

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

May 20, 2003

+ + + + +

The Public Hearing was convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:45 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Board Member
CURTIS ETHERLY, JR.	Board Member

Zoning Commission Members Present:

Carol Mitten	Commissioner
Anthony Hood	Commissioner

Commission Staff Present:

Beverly Bailey	Office of Zoning
Clifford Moy	Office of Zoning
John K. A. Nyarku	Office of Zoning

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Other Agency Staff Present:

John Moore	Office of Planning
Joel Lawson	Office of Planning
Stephen Mordfin	Office of Planning

D.C. Office of Corporation Counsel:

Lori Monroe, Esq.

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

9:45 a.m.

CHAIRPERSON GRIFFIS: So, with that, I would bid everyone good morning and call to order the 20th of May 2003 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis. I am the chairperson.

Joining me today is Ms. RuthAnne Miller and also representing the Zoning Commission is Ms. Mitten.

Copies of today's hearing agenda are available to you. They are located at the table where you entered into the hearing room and on our nice new rack showing our paperwork.

Let me go through a few housekeeping items. Everyone should be aware that all hearings before the Board of Zoning Adjustment are recorded. Therefore, we ask several things of you.

First of all, fill out two witnesses cards when coming forward to address the Board. Witness cards are available at the table where you entered into. If more cards are required, please let staff know in the adjacent and they will make them available. Those witness cards go to the recorder who

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1 is sitting to my right.

2 Of course, I do not need to say, but it is
3 part of our regulations that we will not have any
4 disruptive noises or actions in the hearing room.
5 That is, of course, so that we can keep orderly and be
6 able to hear all the important information that people
7 are going to be giving us.

8 With that also in terms of disturbances, I
9 would ask that everyone at this time turn off any cell
10 phones or beepers so that no one giving testimony
11 would be disrupted by those noises.

12 The order of procedure for today's hearing
13 and all hearing for special exception and variances
14 will be first we will hear the statement and witnesses
15 of the applicant. Second, we would hear government
16 reports attended to the application. Third would be a
17 report from the Advisory Neighborhood Commission.
18 Fourth would be persons in support of the application.

19 Fifth would be persons in opposition and sixth
20 finally we will have any closing remarks by the
21 applicant.

22 Cross examination of witnesses is
23 permitted by the applicant or parties. The ANC within
24 which the property is located is automatically a party
25 in the case.

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1 The record of each hearing will be closed
2 at or each case rather will be closed at conclusion of
3 each hearing except for any materials specifically
4 requested by the Board and the Board will be very
5 specific on what materials are to be submitted into
6 the Office of Zoning and when they are to be
7 submitted. Once those materials are received, of
8 course, it goes without saying that the record would
9 then be finally closed and no other information would
10 be accepted into the record.

11 The Sunshine Act requires that the public
12 hearing in each case be held in the open and before
13 the public. This Board may, however, consistent with
14 it's rules of procedure and the Sunshine Act, enter
15 executive session during or after a hearing on a case.

16 That would be for the purposes of deliberating or
17 reviewing the record of each case.

18 This Board's decision in contested cases
19 must be based exclusively on the public record.
20 Therefore, we ask people present today please not to
21 engage Board members in any conversation so that we do
22 not give the appearance of not being impartial and
23 deliberating solely on the public record.

24 The Board will now consider any
25 preliminary matters. Preliminary matters are those

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1 which relate to whether a case will or should be heard
2 today such as requests for a postponement,
3 continuances or withdrawal or whether proper and
4 adequate notice of a case and hearing has been given.

5 If you are not prepared to go forward with
6 a case today or if you believe the Board should not
7 proceed, now it the time to bring that to attention.
8 I will take an indication of preliminary matter before
9 the Board by having people in the audience come
10 forward and have a comfortable seat in our beautiful
11 beige chairs and I will ask staff if they are aware of
12 any preliminary matters first for the Board's
13 attention and then I will turn to those that have now
14 come forward.

15 MS. BAILEY: Mr. --

16 CHAIRPERSON GRIFFIS: Oh, forgive me. I
17 also need to wish a great good morning to our able
18 Office of Zoning Staff without which we wouldn't be so
19 organized and efficient frankly.

20 Ms. Bailey, good morning and also Mr. Moy
21 and Mr. Nyarku who is also with us and representing
22 the Corporation Counsel this morning is Ms. Monroe.

23 With that, good morning, Ms. Bailey.

24 MS. BAILEY: Mr. Chairman and to everyone,
25 good morning.

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1 There are two preliminary matters and as
2 you can see, the attorneys are sitting at the table
3 and are ready to go.

4 CHAIRPERSON GRIFFIS: Very well. Let's
5 start then on my right.

6 Sir, if you wouldn't mind introducing
7 yourself for the record.

8 MR. BLANCHARD: Good morning, Chairman
9 Griffis.

10 My name is Lyle Blanchard of Greenstein,
11 Delorman and Luchs and I'm representing the applicant
12 in the Board's first case this morning, Sheridan
13 School.

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. BLANCHARD: Do you wish me to proceed?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. BLANCHARD: Okay. The Board is aware
18 that we filed a letter on April 14th for the record
19 requesting a motion of continuance of the public
20 hearing currently scheduled for today until a date
21 that the Board determines in September and the basis
22 for this request is so that we can continue to work
23 with the surrounding community on some issues
24 concerning traffic which we hope will be in the
25 Board's best interest that once those are resolved we

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1 intend to amend our application to address those and
2 hope to submit that next month and that will give
3 ample time to the ANC which has filed a letter in
4 support of this continuance last well based on their
5 April meeting.

6 We will have an additional meeting with
7 the community --

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BLANCHARD: -- later this month.

10 CHAIRPERSON GRIFFIS: I think that's all
11 understandable although I'm a little shocked that a
12 school with an application would have transportation
13 issues. That, of course, is big joke and for the
14 record.

15 That being said, I think it is
16 appropriate. Let me just state. First of all, I
17 think if you look at the record of the Board in terms
18 of granting continuances, you will see that it is
19 lenient in order to get the application together but
20 only to a level and one might say, this isn't
21 definitive, that there are just limited chances for
22 doing that.

23 So, I would say, in fact, directly ask you
24 if September is time enough to bring together all that
25 you need rather than coming back and -- and

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1 potentially asking for another continuance at that
2 time?

3 MR. BLANCHARD: I believe September is
4 ample time.

5 CHAIRPERSON GRIFFIS: Okay. Any other
6 questions from the Board? Concerns?

7 Is there a motion?

8 COMMISSIONER MITTEN: Mr. Chairman, I move
9 that we continue Application Number 16977 to a date in
10 September.

11 CHAIRPERSON GRIFFIS: Section.

12 MEMBER MILLER: I second that motion.

13 CHAIRPERSON GRIFFIS: The motion is before
14 us and seconded. Any discussion? If no discussion,
15 ask for all those in favor signify by saying aye.

16 (Ayes).

17 CHAIRPERSON GRIFFIS: And opposed?

18 COMMISSIONER MITTEN: Mr. Chairman, just
19 as long as we specify what the date is.

20 CHAIRPERSON GRIFFIS: That's right.

21 COMMISSIONER MITTEN: Okay.

22 CHAIRPERSON GRIFFIS: I'm trying to pull
23 the schedule out here now in September.

24 MR. BLANCHARD: Mr. Griffis.

25 CHAIRPERSON GRIFFIS: Yes.

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1 MR. BLANCHARD: And that point, the ANC in
2 its letter that it filed last week ask for a date
3 after September 22nd because apparently they meet --

4 CHAIRPERSON GRIFFIS: Right on the 22nd.

5 MR. BLANCHARD: -- on the -- like a week
6 before then and they figured that they'd be able to
7 file their report --

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BLANCHARD: -- after the 22nd. So --

10 CHAIRPERSON GRIFFIS: Good.

11 MR. BLANCHARD: -- we're willing to work
12 with that scheduled.

13 CHAIRPERSON GRIFFIS: My scheduled doesn't
14 go to September. What dates do we have after the
15 22nd?

16 MR. MOY: The 23rd and the 30th.

17 CHAIRPERSON GRIFFIS: Let's do the 30th.
18 Is that acceptable?

19 MR. BLANCHARD: Thank you. Yes.

20 CHAIRPERSON GRIFFIS: Good. Very well.
21 Anything else? Are we saving that for the morning?

22 MR. MOY: Yes, we could.

23 CHAIRPERSON GRIFFIS: Actually --

24 MR. MOY: It's wide open.

25 CHAIRPERSON GRIFFIS: We have at this time

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1 eight parties in opposition. I guess opposition.
2 Eight requests for party status.

3 Let's set this for the afternoon, Mr. Moy,
4 and that will insure -- although I'm certain all the
5 problems will be remedied and most of those
6 applications will fall off. Again, I've tried a
7 desperate attempt at humor, but -- and -- and we can
8 reserve most of the afternoon for this case so that we
9 can get through that day.

10 Very well. Anything else?

11 All set? Good. Thank you very much, Mr.
12 Blanchard.

13 MR. BLANCHARD: Thank you.

14 CHAIRPERSON GRIFFIS: Yes.

15 MS. ZIGNER: Good morning, Mr. Chairman,
16 members of the Board. Jeannine Rustad Zigner of
17 Robins, Kaplan, Miller & Ciresi here for the applicant
18 in the Application of the D.C. Children's Advocacy
19 Center.

20 As with the previous case, we have filed a
21 motion for a continuance. As indicated in our
22 previous filings, the Children's Advocacy Center is --
23 coordinates with a number of different D.C. agencies
24 as well as the U.S. Attorney's Office and it was a
25 huge undertaking thinking we could be prepared and

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1 coordinated with these agencies by today.

2 Unfortunately, the Government being what
3 is it we do need additional time. We are asking for
4 120 days to allow ample time to get everything
5 together, all the parties on one page, and come before
6 the Board with a fully prepared case and hopefully
7 with support. We have advised the ANC of our request
8 for a continuance. I spoke with the chairman. He
9 voiced no opposition and we have also advised the
10 Office of Planning who is not opposed.

11 CHAIRPERSON GRIFFIS: Very well. Any
12 questions from the Board regarding this matter?

13 Is there a motion?

14 COMMISSIONER MITTEN: Mr. Chairman, I
15 would move that we grant a continuance in -- I don't
16 know what the application number -- 17016. Grant the
17 120-day continuance that's been requested.

18 CHAIRPERSON GRIFFIS: Is there a second?

19 MEMBER MILLER: I'll second that motion.

20 CHAIRPERSON GRIFFIS: Thank you. Any
21 discussion?

22 Let me ask for all those in favor then
23 signify by saying aye.

24 (Ayes.)

25 CHAIRPERSON GRIFFIS: And opposed? Very

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1 well.

2 COMMISSIONER MITTEN: Again, I would just
3 want to set the dates.

4 CHAIRPERSON GRIFFIS: Yes, we'll look at
5 dates for that. 120 days puts us into September is
6 it?

7 MS. ZIGNER: Late September or early
8 October was my estimate.

9 CHAIRPERSON GRIFFIS: What's the first
10 meeting in October?

11 MS. ZIGNER: Seventh.

12 CHAIRPERSON GRIFFIS: It's the 7th. Why
13 don't we set this for the first in the afternoon on
14 the 7th?

15 Would the -- is the applicant available
16 that day?

17 MS. ZIGNER: Yes.

18 CHAIRPERSON GRIFFIS: Okay. Very well.

19 MS. ZIGNER: Thank you.

20 CHAIRPERSON GRIFFIS: Thank you.

21 Okay. We have been joined and what I'd
22 like to do is just set aside the public hearing for a
23 moment and call to order our special public meeting.

24 (Whereupon, at 9:58 a.m. off the record.)

25

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2:16 p.m.

CHAIRPERSON GRIFFIS: Ladies and gentlemen, let me call to order the 20th of May 2003 public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Geoff Griffis. I am chairperson.

With me today is Mr. Etherly on my right, Ms. Miller on my left and representing the Zoning Commission with us this afternoon Mr. Hood.

Copies of today's hearing agenda are available to you. They are located at the table where you entered into the hearing room and in our nice display case permanently fixed to the wall. So, please avail yourself to pick up an agenda.

Also, there's several things I need to go through just to make sure that we all are of the understanding of what's happening this afternoon.

First, a little housekeeping. Of course, as many of you know in the room, but all of you should know all public hearings before the Board of Zoning Adjustment are recorded. Therefore, we ask several

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1 things of you.

2 First, when coming forward to speak to the
3 Board, you need to fill out two witness cards.
4 Witness cards are available to you at the table where
5 you entered into the hearing room. They are also
6 available on the table in front of us. Those two
7 cards go to the recorder who is sitting to my right.

8 Also, when coming forward to speak to the
9 Board, you will need to come have a seat in one of our
10 comfortable chairs at the table in front of us.

11 You need to turn on a microphone.
12 Obviously, that microphone needs to be on for you to
13 be recorded and I'm going to need you to give your
14 name and your address for the record after which it
15 will all be easy from there.

16 Also, let me ask and of course, I don't
17 think I need to say, but we cannot have any disruptive
18 noises or actions in the hearing room. Clearly, that
19 impedes people giving testimony before us and it
20 breaks our concentration.

21 Let me also ask that people present right
22 now turn off any cell phones or beepers at this time
23 so that we don't have that also interrupting our
24 hearings.

25 I appreciate everyone's patience. We did

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1 run over a little bit this morning and I can let you
2 all know that we have extensive amount of preparation
3 to do for each and every case because we do read each
4 and every bit of material that's submitted and our
5 lunch hours are also taken up by working. So, forgive
6 us for being a little late coming back out for this
7 afternoon, but I believe we will jump into this and
8 get it though well before midnight so we can all --
9 no, I'm kidding. We'll -- we'll get out of here in a
10 rational time I promise.

11 The orders of procedure for special
12 exception and variances and always in our hearings are
13 first, statement and witnesses of the applicant.
14 Second, are any government reports attended to the
15 application. Third is the report from the ANC, the
16 Advisory Neighborhood Commission. Fourth is testimony
17 from people in support or parties. Fifth would be
18 parties or persons in opposition and sixth finally we
19 would have concluding remarks, rebuttal testimony and
20 any other conclusions from the applicant.

21 Cross examination of witnesses is
22 permitted by the parties and applicant in a case. The
23 ANC within which the property is located is
24 automatically a party in the case.

25 Our record will be closed at the

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1 conclusion of each case except for any material
2 specifically requested by this Board and we will be
3 very specific on what is to be submitted and when it
4 is to be submitted into the Office of Zoning. After
5 which it goes without saying the record would be
6 closed and no other information would be accepted.
7 Well, I think that's clear.

8 The Sunrise -- Sunshine Act rather
9 requires that public hearings be held or cases be held
10 in the open and before the public. This Board,
11 however, may consistent with it's procedures and the
12 Sunshine Act, enter executive session. That would be
13 for the purposes of reviewing the record or
14 deliberating on a case.

15 Decision of this Board, the last I think
16 but also an important piece, the decision of this
17 Board in all cases must be based exclusively on the
18 public record. That is, the record that occurs within
19 this room and submitted to our files. We ask that
20 people present, of course, not engage Board members in
21 any conversation so that we do not give the appearance
22 of not deliberating solely and exclusively on the
23 public record and we do take that very seriously and I
24 can say for all Board members and myself that that is
25 exactly what happens in our deliberations on each and

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1 every case.

2 That being said, I do believe that we'll
3 get our of here in a rational time. We do adjourn at
4 6:00. If we are running a little bit late in order to
5 finish a case, I will updated people as we get close
6 to 6:00.

7 At this point, we can review and entertain
8 any preliminary matters. Preliminary matters are
9 those which relate to whether a case will or should be
10 heard today, such as requests for postponements,
11 withdrawals, continuances or whether proper and
12 adequate notice of a case has been provide.

13 If you are not prepared to go forward
14 today or you believe that the Board should not proceed
15 with a case that's on the schedule for the afternoon,
16 I ask that you come forward, have a seat at the table
17 as an indication of having a preliminary matter.

18 Let me ask staff and which a very good
19 afternoon to our able Office of Zoning staff which is
20 with us today. Ms. Bailey who is on my extreme right.

21 Mr. Moy is with us and Mr. Nyarku is in and out also
22 ably staffing us.

23 Ms. Monroe is representing Corporation
24 Counsel this afternoon for us.

25 Let's call the first case in the afternoon

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1 please.

2 MS. BAILEY: Ready, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Yes, whenever you're
4 ready, Ms. Bailey.

5 MS. BAILEY: Application Number 17007 of
6 Kathleen Peoples and Philip Sedlak, pursuant to 3104.1
7 for a special exception to allow an addition to a
8 single family row dwelling under Section 223 not
9 meeting the side yard requirements under Section 405.

10 The property is located in the R-4 District at
11 premises 1018 Constitution Avenue, N.E. Square 964,
12 Lot 46.

13 All those persons wishing to testify
14 please stand to take the oath.

15 Please raise your right hand.

16 Do you solemnly swear or affirm that the
17 testimony you're about to give in this proceeding will
18 be the truth, the whole truth, and nothing but the
19 truth?

20 WITNESSES: I do.

21 MS. BAILEY: Thank you very much.

22 CHAIRPERSON GRIFFIS: Okay. First we need
23 to take up the party status application.

24 Board member, get in front of you Exhibit
25 Number 26.

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1 Are Janet and David Pritchard here? Okay.

2 Any questions of the Board? Any comments?

3 The Pritchard property located abutting
4 the -- their rear yard is abutting the side of the --
5 the applicants' property in terms of its adjacency and
6 also in terms of what has been stated in their
7 application. They've outlined significant and unique
8 affect that they believe would happen if this was to
9 be granted.

10 Does the applicant -- why don't I have
11 applicants' representative introduce himself.

12 MR. COOPER: Good afternoon, Mr. Chairman,
13 members of the Board.

14 My name is Robert Cooper from the law firm
15 of Jackson & Campbell. I apologize about my voice. I
16 have a slight sinus infection and I may be chewing on
17 a -- on a throat lozenge.

18 CHAIRPERSON GRIFFIS: Do you have water?

19 MR. COOPER: Yes, I do. I have a little
20 bit left.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. COOPER: Thank you.

23 CHAIRPERSON GRIFFIS: Do you have any
24 objection or comments regarding the party status
25 application?

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1 MR. COOPER: No, I do not.

2 CHAIRPERSON GRIFFIS: No objection. Is
3 there any objection from the Board? I can take that
4 then as a consensus and grant party status to the
5 Pritchards.

6 With that, Mr. Cooper, why don't we jump
7 right in.

8 This is -- has now been called clear and
9 direct Section 223 special exemption for an addition
10 to an existing nonconforming structure.

11 There is one other preliminary matter and
12 that is relating to the zoning certification which did
13 not accompany this application. It's my understanding
14 that this -- that there was no one to do a self-
15 certification and that the Zoning Administrator would
16 not right a memo referring to BZA. Is that correct?

17 MR. COOPER: Yes, that is absolutely
18 correct.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. COOPER: So, the Board -- the Zoning
21 Administrator refused to provide Ms. -- Ms. Peoples a
22 certification as --

23 CHAIRPERSON GRIFFIS: Okay. Tell you what
24 you save your voice. You just need yes or no on that
25 one.

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1 MR. COOPER: Yes.

2 CHAIRPERSON GRIFFIS: And then you'll be
3 able to speak quite a bit.

4 Any -- the Board have any concern or
5 questions, clarifications on that. I think we're
6 fairly well aware of what that issue is.

7 Does the party Pritchard have any comments
8 relating to zoning certification and I will put it
9 into context. I am prepared to waive our rules and
10 accept this application, hear this case today without
11 a zoning certification on this.

12 Does the party have any opposition?

13 MS. PRITCHARD: We have no objection.

14 CHAIRPERSON GRIFFIS: Okay. The Pritchard
15 party has no objection to that.

16 I will state directly in terms of that
17 action this Board is well aware of the difficulty that
18 may have arisen in terms of getting a self-
19 certification which would have arisen out of the
20 appeal that came before and people's opinions in terms
21 of the Zoning Administrator and others that perhaps it
22 would be a concurrence with this Board's order which
23 has become in its own short life perhaps more
24 problematic than ever anticipated, but that's a little
25 aside and perhaps an editorial note.

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1 So, I do not see any complications and I
2 think we can run straightforward.

3 Yes, Mr. Cooper.

4 MR. COOPER: Yes, with respect to the
5 zoning certification, I guess there is one other
6 preliminary note to be made.

7 Upon reviewing the Office of Planning's
8 report in -- in response to the application, the
9 Office of Planning noted that it was their opinion
10 that perhaps a -- a -- an additional request should be
11 made of the Board of Zoning Adjustment for -- under
12 Section 223 for lot occupancy.

13 As you know, this application was filed
14 specifically in response to the earlier noted appeal
15 which addressed -- at that time addressed the side
16 yard and again, our primary concern was -- was to
17 address the issue raised by Ms. Pritchard in that
18 appeal. As such, her application was filed -- which
19 was filed on February 28th specifically requested
20 relief under Section 223 for elimination of the side
21 yard requirement set forth in Section 405 of the
22 regulations.

23 But, again, upon reviewing the May 13th
24 Office of Planning report, it appears that there may
25 still be some continuing confusion about the status

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1 and/or termination to use for this dwelling. It may
2 appear to be mere semantics to some, but obviously
3 there are some important distinctions between a row
4 dwelling and a semi-detached dwelling.

5 The question then is to us with respect as
6 a preliminary matter whether this now deemed semi-
7 detached dwelling will remain a semi-detached dwelling
8 if this application is granted or is it deemed a --
9 reasonably deemed a row dwelling because it appears
10 that in the Office of Planning report their suggestion
11 that well, whether this application is granted with
12 respect to the side yard we still have to request a
13 lot occupancy waiver which, you know, grants if it's a
14 row dwelling, it's a 60 percent lot occupancy. If
15 it's semi-detached, 40 percent.

16 So, I raise that only because --

17 CHAIRPERSON GRIFFIS: Right.

18 MR. COOPER: -- that would have probably
19 have become clear in the --

20 CHAIRPERSON GRIFFIS: It's an excellent
21 point. Let me clarify for the Board to make sure that
22 everyone's understanding and maybe to clarify that I
23 am understanding what you're saying.

24 Your point being as existing it's semi-
25 detached. What is happening is that it's being made

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1 essentially a row dwelling. The lot occupancy is
2 different. So, which one do you calculate for?

3 MR. COOPER: Right. And I believe that
4 would have been resolved in that self-certification
5 probably provided by the Zoning Administrator.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. COOPER: But, because it wasn't --

8 CHAIRPERSON GRIFFIS: Right.

9 MR. COOPER: -- that's why I raise it now
10 as a preliminary matter because it was raised in the
11 Office of Planning's report as suggesting that perhaps
12 a -- a -- an amendment or that a second perhaps
13 application -- special exception application should
14 have been filed by this -- by this applicant. But, we
15 -- we've --

16 CHAIRPERSON GRIFFIS: Well, it wouldn't --
17 first of all, it wouldn't be a special -- an
18 additional special exception. 223 covers them all.
19 Coming under 223 special exception, it addresses the
20 lot occupancy as long as it's below 70 percent. So,
21 I'm not that concern about it. However, it is an
22 interesting point that you bring up and the difference
23 is fairly substantial between 60 and 40 percent.

24 MR. COOPER: Correct.

25 CHAIRPERSON GRIFFIS: Wow. Okay. Why

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1 don't we -- why don't we -- does anyone have an
2 opinion on that? Actually, does Corporation Counsel
3 have an opinion on that?

4 Do you access the lot occupancy for --
5 well, there is it. They're -- they're very bright.
6 Not only did she just need to turn on her mike, but I
7 know the answer and that is --

8 MS. MONROE: Mr. Chair.

9 CHAIRPERSON GRIFFIS: -- if -- if you
10 build from lot line to lot line, you are essentially
11 creating a row dwelling.

12 MS. MONROE: But, I don't think you need
13 to reach that here because of the coming in under 223,
14 the special exception which deals with any lot
15 occupancy that is not matter of right. I mean they
16 need the special exception whether it's -- whether 40
17 percent --

18 CHAIRPERSON GRIFFIS: I understand.

19 MS. MONROE: -- or -- so, I don't think
20 you need to really get into that question.

21 CHAIRPERSON GRIFFIS: I know.

22 MS. MONROE: I don't think I'd address it.
23 It's not necessary in this case.

24 CHAIRPERSON GRIFFIS: Yes. These small
25 cases that -- well, okay. Let's move ahead. We'll

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1 get into it and then I think we'll --

2 MR. COOPER: I raised it only because it
3 was raised in Office of Planning's report and I didn't
4 want to --

5 CHAIRPERSON GRIFFIS: Right. And we're
6 going to have to address it with Office of Planning,
7 but here's the -- the clarity that I'll bring and then
8 let's get onto this. Is that clearly we -- we would
9 access and look at a project in its final form in
10 order to assess the zoning requirements that it would
11 come under and be restricted by. Therefore, if this
12 was, in fact, a row dwelling in its final iteration,
13 it would have a 60 percent lot occupancy.

14 But, as I said and as Corporation Counsel
15 says, it all folds into the 223. So.

16 MR. COOPER: Correct. Thank you.

17 Again, Robert Cooper from the law firm of
18 Jackson & Campbell on behalf of Kathleen Peoples and
19 Philip Sedlak owners of the property located at 1018
20 Constitution Avenue, N.E.

21 Again, we are here presenting our
22 application for -- under Section 223, additions to
23 one-family dwellings or flats.

24 You know, a slight history for those
25 members of the Board who weren't here with respect to

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1 the earlier filed case. This special exception
2 application was filed on February 28th, 2003 following
3 a decision and order issued by this Board on October
4 15th, 2002 on Appeal Number 16811.

5 That appeal filed by the applicants'
6 neighbors, Mr. and Ms. Pritchard, was granted by the
7 Board effectively holding that the applicant should
8 have been referred to the Board of Zoning Adjustment
9 for special exception approval of their then
10 constructed addition to their home and also being the
11 addition is nonconforming.

12 Prior to the date of that order -- prior
13 to the order in that appeal, excuse me, two Zoning
14 Administrators, both Mr. Johnson and Mr. Bello had
15 previously refused to revoke the permits issued to Ms.
16 Peoples in construction of the addition based in large
17 part on one, their interpretation of the zoning
18 regulations and two, the past practices and precedent
19 of that office. Additional reviews and approvals of
20 design had been obtained from the Capital Hill
21 Restoration Society and through the Historic
22 Preservation Office.

23 Again, we are not here today to re-
24 litigate or attempt to appeal or for you to reconsider
25 the order issued in October. We're not here to argue

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1 that. Various sections of the regulation do not
2 preclude conversion of a semi-detached dwelling to a
3 row dwelling nor are we here to argue that the Zoning
4 Administrator's office was right and the Board was
5 wrong in so ruling. It was an unfortunate -- it was
6 an unfortunate turn of events that I'm sure all the
7 parties wish had never occurred.

8 But, we are here to present evidence today
9 that this addition meets all of that criteria for
10 approval under Section 223. That despite the lack of
11 a side yard, there is de minimis impact and the
12 evidence will show on the air and light available to
13 neighboring properties. De minimis impact on the
14 privacy of use and enjoyment available to neighboring
15 properties. There is minimal visual impact on the
16 surrounding street scape. That sufficient graphical
17 representations representing the relationship of the
18 proposed addition to adjacent buildings, views from
19 public ways have been submitted for your review. That
20 the lot occupancy of the dwelling and addition are in
21 compliance with the regulations and finally, evidence
22 will show that the applicant has been and continues to
23 be willing to adopt design screening or other
24 revisions as suggested by the Historic Review Office,
25 the Office of Planning, neighbors, and this Board.

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1 Again, I will attempt to keep the
2 testimony evidence to the standards required in
3 Section 223 and not veer off into what has already
4 been litigated and -- but, will obviously have to
5 refer back to those matters on an as needed basis.

6 CHAIRPERSON GRIFFIS: Well, let me -- let
7 me also be clear. This is a stand alone application.

8 It's a 223 special exception. So, I would anticipate
9 that in your presentation now, we're going down the
10 issues into 223. I, at this point, have seen no
11 reason to revisit other actions of this Board or other
12 rulings. So, I would take that note and let's
13 proceed.

14 MR. COOPER: Thank you. I have seated
15 next to me Ms. Kathleen Peoples who is the co-owner of
16 the property located at 1018 Constitution Avenue.

17 Can you please state your name for the
18 record?

19 MS. PEOPLES: My name -- my name is
20 Kathleen Peoples and I reside at 1018 Constitution
21 Avenue, N.E.

22 MR. COOPER: And when did you become
23 involved with this property at 1018 Constitution
24 Avenue?

25 MS. PEOPLES: I -- my husband was the

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1 original and sole owner of the property which he
2 bought in 1988. We married in 1995 and I became co-
3 owner actually on the completion of the addition to
4 the property.

5 MR. COOPER: Okay. Has the addition that
6 we're referring to -- has that been completed?

7 MS. PEOPLES: It is now complete. Yes.

8 MR. COOPER: Okay. When did you start the
9 process on this application for the addition?

10 MS. PEOPLES: The application on the
11 addition? Sorry. The addition? We began
12 investigation of improving our property in 2001.

13 MR. COOPER: Okay. Did you hire an
14 architecture firm to assist you with developing the
15 plans for this project?

16 MS. PEOPLES: Yes, we selected
17 Wentworth/Levine which has a good reputation for --
18 actually is an awarding winning architect in the city
19 and with a good track record for construction on
20 Capital Hill.

21 MR. COOPER: About how much was the cost
22 of the construction of the addition?

23 MS. PEOPLES: About \$370,000.

24 MR. COOPER: Okay.

25 MS. PEOPLES: I might add that that was

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1 not solely the cost of the addition, but that the
2 house being very old and not having had improvements
3 for many years, this included a changeover of the
4 heating/plumbing to bring it up to -- and other issues
5 that affected the original structure as well as the
6 addition that is in question.

7 MR. COOPER: So, it was a full renovation
8 of the property as well?

9 MS. PEOPLES: That's correct.

10 MR. COOPER: Okay. Now, you filed this
11 application -- special exception application with the
12 Board of Zoning Adjustment. Is that correct?

13 MS. PEOPLES: That is true. Actually,
14 Wentworth/Levine filed for the permit.

15 MR. COOPER: Right. I'm talking about
16 this application.

17 MS. PEOPLES: Oh, I'm so sorry.

18 MR. COOPER: The special exception.

19 MS. PEOPLES: I'm sorry. Yes, we -- I
20 filed for this application. Yes.

21 MR. COOPER: Okay. Now, moved it right to
22 the -- to the meat of the -- the criteria Section 223.
23 I'm referring specifically to Exhibit Number 5. This
24 is the statement in compliance with Form 120,
25 Applicant's Burden of Proof for Special Exception

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1 Application. Did you prepare this document?

2 MS. PEOPLES: Yes, I did.

3 MR. COOPER: Okay. The first criteria of
4 Section 223 says that the addition shall not
5 substantially adversely affect -- have a -- have a
6 substantially adverse affect, excuse me, on the use or
7 enjoyment of abutting or adjacent dwelling or
8 properties.

9 Have you formed an opinion or do you have
10 a position with respect to your addition's impact on
11 the air and light available to neighboring properties?

12 MS. PEOPLES: Yes, I do.

13 MR. COOPER: And what is that opinion or
14 position?

15 MS. PEOPLES: I do not believe that our
16 addition constitutes a substantial or unduly difficult
17 affect on their air and light.

18 MR. COOPER: Okay. I turn your attention
19 -- direct your attention to Exhibit Number 7. This is
20 a four-part exhibit -- four-page exhibit.
21 Specifically referring your attention -- directing
22 your attention to the last page of Exhibit 7 which I
23 believe you identified as small case a capital A.
24 Have you had an -- have you had an opportunity to --
25 you submitted this document. Did you not?

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1 MS. PEOPLES: Yes, I did. I seem to be
2 catching it.

3 MR. COOPER: Okay.

4 MS. PEOPLES: Yes, I did.

5 MR. COOPER: Okay. It's not SARS. I
6 guarantee you.

7 Who took this particular picture that you
8 submitted as Exhibit 7 -- part 4 of Exhibit 7?

9 MS. PEOPLES: My husband Philip Sedlak.

10 MR. COOPER: Okay. And do you know when
11 he took this picture?

12 MS. PEOPLES: Yes, in mid-February
13 sometime.

14 MR. COOPER: Were you present when he took
15 the picture?

16 MS. PEOPLES: Yes, I was.

17 MR. COOPER: Okay. And where -- from what
18 angle does this picture -- where was this picture
19 taken from?

20 MS. PEOPLES: My husband was on the roof
21 of the house.

22 MR. COOPER: Was he on the roof of the
23 addition or was he on the roof of the original
24 existing home?

25 MS. PEOPLES: He was on the roof of the

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1 original home.

2 MR. COOPER: Okay. Do you recall when
3 time of day this picture was taken?

4 MS. PEOPLES: Sometime in mid-afternoon.

5 MR. COOPER: Okay. And what does this
6 picture depict as -- as assisting you in forming an
7 opinion as to light and air?

8 MS. PEOPLES: If you -- if you look at the
9 picture, you see that there is shadowing on the
10 Pritchard home from the neighbor or --

11 MR. COOPER: Okay. Let's -- let's go back
12 a second.

13 MS. PEOPLES: All right.

14 MR. COOPER: The main focus of this
15 picture -- there are three homes shown in the picture
16 and then a -- an additional structure at the lower
17 right hand of the picture. Where -- which one of
18 these properties is the -- is the Pritchard?

19 MS. PEOPLES: The Pritchard home is the
20 one in the middle of the frame that has, because it
21 was winter I presume, has a great deal of
22 overshadowing leaves or brush or whatever.

23 MR. COOPER: Okay. Now, looking at this
24 photograph, the sun is to the south. Is it not?

25 MS. PEOPLES: Yes.

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1 MR. COOPER: And is there shadowing on
2 this property -- on the home, the structure, from your
3 property?

4 MS. PEOPLES: Yes, there is.

5 MR. COOPER: On the -- on the home itself
6 is there shadowing --

7 MS. PEOPLES: Oh, on the home itself in
8 this picture, no, there is not.

9 MR. COOPER: Okay. There -- but, is there
10 shadowing?

11 MS. PEOPLES: Yes, there is.

12 CHAIRPERSON GRIFFIS: There's a shadow of
13 a photographer.

14 MR. COOPER: Right. We'll -- we'll get to
15 that in a second.

16 MS. PEOPLES: Yes. Yes.

17 CHAIRPERSON GRIFFIS: Actually, I think
18 you can move along a lot quicker.

19 MR. COOPER: Okay.

20 MS. PEOPLES: Okay. Fine.

21 MR. COOPER: There is a -- there is a
22 shadow. Is that shadow down at the bottom of Mr.
23 Sedlak?

24 MS. PEOPLES: Yes, it is.

25 MR. COOPER: Okay. And I also refer your

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1 -- direct your attention to Exhibit Number 32 which is
2 six photographs. Again, when were these photographs
3 taken?

4 MS. PEOPLES: May 3rd of this year.

5 MR. COOPER: Okay. And who took the
6 photographs?

7 MS. PEOPLES: My husband Philip Sedlak.

8 MR. COOPER: And from what angle were
9 these pictures taken?

10 MS. PEOPLES: He was on the roof of the --
11 of the house. I believe on the -- on the roof of the
12 original house, but yes, on the roof of the original
13 house.

14 MR. COOPER: Okay.

15 MS. PEOPLES: Oh, well, right. This is --

16 MR. COOPER: And -- and these -- and these
17 show progression of the sun during the course of the
18 day of May 3rd.

19 MS. PEOPLES: That's correct.

20 MR. COOPER: Beginning at 8:00 a.m. and
21 going through 4:47 p.m.?

22 MS. PEOPLES: That's correct.

23 MR. COOPER: Was there sunshine in their
24 -- in their yard --

25 MS. PEOPLES: There was intermittent

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1 sunshine and I believe that the -- the pictures will
2 -- will show that at -- certainly at 8:00 in the
3 morning, there was not significant sun and you can see
4 the progression of sun throughout the day, brighter
5 sun at noon and at 3:00 and at 11:00 with lesser sun
6 at 2:43 and at 4:47.

7 CHAIRPERSON GRIFFIS: Your property runs
8 north/south. Is that correct?

9 MS. PEOPLES: That's correct. I believe
10 so. Yes.

11 CHAIRPERSON GRIFFIS: Okay. And in the
12 photographs that you're just looking at of the May 3rd
13 in the lower right section, I'll point to it and I
14 think -- I don't have a number on this one.

15 MR. COOPER: That's Exhibit 33.

16 CHAIRPERSON GRIFFIS: That's looking into
17 your --

18 MR. COOPER: That's Exhibit 33.

19 CHAIRPERSON GRIFFIS: Okay. Exhibit 23 in
20 the lower right-hand corner. That's your rear yard.
21 Correct?

22 MS. PEOPLES: That's correct.

23 CHAIRPERSON GRIFFIS: Okay. And that's
24 showing that it's fairly shaded.

25 MS. PEOPLES: That's correct.

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1 CHAIRPERSON GRIFFIS: All right. What
2 else?

3 MR. COOPER: What is the -- what is the
4 distance, excuse me, between your property and the
5 property adjacent to you, the -- the Pritchard's home?

6 MS. PEOPLES: We have not have the
7 opportunity directly to measure that property. An
8 original statement made in the former case was that it
9 was 13 feet. More recently, the Pritchard's have
10 given a measurement of 15 and a half feet. We have
11 not had access to make a direct measurement ourselves.

12 MR. COOPER: Okay. Going to the -- the
13 second criteria, the privacy of use and enjoyment,
14 have you had -- have you formed an opinion or position
15 with respect to your addition's impact on the privacy
16 and use and enjoyment available to neighboring
17 properties?

18 MS. PEOPLES: I have.

19 MR. COOPER: And what is that opinion?

20 MS. PEOPLES: I do not believe that our
21 addition constitutes a significant impact on her
22 privacy or use and enjoyment of her property.

23 MR. COOPER: Okay. I turn your attention
24 to the exhibit that Mr. Griffis was just referring to
25 which is Exhibit Number 33. What -- when -- when were

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1 these pictures taken?

2 MS. PEOPLES: These pictures were also
3 taken on May 3rd.

4 MR. COOPER: And who took them?

5 MS. PEOPLES: My husband Philip Sedlak.

6 MR. COOPER: Were you present when these
7 photographs were taken?

8 MS. PEOPLES: Yes, I was.

9 MR. COOPER: And can you provide us with
10 an orientation of -- of what angles these pictures
11 were taken and what they actually depict here?

12 MS. PEOPLES: Yes, these are pictures from
13 the parts of our house and addition that are in
14 someway related to 11th Street.

15 The first picture that you see if from our
16 front balcony which faces -- which faces Constitution
17 Avenue. That is a view seated on that balcony.

18 The second picture that you see is a view
19 toward 11th Street from the front balcony seated.

20 The third picture is a picture from the
21 middle of the front balcony toward 11th Street.

22 The fourth picture which Mr. Griffis
23 referred to is a view of the back balcony. That was
24 taken from the roof facing towards the back alley. In
25 that case, I guess it would be north.

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1 The later two pictures -- I mean the last
2 two pictures are pictures from the two bathrooms in
3 the home. The first from the original bathroom which
4 faces 11th Street. The second from the bathroom that
5 was reconstructed from the original -- from an
6 original second bedroom in that home and it is also
7 towards 11th Street.

8 MR. COOPER: And when you say towards 11th
9 Street, these pictures are -- are directed towards the
10 Pritchard --

11 MS. PEOPLES: Towards -- towards the
12 Pritchard home.

13 MR. COOPER: Okay.

14 MS. PEOPLES: As you will notice then, the
15 -- the only views toward the Pritchard home that are
16 part of -- the -- the two at the -- at the end, the
17 bathroom views, are part of the original structure or
18 at least are from the original structure. The first
19 one is from the balcony and you see standing and
20 seated views.

21 MR. COOPER: Okay. So, these -- the
22 windows that are facing east were original position
23 windows? Maybe not both bathroom windows, but they
24 were original view windows?

25 MS. PEOPLES: That is not correct. The

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1 first is the original window from the bathroom. The
2 second bedroom had a view towards the back of the
3 house before the addition. It was converted to a
4 bathroom and a small window was constructed in that
5 bathroom.

6 MR. COOPER: These windows are adjacent to
7 one another?

8 MS. PEOPLES: Yes, I guess on the same
9 side --

10 MR. COOPER: Okay.

11 MS. PEOPLES: -- of the house if that's
12 what you mean.

13 MR. COOPER: I direct your attention to --
14 to Exhibit Number 10. Specifically -- specifically
15 page A6 and the -- the drawing to the right. That's a
16 -- that depicts which view of your -- of your
17 property.

18 MS. PEOPLES: That is the -- I believe
19 that is the view towards the front. That's the front.
20 It -- it faces Constitution Avenue.

21 MR. COOPER: Okay. So, the balcony you
22 were referring to is shown -- depicted there in that
23 south elevation --

24 MS. PEOPLES: That is correct.

25 MR. COOPER: -- of that drawing? Excuse

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1 me. And then turning your attention to page A7, this
2 is the angle from the -- looking at your building from
3 the east. Is that correct?

4 MS. PEOPLES: That's correct.

5 MR. COOPER: And the two windows that you
6 were referring to under -- in Exhibit 33 are those two
7 that are reflected there on the second story of the
8 addition. Is that correct?

9 MS. PEOPLES: That is correct. I might
10 note that the original bathroom window was, in fact,
11 narrowed and made smaller.

12 MR. COOPER: Okay. Now, the third
13 criteria under this application is that the addition
14 together with the original building view from the
15 street or ally should not substantially visually
16 intrude upon the character, scale, and pattern of
17 houses. Have you had -- have you had an opportunity
18 to form an opinion or position with respect to your
19 addition's impact or the -- the opportunity to present
20 evidence with respect to Section C?

21 MS. PEOPLES: I have.

22 MR. COOPER: Okay. And have you provided
23 documentation to substantiate that this -- well, let
24 me ask you this. Do you believe that the -- that the
25 original building and the addition substantially or do

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1 not substantially visually intrude upon the character,
2 scale, and pattern of houses?

3 MS. PEOPLES: I do not believe that they
4 substantially intrude upon the three criteria you
5 mention especially because the plans for the addition
6 were approved by Historic Preservation and the Capital
7 Hill Restoration Society. They were submitted by
8 Wentworth/Levine and approved.

9 MR. COOPER: Okay. And finally, I -- I
10 jumped ahead of myself here slightly in demonstrating
11 compliance with those three paragraphs. Have you
12 provided supporting documentation --

13 MS. PEOPLES: I have indeed.

14 MR. COOPER: Okay. Finally, under Section
15 -- I think we've addressed Section 223.3, but under
16 Section 223.4, the Board may require some special
17 treatment. Are you prepared or have you been prepared
18 and have you offered in your willingness to amend or
19 revise your drawings and plans to reflect suggestions
20 made to -- to your plans?

21 MS. PEOPLES: I -- I know that in the --
22 I'm not -- I'm not exactly sure of the question, but I
23 guess I can answer it in two ways. First of all that
24 Wentworth/Levine in constructing the home did respond
25 to and make alterations in response to recommendations

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1 by the Historic Preservation Office.

2 CHAIRPERSON GRIFFIS: Actually, let me --
3 let me stop you there. 223.4 goes to this Board --

4 MS. PEOPLES: Okay.

5 CHAIRPERSON GRIFFIS: -- if we find --

6 MS. PEOPLES: I'm sorry.

7 CHAIRPERSON GRIFFIS: -- if there are
8 adverse --

9 MS. PEOPLES: Okay.

10 CHAIRPERSON GRIFFIS: -- impacts that we
11 would add some design features that might mitigate
12 those.

13 MS. PEOPLES: Okay.

14 CHAIRPERSON GRIFFIS: There's no reason.
15 Whether you avail yourself or not to it, they may be
16 the basis of the order or not.

17 MS. PEOPLES: Okay.

18 CHAIRPERSON GRIFFIS: But, we'll get there
19 if we need to.

20 MS. PEOPLES: Okay.

21 CHAIRPERSON GRIFFIS: Is there anything
22 further you want to present?

23 MR. COOPER: No.

24 CHAIRPERSON GRIFFIS: Okay. Questions
25 from the Board? Clarifications? Yes, Mr. Etherly.

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1 MEMBER ETHERLY: Just very briefly, Mr.
2 Chair. I want to -- I want to return to the series of
3 pictures that are included in Exhibit 32 and thank you
4 very much for the provision of the pictures. It's
5 provides a very good snapshot of -- of the vicinity
6 that this Board is most certainly familiar with.

7 The shadowing that's reflected on -- on
8 the date of -- of May 3rd and this is either to
9 counsel or -- or to you. You -- could you -- could
10 you speak to -- I mean I think -- I think perhaps the
11 -- the big challenge here or one of -- one of the
12 challenges is dealing with the light issue and so, I'm
13 curious about -- is it your sense that the photos that
14 were taken on the 3rd, do they reflect shadows that
15 are thrown by the -- by the addition itself or would
16 you characterize that as having been a -- a --
17 atypical or cloudy day for example?

18 MS. PEOPLES: The day was intermittently
19 sunny and overcast. The shadows that -- basically,
20 there are three sources of shadow.

21 MEMBER ETHERLY: Yes.

22 MS. PEOPLES: If you look at the 8:00
23 picture, there's very little sun. So, you don't see
24 -- and it was overcast. So, you don't see shadows at
25 all.

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1 But, if you look on the second picture at
2 11:00, at that time, you see shadows represented --
3 from the neighboring property. That's 202 11th
4 Street. That's on the right side and shadows that
5 come from the Pritchard's own property coming towards
6 the phone line or whatever line that is. I'm not sure
7 what that wire is and as you see, there's no shadow
8 from the addition at that point where you see the
9 vegetation growing there.

10 MEMBER ETHERLY: Okay. So, just to --
11 just to clear.

12 MS. PEOPLES: Yes.

13 MEMBER ETHERLY: And my apologies for
14 interrupting.

15 MS. PEOPLES: No.

16 MEMBER ETHERLY: So, if you -- if you take
17 a look at the picture that's here and I'll show it to
18 my colleagues first so they're aware of which one I'm
19 talking about. It's the one dated May 3rd, '02 at
20 11:00 a.m. That --

21 MS. PEOPLES: It's suppose to be '03.
22 That's wrong.

23 MEMBER ETHERLY: Okay. '03.

24 MS. PEOPLES: Yes.

25 MEMBER ETHERLY: The shadow that is --

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1 there's -- there's a small what appears to be maybe a
2 table or some type of a structure at the bottom of the
3 picture with -- on it.

4 MS. PEOPLES: That's correct.

5 MEMBER ETHERLY: The shadow that's just
6 above that portion.

7 MS. PEOPLES: Is cast by the neighbor or
8 fence at 202 11th Street.

9 MEMBER ETHERLY: Okay. Okay. And then
10 the other shadow that's kind of in the -- in the
11 opposition corner that's a little more uneven and I'm
12 talking about that one right there.

13 MS. PEOPLES: Yes, that is -- that is cast
14 by the Pritchard's property and the vegetation that we
15 spoke of before on that roof.

16 MEMBER ETHERLY: Okay. Okay. And then
17 finally, if you turn the page to the photograph that
18 reflects May 3rd, '03, 3:37 p.m.

19 MS. PEOPLES: That's correct.

20 MEMBER ETHERLY: That shadow with -- with
21 what appears maybe to be -- could either be the
22 photographer or maybe it's a -- kind of a shrub off
23 the top --

24 MS. PEOPLES: No, that's a plant.

25 MEMBER ETHERLY: That's a plant?

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1 MS. PEOPLES: That's a plant.

2 MEMBER ETHERLY: That shadow is being
3 thrown by -- to the best of your knowledge, what's
4 throwing that shadow?

5 MS. PEOPLES: That shadow is being thrown
6 by the side wall of our addition balcony.

7 MEMBER ETHERLY: Okay. Okay.

8 MS. PEOPLES: The -- the lower shadow that
9 you see right below the highlighted wire.

10 MEMBER ETHERLY: Yes.

11 MS. PEOPLES: That is cast by the original
12 home, the original portion of the home.

13 MEMBER ETHERLY: Okay.

14 MS. PEOPLES: And then the shadow again on
15 the right is cast by the -- the fence of the people --

16 MEMBER ETHERLY: Okay.

17 MS. PEOPLES: -- at 202 11th Street.

18 MEMBER ETHERLY: Okay. Thank you. Just
19 to correct, the -- the lower portion in that picture
20 there, that's the -- that's the portion of the shadow
21 that's cast by the original.

22 MS. PEOPLES: That's correct.

23 MEMBER ETHERLY: And then this here with
24 the plant on the top is cast by the addition?

25 MS. PEOPLES: By the balcony wall. Yes.

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1 MEMBER ETHERLY: Okay. Thank you. Thank
2 you, Mr. Chair.

3 MS. PEOPLES: You're welcome.

4 CHAIRPERSON GRIFFIS: Any other questions?
5 The Pritchard party in opposition have any cross
6 examination of the testimony you've heard or as
7 submitted.

8 MS. PRITCHARD: Yes, I -- we -- we have
9 not seen --

10 CHAIRPERSON GRIFFIS: Actually, I need you
11 to come forward and speak into a microphone.

12 MS. PRITCHARD: I'm Janet Pritchard here
13 to speak in opposition to the application.

14 I had checked the file here in the BZA
15 office a few days after the -- what I understood to be
16 the deadline for the party to get their materials into
17 the case file which under Regulation 3113.8 I
18 understand it's 14 days prior to the date of the
19 hearing. At that time, the May 3rd photos that have
20 been referred to were not in the file.

21 CHAIRPERSON GRIFFIS: Right.

22 MS. PRITCHARD: So, I would first request
23 that the Board strike that evidence from the record as
24 not being in compliance with the 3113.

25 CHAIRPERSON GRIFFIS: Okay. Let me --

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1 I'll -- I'll get to it right away. Actually --

2 MS. PRITCHARD: But, if you decide --

3 CHAIRPERSON GRIFFIS: -- if I could have
4 the mike please.

5 First of all, we have requirements for a
6 preliminary submission to fill an application. We
7 don't preclude any applicant from submitting
8 additional information the day of the hearing,
9 presenting evidence. That's part of having a public
10 hearing.

11 MS. PRITCHARD: Right. Okay.

12 CHAIRPERSON GRIFFIS: That these are in --
13 actually, they're in early. They could have brought
14 them today and presented them as evidence. Now --

15 MS. PRITCHARD: Okay.

16 CHAIRPERSON GRIFFIS: -- is it a concern
17 that you haven't seen them. If you -- did you -- do
18 you have copies now?

19 MS. PRITCHARD: We don't have copies now.
20 So, what I was going to -- I wasn't sure exactly how
21 that regulation was interpreted. I understand.

22 What I would like is in the course of our
23 own -- of our presentation, we do have a shadow study
24 that we will be presenting. If we could get copies of
25 the May 3rd photos as well, we could incorporate our

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1 response to those photos into our presentation then.

2 CHAIRPERSON GRIFFIS: Okay. Do you have
3 any other cross examination at this point?

4 MS. PRITCHARD: No, I do not.

5 CHAIRPERSON GRIFFIS: Okay. Do you need
6 five minutes to get that ready then or are you going
7 to do that while we continue?

8 MS. PRITCHARD: If we could just -- if --
9 if someone could provide us with copies of the
10 pictures at this time, I think we'll be ready to
11 respond to them in the context of our own
12 presentation.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. PRITCHARD: Be all right.

15 CHAIRPERSON GRIFFIS: We'll do that.
16 Anything else then? No other cross examination?

17 MS. PRITCHARD: I was just going to -- I
18 guess just one other point. One comment that Ms.
19 Peoples made in -- in discussing the pictures which
20 don't --

21 CHAIRPERSON GRIFFIS: Do you have a
22 question of her?

23 MS. PRITCHARD: No, it's not. So, I -- I
24 can reserve that comment as well. I have no questions
25 for Ms. Peoples.

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1 CHAIRPERSON GRIFFIS: Very good. Let's
2 move on then. We have -- we do have a submission from
3 the Council Member Ambrose. It is Exhibit Number 13.

4 Is there a representative from Ms.
5 Ambrose's office here today? Very well.

6 You are in receipt of the letter?

7 MR. COOPER: Yes. Yes.

8 CHAIRPERSON GRIFFIS: Okay. Are you also?
9 The party in opposition?

10 MS. PRITCHARD: I saw a copy of the letter
11 in the file.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. PRITCHARD: And I do have a -- just a
14 statement I'd like to make about it.

15 CHAIRPERSON GRIFFIS: A statement about
16 the council member's letter.

17 MS. PRITCHARD: Well, I just -- I just --
18 a concern I'd like to raise.

19 CHAIRPERSON GRIFFIS: Have a seat.

20 MS. PRITCHARD: Okay.

21 CHAIRPERSON GRIFFIS: So, I don't keep --
22 or you don't take it as if I'm reprimanding you, I --
23 everything you say has to be said into a microphone.

24 MS. PRITCHARD: I --

25 CHAIRPERSON GRIFFIS: You need to be

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1 seated in front of that --

2 MS. PRITCHARD: Okay. I'm sorry.

3 CHAIRPERSON GRIFFIS: -- so that the
4 recorder can get it. Otherwise, you -- you give our
5 court reporter a headache trying to recreate a
6 transcript that would exist.

7 MS. PRITCHARD: I will try to be more
8 observant about that.

9 CHAIRPERSON GRIFFIS: Thank you.

10 MS. PRITCHARD: When I noticed the letter
11 from -- from Council Member Ambrose in the file, I
12 would just like to state that I was very surprised
13 because, of course, because we are also constituents
14 of Council Member Ambrose and her office did not
15 contact myself or my husband at all to, you know, seek
16 our concerns or perspective on the matter before
17 issuing the letter.

18 So, the letter was issued, you know,
19 solely after hearing, you know, matters that were
20 brought to her attention by I presume Ms. Peoples or
21 -- or her representatives.

22 CHAIRPERSON GRIFFIS: Or so you're
23 assuming?

24 MS. PRITCHARD: I'm assuming that.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. PRITCHARD: Because we certainly were
2 not consulted or --

3 CHAIRPERSON GRIFFIS: Right.

4 MS. PRITCHARD: -- by Ms. Ambrose for our
5 perspective before the letter was issued and I only
6 discovered it in the file when I investigated it
7 recently.

8 CHAIRPERSON GRIFFIS: Okay. Thank you.

9 Any additional? You don't need to. This
10 not a requirement. I'm giving you an opportunity.

11 MR. COOPER: No. None. None.

12 CHAIRPERSON GRIFFIS: Excellent. Any
13 other questions of the Board? Clarification? If not,
14 let's move on to the other to the other government
15 reports since this application.

16 We are moving on then to the Office of
17 Planning which is recommending approval. Their memo
18 is Exhibit Number 28 and, of course, their report was
19 timely filed. So, let's turn to the Office of
20 Planning's representative.

21 MR. LAWSON: Chairman Griffis and members
22 of the Commission, my name is Joel Lawson and I'm with
23 the D.C. Office of Planning.

24 Kathleen Peoples and Philip Sedlak are
25 owners and occupiers of the property at 1018

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1 Constitution Avenue, S.E. and they are requesting
2 special exception relief for a recently constructed
3 rear addition to their house.

4 The properties in the surrounding area are
5 zoned R-4. The property is at the end of a line of
6 row houses facing Constitution Avenue. To the east
7 are row houses facing 11th Street, S.E. perpendicular
8 to the subject property so that the rear yards butt up
9 against the subject property.

10 Lots on this and adjacent block are
11 predominately occupied by row houses. A building
12 permit was issued in July of 2001 for what was then
13 considered to be a fully conforming rear addition to
14 the existing house. Based on a DCRA interpretation,
15 the property was considered a row dwelling lot. So, a
16 side yard was not required.

17 The owner commenced construction of the
18 two-story addition which extends from side lot line to
19 side lot line. There are two upper story decks, a
20 small one facing the street which is south and a
21 larger one facing north towards the alley.

22 The front -- sorry. The front deck is
23 partially screened on the east side with a solid wall
24 of about four feet in height. There are no windows on
25 either the east or west walls of the addition. The

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1 addition provides no setback because a row dwelling as
2 it was originally determined to be is not required to
3 provide a setback whereas a semi-detached dwelling
4 must provide eight feet on its open side.

5 In reviewing the application -- in
6 reviewing the application, Office of Planning noted
7 that the addition increased lot occupancy to 55
8 percent more than the outright permitted amount of 40
9 percent for a semi-detached dwelling but less than the
10 amount permitted by special exception which is 70
11 percent. A row dwelling is permitted lot occupancy --
12 a greater lot occupancy of 60 percent.

13 OP feels that the addition as constructed
14 generally meets the special exception test. OP also
15 notes the particular circumstances that --
16 circumstance that exists in this case that the owner
17 was issued a building permit for the addition and
18 properly submitted the addition for Historic
19 Preservation Review Board review and incorporated
20 required design modifications.

21 The addition has minimal impact on the
22 street scape. It contains no windows facing
23 properties to the east or west and existing fences
24 eliminate visual access at ground level from one
25 property to the next. Upper story decks are oriented

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1 away from the side properties and low solid -- and a
2 low solid sidewall lessons, but does not eliminate
3 visual impacts.

4 The addition may, however, feel more
5 imposing when viewed from the rear yards of adjacent
6 properties than a conforming addition would. As noted
7 in the report, OP feels that minor modifications may
8 help to mitigate these potential issues and OP would
9 encourage more dialogue between the owner and
10 neighbors.

11 OP feels -- oh, sorry. Subsequent to
12 filing the Office of Planning report, the Office of
13 Planning received comments from the fire department.
14 I'd like to share those.

15 The fire department noted no objection to
16 the request to retain the addition as adequate fire
17 access is provided from the alley.

18 In conclusion, OP feels that requiring
19 removal of the addition would result in undue hardship
20 to the owner. As such, OP recommends that the BZA
21 approve the special exception request. The -- this
22 recommendation is not inconsistent with the
23 comprehensive plan and generalized land-use map and
24 would not undermine the integrity of the zoning
25 regulations.

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1 And this concludes OP's comments and I'm
2 available for questions. Thank you.

3 CHAIRPERSON GRIFFIS: Okay. Thank you
4 very much. Any question from the Board?
5 Clarifications?

6 If was, in fact, an excellent report as --
7 as often as the case. Especially with the breakdown
8 which helped substantiate with the specifics of this
9 application and noting -- you did hear a brief
10 discussion on lot occupancy and -- and you're in
11 concurrence with us continuing without addressing that
12 as a separate special exception. Correct?

13 MR. LAWSON: I -- to be honest, I didn't
14 totally understand the discussion. It was certainly
15 the opinion of -- of the Office of Planning that --
16 that if a side yard is required, it's required because
17 this is considered a semi-detached dwelling.

18 CHAIRPERSON GRIFFIS: Semi. Right.

19 MR. LAWSON: The semi-detached dwelling,
20 the lower lot occupancy prevails.

21 CHAIRPERSON GRIFFIS: Okay. Indeed.
22 Applicant have any cross examination of the Office of
23 Planning?

24 Pritchards have any questions of the
25 Office of Planning.

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1 No questions. Very well. Thank you very
2 much.

3 Let's move on then to -- is a
4 representative from the ANC 6 here? 6A.

5 I do not have any record of submission of
6 an ANC report. Does the applicant have any record of
7 that?

8 MR. COOPER: None. We attended a -- a
9 subcommittee meeting and I -- I believe -- it's my
10 understanding that -- that the ANC decided not to --
11 not to weigh in on this and make a decision.

12 CHAIRPERSON GRIFFIS: That would seem
13 somewhat apparent as we don't have a report.

14 That being said, that is all the notes I
15 have in terms of the government reports filed. We do
16 have as indicated from the Office of Planning, the
17 fire which did not -- I'm not aware. I didn't receive
18 an independent letter, but you talked to them. Is
19 that correct?

20 MR. LAWSON: We did receive an independent
21 letter and --

22 CHAIRPERSON GRIFFIS: But not submitted it
23 in?

24 MR. LAWSON: We did not.

25 CHAIRPERSON GRIFFIS: Okay. That's fine.

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1 I just want to be clear. The record is full on that.

2 Are you aware of any other submissions
3 from agency, government reports?

4 MR. COOPER: None.

5 CHAIRPERSON GRIFFIS: Excellent. The
6 Board? Not noting any, then let us move on.

7 Are there -- let me call now for anyone
8 here to give as persons testimony in support of the
9 application? Are there people here to give testimony
10 in support of application 17007?

11 We can move on then to parties in
12 opposition. The Pritchard party in opposition if
13 you're prepared to present your case at this time and
14 then we will go to -- who here is -- how many people
15 are going to give testimony in regards to this
16 application 17007? Support, opposition, neutral.

17 I thought we had some hands raised before.
18 Are you -- you're going to -- your testimony in
19 support? Okay.

20 MR. COOPER: If necessary. It's the --

21 CHAIRPERSON GRIFFIS: You're going to call
22 him as a rebuttal witness in your concluding after the
23 case presentation?

24 MR. COOPER: If necessary. If necessary.

25 CHAIRPERSON GRIFFIS: A rebuttal witness

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1 is what you're proposing. Is that correct?

2 MR. COOPER: Yes. Yes.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. COOPER: If necessary.

5 MS. PRITCHARD: Thank you, Mr. Chairman.

6 My name is Janet Pritchard. Here in opposition to the
7 application.

8 As you know, at a special exception
9 hearing such as this, the applicant bears the burden
10 of proof for showing that the addition shall not have
11 a substantially adverse affect on the use or enjoyment
12 of any abutting or adjacent dwelling or property and
13 it is our position that the applicants have plainly
14 failed in this burden of proof.

15 In our reply, we will illustrate that the
16 addition does have a substantially adverse affect on
17 our -- the addition substantially diminishes the air
18 and light available to our rear yard and kitchen
19 window, encroaches on the privacy of our rear yard,
20 and unduly compromises the use and enjoyment of our
21 property.

22 We will address each of these factors and
23 we will support our claims with empirical evidence,
24 analysis, and testimony for the Board to consider and
25 evaluate.

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1 But, before we get into these details,
2 it's important to emphasize some preliminary points
3 which will frame how this case is to be judged and
4 these points address in part -- part of the opinion
5 presented by the Office of Planning where it said, you
6 know, at this point, it would be undue hardship to the
7 applicants to deny the -- the application and -- and
8 force the -- force the building addition to be taken
9 down.

10 CHAIRPERSON GRIFFIS: Let me -- let me
11 stop you there because you don't need to address that.

12 Proving undue hardship is not part of a test for
13 special exception.

14 MS. PRITCHARD: Thank you.

15 CHAIRPERSON GRIFFIS: The Board is very
16 well aware of what the test is for that.

17 MS. PRITCHARD: Okay.

18 CHAIRPERSON GRIFFIS: Frankly, that's even
19 more difficult to prove than special exception.

20 MS. PRITCHARD: Okay.

21 CHAIRPERSON GRIFFIS: I think it was
22 noted, the opinion of OP, in the universe of what has
23 happened here. In fact, in numerous cases where we
24 have things that are built that come in then for
25 relief from zoning is very problematic and we need to

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1 know the substance of the history, but that being
2 said, let's move on.

3 MS. PRITCHARD: Okay. Well, just in
4 brief, the points that I wanted to emphasize that I
5 believe frame how -- how the case is viewed is that I
6 think it's important when considering whether the
7 additional has a substantially adverse affect to view
8 the case as you would if the addition had not already
9 been built and I emphasize that point because as -- as
10 anyone who's reviewed the previous appeal relating to
11 this case, the applicants constructed the building at
12 their own risk while the appeal challenging the
13 validity of their permit was pending.

14 CHAIRPERSON GRIFFIS: Okay. Let me bring
15 some clarification to that, too.

16 MS. PRITCHARD: Yes.

17 CHAIRPERSON GRIFFIS: Clearly, we are
18 looking at this as much as we can as humanly possible
19 with common sense.

20 MS. PRITCHARD: Okay.

21 CHAIRPERSON GRIFFIS: Viewing the special
22 exception on the merits as if it didn't exist.
23 However, the evidence that's submitted is -- is
24 important because we're actually seeing what we would
25 have anticipated as the affect.

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1 MS. PRITCHARD: Of course.

2 CHAIRPERSON GRIFFIS: And -- and what's --
3 what will be evidenced is what we'll deliberate on.

4 MS. PRITCHARD: Okay. And the other point
5 I wanted to make is -- well, okay. It goes to the
6 hardship question which you said I shouldn't address.
7 So, I won't address it.

8 So, then moving on, of course, to the --
9 the real substance of this hearing which is Section
10 223 factors be considered. Under Section A of that
11 section, the air and light available to neighboring
12 properties shall not be unduly affected.

13 Applicants' testimony and submissions to
14 this point we feel are -- are fairly conclusory and
15 simply takes moment-in-time photographs showing some
16 light and some shadow. We have prepared I think a
17 more rigorous shadow study that I'd invite my husband
18 to present now which I think illustrates in much
19 greater detail the affect of the air and light affect
20 on our home from the addition.

21 It also compares the air and light affect
22 of the condition as constructed to what might have
23 been the impact of an as-of-right addition had they,
24 in fact, chosen to build their addition eight feet
25 back as would have been required under Section 405.3.

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1 MR. COOPER: Mr. Chair, if I may. I guess
2 I will raise the same objection that they raised.
3 We've not as a party -- we've not received any of
4 these documents either 14 days or even today.

5 MS. PRITCHARD: No, we have -- we have
6 copies for you and I'm about to distribute those if my
7 husband --

8 MR. COOPER: Thank you.

9 MR. PRITCHARD: My name is David --

10 CHAIRPERSON GRIFFIS: The staff at the end
11 please. All this needs to go to the staff at the end.

12 MR. PRITCHARD: My name is David
13 Pritchard. I'm a resident of 204 11th Street, N.E.
14 and husband of Janet Pritchard.

15 What has been distributed is a -- it's two
16 packets. One's a sort of presentation format which I
17 will walk through. The second is a series of
18 photographs taken at particular points in time from
19 particular angles and to illustrate some of the points
20 being made in the presentation.

21 CHAIRPERSON GRIFFIS: Well, take a moment
22 while this is getting passed out and we'll have it in
23 front of us.

24 MR. PRITCHARD: Sure. Okay.

25 CHAIRPERSON GRIFFIS: And then can you

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1 give me an indication first of all how many other
2 exhibits you're looking to introduce and then how much
3 time you're going to require in the presentation of
4 your case?

5 MR. PRITCHARD: As soon as I walk through
6 this, how long?

7 MS. PRITCHARD: These are the only
8 exhibits the ones that are being distributed now.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. PRITCHARD: And these exhibits address
11 specifically the air and light question and then we
12 also would like to address the privacy and use and
13 enjoyment factors and then I just have some concluding
14 remarks.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. PRITCHARD: Essentially what I want to
17 do is really sort of directly address some of Board
18 member at least questions about, you know, the time
19 and the season and things like that.

20 Really have two things trying to look at
21 the amount of time. That is, when does the -- the
22 current addition impact our air and light in our rear
23 yard and the second is what is the degree of that
24 impact. I'll be looking at both of those.

25 If you turn to slide three, this is sort

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1 of a model of the looking from our rear yard or -- or
2 looking from our house towards 1018 Constitution. The
3 dotted line area is the area of the addition. This is
4 not to scale and a lot of the measurements here are --
5 are approximate. That's just something to bear in
6 mind.

7 CHAIRPERSON GRIFFIS: Did you -- you
8 created these slides?

9 MR. PRITCHARD: I created these slides.
10 Yes.

11 CHAIRPERSON GRIFFIS: Did -- for my
12 understanding and the Board's understanding, do yo
13 have an expertise in -- in putting together this type
14 of information?

15 MR. PRITCHARD: I'm a management
16 consultant. I'm pretty familiar with making
17 presentations. The -- the pictures here are really --

18 CHAIRPERSON GRIFFIS: Okay. But, you're
19 not like an --

20 MR. PRITCHARD: I'm not a -- that's --
21 that's not really a -- I'm not an architect or
22 whatever. The -- the -- the graphics here are really
23 just to convey so the Board can have a sense of what a
24 --

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. PRITCHARD: -- visually picture
2 things. But, I'm actually going to be using numbers
3 which are based on the model. This just helps explain
4 the model.

5 CHAIRPERSON GRIFFIS: Excellent.

6 MR. PRITCHARD: Okay.

7 CHAIRPERSON GRIFFIS: Okay. Let's
8 continue.

9 MR. PRITCHARD: All right. So, that's
10 just the -- the picture and -- and the -- essentially,
11 you know, the -- the sun tracks east to west depending
12 on time and season.

13 Go to slide four. The -- the shadow
14 created by the sun -- by the -- oh, sorry, by the
15 addition and depends on the -- the azimuth and the
16 elevation. Now, the azimuth is the position of the
17 sun. If you draw a line perpendicular from the sun
18 down to the ground so it's perpendicular to the ground
19 and that position relative to due north is the
20 azimuth. So, this way is due north. So, if you go
21 around sort of 180 degrees, the azimuth as a 180
22 degrees is due south that way, 270 that way. Okay.
23 And the elevation is if you're standing on the ground,
24 what degree do you have to look up to see the sun.

25 So, given those two figures, you can

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1 calculate the position of the sun using basic
2 trigonometry. You can then calculate the position of
3 the shadow in our yard and that's essentially the
4 model that we -- that I created.

5 On slide five --

6 CHAIRPERSON GRIFFIS: So, on slide four,
7 what's casting the shadow in your yard that is created
8 by this triangle?

9 MR. PRITCHARD: I actually get into that
10 in a few -- because this picture crops up again a
11 little bit later and I can -- okay. Let me answer it
12 right now.

13 The -- on the -- the shadow in the yard,
14 the left-hand piece is created by the fence. The very
15 left parallelogram.

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. PRITCHARD: And the irregular triangle
18 on the right is created by the addition. That
19 diagonal line -- if you see -- if you follow the line
20 from the sun down to the ground --

21 CHAIRPERSON GRIFFIS: To that corner.

22 MR. PRITCHARD: -- that clips the corner
23 of the balcony and then hits a point on the ground in
24 our backyard.

25 CHAIRPERSON GRIFFIS: But, the point of

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1 that balcony is small. Are you saying that that small
2 piece of the balcony creates that entire shadow?

3 MR. PRITCHARD: No, because if you follow
4 the sun down, I mean if you imagine lines parallel to
5 that line but lower down the balcony.

6 CHAIRPERSON GRIFFIS: Does the higher
7 portion of the addition create a shadow that's showing
8 on this slide?

9 MR. PRITCHARD: No, the higher point of
10 the shadow at this point of -- of -- if you draw a
11 line, if there was a line coming parallel to the --
12 the one that's there, that hits the top left-hand
13 corner of the parapet, that actually would now hit the
14 -- that would actually sort of hit the fence or go
15 over the fence.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. PRITCHARD: And I'm going to -- I'm
18 going to get into sort of more examples of this.
19 That's sort of the basis of these and then they'll be
20 some associated photographs as well.

21 So, just looking at this picture, you can
22 see and this is consistent with the -- the photos that
23 -- that were just presented to you. When the -- when
24 the sun's azimuth is less than 180 degrees there is
25 not going to be impact of the sun on this addition.

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1 It's -- because the sun will be facing -- will be on
2 the addition as opposed to coming away.

3 The second thing using the -- so,
4 actually, if you turn the slide, you'll see that.

5 When the sun's elevation is less than 36
6 degrees, the sun is generally below the pre-addition
7 1018 Constitution. I say generally because it depends
8 somewhat on actually where the azimuth of the sun is
9 because the pre-existing 1018 Constitution Avenue is
10 of different shapes. So different pieces will hit at
11 different angles and then when you're actually
12 perpendicular when the sun's azimuth is 270 degrees,
13 in fact, you're actually looking -- you've got a, you
14 know, straight -- it's clear across the yard. There
15 is no pre-existing --

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. PRITCHARD: -- 1018. So, these are
18 general calculations, approximate calculation. The --
19 NOAA, the National Oceanic and Atmospheric
20 Administration, has a solo position calculate that I
21 used to calculate the -- the times when the azimuth
22 exceeds 180 degrees and the sun's elevation is greater
23 than -- than 36 degrees.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. PRITCHARD: I just picked seven days

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1 of the year, the summer solstices, the two equinoxes,
2 and then the -- the points at which those values are
3 zero.

4 CHAIRPERSON GRIFFIS: Let me do this
5 because I want -- I want to cut to the conclusion of
6 this exciting movie.

7 MR. PRITCHARD: Okay.

8 CHAIRPERSON GRIFFIS: But, let me be
9 clear. We're not questioning the fact that one, the
10 sun has a position and its -- its rays will be on an
11 angle nor -- and I think the applicant would concede
12 and has conceded indirectly by their evidence that it
13 -- their addition and their existing building cast
14 shadows.

15 MR. PRITCHARD: Okay.

16 CHAIRPERSON GRIFFIS: So, now we need to
17 establish from your point of view that those shadows
18 -- how you -- what you anticipate those shadows to be
19 and then how they are, in fact, unduly affecting your
20 property.

21 MR. PRITCHARD: Okay. Okay. I'm not
22 going to answer the question of unduly, but I'll leave
23 that Janet.

24 CHAIRPERSON GRIFFIS: That's all right.

25 MR. PRITCHARD: But, I will just give some

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1 empirical data. If you turn to slide six, I mapped
2 out that -- that -- that graph using those seven data
3 points. This is an estimate now of the -- the time --
4 the amount of time that the -- the current -- the
5 current -- the addition as it is impacts our property
6 and rather than calculate the -- the total area, I
7 just calculate the area of the triangle just because
8 it's simpler. That comes to about 554 or 5 hour per
9 year or about 13 percent of the total annual daylight
10 hours.

11 CHAIRPERSON GRIFFIS: That what? That the
12 addition will cast a shadow?

13 MR. PRITCHARD: Will cast some kind of
14 shadow.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. PRITCHARD: Some kind of shadow. Now,
17 what's important here is sometimes that shadow is
18 very, very small. Right. And for example, you say
19 the -- the picture during February --

20 CHAIRPERSON GRIFFIS: Let's get to the
21 shadow you're concerned with.

22 MR. PRITCHARD: Okay.

23 CHAIRPERSON GRIFFIS: Again, the Board's
24 well aware that there's shadows cast.

25 MR. PRITCHARD: Okay. Well, let me --

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1 take the summer solstices -- stay on summer solstices
2 because then I actually made some calculations on
3 summer solstices. On summer solstices which is 21st
4 of June, it'll be approximately six hours of the
5 impact of the shadow.

6 If you turn to the photographs and
7 basically go from three -- look at -- look at three
8 and there on photograph three that -- that corner
9 point is the impact of the balcony. The fence if you
10 see on the left-hand side is that -- that shadow of
11 that foliage is -- is created by our fence. So, if
12 you sort of draw a horizontal line basically across
13 from that foliage across the yard, everything above
14 that is shadow created by the addition.

15 If you turn to page four, and this is
16 where you can see I -- I actually took some
17 measurements on the 14th of May to validate my
18 calculations using the model with actual measurements
19 to make sure that I was close.

20 Here you can see -- again, you can see on
21 the sort of bottom -- towards the bottom right, you
22 can see the corner of the shadow point where the
23 diagonal line -- there's a diagonal line up there.
24 The balcony, that's that plant on the balcony and then
25 the main addition goes actually up the wall there and

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1 you can see -- I've tracked that shadow -- I've
2 tracked that shadow, this was on May 14th, across --
3 as it sort of marches across the yard starting from
4 about 2:17 I think are the first flags or actually a
5 bit before that and then ending around -- the last
6 flags are about 3:49. So, that's approximately one
7 and a half hours that the shadow moved from the first
8 flags to the -- to where it is now. That's on May
9 14th. Okay.

10 CHAIRPERSON GRIFFIS: What time is this?

11 MR. PRITCHARD: The times are 2:17 --
12 between 2:17 and 3:49 p.m. Okay.

13 If you see -- if you look at five -- slide
14 number five, that was taken a little bit -- a little
15 bit later. I stopped doing the measurements. Now,
16 you see the shadow coming up the wall and I'm not sure
17 of the time on that one.

18 If you look at number six, six is taken
19 from a picture looking down from our ceiling and there
20 you actually get the sense of the impact of the -- of
21 the -- you see the fence shadow being created by the
22 foliage on the left hand said. So, if you draw a line
23 horizontally there, then the rest of that shadow is
24 created by the addition.

25 Slide -- now, I'm going to go -- since --

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1 some -- some actual calculations here. If you jump to
2 slide nine, here it -- at 2:00 p.m. on June 21st which
3 is the summer solstice day. I just picked that day.
4 I'll get another example as well. The area of the
5 shadow creates -- there is 45 square feet. The -- the
6 total area of shadow in our yard. That was my
7 estimate. Is 45 feet.

8 COMMISSIONER HOOD: Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Yes.

10 COMMISSIONER HOOD: I -- I want to make
11 sure I'm following this.

12 You say it's slide 9 and I'm looking at a
13 picture. Oh.

14 CHAIRPERSON GRIFFIS: No, that one --

15 MR. PRITCHARD: Sorry, I'm back on -- I'm
16 back on this.

17 COMMISSIONER HOOD: That's -- that's what
18 you're referring to is slide nine.

19 MR. PRITCHARD: This is slide nine as
20 opposed to photograph nine.

21 COMMISSIONER HOOD: Okay. Got ya. And
22 you were the one who -- who came up with these
23 measurements? You took the measurements?

24 MR. PRITCHARD: Yes. Yes.

25 COMMISSIONER HOOD: Thank you.

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1 MR. PRITCHARD: So, at 2:00 p.m. on June
2 21st, according to the -- the model here, the -- the
3 area of shadow would be 45 square feet.

4 On slide ten, without the addition, with
5 the sun's elevation high in the sky, the -- the
6 existing Constitution Avenue building, 1018
7 Constitution Avenue doesn't -- doesn't throw any
8 shadow. So, it's just the fence making a shadow which
9 is 24 square feet. So, there's 45 feet v. 24 square
10 feet right there.

11 The same thing if we move the addition
12 back eight feet at this point because of the height of
13 the sun in the sky because it's close to the summer
14 solstice. The -- the -- that addition would not make
15 any shadow on our -- on our yard.

16 I did the same calculations for one of the
17 equinoxes and the -- and the spring and the fall
18 equinoxes are pretty close to each other as you can
19 imagine. So, this is an estimate of September 23 at
20 2:00 p.m. also. Estimate of 53 square feet a shadow
21 would be thrown on our yard. Without the addition, 36
22 square feet.

23 So, you can see that the -- you know, the
24 difference in the shadow obviously depends on the time
25 of year, but, in fact, it actually -- the -- the

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1 impact does goes back from, you know, sometime in --
2 in January to sometime in November. It's just the
3 degree of the shadow being thrown depending on the
4 time of day.

5 The other -- if you turn to page 15 --
6 slide 15, sorry, in this presentation, the --- I just
7 want to make one point about the -- the lighting for
8 the kitchen window and if you compare this with --
9 with -- with photograph number seven, again, this was
10 a photograph taken on May 14th. Janet will be
11 referring to the light through that window in a
12 minute.

13 And then compare that to slide -- to
14 photograph number eight. That was I think about 40 --
15 that was about 45 minutes difference between there. I
16 did some calculations on what would be the impact on a
17 daily basis or at least on -- on a particular day,
18 again summer solstice, in terms of how much more light
19 would we get through that window if -- or how much
20 less light -- how much more light would we get in that
21 window if the addition were moved back eight feet and
22 it was one hour on that particular day. So, that
23 number's going -- going to sort of probably get
24 smaller as you head towards the equinoxes.

25 There are some background materials there

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1 on -- some --

2 COMMISSIONER HOOD: Mr. Chair, can I --

3 CHAIRPERSON GRIFFIS: Yes, Mr. Hood.

4 COMMISSIONER HOOD: I'm just curious on
5 the photographs. Why wasn't the picture taken --
6 you're trying to show me. Why wasn't it taken at the
7 same angle? Because I see that on -- on -- I guess
8 that's nine, photograph nine, I see -- I would have --
9 I would have been able to have a better relationship
10 if they were taken at the position -- I know there are
11 different times and I could see better in relationship
12 to the conduit that's going up the brick wall as
13 opposed to the different angle that -- that has been
14 taken. I'm just -- it's almost like page eight is
15 missing something because I can't see the relationship
16 and the time with eight and nine.

17 So, I'm just wondering why we didn't take
18 it at that angle that you took page nine to give us a
19 better --

20 MR. PRITCHARD: Well, two things. One is
21 seven and eight were designed to show the impact on
22 that window. So, I took one photograph when the shade
23 was at the bottom of the window. One -- one when it
24 was at the very top. The -- the other gets -- my --
25 my question, I'm not a professional in this. This is

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1 not my -- I don't make my living off this. So.

2 COMMISSIONER HOOD: You seem to be doing a
3 pretty good job. So, I -- I just was wondering why
4 wasn't that done so I could get a better understanding
5 of exactly how things are.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. PRITCHARD: I think what -- if you
8 turn to slide six, you know, and again it depends a
9 little bit on the time of day. I'm sorry. Photograph
10 six. You know, you'll -- you'll see these -- this
11 picture sort of march -- march from the fence towards
12 our wall and back up the kitchen wall. Sometimes it
13 comes -- depending on the azimuth, of course, it will
14 either flow -- come this way or it will come straight
15 back or it will at certain times of the year, it will
16 actually go that way where the sun is, in fact, the
17 sun's azimuth is greater than 270 degrees for -- for a
18 few days of the year. That is the sun is due west and
19 still shining on our yard for a few days in the year.

20 MEMBER ETHERLY: Mr. Pritchard, if I could
21 interrupt for a moment and --

22 MR. PRITCHARD: Yes.

23 MEMBER ETHERLY: -- and I'll -- I'll echo
24 my colleagues concerns, you know, for -- for not
25 having the -- the joy of expert status conferred upon

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1 you, you're -- you're doing pretty decently with the
2 calculations on the sun. I'll probably be working on
3 this for the next couple of weeks.

4 MR. PRITCHARD: Thank you.

5 MEMBER ETHERLY: It -- it seems to me that
6 there are two central issues here. One is going to
7 be, you know, the extent of the impact of -- of the
8 addition as far as it relates to your ability to be in
9 that back patio and get some sunlight and clearly, I
10 think as the Chair indicated, you got -- you got
11 shadow and the question is just to what extent do you
12 have it and how much do you have to put up with.

13 The second part of it I think is
14 definitely the impact on your kitchen window because
15 you're demonstrating I think that there are going to
16 be some impacts on that kitchen window.

17 It also would appear that as it relates to
18 -- there's a rear door that's indicated on photograph
19 ten. I take it that's a back -- that's a back exit
20 out of the kitchen.

21 MS. PRITCHARD: Yes.

22 MR. PRITCHARD: Yes, it's a back exit
23 facing due south.

24 MEMBER ETHERLY: Okay. And then you also
25 have -- is that window also?

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1 MR. PRITCHARD: That's -- we -- yes, it
2 is. It's basically --

3 MEMBER ETHERLY: Okay.

4 MS. PRITCHARD: It's our dining room.

5 MEMBER ETHERLY: Okay. And then you have
6 a -- there's -- there's a side door there.

7 MS. PRITCHARD: Yes.

8 MEMBER ETHERLY: I'm not necessarily too
9 or at least just -- just speaking for myself, I'm not
10 necessarily too worried about that window and the side
11 door as you go up those steps because --

12 MS. PRITCHARD: Right.

13 MEMBER ETHERLY: -- because I think you
14 get some shadow coming from that adjacent structure
15 that's unrelated to the applicants' property. So, at
16 least in terms of how I'm envisioning dealing with
17 this issue of the light and the air, the coverage that
18 you get in the patio and that kitchen window I think
19 are -- are of interest to me as -- as we deal with the
20 shadow piece.

21 So, just to give you a sense of -- of kind
22 of -- kind of what I'm -- what I'm working with and I
23 think the -- I think the photographs are very helpful
24 and very instructive in terms of laying out what --
25 what the impact is. So, I just wanted to give you

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1 some indication of --

2 MR. PRITCHARD: Okay.

3 MEMBER ETHERLY: -- kind of where my head
4 is at, but I think -- I think we're pretty close
5 there, Mr. Chair. Thank you.

6 MR. PRITCHARD: That's -- that's the end.

7 CHAIRPERSON GRIFFIS: Any other question
8 from the Board?

9 MR. PRITCHARD: Well, that's --

10 CHAIRPERSON GRIFFIS: Why don't we take
11 this bulk of information while we have it? If not,
12 let's proceed.

13 MS. PRITCHARD: Okay. We've prepared the
14 -- the shadow study and the trigonometry analysis to
15 try to give a better sense, you know, overall over the
16 course of a day and, of course, we could only choose
17 particular days that we could give specific numbers
18 for and then over the course of a year, to try to
19 quantify what we're talking about in terms of sunlight
20 and try to enhance the information from the
21 photographs which, of course, are just one spot in
22 time.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. PRITCHARD: And I hope that it's
25 useful to you.

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1 CHAIRPERSON GRIFFIS: Well, to be clear,
2 because you can document that there may be 539 hours
3 per year that there's shadow does not necessarily mean
4 that it's unduly affecting your property. That is
5 what the Board will deliberate on, but I think it's
6 fairly on what the impact is.

7 All right. Let's move on.

8 MS. PRITCHARD: And I would point out that
9 that 500-some hours is we calculated 13 percent of
10 daylight that we otherwise would enjoy, we don't
11 enjoy.

12 How the Board chooses to weigh 13 percent,
13 you know, that your responsibility.

14 We claim that it is unduly and it's
15 substantial in light of, you know, living in a row
16 house you already are somewhat starved for -- for
17 sunlight.

18 Okay. I'd like to address one point that
19 wasn't raised at the hearing today but that was raised
20 in the applicants' written materials and that is that
21 they suggest that they could have built and as-of-
22 right addition that could have been substantially
23 higher than the addition that they built and just to
24 briefly respond to that, I would, of course, point out
25 that I think any addition that would have been -- the

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1 addition that they built is the same height as their
2 existing building and the rest of the row of houses to
3 which they're adjacent except that they add a parapet
4 that adds about 30-some inches to the height.

5 And, of course, I'd just like to refute
6 their claim that they could have as of right built a
7 higher addition because I think any higher addition
8 most certainly would have been struck down by the
9 Historical Preservation Review Board as being out of
10 character with the neighborhood and buildings. So,
11 that -- I didn't think that was a --

12 CHAIRPERSON GRIFFIS: Well, before opening
13 up to great speculations back and forth --

14 MS. PRITCHARD: Well, I just wanted to
15 respond to what was in their written submission.

16 CHAIRPERSON GRIFFIS: But, their written
17 submission states the fact which I think is absolutely
18 correct. Under the zoning regulations, DCMR Title 11,
19 they would be entitled to build to the maximum out of
20 height as it's outlined. Whether HPRB decides to do
21 something or not, frankly we don't care.

22 MS. PRITCHARD: Okay.

23 CHAIRPERSON GRIFFIS: We look at the
24 zoning regulations.

25 MS. PRITCHARD: Okay. So, we would

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1 certainly argue that the amount of shadow affecting
2 the yard and the window is certainly not de minimis
3 and I will -- I'd like to spend more time addressing
4 in particular the light coming through the window, but
5 first I'd like to also address the question of
6 privacy.

7 The appellants suggest that the addition
8 does not unduly affect the privacy or our home and
9 they point out in particular the orientation of the
10 balcony as being facing the front, et cetera. Now,
11 certainly, we don't -- we're not asserting that the
12 applicants, you know, have the intention of standing
13 on their balcony and spending their time, you know,
14 looking down on our rear yard, but the way the balcony
15 is positioned, it just has a waist high wall. It's
16 directly up to the property line and anyone on that
17 balcony, you know, they could really just look down
18 into their yard.

19 It's as if somebody had a ladder and
20 they're -- they're right up there are your fence and I
21 think in terms of privacy, that feeling of proximity
22 and of encroachment is a factor to consider in terms
23 of the actually feeling like your neighbors are right
24 on top of you and I would say that that is unduly
25 encroaching on our privacy.

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1 And I'd also say that contrary to
2 appellant's assertion, the fact that an occupant at
3 1018 Constitution could also look out of second floor
4 windows that preexisted in their original structure is
5 not comparable to the effect of the balcony in that
6 the windows are setback 12 -- 12 and a half feet from
7 our property line and any viewer behind those windows
8 would, you know, be behind a window and it's not the
9 same sense of encroachment as having your neighbors
10 right on top of you and they are sort of able to look
11 right down over your -- over your fence.

12 In their written materials, the applicants
13 also noted that perhaps by adding additional plants or
14 some further kind of barrier to the balcony they could
15 deal with the privacy issue and I would simply point
16 out that while that might deal with the privacy issue,
17 if you look back to the shape of the shadow that's
18 cast by the addition and you see how the main part of
19 the addition casts a taller shadow and then the
20 balcony addition is quite apparent because you can see
21 that one plant sit on the balcony edge. Obviously, if
22 -- if the ledge were built up, it would deal with the
23 privacy issue, but have a counter negative affect in
24 terms of increasing the amount of shadow by a
25 substantial amount. So, you know, it would be hard to

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1 deal with both issues in a satisfactory manner
2 simultaneously.

3 In addition to compromising our privacy,
4 the addition unduly compromises our use and enjoyment
5 of our property and I'd like to specifically point to
6 two -- two points. Prior to learning of the
7 applicants' proposed construction, we tore out a
8 deteriorated brick patio that existed in our rear yard
9 with the intention of planting a grassy lawn and a
10 garden that would make the yard a more suitable place
11 -- play space for our young children. These
12 renovations are still in progress and increased
13 shadowing of the yard I submit is likely to have a
14 detrimental affect on the success of these gardening
15 efforts.

16 But, certainly, most significantly to me
17 at a personal level is how the addition shadows my
18 kitchen window for substantial periods during the late
19 afternoon and early evening and if you look again at
20 the photographs of the window, if you look at
21 photograph seven, that photograph was taken at
22 approximately 4:00 p.m. on May 14th. Whereas,
23 photograph eight was taken at approximately 4:45 on
24 May 14th. So, you can see just in 45 minutes how the
25 -- the main part of the addition casts a shadow

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1 entirely over the kitchen window.

2 While I appreciate Member Hood's concerns
3 about the different angles of the pictures, one reason
4 why we chose to provide photographs nine and ten is
5 that it gives you a good idea as cast on the wall the
6 shape of the shadow. So, you see the shadow over the
7 window is from the main part of the addition. The
8 small little jag out that you see there is the roof
9 line as compared to the parapet which goes higher and
10 then you can see where the plant is sitting on the
11 ledge, that's the balcony shadow.

12 And if you look at photograph ten, it's
13 somewhat imperfect because now you're moving back into
14 the sort of courtyard section of our rear yard. But,
15 you can see on the ground in front of the steps where
16 the fence shadow would be if you follow that shape up
17 and compared to where the addition shadow is. Okay.
18 So, that gives a sense of the shape of the shadow as
19 cast on the wall, that the shadow of the main addition
20 reaches the bottom of the window at approximately 4:00
21 p.m. That was at least in mid-May and it covers the
22 entire window by 4:45.

23 And -- and if you think then about the
24 shape of the shadow, you can compare it to what the
25 fence would have -- you know, what would have been

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1 cast by the fence is it wouldn't -- it wouldn't be
2 anywhere near to where that -- that upper shadow ledge
3 is now at 4:45. Okay.

4 And I'd just like to provide some personal
5 testimony as to, you know, the affect that it has on
6 my use and enjoyment of my property and that one of
7 the things I appreciated about the house when deciding
8 to buy it is the fact that the kitchen was generally a
9 sunny and bright space. I enjoy cooking. I spend a
10 considerable amount of time in my kitchen particularly
11 during the last afternoon and early evening meal
12 preparation period which is these very hours in
13 question, where the calculations done by my husband
14 estimated that during those late afternoon/early
15 evening hours on average you lose an hour of sunlight
16 per day and this is particularly during the time
17 period when I would expect to be in my kitchen using
18 my kitchen.

19 During the summer solstice, in fact, and
20 during the sunny period of the year, that's as much as
21 four hours of sunlight lost through that window.
22 Obviously, it's going to be lesser than that on a
23 curve across the period of the year, but certainly on
24 an average at least an hour a day lost through that
25 kitchen window.

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1 I often incorporate my children into
2 baking a meal, preparation activities and the main
3 area for baking and food preparation is a long counter
4 top situated along the wall running perpendicular to
5 the window such that any sunshine streaming through
6 the window would flood that section of the kitchen.

7 As many who live in row houses might
8 attest, you come to accept that your home has limited
9 access to sunshine, but you also come to treasure
10 those parts of your home where you can enjoy the sun
11 rays and since the construction of the addition, the
12 kitchen is noticeably without sunshine that I used to
13 enjoy in the late afternoon and early evening on
14 spring and summer and fall days and this has
15 significantly diminished my use and enjoyment of my
16 home.

17 And moreover when looking out of my
18 kitchen window, we now confront a -- a concrete wall.

19 Prior to the construction, the space was open through
20 the entirety of applicants' rear yard. There was a
21 building at 1016 Constitution that was slightly longer
22 than the applicants' original home. The remainder of
23 the space remained open through most of the block and
24 thus while our own rear yard is very shallow, there
25 had nevertheless been a sense of air and light and

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1 space in the rear.

2 While even an as of right addition setback
3 eight feet would have resulted in a significant
4 change, we contend that proximity does make a
5 substantial difference and as illustrated in my
6 husband's shadow study, there is a substantial
7 difference between -- the eight-foot distance makes a
8 substantial difference and that, of course, would
9 follow through to the difference in terms of the light
10 to the window as well as the yard.

11 With a two story -- and I would simply
12 testify that with a two-story wall constructed right
13 on the property line of our shallow rear yard, our
14 home now has a tenement-style feeling of being closed
15 in by brick on three sides rather than just on two.

16 And then a further point I'd make
17 addresses Section 223.4 of the special exception
18 regulation stating that the Board may require special
19 treatment in the way of design screening, et cetera.
20 As explained -- let's see. I -- I would simply say
21 that in the event that the Board should decide to
22 grant applicants' request for a special exception, we
23 would ask that the Board would also require applicants
24 to refinish the wall facing our property with brick or
25 another attractive finish rather than leaving the

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1 existing bare breeze block.

2 And then I just have some closing remarks
3 if I could move on to those. Okay.

4 As the Board clarified in its October 2002
5 decision in the Pritchard appeal case preceding this
6 case, this special exception hearing, "The side yard
7 regulations as a whole are designed to insure the
8 provision of an adequate amount of separation between
9 structures."

10 The Board also chose to cite Rathkopf's
11 law of zoning and planning in support of its
12 interpretation of 405.3 side yard requirements stating
13 that "Restrictions on land development controlling
14 building setback lines and requiring minimum front,
15 side or rear yard areas that must be kept free from
16 structural development have long been recognized by
17 courts as being reasonably related to the promotion of
18 the public welfare."

19 Front yards, rear yards, and side yards
20 provide light, air, and privacy and in -- in their
21 division, the Board emphasized that in adopting
22 Section 405.3, the Zoning Commission expressly stated
23 that its purpose is to ensure the provision of
24 adequate side yards for all residential buildings.

25 So, in deciding whether a special

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1 exception to Section 405.3 side yard requirement is
2 warranted in this case, I'd urge the Board to, of
3 course, keep these same principals in mind.

4 CHAIRPERSON GRIFFIS: Thank you.

5 MS. PRITCHARD: Yes, I would like just --
6 I'm sorry. My husband just pointed out one important
7 point to us and that goes back to the issue I was
8 trying to raise earlier about how -- how the -- the
9 Board frames this case and that is, you know, if as
10 you agreed, the case should be looked at as though you
11 were looking at plans as though the building hadn't
12 already been constructed and essentially what you're
13 weighing is as of right, the applicants could have
14 already built a substantial addition to their yard.
15 It would have been a more rectangular addition and not
16 a square addition coming all the way to our fence
17 line.

18 So, essentially what you're needing to
19 weigh is the applicants' desire to build a more square
20 addition that included that eight feet as opposed to a
21 more limited addition that could be rectangular
22 instead versus the affect that the addition has on our
23 air and light, our privacy, and our use and enjoyment
24 of our property.

25 So, I think that's important to weigh out,

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1 too. If you really were looking at it fresh as though
2 it hadn't already been built to recognize that as of
3 right they could have already built a addition of
4 substantial size. It just would have been altered in
5 its shape and altered in its proximity to our
6 property.

7 Thank you.

8 CHAIRPERSON GRIFFIS: Thank you. Any
9 other questions from the Board?

10 MEMBER MILLER: I have a question to the
11 applicant.

12 CHAIRPERSON GRIFFIS: Ms. Miller. Oh, why
13 don't we hold that then.

14 MEMBER MILLER: Okay.

15 CHAIRPERSON GRIFFIS: Those to cross
16 examination.

17 MR. COOPER: Just a few questions.

18 CHAIRPERSON GRIFFIS: That's right.

19 MR. COOPER: Sorry. Just a couple of
20 questions. Looking back at your empirical data sheet
21 specifically addressing page six, now this is labeled
22 topic one and I believe topic one is on page four. I
23 believe addresses the addition, you know, as -- as
24 currently built. Correct?

25 MR. PRITCHARD: Yes.

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1 MR. COOPER: And now you stated here that
2 the total shading created by this addition as built
3 equals 13 percent of the total annual daylight hours.

4 Now --

5 MR. PRITCHARD: That's -- that's not
6 quite.

7 MR. COOPER: Okay.

8 MR. PRITCHARD: Let me be precise on this.

9 MR. COOPER: Okay.

10 MR. PRITCHARD: The -- the minutes -- and
11 it's essentially the minutes at which the sun's
12 elevation is less than -- is greater than 36 and the
13 azimuth is less than -- sorry. When the azimuth is
14 greater than 180 degrees and the -- the elevation is
15 less than 36 degrees. Those total minutes add up to
16 13 percent of total daylight hours. That -- that
17 doesn't measure the extent of which there's -- the
18 degree of shade. It just says the amount of time.

19 MR. COOPER: I guess -- I guess that's the
20 question. What is -- I'm reading what you wrote here
21 and the percentage although there are absolutely no
22 scales and no expert testimony or -- or certification
23 of these numbers --

24 MR. PRITCHARD: Yes.

25 MR. COOPER: -- you're putting here that

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1 this equals 13 percent of total annual daylight hours
2 and I'm trying to elicit from you what percentage does
3 this addition cause shadowing since you're now
4 identifying total daylights hours and I ask the
5 question does -- are you saying that this addition as
6 built affects 13 percent of the total annual daylight
7 hours?

8 MR. PRITCHARD: Yes.

9 MR. COOPER: Okay.

10 MR. PRITCHARD: That's approximately.
11 Yes, but some -- some --

12 MR. COOPER: But all of this is
13 approximately?

14 MR. PRITCHARD: Yes, some -- now some of
15 that impact might be a square millimeter. Okay.

16 MR. COOPER: Okay.

17 MR. PRITCHARD: For a particular point of
18 time.

19 MR. COOPER: So we're talking about from
20 -- from

21 MR. PRITCHARD: So, it's from zero impact
22 to its total, you know, to its most significant impact
23 which I imagine is summer solstice.

24 MR. COOPER: So, you're saying it -- it
25 affects 13 percent of the total. Okay.

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1 MR. PRITCHARD: Daylight hours.

2 MR. COOPER: Now, that's as built. What
3 would -- would -- what is the percentage of the total
4 daylight hours that it impact if it were built seven
5 feet back from the property line?

6 MR. PRITCHARD: I -- there -- there were
7 lots of analyses that I could have done but didn't do.
8 So, I don't know the answer to that.

9 MR. COOPER: Would you -- would you guess
10 that it could have been 13 percent as well?

11 MR. PRITCHARD: Well, that would be less.
12 It would be less than this, but I don't know how much
13 less.

14 MR. COOPER: Okay. So, that -- you
15 haven't provided us with that?

16 MR. PRITCHARD: No.

17 MR. COOPER: Okay.

18 MR. PRITCHARD: No.

19 MR. COOPER: Now, you stated -- though you
20 did state that in -- in your testimony and I'm not
21 certain if it's written here anywhere that this impact
22 actually -- is actually only one hour of daylight per
23 day.

24 MR. PRITCHARD: Was that something that I
25 said?

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1 MS. PRITCHARD: No, I --

2 MR. PRITCHARD: Let -- let me. Let me.
3 That's --

4 MS. PRITCHARD: Okay.

5 MR. PRITCHARD: -- that's actually not --
6 I'm not sure that's right.

7 MR. COOPER: Well, I -- I wrote that down
8 when you were talking, Mr. Pritchard.

9 MR. PRITCHARD: The -- okay.

10 MR. COOPER: I guess I'm trying to find
11 out what's the --

12 MR. PRITCHARD: Okay.

13 MR. COOPER: -- you know --

14 MR. PRITCHARD: The -- the -- the point --
15 what I said at that time on summer solstice or on June
16 21st, there is one hour less of sun if the addition
17 were back eight feet. Sorry. We would have more --
18 there -- there is one hour less of sun in our -- in
19 our kitchen when we compare -- the current addition
20 compared to the addition if it were back eight feet on
21 that particular day.

22 MR. COOPER: Okay. On that one
23 particular.

24 MR. PRITCHARD: On that one particular
25 day. Now, it's going to get less as you head up

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1 towards the equinoxes.

2 MR. COOPER: Okay.

3 MR. PRITCHARD: Yes. So, that was not --
4 that -- that one hour day on average was -- okay.
5 That's not --

6 MR. COOPER: Yes, I -- I address your
7 attention to your photographs number seven and eight.

8 Now, specifically number seven. Look at that one for
9 a second.

10 Now, I believe Mrs. Pritchard testified or
11 stated that the -- as a result of -- that the -- the
12 sunshine it was -- would flood -- flood the kitchen
13 with sunlight. Let me ask you first. You -- you
14 briefly touched on this, but what's the orientation of
15 this kitchen. What's the size of this kitchen
16 structure and -- and how is this kitchen laid out?

17 MS. PRITCHARD: What I described as the
18 layout is that a long the wall that runs perpendicular
19 to that window that you see -- okay. So, basically if
20 I'm standing at the counter facing the wall with the
21 window to my left --

22 MR. COOPER: Correct.

23 MS. PRITCHARD: -- that there's a counter
24 along the majority of that wall, a kitchen that is, I
25 don't know, about 15 feet in depth. So, about --

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1 approximately 15 -- I haven't measured it. I'm -- I'm
2 guessing out of my head. Fifteen feet long wall which
3 is the primary sort of work space in the kitchen,
4 okay, for food preparation and -- and what not and so,
5 afternoon sun to the rear of my home particularly --
6 in fact, the later -- the later in the day, the angle
7 of sun is deeper such that the sunlight is actually
8 more pronounced in how it streams through the home.

9 Okay. I can still -- particularly in
10 preparing for this special exception hearing, you
11 know, I've compared and those areas of my home that
12 still receive afternoon sunlight at this time of year
13 even at, you know, 6:00 in the evening, the rays --
14 the experience of the rays through a window are
15 actually more profound, you know, at 5:00 or 6:00 in
16 the evening because of the angle of the sun, the way
17 that it does stream into the house. Because this --
18 these windows do face the west. So, the sun is
19 setting down and the -- the sun is coming in. My
20 upstairs windows continue to get substantial light.

21 The kitchen window used to get substantial
22 light of the same nature in those evening hours.

23 MR. COOPER: Well, I -- I want to --

24 MS. PRITCHARD: Now, when it's cut off at
25 the end of the afternoon, it doesn't have that light

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1 streaming in because it would flood -- to answer you
2 question and my -- and -- and my use of the term
3 flood, in the afternoon, the sunlight rays stream in
4 fairly profoundly on a sunny day absent the shadowing
5 effect.

6 MR. COOPER: Well, if -- I just want to
7 discuss if we can --

8 MS. PRITCHARD: And it fills, you know,
9 the half of my kitchen including the half where I'm
10 working with my children.

11 MR. COOPER: Okay. I just want to just
12 look just at photograph number seven.

13 MS. PRITCHARD: Yes.

14 MR. COOPER: I'm trying to see -- this is
15 -- it's interesting. This is a perfect photograph
16 because it shows no shading from either the addition
17 or the existing home or any fences or trees. Yet, I
18 -- I -- this photograph is interesting because it
19 doesn't show or reflect this flooding of light as you
20 are suggesting is now being blocked by your -- by this
21 addition. In fact --

22 CHAIRPERSON GRIFFIS: You're saying
23 because you can't see inside the house?

24 MR. COOPER: Well, I mean it would have
25 been nice to have photographs from the inside, but if

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1 you just look at the photograph and look into -- into
2 the kitchen, you will see there's a bowl sitting right
3 in front of the window which has sun shining on it.
4 But, it looks like matter -- a matter of feet behind
5 it, there is not a ray of sun going on that toaster
6 that probably -- it looks -- appears to be a few feet
7 or that roll of paper towel that's just a few feet
8 behind the bowl.

9 Additionally, if you look at the top of
10 the window --

11 CHAIRPERSON GRIFFIS: Okay. Is there a
12 question?

13 MR. COOPER: I'm asking I mean is -- is if
14 this is an accurate depiction of the condition of the
15 sun flooding into -- into your --

16 MS. PRITCHARD: Okay.

17 MR. COOPER: -- and it -- and does that --
18 does that curtain that you have at the top of your
19 window, does that not block out some of your sun into
20 the kitchen as well?

21 MS. PRITCHARD: Okay. It certainly does
22 not. First of all, it's rather a sheer fabric. So,
23 it sort of has a glittery color affect through the
24 sheer.

25 CHAIRPERSON GRIFFIS: We're not going to

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1 spend a lot of time talking about window treatment.

2 MS. PRITCHARD: But, secondly -- but, in
3 response to the -- response to the -- your question
4 about the angle of the sunlight, this picture I'm
5 assuming, my husband took it, so, he can correct me if
6 he has a collection, was taken standing somewhat in
7 the center of our yard. So, the angle of the camera
8 to the window because it's capturing also the fence
9 there on that side of our yard, it's -- it's coming
10 somewhat from a -- was it southerly direction toward
11 the window.

12 MR. PRITCHARD: Yes. Yes.

13 MS. PRITCHARD: And I believe that if --
14 if he would have been positioned to look into the
15 window straight on, you would have seen the sunlight
16 that was coming through the -- through the window.

17 MR. COOPER: Isn't that sun angle --

18 MS. PRITCHARD: I'm speculating there, but
19 I think it's -- you only see in the surface areas
20 because of the angle of the camera versus if we had --
21 if we had -- had the foresight to take a picture
22 looking directly into the window.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. COOPER: One last -- one last question
25 on this issue of the bare wall. Did you not refuse

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1 access to this contractor and these owners to do -- to
2 get access to that wall to do something different with
3 that wall?

4 MS. PRITCHARD: At the point prior to
5 construction shortly before their planned commencement
6 of construction when Ms. Peoples contacted me to
7 discuss the pargeting of the wall and access to our
8 yard to do that pargeting, my response was that there
9 was an important preliminary -- that that question was
10 a bit premature. There was an important preliminary
11 question which was whether or not the wall should be,
12 you know, permitted to be built along the property
13 line because as they had explained to --

14 CHAIRPERSON GRIFFIS: Actually, let's cut
15 to the chase. So, at one point, you did stop them
16 from coming onto the property to deal with that. Now,
17 are you -- would you preclude them from coming onto
18 the property to deal with that elevation?

19 MS. PRITCHARD: To -- to deal with
20 refinishing the wall if that were part of the Board's
21 order?

22 CHAIRPERSON GRIFFIS: Yes.

23 MS. PRITCHARD: I would not prohibit that
24 at this point.

25 CHAIRPERSON GRIFFIS: You wouldn't

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1 prohibit them?

2 MS. PRITCHARD: No.

3 CHAIRPERSON GRIFFIS: But, that was one of
4 the things you concluded as saying that we ought to
5 make -- mandate or require, but you wouldn't allow
6 them to access it?

7 MS. PRITCHARD: No. No. I said I would
8 not -- I would not prohibit it --

9 CHAIRPERSON GRIFFIS: Oh. Okay. Good.

10 MS. PRITCHARD: -- is my answer to you.

11 CHAIRPERSON GRIFFIS: Thank you. All
12 right. Anything else?

13 MR. COOPER: No further questions.

14 CHAIRPERSON GRIFFIS: Board, follow-up
15 questions?

16 MEMBER MILLER: I just have -- just have a
17 follow-up to this wall question. Also, OP says in
18 their report that they would encourage more dialogue
19 between the owners and the neighbors to lessen impacts
20 for the addition and so, one item we heard is
21 refinishing the wall. Is that something that you are
22 amendable to do?

23 MR. COOPER: I can speak with -- yes, this
24 -- this party is amenable to -- to doing something.
25 It has always been. Now, I don't -- I believe if

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1 there were an effort to put brick on there, that would
2 actually be on their property if I'm not mistaken.
3 So, the architects can -- can address that if
4 necessary. But, their willingness to -- to discuss
5 that and -- and -- and address that in some manner.
6 Yes.

7 CHAIRPERSON GRIFFIS: Any other questions?

8 Looking at the elevation or rather the first
9 photograph that was submitted by the party in
10 opposition, you can clearly see that the -- the -- the
11 gutter and the beginning of the downspout on the
12 addition and there is a parapet that's created above
13 that clearly.

14 Can I -- can someone of the architect or
15 applicant or anybody who can answer this question tell
16 me what is the height of that parapet? Noting that it
17 will change because I imagine that that's a sloped
18 roof. But, is there an estimation of that is?

19 Looking at your sections that were
20 submitted, it's -- it's --

21 MR. WENTWORTH: My name is Bruce
22 Wentworth.

23 CHAIRPERSON GRIFFIS: Yes.

24 MR. WENTWORTH: I am co-owner of
25 Wentworth/Levine Architect Build. We designed and

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1 built the property for Mr. Sedlak and Ms. Peoples.

2 CHAIRPERSON GRIFFIS: Did you understand
3 my question or do you want me to redirect it?

4 MR. WENTWORTH: Yes, I believe that the
5 lowest point is about ten inches and then it --
6 because of the roof slope, it -- it grows. It could
7 be between 24 and 30 inches.

8 A -- a parapet is required by fire code.

9 CHAIRPERSON GRIFFIS: Why? Because that's
10 a lot line wall?

11 MR. WENTWORTH: Because they don't want --
12 they want to contain the fire if there was a fire.

13 CHAIRPERSON GRIFFIS: What's the -- what's
14 the code requirement for the height of the parapet?

15 MR. WENTWORTH: I can't -- I don't know
16 exactly.

17 CHAIRPERSON GRIFFIS: Okay. So, the
18 deepest point is where obviously the water is flowing
19 off it and you're saying that may be upwards of 30
20 inches. Is that correct?

21 How about -- actually, let's have
22 direction after you answer my question because then
23 you guys can go off and talk.

24 The highest point is 30 inches at that --
25 where the water's running off the roof?

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1 MR. WENTWORTH: Possibly at the south.

2 CHAIRPERSON GRIFFIS: And you're saying
3 the shortest point is ten inches?

4 MR. WENTWORTH: Yes.

5 CHAIRPERSON GRIFFIS: Okay. All right.
6 Anything else? Good. Let's then have closing
7 remarks.

8 MR. COOPER: Board's indulgence for one
9 second.

10 In -- in closing, the applicant submits
11 that she has met her burden of satisfying the
12 requirements of Section 223. Specifically, that the
13 addition does not have a substantial adverse affect on
14 the use or enjoyment of any abutting or adjacent
15 property or dwelling. Specifically, that the light
16 and air available to neighboring properties shall not
17 be unduly affected and I believe unduly is an
18 important word.

19 As defined in Webster's Unabridged
20 Dictionary and as -- as are -- are other words that
21 are not defined under the zoning regulations under
22 Section 199.2(g) which says that words not defined in
23 sections shall have the meaning so assigned and again
24 a substantial is consisting of or relating to or
25 sharing the nature of or constituting substance

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1 existing as or in substance, not seeming or imaginary,
2 not elusive but real and true.

3 There has been no evidence submitted by
4 the opponent to this application that their sun has
5 been or their sun will be unduly affected by this
6 addition. Specifically, they've not even addressed
7 how this -- how the addition if pushed back seven
8 feet, because there was some discussion about eight or
9 so, it's really seven feet, would have -- whether it
10 would have any worse impact or anymore significant
11 impact than this structure as built.

12 There's been no opposition to the -- to
13 the applicants' position that the addition does not
14 unduly affect air available to the neighboring
15 property. They've submitted quite extensive and
16 elaborate detailed photographs and drawings, the
17 opponent has, of slides, but there -- again was
18 without any sort certification by either, you know, an
19 astronomy or astrologer, NOAA, NASA or anyone else to
20 certify these -- these calculations that were personal
21 findings at best.

22 You know, there were no expert scales and
23 unfortunately, they were even architectural scales
24 provided on these drawing to show the true
25 relationship and size of this structure with respect

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1 to the -- to the -- the direction of the sunlight and
2 -- and shadowing.

3 There's been no -- neither the applicant
4 has nor the -- has stated that there's been a -- a
5 complete blackout or overly blocking of the sun as
6 result of this addition.

7 I'm sure that again even with this
8 addition being set back and I specifically asked this
9 question seven feet, there would still be some
10 shadowing. I mean there's -- we are not here to -- to
11 state that -- that this addition either seven feet or
12 in its current configuration would not have any
13 impact. It's -- the question is whether there's an
14 undue impact and it's of such -- of such severity and
15 substantiality.

16 There will be some shadowing even if this
17 addition were back seven feet and as stated before,
18 this addition could be proposed to be built to a
19 height of 40 feet which would probably have even more
20 of an impact.

21 It's also important to note that with
22 respect to the light and -- and well, to the light,
23 that the structure that the -- that the opponents own
24 and reside in is also a nonconforming structure. It
25 does not set back -- it does not provide the required

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1 rear yard and has thus pushed a little bit further
2 toward the -- the applicants' property than would
3 otherwise be. So, this window although an important
4 part of their home is, in fact, in a nonconforming
5 scenario.

6 As to the use of the rear yard, privacy of
7 use and enjoyment, again, the applicant has stated
8 that there will be no undue impact and affect the
9 privacy and use of any neighboring properties. The --
10 the -- the second story windows, at least one of them,
11 was already existing prior to the erection of this
12 addition. So, from the -- the two windows and -- on
13 the second story in the bathrooms, yes, there is an
14 orientation towards the east, but there was already an
15 orientation there. So, this addition doesn't add
16 anything new with respect to -- to the -- the privacy
17 of the Pritchard property.

18 Additionally, the use and enjoyment as
19 stated by the Pritchards is that their rear yard would
20 not be able to be used for the purposes that they
21 intended which would be for grass. Now, there's been
22 no testimony that grass can't grow in shade or partial
23 shade and I think that the photographs that have been
24 presented by the applicants show that the rear yard
25 does receive substantial sunlight during the day and,

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1 in fact, many of the photographs show a large plant
2 growing along the eastern wall of the western edge of
3 the Pritchard property which is growing quite
4 healthfully.

5 The -- the next point as set forth by the
6 applicant is that the addition together with the other
7 -- the original building as viewed from street scape
8 does not visually -- substantially visually intrude as
9 set forth by the Capital Hill Restoration Society in
10 its approval as well as the Historic Preservation
11 Office in their approval, and Office of Planning's
12 review that there is no substantial -- is that the
13 addition does not substantially visually intrude upon
14 the character, scale, and pattern of houses along the
15 subject street frontage and in the immediate area.

16 Finally, with respect to the paragraph D,
17 substantial graphically representations have been
18 submitted sufficient to represent the relation of the
19 proposed addition to adjacent buildings.

20 I think will stop there. I think I've
21 used about all that I have there.

22 CHAIRPERSON GRIFFIS: Okay. Good note to
23 stop on. Very well.

24 I think it's very conclusive. The record
25 is full on this.

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1 What I'd like to do is set this for a
2 decision making. Checking the schedule I think we can
3 do a -- no, let's just set this for a decision on the
4 -- on the 3rd June. How are we looking in the
5 morning? We can still fit that in. Correct?

6 MR. MOY: Yes, we -- we could. We have --
7 so far, that's seven cases. We can slide another one
8 in.

9 CHAIRPERSON GRIFFIS: For the -- for the
10 public meeting?

11 MR. MOY: This is for June the 3rd public
12 meeting.

13 CHAIRPERSON GRIFFIS: For a public
14 meeting. There it is. We'll set it then. What I'm
15 going to request from the applicant and the party in
16 opposition is --

17 MS. PRITCHARD: Mr. Chair.

18 CHAIRPERSON GRIFFIS: Yes.

19 MS. PRITCHARD: I'm sorry. I had meant to
20 request earlier if I could submit to the record a
21 written summary of argument within whatever, you know,
22 deadline that you want to impose. If it would be
23 useful to the Board.

24 CHAIRPERSON GRIFFIS: Written summary?
25 That would be argument?

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1 MS. PRITCHARD: Just a written summary of
2 -- of our argument and points to the record. If we
3 might be permitted to do that. If the Board thinks it
4 would be useful.

5 CHAIRPERSON GRIFFIS: I don't know. Board
6 members, any opinion? That would move us off June 3rd
7 to be clear. We have a written summary -- well,
8 unless we ask for findings of fact conclusions and do
9 it that way and we can have them in. In which case,
10 the applicant can do the same.

11 MEMBER ETHERLY: I'll just -- Mr.
12 Chairman, I mean I think both presentations were --
13 were very detailed and rather thorough.

14 MS. PRITCHARD: Okay.

15 MEMBER ETHERLY: I probably would not be,
16 you know, overly -- I don't feel overly in need of
17 additional documentation.

18 CHAIRPERSON GRIFFIS: Very well. As Mr.
19 Etherly --

20 MS. PRITCHARD: Very well.

21 CHAIRPERSON GRIFFIS: -- has spoken, we
22 will set this for June 3rd.

23 I agree. I mean I think it's substantial.
24 This is a -- it -- it is clear in -- in what the test
25 is and the issues before us. Whether that makes it

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1 simple of not, I don't know.

2 But, this is what I'd like to do is have
3 the submissions from both participants in this case
4 that would address 223.4 and that is essentially
5 conditions for a special exception if it was to be
6 successful in its approval.

7 I would note specifically what -- if the
8 applicant would provide options for which they would
9 propose to finish the lot line wall elevation that
10 faces the abutting party's property that is in
11 opposition. Is that clear?

12 MR. COOPER: Yes, I believe it is. Yes.

13 CHAIRPERSON GRIFFIS: Finish options.
14 Very well.

15 MS. PRITCHARD: Mr. Chair, are you asking
16 for something from us --

17 CHAIRPERSON GRIFFIS: Yes.

18 MS. PRITCHARD: -- to that as well? I
19 just want to clarify.

20 CHAIRPERSON GRIFFIS: Yes, you could put
21 that in.

22 MS. PRITCHARD: Okay. But, is that --
23 that's what you were asking for -- for both of us?

24 CHAIRPERSON GRIFFIS: No, I'm asking
25 generally if you want you can submit items that

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1 address 223.4 which is any of the -- what might
2 mitigate the issues of what you've brought you. I'm
3 not sure additive elements -- I'm leaving it open to
4 you, but the Board will clearly look at what would be
5 additive elements that could address those issues that
6 you have said would be unduly affecting your property.

7 Actually, it brings up another point. Am
8 I not being clear on that?

9 MR. COOPER: Kind of loss me a little bit.

10 CHAIRPERSON GRIFFIS: Okay. Well, I'll
11 give you an example.

12 MR. COOPER: That's -- I'll catch up.

13 CHAIRPERSON GRIFFIS: For instance, 223.4
14 gives us a version -- well, if I could -- we could
15 redesign the whole thing which would be a lot of fun,
16 but boy we got another whole hearing room in here and
17 what would they do to me if I started that, but for
18 instance, adding trees on your property would diminish
19 the light. So, just adding -- additive things don't
20 seem to -- to diminish the -- the elements that are
21 being talked about as having undue impact.

22 The other thing I would do and forgive me
23 I am getting tired, but -- so, I may not be totally
24 clear. But, the -- the other piece is what I was
25 bringing up in terms of the parapet. If we were to

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1 look at how we might diminish some of this -- the
2 shadowing effect of the adjacent, is there a level of
3 which that parapet could be reduced?

4 And I would ask the applicant if -- if
5 they can explore that idea. I don't know, you know.
6 It's -- it's there. It's probably built there. I'm
7 sure there was an additive feature and additional
8 material put on to increase the height of that. It's
9 not any sort of architectural embellishment, but if
10 that could be visited also in any sort of submission.

11 So, yes, any other things that you may
12 think that could mitigate the impact and then talk
13 about the finishes and I would ask that in -- in the
14 -- in the spirit of being good communicators between
15 adjacent neighbors, let's be realistic in terms of
16 what conditions and what is offered and finished in
17 that sense.

18 All right. That being said, any other
19 things from the Board? Clarity? Clarification?

20 MS. PRITCHARD: Excuse me.

21 CHAIRPERSON GRIFFIS: Yes.

22 MS. PRITCHARD: By which date were you
23 asking for these submissions?

24 CHAIRPERSON GRIFFIS: Well, that's -- I'm
25 going to get staff to do the calendar.

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1 MS. PRITCHARD: Okay. Okay.

2 CHAIRPERSON GRIFFIS: Boy, if I start
3 picking the calendar right now, we're all in trouble.

4 Yes.

5 MR. COOPER: You're not asking us for a
6 proposed findings of facts and conclusions of law --

7 CHAIRPERSON GRIFFIS: I'm not requiring
8 them. No.

9 MR. COOPER: Okay. Great. Thank you.

10 CHAIRPERSON GRIFFIS: Ms. Bailey.

11 MS. BAILEY: Mr. Chairman.

12 CHAIRPERSON GRIFFIS: When should we have
13 those submissions in for a decision on the --
14 whichever one I said 3rd of June?

15 MS. BAILEY: By the end of this week. Is
16 it possible to have it by the end of this week?

17 CHAIRPERSON GRIFFIS: And so close of the
18 day Friday, you mean?

19 MS. BAILEY: Yes, sir.

20 CHAIRPERSON GRIFFIS: Okay. Possible?
21 Party? Applicant?

22 MR. COOPER: Yes, we can provide the --
23 the Board with a list of possible --

24 CHAIRPERSON GRIFFIS: Okay. And let me be
25 clear. Just so we don't run into any other issues, if

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1 the Board and I don't know, I haven't gotten a read on
2 the Board, we probably won't until June 3rd of the
3 morning when we call this, but if they were moving
4 towards approving this, those would be the substantive
5 pieces that they might go to in creating conditions if
6 conditions were met on a special exception.

7 So, this would not be something that you
8 would frivolously throw down because you may have to
9 live up to them.

10 So, with that, if there's more time
11 needed, let's -- let's look at that seriously so we
12 don't run into a problem that we regret.

13 MR. COOPER: One -- the one -- I guess the
14 one issue that we will have is -- we have to explore
15 is obviously this was approved by the Historic
16 Preservation --

17 CHAIRPERSON GRIFFIS: No, we'll deal with
18 them. Don't you guys worry about that.

19 MR. COOPER: Okay. As long as you can
20 handle them.

21 CHAIRPERSON GRIFFIS: No, I'm kidding
22 actually.

23 MR. COOPER: No, that's on the record.
24 Right?

25 CHAIRPERSON GRIFFIS: I have no control

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1 over them.

2 MR. COOPER: Obviously -- obviously, that
3 -- that may be the issue that has to be addressed.

4 CHAIRPERSON GRIFFIS: Well, in -- in -- in
5 terms of -- and if that is, in fact, one of the
6 biggest issues and that's -- that's of great concern.
7 I mean frankly I would have the staff member look at
8 these as if there was anything, you know, massing-wise
9 that would come in.

10 But, let's be very clear that the zoning
11 regulations, in fact, have further jurisdiction than
12 preservation design and if, in fact, we were to grant
13 a special exception with conditions, those would need
14 to be complied with.

15 MR. COOPER: Okay.

16 CHAIRPERSON GRIFFIS: That would then be
17 brought back, in fact, to Preservation for their
18 approval and I -- I could not see how they can move
19 against that. If that's clear.

20 MR. COOPER: Very.

21 CHAIRPERSON GRIFFIS: All right. Anything
22 else? Are we all clear? Great. We'll see you on the
23 3rd. Thank you very much. Appreciate your patience.

24 We have one more case in the afternoon.
25 Let's let this group leave and I'll let the next set

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1 up and we'll be back in five minutes.

2 (Whereupon, at 4:34 p.m. off the record
3 until 4:49 p.m.)

4 CHAIRPERSON GRIFFIS: Okay. Ms. Bailey,
5 when you're ready, we can call the next case.

6 MS. BAILEY: Thank you, Mr. Chairman. And
7 that's Application Number 17013. This is an
8 application of First Rock Baptist Church Foundation,
9 Inc. pursuant to 11 DCMR 3104.1 for a special
10 exception to extend the provisions of the less
11 restrictive R-5-A zone to the more restrictive R-2
12 zone under Subsection 2514.2 and a special exception
13 to construct a new residential development under
14 Section 353 and pursuant to 11 DCMR 3103.2 for a
15 variance to extend the R-5-A provisions more than 35
16 feet into the R-2 District under Subsection 2514.2(a)
17 and pursuant to 11 DCMR 3104.1 a special exception to
18 operate a child development center for 90 children and
19 15 employees under Section 205 to allow the
20 construction of a 74 unit affordable apartment house
21 for seniors with a child development center. The
22 property is located in the R-5-A District and R-2
23 District at premises 4638 H Street, S.E., Square 5359,
24 Lot 324.

25 All those wishing to testify would you

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1 please stand to take the oath?

2 Please raise your right hand.

3 Do you solemnly swear or affirm that the
4 testimony you're about to give in this proceeding will
5 be the truth, the whole truth, and nothing but the
6 truth?

7 WITNESSES: Yes, I do.

8 MS. BAILEY: Thank you.

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. GLASGOW: Mr. Chairman, members of the
11 Board, good afternoon.

12 For the record, my name is Norman M.
13 Glasgow, Jr. representing First Rock Baptist Church
14 Foundation who are the owners of property at H Street
15 and Hannah Place, S.E.

16 It is our understanding -- we've got a
17 nice crowd here this afternoon. We understand they're
18 all in support of the application.

19 CHAIRPERSON GRIFFIS: Should I do a poll?
20 Show of hands?

21 MR. GLASGOW: We're happy to do that.

22 CHAIRPERSON GRIFFIS: No. No. No.

23 MR. GLASGOW: We have great confidence in
24 our position.

25 We also have the ANC -- the chairperson of

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1 the ANC here in support of the application. I believe
2 you've got a letter in the file from the ANC dated May
3 15th, 2003 reflecting that.

4 CHAIRPERSON GRIFFIS: Okay. Let's clarify
5 it on that issue. We have three submissions from ANC-
6 7E or attended to ANC members the last of which is
7 Exhibit Number 37 which was received in the office on
8 the 16th. For some reason, we received that today,
9 the Board, but it is in favor. So, let's go ahead.

10 MR. GLASGOW: Yes, sir, we're not aware of
11 any opposition to the application at this point in
12 time.

13 We have reviewed the report of the Office
14 of Planning and the recommendation that we take a
15 sidewalk up to Hannah Place, S.E. We're amendable to
16 modifying our plans to do that and what I'm leading
17 to, Mr. Chairman, is we are prepared to rest on the
18 record and field questions from the Board members if
19 you so desire.

20 We think that the statement of the
21 applicant is complete. We think the record is
22 complete in this case.

23 CHAIRPERSON GRIFFIS: I do think that is
24 an -- an effective way to proceed in this manner as we
25 have received all of this and read it completely.

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1 We will have a couple of questions and
2 they will go to this. First of all, there's a
3 clarification question from the Board of the cross
4 zone variance that's requested. So, you could walk
5 briefly through that for clarification.

6 MR. GLASGOW: Sure. Right.

7 CHAIRPERSON GRIFFIS: And then secondly,
8 we will go -- well, actually, secondly, we would ask
9 for your substantiation of the parking count as it is,
10 the parking requirement under the table and that will
11 obviously be -- that's easily answered, but I'll
12 direct you if I don't hear it and then third, I think
13 it will go more into some of the design issues and
14 they're limited in our addressing, but I don't think
15 they were substantially addressed and that goes to the
16 surface parking area. The edging. It may go to some
17 of the sidewalk and access. Lighting. Issues of that
18 nature which would be required.

19 MR. GLASGOW: All right. I will first
20 direct the Board's attention to Exhibit or Tab B to
21 the statement of the applicant which shows the zoning
22 line and the shape of the property and it's also shown
23 in the site plan up on the easel and obviously we --
24 we have a large piece of property. It's about 74,000
25 square feet. It's a very unique and unusual shape.

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1 I -- with respect to the zoning line, you
2 see the separation between the R-2 and the R-5-A and
3 the reason why I directed you to the colored-in site
4 plan there, that entire R-2 area is all open space and
5 what we are asking for is a variance to go beyond the
6 35 foot line. There is the provision by special
7 exception. You can go 35 feet.

8 As you see by the very unusual shape of
9 the piece of property, the R-2 portion on its edge
10 that is nearest to H Street goes 150 feet and so,
11 obviously that is far -- far further than the 35 feet
12 of the line and we do wish to take advantage of
13 utilization of that piece of property with respect to
14 the density of the project and that's where the
15 variance comes from.

16 That very unusual shape being used as open
17 space in effect continues the green space that's there
18 now between the houses that front on Hannah Place and
19 on H Street that are located to the west of the site.

20 CHAIRPERSON GRIFFIS: So, to be clear, if
21 you have a single lot or property that is split by a
22 zone boundary line --

23 MR. GLASGOW: Correct.

24 CHAIRPERSON GRIFFIS: -- under the
25 provisions of 2514 and change, there's a special

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1 exception of which you can extend the lesser
2 restrictive zone 35 feet into the more restrictive
3 zone.

4 MR. GLASGOW: Yes.

5 CHAIRPERSON GRIFFIS: On the issue of this
6 particular which is based on the uniqueness of its
7 shape, I think it was actually indicated as a flag
8 shape which I kind of didn't understand, but I guess I
9 can get that. But, in any case, it cuts into the
10 center of this square. The variance -- of course, the
11 uniqueness is there and the difficulty of one single
12 development.

13 The variance is required because you're
14 going beyond the 35 feet extension of the lesser
15 restrictive zone.

16 MR. GLASGOW: That is correct.

17 CHAIRPERSON GRIFFIS: Is everybody clear
18 on that?

19 COMMISSIONER HOOD: Yes, Mr. Chair, let me
20 -- can I just ask Mr. Glasgow --

21 CHAIRPERSON GRIFFIS: Indeed, Mr. Hood.

22 COMMISSIONER HOOD: Thanks for clarify
23 that. I have some other concerns.

24 Just curious, Mr. Glasgow, now if -- if --
25 if something ever changed with this side or that --

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1 that little piece that you're trying to extend 35
2 feet, would it go back to then the original underlying
3 zone. The underlying zoning would not change.

4 MR. GLASGOW: That is correct. The
5 underlying zoning will not change and also because
6 it's R-5-A and what it is that's been approved, the
7 only development that has been approved is all on the
8 R-5-A portion. So, there's no approved development on
9 the R-2 portion.

10 COMMISSIONER HOOD: That's basically for
11 some type of what drainage easement?

12 MR. GLASGOW: I'll have the architect
13 respond to that.

14 CHAIRPERSON GRIFFIS: Right. It says
15 inside it's the drainage pond.

16 MR. COLBERT: There is a storm water
17 management structure here, but then the rest of it
18 will just be wooded space.

19 CHAIRPERSON GRIFFIS: Okay. But, Mr. Hood
20 asked if it would revert back to the zoning. If you
21 get a variance that extends the R-5-A into that, we --
22 it would essentially go to the extent where the R-2
23 is.

24 MR. GLASGOW: Well, what would happen
25 there is what -- what we're asking a variance is -- is

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1 that we can, in effect, take the FAR of the lesser
2 restrictive use district, the R-5-A, because of the
3 way our project is situated.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. GLASGOW: And we're in effect taking
6 that and we're putting it over in the R-5-A portion
7 and incorporating it into the senior citizen housing
8 building. Because this is the site plan approval.

9 I understand in concept your -- your
10 point, but practical as it relates to this specific --
11 specific application, what we're going to be permitted
12 to build is in the R-5-A portion.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. GLASGOW: We're not being permitted to
15 build anything in the R-2 portion.

16 CHAIRPERSON GRIFFIS: But, are you saying
17 by extending the boundary line you're taking the FAR
18 off of the R-2?

19 MR. GLASGOW: Yes.

20 CHAIRPERSON GRIFFIS: But, you're
21 calculating it as R-5-A?

22 MR. GLASGOW: Well, we're doing the -- the
23 .9. Yes, because it's a lesser restrictive use
24 district as is provided in the regulations for the
25 first 35 feet.

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1 We're -- we're doing nothing different
2 than what's beyond.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. GLASGOW: It's just -- it's all the
5 same. It's -- we're doing the same thing for the
6 first -- for the last 120 feet as we are in the first
7 30 feet.

8 CHAIRPERSON GRIFFIS: Right. Intriguing.
9 Okay. Everybody clear?

10 COMMISSIONER HOOD: Yes, clear. Thank
11 you.

12 MR. GLASGOW: Right. Thank you.

13 Next with respect to the parking
14 calculations, Mr. Sher.

15 MR. SHER: Mr. Chairman and members of the
16 Board, for the record, my name is Steven Sher, the
17 Director of Zoning and Land Use Services with the law
18 firm of Holland and Knight.

19 We have two uses on this property, housing
20 for senior citizens and day care center. That's 74
21 units with a required ratio of parking at 1 to 6.
22 Twelve spaces would be required for the apartments.

23 CHAIRPERSON GRIFFIS: Why is your ratio 1
24 to 6?

25 MR. SHER: Publicly assisted housing for

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1 the elderly.

2 CHAIRPERSON GRIFFIS: This is a publicly
3 assisted housing?

4 MR. SHER: It is a project that involves
5 the Department of Housing and Community Development
6 which owned the land and sold it to the --

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. SHER: -- the Church Foundation and it
9 -- that's -- that's the --

10 CHAIRPERSON GRIFFIS: We can move on.
11 That was not stated in your submissions in what we
12 were looking for. Okay.

13 Then what else can we have fun with?

14 MR. GLASGOW: You had questioned with
15 respect to the design of the surface parking,
16 sidewalks, and lighting.

17 CHAIRPERSON GRIFFIS: Yes. Yes, if we
18 could -- if you wouldn't mind, first of all addressing
19 and we'll get to OP, you know, as they do it, but we
20 can preempt them because there's an interesting issue
21 and the other thing that was brought up in terms of
22 the handicapped parking. That's a requirement. We
23 won't necessarily put upon you, but clearly it would
24 be interesting to know where they were so --

25 MR. COLBERT: Exactly.

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1 CHAIRPERSON GRIFFIS: -- and the
2 pedestrian, but go ahead.

3 MR. COLBERT: Yes, the plan that we
4 currently have they asked for handicapped parking
5 spaces. We provided two in a place where it's the
6 easiest access to a --

7 CHAIRPERSON GRIFFIS: Right.

8 MR. COLBERT: -- small lobby to our
9 elevator from the lower level.

10 CHAIRPERSON GRIFFIS: Is that the same?
11 That looks different than the site plan and parking
12 plan that we had. Let me --

13 MR. COLBERT: Maybe it's just because of
14 the coloring, but it should be the same plan.

15 CHAIRPERSON GRIFFIS: I thought -- I
16 thought the drive aisle went perpendicular to the
17 building. I'm sorry. Now, I'm lost here.

18 Oh, maybe -- there was -- there's two
19 versions of this at one point. Anyway. Okay. I'm
20 clear. Let's -- let's move ahead. Okay. So, you
21 have two -- two handicapped.

22 MR. COLBERT: Yes, due to -- after we
23 figured out our grades, we had to put the handicapped
24 spaces here because up here there -- there's a
25 retaining wall and here we have a direct sidewalk to

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1 an entrance at the lower level to get the wheelchair
2 folks into the building.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. COLBERT: And another issue was as
5 Chip mentioned to extend the sidewalk all the way to
6 Hannah Place. The applicant has agreed to do that.

7 There's a sidewalk that goes around and
8 ends here at the end of the parking. We can extend
9 that. Push these trees back a little bit and simply
10 extend it to Hannah Place.

11 CHAIRPERSON GRIFFIS: Okay. But, I think
12 my more concern than just looking at it is clearly you
13 have the -- the two rows of parking on the opposite
14 side. One's access off the public alley. Correct?

15 MR. COLBERT: Right.

16 CHAIRPERSON GRIFFIS: And then one's
17 access inside. If you were to get out of one of the
18 others of those, what's your anticipation of -- of the
19 pedestrian travel to the building?

20 MR. COLBERT: Well, these people would be
21 walking through the parking lot.

22 CHAIRPERSON GRIFFIS: Okay. Through the
23 parking lot.

24 MR. COLBERT: Yes, or through the alley.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. COLBERT: But, the nice thing about
2 this is a very wide alley unlike a lot in D.C. I
3 think it's about 20 feet.

4 CHAIRPERSON GRIFFIS: And the -- the
5 separation between the drive aisle there that's the
6 required -- there's no extra space there.

7 MR. COLBERT: Yes, this is 20 feet also
8 and then we have the sidewalk on this side.

9 CHAIRPERSON GRIFFIS: I see.

10 MR. COLBERT: But, what we have done
11 though is since -- this is the drop off for the day
12 care center.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. COLBERT: So, the children would be
15 let off at a car and then directly in front of the
16 door. So, they would not have to encounter --

17 CHAIRPERSON GRIFFIS: Right.

18 MR. COLBERT: -- cars.

19 CHAIRPERSON GRIFFIS: Okay. And they're
20 dropped off onto -- not only in front of the door, but
21 also onto a sidewalk.

22 MR. COLBERT: Exactly.

23 CHAIRPERSON GRIFFIS: Right. Okay. And
24 would -- is there lighting in the surface parking?

25 MR. COLBERT: Yes.

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1 CHAIRPERSON GRIFFIS: What type of
2 lighting is it?

3 MR. COLBERT: We would provide -- pole
4 mounted lights in the parking lot would provide the
5 minimum amount of lumina, you know, required by code.

6 CHAIRPERSON GRIFFIS: Have you picked the
7 fixtures for that?

8 MR. COLBERT: No.

9 CHAIRPERSON GRIFFIS: Okay. And is there
10 any -- is there any sort of definition? Edge
11 definition? Is there any sort of brick wall or God
12 forbid shrubbery that define the -- on the -- on the
13 property line? Not the tree line because nice as it
14 goes to the green level, but --

15 MR. COLBERT: Well, here we would
16 definitely have some significant plantings, you know,
17 facing Hannah Street. Facing the alley what you have
18 is across the street here these are the garages of the
19 -- there's some dwellings that were constructed here I
20 --

21 CHAIRPERSON GRIFFIS: Right.

22 MR. COLBERT: -- guess about ten years
23 ago.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. COLBERT: And so, basically, you have

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1 garage doors here. So, we didn't feel that screening
2 facing the other side of the alley was something that
3 would be necessary, but --

4 CHAIRPERSON GRIFFIS: Yes, I'm not so
5 concerned about screening. I -- I guess here's --
6 here's my opinion and it's only one of all of us on
7 the Board here, but going up and looking at the alley,
8 it just seems to be fairly undefined open space.
9 There's two reasons that I have trouble with that.

10 One is -- is the presence on the street
11 and the street edge. That's not a major concern.

12 The other is to make it somewhat of
13 protected space. I mean how does one define that
14 that's private -- private space? How -- how are you
15 going to regulate the parking? Is that going to cause
16 problem? Is -- you know, is there anyway to really
17 define that area and that edge along that open
18 surface?

19 For instance --

20 MR. COLBERT: You mean facing Hannah
21 Place?

22 CHAIRPERSON GRIFFIS: Both and the -- and
23 the alley. For instance, are you anticipating putting
24 lampposts in between the two parkings?

25 MR. COLBERT: Yes.

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1 CHAIRPERSON GRIFFIS: Okay. So, that's an
2 edge that may start to be created on that side.
3 Correct?

4 MR. COLBERT: Yes, I think the one thing
5 we did here is this isn't a very efficient arrangement
6 and it allows us to set back from the adjacent house
7 as much as possible, but -- so, that was kind of our
8 thinking in the arrangement of it.

9 CHAIRPERSON GRIFFIS: Okay. Any other
10 comments? Am I clear on that? Oh, that's what I was
11 looking at. Can I see this for a second? Thank you.
12 Okay.

13 And then on Hannah Place you indicated
14 that there -- there -- you anticipated that probably
15 there would be some greenery or vegetation on that
16 level.

17 MR. COLBERT: Absolutely.

18 CHAIRPERSON GRIFFIS: But, you're not
19 anticipating a curb on -- on the adjacent side of the
20 parking spaces. You know, right at that tree line
21 there's no defined curb or anything of that nature.

22 MR. COLBERT: There would be a curb and a
23 sidewalk.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. GLASGOW: Mr. Chairman, that's what we

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1 had -- had been requested by the Office of Planning
2 and we said we would take the sidewalk up to Hannah
3 Place.

4 CHAIRPERSON GRIFFIS: No. No, I
5 understand that. The -- the -- that's on that -- on
6 the -- the north/south tree line. But, on the
7 east/west tree line as it turns the corner. I -- I
8 may be nitpicking, but it just seems to me that you
9 created as I say a wide open field that's very
10 undefined and I -- I just wonder if there isn't some
11 -- some architectural elements that might animate it
12 that might make that a better presence and also a more
13 defined private property presence.

14 MR. COLBERT: Perhaps one thing we could
15 do is to make this a more dense hedge row and use that
16 as a technique to help define the --

17 CHAIRPERSON GRIFFIS: I guess.

18 MR. COLBERT: -- property.

19 CHAIRPERSON GRIFFIS: I guess. I'll leave
20 it as a direction. I mean my person opinion is hedges
21 aren't great definitions of urban barriers, but, you
22 know, a nice little brick knee wall might be or even a
23 curve or something of that nature or a line of lamp
24 posts.

25 I would also -- in that, this is a large

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1 expansive area. Although it's fronting an alley, it's
2 fronting a street also. I think it would be fairly
3 important just in the aesthetic of the property owners
4 and then the neighbor that the -- the fixtures be
5 picked very appropriately. I mean this isn't a
6 shopping mall parking lot that needs the floods. You
7 know, I know you're aware. Perhaps even a Washington
8 standard fixture would be appropriate in -- in putting
9 in that area that would give enough light to
10 illuminate for pedestrian and safety, but doesn't have
11 to, you know, land aircraft. If that's clear.

12 All right. Anything else?

13 COMMISSIONER HOOD: Mr. Chair, I just had
14 one quick traffic question. Coming off of --
15 orientation may be a little off. But, coming -- it
16 looks like I'm coming off of Hannah Place into the new
17 entrance and as I exit, going down that one -- I guess
18 that one-way new drive there going back out into
19 Hannah, I'm just curious is there a signal? I see
20 where it says signalized, but I don't -- well, no,
21 it's un-signalized and that's coming from the new
22 entrance.

23 And I'm just curious of the -- well,
24 obviously, the level of service, I would say this from
25 what the report states from Mr. George is -- is

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1 excellent as far as I'm concerned. But, I'm just
2 curious. Has that been looked at coming out of the
3 project and that -- going into that new entrance and
4 coming out on I believe that's H Street going towards
5 Benning Road. I'm just concerned about traffic on H
6 Street.

7 MR. SHER: Mr. Hood, the driveway
8 circulation is one way in from Hannah Place and out
9 into the alley.

10 COMMISSIONER HOOD: Right.

11 MR. SHER: When you get to the alley, you
12 can turn left or right. Left takes you back to Hannah
13 Place which is a one-way westbound street going west
14 from Benning Road towards 46th Street.

15 H Street which is at the south end of the
16 property is a two-way street which takes you either
17 east or west.

18 COMMISSIONER HOOD: Okay. I think, sir,
19 you answered my question. You turn into the alley?

20 MR. SHER: Yes.

21 COMMISSIONER HOOD: Okay. I -- I was
22 trying to figure out which -- how am I getting back to
23 the street, but that's an alley. Okay. Thank you.

24 Thank you, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Good. Any other

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1 questions?

2 And for clarity's sake, the drop off for
3 the children and the child development center I should
4 say which is for 90 children, 15 employees. Correct?

5 And that's at the --

6 MR. GLASGOW: That is correct.

7 CHAIRPERSON GRIFFIS: -- at the rear off
8 of the Hannah Place direction and that's where the
9 child development center actually is located.

10 MR. GLASGOW: Yes, sir.

11 CHAIRPERSON GRIFFIS: So, that there's an
12 entrance in and it's directly adjacent to that. Okay.

13 Anything else? Let's move on then.
14 Anything else you want to add?

15 MR. GLASGOW: No, sir.

16 CHAIRPERSON GRIFFIS: Okay. The was
17 tentative, but we'll give you time to --

18 MR. GLASGOW: I'm going to wait for -- I'm
19 waiting for at closing.

20 CHAIRPERSON GRIFFIS: Yes, exactly.

21 All right. Let's move on to Office of
22 Planning that did put in a timely report, Exhibit
23 Number 33. They are in affirmation and approval of
24 the application.

25 Is there anything you wanted to add to

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1 your report today? After you introduce yourself.
2 Office of Planning, are we ready?

3 MR. MORDFIN: Good afternoon. My name is
4 Stephen Mordfin with the Office of Planning and this
5 is BZA Application Number 17013, First Rock Baptist
6 Church Foundation, Inc. at 3648 H Street, S.E.

7 This application is for three special
8 exceptions and one area variance with the
9 establishment of a 74 unit affordable apartment
10 building for the elderly and a child development
11 center for 90 children. The application indicates
12 that most of the children will be walked to the site.

13 Subject property is located on H Street,
14 S.E. between 46th Street and Benning Road. The split
15 zone between the R-5-A and the R-2 Zoning Districts
16 with the majority of the site located within the R-5-A
17 District.

18 The site is currently unimproved. All
19 improvements are proposed within the R-5-A portion of
20 the site only.

21 The three special exceptions requested are
22 1. Pursuant to Section 353 to permit a new
23 residential development within the R-5-A District; 2.
24 Pursuant to Section 205 to permit a child development
25 center, and 3. Pursuant to 2514 to permit the

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1 regulations applicable to the R-5-A District that
2 control use, height, and bulk to extend into the R-2
3 District.

4 The variances are requested to allow the
5 regulations of the R-5-A District to extend more than
6 the maximum 35 feet into the R-2 District to
7 approximately 160 feet.

8 The application is in conformance with the
9 criteria for the approval of a special exception for a
10 new residential development and that it will have no
11 affect on the public school system as the proposed
12 dwelling is for senior citizens only.

13 It meets several goals of the Department
14 of Housing and Community Development including
15 increasing the supply of decent and affordable housing
16 and the application contained the necessary plans as
17 required.

18 The application is in conformance with the
19 criteria for the approval of a special exception for a
20 child development center and that the applicant has
21 indicated that the center will be in conformance with
22 all code and licensing requirements.

23 The use should not create objectionable
24 traffic conditions or unsafe conditions for picking up
25 and dropping off of children, provide a pedestrian

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1 access -- provided to the entrance to the center from
2 Hannah Place and a sidewalk is provided across the
3 subject property's Hannah Place frontage.

4 Sufficient parking is proposed. The
5 outdoor play space will be buffered from nearby
6 properties by two sides of the proposed building and a
7 row of trees. No offset play area is proposed. No
8 other center exists within the square and the Office
9 of Planning is unaware of any other schools within
10 1,000 feet and the D.C. Department of Health
11 recommends approval of the special exception.

12 The application is in conformance with the
13 criteria for the approval of a special exception to
14 extend the regulations of the R-5-A District into the
15 R-2 District and that a variance request has been made
16 as a part of this application to increase the maximum
17 35 foot extension into a lesser restrictive zone
18 district. The extension should have no adverse affect
19 on the neighborhood.

20 There's no construction proposed with the
21 R-2 portion of the site and the extension will result
22 in the creation of only ten additional units for the
23 elderly on the R-5-A portion of the site and the R-2
24 portion of the site will be screen from the proposed
25 improvements by a staggered row of trees screening the

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1 improvements from the dwellings from to the west.

2 The application for the approval of a
3 variance to increase the distance regulations of the
4 R-5-A District may be extended into the R-2 District
5 from 35 feet to approximately 160 feet as testified
6 because of the unusual shape of the lot, the location
7 of the R-2 portion of the site, and the center of the
8 square making its development difficult and its
9 development as a storm water management pond.

10 Therefore, the Office of Planning
11 recommends approval of the variance request and the
12 Office of Planning recommends approval of the three
13 special exceptions and the variance request subject to
14 the condition that the pedestrian access be provided
15 to the child development center from Hannah Place.

16 That concludes the report of the Office of
17 Planning.

18 CHAIRPERSON GRIFFIS: Good. Thank you
19 very much. Board, questions of the Office of
20 Planning?

21 Does the applicant have any questions of
22 the Office of Planning?

23 MR. GLASGOW: No, sir.

24 CHAIRPERSON GRIFFIS: Does the ANC
25 representative who's here today have any questions of

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1 Office of Planning?

2 Do you have any cross examination of the
3 testimony that you've heard so far? No cross
4 examination questions. Thank you.

5 Okay. Before we go down to the other --
6 well, let's run through this. We do have letters of
7 support, Exhibit Number 29, of the Office of Aging.
8 We have letter of support, Exhibit Number 28, from
9 DHCD and we have a letter of -- recommending approval
10 from Department of Health.

11 Just for clarity's sake in our
12 regulations, we are required to refer these oftentimes
13 and depending on the application and the specific
14 application to other agencies. The referral to -- to
15 some of these agencies is fairly specific in that it
16 will meet the codes and licensing. We're not looking
17 for a recommendation necessarily of their approval of
18 the application.

19 Department of Health, of course, is
20 recommending approval, but doesn't indicate that they
21 meet the codes and licensing. I think the intent of
22 the letter that's submitted in the record goes to the
23 fact that they will, in fact, go for licensing and
24 they anticipated no problems, but not that it's their
25 responsibility, but now that it's on the record in the

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1 future that those agencies might address what is the
2 requirements of what they would address for us.

3 That being said, we also understand,
4 especially as child development centers of how you can
5 get licensed before you get approval of the build.
6 There is always that balance of how to -- to deal it,
7 but I think that can be easily overcome.

8 I don't have any other government reports
9 in my memo. Oh, indeed we do have the -- did I skip
10 right over those? How about that. The Department of
11 Transportation which is Exhibit Number 34 does not
12 object. There's not -- we do not have a
13 representative of the Department of Transportation
14 with us. Do we? Very well.

15 You're in receipt of their report? The
16 applicant.

17 MR. GLASGOW: Yes, sir.

18 CHAIRPERSON GRIFFIS: Okay. Anything you
19 want to bring up, highlight as I run through them?

20 Okay. Not having any indication of
21 needing to do that.

22 Before I go to the ANC, let me ask one
23 more quick clarification. The water retention, the
24 storm run off pond that's adjacent you have the
25 treeline that's there. Is there a physical fence

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1 that's going to be on that line at all? My concern is
2 this: the play area is adjacent to that. I know when
3 I was a kid -- and probably still do -- I would be
4 attracted to the water, and I'm wondering if there is
5 any sort of barrier program to mitigate kids wandering
6 off.

7 MR. COLBERT: Actually, this line here
8 represents the fenced edge that will contain the
9 children's play area.

10 CHAIRPERSON GRIFFIS: I see.

11 MR. COLBERT: And the pond -- actually,
12 it's not a -- it's -- there's no water in there.

13 CHAIRPERSON GRIFFIS: It's just for
14 overflow?

15 MR. COLBERT: Exactly.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. COLBERT: We elected not to take
18 advantage of that --

19 CHAIRPERSON GRIFFIS: I see.

20 MR. COLBERT: -- even though it was sized
21 to accommodate our building. I think that the way
22 we've done this is try to not use it up to the
23 potential that it had been originally designed for
24 because it goes on the issues of, you know, the
25 backyards of these other buildings. So, it really is

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1 dry for the most part.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. COLBERT: And we are providing a fence
4 here that will prohibit the children from going there.

5 CHAIRPERSON GRIFFIS: Excellent. Okay. I
6 think that's okay and properly programmed.

7 Okay. With that, let's turn to the ANC --
8 ANC-7E which has submitted it's most up-to-date May
9 15th, 2003 submission to the Board. Was the ANC
10 member wanting to address the Board today?

11 MS. ROBINSON: Do I have to?

12 CHAIRPERSON GRIFFIS: You don't have to.
13 There's no requirement to. It's up to you.

14 MS. ROBINSON: I don't want to. No.

15 CHAIRPERSON GRIFFIS: Okay. Very well.
16 We appreciate you being here and I -- as noted in your
17 letter, you are Ms. Robinson. Is that correct?

18 MS. ROBINSON: Yes

19 CHAIRPERSON GRIFFIS: Ms. Robinson is with
20 us today and we welcome you. That they are in support
21 of the application and this does fulfill the
22 requirements to be given great weight. However, it
23 would need to be waived in if I'm not mistaken.

24 Is there any objection to waiving in the
25 ANC report at this time?

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1 COMMISSIONER HOOD: No objection.

2 MEMBER MILLER: No objection.

3 CHAIRPERSON GRIFFIS: Very well. We can
4 move it into the record and give it the great weight
5 for which it is now afforded.

6 Okay. Is it time now if anyone is here to
7 give testimony in -- for Application 17013 of the
8 First Rock Baptist Church Foundation either in support
9 or in opposition. We'll -- we won't entertain neutral
10 testimony today. Just support, opposition.

11 Is anyone wanting to address the Board
12 this afternoon? Now would be the time.

13 Not seeing any indications of people
14 coming forward or raising their hands, we can go to
15 closing remarks at this time, Mr. Glasgow.

16 MR. GLASGOW: Thank you, Mr. Chairman.

17 Here with me today is George Davis who's
18 the Chairman of the Board of Directors of First Rock
19 Baptist Church. Pastor Corbin is in the audience and
20 a number of other people that have been working on
21 this project for I guess approximately a decade now.

22 I started working on this project about
23 four years ago and we hope that if the Board feels
24 that we have met the burden of proof for the special
25 exceptions and variances that we could get this

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1 project approved today. It's -- it's been a long --
2 it's been a long wait, but I think it's going to be
3 worth it.

4 They've got a wonderful development team
5 put together with Mission First who were the people
6 who came and built -- help get constructed the project
7 for Bible Way Church which as a number of the Board
8 members know that have been involved for a period of
9 time we kept getting extensions and extensions and
10 when they got on board, that project was built very
11 promptly and we're nine stories out of the grave now
12 with that project at New Jersey Avenue and we hope to
13 have the same success at this project down at H
14 Street, S.E.

15 So, if the Board is inclined, we would
16 like to receive a bench decision and be on our way.

17 CHAIRPERSON GRIFFIS: That's it? Oh, very
18 good. I'm sorry. I thought you may have something to
19 say, but I won't be any -- I won't be flippant
20 anymore.

21 Last question just for clarification, Mr.
22 Colbert, what -- what is the facade material that's
23 being anticipated?

24 MR. COLBERT: It's brick and cast stone.

25 CHAIRPERSON GRIFFIS: Okay. So, cast

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1 stone at the base that we're seeing. The lighter
2 reddish is brick.

3 MR. COLBERT: That's right.

4 CHAIRPERSON GRIFFIS: Okay. Very well.
5 Any -- any comments? Board, are we prepared to move
6 forward with this application today?

7 COMMISSIONER HOOD: Yes.

8 MEMBER ETHERLY: Yes.

9 MEMBER MILLER: Yes.

10 CHAIRPERSON GRIFFIS: Okay. Before we go
11 straight into further discussion on this, would it be
12 a stipulation by the applicant that they could, in
13 fact, provide the Washington standard fixtures for a
14 parking lot?

15 MR. COLBERT: Yes.

16 CHAIRPERSON GRIFFIS: I don't know if you
17 want to answer that. Are you going to pay for them?

18 MR. COLBERT: No.

19 CHAIRPERSON GRIFFIS: Here's my concern in
20 all direction. I mean I can give kind of direction
21 from the bench. It won't mean a thing once you leave
22 the room unless I make it a condition on the order.
23 I'd rather not condition the order then burden
24 somebody to -- to comply with, you know, my whim when
25 there may be, you know, substitutions equal to what

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1 I'm looking at doing or what I think would be
2 important in terms of -- of that parking lot.

3 So, what I'd like to do is just leave it
4 as a serious direction and I hope that it would be
5 entertained because I think just in the -- the
6 location of the -- the housing although it's the rear
7 side of those, it's enough open space that any light
8 that's transmitted there or the creation of which is
9 going to transmit all over and I'm not sure even for
10 the residents of the proposed development it would be
11 very pleasant to look out on as I say kind of a
12 landing strip or a suburban parking lot.

13 So, that being said, hopefully, you can
14 work with it and try and find a -- a good substitute
15 or -- or that standard of that area and then I would
16 also look to just the -- the defining of an edge on
17 that which would put it much more to -- although this
18 isn't a heavy, dense urban -- typical urban area, it
19 certainly is a good residential one that has a fairly
20 defined edge of the houses although most detach as I
21 can see from the record. There's an edge that is
22 created on the street.

23 That being said, I would move approval of
24 application 17013, the First Rock Baptist Church
25 Foundation for the special exceptions and variances as

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1 advertised and then would ask for a second?

2 MEMBER ETHERLY: Seconded, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 I think the -- the application is full and makes the
5 test for all of the required special exceptions, that
6 is, to the child development center and a -- and a --
7 the others. One for the new residential development.

8 Of course, soon as I said development, I
9 think the special exception is set up so that we might
10 look at the issues of how the density fits in, the
11 traffic flow, the unit size -- the -- the unit types
12 and use, the sighting on the land. I think this meets
13 all the requirements and specifications that we would
14 need to look at.

15 One thing that hasn't been mentioned, but
16 obviously is in the record is the -- the traffic study
17 that was done of which we all read and reviewed and I
18 think the applicant ought to be applauded noting the
19 mixed use that's happening here, how it's addressed.
20 One, the separate entrances. Two, the traffic flow.
21 How often do we see a child development center come to
22 us that goes through so easily?

23 But, the point being the issues are always
24 or fairly -- fairly consistent in what they are and
25 drop off and pick up is always a big one and I think

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1 that this -- the -- the site plan has clearly
2 addressed it and adequately so.

3 Obviously, we have numerous agencies in
4 support and the written submissions that fill the
5 record and I would have others speak to the motion.

6 COMMISSIONER HOOD: Mr. Chairman, I would
7 also say that it's definitely consistent with the
8 comprehensive plan in the Ward 7 element which states
9 continuing to expedite efforts to redevelop the site
10 at Benning Road and H Street through community
11 development organization, private development and I
12 think it definitely falls in line with the Ward 7
13 element of the comp plan.

14 CHAIRPERSON GRIFFIS: Excellent point, Mr.
15 Hood. Others?

16 Then if there's nothing further, I ask for
17 all those in favor of the motion to signify by saying
18 aye.

19 (Ayes.)

20 CHAIRPERSON GRIFFIS: And opposed? We can
21 record the vote.

22 MS. BAILEY: The vote is recorded as 4-0-
23 1. Motion made by Mr. Griffis. Mr. Etherly second.
24 Ms. Miller and Mr. Hood are in support and Mr. Zaidain
25 is not present today, Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: Good. Thank you
2 very much, Ms. Bailey.

3 Thank you all very much. Appreciate your
4 patience here this afternoon. Glad we could get this
5 in a timely fashion.

6 Ms. Bailey, is there anything else for the
7 Board to do today?

8 MS. BAILEY: None.

9 CHAIRPERSON GRIFFIS: Very well. Thank
10 you very much.

11 That would adjourn then the 20 May 2003.

12 (Whereupon, the hearing was concluded at
13 5:25 p.m.)

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