

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY
APRIL 6, 2004

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner, (National Park Service)
--------------	--

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	ACTING Secretary
BEVERLEY BAILEY	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON	Office of Planning
TRAVIS PARKER	Office of Planning

OFFICE OF CORPORATION COUNSEL STAFF PRESENT:

SHERRY GLAZER, ESQ.
JACOB RITTING, ESQ.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

CALL TO ORDER:
 Geoffrey Griffis 4

THOMAS & LINDA WALTZ
APPLICATION NO. 17139 - ANC-3D: 9

WITNESSES:
 Thomas Waltz 11

CROSS EXAMINATION OF THOMAS & LINDA WALTZ:
 Stephen Gell 17

OFFICE OF PLANNING:
 Arthur Jackson 30

CROSS EXAMINATION OF OFFICE OF PLANNING:
 Stephen Gell 37

PERSONS/PARTIES IN OPPOSITION:
 Michael Sharpston 43

Stephen DuPont 58

CROSS EXAMINATION OF MICHAEL SHARPSTON:
 Thomas Waltz 64

CLOSING REMARKS:
 Thomas Waltz 72

MATERIAL SPECIFICALLY REQUESTED: 76

DWIGHT STERLING
APPLICATION NO. 17140 - ANC-3E: 81

WITNESS:
 Richard Schmitt 82

OFFICE OF PLANNING:
 Travis Parker 86

CLOSING REMARKS:
 Richard Schmitt 87

VOTE ON APPROVAL OF APPLICATION: 90

BRIAN & KATHERINE SEXTON
APPLICATION NO. 17141 - ANC-2E: 91

WITNESS:
 Robert Gurney 93

OFFICE OF PLANNING:
 Travis Parker 96

VOTE ON APPROVAL OF APPLICATION: 99

KALORAMA CITIZEN'S ASSOCIATION
APPEAL NO. 17109 - ANC-1C: 100

WITNESSES:
 Carolyn Brown 101
 Gail Montplaisir 109
 Norman Smith 121

APPEAL NO. 17109 CONTINUED:

ANC:

Alan Roth	155
Bryan Weaver	159
Don Hawkins	173

CROSS EXAMINATION OF DON HAWKINS:

Carolyn Brown	195
Alan Roth	198

CLOSING REMARKS:

ANC-1C:

Alan Roth	202
-----------------	-----

<u>MATERIAL SPECIFICALLY REQUESTED:</u>	225
---	-----

ADJOURN:

Geoffrey Griffis	229
------------------------	-----

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

1:32 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of 6 April 2004. This is the Public Hearing of the Board of Zoning Adjustment of the District of Columbia. I am Chairperson Geoff Griffis.

With me today is the Vice Chair, Ms. Miller, and esteemed Member, Mr. Etherly, will be joining us shortly. Representing the Zoning Commission with us this afternoon is Mr. Parsons and representing the National Capital Planning Commission is Mr. Mann.

Copies of today's hearing agenda are available to you. They are located on the wall where you entered into the hearing room. Please, pick one up and you will see where you are on the agenda and how much work we will get accomplished this afternoon.

Please, be aware that all proceedings before the Board of Zoning Adjustment are being recorded. They are now recorded in two fashions. One is by the recorder, who is sitting on the floor to my right. The second is we are being broadcast live on the Office of Zoning's website.

So attendant to that, I ask several things. First of all, when coming forward to speak to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the Board, you will need to have filled out two
2 witness cards. Witness cards are available to you at
3 the table where you entered into and also the table
4 where you will present testimony. Those two witness
5 cards go to the recorder sitting to my right prior to
6 coming forward to speak to the Board. So you can get
7 those filled out in anticipation of addressing the
8 Board.

9 Also, I would ask when you have a seat,
10 initially, when addressing the Board, you will need to
11 provide your name and your address for the record, so
12 that all your statements will be so accorded to you.
13 I would also ask that people turn off cell phones and
14 beepers, at this time, so we don't have disruptions
15 and, of course, according to our regulations and we
16 have very seldom if ever had to invoke the regulations
17 that say we will not tolerate any disruptive noises or
18 actions in the hearing room, and I certainly don't
19 anticipate invoking those this afternoon.

20 The order of procedure for special
21 exceptions and variances is as follows: First, we
22 have the statement of the applicant and any witnesses
23 that they will present. Second, we will have
24 Government reports attendant to the application,
25 Office of Planning reports, Department of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Transportation, such of that nature. Third, we will
2 have the report from the Advisory Neighborhood
3 Commission. Fourth, we would have parties or persons
4 in support of the application. Fifth would be parties
5 or persons in opposition to the application. And
6 sixth, finally, we would have rebuttal and/or closing
7 remarks by the applicant.

8 Cross examination of witnesses is
9 permitted by the applicant or parties. The ANC within
10 which the property is located is automatically a party
11 in the case and therefore is afforded the ability to
12 conduct cross examination. Nothing prohibits this
13 Board, of course, from limiting the extent, the
14 direction or the context of the cross examination, and
15 we will be very definitive in directing you to make
16 sure that you stay on point and within the time
17 limitations that we perceive to be judicial in our
18 cross examination.

19 The record will be closed at the
20 conclusion of each hearing on each case, except for
21 any material that the Board specifically requests, and
22 the Board is very specific in what it requests and
23 when it is to be submitted into the Office of Zoning.

24 We will, obviously, go through that if that is
25 required in a particular case. After that material is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 received, it should go without saying that the record
2 would then be finally closed and no other information
3 would be accepted into the record.

4 The Sunshine Act requires that this Board
5 conduct its hearings in the open and before the
6 public. This Board may, however, entered into
7 Executive Session during or after a hearing on the
8 case, and this would be in conformance with the
9 Sunshine Act and also in conformance with its Rules of
10 Procedure and Regulations. The utilization of an
11 Executive Session by the Board is for reviewing
12 records and/or deliberating on specific cases.

13 The decision of this Board in contested
14 cases must be based exclusively on the record that is
15 created before us, which is why I go through so much
16 of this opening statement of how important it is to
17 make sure you submit information that is required and
18 also speak to us and give us any information that you
19 would like us to deliberate on. We also ask that
20 people present today not engage Board Members in
21 conversation today, so that we do not give an
22 appearance of receiving information outside of the
23 record created before us.

24 At this time, the Board will consider any
25 preliminary matters. Preliminary matters are those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 which relate to whether a case will or should be heard
2 today, such as requests for postponements,
3 continuances or withdraw or whether proper and
4 adequate notice has been provided. If you believe the
5 Board should not hear a case today or if you believe
6 you are not prepared to go forward with a case, I
7 would ask that you indicate by coming forward and
8 having a seat at the table in front of us that you
9 have a preliminary matter and we will be able to take
10 that up as soon as I ask staff if they have any
11 preliminary matters for us to address.

12 I would also say a very good afternoon to
13 our staff members from the Office of Zoning. Ms.
14 Bailey is sitting to my far right and Mr. Moy, sitting
15 closer to me on my right. Are there any preliminary
16 matters, Ms. Bailey, that you are aware of in its
17 immediacy?

18 MS. BAILEY: Mr. Chairman, Members of the
19 Board, good afternoon. There was one, but it has been
20 resolved, Mr. Chairman, so staff has none, at this
21 point.

22 CHAIRPERSON GRIFFIS: Excellent. Not
23 seeing an indication of anyone else with preliminary
24 matters, I would ask that anyone that is thinking of
25 or knows will be giving testimony to, please, stand

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and give your attention to Ms. Bailey, and she is
2 going to administer an oath. Is anyone going to
3 testify today? Anyone going to testify? If you are
4 even thinking about it, you can just give your
5 attention to Ms. Bailey on my far right, please.

6 MS. BAILEY: Please, raise your right
7 hand.

8 (Whereupon, the witnesses were sworn.)

9 CHAIRPERSON GRIFFIS: Very well. Let's
10 proceed and call the first case.

11 MS. BAILEY: Thank you, sir, and that is
12 Application No. 17139 of Thomas and Linda Waltz,
13 pursuant to 11 DCMR 3104.1, for a special exception to
14 allow an addition to an existing single-family
15 dwelling under section 223, not meeting the side yard
16 requirements at section 405. The property is located
17 in the Wesley Heights R-1-B District at premises 4529
18 Lowell Street, N.W., also known as Square 1605, Lot
19 67.

20 Mr. Chairman, just to remind you briefly,
21 sir, there is a request for party status in this case.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you very much. Indeed, there is. Mr. Michael
24 Sharpston has requested party status. It is Exhibit
25 20. I know the Board has looked at it and reviewed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it. Is there any initial comments from the Board, at
2 this time, questions? First of all, is Mr. Sharpston
3 present today? Yes, good. Thank you. Is the
4 applicant here?

5 MR. WALTZ: Yes.

6 CHAIRPERSON GRIFFIS: Do you want to come
7 forward and have a seat? Good afternoon to you both.

8 If you wouldn't mind, you can turn the microphone on
9 in front of you and just state your name and address
10 for the record.

11 MRS. WALTZ: Linda Waltz.

12 CHAIRPERSON GRIFFIS: I'm sorry, there is
13 a button on the base. There it is.

14 MRS. WALTZ: Okay. Good afternoon. Linda
15 Waltz, 4529 Lowell Street, N.W., Washington, D.C.
16 20016.

17 CHAIRPERSON GRIFFIS: Thank you.

18 MR. WALTZ: Thomas Waltz, 4529 Lowell
19 Street, N.W., Washington, D.C. 20016.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you both. I'm going to give you an opportunity to --
22 first of all, do you have a copy of the request for
23 party status in opposition to your application?

24 MR. WALTZ: Yes.

25 CHAIRPERSON GRIFFIS: And I'm going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 offer you an opportunity just to respond to that
2 request, if you so desire. There is no requirement
3 to. Do you have any opposition to granting of party
4 status?

5 MR. WALTZ: No.

6 CHAIRPERSON GRIFFIS: No opposition?

7 MR. WALTZ: No.

8 CHAIRPERSON GRIFFIS: Very well. Board
9 Members, comments? Clearly, Mr. Sharpston is the
10 property directly adjacent and has enumerated based on
11 our requirements for requesting party status those
12 aspects of which he feels he would be more effective
13 than general public. Are there clarifications or
14 positions that can be shared from the Board?

15 COMMISSIONER PARSONS: No objection.

16 CHAIRPERSON GRIFFIS: Mr. Parsons has no
17 objection. Does anyone have any objection? Noting
18 there are no objections of the Board, we'll take it as
19 a consensus and grant party status to Mr. Sharpston,
20 at this time. Let's proceed then to case presentation
21 by Mr. and Mrs. Waltz. It is all yours.

22 MR. WALTZ: Thank you very much, Mr.
23 Chairman. We are Tom and Linda Waltz and we are here
24 to request a special exception under section 223 to
25 allow for an addition to a single-family detached

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 dwelling located at 4529 Lowell Street, N.W., built in
2 1927, and not meeting side yard requirements under
3 section 405 in an R-1-B District. Since the building
4 was built prior to 1958, the side yard requirement is
5 5 feet. The addition meets all of the specific test
6 requirements under section 223. We have lived in the
7 residence for 17 years and intend to remain for many
8 more years.

9 I would like to give you some background
10 on this. The project plans and plat were submitted
11 for approval to the D.C. Government in December of
12 2002. The building permit was granted in February
13 2003. Construction began in May of 2003. The wall
14 check was commissioned in June 2003. The wall check
15 was undertaken in July of 2003. The wall check was
16 submitted to the Office of the Surveyor in August of
17 2003. Plumbing and electrical work was completed,
18 inspected and approved by December of 2003. Closing
19 was scheduled on December 12, 2003, and because the
20 wall check found that the side yard was only 3.1 feet,
21 approximately, 2 feet less than required under section
22 405, the closing was denied.

23 A special exception request was therefore
24 filed by us on January 30, 2004.

25 MRS. WALTZ: Did you mention about the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 footings?

2 MR. WALTZ: I'm not sure what you are
3 talking about here. Now, as far as the details and
4 support of a special exception under section 223,
5 there are four items that need to be addressed. The
6 first, is light and air available to neighboring
7 properties demonstrating that it is not unduly
8 affected? And I would like to make two points in that
9 regard. The distance between the adjacent dwellings
10 is at least 13 feet, and the distance between the
11 walls, that is excluding a chimney on my neighbor's
12 residence, of the adjacent dwellings is nearly 15
13 feet.

14 The effect of the 2 foot difference on the
15 availability of air and light to the neighboring
16 property is not significant with regard to the 5 yard
17 side yard rule requirement. Secondly, prior to
18 construction, a 60 foot tall silver Maple with a broad
19 canopy shaded both of our houses and it was removed.
20 The tree had become seriously overgrown and a
21 potential threat to both properties should it ever
22 fall during a storm. Both properties face due south
23 and now receive even more light and air today than
24 they did prior to the addition.

25 The second point is the privacy and use

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and enjoyment of neighboring properties are not unduly
2 compromised. The distance of at least 15 feet between
3 opposing windows of the adjacent dwellings including
4 the addition affords substantial privacy to both and
5 more than many other dwellings on the same street.
6 The windows were intentionally located as much out of
7 alignment with those of the neighboring property as
8 possible, in order to enhance mutual privacy. Wider
9 wall construction and heavier insulation than building
10 specifications require prevents the possibility of any
11 noise to the surrounding area as well.

12 Third, the addition together with the
13 original building as viewed from the street, alley and
14 other public way does not substantially visually
15 intrude upon the character, scale and pattern of
16 houses along the subject street frontage. The stucco
17 finish of the additional blends attractively with that
18 of the existing house as well as others in the area.
19 The addition is compatible with the surrounding
20 neighborhood and does not create any neighborhood
21 traffic risks or obstruction. There is no alley.

22 And finally, the lot occupancy of the
23 dwelling, including addition, is only 24.25 percent,
24 substantially less than the 50 percent allowed. And
25 that's all I have to say at the moment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MRS. WALTZ: I'm not quite certain if my
2 husband mentioned that the footings were also approved
3 by the inspector on the project, which enabled us to
4 continue and put in the framing.

5 CHAIRPERSON GRIFFIS: Okay. The wall
6 check came after that, of course. Is that correct?

7 MRS. WALTZ: Exactly. Yes, it did.

8 MR. WALTZ: Exactly.

9 MRS. WALTZ: And we never had a copy of it
10 until just before Christmas in December.

11 MR. WALTZ: December 12th. On the day that
12 the closing was denied.

13 CHAIRPERSON GRIFFIS: Right. And you are
14 saying closing was denied. Is that correct?

15 MR. WALTZ: That's true.

16 CHAIRPERSON GRIFFIS: Okay. Very well.
17 Questions from the Board? Clarifications? And also
18 part of the 223, of course, is the requirement to
19 submit graphic representations so that it can be
20 easily understood, and I think that is fairly clear
21 and that has been met in terms of your submissions to
22 date. The lot occupancy under 223.3, as you have
23 indicated, allowable is 50 percent and you are well
24 under that at 24 and change. If there is no further
25 questions from the Board for clarification, then let's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 go to cross examination.

2 First of all, is an ANC-3D representative
3 here today for this Application 17139? There is no
4 ANC representative or Commissioner representing their
5 position here today. Let's go to the party in
6 opposition. Mr. Sharpston, do you have cross
7 examination?

8 MR. GELL: Thank you, Mr. Chairman. My
9 name is Stephen Gell.

10 CHAIRPERSON GRIFFIS: I'm sorry to
11 interrupt you. Can I have you turn your microphones
12 off until you need to answer his questions? That
13 would be great and that way we won't get feedback.
14 And just to update you, I don't know whether you've
15 been through this before or not, but nonetheless this
16 is more fun than a few things in life. Mr. Gell is
17 going to be asking you direct questions and what we
18 need to do is have just simple direct answers back.
19 There is no reason to narrative or go beyond what he
20 is actually specifically asking you, so if he asks
21 you, for instance, is there a roof on your house, the
22 answer is yes or it is no, and there is no need to
23 explain what type of roof or any other information
24 outside of his question. That way we can keep it
25 rolling. Mr. Gell?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GELL: Thank you, Mr. Chairman. I'm
2 Stephen Gell. I'm representing Michael Sharpston who
3 lives next door to the Waltzes. My first question is
4 say that the wall check was submitted in August and
5 you continued to do plumbing work and so forth until
6 you were denied closing in December. At what point
7 did the Department of Consumer and Regulatory Affairs
8 issue a Stop Work Order?

9 MR. WALTZ: There was no Stop Work Order
10 issued.

11 MR. GELL: And how did they communicate to
12 you that you didn't comply?

13 MR. WALTZ: The closing was not approved.

14 MRS. WALTZ: We voluntarily stopped.

15 MR. GELL: Okay. Now, you say the Maple
16 was overgrown. Was it not, in fact, dead when you
17 took it down and had it not been dead for some time?

18 MR. WALTZ: It was not dead. It had not
19 been dead for some time.

20 MR. GELL: Did you say to Michael
21 Sharpston that, in fact, you took out a dead Maple?

22 MR. WALTZ: No.

23 MR. GELL: Thank you. The windows that
24 you have in your plan are in a different location from
25 the ones shown, than the ones you actually put in.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Why did you change the location?

2 MR. WALTZ: As I said in my opening
3 statement, we tried to position the windows so that
4 they would give us the optimal lighting and the
5 maximum mutual privacy and actually until we actually
6 could get up there on the platform and add the
7 flooring in so we could get a perspective, it was hard
8 to tell. So that was the basis of the decisions and
9 where to locate them.

10 MR. GELL: Did you discuss the location of
11 those windows with Mr. Sharpston?

12 MR. WALTZ: No, we did not.

13 MR. GELL: Now, what made you think that
14 you had 5 feet between your property and the property
15 line?

16 MRS. WALTZ: You have to understand we
17 have a general contractor who submitted the plans. We
18 did not. Our general guy unfortunately is not here
19 today, but, as I understand from him, he had some
20 documentation that he had acquired from D.C. Records
21 that showed there was a 5 foot setback. And there is
22 also an existing -- there is a post which is an
23 existing, I guess, some sort of or type of fence which
24 has been existing since the 17 years we have lived
25 there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I know Mr. Sharpston has lived there for I
2 think since '83. I'm assuming he didn't put the post
3 in. So I'm assuming it has been there longer than 21
4 years. I don't know. But the post is about 5 feet 2
5 or 3 inches from our existing dwelling. And I had no
6 -- personally, again, I'm not speaking for my
7 contractor. I had no -- we had no interaction with
8 our contractor when submitting the plans on the plat.

9 I had no reason to believe that I wasn't taking care
10 of that land for 17 years that was, you know, my
11 responsibility to take care of. It wasn't until the
12 wall check came that anybody -- that we had any
13 understanding of the 3 -- you know, the 3.1 setback.

14 The footprint of our house has always
15 been, obviously, 3.1, which could be debatable because
16 we have had various different information that we have
17 gathered and it shows that 3.1 need not necessarily be
18 accurate. It could be up to almost 4 feet.

19 CHAIRPERSON GRIFFIS: Interesting.

20 MR. GELL: Now, when you appeared before
21 the Advisory Neighborhood Commission, did you explain
22 to them about being surprised about the 3.1 feet and
23 having to get the wall check and so forth?

24 CHAIRPERSON GRIFFIS: Mr. Gell, help me
25 understand why this is critical for our understanding.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GELL: Mr. Chairman, it is and I would
2 ask your indulgence just to let them answer that
3 question.

4 CHAIRPERSON GRIFFIS: Trust in you? Is
5 that what you mean?

6 MR. GELL: Trust me.

7 MRS. WALTZ: I don't know.

8 CHAIRPERSON GRIFFIS: Okay. Let's go.

9 MRS. WALTZ: I'm not quite sure that I
10 understand your question. Would you like to repeat
11 it? But I will do my best to answer it.

12 MR. GELL: Thank you. When you appeared
13 before the Advisory Neighborhood Commission and
14 explained to them why you needed this variance or
15 special exception, did you explain to them about the
16 fact that you were surprised to get the 3.1 verdict
17 from the wall check that this was not something you
18 were aware of?

19 MRS. WALTZ: As I had previously
20 mentioned, my contractor put in the plans. I did not.

21 CHAIRPERSON GRIFFIS: I think his direct
22 question is when you presented to the ANC, did you --
23 when you started your presentation to the ANC, did you
24 say or at any time, well, we were so surprised to find
25 3.1?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MRS. WALTZ: Well, absolutely.

2 CHAIRPERSON GRIFFIS: So you addressed the
3 issue at the ANC?

4 MRS. WALTZ: Step by step I addressed the
5 issue to the members of the ANC, yes.

6 CHAIRPERSON GRIFFIS: Okay. Follow-up
7 question, Mr. Gell?

8 MR. GELL: Yes. And one more about the
9 ANC.

10 CHAIRPERSON GRIFFIS: Can I just have you
11 turn one of those off?

12 MR. GELL: Sorry.

13 CHAIRPERSON GRIFFIS: Thank you.

14 MR. GELL: When you appeared before the
15 Advisory Neighborhood Commission, did you tell them
16 that you thought you would have an agreement with Mr.
17 Sharpston?

18 MRS. WALTZ: No, I did not. I said that I
19 had hoped that we would possibly have a meeting of the
20 minds.

21 MR. GELL: Fair enough. I would like you
22 to look at this document.

23 CHAIRPERSON GRIFFIS: Are you introducing
24 evidence in cross examination, Mr. Gell?

25 MR. GELL: Yes, I am.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Why?

2 MR. GELL: I think this may be an
3 appropriate time to do it.

4 CHAIRPERSON GRIFFIS: What is it?

5 MR. GELL: What it shows is a wall check
6 in 1990, which they got.

7 CHAIRPERSON GRIFFIS: Okay. Help me
8 understand why we're going through this.

9 MR. GELL: Which is 3.1. Well, because I
10 think it goes to credibility. They have said that
11 they didn't know about the 3.1. Here is a wall check
12 in 1990 when they did their earlier addition, which
13 shows 3.1 wall check. I think it is relevant.

14 CHAIRPERSON GRIFFIS: And if we find that
15 they knew --

16 MRS. WALTZ: Why would they have done it
17 in 1990? We didn't have this in 1990.

18 CHAIRPERSON GRIFFIS: I see. Let's --

19 MRS. WALTZ: It wasn't even asked for in
20 1990.

21 CHAIRPERSON GRIFFIS: Excuse me, Ms.
22 Waltz, let's take one thing at a time. Mr. Gell,
23 let's say hypothetically we do establish that they
24 knew, we still have an application before us for a
25 special exception and shouldn't that be what you are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 addressing?

2 MR. GELL: Yes, it does, but I think the
3 question of their credibility and things that they
4 told the ANC which led the ANC in the way they did
5 might very well have come out differently had the ANC
6 been told the truth.

7 CHAIRPERSON GRIFFIS: Is the ANC in their
8 address to the Board go through the special exception
9 requirements?

10 MR. GELL: I don't have the ANC.

11 CHAIRPERSON GRIFFIS: It's Exhibit 21.

12 MRS. WALTZ: If I could address that
13 question?

14 CHAIRPERSON GRIFFIS: No, actually, not.
15 Exhibit 21, I'll give you time to review it. The
16 Board in its procedure and how it has been constituted
17 has always looked at an application that is before us
18 as fresh and independent. I mean, we will look to
19 what the ANC states. If there is some evidence that
20 you want to try and illicit through cross examination
21 that shows us that the ANC actually doesn't address
22 the issue or it was somehow persuaded by a sympathy
23 vote, I'm just being hypothetical here, that's fine.
24 But delving well beyond that, I mean, we have looked
25 at applications for variances that were built and we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 still look at it independently on its face for the
2 variance test, whether it can be granted or not, and
3 obviously if it is denied, then it is removed.

4 So with that direction, Mr. Gell, let's
5 go. Lastly, let's look at this one piece. I'll let
6 you establish that, at this time. Why don't we get it
7 up to the Board, and then if we can quickly move on,
8 that would be, I think, the most expeditious.

9 MRS. WALTZ: Why would they have, you
10 know, put in a maximum building in 1990?

11 CHAIRPERSON GRIFFIS: Let's go.

12 MR. GELL: That concludes my cross
13 examination, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Oh, well, then
15 establish more clearly for the record then, you've
16 presented a -- I'm sorry, it's right here in front of
17 me.

18 MR. GELL: It's a document which lists --

19 CHAIRPERSON GRIFFIS: It's Thanksgiving
20 and I'm holding the cranberry. Pass it on down. So
21 in all seriousness, what you are establishing here is
22 a wall check that was done in 1990 and you asked if
23 the Waltzes were aware of this or in possession of
24 this. Is that correct? Were you aware of this?

25 MR. GELL: I'm making the assumption.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 They can deny that they were if they want, but --

2 CHAIRPERSON GRIFFIS: Well, let's make it
3 a direct question. Are you in possession of this?
4 Have you ever seen this? Were you aware of this 1990
5 surveyor's plat?

6 MR. WALTZ: No, we are not. We were not.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. GELL: Thank you, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Thank you, Mr. Gell.

10 Follow-up questions from the Board? Mr. Waltz or Ms.
11 Waltz, you indicated in one of the questions from Mr.
12 Gell in cross examination that there was a discrepancy
13 in the windows based on what was built and the plans.
14 Did I understand that correctly? What is the
15 discrepancy?

16 MR. WALTZ: It's where they were located.

17 CHAIRPERSON GRIFFIS: I need a microphone
18 on. I'm sorry, this is like high maintenance
19 testimony.

20 MR. WALTZ: Right. I think there were two
21 windows or three windows. I don't know. But the --

22 CHAIRPERSON GRIFFIS: Let me ask you
23 directly.

24 MR. WALTZ: Yes.

25 CHAIRPERSON GRIFFIS: We're looking at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 plans here submitted as part of the record. Is this
2 what is going to be built?

3 MR. WALTZ: Is this what? Excuse me.

4 CHAIRPERSON GRIFFIS: Is this what is
5 going to be built? If this special exception is
6 approved, is this, what I'm looking at, what is going
7 to be built?

8 MR. WALTZ: That's right. Yes, except for
9 the location of the windows.

10 CHAIRPERSON GRIFFIS: So the windows are
11 moving somewhere?

12 MR. WALTZ: They have already been moved.
13 This is an addition that has been built.

14 CHAIRPERSON GRIFFIS: That I know.

15 MR. WALTZ: Pardon me?

16 CHAIRPERSON GRIFFIS: Okay. So we're not
17 looking at the actual location of the windows?

18 MR. WALTZ: No. In the photographs you
19 can see them.

20 CHAIRPERSON GRIFFIS: Do you have any way
21 of indicating where and what windows there are that
22 have changed? Do you have our Exhibit 7, your plans,
23 in front of you?

24 MR. WALTZ: Yes.

25 CHAIRPERSON GRIFFIS: The fenestration

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that has moved in terms of location is on the left
2 side elevation? Is that where it is illustrated? Is
3 it on the rear elevation?

4 MR. WALTZ: This is the one.

5 CHAIRPERSON GRIFFIS: Excellent. Left
6 side elevation?

7 MR. WALTZ: Right.

8 CHAIRPERSON GRIFFIS: There are two --

9 MR. WALTZ: These windows have been moved
10 down here.

11 CHAIRPERSON GRIFFIS: -- appearing to be
12 double-hung windows? Okay?

13 MR. WALTZ: Yes. And there is one over
14 here.

15 CHAIRPERSON GRIFFIS: Just so the record
16 reflects correctly what we're doing.

17 MR. WALTZ: Right.

18 CHAIRPERSON GRIFFIS: The window which is
19 demarcated as a C in a triangle.

20 MR. WALTZ: Yes.

21 CHAIRPERSON GRIFFIS: It's probably
22 telling us what type of window size is going in there
23 is moving to the left on the page, actually toward the
24 rear of the property?

25 MR. WALTZ: That's correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Towards the rear of
2 the property. How far over?

3 MR. WALTZ: Maybe a foot or two from the
4 end.

5 COMMISSIONER PARSONS: Mr. Chairman, I
6 call your attention to Exhibit 4, which is a
7 photograph of that wall.

8 CHAIRPERSON GRIFFIS: A photograph.

9 COMMISSIONER PARSONS: In which that
10 window is now two windows.

11 CHAIRPERSON GRIFFIS: Sweet.

12 COMMISSIONER PARSONS: As I grasp it. And
13 the other window at the other end --

14 MR. WALTZ: That's right.

15 COMMISSIONER PARSONS: -- has become two
16 windows as well. So it looks like there is twice as
17 much opening.

18 MR. WALTZ: Oh, the one on the other end?

19 CHAIRPERSON GRIFFIS: Is it here?

20 COMMISSIONER PARSONS: There is one on the
21 other end that would appear to be two.

22 MR. WALTZ: Where is that photograph?

23 COMMISSIONER PARSONS: Also it appears as
24 though the lower windows are 6 instead of 4.

25 CHAIRPERSON GRIFFIS: Right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER PARSONS: So it appears that
2 there is a doubling of the glazing here.

3 MR. WALTZ: Here we are.

4 MRS. WALTZ: There were two existing. The
5 window, there was always two existing.

6 MR. WALTZ: It's a vertical photograph.

7 COMMISSIONER PARSONS: Yes.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MR. WALTZ: The two windows are here.
10 Okay?

11 CHAIRPERSON GRIFFIS: Right.

12 MRS. WALTZ: And those two were existing.

13 MR. WALTZ: And then this was an
14 additional window and this is one window.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. WALTZ: Okay?

17 CHAIRPERSON GRIFFIS: Perfect. We're
18 going to keep the record open, of course, to have you
19 submit an elevation that clearly reflects what is
20 being proposed.

21 MR. WALTZ: Okay. Any other questions of
22 follow-up? Ms. Miller?

23 VICE CHAIR MILLER: Could you tell me when
24 you purchased your house?

25 MR. WALTZ: 1987.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR MILLER: Okay. Just so that I
2 understand, I understand that you haven't seen this
3 before, but it is related to some construction that
4 you did?

5 MR. WALTZ: We did in 1990.

6 VICE CHAIR MILLER: Okay. Thanks.

7 CHAIRPERSON GRIFFIS: Anything else? Very
8 well. Let's go on to the Office of Planning. Mr.
9 Jackson is with us this afternoon to present his
10 report. Are you in possession of the Office of
11 Planning's memo, Mr. and Ms. Waltz? Do you have the
12 Office of Planning's memo?

13 MR. WALTZ: Yes, sir.

14 CHAIRPERSON GRIFFIS: Excellent. Does the
15 party in opposition have a copy of the Office of
16 Planning's memo?

17 MR. GELL: Yes, we do.

18 CHAIRPERSON GRIFFIS: Okay. Thank you.
19 Mr. Jackson?

20 MR. JACKSON: Mr. Chairman, Members of the
21 Board, my name is Arthur Jackson with the D.C. Office
22 of Planning, and I'll briefly summarize the Office of
23 Planning report. The Office of Planning stands on the
24 record with regard to the report we submitted and
25 would go back and highlight a couple of points. We do

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 find that the application has -- that the discrepancy
2 does exist with regard to the 5 feet that's required
3 in the Zoning Regulations for an extension of a
4 nonconforming side yard setback and the existence of
5 less than 5 feet, in fact 3 feet and 1 inch.

6 We also note that the application also
7 meets all the other requirements of the Zoning
8 Regulations with regard to lot occupancy. As such,
9 we, in reviewing the plan, basically the site visit
10 and review of the property, and then compared what was
11 proposed and existing with what the Zoning Regulations
12 allow, and we basically determined that the 2 foot
13 difference and what would be allowed under the Zoning
14 Regulations, which would allow the construction of 3
15 stories to 40 feet in height in the same location, and
16 the existing distance between the addition and the
17 adjacent property are such that the air and light of
18 adjacent property would not be adversely affected by
19 the proposed construction.

20 We also don't think that the visibility
21 would greatly increase, since the second floor was
22 already in use and the view, the angular view,
23 although the windows in the addition are a little
24 further back, the angular view would not increase
25 markedly. Therefore, we didn't find that the addition

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 together with the original building would also, as
2 viewed from the street, there is no alley, be
3 intrusive, because they used the same building
4 materials in the construction of the addition as
5 currently exists, and note that the lot occupancy does
6 not require relief, and that no special treatment
7 would be recommended.

8 In our plan, we did make reference to
9 discussions with the -- between the applicant and the
10 neighboring property owner to address issues that were
11 being raised by the property owner. However, that was
12 something we felt that could be worked out between the
13 two. And we also -- so based on the information we
14 had available, we recommend approval of the special
15 exception to reduce this required side yard setback to
16 3 feet for the existing addition.

17 We also need to supplement our report by
18 noting that the property is located in the Wesley
19 Heights Overlay District and with regard to the
20 requirements under that Overlay District, the lot
21 occupancy that is allowed is 30 percent and propose
22 and existing construction is only 24.25 percent. The
23 front yard setback is equal to the neighboring
24 property owner's and is not changing as a part of this
25 application. As such is not subject to any additional

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 review. And that the total floor area property is
2 allowed to be 2,000 square feet plus 40 percent of the
3 lot occupancy.

4 The proposed addition based on the land
5 records, I'm sorry, the Office of the -- well, the
6 Office of the Chief Financial Officer, the conclusion
7 of the new addition would bring the total floor area
8 to 3,206 feet, that includes the basement, which means
9 that it would be 2,000 square feet plus 1,206 which
10 would only amount to 16 percent of the total lot
11 occupancy. So with that, we do not find that the
12 proposed addition would violate any of the Wesley
13 Heights Overlay requirements. That concludes our
14 report and we are available to answer questions.

15 CHAIRPERSON GRIFFIS: Good. Thank you
16 very much, Mr. Jackson. The last calculations you did
17 indicated that there was a 16 percent lot occupancy?

18 MR. JACKSON: 2,000 square feet. If you
19 start with 2,000 square feet and then just take the
20 1,206 square feet and divide it by 7,500, it works out
21 to 16 percent.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. JACKSON: So we are only looking at
24 the Wesley Heights overlay requirement.

25 CHAIRPERSON GRIFFIS: Right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. JACKSON: Not the overall requirements
2 that are required in the underlying Zoning District.

3 CHAIRPERSON GRIFFIS: Excellent. And am I
4 correct, you also said that the basement, the portion
5 that is the basement, was calculated into that?

6 MR. JACKSON: Yes, we included that and
7 for the sake of being conservative, we included both
8 the finished and unfinished portions.

9 CHAIRPERSON GRIFFIS: I see.

10 MR. JACKSON: Because we're not aware of
11 what height that was, but just in case it is 6 feet, 6
12 inches we added, took the whole thing.

13 CHAIRPERSON GRIFFIS: I see. Okay. Very
14 well. Questions from the Board? Ms. Miller?

15 VICE CHAIR MILLER: Mr. Jackson, when you
16 wrote your report, you stated that you weren't aware
17 of specific concerns of the neighbor about the
18 property.

19 MR. JACKSON: Yes.

20 VICE CHAIR MILLER: But you didn't see an
21 intrusion on light and air.

22 MR. JACKSON: No.

23 VICE CHAIR MILLER: Okay. Now, in the
24 attachment for party status they specifically say that
25 the extension would lessen the light to the dining

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 room, seriously diminish the privacy of the upper deck
2 and intrude into the privacy of their yard. Do you
3 have a comment on that?

4 MR. JACKSON: Well, we took the
5 perspective of what would be allowed under the Zoning
6 Regulations as compared to what has actually been
7 proposed. With regard if you consider section 405.8,
8 section 405.8 looks at the existing, the buildings
9 that predate 1958 as per unique circumstances in the
10 whole and as such, if there were two buildings, two
11 residences that were both 5 feet from the exterior
12 property boundary, each would be allowed to build, to
13 extend the existing nonconforming 5 foot setback and
14 build to the complete height of 40 feet and three
15 stories.

16 In this case, we have a situation where we
17 have an existing building that is not a full
18 construction, that is to say it's more of a projection
19 from the second floor, which allows additional air and
20 light underneath. It's 3 feet from the property line,
21 but based on a plat on record with the District, the
22 adjacent property is either 11.8 or 10 feet from the
23 property line.

24 So the total distance between the
25 buildings is 13 feet, such that we think that that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 additional distance is sufficient to ameliorate any
2 impacts on the air and light, as opposed to
3 visibility, we're talking about second floor windows
4 looking into a property that would be adjacent to it.

5 If you have second floor windows on the
6 side, our perspective, at least based on the site
7 visit, is that the increase in visibility should be
8 minimal, because if you can see from the second floor,
9 even though these windows would be maybe 10 feet
10 further back, it would not have -- well, we didn't
11 consider, at the time, that it would have significant
12 impact on visibility into the yard, because basically
13 if you're on the second floor, you can see.

14 So that was our perspective at that time
15 and, based on the information that we still have
16 available before us, our perspective has not changed.

17 VICE CHAIR MILLER: Thank you.

18 CHAIRPERSON GRIFFIS: Anything else from
19 the Board? Does the applicant have any cross
20 examination of the Office of Planning? Any questions?

21 MRS. WALTZ: Yes. I don't want to waste
22 your time.

23 CHAIRPERSON GRIFFIS: We're here for you.
24 It's not a waste of our time.

25 MRS. WALTZ: Regarding the Maple, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there was some concern about it being a dead Maple, I
2 was looking for the invoice for the tree. We had the
3 tree obviously professionally taken down.

4 CHAIRPERSON GRIFFIS: I see. Is this a
5 question for the Office of Planning?

6 MRS. WALTZ: No, a clarification, that
7 there was a --

8 CHAIRPERSON GRIFFIS: Why don't we save it
9 until conclusions then?

10 MRS. WALTZ: Oh.

11 CHAIRPERSON GRIFFIS: This is cross
12 examination of the Office of Planning.

13 MRS. WALTZ: Oh, I'm sorry.

14 CHAIRPERSON GRIFFIS: They have put on
15 their flack vest and they are ready for the buckshot,
16 so let's not ease up on them. No cross examination?
17 Mr. Gell?

18 MR. GELL: Yes. Hello, Mr. Jackson. Did
19 you --

20 MR. JACKSON: Yes.

21 MR. GELL: Sorry. You just testified that
22 you did not consider the effect of the new windows on
23 the rear yard. Do I take it that you also didn't
24 consider the effect of those windows on the deck on
25 the house next door?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. JACKSON: Well, as I said --

2 MR. GELL: A privacy issue.

3 MR. JACKSON: Again, the thought was that
4 if you have a window on the second floor and you're
5 looking out onto the -- and you could see the rear
6 property from the second floor, then additional
7 windows on the second floor to see the same area would
8 not necessarily increase or decrease the amount of
9 privacy that would be in the area. That is to say
10 that if you're above 20 feet and you're able to see
11 over into someone's property, then where you are along
12 the side of the property line at that level would not
13 increase or decrease the visibility of the rear yard,
14 but that was our perspective just based on the site
15 visit.

16 MR. GELL: So what you saw were windows
17 that did not conform with the plans that have been
18 submitted. Is that correct?

19 MR. GELL: Actually, what we did was
20 basically just look at the side of the building, view
21 the windows and where they would perceivably -- where
22 they -- well, looking at the windows and where they
23 could see from the ground. We took that into account
24 and did not necessarily -- we didn't actually compare.

25 Based on the site visit, we didn't compare the plans

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 submitted to what was constructed. We just looked at
2 what was constructed.

3 MR. GELL: So you didn't think in terms of
4 comparing what was there before the construction and
5 what they could see by virtue of construction, which
6 did not conform to the zoning requirements. Is that
7 correct? Your comparison was not between those two
8 things, but rather simply looking at the construction
9 and seeing what could be seen?

10 MR. JACKSON: Yes, based on the second
11 floor being in use and having windows existing, but I
12 did not see an elevation that showed the existing
13 second floor windows.

14 MR. GELL: Did you have an opportunity to
15 speak with Mr. Sharpston at the time that you visited
16 at the Waltzes?

17 MR. JACKSON: Yes.

18 MR. GELL: And did you have a conversation
19 at that time?

20 MR. JACKSON: Yes.

21 MR. GELL: And what were his concerns?

22 MR. JACKSON: Well, he was not very
23 specific. He did ask a number of questions about the
24 details of the application and what was the actual
25 problem. I tried to enlighten him on, basically, what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the issue was. He also seemed to express that there
2 were some concerns on his part, but there were no
3 specifics mentioned, but what he did conclude by
4 saying was he wanted to talk to his architect to get
5 more perspective.

6 MR. GELL: But you found out more later
7 when he came to your office?

8 MR. JACKSON: I have never seen him in my
9 office, but he had --

10 MR. GELL: Perhaps I misunderstood. All
11 right. Thank you.

12 CHAIRPERSON GRIFFIS: Thank you, Mr. Gell.
13 Anything else, clarification from the Office of
14 Planning? Mr. Jackson, thank you very much. Let's
15 move on then to the ANC report. It is Exhibit 21.
16 The ANC is recommending approval. The report was
17 timely filed. Ms. Miller, did you have note on that?

18 VICE CHAIR MILLER: It seems to me the
19 requirement is to give great weight, if that's what
20 you're referring to.

21 CHAIRPERSON GRIFFIS: Indeed.

22 VICE CHAIR MILLER: Okay.

23 CHAIRPERSON GRIFFIS: I would make one
24 note in the letter. I think that Mr. Gell was trying
25 to address somewhat and may well in his case

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 presentation, the third paragraph of the letter,
2 Commissioner Mullane moved that this special exception
3 be approved since the Waltzes had done everything "by
4 the book" and it is not their fault that these errors
5 occurred. There was no objection by the neighbors to
6 the reasons. The Commissioners voted 5-0-0 in support
7 of a special exception. I would note that, again, the
8 letter doesn't address any of the tests in 223 or the
9 special exception in general, but we have granted it
10 the great weight for which it is afforded.

11 Very well. I don't have any other
12 Government reports attendant to this application
13 unless the applicant is aware of any other Agency
14 reports submitted.

15 MR. WALTZ: No, we're not.

16 CHAIRPERSON GRIFFIS: Thank you. In that
17 case, what I'm going to have you do is just have a
18 seat right in the front row. We're going to go to the
19 party in -- well, let me first indicate, is anyone
20 else here to give testimony today, 17139, Thomas and
21 Linda Waltz attendant to this application? Very well
22 then.

23 MR. GELL: Mr. --

24 CHAIRPERSON GRIFFIS: You're calling a
25 witness. Is that correct, Mr. Gell?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GELL: Mr. DuPont has common testimony
2 as well.

3 CHAIRPERSON GRIFFIS: As your witness?

4 MR. GELL: As Mr. Sharpston's, yes.

5 CHAIRPERSON GRIFFIS: That's great. Okay.
6 We're trying to get the landscape of how much more
7 time we need. Have a seat right in the front row.
8 I'm going to turn it over to Mr. Gell for the
9 presentation of the party in opposition's case. Then
10 after his case, you will be given an opportunity to
11 cross examine any of the witnesses and their testimony
12 after which we will proceed directly to your closing
13 remarks and any additional rebuttal testimony that you
14 want to provide. That being said, Mr. Gell?

15 I will note in total equity of time,
16 parties in opposition will be afforded a fairly
17 similar time afforded the applicant in their
18 presentation, which I think was about eight minutes.
19 Do you need more time than that, Mr. Gell?

20 MR. GELL: Yes, Mr. Chairman, we will need
21 possibly 25 to 30 minutes.

22 CHAIRPERSON GRIFFIS: I can't possibly
23 imagine you need that much time. Let's go ahead and
24 I'll update you around --

25 MR. GELL: Mr. Sharpston speaks very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 slowly.

2 CHAIRPERSON GRIFFIS: I'll update you
3 around 10 minutes and see how far we have gotten.

4 MR. GELL: All right. Thank you, Mr.
5 Chairman. I'm going to turn it over right now to Mr.
6 Sharpston and not waste any more of the Board's and
7 his time to present his case, and then I will have an
8 opportunity to say something afterwards.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. SHARPSTON: This is the first time in
11 my life I --

12 CHAIRPERSON GRIFFIS: Can you turn on the
13 microphone? Thank you.

14 MR. SHARPSTON: Is that right? Yes.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. SHARPSTON: Okay. Good. Ladies and
17 gentlemen, this is the first time in my life I have
18 ever attended a Zoning Hearing or anything like it
19 because of a contention with a neighbor. That's true
20 actually in this country or any other, and I have been
21 living here for 30 years.

22 I can only give you the account of the ANC
23 meeting, which I did not attend. I can only mention
24 that I had a conversation with Commissioner Mullane
25 and his account was that since there were no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 objections registered, at the time, and the Waltzes
2 had told the meeting they were in the process of
3 coming to an agreement with me, in those
4 circumstances, the Commissioners agreed to the
5 exception.

6 Following that, I wrote up records of my
7 conversation with Commissioner Mullane and I hand
8 carried them around to him. I handed him this record,
9 which I have here, and I stressed to him I was going
10 to mention it at this meeting and could he, please,
11 please, say if he found anything incorrect with my
12 version of my discussion with him and, apparently, he
13 hasn't chosen to take advantage of that.

14 I should like to say that I really
15 believed I had rather good relations with my
16 neighbors. As a matter of fact, early on Tom Waltz
17 came to me and he wanted some kind of introduction to
18 the World Bank, which I gave him.

19 CHAIRPERSON GRIFFIS: Let me interrupt you
20 just quickly.

21 MR. SHARPSTON: Yes.

22 CHAIRPERSON GRIFFIS: Let's get to the
23 heart of the matter.

24 MR. SHARPSTON: All right.

25 CHAIRPERSON GRIFFIS: Why don't we talk to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 why you find this objectionable, on what areas?

2 MR. SHARPSTON: Okay.

3 CHAIRPERSON GRIFFIS: And what --

4 MR. SHARPSTON: Okay.

5 CHAIRPERSON GRIFFIS: Tell us what you
6 know.

7 MR. SHARPSTON: I find this objectionable,
8 because the windows in particular, which are not, in
9 fact, in the position of the building plan, do go
10 directly onto my upper deck. If they had been -- if
11 the single window, as distinct from double window, had
12 been where it was even in the plan, that would not be
13 true. We do have pictures, which I think shows this
14 reasonably convincingly.

15 CHAIRPERSON GRIFFIS: Now, when you say
16 your deck, this is above grade?

17 MR. SHARPSTON: You're going to see it in
18 a minute.

19 CHAIRPERSON GRIFFIS: That's great.

20 MR. SHARPSTON: It's just being --

21 CHAIRPERSON GRIFFIS: Why don't you
22 describe it to me?

23 MR. SHARPSTON: All right.

24 CHAIRPERSON GRIFFIS: So your exterior
25 deck is on the --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SHARPSTON: I have --

2 CHAIRPERSON GRIFFIS: Actually, it's
3 faster if you answer my question.

4 MR. SHARPSTON: I'm sorry.

5 CHAIRPERSON GRIFFIS: The exterior deck is
6 on the same level as the proposed and adjacent? Is it
7 above? It's above grade. Is that correct?

8 MR. SHARPSTON: It's second story.

9 CHAIRPERSON GRIFFIS: Okay. Second story
10 and it's open?

11 MR. SHARPSTON: Yes.

12 CHAIRPERSON GRIFFIS: It's not enclosed?

13 MR. SHARPSTON: Correct.

14 CHAIRPERSON GRIFFIS: Okay. And do you
15 expect a lot of privacy in an open, exposed deck?

16 MR. SHARPSTON: There certainly was a
17 great deal of privacy before.

18 CHAIRPERSON GRIFFIS: I see.

19 MR. SHARPSTON: There was no window on the
20 Waltz' side, which is the immediately adjacent side,
21 so it remotely gave any visibility to that deck.

22 CHAIRPERSON GRIFFIS: Okay. Which is
23 shown in the photograph.

24 MR. SHARPSTON: As you can see for
25 yourself, this is a photo taken with normal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 perspective. It's neither wide angle nor telephoto
2 nor whatever. It's pretty much normal perspective.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MR. SHARPSTON: Yes. The second thing I
5 would like to mention is that the -- I have an open
6 plan downstairs. As it happens, I have living room,
7 dining room downstairs, which is open. The light of
8 the dining room is affected. If the Waltzes do fill
9 in underneath where they have built at the moment, it
10 will certainly make that worse.

11 It won't only affect the dining room. It
12 will, in fact, also affect the living room, because
13 the whole thing is open plan. So you see right
14 through from really where you enter my house straight
15 through to the Waltz' area we're talking about, that
16 is to say underneath the extension.

17 CHAIRPERSON GRIFFIS: So if they don't
18 fill it in, it doesn't increase your light?

19 MR. SHARPSTON: If they don't fill it in,
20 the effect is less serious.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. SHARPSTON: As it is right now, it
23 does affect the light to the dining room.

24 CHAIRPERSON GRIFFIS: Right. So the solid
25 portion is the second level?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SHARPSTON: The impact in terms of
2 confronting into my downstairs space would be less
3 severe, yes. I am quite surprised that despite good
4 relations, they, in fact, at no point showed me any
5 plans and in regard to the business with the windows,
6 they certainly had every opportunity to ask me and
7 they never did. If they had asked me, I would have
8 said I cared much more about the upper deck, which was
9 directly related to my back room. So I'm not sure I'm
10 completely convinced by the argument that this was
11 done, somehow, on my behalf.

12 The ANC never took any initiative to
13 contact me. Perhaps the ANC should have been somewhat
14 more proactive in contacting the immediate neighbor as
15 to the existence of a meeting to deal with this
16 request for a special exception.

17 I did try very hard to get an agreement
18 with the Waltzes and to me a key feature would have
19 been that I was going to be advised in advance of any
20 future plans they had, which could affect me. During
21 the course of exactly those negotiations, I went off
22 for a week. I came back and was actually more or less
23 in bed for about two or three days. I go out and look
24 at my back yard and I find that a fence has been
25 ripped up, posts have been taken out and so on. This

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was precisely the kind of unilateral action I was
2 trying to avoid with an agreement.

3 What my neighbor had done unilaterally,
4 but, in fact, from my point of view, perfectly
5 satisfactorily was to put posts up at the front, which
6 showed the property line and which, in fact, I would
7 have been completely prepared to agree to. I wanted
8 to show these to my lawyer. I took him out front.
9 This was a week later. Poof, they had disappeared.
10 So it has been a slightly psychedelic experience.

11 Oh, yes. It was certainly my belief that
12 Mr. Waltz was telling me that the Maple was dead.
13 What I can do is show you a picture, if you wish,
14 which shows that it doesn't look in particular good
15 health and doesn't seem to have --

16 CHAIRPERSON GRIFFIS: Mr. Gell, why is
17 this germane?

18 MR. SHARPSTON: Oh, because it's to the
19 matter of the degree of shading. You remember that
20 the Waltzes were just telling us --

21 CHAIRPERSON GRIFFIS: I know what they
22 said, but why is it germane to your case, the amount
23 of shading?

24 MR. GELL: That the addition does, indeed,
25 shade more of his lots than one would have assumed if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it was true that a Maple had shaded it prior to that,
2 which was taken out.

3 MR. SHARPSTON: They were arguing that
4 yes, they had built the addition, but yes, they had
5 also removed this Maple.

6 CHAIRPERSON GRIFFIS: I see.

7 MR. SHARPSTON: And that's the only reason
8 I'm mentioning it.

9 CHAIRPERSON GRIFFIS: Oh, okay. All
10 right. Let's go ahead.

11 MR. GELL: We don't have to press it if --

12 CHAIRPERSON GRIFFIS: No, no, no, let's
13 bring it in. I wasn't clear on where it was going.

14 MR. SHARPSTON: That's the only reason I'm
15 mentioning it, sir.

16 CHAIRPERSON GRIFFIS: That's good.

17 MR. SHARPSTON: So basically, my
18 contention is that there is very significant effect on
19 the upper deck by windows, which are not even in the
20 plan, and that the extension as a whole does darken my
21 dining room and that were they, at some future point,
22 to fill in underneath, that would have further effect
23 on actually the whole downstairs in terms of having a
24 window, even including the living room.

25 CHAIRPERSON GRIFFIS: That's good.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SHARPSTON: That's it. Thank you.

2 BOARD MEMBER ETHERLY: Just real quickly,
3 could you clarify exactly the Maple that we're talking
4 about?

5 MR. GELL: Yes, that is a little hard to
6 tell.

7 MR. SHARPSTON: It's the whitey looking
8 thing, the gray-white one.

9 BOARD MEMBER ETHERLY: Thank you. Just
10 for the record, well, it's hard to kind of describe.

11 MR. SHARPSTON: But you see it sort of
12 goes straight up.

13 BOARD MEMBER ETHERLY: Towards the --

14 MR. SHARPSTON: Incidentally, the picture
15 also shows an earlier state. When I made some changes
16 on the front of my house, I went out of my way to ask
17 Tom Waltz in advance what his preferences were for a
18 small bit, which concerned him. I said that I would
19 make it uniform at my expense. He didn't want it and
20 I did exactly what he wanted.

21 CHAIRPERSON GRIFFIS: Indeed.

22 MR. SHARPSTON: Okay.

23 CHAIRPERSON GRIFFIS: You know, one thing
24 the Board does take very seriously, of course, is
25 neighborly relations and we certainly press everyone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to do that.

2 MR. SHARPSTON: Yes.

3 CHAIRPERSON GRIFFIS: Our own jurisdiction
4 of regulating, judging or demanding or dictating what
5 that is is not with us, meaning we don't have any
6 control over it.

7 MR. SHARPSTON: I understand.

8 CHAIRPERSON GRIFFIS: We absolutely
9 appreciate the frustration in this case, but also in
10 many others that are well, perhaps even more complex
11 than this one.

12 Let's move ahead then. Any other further
13 questions, at this point, of the testimony from the
14 Board?

15 VICE CHAIR MILLER: I have a question with
16 respect to the photograph of your deck.

17 MR. SHARPSTON: Sure.

18 VICE CHAIR MILLER: It will probably be
19 given an exhibit number, but in any event, I'm not
20 sure whose property it is in between or if it's both
21 of your properties, but is it possible to increase
22 your privacy here with having increased landscaping,
23 such as a tree?

24 MR. SHARPSTON: I couldn't very easily, I
25 think, fit -- I might be able to fit something in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 eventually, which would have an effect.

2 MR. GELL: It's only a couple of feet.

3 MR. SHARPSTON: It's not a whole lot.

4 VICE CHAIR MILLER: I mean, I noted there
5 seems to be a tree right here and then there is an
6 open space.

7 MR. SHARPSTON: That is correct. That is
8 correct, but you're on an upper level, so, you know --

9 MR. GELL: Is that on their property or
10 yours?

11 MR. SHARPSTON: What?

12 MR. GELL: Is this on their property?

13 MR. SHARPSTON: I think that's --
14 actually, I don't know. We can ask Tom. I would say
15 that was probably his property, but I'm not sure.

16 VICE CHAIR MILLER: And my other question
17 then is with respect to your dining room that you said
18 it has been darkened or your living room has been
19 darkened by the --

20 MR. SHARPSTON: Well, the living room is
21 affected in terms of what you see as soon as you come
22 in the front door. The dining room is darkened.
23 That's what I was trying --

24 VICE CHAIR MILLER: Dark? I mean, can you
25 quantify how --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SHARPSTON: How dark it is?

2 VICE CHAIR MILLER: Well, compared to
3 before. I mean, is it just part of the day it gets
4 less light or all day?

5 MR. SHARPSTON: Before, you know, a lot of
6 the time one wouldn't use a light. At this point I
7 probably would much more of the time. That's a rough
8 idea. You know I'm talking about during the day,
9 right?

10 VICE CHAIR MILLER: Right. I mean, during
11 the night it's dark.

12 MR. SHARPSTON: No, sure.

13 VICE CHAIR MILLER: So we're talking about
14 during the day.

15 MR. SHARPSTON: I'm just saying that
16 prior, I would very often go into the room and not put
17 a light on at all, whereas now I would typically put a
18 light on if I was making any use of the room at all.

19 VICE CHAIR MILLER: Okay.

20 CHAIRPERSON GRIFFIS: Good. One
21 uncontested fact of the day, it is dark at night.

22 How many windows do you have in your
23 dining room?

24 MR. SHARPSTON: One.

25 CHAIRPERSON GRIFFIS: Just one?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SHARPSTON: Well, I have one window on
2 that side.

3 CHAIRPERSON GRIFFIS: I know you have an
4 open plan, right?

5 MR. SHARPSTON: Right.

6 CHAIRPERSON GRIFFIS: So in terms of the
7 area that you define, essentially, as useable in your
8 dining area, you have one on the side?

9 MR. SHARPSTON: On the Waltz' side.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. SHARPSTON: Which is a rather large
12 window.

13 CHAIRPERSON GRIFFIS: And it's similar to
14 the fenestration of the window types that you have on
15 the front elevation? It's a double hung, wood, 2, 3
16 feet wide?

17 MR. SHARPSTON: Actually, if you look at
18 this picture, you can see it. If you look at this
19 picture, you can see my dining room window.

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. SHARPSTON: Okay?

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. SHARPSTON: I know you're looking at
24 it sideways, but it is there.

25 CHAIRPERSON GRIFFIS: It's a beautiful

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 black and white photograph.

2 MR. SHARPSTON: I'm sorry. I have done my
3 best.

4 CHAIRPERSON GRIFFIS: It's very nice, but
5 the detail is not necessarily there. Okay. I
6 understand.

7 MR. SHARPSTON: It is a fairly large,
8 reasonably important window for the room if that's the
9 question.

10 CHAIRPERSON GRIFFIS: First to the
11 adjacent of the chimney is the window. Is that
12 correct?

13 MR. SHARPSTON: Yes, that's right. It is
14 not dead adjacent. I'm going to tell you --

15 CHAIRPERSON GRIFFIS: No, no, I understand
16 that, but it's the first one in this photograph?

17 MR. SHARPSTON: Yes, yes.

18 CHAIRPERSON GRIFFIS: That's adjacent to
19 the chimney, and it's behind the actual line of which
20 the new proposed addition starts. Is that correct?

21 MR. SHARPSTON: Yes.

22 CHAIRPERSON GRIFFIS: Okay. Any other
23 questions at this time? Very well. Let's move on.

24 MR. SHARPSTON: Yes, yes. Prior to this
25 addition, I mean, if you look at this picture --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Yes.

2 MR. SHARPSTON: The roof has now gone much
3 higher, right?

4 CHAIRPERSON GRIFFIS: Sure.

5 MR. SHARPSTON: And so there is less light
6 coming in, how can I say, like this.

7 CHAIRPERSON GRIFFIS: Which direction does
8 your front door face?

9 MR. SHARPSTON: My front door faces south.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. SHARPSTON: Pretty much.

12 CHAIRPERSON GRIFFIS: Very well. Thank
13 you. Anything else?

14 MR. SHARPSTON: No.

15 CHAIRPERSON GRIFFIS: Next witness?

16 MR. GELL: Yes, Stephen DuPont has some
17 things to say. He is a builder and I would like him
18 to just tell you a little bit of his background. I'm
19 not offering him as an expert witness, but he
20 certainly has experience in building and he knows
21 Michael.

22 MR. SHARPSTON: And he knows the area,
23 too.

24 MR. GELL: And the area, and he knows the
25 condition of the property prior to and now. He had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some things that I thought would be useful.

2 CHAIRPERSON GRIFFIS: Sounds like you
3 don't have to say anything more. There it is in a
4 nutshell.

5 MR. DUPONT: Stephen DuPont, I am an
6 architect. I have been around the house for 20 years
7 probably on and off and other than responding really
8 to specific questions, I don't have a great deal to
9 add. I saw the drawings that Michael had gotten from
10 the District that were used to acquire a permit, but
11 there were no indications of property lines in that
12 set.

13 CHAIRPERSON GRIFFIS: Interesting.

14 MR. DUPONT: I have always known that the
15 fence was much closer to their property, to their
16 house than his, because I have his plat.

17 MR. GELL: Was that the fence that was
18 taken down?

19 MR. DUPONT: There was a fence at the
20 front. The front end of the fence where it lays
21 between the two houses had a woodpile against it on
22 one side, and I believe it had an air conditioning
23 unit on the other side, on the Waltz' side and that
24 was moved out of the way by the workmen, so they could
25 get through, so the fence isn't really any indication

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of the front of where the property line would have
2 been.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. DUPONT: And I guess my only other
5 comment would be that I think that there is something
6 in the code about square footage of window, that it's
7 allowed within a certain distance of the property
8 lines that maybe should be checked again by the Permit
9 Branch when this is granted.

10 CHAIRPERSON GRIFFIS: Very well. Good
11 direction. Of course, we have no jurisdiction over
12 Building Codes on this Board.

13 Mr. Gell, further questions of your
14 witness?

15 MR. GELL: No, that's all.

16 CHAIRPERSON GRIFFIS: Excellent.
17 Questions from the Board, clarifications? Anything
18 else, Mr. Gell?

19 MR. GELL: Well, just to say that this
20 addition does create some problems. We hope the Board
21 can find ways to ameliorate those problems for us if
22 the Board decides to grant, and I think we have laid
23 out the issues about as well as we can. So thank you
24 for your time.

25 CHAIRPERSON GRIFFIS: Thank you very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The issues that you have laid out, if I'm correct, is
2 light to the adjacent house, your client's dining room
3 area and also portions of the living room, the privacy
4 and enjoyment of the deck, which is upper second
5 story, which is adjacent to the new fenestration. Is
6 that correct?

7 MR. GELL: That is correct. We think
8 something certainly can be done. If the Board decides
9 that the addition should remain, then certainly there
10 is something that could be done about those windows,
11 so that they don't intrude and ruin the privacy that
12 he had on his deck. The windows had been in a
13 different place. The plans show them in a different
14 place, which would not have had that same effect. He
15 also has windows looking straight back into the back
16 yard, which would not have any effect on the privacy
17 on his deck.

18 However, there is a balcony, which indeed
19 -- it's a very small balcony with no access from the
20 outside, just very tiny. I'm not even sure how
21 anybody could get on the balcony, but if they walk out
22 on there, and I assume that it's going to be enough
23 room for them to, then of course the privacy is lost
24 as well. We don't see any reason why the windows
25 aren't sufficient on that end of the house for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 whatever light and so forth that they need. So the
2 balcony becomes a problem for us as well as the
3 windows on the side.

4 CHAIRPERSON GRIFFIS: What's the function
5 behind those windows? Do you know?

6 MR. GELL: The windows that they put in?

7 CHAIRPERSON GRIFFIS: Yes.

8 MR. GELL: I assume to let more light in.

9 CHAIRPERSON GRIFFIS: No, no, no, I'm
10 sorry. What's the use of the room?

11 MR. GELL: Oh.

12 CHAIRPERSON GRIFFIS: What is it?

13 MR. GELL: I have no idea.

14 CHAIRPERSON GRIFFIS: Okay. Good.
15 Anything else from the Board?

16 VICE CHAIR MILLER: I'm sorry. I'm just
17 not clear what you're referring to with respect to
18 balcony.

19 MR. GELL: Yes, it's hard to spot and we
20 didn't even --

21 VICE CHAIR MILLER: Oh.

22 MR. GELL: -- realize there was a balcony
23 based on the construction, because there's just a
24 little tiny plank there, but apparently they intend to
25 build a balcony and when I looked on the plans,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 indeed, there is something shown.

2 CHAIRPERSON GRIFFIS: Okay. Anything
3 else? Very well. Cross examination? Do you have any
4 questions of the witnesses?

5 MR. GELL: May I? I'm sorry.

6 CHAIRPERSON GRIFFIS: Go ahead.

7 MR. GELL: We made a point in the opening
8 argument below the deck. The plans don't show any
9 filling in of that area. We would like very much for
10 the Board's order, if the Board decides not to make
11 them take the addition down, to certainly make it
12 clear that they can only build in accordance with
13 those plans to the extent the Board wants and that
14 they can't later fill it in, because that would have a
15 privacy effect on Michael and his enjoyment of that
16 room.

17 CHAIRPERSON GRIFFIS: What is your
18 understanding, Mr. Gell, would that be a matter-of-
19 right construction if they decided to fill it in, if
20 this addition was approved and it was built?

21 MR. GELL: It might well unless the Board
22 made that as a condition.

23 CHAIRPERSON GRIFFIS: So you don't see
24 anything precluding them from filling that in if this
25 went forward? It wouldn't be viewed as an addition to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a nonconforming structure or anything like that that
2 would require a special exception?

3 MR. GELL: Well, it might, but I'm a
4 little bit concerned about how that might be read
5 later on.

6 CHAIRPERSON GRIFFIS: I see.

7 MR. GELL: I would be happy, you know, it
8 would be great if you were absolutely right, but I
9 think it could be clarified in the Board's order.

10 CHAIRPERSON GRIFFIS: I understand. Okay.

11 Cross examination?

12 MR. WALTZ: Yes, with regard to that last
13 comment --

14 CHAIRPERSON GRIFFIS: Actually, I'm going
15 to just need you to come up and make yourself
16 comfortable at the table on our beautiful beige
17 chairs. You're going to turn on a microphone and
18 then --

19 MR. WALTZ: Can we both sit here?

20 CHAIRPERSON GRIFFIS: Yes, absolutely. If
21 you both need to be there we'll make room. We can
22 bring up another chair if you want. Okay. And again,
23 now, giving direction, cross examination, of course,
24 is the opportunity for you to ask questions that poke
25 holes in the case that you just heard in presentation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that may show errors in some of the testimony that was
2 presented. If you believe that it's easier to address
3 it in a statement, I would ask you that you just hold
4 the information for your closing, which is probably
5 moments away and you can make your statements fairly
6 quickly and easily. But with that, let's move ahead.

7 MR. WALTZ: I would just like to ask if
8 the photograph here of the -- this photograph is
9 available in color.

10 MR. SHARPSTON: Yes, it is actually.

11 MR. WALTZ: And if so, how was the life or
12 death of this tree determined from the photograph?

13 MR. SHARPSTON: I don't know.

14 CHAIRPERSON GRIFFIS: I'm going to need
15 your microphone on, Mr. Sharpston.

16 MR. SHARPSTON: I'm awfully sorry. The
17 answer to the question is yes, it is available in
18 color and here it is. I'm afraid it isn't copied in
19 color, but I will be very happy to show it to the
20 Waltzes and also to have everybody else see it.

21 MR. WALTZ: My question has to do with how
22 do you determine this is a live or dead tree?

23 MR. SHARPSTON: Oh, that was a different
24 tree. I'm very sorry.

25 MR. WALTZ: How does this prove anything

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about the life or death of a tree?

2 MR. SHARPSTON: I think what it certainly
3 does show is that this tree was in no condition to
4 provide very much shade.

5 MR. WALTZ: At what time of the year was
6 this photograph taken?

7 MR. SHARPSTON: This was taken, I'm
8 honestly not completely sure, I'm going to say about
9 March, but I'm really not sure. So yes, there might
10 be -- what you can see is it goes straight up for a
11 very long while.

12 MRS. WALTZ: I think that I came and I
13 lodged copies of the tree in --

14 CHAIRPERSON GRIFFIS: Is this a question?

15 MRS. WALTZ: To the Board. Was it not
16 part of my statement?

17 MR. WALTZ: We can settle that later.

18 CHAIRPERSON GRIFFIS: Cross examination.

19 MR. WALTZ: We can settle that later.
20 Obviously, the tree does not have leaves in March.
21 Most trees don't.

22 MR. SHARPSTON: Yes.

23 MR. WALTZ: And again, I don't think you
24 have answered that question. However, if it were
25 possible, we could answer that question with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 person who took the tree down.

2 CHAIRPERSON GRIFFIS: Keep the question
3 rolling.

4 MR. WALTZ: Okay.

5 MRS. WALTZ: Unfortunately, we don't have
6 the invoice with us, but when the tree was taken down
7 there was a couple of dead trees that were also taken
8 down, but the Maple was a live, living, healthy tree.

9 CHAIRPERSON GRIFFIS: Is that correct, Mr.
10 Sharpston, in order to phrase that as a question?

11 MR. SHARPSTON: I certainly believe this
12 tree to have been pretty dead.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. SHARPSTON: And I also believe that it
15 had no branches anywhere low down.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. WALTZ: The tree that he is referring
18 to is a Pine Tree immediately in front and that was
19 taken down. I had that taken down.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. WALTZ: So I think he is confused
22 about what's a Maple Tree.

23 CHAIRPERSON GRIFFIS: Let me just clarify.
24 I don't know that. Well, let's move off the trees.
25 Next question?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. WALTZ: There was a statement, there
2 was a request for some actions from the Board. Can we
3 respond to that or is this just questions?

4 CHAIRPERSON GRIFFIS: Conclusions, yes.

5 MR. WALTZ: Just conclusions?

6 CHAIRPERSON GRIFFIS: No, no, no. In your
7 conclusions you can respond to that. Now is just time
8 for cross examination, just questions.

9 MR. WALTZ: Mr. Sharpston, you said that
10 you had not seen the plans for this construction. Is
11 that true?

12 MR. SHARPSTON: Yes.

13 MR. WALTZ: Do you recall visiting our
14 home in the last month, month and a half, at which
15 time we showed you the plans?

16 MR. SHARPSTON: The plans were on the
17 table at that time. That is completely true. I had
18 forgotten. They were on the table, but I was never
19 given an opportunity to take the plans away. I do
20 apologize to everyone that that had slipped my mind,
21 that they were on the table, but they were never shown
22 to me in any meaningful sense.

23 MR. WALTZ: Could you --

24 MR. SHARPSTON: What we were actually
25 doing, at that point, was discussing things about a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 fence.

2 MR. WALTZ: Did you ask to have a copy to
3 take away?

4 MR. SHARPSTON: No.

5 MRS. WALTZ: Were you not away, out of the
6 country, in May when we started this construction
7 work? I think you complained of the fact that you
8 never was given any notice, but you were not in the
9 country. Otherwise, you certainly would have been
10 given a courtesy two weeks head-up that we were going
11 to be doing construction work.

12 CHAIRPERSON GRIFFIS: Okay. Is that a
13 question to him?

14 MR. SHARPSTON: I think it is a question,
15 sir.

16 CHAIRPERSON GRIFFIS: Is it? Were you out
17 of the country?

18 MR. SHARPSTON: I was out of the country,
19 but I can give you the dates when I was out of the
20 country.

21 CHAIRPERSON GRIFFIS: Did you receive --

22 MR. SHARPSTON: I was in the country until
23 July.

24 CHAIRPERSON GRIFFIS: Did you receive
25 notice from the Office of Zoning that that hearing was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 going to take place?

2 MR. SHARPSTON: I think she's referring to
3 the previous year.

4 CHAIRPERSON GRIFFIS: I know. Did you
5 receive notice from the Office of Zoning about this
6 hearing?

7 MR. SHARPSTON: Yes.

8 CHAIRPERSON GRIFFIS: Did you see the
9 placards on the building next door?

10 MR. SHARPSTON: Yes.

11 CHAIRPERSON GRIFFIS: Okay. Next
12 question?

13 MR. WALTZ: Yes. Can you tell me roughly
14 when you did leave and when you returned?

15 MR. SHARPSTON: Sure. In 2003 I left in
16 July and I came back in December. I was then around
17 until, I believe, May. If you give me just a second--

18 CHAIRPERSON GRIFFIS: I don't really see--

19 MR. SHARPSTON: I can give an exact
20 chronology.

21 CHAIRPERSON GRIFFIS: There is no
22 relevance to the Board on this.

23 MR. SHARPSTON: Okay.

24 CHAIRPERSON GRIFFIS: Let me just be
25 straight. The fact of the matter is -- please, let

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 me --

2 MRS. WALTZ: It was just to prove that Mr.
3 Sharpston --

4 CHAIRPERSON GRIFFIS: Ms. Waltz, I
5 understand what it proves. And let me be clear again
6 on some of the issues that I have addressed. There is
7 an awful lot that is well beyond the Board's
8 jurisdiction. Whether you guys talked and got along
9 is important to us, but we have nothing to do with it.

10 What we have to do with is our rules and regulations,
11 whether proper and adequate notice had been provided.

12 I have just heard the answer to that question, so
13 let's move on.

14 MR. WALTZ: Okay.

15 CHAIRPERSON GRIFFIS: Let's stick to the
16 test and, in fact, you might want to ask some of the
17 questions about the issues that are raised in
18 opposition. I mean, there is privacy. There is
19 light.

20 MR. WALTZ: Yes.

21 CHAIRPERSON GRIFFIS: If there is cross
22 examination questions that will assist in your case,
23 that would be appropriate.

24 MR. WALTZ: Yes, indeed. Referring to the
25 photograph that was shown to us of the upper deck,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 which is quite open, and I think the issues of privacy
2 are less in an open deck or an open yard than they are
3 inside of a room in a house, and my concern with
4 mutual privacy was mainly to try to minimize that kind
5 of invasion of privacy for both parties. Obviously,
6 if it's more private for me it, in general, would be
7 more private for the other party as well.

8 With regard to the two properties here, as
9 I mentioned in my opening statement, the distance
10 between the buildings themselves is about 15 feet and
11 since the photograph here shows that this is even at
12 an angle, it's probably more like 17 feet of distance.

13 There is more than enough space there to put a tree,
14 as you said. If he wants to put a tree, he has got 10
15 feet of side yard.

16 CHAIRPERSON GRIFFIS: I'm sorry to
17 interrupt.

18 MR. WALTZ: More than enough room.

19 CHAIRPERSON GRIFFIS: I'm sorry to
20 interrupt you again.

21 MR. WALTZ: For privacy.

22 CHAIRPERSON GRIFFIS: Are you through with
23 any questions for Mr. Sharpston or any other
24 witnesses? I'm perfectly happy to move on to
25 conclusion, which is what you seem to be trying to get

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to anyway.

2 MR. WALTZ: Very good. Thank you.

3 CHAIRPERSON GRIFFIS: All set?

4 MR. WALTZ: Yes.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 We appreciate it.

7 MR. WALTZ: Thank you.

8 CHAIRPERSON GRIFFIS: All right. Why
9 don't we move? When you're ready, we'll go right into
10 any sort of conclusionary remarks that you might have.

11 MR. WALTZ: Under D.C. Zoning Regulation
12 section 405.9, an addition to a residential dwelling
13 existing before May 12, 1958 is required to have a
14 side yard of a minimum of 5 feet. However, a special
15 exception, as a rule, may be requested provided that
16 certainly test requirements under section 223 are met.

17 In this case, the owners have shown that
18 the addition meets those requirements and demonstrated
19 that the addition will not have any undue effects on
20 neighboring properties. The light and air available
21 to neighboring properties is not unduly affected. The
22 distance between the adjacent neighboring property and
23 the addition is roughly 13 feet wide and since the
24 addition maintains the existing dwelling setback, the
25 effect of an additional 2 feet on the availability of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 light, air and privacy would not be significant.

2 Finally, the stucco finish is the same as
3 the existing dwelling. It does not visually intrude
4 upon the character, scale and pattern of houses on the
5 street. The Advisory Neighborhood Commission, ANC-3D,
6 and the D.C. Office of Planning also recommend support
7 of this special exception. Since the addition will
8 have no undue effects on neighboring properties, we
9 hereby respectfully request the Board's approval for a
10 special exception to the side yard rule under section
11 405 to reduce the required side yard setback to 3
12 feet.

13 Now, with regard to Mr. Sharpston's team,
14 I have a few other comments to make. In our view, our
15 adjacent neighbor's complaints do not rise to the
16 level of the test requirements of section 223
17 applicable to this addition and are without merit for
18 the following reasons. There is no legal or
19 regulatory obligation for us to inform or show plans
20 to any neighbor before submitting them in a building
21 permit application.

22 Had the neighbor been at home, at the
23 time, we would certainly have informed him as a
24 courtesy when the construction was about to begin
25 since we were sensitive that there was, obviously,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 going to be some unavoidable noise and debris as the
2 construction got underway.

3 Our neighbor never informed us of his
4 whereabouts or indicated any interest in or desire for
5 us to communicate with him via his letter box and a
6 friend who occasionally picks up his mail. Surely his
7 friend must have noticed the construction going on and
8 could have informed him directly in any event.

9 Fourth, after the external frame and
10 structure of the addition was completed during the
11 summer, our neighbor commented to us in the fall that
12 the addition was nice and that he had "no problem with
13 it." It was only after we began the process of
14 canvassing our neighbors in pursuit of this special
15 exception request and informed him on February 4, 2004
16 that he began to voice any objections.

17 Six, our neighbor failed to pursue any
18 legal or regulatory remedies in the at least five
19 months or more that he was aware of the addition and
20 prior to our lodging this special exception request.
21 Our special exception request pertains to this
22 specific addition. The test requirements specifically
23 address the current addition plans and plat, not
24 hypothetical new additions in future and certainly not
25 the owner's right to pursue such under existing law at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 some time in the future. Do you have anything more?

2 MRS. WALTZ: Since Mr. Sharpston actually
3 brought up an agreement, if the Board so wishes, I
4 have documented a chronology of communications,
5 interactions with Mr. Sharpston, our neighbor, and I
6 have also a copy of his agreement in final. Since
7 it's not a stamped draft, Mr. Sharpston via email said
8 that this was his final agreement. If the Board so
9 wishes it, I have copies.

10 CHAIRPERSON GRIFFIS: Appreciate it. I
11 think it's well stated that you have brought it with
12 you. It looks like an awful lot of paper. It doesn't
13 seem to me to --

14 MR. WALTZ: It was extra copies just for
15 you.

16 CHAIRPERSON GRIFFIS: I understand. It
17 doesn't seem to me to really address any of the issues
18 that we need to really deliberate on.

19 MRS. WALTZ: Exactly. That's what I --

20 CHAIRPERSON GRIFFIS: So unless other
21 Board Members feel differently, I think we can keep it
22 out of the record at this point.

23 MR. WALTZ: Right.

24 CHAIRPERSON GRIFFIS: Anything else?

25 MRS. WALTZ: No. Thank you very much for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 your time. Thank you.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 MR. WALTZ: Thank you very much.

4 CHAIRPERSON GRIFFIS: Very well. I'm
5 going to set this for decision making. I think the
6 Board could do this as a Bench decision. However, we
7 will need the plans as updated, just showing what is
8 actually being proposed to be built. I would say, Mr.
9 Moy, are you aware of any dates for setting a Special
10 Public Meeting on this or do we move this to our next
11 Public Meeting?

12 MR. MOY: I was thinking, unless Ms.
13 Bailey wants to add to this, I was thinking more
14 towards the Public Meeting on May the 4th, because
15 you're pretty full on the 20th and 27th.

16 CHAIRPERSON GRIFFIS: Let's do that. That
17 gives you ample time to get those revised drawings in
18 to the Board. We would certainly require them no
19 later than 3:00 on April 27th.

20 Is that correct, Ms. Bailey and Mr. Moy?

21 MS. BAILEY: Mr. Chairman, will you not be
22 giving Mr. Gell an opportunity to respond?

23 CHAIRPERSON GRIFFIS: To?

24 MS. BAILEY: Respond to the revised plans.

25 CHAIRPERSON GRIFFIS: Plans?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: That you are asking for.

2 CHAIRPERSON GRIFFIS: Wow, I guess we
3 could keep the record open if there is a response to
4 the plans, change the windows. There he is. Yes, Mr.
5 Gell?

6 MR. GELL: We would like an opportunity to
7 provide the Board with either a response if we think
8 one is necessary or if we want to do findings and
9 conclusions or conditions.

10 CHAIRPERSON GRIFFIS: Have we ever had
11 findings and conclusions on a 223? Okay. We're
12 always up for new things. That's fine. Ms. Bailey,
13 why don't we set that then for the first submission of
14 the plan, the submission of the responses and then
15 findings and conclusions. That will bring us up to
16 the final date of a decision making on the 4th of May.

17 MS. BAILEY: April 20th, Mr. Chairman, and
18 then the response and the findings on the 27th of
19 April.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much. Mr. and Mrs. Waltz, do you understand
22 that?

23 MR. WALTZ: No.

24 CHAIRPERSON GRIFFIS: Very well.

25 MR. WALTZ: No, I have no idea what you've

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just been talking about here.

2 CHAIRPERSON GRIFFIS: Exactly. The 20th is
3 when your drawings are due into the Office of Zoning
4 by 3:00. You are also required to serve them on all
5 the participants in this case. Obviously, you have a
6 party in opposition, so before you leave, you might
7 want to check with your neighbor and see how we wants
8 to be served.

9 MR. WALTZ: How would you like to be
10 served?

11 CHAIRPERSON GRIFFIS: That's exactly what
12 you will ask him. The minute you walk out this room,
13 you're going to ask him. Hopefully, he is just going
14 to say just drop them by on my front door. But that's
15 up to you guys to decide. You have to serve him with
16 these plans. Then they will have a week to respond to
17 those.

18 MR. WALTZ: But we deliver them here, too,
19 or just to him?

20 CHAIRPERSON GRIFFIS: Yes, yes,
21 absolutely.

22 MR. WALTZ: By 3:00 here?

23 CHAIRPERSON GRIFFIS: Yes.

24 MR. WALTZ: By 3:00 here?

25 CHAIRPERSON GRIFFIS: One might say, like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 me, that it is most important to serve it here.
2 However, you are required to do it all. So into the
3 Office of Zoning, to the party in opposition, I
4 believe, the ANC-3D would also need to be served. So
5 then they will give --

6 MRS. WALTZ: I take it, do you mean the
7 plans that we have to revise them where the windows
8 actually are? Is that my understanding?

9 BOARD MEMBER MANN: That's what he is
10 talking about, yes.

11 CHAIRPERSON GRIFFIS: Yes, yes.

12 MRS. WALTZ: I thought so.

13 CHAIRPERSON GRIFFIS: Then they are going
14 to have an opportunity --

15 MRS. WALTZ: As I said, our contractor did
16 that, so I'm, you know --

17 MR. WALTZ: He will have to do it.

18 MRS. WALTZ: Yes, yes.

19 CHAIRPERSON GRIFFIS: Give him a call.

20 MRS. WALTZ: Yes.

21 MR. WALTZ: Yes.

22 CHAIRPERSON GRIFFIS: Then we're going to
23 have an opportunity and Mr. Gell is going to have an
24 opportunity to respond to those documents as submitted
25 into the record, and then you will have an opportunity

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to submit any findings, facts, conclusions of law.
2 Any clarifications of what that is and what I'm saying
3 need to be taken up with the Office of Zoning. They
4 have excellent staff there. You can possibly stop in
5 on your way out and get some direction or call in once
6 or twice and get some direction. It's not as
7 complicated as it sounds. Ms. Bailey, one more time
8 on the dates?

9 MS. BAILEY: Oh, sorry, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: That's okay.

11 MS. BAILEY: Let's see, May 4th for the
12 decision, April 20th for the submissions, April 27th for
13 the response and the findings of fact.

14 CHAIRPERSON GRIFFIS: Clear, Mr. Gell?

15 MR. GELL: Thank you, yes. You are
16 expecting something from us by April 27th.

17 CHAIRPERSON GRIFFIS: We're keeping the
18 record open for that opportunity. Any other
19 questions, clarifications I can help you with, at this
20 time, Mr. and Mrs. Waltz?

21 MRS. WALTZ: I don't think so.

22 MR. WALTZ: I don't think so. Thank you.

23 CHAIRPERSON GRIFFIS: Thank you very much.
24 I appreciate you being down here this afternoon. We
25 will see you on the 4th. The 4th is a Public Meeting,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of course. No other information would be accepted.
2 No testimony or anything like that. You are welcome
3 to be here, obviously, it's a Public Meeting. You
4 will hear the Board deliberate and decide on this
5 application.

6 That being said, let's move ahead and call
7 the next case in the afternoon, please.

8 MS. BAILEY: Application No. 17140 of
9 Dwight Sterling, pursuant to 11 DCMR 3104.1, for a
10 special exception to allow the enclosure and
11 enlargement of an existing front and side porch to an
12 existing single-family dwelling under section 223, not
13 meeting the side yard requirements, that's section
14 405. The property is located in the R-2 District at
15 premises 4311 Brandywine Street, N.W., Square 1649,
16 Lot 820.

17 CHAIRPERSON GRIFFIS: Excellent.

18 MS. BAILEY: Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yes?

20 MS. BAILEY: You should have a document in
21 front of you from the applicant. There was some
22 concern about the affidavit, but the property was
23 posted, posted timely, and the affidavit was also
24 timely filed with the Office of Zoning.

25 CHAIRPERSON GRIFFIS: Okay. Excellent.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Have a seat.

2 MR. SCHMITT: Thank you.

3 CHAIRPERSON GRIFFIS: Your name is?

4 MR. SCHMITT: Richard Schmitt for the
5 applicant, Dwight Sterling. Mr. Sterling sends his
6 apologies. He is not able to be here. With me is
7 Marily Sterling, Mr. Sterling's mother and also the
8 applicant, excuse me, the occupant of the house.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. SCHMITT: So we would like the
11 application and the basis of the application has
12 already been summarized. We are not -- the Office of
13 Planning has submitted their findings recommending as
14 ANC-3E has also submitted a letter approving and not
15 opposing. We are not aware of any opposition to this
16 application. The plans have been submitted. We have
17 photographs from the front and the back and we also
18 have an aerial photograph.

19 CHAIRPERSON GRIFFIS: Good. I think the
20 record is fully full on that. Do you want to stand on
21 the record then?

22 MR. SCHMITT: Yes.

23 CHAIRPERSON GRIFFIS: I'm going to ask one
24 favor of you then. Can you turn off that microphone?

25 MS. STERLING: Yes, sir.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you very much. And from my understanding, of course,
3 we do have note of any opposition and we have none.
4 And the ANC reports, I'll run those down. Clearly,
5 this is for the enclosure enlargement of the existing
6 front and side portion existing family dwelling, which
7 doesn't meet the side yard requirements of 405. I
8 believe, Mr. Schmitt, you may be answering these
9 questions, but 223.1, obviously, requires that --
10 let's move on to whether it is your testimony or your
11 witness' testimony that this would impact light and
12 air available to the neighbors, to the adjacent
13 properties?

14 MR. SCHMITT: It would only slightly
15 impacted it and it would not unduly affect the light
16 and air to the adjacent properties.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. SCHMITT: The only way that it would
19 affect it would be for the enclosure of what is now a
20 porch with pillars.

21 CHAIRPERSON GRIFFIS: Clearly, any sort of
22 solid structure would impact it, but wouldn't unduly
23 affect it. It is well said. Now, what about the
24 privacy use and enjoyment of neighboring properties?
25 Would that also be unduly affected or not be affected?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SCHMITT: No, it would not. It would
2 not be and we would point out that the house next to
3 where the enclosure will be 4307, there is only one
4 window on the wall of that house and no doors, and
5 that can be seen, I believe, from the photographs and
6 we -- the privacy and use and enjoyment of the
7 neighboring property shall not be unduly compromised.

8 There isn't even a walkway or path that is on that
9 side of the house.

10 CHAIRPERSON GRIFFIS: Right. So what
11 you're saying is nobody is out there playing
12 volleyball, because it's only 2.91 feet. Is that
13 correct?

14 MR. SCHMITT: Well, it's 2.91 feet.

15 CHAIRPERSON GRIFFIS: On your side?

16 MR. SCHMITT: On our side.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SCHMITT: On the other side, it is, we
19 believe, over 8 feet distance and the photographs will
20 show the distance and also the aerial photographs show
21 the distance.

22 CHAIRPERSON GRIFFIS: Excellent. Okay.
23 And do you find, is it your testimony that this is
24 following the character of the existing building, the
25 surrounding buildings?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SCHMITT: Yes, we do. We would also
2 point out that in the application we have put in a
3 photograph of a house down the street on the same
4 block and on the corner and they have also enclosed
5 the same porch. The buildings are almost identical
6 and also the enclosure -- our enclosure will have a
7 stucco finish. The existing enclosure on the other
8 house has a stucco finish also, and it will be a white
9 stucco finish.

10 CHAIRPERSON GRIFFIS: Excellent. And the
11 proposed lot occupancy is 38.24 percent. Is that
12 correct?

13 MR. SCHMITT: Yes, and that does not
14 exceed the zoning requirements.

15 CHAIRPERSON GRIFFIS: Indeed. Okay. If
16 there is nothing else, at this time, you can hold on
17 to any further comments for conclusions.

18 MR. SCHMITT: No, we don't have. We just
19 ask that the Board approve it.

20 CHAIRPERSON GRIFFIS: You agree?

21 MR. SCHMITT: Yes.

22 CHAIRPERSON GRIFFIS: Okay. Let's move on
23 then and go to the Office of Planning to present their
24 report.

25 MR. PARKER: Thank you, Mr. Chairman,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Members of the Board. I'll state on the record
2 barring any questions.

3 CHAIRPERSON GRIFFIS: Why don't you
4 provide your name for us.

5 MR. PARKER: I'm sorry. That would be
6 good. I'm Travis Parker with the Office of Planning.

7 CHAIRPERSON GRIFFIS: Mr. Parker, welcome.

8 MR. PARKER: We would recommend approval
9 of the special exception.

10 CHAIRPERSON GRIFFIS: Excellent. Board
11 questions, clarifications of the Office of Planning?
12 Again, there is a very excellent report provided along
13 with a Zoning Map attached to it. And did you produce
14 Exhibit 12?

15 MR. PARKER: I did not.

16 CHAIRPERSON GRIFFIS: Okay. That's right.
17 I think it's based on a D.C. Atlas. I'm not sure who
18 put it in, but it's excellent. Maybe the ANC did.
19 All right. That being said, no other questions of the
20 Board for the Office of Planning? Does the applicant
21 have any questions, cross examination of the Office of
22 Planning?

23 MR. SCHMITT: No.

24 CHAIRPERSON GRIFFIS: You have their
25 report, correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SCHMITT: Yes, we do.

2 CHAIRPERSON GRIFFIS: Excellent. Okay.
3 Very well. Thank you very much, Mr. Parker. Let's
4 move on then. I don't have any other attendant
5 Government reports. The ANC report has been filed,
6 ANC-3E. Oh, what am I looking at? Boy, I let that
7 one slip in, too.

8 MR. SCHMITT: The ANC -- there is a copy
9 of the ANC report attached to the Office of Planning
10 recommendation and there is also one attached to my
11 March 29th letter at Exhibit B, is the letter.

12 CHAIRPERSON GRIFFIS: I'm sorry, what
13 exhibit?

14 MR. SCHMITT: Exhibit B.

15 CHAIRPERSON GRIFFIS: It's Exhibit 24.
16 All right. This one is not correct. This one is
17 correct. Very well. Is there any other
18 clarifications from the Board Members on the ANC?

19 UNIDENTIFIED SPEAKER: What was that one
20 from?

21 CHAIRPERSON GRIFFIS: Oh, okay. Very
22 well. I do think it meets the standards for being
23 granted a great weight, if I'm not mistaken. Comments
24 on that from the Board? Very well. That being said,
25 I don't have any other attendant reports. Is there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 anyone here to give testimony, persons either in
2 support or in opposition to Application No. 17140,
3 Dwight Sterling? Not seeing any indication of persons
4 present to give testimony, let's turn it over for any
5 closing remarks you might have.

6 MR. SCHMITT: We would submit on the
7 record, Mr. Chairman, we believe we have met all the
8 requirements.

9 CHAIRPERSON GRIFFIS: Did you have an
10 opportunity to share this with your adjacent
11 neighbors?

12 MS. STERLING: Yes, we sent letters to
13 everybody in the neighborhood and I think they were
14 submitted to you. You should --

15 CHAIRPERSON GRIFFIS: Okay. Right. The
16 notification letters.

17 MR. SCHMITT: Yes.

18 MS. STERLING: And they all approved.

19 MR. SCHMITT: They are all emails.

20 MS. STERLING: They are emails, yes.

21 CHAIRPERSON GRIFFIS: All attached into
22 the record?

23 MR. SCHMITT: Yes, and the neighbors on
24 each side, including the neighbor that may be
25 impacted, and also emails from the neighbors across

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the street are included.

2 CHAIRPERSON GRIFFIS: Excellent. And
3 that's all part of the submission, I believe, that we
4 received today.

5 MS. STERLING: Yes, yes.

6 CHAIRPERSON GRIFFIS: It's dated coming
7 into the record on March 29th. And the front sheet of
8 it, I'll just make note for the record, is all the
9 listing of the addresses and the emails attendant to
10 those. So I think it is very appropriate and fills
11 the record. Is there anything else from the Board at
12 this time? Any questions or clarifications? The
13 applicant is finished with their closing remarks?

14 MR. SCHMITT: Yes, I am.

15 CHAIRPERSON GRIFFIS: Excellent. Then I
16 would move approval of Application No. 17140 of Dwight
17 Sterling, pursuant to special exception under 223. It
18 was not meeting the side yard requirements. This
19 would, of course, allow for an enlargement of existing
20 front and side porch to existing single-family
21 dwelling, and I would ask for a second.

22 VICE CHAIR MILLER: Second.

23 CHAIRPERSON GRIFFIS: Thank you, Ms.
24 Miller. I think the test of 223 and the special
25 exception is clearly made, as indicated by the record,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and the record reflects the support of the Office of
2 Planning and its analysis offered to the ANC.
3 Testimony today has provided that no elements of
4 opposition or any elements that would tend to provide
5 evidence of detriment to light and air use or
6 enjoyment has been provided, and therefore I think it
7 is a supportable application and a strong one at that.

8 And actually it's a pretty nice design, too. I'm
9 sure you'll be able to enjoy it.

10 Anything else then from the Board,
11 deliberations? We have a motion before us that has
12 been seconded. Very well. I would ask for all those
13 in favor to signify by saying aye.

14 ALL: Aye.

15 CHAIRPERSON GRIFFIS: And opposed? Do you
16 want to record the vote?

17 MS. BAILEY: The vote is recorded as 5-0-0
18 to approve the application. Mr. Griffis made the
19 motion, Mrs. Miller seconded, Mr. Etherly, Mr. Parsons
20 and Mr. Mann are in agreement.

21 CHAIRPERSON GRIFFIS: Thank you, Ms.
22 Bailey. Summary order is perfectly appropriate for
23 that.

24 MS. BAILEY: Thank you, sir.

25 CHAIRPERSON GRIFFIS: Thank you very much

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for your patience. Have a wonderful day.

2 MR. SCHMITT: Thank you.

3 MS. STERLING: Thank you.

4 CHAIRPERSON GRIFFIS: Let's call the next
5 case of the afternoon, please.

6 MS. BAILEY: Application No. 17141 of
7 Brian and Katherine Sexton, pursuant to 11 DCMR
8 3104.1, for a special exception to allow a rear
9 addition to an existing single-family detached
10 dwelling under section 223, not meeting the side yard
11 requirements, that's section 405. The property is
12 located in the R-5-B District at premises 2505 P
13 Street, N.W., Square 1264E, Lot 815.

14 CHAIRPERSON GRIFFIS: Thank you, Ms.
15 Bailey. Ms. Miller?

16 VICE CHAIR MILLER: Mr. Chairman, I have a
17 preliminary matter.

18 CHAIRPERSON GRIFFIS: Yes?

19 VICE CHAIR MILLER: I will be recusing
20 myself in this case, as I was an owner of this
21 property at one time.

22 CHAIRPERSON GRIFFIS: Okay. So you get a
23 break, but the rest of us have to stay. That being
24 said, we have a request for party status in this as a
25 proponent and I believe the name is Dudley Kannada.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Is that correct? Are they present? Do you know?

2 UNIDENTIFIED SPEAKER: To my knowledge.

3 CHAIRPERSON GRIFFIS: Okay. Actually, I
4 want to have you introduce yourselves for the record
5 and then I can have you address the Board.

6 MR. GURNEY: My name is Robert Gurney, 113
7 South Patrick Street, Alexandria, Virginia, and I'm
8 the architect for the project.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. SEXTON: I'm Katherine Sexton, 2505 P
11 Street, N.W., Washington, D.C. 20007.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much. Okay. It appears to me that this may
14 just be more of trying to have written submission in
15 support of the application. Is that your
16 understanding? Were you aware there was a party
17 status application?

18 MS. SEXTON: Yes, I was aware of that, and
19 my understanding is that Mr. Kannada supports the
20 proposed special exception.

21 CHAIRPERSON GRIFFIS: Kannada, is that how
22 you say it?

23 MS. SEXTON: Yes.

24 CHAIRPERSON GRIFFIS: All right. I always
25 try and make it exotic. Okay. In that case, then we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will take that as written submission in support. I
2 note, and I will give it to staff and we'll have a
3 chuckle about his comment on our last question in the
4 application, but we'll keep that to ourselves. Let's
5 move this on then, we'll turn it over to you for a
6 quick presentation. Of course, it is 223. Boy, well,
7 there it is.

8 MR. GURNEY: Okay. We're proposing an
9 addition that extends 3 feet beyond the existing
10 house. What that does, because the property line is
11 not parallel to the house, it puts our addition 3.5
12 inches closer to the property line. This scheme was
13 developed after several trips back and meeting with
14 the OGB. We initially had a scheme that was more
15 compact and relied more on some second floor additions
16 that over hung the first floor. And then based on
17 suggestions and recommendations by the OGB, we
18 developed this L-shaped scheme, which in order to
19 accommodate the amount of square footage, we sort of
20 needed to do -- to make this addition even worthwhile
21 doing, it did require this special exception into the
22 side yard.

23 It is my opinion that this will certainly
24 not unduly affect light and air into the adjacent
25 building. In fact, there are no windows alongside our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposed addition, and, in my opinion, it will
2 actually greatly enhance the whole garden pavilion
3 backyard of these three Georgetown houses that will
4 directly be affected by it.

5 CHAIRPERSON GRIFFIS: So the adjacent
6 properties, there is no fenestration?

7 MR. GURNEY: The fenestration happens
8 actually in the light well that is -- it takes place
9 once you get past where our addition is.

10 CHAIRPERSON GRIFFIS: And so it would be
11 just south of the addition. Is that correct?

12 MR. GURNEY: North.

13 CHAIRPERSON GRIFFIS: Really?

14 MR. GURNEY: South. No, north.

15 CHAIRPERSON GRIFFIS: Oh, this is on the
16 north side of the street?

17 MR. GURNEY: Yes, that's where it is.

18 CHAIRPERSON GRIFFIS: See, I didn't
19 previously own the property. It doesn't matter. I
20 understand. It is shown actually well in the Office
21 of Planning's report.

22 MR. GURNEY: Yes.

23 CHAIRPERSON GRIFFIS: And your site plan
24 is what I'm looking at. Let's just say it seems to be
25 project north if that's what it is. So that would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make sense. Okay. There are two light wells and you
2 are seeming to indicate the second light well is the
3 one closest to the -- any sort of windows in it?

4 MR. GURNEY: That's correct.

5 CHAIRPERSON GRIFFIS: My understanding is
6 what you're saying is the addition is in line. It's
7 parallel with the existing structure?

8 MR. GURNEY: Yes, and that was again based
9 on something that OGB had recommended.

10 CHAIRPERSON GRIFFIS: Okay. And that's,
11 of course, the Georgetown Board. And yet the property
12 line itself is not parallel with the existing
13 structure, which is what you talked about initially,
14 so it's squeezing you down and so you're actually
15 getting a smaller and smaller portion. Okay. I think
16 that's fully understood. As it has been reviewed by
17 the -- Georgetown OGB and the HPRB has reviewed this.
18 Is that correct?

19 MR. GURNEY: Yes.

20 CHAIRPERSON GRIFFIS: Okay. In which
21 case, one can say that this wouldn't be unsympathetic
22 in architectural character. Is that your testimony?

23 MR. GURNEY: It is my testimony.

24 CHAIRPERSON GRIFFIS: You probably would
25 be stronger than I would even. And then in terms of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the adjacent privacy and use?

2 MR. GURNEY: It will not adversely affect
3 in any way. As I said, I think the addition will
4 enhance the adjacent properties.

5 CHAIRPERSON GRIFFIS: Okay. Questions of
6 the Board? Very well. Let's move on to the Office of
7 Planning's report.

8 MR. PARKER: Thank you, Mr. Chairman.
9 Once again, Travis Parker with the Office of Planning.

10 CHAIRPERSON GRIFFIS: Mr. Parker is
11 getting loaded up with these 223s over at OP. Okay.

12 MR. PARKER: They are keeping me busy.

13 CHAIRPERSON GRIFFIS: Let's go ahead.

14 MR. PARKER: The Office of Planning finds
15 that this addition will have no impact on the
16 neighboring properties light, air, privacy and that it
17 appears to meet all the other tests to 223, and we
18 recommend approval of the special exception.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you. Questions from the Board? Cross examination
21 from the applicant? Any questions?

22 MR. GURNEY: No, no questions.

23 CHAIRPERSON GRIFFIS: You are in receipt
24 of the Office of Planning's memo. Is that correct?
25 Do you have a copy of it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GURNEY: No, we don't.

2 CHAIRPERSON GRIFFIS: You should get a
3 copy before you leave. They are always good and
4 interesting and good historical documentation of your
5 property or that is in 10 years, I suppose, it will
6 become. Well, there it is. ANC-2E, is there anyone
7 here from the ANC today? ANC-2E? Not representing,
8 obviously, you presented before the ANC-2E and they
9 had no objection to your request for a special
10 exception. Is that correct?

11 MR. GURNEY: Correct.

12 CHAIRPERSON GRIFFIS: Okay. This is
13 Exhibit 23 in the record and we'll so note it and take
14 that under consideration in our deliberation. Is
15 there anyone here attendant to Application No. 17141,
16 persons of Sexton, 2505 P Street, N.W., to give
17 testimony in support or in opposition? Not noting
18 anyone coming forward to give testimony, we can turn
19 it over for closing remarks. Oh, and let me just note
20 in terms of that, you have a petition that was
21 submitted, Exhibit 22, which was in support of the
22 application, and that is from the adjacent neighbors.
23 Is that correct?

24 MS. SEXTON: Yes.

25 CHAIRPERSON GRIFFIS: And it's all listed,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the addresses and all that. Very well. Anything
2 further?

3 MR. GURNEY: No, just again, that we don't
4 see how this would underly affect any of the light or
5 air or use of the property.

6 CHAIRPERSON GRIFFIS: Good. Last
7 questions, clarifications of the Board? Very well.
8 That being said, I would move approval of 17141 of
9 Brian and Katherine Sexton, for a special exception to
10 allow a rear addition to the existing single-family
11 detached dwelling under section 223 at premises 2505 P
12 Street, N.W.

13 BOARD MEMBER ETHERLY: Second it.

14 CHAIRPERSON GRIFFIS: Thank you, Mr.
15 Etherly. I think it is very clear the record is full
16 on this. I think great reliance can be made on the
17 Office of Planning's report and also the applicant's
18 submission and the documentation. I think this is
19 well easy to make analysis based on the excellent
20 documentation, the graphic representation and frankly
21 the architectural drawings.

22 The site plan was the most persuasive to
23 me indicating that the addition had absolutely no
24 impact on the light and air use or privacy. And I
25 think the treatment of the numerous exterior facades

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 based on that shape is well done in terms of the use
2 on its own property and that to respect the adjacent
3 properties. The other aspects of the special
4 exception and certainly 223 have been met and have
5 already been addressed, if not orally, they are in the
6 record.

7 So I think we can move ahead with this in
8 approval. I'll take any other deliberation at this
9 time, if there is such. Not noting any other comments
10 at this time, I would ask for all those in favor to
11 signify by saying aye.

12 ALL: Aye.

13 CHAIRPERSON GRIFFIS: And opposed? Very
14 well. Thank you all very much. Thank you.

15 MS. SEXTON: Thank you.

16 CHAIRPERSON GRIFFIS: I appreciate your
17 patience this afternoon. Go and enjoy the rest of the
18 afternoon and the rest of you have to stay here.
19 We're going to take a 10 minute break. We'll let the
20 next application get ready, setup. You know where we
21 are. I'm assuming in the middle of the next running
22 application and so you can make yourselves prepared
23 when we return. Thank you very much. We will, of
24 course, issue a summary report on this past
25 application, and we will see you in a few minutes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (Whereupon, at 3:17 p.m. a recess until
2 3:43 p.m.)

3 CHAIRPERSON GRIFFIS: Very well. Let's
4 reconvene and why don't we call the next case in the
5 afternoon?

6 MS. BAILEY: This is an appeal, Mr.
7 Chairman, and the number is 17109 of Kalorama
8 Citizen's Association, pursuant to 11 DCMR 3100 and
9 3112, from the administrative decision of David
10 Clarke, Director, Department of Consumer and
11 Regulatory Affairs, from the issuance of Building
12 Permit Nos. B455571 and B455876, dated October 6, 2003
13 and October 16, 2003, respectively, to Montrose, LLC,
14 to adjust the height, the building height to 70 feet
15 and to revise penthouse roof structure plans to
16 construct a 5 story apartment house. The appellant
17 alleges that the under-construction building is in
18 violation of the building height, floor area ratio and
19 roof structure setback requirements of the Zoning
20 Regulations. The property is located at 1819 Belmont
21 Road, N.W., also in Square 2551, Lot 45, and it is
22 Zoned R-5-D.

23 CHAIRPERSON GRIFFIS: Thank you very much,
24 Ms. Bailey. As indicated, we are in the middle of
25 this. It is my understanding from my notes and from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the past we are starting off with the property owner's
2 case. We will then go to the ANC's presentation and
3 then we will, obviously, have rebuttal, closing
4 remarks by the appellant.

5 As a specific note, though, we had also
6 asked for several submissions into the record. We
7 kept the record open. I'm not going to go through all
8 of those. They have been enumerated. We have kept
9 the record open for submission briefing the issue of
10 the Board's jurisdiction with regard to building
11 height, and the Building Height Act. I believe that
12 we did, I don't believe, we left the record open for
13 submissions by the 30th of March.

14 Noting that there has been some concern
15 about meeting that date and as we have passed that
16 date, I would like to keep the record open. When are
17 we going to go on this? It's going to be May. We're
18 going to do until the 20th of April and have
19 submissions into the Office, at that time. So with
20 that, let's proceed. Why don't we have introductions
21 of who is in front of us, and then move right ahead.

22 MS. BROWN: Thank you, Mr. Chairman. For
23 the record, my name is Carolyn Brown with the Law
24 Firm of Holland and Knight. I am here on behalf of
25 Montrose, LLC, the property owner and developer. To

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 my right is Gail Montplaisir, the representative of
2 the developer, Montrose, LLC. And to her right is
3 Norman Smith, the architect for the project. I'm
4 going to state our position for the record, if it is
5 not already fully clear.

6 Montrose opposes this appeal on the
7 grounds that the project fully complies with the
8 Zoning Regulations with respect to height, FAR and
9 roof structure setbacks. I would like to go through
10 our legal arguments with you quickly, and then have
11 our witnesses testify. I don't expect that we will
12 take more than 20 minutes.

13 First, with regard to the height
14 limitations, we agree with the opinion of your
15 Corporation Counsel that the Board does not have the
16 authority to enforce the 1910 Height Act. Obviously,
17 we will be briefing that issue and submitting that on
18 April 20th. But just the basic -- if you look at the
19 basic language of the 1910 Height Act, it has a
20 provision that says for any violations of the Height
21 Act are enforced by the Office of Corporation Counsel
22 by bringing an action before the Superior Court and
23 not BZA. So we believe that we are just dealing with
24 the Zoning Regulation issues. Regardless, we believe,
25 we think that we meet the standard either under --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 both under the Height Act and the Zoning Regulations.

2 The appellant has argued that the deck and
3 railing must count toward building height, and we
4 believe their interpretation is wrong for two reasons.

5 First, the Zoning Regulations have been interpreted
6 to allow roof top railings in excess of the permitted
7 height. There are numerous examples around the city,
8 both under the Zoning Regulations and the 1910 Height
9 Act. One example that is close to me is the office
10 building where our offices are located at 2099
11 Pennsylvania Avenue. It is constructed to a maximum
12 height of 130, under the 1910 Height Act, and it has
13 the roof deck and railing that are above that height.

14 A second example is 1667 K Street, N.W.,
15 again built to 130 feet under the 1910 Height Act. It
16 has a roof deck and railing. A third example was a
17 project that was approved by this Board in 2002 at 400
18 Mass Avenue. There was the special exception relief
19 from the roof structures having more than one
20 enclosure and varying heights, and that is built to a
21 maximum height under the 1910 Height Act and the
22 Zoning Regulations, and that was approved with a roof
23 deck and trellis, so that's BZA Case No. 16881.

24 So we have those examples in the record of
25 roof decks and railings exceeding the Height Act, so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we believe that we are fully compliant with those
2 precedents.

3 Second, we believe their argument is
4 illogical and inconsistent with the Zoning Regulations
5 to claim that a roof deck railing is not one of the
6 enumerated roof structures that is exempt from the
7 height restriction. Section 411.1 clearly
8 contemplates roof swimming pools, which require a
9 fence under the Building Code. And I'm going to read
10 that section for you. It says "To exercise a
11 reasonable degree of architectural control upon roof
12 structures in all Districts, housing for mechanical
13 equipment, stairway and elevator penthouses and
14 penthouses for storage and toilet, incidental and
15 accessory, to roof swimming pools shall be subject to
16 these conditions."

17 So we know that under the Building Code a
18 swimming pool on a roof must have a deck, must be
19 protected, so by extension, if you have a roof deck,
20 the Building Code also requires a railing. But yet
21 the Zoning Regulations make no mention of those safety
22 railings, yet we know that they must exist. So we
23 believe that the Zoning Regulations do not intend
24 these roof decks and railings to be subject to the
25 height restrictions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And this is consistent with the position
2 taken by the Office of Planning when considering roof
3 structure setbacks, and I'm going to refer to a couple
4 of the attachments that the appellants submitted in a
5 memorandum on the Height of Buildings Act. If you
6 look, if you have it handy, I'm not sure if you do or
7 not, at attachment 2 to their submission, at page 2,
8 it talks about penthouses -- let me find the -- it
9 talks about how these roof decks -- I'm sorry, just
10 let me read it for a moment.

11 I'll get to that reference in a moment.
12 It doesn't apply to where I was taking it. But let me
13 go on to the FAR calculations. We believe that the
14 project complies with the maximum permitted density in
15 the R-5-D District of 3.5 FAR. We take exception to
16 Mr. Hawkins' theory that once a portion of a lower
17 floor has a ceiling height greater than 4 feet above
18 ground the entire floor becomes a basement, as he
19 testified.

20 Second, the attic space is indeed an attic
21 and thus does not count toward FAR. As you will hear
22 from the project architect, the collar ties are
23 structurally required and there is less than 6.5 feet
24 of headroom in that area of the building. And the
25 sliver that has been referred to by Mr. Hawkins cannot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be used for anything. It is a nothing space into
2 claiming that we have to call that an attic, I think,
3 is, you know, inconsistent even with the definition
4 that was provided in Webster's.

5 And if I could refer to that very briefly,
6 if you had to read the whole definition and it goes on
7 to say that it is also a garret or a place for
8 storage. And this cannot be -- this sliver that he is
9 trying to call an attic space cannot be used for
10 storage. It is not a garret. It doesn't meet the
11 definition of what is claimed under the Webster's.
12 And the architect will testify on that in greater
13 detail.

14 The Zoning Commission raised a similar
15 question in a PUD project for 14th and V Streets
16 recently, and concluded that open collar ties to
17 separate a two story space was sufficient to eliminate
18 that upper portion of the space from FAR calculations,
19 and that PUD just received final approval March 11th.
20 We're waiting for it to be issued.

21 And, I believe, Mr. Parsons, you actually
22 raised the question there is the tower element on the
23 front of the building and you questioned whether the
24 two story space would have to count toward FAR, and
25 the response from the applicant was that they would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 putting in structural members to separate that space,
2 so it would not be counting toward FAR, and there was
3 no objection from the Zoning Commission on that issue,
4 and the project has been approved.

5 Third, with the roof structure setback
6 issue, again, I would refer you to the memorandum on
7 the 1910 Height Act. We believe that it does -- the
8 very documents supporting that memorandum support the
9 position that these walls -- that these setbacks only
10 apply to exterior walls. And we have heard a lot in
11 the last meetings about party walls, common division
12 walls, face on line walls. What I think is really at
13 issue is the perimeter wall, the interior lot line
14 wall of the building, that's the key issue.

15 And if you go through this memorandum,
16 you'll see that there is a lot of discussion between
17 1984 and 1986 on how to treat the question of
18 appropriate setbacks and the interplay between the
19 1910 Height Act and the Zoning Regulations. And the
20 National Capital Planning Commission opined that the
21 1910 Height Act setback measurement was from the
22 exterior walls. It was intended to hide or screen
23 penthouses from street view, so clearly the exterior
24 walls of the building, and not the interior perimeter
25 walls. And you can see that under tab 2 of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 submission of page 2, and at tab 1 in the Zoning
2 Commission Order at page 6.

3 The Office of Planning during these
4 deliberations on how to treat this suggested that the
5 Zoning Commission change the term from exterior wall
6 to perimeter wall to include more than just street
7 views, and that's under tab 1 in the Zoning Commission
8 Order at page 4. And there it states "The proposal
9 required that all penthouses be setback a 1 to 1 ratio
10 from the perimeter of the structure." Ultimately,
11 though, the Zoning Commission rejected that proposal
12 to say perimeter wall and said that they would leave
13 it just as it says in the Height Act. And let me
14 quote from the order. It says "To the Commission, the
15 reference to the Height Act to exterior walls is clear
16 and leaves no room for amendment by administrative
17 construction. The Commission intends that this use of
18 its phrase exterior walls not be subject to exceptions
19 under any circumstances."

20 Now, had they wanted to use the OP
21 language and make it clearer that its perimeter walls,
22 they could have done so, and they chose not to. And
23 then we have the 1910 Height Act interpretation that
24 clearly states its from the exterior walls. So here,
25 we have the same instance where we don't have to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 setback from the interior line or the perimeter lot
2 line wall. We would only have to setback from the
3 exterior street view walls and that's what we have
4 done. So we're in full compliance on the setback
5 issue.

6 So with that legal framework, I'm going to
7 turn to our first witness, Gail Montplaisir, and I
8 believe you have in some documents that were handed to
9 you background on development and Gail Montplaisir's
10 experience. Thank you.

11 MS. MONTPLAISIR: Hello. I'm Gail
12 Montplaisir and I reside at 2311 15th Street, N.W., #5,
13 Washington, D.C. 20009. I gave you copies of my
14 resume and my own biography for information. There is
15 one piece of information, though, that is not noted
16 there that might be of interest to you and that is
17 although Norman and I have different last names, we
18 are husband and wife, also. He does happen to be the
19 project architect, too.

20 I moved here in 1980 and have resided all
21 but several months of that time in the District, a
22 good portion of that in 20009, and have worked in the
23 City continuously and in all the surrounding suburban
24 areas, also. I would like to give you just a little
25 bit of background related to the decisions from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 developer's perspective regarding the height, setback
2 and the FAR. And I'll do that in kind of quick
3 chronology and I'll mention some of the documents that
4 I gave copies to Mrs. Bailey to deliver to you, also,
5 at that time.

6 We contracted for the property in the
7 spring of 2002 and Norman Smith Architecture began
8 designing the project, at that time. We had a
9 feasibility study period. During that study period,
10 we looked into the zoning, which we were very glad to
11 find out it was R-5-D. Anyone who is involved in
12 development knows that small projects it is very
13 difficult to make the numbers work at all, especially
14 if you have a very low FAR. So the R-5-D was actually
15 a good sign for us being able to proceed with what was
16 a very small building, at the time, and was very
17 expensive.

18 It allowed a 90 foot height restriction,
19 80 percent lot occupancy and a 3.5 FAR. We also
20 routinely do and did in this situation look at the
21 historic status and also fine arts. And we also asked
22 if there is any historic applications that are
23 pending. We were told unequivocally that there was no
24 application pending on this property. We also do
25 financial feasibility, you know, put together, of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 course, our cost to acquire, cost to renovate and what
2 the estimated sales will be to make sure that the
3 project is financially feasible.

4 And also to give you a little bit of
5 perspective on the block that we were looking at. I
6 did include four photos. There is one color one, in
7 particular, that might be beneficial. It has two
8 little tabs on it, so it shows that we were looking at
9 a project that was Zoned R-5-D. We looked at the
10 planning documents and the development documents for
11 the area and we also noted the buildings that were on
12 the block, at the time, and you will note that it's
13 adjacent to a commercial area and there is a five unit
14 -- five story apartment building, four stories up from
15 us, I mean, four houses up from us and then there is a
16 five story apartment building directly across the
17 street.

18 So during our feasibility study period, we
19 did take all of those things into consideration as we
20 decided what types of things we might consider
21 building there.

22 CHAIRPERSON GRIFFIS: Okay. Do we have
23 extra copies of this stuff?

24 MS. MONTPLAISIR: No, I think we gave
25 you --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Does everyone have
2 them?

3 UNIDENTIFIED SPEAKER: No.

4 MS. BROWN: No, there are not extra copies
5 of the photographs that we need to give to the
6 parties, absolutely.

7 CHAIRPERSON GRIFFIS: Yes, if you don't
8 mind, can you give a form, just get one out, so they
9 can look at it.

10 UNIDENTIFIED SPEAKER: Sure.

11 CHAIRPERSON GRIFFIS: And then we'll make
12 more copies.

13 MS. BROWN: This is the one. I was
14 confused.

15 UNIDENTIFIED SPEAKER: This is to them?

16 CHAIRPERSON GRIFFIS: Yes, send one out
17 there right now and we can make copies, if you will.

18 MS. GISOLFI-GILBERT: I would ask that we
19 have copies of the direct testimony.

20 CHAIRPERSON GRIFFIS: Excuse me?

21 UNIDENTIFIED SPEAKER: She wants copies of
22 direct testimony.

23 MS. GISOLFI-GILBERT: I would ask that we
24 have copies of the testimony as she is reading it.

25 CHAIRPERSON GRIFFIS: That's what we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 working on. I'm just handing out one copy of the
2 photographs right now, so you can take a look at what
3 they are looking at specifically, at this point, and
4 then Ms. Bailey is being kind enough to go run copies
5 of all the rest of the stuff. She will have stuff out
6 within a matter of moments, so why don't we proceed
7 along? Did you give her this stuff, too?

8 MS. GISOLFI-GILBERT: Yes.

9 CHAIRPERSON GRIFFIS: Okay.

10 UNIDENTIFIED SPEAKER: Can I get a copy?

11 MS. MONTPLAISIR: We filed for our
12 building permits and demolition permits on December
13 19, 2002 and two permits were granted. One was the
14 demolition foundation excavation and the second, which
15 was received after the 1st of the year, was the
16 construction permit. We did not do anything, you
17 know, act on the permits, of course, until we actually
18 went to settlement, which was on January 10, 2003 and
19 they were held in abeyance.

20 We made an application for a curb cut and
21 tree removal to install a driveway and we applied for
22 that in mid January of 2003. When we acquired the
23 building, actually went to settlement, we then posted
24 the permits that were for the demolition excavation
25 foundation and because part of that demolition, there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 were no windows at the first level, they were posted
2 on the second story and then there was a complaint.
3 Therefore, they were brought down to just left of the
4 door where they were shown to the inspectors routinely
5 when they came and they were always on-site there. I
6 understand that they were not readily able to be seen,
7 but they were definitely posted at all times.

8 The building permit was issued on March
9 11, 2003. The permit was copied and posted on March
10 12, 2003 and, again, it was posted in the same
11 location as the other permits, which was outside the
12 building to the left of the front door at the electric
13 panels.

14 We met then with the ANC ZPT Committee in
15 regard to our application for the curb cut and that
16 was on March 19, 2003 and I also submitted a copy of
17 the drawings that were shown to the ANC ZPT Committee,
18 at that time, and I think I have those in front of me.

19 They are probably only 8.5 x 14 color copies that are
20 there, and I understand Mrs. Bailey will be getting
21 that also.

22 It showed the site plan, the plan of the
23 proposed garage level, the plan of Unit 1 and the
24 elevation showing the garage door and the entire
25 facade of the building, as well as shaded

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 representations of the buildings to the east and the
2 west. Anne Hargrove commented, at the time, that the
3 garage door was unattractive and the elevation is the
4 only place where the garage door is shown, and I
5 understand people may have comments on this since they
6 don't have it right in front of them.

7 The majority of the framing of the
8 addition and roof structures were completed on or
9 about -- I'm sorry, let me go back to March 19th.
10 There was definitely resistance at that meeting for
11 the curb cut and quite vociferous disagreement. We
12 also met with neighbors on each side of it and I also
13 talked to Bryan Weaver and, unilaterally, people were
14 not in favor of it. So we wrote a letter to the ANC
15 ZPT and we withdrew our request for the curb cut.

16 Then we continued with construction. The
17 majority of the framing of the addition and roof
18 structures were completed on or about September 1,
19 2003 and a Stop Work Order was issued September 12,
20 2003 based on issues raised by the KCA and Council
21 Member Graham.

22 We then met with Denzil Noble and Faye
23 Ogunneye to resolve the height issues, because we had
24 not taken into consideration the 1910 Height Act and
25 we met with them several times, and the Stop Work

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Order was lifted after three weeks and revised permits
2 were issued in October and the work recommenced.

3 On October 1st at my statement to the ANC,
4 Anne Hargrove requested drawings after the ANC
5 meeting. I did tell her specifically that DCRA had
6 called us just like a day or two beforehand and
7 advised us that they could not find our permit
8 drawings, their file said, and they asked us to
9 provide them a copy. We did that. I advised Anne
10 Hargrove, at that time, that I was reluctant to be
11 providing copies of drawings that should come from
12 DCRA, and I stated that we had delivered them to DCRA
13 when they told us that they were missing, and told her
14 that if she was not able to get them to, please, call
15 me and that I would be happy to meet with her and
16 discuss the project further and there was never
17 another call in that regard.

18 Then I have also submitted letters of
19 support by a number of neighbors and also people who
20 live in my development projects, and I might add, too,
21 that I happen to live in one of my development
22 projects and if anyone who knows development, that's
23 probably a rarity. Most developers run as far as they
24 can from their development projects after they
25 complete them. Thank you very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. BROWN: I would like to turn to Mr. --
2 unless you all have questions, I would turn to Norman
3 Smith, the architect.

4 CHAIRPERSON GRIFFIS: That's not by court
5 order, residency in your project, is it? I just got
6 to make sure. Okay.

7 MR. SMITH: Good afternoon.

8 MS. BROWN: Excuse me, if I could. Just
9 before, I would like to introduce him as an expert
10 witness and we have circulated his resume for your
11 review.

12 CHAIRPERSON GRIFFIS: Right. That's part
13 of the package that came in today. Is that correct?

14 MS. BROWN: Yes. The parties actually
15 should have that document already.

16 CHAIRPERSON GRIFFIS: Right. Okay. An
17 expert in architecture and design. Is that correct?

18 MS. BROWN: That's correct.

19 CHAIRPERSON GRIFFIS: Okay. Do any of the
20 parties, participants have any objection?

21 MS. FERSTER: No objection.

22 CHAIRPERSON GRIFFIS: DCRA, any objection?

23 MS. GISOLFI-GILBERT: I mean, I think if
24 we stipulate that he is an architect, whether that
25 makes him an expert witness in this case given his

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 interest in the project, I don't know.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. GISOLFI-GILBERT: I mean, I would
4 certainly stipulate.

5 CHAIRPERSON GRIFFIS: I think that matches
6 the other finding of great consensus on fact that it's
7 dark during the night in our last application and yes,
8 indeed. But establishing the fact whether he is an
9 expert will go to the fact of his experience and
10 knowledge of the specific aspects of which he is being
11 proffered. Just being an architect would not
12 necessarily mean one would be an expert in
13 architecture.

14 We could have a commercial architect
15 coming and doing an addition to a single-family house
16 and it may well be beyond their expertise. So first
17 of all, well, I think the point is now to see whether
18 there is an expertise in architecture and design in
19 order to be granted the expert status.

20 With that clarification, is there any
21 objection? Does the ANC have any objection? DCRA?
22 No? Mr. Smith, is that correct?

23 MR. SMITH: I believe so.

24 CHAIRPERSON GRIFFIS: And you're the
25 architect on this project?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SMITH: That's correct.

2 CHAIRPERSON GRIFFIS: Okay. I'm just
3 noting in terms of what you submitted in the resume,
4 there is an awful lot of publications, communications.
5 Can you just quickly, in terms of the actual
6 residential, urban/residential design, what other
7 projects have you done?

8 MR. SMITH: We have done quite a few, 2011
9 Columbia Road, 1704, 1706 16th Street, 1771 Church
10 Street, the ones that my wife, Gail, referred to. So
11 this is about the sixth or seventh project along with
12 a lot of feasibility studies. We have also done other
13 things that are not single-family residential. They
14 are not published, some small institutional work,
15 tenant build-outs, things like that that deal with
16 specifics of zoning and codes.

17 CHAIRPERSON GRIFFIS: And are those
18 projects listed on this that I'm missing?

19 MR. SMITH: They may not be on that. I
20 asked somebody to print that out from my office and,
21 to be honest with you, I did not look that closely at
22 it.

23 CHAIRPERSON GRIFFIS: Okay. It looks like
24 you're coming to be a guest speaker, quite frankly.
25 Okay. Any other further questions by the Board,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clarifications? You seem to have run through several,
2 which I note were probably in the adjacent area. Is
3 that correct?

4 MR. SMITH: Yes.

5 CHAIRPERSON GRIFFIS: Any other multi-
6 family?

7 MR. SMITH: Yes, they are all similar, the
8 same use group, multi-family, correct.

9 CHAIRPERSON GRIFFIS: You said 2012, did
10 you?

11 MR. SMITH: 2011 Columbia Road.

12 CHAIRPERSON GRIFFIS: I missed it by one
13 address. How old is that project?

14 MR. SMITH: That was completed, I believe,
15 in '92 or '93.

16 CHAIRPERSON GRIFFIS: Okay. Any
17 questions, clarifications by the Board? Any note of
18 objection of granting expert status to Mr. Smith? Not
19 noting any objection from my Board, I think we can
20 grant expert status to Mr. Smith in terms of
21 architecture and design. We could also throw in
22 critic, couldn't we? Wow. Are you a tough guest
23 juror?

24 MR. SMITH: I beg your pardon?

25 CHAIRPERSON GRIFFIS: Are you a tough --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 no, don't answer that. All right. Let's go ahead.

2 MR. SMITH: I would like to just run
3 through very quickly some of the issues. A lot of
4 this stuff has already been brought up, so I will try
5 to go through as quickly as possible. As part of
6 that, I have a graphic of the FAR calculations over
7 there that shows the building outline and I will go
8 through that briefly in a second.

9 In terms of the Zoning Regulations and the
10 height issues, as has already been discussed, the
11 zoning height per DCMR 11 under R-5-D is 90 feet. The
12 Height Act is 70 feet. There was an error in the
13 third party zoning computation, which neglected to
14 account for the Height Act.

15 The project, as drawn, was at,
16 approximately, 71 feet measured to the top of the
17 front parapet. After the Stop Work Order was issued
18 and based on discussions with DCRA, the front parapet
19 was removed and the side parapets were lowered to the
20 70 foot height. The southern bay, that is the street
21 side bay on Belmont of roof framing, and by bay I mean
22 the first interval of framing between structural
23 lines, that southern bay of roof framing was adjusted
24 in pitch slightly, so that the finished roof surface
25 was below the 70 foot height by several inches. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the parapet walls are at 70. The front roof is
2 slightly below that.

3 In terms of verification, the height was
4 verified by retaining the services of a surveyor who
5 measured the height of the roof from the curb at the
6 mid point of the lot. Sorry. These are new reading
7 glasses, so I get a little back and forth like this.

8 CHAIRPERSON GRIFFIS: Actually, what I
9 would do, could you just move your microphone a little
10 bit closer?

11 MR. SMITH: Of course.

12 CHAIRPERSON GRIFFIS: I think that will
13 make it easier.

14 MR. SMITH: Is that better?

15 CHAIRPERSON GRIFFIS: I think so.

16 MR. SMITH: The 69 foot, 9 and 3/8 inch
17 dimension refers to the height of the top of the roof
18 at the first bearing line to the north of the south
19 exterior wall just for a point of clarification, which
20 is bearing line F in the drawings. As I said, based
21 on this dimension, the pitch of the front or last bay
22 of the roof framing was then adjusted down slightly.

23 In regard to the deck and railing in the
24 height calculations, the building height under the
25 1910 Height Act and the Zoning Regulations is measured

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to the roof or parapet and the deck and railing are
2 neither. It has been my experience as an architect in
3 Washington that railings do not count toward building
4 height under the Height Act or the Zoning Regulations,
5 and it has been the consistent practice of DCRA not to
6 count railings when computing building height. This
7 is born out of examples that Ms. Brown mentioned. I
8 think it's also consistent with DCMR 11 section
9 2503.2, which is regarding required railings not
10 counting toward height for projections into required
11 open spaces, so I think it's consistent, again, with
12 the interpretation of the railing height.

13 The appellants have argued that roof
14 structure setbacks are required along the walls
15 abutting the adjacent properties. The roof structure
16 is, approximately, 11 foot, 7.5 inches above the top
17 of the roof, I should say above the top of the parapet
18 wall, excuse me. It is set back from the west wall,
19 approximately, 6 feet to drain along the side and is
20 co-planer, that is in line with the east wall.

21 The next east and west building walls are
22 face on line and are not exterior walls, as defined
23 under the Height Act or the Zoning Regulations. We
24 were advised by DCRA and concur in this position that
25 only walls facing the street or public alleys are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com

1 exterior walls.

2 Therefore, the setback provisions do not
3 apply since the roof structure is located along
4 interior lot lines. However, the south and north
5 walls of the roof structure do meet the required
6 setbacks from the north and the south exterior walls,
7 that is the south wall facing Belmont and the north
8 facing the public alley.

9 In terms of the FAR, I would like to just
10 review this briefly in terms of my density
11 calculations and how I determined that the project is
12 within the allowable FAR 3.5. First of all, the
13 calculations are done using a CAD program. The
14 enclosed MPE, that is mechanical, plumbing and
15 electrical chase spaces, are included on each floor in
16 our calculations, and it's not something that we're
17 normally required to do, but we do do that.

18 CHAIRPERSON GRIFFIS: What do you mean
19 they are included? They are included in your FAR
20 calculations?

21 MR. SMITH: That's correct.

22 CHAIRPERSON GRIFFIS: Or included in
23 your --

24 MR. SMITH: They are included in the FAR
25 calculations.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. SMITH: As you can see from the
3 drawings, there are two chase areas on each floor.
4 Those are not subtracted out from this. The third
5 thing in terms of the overview of the FAR --

6 CHAIRPERSON GRIFFIS: Wow, talk about
7 needing reading glasses.

8 MR. SMITH: Yes, would you like me to move
9 it a little closer?

10 CHAIRPERSON GRIFFIS: Is that in the
11 record already?

12 MR. SMITH: Yes, this is a copy of what
13 was submitted to D.C. You have gotten it previously.

14 CHAIRPERSON GRIFFIS: Right. Okay.

15 MR. SMITH: The last thing that is, I
16 think, it's important to remember that the first floor
17 is a slab on grade to the north of the existing lower
18 level, and the area way that was existing to the east
19 was in-filled and there was no other excavation work
20 for the main building.

21 In terms of the calculations themselves,
22 on the lower level, the lower level has exposure only
23 on the south side. It is bunkered on all remaining
24 sides, so it's analogous to actually taking the space
25 in question and sliding it underneath the building, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think.

2 We used a perimeter calculation method to
3 determine the assignable FAR square footage. Now,
4 this calculation is, in my opinion, a method that
5 accurately reflects the buried or bunkered nature of
6 the space and is consistent with the DCMR 11
7 definition of a cellar. That is that portion of the
8 story in which the ceiling is less than 4 feet above
9 the adjacent finished grade. It is also a method that
10 we have used in the past and has been routinely
11 accepted by DCRA.

12 The perimeter of the space where the
13 ceiling is higher than 4 feet above the adjacent
14 finished grade is 27 linear feet. On the lower level
15 the total perimeter of the space is 131.4. The total
16 square feet of the space in question is 736.6. The
17 assignable FAR square footage is then based on
18 establishing ratio by dividing the perimeter with
19 ceiling height of more than 4 feet, that is the front,
20 by the total perimeter and then applying that ratio to
21 the total square footage to determine the applicable
22 FAR square footage of 147.3.

23 On floors one, two and three, these are
24 shown on the attached graphic, the second one over
25 from the left.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: I see. Before you
2 go off the first floor.

3 MR. SMITH: Yes.

4 CHAIRPERSON GRIFFIS: Because what you're
5 saying, if I understand you correctly in that portion,
6 is that there's areas that's a cellar by definition.

7 MR. SMITH: Yes.

8 CHAIRPERSON GRIFFIS: There's areas that's
9 a basement. The basement, of course, is being
10 calculated into your FAR calculations. Is that right?

11 MR. SMITH: That is correct.

12 CHAIRPERSON GRIFFIS: Okay. And what I
13 understand you to say is you looked at how far back
14 the -- where did you establish where you couldn't see
15 the grade adjacent to the building as the ceiling
16 height above or below 4 feet?

17 MR. SMITH: Along the east, west and north
18 lines it is fully and completely below grade.

19 CHAIRPERSON GRIFFIS: How do you know?
20 How is the grade established on those sides?

21 MR. SMITH: Well, on the two sides it's
22 bunkered by adjoining buildings, so there is no
23 adjacent finished grade to speak of.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. SMITH: And in the rear, the adjacent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 finished grade is, approximately, 30 feet back from
2 where the basement, cellar, lower level stops. So
3 there really is, essentially, no adjacent finished
4 grade in the rear, but the closest point that you
5 could get to grade would be about 30 feet back and
6 then that's, approximately, 8 inches or so down below
7 the finished first floor.

8 CHAIRPERSON GRIFFIS: Is that clear? I'm
9 going to have a pop quiz. This is really an important
10 aspect for the Board to understand.

11 MR. SMITH: I understand that.

12 CHAIRPERSON GRIFFIS: So I think I'm just
13 going to slow it down a little bit and have you walk
14 through. What are you talking about, 30 feet? What
15 is that measuring? What is the 27 feet?

16 MR. SMITH: What I would like to do is to
17 refer to this drawing.

18 CHAIRPERSON GRIFFIS: Right. Where was
19 that?

20 MR. SMITH: The plan to the left, the far
21 left, is the outline of the lower level. The plan --
22 maybe I should hold it here, so it's a little closer.

23 CHAIRPERSON GRIFFIS: Are they attached in
24 this thing?

25 VICE CHAIR MILLER: Is it attached to an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exhibit, because it might be easier for us to just
2 look at it.

3 CHAIRPERSON GRIFFIS: What's in this?

4 MR. SMITH: I know that you have it.

5 VICE CHAIR MILLER: You found it?

6 MR. SMITH: I don't exactly recall the
7 exhibits.

8 VICE CHAIR MILLER: Okay.

9 CHAIRPERSON GRIFFIS: It's in the back. I
10 just don't know where it is in the package.

11 MS. BROWN: I think you have several
12 copies.

13 CHAIRPERSON GRIFFIS: The large one, too?

14 MS. BROWN: But I think both we submitted
15 it and the appellant submitted it.

16 CHAIRPERSON GRIFFIS: Was the 11 x 17?
17 Mine disappeared.

18 MR. SMITH: Okay. Would you still like to
19 have this up?

20 CHAIRPERSON GRIFFIS: No.

21 MR. SMITH: Or is it not necessary now?

22 CHAIRPERSON GRIFFIS: Yes. I mean, you
23 can point to it, but we all have it in front of us.

24 MR. SMITH: The plan to the far left is
25 the outline of the lower level. The bottom of it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 aligns with the plan immediately to the right of it,
2 which is the plan of the first, second and third
3 floors. As you can see, there is a dimensional
4 difference top to bottom of at least 30 feet. I'm
5 sorry, I don't remember exactly what that is, but this
6 dimension from here to here.

7 The grade in the rear of the structure is,
8 approximately, 8 inches down from the first floor, so
9 my point is that along these three sides, this is
10 completely below grade. It is literally bunkered.
11 It's bunkered on the east and west by the adjoining
12 buildings and on the north side by the grade itself,
13 and it does not extend back even to where the actual
14 grade is at the rear of the building, the first floor.

15 And what we did is we took the perimeter
16 area, which is shown in this dark line on the left
17 hand most plan, which is the portion where the ceiling
18 height is more than 4 feet. So therefore, it is a
19 basement, so, therefore, it is assignable to FAR
20 square footage.

21 CHAIRPERSON GRIFFIS: Okay. So your
22 perimeter is 27 linear feet?

23 MR. SMITH: Correct.

24 CHAIRPERSON GRIFFIS: And how far back do
25 you go to calculate an FAR then, how far into the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 building? How do you get a square footage calculation
2 out of that?

3 MR. SMITH: Well, we took the perimeter
4 calculation and the overall -- the perimeter
5 calculation of the area that was more than 4 feet as a
6 ratio of the total perimeter of that level,
7 established a ratio and then multiplied the total
8 square footage by that to get the assignable FAR
9 square footage.

10 CHAIRPERSON GRIFFIS: What is your total
11 perimeter square footage then?

12 MR. SMITH: 131.4 linear feet.

13 CHAIRPERSON GRIFFIS: And that's all the
14 sides, east, west, north?

15 MR. SMITH: That is correct.

16 CHAIRPERSON GRIFFIS: All the ins and
17 outs. Okay. So you're saying 131.4 divided by 27
18 times 736.6, 736.6 is the total area of the building,
19 gives you your FAR?

20 MR. SMITH: Of 147.3.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. SMITH: You divide the perimeter with
23 a ceiling height of more than 4 feet by the 131.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. SMITH: So 27.4 divided by 131.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Which, if I
2 understand you correctly in your testimony, that was
3 what you were laying out in terms of the perimeter of
4 the FAR or the basement area is a ratio of the total
5 perimeter, which then becomes a percentage of the FAR.

6 MR. SMITH: That is correct.

7 CHAIRPERSON GRIFFIS: Okay. Understood.

8 BOARD MEMBER ETHERLY: And not so much a
9 question, but just a flag as we kind of proceed with
10 this, perhaps, Ms. Brown, if you could put your hands
11 on I believe what we delineated as Exhibit 39. It was
12 the handwritten FAR calculations that were put
13 together by Ms. Ogunneye. It has 1819 Belmont Road on
14 the top sheet, because I would like to revisit that
15 once we finish walking through this particular graphic
16 here.

17 CHAIRPERSON GRIFFIS: Good point.

18 BOARD MEMBER ETHERLY: Thank you, Mr.
19 Chair.

20 MR. SMITH: Yes.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. SMITH: If I can just comment on that
23 briefly and then I will move on, and I do address this
24 later, but I think there is some minor variation
25 between things that are done by hand on paper that may

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have stretched or shrunk, as the case may be, and
2 something that's done on CAD. The CAD programs have
3 an engine that does this.

4 Moving up to floors one, two and three.
5 As I said before, the MPE chase spaces are counted on
6 each floor as is the exterior stair in the rear since
7 it is roofed. That is this on the upper floor. That
8 is the re-entrant corner where the stair is, so on
9 each level up we have counted the stair, because it
10 has a roof, which is required under the Building Code
11 as a second means of egress.

12 We have also counted the little extension
13 of the stair landing, which is in the back, which is
14 this very light line back in here. That is a portion
15 of the landing that extends past. When you add all
16 those up, you get over the three floors 4228.5 FAR
17 square foot, square feet I suppose.

18 On floor four, same with the MPE chases
19 and the same on the exterior stair since it's roofed.

20 There is no bay on the front of the fourth floor, so
21 that is not included and that, I think, is shown
22 clearly here on the FAR graphic. That results in a
23 total of 1352.0 FAR square footage.

24 On floor five, the MPE chase spaces are
25 counted. The stair, however, stops at this level and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 since the stair has been counted in the FAR
2 calculations of the floors below, it is not counted
3 here. So therefore, we have 1270.5 FAR square
4 footage, square feet on this floor.

5 In regard to the attic, the attic is an
6 attic under the Zoning Regulations since it has
7 structural headroom of 6 foot, 5 and 1/4 inches, which
8 is less than the structural headroom of 6 foot, 6
9 inches or 6.5 feet, which is the threshold under the
10 Zoning Regulations for the level to count toward FAR.

11 This headroom is created by the use of
12 permanently attached collar ties, which are spaced at
13 a maximum of 48 inches on center in all the structural
14 bays of the attic, that is from front to back, from
15 north to south. These collar ties are attached to the
16 steel stud load bearing walls with screw applied
17 framing anchors and like the cross or rack bracing in
18 the walls contribute to the north/south stiffness of
19 the building structure. Based on that, it is my
20 opinion that there is no FAR square footage assignable
21 to the attic space.

22 The roof structure. In the roof
23 structure, the area of the short stair, that is the
24 short stair leading up to the actual deck, the landing
25 and then the stair down to the attic is included for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 total of 124.3 FAR square feet. The stair from the
2 fifth floor to the attic is included in the FAR
3 calculations for the fifth floor.

4 In terms of the variations of the other
5 calculations, which alluded to a moment ago, they are
6 done using CAD and I think there will be some variance
7 between our figures and somebody's figures who does it
8 with a planometer or any other kind of mechanical
9 devise owing to the instability of print paper and
10 other factors.

11 Also, I think there is some discrepancy,
12 because, as I mentioned earlier, the original lower
13 level area way was in-filled and cannot count towards
14 FAR since it doesn't exist, and I believe that this
15 accounts for the, approximately, 50 square foot
16 difference in our lower level calculations from the
17 other calculations that were given.

18 So in conclusion, based on all the above,
19 it's my professional opinion that the project complies
20 with the height requirements of the 1910 Height Act
21 and the Zoning Regulations, as well as the setback
22 requirements of the Zoning Regulations and the FAR
23 requirements of the Zoning Regulations for an R-5-D
24 District.

25 MS. BROWN: I would just have one quick

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 follow-up question for the witness.

2 Mr. Smith, you heard Mr. Hawkins'
3 methodology for calculating the FAR. In your expert,
4 professional opinion, is this calculation method the
5 customary and accepted method for a partial basement
6 cellar space?

7 MR. SMITH: In my experience, it is not
8 customary, no.

9 MS. BROWN: Thank you. That concludes our
10 direct testimony and we would reserve any
11 conclusionary statement until the end.

12 CHAIRPERSON GRIFFIS: Questions from the
13 Board? Yes, Mr. Parsons?

14 COMMISSIONER PARSONS: Well, it's
15 certainly quite clear how you did something. I want
16 to go into a little bit as to why you did something.
17 Why has this building -- as I understand it, the attic
18 is really not required for any purpose other than the
19 structural purpose that you identified earlier, Mr.
20 Smith. Is that correct, or just recently, just now
21 identified?

22 Why has this building got an attic and got
23 access to the roof? I don't understand that. I mean,
24 if economics was driving you to make this building
25 work and the attic doesn't work for you, it's not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rentable space, what motivated you to this height? Is
2 it simply a view from the roof? I need some help as
3 to why you did this, either of you. Is it a marketing
4 issue?

5 MS. MONTPLAISIR: From a development --

6 COMMISSIONER PARSONS: There is certainly
7 no reason to go to additional height if you don't need
8 to.

9 MS. MONTPLAISIR: From a development
10 standpoint, the attic does two things for us. One, as
11 probably most people know, anybody who lives in an
12 apartment in the city, is that storage space is always
13 at a premium. That is number one. Number two, the
14 competition out there these days is fierce and to have
15 a two story space in the front of the unit is
16 definitely called for in the market. It's definitely
17 called for.

18 If you go to loft projects, if you go to
19 selling condominium projects, you will frequently find
20 two story spaces and it is definitely a competitive
21 advantage to have that space. And then yes, of
22 course, to have a roof deck as anybody -- you know, we
23 try to give as much outdoor space as we can and we
24 would normally want that to be a roof deck if you're
25 talking about the penthouse unit, which is why we did

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 do this.

2 COMMISSIONER PARSONS: So it's the windows
3 in the living room, if you will, and access to the
4 roof is worth all of this structural addition, if you
5 will, to the building. Is it that simple?

6 MS. MONTPLAISIR: Absolutely.

7 COMMISSIONER PARSONS: And the only one
8 that has access to the roof deck is the fifth floor
9 apartment penthouse owner?

10 MS. MONTPLAISIR: Correct.

11 COMMISSIONER PARSONS: New question. Is
12 there actually a ceiling panel at the line shown on
13 this drawing as ceiling? Certainly, you have seen
14 this drawing. I don't have an exhibit number, but
15 it's --

16 CHAIRPERSON GRIFFIS: It's attached to --

17 MR. SMITH: Yes.

18 COMMISSIONER PARSONS: So there is a
19 ceiling measurement here and then a line that goes all
20 the way to the back of the building.

21 MR. SMITH: Yes.

22 COMMISSIONER PARSONS: There is a ceiling
23 along that entire length even though there is no use
24 for it, I mean, as in ceiling in this room?

25 MR. SMITH: Well, it's --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER PARSONS: A finished ceiling?

2 MR. SMITH: There is a finished ceiling in
3 a two story space and there is a finished ceiling
4 plane in the attic space, yes.

5 COMMISSIONER PARSONS: Plane?

6 MR. SMITH: Well, I use the word plane,
7 because the collar ties are spaced at 48 inches on
8 center, and so the drywall, the wall board, goes
9 across and down and back up. But to answer your
10 question, there is a finished -- yes, there is a
11 finished ceiling surface.

12 COMMISSIONER PARSONS: So you have got a 4
13 inch space between that and the beams that carry the
14 roof, is that right, I don't know, a 6 inch space?

15 MR. SMITH: The collar ties are 2 x 10, so
16 they are 9 and 1/4 inches deep, so the difference --
17 I'm sorry, I'm not sure that I completely understand
18 your question.

19 COMMISSIONER PARSONS: Well, Mr. Hawkins
20 spent a lot of time talking about this and I'm trying
21 to get some rebuttal to what he is talking about.

22 MR. SMITH: Right.

23 COMMISSIONER PARSONS: As to whether there
24 is a ceiling here or it's just a measuring line for a
25 ceiling.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SMITH: I guess what I can say is that
2 there is a ceiling at the top of the two story space.

3 There is a ceiling in the attic as well. And in
4 terms of Mr. Hawkins' testimony, I have to confess, I
5 don't remember exactly what he said about that.

6 CHAIRPERSON GRIFFIS: Maybe this will
7 help. This section, which is frankly more schematic
8 than anything else, although it has labels on it, we
9 have what is showing and what Mr. Parsons is going to,
10 only in the elevation is there a note to it that says
11 ceiling and then it's dimensioned.

12 MR. SMITH: Yes.

13 CHAIRPERSON GRIFFIS: 6 feet, 5 and 1/4
14 inches. But it looks like it's a structural member.
15 It has depth to it. So his first question is is there
16 a finished ceiling in there and the answer is yes. I
17 think where he is going to next is what does that do
18 as there appears to be a whole line of your collar
19 ties, which really read more as the roof joist. So
20 you have created two members. You have one that's
21 parallel with the floor below it and the other, it's
22 following the pitch of the roof.

23 MR. SMITH: Yes.

24 CHAIRPERSON GRIFFIS: So in some sense, I
25 guess Mr. Parsons is trying to get to the fact of what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is this one doing, if anything, and that relates to
2 why do we have the attic space so large below it and
3 then in addition to the penthouse, but that goes to
4 his first question.

5 So the first one is what are those two
6 doing in conjunction with each other?

7 MR. SMITH: Well, the collar -- let me
8 start by explaining that this building is framed from
9 front to back rather than the traditional side to side
10 method you would normally use in a structure of this
11 width and that was done specifically to not have to
12 deal with loads super-implied on the existing walls
13 and so on and so forth and all the geotechnical
14 analysis that is involved in doing that.

15 So therefore, we decided for that reason
16 amongst some other ones to frame the building front to
17 back. Because of that, that means that the building
18 has a tendency to want to rack, that is to twist a
19 little bit, excuse me, twist this way, north/south.
20 So the roof rafters, obviously, are creating a roof
21 slope.

22 The collar ties are locking into those
23 bearing walls that the roof rafters, in turn, bear
24 all, which are spaced, approximately, 13 to 14 feet
25 apart and varies slightly from north to south to form

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 what is, essentially, a panel truss in each one of the
2 framing bays, so that those elements work together to
3 help resist north/south racking.

4 CHAIRPERSON GRIFFIS: Okay.

5 COMMISSIONER PARSONS: Thank you for the
6 help, because I was out on a limb. Let me try another
7 limb.

8 CHAIRPERSON GRIFFIS: Okay.

9 COMMISSIONER PARSONS: Why is the roof
10 deck this high off the roof, and again I'm looking at
11 this section and it's not dimensioned, but it appears
12 to be about 3 feet off the roof, as opposed to 2 feet
13 off the roof or 8 inches? What drove that decision?

14 MR. SMITH: I can address that. There are
15 two things. One was the way we had decided to frame
16 it, which is that the typical way of framing a deck
17 like this, I mean, given the fire rated requirements
18 and so on and so forth, is to bring the floor joists
19 to a beam, that is this way. We also need to deal
20 with the fact that we have to allow for leaves,
21 buildup, trash blown, blown trash and debris that gets
22 on the roofs that can conceivably get clogged
23 underneath a deck. So the deck was raised enough to
24 allow passage of water underneath, to prevent ice
25 damming and that kind of thing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 That said, in reality we did drop the deck
2 some. We chose to reframe it, so that the beam that
3 the floor joists frame to was dropped, I believe,
4 about 12 inches or so and it makes a little hump at
5 the end of the deck. The final --

6 COMMISSIONER PARSONS: A hump?

7 MR. SMITH: I'm sorry, a little hump like
8 that. It's only because the beam is a deeper
9 structural dimension that the floor joists are. The
10 net result being that the top of the walking surface
11 of the deck is, approximately, 1 foot 3 to 1 foot 4
12 off of the top of the parapet.

13 COMMISSIONER PARSONS: Off of the top of
14 the what?

15 MR. SMITH: Off of the top of the parapet.

16 COMMISSIONER PARSONS: Oh, so this drawing
17 isn't really accurate, I mean?

18 MR. SMITH: It is not accurate, no.

19 COMMISSIONER PARSONS: At one time,
20 somebody could have crawled under there to get leaves
21 out and so forth?

22 MR. SMITH: That was the original
23 intention, yes.

24 COMMISSIONER PARSONS: And now you have
25 lowered it?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SMITH: Yes.

2 COMMISSIONER PARSONS: Okay. Thank you.

3 CHAIRPERSON GRIFFIS: Go ahead, Mr.
4 Etherly.

5 BOARD MEMBER ETHERLY: Just a quick
6 follow-up to make sure I understood that last point.
7 So the space -- perhaps both for the witness, but then
8 also for Mr. Parsons. So the space that is denoted as
9 ceiling, and I am looking at what is the same drawing,
10 but it's Exhibit 1, it's attachment 1 to Exhibit 48,
11 which was the supplemental report of Mr. Hawkins.

12 The space that's denoted as ceiling, it's
13 the witness' testimony that that space is no longer
14 there? Am I understanding that correctly?

15 COMMISSIONER PARSONS: Oh, no, I think
16 maybe we ought to go over this again with the
17 Chairman's help. But as I understand it, you have got
18 to have a finished ceiling in that two story section.

19 I mean, people pay good money for a window and
20 ceiling and loft. So there is a ceiling there and I'm
21 still confused as to what happens once you enter what
22 is attic space here where it's 6 foot high. I
23 wouldn't know a collar if I saw it.

24 BOARD MEMBER ETHERLY: Okay, okay.

25 COMMISSIONER PARSONS: So that's where I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lost it.

2 BOARD MEMBER ETHERLY: Okay. Let me try
3 this attack then. There was a question that Ms. Brown
4 threw towards you at the conclusion of your statement
5 with regard to Mr. Hawkins' piece, and I think what
6 I'm trying to do is square your testimony with that of
7 Mr. Hawkins. So perhaps what might be helpful is help
8 me understand or help my colleagues and I understand
9 where Mr. Hawkins goes awry, in your opinion, with
10 regard to that interpretation of attic, because
11 perhaps what I am just struggling with is is it the
12 case then -- is there any real purpose to that ceiling
13 that is in place in what is referred to as the attic
14 or is that, essentially, just architectural subterfuge
15 for what realistically could be a taller space?

16 MR. SMITH: Are you asking whether the
17 collar ties could be removed?

18 BOARD MEMBER ETHERLY: Yes.

19 MR. SMITH: I think, and I do not mean to
20 be facetious in saying this, that you could remove a
21 piece of floor if you chose to. You could remove
22 collar ties. It would be very, very difficult. It
23 would be inadvisable and would require the consent of
24 the Condominium Owners Association who would contact,
25 hopefully, the architect of record and I would say

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that they cannot do that. In addition to that, it
2 would require a building permit, which would trigger
3 FAR calculations. So I think the short answer is no.

4 BOARD MEMBER ETHERLY: Okay. Okay. Let
5 me then back up real quickly and then I will pause,
6 Mr. Chair, and let other colleagues get in. But with
7 respect to, let's kind of go back downstairs, if you
8 will, and come to the basement.

9 CHAIRPERSON GRIFFIS: You know what? Let
10 me interrupt you for a second.

11 BOARD MEMBER ETHERLY: Yes, sir.

12 CHAIRPERSON GRIFFIS: Let's start with the
13 basics. What is a collar tie? If you're standing on
14 the floor of that attic space, that level, I'm looking
15 up and I look up to 6 feet, 5 and 1/4 inches, what do
16 I see?

17 MR. SMITH: You would see the bottom face
18 of a member that is, in its rough state, an inch and a
19 half wide and 9 and 1/4 inches tall that would run
20 from north to south, would be spaced 48 inches on
21 center.

22 CHAIRPERSON GRIFFIS: A member of what,
23 the Kalorama Citizens Association? Not being an
24 architectural design and review board or a structure
25 review board, what you are talking about is a piece of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 steel in that.

2 MR. SMITH: It's a wooden member.

3 CHAIRPERSON GRIFFIS: Oh, it's wood then?
4 You're using some wood in there, and so it's an
5 engineered piece though. Am I correct?

6 MR. SMITH: The actual floor joists of the
7 building are engineered lumber. These particular
8 members, I believe, are either engineered or are 2 x
9 10s. I think in the --

10 CHAIRPERSON GRIFFIS: All right. I'm just
11 trying to explain then. So they are 48 inches apart?

12 MR. SMITH: That is correct.

13 CHAIRPERSON GRIFFIS: Okay. So there is
14 only a few of them?

15 MR. SMITH: There are I think four or
16 five.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SMITH: Because actually, they are
19 spaced less than 48 inches in certain places. I think
20 one of the analogies or a good example is if any of
21 you live in a single-family house and you go up into
22 the attic, in a gabled attic, frequently there are
23 collar ties that are 2 x 4s or 2 x 6s that run across.
24 They are sort of banged on to the sides of the
25 rafters. Those are members that are acting in tension

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to keep the roof from spreading.

2 These members here, these collar ties, are
3 the same thing. However, they are not acting in
4 tension. They are acting, essentially, as compression
5 braces and collar tie came from the collar bar on
6 men's shirts that helped hold the collar together.

7 CHAIRPERSON GRIFFIS: Fascinating. And
8 then your roof framing is 2 x 12s above that. Is that
9 correct?

10 MR. SMITH: They are 9 and 1/2 inch TJI
11 350s, I believe. The roof framing of the penthouse
12 roof structure is 2 x 12s.

13 CHAIRPERSON GRIFFIS: Oh, I got you. It's
14 kind of hard to read to 8.5 x 11. Okay. Is that
15 clear? I mean, I think this is important enough,
16 because it seems like we're going to spend a lot of
17 time on this to fully understand just the basics of
18 it, so we know what we're looking at. If there are
19 further questions, I would be happy to ask them if you
20 don't want to. But it really gets to the point of,
21 you know, what the Board is getting to, what I hear
22 them struggling with is here you have this space that
23 has got 6 feet 5 and change. Then you have got this
24 other space and then you have this penthouse.

25 Well, I think there is some sort of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reconciliation. What is trying to be established here
2 is how do we understand the space in between the attic
3 and the penthouse? Can you have two attics, one on
4 top of another?

5 MR. SMITH: I don't know the answer to
6 that.

7 CHAIRPERSON GRIFFIS: Okay. And in your
8 understanding in terms of -- well, I guess in terms of
9 architecture and design, what is that space that
10 happens above the 6 feet, 5 and 1/4 and below the
11 penthouse structure?

12 MR. SMITH: Are you referring to that
13 interstitial or the so-called sliver space?

14 CHAIRPERSON GRIFFIS: Right.

15 MR. SMITH: I would consider that to be a
16 non accessible portion of the roof. I don't think
17 that -- I don't believe that that would be considered
18 an attic necessarily.

19 CHAIRPERSON GRIFFIS: Okay. Does an attic
20 have to be -- well, okay, there it is. Mr. Parsons?

21 COMMISSIONER PARSONS: I just have one
22 more question about the deck. Once you lowered the
23 deck, was there a necessity for a railing by code?

24 MR. SMITH: Yes, the Building Code
25 requires a railing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER PARSONS: On any deck?

2 MR. SMITH: Any deck that is more than 32
3 inches above grade, yes.

4 COMMISSIONER PARSONS: Above grade?

5 MR. SMITH: Above grade, yes, and
6 obviously that's the case here.

7 COMMISSIONER PARSONS: So grade isn't the
8 roof?

9 MR. SMITH: I am referring to the Building
10 Codes, which obviously are a different issue, that a
11 deck at grade, for instance, sitting on the ground.

12 COMMISSIONER PARSONS: Yes.

13 MR. SMITH: If it's more than 32 inches
14 above that ground is required to have a railing.

15 COMMISSIONER PARSONS: But here you have
16 got one that now is about a foot to 14 inches above.

17 MR. SMITH: Above the adjacent roof
18 surface and parapet walls, but clearly there is a bit
19 more of a fall if you were to go over the side, so I
20 think --

21 COMMISSIONER PARSONS: So it's common
22 sense that drove you to do this?

23 MR. SMITH: Aside from Building Code
24 requirements, clearly, common sense, yes, Mr. Parsons.

25 COMMISSIONER PARSONS: Okay. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 BOARD MEMBER ETHERLY: If I could, Mr.
2 Chair, let me come back to the basement question and,
3 once again, I'm just trying to square our presentation
4 today with that of Mr. Hawkins. Once again, you were
5 asked by Ms. Brown to assess Mr. Hawkins' take on the
6 basement.

7 Could you just walk through where,
8 according to your testimony, the error lies in Mr.
9 Hawkins' assessment of the basement and its role in
10 the FAR calculation?

11 MR. SMITH: Let me begin by saying this is
12 not a calculation that I have used before, the one
13 that Mr. Hawkins is referring to, so I would only be
14 critiqueing it sort of after the fact. I think the
15 purpose of these calculations is, in my opinion, to
16 accurately reflect the true nature and condition of
17 spaces that you're dealing with in the District.

18 The Building Codes, again, you do not have
19 purview over Building Codes, I understand that, but
20 the Building Codes are very gray about some of these
21 kinds of issues. Even the Zoning Code can be at
22 times, but we try to make a best judgment about a
23 method that seems to accurately reflect conditions
24 like this.

25 This is not a condition where it is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 through space. I have worked on those in the past and
2 we still use a perimeter calculation, but I think
3 something like that would be conceivably more
4 understandable using his calculation. But this is
5 clearly not the case here and I cannot see, in my
6 opinion, how realistically you can use a grade plane
7 that goes, as he has drawn, from the back of the
8 building, but then I think he is going -- I assume he
9 is going -- oh, yes, he is going the 6 feet in the
10 back, which is a BOCA dimension. I don't believe it's
11 a Zoning Code dimension. I am referring to his 6 foot
12 dimension measured from the back. That is to
13 establish grade plane under BOCA. I do not believe
14 that that is a zoning requirement for that.

15 But nevertheless, I think it is
16 unrealistic to extend a line back that far, because it
17 simply doesn't reflect the true nature of the
18 condition that we have here. As I said, we do a lot
19 of work that involves buildings that are sitting on
20 hills or that are partially in and partially out, and
21 this is a calculation method that has been reviewed in
22 the past and accepted repeatedly by DCRA.

23 BOARD MEMBER ETHERLY: Okay.

24 CHAIRPERSON GRIFFIS: What, your perimeter
25 calculations?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SMITH: Yes.

2 CHAIRPERSON GRIFFIS: So you're saying
3 even if you had portions that weren't parallel, as the
4 grade changed on each of the sides, on the east side
5 and the west side, your perimeter calculation still
6 works?

7 MR. SMITH: Would you repeat that, please?

8 CHAIRPERSON GRIFFIS: Sure. I thought I
9 understood you to be saying even in other aspects, the
10 perimeter calculation works as the grade changes on
11 parallel sides of a structure, meaning if the east
12 side had a different slope and grade, then the west
13 side, you could still use your perimeter calculation?

14 MR. SMITH: Yes, I believe that's the
15 case, because it's analogous to the BOCA calculations
16 for height.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SMITH: Which have to do with a
19 perimeter calculation of certain amounts to determine
20 what's a story or not, and so I think that this is
21 analogous to that and I think does -- I think would
22 work to answer your question.

23 CHAIRPERSON GRIFFIS: Okay. Further? All
24 set? Anybody else at this time? Okay. What else,
25 anything else?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BROWN: Not at this time.

2 CHAIRPERSON GRIFFIS: Excellent. Let's do
3 cross. Who would like to start cross? Ms. Ferster,
4 are you ready?

5 MS. FERSTER: It does not appear that we
6 have any questions.

7 CHAIRPERSON GRIFFIS: Okay. Does the ANC
8 have any questions? No cross? DCRA?

9 UNIDENTIFIED SPEAKER: Now what do we do?

10 CHAIRPERSON GRIFFIS: Exactly. I bet
11 we're not prepared for this. All right. Board
12 questions? We'll go back for round two. Then we can
13 proceed. I'm ready to go right into the ANC
14 presentation unless we want to take a quick break.
15 Does the ANC want five minutes to get connoitered if
16 that's the word. Is that what you say?

17 MR. ROTH: Mr. Chairman, we will obviously
18 follow the Board's wishes, but my main concern is that
19 I have a religious obligation at 7:00 this evening.

20 CHAIRPERSON GRIFFIS: Oh, right.

21 MR. ROTH: And so it's my hope that we can
22 be done and out of here by -- at least the ANC can be
23 done and out by 6:00.

24 CHAIRPERSON GRIFFIS: It's up to you,
25 isn't it? It's 4:50.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. ROTH: I think we can do our
2 presentation in 20 to 30 minutes. We do have one
3 witness we'll call.

4 CHAIRPERSON GRIFFIS: Okay. All right.
5 Well, let's go ahead.

6 MR. ROTH: Is that all right?

7 CHAIRPERSON GRIFFIS: And, you know, if we
8 have to disband at 6:00, we'll see where we are.

9 MR. ROTH: Excuse me, let me pull a couple
10 of documents from my chair.

11 CHAIRPERSON GRIFFIS: Do you want two
12 minutes or no, you're all set. Okay.

13 MR. ROTH: Do you need this? Mr.
14 Chairman, thank you. For the record, my name is Alan
15 Roth. I am the Chairperson of Advisory Neighborhood
16 Commission 1C and I am accompanied by Commissioner
17 Bryan Weaver who is the Single Member District
18 Commissioner for the District in which this property
19 is located. That is Single Member District 1-C-03.

20 The ANC-1C has voted twice by unanimous
21 votes to support the KCA's appeal in this case. We
22 submitted a written report by letter dated December
23 22, 2003, which details our concerns about DCRA's
24 handling of the three main issues in this case, all of
25 which we agree with KCA were handled contrary to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Height Act and the Zoning Regulations, namely the roof
2 deck issue, the roof structure setback issue and the
3 FAR issue. And for the record, let me also say that
4 we associate ourselves with the KCA's memorandum in
5 support of the BZA's Height Act jurisdiction, which I
6 believe was submitted earlier today and which we would
7 have gladly signed.

8 CHAIRPERSON GRIFFIS: Well, you might have
9 time, because we haven't seen it.

10 MR. ROTH: Oh, okay. I understood from
11 the discussion before that there was an extension of
12 time on that.

13 CHAIRPERSON GRIFFIS: Because we hadn't
14 seen it.

15 MR. ROTH: Okay. Well, we appreciate the
16 extension of time and we will -- if it isn't already
17 submitted, we will certainly sign it together with the
18 KCA.

19 Let me suggest that we proceed this way.
20 I would like to make a brief statement, in effect,
21 adopting under oath the declaration that I submitted
22 previously in this case as part of the motion to
23 dismiss. I would like to recognize Commissioner
24 Weaver for a similar statement that he would like to
25 make and any comments in regard to that that he would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 like to add. We will have one witness to call and
2 finally, we have several documents to be offered into
3 evidence for the record at the end of that
4 presentation.

5 And so if that is acceptable, as I said,
6 having been sworn in at the outset of the proceeding,
7 I would like to adopt for the record here under oath
8 the declaration that I signed and submitted in
9 connection with the KCA's and ANC's joint reply to
10 Montrose's motion to dismiss and, in particular, to
11 call the Board's attention to paragraph 18 of that
12 declaration on page 12 and the pages that follow in
13 which I recount what occurred at a meeting on October
14 20, 2003 at which Mr. Denzil Noble and Teresa Lewis of
15 DCRA met with myself, Mrs. Hargrove and a
16 representative of Council Member Graham's office to
17 explain their decisions to grant the October 6th and
18 16th building permits to Montrose.

19 I respectfully submit that the testimony
20 proffered by Ms. Ogunneye at our previous session on
21 behalf of DCRA was nothing more than an after the fact
22 rationalization and justification on her part or
23 DCRA's part for decisions that were actually made six
24 months ago largely by her bosses and not by her and
25 her bosses, unfortunately, were not available to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 testify.

2 And the reason I say that this is
3 significant is because that October 20th meeting, which
4 occurred just within four days or, in the case of the
5 October 6th permit, a couple of weeks after the
6 issuance of the permit is much more significant,
7 because the decisions being made then or the
8 rationalizations or explanations being offered at that
9 October 20th meeting were being given to us
10 contemporaneously with those decisions.

11 And so to the extent that my declaration
12 describing that meeting and for that matter, any other
13 evidence in the record in terms of what happened at
14 that meeting, explicates or elucidates what we were
15 told, at the time, by Mr. Noble. I submit to the
16 Board that that has much greater relevance than any
17 testimony that Ms. Ogunneye presented.

18 I have to say that it was truly stunning
19 for me to watch Mr. Noble, who is the man supposedly
20 charged with guarding the sanctity of our Zoning
21 Regulations, to sit at that meeting fumbling around
22 for definitions, such as of the word attic, without
23 knowing or being familiar with the applicable zoning
24 definition at all, which is that in Webster's or just
25 shrugging his shoulders at Mrs. Hargrove's complaint

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about the roof deck saying it's just a roof deck as if
2 to say it's no big deal, why are you bothering me
3 about this.

4 That was the attitude. That was the
5 approach. That was the justification that we sought
6 contemporaneously with the issuance of the permits
7 from DCRA, not any complicated explanation from Ms.
8 Ogunneye about how regulations that apply to
9 structures above grade also can be flown up to the
10 roof of a five or eight story building.

11 Having said that and that specifically is
12 what I want to focus on from my declaration. Let me
13 recognize Commissioner Weaver for any further evidence
14 he would like to present personally or comments that
15 he would like to make.

16 MR. WEAVER: I just wanted to take this
17 moment to also adopt my declaration under oath. It
18 pertains to the March 19, 2003 ANC-1C BZA Committee
19 Meeting, which Montplaisir earlier mentioned that
20 drawings were submitted to the ANC.

21 At that time, I don't believe -- my
22 recollection of the meeting, at the time, was that Mr.
23 Hargrove had asked about the height of the building
24 and how many additional floors were going to be added
25 onto this row house and, at that time, as far as I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 walked out, I believe that Mr. Smith had said that it
2 was one additional floor to the meeting.

3 Now, at the same time we realized that
4 there was a building permit that it was under that
5 said two floors plus attic that was submitted at that
6 time. Now, I don't know if there was a discrepancy in
7 the question or it wasn't clearly understood, but I
8 walked away with a very different sense from that
9 meeting on the 19th.

10 CHAIRPERSON GRIFFIS: Are these the
11 drawings on the 19th that we're showing?

12 MR. WEAVER: I'm not on the BZA Committee.

13 CHAIRPERSON GRIFFIS: Oh.

14 MR. WEAVER: Sorry, PZT Committee, I
15 forgot.

16 CHAIRPERSON GRIFFIS: Yes, let's keep it
17 straight, will you?

18 MR. WEAVER: P, You know, we actually
19 changed the name of it, so yes, PZT, Planning, Zoning
20 and Transportation.

21 CHAIRPERSON GRIFFIS: PZT?

22 MR. WEAVER: Yes.

23 CHAIRPERSON GRIFFIS: Okay. So you're
24 talking about --

25 MR. WEAVER: The focus of the drawings

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that we saw were dealing with the curb cut and tree
2 removal.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. WEAVER: And were not really relevant
5 to the height of the building at that time.

6 CHAIRPERSON GRIFFIS: So it wasn't the
7 drawings that we have seen today?

8 MR. WEAVER: I don't recall seeing -- I
9 recall seeing similar drawings to this one here that
10 deal with the garage.

11 CHAIRPERSON GRIFFIS: The proposed curb
12 cut.

13 MR. WEAVER: The curb, right, but I don't
14 -- I never saw anything that was an elevation or
15 mechanical drawings.

16 CHAIRPERSON GRIFFIS: Did you see plans?

17 MR. WEAVER: No, not that showed an
18 elevation, only from an aerial.

19 CHAIRPERSON GRIFFIS: Yes. But the floor
20 plans? I mean, what was being shown?

21 MR. WEAVER: Essentially, what was being
22 shown had to deal with the curb cut.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. WEAVER: And the tree removal in the
25 front.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: I'm sorry. Why I
2 keep pushing you is --

3 MR. WEAVER: Sure.

4 CHAIRPERSON GRIFFIS: -- because you keep
5 saying essentially what was being shown.

6 MR. WEAVER: Oh, I'm sorry.

7 CHAIRPERSON GRIFFIS: What was shown?

8 MR. WEAVER: From my recollection --

9 CHAIRPERSON GRIFFIS: Yes?

10 MR. WEAVER: Not being on PZT I didn't
11 walk away with a copy.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. WEAVER: From the one that I was
14 handed at the time of the meeting was dealing with the
15 curb cut.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. WEAVER: If there was another drawing,
18 I did not see it. I do recall Mr. Hargrove asking
19 about the height at that time.

20 CHAIRPERSON GRIFFIS: I see. So your
21 recollection is you just looked at that one curb cut?

22 MR. WEAVER: That was the only one that
23 was -- that was what we were dealing with and that was
24 the only one that was brought to my attention.

25 CHAIRPERSON GRIFFIS: Okay. And I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sorry, but for my clarification, so you have the
2 Planning and Zoning and Transportation Committee,
3 which you are not on?

4 MR. WEAVER: Right.

5 CHAIRPERSON GRIFFIS: Where were you in
6 the ANC, in what meeting, the full committee?

7 MR. WEAVER: I was at the full. Well, I
8 did attend this meeting and I attended it, because it
9 was my Single Member District, but not being on the
10 committee, I was essentially sitting with the rest of
11 the gallery that would be at the committee. The
12 committee did ask for my recommendation, because it is
13 my SMD.

14 CHAIRPERSON GRIFFIS: I see.

15 MR. WEAVER: I was opposed to the curb cut
16 and tree removal.

17 CHAIRPERSON GRIFFIS: I see. Okay. So
18 you weren't processing it. You were mostly observing?

19 MR. WEAVER: I was mostly -- I had been
20 asked to participate only dealing with the proposed
21 garage and the tree removal.

22 CHAIRPERSON GRIFFIS: Okay. Excellent.

23 MR. WEAVER: The other part that I just
24 wanted to say was, you know, it has been an honor and
25 a privilege for two years to be a representative of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 perhaps the most vulcanized part of Washington, D.C.
2 There is very rare occasions that anyone at Adams
3 Morgan ever agrees on anything. This project, to a
4 certain degree, has done something that I have been
5 unable to do, which has been unite people with the
6 Kalorama Citizens Association over an issue.

7 CHAIRPERSON GRIFFIS: Interesting.

8 MR. WEAVER: At times in sitting here,
9 this being my fourth time down, listening to this
10 process for the first time as a freshman coming in, as
11 an ANC Commissioner looking at this, it almost hits me
12 as sort of the new speak from 1984 in George Orwell's
13 novel that an attic, the definition of an attic, we
14 are starting to focus on, the height, we're starting
15 to focus on whether or not it's a liveable space.

16 We focus on whether or not it had windows
17 to where when people in the street are asking well,
18 what's the deal with this building, what's going on,
19 where is the scene, it's a tough one to try to explain
20 from a BZA standpoint to try to bring this to a common
21 person walking on the street.

22 There's a degree of frustration that I
23 know that some of the residents who are not members of
24 the Kalorama Citizens Association, but have joined on
25 with them in this in trying to see where a citizen can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 take their complaints if they are not an architect, if
2 they are not a lawyer, and I just wanted to put to the
3 Board that there is a frustration level that has
4 developed within my SMD.

5 And I think that as you guys look at this,
6 it will be intent of the code and then there is letter
7 of the code, and that the intent of this is to try to
8 keep buildings within a certain height and within a
9 certain floor area ratio. I think that what we're
10 seeing here is boy, maybe there are elements of this
11 that are just on one side of being -- I don't want to
12 say being honest or dishonest, because I don't want to
13 put those characterizations on the developers here,
14 but it definitely has an economic drive that many of
15 the people within my SMD are truly troubled by, and I
16 know that they haven't had the time and the chance to
17 come down here.

18 But it becomes a difficult argument when I
19 come back and have to say at a Single Member District
20 meeting well, you know, it's 69.78 feet for the height
21 of the building like well, obviously, it's over 80. I
22 say well, no, that's a roof structure, that doesn't
23 count. Well, why is it that no other building has a
24 roof structure like this? Well, you see, it's a party
25 wall and they can build it. Well, how can it be a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 party wall if it's 25 feet higher than the roof of the
2 next building?

3 CHAIRPERSON GRIFFIS: You live in our
4 world.

5 MR. WEAVER: I would just like to have the
6 time to just be able to voice some of the concerns of
7 some of my other constituents that haven't had an
8 opportunity to come down here today.

9 CHAIRPERSON GRIFFIS: Good. I think those
10 are excellent statements and I'm fairly serious in the
11 fact that we often run across that. We could use
12 common sense and sit up here and all of us have it. I
13 will speak for the others, not for myself, but
14 oftentimes it only flies in the face of it. It is not
15 always just intuitive interpretation of what you see
16 and then the Zoning Regulations. And in fact, some of
17 these Zoning Regulations, quite honestly, are written
18 horribly.

19 So I would say the next time one of your
20 constituents complains, you can send them directly to
21 the Zoning Commission. And in fact, it's fairly
22 appropriate in this case, because I think what you're
23 looking at also is a misunderstanding between two
24 concepts. One is context and one is allowable matter-
25 of-right or within the Zoning Regulations and I can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 tell you, this may be a digression, but it's going to
2 exactly what you're saying.

3 I think it's important for a full
4 understanding of this to look at why this small
5 portion of Belmont Street was zoned R-5-D when it may
6 well have been so far out of context of what was
7 existing, it may well abut a C-2-B Zone, which makes
8 it perfectly appropriate in a zoning designated
9 context and the Commission -- you know, quite frankly,
10 well, maybe I shouldn't, but, you know, contextually
11 those Zone Districts should and can abut each other
12 and it's perfectly appropriate, but in this specific
13 context that's where I think there are going to be
14 some striking ones, could conceivably be a pedestrian
15 striking conflict with common sense and what actually
16 the zoning allows.

17 So believe me, we empathize with what you
18 go through in trying to explain it and, I mean, look
19 at processing this appeal, it has a lot to do with
20 that, looking at reality and looking at the zoning,
21 looking at the actual letter of the Zoning Regulations
22 and looking at what the intent of the Zoning
23 Regulations and trying to balance it all out. Okay.
24 I will try not to interrupt you again.

25 MR. WEAVER: No, that's all right. I will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 save it for later.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. ROTH: I don't know, Mr. Chairman,
4 where exactly reality fits in in all this, and I think
5 both you and Commissioner Weaver have ably stated the
6 dilemma, but I do think the Board has the ability and
7 the authority, based on what they hear, to make some
8 judgment about reality, to make some judgment about
9 what the true expectations or intentions of reasonable
10 and ordinary people would be with regard to some of
11 these spaces and to render your judgments accordingly.

12 CHAIRPERSON GRIFFIS: Our judgments have
13 to be based on the regulations.

14 MR. ROTH: Pardon me?

15 CHAIRPERSON GRIFFIS: Our judgments have
16 to be based on the regulations. I mean, what I hear
17 you saying is, you know, good common sense, good
18 judgment and we'll be able to rule on this pretty
19 quickly, but those all have to be based in what is
20 being presented to us, and what is being presented to
21 us is how it does or does not fit within our
22 regulations.

23 MR. ROTH: Well, we're going to attempt
24 with a witness to put on some more evidence that go to
25 those points, but in the end I think there still

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ultimately is some subjective judgment making that has
2 to be done in this case as in many other cases.

3 CHAIRPERSON GRIFFIS: Interesting concept.

4 Mr. Etherly?

5 BOARD MEMBER ETHERLY: And if I could jump
6 in, Mr. Chair, not to interrupt the presentation, but
7 I might even go a little further than where the
8 Chairman is going with my question, which is is it
9 your sense, and this is for either one of our
10 Commissioners, is it your sense or in the course of
11 debate and discussion at the ANC, is it your sense
12 that perhaps we're confronted with a situation where
13 technically, Montrose may be right, but what you're
14 arguing here really is this might be more of a spirit
15 of the Zoning Regulation issue? I want to be clear
16 about that.

17 MR. ROTH: And I want to be clear, too. I
18 think, technically, Montrose is wrong.

19 BOARD MEMBER ETHERLY: Okay.

20 MR. ROTH: I think we, the KCA, has and we
21 will put on additional evidence saying that they are
22 wrong.

23 BOARD MEMBER ETHERLY: Okay.

24 MR. ROTH: But I think to the extent that
25 you determine that there are judgment calls or that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there are disagreements between experts, you have the
2 ability, using your own expertise, to decide which of
3 those make more sense.

4 BOARD MEMBER ETHERLY: Okay.

5 MR. ROTH: Which of those explanations
6 make more sense.

7 BOARD MEMBER ETHERLY: Thank you. Thank
8 you, Mr. Chair.

9 CHAIRPERSON GRIFFIS: Good.

10 MR. ROTH: With that, Mr. Chairman, and
11 with the Board's permission, I would like to call Mr.
12 Donald Hawkins as our witness.

13 COMMISSIONER PARSONS: Mr. Chairman?

14 CHAIRPERSON GRIFFIS: Yes, Mr. Parsons?

15 COMMISSIONER PARSONS: Before we do that,
16 Mr. Weaver, we talked about this meeting on March 19th
17 and I think we have got conflicting testimony here.

18 MR. WEAVER: Okay.

19 COMMISSIONER PARSONS: Ms. Montplaisir
20 said that these were the drawings at that meeting.
21 She also said, and I'm looking now at the elevation --

22 MR. WEAVER: Yes, I was at that meeting.

23 COMMISSIONER PARSONS: That you don't
24 recall was at that meeting.

25 MR. WEAVER: No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER PARSONS: And she made the
2 statement that Mr. Hargrove had objected to the doors
3 being ugly. Were you in the room at that time?

4 MR. WEAVER: At the doors of the garage
5 being ugly?

6 COMMISSIONER PARSONS: Yes.

7 MR. WEAVER: I was, but I didn't --

8 COMMISSIONER PARSONS: But the drawing was
9 behind you, so I just wanted to make sure.

10 MR. WEAVER: Yes, I --

11 COMMISSIONER PARSONS: You remember the
12 comment, but not the drawing?

13 MR. WEAVER: I don't remember the comment
14 exactly in that way, but at the time there were no
15 elevations. I mean, the focus of the meeting was
16 based on the curb cut.

17 COMMISSIONER PARSONS: All right.

18 MR. WEAVER: And that was the issue at
19 hand.

20 COMMISSIONER PARSONS: Okay.

21 MR. WEAVER: I do not recall. There was
22 actually a painting, an artist's rendering of what the
23 supposed front facade was to look like, and I recall
24 the garage doors being on that and not from this.

25 COMMISSIONER PARSONS: Okay. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Mr. Hawkins?

2 MR. ROTH: Mr. Hawkins, you have
3 previously been sworn in the case and my assumption is
4 that Mr. Hawkins is still under oath.

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. ROTH: Mr. Chairman, he has also been
7 previously qualified as an expert and I assume that
8 still holds as well. Okay. Thank you.

9 CHAIRPERSON GRIFFIS: If you're calling
10 him as the same type of witness.

11 MR. ROTH: Same type of witness.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. ROTH: Thank you. Mr. Hawkins, I want
14 to ask you some questions related to the developer's
15 characterization of the upper space in this building
16 as an attic, which is directly related, in turn, to
17 whether that space should have been counted toward
18 FAR, and I want to read you a portion of the
19 definition of gross floor area from the Zoning
20 Regulations. What that definition says is that "Gross
21 floor area shall include attic space whether or not a
22 floor has actually been laid providing structural
23 headroom of 6 feet, 6 inches or more."

24 Are you familiar with that definition?

25 MR. HAWKINS: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. ROTH: Is the word structural defined
2 in the Zoning Regulations?

3 MR. HAWKINS: It's not in the Zoning
4 Regulations.

5 MR. ROTH: Where then would you turn to
6 find a definition of structural for purposes of the
7 Zoning Regulations?

8 MR. HAWKINS: The Zoning Regulations
9 instruct us to go to Webster's Unabridged Dictionary
10 for any missing definitions.

11 MR. ROTH: Okay. Mr. Chairman, for the
12 record, I would like to introduce a copy of that
13 definition.

14 CHAIRPERSON GRIFFIS: I'm sorry to
15 interrupt and that's fine, you can put that in. You
16 just read a definition of what?

17 MR. ROTH: Gross floor area.

18 CHAIRPERSON GRIFFIS: Oh, I see. That's
19 where the more than 6 --

20 MR. ROTH: That's with structural headroom
21 of --

22 CHAIRPERSON GRIFFIS: More than 6 foot.

23 MR. ROTH: More than 6 foot, 6 inches
24 appears.

25 CHAIRPERSON GRIFFIS: Excellent. Thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you.

2 MR. ROTH: I'm going to pass a copy over
3 to Mr. Hawkins.

4 CHAIRPERSON GRIFFIS: And can we get
5 everyone else to have -- they got them?

6 MR. ROTH: Yes, sir.

7 CHAIRPERSON GRIFFIS: Okay. Great.

8 MR. ROTH: Mr. Hawkins, would you read the
9 definition letter B of structural, which is the
10 applicable or relevant definition?

11 MR. HAWKINS: "It is of or relating to the
12 load bearing members or scheme of a building, as
13 opposed to the screening or ornamental elements."

14 MR. ROTH: And then there is what appears
15 to be a quotation from another source.

16 MR. HAWKINS: Yes. "Details of a house
17 consist of floor joint rafters, wall and partition
18 studs supporting columns...foundations." That's from
19 the Building, Excavating and Contracting Book.

20 MR. ROTH: Okay. Now, you have had an
21 opportunity to review the plans. Is that right?

22 MR. HAWKINS: That's right.

23 MR. ROTH: Are collar ties indicated
24 throughout the attic area on the plans?

25 MR. HAWKINS: They are not shown

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 throughout the attic area, no.

2 MR. ROTH: Where are they shown?

3 MR. HAWKINS: They are indicated in the
4 bay, let's say the structural bay between C and D and
5 a continuation of one of them is indicated on the
6 structural bay B. I'm sorry, D and E.

7 MR. ROTH: Okay. In your professional
8 opinion, what would be the effect on the building's
9 structural integrity if those collar ties were
10 removed?

11 MR. HAWKINS: None.

12 MR. ROTH: And why would that be?

13 MR. HAWKINS: Because they are spaced so
14 closely together that they effectively become as a
15 single member, so that they are not actually
16 performing any work.

17 MR. ROTH: Would they meet the definition
18 of a structural function within the Webster's
19 definition?

20 MR. HAWKINS: No.

21 MR. ROTH: Okay. Are ceiling joists shown
22 throughout the attic on the plans?

23 MR. HAWKINS: No.

24 MR. ROTH: Are they shown at all?

25 MR. HAWKINS: They are shown in some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 places and not in others.

2 MR. ROTH: Okay. What would be the effect
3 on the building's structural integrity if the ceiling
4 joists were removed?

5 MR. HAWKINS: None.

6 MR. ROTH: Why?

7 MR. HAWKINS: They are not contributing to
8 the structural integrity of the building.

9 MR. ROTH: In other words, looking at the
10 Webster's definition, is it your opinion that they
11 perform any structural function?

12 MR. HAWKINS: No.

13 MR. ROTH: Okay. Thank you. Now, turning
14 your attention to an issue relevant both to whether
15 this is really an attic or whether it should be
16 counted in FAR as habitable space, as well as to the
17 issue of whether the side walls are exterior walls for
18 which a setback is required, are windows required by
19 either the Zoning or Building Regulations in an attic?

20 MR. HAWKINS: No.

21 MR. ROTH: How many windows have been
22 provided for in this attic?

23 MR. HAWKINS: Eight.

24 MR. ROTH: And where are they?

25 MR. HAWKINS: They are, I believe, four in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the front room and four in the rearmost room.

2 MR. ROTH: Okay. That's fine. Finally,
3 turning your attention to the question of whether this
4 space is really intended by the developers to be used
5 as an attic or as marketable, habitable space.

6 Do the electrical service requirements of
7 an attic differ from those of a habitable space? For
8 example, how many electrical outlets would one
9 ordinarily need in an attic of this size?

10 MR. HAWKINS: Normally one in each of the
11 spaces.

12 MR. ROTH: And focusing your attention on
13 the fifth floor living room, not counting any outlets
14 serving particular counters or cabinets, etcetera, how
15 many general purpose duplex convenience outlets are
16 shown in that space?

17 MR. HAWKINS: Six.

18 MR. ROTH: How many duplex convenience
19 outlets are shown in the southern most room of the
20 attic?

21 MR. HAWKINS: Five.

22 MR. ROTH: What is the total number of
23 duplex outlets in the space labeled attic?

24 MR. HAWKINS: 10.

25 MR. ROTH: How many electrical lamps,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 appliances or other devices could be operated
2 simultaneously in the space labeled attic?

3 MR. HAWKINS: 20.

4 MR. ROTH: Are 20 electrical appliances
5 and devices typically provided for in a 750 square
6 foot attic?

7 MR. HAWKINS: No.

8 MR. ROTH: Are there also ceiling light
9 fixtures indicated in the space labeled attic?

10 MR. HAWKINS: Yes, there are.

11 MR. ROTH: How many?

12 MR. HAWKINS: Three, I believe.

13 MR. ROTH: And that's above and beyond the
14 20 electrical appliances or other devices, right?

15 MR. HAWKINS: That's right.

16 MR. ROTH: Okay. Thank you very much. I
17 have some submissions of documents and some final
18 comments to make. Do you want me to do that or do you
19 want to have Mr. Hawkins open the questions at this
20 point?

21 CHAIRPERSON GRIFFIS: What documents do
22 you have to submit?

23 MR. ROTH: Okay. First, Mr. Chairman,
24 since we're submitting photographs, I have -- I'm
25 sorry. I have a letter from a neighborhood resident

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 whose name is Dennis James. He resides at 1819
2 Kalorama Road, which is one block south of the subject
3 premises. He has taken a photograph from his rooftop
4 of this building as it stood under construction. The
5 letter is dated February 16, 2004 and since it appears
6 that we're submitting various views of what this
7 structure looks like from all sorts of different
8 angles both in color and in black and white, I would
9 like to submit that for the record, so that the Board
10 can have the benefit of a different perspective on how
11 the building looks just to indicate to you.

12 Rather than blending into the
13 surroundings, which is the perspective that Montrose's
14 photographs, I think, would have you see, clearly
15 there is a different perspective that can be viewed
16 from other places.

17 CHAIRPERSON GRIFFIS: Interesting. Where
18 is that taken from?

19 MR. ROTH: That was taken from Mr. James'
20 roof.

21 CHAIRPERSON GRIFFIS: How tall is his
22 roof?

23 MR. ROTH: I don't know, but it's a much
24 shorter building than the one in question. I think
25 Mr. James' house is three stories tall.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Wow. It kind of
2 looks like the same level as the other. All right.
3 Yes, I mean, please, bring them in.

4 BOARD MEMBER ETHERLY: Are we going to do
5 questions?

6 CHAIRPERSON GRIFFIS: I think so.

7 MR. ROTH: I would also like to submit for
8 the record a letter that was addressed to the
9 Department of Consumer and Regulatory Affairs, and let
10 me peel off some copies here for counsel. It's a
11 letter addressed to DCRA from a couple named Robert
12 and Grace Malokoff who don't actually live on Belmont
13 and, in fact, don't live immediately adjacent, but
14 they do live in the Kalorama Triangle Historic
15 District, and it's a letter that pertains to this
16 issue of roof structure setbacks and party walls
17 versus exterior walls.

18 And I submit it for the record not because
19 it pertains directly to this case in terms of the way
20 1819 Belmont Road, per se, is being built, but to get
21 to the question of or draw the Board's attention to
22 the problem of this interpretation that DCRA appears
23 to be using saying, essentially, in a row house
24 situation, if you have what they determine to be a
25 party wall, it's basically open season for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 neighbors on the roof.

2 And I think it would be helpful for the
3 Board to get a sense of what potentially is in store
4 for row house neighborhoods everywhere and for
5 neighbors in these neighborhoods if that
6 interpretation is allowed to stand. It doesn't make
7 sense to us, I think, through the testimony and
8 evidence that has been presented over the court of the
9 last couple of sessions and particularly the
10 discussion about how can something be a party wall if
11 it appears to be an exterior wall with windows on it
12 built up over the party wall. There is a certain
13 intuitive sense, I guess, that people may or may not
14 draw from that and, again, that's in the Board's
15 province to determine.

16 But I think it would be useful for the
17 Board to see another situation in which the same
18 question has arisen and we now have a situation of
19 warring neighbors, because one neighbor has undertaken
20 to build on top of the other's party wall and to,
21 presumably, have some impact on --

22 CHAIRPERSON GRIFFIS: Okay. Yes, you can
23 bring it in. Believe me, it's not something the Board
24 hasn't seen numerous times. And I would be careful
25 when you describe this application as a townhouse.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. ROTH: Row house.

2 CHAIRPERSON GRIFFIS: Or I'm sorry, the
3 row house. I know the other issue you're talking
4 about is a row house, but an R-5 category is not
5 necessarily known as a row house area, but I'm
6 assuming that the one you're talking about is in a
7 different Zone District.

8 MR. ROTH: Yes, it is, and I think the
9 main point from our standpoint would be you have row
10 house neighborhoods all over the city and this is an
11 interpretation from DCRA.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. ROTH: But has some potentially
14 startling applications.

15 CHAIRPERSON GRIFFIS: Well, we'll
16 definitely take a look at it. As I say, I think you
17 will find that the Board has decided numerous times on
18 applications in row dwelling cases with setbacks of
19 penthouses and roof structures.

20 MR. ROTH: Okay.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. ROTH: That concludes the evidence
23 that we would like to submit. I don't know whether
24 it's appropriate for a summation or not or whether you
25 would like to move on at this point.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Did the owners do a
2 summation?

3 MS. BROWN: We reserve the right to do
4 one.

5 CHAIRPERSON GRIFFIS: Right. I know.
6 When is that going to happen is the point. Mr. Roth,
7 this is what I'm going to do. I want to go through
8 cross examination, questions of the Board, cross
9 examination and then if you're prepared to do a
10 summation now, that would be perfectly appropriate.
11 You're going to have to remind me, because I don't
12 always remember to ask you if you want to do it at
13 that point.

14 MR. ROTH: Okay.

15 CHAIRPERSON GRIFFIS: Oftentimes in these
16 appeals -- well, there it is. Let's go with
17 questions.

18 MR. ROTH: Okay.

19 CHAIRPERSON GRIFFIS: Mr. Hawkins, just
20 starting out, first of all, you have been qualified as
21 an expert in architecture and design. Is that
22 correct? Do you have any structural engineering
23 background?

24 MR. HAWKINS: Thank you. My training as
25 an architect included engineering and I have been in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 practice for 37 years on my own and have only used
2 structural engineers in my residential work a matter
3 of two or three times at the most. I have always done
4 my own engineering.

5 CHAIRPERSON GRIFFIS: Okay. So clearly,
6 you can do load calculations and the like. You
7 indicated that the tie-backs weren't doing anything,
8 right?

9 MR. HAWKINS: That's right in this case.

10 CHAIRPERSON GRIFFIS: And you're saying
11 that they are not carrying any load whatsoever?

12 MR. HAWKINS: It would be inconsiderable
13 in the total of the resistance of the total structure
14 to any horizontal forces that might develop.

15 CHAIRPERSON GRIFFIS: Now, you heard the
16 project's architect talking about the framing of this
17 going north to south.

18 MR. HAWKINS: That's right.

19 CHAIRPERSON GRIFFIS: As opposed to the
20 party wall.

21 MR. HAWKINS: Yes.

22 CHAIRPERSON GRIFFIS: And the aspect of
23 racking of the building would, obviously, be different
24 in framing it that way.

25 MR. HAWKINS: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Do you agree with
2 that analysis that there needs to be bracing for the
3 racking of this building?

4 MR. HAWKINS: There are. There could be
5 forces that would be in the north and south direction
6 that would require some resistance. From the look of
7 the drawings, I would say that the resistance, the
8 total resistance of the building, its north/south
9 walls would be a large part of the -- and the
10 integration of those walls with the floor structure
11 would be the effective bracing, north/south bracing.

12 CHAIRPERSON GRIFFIS: So what are the tie-
13 backs supposed to be doing?

14 MR. HAWKINS: I'm sorry, the collar ties?

15 CHAIRPERSON GRIFFIS: Did I say ties?

16 MR. HAWKINS: The collar ties.

17 CHAIRPERSON GRIFFIS: Right, the collar
18 ties.

19 MR. HAWKINS: They are acting to separate
20 the roof from the ceiling of the floor below as they
21 do in all of the houses, if I might point at a picture
22 that has been here a lot. All of the houses on this
23 street have a similar structure. Above the ceiling of
24 the top floor there is a space, a space that we're
25 calling a sliver. In all of the houses on this street

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that have not been altered, that space is called an
2 attic however high or low it might be. And most of
3 the houses, I believe, I have not surveyed the street
4 with this in mind, but most of them have a sloping
5 front wall to some degree similar to the one that is
6 in question here.

7 The reason that these collar ties are not
8 effective enough to be worth considering in the
9 resistance of north/south forces is that they make a
10 very small triangle. They are about 50 feet long,
11 possibly. I'm sorry. In fact, I think it might be
12 about 60 feet long. And the base of the triangle that
13 they make, that is the collar ties, the roof rafters
14 on the flattish part of the roof and the front roof,
15 the base of that triangle is only about possibly 2.5
16 feet, but it looks to be about 2 feet as against a
17 length of about 50 or 60 feet.

18 A collar tie works to create a triangle,
19 which is a solid shape that can't be changed without
20 changing the lengths of one of its sides. This is a
21 basic in architectural engineering. It's easier to
22 imagine, to picture how a collar tie works if you'll
23 imagine an equilateral triangle, the bottom being the
24 collar ties and the top two being the roof rafters.
25 The collar ties are keeping that pair of rafters from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 spreading.

2 In our case here, we have a very slight
3 tilt to the front roof and a very long, low set of
4 rafters and if there were any appreciable force on
5 that base, the base in this case being the rafters at
6 the front of the building, if there were any
7 appreciable force on that, it would take a very small
8 amount of movement in that triangle.

9 Let me put this a different way. The
10 forces on the base are extreme in such a case. The
11 closer to an equilateral triangle, the more moderate
12 are the forces on it. So we're talking about a long
13 triangle that has very little triangulation to it.

14 CHAIRPERSON GRIFFIS: So the lowest member
15 is going to carry most of the force?

16 MR. HAWKINS: The strength of it depends
17 upon the attachments at the ends and yes, the -- no,
18 I'm sorry, that's not quite the case. What I'm saying
19 is that the forces that are going to be on this
20 building, mostly they would be wind forces, would be
21 taken up by other parts of the building. There is, I
22 assume, the normal kind of floor sheathing, wall
23 sheathing and an integration between these two
24 elements that would make a box that would be very
25 difficult to move.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Theoretically, you might find a force.
2 You might be able to calculate a force that these
3 collar ties are accommodating, but, in fact, I don't
4 believe any force would come to bear on them.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. HAWKINS: Sorry for the number of
7 words it takes. If the question had come up as it has
8 come up during the discussion today, I could have done
9 a diagram and brought it to you.

10 CHAIRPERSON GRIFFIS: That's fine. Go
11 ahead. Other questions, Mr. Etherly?

12 BOARD MEMBER ETHERLY: Thank you very
13 much, Mr. Hawkins and Mr. Roth and Mr. Weaver, for
14 your presentation. I have been struggling with this,
15 you know, from the top of the day as you have probably
16 heard from some of my questions, so I kind of want to
17 walk through it again, but let me make sure I'm clear
18 in understanding your argument, Mr. Hawkins.

19 In terms of supporting your argument, am I
20 to understand correctly that, basically, there are two
21 things that you are saying here. One is if you go by
22 the definition of an attic as you have identified with
23 the Webster's definitions that we have had submitted
24 and you buy the argument of Montrose just for the sake
25 of discussion, that that small sliver that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 represented at attachment 1 to your supplemental
2 report would then qualify as the attic, because that's
3 the piece that has the ceiling and then the roof
4 rafters?

5 MR. HAWKINS: Right.

6 BOARD MEMBER ETHERLY: So to speak.

7 MR. HAWKINS: That's right.

8 BOARD MEMBER ETHERLY: If that's your
9 attic, then, of course, you can't call the space below
10 it the attic.

11 MR. HAWKINS: That's right.

12 BOARD MEMBER ETHERLY: Okay. That's kind
13 of one piece?

14 MR. HAWKINS: Right.

15 BOARD MEMBER ETHERLY: But also, you are
16 saying that but wait a minute, realistically or in all
17 honesty, you can't really stop right there, because
18 this structural argument that is being put forth by
19 Montrose really is a red herring. If I understand you
20 correctly, because when you look at the so-called
21 structural purposes that the collar ties or the
22 ceiling joists are being purported to be serving, it
23 is your contention that they really are not serving
24 those purposes?

25 MR. HAWKINS: That's right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 BOARD MEMBER ETHERLY: Okay. With regard
2 to understanding gross floor area and that issue of
3 structural headroom, I'm curious as to whether or not
4 you are reading into that definition an inquiry or an
5 investigation into a structural function that's not
6 there, i.e., if there is a structural characteristic
7 or element that is introduced into the plan or
8 introduced into the structure by the applicant, in
9 this instance Montrose, shouldn't that be enough for
10 the inquiry? Why do we have to dig further and say
11 well, wait a minute let's second guess the developer
12 and determine whether or not the structural purpose
13 can be met through some other form or fashion. Is
14 that an accurate characterization? Is that something
15 that we should be concerned about?

16 MR. HAWKINS: Yes.

17 BOARD MEMBER ETHERLY: Because that
18 perhaps is logical outcome here. Digging into the
19 project and saying well, wait a minute, there is
20 another way or another place to put the collar tie or
21 the ceiling joist and we, the BZA, are going to go in
22 and make that decision for you. So I'm a little
23 worried about that. Help me understand, you know, why
24 the inquiry needs to go that far. No pun intended on
25 "far."

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. HAWKINS: That was a long question and
2 let me ask a question back. Do you mean -- are you
3 asking me if I think it is worthwhile double checking
4 the architect? The architect has made a structure and
5 we're asking you to refigure the structure, so that
6 there is another way for him to do it?

7 BOARD MEMBER ETHERLY: Yes, yes. Because,
8 once again, gross floor area is structural headroom.

9 MR. HAWKINS: Yes.

10 BOARD MEMBER ETHERLY: So what you are
11 doing is you are attacking that term "structural
12 headroom."

13 MR. HAWKINS: Right.

14 BOARD MEMBER ETHERLY: And you are taking
15 issue with it.

16 MR. HAWKINS: Yes.

17 BOARD MEMBER ETHERLY: Saying that in
18 actuality that the structural headroom here isn't
19 necessary to the design of the building to handle all
20 of the forces or stresses that are being alleged here.

21 MR. HAWKINS: That's right, yes. In fact,
22 there are zoning categories, residential zoning
23 categories in which the collar ties or an obstruction
24 such as the collar ties would not be counted as
25 lowering the ceiling. In this case, I don't see in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the structural drawings the roof rafters would not
2 have been enough, if structure were all we were
3 concerned with.

4 BOARD MEMBER ETHERLY: Okay. Okay. I
5 mean, I think we're coming back to the same point that
6 I used earlier. Essentially, we're talking about I
7 don't mean to make it sound so pejorative, but an
8 architectural subterfuge, so to speak. I understand
9 what you are saying. Let me leave it at that. I
10 understand what you are saying. Let me move real
11 quickly, just because I want to come back to this
12 basement issue real quick.

13 MR. HAWKINS: Yes.

14 BOARD MEMBER ETHERLY: You heard the
15 exchange that took place between myself and Mr. Smith.

16 MR. HAWKINS: Yes.

17 BOARD MEMBER ETHERLY: On the basement
18 issue.

19 MR. HAWKINS: Yes.

20 BOARD MEMBER ETHERLY: I just want to be
21 sure I'm clear. It sounds as though the
22 characterization here is that your interpretation or
23 your argument about how to interpret that is somewhat
24 unusual. Can you speak to that a little bit?

25 MR. HAWKINS: Actually, I believe we have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a submission that will support my contention that the
2 normal way of -- the way I had always figured in 37
3 years of practice here had calculated the proportion
4 of basement to cellar was to establish if there wasn't
5 an actual grade adjacent to the building, to
6 establish, I call it, a fictional grade, the grade
7 that probably was there before. This comes from my
8 understanding, for one thing, it has always been my
9 practice to do it this way. But another -- the
10 attitude behind that is, the principle behind it is
11 that the condition, the temporary condition of an
12 adjacent property should not be, and I don't believe
13 anywhere in the Zoning Code, taken as part of the
14 definition of what would happen on this property.

15 BOARD MEMBER ETHERLY: Yes.

16 MR. HAWKINS: So when we say or when we
17 hear that this property is bunkered on two sides, it
18 may not be tomorrow. It may not have been when the
19 building, this building was first conceived. So
20 establishing an imaginary plane, which BOCA outlines
21 and, in fact, which Mr. Smith had done for BOCA
22 purposes, he had established where that plane would
23 be. When the drawings were modified a little bit and
24 we got a set of the modified drawings, I found that
25 his grade plane was within very few inches of where I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 calculated the grade plane to be.

2 This form of calculation, it seems to me,
3 is consistent in the extremes, and any calculation,
4 any formula ought to be created so that it is good at
5 one extreme or another or in the middle equally good.

6 In the case of the one that establishes a grade
7 plane, it seems to me that there are no
8 inconsistencies if the back yard were 40 feet high,
9 you would get a reasonable proportion. If it were 2
10 feet high, you would get a reasonable proportion.

11 BOARD MEMBER ETHERLY: So you're looking
12 for more accurate or reasonable approximation?

13 MR. HAWKINS: A universally applicable
14 one.

15 BOARD MEMBER ETHERLY: Okay.

16 MR. HAWKINS: And as I say, we have
17 supporting material to show that that has always been
18 the case.

19 BOARD MEMBER ETHERLY: Okay.

20 MR. HAWKINS: Or had always been the case.

21 BOARD MEMBER ETHERLY: Okay.

22 MR. HAWKINS: In the District.

23 BOARD MEMBER ETHERLY: Thank you. Thank
24 you, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Other questions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Anything else? Okay. Let's go to cross. Does the
2 owner have cross?

3 MS. BROWN: Thank you, Mr. Chairman. I
4 think most of the questions were covered by Mr.
5 Etherly and yourself, but I do have just a couple that
6 I want to go over. Back to Mr. Etherly's point, I
7 want to ask you, Mr. Hawkins, where in the Zoning
8 Regulations does it discuss the owner's intent on what
9 they want to do with structural members or electrical
10 outlets and removing them?

11 MR. HAWKINS: I don't believe I testified
12 as to intent, only the existence of the conditions
13 that indicate what an intent might be.

14 MS. BROWN: Maybe I have the wrong
15 witness. Mr. Roth, was that your testimony that you
16 described the intent of the owner and what they intend
17 to do with --

18 MR. ROTH: I don't think I testified to
19 that. I think I suggested to the Board that they had
20 the discretion to take the testimony that Mr. Hawkins
21 gave and apply their reasonable judgment to it.

22 MS. BROWN: And is that part of the Zoning
23 Regulation standard?

24 MR. ROTH: It's my belief that the Board
25 in a situation where there are conflicting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 interpretations has the authority to decide which one
2 they believe makes more sense.

3 MS. BROWN: I have another question for
4 Mr. Hawkins. You testified that you have only used a
5 structural engineer, I think, in one or two or three
6 instances on residential properties?

7 MR. HAWKINS: That's right.

8 MS. BROWN: And were those multi-unit
9 residential projects?

10 MR. HAWKINS: I was meaning that I have
11 only used them, and I was thinking about only
12 residential, but, in fact, I have worked with and
13 without structural engineers on multi-unit properties.
14 Mostly without.

15 MS. BROWN: And you have testified that
16 you believe that these collar ties serve no purpose?

17 MR. HAWKINS: That's right.

18 MS. BROWN: Since you are an expert
19 witness, I'm going to ask you a hypothetical question
20 and ask you that if a client were faced with two
21 expert testimonies of the collar ties are necessary
22 and your testimony that the collar ties are not
23 necessary, would you say that the owner would be wrong
24 to ask for redundancy in structural protections?

25 MR. HAWKINS: I don't think I can give a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 straight answer to that. If I were presented with a
2 condition where somebody wanted to remove the collar
3 ties, I would say that it would call for a calculation
4 of the actual forces before removing them.

5 MS. BROWN: And is it possible that these
6 collar ties are part of a multi integrated structural
7 system and that while you perceive it not to have any
8 great purpose, that part of the integrated structure
9 it could have a significant purpose?

10 MR. HAWKINS: I considered that they are
11 part of an integrated system. They are a very minor
12 part of that integrated system and so minor that they
13 are not likely to be called on in even extreme -- the
14 case of extreme forces.

15 MS. BROWN: And is there any provision in
16 the Zoning Regulations that prohibits the number of
17 electrical outlets in an attic?

18 MR. HAWKINS: No.

19 MS. BROWN: And is there any provision in
20 the Zoning Regulations that prohibits redundancy in
21 structural members?

22 MR. HAWKINS: No.

23 MS. BROWN: Thank you.

24 CHAIRPERSON GRIFFIS: Redirect?

25 MR. ROTH: Sure, Mr. Hawkins, one question

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on redirect. Ms. Brown, it seems, characterized these
2 collar ties as redundant. Is that how you interpreted
3 her question?

4 MR. HAWKINS: In the question about the
5 removal of them, they were characterized. Collar ties
6 were characterized that way in her hypothetical, yes.

7 MR. ROTH: Okay. Let's focus on two
8 different issues, and I'll just let you comment as an
9 expert on those. The first is the question of whether
10 or not these collar ties are redundant. The second is
11 the question of whether or not they are redundant,
12 what is your testimony with regard to whether or not
13 they serve any structural function?

14 MR. HAWKINS: I believe they do not serve
15 any structural function.

16 MR. ROTH: Okay. Thank you.

17 MS. BROWN: One point of clarification,
18 Mr. Hawkins made reference to documents that he had
19 submitted to the record on this, and I have not -- I'm
20 not sure what he referred to. If he is referring to
21 other things that had already been submitted to the
22 record.

23 MR. ROTH: Mr. Chairman, I don't think Mr.
24 Hawkins is referring to any documents that have been
25 submitted. I think that KCA and the ANC have been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 collaborating on an effort to establish some past
2 historical practice and, frankly, we would like the
3 opportunity to submit a supplemental memo to the
4 record, if we can establish those things with regard
5 to practices of the Zoning Administrator's Office,
6 interpretations of Corporation Counsel on some of
7 these issues.

8 CHAIRPERSON GRIFFIS: On which issues?

9 MR. ROTH: Setback, FAR calculations.

10 CHAIRPERSON GRIFFIS: Wow.

11 MR. ROTH: Any others? I think the answer
12 to Ms. Brown's question, frankly, is there is no
13 document that is in existence or has been submitted
14 that Mr. Hawkins was referring to.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. ROTH: We can either cover it with a
17 supplemental memo or in conclusions of law, propose
18 conclusions of law and findings of fact.

19 CHAIRPERSON GRIFFIS: I think that might
20 be the appropriate place for it. It sounds like you
21 were going to go on a research find. We may not see
22 you again.

23 MR. ROTH: Well, to tell you the truth,
24 we've already done most of the research.

25 CHAIRPERSON GRIFFIS: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. ROTH: It, frankly, would be helpful
2 to us if we -- I think it would be helpful to the
3 Board and to all the parties to just have it submitted
4 in memo form and it won't be a lengthy memo.

5 CHAIRPERSON GRIFFIS: And that's fine. I
6 think it would have been appropriate, also, to bring
7 it up in your case presentation and talk about it a
8 little bit, but we'll hear objections.

9 MS. BROWN: That was my only concern that
10 they have had since September to put together their
11 case on this, and to the extent that they are
12 submitting new information, we, obviously, would have
13 the right to respond to it.

14 CHAIRPERSON GRIFFIS: Right. Right. All
15 right.

16 MR. ROTH: I'll leave it to Ms. Ferster,
17 but I believe that in the KCA's case on rebuttal, they
18 are going to present this as part of their rebuttal
19 case.

20 CHAIRPERSON GRIFFIS: Okay. And I think
21 that's the appropriate part. I mean, quite frankly,
22 you could -- you know, we get cases and we get
23 precedents all day, every Tuesday. I think we have
24 heard De Azcarate case about six times today, we know
25 them well, but anyway, I thin it is more -- it is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 stronger in your case presentation than just
2 submitting a simple memo that seems to make a
3 statement and may not make it totally.

4 Mr. Hawkins, you indicated that this
5 parallel member is not a structural member. It's not
6 doing anything. But try and help me clarify, you gave
7 the example of the adjacent structure that also has
8 this triangle, as you describe it, of the ceiling,
9 framing, the roof framing and then the pent roof or as
10 you said the angled exterior wall.

11 MR. HAWKINS: Yes.

12 CHAIRPERSON GRIFFIS: Why do all these
13 other buildings have this type of construction and yet
14 you say in this the triangle is too small to do
15 anything, and so one of the members, the bottom member
16 is actually not doing anything?

17 MR. HAWKINS: Yes, in fact, it is not
18 doing anything in most of them. In the normal case,
19 they -- an attic, I call it a sliver attic in this
20 case, since it's really a better proportion, I mean a
21 matter of proportion. It is done that way normally to
22 give a bit larger front and drainage to the back.
23 It's the shape of the roof, not the necessity of the
24 structure.

25 CHAIRPERSON GRIFFIS: Okay. The top

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 portion, the roof joist gives the shape of the roof,
2 does it not? Not the bottom portion.

3 MR. HAWKINS: That's right. Yes, the
4 bottom portion in most cases, in fact, the ceiling
5 joists do not run front to back. They do sometimes
6 and in wider houses they will. But the -- none if it
7 is, let's say, part of the macro-structure. They all
8 have, as you can see, many of them have a small
9 Mansard Roof at the front, that's incidental. It's a
10 matter of style, not structure. In that case, the
11 Mansard Roof, though it is taking -- the total form is
12 the same, that is a small triangle, none of it is for
13 structural purposes beyond the most immediate.

14 CHAIRPERSON GRIFFIS: Okay. Very well.
15 Anything else from the Board? Any other questions?
16 Any redirect further? Closings?

17 MR. ROTH: Brief closing, summation and
18 then you'll be done with the ANC. Mr. Chairman,
19 Members of the Board, the best analogy that I have
20 been able to come up with, as I thought about this
21 case, is football, because football is called a game
22 of inches, and it strikes me that the BZA should not
23 allow DCRA to turn zoning into a game of inches or
24 fractions of an inch, which is, in effect, what we've
25 done here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DCRA and Mr. Noble's office are supposed
2 to understand, and we presume, I think citizens
3 presume they understand, both the letter of the
4 regulations and the law, as well as their spirit and
5 history. And that history does include, for example,
6 Zoning Commission decisions, one of which Ms. Ogunneye
7 seemed not to be aware of, but which is particularly
8 relevant to this case. And as some reference has been
9 made, and I think further evidence will come in as we
10 said on KCA's rebuttal, we think that there are
11 perhaps other historical practices of the Zoning
12 Administrator's Office interpretations of Corporation
13 Counsel that either have been overlooked or not
14 applied or ignored here.

15 But in any event, at a minimum, these
16 decisions should not be based on the personal opinions
17 of Mr. Noble taken from his other job of issuing
18 building permits from BLRA. He has got a different
19 role, a Zoning Administrator, Interim Zoning
20 Administrator and it is important that he apply some
21 scrutiny, which unfortunately in this case it doesn't
22 appear that he or others at DCRA applied. Had they
23 taken the time and shown the interest in actually
24 doing that at any number of points along the way, most
25 especially last -- including the last round in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 October, rather than spending their time trying to
2 avoid having to turn over plans and drawings to the
3 KCA and ANC, I don't think these permits would ever
4 have been issued in their current form. But
5 regrettably, they were issued.

6 And as the KCA's and the ANC's evidence
7 has amply demonstrated, they were issued erroneously.

8 They were issued in violation, not only of the plain
9 language of the Height Act, but also the Zoning
10 Regulation that incorporates the entirety of the
11 Height Act by reference, the roof structure setback
12 and FAR Regulations. And again, as I said, in
13 ignorance of or at least in appearance an awareness of
14 prior Zoning Commission Orders or other Zoning
15 Commission or Corporation Counsel practices and
16 procedures.

17 So on behalf of ANC-1C, we hope you will
18 reject those permits, uphold the KCA's appeal. I
19 don't know exactly what the appropriate remedy is in
20 terms of the Board's ability, but at a minimum we
21 would hope that no C of O would be issued for these
22 premises until the necessary structural corrections
23 are made through removal of the illegal roof deck,
24 removal of the illegal roof structure, which will
25 become completely unnecessary once the roof deck is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 removed and lopping off as much of the top story as is
2 necessary to make the building comply with the FAR
3 requirements. And we appreciate your patience and
4 your indulgence over many weeks.

5 CHAIRPERSON GRIFFIS: Thank you and we
6 appreciate your's. Thank you very much. I think, at
7 this point, we are getting on to the 6:00 hour. It's
8 an excellent breaking point. We're going to set for
9 conclusions. We'll allow an opportunity for the owner
10 to do a conclusion. Then we will have rebuttal and
11 closing remarks by the appellant. I would like to
12 obviously get this done as quickly as possible.
13 Unless you are ready to go tonight?

14 MS. FERSTER: Yes, we're ready to go
15 tonight if you would like.

16 CHAIRPERSON GRIFFIS: I wish she would.
17 Just turn your mike on if you don't mind.

18 MS. FERSTER: We're ready to go tonight if
19 you want to go tonight, but if you want to break, what
20 we would like to do is leave you with the legal memo
21 that we prepared on the jurisdictional issue, as well
22 as the supplemental memo that the ANC alluded to about
23 the historical treatment of FAR and setback issues.
24 So it's really, you know, your call, but we are
25 prepared to --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Excellent.

2 MS. FERSTER: -- present our rebuttal and
3 close today.

4 CHAIRPERSON GRIFFIS: I am somewhat
5 mindful of people's schedules, I know, on the Board
6 and then obviously folks involved in this tonight, so
7 I think it's appropriate to break at this point. It
8 doesn't seem like we have a whole lot more to get done
9 and it might be a better situation to have clear minds
10 for the Board to have closings and any sort of
11 rebuttals that happen. Let me have people quickly
12 check their schedule for the 20th of April.

13 MS. FERSTER: Mr. --

14 CHAIRPERSON GRIFFIS: You're not here on--
15 yes?

16 MS. FERSTER: Mr. Chairman, I also have a
17 question.

18 CHAIRPERSON GRIFFIS: Go ahead.

19 MS. FERSTER: Well, my question is that
20 since we have submitted a memo on the jurisdictional
21 issue, because there was some confusion before about
22 whether, in fact, you had ordered a briefing on this
23 question and we had discussed, for example, the
24 possibility of Corporation Counsel providing the
25 opening memo and KCA providing a responses memo and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that, apparently, didn't -- Corporation Counsel,
2 apparently, didn't understand that.

3 So what we did was we decided to provide
4 our own opening memo, at this point, but we would
5 suggest, at this point, that if you are going to be
6 setting some kind of schedule for briefing the
7 jurisdiction issues that, at this point, since we have
8 taken it upon ourselves to provide an opening memo on
9 the jurisdictional issue, it would be most helpful for
10 us then if the briefing were in terms of a response
11 and a reply, and we would very much like to file a
12 reply brief to whatever D.C. and the property owner
13 file in response to our opening memo.

14 CHAIRPERSON GRIFFIS: But you wanted
15 Corporation Counsel to start that, but you're saying
16 you started it now?

17 MS. FERSTER: We started it.

18 CHAIRPERSON GRIFFIS: Where are we on the
19 briefing on the jurisdictional issue of the Board for
20 the height from the owner and DCRA?

21 MS. GISOLFI-GILBERT: Speaking for DCRA,
22 Laura Gisolfi-Gilbert. We did not understand a
23 deadline for March 30th. My recollection is that --

24 CHAIRPERSON GRIFFIS: How come I was the
25 only one that had clarity?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. GISOLFI-GILBERT: No, because
2 originally there was a discussion about a March 30th
3 deadline and then my recollection is that once the
4 case was continued to another date that the Board
5 decided or you decided that you would wait and make
6 that determination of deadlines after the next
7 session. That was my understanding and my
8 recollection.

9 CHAIRPERSON GRIFFIS: Be that as it may,
10 it wasn't my understanding. My understanding is that
11 we knew that we wouldn't finish, but we wanted it
12 midstream and I think perhaps I wasn't so articulate
13 late in an evening, but the point was to get it in, so
14 we would have it as we were continuing. We don't.
15 That's where it is. What did I say? It was the 20th
16 that we were going to have them submitted by. Is that
17 correct?

18 MS. GISOLFI-GILBERT: The 20th is
19 acceptable. I have no particular opinion on the
20 appellant's needing to rebut what we say. I think you
21 had originally talked about simultaneous briefing.

22 CHAIRPERSON GRIFFIS: Right.

23 MS. GISOLFI-GILBERT: You know, I don't
24 know that it puts them at any major disadvantage to --
25 I mean, I think the arguments are going to be whatever

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the arguments are on either side of this matter.

2 CHAIRPERSON GRIFFIS: Excellent.

3 MS. GISOLFI-GILBERT: And I did want to
4 say --

5 CHAIRPERSON GRIFFIS: Ms. Ferster, you
6 wanted to respond to their briefing on the
7 jurisdiction. Is that correct?

8 MS. FERSTER: That's correct. We would
9 like to file a reply brief.

10 CHAIRPERSON GRIFFIS: Right. In terms of
11 the time that we have, is it something that you could
12 actually include in your findings and conclusions?

13 MS. FERSTER: We could do it that way.

14 CHAIRPERSON GRIFFIS: I think that's what
15 I'm anticipating just to keep us from not deciding
16 this sometime in '06, that we would actually look to
17 have the next hearing first in the afternoon, 1:00 on
18 the 20th. We'll go through closings. I'm going to get
19 to everything, but let me lay out the whole world as I
20 see it, at this point, so that we can have comments on
21 all of it.

22 We would have that submission on the 20th
23 and then we will note and set the entire schedule as
24 we would decide this or set for decision on whatever
25 our next decision making is. We won't make May 4th, so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we're doing the June, and that's how I see it and we
2 have some other things that would be submitted. Ms.
3 Brown?

4 MS. BROWN: Yes. I was going to state an
5 objection.

6 CHAIRPERSON GRIFFIS: Oh, boy.

7 MS. BROWN: To having any additional reply
8 by Mr. Ferster only because they have already briefed
9 this issue twice now.

10 CHAIRPERSON GRIFFIS: Right.

11 MS. BROWN: I don't see the need for a
12 reply.

13 CHAIRPERSON GRIFFIS: And that's why I
14 think it's only going to be -- it's appropriate within
15 the findings and conclusions that they would submit.
16 I mean, proposed findings and conclusions, that's
17 clearly an appropriate point, but I think it actually
18 is kind of a make work exercise if you look to reply
19 to the submissions on this. So you certainly have the
20 opportunity, but I don't think we need to do it
21 separately and then fold it into the case
22 presentation. It makes it all streamlined.

23 MS. FERSTER: That's fine. The only then
24 suggestion I might have would be that to the extent
25 that, again, as I said, we have provided our opening

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 brief today.

2 CHAIRPERSON GRIFFIS: Right.

3 MS. FERSTER: And we have provided it to
4 counsel for Montrose, as well as to the ANC today,
5 that we ask that the responsive brief be one or two
6 days before closing arguments, so that if we have some
7 response we can address it in our closing.

8 CHAIRPERSON GRIFFIS: Oh, no, that makes
9 perfect sense. Although, I set this for the 20th in
10 the afternoon, didn't I? All right. Let's move it
11 back a week. What is the possibility of getting the
12 briefing by the 13th? We're all okay with that? Well,
13 I'll add on all the time past that we asked for
14 before. That's three and a half weeks. How does that
15 sound?

16 MS. GISOLFI-GILBERT: The request wasn't
17 clear, the three and a half weeks.

18 CHAIRPERSON GRIFFIS: You get a week.

19 MS. GISOLFI-GILBERT: That's very tight
20 for me. I think Ms. Ferster asked for a couple of
21 days in advance, you know, if we could make it --
22 what's the Friday, the 15th?

23 UNIDENTIFIED SPEAKER: 16th.

24 MS. GISOLFI-GILBERT: The 16th.

25 CHAIRPERSON GRIFFIS: No, because that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 doesn't accommodate us, actually. We won't see it
2 until the morning of the Tuesday, which makes us walk
3 out here and not see anything. It will be on the 13th
4 or we'll set this all off another two, three weeks. I
5 can tell you I'm squeezing this in on the 20th. We're
6 going to run this to get closings in.

7 MS. GISOLFI-GILBERT: I guess the --

8 CHAIRPERSON GRIFFIS: The next date for
9 closing is going to be 11 May and if we set 11 May,
10 I'm not deciding this in our June decision making.
11 We're deciding it in July. By that time the Board may
12 be so fed up and take July and August off, which makes
13 it September. But nonetheless, I think we really
14 ought to work hard and try and do this.

15 MS. GISOLFI-GILBERT: My only hesitation
16 is that there have been -- were some representations
17 by Lori Monroe at a prior hearing about an OCC
18 position in this matter on the Height Act, which I
19 need to familiarize myself with, because --

20 CHAIRPERSON GRIFFIS: But there is nothing
21 on the record except her statement.

22 MS. GISOLFI-GILBERT: Okay.

23 CHAIRPERSON GRIFFIS: There is nothing to
24 familiarize yourself with.

25 MS. GISOLFI-GILBERT: All right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: And that ought to be
2 absolutely clear, because people shouldn't walk out of
3 here thinking that there is something else that we
4 need to see or are you going to see.

5 MS. GISOLFI-GILBERT: Okay.

6 CHAIRPERSON GRIFFIS: We're looking for
7 you guys to present the information for the Board to
8 deliberate, which also goes to the fact of I'm not
9 sure how much is needed to really argue and respond.

10 MS. GISOLFI-GILBERT: Okay.

11 CHAIRPERSON GRIFFIS: And back and forth.
12 My understanding from my Board when we asked for this
13 was a very, very succinct briefing on the issue.

14 MS. GISOLFI-GILBERT: Okay.

15 CHAIRPERSON GRIFFIS: I mean, quite
16 frankly, send in a letter and say the Board has
17 jurisdiction or it doesn't and we'll deal with it from
18 there.

19 MS. GISOLFI-GILBERT: Okay.

20 CHAIRPERSON GRIFFIS: 13th.

21 MS. GISOLFI-GILBERT: Well, we'll go with
22 the 13th. That's fine.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. FERSTER: Mr. Chairman, I have a
25 scheduling issue on April 20th that I hope will not be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a problem. I have to be in Superior Court, which is
2 obviously right down the block, but it's at 2:30.

3 CHAIRPERSON GRIFFIS: At 2:30?

4 MS. FERSTER: At 2:30.

5 CHAIRPERSON GRIFFIS: So that's
6 definitive, you have to be there at 2:30?

7 MS. FERSTER: Yes, before Judge Turner.

8 CHAIRPERSON GRIFFIS: Do I know Judge
9 Turner? Okay.

10 MS. GISOLFI-GILBERT: Is there any
11 possibility of going in the morning?

12 CHAIRPERSON GRIFFIS: Well, that's what I
13 was looking at. Mr. Moy, do you have an opinion on
14 that?

15 MR. MOY: It's always the Board's
16 prerogative.

17 CHAIRPERSON GRIFFIS: Wow.

18 MR. MOY: You have the schedule.

19 CHAIRPERSON GRIFFIS: We sure do have a
20 schedule.

21 MS. FERSTER: My matter before Judge
22 Turner shouldn't take me more than an hour if that
23 helps at all, so I should be out of there by --

24 CHAIRPERSON GRIFFIS: There's two options
25 and I'm willing to accommodate this. We could do it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 first in the morning on April 20th, 9:30, which,
2 frankly, puts the burden on the Board. That means we
3 probably won't start our afternoon until 3:00 or we
4 put you last in the afternoon.

5 MS. FERSTER: It's better for me last in
6 the afternoon.

7 CHAIRPERSON GRIFFIS: Is that better for
8 everybody?

9 UNIDENTIFIED SPEAKER: From 3:30 to 6:00?

10 CHAIRPERSON GRIFFIS: 3:30 to 6:00? No,
11 it's last in our afternoon not hers.

12 MS. BROWN: Last in the afternoon is fine
13 for the property owner.

14 CHAIRPERSON GRIFFIS: Okay. And I'm going
15 to be realistic. We have three full cases in the
16 afternoon. We may not call it until 5:00. We may not
17 call it until 6:00. Let's do this. I mean, I'm
18 trying to accommodate. I'm just putting reality into
19 this.

20 MS. GISOLFI-GILBERT: I would say 9:00 in
21 the morning is my preference.

22 CHAIRPERSON GRIFFIS: All right. We have
23 got two more minutes on this.

24 MR. ROTH: Mr. Chairman?

25 CHAIRPERSON GRIFFIS: Yes?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. ROTH: Just for the record, you don't
2 have to change any scheduling. I just want to say I
3 can't personally be here on the 20th. However, I keep
4 looking over my shoulder and Commissioner Weaver can
5 be at 5:00 if need be.

6 CHAIRPERSON GRIFFIS: Well, the only folks
7 that are actually required unless Ms. Ferster is
8 calling people as witnesses and two, obviously, will,
9 you know, pull together her rebuttal stuff. The only
10 folks are the owners if they are going to have
11 conclusions and whatever else, rebuttal and
12 conclusions. Okay.

13 MS. GISOLFI-GILBERT: I don't know if it
14 has already been decided, but if we could go at 9:30
15 in the morning that would definitely be my preference,
16 because I don't think we have got more than an hour to
17 go.

18 MS. FERSTER: I mean, I have a scheduling
19 issue in the morning, as well, and if it's possible, I
20 mean, I'm pretty sure that we have a very, very brief
21 rebuttal. For example, if it's at all necessary, Mrs.
22 Hargrove would like to testify for five minutes
23 basically to rebut the owners' issues about who saw
24 what at the ANC meeting.

25 CHAIRPERSON GRIFFIS: Okay. Here's the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 deal.

2 MS. FERSTER: And then we would go to
3 closing, so I don't anticipate --

4 CHAIRPERSON GRIFFIS: Don't let it be said
5 that I'm not an accommodating type of gentleman.
6 We're going to set this third in the afternoon.
7 That's going to buy you time to get back here on
8 schedule. We'll go through two applications.
9 Clearly, if you're here when that happens, then we'll
10 call the case. If you're not, we'll call it last in
11 the afternoon.

12 So we're going to ask everyone just to be
13 a little flexible in order to fit in the last little
14 piece of this and then the burden is ours. And so I
15 think that's the way to go with this that will, I
16 think, get us through this on the 20th with further
17 submissions, set this for decision making on whatever
18 I said. I should bring clarity, because then you walk
19 out of the room without it.

20 We'll be deciding this on the first
21 meeting in June. Is that what I said, Ms. Bailey.

22 MS. BAILEY: Yes, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Excellent. Okay.
24 Why don't you reiterate?

25 MS. BAILEY: Can I just, please, sir, so

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that -- on April 20th it will be the conclusion of the
2 hearing. At that time, the rebuttals and closings by
3 the appellants would be presented. Possibly June 1st,
4 decision. On April 13th DCRA is to provide a brief on
5 the jurisdictional issue. The appellants had asked
6 for a response to that brief that is filed by DCRA.
7 I'm not quite sure if a date was given for that.

8 CHAIRPERSON GRIFFIS: No, no response on
9 that. Thank you.

10 MS. BAILEY: No response. And that's what
11 I have, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Excellent. Yes?

13 MS. BROWN: Mr. Chairman, if the property
14 owner would be allowed to submit a memo on the legal
15 issues, as well, on April 13th. I heard only DCRA
16 included in that.

17 CHAIRPERSON GRIFFIS: What legal issues,
18 the jurisdiction of the height?

19 MS. BROWN: Yes.

20 CHAIRPERSON GRIFFIS: Will they be allowed
21 to? No, we're asking you to.

22 MS. BROWN: In her recitation she only
23 mentioned DCRA.

24 CHAIRPERSON GRIFFIS: Oh.

25 MS. BAILEY: I'm sorry.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BROWN: And I just wanted to clarify
2 that it's everybody.

3 CHAIRPERSON GRIFFIS: It's everybody,
4 everybody, anybody and everybody.

5 MS. BROWN: Okay. And then I have a
6 second objection. I'm sorry to belabor all this
7 tonight. On the document that was just submitted by
8 KCA, the appellant's supplemental memo on historical
9 treatment by Corporation Council and zoning
10 authorities on roof structure and basement FAR issues,
11 I do have an objection to the second exhibit, which is
12 a statement of Jim Fahey, former Zoning Administrator.
13 It's a declaration and I believe it's inappropriate
14 to include this. It's not a historical document.
15 It's a current declaration. He is not available for
16 cross examination.

17 CHAIRPERSON GRIFFIS: It's a declaration
18 on what?

19 MS. BROWN: On the historical treatment of
20 how to interpret the perimeter wall method versus the
21 grade level on the basement floor level for FAR.

22 CHAIRPERSON GRIFFIS: And the basis of
23 your objection is the fact that the author can't be
24 cross examined?

25

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 MS. BROWN: That's correct, that he is,
4 you know, giving current day testimony on historical
5 practices and we, obviously, would like the
6 opportunity to cross examine that witness on those
7 issues.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. BROWN: And there is implied weight
10 given to his declaration because of his past position
11 with the city.

12 CHAIRPERSON GRIFFIS: It's a tenable
13 situation, but a complex one that we have been in.
14 Oh, that's true. One quick question. Well, the way
15 we have dealt with this before and in prior, yes, the
16 Board will have to establish what sort of weight the
17 author is given based on the substance and it can be,
18 in fact, one option is to be treated just as a letter
19 that is submitted in and we'll take it for what it's
20 worth as you cannot, of course, cross examine any
21 letters that come in, well, conceivably not by
22 experts, but more of a factual witness.

23 The other is the fact that the author of
24 this letter, is he available as a witness?

25 UNIDENTIFIED SPEAKER: I would have to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 find out whether he would be available, he is quite
2 elderly. The letter that you have is notarized, it's
3 not just a memo.

4 CHAIRPERSON GRIFFIS: No, I understand
5 that, but it still rises to the level of if this is
6 being submitted for the Board to look at it with some
7 weight above and beyond, you know, we support and this
8 is a tall building or this is a short building,
9 shouldn't that author, shouldn't that substance be
10 available for cross examination?

11 MS. FERSTER: I mean, we had submitted it
12 based on the past practice before this Board of
13 accepting written submissions that were, essentially,
14 part of the case to be included in the case of one of
15 the parties and, based on that past practice, we
16 certainly think that if there is any issue as to the
17 weight that should be given to this memo, that weight
18 is established by virtue of the fact that he signed a
19 sworn affidavit.

20 However, if, in fact, this Board, after
21 reviewing the affidavit, believes that it is important
22 to have Mr. Fahey, who is a former Zoning
23 Administrator and is quite elderly, come and testify
24 as to the past practice on the use of perimeter method
25 versus the average grade plane method, which is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 issue that he has submitted the sworn affidavit for,
2 to appear before you, it would have to be -- we would
3 have to consult him, because he is elderly and we
4 would have to give him a very specific time, because
5 he just doesn't have the ability to come and sit. He
6 doesn't live near here, first of all. He would have
7 to travel some distance and then he would need to be
8 slotted very carefully.

9 MS. GISOLFI-GILBERT: I would add that if
10 the affidavit is going to be considered on any level,
11 then I should have the opportunity to bring it to the
12 current Zoning Administrator and file a responsive
13 affidavit if necessary. And if Mr. Fahey is not going
14 to be cross examined then, you know, we should be able
15 to respond and file an affidavit for whatever value it
16 may be given, whatever weight or lack of weight that
17 it may be given.

18 MS. FERSTER: Mr. Chairman?

19 MS. GISOLFI-GILBERT: I think it has very
20 limited relevance, because we're talking about
21 something that is, you know, prior to 1986.

22 MS. FERSTER: I mean, that seems to us a
23 good way of proceeding, because --

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. BROWN: I would object, because, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 know, this is somebody that should have been -- if
2 they wanted to submit this information before they had
3 the opportunity, they knew that this was going to be
4 the day for rebuttal. They knew that this was going
5 to be the day that we presented. They had plenty of
6 opportunity to address these issues in the six other
7 hearings that we have had on this, and it should have
8 been part of their case in chief or if they needed to
9 do it in rebuttal then, you know, that was supposed to
10 happen today.

11 And if we're going to have to have the
12 current Zoning Administrator filing an affidavit,
13 we're going to want to file an affidavit from another
14 expert and we're going to end up having to reopen this
15 all again to testimony that should have already
16 happened. This is the end of the hearing and the
17 easiest and most prudent and efficient way to deal
18 with this is strike it from the record.

19 MS. GISOLFI-GILBERT: Actually, on further
20 consideration I agree with Ms. Brown.

21 MS. FERSTER: We think it's appropriate
22 rebuttal testimony and it rebuts the Zoning
23 Administrator's testimony and this is the proper place
24 for that testimony to go.

25 MS. BROWN: Then we would need that as an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expert witness, as present to cross examine and not
2 through sworn affidavit testimony.

3 VICE CHAIR MILLER: I think in the past we
4 haven't afforded an affidavit expert status, so I
5 think what we're talking about is admitting it in like
6 we would admit in a letter as part of the record. But
7 given the stature of the past Zoning Administrator, I
8 mean, it would be my view that if you wanted to file
9 something in response, such as an affidavit from the
10 current Acting Zoning Administrator, that might be
11 appropriate.

12 MS. BROWN: And we would be glad to get
13 every other past Zoning Administrator in here. I
14 think the testimony that really is relevant is the
15 current Zoning Administrator we have put on our case
16 in chief, they have put on their case in chief. End
17 of story.

18 CHAIRPERSON GRIFFIS: Okay. In which case
19 it seems to go back to what the Government was saying,
20 that perhaps they will take this and have it looked at
21 by the current Zoning Administrator and have a
22 submission in response and we'll leave it at that. I
23 will leave the record open if the owner wants to --

24 MS. GISOLFI-GILBERT: However, I did more
25 or less change my position and I support what Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Brown is saying.

2 CHAIRPERSON GRIFFIS: Yes, and I listened
3 to it all, too.

4 MS. GISOLFI-GILBERT: Right.

5 CHAIRPERSON GRIFFIS: And that's the only
6 way we're going to remedy this, to get somebody down
7 that may or may not be, we'll have to reschedule
8 another hearing just for this witness. Look, I think
9 the Board is diligent enough in its thought process to
10 understand the substance and the weight to be given on
11 this. It is fully known that we're looking at what
12 the current Zoning Administrator did and their
13 decision to do it, and so we'll keep the record open
14 for a response to that item in terms of the letter
15 that has been submitted into the record from both DCRA
16 and the owners. Okay. Anything else? We're almost
17 to the 20th. Shall we just stay?

18 MS. FERSTER: One question. When will
19 those responses be due? Are you going to set a
20 deadline for what you're going to keep the record open
21 for any responsive declarations?

22 CHAIRPERSON GRIFFIS: Yes, Ms. Bailey
23 won't let me leave until I set that. Ms. Bailey, how
24 much time do we need? This is in now? Is it
25 conceivable that's in on the 13th or is in on the 20th?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 You have got one submission on the 13th. Do you want
2 them by the same day or on the 20th?

3 MS. BROWN: We can put it in on the 20th as
4 part of our --

5 UNIDENTIFIED SPEAKER: I prefer the 20th.

6 MS. BROWN: And will we be setting a
7 schedule for draft orders? No?

8 CHAIRPERSON GRIFFIS: Well, I can set up a
9 tentative schedule.

10 MS. BROWN: But we'll do that the next?

11 CHAIRPERSON GRIFFIS: Oh, absolutely.

12 MS. BROWN: Okay.

13 CHAIRPERSON GRIFFIS: I'm going to set up
14 the total order. The only reason why I'm not doing it
15 tonight is the fact that, you know, I would hate to
16 curse that we don't finish next time and then we have
17 to redo the whole schedule. So yes, absolutely, the
18 closings and the conclusions. I will set the schedule
19 for the final submissions, but keep in mind when
20 you're all putting your schedules together, which is
21 why I have actually tentatively put a decision making
22 on, it will be within that window. So we're looking
23 at mid May for the rest of the submissions for the 1
24 June decision. Okay.

25 MR. MOY: Mr. Chair?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Yes?

2 MR. MOY: Staff would just like to remind
3 the Board that the decision date actually would be
4 June 8th.

5 CHAIRPERSON GRIFFIS: That's true.

6 MR. MOY: Because June 1st is the day after
7 Memorial Day. We have not scheduled any meetings on
8 that date.

9 CHAIRPERSON GRIFFIS: That's so smart.
10 Okay. So we're looking at the 8th of June. All right.
11 Is everyone comfortable with what has now happened?

12 MS. FERSTER: A question about mechanics.
13 Since there will be submissions that are going to be
14 coming either on April 20th or prior to April 20th, can
15 there be some direction that the other parties be
16 served by hand, so that we can at least have an
17 opportunity to see them before we appear before you on
18 the 20th, hand delivery of all submissions?

19 MS. GISOLFI-GILBERT: The only submissions
20 that are -- oh.

21 CHAIRPERSON GRIFFIS: We're looking at the
22 height on the 13th.

23 MS. FERSTER: The height is on the 13th.

24 CHAIRPERSON GRIFFIS: Is that what you
25 want to hand deliver?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. FERSTER: I would rather it be hand
2 delivered, yes, and I would rather have -- if you're
3 going to submit an opposing declaration or something
4 from the Zoning Administrator, which you have
5 indicated will be due on April 20th, if that could be
6 filed, you know, 9:00 a.m. or by close of business on
7 the 19th, anyway just so we can see it beforehand.

8 MS. GISOLFI-GILBERT: Well, I don't think
9 we have had that option ourselves of seeing things in
10 advance. However, as far as the 13th, I'm happy to
11 email copies to anybody. I think that's much simpler.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. GISOLFI-GILBERT: And the same for the
14 20th, I don't think they need the notarized statement
15 in front of them to see the substance of it.

16 CHAIRPERSON GRIFFIS: I think you get her
17 gist though. Let's get it to them as fast as
18 possible.

19 MS. GISOLFI-GILBERT: Right.

20 CHAIRPERSON GRIFFIS: Let's email it, fax
21 it, whatever.

22 MS. GISOLFI-GILBERT: Right.

23 CHAIRPERSON GRIFFIS: And then we'll do
24 the proper actual service as you would need to, but I
25 think that's well said and I think you all ought to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 try and accommodate that. Okay. Anything else?

2 MS. GISOLFI-GILBERT: Do I have your email
3 address?

4 CHAIRPERSON GRIFFIS: Truly? Okay. Ms.
5 Bailey, all set?

6 MS. GISOLFI-GILBERT: I have all email
7 addresses, make sure I have them.

8 CHAIRPERSON GRIFFIS: Okay. Very well.
9 If there is nothing else from the Board then, we can
10 adjourn the 6th of April 2004 Afternoon Session. Thank
11 you all very much. I think if our shades were open,
12 we would see it might still be light out, so go enjoy
13 the rest of the evening.

14 (Whereupon, the Public Hearing was
15 concluded at 6:16 p.m.)

16

17

18

19

20

21

22

23

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701