

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING AND ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY  
APRIL 20, 2004

+ + + + +

The Public Hearing was convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:29 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Vice Chairperson
JOHN PARSONS	Commissioner, (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Acting Secretary
BEVERLY BAILEY	Office of Zoning
JOHN K. A. NYARKU	Office of Zoning

OTHER AGENCY STAFF PRESENT:

ARTHUR JACKSON	Office of Planning
JOEL LAWSON	Office of Planning
STEPHEN MORDFIN	Office of Planning
KAREN THOMAS	Office of Planning

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D.C. OFFICE OF Corporation Counsel:

SHERRY GLAZER, ESQ.  
JACOB RITTING, ESQ.

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9:29 a.m.

1  
2 CHAIRPERSON GRIFFIS: Let me call to order  
3 the morning session of 20 April, '04. This is the  
4 public hearing before the Board of Zoning Adjustments  
5 of the District of Columbia. I am Geoff Griffis,  
6 Chairperson. Joining me today is Ms. Miller, Vice  
7 Chair, and representing the National Capital Planning  
8 Commission is Mr. Mann.

9 Mr. Hood is with us representing the  
10 Zoning Commission and will be right out. Copies of  
11 today's hearing agenda are available for you. They  
12 are located where you entered into the hearing room.  
13 They are on the wall. Please pick up a copy. You can  
14 see the chronology of the cases we will get through  
15 this morning.

16 Two important aspects of conduct. First  
17 of all, all proceedings before the Board of Zoning  
18 Adjustment are recorded and they are now recorded in  
19 two fashions. They are recorded by the court reporter  
20 who is sitting to my right on the floor and they are  
21 also being broadcast live on the Office of Zoning's  
22 website.

23 Therefore, we ask several things of you.  
24 When coming forward to speak to the Board, you will  
25 need to have filled out two witnesses cards. Witness

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1 cards are available at the table where you entered  
2 into the room and also at the table in front of us  
3 where you will give testimony.

4 Those two cards are to be filled out and  
5 given to the recorder prior to coming forward. I  
6 would also ask that when sitting down to give  
7 testimony before the Board that you state your name  
8 and your address for the record so that we can give  
9 you proper credit for that which is said.

10 We do have some technical disturbances  
11 sometimes when all the microphones are on up front so  
12 I'm just going to ask if people would be aware of when  
13 you speak make sure the microphone is on and then when  
14 you finish you can turn it off and I'll probably  
15 interrupt you if we get a lot of feedback.

16 That being said, the order of procedure  
17 for variances and special exceptions is statement and  
18 witnesses by the applicant. Second is any Government  
19 reports attended to the application such as the Office  
20 of Planning or DDOT.

21 Third is the report from the Advisory  
22 Neighborhood Commission within which the property is  
23 located. Fourth is persons or parties in support of  
24 an application. Fifth is persons or parties in  
25 opposition to the application. Sixth, finally, we'll

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1 have closing remarks and any sort of rebuttal  
2 testimony or witnesses that the applicant has.

3 Pursuant to Section 3117.4 and also 3117.5  
4 the following time constraints are applied to all  
5 applications. The applicant, appellant, persons or  
6 parties including witnesses is limited to no more than  
7 60 minutes. The appellees, persons, and parties,  
8 except the ANC, of course, in opposition is likewise  
9 limited to 60 minutes.

10 Individuals that are going to give  
11 testimony before the Board, individual persons, not  
12 parties in the case, will be limited to three minutes  
13 for their testimony. Time constraints do not include  
14 cross-examination or questions from the Board. Cross  
15 examination, of course, is permitted by the applicant  
16 and parties in the case.

17 As I stated, the ANC within which the  
18 property is located is automatically a party in the  
19 case and, therefore, will conduct cross examination.  
20 Nothing prohibits this Board from restricting cross  
21 examination in time, in subject matter, in direction.

22 We will be fairly vigilant in doing that.

23 The record will be closed at the  
24 conclusion of each case except for any material that  
25 this Board specifically requests. We will make very

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1 clear what information is to be submitted into the  
2 record and when it is to be submitted into the Office  
3 of Zoning. After that material is received, it should  
4 be obvious that the record would then finally be  
5 closed and no other information would be accepted into  
6 the record.

7 It's important to note establishing the  
8 record because, of course, that's what we deliberate  
9 on so anything that you want to say or have us know  
10 should be said today or should be submitted in  
11 writing.

12 The Sunshine Act requires that this Board  
13 conduct all its hearings in the open and before the  
14 public. This Board may, however, enter into executive  
15 session during or after a hearing on the case. This  
16 would be in accordance with the Sunshine Act and also  
17 our procedures and rules.

18 We do enter executive sessions in order to  
19 review records and to deliberate on cases. The  
20 decision of the Board in contested cases must be based  
21 exclusively on the record, which is why it's so  
22 important to get everything in that you would like so  
23 that we have a full record.

24 I would ask that people turn off cell  
25 phones and beepers at this time so we don't have any

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1 disruption of the proceedings as well run through the  
2 morning session. I would also request that people  
3 present today not engage Board members in conversation  
4 so that we do not give the appearance of receiving  
5 information outside of the public record.

6 We will now consider any preliminary  
7 matters. Preliminary matters are those which relate  
8 to whether a case will or should be heard today such  
9 as request for a postponement, continuances, or  
10 withdrawal, or whether proper and adequate notice has  
11 been provided.

12 If you are not ready to proceed with the  
13 case today or you believe that the Board should not  
14 proceed with a specific case, I would ask that you  
15 just come forward and have a seat at the table in  
16 front of us as an indication of having a preliminary  
17 matter. Let me go to staff to see if they have any  
18 preliminary matters for us this morning.

19 Ms. Bailey on my very far right  
20 representing the Office of Zoning I wish a very good  
21 morning to. And Mr. Moy also on my right with the  
22 Office of Zoning. Ms. Bailey, do we have any other  
23 preliminary matters at this time?

24 MS. BAILEY: Mr. Chairman, members of the  
25 Board, good morning. No, sir. Staff has none.

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1 CHAIRPERSON GRIFFIS: Excellent. Not  
2 seeing any other indication of preliminary matters,  
3 then I would ask that everyone wishing or thinking of  
4 testifying this morning, if you would please stand and  
5 give your attention to ms. Bailey and she is going to  
6 administer the oath.

7 MS. BAILEY: Please raise your right hand.  
8 Do you solemnly swear or affirm that the testimony  
9 you will be given is the truth, will be the truth, the  
10 whole truth, and nothing but the truth?

11 WITNESSES: I do.

12 MS. BAILEY: The first case, Mr. Chairman,  
13 members of the Board, is Application No. 17144 of Ken  
14 Golding, pursuant to 11 DCMR 3104.1, for a special  
15 exception to allow a one story family room addition to  
16 the rear of a single-family detached dwelling under  
17 Section 223, not meeting the rear yard requirements  
18 (Section 404), in the R-1-B District at premises 5519  
19 Carolina Place, N.W. (Square 1449, Lot 98).

20 Is there someone here representing Ken  
21 Golding? Please have a seat at the table.

22 CHAIRPERSON GRIFFIS: Hi. Good morning.  
23 If you wouldn't mind, there's a button on the base of  
24 that microphone. The light will turn on. Excellent.  
25 You can just provide your name and address.

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1 MS. FABRY: Yes. My name is Joan Fabry of  
2 Fabry Associates Architects. Our address is 1777  
3 Church Street, N.W. in the District. The zip code is  
4 20036. The owner, Ken Golding, is present as well.  
5 His address is 5519 Carolina Place, N.W.

6 CHAIRPERSON GRIFFIS: Good. Thank you  
7 very much. You are here before us under Section 223  
8 which is a special exception. This is self-certified.  
9 Is that correct?

10 MS. FABRY: Correct.

11 CHAIRPERSON GRIFFIS: Okay. Can I ask you  
12 one quick question? In terms of the self  
13 certification form that you laid out in terms of the  
14 rear yard, what was your measurement on the rear yard?

15 MS. FABRY: The measurement that is  
16 allowed is 25 feet. The projection of the addition  
17 into the rear yard is between three and nine feet.  
18 The yard is trapezoidal and the building does not  
19 parallel the rear yard line so it varies. The rear  
20 yard at its least shallow would be 16 feet with nine  
21 foot maximum projection.

22 CHAIRPERSON GRIFFIS: And what's your  
23 measurement of the rear yard then?

24 MS. FABRY: Oh, the rear yard --

25 CHAIRPERSON GRIFFIS: Existing.

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1 MS. FABRY: Existing. Oh, I don't know if  
2 I noted that. I'm sorry.

3 CHAIRPERSON GRIFFIS: I did.

4 MS. FABRY: I did.

5 CHAIRPERSON GRIFFIS: You gave me two  
6 dimensions. That was the issue.

7 MS. FABRY: I'm sorry. It's because it  
8 varies. Let me just go back and look at my notes. It  
9 varies now from 28.3 feet to 34.5 feet, 25 foot being  
10 allowable or required.

11 CHAIRPERSON GRIFFIS: Okay. So for  
12 clarification, of course, you would have to establish  
13 an average and give me one dimension for the rear yard  
14 and existing. I think we can move on from that.

15 MS. FABRY: Okay.

16 CHAIRPERSON GRIFFIS: Let me just  
17 summarize what I have in the record and you tell me if  
18 this is also your understanding. The Office of  
19 Planning has submitted a report. It is Exhibit No. 25  
20 in the record. They are recommending approval. They  
21 will present but I want to run through everything that  
22 we do have.

23 DDOT for -- interesting -- also submitted  
24 on this Section 223 and we will get through that. Is  
25 there anyone from ANC-3D here represented? Not seeing

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1 any indication they also are Exhibit 22 in  
2 recommending approval. There is no request for party  
3 status in this. I suggest that we get right into it.

4 If you would not mind just addressing very briefly  
5 how this complies with Section 223, I think we can  
6 move ahead.

7 MS. FABRY: Basically, the narrow  
8 trapezoidal shape of the property makes it difficult  
9 for the owners to comply with the area Zoning  
10 Regulations. The existing home that was built in 1932  
11 didn't take advantage of its potential square footage.

12 It occupies currently slightly more than 27 percent  
13 of its lot while under the 40 percent allowable.

14 It set back over 21 feet from the front  
15 property line which is well over the five foot  
16 limitation of the existing building restriction line.

17 Its size and placement on the lot creates a side yard  
18 measuring 12 feet and 11.8 feet which is four foot  
19 larger than the allowable eight-foot side yard.

20 The owners with two teenage children wish  
21 to add a family room that relates -- am I doing this  
22 appropriately?

23 CHAIRPERSON GRIFFIS: That's fine. I  
24 thought I heard you say the owners are two teenage  
25 children.

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1 MS. FABRY: Oh, no.

2 CHAIRPERSON GRIFFIS: I thought, "Man,  
3 what a blast."

4 MS. FABRY: They may be at heart. They  
5 wish to add a family room that relates to the kitchen  
6 and rear yard. It's not logical to add to the front  
7 because of the established building line along the  
8 street and the configuration of rooms that is  
9 existing. It is also virtually impossible to add to  
10 the sides because of the narrow four-foot strips of  
11 property left to develop.

12 CHAIRPERSON GRIFFIS: Let me interrupt you  
13 because a lot of that is in your written submission  
14 and it actually is going to a much higher threshold of  
15 variance. You've been talking about use variance  
16 perhaps but I don't want to distract. The issue comes  
17 under Section 223 which is a lower threshold which is  
18 special exception. If you were allowed to do this  
19 addition, would it substantially or adversely affect  
20 the use and enjoyment of the neighboring properties?

21 MS. FABRY: No, it does not affect the  
22 light or air. It's a one-story addition with ample  
23 side yard set into the rear yard which is typically  
24 allowed to have accessory buildings such as garages  
25 anyhow and it's not affecting the light or air of the

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1 properties.

2 CHAIRPERSON GRIFFIS: And communication  
3 has happened with the adjacent neighbors?

4 MR. GOLDING: Yes, it has.

5 CHAIRPERSON GRIFFIS: And nothing has been  
6 evident in terms of concern or any problems that we  
7 should be aware of?

8 MR. GOLDING: No.

9 CHAIRPERSON GRIFFIS: Okay. I'm just  
10 going to have you turn on your microphone, too. The  
11 addition together with the original building is in  
12 keeping with the architectural character of the  
13 neighborhood? Is that correct?

14 MS. FABRY: Yes, it is. It is being  
15 designed with the same detailing that is existing in  
16 the home.

17 CHAIRPERSON GRIFFIS: Okay. And it's  
18 noted that the actual exterior finish is going to be  
19 the cedar shingle?

20 MS. FABRY: Correct, and siding. A  
21 mixture of both.

22 CHAIRPERSON GRIFFIS: Indeed. You have  
23 self-certified the fact that the lot occupancy allows  
24 you to come under 223. Questions or clarifications?  
25 What is the adjacent property line condition? Is

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1 there a fence?

2 MR. GOLDING: There's a fence on both  
3 sides.

4 CHAIRPERSON GRIFFIS: On both sides. A  
5 wood fence?

6 MR. GOLDING: A wood fence on one and a  
7 partial wood and metal chain link on the other.

8 CHAIRPERSON GRIFFIS: Indeed. Very well.  
9 Anything else from the Board? Questions? If you  
10 don't mind, we'll just move into other Government  
11 reports at the end. This will give you a chance to do  
12 any conclusionary remarks unless there is something  
13 that you want to address to the Board now.

14 MR. GOLDING: We have a letter of support  
15 from one of the neighbors.

16 CHAIRPERSON GRIFFIS: Excellent. We are  
17 going to need that submitted if it's not already in  
18 the record.

19 MR. GOLDING: I think I did put it in the  
20 record.

21 CHAIRPERSON GRIFFIS: Okay. I'll make  
22 note of that when we get --

23 MR. GOLDING: Adjacent neighbor.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. GOLDING: The other neighbor is out of

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1 town and just bought the house.

2 CHAIRPERSON GRIFFIS: And that's Francis  
3 Seymour?

4 MR. GOLDING: That's correct.

5 CHAIRPERSON GRIFFIS: Okay. We do have  
6 that in the record. It's Exhibit No. 23. Okay. Very  
7 well. If there's nothing else immediately, then let's  
8 go to the Office of Planning. Mr. Jackson is with us  
9 and we wish him a very good morning.

10 MR. JACKSON: Good morning, Mr. Chair, and  
11 members of the Board. We'll briefly go through the  
12 Office of Planning's report and state that we stand on  
13 our report and would just highlight a couple of  
14 issues.

15 CHAIRPERSON GRIFFIS: Let me interrupt you  
16 just briefly. Do you have a copy of the Office of  
17 Planning's report?

18 MS. FABRY: Yes.

19 CHAIRPERSON GRIFFIS: So you have reviewed  
20 it?

21 MS. FABRY: Yes.

22 MR. GOLDING: Yes.

23 CHAIRPERSON GRIFFIS: Excellent. Sit back  
24 and relax and I'll have you turn off your microphone.

25 MR. JACKSON: Briefly we went through and

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1 the issue is the irregular rear lot and the addition  
2 would require -- would reduce the rear yard to a  
3 minimum of 16 feet. The building dates from 1930 and  
4 is eligible for consideration for 223.

5 Going through the standards of approval  
6 for 223, we found that the proposed addition would not  
7 alter the site substantially and, thus, would not  
8 adversely affect the air and light or enjoyment of  
9 adjacent properties. The applicant has demonstrated  
10 through their illustrations that the design would be  
11 consistent with the existing building and as such  
12 would be a welcome addition to the building as opposed  
13 to being conflicting with what currently exist.

14 The lot occupancy provisions of 223 are  
15 not required because it would not increase the lot by  
16 50 percent. Thus, we don't think that any additional  
17 treatment is required.

18 Our conclusion is that the application  
19 meets the requirements of 223. We also note that it  
20 sits with the conference of plan and that the ANC-3D  
21 recommends approval. Therefore, we recommend approval  
22 of a special exception to reduce the required rear  
23 yard to 16 feet and we sit available for questions.

24 CHAIRPERSON GRIFFIS: Thank you very much.

25 Does the Board have any questions of the Office of

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1 Planning? Ms. Miller?

2 VICE CHAIR MILLER: Well, I have a  
3 question regarding the Department of Transportation's  
4 report unless someone is here from DOT which I doubt.

5 MR. GOLDING: I haven't seen the  
6 Department of Transportation Report.

7 VICE CHAIR MILLER: Oh, you haven't?

8 MR. GOLDING: No.

9 VICE CHAIR MILLER: Okay.

10 CHAIRPERSON GRIFFIS: It's going to be  
11 tough to answer that question, Mr. Jackson.

12 MR. JACKSON: Would you like to review it?

13 CHAIRPERSON GRIFFIS: No. Does the  
14 applicant request examination of the Office of  
15 Planning? Anything else for the Office of Planning?  
16 If not, thank you very much. Let's go to the other  
17 Government report, Ms. Miller, evidence in Exhibit 26,  
18 and that is the DDOT report. Do you have a copy of  
19 that also? Okay.

20 Let me read in pertinent part, first of  
21 all, there's one slight error that they are indicating  
22 that you are requesting a variance, which you're not.

23 The pertinent last paragraph reads, "The proposed  
24 addition will displace a parking space required for a  
25 single family dwelling. That is, of course, under

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1 2101.1.

2 It will create over spill parking on the  
3 neighborhood streets. While this proposal would  
4 eliminate the required practice, the Department of  
5 Transportation believes the addition will have a  
6 minimal negative impact on the neighborhood and  
7 support the application." They actually are in  
8 support. Are you tearing down a garage? Can you turn  
9 on your microphone?

10 MR. GOLDING: No, I'm not tearing down a  
11 garage.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. GOLDING: Don't have a garage.

14 CHAIRPERSON GRIFFIS: So you didn't have  
15 any sort of enclosed area or originally with the house  
16 was there a parking space there?

17 MR. GOLDING: No.

18 CHAIRPERSON GRIFFIS: Okay. That's what  
19 we need. Thank you very much. Any other  
20 clarification questions on that? I don't have any  
21 other attended Government reports. Attended to this  
22 application we do have the letter from the ANC-3D  
23 which is recommending approval as I've indicated.  
24 They do say in pertinent part, "We feel it met all  
25 criteria for the special exception." Obviously you

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1 went and presented this to the ANC.

2 MR. GOLDING: Yes, I did.

3 CHAIRPERSON GRIFFIS: Indeed. Okay.  
4 Anything further on that? Comments? Questions? Very  
5 well. Is anyone here attended to application 17144 to  
6 give testimony, persons to give testimony either in  
7 opposition or support? Not seeing any indication of  
8 persons present to give testimony, we will make note  
9 again the letter of support of the adjacent neighbor.  
10 You've indicated that the other adjacent neighbor  
11 just purchased and moved in?

12 MR. GOLDING: Yes.

13 CHAIRPERSON GRIFFIS: Have they reviewed  
14 it? Did you just talk to them about what you are  
15 proposing?

16 MR. GOLDING: I've shown the plans to  
17 everybody in the neighborhood and no one had any  
18 objections. Everybody adjacent to my house. Not the  
19 whole neighborhood.

20 CHAIRPERSON GRIFFIS: That's a lot of work  
21 doing that. Okay. Any other quick clarification  
22 questions, Board?

23 I'll turn it over to you. Any questions  
24 you might have?

25 MR. GOLDING: I have none. I used to do

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1 that for the Planning Office in Denver, Colorado. You  
2 did a very nice job.

3 CHAIRPERSON GRIFFIS: Thank you. Okay.  
4 If there's nothing further then, 6223, of course, is  
5 one of the best sections in the Zoning Regulations and  
6 I'm not going to go into it because my Board has heard  
7 my little vignette all too often but it's fairly clear  
8 on the application here that I think it is strong and  
9 should be supported and I would move approval of  
10 Application 17144 of Ken Golding pursuant to 3104.1  
11 for special exception to allow a one-story family room  
12 addition at the rear of the single family detached  
13 dwelling not meeting the rear yard requirement,  
14 Section 404, premises 5519 Carolina Place, N.W., and  
15 would ask for a second.

16 VICE CHAIR MILLER: Second.

17 CHAIRPERSON GRIFFIS: Thank you very much.  
18 I think going through the written submission and also  
19 the oral testimony this morning obviously we have  
20 great support from all those that have viewed this and  
21 looking at their analysis and also our own analysis of  
22 Section 223 it would not impact light or air or any  
23 other requirements for the special exception of 223.  
24 Further deliberations? Comments? Very well. I'll  
25 ask for all in favor to signify by saying I.

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1 ALL: Aye.

2 CHAIRPERSON GRIFFIS: Opposed? Record the  
3 vote.

4 MS. BAILEY: Mr. Chairman, the vote is  
5 recorded as four, zero, one to approve the  
6 application. Mr. Griffis made the motion, Ms. Miller  
7 seconded. Mr. Hood and Mr. Mann are in agreement.  
8 Mr. Etherly is not present today. Are we doing a  
9 summary order on this, Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes.

11 MS. BAILEY: Thank you, sir.

12 CHAIRPERSON GRIFFIS: Thank you very much.  
13 Thank you all very much. Enjoy the pleasant day.

14 Let's call the next case then.

15 MS. BAILEY: Application No. 17146 of the  
16 United House of Prayer, pursuant to 11 DCMR 3103.2,  
17 for variances from the minimum lot area and width  
18 requirements under Section 401 to allow the  
19 construction to a fault (two-family dwelling) in the  
20 R-4 District at premises 1312 5th Street, N.W. (Square  
21 480, Lot 820).

22 CHAIRPERSON GRIFFIS: Ms. Bailey, if I'm  
23 not mistaken, Exhibit 19 is a request for party  
24 status.

25 MS. BAILEY: Yes, Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: Is Mr. Thomas here?  
2 A Mr. Thomas? Are you aware you have a party status  
3 request in opposition to this application? Let me  
4 have you introduce yourselves.

5 MR. GREEN: Good morning, Mr. Chairman,  
6 and other distinguished members of the Board. My name  
7 is Apostle Green, Director of Special Projects for  
8 Bishop S.C. Madison United House of Prayer.

9 CHAIRPERSON GRIFFIS: And with you is?

10 MR. GREEN: With me is Mrs. Suzane Reatig  
11 who is a distinguished architect for the United House  
12 of Prayer.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. GREEN: And we are pleased to be here  
15 today on behalf --

16 CHAIRPERSON GRIFFIS: That's nice of you  
17 to say.

18 MR. GREEN: Oh, thank you.

19 CHAIRPERSON GRIFFIS: Are you aware of the  
20 application for party status from Mr. Thomas?

21 MR. GREEN: There was one person who  
22 contacted us who preliminarily indicated they were in  
23 opposition but I got a phone call yesterday indicating  
24 that opposition had been withdrawn. He was a neighbor  
25 and was concerned about parking and we satisfied him

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1 with his concern. The ANC, of course, has given their  
2 unanimous support.

3 CHAIRPERSON GRIFFIS: Was it Mr. Thomas  
4 you talked to?

5 MR. GREEN: All I know is there was one  
6 person who indicated they were going to go on record  
7 in opposition.

8 CHAIRPERSON GRIFFIS: How did you satisfy  
9 his concern?

10 MR. GREEN: We informed him that there is  
11 parking provided to the rear of the property that we  
12 are building and his property apparently was in kind  
13 of a little cul-de-sac in the alley and he was  
14 concerned that he would be limited to access his  
15 property from the rear of the alley and parking on our  
16 property would adversely impact on his property.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. GLAZER: Mr. Chair, if I may  
19 interrupt, I believe the party status request was from  
20 Mr. Thomas Bandy.

21 CHAIRPERSON GRIFFIS: Oh, I'm sorry.

22 MS. GLAZER: Just for clarification for  
23 the record.

24 CHAIRPERSON GRIFFIS: That's an excellent  
25 clarification.

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1 MR. GREEN: Mr. Bandy was the person that  
2 I spoke to. He called me yesterday and told me his  
3 was withdrawing his opposition. When you said Mr.  
4 Thomas I hesitated.

5 CHAIRPERSON GRIFFIS: I can't imagine you  
6 would know who I was talking about.

7 MR. GREEN: Okay.

8 CHAIRPERSON GRIFFIS: Well, there it is.  
9 We still are, of course, without anything official  
10 with him withdrawing the party status. There is an  
11 indication of the proximity of Mr. Bandy's house. He  
12 does indicate that he's concerned about vehicles  
13 turning into the rear parking area, increased trash in  
14 alley. I think that's pretty much the extent of it.  
15 Of course, there is an importance to be granted party  
16 status and it is to have full participation in the  
17 case. I do think we can look at this as written  
18 testimony and take it for our own analysis. As Mr.  
19 Bandy is not here, I'm not sure that it would rise to  
20 the level of granting party status at this point.  
21 Others?

22 VICE CHAIR MILLER: I would concur. I  
23 don't see how we could grant party status to someone  
24 who is not here to undertake the responsibilities of  
25 party status.

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1 CHAIRPERSON GRIFFIS: Okay. Anything  
2 further?

3 MR. HOOD: Mr. Chairman, I would disagree  
4 with my colleagues but that's fine. I'm not going to  
5 belabor the point or argue. I think once we do  
6 entitle him to party status, he has a fully  
7 participatory process throughout the whole process.  
8 We do have an application we have to go with the  
9 application that's in front of us and he is affected.  
10 I don't think we would do any harm, ourselves any  
11 harm to give him party status.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. HOOD: Even though he's not here and  
14 able to ask questions, later on down the line for an  
15 appeal or whatever the issue may be, we have done due  
16 diligence to give him the party status which is in the  
17 record. While I take the gentleman's word satisfying  
18 his issues, we still have something in the record  
19 that's complete.

20 CHAIRPERSON GRIFFIS: Okay. I think that  
21 is an excellent point. It isn't just that you have to  
22 be here or not. I think if we go through the  
23 application for party status, then the last question  
24 is what I find the most substantive, and that is  
25 explaining how this person would be more

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1 significantly, distinctly, or uniquely affected in  
2 character indicating there would be increased trash in  
3 the alley.

4 Well, I guess, he's indicating his house  
5 would be damaged based on the vehicle movement through  
6 the alley. I'm open to hear further comments on that  
7 then from other Board members. Any additional  
8 comments, Board members? Mr. Mann? Ms. Miller?  
9 Additional comments on the request for party status?  
10 Does it rise to the level in answering how he is  
11 uniquely and distinctly affected to be granted party  
12 status in this case?

13 MR. HOOD: I don't think we need to get  
14 hung up on that, Mr. Chairman. I withdraw my  
15 comments. I just don't see us losing either way in  
16 this granting party status. You only have one  
17 applicant, one person asking for it but if it's going  
18 to tie us up for 20 minutes, I'll just withdraw my  
19 comments.

20 CHAIRPERSON GRIFFIS: I don't think your  
21 comments need to be withdrawn. I think they are  
22 excellent comments. I just thought we might elicit  
23 more. There it is. I don't find that the concern and  
24 the issues rise to the party status in terms of  
25 uniquely affecting or distinctly affecting this

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1 individual. I think as a full participant, as a  
2 person in opposition, or if he changes his mind either  
3 way would be appropriate and, therefore, I would not  
4 support granting party status at this time. Others?  
5 I would move we deny the party status for Mr. Bandy.  
6 Is there a second?

7 VICE CHAIR MILLER: Second.

8 CHAIRPERSON GRIFFIS: Thank you. Further  
9 deliberation? All those in favor of the motion  
10 signify by saying aye.

11 MEMBERS: Aye.

12 CHAIRPERSON GRIFFIS: Opposed?

13 MR. HOOD: Opposed.

14 CHAIRPERSON GRIFFIS: Thank you, Mr. Hood.  
15 Okay. Let's go ahead. Let me turn it over for  
16 opening comments.

17 MR. GREEN: Thank you, Mr. Chairman.  
18 Again, I am delighted to be here today. I wanted to  
19 thank the Board and yourself for allowing us the  
20 opportunity. I'm joined here by Mrs. Suzane Reatig,  
21 our architect. She can certainly speak to the  
22 technical aspect of this proposal.

23 But just in a general statement Bishop  
24 Madison and the United House of Prayer has developed  
25 about 60 percent of the 1,300 block of 5th Street,

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1 N.W. This is a vacant lot that's in that block. As  
2 you may know, it's located about two blocks from the  
3 new D.C. Convention Center which was built at the cost  
4 of in excess of \$800 million so there's been a  
5 concerted effort on the part of D.C. Government and  
6 the entities of D.C. Government to facilitate  
7 development of the area all around the Convention  
8 Center so that the enormous investment of D.C.  
9 Government resources are not lost by having vacant,  
10 abandoned property all around the Convention Center.

11 In fact, it's the Government's program now  
12 to enforce in some way development of all of the  
13 properties near the Convention Center by either  
14 raising the taxes and taxing them at a special rate --

15 CHAIRPERSON GRIFFIS: Actually, let's not  
16 go so far afield. We have no jurisdiction whether the  
17 D.C. Government is doing that or not. Let's stay  
18 specifically to your site. You just indicated you  
19 developed 60 percent of this block. What do you  
20 develop for? What are these?

21 MR. GREEN: Affordable housing.

22 CHAIRPERSON GRIFFIS: You sell the houses?

23 MR. GREEN: These are rental properties so  
24 that the persons in the neighborhood can afford to  
25 rent properties in the District of Columbia.

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1 CHAIRPERSON GRIFFIS: Okay. Go ahead.

2 MR. GREEN: And if this property is not  
3 developed, then it would just continue to be a blight  
4 and vacant lot susceptible to trash being dumped on  
5 the lot which happens now. From time to time there  
6 are citations so we wanted to remove this aggravation  
7 and nuisance in the neighborhood by going forward and  
8 developing the property and allowing decent property  
9 that is affordable property for persons to live in the  
10 District of Columbia. We would welcome the support of  
11 the Board in moving forward in their behalf.

12 CHAIRPERSON GRIFFIS: Okay. Thank you  
13 very much. Do you want to -- are you going to  
14 address?

15 MS. REATIG: Yes.

16 CHAIRPERSON GRIFFIS: Let's move ahead  
17 then.

18 MS. REATIG: Good morning. My name is  
19 Suzane Reatig and my address is 1312 8th Street, N.W.,  
20 Washington, D.C. 20001. This application of the  
21 United House of Prayer seeks area variance pursuant to  
22 Zoning Regulations 11 DCMR, Section 3103.2 for  
23 variances from the minimum lot area and with  
24 requirements under Section 401 to allow the  
25 construction of a flat two-family dwelling unit in the

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1 R-4 district at the premises 1312 5th Street, N.W.,  
2 square 480, lot 820.

3 The proposed flat will be a three-story  
4 building with approximately 750 square feet. The  
5 first floor will contain a one-bedroom unit. The  
6 second and third floor will contain a three-bedroom  
7 duplex dwelling unit. One parking space will be  
8 provided. The property is unique in that its width is  
9 narrow, 15 feet, and the lot area is 1,251 square  
10 feet.

11 The project will provide substantial  
12 benefits to the shore community by providing much  
13 needed affordable housing. The proposed flat is  
14 consistent with the comprehensive plan of moderate  
15 density residential land use. The United House of  
16 Prayer submits that the application has satisfied all  
17 applicable zoning requirements and the requisite  
18 building and, therefore, should be granted. I'll  
19 answer any questions.

20 CHAIRPERSON GRIFFIS: Good. Thank you.  
21 What is the size of the alley that is adjacent?

22 MS. REATIG: The alley is in the shape of  
23 a trapezoid. It's like a bottle. It's 20 feet to the  
24 end and it's 10 feet. You can see here.

25 CHAIRPERSON GRIFFIS: I see. Okay.

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1 There's a small sliver of land that is on what would  
2 be the project west.

3 MS. REATIG: This belongs to a church that  
4 sits here. This is empty and the church sits on the  
5 lot there.

6 CHAIRPERSON GRIFFIS: So that's just a  
7 sliver of a lot somehow?

8 MS. REATIG: I guess she purchased it at a  
9 certain time.

10 CHAIRPERSON GRIFFIS: I see.

11 MS. REATIG: All the neighbors on this  
12 side do park in the area --

13 CHAIRPERSON GRIFFIS: Right.

14 MS. REATIG: -- from the 10-foot alley.

15 CHAIRPERSON GRIFFIS: Right.

16 MS. REATIG: There is no problem. Here it  
17 will make it any easier to get in and out because you  
18 have 20 feet.

19 CHAIRPERSON GRIFFIS: Indeed.

20 MS. REATIG: And we'll have only one  
21 parking space provided, 15-foot wide.

22 CHAIRPERSON GRIFFIS: Okay. We'll get  
23 through all the other reports. You've indicated also,  
24 I think, in some of the written submission that this  
25 would, in fact, maintain and be in character with the

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1 neighborhood and street scape?

2 MS. REATIG: That's correct.

3 CHAIRPERSON GRIFFIS: Can you just pull  
4 your board up again? Just quickly on the front  
5 elevation how did you come to do an elevation of that  
6 nature and how is it in character with the adjacent  
7 road dwellings?

8 MS. REATIG: It's in character in mass and  
9 in height. We have two and three-story buildings on  
10 the front. We are using brick for the front facade  
11 and we would like to provide a lot of light and  
12 ventilation because the unit is very narrow. We don't  
13 have any side windows so we want to allow as much  
14 light as we can from the front and the back.

15 CHAIRPERSON GRIFFIS: Okay. Is it brick  
16 articulation in the adjacent row dwellings?

17 MS. REATIG: No. It's not an historic  
18 area and there are --

19 CHAIRPERSON GRIFFIS: There's no brick  
20 articulation? What happens with the roof line?

21 MS. REATIG: Oh, you're talking about the  
22 next one. Yes.

23 CHAIRPERSON GRIFFIS: Isn't that part of  
24 the character of the block? Don't you think this will  
25 stand out a bit?

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1 MS. REATIG: If you see the other  
2 buildings as compared to the new one, they do stand  
3 out so there is a big variance in the street. Also  
4 differences in materials.

5 CHAIRPERSON GRIFFIS: How so materials?

6 MS. REATIG: You have imitations of stone,  
7 of plastic, of wood.

8 CHAIRPERSON GRIFFIS: There are some  
9 things that aren't originally inherent that we  
10 probably shouldn't recreate. Okay.

11 Anything else from the Board? Questions?  
12 Would you mind just summarizing then the uniqueness  
13 of this site and then the practical difficulty that  
14 arises from it?

15 MS. REATIG: Yes. The site is 15 feet  
16 wide and 83 feet, four inches long. It makes it  
17 nonconforming with the current zoning regulation. Now  
18 we have to have a minimum of 18 feet wide and 1,800  
19 square feet for the lot. This is only 15 feet wide  
20 and it's 1,251 square feet area.

21 CHAIRPERSON GRIFFIS: So your point is  
22 that this existing nonconforming lot is unique because  
23 of that aspect and the others are conforming?

24 MS. REATIG: Right.

25 CHAIRPERSON GRIFFIS: It obviously then

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1 creates difficulty in developing anything if it's  
2 nonconforming. Okay.

3 Ms. Miller.

4 VICE CHAIR MILLER: Actually, I just want  
5 to ask a few questions from Mr. Bandy's party status  
6 application. He was concerned that -- he says his  
7 property is directly across the dead end within 20  
8 feet. He's concern about damage to his stucco wall by  
9 vehicles turning to get into the rear parking. Do you  
10 know what he is concerned about? Does that mean  
11 something to you and can you address it?

12 MS. REATIG: I think in this area it would  
13 be easier to park there. We are much closer with the  
14 other properties and have an alley of only 10 feet  
15 wide and they go in and out of the parking space and  
16 there are no problems. Here we have 20 feet. I don't  
17 see how it would be a problem.

18 CHAIRPERSON GRIFFIS: Do you know Mr.  
19 Bandy's house is?

20 MS. REATIG: I believe he's just across.

21 CHAIRPERSON GRIFFIS: He's across the  
22 alley. Where does his house abut the alley? Is it  
23 right on the alley line?

24 MR. GREEN: Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Yes.

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1 MR. GREEN: His property is 1307 6th  
2 Street.

3 CHAIRPERSON GRIFFIS: That's correct.

4 MR. GREEN: When I spoke with him  
5 yesterday he shared with me that's his location.  
6 Actually, he told me the reason he withdrew his  
7 opposition is that he was not focused on the United  
8 House of Prayer as a developer.

9 He applauds what the United House of  
10 Prayer has done but there are about three developments  
11 taking place on the block and they have not come down  
12 to this Board and done the proper things that we have  
13 done. They are not providing parking, etc. His  
14 concern was about developing in general but he  
15 applauded what the United House of Prayer has done.

16 CHAIRPERSON GRIFFIS: That's fine. I  
17 appreciate that. We will get the other folks later.  
18 That being said, we're here. So he's across the  
19 alley. Is his building on the alley line?

20 MS. REATIG: There is no building --

21 CHAIRPERSON GRIFFIS: To hit his stucco  
22 would you have to drive into his lot?

23 MS. REATIG: No, no. There are rear  
24 yards.

25 CHAIRPERSON GRIFFIS: I know, so how would

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1 you hit it?

2 MS. REATIG: I can't.

3 CHAIRPERSON GRIFFIS: You would have to  
4 drive into his rear yard?

5 MS. REATIG: Right.

6 CHAIRPERSON GRIFFIS: Okay. So  
7 conceivably if you had a big trailer-tractor coming in  
8 there, they would have to back in and that would start  
9 to -- okay. That's a little bit absurd.

10 MS. REATIG: I don't think a big trailer  
11 can get into the 10-foot alley.

12 CHAIRPERSON GRIFFIS: Agreed.

13 Ms. Miller.

14 VICE CHAIR MILLER: His other concern is  
15 increased trash in the alley. He said there's no room  
16 for more trash cans except abutting his property. Do  
17 you want to comment on that?

18 MS. REATIG: All the neighbors have their  
19 trash cans in the back and I have the same thing at  
20 1312 8th Street and that's what we do. We have to put  
21 the trash in the back. I don't see why this one would  
22 be different than all the others.

23 VICE CHAIR MILLER: And there is room for  
24 the trash?

25 MS. REATIG: Yes, definitely.

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1 VICE CHAIR MILLER: Okay.

2 MS. REATIG: We have a patio. We have the  
3 parking but we have a patio that is about 13 feet wide  
4 and the trash will be in the patio before the parking.

5 VICE CHAIR MILLER: The trash will be  
6 where?

7 MS. REATIG: Between the house and the  
8 parking.

9 CHAIRPERSON GRIFFIS: Any other questions,  
10 Board? Clarifications? Very well. Let's move on  
11 then to the Office of Planning.

12 MR. LAWSON: Thank you, Mr. Chair, members  
13 of the BZA. My name is Joel Lawson. I'm with the  
14 D.C. Office of Planning. Very briefly, this  
15 application is to permit development of a vacant lot  
16 at 1312 5th Street, N.W. The lot was created prior to  
17 current Zoning Regulations and does not provide the  
18 currently required lot width or lot area.

19 The narrowness and the size of the lot and  
20 the inability of the owners to create a conforming one  
21 in OP's opinion does represent a practical difficulty  
22 that is unnecessarily burdensome, particularly since  
23 from the street the lot width provides greater than 80  
24 percent of that required for the zone district so it's  
25 generally in character with the street scape.

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1           The owners wish to construct a new three-  
2 story flat with one parking space access from the  
3 alley. No other district agency provided comments in  
4 opposition to the proposal. OP believes that the  
5 proposed development is in character with the  
6 neighborhood and street scape development patterns in  
7 form and in scale and would provide additional housing  
8 in the District by infilling of vacant lot.

9           We feel it would not impair the intent of  
10 the Zoning Regulations as the lot is sufficiently  
11 large that it permits development with the building  
12 that conforms to lot coverage, height, parking, and  
13 all setback requirements. The proposal also furthers  
14 comprehensive planned housing in Ward 2 objectives and  
15 is not contrary to the comprehensive planned  
16 generalized land use now.

17           As such OP supports approval of the  
18 application and I'm available for questions. Thank  
19 you.

20           CHAIRPERSON GRIFFIS: Thank you very much,  
21 Mr. Lawson. Any questions from the Board?

22           MR. HOOD: Mr. Lawson, I just want to  
23 piggyback on what the Chairman was asking the  
24 architect about the character. I noticed that in your  
25 report just now you stated, notwithstanding the scale

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1 and whatnot, as far as the look of the other  
2 surrounding properties how do you see this we have  
3 here in front of us today as being in character with  
4 what already exist in the surrounding neighborhood?

5 MR. LAWSON: Again, I would say that it's  
6 in character, in form, and in scale. It's generally  
7 the same height. It uses brick on the front facade.  
8 There are a number of different materials and  
9 different forms used on this street. It's not like  
10 there is one single design that is common along the  
11 street scape. I guess I would see this as a more  
12 contemporary design approach to the existing row house  
13 development.

14 There has also been some other  
15 redevelopment on this square including the house that  
16 is either one or two houses down. It doesn't quite  
17 show on the photograph here but it also has a somewhat  
18 more contemporary approach than the existing row  
19 houses such as the one directly next door.

20 I would say, again, in closing it is in  
21 character in its use. It's in character in its  
22 overall scale but of a more contemporary approach than  
23 what is predominant in the square.

24 MR. HOOD: Okay. All right. Thank you.

25 CHAIRPERSON GRIFFIS: Any other questions

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1 of the Board? Does the applicant have any cross  
2 examination of the Office of Planning? Any questions?

3 MR. GREEN: No, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Okay. Is ANC-2C  
5 represented here today? Anyone representing ANC-2C?  
6 We do have recommendation for approval which is  
7 Exhibit No. 20 and I believe the report was timely  
8 filed and meets our requirements. Is that correct?  
9 Did you have any questions or clarification on the ANC  
10 letter?

11 MR. GREEN: We were present at the ANC  
12 meeting. We were delighted that we had unanimous  
13 support from the ANC-2C.

14 CHAIRPERSON GRIFFIS: Excellent. DACD  
15 also submitted a recommendation for approval and that  
16 was, of course, attached to the Office of Planning's  
17 report. Is there anyone here present to give  
18 testimony for Application 17146 in support or  
19 opposition? Not seeing an indication, we'll move  
20 ahead to Board questions. Any other further  
21 clarifications or questions? We can turn it over to  
22 you then for any summation remarks that you might  
23 have.

24 MR. GREEN: Just in closing, Mr. Chairman,  
25 we again appeal for your support of this process so we

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1 can go forward and put a beautiful housing unit on  
2 that site. We thank you in advance for your support.

3 CHAIRPERSON GRIFFIS: Thank you. Very  
4 well. I think the record is full and I don't think we  
5 have to, or need to, require additional information.  
6 We have addressed all the -- even though we did not  
7 grant the opposition party, we did address the items  
8 that arose out of his request which I think were  
9 pertinent.

10 Just a quick clarification because we were  
11 actually while you were talking we were listening to  
12 you but we also heard some other information. It does  
13 appear that Mr. Bandy's structure comes to the alley  
14 line. Is that correct? I mean, he's fairly close to  
15 the alley.

16 MS. REATIG: I don't remember saying it  
17 comes to the alley.

18 CHAIRPERSON GRIFFIS: Are there two  
19 properties? Is there a garage on one of the  
20 properties across the way?

21 MS. REATIG: I don't think so.

22 CHAIRPERSON GRIFFIS: Okay. I think we --  
23 well, it would appear that there is. The aerial  
24 photograph shows it fairly distinctly and the site  
25 plan, all of which are attachments to the Office of

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1 Planning's plan. Be that as it may, it was important  
2 to understand the issues that began the opposition. I  
3 think the Board is fairly clear on those and can  
4 actually deliberate on them.

5 I think it's appropriate then to move  
6 ahead with this. I think we should move approval of  
7 Application 17146 for the United House of Prayer for  
8 the variances from the minimum lot area and the width  
9 requirements under Section 41 to allow the  
10 construction of a flat which is, of course, the two-  
11 family dwelling at premises 1312 5th Street, N.W. I  
12 would ask for a second.

13 MR. HOOD: Second.

14 CHAIRPERSON GRIFFIS: Excellent. One of  
15 the pieces that we didn't address, because there was  
16 clarify with the Board, was whether actually the lot  
17 width was required based on some of the notes in the  
18 regulation, of course, based on unimproved lot and  
19 single ownership past a certain date or prior to a  
20 certain date.

21 We have to, in fact, proceed with this as  
22 both lot area and lot width variances and I think it's  
23 appropriate to do so in reading the regulation. It is  
24 fairly clear that this existing nonconforming lot is  
25 unique for this area and does create the practical

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1 difficulties from that in terms of developing a matter  
2 of right use.

3 I don't think the Board has any questions  
4 and, in fact, fully supports, I know, in our past  
5 proceedings the new development of vacant lots and  
6 most appropriately for a mix of types of housing and  
7 that is, as you are addressing, affordable housing.

8 One aspect that I think that I noted from  
9 the Board in some of their comments and, of course, we  
10 are a Board of many different opinions, is the high  
11 concern and desire for excellent design in the city.  
12 I think that is what we look to see. We are not a  
13 design review board. We are not the preservation  
14 board. There are aspects in the regulation that give  
15 us design review.

16 But I think, as noted, there are several  
17 opinions on the Board and we would just push you to do  
18 the best design, let your architect go, and I think  
19 you will be much more happy with the end result, as  
20 will the overall city. And the tenants, for that  
21 matter, will be. I think that is appropriately said  
22 in terms of direction in reviewing this.

23 Other than that, I do believe that as the  
24 Office of Planning states, that this does clearly fall  
25 within the form and character, the massing of the

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1 block, and it is absolutely appropriate to do that.  
2 It does not serve the block or the city well to have  
3 just a vacant lot unless you wanted to do a nice  
4 little urban park which could be successful or not  
5 successful, but that takes us in a whole different  
6 discussion.

7 With that also I think the Office of  
8 Planning was fairly strong in their analysis and I  
9 would rely, mostly in part, on their analysis of the  
10 uniqueness and practical difficult. I don't think,  
11 and we didn't address directly in the comments here  
12 how this would or would not impair the zone plan  
13 because I think it's fairly clear that it would not.  
14 That's all I need to say, I think. Others?

15 VICE CHAIR MILLER: I just want to say  
16 that I concur with comments of the Chair and I think  
17 it's certainly in the public interest to replace a  
18 vacant parking lot with housing and I applaud what  
19 you're doing and I think it clearly meets the variance  
20 test.

21 My only concern was did this building in  
22 design, and I'm not a designer, compliment the street  
23 scape and the character of the rest of the block. I'm  
24 basically relying on and giving great weight to the  
25 Office of Planning who has seen the block and says

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1 that it does. I know you made that representation  
2 that there are different types of architecture and  
3 materials in that block. In any event, I support the  
4 variance.

5 MR. HOOD: Also I would concur, Mr. Chair.

6 On the Zoning Commission we do some design. Today I  
7 will tell you I did have some caution with the design  
8 that I saw in front of me but as the Chairman my  
9 colleagues said I would be supporting this. Only to  
10 add that granting this application will not be  
11 inconsistent with the general intent and purpose of  
12 the Zoning Regulations and map so I will be supporting  
13 it.

14 MR. MANN: Mr. Chair.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. MANN: I would also like to add that  
17 design is one thing and no matter how you feel about  
18 this design, you can have the best design in the world  
19 and if it's not ultimately maintained correctly or if  
20 it's not built with the proper materials, the design  
21 ultimately wouldn't even matter. Design while  
22 important is only one aspect of it and hopefully it's  
23 going to be well maintained over the years as well.

24 CHAIRPERSON GRIFFIS: Do you have an  
25 opinion on the design?

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1 MR. MANN: I personally like the design.

2 CHAIRPERSON GRIFFIS: Good. I absolutely  
3 applaud diversity. I think one of the difficulties  
4 also that the Board has raised in terms of we had one  
5 simple elevation. I think a lot more is shown  
6 actually in the elevation that was presented today.  
7 With that we will need copies of all of that into the  
8 record just to make sure because it was presented.  
9 Okay.

10 MS. REATIG: Can I ask a question?

11 CHAIRPERSON GRIFFIS: Yes.

12 MS. REATIG: It's my understanding that  
13 zoning approved the zoning aspect of the building and  
14 that I will be free to work and develop the facade  
15 more and more. This is not final by no means.

16 CHAIRPERSON GRIFFIS: Okay. Before you  
17 continue --

18 MS. REATIG: I want to make sure --

19 CHAIRPERSON GRIFFIS: Let me interrupt you  
20 actually. We do have a motion that has been stayed a  
21 while. Let me dispense with that and then I'll  
22 address that specific information. If there is  
23 nothing further from the Board, then let me ask for  
24 all those in favor of the motion signify by saying  
25 aye.

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1 ALL: Aye.

2 CHAIRPERSON GRIFFIS: And opposed? Why  
3 don't we record the vote.

4 MS. BAILEY: The vote, Mr. Chairman, is  
5 recorded as four, zero, one. You made the motion, Mr.  
6 Griffis made the motion, Mr. Hood seconded. Ms.  
7 Miller and Mr. Mann are in agreement. Mr. Etherly is  
8 not present today.

9 CHAIRPERSON GRIFFIS: Good. Thank you.  
10 Now, specifically to that. When we get drawings  
11 submitted, that is the first condition of any order  
12 that's issued meaning when you go down and pull  
13 permits they are going to look at the drawings that we  
14 approved.

15 Now, I think it can be said that the  
16 pertinent parts that should be looked at are those  
17 which we granted relief from. I guess that's not  
18 really clear, is it?

19 MS. REATIG: The zoning administrator or  
20 the zoning reviewer, we review it for the area, for  
21 the height of the building.

22 CHAIRPERSON GRIFFIS: That's correct.  
23 They are going to look at the lot and if you can build  
24 on it.

25 MS. REATIG: They don't care about the

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1 facade.

2 CHAIRPERSON GRIFFIS: I understand that.  
3 I think you do have flexibility.

4 MS. REATIG: I do have flexibility.  
5 That's what I want to make sure.

6 CHAIRPERSON GRIFFIS: Right. Right.  
7 Indeed.

8 MS. REATIG: Okay.

9 CHAIRPERSON GRIFFIS: Good. Anything else  
10 we can answer?

11 MR. HOOD: Mr. Chairman, is there a  
12 certain percentage?

13 CHAIRPERSON GRIFFIS: Percentage of?

14 MR. HOOD: Flexibility. I'm not sure.

15 CHAIRPERSON GRIFFIS: Well, this is where  
16 it gets complicated but certainly anything that would  
17 be within the relief that we granted would not have  
18 flexibility unless we specifically enumerated it.  
19 Based on the fact that we've just granted relief on  
20 the lot width and area, that cannot change at all. If  
21 there is anything else that changes that would create  
22 some other type of relief, then obviously you would  
23 have to come back here for it.

24 I think for clarity that's the aspect of  
25 which has no flexibility and the rest of it would not

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1 necessarily. I mean, the detailing on the elevation,  
2 if it changed, if it didn't doesn't actually come back  
3 in for zoning issue anyway. I think there is some  
4 flexibility to finish up the drawings on that. Yes?

5 VICE CHAIR MILLER: This is probably  
6 obvious but just in case, we don't make decisions  
7 based on window treatments and things like that so  
8 there is total flexibility with that as long as it  
9 doesn't encroaching upon an area, lot, etc., that  
10 we've ruled on.

11 CHAIRPERSON GRIFFIS: Window treatment  
12 like venetian blinds. We get pretty damned detailed.

13 Okay. That being said, anything else? Everything  
14 clear?

15 MR. GREEN: Mr. Chairman, we thank you.

16 CHAIRPERSON GRIFFIS: Thank you very much.

17 MS. REATIG: Thank you very much.

18 CHAIRPERSON GRIFFIS: Are you able to  
19 leave copies or leave the plans with us today?

20 MS. REATIG: You want me to leave folder?  
21 I would be happy to.

22 CHAIRPERSON GRIFFIS: Not really. I need  
23 something that can be put into a file.

24 MS. REATIG: It's very similar to what I  
25 provided.

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1 CHAIRPERSON GRIFFIS: I know. It doesn't  
2 matter if it's similar. You presented new evidence  
3 and so we are going to need that evidence in the  
4 permanent record. Somehow actually after this you  
5 might want to go into the Office of Zoning and figure  
6 out how and when you are going to get all that  
7 submitted in.

8 MS. REATIG: Okay. I will be happy to do  
9 that.

10 CHAIRPERSON GRIFFIS: Okay. Great. Thank  
11 you very much.

12 MS. REATIG: Thank you.

13 CHAIRPERSON GRIFFIS: Appreciate it. Have  
14 a great day. Why don't we call the next case.

15 MS. BAILEY: That is Application No. 17148  
16 of the Marshall Heights Community Development  
17 Organization, pursuant to 11 DCMR 3103.2, for a  
18 variance from the side yard requirements under Section  
19 405, to allow the construction of a single-family  
20 detached dwelling in the R-1-B District at premises  
21 3034 Clinton Street, N.E. (Square 4319, Lot 72.)

22 CHAIRPERSON GRIFFIS: Good morning. Why  
23 don't I just have you give me your name and address  
24 for the record.

25 MS. KATZ: Good morning, Mr. Chair, and

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1 other members of the Board. My name is Collette Katz  
2 and I am the project manager at Marshall Heights  
3 Community Development Organization in the Housing and  
4 Economic Development Division. The address is 3939  
5 Benning Road, N.E., Washington, D.C. 20019.

6 CHAIRPERSON GRIFFIS: Excellent. And do  
7 you have other folks with you? Are you going to have  
8 witnesses?

9 MS. KATZ: I'm expecting a colleague who  
10 is not here yet.

11 CHAIRPERSON GRIFFIS: Okay. Who else is  
12 here attended to this application, 17148? Everyone  
13 else that's in the room? Could I see a show of hands  
14 of people that are going to give testimony today?  
15 Okay. So we have a few to get through. Very well.

16 Mr. Hood.

17 MR. HOOD: Mr. Chairman, I wanted to do a  
18 disclosure. I know a lot of the people are very  
19 intimately involved in this case. While they have not  
20 spoke to me about this case, I am the President of the  
21 Civic Association which this area is, but I can assure  
22 you that I have not been approached about this issue.

23 Until I read the filing I didn't know this  
24 issue even existed. I wanted to put down on the  
25 record that if anybody had any problems, I would

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1 recuse myself. I want to do that up front because in  
2 the past I've gotten in trouble for that so I wanted  
3 to make sure that was out front.

4 CHAIRPERSON GRIFFIS: Good. Thank you.  
5 Did you take any official action in your capacity in  
6 the Civil Association?

7 MR. HOOD: No, I did not.

8 CHAIRPERSON GRIFFIS: Okay. Any other  
9 questions from the Board? Ms. Miller.

10 VICE CHAIR MILLER: Do you feel that  
11 you're biased in anyway one way or the other?

12 MR. HOOD: No. I think I can judge this  
13 on the merits of the case.

14 CHAIRPERSON GRIFFIS: Does the applicant  
15 have any questions of Mr. Hood?

16 MS. KATZ: No.

17 CHAIRPERSON GRIFFIS: Do you have any  
18 opposition to him continuing hearing this case and  
19 deciding on it?

20 MS. KATZ: He says he's not biased so if  
21 he feels he can go on, that's fine with me.

22 CHAIRPERSON GRIFFIS: Okay. I can give  
23 you a minute to think about it, too, if you want.  
24 It's a very serious issue in terms of when one -- of  
25 course, we are all district presidents so we all live

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1 in neighborhoods. We all know and care about them,  
2 otherwise we probably wouldn't be doing --

3 MS. KATZ: So you're a resident of 5A?

4 MR. HOOD: Actually, I'm the President of  
5 the Civic Association in that area and a lot of folks  
6 who may be in opposition or support. I just know the  
7 ANC as I work with them candidly.

8 MS. KATZ: Are you aware of that meeting  
9 that we had?

10 MR. HOOD: I don't even attend my own ANC  
11 sometimes because of these issues. I would rather  
12 deal with them when we come down here. I try to make  
13 sure that I come down here with a clear mind. You  
14 have to consider we have three board members and I can  
15 go in the back and prepare myself for later on this  
16 afternoon. I can assure you that. I just want to  
17 make sure that you're comfortable.

18 MS. KATZ: Okay. Well --

19 MR. HOOD: You hesitate. Mr. Chairman, I  
20 will recuse myself. She hesitated too long.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. HOOD: I don't want to jeopardize this  
23 case.

24 MS. KATZ: Thank you.

25 CHAIRPERSON GRIFFIS: Thanks. If I could

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1 just have you turn off your microphone on the side.

2 MS. KATZ: Oh, sure.

3 CHAIRPERSON GRIFFIS: Thanks. Very well.

4 With that, let's move ahead and I'll turn it over to  
5 you just for opening remarks.

6 MS. KATZ: Okay. Well, Marshall Heights  
7 is a nonprofit community-based organization. Our main  
8 objective is to build homes for low to moderate income  
9 families. We either buy houses and renovate them or  
10 build them new construction.

11 Currently on this project we are working  
12 in conjunction with the mayor's program, the Home  
13 Again Initiative Program which is a program that is  
14 promoting home ownership in Washington, D.C. and  
15 essentially find properties and bundle them and  
16 developers are bidding on them for renovating or  
17 building on new lots.

18 CHAIRPERSON GRIFFIS: So this came to you  
19 through the Home Again Initiative?

20 MS. KATZ: Correct.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. KATZ: We acquired it in a bundle of  
23 properties. We are proposing to build a single family  
24 home on this 3034 Clinton Street, approximately 2,228  
25 square foot house. The lot is unique such that it's a

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1 flag lot and it is exceptionally narrow along Clinton  
2 Street in the front. Although it does have the square  
3 footage, it's very narrow in the front so we are  
4 seeking relief from the side yard requirement of eight  
5 feet on each side.

6 CHAIRPERSON GRIFFIS: You just described  
7 the fact that it's a flag lot which is pretty apparent  
8 when you look at it meaning it looks like a flag on a  
9 post.

10 MS. KATZ: Yes.

11 CHAIRPERSON GRIFFIS: The narrow part is  
12 what you're talking about. What is the reasoning for  
13 building in that portion and why can't you build on  
14 the rear portion?

15 MS. KATZ: There are several reasons  
16 actually. One is that we are building on the front to  
17 stay in harmony with the other houses in the  
18 neighborhood. To go any further back it would be very  
19 closely to excavate the step topography in the back.

20 CHAIRPERSON GRIFFIS: So it's difficult to  
21 build on that portion because of the dramatic  
22 topography?

23 MS. KATZ: Yes.

24 CHAIRPERSON GRIFFIS: There's a huge grate  
25 change?

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1 MS. KATZ: Yes, extreme.

2 CHAIRPERSON GRIFFIS: And the portion of  
3 which you're looking at is more level?

4 MS. KATZ: Yes.

5 CHAIRPERSON GRIFFIS: And it's based in  
6 part because of the development that has happened  
7 adjacent to it. Is that correct?

8 MS. KATZ: That's correct.

9 CHAIRPERSON GRIFFIS: Okay. Fascinating.  
10 Okay. And you find that the building that you're  
11 proposing is in character and harmony? Clearly you're  
12 saying in terms of the sighting of it which I think I  
13 would tend to agree that it looks as though the front  
14 portion is somewhat aligned with one of the houses and  
15 not aligned with the other but it's within the same  
16 reason. And you find that the architectural character  
17 and materials are also similar to the neighborhood?

18 MS. KATZ: Yes. We are going to have a  
19 brick front and siding, aluminum siding. Vinyl  
20 siding, I'm sorry. Asphalt shingles.

21 CHAIRPERSON GRIFFIS: Okay. You're not  
22 proposing a nice big front porch like the adjacent  
23 houses? Those are some of the best things on houses,  
24 I think.

25 MS. KATZ: No, we're not actually. We

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1 don't usually.

2 CHAIRPERSON GRIFFIS: Why is that?

3 MS. KATZ: Well, actually we try to stay  
4 in budget. Especially with these projects we try to  
5 build a nice home and also stay within a budget to  
6 keep the house affordable.

7 CHAIRPERSON GRIFFIS: When you say  
8 affordable, what is affordable?

9 MS. KATZ: Well, that's actually what I  
10 have my colleague here for who is not here yet.

11 CHAIRPERSON GRIFFIS: What are you  
12 proposing to sell the house for?

13 MS. KATZ: He has actually all that  
14 information. I believe it is -- I don't want to  
15 answer. I was expecting him.

16 CHAIRPERSON GRIFFIS: Who are you  
17 expecting?

18 MS. KATZ: He is actually the Manager of  
19 Housing and Economic Development at Marshall Heights.

20 CHAIRPERSON GRIFFIS: And his name is?

21 MS. KATZ: Kevin Moody. He does all of  
22 our acquisitions and selling of our properties.

23 CHAIRPERSON GRIFFIS: Okay. Hopefully  
24 he'll be here and provide that. Anything else?

25 Clarification of the Board? Yes, Ms. Miller.

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1 VICE CHAIR MILLER: Are there other homes  
2 on the block that have this flag lot shape?

3 MS. KATZ: No.

4 VICE CHAIR MILLER: So this is the only  
5 one?

6 MS. KATZ: It appears that the lot was  
7 subdivided back in the '60s maybe. It was very  
8 strange the way they subdivided it but this looks like  
9 the only lot that is like that.

10 MR. MANN: Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Yes, Mr. Mann.

12 MR. MANN: When you mentioned earlier that  
13 the properties were bundled, I just wanted to clarify.  
14 That meant financially and not geographically. Is  
15 that correct?

16 MS. KATZ: It means both.

17 MR. MANN: So some of the lots may or may  
18 not have been adjacent to each other when they were  
19 purchased in a bundle?

20 MS. KATZ: There are not lots that were in  
21 our bundle that are adjacent to each other.

22 MR. MANN: Geographically. Okay.

23 MS. KATZ: Correct.

24 MR. MANN: With common property lines.

25 MS. KATZ: Right.

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1 MR. MANN: Okay.

2 CHAIRPERSON GRIFFIS: Anything else? Just  
3 for clarification, my understanding is the Home Again  
4 Initiative, of course, when it was stated that the  
5 properties were bundled together, it's basically those  
6 that were in some sort of inventory in the District  
7 and they put them all together at one time and said,  
8 "We will award these to a proper group for  
9 development." They awarded several at a time so you  
10 might be able to pick up one or you might be able to  
11 pick up 10. Is that a correct summary?

12 MS. KATZ: Yes. They bundle -- I mean,  
13 there's no specific amount of properties that they  
14 bundle.

15 CHAIRPERSON GRIFFIS: Right, but the point  
16 is disposing of them into the market all at one time.

17 MS. KATZ: Yes.

18 CHAIRPERSON GRIFFIS: Okay.

19 VICE CHAIR MILLER: One other question  
20 with respect to the topography in the back. I  
21 understand how it would be out of keeping with the  
22 rest of the houses to set the house way in the back.  
23 I think it also has been represented that it would be  
24 very difficult to excavate the land back there and  
25 very expensive. My question is if you had to do that,

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1 would it not put it out of range of the buyers that  
2 the homes are geared for? Would it be so expensive  
3 that the house would have to be so expensive?

4 MS. KATZ: It certainly would add to the  
5 cost of building the house which any cost would  
6 actually just bump the cost of selling the house for.

7 I guess the other reason was to try to keep the house  
8 in harmony with the other houses on the block. It was  
9 two fold actually.

10 VICE CHAIR MILLER: I heard that. I said  
11 that. I understand that.

12 MS. KATZ: I'm sorry. Did I misunderstand  
13 your question?

14 VICE CHAIR MILLER: No, that there were  
15 two parts to that. One is not putting it in the rear  
16 because it would be out of keeping with the rest of  
17 the neighborhood and, second, because it would be so  
18 expensive to excavate the property back there.

19 MS. KATZ: Correct.

20 CHAIRPERSON GRIFFIS: You're not putting a  
21 basement in the home. Is that right?

22 MS. KATZ: You enter in on the lowest  
23 level. There's a garage.

24 CHAIRPERSON GRIFFIS: Okay. Anything  
25 else? Let's move ahead then to the Office of

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1 Planning's report.

2 MS. THOMAS: Good morning, Mr. Chairman,  
3 members of the Board. I'm Karen Thomas presenting  
4 OP's recommendation for the side yard request for  
5 Marshall Heights' proposed single-family dwelling.

6 I would like to stand on the record with  
7 regards to the details in the report and highlight our  
8 recommendation that the applicant amend the submission  
9 to reflect the side yard provision of at least four  
10 feet in either yard.

11 We reviewed this on the basis of a four-  
12 foot side yard on both sides. Since we could not  
13 support the submitted plan which depicts a side yard  
14 of five feet on the south and one foot on the north,  
15 we believe that the applicant's submission would have  
16 a negative effect on lot 71 to the north of the  
17 subject property and would result in defeat of the  
18 property owner being unable to do maintenance of the  
19 residence without trespassing on the adjoining  
20 property.

21 We informed the applicant through Mrs.  
22 Katz. The application was reviewed in accordance with  
23 the suggested amendment. As written in our report,  
24 the lot has exceptional topography and we believe that  
25 the shape and sloping condition of the lot creates an

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1 exceptional condition.

2 The lot in the front of the property is  
3 already nonconforming to the zone and is beyond  
4 reasonable control of the applicant. Development of  
5 the lot is consistent with committed uses and it  
6 conforms to all of the requirements of the Zoning  
7 Regulations. OP contends that granting the variance  
8 to allow the proposed improvement of the lot with a  
9 four-foot side yard would not impair the overall  
10 purpose and integrity of the Zoning Regulations and  
11 would be in keeping with the neighborhood's character.

12 Thank you.

13 CHAIRPERSON GRIFFIS: Thank you very much,  
14 Ms. Thomas. Questions from the Board?  
15 Clarifications? Does the applicant have any cross  
16 examination of the Office of Planning? Do you have  
17 any questions of them?

18 MS. KATZ: I don't have any questions of  
19 them.

20 CHAIRPERSON GRIFFIS: Did you submit a  
21 revised site plan that reflected the Office of  
22 Planning's change to the side yard?

23 MS. KATZ: No. My team and myself  
24 discussed that and they are concerned about the one-  
25 foot side yard and the maintenance of it. Since then,

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1 since we've received their report, we had decided to  
2 put some kind of nonmaintenance like gravel or  
3 something on that side to keep the maintenance down  
4 without encroaching on the neighbors.

5 CHAIRPERSON GRIFFIS: So if I understand  
6 what you're saying, you're saying that you're keeping  
7 it as is. You are keeping a one-foot set.

8 MS. KATZ: We'd like to.

9 CHAIRPERSON GRIFFIS: I think what the  
10 Office of Planning is indicating is not just the  
11 maintenance of the ground. I mean, mowing the grass.

12 How are you going to paint that side? How are you  
13 going to repair anything?

14 MS. KATZ: I guess our other discussion  
15 was houses that are built on the property lines and  
16 how they maintain their houses if they are built on  
17 the property line. We thought we would try to go  
18 ahead and propose the house still with the one-foot  
19 side yard and work with that one foot.

20 CHAIRPERSON GRIFFIS: Why do you need the  
21 one foot?

22 MS. KATZ: There are several -- do you  
23 have a copy of the plans there?

24 CHAIRPERSON GRIFFIS: Of course.

25 MS. KATZ: There's a tree in the front of

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1 the house.

2 CHAIRPERSON GRIFFIS: Which is indicating  
3 it will remain.

4 MS. KATZ: Yes. And your question was why  
5 do we need the one foot?

6 CHAIRPERSON GRIFFIS: Right.

7 MS. KATZ: Actually, we don't really. I  
8 mean, if we could have built on the property line we  
9 would have.

10 CHAIRPERSON GRIFFIS: So you need more,  
11 not less.

12 MS. KATZ: We need more.

13 CHAIRPERSON GRIFFIS: Right. I  
14 understand. Okay. Any other questions regarding the  
15 Office of Planning's report, Ms. Miller?

16 VICE CHAIR MILLER: I'm wondering if  
17 either the Office of Planning or the applicant spoke  
18 with the neighbors about this issue regarding the one-  
19 foot side yard.

20 MS. THOMAS: No, I didn't speak to a  
21 neighbor but I did get the impression from Mrs. Katz'  
22 comments and I spoke with her extensively. I asked  
23 her what they were thinking about this and also the  
24 ANC. She did indicate they were opposed to it and  
25 that there was some issue with the neighbor to the

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1 north. On that basis we really didn't want to  
2 recommend that it stay in one foot and we ask them to  
3 center the house back at least four feet on both  
4 sides.

5 MS. KATZ: Actually, it wasn't an issue  
6 with the neighbor on the north side, if I'm  
7 understanding the north side is the one-foot side  
8 yard.

9 MS. THOMAS: Yes.

10 MS. KATZ: No, there were no issues with  
11 the neighbor on the north side.

12 MS. THOMAS: Well, in any event, we would  
13 not have granted that one-foot side yard variance  
14 request. We would still like it to be four feet on  
15 either side.

16 MS. KATZ: And that's reducing the sides  
17 of the house, the width of the house.

18 MS. THOMAS: Just by two feet at least.  
19 We didn't see an appreciable difference but at least  
20 we wanted that side yard, some semblance of a side  
21 yard to be maintained.

22 MS. KATZ: Okay.

23 CHAIRPERSON GRIFFIS: Is ANC-5A  
24 represented today? Good. Let's call you up then and  
25 let me give you this opportunity to cross examine the

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1 applicant in terms of the testimony you've heard and  
2 also cover Office of Planning if you would like. This  
3 is just cross examination time, just questions for  
4 them. I wanted to put them two together because they  
5 are the substantive pieces of this.

6 MS. THOMPSON: I want to say good morning  
7 to the Board. My name is Margaret Thompson,  
8 Commissioner of 5A, No. 11 Section. I had spoken with  
9 Ms. Katz at the single member district meeting that I  
10 had to call for the neighbors and their ideas on this.

11 With the four foot that you were going to allow --  
12 wanted to allow, I believe there is still is not  
13 enough room to get -- if you had something to go into  
14 the back  
15 yard --

16 CHAIRPERSON GRIFFIS: Let me interrupt you  
17 a little bit. This is your opportunity to ask  
18 question of the applicant.

19 MS. THOMPSON: Right.

20 CHAIRPERSON GRIFFIS: You don't need to  
21 lay a huge foundation.

22 MS. THOMPSON: Oh, okay.

23 CHAIRPERSON GRIFFIS: Shoot off the  
24 question and we'll get a short answer.

25 MS. THOMPSON: That's why you do not want

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1 the four foot on either side?

2 MS. KATZ: What's your question?

3 MS. THOMPSON: Why would you not want the  
4 four foot on either side of the house?

5 MS. KATZ: Because our architects designed  
6 it to be this way. As I mentioned in the meeting, we  
7 had one side larger for just the access of the back  
8 yard. Carrying any kind of large lawn mowers or  
9 anything to the back you would have at least one side  
10 to access the back yard.

11 MS. THOMPSON: I was trying to think of  
12 what else Office of Planning had specified. I guess  
13 that would probably be it other than my own testimony  
14 would cover some of the items that were brought up.

15 CHAIRPERSON GRIFFIS: Right. And I will  
16 call you up to -- actually, you probably don't need to  
17 go too far. Let's follow up on any of that from the  
18 Board. Any further questions?

19 VICE CHAIR MILLER: I was wondering if you  
20 could just explain that further for me. I thought  
21 that was a very good question that you asked about why  
22 not four feet on either side. Your response was you  
23 need one side wide enough to access the back yard with  
24 equipment such as lawn mowers. Are you saying if it's  
25 not four and four, what is it as you have proposed?

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1 Is that the only way that you can access the yard if  
2 it's the way you proposed it?

3 MS. KATZ: No. If these plans that are  
4 architect has designed, these are a set of plans that  
5 they designed for this lot because it was a unique  
6 lot. We do have prototypical houses that are narrower  
7 and longer in length that we could have -- we still  
8 can, I guess, but it would go to a point of having to  
9 seek off-street parking, a relief from off-street  
10 parking because we did this house because it has a  
11 garage.

12 Because the lot is so narrow and there is  
13 no access from the alley -- there is no alley we put a  
14 garage in the house. We do have other prototypical  
15 houses that we use that don't have garages that are  
16 narrower that will allow for that four feet on each  
17 side. If it is causing a problem, we can change the  
18 design of the house.

19 VICE CHAIR MILLER: So the house would be  
20 narrower and would not be able to accommodate a  
21 garage?

22 MS. KATZ: Correct.

23 VICE CHAIR MILLER: What is the off-street  
24 parking like in the neighborhood?

25 MS. KATZ: What is it like meaning is it

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1 crowded?

2 VICE CHAIR MILLER: Exactly. Is there  
3 sufficient off-street parking?

4 MS. KATZ: It seems to be.

5 CHAIRPERSON GRIFFIS: So if I understand  
6 you correctly, you say that your architect is located  
7 in Alexandria, Virginia. Is that correct?

8 MS. KATZ: Correct.

9 CHAIRPERSON GRIFFIS: That they've created  
10 and designed a unique house that specifically  
11 addresses this site?

12 MS. KATZ: Correct.

13 CHAIRPERSON GRIFFIS: What aspects of this  
14 in your understanding when you look at this are  
15 uniquely designed for this site?

16 MS. KATZ: As it relates to Marshall  
17 Heights typical houses, it has the garage. All of our  
18 other lots that we build on are wide enough to support  
19 a driveway or parking pad along the side of the house  
20 and not actually have a garage. All of our other  
21 houses are prototypical houses with in-ground  
22 basements and this is above ground.

23 CHAIRPERSON GRIFFIS: Okay. I understand  
24 that it's different than your prototypical houses. I  
25 thought I understood you to say that they have

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1 designed this house uniquely or have done a unique  
2 design.

3 MS. KATZ: It's just not one of our  
4 prototypical houses so they designed it --

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. KATZ: We deal with this architect all  
7 the time and with our civil engineers and we use three  
8 or four prototypical houses on all of our lots. Yes,  
9 this house was designed for this property.

10 CHAIRPERSON GRIFFIS: And this firm --  
11 well, this firm has great familiarity with the  
12 location and the different ways properties are  
13 developed originally or new in this area as opposed to  
14 an architect that might have an office down the street  
15 from this? Do you understand my question?

16 MS. KATZ: I do and they visited the site  
17 in order to --

18 CHAIRPERSON GRIFFIS: Just to that, you  
19 indicated that if you made this more narrow that you  
20 would lose the garage. I think that is an important  
21 aspect to understand for the Board. How would you  
22 then provide parking? It isn't the best scenario  
23 necessarily to have a pad in front. I don't think it  
24 really is keeping with the character of the  
25 neighborhood at all.

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1                   However, you look to the adjacent house  
2 and they have parking. They actually have garage  
3 parking and they don't enter into the house and  
4 there's not a pad in front. I think there is ample  
5 evidence of how you might be able to accommodate that  
6 if this had to get more narrow or changed in size.

7                   Clearly, if my understanding is correct,  
8 if you make this more narrow, then you won't be able  
9 to pull a car in and you won't be able to walk in and  
10 have you living room or, I guess, the foyer adjacent  
11 to that. So it's an interesting design problem that  
12 probably needs to be uniquely focused on. All right.

13                  Anything else? Follow-up questions at this time, Ms.  
14 Miller?

15                  VICE CHAIR MILLER: I just wonder if the  
16 Office of Planning has a comment about the  
17 availability of off-street parking.

18                  MS. THOMAS: No, I don't at this time.

19                  CHAIRPERSON GRIFFIS: Okay. Nothing  
20 further then from the Office of Planning. Let's go to  
21 the ANC's report then.

22                  MS. THOMPSON: Margaret Thompson. Do you  
23 want me to repeat that or it was picked up all right?

24                  CHAIRPERSON GRIFFIS: No. All set.

25                  MS. THOMPSON: BZA application 17148,

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1 Marshall Heights Community Center Development  
2 Organization, pursuant to the 11 DCMR 3103.2 for a  
3 variance from the side yard requirements under Section  
4 405, to allow the construction of a single-family  
5 detached dwelling in the R-1-B District at premises  
6 3034 Clinton Street, N.E., Square 4319, Lot 72.

7 The regularly scheduled and properly  
8 noticed ANC-5A monthly meeting was held on March 24,  
9 2004, at the N.E. Presbyterian Church. Nine members  
10 were present and seven constitutes a quorum. The  
11 commissioners voted unanimously to oppose the above-  
12 referenced variance application. I am to represent  
13 the 5A District. Do I give my testimony at the  
14 present time?

15 CHAIRPERSON GRIFFIS: Yes.

16 MS. THOMPSON: After receiving the notice  
17 of the applications of Marshall Heights Community  
18 Development Corporation -- I won't go through that  
19 same thing again -- to allow the construction of the  
20 single-family member dwelling, 125 flyers were given  
21 out and 12 people attended a meeting at the New Canaan  
22 Baptist Church at 2826 Bladensburg Road, N.E. on  
23 Tuesday, March 9, 2004.

24 There were 12 in attendance and the vote  
25 was taken at the end of the meeting which was two for,

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1 eight opposed, and one abstained. One vote was  
2 invalid and was not counted. This is my testimony to  
3 the BZA Application 17148, the 405 side yard. I was  
4 thinking that having the side yard actually the house  
5 -- they would have difficulty building the house  
6 unless they trespassed on the neighbor's yard or got  
7 permission from the neighbor to do so.

8 Only by trespassing on the neighbor's lot  
9 would they be able to cut the grass or clean up the  
10 trash area in the one-foot variance that they wanted  
11 on the north side. Also, if either neighbor wanted to  
12 install a fence in the area, the area would be totally  
13 impossible to get into.

14 Then on the picture that you have, I  
15 believe, of the house and the way it will look after  
16 it's built, you notice the downspouts are on the front  
17 and the rear. Having that one foot variance to the  
18 neighbor's lot would not give sufficient drainage to  
19 the water runoff that would be coming in a storm. It  
20 would make for a very wet side yard for the neighbor  
21 on the north.

22 Then also we go to 407. It's a minor  
23 flexibility by the Zoning Administration ruling, No.  
24 407.1. Within the ruling it states that the Zoning  
25 Administrator is authorized to remit a deviation not

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1 to exceed 10 percent of the linear requirement of 404  
2 and 405 which is the rear and side yard requirements.

3 the source is the final rule making published 45 DCR  
4 1446, 47, 48, March 13, 1998.

5 CHAIRPERSON GRIFFIS: What's the  
6 pertinence of that?

7 MS. THOMPSON: The minimum side yard from  
8 eight foot would make a 7.20 foot yard instead of the  
9 one foot.

10 CHAIRPERSON GRIFFIS: The regulation you  
11 just read allows a flexibility to the Zoning  
12 Administrator.

13 MS. THOMPSON: Yes.

14 CHAIRPERSON GRIFFIS: How does that  
15 pertain to us?

16 MS. THOMPSON: Well, I thought that  
17 possibly that would also go over into the variance  
18 area.

19 CHAIRPERSON GRIFFIS: So what you're  
20 saying is you made an assumption that is what the  
21 limit of relief could be.

22 MS. THOMPSON: Right.

23 CHAIRPERSON GRIFFIS: I see. Okay. For  
24 clarification just on that point, and then I'll let  
25 you continue, the two percent flexibility comes to the

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1 Zoning Administrator when a permit is being processed  
2 so the Zoning Administrator could look at that and  
3 allow flexibility in that nature which would then not  
4 require it coming here for any sort of relief. That  
5 is actually addressing the area of flexibility which  
6 would not have to go for a variance.

7 MS. THOMPSON: I see.

8 CHAIRPERSON GRIFFIS: Okay. Anything  
9 else?

10 MS. THOMPSON: Well, I thought perhaps  
11 they would have to go for a variance for the front  
12 footage which is also 30 foot instead of the 50 feet  
13 as required for front footage.

14 CHAIRPERSON GRIFFIS: You're talking about  
15 lot width?

16 MS. THOMPSON: Yes.

17 CHAIRPERSON GRIFFIS: Interesting point.

18 MS. THOMPSON: And we had also asked at  
19 the meeting we had inquired about building a smaller  
20 house but that was given the negative response at that  
21 time. Well --

22 CHAIRPERSON GRIFFIS: It's your  
23 opportunity.

24 MS. THOMPSON: I don't know if another  
25 party is going to mention that -- it slipped out --

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1 mention that there is another house built on Myrtle  
2 Avenue in the very same type of situation and sits way  
3 back quite a distance in the rear of the yard.

4 CHAIRPERSON GRIFFIS: I see. Okay. What  
5 were some of the other issues in opposition that were  
6 raised? Or were there any?

7 MS. THOMPSON: The main thing I think was  
8 that one foot side yard and then with the five feet on  
9 the other side to gain access to the rear yard. I  
10 mean, even if you move the house over to four feet on  
11 either side, you're still going to have somewhat of a  
12 problem depending on what you may purchase to get it  
13 through the four feet.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. THOMPSON: Especially if they would  
16 put a fence up.

17 CHAIRPERSON GRIFFIS: Okay. Questions  
18 from the Board?

19 VICE CHAIR MILLER: Ms. Thompson, I don't  
20 have any questions but I want to make a few comments  
21 to you. First of all, I really appreciate you coming  
22 here today and raising some important issues. I just  
23 want to let you know, and I was a former ANC  
24 commissioner, that when any proceeding that affects  
25 your ANC comes before the BZA, the Office of Zoning

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1 sends out an excerpt from Title 11 which talks about  
2 ANCs and giving great weight to ANCs.

3 It sets forth these requirements that you  
4 need to meet in order for us to give you the great  
5 weight that you are entitled to under the law.  
6 Basically I have -- we have in the record Exhibit No.  
7 22 which is the ANC report. I find that I would say  
8 we can't give it great weight because what you don't  
9 do in your report is something which you are trying to  
10 do here today which is address the issues of the  
11 variance like why you are taking the position that  
12 you're taking.

13 You know, why the four feet or the one  
14 foot doesn't work on each side. I just want to tell  
15 you this for the future. You're coming here and  
16 you're making these points and we are hearing them and  
17 that's great but as an ANC you can get this additional  
18 great weight in which we will address and fill all  
19 your issues if you meet the great weight standard. I  
20 would just suggest that in the future you put those  
21 kind of analyses in your report because we're supposed  
22 to give the great weight to the report.

23 MS. THOMPSON: I did inquire to the  
24 Chairperson. This is my first term in doing this so I  
25 was not really familiar with it but in asking her for

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1 her input this was what I was absolutely told to do.  
2 It will be done in the future.

3 VICE CHAIR MILLER: Good. And your ANC is  
4 not necessarily alone in this. I think a lot of ANCs  
5 don't either read that carefully or enough to  
6 understand it. That's why I wanted to take this  
7 opportunity to let you know.

8 MS. THOMPSON: I appreciate it.

9 CHAIRPERSON GRIFFIS: Good. Thank you.  
10 Does the applicant have cross examination of the ANC  
11 member? Questions for Ms. Thompson?

12 MS. KATZ: I don't have any questions of  
13 her, everything in the meeting.

14 CHAIRPERSON GRIFFIS: Good. Does the  
15 Board have an opinion? Ms. Glazer, do you have an  
16 opinion about the issue that was raised in terms of  
17 the lot width? How is one allowed to have this 30-  
18 foot portion of a lot that is required to have a 50-  
19 foot minimum lot width?

20 MS. GLAZER: Sorry. I didn't look at  
21 that, Mr. Chair. I can do that if you want.

22 CHAIRPERSON GRIFFIS: Okay. It would be  
23 my understanding, and perhaps I can be corrected  
24 before this is all over, but in looking at the lot  
25 width dimensions one needs to establish a point of

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1 which the majority of the lot meets the minimum lot  
2 width requirement which is 50 feet which its assuming  
3 based on the scale of the drawings that have been  
4 submitted that the majority of it does in the rear  
5 and, therefore, would conform.

6 Obviously all lots in the District aren't  
7 perfect squares or rectangles and this is a unique lot  
8 which actually tends to support its application in  
9 terms of processing for the variance relief based on  
10 the somewhat -- well, yes, based on that uniqueness  
11 and if a practical difficulty arose from it. But we  
12 can get further information on that if needed as we  
13 progress with this.

14 Okay. Very well. If there is nothing  
15 further for the ANC, no cross examination, let us move  
16 on to other Government reports attended to this of  
17 which I have no other listed. Is the applicant aware  
18 of any other reports submitted by any other Government  
19 agencies?

20 MS. KATZ: We do have a letter of support  
21 from Howard Ways who is in the Office of the Deputy  
22 Mayor for Planning and Economic development. I don't  
23 know if that was submitted in the file or not. Would  
24 you like me to read it?

25 CHAIRPERSON GRIFFIS: I don't have a

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1 record of that. No, you don't need to read it. Can  
2 you describe for me whose position is it?

3 MS. KATZ: Howard Ways is a special  
4 assistant and he is actually, I guess, in charge of  
5 the Home Again Initiative Program or he's been working  
6 with Marshall Heights.

7 CHAIRPERSON GRIFFIS: I know, but is he  
8 signing for the Office of Economic Development?

9 MS. KATZ: He did sign for the Office.

10 CHAIRPERSON GRIFFIS: There it is. Let's  
11 put it in the record.

12 MS. BAILEY: Mr. Chairman, that's Exhibit  
13 5.

14 CHAIRPERSON GRIFFIS: Oh, thank you.

15 MS. BAILEY: I took that to mean the  
16 letter for authorization for Marshall Heights to be --

17 MS. KATZ: That's something different.  
18 That was in an authorization letter that they sent in  
19 to give us the authority to --

20 MS. BAILEY: There's something else?

21 MS. KATZ: Yes.

22 MS. BAILEY: Okay.

23 CHAIRPERSON GRIFFIS: How many copies do  
24 you have with you today?

25 MS. KATZ: Actually, I just have one but I

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1 have another one at the office.

2 CHAIRPERSON GRIFFIS: Okay. There it is.

3 If you wouldn't mind providing it to the ANC first  
4 they can read it and then we are going to put it in  
5 the record and we'll make copies into the record.  
6 Anything else from the Board? Any other questions in  
7 regards to the ANC?

8 Okay. Let's move ahead then. Well, let's  
9 go to persons that are going to give testimony in  
10 support of the application. People in support, if you  
11 wouldn't mind coming up. Actually, before we do that,  
12 is this the gentleman you've been waiting for?

13 MS. KATZ: Yes.

14 CHAIRPERSON GRIFFIS: Indeed. Why don't  
15 you introduce yourself for the record, please. Your  
16 name and address.

17 MR. MOODY: Good morning. First I want to  
18 apologize for being behind. I've actually been out  
19 looking for a parking space for well over an hour  
20 outside. For the record, my name is Kevin Moody.

21 CHAIRPERSON GRIFFIS: That's why they put  
22 the Metro right there. Okay.

23 MR. MOODY: My name is Kevin Moody and I'm  
24 Housing Development Manager for Marshall Heights  
25 Community Development Organization.

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1 CHAIRPERSON GRIFFIS: And your address?

2 MR. MOODY: Mailing address or work  
3 address, sir?

4 CHAIRPERSON GRIFFIS: Which ever you would  
5 like to give.

6 MR. MOODY: 3939 Benning Road, N.E.,  
7 Washington, D.C. 20019.

8 CHAIRPERSON GRIFFIS: Okay. I don't know  
9 if you had additional information that you wanted him  
10 to provide but there was one question that I think he  
11 was going to answer because you had indicated that you  
12 were providing affordable and we were trying to get an  
13 idea of what affordable was as you define it. The  
14 direct question was how much are you selling this  
15 building for.

16 MR. MOODY: Certainly. The affordable  
17 guidelines and what we can sell this property for was  
18 originally a part of the agreement that Marshall  
19 Heights had with the Deputy Mayor's Office under the  
20 Home Again Initiative Program. The anticipated  
21 selling price of this unit will be in the neighborhood  
22 of upper \$190s. That is considered affordable based  
23 upon the AMI guidelines that the District of Columbia  
24 offered that we must adhere to.

25 CHAIRPERSON GRIFFIS: Okay. So, if I

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1 understand you, with the Home Again Initiative and the  
2 award of this you were actually -- you are required to  
3 keep it within a range and that's what set the  
4 ceiling.

5 MR. MOODY: Absolutely.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. MOODY: In addition to that, there  
8 were certain requirements and guidelines that we had  
9 to provide as far as a price range. Now, you have to  
10 realize that those numbers that were agreed upon were  
11 numbers that were given approximately two years ago.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. MOODY: And almost not only Marshall  
14 Heights but any of the other developers that were  
15 awarded the properties have since had to come back  
16 because just the cost of materials, the cost of labor,  
17 and things have gone up. They have to approve the  
18 sales price before we can sell it to an individual  
19 person.

20 CHAIRPERSON GRIFFIS: Indeed. Okay. I  
21 don't know if it was established on the record today.

22 I think it's in the written submission but Marshall  
23 Heights Community Development Organization is a  
24 nonprofit. Is that correct?

25 MR. MOODY: Absolutely.

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1 CHAIRPERSON GRIFFIS: Okay. Any other  
2 questions?

3 VICE CHAIR MILLER: I'm sorry. I just  
4 missed it. What guidelines were you referring to?

5 MR. MOODY: Sure. They were the AMI,  
6 Average Median Income, for Washington, D.C. and it  
7 changes. There are two or three different models out  
8 there but I believe the latest one is approximately  
9 \$90,000 for household income under the AMI. There are  
10 certain guidelines. Some of the properties we can  
11 only sell 80 percent, some are 100 percent, some are  
12 110 percent. Each property that Marshall Heights was  
13 awarded varies.

14 VICE CHAIR MILLER: Okay.

15 CHAIRPERSON GRIFFIS: You said 80, 100,  
16 110 percent of the median income.

17 MR. MOODY: Yes, sir.

18 CHAIRPERSON GRIFFIS: So you would take a  
19 family and it goes on size. Is that correct? A  
20 family of four or a family of two has a different  
21 median income?

22 MR. MOODY: Absolutely.

23 CHAIRPERSON GRIFFIS: Okay. So what you  
24 do is in terms of establishing affordability level you  
25 may be hitting the 80 percent median income

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1 affordability level or the 10 percent median income  
2 affordability level for a family of four or a family  
3 of two.

4 MR. MOODY: I couldn't have said it  
5 better.

6 CHAIRPERSON GRIFFIS: I see. Okay. You  
7 were very clear because you gave me that full  
8 understanding. Okay. Any questions, follow-up?  
9 Clarifications at all? Okay. Then let's go to  
10 testimony. If you wouldn't mind, you folks can have a  
11 seat and make yourselves comfortable. We are going to  
12 hear from all the persons to give testimony today. Of  
13 course, you are afforded the opportunity to cross  
14 examine all those witnesses.

15 I'm going to pull a panel first of those  
16 in support for testimony. If you would all come  
17 forward at this time and we can proceed. Persons to  
18 give testimony? Don't tell me you've all gone shy  
19 now. Okay. And in opposition? How many do we have  
20 to give testimony? Anyone else? We just have two?  
21 Is she going to testify? When she comes back in if I  
22 don't pay attention, just have her take a seat and she  
23 can come right up. Okay.

24 As indicated, you guys can decide who you  
25 want to start with but just please provide your name

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1 and address for the record and then proceed. Of  
2 course, you are limited to three minutes. I'm not  
3 going to turn the buzzer on because it really makes a  
4 horrendous noise but I will keep my eye on the clock  
5 and I will kind of interrupt you gently as you get  
6 close to that time. Whenever you're ready. Yes, sir.

7 MR. WIGGINS: Good morning, Mr. Chairman,  
8 and other staff. My name is Eric Wiggins and I  
9 actually live at 3032 Clinton Street, N.E., the  
10 property adjacent to the property they are wanting to  
11 build.

12 CHAIRPERSON GRIFFIS: I'm sorry. When you  
13 say adjacent, as you face the proposed building you're  
14 on the left side?

15 MR. WIGGINS: I'm on the -- this is my  
16 property and this is their property.

17 CHAIRPERSON GRIFFIS: Okay. If you are  
18 facing your property?

19 MR. WIGGINS: If I'm facing my property  
20 looking at my property, then their property would be  
21 over here.

22 CHAIRPERSON GRIFFIS: On the right?

23 MR. WIGGINS: Well, it would be on my  
24 right looking but if you --

25 CHAIRPERSON GRIFFIS: Let me turn around.

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1       Sometimes we have to do these things to understand  
2 what's going on. Okay.

3                   MR. WIGGINS: I'm on the south side.

4                   CHAIRPERSON GRIFFIS: You park under your  
5 front porch. Is that correct?

6                   MR. WIGGINS: Yes.

7                   CHAIRPERSON GRIFFIS: Okay.

8                   MR. WIGGINS: Well, I actually have a two-  
9 car garage. Under the front porch is a garage and  
10 right in front of --

11                   CHAIRPERSON GRIFFIS: And then pull  
12 straight in. Interesting. Quite a unique way to do  
13 it. Okay.

14                   MR. WIGGINS: I'm not sure how much more  
15 that I can actually say but I do want to apologize,  
16 first of all, for not even applying for the party  
17 status because I didn't realize that I had to apply to  
18 a party status at first because -- there you go. This  
19 is the kicker -- when this letter was sent out back in  
20 February, it was sent to an address that I moved away  
21 from two years ago and it never got to me.

22                   When the ANC had its meeting then, you  
23 know, and they were telling me about this, then that's  
24 how I end up finding out about it. Before that I  
25 lived in Virginia. I didn't know anything about

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1 houses in the District or anything like that. Then I  
2 just purchased a property. At the same time two years  
3 ago when I came in to the District to purchase a  
4 property --

5 CHAIRPERSON GRIFFIS: I'm sorry. Do you  
6 still own the old address?

7 MR. WIGGINS: No. It's an apartment that  
8 I was renting.

9 CHAIRPERSON GRIFFIS: I see. Okay. Go  
10 ahead.

11 MR. WIGGINS: So, with that, Ms. Miller  
12 said that she -- well, she was telling the ANC about  
13 the party way so I'm not sure how much more of that I  
14 would have to go over because I truly agree with what  
15 Commissioner Thompson referenced in the side yard  
16 variance. Why couldn't they put this property  
17 centered like center of the property?

18 Not only that, I oppose the side yard  
19 variance and the fact that, No. 1, it's positioned  
20 close to my property, as well as also on the other  
21 side it doesn't allow for us to be able to move  
22 anything through the property. Again, I don't want to  
23 go back over --

24 CHAIRPERSON GRIFFIS: Don't worry about  
25 repeating things because I'll be pretty strict on that

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1 but just tell us essentially what you find that will  
2 -- that you oppose in this application.

3 MR. WIGGINS: Well, again, those are the  
4 areas that I oppose. Also, again, in reference to Ms.  
5 Katz' testimony about not being able to move the  
6 property back, there is an area on -- there is a  
7 property over on Myrtle Avenue that the house is  
8 positioned back off the property. I believe that one  
9 of the bigger issues is cleaning that area on the back  
10 half of that property.

11 When I came in and moved on the property,  
12 I cleaned up the whole front half of that area so now  
13 the area is not even a nuisance to the neighborhood.  
14 At least, not that I can see, because it is clean up  
15 front but, still, they can move their property back.  
16 I don't like the idea of them being positioned right  
17 next to me in that respect.

18 CHAIRPERSON GRIFFIS: What don't you like  
19 about that?

20 MR. WIGGINS: Well, No. 1, there's a noise  
21 variance with the houses being close. One of the  
22 reasons why I moved into the area was because I liked  
23 the idea of having my space.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. WIGGINS: Again, in essence of

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1 repeating what has already been said I don't want to  
2 get into it but that is how I feel about it. I mean,  
3 I don't like the idea of how this property is actually  
4 going to be positioned. I don't know if this would  
5 cause a problem for resale of my property if I should  
6 want to resale my property. Or would it cause a drop  
7 in my property value. These are the issues that I  
8 have.

9 These are issues that I have pertaining to  
10 this property the way that it's being built. Also,  
11 there's a huge tree out in front. I don't see no need  
12 for that tree to be there. I think they can remove  
13 that tree but they refuse to remove that tree. That's  
14 another issue.

15 CHAIRPERSON GRIFFIS: Wow. You don't want  
16 the tree there?

17 MR. WIGGINS: No.

18 CHAIRPERSON GRIFFIS: We often hear the  
19 opposite.

20 MR. WIGGINS: I understand.

21 CHAIRPERSON GRIFFIS: It just shows how  
22 great this city is.

23 MR. WIGGINS: When I came in I got rid of  
24 mine.

25 CHAIRPERSON GRIFFIS: I see. Okay.

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1 MR. WIGGINS: I think the tree is a  
2 nuisance. Even though the engineer came in and they  
3 said it's structurally sound, there is some area that  
4 is rotting out. At some point it will --

5 CHAIRPERSON GRIFFIS: Yeah, they will have  
6 to tend to it. It looks like from the photographs  
7 it's a fairly old tree.

8 MR. WIGGINS: It is.

9 CHAIRPERSON GRIFFIS: It would need some  
10 attention.

11 MR. WIGGINS: Right.

12 CHAIRPERSON GRIFFIS: Okay. Anything  
13 else?

14 MR. WIGGINS: Parking area. There's a  
15 hydrant right off the property right in front of it.

16 CHAIRPERSON GRIFFIS: Right. Just  
17 adjacent to your driveway.

18 MR. WIGGINS: Right. So I don't see them  
19 actually making a parking path through that area so  
20 they have to go on the opposite side of the tree.  
21 Again, you are infringing on the other property next  
22 door which, again, is taking away from the way that  
23 the neighborhood really looks now. Everybody has  
24 space in between their property and there would be no  
25 space.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. WIGGINS: I'll pass it on to the next  
3 person.

4 VICE CHAIR MILLER: I just want to ask a  
5 quick question before we move on just to understand  
6 which neighbor you are. On one of the sides the side  
7 yard is proposed to be only one foot. Are you the  
8 abutting neighbor to that side or are you on the other  
9 side?

10 MR. WIGGINS: I'm on the opposite side.

11 VICE CHAIR MILLER: Okay.

12 CHAIRPERSON GRIFFIS: Mr. Wiggins, you  
13 brought up an interesting point and, of course,  
14 notification for the Board mailing and posting is a  
15 critical aspect that we take very seriously. I did  
16 pull out the mailing label list which is Exhibit No. 8  
17 in the record and Eric L. Wiggins, is that who you  
18 are?

19 MR. WIGGINS: That's correct.

20 CHAIRPERSON GRIFFIS: Well, for some  
21 reason your address is listed at 2005 Columbia Park.

22 MR. WIGGINS: Correct.

23 CHAIRPERSON GRIFFIS: I just want to be  
24 clear that I don't think it's the applicant's mistake  
25 or error.

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1 MR. WIGGINS: No, no, no. I'm not blaming  
2 them for it.

3 CHAIRPERSON GRIFFIS: Oh, okay.

4 MR. WIGGINS: When I came over -- as a  
5 matter of fact, I came over last week to get this from  
6 the young lady over here who actually gave me this.  
7 She went over and she told me that this is where it  
8 was sent to.

9 CHAIRPERSON GRIFFIS: Okay. So it may be  
10 something that you have to attend to in terms of why  
11 they still have that address for you.

12 MR. WIGGINS: Right.

13 CHAIRPERSON GRIFFIS: Okay. Great. If  
14 nothing else, that's been cleared up for me. Okay.  
15 Any other questions from the Board? We are going to  
16 finish the panel and then you are all going to stay  
17 here because there's an opportunity for you to be  
18 cross examined. Who would like to be next?

19 MS. NICKENS: I.

20 CHAIRPERSON GRIFFIS: Excellent. Mr.  
21 Wiggins, I'm going to ask you to turn your microphone  
22 off. Thank you.

23 MS. NICKENS: My name is Paula Nickens. I  
24 live at 3024 Clinton Street. I live three lots just  
25 adjacent to the proposed lot to build on. I don't

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1 want to go through and read my testimony. I want to  
2 make two points. I want to talk about the Home Again  
3 Program that was referenced in terms of building a  
4 home there.

5 I've lived on Clinton Street more than 35  
6 years. We own our property so I've seen the  
7 neighborhood transition and I'm not opposed to them  
8 building. What I would like Marshall Heights to do is  
9 to accept an amendment and build the property further  
10 back. We do have not only at 2832 an example of a far  
11 back house with a driveway coming up. We discussed it  
12 at the ANC meeting but their issue is they don't want  
13 to clean the lot.

14 Some people are objecting and opposed to  
15 this because the lot is a lot of trees and etc. behind  
16 it. They don't want -- they are using financial  
17 reasons to say to us that they don't want to move it  
18 back because they don't want to clean the lot but you  
19 can build back there because there's a lot of property  
20 back behind where they want to build.

21 I would not be opposed here today if they  
22 would move the house back. It is with Eric taking  
23 away some of his privacy. We are able to in our  
24 neighborhood walk around our houses and enjoy each  
25 other but still walk around our houses and have guests

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1 and they are able to walk around our house.

2 The neighborhood itself has a lot of  
3 trees. Marshall Heights coming over had to see all  
4 the trees and that's what made it so beautiful. I  
5 hate it in the winter but it's beautiful in the  
6 summer, the gallery of trees that are there.

7 I'm not opposed to them building a house  
8 there, low and moderate income house there, because  
9 our neighborhood, in particular Clinton Street, are  
10 now getting used to having low and moderate income.  
11 We have 25 percent already there and we are now  
12 willing to accept with some amendments but as I heard  
13 Marshall Heights sit today in a stubborn kind of way  
14 not wanting to change their plans.

15 The Home Again Initiative Program is a  
16 program that the city developed and entered in  
17 neighborhoods where they have blight, run-down  
18 conditions. That property does not even meet those  
19 guidelines. It is not blight. It is not run down.  
20 It's been there before I came there. It's still  
21 there.

22 Before Eric came to try to clean the lot  
23 up it was just trees so it does not meet the Home  
24 Again Initiative Program's building, what their  
25 initiative is. Eric has inquired about the property

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1 with the District of Columbia government a year ago.  
2 Once he inquired about that property, all of a sudden  
3 after being there over 35, 40 years, all of a sudden  
4 we now have a ownership to this property and it's  
5 Marshall Heights. Before then you couldn't find any  
6 information out about this property.

7 It makes sense to me that Eric has this  
8 property, or on the other side have this property to  
9 enlarge, increase, move their property around instead  
10 of putting somebody in there because eventually  
11 whoever moves there the way they are building and the  
12 way the property is it's going to cause some problems  
13 on one or the other sides.

14 I just don't believe that Marshall Heights  
15 has come to our neighborhood in a friendly way to talk  
16 to us about building a house on that property. To ask  
17 for a zoning variance when there is property, there's  
18 nothing unique about that property. I don't see any  
19 uniqueness.

20 If you go look at the property, it's  
21 really nothing unique except that at the front end of  
22 it, it is no. The back end you can build on it. We  
23 have two examples in our area where houses are in the  
24 back so you can build that way. I just don't believe  
25 that the city should be just giving variances to

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1 organizations, nonprofits.

2 I know about them. I've worked diligently  
3 with nonprofits. I am the former chair of the D.C.  
4 Democratic Party just to give them variances.  
5 Marshall Heights needs to -- and to say the financial  
6 part of it, I understand the financial part of it but  
7 it would be nicer to come in a neighborhood where the  
8 community is acceptable and build backwards or either  
9 clean up the back of it because they are still gong to  
10 have what we don't want to see, the trees that are  
11 tumbling over.

12 There's a lot of trees tumbling over back  
13 there. Even with that house, you are still going to  
14 see that and the people that are moving there if they  
15 are lower income or moderate income people, they are  
16 not going to have the money to take down those trees.

17 They are still falling down so it's going to still  
18 look a mess. Eric out of the goodness of his heart  
19 had become doing that. That's my testimony.

20 CHAIRPERSON GRIFFIS: Good. Thank you  
21 very much. I think that last sentence actually  
22 clarified something I was going to ask in terms of you  
23 described your block as being incredibly beautiful in  
24 the summer because of the trees. Yet, you were  
25 pushing them to build on the back lot and clean the

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1 lot meaning removing a lot of the trees. If I  
2 understand you correctly, what you mean is basically  
3 thinning out some of the dead ones and maintaining  
4 more growth back in there.

5 MS. NICKENS: Yeah, because during a  
6 hurricane and storms that we had some of them have  
7 tumbled over.

8 CHAIRPERSON GRIFFIS: Indeed. On the  
9 adjacent properties that are similar to this that you  
10 say there has been construction, how forest are they?  
11 Do they have a lot of trees around the house?

12 MS. NICKENS: Yeah, they are real forest.

13 CHAIRPERSON GRIFFIS: I see.

14 MS. NICKENS: As a matter of fact, you  
15 can't even see the front of those houses because of  
16 the trees. You have to actually drive back up into  
17 the house. It's beautiful. It looks like a private  
18 separate setting.

19 CHAIRPERSON GRIFFIS: Right. Right.  
20 Indeed. Okay. Questions?

21 VICE CHAIR MILLER: We heard testimony  
22 that the topography in the rear yard was such that it  
23 would be quite expensive to excavate and be able to  
24 then sell the house for affordable housing. I'm  
25 wondering if you have any knowledge about the two

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1 houses that you make reference to that were built in  
2 the back. Do you have any knowledge about the  
3 topography there, the expense to put those houses back  
4 there?

5 MS. NICKENS: No, I don't because they  
6 probably was built probably even before I was born so  
7 no, I don't. I say that to say that they have  
8 examples of that type of house in the neighborhood. I  
9 don't believe based on watching Eric come and work  
10 that property -- he has worked that property all  
11 ready.

12 He has cleaned up a lot of the trees that  
13 have fallen and began to cut up until he heard about  
14 the variance because he was trying to purchase the  
15 property. When he heard about the variance and stuff,  
16 he just stopped. But if you look at the property now  
17 and what it was like before the hurricane, you can see  
18 back there. You can see dirt instead of fallen-over  
19 trees. You can see back there.

20 CHAIRPERSON GRIFFIS: Okay. Any other  
21 questions from the Board? Very well. Thank you very  
22 much.

23 Good morning.

24 MS. GILLIS: Good morning.

25 CHAIRPERSON GRIFFIS: I would just have

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1 you turn off that microphone. If you do have your  
2 written testimony, you can submit it in. Would you  
3 mind turning your microphone off? Excellent. Thank  
4 you.

5 MS. GILLIS: My name is Tama, T-A-M-A,  
6 last name Gillis, G-I-L-L-I-S. My address, 1037  
7 Irving Street, N.E., Washington, D.C. I'm the owner  
8 of 3042 Clinton Street, N.E. I'm here today to say  
9 that the owners and builders of Square 4319, Lot 72  
10 should not be allowed to have a variance from the side  
11 yard requirements. To allow the variance implies that  
12 the owner/builder wants to SQUEEZE a single-family  
13 detached dwelling onto a lot which is not large enough  
14 to accommodate it.

15 Most of the houses on Clinton Street have  
16 adequate yards and many having enough yard to have a  
17 driveway. To squeeze this house onto this lot would  
18 change the esthetic quality of the neighborhood. The  
19 houses in the Woodridge Community are appreciated for  
20 the quality of the homes and the size of the lots that  
21 they sit on. Squeezing a house onto a lot without a  
22 side yard will lessen the property value of the homes  
23 on either side of this lot.

24 In concluding, I feel strongly that the  
25 variance on Square 4319, Lot 72, should be denied.

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1 Thank you.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 We would appreciate it if you have that also to  
4 submit in writing. We can put that into the record.

5 Questions from the Board? Questions, clarifications?

6 Very well. Let's go to cross examination. Does  
7 applicant have any cross examination of the testimony  
8 that you just heard?

9 If you do, you're going to come forward,  
10 make yourself comfortable, and just turn on a  
11 microphone. Of course, cross examination the purpose  
12 of which the applicant is allowed to ask you  
13 questions. They should be short, succinct, direct, to  
14 the point, and your answer should be the same.

15 MR. MOODY: It's not necessarily a cross  
16 examination. If I could just sort of make -- I've  
17 been taking a few notes -- just sort of --

18 CHAIRPERSON GRIFFIS: Hope. Now is the  
19 time for cross examination questions.

20 MR. MOODY: Okay.

21 CHAIRPERSON GRIFFIS: And then any sort of  
22 statement or rebuttal, we are going to do that  
23 probably in a matter of moments.

24 MR. MOODY: So you think I should just  
25 hold it for the rebuttal then?

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1 CHAIRPERSON GRIFFIS: Must, unless you  
2 have questions.

3 MR. MOODY: No questions.

4 CHAIRPERSON GRIFFIS: Does the ANC have  
5 any cross examination questions? Good. You're going  
6 to need to come forward and have a seat. I have this  
7 thing about wanting everyone to be comfortable in  
8 their chairs. Most importantly, you have to say it  
9 into a microphone.

10 MS. THOMPSON: On the burden of proof that  
11 Marshall Heights had turned into you, they specify  
12 here that the space between the proposed house and the  
13 existing house to the north would be 20 feet.

14 CHAIRPERSON GRIFFIS: Is this a question  
15 for some of the witnesses?

16 MS. THOMPSON: Yes.

17 CHAIRPERSON GRIFFIS: Okay. Who are you  
18 directing it to?

19 MS. THOMPSON: Marshall Heights.

20 CHAIRPERSON GRIFFIS: No, you've already  
21 cross examined them.

22 MS. THOMPSON: Oh, I see. I wanted to see  
23 how they arrived at the 20 foot.

24 CHAIRPERSON GRIFFIS: Okay. The 20 foot  
25 what?

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1 MS. THOMPSON: There is supposed to be 20  
2 feet between the house on the north and the side where  
3 the one-foot variance they are asking for.

4 CHAIRPERSON GRIFFIS: What are you looking  
5 at?

6 MS. THOMPSON: The burden of proof.

7 CHAIRPERSON GRIFFIS: Okay. Do you have  
8 any cross examination, though, of the witnesses that  
9 you just heard?

10 MS. THOMPSON: Oh, no. Sorry about that.

11 CHAIRPERSON GRIFFIS: That's okay. Thank  
12 you very much.

13 Well, then, if no one is going to put you  
14 and sweat you under cross examination, I'm going to  
15 say thank you very much for being here and for being  
16 patient with us this morning. I think we're through  
17 with that aspect of this. Is anyone else here present  
18 to give testimony today, support or in opposition?  
19 Very well.

20 Then let us go to closing remarks by the  
21 applicant. Before we do that, just addressing the  
22 ANC, Ms. Thompson, who came forward, I believe you  
23 were looking at the third paragraph from burden of  
24 proof of Exhibit No. 7 which says the space between  
25 the proposed house and the existing house to the north

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1 would be 20 feet. I believe what that is indicating  
2 is not taking into account property lines. It's the  
3 distance from property structure to structure. Does  
4 that make sense?

5 MS. THOMPSON: Yes.

6 CHAIRPERSON GRIFFIS: If you say anything,  
7 you're going to have to be on a microphone.

8 MS. THOMPSON: I may be wrong but I would  
9 assume that the 20 foot or any measurement would be  
10 taken from the side of the house to the side of the  
11 house? Is this correct?

12 CHAIRPERSON GRIFFIS: I don't know. It  
13 depends on what you're talking about.

14 MS. THOMPSON: For a side yard variance or  
15 a side yard, if it would be eight feet, wouldn't that  
16 be measured from the side of the house to the property  
17 line?

18 CHAIRPERSON GRIFFIS: That's correct.  
19 Yeah. Anything that's required in the regulations is  
20 going to happen on the property.

21 MS. THOMPSON: Correct.

22 CHAIRPERSON GRIFFIS: Let's just get a  
23 quick clarification. In the third paragraph in the  
24 burden of proof you've indicated the space between the  
25 proposed house and the existing house to the north

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1 would be 20 feet. You're measuring from your exterior  
2 wall to the next structure's exterior wall. Is that  
3 correct?

4 MR. MOODY: That is correct.

5 CHAIRPERSON GRIFFIS: Does that have  
6 anything to do with zoning?

7 MR. MOODY: No.

8 CHAIRPERSON GRIFFIS: It's a separation of  
9 the structures. They are saying that between the two  
10 houses there's 20 feet.

11 MS. THOMPSON: But if they want a variance  
12 for just one foot to the property line on the house  
13 they would build, and say possibly there would be 10  
14 feet from the property line to the other structure of  
15 the house next door, it would still be only possibly  
16 11 feet. You would have to have an eight-foot side  
17 yard on both houses, or 10 feet on each side yard of a  
18 house to have the 20 feet? Am I wrong on this?

19 CHAIRPERSON GRIFFIS: Yes. I think you're  
20 getting confused, a little bit confused. Let's assume  
21 that this house was now constructed and you took a  
22 tape measure from the proposed house and you walked it  
23 over to the next house and touched the side of that  
24 house, it would measure 20 feet.

25 MS. THOMPSON: I didn't get a chance to do

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1 that but --

2 CHAIRPERSON GRIFFIS: You couldn't. It  
3 didn't exist.

4 MS. THOMPSON: In the appearance, you  
5 know, in pictures and on this picture that they have  
6 here on this No. 1, it doesn't seem as though there  
7 would be 20 feet in between both homes.

8 CHAIRPERSON GRIFFIS: I see. I see. So  
9 you're questioning whether it would actually be 20  
10 feet.

11 MS. THOMPSON: Right.

12 CHAIRPERSON GRIFFIS: So the adjacent  
13 property needs to be 19 feet from its property line in  
14 order for it to be 20 feet with a one-foot setback  
15 proposed. Okay. I think I'm clear. Thank you.  
16 Okay. Closing remarks?

17 MR. MOODY: Yes. First, I want to be able  
18 to appreciate and understand everyone's concerns that  
19 live in and/or about the Clinton Street. I just  
20 wanted to make a few clarification points. As far as  
21 the possibility of moving the proposed house back  
22 towards what I called the flag portion of the lot,  
23 yes, it does have something to do with expenses, but  
24 it has more so to do with the engineering nightmare to  
25 try to be able to go through the 25 to 30 percent

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1 slopes that are at the rear of the property which then  
2 (a) defeats the purpose of trying to maintain the  
3 existing trees where in most situations we want to  
4 save as many trees as humanly possible.

5 Then if you also starting to talk about  
6 steep slopes, you also then are having to put multiple  
7 retaining walls around the entire site in order to be  
8 able to retain the soil. Again, yes, it has something  
9 to do with expenses but just more so to do with an  
10 engineer nightmare to try to be able to site a house  
11 back there.

12 In addition to that, if a person did have  
13 their house back there, it would be a terrible  
14 sighting because if you are sitting on your front  
15 porch, all that you would be doing is looking in the  
16 rear porches of the other two adjacent properties. I  
17 just don't think based upon all of the circumstances  
18 that we have to deal with, that would just not be a  
19 viable option.

20 The other notion and, again, I understand  
21 the gentleman that was here and his ability to be able  
22 to acquire the property prior to the Home Again  
23 Initiative Program. I understand again for that to be  
24 a problem but we're not in front of you today to  
25 discuss who is getting the property. We are in front

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1 of you today to be able to discuss what the variance  
2 relief that we are trying to ascertain.

3 The other portion that the lady had  
4 mentioned about this property did not fit the criteria  
5 for the Home Again properties. The Home Again  
6 properties were abandoned properties as well as vacant  
7 and abandoned lots. I think we are all in agreement  
8 that this property has been vacant and abandoned for  
9 quite some time. I know the few times that I've been  
10 pass the property it does have trash.

11 Unlike what I think a lot of people tend  
12 to believe, a new construction typically increases the  
13 value of a property more so than a vacant lot where a  
14 person can come and throw trash. We really and truly  
15 believe that as opposed to having a vacant lot, having  
16 a new single family detached house built there would  
17 definitely not hurt the values, but we would also tend  
18 to believe that it would increase the values of the  
19 property.

20 The only other remaining items as far as  
21 noise that if the other gentleman would end up  
22 building, I guess it would be wonderful if we all  
23 could have a vacant lot beside us and to use it  
24 whichever way that we so choose to, but if you have a  
25 property line and they were saying that would affect

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1 the ability to be able to use the adjacent person's  
2 property would not be true because you would not be  
3 able to intrude or trespass on an adjacent property.

4 So if a person was utilizing their  
5 property within their property lines, building a house  
6 next door as long as it's within the confines of the  
7 property line would not diminish the use of any  
8 person's property. That was just a rebuttal  
9 statement.

10 Again, Marshall Heights is just trying to  
11 be able to work within the confines of the flag lot  
12 which is a different lot because it's not a rectangle  
13 or square. Anything that we could do to try to make  
14 the residents within that area more comfortable, you  
15 know, we would be more than happy to but when you're  
16 working with such a tight site, it just does not leave  
17 many options in which to do anything.

18 CHAIRPERSON GRIFFIS: Good. Thank you.  
19 Anything else? We've had a lot of discussion and the  
20 Office of Planning's recommendation to adjust the side  
21 yards, and obviously all the opposition addresses that  
22 and other issues. Help me understand that your  
23 position now whether you want to hold the plan as it  
24 or we should proceed on it or you having heard things  
25 today thought perhaps you want to reevaluate just the

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1 siting or the footprint? It's absolutely your choice  
2 in this matter but we need to understand what  
3 direction you're taking.

4 MR. MOODY: Certainly. I don't want to  
5 sound like I'm on the fence on this issue but what we  
6 originally submitted was at least the best house  
7 siting that we could to try to be as close to the  
8 square footages of all of the other houses that were  
9 on the block.

10 If need be, Marshall Heights has  
11 absolutely no problem in utilizing another  
12 prototypical floor plan that we have and the width of  
13 that is 20 feet by 35 feet which would then mean that  
14 we would site that house dead smack in the middle of  
15 the lot which would then provide four feet on either  
16 side as opposed to one and five. If that would make  
17 at least the situation more plausible to everyone, we  
18 would have absolutely no problem in doing that.

19 MS. KATZ: If I can interject also, that  
20 was one of the prototypical houses I was speaking of  
21 earlier which we would then have to see off-street  
22 parking. It does not have a garage.

23 CHAIRPERSON GRIFFIS: That's where I was  
24 going before in some of the discussions because I'm  
25 not sure what it requires you to do prototypical, but

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1 I also don't want to get into a big discussion on  
2 that. Coming from your statement, you said you hired  
3 these architects to do a specific design for this  
4 specific site so I would encourage you.

5 If these folks aren't capable, there's  
6 plenty in the District that are. If you are amenable  
7 to going in that direction, try to look at some  
8 creative solutions for siting and size and then  
9 parking on this lot. Again, that is a decision you  
10 have to make.

11 Let me lay it out here. If you decide you  
12 want to relook at this, obviously we keep the record  
13 open. If we keep the record open, I need to know what  
14 to anticipate and you are going to need to share it  
15 with me and see and get responses back from them.

16 I think that is an important vehicle and  
17 appropriate to do. Or we will set this for decision  
18 making which will be a little bit quicker but probably  
19 not that much quicker and we will go with what's on  
20 the record today.

21 MR. MOODY: If I could ask a question.  
22 I'm not exactly sure if it is appropriate at this  
23 time. Is it possible to maybe sort of get a feel or a  
24 sense for what the governing body because we can do it  
25 either way. We want to try to appease as many people

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1 as we can but just realizing again this is one of the  
2 units that had the garage. If it was kind of offset  
3 to one side, we could try to maintain what is in fact  
4 a healthy, very mature tree.

5 If you site the house dead smack in the  
6 middle with having off-street parking as opposed to a  
7 garage, there just isn't enough room because every  
8 time we go through DCRA the side yard has to be able  
9 to maintain and the parking space has -- the 19 feet  
10 starts from the face of the house back. It's not like  
11 this parking can sit in the front of the unit. It  
12 looks like I'm totally confusing you. Should I try to  
13 explain that again?

14 VICE CHAIR MILLER: Is your point that you  
15 would have to get a variance on the parking?

16 MR. MOODY: Yes.

17 VICE CHAIR MILLER: Okay.

18 MR. MOODY: In a nutshell that's what I  
19 was trying to say.

20 VICE CHAIR MILLER: Okay. And we did  
21 pursue questioning about the availability of parking  
22 on the street and we didn't hear that there was any  
23 problem with that.

24 MR. MOODY: It appears to be the direction  
25 in which the governing body would be happier, for lack

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1 of a better word, for us to have the 20-foot wide  
2 house with four feet on either side and to provide us  
3 a variance for just having on-street parking. We have  
4 no problem with that so I don't know if that is  
5 something where we could try to get some guidance.

6 CHAIRPERSON GRIFFIS: No.

7 MR. MOODY: Okay.

8 CHAIRPERSON GRIFFIS: It frankly wouldn't  
9 be fair to you if we gave you guidance because I'm not  
10 sure we are of consensus. We obviously haven't  
11 deliberated or even discussed. I think there are very  
12 creative ways to do it without having to somehow give  
13 an indication that we would grant a variance for the  
14 parking requirement. Mr. Wiggins' building itself  
15 shows how you can part in front of the building and  
16 not have to pull in.

17 That doesn't impact necessarily the width  
18 outside of 20 feet that would be required for the  
19 minimum parking pad. I think there's a lot of very  
20 intriguing ways you could do it. If the Board wants  
21 to do a further investigation, I would support that.  
22 I would also support going ahead with it as it is. I  
23 put it to you.

24 The direction I think this Board would  
25 give if you decide that you wanted to relook at the

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1 design of the building in terms of how it relates to  
2 the variance and the side yards and access and all  
3 that, I think there is sufficient contextual examples  
4 that you can look at on how you could facilitate that.

5 I would certainly support that if you wanted to move  
6 ahead in that direction.

7 Now, I think the Board is also well aware  
8 of the constraints that you have. This is,  
9 interestingly enough, not a market rate house with a  
10 private developer and so I know that the budget isn't  
11 unlimited so we would certainly be sensitive to that.

12 Actually, why don't we do this. We are  
13 going to take three minutes and we will be back.

14 (Whereupon, at 11:47 a.m. off the record  
15 until 11:58 a.m.)

16 CHAIRPERSON GRIFFIS: Okay. Let's  
17 reconvene. What have you decided? You're lucky we  
18 were so expeditious with our morning with our morning  
19 schedule. We can be kind of leisurely in this one.  
20 Okay.

21 MR. MOODY: Certainly. Our feelings sort  
22 of based upon the brief discussions with the people in  
23 opposition. At least from the comments that we  
24 viewed, I think it would be a Marshall Heights'  
25 position to provide the smaller width house which

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1 would then be 20 feet versus 24 feet which would then  
2 allow for four feet on either side yards which, if I'm  
3 not mistaken, was the recommendation that we had  
4 gotten from the Office of Planning.

5 CHAIRPERSON GRIFFIS: So, if I understand  
6 you, you are looking at a 22-foot house. Is that  
7 correct?

8 MR. MOODY: Oh, excuse me.

9 MS. KATZ: It would actually allow for  
10 five feet on each side of the house because if the  
11 house is 20 feet and the lot is 30 feet.

12 CHAIRPERSON GRIFFIS: Five feet on either  
13 side.

14 MS. KATZ: Correct.

15 MR. MOODY: I stand corrected.

16 CHAIRPERSON GRIFFIS: Wow.

17 MR. MOODY: Please be mindful again that  
18 would mean that we would be looking for a waiver of a  
19 variance for off-street parking because there isn't  
20 enough side yard. Again, DCRA now does not allow the  
21 parking pad to be in the front of the house. The  
22 parking pad, if you can imagine this being the house,  
23 the parking can only start here and go back.

24 CHAIRPERSON GRIFFIS: And what is the  
25 reason why you couldn't do a scenario approximately

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1 like the adjacent house, Mr. Wiggins' house?

2 MR. MOODY: There just isn't enough  
3 turning radius to be able to get in there when we are  
4 working with a couple of obstacles. For instance, the  
5 fire hydrant. From talking with the powers that be,  
6 they said they would not relocate that. Then the  
7 second option, again, is trying to keep the mature  
8 specimen tree in the front yard.

9 There just is not enough turning radius to  
10 be able to do that. It is minimum turning radius DCRA  
11 would have to approve. The way that this alignment is  
12 now for the adjacent property is something that would  
13 not be able to get approved today.

14 CHAIRPERSON GRIFFIS: Okay. Let's do  
15 this. We are going to proceed in this fashion. We  
16 are going to have you submit what you just stated in  
17 terms of what you're thinking about in terms of an  
18 alternative. We will set a date for that. Of course,  
19 it would just be the site plan and then somewhat  
20 similar the package that you've put in for this  
21 application that clearly and graphically represents  
22 what you are proposing to build.

23 Of course, we would ask that you share it  
24 with the neighbors but, most importantly, the party in  
25 the case is the ANC and we'll leave the record open

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1 for their brief response to that. How quickly do you  
2 think you could have your information produced?

3 MR. MOODY: Would two weeks be an  
4 acceptable time frame for you, sir?

5 CHAIRPERSON GRIFFIS: It's totally up to  
6 you. If you can do it in two, that's great.

7 MR. MOODY: If you could allot us two  
8 weeks and we'll try our absolutely best to get the  
9 architect to finalize that faster. If you could grant  
10 us two weeks, it would be appreciative.

11 CHAIRPERSON GRIFFIS: It's up to you. I'm  
12 going to make it that everyone can meet the schedule  
13 that we set. If we had submission in two weeks, that  
14 would be then, of course, put into the Office of  
15 Zoning. It would be served on the ANC. We could  
16 allow a week for response, Ms. Bailey?

17 MS. BAILEY: Yes, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Excellent.

19 MS. BAILEY: Now, if you are going three  
20 weeks, that would be a special public meeting. Say  
21 May 18th or May 25th?

22 CHAIRPERSON GRIFFIS: Well, if the ANC is  
23 served, would they be able to respond within a week?

24 MS. THOMPSON: A week would be a little  
25 short.

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1 CHAIRPERSON GRIFFIS: Can you come have a  
2 seat?

3 MS. THOMPSON: In order to get a meeting  
4 up of the single member district, I think actually we  
5 are supposed to notify people seven days in advance of  
6 a meeting when it's coming up so I would have to have  
7 that seven days at least to notify the other people.  
8 It might take, say, two weeks.

9 CHAIRPERSON GRIFFIS: But as director of  
10 your single member district, you heard the concerns  
11 previously. Is that correct?

12 MS. THOMPSON: Yes.

13 CHAIRPERSON GRIFFIS: And so in addressing  
14 those concerns the applicant is proposing perhaps to  
15 submit a different design. Could you not evaluate  
16 that yourself?

17 MS. THOMPSON: Would that be in the best  
18 interest of the community for their input and for them  
19 to give the okay?

20 CHAIRPERSON GRIFFIS: Are you asking me  
21 that question?

22 MS. THOMPSON: Yes.

23 CHAIRPERSON GRIFFIS: I'm not going to  
24 answer that question.

25 MS. THOMPSON: I don't know whether I

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1 should give the reply or it should be the community.

2 CHAIRPERSON GRIFFIS: You need seven days  
3 to give notice. Right?

4 MS. THOMPSON: Seven days to notify the  
5 community of a meeting that I would have to get their  
6 input.

7 CHAIRPERSON GRIFFIS: Okay. That's easy  
8 to do. I mean, after you walk out of here you are  
9 going to know exactly when you are getting information  
10 and when it's due back.

11 MS. THOMPSON: Right.

12 CHAIRPERSON GRIFFIS: You are going to  
13 have at least three weeks. You can announce it today  
14 and get the seven days.

15 MS. THOMPSON: Three weeks would be fine.

16 CHAIRPERSON GRIFFIS: Okay. So you're  
17 going to have one week to respond though.

18 MS. THOMPSON: Right.

19 CHAIRPERSON GRIFFIS: I know you say right  
20 but it will be clear to you when we go through all  
21 this.

22 Ms. Miller.

23 VICE CHAIR MILLER: I have two comments.  
24 I think that the ANC law provides that you can have an  
25 emergency meeting in less than seven days if you need

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1 to but it sounds like you can have it and make the  
2 seven days anyway.

3 My other concern is if the applicant is  
4 going to be seeking another variance whether or not it  
5 should be posted so that certainly, you know, any  
6 neighbors who aren't here would be aware of it.

7 CHAIRPERSON GRIFFIS: I mean, I think  
8 we're going to have fudge this if it changes which  
9 just goes to show how cumbersome some of these can be.  
10 However, I don't know. I wish we could just grab  
11 some sketch paper and work this out now. However, the  
12 issue -- go ahead.

13 MR. MOODY: If we could provide and,  
14 again, we are trying to make this as simple as  
15 possible, we thought that this may come. We have a  
16 sketch of the floor plans that we would be using that  
17 has the 20 foot --

18 CHAIRPERSON GRIFFIS: Can you park in it?

19 MR. MOODY: Excuse me?

20 CHAIRPERSON GRIFFIS: Can you park?

21 MS. KATZ: No, this is the sketch of the -  
22 -

23 CHAIRPERSON GRIFFIS: Right. So you're  
24 pretty convinced of the fact and you've looked at it.

25 If you did a 20-foot dimension, you won't be able to

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1 park -- provide a parking space.

2 MR. MOODY: That is correct.

3 CHAIRPERSON GRIFFIS: This is for a  
4 variance. It was announced for a variance. What is  
5 the opinion on whether we would have to readvertise  
6 and post the property?

7 MS. BAILEY: Is the Corporation Counsel  
8 over there, Mr. Chairman?

9 MS. GLAZER: Yes, Mr. Chair. I agree with  
10 Ms. Miller on this one. I believe that it would be  
11 appropriate to readvertise. The relief would be  
12 different enough from the original relief requested  
13 that it should be advertised and the Board might want  
14 to consider asking OP to follow up with a brief  
15 supplement on the parking issue.

16 CHAIRPERSON GRIFFIS: Okay. There it is.  
17 That's what we're going to do. You are convinced the  
18 alternative is going to bring in a variance from  
19 parking. Is that correct?

20 MR. MOODY: If we went with what we  
21 thought was the preferred option of all of the bodies  
22 in here then, yes, we would.

23 CHAIRPERSON GRIFFIS: Okay. Right. Undo  
24 caution, we're going to cover all the bases and here  
25 is what I suggest. First of all, we are going to have

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1 your documentation and then any sort of documentation  
2 to the case, the presentation for the variance from  
3 the parking if that is what, in fact, comes in with  
4 the new sketches and the alternatives. That would all  
5 be submitted. That should be submitted to us. Is  
6 that also something you could do in two weeks?

7 MR. MOODY: Yes. Yes.

8 CHAIRPERSON GRIFFIS: Take as much time as  
9 you need but as quickly as you can do it.

10 MR. MOODY: Yes. We will have it in two  
11 weeks.

12 MS. KATZ: Two weeks is fine.

13 CHAIRPERSON GRIFFIS: Are you sure?

14 MR. MOODY: Yes.

15 CHAIRPERSON GRIFFIS: Okay. Let me just  
16 state again, you are setting the schedule here. I  
17 will push you to do it as quickly as possible for your  
18 own benefit so that we can clear this whether an  
19 approval or denial. No one needs to sit on this for a  
20 long time. If you are comfortable meeting in two  
21 weeks, then we'll go ahead with that.

22 MS. KATZ: I'm fine with that.

23 CHAIRPERSON GRIFFIS: Okay. So if we have  
24 it in two weeks, what we will do is we'll have a week  
25 to respond from the ANC so we are putting it to three

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1 weeks which, Ms. Bailey, you were saying was the 18th.

2 Is that correct?

3 MS. BAILEY: Yes, sir. At a special  
4 public meeting.

5 CHAIRPERSON GRIFFIS: Okay. It actually  
6 can't be -- well, I think if we readvertise this are  
7 we not required then to have a limited public hearing  
8 on this?

9 MS. GLAZER: Yes, I believe so.

10 CHAIRPERSON GRIFFIS: Right. Okay. So  
11 what we're going to do is --

12 MS. BAILEY: May 4th for the submissions,  
13 May 11th for the ANC, and May 18th for the continued  
14 public hearing?

15 CHAIRPERSON GRIFFIS: Can we fit it in the  
16 afternoon?

17 MS. BAILEY: At 1:00 p.m., sir?

18 CHAIRPERSON GRIFFIS: Yes.

19 MS. BAILEY: Sure.

20 CHAIRPERSON GRIFFIS: Do you think that  
21 will work?

22 MS. BAILEY: Sure.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. MOY: I was looking at May 25th but I  
25 think May 18th is probably better than the 25th.

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1 CHAIRPERSON GRIFFIS: I think so, too.

2 MR. MOY: Given the appeal cases.

3 CHAIRPERSON GRIFFIS: Okay. Oh, gosh,  
4 yes. So it's going to be on the 18th.

5 MS. BAILEY: Should I repeat those dates,  
6 Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes.

8 MS. BAILEY: Okay. The submissions from  
9 the applicant is due May 4th. The ANC may respond by  
10 May 11th. The Board will continue the public hearing  
11 the afternoon of May 18th at 1:00.

12 CHAIRPERSON GRIFFIS: Okay. I'm going to  
13 take questions, procedural questions, clarifications.

14 MR. MOODY: Just one question. Since we  
15 are going to be coming in for a variance from the off-  
16 street parking, when must the site be reposted so we  
17 are making sure we are adhering to that deadline?

18 CHAIRPERSON GRIFFIS: Fourteen days. Is  
19 that correct?

20 MS. BAILEY: Yes.

21 MR. MOODY: Fourteen?

22 MS. BAILEY: Prior to May 18th.

23 MR. MOODY: So that would basically then  
24 be the same date which is the deadline for submission  
25 from us. That is, in fact, the same date as the

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1 deadline to post the site.

2 MS. BAILEY: You can pick up the posters  
3 today.

4 MR. MOODY: Okay.

5 CHAIRPERSON GRIFFIS: For that kind of  
6 stuff you can go right next door to the Office of  
7 Zoning and they can clarify all that. Does anyone  
8 have any questions about dates? Yes.

9 MS. THOMPSON: I would like to know will  
10 the public hearing now just be for the house itself or  
11 will it also include the parking variance?

12 CHAIRPERSON GRIFFIS: It's going to be  
13 everything. It's a continuation of the hearing. It's  
14 an excellent question, though. Any other questions?  
15 Okay. Let me clarify, when we reconvene this hearing,  
16 we are not going to be revisiting a lot of the facts  
17 that we've gone through.

18 What we will be doing is focusing on any  
19 alternatives that have been submitted into the record  
20 so we are perhaps going to be looking at a whole new  
21 design and obviously an additional variance for  
22 parking. I think the Board will look at both,  
23 although we don't often do that. We may well look at  
24 both. We will ask, and we ask everyone who is here  
25 today to spread the word, too.

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1           This will be limited to about 60 minutes  
2 on whatever date we were doing, the 18th, 60 minutes.

3           We have a huge afternoon which will take us eight or  
4 nine hours to finish and we are squeezing this in, the  
5 first case at 1:00. I think we need no more than 60  
6 minutes to get through all of the information.

7           With that, if you have written testimony  
8 that you can submit, that would be the most  
9 appropriate thing to do and we can fill the record  
10 with that. The Board will obviously, and does, read  
11 all the information in every record and will set this  
12 for decision after the 18th.

13           It is not my anticipation that we would  
14 decide this on the 18th but rather just finish the  
15 public hearing on it, gather all the information, and  
16 then we will set it for decision making on the first  
17 week of June and decide it then. Okay. Now, everyone  
18 is clear on who is serving who? You folks are getting  
19 information to and from each other so it should be  
20 appropriate.

21           Mr. Wiggins, if you have a question,  
22 you're going to need to come up to the table.

23           MR. WIGGINS: My question was just  
24 basically pertaining to would we actually -- would  
25 they actually submit those plans to us as the

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1 neighborhood that we will be able to see those plans  
2 prior to the 18th?

3 CHAIRPERSON GRIFFIS: Indeed. Our  
4 regulations don't require them to do that. I  
5 certainly think they would take the initiative to do  
6 that. You may want to just talk about where you could  
7 get that coordinated, whether you can go pick them up  
8 or drop them off. They will be serving it to the ANC  
9 so you can talk to your ANC member also and make sure  
10 when she gets it and receives it that you all get  
11 copies or get to look at it. What is required is that  
12 the ANC be served.

13 MR. WIGGINS: Okay.

14 CHAIRPERSON GRIFFIS: Thank you. Anything  
15 else?

16 MR. MOODY: Just to clarify. That will be  
17 the person that we will provide documents to and if  
18 any person in the neighborhood feels they need to  
19 review it, an ANC person would be the person that they  
20 should go to to review any documents that we submit.

21 CHAIRPERSON GRIFFIS: Uh-huh. Of course,  
22 there is nothing to prohibit you from dropping them  
23 off on their front steps, too, but I'll leave that up  
24 to you. Okay. Anything else then? Everyone clear?

25 Yes, Ms. Miller.

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1                   VICE CHAIR MILLER:       One point of  
2 clarification.       Office of Corporation Counsel  
3 suggested that we might ask Office of Planning to  
4 weigh in on the parking variance and the new design, I  
5 would think.       I'm not sure whether Ms. Bailey  
6 addressed that in the schedule or whether we need to,  
7 but I would be interested certainly.

8                   MS. BAILEY:   Normally the OP report would  
9 come in seven days before so it would be seven days  
10 prior to May 18th which would be the 11th.

11                   VICE CHAIR MILLER:   Thank you.

12                   CHAIRPERSON GRIFFIS:   I take it someone  
13 has an assumption that the application changes and the  
14 Office of Planning would be looking at it.   Good to  
15 clarify that we, in fact, not only assume it but  
16 expect it.

17                   MS. THOMAS:   We have no problem submitting  
18 a supplemental.

19                   CHAIRPERSON GRIFFIS:   Indeed.    Good.  
20 Thank you all very much.   Is there is nothing further  
21 I can answer at this point?   Clarification?   Very  
22 well.   Thank you all very much for being here today  
23 and we will see you on the 18th of May.

24                   Ms. Bailey, is there any other business  
25 for the Board in the morning session?

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1 MS. BAILEY: No, sir.

2 CHAIRPERSON GRIFFIS: Very well then. We  
3 can adjourn the morning session of 20 April '04.

4 (Whereupon, at 12:15 p.m. off the record  
5 for lunch to reconvene at 1:27 p.m.)

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1:27 p.m.

1  
2 CHAIRPERSON GRIFFIS: Good afternoon,  
3 ladies and gentlemen. Let me call to order the  
4 afternoon hearing of the Board of Zoning Adjustments  
5 for the District of Columbia. It is the 20th of  
6 April, 2004, and I am Geoff Griffis, Chairperson.  
7 Joining me today is Ms. Miller, Vice Chair.  
8 Representing the Zoning Commission with us this  
9 afternoon is Mr. Hood. Representing the National  
10 Capital Planning Commission is Mr. Mann.

11 Copies of today's hearing agenda are  
12 available to you. They are located on the wall where  
13 you entered into the hearing room. You can pick them  
14 up. We are going to juggle the schedule for this  
15 afternoon and I will make clear which cases we are  
16 calling first and how we are going to proceed based on  
17 some of the applicants' representatives who are  
18 unavailable this afternoon.

19 There are several important items that I  
20 need to make sure everyone fully understands. First  
21 of all, all proceedings before the Board of Zoning  
22 Adjustments are recorded. They are recorded in two  
23 fashions now. One, we have the court reporter who is  
24 creating the official transcript of the hearing.

25 Secondly, we are being broadcast live on

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1 the Office of Zoning's website. Attending to that, I  
2 ask everyone to turn off all their cell phones and  
3 beepers. Also refrain from making any disruptive  
4 noises or actions in the hearing room while we proceed  
5 with our cases this afternoon.

6 Additionally, I would ask that when coming  
7 forward, first, two witness cards need to be filled  
8 out by anyone who is going to address the Board. They  
9 are available at the table where you entered and also  
10 the table in front of us. Those two cards go to the  
11 recorder sitting to my right.

12 Also, in coming forward I would ask that  
13 you make yourself comfortable, turn the microphone on,  
14 and you will need to state your name and address once  
15 before addressing the Board. I would also ask if you  
16 could be somewhat attentive to turning the microphone  
17 off when you finish speaking. We will be getting some  
18 feedback on those microphones on the table but I will  
19 give instructions further on that if it becomes a  
20 problem.

21 The order of procedure for special  
22 exceptions and variances is, first, we have statement  
23 and witnesses by the applicant. Second, we hear  
24 Government reports attended to the application. For  
25 instance, the Office of Planning's report or DDOT's

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1 report.

2 Third, we will hear from the ANC in which  
3 the property is located. Fourth, we will hear persons  
4 or parties in support of the application. Fifth would  
5 be persons or parties in opposition to the  
6 application. Sixth, finally, we would have any  
7 rebuttal witnesses or closing remarks by the  
8 applicant.

9 We do have pursuant to Section 3117.4 and  
10 3117.5 outlines of time restrictions that are placed  
11 on applicants in terms of presentation. I don't think  
12 we are going to need to invoke those this afternoon.  
13 I'm going to move things on fairly quickly. If need  
14 be, I will cite the specifics of the regulation, or I  
15 will just determine what is an equitable amount of  
16 time established for each side on the case.

17 So, proceeding with that, next another and  
18 very important aspect of our proceedings is cross  
19 examination. Cross examination of witnesses is  
20 permitted by the applicant and parties in the case.  
21 The ANC within which the property is located is  
22 automatically a party in the case and, therefore, will  
23 be able to conduct cross examination.

24 Nothing prohibits the Board from limiting  
25 the time, the direction, or the scope of cross

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1 examination questions in order to sufficiently allow  
2 for decided and deliberate questions. Again, I think  
3 the Board will give clear direction on how that should  
4 proceed if we find ourselves in that specific type of  
5 manner.

6 The record will be closed at the  
7 conclusion of each hearing or process on the case  
8 except for any material that we may request be put  
9 into the record. We will be very specific on what is  
10 to be submitted into the record and when it is to be  
11 submitted into the Office of Zoning.

12 After that material is received, of  
13 course, the record would then be finally closed and no  
14 other information would be accepted into the record.  
15 It's very important to understand all that I've said  
16 in terms of submitting into the record and  
17 establishing the record because it is clear, or should  
18 be clear, that the Board only deliberates on that  
19 record which is created before us today.

20 Also attending to that then, we ask that  
21 people present not engage Board members in any  
22 conversation so that we do not appear to be gathering  
23 information outside the record. The Sunshine Act  
24 requires that this Board conduct its hearings in the  
25 open and before the public.

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1           This Board may, however, enter into  
2 executive session during or after a hearing on a case  
3 and that would be appropriate under the Sunshine Act  
4 and according to our rules of procedure. We do enter  
5 into executive session some regular times or, I should  
6 say, off and on. This is for the purposes of  
7 reviewing records and/or deliberating on cases.

8           We will make every effort to conclude our  
9 afternoon by 6:00 tonight. Of course, I have to say  
10 that every afternoon. Today it was even more  
11 important because I do believe we will lose a quorum  
12 at 6:00 this evening but I will assess the schedule as  
13 we get closer to that hour.

14           At this time the Board will entertain any  
15 preliminary matters attended to the afternoon cases.  
16 Preliminary matters are those which relates to whether  
17 a case will or should be heard today such as request  
18 for postponements, continuances, or withdrawals, or  
19 whether proper and adequate notice has been provided  
20 for the application.

21           If you are not prepared to go forward with  
22 a case today, or you believe the Board should not  
23 proceed with the case on its agenda this afternoon, I  
24 would ask that you come forward and have a seat here  
25 at the table as an indication of having a preliminary

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1 matter. I will ask staff if they have any preliminary  
2 matters at this time and also say a very good  
3 afternoon to Ms. Bailey who is with the Office of  
4 Zoning and Mr. Moy who is sitting on my right.

5 Ms. Bailey, any preliminary matters for  
6 our attention?

7 MS. BAILEY: Mr. Chairman and members of  
8 the Board, good afternoon. Just a reminder, Mr.  
9 Chairman, that clarification of the order of the cases  
10 this afternoon would be useful to the participants in  
11 the audience.

12 CHAIRPERSON GRIFFIS: Actually, why don't  
13 we do that now and then you can swear everybody in.

14 MS. BAILEY: Okay. Please stand to take  
15 the oath.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. BAILEY: Do you want to do that first?

18 CHAIRPERSON GRIFFIS: That's fine. Anyone  
19 that is thinking or going to give testimony today, if  
20 you would please rise and give your attention to Ms.  
21 Bailey. Ms. Bailey is going to administer the oath.

22 MS. BAILEY: Please raise your right hand.  
23 Do you solemnly swear or affirm that the testimony  
24 you will be giving will be the truth, the whole truth,  
25 and nothing but the truth?

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1 WITNESSES: Yes.

2 MS. BAILEY: Thank you.

3 CHAIRPERSON GRIFFIS: So update for the  
4 schedule this afternoon. We had to call first in the  
5 afternoon a conclusion of an appeal of Kalorama  
6 Citizen's Association. We do note that an attorney  
7 who is part of that case is not here so we will hold  
8 that off. We were going to go to 17133, El Tamarindo  
9 Restaurant, and we will proceed accordingly with our  
10 cases in the afternoon and then get to the appeal.

11 MS. BAILEY: Application No. 17133 of El  
12 Tamarindo Restaurant, pursuant to 11 DCMR 3103.2 for a  
13 variance from the floor area ratio requirements under  
14 Section 771 and a variance from the off-street parking  
15 requirements under Subsection 2101.1 to expand an  
16 existing restaurant's dining area to the second floor  
17 at premises 7331 Georgia Avenue, N.W. The property is  
18 located in the C-2-A District in Square 2964 and on  
19 Lot 40.

20 CHAIRPERSON GRIFFIS: Good afternoon.

21 MR. BAYONET: Good afternoon, Mr.  
22 Chairman. My name is Fausto Bayonet from 57 Midline  
23 Court, Gaithersburg, Maryland. I'm here to present  
24 the case for El Tamarindo Restaurant.

25 CHAIRPERSON GRIFFIS: Indeed. Welcome

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1 back.

2 MR. BAYONET: Thank you, sir.

3 CHAIRPERSON GRIFFIS: Let's go through  
4 this. As you know, and for the Board's review, or  
5 actually maybe just for the record, of course, the  
6 Board entirely prepared to hear this previously and we  
7 actually sent you out to advertise for the appropriate  
8 amount of time so now you're back. I think we are  
9 very up to speed on all the issues with this. I think  
10 we can get through this fairly quickly.

11 MR. BAYONET: As you know, the applicant  
12 is requesting a variance from the FAR and parking  
13 requirement to allow expansion of the existing use.  
14 The actual required relief is only 1.7 of the 1.5  
15 requirement. Also, Section 2101.1 required one  
16 parking space for every 300 square feet of area above  
17 3,000 square feet for retail and service  
18 establishment.

19 This proposed change would increase the  
20 use over 3,000 square feet requirement so we are only  
21 requiring three new parking spaces. The applicant is  
22 requesting relief from the requirement due to an  
23 existing condition.

24 We comply with the requirement of putting  
25 the posting at the premises for at least 15 days prior

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1 to this meeting. We also have a letter from the ANC  
2 signed by Mr. Jeff Tyron who is the Chairman of the  
3 ANC-4B. This letter, if I may, can I read it? No?

4 CHAIRPERSON GRIFFIS: Is it in the record?

5 MR. BAYONET: Yes, it is in the record.

6 CHAIRPERSON GRIFFIS: So you already  
7 submitted it in?

8 MR. BAYONET: Actually, yes.

9 CHAIRPERSON GRIFFIS: So we have copies of  
10 it somewhere?

11 MR. BAYONET: Yes, you should have it.

12 CHAIRPERSON GRIFFIS: I haven't seen it.  
13 I don't think the other Board members have seen it.

14 MR. BAYONET: I have a copy here.

15 CHAIRPERSON GRIFFIS: Okay. You can just  
16 submit it. You don't need to read it in the record.  
17 We'll just put it in there. My understanding is they  
18 are recommending approval. Is that correct?

19 MR. BAYONET: They are recommending  
20 approval of the relief.

21 CHAIRPERSON GRIFFIS: Of course, we would  
22 have to waive our rules in order to accept that to  
23 look at it. I don't think there would be any  
24 difficulty with that. Is there a representative from  
25 ANC-4B here? Anybody representing the ANC? There's

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1 no indication that there is. Okay. Very well. So  
2 you went and presented to 4B, had discussions, they  
3 took a vote?

4 MR. BAYONET: Yes, they did.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. BAYONET: Mostly they approved it.  
7 Well, actually the majority, eight to zero.

8 CHAIRPERSON GRIFFIS: Got to love  
9 democracy. Let's move ahead then. What else can you  
10 tell us?

11 MR. BAYONET: Well, what I can tell you is  
12 since the ANC has recommended approval for the relief,  
13 the variant relief. Also, I got a memo from the  
14 Planning Board.

15 CHAIRPERSON GRIFFIS: Good. OP is here  
16 and they are going to present that.

17 MR. BAYONET: Right.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. BAYONET: So we are asking the Board  
20 for approval of this variant relief.

21 CHAIRPERSON GRIFFIS: Excellent. Thank  
22 you very much. Re-reviewing for today and also  
23 looking at the new submissions am I correct that this  
24 building was built around the 1930s and you haven't  
25 changed the lot -- actually, you want to just answer

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1 that?

2 MR. BAYONET: Actually, yes. This  
3 building was, as you said, built in the 1930s.

4 CHAIRPERSON GRIFFIS: Okay. And it was  
5 built in its present lot occupancy. Right? The  
6 footprint hasn't changed since then.

7 MR. BAYONET: It hasn't changed at all.

8 CHAIRPERSON GRIFFIS: Clearly the 1930s is  
9 before 1958 when the Zoning Regulations were adopted.  
10 Correct?

11 MR. BAYONET: That's correct.

12 CHAIRPERSON GRIFFIS: Is it a two-story  
13 structure?

14 MR. BAYONET: I'm sorry?

15 CHAIRPERSON GRIFFIS: Two stories?

16 MR. BAYONET: It's two story plus a  
17 basement.

18 CHAIRPERSON GRIFFIS: Right. In the zone  
19 it's in, C-2-A, they obviously have a cap on the FAR  
20 allowed for commercial and then the rest can be  
21 residential. That's why you're here.

22 MR. BAYONET: Yes, but what makes it  
23 difficult is that the type of building. I mean, the  
24 building occupies 90 percent of the lot.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. BAYONET: So we only have 10 percent  
2 for parking.

3 CHAIRPERSON GRIFFIS: Indeed. So you  
4 clearly can't -- your testimony is you can't put  
5 parking in because you don't have any space for it.  
6 The building occupies it.

7 MR. BAYONET: That is correct.

8 CHAIRPERSON GRIFFIS: Is my understanding  
9 correct your testimony also written and oral today is  
10 that what's left over after you put in the allowable  
11 commercial FAR, what's left over is a little over 400  
12 square feet?

13 MR. BAYONET: 425 feet.

14 CHAIRPERSON GRIFFIS: Indeed.

15 MR. BAYONET: That's correct.

16 CHAIRPERSON GRIFFIS: Lower 400. And that  
17 would be required to be used as residential. Is that  
18 right?

19 MR. BAYONET: That is correct according to  
20 the requirement.

21 CHAIRPERSON GRIFFIS: And you find that to  
22 be practically difficult?

23 MR. BAYONET: It's going to be difficult.  
24 I mean, impossible actually --

25 CHAIRPERSON GRIFFIS: Even more so.

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1 MR. BAYONET: -- to comply with the  
2 requirement.

3 CHAIRPERSON GRIFFIS: Right. Not to  
4 mention this 400 feet actually residential unit.  
5 Nonetheless, without going into design, I think the  
6 Board understands practical difficulty in trying to  
7 fit in a building from the '30s that was clearly not  
8 built to facilitate the type of zoning that was then  
9 imposed on it.

10 Any other questions from the Board? Okay.

11 With your permission, we'll proceed to the Office of  
12 Planning's report.

13 MR. BAYONET: Sure.

14 CHAIRPERSON GRIFFIS: Excellent. Let's do  
15 that. We'll say good afternoon to the Office of  
16 Planning.

17 MR. MORDFIN: Good afternoon, Chairman,  
18 and members of the Board. I'm Stephen Mordfin with  
19 the Office of Planning. I stated the applicant is  
20 requesting to increase the commercial FAR from 1.5 to  
21 1.7 and the property is located in the C-2-A zone  
22 district.

23 The extraordinary situation is that due to  
24 the existing wide coverage and the existing  
25 configuration and improvements to the building, a 1.5

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1 FAR results in the commercial use of the entire first  
2 floor almost but not all the second floor.

3 Use of the remainder of the second floor  
4 is not feasible due to the size. It is only 425  
5 square feet in area, too small to be converted to a  
6 residential unit. Therefore, also due to the existing  
7 lot coverage it's not possible to provide parking on  
8 site. Therefore, the Office of Planning recommends  
9 approval of the application as submitted by the  
10 applicant.

11 CHAIRPERSON GRIFFIS: Excellent. Thank  
12 you very much. Questions from the Board?  
13 Clarifications, Ms. Miller?

14 VICE CHAIR MILLER: I have a question from  
15 page 3 of your report where you are discussing  
16 extraordinary exceptional circumstances where you say  
17 that the building was originally built in the 1930s.  
18 It's a two-story commercial building with no provision  
19 for residential use. What you mean by that is even  
20 though we have a zoning regulation that talks to a  
21 certain amount being used for residential use, this  
22 building was constructed in such a way that it can't  
23 be used for residential use on that second floor?

24 MR. MORDFIN: Actually, I did not prepare  
25 this report and I'm not sure exactly how it was done.

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1 I think the building has been modified but you are  
2 permitted up to 1.5 FAR which would almost the second  
3 floor. Otherwise, it would reduce the maximum FAR  
4 that you could get for other uses besides residential.

5 By doing that you would be limiting the property.

6 By expanding it to the 1.5 it's a very  
7 small portion of that second floor that is left over  
8 that could be used for residential. Because there's  
9 no parking on the site because of the way the building  
10 is currently configured and the way it is set up now  
11 and assigned, it would make it more difficult to use  
12 it for residential use.

13 VICE CHAIR MILLER: Thank you.

14 CHAIRPERSON GRIFFIS: Did that answer your  
15 question?

16 VICE CHAIR MILLER: Um-hum.

17 CHAIRPERSON GRIFFIS: Okay. Other  
18 questions from the Board? Does the applicant have any  
19 cross examination of the Office of Planning? Any  
20 questions?

21 MR. BAYONET: None.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. BAYONET: I agree completely.

24 CHAIRPERSON GRIFFIS: That's a good  
25 position to take. Okay. Yes.

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1 MR. HOOD: Mr. Chairman, forgive me.  
2 Let's go back to the applicant when he presented his  
3 case. You mentioned about the ANC and unfortunately I  
4 was up here fumbling through some papers. Did you get  
5 a unanimous vote?

6 MR. BAYONET: Unanimous. I got a copy of  
7 the letter I can present to you.

8 MR. HOOD: No, that's good. Gut it was  
9 unanimous?

10 MR. BAYONET: It was unanimous, yes.

11 MR. HOOD: Okay. Thank you.

12 CHAIRPERSON GRIFFIS: Very well. Let's  
13 move on to the ANC report of which we have been  
14 talking so much about and now we can see it, ANC-4B.  
15 Ms. Miller, comments?

16 VICE CHAIR MILLER: No. I'm just  
17 absorbing it right now. Thank you.

18 CHAIRPERSON GRIFFIS: Does the meet the  
19 test for the great weight? Is there any opposition to  
20 waiving 4B? Any opposed? Very well. I take it the  
21 Board accepts it into the record. It does appear on  
22 face to meet the test for great weight and it was  
23 recommending approval.

24 The one issue that comes up in the ANC  
25 they talked about there were some concerns about

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1 parking and the applicant has indicated that they  
2 might conduct some valet parking.

3 MR. BAYONET: That is correct. Mr. Reyes,  
4 the owner, told me to convey to you and the Board that  
5 if the need comes that extra parking spaces will be  
6 needed, he's going to use valet parking. He made some  
7 arrangement with the liquor store that is about half a  
8 block up the street on Georgia Avenue. If the need  
9 arises, they already have some agreement on that.

10 CHAIRPERSON GRIFFIS: Who decides that the  
11 case would arise that you need it?

12 MR. BAYONET: What I'm saying is actually  
13 it's very hardly the restaurant is filled to capacity  
14 and that is when the need arise for extra parking.  
15 Most of the clients park up the street on Georgia  
16 Avenue. At that time most of the commercial  
17 establishments on that block are off. They are not  
18 working. They are closed.

19 CHAIRPERSON GRIFFIS: I see.

20 MR. BAYONET: It's very, very unusual that  
21 happens.

22 CHAIRPERSON GRIFFIS: So how quick is the  
23 valet service on call, or is it predictable when the  
24 restaurant is going to be full?

25 MR. BAYONET: Well, he's got a person who

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1 is there all the time.

2 CHAIRPERSON GRIFFIS: I see. You have an  
3 arrangement that you can move cars into the liquor  
4 store.

5 MR. BAYONET: That is correct. That is  
6 correct, sir.

7 CHAIRPERSON GRIFFIS: I see. Interesting.  
8 Okay.

9 MR. HOOD: Just curious. Is that a cost  
10 for the valet parking?

11 MR. BAYONET: No, sir.

12 MR. HOOD: Okay.

13 CHAIRPERSON GRIFFIS: All right. Anything  
14 else on that? Questions?

15 VICE CHAIR MILLER: I'm just curious. Did  
16 you look into the possibility of using the second  
17 floor for residential purposes?

18 MR. BAYONET: Not really, no, because like  
19 the Planning Board suggested, the building wasn't  
20 designed for residential so what you've got left is  
21 only 429 square feet and it's almost impossible to  
22 make it a residential dwelling.

23 VICE CHAIR MILLER: Okay.

24 CHAIRPERSON GRIFFIS: Very well. Let's  
25 move on then. I don't have any other Government

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1 reports attended to the application unless you are  
2 aware of any. Is anyone here to give testimony for  
3 Application 17133, El Tamarindo Restaurant on 7331  
4 Georgia Avenue, N.W., either in support or in  
5 opposition? Not seeing anybody present indicate they  
6 wanted to give testimony, let's move on for any  
7 closing remarks.

8 MR. BAYONET: Well, I would appreciate  
9 your consideration, this Board. Thank you so much for  
10 letting me present this case to you. Hopefully we  
11 will get that approval of relief.

12 CHAIRPERSON GRIFFIS: Very well. Thank  
13 for coming back.

14 MR. BAYONET: Thank you.

15 CHAIRPERSON GRIFFIS: Questions?  
16 Comments? Is the Board ready to proceed with this?  
17 Very well. I think action is appropriate at this  
18 time. I would move approval of Application 17133 of  
19 El Tamarindo Restaurant from the variances from the  
20 floor area ratio requirements under 771 and also the  
21 variance from the off-street parking requirements  
22 under 2101.1. That is to animate or be able to  
23 utilize portions of the existing restaurant and dining  
24 area on the second floor of 7331 Georgia Avenue, N.W.  
25 I would ask for a second.

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1 VICE CHAIR MILLER: Second.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 I think the record has been full. Although we have  
4 quickly exercised this, I think it goes on the fact  
5 and matter that most of the pertinent information was  
6 submitted in writing and the Board had ample time not  
7 only to review the drawings and the layout but also  
8 all the statements and case presentation.

9 I think heavy reliance was also, or can be  
10 looked at in terms of the Office of Planning's  
11 analysis. Some of the critical pieces in terms of the  
12 FAR I think is very clear exactly where it is. Here  
13 is a building that wasn't built to facilitate a mixed  
14 use. It was built for a commercial retail use  
15 originally and has existed and maintained in that  
16 sense.

17 Our Zoning Regulations come in and say it  
18 has to stop at a certain FAR of which the building was  
19 built well before the requirement. It doesn't make a  
20 heck of a lot of sense, not to mention it does create  
21 out of its uniqueness the lot occupancy and shape of  
22 the building a practical difficulty in accommodating  
23 the residential and the mixed use.

24 Mixed use is a great idea and it makes for  
25 some great projects and also animates great avenues

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1 like Georgia Avenue this being unique enough that it  
2 cannot facilitate that I think rises to the level of  
3 approval of the variance in terms of FAR. It  
4 certainly wouldn't impair intent and take it to the  
5 zone plan in that it is fulfilling part of its  
6 obligations and it is only a slight increase in the  
7 FAR for the commercial use.

8 In terms of the public good, there  
9 certainly has not been evidence of the fact that this  
10 would diminish anything or any aspect to the public  
11 good. I guess by the mere fact that the restaurant  
12 wants to expand one might glean that it is feeding  
13 some aspect of the public good.

14 In terms of the off-street parking, you  
15 know, we look at the extra requirement for the off-  
16 street parking in this application which is two, two  
17 spaces. I think it would be more difficult to  
18 understand or comprehend a variance from parking if  
19 not having some other availability of facilitating the  
20 parking that was required if we were in the numbers of  
21 15 to 30.

22 In that we are looking at two that would  
23 be required under 2101.1 and we have an existing and  
24 there has not been at this point any observations of  
25 negative impacts of sort, I think it's clear that the

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1 parking cannot be accommodated on the sight based on  
2 its history which does create the practical  
3 difficultly of where do you find land that isn't  
4 there.

5 I think critical for the parking goes to  
6 the last test of whether it would somehow critically  
7 impact the zone plan or affect the public good. I  
8 don't think this rises to the level of doing that.  
9 That's all I have on it. Others? Ms. Miller.

10 VICE CHAIR MILLER: I would just comment  
11 that I concur with your remarks and note that the ANC  
12 and the Office of Planning also support the  
13 application and we give great weight to their  
14 comments.

15 CHAIRPERSON GRIFFIS: Good. Thank you.  
16 Anything else? Further comments? If not, then we  
17 have a motion before us that has been seconded. I  
18 would ask for all those in favor to signify by saying  
19 aye.

20 ALL: Aye.

21 CHAIRPERSON GRIFFIS: And opposed? Record  
22 the vote.

23 MS. BAILEY: Mr. Chairman, the vote is  
24 recorded as four, zero, one to approve the  
25 application. Mr. Griffis made the motion, Mrs. Miller

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1 seconded, Mr. Hood and Mr. Mann are in agreement and  
2 Mr. Etherly is not present today.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 Have an excellent afternoon. Why don't we call the  
5 next case in the afternoon.

6 MS. BAILEY: Are we doing Marquette  
7 University next, Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes.

9 MS. BAILEY: Application No. 17143 of  
10 Marquette University, pursuant to 11 DCMR 3104.1, for  
11 a special exception to allow a private school (20  
12 students, two full-time staff members) under Section  
13 206 and Section 1201, last approved under BZA Order  
14 No. 16459, in the CAP/R-4 District at premises 502  
15 East Capitol Street, N.E. (Square 840, Lot 23).

16 CHAIRPERSON GRIFFIS: Good afternoon.

17 MR. NETTLER: Good afternoon. My name is  
18 Richard Nettler. I'm here with Father O'Brien on  
19 behalf of the applicant. We are here this afternoon  
20 for a continuation of a special exception that this  
21 Board approved a number of years ago for the premises.

22 The premises are primarily used as a residence for  
23 Father O'Brien.

24 The basement is used as -- it's considered  
25 a private school, although that denomination of the

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1 use is a consequence of an agreement that was entered  
2 into with the Capitol Hill Restoration Society in the  
3 last application. There have previously been approval  
4 given to the use of the property as a private club for  
5 which there was not a need for any Board of Zoning  
6 Adjustment relief.

7 When the Capitol Restoration Society had  
8 appealed that, rather than go forward and challenge  
9 and deal with that appeal, we decided to work together  
10 and instead propose this as a private school.  
11 Nevertheless, it was approved by the Board. I  
12 understand the ANC has already submitted a letter in  
13 support of the application. The capitol Restoration  
14 Society has also submitted a letter in support of the  
15 application.

16 MR. HOOD: Mr. Nettler, before we go too  
17 far into the case, you may be getting there but I just  
18 want to try to get you there. Why is this not in  
19 front of the Zoning Commission?

20 MR. NETTLER: This is not a university  
21 use. We had that exact same issue that came up in the  
22 prior case when we raised that issue.

23 MR. HOOD: When was the prior case?

24 MR. NETTLER: The prior case was in --

25 CHAIRPERSON GRIFFIS: September 22, 1999.

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1 MR. NETTLER: That's correct.

2 MR. HOOD: Are you aware that the Zoning  
3 Commission now has all actions and university campus  
4 use in front of the Zoning Commission as of December  
5 of 2000?

6 MR. NETTLER: Right, and the issue that  
7 came up at that time was whether to treat this as a  
8 university for which it would have to be a campus plan  
9 that would be reviewed by the BZA under the campus  
10 plan regulations, or to treat this separately as a  
11 private school. The Board agreed with us given the  
12 accommodation that we were making to the Capitol  
13 Restoration Society that it would be treated as a  
14 private school at that time and not being treated as a  
15 university.

16 Actually it was our position at that time  
17 that it fit the description of a private club rather  
18 than as a university and so, nevertheless, regardless  
19 of what our consideration of it was, the Board agreed  
20 with us that it should be treated as a private school.

21 The only activity that is done on the  
22 premises here and is not part of the Marquette  
23 University program here is really Les Aspen Center  
24 that has some lectures that go on in the basement of  
25 the private residence of Father O'Brien on occasion as

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1 opposed to the types of things that would normally  
2 come under the definition as was discussed in that  
3 prior proceeding as a university.

4 As I said, that issue was fully aired in  
5 the prior proceeding. The Board agreed that it should  
6 go forward as a private school and provided that the  
7 limitation on the number of years on the special  
8 exception for which are now before you and getting an  
9 extension on.

10 MR. HOOD: Mr. Chairman, I just have a  
11 problem. I understand what happened in '99 because I  
12 was one of those people who voted in favor of it, but  
13 since 2000, and I would like to hear some comments  
14 from my colleagues, but the Zoning Commission has  
15 rewritten the regs and, as far as I'm concerned, this  
16 should be properly in front of the Zoning Commission.

17 I'm not trying to belabor your time or anything but  
18 we are supposed to hear campus plans, special  
19 exceptions.

20 I understand this fine line, this gray  
21 area about the private school use but I still think  
22 this is a university and the use, you are dealing with  
23 college students. I think this will be properly in  
24 front of the Zoning Commission. That's where I am  
25 with it.

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1 MR. NETTLER: I recall you raising the  
2 same issue at that time and ultimately --

3 MR. HOOD: I don't think I would have  
4 raised it at that time. The Zoning Commission had not  
5 -- we can look at the transcript. '99 was a while  
6 back and we've had a lot of cases since then. This  
7 action the  
8 Zoning Commission took did not happen until December  
9 of 2000.

10 MR. NETTLER: Right, but the action of the  
11 Zoning Commission was to remove the authority for  
12 reviewing campus plans, as you know, from the Board of  
13 Zoning Adjustment to the Zoning Commission while  
14 keeping in place the specific regulations that govern  
15 universities and campus plans.

16 CHAIRPERSON GRIFFIS: Which would have  
17 been 3035.1 and 210. The regulations in this didn't  
18 change but the jurisdiction to hear those changed. In  
19 fact, if you look at the case -- frankly, we are just  
20 throwing this together somewhat ourselves in looking  
21 at all the regulations in terms of this particular  
22 issue because it did not come up timely as a  
23 preliminary matter for us so we are probably going to  
24 have some more raw discussion up here quickly.

25 One of the findings of fact in the past

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1 order, which let me pass down to Mr. Hood for his  
2 note, indicates that the ANC actually -- wasn't it the  
3 ANC that requested that this be heard under 210?

4 They brought up the regulation that you're talking  
5 about, Mr. Hood. Not obviously talking about whether  
6 it should be the Zoning Commission or at the BZA but  
7 having it processed as a university which I think is  
8 important to understand that the issue was talked  
9 about clearly there.

10 I think what is before us, again, if we  
11 want to take a very quick moment to revisit that  
12 issue. If it was definitive in the finding from the  
13 Board previously in 1999 that this was a private  
14 school, I think we could essentially move ahead. One  
15 course of action we would do that. I think we need --

16 MR. NETTLER: Because -- I'm sorry. Go  
17 ahead.

18 CHAIRPERSON GRIFFIS: I think we need to  
19 establish, (1) whether it was actually definitive from  
20 the Board previously, or (2), or maybe and, take a  
21 look at 210 in regards to 3035.1 to see if it falls  
22 within the requirements of that regulation.

23 MR. NETTLER: If I might just clarify,  
24 there were two ANCs that were involved. I was  
25 involved in that prior matter and there were two ANCs

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1 that were involved. One ANC in whose jurisdiction  
2 this was not located but which was an adjacent ANC was  
3 the ANC that raised the issue. It was discussed.

4 I was asked to provide a memorandum on the  
5 issue as to why it was not a university under Section  
6 210. As you say, the Board agreed that it would not  
7 be treated as a university. Because we are dealing  
8 with the same applicant, that is binding on the  
9 proceedings today. The use hasn't changed.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. NETTLER: There's nothing about the  
12 premises that has changed, the scope that the property  
13 is used for. This very limited purpose hasn't  
14 changed.

15 CHAIRPERSON GRIFFIS: Okay. My concern is  
16 Ms. Miller has handed me, I think, a pertinent point.

17 As I said, if it was definitive that the Board  
18 established -- well, there are two points to this Mr.  
19 Nettler.

20 If you want to point to and tell us what  
21 happened that made it definitive really, because what  
22 I find is that the Board found that this was a self-  
23 certified application and they relied on that  
24 information meaning almost as if they tossed it to the  
25 ZA to say if there was a problem, perhaps it will come

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1 back to us.

2 MR. NETTLER: Well, actually, it was a  
3 self-certified application because it was deemed by  
4 the Zoning Administrator to be a use that was  
5 permitted as a matter of right. The only reason it  
6 became a self-certified application was because of an  
7 agreement between us and Capitol Restoration Society  
8 was that we would treat it differently.

9 When this Board approved of it -- as I  
10 said, the issue was raised in those proceedings. When  
11 the Board approved of it at the time and we did go  
12 back to the Zoning Administrator, we did have to make  
13 sure for the Zoning Administrator's purposes that the  
14 premises met certain building code requirements that  
15 would apply to a private school as distinct from  
16 merely a personal residence, private club, whatever,  
17 which was done.

18 The Zoning Administrator signed off on it.

19 Obviously permits were given to make those changes in  
20 the use of the basement that were necessary. Had to  
21 have a second means of egress for it and issued a  
22 certificate of occupancy for the public school. It  
23 was considered here. It was raised as an issue.

24 The Board agreed to treat it as a private  
25 school, that it should be treated as a private school,

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1 notwithstanding the fact that at bottom in our  
2 position it's neither a private school nor a  
3 university. We had a -- I don't want to get into that  
4 because of our agreement but it was our of a  
5 willingness to work with the Capitol Restoration  
6 Society was the reason for proposing this as a private  
7 school.

8 Capitol Restoration Society didn't ask for  
9 it to be treated as a university, The one ANC that  
10 did raised the issue and it was discussed. If you  
11 want, I can provide you with a copy of the transcript  
12 where there was a lengthy discussion on it. The Board  
13 ultimately agreed with a special exception to the  
14 relief that was being sought.

15 CHAIRPERSON GRIFFIS: Okay. Further?

16 VICE CHAIR MILLER: First of all, I'm  
17 inclined to interpret the regulations as having this  
18 case properly before us. When I look at the 3035.1  
19 which talks about Zoning Commission having  
20 jurisdiction, it says over campus development plans  
21 and amendment of a campus development plan and further  
22 processing of an approved campus development plan,  
23 etc. I don't think that is what is before us.

24 I don't have a problem with that and I  
25 don't see that it falls under 210.1 either because

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1 that seems to go to locating a use on a college or --  
2 on a campus of a college or university and I don't  
3 think we have a campus here. I personally don't have  
4 a problem with that but I'm just a little bit confused  
5 as to where -- you are proposing that we treat this as  
6 a private school.

7 MR. NETTLER: That's correct.

8 VICE CHAIR MILLER: Even though you don't  
9 believe that it's really a private school.

10 MR. NETTLER: That's correct.

11 VICE CHAIR MILLER: Okay. But you  
12 certainly don't believe it's part of a campus plan.

13 MR. NETTLER: No, there is no campus here.  
14 This is a basement of someone's private residence.  
15 The fact that there are university students who are  
16 here in the District for some other program who come  
17 to the Les Aspen Center simply to hear lectures and  
18 for things related to those lectures is not part of  
19 the Marquette Campus.

20 As you read the definition, it would be  
21 hard pressed for me to say that there's anything about  
22 a basement of somebody's house that lends itself to  
23 the type of issues that are addressed by approval of  
24 campus plans such as changes to the square footage,  
25 the FAR that you are allowed to use over the site of a

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1 particular project and a whole bunch of other location  
2 issues that are part of campus plans.

3 That is not what happens in the basement  
4 of a private residence. If we were to dominate this  
5 as a university, he then doesn't get -- Father O'Brien  
6 doesn't get the opportunity then to increase the FAR  
7 of the building because there are certain FAR  
8 allowances in universities that wouldn't be allowed  
9 for a private school. It just doesn't happen.

10 VICE CHAIR MILLER: My other question to  
11 you is we have in our pleadings a copy of the order  
12 which doesn't seem to go into detail as to why it's  
13 not a college or university. We haven't researched  
14 back to see the memorandum. That may be in the file  
15 or whatever. Is there anything else that you said  
16 back then that we ought to know now as to why it's not  
17 a college or university?

18 MR. NETTLER: Well, I could provide you  
19 with the memo that -- with both the transcript and the  
20 memo where the issue was discussed but, needless to  
21 say, it was along the lines of what you have  
22 identified which is if you look at the regulations  
23 under the campus plan provisions and what they are  
24 intended to deal with, the types of things they are  
25 intended to deal with, none of those really apply to

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1 here to this situation. It would be no different than  
2 if university students were going to the Cosmos Club  
3 to hear a lecture.

4 They just happen to be coming to the Les  
5 Aspen Center to hear a lecture by individuals who are  
6 invited now and then on occasion and anything that  
7 goes along with that but that would not make it any  
8 different than the Cosmos Club. But, in this case,  
9 it's in somebody's personal residence and three-  
10 quarters of this building are used as the personal  
11 residence of Father O'Brien.

12 CHAIRPERSON GRIFFIS: Okay. Others?

13 MR. HOOD: Again, Mr. Chairman, I just  
14 believe this is properly before the Zoning Commission.

15 I understand from reading the record and everything  
16 that Father O'Brien has definitely been a good  
17 neighbor.

18 I voted on this project before. That's  
19 not the issue with me. The issue is I think it's  
20 properly before the Zoning Commission. Dependent upon  
21 how this Board moves, I will do the appropriate  
22 action. The problem is a precedent will be set. I'll  
23 leave it at that.

24 CHAIRPERSON GRIFFIS: Thank you.

25 MR. NETTLER: Let me just say one thing.

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1 CHAIRPERSON GRIFFIS: Yes.

2 MR. NETTLER: I understand Mr. Hood's  
3 concerns and I don't believe it sets a precedent. The  
4 reason I don't believe it sets a precedent is because  
5 the primary reason we're here is this is an  
6 accommodation that is made to the Capitol Restoration  
7 Society.

8 I doubt that you would have a similar  
9 situation that would develop where somebody has  
10 received the certificate of occupancy as a matter of  
11 right for a different use and only as an accommodation  
12 to the neighborhood organization has agreed to  
13 characterize that use differently. I don't think you  
14 normally are going to have that situation that would  
15 come up.

16 CHAIRPERSON GRIFFIS: I think that's true  
17 which is good and bad. I mean, it kind of complicates  
18 the whole issue here. I think some of the Board  
19 members have also caught onto the fact that you said  
20 you don't believe it is what it is that's before us.  
21 If it was a private club, which you believe that it  
22 is, it would be a matter of right. Maybe our third  
23 recourse is we kick you out and say you shouldn't be  
24 here.

25 MR. NETTLER: If I can, Corporation

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1 Counsel advised the Board at the time, Ms. Rusta has  
2 provided me a copy of the transcript, and said that  
3 this was not a campus plan and would be treated as a  
4 private school because the principle difference -- I'm  
5 quoting this from the transcript, "The principle  
6 difference is if there is a campus pro se, then there  
7 needs to be a campus plan."

8 In other words, if there is more than one  
9 building, you need a campus plan and a special  
10 exception can be consolidated in the campus plan. It  
11 was Corporation Counsel who advised and took the  
12 position before the Board of Zoning Adjustment at the  
13 time that this was not to be treated under Section 210  
14 but was to be treated as a private school.

15 MR. HOOD: Mr. Chairman, you said yourself  
16 today that you didn't believe it was a private school.

17 MR. NETTLER: But it's still not a campus.  
18 It's certainly not a university.

19 MR. HOOD: Well, still, again, we go back  
20 to what the Zoning Commissioner has, special  
21 exceptions, variances, and the whole campus plan issue  
22 alone. What I would like to do is go to Corporation  
23 Counsel and maybe just see where we are if that's  
24 okay, Mr. Chairman. I would like to hear from  
25 Corporation Counsel. I would unless --

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1 MS. GLAZER: From a legal perspective, I  
2 believe that if the Board already ruled on this, the  
3 Board approved this as a private school. Therefore, I  
4 think unless something has changed, that finding  
5 should be followed unless there's some evidence that  
6 there's a change from the time of the previous order.

7 CHAIRPERSON GRIFFIS: I think that is part  
8 of what Mr. Nettler was getting to. I think it  
9 actually is very important to the Board for two  
10 aspects. I mean, I think we ought to take very  
11 seriously Mr. Hood's comment that we don't want to set  
12 precedent. I mean, it is important to make sure that  
13 we are processing the instant application correctly.  
14 And it's even more important to understand what the  
15 ramifications of any decisions that we make are in the  
16 future.

17 I think looking and taking that advice,  
18 (1) that the Board has previously discussed  
19 deliberated and decided an application in this  
20 fashion; (2) the complexity of having the community  
21 arrangement somehow tell the BZA what it is supposed  
22 to be doing. Whether I like that or not, it does set  
23 us up to a unique circumstance unprecedential in  
24 nature.

25 Then, third, I have probably even more

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1 confidence in all those in looking at 3035.1 and 210  
2 and I don't see how this begins to fit into it. I  
3 noticed, Mr. Nettler, you started with the discussion  
4 about private club or not.

5 In your written submission you addressed  
6 that, I thought, fairly clearly that aspect. Whether  
7 it be that or not, I don't believe it rises to  
8 something that would be under a campus plan review  
9 which would move the special exceptions and variances  
10 in the campus plan review, either be it new or  
11 continuum processing to the Zoning Commission.

12 I am prepared to move along with this. I  
13 think we'll make great note of Mr. Hood's concern and  
14 I don't think the Board would have any problem if it  
15 was shown or if the Board moves in that direction if  
16 it was shown that we have incorrectly processed and  
17 that we would take any steps needed to remedy that.  
18 In that case, I think I would support proceeding at  
19 this time.

20 MR. HOOD: Mr. Chairman, if I just may  
21 add, I would hate -- I know that Marquette and this  
22 whole piece, Father O'Brien has been a good neighbor  
23 like I stated earlier, but I would hate to vote  
24 against this project on this because I'm unclear on  
25 whether they should be -- well, I believe they should

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1 be in the Zoning Commission.

2 I think it doesn't do this application any  
3 service. It does them a disservice for me to vote on  
4 that assumption. Before I vote, I would like to have  
5 a comfort level of moving forward. If you are going  
6 to move forward today and maybe vote another day, I  
7 would feel better proceeding in that fashion.

8 CHAIRPERSON GRIFFIS: Okay. I think it  
9 might be important for you in your own thought process  
10 to separate the two. I mean, if you hear the special  
11 exception here, it would be the same special exception  
12 requirements in the Zoning Commission.

13 I think we could clearly look at the  
14 substance of the application and maintain the same  
15 vote, and probably should maintain the same vote  
16 whether it be in this form or that if the facts are  
17 the same. I don't think there is any difficulty with  
18 enumerating your opposition for the BZA to hear it but  
19 the separation of the two issues might be important.

20 MR. HOOD: I would concur but I just see a  
21 fallacy in voting for something and then sua sponte,  
22 or whatever the case may be. I would hope I wouldn't  
23 have to do that. I just see a fallacy in that and I  
24 would like to be consistent.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. HOOD: I know my colleagues don't  
2 agree with me but when the precedent is set, like Mr.  
3 Nettler said he doesn't believe, then the first  
4 question is going to be asked who was the Zoning  
5 Commissioner on the case and that's what I'm trying to  
6 protect, the integrity of the zoning plan and the map  
7 and the regulations which the Zoning Commission  
8 rights.

9 CHAIRPERSON GRIFFIS: All right. Very  
10 well. Others?

11 VICE CHAIR MILLER: I think we should  
12 proceed and hear this case. I think we have  
13 jurisdiction based on the reading of those two regs.,  
14 3035.1 and 210.1. I would like to say it gave me  
15 great comfort that Mr. Nettler read from the  
16 transcript, which I would hope you would submit, that  
17 this was more fully addressed below -- not below, in  
18 the previous order, that OCC actually did study and  
19 did determine in agreement with our conclusion that  
20 3035.1 and 210.1 didn't really apply to this case.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. NETTLER: I just want to correct  
23 myself actually. When I looked at the transcript it  
24 was not Mr. Hood who had an issue about the time. It  
25 was actually Ms. King who did and then Corporation

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1 Counsel responded. Sorry about that.

2 MR. HOOD: I will tell you if I'm  
3 incorrect, I'll be the first one to admit it. Right  
4 now I'm going to stand fast. Hopefully we won't and  
5 hopefully it won't cause anybody any hardship because  
6 I hate to vote against an application like this on  
7 that.

8 CHAIRPERSON GRIFFIS: Mr. Mann, are you  
9 ready to proceed?

10 MR. MANN: I am. I just want to say I  
11 agree with what Ms. Miller just said. I'm comfortable  
12 and I believe this is properly before us.

13 CHAIRPERSON GRIFFIS: Okay. Why don't we  
14 do that if the applicant is ready to go.

15 MR. NETTLER: We are. I know we've had a  
16 pretty sensitive statement as to what goes on at the  
17 premises. The only two things that we are asking for  
18 in terms of the order to change and then I'll turn it  
19 over to Father O'Brien and any questions you might  
20 have for him. One, there unfortunately was a  
21 discrepancy within the order and one of the conditions  
22 about the time in which it was operating.

23 It says 4:00 is the condition. It was  
24 5:00 in the testimony. Both the ANC, I think the  
25 Office of Planning, and the Capitol Hill Restoration

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1 Society support the 5:00 determination extent of the  
2 time being used. The only other issue was the time  
3 frame in which the special exception would exist. We  
4 had asked and discussed extensively a request that the  
5 time frame not be as constrained as it was before in  
6 which the special exception would require the  
7 applicant to come back before the Board.

8 I know the Office of Planning has not gone  
9 as far as we and the ANC would like in terms of not  
10 having a time constraint and a suggested 10 years.  
11 Given the report that is before you, I would rather  
12 leave that up to your discretion. Hopefully not  
13 anything less than 10 years and possibly as long as we  
14 are suggesting.

15 I'll then turn it over to Father O'Brien  
16 who can give you a little bit more about the premises  
17 and answer any questions that you might have if you  
18 want him to provide anymore testimony beyond what we  
19 have already provided in our --

20 CHAIRPERSON GRIFFIS: I think we can hear  
21 an opening statement or any limited comments that you  
22 want to present. Then I think we'll have some  
23 questions.

24 FATHER O'BRIEN: I would just say -- this  
25 is my second visit here. I was here four years ago.

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1 I would say we went through at great length  
2 discussions about private club and university. As I  
3 recall in getting the exception for a private school,  
4 that the university idea was clearly put to rest  
5 because of the nature of what we do at the center.

6 Credits are not given there. It doesn't  
7 meet any of the university kind of tutorial or  
8 academic needs. Our university is in Milwaukee. I've  
9 been here in Washington, D.C. for the last 15 years.  
10 We moved from 502 East Capitol nine years ago. When  
11 we bought that property on the advice of counsel and  
12 the District of Columbia, we were told that for the  
13 purpose of what we were intended to do that a private  
14 club certificate of occupancy is what was required.

15 We proceeded to purchase the property  
16 after that was an assurance by the District of  
17 Columbia. We operated at that premise for four years  
18 before the Capitol Hill Restoration Society raised an  
19 issue. Then in agreement with the Capitol Hill  
20 Restoration Society out of, I think, a generous  
21 gesture on the part of the university.

22 We said we will surrender the private club  
23 if it is more conducive to the neighborhood and to all  
24 people that were here. Legitimately and honestly we  
25 are a Catholic Institution. Integrity is what we

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1 stand for.

2 I think it was a bit painful to give away  
3 a certificate of occupancy that we had by right and we  
4 were given assurances that we could do all of this and  
5 encouraged to move to Washington, D.C. in this full-  
6 time capacity by representatives of the District of  
7 Columbia. And we had that certificate of occupancy.

8 We negotiated over issues and it was a  
9 very, very ugly kind of underhanded and people saying  
10 things that were completely untrue of what we did  
11 there to bring some sort of openness, transparency,  
12 honestly. I went to ANC meetings on both sides of  
13 East Capitol, different ANCs, negotiated. We hired  
14 Richard's firm to help us.

15 Eventually we said that we will go and  
16 seek a private school designation to do what we do.  
17 We'll surrender our permanent certificate of occupancy  
18 to enter into negotiations with the Capitol Hill  
19 Restoration Society and any other group that has a  
20 problem with what we do. We did that. We came here  
21 and then a four-year restriction was placed on us. We  
22 have operated with that.

23 If you look at the record, ANC was  
24 unanimous vote. I went to the zoning committee  
25 meeting of the ANC. That was unanimous. The full

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1 commission was unanimous. Everyone seems to be in  
2 agreement. We went to the Capitol Hill Restoration  
3 Society meetings. The record will show that they have  
4 recommended it. I think we have taken enormous steps  
5 to be excellent neighbors and I live there. This is  
6 my home, too.

7 CHAIRPERSON GRIFFIS: So you're a  
8 neighbor.

9 FATHER O'BRIEN: Both of our neighbors on  
10 either side have written very wonderful letters of  
11 support calling us absolutely the best neighbors you  
12 could imagine. It kind of bothers me.

13 I'm a professor of political science. I  
14 studied politics as my profession and it is a little  
15 bit bothersome to me that we are being asked over and  
16 over to go through all these hurdles to produce  
17 students who are committed to public service who are  
18 to build up this community. Many of our students  
19 volunteer at intercity schools as tutors. We do so  
20 much public good.

21 I know you don't want to get into those  
22 kind of issues but that's what I represent. I am  
23 asking for your authorization to do what we've been  
24 doing for nearly nine years, four years before we made  
25 the gesture to be as cooperative as we good to get the

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1 private school designation.

2 We are a private school and that  
3 designation, I don't know the legal indications with  
4 your different regulations, but we are a private  
5 school but an aspect of a university private school.  
6 It's not the legal technical thing of a private school  
7 with a president there and a dean and all of those  
8 kind of things. We are an enabler for the university  
9 which is located in Milwaukee and the campus in Madrid  
10 and one in Belgium.

11 MR. NETTLER: Could you describe very  
12 briefly what the Les Aspen Center does?

13 FATHER O'BRIEN: Yes. We have usually 18  
14 to 20 students who in turn are on Capitol Hill or in  
15 federal agencies and have integrative seminars of  
16 their experiential learning and their internships with  
17 course readings and lectures from outside.

18 MR. NETTLER: And what takes place? What  
19 is the function which the basement of your residence  
20 is used for?

21 FATHER O'BRIEN: That is the gathering  
22 area for the seminars to take place. We have had many  
23 members of Congress come there, Supreme Court Justices  
24 and lead students in discussions. Lectures and  
25 discussions.

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1 MR. NETTLER: So those who come there are  
2 students who are here in Washington for internship  
3 programs elsewhere, live elsewhere. Correct?

4 FATHER O'BRIEN: Correct.

5 MR. NETTLER: They are not getting credits  
6 for the lectures that are given in the basement. Is  
7 that correct?

8 FATHER O'BRIEN: Well, not for visiting  
9 lectures but they are enrolled in an internship  
10 program which has academic credit which is granted by  
11 the university in Milwaukee.

12 MR. NETTLER: But that's part of the  
13 internship program on the Hill or in federal agencies?

14 FATHER O'BRIEN: Right.

15 MR. NETTLER: Is there any cafeteria use  
16 per se?

17 FATHER O'BRIEN: No, no.

18 MR. NETTLER: There isn't?

19 FATHER O'BRIEN: They might like to bring  
20 lunch every now and then but they're not supposed to.

21 MR. NETTLER: Have the operations changed  
22 at all since the last hearing at all?

23 FATHER O'BRIEN: No. I gave them my word  
24 and I keep my word. A lot of people would love to  
25 have us expand, I suppose, but no, no, no. This is an

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1 ideal educational opportunity right now at the size we  
2 are and that's where we stay.

3 MR. NETTLER: And how did it come to be  
4 identified with Les Aspen?

5 FATHER O'BRIEN: Well, the former  
6 president, William Jefferson Clinton, released Les  
7 Aspen from his weighty responsibility at the Pentagon  
8 as Secretary of Defense and Secretary Aspen had been a  
9 professor at Marquette University, Economic  
10 Department, before he was elected to Congress and  
11 before he became Secretary of Defense.

12 When he became available I wanted him to  
13 join me with this idea of introducing students to the  
14 political processes under the direction of people who  
15 were highly knowledgeable and he agreed to come and  
16 help me put together this idea. Unfortunately the  
17 year after that he died and we renamed our center. It  
18 was called the Marquette Center for Government and we  
19 renamed it in honor of Les Aspen's contribution to  
20 public society.

21 MR. NETTLER: I have no other questions.

22 CHAIRPERSON GRIFFIS: Any questions from  
23 the Board?

24 VICE CHAIR MILLER: Just for  
25 clarification. The lectures that are held in the

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1 basement, are they part of the required program that  
2 goes with the internship or are they optional?

3 FATHER O'BRIEN: We don't have the luxury  
4 of having students pick and choose from a lot of  
5 courses. If they enroll at the Aspen Center, it is  
6 lectures and primarily learning experience in offices.  
7 They spend three and a half days on average in their  
8 work assignments. If they are drug administration, it  
9 might be four days. It depends on the internship.

10 We look very carefully at the background  
11 of the student and where we think that person could  
12 develop well. If they are biomedical engineering  
13 majors, they intern under a Ph.D. at the Food and Drug  
14 Administration. If they are a political science  
15 major, they will intern in a congressional office.

16 But our whole concept is experiential  
17 learning. Getting them into the environment and then  
18 having them do required readings and integrating their  
19 work experience, their observations, experts coming in  
20 to share their experiences with them in a seminar  
21 format and then they write papers in their residences.

22 VICE CHAIR MILLER: I just have one other  
23 question for curiosity. Are all the students from  
24 Marquette University or does the university accept  
25 students from other universities into this program?

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1 FATHER O'BRIEN: 90 some percent would be  
2 Marquette students. The word has spread and I think  
3 we have a very fine reputation. We have been  
4 evaluated as one of the better -- the best program  
5 actually of this type in Washington. We have people  
6 requesting but it's a Marquette project and we have to  
7 give priority to our students unless they are just too  
8 dumb and then I'll take a bright one from other  
9 places.

10 MR. HOOD: Mr. Chair.

11 CHAIRPERSON GRIFFIS: Mr. Hood.

12 MR. HOOD: Father O'Brien, I'm sorry that  
13 you feel as though I'm trying to take you through  
14 another hurdle because anybody that knows me knows I  
15 don't like a lot of hurdles and red tape. It's just  
16 that you may be an exception. Like I said, I voted on  
17 this in the past and, you know, the good neighbor  
18 policy.

19 There are others that may come later on  
20 and I want to make sure that from a Zoning Commission  
21 perspective, with me as a representative on this case,  
22 that we proceed in the fashion that is appropriate for  
23 all other cases. Now, if I'm wrong, I'll be the first  
24 one to admit it but I just want to make sure that if I  
25 err, I err on the side of caution.

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1 FATHER O'BRIEN: If I could just respond.  
2 I can't believe that there would be another human  
3 being that would go through what we've gone through.  
4 I don't think you are setting any precedent  
5 whatsoever. Nobody else would put up with this.

6 CHAIRPERSON GRIFFIS: You'd be surprised  
7 how many of these we see.

8 FATHER O'BRIEN: Well, I've been  
9 surprised.

10 CHAIRPERSON GRIFFIS: It's certainly not  
11 something we strive for. I think Mr. Hood is  
12 absolutely correct. We are not here to make  
13 impediments but to make the process work and that is  
14 really what I think I hear Mr. Hood talking about, is  
15 making sure the process gets smoother and we don't  
16 create difficulties for the next coming along, or for  
17 us, for that matter. We appreciate that comment.

18 A quick clarification in terms of the last  
19 application, and actually the application that is  
20 before us. We have counts which always piques my  
21 interest, especially when we are looking at private  
22 schools. How do you define the 20 students in the  
23 release sought that you are requesting?

24 You indicate two full-time staff members,  
25 although in your written submission you talk about

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1 three staff members, I believe two full-time and a  
2 director. How do those numbers balance out, first of  
3 all the 20 students?

4 FATHER O'BRIEN: The 20 students would be  
5 an average of the number of students that are there.  
6 We operate on a semester program, summer program,  
7 winter session.

8 CHAIRPERSON GRIFFIS: Okay. When you say  
9 are there, do you mean 20 students on site at one  
10 time? Do you mean are actually enrolled?

11 FATHER O'BRIEN: Enrolled.

12 CHAIRPERSON GRIFFIS: So it's enrollment.

13 FATHER O'BRIEN: Right now we have 18  
14 students.

15 CHAIRPERSON GRIFFIS: I see. And you  
16 don't have the capacity of going beyond 20?

17 FATHER O'BRIEN: We have if we want but I  
18 agreed to 20. When I ran the program at other places,  
19 we had as many as 35 but --

20 CHAIRPERSON GRIFFIS: How much daily  
21 impact do the students have on 502 East Capitol  
22 Street?

23 FATHER O'BRIEN: Daily impact?

24 CHAIRPERSON GRIFFIS: Yeah. I mean, do  
25 they have to check in in the morning?

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1 FATHER O'BRIEN: Oh, no, no.

2 CHAIRPERSON GRIFFIS: They are off  
3 partying all night in their apartment on Dupont  
4 Circle.

5 FATHER O'BRIEN: Did you say partying?

6 CHAIRPERSON GRIFFIS: They are studying  
7 all night.

8 FATHER O'BRIEN: Yeah, that's better.

9 CHAIRPERSON GRIFFIS: Then they are going  
10 down to the Hill all day and then on occasion they go  
11 to 502.

12 FATHER O'BRIEN: Yeah. So in a typical  
13 week they would be in class or in seminar maybe six  
14 hours.

15 CHAIRPERSON GRIFFIS: In a typical week?

16 FATHER O'BRIEN: Yeah. That's why we  
17 don't have problems in the neighborhood. That's why  
18 we make a big to do about not too much here.

19 CHAIRPERSON GRIFFIS: Okay. I have to  
20 hold back on the jokes on this one. Okay. Further  
21 questions? Actually, let me just follow up then in  
22 terms of -- so we have 20 enrollments is what we're  
23 talking about. Then in terms of staff you indicated  
24 there's a director.

25 FATHER O'BRIEN: Moi.

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1 CHAIRPERSON GRIFFIS: And then there's two  
2 full-time staff in which one parks in the garage or  
3 somebody.

4 FATHER O'BRIEN: I park in the garage.

5 CHAIRPERSON GRIFFIS: You park in the  
6 garage.

7 FATHER O'BRIEN: The other staff don't  
8 park there.

9 CHAIRPERSON GRIFFIS: How do you define  
10 the -- actually, I guess the direct question is if you  
11 are limited to two full-time staff, do you have just  
12 full-time staff and are you unlimited in part-time  
13 staff? Is that your reading of this application or  
14 what is the actual scenario of what you need to make  
15 this private school work?

16 FATHER O'BRIEN: Well, the scenario to  
17 make it work would be the director. The second staff  
18 person came on. I was getting old and the university  
19 allowed me to have less of a teaching load so we hired  
20 a person so I could think more and write more. I  
21 don't know if I do either very well but that's how the  
22 other person came on with the reduced teaching load or  
23 seminar facilitator with me. That's where it is. As  
24 far as the parking goes, there is a garage.

25 CHAIRPERSON GRIFFIS: I'm sorry. I don't

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1 have clarification on that. Let's just talk numbers.

2 Let's predict this out 20 years from now. What is it  
3 that we're looking at?

4 FATHER O'BRIEN: We're in our ninth year  
5 and we have two full-time staff.

6 CHAIRPERSON GRIFFIS: Are you full-time  
7 staff?

8 FATHER O'BRIEN: Well, yeah. I live  
9 there.

10 CHAIRPERSON GRIFFIS: Okay. And then who  
11 are the other two?

12 FATHER O'BRIEN: Dr. Loranno who is sort  
13 of half full-time. It's hard to define this outside  
14 of academic. He coordinates programs for the  
15 university in Africa and he is a professor from Ghana.  
16 The university has programs in six countries and  
17 Africa. He facilitates some of the seminar  
18 discussions. He teaches one course so he would be  
19 like considered at the university a person who taught  
20 one course maybe like a one-third employee for 10  
21 months of the year.

22 CHAIRPERSON GRIFFIS: Okay. So now you've  
23 got two people. Who is the third person?

24 FATHER O'BRIEN: The third person who  
25 comes in to teach this one course is a Ph.D.

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1 candidate. Then the assistant director is full time.  
2 He's with me here today.

3 CHAIRPERSON GRIFFIS: So that's four.

4 FATHER O'BRIEN: He does all the  
5 administrative. More than just administrative work.  
6 He smiles and keeps things happy.

7 CHAIRPERSON GRIFFIS: That's full-time  
8 work.

9 FATHER O'BRIEN: Yeah.

10 MR. NETTLER: But there's only two full-  
11 time.

12 FATHER O'BRIEN: There's two full-time  
13 people, me and the assistant director. The other two  
14 staff have responsibilities beyond just being full-  
15 time at the center.

16 MR. NETTLER: And they are not at the  
17 center -- I mean, other than the six hours that it's  
18 used during the year they are not there.

19 FATHER O'BRIEN: They will facilitate and  
20 integrate the seminars so they will be charged with  
21 those responsibilities.

22 MR. NETTLER: And they do that from where?

23 FATHER O'BRIEN: Well, they live in  
24 Washington but they will come to the center for a  
25 couple days.

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1 MR. NETTLER: Otherwise where are they?

2 I'm sorry.

3 CHAIRPERSON GRIFFIS: That's all right.

4 MR. NETTLER: Where are they located? Are  
5 they located in Marquette or --

6 FATHER O'BRIEN: No, they live in  
7 Washington.

8 MR. NETTLER: Okay. And they are doing  
9 other things while they are living in Washington?

10 FATHER O'BRIEN: Yeah. One works on the  
11 Africa projects and the other is doing dissertation.

12 CHAIRPERSON GRIFFIS: Good. Other  
13 questions then?

14 VICE CHAIR MILLER: Just two points. The  
15 two employees we're talking about, they are full-time  
16 employees but they are really just part-time at the  
17 center. Is that what you're trying to say?

18 CHAIRPERSON GRIFFIS: No, there's two  
19 full-time and then --

20 VICE CHAIR MILLER: Two full-time and then  
21 there are two --

22 CHAIRPERSON GRIFFIS: Two part-time.

23 VICE CHAIR MILLER: Are they part-time?

24 FATHER O'BRIEN: Well, they're --

25 VICE CHAIR MILLER: They are part-time at

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1 the center?

2 FATHER O'BRIEN: Right.

3 CHAIRPERSON GRIFFIS: Two non-full-time.

4 FATHER O'BRIEN: They have other  
5 responsibilities besides just the center.

6 VICE CHAIR MILLER: Are they full-time  
7 from Marquette University?

8 FATHER O'BRIEN: Yes.

9 VICE CHAIR MILLER: Okay. But they are  
10 only part-time at the center?

11 FATHER O'BRIEN: Right.

12 VICE CHAIR MILLER: Okay. I just have  
13 this kind of general question hanging over and that is  
14 you've been operating there for nine years and we are  
15 looking at mainly what's happened since the last order  
16 and everybody supports you and no problems, etc. I'm  
17 just curious about what happened, you know, in four  
18 years to prompt this in the community to have you go  
19 for a special exception. Was it their anxiety of your  
20 being a matter of right under constraints, or were  
21 there some problems that have since been corrected?

22 FATHER O'BRIEN: This may be more legal  
23 but my understanding was that there was concern that  
24 other schools would come in under private club status  
25 and have programs like this and have a less than

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1 desirable affect on the residential areas.

2 VICE CHAIR MILLER: Okay. Thank you.

3 FATHER O'BRIEN: I think, in a nutshell,  
4 there were a lot of things that were said that weren't  
5 true but that's more of an emotional argument. I  
6 think the core was, wow, if the District of Columbia  
7 Acting Administrator of Zoning gave them a certificate  
8 of occupancy which didn't require a public hearing or  
9 any of these kind of things -- I wasn't all aware of  
10 the technicalities -- that others could come in in  
11 those areas that private clubs are allowed.

12 It was the District of Columbia that gave  
13 me the definition of what a private club was in that,  
14 "You absolutely fit that and we'll give you a  
15 certificate of occupancy if you buy that property."  
16 So we proceeded to buy the property, meet all the  
17 regulations. It's a brand new townhouse and having to  
18 knock out walls and all this stuff to meet all the  
19 OSHA requirements. Unbelievable. That's why, Mr.  
20 Hood, I can't believe anybody would do this. Don't  
21 worry about precedent. Nobody would go through all  
22 these things unless they are certifiably a lunatic.

23 CHAIRPERSON GRIFFIS: I think we've  
24 exhausted it. Mr. Mann.

25 MR. MANN: A question that I heard asked

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1 earlier and I'm not certain that I heard the answer.  
2 Do you anticipate or how would you expect staffing  
3 levels to change in the future?

4 FATHER O'BRIEN: We are exactly where we  
5 started and that's where I intend to stay. Nine years  
6 ago we had 18 students, 19 students. Now we have  
7 that.

8 MR. MANN: Okay.

9 CHAIRPERSON GRIFFIS: Good. Anything  
10 else? Questions? If not, then if you're ready, why  
11 don't we proceed to the Office of Planning report  
12 then. Very well, let's do that. It is Exhibit No.  
13 31. Of course, they are recommended approval.

14 A very good afternoon, sir.

15 MR. MOORE: Good afternoon, Mr. Chair, and  
16 members of the Board. The Office of Planning will  
17 stand on the record to support the application.

18 CHAIRPERSON GRIFFIS: Excellent.  
19 Questions from the Board on the Office of Planning's  
20 Report? I think the report was excellent in its  
21 analysis and going through everything. Of course, it  
22 does take us through the old familiar section of 206  
23 which obviously is what we're looking at in this  
24 point. I think there's ample evidence in the record  
25 that is addressing that and the Office of Planning

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1 does an excellent job of doing that.

2 Ms. Miller, you have a question for OP?

3 VICE CHAIR MILLER: Yes. Office of  
4 Planning recommends that the order be limited to 10  
5 years. I'm wondering if you could explain why you  
6 take the position of 10 years versus no limitation  
7 which is what the applicant is requesting.

8 MR. MOORE: Because the use is still a  
9 nonresidential use in a residential community. We  
10 just thought there should be periods by which it  
11 should be monitored still so we selected 10 years.

12 CHAIRPERSON GRIFFIS: Anything else for  
13 the Office of Planning? Does the applicant have cross  
14 examination for the Office of Planning? Any cross?  
15 Very well. Thank you very much. Appreciate it.  
16 Excellent report. Let's go down to -- we do have  
17 submitted an exhibit recommending approval in Exhibit  
18 No. 26. DDOT also submitted a recommendation for  
19 approval, Exhibit No. 25. DDOT also addressed the 10  
20 years somewhat.

21 Is there an ANC representative here today,  
22 6C? Okay. If there's nothing else from the Board  
23 regarding that, of course, the ANC did submit and they  
24 were talking about adopting the previous conditions.  
25 I'm assuming outside of what you have discussed,

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1 changing the time or the past condition, also the  
2 timing of the entire application that you are  
3 satisfied with adopting the conditions of the previous  
4 order. Is that correct?

5 MR. NETTLER: Correct.

6 CHAIRPERSON GRIFFIS: Okay. Has there  
7 been any evidence -- condition No. 6 as I look at I  
8 think is an appropriate point. I think that is all of  
9 the Government reports attended to the application  
10 that I'm aware of unless the applicant or Board  
11 members are aware of any other. Condition No. 6 talks  
12 about the applicant shall use best efforts to  
13 supervise the conduct of its students. As there been,  
14 first of all, any issue of unsavory conduct in the  
15 students that are at the center?

16 FATHER O'BRIEN: No.

17 CHAIRPERSON GRIFFIS: So there hasn't been  
18 any police reports or neighborhood complaints or  
19 anything like that?

20 FATHER O'BRIEN: None.

21 MR. NETTLER: If I can give you some  
22 background with it.

23 CHAIRPERSON GRIFFIS: That's okay.

24 MR. NETTLER: Where that arose from.  
25 There was an issue that one of the ANC, and I forget

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1 which ANC raised an issue about where the students  
2 were residing. It had nothing to do with the use of  
3 the premises here. There had been a request that  
4 Father O'Brien and Marquette exercise some greater --  
5 make some attempts to oversee what the students were  
6 doing at the places where they were living as opposed  
7 to what was going on here.

8 CHAIRPERSON GRIFFIS: Nighttime activities  
9 as previously discussed. I see. Of course, that is a  
10 bit of humor when we read the record in next year's  
11 case. Has that continued or what was done? I mean,  
12 how was that condition complied with?

13 FATHER O'BRIEN: Well, we have a resident  
14 assistant like you would have at a university in the  
15 housing that the students live.

16 CHAIRPERSON GRIFFIS: Are they all in one  
17 kind of group house?

18 FATHER O'BRIEN: They don't have to be but  
19 most of them are.

20 CHAIRPERSON GRIFFIS: You provide housing  
21 in the city?

22 FATHER O'BRIEN: We provide housing. We  
23 don't own it.

24 CHAIRPERSON GRIFFIS: That, of course,  
25 would be supervised.

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1 FATHER O'BRIEN: Right.

2 CHAIRPERSON GRIFFIS: So the housing  
3 provided is supervised?

4 FATHER O'BRIEN: Correct.

5 CHAIRPERSON GRIFFIS: Okay.

6 FATHER O'BRIEN: I had asked Capitol  
7 Restoration Society and they had asked its members  
8 whether there had been any incidents regarding the  
9 residents where the students were residing and my  
10 understanding was there was none. There hadn't been  
11 any issues that had arisen since that time.

12 CHAIRPERSON GRIFFIS: Here is my concern.  
13 First of all, I don't see where we have the  
14 jurisdiction to talk about supervision offsite of an  
15 application for special exception of which we're  
16 reviewing. I'm not sure how you could even measure  
17 your compliance with a condition like that.

18 One of the important points that the Board  
19 has taken on is crafting conditions that are  
20 understandable, measurable and all these other  
21 adjectives that I have when I'm usually capable of  
22 reading them all off. That one doesn't strike me as  
23 one that is.

24 If there were actually complaints of  
25 conduct, and I would think by the mere operation of

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1 the center that you are monitoring the conduct of the  
2 students at the center because clearly they are there  
3 to attend something so that would make it pertinent.  
4 Outside of that I don't think I would move ahead with  
5 continuing condition No. 6 if this order was to move  
6 to any sort of successful completion.

7 All right. Anything else on any of the  
8 other Government reports in the application as it is  
9 now? Do you have letters of support? Is anyone else  
10 here to give testimony of Application 17143 either in  
11 support or in opposition? Not noting any other, we  
12 have letters of support, Exhibit No. 28, Exhibit No.  
13 27.

14 You attached some in the prehearing  
15 statement, I believe. We have Visas Miller. We have  
16 David and Stephanie Deutch and the Capitol Restoration  
17 Society which I should have mentioned actually. We do  
18 have their letter. Actually, do you guys have Exhibit  
19 No. 27? It's the Capitol Restoration Society letter.

20 VICE CHAIR MILLER: I think the applicant  
21 also attached it to their --

22 CHAIRPERSON GRIFFIS: Oh, he did? Okay.

23 VICE CHAIR MILLER: It's an exhibit, two  
24 pages.

25 CHAIRPERSON GRIFFIS: I like this shotgun

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1 approach that Capitol Hill has. We had a meeting and  
2 here are the five applications in. I probably  
3 shouldn't say it on the record, should I, as the tape  
4 is rolling along? Okay. 17143, of course, was one of  
5 the applications that they did, the application of the  
6 Marquette University special exception. The abutting  
7 neighbors sent letters in support of the application.

8 The Capitol Restoration Society supported  
9 the application in '99. The committee voted  
10 unanimously to support the application. That is the  
11 paragraph dedicated to 17143 which is this  
12 application. Okay. Anything else then? Anything  
13 further?

14 VICE CHAIR MILLER: I have a question on  
15 the conditions. Are we going to get to that later or  
16 do you want that now?

17 CHAIRPERSON GRIFFIS: Let's crack  
18 conditions if we get to a motion. Do you have  
19 questions the applicant can answer?

20 VICE CHAIR MILLER: My only question about  
21 a condition, and I don't have it in front of me, but  
22 it dealt with two full-time staff members. We  
23 discussed that there may be two part-time staff  
24 members as well. I would just want to be sure that  
25 they weren't excluded if we didn't mean to exclude

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1 them. It's condition No. 1. It says, "Enrollment at  
2 the school shall be limited to an average of 20  
3 students over the year and two full-time staff  
4 persons."

5 CHAIRPERSON GRIFFIS: Right. I think it's  
6 appropriate to talk about full-time because I think  
7 that's the actual impact as we're measuring impact.  
8 What is the impact of the employees? One, obviously,  
9 we go to parking.

10 Parking is pretty much taken care of in  
11 this site in that it's not expanding the intensity of  
12 use necessarily because the square footage isn't  
13 changing. We have a given one space and the one space  
14 requirement. I think to try -- what I've gleaned from  
15 the reading and also the testimony today in terms of  
16 trying to establish how many part-time people.

17 I mean, I can imagine hours of hearings  
18 about is a lecturer then not a full-time and,  
19 therefore, a part-time? How do we really put it down  
20 in scientific formula form.

21 I think if we address the full-time, that  
22 really talks about what makes the center successful to  
23 operate and continue and what the actual requirements  
24 are and what the impact would actually be on the  
25 surrounding area in terms of continual population that

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1 uses the building. That's just off the top of my  
2 head.

3 VICE CHAIR MILLER: I'll agree. I just  
4 wouldn't want anyone to think they were in violation  
5 of the order if there was another part-time lecturer  
6 coming at some point.

7 CHAIRPERSON GRIFFIS: Okay. Any other  
8 questions that we might be able to -- need further  
9 information on in terms of understanding the  
10 application that is proposed and whether they meet the  
11 test for special exception? If not, Mr. Nettler, I  
12 think we can turn it over to you for any conclusory  
13 remarks that you have.

14 MR. NETTLER: We would, again, ask the  
15 Board to grant the special exception. I think we have  
16 pretty well aired the issues here. We iterated our  
17 position as we did before that, in our view, this  
18 university does not fit within the definition of a  
19 campus plan or university.

20 If the Board so request, I can provide  
21 them with a copy of the transcript and the discussion  
22 that the Corporation Counsel had with the Board at the  
23 time. But the two issues that the Corporation Counsel  
24 focused on then was, as I said, this notion of a  
25 campus.

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1           The second one was the issue that I had  
2           referenced as well which was the whole idea of using a  
3           campus plan was the ability to apportion density among  
4           a number of buildings and how you do that in a way  
5           that doesn't have an impact on the neighborhood or  
6           residential neighborhood, whereas this is not a  
7           situation where that would ever would come into play  
8           because we are dealing with one building or residence.

9           It's almost like saying if you take Dean  
10          Trachtenberg's house, which is shared in Kalorama and  
11          not part of the George Washington University campus  
12          and you say that because Trachtenberg has people,  
13          which he does on occasion, have people come over there  
14          to do some extra university events, that in itself  
15          would become part of a campus.

16          Here we don't even have that extra campus  
17          in Washington, D.C. so there is no way to take  
18          advantage of what the campus plan regulations are  
19          intended to deal with and that was the impacts on  
20          residential neighborhoods.

21          As you've read from the submissions of the  
22          ANC and Capitol Hill and the neighbors, Father O'Brien  
23          and the use of this premises have been consistent with  
24          the conditions that were imposed and we would ask that  
25          the conditions be modified as suggested by us.

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1 CHAIRPERSON GRIFFIS: Excellent. Hope we  
2 didn't cause any problem with GW bringing it up on the  
3 record now. Okay.

4 VICE CHAIR MILLER: I just want to ask Mr.  
5 Nettler where he draws the purpose of the campus plan  
6 from with respect to apportioning density and its  
7 impact on the residential aspects of the neighborhood.

8 I mean, that all makes sense but are you pulling it  
9 from the legislative history of the regs.?

10 MR. NETTLER: No, there's a provision in  
11 the regulations.

12 VICE CHAIR MILLER: You're pulling it from  
13 a regulation?

14 MR. NETTLER: Right.

15 VICE CHAIR MILLER: Which one?

16 MR. NETTLER: I'm trying to do it off the  
17 top of my head. Actually it depends on whether you  
18 use R-5-B or R-5-D for purposes of the FAR when you  
19 apportion along the campus depending on which zone  
20 district you're in but I think it's part of 210.

21 CHAIRPERSON GRIFFIS: I think it is.

22 MR. NETTLER: Correct, 210.3. If you are  
23 in R-1 through R-5-B you are allowed to take advantage  
24 of the bulk requirements of R-5-B to apportion density  
25 among several buildings on campus. In all other

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1 residential districts you are allowed to take the  
2 gross floor area R-5-D and apportion that over the  
3 entire campus.

4           What you end up doing is you can have a  
5 building -- let's say you have three buildings along  
6 campus that individually might exceed the density, or  
7 two of them might exceed the density for that  
8 particular lot but because it's treated as a campus,  
9 you are allowed to take the aggregate gross floor area  
10 that is permitted under R-5-B or R-5-D apportion it  
11 among the entire campus and come up with a figure that  
12 will allow the densities that are used within the  
13 entire campus.

14           That's a primary benefit for universities  
15 of using campus plan is to be able to do that, to have  
16 different density designations around a residential  
17 area that you otherwise could not get with a private  
18 school or any other use. It's a benefit for the  
19 campus.

20           It's unfortunately a burden sometimes on a  
21 residential neighborhood and that's why it's then  
22 balanced against all these other issues, traffic and  
23 noise and where your students are living and other  
24 things like that that the Zoning Commission and you  
25 have visited on a number of occasions.

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1           That's not the type of thing that gets  
2 applied here so there's no benefit to the school  
3 taking advantage of the university regulations as they  
4 were intended to benefit the universities and there is  
5 no harm done to the residential communities because  
6 you can't take advantage of those provisions when you  
7 have a single building of which on a quarter of it is  
8 used for the use that has been described.

9           VICE CHAIR MILLER: Thank you.

10          MR. NETTLER: Corporation Counsel said the  
11 same thing in their discussion of it.

12          CHAIRPERSON GRIFFIS: Anything further?  
13 Follow-up question? So we are proportioning the  
14 overall density across this one building in accordance  
15 -- no, I'm just kidding.

16          MR. NETTLER: Across the basement maybe.

17          VICE CHAIR MILLER: I do have a question.

18          CHAIRPERSON GRIFFIS: That's why I  
19 delayed.

20          VICE CHAIR MILLER: When the last order  
21 was issued did you have the part-time staff as well or  
22 did you only have the two full-time staff?

23          MR. NETTLER: No, it was the same.

24          VICE CHAIR MILLER: It was the same. And  
25 it hasn't been a problem in the way the order has been

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1 read. Okay.

2 CHAIRPERSON GRIFFIS: Okay. Anything  
3 else? Further clarifications? Very well. I think we  
4 have aired an awful lot on this case and I, in fact,  
5 am ready to proceed. I do take under great  
6 consideration note of Mr. Anthony's concern about  
7 proper processing of this. I believe, that being  
8 said, that as we proceed with this we should look at  
9 the substance and I think that is really the two clear  
10 points. One is the proper processing and then the  
11 other is the substance of the application.

12 With that and hearing the case I would  
13 move approval of Application 17143 for the special  
14 exception that would allow the private school of 20  
15 students and two full-time staff. That is under 206,  
16 of course and 1201 as also approved in a previous BZA  
17 order for the premises of 502 East Capitol Street,  
18 N.E., and would ask for a second.

19 VICE CHAIR MILLER: Second.

20 CHAIRPERSON GRIFFIS: Thank you very much.  
21 I think in terms of the 206 it is an interesting  
22 point how limited discussion we have actually had on  
23 the 206 revision which the applicant is required to  
24 address and to come into compliance or show that they  
25 don't create any objectionable situations and that

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1 being from number of students and traffic and all the  
2 things that we are all very familiar with.

3 I think the limited discussion required on  
4 that is, first of all, based on the address in the  
5 written submission that was sufficient. Also I think  
6 it was fairly clear that this doesn't even rise to  
7 many of the aspects that 206 seems to need to cover.

8 But, that being said, we also don't have  
9 any evidence that over the long history of the center  
10 operation of which the testimony has been that nothing  
11 has changed and certainly nothing substantive has  
12 changed that there is any evidence that there has been  
13 the creation of objectionable activities or noise,  
14 traffic, etc. I think also great reliance can be  
15 placed on the Office of Planning support and their  
16 review and recommendation for approval.

17 That being said, I would attach to the  
18 motion that is before us and seconded and ask the  
19 concurrence on each of the conditions. The proposed  
20 conditions I will begin to craft based on the previous  
21 order and based on my understanding of this new  
22 application. I think the enrollment at the center  
23 would be for 20 students and two full-time employees.

24 The center would be operated the hours as  
25 stated in the record today and that is 1:00 to 5:00, I

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1 believe, but we can certainly correct that to make it  
2 accurate. And, of course, it would be on an irregular  
3 basis allowed the flexibility of having events,  
4 lectures, and students in the evening. I mean,  
5 clearly that is part of the actual functioning of the  
6 center and I don't think there is any reason to limit  
7 that.

8 I would strike a condition that talked  
9 about whether the center would assist students in  
10 gaining passports or parking permits or anything else  
11 outside of the jurisdiction of the Board of Zoning  
12 Adjustments.

13 I would include the condition -- I guess  
14 we could adopt the previous condition that was in  
15 somewhat fashion and substance talking about not  
16 permitting any part of the property to be used other  
17 than the official receptions on the center on an  
18 yearly basis or for any functions that are not  
19 attended by the students and their guests, etc.

20 R-4, the applicant would maintain a  
21 working relationship with the ANC Commission either  
22 through the NO meetings of the SMD or the annual  
23 appearances before the ANC. I don't think we need to  
24 get any more strict on that. I'm not sure I would  
25 craft that if it hadn't been presented before but I

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1 think it is important to have open communication.

2 That may well be the reasoning for great  
3 continued success. And I would strike and not include  
4 a condition that has something to do with supervising  
5 conducts of students unless we found that there be  
6 evidence for us to condition that.

7 Then I would like to be very specific on  
8 what conduct, where, and what the purview and the  
9 remedy and the reaction and the rewards and, who  
10 knows, punishment and everything else that would be  
11 attended to misconduct by the students. That's all I  
12 have. Comments?

13 VICE CHAIR MILLER: I basically concur  
14 with your conditions which follow the conditions that  
15 have been presented to us. Just for clarification, I  
16 can't tell whether you intentionally intended to  
17 exclude part of condition No. 4, the last line which  
18 deals with garden parties.

19 CHAIRPERSON GRIFFIS: Garden parties? I  
20 didn't get invited to any garden party.

21 VICE CHAIR MILLER: Because there are  
22 none.

23 CHAIRPERSON GRIFFIS: Oh. Okay, there  
24 should be no garden parties associated with the  
25 center. Now we've just got to pull the Webster out

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1 and figure out what actually is a garden party. I  
2 mean, if you're having fun out in the garden, is that  
3 a garden party? No, I shouldn't be foolish actually.

4 FATHER O'BRIEN: It's a basement. Someone  
5 objected that we might have garden parties. A lot of  
6 those conditions were put in to satisfy people at ANC  
7 meetings where there is an objective that they heard  
8 of a school that had a garden party so we agreed not  
9 to have a garden party.

10 CHAIRPERSON GRIFFIS: In all seriousness -  
11 -

12 FATHER O'BRIEN: What am I going to do?  
13 How are you going to have a garden party in a  
14 basement? Yeah, put it in. We'll accept it.

15 CHAIRPERSON GRIFFIS: In all seriousness,  
16 two things. First of all, I get in great trouble when  
17 I let applicants talk in the middle of a motion.  
18 Secondly, I think the point in all seriousness in  
19 terms of condition 4 is as I understand the last  
20 proceeding and I understand this proceeding and  
21 looking at private schools, the point of the condition  
22 is to limit the use for that which is attended to the  
23 use established meaning if it's a center function and  
24 it's functioning, then it should be allowed.

25 If it starts to grow beyond that and

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1 starts throwing parties and all this stuff, I think it  
2 would be difficult. I think that exact sentence was  
3 more towards if they went outside and started creating  
4 this huge noise and start having events outside.  
5 Again, what have we seen in the past history that has  
6 been evidence that that kind of occasion occurs?

7 VICE CHAIR MILLER: Well, my question  
8 really was for clarification for what you were  
9 proposing.

10 CHAIRPERSON GRIFFIS: I know.

11 VICE CHAIR MILLER: Are you proposing that  
12 we strike that?

13 CHAIRPERSON GRIFFIS: Yes.

14 VICE CHAIR MILLER: Okay. You also didn't  
15 read the sentence before but I think that sentence  
16 before should stay in, that nothing herein shall be  
17 misconstrued to prohibit the resident of the premises  
18 from using the residential portions in a manner  
19 consistent with such residential use.

20 CHAIRPERSON GRIFFIS: I find it so overly  
21 redundant. So we're telling them that if the Zoning  
22 Regulations say that it's a matter of right use, that  
23 they can use it as a matter of right. I don't have  
24 any contention with that. I'm not sure why we need to  
25 state it. Does it say something other than that?

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1                   VICE CHAIR MILLER:       I think the  
2 complication here is that it's a mixed use. Some of  
3 it's residential and some of it's related to the  
4 schools.

5                   CHAIRPERSON GRIFFIS:       Nothing does  
6 prohibit them from using the premises and the  
7 residential portions for residential use. I don't  
8 have any problem with keeping it in. It just kind of  
9 says the obvious. Anything else? Let's hear a brief  
10 discussion. I'm open actually to having a discussion  
11 on two points. We either do 10 or we do 15 years. We  
12 have OP recommending 10 years which seems to be  
13 substantial, although there wasn't a huge amount of,  
14 again, evidence talking about why you wouldn't.

15                   We've gone through now four years, say  
16 five years of operation. Nothing has changed.  
17 Nothing is being predicted to change. There hasn't  
18 been any incident -- I was going to say any real  
19 incident. Actually there hasn't been evidence of any  
20 incident at all.

21                   Mr. Mann.

22                   MR. MANN: I think there was four years of  
23 operation just since the order. They have actually  
24 been in operation longer than that.

25                   CHAIRPERSON GRIFFIS: Yes. Good point.

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1                   VICE CHAIR MILLER: I would be inclined  
2 toward the longer period of time because it seems like  
3 such a small operation that has no opposition, total  
4 support, a good track record. Nothing to indicate  
5 that -- well, it has conditions that won't allow it to  
6 expand to become something that it isn't.

7                   I find it very helpful that applicant  
8 attached other decisions that we've done where we've  
9 had 10 years or no limit at all. It just seems like  
10 such a benign use that I don't have a problem going a  
11 little longer.

12                   CHAIRPERSON GRIFFIS: Is there a vote of  
13 15? Mr. Mann also concurs?

14                   MR. MANN: Yes.

15                   CHAIRPERSON GRIFFIS: Mr. Hood?

16                   MR. HOOD: I was going to wait until you  
17 all wrap it up and then I'll give you my opinion.

18                   CHAIRPERSON GRIFFIS: Okay. If I  
19 understand, we have conditions. Is everyone clear on  
20 the conditions? The first condition then would be for  
21 a limit of 10 years -- 15 years rather. Is that  
22 correct?

23                   MR. MANN: Yes.

24                   CHAIRPERSON GRIFFIS: Anything else we  
25 haven't covered?

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1 MR. NETTLER: Mr. Chair, I know it's  
2 inappropriate to interrupt but there is a reason to  
3 keep in that provision dealing with nothing herein  
4 shall be construed to prohibited the resident of the  
5 premises from using it because if you read the first  
6 sentence of that condition, it could be construed --

7 CHAIRPERSON GRIFFIS: Oh, I see. It's a  
8 clarification of four and that makes sense. When I  
9 take time to look at the whole thing, it probably will  
10 stay in. It will stay in. I think that is an  
11 important provision because actually what that does is  
12 qualify the first sentence which is trying to limit  
13 any of the use that isn't actually matter of right so  
14 it could get misconstrued that you could essentially  
15 render a large portion of the property not usable  
16 because you couldn't expand essentially the special  
17 exception use but you couldn't have anything useful  
18 outside of the special exception.

19 MR. NETTLER: It should be construed, not  
20 misconstrued because it becomes redundant when it is  
21 said that way. I'm sorry.

22 CHAIRPERSON GRIFFIS: I'm getting too  
23 tired to get into that one. Okay. You're saying the  
24 language in here should have changed? Construed and  
25 not misconstrued? Nothing herein shall be construed

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1 to prohibit the resident. Right. Very well.

2 MR. HOOD: Mr. Chairman, I just want to  
3 speak to the motion. I'm going to be -- well, I agree  
4 with all the comments I've heard from my colleagues.  
5 I will be abstaining because, as I said earlier on  
6 when we first started, that I believe this is not  
7 proper before this Board.

8 I still believe this is supposed to be in  
9 front of the Zoning Commission and I plan on  
10 considering asking the Commission to look at this  
11 issue not to badger or punish Marquette. I think I  
12 voted on this previously when it was in front of the  
13 BZA and I think they are a model neighbor, good  
14 neighbor.

15 I also have to look at the regulations and  
16 make sure that I am correct. If I'm going to make a  
17 mistake either way, I'm going to air on the side of  
18 caution. Again, Father O'Brien, don't take it  
19 personally.

20 I'm not trying to give you anymore red  
21 tape but it appears that you have the vote so it  
22 doesn't matter what Anthony Hood does today or not. I  
23 will tell you that I will taking not your case but the  
24 issue in front of the Commission on how to deal with  
25 this campus plan issue. Thank you, Mr. Chair.

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1 CHAIRPERSON GRIFFIS: If it's more  
2 appropriate, we could certainly set this off for  
3 decision and allow some investigation on this topic if  
4 you think that might facilitate a better  
5 understanding.

6 MR. HOOD: I think you all are ready to  
7 move forward. I mean, again, if you don't hear from  
8 me, no news is good news and then you know that  
9 Anthony Hood may have been incorrect. I don't see us  
10 holding up the applicant so you guys got to vote.

11 CHAIRPERSON GRIFFIS: Very well. Anything  
12 else on the motion? We have a motion before us. It  
13 has been seconded and conditioned. If there is no  
14 other deliberation, then let me ask for all those in  
15 favor of the motion to signify by saying aye.

16 MEMBERS: Aye.

17 CHAIRPERSON GRIFFIS: Opposed?  
18 Abstaining?

19 MR. HOOD: Abstain.

20 CHAIRPERSON GRIFFIS: Thank you.

21 MS. BAILEY: The Board has voted three,  
22 zero, two to approve the application. Mr. Griffis  
23 made the motion, Ms. Miller seconded, Mr. Mann is in  
24 support, Mr. Hood has abstained, and Mr. Etherly is  
25 not present today. Is this a summary order, Mr.

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1 Chairman?

2 CHAIRPERSON GRIFFIS: Ms. Bailey, this was  
3 a full order last time. Wasn't it?

4 MS. BAILEY: Last time I believe it was a  
5 summary order.

6 CHAIRPERSON GRIFFIS: Was it a summary  
7 order last time? Yeah, I think it was full. I don't  
8 know. Ms. Bailey, I think --

9 MS. BAILEY: That's right. It's a full  
10 order.

11 CHAIRPERSON GRIFFIS: I'm just going to  
12 reserve making an announcement whether it be. I'm  
13 certainly inclined to do a summary order. What I do  
14 want to figure out, though is whether the order needs  
15 to carry some sort of discussion on the private school  
16 establishment and whether it is or it isn't so that we  
17 don't run into this 15 years from now. I think we can  
18 make that decision this week.

19 MS. BAILEY: Do you want Mr. Nettler to  
20 provide a draft?

21 MR. NETTLER: I can do that and I'll  
22 provide the transcript as well so that allows  
23 everybody to understand how the Corporation Counsel  
24 handled the issues.

25 CHAIRPERSON GRIFFIS: Excellent point.

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1 Why don't we do that then. Thank you, Ms. Bailey.  
2 That's an excellent idea. Anything else? All set?  
3 Good. Thank you all very much. Appreciate you being  
4 here this afternoon. Sorry that took so long.

5 MR. NETTLER: Date for submission, Ms.  
6 Bailey? A date for submission?

7 MS. BAILEY: Well, the Board has voted so  
8 soon as you get it in you can get your orders quickly.

9 CHAIRPERSON GRIFFIS: All right. Why  
10 don't we move ahead with the next case.

11 MS. BAILEY: Application No. 17147 of Bloom  
12 Builders, Inc., pursuant to 11 DCMR 3103.2, for a  
13 variance to allow the renovation and reconfiguration  
14 of an existing building (formerly known as the Broad  
15 Branch Market) for continued use as a neighborhood  
16 market under subsection 2002.3, and a variance from  
17 the rear yard requirements under Section 404, and  
18 pursuant to 11 DCMR 3104.1, a special exception to  
19 establish a Child Development Center (60 children and  
20 8 staff) under Section 205. The property is located  
21 in the R-1-B District at premises 5608 Broad Branch  
22 Road, N.W. (Square 1997, Lot 78).

23 CHAIRPERSON GRIFFIS: Good afternoon.

24 MR. TUMMONDS: Good afternoon, Mr.  
25 Chairman. My name is Paul Tummonds with the law firm

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1 of Shaw Pittman on behalf of the applicant. I have  
2 two quasi preliminary matters this afternoon I wanted  
3 to bring to your attention. The first is --

4 CHAIRPERSON GRIFFIS: We don't take quasi  
5 preliminaries on Tuesday.

6 MR. TUMMONDS: They are preliminary  
7 matters for this case.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. TUMMONDS: The first would be that we  
10 are proposing to have our traffic engineer, Ms. Jami  
11 Milanovich from Wells and Associates be admitted as an  
12 expert witness in traffic and parking engineering. I  
13 believe you have her resume now.

14 CHAIRPERSON GRIFFIS: Actually, before you  
15 start introducing that, we need to take up a  
16 preliminary matter which is the party application of  
17 Mr. Henry Custis. Mr. Custis is here. Excellent.

18 We also have a party status application  
19 for Raven Oliver.

20 MR. CUSTIS: She was not able to come.  
21 She has a child care problem but she submitted a  
22 letter.

23 CHAIRPERSON GRIFFIS: Okay. Let me give a  
24 little instruction. If you are going to say anything,  
25 you are going to need to be on a microphone.

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1 Otherwise, you are not on the record. If you need to,  
2 we can address it up here. Mr. Custis, do you know  
3 Ms. Oliver?

4 MR. CUSTIS: Yes, I do. She's my  
5 neighbor.

6 CHAIRPERSON GRIFFIS: Okay. And you  
7 indicated that in addition to the party status  
8 application she also submitted something in writing?

9 MR. CUSTIS: Yes. She submitted a letter  
10 which I brought down to the staff a couple of weeks  
11 ago and I have another copy of it with a different  
12 heading. I think that letter was written to the ANC.

13 CHAIRPERSON GRIFFIS: That's fine. The  
14 letter that was submitted, does she want you to speak  
15 for her?

16 MR. CUSTIS: No. I just have her letter  
17 actually addressed to you here.

18 CHAIRPERSON GRIFFIS: I just wanted to  
19 clarify everything here. Mr. Custis, are you fully  
20 aware of what being granted party status enables and  
21 requires of you?

22 MR. CUSTIS: I have a vague sense of what  
23 it means.

24 CHAIRPERSON GRIFFIS: Okay. There are  
25 many different ways that one participates within an

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1 application for the Board of Zoning Adjustment. If  
2 you sat here most of the afternoon, you may have  
3 gleaned some of those, but obviously the applicant has  
4 a part. The pertinent piece for me to make you  
5 understand is there are two ways that the public  
6 participates. That is, as a party in the case or as  
7 persons, as individuals.

8 As an individual person, anyone can come  
9 in and give testimony. Obviously it's a public  
10 hearing. We do allow a time for persons in support  
11 and persons in opposition to make their testimony  
12 known to the Board and we do keep the record open for  
13 any written submissions that would be required.

14 If you are granted party status, then it  
15 is a fairly high threshold that the Board carries for  
16 granting party status. If you are granted party  
17 status, you are a full participant in the case meaning  
18 you are equal to the applicant in this case meaning  
19 anything that we require to be submitted, we would  
20 require of you and that could be anything from  
21 evidence, briefings on regulation issues, or findings,  
22 facts, conclusions of law.

23 As a party you are afforded the  
24 opportunity, of course, to cross examine witnesses.  
25 As a person you are not allowed to do that. You are

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1 then also required to present a case. Your case will  
2 need to be presented and that would be in order after  
3 the applicant, the Government reports, and the party  
4 in support of an application. The party in opposition  
5 would then present their case.

6 All that being said, do you have any  
7 questions of that?

8 MR. CUSTIS: I don't have any questions.

9 CHAIRPERSON GRIFFIS: Are you wanting to  
10 be a party in this application?

11 MR. CUSTIS: Yes.

12 CHAIRPERSON GRIFFIS: Okay. Board  
13 members, let's take up -- you are next door to the  
14 market. Is that correct?

15 MR. CUSTIS: I am next door to the lot  
16 that was in the contract with the market. I submitted  
17 a map actually with my --

18 CHAIRPERSON GRIFFIS: Are you shown on  
19 that site No. 1?

20 MR. CUSTIS: No, I'm not, but I can show  
21 you. There's a lot here that went with the market and  
22 then I'm the next lot. Oh, I'm sorry. I've got it  
23 backwards. These are the two lots. The one with the  
24 contract, I'm this lot here. I submitted a map with  
25 my party status application actually.

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1 CHAIRPERSON GRIFFIS: I'm sorry. I'm  
2 getting tired. You're in support of the application?

3 MR. CUSTIS: Yes.

4 CHAIRPERSON GRIFFIS: Ms. Oliver is in --

5 MR. CUSTIS: She's one down from me.  
6 She's 5600 and I'm 5604. The house that is no longer  
7 a part of the project is 5606 and the market is 5608.  
8 There should be a map with my party status.

9 CHAIRPERSON GRIFFIS: Ms. Oliver is in  
10 opposition, though? Is that your understanding?

11 MR. CUSTIS: Yes.

12 CHAIRPERSON GRIFFIS: Let's take up -- is  
13 there an ANC representative here today from 3-4-G?  
14 Ms. Renshaw, it's a pleasure to see you. Do you have  
15 any objection to the party status -- granting party  
16 status to Mr. Custis?

17 MR. TUMMONDS: I would raise an issue  
18 whether Ms. Renshaw is the duly authorized  
19 representative of the ANC for this case. It is my  
20 understanding in talking with the ANC Commissioner  
21 Levine that, in fact, they were not going to send down  
22 an authorized representative of the ANC today.

23 CHAIRPERSON GRIFFIS: Okay. Well, let's  
24 get that clarified. Ms. Renshaw, do you mind coming  
25 up?

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1 MS. RENSHAW: Good afternoon. I'm Ann  
2 Renshaw for the record, ANC-3/4G-03. Mr. Tummonds is  
3 correct that Commissioner Jerry Levine is the  
4 designated representative from the ANC on this case.  
5 I am here as a person to make a comment later on. But  
6 I can say that Mr. Custis' party status request did  
7 not come up at the ANC meeting.

8 CHAIRPERSON GRIFFIS: Okay. Rather than  
9 crossing over that line of you're a person, but as a  
10 person you're saying what your understanding of the  
11 ANC meeting is. Okay. That's clear to me.  
12 Excellent. That being said then, I think we can -- is  
13 there any objection to granting party status to Mr.  
14 Custis at this time? I'm assuming, Mr. Tummonds, you  
15 don't have any objection?

16 MR. TUMMONDS: No objection.

17 CHAIRPERSON GRIFFIS: Okay. Then any  
18 objection from the Board?

19 VICE CHAIR MILLER: I just have a  
20 question, Mr. Custis. Since you are in support of the  
21 application, I'm just wondering, I believe the ANC  
22 also is in support. I was just wondering if you could  
23 address why your interest wouldn't be represented by  
24 any of the other parties in this case?

25 MR. CUSTIS: I mean, I'm new t this. I'm

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1 back in Washington, D.C. after living in California  
2 for 30 years. Our system of doing business there in  
3 matters like this are very different. The situation  
4 was that you have to decide whether you are going to  
5 be party status relatively early so you want to  
6 reserve that option so that application was made  
7 before the project went through the steps that you're  
8 going to see today. I don't know what your time frame  
9 is. In California you have a minute and, believe me,  
10 if you don't make the minute, you're cut off mid  
11 sentence. I only wanted to reserve --

12 CHAIRPERSON GRIFFIS: That's exactly the  
13 way we are.

14 MR. CUSTIS: -- to be able to sort of put  
15 the thing in context to sort of how we got to where we  
16 are now. This has been sort of an interest process.  
17 In a way it's sort of typical of what normally  
18 happens. I mean, if you will give three, four, or  
19 five minutes to talk, I don't need to be a party. But  
20 if I'm cut off at a minute, I may need more. The  
21 advantage to me -- to make it simple for you, the  
22 advantage to me with party status was that I got to  
23 talk a little bit longer.

24 VICE CHAIR MILLER: I was just confirming  
25 that if you just participate as a person, which sounds

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1 like you want to be able to give testimony on  
2 something specific to you, you have three minutes.  
3 Otherwise, if you're a party, you have all the other  
4 obligations of cross examination, etc.

5 MR. CUSTIS: I'm not interested in the  
6 cross examination having been through this so much in  
7 Santa Monica. I am more interested in having not to  
8 stop in mid sentence at three minutes.

9 CHAIRPERSON GRIFFIS: Okay. Mr. Custis, I  
10 think you would remove your application for party  
11 status and appear as a person in support of the  
12 application.

13 MR. CUSTIS: Yes. Yes.

14 CHAIRPERSON GRIFFIS: Excellent choice.  
15 That leaves us Ms. Oliver which is before us as a  
16 party and opponent application. Commercial issues  
17 will increase the noise, lighting, size of deliveries,  
18 and interfere with residential character. Also  
19 indicates that a carjacking occurred some years ago in  
20 front of the market. The proximity of the development  
21 of property to her home seems to significantly,  
22 distinctly, or uniquely affect her as opposed to those  
23 in general public.

24 I have some concerns just on the threshold  
25 of granting party status on those issues. First of

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1 all, I can't imagine that all those issues that she's  
2 identified don't affect the general public and would  
3 not have been covered in the ANC and by the ANC. I  
4 don't find this rises to the level of evidencing how  
5 this person would be significantly, distinctly, or  
6 uniquely affected in character or kind outside of the  
7 general public. Others?

8 VICE CHAIR MILLER: Mr. Chairman, is there  
9 a letter that was being circulated that might add to  
10 this from Ms. Oliver? I mean, I heard that she  
11 couldn't be here so she had a letter.

12 MR. TUMMONDS: I believe it's Exhibit 35  
13 of the record filed on April 15.

14 CHAIRPERSON GRIFFIS: My file stops at  
15 Exhibit 34.

16 MR. TUMMONDS: I can submit Exhibit 35 for  
17 the record.

18 CHAIRPERSON GRIFFIS: Why don't we do  
19 that. I'm going to check. Yeah, by the time we were  
20 delivered our cases, 34, the Office of Planning's  
21 report is the last exhibit so we'll take that in Do  
22 you want to look at the letter before responding?

23 VICE CHAIR MILLER: Yes.

24 CHAIRPERSON GRIFFIS: Okay. A quick  
25 review of the letter it doesn't seem to have anything

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1 additional than is in the request for party status.

2 MR. TUMMONDS: We object to the request  
3 for party status. In addition, it's our understanding  
4 that Ms. Oliver is not even here so it would be hard  
5 for her to cross examine as well.

6 CHAIRPERSON GRIFFIS: Board members?

7 MR. HOOD: I would also agree, Mr. Chair.  
8 I would move that we deny Ms. Oliver party status for  
9 the reasons that you site above. She is not aggrieved  
10 anymore than anyone else as far as I'm concerned.

11 CHAIRPERSON GRIFFIS: Excellent. I would  
12 second the motion. Further deliberation of the  
13 motion? All in favor signify by saying aye.

14 ALL: Aye.

15 CHAIRPERSON GRIFFIS: Opposed? Abstained?  
16 Very well. Let's move on. Those were the quasi  
17 preliminary. Right?

18 MR. TUMMONDS: No. We haven't even got to  
19 my quasi preliminary.

20 CHAIRPERSON GRIFFIS: I know.

21 MR. TUMMONDS: First is the --

22 CHAIRPERSON GRIFFIS: Oh, wait. Is that  
23 all I had? I thought I had something else on my mind.  
24 Okay. Good. Let's go to the next.

25 MR. TUMMONDS: The expert witness

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1 designation for Ms. Milanovich.

2 CHAIRPERSON GRIFFIS: Right. Wells and  
3 Associates.

4 MS. MILANOVICH: Correct.

5 CHAIRPERSON GRIFFIS: Have we granted you  
6 expert status before?

7 MS. MILANOVICH: No, you have not.

8 CHAIRPERSON GRIFFIS: Board members, take  
9 a moment to review. Okay.

10 MR. HOOD: Have you ever been given status  
11 in front of any other board or commission?

12 MS. MILANOVICH: In front of this Board?

13 MR. HOOD: Any other board or commission,  
14 Montgomery County, Fairfax, anywhere.

15 MS. MILANOVICH: Actually, in  
16 Pennsylvania.

17 MR. HOOD: Is that on here? Tell which  
18 page it's on.

19 MS. MILANOVICH: The specific Pennsylvania  
20 experience is not in my resume at this point. I've  
21 been with Wells and Associates for a little under a  
22 year. Prior to joining Wells I worked in Pennsylvania  
23 for about eight years.

24 MR. HOOD: Thank you.

25 CHAIRPERSON GRIFFIS: Any other questions?

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1 VICE CHAIR MILLER: Did you conduct the  
2 traffic study for this case?

3 MS. MILANOVICH: Yes, I did.

4 CHAIRPERSON GRIFFIS: A little under a  
5 year and you've done Rosemont, Sidwell, Broad Branch,  
6 Emerson, Fort Totun, Square 46 and Square 43. That's  
7 a busy year.

8 MS. MILANOVICH: Yes, it was.

9 CHAIRPERSON GRIFFIS: With that,  
10 obviously, I've read up to the point that it's a heck  
11 of a lot of experience. Not only direct experience  
12 related to this but rather substantial experience.  
13 Obviously Wells and Associates appears before us often  
14 and I think that you also represent that firm and its  
15 excellent reputation. I don't have any difficulty in  
16 granting expert status at this time unless others have  
17 an objection. Any concerns? Very well. Let's  
18 proceed.

19 MR. TUMMONDS: The next issue that I have  
20 before we begin our presentation is in both the  
21 applicant's prehearing statement as well as the Office  
22 of Planning's statement there was an issue raised with  
23 regards to whether or not variance relief is necessary  
24 from Sections 2002.3 or 2002.4 regarding the proposed  
25 reconfiguration of this existing nonconforming use.

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1           We thought that perhaps in order to make  
2 this process more efficient that if you wanted to make  
3 a ruling on that based on the record, you could do  
4 that now and we wouldn't have to provide any testimony  
5 on that. If you wanted to hold that in abeyance and  
6 listen to our testimony, we can do that. If we  
7 thought it may be more efficient to have the ruling  
8 now, then we could just address the special exception  
9 standards.

10           CHAIRPERSON GRIFFIS: Do you have just a  
11 limited statement?

12           MR. TUMMONDS: Absolutely. Yes.

13           CHAIRPERSON GRIFFIS: Let's do that.

14           MR. TUMMONDS: Sure. As I mentioned, in  
15 both our prehearing statement and Office of Planning  
16 report we note the fact that we believe that the  
17 requested use variance relief from Section 2002.4 is  
18 not necessary in that the Zoning Regulations regarding  
19 nonconforming uses permit modifications and structural  
20 alterations to a building if such structural  
21 alteration is required by other municipal laws or  
22 regulations.

23           What we've stated in our statement and  
24 what Office of Planning has confirmed is that, in  
25 fact, the changes that we are making to the existing

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1 building on the site are in order to bring that  
2 building up to the current codes, building, fire, life  
3 safety, electrical, plumbing, mechanical, as well as  
4 ADA. We believe that "new space" is, in fact,  
5 existing space reconfigured.

6 We believe that, in fact, because we are  
7 not adding additional market space onto this property  
8 but we are merely configuring it in order to make this  
9 market use consistent with what the Zoning Regulations  
10 call other municipal laws and regulations, that  
11 perhaps we are not required to obtain a use variance  
12 from Section 2002.4.

13 CHAIRPERSON GRIFFIS: Okay. Questions?  
14 Clarifications? I absolutely follow the logic of what  
15 you are indicating in 2002.4. You obviously have to  
16 make something accommodating for a nonconforming use.  
17 How could you preclude it from updating, modernizing,  
18 and certainly addressing any sort of code compliant  
19 issues?

20 Clearly, as I read 2002 the intent is that  
21 you don't kind of reconfigure the entire scenario of a  
22 project just because basically the foot in the door is  
23 not having an existing nonconforming use to allow you  
24 to expand it to some great level. I mean, I think we  
25 have to protect that and clearly that is not what

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1 should be done.

2 This seems to be -- well, to be direct on  
3 face it seemed to be heading in that direction. But  
4 reading actually the submission and the briefing that  
5 you did on this issue, also looking at the Office of  
6 Planning's report, I have fair confidence that we are  
7 actually falling directly under 2002.4.

8 Two points. Actually, there is not an  
9 increase of the use of the nonconforming use. There's  
10 actually a reduction of the nonconforming use. That's  
11 the market. I think we also need to look at this as  
12 in the entire site, not only the structure. These are  
13 structural issues but in the entire context.

14 The form itself as we would look at this  
15 essentially holistically for the regulations, nothing  
16 is changing but the structural accommodations, as  
17 you've indicated and as is written, are to address --  
18 you know, ADA really strikes me as the most critical  
19 one. If you look at the existing condition you've got  
20 one nice flight of stairs up.

21 We don't have evidence what the inside is  
22 like but one can assume that there are current safety  
23 codes that would have to be complied with. I don't  
24 have difficulty proceeding in that fashion which would  
25 mean that this comes under 2002.4 which would not

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1 require a use variance for this application. We would  
2 move ahead to look at this as -- it would still come  
3 under a variance under 2002.3. Is that correct?

4 MR. TUMMONDS: They kind of bootstrap  
5 themselves. If you say it's not "new space," it's  
6 merely reconfigured space, that reconfigured space is  
7 required by the structural alterations that the ADA  
8 building code require such that I don't think we need  
9 relief from 2002.

10 CHAIRPERSON GRIFFIS: And you've already  
11 removed the variance that would be required for the  
12 rear yard based on the changes in the plan.

13 MR. TUMMONDS: That's correct.

14 CHAIRPERSON GRIFFIS: Which means we are  
15 left for the special exception for the Child  
16 Development Center.

17 MR. TUMMONDS: That is correct.

18 CHAIRPERSON GRIFFIS: Mr. Tummonds, how do  
19 we get over 2002.3, the fact that structure is used in  
20 that meaning the nonconforming use shall not be  
21 extended to portions of a structure not devoted to  
22 that nonconforming use at the time of the enactment of  
23 another structure?

24 MR. TUMMONDS: My answer to that would be,  
25 I think, that structure is there now. It's snaked

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1 into that southwest corner of the site. We are, in  
2 fact, pushing that to a more continuous contiguous  
3 space. It provides a more efficient truly marketable  
4 market space. I think coupled with what you had said  
5 before was the fact that the amount of square footage  
6 of market use is, in fact, being reduced.

7 CHAIRPERSON GRIFFIS: Okay. So in 2002.3  
8 one could look at not be extended to portions meaning  
9 it's an expansion of the nonconforming use. Well, you  
10 know.

11 MR. TUMMONDS: If you feel more  
12 comfortable, we are fully prepared to go ahead. We  
13 think we do satisfy the use variance standards. We  
14 can discuss that and prove that to you as well.

15 CHAIRPERSON GRIFFIS: Are we definitive?  
16 Let's do that. We're going to have a limited  
17 discussion. We will take written submissions if  
18 required for the use variance and then let's move  
19 ahead to the more substantial. I think it's clear in  
20 what we need to look at and I think actually the test  
21 is fairly clearly laid out, too. Obviously we would  
22 look at the difficulty if this was used in another  
23 case that wasn't so clear. We need to be aware of  
24 that. Let's proceed in that fashion.

25 MR. TUMMONDS: Absolutely.

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1 CHAIRPERSON GRIFFIS: Let's not delay any  
2 longer.

3 MR. TUMMONDS: Great. Again, my name is  
4 Paul Tummonds with the law firm of Shaw Pittman. We  
5 are here this afternoon, and Heidi Sachs of my firm is  
6 with me as well, to present Bloom Builders, Inc., the  
7 applicant in this case. As noted, we are here for a  
8 special exception to establish a Child Development  
9 Center on the property, as well as use variance relief  
10 to allow the reconfiguration of the existing market  
11 space.

12 We, as mentioned by the Chair, in response  
13 to comments from the commissioners of ANC-3/4G we  
14 notched out a portion of the building such that the  
15 rear yard variance is no longer necessary. We note  
16 that ANC-3/4G has submitted a rather exhaustive  
17 resolution in support of this application. We have  
18 received the support of Mr. Custis, one of our  
19 adjacent neighbors.

20 We also have received other support from  
21 members of the community. We have two witnesses  
22 today. The first is Lewis Bloom on behalf of Bloom  
23 Builders. Our second witness is Jami Milanovitch, the  
24 traffic and parking engineer.

25 First, I would like to have Mr. Bloom

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1 state his name and address for the record.

2 MR. BLOOM: Lewis Bloom, 4412 Walsh  
3 Street, Chevy Chase, Maryland.

4 MR. TUMMONDS: Mr. Bloom, can you please  
5 tell us a little bit quickly about the existing  
6 condition of the building on the property.

7 MR. BLOOM: Horrendous.

8 CHAIRPERSON GRIFFIS: Good summation.  
9 Next question.

10 MR. TUMMONDS: Okay.

11 CHAIRPERSON GRIFFIS: You mean it's  
12 falling apart?

13 MR. BLOOM: Bars on the window, boarded  
14 up.

15 CHAIRPERSON GRIFFIS: I see.

16 MR. BLOOM: A rat's nest.

17 MR. TUMMONDS: Does it provide any sort of  
18 coherent or marketable space for a neighborhood  
19 market?

20 MR. BLOOM: No.

21 MR. TUMMONDS: Could you briefly describe  
22 for the Board the discussions you've had with the  
23 community regarding this application and what you  
24 propose to do on this property?

25 MR. BLOOM: Before I got into this

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1 property it was kind of tied up in the neighborhood a  
2 little bit with historic designation and the  
3 neighborhood really wanted to preserve a market. They  
4 didn't really want any developers getting in there as  
5 far as dividing it up into, at the time, three lots  
6 but that property could be divided into two lots. The  
7 neighborhood put a historic thing on there. Now we're  
8 at the point where --

9 CHAIRPERSON GRIFFIS: What's a historic  
10 thing? Do they hang an old barrel on it or something?

11 MR. BLOOM: Yeah, they did. Exactly.

12 CHAIRPERSON GRIFFIS: They designated it  
13 or they put an application in?

14 MR. BLOOM: They put an application in in  
15 order to stop the developer from putting it as  
16 residential units because they wanted to preserve the  
17 market. I came in, wrote a contract with the  
18 stipulation that the historic application would be  
19 removed so I could proceed with you guys.

20 CHAIRPERSON GRIFFIS: So they were going  
21 for a historic designation of a market use.

22 MR. BLOOM: Just to stop the residential  
23 use.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. TUMMONDS: Mr. Bloom, could you

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1 describe real briefly the type of -- some question was  
2 asked about what is the type of market use you're  
3 going to have here.

4 MR. BLOOM: The market use is strictly  
5 community minded. There's a lot of kids in the  
6 neighborhood. It would just be convenience, you know,  
7 as far as the milk, bread, stuff like that, candy for  
8 the kids. There is a beer and wine license attached  
9 to the property which I have not received yet or  
10 looked after. It's basically just community minded  
11 convenience.

12 CHAIRPERSON GRIFFIS: What does that mean,  
13 though? You're going to go for the liquor license?

14 MR. BLOOM: There is a liquor license  
15 around but we can't find the person that owns it.

16 CHAIRPERSON GRIFFIS: Okay. You are  
17 anticipating selling beer and wine then?

18 MR. BLOOM: Right. They did before.

19 MR. TUMMONDS: Mr. Bloom, is the market  
20 operator's use of this property contingent upon  
21 obtaining a beer and wine license?

22 MR. BLOOM: No.

23 MR. TUMMONDS: As you know, one of the  
24 issues we have about the use variance is that you have  
25 to show that there is an undue hardship that would be

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1 placed upon you if you were not able to reconfigure  
2 the building as we have proposed. Could you describe  
3 what would be some of those aspects of that undue  
4 hardship?

5 MR. BLOOM: I really couldn't do anything  
6 with the property. It could be, I guess, one  
7 residential unit but the neighborhood really wants the  
8 market to be there so I'm doing everything in my  
9 power, and hopefully your power, to keep it a market.  
10 You know, it's just hanging around doing nothing  
11 right now.

12 MR. TUMMONDS: Correct. With regards to  
13 the child development, switching gears to Section 205,  
14 could you please provide for the Board information on  
15 the status of your discussions with a potential Child  
16 Development Center operator?

17 MR. BLOOM: When I met with the  
18 neighborhood before purchasing the property, it really  
19 needs another use to be a success because it needs  
20 quite a bit of renovation and additions added. With  
21 the neighborhood we came up with a child care  
22 development center and that's how that came about.  
23 Then at the same time St. Alban's -- All Day Saints,  
24 excuse me, All Day Saints has approached me and we've  
25 had many, many discussions. Met with their architect

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1 and everything to try to move ahead with getting a  
2 child care center in here.

3 MR. TUMMONDS: And has All Day Saints  
4 reviewed this application and they believe that a  
5 child care center with a limit of 60 children on the  
6 site at any one time and a maximum of eight staff at  
7 any one time would be appropriate for this facility?

8 MR. BLOOM: Yes.

9 MR. TUMMONDS: With regards to the Child  
10 Development Center use itself, do you believe there  
11 would be any objectionable impacts on neighboring  
12 properties?

13 MR. BLOOM: No. The neighborhood seems to  
14 be pretty happy with it.

15 MR. TUMMONDS: How about are you proposing  
16 any fencing, buffering of the property?

17 MR. BLOOM: Meeting with all the  
18 neighbors, meeting with the ANC, we've come up with a  
19 group of compromises that make the project a really  
20 nice project as far as a six-foot high wooden fence  
21 around it, landscape buffering. There was a little  
22 blue house there and it's still there and that shields  
23 that market from another house.

24 MR. TUMMONDS: Are there any other  
25 conditions that you would agree to per se that were

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1 put on the approval of this application by the ANC?

2 MR. BLOOM: Save the cherry tree.

3 MR. TUMMONDS: Anything else?

4 MR. BLOOM: We were going to do the fence.  
5 We were going to save the cherry tree. Then there  
6 was a preference system so we can try to accumulate  
7 the kids directly from the neighborhood. Restrict  
8 traffic and everything which there's tons of kids  
9 there so they feel like they will be able to fill it  
10 up pretty easily.

11 Then, you know, as far as developing it, I  
12 would work with the ANC as far as trucks and  
13 construction trucks that are going to disturb the  
14 neighborhood. Also adjourning neighbors. I have also  
15 made a commitment that I would work with them directly  
16 between the architect and myself to make sure that  
17 everything is going to fit in a harmonious way.

18 MR. TUMMONDS: Thank you. I think now I  
19 will have the traffic engineer address the study that  
20 she prepared or, if you would like to ask questions of  
21 Mr. Bloom now, he's available to do that, or perhaps  
22 some of the issues addressed by our traffic and park  
23 engineer may answer your questions.

24 CHAIRPERSON GRIFFIS: How much control are  
25 you going to have to negotiate what the day care

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1 center does? You talked about the ANC asking for a  
2 condition of preference for residents in the  
3 surrounding area. How can you agree to that?

4 MR. BLOOM: I can't really -- I mean, I  
5 can agree to it. Can I control it, you know?

6 CHAIRPERSON GRIFFIS: It's not something  
7 you can really agree to.

8 MR. BLOOM: I can agree to it but I can  
9 try to monitor it as much as I can by them putting out  
10 pamphlets and brochures to the neighborhood first  
11 until they fill --

12 CHAIRPERSON GRIFFIS: But preferential  
13 enrollment for residences in a proximity is different  
14 than just advertising to the community. Don't you  
15 agree?

16 MR. BLOOM: Um-hum. I think if this Board  
17 decided to put that as a condition of this order, that  
18 condition would run with the land so that any operator  
19 of a Child Development Center on this site would have  
20 certain conditions that they need to satisfy. One of  
21 those would be traffic management plan, certain  
22 aspects of it, and one of those would have to be first  
23 choice.

24 CHAIRPERSON GRIFFIS: When this all gets  
25 rezoned to commercial manufacturing --

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1 MR. BLOOM: Then we have a big problem.

2 CHAIRPERSON GRIFFIS: -- are they going to  
3 have for child -- I have difficulty with the condition  
4 that runs with the land based on that. I'm not  
5 questioning. I'm just trying to get to the heart of  
6 the matter what the reality is. I suppose you'll show  
7 us where the cherry tree is because that's of great  
8 interest.

9 The blue house sounds like something that  
10 might fit well under the Child Development Center just  
11 by its name. "We saved the blue house." Okay. The  
12 other point was you said you were going to craft with  
13 the ANC a construction management agreement. Is that  
14 in draft form already?

15 MR. BLOOM: We haven't even started  
16 architecturals.

17 CHAIRPERSON GRIFFIS: Oh, I see. Okay.

18 MR. BLOOM: We have to get past this  
19 hurdle first.

20 CHAIRPERSON GRIFFIS: You have agreed to  
21 somewhat negotiate all of that.

22 MR. BLOOM: Yes.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. BLOOM: I'm a considerate builder.

25 CHAIRPERSON GRIFFIS: Ms. Miller.

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1                   VICE CHAIR MILLER:     I just want a  
2 clarification on the liquor license. I got lost on  
3 that. You said somebody has it but you don't know who  
4 but what?

5                   MR. BLOOM:    The market was owned by this  
6 one guy and then he kind of like sublet it or leased  
7 the market to another guy. That guy took the liquor  
8 license in his name and we haven't been able to find  
9 him.

10                  CHAIRPERSON GRIFFIS:    Was he a big  
11 drinker?

12                  MR. BLOOM:    He might have been. There was  
13 very, very little wine and beer sold at the place. I  
14 think it was just more a matter of picking up a six  
15 pack type of thing so I'm not sure the guy really even  
16 cares or he's even around.

17                  CHAIRPERSON GRIFFIS:    I think it's one of  
18 the greatest amenities of living in the city when you  
19 can have a corner market and why should we not be able  
20 to go pick up a beer or a good bottle of wine.

21                  MR. BLOOM:    I agree with you.

22                  CHAIRPERSON GRIFFIS:    The kids can get  
23 some bubblegum or maybe vice versa. No, we don't want  
24 that.

25                  VICE CHAIR MILLER:    What happens if you

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1 can't find him?

2 MR. BLOOM: Then apparently the -- I don't  
3 really know all the legalities to it but apparently  
4 the liquor license will run out and then I can reapply  
5 or I can apply now and then say we can't find this guy  
6 and it will get rid of that part of it. I don't  
7 really know all the legalities behind it all. Nor do  
8 I care that there is going to be a liquor license or  
9 not.

10 CHAIRPERSON GRIFFIS: Okay. Any other  
11 questions? Okay.

12 MR. TUMMONDS: Ms. Milanovich.

13 MS. MILANOVICH: My name is Jami  
14 Milanovich with Wells and Associates. I conducted the  
15 traffic and parking study for the subject property. I  
16 would just like to give a brief overview of the study,  
17 describe our analyses that we conducted, and summarize  
18 our conclusions and recommendations.

19 At the outset of the study we met with  
20 representatives of DDOT to scope the study. We met  
21 with the Ward 3 and Ward 4 transportation planners  
22 because the site is on the border between Ward 3 and  
23 Ward 4. The agreed upon scope included the  
24 intersection of Broad Branch Road and Northampton  
25 Street. We also agreed to do a parking evaluation in

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1 the area due to the fact that Lafayette Elementary  
2 School is nearby and the perception was that parking  
3 may be an issue.

4 CHAIRPERSON GRIFFIS: What's the parking  
5 impact in the area you just did, the public access  
6 parking? Street parking is what you counted?

7 MS. MILANOVICH: Yes. We did the street  
8 parking within a one-block radius of the site.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. MILANOVICH: We conducted counts at  
11 the Broad Branch Road, Northampton Street intersection  
12 to coincide with the peak times of Lafayette  
13 Elementary School because in that area Lafayette is  
14 the largest traffic generator.

15 Basically our existing conditions analysis  
16 determined that the Broad Branch Road, Northampton  
17 Street intersection currently operates at a level of  
18 service analysis with minimal delay at the  
19 intersection. The existing parking counts, as I said,  
20 within a one-block radius of the site indicated that  
21 during the a.m. peak hour approximately 67 percent of  
22 the on-street parking spaces are occupied. That would  
23 equate to 29 vacant spaces.

24 During the p.m. peak period which  
25 coincides with the dismissal of Lafayette Elementary

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1 School the on-street parking was approximately 97  
2 percent occupied which equates to three vacant spaces.

3 During the remaining times of the day 40 or more  
4 spaces were available. Again, that's except for the  
5 half hour surrounding the start of Lafayette  
6 Elementary School which was from 8:30 to 9:00 a.m. and  
7 except for a half hour surrounding the dismissal of  
8 Lafayette Elementary School and that time was between  
9 3:00 and 3:30 p.m.

10 We then did a site analysis. We projected  
11 trip generation for the site. We recognize that the  
12 Child Development Center will be a community-based  
13 center. As such, a lot of the students we anticipate  
14 would be from the neighborhood and would walk to the  
15 center with their parents or guardians.

16 CHAIRPERSON GRIFFIS: Help me understand  
17 how you actually formulated what the CDC was. I mean,  
18 you projected that there may be 49 a.m. trips and 51  
19 afternoon trips on what? I mean, you just indicated  
20 that it's assumed it will be neighborhood oriented so  
21 help me understand what that assumption is. How many  
22 students did you think were enrolled?

23 MS. MILANOVICH: We assumed an enrollment  
24 of 60 students based on information --

25 CHAIRPERSON GRIFFIS: How many came from

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1 the neighborhood walking?

2 MS. MILANOVICH: We assumed 35 percent  
3 would be from the neighborhood that would be walking  
4 or --

5 CHAIRPERSON GRIFFIS: Is that a good  
6 percentage in the firm and your understanding of Child  
7 Development Centers that are similarly situated?

8 MS. MILANOVICH: We based that on another  
9 study that we did in the District at Rosemont Center  
10 where we actually counted the number of students that  
11 arrived by automobile versus other modes of  
12 transportation, either walking or metro.

13 CHAIRPERSON GRIFFIS: I see. And it broke  
14 down to 35 did not come by vehicle?

15 MS. MILANOVICH: Correct.

16 CHAIRPERSON GRIFFIS: Okay. All right.  
17 That helps.

18 MR. HOOD: Mr. Chairman, let me back up.  
19 Ms. Milanovich, you said something about level of  
20 service analysis. I was under the impression -- you  
21 are the expert and not me but I was under the  
22 impression that in residential areas you don't do  
23 level of service. Am I incorrect in my assumption?

24 CHAIRPERSON GRIFFIS: That brings back  
25 some memories. Were you on that case?

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1 MS. MILANOVICH: Yes, you can do level of  
2 service analysis in residential areas.

3 MR. HOOD: It's different from case to  
4 case, Mr. Chairman. I'm flexible about that. Anyway,  
5 it's good to see it's level of service. Let me let  
6 you finish your report because my questions are going  
7 to be directed to you and also to whoever Mr. Tummonds  
8 sees fit to answer because I'm concerned about how all  
9 of that is going to work with the traffic and you say  
10 the school is across the street. Forgive me because  
11 my orientation is off. I don't get up to Broad Branch  
12 too much but Lafayette is across from -- help me  
13 reference and get my orientation straight.

14 MR. BLOOM: Connecticut Avenue parallels  
15 Broad Branch, way down there. Lafayette is catty  
16 corner from the market right here. This is  
17 residential, this is residential, and this is all  
18 residential so the school is here.

19 MR. HOOD: So that traffic -- now, for the  
20 CDC, show me where that is.

21 MR. BLOOM: The CDC is above the market  
22 and then we have the four parking places for the  
23 staff. There's going to be like eight staff but I  
24 should let Jami answering those questions.

25 MR. HOOD: Where are they going to be

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1 dropped off? Where is the drop off?

2 MR. BLOOM: Mainly --

3 MR. HOOD: So they are going to share that  
4 with Lafayette pretty much.

5 MR. BLOOM: They could be dropped off on  
6 Northampton but it seems like most people are driving  
7 up and down Broad Branch.

8 MR. TUMMONDS: Ms. Milanovich, could you  
9 discuss for Mr. Hood what your observations are with  
10 regards to where the Lafayette drop-off occurs?

11 MS. MILANOVICH: Yes. The area of  
12 Northampton Street immediately adjacent to Lafayette  
13 Elementary School and also the area of Northampton  
14 Street adjacent to Lafayette Elementary School are  
15 currently posted as no parking. Many parents pull up  
16 and stop there to drop their students off. There are  
17 some parents that actually park in the neighborhood  
18 and walk their students from their parking spot to  
19 Lafayette Elementary School as well.

20 MR. HOOD: This level of service issue,  
21 not just with this case, but it has been an issue for  
22 me. I'm glad to see it's level of service A. Thank  
23 you.

24 MR. TUMMONDS: Ms. Milanovich, could you -  
25 - I know that in your statement you have a series of

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1 what you call transportation management plan. Could  
2 you go over that briefly for the Board?

3 MS. MILANOVICH: Sure. In order to  
4 facilitate the traffic for the CDC and the market, we  
5 developed a recommended transportation management plan  
6 that would consist of the following components. For  
7 the CDC, CDC drop-off and pick-up times should be  
8 dispersed and should not coincide with the drop-off  
9 and pick-up times at Lafayette Elementary School.

10 Parents should be discouraged from  
11 dropping off children from 8:30 a.m. to 9:00 a.m.  
12 Parents should be discouraged from picking up children  
13 between 3:00 p.m. and 3:30 p.m. Parents and staff  
14 must legally park when dropping off or picking up  
15 students. Families that live in the immediate area  
16 should be encouraged to walk.

17 Other families should be encouraged to  
18 carpool. Employees of the Child Development Center  
19 should be encouraged to walk, carpool, and use public  
20 transportation. A staff person or persons should be  
21 provided to assist children to and from cars during  
22 the pick-up and drop-off times.

23 As for the market, the following elements  
24 should be implemented in terms of transportation  
25 management. The curbside loading zone that is

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1 currently located on the south side of Northampton  
2 Street adjacent to the market should be retained and  
3 used for deliveries.

4 CHAIRPERSON GRIFFIS: There is an assigned  
5 commercial time period.

6 MS. MILANOVICH: Yes.

7 CHAIRPERSON GRIFFIS: Okay. And the  
8 market delivery issue is scheduled outside the CDC  
9 peak hours.

10 MS. MILANOVICH: Correct.

11 CHAIRPERSON GRIFFIS: Good thought.

12 MR. TUMMONDS: Ms. Milanovich, one follow-  
13 up question. With regards to the question that was  
14 raised by the Board about whether or not 35 percent  
15 was an appropriate module split, was there any  
16 discussion of that number at the ANC meeting?

17 MS. MILANOVICH: Yes. At the ANC meeting  
18 one of the commissioners had indicated that he thought  
19 35 percent was a little bit low and that it would  
20 probably be higher in terms of students and parents  
21 walking to the site.

22 CHAIRPERSON GRIFFIS: And that's of great  
23 interest to us because?

24 MS. MILANOVICH: Because it would reduce  
25 the number of vehicles --

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1 CHAIRPERSON GRIFFIS: I know. Was this a  
2 traffic engineer at the ANC meeting?

3 MS. MILANOVICH: No. It was somebody who  
4 has lived in the area.

5 CHAIRPERSON GRIFFIS: I see. So based on  
6 their --

7 MS. MILANOVICH: Also observed the market  
8 during the time it was there.

9 CHAIRPERSON GRIFFIS: Ah, it might be  
10 more. Okay. Good point.

11 MR. TUMMONDS: One other thing to add.  
12 Mr. Bloom, based on your discussions with the Child  
13 Development Center operator, would you discuss their  
14 views on their ability to disperse the number of  
15 arrivals that come to the Child Development Center?

16 MR. BLOOM: They stagger their classes so  
17 there's not one drop-off hour. Kids can come in at  
18 certain hours so it's not like --

19 CHAIRPERSON GRIFFIS: You're talking about  
20 the proposed CDC?

21 MR. BLOOM: Um-hum.

22 CHAIRPERSON GRIFFIS: Okay. Good.

23 MR. BLOOM: There's not like a mass drop-  
24 off and a mass pick-up. People can pick-up and drop-  
25 off between certain hours.

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1 CHAIRPERSON GRIFFIS: How secure are you  
2 that you are going -- that if you build this that they  
3 will occupy it?

4 MR. BLOOM: If they don't, there are three  
5 others in line.

6 CHAIRPERSON GRIFFIS: I'm going to breeze  
7 through kind of the specifics of one users. I don't  
8 want the Board to deliberate on the fact that you've  
9 signed a tenant. It brings up another point. Who is  
10 running the market?

11 MR. BLOOM: That also I talked to a David  
12 Glass who has had markets before. He is very  
13 interested. But there is also a list of --

14 CHAIRPERSON GRIFFIS: Okay. So you're the  
15 peer developer here. You are going to build that  
16 space --

17 MR. BLOOM: And lease it.

18 CHAIRPERSON GRIFFIS: -- and hope for some  
19 tenants.

20 MR. BLOOM: There you go.

21 CHAIRPERSON GRIFFIS: Okay. Excellent.  
22 Quite frankly -- okay. Understood. Anything else?  
23 Question, Ms. Miller?

24 VICE CHAIR MILLER: On page 10 of  
25 applicant's prehearing statement, with the exception

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1 of approximately 30 minutes during the PM peak period  
2 the vacant on-street parking spaces within a block  
3 radius of the property are sufficient to meet the  
4 needs of the parents, employees, and visitors to the  
5 site. I would like to ask you when is the time period  
6 and why isn't that able to be accommodated or avoided?

7 MS. MILANOVICH: The peak period occurs  
8 from 3:00 to 3:30 in the afternoon. Lafayette  
9 Elementary School dismisses at 3:15 so during that  
10 time the available parking spaces are taken up  
11 currently. I believe there's three spaces that are  
12 currently unoccupied during that peak half hour.

13 VICE CHAIR MILLER: Thank you.

14 CHAIRPERSON GRIFFIS: Anything else?

15 MR. TUMMONDS: That concludes our  
16 presentation.

17 CHAIRPERSON GRIFFIS: Okay. Are you  
18 presenting the architects to go through the plans?

19 MR. TUMMONDS: No.

20 CHAIRPERSON GRIFFIS: Good. Show us where  
21 the tree is. I know where the blue house is.

22 MR. BLOOM: Guess where the tree is?  
23 Here.

24 CHAIRPERSON GRIFFIS: I see. Okay.  
25 That's not in an area that is proposed to be impacted

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1 by

2 the --

3 MR. BLOOM: No. It's in the set-back  
4 anyway.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. BLOOM: I don't know. Can you guys  
7 see this?

8 CHAIRPERSON GRIFFIS: You mean are we  
9 allowed to see it?

10 MR. BLOOM: No, can you see it.

11 CHAIRPERSON GRIFFIS: Yes, we can see it.  
12 You made a statement that you haven't done any  
13 architectural so what is that? Just a nice and  
14 artistic rendering of a dream?

15 MR. BLOOM: Yes, of a dream of mine.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. BLOOM: It just keeps consistent with  
18 what actually occurs. This is the market now. It has  
19 an addition out here but this is the old market.

20 CHAIRPERSON GRIFFIS: I see.

21 MR. BLOOM: And so all the old space, all  
22 this junk here basically gets reconfigured back here.  
23 There's that addition on the side so it's here and  
24 here that this all gets reconfigured and that's how  
25 you end up with that. This is going to be similar

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1 but, you know, it's not laid out yet.

2 CHAIRPERSON GRIFFIS: Okay. That actually  
3 makes some sense. I'm not sure I looked at that  
4 correctly. Okay. It's in our file actually. Okay.  
5 Any other questions then? Anything else? Very well.  
6 Let's move on to the Office of Planning's report  
7 then.

8 MR. MORDFIN: Good afternoon, Chairman and  
9 members of the Board. I'm Stephen Mordfin with the  
10 Office of Planning. The subject property is located  
11 within the R-1-B zone district and was last used as a  
12 retail grocery and has been vacant for the past year.

13 There is an application for a special  
14 exception to permit a 60-child, eight-employee Child  
15 Development Center in conformance with Section 205 of  
16 the Zoning Regulations as the application indicates  
17 that the proposed center is capable of meeting all  
18 applicable code and licensing requirements. The  
19 Department of Health has issued a memo dated March 19,  
20 2004 recommending approval of the application.

21 The traffic and parking study submitted by  
22 the applicant indicates that the proposal will not  
23 result in unsafe conditions in the picking up and  
24 dropping off of children. Two parking spaces will be  
25 provided as required. The proposed outdoor play space

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1 will be screened from adjoining properties with a six-  
2 foot wooden fence and located away from existing  
3 dwellings and adjoining lots.

4 The subject property will be relandscaped  
5 and the proposed parking area is separated from the  
6 adjoining property by an existing wooden fence. No  
7 off-site play area is proposed and the Office of  
8 Planning is not aware of any other child development  
9 centers within one thousand feet of the subject  
10 property.

11 The Office of Planning also recognizes  
12 that the subject property is configured and has been  
13 used as a retail use for last eight years and if  
14 converted to residential use the building will still  
15 require major renovation.

16 The proposed retail use would not impair  
17 the intent of the Zoning Regulations and would allow  
18 for the continuation of the legal nonconforming use.  
19 Therefore, the Office of Planning recommends approval  
20 of the application.

21 CHAIRPERSON GRIFFIS: Thank you very much.  
22 Questions from the Board? Excellent graphics as  
23 usual. No questions or clarifications? Does the  
24 applicant have any questions?

25 MR. TUMMONDS: No questions.

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1 CHAIRPERSON GRIFFIS: Okay. Let me go  
2 back to your rendering actually that you just put up.  
3 No, don't put it up. The issue, though, is for the  
4 importance of the Board, that is a nice artistic  
5 rendering. Even looking at the proposed footprint it  
6 isn't close to what you are showing there. I may well  
7 be close in your idea.

8 I don't want to go into a lot of detail  
9 but what you showed in the rendering it looks like the  
10 existing building, or that extent to the existing  
11 building, is totally in line all the way back to the  
12 rear of the property. But if I'm looking at that as  
13 the proposed scope of the work, it isn't. Maybe I'm  
14 not looking at it correctly.

15 MR. TUMMONDS: Mr. Bloom, do you believe  
16 that rendering is an entirely accurate depiction of  
17 what is shown on that site plan?

18 MR. BLOOM: It is of the front and the  
19 side. It's pretty close to what that is. Obviously  
20 the rendering is not showing the back.

21 CHAIRPERSON GRIFFIS: Anyway, you're not  
22 going to pull a permit on a rendering, I'll tell you  
23 that.

24 MR. BLOOM: No.

25 CHAIRPERSON GRIFFIS: But I just think

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1 it's important for the Board to note that the  
2 rendering doesn't -- it looks like it's a line all the  
3 way back. Your plans show that the back portion is  
4 projecting out from the front portion about 15 feet,  
5 10 inches. You need to be on a microphone if you're  
6 going to do this. You can put it there. We have  
7 pretty good eyes, even at 4:00 in the afternoon.

8 MR. BLOOM: This area right here is this.  
9 This projects out further than this which is that.

10 CHAIRPERSON GRIFFIS: Rewind there. The  
11 last portion that you just said "this projection."  
12 Point to the light grey, that far corner. Keep your  
13 finger there. Right there. Point to where that is on  
14 the rendering. That's showing 15 feet, 10 inches  
15 projected out from the front portion?

16 MR. BLOOM: Yes.

17 CHAIRPERSON GRIFFIS: Where? Where is  
18 that?

19 MR. BLOOM: Right here. This wall is the  
20 same plane as the front. Front, front, front. Maybe  
21 it's not a very good rendering.

22 CHAIRPERSON GRIFFIS: No, it's a lovely  
23 rendering.

24 MR. BLOOM: You can see the job, though,  
25 right?

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1 CHAIRPERSON GRIFFIS: Yeah. Excellent.  
2 Okay. Fair enough. What else? Oh, right. We've got  
3 to continue on with this. If there is nothing else  
4 for the Office of Planning, then let's go the other  
5 Government reports attended. We do have DDOT's  
6 report, Exhibit No. 33. We don't have a  
7 representative from DDOT here, do we to present?

8 I think it was fairly clear on what they  
9 were talking about and their analysis from it. They  
10 did say that they had no from their standpoint adverse  
11 impact projection on the area so it is in support of  
12 the application. Unless there are any Board  
13 questions, clarifications, does the applicant have any  
14 clarifications on Exhibit No. 3?

15 MR. TUMMONDS: Nope.

16 CHAIRPERSON GRIFFIS: We have, as also  
17 discussed, Exhibit No. 28, the Health Department,  
18 which is recommending approval of the Child  
19 Development Center. Well, okay. Let's go to the ANC-  
20 3/4G. We have the letter in as Exhibit No. 29. We  
21 had addressed that. Do we have comments on that? No  
22 comments? Okay.

23 MR. HOOD: There was an issue but I think  
24 it was addressed but I want to make sure. There was  
25 an issue in the ANC letter on page 2 talking about the

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1 raising of the house. Did you talk about that?  
2 There's an issue about if it's included the raising of  
3 the house situated between this house and the market.

4 MR. BLOOM: We're keeping that. That's  
5 the little blue house.

6 MR. HOOD: The little blue house.

7 MR. BLOOM: It's staying.

8 MR. HOOD: Little blue house. Okay.

9 CHAIRPERSON GRIFFIS: I can't believe we  
10 don't have comments from the Board of the extensive  
11 nature of the ANC letter.

12 MR. MANN: I have one comment.

13 CHAIRPERSON GRIFFIS: Yes, Mr. Mann.

14 MR. MANN: You raised this issue earlier.

15 The appropriateness of the first -- what do they call  
16 it? The first priority preference system.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. MANN: I don't know if that was  
19 resolved earlier. I don't know that it should be  
20 resolved through the ANC submission.

21 CHAIRPERSON GRIFFIS: That's an  
22 interesting point. I'm not sure. My opinion is we  
23 don't have a resolution that's before us on that  
24 issue. I think it's a very important one. I think it  
25 would be critical. In fact, it only supports

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1 everything that is positive about the Child  
2 Development Center.

3 Certainly they would want to have people  
4 that are locally around. They would probably get more  
5 input from parents and support and all that. It  
6 clearly would help the community but we don't even  
7 have a user yet so how are we going to condition  
8 somebody? I think that has to be left for the  
9 communication between the developer or the new user  
10 and the community and the ANC.

11 VICE CHAIR MILLER: I'm quite impressed  
12 how extensive this report is. I would note that the  
13 conditions set forth in paragraph 9, it's not clear  
14 that they are asking this Board to impose those  
15 conditions.

16 CHAIRPERSON GRIFFIS: That's true.

17 VICE CHAIR MILLER: It is representing  
18 what they may have agreed to with the developer.

19 CHAIRPERSON GRIFFIS: Right. I certainly  
20 think that when we look at those conditions that are  
21 talked about at the Commission we see two things,  
22 whether it addresses any of the adverse or any issues  
23 attended to the relief that is requested and,  
24 secondly, if we needed to, that we would incorporate  
25 those as conditions. That being said, anything else

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1 on the ANC? Very well. We do have letters of support  
2 in the file. I don't need to enumerate all those. Is  
3 there any persons here present to give testimony for  
4 application 17147 in support?

5 MR. CUSTIS: I am.

6 CHAIRPERSON GRIFFIS: Are there any others  
7 in support? In opposition? Can I have a show of  
8 hands that are in opposition? All right. So we only  
9 have three people. Why don't we clear the table then.  
10 Let's just fill the panel. Why don't we come up and  
11 go through the persons' testimony at this time.

12 Very well, Mr. Custis. Let's start with  
13 you.

14 MR. CUSTIS: Okay. I'm Henry Custis. I  
15 live at 5604 Broad Branch Road. My family has owned  
16 the property since 1946. I actually lived in the  
17 house until I was in fourth grade. I don't know your  
18 procedure but can I give you some pictures that I  
19 think will help?

20 CHAIRPERSON GRIFFIS: Absolutely.

21 MR. CUSTIS: Okay.

22 CHAIRPERSON GRIFFIS: Actually, you will  
23 give it to staff. Anything you want submitted in and  
24 any written testimony that you have if you don't get  
25 to it in your three minutes, they, of course, will --

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1 MR. CUSTIS: My involvement came obviously  
2 because I'm going to be heavily impacted by what's  
3 happening. But also because we ended up with a sort  
4 of strange dynamic in the community where you had some  
5 people who were very, very insisting that this use be  
6 saved, the market, and the method that they employed  
7 to do that was to make an application for historic  
8 designation for the building.

9 My concern was that the building was going  
10 to be saved but you weren't going to be able to find a  
11 developer who would be able to do something that made  
12 sense in the building. Luckily enough Mr. Bloom  
13 stepped to the plate and was able to craft a project  
14 that he felt could work. As a part of that  
15 negotiation between him and me and some other people  
16 in the neighborhood, we arrived at a decision that the  
17 blue house, the now famous blue house, would be saved.

18 My interest in saving the blue house was  
19 not only because it would be a buffer between me and  
20 the market, but because if you look at the pictures  
21 that I've given you, you can see that the three  
22 buildings together, the market, the blue house, which  
23 is the darker of the two, and the white house, which  
24 is mine, are sort of a little bit of a street scape  
25 that actually are somewhat unique.

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1           They predate the surrounding suburban  
2 area. The two houses were built before 1877 because  
3 there's no recorded building permit for either one of  
4 them. Then the market was built in the early 1900s.  
5 My interest actually was to work with a developer who  
6 was going to be capable of putting together a project  
7 that was going to be successful.

8           Otherwise, we were going to have a  
9 derelict building that was going to sit there for  
10 years and years with neighborhood fights and ANC  
11 meetings and lawsuits and whatever because of this  
12 whole historic application thing. The supporters of  
13 the historic application there were only a few of them  
14 but they were very adamant that they were not going to  
15 change that.

16           Mr. Bloom has worked very successfully  
17 with that, I think, and has created something where  
18 we've got a use that the neighborhood will appreciate  
19 the market. Also we have a second use which can help  
20 the project pencil that is a use that I think is  
21 actually very good for the neighborhood, a child care.

22           It's across from an elementary school. People are  
23 going to be dropping kids off and then having other  
24 kids there. It's a very compatible situation.

25           Based on all that and having attended the

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1 meetings and then having other conditions added in,  
2 the cherry tree, which sounds small but is actually  
3 important. It's an incredibly beautiful tree. I'm in  
4 support of this project. I'm hoping that he can find  
5 tenants that are going to make it work.

6 CHAIRPERSON GRIFFIS: Thank you very much.

7 Questions from the Board? Very well. Ms. Miller.

8 VICE CHAIR MILLER: Just with respect to  
9 this blue house, is this owned by Mr. Bloom?

10 MR. CUSTIS: As it turns out, he can  
11 answer that. I don't want to answer for him but he  
12 sold it to someone who is living in it now and  
13 restoring it right now so it's going to remain as a  
14 house and hopefully won't be blue too much longer.

15 VICE CHAIR MILLER: Okay. Thank you.

16 MR. CUSTIS: Blue is not its color. It  
17 has become famous as that.

18 CHAIRPERSON GRIFFIS: All right. Any  
19 other questions? Very well. Thank you very much. We  
20 are going to have all of you stay there and we'll talk  
21 Board questions as we go down. Of course, there will  
22 be cross examination.

23 MS. WEINTRAUB: Thank you, Mr. Chairman.  
24 My name is Beneva Weintraub. I lived at 3508  
25 Northampton Street. I am the owner and resident of

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1 the property immediately adjacent this whole length of  
2 the property here. My position on this is I think  
3 both the intended uses are something that would be of  
4 benefit to the community despite numerous community  
5 problems.

6           However, I'm concerned about the affect on  
7 my own property, primarily from the reconfiguration.  
8 As you can see, the darkened part is the only two-  
9 story part of the current building and the way it's  
10 designed now. You won't see my picture in the  
11 application because I live behind the market. This is  
12 the back of the market. This has been redesignated as  
13 a front and the proposal makes me a side neighbor with  
14 an eight-foot setback. This proposal is much bigger,  
15 taller, and closer to my property line than I ever  
16 thought would happen in this redevelopment. To say  
17 there is no adverse impact -- especially since  
18 there's no guarantee that is always going to be a  
19 child care center. Who knows what it could end up  
20 being in the future -- is a bit of an exaggeration.

21           CHAIRPERSON GRIFFIS: We do have some  
22 indication of what it might be in the future. There  
23 are only certain things that would be allowable matter  
24 of right. It's not as if -- it certainly won't be a  
25 trash transfer station without us taking a look at it.

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1 MS. WEINTRAUB: That's true and I'm sure  
2 you would take a good luck at anything further.

3 CHAIRPERSON GRIFFIS: I'm sorry to  
4 interrupt you. I say that to alleviate perhaps some  
5 of your concerns. Not all of them but some of them  
6 because I think you could easily look to the Zoning  
7 Regulations to see what matter of right use is and not  
8 just be concerned that anything could go in there.

9 MS. WEINTRAUB: Yes. Aside from that, my  
10 concern is that this thing is going to loom like a  
11 battleship next to my property. My house is  
12 approximately here. The back yard drops down so that  
13 will cut off the morning light and it will overhang  
14 and basically appear over my property.

15 But I understand that, you know, some  
16 accommodations need to be made. I really would like -  
17 - although I noticed to save the blue house everything  
18 has been shoved toward my property. I think that is  
19 pretty clear from the picture that the whole  
20 development has been shoved right up against my  
21 property line.

22 Mr. Bloom has offered to work with me on  
23 things that might mitigate it whether it be tall like  
24 those cypresses or something. I wanted to bring this  
25 to the Board's attention because I think there is an

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1 adverse affect on really the only immediate neighbor  
2 which I would like to have mitigated.

3 CHAIRPERSON GRIFFIS: I'm sorry. I didn't  
4 hear that last part.

5 MS. WEINTRAUB: Which I would like to have  
6 mitigated as much as possible.

7 CHAIRPERSON GRIFFIS: Okay. Ms. Miller.

8 VICE CHAIR MILLER: Do you have any  
9 specific suggestions that you want the Board to hear  
10 as to how it should be mitigated?

11 MS. WEINTRAUB: Well, one of my concerns  
12 is the height of the building. It's my understanding  
13 that this square here is all intended to be two  
14 stories high. To the extent that the architecture  
15 moves the two-story part of the building further away  
16 from the property line, that would be a help.

17 You know, a strategic place so it's not  
18 overlooking my property. I guess fencing is something  
19 that was intended anyway and possibly tree screening  
20 if you're looking at a very -- I don't have much faith  
21 in this dream that it's going to look like the dream,  
22 although I think Mr. Bloom is in very good faith and  
23 this is a positive program for the neighborhood. It  
24 may need to be screened visually from the adjacent  
25 property.

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1 CHAIRPERSON GRIFFIS: Indeed. Other  
2 questions?

3 MR. HOOD: Forgive me. What is your name  
4 again?

5 MS. WEINTRAUB: Beneva Weintraub.

6 MR. HOOD: Okay. Thank you.

7 CHAIRPERSON GRIFFIS: Anything else? If  
8 not, Ms. Renshaw.

9 MS. RENSHAW: Good afternoon. My name is  
10 Anne Renshaw, ANC-3/4G-03. At the time of the ANC  
11 meeting on March 22, 2004, there was no final traffic  
12 report on the Broad Branch Market/Day Care operation,  
13 only a verbal summary by the traffic consultant. By  
14 the way, I abstained. I was the only one who did not  
15 vote one way or the other on this project and I did  
16 not vote, I abstained, because I felt I did not have  
17 enough information to make a decision.

18 One copy of the traffic report was made  
19 available to the ANC a week later after the vote. At  
20 the time of the ANC meeting, the Lafayette Elementary  
21 School principal, Lynn Main, had neither been  
22 approached by the applicant, his attorney, nor the  
23 traffic consultant. As late as April 16 the Lafayette  
24 principal, "had not talked to anyone" -- that's a  
25 quote -- "about the Broad Branch Market/Day Care

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1 Center."

2 Lafayette Elementary School is located on  
3 Broad Branch Road close to the market. Lafayette  
4 School has 530 preschool and elementary school  
5 children. They arrive anywhere from 7:00 in the  
6 morning to 8:45 when the school begins and they leave  
7 at 3:15. There is an after school program that runs  
8 until 6:00 p.m. 145 babies, as the principal calls  
9 them, ages three to six, are enrolled in Lafayette's  
10 pre-kindergarten or kindergarten in the newer part of  
11 the school directly across, diagonally across from the  
12 Broad Branch Market.

13 Parents park anywhere they can find a  
14 place according to Ms. Main. It takes approximately  
15 10 minutes to get a child out of the car and into the  
16 school. Some teachers stand by to help. The majority  
17 of the 145 little ones are walked to the door. There  
18 are two adults, teacher and an aid, for each 20 pre-K  
19 and kindergarten children.

20 All of the younger children are on the  
21 first floor for ease in getting the children in and  
22 out of the building. The pre-K children, by the way,  
23 are chosen by lottery held in March. This year 67  
24 enrolled. The school takes the first 60 with the rest  
25 on a wait list. So far two pre-K children have

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1 dropped off leaving five children on a wait list.

2 Ms. Main in an e-mail to me today said  
3 that she has the superintendent's meeting this  
4 afternoon and could not attend the BZA meeting. She  
5 looked over the traffic report and other materials  
6 that I provided her and feels that Lafayette will be  
7 able to work out the traffic issues for both  
8 locations. We know from previous day care private  
9 school cases how parking, drop-off and pick-up can  
10 quickly become neighborhood irritants.

11 In some BZA cases, and I'll reference BZA  
12 case 16915 drop-off and pick-up, the neighbors of the  
13 day care center and/or private schools have told the  
14 Board of school bound cars parking in their driveways,  
15 blocking the end of their driveways, double parked in  
16 the street, parked in Metro Bus zones and/or driving  
17 around and around the blocks looking for space to park  
18 or keeping a place in the drop-off or pick-up queue.

19 The Broad Branch Northampton neighbors  
20 deal with a lot of morning and afternoon traffic  
21 generated by Lafayette School. Their strong PTA  
22 organization and responsive principal work together to  
23 minimize problems in the neighborhood.

24 Yet, in the matter of the proposed Broad  
25 Branch Market/Day Care, the community and the ANC, in

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1 my opinion, do not have a full grasp of the day care  
2 operation because at the time of the ANC meeting, it  
3 was discovered that the day care provider was  
4 tentative.

5 One individual from the day care  
6 organization was present at the ANC meeting. Few  
7 questions were directed his way as there was no  
8 concrete deal between the developer and the proposed  
9 day care board at that time.

10 Therefore, all of the normal questions  
11 that a community should inquire of a day care provider  
12 such as actual number and ages of enrollees, hours and  
13 days of operation, emergency contact, staff  
14 arrangements, whether the school will advertise,  
15 number of special event days and evenings, location of  
16 handicap parking, and a term limit remain vague.

17 The promise of children being walked to  
18 school, which we have been told will happen with this  
19 day care center, is really determined by the weather,  
20 distance, parent schedule, and numerous emergencies  
21 that pop up on a daily basis.

22 Yet, on page 17 of the traffic report,  
23 column 1, at the bottom, the traffic consultant  
24 references one commissioner's comment which really has  
25 no basis in fact. There is a sense that the community

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1 wants the market to reopen. The building, after all,  
2 is an eyesore. Lafayette teachers would like a nearby  
3 place to buy sandwiches and soup at noontime.

4 The children, of course, want their  
5 popcicles, but this is business and there will be  
6 delivery trucks, just how many and when is unknown,  
7 and vehicles competing for market and/or day care  
8 parking spaces. The Board Branch and Northampton  
9 corridor and side streets will be even busier.

10 There will be more traffic off Nevada and  
11 McKinley onto Northampton and Broad Branch which, by  
12 the way, the neighbors have told these ANCs they do  
13 not want. Traffic diversion and cut-through traffic  
14 are huge issues in the Chevy Chase area. With the  
15 Broad Branch Market/Day Care Center we have a new  
16 destination for traffic which in the long run may be  
17 significant.

18 The Board will analyze these points among  
19 others to assure if there is to be a restored and  
20 expanded market, perhaps even with outdoor seating,  
21 together with a day care center for 60 children at any  
22 one time complete with an outdoor play area, that the  
23 proposed new use ultimately fit into and enhance and  
24 not overwhelm the neighborhood. Thank you.

25 CHAIRPERSON GRIFFIS: Thank you very much.

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1       You clearly have a firm understanding of all the  
2 issues that go into this which we are well aware. We  
3 appreciate it. I think one of the most prevalent  
4 pieces that you've talked about is really the  
5 vagueness.

6               I think you probably sensed it from the  
7 Board today. I mean, how do we really address a lot  
8 of situations that are the particulars and specifics  
9 that we go through, and rigorously go through, in  
10 child development centers when we actually don't have  
11 the specific user.

12               Now, as this is a special exception, I  
13 have some confidence in the fact that, (1) in terms of  
14 knowing the location, the site, and the adjacency and  
15 the problems and, (2) the time restriction on special  
16 exceptions, there will be time to review that once  
17 things are up and rolling. I think those types of  
18 aspects of the unknowns may well be able to be  
19 addressed if they become great concerns.

20               Other questions for Ms. Renshaw at this  
21 time? Mr. Hood?

22               MR. HOOD: I want to thank everyone for  
23 their comments but particularly Ms. Renshaw. It's  
24 always good to see you. It's good to see each and  
25 everyone of you. It's good to see you.

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1           Let me just ask you this, Ms. Renshaw. In  
2 your capacity as ANC commissioner, I noticed that you  
3 didn't vote against the project, you abstained. I  
4 should probably be the last person talking about  
5 abstaining today. I noticed that you abstained so  
6 obviously you feel that, like the Chairperson said,  
7 there are some unknowns that can be answered and  
8 mitigated at some point.

9           MS. RENSHAW: I do. I would like to have  
10 the assurance from the builder and from the Board that  
11 the ANC will revisit this issue when the operators are  
12 chosen, both for the market and for the day care  
13 center. I think it's critical for these operators to  
14 come back to the ANC and meet us at a public meeting  
15 and respond to our questions.

16           We were not able to ask these kinds of  
17 questions at our meeting. It was a gloss treatment of  
18 the proposal as you have heard today. I mean,  
19 everything is -- the devil is in the details. I want  
20 to be assured for the ANC and for the community that  
21 some of these points are addressed in our public  
22 meetings.

23           MR. HOOD: All right. Thank you. Thank  
24 you, Mr. Chairman.

25           CHAIRPERSON GRIFFIS: Ms. Miller.

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1                   VICE CHAIR MILLER:     Ms. Renshaw, does  
2 Lafayette accommodate the same age group that the  
3 child development center does?

4                   MS. RENSHAW:     Just about.     The preschool  
5 children at Lafayette start at about three but they  
6 move quickly into their fourth year.     That's part of  
7 the sign-up procedure.     I have a feeling that the day  
8 care operator may be taking some younger children like  
9 at two, two and a half, something like that.

10                  But, again, there was something in this  
11 report which said that there will be 11 spaces  
12 required for the drop-off and the pick-up at the CDC.

13                  Where are these 11 spaces going to be because the  
14 Lafayette children start to arrive at 7:00 in the  
15 morning.

16                  There are some early arrivals and some  
17 older children who come in for some math, for  
18 instance, or special needs that they have.     But one  
19 learns not to go around Lafayette School unless you  
20 are dropping off children in the morning and in the  
21 afternoon.     You just stay away.     But as far as the  
22 ages, there would be comparable ages except Lafayette  
23 starts about three years old.

24                  VICE CHAIR MILLER:     Would you say that  
25 there isn't a need for this type of center in that

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1 location?

2 MS. RENSHAW: I don't know. I haven't  
3 been presented with any facts, any substantive study  
4 that says that there are X number of families with X  
5 number of children and they would be using this  
6 facility. It's just assumed that the younger children  
7 in the neighborhood might be using the facility. We  
8 don't know.

9 VICE CHAIR MILLER: Okay. I just want to  
10 be clear on your position. Are you against the use of  
11 the facility for that purpose or are you just  
12 concerned that we don't have a specific --

13 MS. RENSHAW: Ms. Miller, I was concerned  
14 that I did not have enough information to make a  
15 determination one way or another so, therefore, I  
16 stepped back and I will stay back until such time as  
17 these matters are clarified. But I feel that, and Mr.  
18 Custis said at our ANC meeting, it's going to depend  
19 upon the quality of the operator, both of the market  
20 and of the day care center.

21 I would just like to be sure that these  
22 people are required to come back to the ANC for a  
23 review. If that can be worked into the Board's  
24 language, I would be very heartened.

25 VICE CHAIR MILLER: So you are equally

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1 concerned with respect to the market as in respect to  
2 the child development center?

3 MS. RENSHAW: Well, the market has been  
4 there for a long time, albeit it's not going to be as  
5 new an operation and as efficient an operation as Mr.  
6 Bloom is proposing. I just don't know how an enhanced  
7 market is going to draw traffic into the area because  
8 if I go to that market for a carton of milk instead of  
9 going to a nearby Safeway, I'm going to have to drive.

10 Whereas the neighbors have said, "We don't  
11 want cars on the side street," this market is going to  
12 be a generator and is going to be a magnet for more  
13 vehicles in the neighborhood. No way around it. As  
14 will the day care operation.

15 It's just do we have adequate spaces on  
16 the street for both the day care and the market  
17 operation and are the neighbors sufficiently convinced  
18 as the ANC, too, that this operation is not going to  
19 cause any adverse affects on the neighborhood. Let's  
20 hope it doesn't happen. But I was just being cautious  
21 and wanting to bring these points to the Board's  
22 attention.

23 VICE CHAIR MILLER: Thank you.

24 CHAIRPERSON GRIFFIS: Excellent. I think  
25 you brought up the point about 11 parking spaces. I

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1 think that came from the traffic engineers report  
2 indicating what would be needed in order to  
3 facilitate, not what would be required.

4 MS. RENSHAW: Exactly.

5 CHAIRPERSON GRIFFIS: They mainly assessed  
6 the fact that I think six spaces were available  
7 immediately in front of the building and that there  
8 could possibly be more. I mean, in terms of the  
9 actual required, I think we are looking at two that  
10 were required, one per four employees or something of  
11 that ratio.

12 MS. RENSHAW: But there will have to be a  
13 handicap parking space designated on the street. Ms.  
14 Main, Lafayette School, had to work through the ANC to  
15 get a handicap space for Lafayette and that is going  
16 to be absolutely necessary. I would expect it would  
17 be right out in front of the entrance to the market.

18 CHAIRPERSON GRIFFIS: But you're saying  
19 they wouldn't be able to provide one on site?

20 MS. RENSHAW: Well, whether they can or  
21 not there are four parking on site and in the rear of  
22 that parking area is going to be the play area for the  
23 children probably fenced off. Whether one of those  
24 four parking spaces on site will be designated as  
25 handicap. I think Mr. Bloom had mentioned that he

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1 might do that at our ANC meeting. You could inquire  
2 of him before testimony is over.

3 CHAIRPERSON GRIFFIS: Well, I think it  
4 would be required to do handicap parking without us  
5 getting involved.

6 MS. RENSHAW: I don't know.

7 CHAIRPERSON GRIFFIS: Me neither, but I  
8 know it's not under DC 11. Further questions?  
9 Follow-up? Thank you very much, Ms. Renshaw. It's  
10 very important. Before you all go, let me just see if  
11 the applicant has any cross examination. No cross?  
12 Very well.

13 Thank you all very much. Appreciate you  
14 being patient with us and being here this afternoon.  
15 We will certainly take under consideration all your  
16 comments. And if you have written statements of your  
17 oral testimony today, we would appreciate that being  
18 submitted into the record. Very well. Mr. Tummonds,  
19 are you ready for --

20 MR. TUMMONDS: A very brief closing  
21 statement.

22 CHAIRPERSON GRIFFIS: Excellent.

23 MR. TUMMONDS: The applicant believes that  
24 through its written submission as well as the  
25 testimony today that it has fully satisfied the

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1 special exception standards to establish a child  
2 development center use on the property, as well as the  
3 use variance standards pursuant to 2002.3 -- use  
4 variance from 2002.3 pursuant to 3104.2.

5 We note the support of the Office of  
6 Planning, Department of Transportation, Department of  
7 Health, Child, and Residential Care Facilities  
8 Division. We also note the fact that six members of  
9 ANC-3/4G thought that there was sufficient information  
10 provided in their application. Six members of ANC-  
11 3/4G fully supported this project.

12 Based on all of that support and the  
13 ongoing discussions that this applicant has stated  
14 that it will engage in with the members of the  
15 community as this project moves forward and as it goes  
16 through its building permit review process, we would  
17 request that this Board approve this project and, if  
18 you believe appropriate, request a bench decision  
19 today. Thank you very much.

20 CHAIRPERSON GRIFFIS: Thank you very much.

21 We appreciate actually the very thorough case  
22 presentation with us. It has raised an awful lot of  
23 issues. I think I would like to set this for a  
24 decision making just to give us time to evaluate  
25 2002.3 so that we can be, in fact, probably more

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1 direct in our deliberation on that issue and then on  
2 the entire case.

3 In terms of additional submissions, Board  
4 members, I don't see the requirement of having  
5 anything further into the record. I just think we  
6 need to focus a little bit more on it.

7 Ms. Bailey, do you have a list of anything  
8 that we thought we might be getting in?

9 MS. BAILEY: No, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Okay. Mr. Tummonds,  
11 did you want the opportunity to submit anything  
12 further?

13 MR. TUMMONDS: No, I believe we'll stand  
14 on the record.

15 CHAIRPERSON GRIFFIS: Okay. We'll  
16 obviously keep the record open for anything that was  
17 referred to in testimony today and the written  
18 submissions. Of course, we would need that in fairly  
19 quickly. I noted that a lot of those that were here  
20 have already put that in and we'll make copies and  
21 provide to the Board.

22 I would suggest then that we set this for  
23 -- Ms. Bailey, we set a special public meeting today,  
24 didn't we? It seems like years ago, this morning.

25 MS. BAILEY: We had a continuation on May

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1 18th.

2 CHAIRPERSON GRIFFIS: No, I guess we  
3 didn't then. Okay. We have --

4 MS. BAILEY: May 4th, Mr. Chairman, the  
5 next scheduled meeting?

6 CHAIRPERSON GRIFFIS: That's two weeks,  
7 isn't it? May 4th. Let's set it. I mean, I think we  
8 can conceivably do this on the 27th but we have four  
9 hearings in the morning on the 27th and I don't think  
10 it would be expeditious for us to do that. Is there  
11 any concern in delay in setting it for the 4th, Board  
12 members? Any difficulty in that?

13 Okay. In which case let's do that. At  
14 that time, of course, that would be at our public  
15 hearing

16 -- public meeting, rather, and it would be the  
17 deliberation solely by the Board and rendering of a  
18 decision. We will obviously take up the first  
19 question of whether it is properly before us for a use  
20 variance and, if so, we would move ahead on the  
21 deliberation of that and special exception.

22 Okay. Then we'll do that. Anything  
23 further then? We're not asking unless, Mr. Tummonds,  
24 you wanted to submit draft findings and conclusion.  
25 We would keep the record open for that.

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1 MR. TUMMONDS: I don't think it's  
2 necessary for this case.

3 CHAIRPERSON GRIFFIS: Okay. In which case  
4 we're not expecting much of anything into the record.

5 Okay. Is everyone clear then on the processing and  
6 schedule? Excellent. Thank you all very much. We  
7 appreciate it. You are, of course, welcomed on the  
8 4th but no further testimony would be accepted.

9 With that we're going to take five minutes  
10 and let the next case set up. I'll also note for the  
11 next case we will be losing a quorum at 6:00. We're  
12 going to take a very quick five-minute break. I don't  
13 anticipate us needing more than 60 minutes to get  
14 through what is left for the appeal. Right when we  
15 return we'll call the case and get right into it and  
16 get everyone home for supper.

17 (Whereupon, at 4:38 p.m. off the record  
18 until 4:51 p.m.)

19 CHAIRPERSON GRIFFIS: Very well. Let's  
20 resume. Why don't we briefly announce the next case  
21 which is, of course, Appeal No. 17109, continuation.

22 MS. BAILEY: Thank you, Mr. Chairman.  
23 Application of the Kalorama Citizen's Association  
24 pursuant to 11 DCMR 3100 from the administrative  
25 decision of David Clarke, Director, Department of

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1 Consumer and Regulatory Affairs, from the issuance of  
2 Building Permit Nos. B455571 and B455876 dated October  
3 6, 2003, and October 16, 2003, respectively, to  
4 Montrose, LLC, to adjust the building height to 70  
5 feet and to revise penthouse roof structure plans to  
6 construct a five-story apartment house in the R-5-D  
7 District.

8 Appellant alleges that the under-  
9 construction building is in violation of the building  
10 height, floor area ratio and roof structure set-back  
11 requirements of the Zoning Regulations. The subject  
12 property is located at 1819 Belmont Road, N.W., Square  
13 2551, Lot 45).

14 Mr. Chairman, none of the applicants were  
15 previously sworn . I think anyone who will be  
16 testifying today needs to be sworn in. Do you  
17 solemnly swear or affirm that the testimony that you  
18 will be giving this afternoon will be the truth, the  
19 whole truth, and nothing but the truth?

20 WITNESS: I do.

21 CHAIRPERSON GRIFFIS: Thank you very much,  
22 Ms. Bailey.

23 At the conclusion of our last and setting  
24 up for this, it's my understanding, and I can be  
25 corrected, that the appellant is going to present

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1 rebuttal testimony and then we'll have conclusions.  
2 Issues with that? Did you have an issue? Okay. Are  
3 we ready to proceed?

4 MR. HARGROVE: Thank you, Mr. Chairman.  
5 I'm Larry Hargrove for the record. A couple of  
6 preliminary matters. To begin with, as you can see,  
7 Ms. Firster is not present. As you may recall, she  
8 had a conflicting court obligation which turned out to  
9 be an insurmountable barrier.

10 We concluded that we should proceed with  
11 the rebuttal and closing without her assistance so we  
12 are prepared to do so. The second preliminary matter  
13 has to do with correcting an inadvertent omission in  
14 an attachment to one of the several documents that KCA  
15 has submitted in this case.

16 Namely, Attachment 1 to the appellant's  
17 supplemental memorandum on the Height Act which had  
18 omitted one of the two or three pages of that  
19 attachment. I would like to simply provide that to  
20 the staff so they can provide it to the Board. We  
21 apologize for that omission. Before proceeding, let  
22 me say that I understand --

23 MS. BROWN: Excuse me, Mr. Chair. We have  
24 not had a chance to review this submission to whether  
25 or not it's inadvertent or should be admitted into the

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1 record. If we could just have a few moments to look  
2 it over. We haven't seen it yet.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. BROWN: Thank you.

5 CHAIRPERSON GRIFFIS: Take a few minutes.  
6 You can continue.

7 MR. HARGROVE: Before proceeding, let me  
8 say that we understand that the intervener does have a  
9 question to raise about the introduction of additional  
10 evidence in behalf of its case. We're not disposed to  
11 interpose any objection to that additional evidence  
12 but we would want this matter to be disposed of before  
13 we proceed to our rebuttal witnesses and closing  
14 argument.

15 CHAIRPERSON GRIFFIS: It's your  
16 understanding that the owner wants to submit  
17 additional evidence at this time?

18 MR. HARGROVE: I'm sorry?

19 CHAIRPERSON GRIFFIS: Do I understand you  
20 to say that the owner is going to introduce evidence?

21 MR. HARGROVE: That's my understanding  
22 but, of course, counsel for Montrose will have to  
23 address that point.

24 CHAIRPERSON GRIFFIS: Where are we on  
25 that. Are we having additional evidence in?

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1 MS. BROWN: I was going to raise the issue  
2 when I came up to the table. In light of DCRA's  
3 filing last night that says they were not able to get  
4 the Zoning Administrator to respond to the issue of  
5 FAR calculations of the basement versus cellar level  
6 issue, we've since the last hearing April 6th had a  
7 chance to look at Mr. Fahey's affidavit more closely.

8 We calculated taking his method. We have  
9 a drawing that shows those calculations and we also  
10 have a memo written by Mr. Fahey to Mr. Stephen Sher  
11 of our office back in 1990. To the extent it's  
12 appropriate for you to look at it, we can address it  
13 at that time. It's simply because the Zoning  
14 Administrator's Office was unable to provide you with  
15 anything.

16 CHAIRPERSON GRIFFIS: I see. Have you  
17 been able to look at the evidence?

18 MR. HARGROVE: Yes. Yes, I have.

19 CHAIRPERSON GRIFFIS: Do you have any  
20 objection to taking it into the record?

21 MR. HARGROVE: No. We will as soon as we  
22 receive it as evidence. Only now we will want to  
23 reserve the right to make some response at a later  
24 time, although we'll try to address this in our  
25 closing argument as well.

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1 CHAIRPERSON GRIFFIS: Okay. Very well. I  
2 think that's appropriate.

3 MR. HARGROVE: We have only two rebuttal  
4 witnesses, Mr. Chairman. I would like to call the  
5 first at this time, Mr. George H. F. Oberlander who,  
6 as many of you know, has had many years of experience  
7 in zoning and planning matters. I'm prepared to  
8 distribute to the Board his curriculum vitae but we  
9 are not asking him to appear as an expert witness but  
10 rather simply as a fact witness.

11 CHAIRPERSON GRIFFIS: Okay. Proceed.

12 MR. HARGROVE: Would you state your name  
13 for the record, please?

14 MR. OBERLANDER: George H. F. Oberlander.

15 MR. HARGROVE: Mr. Oberlander, were you a  
16 member of the staff of the National Capital Planning  
17 Commission during the years 1984 to 1986 which was the  
18 period of consideration of the issues that were  
19 ultimately decided by the Zoning Commission and it's  
20 Order No. 476?

21 MR. OBERLANDER: Yes, I was.

22 MR. HARGROVE: Did you participate in the  
23 NCPC's consideration of those issues and its reports  
24 to the Zoning Commission on those issues?

25 MR. OBERLANDER: Yes, I was the staff

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1 person making the presentation to the Commission on  
2 August 1, 1985. I'm very familiar with the issues.

3 MR. HARGROVE: You prepared a short  
4 statement dealing with the NCPC's role in those  
5 deliberations. Would you read that for the Board's  
6 benefit?

7 MR. OBERLANDER: I believe it's been  
8 passed out to the Board. It's a two-page statement  
9 with a 10-page attachment. The attachment is the  
10 transcript of the National Capital Planning Commission  
11 of August 1, 1985.

12 CHAIRPERSON GRIFFIS: Not too quick  
13 because I'm not sure that it has been passed out.

14 MR. OBERLANDER: It's being passed out at  
15 the moment.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. OBERLANDER: Sorry. As I indicated, I  
18 participated in the considerations within the Planning  
19 Commission of its position regarding issues raised by  
20 the Zoning Commission case 84-10 with respect to  
21 proposed changes in the Zoning Regulations regarding  
22 roof structures and, specifically, changes in the  
23 regulations regarding setback of roof top penthouses.  
24 If you now have the statement, the second paragraph.

25 CHAIRPERSON GRIFFIS: Yes, we have it.

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1                   MR. OBERLANDER:           The 1958 Zoning  
2 Regulations require a setback of penthouses by a  
3 distance equal to their height above the roof from  
4 "all lot lines of the lot" in most zoning districts.  
5 In the 1980s the Zoning Commission had originally  
6 proposed changing these provisions to require setback  
7 to be measured from the perimeter of the roof.

8                   Later the Zoning Commission proposed less  
9 restrictive language that would retain the requirement  
10 of measurement from "all lot lines of the lot." The  
11 Zoning Commission also had before it other less  
12 restrictive language that setbacks should be measured  
13 from lot lines on a street -- that was reportedly  
14 expressed by the then Corporation Counsel -- or  
15 exterior walls fronting on the street expressed by the  
16 then Office of Planning.

17                   The National Capital Planning Commission  
18 was concerned that the Zoning Regulations be  
19 consistent with the Height Building Act of 1910 which  
20 require setbacks from "exterior walls." That's the  
21 language in the act in cases where the roof structure  
22 height exceeds the building height allowed by the act.

23                   Therefore, the NCPC opposed the then  
24 current provisions measuring setback from lot lines  
25 because the lot lines might be located some distance

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1 away from the exterior wall. It also opposed  
2 measuring setback only from lot lines or exterior  
3 walls that front on the street since that would  
4 require setback from only some exterior walls and  
5 would, therefore, in the NCPC's view be inconsistent  
6 with the Height Act.

7 In my recent current review of the NCPC  
8 files in Commission consideration of this matter,  
9 there was no provision or discussion for exempting row  
10 house party walls from setback requirements. The NCPC  
11 regarded the Zoning Commission's original proposal to  
12 require setback from perimeter of the roof which had  
13 the effect of requiring setbacks from all walls of the  
14 building to be in keeping with and to have the same  
15 intent and effect as the Height Act requirements of  
16 setback from exterior walls.

17 The NCPC communicated its views on the  
18 setback issue to the Zoning Commission on August 1,  
19 1985, requesting that the Commission consider  
20 reverting to its original proposal requiring penthouse  
21 setbacks be measured from the perimeter of the roof.

22 Ultimately, the Zoning Commission adopted  
23 a formulation that the NCPC regarded as having the  
24 same effect, namely the requirement of setback from  
25 all exterior walls. I'll be happy to answer any

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1 questions the Board may have.

2 CHAIRPERSON GRIFFIS: Thank you very much.

3 Any questions from the Board? Very well. Thank you.

4 MR. HARGROVE: Thank you very much, Mr.

5 Oberlander.

6 Our second and last rebuttal witness is

7 Ann Hargrove who will have a brief statement. Mrs.

8 Hargrove, would you proceed.

9 MS. HARGROVE: Thank you, Mr. Hargrove.

10 First, because of comments made by Montrose, I want to

11 simply reaffirm my joint declaration submitted

12 regarding March 19, 2003, including, in particular,

13 paragraph 6 of that declaration regarding a meeting on

14 March 19th.

15 Specifically, at that meeting I did not

16 see any elevations of the project. I did see a plan

17 such as one would look at from above that showed the

18 garage door as seen from above. Nor did I see any

19 front elevations at all. They may have been present

20 but I didn't see them and they were not distributed to

21 my knowledge widely among the people who were there.

22 But I did comment on the Zoning

23 Regulations which is why I was there such as the width

24 of the driveway required and the fact that the bay

25 involved appeared too narrow to accommodate the

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1 opening without further destruction. A curb cut  
2 permit would be required and I expressed my dismay at  
3 the destruction of the portion of the facade.

4 Subsequently, Mr. Hargrove discussed with  
5 this architect and the project foreman the possibility  
6 of matching and restoring the brick around the edges  
7 of the destroyed facade opening at the front and  
8 engaging a brick man expert to repair and restore the  
9 curved edge bay opening.

10 At that time I had no knowledge or  
11 expectation of any other change in the facade of this  
12 narrow-turreted row house. Secondly, in response to  
13 questions from the Board as to the purpose of this so-  
14 called attic, Montrose alleged that a two-story, and I  
15 note the word story, apartment space with roof deck  
16 was demanded by the market and that the attic also met  
17 a market demand for storage space.

18 I would like to bring to the Board's  
19 attention the outdoor advertising that has been  
20 erected presumably in an effort to market the  
21 condominium with its top, shall we say, closet at 1819  
22 Kalorama Road. The legend on the large front yard  
23 sign says, "Belmont Overlook. Bold and beautiful loft  
24 apartment living for enlightened people."

25 The apartments are not two levels, which

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1 is all very well, and they are exemplified by 2004  
2 sales at 1821 next door for \$409,500 and one at 1801  
3 Belmont Road for \$550,000 listed as sold in  
4 Metropolitan Regional Real Estate Systems, Inc.

5 But, in any event, the Board does not have  
6 to address economic hardship if Montrose based its  
7 decision on a gamble not only regarding the market but  
8 also the plans for its development that exceed what  
9 the Zoning and Height Act allow.

10 Third, I want to direct your attention to  
11 two comments, one by the Chairman regarding the R-1  
12 through R-4 Districts, and one by Mrs. Ogunneye  
13 regarding an exterior wall in particular because of  
14 what can be potentially built up on its side.

15 The R-5 Districts allowed for a variety of  
16 matter of right housing types including the building  
17 types available in R-1 through R-4 zones and,  
18 therefore, do not differ from any other district  
19 including the R-2 through the R-4 zones which are row  
20 house type zones.

21 The case is about a specific property as  
22 are other BZA cases and conclusions should be drawn  
23 regarding this specific property. The building next  
24 to Montrose on the west side, 1821 Belmont Road is, as  
25 we said, a condominium building built in 1998 with

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1 high-end apartments that bring high prices. The two  
2 older buildings on the east side of 1822 that matched  
3 1822 before it was destroyed, on the other hand, are  
4 restored row houses.

5 Now, why did I bring up the nature of  
6 these buildings? First, there are FAR lot occupancy  
7 and rear yard limits that must be taken into account  
8 in constructing buildings. The adjacent new condo  
9 building on the west is either at or near its limits  
10 under zoning and will not be able to go up 70 feet.  
11 Nor, for that matter, will its neighboring row houses  
12 -- I mean, condo row houses to its immediate west.

13 The two restored row houses on the east  
14 side of 1822 could conceivably go up enveloping the  
15 awful chimney visible on the wall of the new  
16 development if there were virtually complete  
17 demolition. They are, however, restored buildings but  
18 it remains to be seen what their value will be in the  
19 future because of the 1822 intrusion into the mix of  
20 row houses and, indeed, what could be perhaps  
21 destroyed. It will likely be a year before the  
22 historic district application is submitted and  
23 approved by the Board.

24 The neighboring new building property on  
25 the west is unlikely to go much higher, if at all,

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1 because it is a new building with high sale price  
2 condominiums as we said. They don't have two-story  
3 apartments with roof decks above.

4 Because we feel that the retail value and  
5 the market value of this new building is high, we do  
6 not expect them to be destroyed so it is outrageous  
7 for there to be an interpretation that characterizes  
8 the clearly exterior wall which must comply with  
9 Section 14 of the building code regarding exterior  
10 envelopes that has windows sprinkled throughout it as  
11 an interior wall on grounds that the neighboring  
12 properties may go straight up to 70 feet as well, as  
13 Mrs. Ogunneye has asserted. Each of these things have  
14 to be looked at individually.

15 On one side we have a building that cannot  
16 go up and on the other we have some that could be  
17 destroyed if the Board rules in a way which would  
18 encourage this kind of construction in these zones.

19 Finally, Montrose has cited, and this is a  
20 very difficult thing for me -- Montrose has cited a  
21 number of buildings where the Zoning Administrator,  
22 and in one instance the Board, allegedly approved roof  
23 decks that exceed the height limit of the Height Act.

24 It appears from our review that there have  
25 been a substantial number of buildings erected in the

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1 District since at least the 1970s that are in  
2 violation of the Height Act and some of these have  
3 involved cases before this Board.

4 I cite as an example a list prepared by  
5 counsel for WETA and George Washington University in  
6 Zoning Commission Case No. 93-9C as an attachment to a  
7 memorandum of law on the Height Act list entitled,  
8 "Orders of the BZA approving roof structures above the  
9 building limit of the Act of 1910 without the normal  
10 setback."

11 It contains 11 BZA cases all but one  
12 antedating the 1986 Zoning Commission's order of roof  
13 structures. In our examination of these orders from  
14 these cases thus far, we have found only one, the  
15 earliest in which the order makes even an oblique  
16 reference to the Height Act.

17 The only post-1986 order in 1991 makes no  
18 reference to the Height Act that we have discovered.  
19 While we have not been able as yet to examine the  
20 record of these cases exhaustively, it would appear  
21 that these cases to the extent that they involve roof  
22 structures exceeding the Height Act limit constitute a  
23 body of practice in which the developers and the  
24 permitting authorities routinely ignored the Height  
25 Act and the presentation of the case proceeding before

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1 the Zoning Commission or before the BZA.

2 This resulted through no necessary fault  
3 of the Board in decisions that similarly failed to  
4 address the Height Act issue. We do not know the  
5 extent to which this pattern may be manifest in later  
6 cases or in buildings erected without BZA's scrutiny,  
7 but it is in this light that the project cited by  
8 Montrose must be asserted including their recent  
9 listing of instances which really buttress what I've  
10 just told you about.

11 One other thing. I do not have evidence  
12 that the roof plans of 1822 was ever forwarded to the  
13 Office of Planning for what it's worth.

14 MR. HARGROVE: I have just one question  
15 for you. Am I correct in my assumption that you  
16 intended to refer not to 1822 but to 1819.

17 MS. HARGROVE: That's correct. 1822 is  
18 the project we're working on on another street.

19 MR. HARGROVE: Thank you very much.

20 CHAIRPERSON GRIFFIS: Actually, quick  
21 question. You indicated that there's a list, actually  
22 two lists now, of BZA applications that have gone  
23 through, if I understood you correctly, that allowed  
24 -- oh, here we are, Exhibit 4, "Approving roof  
25 structures above the building limit of the Act of 1910

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1 without normal setbacks."

2 MS. HARGROVE: That's directly taken from  
3 the WETA case that I told you about. We did look at  
4 those orders which are also listed in the  
5 congressional hearings that followed that case. In  
6 examining them what I said to you was the case.  
7 Hearing Mrs. Brown at the last occasion that she  
8 spoke, I think there were three or four examples that  
9 she gave. Only one of them could be traced down to a  
10 BZA case so I assume the others were merely DCRA  
11 orders which have no bearing at all on interpretation  
12 of the law.

13 CHAIRPERSON GRIFFIS: This is what I want to  
14 get some clarification on. When you looked at these  
15 particular orders, first of all, did the roof  
16 structures or decks were they before the Board for  
17 relief?

18 MS. HARGROVE: Yes, they were there for  
19 special exceptions or for variances.

20 CHAIRPERSON GRIFFIS: Okay. So these were  
21 all in for special exceptions or variances based on  
22 height or roof structure.

23 MS. HARGROVE: The problem with that is  
24 that one can make an argument, I think, that what may  
25 apply with regard to the Zoning Regulations which,

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1 indeed, may be more restrictive as they are with  
2 regard to the height of the roof structure involved as  
3 they have been since 1986.

4 One may make that argument but one can't  
5 make the argument, I think, that either the Zoning  
6 Administrator or the Board has authority through  
7 special exception or variance to change the Height Act  
8 requirements and that's where there's a problem. If  
9 you go down the slippery slope of saying, okay, this  
10 is sort of like the 1953 memorandum which you have  
11 before you from the Corporation Counsel which clearly  
12 indicated that only a nonliving space structure could  
13 be up there with a small office to operate the  
14 mechanical equipment which had to be different than it  
15 is today.

16 To go from that to constantly changing the  
17 grounds to allow more and more things which do involve  
18 living space. It seems to me where does it end and  
19 where is the criteria and there is nothing in writing  
20 to explain how you get to that point.

21 CHAIRPERSON GRIFFIS: Okay. Ms. Miller.

22 VICE CHAIR MILLER: Did you say that all  
23 these cases were referenced in another case?

24 MS. HARGROVE: Yes. They were referenced  
25 in the WETA case which I think I have with me but it's

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1 one that occurred several years ago and received quite  
2 a storm of protest. It was a GW case which involved a  
3 possibility of having WETA there at that campus on one  
4 of the streets there. A major street, in fact,

5 VICE CHAIR MILLER: Do you have the cite  
6 for that one?

7 MS. HARGROVE: I can give it to you by the  
8 end of the hearing because I think I have it with me.

9 VICE CHAIR MILLER: Okay. Thank you.

10 CHAIRPERSON GRIFFIS: Any other questions?  
11 Thank you very much.

12 MR. HARGROVE: We would like now to  
13 proceed to our closing. We will try to make this as  
14 succinct as possible. We ask the Board's indulgence  
15 in the fact that this is a case of some complexity and  
16 we do want to take the liberty of touching on each of  
17 the issues that are addressed.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. HARGROVE: However --

20 CHAIRPERSON GRIFFIS: Can I interrupt you?  
21 I'm sorry to interrupt you but there is one follow-up  
22 question. There is an indication that we have before  
23 us the old Corporation Counsel memo.

24 MS. HARGROVE: The 1953 Corporation  
25 Counsel memo. We did cite in one of our earlier roof

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1 structure memorandums and we enclosed one or two pages  
2 of it but not all three.

3 CHAIRPERSON GRIFFIS: Okay. So excerpts  
4 of it.

5 MS. HARGROVE: That's the one that I was  
6 referring to in the discussion.

7 CHAIRPERSON GRIFFIS: Excellent. Thank  
8 you.

9 MR. HARGROVE: I think first it would be  
10 useful, however, to clarify the situation with respect  
11 to the additional evidence that the intervenor wanted  
12 to submit. If that is to be done, it should be done,  
13 it seems to us, at this point so it would be before  
14 the Board and we would have an opportunity to comment  
15 on it in this statement we are about to make.

16 CHAIRPERSON GRIFFIS: If we have specific  
17 comments?

18 MR. HARGROVE: I beg your pardon?

19 CHAIRPERSON GRIFFIS: I'm sorry. What was  
20 your question?

21 MR. HARGROVE: The question is whether or  
22 not the intervenor should not go ahead at this point  
23 and present this additional evidence if it's to be  
24 submitted at all so that we and the Board would have  
25 it before us and we could comment on it in the course

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1 of the closing statement.

2 CHAIRPERSON GRIFFIS: Is there testimony  
3 involved in the submission of the additional evidence?

4 MS. BROWN: It would just be incorporated  
5 into our closing argument and to the extent that you  
6 want more clarification on what it represents. I  
7 would suggest that once it's submitted just like we've  
8 been receiving these materials and hearing rebuttal  
9 evidence that it can be parsed out in a proposed order  
10 where you sit there and say so and so presented X and  
11 so and so presented Y and then this is your finding.

12 CHAIRPERSON GRIFFIS: You bring up an  
13 interesting point. You are anticipating time for a  
14 closing this evening?

15 MS. BROWN: Yes.

16 CHAIRPERSON GRIFFIS: How much time do you  
17 need?

18 MS. BROWN: Ten to 15 minutes.

19 CHAIRPERSON GRIFFIS: Okay. Anyone else?  
20 Ten or 15?

21 MR. HARGROVE: Mr. Chairman, I'm a little  
22 perturbed here. My reading of the Zoning Regulations  
23 does not envisage any additional closing argument on  
24 the party intervenor. I had understood from the  
25 Zoning Regulations that the closing argument by the

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1 appellate in this appeal would be the last item on the  
2 agenda.

3 CHAIRPERSON GRIFFIS: Right, which is why  
4 --

5 MR. HARGROVE: If there is additional  
6 argumentation that the Board wishes to have from the  
7 intervenor, then that should take place now and we can  
8 take it into account perhaps, although I'm a little  
9 uncertain as to whether we should have a full-fledged  
10 closing on the part of the intervenor who had an  
11 opportunity to present its case. As I said, we are  
12 willing to have the additional evidence that Montrose  
13 wishes to submit put in.

14 CHAIRPERSON GRIFFIS: Right. I think what  
15 has happened in the processing of this is the fact  
16 that we laid out, especially with the limited time we  
17 had, that we got to the case presentation and I know  
18 several reserve the rights just to have closing  
19 statements and I think that is what we are  
20 anticipating today.

21 That is why I wanted just to make sure and  
22 see where we were with that. I think we ought to do  
23 that first and then have you do your closing at the  
24 very end. So let's proceed in that fashion and we are  
25 going to need to be fairly expeditious, as I say.

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1 Onward of 6:00 we are going to have to end. Who wants  
2 to start? Yes. We have nothing else except closing.

3 MS. BROWN: I'm happy to start. It seems  
4 more appropriate that DCRA go first but I'm happy to.

5 CHAIRPERSON GRIFFIS: I know. It's up to  
6 you guys. The appellant gets the last word. They  
7 just presented their rebuttal testimony. Of course,  
8 if there was any cross examination, I imagine you  
9 would have jumped up. Is there any cross on the  
10 rebuttal testimony? Any questions? Okay. After 10  
11 hours of this I lose track of what I've actually asked  
12 and not asked.

13 MS. GILBERT: I'm just a little confused  
14 because I thought the appellant was simply asking that  
15 the materials that --

16 CHAIRPERSON GRIFFIS: Here. Let me  
17 clarify all your confusion. The appellant is saying  
18 you guys don't have closings. You presented your  
19 case. You're done. This evening is all their time.  
20 What I'm indicating is that frankly perhaps I'm not as  
21 direct as I should be. I was reserving brief closing  
22 statements for everyone at a closing session and that  
23 is what this is. This is now your opportunity to do a  
24 closing statement.

25 MS. GILBERT: That's fine. I just don't

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1 understand why the appellant isn't --

2 CHAIRPERSON GRIFFIS: Don't worry about  
3 them. Just give me your statement.

4 MS. GILBERT: Very good. There are  
5 several issues that have been raised in this appeal.  
6 I'll try to take them one by one. The first issue  
7 that was raised was that the builder in this case, the  
8 permit holder, had not met the requirements of the  
9 Height Act.

10 We established in our testimony that  
11 although the Department initially erred in suggesting  
12 that the building could go up to a height of 90 feet,  
13 that error was corrected and a stop work order had  
14 been issued back in September of 2003. The permit  
15 applicant came back in and submitted revised plans  
16 that brought the height down to 69 feet and 9 inches,  
17 I believe it was.

18 In support of that the building owner  
19 submitted a plan by Norman Smith Architects and a  
20 letter submitted by Geo Environ Engineers dated  
21 9/25/03 that is part of the record in the case. This  
22 verified that the height of the building met the 70-  
23 foot height limit under the Height Act.

24 That first issue that has been raised by  
25 appellants as to the height of the roof up to the

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1 parapet there is no issue and I don't believe that has  
2 been raised as an issue by appellants in this case,  
3 even though I believe it was raised in their initial  
4 appeal memoranda.

5 With respect to the roof structures, that  
6 is the next issue that has been raised. Under the  
7 Height Act D.C. Official Code 6-601.05H penthouses  
8 over elevator shafts, etc., can be erected above the  
9 height of the building provided there's an adequate  
10 setback from the exterior walls. 11 DCMR 411.7 more  
11 or less mirrors the Height Act and provides for roof  
12 structures including housing from mechanical  
13 equipment, stairway and elevator penthouses.

14 And 11 DCMR 400.7 suggest the housing for  
15 mechanical equipment or a stairway or elevator  
16 penthouse can be erected as a roof structure above the  
17 limit, the 70-foot limit in the Height Act provided,  
18 of course, that it meets the setback requirements.

19 We put on the testimony of Ms. Faye  
20 Ogunneye who explained how the Department has  
21 interpreted the setback requirements and the fact that  
22 the Department interprets the setback requirements in  
23 the case of a row house to require the setback of a  
24 distance at least equal to the height of the building  
25 above the roof upon which it is located from the front

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1 wall of the building and from the back wall of the  
2 building.

3 The Zoning Administrator does not consider  
4 the side walls of a rowhouse to be exterior walls. In  
5 putting forth that testimony we went through the  
6 definition in 11 DCMR 405.3 which uses the term common  
7 division wall when referring to the wall between  
8 attached houses or row houses. The other term that is  
9 commonly used is party wall.

10 As Ms. Ogunneye testified, although there  
11 is nothing above the roof structure at this -- nothing  
12 going to the level of the roof structure at this  
13 particular time, the neighboring property owner in a  
14 row house situation has the right to build up to the  
15 same height along that party wall or common division  
16 wall. It is DCRA's position that no setback was  
17 required from the side party walls or common division  
18 walls and the requirements of the Zoning Regulations  
19 were met.

20 With respect to the deck, 11 DCMR Section  
21 411 describes the requirements and restrictions  
22 applicable to such structures pursuant to 11 DCMR  
23 411.17. "Roof structures that are less than four feet  
24 in height above a roof or parapet are not subject to  
25 the requirements of Section 411." The deck in this

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1 case is less than four feet in height above the roof.

2 With respect to the railing, DCRA's  
3 position has been that the height of the railing does  
4 not need to be included in the four feet because it is  
5 required by the construction codes for safety and is  
6 not subject to the height limitation. And we rely  
7 upon an analogous provision in 11 DCMR 2503 which  
8 refers to structures and required open spaces.

9 That provision states that a structure  
10 including a building no part of which is more than  
11 four feet above grade at any point may occupy any yard  
12 required under the provisions of this title. Any  
13 railing required by the D.C. construction code shall  
14 not be calculated in the measurement of this height.  
15 So that is DCRA's response with respect to the roof  
16 structures.

17 Finally, the other basis for the appeal  
18 has been the alleged excessive FAR. In this regard I  
19 think that we have to reemphasize the fact that the  
20 gross floor area shall not include an attic space  
21 whether or not a floor has actually been laid  
22 providing the structural headroom is less than six  
23 feet, six inches. If it's six feet, six inches or  
24 more, then the attic space has to be included in the  
25 head room -- I mean, in the gross floor area.

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1           In this instance the plans submitted by  
2 the applicant, the building owner, showed that the  
3 space from the floor to the collar ties was less than  
4 six feet, six inches. You heard testimony that the  
5 collar ties were, in fact, a structural component.

6           Also, in this regard I believe that Ms.  
7 Ogunneye testified that she had sent one of her zoning  
8 inspectors out there to actually verify the  
9 measurement. Also, with respect to the floor area  
10 ratio, there were some concerns raised with respect to  
11 the calculations made by the Department in making a  
12 determination with regard to the permit application  
13 DCRA had before the calculations which had been  
14 provided by the applicant.

15           There were calculations which were done  
16 in-house which there is some testimony about the fact  
17 that they couldn't be located at one point. However,  
18 after the fact Ms. Ogunneye did redo the calculations.

19           Those calculations were redone a couple of times.

20           They were redone prior to the issuance of  
21 the revised permits after the stop work order was  
22 issued and then Ms. Ogunneye did them again in  
23 preparation for this hearing to be absolutely  
24 confident that those calculations were correct.

25           However, as I mentioned, we did have the calculations

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1 which have been submitted by the applicant which were  
2 part of the permit record at the time the permit was  
3 issued.

4 Based on the foregoing, I would request  
5 that the Board affirm the decision of the Department  
6 and dismiss the appeal. Thank you.

7 CHAIRPERSON GRIFFIS: Thank you very much.

8 MS. GILBERT: With respect to the issue  
9 that was raised as far as the measurement of the  
10 basement space, we did submit a letter from Mr. -- a  
11 letter to you yesterday indicating that Mr. Noble has  
12 been out ill.

13 CHAIRPERSON GRIFFIS: Oh, yes. We did  
14 review that.

15 MS. GILBERT: We haven't been able to  
16 submit a recalculation. We are prepared to still  
17 submit a response to Mr. Fahey's statement at the time  
18 that we submit findings or a closing post-trial memo  
19 or whatever.

20 CHAIRPERSON GRIFFIS: Okay. Well, I think  
21 it's going to have to come in before that so it can  
22 get response. We'll keep note of that. When do you  
23 think it would be able to be submitted?

24 MS. GILBERT: I doubt if it could be  
25 before next week because I know that Mr. Noble will be

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1 out the rest of this week. We did try to see if we  
2 could call him to consult on it and he was in no  
3 condition to really discuss it when we called today.

4 CHAIRPERSON GRIFFIS: So two weeks at the  
5 earliest?

6 MS. GILBERT: Probably, but I would remind  
7 you that we were given the right to respond to  
8 something that was objected to initially because Mr.  
9 Fahey had submitted a statement after the appellant  
10 had put on his case in chief.

11 CHAIRPERSON GRIFFIS: So what is the  
12 point? You don't need to submit this?

13 MS. GILBERT: No. It's not that I don't  
14 need to submit it. It's that they don't need to have  
15 an opportunity to respond because --

16 CHAIRPERSON GRIFFIS: Oh, I understand.

17 MS. GILBERT: -- they already submitted  
18 something. We are responding to something that was  
19 allowed in.

20 CHAIRPERSON GRIFFIS: Indeed. When do we  
21 stop the responses? Okay. So we'll have it in at the  
22 findings. I appreciate that.

23 MS. GILBERT: Thank you.

24 CHAIRPERSON GRIFFIS: Mr. Parsons.

25 MR. PARSONS: Mr. Chairman, unfortunately

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1 I have to leave for another commitment but I will read  
2 the transcript prior to us making a decision which you  
3 haven't scheduled the decision yet but I hope it will  
4 not be the May meeting.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. PARSONS: For that very reason.

7 CHAIRPERSON GRIFFIS: Excellent. Good  
8 point. It won't be the May because we are going to  
9 have ample time for submissions, findings and  
10 conclusions. I thought I said, but perhaps I didn't  
11 in this case, that we are looking at the first week of  
12 June for a decision on this.

13 MR. PARSONS: I'm sorry. You had said  
14 that previously.

15 CHAIRPERSON GRIFFIS: Excellent. Okay.  
16 Thanks.

17 Go ahead.

18 MS. BROWN: Good afternoon. Maybe I  
19 should say evening. For the record, I'm Carolyn Brown  
20 with Holland & Knight on behalf of Montrose, LLC, the  
21 property owner in this case. I think we all have  
22 exhibited a great amount of patience in getting  
23 through five hearings. I think this is the fifth day  
24 that we've convened on this.

25 I think we've heard a lot of conflicting

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1 and, in some cases, even irrelevant information and a  
2 lot of very passionate argument about why this  
3 building should not be allowed because of its  
4 excessive height or because it's out of scale with the  
5 neighborhood.

6 The appellants feel very strongly that  
7 this is the wrong addition at the wrong place. I  
8 think that we can sympathize with their heartfelt  
9 convictions. But the Zoning Regulations don't  
10 regulate taste. They don't regulate good  
11 architecture, bad architecture. They regulate  
12 specific provisions. In this case it's strictly about  
13 interpretation of height, FAR, and setbacks.

14 That's probably what makes this case so  
15 difficult because there isn't anywhere written down  
16 for anyone to consult how to interpret these  
17 regulations and now we're in the midst of trying to  
18 slough through it ourselves.

19 But that is also why under the Zoning  
20 Regulations the Zoning Administrator is designated as  
21 the arbiter of how to interpret these. If we could  
22 quickly go to the corrected submission, the attachment  
23 to the memorandum on the Height Act that Mr. Hargrove  
24 submitted tonight. I had a chance to look it over.

25 I agree with it. I have no objection to

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1 it being admitted. In fact, it even has highlighted  
2 on the last page of that saying that, "The Zoning  
3 Administrator shall be responsible for  
4 administratively interpreting and enforcing the zoning  
5 regulations."

6 I think that is critical here because what  
7 we have is a case of the Zoning Administrator doing  
8 its best to interpret the regulations based on  
9 precedent, based on their knowledge, and based on what  
10 that office is used to doing. I think that what we  
11 have here is absolutely no abuse of that discretion  
12 whatsoever. There is logical, reasonable, rational  
13 basis for all the interpretations that they made.

14 I'll go through each of these issues. I'm  
15 going to start with the hardest one first, I think,  
16 which is the FAR calculations and how to deal with  
17 what is a basement and what is a cellar and the attic  
18 space issue.

19 After we received Mr. Fahey's affidavit  
20 back on April 6, we went through it, read it. What  
21 this argument comes down to is which methodology do  
22 you use, the perimeter wall method which was used in  
23 this case by the Zoning Administrator which has long  
24 been adopted, or do you use this grade plane average  
25 that is referred to in Mr. Fahey's memo?

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1 Well, what I hope to submit to help  
2 clarify that issue, and I would ask that you accept it  
3 into the record. One of the reasons, as I said  
4 before, I'm submitting it is that we didn't have a  
5 response from the Zoning Administrator on this for  
6 today and I thought it was important to have something  
7 in the record to respond to Mr. Fahey's affidavit.

8 Two things that I've submitted to you are,  
9 one, a 1990 memo from Jim Fahey to Mr. Steve Sher of  
10 our office. At that time Mr. Fahey was a consultant  
11 to Wilkes Artis. Mr. Steve Sher was employed there.  
12 Just setting out for everyone's benefit what is an FAR  
13 and what isn't. We have again the same person  
14 explaining the perimeter wall method.

15 Then we have the affidavit which explains  
16 now this average grade plane method which apparently  
17 based on the testimony of Norman Smith and Ms.  
18 Ogunneye hasn't been in use by the Zoning  
19 Administrator for a while. They have adopted the  
20 perimeter wall method to resolve even in cases where  
21 you don't know exactly what the adjacent grade is.

22 The second document I have submitted is an  
23 architectural drawing using the strict letter of Mr.  
24 Fahey's affidavit and applying it to this case. The  
25 crucial difference between the architect's drawing

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1 that we've submitted to you today and the drawing that  
2 was prepared by Mr. Hawkins is where is the rear grade  
3 of the building.

4 We believe that Mr. Hawkins made a serious  
5 error in his calculation by drawing that line all the  
6 way to the back of the building at the first floor  
7 level as opposed to the lower level. The lower level  
8 does not extend all the way back. It's a much smaller  
9 floor plate than the others. If you draw that line to  
10 the back of the basement wall and do the grade plane  
11 average, the entire basement -- the average ceiling  
12 height is less than four feet out of ground so it's  
13 all cellar space so none of it would count toward FAR.

14 We are even in a better position using the  
15 average grade plane method where the FAR calculation  
16 is actually reduced from the number that we submitted  
17 originally. To the extent that you want that  
18 information and it helps you in making your decision,  
19 I would ask that you accept it into the record.

20 But even using the perimeter wall method,  
21 I think that is a valid approach to this. The Zoning  
22 Administrator exercised no abuse of discretion in  
23 choosing that methodology. Again, that is a decision  
24 that is up to the Zoning Administrator.

25 While the Board of Zoning Adjustment is

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1 the final arbiter on what that interpretation is, as  
2 long as you have something reasonable before you and  
3 the regulations aren't clear and it's not written down  
4 anywhere, what is the public supposed to do? So you  
5 have to rely on what the Zoning Administrator tells  
6 you to do. Otherwise, it's a mess and we end up here  
7 trying to sort it out and hopefully we can get it  
8 straight for everyone for all future time.

9 As far as the attic space is concerned, it  
10 seems a little preposterous to me and far fetched and  
11 overreaching to say that a sliver space that you can  
12 barely reach your hand into is an attic space under  
13 the interpretation that Mr. Hawkins has presented.  
14 It's not an attic space. The attic space is what is  
15 shown in the drawings and what was calculated by the  
16 Zoning Administrator and Mr. Smith as attic space.

17 There is a whole discussion on whether or  
18 not this is a structural member and we got into a  
19 whole technical discussion on the load bearing walls  
20 and the structural bracing and wind shear and what may  
21 happen, what might buckle, and whether this is  
22 redundant and whether it's not redundant. Bottom line  
23 is it is a structural member. It serves the function.

24 Mr. Hawkins may think it's redundant and  
25 unnecessary. Even the client may think it's redundant

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1 and unnecessary. In this case it isn't. They believe  
2 it is actually required. When a client is faced with  
3 two opinions of architects, "Yes, I think these are  
4 required structural members. The collar ties are  
5 necessary," why wouldn't you have the choice of  
6 putting them in as structural members? Why are we  
7 parsing the rules and letters of the Zoning  
8 Regulations to this tortured extent? It's a contorted  
9 interpretation.

10 We note that the attic space is meant for  
11 storage space. What some future owner might do with  
12 removing them, the architect here thinks that it would  
13 be a problem for the structural integrity of the  
14 building. It may not have an immediate collapse but  
15 that's something that in his professional opinion he  
16 believes they are necessary structural members.

17 So to the extent that the lower level is  
18 the cellar under the average grade plane method, or  
19 under the perimeter wall method that only the front  
20 portion counts toward the FAR were under. I would  
21 also point out that when you look at the adjacent  
22 finished grade, if you look at the street scape of  
23 Belmont, everything is bermed.

24 The property immediately to the east has a  
25 berm that makes that lower level completely

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1 underground. It's a cellar. This particular property  
2 had it carved out but you have an indication right  
3 next door that this really is a bunkered in space,  
4 that it is below grade. That's why the perimeter wall  
5 method works in that case because it's just that part  
6 that extends out the front bay and the few feet in  
7 front that makes it count towards FAR. Again, either  
8 one you pick we're fine.

9 The next difficult issue in order of  
10 ranking in my mind is the roof structure issue. We  
11 had Mr. Oberlander testify today and submit the  
12 transcript from the NCPC proceeding. I had a chance  
13 to review it and I don't see anything in there that  
14 dissuades me from the belief that the Zoning  
15 Commission had a choice between using exterior walls  
16 and perimeter walls as it was presented to them.

17 In fact, in Mr. Oberlander's testimony in  
18 that transcript it says it is a case between exterior  
19 walls, choice of language between, I think, building  
20 lot line, perimeter wall, and what's in the Height  
21 Act. We decided to go with the Height Act with  
22 exterior walls. They asked him why and he said,  
23 "Because of what it looks like from the street." He  
24 is questioned about it in the transcript.

25 It goes back a little bit but we never get

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1 to the issue of if it's supposed to be consistent with  
2 the Height Act and all the things they presented in  
3 their other submissions, it shows that the Height Act  
4 deals strictly with street or alley views, I don't  
5 understand what the issue is here, that the setback is  
6 just from the front and rear lot lines.

7 But it's further my position and our  
8 position, and I think it's absolutely correct, we're  
9 not talking about perimeter walls. We're talking  
10 about exterior walls. Again, they had a choice to  
11 change it to perimeter and they chose not to and that  
12 is significant in any book of law and statutory  
13 construction in rejecting certain words and accepting  
14 others.

15 The third issue with regard to height, I  
16 believe, again, the submission by Mrs. Hargrove just  
17 now supposedly all these buildings that have requested  
18 exceptions to the height limit, I think it further  
19 supports our case that the Board of Zoning Adjustment  
20 and the Zoning Commission have taken note that you can  
21 have roof structures such as railings or certain other  
22 elements that can exceed the building height level.

23 You asked the question and I'm not sure  
24 how it was answered. I need to go back to review each  
25 of these cases myself whether or not they are asking

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1 for an exception from the maximum 18'6" height of the  
2 penthouse. I think that might have been your  
3 question. I don't know that ever could happen so I  
4 want to go back and read those cases.

5 I do know, as she mentioned, I have the  
6 three precedents and that's 2099 Pennsylvania Avenue,  
7 which is 130 feet under the Height Act and it's got a  
8 beautiful roof deck that I was up to just the other  
9 week with a railing for safety purposes that exceeds  
10 the 130-foot height.

11 Again, the other example I cited was 1667  
12 K Street. Again, 135-foot building under the Height  
13 Act and, again, railing, roof deck. The third one I  
14 mentioned was 400 Mass. Avenue that is a BZA case and  
15 they did ask for roof structure relief under that BZA  
16 case but it was for roof structures of unequal height.

17 I believe the other one was two separate  
18 roof structures but it didn't deal with the terrace,  
19 the trellis, and the roof deck that's up there that  
20 was plainly shown on all the drawings that exceeds the  
21 maximum height under the 1910 Height Act. So what is  
22 a client supposed to do? What is a developer supposed  
23 to do when they see these examples?

24 They see the BZA approve these things and  
25 they are allowed to rely on these interpretations that

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1 they are allowed to build a roof structure, a railing  
2 and deck, beyond the height limit. Again, it defies  
3 logic. There we have in Section 411.1 a whole host of  
4 things that you are allowed to have, not allowed to  
5 have on the roof.

6 I go back to the example I used earlier  
7 about the pool that is clearly allowed. We know that  
8 they have to have safety railings around a pool. Yet,  
9 Section 411 doesn't place any restriction on the  
10 height or what kind of parameters there are. We know  
11 it has to be there and yet they don't speak to it.

12 I think it's logical that such safety  
13 features are not considered roof structures for  
14 purposes of the Height Act or for the Zoning  
15 Regulations they are permitted. We come within the --  
16 there is no violation of the Height Act or the Zoning  
17 Regulations under this. Again, the Zoning  
18 Administrator did not abuse its discretion in coming  
19 to that conclusion.

20 So are the three important issues we have,  
21 height, FAR, and setbacks. We clearly meet them.  
22 DCRA says we meet them. The Zoning Administrator says  
23 we meet them. Other case law says we meet them.  
24 Other precedent that's come to the Board. Other  
25 matter of right buildings say they are permitted.

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1 Whether you use the perimeter wall method, average  
2 grade plane, we're okay on everything. I would urge  
3 you to deny the appeal.

4 I guess just one more side note. We  
5 submitted a memorandum on whether or not the 1910  
6 Height Act applies or whether or not you have  
7 jurisdiction to enforce it. We say you don't but I  
8 won't go into that other than it's been submitted for  
9 the record for your review. Again, I ask that you  
10 deny the appeal and allow the building permits to  
11 proceed as issued. Thank you.

12 CHAIRPERSON GRIFFIS: Thank you very much.

13 MR. HARGROVE: Mr. Chairman, I think I  
14 need your guidance. I had not anticipated that this  
15 much time would be taken up and I'm aware of your  
16 injunction earlier that we are all going to turn into  
17 pumpkins at some hour which I think you said was 6:00.

18 CHAIRPERSON GRIFFIS: How much time do you  
19 need?

20 MR. HARGROVE: It's going to take more  
21 than 15 minutes.

22 CHAIRPERSON GRIFFIS: How much time do you  
23 suppose?

24 MR. HARGROVE: Twenty to 25 would be  
25 adequate if that's going to be satisfactory. As a

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1       sweetener, I will agree to eliminate the discussion  
2       which we had intended to include on the jurisdiction  
3       question because there are issues that have been  
4       raised which we have not had an opportunity to  
5       address. I assume that it would be satisfactory to  
6       submit a supplemental memo on those additional  
7       jurisdiction issues in lieu of any discussion.

8                   CHAIRPERSON GRIFFIS: Certainly. I think  
9       that would be fine. I'm not sure what you haven't  
10      been able to address but at this point it's probably  
11      going to be more -- you see that? I'm losing my  
12      vocabulary already -- more powerful for the Board in  
13      written submission form than it might be just orally  
14      this evening. We can certainly keep that open. I say  
15      we go. We're here. I think we can -- let's go until  
16      this is over but we're anticipating about 20, 25  
17      minutes.

18                   MR. HARGROVE: Thank you, Mr. Chairman.  
19      Let me just note on the jurisdiction question that we  
20      have submitted our initial memorandum on the  
21      jurisdiction question. Subsequently Montrose  
22      submitted a memorandum taking the position which we  
23      had not addressed that only the Corporation Counsel  
24      has jurisdiction or the authority to deal with matters  
25      involving enforcing the Height Act. Subsequent to

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1 that DCRA submitted its own memorandum essentially  
2 agreeing with our position and we would like the  
3 opportunity to address the position that Montrose has  
4 taken in its memorandum. We plan to do so as you  
5 suggested.

6 CHAIRPERSON GRIFFIS: Okay. I think you  
7 meant the Zoning Administrator has the authority, not  
8 Corporation Counsel? I'm not understanding.

9 MR. HARGROVE: The position, as I  
10 understand it, and they can speak for themselves, of  
11 course, that Montrose took is that only the  
12 Corporation Counsel under the provision of the Height  
13 Act which gives him jurisdiction or authority to bring  
14 an action against a violator of the Height Act --

15 CHAIRPERSON GRIFFIS: Oh, I see.

16 MR. HARGROVE: -- has authority to enforce  
17 the Height Act.

18 CHAIRPERSON GRIFFIS: Okay. Okay. We'll  
19 review that. Good.

20 MR. HARGROVE: Let me move then directly  
21 into the substantive issues of the case beginning with  
22 the roof deck. The issue relating to the roof deck is  
23 whether the Zoning Administrator has discretion to  
24 allow additional roof structures that are not  
25 enumerated in the Height Act or the Zoning Regulations

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1 as exceptions to the Height Act limits.

2 We believe that the Zoning Administrator  
3 lacks the discretion to add roof decks to the list of  
4 roof structures permitted as exceptions to the Height  
5 Act. The Zoning Regulations allow only for  
6 statutorily enumerated roof structures including  
7 penthouses and closing elevators, plus penthouses for  
8 mechanical equipment and antennas, an extension of the  
9 penthouse provision by analogy on the basis of the  
10 1953 memorandum of law of the Corporation Counsel  
11 which was referred to earlier.

12 That opinion reasons that mechanical  
13 penthouses are necessary to the functioning of the  
14 building and are not intended for human occupancy and,  
15 therefore, are consistent with the Height Act.

16 Consequently, air conditioning equipment,  
17 heating equipment, and other mechanical equipment  
18 necessary for the functioning of the building can  
19 properly be included in a penthouse and be consistent  
20 with the Height Act. That memo also points out,  
21 however, that not only must any such additional roof  
22 structure be essential for the functioning of the  
23 building, it must not be intended to human habitation.

24 Consequently, there is no law or  
25 regulation authorizing the Zoning Administrator of

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1 this Board, or the Zoning Commission for that matter,  
2 to extend the list of permitted roof structures to  
3 include structures such as a roof deck and railing  
4 which are intended for human occupancy. That is based  
5 on the Height Act and is reinforced by the  
6 interpretation that was given by Corporation Counsel  
7 in 1953.

8 In any case, just to repeat, a roof deck  
9 and railing whether in the form of an interpretation  
10 of the Zoning Regulations, or as a new regulation  
11 would be barred by the Height Act since it is not  
12 necessary for building functioning. It is clearly  
13 intended for human occupancy.

14 Now, we may readily dismiss the argument  
15 on this point by DCRA which was reiterated this  
16 afternoon that under 411.17 of the Zoning Regulations  
17 the roof deck is permitted because the deck alone is  
18 not more than four feet high. The reason is that  
19 there is no such exception in the Height Act and this  
20 is a Height Act case. The roof deck exceeds the  
21 height limit of the Height Act so the Zoning  
22 Regulation exception simply is inapplicable.

23 Similarly, we may dismiss the argument  
24 that the roof deck railing height is not to be counted  
25 in the height of the structure on the ground of

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1 Section 2503 which happens to apply only to structures  
2 on the ground. Now, Montrose's counsel has cited a  
3 number of projects where the Zoning Administrator, and  
4 in one instance this Board, allegedly approved roof  
5 decks that exceeded the Height Limit and the Height  
6 Act.

7 The suggestion is that, therefore, the  
8 present roof deck should be allowed. Some of these  
9 cases were enumerated again by counsel for Montrose  
10 just a few minutes ago. Some of these we have not  
11 been able to find any associated BZA case.

12 In any event, Montrose has supplied no  
13 evidence that the property owners or the Zoning  
14 Administrator in any of these cases disclosed to the  
15 Board where there were BZA cases that the roof deck  
16 involved a Height Act issues. This is the point that  
17 Mrs. Hargrove was making in her testimony.

18 There is no evidence in these cases where  
19 there were BZA cases that the Zoning Administrator  
20 informed the Board or that the applicant informed the  
21 Board that the roof deck would result in excessive  
22 height under the Height Act, or that the Board had any  
23 intention of interpreting the Height Act so as to  
24 permit such a structure to exceed its limit or to  
25 sanction it under the Height Act in any way.

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1           This argument on the part of Montrose is  
2 tantamount to saying that running a red light is not  
3 against the law just because you've never been caught  
4 doing it. It is sadly the case, as Mrs. Hargrove's  
5 testimony indicated, that there are a number of  
6 buildings in this city, including large commercial  
7 projects that are in violation of the Height Act in  
8 various ways. A number of these involve proceedings,  
9 fortunately in past decades, before this Board.

10           An examination of the transcripts and the  
11 orders in these proceedings incredibly discloses a  
12 disturbing scarcity of mention either by the property  
13 owners or, even worse, by the permitting authorities  
14 of the fact that the proposed project involves issues  
15 under the Height Act.

16           They appear uniformly, or almost  
17 uniformly, to be proceeding under the Zoning  
18 Regulations alone. The Height Act is the perpetual  
19 absent guest at the wedding in these proceedings. The  
20 one BZA case cited by Montrose earlier, and reiterated  
21 this afternoon, seems to fit into that category  
22 exactly. That is the 400 Massachusetts Avenue case.

23           Now, in the present case the record of the  
24 permit approval discloses that the zoning checkoff  
25 ignored the Height Act approving plans that plainly

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1 exceeded the Height Act limit. In view of the  
2 apparent reluctance of the permitting authorities in  
3 all these past cases to interject Height Act issues  
4 when they should have been properly before the Board  
5 or other decision making authority.

6 While it pains us to suggest it, it seems  
7 no coincidence that the checkoff, as the record will  
8 disclose, was performed by a recent former Zoning  
9 Administrator. There is a mindset here which needs to  
10 be corrected and that's our suggestion.

11 We respectfully suggest so far as its  
12 implication for this case is concerned that such cases  
13 as we have described are without value as legal  
14 precedent as regards the requirements of the Height  
15 Act and interpretation of the Height Act. In our  
16 legal system in the District of Columbia it is  
17 decisions by authorized tribunals on properly and  
18 explicitly presented issues and not simply fed a plout  
19 plea on the ground that govern.

20 Let me turn to the roof structure setback  
21 issue. It's agreed that the penthouse roof structure  
22 is not setback properly or is not setback in  
23 accordance with the one-to-one setback requirement for  
24 all four walls but only from the front and rear walls.

25 The Zoning Administrator takes the position that

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1 there is no need for a penthouse to be set back from  
2 the side walls where these walls are wither party or  
3 lot line walls.

4           However, as we have argued in this  
5 memorandum on the Height Act that we presented  
6 earlier, this view simply cannot be squared with the  
7 regulatory history of Section 400.7(b). Prior to 1958  
8 the Zoning Regulations required a setback from all  
9 exterior walls. For reasons that I'm unfamiliar with,  
10 in 1958 someone persuaded the Zoning Commission to  
11 change that rule to require setback from all lot  
12 lines.

13           Now, the lot lines criterion did have the  
14 effect of requiring setback from the sidewalls of the  
15 row houses but it was widely deviant from the  
16 requirements of the Height Act because of the fact  
17 that the lot lines and the walls are not always in the  
18 same vertical plane. So in 1984 a case was proposed  
19 by the Zoning Commission to reconsider the rules  
20 governing roof structures and that is the case  
21 eventuating an order 476 which Mr. Oberlander  
22 testified to.

23           Now, counsel for Montrose has completely  
24 misconstrued this important and, indeed, definitive  
25 Zoning Commission order. As detailed in Mr.

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1 Oberlander's testimony, the NCPC played, as it is  
2 required to play by the Zoning Act, as a matter of  
3 fact, a role, an important role, in the deliberations  
4 to the Zoning Commission on the issue and it insisted  
5 successfully that the Zoning Regulations be made  
6 consistent with the Height Act.

7 The Zoning Commission's original proposal  
8 was to require a setback from the perimeter of the  
9 roof. They changed that later to a lot line proposal  
10 and there were other less restrictive proposals before  
11 them. The NCPC took the position that the perimeter  
12 of the roof and the exterior walls criteria were of  
13 the same intent and effect and both the NCPC and the  
14 Zoning Commission exhibited that in their use of these  
15 terms in the record of the order.

16 What the Zoning Commission did ultimately  
17 at the insistence of the NCPC that their order be  
18 consistent with the Height Act was to revert to the  
19 original language, the pre-1958 language, which had  
20 used the language of the Height Act itself. It is  
21 clear from that record that both agencies regarded  
22 perimeter of the roof and exterior walls as having the  
23 same intent and effect.

24 Now, the current Zoning Administrator's  
25 position is that there is no need for a setback from

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1 side walls if they are party walls. We believe that  
2 the Zoning Commission has -- the Zoning Administrator  
3 has simply exceeded his authority in that regard and  
4 we regard this regulatory history as dispositive on  
5 the point.

6 Now, in connection with this last point,  
7 as you have heard discussed by both DCRA and the  
8 intervenor, DCRA has argued that these side walls are  
9 not exterior because the adjacent property owners  
10 might some day build up to the same height as the  
11 building now in question. There is simply no basis  
12 for this position in the Height Act or the Zoning  
13 Regulations.

14 Mrs. Hargrove has already noted that at  
15 least one of the existing adjacent structures has  
16 already exhausted its FAR at its present height and  
17 could not be built up and that lot occupancy and FAR  
18 requirements are often already exceeded in the older  
19 built-up neighborhoods.

20 Beyond this consideration which has to do  
21 with the future conduct and exercise of legal rights  
22 by adjacent property owners, as a matter of law it is  
23 the present characteristic of the building at 1819  
24 Belmont Road, the subject building of this case, that  
25 govern and not some speculative conjecture as to the

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1 future configuration of adjacent properties.

2 Why is this? It's because we are dealing  
3 with legal provisions here in the Height Act and in  
4 the Zoning Regulations which use a term "exterior  
5 walls" and the question is what is the meaning of that  
6 term? This is not a term which has legal content.

7 This is a term which is confirmed in its  
8 applicability by looking at the configuration of the  
9 wall. You inspect the wall physically. It has  
10 nothing to do with the legal status of adjacent  
11 properties. It has even less to do with some  
12 speculative conjecture as to the future conduct of  
13 adjacent property owners in exercising their legal  
14 rights.

15 The drafters of these provisions both in  
16 the Height Act and in the Zoning Regulations could  
17 well have tied the determination of exterior walls,  
18 that is, the setback requirements, to future conduct  
19 in the exercise of legal rights by adjacent property  
20 owners.

21 They could easily have done that. They  
22 chose not to. There is simply no basis in the  
23 provisions for exterior walls for determining that it  
24 is in anyway relevant what a future property owner  
25 might do in the exercise of that future owner's

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1 property rights.

2           Finally, let me turn to the FAR issues. I  
3 appreciate your patience. They concern first the so-  
4 called attic. The Zoning Regulations, as you already  
5 heard, provide that gross floor area does not include  
6 attic space. That provides something called  
7 structural head room of more than six feet, six  
8 inches.

9           The developer's plan label the top floor  
10 of the building as an attic and provided for a ceiling  
11 mounted not on roof rafters but on joists and so-  
12 called collar ties positioned below the roof rafters  
13 approximately three-quarters of an inch less than the  
14 6'6" cutoff point. On this basis Montrose excluded  
15 the entire top floor of the building from FAR  
16 inclusion.

17           We believe there are two fatal flaws in  
18 this position. First, the top floor of this building  
19 is not an attic. It does not meet the dictionary  
20 definition of attic that the Zoning Regulations make  
21 applicable, as you know. Or, for that matter, the  
22 definition found in the Bilco Construction Code both  
23 of which describe an attic with structural  
24 specificity.

25           The part of 1819 Belmont Road that meets

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1 these definitions like that of a number of other  
2 buildings in the surrounding area is the small space  
3 between the roof rafters that was marked by an X on  
4 one of the exhibits to Don Hawkins supplemental  
5 statement.

6 Now, Montrose has subjected that is too  
7 small to be habitable. What they have not done,  
8 however, is point us to any requirement in the Zoning  
9 Regulations that a building must have a habitable or  
10 usable attic. The fact that they have chosen to  
11 construct the building in such a way as to have a  
12 small sliver of space as an attic that is not usable,  
13 as have many buildings on the very block in question,  
14 does not affect the conclusion that this space is an  
15 attic and that the space labeled an attic for  
16 extraneous reasons is not an attic.

17 As to whether a building can have two  
18 attics, somebody raised that question, that would seem  
19 to us to be a matter of architectural ingenuity which  
20 it is not necessary for the Board to judge in this  
21 case. All the Board needs to do in this case is to  
22 determine that anything that is labeled an attic is  
23 really an attic and that is not the case with the plans  
24 for this project.

25 It is not acceptable, we would suggest,

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1 for a property owner to ignore the plainly defined  
2 meaning of terms in the Zoning Regulations to treat  
3 them as infinitely elastic just in order to achieve  
4 the benefit of greater density. We hope that the  
5 Board will exercise its responsibility to see that is  
6 not done.

7 In response to questions from the Board as  
8 to the purpose of this attic, Montrose replied that a  
9 competitive apartment market required two interior  
10 space such as that found at the front of the fifth  
11 floor. This is somewhat a curious argument because  
12 with a little reflection you can see that the entire  
13 fifth floor and not simply the space at the front  
14 could have been rendered two stories simply by doing  
15 away with the attic.

16 The presence of the attic has nothing to  
17 do with presenting vaulted ceilings that Montrose says  
18 are necessary because of market demand. Montrose also  
19 suggested that the attic would need a market demand  
20 for storage space, and I believe counsel referred to  
21 that possibility again this afternoon.

22  
23  
24  
25  
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E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

1  
2  
3 Can anyone seriously believe that this  
4 space, amply lit by windows commanding a view of  
5 distant vistas served by full compliment of electrical  
6 outlets accessed by a full staircase, that this space  
7 is going to be marketed as some sort of garrick where  
8 you squirrel away your old tax records or your  
9 grandma's old victrola record player. Can anyone  
10 seriously believe that this so-called attic space was  
11 not designed simply to maximize top-end marketable  
12 living space in this penthouse apartment?

13 Now, the second fatal flaw in this  
14 treatment of the attic is quite independent of the  
15 first. Either one of them is fatal in our judgment.  
16 Even if the top floor were an attic, it would have to  
17 be included in the FAR since it does not provide  
18 structural head room less than 6'6". Such structural  
19 headroom could easily have been provided by mounting  
20 the ceiling on the roof rafters. Nothing to prevent  
21 that.

22 The only thing preventing that is the FAR  
23 requirement that we are trying to avoid as developers  
24 of this property. If you mount the ceiling on the  
25 roof rafters, you raise the ceiling above the magic

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1 6'6" level and you have to count the top floor of the  
2 building in FAR. So the ceiling was dropped and it's  
3 mounted on joists and something called collar ties.

4 Now, presumably all except these joists  
5 are not structural. I'm sorry to say this but it  
6 seems to me that you do have to take these terms  
7 seriously, particularly since that is in the very  
8 definition of an includable attic in the Zoning  
9 Regulations, notwithstanding the suggestion by  
10 Montrose counsel that this was all a mumbo jumbo in an  
11 effort at ofiscation. The requirement is a structural  
12 head room.

13 It is the collar ties and not the joists,  
14 of course, that Montrose relies on in their effort to  
15 establish the structural character of the top floor  
16 head room. We have placed expert testimony in the  
17 record to the effect that these collar ties are not  
18 merely redundant. We have placed testimony in the  
19 record that they are not merely redundant structural  
20 members but, in fact, they perform no significant  
21 structural function at all.

22 While Montrose's architect asserted that  
23 the collar ties in the ceiling provide structural  
24 support, he also conceded himself that they could be  
25 removed. That being the case, the ceiling does not

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1 provide structural head room and the top floor must be  
2 included in FAR but I would like to be clear on one  
3 point. I'm sorry I've extended this so long. This is  
4 in response to a question raised by one member of the  
5 Board.

6 Let us assume for argument sake that the  
7 structural ties do perform a structural function  
8 contrary to Mr. Hawkins testimony, but that they are  
9 simply redundant. That is to say unnecessary. If you  
10 take them down, the building is not going to fall  
11 down. Our position is that in that case they should  
12 still be disallowed.

13 It's one thing to over engineer a building  
14 just because you want to go the extra structural mile.

15 It's quite another thing to over engineer a building  
16 simply to evade the requirements of the Zoning  
17 Regulations. We think that is clearly the case here.

18 Finally, the basement. Mr. Hawkins'  
19 testimony has shown that the entire ceiling of the  
20 basement is more than four feet above grade and should  
21 be included in FAR. Most of the basement floor has  
22 been excluded from FAR using the so-called perimeter  
23 method.

24 Now, our position is that even if you  
25 accept the notion that a portion of the basement might

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1 be excludable from FAR because the building is on a  
2 sloping grade, the method employed by DCRA in later  
3 years, the so-called perimeter method, simply makes no  
4 sense.

5 Now, cutting to the chase here, it seems  
6 now that Montrose has accepted that proposition that  
7 the method which was applied in this case initially to  
8 calculate the includable FAR in the basement is  
9 arbitrary. There is no relationship to the actual  
10 grade of the lot on which the building sits. And it,  
11 moreover, bears no appropriate relationship to the  
12 size of the floor area.

13 Mr. Hawkins provided calculations  
14 demonstrating this we think conclusively. We don't  
15 know where this method came in after the departure of  
16 Mr. Fahey or others from the Zoning Administration who  
17 followed the grade plane method that Mr. Fahey's  
18 memorandum describes.

19 In any event, it is beyond irrational.  
20 It's wacky. And to use the terms that counsel from  
21 Montrose has used, it does not amount to a reasonable  
22 interpretation of ambiguous Zoning Regulations by the  
23 Zoning Administrator. In order for this Board to be  
24 in a position to accord the difference that usually is  
25 appropriate for it to accord to the Zoning

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1 Administrator in the interpretation of the Zoning  
2 Regulations, the practice that you are considering  
3 must first be a consistent practice over years and,  
4 secondly, it must be rational.

5 At a minimum, Mr. Fahey's testimony has  
6 shown that this is not a consistent practice, this  
7 perimeter method. Indeed, Ms. Ogunneye seemed to  
8 state that they do not consistently apply this method  
9 in various zoning districts but only the Zoning  
10 Districts that include the one involved in this case.

11 Beyond that, not only is it not  
12 consistent, it is simply not a rational method. It  
13 produces bizarre results which in this case happen to  
14 work to the extreme advantage of the developer whose  
15 natural inclination is to minimize includable FAR as  
16 much as possible.

17 But, as I say, it appears that Montrose  
18 has accepted the proposition that the method employed  
19 by the DCRA, by the Zoning Administrator, is not a  
20 rational one and has sought to establish by using the  
21 grade plane method that none of the basement need be  
22 included in FAR.

23 The problem with that if you have the  
24 drawings supplied is the following. As Mrs. Brown  
25 indicated, the so-called grade plan has been drawn not

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1 over the entire footprint of the building but only to  
2 the back of the basement thereby predictably producing  
3 an outcome in which all or most of the basement is  
4 excludable from FAR and is a cellar, or at least some  
5 portion of it.

6 This misses the very point of the grade  
7 plane method as expounded in Mr. Fahey's memo which is  
8 to approximate the actual grade of the ground on which  
9 the building sits. If one extrapolated from this  
10 grade plane to the back of the footprint of the  
11 building, you would have a grade plane absurdly  
12 located maybe 10 feet above the actual grade.

13 Admittedly, it's convenient to draw the  
14 grade plane in this way if you are trying to achieve  
15 the effect that is being sought here, but it misses  
16 the whole point of the grade plane method which is, as  
17 I say, to approximate what the grade would look like  
18 if you were able to see the grade because you had no  
19 obstructing buildings on either side.

20 Our conclusion, therefore, is that both  
21 the determination of includable FAR on the basement  
22 and the includable determination on the attic are  
23 errors on the part of the Zoning Administrator and the  
24 permits to the extent of those decisions should be  
25 revoked. I thank you for your patience.

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1 CHAIRPERSON GRIFFIS: Thank you very much.  
2 We appreciate your patience also in this whole entire  
3 processing. Very well. This would then conclude.

4 MR. HARGROVE: Mr. Chairman, can I ask one  
5 question? The building in question is proceeding  
6 toward completion I assume. The question is in the  
7 Board's view what is to be done with respect to a  
8 certificate of occupancy during the pendency of this  
9 case before the Board of Zoning Adjustment?

10 CHAIRPERSON GRIFFIS: What is our view?

11 MR. HARGROVE: Yes.

12 CHAIRPERSON GRIFFIS: I think our view  
13 would be pretty clear. Unfortunately, we wouldn't be  
14 able to have a view on it. I think it's outside of  
15 our jurisdiction. Our jurisdiction is specifically  
16 attended to the appeal. Obviously, the appeal and the  
17 outcome of the appeal is going to impact or affect  
18 what does or doesn't happen with a certificate of  
19 occupancy. I don't think there is anything outside --  
20 briefly thinking about it, there is nothing that this  
21 Board can do with regards to any other processing.  
22 Well, I don't -- maybe that is as clear as I should  
23 leave it. Do you have other questions?

24 MR. HARGROVE: No, thank you, Mr.  
25 Chairman.

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1 CHAIRPERSON GRIFFIS: Very well. Let's  
2 check the schedule then. I think we can hold the  
3 first session, I believe it's the 8th of June, for our  
4 decision making on this. Yes, 8th of June. That is  
5 our public meeting time. Let's run through additional  
6 submissions as we had them come up today. Findings  
7 and conclusions, Ms. Bailey.

8 MS. BAILEY: That's what I have, Mr.  
9 Chairman. The findings of fact and conclusion of law  
10 from the parties. DCRA also requested to respond to  
11 the statement of Mr. Fahey. I think Mr. Hargrove had  
12 also requested to provide a supplemental memo on the  
13 jurisdictional issue.

14 CHAIRPERSON GRIFFIS: Right.

15 MS. BAILEY: So those are the three things  
16 that I have, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Excellent. Thank  
18 you very much. Does anyone else have any others that  
19 were listed that I have missed or Ms. Bailey missed?  
20 Very well. Then I would suggest that we have them all  
21 at the appropriate time.

22 MS. BAILEY: May 25th. Would anyone have  
23 opposition to filing the documents by May 25th?

24 CHAIRPERSON GRIFFIS: May 25th?

25 MS. BAILEY: Yes, sir. All of the

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1 documents.

2 MS. BROWN: To the extent that there are  
3 going to be supplements from DCRA and the supplemental  
4 memo, we would need to be able to incorporate them  
5 into the findings of fact.

6 CHAIRPERSON GRIFFIS: Can you turn your  
7 mike on?

8 MS. GILBERT: DCRA should be able to  
9 respond within two weeks to the Fahey --

10 CHAIRPERSON GRIFFIS: So by the 11th of  
11 May?

12 MS. GILBERT: That's fine.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. HARGROVE: We can submit our  
15 supplemental memo on the jurisdictional issue by that  
16 time as well.

17 CHAIRPERSON GRIFFIS: Okay. So we'll have  
18 the supplemental submissions by the 11th. We'll have  
19 final findings and conclusions on the 25th. We will  
20 see you all -- you will hear from us on the 8th. Make  
21 sense? Any questions procedural? Anything else?  
22 Everyone clear? Okay.

23 Anything else we need to do this  
24 afternoon? I don't think I can stand up. I've been  
25 sitting for too long. You want to take up the GW case

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1 this afternoon, Ms. Miller?

2 VICE CHAIR MILLER: I think Ms. Hargrove  
3 is going to give us -- okay. We got it directly.

4 CHAIRPERSON GRIFFIS: I don't know if you  
5 want that directly.

6 VICE CHAIR MILLER: Not supposed to get it  
7 directly.

8 CHAIRPERSON GRIFFIS: Give it to staff and  
9 they can put it around. I believe that is the cite of  
10 the case so we should obviously make a note or a copy  
11 of that to give everyone that's here so that we don't  
12 appear to be receiving notes personally and not  
13 putting it in the record. That will go in the record.

14 We will get a copy for everybody before it goes with  
15 that cite.

16 Any other questions or clarifications?  
17 Everybody clear?

18 MS. BROWN: For the supplemental memo on  
19 the -- I just want to make clear that I understand  
20 that it's limited to the narrow issue of responding to  
21 the brief that I submitted on the jurisdictional issue  
22 of the 1910 Height Act and the enforcement of  
23 Corporation Counsel, that narrow issue. That's it.

24 MR. HARGROVE: That's our intention.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. BROWN: Thank you.

2 CHAIRPERSON GRIFFIS: Yes. I appreciate  
3 that. I think we need to be as specific as possible  
4 in terms of what is going to be submitted. I think we  
5 have ample information in the record to do a full  
6 deliberation on. Okay. Any other questions?  
7 Anything else I can answer? Very well. I appreciate  
8 you all being patient with us all afternoon. Go and  
9 enjoy the rest of the nice evening and this will then  
10 adjourn the afternoon session of 20 of April, 2004.

11 (Whereupon, at 6:21 p.m. the hearing was  
12 adjourned.)

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