

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY  
SEPTEMBER 21, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS,	Chairperson
RUTHANNE MILLER,	Vice Chairperson
CURTIS ETHERLY, JR.,	Member
JOHN A. MANN, II	Member

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY,	Deputy Secretary
BEVERLEY BAILEY,	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN,	Office of Planning
JOHN MOORE,	Office of Planning
STEVEN MORDFIN,	Office of Planning
KAREN THOMAS,	Office of Planning

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

LORI MONROE, ESQ.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

This transcript constitutes the minutes from the hearing held on Tuesday, September 21, 2004.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

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

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

I-N-D-E-X

<u>Agenda Item</u>	<u>Page</u>
Preliminary Matters .....	4
17204 Application of Richard and Christina Donnell .....	9
17095 Application of Sun Service, Inc. ....	31
17205 Application of Richard Flax and Katherine Alley .....	32
Vote .....	37
17206 Application of Michael and Shaun Jones .....	37
Vote .....	39
17110 Application of Millennium Arts Center .....	52
17185 Application of James Firkser	
Edward Grandis .....	54
Office of Planning .....	64
Vote .....	70

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

<u>Agenda Item</u>	<u>Page</u>
17055 Application of Army Distaff Foundation, Inc. ....	76
 <u>APPLICANT</u>	
Paul Tummonds, Esq. ....	92
 <u>WITNESSES</u>	
Donald Hilbert .....	97
Vernon Feather .....	102
Mike Bello .....	108
Ed Papazian .....	111
Tom Moss .....	121
 Office of Planning .....	 190
 ANC .....	 202
 <u>TESTIMONY IN SUPPORT OF APPLICATION</u>	
Ethel Kulhanek .....	231
 <u>TESTIMONY IN OPPOSITION OF APPLICATION</u>	
Mary Goodsell .....	235
Clifford Arnold .....	237
 <u>OPPOSITION</u>	
Richard Nettler, Esq. ....	247
 <u>WITNESSES</u>	
Ted Scallet .....	258
Larry Finster .....	273
Keith Pitchford .....	278
Robert Diamond .....	289
John Wimberly .....	291

**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

9:48 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 21<sup>st</sup> of September, 2004 morning session, morning hearing of the Board of Zoning Adjustments for the District of Columbia. My name is Jeff Griffis, Chair. Joining me today is Ms. Miller, the Vice Chair, and also Mr. Etherly. Representing the National Capitol Planning Commission is Mr. Mann, and representing the Zoning Commission is Mr. Jeffries, with us all day, which we're very pleased about.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room. They're on the wall there. You can pick one up and see what we will be endeavoring to get through this morning. We do have some preliminary matters, which will come up at the end of my opening remarks, and we will get directly to them.

However, there are some important things that everyone should understand. First, all proceedings before the Board of Zoning Adjustments are recorded. They're recorded in two fashions. First, of course, we have the court reporter sitting to my

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 right on the floor, who is creating the transcript for  
2 all of our proceedings. Secondly, we are being  
3 broadcast live on the Office of Zoning's web site. So  
4 attendant to both of those, we, of course, ask that  
5 people refrain from making any disruptive noises or  
6 actions in the hearing room while we proceed. I would  
7 ask that people turn off cell phones and beepers,  
8 also, so that we don't have any disruptions of people  
9 giving testimony or breaking our own concentration on  
10 the most important factors that will be told to us  
11 today.

12 Additionally, all persons planning to  
13 testify should fill out two witness cards. Witness  
14 cards are available at the table in front of us and  
15 also at the table you entered into the hearing room.  
16 Prior to coming forward, please give those two cards  
17 to the recorder. That way, of course, we can give  
18 credit to the statements that you will make this  
19 morning.

20 Also, when coming forward, just make  
21 yourself comfortable. I will need you to state your  
22 name and your address once before speaking, and then  
23 you can proceed with that. I will give you technical  
24 advice on turning the microphones on and off as we  
25 proceed.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           The order of procedure for special  
2 exceptions and variances is as follows: first, we hear  
3 from the applicant, any witnesses in the presentation  
4 of their case; second, we hear any government reports  
5 attendant to the application, such as the Office of  
6 Planning or Department of Transportation; third, we  
7 would hear the report from the Advisory Neighborhood  
8 Commission; fourth would be parties or persons in  
9 support of the application; fifth is parties or  
10 persons in opposition to the application; six,  
11 finally, we'll have closing remarks or any rebuttal by  
12 the applicant.

13           Cross examination of witnesses is  
14 permitted by the applicant and parties. The ANC  
15 within which the property is located is automatically  
16 a party in each case and, therefore, obviously, is  
17 able to conduct cross examination.

18           The record will be closed at the  
19 conclusion of our hearing, except for any material  
20 that is specifically requested by the board, and we  
21 will be very specific as to what is to be submitted  
22 and when it is to be submitted into the Office of  
23 Zoning. After that, materials received, the record  
24 would then be closed, and no other additional  
25 information would be accepted into it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           The Sunshine Act requires that this board  
2           conduct its public hearings on each case in the open  
3           and before the public.     The board may, however,  
4           consistent with its rules and procedure and the  
5           Sunshine Act, enter into executive session.   Executive  
6           sessions are utilized by the board for review of cases  
7           and also for deliberating on cases.

8           The decision of this board in contested  
9           cases, of which all of which are in front of us, must  
10          be based exclusively on the record that is created  
11          before us today.   So we ask that anything that, of  
12          course, you want us to know that it is either  
13          submitted in writing or it is stated today.   And we  
14          also ask that, while present here today, you do not  
15          engage board members in conversation so that it does  
16          not give the appearance of receiving information  
17          outside of the record.

18          The board will now consider any  
19          preliminary matters.   Preliminary matters are those  
20          which relate to whether a case will or should be heard  
21          today, such as request for postponement, continuances,  
22          or withdrawals, or, frankly, whether proper and  
23          adequate notice has been provided for each of the  
24          application.

25                 Let me say a very good morning to Ms.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Bailey, who is sitting at my far right, from the  
2 Office of Zoning, and also Mr. Moy from the Office of  
3 Zoning. Ms. Bailey, are you aware of any preliminary  
4 matters for the board at this time?

5 MS. BAILEY: Mr. Chairman, members of the  
6 board, and to everyone, good morning. Yes, sir, I am,  
7 and it has to do with several cases, the first of  
8 which is Application Number 17204. There is a request  
9 from Advisory Neighborhood Commission 2A for  
10 postponement of the hearing. And as a reminder, Mr.  
11 Chairman, the ANC report did come in late and should  
12 be waived into the file. And, secondly, there is a  
13 request for party status and opposition to the  
14 application.

15 CHAIRPERSON GRIFFIS: Indeed. Is Mr.  
16 Falon present? Okay. In which case then, Ms. Bailey,  
17 I'm sorry to disrupt your momentum. Why don't we  
18 swear in everybody, and then we can get through any  
19 questions that we might have and process the party  
20 status application and go to the continuance. So if I  
21 would ask everyone who is planning on testify today,  
22 if you would please stand, give your attention to Ms.  
23 Bailey, and she is going to administer the oath.

24 MS. BAILEY: Please raise your right hand.  
25 Do you solemnly swear or affirm that the testimony you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will be given today will be the truth, the whole  
2 truth, and nothing but the truth?

3 (Whereupon, the witnesses were sworn.)

4 CHAIRPERSON GRIFFIS: Very well. Let's  
5 take up the party status application. It is Exhibit  
6 Number 29 in our application. Is the applicant's  
7 representative here? Mr. Gell? Okay.

8 MR. GELL: Mr. Chairman, Stephen Gell,  
9 1101 30<sup>th</sup> Street, Northwest, representing the Donnells,  
10 who are the applicants.

11 CHAIRPERSON GRIFFIS: Okay. Board  
12 members, any questions regarding the request for party  
13 status, clarifications?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Very well. Mr.  
16 Gell, any comments on their request for party status?  
17 Any objections?

18 MR. GELL: I would like to ask where Mr.  
19 Falon lives.

20 CHAIRPERSON GRIFFIS: Mr. Falon, would you  
21 mind coming forward? Thank you. Mr. Falon, if you  
22 wouldn't mind, just state your name and address for  
23 the record.

24 MR. FALON: Paul Falon, 2504 I Street,  
25 Northwest, Washington, D.C. 20037.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Mr. Gell, does that  
2 answer your question?

3 MR. GELL: Yes, it does. I would suggest  
4 that Mr. Falon lives several doors away from the  
5 subject property and, therefore, is not uniquely  
6 affected by any changes that might take place thereon.

7 CHAIRPERSON GRIFFIS: Okay. Is the  
8 representative from ANC 2A here or 2?

9 MR. TYLER: Mr. Chairman --

10 CHAIRPERSON GRIFFIS: I'm just going to  
11 ask you ?- there it is, thank you.

12 MR. TYLER: Mr. Chairman, my name is  
13 Geoffrey Tyler. I live at 949 25<sup>th</sup> Street, Northwest,  
14 Washington, D.C. 20037. My wife, Maria Tyler, is the  
15 commissioner in the single-member district in which  
16 the dwelling is located. She is under medical  
17 treatment at the moment and will be here later this  
18 morning, but she asked me to represent her views  
19 before she arrived.

20 It seems to me, Mr. Chairman, that one  
21 doesn't have to be next door to the property or one or  
22 two doors away in the same street to be interested in  
23 this case. It is in the Foggy Bottom Historic  
24 District, which is covered by the overlay provisions  
25 under Chapter 1521 of the Zoning Regulations, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 anyone who lives in the Foggy Bottom Historic District  
2 has a great interest in this case, indeed.

3 CHAIRPERSON GRIFFIS: I don't think the  
4 board disagrees with you. There's a difference  
5 between having a great interest and how you are  
6 presented in each of the cases. What I'd like you to  
7 directly address, if you can, is any objection or  
8 support of the request for party status. Of course,  
9 there are two main forms of participation by the  
10 public in each of the cases before us. One is of  
11 party status, which is, frankly, an equal standing of  
12 that of an applicant. There are certain  
13 responsibilities and privileges that go with granting  
14 of party status, one being the ability to cross  
15 examine. The additional responsibilities, of course,  
16 goes to presenting a full case, briefing the board on  
17 any issues that it requests, and potentially  
18 submitting findings of facts and conclusions of law.

19 The critical piece about the request for  
20 party status is the answer to one of the questions on  
21 the form, and that is how was a person uniquely or  
22 distinctly affected, that being different than the  
23 general public.

24 MR. TYLER: Well, Mr. Chairman, I believe  
25 that where the applicant for party status resides is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 close enough to the property to meet the requirements  
2 needed under the rules.

3 CHAIRPERSON GRIFFIS: Okay. So you  
4 support the request?

5 MR. TYLER: Yes.

6 CHAIRPERSON GRIFFIS: Question?

7 VICE CHAIRPERSON MILLER: Mr. Tyler, I  
8 just want to clarify, are you speaking for your wife  
9 in her personal capacity, or are you speaking for the  
10 single-member district or the ANC?

11 MR. TYLER: No, I'm speaking on behalf of  
12 her in her capacity as Zoning Commissioner.

13 VICE CHAIRPERSON MILLER: As commissioner?

14 MR. TYLER: The single-member district in  
15 which the property is.

16 VICE CHAIRPERSON MILLER: Is there some  
17 authorization that she has to represent her single-  
18 member district on this issue?

19 MR. TYLER: I do not have a written  
20 document, Madame Vice Chair. Might I say that this  
21 particular case, in terms of its timing, has a small  
22 history attached to it. The applicant made a request  
23 under the number 17204 and provided the ANC with all  
24 the documentations and all the rest of it but included  
25 at the very last minute at the ANC meeting itself on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 last Tuesday a complete, well, a very major change in  
2 plans. And he still, however ?- and the ANC asked him  
3 would it not be appropriate to have a change in the  
4 date of hearing because the new plan is different  
5 enough from the ones that were recorded in the  
6 application that the ANC needed time to, first of all,  
7 examine them, to understand them ?-

8 CHAIRPERSON GRIFFIS: Wait. Before we get  
9 too far into that, that's our second preliminary issue  
10 with this case. We're first just trying to get across  
11 the threshold of do we have a party in opposition or  
12 not.

13 MR. TYLER: Yes. Well ?-

14 CHAIRPERSON GRIFFIS: I understand you to  
15 say ?-

16 MR. TYLER: Commissioner Tyler fully  
17 supports Mr. Falon's application to have party status.

18 CHAIRPERSON GRIFFIS: Okay. We can note  
19 that for the record.

20 MR. ETHERLY: Mr. Chair, just for  
21 clarification, Mr. Falon, we have a number of overhead  
22 shots that were provided as part of the Office of  
23 Planning report, and I'm just trying to get a sense of  
24 the proximity of your property to the subject  
25 property. You probably don't have a copy of the Office

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of Planning report in front of you, but, relative to  
2 the subject property, could you give an indication of  
3 where you are? Are you moving what would be westward  
4 towards I-66, or are you moving back towards what  
5 would be 25<sup>th</sup> Street?

6 MR. FALON: It's east to 25<sup>th</sup> Street. My  
7 property is separated by three lots from 2512.

8 MR. ETHERLY: Okay.

9 CHAIRPERSON GRIFFIS: Which way are we  
10 going?

11 MR. ETHERLY: Heading back towards 25<sup>th</sup>  
12 Street.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. ETHERLY: So attachment number three  
15 of the Office of Planning report perhaps might give at  
16 least a general sense of where Mr. Falon's property is  
17 situated.

18 CHAIRPERSON GRIFFIS: Indeed.

19 MR. ETHERLY: And once again, it's  
20 separated by three other properties?

21 MR. FALON: Yes.

22 MR. ETHERLY: And then your property.

23 MS. FALON: Two residences and an empty  
24 lot --

25 MR. ETHERLY: And it's the empty lot

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that's immediately east of the subject property,  
2 correct?

3 MR. FALON: Yes, it is.

4 MR. ETHERLY: Okay. And then three other  
5 residences?

6 MR. FALON: There are two other residences  
7 ?-

8 MR. ETHERLY: Okay, okay.

9 CHAIRPERSON GRIFFIS: Okay. The question  
10 then goes to, as I've said, how are you more  
11 significantly, distinctly, or uniquely affected in  
12 character or kind if the proposed zoning relief was  
13 granted than other persons in the general public?  
14 You've indicated, of course, that you will be impacted  
15 by the disruption of open space, the character of the  
16 neighborhood. You've also indicated that you believe  
17 that financial value of your property would be  
18 adversely affected. Is that all issues that would go  
19 directly and uniquely to you?

20 MR. FALON: They would include me. I  
21 think, I don't know what schematic or photographs you  
22 have in front of you, but to the east of the subject  
23 property there is a corner of townhouses that go to  
24 the end of I Street at 25<sup>th</sup>, and then go sought on I  
25 towards H Street.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Right.

2 MR. FALON: All of those properties have  
3 backyards that are adjacent to one another, sort of  
4 formed by the right angle of those buildings. And the  
5 rear views from all of those properties to the south  
6 and southwest have the advantage of open space from  
7 the vacant lot at 2510 and also from the existing open  
8 rear backyard to 2512. It was the proposal to  
9 eliminate the rear yard at 2512 and build a three-  
10 story extension to ?-

11 CHAIRPERSON GRIFFIS: Okay. I don't want  
12 to get into the case here. Talk to me about why, as  
13 opposed to the nine other residents right on that  
14 corner or the 23 or 25 on the square, is there a rise  
15 in the level of unique status for you.

16 MR. FALON: I would say that my status is  
17 equal with anyone else. Whether or not other owners  
18 felt that they wanted to apply for party status I have  
19 no control over. I am affected. Your people ?-

20 CHAIRPERSON GRIFFIS: Okay. And let me be  
21 absolutely clear and direct here. No one is  
22 questioning the fact that you will have impact or be  
23 affected.

24 MR. FALON: Correct.

25 CHAIRPERSON GRIFFIS: What we're trying to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 establish is at what level you participate in this  
2 hearing or when it is done, and that is there is  
3 nothing that precludes you from coming as a person and  
4 giving testimony, testimony in opposition to the  
5 application and laying it all out. You're clear about  
6 that, correct?

7 MR. FALON: I'm clear about that.

8 CHAIRPERSON GRIFFIS: Okay. And then the  
9 second level of party status is a full participant in  
10 it, which means the board will be looking for you to  
11 present a full case. It will also be asking or  
12 allowing you to do cross examination of witnesses and,  
13 as I said before, that any other additional  
14 information or requirements or responsibilities that  
15 the board asks of the applicant we will also require  
16 of you. That's the level of which you want to  
17 participate; is that correct?

18 MR. FALON: That's correct.

19 CHAIRPERSON GRIFFIS: Questions?  
20 Deliberation? Ms. Miller?

21 VICE CHAIRPERSON MILLER: I just have a  
22 comment here, and that is I think when the term  
23 "uniquely affected" is used with respect to party  
24 status, it's not as high a standard as unique in the  
25 context of variances. I think that the applicant of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 party status has merely to show that he's unique from  
2 persons in the general public, and that's what it says  
3 in the regulation 3106.2.

4 CHAIRPERSON GRIFFIS: Indeed.

5 VICE CHAIRPERSON MILLER: And I think he  
6 has made his case here, even though there are other  
7 neighbors that also could seek party status and  
8 haven't. I don't think he needs to show that he's the  
9 only one. So I would grant party status.

10 CHAIRPERSON GRIFFIS: You would support  
11 the application for party status. Any other comments,  
12 questions?

13 MR. ETHERLY: I agree with Ms. Miller.

14 CHAIRPERSON GRIFFIS: That's fine. Before  
15 we do a vote, I'm going to do one more pass-around.  
16 Mr. Gell, comments?

17 MR. GELL: Mr. Chairman, attachment number  
18 four, I think, shows even more clearly how Mr. Falon  
19 would be affected. His front, from the front of his  
20 building, he couldn't possibly see the house and,  
21 obviously, we're not even changing the front of our  
22 building. From the rear, his house does not extend as  
23 far back as his next-door neighbor and is, therefore,  
24 cut off of any addition that might take place on our  
25 property. I think he's far less affected than many

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 people in the square, and I would say that the board  
2 ought to be consistent with previous rulings that it  
3 has made, and that is to say that, in fact, he has not  
4 shown a unique or even a substantial effect on his  
5 property that would justify his having party status in  
6 this case. We've -? well, I'll get into the other at  
7 a later time.

8 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,  
9 are you here representing the ANC today?

10 MS. MILLER: My name is Dorothy Miller,  
11 and I'm Chair of ANC 2A, and I live at 2440 Virginia  
12 Avenue, Northwest, and I'm here to make sure that, if  
13 any additional information is needed, I can be here to  
14 supply it. But we did write you a letter that Maria  
15 Tyler would be representing her single-member district  
16 in this case, and we did get two or three letters to  
17 support what the gentleman is saying.

18 CHAIRPERSON GRIFFIS: Good. Thank you  
19 very much for the verification the board was looking  
20 for. Okay. Any additional information from the ANC  
21 then that you wanted to provide?

22 MS. MILLER: Well, not at this time,  
23 except we would recommend --

24 CHAIRPERSON GRIFFIS: Your mike. Can you  
25 turn your mike on?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: -- the people who did take  
2 the trouble to write and complain should be given  
3 party status because, certainly, light and air around  
4 Foggy Bottom, the air is so bad, you need all the  
5 light and air you can get.

6 CHAIRPERSON GRIFFIS: Okay, thank you.

7 MR. GELL: May I just say, Mr. Chairman --

8 CHAIRPERSON GRIFFIS: I don't know. What  
9 are you going to say?

10 MR. GELL: The question of Mr. Falon's  
11 seeking party status never came up at the ANC meeting.

12 CHAIRPERSON GRIFFIS: Was there an  
13 official action, Ms. Miller, on supporting or not --

14 MS. MILLER: I beg your pardon?

15 CHAIRPERSON GRIFFIS: Was there an  
16 official action, was there an official vote from the  
17 ANC? Not that it's required but just for  
18 clarification, was there an official vote on ?-

19 MS. MILLER: Not exactly.

20 CHAIRPERSON GRIFFIS: -- supporting?  
21 Okay.

22 MS. MILLER: No. But we did get, as I  
23 said, two or three letters of complaint which were  
24 forwarded in.

25 CHAIRPERSON GRIFFIS: Oh, sure, sure,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sure. Okay, that's no problem. Good clarification.  
2 Anything else?

3 MR. TYLER: Mr. Chairman, I would only  
4 comment that if Mr. Falon, who lives just several  
5 doors away, doesn't have the right for party status,  
6 who does? The --

7 CHAIRPERSON GRIFFIS: Okay, let's not go  
8 too far into the fundamentals and theoretical  
9 arguments of how it was created but, rather, the  
10 specifics and the answers to the question, which is  
11 obviously what we have to look at in establishing  
12 party status. Mr. Falon?

13 MR. FALON: Yes. I'd like to point out  
14 that Mr. Gell is incorrect in stating that I would not  
15 have an effect from the rear of my property. My  
16 bedroom is on the second floor of my property, and  
17 from both windows in the bedroom you can see the rear  
18 of the property at 2512. An addition that went to the  
19 rear of the property line would be visible from my  
20 bedroom. Also, I have a patio in my house at the rear  
21 of the property, which I use throughout the year, and  
22 the absence of light that a three-story addition  
23 extending to the property line would create would be  
24 felt in my patio, as well. So either indoors or  
25 outdoors, I do have a view of the space, the air

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 rights occupied by this property, and an extension  
2 that went to the rear of that property line would  
3 directly affect me both indoors and outdoors.

4 CHAIRPERSON GRIFFIS: Okay. Board  
5 members, further clarification?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Is there action  
8 proposed by members? We have before us a request for  
9 party status.

10 VICE CHAIRPERSON MILLER: Mr. Chairman, I  
11 would move that we grant party status. This would be  
12 based on the applicant's for party status  
13 representation that his sunlight and privacy would be  
14 affected, directly affected.

15 CHAIRPERSON GRIFFIS: Is there a second.

16 MR. MANN: Second.

17 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.  
18 Very well. We have a motion before us. Mr. Falon, is  
19 there further discussion or deliberation? If not,  
20 then I'd ask for all those in favor of the motion say  
21 aye.

22 (Chorus of ayes.)

23 CHAIRPERSON GRIFFIS: And opposed?

24 (Chorus of nays.)

25 CHAIRPERSON GRIFFIS: We eked that one

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 out. Very well. Let's move on to the substance then.  
2 We have a request for a continuance to November 30.  
3 Mr. Gell, is that acceptable?

4 MR. GELL: Yes, that day is acceptable to  
5 us. We deeply regret the fact that the ANC was not  
6 given the change of plans until the time of the  
7 meeting. That was unavoidable. We had been trying  
8 for months to talk with the next-door neighbor. She's  
9 been on travel and very, very hard to reach. We  
10 finally were able to do so --

11 CHAIRPERSON GRIFFIS: Okay, that's fine.

12 MR. GELL: -- and, in the discussions with  
13 her, we made the changes, which were then presented.  
14 But I think the ANC needs additional time --

15 CHAIRPERSON GRIFFIS: We won't hold it  
16 against you. Plans change. ANC, you're also in  
17 agreement with, of course, so that you have time to  
18 look at it, to postpone this until the 30<sup>th</sup> of  
19 November? Schedule availability is okay?

20 MR. TYLER: Yes, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Good, thank you.  
22 Mr. Falon?

23 MR. FALON: That's fine.

24 CHAIRPERSON GRIFFIS: Okay, very well.  
25 We're going to set this for the 30<sup>th</sup> of November. Ms.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Bailey, do we have this set for the morning?

2 MS. BAILEY: Bear with me one second.

3 CHAIRPERSON GRIFFIS: Yes, of course, take  
4 your time, please. While she looks at that, let me  
5 just lay out this is, of course, a variance case  
6 regarding the lot occupancy in the rear yard, and  
7 2001.3, which, of course, is addition to nonconforming  
8 structures, I'm just going to lay out little  
9 parameters for this. This is not, although it is ?-  
10 well, let me say directly this is not complex in its  
11 issues to understand, and the board, believe me,  
12 processes these all the time. So I'm saying that  
13 because I'm expecting that, when we return and we do  
14 have the party in opposition, that we run through this  
15 very systematically and very efficiently and  
16 effectively. We're going to be, obviously, looking  
17 for the applicant to provide how they meet the test  
18 for the variance, the uniqueness, the practical  
19 difficulty, whether it impairs intent and integrity of  
20 the zone plan map, or whether it impairs the public  
21 good. And we're going to be looking for the  
22 opposition party to make the case on why it doesn't  
23 meet that variance test, and we're going to get  
24 through it very quickly.

25 Morning session, Ms. Bailey?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: Yes, sir, morning session.

2 CHAIRPERSON GRIFFIS: Excellent. Do we  
3 know -- well, there it is. So we're scheduled for the  
4 morning of November 30<sup>th</sup>, 2004. We will see you all  
5 then, unless I have any questions of procedural  
6 matters at this time? Yes?

7 MR. GELL: Mr. Chairman, I just wanted to  
8 advise the board that, in making the changes, we have  
9 actually reduced our request from a variance to a  
10 special exception. As far as we understand, no  
11 variance is needed. But that --

12 CHAIRPERSON GRIFFIS: I didn't know that.

13 MR. GELL: -- that also involves the  
14 question of whether 1523.1 requires a variance. Our  
15 reading of the regulations tells us that that's not  
16 the case, that because it's only a special exception  
17 that there is no violation of 1523.1 and, therefore, a  
18 formal request for a variance of that would not be  
19 necessary. We did, however, make it in the last  
20 communication with the board.

21 CHAIRPERSON GRIFFIS: You put that into  
22 the record?

23 MR. GELL: We did, yes, in our pre-hearing  
24 submission.

25 CHAIRPERSON GRIFFIS: Oh, right, right,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 right.

2 MR. GELL: In the letter, we stated that  
3 this had come to our attention quite late, and we did  
4 add it. But that's the only thing that would need a  
5 variance, if anything. We come within the 70 percent  
6 lot occupancy, and the rear yard is a special  
7 exception.

8 CHAIRPERSON GRIFFIS: Okay. So we have  
9 your briefing on that aspect, 1523.1. We'll get  
10 clarification when we call this hearing on exactly how  
11 we proceed with this. We're going to ask that the  
12 parties also submit briefings on that issue and be  
13 prepared to discuss that very quickly. Yes, Mr.  
14 Tyler?

15 MR. TYLER: Mr. Chairman, I don't want to  
16 enter into a debate about the substance of the  
17 November 30<sup>th</sup> meeting, but I thought I should put on  
18 record that the ANC is not clear that it agrees with  
19 the applicant --

20 CHAIRPERSON GRIFFIS: Right. Which is why  
21 I'm now giving you the opportunity and the full  
22 responsibility to submit something in writing. We're  
23 going to have that, and Ms. Bailey is going to tell  
24 you when it's due into the board That will be one  
25 thing that we'll bring up an addition to preliminary

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 matter when we call this case, and we'll spend about  
2 seven and a half minutes on it. And if the board can  
3 make a decision, then we'll do so from the bench. If  
4 not, we'll figure out how we proceed. Is that clear?

5 MR. TYLER: Yes, Mr. Chairman. I just  
6 wanted to make sure that the absence of an ANC  
7 commentator agreeing or disagreeing with the fact that  
8 the --

9 CHAIRPERSON GRIFFIS: Fully understood. We  
10 don't have all the information. That's why we're  
11 asking you to put it in. Mr. Falon?

12 MR. FALON: Yes. As a party, will I  
13 receive copies of all the submissions that are made in  
14 this case?

15 CHAIRPERSON GRIFFIS: Absolutely. And I'm  
16 glad you bring that up. I take that, and assuming Mr.  
17 Gell knows, and I'm sure he does, but, yes, that's why  
18 we've established party status for you at this point  
19 so that anything, any sort of communication, anything  
20 that goes in the file will also be served to you.  
21 Likewise, anything you put in the file must be served.  
22 You need to serve it to the agency and also to Mr.  
23 Gell. If you don't know where to provide service,  
24 then take the opportunity when we dispense with this  
25 today to make sure that you have the proper addresses

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and phone numbers, etcetera.

2 MR. FALON: And will it be possible to  
3 obtain copies of what has been filed already with the  
4 BZA?

5 CHAIRPERSON GRIFFIS: Absolutely. The  
6 public file is in the Office of Zoning soon after we  
7 move on to the next case. So you can just go right  
8 next door to the office, and someone will assist you  
9 in pulling that file.

10 MR. FALON: Thank you very much.

11 CHAIRPERSON GRIFFIS: Okay. Anything else  
12 then? Everyone clear?

13 OFFICE OF PLANNING: Mr. Chair, the Office  
14 of Planning has not received any revised drawings.

15 CHAIRPERSON GRIFFIS: Oh, right. The  
16 voice of reason from the Office of Planning. Mr.  
17 Gell, have you provided the revised plans to the  
18 Office of Planning?

19 MR. GELL: We'll see that that gets done  
20 right away. I thought that it had been.

21 CHAIRPERSON GRIFFIS: Okay, excellent. In  
22 which case, of course, we'll keep the record open for  
23 any supplemental reports that you might have in  
24 regards to that. I think it would probably be wise to  
25 do that, as it sounds as if the potential for relief

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 requested has substantially changed. Ms. Bailey, when  
2 are we having the submissions, the pre-hearing  
3 submissions on the 1523.1?

4 MS. BAILEY: Mr. Chairman, before I answer  
5 your question, is it possible to ask you a question,  
6 and that is are we going to allow a response to the  
7 response?

8 CHAIRPERSON GRIFFIS: No.

9 MS. BAILEY: Okay. That will be November  
10 23<sup>rd</sup>, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Excellent. Clear?  
12 The 23<sup>rd</sup> of November. Yes, Mr. Falon?

13 MR. FALON: I'm sorry, repeat, the date is  
14 for what?

15 CHAIRPERSON GRIFFIS: The 23<sup>rd</sup> of November  
16 is the due date for your submission, your briefing,  
17 your argument on whether 1523.1 is relevant and also  
18 looking at Mr. Gell's statement of whether this is a  
19 full special exception or variance.

20 MR. FALON: Thank you.

21 CHAIRPERSON GRIFFIS: Good. Anything else  
22 then?

23 (No response.)

24 CHAIRPERSON GRIFFIS: If not, thank you  
25 all very much, and we will see you on the 30<sup>th</sup> of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 November. Ms. Bailey, any other preliminary matters  
2 for the board?

3 MS. BAILEY: Yes, Mr. Chairman. It has to  
4 do with Application Number 17095 of Sun Service, Inc.  
5 The board began this case in February of this year. In  
6 July, the board had requested several things from the  
7 applicant. Those items have not been forthcoming. In  
8 addition, we have no information on the record, no  
9 current information. My understanding is the  
10 applicant's attorney may have indicated to staff that  
11 this project would be withdrawn.

12 CHAIRPERSON GRIFFIS: I'm sorry, let me  
13 clarify. We do have actually a written letter that  
14 has withdrawn 17095.

15 MS. BAILEY: Sure. I wasn't aware of  
16 that.

17 CHAIRPERSON GRIFFIS: Good. In which  
18 case, is there any action required by the board in  
19 this case?

20 MS. BAILEY: None, Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Excellent. Thank  
22 you. Very well. Any other preliminary matters?

23 MS. BAILEY: Not at this point, sir, not  
24 from staff.

25 CHAIRPERSON GRIFFIS: Very well. Then

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 when you are ready, we can call the first case for  
2 hearing this morning.

3 MS. BAILEY: And that is Application  
4 Number 17205 of Richard Flax and Katherine Alley  
5 pursuant to 11 DCMR 3104.1 for special exception to  
6 convert an existing deck into a one-story screened  
7 porch at the rear of a single-family detached dwelling  
8 under Section 223, requirements of Section 43, and the  
9 nonconforming structure provisions Subsection 2001.3.  
10 The property is located in the R1B district of  
11 premises 2400, Wyoming Avenue, Northwest, also known  
12 as Square 2504, Lot 805.

13 CHAIRPERSON GRIFFIS: Excellent. Good  
14 morning to you both. Why don't I just have you state  
15 your name and address for the record?

16 MS. FABRY: Hello. I'm Joan Fabry. I'm  
17 Richard Flax' architect. My address is 2425 Wyoming  
18 Avenue, Northwest.

19 MR. FLAX: And my name is Richard Flax. My  
20 address is 2400 Wyoming Avenue, Northwest, ZIP code  
21 20008.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you both very much. Ms. Fabry, you're going to  
24 present the case; is that correct?

25 MS. FABRY: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   CHAIRPERSON GRIFFIS: Can I ?- well, let  
2 me give you a brief opportunity for an opening  
3 statement.

4                   MS. FABRY: I'll try and be brief.  
5 Richard Flax and Katherine Alley are seeking to  
6 enclose an existing deck with screening and a copper  
7 roof in order to create a screened porch. The roof  
8 will align with existing sunroom. The remaining wood  
9 deck stairs will be repaired and rebuilt as necessary  
10 because they are in a deteriorated condition. They're  
11 seeking a special exception from the BZA because the  
12 existing lot, like its neighbors to the south and  
13 west, is 4,631.25 square feet instead of the required  
14 5,000 square feet.

15                   The existing lot occupancy, which includes  
16 the rear decks and sunroom already, exceeds the  
17 allowable 40 percent. The lot occupancy will not be  
18 increased. The proposal does not affect the light and  
19 air of any neighboring property and is consistent with  
20 the general intent and purposes of the zoning  
21 regulations and map.

22                   CHAIRPERSON GRIFFIS: Good. Thank you  
23 very much. Is that wisteria that's growing on the ?-

24                   MR. FLAX: There are two. There's  
25 wisteria and a trumpet vine.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: That's a very  
2 beautiful piece. Okay. Let me ask you, Ms. Fabry, I  
3 believe you were going to answer this, would the  
4 proposed addition affect unduly the availability of  
5 light to the neighboring properties?

6 MS. FABRY: No, it will not.

7 CHAIRPERSON GRIFFIS: And would the  
8 addition unduly compromise the privacy, use, and  
9 enjoyment of the neighboring properties?

10 MS. FABRY: No, it will not.

11 CHAIRPERSON GRIFFIS: Indeed. Will the  
12 proposed ?- is this really an addition? Well, anyway,  
13 the proposed new structure on the back, do you find  
14 that it would substantially visually intrude upon the  
15 character or pattern of houses in the neighborhood?

16 MS. FABRY: No, it will not.

17 CHAIRPERSON GRIFFIS: Okay. And, of  
18 course, in demonstrating compliance with all these  
19 aspects, you have submitted graphic representation in  
20 the form of plans and also pictures, and you've stated  
21 the lot occupancy for this. Is there any other  
22 questions from the board?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Very well. Let's  
25 move on to the Office of Planning then.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 OFFICE OF PLANNING: Good morning, Mr.  
2 Chair and members of the board. The Office of  
3 Planning stands on the record in support of the  
4 application.

5 CHAIRPERSON GRIFFIS: Thank you very much.  
6 Any cross examination of the Office of Planning?

7 MS. FABRY: No, sir.

8 CHAIRPERSON GRIFFIS: Indeed. Let me just  
9 take a brief moment then and, again, compliment on the  
10 Office of Planning's report. Do you have a copy of  
11 the Office of Planning's report? Well, be that as it  
12 may, you should pick one up because, actually, they  
13 photographed your property quite well. But  
14 fascinating stuff, too, because I, frankly, love  
15 aerial photographs. But there it is. Okay. Anything  
16 else from the Office of Planning then? Any questions  
17 from the board?

18 (No response.)

19 CHAIRPERSON GRIFFIS: Okay. Let's move on  
20 then. It is indicated that the Sheridan-Kalorama  
21 Historic Review Committee supported the project. We  
22 don't have anything submitted into the record, nor  
23 would it necessarily be a requirement for that. Is  
24 there a representative from ANC 2D here today? Not  
25 seeing any note of that. Exhibit Number 21, of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 course, is the ANC decision of 19 July, 2004, in which  
2 it unanimously voted to support the application.

3 Is anyone here present today, persons  
4 present in support or in opposition of Application  
5 17205 to give testimony either in support or in  
6 opposition? I don't see any indication of anyone here  
7 to present testimony on this.

8 Let me turn it over to you. Any closing  
9 remarks you might have?

10 MS. FABRY: No, thank you.

11 CHAIRPERSON GRIFFIS: Very well. Board  
12 members, questions, clarifications? I would move  
13 approval of Application 17205, the application of  
14 Richard Flax and Katherine Alley, regarding the  
15 special exception to convert the existing deck to a  
16 one-story screened porch at the rear of their home.  
17 This is, of course, under a 223 Section. In order to  
18 save an undue amount of time, I won't give my normal  
19 litany on the importance of Section 223 and its  
20 critical nature to our regulations. But, of course,  
21 this property does not meet the lot occupancy  
22 requirements under 403 and is under the nonconformance  
23 structure provision, of course, under 2001.3. And I  
24 think that the special exception, the 223  
25 requirements, are adequately and appropriately laid

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 out here, and I would ask for a second.

2 MR. MANN: Second.

3 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.  
4 Is there any questions, discussions, deliberation on  
5 the motion before us to approve? It has been  
6 seconded.

7 (No response.)

8 CHAIRPERSON GRIFFIS: Not noting any, I  
9 would ask all those in favor by saying aye.

10 (Chorus of ayes.)

11 CHAIRPERSON GRIFFIS: Opposed?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Very well. Ms.  
14 Bailey, unless there's any sort of concern from the  
15 board, I think we can issue a summary order on this.

16 MS. BAILEY: Yes, Mr. Chairman. And the  
17 vote is recorded as 5-0-0 to approve the application.  
18 Mr. Griffis made the motion, Mr. Mann second. Mrs.  
19 Miller, Mr. Jeffries, and Mr. Etherly are in  
20 agreement.

21 CHAIRPERSON GRIFFIS: Good. Thank you.  
22 Thank you very much. I appreciate your patience this  
23 morning. Enjoy the beautiful day. Let's move on then  
24 to the next case.

25 MS. BAILEY: Application Number 17206 of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Michael and Shaun Jones pursuant to 11 DCMR 3104.1 for  
2 a special exception to construct a two-story rear and  
3 side addition to an existing single-family detached  
4 dwelling under Section 223, none meet requirements of  
5 Section 405. The property is located in the RIB  
6 district of premises 3607 Newark Street, Northwest,  
7 also known as Square 1914, Lots 26 and 27.

8 Mr. Chairman, there is a request for party  
9 status in opposition to this application.

10 CHAIRPERSON GRIFFIS: Yes, thank you. Is  
11 Ms. Louise Mankinney here? Not seeing any indication.  
12 Why don't you give me your name and your address, sir?

13 MR. SNOWBER: My name is Chris Snowber of  
14 Hamilton Snowber Architects. I'm representing the  
15 clients, Michael and Shaun Jones. My address is 2741  
16 Woodley Place, Northwest.

17 CHAIRPERSON GRIFFIS: Okay. And are you  
18 aware that there's an application for party status?

19 MR. SNOWBER: I was not aware of that.

20 CHAIRPERSON GRIFFIS: Okay. Well, there's  
21 two aspects to this. One, it is not timely filed, and  
22 the second is that they are not present. One of the  
23 critical aspects, of course, with request for party  
24 status and party status the board has held fairly  
25 strongly is that it is a physical participation in it.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I mean, that is a level of responsibility. I think,  
2 at this point, not having Ms. Mankinney present, that  
3 we can dispense with this and move to deny the  
4 property status application, and I ask for a second.

5 MR. ETHERLY: Seconded.

6 CHAIRPERSON GRIFFIS: Thank you, Mr.  
7 Etherly. Let me just speak quickly to the motion.  
8 First of all, I don't find that, one, the application  
9 is strong, but most importantly I think that the fact  
10 of the matter of not being present and actually fully  
11 participate as a party in this case also diminishes  
12 the strength of the application. I think we can take  
13 this clearly and submit it as written testimony in  
14 opposition to the application. We've all read it, and  
15 we'll address all the issues that are in that. I'll  
16 let others speak to the motion, if needed.

17 (No response.)

18 CHAIRPERSON GRIFFIS: Very well then. We  
19 have a motion to deny the application of party status,  
20 and it's been seconded. I ask for all in favor to say  
21 aye.

22 (Chorus of ayes.)

23 CHAIRPERSON GRIFFIS: And opposed?

24 (No response.)

25 CHAIRPERSON GRIFFIS: Very well. Let us

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 move on then and turn it over to you.

2 MR. SNOWBER: Thank you very much. Good  
3 morning. The special exception we are applying for is  
4 an application to build an oriel window at the second  
5 story of an addition that we are building to the  
6 existing house at 3607 Newark Street. The addition --  
7 and there are no other aspects of the addition that  
8 require any zoning actions, it is only this oriel  
9 window. For the rest of the addition, we have already  
10 received the support of the Historic Preservation  
11 Review Board and the ANC and, in fact, the building  
12 permit is in process for the rest of the addition. We  
13 will have to hold off on getting the permit for the  
14 oriel window, should we get approval here from you  
15 all.

16 The oriel window is three feet in  
17 projection and 10 feet, 3 ? inches wide. It occurs  
18 only, as I said, at the second story. It is on the  
19 east side of the property. It is towards the rear of  
20 the house and addition that we're proposing, as you  
21 can see on the drawings that we've presented.

22 It should be noted that we project three  
23 feet and, therefore, we are to a five-foot setback  
24 line. The existing house and the original house  
25 already has a bay that projects four feet into the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 side yard and then another two feet with a projecting  
2 oriel window. I'm giving approximate dimensions. I  
3 gave the exact dimensions on the drawings.  
4 Approximately, another two feet of an oriel window.  
5 And that projection is towards the front of the house  
6 and, therefore, towards the street direction of the  
7 house, thereby making, for all intents and purposes,  
8 the oriel window we're projecting invisible from the  
9 street. It's not visible from the street. The only  
10 place you can see it from would be to the east of the  
11 affected neighbor, and that neighbor has signed a note  
12 in support or, technically, they said they have no  
13 opposition to the projection and to the addition that  
14 we're building. Those are the Harringtons. They both  
15 signed a note regarding that.

16 So we feel that we've demonstrated that we  
17 have no impact on the light and air of the adjacent  
18 properties and the support of the ANC for the  
19 variance. We hope that you would approve this  
20 application.

21 CHAIRPERSON GRIFFIS: Good, thank you.  
22 Quick clarification on 83, your north elevation.  
23 We're looking at down towards, actually, the existing,  
24 as you said, the existing kind of bay window. This is  
25 substantially less of a projection; is that correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SNOWBER: That is correct.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. SNOWBER: I think it's clear, also,  
4 you can see it best on the second floor plan on A-2.  
5 On that plan, Newark Street is to the right and the  
6 public view of it in light gray going back towards the  
7 rear of the property. You can see the existing  
8 projection and then our projection behind that.

9 CHAIRPERSON GRIFFIS: So that, obviously,  
10 already impedes on the side yard, but that's there.

11 MR. SNOWBER: That's there. We're not  
12 changing that.

13 CHAIRPERSON GRIFFIS: Questions,  
14 clarifications?

15 VICE CHAIRPERSON MILLER: I think you may  
16 have said that you have the support of the ANC, but I  
17 didn't see anything in our record.

18 MR. SNOWBER: I actually have a copy of  
19 their letter. They e-mailed it to me last night at  
20 about 10:00, so I do have a copy of that right here.  
21 We appeared before them on the 19<sup>th</sup>. I have no idea  
22 why they didn't submit it.

23 CHAIRPERSON GRIFFIS: Do you have copies  
24 of it?

25 MR. SNOWBER: I do. I have three copies.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay. Why don't you  
2 put that in while we go to the Office of Planning for  
3 their presentation of the report.

4 VICE CHAIRPERSON MILLER: Thank you.

5 OFFICE OF PLANNING: Good morning, Mr.  
6 Chairman, members of the board. The Office of  
7 Planning would stand in support of the record.

8 CHAIRPERSON GRIFFIS: Excellent. Thank  
9 you very much. Also, an excellent report We do have  
10 this now, and it's signed by . . . okay. Very well.  
11 Any question from the board or the Office of Planning?

12 (No response.)

13 CHAIRPERSON GRIFFIS: The applicants'  
14 representative have any cross examination of the  
15 Office of Planning?

16 MR. SNOWBER: I don't. Thank you for the  
17 report. That was well written.

18 CHAIRPERSON GRIFFIS: Okay. I think it's  
19 important to note that they've laid out the entire  
20 special exception but also 223. I won't run through  
21 that at this time, but it is very well laid out. It's  
22 obviously based on information that the applicant has  
23 provided and based on the review of the site and the  
24 record itself. If there is nothing further then for  
25 the Office of Planning, we are trying to get 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](http://www.nealrgross.com)

1 bottom of ANC. We have ANC 3C, which is indicating  
2 that they, in fact, considered the application for  
3 special exception. The commission has voted to  
4 support the application by unanimous vote of 5-2-0.  
5 That letter is, of course, dated 21 July, 2004.

6 Okay. I don't have any other attendant  
7 government reports to this application, unless the  
8 applicant is aware of any other submissions or the  
9 board members see any that I have missed. Let us then  
10 go to any closing remarks you might have.

11 MR. SNOWBER: I have no further comments.

12 CHAIRPERSON GRIFFIS: Okay. Very well. I  
13 would move approval of Application 17206, Michael and  
14 Shaun Jones, and that would be pursuant to special  
15 exception, which would be constructing a small, it's  
16 called an addition to the existing structure under 223  
17 not meeting the side yard requirements of 3607 Newark  
18 Street, Northwest. I would ask for a second.

19 MR. MANN: Second.

20 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.  
21 I think it's very clear, in terms of the application  
22 presentation and also the Office of Planning, which  
23 you can rely greatly on, the test is met for 223 and  
24 special exception under that provision. And we'll  
25 open it up for any further deliberation by the board

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 members.

2 (No response.)

3 CHAIRPERSON GRIFFIS: Very well. That  
4 being noted, we have a motion before us that's been  
5 seconded. I'll ask for all those in favor of the  
6 motion by saying aye?

7 (Chorus of ayes.)

8 CHAIRPERSON GRIFFIS: Opposed?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Abstaining.

11 MS. BAILEY: The vote is recorded as 5-0-0  
12 to approve the application. Mr. Griffis made the  
13 motion, Mr. Mann seconded; Mrs. Miller, Mr. Jeffries,  
14 and Mr. Etherly are in agreement.

15 CHAIRPERSON GRIFFIS: Very well. Unless  
16 there's any objection from the board members, I  
17 believe we can issue a summary order on this and waive  
18 our requirements for full order. Very well. Good.  
19 Thank you very much. We appreciate you being down  
20 here this morning. Good luck with that.

21 MR. SNOWBER: Okay. Thank you very much  
22 for your careful attention.

23 CHAIRPERSON GRIFFIS: Okay. Ms. Bailey,  
24 is there any other business for the board this  
25 morning?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: Not that I'm aware of, Mr.  
2 Chairman.

3 CHAIRPERSON GRIFFIS: Unbelievable. It's  
4 one for the record books. We'll call our afternoon  
5 cases and get them in here; we're going to start  
6 moving. Very well then. If there's no other official  
7 business for the board, let us adjourn the morning  
8 session, and we will reconvene at 1:00, as scheduled.

9 (Whereupon, the foregoing matter went off  
10 the record at 10:38 a.m. and went back on the record  
11 at 1:07 p.m.)

12 CHAIRPERSON GRIFFIS: Good afternoon,  
13 ladies and gentlemen. May I call to order the 21<sup>st</sup>  
14 September, 2004 afternoon public hearing of the Board  
15 of Zoning Adjustments in the District of Columbia. My  
16 name is Jeff Griffis, Chairperson. Joining me is, of  
17 course, Ms. Miller, our Vice Chair, and Mr. Etherly.  
18 Representing the National Capitol Planning Commission  
19 on my left is Mr. Mann, and representing the Zoning  
20 Commission with us this afternoon is Mr. Jeffries.

21 Copies of today's hearing agenda are  
22 available. They are located at the wall where you  
23 entered into the hearing room. Please pick one up,  
24 and you can see what we're going to accomplish this  
25 afternoon.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           Several very important things I'm going to  
2 run through and probably very quickly, so, obviously,  
3 if you have questions, I will answer those to make  
4 sure everyone is clear. First of all, all proceedings  
5 and public hearings before the Board of Zoning  
6 Adjustment are recorded. They're recorded in two  
7 fashions, the most important being the court reporter,  
8 who is creating the official transcript of all the  
9 proceedings that happen today.

10           Second, we are being broadcast live on the  
11 Office of Zoning's web site. Attendant to both of  
12 those, we do ask that people refrain from making any  
13 disruptive noises or actions in the hearing room that  
14 will obviously throw us off track and throw anyone's  
15 concentration off that might be giving important  
16 testimony. I'd also ask that you turn off cell phones  
17 and beepers so we don't have that type of disruption  
18 as we run through this.

19           When coming forward to give testimony,  
20 information to the board, there are several important  
21 things that you need to do. First, you'll need to  
22 fill out two witness cards. Witness cards are  
23 available to you at the table in front, where you will  
24 be giving testimony. They're also located at the  
25 table where you entered into the hearing room. Two

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cards go the reporter, who sits to my right, prior to  
2 coming forward.

3 When you do sit down, make yourself very  
4 comfortable, and you will need to speak into a  
5 microphone. The microphone must be on. I'm going to  
6 ask that people state their name and their address  
7 when they begin to speak. You only need to do that  
8 once. Obviously, we're tying all those important  
9 things that you'll be stating into the record, and we  
10 need to give you credit and proper credit for it.

11 The order of procedure for special  
12 exceptions and variances is as follows: first, we have  
13 the applicant statement, witnesses, presentation of  
14 their case; second, we have any attendant government  
15 reports to the application, that being Office of  
16 Planning, Department of Transportation, etcetera;  
17 third, we go to the Advisory Neighborhood Commission's  
18 report and presentation of their case, if that is  
19 applicable; fourth is parties or persons in support of  
20 an application; fifth is parties or persons in  
21 opposition to the application; and, six, we clean up  
22 with the applicant rebuttal testimony and closing  
23 remarks.

24 Pursuant to Section 3117.4 and 3117.5, of  
25 course, there are time constraints based on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 presentation of cases. That would be for the  
2 applicant, for any sort of persons or parties  
3 established in the case. I will run through those, in  
4 particular, cases as it warrants.

5 Let me just state if you are here as an  
6 individual to give testimony, everyone obviously is  
7 able to do that, you are limited to three minutes. In  
8 terms of the case presentations, I say we will  
9 establish times as it is required.

10 These time restraints, of course, do not  
11 include cross examination, questions by the board, and  
12 I think that's probably it. Cross examination of  
13 witnesses is permitted by the applicant and parties in  
14 each case. The ANC within which the property is  
15 located is automatically a party in the case.  
16 Therefore, they, obviously, conduct cross examination.

17 This board does have the jurisdiction  
18 authority, and I use it sparingly, to give direction  
19 on cross examination questions. Of course, the  
20 importance of cross examination, I will get into  
21 detail, if required, but it is to stay on point and  
22 stay on subject.

23 The record will be closed at the  
24 conclusion of each hearing on the cases this  
25 afternoon, except for any material that the board

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 specifically requests. So what you need to make sure  
2 is that all the information you want us to know is  
3 presented either in writing or in testimony today,  
4 and, if we believe that there is additional  
5 information that's required, we will request it.

6 The record will stay open only for that  
7 type of material. We will be very specific on what we  
8 want and when it is to be submitted into the Office of  
9 Zoning. After that is received, it should go without  
10 saying that the record would then be finally closed,  
11 and no other information would be accepted into the  
12 record.

13 The Sunshine Act requires that this board  
14 conduct all hearings in the open and before the  
15 public. This board may, consistent with the Sunshine  
16 Act and its regulations, enter into executive session.  
17 Executive sessions are utilized by the board for  
18 reviewing the records and/or deliberating on each  
19 case.

20 The decision of the board in contested  
21 cases must be based exclusively on the record that's  
22 created in front of us. So that is why I've gone  
23 through such an exhaustive piece of making sure you  
24 tell us what you're going to tell us and get in what  
25 you're supposed to submit on time.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 I would ask one last thing attendant to  
2 the creation of the record that people present today  
3 not engage board members in conversation, so that we  
4 do not give the appearance of receiving information  
5 outside of the record. We will make every effort  
6 possible to finish our business today, and we are  
7 shooting for 6:00. If, in fact, we have an afternoon  
8 case that goes further than that, I will update on  
9 schedule and make sure we can appropriately go to the  
10 hour that we may need to.

11 At this time, the board will consider any  
12 preliminary matters. Preliminary matters are those  
13 which relate to whether a case will or should be heard  
14 today, such as requests for postponements,  
15 continuances, or withdrawals, or whether proper and  
16 adequate notice of an application has been provided.

17 Let me say a very good afternoon to Ms.  
18 Bailey, who's sitting at my very far right, and Mr.  
19 Moy, both with the Office of Zoning. And I am going  
20 to first, before we get into preliminary matters, ask  
21 that everyone that is going to testify, thinking about  
22 testifying, or toying with the idea to please stand  
23 and give your attention to Ms. Bailey, and she's going  
24 to administer the oath.

25 MS. BAILEY: Please raise your right hand.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Do you solemnly swear or affirm that the testimony you  
2 will be giving this afternoon will be the truth, the  
3 whole truth, and nothing but the truth?

4 (Whereupon, the witnesses were sworn.)

5 CHAIRPERSON GRIFFIS: Thank you all very  
6 much. Ms. Bailey, are there any preliminary matters  
7 for the board's attention at this time?

8 MS. BAILEY: To everyone, good afternoon.  
9 Yes, Mr. Chairman, there is, and it has to do with  
10 Application Number 17110 of Millenium Art Center. We  
11 have received notice that that application was  
12 withdrawn, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Good. Thank you  
14 very much. Is there anything then that the board  
15 needs to do in that matter?

16 MS. BAILEY: No, sir.

17 CHAIRPERSON GRIFFIS: Excellent. Anything  
18 else?

19 MS. BAILEY: No, Mr. Chairman, staff has  
20 nothing else at this point.

21 CHAIRPERSON GRIFFIS: Very well. Why  
22 don't we call the first case in the afternoon?

23 MS. BAILEY: And that is Application  
24 Number 17185 of James ?-

25 CHAIRPERSON GRIFFIS: I'm sorry. Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       Nettler, you have a preliminary matter in the second  
2       case in the afternoon?    Is it attendant to the  
3       submission you've already put in?

4                   MR.   NETTLER:       Richard   Nettler   in  
5       Application Number 17055, and all I was going to say  
6       was, although it's styled as, I believe, a preliminary  
7       matter, that we would deal with it in our case rather  
8       than deal with it as a preliminary matter.   I just  
9       wanted to --

10                   CHAIRPERSON GRIFFIS:   Excellent thought. I  
11       think we'll take you up on that then.   Very well. That  
12       being said, and I appreciate that; it's very  
13       appropriate.   Let's move into the first case of the  
14       afternoon.

15                   MS.   BAILEY:       And that is Application  
16       Number 17185 of James Firkser pursuant to 11 DCMR  
17       3103.2 for a variance from the rear yard requirements  
18       under Section 401, a variance from the lot occupancy  
19       requirements under Section 43, a variance from the  
20       open court requirements under Section 46, and a  
21       variance from the nonconforming structure provisions  
22       under Subsection 2001.3, to construct a rear-deck  
23       addition with room for parking below to an existing  
24       single-family road dwelling in the R3 district.   The  
25       property is located at 2130 Leroy Place, Northwest,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 also known as Square 2531, Lot 41.

2 Members of the board, we received some  
3 submissions this afternoon, and that was placed in  
4 front of you.

5 CHAIRPERSON GRIFFIS: Very well. Good  
6 afternoon. I would just have you turn on your  
7 microphone. There's a button on the base there. The  
8 light will turn on. There it is.

9 MR. GRANDIS: Good afternoon, sir. My  
10 name is Edward Grandis. I'm the attorney of record  
11 for this matter. My address is 1735 20<sup>th</sup> Street,  
12 Northwest. And with me today is the owner of the  
13 property. If you'd like to have him introduce himself  
14 at this time or . . .

15 CHAIRPERSON GRIFFIS: Sure.

16 MR. FIRKSER: Hi. I'm Jim Firkser. I'm  
17 the owner of 2130 Leroy Place, Northwest, 20008.

18 CHAIRPERSON GRIFFIS: A very good  
19 afternoon. Do you spell your last F-I-R-K-S-E-R?

20 MR. FIRKSER: Yes, sir.

21 CHAIRPERSON GRIFFIS: Excellent. Okay.

22 MR. GRANDIS: Good afternoon. A couple of  
23 just introductory matters. I noticed when I was  
24 retained in this matter the originals of letters from  
25 the neighbors, which had been submitted, I think, for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the first hearing, which are a matter of the record, I  
2 have the originals and I've given them to Ms. Bailey  
3 today. I thought the signed originals would be better  
4 than just the photocopies or the faxes that you all  
5 had in the ?-

6 CHAIRPERSON GRIFFIS: Okay. But they  
7 haven't changed?

8 MR. GRANDIS: No, they have not changed.  
9 I just wanted to note that. Additionally, there are  
10 pictures that I have circulated for the board to make  
11 sure that you have some better clarification of the  
12 exact location of the property and the location of the  
13 deck we wish to propose. And with that, I can get  
14 started.

15 This photo here is a photo of the front of  
16 the home at the 2130 Leroy Place. And good afternoon,  
17 Chairman Griffis and members of the board.

18 My name, as I stated, is Edward S.  
19 Grandis. I'm an attorney located in the Dupont Circle  
20 area and have been a resident of the District since  
21 1981. It is my pleasure to be here today before the  
22 Board of Zoning Adjustment on behalf of the applicant,  
23 Mr. Firkser, regarding Application Number 17185.

24 This application is pursuant to the  
25 Section 3103.2 dealing with variances to allow

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 construction of a deck in the rear yard of a single-  
2 family dwelling that does not meet the lot occupancy,  
3 lot width, rear lot, lot occupancy, open court, and is  
4 a nonconforming structure in the R3 district at  
5 premises 2130 Leroy Place, which is a series of row  
6 homes that were built in the early 1900s, and it's the  
7 Sheridan-Kalorama District neighborhood of District of  
8 Columbia.

9 And as I said, Mr. Firkser is here with me  
10 today to talk about the design elements, if that had  
11 any interest at all, or the deck itself. What I have  
12 done and has been circulated and provided to each of  
13 you is my legal outline of the case for the  
14 application, and I'm happy and prepared to discuss  
15 that, but we would like to remind the board that the  
16 Office of Planning had done a detailed analysis and  
17 submitted it September 14<sup>th</sup> and is a part of this  
18 record. And if you all have questions, I'm happy to go  
19 into the various variances and why we believe we meet  
20 these ?-

21 CHAIRPERSON GRIFFIS: Why don't you just  
22 summarize? We've got the numerous variances, some of  
23 which are existing and not to be changed; is that  
24 correct?

25 MR. GRANDIS: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay. Why don't you  
2 just go through in terms of the general outline. We  
3 do have your submissions and then today's submission  
4 about the unique qualities of this property, the  
5 practical difficulties attendant to it, whether it  
6 would impair the intent and integrity of the zone  
7 plan, and whether it would smash the public good in  
8 the surrounding area.

9 MR. GRANDIS: Just to give some context to  
10 the square and where it's located, as we mentioned,  
11 it's in the Sheridan-Kalorama area of D.C. This is a  
12 very old neighborhood in Washington. The houses pre-  
13 date the zoning regulations of 1958, of course. And  
14 when the square was subdivided, it was subdivided  
15 roughly at 1200 square-foot parcels, not the now  
16 legally-required 2,000 square-foot parcels. So what  
17 we're sort of up against is the reality that the  
18 square itself would not, today, meet the test if they  
19 had subdivided it since 1958.

20 CHAIRPERSON GRIFFIS: Understood.

21 MR. GRANDIS: Okay. The square contains  
22 many lots that have also been improved and have come  
23 before this body in the last decade to seek similar  
24 variances for similar structures because of the  
25 impossibilities. Not only are the square footage of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the lots small, they're also, if you know this  
2 neighborhood, it's a major slope and it's a large hill  
3 that you go up many, many, many more, you know, a  
4 quarter of a mile or so, even up to the zoo, you're  
5 still going up the hill on Connecticut Avenue.

6 CHAIRPERSON GRIFFIS: Wouldn't the record  
7 show there's a slope that you're ?-

8 MR. GRANDIS: Yes.

9 CHAIRPERSON GRIFFIS: Now, in the record,  
10 did you submit something that indicates the outside of  
11 the narrative descriptions? Is there anything in  
12 addition to it?

13 MR. GRANDIS: It's my understanding, in  
14 the Office of Planning documents.

15 CHAIRPERSON GRIFFIS: Okay. That's fine.

16 MR. GRANDIS: Right. And this slope  
17 creates another impossibility when you're trying to  
18 configure a home on that piece of property.

19 CHAIRPERSON GRIFFIS: Tell me the  
20 practical difficulty. We're talking about a deck over  
21 a parking space. In your written submission was the  
22 fact that it's so strangely oriented and close to the  
23 alley that it doesn't even appear to be a private  
24 parking space.

25 MR. GRANDIS: Right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: And, therefore,  
2 you're trying to somewhat define that area so everyone  
3 and their guests, or whoever it is ?-

4 MR. GRANDIS: If you turn to the pictures  
5 ?-

6 CHAIRPERSON GRIFFIS: Right. You just  
7 held up a picture that said this is the front of the  
8 building. Is that in the record?

9 MR. GRANDIS: No.

10 CHAIRPERSON GRIFFIS: Indeed. You know  
11 what's funny? When you start reading the transcripts  
12 on these trying to figure it out that it won't mean  
13 much at all, but that's your posting; is that correct?

14 MR. GRANDIS: Yes. And it indicates the  
15 posting.

16 CHAIRPERSON GRIFFIS: And that's on your  
17 submission for your affidavit ?-

18 MR. GRANDIS: Yes.

19 CHAIRPERSON GRIFFIS: -- the posting?

20 MR. GRANDIS: Yes.

21 CHAIRPERSON GRIFFIS: Okay. So the  
22 picture in the front of the building is also attached  
23 to the affidavit.

24 MR. GRANDIS: Yes.

25 CHAIRPERSON GRIFFIS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRANDIS: And what I'd like to do is  
2 refer you to some pictures that we have submitted  
3 today that you have in front of you, and the very  
4 first one is ?-

5 CHAIRPERSON GRIFFIS: Tell me first am I  
6 correct in my understanding of your argument for the  
7 practical difficulty in terms of the site itself is so  
8 cramped, it obviously pre-dates the zoning regulation.

9 The slope itself limits you in the possibilities of  
10 doing other things with it, and then you have this  
11 adjacency to an alley that doesn't provide for one of  
12 the required parking spots, although that has to do  
13 with the regulations, as this was built before but in  
14 terms of defining the privacy of that space?

15 MR. GRANDIS: Yes, sir.

16 CHAIRPERSON GRIFFIS: Okay. And anything  
17 else we need to know on uniqueness or practical  
18 difficulty?

19 MR. GRANDIS: To address exactly the  
20 concern you raised a moment ago about the parking off  
21 the alley, if you look at the first picture, if I  
22 could refer you, you will see that the way the alley  
23 and the back lots come together that, with the  
24 competition for the embassies and the other uses that  
25 are in this neighborhood, there is competition

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 everyday for parking. And, often, not only this  
2 resident but other residents find people parked in  
3 their unenclosed spaces because some people think it's  
4 actually public parking.

5 CHAIRPERSON GRIFFIS: Good. Everyone  
6 understand that? Excellent, okay.

7 MR. GRANDIS: And in addition, the way the  
8 lot is configured, there is no additional adjoining  
9 property available to this applicant. So that if he  
10 had a possibility of trying to reconfigure the use of  
11 that 1200 square-footage, there is just no additional,  
12 and the regulations speak to that under Section 401.3  
13 regarding with those difficulties. But we believe  
14 that he can put this deck on here without impairing  
15 the intent, purpose, and integrity of the zone plan as  
16 embodied in the zoning regulation and map.

17 We'd like to refer you to the variance section of  
18 31.03 that specifically allows relief whereby reason  
19 of exceptional narrowness, shallowness, or shape of a  
20 specific parcel at the time of the original adoption  
21 of the regulations that there really is a hardship  
22 here, that's it's really an impossibility for this  
23 applicant, actually, to go from the front of his  
24 house, which is on one level of the slope, and to walk  
25 out on that same level to the backyard because what

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 happens, by the time you have the topography variance,  
2 you end up having a whole floor. And so, therefore,  
3 when he's on his main level, he is not able to exit to  
4 the back, to the rear of the property. And this deck  
5 will allow him to do so, which will add safety to the  
6 occupants in that house.

7 CHAIRPERSON GRIFFIS: Excellent. Okay.  
8 So, basically, the practical difficulty arises out of  
9 the uniqueness of the slope and the shape and the size  
10 of the building. Okay.

11 MR. GRANDIS: Yes.

12 CHAIRPERSON GRIFFIS: I don't think this  
13 would -? well, there it is. Okay. Anything else?

14 MR. GRANDIS: No. I think , at this time  
15 I think we'd like to rely upon the Office of Planning  
16 report.

17 CHAIRPERSON GRIFFIS: No need to. They're  
18 going to present it.

19 MR. GRANDIS: Okay.

20 CHAIRPERSON GRIFFIS: And then we'll  
21 return to you for any closing remarks. But now board  
22 questions. Ms. Miller?

23 VICE CHAIRPERSON MILLER: Is the  
24 topography that you were describing just unique to  
25 that property or similar to the neighbors?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRANDIS: Well, in his case, it's  
2 unique to his property.

3 CHAIRPERSON GRIFFIS: In terms of the  
4 access out to the back?

5 MR. GRANDIS: Yes.

6 CHAIRPERSON GRIFFIS: I see.

7 VICE CHAIRPERSON MILLER: So the  
8 neighboring properties don't have the same problem?  
9 That's my question.

10 MR. GRANDIS: It depends on their location  
11 because of the slope. The contiguous neighbors have  
12 the same issue. If you look at one of the pictures,  
13 they actually have a deck that allows them, the  
14 neighbor, allows them to go right from their main  
15 level to their back.

16 VICE CHAIRPERSON MILLER: Thank you.

17 CHAIRPERSON GRIFFIS: Any other questions  
18 from the board?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Very well. Let's  
21 move on to the Office of Planning to present their  
22 report.

23 MR. MORDFIN: Good afternoon, Chair and  
24 members of the board, my name is Steven Mordfin with  
25 the Office of Planning. And this application is for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 five area variances to permit the construction of a  
2 deck onto the rear of an existing row house. The  
3 subject property is a row house that was constructed  
4 100 years ago. It is nonconforming for lot width, lot  
5 area, lot occupancy, and rear yard. The application  
6 proposes to reduce the rear yard to 2.5 feet, increase  
7 the lot occupancy to 95.6 percent, create an open port  
8 1.46 feet in width, and increase the nonconforming  
9 aspect of the structure.

10 The subject property is narrow, shallow,  
11 and has sloping topography. It is also impacted by  
12 the location of several embassies and chancelleries  
13 nearby, in addition to religious institutions and row  
14 houses used as office space. These uses create  
15 unusually high demand for on-street parking that  
16 might, otherwise, be expected within an R3 district.

17 The granting of the requested variances  
18 will enable the applicant to construct a deck onto the  
19 rear of the subject property with one off-street  
20 parking space beneath it. The deck will include one  
21 ornamental tree and a planter, softening the  
22 appearance of the deck, and will not be enclosed on  
23 the side facing the alley, reducing the bulk  
24 appearance of the structure.

25 Therefore, the Office of Planning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 recommends approval of the application subject to the  
2 conditions contained within the staff report. And  
3 that concludes the Office of Planning's report.

4 CHAIRPERSON GRIFFIS: Thank you very much.  
5 Any questions from the board?

6 MR. MANN: I have a question concerning --

7 CHAIRPERSON GRIFFIS: Yes, Mr. Mann?

8 MR. MANN: -- concerning the  
9 recommendation that the planter be maintained with one  
10 ornamental tree. I was wondering whether or not you  
11 intended to be as specific as saying that it has to  
12 be, number one, one tree, and if it has to be an  
13 ornamental tree, or how that came about?

14 MR. MODFIN: Actually, that came about,  
15 that was the proposal from the applicant. It doesn't  
16 have to be one tree, and it does not have to be an  
17 ornamental tree.

18 MR. MANN: So the point was really that  
19 there's just going to be a planter, and it's  
20 maintained with some sort of landscape element?

21 MR. MODFIN: Yes.

22 MR. MANN: Okay.

23 CHAIRPERSON GRIFFIS: Ms. Miller?

24 VICE CHAIRPERSON MILLER: I just wanted to  
25 know if you can elaborate further on what you mean by

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exceptional because your recommendation, I think, is  
2 based, in large part, on finding exceptional  
3 circumstances in this case. And often, when we're  
4 looking at variances, we think in terms of uniqueness,  
5 but I noticed that the regulation does use the term  
6 exceptional, and I'm wondering if you're using it  
7 interchangeably, or if you think that there's a  
8 broader definition that you're using?

9 MR. MODFIN: I think what I've done is  
10 I've used it interchangeably when I should not have.

11 VICE CHAIRPERSON MILLER: Do you think  
12 this is unique?

13 MR. MODFIN: I think this is a unique  
14 situation in terms of the shape of the lot, the way it  
15 narrows. That square goes from east to west, the  
16 square narrows, and what happens is that the lots then  
17 become narrower, and this is one of the lots on the  
18 western side of the square. So it's one of the ones  
19 more impacted by the shape of the square than the lots  
20 on the east side of the square.

21 VICE CHAIRPERSON MILLER: Thank you.

22 CHAIRPERSON GRIFFIS: I don't understand  
23 what you're asking, Ms. Miller. One could look at  
24 exceptional situations or conditions.

25 VICE CHAIRPERSON MILLER: I think that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Office of Planning explained it very well for me, but  
2 what I was getting at is when we're analyzing  
3 variances, we often use the term unique. But in this  
4 particular case, I see the term exceptional used more  
5 frequently; I didn't even notice unique. And then  
6 when I went back to look at the regulations, I thought  
7 that they used the term exceptional. And, often, the  
8 case law talks about unique, and I was just wondering  
9 whether exceptional might be a little bit broader  
10 than, you know, if one neighbor had the same kind of  
11 topography, we could still consider this property  
12 exceptional, even if it might not be totally unique.

13 CHAIRPERSON GRIFFIS: Exceptional or  
14 extraordinary.

15 VICE CHAIRPERSON MILLER: Yes.

16 CHAIRPERSON GRIFFIS: Okay, very well.  
17 Any other questions from the board on the Office of  
18 Planning's report? Does the applicant have any cross  
19 examination of the Office of Planning?

20 MR. GRANDIS: Not to the Office of  
21 Planning; no, sir. I want to thank them for the  
22 report.

23 CHAIRPERSON GRIFFIS: Okay. Then let's  
24 move ahead. You've already been through HPRB; is that  
25 correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. GRANDIS: Correct. And he got concept  
2 approval.

3 CHAIRPERSON GRIFFIS: Okay. And we have a  
4 submission on that, which is Exhibit Number 22. ANC  
5 2D also has a submission. Is anyone here representing  
6 ANC 2D on this application today?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Not noting any  
9 indication of that, we'll just take note that it was  
10 unanimously voted to support the application. Any  
11 clarifications on that from the board, applicant?

12 MR. GRANDIS: I just want to thank the  
13 board for the presentation and to ?-

14 CHAIRPERSON GRIFFIS: Wait. We've got to  
15 go through ANC's first. Any comments on ANC?

16 MR. GRANDIS: No.

17 CHAIRPERSON GRIFFIS: Okay. In which case  
18 then, let me ask is there anyone here present in  
19 Application 17185 to give testimony either in support  
20 or in opposition, persons to give testimony this  
21 afternoon?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Not noting any, we  
24 can move ahead for closing remarks.

25 MR. GRANDIS: I'd like to thank the board,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and I'd also like to just restate to Ms. Miller, if I  
2 could, and to the board that we're looking at this  
3 term exceptional in the context of this lot because,  
4 if you look at the history of the lot, it pre-dates  
5 the zoning regulations. And if there had been thought  
6 of those regulations back in the year, say, 1901, when  
7 these homes were constructed, then I think there could  
8 be arguments made about what was going on then.

9 But this is a very residential area. The  
10 comprehensive plan looks at this area as to be  
11 residential and encourages the property owners to do  
12 things to their properties to maintain them in a  
13 family and residential manner. And I believe that  
14 this property owner, when he's coming here today, is  
15 truly trying to maintain that home in a residential  
16 character, to provide him some safety, and that the  
17 lot itself is exceptional when you look at what the  
18 requirements today would be on a lot of that nature.

19 We really want to thank the board for  
20 allowing us to have this presentation. As I said, the  
21 property owner is here. If there's any questions for  
22 him, he would welcome those questions. But once  
23 again, we hope that you all would look with favor on  
24 this application and, if so, we'd like to, if there is  
25 no controversy and with the ANC support and with 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](http://www.nealrgross.com)

1 Office of Planning documentation, we'd like to request  
2 a bench ruling today, and I have come prepared with a  
3 summary order, if that is the favor of the board, that  
4 I could present that at the right time.

5 CHAIRPERSON GRIFFIS: Good. Thank you  
6 very much. Any questions, clarification of the board?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Did you pick your  
9 type of ornamental tree yet?

10 MR. FIRKSER: The neighborhood wants a  
11 Crape Myrtle.

12 CHAIRPERSON GRIFFIS: Crape Myrtle. We're  
13 big fans of Crape Myrtle, right? Okay. Board  
14 members, unless there's any objection, I think we can  
15 proceed with this today, and I think it would be  
16 advantageous to do our deliberation under a motion,  
17 and I would move approval of Application 17185, and  
18 that is for the variance from 41.3, 403.2, 404.1,  
19 406.1, and 2001.3. I'd ask for a second.

20 MR. ETHERLY: Second, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Thank you, Mr.  
22 Etherly. As we rattle down five variances, one might  
23 think this is a very complicated and involved case.  
24 However, it's very clear from the record here that  
25 numerous of these are actually, three of these are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1       existent conditions and, based on the fact that,  
2       frankly, the uniqueness of the layout of the smaller  
3       site and the diminished site, the variance, obviously,  
4       from the minimum lot area.

5               I've also seen a very strong showing and  
6       submissions on the fact that the exceptional  
7       situation, if not extraordinary, and that is just the  
8       viability of access from the first four and the lower  
9       level out to the rear from the front to the rear of  
10      the properties. And in addition, in terms of defining  
11      the property itself for utilization of the parking, as  
12      has been shown in the written submissions, the demand  
13      for parking and the numerous types of demands or the  
14      numerous types of cars that are accessed in the alley  
15      in the surrounding area in its diversity of uses from  
16      residential to, as it was indicated, embassies and  
17      chancelleries and the like.

18             I do not believe that adding a deck on top  
19      or increasing the lot occupancy to keep that, in terms  
20      of an open deck and parking space, would somehow  
21      impair the intent or the integrity of the zone plan,  
22      nor do I see the public good being harmed if this was  
23      to proceed with relief. It is very clear, in fact,  
24      that it may actually be beneficial in terms of  
25      defining the alley space in the rear and providing a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 more protected parking.

2 I also think, in terms of the public good,  
3 whether this goes directly to it or not because we  
4 didn't go through a lot of it, although we obviously  
5 have gone through this full and entire record, is  
6 actually the architectural design or the  
7 embellishments that are happening with the enclosure  
8 on the top I think are very sympathetic if not fitting  
9 into the area and the neighborhood itself.

10 So that being said, I'll open it up to  
11 others for any comments.

12 VICE CHAIRPERSON MILLER: Mr. Chairman, I  
13 would concur with your remarks. I think you covered  
14 it quite comprehensively. The only thing I would add  
15 is that we consider making the application subject to  
16 the conditions set forth in the Office of Planning's  
17 report.

18 CHAIRPERSON GRIFFIS: Good. I'm glad you  
19 bring that up. I think condition number one that's  
20 been proffered by the Office of Planning is an  
21 excellent one, and that is the air beneath the deck  
22 not be enclosed along the rear lot line. I think  
23 that's absolutely an appropriate condition in terms  
24 of, just based on the fact of the evidence in the  
25 record of the shallowness of the lot and the alley and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the close proximity. I think it may be problematic if  
2 that was ever to be enclosed. I'll leave it up for  
3 further quick discussion from the board whether we  
4 would actually condition any sort of relief on  
5 planting an ornamental tree. I think it's a great  
6 idea; however, I didn't see any adverse impact that  
7 that would mitigate.

8 MR. MANN: Right. I would agree, and I  
9 don't think that we should condition it with the  
10 planting of one ornamental tree.

11 CHAIRPERSON GRIFFIS: Okay. Not say you  
12 can't do it.

13 VICE CHAIRPERSON MILLER: I'll just say  
14 that I believe that the planter is shown on the plan,  
15 and they're submitted by the applicant, and that the  
16 variance be granted in accordance with the plans that  
17 are submitted.

18 CHAIRPERSON GRIFFIS: That's one way  
19 around it. Excellent idea. Okay. Anything else?  
20 Very well. We have a motion before, and it has been  
21 seconded. It is conditioned, and the condition reads  
22 that the area beneath the deck will not be enclosed  
23 along the rear of the lot line facing the alley. If  
24 there's no further deliberations, then I'd ask for all  
25 those in favor of the motion by saying aye.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (Chorus of ayes.)

2 CHAIRPERSON GRIFFIS: Opposed?

3 (No response.)

4 CHAIRPERSON GRIFFIS: And Ms. Bailey, we  
5 can record the vote when you're ready.

6 MS. BAILEY: Certainly, sir. The vote is  
7 recorded as 5-0-0 to approve the application with the  
8 condition as discussed by the board. Mr. Griffis made  
9 the motion, Mr. Etherly second; Mr. Jeffries, Mrs.  
10 Miller, and Mr. Mann are in agreement. Summary order,  
11 Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes, I believe we  
13 can waive and issue a summary order in this case.

14 MS. BAILEY: Thank you, sir.

15 CHAIRPERSON GRIFFIS: Very well.

16 MR. GRANDIS: Would it be of help to  
17 submit the draft order?

18 CHAIRPERSON GRIFFIS: How many pages is  
19 that summary?

20 MR. GRANDIS: No, it's a page. These are  
21 just 12 copies.

22 CHAIRPERSON GRIFFIS: Yes, of course, it's  
23 always helpful. When you give it to staff, it will go  
24 into the record. Ms. Bailey, anything further on this  
25 case?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: Not on this case, Mr.  
2 Chairman.

3 CHAIRPERSON GRIFFIS: Excellent. Thank  
4 you both very much.

5 MR. FIRKSER: Thank you all.

6 CHAIRPERSON GRIFFIS: I appreciate your  
7 time this afternoon. And we are going to, we have one  
8 more case in the afternoon; is that correct Ms.  
9 Bailey?

10 MS. BAILEY: Yes, sir.

11 CHAIRPERSON GRIFFIS: In which case, I  
12 imagine most of you are here for it. If not, you're  
13 in the wrong place. We're going to take five minutes  
14 and let everyone set up and get ready, and we'll be  
15 back to start right away.

16 MR. FIRKSER: Could I ask one question?

17 CHAIRPERSON GRIFFIS: Sure.

18 MR. FIRKSER: Just from a practical  
19 standpoint, what would be the practicality about  
20 getting the permit to go forward? What's the process  
21 from here; can you tell me? Do I have to go back to  
22 the permit office to do that? Okay. So this order  
23 would be, is what we need in order to go to the  
24 office?

25 CHAIRPERSON GRIFFIS: Right. Quite

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 frankly, we don't have anything to do with permitting.

2 MR. GRANDIS: I'll help him with that.

3 CHAIRPERSON GRIFFIS: We're zoning. Yes,  
4 exactly. Well, are we on the record? So I would just  
5 go next door to the Office of Zoning and indicate this  
6 is a summary order. Summary orders are, frankly,  
7 being issued in great speed. You're going to need  
8 that before you go on to any further processing.

9 (Whereupon, the foregoing matter went off  
10 the record at 1:40 p.m. and went back on the record at  
11 1:55 p.m.)

12 MS. BEVERLEY: This is application number  
13 17055 of Army Distaff Foundation, in pursuant to  
14 11DCMR3104.1 for special exception to allow a four  
15 story addition housing 25 nursing rooms, accommodating  
16 27 residents, and the addition of 27 independent  
17 living units, at the Knollwood Apartment residence, an  
18 existing healthcare facility.

19 Relief is being sought members of the  
20 Board under section 219 and section 218 of the zoning  
21 regulation. The site is located in an R1A district --  
22 6200 Oregon Avenue, N.W., Square 2339, Lot three.

23 Mr. Chairman, as you know, there are  
24 several preliminary matters attending to this case.

25 CHAIRPERSON GEOFFREY: Good, thank you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 very much. First of all, just to update everybody, of  
2 course we are all well aware of already established  
3 parties in this proceeding.

4 One party is the Knollwood neighbors. We  
5 do have ANC34G. I believe they will be represented  
6 today. Is that correct? Excellent. In which case,  
7 let's move ahead.

8 Mr. Nettler, you had indicated that you  
9 had done a submission that actually utilized the words  
10 motion to dismiss, but rather you are changing what  
11 you believe the Board should be attendant to as a  
12 preliminary matter.

13 MR. NETTLER: Well, ultimately not the  
14 result -- excuse me, I've got a cold -- but the -- in  
15 terms of the ultimate result would be the denial of  
16 the application.

17 But I think we can address it in our case  
18 in chief of behalf of the Knollwood neighbors, rather  
19 than doing it as a preliminary matter here. And we  
20 will develop that as we go through cross examination  
21 in our case, the issues that we've raised in that  
22 motion.

23 CHAIRPERSON GEOFFREY: Okay. So, for  
24 clarity then, we don't have a motion before us?

25 MR. NETTLER: Well, I'm going to keep it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 styled as a motion. I just think that the issue that  
2 can be addressed in there in terms of whether they are  
3 entitled to the relief is in part dependant upon  
4 whether a portion of the relief that they are seeking  
5 is appropriate for all of the uses that are being  
6 presented today in their application, specifically the  
7 independent living arrangements.

8 And, while the Knollwood neighbors are not  
9 opposed to a special exception being approved for the  
10 facilities that would provide assistance to  
11 Alzheimer's patients, we are opposed to the  
12 independent living arrangements because those would  
13 require a use variance.

14 And we will develop that issue in our  
15 case. And, for that reason, that aspect of the  
16 application would have to be denied, in our view.

17 CHAIRPERSON GEOFFREY: I see. Well, I  
18 think we ought to set the parameters pretty quickly  
19 here and get it into focus. First of all, it is my  
20 opinion in reading this, my understanding, actually  
21 with the submission of the record that this is a self-  
22 certification, a certification for special exception.

23 Therefore we, in all directness, have a  
24 special exception case before us. In order to  
25 establish the fact that there would be additional

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 relief or differing types of relief, it may not be the  
2 purview in this case of the Board itself as a self-  
3 certification if this was to proceed successfully.

4 It would then go to the zoning  
5 administrator. The zoning administrator would then  
6 look to whether the proper relief had been granted. If  
7 there's a decision by the zoning administrator which  
8 was not agreeable, that would be the next step for any  
9 sort of action.

10 MR. NETTLER: Well, with regard to the --  
11 that may work in some circumstances. In our view, it  
12 does not work in this particular circumstance,  
13 because, if they are seeking a special exception for a  
14 -- let's say we didn't have the Alzheimer's units  
15 here, but this was a special exception solely for the  
16 purpose of building an apartment building on these  
17 premises.

18 Then our position -- and we could do this  
19 as a preliminary matter or doing it in the way that I  
20 said I wanted to go forth. They wouldn't be entitled  
21 to a special exception relief for an apartment  
22 building in an R1A zone, an R1B zone. And, in that  
23 way --

24 CHAIRPERSON GEOFFREY: That would be easy  
25 to figure out.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. NETTLER: And, in our view, that is  
2 going to be easy to figure out in this case when we  
3 are finished with it.

4 CHAIRPERSON GEOFFREY: Okay. And what I'm  
5 saying is -- and I'll hear from my other Board  
6 members, I'm not opening up the hearing in order for  
7 that type of a discussion and exploration to happen.

8 As we have been presented  
9 straightforwardly with a special exception, the Board  
10 is prepared to move ahead with the special exception.

11 If it finds that the self certification is  
12 in error, there are next steps that would either  
13 address that or remedy that.

14 MR. NETTLER: Well, I guess when we get to  
15 the issues, if you think that we're going -- I'm not  
16 sure about the parameters that you're establishing in  
17 terms of any limitations on testimony or cross  
18 examination, because, as I said, to the extent that  
19 there is a relief being requested here, a special  
20 exception relief for what we believe to be an  
21 apartment building, we will demonstrate we believe, in  
22 cross examination and in our case, that this is an  
23 apartment building, and therefore it is not entitled  
24 to special exception.

25 CHAIRPERSON GEOFFREY: And what I'm saying

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is that that's outside of the scope of this hearing.

2 MR. NETTLER: Our view is that it's not  
3 outside of the scope of the hearing because, for this  
4 to have been noticed properly, for the people to have  
5 an opportunity to make presentations on this matter,  
6 that type of a ruling would essentially undermine the  
7 notification provisions under the zoning regulation.

8 CHAIRPERSON GEOFFREY: We'd be upholding  
9 the notification and not changing the dynamic of what  
10 the application --

11 MR. NETTLER: Well, you have permitted  
12 this issue to have been addressed in other cases where  
13 this issue has arisen, Presbyterian Home and  
14 subsequent case as well.

15 We think it is appropriate to develop that  
16 in this case as well, and for you to understand the  
17 nature of the type of facility that's being presented  
18 to you.

19 And that may very well be in your --  
20 ultimately in your decision as a basis for not  
21 granting a special exception, whether in ruling or  
22 whether in entitled to they're required to get a use  
23 variance.

24 But, it does go to whether they are  
25 entitled to get a special exception under the two

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 provisions that they've sought relief for. And, if  
2 they don't fit within those two special exception  
3 provisions, then they are -- shouldn't be entitled to  
4 a special exception.

5 CHAIRPERSON GEOFFREY: If they don't make  
6 the -- special exception, then absolutely they would  
7 not be granted an approval. Board Member's comments?

8 MS. MILLER: I just want to understand the  
9 status of this motion now. Are you seeking to  
10 withdraw the motion without prejudice to file  
11 something later after we get into the case?

12 MR. NETTLER: No, we are not withdrawing  
13 the motion. We are just saying that we will address  
14 it in a way that I've just stated in the context of  
15 our case, which is that the relief that's being sought  
16 for the -- the special exception relief being sought  
17 for the independent living arrangements here are not  
18 entitled to the relief requested because they do not  
19 meet the definitions of the independent living  
20 arrangements.

21 And that's what we've addressed in -- do  
22 not meet the definitions of 218 and 219.

23 MS. MILLER: Okay. I have to say I'm a  
24 little bit confused though because you sound like  
25 you're going to change it. You're not.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. NETTLER: No.

2 MS. MILLER: You're not asking for a  
3 ruling on it.

4 MR. NETTLER: I'm not, that's right.

5 MR. ETHERLY: Just a follow-up, Mr.  
6 Chairman. The in question, however, Mr. Nettler,  
7 would still be the same. You still would be seeking  
8 dismissal.

9 MR. NETTLER: Or denial.

10 MR. ETHERLY: Or denial.

11 MR. NETTLER: That's right.

12 MR. ETHERLY: At the time of your case  
13 presentation?

14 MR. NETTLER: That is correct.

15 MR. ETHERLY: So, we still see a motion  
16 eventually.

17 MR. NETTLER: Correct. That's right.

18 CHAIRPERSON GEOFFREY: Well, Mr. Etherly,  
19 I think you've really put it into context here. And I  
20 think we have two sets. One, obviously Mr. Nettler to  
21 represent the party in opposition is going to present  
22 a case in which we would, if persuaded deny the  
23 application.

24 But the first is we do have a motion  
25 dismissed based on the fact of that this wasn't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 correctly --

2 MR. NETTLER: I would ask for it to be  
3 deferred to deal with it on the merits instead, rather  
4 than as a preliminary matter.

5 CHAIRPERSON GEOFFREY: I think we would  
6 take it as a two step process. The case presentation  
7 -- I will be very direct to you. I will limit an  
8 awful lot of the scope and direction that we go in in  
9 this hearing to that which is advertised and to the  
10 special exception 218 and 219.

11 Obviously we have to hear some things that  
12 fill the record for other arguments. But, I am going  
13 to be pretty strict in doing that. However, we do  
14 then have the first step, which is a motion to  
15 dismiss, based on the fact of, if I can paraphrase you  
16 correctly, based on the fact of the wrong relief  
17 requested. Is that correct?

18 MR. NETTLER: I think it's better in terms  
19 of the relief that's been requested -- they do not  
20 satisfy the requirements for the relief that's being  
21 requested. Let's put it that way.

22 CHAIRPERSON GEOFFREY: So, failure to  
23 request the proper relief.

24 MR. NETTLER: No, as I said --

25 CHAIRPERSON GEOFFREY: You have to say yes

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 because I just read that from your submission.

2 MR. NETTLER: As I said, I was asking to  
3 defer this to the body of the case because I think it  
4 goes to the merits of whether they meet the definition  
5 of it.

6 CHAIRPERSON GEOFFREY: I think we'll take  
7 it under advisement. However, I would move the Board  
8 to deny the motion to dismiss based on failure to  
9 request the proper relief. And I'd ask for a second.

10 MS. MILLER:

11 CHAIRPERSON GEOFFREY: Thank you, Ms.  
12 Miller. I think it is fairly evident in the fact that  
13 we have a self-certified application here. There is  
14 nothing monumental that is persuading me that this, in  
15 fact, was so in error in its advertising that the  
16 immediate motion to dismiss should be denied.

17 And I'd ask for people's support. Let me  
18 open it up for any other deliberation on the motion.

19 MR. ETHERLY: I would agree, Mr. Chairman.  
20 And I think further, as you note, it's probably  
21 important to reiterate that, as you perhaps  
22 encapsulate some of the arguments that were submitted  
23 in your written submission, in the body of your full  
24 presentation and full argument, be sensitive to the  
25 Chairman's admonition that there's going to be perhaps

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 -- if I'm not speaking out of terms -- very little  
2 wiggle room in terms of massaging some of those themes  
3 that may have come in your initial submittal.

4 MR. NETTLER: I'll focus on whether an  
5 apartment building meets the definition of 218 or 219.

6 MR. ETHERLY: Okay, thank you.

7 CHAIRPERSON GEOFFREY: We have a motion  
8 before us, it has been seconded. Other deliberation?  
9 Very well, if there's no other further discussion or  
10 deliberation on that, I'll ask that all those in favor  
11 of the motion -- by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON GEOFFREY: Opposed?

14 (Chorus of aye.)

15 CHAIRPERSON GEOFFREY: Abstaining?

16 (No response.)

17 MR. TUMMONDS: Mr. Chairman, Paul Tummonds  
18 on behalf of --

19 CHAIRPERSON GEOFFREY: One second.

20 MR. TUMMONDS: Sure.

21 CHAIRPERSON GEOFFREY: Ms. Beverley, would  
22 you record the vote on the motion, please?

23 MS. BEVERLEY: The motion -- the vote is  
24 500, the motion is denied for Mr. Nettler to dismiss  
25 the application based on failure of the applicant to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 meet the requirements of the relief that was  
2 advertised for this.

3 CHAIRPERSON GEOFFREY: Excellent. Thank  
4 you very much. Mr. Tummonds?

5 MR. TUMMONDS: Paul Tummonds, Shaw Pittman  
6 on behalf of the Applicant. I just want to confirm  
7 what we just did there. But, you are doing to allow  
8 testimony by Knollwood neighbors as to this issue of  
9 whether or not an independent living unit is in fact a  
10 community residence facility unit or an apartment  
11 unit?

12 CHAIRPERSON GEOFFREY: Actually, I haven't  
13 been persuaded that we would open testimony up in that  
14 --

15 MR. TUMMONDS: Okay, that's my question is  
16 whether or not I need to address that issue in my case  
17 in chief.

18 CHAIRPERSON GEOFFREY: Well, that's the  
19 difficulty. I don't really see how we would be moved  
20 in that direction at this point. I mean, really, what  
21 that does is kind of create a hearing and appeal in a  
22 hybrid situation.

23 Now, I know full and well that I don't  
24 have total discretion over the case presentation by  
25 the opposition on issues that they want to bring up.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Whether it actually has any bearing or persuasiveness  
2 to the Board will be a question.

3 So, I think that's about as direct as I  
4 can be in terms of that aspect. I think we will try  
5 and limit it somewhat. Mr. Nettler?

6 MR. NETTLER: If I might just add, as  
7 we've discussed -- and I think this is what I took  
8 away from the understanding here -- if what you're  
9 being presented with does not fit the definition of  
10 sections 218 and 219, which is the relief that's been  
11 applied for, then we certainly have the leeway to  
12 demonstrate that that's the case. And that --

13 CHAIRPERSON GEOFFREY: I don't think I can  
14 stop you from presenting a case that shows how they  
15 don't make the special exception.

16 MR. NETTLER: Right.

17 CHAIRPERSON GEOFFREY: How you craft that,  
18 obviously, is your expertise. But, you know, we also  
19 aren't going to be talking about -- wow, and no  
20 analogy comes to my mind.

21 But, you know, we're going to have to stay  
22 on point. Otherwise we don't get through proceedings.

23 So, it's not something the Board is unused to.

24 So, I think we'll be able to handle it.  
25 That being said, you could take it under advisement.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Obviously there's submission, there's the issue that's  
2 there. Okay, anything else?

3 MS. MILLER: I just want to clarify, at  
4 least the way I saw our vote was, in denying the  
5 motion to dismiss for failure to request proper  
6 relief, I don't think there's any authority for that  
7 kind of a motion.

8 This is self-certified. And, as I see it,  
9 they can ask for whatever relief they want. And, in  
10 this case we'll decide whether it is appropriate. So,  
11 that's how I see our vote.

12 CHAIRPERSON GEOFFREY: Well put. Mr.  
13 Tummonds?

14 MR. TUMMONDS: Yes, first as a preliminary  
15 matter, we are going to ask for certification of three  
16 expert witnesses. I believe that the résumés of those  
17 witnesses have been forwarded to the Staff.

18 Our first request for expert witness would  
19 be Vernon Feather, the project architect. Second  
20 would be Mike Bello, landscape architect. And our  
21 third would be Ed Papazian, traffic engineer, parking  
22 engineer.

23 CHAIRPERSON GEOFFREY: Okay, and, is that  
24 -- all the parties have been given the résumés?

25 MR. NETTLER: No.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GEOFFREY: Mr. Tummonds, do  
2 you have extra copies of the résumés?

3 MR. TUMMONDS: Yes.

4 CHAIRPERSON GEOFFREY: Mr. Tummonds,  
5 before we take this up, and while the Board members  
6 are reviewing these, what's your estimation of time  
7 needed for your case presentation?

8 MR. TUMMONDS: Approximately 45 minutes.

9 CHAIRPERSON GEOFFREY: Good. We're going  
10 to set the clock running at zero. At 45 it will  
11 sound, or I will notify you. Obviously the time that  
12 you take will be afforded equally to the parties in  
13 opposition.

14 And the ANC, of course, is not limited to  
15 time. Did the ANC get copies of these? Mr. Bello,  
16 are you Mr. Bello.

17 WITNESS BELLO: Yes.

18 CHAIRPERSON GEOFFREY: Good afternoon.

19 WITNESS BELLO: Good afternoon.

20 CHAIRPERSON GEOFFREY: Did you just move  
21 up from Florida?

22 WITNESS BELLO: Yes.

23 CHAIRPERSON GEOFFREY: Okay. Board  
24 members, questions? Does the ANC have any objection  
25 to any of these witnesses being proffered as expert?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (No verbal response.)

2 CHAIRPERSON GEOFFREY: No objections from  
3 the ANC. Does Mr. Nettler? The party in the  
4 opposition?

5 (No verbal response.)

6 CHAIRPERSON GEOFFREY: Okay. Board  
7 members concerns?

8 (No verbal response.)

9 CHAIRPERSON GEOFFREY: Any objection to  
10 Mr. Feather the architect, Bello, or Papazian?

11 (No verbal response.)

12 CHAIRPERSON GEOFFREY: Excellent. And, if  
13 there's no voiced objection from the Board, I figure  
14 there's a consensus and we can establish three expert  
15 witnesses in this case, one in architecture, one in  
16 landscape architecture, and one in transportation  
17 engineering. Okay, let's move ahead.

18 MR. TUMMONDS: Thank you very much. Good  
19 afternoon Mr. Chairman, members of the Board. We are  
20 here this afternoon to present an application  
21 requesting special exception relief pursuant to  
22 sections 218 and 219 and 3104 of the zoning  
23 regulations to allow the construction of an addition  
24 to an existing continuing care retirement residence  
25 facility.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           The proposed addition will include a 25  
2 unit, 27 bed dementia Alzheimer's unit, which will  
3 require satisfaction of section 219 of the zoning  
4 regulations, and 22 independent living units which  
5 requires satisfaction of section 218 of the zoning  
6 regulations.

7           As the Board is aware, special exception  
8 use is a use deemed compatible with other uses  
9 permitted in that particular zoning classification  
10 provided certain requirements are met.

11           In reviewing applications for special  
12 exception relief, the Board's discretion is limited to  
13 determining whether the proposed exception satisfies  
14 the requirements set forth therein.

15           If the prerequisite set out in the zoning  
16 regulations are satisfied, the Board must grant the  
17 application. As noted in the pre-hearing statement,  
18 and will be shown in testimony here today, the  
19 granting of the requested special exception relief  
20 will be in harmony with the general purpose and intent  
21 of the zoning map, and will not tend to affect  
22 adversely the use of neighboring properties.

23           As we will show you this afternoon, the  
24 proposed addition has been carefully planned,  
25 designed, and modified, to mitigate any adverse

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 impacts on surrounding neighbors.

2 Knollwood has engaged in extensive  
3 discussions with members of the surround neighborhood  
4 about the application, and has significantly amended  
5 its plans to accommodate neighbor concerns.

6 I would now briefly outline how this  
7 application satisfies the special exception standards  
8 of sections 218 and 219 and the witnesses that will  
9 testify to those relevant standards.

10 Our first witness will be General Donald  
11 Hilbert, Executive Director of Knollwood, who will  
12 describe the need for the dementia units, and the  
13 independent living units that are proposed as part of  
14 this application.

15 This testimony will thereby satisfy the  
16 requirement that a community residence facility and a  
17 healthcare facility in excess of 15 and 300 beds  
18 respectively cannot be achieved by a facility of a  
19 smaller size on this property.

20 I would note that there are no other  
21 community-based residence facilities within this  
22 square or within 1,000 feet of this property. Mr.  
23 Bello, our landscape architect and Mr. Papazian, our  
24 transportation engineer, will testify as to the  
25 sufficiency of the parking areas that are provided in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this application, and the screening of those parking  
2 areas.

3 I'll also note that this proposed facility  
4 will be able to satisfy all applicable code and  
5 licensing requirements. We have had preliminary  
6 discussion with the Department of Health and with  
7 SHPA, and will continue to work with those agencies  
8 through the permitting and certificate of need  
9 process.

10 Again, Mr. Papazian will testify as to the  
11 proposed parking and traffic impacts of the addition.

12 And, we would note that this proposed addition as  
13 well as the existing Knollwood facilities, have never  
14 in the past, nor will they in the future, create any  
15 adverse impacts on neighboring properties due to noise  
16 or operation of those facilities.

17 In regards to the requirement that we show  
18 that this application will not -- is in keeping with  
19 the general intent of the zoning map and zoning  
20 regulations, and will not create an adverse impact on  
21 neighboring properties.

22 We note that the pre-hearing statement  
23 thoroughly discusses how the proposed addition is in  
24 harmony with the general purpose and intent of the  
25 zoning regs.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           We will present testimony this afternoon  
2 that shows how the project has been modified through  
3 the testimony of our project architect to show that  
4 this building has been reduced in size, has been --  
5 the sighting of this property has been modified in  
6 such a manner to reduce the visual impact on  
7 neighboring properties, and that, with the  
8 construction of the proposed addition, the Knollwood  
9 facility will continue to satisfy all requirements of  
10 the zoning regulations, such as lot occupancy,  
11 building height, and required setbacks.

12           Our final witness will be Colonel Tom  
13 Moss, the CFO of Knollwood. Mr. Moss will present  
14 testimony regarding the mediation process that  
15 occurred this spring and summer, and the significant  
16 areas of agreement that have been reached between  
17 Knollwood and the Knollwood neighbors.

18           Colonel Moss will present a version of a  
19 memorandum of understanding between Knollwood and the  
20 Knollwood neighbors that Knollwood believes is  
21 appropriate and furthers the goals of both Knollwood  
22 and the Knollwood Neighbors.

23           I am pleased to note that to Office of  
24 Planning supports this application, as does the  
25 National Parks Service. And I'm going to submit for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the record right now a letter from Adrian Coleman,  
2 Superintendent of Rock Creek Park, evidencing her  
3 support for this application.

4 We also note that ANC3-4G has given this  
5 application its support, based on 13 conditions.  
6 General Hilbert, and Colonel Moss in their testimony  
7 today will discuss how we are able to satisfy 11 of  
8 those 13 conditions of the ANC's support for this  
9 project.

10 As I noted previously, our presentation  
11 will last approximately 45 minutes. And, with that, I  
12 will have our -- I will reserve -- first I'd like to  
13 reserve the right too to address the issue of the  
14 adequacy of the notice that was given in this case and  
15 the BZA precedent for, not only this site, but other  
16 continuing care retirement residence facilities in the  
17 District of Columbia that include independent living  
18 units.

19 In each of those cases, this Board, as  
20 well as previous boards of zoning adjustment, have  
21 always determined that, in fact, independent living  
22 units are a type of a community residence facility.

23 They are not apartment units, and  
24 therefore a use variance is not required to approve  
25 such units in the R1A district, and that special

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 exception approval, pursuant to section 218 is  
2 appropriate.

3 With that, I'll now call our first  
4 witness, General Donald Hilbert.

5 WITNESS HILBERT: Thank you. Donald C.  
6 Hilbert, 8309 Turnberry Court, Potomac, Maryland  
7 20854. On behalf of the current and future residents  
8 of the Army Distaff Foundation, Knollwood, I thank the  
9 Board of Zoning Adjustment for allowing us to testify  
10 this afternoon.

11 The Army Distaff Foundation was founded in  
12 1959. We are a 501(c)(3) non-profit, charitable  
13 organization whose mission is to provide affordable  
14 safe retirement housing and healthcare services to  
15 military officers and their female relatives.

16 This care will never be limited by one's  
17 personal financial resources. In 1962 Arm Distaff  
18 Hall opened its doors as a retirement facility for  
19 widows of Army officers who were in need of a  
20 retirement community which met their requirements and  
21 a price they could afford.

22 In 1989 the Board of Directors approved  
23 the expansion of eligibility to include retired career  
24 officers from all branches of the services, and their  
25 female relatives.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           In 1993, following industry trends, an  
2 assisted living wing was added the building to  
3 establish Knollwood as a continuing care retirement  
4 community which provides independent living, assisted  
5 living, skilled nursing care, and licensed by the  
6 Government of the District of Columbia, and is  
7 certified as a Medicare Medicaid provider.

8           This philosophy behind a continuing care  
9 retirement organization is to allow residents to make  
10 one final move where their healthcare needs will be  
11 met for the remainder of their lives.

12           This is known as aging in place. In order  
13 to fulfill this obligation, ADF Knollwood must meet  
14 the growing need to care our residents suffering from  
15 Alzheimer's and other forms of dementia.

16           Research has shown that the number of  
17 seniors battling Alzheimer's and dementia is  
18 continuing to grow and is forecast to climb  
19 dramatically over the next decade.

20           It could reach epidemic proportions by the  
21 year 2050. And, according to the Alzheimer's  
22 Association, approximately four million Americans have  
23 Alzheimer's disease.

24           And that number could rise to 14 million  
25 unless research efforts provide a prevention or a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cure. The association reports that nearly one half of  
2 the population over 85 has some type of dementia or  
3 Alzheimer's disease.

4 In order to cope with this critical and  
5 rapidly growing need to care for the residents with  
6 Alzheimer's and other forms of dementia, the Army  
7 Distaff Foundation Board authorized a new unit to be  
8 built to provide care for these individuals.

9 The wing has been specifically designed to  
10 meet their unique needs. The new special care unit  
11 will accommodate 27 residents, and will incorporate  
12 areas for dining and activities which will include  
13 stations designed to help residents focus on  
14 particular topics, such as music, reading, sports,  
15 games, historical memory joggers, all designed to  
16 reduce feelings of anxiety and confusion as well as  
17 maintaining the residents' optimal level of physical  
18 and cognitive functioning.

19 The proposed expansion of the independent  
20 living facility will provide additional and updated  
21 floor plans, which are required at Knollwood as more  
22 couples are in need of independent living units.

23 Presently, ADF Knollwood has a waiting  
24 list of 150 singles and couples for its independent  
25 living. Prospective residents and their families make

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 their decision after considering the size and type of  
2 units available, as well as the amenities including  
3 health services and activities.

4 In a survey we conducted about six months  
5 ago of 12 retirement communities in the area, we found  
6 that all report high demand for large independent  
7 living units.

8 Further, it is vital to the establishment  
9 of specialized dementia services, that the income from  
10 the independent living units help to fund dementia  
11 units as supplement to cost to operate the healthcare  
12 facilities in the future.

13 The project architect will discuss in  
14 detail the proposed addition. And the landscape  
15 architect and parking consultant will discuss the  
16 landscape buffer parking lot, as well as the vehicular  
17 exit into the street.

18 ADF Knollwood and its neighbors have been  
19 engaged in close and productive discussions for over  
20 the last five months, resulting in significant  
21 revision to the original plans at a substantial  
22 financial cost to Knollwood.

23 This has resulted in the application  
24 receiving the support of the Office of Planning, and  
25 by a seven to zero vote of conditional support of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ANC3-4G.

2 In the Office of Planning report, it was  
3 written, and I quote, Office of Planning believes that  
4 the application has made design and landscaping  
5 changes that not only demonstrate a good faith  
6 effort to respond to neighborhood concerns, but that  
7 also have resulted in a significantly improved and  
8 less intrusive design.

9 Office of Planning believes that the  
10 revised design and landscaping would ensure that the  
11 proposed structure would not tend to adversely affect  
12 the use of neighboring property, unquote.

13 The ANC3-4G report noted that the ANC has  
14 recognized the need for the addition of the  
15 dementia/Alzheimer's unit at this time. The ANC  
16 reports includes 13 conditions.

17 Knollwood accepts 11 of these conditions  
18 unequivocally. With regard to conditions number 11  
19 and 12, Knollwood has continued to work with the  
20 Knollwood Neighbors to enter into a mutually  
21 acceptable agreement.

22 Unfortunately, as of this time, we have  
23 not been able to resolve the issues of a moratorium on  
24 future development of the Knollwood property and the  
25 ability of the Knollwood residents to make right turns

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 only onto Tennyson Street.

2 Right turns out to Tennyson Street or  
3 necessary for Knollwood residents, due to the large  
4 hill on Oregon Avenue that makes right turns out of  
5 Oregon Avenue entrance problematic.

6 In conclusion, it is hoped that the Board  
7 of Zoning Adjustment will agree that the proposed  
8 expansion project will benefit the many military  
9 retirees who have dedicated their lives to  
10 safeguarding the security of the United States, and  
11 will ensure that they will not be forgotten in  
12 retirement.

13 Thank you. And I will be following by  
14 Vernon Feather, the Chief Architect from the firm of  
15 FFCs.

16 CHAIRPERSON GEOFFREY: Good, thank you  
17 very much.

18 WITNESS FEATHER: Good afternoon, my name  
19 is Vernon Feather. I live at 100 Maiden Lane, Hardy,  
20 Virginia. I'm going to do a traffic presentation.  
21 Primarily what I want to do is just give you a quick  
22 overview of the scope of the project and then to  
23 demonstrate some of the most significant changes that  
24 we've made to the design as a result of the mediation  
25 process.

**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 CHAIRPERSON GEOFFREY: Do we have a hard  
2 copy of this?

3 WITNESS FEATHER: Yes.

4 CHAIRPERSON GEOFFREY: Okay, good, thanks.

5 WITNESS FEATHER: Actually, all of these  
6 graphs -- can we dim this slightly?

7 CHAIRPERSON GEOFFREY: On its way.

8 WITNESS FEATHER: What was being handed  
9 out are some revised graphics. And I'll point the  
10 ones out that have been revised and why. Just to give  
11 you a quick overview of the Knollwood property, it is  
12 bounded by Tennyson Street at the North, Oregon  
13 Avenue, Nebraska, Stevenson Lane, and 29<sup>th</sup> Street.

14 The only piece -- this corner right here  
15 of 29<sup>th</sup> street property is not included in the  
16 Knollwood property boundary. The property includes  
17 the original building the Knollhouse.

18 In 1962, the original Knollwood home was  
19 built. This includes nursing facilities on the lower  
20 floor of this portion of the building, administrative  
21 storage space, and then four floors above that of  
22 independent living units.

23 In '93, they opened this wing down here of  
24 the assisted living facility, which completed their  
25 continuing care retirement community. This is the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 intermediate level of care.

2           What we're proposing is an expansion of  
3 this location on top of the existing parking lot.  
4 This building includes one floor of a special care  
5 unit for dementia, and then three floors above that of  
6 independent living units.

7           The building, as we have modified it here,  
8 is 120 feet from the Knollwood -- I'm sorry, from the  
9 29<sup>th</sup> Street neighbors' property line, and 120 feet from  
10 the property line of the Stevenson, or about 70 feet  
11 from the edge of the property line of Knollwood, so 50  
12 feet difference at the street.

13           In addition, we are proposing an entrance  
14 onto Tennyson for two reasons. The fire department  
15 has requested this since the new building will  
16 eliminate the loop road that now occurs.

17           And so, for safety reasons, they want an  
18 emergency entrance and exist, a secondary one, other  
19 than the one at Oregon. In addition, we are  
20 requesting that this be a right turn lane only for  
21 residents so that they can come out of the property  
22 and down to this intersection where there's stop sign.

23           This is for a safety concern. Exiting  
24 right here out of Oregon, this is at the top of a hill  
25 in Tennyson. Traffic comes along there, and it's a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 blind spot at that intersection.

2 This next slide demonstrates some of the  
3 significant changes we've made to the footprint of the  
4 building. In gray right here you can see the outline  
5 of the previous proposal.

6 And we have pulled back the new building  
7 significantly. The Knollwood Neighbors asked that  
8 this design stay within the paving area of the parking  
9 lot and the existing roadway.

10 We've substantially done that. You can  
11 see the edge of the paving comes along here. We're  
12 over about two feet right there. And it comes down  
13 along this edge, or across this by about eight feet.

14 So, substantially, the building is within  
15 that footprint of the parking area. This slide also  
16 demonstrates the significant reduction in the loss of  
17 trees.

18 All of these trees that are in the lighter  
19 green color -- there's approximately 30 trees over  
20 eight inches in diameter that will not have to be  
21 removed as a result of the design changes.

22 This slide is a site section going from  
23 29<sup>th</sup> street home -- it is approximately a two story  
24 home -- property line at this point, and sloping  
25 through the project.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           It demonstrates how we have sunken the  
2 whole project down one floor from the previous  
3 proposal. The light tan in the background is the  
4 existing building.

5           You can see that our new building is an  
6 entire floor lower than the existing building. We  
7 have a parking deck at the lowest -- below the SCU  
8 level.

9           We have the special care unit right here.  
10 It has light opening into light, wells on either side  
11 to this direction. We'll have to use retaining walls  
12 to get light down into there.

13           And then it opens directly out to -- on  
14 this side it continues down the hill for a wondering  
15 garden, a secure garden for the dementia residents.  
16 Above that are three levels of independent living  
17 units.

18           The purpose of this slide is to  
19 demonstrate the significant change in the massing from  
20 the original proposal. The grayed out background are  
21 the north and south elevations of the last proposal.

22           In front of that is a massing study. And  
23 this is not intended to be an elevation of the  
24 building, but an early massing study that demonstrates  
25 how much lower the building is and how much more

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 compact it has become.

2 This slide was also just given to you as a  
3 change. Just recently, Knollwood has made an  
4 agreement that we would step back the elevations  
5 towards the Stevenson Lane side.

6 And that's what's changed on this slide  
7 right here, and here. The elevations are -- the style  
8 of the building is intended to be complimentary to the  
9 existing building in terms of there's two colors of  
10 brick that we'll use.

11 And there's limestone. But we will be  
12 doing -- using sunroom-style residential windows to  
13 break this up and make it a little bit more  
14 residential than the existing building.

15 This is the west elevation. Again, as  
16 previously we had agreed to step back the building  
17 toward 29<sup>th</sup> Street residence. And that's what this is  
18 indicating.

19 So, the third floor has step backs from  
20 two different directions. In the original proposal,  
21 we had done a balloon test to study the mass of the  
22 building from a photograph taken from one of the 29<sup>th</sup>  
23 Street properties.

24 This was the result of that original  
25 balloon test. And the wire diagram indicates the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 outline of that building. We then went through a  
2 process of trying to cut that building back.

3 And this is the result of that. This is a  
4 comparison of where the massing is now relative to  
5 that same image. In addition, we did a couple of  
6 photo merges at winter time views.

7 This is a view from one of the 29<sup>th</sup> Street  
8 property balconies looking at the massing of the new  
9 building. This is wintertime, so this is the worst  
10 condition.

11 And, in the summertime, the building would  
12 be completely obscured. In our proposal though, we  
13 are going to some screening. We'll talk more about  
14 that later in the presentation.

15 This is a quick image indicating how the  
16 screening -- evergreen screening could also mitigate  
17 the views, even in the winter time. This is the same  
18 kind of image taken from Stevenson Lane property.

19 And also, evergreen screening could be  
20 done on that side as well.

21 MR. TUMMONDS: We'd now like to have our  
22 next witness present his testimony, Mike Bello, our  
23 landscape architect who will discuss the landscape  
24 screen.

25 WITNESS BELLO: Yes, hi. Good afternoon,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Mike Bello, 13755 North Sunrise Valley Drive, Suite  
2 450, Herndon, 20171. I will be presenting to you the  
3 proposed evergreen landscape screening for the  
4 following buffer areas of the Knollwood expansion.

5 The buffer area between the proposed  
6 building and 29<sup>th</sup> Street neighbors, the buffer area  
7 between the proposed building and Stevenson Lane  
8 neighbors, the buffer area between proposed parking  
9 lot and Tennyson Street, as well as the Oregon Avenue.

10 After conducting a site visit, followed by  
11 attending several mediation process meetings and site  
12 visits with the Knollwood Neighbors and the Neighbor's  
13 arborists, our landscape screening design has evolved  
14 and arrived at a point where the proposed landscape  
15 plant list and size, as well as screening locations,  
16 are satisfactory in that they will adequately screen a  
17 substantial portion of the buildings.

18 In the first -- the purpose of this slide  
19 is to show you Stevenson Lane here on the portion, and  
20 29<sup>th</sup> Street neighbors here. And, in working with the  
21 neighborhood community, as well as their arborists,  
22 basically discussed several plant species that were  
23 capable of dealing with the environment in this area,  
24 specifically located on site where in this site the  
25 most opportune points for these trees and shrubs would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be -- they would be most successful in their  
2 acclimation.

3 We also worked together with a plant list.  
4 And we also worked with the Virginia and the Master  
5 Gardner for the extension coop, which further  
6 identified native plant materials that easily  
7 acclimate in this area.

8 Here what you see is a schematic design of  
9 the location of each one of these trees, as well as  
10 large shrubs. The intent of this overall design is to  
11 give, not only the screening effect, but also to give  
12 a lingering, more aesthetic effect, natural effect to  
13 that site, that area, that site.

14 Next slide, please, thank you. The  
15 purpose of this slide is to further just describe the  
16 plant list, the overall general notes for the process  
17 for the maintenance, installation, and what not.

18 Of course, there's more to that when  
19 approaching construction documents. And here is a  
20 brief section view to the proposed building and the  
21 purpose the screening and the conceptual result of the  
22 screening. Next slide, please.

23 MR. TUMMONDS: Mr. Bello, if I may, just  
24 one question. If you go back to the last slide, does  
25 that include the caliper and size of the proposed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 screening?

2 WITNESS BELLO: Yes, it includes the size  
3 of the proposed screening in terms of height. Caliper  
4 exponentially will meet that -- more than that size of  
5 the height of the trees, all evergreen.

6 MR. TUMMONDS: Right.

7 WITNESS BELLO: Yes.

8 MR. TUMMONDS: We'd now like to have our  
9 next witness, Ed Papazian, who will discuss the  
10 proposed parking area.

11 WITNESS PAPAZIAN: Good afternoon. For  
12 the record, I'm Edward Papazian with the firm of Kimly  
13 Horn Associates. We performed a traffic analysis and  
14 a parking analysis for the proposed expansion.

15 We did a series of traffic counts at the  
16 area intersections and at the driveways to the  
17 existing Knollwood facility in order to ascertain the  
18 morning and evening peak hour in and out traffic  
19 volumes for the existing Knollwood facility and use  
20 that as the basis for estimating the future trip  
21 generation, numbers of additional vehicle trips that  
22 would occur during the peak hours with the proposed  
23 expansion in place.

24 Using those calculations and of course the  
25 details are contained in the analysis that's contained

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in the submission that you have -- our calculations  
2 indicate that, in the morning peak hour, there would  
3 be approximately seven trip generated.

4 And, in the evening peak hour, there would  
5 be approximately 15 vehicle trips generated over the  
6 full one hour period as a result of the proposed  
7 expansion.

8 So, this equates to essentially one  
9 additional trip every eight minutes in the morning  
10 peak hour and approximately one trip every four  
11 minutes during the evening peak hour.

12 From a trip generation standpoint, this is  
13 a very, very small number of trips that will have no  
14 discernable effect, traffic impact on the surrounding  
15 area.

16 Another issue associated with traffic is  
17 the driveway access points. The driveway access into  
18 the Knollwood facility includes a driveway along  
19 Nebraska Avenue and a driveway along Oregon Avenue.

20 As Mr. Feather described a few moments  
21 ago, we are proposing a limited use access drive onto  
22 Tennyson Street. That's for two reasons. Number one,  
23 for safety purposes, emergency vehicle access  
24 purposes.

25 And the other two address safety for the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 residents as they exit onto Oregon Avenue. With  
2 respect to the emergency access, we have a letter --  
3 as described previously by Mr. Feather, the proposed  
4 expansion will result in the elimination of what is  
5 now a through-loop that connects the southern portion,  
6 the Nebraska Avenue portion of the property, with the  
7 remaining portion of the property to the west and to  
8 the north of the property.

9 And the proposed expansion will eliminate  
10 the vehicle connection. As a result of that, the fire  
11 department has -- the fire marshal has recommended  
12 that a secondary emergency access be provided onto  
13 Tennyson Street incase there was a situation where the  
14 entrance along Oregon Avenue were to be blocked for  
15 some reason.

16 So, this entrance onto Tennyson will serve  
17 as an emergency entry and exit for emergency vehicles.

18 The treatment -- I'll be describing that in a few  
19 moments.

20 In addition, in terms of the situation  
21 along Oregon Avenue, as previously mentioned, there is  
22 a crest at this intersection along Oregon Avenue at  
23 Tennyson Street.

24 With the speed of traffic coming down  
25 Oregon Avenue, it sometimes is difficult for drivers,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as they're exiting onto Oregon Avenue, to see clearly  
2 approaching vehicles.

3 We are proposing that a limited access  
4 exit for residents be provided that will permit only  
5 right turns onto Tennyson Street. The treatment at  
6 the driveway will include an exit activated break away  
7 gate at this location.

8 This means that, as a driver is exiting,  
9 they will trigger the gate that allows them to exit.  
10 This will be a break away gate so that emergency  
11 vehicle that is approaching and wishes to enter due to  
12 a situation where this driveway is not available, this  
13 would be a breakaway gate that an emergency vehicle  
14 would be able to drive through.

15 Also, there will be a diverter island that  
16 will -- at this corner on the west side on the left  
17 side of the driveway, that will guide drivers to make  
18 the right turn out.

19 However, this diverter island will be  
20 mountable island for an emergency vehicle if they are  
21 approaching from the west and they need to enter at  
22 this driveway.

23 So, the appropriate treatment will be made  
24 to allow emergency vehicles to enter and exit and to  
25 guide the drivers -- the residents to turn right onto

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Tennyson so that there will be no adverse effect on  
2 the neighborhood.

3 Another treatment that we will be  
4 requesting from the district department of  
5 transportation is the installation of a stop sign  
6 along Oregon Avenue at the intersection with Tennyson  
7 Street.

8 As you well know, Oregon Avenue has  
9 several other locations, including immediately to the  
10 south here in Nebraska Avenue, of all-way stop signs.

11 And that will help to control the speed of  
12 traffic along Oregon Avenue. In terms of the parking  
13 analysis, we performed a series of parking counts on  
14 the facility.

15 These were counts of existing parking  
16 spaces and the counts of the numbers of parked cars.  
17 These counts of parked cars were obtained over a one  
18 week period on weekdays, weekend days, daytime,  
19 evening, nighttime, early morning hours, so that we  
20 could get a full profile of parking and what the  
21 existing parking demand so that we can determine when  
22 is the peak parking accumulation that occurs at the  
23 facility.

24 And what we found is that, during the  
25 midday-weekday hours when the full dayshift of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 employees is at the facility, and during the time of  
2 the shift change in the mid-afternoon hours, is the  
3 time of peak parking accumulation.

4 Now, we counted as far as numbers of  
5 parked cars, we counted 203 parking spaces. Office of  
6 Planning and their staff report indicate that there  
7 had been a previous calculation, or there was a  
8 previous requirement or direction for 190 parking  
9 spaces.

10 What we realized was that there are  
11 additional 13 parking spaces along Nebraska Avenue  
12 that are in place at the moment which creates a  
13 discrepancy between the 190 that's in the previous  
14 order, and the 203 spaces that exist.

15 The existing parking at the facility is  
16 divided into parking for the independent living units.

17 There are 81 parking spaces that are reserved for 150  
18 existing independent living units, which results in  
19 about a little over approximately, .54 parking spaces  
20 per unit.

21 There 104 spaces that are reserved for --  
22 that are unmarked that are available for staff and  
23 visitors. There are seven other spaces that are  
24 reserved for visitors.

25 And there are four handicap spaces and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 seven bus parking spaces. The proposed expansion as  
2 previously described, calls for 22 independent living  
3 units.

4 We are, for the purpose of our parking  
5 analysis, estimating that we should provide one  
6 parking space for each independent living unit. Once  
7 again, it's a little bit higher than the existing  
8 ration, but it's probably in accordance.

9 What typically happens when someone first  
10 starts to move into an independent living unit, they  
11 maintain their automobile. There is also the 27  
12 dementia unit beds that will result in slight increase  
13 in employment levels, about 18 additional employees.

14 And, the indication is that that would  
15 require -- that would result in about 11 daytime  
16 employees. We have calculated a desire for 12 parking  
17 spaces to cover the employee needs.

18 So, we have identified 22 parking spaces  
19 for the 22 additional independent living units, and 12  
20 parking for the additional activity resulting from the  
21 dementia beds.

22 In our calculations, counts of existing  
23 parking, we have identified that, during the peak  
24 midday hours when there are the highest levels of  
25 parking, the smallest number of empty spaces I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 approximately 30.

2 This is amongst those unmarked spaces that  
3 are used by visitors and staff. In order to account  
4 for seasonal and daily variations, I have concluded  
5 that it is appropriate to estimate that there are  
6 probably 15 more parking spaces that are actually  
7 needed at this time.

8 Once again, the smallest number of excess  
9 was about 30 spaces. But I want to give a little  
10 safety factor there to account for the variations --  
11 daily variations.

12 So, I'm concluding that there are about 15  
13 spaces that essentially are not needed to accommodate  
14 existing needs. With the expansion resulting in the  
15 need for 34 parking spaces for the 22 independent  
16 living units, and for the additional employees, and  
17 minus the 15 spaces that we have estimated that we are  
18 over parked at the moment, we have concluded that  
19 there is a need for a net increase of 19 parking  
20 spaces to accommodate the future needs of the  
21 Knollwood facility.

22 Now, the question then becomes where to  
23 place these parking spaces. There are certain spaces  
24 that are going to be removed as a result of the  
25 building construction and the provision of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 driveway along Tennyson Street, which results overall  
2 in the need to provide 86 parking spaces to take care  
3 of the spaces that are being removed and the 34  
4 parking -- the net increase of 19 parking spaces that  
5 are needed for the expansion.

6 It is estimated that, if we provide the --  
7 Knollwood intends to provide 20 parking spaces  
8 underneath the new construction. And that would  
9 result in the need for 66 surface parking spaces that  
10 would be located along Oregon Avenue, along the slope  
11 that's on the east side of the property facing Oregon  
12 Avenue.

13 If it is determined that providing the 20  
14 parking spaces underneath the building is not  
15 feasible, cost prohibitive, we have the potential to  
16 provide an additional 20 spaces.

17 And these don't show up that well on this  
18 screen. But, it shows up on your submittal. These  
19 would be colored in white, the additional 20 parking  
20 spaces that could be provided on the surface to result  
21 in providing 86 parking spaces.

22 So, the bottom line is we could provide 20  
23 spaces below the building and 66 spaces here.  
24 Otherwise, if we can't provide these 20 spaces, they  
25 would be incorporated into this parking area to result

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 in all 86 spaces being located at this location.

2 The result of our analysis is the proposed  
3 parking that we are providing, the additional parking  
4 spaces, will be more than adequate to satisfy the  
5 needs of the Knollwood facility.

6 There would be no negative impact on the  
7 surrounding area as a result of traffic and of  
8 parking. Mr. Bello will go back and talk a little bit  
9 about the screening that will occur along Oregon  
10 Avenue.

11 WITNESS BELLO: Hello. The purpose of  
12 this slide is to present to you a computer rendering  
13 of the before and after of the parking lot buffer  
14 areas.

15 This photo was taken off of the closest  
16 point, which is Oregon Avenue, near the entrance of  
17 the site of the project. As you can see, in the  
18 closest view here, which is from Oregon Avenue, the  
19 significant amount of buffering is already addressed  
20 by the existing topography alone.

21 In addition, the proposed landscape screen  
22 will further address the remaining view to be screened  
23 in an aesthetic fashion, not in the typical green  
24 wall.

25 And here is the conceptual plant list that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we are working with, all evergreen, and about half  
2 native. So, it should be pretty. So, thank you.

3 MR. TUMMONDS: We'll now have our next and  
4 final witness, Colonel Moss, the CFO of Knollwood.

5 WITNESS. MOSS: Thank you. Tom Moss,  
6 13411 Hidden Meadow Court, Herndon, Virginia. As  
7 noted, I am the CFO at Knollwood, and was the primary  
8 point of contact for the negotiation, the mediation  
9 during the summer.

10 I was asked to give my perspective on  
11 those meetings and kind of a run down of where we are.

12 We met more than a dozen times with the neighbors  
13 over the last five months.

14 I would characterize the sessions to have  
15 been conciliatory, very positive, and I believe very  
16 successful, particularly considering how far apart we  
17 were just a year ago today.

18 We were able to address the major concerns  
19 of the neighbors by keeping the building within the  
20 existing footprint of the parking lots, roadways, and  
21 buildings of Knollwood.

22 And we were also able to deal with a  
23 height and visual impact of the building by lowering  
24 it by a floor. We also agreed to do additional  
25 landscape around the building in order to provide

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sufficient screening so as to make the building  
2 virtually invisible to our neighbors.

3 We worked closely with the neighbors  
4 arborists to ensure we selected trees and plants that  
5 would survive in Knollwood's terrain, and also on ways  
6 to ensure the survivorabilty of the large mature trees  
7 surrounding the construction area.

8 We spent the final sessions trying to iron  
9 out details of a memorandum of understanding that  
10 would formalize the agreements that we had reached  
11 during the mediation process.

12 As of today, only two issues remain  
13 unsettled, the length of the proposed building  
14 moratorium that would preclude Knollwood from building  
15 in a green buffer zone surrounding our property, and  
16 we will be able to provide a new right hand turn exit  
17 only for our residents onto Tennyson Avenue.

18 I would like to submit to the Board a copy  
19 of the latest version of an MOU, the agreements we  
20 came to, some additional ones we could not reach but  
21 which we think is reasonable that we presented to the  
22 residents last Friday.

23 And I would like to end up with saying,  
24 although this may appear to be adversarial and  
25 confrontational, in fact I don't believe it is. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think we have come to a substantial agreement on the  
2 building itself.

3 The issues that actually confront us are  
4 future building, and a roadway out into Tennyson. It  
5 does not relate to the actual building that we are  
6 proposing.

7 MR. TUMMONDS: Thank you very much. As I  
8 previously stated, I will briefly touch upon the issue  
9 of the appropriateness of the independent living units  
10 on this property.

11 For over 40 years, the BZA has determined  
12 that independent living units can be included on the  
13 Knollwood property without the need for variance  
14 relief.

15 I would note our attachments to the  
16 previous BZA orders as Exhibit A to our pre-hearing  
17 statement, in each case when independent living units  
18 were proposed for this facility, there was no need for  
19 variance relief.

20 In addition, as noted on page 12 of our  
21 pre-hearing statement, this exact issue was raised,  
22 this exact issue of whether or not independent living  
23 units are in fact apartment units in a continuing care  
24 retirement residence facility, was raised by the  
25 opponents to the Ingleside at Rock Creek Park case.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           That is BZA application number 16138. In  
2 that case, the BZA clearly determined that independent  
3 living units are not apartments. Moreover, earlier  
4 this year on February 17<sup>th</sup>, 2004 this BZA in BZA  
5 application number 17114, granted special exception  
6 approval to Ingleside at Rock Creek for the  
7 construction of 13 additional independent living  
8 units.

9           I would also like to submit for the record  
10 a copy of an operational definition of community  
11 residence facility which is prepared by the Department  
12 of Health, Health Regulation Administration, Child and  
13 Residential Care Facilities Division.

14           This document notes that a community  
15 residence facility -- I will not read the entirety of  
16 this definition for you -- but, in part says that  
17 these individuals are ambulatory with or without the  
18 assistance of mechanical devices and able to get in  
19 and out of bed.

20           They are capable of making proper  
21 judgments in emergency situations, and able to perform  
22 the activities of daily living, i.e., eating, bathing,  
23 dressing, toileting, and walking, independently or  
24 with minimal assistance.

25           I will note the last sentence of this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 definition. This definition is for facilities that  
2 are for the elderly, halfway houses, and group homes  
3 for the mentally retarded persons.

4 Therefore, I would posit that the BZA  
5 precedence with regards to independent living units in  
6 community residence facilities is clear. They are  
7 permitted as a special exception use pursuant to  
8 section 218.

9 I would also note that the Department of  
10 Health in this document, its operational definition of  
11 a community residence facility clearly indicates that  
12 independent living units are deemed to be part of a  
13 community residence facility.

14 I think that we have also noted in our  
15 statement, as well as the Office of Planning that the  
16 types of services offered to the independent living  
17 unit residents are different than typical apartment  
18 units.

19 As General Hilbert said, every person who  
20 enters into the independent living units signs a life  
21 care contract with Knollwood, which means that, as  
22 General Hilbert said, they are able to age in place.

23 They are able to progress from independent  
24 living units to assisted living units, to special care  
25 units, hopefully not ever need to go to the dementia

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 units.

2 Again, included in the monthly payment for  
3 every resident of the independent living units are  
4 means. One meal a day is included in the monthly  
5 payment.

6 On-site nursing is provided. An emergency  
7 call button is provided in each independent living  
8 unit. The independent living unit residents are  
9 provided transportation services to the Walter Reed  
10 Medical Center.

11 They are provided an activity director.  
12 And, for an additional fee, they are provided  
13 significantly more services that are made available to  
14 all assisted living residents.

15 Therefore, we believe that the proposed  
16 request for relief is sufficient, is appropriate, and  
17 is entirely consistent with past BZA precedent. We  
18 therefore conclude our presentation and are available  
19 to answer any questions that you may have.

20 CHAIRPERSON GEOFFREY: Good, thank you  
21 very much. First of all, in terms of the slide  
22 presentation that we saw, we had one of the parking --  
23 I'm not seeing, maybe it came through.

24 Do we have the actual final parking plan  
25 or site plan that shows the parking? All I want is a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 site plan that shows the actual parking and the  
2 demarcation of it. Do you guys have it? Did I miss  
3 it?

4 MR. TUMMONDS: We will make sure that all  
5 your packages include that.

6 CHAIRPERSON GEOFFREY: Okay. And, I mean,  
7 I don't understand. I have the large site plan here.  
8 Is that what --

9 MR. TUMMONDS: Yes.

10 CHAIRPERSON GEOFFREY: And then, what I  
11 need -- right. We'll get into questions here.  
12 There's a hatch on it. Half of it is light gray, half  
13 of it is white.

14 Those are the portions of which the  
15 parking would be provided if you can't go below grade.  
16 Is that correct?.

17 MR. TUMMONDS: That is correct.

18 CHAIRPERSON GEOFFREY: Okay. So, what's  
19 the cost of going below grade?

20 MR. TUMMONDS: General Hilbert will  
21 testify to this.

22 CHAIRPERSON GEOFFREY: Okay. I guess the  
23 direct question is, why is that an unknown at this  
24 point?

25 WITNESS HILBERT: We've had borings. And

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 we have not received a complete report of all the  
2 borings that were taken. If the borings indicate that  
3 we have a large amount of rock further on down, we  
4 know we can put the care facility there.

5 But, if we go further on down, we've also  
6 agreed with the neighbors that we would do no  
7 blasting. So, the big thing is just whether or not we  
8 can physically be able to put a parking lot down  
9 there.

10 CHAIRPERSON GEOFFREY: Okay. That's  
11 understandable. And I wasn't clear on, if you do  
12 below grade parking, are you just going to have 20  
13 spaces, or are you actually going to have more?

14 WITNESS HILBERT: We think that we'll only  
15 be able to put 20 spaces down there because of the way  
16 -- we know there is some rock down there. It's just  
17 we won't be able to go much further than the area that  
18 we've defined as our parking area --

19 CHAIRPERSON GEOFFREY: Okay.

20 WITNESS HILBERT: -- underneath the --

21 CHAIRPERSON GEOFFREY: So, you have an  
22 idea of what the actual footprint is as long as the  
23 soil boring tests come back that's accommodating,  
24 you'll do it.

25 If not, you'll go to the surface parking

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lot?

2 WITNESS HILBERT: Yes.

3 CHAIRPERSON GEOFFREY: Okay. So, we're  
4 talking about the same number of spaces either way.

5 MR. TUMMONDS: That is correct. And that  
6 was the intent of showing that plan to show all 86  
7 spaces and then try and hash out those spaces which  
8 would, if need be, have to be placed at grade.

9 So, that plane is intended to show that  
10 would be the maximum impact on that front parking  
11 space area.

12 CHAIRPERSON GEOFFREY: And, General  
13 Hilbert, continue with you. You indicated -- I  
14 believe you made the statement that the size of the  
15 proposed independent units were getting larger than  
16 what you have on site.

17 WITNESS HILBERT: No, if I said that I --

18 CHAIRPERSON GEOFFREY: You didn't say that  
19 directly.

20 WITNESS HILBERT: I said the proposed  
21 units that we -- the 22 units will go from 1,400  
22 square foot to about 1,900 square feet.

23 CHAIRPERSON GEOFFREY: Okay.

24 WITNESS HILBERT: But, we do have  
25 apartments of that size in our original building also.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GEOFFREY: Okay. So, maybe  
2 tell me if I'm correct here. You indicate the size  
3 because you made a statement because there are more  
4 couples that are actually looking units.

5 WITNESS HILBERT: Yes, what I said, we had  
6 150 singles or couples. And the couples have been  
7 just counted as one. But, we're finding that more and  
8 more couples are -- we only voted in 1989 to bring men  
9 in as we tried.

10 CHAIRPERSON GEOFFREY: Right.

11 WITNESS HILBERT: So, through the years  
12 we've done a lot of advertising for couples. And  
13 we're finding now the most requested is a two bedroom,  
14 two bath, two bedroom den.

15 And, normally we have couples that would  
16 like to have that.

17 CHAIRPERSON GEOFFREY: Good, okay. Let me  
18 run through a couple quick questions. I know other  
19 Board members have quite a few. First of all, in  
20 clarification, you have written in your submission,  
21 and also in your oral statement today you indicated  
22 that you surveyed retirement communities around the  
23 area.

24 You actually said 12 specific ones. What  
25 did that survey -- very briefly -- entail? You have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 enough relations and communications with them that  
2 they would tell you what their demand is, what their  
3 waiting list is?

4 WITNESS HILBERT: Yes. We were able to  
5 actually call the people at the other retirement  
6 communities. And we just asked them what their  
7 requirements were.

8 And, overwhelmingly, they were for two  
9 bedrooms and two bedrooms den, larger facilities.

10 CHAIRPERSON GEOFFREY: Okay. Very well.  
11 You also indicated that, out of all the conditions  
12 that are being proposed by the ANC, there were only  
13 two that you felt you could not comply with.

14 One was 11 and one was condition number  
15 12. And then you mentioned something about the right  
16 turn. Is the right turn aspect in condition number 11  
17 in terms of the mutual -- the memorandum of  
18 understanding?

19 WITNESS HILBERT: Yes. It's -- number 11  
20 of the 3-4G Advisory Commission, a proposed exit to  
21 Tennyson Street. And that's what we're saying, right  
22 hand only. That's number 11.

23 CHAIRPERSON GEOFFREY: Okay. But, isn't  
24 your transportation engineer indicating that that  
25 would be -- I don't know what his words were -- a good

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 suggestion?

2 MR. TUMMONDS: We are proposing that ANC  
3 and Knollwood Neighbors do not want that to occur. So  
4 that's where one of the areas of disagreement is.  
5 Knollwood Neighbors is saying no right turn only exit  
6 for Knollwood residents.

7 We are saying we need that. So, that is  
8 one of the areas of disagreement. One of the two  
9 areas of disagreement we have is we want the right  
10 turn only exit, they say no.

11 CHAIRPERSON GEOFFREY: I see.

12 WITNESS FEATHER: They have agreed to the  
13 emergency entrance and exit though. And there'll be a  
14 road there. It's just a question of what the total  
15 use will be for.

16 CHAIRPERSON GEOFFREY: Right.

17 WITNESS FEATHER: Okay.

18 CHAIRPERSON GEOFFREY: I guess -- asked --  
19 questions about this breakaway gate. Very well.  
20 Let's do go to then in fact -- the emergency entrance.

21 I understand the fact that if a vehicle  
22 pulls up to exit it would -- I don't know who wants to  
23 answer this. The availability -- somehow the gate  
24 would automatically open as a vehicle approached. Is  
25 that correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 WITNESS PAPAZIAN: Once again, for the  
2 record, yes, that is correct.

3 CHAIRPERSON GEOFFREY: Okay. What does  
4 this gate look like?

5 WITNESS PAPAZIAN: It would be a modest  
6 gate. It's not intrusive.

7 CHAIRPERSON GEOFFREY: More like a parking  
8 attendant gate?

9 WITNESS PAPAZIAN: Parking attendant gate,  
10 yes. Maybe a little more substantial than that. But,  
11 it would not be an intrusive. It would be -- you  
12 typically see that in various residential  
13 developments.

14 CHAIRPERSON GEOFFREY: Sure. And there's  
15 a sign out front in case of emergency break?

16 WITNESS PAPAZIAN: Yes. I think the  
17 emergency vehicles, the fire department, would realize  
18 that they could go right through.

19 CHAIRPERSON GEOFFREY: Okay. And, am I  
20 correct in your assessment -- your professional  
21 assessment as an expert witness that you indicated,  
22 what is your -- clarify your position for me on the  
23 right turn on Tennyson Street.

24 WITNESS PAPAZIAN: Clarify, what we are  
25 suggesting that driveway would serve two purposes. One

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as an emergency vehicle access, I think that's fairly  
2 clear.

3 The other is as an exit that would be for  
4 residents that would be limited for right turns only.

5 And, the purpose of that is to allow those residents,  
6 those drives, to get to Tennyson Street and avoid  
7 using, if they care not to, using the Oregon Avenue  
8 exit. And the site distance situation that --

9 CHAIRPERSON GEOFFREY: What's the problem  
10 with taking a left on Tennyson out of the emergency  
11 entrance?

12 WITNESS PAPAZIAN: Well, the problem there  
13 is we did not want to introduce traffic into the  
14 neighborhood, because there is a great deal of  
15 sensitivity to --

16 CHAIRPERSON GEOFFREY: So it's not a  
17 dangerous intersection --

18 WITNESS PAPAZIAN: Oh, no.

19 CHAIRPERSON GEOFFREY: The whole point is  
20 to try and focus traffic out on Oregon.

21 WITNESS PAPAZIAN: That is correct.

22 CHAIRPERSON GEOFFREY: Okay. You're  
23 making a statement that, of course, the emergency exit  
24 would only be residents.

25 WITNESS PAPAZIAN: That driveway would be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 used by residents to exit.

2 CHAIRPERSON GEOFFREY: Okay. Not that --  
3 how would you stop it?

4 WITNESS PAPAZIAN: I think the Knollwood  
5 would have some control over their employees and  
6 direct their employees not to use that.

7 CHAIRPERSON GEOFFREY: It's more program?

8 WITNESS PAPAZIAN: It is more  
9 programmatic.

10 CHAIRPERSON GEOFFREY: Not like this is a  
11 high intelligent gate that actually won't let --

12 WITNESS PAPAZIAN: No.

13 CHAIRPERSON GEOFFREY: It could happen, I  
14 don't know.

15 WITNESS PAPAZIAN: In the future it could.

16 WITNESS HILBERT: If you'll notice, the  
17 parking that we're requesting is going to be for staff  
18 parking. So the normal -- because all of the  
19 residents will have the parking close to the building.

20 So staff will park closer to Oregon. So,  
21 the natural --

22 CHAIRPERSON GEOFFREY: Right.

23 WITNESS HILBERT: -- way for them to go  
24 out is to Oregon.

25 CHAIRPERSON GEOFFREY: Right. So

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 logically they would go out to Oregon. What in your  
2 analysis -- did you study any of the traffic in the  
3 neighborhood that lent you to the conclusion that you  
4 wanted to preclude or limit traffic to the  
5 neighborhood?

6 WITNESS PAPAZIAN: Well, we do have some  
7 traffic counts. But, also, we are well aware of a  
8 traffic calming study that has been initiated that has  
9 been ongoing over the last several years in the area  
10 between here and Chevy Chase and Friendship Heights  
11 area.

12 And, with a great deal of sensitivity that  
13 the community has to the intrusion of traffic, we did  
14 not want to do anything that would introduce any  
15 traffic that would go into -- go to the west on  
16 Tennyson Street. But --

17 CHAIRPERSON GEOFFREY: Okay. But, as  
18 we're focused on the record and all I know is this  
19 site plan on this intersection, is there information  
20 that can inform this Board about the levels of  
21 traffic? I mean, what are we trying to preserve?

22 WITNESS PAPAZIAN: We have traffic counts.  
23 They were not part of my testimony partly because it  
24 wasn't a relevant issue --

25 CHAIRPERSON GEOFFREY: Right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   WITNESS PAPAZIAN:    -- in terms of the  
2 impact of this project.  But, every indication that I  
3 have is all of the intersections appear to operate at  
4 good levels of service.

5                   There may be situations at Connecticut  
6 Avenue.  But that's some distance away.  The  
7 intersections in the surrounding area all appear to  
8 operate at good levels of service based on  
9 observations and based upon my review of the traffic  
10 volumes that we do have in the area.

11                   These are counts that are available from  
12 the counts that we have done as part of this project,  
13 and the counts that are in the traffic calming study  
14 that have been prepared for the District.

15                   CHAIRPERSON GEOFFREY:  Okay.

16                   MR. TUMMONDS:  And, Chairman, let me add  
17 too, part of the negotiating stance that Knollwood had  
18 with the Knollwood Neighbors is Knollwood Neighbors  
19 had a number of constituencies, including Stevenson  
20 Lane, 29<sup>th</sup> Street, and Tennyson.

21                   There was a great deal of concern raised  
22 by the Tennyson Street neighbors was the cut-through  
23 traffic that occurs on Tennyson Street.  Tennyson  
24 Street has speed humps that are included there.

25                   So I think part of the negotiation that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 occurred, which was, okay, we will do everything that  
2 we can to mitigate any potential adverse impact on  
3 Knollwood related traffic cutting through west bound  
4 on Tennyson.

5 CHAIRPERSON GEOFFREY: Excellent. And I  
6 don't disagree. I imagine it's a great idea. I'm not  
7 familiar, even though you made the assumption that we  
8 know, perhaps better than you, Oregon Avenue, I don't.

9 WITNESS PAPAZIAN: Okay.

10 CHAIRPERSON GEOFFREY: So, I need  
11 everything that I need. So, in fact, if we go in a  
12 direction that somehow this is a condition or  
13 something, I'd like to know why we are conditioning.

14 So I'm just trying to get the base  
15 understanding of the situation in which we're talking  
16 about, which I think I have this point. You've  
17 indicated that seven new trips in the morning, 15  
18 trips in the afternoon, would be created by the  
19 proposed addition. Is that correct?

20 WITNESS PAPAZIAN: That is correct.

21 CHAIRPERSON GEOFFREY: There's 104  
22 unmarked spaces. And that is total, or is that for  
23 the --

24 WITNESS PAPAZIAN: The 104 unmarked spaces  
25 are spaces that are generally utilized by the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 employees and other visitors to the facility.

2 CHAIRPERSON GEOFFREY: Right.

3 WITNESS PAPAZIAN: There's approximately  
4 51 spaces that are reserved for the residents. And  
5 I've described the rest of them. But, in terms of my  
6 analysis of parking, you know, I considered those 104  
7 spaces in play, if you will, to consider to see if we  
8 are over parked.

9 CHAIRPERSON GEOFFREY: A little bit  
10 practical, right.

11 WITNESS PAPAZIAN: Right.

12 CHAIRPERSON GEOFFREY: And I appreciate  
13 your clarification of the map in terms of what you  
14 have, what you're proposing, and that's how you got to  
15 19, 34 total, minus 15.

16 Now, that brings itself to a point. Oh,  
17 Office of Planning raising the fact -- whatever the  
18 numbers are, 203 and 190. You've indicated that off  
19 of the Nebraska Avenue, the driveway there, that there  
20 are 13 spaces that are just to the side of the road.

21 WITNESS PAPAZIAN: That is correct.

22 CHAIRPERSON GEOFFREY: Do you know,  
23 looking at them, are they standard size, or are they  
24 actually zoning compliant size? What are we talking  
25 about?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   Is it just where people pull off the road  
2 and park?

3                   WITNESS PAPAZIAN: They are marked spaces.  
4 They appear to be in accordance with appropriate size.  
5 I haven't put a tape to them. But, they appear to be  
6 appropriate.

7                   CHAIRPERSON GEOFFREY: It's a hard surface  
8 they are parking on? They are striped.

9                   WITNESS PAPAZIAN: That is correct.

10                  CHAIRPERSON GEOFFREY: Do you know when  
11 they came into existence?

12                  WITNESS PAPAZIAN: I do not.

13                  WITNESS HILBERT: I do not. And, when I  
14 arrived there, we had that many. In fact, when you  
15 told me I had -- we were authorized to have 190 and we  
16 have 213, or 203, I said go ahead out and count them.

17                  They ended up counting 200. But we feel  
18 that, when the air conditioning and modifications were  
19 made and they were bringing trucks onto the ground,  
20 that these additional, we think --

21                  CHAIRPERSON GEOFFREY: Right.

22                  WITNESS HILBERT: -- that's when the  
23 additional parking --

24                  CHAIRPERSON GEOFFREY: And, just for  
25 classification, they've been there since you joined or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 have been there, is that correct?

2 WITNESS HILBERT: Sir, I didn't hear.

3 CHAIRPERSON GEOFFREY: I'm sorry. The  
4 parking spaces have been there for as long as you've  
5 known?

6 WITNESS HILBERT: Oh, certainly.

7 CHAIRPERSON GEOFFREY: And that has been  
8 how long?

9 WITNESS HILBERT: Two years.

10 CHAIRPERSON GEOFFREY: Indeed. Okay. I  
11 think that's all I have at this time. Are there other  
12 questions from Board members? Mr. Mann?

13 MR. MANN: On the landscape plans, you  
14 showed renderings or elevations that had plants on  
15 them. And I assumed that's plants that had reached  
16 maturity.

17 WITNESS BELLO: The proposed plants?

18 MR. MANN: Yes.

19 WITNESS BELLO: The dark ones will be  
20 plants that are installed that have reached maturity.

21 MR. MANN: Will there be -- how mature  
22 will the plants be when they are installed?

23 WITNESS BELLO: To the general heights  
24 that I specified, probably 25 to 28 feet in height if  
25 it is Stevenson Lane.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MANN: So they won't be seedling size  
2 plants that will take --

3 WITNESS BELLO: No, sir. No, they can't  
4 be. We are planning to install them -- schedule this  
5 so they are installed way before the building is ever  
6 constructed.

7 So, if there is any need for any growth  
8 that we need to meet before the building is  
9 constructed, we have that out there settled for all  
10 the landscape proposal.

11 MR. MANN: Okay. On the campus plan  
12 there's -- over near the proposed addition, there is  
13 an indication that there's ambulance access. Is that  
14 the only place that there's ambulance access for the  
15 entire building?

16 Or, are there multiple places for  
17 ambulance access?

18 WITNESS HILBERT: At present, the  
19 ambulance -- there are two ambulance access. One is  
20 from Nebraska Avenue into the HSC area there. And the  
21 other one is off Oregon Avenue.

22 What we're going to lose by the building  
23 is we're going to lose the ability of the residents to  
24 come all the way around from the upper parking lot.

25 We're going to lose the ability for the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 residents to go from here out here. So, right now we  
2 have one exit for emergency vehicles from Nebraska,  
3 and the other one from Oregon.

4 MR. MANN: And so, there'll only be one  
5 ambulance access point into and out of the building as  
6 proposed on the campus plan?

7 WITNESS HILBERT: Yes, right in here.

8 WITNESS FEATHER: What we're proposing is  
9 an ambulance access here for the nursing wing that's  
10 existing. And that's required by the Department of  
11 Health.

12 MR. MANN: But the assisted living will  
13 have one as well down here?

14 WITNESS FEATHER: No.

15 MR. MANN: So this is the only ambulance  
16 access?

17 WITNESS FEATHER: Right.

18 MR. MANN: Okay. The campus plan shows a  
19 proposed public pathway. Are there existing public  
20 pathways on the campus?

21 WITNESS FEATHER: Yes, there are some  
22 pathways that go through a garden areas here. There  
23 are also residential gardens in this area.

24 MR. MANN: But, Mr. Feather, is there a  
25 public sidewalk along Oregon Avenue?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 WITNESS FEATHER: No.

2 MR. MANN: Are there any fences or walls  
3 around the campus?

4 WITNESS FEATHER: I don't believe so, no.

5 MR. MANN: And I think in something --

6 WITNESS BELLO: Except for the neighbors  
7 on 29<sup>th</sup>, which have chain link fence with their  
8 property abutting the campus.

9 MR. TUMMONDS: I guess, in answering your  
10 question, along Oregon Avenue it is generally open.  
11 There isn't a fence as your proceed up Oregon Avenue  
12 that blocks that.

13 You know, I think there are certain  
14 specific places. But it is not a perimeter fence that  
15 delineates the Knollwood property on the entirety of  
16 the site.

17 MR. MANN: So, is the -- the campus is  
18 open for people to walk through?

19 WITNESS HILBERT: Yes, it is open. Not  
20 only do they walk through, they drive through. They  
21 do sledding on our campus and jogging. Yes, we are an  
22 open campus and we welcome the neighbors to come into  
23 our campus.

24 MR. MANN: And, regarding the coordination  
25 with National Park Service, has National Park Service

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 met with just you, or have they met with the other  
2 organizations that have an interest in this?

3 MR. TUMMONDS: I don't know if the  
4 National Park Service as met with the Knollwood  
5 Neighbors. Our discussions have been, you know, since  
6 the very beginning.

7 In January we talked to members of their  
8 soil erosion protection water resource management  
9 division, as well as Adrian Coleman, the  
10 superintendent.

11 Our most recent meeting was last  
12 Wednesday, when they came out to the site. Obviously,  
13 their biggest concern was the parking area in front,  
14 because that is the most visual impact on Rock Creek  
15 Park.

16 We showed them what we were doing. We  
17 discussed with them the possible soil erosion sediment  
18 control measures. They said -- what we told them.

19 They said that was fine. And, obviously,  
20 we will continue to work when you have building  
21 permits and moving forward with that.

22 MR. MANN: Okay, thank you.

23 MR. ETHERLY: Mr. Chair, just a very brief  
24 question for Mr. Papazian on the traffic analysis.  
25 With regard to some of the discussion in your analysis

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regarding, for example, use of -- I'm looking for the  
2 appropriate reference.

3 I believe you noted that approximately 10  
4 percent of the employees either take transit or  
5 carpool to work. How did you determine that usage?  
6 Was there a survey that was conducted?

7 WITNESS PAPAZIAN: This is through  
8 information that Knollwood provided to us. They had  
9 indicated that their review of employees -- and I  
10 don't know the method in which they obtained that  
11 information.

12 But they indicated to us that  
13 approximately 10 percent do use transit.

14 MR. ETHERLY: Okay. Hold tight on that  
15 for a moment. Let me then circle back to some of the  
16 Knollwood staff with regard to how information was  
17 gathered around those employees who came to work and  
18 how they came to work, whether it was through their  
19 own vehicle or transit.

20 How did you gather the information? Was  
21 it through a written survey, or was that just kind of  
22 verbal information gathering?

23 MR. TUMMONDS: I'll have -- we have also  
24 here today the administrator of the -- am I giving you  
25 a correct title. This is Lisa Hartfoot, the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 administrator of the terrace, which is the assisted  
2 living facility for Knollwood.

3 MR. ETHERLY: Okay, thanks.

4 MS. HARTFOOT: Good afternoon, I'm Lisa  
5 Hartfoot. I live at 336 14<sup>th</sup> Street, S.E. Washington,  
6 D.C. At the time that the parking survey went on, the  
7 Director of Human Resources called each administrator.

8 I'm an administrator of an entire section  
9 of a building. He had me review my employee listing.

10 I am aware of how my employees get to work because  
11 they ask me for a parking permit.

12 And we were to give them a count. And I  
13 am going under the assumption that they did that for  
14 the other administrative sections of the building.

15 MR. ETHERLY: Okay. Now, with regard --  
16 and what I'm trying to tease out a little bit is  
17 essentially your analysis concluded that there are  
18 approximately 30 spaces or so that go unused, or you  
19 are approximately 30 over what you really need.

20 And, I think the phrase in the written  
21 report was that, essentially, you are accounting for  
22 peak demands and maybe seasonal demands. Essentially  
23 you are about 15 in excess of what you need.

24 And so, are you using that 15 to account  
25 for to an extent for some of the new parking need that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will be created by the addition? Is that roughly a  
2 correct summation of the analysis?

3 WITNESS PAPAZIAN: Yes, it is.

4 MR. ETHERLY: Okay. I think that covers  
5 it. I think I'm comfortable, Mr. Chair. I may come  
6 back to it at some point. I think I understand it.  
7 But, essentially, I just wanted to be sure I had it  
8 straight.

9 You're about 30 over. And you're saying,  
10 okay, I'll build in an assumption regarding a peak  
11 demand period and say that, of that 30 that I'm over,  
12 15 might get used at some point or another.

13 But I'm still going to allow myself 15.  
14 And the argument coming back to you, Mr. Tummonds is,  
15 I want part of that 15 to be counted towards what's  
16 needed for the new space.

17 MR. TUMMONDS: That is correct. And,  
18 obviously we have -- especially on a site like this,  
19 which is wonderful, and hilly, and wooded. We want to  
20 be as close as possible to providing the number of  
21 parking spaces that we need.

22 We don't want to over park the site. Yet,  
23 we don't want to have parking impacts where people are  
24 parking on the neighborhood streets. So, how do we  
25 determine that?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think what we try to do is be  
2 conservative. So we weren't say, oh, we have 30  
3 excess because we did -- so, you know what? We're  
4 going to take 28 of those spaces and do that.

5 We said 15 probably fits, that's about  
6 right.

7 MR. ETHERLY: Okay.

8 MR. TUMMONDS: And one other question you  
9 had asked with regards to public transportation, there  
10 is an actual metro bus stop on the property.

11 MR. ETHERLY: Correct.

12 MR. TUMMONDS: So I think that's why part  
13 of the degree of metro bus activity we have is because  
14 it is quite easy to come to the site.

15 MR. ETHERLY: Excellent. One final  
16 question for you Ms. Hartfoot. Is there any reason to  
17 believe on your part that there might be any different  
18 travel patterns?

19 And perhaps Mr. Papazian can respond as  
20 well. But, any reason to believe that for any of the  
21 new staff that would come on site for the additions  
22 that there would be any change or difference in the  
23 travel patterns, based on your general experience with  
24 the staff?

25 MS. HARTFOOT: In working from the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 clinical staff, nurses aids, nurses, no. We are not  
2 hiring new and different types of staff. I believe we  
3 are not adding any Management Staff.

4 So, no. I don't believe we are creating  
5 any new positions that would change the type of  
6 employees that we would have that would change shift  
7 times, what not.

8 It would be all in keeping with what we  
9 currently have.

10 MR. ETHERLY: Okay. And, generally  
11 speaking, Mr. Papazian, you would also tend to agree  
12 that there probably would not be any noticeable or  
13 market change in some of the travel patterns that  
14 you've already analyzed because of -- by virtue of the  
15 proposed application here?

16 WITNESS PAPAZIAN: That is correct. It  
17 would remain essentially the same.

18 MR. ETHERLY: Okay, thank you.

19 MS. MILLER: I have questions in a variety  
20 of areas. But, just to follow-up on Mr. Etherley's  
21 last line of questioning with respect to the Staff  
22 driving patterns.

23 Where do most of your staff come from? Do  
24 they live in the District, or do they live outside?

25 MS. HARTFOOT: I believe it's in the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 application. I have not refreshed myself with the  
2 statistics exactly. I believe that I currently hire  
3 approximately 33 percent.

4 It's probably smaller. Nursing aids, we  
5 tend to hire from the district. So, they either live  
6 in the district or on the district border.

7 MS. MILLER: So, about 33 percent?

8 MS. HARTFOOT: Yes, but I'm speaking off  
9 the cuff. I believe it is mentioned in our  
10 application specifically. And I run one small part of  
11 the building.

12 MS. MILLER: Okay. Oh, you are answering  
13 just for that one small part?

14 MS. HARTFOOT: Yes.

15 MS. MILLER: While you're looking, it's  
16 not critical, I just was curious because we were  
17 talking about driving patterns.

18 MS. HARTFOOT: And we do an incentive to  
19 hire District residents as our first choice of  
20 employees. We do solicit from the District office of  
21 employment, I believe.

22 They have a listing. We do call them when  
23 we have openings. We do try very hard to recruit  
24 employees from this area.

25 MS. MILLER: Great. I'm kind of intrigued

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 by this life care contract that you mentioned. Am I  
2 correct to understand that every resident who comes  
3 into Knollwood signs a lifetime contract that they'll  
4 be there for the rest of their life?

5 MS. DIEGASTINO: Hi, my name is Barbara  
6 Diegastino. And I live at 18602 Reliant Drive,  
7 Gaithersburg, Maryland 20879. And I am the Health  
8 Services Administrator.

9 And I also would be the administrator of  
10 the special care unit. When our residents move into  
11 Knollwood, they all do sign a contract. The contract  
12 carries them throughout the facility.

13 And the majority of our residents do move  
14 into independent living initially and then typically  
15 move through our continuum of care through assisted  
16 living, and then the nursing.

17 MS. MILLER: Okay, say for instance that  
18 you have a married couple that comes in and one of the  
19 couple is further along in dementia or poor health, or  
20 whatever, and eventually moves into a higher standard  
21 of care facility.

22 Does it ever happen that the other partner  
23 wants to leave the facility? Or does nobody ever want  
24 --

25 MS. DIEGASTINO: No, we do have a number

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of couples where one lives in independent living, and  
2 another lives in the nursing home.

3 MS. MILLER: So, do individuals ever  
4 leave?

5 MS. DIEGASTINO: Very infrequent. We have  
6 had some individuals leave. Typically, if someone  
7 leaves, at times it may be because they need nursing  
8 home and care.

9 The children sometimes want them closer to  
10 them if they're not in the area. But, typically, the  
11 majority of our residents do stay at Knollwood and  
12 live throughout the continuum.

13 MS. MILLER: And, is there an age  
14 requirement?

15 MS. DIEGASTINO: No.

16 MS. MILLER: To become a resident?

17 MS. DIEGASTINO: No.

18 MS. MILLER: No, okay. And, is there  
19 financial assistance provided to some who can't afford  
20 to stay.

21 MS. DIEGASTINO: Yes, we offer financial  
22 assistance for those who need it for independent and  
23 assisted living levels. And, if they are unable to  
24 afford the nursing home level, that's when we have  
25 Medicaid.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: Okay. On another topic. I  
2 have a question with respect to the proposed  
3 landscaping that was presented to us today. And that  
4 is, is that proposal something that was worked out  
5 with the neighborhood and already agreed to by them,  
6 or where did that come from?

7 WITNESS BELLO: The proposed landscape for  
8 29<sup>th</sup> Street and Stevenson Lane were worked -- we worked  
9 with the neighbors. We'd like to say we came to a  
10 common ground.

11 But, a complete agreement has not been  
12 assessed with the arborists, the neighbor's arborists.

13 MS. MILLER: Now, what does that mean?  
14 Does that mean you're not finished working on that  
15 aspect of the landscaping, or there's a disagreement?

16 WITNESS BELLO: I would say not finished.

17 MS. MILLER: Okay, because I'm just  
18 wondering, one of my related questions is with respect  
19 to this memorandum of understanding that was passed  
20 out to us just today.

21 And I haven't had a chance to go through  
22 it. And I know it mentions screening and landscaping,  
23 as well as other things. I'm not sure what the status  
24 of this is.

25 Is this something that has been agreed to,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or is this something that you're presenting as a  
2 proposed agreement?

3 CHAIRPERSON GEOFFREY: Before you answer  
4 that, I would appreciate you coming up because you're  
5 the person to answer it. Is the MOU that you handed  
6 out any different than that which is attached to the  
7 ANC's?

8 WITNESS MOSS: Yes, it is slightly  
9 different. We've had some further negotiations with  
10 the neighbors and incorporated some of the agreements.

11 CHAIRPERSON GEOFFREY: Okay.

12 MR. MOSS: But it also illustrates the two  
13 areas which we have not come to substantial agreement  
14 on. And that would be the length of the moratorium  
15 proposed and also the right turn onto Tennyson.

16 CHAIRPERSON GEOFFREY: And this was  
17 presented too?

18 MR. MOSS: Yes, we presented a copy to the  
19 neighbors last Friday afternoon. And we also  
20 presented a copy to the formal mediator, whom we've  
21 been working with over the past five months, on  
22 Monday.

23 CHAIRPERSON GEOFFREY: So, is landscape an  
24 issue in the MOU, a discrepancy?

25 MR. MOSS: We basically agreed that we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 would hire the arborist for the neighbors and work  
2 with him to come up with a plan that is agreeable.  
3 There is basically one area where there is some  
4 contention.

5 And that's where a corner of the building,  
6 I believe on the south end, juts into the berm. And  
7 the question is trying to get the right types and size  
8 of plants that will survive, given the fact that they  
9 need to be shade tolerant because there is very some  
10 large deciduous trees there.

11 CHAIRPERSON GEOFFREY: I'm sorry.

12 MR. MOSS: I'm sorry.

13 CHAIRPERSON GEOFFREY: The issue really  
14 revolves then around the type and species of plants  
15 that will be planted in a certain area.

16 CHAIRPERSON GEOFFREY: Right.

17 MR. MOSS: Not in areas -- so, it --

18 CHAIRPERSON GEOFFREY: Yes, sir.

19 MR. MOSS: So that's why we're not in  
20 complete total agreement.

21 CHAIRPERSON GEOFFREY: Understood.

22 MR. MOSS: It's a schematic design and  
23 they're working through that right now.

24 CHAIRPERSON GEOFFREY: okay.

25 MS. MILLER: Well, okay. So you're the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 person to ask about this memorandum of understanding.

2 I have a different one in front of me.

3 And it has seven pages to it and 12  
4 paragraphs. And I haven't had a chance to read it  
5 yet.

6 MR. MOSS: I understand.

7 MS. MILLER: So, I what I want to know is,  
8 is this all 12 paragraphs something that you all have  
9 come to agreement on, or what is it?

10 MR. MOSS: That is a revision of an MOU  
11 that we have worked on with the neighbors. The  
12 neighbors through the mediator presented to us a  
13 memorandum of understanding, which we then went back  
14 and reviewed and made some changes to.

15 And then we had some further discussions  
16 and made some even further changes to it. So, it is  
17 not something that has been agreed upon by both  
18 parties.

19 But, there is many paragraphs, in fact, if  
20 there's 12, then I would say 10 of the paragraphs are  
21 substantially agreed upon between the neighbors and  
22 nuclear weapon.

23 But you have to get them to substantiate  
24 that from their side.

25 MS. MILLER: Okay. This is something that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you would propose though?

2 MR. MOSS: Yes, it is.

3 MS. MILLER: Okay.

4 MR. JEFFRIES: Excuse me, it is your  
5 understanding, this memo of understanding represents  
6 your understanding about what has been agreed upon.  
7 But, the neighborhood group has not signed off?

8 MR. MOSS: That is correct.

9 MS. MILLER: With respect to the two  
10 outstanding issues that you identified, one being the  
11 right turn onto Tennyson --

12 MR. MOSS: Yes, ma'am.

13 MS. MILLER: -- and the other being a  
14 moratorium, am I correct in understanding that your  
15 position is you need the right turn for emergency  
16 reasons?

17 MR. MOSS: We need the right turn for  
18 safety reasons for our residents. It's difficult to  
19 envision from this photo. But, if you kind of look at  
20 the intersection there of Tennyson and Oregon, that is  
21 a hill.

22 And cars come up over Tennyson, which  
23 cannot be seen until they get to the crest of that  
24 hill. And, while the speed limit, I think, is around  
25 25 to 30 miles-an-hour, the traffic actually moves

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 much faster than that.

2 And it can be a very difficult left-hand  
3 turn and also a right-hand turn onto Oregon coming out  
4 of the Knollwood property.

5 MR. TUMMONDS: So, Colonel Moss, you say  
6 that the importance of having the right turn entrance  
7 onto -- exit, I should say -- onto Tennyson Street, is  
8 to allow people to get both northbound and southbound  
9 on Oregon Avenue?

10 MR. MOSS: That is correct, safely.

11 MS. MILLER: And it's easier for your  
12 residents to get to Oregon via Tennyson, is that  
13 correct?

14 MR. MOSS: It's safer.

15 MS. MILLER: Safer.

16 MR. MOSS: With the loop, a number of our  
17 residents, in order to get to Oregon, would actually  
18 go out the Nebraska exit. And they will no longer be  
19 able to do that because the new building will cut off  
20 that loop.

21 MS. MILLER: Oh, okay.

22 CHAIRPERSON GEOFFREY: Tennyson and Oregon  
23 were one of the places that were indicated as having  
24 stop signs.

25 MR. MOSS: Yes, I think that both the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 neighbors and ourselves would like to see some type of  
2 safety concern built into that, whether it is stop  
3 sign, a speed hump, or something, because it is a very  
4 dangerous intersection for our residence.

5 CHAIRPERSON GEOFFREY: And, your  
6 familiarity with the site in the written submission  
7 there was talk about areas that had -- currently had  
8 stop-signs. Is that correct?

9 MR. MOSS: It's not.

10 CHAIRPERSON GEOFFREY: I know that corner  
11 doesn't. Show me the corners that do. Does Nebraska  
12 and Oregon intersection have a stop sign?

13 MR. MOSS: Yes.

14 WITNESS PAPAZIAN: Yes, it does. It's an  
15 all-way stop sign.

16 CHAIRPERSON GEOFFREY: Exactly. So, we  
17 have one in Oregon.

18 WITNESS PAPAZIAN: Further to the north, I  
19 forgot what street it is, but one of the streets  
20 further to the north also has a stop sign along Oregon  
21 Avenue.

22 CHAIRPERSON GEOFFREY: Okay. So, most of  
23 the intersections -- or those two intersections,  
24 according to your submission, have stop signs along  
25 Oregon Avenue.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MS. MILLER: That is correct.

2 CHAIRPERSON GEOFFREY: And Tennyson does  
3 not.

4 WITNESS PAPAZIAN: That is correct.

5 MS. MILLER: But, how has that changed  
6 connected to this proposed modification? I mean, is  
7 it you've just been noticing that it's not safe.

8 MR. MOSS: No, it's because they can no  
9 longer go out the Nebraska exit.

10 MS. MILLER: Okay, thank you. Doesn't the  
11 new building also affect a breakup, a loop? So that's  
12 why there had to be another emergency entrance?

13 WITNESS PAPAZIAN: That is correct.

14 MS. MILLER: Can someone address the  
15 dispute concerning the moratorium?

16 MR. MOSS: Yes, ma'am. The neighbors were  
17 very gracious in their negotiations. We worked  
18 through a lot of issues. Their concern was basically  
19 that, you know, once this building was done, if they  
20 agreed upon it, that they didn't really want to have  
21 to go through this process again.

22 And they felt that the safest way to do  
23 that was to build it on a moratorium that was  
24 enforceable by law. We have worked on varying numbers  
25 of years and how it would work, and exclusions,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 exceptions.

2 The neighbors are desirous of a much  
3 longer moratorium. We are in favor of a shorter  
4 moratorium. But then, would go into us following the  
5 process, i.e. the Office of Planning, the ANC, and the  
6 BZA, if we should ever want to build and any point in  
7 time.

8 And, basically what we're talking about is  
9 the green belt area that now runs outside of our  
10 roadways in existing buildings, basically what's  
11 continuous to the neighbor's property is what they're  
12 primarily concerned about.

13 MS. MILLER: Okay. And, with respect to  
14 the possibility of the underground parking, I think I  
15 heard Mr. Hilbert say maybe that you were waiting for  
16 some test results.

17 And I'm just wondering if you have an idea  
18 of the timeframe, when you're going to get your test  
19 results, and when you would know whether you would be  
20 able to do the underground parking.

21 WITNESS HILBERT: We've had several  
22 borings because we've moved the building. So we had  
23 to bring them back and do additional borings. I think  
24 we will know by probably the end of this month whether  
25 or not there is -- if you're talking about putting a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 garage underneath the building, whether there is  
2 substantial rock from the -- in that area.

3 We'll know that within a number of weeks,  
4 I think.

5 MS. MILLER: Okay, thank you. And, Mr.  
6 Tummonds, I just want to follow-up on your point that  
7 BZA has already looked at this issue with respect to  
8 community residents as being part of a health facility  
9 or whatever.

10 And I know you referenced Ingleside. In  
11 those cases, did the BZA just approve the special  
12 exception, or did they actually entertain arguments  
13 about whether the use was --

14 MR. TUMMONDS: I would point to Exhibit C  
15 of our pre-hearing statement. It is BZ application  
16 number 16138, the Presbyterian Home case that  
17 established Ingleside at Rock Creek.

18 And, the first section of that order is  
19 preliminary matter. As a preliminary matter, the  
20 abutters of the Presbyterian Home filed a motion to  
21 appear as a party in opposition and a motion to  
22 postpone the hearing due to defective notice.

23 The APH alleged that the application was  
24 improperly advertise for a public hearing as a special  
25 exception to increase a community residence when the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 use was actually an apartment house.

2 It sounds very similar to the argument  
3 that was made earlier today. The Chairman ruled to  
4 postpone the decision until the motion -- on the  
5 motion until the development of the factual record.

6 I would then point to page number seven of  
7 that order, finding of fact number one. The BZA said,  
8 based on the evidence of record, the Board finds as  
9 follows, number one, the proposed use constitutes a  
10 community residence facility and not an apartment  
11 building.

12 In addition, in the text of the order at  
13 page three, there is a discussion of paragraph 16  
14 where the Board in its order as all BZA orders are  
15 required to rationally flow from the evidence  
16 submitted in the record and findings of fact based on  
17 evidence of record, paragraph 16 includes their  
18 decision as to why those independent living units  
19 satisfy the definition of a community residence  
20 facility, again talking about the facility as a safe,  
21 hygienic, sheltered living arrangement for senior who  
22 are ambulatory, etcetera.

23 So, I believe, in answering your question,  
24 yes, this was absolutely an issue that was put before  
25 the BZA. And the BZA, I think, dealt with it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 accordingly.

2 And, therefore, this BZA should follow  
3 that same rationale.

4 MS. MILLER: Thank you.

5 CHAIRPERSON GEOFFREY: Anything else?

6 MR. JEFFRIES: Just a quick question. I  
7 just -- it goes back to operations. Just given the  
8 fact that you will be introducing increasing aging  
9 population here, I'm just concerned -- particularly  
10 dementia residents.

11 I mean, I'm just interested about the  
12 emergency vehicles and noise and just adverse impact  
13 on the neighborhood. Can someone comment on that? Has  
14 any research been done or just comparables?

15 I'm just trying to get a sense of just  
16 sort of what happens?

17 MS. HARTFOOT: As the assisted living  
18 administrator, I have direct access to the wellness  
19 clinic that operates for the majority of the residents  
20 who live in the independent section.

21 We have approximately one to two during a  
22 bad week emergencies per week. We often call Bethesda  
23 Chevy Chase rescue squad. They often do not arrive  
24 with the sirens on.

25 They come because they know us. They

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 often are not accompanied by a fire truck. In the  
2 rare case that we do call 911, which, again, this is  
3 an approximation, maybe one out of every five  
4 emergencies is a 911 emergency.

5 D.C. fire department does come out. They  
6 often send a truck. And then they'll use the sirens.

7 That would potentially happen once a month, if that.

8 MR. JEFFRIES: Okay, once a month with the  
9 increase.

10 MS. HARTFOOT: With the increase that's  
11 actually a nursing home increase for the majority of  
12 those beds. So, when the nursing home has an  
13 emergency, and Ms. Diegastino can speak more clearly  
14 to that.

15 Again, that is an ambulance service that  
16 does not arrive with flashing lights and a truck.  
17 That's often a pre-arranged RN to hospital transfer.  
18 So you do get Bethesda Chevy Chase rescue squad to  
19 come out.

20 And they don't use the lights or call the  
21 engine.

22 MR. JEFFRIES: Thank you.

23 MR. MANN: One quick question. This  
24 project has been submitted to the Commission of Fine  
25 Arts, is that correct?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. TUMMONDS: That is correct. We have  
2 also had numerous meetings. We have had numerous  
3 discussions. We have had two meetings with Christina  
4 Aug, staff person for CFA.

5 She was on site last week. Obviously we  
6 know that we have the conflicting jurisdictions there.

7 CFA staff likes our location of the proposed  
8 addition, as you can imagine, since their concerns are  
9 generally with the impact on Rock Creek Park under the  
10 -- jurisdiction.

11 And so, their major concerns are with the  
12 sufficiency of the landscape screening. And they were  
13 also waiting to hear from what kind of comments we  
14 receive from Rock Creek Park.

15 So our goal is next, after this process,  
16 continue to work with CFA. Depending on where we are,  
17 that may be going to present to them in October or  
18 perhaps November.

19 But, yes, we have been discussing this  
20 with CFA.

21 MR. MANN: Thank you.

22 CHAIRPERSON GEOFFREY: Anything else?

23 MR. JEFFRIES: One final question. I  
24 noted on your balloon diagrams just really trying to  
25 capture sort of the reduction in building density. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mean, the building reduced from 80,000 square feet  
2 originally to 68, is that correct?

3 WITNESS FEATHER: Yes, that is correct.

4 MR. JEFFRIES: And that was a reduction in  
5 just five?

6 WITNESS FEATHER: It was a reduction in  
7 five apartments and a general tightening of the  
8 building.

9 MR. JEFFRIES: The common areas and so  
10 forth?

11 WITNESS FEATHER: Yes, some of the common  
12 areas.

13 MR. JEFFRIES: Okay. I know they are  
14 representational, but they look fairly pronounced in  
15 terms of the differences and so forth. And, when I  
16 saw five reductions, of just five units, I was  
17 wondering how much more of that was really part of the  
18 reduction.

19 MR. TUMMONDS: And I think too, Mr.  
20 Jeffries, part also as well was that the initial  
21 application was approximately 51 feet from where that  
22 picture was taken.

23 And so, with the proposed addition now, we  
24 are 120 feet. So, again, that, as much as anything,  
25 the big difference between those depictions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GEOFFREY: Good, Mr. Tummonds,  
2 one last legal question for your answer. Obviously in  
3 application 15358, condition number one speaks to the  
4 moratorium of major structural additions on the  
5 property for a time period.

6 You've come in now, obviously, for a  
7 structural alteration. How the Board to look at the  
8 previous -- the current order and this change or --

9 MR. TUMMONDS: I think we have asked for  
10 the removal of condition number one, just as when,  
11 under a private school case comes in and there is a  
12 condition on number of students, they request an  
13 amendment to that condition.

14 We are requesting the removal of condition  
15 number one.

16 CHAIRPERSON GEOFFREY: So it's a  
17 modification to the existing condition number one?

18 MR. TUMMONDS: That is correct.

19 CHAIRPERSON GEOFFREY: Okay. Good. Very  
20 well, are you ready to proceed cross examination?  
21 Excellent, let's do it. What we're going to do is set  
22 up.

23 Mr. Nettler, do you know the witnesses you  
24 want first or in order? Would you like them to go  
25 first? Does the ANC have any cross examination? If

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you're going to have any sort of questions, you can  
2 come up.

3 You don't say it if you don't say it into  
4 a microphone.

5 MR. BUCHAOLZ: Why doesn't the road go  
6 from the parking lot to Tennyson Street?

7 CHAIRPERSON GEOFFREY: Okay, let's take  
8 just a quick moment. Could I have the ANC  
9 representative just -- interesting, we're going a  
10 little off track.

11 Come back to a microphone. First of all,  
12 just to be absolutely clear, you're not on the record  
13 unless you talk into microphone, whether we can hear  
14 you or not.

15 We're establishing an official record  
16 here. And secondly, could I just have you state your  
17 name and address for the record. I think you could  
18 probably use their pointer, because it will be  
19 important for the Board to see also what you're  
20 question is. Your name and address sir.

21 MR. BUCHAOLZ: Frank Buchaolz, ANC  
22 Commissioner, 5877 Nebraska Avenue. My question is  
23 why doesn't the road go from the parking lot to  
24 Tennyson Street?

25 CHAIRPERSON GEOFFREY: Okay, so a direct

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 link from the parking lot to Tennyson Street, rather  
2 than going either out the driveway to Oregon or out  
3 the emergency exit?

4 MR. BUCHAOLZ: Yes.

5 CHAIRPERSON GEOFFREY: Okay.

6 MR. MOSS: I can address that, sir.

7 CHAIRPERSON GEOFFREY: Excellent.

8 MR. MOSS: We had originally proposed a  
9 parking lot completely in that area in here in the  
10 original plans we had. However, because they  
11 neighbors on Tennyson street were very concerned about  
12 parking lots, the impact of the number of trees that  
13 we would have to take down in that area, we moved it  
14 in fact over here.

15 I don't think we would want to go directly  
16 to Tennyson Street because, what we're trying to do is  
17 to have our employees exit out here and limit this  
18 exit here simply to our residents, to --

19 CHAIRPERSON GEOFFREY: Okay. You --  
20 Tennyson to the parking lot because you're trying to  
21 limit the vehicle access into Tennyson.

22 MR. MOSS: Right, and also the number of  
23 trees that we would have to take down to do that.

24 CHAIRPERSON GEOFFREY: Okay, so you're  
25 keeping that green buffer. Are there --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. TUMMONDS: In addition too, I would  
2 add one other thing. The previous, there was an  
3 entrance exit onto Tennyson Street. And it was not  
4 lined up with 29<sup>th</sup> as it is now.

5 CHAIRPERSON GEOFFREY: Oh, I see.

6 MR. TUMMONDS: So, there were some  
7 concerns raised about neighbors on Tennyson Street,  
8 parking headlights shooting straight into their homes.  
9 So, we moved the entrance so it aligns with 29<sup>th</sup> place  
10 to further mitigate any.

11 CHAIRPERSON GEOFFREY: Okay.

12 MR. MOSS: There is a berm that runs  
13 around the entire property almost in here. And we  
14 originally wanted the road to go out here so we  
15 wouldn't have to cut through the berm.

16 CHAIRPERSON GEOFFREY: Right.

17 MR. MOSS: But, because of the concerns of  
18 the neighbors that the traffic emptying right out in  
19 front of somebody's house, we moved it up here to be  
20 right across the street from 29<sup>th</sup> Place.

21 CHAIRPERSON GEOFFREY: Very well. You've  
22 indicated, and you just used the phrase, the parking  
23 lights. You mean the lights on the cars, is that  
24 correct?

25 MR. MOSS: Yes, sir.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GEOFFREY: The surface parking  
2 lot is lit or not? Are there lampposts?

3 MR. MOSS: There probably will be, yes,  
4 sir.

5 CHAIRPERSON GEOFFREY: Okay.

6 MR. MOSS: But, one of the things we've  
7 talked about with the neighbors is that we would make  
8 sure it would be soft lighting and that it would not  
9 direct into their property, both with the parking lot  
10 and also with the new building. There will be some  
11 lighting up there.

12 CHAIRPERSON GEOFFREY: Okay, very good.  
13 Mr. Nettler? What we're going to do is get Mr.  
14 Nettler to chair close to one of the mics. Mr.  
15 Nettler, do you have a roster of witnesses? Or do you  
16 want to just go through at your own --

17 MR. NETTLER: I'll just go through it.

18 CHAIRPERSON GEOFFREY: Okay.

19 MR. NETTLER: It's not going to be very  
20 long.

21 CHAIRPERSON GEOFFREY: Okay.

22 MR. NETTLER: Mr. Bello.

23 MR. BELLO: Hi.

24 MR. NETTLER: Hi. How are you? Richard  
25 Nettler for the Knollwood Neighbors. I understand

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you've just come to this area from Florida, correct?

2 MR. BELLO: Yes.

3 MR. NETTLER: Okay. How familiar are you  
4 -- have you done any projects in Washington, D.C.?

5 MR. BELLO: Yes.

6 MR. NETTLER: Okay. Where in Washington,  
7 D.C.?

8 MR. BELLO: I'm currently working on one  
9 project in Washington, D.C. Other projects I'm  
10 working on are schematic right now, so currently I'm  
11 working on one.

12 MR. NETTLER: Okay. So nothing that's  
13 been completed.

14 MR. BELLO: Nothing that's been completed.

15 MR. NETTLER: How much experience do you  
16 have with large tree transplants?

17 MR. BELLO: I have some experience with  
18 large tree transplants.

19 MR. NETTLER: Could you explain that?

20 MR. BELLO: Sure. I used to work for Walt  
21 Disney World in Orlando, and we used to install large  
22 trees.

23 (Laughter.)

24 Relocate them.

25 MR. NETTLER: Relocate them?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BELLO: Three hundred gallon.

2 MR. NETTLER: Okay. And with tree  
3 protection during large-scale development, have you  
4 had a lot of experience in that area as well?

5 MR. BELLO: Tree protection in large-scale  
6 developments?

7 MR. NETTLER: Right, where we have  
8 projects like this which are going to be impacting a  
9 number of trees that you want to protect.

10 MR. BELLO: Yes. We have that in our  
11 construction document as well as meeting regulations  
12 of all municipalities as to how to protect existing  
13 trees.

14 MR. NETTLER: No. The question was how  
15 much experience you've had in that.

16 MR. BELLO: Oh. Three years.

17 MR. NETTLER: Three years. You've  
18 identified a number of different, on your plans, some  
19 landscape that you're introducing into the area. Is  
20 one of them a Carolina hemlock? Does that sound  
21 correct?

22 MR. BELLO: Yes.

23 MR. NETTLER: Okay. And is that going to  
24 be planted where the deep shade area is?

25 MR. BELLO: That's being planted

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sporadically throughout the site, not just in the deep  
2 shade areas specifically.

3 MR. NETTLER: Does it do well in that  
4 area?

5 MR. BELLO: It does okay in that area. It  
6 prefers dabbled light, not high shade.

7 MR. NETTLER: Not high shade. So why is  
8 it being put in high shade areas?

9 MR. BELLO: Nowhere on that property is  
10 there a complete high shade area. It's dabbled light  
11 on that property.

12 MR. NETTLER: Okay. And do you have any  
13 sense of the growth rates of the evergreens that  
14 you're placing in the very shaded areas, deep shaded  
15 areas?

16 MR. BELLO: Yes, about a foot a year.

17 MR. NETTLER: About a foot a year? Okay.  
18 And how are the screening plants that you've  
19 identified going to be replaced if they die? Have you  
20 provided for that?

21 MR. BELLO: Yes. They will part of the  
22 construction documents. There will be a -- the  
23 specifications and general notes with the contractor  
24 will replace within a certain amount of time the  
25 plants that have died in terms of their maintenance

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 period.

2 MR. NETTLER: Okay. Do you know how many  
3 trees are going to be removed for the roads that are  
4 being put in?

5 MR. BELLO: Roads being put in. Not  
6 exactly how many trees for the roads being put in. I  
7 know in general for the parking lot. For the road at  
8 the bottom here by the ambulance entrance-exit, no.  
9 And for the building itself, it's being installed  
10 where there's an existing parking lot. And,  
11 specifically, no, I don't know that answer.

12 MR. NETTLER: You don't know. With regard  
13 to the berm that's where you've -- it was pointed out  
14 by, I think, either the architect or someone else that  
15 there was some construction -- actually, I think it  
16 may have been this Colonel Moss -- some construction  
17 that was being pushed close to the berm and you were  
18 going to be having to put in landscaping in the berm  
19 there. Do you recall that?

20 MR. BELLO: Yes, down by the corner of the  
21 building?

22 MR. NETTLER: Right.

23 MR. BELLO: We're addressing that corner  
24 of that building.

25 MR. NETTLER: Right. And do you have a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lot of experience in plantings in berms?

2 MR. BELLO: Yes. Between two of us in the  
3 office we have over 19 years of experience.

4 MR. NETTLER: And you in particular?

5 MR. BELLO: I have one total year of  
6 experience of relocating a plant, a large specimen  
7 tree in an area with that density.

8 MR. NETTLER: Okay. Thank you. I don't  
9 have any questions for him. The traffic expert.

10 You talked earlier in your testimony, if  
11 you can recall, about adverse effects from a left turn  
12 that you were trying to address. Do you recall that?

13 MR. PAPAZIAN: I'm not sure which left  
14 turn you're talking about.

15 MR. NETTLER: Was there one that you  
16 identified as having adverse effects?

17 MR. PAPAZIAN: Not caused by this  
18 application, no.

19 MR. NETTLER: Okay. With regard to the  
20 right turn only request --

21 MR. PAPAZIAN: Yes.

22 MR. NETTLER: -- could you describe the  
23 problems from that right turn only again?

24 MR. PAPAZIAN: I guess your question is  
25 what is that right turn addressing, what problem is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that addressing?

2 MR. NETTLER: Right. Right.

3 MR. PAPAZIAN: As I've mentioned before,  
4 there is a crest at this location, as one drives along  
5 Oregon Avenue, which creates a problem with the  
6 speeding prevalence, apparently, along Oregon Avenue.  
7 Folks that are exiting the property onto Oregon  
8 Avenue, either making a left turn or the right turn  
9 onto Oregon Avenue, have some discomfort. It's a less  
10 than desirable situation in terms of the ability to  
11 see over the crest at the Tennyson intersection,  
12 especially if a vehicle on Oregon is speeding.

13 In order to reduce the amount and make it  
14 easier for residents to exit onto Oregon Avenue, that  
15 is the reason for the allowing residents to be able to  
16 turn right from the proposed driveway, travel east  
17 onto Tennyson Street, come to the stop sign and be  
18 able to turn onto Oregon Avenue as opposed to using  
19 the existing driveway to turn onto Oregon Avenue.

20 MR. NETTLER: Okay. And what would be the  
21 problem with having them make a left turn, from your  
22 perspective?

23 MR. PAPAZIAN: Well, in terms of folks  
24 exiting over here making a left turn?

25 MR. NETTLER: Correct.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. PAPAZIAN: Well, as I mentioned  
2 before, my concern was to protect -- to eliminate the  
3 potential for any Knollwood residents to drive through  
4 the community, through the area west of this driveway  
5 due to the sensitivity that has been expressed by the  
6 overall community of cut-through traffic using  
7 Tennyson and other streets in the Chevy Chase area.

8 MR. NETTLER: Okay. So making a right  
9 turn, in your view, does not present that same  
10 problem?

11 MR. PAPAZIAN: Well, obviously, we're  
12 talking about using a very, very short distance of  
13 Tennyson Street in which there's maybe, what, I  
14 believe, four homes in the area. So I think it's much  
15 more desirable if someone's going to use Tennyson to  
16 use this short section of Tennyson Street as opposed  
17 to the potential for drivers to travel through the  
18 other sections, the other streets.

19 MR. NETTLER: Okay. You were asked by the  
20 Board about this gate that's being put up. Could you  
21 indicate where on that exhibit the gate is being  
22 place?

23 MR. PAPAZIAN: The gate would be placed at  
24 the exit drive. Whether it is located on the --  
25 whether the post is on the left side or on the right

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 side, I can't tell that right now, but the gate would  
2 be located close to Tennyson Street.

3 MR. NETTLER: Okay. Do you know how many  
4 trees are being cut down for that?

5 MR. PAPAZIAN: I do not.

6 MR. NETTLER: Thank you. Let me talk to  
7 Colonel Moss.

8 You and Mr. Hilbert have identified 22  
9 independent living units that are being constructed on  
10 the property, correct?

11 MR. MOSS: That's correct.

12 MR. NETTLER: Could you tell me who the  
13 population is that you're looking for, that you're  
14 planning on occupying these units?

15 MR. MOSS: We're looking for elderly  
16 retired military officers and their female relatives.

17 MR. NETTLER: Okay. And elderly -- when  
18 you use the term, "elderly," what do you mean, what  
19 age?

20 MR. MOSS: Well, we don't have an  
21 identified age. We actually have residents that age  
22 from 45 all the way up to their 90s, so we're talking  
23 about a very wide range of people, I guess.

24 MR. NETTLER: So, 45, does that fit within  
25 your definition of elderly?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MOSS: No, but elderly officers and we  
2 talk about their female relatives, and these tend to  
3 be female relatives who require assistance that we  
4 were able to provide there at the Continuing Care  
5 Retirement Community.

6 MR. NETTLER: Well, let's just focus on  
7 these 22. You're essentially looking from an age  
8 group that's 45 and above; is that correct?

9 MR. MOSS: That's correct.

10 MR. NETTLER: Okay. So if they're all  
11 sold -- well, I guess not sold, but if the units are  
12 -- contracts are entered into with individuals who are  
13 retired military and they are between the ages of 45  
14 -- if they're 45 or above, then how do you distinguish  
15 between those who are elderly and those who aren't and  
16 those 45?

17 MR. MOSS: Why would we distinguish?

18 MR. NETTLER: Well, are you familiar with  
19 the definition of a community residents facility?

20 MR. TUMMONDS: I would object to that  
21 question. Colonel Moss didn't testify to the  
22 definition of a community residents facility.

23 MR. NETTLER: I'm just asking him what he  
24 believes elderly is. He's testified as to what the  
25 population is --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. DILBERT: May I just say that our  
2 average age right now is 85 years of age. That's the  
3 average age of the Army --

4 MR. TUMMONDS: And it's 85 years, you  
5 said, General Hilbert?

6 MR. DILBERT: Eighty-five.

7 MR. NETTLER: And could you break it down  
8 by the different -- let's take the assisted living  
9 first. What's the age group in the assisted living  
10 group?

11 CHAIRPERSON GRIFFIS: Let's just get some  
12 direction here, Mr. Nettler. Where are you going with  
13 it, establishing the definition of elderly?

14 MR. NETTLER: Well, I'm trying to find  
15 out, again, whether the 22 independent living units  
16 fits within the definition of a community residents  
17 facility.

18 MS. LISA: Speaking from a clinical  
19 perspective, the two residents that I believe that we  
20 have who are in their 40s and 50s suffer from a long-  
21 term degenerative disease. Both of them that I'm  
22 believing fit that category have multiple sclerosis  
23 and provided with extra assistance. The average age  
24 --

25 CHAIRPERSON GRIFFIS: Wasn't the Colonel's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 answer the same? You indicated that the people that  
2 were of that age, the 45 that you indicated, also  
3 needed some sort of assistance that was provided here;  
4 is that correct?

5 MR. MOSS: That's correct; yes, sir.

6 CHAIRPERSON GRIFFIS: Okay. So what else  
7 do we need to know?

8 MS. LISA: The average age for the  
9 assisted living I have the youngest resident, I  
10 believe, is in the last 70s. I have residents who are  
11 close to 100.

12 MR. NETTLER: Okay. Let's go back to  
13 Colonel Moss about the independent living units.

14 MR. MOSS: Okay.

15 MR. NETTLER: Do you recall having a  
16 discussion during these five months of negotiations  
17 with the Knollwood Neighbors about what services could  
18 financially be provided to the occupants of these 22  
19 independent living units?

20 MR. MOSS: I'm not sure what you mean by  
21 financial services.

22 MR. NETTLER: Do you recall making a  
23 statement to them that it would not be financially  
24 feasible for the applicant, your Army Distaff, to be  
25 able to provide medical assistance to those who would

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 be living in those 22 units?

2 MR. MOSS: No.

3 MR. NETTLER: Okay. Let me ask you about  
4 what kind of services are being provided to those in  
5 those 22 independent living units? Could you  
6 elaborate -- either you or Mr. Hilbert, if you could  
7 elaborate on exactly what those services are? Now,  
8 let's not talk about the continuum. Let's talk about  
9 while they're in those independent living units. What  
10 services are being provided?

11 MR. MOSS: Well, they are provided, and it  
12 may be that Barbara or Lisa may be better, but I can  
13 tell you that we do --

14 MR. NETTLER: Well, I've asked you the  
15 question, so let's --

16 MR. MOSS: Okay. I'll tell you what I  
17 know.

18 CHAIRPERSON GRIFFIS: It's better to have  
19 the person who's best able to answer the question.

20 MR. NETTLER: Well, I've asked the  
21 question of the individuals who already have  
22 testified.

23 MR. TUMMONDS: Ms. D'Agostino's testified.

24 MR. NETTLER: Well, I'm not asking her the  
25 question; I'm asking these gentlemen who have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 testified.

2 MR. TUMMONDS: I'm sorry, Ms. D'Agostino  
3 did testify. I think she might be the most  
4 appropriate person.

5 CHAIRPERSON GRIFFIS: As far as I recall,  
6 the testimony from Ms. D'Agostino was about the  
7 program, what was provided, so it's probably more  
8 appropriate to do that. If you want to rephrase the  
9 question in order to get directly at the testimony of  
10 Colonel Moss and what he --

11 MR. MOSS: I mean, the basic answer is  
12 that the people in those 22 apartments will be  
13 provided with the same services that the ones in the  
14 current independent units receive now.

15 MR. NETTLER: Okay. And is that in the  
16 context of what's called a sheltered living  
17 arrangement for those individuals?

18 MR. MOSS: I am not familiar with the  
19 term, "sheltered living."

20 MR. NETTLER: Okay.

21 CHAIRPERSON GRIFFIS: What is that term  
22 from?

23 MR. NETTLER: Well, the zoning definition  
24 of a community residents facility refers to the  
25 definition that's in Title 22, and it defines it as a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 sheltered living arrangement.

2 CHAIRPERSON GRIFFIS: Title 22 is?

3 MR. NETTLER: The regulations of the --  
4 excuse me -- Health Regulation Administration. It's  
5 not what was passed out; that's not a regulation.

6 CHAIRPERSON GRIFFIS: No, I understand  
7 that. I just wanted clarification with a question of  
8 a term that he ought to know where it's coming from.  
9 So it's one of another municipal regulation defined  
10 terms. You're not familiar with the term.

11 MR. MOSS: I am simply not familiar with  
12 it.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. MOSS: I can't answer that question if  
15 I don't --

16 CHAIRPERSON GRIFFIS: Indeed.

17 MR. NETTLER: Okay. Would you say it's  
18 accurate to describe the individuals who are expected  
19 to be in these 22 units as persons who require  
20 supervision or assistance within a protective  
21 environment because of physical, mental, familiar or  
22 social circumstances?

23 MR. MOSS: I would believe so. That's the  
24 reason that people come to a contained care retirement  
25 communities. Most of the people who come there they

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 come there because they require security, the safety,  
2 the access to the nursing and medical facilities that  
3 we have and also the ability for them and/or their  
4 family member to age and place. They're not looking  
5 for apartments; they're looking for a way of life.

6 MR. NETTLER: Let's get back to these 22.  
7 These units are significantly different than the ones  
8 that are already on the premises, aren't they?

9 MR. MOSS: No, they are not.

10 MR. NETTLER: Are they larger than the  
11 ones on the property?

12 MR. MOSS: No. I do not believe the  
13 current configurations have any that are substantially  
14 larger than what we currently have. The architect  
15 would be better to answer, but most of them, as  
16 General Hilbert said, are now in the range of 14 to  
17 1,900 square feet, and we do have apartments currently  
18 of that size in the facility.

19 MR. NETTLER: Okay. I gather since you  
20 weren't able to answer my question about sheltered  
21 living arrangements -- Mr. Hilbert, are you familiar  
22 with the term, "sheltered living arrangement?"

23 MR. DILBERT: No, but if you have a  
24 definition, I'll try to --

25 CHAIRPERSON GRIFFIS: No.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. NETTLER: Why don't I ask Ms.  
2 D'Agostino then if she's --

3 CHAIRPERSON GRIFFIS: Also not familiar.

4 MR. NETTLER: Okay. Do you know which  
5 portion of the facility presently is licensed as a  
6 health care facility by the District of Columbia?

7 MR. DILBERT: Yes.

8 MR. NETTLER: And which ones --

9 MR. DILBERT: All of them.

10 MR. NETTLER: All of them are licensed as  
11 a health care facility?

12 MS. LISA: The Health Services Center.

13 MR. DILBERT: Health Services Center.

14 MR. NETTLER: Okay. And the Health  
15 Services Center is --

16 MS. LISA: The Health Services Center is  
17 licensed as a nursing home in the district, and right  
18 now the assisted living is licensed as a community  
19 residence facility.

20 MR. NETTLER: Okay. I have no other  
21 questions.

22 CHAIRPERSON GRIFFIS: Thank you very much.  
23 Redirect, Mr. Tummonds? It's not required.

24 MR. TUMMONDS: No. I have no redirect  
25 questions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Very well. Okay.  
2 That concludes then your case presentation with cross  
3 examination. Next, we're going to go to the Office of  
4 Planning's report. I think it would probably be  
5 advantageous to just take five minutes, stretch  
6 everyone's legs. We'll come back to the Office of  
7 Planning, and then we'll go through the other  
8 government reports.

9 (Whereupon, the foregoing matter went off  
10 the record at 4:08 p.m. and went back on  
11 the record at 4:29 p.m.)

12 CHAIRPERSON GRIFFIS: All right. If I  
13 could have everyone take their seats, why don't we  
14 resume. Very well. Let's go to the Office of  
15 Planning. Mr. Cochran is here with us this afternoon  
16 to present the Office of Planning's report.

17 MR. COCHRAN: Thank you, Mr. Chair. For  
18 the record, my name is Stephen Cochran with the D.C.  
19 Office of Planning.

20 OP is evaluating the physical expansion of  
21 an existing community residents and health care  
22 facility in upper Northwest Washington. This facility  
23 was first permitted by the BZA in 1959 and again  
24 permitted in four subsequent BZA orders or order  
25 modifications. The facility currently has a residence

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cap of 318 but a current residence number of something  
2 along the order of 253, I believe.

3 Well, first, looking at the application  
4 within the context of the comprehensive plan, if you  
5 turn to Attachment 2 of the OP report, you'll see that  
6 the majority of the area, the vast majority of the  
7 area near the site is labeled as appropriate for low-  
8 density residential. However, the blue areas that you  
9 see on your map are the areas that are the  
10 institutional uses that were actually in existence at  
11 the time that the generalized land use map was adopted  
12 and that were basically grandfathered in as  
13 appropriate for institutional uses. There is also a  
14 medium brown, mustard brown area to the north of the  
15 Applicant's site, which is labeled, "site," and that  
16 medium brown area is an existing PUD on the site of  
17 the former Tregan estate, as I recall.

18 When it comes to the comprehensive plan  
19 text, as you might expect, the text is somewhat mixed  
20 in its recommendations. The ward plan supports  
21 neighborhood stability but also recognizes the need to  
22 expand the supply of housing for the elderly in this  
23 area.

24 With respect to the basic tests for the  
25 proposal, even with the expansion, the proposed

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expansion, the Applicant would meet -- Knollwood  
2 facility would comply with the minimum lot area,  
3 dimensions, yard, height and lot occupancy  
4 requirements. Specifically, the R1B zone district  
5 permits 40 percent lot occupancy. If it were  
6 constructed, it would have a 13.5 lot occupancy.  
7 There's no FAR limitation in the R1B zone. Were there  
8 an FAR, Knollwood would have 0.5. The minimum lot  
9 width required is 75 feet. The site average width is  
10 over 700 feet. There is a side yard requirement of  
11 eight feet. The smallest distance between the  
12 proposed facility and the property line is 70 feet.

13 We'd like to look next at the special  
14 exception criteria that are particular to these types  
15 of facilities that are described in the zoning  
16 regulations, Sections 218 and 219. That is to say  
17 under 218, the community-based residential facility;  
18 under 219, the health care facilities. Again, we note  
19 that there was prior approval for this facility under  
20 both regulations by this Board.

21 But if you want to go for an expansion of  
22 this, even a physical expansion, the Board has to  
23 evaluate whether the program goals of the District can  
24 be met with a smaller facility. We've noted that the  
25 comprehensive plan suggests that there is a need for

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the expansion of residential housing for the elderly  
2 in the Northwest area and that there are the needs for  
3 providing health care for residents of Ward 3.

4 With respect to there being no other  
5 reasonable alternative, we would note that while there  
6 may be possibly one site on Connecticut Avenue where  
7 an entirely new facility could be put up of this type,  
8 a reasonable alternative from the standpoint of the  
9 Applicant doesn't exist. The health care facilities  
10 are already in place at this facility. It would not  
11 be possible to transfer particularly dementia patients  
12 from an off-site location to the health care  
13 facilities that now exist on the Knollwood site. This  
14 seems to be the only reasonable alternative from the  
15 standpoint of the Applicant.

16 With respect to Sections 218.2 and 219.2,  
17 there being no other CBRFs, as the Applicant has  
18 already pointed out, there are none within at least  
19 1,000 feet. I believe it's at least half a mile  
20 between this and the next community-based residents  
21 facility.

22 Section 218.3, 219.3, adequate parking,  
23 screening. There's been considerable discussion about  
24 this. OP continues to have some reservations about  
25 this. The proposed location for the parking lot is a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 relatively recent suggestion for the location, made in  
2 response to the concerns of some of the neighbors on  
3 Tennyson Street. The Office of Planning would still  
4 like to see additional studies of the view of this  
5 parking lot from the southeast with respect to  
6 screening. We realize that it is adequately screened  
7 from the northeast, particularly from the intersection  
8 of Tennyson and Oregon. We're not as convinced of  
9 this from the southeast because we haven't seen any  
10 renderings.

11 We do note, however, that the National  
12 Parks Service in the form of the Rock Creek Park  
13 Superintendent, not known to be a soft customer, has  
14 already indicated that they're satisfied with it, but  
15 Office of Planning still thinks it would be advisable  
16 before the Board makes any decision in this case to  
17 see firm plans on screening and certainly firm plans  
18 on whether all of the parking would be -- the proposed  
19 expansion of the parking would be on the surface or  
20 whether it would be below the proposed addition after  
21 the borings are in.

22 With respect to Section 218.4 and 219.4,  
23 coding and licensing requirements, they won't get to  
24 build it if they don't meet them.

25 Section 218.5 and 219.5, the impact on the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 neighborhood. With respect to traffic and operations,  
2 the principal point of contention seems to be the  
3 right hand turn on Tennyson. The Office of Planning  
4 understands the desire of the Applicant to have yet  
5 another emergency exit because of the closing of the  
6 loop road right now. It does seem to be prudent.  
7 With respect to the turning of the movement on -- a  
8 right-hand, east-bound turn on Tennyson for the  
9 residents of Knollwood, OP understands the desire for  
10 this. I think nobody's quite addressed it directly.  
11 We're talking about, with perhaps one or few  
12 exceptions, as we've heard of today, for the  
13 relatively elderly population reaction times aren't as  
14 good as for somewhat younger residents.

15 I am personally very familiar with that  
16 stretch of road and realize that without a stop sign  
17 at Tennyson that is a difficult entrance and exit.  
18 The Office of Planning has asked for certain  
19 clarifications, should you approve this, to the  
20 landscaping, to how the turn would be protected, to  
21 how the gate would look for this proposed exit and  
22 entrance for emergency vehicles.

23 But we do hope that you would -- if this  
24 becomes significantly contentious, we would suggest  
25 that you consider that this turning movement be

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 allowed only until such time as there is a stop sign  
2 and adequate studies on the safety of a stop sign at  
3 Tennyson and Oregon and adequate studies on the safety  
4 of a turning entrance and exit at Oregon Avenue. In  
5 other words, it might be possible to have the proposed  
6 entrance and exit just for emergency vehicles, and if  
7 studies show that a safe entrance and exit on Oregon  
8 Avenue can be achieved for the relatively elderly  
9 residents of this facility, then perhaps it would be  
10 reasonable to not have a right turn movement only for  
11 the residents of the facility.

12 With respect to noise and other  
13 operations, Office of Planning is aware of no problems  
14 so far, and we note that the cap would still remain at  
15 318 residents. The Applicant has indicated that they  
16 would be putting noise baffles on the mechanical  
17 equipment on the room and has indicated the relatively  
18 low number of increase in any emergency vehicles that  
19 would be coming to the site.

20 We're also required to look at the  
21 concentration of similar facilities in the area, and  
22 as we've noted, the nearest such facility is  
23 approximately a half mile away.

24 Now we get to the general criteria for the  
25 special exception. Is the application in harmony with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the purpose and intent of the zoning regulations and  
2 the maps? The Board has already indicated that this  
3 type of use at this location is in harmony with the  
4 zoning regulations and the map because of the 40-year  
5 history of approvals for this. It was also indicated  
6 that this type of facility that OP is evaluating,  
7 which community-based residential facility and a  
8 health care facility, is an appropriate use, given the  
9 Board's Orders, Number 15358 for the Presbyterian home  
10 and 16138 for Ingelside. It also seems to me the  
11 Department of Health definition of independent living.

12 What about adverse impact of the use on  
13 neighboring properties? The Office of Planning was  
14 very surprised by the results of the Blume test that  
15 it requested. The original proposal did seem to be so  
16 close to the residences, particularly in the rear of  
17 the residences on the 29th Street, that it would have  
18 had an adverse impact on the use of the rear yards and  
19 likely the decks and even some of the rear-facing  
20 rooms of these residences. Since then the Applicant  
21 has significantly redesigned this facade. The  
22 Applicant has sunk part of the building into the  
23 south-facing slope, has moved the facility back from  
24 the rear of the 29th Street residences and has  
25 generally employed setbacks, both for the 29th Street-

**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 facing facade and the Stevenson Lane facade.

2 The Applicant has also repositioned the  
3 location of the building so that it's within the  
4 existing parking lot and service roads and the  
5 orientation of the building so that what faces both  
6 Stevenson Lane and the rear of the 29th Street houses  
7 is not the blunt, flat, long end of the building but  
8 rather the corner of the building so that you get a  
9 more tapered appearance. All in all, the Office of  
10 Planning thinks that the current design would not  
11 impact negatively on the use of the neighboring  
12 properties.

13 We feel that we should point out that with  
14 respect to 29th Street the potential for impact is  
15 greater, because you do have the rear yards at 120  
16 feet to the building, but we feel, again, that with  
17 the redesign that there would be no impact on that  
18 use.

19 We point out that the use of the  
20 properties on Stevenson Lane is different. You're  
21 basically talking about entering and exiting houses  
22 and perhaps looking out of the front windows of the  
23 houses. The rear yards are significantly farther away  
24 and are yet farther away from this property. We do  
25 believe that with the changes in the design and 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](http://www.nealrgross.com)

1 landscaping that there would not be an impact on the  
2 use of the properties on Stevenson Lane either.

3 And that concludes OP's summary of its  
4 report. I'd be happy to go into any of the many  
5 details in the long report we submitted.

6 CHAIRPERSON GRIFFIS: Good. Thank you  
7 very much. And it was a very detailed report. Are  
8 there questions from the Board members,  
9 clarifications? Ms. Miller?

10 MS. MILLER: With respect to the right  
11 hand turn issue, I think that you brought up the  
12 question about a safe entrance and exit onto Oregon  
13 Avenue.

14 MR. COCHRAN: Yes.

15 MS. MILLER: That's been the entrance and  
16 exit.

17 MR. COCHRAN: That's right.

18 MS. MILLER: Are there statistics or  
19 something that show that it's been unsafe?

20 MR. COCHRAN: I don't know of any  
21 statistics. For me, it would have to be anecdotally.  
22 I know the road. It is a difficult road.

23 MS. MILLER: You know it from whom?

24 MR. COCHRAN: I'm a native. I've lived  
25 here, my sister lives two blocks away. I've raised my

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 nephews and nieces for various reasons.

2 MS. MILLER: Oh, so you personally know.

3 MR. COCHRAN: Oh, yes. Yes, I am.

4 MS. MILLER: Okay. And the reason  
5 neighbors are against the right hand turn onto  
6 Tennyson Street is because it would increase traffic  
7 that doesn't go there right now, correct?

8 MR. COCHRAN: I have to take that  
9 reasoning from what you've heard. No neighbor has  
10 spoken to me about it.

11 MS. MILLER: Okay. Let's presume that  
12 that's the case. Do we have traffic studies that show  
13 how much the traffic would be increased?

14 MR. COCHRAN: I believe that the  
15 consultant's traffic study refers to overall numbers,  
16 not to which choice a resident would make on exiting.  
17 So I don't believe that there are numbers specific to  
18 Tennyson, as opposed to some of the more spry  
19 residents who choose to exit at Oregon Avenue.

20 MS. MILLER: Okay. And I just want to  
21 keep track of the definitions and the sources of the  
22 definitions that we're getting. I think you made a  
23 reference to a definition of independent living.  
24 Could you give that again and what that is? Do you  
25 recall? Just today, just in your testimony, I thought

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you made a reference.

2 MR. COCHRAN: I made reference to the  
3 Board -- that this being considered as -- no,  
4 actually, I don't believe I did refer to it as being  
5 independent.

6 MS. MILLER: So far as you know, there  
7 isn't a definition of independent living in any  
8 regulation or such?

9 MR. COCHRAN: It is in the Department of  
10 Health regulations.

11 MS. MILLER: Is it in the Department of  
12 Health, okay. We just don't have the site for it?

13 MR. COCHRAN: I don't have the site. I  
14 actually tried to get it during the break.

15 MS. MILLER: Okay. And my last question  
16 about this definition, and you may or may not know --

17 MR. COCHRAN: Excuse me, the definitions I  
18 had been going on --

19 MS. MILLER: Okay.

20 MR. COCHRAN: -- were the ones in the  
21 previous BZA cases.

22 MS. MILLER: Okay. And today we've  
23 received various handouts, and one is entitled,  
24 "Operational Definition of Community Residents  
25 Facility," from D.C. Department of Health Regulation

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Administration. Is there any relation of that to 22  
2 DCMR 3099.1 that's cited in the zoning regulations?  
3 Are you familiar with this?

4 MR. COCHRAN: Without the regulation in  
5 front of me, I don't feel comfortable -- do you have  
6 it?

7 MS. MILLER: Well, I don't know if this is  
8 a regulation. This is what we were handed out today.

9 MR. COCHRAN: No. I have this. This  
10 says, "Operational definition." That adjective would  
11 make me question whether that's the legal definition.

12 MS. MILLER: Okay. Well, I'm sure we'll  
13 find out further in the case then.

14 MR. COCHRAN: I imagine so.

15 MS. MILLER: The relation of this to the  
16 other regs. Okay. That's all. Thank you.

17 CHAIRPERSON GRIFFIS: Anything else from  
18 the Board? Very well. Does the Applicant have any  
19 cross examination for the Office of Planning?

20 MR. TUMMONDS: No questions.

21 CHAIRPERSON GRIFFIS: The ANC, any  
22 questions of the Office of Planning? Mr. Nettler?

23 MR. NETTLER: Richard Nettler for  
24 Knollwood Neighbors. Let me ask you, when you say  
25 there's no alternative to this site in terms of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 whether -- in going through the criteria for the  
2 special exception, are you aware that other similar  
3 facilities, like Engleside, have built satellite  
4 campuses elsewhere, not necessarily on-site, or was  
5 that not coming to your --

6 MR. COCHRAN: I was not aware of the other  
7 ones having built satellite campuses for dementia  
8 facilities. That's what I was referring to

9 MR. NETTLER: Okay. So you weren't aware  
10 that that's --

11 MR. COCHRAN: I was not.

12 MR. NETTLER: Okay. And you were asked by  
13 Ms. Miller about the independent living. You can't,  
14 as you sit here today, point to exactly where there's  
15 an independent living definition in the health care  
16 regulations, can you?

17 MR. COCHRAN: No, I cannot.

18 MR. NETTLER: Okay. If I was to tell you  
19 that they didn't exist, would you know whether that  
20 was the case or not?

21 MR. COCHRAN: I would not know that was  
22 the case or not.

23 MR. NETTLER: Okay. With regard to the  
24 operational definition, which I believe that you have  
25 before you, which at least without characterizing it,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 it says that, if you look at the paragraph after,  
2 let's see -- the sentence, excuse me, fourth sentence.

3 It says, "This level of health care is for  
4 individuals who desire or require supervision or  
5 assistance within a protect environment because of  
6 physical, mental, familiar or social circumstances."  
7 Do you understand that the people who are supposed to  
8 occupy the 22 independent living units fit within that  
9 characterization, the operational definition of a  
10 community residence facility?

11 MR. COCHRAN: I think I would feel more  
12 comfortable saying that I do not feel uncomfortable  
13 thinking that they would.

14 MR. NETTLER: Could you say that in a way  
15 that doesn't have any non-sequiturs in it? Say that  
16 again.

17 MR. COCHRAN: I would not feel  
18 uncomfortable saying that they would fit into that  
19 definition.

20 MR. NETTLER: Okay. And that's because  
21 you're familiar with the program that's being provided  
22 for those 22 --

23 MR. COCHRAN: Given what the Applicant  
24 stated would be the services that would be provided to  
25 those people --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. NETTLER: In those particular units,  
2 not in the assisted living, not in any health care  
3 facility.

4 MR. COCHRAN: That's correct. On Page 13  
5 of the Applicant's pre-hearing statement, "The  
6 residents of the new independent living units will be  
7 offered a supportive living environment, including an  
8 activity director, meal services, emergency alarms in  
9 bathrooms, on-site nursing care and transportation,  
10 just like the residents of the existing independent  
11 living units. The units will feature bathrooms  
12 equipped with safety grab bars, emergency call  
13 systems, scheduled transportation to Walter Reed Army  
14 Medical Center, nutritional consultation, 24-hour  
15 emergency clinic service, resident clinic visits for  
16 blood pressure tests and medical wellness counseling."

17 And then it goes on to what might be available for  
18 the added fee. All of that would seem to describe to  
19 me a supportive care environment.

20 MR. NETTLER: Okay. Are you familiar with  
21 the definition of sheltered living arrangements?

22 MR. COCHRAN: I am not.

23 MR. NETTLER: Okay. So when you looked to  
24 see whether this fit within the definition of a  
25 community residence facility, just the 22 units now,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 and you were referenced to Title 22 of the DCMR, you  
2 didn't look at Title 22 to see exactly what those  
3 requirements were?

4 MR. COCHRAN: Excuse me, Mr. Nettler, I  
5 want to be sure that I actually referenced Title 22.

6 MR. NETTLER: Well, the zoning regulations  
7 do. Because the zoning regulations don't have a  
8 definition. They reference that -- the zoning  
9 regulations, if you look at 199.1 --

10 MR. COCHRAN: I understand what you're  
11 saying. No. What I actually did was look at the  
12 previous way in which the Board of Zoning Adjustments  
13 had interpreted the definition for themselves.

14 MR. NETTLER: Okay. Well, let's take the  
15 Presbyterian home, okay? Presbyterian home, and we  
16 don't have a record, so we don't know exactly what  
17 evidence was submitted, but on Page 3 of the order for  
18 the Presbyterian home application, Number 16138,  
19 Paragraph 16 makes reference to the fact that the  
20 facility was going to provide a sheltered living  
21 arrangement for seniors. So did you understand when  
22 you read that what sheltered living arrangement meant  
23 and how you could distinguish that or not distinguish  
24 that?

25 MR. COCHRAN: The reason I'm hesitating on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 my answer is because of the way that you ask the  
2 question. I suspect that there's a definition of  
3 sheltered living arrangement that I don't know, and  
4 I'm hesitant to answer that, as a result of that.  
5 Certainly, I'd feel comfortable saying protected  
6 living but sheltered, if that is defined, then I  
7 couldn't say that it meets that.

8 MR. NETTLER: Okay. Now, you also made  
9 reference to the prior orders that this Board had  
10 granted with regard to this facility and the type of  
11 relief that had been provided.

12 MR. COCHRAN: Yes.

13 MR. NETTLER: Okay. I don't know if you  
14 have them before you, let's look at the 1959 order.  
15 Do you see anything in there that provides for relief  
16 for a community residence facility being authorized?  
17 Well, let me ask it a little bit differently. The  
18 1959 order doesn't reference a community residence  
19 facility. What it talks about, does it not, is that  
20 it's providing health care for elderly women at an  
21 institution.

22 MR. COCHRAN: As I recall, that's correct,  
23 yes.

24 MR. NETTLER: Okay. And the order in 1967  
25 also doesn't reference a community resident facility.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 It's providing for an expansion of the number of  
2 elderly women who would be allowed to be resident at  
3 this health care facility at this institution; isn't  
4 that correct?

5 MR. COCHRAN: I'm not sure on that one.

6 MR. NETTLER: Okay. And in the order in  
7 1987 that, I think, is that not correct, this is the  
8 first time that Section 218 is referenced, and this is  
9 for an assisted care facility, is it not?

10 MR. COCHRAN: I note that on Page 2 of  
11 15358 the Board in its finding of facts stated that  
12 the Distaff has provided accommodations for  
13 independent living since June of 1962.

14 MR. NETTLER: Okay. But when you read the  
15 order that's not what they're providing. They may  
16 have said that they're providing that, but whether  
17 they were authorized to do that or not or what exactly  
18 what it was you don't know that from that order, do  
19 you? Because we don't know what a definition of  
20 independent living is, either by the zoning  
21 regulations or any other regulations, do we?

22 MR. COCHRAN: I took it for fact. If the  
23 Board of Zoning found it to be a fact, then it was a  
24 fact.

25 MR. NETTLER: Okay. Did you read the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 transcript that accompanied the Application Number  
2 14626, which was the 1987 decision of the --

3 MR. COCHRAN: No, I did not.

4 MR. NETTLER: Okay. You'll find that at  
5 Exhibit Number 5 to our --

6 MR. COCHRAN: I believe I did look at  
7 portions of those that were submitted by neighbors.

8 MR. NETTLER: Excuse me?

9 MR. COCHRAN: I do believe that I looked  
10 at a portion of that transcript that was submitted by  
11 one of the neighbors but not the whole thing.

12 MR. NETTLER: All right. Now, in 1990,  
13 when the last order was -- I believe it was the last  
14 order or at least the -- excuse me, 1993 dealt with a  
15 convenience store. In 1990, when there was a  
16 moratorium that was placed on the additional  
17 development -- let me just make sure.

18 MR. COCHRAN: Excuse me, are you referring  
19 to the October -- there were three orders that were  
20 basically based around that.

21 MR. NETTLER: 15358, October 3, 1990,  
22 correct.

23 MR. COCHRAN: Okay.

24 MR. NETTLER: Right. There was a 25-year  
25 moratorium.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. COCHRAN: Yes.

2 MR. NETTLER: Do you know what the reasons  
3 were that it was being placed as a condition in the  
4 order?

5 MR. COCHRAN: I would have to make  
6 assumptions.

7 MR. NETTLER: You don't know as a fact.  
8 You don't know the reason?

9 MR. COCHRAN: No, I don't know as a fact.

10 MR. NETTLER: Okay. Has there been any  
11 discussions with you in relation to this application  
12 by the Knollwood Neighbors as to the reason why that  
13 25-year moratorium was made a condition of the  
14 property?

15 MR. COCHRAN: Yes.

16 MR. NETTLER: Okay. And what was that  
17 discussion?

18 MR. COCHRAN: The neighboring residents  
19 didn't want to go through this again so quickly.

20 MR. NETTLER: Back in 1990.

21 MR. COCHRAN: Correct.

22 MR. NETTLER: Okay. And the Applicant  
23 agreed to that condition; was that correct?

24 MR. COCHRAN: That's correct.

25 MR. NETTLER: Okay. I have no other

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 questions.

2 CHAIRPERSON GRIFFIS: Thank you. Any  
3 follow-up from the Board to the Office of Planning?  
4 Very well. We have a submission by the Department --  
5 DDOT that came in today. Are all the parties in  
6 possession of this?

7 MR. COCHRAN: No.

8 CHAIRPERSON GRIFFIS: Okay. Do we have  
9 extra copies around? All right. I'm going to move  
10 this on, and we can have any sort of reaction to it as  
11 we proceed. I'll just read the last paragraph. It  
12 states in summary, "DDOT supports the proposed the  
13 expansion based on the adequacy of parking provisions,  
14 the availability of public transportation and the few  
15 vehicular trips generated by the project." It is  
16 Exhibit 127 in the application. You can respond to  
17 that in any sort of closings or subsequent submissions  
18 if we have an opportunity for that.

19 Outside of that, I don't have any other  
20 government reports attendant to this application, if  
21 I'm not mistaken. Oh, indeed. Why don't we cover --  
22 we have submissions also from certain council members,  
23 one of which was received this afternoon as the  
24 hearing was underway. They are not an exhibit number.

25 Councilmember Mendelson has submitted, Councilmember

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Katanya and also Councilmember Fente. Is there anyone  
2 here representing any other councilmembers' offices?  
3 Very well. All letters are in the record. Does  
4 everyone have the ANC applicant opposition? Okay.  
5 Let's make sure we get copies of those out also.

6 That being said, let's move on, and if the  
7 ANC's prepared to present their case, we can move  
8 ahead with it.

9 MR. BUCHAOLZ: Thank you, Mr. Chairman.  
10 My name is Frank Buchaolz. I'm the ANC representative  
11 for ANC-3/4. Could you clarify what you just said?

12 CHAIRPERSON GRIFFIS: How far back do you  
13 want me to read?

14 MR. BUCHAOLZ: ANC applicant opposition?  
15 Did you say that?

16 MR. TUMMONDS: I think you were asking the  
17 ANC, the Applicant from opposition, whether we had  
18 received copies of the councilmember letters.

19 CHAIRPERSON GRIFFIS: Yes, I'm sorry.  
20 There's there letters from councilmembers that have  
21 been put in the record.

22 MR. BUCHAOLZ: Yes. No, I understood  
23 that. Thank you very much, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Okay. And I just  
25 want to make sure everyone knows and they have copies

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 of it, because I'm not going to read them into the  
2 record; they're in there. Okay.

3 MR. BUCHAOLZ: Thank you, Mr. Chairman. I  
4 have no prepared testimony. In the interest of time,  
5 I would like to state that as far as the ANC's  
6 concerned, the report speaks for itself.

7 I would like to explain some of the  
8 circumstances under which we wrote the report. If you  
9 remember correctly from our previous meeting, we were  
10 asked by Knollwood Neighbors Council to schedule the  
11 meeting, this hearing, for today, and this caused some  
12 problems but we said we would try and work them out as  
13 best we could. We had one meeting to have a  
14 presentation, have a comment, have a report read,  
15 amended and produced for the next day, and we were  
16 able to accomplish that.

17 As far as the status of the situation as  
18 of September 13 and September 14, it was our  
19 understanding at that time, and we had heard from both  
20 sides, that they were, I think the term was, 85  
21 percent close to agreement. In essence, as I  
22 understood it at the time, they were pretty much in  
23 agreement on the building and on the shrubs and  
24 parking, and that didn't seem to be much of an issue.

25 As has been apparent today, the road is still an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 issue, and, as I understand it, the moratorium is  
2 still an issue.

3 I think that's about it for my comments.  
4 If you have any questions, I'm ready to answer them.

5 CHAIRPERSON GRIFFIS: Good. Thank you  
6 very much.

7 MR. BUCHAOLZ: Oh, I do have one other  
8 thing.

9 CHAIRPERSON GRIFFIS: Indeed.

10 MR. BUCHAOLZ: And that is that I have  
11 spent a lot of my time as ANC Commissioner on traffic  
12 issues in that area. Specifically, I credit myself  
13 with two stop signs on Oregon Avenue. That was one of  
14 my major accomplishments. And I have traversed  
15 Tennyson Street and Oregon Avenue at least five times  
16 a week. I'm very familiar with that area. So if you  
17 do have any questions, please direct them at my  
18 direction. Thank you.

19 CHAIRPERSON GRIFFIS: Good. Do you  
20 believe that the stop sign is needed at Tennyson?

21 MR. BUCHAOLZ: You know, it's something  
22 that you really need a traffic engineer to make a  
23 determination. I can give you an example of how we  
24 deal with traffic issues at the ANC, and that is  
25 someone makes a recommendation, we pass it on to DDOT,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 DDOT sends out a traffic engineer, they make a  
2 determination, they do something or they don't do  
3 something.

4 I might also add that on this road  
5 question, this hasn't come up, so maybe I'm off base  
6 on this, when you're putting in a driveway, there is  
7 something called a curb cut permit. So if this is a  
8 driveway within the meaning of the law and requires a  
9 curb cut permit, then this thing is going to come up  
10 again through the ANC because we get to advise whoever  
11 is in charge of curb cuts whether to put it in or not.

12 I don't know if that's helpful or not.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. BUCHAOLZ: Getting back to your real  
15 question, do you really need a stop sign there, you  
16 have to realize that you're dealing with an elderly  
17 population, and when you come up Oregon Avenue and are  
18 trying to make a left hand turn into that area, it is  
19 difficult, depending on the time of the day, to make  
20 that left hand turn. There are cars coming south on  
21 Oregon doing 40 miles an hour, and that's pretty  
22 conservative, and you need very quick reflexes. For  
23 instance, I met with General Hilbert last week and I  
24 was going up Oregon Avenue and trying to make that  
25 left hand turn and it was difficult for me because

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 cars are coming one after the other. I mean there is  
2 no break in the traffic. It is a major east-west  
3 route that people take to get from Silver Spring down  
4 Nebraska Avenue --

5 CHAIRPERSON GRIFFIS: Do you think a stop  
6 sign at that corner would mitigate that problem?

7 MR. BUCHAOLZ: It would slow down the  
8 traffic. And it would increase the amount of time  
9 someone would have to make that left hand turn. We do  
10 plan to, by the way, in fact we planned to do it at  
11 the last meeting but we got so caught up in this  
12 process of getting this report out that we didn't get  
13 around to it, but we will, at our next meeting,  
14 recommend to the city to place a stop sign there.

15 CHAIRPERSON GRIFFIS: There it is. Okay.

16 MR. BUCHAOLZ: I will point out, though,  
17 there's no guarantee the city will do that.

18 CHAIRPERSON GRIFFIS: No, no, no. I  
19 understand that.

20 MR. BUCHAOLZ: We asked them to do it at  
21 Morland Place, and they did not do it.

22 CHAIRPERSON GRIFFIS: Okay. Good. One  
23 last clarification question. Of course, your written  
24 submission from 34G indicates that your support of the  
25 application is based on the attached conditions, and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there are numerous conditions, one of which is the  
2 Memorandum of Understanding, which has not been  
3 signed. Does that change or can you clarify what the  
4 position is for the ANC today or was there any sort of  
5 discussion on that?

6 MR. BUCHAOLZ: There was not discussion on  
7 it.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BUCHAOLZ: However, this has been of  
10 some concern to the ANC. Could I read very quickly an  
11 e-mail I received from Commissioner Levine. "I think  
12 it is unfortunately quite clear. It was a specific  
13 expressed condition of our approval of the revised  
14 Knollwood plan that the parties reached an agreement  
15 on the five points listed -- this is so-called, I  
16 think, Condition 11 -- including the moratorium. If  
17 they fail to do so, for whatever reason, as to this  
18 condition or any of the other four of them, then the  
19 condition falls and our approval is void. Frank," me,  
20 "can only testify to that and nothing more. That is  
21 that we approve the plan on the basis of five  
22 conditions and that having failed at least one there  
23 is at present no longer any ANC approval of this  
24 particular plan."

25 CHAIRPERSON GRIFFIS: Okay.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BUCHAOLZ: Wait a minute. The problem  
2 is this: That was Commissioner Levine, and I've also  
3 had discussions with other commissioners as well.  
4 There is another viewpoint and that is --

5 CHAIRPERSON GRIFFIS: I don't know that  
6 it's pertinent to go into all the individuals'  
7 viewpoints.

8 MR. BUCHAOLZ: No, no, I'm not going to do  
9 that, sir.

10 CHAIRPERSON GRIFFIS: Actually, I'm more  
11 clarifying for my Board members. Because this is  
12 where I'm going with this: I mean we have the  
13 official letter that's written in. We have to take it  
14 on face. It says certain things, and I think we need  
15 to run with it. Unless there's some other official  
16 sanction, voted on ANC position, I think we have what  
17 we have. That's my direct question to you: Was there  
18 anything officially done with the ANC, because I don't  
19 think we need to spend a lot of time hearing e-mails  
20 back and forth of differing opinions.

21 MR. BUCHAOLZ: No. No. The only thing I  
22 was going to say was that there is a concern, though,  
23 that because of the way the MOU is written or our  
24 report is written, that either party could sabotage  
25 this.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Sure.

2 MR. BUCHAOLZ: That was never the intent  
3 of the ANC.

4 CHAIRPERSON GRIFFIS: No. And let me just  
5 step back a second, because I think the ANC has done  
6 an excellent job here in trying to really bridge a lot  
7 of the complicated issues and putting together an  
8 excellent report to us. And I think the value of it  
9 is still standing. Whether it has the full impact of  
10 support or in opposition of it, we'll deal with that.

11 I have one clarification question.  
12 Thirteen indicates the Board of Directors and Army  
13 Distaff Foundation shall provide this ANC and the BZA  
14 the date and vote of their vote on its applications.  
15 That doesn't make any sense to me. What is the  
16 application? What are these votes? What are we  
17 actually being provided?

18 MR. BUCHAOLZ: As I said, sir, we were  
19 drafting this under a great deal of pressure.

20 CHAIRPERSON GRIFFIS: That's fine.

21 MR. BUCHAOLZ: It may have well been that  
22 we made an error at that point. I know what  
23 Commissioner Beech was getting at -- he's the one who  
24 put this in -- was that basically he wants the vote of  
25 the approval of whatever they're going to be doing.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 That doesn't help, does it?

2 CHAIRPERSON GRIFFIS: Well, the approval  
3 of the Board of Directors?

4 MR. BUCHAOLZ: The approval of the Board  
5 of Directors.

6 CHAIRPERSON GRIFFIS: So you want to know  
7 what ADF actually their Board believes in this  
8 application and what they're going to do, you said,  
9 what they're going to do.

10 MR. BUCHAOLZ: Well, let me give an  
11 example. If there was a Memorandum of Understanding  
12 --

13 CHAIRPERSON GRIFFIS: Right.

14 MR. BUCHAOLZ: -- they would have to  
15 approve it.

16 CHAIRPERSON GRIFFIS: I understand. Okay.

17 MR. BUCHAOLZ: As far as we're concerned.  
18 And then they would have to give us their vote.

19 CHAIRPERSON GRIFFIS: Okay. So any other  
20 official action by ADF in regards to this application  
21 would be provided to the ANC and the BZA.

22 MR. BUCHAOLZ: That's correct, sir.

23 CHAIRPERSON GRIFFIS: Sounds --

24 MR. BUCHAOLZ: I have one last point, and  
25 I can't stress this enough, and that is concerning the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 so-called moratorium. It's in the report, it is in  
2 the letter to you, enclosed is the report. I think  
3 it's in this document five times one way or the other,  
4 and that is that there has to be some continuance of  
5 existing moratorium on construction at the facility.  
6 Now, our idea was always that the two parties agree to  
7 that.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BUCHAOLZ: So whatever the terms are  
10 probably okay with us.

11 CHAIRPERSON GRIFFIS: A moratorium on any  
12 sort of action may well step beyond the jurisdiction  
13 of this Board, so help me understand how precluding  
14 someone from doing future, undefined construction  
15 mitigates an adverse impact. What's the negative that  
16 that's trying to diminish or protect against?

17 MR. BUCHAOLZ: What's the word,  
18 unrestricted development of the site at some date, at  
19 some time in the near future.

20 CHAIRPERSON GRIFFIS: So your  
21 understanding from representing this area is that the  
22 Board would have to restrict any construction;  
23 otherwise it could become unrestricted. There are no  
24 other restrictions to what they could do except for  
25 this moratorium.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BUCHAOLZ: Well, let me give you an  
2 example for Knollwood, and that is of course the first  
3 Knollwood BZA order banned any future construction on  
4 the site.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. BUCHAOLZ: Then there were a number of  
7 others, and then we get to the 1991 order, and that  
8 banned any construction until I think it's January 31,  
9 2016, if I'm not mistaken. So there have been these  
10 things in the past.

11 Now, I have looked over what we've  
12 proposed. I've looked over what is in the Memorandum  
13 of Understanding that was circulated by Shaw Pittman.

14 There is a memorandum there -- sorry, a moratorium  
15 there. And perhaps moratorium is the wrong word, but  
16 there is this concept.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. BUCHAOLZ: And that is what we're  
19 getting at. Again, they can -- yes.

20 CHAIRPERSON GRIFFIS: You just don't want  
21 a larger facility; is that what the community is --  
22 your representation from the ANC regarding the  
23 feedback you had from the community is they just don't  
24 want it to keep growing.

25 MR. BUCHAOLZ: That's, I would say, at a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 minimum. I would say that's probably --

2 CHAIRPERSON GRIFFIS: What's the maximum?

3 (Laughter.)

4 MR. BUCHAOLZ: That they don't want any  
5 construction at all in the future.

6 CHAIRPERSON GRIFFIS: So what is the  
7 negative impact of construction? Is it the physical  
8 bulldozers, is it --

9 MR. BUCHAOLZ: Again, it is -- well, I  
10 think you should ask the neighbors that. But as far  
11 as the ANC is concerned, and from my dealing with the  
12 neighbors, it is this constant feeling that  
13 particularly after these moratorium have -- it's not  
14 that they've been violated but that they've been  
15 changed, let's put it that way --

16 CHAIRPERSON GRIFFIS: I see.

17 MR. BUCHAOLZ: -- that the facility went  
18 from the original hall to the assisted living facility  
19 and now it's going to Alzheimer's clinic plus  
20 apartments, and it seems to be constantly getting  
21 bigger every ten or 15 years.

22 CHAIRPERSON GRIFFIS: So if I understand  
23 what you're saying it's somewhat of an assurance, your  
24 understanding of the thought process. It's an  
25 assurance that things won't change or things won't

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 creep up on people.

2 MR. BUCHAOLZ: Exactly.

3 CHAIRPERSON GRIFFIS: There's a certain  
4 amount of consistency when you look across the street  
5 that you know it's always going to be there, at least  
6 till 2016 and not going to change.

7 MR. BUCHAOLZ: Plus the fact is I mean  
8 everyone takes a keen interest in Knollwood. I mean  
9 everyone likes it. And there are some marvelous trees  
10 in Knollwood that go back to the estate and it is more  
11 than sentiment; it's a real sort of love affair with a  
12 jewel of a private park, is what it is, that everybody  
13 enjoys. Have you ever been back there?

14 CHAIRPERSON GRIFFIS: No, I haven't,  
15 actually.

16 MR. BUCHAOLZ: It's worth a visit.

17 CHAIRPERSON GRIFFIS: I can't now.

18 (Laughter.)

19 CHAIRPERSON GRIFFIS: Okay. Any other  
20 questions?

21 MS. MILLER: Yes.

22 CHAIRPERSON GRIFFIS: Yes, Ms. Miller?

23 MS. MILLER: I have a comment first and  
24 then I have some questions. My comment is that the  
25 parties are free to come to mutual agreements on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 really any topic affecting this property, but our  
2 jurisdiction is limited to zoning. And I think there  
3 have been orders in the past that the Court of Appeals  
4 has said afterwards we've exceeded our jurisdiction.  
5 And so therefore what I'm saying is that if you're  
6 looking just to the past, some of those things may not  
7 be within our jurisdiction. I think there's a  
8 question as to whether or not we can impose a  
9 moratorium or not and preclude an applicant from  
10 coming forward or not. Whatever you agree to you're  
11 free.

12 CHAIRPERSON GRIFFIS: Let me clear on that  
13 and stress that strongly. I mean I think the Board  
14 absolutely applauds any sort of agreements that are  
15 reached from the community and a property owner, and  
16 what Ms. Miller is adequately saying, I think, is that  
17 however aspects of that are not appropriate for our  
18 jurisdiction and authority to go into any sort of  
19 orders. But that's something that we're going to  
20 wrestle with on this one as we have in other cases.

21 MS. MILLER: And I just -- well, I'll tell  
22 you where I'm leading to, but another category that in  
23 the past maybe the Board has imposed conditions on,  
24 such as construction. Recently, we've determined that  
25 that's not within our jurisdiction.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   And where I'm going now is that I know  
2                   some of the conditions in the ANC's letter might be  
3                   beyond our jurisdiction. And so if your position, if  
4                   the ANC's position is an all or nothing, I would throw  
5                   out the possibility that they might want to take  
6                   another look at that, given this indication from the  
7                   Board. And I'm also wondering if the ANC is going to  
8                   meeting again soon so that it might have an  
9                   opportunity to take another look.

10                   MR. BUCHAOLZ: Well, if you read carefully  
11                   what we wrote, we took that into consideration. Oddly  
12                   enough, I think I picked on a press report where the  
13                   Chair made the same comment about enforceable  
14                   conditions and the importance of enforceable  
15                   conditions. And I think wherever we have at least in  
16                   12 and in the letter there is an "or," which is  
17                   usually something along the lines of, "continuing the  
18                   existing order," which, as you suggest, may not be the  
19                   case, "or shall remain in effect until such time as a  
20                   legally enforceable means to restrict future  
21                   development of the site for a specific period of time  
22                   is devised." This was us trying to, as, no doubt, you  
23                   are trying to struggle with this concept of  
24                   restrictions but within your power to control.

25                   MS. MILLER: Well, for instance, and I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 won't dwell on this too much longer, but like on Page  
2 you talk about what's written into contracts dealing  
3 with construction. And I think it's really important  
4 and basic to the neighborhood, but it's the type of  
5 condition that we've been finding we don't have  
6 jurisdiction over. So if we don't put that condition  
7 in our order, it sounds like you don't support it the  
8 way this is written.

9 MR. BUCHAOLZ: I think our attitude, of  
10 course, is that this is of course a recommendation to  
11 you. It's not that you have carte blanche to do as  
12 you please. On the other hand, this is our best  
13 effort to help you come up with an order which makes  
14 sense, which reflects the community's concerns and  
15 which is legal. That's the basic thing. And that's  
16 what we were trying to do.

17 MS. MILLER: All right.

18 CHAIRPERSON GRIFFIS: I think it also  
19 reflects -- Ms. Miller, of course, gave an excellent  
20 point, but it also reflects the issues of which were  
21 of importance of the ANC and also some of which the  
22 Applicant has already agreed to or proposing to do in  
23 the first place.

24 MS. MILLER: Okay. Well, let me ask you  
25 this so that I make sure I understand this letter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 correctly then. There's a sentence that says that you  
2 support -- it's the first paragraph, subject to the  
3 conditions outlined in the enclosure. So does that  
4 mean that these are conditions that you think should  
5 be included, but if one is not included, you still  
6 support the application?

7 MR. BUCHAOLZ: Well, as I -- well, maybe I  
8 didn't say it. Obviously, some conditions are more  
9 important than others. And I know Condition 11 is  
10 very important to Commissioner Levine. Any condition  
11 that affects a moratorium, to the extent that you can  
12 impose a moratorium, is of course important to the  
13 Board as a whole. My favorite one is the Advisory  
14 Committee. We all have our favorite conditions, I  
15 suppose. There are obviously, though, there are  
16 conditions in here which you will recognize from other  
17 orders. I mean I did borrow heavily from other  
18 orders, so you will probably have to adapt them to  
19 more modern terminology or to whatever your line of  
20 practice is.

21 CHAIRPERSON GRIFFIS: Okay. I'll make one  
22 last point and then we're going to move on off of  
23 this. What Ms. Miller is actually saying is your  
24 Condition Number 7 says, "All dump trucks shall be  
25 covered." Nowhere in all our late night session last

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 night could we find dump trucks coverage or  
2 requirements or in the zoning regulations, nor could  
3 we figure out what in terms of a special exception  
4 relief from zoning that would mitigate. What adverse  
5 impact of the application would that mitigate. So  
6 things like that will not be in any sort of order if  
7 this goes ahead for approval.

8           However, it's very important to understand  
9 that there are clear building code regulations and  
10 other agencies and people that are responsible and  
11 have jurisdiction over that type of activity,  
12 construction activity, even hours of construction.  
13 And if you want more specifically beyond what of  
14 course other District agencies would regulate, then  
15 that's where the agreement with the owners comes into  
16 play.

17           So I think we can move on from that, and  
18 let's go on to any other questions of the ANC at this  
19 time that you have. Ms. Miller, any follow up? Any  
20 other Board members? Very well.

21           Okay. Does the Applicant have any cross  
22 examination of the ANC?

23           MR. TUMMONDS: I have one quick question,  
24 Mr. Buchaolz. With regards to the proposed building,  
25 the 22-independent living unit, 27-bed dementia unit,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is it the stance of the ANC that that building will  
2 not create adverse impacts on adjacent properties?

3 MR. BUCHAOLZ: I'd love to say something  
4 like, well, the report speaks for itself, but I think  
5 that's a quote from the report, isn't it? Do you want  
6 me to say it out loud?

7 CHAIRPERSON GRIFFIS: Yes, he does.

8 MR. BUCHAOLZ: Yes, it is the ANC position  
9 that it will not create adverse impacts on other  
10 property.

11 MR. TUMMONDS: Okay. Good. That's the  
12 only question I have.

13 CHAIRPERSON GRIFFIS: That's it? Very  
14 well. Mr. Nettler. No cross? Great. Mr. Buchaolz,  
15 thank you very much. Appreciate you being down here  
16 this afternoon and spending it with us.

17 Let us move on then -- yes, Mr. Tummonds?

18 MR. TUMMONDS: We do have one person in  
19 support, the representative of the Knollwood Residents  
20 Council, so we would ask that she is --

21 CHAIRPERSON GRIFFIS: Okay. Let's look at  
22 this: How many people are here to give testimony in  
23 support and/or opposition this afternoon? Persons?  
24 Persons? Yes, everybody, testimony. So we have about  
25 one, two, three, four, five, six, okay. Seven. Seven

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 or eight.

2 Let's move ahead then. I'm going to have  
3 the persons give testimony in support of the  
4 application. I'm then going to call persons in  
5 opposition, persons that wouldn't necessarily be  
6 called as witnesses or a participant in the case so  
7 that we can have individuals that are here that have  
8 been with us all afternoon. And then we'll  
9 conceivably look at schedule and see where we go and  
10 continue on from here.

11 With that, a very good afternoon, almost  
12 evening to you.

13 MS. KULHANEK: Good afternoon, and thank  
14 you very much.

15 CHAIRPERSON GRIFFIS: Certainly.

16 MS. KULHANEK: This has been quite an  
17 education for me, my first experience. I've learned a  
18 great --

19 CHAIRPERSON GRIFFIS: I'm glad education  
20 will fit into that.

21 MS. KULHANEK: I've learned a great deal.  
22 I'm Ethel Kulhanek.

23 CHAIRPERSON GRIFFIS: Yes.

24 MS. KULHANEK: I live at Knollwood, 6200  
25 Oregon Avenue. I'm President of the Knollwood

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Residents Association. I would like to also say that  
2 I have two of my Board members here, and that is Joan  
3 Enie and Mary Wilson.

4 Our Board is in strong support of what I  
5 am about to say. We represent the feelings of  
6 definitely three-quarters of the people living there.

7 I'm sorry, I've lost my voice.

8 I sent a letter to you on, let's see, it  
9 was on the 7th of January, addressed to you and to the  
10 BZA Board members. It's a long time ago and that's  
11 why I thought I would bring a couple points up as a  
12 result.

13 CHAIRPERSON GRIFFIS: An excellent idea.

14 MS. KULHANEK: Number one was the fact  
15 that we -- we, the residents -- strongly support the  
16 application adding the Alzheimer's dementia unit  
17 project that has the support of the majority of the  
18 residents who are living there -- the majority meaning  
19 all three areas.

20 Knollwood is our home. We're all very  
21 much interested in the joy that we take in its beauty,  
22 in its surroundings. It's our campus. We would never  
23 do anything that would in any way, shape or form hurt  
24 our own home property, and I'd like to make that very  
25 clear.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           We, too, will go through the stress during  
2 the building project; we've discussed it. We've just  
3 gone through some changes updating us in our home.  
4 But we figure it's worth it, and so we're going along  
5 and supporting it totally, even though we know that  
6 we're going to have a lot of changes made that we may  
7 have to be up a little later or -- everybody knows  
8 what building is like. And we're ready to work with  
9 that.

10           Now, as far as our relations to the  
11 neighborhood is concerned, we have had outstanding  
12 relationships with the neighborhood. Their children  
13 ski on our slopes. They'll lose a little part of the  
14 slope now, unfortunately, because we have to use that  
15 to put the parking. But it's such fun for us to watch  
16 those kids. This is bringing us closer to the young  
17 people, and it gives us great joy to do that.

18           What they do in return, which is equally  
19 joyous, they come in costumes to us on --

20           CHAIRPERSON GRIFFIS: Halloween?

21           MS. KULHANEK: -- a holiday just coming  
22 up, Halloween. They come in costumes, they sing to  
23 us. The first time they came, we offered to give them  
24 some refreshment. No, no, no, they brought their own  
25 refreshments. From that point on, we're doing the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 refreshments. It is just a very joyous -- this is the  
2 sort of thing we've had. We've had no problems at  
3 all.

4 And that's why I can't understand some of  
5 this, because there's been such a wonderful -- they  
6 walk their dogs on our paths. They're free to come in  
7 and be welcome. It just doesn't make sense to me.

8 Anyhow, we're urging you to support our  
9 application to the Alzheimer's unit. Thank you.

10 CHAIRPERSON GRIFFIS: Thank you very much.  
11 Before you go too far, are there any questions from  
12 the Board? Any cross? Mr. Tummonds? ANC? Very  
13 well. Thank you very much.

14 MS. KULHANEK: Thank you.

15 CHAIRPERSON GRIFFIS: We appreciate you  
16 being down here all afternoon with us.

17 Let's go -- is there any other persons to  
18 give testimony in support? If not, we have persons in  
19 opposition that want to give testimony? Why don't we  
20 fill the table, or not? Persons, not parties.  
21 Persons? Anyone else that's going to give testimony  
22 this afternoon. Is that all? Last call. Support?  
23 Opposition? Neutral? A good joke for this afternoon?

24 (Laughter.)

25 MS. GOODSELL: Don't I wish.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Okay.

2 MS. GOODSSELL: Yes. My name is Mary  
3 Goodsell, and I'm a resident at Knollwood also, and I  
4 speak in opposition. That's the right of the American  
5 people.

6 CHAIRPERSON GRIFFIS: Exactly.

7 MS. GOODSSELL: The majority rules but the  
8 minority has a right to be heard. Okay. I've said  
9 that many times, and when I say it at home, they say,  
10 "Sit down, Colonel Goodsell and be quiet."

11 So, anyhow, moving right along, I am  
12 opposed to the expansion project, because I don't feel  
13 that we're managing what we have. When we manage what  
14 we have and they show me that things are moving along  
15 and they're ready to expand, I'll support it.

16 Our bylaws require that -- well, here it  
17 is. The objectives of our bylaws are to promote the  
18 welfare and enhance the living conditions of Knollwood  
19 residents by serving as a conduit for the exchange of  
20 information among the residents association, the  
21 Knollwood Administration and the Army Distaff  
22 Foundation. We have not been -- as residents, we have  
23 not been updated on these plans since last August when  
24 there was a meeting of the neighbors and that was  
25 under the old plan.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 I heard about this new parking business  
2 when we went to the Advisory Neighborhood Council. We  
3 have not been informed as to what's going on on the  
4 plans. Our bylaws require that we are informed. This  
5 is one of the things that I am most concerned about.

6 One report that we got back was we're  
7 looking at how our architects can appease the  
8 neighbors. The neighbors have calmed down, but we  
9 will go forward as perceived as caring neighbors.  
10 Well, that's not a joke.

11 I came here from California. Knollwood is  
12 beautiful. It's 16 acres, it's a got a Washington,  
13 D.C. address and a rural setting. What more can you  
14 ask? It is a lovely spot. I knew Mrs. Taylor and  
15 this was her dream. This was her vision, and it  
16 worked. She was worried about it before she passed  
17 on.

18 But, anyhow, one of our residents in the  
19 ALU has escaped. He lost his way. He doesn't know  
20 where he is most of the time. He escaped four times  
21 in the last month. I brought him home once, the  
22 police brought him home once. When we get to the  
23 point where we're managing what we have, then I will  
24 support the expansion project. And it's late, and I  
25 will write you a letter with more if you would like.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Any questions?

2 CHAIRPERSON GRIFFIS: Absolutely. By all  
3 means, feel free to put your testimony in writing, and  
4 you can submit it into the record. We'll let you know  
5 at the end when we might decide this if we set it for  
6 that. Any questions from the Board? Any cross from  
7 the ANC? Applicant? Mr. Nettler? Very well. Thank  
8 you very much.

9 MS. GOODSELL: Thank you.

10 CHAIRPERSON GRIFFIS: We appreciate you  
11 being here.

12 MS. GOODSELL: Incidentally, it's going to  
13 be hard to live there now. If you find my body in a  
14 ditch --

15 (Laughter.)

16 CHAIRPERSON GRIFFIS: Yes, sir.

17 MR. ARNOLD: Good afternoon. My name is  
18 Clifford Arnold. I'm a neighbor. I live at 6315 29th  
19 Place in the neighborhood, at the end of the cul-de-  
20 sac near the top of that picture. I'd point out my  
21 house but I don't think it's actually in the picture.

22 I have two points I would like to make. I'm not  
23 sure if there will be enough time to make them both,  
24 so I'll start with the one that's more important to  
25 me, and that is what we've been calling this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 moratorium. I'm not sure if I'm accurately  
2 representing the view of the neighborhood or the  
3 party, and you may hear more of this later, but I  
4 heard stuff that seems so much off the point of what I  
5 thought the agreement was that I'd like to make a  
6 point about it.

7 CHAIRPERSON GRIFFIS: That's exactly what  
8 you should be doing now, just make the point that's  
9 important to you.

10 MR. ARNOLD: Thank you. It seems to me  
11 that we're not -- I didn't think we were intending to  
12 be asking for the BZA to extend the moratorium. I  
13 thin the history already shows that the BZA enforcing  
14 a moratorium may not be particularly valid because  
15 it's been broken more than once already. In fact,  
16 what I thought we were doing was asking for a contract  
17 with Knollwood that agreed to stop additional  
18 expansion or development as a trade for us being very  
19 cooperative with this particular expansion. In other  
20 words, this expansion is contingent on their good  
21 faith contract to stop with this one. And that you  
22 understand not that we're asking you to enforce the  
23 contract or create an extension but that you realize  
24 that we're really only agreeing to this extension if  
25 we realize it's the last one.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   And the reason why I personally would  
2 propose that I think that's appropriate is basically  
3 in the form of a question. And that is at what point  
4 does it become clear that the expansion's gone too  
5 far? This is an area that is zoned R1A. Typically, I  
6 believe the zoning laws say five to six residents per  
7 acre, low-density residential neighborhood. If you  
8 were to walk the premises as they are now, there are  
9 areas where you'd say, "Oh, my, this does not look  
10 like a construction site characteristic of such a  
11 neighborhood."

12                   Yet they're going to extend it. They've  
13 shown you, frankly, some very good reasons to extend  
14 it, things that we sympathize with. Their first  
15 proposal to extend it we thought was outrageous, and  
16 only under threat of them not getting it, in my  
17 opinion, did they look at mediation. It was a hard  
18 tussle just to get them into mediation. And once we  
19 finally did, you've seen, and they've talked about,  
20 dramatic changes to their plan.

21                   I think if they had built what they  
22 originally wanted, it would have been unfortunate, and  
23 I think one of the reasons the neighborhood fought so  
24 hard -- I'm not a long-term member of the  
25 neighborhood, I don't know what happened the last time

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 around, but my personal opinion, based on walking the  
2 property, the last time around the negotiation wasn't  
3 hard enough. The property, especially from Stevenson  
4 and Nebraska, does not look like residential  
5 neighborhood to me at all.

6 So that's my one point. And if you'll  
7 allow me the second point --

8 CHAIRPERSON GRIFFIS: Very briefly.

9 MR. ARNOLD: -- the turn onto Tennyson,  
10 the right turn onto Tennyson, personally, I think  
11 there's an oversight in this. I think the idea is  
12 cracked for the following reason. I've driven, since  
13 I live in the neighborhood, that turn, both right and  
14 left turn, from Tennyson onto Oregon. I've also  
15 turned it out of Knollwood recently. It's actually an  
16 easier exit out of Knollwood than it is out of  
17 Tennyson.

18 The reason you haven't heard yet is that  
19 in addition to the rise up to Tennyson from the south,  
20 in the other direction there's just as steep a fall-  
21 off. And so in fact I don't know if Knollwood  
22 residents have tried that turn. It's actually quite a  
23 hard one. And it's my opinion that if you put the  
24 stop sign that's been discussed, which would certainly  
25 help their proposal, I believe it would help their

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 proposal for their existing exit as much as it would  
2 for their new proposed exit. And in fact I would  
3 suggest that they would probably be safer exiting from  
4 their existing exit. That's my personal opinion.

5 CHAIRPERSON GRIFFIS: I see. Excellent.  
6 Thank you very much. Just to follow-up on that then,  
7 but a stop sign at the Tennyson you think might be a  
8 good idea and might make in fact the existing exit and  
9 entrance even more safe.

10 MR. ARNOLD: In my opinion, yes.

11 CHAIRPERSON GRIFFIS: Okay. Good. Let's  
12 go back very briefly in terms of the density  
13 regulation that you spoke of in referring to this  
14 area, and it was a person per acre or five people per  
15 acre.

16 MR. ARNOLD: I said five -- the rule of  
17 7,500 square feet per residence works out to five to  
18 six homes per acre.

19 CHAIRPERSON GRIFFIS: Okay. And where is  
20 that from?

21 MR. ARNOLD: The acre is 43,500 square  
22 feet per acre --

23 CHAIRPERSON GRIFFIS: Oh, I see. So  
24 you're taking actually the residence and dividing it  
25 into the site dimension and getting a population or a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 density?

2 MR. ARNOLD: No. I'm not talking about  
3 the site dimension for Knollwood. I'm just saying  
4 that the general density for R1A residential  
5 communities is about five to six homes per acre. If  
6 you do the math --

7 CHAIRPERSON GRIFFIS: I'm not sure what  
8 math, but I'm not going to belabor this too much. My  
9 limited familiarity with the zoning regulations in  
10 fact does not regulate density that way in the R1 or  
11 any of the R districts. It in fact goes to lot  
12 occupancy, it goes to height of building, it goes to  
13 minimum lot dimensions and size.

14 MR. ARNOLD: Right. Yes. There's a long  
15 list of things that talk about sort of the spirit of  
16 what is the residential R1A: Signage, antennas.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. ARNOLD: One of them is the size, the  
19 minimum size of the residential lot is to be 7,500  
20 square feet.

21 CHAIRPERSON GRIFFIS: Right. I see. So  
22 that's where your 7,500 is coming from.

23 MR. ARNOLD: That's right. The minimum  
24 lot size is 7,500 square feet.

25 CHAIRPERSON GRIFFIS: Excellent. And this

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 lot size is?

2 MR. ARNOLD: The Knollwood lot size? I  
3 heard someone else today say 16 acres. I mean if they  
4 wanted to break it up into single residencies, I'm  
5 sure it would probably justify more than 300 people.  
6 I'm not arguing that point.

7 CHAIRPERSON GRIFFIS: Right. Okay. I  
8 just wanted to figure out where -- the end point you  
9 were making.

10 MR. ARNOLD: I'm just trying to give a  
11 spirit for the idea of the density of the residential  
12 community.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. ARNOLD: Now you've got a large  
15 building in the middle of a residential community.

16 CHAIRPERSON GRIFFIS: I see.

17 MR. ARNOLD: Look at the size of the  
18 building, look at the homes around and the density of  
19 the homes and imagine the building getting larger. At  
20 what point does it outstrip the appropriate  
21 residential neighborhood feeling? That's all I'm  
22 saying.

23 CHAIRPERSON GRIFFIS: Excellent point.  
24 Other questions from the Board?

25 MS. MILLER: I'm not sure how to phrase

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this, but I hear what you're saying about the  
2 moratorium and I think that you're approaching it  
3 appropriately, that if it's going to be addressed  
4 anywhere, it would be addressed in a contract between  
5 neighbors or a neighbor and the facility and enforced  
6 outside of the BZA.

7 But I just -- you're speaking for  
8 yourself, right?

9 MR. ARNOLD: Yes.

10 MS. MILLER: Okay. I'm asking your  
11 opinion. For you, it sounded like if that doesn't  
12 happen, if you don't come to a contract or an  
13 agreement, you don't support the facility; is that  
14 correct?

15 MR. ARNOLD: That's correct. And the  
16 reason is it frankly is an issue of the extent of good  
17 faith that we've seen, or lack of it.

18 MS. MILLER: Okay. Let me ask you this  
19 then: Are you involved in the negotiations?

20 MR. ARNOLD: I read the e-mails, I keep up  
21 with them, but I'm not part of the party.

22 MS. MILLER: Okay. And I think the  
23 Applicant will probably address this, but it doesn't  
24 sound to me as if they, on the other hand, would be  
25 saying, "Okay. Well, if we don't come to that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 agreement," which it sounds like they don't want to,  
2 "then forget all the other conditions." All or  
3 nothing on the other side.

4 MR. ARNOLD: Well, what happens, I think,  
5 is it becomes sort of a negotiating posture versus  
6 risk, okay? How much will they ask for that you might  
7 agree to, okay? And I think the current negotiation  
8 has been very promising, frankly. There's been a lot  
9 of movement on both sides.

10 MS. MILLER: And I may be -- we're not  
11 really to be involved in that.

12 MR. ARNOLD: But the point is that without  
13 some kind of contract that seals the deal, then after  
14 this is all done, what has really been negotiated?  
15 What did we get for our cooperation to allow this to  
16 happen? Our notion was that they're asking for so  
17 much, we ought to get something, and the something is  
18 a contract that says that's it. And if they're not  
19 ready to sign it, then, in my opinion, we wait until  
20 they are. And you can enforce that by saying, "Well,  
21 we haven't seen the good faith on your side. We're  
22 going to put this on the table until you sign a  
23 contract with that neighborhood."

24 MS. MILLER: Okay. I have just one other  
25 question and just a quick response. I understand that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that issue is very important to you, and that's really  
2 not within our jurisdiction. These other conditions  
3 that are presented to us, many of which are within our  
4 jurisdiction, I just want -- how important are they to  
5 you?

6 MR. ARNOLD: For me, personally, I would  
7 like to see the exit onto Tennyson removed.

8 MS. MILLER: That's the most important  
9 one. Okay. Thank you.

10 MR. ARNOLD: Based on where I live, if you  
11 look at it, I think you can see why. But I'd like to  
12 say I support all the other neighbors, and if there  
13 were something that they felt strongly about, I'd like  
14 to go to bat for them.

15 MS. MILLER: But for you, you're speaking  
16 for -- and the reason that condition is so important  
17 to you with respect to the Tennyson exit being removed  
18 is?

19 MR. ARNOLD: Well, I think it opens up a  
20 whole visual connection to Knollwood that is currently  
21 blocked by a berm and large trees. Frankly, the  
22 traffic is not the issue to me.

23 MS. MILLER: It's the visual.

24 MR. ARNOLD: Yes.

25 MS. MILLER: Okay. Thank you very much.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Thank you very much.  
2 Okay. Have we exhausted everyone, persons here to  
3 give testimony that have sat with us now for five  
4 hours, or six? Very well.

5 Mr. Nettler, are you prepared to move  
6 forward tonight? Excellent. Let's move ahead then.  
7 We have the case presentation of the opposition. This  
8 is what I anticipate at this point; that is, after  
9 this and then we'll do cross examination. We would  
10 then end for the evening and set a time of which we  
11 will have closings -- any sort of rebuttal and then  
12 closings, which, obviously, is easier to fit in on our  
13 schedule. So while they are presenting, we will start  
14 grabbing some dates and see what works.

15 MR. NETTLER: Good evening. My name is  
16 Richard Nettler. I represent the Knollwood Neighbors.  
17 I'm going to be very brief aside from I'm cold. We  
18 have a presentation that I'd like to get to but I did  
19 want to address a couple of the issues raised by the  
20 Applicant particularly in terms of the reference  
21 before in terms of the independent living situation  
22 and the conditions that have been discussed as well.  
23 And you'll hear more about that from the neighbors  
24 themselves.

25 With regard to the independent living

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 situation and what this Board has done in the past and  
2 what the regulations say, I would direct your  
3 attention to the definition of a community residence  
4 facility and you'll hear more of that from Mr. Scallet  
5 in terms of how it's defined and how this Board has  
6 looked at what has been proposed for this site. I  
7 would say that both the decisions that have been  
8 rendered by the Board with this particular Applicant  
9 in the past and the facts or circumstances upon which  
10 those decisions were made are completely different  
11 from what is being presented with regard to the 22  
12 independent living units that are being proposed here.

13 They are not community residence  
14 facilities. There is no community residence facility  
15 license that the Applicant has for what are some of  
16 what they characterize as independent living  
17 facilities right now. They have as you will hear  
18 licenses and as you've heard from them, licenses for  
19 some of the other buildings on this site. They have  
20 also an apartment license and that is an apartment  
21 license because there is a component of this thing  
22 that has morphed into an apartment and that is what  
23 they are asking to do now is to have an apartment  
24 component to this that is significantly different than  
25 what the definition is of the community residence

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 facility.

2           The two Board decisions that they also  
3 rely on the Presbyterian Home, neither the decision if  
4 you read the language of the decision and the facts  
5 that were presented or not presented in that case are  
6 consistent with this either. The same is true with  
7 Ingleside. I also should note that notwithstanding  
8 that none of those cases were ever appealed to the  
9 Court of Appeals and I don't believe the facts are as  
10 you will see from the transcript that we've provided  
11 for even for the Army Distaff site are comparable to  
12 what is being proposed here.

13           Secondly, with regard to the conditions  
14 that you've been questioning some of the more recent  
15 individuals about, as you know, there is a distinction  
16 and the Court has made clear that there are  
17 distinctions between conditions that are imposed for  
18 variances or what you cannot impose on variances,  
19 special exceptions and condition which the Court say  
20 are legitimate and there are also situations and the  
21 court has recognized this in which the parties have  
22 come together. Sometimes it's been the District of  
23 Columbia government in a different context with an  
24 applicant in the PUD situation or sometimes in a  
25 special exception situation which the Court has also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 recognized as conditions which are legitimate because  
2 they have been agreed upon by other parties.

3           They are not contract zoning in the sense  
4 that your approval is conditioned upon them, but they  
5 are conditions that are entitled to be enforced  
6 because the parties have agreed to them rather than  
7 you imposing them on them. Also as I think the Chair  
8 has correctly recognized, conditions that are intended  
9 to address circumstances that could have an adverse  
10 impact or has a potential for having an adverse impact  
11 that may not be fully mitigated by what the Applicant  
12 is presenting in a special exception situation can  
13 also be the subject of conditions. Conditions that  
14 impose a moratorium have been accepted by courts as  
15 legitimate conditions in a zoning context for a  
16 special exception situation.

17           Here as I think others have testified to  
18 just recently, as the other gentleman testified to,  
19 this is not just an issues of traffic and as I think  
20 you'll hear, it's not overriding issue here. There  
21 are issues of the sense of place, the visual aspect of  
22 what this site has presented over the years, the trees  
23 that are in this area. It is very close to Rock Creek  
24 Park and so development on one part of it while it may  
25 not be adjacent to Rock Creek Park, it ultimately has

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 an impact on the park because of the additional  
2 impervious surfaces and the runoff as occasioned by  
3 that. And how that ultimately impacts the streams and  
4 the rivers that the District has and has an obligation  
5 to protect.

6 So there are aspects to the type of  
7 development that goes on here that the community is  
8 trying to protect against that does have adverse  
9 consequences. And the lack of development is a way of  
10 trying to hold back those adverse consequences.

11 When the Board of Zoning Adjustment first  
12 granted a special exception, not under Section 218,  
13 but first granted a special exception, it certainly  
14 envisioned and put a restriction on any further  
15 development. It did so because it understood from the  
16 opposition that it was considering that the park-like  
17 setting here, the rural setting that others have  
18 talked about as important to them as residents of it,  
19 needed to be protected and it envisioned a subsequent  
20 Board of Zoning Adjustment as doing that. It wouldn't  
21 have put that in there if it didn't think that some  
22 subsequent members of the Board of Zoning Adjustment  
23 would enforce that.

24 Similarly when the Board didn't and  
25 instead was agreeable to a 25 year moratorium that was

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 agreed to between the parties in return for  
2 withdrawing opposition to what was being proposed 14  
3 years ago or 12 or 13 years ago, that Board certainly  
4 anticipated that as well and it was doing so again to  
5 protect against the adverse consequences that it felt  
6 from continued expansion here.

7 While it's now recognized in these  
8 negotiations by the parties here that we have our  
9 independent obligation to make sure that we have a  
10 contractual relationship so that we can also enforce  
11 that type of a moratorium, that doesn't mean that that  
12 takes away from our belief that the moratorium that  
13 was put into effect in the previous order should not  
14 be dissipated merely because the Applicant has decided  
15 it wants to do something different. It wants to do  
16 something more even though there are components of  
17 this things that we support such as the Alzheimer's  
18 unit here.

19 We will, as the last individual said,  
20 hopefully continue to try and have a contractual  
21 agreement that will provide us with the opportunity to  
22 enforce what we would have thought the Board of Zoning  
23 Adjustment would be enforcing. But at this point, we  
24 are here to deal with what's before you today, the  
25 conditions that have been suggested by the ANC and our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 response to this application that's before you. As  
2 having said that, I will turn it over to Mr. Scallet.

3 MR. SCALLET: My name is Ted Scallet.

4 CHAIRPERSON GRIFFIS: Before you do that,  
5 we'll get the technicals down. Let's just stress and  
6 hopefully you don't mind just hitting the clock for a  
7 second. We're going to tell some questions, Mr.  
8 Nettler, because you're touching upon a couple of  
9 legal issues. Let me start with the beginning. So  
10 how would you see the Board enforcing the moratorium,  
11 not accepting an application?

12 MR. NETTLER: Correct. Absolutely and  
13 deny the application.

14 CHAIRPERSON GRIFFIS: Okay. So we would  
15 kick it out, deny it without hearing it. They would  
16 be precluded from putting an application in. Okay. I  
17 don't disagree with your assessment of conditions and  
18 the availability of the jurisdiction especially those  
19 that are proffered between an applicant or a party and  
20 such. However, there is still, and I think the most  
21 important thing that this Board has done, is looked  
22 at the condition that are in some frame of mind  
23 measurable so that you know what they are, they are  
24 understandable, so we all know what we're playing with  
25 here, and then they have to be enforceable based on

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that.

2 What's happened, I think, too often is  
3 that we're after condition things that go well beyond  
4 our jurisdiction of enforcability and they actually  
5 are into other agency's jurisdiction. So even if you  
6 wanted us to enforce it, even if you wanted us to take  
7 control, it would be probably more cumbersome and  
8 difficult to do it. I think we've pontificated.

9 MR. NETTLER: I don't disagree with you  
10 about that. I think you're right. I just don't think  
11 that this particular condition is the one that fits  
12 within that.

13 CHAIRPERSON GRIFFIS: Right. And that's  
14 fine. I understand that. I don't think that the  
15 Board has a consensus. I imagine we're all differing  
16 opinions on it, but that's what we're wrestling with  
17 in that sense. Did you have another quick question?

18 COMMISSIONER MILLER: Yes. I just have a  
19 ?-

20 MR. NETTLER: Let me just for the  
21 response. In other circumstances where there's been a  
22 similar condition, there have been those applicants  
23 who have been subjected to that condition have looked  
24 for alternative ways of dealing with the restriction  
25 that has been placed upon them and I'll give you an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 example, if I can for this cold is probably hurting my  
2 memory on this.

3 But fairly recently over the last two  
4 years in response to condition that the Board of  
5 Zoning Adjustment placed on a property in the Woodley  
6 Park area, a significant large property which it  
7 granted a special exception for a facility there, put  
8 a condition on it which required them to, the  
9 neighbors of the property actually had the right to  
10 step in and take control of that property if they were  
11 going to expand the use or intensify the use in a way  
12 that was inconsistent with that. And the neighbors  
13 did. They stepped in, took control of it and enforced  
14 that condition and ended up with the property being  
15 preserved and being turned into no longer a special  
16 exception property, but being turned into a  
17 residential property.

18 There are conditions that do work and that  
19 parties do respond to and in the face of them live up  
20 to and try and work out with the neighbors the things  
21 that they've agreed to, alternatives. Actually Shaw  
22 Pittman represented those parties with me in that  
23 matter, but this is a type of condition that does work  
24 and it does force people to look at alternative ways  
25 of trying to reach the same type of means, population,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 who they are trying to support.

2 CHAIRPERSON GRIFFIS: Right. Understood.

3 COMMISSIONER MILLER: Okay. I just have a  
4 few follow-up questions. Based on that moratorium  
5 type of condition though, isn't it true that BZA can  
6 modify conditions of a previous BZA order?

7 MR. NETTLER: Absolutely.

8 COMMISSIONER MILLER: So, but you could  
9 put in a moratorium condition, but in the future it  
10 could be removed by a future BZA.

11 MR. NETTLER: That's correct. It could be  
12 removed and I think you have to go a little bit  
13 further than merely saying that it's just another  
14 application for a special exception. When the court  
15 has looked at for example a planned unit development,  
16 covenant on a planned unit development and when you  
17 modify those covenants that may be applicable to a  
18 planned unit development, it has required the Zoning  
19 Commission to look at it as if the request that has  
20 come in to modify that is you start over as if it's  
21 new in terms of addressing all the implications of  
22 that project as if the conditions don't exist anymore  
23 as a way of trying to address that modification.

24 Other courts have looked at special  
25 exception conditions and have applied somewhat of a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 different criteria than in the PUD context as to what  
2 you can do in terms of changed conditions that would  
3 warrant you to modify a condition certainly and the  
4 type of condition that you would be warranting and  
5 modifying.

6 COMMISSIONER MILLER: Okay. To save time  
7 then, I would ask and I'm sure this wouldn't surprise  
8 you if you could submit cites to those Court of  
9 Appeals cases that (1) provide for conditions being  
10 imposed with respect to moratorium and Zoning cases,  
11 you said and then (2) the other one was where the  
12 court held that conditions were legitimate because the  
13 parties had agreed upon them even if they were beyond  
14 the BZA's jurisdiction.

15 MR. NETTLER: Well, it wasn't in the  
16 context of whether it goes beyond the BZA's condition.  
17 It was in the context that the Zoning authority, in  
18 this case the Zoning Commission, would have the  
19 authority to impose those conditions because they were  
20 agreed upon by other parties. Do you understand?

21 COMMISSIONER MILLER: Well, for whatever  
22 they're worth, you can submit and we'll look at them  
23 and see how relevant they are.

24 MR. NETTLER: As opposed to the Zoning  
25 Commission being able to have imposed those conditions

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 themselves which would have amounted to a contract  
2 zoning in the way it was being looked at. It was in  
3 return for a change in zoning.

4 COMMISSIONER MILLER: Okay. And my last  
5 question is a factual one. You make a reference to  
6 this facility's current independent living residence  
7 as having apartment licenses?

8 MR. NETTLER: Yes, we're going to bring  
9 that up.

10 COMMISSIONER MILLER: Okay. So that will  
11 be coming into the record?

12 MR. NETTLER: Yes.

13 COMMISSIONER MILLER: Thank you.

14 CHAIRPERSON GRIFFIS: Okay. Let's go  
15 ahead then.

16 MR. SCALLET: My name is Ted Scallet. I  
17 live at 2756 Stevenson Lane, Washington, D.C. I'm  
18 here on behalf of Knollwood Neighbors. A week ago  
19 yesterday, I appeared before the ANC on behalf of  
20 Knollwood Neighbors. I was speaking not so much to  
21 the ANC or even to Knollwood. I was speaking to my  
22 neighbors and I was trying to convince them in the  
23 face of ever-increasing opposition and distrust from  
24 my neighbors that they ought to accept the deal that I  
25 and several other of my colleagues, my neighbors, had

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 received with Knollwood.

2           It was a deal that had been put together  
3 for several months. We were working on deals, but the  
4 major parts of that deal were all in place and I tried  
5 to convince my neighbors that it was a good deal.  
6 Every question kind of pushed me further and further  
7 out on the limb, but we stuck to it. I and the people  
8 that are here today with representing Knollwood  
9 Neighbors in the face of really more opposition I  
10 think than we thought we would get from our neighbors.

11           Last Friday at 5:00 p.m., the limb got  
12 sawed off behind us by Knollwood which proposed a  
13 memorandum of understanding, changes to a memorandum  
14 of understanding, for the first time, the very first  
15 time that Knollwood had actually proposed conditions,  
16 anything different, from the negotiations that we had  
17 been talking about for three months and they do so in  
18 several very important places.

19           Here is the deal that was agreed to three  
20 months ago or more. Knollwood had 14 alternatives to  
21 build. They didn't talk about that here today, but I  
22 think it's in their papers that they had 14  
23 alternatives. They rejected 13 of them. All 13 of  
24 those alternatives are more preferable to the  
25 neighbors than the one they selected, all 13. The

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 reason is simple, because the 14th alternative is to  
2 build this building in our front yards and in our  
3 backyards.

4 As you can see, Knollwood is a very large  
5 campus. This building is being built in the place in  
6 the campus, the single place, on this property where  
7 it has the maximum adverse impact on the neighbors.  
8 The single worst place on this 14 acre or 16 acre  
9 property with respect to adverse impact on the  
10 neighbors.

11 We broke the log jam. The neighbors broke  
12 the log jam over this project about three or four  
13 months ago when we agreed to allow and to support  
14 before you and the ANC the building of an Alzheimer's  
15 wing including some apartments in exchange for four  
16 very important concepts and very important commitments  
17 on the part of Knollwood, all of which they agreed to  
18 three/four months ago.

19 1. Siting only on the paved areas to  
20 protect the berm and the forest buffer. It's repeated  
21 in their submission that they sited the building on  
22 the paved areas. They sited the building on the paved  
23 areas, but they are insisting on building a wall  
24 around the building which impinges on the berm and on  
25 the forest and you will hear that the landscaping to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 screen the building cannot be done effectively if they  
2 impinge on the berm at the corner that we're going to  
3 discuss and we'll have some testimony about that.  
4 Their insistence on building outside the paved areas  
5 is jeopardizing trees and is jeopardizing the ability  
6 to landscape and screen this building.

7           2. From the very beginning, there was  
8 never any discussion of any condition with respect to  
9 the Tennyson Road exit other than it would be for  
10 emergency vehicles. There was never discussion of  
11 having residents use that exit until Friday afternoon  
12 at 4:00 p.m. it shows up in their counterproposal. I  
13 misspoke. There was a discussion about two days  
14 before when we met with Colonel Moss and he said that  
15 that might be an issue that they want to bring up at  
16 the very last minute. That was contrary to the  
17 agreements that we had made in the past.

18           3. A significant extension of the  
19 existing moratorium, we're going to hear a lot about  
20 the moratorium. This is a matter of good faith. We  
21 see the moratorium, and we'll have some discussion  
22 about this, as a good faith compromise entered into by  
23 three parties.

24           Knollwood, the neighbors and the BZA all  
25 agreed to this moratorium as a condition and as a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 condition to our support in 1991. You have to  
2 understand. We supported Knollwood in 1991 because we  
3 got their word that they would not build on this  
4 property for 25 years. This is a matter of commitment  
5 and faith and integrity from our standpoint.

6 With me today and people who are going to  
7 speak today, on my left is Larry Fencer. He's the  
8 President of Knollwood Neighbors. Every neighbor  
9 other than two houses, I believe, that we did not get  
10 any response from in the neighborhood, it's 150 people  
11 all together, are opposed. That is the last time we  
12 polled. They are opposed to the project.

13 The specific issues that Larry as  
14 President of Knollwood Neighbors is going to address.

15 He's going to talk about the siting issue and this  
16 impingement on the berm which we have been trying to  
17 prevent and which we thought we'd had agreement, the  
18 impact on screening and the effectiveness of the  
19 screening and he's going to have with him Mr. Keith  
20 Pitchford who is an arborist and we will submit his  
21 expert testimony with respect to why Knollwood's  
22 insistence on siting this building outside the paved  
23 areas contrary to the agreement they made jeopardizes  
24 the ability to do an effective landscaping screen.

25 We will also hear from Bob Diamond. He's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on my left. Bob is a former ANC Commissioner. He had  
2 just finished his term in 1991 and was instrumental in  
3 making this deal with Knollwood. He led and convinced  
4 neighbors such as myself, I've lived in that house for  
5 more than 20 years, to support Knollwood and the  
6 assisted living wing largely on the basis of their  
7 commitment, their word, that they would not seek  
8 further building for 25 years. He will discuss that.

9 Finally, on my left, John Wimberly, behind  
10 me actually. He is a neighbor. He's also the pastor  
11 of the Western Presbyterian Church. John has been  
12 before the BZA. He's been in Knollwood's position.  
13 He had devoted a lot of his career to the elderly,  
14 helping the elderly, serving the elderly in his  
15 congregation and as a community leader. He knows what  
16 a successful mediation process is like. He knows what  
17 good faith and mediation is. He's going to talk about  
18 what we feel is at stake here for the neighbors, for  
19 Knollwood and the BZA.

20 You know we took a chance. We read the  
21 newspapers too and the neighborhoods around seems to  
22 take the position that if someone in their  
23 neighborhood wants to do something thing, it's  
24 scorched earth policy. It's oppose, oppose, oppose  
25 until you absolutely can't oppose anymore. We took

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 another path here. Despite our experience in 1991  
2 where we really feel betrayed that Knollwood is back,  
3 we decided that we would negotiate. We did not want  
4 bad relationships with our neighbors. We wanted to  
5 negotiate in good faith.

6 I cannot overstate the degree of anger  
7 amongst us who put ourselves on the line to negotiate  
8 this agreement and to get at 4:00 p.m. on a Friday  
9 afternoon things that are significantly different from  
10 agreements we thought had been made. Frankly, I don't  
11 see why any neighborhood in this city is going to  
12 engage in a mediation negotiation process if the BZA  
13 is not going to back them.

14 That's what happened at the ANC. When we  
15 described the importance of the mediation what you see  
16 in the ANC's report is nothing less than an  
17 endorsement of a process that it's important that if  
18 you're going to build this kind of building people  
19 ought to come together and agree. I'm afraid that if  
20 this application is shoved down our throats on the  
21 basis of what we consider to be going back on  
22 commitments that were made to us, you're going to send  
23 a clear signal to the neighborhoods all around this  
24 city that negotiation and compromise is not the way to  
25 go.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1                   I want to speak before Larry gets up here  
2 briefly on this whole community facility. Community  
3 residence facility has an actual definition. Well,  
4 first of all, let's start with what an apartment house  
5 is. I think this is important. An apartment house is  
6 any building or part of a building, or part of a  
7 building, and our position has always been that we  
8 want to work with Knollwood to build the Alzheimer's  
9 wing. Many of us have had situations in our own  
10 families with this disease and we are very  
11 sympathetic, but the apartments are totally different.  
12 That's what I want to speak to.

13                   Let's talk about an apartment house. An  
14 apartment house is any building or part of a building.

15                   So the question is "Are these 22 independent living  
16 units being used as an apartment or a community  
17 residence facility?" Here is what a community  
18 residence facility requires and I have bolded and  
19 italicized the language that I think is important. *It*  
20 *is a facility provides safe, hygienic, sheltered*  
21 *living arrangements. In order to be a community*  
22 *residence facility, you must have sheltered living*  
23 *arrangements.* That means that the 22 independent  
24 living units that are proposed to be built here must  
25 be sheltered living arrangements.

**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           They are somewhat defined down below and  
2 that is in bolded and italicized as well. A *shelter*  
3 *living arrangement for persons who desire or require*  
4 *supervision or assistance within a protective*  
5 *environment because of physical, mental, familial or*  
6 social circumstances or mental retardation. I submit  
7 the people who are going to be living in these  
8 apartments do not fit that definition.

9           But let's take a look at what that actual  
10 definition of sheltered living arrangements because I  
11 think this is absolutely dispositive. This is the  
12 definition of sheltered living arrangement. These  
13 independent living units are going to have to meet  
14 this definition in order for them to be considered a  
15 community residence facility. They are going to have  
16 to be living arrangements in which "a responsible  
17 adult oversees the activities living of each  
18 resident."

19           Now we've had some discussions about we  
20 like to call these "apartments." Knollwood likes to  
21 call them independent living units. I don't care what  
22 you call them. I think they have conceded the point  
23 because these are independent living units. There is  
24 nobody that's going to be in these 22 apartments that  
25 is going to be overseen by some responsible adult in

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the activities of daily living.

2 In fact, they are an apartment house. If  
3 you look at Exhibit 8, and somehow it's Exhibit 11, I  
4 don't know if it's Exhibit 8 or Exhibit 11, this is  
5 the license for the independent living units at  
6 Knollwood. They are not a health care facility.

7 CHAIRPERSON GRIFFIS: Exhibit 11 is what?

8 MR. SCALLET: It's marked here Exhibit 11  
9 to our submission, but I think it might be Exhibit 8.  
10 Janeen, where are we are here?

11 CHAIRPERSON GRIFFIS: I have Exhibit 9.

12 MR. SCALLET: I'm sorry.

13 CHAIRPERSON GRIFFIS: 29.

14 PARTICIPANT: (Off microphone.)

15 MR. SCALLET: It's Exhibit 11 to the  
16 record. I'm sorry. I'm not familiar with protocol.

17 CHAIRPERSON GRIFFIS: Well, this one was a  
18 long time ago.

19 MR. SCALLET: Take a look at this. This  
20 is the master business license for the independent  
21 living units currently at Knollwood. It is a license  
22 housing residential apartment.

23 CHAIRPERSON GRIFFIS: Do you understand  
24 what the basis of why you would need a business  
25 license for that?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SCALLET: Because, I am not. Maybe  
2 Mr. Nettler could answer that because I'm not a Zoning  
3 lawyer. But that's the license they applied for. Mr.  
4 Nettler tells me if you're licensed as an apartment  
5 you can't be a community residence facility. You  
6 can't be both.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. SCALLET: And that's something that we  
9 would be happy to develop.

10 COMMISSIONER MILLER: Can I just ask you?  
11 You have those three dots before the definition of  
12 what sheltered living is. What's missing there?

13 MR. SCALLET: Janeen, you have it here and  
14 I'll be happy to read it.

15 CHAIRPERSON GRIFFIS: Actually, this is  
16 going to be an important to 3099.1 if we want to have  
17 that whole section.

18 MR. NETTLER: It's on the motion that we  
19 filed.

20 COMMISSIONER MILLER: Okay.

21 MR. NETTLER: It's on page ?- Excuse me.

22 MR. SCALLET: But it is critical because  
23 there are going to be no responsible adults  
24 supervising the people who live in these 22  
25 apartments. I mean that's absurd. In fact, let's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 take a look at what Knollwood says. I have this  
2 written out too. It may be a little difficult to see  
3 how Knollwood is trying to get ?-

4 Let me preface this by saying that when we  
5 discussed this Knollwood about the independent living  
6 units, the apartments, the reason they want to build  
7 these is to build the Alzheimer's wing. They need the  
8 money to do that. Their term for it is that they are  
9 seeking "people who will walk in the front door. "  
10 That's the term apparently that's used in here. That  
11 means that those are people that come to their  
12 facilities that will not use the assisted living  
13 facilities and will not use the nursing home.

14 They want people walking into the front  
15 door that aren't going to use their medical  
16 facilities. When they need medical assistance, when  
17 they need a responsible adult to oversee the  
18 activities of daily living, they will move to a  
19 different part, a different building with a different  
20 use and that's the assisted living wing. Then if they  
21 need more adult supervision, they will move to a  
22 different building with a different use.

23 There are three buildings with three very  
24 different uses in this facility. One is a healthcare  
25 facility and that's the nursing wing. One is a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 community residence facility and that's the assisted  
2 living wing. And one is an apartment house and those  
3 are the independent living units. Three different  
4 things with three different uses.

5 Let's take a look at how Knollwood wants  
6 to attract people to its independent living units.  
7 Take a look at what it says below the little picture.

8 "Residents enjoy living in elegant apartments with  
9 basic safety features ensure their well being" and I  
10 didn't print them all out, but they are exactly what  
11 you see in every single apartment house advertisement.

12 They are kitchens, cabinets, showers, large linen  
13 closets.

14 And let's talk about the people that they  
15 want that they're trying to tell you are people that  
16 are going to be living in units where they need adult  
17 supervision activities of daily living so that they  
18 can meet that definition. Take a look at the last  
19 sentence of the first paragraph.

20 PARTICIPANT: Yes.

21 MR. SCALLET: I will read it to you. "Our  
22 residents can travel the world with the peace of mind  
23 that their homes are secure." "Travel the world with  
24 the peace of mind that their homes are secure" and  
25 they are going to try to tell you that this fits the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 definition of a sheltered living arrangement because  
2 it's attracting and is only going to be used for  
3 people who need a responsible adult to oversee the  
4 activities of daily living.

5 I want to talk briefly before we talk  
6 about the project about the comprehensive plan. The  
7 comprehensive plan they have cited, they have cited  
8 that the sentence, and I believe Mr. Cochran referred  
9 to the sentence about Ward 3 and the needs for elderly  
10 housing, a very good question about my allusion where  
11 I started ... They end theirs.

12 It says, "Housing for the elderly must  
13 maintained and increase ..." So I filled in the ...  
14 and there it is underneath it. It says, "Housing for  
15 the elderly must be maintained and increased  
16 especially along the major transportation and  
17 commercial corridors of Connecticut and Wisconsin  
18 Avenues where it is not zoned R-1-A where we do have  
19 large apartment buildings and where we do have large  
20 elderly buildings." That's what's in the  
21 comprehensive plan.

22 In fact, the comprehensive plan, this  
23 appears well down in the comprehensive plan. If you  
24 want to look at the comprehensive plan, here is the  
25 major, this is how it starts. "Major themes for Ward

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 3. Protecting the Ward's residential neighborhoods"  
2 and I've again bolded and italicized what the  
3 comprehensive plan is the major theme for Ward 3. "It  
4 is a major theme of this Ward's plan to protect and  
5 maintain the low density, high quality character of  
6 the ward." That's what we're trying to say.

7 If you want to go further in the  
8 comprehensive plan still well above this one sentence  
9 about elderly housing along Connecticut Avenue and  
10 Wisconsin Avenue, it talk about protecting Rock Creek  
11 Park and the loss of open space in natural areas.  
12 Then take a look at that last portion of that which  
13 again is bolded and italicized. *Development on or  
14 near park borders is again threat to the ward's  
15 natural resources. Thus, it is a major theme of this  
16 ward plan that the integrity of parklands be  
17 maintained and improved wherever necessary.*

18 That's our point of view here that if  
19 you're going to look at the comprehensive plan, the  
20 comprehensive plan would not support the building of  
21 an apartment house in the middle of Ward 3. Now I  
22 want to turn it over to Larry Fencer who's going to  
23 talk about the importance of protecting the forests  
24 and the berm.

25 CHAIRPERSON GRIFFIS: Okay. That's good.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. SCALLET: Did you have questions?

2 CHAIRPERSON GRIFFIS: No, we'll hold it to  
3 the end.

4 MR. FINSTER: Good evening, Chairman and  
5 Commissioners. My name is Larry Finster. I'm  
6 President of Knollwood Neighbors. I live at 2730  
7 Stevenson Lane and I directly abut Knollwood's  
8 property.

9 My testimony describes that adverse  
10 impacts that Knollwood's proposed plan will have on  
11 the neighborhood and it tells a story that others will  
12 enhance. This is a story of Knollwood's disregard of  
13 BZA orders and its disregard of promises to the BZA  
14 and its neighbors.

15 As a condition of approving its assisted  
16 living wing in 1990, the ANC required Knollwood to  
17 provide landscape screening to conceal the large new  
18 building from its neighbors on Stevenson. Knollwood  
19 acknowledged in the hearing, the BZA hearing, that the  
20 new building needed to be screened from neighbors  
21 living on the lower end of Stephenson Lane.

22 Mr. Resnick, Knollwood's landscaper stated  
23 that "we do propose evergreen screening to mitigate  
24 whatever effect the view corridor may have whatever  
25 effect the building may have on those view corridors

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 from those homes in this area of Stevenson Lane."  
2 That's in the transcript at page 211.

3 The BZA incorporated those commitments by  
4 Knollwood into its order stating that "The Applicant  
5 shall provide landscaping to adequately screen the new  
6 addition from nearby properties." Now Commissioners,  
7 look. Fourteen years after promising and being  
8 ordered to provide landscaping to adequately screen  
9 from nearby properties, see what Knollwood has been  
10 able to achieve.

11 The first picture is taken at that last  
12 house on Stevenson Lane and shows five to six smallish  
13 evergreens that after ten years provide no real  
14 screening.

15 CHAIRPERSON GRIFFIS: Let's see. If you  
16 wouldn't mind moving, where they were on the other  
17 side, is much better because we can't see it at that  
18 place.

19 MR. FINSTER: Is that better?

20 (Discussion off microphone.)

21 PARTICIPANT: You're running out of time.

22 MR. FINSTER: Okay. Ted will get the  
23 other picture up there. The second picture is a  
24 little further up Stevenson Lane. As you can see  
25 again, the screening is inadequate. Knollwood planted

**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 maybe three very small evergreens that have achieved  
2 this amount of screening after ten years.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. FINSTER: These pictures show the  
5 utter disregard that Knollwood has for its neighbors'  
6 needs and how it disregards its own promises and BZA  
7 orders.

8 Next picture please, Ted. Now Knollwood  
9 wants to go back on its promise not to build for 25  
10 years and build another large mass building that will  
11 stand far above Stevenson Lane. This picture was  
12 taken from Exhibit B of Knollwood's application. As  
13 you can see, the building stands far above Stevenson  
14 and is of a very large scale.

15 In this picture, they put trees over very  
16 quickly so you wouldn't see it and it doesn't taper  
17 back as Mr. Cochran testified. In fact, for lower  
18 Stevenson, the building sticks out farther than the  
19 previous building did and for lower Stevenson, you see  
20 the full length of it, 150 feet. The building is 150  
21 by 150. It's basically the same size as the previous  
22 building which is what you'd expect since there's only  
23 five fewer apartments. So the footprint is basically  
24 the same.

25 Okay. Next picture. I call this "The

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Meandering Wall Picture." Knollwood again claims that  
2 this time it will plant large evergreens to screen the  
3 view of the building yet Knollwood's proposed building  
4 extends eight feet into the berm out of the parking  
5 lot at that point where Ted is showing. It has a  
6 meandering wall that further intrudes into the berm.

7 In a minute, our expert arborist, Mr.  
8 Pitchford will testify about the unlikely prospects  
9 for effective screening and more important, on the  
10 adverse impacts on this part of the Rock Creek Park  
11 ecosystem. The ineffective screening and adverse  
12 ecosystem impacts are especially upsetting since  
13 Knollwood Neighbors supported Knollwood's petition to  
14 obtain a Federal grant to spend \$1 million for  
15 nonconstruction expenses such as landscaping. We did  
16 this based on early understandings that Knollwood  
17 agreed to a long-term moratorium, that it agreed to  
18 full screening and it agreed to a process that would  
19 ensure large trees would actually survive the  
20 construction process.

21 To conclude, neighbors don't trust the  
22 promises of effective screening made by Knollwood and  
23 neither should the BZA. They promised full screening  
24 in 1990. They made only token efforts. It was a  
25 failure. During mediation, they agreed to use no

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 overdigging which according to Mr. Pitchford is a  
2 construction technique that must be used in this case  
3 to protect both the large transplanted screening trees  
4 and large deciduous trees on 29th Street during  
5 construction, but they rescinded that understanding at  
6 the last minute.

7 They agreed to spend a minimum amount of  
8 money to be determined by an arborist to ensure  
9 effective screening but they rescinded on that  
10 agreement at the last minute. They agreed to a line  
11 item for annual maintenance of the screening  
12 landscaping with an agreed amount to spend, by they  
13 rescinded on this at the last minute.

14 They agreed to back this meandering wall  
15 off the berm and keep the building in the parking lot  
16 unless a neutral expert arborist determined that  
17 incursion would not threaten trees, but at the last  
18 minute, they agreed only to protect the trees "to the  
19 extent possible." The BZA has consistently cited  
20 preserving the residential character of the  
21 neighborhood as a condition of granting Knollwood's  
22 exceptions. Mr. Pitchford will now explain the  
23 screening and overdigging and ecosystem issues in more  
24 depth.

25 MR. NETTLER: We'd ask that the Board

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 accept Mr. Pitchford as an expert. I'm handing up his  
2 résumé and I've already given a copy to the other  
3 party.

4 CHAIRPERSON GRIFFIS: Good. Thank you.

5 PARTICIPANT: Go ahead, Larry. The clock  
6 is ticking.

7 MR. PITCHFORD: Okay. Thank you very  
8 much. My name is Keith Pitchford, 2214 30th Place,  
9 N.W., Washington, D.C. 20007. I've been the arborist.

10 CHAIRPERSON GRIFFIS: Hold on a second.  
11 You want to be established as an expert witness, do  
12 you not?

13 MR. PITCHFORD: Yes.

14 CHAIRPERSON GRIFFIS: Okay.

15 COMMISSIONER JEFFRIES: Does the clock  
16 stop while you're doing that?

17 CHAIRPERSON GRIFFIS: Pardon me.

18 COMMISSIONER JEFFRIES: Does the clock  
19 stop?

20 CHAIRPERSON GRIFFIS: Oh, yes. Thank you,  
21 Commissioner Jeffries. Just give us a moment. We've  
22 just been handed this and we have to review it.

23 MR. PITCHFORD: Okay.

24 CHAIRPERSON GRIFFIS: Mr. Tummonds, have  
25 you had a chance to review this? Any objections?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 When you're ready, you can come up.

2 MR. TUMMONDS: I have no objection.

3 CHAIRPERSON GRIFFIS: Well, there it is  
4 right there. Thank you, Mr. Tummonds.

5 (Board reviews document.)

6 CHAIRPERSON GRIFFIS: Good. Any questions  
7 from the Board? Clarifications?

8 (No response.)

9 CHAIRPERSON GRIFFIS: Let me hear any  
10 opposition to establishing Mr. Pitchford as an expert  
11 arborist? Any difficulties?

12 COMMISSIONER ETHERLY: No objection, Mr.  
13 Chair. Just a quick question, of course, with regard  
14 to the ISA certification, you still maintain an active  
15 certification in that regard.

16 MR. PITCHFORD: Yes, sir. Correct.

17 COMMISSIONER ETHERLY: Excellent. Of  
18 course, I would never oppose an expert from the  
19 esteemed institution of Yale University. I just have  
20 to admit that wouldn't be consistent about my  
21 boosterism for that August institution in New Haven,  
22 Connecticut. Thank you, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Very well, After  
24 6:00 p.m., we're allowed to be a little loose. Okay.  
25 let's move ahead.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 MR. PITCHFORD: Okay. Very good. Keith  
4 Pitchford, 2214 30th Place, N.W., D.C. I've been  
5 retained by the Knollwood Neighbors to assess the  
6 landscape plan presented by the Army's Distaff  
7 Foundation with regard to this siting plan.

8 Really, I would say that there are two  
9 major issues that I have some real serious concerns  
10 with, one being the screening concept that we've  
11 talked about and the success of that and also the tree  
12 preservation that we've had some problems with. It  
13 really comes down to one basic fact and that is that  
14 I've heard everyone here talk about trees and they  
15 want to preserve trees which is great and I've heard  
16 people talk about keeping the confines of this  
17 building within the extent of the existing parking  
18 lot, in other words, keeping it inside the existing  
19 curb of the parking lot.

20 If that in fact were the case, I would not  
21 be here. The only reason I am here is because their  
22 plan overlaps the curb and goes into the berm in  
23 several locations that are causing impacts to some  
24 nice specimen trees and also making it very difficult  
25 to establish the screening as they've designed and

**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 promised the community.

2 Let me address this corner down here first  
3 because that's the main one. I handed you a collage  
4 of digital photos that shows a little bit about what's  
5 out there and we talk a lot about maps and look at  
6 maps. But hopefully, this collage will give you a  
7 sense of actually what's going on there.

8 This line here is the line of azaleas that  
9 you'd seen in picture P-2. There is actually a fairly  
10 tall berm. It's about five or six feet above the  
11 elevation of the parking lot so it's already a nice  
12 natural screen. We were proposing to plant some very  
13 large evergreen plants along that berm. We're talking  
14 20 to 30 foot evergreen plants in order to provide the  
15 immediate screening that the community demanded and as  
16 I understand it, Knollwood agreed to.

17 Let me give you a sense of how big these  
18 plants are. I've been involved in tree transplants  
19 and tree moving for quite a while and these are big  
20 plants. We're talking six or seven inch caliper  
21 trees. That's the measurement at the base that we  
22 determine the root ball from. These root balls could  
23 be 60 to 70 inches across or five to six feet across  
24 and an individual weight of these plants is roughly  
25 5,000/5,500 pounds, so about the weight of an SUV is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the weight of these plants if they are going to go in  
2 screening as they've promised the community. They  
3 would do a nice job, but these are very big plants.  
4 This is not a simple backyard landscape project.

5 CHAIRPERSON GRIFFIS: It's not something  
6 you'd do on our own on the weekend.

7 MR. PITCHFORD: Not exactly, no. I mean  
8 we're talking huge trees spades that are the size of  
9 cement mixtures that you see in those vehicles down  
10 the road. That's the size of the tree spade that  
11 would have to get up into the woods if they are going  
12 to put the screening plants into the woods around this  
13 corner as they are talking about. That is huge job.

14 CHAIRPERSON GRIFFIS: It's a big endeavor.

15 MR. PITCHFORD: A huge endeavor.

16 CHAIRPERSON GRIFFIS: Is it possible?

17 MR. PITCHFORD: Well, let me tell.

18 CHAIRPERSON GRIFFIS: Is building this  
19 building a huge endeavor?

20 MR. PITCHFORD: There are a lot of things  
21 that we've heard in the news these days when they  
22 thought it was a sure bet, wards that were undertaking  
23 them and all of a sudden, they become huge endeavors.

24 CHAIRPERSON GRIFFIS: Let me begin your  
25 perspective because you can throw that out. You're an

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expert witness on this for us. When you say it's a  
2 huge endeavor, in your perspective is building that  
3 building a huge endeavor? What level?

4 MR. PITCHFORD: Well, this corner right  
5 here is going to be roughly 30 feet deep, that cut at  
6 that corner in that berm. So they're going to have to  
7 sheet and shore that edge.

8 CHAIRPERSON GRIFFIS: Thirty feet deep?  
9 So straight down at that corner, they're going down 30  
10 feet.

11 MR. PITCHFORD: Correct.

12 CHAIRPERSON GRIFFIS: That's fine.

13 MR. PITCHFORD: Okay. That's a huge  
14 amount of disturbance around these mature trees for  
15 one, but it also makes it so that they can't plant the  
16 screening plants right there. They have to put it  
17 further back into the woodlands. If you look at  
18 picture P-3, that basically right where that "Caution,  
19 Drive Slowly" sign is is where the cut would go into  
20 the berm.

21 As you can see, there are a lot of trees  
22 back there. So if you can imagine how hard it would  
23 be to get 25 to 30 foot tall trees back into this  
24 corner. You would have clear out some existing trees  
25 to get these big vehicles back there to plant them and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I can't guarantee that they're not going to (a) kill  
2 the mature trees that are in there and (b) be able to  
3 site them in an orientation that would provide a  
4 complete screening.

5 CHAIRPERSON GRIFFIS: Okay. I'm going to  
6 interrupt you just a quick second here.

7 MR. PITCHFORD: Okay.

8 CHAIRPERSON GRIFFIS: It's going to help  
9 your point here.

10 MR. PITCHFORD: Okay.

11 CHAIRPERSON GRIFFIS: I'm looking at these  
12 pictures and I'm seeing a road. You're pointing to, I  
13 know it was stopped for a long time.

14 MR. PITCHFORD: This road right here is  
15 what you're seeing, that old access road.

16 CHAIRPERSON GRIFFIS: Okay. So the old  
17 access road. So now when you tell me that the azaleas  
18 on P-2 are going to be planted in that corner.

19 MR. PITCHFORD: No, they would be coming  
20 out.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. PITCHFORD: The azaleas would come  
23 out.

24 CHAIRPERSON GRIFFIS: And they're going to  
25 move away.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. PITCHFORD: Right.

2 CHAIRPERSON GRIFFIS: I'm just trying to  
3 orient the Board here.

4 MR. PITCHFORD: Okay. Very good.

5 CHAIRPERSON GRIFFIS: You're pointing to a  
6 site now that has no road and we're looking at  
7 pictures with roads.

8 MR. PITCHFORD: I got you. So yes, those  
9 azaleas would come out and our proposal would be to  
10 keep this corner out of the berm so that we can plant  
11 these large evergreens right on the berm. We'd clear  
12 out the vegetation there you see in P-1 and that's a  
13 flat surface. It's about 15 feet wide from the curb  
14 back to those big trees, plenty of room to plant these  
15 trees. We could do a beautiful row of evergreen right  
16 there.

17 But the problem now is we have this huge  
18 corner bumping into our berm. If they would keep  
19 their building with inside the curb, this would all go  
20 away. It would be so easy, but we have a huge issue  
21 to deal with just because of this little corner into  
22 the berm.

23 Can you put some trees in there? I guess  
24 you could back some huge trucks in there, these big  
25 spades. But I'm telling you I can't guarantee that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 these trees aren't going to die. I can't guarantee  
2 that you're not going to have die-back from trees in  
3 this deep shade.

4 The only tree I can tell you that's going  
5 to grow in this deep shade is going to be American  
6 holly and that's what's growing out there now as an  
7 under-story. Let me tell you. It does not put a foot  
8 of growth on a year. It's going to put six inches of  
9 growth on a year maximum in that deep shade. It's not  
10 dappled shade. It's pretty deep in there. You can  
11 see the density of the woods that's true.

12 Not only that, but one more point. When  
13 you put these big trees in, there is a transplant  
14 delay. There is a year for every inch of caliper  
15 before the tree starts to put on any appreciable  
16 growth. So you're going to put in six to seven inch  
17 caliper trees. It's going to be six or seven years  
18 before those things start really growing out of their  
19 root ball and start putting on appreciable growth. So  
20 you have that delay. You're not going to get instant  
21 growth. Then you'll only get six inches of growth a  
22 year if they are hollies.

23 So let me tell you. If you put those  
24 trees along that edge as we're proposing, you'll get  
25 nice sunlight. You'll get full evergreens. Everyone

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 will be happy. That corner is a major problem to our  
2 screening.

3 The second issue, and I'll go quickly  
4 here, is a little bump out into the 29th Street side  
5 berm where we have a very nice weeping cherry right  
6 there and a big oak right there. (Indicating.) The  
7 problem there is we have a wall planned that's going  
8 to go out into the root zone of those trees. That's  
9 shown in P-4. You can see the weeping limbs of that  
10 cherry right there close to the curb and the big oak  
11 is lit up in the sunlight on the back.

12 This wall is going to go back into that  
13 berm a bit, something like eight or ten feet. Then  
14 you're going to have three feet of overdig which is  
15 absolute necessity for construction to build that  
16 retaining wall. So you're encroaching on these trees  
17 quite considerably and I'm very concerned that the  
18 weeping cherry is going to go. I don't see how that  
19 would survive at all. This oak may make it, but it's  
20 going to be 150 to 200 year old tree. I'm not sure if  
21 it's going to take the kind of damage that is  
22 inflicted on it.

23 But the thing is there are no roots under  
24 this parking lot. They do not go under the parking  
25 lot. There's no air. There's no water there. They

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 are not going to be there, but they are chocked up  
2 against that curb. As soon as you violate that curb,  
3 you're opening up a huge can of worms and that's what  
4 I would like to see avoided here.

5 The final thing very quickly is we've  
6 talked a little bit about this ecosystem issue with  
7 Rock Creek Park. You know a couple of years ago in  
8 *The Post* there was an article about how the city has  
9 lost 64 percent of its contiguous canopy cover since  
10 1975 which is why Mrs. Casey gave \$50 million to start  
11 this foundation to regreen the city.

12 If you start going in here and messing  
13 around here, this is one of the nicest forest stands  
14 I've seen in a residential area in Washington in a  
15 long time. Certainly, Rock Creek Park is very nice,  
16 but I'm a forester by training. There is great  
17 regeneration in here, beautiful trees. You don't not  
18 want to go messy around in this stand of trees if yo  
19 don't have to. I just feel like you could possibly  
20 kill some big trees, create some gaps in the canopy.  
21 You would lose that whole contiguous canopy benefit  
22 and I can't see that the Park Service would be happy  
23 about that even though they seem to have signed on.

24 I'm not sure that they understand what's  
25 going to happen in here. We're talking big, big

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 evergreens in there to create the screening that they  
2 want and it's just not going to work. It's not going  
3 to give them the screening that they promised the  
4 neighbors.

5 COMMISSIONER MILLER: Excuse me. I just  
6 wanted to pose a quick question before we move on to  
7 you. I just want to get the bottomline here  
8 basically. Given the problems that you've identified  
9 with the trees, would the solution be a resizing or a  
10 cutting back on the size of the building they're  
11 building?

12 MR. PITCHFORD: It's so easy it's  
13 humorous.

14 COMMISSIONER MILLER: What is it?

15 MR. PITCHFORD: If you keep the building  
16 inside the curb all of these three issues will go  
17 away. Because I'll tell you, when you put these big  
18 trees in there and if they die, you tell me how you're  
19 going to get a 25 to 30 foot tree back into those  
20 woods when there's a huge building right in front of  
21 you. I mean there's just no way. It's a huge gamble.  
22 I don't think it's going to work.

23 COMMISSIONER MILLER: Thank you.

24 CHAIRPERSON GRIFFIS: Okay. Thanks.

25 MR. DIAMOND: I'm Robert Diamond. I live

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 at 6251 29th Street. My backyard abuts Knollwood's  
2 property. I believe you have my statement. I'm going  
3 to spare you the trouble of reading through the  
4 statement by just highlighting a couple of points and  
5 stopping.

6 In 1990 at the BZA hearing, I'm on page  
7 three but you don't have to look around to find it,  
8 the lawyer on behalf of Knollwood, Stanley Jacobs,  
9 testified in favor of the compromise that had been  
10 worked out at the ANC. In fact, he clarified what the  
11 25 year moratorium was because the wording of the ANC  
12 report was a little ambiguous.

13 It said, "It's exception for 25 years."  
14 Taken literally, that would mean the building would go  
15 up for 25 years and it would come down. Stanley  
16 Jacobs clarified that to say what they really meant  
17 was after the building went up, you would have 25 year  
18 moratorium.

19 Now I'm just going to jump ahead to the  
20 last paragraph of my presentation. We're not here  
21 today to ask you to create a new moratorium. We're  
22 asking you to uphold the BZA order of 1991. If you  
23 reward Knollwood's misuse of the mediation process to  
24 get what they want while the neighbors get nothing in  
25 return, what neighborhood group will ever attempt to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 mediate or resolve differences outside of the confines  
2 of the BZA process? Your docket will be filled with  
3 fiercely contested cases. Thank you.

4 MR. WIMBERLY: Hi, my name is John  
5 Wimberly. I live at 6243 29th Street, N.W. and our  
6 backyard opens on to the area being developed under  
7 Knollwood's application. As Ted mentioned, I've been  
8 in this seat before representing the interests of a  
9 growing institution, the congregation I serve, and  
10 opposed by a neighborhood organization. In my work, I  
11 spend a lot of time in nursing homes and retirement  
12 facilities. My wife and I know and are fond of a lot  
13 of the people who live at Knollwood.

14 So it's for those reasons that I've  
15 committed to finding a way for Knollwood to build this  
16 Alzheimer's unit in our backyard. I'm what I'd like  
17 to call a "yimby," Yes-In-My-Back-Yard, as are the  
18 other members of the group. We're not a "nimby"  
19 group. We want to help make this happen, but 30 years  
20 of ministry have taught me one thing and that is you  
21 can only help people who are willing to cooperate with  
22 you.

23 We had a wonderful cooperative  
24 relationship going, I think, and most of us think  
25 until last Friday night when all of a sudden Knollwood

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 decided to stop cooperating. Instead they decided to  
2 go for broke and take their chances with you that they  
3 would get everything that they want, a new building in  
4 the position that was the least favorable for our  
5 neighborhood, removal of any barriers to future  
6 construction in the heavily forested green spaces that  
7 are contiguous with Rock Creek Park, limited  
8 guarantees on the kinds of landscaping problems that  
9 Keith and Larry described and additional traffic exit  
10 for the residents.

11 At the beginning of this process, our  
12 position was very simple. We simply didn't want to  
13 building in our backyards originally, but once we  
14 heard what the need was and we saw that was the only  
15 place they could put it, we said, "Okay, we'll work  
16 with you on that, but in exchange, you have to give us  
17 a moratorium." And they said all the way for the past  
18 five months, "Don't worry. The moratorium issues  
19 we'll work out."

20 We believed them. There were people in  
21 our group that were questioning why we were believing  
22 them, but we did believe them. Until Friday, we  
23 thought we had that and then it disappeared.

24 I think in our first meeting with  
25 Knollwood and the mediator, what the mediator said to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 us is that every step of a mediation process is a  
2 series of commitments that are made and then you move  
3 on to something else and in order for the process to  
4 work, commitments that are made have to be commitments  
5 that are kept. If you approve this application,  
6 Knollwood will have successfully manipulated the  
7 mediation process to get what they want and give the  
8 city and the neighbors absolutely nothing in return.

9 Knollwood has told us over and over again  
10 that they have no plans to develop any of this green  
11 space and our response has been over and over again,  
12 "Well then sign an agreement. If you have absolutely  
13 no plans to do that, sign an agreement or live with a  
14 12 year ban that the BZA currently has instead of  
15 asking them to waive it." Obviously they want to  
16 develop it.

17 Thirteen years ago, your counterparts in  
18 the BZA listened to Knollwood, different people, same  
19 organization agreed to (1) extensively landscape the  
20 land and (2) not build anything for 25 years. They  
21 have already ignored the first one, landscaping the  
22 area, and now they're trying to get out of the second  
23 major condition that the BZA put out there.

24 We are more than willing to continue our  
25 mediation efforts. We think we can still come to a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 happy ending to this whole thing. But in order to  
2 have a rationale and reasonable zoning system,  
3 commitments that are made, including commitments made  
4 by the BZA like a 25 year ban, must commitments kept.

5 Otherwise, there's no reason. There's no  
6 rationality. The guy with most money and the most  
7 power in this city wins.

8 Finally, in closing I would just note that  
9 the BZA, and I'm starting to preach and I apologize  
10 for that, that Knollwood has asked the BZA to respect  
11 the decisions regarding Ingleside because that's a  
12 precedent. But they are saying in regards to the 25  
13 year band, ignore that. You can't have your cake and  
14 eat it too on these kinds of things. If they want to  
15 see precedent done and past orders respected, then  
16 respect their own past order that's on top of their  
17 heads right now. Thank you very much.

18 CHAIRPERSON GRIFFIS: Thank you very much.

19 Thank you all. Okay. Let's go quickly to Board  
20 questions and then we'll get into cross examination.  
21 First of all, there has been a lot of talk about this  
22 mediation process and believe me the Board actually  
23 granted a continuance of this so that that could  
24 continue.

25 There is no question in my mind and I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 think I speak for the entire Board that we support  
2 that in terms of getting to differences. I think  
3 there's been a lot of strong things that have happened  
4 in this application to-date. It's too bad that it  
5 hasn't come in all 100 percent.

6 But now going beyond that, there has been  
7 so much now said about lack of faith and trust and all  
8 this. You know what we're charged with is to look  
9 specifically at our regulations in the test for  
10 special exception and that's what we have to  
11 deliberate on and that's what we'll make a decision  
12 on. So in terms of how, I'm going to ask you all the  
13 same question on what you each spoke about and then  
14 I'll get into landscaping specifically.

15 Talk to me about the residential  
16 character. You've been talking a lot about open space  
17 and the loss of open space and the loss of  
18 residential character. There was this definition of  
19 density with one other person that was giving  
20 testimony in terms of acreage and such.

21 Here's what I need answered. When I look  
22 at this entire case, I look at the zoning and what the  
23 density is allowed here. If you're allowed 40 percent  
24 lot occupancy on this and this is coming in at 13  
25 percent, where is the over density? I'm just throwing

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 this out because there are the facts that I think you  
2 really need to focus and address very limitedly this  
3 evening.

4 When we look at residential character,  
5 this is a residential use. That's why it's a special  
6 exception. Where is it that's it's becoming  
7 detrimental? Where is the negative impact because I  
8 haven't heard a lot of that outside of the landscaping  
9 which made very strong points that are tangible? I  
10 don't know who wants to start with that.

11 MR. SCALLET: And we are not Zoning  
12 experts, but maybe it's this picture that says it as  
13 well as anything else. That's a building in our  
14 backyards. That's not our understanding of an R-1-A  
15 district. That's not characteristic of the rest of  
16 the neighborhood. It's not characteristic of the  
17 neighborhood within thousands of yards of our house to  
18 have a large institutional, in this case it's six  
19 stories, this will be four stories, building, a  
20 massive building in our front yards.

21 From Stevenson Lane, the building that was  
22 totally objectionable to the Office of Planning as we  
23 understand it, and that was the word that had gotten  
24 back, because of the mass of the building is still as  
25 big a mass of building from lower Stevenson Lane as it

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ever use because it in fact as Larry pointed out and  
2 as that picture shows you, it's closer to lower  
3 Stevenson Lane than it was sited before. So I don't  
4 know how to answer it other than we have houses and  
5 this is in our front and back yards and we don't want  
6 to add to a massive structure like that. John.

7 MR. WIMBERLY: Yes. I mean a couple of  
8 things. One is in a neighborhood zone like ours you  
9 would not expect on the next lot to have 200  
10 automobiles which is what they're asking permission  
11 for.

12 CHAIRPERSON GRIFFIS: On a 700,000 square  
13 foot site?

14 MR. WIMBERLY: You wouldn't expect on the  
15 lot next door to you to have 200 automobiles. You  
16 wouldn't expect to have buses running in and out of  
17 there. You wouldn't have trucks bringing in food.  
18 Right? I mean most people don't have big trucks  
19 bringing in, Cisco and people like that, supplies to  
20 run obviously the kitchen and all the feeding  
21 facilities and other kinds of facilities that they  
22 have there. So it's a different use.

23 Bu you know what. We're not objecting to  
24 that place being there. We would just like it to be  
25 manageable as the residents stated and we would like

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 there to be some parameters on this. There is a real  
2 feeling in the neighborhood.

3 CHAIRPERSON GRIFFIS: I'm glad you say  
4 these things because now let's get to specifics  
5 because we'll walk out of here and we'll say, "Those  
6 guys wanted parameters. What is it?" What is it that  
7 you're asking for specifically.

8 MR. SCALLET: Mr. Chairman, that's a very  
9 good question. The last three pages of the PowerPoint  
10 that's been up there and actually, Keith, if you knock  
11 down here a little ways. Just hit the down arrow.  
12 There. Go back up one. These are conditions on  
13 siding and landscaping that we felt had been agreed to  
14 by Knollwood. In a nutshell, they solved the problem  
15 of incursion on the berm because instead of  
16 Knollwood's version which is "We'll stay in the paved  
17 areas to the extent possible" and instead of the plans  
18 which has a wall going out into the berm and  
19 jeopardizing landscaping, we have a specific condition  
20 that all of the building materials including the walls  
21 will stay within the curbed areas and you heard Keith  
22 Pitchford say that that will solve our landscaping  
23 problem.

24 The second issue that's in your purview is  
25 the exit road. The people on Stevenson feel very

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 strongly about that. The houses that are on Stevenson  
2 Lane near that exit road have small children. I'm  
3 sorry. Tennyson. I apologize. They have small  
4 children and frankly from the very beginning, they did  
5 not want elderly residents turning on to their street  
6 where their small children play in the streets.

7 That was why from the very beginning we  
8 had an agreement with Knollwood that there would be  
9 only an emergency exit and for emergency vehicles  
10 only. It was never, never agreed and never even  
11 contemplated that it would be a resident exit until  
12 several days before the end of our negotiations  
13 totally broke down and it didn't break down entirely  
14 until we got their agreement which insisted on the  
15 residents to be able to use that. Those are the two  
16 conditions that are in the last week which I think  
17 definitely are within the purview of this body.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. WIMBERLY: And also not to waive the  
20 remaining period of the ban that is currently in  
21 place. You can certainly allow them to build this  
22 building with the modifications without waiving that  
23 band so that those green spaces are protected.  
24 Correct?

25 CHAIRPERSON GRIFFIS: I don't know. How

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 do you maintain a moratorium on construction or  
2 structural?

3 MR. WIMBERLY: All I know this little  
4 fight is costing all of us sitting here at the table  
5 literally thousands of dollars and hundreds of hours  
6 and I don't want to have to go through this again in  
7 12 years.

8 CHAIRPERSON GRIFFIS: I understand, but I  
9 guess my question to you is you're asking us to save  
10 it because it's going to be so important because it  
11 will hold it to it when here we are looking at an  
12 application for it. What I'm asking is maybe there's  
13 too much faith being put in that condition as we may  
14 not actually have the ability of enforce it. Okay. I  
15 understand the point. Does anyone else want to  
16 comment on the density character now?

17 MR. NETTLER: Well, only from a legal  
18 perspective because you've asked a question that  
19 relates to what are things that are permitted by  
20 special exception which is part of this facility in  
21 our view.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. NETTLER: And why it takes up 13  
24 percent of the lot as opposed to 40 percent, you could  
25 probably put a lot of houses in there and other

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 people and cars.

2 CHAIRPERSON GRIFFIS: You could close to  
3 600 houses on that lot, couldn't you?

4 MR. NETTLER: No, it's not 600 houses.  
5 It's actually a 16 acre site and it doesn't work out  
6 to 600 houses, believe me.

7 CHAIRPERSON GRIFFIS: Oh, well.

8 MR. NETTLER: But the reality is that it  
9 actually goes back to the original Supreme Court  
10 decision on Zoning is which is ?- *Euclid v. Ambler*  
11 which is where you have a community that zones to  
12 preclude a certain type of residential use of property  
13 because it's inconsistent with the other residential  
14 uses, do you uphold that? You do because the Supreme  
15 Court recognizes that those types of uses affect  
16 values of property and they affect them differently  
17 than the people who live in residential homes.

18 It may very well be if Knollwood isn't  
19 operated in the same fashion continuously as you would  
20 hope it to be and becomes a facility that doesn't  
21 work, that it has a different impact because the  
22 interest in preserving the value of the facility is  
23 different than when people have individual homes and  
24 try to preserve those individual homes which is why  
25 the Supreme Court said that a zoning authority, New

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 York at the time, New Jersey, whatever it was, had the  
2 authority to enact zoning regulations that precluded  
3 the use of residential property for certain types of  
4 uses even though they were still residential uses.

5 In that case we've had the situation with  
6 college students in Long Island and other Zoning cases  
7 that have gone up there. It's the same type of thing.

8 It's like saying that why couldn't we have prison  
9 here which is a residential use if it occupied only 13  
10 percent of the site and had 1300 prisoners. Because  
11 the whole nature of what's going on the site is  
12 different from a low density, single family home use  
13 even though you could have those many people, not  
14 exactly those many people, but you could have a lot of  
15 houses. It affects property values and that's what  
16 zoning is intended to protect.

17 CHAIRPERSON GRIFFIS: And exactly that,  
18 our Zoning does that. There's a myriad of things that  
19 break down in terms of uses that would be compatible  
20 and would be special exception approval and some are a  
21 matter of right and some are precluded outright.

22 MR. NETTLER: Exactly.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. SCALLET: One of which is not an  
25 apartment house.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Pardon me.

2 MR. SCALLET: One of which is not an  
3 apartment house.

4 CHAIRPERSON GRIFFIS: That we're clear on.

5 MR. NETTLER: Thank you.

6 CHAIRPERSON GRIFFIS: Okay. Now Mr.  
7 Nettler of course citing our court case, you're going  
8 to have to now submit it into the record for the  
9 purposes of one of our members and all of our  
10 interests.

11 MR. NETTLER: Okay. I will do that.

12 OFFICE OF PLANNING: Mr. Nettler, you  
13 might want to look in the great swing state of Ohio  
14 though rather than New York though.

15 CHAIRPERSON GRIFFIS: Okay. Let's keep on  
16 point here.

17 (Laughter.)

18 CHAIRPERSON GRIFFIS: I don't like reading  
19 a lot of court cases. I'm sorry. What did you say?

20 MR. NETTLER: I don't have anything else.

21 CHAIRPERSON GRIFFIS: Okay. Does anyone  
22 else want the opportunity to comment on that? I think  
23 we've really put that to rest. So it's not necessary  
24 a direct question. But let me ask. Where have you  
25 seen in your extensive experience in the District of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 planting larger mature trees of the size that would  
2 compatible with replacing some of the ones that might  
3 be lost in any sort of construction and secondly, have  
4 you and do you have any experience of construction in  
5 proximity to large trees where you map out the roots?

6 MR. PITCHFORD: Oh, yes. I do that every  
7 week. Yes.

8 CHAIRPERSON GRIFFIS: And with what kind  
9 of success?

10 MR. PITCHFORD: I've been in this business  
11 for 15 years in D.C. and I've been on my own for seven  
12 years. In that seven years, I've been the Project  
13 Arborist for the Landscape Architect on the Capitol on  
14 the Visitor's Center Project. Right now, I'm with the  
15 Washington National Cathedral on the field house in  
16 their north garage that they're about to build that  
17 that will get some people upset I'm sure about tree  
18 loss, but big transplants there. Dumbarton Oaks. So  
19 I've been involved in this quite actively in the last  
20 seven years.

21 CHAIRPERSON GRIFFIS: So it's done and  
22 it's done in this area.

23 MR. PITCHFORD: Oh, big tree transplants?  
24 Oh, absolutely. It's done every week.

25 CHAIRPERSON GRIFFIS: Okay. And you're

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 saying in terms of your understanding and knowledge of  
2 construction in terms of going down in close proximity  
3 that there would be no way to somehow, well, I guess  
4 you've answered that actually. Let me move on. Are  
5 there any other questions from Board members?

6 COMMISSIONER ETHERLY: For Mr. Pitchford  
7 if I could just very quickly. With regard to your  
8 testimony, it was very instructive especially along  
9 with the illustrations. P-3 and P-4, where we've  
10 discussed a little bit of the impact on the berm.

11 MR. PITCHFORD: Right.

12 COMMISSIONER ETHERLY: With regard to  
13 pulling back the proposed structure, if I understand  
14 it correctly, it would not simply be a matter of  
15 pulling it back so that it falls within the confines  
16 of the road as it currently exists. Would you not in  
17 fact have to pull it back further in order to protect  
18 whatever root systems may be in the vicinity of the  
19 edge of that road? What I'm getting is, and I forget  
20 the expression that you used, but essentially it  
21 sounds as though there is, I don't know, we're all  
22 perhaps used to hurricane terminology from the last  
23 couple of weeks.

24 But let's say for example there's a zone  
25 of uncertainly or cone of uncertainly around the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 construction where even if I build directly up to the  
2 edge of that road, that still may have some impact on  
3 some of those root systems that you've discussed. So  
4 in actuality, I may not have all of that wiggle room  
5 to go to the edge of the root. I may in fact have to  
6 still keep some of that edge as a buffer.

7 MR. PITCHFORD: No. Actually, what I said  
8 was that that curb line is really a barrier. If you  
9 can imagine it as an impenetrable barrier to these  
10 roots, these roots are not going to go under the curb  
11 and under the sidewalk or under the parking lot or  
12 under the street because there's nothing down there  
13 for them.

14 COMMISSIONER ETHERLY: So really, I could  
15 build right ?-

16 MR. PITCHFORD: Right at the edge.

17 COMMISSIONER ETHERLY: And any excavation  
18 could go right up to the edge.

19 MR. PITCHFORD: Right. You would have no  
20 impact. If you had a tree protection fence along  
21 there and you really policed that, nothing would  
22 happen to these trees. We could put a big line of big  
23 evergreens and everyone would be happy.

24 COMMISSIONER ETHERLY: Okay.

25 MR. PITCHFORD: But as soon as you get

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 into that berm, it's a can of worms I guarantee it.

2 COMMISSIONER ETHERLY: And you're fairly  
3 certain that with respect to P-4 in particular, while  
4 there may not necessarily be, let me put it this way.

5 With regard to P-4, you're fairly certain that if the  
6 plan were maintained as currently proposed that you  
7 would that weeping cherry and the oak into some  
8 serious jeopardy.

9 MR. PITCHFORD: Oh, the cherry would be  
10 gone. No question.

11 COMMISSIONER ETHERLY: Okay.

12 MR. PITCHFORD: Absolutely.

13 COMMISSIONER ETHERLY: Thank you.

14 MR. PITCHFORD: The oak is far enough away  
15 that it's possible we could save it but it's an old  
16 tree. This is 150 to 200 year old tree. This is a  
17 geriatric tree. We really don't want to damage it if  
18 we don't have to.

19 COMMISSIONER ETHERLY: Okay.

20 MR. PITCHFORD: So I would really rather  
21 than they didn't take the chance for the people that  
22 live along this area and it's a gorgeous tree. It's a  
23 fantastic tree.

24 CHAIRPERSON GRIFFIS: Good. Thank you.

25 COMMISSIONER ETHERLY: Actually, Mr.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Chair, I just want to finish with the panel real quick  
2 so I can be done. If I could locate Mr. Nettler, I  
3 think I see him behind the picture here. I want to  
4 come back to some of the, very quickly, legal argument  
5 around the apartment house argument and I don't want  
6 to parse it too far.

7 But what I'm seeking to ask and perhaps  
8 Mr. Finster can also respond to this. But legally  
9 speaking, are you reading that definition that's been  
10 offered up around which we've had some discussion to  
11 narrowly? I'm concerned about whether or not the  
12 definition in particular the language is, it notes  
13 towards the latter half of it that the definition  
14 includes facilities and then it proceeds further to  
15 talk about a sheltered living arrangement for person.

16 So I'm wondering whether or not the  
17 definition provides for some space if you will or  
18 contemplates living situations that may be more  
19 independent in nature.

20 (Microphone turned off accidentally.)

21 COMMISSIONER ETHERLY: Thank you. Are you  
22 hanging too much of your argument on an artificial  
23 distinction between the level of independence that  
24 might be offered by persons who want to take advantage  
25 of the independent living units versus persons who

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 might desire or need a higher degree of engagement in  
2 their lives?

3 MR. NETTLER: I don't think so because if  
4 you look at what's been just pointed out to me as  
5 well, if you look at the first part of the definition  
6 it's a facility providing safe, hygienic, sheltered  
7 living arrangements. You have to look at it in that  
8 context.

9 The fact that it then discusses it later  
10 on only falls back as a reference to that. If you  
11 look back at the way the Zoning regulations work with  
12 regard to all the different types of community-based  
13 residential facilities or community residential  
14 facilities and it's actually one of the few provisions  
15 of the Zoning regulations where the Zoning regulations  
16 specifically state that if you meet one of these  
17 definitions you cannot be something else.

18 There are circumstances in the Zoning  
19 regulations when you fit within a number of different  
20 categories. The reason why that was put in there  
21 originally was because it wanted to have these types  
22 of uses which there was a lot of community opposition  
23 to, there's always community opposition to implore  
24 them being placed, was to try and make sure that the  
25 facilities met those specific definitions.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1           In this case, it's interesting because the  
2 healthcare regulations as to what defining a community  
3 residential facility have changed over years also.  
4 But the fact is that in my view they are to be read  
5 not over broadly because of the fact that they are (1)  
6 special exceptions and (2) when you look at the  
7 context in which they were adopted. But I don't think  
8 you can read the healthcare regulation to say that it  
9 permits the type of tenant that they are expecting and  
10 that they are advertising for, people who essentially  
11 are looking upon this as just a home on a step toward  
12 possibly another arrangement later in their lives, but  
13 the first step to it which is no different than any  
14 other home in an apartment.

15           You can get these types. There are a  
16 number of senior living facilities in the city that  
17 are apartment houses. They provide the exact same  
18 type of arrangements here, but they are a step before  
19 you get to an assisted living facilities and other  
20 types of facilities that come with the CBRF  
21 regulations.

22           Secondly, they are licensed as apartment  
23 buildings. They are controlled depending on when they  
24 were built or when they were renovated by the Rental  
25 Housing as a apartment buildings. One of the unusual

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 situations if you look at the exemption that they have  
2 here, the exemption that either they checked off the  
3 wrong box or whatever, I don't know, but the box that  
4 they checked off in terms from the exemption from  
5 Rental Housing regulations has to do with it being  
6 previously a vacant apartment building.

7 COMMISSIONER ETHERLY: I mean I understand  
8 the argument. I guess perhaps it just begs a question  
9 of so where is the line of demarcation.

10 MR. NETTLER: The line of demarcation is  
11 in the definition and the definition recognizes that  
12 it's a facility that provides a sheltered living  
13 arrangement and a sheltered living arrangement is one  
14 in which there is an adult who is overseeing your  
15 daily living activities. That's what the definitions  
16 are. That's not what's being provided for in 22 of  
17 these units.

18 COMMISSIONER ETHERLY: I know I'm getting  
19 a little bit of consternation from my colleagues but I  
20 wanted to be very up front about dealing with this  
21 because I know we're going to hear more of it.

22 MR. NETTLER: I'm sure.

23 COMMISSIONER ETHERLY: And you'll probably  
24 get some struggle from us around hearing it.

25 MR. NETTLER: All right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1                   COMMISSIONER ETHERLY:    I just wanted to  
2 hear it.  I have trouble with that, but I'll just flag  
3 it for right now and let us move forward.

4                   MR. NETTLER:        I mean if there was  
5 something in the Zoning regulations that suggested  
6 otherwise, we'd all be dealing with that.  But that's  
7 not where the Zoning regulations go.  They direct to  
8 you to a different definition.

9                   COMMISSIONER ETHERLY:    Because it sounds  
10 as though that perhaps at best maybe there's an  
11 internal conflict within the definition because there  
12 is of course that reference to living with minimal  
13 assistance.  So why couldn't you necessarily view the  
14 operation that Knollwood is offering for those  
15 independent living units as one that is able to  
16 perform the activities of daily living with minimal  
17 assistance?  Why isn't it just essentially the minimal  
18 assistance?

19                  MR. NETTLER:        I represented the Volver  
20 (PH) School before the BZA some years ago which had a  
21 preschool function as well as a kindergarten through  
22 sixth grade function and the definition was a  
23 reference to the Healthcare regulations.  The Board of  
24 Zoning Adjustment and the Office of Planning actually  
25 agreed with us that it came within the zoning of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 expanded school rather than under the Healthcare  
2 regulations.

3 Well, of course, we go to DCRA at that  
4 time when Healthcare was administered under DCRA.  
5 Healthcare refused to provide any licensing for the  
6 school function. The Corporation Counsel's Office  
7 agreed with the Healthcare Administration. We're back  
8 before the BZA because the BZA didn't follow the  
9 Healthcare regulation. In that situation, we had to  
10 get another exception to cover that. So the fact of  
11 the matter is when you have those definitions in the  
12 Zoning regulations that make reference to the  
13 Healthcare regulations, those are the ones that have  
14 to be applied.

15 COMMISSIONER ETHERLY: But then do you  
16 disagree that the, where is my reference, definition  
17 that was offered, the operational definition of  
18 community residence facility definition that was  
19 offered by the Applicant, would you say then if we  
20 were to look towards that definition, and of course,  
21 we're not bound to look towards that definition  
22 because I would argue whether or not it has any  
23 importance from the Zoning standpoint ?-

24 MR. NETTLER: It's not a regulation.

25 COMMISSIONER ETHERLY: Of course.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. NETTLER: Right.

2 COMMISSIONER ETHERLY: But I think I've  
3 flagged this sufficiently. I'll just leave it at  
4 that.

5 MR. NETTLER: There is a line in that  
6 operational definition that I think is perfectly  
7 consistent with the regulation that we've made  
8 reference to and it does raise this independent  
9 living, but I've never found anything else that makes  
10 reference to independent living or that even defines  
11 independent living.

12 COMMISSIONER ETHERLY: Okay.

13 MR. NETTLER: But the rest of that  
14 definition is straight out of the regulation.

15 COMMISSIONER ETHERLY: Thank you, Mr.  
16 Chair.

17 CHAIRPERSON GRIFFIS: Thank you very much.  
18 Any others?

19 COMMISSIONER MILLER: Yes. I don't for  
20 you, Mr. Nettler. I think Mr. Etherly covered what I  
21 was going to cover. I just have a quick question for  
22 Mr. Pitchford and that is you made reference to the  
23 tree replacement done at the National Cathedral  
24 School. And I wasn't sure what the connection was.  
25 What is it that we would see there that would give us

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 insight about what would occur here or what should  
2 occur here?

3 MR. PITCHFORD: I thought the question was  
4 did I have experience with these large tree moves and  
5 if so, where?

6 COMMISSIONER MILLER: So the point there  
7 was there was some successful tree replacements there.

8 MR. PITCHFORD: Not on that site. It's  
9 being planned right now. I've written the specs for  
10 that. It's for the north garage which is just about  
11 to break ground next year. So I'm already planning  
12 the specifications for those large tree moves now.

13 COMMISSIONER MILLER: Okay. Thank you.

14 MR. PITCHFORD: In other places, they have  
15 happened, the Visitor's Center and Dumbarton Oaks  
16 where they've been moved.

17 COMMISSIONER MILLER: So at Dumbarton  
18 Oaks, one could see big trees having been replaced.

19 MR. PITCHFORD: Moved.

20 COMMISSIONER MILLER: Removed and  
21 replaced?

22 MR. PITCHFORD: And protected.  
23 Absolutely.

24 COMMISSIONER MILLER: Okay. Got it.  
25 Okay. Not removed. Moved. I want a clarification

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 with respect to the conditions that I think were  
2 attached to the PowerPoint presentation. Most of them  
3 deal with landscaping and one I think deals with the  
4 street.

5 MR. SCALLET: That's correct.

6 COMMISSIONER MILLER: Are those the only  
7 conditions that the neighbors would be proposing be  
8 included in a special exception order if we were to  
9 grant this application or are there other conditions?

10 MR. SCALLET: Recognizing that what  
11 appears to be clear here that the BZA has no interest  
12 in opposing moratorium, this BZA, an additional one  
13 and that of course is a major objective of the  
14 neighbors. But with the exception of that, if this  
15 thing were to be approved, at a minimum we would like  
16 Knollwood to go back and honor the commitment they  
17 made to keep this within the paved areas of the site  
18 so that we could those trees and have some landscaping  
19 screening. We would also like Knollwood to honor the  
20 commitment it made and have it reflected in the  
21 condition from the BZA that the exit road on to  
22 Tennyson would be for emergency vehicles only. Those  
23 are the two which I think are clearly within the  
24 purview of the BZA.

25 There are many other things. You have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 seen the memorandum of understanding and there are  
2 things about construction and other things like that  
3 and neighborhoods and budgets and things like that  
4 which I think you made it quite clear today that are  
5 not really within your purview and we would work those  
6 out with Knollwood or we would hope to. But in the  
7 specific answer to you, Ms. Miller, the two conditions  
8 that related directly to the building would be the  
9 landscaping and siting condition that we had there and  
10 the exit road on Tennyson.

11 COMMISSIONER MILLER: Okay. The other  
12 comment I want to make goes to this whole question  
13 about bad faith and mediation, etc. And what I'd like  
14 to say is mainly that the way I see it if you all  
15 mediated within your control how this turns out and  
16 that the Applicant does take a risk here and that we  
17 very well could turn down the application or we very  
18 well could impose not only your conditions, but other  
19 conditions that the Board may come up with.

20 MR. SCALLET: We understand that.

21 COMMISSIONER MILLER: Okay.

22 CHAIRPERSON GRIFFIS: Another other  
23 questions of the Board? Mr. Tummonds, cross  
24 examination? No cross. Does the ANC have any cross?  
25 Yes, come on up.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. BUCHOLZ: I wouldn't term this cross  
2 examination but rather points of information.

3 CHAIRPERSON GRIFFIS: Well then it may not  
4 be appropriate so you may want to call it cross  
5 examination.

6 MR. BUCHOLZ: It is definitely cross  
7 examination then. In any event, my first question is  
8 when did or more accurately, why was the brief on the  
9 apartment situation, the variance situation,  
10 distributed so late in the game, i.e. after the ANC  
11 meeting and a mere four days ago.

12 MR. SCALLET: But until Friday at 4:00  
13 p.m., we felt that we were going to be walking in here  
14 hand in hand with Knollwood and that we did not need  
15 to oppose the project because we would have gotten an  
16 agreement along the lines of things we thought they  
17 had agreed to. We apologize if we overemphasize or  
18 exaggerate Knollwood's willingness to come to that  
19 agreement.

20 MR. BUCHOLZ: Thank you. My second  
21 question is what impact, say it's decided that a  
22 variance is required, will that have on Knollwood's  
23 existing operations. In the past, it's been  
24 considered to be a community-based residence facility  
25 and it's operated on that basis now for like 14 years

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I guess. Will it have any impact? I mean are they  
2 going to have to ask for a variance for their existing  
3 apartments?

4 MR. SCALLET: I don't know, but as Ms.  
5 Miller points out, Knollwood at this point is very  
6 much at risk.

7 MR. BUCHOLZ: And my last question is how  
8 much does it cost to move a big tree?

9 MR. PITCHFORD: A lot of money.

10 MR. BUCHOLZ: Could you be a little bit  
11 more specific?

12 MR. PITCHFORD: How big a tree?

13 MR. BUCHOLZ: Well, I mean what you're  
14 talking about here.

15 MR. PITCHFORD: We have had bids from big  
16 tree movers for trees on the Cathedral grounds that  
17 are 35/40 inches in diameter, huge white oaks and  
18 we're talking \$100,000 to \$150,000 apiece to move  
19 those. These trees here, how much are you talking  
20 about for the installation of these?

21 MR. BUCHOLZ: Yes.

22 MR. PITCHFORD: Oh, these are big trees. I  
23 have to think, \$5,000 to \$8,000 apiece.

24 MR. BUCHOLZ: Thank you. That's it.

25 CHAIRPERSON GRIFFIS: Thank you very much.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Nothing else then? Board members. Excellent. Thank  
2 you all very much. Appreciate your presentations of  
3 the case. The last then we would have is, Mr.  
4 Tummonds, you propose to bring rebuttal witnesses, not  
5 that you have to be definitive now, but just to get an  
6 idea.

7 Mr. Nettler, if you wouldn't mind coming  
8 up and ANC, you may want to come up to the table also.

9 I think we're concluding for this evening. So let me  
10 get an assessment. Are you planning to have any  
11 rebuttal witnesses potentially?

12 MR. TUMMONDS: I think at this point I  
13 believe that I would be able to conduct any rebuttal  
14 testimony and a closing statement in half an hour.

15 CHAIRPERSON GRIFFIS: Right.

16 PARTICIPANT: So maybe three rebuttals  
17 witnesses. Okay. There it is. How is everyone's  
18 schedule on the 12th of October in the afternoon first  
19 case?

20 CHAIRPERSON GRIFFIS: Your schedule is  
21 already set. You have to be here. Let me just before  
22 we get reactions to this, October 12th, I'm actually  
23 shoe-horning it in to get this done.

24 MR. TUMMONDS: Right. I appreciate it.  
25 We can use October 12th.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: It's certainly not  
2 the Board's view to continue this for a long time, but  
3 if we can't do it on the 12th, then we are looking at  
4 December. Okay. There are no problems. Mr.  
5 Tummonds, no problems?

6 MR. TUMMONDS: No problems.

7 CHAIRPERSON GRIFFIS: Mr. Nettler, no  
8 problems?

9 MR. NETTLER: No problems.

10 PARTICIPANT: 1:00 p.m.?

11 CHAIRPERSON GRIFFIS: Yes, 1:00 p.m. the  
12 first of the afternoon. Mr. BUCHAOLZ?

13 MR. BUCHAOLZ: No problem.

14 CHAIRPERSON GRIFFIS: I think that's the  
15 easiest one I've ever done. Okay. Ms. Bailey,  
16 anything else? We need a reminder. We have cases  
17 that have been cited that have asked to be submitted  
18 in. Of course, it would be helpful if we got that in  
19 before the 12th, but I imagine that's not an absolute  
20 drop-dead requirement. It shouldn't be that difficult  
21 was the comment. Ms. Bailey, did you have any other  
22 notes on submission?

23 MS. BAILEY: No, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Nor I. Mr.  
25 Tummonds, you had asked to reserve time and the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ability to address this use issue? Are you going to  
2 be doing that in closing?

3 MR. TUMMONDS: Yes, I'll wrap that up in  
4 closing.

5 CHAIRPERSON GRIFFIS: Okay. Then I don't  
6 know that there's anything else for us to take care of  
7 this afternoon, unless anyone else has any other  
8 procedural questions for us. Very well. Thank you  
9 all very much. Appreciate you staying around this  
10 afternoon and we are concluded. Off the record.

11 (Whereupon, at 7:12 p.m., the above-  
12 entitled matter concluded.)

13

14

15

16

17

18

19

20

21

22

23

24

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701