

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 5, 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 RENSCHAW	Vice Chairperson
DAVID LEVY	Board Member (NCPC)
CURTIS ETHERLY, JR.	Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Commissioner
CAROL J. MITTEN	Commissioner
HERBERT FRANKLIN	Commissioner
PETER MAY	Commissioner

COMMISSION STAFF PRESENT:

SHERI M PRUITT, Secretary, BZA
PAUL O. HART, Office of Zoning
JOHN K.A. NYARKU, Office of Zoning
BEVERLY BAILEY, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

MARIE SANSONE, ESQ.

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS	7
 <u>APPEAL OF DAVID AND JANET PRITCHARD:</u>	
<u>16811 ANC-6A</u>	9
MARIE-CLAIRE BROWN, ESQ.....	11
Office of the Corporation Counsel	
441 4 th Street, N.W., 450N	
Washington, D.C. 20001	
ROBERT COOPER, ESQ.....	11
Jackson & Campbell, P.C.	
1120 20 th Street, N.W.	
Washington, D.C. 20036	
 <u>WITNESSES:</u>	
Janet Pritchard	12
Lyle Schauer.....	23
Toye Bello.....	83
Kathleen Peoples.....	141
Bruce Wentworth.....	153

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

(1:15 p.m.)

CHAIRPERSON GRIFFIS: And good afternoon to everyone here. Ladies and gentlemen, this is the 5th of March, 2002 Public Hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Ms. Anne Renshaw, Vice Chair, Mr. Curtis Etherly on my right, and also Mr. Levy, representing the National Capitol Planning Commission to my far left, and representing the Zoning Commission today is Mr. May.

Copies of today's hearing are available to you. They are located at the door you entered into on the table. Please be aware that this proceeding is being recorded, so we must ask that you refrain from any disruptive noises or actions in the hearing room. And when presenting information to the Board, please speak into the microphone. Make sure that it's on, and state your name and home address before presenting your testimony.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at the end of the table in front of us. Yes, they are, and I think they're also on the table when you entered into the door. Upon coming forward to speak to the Board, please have those filled out, and give them to the reporter who is on my right, identified by the earphones and taking notes.

1 The orders of procedure today for, and I will read
2 just the appeal. And I think we will have -- we'll go from there
3 if we need other instruction, but the order for procedure of the
4 appeal of the application this afternoon will be first, the
5 statement of witnesses of the Appellant. Second, will be the
6 Zoning Administrator and/or other government officials. Third,
7 would be the owner/lessee and operator of the property involved,
8 if not the Appellant. Fourth, would be the ANC within which the
9 property is located. Fifth, would be the Intervenor's case. And
10 sixth, finally, would be the rebuttal and closing statement of
11 the Appellant.

12 Cross examination of witnesses is permitted by the
13 Applicant or parties. The ANC within which the property is
14 located is automatically a party in this case. The record will
15 be closed at the conclusion of each case, except for any material
16 specifically requested by the Board. And the Board and Staff
17 will specify at the end of the hearing exactly what is expected,
18 and the date when the persons must submit the evidence to the
19 Office of Zoning. After the record is closed, no other
20 information will be accepted by the Board.

21 The Sunshine Act requires that the Public Hearing
22 in each case be held in the open before the public. The Board
23 may, consistent with its rules and procedures and the Sunshine
24 Act, enter Executive Session during or after the Public Hearing
25 on a case for purposes of reviewing the record, or deliberating

1 on the case.

2 The decision of the Board in these contested cases
3 must be based exclusively on the public record. To avoid any
4 appearance to the contrary, the Board requests that persons
5 present not engage the Members of the Board in conversation. We
6 would respectfully ask that you turn off all your cell phones and
7 beepers at this time so as not to disrupt the proceedings today,
8 and the Board will make every effort to conclude the Public
9 Hearing as near as possible to 6 p.m. this afternoon. Obviously,
10 if we get close to that, we will re-evaluate the schedule and let
11 everyone here know what we intend on doing.

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

19 I would first turn to Staff to see if we have any preliminary
20 matters.

21 MS. BAILEY: Members of the Board, Mr. Chairman,
22 good afternoon. Mr. Chairman, there is a preliminary matter. It
23 has to do with the appeal of Waste of D.C., Inc., Application
24 Number 16239. The Applicant in that case is requesting -- well,
25 there is a request for the case to be postponed to a later date.

1 I'm not sure, but I think someone may be in the audience. Is
2 someone in the audience on Application Number 16239?

3 CHAIRPERSON GRIFFIS: And do we have any written
4 documentation requesting a postponement? Do you have any --

5 MS. BAILEY: Ms. Pruitt is going to respond to
6 that, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Okay.

8 SECRETARY PRUITT: Yes, we did, Mr. Chair. Mr.
9 Nyarku is bringing it.

10 CHAIRPERSON GRIFFIS: Okay.

11 SECRETARY PRUITT: I believe we also -- it's with
12 the support of the ANC and the Applicant.

13 CHAIRPERSON GRIFFIS: Okay.

14 SECRETARY PRUITT: Ms. Brown can tell you.

15 CHAIRPERSON GRIFFIS: Good afternoon.

16 MS. BROWN: Good afternoon, Members of the Board.

17 My name is Carolyn Brown. I'm with the law firm of Holland and
18 Knight, here on behalf of the Appellant, USA Waste of D.C., Inc.

19 We are prepared, fully prepared to come forward today and
20 present our case, but we understand there was a problem with the
21 notice. We have been given copies of additional requests for a
22 postponement by the ANC and the -- those that are requesting
23 Intervenor status, and we have no objection to the postponement
24 at this time.

25 CHAIRPERSON GRIFFIS: Okay. So actually, you're

1 not making a motion for a postponement, but you're not adverse to
2 having it postponed.

3 MS. BROWN: That's correct.

4 CHAIRPERSON GRIFFIS: Okay. Well, I will pause as
5 if thinking about, waiting for the paperwork to come out. Unless
6 it's fairly clear and fairly certain that that's exactly what's
7 happening, we had anticipated that, of course, this was going to
8 be asked, so we'll look and review the paperwork as it comes out.

9 Board Members, if anyone wants to comment on that,
10 I would be fully prepared to postpone this. Do we need to set a
11 date at this time?

12 MS. BROWN: We have, sir. It's tentatively
13 scheduled for May 7th in the afternoon. It would be the only case
14 in the afternoon.

15 CHAIRPERSON GRIFFIS: May 7th in the afternoon. And
16 is that acceptable, signifying that would be appropriate. I
17 think we can do that. Is anyone else here regarding that case?
18 Mr. Levy. Oh, indeed. And how is your schedule on the 7th?

19 MR. LEVY: I believe it was scheduled when we were
20 here last, we were advised it was going to be continued until the
21 7th.

22 CHAIRPERSON GRIFFIS: It's certainly nice to be
23 told about that. That's perfectly fine. I think it's great that
24 that was taken care of, and I don't think the Board has any
25 objection to that. Noting a consensus, the Board will set that

NEAL R. GROSS

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

1 for May 7th, '02, and we'll see you then. Of course, one of you
2 can't leave. So let us call the second case for the afternoon.

3 MS. BAILEY: Appeal Number 16811 of David and Janet
4 Pritchard, pursuant to 11 DCMR 3100 and 3101, from the
5 Administrative Decision of Michael D. Johnson, Zoning
6 Administrator, for the issuance of Building Permit Number
7 B431591, allowing the construction of an addition to a single-
8 family dwelling, allegedly not complying with the side yard
9 requirements, Section 405, in an R-\$ District, at premises 1018
10 Constitution Avenue, N.E., Square 964, Lot 46.

11 Please stand to take the oath, all those persons
12 wishing to testify.

13 WITNESSES SWORN:

14 CHAIRPERSON GRIFFIS: Mr. Chairman, the case is
15 ready to go forward. Is the Appellant here?

16 MS. PRITCHARD: Yes.

17 MS. BAILEY: Please have a seat at the table.

18 CHAIRPERSON GRIFFIS: Okay. Good afternoon.

19 MS. PRITCHARD: Good afternoon.

20 CHAIRPERSON GRIFFIS: I would just have you
21 introduce yourself, give your address.

22 MS. PRITCHARD: My name is Janet Pritchard,
23 together with my husband, David, and the Appellant in this case.

24 The address is 204 11th Street, N.E., in Washington.

25 CHAIRPERSON GRIFFIS: Okay. Hold on just a second.

1 Okay. Please proceed.

2 MS. PRITCHARD: Thank you. First, I'd just like to
3 inquire, I had submitted a letter brief regarding this case
4 following the previous hearing. And assuming you've had an
5 opportunity to review that, I could then keep my summary argument
6 here very brief. Have you had a chance to -- yes? Okay.

7 CHAIRPERSON GRIFFIS: Yes. Absolutely.

8 MS. PRITCHARD: Okay. Then I --

9 CHAIRPERSON GRIFFIS: We did receive that. All
10 Board Members, I think, had ample opportunity to read it.

11 MS. PRITCHARD: Okay. Then I will try to be very
12 brief.

13 CHAIRPERSON GRIFFIS: I think we have some
14 comments.

15 MS. PRITCHARD: Okay.

16 MS. BROWN: Mr. Chair, Marie-Claire Brown,
17 Assistant Corporation Counsel. We have not had an opportunity to
18 review that document. It was not served on the District.

19 MR. COOPER: Likewise, Robert Cooper, from the law
20 firm of Jackson and Campbell, on behalf of the owners of the
21 property. We, too, have not received this document, and have not
22 had an opportunity to review it.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. PRITCHARD: I submitted -- my intention had
25 been to file it, to submit it following the hearing that was

1 scheduled last week. When the hearing was postponed, I submitted
2 it to the file, and thought that was in course with the testimony
3 and procedures. I do have copies here with me that I'm happy to
4 share with you at this time. And it -- you know, I'm going to
5 summarize the arguments here, the same arguments I would have
6 made at the prior hearing. May I proceed then?

7 CHAIRPERSON GRIFFIS: One second. We have a
8 question up here. Is the date February 26th on that?

9 MS. PRITCHARD: Yes. The date of the previous
10 hearing date? I believe that's -- yes.

11 MS. SANSONE: It should be Exhibit 27 at the
12 bottom, marked.

13 MS. PRITCHARD: And it was submitted to the file on
14 the following date actually, the 27th, because the office was
15 closed by the time the hearing was postponed.

16 CHAIRPERSON GRIFFIS: Okay. Yeah, indeed. All
17 right. It's come to my attention that the Board has received it.

18 However, there has not been lengthy time to study it, so I would
19 say err on the side of caution, and no need to summarize. I
20 would get right into it, and bring up any issues that you want.

21 MS. PRITCHARD: Yes, of course. As indicated in
22 the record, the owners at 1018 Constitution Avenue, prior to the
23 construction that's currently underway, had a side yard between
24 the east side of their home and our rear property line. In other
25 words, our rear yard adjoins their side yard.

1 In July of 2001, they were issued a permit by the
2 DCRA to build a two-story addition to the rear of their home.
3 The addition, unlike the pre-existing house, is the full width of
4 their property, and hence fills a segment of the side yard, that
5 portion abutting my property. It backs right up onto our
6 property line, exactly where our fence is. It's only 13 feet
7 from the rear wall of my home, and our rear windows, and it
8 substantially interferes with the air and light to our backyard
9 and kitchen.

10 Since learning of the plan to build, my husband and
11 I have challenged the legality of the permit persistently and
12 consistently. Prior to the issue of the permit, we raised our
13 concerns with the owner's architect, explaining to them the
14 regulatory concerns that we had, and also with the DCRA, even
15 prior to the granting of the permit.

16 Post issuance, we very promptly wrote to Michael
17 Johnson, then the Zoning Administrator, requesting a review of
18 the permit decision, and a revocation of the permit. Following
19 Mr. Johnson's August 20th letter upholding the permit, we sought
20 and obtained the support of ANC-6A, and we appealed the permit in
21 October of 2001, filed the appeal for this case.

22 We argue that the permit should not have been
23 issued by the DCRA without first receiving a special exception to
24 Section 405.3 of the Zoning Regulations, which require a side
25 yard in this case. Our argument is based on four points. I'd

1 like to list those points, and then will briefly summarize them
2 for you.

3 First of all, the permit conflicts with the plain
4 language of Section 405.3. Secondly, the DCRA did require a
5 special exception hearing to seek relief from Section 405.3 in a
6 substantially -- in a substantively identical case at 220 5th
7 Street, S.E. Thirdly, the permit justification set forth by the
8 Zoning Administrator not only conflicts with the plain language
9 of 405.3, but also other sections of the Zoning Regulations. And
10 fourth, even if the interpretation of Section 405.3 were to be
11 seen as ambiguous, the Zoning Administrator failed to apply the
12 interpretation guidelines provided in the Zoning Regulations.
13 These guidelines expressly favor the interpretation that best
14 provides light and air, and/or encourages the stability of land
15 values.

16 To elaborate briefly on my first point, the permit
17 conflicts with the plain language of Section 405.3, which states
18 that where a building, "does not share a common division wall
19 with an existing building, or a building being constructed
20 together with the new building, then it shall have a side yard on
21 each free-standing side." 1018 Constitution does not, and cannot
22 share a common division wall with any building on its east side,
23 because its east side abuts the rear yards of several properties.

24 On its face, the permits conflicts with this section.

25 Now the Administrator would instead read Section

1 405.3 as seeming to say that where two buildings are adjacent,
2 they shall share a common division wall. Well, this is very
3 well, but Section 405 is about side yard, and Section 405.3
4 addresses those circumstances where there is not a division wall,
5 requiring a side yard in those circumstances. It does not merely
6 require a division wall where two buildings are adjacent, but is
7 primarily concerned with where there is no adjacent building, and
8 in that circumstance, a side yard is required.

9 Secondly, the DCRA did require a special exception
10 hearing to seek relief from this same Section, 405.3, in a
11 substantively identical case at 220 5th Street, S.E., in the very
12 same Capitol Hill neighborhood. The owners at 220 5th Street also
13 sought to build into their side yard to their property line, but
14 this addition would not create a common division wall with the
15 neighboring property, in this case 222 5th Street, because 222 5th
16 Street also had a side yard between the properties.

17 The DCRA ruled that Section 405.3 did not allow the
18 construction of the side yard, but required the owners to seek a
19 special exception. Now the only difference between the two cases
20 is that the 5th Street properties are side by side. Our property
21 is back to side, but this is a distinction not noted by the
22 regulations or the Zoning Administrator, and there's no basis in
23 the regulations for treating these two properties differently
24 based on that difference alone.

25 1018 Constitution should need a special exception for the same

1 reasons as the owners at 220 5th Street required one.

2 Third, the permit justification set forth by the
3 Zoning Administrator not only conflicts with the plain language
4 of 405.3, but also other sections of the zoning regulations. And
5 this can be seen in a review of three other sections of the
6 regulations.

7 First, 405.5 which states, "A side yard shall not
8 be required along a side street abutting a corner lot in a
9 residence district." Now this plainly refers to many instances
10 of where there is the end of a row of row houses. Most commonly,
11 the end house would abut a street or an alley. Section 405.5
12 expressly states that in such circumstances, no side yard is
13 required.

14 Read in light of the interpretation that I offer
15 for 405.3, this makes perfect sense, because 405.3 would
16 otherwise hold that the end of a row house, because there's no
17 common division wall for it, would require a side yard. However,
18 the Zoning Administrator's interpretation is that the regulations
19 allow, as a matter of right, an owner of a semi-detached house to
20 convert to a row house with no side yard.

21 Under the Administrator's interpretation, Section
22 405.5 would be superfluous. No such exception would be required.

23 However, under our interpretation, there might be a concern that
24 any house that comes at the end of the row, such as at a side and
25 street, would also need a side yard. Thus, 405.5 creates a

1 meaningful exception.

2 The Zoning Administrator's interpretation is also
3 inconsistent with Section 405.6. The Zoning Administrator, in
4 its letter of determination notes that Section 405.6 permits
5 owners to convert to a row dwelling as a matter of right. 405.6
6 states that with the exception of Section 405.1 and 405.2, "A
7 side yard shall not be required in an R-4 Zone." But Section
8 405.2 explicitly requires the owner of a one-family semi-detached
9 dwelling, which is the accurate description of 1018 Constitution
10 in this case, shall maintain a side yard of at least eight feet.

11 Section 405.6 clearly supports our interpretation
12 of the regulations, not the Zoning Administrator's because 405.2
13 is an express exception to 405.6's general rule that no side yard
14 is required, because it requires a side yard for a semi-detached
15 dwelling, such as in this case.

16 Finally, the Zoning Administrator's interpretation
17 is plainly -- does not make sense in light of Section 223.
18 Section 223 describes when property owners can seek exceptions to
19 Section 405 requirements. Under 223, exceptions can be granted
20 only when, "the addition shall not have a substantial adverse
21 affect on the use or enjoyment of any abutting or adjacent
22 dwelling or property. In particular, (A) The light and air
23 available to neighboring properties shall not be affected. (B)
24 The privacy of use and enjoyment of neighboring properties shall
25 not be unduly compromised."

NEAL R. GROSS

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

1 Under the Zoning Administrator's interpretation,
2 Section 223 is more restrictive than Section 405, and that does
3 not make sense given the purpose of Section 225, which is to
4 designate exceptions to what otherwise would be 405's
5 requirements, because the Administrator would say that they can
6 build under 405 as a matter of right. His interpretation pays no
7 heed to issues or concerns about air and light, et cetera. And
8 yet, to obtain an exception to Section 405, someone who proposes
9 to build would have to show that it does not interfere with the
10 air and light, and enjoyment of neighboring properties. Thus,
11 making the exception stricter than the rule, an interpretation
12 which plainly does not make sense.

13 Finally, even if the Board were to find, or the
14 Administrator were to find that the interpretation of Section
15 405.3 is ambiguous, or perhaps in conflict with what otherwise
16 might be a right to build a row property as a matter of right,
17 the Zoning Administrator clearly failed to apply the
18 interpretation guidelines provided in the zoning regulations
19 themselves.

20 Section 101 of the regulations sets forth
21 principles to guide the interpretation of the regulations, where
22 there appear to be conflicts of law, or the regulations are
23 otherwise ambiguous. Under Section 101, any ambiguity should be
24 resolved in favor of the interpretation that would best provide
25 light and air, or "encourage stability of districts and of land

1 value."

2 The Zoning Administrator's interpretation of
3 Section 405.3 rules against the interpretation that would best
4 provide light and air, and is most disruptive to land values.
5 That is, while it may increase the value of 1018 Constitution, it
6 clearly decreases the land value of my home, and the other homes
7 in the row of houses facing 11th Street.

8 Instead, the Zoning Administrator's interpretation
9 of this case allows an individual homeowner's desire to expand
10 his floor space, in this case the owner at 1018 Constitution, to
11 trump these important community values, which place greater
12 weight on stability of land values of law, and continued
13 enjoyment of air and light rights of neighboring properties.

14 So in conclusion, we request that the BZA overturn
15 the Administrator's interpretation to appeal the permit. The
16 Zoning Administrator has failed to provide sufficient
17 justification for his interpretation of Section 405.3, which on
18 its face would require the owners of 1018 Constitution to
19 maintain their side yard.

20 The DCRA essentially applied our interpretation
21 when they required the owners of 220 5th Street to seek a special
22 exception. They've offered no justification for the different
23 treatment of these two properties. Our interpretation of the
24 regulation makes more sense than the Zoning Administrator's in
25 the context of other sections of the regulations.

1 And finally, any interpretation the Zoning
2 Administrator could provide of Section 405.3, must be shown to
3 comply with the interpretation guidelines of Section 101, which
4 favor that interpretation that provides for more light and air,
5 and secures the stability of land values. Thank you.

6 I would also -- I do have one witness to call, and
7 that's Mr. Lyle Schauer, who is the Zoning Chair of the Capitol
8 Hill Restoration Society. I could call him now, or I don't know
9 if you have questions for me first.

10 CHAIRPERSON GRIFFIS: Good point. Why don't we
11 establish an order to follow in this. Board Members, give me
12 comments if you want to have questions, then cross examination,
13 or cross examination and then questions, or do we want to get
14 through all the testimony of all the witnesses, and do it all at
15 once? Do it all at once. Why don't we -- yeah, Ms. Renshaw.

16 VICE CHAIRPERSON RENSHAW: Well, I was just going
17 to say, I prefer to hear all the testimony and then make the
18 decision.

19 MS. PRITCHARD: Okay.

20 CHAIRPERSON GRIFFIS: Very good, if that's also
21 acceptable. And then what we'll do is we'll do cross examination
22 first, and then we'll have Board Members' questions.

23 MS. PRITCHARD: Okay.

24 CHAIRPERSON GRIFFIS: So you can call your first
25 witness.

1 MS. PRITCHARD: Okay. I'd like to call Mr. Lyle
2 Schauer, who is the Zoning Chair of the Capitol Hill Restoration
3 Society.

4 CHAIRPERSON GRIFFIS: Good afternoon, sir.

5 MR. SCHAUER: Good afternoon, Mr. Chairman, Members
6 of the Board. My name is Lyle R. Schauer. I live at 1107
7 Independence Avenue, S.E., and I am the Zoning Chair of the
8 Capitol Hill Restoration Society, and a member of the committee,
9 the Zoning Committee for probably about 10 years.

10 I'd like to -- I have presented you a written
11 statement, and I'd like to just cover a few of the points there.

12 I will not read the whole thing into the record, but I
13 summarized this case by saying that I think the question before
14 the Board is whether the Zoning Administrator should follow past
15 practice and custom in issuing a building permit as a matter of
16 right for a side addition at 1018 Constitution Avenue.

17 Adoption of Section 223, in which I played a very
18 minor role, making it possible now to seek a special exception
19 relief instead of a variance, should have led to a revised
20 interpretation of Section 405, to require that applicants seek a
21 special exception. And dropping passed the background which has
22 been well covered by Ms. Pritchard, dropping down to the
23 interpretation of the regulations, if the Zoning Administrator
24 goes by the book, the property at 1018 Constitution will have to
25 provide a side yard, or secure relief from that requirement from

NEAL R. GROSS

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

1 this Board.

2 Now one week ago, the Corporation Counsel was in
3 front of this Board on the Boys Town case, and argued very
4 persuasively that the Administrator had to go by the book. They
5 could not go beyond the clear reading of the regulations. They
6 couldn't interpret, because if they do, they get into the realm
7 of the Zoning Commission.

8 Section 405.3 dealing with side yards in
9 residential districts could not be clearer. A row house must
10 share a common division wall, or provide a side yard on each
11 free-standing side. There's only one exception, and that's
12 Section 405.5, which provides that no side yard is required along
13 a side street abutting a corner lot, but as noted above the
14 property at 1018 Constitution abuts the rear property line of a
15 row of dwellings, and not a street.

16 The Letter of Determination from the Zoning
17 Administrator argues that Section 405.3 was intended to ensure a
18 common division wall between two adjacent properties. The letter
19 concludes that no side yard is required along the east property
20 line of 1018 Constitution because there can be no common division
21 wall on that line. The Zoning Administrator has adopted the
22 practice of reading 405.3 as if it includes an exception when a
23 common division wall is not possible. The problem with that
24 conclusion is that the regulations do not include such an
25 exception.

1 And then what are we to make of Section 405.5,
2 which provides that no side yard is required along a side street
3 abutting a corner lot? The Zoning Administrator's interpretation
4 simply makes that section superfluous. In the absence of an
5 applicable exception, it seems that Section 405.5 should be read
6 as requiring a side yard for properties like 1018 that abut on
7 adjacent lots, and not on a side street. Specific provisions of
8 one exception in the absence of others normally is interpreted as
9 indicating other exceptions were considered and rejected when the
10 regulation was adopted.

11 In summary, the Zoning Administrator does not go by
12 the book. Instead, he relied on practice and custom of his
13 office. In the past, there was a practical reason, I believe, to
14 interpret the regulations to allow matter of right construction
15 to the lot line where it is not possible to have a common
16 division wall. In the absence of that interpretation, it would
17 have been necessary to win a variance in order to construct a
18 side yard addition, and many applicants would not have been able
19 to meet the rigorous tests that are involved in a variance. But
20 with the adoption of Section 223 in 1998, additions and side
21 yards become special exceptions instead of variances.

22 Although applicants must show the proposed addition
23 will not have a substantially adverse affect on light, air, and
24 privacy of neighboring properties, they escape the rigors of
25 proving a variance. It then became possible and desirable to

1 treat side additions, where it is not possible to have a common
2 division wall, as special exceptions rather than matters of
3 right. The public process of a special exception is highly
4 desirable in these relatively uncommon situations of filling in a
5 side yard where it is not possible to have a common division wall
6 as at the end of a row.

7 That's the end of my statement, Mr. Chairman.

8 CHAIRPERSON GRIFFIS: Thank you very much. Ms.
9 Pritchard, did you have questions of your witness, or is that
10 sufficient?

11 MS. PRITCHARD: That's sufficient.

12 CHAIRPERSON GRIFFIS: Do you have other witnesses?

13 MS. PRITCHARD: No, I do not.

14 CHAIRPERSON GRIFFIS: Okay. Why don't we start
15 with cross examination then. Do you want to sit -- yeah.
16 Actually, if you -- good.

17 MS. BROWN: Mr. Chair.

18 CHAIRPERSON GRIFFIS: Yes.

19 MS. BROWN: Would it not make sense if we did cross
20 examination of Ms. Pritchard first and go around, rather than --

21 CHAIRPERSON GRIFFIS: Sure.

22 MS. BROWN: Again, Mr. Chair, Members of the Board,
23 Marie-Claire Brown, Assistant Corporation Counsel on behalf of
24 the Zoning Administrator.

25 Mrs. Pritchard, first of all, your husband is not

1 present with us today. Is that correct?

2 MS. PRITCHARD: No, he's not here.

3 MS. BROWN: Okay. And, in fact, your husband has
4 been in contact with the Zoning Administrator's Office regarding
5 this matter, to your knowledge.

6 MS. PRITCHARD: He spoke to Mr. Toye Bello on one
7 occasion following the permit issuance. I have also spoken with
8 Mr. Bello prior to the permit issuance, yes.

9 MS. BROWN: And you were not privy to the
10 conversation between your husband and Mr. Bello.

11 MS. PRITCHARD: I was not. He -- you know, I mean,
12 he summarized it for me, told me how he viewed it, of course,
13 after, but I was not involved with the conversation, no.

14 MS. BROWN: Thank you. The basis for your appeal
15 is in essence the side yard requirement. Is that correct?

16 MS. PRITCHARD: Yes, that's correct.

17 MS. BROWN: Are you familiar with the definition
18 sections in the zoning regulations?

19 MS. PRITCHARD: I have looked at them, yes.

20 MS. BROWN: And you've reviewed the definitions for
21 a one-family detached -- semi-detached dwelling?

22 MS. PRITCHARD: Yes, I have.

23 MS. BROWN: And as far as your understanding is
24 concerned, what is a one-family detached dwelling?

25 MS. PRITCHARD: Let me look at the regulations.

1 Your question was what is a one-family semi-detached dwelling?

2 MS. BROWN: Your understanding of that, yes.

3 MS. PRITCHARD: Yes. Well, as it says in the
4 regulations, it's defined as "a one-family dwelling with a wall
5 on one side, which is either a party wall or a lot line wall,
6 having one side yard." And I believe that this description
7 describes 1018 Constitution Avenue as it existed prior to the
8 addition.

9 MS. BROWN: Okay. And similarly, you're familiar
10 with the definition for a lot line wall?

11 MS. PRITCHARD: Pardon me?

12 MS. BROWN: Lot line wall, which is included in
13 that definition. Are you familiar with that?

14 MS. PRITCHARD: My understanding of a lot line wall
15 would be a building wall which is right on the lot line of the
16 property.

17 MS. BROWN: Okay. And would that be --necessarily
18 require that there be a common division wall?

19 MS. PRITCHARD: My understanding of the common
20 division wall would be that where -- that if there were another -
21 - if there were -- in circumstances like most row houses, where
22 one house comes up to another house, that they actually share a
23 party wall at the lot line.

24 MS. BROWN: Okay. And in this case, there is no
25 party wall shared at the lot line. Correct?

1 MS. PRITCHARD: There cannot be because there
2 wouldn't be another row house that could abut them.

3 MS. BROWN: But that doesn't preclude this property
4 from having a lot line wall. Correct?

5 MS. PRITCHARD: I assert that it does, because
6 under 405.3, they're required to maintain a side yard.

7 MS. BROWN: My question is whether or not the
8 property at 1018 Constitution Avenue includes a lot line wall
9 after construction.

10 MS. PRITCHARD: Well, it's -- yeah. After
11 construction what physically exists is a wall on their lot line,
12 which is, of course, also my rear lot line. But I believe under
13 the regulations that it should not be permitted. It's physically
14 possible. In fact, that's what they've built, yes.

15 MS. BROWN: And you're similarly familiar with the
16 definition for row dwelling?

17 MS. PRITCHARD: I understand a row dwelling to run
18 from lot line to lot line, with no side yard.

19 MS. BROWN: Okay. And upon completion of this
20 construction as proposed, would this property not go from lot
21 line to lot line?

22 MS. PRITCHARD: It would, yes.

23 MS. BROWN: And so therefore, it would be by
24 definition a row dwelling. Correct?

25 MS. PRITCHARD: Yes.

1 MS. BROWN: Okay. You're not familiar with any
2 provision in the zoning regulations that prohibits the conversion
3 of a property from one class to another, are you?

4 MS. PRITCHARD: Not in a general sense, but I
5 believe that 405.3 prohibits the conversion in this circumstance.

6 MS. BROWN: I'm sorry. Perhaps you can point me to
7 exactly what provision -- what language you're referring to that
8 prohibits a conversion from one property class to another.

9 MS. PRITCHARD: I do not know of any section of the
10 regulations that specifically speak about conversions, and
11 prohibiting conversions in that language. But as applied in
12 these circumstances, I believe that 405.3 prohibits the
13 conversion of 1018 Constitution into a row dwelling, because as
14 it states, "Where a one-family dwelling flat or multiple
15 dwelling, which this describes, is erected that does not share a
16 common division wall with an existing building, or a building
17 being constructed together with the new building, then it shall
18 have a side yard on each resulting free-standing side."

19 There is no opportunity for a common division wall
20 in this circumstance, and therefore, I believe that in this
21 particular configuration, 1018 Constitution must remain a semi-
22 detached dwelling. So in this circumstance, 405.3 prohibits the
23 conversion. I'm not familiar with any reg describing in general
24 terms that in all circumstances, a semi-detached dwelling could
25 not be converted to a row dwelling. I'm not familiar with any

1 general reg along those lines, if that's what you're asking.

2 MS. BROWN: Let's take, for example, a hypothetical
3 situation where 1018 Constitution Avenue was damaged by fire, and
4 had to be reconstructed.

5 MS. PRITCHARD: Okay.

6 MS. BROWN: What would prohibit the reconstruction
7 of a row dwelling at 1018 Constitution Avenue.

8 MS. PRITCHARD: The very same regulation, 405.3
9 would clearly prohibit it, because there would be no -- it
10 wouldn't be a -- they wouldn't be able to build up to another
11 adjacent building. And so with -- unless they were able to
12 obtain a special exception under 223, they would have to build a
13 building that would maintain at least an eight foot side yard.

14 MS. BROWN: And suppose the owners of 1018
15 Constitution Avenue had raised -- had gotten a permit to raise
16 the existing building, they would still be limited to building a
17 semi-detached property?

18 MS. PRITCHARD: That's correct. They would have to
19 maintain at least an eight foot side yard on their east side.

20 MS. BROWN: Can you point me to anything in the
21 regulations that says exactly that?

22 MS. PRITCHARD: I can point you to the side yard
23 requirements. Namely, Section 405.3 which first says that where
24 there is no common division wall, that they must have a side yard
25 in each resulting free-standing side. In this -- the way that

1 these lots are configured, there's no opportunity for a common
2 adjacent wall for the property at 1018 Constitution on its east
3 side. Therefore, it must maintain a side yard on that free-
4 standing side under 405.3.

5 There are further regulations within Section 405
6 that specify that for a semi-detached dwelling, which in this
7 circumstance then that would necessarily be, an eight foot side
8 yard is required, so I'm looking at those side yard regulations
9 in combination to reach that conclusion, that any building that
10 were to be built on that lot, even if the building were raised or
11 destroyed, as you suggest, would have to be a semi-detached
12 dwelling with at least an eight foot side yard.

13 MS. BROWN: So is it your testimony that 1018
14 Constitution Avenue does not share a common division wall?

15 MS. PRITCHARD: It shares a common division wall on
16 its west side, where it adjoins a row of houses running down
17 Constitution. There is no common division wall on its east side,
18 nor could there possibly be, given the way that the 11th Street
19 properties are situated facing 11th Street.

20 MS. BROWN: But the regulations don't say a common
21 division wall on either side. Correct?

22 MS. PRITCHARD: On each resulting free-standing
23 side. The regulation says where it does not share a common
24 division wall with an existing building, or a building being
25 constructed together with the new building, it shall have a side

1 yard on each resulting free-standing side.

2 Now even if -- I mean, if -- even with the new
3 construction, as you say, it has a lot line wall, is what they've
4 built now. Okay? It's still a free-standing one in that it does
5 not adjoin another building.

6 Section 405.3 says you have to have a side yard on
7 each resulting free-standing side. The only exception is under
8 405.5, which expressly says that where that end row house is
9 abutting a side street on a corner lot, then they don't have to
10 have a side yard, so an exception is created in that
11 circumstance.

12 MS. BROWN: Except in the case of a row dwelling.
13 Correct?

14 MS. PRITCHARD: It does -- nothing says in the case
15 of a row dwelling.

16 MS. BROWN: And that's because 405 does not apply
17 to row dwellings. Isn't that correct?

18 MS. PRITCHARD: But whether or not you can have a
19 row dwelling, row dwelling being defined as going from lot line
20 to lot line, is affected by the requirements of 405.3.

21 MS. BROWN: Mrs. Pritchard, are you aware of
22 whether or not a row dwelling is permitted as a matter of right
23 in an R-4 District?

24 MS. PRITCHARD: I believe that a row dwelling is
25 permitted as a matter of right, but any such rights would be

1 subjected to other building requirements that exist in the
2 regulations, including Section 405.3, which specifically limits
3 that right in the circumstances that 405.3 describes.

4 MS. BROWN: So your testimony is that 405 limits
5 the construction of row dwellings.

6 MS. PRITCHARD: In circumstances where -- that are
7 described in 405.3, where the building does not share a common
8 division wall with an existing building, or a building being
9 constructed together with the new building.

10 Now, of course, relief to that requirement could be
11 obtained through a special exception application and hearing, and
12 that would be the appropriate way to be exempted from that
13 requirement if the circumstances would be appropriate for an
14 exemption. It requires individual review.

15 MS. BROWN: But your testimony is that a row
16 dwelling is permitted as a matter of right in an R-4 District.
17 Correct?

18 MS. PRITCHARD: It's my understanding that as a
19 general rule, row dwellings are permitted in an R-4 District, but
20 I believe that any buildings have to comply with the regulations
21 as a whole, including the side yard requirements which limit that
22 right to a row dwelling in certain configurations, in certain
23 circumstances, depending upon how the lots and buildings are
24 configured. I mean, what are the regulations, if not general
25 detailed, you know, burdens on building opportunities and rights

NEAL R. GROSS

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

1 in varying circumstances?

2 MS. BROWN: Are you asking me?

3 MS. PRITCHARD: Well, I'm trying to explain my
4 interpretation, to show that any other interpretation of what
5 regulations even are would not make sense to me.

6 MS. BROWN: Okay. And it was your testimony that
7 the Zoning Administrator is charged with the reasonable
8 interpretation of the zoning regulations. Correct?

9 MS. PRITCHARD: That's correct, but that --

10 MS. BROWN: Okay.

11 MS. PRITCHARD: -- his interpretation must be
12 reasonable.

13 MS. BROWN: And that's reasonable in whose view?

14 MS. PRITCHARD: Reasonable in the Board of Zoning
15 Adjustment's view, reasonable in the court's view, those who are
16 charged with reviewing the Administrator's interpretation for its
17 reasonableness and legitimacy.

18 MS. BROWN: Suppose I told you that the Zoning
19 Administrator is charged with the interpretation of the
20 regulations?

21 MS. PRITCHARD: I understand that the Zoning
22 Administrator is charged with the interpretation of the
23 regulations. But like other executives and administrative
24 officers, that interpretation is subject to review by, in this
25 case the Board of Zoning Adjustment, and the Board of Zoning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Adjustment should only defer to an interpretation that is a
2 reasonable one, and not applied in an arbitrary manner.

3 MS. BROWN: And in what arbitrary manner was the
4 zoning regulation applied in this case?

5 MS. PRITCHARD: It was applied in an arbitrary
6 manner because it appears that it was applied differently to the
7 circumstance at 220 5th Street, which I argue is a substantially
8 similar circumstance here in that, as in my own case, as in this
9 case, there was no adjacent -- a property owner wanted to fill in
10 their side yard to their lot line, but that building addition
11 would not come up to an other building, because the adjoining
12 property had a side yard coming out to that same lot line.

13 In that circumstance, the Zoning Administrator
14 required a special exception hearing in order to get an exception
15 to 405.3. And that is clearly here in the record of that 5th
16 Street case.

17 MS. BROWN: Can you point me to the record where
18 that exactly occurred?

19 MS. PRITCHARD: If you will give me just a moment,
20 I will show you a memo from the Administrator which was in the
21 file for the 5th Street case that I'm referring to.

22 MS. BROWN: And while you're looking for that, were
23 you involved in any of the decision making with respect to 220 5th
24 Street?

25 MS. PRITCHARD: I was not.

1 MS. BROWN: And do you know the specific
2 circumstances under which any documentation was prepared,
3 generated, or otherwise included in this record?

4 MS. PRITCHARD: I do not, but I'm drawing my
5 conclusions from the fact that this memo, which I will obtain for
6 you shortly, signed by the Zoning Administrator, states that a
7 special exception is required for a special exception from, among
8 other regulations, 405.3.

9 MS. BROWN: And you're assuming that the Zoning
10 Administrator walked through the process exactly as you did in
11 this case, aren't you?

12 MS. PRITCHARD: I'm assuming that the Zoning
13 Administrator or obviously somebody working within the Zoning
14 Administrator's Office under his authority, authorized this memo,
15 which has the Zoning Administrator's name on it as the issuer of
16 the memo, saying yes, in this case a special exception hearing is
17 required to get an exception 405.3, because that's what the memo
18 says, which I'm looking for here. And that the -- I'm assuming
19 that the Administrator would not issue such a memo, and require a
20 special exception hearing which requires, of course, the BZA to
21 put the hearing on its calendar, require its parties to come and
22 -- you know, all the administrative effort and cost to have a
23 special exception hearing, I assume the Administrator would not
24 issue such a memo and require such a hearing if he had not
25 reached a determination that it was required by the regulations

NEAL R. GROSS

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

1 cited. In this case, 405.3.

2 MS. BROWN: But again, you have no idea how that
3 decision was --

4 MS. PRITCHARD: I was not party to the Zoning
5 Administrator --

6 MS. BROWN: That's fair.

7 MS. PRITCHARD: The memo that I'm showing to
8 Corporation Counsel is described as Exhibit 6 in BZA Case Number
9 16755. It was also listed as Attachment H to the letter to Mr.
10 David Clark, which accompanied my initial application for this.
11 It's a June 11th, 2001 memo to the Board of Zoning Adjustment,
12 from Michael D. Johnson, Zoning Administrator. It's signed here
13 by Toye Bello, is the name that's written in next to Mr.
14 Johnson's name. The subject, "Proposed addition to a semi-
15 detached single family dwelling located at premises 220 5th
16 Street, S.E., Lot 804, in Square 843, and Square 843 zoned CAP/R-
17 4.

18 And the memo reads: "Review of plans for the
19 proposed addition to a semi-detached single family dwelling at
20 the above subject premises indicates that the Board of Zoning
21 Adjustment approval is required as follows. One, special
22 exception pursuant to Section 223.1, to allow an addition which
23 does not comply with the requirements of Section 405.2 and 405.3
24 for a single family dwelling in the CAP/R-4 zone."

25 MS. BROWN: I believe that earlier in your

1 testimony you also indicated that these buildings were similar,
2 the proposed construction was similar?

3 MS. PRITCHARD: I believe that they are
4 substantially similar for the purposes of this regulation. There
5 is a single difference that is noteworthy, and that is that on
6 the 5th Street properties, the properties are side by side. Prior
7 to the construction was a side yard, abutting a side yard. In
8 our circumstance it's a side yard abutting a rear yard. But
9 there's nothing in the Regulation 405.3 which suggests that this
10 distinction should be significant.

11 Moreover, in the Administrator's letter of
12 determination, he did not raise anything suggesting that -- the
13 fact that it's a side yard to rear yard was significant in
14 reaching his determination, because he asserted that you could
15 build a row dwelling as a matter of right, which clearly seemed
16 not to be unapplied in the case of 5th Street.

17 MS. BROWN: And do you know what the end result of
18 the 5th Street construction was on the completion of the
19 construction?

20 MS. PRITCHARD: Yes, I have reviewed that file, and
21 I was attendant at that hearing. Nobody raised -- none of the
22 neighbors in that case raised any objection to the building. The
23 BZA did approve the special exception, and an addition was built
24 on that house, following their receipt of a special exception.

25 MS. BROWN: And that building is a completed row

1 house at this point?

2 MS. PRITCHARD: I have not gone to view the house
3 recently.

4 MS. BROWN: Okay.

5 MS. PRITCHARD: I have not seen the building. But
6 if the addition that was planned were built, it would qualify as
7 the definition of a row house.

8 MS. BROWN: And since you're familiar with the
9 construction at that property, do you know how big the side --
10 how wide the side yard is on the adjoining property?

11 MS. PRITCHARD: I have to refer to my earlier --

12 CHAIRPERSON GRIFFIS: Is that from a previous case?

13 MS. BROWN: That would be the case, the 220 5th
14 Street, which she has raised as substantively --

15 MS. PRITCHARD: I believe it was --

16 CHAIRPERSON GRIFFIS: The size of the side yard,
17 you're finding --

18 MS. BROWN: Adjoining property.

19 CHAIRPERSON GRIFFIS: -- fairly pertinent?

20 MS. BROWN: I'm just asking that question.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. PRITCHARD: I believe it was approximately
23 three feet, but I can find it for you exactly. In the case of 5th
24 Street, 220 5th Street prior to construction had an eight foot
25 five inch side yard on its south side. The adjoining property at

NEAL R. GROSS

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

1 222 5th Street is located -- has a side yard on its north side of
2 three foot seven inches.

3 MS. BROWN: You testified that the Zoning
4 Administrator is guided by the requirements of Section 101, I
5 believe, with respect to light, air, and land value.

6 MS. PRITCHARD: Yes, that's correct.

7 MS. BROWN: Ms. Pritchard, you testified that your
8 rear yard is 13 feet from the lot line, from your rear lot line?

9 MS. PRITCHARD: The rear wall of my home is
10 approximately 13 feet from my rear lot line.

11 MS. BROWN: Not 30 feet, but 13 feet?

12 MS. PRITCHARD: Thirteen.

13 MS. BROWN: Okay.

14 MS. PRITCHARD: It's very shallow yards for that
15 row of houses.

16 MS. BROWN: Okay. Do you know whether or not you
17 can construct an accessory building in your yard?

18 MS. PRITCHARD: I have never investigated that
19 matter, so I have no idea whether that would be permitted or not.

20 MS. BROWN: Okay. With respect to the light and
21 air requirement, what exactly was the Zoning Administrator's
22 obligation in making a determination?

23 MS. PRITCHARD: First, I would just remind you that
24 number one, I think that the regulations are plain on their face
25 as requiring a side yard. Section 101, to which you were just

1 referring, gives guidance to the Zoning Administrator or anyone
2 authorized to interpret the regulations where a regulation might
3 be read as ambiguous or in conflict with other laws, including, I
4 would propose in this case, in conflict with the general right to
5 a row dwelling that you assert.

6 MS. BROWN: Do you have any --

7 MS. PRITCHARD: Those -- so in this -- so like I
8 said, where there's an ambiguity or a conflict, if they were to
9 find an ambiguity or conflict, then they need to turn to Section
10 101, which advises the interpreter to favor that interpretation
11 which preserves air and light, and preserves stability of land
12 values, so it's guidance for the interpreter, in this case, the
13 Zoning Administrator, where there might be some ambiguity or
14 conflict. I don't even believe there's ambiguity here, but if
15 there were.

16 MS. BROWN: What is the requirement for air and
17 light that's supposed to guide the Zoning Administrator?

18 MS. PRITCHARD: I'm not aware of any specific so-
19 called requirement for air and light. However, what I'm
20 suggesting to you when I raised my argument regarding Section 101
21 is that were the Zoning Administrator to perceive a conflict
22 between the requirements of 405.3, requiring a side yard in these
23 circumstances, and the otherwise general -- you know, the general
24 rule to convert to a row dwelling, that appears to have been the
25 Administrator's sort of guiding principle in his decision making

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 in this case, was that right to a row dwelling. So Section 101
2 would say that where there's a conflict like that, and you're not
3 sure whether to say oh, well, there's a right to a row dwelling
4 so they must be able to build, or say oh, well, but what about
5 the side requirements of Section 405.3.

6 When you're looking at the conflict between those
7 two provisions, Section 101 instructs the Administrator to favor
8 that interpretation, or give priority, if you would, to that
9 regulation, or that part of the law if there's a conflict between
10 two parts of the law, which would best preserve existing air and
11 light, that would best protect neighboring properties' rights to
12 air and light, and that would best protect the stability of land
13 values.

14 And, you know, I can go -- if you'll let me just
15 take time to look at Section 101, there's parts of it that even
16 expressly favor larger yards. I quote you, Section 101.3 says:
17 "The provisions of this Title shall govern whenever the
18 regulations in this Title do the following. (A) Require larger
19 yards, courts or other open spaces. Section 102 says -- 101.2:
20 "The regulations set forth in this Title are designed with
21 consideration of the following, the encouragement of the
22 stability of districts and land values of those districts."
23 Section 101: "In their interpretation and application, the
24 provisions of this title shall be held to be the minimum
25 requirements adopted for the promotion of the public health,

1 safety, morals, convenience, order, prosperity and general
2 welfare for the following purposes. (A) To provide adequate
3 light and air. (B) To prevent undue concentration of population
4 or over-crowding of land, and (C)", some other purposes which
5 aren't as directly relevant in this case.

6 So what I'm saying here is the Administrator is
7 expressly directed by Section 101 that where there's a conflict
8 of laws, or any ambiguity, they should favor that interpretation
9 that will create larger yards, more open spaces, preserve air and
10 light.

11 MS. BROWN: Okay.

12 MS. PRITCHARD: There is no --

13 MS. BROWN: And where there's a conflict is in the
14 view of the Zoning Administrator. Is that not correct?

15 MS. PRITCHARD: The Zoning Administrator, as I
16 understand his Letter of Interpretation, made his decision based
17 on the alleged right to build a row dwelling or convert to a row
18 dwelling in R-4 District.

19 MS. BROWN: And so, therefore, the Zoning
20 Administrator viewed no conflict. Correct? In fact, the Zoning
21 Administrator specifically advised you that your side yard issue
22 was not pertinent to this property. Is that not correct?

23 MS. PRITCHARD: I believe that accurately describes
24 what the Zoning Administrator said in his letter.

25 MS. BROWN: And further said that a row house was

1 permitted as a matter of right in an R-4 District. Correct?

2 MS. PRITCHARD: I understand that was the basis for
3 his decision in this case.

4 MS. BROWN: And in the Zoning Administrator's view,
5 there was no conflict with respect to the regulations. Correct?

6 MS. PRITCHARD: That would appear to be accurate,
7 given his Letter of Determination.

8 MS. BROWN: And so, therefore, no need to defer or
9 refer to any other statute, or any other provision.

10 MS. PRITCHARD: Yeah. I refer to it in this case,
11 and in my arguments here because the Board of Zoning Adjustment
12 is, of course, charged with reviewing the Administrator's
13 decision, so I wanted to bring those regulations to their
14 attention as well, because I believe in this circumstance they
15 should have been pertinent for the Administrator.

16 MS. BROWN: And so --

17 MS. PRITCHARD: The fact that he chose not to refer
18 to them, I believe that he should have, and that's why I raised
19 them here.

20 MS. BROWN: Similarly, your argument with respect
21 to land value, there was nothing before the Zoning Administrator
22 that would have determined that your land value had decreased.
23 Correct?

24 MS. PRITCHARD: Well --

25 MS. BROWN: Yes or no?

1 MS. PRITCHARD: I think it's a fair presumption to
2 assume that if -- well, what I'd like to point out, one, the
3 permit in its application did not show the Administrator the
4 configuration of the neighboring properties. However, prior to
5 issuing the Letter of Determination, the Administrator certainly
6 was aware of the configuration and the affect on neighboring
7 properties because I, myself, and my husband had brought this to
8 his attention. So yes, I believe the Administrator was aware
9 that this addition would be very likely to reduce the value of my
10 property. I had not, you know, had it appraised and submitted to
11 the file an appraisal of exactly how much the value would go
12 down.

13 MS. BROWN: But the Zoning Administrator is charged
14 with assuming that your property values decreased because you
15 challenged his decision?

16 MS. PRITCHARD: I think that the Zoning
17 Administrator could be concerned and make a fair judgment, and
18 should -- ought to presume, in fact, that this addition would
19 decrease the value of my property based on the description that I
20 had provided to the Zoning Administrator. Which, of course, he
21 could have -- you know, had every power to validate, verify, you
22 know, find out if my description was accurate, et cetera. But if
23 he were looking at the plats and looking at the measurements of
24 how close this addition, this towering two-story addition is
25 going to be my smaller home, I think he should presume that it is

1 going to decrease the value of my home. And that is what I
2 asserted to him prior to his issuance of the Letter of
3 Determination.

4 MS. BROWN: Or possibly increase the value of your
5 home.

6 MS. PRITCHARD: Of my home? I doubt it. I mean, I
7 don't know what the basis for that would be.

8 MS. BROWN: You don't know whether or not the
9 Zoning Administrator in reaching a decision was aware of the
10 configuration of the neighboring properties?

11 MS. PRITCHARD: When the permit application was
12 filed, it's my understanding given the rules that govern such
13 applications, that it should have, in fact, indicated also in its
14 drawings the location and configuration of neighboring
15 properties. It did not do so. However, prior to the issuance of
16 the Letter of Determination in August, I and my husband had
17 already had conversations with Mr. Toye Bello and Mr. Johnson
18 himself, in which we had described over the phone the
19 configuration of neighboring properties. So based on the
20 information that I had provided to them by phone, I believe that
21 they were, in fact -- did have an understanding of the
22 configuration that exists there. It was not provided in the
23 initial permit application, and maybe with -- so could not have
24 been brought to bear, perhaps, in the initial permit decision.

25 MS. BROWN: And with that information provided by

1 you and your husband, the Zoning Administrator affirmed his
2 decision. Is that correct?

3 MS. PRITCHARD: Yes, he did, in his Letter of
4 Determination.

5 MS. BROWN: Ms. Pritchard, just quickly, how many
6 single family detached or semi-detached dwellings are there in
7 the block in which your house is located?

8 MS. PRITCHARD: Are you asking about the dwellings
9 facing 11th Street --

10 MS. BROWN: I'm asking --

11 MS. PRITCHARD: -- of which mine is one of the row?

12 MS. BROWN: The entire block, which would be the
13 street on which the 1018 Constitution Avenue, your street, as
14 well as the other two streets.

15 MS. PRITCHARD: I have to sort of mentally picture
16 it in my --

17 CHAIRPERSON GRIFFIS: How about an approximation,
18 whether it's a majority or not, above 50 percent?

19 MS. PRITCHARD: I'm sorry.

20 CHAIRPERSON GRIFFIS: You're asking how many row
21 houses --

22 MS. BROWN: I'm asking her how many -- well, let me
23 ask you this. How many houses within -- approximately within
24 that block are not row dwellings?

25 MS. PRITCHARD: I'm sorry, but it's difficult to

1 answer the question because I'm only intimately familiar with,
2 you know, the corner that's in question here.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. PRITCHARD: I mean, I haven't gone around --

5 CHAIRPERSON GRIFFIS: I think that --

6 MS. BROWN: Let me ask you this. Are there any
7 buildings -- are there any dwellings on your street, on your
8 block that are not row dwellings?

9 MS. PRITCHARD: There is a house on the corner, but
10 as I understand it, the side yard is probably city property in
11 that case, I'm assuming, if my understanding of how property
12 ownership on the Hill works, so I don't know if they're a row
13 dwelling or semi-detached, the one on the corner of 11th and
14 Constitution.

15 MS. BROWN: So it has a side facing a street.

16 MS. PRITCHARD: It's facing a street.

17 MS. BROWN: Abutting a street, so it's impossible
18 for it to share a --

19 MS. PRITCHARD: But 405.5 would apply in that case.
20 Then there are -- including that corner house there are one,
21 two, three, four, five houses in a row, and then it abuts an
22 alley. Then there's an alley, and then there are, I would say,
23 perhaps ten more houses that run all the way to the corner.

24 MS. BROWN: All row houses.

25 MS. PRITCHARD: All row houses running to the

1 corner.

2 MS. BROWN: So row houses are entirely consistent
3 with the properties that are currently developed on your block.

4 MS. PRITCHARD: Of course. On Capitol Hill, the
5 majority of homes are row dwellings, yes.

6 MS. BROWN: Okay. And again, you can't point me to
7 anything within the regulations that prohibits the conversion
8 from one legal status of a property to another. Correct? From a
9 semi-detached to a row dwelling.

10 MS. PRITCHARD: Not a rule stating it as such, but
11 I would hold though that various regulations, including this case
12 405.3 do, in effect, prohibit such a conversion.

13 MS. BROWN: I have nothing further.

14 CHAIRPERSON GRIFFIS: Thank you.

15 MS. BROWN: Mr. Chair, I would just ask that the
16 District, the Zoning Administrator reserve the right to review
17 the brief that was filed in this matter, since we did not have an
18 opportunity to.

19 CHAIRPERSON GRIFFIS: Sure. Are you anticipating
20 that you would want to respond in written form for that?

21 MS. BROWN: What I would ask is that I will review
22 it right here.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. BROWN: And if we have any additional
25 questions, we'd like to ask Ms. Pritchard questions regarding it.

1 CHAIRPERSON GRIFFIS: That's fine.

2 MR. COOPER: Good afternoon. My name is Robert
3 Cooper. I'm with the law firm of Jackson and Campbell, and I
4 represent the owners of the property located at 1018 Constitution
5 Avenue, N.E. I just have a few quick questions.

6 CHAIRPERSON GRIFFIS: Great. And let me just give
7 you my boilerplate turning out that any cross examination that we
8 just went through, there's obviously no reason for you to repeat
9 it because it is for our benefit, so with that understanding,
10 you're welcome to proceed.

11 MR. COOPER: Thank you, sir.

12 Ms. Pritchard, can you provide us with an idea of
13 what criteria you used to determine that the addition as proposed
14 and built would not provide your property with adequate light and
15 air, as you state is relevant under Section 101.1. You know,
16 what criteria did you use to determine that you would not have
17 adequate light and air?

18 MS. PRITCHARD: Well, I would just say that one, as
19 you're probably aware, and Capitol Hill is predominantly appraised
20 of row dwellings like my own home, is already enclosed entirely
21 by walls on two sides. If you were to be in my rear yard now,
22 you would see that it really does give a feeling of being
23 enclosed on three sides now. It gives it a real tenement style
24 feeling. I've lived in New York City, as well, where it's more
25 customary that homes be not only row dwellings, but then

1 neighboring homes are, you know, only a matter of feet, you know,
2 less than 20 feet from the building in question.

3 Now, you know, New York City, other cities maybe
4 have different standards and customs of what buildings are like,
5 and how close and proximate they are, so it might be difficult in
6 an objective sense to say what's adequate. But I believe that
7 what's adequate should be referenced also to the neighbor and
8 character of the neighborhood, and what's customary and expected
9 when you purchase a home in that neighborhood, what traditionally
10 has been the configuration and layout of homes in that
11 neighborhood. And I would state then that it's -- I believe it's
12 highly unusual in my neighborhood to have a home where there's
13 yet a third house encroaching in so closely, giving it the kind
14 of tenement feeling that maybe exists in other cities, and maybe
15 is judged to be adequate in those cities. But I think the
16 reference of what's adequate, I think, should be referenced to
17 the character and tradition of the neighborhood.

18 MR. COOPER: It was your testimony though, was it
19 not, that this addition would not provide you with adequate light
20 and air?

21 MS. PRITCHARD: Yes, that's right.

22 MR. COOPER: Okay.

23 MS. PRITCHARD: Because now it severely overshadows
24 my home in ways that it hadn't been.

25 MR. COOPER: Is that because when you purchased

1 your home, as you said, there was no addition on this home, and
2 that --

3 MS. PRITCHARD: That's correct. And I believe
4 that's why Section 101, as I read it, you know, does tend to
5 protect the status quo. It expressly talks about stability of
6 land values, of protecting air and light, and open space that
7 exists.

8 MR. COOPER: But are you saying then that it would
9 -- it's your position in your reading of these regulations that
10 the addition, barring this issue of your -- of the side yard,
11 that addition would not be able to be built at all? Would you
12 not have the same result of, perhaps as you state, a tenement
13 feel that, you know, that this addition could -- would otherwise
14 be built barring the discussion that we're having on the side
15 yard, that the addition could be built regardless, and would
16 still be facing your rear yard.

17 MS. PRITCHARD: As has been made clear from my
18 arguments, my concern is with the side yard requirements, which I
19 assert require 1018 Constitution to have a side yard of at least
20 eight feet.

21 Now I would interpret the regulations -- if they
22 had chosen to build a rear addition which would have extended
23 their building and filled in even a small dog leg they had in
24 their building, but had left at least a side yard of eight feet -
25 okay. I may not have liked it because it still would have had

1 some impact on my property, it's true, but under the arguments
2 I've made today, I don't believe I would have had a basis to
3 contest that. But I would further assert though, that with the
4 addition, they are only 13 feet from my rear window, and that
5 additional eight feet. Prior to the addition -- I mean, I could
6 look at plats and diagrams. I think prior to the addition they
7 were maybe, you know, I don't know how wide their dog leg area
8 is. Prior to the addition, they were maybe 30 feet away, you
9 know.

10 If they were to build a lawful addition that went
11 out to the rear, but left eight foot side yard, then I would
12 still have 21 feet of the initial 30 that were there when I
13 bought the house, as opposed to left with 13 feet, so that
14 difference is significant to me.

15 MR. COOPER: So you're saying that the -- and this
16 was in the documents that you recently provided that we didn't
17 have a copy of, that your --

18 MS. PRITCHARD: The same information was in the
19 letter that attended my initial application.

20 MR. COOPER: That your property -- the rear of your
21 -- you only have a 13 foot rear yard.

22 MS. PRITCHARD: That's correct. And that was noted
23 in my initial application for appeal.

24 MR. COOPER: So your rear yard is not conforming,
25 or does not conform with the zoning regulations. Isn't that

1 correct?

2 MS. PRITCHARD: Well, it's a 100 year old house, so
3 the --

4 CHAIRPERSON GRIFFIS: I think just yes is fine.

5 MS. PRITCHARD: Yes.

6 CHAIRPERSON GRIFFIS: It's clear.

7 MS. PRITCHARD: Right, but it's not because I
8 constructed anything there.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. COOPER: But there is an addition on your home,
11 is there not?

12 MS. PRITCHARD: No, my home is the original
13 construction. That was built 100 years ago.

14 MR. COOPER: And again, I may have missed this.
15 You said your concern was the reduction in value of your home,
16 and that that should be taken into consideration, I presume, or
17 at least under Section 101, something that should be taken into
18 consideration. What criteria have you used to determine that
19 there will be, or that there is a reduction in the value of your
20 property as a result of this --

21 MS. PRITCHARD: I have not --

22 CHAIRPERSON GRIFFIS: I think that was already
23 asked.

24 MR. COOPER: Okay. You also stated that -- in one
25 of your statements or a response to a question, that this is a --

1 such a large addition upon your smaller house. Isn't it not true
2 that the addition is the same height as your home?

3 MS. PRITCHARD: My home is a two-story home, but if
4 you -- I believe in eyeballing it, they have their two stories.
5 And then I believe for the sake of symmetry with the other side,
6 the west side of their house, they have like an additional five
7 feet wall that goes up beyond their roof line. With that
8 additional five feet up there, and even standing alone, I think
9 if you were to view it straight on, it is, in effect, somewhat
10 taller than my home. And because of its proximity to my rear
11 windows, it definitely has -- it's this yucky bold concrete wall,
12 and it definitely has a sense of, you know, aesthetically of sort
13 of coming in on my back yard, my back wall.

14 MR. COOPER: At the rear of your property, since
15 you have not provided photographs.

16 MS. PRITCHARD: I have in the file, yes.

17 MR. COOPER: Is there a fence at the end of --

18 MS. PRITCHARD: Yes, there are photographs in the
19 file, in fact, that might be useful to refer to. They were
20 attached to the original letter accompanying the application.
21 And I refer the Board -- I assume, have you had an opportunity to
22 have a copy of that? It's Attachment B to the letter that
23 accompanied our application. And I think it gives a clear
24 picture of how encroaching this wall is. At that point, the wall
25 was only partially built.

NEAL R. GROSS

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

1 MR. COOPER: And that was a solid wall, was it not,
2 across your property line? You had a solid wall. I mean, there
3 was no gate.

4 MS. PRITCHARD: Oh, in my fence?

5 MR. COOPER: In your fence.

6 MS. PRITCHARD: No, there was no gate.

7 MR. COOPER: Okay.

8 MS. PRITCHARD: But access --

9 MR. COOPER: That's all the questions that I have.

10 CHAIRPERSON GRIFFIS: Thank you. Any cross
11 examination of the witness?

12 MS. BROWN: No.

13 CHAIRPERSON GRIFFIS: Did you have additional
14 cross?

15 MS. BROWN: Unfortunately, I didn't make it very
16 far, but I don't believe I have any questions for the witness.

17 CHAIRPERSON GRIFFIS: Okay. Mr. Cooper, do you
18 have any cross examination of the witness? I'm sorry. Did --
19 you don't have any other cross examination of the witness?

20 MR. COOPER: No.

21 CHAIRPERSON GRIFFIS: Okay. Are you calling anyone
22 else today, Ms. Pritchard?

23 MS. PRITCHARD: No, I'm not.

24 CHAIRPERSON GRIFFIS: You're all set?

25 MS. PRITCHARD: Uh-huh.

1 CHAIRPERSON GRIFFIS: Very well then. Board
2 Members, questions of Ms. Pritchard or the witness at this time?

3 COMMISSIONER MAY: I just want to clarify one point
4 about the question that came up in the cross examination,
5 regarding whether if the property at 1018 C Street were, for some
6 reason or another raised or a new property were built, it's your
7 contention that your reading of 405.3 is that a side yard would
8 be required for that property no matter what.

9 MS. PRITCHARD: That they be constrained by the
10 same regulation in that instance.

11 COMMISSIONER MAY: Right. And would have to seek a
12 special exception.

13 MS. PRITCHARD: That's correct.

14 COMMISSIONER MAY: So even if that property were
15 the minimum width, 18 feet wide, that it would still technically
16 require an eight foot side yard.

17 MS. PRITCHARD: Without a special exception, yes.
18 And I don't know if lots would be drawn that way so as to have
19 such a narrow lot in that circumstance, if that exists.

20 COMMISSIONER MAY: And in the circumstance where
21 such a property is not bordering other properties, but is
22 bordering an alley, for example, which is also not -- a street
23 is covered in the code, but if it were an alley, again your
24 interpretation would be that it requires -- a side yard would be
25 required facing the alley.

NEAL R. GROSS

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

1 MS. PRITCHARD: No. I believe that 405.5 would
2 apply in the case of an alley.

3 COMMISSIONER MAY: Okay.

4 MS. PRITCHARD: I believe that it could be read to
5 do so.

6 COMMISSIONER MAY: Okay. Do you see a substantive
7 difference between the notion of a party wall, or a devising
8 wall, however it's referred to, and a lot line wall, because it's
9 used somewhat interchangeably within these various definitions
10 and regulations.

11 MS. PRITCHARD: Uh-huh. I don't see any
12 substantive difference between the two, but I do understand the
13 requirement of the regulations that when you have a lot line
14 wall, and a lot line wall, the regulations intend that you
15 shouldn't have a wall abutting a wall, but you should share a
16 common wall, so that would be how I would distinguish them, and
17 where the distinction perhaps becomes relevant, is that the
18 regulations intend for row houses to share a common wall. Not
19 just have a wall up against a wall with, you know, two inches in
20 between or something.

21 COMMISSIONER MAY: Uh-huh. And if they're built at
22 a separate time, then the lot line wall is simply the acceptable
23 fall back or what have you, as opposed to requiring that that
24 wall be remade as a party wall.

25 MS. PRITCHARD: I mean, I'm not a builder to know

1 sort of how it would work from a builder's point of view, but my
2 understanding would be that if you had -- if I understand your
3 question, if you had an empty lot for example.

4 COMMISSIONER MAY: Uh-huh.

5 MS. PRITCHARD: And you had a row of dwellings, the
6 last one of which came up to that empty lot, because you raised
7 whatever was there, for example.

8 COMMISSIONER MAY: Uh-huh.

9 MS. PRITCHARD: And the other one was pre-existing,
10 that to build a new dwelling in that raised lot --

11 COMMISSIONER MAY: Uh-huh.

12 MS. PRITCHARD: -- you would have to build it using
13 the lot line wall here as a common wall for the two buildings,
14 however it is you do that in a building sense of things, as
15 opposed to build your own wall up to, but not joining it. That's
16 what I would understand.

17 COMMISSIONER MAY: Okay.

18 MS. PRITCHARD: This is a lay person's view of
19 building.

20 COMMISSIONER MAY: All right. My next question is
21 for Mr. Schauer. And that is that, you started off your
22 statement with the statement that this boils down to whether the
23 Zoning Administrator should follow past practice and custom in
24 issuing a building permit as a matter of right for a side
25 addition. Not being the familiar with the full breadth of all of

1 the building permits that have been issued since the zoning code
2 was enacted in 1958, or whenever the -- is it your contention or
3 your knowledge that as a matter of practice, the Zoning
4 Administrator simply would issue -- I mean, has done this
5 essentially before in other cases consistently?

6 MR. SCHAUER: He has, indeed. Past Administrators
7 have and in the Letter of Determination they refer to that, the
8 precedents of the past Administrators.

9 COMMISSIONER MAY: Uh-huh. And how is that --
10 that's inconsistent though with what is -- what I understand
11 occurred with the case on 5th Street. Is that right? The case on
12 5th Street would then -- would have been a departure from that if
13 a -- if, in fact, a special exception was required to build that
14 side -- in that side yard.

15 MR. SCHAUER: I'm not sure I would go that far. I
16 think the key thing here is that a new mechanism was put in place
17 three years ago in 1998, which allows the side yard deviations to
18 be treated as special exceptions rather than variances.

19 COMMISSIONER MAY: Uh-huh.

20 MR. SCHAUER: Now in a situation of a house like
21 1018, if they had to come before this Board and show -- and prove
22 the elements of a variance in order to put a side addition on,
23 they probably couldn't make it. It simply would be too
24 difficult. They couldn't show hardship, and they probably would
25 have difficulty showing a practical difficulty. But under the

1 special exception provisions of Section 223, we don't have to do
2 that any more, so I think -- what I was alluding to was I think
3 the Administrators in the past, as a practical matter recognized
4 hey, some of these people are going to be left out if we don't
5 interpret the regulation to allow them to go to the party line,
6 or to the lot line as a matter of right. We don't have to do
7 that any more. There now is a mechanism in place, and one, in
8 fact, that is well designed to deal with the very kind of problem
9 that's here; in other words, the issues of right, and air, and
10 privacy are things that have to be covered in the special
11 exception hearing. And you folks get these all the time, and
12 they are dealable.

13 Some of the cross examination here seems to be in
14 terms of how these things are not defined. Well, you face that
15 all the time. These things have to be worked out, and sometimes
16 worked out on an individual case by case basis.

17 I think the adoption of 223 was a major thing. It
18 was -- there was no intention, I'm sure, or ever any thought
19 that it might apply in this kind of case, but it really does
20 apply very much. And the interpretations that were made in the
21 past are a bit antiquated now.

22 COMMISSIONER MAY: So would you say then that what
23 has occurred here with 1018 Constitution is really the anomaly at
24 this point, in light of what happened in 1998 with the Section
25 223. And that what happened on 5th Street is or should be the

1 norm.

2 MR. SCHAUER: Correct.

3 COMMISSIONER MAY: Okay. But there's -- again,
4 there is substantial precedent, either prior to '98 for these
5 sorts of additions being approved as a matter of right.

6 MR. SCHAUER: I'm sure there are. Of course, these
7 are kind of rare circumstances, but I suspect yes, there probably
8 are precedents. And certainly, they're referred to in the Zoning
9 Administrator's Letter of Determination.

10 COMMISSIONER MAY: Okay. That's it for me.

11 CHAIRPERSON GRIFFIS: Thank you, Mr. May. Let me
12 just get quick clarification on the ZA's Letter of Determination.

13 So that's not, in fact, the letter to Mr. and Mrs. Pritchard
14 that you're referring to, August 20th.

15 MR. SCHAUER: Yes, it is.

16 MS. PRITCHARD: Yes.

17 CHAIRPERSON GRIFFIS: That is what you're referring
18 to.

19 MR. SCHAUER: Yes.

20 CHAIRPERSON GRIFFIS: All right. Can you just
21 point out the precedent? I thought you had indicated that the --
22 Mr. Johnson, who was a signator on this, referred to past
23 Administrators.

24 MR. SCHAUER: Right. It's in the very last
25 paragraph of the --

1 CHAIRPERSON GRIFFIS: No, it just takes me to say
2 it to find it, so I just put my eye to it. Very good. Thank
3 you.

4 MR. COOPER: Yeah. I didn't think it was there
5 either.

6 MS. PRITCHARD: He doesn't specify any examples of
7 --

8 CHAIRPERSON GRIFFIS: No. Exactly. Exactly. He
9 just -- and for other Board Members, it's obviously right there,
10 the zoning regulations that previous precedent established by
11 past Zoning Administrators is what was said.

12 MS. PRITCHARD: Right.

13 CHAIRPERSON GRIFFIS: Okay. Any other questions?
14 Yes, Ms. Renshaw.

15 VICE CHAIRPERSON RENSHAW: Yes, Mr. Chairman.

16 Ms. Pritchard, I wanted to ask you the date of the
17 photographs that are in the file. I'm holding them up, and --

18 MS. PRITCHARD: Yes. Those were taken -- I can
19 just give you an estimated date of the week or two prior to when
20 we -- they were taken -- let me think now what they were taken in
21 preparation for.

22 CHAIRPERSON GRIFFIS: I think it was --

23 MS. PRITCHARD: Well, I can give you -- I wish I
24 could -- I was going to give you one date, and now I'm not
25 precisely sure. They were either taken within the week prior to

1 when we filed this appeal, which is -- we filed it on October
2 30th, or a week earlier than that in preparation for when we first
3 brought our claim to a Committee of the ANC. They were taken
4 just -- so either mid-October, end of October.

5 VICE CHAIRPERSON RENSHAW: Of 2001.

6 MS. PRITCHARD: Of 2001.

7 VICE CHAIRPERSON RENSHAW: All right.

8 MS. PRITCHARD: They started digging and building
9 in early August. I think like the same date that we got our
10 letter to Mr. Johnson, like August 7th, August 5th, somewhere in
11 there.

12 VICE CHAIRPERSON RENSHAW: All right. And since
13 then, have you submitted any photographs of what the property
14 looks like from your vantage point?

15 MS. PRITCHARD: I have not, but the exterior
16 structure, that wall that faces us, is completed.

17 VICE CHAIRPERSON RENSHAW: And can you tell me how
18 many windows are looking out on your property?

19 MS. PRITCHARD: They do not have windows facing our
20 property, but they do have a deck that goes out that would look
21 over to our property.

22 VICE CHAIRPERSON RENSHAW: I was going to ask you
23 about the deck in your submission of -- let me refer to the date
24 so we can be accurate, February 26th, 2002.

25 MS. PRITCHARD: Yes.

1 VICE CHAIRPERSON RENSHAW: You have a diagram of
2 the proposed addition to 1018 Constitution Avenue, N.E.

3 MS. PRITCHARD: Yes.

4 VICE CHAIRPERSON RENSHAW: And its relationship to
5 the 11th Street properties, and I note the deck. And I can't
6 quite tell whether it's a step-down deck, and I can't tell how
7 high it is, and whether the deck overlooks -- looks over your
8 fence.

9 MS. PRITCHARD: Uh-huh. I would just -- yes, it
10 does look over the fence. Yes, they -- the way I see it, it
11 seems like a two-story deck, and perhaps the owners could
12 describe it better if they are to testify, but the upper story
13 deck has, you know, like a waist level brick wall, which comes up
14 just a few feet above our fence. Okay? I don't know how many
15 feet, maybe six feet above our fence. And so then you could walk
16 out on the deck and you would be looking into our yard and our
17 rear, because the wall then sort of breaks there, but the deck
18 comes forward. It's an open second floor deck.

19 VICE CHAIRPERSON RENSHAW: All right. And there --
20 from the two-story additions, there are sliding glass doors
21 coming out on the deck, some access way out onto the deck.

22 MS. PRITCHARD: Yes, there's a doorway of some
23 sort. Yeah. I don't know if it's sliding glass. I don't think
24 it's put on yet, last I looked.

25 VICE CHAIRPERSON RENSHAW: When you first began to

1 -- well, when you began your worry about this addition to the
2 property --

3 MS. PRITCHARD: Uh-huh.

4 VICE CHAIRPERSON RENSHAW: -- was the deck part of
5 the plans that you saw initially, or was --

6 MS. PRITCHARD: Yes.

7 VICE CHAIRPERSON RENSHAW: -- the deck added to it?

8 MS. PRITCHARD: The diagram that you were just
9 referring to, I pulled that -- the architectural -- the
10 architect's sketch of 1018, that's part of that page, I pulled
11 that from attachment to their initial permit application, and
12 then I simply blocked out -- I simply -- actually, well there's
13 nothing really to block out except some handwriting. I drew in
14 then the 11th Street properties, which weren't initially on their
15 permit application, did not show how the 11th Street properties
16 were situated in relationship to 1018, so the deck was indicated
17 in their initial permit --

18 VICE CHAIRPERSON RENSHAW: All right. And you're
19 contending that the Zoning Administrator did not take into
20 account the impact of this addition on your property, or those
21 properties along 11th Street.

22 MS. PRITCHARD: Did not give it the weight that he
23 should have, yes.

24 VICE CHAIRPERSON RENSHAW: All right. Thank you.

25 CHAIRPERSON GRIFFIS: On that, you pulled off the

1 plat plan from the permit application.

2 MS. PRITCHARD: Yes.

3 CHAIRPERSON GRIFFIS: And it's your understanding
4 that more of the surrounding context would be required in terms
5 of the standard of permit application?

6 MS. PRITCHARD: Yeah. I wish that I had -- I don't
7 have like the rules in front of me now, but at one point in the
8 course of all this when I was at the DCA looking at files, I was
9 looking at sort of an instruction sheet, you know, to how to file
10 for a perm it.

11 CHAIRPERSON GRIFFIS: Right.

12 MS. PRITCHARD: And as I recall, in those
13 instructions that are made available at the DCRA, it said that
14 you're supposed to also note, you know, surrounding properties,
15 give some indication of the context. But I'm sorry.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. PRITCHARD: And perhaps I shouldn't have spoken
18 without being able to refer concretely to the reg, but it was --

19 CHAIRPERSON GRIFFIS: No, that's all right. I
20 mean, we --

21 MS. PRITCHARD: -- from a recollection at looking
22 at those instructions.

23 CHAIRPERSON GRIFFIS: -- don't expect you to be an
24 expert at it. I wonder if --

25 MS. PRITCHARD: And then that made me note that -- recall

1 like maybe that's why they're supposed to do it because, you
2 know, this case initially they didn't have that information
3 there, although they did have it prior to issuing the Letter of
4 Determination based on conversations.

5 CHAIRPERSON GRIFFIS: Yeah, I understand all that.

6 I just wanted to get quick clarification on that simple thing.

7 MS. PRITCHARD: Yeah.

8 CHAIRPERSON GRIFFIS: It may, in fact, be another
9 phase of the permitting that would not necessarily have gone up
10 to the Zoning Administrator, but we get your point clearly.

11 Let me ask you first, did you receive the letter of
12 February 19th, 2002 signed by Ms. Kress, indicating that this
13 Board would be looking at Order Number 17 of the Zoning
14 Commission? Are you in receipt of that?

15 MS. PRITCHARD: Yes.

16 CHAIRPERSON GRIFFIS: Okay. It is Exhibit Number
17 22. Can I have you comment on Order Number 17?

18 MS. PRITCHARD: Let me just --

19 CHAIRPERSON GRIFFIS: Do you have a copy in front
20 of you? If not, I'll give you one.

21 MS. PRITCHARD: I thought that I had. Okay. Here,
22 I do have it.

23 CHAIRPERSON GRIFFIS: Then take a minute if you to,
24 to read it.

25 MS. PRITCHARD: This is dated February 19th.

1 CHAIRPERSON GRIFFIS: Yeah. And the letter is not
2 important.

3 MS. PRITCHARD: Yeah.

4 CHAIRPERSON GRIFFIS: The letter is telling you
5 that you should look at Order 17, which should be attached.

6 MS. PRITCHARD: Right. Yes, well the way that I --
7 I understood Order 17 as being -- that was when they -- when the
8 Commission first passed the section that I'm basing my entire
9 argument on, which is Section 405.3.

10 CHAIRPERSON GRIFFIS: Uh-huh.

11 MS. PRITCHARD: And so I have simply honed my
12 arguments in that light so as to suggest to you how I believe
13 405.3 should be interpreted.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. PRITCHARD: I think it is totally appropriate
16 that that be the focus of this hearing.

17 CHAIRPERSON GRIFFIS: Okay. Good. Any other
18 questions, Board Members, at this time?

19 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Yes.

21 VICE CHAIRPERSON RENSHAW: Just to go back to my
22 questioning of Ms. Pritchard about those photographs taken back
23 in 2001, since then the property is finished, from your vantage
24 point? In other words, what do you see now?

25 MS. PRITCHARD: Now we see a two-story concrete

1 block wall that covers roughly three-quarters of my rear lot
2 line. Okay. And extends then into about half of my neighbor's
3 rear lot line. And it goes up two stories, and then a further --
4 we haven't measured it, but maybe five, six feet, four to six
5 feet above the roof line, because obviously it's that wall that
6 I'm concerned with, to reach a height that I believe, taken on
7 the level is even taller than our roof line. And it's just an
8 unfinished concrete block. You know, we've got a lot of the
9 concrete that spilled over into our yard, as well, from when they
10 first put that up. And then there's the deck.

11 Now the deck in the front face of -- the face of
12 the addition that faces Constitution Avenue, they've just
13 recently finished facing with red brick to match the rest of the
14 rear. I've gotten no indication that they intend to face the
15 wall facing me with brick or apply any finishing to it, so it
16 just goes up the two stories, you know, 13 feet out from my rear
17 window.

18 VICE CHAIRPERSON RENSHAW: In order to finish that
19 side of the addition, would they have to come on your property?

20 MS. PRITCHARD: They probably would to do the rear
21 portions of it. If they were to face it with brick, for example,
22 they would have to.

23 VICE CHAIRPERSON RENSHAW: All right. Is there any
24 lighting on that side of the building on the addition? Any
25 lighting?

1 MS. PRITCHARD: What do you mean by lighting?

2 VICE CHAIRPERSON RENSHAW: Exterior lighting.

3 MS. PRITCHARD: At this point there is not. I
4 don't know if they intend to put exterior lighting on or not.

5 VICE CHAIRPERSON RENSHAW: All right. I'm just
6 trying to get a sense of you being the Opponent here, what you
7 see and how it's affected you since it's almost finished, it
8 sounds like it's almost finished.

9 MS. PRITCHARD: Well, for purposes -- I mean, what
10 needs to be finished is the interior, which they're sawing and
11 hammering every day, so I assume that that's proceeding at pace
12 as well, but the wall appears to be complete, the wall that
13 affects me. And so the impact it has is one, to look out, it's
14 quite unsightly to just look out at this close bare concrete
15 block unfinished in any way.

16 But more significantly even than that, because that
17 might be dealt with in various ways, but what can't be taken away
18 unless they, you know, are ordered to take the construction down,
19 is that -- is the way in which it shadows my home, and just seems
20 to sort of, you know, overwhelm it. You know, it gives it a
21 tenement style feeling is the best way I can describe it.

22 VICE CHAIRPERSON RENSHAW: Thank you.

23 CHAIRPERSON GRIFFIS: Okay. Unless there are other
24 questions, we'd move this along. Any? Okay. Are you ready?
25 Very good. If you can move to the table for a brief moment.

1 (Off the record)

2 CHAIRPERSON GRIFFIS: Whenever you're ready.

3 MS. BROWN: Good afternoon, Mr. Chair, Members of
4 the Board. Again, Marie-Claire Brown, Assistant Corporation
5 Counsel on behalf of the Zoning Administrator. Rather than give
6 you a lengthy opening statement, I'd simply make a brief point
7 that the Zoning Administrator's view of this matter is that it
8 was simply an application that was filed with the Office of the
9 Zoning Administrator, which sought to convert a semi-detached
10 home in an R-4 District, which permits row dwellings as a matter
11 of right, into a row dwelling. And based on that, the Zoning
12 Administrator properly issued the permit.

13 I'm going to ask Mr. Bello several questions, and
14 he'll have an opportunity to be cross examined. I would note for
15 the record that there are some documents which I probably should
16 have brought up as a preliminary matter, various documentation
17 contained in Mrs. Pritchard's appeal, which would lead one to
18 indicate that her interest is also representative of several
19 other persons, including the Katellis (phonetic), another
20 neighbor, as well as her husband, none of whom have entered an
21 appearance in this matter.

22 I believe Mr. Steven Hanson, Colleen Koller Katilli
23 (phonetic), John Katilli and David Pritchard all indicated in the
24 Appellate package as persons with whom the sentiments were
25 similar.

1 CHAIRPERSON GRIFFIS: Let me just make a quick
2 statement on that in terms of the backup. Ms. Pritchard would be
3 perfectly capable, and under correct procedure, pursuing this on
4 her own.

5 MS. BROWN: Yeah. That's fine, sir.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. BROWN: I just simply wanted to clarify that
8 the persons who are listed in here as persons whose interests she
9 represents, in fact have not -- are not participating in this
10 matter.

11 CHAIRPERSON GRIFFIS: Okay. We'll take note of
12 that, and possibly get some clarification on that also. Good.

13 MS. BROWN: Could you state your name and title for
14 the record, please.

15 MR. BELLO: Toye Bello for the Zoning
16 Administrator's Office. Good afternoon.

17 CHAIRPERSON GRIFFIS: Good afternoon.

18 MS. BROWN: Mr. Chair, would it be necessary that
19 we establish that Mr. Bello is an expert?

20 CHAIRPERSON GRIFFIS: No.

21 MS. BROWN: Okay.

22 CHAIRPERSON GRIFFIS: We are very familiar -- I
23 don't want to speak expeditiously here, Board Members, but I
24 think we all concur, Mr. Bello would be an expert in zoning, and
25 is the Acting -- well, you're not -- are you Acting still, or are

1 you the --

2 MR. BELLO: Acting.

3 CHAIRPERSON GRIFFIS: Okay. So the Acting Zoning
4 Administrator. Very well.

5 MS. BROWN: Mr. Bello, are you personally familiar
6 with 1018 Constitution Avenue, N.E.?

7 MR. BELLO: Yes, I am.

8 MS. BROWN: Okay. And how did you become familiar
9 with that property?

10 MR. BELLO: I believe I fielded a call from Mr. and
11 Mrs. Pritchard, either prior to the submission of an application,
12 or in the course of the application being in process.

13 MS. BROWN: Okay. And what was your involvement
14 with respect to this property?

15 MR. BELLO: Well, the Pritchards expressed a
16 concern about what they perceived to be the proposed conversion
17 of a semi-detached structure to a row structure, and their belief
18 that it would not comply with the regulations. And I promised to
19 pay particular attention to the application.

20 MS. BROWN: And did you, in fact, pay particular
21 attention to this application?

22 MR. BELLO: If my recollection serves me correctly,
23 I think I reviewed the application, and I had approved it.

24 MS. BROWN: Okay. In what Zoning District is this
25 property, 1018 Constitution Avenue, located?

1 MR. BELLO: The R-4 Zoning District.

2 MS. BROWN: What type of buildings, what type of
3 homes are permitted in an R-4 District, as a matter of right?

4 MR. BELLO: Detached single family dwellings, semi-
5 detached, or a row structure, single family or flat two unit
6 building.

7 MS. BROWN: Are you familiar with any circumstances
8 in which one of those types of dwellings can be converted into a
9 different type under the regulations?

10 MR. BELLO: Well, there's nothing specifically in
11 the zoning regulation that precludes a single family dwelling,
12 detached dwelling, or semi-detached dwelling to be converted to a
13 row if they meet the condition of sharing one common division
14 wall.

15 MS. BROWN: Is there any specific -- any particular
16 reason for the sharing of the one common division wall?

17 MR. BELLO: I think one can only imagine what the
18 existing condition would have been prior to the amendment of the
19 regulations to insert 405.3, which obviously did not require any
20 common division wall prior to that amendment. And that people
21 would have been able to construct face on line construction
22 without sharing any wall on either side, or to be within one foot
23 of a side property lot line and qualify as a semi-detached
24 structure.

25 MS. BROWN: Based on your experience in the Office

1 of the Zoning Administrator, can a semi-detached property be
2 converted into a row dwelling?

3 MR. BELLO: Yeah, if it shares one common division
4 wall and a face on line wall on an adjacent lot line, they
5 certainly can.

6 MS. BROWN: And do those criteria apply to this
7 particular property at 1018 Constitution Avenue?

8 MR. BELLO: Yes, ma'am.

9 MS. BROWN: Okay. With regard to that conversion,
10 is there any specific procedure that a land owner or a homeowner
11 must follow in order to do such a conversion?

12 MR. BELLO: Other than the administrative
13 requirement for a building permit, it would be a matter of right
14 construction.

15 MS. BROWN: Okay. At the time that the application
16 was filed with the Office of the Zoning Administrator by Mr.
17 Sedlack (phonetic), how would you describe the property at 1018
18 Constitution Avenue?

19 MR. BELLO: 1018 was an existing semi-detached
20 single family dwelling that sought to convert to a row dwelling.
21 And it, I believe, shared the common division wall with the
22 adjacent property to the west; thereby, meeting the condition of
23 405.3.

24 MS. BROWN: Is there anything that required in your
25 review of the application or in your office's review of the

1 application, a description with respect to the other adjoining
2 properties?

3 MR. BELLO: Not necessarily. In this particular
4 case, other than the need to ascertain that there was a common
5 division wall on one of either sides, it would no have been
6 necessary. No.

7 MS. BROWN: And was that ascertainment made in this
8 case?

9 MR. BELLO: That's correct, by showing the adjacent
10 property to the west where they share a common division wall.

11 MS. BROWN: Were you aware at the time, or was your
12 office aware at the time that this property abuts the rear of
13 Mrs. Pritchard's property?

14 MR. BELLO: I believe the survey evidenced that,
15 yes.

16 MS. BROWN: Okay. Did that cause any concern or
17 any -- did that require any special attention to this matter?

18 MR. BELLO: Certainly not. I think the condition
19 of 405.3 is that one common division wall be shared, and that
20 that condition was already met on the adjacent property to the
21 west. And moreover, this constituted a rare property lot line
22 for the Pritchards in a zone that would ordinarily not allow you
23 to build within 20 feet of that line. So considerably, there
24 would never be a common division wall there unless the Pritchards
25 constructed an accessory structure.

1 MS. BROWN: Could -- under what circumstances could
2 the Pritchards construct an accessory structure?

3 MR. BELLO: Well, if the Pritchards are able to
4 adhere to the percentage of lot occupancy limitation for their
5 zone district they, in fact, would be able to construct an
6 accessory structure that would be right on the line and abut this
7 wall.

8 MS. BROWN: And that accessory structure could be
9 two feet, two stories?

10 MR. BELLO: Not in this zone. This could be only
11 one story.

12 MS. BROWN: Okay. Are you familiar with the
13 property located at 220 5th Street, S.E.?

14 MR. BELLO: I have become so.

15 MS. BROWN: And what is your familiarity with that
16 property?

17 MR. BELLO: That, in fact, my office sent it to the
18 BZA in error, and that's an aberration. That application should
19 not have been here.

20 MS. BROWN: And can you expound on that a little?

21 MR. BELLO: Well, the application here sought to do
22 also an addition to the lot line, and I believe also already
23 shared a common division wall. Notwithstanding that the adjacent
24 property was only three feet away, which situation was
25 precipitated by the non-existence of 405.3 prior to amendment.

1 That, in itself, would not have precluded the -- this property
2 from exercising their right to build a face on line wall
3 construction.

4 MS. BROWN: And in your opinion -- well, let me ask
5 you this. Is there any difference, any technical difference
6 between the property at 220 5th Street, the proposed construction
7 at 220 5th Street and what's before the Board today?

8 MR. BELLO: Well, one could make the argument that
9 if any case personified the necessity for a judgment call, that
10 this would have been the case, being that this wall was only
11 three feet from a side property lot line that was shared by each
12 adjacent property. The significant difference with the
13 Pritchards property is that the side property side line for 1018
14 constitutes a rear property lot line for the Pritchards under
15 normal circumstances, which they would not be able to construct
16 to within 20 feet.

17 MS. BROWN: Okay. But again, your testimony is
18 that that was an aberration?

19 MR. BELLO: That is correct, that on the face of
20 it, that application should not have been before the Board of
21 Zoning Adjustment.

22 MS. BROWN: Other than the issues that were raised
23 by Mrs. Pritchard or anyone else with respect to this property
24 construction, did the construction at -- proposed construction at
25 1018 Constitution Avenue meet all other zoning requirements?

1 MR. BELLO: As evidenced by the issuance of a
2 Building Permit. That is correct.

3 MS. BROWN: Okay. In the final analysis, once this
4 construction is complete, is there a side yard at 1018
5 Constitution Avenue?

6 MR. BELLO: I think perhaps a reference to the
7 definition of a side yard would probably be instructive. And the
8 regulations quotes a side yard as, "A yard between any portion of
9 a building or other structure and the adjacent side lot line
10 extending for the full depth of the building or structure."

11 With the addition here being faced on line, there
12 isn't a side yard. I also believe that the definition for a row
13 structure is also instructive, in that a row structure is -- a
14 row dwelling is defined as, "A one family dwelling having no side
15 yards."

16 I think that if the definition for a row dwelling
17 or the condition for not having a side yard were limited to
18 instances where you had a common division wall, that a row
19 dwelling would still have been satisfied.

20 MS. BROWN: Going back to Section 405 -- well, let
21 me ask you this. Does 405 apply to this type of construction or
22 to this permit?

23 MR. BELLO: Which of the 405s?

24 MS. BROWN: Any part of 405.

25 MR. BELLO: Well, 405.6 does. It says, "With the

1 exception of the provisions in 405.1 or 2, a side yard shall not
2 be required in an R-3, R-4 Zone District." The emphasis is on
3 "shall not be required".

4 MS. BROWN: How would that section apply to this
5 particular construction?

6 MR. BELLO: Well, this construction has no side
7 yard. And furthermore, 405.3 is all or nothing section. What
8 the section seeks to establish is that you either provide a side
9 yard. If you indeed decide that you want to provide a side yard,
10 it shall be for no less than eight feet. But then the option of
11 not providing one is not removed from you. And if you tie that
12 and connect that to the definition of the possibility of not
13 having a side yard by having a face on line construction, I think
14 that it should be clear to everybody that that's not a
15 requirement.

16 MS. BROWN: Okay. So when you're doing your
17 analysis you would walk through the steps starting with 405.1?

18 MR. BELLO: Well, the -- in this case, the first
19 determination would be whether you're in a zone district, of
20 course, that allows a row structure, and whether the proposal
21 meets the requirements for being able to be a row structure,
22 which is only to share one common division wall, not two. And in
23 both instances, this proposal meets the standards.

24 MS. BROWN: Okay. So you first made a
25 determination that this structure, this building would be a row

1 structure by definition.

2 MR. BELLO: That is correct.

3 MS. BROWN: And therefore, 405.1 and 405.2 would
4 not apply. Correct?

5 MR. BELLO: That's correct, because those only
6 apply to semi-detached structures and detached structures.

7 MS. BROWN: And since those don't apply, 405.6 then
8 reads, "A side yard shall not be required in an R-4 District."

9 MR. BELLO: That is correct.

10 MS. BROWN: Mr. Bello, are you familiar with
11 Section 101 of the Zoning Regulations?

12 MR. BELLO: Yes, I am.

13 MS. BROWN: When do those regulations become
14 applicable to your decision making?

15 MR. BELLO: Well, the applicability of those
16 sections inherent in the setback requirements are already
17 embedded and encoded in the regulations. One would surmise that
18 in those zone districts where side yards are required, that
19 they're required to be for a minimum of eight feet on each side.

20 And that those setbacks measure to the lot line and not to
21 adjacent faces of wall, so that one can conclude that meeting
22 those standards would actually comply with the adequacy for light
23 and air.

24 MS. BROWN: Specifically, you heard Ms. Pritchard's
25 testimony about the interpretation and application for light and

1 air, land value, et cetera?

2 MR. BELLO: Well, I'm not required to ask about
3 land values, or to speculate about them with respect to
4 additions. My job is basically to see if a proposal complies
5 with the regulations that have been set forth in this regulation.

6 MS. BROWN: When would you be required to make a
7 determination with respect to light and air?

8 MR. BELLO: Well, the possibility would be in those
9 instances where those setback requirements may not be complied
10 with, and that in any event, such proposals are the purview of
11 the Board of Zoning Adjustments, but this is not one of those
12 cases.

13 MS. BROWN: With respect to the testimony that you
14 heard on past practice and custom, is it the practice of the
15 Zoning Administrator to follow all of its prior decisions?

16 MR. BELLO: When it's reasonable and accurate, yes.
17 I have provided Ms. Pritchard with other examples where this
18 section has been applied in the same manner that it was applied
19 to 1018. And I also need to, perhaps, dispute the validity of
20 Mr. Schauer's testimony, that the only condition under which you
21 could have no side yard is if you have a common division wall,
22 and that is not the case. The definition of a row dwelling
23 disputes that, or dispels that. And the definition of a semi-
24 detached structure also dispels that.

25 MS. BROWN: I believe that's all the direct

1 examination I have.

2 CHAIRPERSON GRIFFIS: Okay. Cross examination?

3 MS. PRITCHARD: Mr. Bello, I'd like to first
4 question you more about how you interpret Section 405.3. If I
5 understand the testimony that you just gave in response to Corp.
6 Counsel's questioning, you referred at times to Section 405.3 in
7 the sense of if -- you said if a proposed plan has met the
8 condition of 405.3, meaning that so long as it has an adjoining
9 wall on one side, that it is permitted then to convert to a row
10 dwelling. Is that an accurate restatement of your interpretation
11 of 405.3?

12 MR. BELLO: As close as can be, yeah.

13 MS. PRITCHARD: Okay. So you're saying that 405 --
14 what 405.3 does, is it creates a condition that provided that
15 there's one adjoining wall, then you can build a row dwelling
16 from side line to side line.

17 MR. BELLO: That the other wall does not have to be
18 a common division wall, that it can be a face on line wall.

19 MS. PRITCHARD: Okay.

20 MR. BELLO: As defined by a row dwelling.

21 MS. PRITCHARD: Okay. What do you make of the
22 language in 405.3 which does not, to my -- which says, "Where a
23 dwelling does not share a common division wall with an existing
24 building, or a building being constructed together with the new
25 building, then it shall have a side yard on each resulting free-

1 standing side."

2 MR. BELLO: Uh-huh.

3 MS. PRITCHARD: Would you agree that that language
4 seems to be primarily concerned with circumstances where there is
5 not a common division wall, as opposed to those circumstances
6 where there is a common division wall?

7 MR. BELLO: Not really. If you -- you've got to be
8 able to imagine what would have pervaded prior to the amendment
9 that created this section, which would have inconsistency with
10 the definition of semi-detached structure, that semi-detached
11 structures would have been able to be constructed without any
12 common division wall whatsoever. Okay?

13 MS. PRITCHARD: Okay.

14 MR. BELLO: And that to meet the definition of
15 semi-detached, without the existence of the requirement for a
16 minimum setback of eight feet if you're not right on the line.
17 Okay?

18 MS. PRITCHARD: Uh-huh.

19 MR. BELLO: That people would have been able to
20 construct within one foot of each property lot line without
21 having one common division wall, so the intent of that section
22 was to remedy that oversight of the regulations, and not to
23 preclude the ability for row dwelling construction as a matter of
24 right in zone districts that allow them.

25 MS. PRITCHARD: But what then, again -- I

1 understand that the reg can be read to say that where you have
2 two adjacent buildings, there shouldn't be a foot between them,
3 they should share a common division wall. Right? There
4 shouldn't be one or two feet between them, where they're --

5 MR. BELLO: Well, that's not the only condition
6 that you may have two walls on the line. You may have adjacent
7 property lines that have two face on line walls.

8 MS. PRITCHARD: Okay.

9 MR. BELLO: And that if you look at the definition
10 of semi-detached structure and row dwelling, that in fact, that
11 definition does not say that in order to be a row dwelling you
12 must have two common division walls. And that 405.3 is also
13 consistent with that, in that it asks for a common division wall,
14 and not two common division walls.

15 MS. PRITCHARD: Well, but would you agree -- you
16 have 405.3 in front of you here.

17 MR. BELLO: Uh-huh.

18 MS. PRITCHARD: Is it not true that the language
19 says -- refers to where a building does not share a common
20 division wall, that that is what the section refers to, not to
21 whether it has to share one or two common division walls. But it
22 refers to the circumstances where a dwelling does not share a
23 common division wall, and goes on to state that then it shall
24 have a side yard on that resulting free-standing side.

25 MR. BELLO: Well --

1 MS. PRITCHARD: Would you agree that -- I'm sorry.

2 MR. BELLO: Go ahead.

3 MS. PRITCHARD: Would you agree that where a
4 building does not share a common division wall, that that side of
5 the building is free-standing?

6 MR. BELLO: Oh, absolutely not. You have to be
7 able to reconcile that with the fact that having a common
8 division wall is not the only condition under which you have no
9 side yard.

10 MS. PRITCHARD: But Section 405 pertains to side
11 yards, and when side yards are and are not permitted, or are or
12 are not required, I should say. You're reading it as to
13 establishing conditions for where you can convert to a row
14 dwelling, and so again, I just don't see how -- what do you make
15 of the language where it's describing a circumstance where it
16 does not share a common division wall, and goes on to say that
17 then you must have a side yard?

18 MR. BELLO: Well --

19 MS. PRITCHARD: What is it doing in Section 405, if
20 it's not pertaining to side yards?

21 MR. BELLO: Well, what I'm saying is this, is that
22 one -- if a row dwelling was required to have two common division
23 walls, it would have been so defined in the definition section.
24 That's number one. Number two, the only condition under which
25 you may not have a side yard is not limited to where you have a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 common division wall; that in fact, the definition of side yard
2 requires for the building and entirety of this depth to setback
3 from the property lot line. Okay?

4 MS. PRITCHARD: Okay.

5 MR. BELLO: And number three, if you -- if we're to
6 take your interpretation, it would make absolute nonsense of the
7 subdivision rules. I think the subdivision requirements would
8 then have been that in this instance where the side property lot
9 line constitutes a rear property lot line for you, that the
10 subdivision rules would never allow for a minimum lot size of
11 1,800 square feet, to be subdivided next to where you share a
12 property lot line that's a rear property lot line, because it
13 recognizes that there would never be a common division wall,
14 because you could not ever build your rear property lot line.

15 MS. PRITCHARD: Do you know of many circumstances
16 where following the date on which 405.3 was passed, which was
17 1970, that new lots have been created in the Historical Capitol
18 Hill District that are only 1,800 feet, and would be rendered
19 worthless by my interpretation of this reg, because --

20 MR. BELLO: Absolutely. I mean, I sign subdivision
21 plats every day, and disseminate such information, that the
22 absolute minimum lot size that you can have in a R-4 Zone for a
23 row dwelling is 1,800 square feet.

24 MS. PRITCHARD: And you have routinely approved new
25 lot subdivisions for new buildings with that size property, where

1 it's abutting a rear to side like this?

2 MR. BELLO: Absolutely, or else the subdivision
3 rules would have spoken to that, but it would make no sense for
4 the regulations to allow a subdivision of a lot size, and then
5 that it automatically renders useless, because you cannot
6 construct the type of structure that you're allowed to construct.

7 MS. PRITCHARD: Would you say that the circumstance
8 that exists here where you have a side lot line to a rear lot
9 line without any alley, is that extremely common in the Capitol
10 Hill neighborhood, or is it relatively rare?

11 MR. BELLO: I don't think it's peculiar to Capitol
12 Hill. It's rampant in every R-4 District Ward-wide, Citywide.

13 MS. PRITCHARD: You referred to -- in justifying
14 your interpretation of 405.3, you referred to the circumstances
15 in which this regulation was passed, and circumstances or
16 practices that existed prior to and subsequent to its passage.
17 Do you have any further like, you know, committee/commission
18 hearing minutes, or any documentation about, you know,
19 discussions that -- and debates that went into the passage of
20 this regulation that supports your interpretation?

21 MR. BELLO: Well, number one, I've been only 12
22 years in the Zoning Administrator's Office, and this
23 interpretation is the precedent interpretation of previous Zoning
24 Administrators. And from my experience, that I can only imagine
25 that conditions that would have existed prior to the existence of

1 this specific section, which I considered to have been a
2 significant oversight of the regulations.

3 MS. PRITCHARD: So you don't have any of the
4 documented history of sort of debates or discussions of the
5 Commission as to what they intended when they passed this
6 regulation.

7 MS. BROWN: Objection. I think that information is
8 readily available if there's a legislative history search done.

9 CHAIRPERSON GRIFFIS: Your objection is that Mr.
10 Bello can't answer it because it's readily available?

11 MS. BROWN: I object to the form of the question.

12 CHAIRPERSON GRIFFIS: Okay. Do you want to rephrase
13 the question?

14 MS. PRITCHARD: Yeah. Do you -- Corp. Counsel
15 suggests that this sort of legislative history would be readily
16 available. Are you familiar with, or do you have here for the
17 record any such history that supports your interpretation of
18 405.3?

19 MR. BELLO: I think that the numerous and hundreds
20 and hundreds of such conditions that are being approved and
21 applied in this manner is enough evidence. I think that
22 considering the testimony that I'm giving here today about, you
23 know, what the logical reasoning would be, should be evidence.
24 I'm quite confident that there's no error in the application of
25 that section.

1 MS. PRITCHARD: Can you offer to me -- well, never
2 mind. No, I'm -- that's all. I'm done questioning.

3 CHAIRPERSON GRIFFIS: Any cross?

4 MR. COOPER: No.

5 CHAIRPERSON GRIFFIS: No. Okay. Questions from
6 the Board. Mr. Bello, let me just start off. Is there a
7 difference in your interpretation between a conversion of, in
8 this case, a semi-detached to a row dwelling, and an addition to
9 a semi-detached?

10 MR. BELLO: No difference, sir.

11 CHAIRPERSON GRIFFIS: No difference.

12 MR. BELLO: Because you would have to be doing that
13 addition --

14 CHAIRPERSON GRIFFIS: Okay. And so, in terms of
15 this application, is there any determination that would
16 constitute a length of wall that would be on the property line
17 that would substantiate a row dwelling definition; meaning that -
18 - it's actually two-fold. What is -- you can answer both. What
19 is the area conceivably that was the side yard of the semi-
20 detached now defined as in your interpretation? And then, is
21 there a minimum, or there wouldn't be a maximum say for lot
22 occupancy. Is there a minimum of which a wall needs to be
23 constructed on that to establish -- on the property line, the lot
24 line to establish a definition of a row dwelling?

25 MR. BELLO: Well, there really isn't any minimum

1 requirement or maximum requirement. But clearly, where your
2 addition is not for the depth of the existing building, then
3 you're creating an open court.

4 CHAIRPERSON GRIFFIS: Uh-huh.

5 MR. BELLO: For which a minimum width requirement
6 of six feet suffices.

7 CHAIRPERSON GRIFFIS: Okay. And so in your
8 interpretation in looking at this, you find that they are --
9 actually a conforming court was established.

10 MR. BELLO: Well, simply converted what was a side
11 yard to a court.

12 CHAIRPERSON GRIFFIS: Okay. And how about the step
13 back in the building, which I only have the submission, and I'll
14 hold it up. I don't know if you've seen this or not. I can give
15 you a copy of this, and let me reference it if it's -- it's
16 Attachment B of the February 26th. Clearly, I would agree that
17 there's a courtyard established at the seven foot dimension.
18 Does the courtyard definition or classification change as that
19 step in of the row dwelling at all?

20 MR. BELLO: It's simply the continuation of the
21 court, which becomes wider at that point.

22 CHAIRPERSON GRIFFIS: Okay. And so that area is,
23 in fact, defined by three walls. You would not find that as
24 another definition of a court. You would still maintain that it
25 is an open court.

1 MR. BELLO: It is one continuous open court.
2 That's correct.

3 CHAIRPERSON GRIFFIS: Okay. Let me push it just a
4 little but farther. Would that need to be called any sort of
5 court niche or anything of that nature that it steps in at that
6 point?

7 MR. BELLO: I believe a court niche by definition
8 is really only an architectural embellishment of a wall --

9 CHAIRPERSON GRIFFIS: Uh-huh.

10 MR. BELLO: -- so I don't believe that that's what
11 this would be.

12 CHAIRPERSON GRIFFIS: And what would -- I'll pull
13 it up here, but what would be the definition of a closed court?

14 MR. BELLO: A closed court is, I believe, a court
15 that's either enclosed in entirety by a wall, and let me refresh
16 my memory here.

17 CHAIRPERSON GRIFFIS: Okay. I mean, I have it. I
18 don't want to put you on the spot here. I can read it also.
19 "Surrounded on all sides by exterior walls of a building, or by
20 exterior walls of a building and side of rear lot lines, or by
21 alley lines where the alley is less than ten feet in width."

22 MR. BELLO: Uh-huh.

23 CHAIRPERSON GRIFFIS: So I think the operative word
24 there would be "closed", it would be on all sides. Okay. So in
25 the same respects this -- well, is -- in your analysis of the

1 addition, you found this also conforming in all other aspects in
2 terms of lot occupancy.

3 MR. BELLO: That is correct, because by converting
4 to row you up your by going to 60 percent lot coverage instead of
5 40.

6 CHAIRPERSON GRIFFIS: Okay. And if you could, and
7 I think Ms. Pritchard was getting you there, or walking down, in
8 terms of the Zoning Commission Order 17, could you speak to the
9 fact of that this -- that the stand by the Commission was, "The
10 proposed text change was to ensure the provision of adequate" -
11 and I'm reading this - "adequate side yards for all residential
12 buildings regardless of zoning district in which they lie." And
13 then it is then incorporated into 405. And is it correct that
14 your statement, your belief is that the conversion of this to a
15 row dwelling therefore steps you away from this provision?

16 MR. BELLO: That's correct, because what would have
17 pervaded against prior to the existence of this amendment, was
18 that semi-detached structures could have had on one side a face
19 on line wall, and be within a foot of a property lot line because
20 there were not minimum setback standards, if you did not -- you
21 didn't want to provide more than that. Because if you look at
22 that section, without the existence of that section, and if you
23 look at that in tandem with the definition of a semi-detached
24 structure, that in these zones that a semi-detached structure
25 would have had a face on line wall, and still build within one

NEAL R. GROSS

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

1 foot of the property lot line, and still qualify as a semi-
2 detached structure. And then the adjacent property owner would
3 also be able to do that. So in effect, you would have walls
4 within four feet of each other, so this is what I referred to as
5 an all or nothing amendment. It's either you provide the full
6 eight if you decide to setback, or you don't set back at all by
7 meeting the one party wall requirement for a full structure.

8 CHAIRPERSON GRIFFIS: Okay. And in terms of --
9 just for my edification, what would be the reason for stepping
10 back just a foot for definition of semi-detached as opposed to
11 row?

12 MR. BELLO: Well, because you would then still be
13 able to satisfy the requirement for the definition of a side
14 yard. And the definition is that the yard be open for the entire
15 depth of the building.

16 CHAIRPERSON GRIFFIS: Uh-huh.

17 MR. BELLO: And you need not be eight feet away to
18 be qualified as a semi-detached structure. You could be a foot
19 away. As long as that setback was consistent for the depth of
20 the building, you're still a semi-detached structure.

21 CHAIRPERSON GRIFFIS: But you're saying that there
22 would be some benefit, some bonus for going for a semi-detached
23 as opposed to a row by just setting back a foot, somewhat
24 circumventing some sort of restrictions.

25 MR. BELLO: Well, yeah. I believe that perhaps it

1 would have had a significant impact on light and air, if down the
2 row each semi-detached structures in this zone district could
3 have been able to build within two feet of each other.

4 CHAIRPERSON GRIFFIS: Oh, I see. So it was more --
5 your interpretation, it was done more as a preservation of that
6 aspect. I guess I'm still, and I won't pursue it much further.
7 I'm not sure why -- I mean, first of all, do you have any
8 examples of that happening? And actually, I don't need you to
9 answer that. I'm not sure why we'd be trying to protect that in
10 that it seems somewhat more restrictive if you were in R-4,
11 having to be a semi-detached dwelling. It's certainly more
12 restrictive in terms of what the lot size and all would be. You
13 understand where I'm going? I'm not sure what would be pushing
14 one to move a building line to that, but I'm not sure I need to
15 explore it much further.

16 MR. BELLO: Well, I don't know. Maybe people were
17 not that neighborly before that. Maybe they didn't want to share
18 a party wall. Maybe people just preferred not sharing walls with
19 their neighbor, and the ability to be that close to the property
20 lot line would have --and moreover, would have given you a lot
21 bigger in square footage size building. And the natural
22 intention of builders would have been to maximize by building as
23 close as possible to the property lot line as they could.

24 CHAIRPERSON GRIFFIS: Right. If they had a lot
25 that could support a semi-detached definition in the zone that it

1 was required. Okay. Well, with that -- and they're in the wrong
2 city if they don't like common walls. I can tell you that. Any
3 other questions?

4 VICE CHAIRPERSON RENSHAW: Yes.

5 CHAIRPERSON GRIFFIS: Yes, Ms. Renshaw.

6 VICE CHAIRPERSON RENSHAW: Uh-huh. Mr. Bello, I
7 have several questions for you. You stated that the Canfield
8 (phonetic) case that has been referenced today has -- was in
9 error, it was an aberration. Did the ZA alert the BZA not to
10 review the case because it was in error?

11 MR. BELLO: Not to my knowledge, probably because
12 it didn't come to our attention before the case was heard. But
13 let me state that the Zoning Office is not infallible. We're not
14 here, perhaps, to decide whether the Zoning Administrator errs
15 sometimes. I think we all know that we do, as the BZA has
16 established. But whether there's a logic, a logical reason to
17 the way a particular section is applied, and my experience is
18 that the way it is applied here is the way that we've applied it
19 numerous around the city.

20 VICE CHAIRPERSON RENSHAW: All right. This
21 particular application, what was given to you to review? You
22 said that you reviewed this yourself.

23 MR. BELLO: Are we talking about 1018 now?

24 VICE CHAIRPERSON RENSHAW: I want to know what kind
25 of paperwork was given to you to review this particular

1 application? What did you have before you to make --

2 CHAIRPERSON GRIFFIS: This case?

3 MR. BELLO: This case?

4 VICE CHAIRPERSON RENSHAW: This case, not the
5 Canfield case.

6 CHAIRPERSON GRIFFIS: Right.

7 VICE CHAIRPERSON RENSHAW: This case.

8 MR. BELLO: Well, your customary documentations for
9 filing a building permit, DC Surveyor's plans, application,
10 building survey.

11 VICE CHAIRPERSON RENSHAW: Okay. All right. Now
12 the plat showing the abutting property, is that required in the
13 permit instructions, because there was some reference by Ms.
14 Pritchard that she took the surveyor's plat and drew on it to
15 show the abutting properties. Is it part of the instruction that
16 the applicant submit a plat showing the abutting properties, and
17 therefore, you would pay attention to that?

18 MR. BELLO: Not in the pursuit of a matter of right
19 proposal. I think the only requirement is that you provide the
20 surveying for the specific property that you propose to work on.

21 But, you know, the process has a system of checks and balances,
22 so the question would have been to the Applicant, if there was a
23 common division wall on either side of this property. And that
24 if, in fact, accurate information was not given, then field
25 inspections would have readily picked that up.

1 VICE CHAIRPERSON RENSHAW: All right. Now it
2 states on the application, and it says, "Description of proposed
3 work. Two story addition on rear of existing home." Now first
4 of all, there's no mention of a deck in that. And doesn't that
5 mean, or could not we read into that that it's going to be -- the
6 addition is going to be the size of the existing part of the rear
7 of the home? In other words, not enlarged, but just the existing
8 rear dimension, that that would be an addition to the existing
9 dimensions of the rear wall?

10 MR. BELLO: No, ma'am.

11 VICE CHAIRPERSON RENSHAW: Why not?

12 MR. BELLO: The building application is but one of
13 the documents that you submit in the course of seeking a building
14 permit, part of which would require that you have survey and
15 plans. And those survey and plans would have some consistency
16 that would give the reviewer a definitive picture of what's being
17 proposed.

18 VICE CHAIRPERSON RENSHAW: Why isn't the deck
19 mentioned on that, and then also mentioned on the permit? Is
20 there a separate permit for the deck?

21 MR. BELLO: And there wouldn't have been a
22 requirement for a separate permit. I'm saying that to the extent
23 that there's omission of language on the application, that one
24 cannot jump to the conclusion that, in fact, the deck that was a
25 part of this approval, that the deck is amply reflected on the

1 survey, and I'm sure on the plans that were submitted.

2 VICE CHAIRPERSON RENSHAW: But isn't the permit
3 what speaks to the -- what you have approved?

4 MR. BELLO: Permits and the plans, and the plats.
5 It's not the --

6 VICE CHAIRPERSON RENSHAW: But they don't put the
7 plans and the plat up in the window. They put the permit up in
8 the window, and so that should be, to my mind, what says what you
9 have passed, and so it doesn't say anything about a deck, so I
10 question whether or not the deck was part of this.

11 CHAIRPERSON GRIFFIS: Let me just get quick
12 clarification, Ms. Renshaw and Mr. Bello. What else is required
13 to be on-site at all times with the issuance of a permit?

14 MR. BELLO: The approved set of plans.

15 CHAIRPERSON GRIFFIS: Right. So --

16 VICE CHAIRPERSON RENSHAW: So there are --

17 CHAIRPERSON GRIFFIS: There would have to be
18 stamped permit approved plans, and that would be the permit
19 posting, which I agree, I think Ms. Renshaw is picking up on the
20 fact that it reads just two story addition, and she's seeing that
21 there's actual deck involved. I think Mr. Bello's point is
22 clearly that the deck is part of the two-story addition, but for
23 clarification, the entire plans would have to be on site and
24 those that would be stamped approved for the permitting process.

25 VICE CHAIRPERSON RENSHAW: All right. I

1 understand. On the application, I refer you to line number 16
2 which says, "The proposed uses of the building or property."
3 First of all, in 13 it's the existing uses of the building or
4 property which says, "Single family semi-detached." Then under
5 proposed uses, the application says, "Single family semi-
6 detached."

7 MR. BELLO: Uh-huh.

8 VICE CHAIRPERSON RENSHAW: So what happened here?
9 It doesn't say row dwelling. It doesn't say conversion. This
10 addition converts the semi-detached to a row dwelling. It just
11 says, "Single family semi-detached."

12 MR. BELLO: Okay. I appreciate what you're
13 pointing out to me which may be, you know, minor oversights on
14 the application, but I doubt that they speak to what has been
15 approved in terms of the plans submitted. And then if -- to what
16 extent this is significant, they're issues that can be easily
17 administratively corrected.

18 VICE CHAIRPERSON RENSHAW: But you were looking at
19 this, and this is what is before you as the application, along
20 with the drawings, et cetera, and you see a discrepancy in the
21 application. And this is part of a public file, so isn't it
22 correct that you should have made sure that the application was
23 absolutely correct, so that there would be no misunderstandings
24 if and when any abutter to the property looked at the file, that
25 there would be no ambiguities that would set them off in a

1 direction of an appeal or some problem that they would present to
2 you, such as letters asking for work to be stopped, et cetera?

3 MR. BELLO: And I concede that there probably are
4 some technical minor errors in this application, but my point is
5 that the plans that were reflected on -- that were submitted for
6 review were probably more indicative of what was proposed, and
7 that was what was reviewed, not the specific minor technical
8 errors of the language of the application, which is not unusual
9 on the part of applicants in how they employ some of these
10 languages.

11 VICE CHAIRPERSON RENSHAW: Uh-huh. But you
12 reviewed this.

13 MR. BELLO: What we reviewed was the conversion to
14 a row structure. That's correct.

15 CHAIRPERSON GRIFFIS: Let me follow up on that
16 quickly.

17 VICE CHAIRPERSON RENSHAW: Go ahead.

18 CHAIRPERSON GRIFFIS: Mr. Bello, what you're saying
19 then is actually you look at this application, and would have
20 then had to make that determination that that's how this
21 application should be viewed. Meaning, you've looked at the
22 application. What the applicant is telling you is this is doing
23 away with the side yard of semi-detached, because they're
24 classifying it as a semi-detached. You would then take it upon
25 yourself to re-evaluate the application based on the further

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 drawings, and then do your analysis based on your re-evaluation
2 of it?

3 MR. BELLO: Well, my analysis would be based on the
4 consistency of the survey and the plans submitted. The questions
5 in those boxes pertain to 18 really speak to the existing use of
6 the building, not the type of building that's being constructed,
7 so ordinarily, an applicant is really not required to tell us
8 what type of building, whether it be row, or semi-detached, or
9 detached that they intend to construct and add on to. The plans
10 and the plats would adequately speak to that. What the
11 application asks for is the use of a building. It's a single
12 family.

13 CHAIRPERSON GRIFFIS: Right. Okay. And so your
14 point would be --

15 VICE CHAIRPERSON RENSHAW: Single family semi-
16 detached.

17 MR. BELLO: Semi-detached depicts a type of
18 structure.

19 VICE CHAIRPERSON RENSHAW: Uh-huh.

20 MR. BELLO: The question here asks for use.

21 CHAIRPERSON GRIFFIS: And so your point is that if
22 there's discrepancies, you -- the drawings prevail for your
23 analysis.

24 MR. BELLO: That's correct.

25 CHAIRPERSON GRIFFIS: Okay. Sorry, Ms. Renshaw.

1 You can continue.

2 VICE CHAIRPERSON RENSHAW: No, I think we've beaten
3 the horse at this point.

4 CHAIRPERSON GRIFFIS: Okay. Any other questions?

5 MEMBER LEVY: Mr. Chair.

6 CHAIRPERSON GRIFFIS: Yeah.

7 MEMBER LEVY: Mr. Bello, is it your testimony that
8 the building before the addition was semi-detached, and I believe
9 you also testified that Section 405.6 applied. My question is,
10 given that 405.6 directs us to look at 405.2, and that 405.2
11 requires a building in an R-4 District, excuse me, a one family
12 semi-detached dwelling in an R-4 District to be subject to the
13 side yard requirements in an R-2 District, which is a side yard
14 of eight feet, I believe.

15 MR. BELLO: Uh-huh.

16 MEMBER LEVY: How is it -- what did you use in
17 determining that it was proper to convert this to a row dwelling
18 and eliminate the existing side yard?

19 MR. BELLO: Well, I think the -- perhaps the more
20 instructive question would be when there's a specific provision
21 of the regulations that precludes your ability to convert from
22 one type of structure to another in a zone where those two types
23 of structures are allowed. The zoning regulations, as you all
24 know, are cumulative. A row dwelling is allowed in an R-3 Zone
25 as a matter of right, and that by -- and by inference, of course,

NEAL R. GROSS

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

1 because detached and semi-detached dwellings are the only type of
2 dwellings allowed in the R-1, R-2 Districts, that those type of
3 structures are also allowed in the R-4 District. So the section
4 speaks to the fact that in the event that you decide that you
5 want to construct a semi-detached structure, that you shall have
6 a side yard of no less than eight feet. There's nowhere in the
7 regulations where you're precluded from being able to convert to
8 the type of structure that is allowed by and wide under the Zone
9 District. And if you look at that in the context of what the
10 intention of the amendment was, or what the remedy the amendment
11 sought to eliminate, it certainly is not designed to required
12 that semi-detached structure remain solely in perpetuity.

13 MEMBER LEVY: What would you say then -- I mean,
14 you say there's nothing that precludes the conversion. What
15 would you say points to -- what permits the conversion that
16 overrules 405.6 and it's reference to 405.2?

17 MR. BELLO: The use provisions for the R-4 District
18 that allows a row dwelling. The definition of row dwelling in
19 the zoning regs, and the fact that if a row dwelling was indeed
20 required, or if the intent of the regulations were to indeed
21 require a row dwelling to have two common division walls, then it
22 would have been so defined.

23 MEMBER LEVY: Well, I'm not talking about 405.3,
24 but I guess what I would ask is, do you think that a more general
25 provision allowing row dwellings as a matter of right would

1 supersede a specific provision about side yards in 405.6, an
2 existing side yard that's being eliminated by conversion of a row
3 dwelling, or excuse me, to a row dwelling?

4 MR. BELLO: Well, I think the argument goes back to
5 again the fact that there's no side yard requirement here in this
6 Zone District as a general rule. The provisions of 405.3 speaks
7 to the type of structures that you may want to construct. The
8 non-existence of 405.3 again would allow the construction of
9 semi-detached structures within one foot of side property lot
10 lines, so I don't think the intent of the amendment was to hold
11 semi-detached structures in perpetuity.

12 MEMBER LEVY: Except that 405.6 doesn't reference
13 405.3. It only references 405.1 and 405.2. And 405.2 clearly
14 states that, "One family semi-detached dwellings shall be subject
15 to the side yard requirements of an R-2 District which is eight
16 feet", so I'm having trouble following the logic. I'm trying to,
17 but I'm having trouble getting there.

18 MR. BELLO: I think, you know, the -- I don't
19 believe that it would have been an omission on the part of the
20 Zoning Commission when this 405.3 was amended through text
21 amendment for the definition of a row dwelling to have not been
22 changed, or for some section to have expressly encapsulated the
23 intent of having semi-detached structures remain so in
24 perpetuity.

25 MEMBER LEVY: Okay. Thanks.

1 CHAIRPERSON GRIFFIS: That seems to be the crux of
2 an interpretation though.

3 MEMBER LEVY: That's correct.

4 CHAIRPERSON GRIFFIS: Because I don't -- I can see
5 how you could read, in fact, the Zoning Commission's text saying
6 that yes, existing single family semi-detached would remain in
7 perpetuity with a side yard as required in the R-2 District.

8 MR. BELLO: Well, if you look at the specific
9 language of that section, I think the section recognizes that
10 there would have been conditions where adjacent property had
11 buildings to within one foot of the side property lot line. But
12 that was a condition that would have pervaded prior to the
13 existence of this section. I think the emphasis is on what is
14 erected, so that this speaks to what comes after this section in
15 terms of new construction, and your ability to share one common
16 division wall, so I don't think that the intent would have been
17 to limit the property rights of an adjoining property owner based
18 on an existing condition that existed as a matter of right prior
19 to the amendment of this section. 1018 has not been erected.
20 It's been added on to.

21 CHAIRPERSON GRIFFIS: I see. And the applicant
22 words you're using are in 405.3. Okay. Mr. May.

23 COMMISSIONER MAY: Okay. I think I'm having the
24 same problem that we are with following this chain between the
25 various not quite conflicting, but not very clear regulations, so

1 I have to walk through this kind of slowly, but I'll try to go
2 quickly.

3 First of all, clarify for me in the definitions,
4 common division wall is the same as a party wall. Correct?

5 MR. BELLO: That's correct.

6 COMMISSIONER MAY: Okay. Lot line is the same as,
7 or lot line wall is the same as a face on line wall as you've
8 referred to it.

9 MR. BELLO: That is correct.

10 COMMISSIONER MAY: Right?

11 MR. BELLO: Yes.

12 COMMISSIONER MAY: What's the real difference
13 zoning wise? What's the substantive difference that would prompt
14 the Zoning Commission to write one word or one phrase rather than
15 the other?

16 MR. BELLO: Well, because I believe that the
17 substantive difference between a party wall is that a party wall
18 straddles property lot lines on either side, and that one could
19 not be erected without the acquiescence of an adjacent property
20 lot -- property owner. A face on line wall can without
21 acquiescence from an adjoining neighbor, so that if you look at
22 that in context, it cannot be the intent of the regulations that
23 the only condition that would allow the non-existence of a side
24 yard is party wall construction.

25 COMMISSIONER MAY: Uh-huh. So in other words, if

1 we broaden that a bit, when you look at the other regulations,
2 not the ones that deal specifically with party line versus lot
3 line, but when you look at the other regulations that are
4 affected by this, that there really isn't a difference between a
5 party line and a lot line, or party wall and a lot line wall.
6 And that effectively, if 1018 and the next property were both
7 face on line, that effectively they're the same thing, and that
8 the regulations should be applied the way you have applied them
9 anyway.

10 MR. BELLO: Effectively in the sense that no side
11 yard is provided.

12 COMMISSIONER MAY: Right.

13 MR. BELLO: Other than that, yes, you are correct.

14 COMMISSIONER MAY: Okay. Now let's go to 405.3 for
15 a second. There are obviously two ways to read this. One is
16 that it refers to a requirement that there be at least one common
17 division wall, which is the way you've interpreted it.

18 MR. BELLO: Yes, sir.

19 COMMISSIONER MAY: Versus the requirement in the
20 fact that there be two common division walls, which is the way
21 the Appellant is considering this.

22 MR. BELLO: Uh-huh.

23 COMMISSIONER MAY: If, in fact, we look at this
24 from the point of view -- well, just read it right from the
25 beginning. "When a one family dwelling flat, a multiple dwelling

1 is erected that does not share a common division wall with an
2 existing building, then it shall have a side yard on each
3 resulting free-standing side."

4 MR. BELLO: Uh-huh.

5 COMMISSIONER MAY: Okay. So we have a building
6 that has one common division wall. Right? It has resulting free
7 sides. That's the argument that the Appellant is making. Right?

8 MR. BELLO: Exactly.

9 COMMISSIONER MAY: Okay. If it did not have that
10 common division wall, and it says "common division wall", and not
11 lot line wall. If it has a common division wall, what you're
12 arguing is that it is effectively exempt from all of that.

13 MR. BELLO: What I'm arguing is that in the term
14 that is used here, a free-standing wall must set back from the
15 side property lot line or from the lot line. If a wall is face
16 on line, it is not necessarily free-standing because one can
17 surmise that in a zone that requires that a common division wall
18 or face on line wall be constructed, that if these series of
19 buildings were being erected at the same time, that it would
20 share that wall with a common division wall, because the adjacent
21 property would then be required to have one common division wall
22 also. So the free-standing, I don't think, speaks to the
23 necessity for attachment, as it does to whether or not you set
24 back from the side property lot line.

25 COMMISSIONER MAY: I'm not sure I would carry it

1 that far, because it seems to me there's a way to word this, that
2 if the Zoning Commission had to consider this specifically, that
3 rather than use the word "resulting", that they would have used
4 remaining or something else that refers to anything else that's
5 left over. But by saying that it's resulting, it implies that
6 you are dealing with situations where there is one common
7 division wall, but that on the sides where there is not a common
8 division wall, that there has to be a side yard. Is that -- I
9 mean, that -- does that make any sense to you?

10 MR. BELLO: Well, I mean, it makes sense in terms
11 of the common use of words, but if you look at it in the context
12 of these are the definitions and sections, and the subdivision
13 rules, it wouldn't make sense. In the sense that if the intent
14 were to require a side yard on a lot that abuts the rear in this
15 instance of the Pritchards, that the subdivision rules for a
16 vacant lot would require the subdivision of the lot to the size
17 of the semi-detached structure, and there's no such instruction.

18 COMMISSIONER MAY: So you're saying it's
19 inconsistent with rules regarding subdivisions.

20 MR. BELLO: It's inconsistent with rules regarding
21 subdivisions. It's inconsistent with the definition of a row
22 dwelling. It's inconsistent with the definition of a semi-
23 detached structure.

24 COMMISSIONER MAY: I don't see where the
25 inconsistency is with the definition of a row dwelling

1 necessarily.

2 MR. BELLO: Because the row dwelling definition is
3 that you have no side yard. It doesn't say that.

4 COMMISSIONER MAY: This doesn't preclude that.

5 MR. BELLO: Well, it doesn't --

6 COMMISSIONER MAY: Why would it -- it doesn't
7 preclude not having a side yard. I mean, having a -- you know,
8 there are going to be circumstances. The row can't go on
9 forever.

10 MR. BELLO: Uh-huh.

11 COMMISSIONER MAY: There's going to be an end to
12 it.

13 MR. BELLO: Right.

14 COMMISSIONER MAY: That seems to indicate that when
15 you have an end to it, you have to have a side yard.

16 MR. BELLO: Not necessarily. I mean, the end --
17 even if you look at the section that the previous, Mr. Schauer
18 pointed to, which is in the instance of a corner lot.

19 COMMISSIONER MAY: Uh-huh.

20 MR. BELLO: That is true across the board, even in
21 zone districts that require a side yard, so yeah, there is a
22 recognition that it would end at some point in time.

23 COMMISSIONER MAY: Uh-huh.

24 MR. BELLO: But I don't think that that recognition
25 hinges on the necessity for there to be a party wall, or the

1 requirement that there be a side yard. Again, the effect of that
2 is that you're going to automatically render hundreds and
3 hundreds of lot meet the minimum requirements for construction in
4 a zone district to be totally worthless. It would also change
5 the subdivision rules.

6 COMMISSIONER MAY: By effectively requiring on an
7 18 foot wide lot, which is otherwise the minimum, to have an
8 eight foot --

9 MR. BELLO: Exactly. It would require that I look
10 -- when somebody comes to me for a subdivision, it would require
11 that I look around the surrounding, ask the person whether or not
12 there's a rear property lot line to them, and then insist that
13 they must subdivide to the standards of a semi-detached
14 structure. And that would be clearly in excess of my authority.

15 COMMISSIONER MAY: Okay. I don't have any other
16 questions.

17 CHAIRPERSON GRIFFIS: Any other questions?

18 MEMBER LEVY: Mr. Chair, kind of a follow-up
19 question to that. Mr. Bello, does a row dwelling with no common
20 division walls have any free-standing walls? Does that -- do you
21 understand my question?

22 MR. BELLO: Well, prior to the existence of 405.3,
23 yes, that would have been possible. But the amendment here
24 requires that there at least be one common division wall in the
25 R-4, in these zones that allow row dwellings.

NEAL R. GROSS

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

1 MEMBER LEVY: You lost me on that. You're telling
2 me that 405.3 specifically refers to a row dwelling, or not? Did
3 I misunderstand?

4 MR. BELLO: Well, perhaps I misunderstood your
5 question.

6 MEMBER LEVY: I guess what I'm trying to -- if this
7 lot, this 1018 Constitution Avenue was abutted on both sides by
8 rear yards of adjacent properties, and it was a row dwelling, so
9 it's a row dwelling with no party walls, does it have -- are
10 those walls then free-standing?

11 MR. BELLO: Well, those walls would not be free-
12 standing because they'd be right on the property lot line.

13 MEMBER LEVY: Okay.

14 MR. BELLO: I recognize that your question is a
15 hypothetical one. There actually is no situation like that in
16 this --

17 MEMBER LEVY: Well, that's exactly what I was
18 getting at, so thanks.

19 COMMISSIONER MAY: Can I follow-up that one?

20 CHAIRPERSON GRIFFIS: Yeah.

21 COMMISSIONER MAY: What is the definition of free-
22 standing in the zoning regulations?

23 MR. BELLO: There isn't a specific definition of
24 free-standing.

25 COMMISSIONER MAY: Okay. What's Webster's

1 definition of it? Does anybody know?

2 MR. BELLO: Well, I surmise that you're not going
3 to find that definition.

4 CHAIRPERSON GRIFFIS: One that stands freely.

5 COMMISSIONER MAY: I would guess that it's
6 something more common sense than zoning, and when we don't have a
7 definition that's in the regs, we have to go to the dictionary.

8 CHAIRPERSON GRIFFIS: Indeed.

9 COMMISSIONER MAY: So we have -- well, we will look
10 at it.

11 MR. BELLO: Well, if I may add to that, I -- well,
12 I don't know how you'll be able to look at the Webster's
13 Dictionary and make sense of that, because you'd have to be
14 looking under free and standing. I don't know that it would be
15 used in the context of construction. If you look at those two
16 words separately, then you get separate meanings from them.

17 COMMISSIONER MAY: Yeah, you may be right. There
18 may not be a word "free-standing", but we'll see.

19 CHAIRPERSON GRIFFIS: Okay. Anything else for Mr.
20 Bello at this time?

21 VICE CHAIRPERSON RENSHAW: Mr. Bello, another
22 question for you. When you reviewed the plans, did you review
23 just one set of plans, or did you review plans and then later an
24 amended set of plans? And if you had an amended set of plans,
25 what was the difference between the first set and the second or

1 third set?

2 MR. BELLO: I have no recollection, but it is not
3 unusual in the course of a review of an application for plans to
4 undergo changes or amendments, depending on what comments from
5 wherever, from whichever discipline, so I can't answer that
6 question definitively. I have no recollection.

7 VICE CHAIRPERSON RENSHAW: You said that you
8 reviewed the plans as a conversion to a row structure, even
9 though it said the proposed uses of the building single family
10 semi-detached, and the Chair asked you if you took it upon
11 yourself to re-evaluate. The basis of my question is if there
12 was a change in the plans concerning the width of the property,
13 in other words, that the addition would become converted to a row
14 dwelling, was it based on your pointing out to the Applicant that
15 they could -- you re-evaluated and you said you could bring this
16 over to the property line because it's all right to become a row
17 dwelling, rather than stay as a semi-detached?

18 MR. BELLO: Well, that's conceivable. Again, as I
19 testified earlier, the proposal here was brought to my attention
20 I believe even before an application was filed, so that I looked
21 out for it, and specifically oversaw the review of the
22 application.

23 VICE CHAIRPERSON RENSHAW: Then did you recommend
24 to the Applicant that the -- not the Appellant but the Applicant,
25 that they extend the size of the addition to go from side yard to

1 side yard, from one -- the party wall over to the fence, to the
2 lot line?

3 MR. BELLO: In the normal course of what I do, I
4 provide pertinent information in detail to applicants as to what
5 the limits of their rights are, what they can or cannot do, so it
6 may not be inconceivable, but I have no recollection of it
7 specifically.

8 VICE CHAIRPERSON RENSHAW: But it is conceivable
9 that you did that.

10 MR. BELLO: It's not inconceivable.

11 VICE CHAIRPERSON RENSHAW: Okay. Thank you.

12 CHAIRPERSON GRIFFIS: Any other questions? Very
13 well. Mr. Cooper, do you have cross examination of Mr. Bello?

14 MR. COOPER: Mr. Bello, do you have any
15 recollection of suggesting to this Applicant that they make such
16 an amendment as the Board Member Renshaw just alluded? Do you
17 recall making any such recommendation to this Applicant?

18 MR. BELLO: I don't recall specifically. However,
19 you must recognize how the Zoning Office works. And, of course,
20 given each individual reviewer's experience, the information may
21 be given to an Applicant that they may question, and if those
22 questions arise, those questions are brought to me, so it is not
23 inconceivable that I may have told them what they could do as a
24 matter of right. But as far as recommending, I don't recommend
25 proposals to Applicants.

1 MR. COOPER: Thank you. No further questions.

2 CHAIRPERSON GRIFFIS: Redirect, Ms. Brown?

3 MS. BROWN: I just have one quick question, with
4 the hopes of clarifying Mr. May's concern. Mr. Bello, if you
5 have a house that is constructed on a lot which has one lot line
6 wall, and on the opposite side you have a 10 foot yard, is that a
7 semi-detached property, or is that a detached property?

8 MR. BELLO: With one side yard wall?

9 MS. BROWN: One wall is flush to the lot line.

10 MR. BELLO: Face on line.

11 MS. BROWN: Face on line. The other wall -- the
12 other side of the building has a 10 foot side yard. Is that
13 detached or semi-detached?

14 MR. BELLO: I think that would be consistent with a
15 semi-detached definition.

16 MS. BROWN: Okay. And if you drag that wall 10
17 feet over, and you have two walls on the lot line face on, what
18 do you have, a row dwelling, or a semi-detached?

19 MR. BELLO: You would have a row dwelling,
20 consistent with the definition.

21 MS. BROWN: I have nothing further.

22 CHAIRPERSON GRIFFIS: Okay. Let's take a quick
23 assessment of time. We are at 4:15. We want to wrap this up for
24 today to move on to other business by, I think we probably need
25 to make it by 4:30, 4:45 at the latest. That gives us 15 minutes

1 to half an hour. Mr. Cooper, are you calling witnesses today?

2 How many witnesses are you calling?

3 MR. COOPER: Three. Two, possibly three. For
4 sure, two.

5 CHAIRPERSON GRIFFIS: Okay. And how much -- are
6 you putting on -- are you giving testimony statements to begin
7 with, and then calling witnesses, or are you just calling
8 witnesses?

9 MR. COOPER: I have a statement from one, and --

10 CHAIRPERSON GRIFFIS: How much time do you think
11 you need?

12 MR. COOPER: I could try to do it --

13 CHAIRPERSON GRIFFIS: I'm not going to try to push
14 you into being short in time. I just need to assess it for what
15 we have today.

16 MR. COOPER: Well, if you're saying we need to be
17 done by 4:30, I don't think it could be done. What I -- what we
18 could -- I'd rather -- I hate to start and then be in the middle
19 of my part of this case, and everyone try to remember what was
20 asked, and then do cross examination. I would -- unfortunately,
21 one of my three witnesses is going to be out of the country at
22 whatever time we postpone this meeting to, and I would rather, at
23 this stage --

24 CHAIRPERSON GRIFFIS: It's a heck of a long trip.

25 MR. COOPER: Well, he's going to be out of the

1 country for quite some time.

2 CHAIRPERSON GRIFFIS: No, I understand that.

3 MR. COOPER: So I would rather just wait and put on

4 --

5 CHAIRPERSON GRIFFIS: Okay. I get that. Ms.
6 Pritchard, how much -- what's your availability for the rest of
7 today?

8 MS. PRITCHARD: I can go until 5.

9 CHAIRPERSON GRIFFIS: Until 5, so that gives us 45
10 minutes. Is it conceivable you can do what you need to do
11 without -- well, in terms of putting together your statement and
12 case, and witnesses in 45 minutes?

13 MR. COOPER: I could definitely try. And I don't
14 know -- you know, if -- I could try. I mean, or we could just
15 wait and --

16 CHAIRPERSON GRIFFIS: That seems to be --

17 MR. COOPER: -- just do it another time.

18 CHAIRPERSON GRIFFIS: Forty-five minutes is --

19 MR. COOPER: Well, with cross examination --

20 CHAIRPERSON GRIFFIS: No, and I understand that.
21 Cross examination is something different. But let us do that,
22 let's proceed, and let's try and keep things rolling so that we
23 can fit this in, so that we don't, frankly, have to call everyone
24 back at another time, and have a third or fourth day, whichever
25 how many days we've been doing this one. But that -- and I'm

NEAL R. GROSS

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

1 very serious about this. Anyone that needs time, or more time,
2 as long as it's relevant and goes to this case, we will certainly
3 provide it. So that being said, Mr. Cooper.

4 MR. COOPER: Yes. I'll just be as brief as I can.

5
6 CHAIRPERSON GRIFFIS: All right. While we have a
7 little changing of the guard here, we have been handed up here on
8 the dias, the Board is now in possession of a definition of free-
9 standing, which is an adjective, "standing alone and on its own
10 foundation, free of architectural or support frame, or
11 attachment." So we'll actually make this part of the case as
12 we've been handed it. It'll be Exhibit Number 29, and we'll get
13 copies around if it isn't already distributed. And don't wait
14 for me, whenever you're ready.

15 MR. COOPER: Mr. Chairman, Robert Cooper from the
16 law firm of Jackson and Campbell, on behalf of the Building
17 Permit Applicants. I have seated with me one of the owners of
18 that property. She has a statement that's been prepared. I want
19 to make sure everyone has a copy of her statement, and I guess we
20 could --

21 CHAIRPERSON GRIFFIS: Was that a previously
22 submitted statement?

23 MR. COOPER: No, it was not. I could have her just
24 read the statement, and then -- or she can summarize it, and we
25 can just deal with it that way.

1 CHAIRPERSON GRIFFIS: Do we have copies of it?

2 MR. COOPER: I believe copies have --

3 CHAIRPERSON GRIFFIS: Okay. They went up to Staff?

4 Okay. When you guys are ready, you can proceed, just so as you
5 don't think you're waiting on me. And we are making copies of
6 that, so the Board will get copies of that. I would suggest if
7 you feel comfortable summarizing, that's fine. The Board does
8 read absolutely everything that we do get, and we can read it
9 along as you're summarizing.

10 MR. COOPER: Okay. Please state your name for the
11 record.

12 MS. PEOPLES: My name is Kathleen Peoples, and I
13 reside at 1018 Constitution Avenue, N.E.

14 MR. COOPER: And you are -- are you the owner of
15 the property at 1018 Constitution Avenue?

16 MS. PEOPLES: Yes, along with my husband, Philip
17 Sedlack.

18 MR. COOPER: Okay. And you have a statement
19 prepared. Can you summarize for the Board the contents of your
20 statement?

21 MS. PEOPLES: In summary, we submitted our request
22 for a permit through Wentworth Levine, who had also asked for
23 approvals from the Capitol Hill Restoration Society, from the
24 D.C. Historical Preservation Office. They requested some
25 changes, and the plans were approved. The Building Permit was

1 granted on the 5th of July, 2001.

2 Wentworth Levine advised me to tell Mrs. Pritchard
3 that we had, in fact, received a Building Permit and to discuss
4 with her the parameters of the project. Notably, we wanted to
5 talk with her about the parging (phonetic), or finishing of the
6 wall that would face her property.

7 In that conversation, I explained what parging was,
8 and said that we would, in fact, have to have access to her
9 property in order to finish the job. She said she understood
10 this, and that she knew it would be in her interest to do so, but
11 she was determined to have the project stopped. The wall to
12 which she referred to earlier today that she says is a concrete
13 block, and unfinished, and which you may see in your photos as
14 unsightly has to do with the fact that we were unable to complete
15 or begin the parging.

16 After the permit was granted on the 5th of August,
17 building began. She called me at work saying that I should come
18 home to prevent the beginning of the project because I would end
19 up with just a big hole in my yard in the end of it. I explained
20 that I couldn't speak with her at that time. The building did
21 begin, and on the 7th, we received a copy of a letter she
22 submitted asking for a work order.

23 We received a response on that letter, which was
24 given to her, but copied to us, from the Zoning Commission saying
25 that there was no basis on which to grant a Stop Work Order.

1 Subsequent to this, I received calls at work. Mrs. Pritchard was
2 very angry, and called the removal of the retaining wall, which
3 she had no way to know was on our property because she refused to
4 meet with us about the survey, she called this vandalism.

5 She also mentioned that someone on the Restoration
6 Society was upset about the building process, and they did not
7 believe that the project should go forward. Nevertheless, I had
8 been informed by Wentworth Levine that the Capitol Hill
9 Restoration Society had, in fact, delayed their approval two
10 weeks in order that all members who sat on that board could see
11 the permit, the request rather, and that -- not the permit. They
12 were not granting permit, but could see the plans, and we waited
13 the two weeks, or at least Wentworth Levine did, so that if the
14 person is now saying that the plans are not in order, they either
15 did not review the plans as requested, or reviewed them and now
16 have changed their mind. That's my contention.

17 CHAIRPERSON GRIFFIS: I'm a little confused.

18 MS. PEOPLES: Yes.

19 CHAIRPERSON GRIFFIS: What plans are you talking
20 about that were --

21 MS. PEOPLES: We're talking about the Capitol Hill
22 Restoration Society --

23 CHAIRPERSON GRIFFIS: Yeah.

24 MS. PEOPLES: -- to whom Wentworth Levine submitted
25 the plans --

1 CHAIRPERSON GRIFFIS: Right.

2 MS. PEOPLES: -- for building. Those plans were
3 approved.

4 CHAIRPERSON GRIFFIS: I see. So you --

5 MS. PEOPLES: I believe that Mr. Schauer, I'm not
6 sure what --

7 CHAIRPERSON GRIFFIS: Right. So you're referring
8 to the witness that --

9 MS. PEOPLES: Yes.

10 CHAIRPERSON GRIFFIS: -- was here today.

11 MS. PEOPLES: Right.

12 CHAIRPERSON GRIFFIS: That there is confusion there
13 in terms of plans.

14 MS. PEOPLES: Right.

15 CHAIRPERSON GRIFFIS: And can you state the
16 outcome, the official outcome of the Restoration Society?

17 MS. PEOPLES: The plans were approved.

18 CHAIRPERSON GRIFFIS: Do we -- we don't have any
19 sort of documentation of that in the record. Is that correct?

20 MS. PEOPLES: I believe I gave that to -- at least
21 I gave the list of things of the changes they requested to Mr.
22 Cooper, and they should be, if not on file, readily available.

23 CHAIRPERSON GRIFFIS: Okay. Not a problem. And
24 just for clarification, and I'll try not to interrupt you again.

25 The witness was called today as the Chair of the Zoning

1 Committee of the Restoration Society.

2 MS. PEOPLES: Okay.

3 CHAIRPERSON GRIFFIS: All right. So please
4 proceed.

5 MS. PEOPLES: All right. In addition, a Mrs.
6 Goddis (phonetic), I'm not sure of the spelling of the name
7 which is reflected in the statement, had taken an interest in
8 this case, and also was concerned about the construction.
9 Someone who answers her description, as we later discovered by
10 speaking with the workmen, stood in the alley and made remarks to
11 the workmen about the project, and perhaps they themselves being
12 illegal. At that time, we thought that was Mrs. Pritchard.
13 Conversations with the workmen and Mrs. Pritchard also called and
14 said that she felt that was incorrect, and that it had not been
15 she. My husband spoke with the workmen and they described a
16 person who answers the description of Mrs. Goddis.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. PEOPLES: Subsequent to that, we received a
19 call saying that we should appear at an ANC meeting. We received
20 one day's notice. We were there for -- should I stop here?

21 CHAIRPERSON GRIFFIS: Yeah. Actually, let me
22 interrupt you.

23 MS. PEOPLES: Sure.

24 CHAIRPERSON GRIFFIS: Because basic -- and I do
25 appreciate you bringing us to light on all this.

1 MS. PEOPLES: Uh-huh.

2 CHAIRPERSON GRIFFIS: But really, a lot of what
3 you're telling us goes much more towards a special exception or a
4 variance case. At this point, we're in an appeal.

5 MS. PEOPLES: Okay.

6 CHAIRPERSON GRIFFIS: And an appeal is a very
7 specific thing, and that is, we're looking at the exact decision
8 that the Zoning Administrator made.

9 MS. PEOPLES: Okay.

10 CHAIRPERSON GRIFFIS: So in many respects, we all,
11 and this Board Member, and this Board likes to have context with
12 a lot of things. But in many respects, I don't think I'm
13 incorrect in saying it doesn't matter what happened, because what
14 the Zoning Administrator has indicated in his ruling, that this
15 is a matter of right, and therefore --

16 MS. PEOPLES: Uh-huh.

17 CHAIRPERSON GRIFFIS: -- not before us for relief
18 or approval, which would go to testimony of whether there was ANC
19 approval, or Restoration Society approval, or anything of that
20 nature. And even more importantly and specifically, the last
21 thing I'm going to say, we would never get into hearsay about
22 whether neighbors were talking to workers, or comments.

23 MS. PEOPLES: Okay.

24 CHAIRPERSON GRIFFIS: That's the worst thing we
25 like to hear that happens. We know it does, but we certainly

1 can't do anything about it if and when it does.

2 MS. PEOPLES: Okay. So -- go ahead.

3 MR. COOPER: If I may, the reason that these
4 comments are being made now is that there were comments, similar
5 comments made in the written statements that were presented in
6 this case --

7 CHAIRPERSON GRIFFIS: Uh-huh.

8 MR. COOPER: -- by the Appellant. And this is but
9 one of the -- this is probably the only opportunity to respond to
10 those statements concerning time lines, who came where, who did
11 what, so without an opportunity to really -- you know, the
12 Appellant here, you know, submits those documents. You know, we
13 got them today, submits something called a time line, which goes,
14 you know, on a day to day, who did what, what happened here and
15 there, and this is our opportunity to respond. Now I can either
16 move to strike that time line, and strike certain statements made
17 in there. I'd have to go through that document line for line,
18 and wish to -- I don't want to do that, so I will agree with you,
19 Mr. Chairman, that you know, perhaps her oral comments today may
20 not need to address that. Her written statement does respond to
21 that, and you know, perhaps we can move on to something --

22 CHAIRPERSON GRIFFIS: I know, and I appreciate you
23 bringing that up. And often times in appeals, it is appropriate
24 and this Board finds it very helpful to have time lines because
25 it does go to, for instance, the process and the timeliness of

1 the appeal itself.

2 MR. COOPER: That we're not contesting.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. COOPER: I don't think anyone here is
5 contesting that specific.

6 CHAIRPERSON GRIFFIS: Okay. And that would frankly
7 be the only information that would be deliberated on for this
8 Board, is just the timeliness of the appeal, but I appreciate
9 that. I think it would be more expeditious and probably more
10 substantive that you review the time line that is submitted. It
11 is not that large. If there are points which you want stricken,
12 then I would make motions to that. You could do that in writing,
13 or you can, frankly, address them in writing, if you feel there's
14 need, knowing full well we're looking at time lines on the basis
15 of appeal.

16 (Off the record)

17 MS. PEOPLES: Okay. Sorry. I've been instructed
18 more clearly about what I should be talking about, so I
19 appreciate your indulgence.

20 CHAIRPERSON GRIFFIS: Sure.

21 MS. PEOPLES: I just wanted to say then in summary,
22 because you will have my statement, and you'll be able to read it
23 as background, that the deck was part of the plans that were
24 submitted originally to all parties, including the Historical
25 Preservation Society, and the Capitol Hill Restoration Society.

1 CHAIRPERSON GRIFFIS: For permitting.

2 MS. PEOPLES: Say that again?

3 CHAIRPERSON GRIFFIS: They were permit documents.

4 MS. PEOPLES: Yes, they were -- the plans have been
5 the plans, and they have not changed. And that the width of the
6 property, I mean, the width of the proposed addition has been
7 constant, as well. So that the concerns that were raised earlier
8 about the nature of the plans submitted, at least from Wentworth
9 Levine and from our understanding of the plans, they have been
10 consistent and have not changed.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. PEOPLES: Except for changes that were
13 recommended to us by the Historical Preservation Society and the
14 Capitol Hill Restoration Society. For example, there was some
15 trim on the windows that they wanted to see changed, and there
16 were changes in the mortar style, something like that, that they
17 wanted for historical consistency with the neighborhood.

18 CHAIRPERSON GRIFFIS: Okay. So this has HPRB
19 approval, and those changes were made as this was going through
20 the permitting process.

21 MS. PEOPLES: That's correct.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. COOPER: Your indulgence.

24 CHAIRPERSON GRIFFIS: Uh-huh.

25 (Off the record)

1 MS. PEOPLES: I wanted to say also, having to do
2 with issues related to the deck, the deck does not look onto her
3 property. Both decks have a shielding wall that -- she talked
4 about there being a four foot rise above the level of the deck
5 that faces the front of the property. That does shield -- I
6 mean, I suppose it's possible for a person to stand on the deck
7 and look across to her property, but the use of the deck would
8 not indicate that we would be looking in that direction. It
9 faces, in fact, to the front of the property, and would not --
10 and in fact, that side wall is to ensure privacy, rather than to
11 abridge her privacy.

12 Further, the -- okay. And I did mention again,
13 that the discussion about parging or finishing her wall was made
14 before the building began, and she declined to meet with us. And
15 as -- and we were unable then to speak with her further because
16 of the progress of this appeal about access to her property,
17 although I did inform her that that would be necessary in order
18 to finish the wall to an appropriate aesthetic.

19 The neighboring wall, I mean, the people on the
20 other side of us have a wall as well that has been affected by
21 the addition, and their wall and the finishing of it is of a much
22 higher quality than what you will see in the pictures.

23 CHAIRPERSON GRIFFIS: Anything else?

24 MR. COOPER: And abbreviated process now. That's
25 it for this witness.

1 CHAIRPERSON GRIFFIS: Okay. Well, cross
2 examination?

3 MS. PRITCHARD: No.

4 CHAIRPERSON GRIFFIS: Nothing? Okay. Let me just
5 say thank you very much, and we do have your written -- and let
6 me also say no matter what, and I'm stepping aside a little bit
7 from this case, but this Board is, first of all, all are District
8 residents, and are very aware of what it means to have neighbors,
9 and close neighbors. And so no matter what happens in this case,
10 obviously we have our responsibility to look at this in a very
11 judicial way, and we have certain instructions that we'll have to
12 follow. But I certainly hope in the long run that no matter what
13 happens, that reconciliation can come between the neighbors, all
14 of which, and certainly the neighbors that are here today because
15 you folks are going to live next to each other no matter what
16 happens, and that's reality. So that being said, that's our 4:30
17 little break and recess. We don't get to get up and do anything
18 else. You get to hear me talk. The next witness.

19 MR. COOPER: Yes. Please state your name and
20 address for the record.

21 MR. WENTWORTH: My name is Bruce Wentworth. I live
22 at 2705 34th Place, N.W.

23 MR. COOPER: And where are you employed?

24 MR. WENTWORTH: I am a Vice President at Wentworth
25 Levine, Architect-Builder, Incorporated. And we are the

1 architects and builders for the project.

2 MR. COOPER: And have you been involved with this
3 project from its beginning?

4 MR. WENTWORTH: Yes.

5 MR. COOPER: Okay. There was -- you heard the
6 testimony today, and the questions on cross examination, did you
7 not?

8 MR. WENTWORTH: Yes.

9 MR. COOPER: There were some questions about
10 amendments or changes to the drawings. After the permit -- after
11 the set of drawings were submitted for permit review, were they
12 changed as a result of your conversations with the Office of
13 Zoning, or the Zoning Administrator?

14 MR. WENTWORTH: No.

15 MR. COOPER: Did the plans that were -- were the
16 plans that were submitted to -- for the District of Columbia, the
17 DCRA, for permit issuance, did they originally envision the
18 design as finally approved, where the building was being
19 constructed, the addition was being constructed from lot line to
20 lot line?

21 MR. WENTWORTH: Yes.

22 MR. COOPER: Okay. So that was not changed.

23 MR. WENTWORTH: No, it was not changed.

24 MR. COOPER: There was testimony earlier today
25 about the height of, I presume, a parapet wall, or sort of an

1 addition onto the roof extending vertically. The statement to
2 the Board was that that was approximately, or perhaps
3 approximately four or five feet high, or above the roof line.
4 Can you shed some light on that as the architect for this
5 project?

6 MR. WENTWORTH: There's a very small parapet above
7 the roof, because the roof slopes. And I believe it's between 12
8 and 18 inches for the parapet.

9 MR. COOPER: Okay. So the overall height visually
10 of this structure, this addition, is it substantially taller than
11 the other properties that are in its immediate vicinity?

12 MR. WENTWORTH: No, it's a normal two-story
13 addition.

14 MR. COOPER: Okay. You heard testimony today as
15 well about the location of this structure in relation to the rear
16 wall of the Appellant's property. Your testimony today, and I
17 believe there's a document in the file that identifies it as
18 being 13 feet from the addition to the rear of the Pritchard
19 property. Have you -- you've been to this property, have you
20 not?

21 MR. WENTWORTH: Yes. I've not been on the
22 property. I've looked at the Appellant's property, but I couldn't
23 speak to the precise measurements of her back yard. I do believe
24 it's more than 13 feet.

25 MR. COOPER: Okay. Have you had anyone go out and

1 measure, give you any formal measurements?

2 MR. WENTWORTH: No.

3 MR. COOPER: Can you -- well, you said you believe
4 it's more than 13 feet. Have you looked at what 13 feet actually
5 is, and have you reconciled that in your mind as to whether or
6 not this is --

7 CHAIRPERSON GRIFFIS: Are you asking that of a man
8 who's carrying a tape measure?

9 MR. COOPER: And with the expertise in the field of
10 architecture.

11 CHAIRPERSON GRIFFIS: Okay. I just wanted to be
12 clear.

13 MR. COOPER: Yes.

14 CHAIRPERSON GRIFFIS: You can estimate 13 feet.
15 Correct? You don't need to do it for us.

16 MR. WENTWORTH: Yes. It's definitely more than 13
17 feet.

18 CHAIRPERSON GRIFFIS: So it's your estimation that
19 it's more than 13 feet. Okay. But we don't have any
20 documentation on that.

21 MR. COOPER: No.

22 MR. WENTWORTH: No.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. COOPER: Let's see. One more question. Oh,
25 there's a discussion about the deck. And is this a deck that

1 extends out beyond the walls of the construction, or is it more
2 or less of a balcony with walls surrounding the deck?

3 MR. WENTWORTH: It's more of a balcony. There's a
4 balcony on the rear, which is the north side, which triangular
5 and it's embraced by the building. And there is a small balcony
6 on the front, which is shielded by a firewall on the east.

7 MR. COOPER: So from the -- if you're standing on
8 the balcony and you turn east, can you immediately see the
9 property adjacent, or the Pritchard, or is there a wall in
10 between --

11 MR. WENTWORTH: You could see the top portion of
12 the Pritchard property if you looked that way.

13 MR. COOPER: How high is that shielded --

14 MR. WENTWORTH: I believe on the south balcony, I
15 believe it's four feet tall.

16 MR. COOPER: Your indulgence.

17 CHAIRPERSON GRIFFIS: Well, I'll occupy the time
18 while he does that. What's the height of the addition?

19 MR. WENTWORTH: I believe it's about between 18 and
20 20 feet. I'm not certain.

21 CHAIRPERSON GRIFFIS: Do yo know approximately what
22 the height of the top of the second floor level is?

23 MR. WENTWORTH: Not precisely.

24 CHAIRPERSON GRIFFIS: Okay. But we're probably
25 talking, if it's 18 to 20, it's probably within the range of nine

1 to ten feet.

2 MR. WENTWORTH: Ask me the question again.

3 CHAIRPERSON GRIFFIS: What is the height above
4 ground of the second floor? Actually, where I'm going is, the
5 two decks which you're calling decks or balconies --

6 MR. WENTWORTH: Off the ground.

7 CHAIRPERSON GRIFFIS: Right, off the second floor,
8 so they're about 10 feet. I'm not sure I followed what that --
9 the other balcony on the east or north, not having plans to know
10 which direction is which, but I'm not sure we need clarification
11 on that right now. And Mr. Cooper is back.

12 MR. COOPER: No further questions.

13 CHAIRPERSON GRIFFIS: Good. Okay. Well, I'll
14 continue. There's two then, two decks that we're talking about.
15 One that faces what you said front, which would be on the south.
16 Now this is -- all right. Let's get some orientation, because
17 we don't have documentation to orient us in terms of direction,
18 and I appreciate that you understand it. But Ms. Pritchard is on
19 the south side, which direction --

20 MR. WENTWORTH: East.

21 CHAIRPERSON GRIFFIS: East. Okay. Well, I had to
22 pick one to establish where we were. Okay. So if they're on the
23 east, then the decks are on the north and the south sides?

24 MR. WENTWORTH: Yes.

25 CHAIRPERSON GRIFFIS: Okay. And the small one, I'm

1 not sure if you've seen this documentation, but okay. So this
2 small one, which you say is more of a balcony.

3 MR. WENTWORTH: Is a triangular one here. I'm
4 sorry?

5 CHAIRPERSON GRIFFIS: Is on the north side, the
6 small balcony.

7 MR. WENTWORTH: The small balcony is on the south
8 side facing Constitution.

9 CHAIRPERSON GRIFFIS: Okay. Oh, and I see. And
10 then there's a small setback of the addition that there's
11 possibly another balcony there.

12 MR. WENTWORTH: Yes.

13 CHAIRPERSON GRIFFIS: Which is what would, in fact,
14 be obstructing the view into the other -- however, from that you
15 could -- conceivably you're looking at the other adjacent rear
16 yards.

17 MR. WENTWORTH: Yes.

18 CHAIRPERSON GRIFFIS: Okay. Any other questions?

19 COMMISSIONER MAY: Are we doing all of our
20 questions now or --

21 CHAIRPERSON GRIFFIS: Oh, I'm sorry. Ms.
22 Pritchard, do you have cross examination? Okay. Yeah, we're
23 doing them in the barrage.

24 COMMISSIONER MAY: All right. I have a couple of
25 questions. Mr. Wentworth, you -- I know you do a lot of work in

1 D.C. and Capitol Hill in particular. I've seen your signs
2 around, so I assume you've had a number of experiences building
3 additions probably not unlike this. Have you had other cases
4 where you've had to file for a special exception for whatever
5 reason?

6 MR. WENTWORTH: I have done projects where I've
7 needed zoning variances, but I've --

8 COMMISSIONER MAY: Variances, right.

9 MR. WENTWORTH: -- not -- this project, in my
10 opinion, was a matter of right from what I know.

11 COMMISSIONER MAY: Okay. That's my next question.

12 In this particular case, did you look at the issue of the side
13 yard, and did you specifically look at Section 405 and those
14 requirements?

15 MR. WENTWORTH: We discussed it in the office, but
16 we --

17 COMMISSIONER MAY: And you considered --

18 MR. WENTWORTH: -- felt that it didn't apply.

19 COMMISSIONER MAY: Okay. The Zoning Administrator
20 referred to precedents in similar cases like this where an
21 addition into a side yard, or what was a side yard, was
22 considered matter of right. Have you, yourself, designed or
23 built anything like that in the city?

24 MR. WENTWORTH: Yes.

25 COMMISSIONER MAY: So you've gone through this

1 before, and built them as a matter of right.

2 MR. WENTWORTH: Yes.

3 COMMISSIONER MAY: Okay. Thanks.

4 CHAIRPERSON GRIFFIS: Any other questions? Okay.

5 I think we're finished with questions. Thank you very much.

6 MR. COOPER: I think we're finished with our case.

7 I'm not going to -- I don't think we need to call another
8 witness. I think there will be some duplicitous statements, so
9 we'll just rest on the two witnesses that we've presented.

10 CHAIRPERSON GRIFFIS: Are you sure?

11 MR. COOPER: Yes.

12 CHAIRPERSON GRIFFIS: Okay. In which case, let's
13 move on to the ANC, and assuming -- and my understanding, there's
14 no one here representing the ANC today as a party. Is that
15 correct? Is the ANC here? That's an easier question to answer.

16 MS. PRITCHARD: There is a letter --

17 CHAIRPERSON GRIFFIS: Indeed, and that's what I'm
18 going to now, that we do have the ANC-6A which supports the
19 subject appeal. It is dated January 7th, 2002. Right. I won't
20 go through all the rest of it, but it is signed by the Chair of
21 the ANC-6A. And then indeed, this -- okay. The note passed to
22 me just supports the letter that we have. Okay.

23 We have -- we're at 4:45 right now. Ms. Pritchard,
24 do you have any rebuttal testimony that you wanted to --

25 MS. PRITCHARD: Just very briefly.

1 CHAIRPERSON GRIFFIS: Okay. Why don't you come up.

2 MS. PRITCHARD: First, just briefly with regard to
3 the statement of the issues focused on by the permit applicant's.

4 I intended to respond to things made in Ms. People's statement,
5 but as I don't see them as being really relevant to the legal
6 questions before the BZA, I won't do so, except to say that what
7 she seems to characterize as ongoing harassment of her in the
8 construction of the property, I saw as, you know, appropriate for
9 me to make clear to them prior to construction, then when they
10 started digging, and then at each point that I had a written
11 submission to decision makers in the Zoning Division, this Board,
12 et cetera, to notify them that we were protesting it, that we
13 intended to take it to the BZA, so they could take into
14 consideration in their own decisions as to whether to proceed
15 with building, and that they were familiar also with the
16 arguments that we were making to the city, and that as well, we
17 copied them with this information.

18 Primarily, I would like to address, of course, the
19 Zoning Administrator's comments on his interpretation of the
20 relevant regulations here. Frankly, his interpretation baffles
21 me in that it doesn't comport at all with the plain language of
22 the regulation. He asserts instead that 405.3 is primarily
23 concerned with setback requirements, I guess, so that there
24 wouldn't be someone seen qualifying as a semi-detached dwelling
25 that could be one or two feet away, as opposed to eight feet away

1 from neighboring structures. I would point out that there are
2 other regulations that already take care of this concern;
3 namely, the setback regulations referred to at one point by
4 Member Levy in his comments, that 405.2 already says a semi-
5 detached needs to be set back by eight feet. So under the
6 Administrator's interpretation, this would seem to be
7 duplicative, the interpretation that he ascribes to 405.3.

8 And I'm baffled that he does not seem to offer any
9 real -- ascribe any meaning to the actual language that's in the
10 reg which, of course, talks about those circumstances where
11 there's no common division wall, and requires a side yard.
12 Instead he says, well, but there's no side yard requirements
13 because there is a right to build a row dwelling as a matter of
14 right. But I would point out to you that, in fact, there is a
15 whole chapter of the regulations that talk about side yards,
16 Section 405. Some of those sections, including the sections that
17 I've discussed with you today, are applicable in R-4 Districts.
18 And I would just remind the Board of the general rule of
19 statutory interpretation as I know it, is that any sort of
20 general rule, such as a general right to a row dwelling, is
21 superseded by any specific instructions that might place
22 conditions upon such a right. And I would propose that the side
23 yard requirements in Section 405, including 405.3, 405.2, 405.6,
24 all applicable here, do in fact supersede that general right, and
25 they're specifically addressing circumstances where, in fact,

NEAL R. GROSS

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

1 side yards are required even in an R-4 District, as the regs make
2 very clear.

3 And I would further point out that not only does
4 the Administrator's interpretation not comport with the language
5 of the specific reg at issue, or the regs as a whole, but he
6 fails to provide any other justification or background sort of
7 information about the Commission's deliberations, et cetera, that
8 might give some weight to his interpretation, that otherwise
9 appears to be at odds with the language of the reg itself.

10 I'd also like to speak briefly regarding precedents
11 in this case. First, I would like to point out that there's been
12 no specific example provided or described in the record or before
13 the Board here today that shows any analogous case that's been
14 treated in a similar fashion to the circumstances at issue here.

15 Mr. Bello did state in his testimony that he
16 offered some examples to my husband and myself in phone
17 conversations. I will report to you that the example he provided
18 was a block of new construction of new row houses being built one
19 against the other on the 1800 Block of Constitution Avenue. It's
20 not at all analogous to the situation in that there's no side
21 yard abutting rear yard, or side yard abutting side yard. It's
22 just new row houses being built, and they're adjoining, so I
23 would -- the only example that the Zoning Administration has
24 offered anybody, which was to me privately on the phone is not
25 analogous, and no analogous circumstances of a property being

NEAL R. GROSS

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

1 treated similarly has been offered, or described, or
2 substantiated before this Board, except for general statements
3 referring to precedents past.

4 IN fact, the only specific comparable case on the
5 record before the Board is a case which was treated differently,
6 and more in compliance with the interpretation that I have
7 offered you of the relevant regulations.

8 Mr. Bello can say that that particular case was an
9 error and an oversight, but it doesn't -- that doesn't belie the
10 fact that it still was a similar case treated differently to my
11 own, which makes me allege that my own property is being treated
12 here in an arbitrary and inconsistent fashion to any other
13 analogous situation that I am aware of, or that to my knowledge
14 has been brought to the attention of the record of the Board
15 here.

16 Finally, even if, in fact, there are lots of
17 precedents that we don't know the details, but let's assume there
18 have been precedents, and that the Zoning Administrator and
19 Administrators before him have interpreted the regulations, as
20 Mr. Bello describes. Well, you know, I could stand up here and
21 call this blue for 10 years, and it wouldn't make it blue.
22 There's no precedent that I'm aware of, where the BZA or anybody
23 charged with overseeing the Zoning Administrator's
24 interpretations has ruled on this point. Nor has any such thing
25 been brought to the Board's attention today. And so I would say

NEAL R. GROSS

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

1 that while, of course, the Zoning Administrator's interpretation,
2 he is charged with interpreting the regulations, those
3 interpretations are subject to -- are entitled to some deference,
4 but only where they're reasonable interpretations.

5 I say for all the reasons that I've mentioned
6 already, it clearly seems to be an unreasonable interpretation of
7 this case. It also has been arbitrarily applied in different
8 fashion to similar properties, and on both of those grounds,
9 should be overturned, I believe.

10 Finally, with regard to questions about what is
11 adequate air and light, exactly how high or what size shadow is
12 being cast over what properties, all those things, of course, are
13 of great concern in this case, but the details of those
14 discussions I haven't dwelled on. I've tried not to dwell on too
15 much, because I believe they're the proper subject matter for a
16 special exception hearing, that if, in fact -- of course, if you
17 were to rule in my favor, I presume that such a hearing will be
18 held, if Appellant's -- if Applicants apply for one, and that
19 that's, of course, the place for all of those details to be
20 parceled out. Thank you.

21 CHAIRPERSON GRIFFIS: Good. And that, my
22 understanding, was your rebuttal testimony. You still have
23 closing. Correct?

24 MS. PRITCHARD: Oh, I'm sorry. I thought
25 that --

1 CHAIRPERSON GRIFFIS: You want that as closing?

2 MS. PRITCHARD: I thought that's what I was doing.

3 Okay.

4 CHAIRPERSON GRIFFIS: Well, a mere technicality
5 perhaps.

6 MS. PRITCHARD: All right. I thought that that was
7 the -- I thought everybody else was finished. No? Okay.

8 CHAIRPERSON GRIFFIS: Well, if we call it closing,
9 everyone else is finished.

10 MS. PRITCHARD: Of course not, just because of my
11 understanding.

12 MS. BROWN: Mr. Chair.

13 CHAIRPERSON GRIFFIS: Yeah.

14 MS. BROWN: I would submit to you that the question
15 that I planned to ask Ms. Pritchard probably won't modify.

16 CHAIRPERSON GRIFFIS: Okay. Why don't we give a
17 little latitude here and see how this rolls.

18 MS. BROWN: Mrs. Pritchard, you have not studied
19 the survey plat for the Constitution Avenue property that was
20 provided as an example for you, have you?

21 MS. PRITCHARD: I'm not sure what you --

22 MS. BROWN: You indicated that Mr. Bello only gave
23 you as an example some new construction on Constitution Avenue.

24 MS. PRITCHARD: He gave us a series of addresses,
25 which were the 1800 Block of Constitution Avenue. And I looked

NEAL R. GROSS

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

1 at those buildings which were being built, and they did not
2 appear, to me, to be at all analogous to my situation.

3 MS. BROWN: My question is, you did not actually
4 study the survey --

5 MS. PRITCHARD: To go down to the surveyor's office
6 --

7 MS. BROWN: Or something that would indicate the
8 actual positioning of the buildings on the property.

9 MS. PRITCHARD: No. I looked at the buildings, and
10 observed a series of new construction row dwellings going from --
11 well, you know, they were adjoining buildings.

12 MS. BROWN: And you're not aware that one of the
13 properties on that has a lot line wall, similar, almost identical
14 to the situation that we have before the Board.

15 MS. PRITCHARD: Not that I observed.

16 MS. BROWN: And that could possibly be because of
17 your lack of technical expertise.

18 MS. PRITCHARD: As I said, I just observed it. It
19 did not carry great weight for me, because it did not seem to be
20 analogous, and so I dismissed it.

21 CHAIRPERSON GRIFFIS: Let me interrupt. You were
22 just given addresses. Is that correct?

23 MS. PRITCHARD: I was given addresses.

24 CHAIRPERSON GRIFFIS: So you weren't given plats,
25 or site plans or anything like that.

1 MS. PRITCHARD: No, we were given addresses over
2 the phone.

3 CHAIRPERSON GRIFFIS: All right. And so you went
4 to the property and looked around it yourself.

5 MS. PRITCHARD: I pass it frequently on
6 Constitution Avenue.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. PRITCHARD: And it did not appear to be
9 analogous to me, so I dismissed it as being irrelevant.

10 CHAIRPERSON GRIFFIS: Okay. I think I'm clear on
11 that. Anything else?

12 MS. BROWN: Nothing.

13 CHAIRPERSON GRIFFIS: Okay. In which case, now
14 you'll have an opportunity to give additional closing or anything
15 else you want to say.

16 MS. PRITCHARD: Okay. I thank you for your time
17 today.

18 CHAIRPERSON GRIFFIS: Sure, and we thank you.
19 Let's set this for a schedule decision making. And Board
20 Members, let's look quickly at any additional information that
21 we're going to need for this. I did not see or get a feeling for
22 additional information that we were needing coming from questions
23 that we had. I think this is going to be a very difficult one to
24 really filter out, but I think we might have the information that
25 we need at this point. Unless there's any other volleys in of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 things that we might need.

2 VICE CHAIRPERSON RENSHAW: Photographs.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. BROWN: Mr. Chair.

5 CHAIRPERSON GRIFFIS: yes.

6 MS. BROWN: I was just going to suggest it may be
7 helpful for everyone if Mrs. Pritchard can provide the survey so
8 that we can -- because there is a major issue being given to the
9 size of her rear yard. There seems to be a discrepancy.

10 CHAIRPERSON GRIFFIS: You want a survey of what,
11 her property?

12 MS. BROWN: Of the property to determine the
13 spacing.

14 CHAIRPERSON GRIFFIS: I don't see that as an
15 important point.

16 COMMISSIONER MAY: Yeah, I don't consider that
17 issue. I mean, we have also the language.

18 CHAIRPERSON GRIFFIS: Yeah. And I think also, Ms.
19 Pritchard either brought up in her closing statements that, in
20 fact, the -- she brought that up in light of Section 101, but
21 that the pertinence of her argument are more substantively based
22 in 405.3, and other sections, so that being said. Anything else?
23 Board Member has indicated pictures might be requested. I think
24 we probably should just stick with what we have. We can assume
25 that we know that it's finished, unless that goes to a --

1 frankly, if we go to pictures and look at the height and mass of
2 the property, then it does step us back into we're going into
3 light and air, and maybe we should start to look at survey and
4 dimensions. I think the pictures that we have on record show the
5 width, if not the entire height, so I think we can assume the
6 mass of what's being done there.

7 Anything else? Okay. What dates are we looking at
8 now?

9 Ms. BAILEY: Mr. Chairman, excuse me.

10 CHAIRPERSON GRIFFIS: Yeah.

11 Ms. BAILEY: We did -- there was some discussion
12 about a letter from the Capitol Hill Restoration Society, that
13 they did discuss this case at one of their meetings, and the
14 plans were approved. I don't know if you want that. I'm just --

15 CHAIRPERSON GRIFFIS: Okay. No, and I absolutely
16 appreciate you bringing that to our attention. Board Members?

17 VICE CHAIRPERSON RENSHAW: If we ask for the
18 letter, I would ask for the plans that go with the letter.

19 COMMISSIONER MAY: I think there's some risk of us
20 going too far down the path of evaluating the merits of this
21 particular project, so I -- but on the other hand, if there has -
22 - there have been statements about whether or not this has passed
23 muster on the historic basis, I mean, can we simply take the fact
24 that the permit was issued as evidence that HPRB approved it,
25 because HPRB is the one who has to approve it. And they may seek

NEAL R. GROSS

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

1 the advice of the Restoration Society, but I don't know that -- I
2 don't know the entirety of the process, but we know issuance of a
3 permit is certainly not contingent on the Restoration Society
4 approval.

5 CHAIRPERSON GRIFFIS: Right. I would agree with
6 Mr. May, and again just keep your mind focused on that this is an
7 appeal. We'd have to ask ourselves what pertinence would the
8 Restoration Society's approval or disapproval of this project go
9 to in the Zoning Administrator's view, and analysis, and final
10 decision on this. I am not aware, unless others can bring me to
11 an awareness, that it would have any pertinence, so I would
12 suggest that we do not ask for that. But I absolutely appreciate
13 you keeping tabs on us for these things that we do bring up.

14 Anything else? In which case, what are we looking
15 at?

16 SECRETARY PRUITT: We could set this for an April
17 decision meeting, and since there's no submissions, draft orders
18 from the parties could be due March 25th.

19 CHAIRPERSON GRIFFIS: Would that be the infamous 2nd
20 of April?

21 SECRETARY PRUITT: Yes.

22 CHAIRPERSON GRIFFIS: Oh, boy, you know.

23 COMMISSIONER MAY: Working on something else that
24 day.

25 CHAIRPERSON GRIFFIS: We're all in this folks. You

1 went through this morning. All right. Yeah, what is -- what do
2 we have on now so far? I mean, it seemed like a heck of a lot.

3 SECRETARY PRUITT: Three at least.

4 CHAIRPERSON GRIFFIS: Okay. All right. I'm sorry.

5

6 MS. PRITCHARD: Excuse me. I do need to leave. Is
7 there --

8 CHAIRPERSON GRIFFIS: Yeah.

9 MS. PRITCHARD: -- further information you need
10 from me now?

11 CHAIRPERSON GRIFFIS: No, we're on for the 2nd of
12 April, 2002. That would be the decision making in the morning.

13 MS. PRITCHARD: Okay. And is there anything you
14 need from me prior to that?

15 SECRETARY PRUITT: If you would like to submit a
16 draft order, draft Findings of Fact, you may do so, but please do
17 so by March 25th. And you do need to serve it on the other
18 people.

19 MS. PRITCHARD: Okay.

20 SECRETARY PRUITT: And everybody will serve -- if
21 they submit, they will also serve it on you.

22 MS. PRITCHARD: Okay. Thank you very much.

23 CHAIRPERSON GRIFFIS: Great. Thanks. Have a great
24 evening. I think that's pretty clear. If there's anything else
25 that comes up, we will make it known, if needed.

NEAL R. GROSS

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

1 We will excuse everyone else that doesn't need to
2 be here. Everyone is welcome to stay, and let's take -- can we
3 just take 10 minutes, and then come back and do minutes, or do
4 you want to do them right now? Let's run through them. I'd
5 rather run through them and be finished. Mr. Hart, when you're
6 ready, I think we're going to go through the Minutes that were
7 continued from this morning.

8 MR. HART: Yes.

9 CHAIRPERSON GRIFFIS: Did you want -- actually, I
10 think --

11 MR. HART: Are we ready, sir?

12 CHAIRPERSON GRIFFIS: Yeah.

13 MR. HART: The first is the matter of --

14 CHAIRPERSON GRIFFIS: I'm sorry.

15 COMMISSIONER MAY: Can I interrupt just one second?

16 CHAIRPERSON GRIFFIS: Yeah.

17 COMMISSIONER MAY: Looking through the Minutes,
18 there are no cases in which I was a part.

19 CHAIRPERSON GRIFFIS: Oh, yeah. Sure.

20 COMMISSIONER MAY: May I be excused?

21 CHAIRPERSON GRIFFIS: Why don't we get through them
22 all just to make sure that you weren't involved in any of them.

23 COMMISSIONER MAY: My name does not appear.

24 CHAIRPERSON GRIFFIS: Thank you very much, Mr. May.

25 We'll see you later.

1 CHAIRPERSON GRIFFIS: Okay. We are back to
2 February 5th, 2002, I believe is where we begin. Is that correct,
3 Mr. Hart?

4 MR. HART: Yes, sir.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. HART: February the 5th.

7 CHAIRPERSON GRIFFIS: Any comments on the 5th, 2002?
8

9 VICE CHAIRPERSON RENSHAW: Didn't we do more than
10 what is in the Minutes on February the 5th? This is just Father
11 Flannagan's.

12 Ms. BAILEY: Mrs. Renshaw, the Minutes are for the
13 afternoon session, just like this afternoon. The Minutes for the
14 morning session where we had the meeting are not here. We just
15 let the transcript stand in for the Minutes for the meetings. We
16 only do the Minutes for the hearings.

17 VICE CHAIRPERSON RENSHAW: Oh.

18 CHAIRPERSON GRIFFIS: The February 5th just covers
19 the afternoon of the February 5th, 2002 Public Hearing, and we
20 only had the appeal of Southeast Citizens on that day. Is that
21 correct?

22 MR. HART: Yes. Those Minutes, Mr. Griffis, Ms.
23 Renshaw, Mr. Levy, Mr. Etherly, and Mr. Hannaham.

24 CHAIRPERSON GRIFFIS: Okay. Mr. Levy.

25 MEMBER LEVY: Mr. Chair.

1 CHAIRPERSON GRIFFIS: Yeah.

2 MEMBER LEVY: Just on page 2, the last paragraph on
3 page 2 that talks about the suggestion that we look for a report
4 from the Office of Planning, I would just ask you whether you
5 think that accurately reflects what we did there.

6 Ms. BAILEY: On February 5th that's what we did.
7 Now we may have further -- we had four hearings on Father
8 Flannagan.

9 MEMBER LEVY: No, no. I just want to make sure the
10 language reflects -- did we inform the parties that we were
11 definitely going to do that? Did we ask them -- did we decide to
12 do that at that point? I guess that's one question I have. Do
13 we want to specify what we -- what the brief should state?

14 Ms. BAILEY: And again, Mr. Levy, I don't think on
15 February 5th we specifically got into that discussion. I think it
16 was further into the hearing where we went into the specificity
17 of what the Office of Planning should or should not do, as far as
18 providing a report to the Board is concerned.

19 CHAIRPERSON GRIFFIS: I think we can remedy this in
20 the change of one word. If it reads, "The Board informed the
21 parties that a report from Office of Planning might be requested,
22 or may be requested."

23 MEMBER LEVY: Okay.

24 CHAIRPERSON GRIFFIS: Rather than "would". I think
25 Mr. Levy is questioning whether we were that definitive, that we

1 were going to or not.

2 MEMBER LEVY: I would also change -- then you'd
3 change the word "participating" to "participation of the Office
4 of Planning."

5 CHAIRPERSON GRIFFIS: Okay. Is that in the same
6 paragraph?

7 MEMBER LEVY: Yeah. Yes. "Mr. Fiola stated the
8 Board's rules and procedures do not allow for the participation
9 of the Office of Planning."

10 CHAIRPERSON GRIFFIS: Okay.

11 MEMBER LEVY: That's it.

12 CHAIRPERSON GRIFFIS: Any other comments on
13 February 5th? Okay. I'm going to move on through all of them, and
14 then we'll approve them all at once, unless we need to pull one
15 out at some point. Some February 12th, any comments on that?
16 Myself, Ms. Renshaw, Mr. Levy, Mr. Etherly, Mr. Hannaham, and Mr.
17 Hart. I don't know if we have proxies for --

18 MR. HART: Yes. The only -- yes, we have proxies
19 for all from Mr. Hannaham.

20 CHAIRPERSON GRIFFIS: Okay. Great.

21 MR. HART: Nothing from Mr. Hood or Mr. Parsons,
22 but for both of those days, we did have -- we do have a quorum,
23 did have a quorum without them.

24 CHAIRPERSON GRIFFIS: Great. Okay. Actually, what
25 we'll do is we'll do the motion on February 5 and February 12th

1 when Mr. Hannaham is in. Any comments on February 12th?

2 MEMBER LEVY: Case number 16833, where we describe
3 the project should read, "permit the construction of a mixed use
4 building", I guess where it says, "apartment house and retail",
5 in parentheses.

6 CHAIRPERSON GRIFFIS: Oh, I see.

7 MEMBER LEVY: Just a missing word, I think.

8 CHAIRPERSON GRIFFIS: Uh-huh. Okay. Anything
9 else?

10 MEMBER LEVY: No.

11 CHAIRPERSON GRIFFIS: Any other comments? Okay. I
12 move approval of Minutes February 5, February 12, 2002.

13 MEMBER LEVY: Second.

14 CHAIRPERSON GRIFFIS: All in favor.

15 (Vote.)

16 CHAIRPERSON GRIFFIS: And we do have -- oh, there
17 it is. Okay. February 19. Comments?

18 MEMBER LEVY: Page 3, Case Number 16826. The
19 paragraph that begins, "Advisory Neighborhood Commissioner John
20 Chagnon".

21 CHAIRPERSON GRIFFIS: Yeah.

22 MEMBER LEVY: The last couple of words in the last
23 sentence of that paragraph. I think there's just an extra word
24 there, either "required" or "needed", rather than both.

25 VICE CHAIRPERSON RENSHAW: Which word?

1 MEMBER LEVY: Let's go with "required".

2 VICE CHAIRPERSON RENSHAW: Uh-huh.

3 CHAIRPERSON GRIFFIS: Okay. So strike "needed."

4 MEMBER LEVY: Okay.

5 CHAIRPERSON GRIFFIS: Any other?

6 MEMBER LEVY: On page 5, Case Number 16791, Item
7 Number Five, the Board indicated it would likely require
8 simultaneous opening post -- is that opening and post hearing
9 briefs, so there's the word "and" is just missing there.

10 SECRETARY PRUITT: Mr. Chairman, opening and post
11 hearing briefs would be correct.

12 MEMBER LEVY: Okay. Thanks.

13 CHAIRPERSON GRIFFIS: Okay.

14 MEMBER LEVY: That's it.

15 CHAIRPERSON GRIFFIS: And that's going to the
16 Flannagan's. Right? Yeah. Okay. Actually, I'm going to take
17 this one too because I think that would be the last of -- no.
18 All right. We'll keep going. Let me get my notes here. The 26th
19 February.

20 MEMBER LEVY: A question on Case Number 16837, the
21 first case.

22 CHAIRPERSON GRIFFIS: Uh-huh.

23 MEMBER LEVY: We say the Applicant applied
24 previously under Section 223, originally applied for a variance.

25 Is that correct? And then --

1 CHAIRPERSON GRIFFIS: Oh, yeah.

2 MEMBER LEVY: So that's incorrect. The application
3 was denied, and then went into 223, and then they reapplied, so -
4 -

5 CHAIRPERSON GRIFFIS: Yeah.

6 MEMBER LEVY: -- that reference is incorrect in
7 that sentence.

8 VICE CHAIRPERSON RENSHAW: So take it out?

9 MEMBER LEVY: Well, it needs to --

10 CHAIRPERSON GRIFFIS: Well, we can identify the
11 section, or we can say as it said in our memos, the Applicant had
12 applied previous for a variance.

13 MEMBER LEVY: Variance, yeah.

14 CHAIRPERSON GRIFFIS: So why don't we just change
15 that. That's easy. Or for a variance, whatever it should be.
16 Okay. Anything else? Oh, are we -- okay. The 26th. Under 16791
17 which is the -- that's marked Boys Town, after the property owner
18 -- I'm sorry. Page 4, "Property owner, Father Flannagan's", am I
19 not correct in recalling that we gave Ms. Ferster the opportunity
20 to provide rebuttal testimony at that point?

21 MS. SANSONE: I think that's correct, Mr. Chairman.
22 You specifically gave her another opportunity to request -- to
23 provide rebuttal.

24 CHAIRPERSON GRIFFIS: Okay. Right, because I'm --
25 if -- I'm reading this. That was the day of the closings.

1 Correct?

2 VICE CHAIRPERSON RENSHAW: Uh-huh.

3 CHAIRPERSON GRIFFIS: Okay. And so -- yeah, I
4 guess I can -- I would give sentence to that, but I would that
5 say we -- it may read as Ms. Ferster was again given the
6 opportunity for rebuttal testimony, and Ms. Ferster declined the
7 opportunity.

8 VICE CHAIRPERSON RENSHAW: Uh-huh.

9 CHAIRPERSON GRIFFIS: Okay.

10 MEMBER LEVY: And 16810, page 6.

11 CHAIRPERSON GRIFFIS: Yeah.

12 MEMBER LEVY: At the end of the description of that
13 case, do we want to put there what action we took, whether the
14 case was continued? Do we typically do that?

15 CHAIRPERSON GRIFFIS: Yeah, what did we do?

16 MEMBER LEVY: I think we continued that.

17 CHAIRPERSON GRIFFIS: Did we continue it, or is
18 that for -- oh, yeah, we continued to the 12th.

19 MEMBER LEVY: Right, so --

20 CHAIRPERSON GRIFFIS: Okay. Is that --

21 MR. HART: Which case is that, sir?

22 CHAIRPERSON GRIFFIS: This is Trautwine. Am I
23 correct, Mr. Levy?

24 MS. SANSONE: Correct.

25 MEMBER LEVY: Yes, I'm sorry.

1 CHAIRPERSON GRIFFIS: Okay. So 16810 -- no, you're
2 -- you indicated correctly. So at the end of that we would say
3 it would be continued to --

4 MEMBER LEVY: Well, I'm just -- I'm reading and I
5 don't see what action we said that we took, so --

6 CHAIRPERSON GRIFFIS: No, exactly.

7 MEMBER LEVY: Okay.

8 CHAIRPERSON GRIFFIS: That's what I'm indicating,
9 that we would then be -- we would state that it was continued to
10 -- continuation on 12 April.

11 MS. SANSONE: 12 March.

12 MR. HART: March.

13 MEMBER LEVY: 12 March.

14 CHAIRPERSON GRIFFIS: Oh, 12 March, whichever.

15 MEMBER LEVY: Thanks. That's all I have.

16 CHAIRPERSON GRIFFIS: Okay. What month are we in?
17 Okay. Is that it? End of comments on that?

18 MEMBER LEVY: Yes.

19 CHAIRPERSON GRIFFIS: Okay. In which case, we are
20 moving to approve February 19th.

21 VICE CHAIRPERSON RENSHAW: And 26th.

22 CHAIRPERSON GRIFFIS: And 26th. Is that it?

23 VICE CHAIRPERSON RENSHAW: Yes. Mr. Chairman, I
24 won't be voting on the 19th, as I was not here that day.

25 CHAIRPERSON GRIFFIS: Indeed. Let's separate them

1 out, so for February 26th, 2002, I move approval.

2 MEMBER LEVY: Second.

3 CHAIRPERSON GRIFFIS: All in favor.

4 (Vote.)

5 CHAIRPERSON GRIFFIS: Opposed? And February 19th,
6 2002, move approval.

7 MEMBER LEVY: Second.

8 CHAIRPERSON GRIFFIS: So in favor.

9 (Vote.)

10 CHAIRPERSON GRIFFIS: And Mr. Hart, it's all you.

11 MR. HART: Okay. February 26th, who seconded, Mr.
12 Levy? Okay.

13 CHAIRPERSON GRIFFIS: Yeah.

14 MR. HART: All right. Please bear with me here.
15 The Minutes for February 5th, 2002, approved by Mr. Griffis,
16 seconded by Mr. Levy, proxied by Mr. Hannaham, 5-0 with
17 corrections as indicated by Board Members.

18 February 12th, Mr. Griffis, Mr. Levy, proxy for Mr.
19 Hannaham, with corrections as indicated.

20 February 19th, motion made by Mr. Griffis, seconded
21 by Mr. Levy, Ms. Renshaw not voting, proxy from Mr. Hannaham, Mr.
22 Hood not submitting a vote, with corrections as indicated.

23 February 26th, Mr. Griffis, Mr. Levy seconded, Mr.
24 Griffis making the motion, with a proxy from Mr. Hannaham, and no
25 vote submitted by Mr. Parsons, and with corrections as indicated

1 by the Board.

2 Thank you, sir. It's over and out.

3 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
4 Hart. And this concludes then the 5th of March, 2002 afternoon
5 session.

6 (Off the record at 5:15 p.m.)