

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

This transcript constitutes the minutes from the public hearing held on Tuesday, September 14, 2004.

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 2:12 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS,	Chairperson
RUTHANNE G. MILLER,	Vice Chairperson
CURTIS L. ETHERLY,	Board Member
JOHN A. MANN, II,	Board Member
JOHN PARSONS,	Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY,	Deputy Secretary
BEVERLEY BAILEY,	Zoning Specialist
JOHN NYARKU,	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE,	Office of Planning
STEVE COCHRAN,	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

C-O-N-T-E-N-T-S

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS	8
 <u>APPEAL OF SOUTHEAST CITIZENS FOR SMART DEVELOPMENT, INC.</u>	
<u>17121 ANC-6B</u>	8
 <u>APPLICATION OF JANET MANN:</u>	
<u>17201 ANC-3D</u>	11
 WITNESSES:	
JANET MANN	12
LARYSA KURLYAS	17
 <u>APPLICATION OF ROBIN SNYDER AND BRUCE LOUIE:</u>	
<u>17203 ANC-6B</u>	25
 WITNESSES:	
ROBIN SNYDER	26
GARY PETERSON	60
BRUCE LOUIE	69
DAVID KACAR	71
HANK TEUTON	74
 <u>APPLICATION OF FIRST WASHINGTON EQUITIES LLC</u>	
<u>17202 ANC-6C</u>	95
PAUL TUMMONDS, ESQ.	96
SHAW PITTMAN	
2300 N Street, N.W.	
Washington, D.C. 20037	
 WITNESSES:	
ANDREW P. LOEWINGER	104
MICHAEL ALAN FINN	105
 <u>APPEAL OF ADVISORY NEIGHBORHOOD COMMISSION 4A</u>	
<u>16839 ANC-4A</u>	137
 WITNESS:	
JOHN CHAGNON	138
ADJOURN	150

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

P R O C E E D I N G S

2:12 P.M.

MR. GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the Board of Zoning Adjustments of the District of Columbia for the 14th of September, 2004. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller; also our esteemed colleague and Member, Mr. Etherly. Representing the National Capital Planning Commission with us this afternoon and for the rest of the year is Mr. Mann, and maybe even longer than that. I shouldn't limit it to a year. Representing the Zoning Commission with us this afternoon is Mr. Parsons.

Copies of today's hearing agenda are available for you. They are located where you entered into the Hearing Room on the wall. Please pick one up and you can see the order of which the cases will be heard this afternoon.

A couple of very important things to go through. I'm going to try to do it very quickly to make up the time of which we've lost so far, however, I would ask everyone to listen with great intent.

First of all, we are recorded, all our proceedings before the Board of Zoning Adjustment. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 are now recorded in two fashions. The most important
2 is the Court Reporter sitting to my right. He is
3 creating the transcript. Everything said in here goes
4 into the official record. Secondly, we are being
5 broadcast live on the Office of Zoning website which
6 allows everyone to sit at home with no shoes on and
7 watch us and see what we do.

8 I ask and tell you all this for several
9 very important reasons. First of all, we will ask
10 everyone to refrain from making any disruptive noises
11 or actions in the Hearing Room as we proceed. I would
12 ask that everyone turn off all their cell phones and
13 beepers at this time and I will go through a couple of
14 important things. Let me get right to those.

15 First of all, in coming forward to testify
16 you will need to fill out two witness cards. Witness
17 cards are available where you entered into the Hearing
18 Room. They're also available on the table in front of
19 us where you'll give testimony. Two cards filled out
20 prior to coming forward, they go to the recorder
21 sitting to my right. When you come forward to speak
22 to the Board, of course, you will need to speak
23 directly into the microphone. The microphone should
24 be on. If you do not speak into the microphone, you
25 will not be on the record and I will have to ask you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to repeat yourself. That should be fairly straight
2 forward.

3 The order of procedure for special
4 exceptions and variances is first we hear from the
5 Applicant and their presentation of their case.
6 Second we hear any Government reports attendant to the
7 application such as the Office of Planning, Department
8 of Transportation and any other attendant agency
9 reports. Third, we'll hear from the Advisory
10 Neighborhood Commission. Fourth, we will hear from
11 persons or parties in support of the application.
12 Fifth, we will hear from persons or parties in
13 opposition to the application. Sixth, finally, we
14 give the Applicant another time to make closing
15 remarks, rebuttal testimony and conclude the hearing
16 for us.

17 Pursuant to Section 3117.4 and 3117.5 we
18 have total jurisdiction on constraining certain time
19 aspects as we get through the hearing. I'm not going
20 to run through all of those because I don't think any
21 hearing this afternoon is going to need to be limited
22 to those times. I will move people along as we get
23 into these and let you know, but the bottom line is
24 everyone is given equitable and equal amount of time
25 so don't worry about running out of time, but I will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 make sure that you stay on point and move things
2 expeditiously.

3 Cross examination of witnesses is
4 permitted by the Applicant or parties in the case.
5 The ANC within which the property is located is
6 automatically a party in a case and obviously
7 therefore afforded cross examination privileges.
8 Again, I will give direction on staying on point of
9 any cross examination questions. It is a very
10 important vehicle and part of our hearing process, so
11 it should -- and we do take it very seriously, but it
12 also needs to stay within the scope of the hearing
13 itself.

14 The record will be closed at the
15 conclusion of the hearing on a case, except for any
16 material that this Board requests and we will be very
17 specific as to what material is to be submitted and
18 when it is to be submitted into the Office of Zoning.

19 After that material is received, of course, it should
20 go without saying the record would then be finally
21 closed and no other information would be accepted into
22 the record.

23 Why is that so important? It's so
24 important because the record is what the Board bases
25 its decisions on and solely on, so anything that you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 want us to look at to deliberate on and to decide on,
2 must be in the record.

3 Moving on, the Sunshine Act requires that
4 this Board conduct all hearings in the open and before
5 the public. This Board may, however, enter into
6 Executive Session, both during or after a hearing on a
7 case. That would be for the purposes of reviewing the
8 record and/or deliberating on the case. This is in
9 accordance with our rules of procedure and the
10 Sunshine Act. The decision of this Board in contested
11 cases, as I've said, must be based exclusively on the
12 record. Therefore, we ask one more thing, that people
13 present today not engage Board Members in conversation
14 today so that we do not give the appearance of
15 receiving information outside of the record.

16 We will make every effort to conclude our
17 afternoon session by 6 o'clock. I don't see any
18 difficulty with making that at this point as we're
19 going to move directly into our published scheduled at
20 this time. However, before calling the first case,
21 the Board must consider any preliminary matters
22 attendant to the Applicants for this afternoon.
23 Preliminary matters such as whether a case will or
24 should be heard today meaning has proper and adequate
25 notice been provided, are there requests for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 continuances or withdrawals or any other preliminary
2 matters attendant to any of the applications. If you
3 are here this afternoon and believe you have a
4 preliminary matter, I would ask that you come forward
5 and have a seat at the table as an indication that you
6 need to address the Board before we proceed further
7 with a case today.

8 Let me say a very good afternoon to Ms.
9 Bailey from the Office of Zoning who is sitting on my
10 very far right; Mr. Moy, in a very striking red tie,
11 closer to me, also from the Office of Zoning, who are
12 frankly keeping us in order and moving us along.

13 Ms. Bailey, Mr. Moy, are you aware of any
14 preliminary matters that the Board should take up at
15 this time?

16 MS. BAILEY: Mr. Chairman, Members of the
17 Board and to everyone, good afternoon. Yes, Mr.
18 Chairman, there is and it has to do with Application
19 No. 17121 of Southeast Citizens for Smart Development,
20 Inc. There is a request for postponement of this
21 case, sir.

22 MR. GRIFFIS: Very well. Are the parties
23 representing that application present today?
24 Fascinating.

25 Very well, we did have that submitted and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the Board has reviewed it. There is no contesting of
2 the request by the property owner. Is that correct,
3 Ms. Bailey?

4 MS. BAILEY: Yes, Mr. Chairman.

5 MR. GRIFFIS: It looks like everyone is in
6 accord. This is actually the second request for a
7 continuance. Previously, it was continued for 60
8 days. Is that also your recollection?

9 MS. BAILEY: Yes, Mr. Chairman.

10 MR. GRIFFIS: And the timing on the
11 request is for an additional 60 days, making it, if my
12 math serves me, a total of a 120 days? Yes, I think
13 that's true.

14 MS. BAILEY: Yes.

15 MR. GRIFFIS: Very well, Board Members is
16 there any discussion, concern?

17 Ms. Miller?

18 MS. MILLER: No concern. I just would add
19 that the reason for this is that it's represented to
20 us that subsequent events due to occur by the end of
21 October may make this appeal moot.

22 MR. GRIFFIS: We've heard that before.

23 Not to be humorous, but hopefully, there is something
24 happening with that. I see no reason and it certainly
25 wouldn't prejudice anyone to continue this a little

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 while. I think the letter also states and adequately
2 so that the fact that they do essentially want to
3 reserve their place or their possibility of further
4 processing on this if that action as proposed and
5 anticipated doesn't come through.

6 Is there any objection to grant the
7 continuance then?

8 Not noting any objection, I take it it is
9 the consensus of the Board to grant the continuance
10 for 60 days.

11 Mr. Moy, do we need to set a time for
12 that?

13 MR. MOY: Mr. Chairman, Staff's position
14 is that given the history of this case, it might be
15 desirable to schedule this case a little longer,
16 possibly in December or January, since they've already
17 come before the Board twice, but that's your decision.

18 MR. GRIFFIS: The second Tuesday in
19 December.

20 MR. MOY: The second Tuesday in December
21 would be the 14th.

22 MR. GRIFFIS: Nice round number. Very
23 well, let's set that for the morning. Anything else
24 attendant to that? Are there any other preliminary
25 matters?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: No, Mr. Chairman.

2 MR. GRIFFIS: Excellent, thank you very
3 much. And I would ask all those present today that
4 are planning or anticipating or even thinking about
5 giving testimony evidence before the Board, if you
6 would please stand and give your attention to Ms.
7 Bailey. She's going to swear you in.

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

12 (Witnesses sworn.)

13 MS. BAILEY: Thank you.

14 MR. GRIFFIS: Excellent. Thank you all
15 very much. We are going to juggle the schedule around
16 just ever so slightly and we are going to call
17 Application 17201 of Janet Mann first. We are then
18 moving on to Application 17203. Excellent. Let's
19 call the first case in the afternoon.

20 MS. BAILEY: Application No. 17201 of
21 Janet Mann, pursuant to 3104.1, for a special
22 exception to allow the construction of a two-story
23 rear addition to a single-family row dwelling under
24 section 223, not meeting the lot occupancy
25 requirements, that's section 403, side yard

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 requirements, section 405, and nonconforming structure
2 provisions, that's subsection 2001.3. The property is
3 located in the R-1-B District at premises 1523 Elliott
4 Place, N.W., also known as Square 1358, Lot 807.

5 (Pause.)

6 MR. GRIFFIS: Excellent, thank you. One
7 thing I think I neglected to say in my opening, you
8 will need to just provide for the record your name and
9 address once while you address the Board and then
10 they'll know who to credit all this important stuff
11 to.

12 So why don't we start with that? There's
13 a button on the base of that, you just turn it on.
14 Perfect.

15 MS. MANN: Okay, my name is Janet Mann and
16 I live at 1523 Elliott Place. Just a correction, I
17 think you said Ellicott, but it's Elliott Place in
18 Washington, D.C.

19 And do I just begin?

20 MR. GRIFFIS: Who is with you?

21 MS. KURLAS: My name is Larysa Kurylas.
22 I'm the associate architect on this project.

23 MR. GRIFFIS: Excellent. Yes?

24 MS. MANN: Okay, I bought my home in 2000,
25 in September of 2000 and I've lived there and I'm a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 tenured professor at Georgetown University, so I plan
2 to be there for a while and I love the neighborhood.
3 It is a very small house. It's a one bedroom and it
4 covers only 480 square feet, the total lot is 1309
5 square feet. And so what I'm requesting is basically
6 a 10-foot extension so I could add both a second
7 bedroom and get access to my basement so that I can do
8 my laundry without going outside and have a dining
9 area.

10 MR. GRIFFIS: Excellent.

11 MS. MANN: That's basically it.

12 MR. GRIFFIS: Thank you. And are you
13 going to have your architect call witnesses or is she
14 here to answer questions?

15 MS. MANN: Well, she's here to answer
16 questions about any specifics, but I would go to 47
17 percent of the lot coverage and I -- we did some work
18 in response to Arthur Jackson's concerns about the
19 second story deck and so what we've -- I went back to
20 the architect who did two alternatives which then I
21 went and got my neighbors' approval who are on
22 adjacent sides, so it's basically I brought copies of
23 all those alternatives. They're not a major revision
24 at all. It's simply instead of the deck, that there
25 be a roof on the second story or that the extension is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the same length on both floors and --

2 MR. GRIFFIS: Well, let's start from the
3 beginning. First of all, Mr. Jackson is representing
4 the Office of Planning and in his memo he indicated
5 that perhaps the second floor might impair the privacy
6 use of the adjacent properties. Now you have one
7 alternative that you want to proceed with?

8 MS. MANN: We have two alternatives.

9 MS. KURLAS: There are two alternatives
10 and I think Janet would like approval of all options,
11 if possible.

12 MR. GRIFFIS: We'd love to do that, but we
13 can't.

14 MS. MANN: No.

15 MR. GRIFFIS: We'll get to the bottom of
16 this. Let me ask you a couple of quick questions. Of
17 course, this is a 223 application which is special
18 exception. Can you tell me would the light and air
19 available to your adjacent neighbors and neighboring
20 properties be impeded in some way?

21 MS. MANN: No.

22 MR. GRIFFIS: I see. Is the privacy, use
23 and enjoyment of the neighboring properties, would
24 they be unduly compromised?

25 MS. MANN: No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Especially with these myriad
2 of alternatives.

3 MS. MANN: Which one are we talking about
4 then?

5 MR. GRIFFIS: We'll get to it. The
6 addition, together with the original building is
7 viewed from the street alley public way, would it
8 substantially visually intrude the character of the
9 neighborhood?

10 MS. MANN: No.

11 MR. GRIFFIS: Okay. And you have
12 submitted graphical representation and you're going to
13 supplement the case with further.

14 MS. MANN: Correct.

15 MR. GRIFFIS: In dealing with the
16 neighbors, the adjacent property owners, were there
17 any comments that aren't in the record at this point?

18 MS. MANN: Yes, I brought letters both
19 saying that they approve of the extension. My
20 neighbor -- I have two immediate neighbors, one at
21 1525 and one at 1521. The neighbor at 1525, I have
22 another letter from her approving the alternative.
23 She's -- they're very minor changes and she was -- so
24 I have those letters and then I have my other neighbor
25 had sold her place to a couple that moved in and so I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 talked to them as soon as I could and so I have a
2 letter from them saying they have no objections to the
3 extension.

4 MR. GRIFFIS: Who is James Quigley?

5 MS. MANN: That's James Quigley and his
6 wife, Kristin Quigley. They're the new neighbors and
7 so they faxed in a letter, but I brought copies as
8 well.

9 MR. GRIFFIS: That's fine. We have it in
10 the record and we'll give it a number as evidence.

11 Let's look at the alternatives quickly.
12 How do you have them?

13 MS. MANN: I brought copies of them.
14 Basically --

15 MR. GRIFFIS: That's fine.

16 MS. MANN: I can visually show.

17 MR. GRIFFIS: Do you have copies?

18 MS. MANN: I have bigger drawings, if that
19 would be easier.

20 (Pause.)

21 MS. MANN: There's a cover sheet
22 explaining alternative 1 and alternative 2, but the
23 cover sheet didn't make it on to all the copies.

24 MR. GRIFFIS: That's fine. We want visual
25 aids. We're going to get these very quickly in about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 three and a half minutes.

2 You're not Mr. Jackson.

3 (Laughter.)

4 MS. MANN: Can I submit one more thing?
5 My neighbor had given me her original letter approving
6 these two alternatives and a copy, just to enter into
7 the record.

8 MR. GRIFFIS: Yes, we can put that in. Do
9 you have copies of that?

10 MS. MANN: I only have a couple of copies.

11 MR. GRIFFIS: We'll get copies and put it
12 into the record.

13 Okay, let's do this very quickly. What
14 we're looking at in the first sheet, oh, are these all
15 the plans, too? Are these redundant?

16 MS. KURLAS: If you look at alternate 1,
17 the area identified as roof on the second floor of the
18 plan was initially an outdoor balcony and so alternate
19 1 proposes to roof that area so that there are no side
20 views from a potential balcony on that level.

21 And alternate 2 which is the fifth sheet
22 completely eliminates the balcony and just makes it
23 interior space so that there's a two-story wall back
24 of the addition.

25 If you'd like review of what the original

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 submission, I can --

2 MR. GRIFFIS: No, we have that in front of
3 us.

4 Ms. Mann, which one do you want to pursue?

5 MS. MANN: Well, after talking to other
6 people that had second story decks, they said you'll
7 never spend time up there, so I would go for the
8 interior space.

9 MR. GRIFFIS: Let's take a poll. Oh, no,
10 no.

11 (Laughter.)

12 So you want alternative 2?

13 MS. MANN: Yes.

14 MR. GRIFFIS: How does that impact any
15 sort of zoning compliance? Does it in any way change
16 your application?

17 MS. KURLAS: No, the coverage issue is
18 the same and the side yard encroachment issue is the
19 same.

20 MR. GRIFFIS: Board Members, I suggest we
21 move expeditiously through alternative 2. It shows an
22 elevation on A-4. Alternative 2 is actually the last
23 sheet of the attachments that's just come in. And
24 section and also in plan A-2 alternative 2. Second
25 floor, of course, the roof plan is what shows -- well,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 A-2 shows it fairly well.

2 Okay, everyone clear? What else do you
3 need to tell us?

4 MS. MANN: That's it.

5 MR. GRIFFIS: What's the material on the
6 back of the building?

7 MS. MANN: Brick.

8 MR. GRIFFIS: What's on the front?

9 MS. MANN: Brick.

10 MR. GRIFFIS: Okay. Questions of the
11 Board?

12 MS. MILLER: Is this the alternative that
13 addresses Office of Planning's concern?

14 MS. MANN: Yes.

15 MS. MILLER: Thank you.

16 MR. GRIFFIS: Office of Planning was
17 concerned that you'd be out on the second level and
18 look over in everyone's backyard.

19 MS. MANN: Or in their back windows. If I
20 went all the way to the edge, I could look back into
21 the windows.

22 MR. GRIFFIS: And you'd know what the
23 Quigleys are doing next door.

24 (Laughter.)

25 MS. MANN: They didn't seem to be worried

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 about it. None of my neighbors were worried about it
2 in either case.

3 MR. GRIFFIS: That's true, but in all
4 seriousness, the next owners may.

5 Okay, let's move on. If there are no
6 other questions from the Board, if there's nothing
7 else from the evidence, we'll go to Office of Planning
8 to present their report.

9 MR. MOORE: Good afternoon, Mr. Chairman,
10 and Members of the Board. I'm John Moore, standing
11 in for Arthur Jackson. The Office of Planning's stand
12 in support of the application, the Applicant has
13 already agreed to the condition and discussed it with
14 Office of Planning.

15 MR. GRIFFIS: Excellent. Thanks very
16 much. Do you have a copy of the Office of Planning's
17 report?

18 MS. MANN: Yes.

19 MR. GRIFFIS: Good. It's as always a good
20 one. Any questions then, any cross examination
21 questions of the Office of Planning?

22 MS. MANN: No. No questions.

23 MR. GRIFFIS: Board Members, questions of
24 the Office of Planning?

25 Is the ANC represented here today with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this application? Very well. I'm not aware of any
2 other government reports attendant to this
3 application, unless the Applicant is aware of any.

4 MS. MANN: No.

5 MR. GRIFFIS: Okay. ANC 3-D is not
6 represented here today. We'll note in Exhibit 25, it
7 was submitted and timely submitted. I believe it
8 meets our requirements for granting it great weight.
9 It did vote 6:0:1 on the 7th of July to recommend that
10 this Board approve the application.

11 Are there any persons present here today
12 to give testimony in regards to Application No. 17201,
13 either in support or in opposition? 17201 of Janet
14 Mann. Not noting anyone here to give testimony, I'll
15 turn it over to you for any closing remarks you might
16 have?

17 MS. MANN: That's it. I was wondering if
18 I could get a ruling from the bench today.

19 MR. GRIFFIS: I think that's possible.
20 Any other further questions from the Board?

21 MR. PARSONS: Mr. Chairman?

22 MR. GRIFFIS: Yes, Mr. Parsons.

23 MR. PARSONS: Ms. Mann, I'm a little
24 confused. You mentioned that one of your neighbors
25 had written a letter and then a second letter based on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the alternative that we're looking at and you waived
2 that. Is that part of our record?

3 MS. MANN: No, that's what I have here
4 because there was -- I didn't ask her to write the
5 letter until I could physically show here the plan, so
6 that's why I just received them.

7 MR. PARSONS: I think we ought to have it
8 as part of the record --

9 MR. GRIFFIS: I was taking it into the
10 record.

11 MR. PARSONS: Okay.

12 MR. GRIFFIS: Actually, if you would just
13 give it to staff.

14 MS. MANN: Here's the copy and here's the
15 original. It's very short.

16 MR. GRIFFIS: We'll take the original into
17 the record. There's one copy coming down. It's going
18 to start with Mr. Parsons and I'm going to take any
19 other final questions from Board Members of the
20 Applicant.

21 And that's the letter from Mrs. Nancy
22 Cooper Wood, is that correct?

23 MS. MANN: Yes.

24 MR. GRIFFIS: Okay.

25 MS. MILLER: I have a question. Is this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the neighbor that was affected by your being able to
2 look into their windows if you had a deck under the
3 previous plan or is this a different neighbor?

4 MS. MANN: Well, neither of my neighbors
5 were concerned about it. They both have windows which
6 technical if I went to the edges of the deck and
7 looked back I could see into their windows better than
8 I could from my backyard.

9 MS. MILLER: Okay, neither of your
10 neighbors were concerned. This was just a concern
11 that was brought up by Office of Planning?

12 MS. MANN: Exactly.

13 MS. MILLER: Okay.

14 MR. GRIFFIS: Any other questions of the
15 Board?

16 Very well, I think we ought to move and
17 process this under a motion. I would move approval of
18 Application 17201 of Janet Mann, this would be
19 pursuant to a special exception of 223 to allow the
20 construction of a two-story rear addition. The record
21 has been amended to include an alternative known as
22 number 2 which will go into the documentation, if this
23 proceeds in approval and that would be for the
24 addition of a single-family row dwelling not meeting
25 the lot occupancy requirements under 403, also the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 side yard requirements under 405 for nonconforming
2 structure provisions at premises 1523, previously
3 known as Ellicott, but now we know it as Elliott
4 Place, N.W.

5 Is there a second?

6 MR. PARSONS: Second.

7 MR. GRIFFIS: Thank you, Mr. Parsons.
8 Further deliberation of the motion, Ms. Miller?

9 MS. MILLER: I just want to note for the
10 record that we have a letter from Mr. James Quigley
11 asking for certain conditions, it appears. It doesn't
12 have an exhibit number yet. And that these conditions
13 relate to construction and that I would recommend that
14 we not adopt them, that they're not within our
15 jurisdiction since they deal with construction and not
16 zoning. They're under the jurisdiction of DCRA.

17 MR. GRIFFIS: Excellent point to point
18 out. I'm sorry we didn't get into that in the
19 specifics, but to let Ms. Mann known, of course your
20 architect is probably well aware of the building code
21 requirements that will deal with the timing of
22 construction, also where certain things can be placed.

23 Obviously, I think the Board would direct you to look
24 at those specifically and make sure that you
25 accommodate the neighborliness in terms of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 construction. As you know, it's tight doing it in a
2 residential district.

3 Okay, anything else? Very well, we have a
4 motion, of course. It's be seconded. I asked that
5 all those in favor signify by saying aye.

6 (Ayes.)

7 MR. GRIFFIS: Opposed? Abstaining?

8 (No response.)

9 MS. BAILEY: The vote is record 5:0:0 to
10 approve the application. Motion made by Mr. Griffis,
11 seconded by Mr. Parsons. Ms. Miller and Mr. Etherly
12 are in agreement. This is a summary order, Mr.
13 Chairman?

14 MR. GRIFFIS: Yes, we can waive our
15 requirements and issue a summary order.

16 MS. BAILEY: Thank you, sir.

17 MR. GRIFFIS: Good. Thank you. Thank you
18 very much.

19 MS. MANN: Thank you.

20 MR. GRIFFIS: Good luck.

21 MS. MANN: Thank you.

22 MR. GRIFFIS: Let's move on.

23 MS. BAILEY: Application No. 17203 of
24 Robin Snyder and Bruce Louie, pursuant to 11 DCMR
25 3104.1, for a special exception to construct a two-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 story rear addition to a single-family dwelling under
2 section 223, not meeting the lot occupancy
3 requirements, section 403, rear yard requirement,
4 section 404. The property is located is located in
5 the R04 District at premises at 925 North Carolina
6 Avenue, S.E., Square 943, Lot 13.

7 Please have a seat at the table.

8 (Pause.)

9 MS. SNYDER: Good afternoon, Mr. Chairman,
10 and Members of the Board. I'm Robin Snyder and with
11 me is my husband Bruce Louie. We live at 925 North
12 Carolina Avenue, S.E. We are asking you to approve
13 our application, Case No. 17203 --

14 MR. GRIFFIS: Hold on, before you proceed.

15 We have a request for party status in this, do we
16 not?

17 MS. BAILEY: Yes, Mr. Chairman.

18 MR. GRIFFIS: Mr. Teuton, is that the way
19 you pronounce it?

20 MR. TEUTON: Teuton.

21 MR. GRIFFIS: Teuton. Excellent. If you
22 wouldn't mind, can you come forward, please?

23 Sir, did you fill out an application
24 requesting party status?

25 MR. TEUTON: Yes, I did.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: I thought you did. I
2 thought I had it.

3 MS. BAILEY: Exhibit No. 22 of the file,
4 Mr. Chairman.

5 MR. GRIFFIS: I had the letter, right
6 Exhibit 22. Very well. Let's -- oh, I'm sorry. It's
7 at the back.

8 Okay. Teuton.

9 MR. TEUTON: Teuton.

10 MR. GRIFFIS: Teuton. Okay.

11 MR. TEUTON: It's close enough.

12 MR. GRIFFIS: Excellent. You're aware of
13 participation, essentially at two levels in all public
14 hearings before the Board of Zoning Adjustment,
15 certainly persons can come and give testimony, that's
16 the one level. And the second level is party, party
17 status which means that if granted party status are
18 actually an equal participant in the processing of an
19 application, meaning you are going to be asked to
20 present a case. You'll be afforded the opportunity to
21 cross examine. If the Board requires further
22 submissions, you will be required to submit those
23 documents and conceivably, at the end, submitting any
24 sort of findings of facts, conclusions of law or draft
25 orders.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I lay this out to you very quickly just to
2 make sure that you want to proceed in this as a party
3 or would you also, or would you rather proceed as a
4 person and be given time to give testimony?

5 MR. TEUTON: I understand your question
6 and there's still at least one item in my mind that
7 would put me in the category of an opponent instead of
8 just an interested party, in opposition.

9 MR. GRIFFIS: Okay. As a person, you can
10 still oppose the application.

11 MR. TEUTON: Then that's where I am. I
12 have no party status.

13 MR. GRIFFIS: Okay. You don't yet, but
14 you've requested it. We could grant you party status,
15 but what you're saying is you just want to give
16 testimony as a person in opposition to the
17 application.

18 MR. TEUTON: For you to consider, correct.

19 MR. GRIFFIS: Okay. So you don't want to
20 do cross examination, you don't want to present the
21 sole case? Is that correct?

22 MR. TEUTON: No. I may give some
23 testimony.

24 MR. GRIFFIS: Testimony, absolutely. Very
25 good. I think I'm clear with that then. We'll call

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you for persons in opposition to the application and
2 we'll take your testimony at that time in which case I
3 take it you're withdrawing your application for party
4 status?

5 MR. TEUTON: Correct.

6 MR. GRIFFIS: Excellent. Thank you.
7 Okay, let's proceed then.

8 MS. SNYDER: Thank you. We are asking you
9 to approve our application for a special exception for
10 a rear yard setback and lot coverage in the
11 construction of a two-story addition. We believe that
12 you'll find that we are not adversely affecting the
13 use of neighboring properties. Why do we want this
14 addition? We're planning to expand our family and
15 need the additional space.

16 Our proposal. Proposals for additions
17 must primarily address four criteria found in section
18 223 of Title 11. We believe we can address them to
19 your satisfaction, but first, some background on the
20 property. We're located in a corner lot at the
21 intersection of 10th and North Carolina, S.E. If you
22 look in your packets you should have several
23 photographs of the house. We are in an R-4 District
24 and R-4 Districts are developed primarily with row
25 dwellings, with a substantial number of them converted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to dwellings of two or more families. First of all,
2 we do not have a typical row dwelling, as you'll see,
3 and unlike many of our neighbors, we don't have a
4 rental unit. As you'll see, our home is atypical in a
5 lot of ways when you look at the pictures.

6 And I want to be clear. We're not asking
7 to add a rental unit. We're simply trying to add
8 living space for our family.

9 When you look at the pictures, you'll see
10 the design of the home is extremely odd for this area
11 of the city and considering the historic issues and
12 the look and feel of the neighborhood, adding a third
13 story to this unusual home would not be appropriate,
14 even though R-4 District allows for three story homes
15 rather. This home is fully detached, something which
16 is very rare in the neighborhood and for that reason,
17 attaching to other properties would not be
18 appropriate. We heard loud and clear from the
19 historic professionals that the only addition they
20 would support would be a two-story addition to the
21 rear of the house, maintaining the character of the
22 home without adding a third story or attaching it to
23 adjacent properties.

24 So we can't expand upward and aren't going
25 to be allowed to bump out sideways and our options are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 extremely limited. Although we have a corner house,
2 we can't wrap around and attach to properties on
3 either side, the way other corner houses do. So we
4 would appreciate your consideration for a rear
5 addition.

6 We would like your flexibility in allowing
7 us to occupy our lot in a fashion similar to that of
8 the surrounding community. We've been told that our
9 house sticks out like a sore thumb and we'd like your
10 help in making our house fit into the neighborhood
11 better.

12 With regards to the four criteria found in
13 Section 223 of Title 11, the first requirement is that
14 light and air available to neighboring properties
15 shall not be unduly affected. There are two
16 properties that could potentially be affected, one to
17 the side and one to the rear. The first I'll address
18 is the side neighbor. As required in Section 405, our
19 proposal provides an 8-foot side yard. Although our
20 existing house has only a 6-foot side yard on one
21 portion, we adjusted the size of the addition making
22 it narrower than the house in order to comply with the
23 8-foot side yard requirement.

24 My husband has a packet of information
25 that he wanted to distribute to you and the first page

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 in that packet, we do have six copies, is a landscape
2 plan which also outlines the existing house and you
3 can see the addition as proposed, the way it looks
4 attached to the existing house. And you'll be able to
5 see the gap between the two houses which is where the
6 landscaping plan comes in that I'll start going into.

7 But this will give you a sense of kind of what we're
8 looking at here.

9 MR. GRIFFIS: Was Mr. Teuton given a copy
10 of this?

11 MS. SNYDER: Oh yes. He received on at a
12 Zoning Committee Meeting of CHRS last Thursday.

13 MR. GRIFFIS: Okay. Do you have this, do
14 you have an extra copy?

15 MS. SNYDER: Sure. He's seen it. It
16 hasn't changed.

17 MR. GRIFFIS: Do you have an extra copy?

18 MS. SNYDER: They have seen it.

19 MR. GRIFFIS: That's all the same thing at
20 the same time.

21 MS. SNYDER: Okay. So the neighboring
22 property has raised an issue regarding views, stating
23 at a recent meeting that their preference would be a
24 view of green space. They have several windows on the
25 property line or party wall. I understand their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 preference for green space. Section 405 requires us
2 to provide 8 feet of space between the properties.
3 This requirement was designed to prevent adverse
4 effect to adjoining properties and ensure sufficient
5 light and air. Please note, we have gone beyond the
6 section 405 requirements and have also agreed to
7 landscape the side yard and plan to add shutters once
8 the addition is completed, to help beautiful the
9 space.

10 As I mentioned a moment ago, the windows
11 of the side neighbor are on the property line and
12 please consider that when new construction occurs next
13 to property that has windows on the property line, the
14 windows get covered up. We aren't doing that. We're
15 providing the full 8 feet for light and air that the
16 rules require. We're landscaping, etcetera.

17 It is also worth pointing out that the
18 side property is to the west of our home. It is over
19 a story taller than our home and the majority of its
20 windows face east, ensuring that they get plentiful
21 sunlight as the sun rises above our house and moves
22 overhead. There's also free flow of air through their
23 third floor windows and on their first and second
24 floors due to the 8-foot setback in the side yard.

25 Light and air with regards to the rear

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 neighbor. Section 404 addresses rear yards and
2 presents a minimum depth of 20 feet. This is where
3 the first part of our special exception application
4 comes into play. We're asking for a 7-foot, 6 inch
5 setback. As I understand it, since the property
6 existed before May 12, 1958 and the addition would
7 extend only into the pre-existing building area, you
8 can tell that I've done a little reading. I'm an
9 environmental analyst, but I've tried to get boned up
10 on these regs. I understand that there's some
11 flexibility allowed with the rear yard requirement.

12 Although it's also important to note that
13 the rest of the homes on our block on this North
14 Carolina side do not have rear yards at all. Some
15 have below grade patios, some simply have decks. Our
16 request for a reduction in the rear setback
17 requirement will not infringe on air, light or privacy
18 of outdoor space of our neighbors. They don't have
19 rear yards.

20 Another important point is that the rear
21 neighbor supports our plans. She attended the ANC
22 meeting and the CHRS Zoning Committee Meeting to speak
23 in support of our proposal. She's out of town today,
24 but we have a statement of support from her that we'd
25 like to read into the record on her behalf when it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the appropriate time.

2 MR. GRIFFIS: You can just submit it. Do
3 you have it in writing?

4 MR. LOUIE: It's in your packet, Mr.
5 Chairman, at the end.

6 MR. GRIFFIS: Did you just hand it out?

7 MR. LOUIE: Yes. It's on the second to
8 last page. It's from Julie Rottenberg, 109 10th
9 Street, S.E.

10 MR. GRIFFIS: And your photograph number,
11 oh gosh. Where's your property? Is it shown in
12 photograph 4?

13 MR. LOUIE: It's to the left.

14 MS. SNYDER: It's the one to the left, the
15 furthest to the left.

16 MR. GRIFFIS: So we're looking at Exhibit
17 4. If you look at the subject site house is directly
18 in the view of the photograph on the left side of the
19 photograph is a brick structure. That's what we're
20 talking about. Oh, I see and you have a photograph in
21 the submission that you've just put into the record.

22 Okay.

23 MS. SNYDER: So the second requirement of
24 Section 223 is that the privacy, use and enjoyment of
25 neighboring properties shall not be unduly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compromised. The windows of our proposed addition are
2 laid out so they are not directly opposite the windows
3 of adjoining properties. The only exception is one
4 window in the addition which would face a neighbor's
5 hallway window. This is the neighbor who supports our
6 plan and she has indicated that since this window is a
7 hallway window, she won't be losing privacy.

8 The third requirement. The addition,
9 together with the original building as viewed from the
10 street, alley or other public way, shall not
11 substantially visually intrude upon the character,
12 scale and pattern of houses along the subject street
13 frontage.

14 We have worked with HPRB staff and the
15 CHRS History Preservation Committee to develop a
16 design that enhances the neighborhood while
17 preserving the unique character of this very unusual
18 detached home. As I mentioned earlier, the design of
19 this home is extremely atypical for this area of the
20 city. It is also one of the oldest homes in the
21 neighborhood, built before the buildings to the side
22 and to the rear. We can't expand vertically or
23 sideways, but we would appreciate your consideration
24 for a rear addition that would bring our lot coverage
25 to over 60 percent.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Our proposed addition would result in a 62
2 percent lot coverage which is the second part of our
3 need for a special exception. It's true that the
4 requirement for a detached home is 40 percent lot
5 coverage and we are currently at 44 percent. But
6 please, also consider that we can't add a third story,
7 something that would give us much more space than this
8 addition provides.

9 We would like your approval to bring the
10 rear wall of our addition in line with the rear walls
11 of the rest of the homes on our block. Please note,
12 these homes do not meet the 20-foot rear setback
13 either, and in fact, the property to the side only
14 provides a 1-foot setback when you consider their
15 below grade patio. Our rear setback would be 7 foot 6
16 inches.

17 MR. LOUIE: There's a picture illustrating
18 that fact of the property.

19 MR. GRIFFIS: Okay, we're not going to go
20 too far into the comparativeness of the adjacent
21 properties.

22 MS. SNYDER: Okay, I'm moving on. I'm
23 moving on.

24 We have a street scape in your packet
25 which shows what the block will look like with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposed addition. As you'll see, the input of the
2 historic professionals has helped us to come up with a
3 plan that will complement and support the feel of the
4 neighborhood.

5 I should also mention that currently
6 there's a large gap in our block when viewed from 10th
7 Street which you can see with that street scape and
8 with an additional photo that's in the pack. The
9 neighbor right next door to us described it at one
10 meeting as looking like a smile where the front tooth
11 is missing. The gap where the tooth is missing is
12 where we want to put the addition.

13 As owners of this home since 1997, we
14 wanted to be sure that our community liked our plans.

15 We went door to door, meeting with neighbors who
16 would be impacted by the look of our house, showing
17 them the drawings and discussing our plans. We have
18 the petition which is in your packet signed by 30
19 neighbors representing 25 households, stating that
20 they've met with us, viewed our plans, discussed our
21 addition and support us with the proposal you are
22 considering today.

23 Another point, one person expressed a
24 concern that our addition would fill open space in
25 this neighborhood. I'd like you to consider three

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 things about this. First, section 330.2 under the
2 general provisions for R-4 Districts states that very
3 little vacant land shall be included within the R-4
4 District. Second, please see the diagram where we
5 have hache marks through our front yard. It depicts
6 our open space in the front yard. Since 1997, we've
7 planted 10 trees, over 40 shrubs and numerous flowers
8 and ferns on our property. And third, we're only a
9 block and a half away from Lincoln Park, a significant
10 piece of open space.

11 The last requirement of 223 is in
12 demonstrating compliance, we used plans, drawings and
13 photographs to represent the relationship of the
14 addition to adjacent buildings and views from public
15 ways. We've worked very hard to try and provide you
16 with the information you need to make your decision.

17 In summary, we have overwhelming support
18 for our addition plans. I mentioned the petition
19 earlier and in July, ANC-6B voted 6 to 0 in support of
20 our application. As part of the ANC approval, we did
21 agree to landscape the side yard and address water
22 drainage issues. We have made many adjustments to
23 address other concerns of other property such as the
24 CHRS Historic Preservation Committee and HPRB staff.

25 My husband and I are both here and would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 like to answer any questions you might have. We'd
2 appreciate a ruling from the Board today.

3 MR. GRIFFIS: Good. Thank you very much.

4 We'll give you an opportunity to repeat those closing
5 marks at the end of this.

6 First of all, where are you with the
7 Historic Preservation Review Board?

8 MS. SNYDER: Well, we've met with the
9 staff and we may have to go in front of the full HPRB,
10 but we're working with the staff in hopes of getting
11 on the consent calendar. A decision hasn't been made
12 yet.

13 MR. GRIFFIS: Okay, and you're doing this
14 as a design/build?

15 MS. SNYDER: Yes.

16 MR. GRIFFIS: Okay. Other questions from
17 the Board?

18 In the illustrations, you have
19 fenestration -- hm. What direction am I looking at?
20 Let's say your front door is off of 10th Street,
21 correct?

22 MS. SNYDER: Yes.

23 MR. GRIFFIS: So the north side is where
24 your addition is, for my purposes?

25 MS. SNYDER: The south side.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Good enough, the south side.

2 (Laughter.)

3 MR. GRIFFIS: And the fenestration that
4 you were talking about, those are the windows that are
5 actually looking into a hallway window of the adjacent
6 neighbor, is that correct?

7 MS. SNYDER: The south side.

8 MR. GRIFFIS: And on the rear of that
9 addition --

10 MR. LOUIE: To the west.

11 MR. GRIFFIS: On the west side, there is
12 no window, there is no fenestration on that side?

13 MS. SNYDER: Right, no privacy issues
14 there. The windows do not line up on that side.

15 MR. GRIFFIS: And what's the dimension of
16 the separation from the addition to the adjacent
17 property on that -- what is now the rear yard?

18 MS. SNYDER: On the rear yard, we're
19 asking for a 7 foot 6 inch.

20 MR. GRIFFIS: Okay. And you indicated
21 that on the -- which is now the side yard of the
22 property, the existing fenestration there is actually,
23 you made a statement, one is on the property line.

24 MS. SNYDER: Two windows are on the
25 property line. There's a first story and a second

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 story window.

2 MR. GRIFFIS: I'm sorry, the line, one
3 line of windows is on the property line?

4 MS. SNYDER: Yes.

5 MR. GRIFFIS: Okay.

6 MS. SNYDER: Three. There's one line of
7 windows, first, second and third floor.

8 MR. GRIFFIS: And there's a small window
9 well, which is the other line of fenestration going up
10 to that building. Okay.

11 Any other questions of the Board? Mr.
12 Mann?

13 MR. MANN: I have a comment. We have some
14 indication from staff now hearing this that there's a
15 letter of opposition from the Capitol Hill Restoration
16 Society, but I don't -- nor does Ms. Miller -- have a
17 copy of that letter in our files.

18 MR. GRIFFIS: Did you present this to the
19 Capitol Hill Restoration Society?

20 MS. SNYDER: Yeah, it was the Zoning
21 Committee that had the issue, not the Historic
22 Preservation Committee.

23 MR. GRIFFIS: Did they submit a letter?

24 MS. SNYDER: They said -- he said he
25 submitted a letter to you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: When did it come in?

2 MR. PETERSON: Yesterday, with 20 copies.

3 MR. GRIFFIS: Thank you. Thank you, Mr.
4 Mann. We'll obviously give an opportunity to the
5 Capitol Hill Restoration Society to give testimony on
6 this. We didn't receive copies of that if it came in
7 yesterday.

8 I'm not sure it's timely. Have you seen
9 the letter?

10 MS. SNYDER: Yes.

11 MR. GRIFFIS: Okay. Ms. Miller?

12 MS. MILLER: I'm wondering if there's a
13 representative here from the ANC-6B? Okay, because we
14 have a -- I guess we'll get to them later, but maybe
15 at this point I just wanted to ask the Applicant's
16 response to their conditions. One of the conditions
17 of support, we have a letter. It's Exhibit 23. One
18 of the conditions is that landscaping between the
19 houses be aesthetically pleasing and you've addressed
20 that one. I think you have.

21 The second one talks about --

22 MR. GRIFFIS: Someone else might have a
23 different opinion of what's aesthetically pleasing.

24 MS. SNYDER: It is a difficult -- but I
25 did provide the plan and I showed what type -- I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 marked what types of plants.

2 MR. GRIFFIS: You're going to landscape
3 it, right?

4 MS. SNYDER: Yes.

5 MR. GRIFFIS: You're not going to -- see,
6 I was going to throw something out there, it may
7 offend me, but maybe not others.

8 MS. MILLER: Well, I think that they've
9 addressed it at least.

10 MR. GRIFFIS: Okay.

11 MS. MILLER: But then there's the question
12 about downspouts.

13 MS. SNYDER: Right, we weren't sure
14 whether it was appropriate to bring it up here. We
15 presented our information at the CHRS Zoning Committee
16 regarding where the downspouts are going. All of the
17 water is going to be diverted away from that side of
18 the house, so we did discuss it. We showed diagrams
19 and our architect is here to do the same, if that's
20 what we need to do here. But you know, we have
21 addressed the issue. We aren't just shrugging it off.

22 MR. GRIFFIS: Did you see a water diagram?

23 MS. MILLER: No, I think that's fine and
24 if there is an ANC representative here and if they're
25 dissatisfied, I'm sure that they'll bring that up.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Thank you.

2 MR. GRIFFIS: Any other questions from the
3 Board?

4 Does the ANC have any cross examination of
5 the Applicant? No cross.

6 MR. JARBOE: No cross.

7 MR. GRIFFIS: Very well. Let's move on
8 then to the Office of Planning.

9 MR. MOORE: Good afternoon again, Mr.
10 Chair, and Members of the Board. I'm John Moore,
11 Office of Planning. Office of Planning stands on the
12 record on this application.

13 MR. GRIFFIS: Very well, Mr. Moore. Let
14 me say -- Mr. Moore does the best graphics. Do you
15 have a copy of the Office of Planning's Report?

16 MR. LOUIE: Yes, we do.

17 MR. GRIFFIS: Good. It's like a keepsake,
18 isn't it? It's like a photographic diary of your
19 property.

20 Actually, it was very helpful. I can tell
21 you, I was a little bit confused trying to orient my
22 view with your property. It is -- I don't know if I'd
23 use all the descriptive adjectives that you did to
24 describe your own house, but it is different.

25 MS. SNYDER: It's unique.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Of the surrounding -- it's
2 the first one like this that I've ever seen.

3 MS. SNYDER: We've heard all different
4 kinds of descriptions.

5 MR. GRIFFIS: Right. I don't think they
6 all need to be pejorative, but nonetheless, one of the
7 diagrams that I think was most helpful in Mr. Moore's
8 report is on page 3 at the bottom. It's a little
9 thumbnail piece and he's actually stenciled in the
10 area which the addition would go to and it helps to
11 kind of graphically represent the massing that will
12 sit there and above that is a direct shot of the rear
13 yard. And quite frankly shows as the submitted
14 photographs, but this one also, the context and the
15 impact that it will have on the rear property.

16 Going to that fully lays out the 223
17 requirements and the Office of Planning is
18 recommending approval. Are there follow-up questions
19 from the Board, clarifications? Ms. Miller?

20 MS. MILLER: I'm just wondering if the
21 Office of Planning has any comments on the ANC's
22 proposed conditions.

23 MR. MOORE: That was discussed with the
24 Applicant and I think the issue was, well, the
25 landscaping was one objective. The Applicant is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 agreeing to channel the water away from the west side
2 of the house toward 10th Street. I thought that was
3 pretty reasonable in terms of responding to it.

4 MS. MILLER: Thank you.

5 MR. GRIFFIS: You opened by giving us a
6 lot occupancy with the proposed addition, did you not?

7 MS. SNYDER: Yes.

8 MR. GRIFFIS: It is?

9 MS. SNYDER: The current occupancy is 44
10 percent and we're applying for a 62 percent.

11 MR. GRIFFIS: Okay, any other questions?

12 MR. ETHERLY: Mr. Chair, just very quickly
13 for Office of Planning. I'm just trying to get a
14 sense for what the street scape as you continue ahead,
15 I'm going to screw up my directions, but as you
16 continue to head down 10th Street, the first -- Mr.
17 Moore, did you get an opportunity to take a look at
18 the submission from the Applicant that was provided
19 today, the artist rendering and the pictures?

20 Okay, a quick question regarding the
21 artist rendering and this is the long-hand that
22 follows the picture of the squirrel that's
23 incarcerated there. I just had to comment on that.

24 (Laughter.)

25 The squirrel is very helpful. I just had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to observe that.

2 What I wanted to know is with regard to
3 the property that is 109 10th Street, there's a kind
4 of a gated, what appears to be a gated area adjacent
5 to that property. Did you get an opportunity to kind
6 of just look at that streetscape when you visited the
7 site?

8 I'm just curious about what that space is.

9 MR. MOORE: I did walk beyond 109, but I
10 didn't photograph it. I didn't see any relevancy in
11 this case.

12 If you look at the photograph again on
13 page 3 in Office of Planning report, there is a clear
14 picture of 109. I think above the photograph that the
15 Chairman mentioned.

16 MR. ETHERLY: Right, but it appears from
17 the artist rendering that as you proceed past 109 --

18 MR. MOORE: South of it?

19 MR. ETHERLY: Yes sir. There's an open
20 space and I'm just trying to get a sense of the
21 context of the street.

22 MR. MOORE: No, I did not define that.

23 MR. ETHERLY: Okay, no problem. Thank
24 you, Mr. Chairman.

25 MR. GRIFFIS: Any other questions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. SNYDER: Do you mean this?

2 MR. GRIFFIS: That's what he's talking
3 about.

4 MS. SNYDER: There's a house. There's a
5 driveway right there and then there's a gate and they
6 have a pool pass that and their house is recessed. It
7 used to be an old organ factory back there that's been
8 converted to a home, so it's actually kind of not
9 represented correctly in the picture because he should
10 have drawn in a house. You should be able to see it
11 from the street.

12 MR. ETHERLY: No problem. I can kind of
13 see the suggestion of it with OP's overhead, but you
14 couldn't quite see what the structural --

15 MS. SNYDER: There is actually a house
16 there. So that's why we're saying that there's a gap
17 where our addition would go because when you stand on
18 10th and you look at the whole block, there isn't a
19 gap where it looks like there is. The only one is
20 where our addition would go.

21 MR. ETHERLY: Okay, thank you. Thank you,
22 Mr. Chairman.

23 MR. GRIFFIS: Anything else from the
24 Board?

25 Do you have any cross examination of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Office of Planning?

2 MS. SNYDER: No.

3 MR. GRIFFIS: Any questions, ANC have any
4 cross of Office of Planning? No cross from the ANC.

5 Very well, that's all the government
6 reports for this application that I have.

7 Why don't we go to the presentation from
8 ANC-6B.

9 MR. JARBOE: Mr. Chairman, Members of the
10 Board, my name is Kenan Jarboe. I am ANC Commissioner
11 for 6B05. This property is in 6B, as you've noticed.

12 It's also within my SMD. You are getting copies of
13 my testimony and in the sake of time I'll just
14 summarize.

15 I believe you also have the letter from
16 the ANC noting our vote of 6 to 0 with one abstention
17 in support of this.

18 I note for the record that that one
19 abstention was a Commissioner who came in late to that
20 particular meeting and did not hear the entire
21 presentation, so felt that they did not -- felt that
22 he should not vote on it.

23 MR. GRIFFIS: Excellent, and it is Exhibit
24 23.

25 MR. JARBOE: I'd also note at that meeting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we heard from neighbors both in support of the special
2 exception, including the neighbor directly to the
3 south and the neighbors across the street. We also
4 heard opposition from the neighbor directly to the
5 west, the Teutons.

6 As you know, there's the three prong test
7 for special exception: air and light, privacy and the
8 visual character, using shorthand for the three tests.

9 Let me take them a little bit out of order starting
10 with privacy. We didn't find that there was any
11 impact on privacy. The privacy would not unduly be
12 compromised and I think that's already been explained.

13 The windows don't line up with the windows on the
14 house to the west. The one window that does line up
15 with a window, I believe is on the south and it lines
16 up with a hallway and in their statements from the
17 neighbors on the west, the Teutons, they raised issues
18 not of people looking in, but of the view looking out,
19 so we didn't see that there was any privacy issue
20 there.

21 Concerning the visual character of the
22 neighborhood, this is a corner lot. I realized that I
23 could easily touch off an extended architectural
24 debate about whether corner houses should wrap all the
25 way around a corner lot or not, but suffice it to say

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on Capitol Hill we have both cases. We have cases of
2 corner houses that wrap completely around, i.e., are
3 attached on both sides. We have cases where houses
4 have very little breaks, minimal break, maybe a foot,
5 two foot, three foot differentiation. And we have
6 some cases where there is, in fact, a 20-foot setback.

7 I would say that having the 20-foot setback is as
8 uncommon as it is common in the neighborhood.

9 What you get visually in the neighborhood
10 is a continuous view of buildings accented by
11 different facades, not by big breaks of space. What
12 the Applicants are doing is drawing their house out
13 along the street. It ends up with a visually more
14 continuous look to that block, I think they've
15 testified. It's filling in the gap. In that way, we
16 believe that actually this is very much more in
17 keeping with the requirements of Section 223 which are
18 the character, scale, pattern of houses along the
19 street frontage. In fact, it may be adding to the
20 character, pattern of the street frontage, rather than
21 taking away from it.

22 The issue really comes down to the first
23 test which is air and light. At the meeting, we heard
24 from the neighbors to the west who had concerns about
25 that, that the view from four windows would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 obstructed by the addition and that the view from two
2 others, the top floor would have reduced, looking over
3 the roof of the new addition. We found that contrary
4 to the objections that the addition does not have an
5 unduly effect on the neighbors' air and light. First
6 of all, there's only four windows that are affected.
7 Two of those are on the party wall, as you've heard,
8 two of which as the Chairman has already pointed out,
9 are recessed in a small setback, a window well, if you
10 will. They already receive obstructed air and light
11 and the addition would not substantially change that,
12 would not substantially aggravate that.

13 The second point is that the addition is,
14 in fact, shorter than the existing building to the
15 west. We often run into that with air and light
16 questions when people are putting on additions that
17 their house is going to tower over the existing
18 neighbor. So in this case, it's just the opposite.
19 The existing house will still continue to tower over
20 the new addition. Granted, the view from those top
21 windows won't be as aesthetically pleasing, to use my
22 infamous phrase there, but it won't affect the air and
23 light. I mean they will still have a view. It will
24 be over the roof, but it won't affect the air and
25 light.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Third, as has been mentioned, the
2 neighbors have no back yard. Often with rear
3 additions, again, we get issues that the addition is
4 going to impact the air and light of the outdoor
5 space. Well, in this case it doesn't because the
6 outdoor space of the neighbors is essentially in the
7 front of the yard. It's not affected by the addition
8 and there is no essential back yard to the neighbors.

9 And in any event the proposal is only to
10 take it back as far as the neighbor's building.
11 Again, we often have issues of whether or not the
12 addition is going back further than the neighbor's and
13 therefore impinging on air and light. In this case,
14 it's only going back as far as the existing buildings
15 and therefore really doesn't even block out the air
16 and light for that small space that the neighbors on
17 North Carolina avenue have.

18 Finally, the addition does have this 8-
19 foot setback or separation between the buildings. The
20 ANC believes that an 8-foot separation between
21 buildings is sufficient for air and light. And that
22 is the standard, as you know, for side yards.

23 I think we've gone over our two conditions
24 already. Let me state that we do believe that the --
25 we haven't seen the specifics of the landscaping plan,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 but we think that an appropriate landscaping plan can
2 be put into place for this. We leave that to the
3 Board's authority under section 233. Also, the design
4 -- they have showed us the changes in the downspouts
5 so that the water runoff goes to 10th Street and we
6 are satisfied with that.

7 I'd be happy to answer any questions.

8 MR. GRIFFIS: Are you concerned that the
9 water runoff was not having it run onto the adjacent
10 property?

11 MR. JARBOE: One of the issues that the
12 neighbors did raise is that with the current building
13 there is a problem there, that in fact, given that
14 space between the buildings, any of the water that
15 goes into that -- essentially that side yard ends up
16 just saturating that area and damaging their house.
17 If they're going to add the addition, you have that
18 much extra roof space, that much extra water and that
19 yes, that we wanted to make sure that that additional
20 runoff would not be damaging. And the current runoff
21 would not be damaging the neighbor's house.

22 MR. GRIFFIS: Thank you. Very, very
23 complete analysis of the application. We appreciate
24 your giving us this report and testimony. As I said,
25 we do have the official vote from the ANC-6B.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Any questions of the Board of the ANC?
2 Does Applicant have any cross examination of the ANC?

3 MR. LOUIE: No.

4 MR. ETHERLY: Just very quickly, if I
5 could, Mr. Chairman, I'll follow up also when we get
6 to parties -- testimony in opposition, but I just
7 wanted to make sure I'm clear with Mr. Jarboe's
8 testimony. And I agree, excellent presentation.

9 With respect to the impact, potential
10 impact to the -- once again, get myself oriented for
11 the neighbors to the west, he noted that the outdoor
12 space and once again, I'll inquire about this when
13 that testimony comes forward, but the outdoor space,
14 as you look on page 3 of the Office of Planning
15 report, you have three windows that are kind of right
16 at the edge of the neighbor to the west, that
17 property. That outdoor space there goes all the way
18 back to the wrought iron fence here, correct? I'm
19 just trying to orient myself. So this picture here is
20 a picture of the real of the neighbor's property to
21 the west, correct?

22 MS. SNYDER: Yes.

23 MR. ETHERLY: All of that green space that
24 leads up to that wrought iron fence and that building,
25 all of that green space is on your property, correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. SNYDER: Right.

2 MR. ETHERLY: So that's all outdoor space
3 that you use there.

4 And in terms of -- so part of this is
5 getting back to the comment that you made about there
6 really not being a rear yard for the neighbor to the
7 west, so in terms of outdoor space and once again,
8 this question will perhaps be best put to the owner of
9 the neighboring property, but I just wanted to ask
10 you, Mr. Jarboe, in terms of the ANC's consideration
11 of this issue, there's no outdoor space that would be
12 impacted as far as the neighbor to the west property
13 would be concerned, space that they are using for
14 recreational sense, like a patio or a traditional rear
15 yard?

16 MR. JARBOE: That is correct in my
17 understanding. When I was walking around the
18 neighborhood, in fact yesterday, the patio furniture
19 at the neighbor's house which is to -- I'm sorry, 923,
20 all of their outdoor patio furniture and everything is
21 in the front of the house. In fact, someone was out
22 there having a nice leisurely drink.

23 So the rear of that house, as far as I
24 understand it has a very, very small setback. This is
25 the neighbor's house to the west. So the addition to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the rear doesn't affect their rear yard because they
2 don't have it. Their space, public space is
3 essentially in the front on -- fronts North Carolina.

4 As you know, North Carolina has very large setbacks
5 in some of the houses so they have a very large front
6 yard, no back yard.

7 MR. ETHERLY: And you know that there was
8 some discussion about the impact as far as light and
9 the visual perspective would be for 923 North
10 Carolina. You noted that you might essentially be
11 looking at a reverse situation whereas you still have
12 -- 923 will still have the height advantage over the
13 proposed addition, to use your phrasing. It would
14 still tower over the addition, but was there any
15 concern raised by any of your colleagues or yourself
16 about -- what I'm curious about is as you get to those
17 windows on the lower level, and once again, this will
18 perhaps be a question that I'm simply raising with
19 you, but to flag for the owners of 923, but was there
20 any concern expressed about those windows at the lower
21 level in terms of the light impact from the addition?

22 I can understand the argument, perhaps, for the upper
23 two stories, but was there some discussion at the ANC
24 level about what happens to the space behind those two
25 windows?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. JARBOE: Yes, there was and that was
2 essentially the crux of the opposition as I understand
3 it. Basically, we came down with the fact that there
4 is an 8-foot separation, that those windows have an
5 8-foot view outside them. Now again, it's this
6 question of aesthetically pleasing. You don't want to
7 look out your window and see, as I believe the
8 neighbor said, a warehouse look out there. You would
9 like to see trees and shrubs and things like that. So
10 that's why we put the recommendation in that that area
11 between the two houses be landscaped. But it was our
12 feeling that you have an 8-foot separation there, that
13 is sufficient for air and light.

14 MR. ETHERLY: Okay, thank you. Thank you,
15 Mr. Chair.

16 MR. GRIFFIS: Ms. Miller?

17 MS. MILLER: Well, with respect to your
18 condition regarding landscaping, it doesn't go to air
19 and light. Does it go to any specific criteria that
20 we're to be considering?

21 MR. JARBOE: It goes to the neighbor's
22 concerns of the visual impact.

23 MR. GRIFFIS: Any other questions of the
24 ANC?

25 Good, thank you very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. JARBOE: Thank you.

2 MR. GRIFFIS: Let's hear from the Capitol
3 Hill Restoration Society and then we'll hear persons
4 in support and then persons in opposition.

5 While he's getting ready, what's the
6 material on the -- oh gosh, I just did this, didn't I
7 -- the west side of the addition, what's the material
8 proposed?

9 MS. SNYDER: Oh, siding. We have.

10 MR. GRIFFIS: What kind of siding?

11 MS. SNYDER: It's hardy plank.

12 MR. GRIFFIS: And the original structure
13 is wood, is that correct?

14 MS. SNYDER: The current house has hardy
15 plank all around it.

16 MR. GRIFFIS: It does?

17 MS. SNYDER: Yes.

18 MR. GRIFFIS: Fascinating. Okay.

19 MR. PETERSON: Mr. Chairman, I'm Gary
20 Peterson, Chair of the Zoning Committee of the Capitol
21 Hill Restoration Society and also a member of the
22 board. I'd like to hand up one exhibit which is a
23 photograph of the property.

24 MR. GRIFFIS: Good.

25 MR. PETERSON: I have two copies so you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 can share it.

2 MR. GRIFFIS: That's thoughtful. We need
3 our bonding time.

4 Ms. Bailey, why don't you keep one for the
5 record and we'll just pass this down. Go ahead.

6 MR. PETERSON: Basically, I have one here
7 that shows the property and the point that I want to
8 make is insofar as the rear portion of the property is
9 concerned, if you were to extend on this visual the
10 addition back here, it will go all the way back to the
11 end of that house and actually the plans that I've
12 seen it goes a little ways beyond the end of 923, not
13 very far, but a little ways, I'd say a foot or two,
14 but not more than that.

15 Now if they want to correct the drawings,
16 I stand corrected on that, but that's just my look at
17 the drawings that they gave to us and submitted to you
18 as well, if you look at the one showing the
19 landscaping, for instance.

20 So it's the position of the Restoration
21 Society that this addition severely impacts the air
22 and light of the adjacent properties. It severely
23 impacts four windows and probably these two that are
24 facing straight out more dramatically than the two
25 that are in that -- it's sort of like it was built to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be a light well in case something was built adjacent
2 to it. I'm not sure why they're angled.

3 MR. GRIFFIS: Those are on the property
4 line?

5 MR. PETERSON: No. These three windows
6 are angled back.

7 MR. GRIFFIS: I know.

8 MR. PETERSON: It's in a notch.

9 MR. GRIFFIS: It's on the property line.
10 Okay, go ahead.

11 MR. PETERSON: The property line doesn't
12 have a notch in it. The building has the notch in it
13 for those windows.

14 MR. GRIFFIS: I understand that.

15 MR. PETERSON: Those windows are angled,
16 but anyway, and what we see -- this is just going too
17 far. It's just too much of an extent and I would
18 refer you and I just found this yesterday, I was
19 looking at rear yard. I was reading the definitions
20 again, just to reacquaint myself.

21 MR. GRIFFIS: We do that often for
22 enjoyment purposes ourselves.

23 MR. PETERSON: Late night reading, and I
24 notice under the definition of yard it says "no
25 building or structure shall occupy in excess of 50

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 percent of a yard required by this title." And I
2 think that is a statement of policy, certainly, if
3 nothing else. And I would suggest to you that in this
4 case, if this addition was brought back so that it
5 didn't obstruct these rear two windows, that would
6 still allow them a 10 to 12 foot addition and the two
7 windows that are partially obstructed do face to the
8 rear slightly because they're in that notch, but that
9 represents something that is less impeding on the
10 light and air and also is consistent with the policy
11 of the zoning regulations. And we just felt that this
12 is too much, these are too many exceptions, that if
13 you look at our letter, we state that the exceptions
14 that are required, the special exceptions that are
15 required or asked for are -- there are just too many
16 of them that are too large, that this is just reaching
17 too far.

18 MR. GRIFFIS: Right, all right. A couple
19 of things. First, you're proposing an option? Is
20 that correct? What were you pointing to?

21 MR. PETERSON: What I was trying to point
22 out is I think the reasons for their addition is they
23 want to expand their family and I think that's
24 commendable. I think that they can add a 10 to 12
25 foot addition to the rear of their house which, if you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 look at when most people are coming in for special
2 exceptions, they're adding 10 to 12 feet on to the
3 rear. Most of the ones in Capitol Hill that we get
4 are adding just a limited amount.

5 MR. GRIFFIS: Just for clarity, most of
6 the things you've seen it's 10 to 12 feet additions.

7 MR. PETERSON: On Capitol Hill, that's
8 right.

9 MR. GRIFFIS: I see, okay. Go ahead. Oh,
10 I'm sorry, and then you said because of the number and
11 amount of special exceptions?

12 MR. PETERSON: That this is just sort of
13 pushing the limit. I mean --

14 MR. GRIFFIS: They're in for one special
15 exception or 223.

16 MR. PETERSON: Well, there's both for the
17 rear yard and there's also for the lot occupancy. I
18 think that's two of them and then they're pushing
19 those, both of them, I think, to the maximum.

20 MR. GRIFFIS: It's a matter of semantics.
21 223, of course, is one special exception that covers
22 all those areas, sections that precludes you from
23 having a special exception for certain aspects in the
24 residential zone.

25 MR. PETERSON: Right. I agree.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Now lastly, you said in the
2 definition of rear yard it talked about the percentage
3 of which a building or accessory structure can occupy
4 it.

5 MR. PETERSON: Right.

6 MR. GRIFFIS: I don't think it's in the
7 definition.

8 MR. PETERSON: No, it's in the definition
9 of yard.

10 MR. GRIFFIS: Oh, of yard.

11 MR. PETERSON: Yes.

12 MR. GRIFFIS: Okay. And what to you
13 propose the percentage of -- okay. Any other
14 questions from the Board?

15 (Pause.)

16 Ms. Miller?

17 MS. MILLER: I'm just interested in this
18 yard definition. So basically in this case they're
19 going to occupy the full yard?

20 MR. PETERSON: No, they're --

21 MS. MILLER: What percentage of the yard
22 are they going to occupy?

23 MR. PETERSON: I don't have an exact
24 percentage, but they're going back so they're 7 and a
25 half feet, have a 7 and a half foot rear yard when a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 20 foot rear yard would be required. So they're
2 occupying 13.5 feet.

3 MS. MILLER: Okay.

4 MR. GRIFFIS: Good, any other questions,
5 clarifications?

6 Does the Applicant have any cross
7 examination of the Capitol Hill Restoration Society?

8 MS. SNYDER: Yes, I think we have a couple
9 of comments. The first is --

10 MR. GRIFFIS: Let me just clarify, not
11 comments, but do you have direct questions?

12 MS. SNYDER: Questions.

13 MR. GRIFFIS: Good.

14 MS. SNYDER: The first question would be
15 are you basing your understanding of where our
16 addition goes solely on the sketch that we submitted
17 at the Zoning Committee Meeting Thursday?

18 MR. PETERSON: Yes.

19 MS. SNYDER: It was a hand made sketch.
20 The rear wall --

21 MR. GRIFFIS: I understand.

22 MS. SNYDER: Do you not feel that an 8
23 foot side yard setback, as required by the City for
24 side yards was defined as a requirement to provide
25 sufficient light and air?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. PETERSON: Yes.

2 MS. SNYDER: When you say that our
3 addition would go back too much too far and you're
4 suggesting a 10 to 12 foot addition, do you agree that
5 it's possible that we could do a 10 foot addition,
6 someone else could buy the house five years from now
7 and come in and do another 10 foot addition?

8 MR. PETERSON: With a special exception,
9 someone could apply for a special exception to do
10 that, yes.

11 MS. SNYDER: Thank you.

12 MR. GRIFFIS: Does the ANC have any cross
13 examination?

14 MR. JARBOE: Mr. Chairman, just a quick
15 question to follow up on this use of the term,
16 definition of yard. Is it the Restoration Society's
17 opinion that the Board is precluded from giving a
18 special exception to the requirements for a rear yard
19 under the authority in Section 223 because of the
20 definition of a yard, or does the Board have the
21 authority because the definition is included in,
22 embedded in the regulations, the sections that are
23 cited in Section 223 as specifically allowable for a
24 special exception that the Board cannot give a special
25 exception?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Good question. Do you
2 understand it?

3 MR. PETERSON: I do, even though I think
4 it was a bit rough in phrasing. I understand it.
5 I'll try and make my answer very short. I think this
6 is just a statement of policy and I think the Board
7 has the authority under the regulations to grant the
8 special exception requested, if it so finds the test
9 is met.

10 MR. GRIFFIS: I see.

11 MR. PETERSON: This is a statement of
12 policy, not --

13 MR. GRIFFIS: Right, in fact, covered
14 under Section 223.

15 MR. PETERSON: Right.

16 MR. GRIFFIS: Is that your understanding?

17 MR. PETERSON: Yes. I just raised it, I
18 thought I said indicated policy.

19 MR. GRIFFIS: Any other questions from the
20 ANC?

21 MR. JARBOE: No other questions.

22 MR. GRIFFIS: Very well. Thank you very
23 much. If there's no follow-up questions then from the
24 Board, I appreciate your participation today. We do
25 have your letter now in -- I'm not sure, do we need to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 waive that into the record?

2 Ms. Bailey?

3 MS. BAILEY: From the Capitol Hill
4 Restoration Society?

5 MR. GRIFFIS: Yes.

6 MS. BAILEY: No sir. He's not a party.

7 MR. GRIFFIS: Thank you. Trying to be so
8 technical here. There it is then. It is Exhibit 27.

9 Let us move on then to persons -- who else is here to
10 give testimony today?

11 Yes, let's here from persons in support of
12 the application, then we'll go for persons in
13 opposition.

14 Yes?

15 MR. LOUIE: Chairman, I have two letters
16 from neighbors who would have attended today if they
17 could. I would like to paraphrase them and put them
18 in the record, please.

19 MR. GRIFFIS: Okay.

20 MR. LOUIE: The first letter, it's in your
21 handout dated September 10, 2004 from Julie
22 Rottenberg, address 109 10th Street, S.E. And I'll
23 paraphrase. I'm writing in support of my neighbor. I
24 support the special exception. I live at 109 10th
25 Street, the property that is directly adjacent to 925

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 North Carolina Avenue to the south. Both windows are
2 hallway windows in my home. The addition will have a
3 7 foot 6 inch setback from my home which I believe is
4 sufficient to allow air and light to my windows. I do
5 not believe that the addition will have a substantial
6 adverse effect on the privacy, use or enjoyment of my
7 property.

8 I believe the addition will improve the
9 street frontage. Currently, the open space is more of
10 a gap in the street frontage and the addition will add
11 to the character, scale and pattern of houses along
12 the street. Therefore, I support the special
13 exception.

14 We have our last letter from Daniel Buck
15 and Ann Meadows, 100 10th Street, S.E., dated
16 September 14, 2004. It's in your handout.

17 We live in a rowhouse at 100 10th Street,
18 S.E. directly across the street from Robin Snyder and
19 Bruce Louie. We support their project because we
20 believe it will visually enhance the neighborhood. We
21 own our home and have lived there since 1976. At
22 present the space at the south end of Robin and
23 Bruce's property is vacant. It looks like a missing
24 tooth. Their addition will close part of that gap and
25 naturally improve the look of the block. When Robin

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and Bruce purchased their property several years ago,
2 they spent considerable time and expense landscaping
3 what had been for years a drab lot. They are good
4 neighbors and the reason that Capitol Hill is an
5 attractive place to live. We hope that the Board will
6 approve their request. Sincerely, Daniel Buck and Ann
7 Meadows.

8 MS. SNYDER: They actually don't have a
9 copy of that one. We just got that today.

10 MR. LOUIE: It's in their packet. I made
11 copies. Let me know if you don't have it.

12 MR. ETHERLY: We'll take your word for it,
13 it's in the packet.

14 MR. GRIFFIS: Any questions of the Board
15 on the letters that have now been read?

16 Okay. Let's hear from persons in support.
17 Why don't we have the Applicant take a seat in the
18 front row for now. We'll leave the table for the
19 testimony.

20 MR. KACAR: My name is David Kacar. I
21 live in Dunkirk, Maryland. I'm the architect on the
22 project. I'd like to address three brief issues.
23 One, the water issue that was brought up at the ANC
24 meeting has been addressed. All the water from the
25 addition will be directed to the 10th Street side of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the property.

2 In addition, the existing water from the
3 existing house currently flows to the side to the west
4 of the property. That water will also be brought,
5 picked up and brought to the 10th Street side. So no
6 water runoff from the roof will run on to the west
7 property side.

8 MR. GRIFFIS: Okay, when you say it's
9 going to be picked up, you have people --

10 MR. KACAR: Gutters and downspouts.

11 MR. GRIFFIS: Is there going to be below
12 grade drainage?

13 MR. KACAR: There will not be.

14 MR. GRIFFIS: So in terms of even the
15 saturation of the soil there is nothing around the
16 foundation that's going to --

17 MR. KACAR: Currently, there's no
18 underground drainage.

19 MR. GRIFFIS: How does the storm water get
20 off the building on to 10th Street?

21 MR. KACAR: It will be run into planting
22 beds on the 10th Street side. It will now go on the
23 ground.

24 MR. GRIFFIS: I understand that. So there
25 is going to slope towards 10th Street, the downspouts

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are --

2 MR. KACAR: There currently is a slope
3 towards 10th Street, yes.

4 MR. GRIFFIS: There is?

5 MR. KACAR: Yes.

6 MR. GRIFFIS: So why are they having a
7 problem now?

8 MR. KACAR: We don't believe they are, but
9 Robin and Bruce have been very sensitive to their
10 neighbor's concerns and directed us to be sure that
11 the water was running away from the western property
12 side.

13 Should I continue?

14 MR. GRIFFIS: Pardon me?

15 MR. KACAR: Is there any other questions
16 on that?

17 MR. GRIFFIS: No, not from me.

18 MR. KACAR: Item 2, I'd like to address is
19 that the windows of the adjacent property to the west
20 would not be allowed under building, current building
21 code. You cannot build windows along a property line,
22 along a party wall. So those windows would not have
23 been allowed if they were built today.

24 And the last issue I'd like to address is
25 that this is a very unique historic property and we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 believe that the proposed addition preserves the
2 unique character of this home as a single family home,
3 single family detached dwelling. Thank you very much.

4 MR. GRIFFIS: Thank you. Any questions
5 from the Board? Clarifications? Any cross from the
6 Applicant? ANC? Thank you very much.

7 MR. KACAR: Thank you.

8 MR. GRIFFIS: Ready?

9 MR. TEUTON: I think so.

10 MR. GRIFFIS: We'll put you at clean-up.

11 MR. TEUTON: Good afternoon, Mr. Chairman,
12 Members of the Board. I am Hank Teuton, the infamous
13 neighbor to the west. I share about 100 feet of
14 property line with the Applicant. I believe that I
15 probably am more impacted than any of the other
16 neighbors who have spoken in favor of what's going on.

17 It is my preference that there not be any extension
18 to the house because I believe it does, in fact,
19 impact the amount of light that I would get right now.

20 All six of those windows that are exposed -- my house
21 has 10 windows all along the property line. And six
22 of those would be affected by any addition, light and
23 air.

24 Right now, all of those windows enjoy
25 direct sunlight being able to enter and with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 structure in place, the lower four windows would
2 probably only enjoy maybe 20 minutes and that's just a
3 guess, but about 20 minutes of direct sunlight. And
4 then we'd be in darkness the rest of the time. So I
5 believe that there is a light issue in regard to that.

6 I had preferred to be able to support my
7 neighbor, but unfortunately there hasn't been good
8 communication through this whole process. The only
9 communication, most of the communication has been
10 limited to either the ANC Committee Meeting or the
11 Historic Committee Meeting, but the issue of the water
12 was my first and foremost concern and apparently even
13 to this moment we have different views of the existing
14 water situation. The water coming off of their
15 existing house does come off their house in the corner
16 under the drawings there what would be the southwest
17 corner and apparently it had caused problems in their
18 own basement at some point. They had installed a
19 French drain to move the water from their basement and
20 deposited that water along my basement and that has
21 plugged up over the years in some way, but it's been
22 saturating that ground and currently all of that water
23 runs down to that corner, at least from my
24 perspective, saturating the ground there.

25 I at my own expense installed some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 temporary plastic pipe to move it across their lawn
2 out towards 10th Street, the water coming off their
3 house and they weren't happy with the visual effects
4 of that, and I agree, it was quite unattractive, but
5 due to lack of good communication between us, we
6 haven't been able to work out a way to install that in
7 any permanent fashion, especially since they also are
8 doing this plan, I was willing to wait to see what was
9 going to happen with that. At any rate, even at this
10 moment, that hose is rolled up and out of the way so
11 that if it were to rain this afternoon, all of the
12 water coming off the house would be going along the
13 side of my house.

14 After seeing those plans on Thursday, I am
15 persuaded that the new construction does take care of
16 moving the water away from my house and that would be
17 taken care of adequately.

18 I did raise the issue not only the light
19 and air issue, but also the visual effects and asked
20 them in compromise that either they would do something
21 as Mr. Peterson has suggested, to either limit the
22 extension to which they went back or to consider the
23 possibility of some sort of ornamentation that would
24 avoid me having more of an alley view instead of the
25 current view of open air, green space that I enjoy

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 right now. I sort of like the -- what they describe
2 as a missing tooth in a smile. I like that missing
3 tooth in the smile and would prefer to be able to
4 retain that.

5 With the issues taken care of, the
6 drainage issue taken care of and if they're able to
7 take care of landscaping and that's not very well
8 defined right now, but if they took care of the
9 landscaping and provided some ornamentation like
10 shutters that they talked about being able to install
11 if finances permitted, I still haven't seen exactly
12 what that means exactly, but if they're willing to do
13 those things, I could be relatively supportive of
14 this, even though it is to my detriment to lose the
15 open view, compared to having what could end up being
16 more of an alley view.

17 That's all I have to say.

18 MR. GRIFFIS: Good. Thank you very much.

19 And you did put in some detail of differing options.
20 Let me ask you just on your testimony now, you talked
21 about shutters, if the budget allows. On the facade
22 that was directly facing your property?

23 MR. TEUTON: Yes, I suggested that instead
24 of, in an earlier meeting I characterized it as having
25 a warehouse view, just nothing but boards looking out

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 my window, if they could do some sort of ornamentation
2 that would make it a little bit more attractive, more
3 compatible with an \$800,000 house, that's what ours
4 was appraised at, \$825,000 and that was based largely
5 on the light and air that I have right now. Should I
6 lose all of that, I think a good compromise would be
7 to have at least some sort of ornamentation, cornices
8 above the windows, shutters, change in the pattern,
9 something like that that would make it other than just
10 an alley appearance.

11 MR. GRIFFIS: But that elevation wouldn't
12 have any actual windows, but you're saying to do some
13 representation, maybe a relief that looks --

14 MR. TEUTON: Some sort of compromise that
15 made it better than just an alley kind of look.

16 MR. GRIFFIS: I see. Okay. And if I look
17 at this, the absolute south elevation of yours, it's a
18 fascinating little boot you have at the end of your
19 property. Are there windows on the very south side?

20 MR. TEUTON: There are.

21 MR. GRIFFIS: So you have fenestration in
22 that little area, you have windows on two sides, one
23 faces east -- I don't know why I think that's down --
24 okay, east and one faces south, is that correct?

25 MR. TEUTON: That's correct. To be more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 specific, down below grade there are two doors, French
2 doors, that open into that area. On the next level up
3 there's one that opens up into the kitchen, I'm sorry,
4 to a bathroom and the one above that opens to a
5 kitchen. The one above that to a bedroom or office.
6 That's on the south end that you're asking about.

7 MR. GRIFFIS: You're saying French doors,
8 those are interior, right? It sounds like on the
9 third level you have French doors, you open it up and
10 the first step is a doozy?

11 MR. TEUTON: No, there are two doors with
12 window panes in the whole thing, 16 pane windows or
13 something, down below grade.

14 MR. ETHERLY: And that's at the very rear
15 of your property?

16 MR. TEUTON: Very rear, that's correct.

17 MR. GRIFFIS: I see.

18 MR. TEUTON: I have two of those.

19 MR. ETHERLY: Not to come back to the
20 squirrel again, but you're talking about beyond where
21 --

22 MR. TEUTON: To the left and below the
23 squirrel.

24 MR. ETHERLY: Okay. On the first picture
25 that was offered. Because there's decking at the rear

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of your property?

2 MR. TEUTON: It's concrete.

3 MR. ETHERLY: Concrete.

4 MR. TEUTON: Okay.

5 MR. ETHERLY: I see. Right here.

6 MR. GRIFFIS: I understand that. Okay, so
7 in the cellar or basement level you have these French
8 doors that open up to your patio.

9 MR. TEUTON: That's right.

10 MR. GRIFFIS: And now you go up to the
11 first floor, are there windows on that elevation also?

12 MR. TEUTON: There is, yes sir.

13 MR. GRIFFIS: And on the second floor?

14 MR. TEUTON: There is a window into the
15 kitchen. And the third as well.

16 MR. GRIFFIS: But you don't have French
17 doors going all the way up?

18 MR. TEUTON: No, but that would be nice.

19 MR. GRIFFIS: I don't know, you could step
20 right out and you'd be on your patio in a second.

21 Okay. Questions? Clarifications?

22 MR. ETHERLY: Let me get a little bit of
23 sense for the two windows at the bottom. The second
24 picture that's pictured in the submission that was
25 entered into the record today by the Applicant, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 two lower windows there that appear to be curtained,
2 those windows are windows into what, living room area,
3 kitchen area?

4 MR. TEUTON: It's a master suite down
5 there, the way it's set up right now.

6 MR. ETHERLY: Okay, and then as you move
7 up to the second floor?

8 MR. TEUTON: I have a dining room and
9 kitchen.

10 MR. ETHERLY: And third floor there?

11 MR. TEUTON: Is a bedroom and another
12 bedroom that we have set up as an office.

13 MR. ETHERLY: One of the things that, as
14 I've been offering some questions, I've been kind of
15 massaging this issue of light and air to an extent and
16 I see, I can see where the argument comes with respect
17 to what would be the first floor windows there.

18 In terms of use and enjoyment, I'm perhaps
19 not quite with you all the way on the argument because
20 you do already, of course, have to accommodate or
21 account for the fact that there is open space right
22 outside those windows already that conceivably could
23 be used by the Applicant, by that I mean there appears
24 to be patio furniture already outside of that window,
25 so conceivably that space could be used by the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Applicant completely as a matter of right in terms of
2 just activity.

3 So you kind of have to live with that
4 already to an extent. Clearly, that's very different
5 from what the impact would be if a structure is placed
6 there. So I understand where that argument is coming
7 from. I think that's all I have, Mr. Chair. I just
8 wanted to get a sense of what was behind those windows
9 from an impact standpoint.

10 Thank you, Mr. Chairman.

11 MR. GRIFFIS: Good, thank you very much.
12 Any other questions from the Board?

13 Any cross examination of the Applicant?

14 MS. SNYDER: Yes, we have a couple of
15 clarifying questions. In about January of this year,
16 didn't you and your wife approach us concerning a tree
17 in the backyard that you indicated was dropping pine
18 needles into your gutters and asking us to remove or
19 trim branches or allow you to do so because you were
20 convinced that runoff from your own gutters was
21 resulting from build up of pine needles, that it was
22 dangerous for you to go up there and clean them
23 because you do have a three story home and that the
24 water run off from your gutters was causing internal
25 water damage?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Let me just get a sense of
2 the relevancy here?

3 MS. SNYDER: The relevancy is this issue
4 of our home currently causing all of this water damage
5 which has snowballed into all of these things that
6 we're supposed to do to address this water damage, but
7 there's been a history of evolution of the cause of
8 the water damage.

9 MR. GRIFFIS: Okay. Is the pine tree to
10 blame?

11 MR. TEUTON: The tree I think she's making
12 reference to has been removed by them. The timing,
13 January, I was in Hawaii, so I wasn't around.

14 MR. GRIFFIS: I know, the specifics, I
15 won't remember. Did the issue change, this whole
16 water drainage?

17 MR. TEUTON: I think the tree probably has
18 some impact on the whole thing, but to answer her
19 question --

20 MR. GRIFFIS: It sounds like remedies have
21 been taking place step by step by get this. Do you
22 agree?

23 MR. TEUTON: No, I wouldn't agree exactly.
24 I think we have a different memory of what happened.
25 I did approach them because the limbs were dropping

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 needles in our gutter, filling them up and I asked for
2 permission that I do the trimming at my own expense
3 and that's my memory. And they recommended that I not
4 go up on the roof, they thought it was dangerous.

5 MR. GRIFFIS: Okay. You indicated that
6 you're satisfied that the addition will remedy the
7 water problem, is that correct?

8 MR. TEUTON: Absolutely. I think it will
9 remedy the whole thing. But if they do the guttering
10 as described this past Thursday night, that would
11 solve the problem.

12 MR. GRIFFIS: So it's kind of a moot
13 issue, this water?

14 MR. TEUTON: Absolutely. It's moot from
15 the point of view, if you approve their addition, it's
16 taken care of, but currently, as I said, at this very
17 moment water still is saturating that ground.

18 Okay, next question?

19 MS. SNYDER: I think given what he just
20 said, I think we're okay.

21 MR. GRIFFIS: Does the ANC have any
22 questions?

23 MR. JARBOE: Mr. Chairman, this is just a
24 clarification question. I'm still confused about the
25 windows at the rear as well. In part, I guess,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because I don't have the famous squirrel picture. I
2 didn't get the Office of Planning --

3 MR. GRIFFIS: WE're going to post it on
4 the website for sale.

5 MR. JARBOE: If I could look at that very
6 quickly.

7 MR. GRIFFIS: Let's look at that very
8 quick. Do you have the submission that shows the
9 diagrams of the options?

10 MR. JARBOE: Yes.

11 MR. GRIFFIS: Why don't you get that out?

12 MR. JARBOE: What I have is a submission
13 that was made to the ANC at the ANC's meeting. I
14 don't know if I have any other. I'm not sure that
15 that answers my question. What I have is a -- the
16 submission that I have has various options drawn in
17 for the proposed addition and that isn't getting at my
18 question.

19 MR. GRIFFIS: The Applicant's submission?

20 MR. JARBOE: No. This is a submission
21 from the neighbor. The Applicant's submission --

22 MR. GRIFFIS: Page 3.

23 MR. JARBOE: There's the squirrel. I now
24 have the squirrel picture.

25 I guess I'm confused as to what part,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 where the windows are on this. I'm looking at this
2 and I see a chimney along that back well. I just am
3 wondering, clarification of where on that back wall
4 the --

5 MR. TEUTON: Just around behind the
6 chimney, there's a window there.

7 MR. JARBOE: So the back windows are, in
8 fact, back behind the chimney, so you've got --

9 MR. TEUTON: To the left.

10 MR. JARBOE: To the left, to the east of
11 the chimney. So it's on the east side of your
12 property. So it's on the side near the party wall
13 with the other neighbors, not on this side.

14 MR. TEUTON: Correct.

15 MR. JARBOE: Thank you.

16 MR. GRIFFIS: Okay, any other questions?

17 MR. ETHERLY: We'll need the squirrel
18 picture back, please.

19 (Laughter.)

20 MR. GRIFFIS: Okay, anything else from the
21 Board, clarifications, questions?

22 Okay, very well. Thank you very much.

23 MR. TEUTON: Thank you, Mr. Chair.

24 MR. GRIFFIS: And your submission, the
25 diagrams are very useful.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Let's move on then to closing remarks.

2 MS. SNYDER: In summary, we do have
3 overwhelming support for our addition plans. I
4 mentioned the petition earlier and in July, the ANC
5 voted 6 to 0 in support of our application. As part
6 of the ANC approval, we agreed to landscape the side
7 yard and water drainage issues were addressed. We
8 really would appreciate a ruling from the Board today.

9 MR. GRIFFIS: Very well, Board Members, I
10 think we've filled the record. I think everything we
11 have before us allows us to make a bench decision on
12 this. Unless I hear otherwise from Board Members, I
13 think we ought to go right into deliberation on this.

14 First of all, we were presented, of course, a special
15 exception under 223. 223, of course, has to flow
16 through the entire special exception test, but also
17 the specifics of 222 which go to -- actually, it's
18 almost an enumeration of the special exception itself,
19 but use, light, privacy of adjoining neighbors and not
20 affecting, impacting the character. I don't think the
21 character in any way, shape or form has been
22 questioned in this.

23 It's fascinating to hear the description
24 and views this actually lends itself to the uniqueness
25 of Capitol Hill, I might say, which is part of its

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 character, but that may be too much of a digression.

2 At this point let's go into the specifics
3 and really the heart of the issues here. And that's
4 the light/air and I dare say that the privacy of the
5 adjoining neighbors. This is -- both the buildings of
6 critical nature and the impact of this are uniquely
7 shaped. What's fascinating the neighbor in
8 opposition, I think has an important issue to raise in
9 terms of having come to enjoy and rely on large open
10 space and views and light into this property.
11 However, it is across the property line on to the
12 adjacent neighbor's property of which that is their
13 open space and their area to utilize, to animate and
14 to do with essentially what is needed for their own
15 requirements, of course, within the jurisdiction of
16 all the regulatory bodies of this city, this being one
17 of them.

18 So balance is really what we come down to
19 in looking at this. I think there's a strong case and
20 as a matter of fact, I am much more persuaded by this
21 application, by the Applicant's testimony and
22 presentation in terms of how the impact, there's no
23 question in the beginning of any construction, is
24 going to have impact. You're creating a physical
25 structure that will be viewed and seen. But the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 impact has been mitigated, first of all by maintaining
2 the massing of this unique building of two story,
3 which actually aligns with the massing of the adjacent
4 structure. It's kind of interesting. It shows better
5 in the artist's rendering which is obviously not a
6 scaled or realistic, but it's a good kind of sense of
7 the graphics of how it matches the massing of the
8 adjacent property, almost as if it marches down a
9 separate townhouse.

10 Now that's the front of that -- of 10th
11 Street and that avenue. It's actually creating
12 another primary elevation. And what's at issue is how
13 it impacts the rear elevation of the rear, of the
14 adjacent property. So now the rears are aligning, but
15 an unknown situation. As also, in given testimony in
16 terms of the side yard of which that actually is, even
17 though directionally I'm referring to it as the rear,
18 it's the side yard. It is upwards of eight feet
19 separation.

20 Also, in my mind in looking at the fact
21 that the impact, as we've just gone through, there are
22 additional windows and fenestration on the direct
23 south side of the adjacent property.

24 Now I don't dispute the fact that some
25 light is going to be cut off from the impacted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 windows, but I don't think it will be essentially
2 bricked up or totally removed and certainly on the
3 third level. You know, the mere fact that it's going
4 to be a white building, at least now and currently,
5 shows that there will be a lot of refraction of light
6 also as it goes through.

7 In terms of the aesthetically pleasing
8 landscaping, I'm not really sure what that means
9 because I have good friends who actually find painted
10 gravel aesthetically pleasing landscaping, but I think
11 it's important the notion of what's being said here in
12 this application is that area has to be dealt with.
13 It's now going to be totally different than it is
14 currently. One, that landscaping is going to be very
15 difficult to do. It steps over, I think, our
16 jurisdiction in terms of regulating or telling what
17 exactly that landscape is going to be, but in all
18 practicality, the light that will be back there for
19 plantings, it will be critical really to put something
20 that's useful and that's actually enjoyable back in
21 that area. But that's going to be left up to the
22 Applicant if this proceeds.

23 I'm going to leave it at that. I'll do
24 any summary if needed, but let me hear from other
25 Board Members.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: Well, I concur with all the
2 remarks that you made and I want to add that none of
3 us like to lose green space that's next door to us and
4 that is an adverse impact to a neighbor that's become
5 accustomed to having that nice open space, but I don't
6 believe that that's the type of adverse impact that is
7 at issue in these regulations under 223. The issues
8 are really whether light and air and privacy are
9 affected and it's not even just a balancing. I mean
10 the property owners have certain rights and by
11 building, some light may be diminished, but that
12 doesn't really rise to the level of an adverse impact.
13 The standard is the light and air and privacy under
14 these regs.

15 I also just want to address for the record
16 that to give great weight to the ANC. They did come
17 in in support of the application with two conditions.

18 The first one dealt with downspouts and I think we've
19 thoroughly discussed that issue and the parties have
20 said that that is moot at this point, so that wouldn't
21 be a condition in this order. And the other one is
22 the landscaping and I think our conditions also are
23 for the purpose of mitigating certain adverse impacts
24 that we might foresee in the order and I don't think
25 we've identified adverse impacts so far. We don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 find that this impacts on light and air and privacy if
2 we choose to grant it. And it's also not measurable.

3 It is a personal thing. So therefore, I don't think
4 we should include this landscaping condition as a
5 condition in our order. However, I think the order
6 should reflect that the Applicant has represented that
7 they plan to landscape in accordance with the site
8 plan that is submitted. I don't believe it has an
9 exhibit number yet, but it will.

10 MR. ETHERLY: Mr. Chair, I too will be
11 supportive of the direction in which your comments
12 have led us, Mr. Chair. I believe the testimony that
13 was offered, both the photographic illustrations, as
14 well as the verbal testimony was extraordinarily
15 helpful and very well prepared. I think there's been
16 a significant amount of work that's been conducted to
17 get us to this point in terms of some of the back and
18 forth that's already taken place between members of
19 the community and the neighbors to the west.

20 I did indeed struggle very much and wanted
21 to really parse out some more information regarding
22 the impact on the light and the air and I appreciate
23 the photographic evidence that was brought by the
24 neighbors to the west. I do think that that's where a
25 lot of the tension in this case for me resided in that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue, as it related to the light and air. I felt
2 that the privacy was fairly a wash in terms of looking
3 at the impact of the new structure, relative to what
4 you already have in place, so I wasn't necessarily too
5 concerned about that particular prong, but I felt the
6 light and air issue was one of some concern.

7 I'm going to side with the Chair and my
8 colleague, Ms. Miller, in that I do believe the
9 remaining buffer that will exist between the proposed
10 addition and the property to the west will afford some
11 additional light. I think the key word here with
12 regard to 223.2A is really are we looking at an effect
13 that is going to be undue, shall we say an unduly
14 effect, the availability of light and air and I just
15 don't think we're quite at that level yet.

16 I am in agreement, that is going to have
17 an impact. I just don't think it rises to the level
18 of shall we say if you had a pure brick wall rising
19 up, a full three stories, two feet from your windows.

20 So with that, Mr. Chair, I'm prepared to move
21 forward, but I do appreciate all the effort and the
22 work that was brought forward by both the Applicants
23 and other members of the community and of course, the
24 Teutons for their time today.

25 Thank you, Mr. Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Thank you, Mr. Etherly, well
2 said.

3 Others? If there are no other preliminary
4 deliberations, let's move ahead under a motion. I
5 would move approval of Application 17203 for the
6 special exception to reconstruct a two-story rear
7 addition to a single family dwelling under Section
8 223, not meeting the lot occupancy under 403, the rear
9 yard under 404, requirements at the premises of 925
10 North Carolina Avenue, S.E. and would ask for a
11 second.

12 MS. MILLER: Second.

13 MR. GRIFFIS: Thank you, Ms. Miller. I
14 think we've talked extensively about the special
15 exception test on this. I think one of the things
16 that should continue to occur which we often say, but
17 perhaps not often enough but clearly the neighbors
18 keep working with them together and communicating in
19 terms of as the construction starts, if this moves
20 ahead and also any other specific issues as arise
21 either from the addition or otherwise and both enjoy
22 the area in which they live.

23 I'll open it up to others, deliberation of
24 the motion. We have a motion before us that's been
25 seconded. Any other comments? Very well, Ms. Miller?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: Well, I would propose that
2 this be -- no, I'm sorry.

3 MR. GRIFFIS: Indeed. If there's no other
4 comments then to the motion that's before, I ask that
5 all who are in favor signify by saying aye.

6 (Ayes.)

7 Opposed? Abstaining?

8 (No response.)

9 Very well, why don't we record the vote?

10 MS. BAILEY: The vote is recorded as 5:0:0
11 to approve the application. Mr. Griffis made the
12 motion. Ms. Miller seconded. Mr. Mann, Mr. Parsons
13 and Mr. Etherly are in agreement.

14 MS. MILLER: What I was going to propose
15 then, I think I can propose that at this point is that
16 this be a summary order, since we don't have any
17 parties in opposition, but I would also request that
18 that order reflect the representation with respect to
19 the landscaping since that was not a part of the
20 initial application, just to reference a exhibit.

21 MS. BAILEY: Absolutely.

22 (Pause.)

23 MR. GRIFFIS: Okay, let's move ahead.
24 Thank you both very much.

25 MS. SNYDER: Thank you very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. LOUIE: Thank you.

2 MR. GRIFFIS: We're going to take a 10
3 minute break and we'll be back for the next case.

4 (Off the record.)

5 MR. GRIFFIS: Very well, let's resume.

6 MS. BAILEY: Application 17202 of First
7 Washington Equities LLC, pursuant to 11 DCMR 3103.2,
8 for a variance to permit the establishment of an
9 all-day commuter parking lot, with eight parking
10 spaces under subsection 1702.7(c) in the DD/C-2-C
11 District at premises 1017 4th Street, N.W., also known
12 as Square 526, Lot 808.

13 Mr. Chairman, just for clarification, the
14 application was originally advertised for four parking
15 spaces, however, it has been amended to indicate that
16 it is for eight spaces.

17 MR. GRIFFIS: Very well. And we have
18 drawings to reflect that. Actually, we have both
19 showing. So let's move ahead.

20 MR. TUMMONDS: Good afternoon, Mr.
21 Chairman, Members of the Board. I'm Paul Tummonds,
22 Law firm of Shaw Pittman on behalf of the Applicant in
23 this case.

24 As you know, seeing from our pre-hearing
25 statement, this application requests variance relief

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in order to establish an all-day commuter parking lot
2 for eight parking spaces at the property located at
3 1017 4th Street, N.W. This property is located in the
4 DD/C-2-C zoned district.

5 I'll provide a brief overview of how we
6 believe that we satisfy the variance relief standards
7 and we'll be followed by Mr. Loewinger, a
8 representative of the Applicant to address the
9 proposed use, operation of the lot.

10 In addition, if you have any questions, we
11 have the architect who can run you through the parking
12 lot.

13 MR. GRIFFIS: I hope we don't have too
14 many questions.

15 Let me ask a quick preliminary question.
16 What type of variance are we looking at here?

17 MR. TUMMONDS: The DD regulations prohibit
18 all day commuter parking, 1702.7(c). I guess your
19 question is is it a use variance or is it an area
20 variance?

21 MR. GRIFFIS: That's correct.

22 MR. TUMMONDS: It is my understanding that
23 the most recent case that came before this Board was
24 for the old Convention Center site where it was
25 determined that it was, in fact, the infamous Palmer

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Hybrid Variance type case where there are practical
2 difficulty aspects, I would say, in this case, the
3 practical difficulty standards apply to show us why
4 you can't use this for parking for short term retail,
5 parking shop operation or for residential use on the
6 site and then a use variance, if need be, for
7 establishing all day commuter use.

8 We have presented our case such that we
9 believe we can satisfy that use variance standard of
10 undue hardship, if this Board were to determine that,
11 in fact, we do not need to satisfy the undue hardship
12 standard, but then only the lower standard of a
13 practical difficulty, we think we would certainly
14 satisfy practical difficulty standard as well.

15 MR. GRIFFIS: So you're saying that Palmer
16 sets out the availability for the hybrid type of
17 application which goes to you have a prescribed
18 general use and that's the parking that would be
19 allowable. However, in the specificity of the DD, it
20 prohibits certain types of sub-uses within that
21 general use and that's where we get into the use
22 discussion, but it's not a full blown hardship case.

23 MR. TUMMONDS: Yes.

24 MR. GRIFFIS: Board Members? Does the
25 Attorney General have an opinion on this?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MONROE: I agree, it's a hybrid. I
2 hate to say that, but I think that best fits this,
3 particularly because it is an allowed use and there's
4 a specific subsection which says you need a variance
5 and it doesn't specify what kind. I think you can go
6 with that.

7 MR. GRIFFIS: Okay. Others?
8 Clarifications? Is everyone satisfied proceeding in
9 that fashion?

10 MR. PARSONS: Yes.

11 MR. GRIFFIS: Let's move ahead then.

12 MR. TUMMONDS: With regards to the first
13 prong of the variance standard that this property is
14 subject to, an extraordinary situation or condition.
15 We note that the general area surrounding this
16 property has not yet experienced the type of mixed use
17 development that the DD District envisions. There's
18 no significant shopping or retail uses close to the
19 property and unfortunately, in addition, a significant
20 amount of loitering and prostitution exists in the
21 general area surrounding this property.

22 As noted in our pre-hearing statement,
23 this property is a small rectangular lot located on
24 4th Street, approximately mid-block between K and L
25 Streets. The lot has no alley access. It consists of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 only 25, approximately 2500 square feet and is only
2 approximately 27 feet wide.

3 As noted in the Office of Planning report,
4 over half of the property in this square is owned by
5 the District of Columbia. That property is adjacent
6 to this small property. That property that's
7 currently used by the District of Columbia for the
8 storage of vehicles and other -- looks like random
9 materials.

10 The square includes a few row houses and
11 at the corner, the intersection of 4th and K, a
12 converted rowhouse that is now a delicatessen and a
13 car repair shop.

14 The Applicant believes that the
15 convergence of all these factors, the existing
16 conditions in the general area, the use of the other
17 properties in this square, the small size of this
18 property, the fact that it has no alley access, the
19 convergence of all those factors results in an
20 extraordinary or exceptional situation or condition
21 for this property.

22 Second, with regards to the practical
23 difficulty prong of why we are not able to satisfy the
24 regulations of 1702.7, we note that the DD regulations
25 do permit parking lots in this zone, if they're used

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for short-term parking and all of those spaces are
2 leased to merchants or parking shop organization. As
3 we've said, there isn't really any significant retail
4 or shopping adjacent to this property where someone
5 would want to use this lot for short-term parking.

6 In addition, the DD regs do permit a
7 parking lot for residential uses on that site. Due to
8 the small size of this lot, it is not -- there is a
9 practical difficulty in having both residential and
10 parking spaces on site, so we think that a practical
11 difficulty does arise with providing parking for
12 residents of a project on this site.

13 With regards to the undue hardship, again,
14 we note that due to the small size of this property
15 and the fact that it's only 17 feet wide and there's
16 no alley access, any parking that would be required
17 for a residential use on this property or a commercial
18 use would have to be accessed from 4th Street. We
19 note in our application that two-way access for in and
20 out to get to parking spaces requires 14 feet.

21 Therefore, on this site in order to provide the
22 required parking that we need to, the amount of
23 buildable area on our site would only be 13 feet wide
24 at that first level. We have 13 feet of building, a
25 14 foot wide driveway to allow in and out access to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the parking spaces that we would then have to put in
2 the rear of our 2500 square foot lot, so we think
3 there is an undue hardship that would be required to
4 require on this site of this size development of
5 residential or commercial.

6 Again, we note that the commercial
7 allowable on the site is only a 2.0 commercial. We
8 also note that this property is located in housing
9 priority area A which would require any development on
10 this site would have to provide 4.5 FAR residential.
11 So in effect, a mixed use building would have to have
12 4.5 FAR residential, 13 feet of buildable, developable
13 space at that ground level and then we could build to
14 90 feet. Well, we don't think that that is a likely
15 scenario.

16 With regards to whether or not relief can
17 be granted for this variance that would not cause
18 substantial detriment to the public good, we note that
19 ANC-6C has adopted a unanimous resolution in support
20 of this project and the proposed use of the property.

21 Their support for this use was based on the inclusion
22 of a rain garden, a security fence, a parking lot
23 operator and security lighting. I think truly their
24 idea behind this was by having some beneficial, legal
25 use and activity on this site, it will help encourage

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the security for the area.

2 By having the parking lot operator there,
3 by having a fence, by having appropriate lighting,
4 that will provide more activity, pedestrian activity
5 up and down 4th Street and deter the type of
6 activities that presently occur.

7 With regard to the last aspect of the
8 third prong of the variance test, whether or not
9 relief can be granted, that would not impair the
10 intent, purpose and integrity of the zone plan. We
11 believe that the goals to the mixed use development
12 embodied in the DD District are not impaired by
13 allowing an interim use of this property for an all
14 day commuter parking lot. As Mr. Loewinger will
15 discuss, the Applicant is amenable to approving this
16 application for a period of 7 years at which time the
17 Applicant certainly hopes that this property will be
18 more -- the likelihood of development in this area
19 will be of such for a more permanent use of this
20 property that will be beneficial both to the
21 surrounding area and will truly be in keeping with the
22 intent and integrity of the zone plan.

23 That concludes the Applicant's discussion
24 of how we believe we satisfy the variance standards
25 and I'll have Mr. Loewinger give a brief statement as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to the proposed use, operation of this lot.

2 MS. MILLER: Could I make a -- well, he
3 made reference to the ANC and I'm wondering if we have
4 an ANC report in our file.

5 MR. TUMMONDS: I have one, it says
6 received September 13 at 3:45.

7 MR. GRIFFIS: Your mic is off. September
8 13th at 3:45 it was received.

9 MS. MILLER: I don't think we do have it.

10 MR. TUMMONDS: I would note the ANC
11 requested a waiver for the late filing. We were
12 amenable to that waiver request.

13 MR. GRIFFIS: Okay, let's move ahead.

14 MR. LOEWINGER: Mr. Chair and Members of
15 the Board, my name is Andrew Loewinger. I'm a
16 principal in First Washington Equities LLC and
17 professionally I'm a partner in the law firm of Nixon
18 Peabody in Washington, D.C. where I also live.

19 We are here for this variance today for a
20 small parking lot on the subject property at 117 4th
21 Street, N.W., as Mr. Tummonds has described. The
22 property is a small, approximately 2500 square foot
23 grassy lot in the middle of the block on 4th Street
24 between K and L Streets, N.W. It has no alley access.

25 It is in a transitional neighborhood, where there's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 currently certain amount of illegal activity that goes
2 on daily, loitering, prostitution and the like. And
3 for that reason, we would like to put an 8 space lot
4 on the property. We had originally applied to put
5 four spaces on the lot, but because the ANC
6 recommendation, in part, to have an attendant on the
7 lot, we believe that it supports eight spaces.

8 The proposed use would be for an all-day
9 commuter parking for employees of Loewinger and Brand,
10 a law firm located at 4th and H Street, N.W., and for
11 other commuters. As Mr. Tummonds indicated, our
12 request is for a variance for 7 years.

13 I appreciate your consideration of our
14 request.

15 I'm available for questions.

16 MR. GRIFFIS: Good, thank you very much.
17 Let's go to a couple of questions in terms of
18 technical in the plan. Maybe the architect -- what's
19 a raingarden?

20 MR. FINN: The question of the raingarden
21 came in at the first ANC meeting when the members of
22 the ANC were worried about storm water, wash off into
23 a street and so they suggested the raingardens so
24 we've come up with what I think is a rather pleasant
25 tidy solution to that. In other words, this area

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 marked by the Xs right here would be planted and
2 landscaped so any -- it would take care of some of the
3 excess water.

4 MR. TUMMONDS: Mr. Finn, would they be
5 planted with grasses?

6 MR. FINN: I was envisioning in this,
7 although judging from the last two sessions, some
8 pachysandra and some acuba. It would actually be
9 rather pleasant and green all year round.

10 MR. GRIFFIS: Is the runoff from the
11 surface all going into these raingardens or is it just
12 capturing the water that hits in that area?

13 MR. FINN: What we're planning on doing is
14 sloping the paving approximately 50 percent of the
15 paving down to raingarden, so we'll get about half of
16 it.

17 MR. GRIFFIS: I see. And the lighting,
18 there's only two lamp posts that are proposed at the
19 edge, the street edge, is that correct?

20 MR. FINN: Yes.

21 MR. GRIFFIS: Is there additional
22 lighting on the attendant booth? Is there any
23 lighting into the lot itself?

24 MR. FINN: Well, we'll certainly be
25 willing to entertain lighting the booth. It's not a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 problem, if the Board --

2 MR. GRIFFIS: Is there or not?

3 MR. FINN: We haven't shown it now.

4 MR. GRIFFIS: Are you proposing it?

5 MR. FINN: Yes, we'll propose it.

6 MR. TUMMONDS: We'll propose it.

7 MR. GRIFFIS: I mean --

8 MR. TUMMONDS: It's such a small lot.

9 MR. GRIFFIS: Grow lights for your
10 raingarden or something. I just want clarification.
11 If lighting is an issue in this problematic, is there
12 a gate that closes this off?

13 MR. TUMMONDS: Yes, there will be.

14 MR. GRIFFIS: So it closes at night?

15 MR. TUMMONDS: It closes at night.

16 MR. GRIFFIS: So conceivably, it's just as
17 a dark back behind the gate. How high is the gate?

18 MR. FINN: I believe seven feet is the
19 maximum we can do a fence.

20 MR. GRIFFIS: What are you proposing?

21 MR. FINN: Seven feet.

22 MR. GRIFFIS: I see. Okay. And just
23 programmatically, I know it's in here, but just for
24 reiteration and specificity, the hours of operation
25 and the hours the attendant is going to be on site, is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it 12?

2 MR. TUMMONDS: The zoning regulations
3 allow for 12-hour and it's a peak period, so it's
4 depending on is that 7 to 7, is that 8 to 8. I think
5 that will be determined by demand.

6 MR. GRIFFIS: Okay, but frankly for this
7 application then it will be attended at a minimum of
8 the peak period within the 12 hours?

9 MR. TUMMONDS: That's correct.

10 MR. GRIFFIS: I see. Other questions.

11 MR. PARSONS: Why the request for 7 years,
12 why not 5 or 10?

13 MR. TUMMONDS: We noted that with the
14 Convention Center, it was 6. We thought that
15 obviously one of the big drivers in this area is going
16 to be the redevelopment of the Wax Museum site, it's a
17 block away and thinking that is the timing for that,
18 five, six years? I don't think there is a distinct
19 reason why 7, why 6.

20 MR. PARSONS: Okay.

21 MR. TUMMONDS: It will be your discretion.

22 MR. MANN: From which organization do you
23 see permission for the curb cut?

24 MR. TUMMONDS: DDOT. That would be during
25 the permitting process. They will review the plans we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have showing bituminous concrete and the curbcut that
2 public space permit to allow that curbcut and then the
3 paving of the lot.

4 MR. MANN: And how many of the parking
5 spots are supposed to be or intended to be dedicated
6 for use by the law firm?

7 MR. LOEWINGER: I don't think we had
8 allocated a certain number for use by the law firm.

9 MR. MANN: So it could be from one to
10 seven?

11 MR. LOEWINGER: That's correct.

12 MR. MANN: But not eight?

13 MR. LOEWINGER: I wouldn't think so, no.

14 MS. MILLER: Is part of the reason you're
15 not seeking accessory parking for the law firm because
16 there's not a need to devote the eight spaces to the
17 law firm?

18 MR. TUMMONDS: Accessory parking would
19 have to be adjacent to. The law firm is located 471 H
20 Street.

21 MS. MILLER: Oh that's right. Thank you.

22 And my other question is the raingarden sounds very
23 nice, but I just want to know is there a nexus between
24 the need for the raingarden because of the paving, is
25 that going to change the water flow and that's why

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you're going to have this raingarden?

2 MR. TUMMONDS: I believe ANC-6C requested
3 it. They have a rather extensive form that they
4 require at their planning and zoning committee for all
5 Applicants to fill out and one of the boxes that you
6 can check is are you proposing a raingarden? Sure, we
7 are proposing a raingarden.

8 MR. GRIFFIS: Is it going to be certified
9 construction also? No, I mean --

10 MR. TUMMONDS: No, I mean, I don't want to
11 make fun of that by saying there is a requirement for
12 parking lots that are greater than 10 spaces, you have
13 a certain amount of landscape space. That landscape
14 space can be a raingarden. It could be bushes,
15 shrubs. That was an important issue for ANC-6C and so
16 we said that made sense to us. We'll put in a
17 raingarden.

18 MS. MILLER: Okay, I was just curious that
19 this is the first I've heard about raingardens, so
20 thank you.

21 MR. GRIFFIS: Well, it makes some sense
22 also just in terms of stormwater management on the
23 site. I think it's located correctly too, but getting
24 in the specificity is important for our understanding.

25 Okay, other questions? Let me see if I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 understand the other assertion that was talked about a
2 little bit with a written submission, but more so in
3 the opening by the attorney representing the Applicant
4 and that goes to what could actually be built here and
5 what the requirements are. You said it indicated
6 being a housing priority area it would be required any
7 sort of development to also provide 4.5 FAR housing.
8 Is that correct?

9 MR. TUMMONDS: That is correct.

10 MR. GRIFFIS: So the site is roughly a
11 little over 2000 square feet, the lot itself?

12 MR. TUMMONDS: 2552.

13 MR. GRIFFIS: So 2552 at 4.5 FAR is about
14 11,000 square feet.

15 MR. TUMMONDS: Right, within I believe an
16 80 percent lot occupancy.

17 MR. GRIFFIS: That's right, so an 80
18 percent lot occupancy would mean a 2552, 80 percent
19 would be about 2,000 footprint, fitting in 11,000
20 square feet of housing. You're looking at a six story
21 building essentially on 2,000 square feet with the
22 commercial below it, the 2 FAR commercial below it.

23 MR. TUMMONDS: That would be 27 feet wide.

24 MR. GRIFFIS: I'm just trying to picture
25 what the structure might look like. So at 2,000

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 square feet at 27 feet wide, it has some depth to it,
2 but not much and then you have two stairs, conceivably
3 an elevator because you're not walking up six to eight
4 stories.

5 MR. TUMMONDS: Corner parking.

6 MR. GRIFFIS: Right, and your parking is
7 below, so it's sitting even taller. I see. So we
8 have like almost a telephone tower rising out of this
9 site which might make some speculator loft views.

10 Okay. So if I understand then just the
11 mere -- in what is allowable in building here and
12 actually what's required as part of the overall area,
13 it seems to be putting a heavy burden on it that's
14 more appropriate for the larger sites in the adjacent
15 area.

16 MR. TUMMONDS: That's correct.

17 MR. GRIFFIS: I see. Anything else? Any
18 other questions?

19 Let's move ahead then to the ANC report,
20 or rather the Office of Planning's report. Mr.
21 Cochran is with us.

22 MR. COCHRAN: Thank you. For the record,
23 my name is Steven Cochran, Office of Planning. Office
24 of Planning recommends against this application.
25 We've evaluated it as a use variance under 1702.7(c).

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 With respect to uniqueness, the first test, we do not
2 believe that the Applicant has demonstrated that the
3 site is unique.

4 The Applicant has mentioned several other
5 vacant parcels in the same square. The Applicant's
6 parcel is 27 by 93, 2500 square feet. There are nine
7 other similar parcels in that same square alone. It
8 does not have alley access, neither of the other
9 parcels have alley access. It's not unique within the
10 square, nor within the Mount Vernon triangle.

11 With respect to the second test, undue
12 hardship, Office of Planning does not believe that the
13 Applicant has demonstrated that there is undue
14 hardship. It's true that it would be impractical to
15 use for short term parking for park and shop or
16 through merchants association under 1702.7(a). It
17 would be impractical to use only for residents as
18 there are no nearby residents under 1702.7(b).
19 However, as the BZA has started to question, the
20 Office of Planning, at least, does not feel that the
21 Applicant has demonstrated that there aren't other
22 matter of right uses with which this site could be
23 developed.

24 OP estimates that somewhere between 20 and
25 just under 25,000 square feet of residential

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 development could be achieved on this site. It is in
2 the DD. It does not have an FAR requirement. The
3 effective FAR would be about 10, we estimate, given
4 the easing of restrictions within the DD.

5 Yes, there could be a building, much like
6 you see in other parts of town that's 23 feet wide and
7 10, 12, 13 stories tall. If you really wanted to push
8 it, you could get a 14-story residential building in
9 here. Office of Planning would prefer to see
10 something with more generous ceiling heights, but it
11 is the burden of the Applicant to demonstrate that
12 that kind of matter of right development is
13 impractical and we don't believe that the Applicant
14 has demonstrated that. In fact, it seems to Office of
15 Planning that what we have here is exactly what the DD
16 restrictions are trying to avoid.

17 We have a piece of property that the
18 Applicant has not demonstrated can't be usable under a
19 matter of right, but the Applicant is avoiding the
20 very restrictions that the DD sought to impose on
21 parking lots that are not imposed in other commercial
22 areas.

23 This type of use would be allowed as a
24 matter of right outside of the DD. Why isn't it in
25 the DD? It allowed, as a matter of right, in the DD,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because we're trying to avoid having buildings either
2 torn down as they reach the end of their seemingly
3 useful life or to have vacant land remain undeveloped.

4 An example of what happens, if this vacant land
5 remains undeveloped is illustrated in Attachment 1 to
6 the OP report. If you look at that ortho photograph,
7 you'll see exactly what happens with the DD
8 restrictions haven't been applied, excuse me, when the
9 DD restrictions didn't exist on parking lots in an
10 area like this. This area is, as the Applicant has
11 stated, been assembled for development. We have the
12 Wax Museum with an exclusive rights agreement. We do
13 believe that that will be underway within the
14 relatively near future. We have the Mount Vernon
15 Partnership assembling land on the south side of K
16 Street, catty-cornered from the square in which the
17 Applicant's property is located.

18 We have the Mount Vernon Partnership also
19 assembling land in the square immediately to the
20 south. We have the Stewart Company assembling land to
21 the northeast of the square in 515N. The Zoning
22 Commission has recently allowed to be set down
23 language to put into place a new district within the
24 downtown development district that would affect the
25 Mount Vernon area although not this particular square,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 admittedly.

2 The third test involves is there harm to
3 the public and is there harm to the zoning plan? The
4 Office of Planning agrees with the Applicant. There
5 would not likely be harm to the public from a parking
6 lot in this area. In terms of the benefits that the
7 Applicant alleges, we would note that you could put up
8 a fence and light this without there being a parking
9 lot. The benefit comes from fencing and lighting, not
10 from use as a parking lot.

11 Would there be harm to the zone plan?
12 Yes, the Office of Planning believes that there would
13 be for the very reasons that we just went through when
14 we were examining Attachment 1, we believe that the
15 incremental effect of undercutting the restrictions
16 that the DD puts on parking lots in this within the DD
17 adds to a very large cumulative effect. We would like
18 to see the Mount Vernon area develop sooner rather
19 than later.

20 The Office of Planning believes that an
21 interim use such as this reduces the incentive to
22 develop the parking lot for a higher and better use
23 sooner rather than later. For these reasons, the
24 Office of Planning recommends against this
25 application. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Thank you, Mr. Cochran. Ms.
2 Miller?

3 MS. MILLER: Mr. Cochran, I assume you're
4 familiar with the Convention Center case?

5 MR. COCHRAN: Indeed, I am. I managed the
6 case for OP.

7 MS. MILLER: Okay, and I didn't have a
8 chance to review the Office of Planning's report in
9 that case, but my recollection is that Office of
10 Planning took the position that 1702.7(c) was to be
11 interpreted as requiring an area variance and that, in
12 fact, they compared it to almost a special exception.

13 MR. COCHRAN: We did, and we were -- we
14 respectfully submit to the later interpretation of the
15 OAG. That's why we viewed this as a use variance.

16 MS. MILLER: I'm sorry, I don't know what
17 you're referring to.

18 MR. COCHRAN: The Office of Planning in
19 discussions with the Office of the Attorney General
20 was told that a parking lot like this should be
21 evaluated under the test for use variance, not an area
22 variance, is that's what you're referring to.

23 MS. MILLER: I was wondering why there was
24 a switch in Office of Planning's position.

25 MR. COCHRAN: We are not the lawyers. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have to defer to the Office of the Attorney General,
2 which we are doing.

3 MR. MANN: I have a question. Do you have
4 any opinion as to the availability of parking in that
5 area, whether or not there's a shortage of parking,
6 whether or not there's any identified need for
7 additional parking lots?

8 MR. COCHRAN: I'm not aware of there being
9 an identified need for additional parking in the area,
10 nor am I aware of there a survey being done. I do not
11 know at what time in 2002 this ortho photograph was
12 taken. I would, however, note that -- well, absent
13 shadow studies, it was clearly done in the -- some
14 time in the late morning, it would appear, and all the
15 parking lots in this area are not full. I don't know
16 whether it was done on a weekend or a weekday.

17 MS. MILLER: Is it your opinion that this
18 parcel of land will be part of an assembly package?

19 My understanding is that this is for an
20 interim of 7 years because Applicant is representing
21 that it would be part of an assembly package, if
22 that's the right term, if you know what I mean.

23 MR. COCHRAN: I do understand what you
24 mean. I would assume that if the Applicant decides
25 not to develop this property for a matter of right

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 use, that eventually it's likely that this land would
2 become part of an assemblage, yes.

3 MS. MILLER: I think you also made the
4 comment that by having this used as a parking lot, it
5 would reduce the incentive for it to be part of such a
6 package.

7 MR. COCHRAN: No --

8 MS. MILLER: Or would it reduce the
9 incentive?

10 MR. COCHRAN: It would reduce the
11 incentive to develop it now. We don't believe that
12 the Applicant has demonstrated that the Applicant
13 would experience undue hardship by developing it as a
14 matter of right use now. We don't believe that the
15 Office of Planning would prefer to see development
16 happening in the Mount Vernon triangle now. We don't
17 believe that the Applicant hasn't demonstrated that
18 that is not feasible.

19 MS. MILLER: Okay, thank you.

20 MR. PARSONS: Mr. Cochran, in looking at
21 your attachment 1, it would seem to me from an urban
22 design standpoint, an urban planning standpoint that
23 this unusual triangular shaped, large lot, if you
24 will, between 4th, K and the freeway would be better
25 developed as a unit than encouraging piecemeal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 individual projects of this size. That doesn't seem
2 to be part of your report. I mean do you really feel
3 that it would be the proper thing to do to develop
4 this as a 13-story apartment building in the middle of
5 this parcel as a start to development here?

6 MR. COCHRAN: I have two answers to that.

7 The first is the question here is not a judgment call
8 on whether it's preferable to develop this as a parcel
9 that would be combined with other larger parcels. The
10 question is can it not be developed as a matter of
11 right. And has the Applicant demonstrated that? We
12 believe that the Applicant hasn't --

13 MR. PARSONS: I understand that you don't
14 believe he has done that.

15 MR. COCHRAN: The second question, sir, is
16 this site has been vacant at least since 1986. There
17 are several other parcels in this same square that
18 remain vacant, undeveloped and well-maintained with
19 grass. The Applicant knew the nature of the property
20 when the Applicant purchased the property. The
21 Applicant knew the restrictions, presumably, the
22 Applicant had the obligation to at least know the
23 restrictions of the DD when the Applicant purchased
24 the property.

25 Again, this property is not unique in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 remaining undeveloped awaiting either matter of right
2 development or future assemblage. Office of Planning
3 believes that actually developing it as a parking lot
4 inhibits the incentive to develop sooner rather than
5 later.

6 MS. MILLER: How is that? That was really
7 my question. How does that inhibit the incentive.

8 MR. COCHRAN: Without doing a full
9 analysis on this, I note that parking lots are
10 relatively lucrative investments for relatively small
11 investments of money up front.

12 MS. MILLER: I also just want to do a
13 follow up on your answer to Mr. Parsons with respect
14 to that first prong, I think you said. I think they
15 haven't shown that it couldn't be developed, that the
16 proper analysis is that it can't be developed in some
17 other way as a matter of right and that really goes
18 only though, am I correct, that if you're analyzing
19 this as a use variance as opposed to an area variance
20 because the area variance we would just be looking at
21 the practical difficulty.

22 MR. COCHRAN: That's correct.

23 MS. MILLER: Okay.

24 MR. ETHERLY: Mr. Cochran, would your
25 posture change if there were a -- I mean this is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 hypothetical and I kind of hate broaching those topics
2 because we're dealing with an actual application, but
3 would your outcome be different if there were a hard
4 and fast project on the heels of this and there were a
5 finite period of time attached to it?

6 MR. COCHRAN: I think the answer to that
7 would be yes. That underlay part of our position on
8 the former Convention Center site parking lot. It's a
9 publicly-owned parcel. There is an ERA outstanding on
10 it. There is or we certainly hope is a fairly near
11 term time frame for the development of that. We don't
12 have that same guarantee here.

13 The Office of Planning is encouraging and
14 I believe that the market is encouraging conversion of
15 parking lots in this area into more productive uses,
16 not the establishment of new parking lots.

17 MR. ETHERLY: Thank you. Thank you, Mr.
18 Chair.

19 MR. GRIFFIS: Any other questions? Cross?

20 MR. TUMMONDS: No cross examination.

21 MR. GRIFFIS: Okay.

22 MS. MILLER: I was just wondering if the
23 Applicant could respond to Mr. Cochran's comments
24 about the property not being unique.

25 MR. TUMMONDS: Sure, absolutely. We think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the property is subject to unique situation or
2 condition. We think due to its small size, the fact
3 that it has no alley access. I know that there have
4 been other cases where that has been deemed sufficient
5 to state that by not having alley access, you are
6 going to basically make that first level of your
7 property be only allow a developable portion of 13
8 feet because we'll need to provide 14 feet to allow
9 both in and out traffic for the required parking on
10 this site.

11 So due to the size of the lot, the no
12 alley access, and I think when you look at the
13 relevant standards that were established in the
14 Clerics of St. Viatore, National Black Child Day, as
15 Cartez and Monaco, the Court has said that the
16 exceptional situation or condition standard goes to
17 the property and not just the land. The Court has
18 repeatedly rejected the idea that the exceptional
19 situation or condition of the property and the undue
20 hardship justifying a use variance must arise from the
21 physical aspects of the land and has permitted the BZA
22 to weigh more fully the equities in an individual
23 case.

24 I would posit that also means we look at
25 what else is going on in that square. We have large

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 land owners, the District of Columbia being one that
2 owns over half of the property in that square that is
3 using this property for parking lot use. I would note
4 too that the undue hardship test does not require us
5 to show that there is an impossibility that you could
6 do something on that site, but instead, it shows that
7 you face an undue hardship in satisfying what would be
8 the matter of right requirements. I believe that we
9 have shown that today.

10 I believe that Mr. Parsons raises an
11 appropriate issue of what would be the most
12 appropriate way to develop that site, so that what in
13 looking at what is the best way to obtain the --
14 follow the intent and integrity of the zone plan and
15 the DD regs. I guess one other question that was
16 raised by the Office of Planning, I believe Ms. Miller
17 to the Office of Planning was with regards to -- I'm
18 sorry, Mr. Mann, perhaps, with regards to the parking
19 in the area and we'll have Mr. Loewinger address that.

20 MR. LOEWINGER: I do believe that there is
21 constricted parking in the area based on discussions
22 with law firm of Loewinger and Brand and given the
23 development in that general community, the large
24 amount of development going on there. I don't have
25 any scientific basis for that, but it is anecdotal.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I would also just like to briefly address
2 Ms. Miller's, the point she raised with respect to
3 this being the part of a future assembly package and
4 the issue raised by the Office of Planning with
5 respect to whether or not the development of an
6 interim use of a parking lot would deter that and the
7 answer in my view is categorically, that it would be
8 part of a future assembly, a larger assembly for the
9 area and that it would -- and that the interim use of
10 a parking lot would absolutely not deter use of this
11 property for that. This is purely an interim use.
12 It's purely an interim use. We did not purchase it
13 for the purpose of putting a parking lot there
14 indefinitely.

15 MR. TUMMONDS: And I think one final thing
16 to add too, I believe that there is -- the question,
17 the issue was raised about well, if we just put some
18 lighting on the lot, put a fence up, that that would
19 help increase security in the area. I believe that
20 the pedestrian activity of those people who park their
21 cars in the morning, walk to their place of business
22 and then walk back along 4th Street in the afternoon
23 and the evening to pick up their cars, I believe that
24 is a strong deterrent to the types of activity that
25 are occurring in that area now. And I think by having

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 a use of that and people walking in that area is an
2 added benefit that you wouldn't get by just fencing
3 off that area and putting up some lights.

4 MS. MILLER: I just have a few follow-up
5 questions.

6 MR. TUMMONDS: Sure.

7 MS. MILLER: So Office of Planning
8 identified nine other vacant, privately held parcels
9 and six under developed privately held parcels that
10 presumably are awaiting assemblage to compare to this
11 parcel for the argument that it's not unique and I
12 just want to just pin this down that you're saying
13 well, this particular property is different from those
14 because of its size and lack of alley access. Is that
15 correct?

16 MR. TUMMONDS: That's correct.

17 MS. MILLER: And then my other question is
18 do we have any indication that this property will be
19 part of any assembly package? Has anybody determined
20 that it is appropriate for that kind of package?

21 MR. GRIFFIS: Ask him to show their cards?

22 MS. MILLER: Well, I'm only raising it
23 because in the Convention Center case which Mr.
24 Cochran was also stating that in that case you know we
25 knew exactly -- there was a plan.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: You don't own any adjacent
2 properties, do you?

3 MS. MILLER: No.

4 MR. LOEWINGER: I'm not aware of anything
5 currently, but I know that there's considerable amount
6 of development activity the area.

7 MR. TUMMONDS: I would posit too that with
8 the District of Columbia being the largest land owner
9 in that square and knowing how recent development
10 activity has occurred throughout the city that it
11 would not be unheard of to think of an unsolicited RFP
12 could be presented to the District. That's what
13 happens a lot of times of how in making the District
14 aware of, this is a site that has potential value for
15 the District and looking to find revenue, the District
16 is usually quite interested in those types of things.

17 MS. MILLER: Thank you.

18 MR. GRIFFIS: Any other questions of the
19 Board?

20 Very well, then let's move on. Did we get
21 a report from DDOT? We didn't get anything in, is
22 that correct?

23 Is the Applicant aware of any responses
24 from DDOT?

25 MR. COCHRAN: I'm not aware of anything,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 no.

2 MR. GRIFFIS: Well, we did refer over
3 there, so it's noted. ANC-6D we have now received
4 their letter. It is Exhibit 28. Any comments from
5 the Board or any clarifications you want to ask staff?

6 You had indicated that the landscaping the
7 basic design came out of discussions with the ANC, is
8 that correct?

9 MR. TUMMONDS: That's correct.

10 MR. GRIFFIS: Good. I don't have any
11 attendant agencies or associations. Is anyone here as
12 part of -- are any persons present to give testimony
13 for Application 17202, either in support or in
14 opposition? Not noting anyone to give testimony,
15 let's move ahead to any enclosing remarks.

16 MR. TUMMONDS: Just real briefly, I think
17 we have presented our case today and our previous pre-
18 hearing submissions. We believe that we do satisfy
19 the variance standards and in light of the support for
20 this application from the ANC, no opposition from any
21 members of the community, we would ask that the Board
22 approve this application by a bench decision this
23 afternoon. Thank you.

24 MR. GRIFFIS: Thank you, Mr. Tummonds.
25 Very well, I think we should move ahead with this this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 afternoon. I'll open up for discussion of this and to
2 accept any motions.

3 Who would like to lead us off?

4 MR. PARSONS: I'll give it a try. I guess
5 my conversation with Mr. Cochran, I'm looking at this
6 in a larger context of the proper development of this
7 site in the long run and I think that if there's
8 uniqueness to this property, its small size, I think
9 it would be detrimental to long-term development if it
10 was to be developed. And that wasn't the case made by
11 the Applicant, but I'm making the case from my
12 perspective of it. So it's small size to me that
13 makes it unique in the context of the lot. And to me,
14 the hardship then is it is too small to develop, I
15 don't know whether it is from an equitable standpoint,
16 I don't care, but too small to develop in the short
17 term as a meaningful thing.

18 I think they've exhibited that the current
19 state of affairs is a detriment to the public good in
20 this community and that this would enhance the
21 circumstance, but I'm not persuaded that we've got to
22 wait seven years. I'm more in the four to five year
23 range.

24 When the Wax Museum site takes off,
25 finally, I don't know how long we've been listening to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that, they'll be scrambling to assemble this with
2 others, so I would move approval for five years.

3 MR. GRIFFIS: Good, thank you very much.

4 MR. ETHERLY: Seconded.

5 MR. PARSONS: With the raingarden.

6 MR. GRIFFIS: With the raingarden. We
7 have a motion. It's been seconded by Mr. Etherly.
8 Further discussion?

9 MR. MANN: I just wanted to address the
10 uniqueness issue also. I actually am more persuaded
11 by Office of Planning's argument that this property is
12 not unique because it's so similar to so many other
13 properties that are just around it reminds me of
14 another case that involved parking actually. And just
15 because parking sounds like a good idea, it might be a
16 good idea, I don't know why necessarily we have to
17 grant that just because it sounds good on a property
18 that's not unique.

19 MR. GRIFFIS: Thank you, Mr. Mann. Ms.
20 Miller?

21 MS. MILLER: Since I'm sure you're
22 referring to a case we decided today. I think in that
23 case we couldn't find any uniqueness and I think in
24 this case there is uniqueness that is relevant, that
25 being the small size and the no alley access. I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think it makes good sense to develop something just to
2 fit that space there and I was not convinced by Office
3 of Planning that a parking lot is a deterrent to this
4 parcel of land being part of a larger assembly package
5 that would make more sense and better planning for the
6 City.

7 So I think it is different. And I believe
8 that 1702.7(c) should be interpreted in the same way
9 that we interpreted it with respect to the Convention
10 Center with respect to showing a practical difficulty
11 as opposed to that nothing else could be built here.

12 Finally, with respect to the term, I guess
13 it does become somewhat arbitrary. I know that when
14 we were considering the term for the Convention
15 Center, we wanted to -- we were considering factors
16 such as how long it would take them to get the
17 financing, how long it would take to go through the
18 various District agencies and that's why we ended up
19 with six years. Here, there is no specific plan out
20 there for assembly, so it is a little bit more
21 arbitrary. So I could go along with the five years
22 and if that's not sufficient, then I'm sure they'll be
23 back.

24 MR. GRIFFIS: Others? Very well. Looking
25 at the uniqueness, I think it was well said by the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Applicant in putting together and also in terms of
2 their case citations, St. Viatore and talking about
3 the exceptional situation created the uniqueness
4 coming out of the property, not just the land. And I
5 think that goes into everything that we're talking
6 about here in terms of the DD/C-2-C, the triangle
7 square that this is on, the area it's located in, the
8 future projection of what's happening. The smallness
9 of the lot goes directly to that and the lack of alley
10 access.

11 I think as Office of Planning has laid out
12 in terms of the possibility of a 10 FAR on a site
13 that's 2,552 square feet with an 80 percent lot
14 occupancy of a residential means there's 10 FAR,
15 there's 25,000 square feet being proposed in a 2,000
16 square foot foot print. Do the math and see how tall
17 that building gets and how efficient and effective.
18 I'm with Mr. Parsons in the fact that yeah, maybe that
19 is possible, it may be a spectacular piece of
20 architectural monumentation in that small corner, but
21 is it actually going towards the larger view of what
22 the zoning, the intent of the zoning regulations and
23 the overlay is pushing that square to be?

24 Folding that all back into the situation
25 of how that's unique, I think we are looking at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 aspect of what the future development should be and is
2 really gearing up to be. The argument that this lot
3 is so small, it really goes to the difficulty of any
4 sort of matter of right development and if we talk
5 about the context of doing larger development and
6 fulfilling the Mount Vernon and the DD overlay, I
7 think all of that lends itself to great uniqueness and
8 practical difficulty in the situation itself.

9 In terms of the term, I think we're all in
10 agreement in terms of whether it wouldn't deter the
11 intent to get a zone plan of the public good, even
12 Office of Planning is in concurrence with that, that
13 it wouldn't deter the public good. I think animating
14 the site with some sort of activity, I think this
15 Board has made strong, to digress a second, strong
16 assertions that one of the things, well, I'll speak
17 for myself, one of the things that I detest most in an
18 urban area is surface parking and I don't think any
19 developer in their right mind think that's the highest
20 and best use of pieces of land.

21 I think the case is very clear here that
22 this is an interim use in order to satisfy the holding
23 of that property for a larger, better use of it and
24 that will have to be when it assembles with larger
25 parcels to fulfill its matter of right destiny, one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 might say.

2 Going towards the time period, I think
3 five years is appropriate. I think even the
4 Applicant's assertions of what's happening in the
5 surrounding area of the schedule, even Office of
6 Planning has indicated that there may well be new
7 zoning looking at Mount Vernon, there's certainly an
8 awfully lot of attention that the entire City is aware
9 of. I think we ought to help and assist with that.

10 I know one of our concerns in the case
11 we've talked about which is I think very analogous to
12 this and that's the Convention Center, the old
13 Convention Center site. One of the largest
14 discussions for this Board, as I recall, was well,
15 what is the timing of the development? We certainly
16 don't want to make this a viable option to sit on it
17 for a while, let's help and move this on. And I don't
18 think we came in with the timing that was initially
19 asked for, but that doesn't matter. I think this puts
20 it into a realm.

21 Lastly, five years sets into, I think, a
22 much more precedential time period that we've utilized
23 in past cases for parking lot, be it an accessory or
24 be it surface parking like this. More of the three-
25 year, the five-year, the 10-year mode. So in order to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 move away from the absolute arbitrary, I think it fits
2 within what we've done previously.

3 Other than that we have a motion and it's
4 been seconded. Final comments, Ms. Miller?

5 MS. MILLER: I would recommend that the
6 application -- that the order be written with the
7 condition offered by the ANC and accepted by the
8 Applicant. That would include the raingarden and the
9 lighting and the security, unless they're already in
10 the application.

11 MR. GRIFFIS: Well, they're showing in the
12 plans.

13 MS. MILLER: Fine, then we don't need that
14 additional --

15 MR. GRIFFIS: I mean there's the
16 availability, if you wanted to add in other points of
17 or areas of light, but it was discussed. I didn't see
18 anything or evidence coming up that would require
19 further.

20 MS. MILLER: No, that's fine, as long as
21 they're a part of the application.

22 MR. GRIFFIS: It's in the plan.

23 MS. MILLER: I'm satisfied.

24 MR. GRIFFIS: Very well, we have a motion
25 before us. It's been seconded. Final words? Very

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 well, then I ask all in favor signify by saying aye.

2 (Ayes.)

3 Opposed?

4 (Opposed.)

5 Abstaining?

6 (No response.)

7 Very well.

8 MS. BAILEY: Vote is recorded as 4:1:0 to
9 approve the application. Motion made by Mr. Parsons,
10 seconded by Mr. Etherly. Ms. Miller and Mr. Griffis
11 are in support. Mr. Mann is opposed to approval of
12 this application. And that is for five years.

13 Summary order, sir?

14 MR. GRIFFIS: No, I don't think we're
15 doing a summary order on this as it's a new breed of
16 hybrid, it's going to need a little bit of text, so at
17 this point I think we do, in which case we would
18 accept, keep the record open for --

19 MR. TUMMONDS: I'll work with staff to
20 give you a proposed order.

21 MR. GRIFFIS: Excellent thought. Good,
22 anything else?

23 MS. BAILEY: For this case, no, Mr.
24 Chairman.

25 MR. GRIFFIS: Thank you all very much.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: I lied. The plans that are
2 presented there --

3 MR. GRIFFIS: Yeah, that's the one
4 question, they're showing images that I don't think
5 are in the record because I haven't seen them before.
6 Do you have copies of that just to submit for the
7 record?

8 MR. TUMMONDS: Yeah, I will submit those
9 for the record, along with the proposal.

10 MR. GRIFFIS: We'll put that in the
11 application. Excellent. Let's move ahead then.

12 MS. BAILEY: The last case today, Mr.
13 Chairman, is an appeal and the number is 16839 of
14 Advisory Neighborhood Commission 4A, pursuant to 11
15 DCMR 3100 and 3101 from the decision of the Zoning
16 Administrator, for the issuance of a Certificate of
17 Occupancy No. 18366, dated August 31, 2001, for an
18 elderly development center serving 30 persons, ages 22
19 to 85 years old and 7 staff in a C-2-A District at
20 premises 5511 14th Street, N.W., Square 2800, Lot 9.

21 Were you sworn in previously, sir?

22 MR. CHAGNON: No.

23 MS. BAILEY: Will you please stand? Do
24 you solemnly swear or affirm that the testimony you
25 will be giving today will be the truth, the whole

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 truth and nothing but the truth?

2 (Witness sworn.)

3 MR. GRIFFIS: Very well. Will you state
4 your name and address for the record, please?

5 MR. CHAGNON: John Chagnon. My address is
6 5603 14th Street, N.W., Washington, D.C. 20011. I'm
7 the representative for ANC-4A.

8 MR. GRIFFIS: And there was some question,
9 obviously, you were the original ANC member that
10 brought the appeal?

11 MR. CHAGNON: Correct.

12 MR. GRIFFIS: And then subsequently
13 something has happened that you weren't involved in
14 the appeal or the named person, is that correct?

15 MR. CHAGNON: I was the original ANC
16 representative when it was at the contested case
17 hearing and I was the person who brought it to the
18 D.C. Court of Appeals which then remanded back to this
19 Board to enforce its ruling.

20 ANC-4A reconfirmed that I remain their
21 representative.

22 MR. GRIFFIS: Okay, and that's where I'm
23 going. In fact, the December 14, 2004 letter is the
24 reconfirmation of that standing.

25 MR. CHAGNON: Correct.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: In which case you are the
2 person that should be -- will be named in service of
3 further documentation.

4 Okay, let me also address just very
5 briefly, I note that's in the record you were issued a
6 letter to the Office of Zoning. I think there was
7 probably just some miscommunication, in fact, of you
8 weren't directly notified of the action that was
9 happening with the Board on this, obviously when the
10 remand came back. We take that particularly serious
11 and have been moving on with this.

12 At this point what I think, do you have a
13 copy of the letter that was sent out to the Zoning
14 Administrator?

15 MR. CHAGNON: The letter to the Zoning
16 Administrator, is that the one dated in July?

17 MR. GRIFFIS: Correct.

18 MR. CHAGNON: Yes, I've seen it.

19 MR. GRIFFIS: And you know that to date we
20 have not had a response on that?

21 MR. CHAGNON: That is my understanding.

22 MR. GRIFFIS: Right. And quite frankly,
23 we would like one. So this is what I'm proposing to
24 do. We're going to reissue the latter and we're going
25 to reissue it to the Zoning Administrator, their legal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 counsel. We're also going to be issuing it to the
2 Metro Day, the tenants or operators of the facility in
3 question here.

4 Essentially, or directly, what we're
5 asking is that they give us or provide us a
6 determination of whether the treatment center program
7 is eligible for a Certificate of Occupancy permit
8 under a different use classification. And what we
9 would like to do is have that into the record. I'm
10 going to set the dates for that.

11 What my view in talking to the Board and
12 I'll let other Board Members comment if they disagree
13 or can clarify issues for me, I think we have several
14 things. We have really two directions that we will
15 conceivably pursue. The first is we would just grant
16 the appeal outright. The second would be that we
17 would try and resolve the overall question at the
18 Board level itself and that overall question is is
19 there a defined use within the zoning regulations that
20 would allow a granting of a Certificate of Occupancy
21 for this.

22 I think we have to at least ask the
23 question and have answers to it from the tenant and
24 operator and also from the Zoning Administrator and
25 with that, I think we can then further or potentially

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 further process this.

2 Others? Ms. Miller.

3 MS. MILLER: I just want to ask you, is
4 this letter from ANC-4A basically a response to the
5 letter that went out to the Zoning Administrator
6 asking that question? And should we interpret this as
7 the ANC's position that there isn't a different use
8 and that -- or -- let me just finish, that there isn't
9 a different use and that therefore the ZA's decision
10 should be overturned, or do you think that the ANC
11 will want another opportunity to look at the
12 regulations?

13 MR. CHAGNON: If I may? I think the ANC's
14 letter, the impetus of it was from the letter that
15 Jerrilee Kress had sent to me in that there apparently
16 some confusion as to whether I would or would not
17 still be representing ANC-4A. I think it was just a
18 matter of confirmation to avoid any confusion as to
19 who is the proper representative to be before the body
20 today.

21 And to my knowledge, there is no change in
22 the ANC's position as it was in the contested case
23 hearing which is what that letter really is. It is
24 just an amendment to show the opposition, along with
25 the reconfirmation of who the representative is.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: The only thing I would add is
2 -- that's the way I interpret it, but when we reissue
3 this letter to all the parties, that the ANC will have
4 a chance to take another look at that.

5 MR. CHAGNON: I'm hoping that there will
6 be some element of discussion, at least from the ANC's
7 perspective is that there's been six months since the
8 Court rendered its decision. Neither the owner nor
9 the operator elected to participate in the BZA hearing
10 initially, nor in the Court of Appeals. So they've
11 shown no indication that they have any intentions of
12 joining into these proceedings and I think they've
13 been given ample opportunity, including the Zoning
14 Administrator to come forward and state their case.
15 They have failed to do so. It would be my position
16 that there should be action on the Court's decision
17 and it should be immediate.

18 MR. GRIFFIS: I think the Board holds the
19 same opinion and I think there are several steps that
20 I perhaps too briefly outlined, but the Board is going
21 to pursue and I think the first step and obligation of
22 the Board is to ask Metro Day for the answer to this
23 question that went to the Zoning Administrator, to ask
24 once more of the Zoning Administrator to answer the
25 question. And that will frankly decide whether --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will decide which direction we go, whether we just
2 turn and grant the appeal or whether we open up a
3 defined set of processing for this to establish the
4 answer in this forum.

5 So as outlined I think we were looking at
6 issuing this letter to all the parties some time this
7 week which would mean by the end of the day on Friday.

8 We're looking at response to those by the 14th of
9 October, 2004 and the Board would then process that
10 immediately after in the fashion that we'll figure out
11 once we get those in.

12 Do you have any questions on that?

13 MR. CHAGNON: Other than ANC registers its
14 objections to that procedure and that it would be the
15 ANC's intention that a motion be put forth immediately
16 to eliminate the Certificates of Occupancy based upon
17 an elderly development center use for what is -- the
18 Court couldn't have been clearer that it is now.

19 MR. GRIFFIS: Okay. Let me first just
20 say, you mean that you think we ought to move to grant
21 the appeal right now?

22 MR. CHAGNON: Correct.

23 MR. GRIFFIS: Of course, we don't revoke C
24 of O's or anything of that nature, but we would grant
25 the appeal for it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And then in terms of your comment, in
2 terms of the Court couldn't be more direct, well, in
3 fact, the Court was fairly direct in its flexibility
4 to the Board in saying they did not -- well, generally
5 speaking in my words, not being an attorney, the Court
6 said to this Board there may well be something that
7 this fits into and you may want to find it and I think
8 that's what essentially we're looking at, trying to
9 explore to the full extent that we can, but listen, we
10 also don't have a lot of time to spend on this, nor
11 need to spend on it. So I think we're going to
12 satisfy our obligations and move on.

13 So the first step is going to be issuing
14 this and see what kind of responses we get back. But
15 we'll note for the record the ANC's objection and, of
16 course, asking the Board to uphold the appeal on
17 today's proceeding.

18 MR. ETHERLY: Mr. Chair, did you know, of
19 course, that there will be a date certain attached to
20 -- attached to that letter, such that -- I understand
21 what Mr. Chagnon's concern is coming from, but I think
22 there's definitely consensus that there will be a
23 finite period of time during which this Board's
24 patience will remain steadfast for a response from the
25 ZA on this. I'm perhaps being a little too romantic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in my language, but the bottom line is we're not going
2 to wait until hell freezes over.

3 MR. GRIFFIS: I understand --

4 MR. ETHERLY: In this process.

5 MR. GRIFFIS: We're setting very specific,
6 very short dates on all of this, the first date of
7 which needs to be publicly announced and will be in
8 the letter as the 14 October of which responses for
9 this are. Once we get that, we will set a date and it
10 will either be an issuance, an order from the Board or
11 it will be part of a decision making and possibly a
12 special public meeting of which we will outline very
13 directly and very specifically -- Mr. Etherly brings
14 up an excellent point. All of this will be very short
15 term in time.

16 Ms. Miller?

17 MS. MILLER: Correct me if I'm going too
18 far, but my feeling is and I think this is what Mr.
19 Etherly was getting at as well is if we don't receive
20 any response from DCRA or Metro Day by October 14th,
21 we will interpret that as meaning that they don't care
22 to pursue in this forum a determination of whether or
23 not Metro Day falls into a different use
24 classification in which case we would grant the
25 appeal. Is that the consensus of the Board Members?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: Absolutely. We're looking
2 for an awful lot of showing.

3 Okay, any other questions? Comments?

4 MR. CHAGNON: Are you likewise setting the
5 hearing date as well in this letter?

6 MR. GRIFFIS: No.

7 MR. CHAGNON: So there will be another 30-
8 day notice period?

9 MS. MILLER: We're not sure there's going
10 to be a hearing. That's why we want to see if they're
11 interested in pursuing this.

12 MR. GRIFFIS: Right, and we're not sure
13 that this would actually go towards a standard hearing
14 as in an appeal or a contested case. This is really
15 stepping into another realm for the Board and if we
16 look at what the Court actually indicated that we
17 should do in the remand. And so what we'll do based
18 on the submissions is define that, define that scope
19 of the processing that we will then embark on and
20 we'll set a very clear and direct timeline for it.

21 So it may well be that it's all done by
22 written submissions.

23 MR. CHAGNON: I see. Is the Board aware
24 that there's been another Certificate of Occupancy
25 issued at that site?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRIFFIS: How would be aware of that?

2 MR. CHAGNON: It came to my attention when
3 the file was checked and they had been issued another
4 Certificate of Occupancy as a child development
5 center, this time with a load change that increases
6 the load from what was 7 staff members to 15, along
7 with an increase of 55 persons from 30, I believe,
8 along with 15 staff members.

9 MR. GRIFFIS: Which file did you check
10 when you say you checked the file?

11 MR. CHAGNON: This is the Certificate of
12 Occupancy file.

13 MR. GRIFFIS: Okay, down at DCRA?

14 MR. CHAGNON: Department of Consumer
15 Regulatory Affairs.

16 MR. GRIFFIS: Indeed. And what was the
17 date on the C of O?

18 MR. CHAGNON: I'm sorry?

19 MR. GRIFFIS: What's the date on that C of
20 O?

21 MR. CHAGNON: January 3, 2003.

22 MR. GRIFFIS: Okay.

23 MR. CHAGNON: I'd be happy to submit
24 copies for the record.

25 MR. GRIFFIS: I mean there's no relevancy

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 for us. I mean there's nothing -- there's no avenue
2 to take that in, if you follow what I'm saying. I
3 just don't see where -- we'll take note of that. We
4 have absolutely no jurisdiction or direction over it
5 unless it's somehow -- unless the attorney disagrees
6 as well. We lost him. But unless I have Board
7 Members disagree with me.

8 We have a remand from a specific case that
9 then defines exactly the parameters. The record is
10 not open to accept other information or evidence or
11 anything of that nature. But we'll take it under
12 advisement.

13 Okay, anything else we need to cover on
14 this?

15 MS. MILLER: No, I would just say that at
16 this point, there's nothing we can do with it. If it
17 comes down the road that we decide we will have a
18 hearing or something or will receive written
19 submissions at that point, it may be appropriate, but
20 we're not there yet.

21 MR. CHAGNON: This is not the first time
22 that we've been whip-sod by undisclosed Certificate of
23 Occupancy. There was one case mooted, at a contested
24 case hearing, right here, that was mooted because of
25 this very issue. It's a like -- it's identical, other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 than the load change, that it's still listed as a
2 community child-elderly development center and the
3 Court of Appeals does address that, that that is what
4 it is not.

5 MR. GRIFFIS: Right, I understand. I hope
6 you understand our point. We have a very defined
7 scope that we have to look at. This isn't an open
8 case right now. This is a remand from the Court of
9 Appeals. And so that file is in front of us. I don't
10 know what sort of implication it would be.

11 I take it there's no action being taken by
12 the ANC based on that C of O?

13 MR. CHAGNON: We weren't aware that it
14 even existed.

15 MR. GRIFFIS: Right. Okay, well, there it
16 is for us. And we'll -- obviously, we've made note of
17 that.

18 Anything else from staff?

19 MS. MILLER: I just dare to make a
20 comment. Without seeing that C of O, it just sounds
21 like it was granted in the same use category so that
22 it would be covered by whatever action this Board
23 takes.

24 MR. CHAGNON: One would hope, but that's
25 part of the concern is does this process have to start

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 all over again after four years.

2 MR. GRIFFIS: We absolutely agree. Okay,
3 there it is.

4 Staff, anything else for us this
5 afternoon?

6 MS. BAILEY: No, Mr. Chairman.

7 MR. GRIFFIS: Very well, thank you all
8 very much. I appreciate you coming down this
9 afternoon and if there's nothing further from the
10 Board, then we can adjourn the afternoon session of 14
11 September 2004.

12 (Whereupon, at 5:32 p.m., the hearing was
13 concluded.)

14

15

16

17

18

19

20

21

22

23

24

25