAIRPERSON GRIFFIS: Right. Okay. More
21 directly, you have a lease on the entire space?

22 MR. ENIOLA: Yes.

23 CHAIRPERSON GRIFFIS: Right. Okay.

24 MR. ENIOLA: The second floor of the building.

25 CHAIRPERSON GRIFFIS: I see.

1 MR. ENIOLA: So that front section of it is going
2 to be used for office purposes, in that I was conducting
3 business. The back is where the meeting is going to be taking
4 place and even at that, most of the people who are going to be
5 attending this meeting are very busy over the weekend -- during
6 the week.

7 In addition, not everyone is free during the very
8 same period, so we can guarantee you here now that we are not
9 going to have more than 45 people, as stated in our application.

10 CHAIRPERSON GRIFFIS: Right. Okay. Well, and
11 let me just bring -- it's a little bit of a concern. Let me
12 just bring to light Exhibit Number 27, where you have stated on
13 the African Community Center, Inc.'s letterhead, and this is a
14 letter addressed to the D.C. Fire Department, stating, per, to
15 Mr. Guffy, I believe it is.

16 MR. ENIOLA: Yes.

17 CHAIRPERSON GRIFFIS: Per your visit and our
18 conversation, I am hereby forwarding this letter as a result.
19 Letter is to certify that the African Community Center, Inc. --

20 Do you have this in front of you?

21 MR. ENIOLA: No, I --

22 CHAIRPERSON GRIFFIS: That's okay. Don't worry.

23

24 Will not have more than 45 persons, individuals,
25 at a time at our meetings in the building.

1 And the president of the African Community Center
2 is the signature on that, indeed, who is here before us today.
3 However, Mr. Eniola --

4 MR. ENIOLA: Yes, please?

5 CHAIRPERSON GRIFFIS: You are a notary public?

6 MR. ENIOLA: Yes, I am.

7 CHAIRPERSON GRIFFIS: And you notarized this
8 letter?

9 MR. ENIOLA: Yes, I did.

10 CHAIRPERSON GRIFFIS: Okay. Well, we have that
11 as Exhibit 27, Board members. Okay. Sorry. I'm interrupting
12 you, possibly, with these questions, but continue on, if you
13 like.

14 MR. ENIOLA: Well, I think I have made my case.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. ENIOLA: Unless if the Board have any
17 questions, I'd be willing to answer them.

18 COMMISSIONER HOOD: Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yeah, Mr. Hood?

20 COMMISSIONER HOOD: I would like for him to speak
21 to the arrangements he has made because -- and I know I -- we
22 will have ample time to ask the Office of Planning, but when I
23 started reading this and going back and forth, I was just
24 thoroughly confused. I don't know if my other colleagues were,
25 but I put myself -- it seems like the more we're getting into

1 this, the more confused that I'm getting.

2 So maybe if he can clarify some of the
3 agreements, because looking at the Office of Planning report,
4 one of the cases I saw where you only picked -- I think there
5 will only be seven parking spaces and two separate people are
6 going to be using those seven parking spaces.

7 I may be totally incorrect, but if you can just
8 help me to understand what these agreements are and what's going
9 on with it. I know that was one of the issues.

10 The next issue, if you can address, I still see
11 that the Metropolitan Police Department's letter has not been
12 withdrawn. I still see that and that was an issue with me last
13 time. And that still remains an issue because the charge of the
14 zoning -- well, of the Board members and the Zoning Commission
15 is to protect the safety and health of the residents of the
16 District. And the Metropolitan Police Department still have in
17 their letter in here. Means a lot. That is our top security
18 here in the city.

19 So if you can respond to both of those, Mr.
20 Chair, if that's in order?

21 CHAIRPERSON GRIFFIS: Absolutely, Mr. Hood.

22 COMMISSIONER HOOD: Thank you.

23 MR. BUNDU: Okay. Francis Bundu. The police
24 concern has been solved, really, because the main concern was to
25 get space to park the cars. We have got a space that is -- that

1 would take about 16 cars.

2 And apart from that, we have two set of keys to
3 go to the back of the building and park the cars, if we have any
4 cars to park. Originally, those were also the concern of Office
5 of Planning, because we discussed that. They say, if you have
6 got keys -- please -- we don't have access to the front or to
7 the back. Now we have access to the back because the parking
8 lot has provided a key for us to go to the back and park the
9 cars. In case we have enough cars, the little parking, we're
10 sharing. So I discussed that --

11 COMMISSIONER HOOD: Too many spaces. Let me just
12 ask. How many spaces? The lot that you're sharing, how many
13 spaces are there?

14 MR. BUNDU: It would take 16 cars.

15 COMMISSIONER HOOD: It will take 16 cars?

16 MR. BUNDU: Sixteen cars.

17 COMMISSIONER HOOD: I don't know why I was led to
18 think it was just seven. But anyway, you can --

19 MR. BUNDU: It would take 16 cars, well, on
20 either side. So I -- I have the keys. The back will take more,
21 a lot of cars, at night. And until that problem has been solved
22 -- and apart from the back, on the first street way down to the
23 bus station, is all empty at night, particularly on weekend. So
24 that concern, really, by the police has been solved, because the
25 original concern was we don't have a way to go to the back.

1 COMMISSIONER HOOD: Have they submitted something
2 -- maybe I may have missed it, but I didn't see anything, where
3 they have withdrawn their concern. I think it still stands. Am
4 I correct, Mr. --

5 MR. BUNDU: I think so. I have --

6 COMMISSIONER HOOD: So their letter still stands?

7 MR. ENIOLA: Mr. Hood, I think -- I don't -- I do
8 not have any letter to that effect, but officially, I will guess
9 that it still stands, because I have not, you know, I have not
10 responded to it in any way.

11 COMMISSIONER HOOD: Well, I'm going by the
12 statement that was made, that that issue has been addressed.
13 Normally, when it's been addressed by a government official, I
14 would hope that they would send a letter to rescind their
15 preexisting letter.

16 MR. ENIOLA: Well, Mr. Wood, I do not know any --
17 I have no information on that particular issue because that
18 issue was dealt with by Mr. Bundu and I -- my mistake was not
19 asking Mr. Bundu to have gotten an official -- in other words,
20 written documents to that effect. So that's why I did not --

21 COMMISSIONER HOOD: Mr. Chairman, am I in line
22 for asking for that? Because as far as we're concerned, I still
23 look at what I have here in front of me.

24 CHAIRPERSON GRIFFIS: Yeah, no, I think, Mr.
25 Hood, that is perfectly appropriate.

1 MR. ENIOLA: Let me --

2 CHAIRPERSON GRIFFIS: I think if we get -- let me
3 just finish up here. I think as we get into the Office of
4 Planning, we're going to deal with that even more, because we
5 have quite a few government reports.

6 And frankly, it was in my mind also that we would
7 need those updated, if not resubmitted or given an opportunity
8 for a re-submission. And it would only help the applicant,
9 because, frankly, what's in here now, as you've stated, does not
10 help. Okay.

11 MR. BUNDU: Let me talk to that. First of all,
12 we never received a letter from the police. I learned that the
13 police had sent a letter through the Office of Planning. And a
14 discussion, met with them, they told me that since we have a
15 secure place to park, and we have access to the back, that could
16 solve the concerns of the police. They discussed this with me.

17 So I was hoping --

18 CHAIRPERSON GRIFFIS: Okay. And I think the
19 point's made that we would obviously need clarification without
20 speculation. Let me ask you a quick question, perhaps just to
21 review for our own sakes. When we're talking about when you're
22 indicating you have access to the back, you're talking about the
23 parking lot?

24 MR. BUNDU: Yes.

25 CHAIRPERSON GRIFFIS: Is that correct?

1 MR. BUNDU: Right.

2 CHAIRPERSON GRIFFIS: Which is off of the N
3 Street, which is what you're referring to as --

4 MR. BUNDU: Right.

5 CHAIRPERSON GRIFFIS: And that's pertinent
6 because you have access to your building off of N Street --

7 MR. BUNDU: Right.

8 CHAIRPERSON GRIFFIS: -- not off of New York
9 Avenue?

10 MR. BUNDU: No.

11 CHAIRPERSON GRIFFIS: Right. So that people
12 would be walking and they need to park and they need to walk
13 down N Street to get it rather than having to walk entirely
14 around the block?

15 MR. BUNDU: Right.

16 CHAIRPERSON GRIFFIS: Okay. I think it may be
17 helpful to move right into the Office of Planning's report
18 unless other Board members have questions. And then we can come
19 back and revisit and you will have time to ask OP questions.
20 But let us turn to the Office of Planning.

21 MR. JACKSON: Thank you, Mr. Chairman and members
22 of the Board. My name is Arthur Jackson. I work with the
23 Office of Planning and I am the staff person that was working
24 with this case.

25 First, I'd like to just to recap the orientation

1 aspect of this case. If you'll turn to the photograph in your
2 packet, you'll note that the property exists between New York
3 Avenue and N Street, Northeast, that the -- there's a
4 photograph, a red dotted square on the photograph that indicates
5 two parking facilities.

6 One's an adjacent parking lot that's next to the
7 New York Avenue Car Wash. It's a larger parking lot that
8 apparently is government controlled.

9 And then there's a smaller parking lot next to
10 the lot, what's called the New York Avenue Lounge, the Skylark
11 Lounge, which is located west of the subject property.

12 The applicant -- first of all, I'd like to
13 applaud the applicant in that they did reach out to the
14 community and through their own persistent were able to get a
15 hearing before the Land Use Committee for the ANC and get an
16 approval. And unfortunately they weren't able to go to a full
17 meeting, and get that okay.

18 All right. I note that they did express --
19 actually they, in talking to Mr. Eniola before Christmas, there
20 seemed to be a possibility that they were -- they were
21 succeeding in getting and identifying who was actually
22 controlling the government parking lot east of the New York
23 Avenue Car Wash. But to date they still haven't been able to
24 find out who actually controls it and get any further
25 negotiations on that.

1 But the applicants were able to begin
2 negotiations with the owners -- the operators of the Skylark
3 Lounge and secure a parking understanding.

4 The -- to review the concerns that we expressed
5 at the last hearing, one of them was the lack of handicap
6 parking and drop-off areas for persons with special needs. The
7 distance to available parking spaces. The potential to increase
8 -- to encourage illegal parking in the area if there wasn't
9 parking immediately accessible. The lack of a pass through to
10 the parking south of the property. And then just a general
11 concern about encouraging people who may not be familiar with
12 the area to park alone in the street, given the fact that
13 there's a methadone clinic back there and works all the time.

14 The applicants feel fairly comfortable with their
15 clientele going and parking along that street, so I won't
16 address that any more, but I just wanted to say that the only
17 reason we're bringing that up is because there is some concern
18 about the active nature of that street.

19 Down to the particulars of what -- now that we've
20 talked about that the applicant has accomplished, we still have
21 several concerns and I think they have to do just with clarity.

22
23 When we talked to the applicant and told him
24 about the situation with the negative reports from the
25 Department of Public Works and the police department, and we

1 offered to arrange a meeting -- in fact, encouraged them to
2 allow us to try to arrange a meeting with the contacts from
3 those agencies on site, when they had secured whatever parking
4 they were going to secure.

5 My concern was that, I think, meeting on site and
6 talking in person with the applicant, to give them a better idea
7 of what was available and allow the applicant to actually meet
8 them face to face and discuss what they were able to do. To
9 date, that has not occurred and I think it still would be good
10 to do and I'm still volunteering to arrange that so that we
11 could resolve this once and for all.

12 I saw the applicant's letter for the parking with
13 the Skylark Lounge and I was very interested in it. And in the
14 conversations, I heard there were 40 spaces, then there were 20
15 spaces and then so on.

16 When I went to visit the site -- now, I'm just
17 saying what spaces are striped on the property. Now, you
18 probably can stack them in on end and get all kinds of parked
19 cars in there, but if you look at the striped spaces on site,
20 there's seven in the actual area, but then there are five more
21 in front of the building in public space. So that's around 12.

22 The -- when I called the owner of the property or
23 the operator of the property, and I think that if you turn to
24 that letter, the owner's name or the person who actually
25 controls the property is the managing director, Mr. Sherriff?

1 But the operator -- Sherriff. Schuff.

2 But the operator of the lounge was Mr. Bell. I
3 asked Mr. Bell several times about this application. He said,
4 oh, yes, he remembers signing the agreement and he was all for
5 it. But then I asked him, well, is this -- is the Skylark
6 Lounge open on Friday and Saturday? He said yes.

7 So that indicated to me that, although the
8 spaces, there was an agreement and they had access to walk
9 through the parking lot through the gate, they did not have
10 actual control of the spaces.

11 Now, he did say the Skylark Lounge is closed on
12 Sunday, so on Sunday they would have control of the entire space
13 and therefore would have the 12 spaces that are available there
14 and then additional four spaces in the public -- and four
15 parking spaces in the front space, that's in front of their
16 building. That would give them 16.

17 The -- so my concern is that I think the
18 presentation, in the presentation, too, the ANC, the statement
19 was made, and this is information I got from the applicant, that
20 there would be 15 spaces available. I think it's important to
21 make sure that if they promise 15 spaces, 15 spaces should be
22 available off site -- on site or under their control. And at
23 this point, that doesn't seem to be the case.

24 The applicant alluded a number of times to the
25 issue about Office of Planning encouraging him to go to see the

1 Department of Consumer Regulatory Affairs.

2 Again, the thought was that if there was
3 significant cost associated with them making, adapting the room,
4 because of the change of use, then this may not be -- this
5 application might have been withdrawn. Apparently, there isn't
6 a lot of expense in that. I appreciate them going to that
7 effort, so obviously that's no longer an issue and I won't be
8 bringing that up again.

9 Then the last issue is the handicap
10 accessibility. I think if they could get a control -- actually
11 get control of a couple of spaces in Skylark Lounge, that one of
12 those could be for handicap accessibility. All we're looking
13 for is something where a handicap person could drop off or park
14 and not have to be standing in New York Avenue or, worse, having
15 to park on N Street and walk around the building.

16 So I think, if the applicant -- one of the
17 options we proposed was, if they go with permanent seating, then
18 we're not talking about a variance any more. We're talking
19 about a special exception, which would allow them to just locate
20 four, five, four or five spaces, identify four or five spaces on
21 the adjacent property, and they would meet the requirements.
22 And it would be easily approved and they'd be on their way.

23 To date, the applicant has not really -- well,
24 I've heard -- I wasn't quite sure what I was hearing during the
25 discussion this morning -- this afternoon -- so I'm not sure if

1 they're interested in pursuing that. But I think it would make
2 this a lot easier. Of course, there is an expense associated
3 with that, but I believe Mr. Bundu, if I -- I get the impression
4 that he's in the restaurant business, so there could be some
5 angles that he could approach them.

6 Again, the thought is, if you have permanent
7 seating, then we would lower the parking requirement overall.
8 If you're going to put in the 45, that nails the actual
9 occupancy permit to be 45, based on that permanent seating, and
10 then based on that, he would only need four or five spaces,
11 which would eliminate -- which greatly reduce the required
12 parking, from 77 to 75 to that number.

13 CHAIRPERSON GRIFFIS: Can I interrupt you --

14 MR. JACKSON: Sure.

15 CHAIRPERSON GRIFFIS: -- just quickly, Mr.
16 Jackson, on that? If they install the 45 fixed seatings, I
17 trust your math there, that it would be five. But then they
18 would still have office. So you'd still have occupancy in that,
19 minimal as it is.

20 MR. JACKSON: Well, at this --

21 CHAIRPERSON GRIFFIS: Or is that not the case?

22 MR. JACKSON: Well, at this point, and the office
23 that exists, I'm only dealing with the change in use. I'm not
24 dealing with the existing office, at this point.

25 CHAIRPERSON GRIFFIS: I see.

1 MR. JACKSON: So -- because I don't see where
2 there's been a variance applied for, for the office parking
3 space.

4 CHAIRPERSON GRIFFIS: Right. Okay.

5 MR. JACKSON: So --

6 CHAIRPERSON GRIFFIS: So you don't want us to
7 open that door and walk into those offices right now?

8 MR. JACKSON: Not -- not necessarily.

9 CHAIRPERSON GRIFFIS: Okay. So what we're
10 looking at is partially for -- and it's my understanding that
11 the public hall, in quotes, is a matter of right use in the C-3-
12 C, correct?

13 MR. JACKSON: Right.

14 CHAIRPERSON GRIFFIS: Okay. So we are just
15 talking about a small portion of a floor that is changing its
16 matter of right use, that then, obviously, impacts the parking
17 variance?

18 MR. BUNDU: Mr. Chair --

19 MR. JACKSON: So -- so at this point, based on
20 those circumstances --

21 CHAIRPERSON GRIFFIS: Hold on just a second.
22 We're going to let him finish up and then we'll get to your
23 response.

24 MR. JACKSON: So what I see is significant
25 progress toward addressing the issues that were raised.

1 CHAIRPERSON GRIFFIS: Right.

2 MR. JACKSON: I also see that there is
3 significant opportunity to address them all, if the applicant
4 follows one of three options. One, they continue to work to
5 secure, to either nail down the parking spaces, actually
6 identify which parking spaces are theirs at the Skylark, or,
7 better yet, to continue to try to find additional parking,
8 either in the government lot at the eastern end of the square,
9 or somewhere else. That would give them a modicum of parking
10 that would be controlled and off site.

11 If they would pursue the possibility of coming in
12 with permanent seating -- now, you need to check with the DCRA
13 as to what their definition of permanent seating is, because it
14 might not be a very expensive affair. But any rate, you know
15 how you want to use the space and you know the number of people
16 who are there. If you pursue that, that approach, then that
17 could reduce the parking requirement.

18 And the third thing is to allow, when you're
19 ready to put forth your best proposal, if you'll contact the
20 Office of Planning, we will try to arrange a meeting on site
21 with the Department of Public Works and with the police
22 department. And we can look at whether or not they're satisfied
23 with the efforts that are made or are more pleased.

24 And again, the fact that the ANC committee has --
25 supports your application is a plus in your -- on your side.

1 However, if the ANC expects you to have 15 spaces when this use
2 is open, that are controlled, under your control, and on site,
3 we need to make sure they at least get to that level.

4 And based on that, we're recommending that this
5 application be deferred to allow them a little more time to
6 pursue those angles of inquiry.

7 CHAIRPERSON GRIFFIS: Okay. Thank you, Mr.
8 Jackson. And that is very in depth. For another of my own
9 reference point, on page 3 in your report, first paragraph, you
10 indicate that installing fixed seating for 45 persons would
11 reduce parking requirement from 72 to five on site parking
12 spaces.

13 So your point being, not only do you need to
14 figure out how many are secure in the Skyline, but to keep
15 looking, is very prevalent, in terms of how many parking spaces
16 they actually need to come up with, unless the option of going
17 to some sort of fixed seatings -- I shouldn't say permanent
18 seating -- but fixed seatings can be done.

19 Okay. And Board members, questions of Mr.
20 Jackson or Office of Planning?

21 VICE CHAIRPERSON RENSHAW: Yes, Mr. Chairman.
22 I'd like to just go back to the page 2 of your report, down at
23 the bottom, under further analysis, if you would just go over
24 the business of Bobby Bell, the president of Skylark Lounge
25 indicated that he agreed to share the available parking on

1 Friday and Saturday nights. And share to what degree, to what
2 extent? How many spaces would be available?

3 MR. JACKSON: That wasn't clear. I think -- now,
4 in talking to Mr. Bell, he's interesting, very interesting
5 person to talk to on the phone. Sometimes you just say
6 something and he'll -- it kind of goes past him.

7 But I asked him -- the question I was able to
8 nail him down on was, is the Skyline -- Skylark Lounge going to
9 be open on Friday and Saturday? He said yes. Okay. Did you
10 agree to allow the African American Community Center to use the
11 parking lot? He said yes. So in your essence, you're saying
12 you're willing to share the parking lot with them? And he said
13 yes.

14 Now -- so my understanding from that was that
15 there wasn't a firm number, one way or the other, and that the
16 letter indicates that there would be, there is an agreement, but
17 the letter doesn't state a number. So what needs to happen is
18 that that number can -- it'll probably be clarified.

19 Now, he also did say that the lounge was closed
20 on Sunday, so obviously on Sunday, they have the use of the
21 entire parking lot and if they wanted to do -- they could
22 control it and park however they saw fit. But it's just on
23 Friday and Saturday, that option would not be available, to use
24 it in its entirety, if the lounge is open and someone's in
25 attendance.

1 VICE CHAIRPERSON RENSHAW: Second question, just
2 to follow up. On the map that you have in your report, you
3 outline the lounge lot and it looks to be quite a distance to
4 the site. Can you tell me how far the lot would be if one of
5 the spaces in the lounge lot is designated as handicapped? Or
6 would the handicapped be a designated spot out in front on New
7 York Avenue?

8 MR. JACKSON: Well, the thought would be that the
9 handicap space would be in the lounge lot. The -- I've got a
10 plat of the properties, so let me just add the distances up for
11 the adjacent lots. It'll just take me a minute.

12 Unfortunately, this plat dates from the 40's, so
13 it shows the property when the -- oh, no, I'm sorry. Wrong side
14 of the street. My fault.

15 It looks to be about 50 -- 53 feet. The adjacent
16 lot, the adjacent building, is 26 feet wide according - no, 29
17 feet wide. And then the next lot, lot 35, is 28. So that would
18 be -- 26 and 28, 54 feet, if these dimensions are accurate.

19 VICE CHAIRPERSON RENSHAW: Thank you. It's just
20 to indicate that 54 feet looks to be a considerable distance
21 from a handicap space to an entrance.

22 MR. JACKSON: Right. It would be much preferable
23 if they were able to get -- if they got control of the
24 government lot, government controlled lot that's immediately
25 adjacent to the New York Avenue Car Wash. They could put a

1 space right there at the entrance to the lot.

2 We'd also suggest to the applicant that they
3 contact the Department of Public Works. They might even put in
4 a handicap parking space in the public way.

5 But at this point, that's just another
6 complication. If they can get control or partial control of
7 either one of those lots, then I think the potential is they can
8 provide a space that's convenient within 50 feet.

9 And now, so 50 feet, I think, would be from the
10 middle of this block to the end. I think this block's bout a
11 hundred feet long.

12 CHAIRPERSON GRIFFIS: The entire N Street, from New
13 York down to --

14 MR. JACKSON: I'm saying the block we're in here, I
15 believe it's a hundred feet long.

16 CHAIRPERSON GRIFFIS: Oh, right. Yeah. I was
17 gonna say, this is substantially larger than that is. Yeah.
18 Okay. Okay. Are there questions for Office of Planning?
19 Please.

20 MR. ENIOLA: I'd like to address two of Mr.
21 Jackson's concern. First one, which is the parking space at 33
22 New York Avenue, for the lounge. I think Mr. Jackson
23 misunderstood Mr. Bell's communication, in that the lounge that
24 is open on Friday and Saturday, is not at 1943 New York Avenue,
25 Northeast. The parking space that we're talking about is at 33

1 New York Avenue and that is not open after five o'clock as of
2 Friday though Sunday.

3 So we're talking about two places here. And I
4 think I made it very clear in my letter that the 1943 New York
5 Avenue, where the lounge itself is, is used for the purposes of
6 that business, but the operations and the official part of it.
7 And I don't mean to use the word loosely, here, I mean, in that
8 it was the operation of the other business itself is conducted,
9 is done at 33 New York Avenue.

10 In other words, 1943 is like a subsidiary of New
11 York Avenue. In other words, they perform what these people do
12 down at 1943 New York Avenue, Northeast, which is almost about,
13 if I'm not mistaken, about ten or so blocks from 33 New York
14 Avenue. So 33 New York Avenue parking space is what we're
15 talking about.

16 So that's, we're at -- because after Mr. Jackson
17 talked to Mr. Bell, Mr. Bell called me and told me that, well,
18 look, I told him we were open on Friday and Saturday. I said,
19 well, not our offices. Our offices is closed as of five o'clock
20 on Friday through Sunday midnight. So that's where I think
21 there is a miscommunication.

22 CHAIRPERSON GRIFFIS: Okay. So you're point is
23 that, in fact, at this site, Skylark is administrative offices,
24 not an actually functioning lounge, which we assume to be open
25 on weekends?

1 MR. ENIOLA: Yeah. That is my point.

2 CHAIRPERSON GRIFFIS: So this is normal Monday to
3 Friday business hours?

4 MR. ENIOLA: Yes, it is, official, you know, normal
5 business conduct.

6 COMMISSIONER HOOD: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yeah?

8 COMMISSIONER HOOD: I am hearing a lot of things
9 that I know that are not exactly accurate, because the Skylark
10 on 1943 is open on Sunday, unless something has changed in the
11 past two weeks. I know that for a fact. But --

12 CHAIRPERSON GRIFFIS: I think that's what he's
13 stating, isn't?

14 COMMISSIONER HOOD: That it's open on Sunday?

15 CHAIRPERSON GRIFFIS: Right. They're stating --

16 COMMISSIONER HOOD: Okay. Okay. I thought they
17 said both of them were closed on Sunday.

18 MEMBER ETHERLY: No.

19 CHAIRPERSON GRIFFIS: No, no.

20 MR. ENIOLA: No, I'm talking about 33 New York
21 Avenue parking is closed from Friday --

22 COMMISSIONER HOOD: Okay, 1943, which is not even
23 relevant to this, is open Friday, Saturday and Sunday?

24 MEMBER ETHERLY: Well, Mr. Hood, the reason I'm
25 bringing this up --

1 COMMISSIONER HOOD: No, no, no. I want it as a yes
2 or no, because, see, I'm trying to get clear here because I'm --
3 the information is coming in dribbles and it's not clear. So
4 for me to make an informed -- for this commission or Board
5 member to make an informed decision, I want to make sure I
6 understand. So if you can just answer the question. We'll need
7 to elaborate, because the Chair's gonna run this, but if you
8 just elaborate, 1943 -- your testimony is 1943 is closed on
9 Sunday or open on Sunday?

10 MR. ENIOLA: Oh, it's open on Sunday.

11 COMMISSIONER HOOD: Oh. Okay. Okay.

12 MR. ENIOLA: Yeah, I'm not talking about that.
13 Yeah.

14 COMMISSIONER HOOD: Right. Right. Well, I just
15 want to make sure we're clear. Thank you.

16 MR. ENIOLA: I think the second thing that I want
17 to comment about is the parking lot or the other government
18 parking lot, which is the -- belongs -- presently in use by DPW.

19 According to Mr. Christopher Aneed at 801 North
20 Capital Street was in fact the contract -- the chief contracting
21 officer for Department of Housing and Community Development.
22 They were using that parking lot during the period that they
23 were at 51 N Street.

24 And they are the one who in fact, in the lease, who
25 leased it from Mr. Webster to DPW. And so that is government

1 occupied parking space and the possibility that the Department
2 of Housing and Community Development will allow us or give us a
3 leased to use it over the weekends, I think, is somewhat very
4 remote.

5 Everything that Mr. Jackson suggested that we do,
6 have tried. I know the Department of Housing and Community
7 Development used to occupy 51 N Street, Northeast.

8 CHAIRPERSON GRIFFIS: Mm-hmm.

9 MR. ENIOLA: And in fact they used to use the
10 parking on east and the west and behind the building itself and
11 across the building. And since they are now at 801 North
12 Capital Street, that's the old lease. Now they sublease that
13 part of the lot to DPW, which presently is in possession of it.

14 And my communication with Mr. Aneed is that under no
15 circumstances would the government occupies it, taking it and no
16 matter what, leasing it from Mr. Webster and then subleasing it
17 to us.

18 CHAIRPERSON GRIFFIS: Right. But your point is
19 that you would not be -- it wouldn't be available for you to use
20 it?

21 MR. ENIOLA: No, sir.

22 CHAIRPERSON GRIFFIS: Okay. Okay. I mean, and
23 that's informative, because, I think, as we have talked about
24 before and looking at this ariel elevation, you see a lot of
25 parking spaces.

1 But even if the fact of the matter is that the
2 surface parking that surrounds this site is not available to
3 you, does not necessarily prove your case so that we would grant
4 the variance. But it is informative talking about this -- what
5 you've been working through to try and find that -- just to
6 bring that to a point. Okay.

7 COMMISSIONER HOOD: Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes?

9 COMMISSIONER HOOD: Can we just ask, have we seen,
10 are there any written agreements? Have they -- I mean, I see
11 where they mention, but do we actually have in the file the
12 actual agreements?

13 CHAIRPERSON GRIFFIS: For the parking?

14 COMMISSIONER HOOD: Yeah.

15 CHAIRPERSON GRIFFIS: We have the Skylark letter.

16 COMMISSIONER HOOD: Okay. I saw the letter, but, I
17 mean, you know, normally --

18 CHAIRPERSON GRIFFIS: Right. And indeed, we don't
19 have --

20 COMMISSIONER HOOD: I don't know if it's the
21 agreement.

22 CHAIRPERSON GRIFFIS: Yeah. And I'm glad you bring
23 that up because that is worth note of something that would have
24 to be, I would say, finalized. This looks like a letter of
25 intent almost, just to begin the agreement. I mean, most

1 parking agreements that we're familiar with, and frankly will
2 ensure your use, is a fairly legal document. But it would
3 outline how many spaces, where the spaces are.

4 The other issue that brings up, if I could just
5 continue on what you're saying -- which Mr. Jackson can talk to
6 this -- is what's the condition of that surface parking?
7 Because you know under our regulations, if we approve surface
8 parking and more potently, as we've seen, in adjacent parking,
9 we have to make sure that they are in fact per our regulations,
10 which are somewhat onerous.

11 But Mr. Jackson, briefly, and then I'm going to put
12 it back to Mr. Hood because I always grab what he's saying,
13 because he says such great things.

14 MR. JACKSON: Mr. Chairman, again, that's why I was
15 just going with I saw all the parking spaces that were marked.
16 There is more room to park cars, per se, except you've got
17 doors, you've got places where they apparently --

18 CHAIRPERSON GRIFFIS: Right.

19 MR. JACKSON: -- would have a dumpster.

20 CHAIRPERSON GRIFFIS: But what about the physical
21 condition? I mean, in terms of the surface, in terms of the
22 striping?

23 MR. JACKSON: Well, it's paved -- it's paved with
24 concrete and asphalt.

25 CHAIRPERSON GRIFFIS: Okay.

1 MR. JACKSON: The fences themselves have the --
2 it's chainlink with slats, vinyl slats.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. JACKSON: It looks like it's a pretty secure
5 facility.

6 CHAIRPERSON GRIFFIS: Okay. So it was satisfactory
7 enough for you not to bring that to light, in terms of what
8 might need to be happening.

9 MR. JACKSON: Well, it's being used on a regular
10 basis now --

11 CHAIRPERSON GRIFFIS: Right.

12 MR. JACKSON: -- with cars and if you go by there
13 on occasion, you'll see the cars that are fenced it. I'm not
14 sure why so many cars are there during the day.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. JACKSON: But it's being used on a regular
17 basis.

18 CHAIRPERSON GRIFFIS: Okay.

19 COMMISSIONER HOOD: Mr. Chair?

20 CHAIRPERSON GRIFFIS: Yeah? We're you done, Mr.
21 Hood?

22 COMMISSIONER HOOD: No, I just want to say, it
23 looks like from the previous case, well, the previous hearing,
24 the applicant has made some headway. While I still have some
25 fine tuning concerns, maybe a little frustrating, but there are

1 still one very -- there still is one very outstanding issue with
2 me, and that's the Metropolitan Police Department.

3 I have been on record of voting against situations
4 because of the police department's opposition. So that is --
5 that is one outstanding issue, and I hope that -- you'll need to
6 respond to it now.

7 And I'm not show whether the Chair's going today
8 with this, but that is a very important issue with me. So
9 hopefully that issue can be taken care of, but it looks like you
10 are making some headway, like Mr. Jackson has already said.
11 Thank you, Mr. Chair.

12 CHAIRPERSON GRIFFIS: Indeed, Mr. Hood. Mr.
13 Etherly, you were indicating you had something?

14 MEMBER ETHERLY: Thank you very much, Mr. Chair. I
15 apologize for not raising this question following Mr. Jackson's
16 report on behalf of the Office of Planning.

17 Mr. Jackson, you heard Mr. Eniola mention the fact
18 that there might be some misunderstanding regarding the
19 activities already taking place and the site that is adjacent to
20 the lounge lot. I'm looking back at what is labeled as Exhibit
21 6, at the conclusion of the Office of Planning Report.

22 The Office of Planning may not have taken a look at
23 this when you did your walk-through of the site, but are you --
24 are you in any position to comment on what you observed in terms
25 of any activities or any indicia of activities at that site

1 adjacent to the smaller lot that is labeled lounge lot?

2 MR. JACKSON: Well, my experience being, on and on
3 a regular basis going by the lot, is that it's maintained. I
4 mean, it's not -- it's paved with concrete and it's paved with
5 asphalt. It's not the greatest lot in the world, but it is
6 maintained. The rear is always closed when I've gone by there,
7 so they've always locked off the rear.

8 MEMBER ETHERLY: Okay. And in terms of the
9 building that is adjacent to that lot, Mr. Eniola is referencing
10 that building as being primarily used for administrative
11 purposes. Once again, the Office of Planning probably did not
12 take a look at this, but was there any indication, when you did
13 your walk-through, as to what activities might be taking place
14 on that site?

15 MR. JACKSON: No, it's difficult to say --

16 MEMBER ETHERLY: Okay.

17 MR. JACKSON: -- because there was the Skyline sign
18 was up there, but its -- there are no windows in the first
19 floor. The windows in the second floor, you can see what looked
20 like a pool table, but we didn't go -- we didn't in fact go in
21 there.

22 MEMBER ETHERLY: Okay. Understood. I figured that
23 you didn't, but I just wanted to kind of, you know, try to gel
24 those two comments together. Thank you. Thank you, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Mm-hmm.

1 VICE CHAIRPERSON RENSHAW: Mr. Chairman. Mr.
2 Jackson, on Exhibit 1, it is the DPW report of Ken Laden. And
3 in the second paragraph, he says that New York Avenue has no
4 parking and no standing restrictions enforced all day. Does
5 that mean Saturday, Sunday, also?

6 MR. JACKSON: I'd have to verify that. My
7 experience has been that when you see these signs, it's usually
8 no parking signs, unless it says 24 hours, that it may mean just
9 during the week. But I'll have to verify that.

10 VICE CHAIRPERSON RENSHAW: All right. Because that
11 certainly impacts on public space, available areas for parking.

12 MR. JACKSON: Yes.

13 VICE CHAIRPERSON RENSHAW: Okay. And then also,
14 just to the applicant, where Mr. Hood has just spoken of his
15 concern about the police report, I'll weigh in on the concern
16 over the fire department's report and just hope that, and this
17 is now directed to Mr. Jackson, if you're having a site visit
18 with DPW and the police, that the fire marshall be invited to
19 attend that, so that everyone, the responders who would be on
20 call to an emergency, would know exactly what the applicant has
21 proposed for changes at this site.

22 MR. JACKSON: I'll be sure to invite them.

23 VICE CHAIRPERSON RENSHAW: Thank you.

24 CHAIRPERSON GRIFFIS: Okay. Lastly, I think we
25 just need to have, if you feel so able or you could, you know,

1 just point us to your written submissions, that we're looking at
2 a variance. Just walk down the three-prong test and I can
3 reiterate that for you, if you need.

4 But we have an indication from the owner that there
5 is a hardship, as you stated, because he will not be able to
6 rent it and use the space. But I'm certain that and -- anyway,
7 I'll turn it to you to elaborate a little bit more on that.

8 MR. ENIOLA: Thank you. Our application is
9 probably one of the first in almost five years of the building
10 that no one has occupied it, other than the car wash in the
11 bottom. And the reason for that is simply that what they are
12 intending, the intended applicant for the usage of the place,
13 what they had intended to use it for, they cannot go through the
14 zoning boards to get it because of the very same parking.

15 According to my own estimate, even Mr. Bell himself
16 wanted that second floor, where the African Community Center is
17 now. But simply because you cannot use it for the purposes of
18 what he had in mind, which is probably what he was going to do
19 with it was 1943 New York Avenue in the first place.
20 Unfortunately, he cannot get the -- he knew, pretty much, where
21 that the Zoning Board would turn him down. And so therefore he
22 didn't even try.

23 And so by Mr. Schuff's own admission, is that they
24 are having a hard time in renting the place anyway. And his
25 nightmare is that he has to pay taxes on a building that is not

1 being utilized. And so that's a frustration Mr. Schuff carries
2 with him.

3 And so when African Community Center told him that
4 where we will give a zoning commissioner our application and we
5 will try to do the best we can to obtain a variance on parking
6 spaces for the purpose of what, you know, what we intended to
7 use it for, he was then willing to give it, you know, to give us
8 a chance.

9 And we have been here since and trying to see what
10 we can do. Not that the Board has been somewhat reluctant. I
11 don't mean that. It's just simply the way the regulations are.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. ENIOLA: Yeah. So after that, to that, and I
14 have no -- in fact, I have very much respect for this Board,
15 that most of all the places I have been within the D.C.
16 government. And believe me, I have been a contractor with D.C.
17 government for 20 years in the city. And the -- one of my
18 personal friends that I think some members of this Board knows
19 pretty much well, is Metcalf King. He was a deputy Corporation
20 counsel for the District of Columbia until 1996, when he became
21 a judge in New York, and thereafter died about a year later,
22 unfortunately.

23 But what we were brought up as children in the same
24 -- our ancestors -- one after the other, in Sierra Leone, and
25 what came here. So while he was here, I've been with the

1 government. I used to do all the moving and hauling for the
2 District of Columbia. That was Impex Industries. And that was
3 my company. Also, I was the landscaping contractor for the
4 District of Columbia.

5 CHAIRPERSON GRIFFIS: And this is all coming back
6 around to your argument, right?

7 (Laughter.)

8 MR. ENIOLA: Yes.

9 CHAIRPERSON GRIFFIS: Okay. Good.

10 MR. ENIOLA: All right. So therefore, when I used
11 to work, a great deal of respect the Zoning Board, I know what
12 I'm taking about --

13 CHAIRPERSON GRIFFIS: Right.

14 MR. ENIOLA: -- because of my past experiences with
15 --

16 CHAIRPERSON GRIFFIS: Right.

17 MR. ENIOLA: -- you know, with the government. So
18 I think what I'm trying to -- asking -- I will be asking the
19 Board to do for me here is just be a little bit patient for me
20 and give me the opportunity to get to love the police department
21 and report and let me get in touch with them and let me see what
22 I can do to solve that particular problem.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. ENIOLA: As to the other parts of the
25 disturbances that would -- might be thinking that the African

1 Community Center might create, I doubt it very much, in the
2 sense that we're only going to be there for a certain period of
3 time and it's gonna be on weekend. I don't think it's gonna
4 cause any problem with -- there's no drinking served, except for
5 soda and water.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. ENIOLA: And I don't think that someone could
8 become a public nuisance unless intended to, in that instance.
9 So the purpose of the meeting is only for to put together our
10 community here. And I will ask that the Board be somewhat
11 patient, be tolerant, and give us a shot at it.

12 CHAIRPERSON GRIFFIS: Good. I appreciate that and
13 I think the operative word there is patience, of which we have
14 been and I believe can continue to be.

15 Let me reiterate a little bit of my memory and then
16 some of us what you just said, in terms of the --

17 MR. ENIOLA: Please do.

18 CHAIRPERSON GRIFFIS: -- three-prong test. I mean,
19 I think the record shows that it's a unique property and in fact
20 the ariel photograph reiterates that for us.

21 MR. ENIOLA: Yes.

22 CHAIRPERSON GRIFFIS: In terms of the practical
23 difficulty you have talked about, there is an existing building.
24 It has -- it fills out the site fairly completely. I'm not --
25 I don't have my finger on exact lot occupancy. But in that a

1 matter of right use is not able to go forward because it cannot
2 meet, therefore, the parking requirements, because on the site
3 there is none. And where we are with that is searching for
4 parking.

5 I would propose that we set this for
6 decisionmaking. And give ample time to allow -- and I would see
7 what our March, first meeting in March was looking like, and
8 give ample amount of time for you to pull together a few things.

9 MR. ENIOLA: Okay.

10 CHAIRPERSON GRIFFIS: One of -- or several of which
11 -- all of which, we have discussed today. One of the big ones,
12 I think, is working, continuing to work with the Office of
13 Planning and utilizing their staff in pulling together meetings
14 with the D.C. agencies and getting new submissions. That's
15 fairly simple to do in terms of time. In terms of scheduling,
16 it is not, but we understand that. I would include in that the
17 ANC reports.

18 I would also request that we have some sort of plan
19 or some sort of verification. And it has to be independent of
20 what the occupancy of this space will be. And if that becomes -
21 - if that is fixed seatings and that's plans that you're
22 submitting for permitting, because if you do fixed seatings,
23 you're going to have to have a fire plan. It's gonna have to be
24 permitted. You're gonna have to drawings, some in. It will not
25 have to be elaborate. But I don't think that this Board can

1 move ahead and approve a parking variance without knowing
2 exactly what kind of --

3 MR. ENIOLA: What we are --

4 CHAIRPERSON GRIFFIS: -- parking variance we're
5 approving. And that would help us. And, frankly, if it's
6 decided that there's a roof terrace and you want 2,000 people in
7 there, that's okay, because we can do our calculation and know
8 what the parking is. Not saying we'll approve it.

9 MR. ENIOLA: True.

10 CHAIRPERSON GRIFFIS: But at least we'll have the
11 detail. I would say also once parking is established and the
12 numbers -- and you will provide that to us and OP will review
13 that, of course, and if it has to take some sort of DCRA --
14 yeah, go ahead.

15 MR. ENIOLA: Mr. Chair, we'd like to ask if you'd -
16 - you request for us to have a lease submitted regarding that
17 parking lot.

18 CHAIRPERSON GRIFFIS: That was my next issue.

19 MR. ENIOLA: Yeah.

20 CHAIRPERSON GRIFFIS: Once we have established --

21 MR. ENIOLA: Yes. What we have here is a mutual
22 agreement that upon this Board's approval, we will sign the
23 lease. But now isn't that, well -- it will really not matter
24 with this meeting today and we are going to go ahead and sign
25 the lease anyway. And then that could prove our good faith

1 effort to the Board and hopefully it could be of help.

2 CHAIRPERSON GRIFFIS: Well, certainly you have to
3 use your own business judgement in the lease you sign.

4 I mean, conceivably, you could have an unsigned
5 lease that was prepared to sign, and letter of intent for both.

6 And all we need to do is make sure that the specifics are
7 there. And, frankly, we could have -- we can write an order if
8 -- say we approve this. We can have the order stating that it's
9 based on the submission of a signed lease. Present us with an
10 unsigned lease that's obviously between the two parties and we
11 can work with that.

12 But obviously, more specification or specificity
13 than we're seeing there. And that will go directly to the
14 previous item of how many spaces are actually required, which
15 goes to the occupancy.

16 I think there are a few things that have come up
17 and one can assert miscommunication. And what we need is
18 confirmation. I think Mr. Hood has been hitting on that
19 strongly and that is just, if we could, and working with Office
20 of Planning or if you want to get a letter, but in -- operation
21 for Skylark. We have two for their New York Avenue site. And
22 even if it's just them writing a quick letter saying that's
23 their administrative offices and their office hours are normal
24 business hours, that's fine.

25 Office of Planning, this will not be for you, but

1 I'm laying it all out. Office of Planning had indicated that
2 they will be able to verify the parking on New York Avenue
3 during the weekends. And then -- you have submitted the letter
4 that indicates that this is only used during the weekend?

5 MR. ENIOLA: Yes.

6 CHAIRPERSON GRIFFIS: I'm not sure I have anything
7 to ask of you, more than that. However, let me just state that
8 I need -- I will need clarification on that and I will work with
9 Corporation counsel on how we actually set -- how we'd write an
10 order that definitively defines the hours of operation, outside
11 of us defining the specific hours of operation. Maybe that's
12 how we do it.

13 So if there's more clarity that you can think of,
14 because I can't tell you anything specific to provide the Board.

15 If there's more clarity, then that's fabulous and we'll take
16 that into our deliberations.

17 I'll open it up to other Board members. That is my
18 motion, lengthy as it is.

19 MEMBER ETHERLY: Mr. Chair, just for clarification
20 purposes, did your motion include reference to some
21 clarification on the status of the building code abatement
22 efforts on that part of the applicant?

23 CHAIRPERSON GRIFFIS: Oh. You know, that's an
24 excellent point. And I think -- I think what I want to do is
25 just, I want to roll that into plans, in terms of seating and

1 occupation, because they're all tied in.

2 But it's an excellent point to make sure that the
3 applicant is well aware of what I mean. And that is, if you are
4 proposing fixed seatings, the building itself, to be occupied,
5 needs to be up to code.

6 MR. ENIOLA: All right.

7 CHAIRPERSON GRIFFIS: So we'll be looking at, you
8 know, we'll be looking at the information you can provide us
9 that substantiates that issue.

10 MR. ENIOLA: That --

11 CHAIRPERSON GRIFFIS: Good. Anything else? Okay,
12 then, I would look for a second on that.

13 MEMBER ETHERLY: Second.

14 CHAIRPERSON GRIFFIS: Good. Unless there are any
15 other comments at this time --

16 MEMBER ETHERLY: Mr. Chair?

17 CHAIRPERSON GRIFFIS: Yeah?

18 MEMBER ETHERLY: Mr. Chair, if I may, just as a
19 little bit of a closing matter for us. For this Board member,
20 obviously I don't speak for the entire Board, but you have put
21 forth tremendous effort, I think, in terms of trying to address
22 some of the issues that have been raised here. And I don't
23 think my colleagues, that is lost on them.

24 And I just wanted to be sure that that is added to
25 the record. We're just looking for some additional detail to

1 kind of tie the loop, close the loop on some of these
2 outstanding questions, but I Just wanted to highlight that.
3 Thank you, Mr. Chair.

4 CHAIRPERSON GRIFFIS: Good. No, I appreciate that
5 --

6 MR. ENIOLA: Thank you, Mr. Etherly.

7 CHAIRPERSON GRIFFIS: -- and actually why we had
8 that brief moment. Do we actually need a motion to set a
9 decision making on this?

10 MS. BAILEY: No, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Yeah, I know, we got a
12 second, so, anyway. Well, I --

13 VICE CHAIRPERSON RENSHAW: Just vote.

14 CHAIRPERSON GRIFFIS: Right. All those in favor?

15 (A chorus of ayes.)

16 CHAIRPERSON GRIFFIS: Okay. So it obviously shows
17 a consensus of what we need. And it's just -- let me just
18 verify as I pick that date that that is -- first of all, that it
19 is available to your schedule.

20 MR. ENIOLA: All right.

21 CHAIRPERSON GRIFFIS: But second, that it's
22 available to ours. Mr. Hart -- or Ms. Bailey?

23 MS. BAILEY: Mr. Chairman, March 5th, we're going
24 to set this for a decision?

25 CHAIRPERSON GRIFFIS: Yeah.

1 MS. BAILEY: Pending all of the information that
2 was discussed to come into the record?

3 CHAIRPERSON GRIFFIS: Correct.

4 MS. BAILEY: Okay.

5 CHAIRPERSON GRIFFIS: Great. And March 5th is
6 available to you?

7 MR. ENIOLA: Yes, I believe.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. ENIOLA: Well, Mr. Chair, I will have to
10 provide you whether I like it or not.

11 (Laughter.)

12 Thank you.

13 CHAIRPERSON GRIFFIS: Well, we can accommodate if
14 you're not available that specific date, but -- yes, Mr. Hart,
15 did you --

16 MR. HART: Mr. Chair, I just want to caution here.
17 You have several things to submit and I'm requesting that we
18 have them no later than the 21st of February for the March 5th
19 meeting.

20 MR. ENIOLA: I think we'd prefer the March 5th as
21 well. Good, the --

22 MR. HART: Decision date is going to be March the
23 5th.

24 MR. ENIOLA: Okay.

25 MR. HART: There are submissions that you are

1 required to make to this Board. I'm requesting that those
2 submissions be made to the Board, to the Office of Zoning, no
3 later than the 21st of February.

4 MR. ENIOLA: That will be fine with --

5 MR. HART: That's fine?

6 MR. ENIOLA: Yes.

7 MR. HART: Thank you.

8 MR. ENIOLA: Thank you.

9 MS. BAILEY: Mr. Chairman, were you asking for the
10 Office of Planning to amend its report to give you a status as
11 to how things have proceeded?

12 CHAIRPERSON GRIFFIS: Well, I think, and Mr.
13 Jackson, I'd assume from your report, but yes. And I would
14 imagine they'd want to updated. They're updating it, hopefully
15 for more reports and on their own recommendation they're asking
16 this to be moved to a decisionmaking.

17 So, Mr. Jackson, you don't have any problem
18 resubmitting an updated summary?

19 MR. JACKSON: Not at all.

20 CHAIRPERSON GRIFFIS: Okay. Good. Thank you.
21 Yes?

22 MR. BUNDU: I want to know my --

23 CHAIRPERSON GRIFFIS: Can you just turn on your
24 mike -- turn on your mike. And the question was that, whether
25 it was in the morning or afternoon?

1 MR. BUNDU: The March 15th?

2 CHAIRPERSON GRIFFIS: Yeah? Do we know, Ms.
3 Bailey?

4 MR. HART: It's a meeting in the morning --

5 CHAIRPERSON GRIFFIS: It's in the morning. Our
6 public meetings start at 9:00 a.m.

7 MR. HART: -- 9:30, actually.

8 CHAIRPERSON GRIFFIS: Is it really? Fabulous. All
9 right. We're sleeping in on March 5th and we'll all meet here
10 at 9:30.

11 MR. HART: Right.

12 CHAIRPERSON GRIFFIS: Okay. And it was clear that
13 the information we've asked for comes in before that --

14 MR. ENIOLA: Yes.

15 CHAIRPERSON GRIFFIS: -- on the 21st?

16 MR. ENIOLA: Yes, sir.

17 CHAIRPERSON GRIFFIS: And --

18 COMMISSIONER HOOD: Mr. Chair, let me just ask. On
19 the 5th, I think, is your next meeting, your -- well, decision
20 meeting. And I think we have put two cases. If we can put the
21 ones that I'm dealing with in some kind of order? I'm just
22 asking staff if they can -- either I come first or I come later.
23 Since none of my other colleagues are here, I figure I figure I
24 put my --

25 (Laughter.)

1 CHAIRPERSON GRIFFIS: Indeed. I think we can -- I
2 think we can deal with that. No problem at all.

3 Okay. Is there anything else that needs to be
4 dealt with? Then I would adjourn the January 15th, 2002 public
5 hearing.

6 (Whereupon, the hearing in the above-entitled
7 matter was adjourned at 4:32 p.m.)

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