

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 5, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 2:00 p.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 MANN III,	Member

ZONING COMMISSION MEMBERS PRESENT:

JOHN PARSONS,	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY,	Deputy Secretary
BEVERLEY BAILEY,	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
JOHN MOORE
KAREN THOMAS

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

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This transcript constitutes the minutes from the meeting held on October 5, 2004.

APPEARANCES:

On Behalf of Applicant, Potomac Foods

ASHLEIGH HORNE
Shaw-Pittman
2300 N St., N.W.
Washington, D.C. 20037
(202) 663-8428

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

2 2:13 p.m.

3 CHAIRPERSON GRIFFIS: Good afternoon,
4 ladies and gentlemen. Let me call to order the
5 afternoon session of the 5th of October, 2004, of the
6 Board of Zoning Adjustment for the District of
7 Columbia. My name is Geoff Griffis, Chairperson.
8 Joining me today is the Vice Chair Ms. Miller and our
9 esteemed colleague Mr. Etherly. Representing the
10 National Capital Planning Commission is Mr. Mann.
11 Representing the Zoning Commission with us this
12 afternoon is Mr. Parsons.

13 Copies of today's hearing agenda are
14 available for you. They are located where you entered
15 into the hearing room. You can pick one up and see
16 where you are on the chronology for the afternoon
17 session. Again, let me just say we appreciate
18 everyone's patience with us this afternoon. We had a
19 very rigorous morning session that ran over but we
20 will make up the time this afternoon for certain.

21 A couple of very important things in my
22 opening remarks. First of all, all proceedings before
23 the Board of Zoning Adjustment are recorded. They are
24 recorded in two fashions. One, the court reporter

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1 sitting on the floor to my right is creating the
2 official transcript. He is recording everything that
3 is said today in the hearing room attended to the
4 applications.

5 Secondly, we are being broadcast live on
6 the Office of Zoning's website so we ask attended to
7 both of those if people would please reframe from
8 making any disruptive noises or actions in the hearing
9 room while the proceedings are progressing. We also
10 ask that you would turn off cell phones and beepers at
11 this time so they don't disrupt anybody providing
12 testimony before the Board.

13 All persons planning to testify either in
14 favor or in opposition, if you are planning to address
15 the Board at all, we would ask that you fill out two
16 witness cards. They are located on the table where
17 you entered into the hearing room. They are also
18 located on the table in front of us.

19 Those two cards should be filled out prior
20 to coming forward to the Board and given to the
21 recorder sitting on my right. Then you will come
22 forward and you'll need to state your name and your
23 address for the record only once as you start and then
24 you can proceed.

25 The order of procedure for special

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1 exceptions and variances, first we will hear from the
2 applicant and any witnesses in the presentation of
3 their case. Second we'll hear any Government reports
4 attended to the application, that being Office of
5 Planning or DDOT.

6 Third we'll hear the report of the
7 Advisory Neighborhood Commission. Fourth we will hear
8 persons or parties in support of the application.
9 Fifth would be persons or parties in opposition to an
10 application. Sixth, finally, we'll hear rebuttal
11 witnesses and closing remarks by the applicant.

12 I am going to run through all of the
13 regulations that I usually cite attended to the timing
14 of cross-examination and any timing also of
15 presentation of cases because I think we won't even
16 need to set time limits as we go through the afternoon
17 session having looked at it.

18 However, an important aspect is cross-
19 examination and cross-examination is permitted by the
20 applicant and/or parties in a case. The ANC within
21 which the property is located is automatically a party
22 in the case and, therefore, obviously rises to the
23 level of a full participant in the case and is able to
24 cross-examine any witnesses that are presented.

25 The record will be closed at the

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1 conclusion of our hearing today except for any
2 materials that are specifically requested by the
3 Board. We will be very specific as to what materials
4 are being requested and when those should be submitted
5 into the Office of Zoning.

6 After that material is received, it should
7 go without saying but I'll say it anyway, the record
8 would then finally be closed and no other information
9 would be taken into the record. It's an important
10 aspect to understand, of course, we will deliberate
11 and make our decisions based on the record so the
12 record needs to be full. Anything you want us to
13 understand needs to be told to us or put in written
14 submission.

15 The Sunshine Act requires that this Board
16 conduct its proceedings in the open and before the
17 public. This Board may, however, consistent with the
18 Sunshine Act and its rules of procedure enter into
19 executive session. Executive session is used by the
20 Board to review record on a case or deliberate on the
21 case.

22 The decision of this Board in contested
23 cases, of which all cases before this Board are
24 contested, must be based -- our decision for these
25 contested cases must be based exclusively on the

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1 record that's created before us today so we ask that
2 people present today in the hearing room not engage
3 Board members in private conversations so that we do
4 not appear to be receiving information outside of the
5 record.

6 Let me say a very good afternoon to Ms.
7 Bailey from the Office of Zoning on my very far right,
8 and also Mr. Moy with the Office of Zoning. I think
9 at this point the Board can consider any preliminary
10 matters. Preliminary matters are those which relate
11 to whether a case will or should be heard today such
12 as request for postponements, continuances, or
13 withdrawals, or perhaps proper and adequate notice has
14 not been provided for an application.

15 If you are not prepared to go forward with
16 a case today or you believe the Board should not
17 proceed with a case that is on our schedule this
18 afternoon, I would ask that you come forward and have
19 a seat at the table as an indication of having a
20 preliminary matter.

21 Ms. Bailey, are you aware of any
22 preliminary matters that need the attention of the
23 Board at this time?

24 MS. BAILEY: Mr. Chairman, Members of the
25 Board, good afternoon. Mr. Chairman, staff has no

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1 preliminary matters.

2 CHAIRPERSON GRIFFIS: Excellent. Not
3 seeing any indication from those in attendance of a
4 preliminary matter, let me do this then. All those
5 that will be providing testimony or are thinking of
6 providing testimony, if you would please stand and
7 give your attention to Ms. Bailey and she is going to
8 administer the oath.

9 (Whereupon, the witnesses were sworn.)

10 CHAIRPERSON GRIFFIS: Very well. I think
11 we are ready to proceed.

12 MS. BAILEY: The first case, Mr. Chairman,
13 Members of the Board, is Application No. 17216 of
14 Serena Schorr, pursuant to 11 DCMR 3104.1 and 1202.1,
15 for a special exception to allow a two-story rear
16 addition to a single-family semi-detached dwelling
17 under Section 223, not meeting the lot occupancy
18 (Section 403), and side yard (Section 405),
19 requirements in the Capitol Interest Overlay/R-4
20 District at premises 408 East Capitol Street, N.E.
21 (Square 816, Lot 825).

22 CHAIRPERSON GRIFFIS: Good. Thank you
23 very much.

24 If you wouldn't mind, touch the base of
25 the microphone and it will turn on and you can provide

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1 your name and your address for the record.

2 MS. SCHORR: My name is Serena Schorr and
3 my address is 408 East Capitol Street, N.E.

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you, Ms. Schorr. Ms. Schorr, you've put into the
6 record a full written submission outlining the test
7 for how you make it for 223. We also have, of course,
8 the attended Office of Planning which I'll get to. Is
9 there anything else in addition to this that you would
10 like to provide or would you like to stand on the
11 record?

12 MS. SCHORR: I would like to stand on the
13 record.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you very much.

16 Are there any questions from the Board
17 members at this time attended to this? I think it's
18 very straightforward. I have one quick question. I
19 have in the written submission Exhibit -- in one of
20 the submissions Exhibit 9 which is a no consideration
21 deed. Did you submit that in?

22 MS. SCHORR: I did because I was told at
23 some point I needed to so, yes, I did.

24 CHAIRPERSON GRIFFIS: Okay. Very well.
25 I'm not sure what it's for but maybe it will come to

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1 my attention.

2 MS. SCHORR: I didn't quite understand it
3 either but I was told in some zoning moment that I was
4 supposed to do that.

5 CHAIRPERSON GRIFFIS: Good. We'll put it
6 in the back of the folder and it is there.

7 Let's then go to the Office of Planning's
8 report. Have a very good afternoon. Also a very
9 excellent report. You can certainly summarize or
10 stand on the record if you would like.

11 MS. THOMAS: Yes. Good afternoon, Mr.
12 Chairman, Members of the Board. I'm Karen Thomas and
13 we would stand on the record.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you very much. Does the applicant have any cross-
16 examination or questions of the Office of Planning?

17 MS. SCHORR: No. I was impressed by the
18 thoroughness of the report.

19 CHAIRPERSON GRIFFIS: Good. That answers
20 my question. You have the report. Is that correct?

21 MS. SCHORR: Yes.

22 CHAIRPERSON GRIFFIS: Excellent. I would
23 say also it's a very thorough report and the traffic
24 site plan is very helpful for the Board with the
25 aerial photograph as it relates to yours.

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1 Are there any questions from the Board or
2 the Office of Planning? Let's move on then. I don't
3 have any other attended Government reports to this.
4 We do not have an ANC-6C report. Are you aware of the
5 submission of the ANC report?

6 MS. SCHORR: I went to not one but two
7 hearings on their request and they told me they would
8 submit a letter. They approved the project. I
9 believe the Office of Planning, the woman who was
10 managing this report, spoke to my ANC member Bill
11 Cruz.

12 CHAIRPERSON GRIFFIS: That's okay. You
13 presented it to the ANC?

14 MS. SCHORR: Yes.

15 CHAIRPERSON GRIFFIS: Were there any
16 issues that were brought up in opposition of this?

17 MS. SCHORR: No.

18 CHAIRPERSON GRIFFIS: Any issues of
19 concern that you want to bring to light to the Board?

20 MS. SCHORR: No. And my ANC member
21 visited the property as well.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. SCHORR: It's all fine.

24 CHAIRPERSON GRIFFIS: Very well. Any
25 clarifications or questions from the Board at this

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1 point, Ms. Miller?

2 MS. MILLER: The Office of Planning says
3 in their report that the application was reviewed by
4 ANC-6C and they recommended approval of the special
5 exception request. I'm wondering if we can just get a
6 clarification from Office of Planning in what form
7 they approved it. Was it orally or are we missing
8 something in writing?

9 MS. THOMAS: I did not, in fact, work on
10 this case. It was Maxine so I'm standing in for her
11 but I don't believe that anything was submitted to us.

12 CHAIRPERSON GRIFFIS: Okay. Well, it
13 sounds like she may have talked to the ANC member and
14 gotten the report.

15 MS. SCHORR: I think it was verbal.

16 CHAIRPERSON GRIFFIS: Very well. Not
17 having it in the record. Again, I don't have anything
18 then officially to give great weight to the ANC-6C.
19 However, we can proceed with that. We do have letters
20 of support. The Capitol Restoration Society also
21 reviewed this and gave unanimous support to it,
22 Exhibit No. 23, the resident of 410 East Capitol
23 Street, N.E., Exhibit 10, and 406 East Capitol Street,
24 Exhibit 11. Those are the adjacent properties. Is
25 that correct?

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1 MS. SCHORR: Yes.

2 CHAIRPERSON GRIFFIS: Excellent. Is
3 anyone here to provide testimony either for or in
4 opposition to this application?

5 MS. SCHORR: Not that I know of.

6 CHAIRPERSON GRIFFIS: And no indication of
7 anyone being here or coming forward. Okay.

8 Board members, final questions?
9 Clarifications? Very well. I would move approval of
10 Application 17216 for the special exception to allow
11 the two-story addition of a single-family semi-
12 detached dwelling under 223, not meeting under Section
13 403 the lot occupancy or the side yard, Section 405 at
14 premises 408 East Capitol Street, N.E. I would ask
15 for a second.

16 MS. MILLER: Second.

17 CHAIRPERSON GRIFFIS: Thank you very much,
18 Ms. Miller.

19 Again, as the record fully shows, this
20 meets all the adequate tests. This is taking down of
21 a portion and adding onto. It's perfectly appropriate
22 to come under 223. The light, air, and privacy use
23 neighbor adjoining, and also the architectural
24 character, I would like to call it, in terms of 223.2
25 are all in compliance. The Historic Preservation

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1 Review also looked at this in which I think it was
2 appropriate in terms of establishing that aspect.

3 Is there anything else the Board would
4 like to bring to attention under this motion that's
5 been seconded? If not, then I would ask for all those
6 in favor of the motion signify by saying aye.

7 ALL: Aye.

8 CHAIRPERSON GRIFFIS: And opposed?
9 Abstaining? Very well. Why don't we record the vote.

10 MS. BAILEY: It's recorded as five, zero,
11 zero to approve the application. Mr. Griffis made the
12 motion, Mrs. Miller seconded. Mr. Mann, Mr. Etherly,
13 and Mr. Parsons are in agreement. Are we doing a
14 summary order on this, Mr. Chairman?

15 CHAIRPERSON GRIFFIS: I see no reason not
16 to waive our requirements for and order and issue a
17 summary order on this unless there is any objection
18 from the Board. Not noting any objection, why don't
19 we do that. Thank you very much, Ms. Bailey.

20 MS. SCHORR: Thank you.

21 CHAIRPERSON GRIFFIS: Thank you very much.
22 We appreciate you being down with us. Excellent
23 application, I must say, which probably was the reason
24 why it went so quickly.

25 MS. SCHORR: Oh, thank you very much.

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1 CHAIRPERSON GRIFFIS: Enjoy.

2
3 Let's go to the next case.

4 MS. BAILEY: The second case of the
5 afternoon is Application No. 17213 of Fay Brinkley,
6 pursuant to 11 DCMR 3103.2, for a variance from the
7 lot area and lot width requirements under Section 401,
8 and a variance from the side yard requirements under
9 Section 405, to allow the construction of a new
10 single-family detached dwelling in the R-1-B District
11 at 1408 1/2 Kearney Street, N.E. (Square 4011, Lot
12 816).

13 Is the applicant here for Application
14 17213?

15 CHAIRPERSON GRIFFIS: Good afternoon. Why
16 don't I have you introduce yourself for the record.

17 MS. WHITE: My name is Shanice White. I'm
18 the agent for Faye Brinkley and my address is 9475
19 Lottsford Road in Largo, Maryland 20774.

20 CHAIRPERSON GRIFFIS: You said your name
21 was Ms. White?

22 MS. WHITE: Yes. Shanice White.

23 CHAIRPERSON GRIFFIS: Okay. And you're
24 the realtor?

25 MS. WHITE: Yes.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. ROBERTS: Hi. I'm Walter Roberts.

3

4 CHAIRPERSON GRIFFIS: I need you to turn
5 your microphone on. There's a small button on the
6 base there. Excellent. Thank you.

7 MR. ROBERTS: I'm Walter Roberts and I'm
8 the architectural designer for the project for the
9 client Faye Brinkley.

10 CHAIRPERSON GRIFFIS: Good. Okay. I'll
11 turn it over to you.

12 MR. ROBERTS: I'll speak first. We took
13 the design around to some of the additional residents
14 on the block and we have nine petitions that different
15 homeowners on the block signed in support of the
16 project.

17 CHAIRPERSON GRIFFIS: Good.

18 MR. ROBERTS: In addition to our package
19 that we presented when we applied for our variance
20 application, the only two other submissions that I'd
21 have for today would be a photograph of two detached
22 single-family homes on the block showing their side
23 yard setbacks which is pretty minimal.

24 CHAIRPERSON GRIFFIS: Okay. Let me
25 clarify what your responsibility here is today.

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1 MR. ROBERTS: Oh, okay.

2 CHAIRPERSON GRIFFIS: First of all, you're
3 in for two variances, a variance from the lot area and
4 lot width requirements.

5 MR. ROBERTS: And a third one for the side
6 yard setback as well.

7 CHAIRPERSON GRIFFIS: Right. Well, the
8 first one is one but there it is. Then the variance
9 from the side yard setback. So clearly the test --
10 not clearly but the test for a variance, which we will
11 look at whether we grant or not, first, is this
12 unique. How is this unique.

13 Out of any sort of unique aspects of this
14 there's practical difficulty. Then we need to know
15 whether this would impair the zoning. I can't use
16 analogies. I get in trouble every time I do that. So
17 would it impair the zoning map or plan and would it
18 impair the public good. Tell me how this is unique.

19 MR. ROBERTS: All of the lots on this
20 block, including the lot in question today, predate
21 the zoning which was instituted in the 1950s. The lot
22 is 34 and a half feet in width by 100 feet deep so we
23 do not meet the present lot frontage requirement of 50
24 feet or the lot size of the minimum of 5,000 square
25 feet.

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1 CHAIRPERSON GRIFFIS: Okay. But you just
2 said all of them on the block.

3 MR. ROBERTS: Predate.

4 CHAIRPERSON GRIFFIS: Oh, predate. So
5 this is more narrow and a lot smaller.

6 MR. ROBERTS: Correct. This lot is
7 identical to the lot west of it but adjoining it.
8 That presently has a house on it.

9 CHAIRPERSON GRIFFIS: It's uniquely
10 identical to the adjacent lot? We're establishing
11 uniqueness, right? You're talking about what's unique
12 about it. Okay. I understand that. So it's my
13 understanding what you're saying, and actually from an
14 excellent Office of Planning Report, that this has
15 been in existence for a long time. Tell me if I'm
16 correct here. Are the adjoining lots similar
17 ownership?

18 MR. ROBERTS: Are they owned by the same
19 person?

20 CHAIRPERSON GRIFFIS: Yes.

21 MR. ROBERTS: No.

22 CHAIRPERSON GRIFFIS: Okay. So previous
23 1958. It's very small. Can you build anything on
24 this matter of right? Can you do anything?

25 MR. ROBERTS: Matter of right according to

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1 the zoning regulations I don't believe so.

2 CHAIRPERSON GRIFFIS: So it's actually an
3 existing site before the zoning regulations that you
4 can't build anything on.

5 MR. ROBERTS: Correct.

6 CHAIRPERSON GRIFFIS: That's pretty
7 unique. Okay. That's somewhat practically difficult
8 if you can't build anything on it.

9 MR. ROBERTS: Correct. Thank you.

10 CHAIRPERSON GRIFFIS: Okay. I suppose you
11 could be a professional crochet player and just want
12 an excellent -- put mallets. Okay. That being said,
13 anything else then you would like to tell us at this
14 time?

15 MR. ROBERTS: In addition to the items
16 that you've raised would be the side yard setback
17 requirement.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. ROBERTS: Again, because of the
20 narrowness of the site if we are not allowed our
21 variance for the side yard setbacks, it would result
22 in a detached house of about 18 and a half feet in
23 width which is fairly narrow for a freestanding home
24 in the neighborhood. All of the detached houses are
25 far wider than that.

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1 CHAIRPERSON GRIFFIS: I see. So you
2 provided a compliant 8-foot setback on each side minus
3 16 feet from an overall 34 and a half feet. You're
4 looking at actually something that would be more
5 reminiscent of a row dwelling in the neighborhood of
6 entire detached homes.

7 MR. ROBERTS: Or the duplexes which are on
8 the east end of the block.

9 CHAIRPERSON GRIFFIS: I see. Okay.
10 Anything else then?

11 MR. ROBERTS: That would be it, sir.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much. Why don't we go then to the Office of
14 Planning and have them present their report.

15 Good afternoon, sir.

16 MR. LAWSON: Good afternoon. My name is
17 Joel Lawson. I'm with the D.C. Office of Planning.
18 Actually, I'm happy to let the report stand on the
19 record unless the Commission members have questions of
20 the report.

21 CHAIRPERSON GRIFFIS: Okay, Mr. Lawson.
22 Because it's such a great report I guess we could do
23 that.

24 Are there any questions from the Board
25 regarding the Office of Planning Report? Does the

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1 applicant have any questions, cross-examination of the
2 Office of Planning? Do you have the report? Have you
3 seen it?

4 MR. ROBERTS: Yes, we have it and have
5 read it.

6 CHAIRPERSON GRIFFIS: Good. Excellent.
7 Very well. I think it is an excellent report. It
8 starts out actually talking about the relationship
9 with the comprehensive plan which is a good way to
10 start the general discussion of this.

11 It also, I think, and I think the Board
12 can rely on the Office of Planning Report in looking
13 at this but it goes directly into the aspect of 401.2
14 which frankly just summarizes dealing with
15 nondevelopable lots essentially that predate the 1958
16 lots and the different requirements for that. I think
17 it's excellently laid out in its report.

18 And then goes into what is unique and what
19 is practically difficult which you have highlighted a
20 few on that. That being said, if there is nothing
21 further for the Office of Planning Report -- Ms.
22 Miller did you have a comment?

23 MS. MILLER: I just want to comment also
24 that I think it's a really excellent report and I
25 don't have any questions because it so fully addresses

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1 the issues. Thank you.

2 MR. LAWSON: Thank you.

3 CHAIRPERSON GRIFFIS: The important aspect
4 of 41.2, to follow that, Ms. Miller, that was really
5 flushed out is that there's the aspect of the 80
6 percent requirement for the area and width. Here we
7 have something that can't even fit in terms of what
8 the regulations were predicting what might happen. I
9 think that's an important note as well as more so what
10 the Office of Planning did to address that.

11 Okay. Very well. We have attached to the
12 Office of Planning's Report also the DHCD which had
13 waited on this and they were noting no opposition in
14 recommending approval. Also DDOT indicated that there
15 would be no traffic impact. WASA put in -- how come
16 you have so many people coming in?

17 MR. LAWSON: Lucked out I guess, Mr.
18 Chair.

19 CHAIRPERSON GRIFFIS: I'll say. You've
20 got a lot of respect. Have you seen all these
21 aspects?

22 MR. ROBERTS: No, sir.

23 CHAIRPERSON GRIFFIS: Okay. You'll
24 probably get a copy or the Office of Planning has
25 these. Parks and Recreation, DDOT, Department of

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1 Housing and Community Development, WASA, and the
2 Department of Employment Services. Fascinating. All
3 are in support of the application. Okay. In all
4 seriousness, of course, these are referred and the
5 agencies pick them up and put them in as they will so
6 your got the attention all around.

7 Very well. I don't have any other
8 Government reports attended to this application unless
9 you are aware of any other submissions on this or
10 Board members are aware. We can go into the ANC
11 report which I don't have a copy of the ANC-5A. Are
12 you aware of whether they submitted a report?

13 MR. ROBERTS: I'm not aware that they
14 submitted a report.

15 MS. SCHORR: I'm not aware.

16 CHAIRPERSON GRIFFIS: Okay. You presented
17 to the ANC?

18 MR. ROBERTS: Actually we did not. We did
19 not know that was a requirement.

20 CHAIRPERSON GRIFFIS: Is it a requirement?
21 I don't think it's a requirement. Notification goes
22 out to the ANC. They would have known this was coming
23 in. They probably would have called you if they
24 thought -- well, I don't know but they could have
25 called you and asked you to come present or get on the

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1 schedule, or you could call them and request to be on
2 the schedule. Very well. No ANC. I don't have
3 anything else then attended to this in terms of the
4 submissions.

5 Is anyone here regarding Application 17213
6 to give testimony? Persons to give testimony either
7 in support or opposition? Not noting any indication
8 of persons present to give testimony, I'll turn it
9 over to you for any closing summation remarks you
10 would like to provide.

11 MS. SCHORR: I don't have any remarks.

12 CHAIRPERSON GRIFFIS: We're going to have
13 to slow it down here. Otherwise, we all have to go
14 back to work, see.

15 MR. ROBERTS: Would this be the point at
16 which we would submit --

17 CHAIRPERSON GRIFFIS: Absolutely. So you
18 have copies of those?

19 MR. ROBERTS: At home I do, yes.

20 CHAIRPERSON GRIFFIS: Okay, fine. Yeah,
21 I'm sorry. I should have made mention of that. We'll
22 take that into the record. You just provide it to
23 staff and it will go into the full record. We're
24 taking it as testimony that you've gone and gotten all
25 these signatures and approval and shown the plans.

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1 MR. ROBERTS: Right.

2 CHAIRPERSON GRIFFIS: Let me make one
3 note. Of course, you do have some very good plans in
4 terms of showing the scope of the work and all that.
5 Of course, these are also attached to an order if this
6 was so approved and this would be what is to be built.

7 Actually, it's quite a handsome place.

8 Okay. If there's nothing further then, I
9 think we can proceed. I see no reason to set this off
10 and let Board members think that there's additional
11 information that we need to fill the record. I think
12 we ought to proceed under a motion. I would move
13 approval of Application 17213 for the variances of the
14 lot area and the lot width requirements under 401 and
15 also for the variance from the side yard requirements
16 under 405 which would allow the construction of a new
17 single-family detached dwelling at premises 1408 1/2
18 Kearney Street, N.E.

19 MR. ETHERLY: Seconded.

20 CHAIRPERSON GRIFFIS: Thank you very much.

21 Oh, you know, there was one aspect. Okay. I'll get
22 into that after we deliberate on the motion. Does
23 anyone want to add comments to the motion? Very well.

24 I think we've talked it out.

25 I think a great reliance on the Office of

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1 Planning Report is appropriate here. I would do so
2 especially in regards to the nonconforming lot in its
3 existence. Clearly the -- although regularly shaped
4 and narrow, a smaller area, it has been testified, and
5 the Office of Planning brought it up very distinctly,
6 that you actually could not necessarily, or it was not
7 shown that you could build a conforming house to set
8 on this site.

9 I think it's pretty straightforward in
10 terms of its uniqueness and practical difficulty
11 certainly would impair intent and take a zone plan or
12 the public good and, therefore, will support it.
13 Anybody else? There it is. We have the motion before
14 us. It has been seconded. All those in favor signify
15 by saying aye.

16 ALL: Aye.

17 CHAIRPERSON GRIFFIS: And opposed?
18 Abstaining?

19 MS. BAILEY: The Board has voted to
20 approve the application five, zero, zero. Mr. Griffis
21 made the motion. Mr. Etherly seconded. Mrs. Miller,
22 Mr. Parsons, Mr. Mann are in agreement. We're doing a
23 summary order on this, Mr. Chairman?

24 CHAIRPERSON GRIFFIS: Yes, I don't see any
25 reason that we would need -- unless Board members have

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1 objections, we can issue a summary order and waive our
2 requirements on that. Thank you, Ms. Bailey.

3 MS. BAILEY: Thank you.

4 CHAIRPERSON GRIFFIS: Let me bring up
5 before you leave one aspect that, in fact, the Office
6 of Zoning has brought to our attention and that is
7 that you may need to verify that an actual address is
8 being created for the property. Are you aware of
9 that?

10 MR. ROBERTS: The direct answer is no but
11 on some of the documentation that we saw, I believe
12 it's 1418 and a 1/2.

13 CHAIRPERSON GRIFFIS: 1408 and a 1/2. I
14 think you may have to actually get an address for it.

15 MR. ROBERTS: Who do we approach for that?

16 CHAIRPERSON GRIFFIS: I don't know. The
17 Office of Address Maintenance. I don't know. I'm not
18 going to give you that advice. It's easy to answer.
19 In fact, you might just want to go to the Office of
20 Zoning and they can tell you directly.

21 MR. ROBERTS: Thank you.

22 CHAIRPERSON GRIFFIS: If I tell you, it's
23 on the record, it's recorded, and I get in trouble if
24 I'm wrong. Although I'm never wrong but we don't want
25 to chance it. Okay. There it is. Any questions?

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1 Procedural questions?

2 MR. ROBERTS: None from me.

3 CHAIRPERSON GRIFFIS: Very well.

4 MR. ROBERTS: Do I just hand the --

5 CHAIRPERSON GRIFFIS: Yeah, if you could
6 just -- you are going to provide that to staff, Ms.
7 Bailey, before you leave and that's going into the
8 record. Actually, you did show that picture also so
9 you need to put that into the record and that will
10 fill it all out. I think that's it for this
11 application unless there is anything else I can assist
12 you with.

13 MR. ROBERTS: That should be it. Thank
14 you for your time.

15 MS. SCHORR: Thank you.

16 CHAIRPERSON GRIFFIS: Thank you very much.

17 All right. Let's move on then and go to
18 the last case of the afternoon.

19 MS. BAILEY: And that is Application No.
20 17200 of Potomac Foods, pursuant to 11 DCMR 3104.1,
21 for a special exception to permit the continued use of
22 an accessory parking lot (last approved by BZA Order
23 No. 16541) serving an existing Burger King restaurant
24 under Section 214, in the R-1-B District at the rear
25 of 4422 Connecticut Avenue, N.W. (Square 1971, Lot

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1 822).

2 MR. HORNE: Good afternoon. My name is
3 Ashleigh Horne and I'm from Shaw-Pittman. We do have
4 a full presentation here if you would like but we
5 would be prepared to abbreviate our presentation if
6 the Board found it appropriate.

7 CHAIRPERSON GRIFFIS: Okay. I would ask
8 you just to consolidate and expedite but we wouldn't
9 mind seeing a little bit of substance and take a few
10 questions.

11 MR. HORNE: Okay. We will do that. I'm
12 here today on behalf of Potomac Foods and we are
13 seeking approval for the continuing use of an
14 accessory parking lot in the R-1-B zone behind the
15 Burger King restaurant at 4422 Connecticut Avenue,
16 N.W.

17 The subject property has been used as a
18 parking lot for 22 years. It was initially approved
19 by the BZA in 1982 for a three-year term and the most
20 recent term was for four years. Initially we agreed
21 with the Office of Planning to seek a term of four
22 years. However, as a result of further discussions
23 with the Office of Planning and the ANC we are seeking
24 a term of two years.

25 The Burger King restaurant provides only

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1 six spaces on the Burger King lot. The subject
2 parking lot currently proves 16 additional spaces
3 which are used as parking for the Burger King's
4 customers. These spaces help alleviate the pressure
5 on the supply of parking spaces on the surrounding
6 residential streets.

7 The parking lot generally is situated
8 among other commercial uses. The property to the
9 north is a carwash and to the south the Burger King
10 abuts a row of commercial buildings and another alley
11 parking lot. The rear of the lot to the west abuts
12 approximately three detached single-family homes. The
13 parking lot is adequately buffered from adjacent
14 residential properties.

15 As shown in the photographs attached as
16 Exhibit C to our statement filed on September 21, the
17 parking lot is located several feet below the abutting
18 residential properties. The parking lot also is
19 separated from those properties by a tall wooden fence
20 and brick garage and mature trees. As set forth
21 in a statement of the applicant, this lot meets the
22 requirements of Section 214.

23 The witnesses we have today are Mark
24 James, the current district manager for the Burger
25 King and Danny Lopez, the former district manager for

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1 the Burger King, both of whom are representatives of
2 the owner.

3 If the Board has no questions, I would
4 like to proceed with the testimony of Mr. James.

5 CHAIRPERSON GRIFFIS: Excellent. One
6 clarification. Did you say it was first approved for
7 four years and then four years? I had in my notes
8 five years, four years.

9 MR. HORNE: It was five and four.

10 CHAIRPERSON GRIFFIS: Okay. So the first
11 order was five, then it was four, and now you're
12 requesting two.

13 MR. HORNE: Yes.

14 CHAIRPERSON GRIFFIS: Is your witness
15 going to tell us why this is an issue?

16 MR. HORNE: Why the term is an issue?

17 CHAIRPERSON GRIFFIS: Yes. Why are we at
18 two years? We're kind of going backwards here.

19 MR. HORNE: Right. I believe that the
20 neighbors had had some issues with the maintenance of
21 the lot and they wanted some assurance that it was
22 going to be adequately maintained.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. HORNE: So we agreed and the Office of
25 Planning suggested it and so we agreed to it. We

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1 would be happy with a four-year term but we'll discuss
2 the issues that the community raised in Mr. James'
3 testimony.

4 CHAIRPERSON GRIFFIS: Okay. Why don't we
5 get into that a little bit and just note, from my
6 observation obviously, we read the entire application
7 and looking at this and the complaints about the
8 maintenance and all that. Of course, now you've gone
9 out and done a lot of the maintenance and painted it.

10 Initially I think the Board walked into
11 this saying, "Yeah, let's have it every year." You
12 come back every year and the thing gets painted.
13 Maybe you can address how you would ensure because,
14 I'll tell you right off, I'm predisposed to say -- can
15 I say that? See, I'm getting into trouble with all
16 this legal stuff. It seems difficult to look at two-
17 year terms of things because you walk out of here and
18 you're starting to put an application together.

19 From the Board's point of view I'm not
20 really bothered if that occupies your time but it
21 occupies our time and if we can facilitate the fact
22 that we don't need to be doing this every year as if
23 we're the enforcement mechanism, but rather look out
24 further, then let's address that if we can succinctly
25 today.

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1 MR. HORNE: I believe the ANC did suggest
2 yearly reporting which may address that issue.

3 CHAIRPERSON GRIFFIS: Right. They did
4 indeed and I think maybe something of that nature
5 might remedy the situation. Okay. Let's go quickly
6 through and tell us a little bit about your
7 relationship with your adjacent neighbor, the carwash.

8 No, no. I think that's clear what's happening there.

9 MR. JAMES: Good afternoon, everybody. My
10 name is Mark James and I'm the current district
11 manager for the Burger King located at 4422
12 Connecticut Avenue and I've been the District Manager
13 for a little over a year there now. We are, indeed,
14 seeking special exception to continue the use of the
15 lot for parking for the Burger King Restaurant.

16 MR. HORNE: Could you describe the lot,
17 Mr. James?

18 MR. JAMES: The lot provides 16 spaces.
19 At the rear of the lot is a landscape area which
20 provides a buffer for the residential properties. The
21 area is landscaped with grass and the mature trees.
22 The dumpsters for the Burger King are located on the
23 triangle shaped paved area adjacent to the public
24 alley. We chose this location because it was farthest
25 away from the abutting neighbors. The drive-through

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1 line and speaker system are not located on the Burger
2 King parking lot. They are located actually on the
3 Burger King property.

4 MR. HORNE: Can you please describe the
5 prior approvals of the lot?

6 MR. JAMES: The use of the lot was first
7 approved in '82 and the property has been used as a
8 parking lot since then. Of course, the most recent
9 approval was in 2000 and the lot was approved for four
10 years.

11 CHAIRPERSON GRIFFIS: Are there any
12 changes to the lot when they were presented before in
13 the previous orders as we're looking at now?

14 MR. JAMES: I don't believe so, sir.

15 CHAIRPERSON GRIFFIS: Okay. And who does
16 your landscaping on it?

17 MR. JAMES: We have an in-house company
18 that does our landscaping.

19 CHAIRPERSON GRIFFIS: When you say in-
20 house, it's part of the corporation that comes in and
21 probably does other facilities also?

22 MR. JAMES: Yes.

23 CHAIRPERSON GRIFFIS: I see. Okay.

24 MR. HORNE: Could you describe the
25 conditions in the 2000 order under which you are

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1 currently operating?

2 MR. JAMES: Okay. The 2000 order required
3 us to remove the dumpsters used for kitchen grease and
4 replace it with a system that accumulates grease
5 inside of the building. Because of fire marshall code
6 and health department code, we were not able to do so.
7 We moved it directly behind the restaurant furthest
8 away from the neighbors.

9 The 2000 order also required that the
10 drive-through speaker have 60 decibels or less.
11 Following the 2000 order we made an adjustment to the
12 volume of the drive-through speaker. In the meantime
13 we have purchased a new speaker system a little over a
14 year and a half ago which is more directly related.

15 CHAIRPERSON GRIFFIS: Okay. About this
16 drive-through and the speaker stuff, it fascinates me.
17 However, if the parking lot was to go away, would you
18 be able to have your drive-through?

19 MR. JAMES: Yes, sir.

20 CHAIRPERSON GRIFFIS: So really the drive-
21 through stuff although its a major problem for the
22 neighborhood, does it have anything to do with the
23 parking lot?

24 MR. JAMES: No, sir.

25 CHAIRPERSON GRIFFIS: Then I'm not sure we

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1 have any jurisdiction or authority to get into a lot
2 of these specifics. I would say, unless other Board
3 members feel differently, I'm not sure we could make a
4 condition on this parking lot for anything that's on
5 the site be it the drive-through or the speakers or
6 anything of that nature. Okay. Let's move ahead
7 then.

8 MR. JAMES: Okay. The collection of
9 litter in the parking lot was to be performed four
10 times daily and we have, in fact, done so. The order
11 has also required us to engage in ongoing
12 communication with the ANC. We contacted Carl
13 Kessler, the commissioner for the ANC, in July of 2003
14 to see whether there were any concerns about the
15 parking lot and there were none at that time.

16 The ANC held a meeting on July 7th to
17 discuss the lot and he suggested on July 15th we
18 appear and no residents or commissioners expressed any
19 concerns about the lot at that time. We immediately
20 increased trash pickups after Carl Kessler came to us
21 about trash in the lot and we increased from one time
22 to three times per week of trash pickup for the
23 dumpsters.

24 On July 7th the ANC held a meeting to
25 discuss the lot. We contacted Carl Kessler by

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1 telephone in late July and arranged to set up a
2 meeting with the abutting neighbors. During that
3 meeting the neighbors cited several concerns that were
4 raised about the parking lot. The primary concern
5 related to noise from the drive-through speaker, trash
6 pickups, landscaping, Vector Control, and security of
7 the lot.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. HORNE: And what have you done in
10 response to the community concerns?

11 MR. JAMES: We have agreed to limit
12 delivery times from 10:00 a.m. to six p.m. upon their
13 request. That's delivery as well as trash pickup. We
14 also increased trash pickup, like I said earlier, to
15 three times per week. We agreed to weld the side
16 doors of the dumpsters closest to the properties
17 closed in order to reduce any chance of order to reach
18 their properties. We have also ordered new trash cans
19 and placed them on our lots.

20 CHAIRPERSON GRIFFIS: What kind of trash
21 cans? That's for people that are walking to their
22 cars and have already finished eating?

23 MR. JAMES: Which we haven't had in the
24 years prior.

25 CHAIRPERSON GRIFFIS: Fast food, fast eat.

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1 By the time they get to their car they're done.

2 MR. JAMES: That's right.

3 CHAIRPERSON GRIFFIS: Okay. What are they
4 though?

5 MR. JAMES: Just regular concrete trash
6 receptacles.

7 CHAIRPERSON GRIFFIS: Oh, they are? Okay.
8 So they are pretty much not going anywhere.

9 MR. JAMES: No.

10 CHAIRPERSON GRIFFIS: Excellent. And
11 those also are emptied three times a week>

12 MR. JAMES: No. That's emptied actually
13 as needed. They are checked once daily but if it's
14 overflowing they are emptied as needed.

15 CHAIRPERSON GRIFFIS: Okay. And that
16 stuff goes into the dumpster?

17 MR. JAMES: Yes, sir.

18 CHAIRPERSON GRIFFIS: And then the
19 dumpster is picked up three times?

20 MR. JAMES: That is correct.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. JAMES: That is correct. We also have
23 called an extermination company, Vector, to control
24 for potential rats once a month. If we have any
25 neighbors that raise any other issues, they will come

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1 out more than once a month. And we have agreed
2 to prune the trees that are on our property at the
3 backside of our property that overhang into the
4 neighbor's yards upon the request, of course, of the
5 ANC.

6 Oh, I'm sorry. We also, as far as
7 security, they have asked us to place a chain across
8 the parking lot so nobody can enter or exist after
9 9:00 p.m. which we have done as well. There was
10 concern about loitering on the property after it got
11 dark.

12 CHAIRPERSON GRIFFIS: So this closes down
13 when the restaurant closes down?

14 MR. JAMES: The restaurant actually closes
15 at 1:00 in the morning. 12:30 and 1:00 on the
16 weekends. They suggested that we put the chain up so
17 we did.

18 CHAIRPERSON GRIFFIS: Can you go in and
19 eat at night?

20 MR. JAMES: Yes, sir. We have six parking
21 spaces directly on our property but that's all we have
22 after 9:00. We open the chain --

23 CHAIRPERSON GRIFFIS: The problems were
24 loitering?

25 MR. JAMES: I don't believe that there

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1 have been problems with loitering but the neighbors
2 addressed that concern.

3 CHAIRPERSON GRIFFIS: This has two light
4 fixtures, right? I mean, two posts with four fixtures
5 on each?

6 MR. JAMES: Yes, sir.

7
8 CHAIRPERSON GRIFFIS: Is it fairly well
9 illuminated?

10 MR. JAMES: Always.

11 CHAIRPERSON GRIFFIS: I mean, if we're
12 going to have an ugly surface parking lot, why not use
13 it? Okay. What are the --

14 MR. HORNE: Can I just follow up on that
15 before we move to another note?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. HORNE: Is there adequate parking
18 between 9:00 and 1:00 without the use of that parking
19 lot?

20 MR. JAMES: Between 9:00 and 1:00, ma'am,
21 at night? I believe not. I believe not. However, 50
22 percent of our business comes through the drive-
23 through and late at night I don't believe many people
24 walk from the parking lot to the Burger King to the
25 alley way anyway so we went ahead and agreed with it.

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1 This was also part of an existing order. I'm not
2 sure what year that this was ordered. We had the
3 chain and cable up for a while and actually we were
4 taken at gun point and robbed and we took the chain
5 down at one point. They've asked us to put the chain
6 back up.

7 CHAIRPERSON GRIFFIS: Is that what you
8 said?

9 MR. JAMES: Pardon?

10 CHAIRPERSON GRIFFIS: You were going out
11 to put the chain up?

12 MR. JAMES: Yes.

13 CHAIRPERSON GRIFFIS: When was that?

14 MR. JAMES: Well, we do it every morning.

15 CHAIRPERSON GRIFFIS: No, no, when were
16 you robbed?

17 MR. JAMES: We were robbed in the morning
18 going to take the chain down.

19 CHAIRPERSON GRIFFIS: The store was?

20 MR. JAMES: Yes.

21 CHAIRPERSON GRIFFIS: I see. When was
22 that?

23 MR. JAMES: This was four or five years
24 back

25 CHAIRPERSON GRIFFIS: Oh, I see.

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1 MR. HORNE: I believe it was part of the
2 1994 order that we were required to have a chain or a
3 cable to secure the lot.

4 CHAIRPERSON GRIFFIS: Okay. Uh.
5 Interesting.

6 MR. JAMES: Thank you for feeling my
7 grief.

8 CHAIRPERSON GRIFFIS: Well, it wasn't you
9 because you have only been there for a year but I
10 understand. Is that right?

11 MR. JAMES: Yes, sir.

12 CHAIRPERSON GRIFFIS: Okay.

13 Ms. Miller?

14 MS. MILLER: I'm sorry. I'm just not
15 clear about what you said. Is it not a problem?
16 Maybe I'm not asking the question right. You don't
17 have use of that parking lot between 9:00 p.m. and
18 1:00. Is it not a problem because you have less
19 traffic and the drive-through accommodates the cars so
20 you don't need the lot at that hour?

21 MR. JAMES: I would like to have the lot
22 at that hour.

23 MS. MILLER: You would like to have the
24 lot at that hour?

25 MR. JAMES: Yes.

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1 MS. MILLER: Okay. And the reason that
2 you're representing that you agree to put up the chain
3 at 9:00 was because the neighbor said that there was a
4 problem with loitering?

5 MR. JAMES: Yes, ma'am.

6 MR. HORNE: Did they say there was an
7 existing loitering problem?

8 MR. JAMES: I don't believe so.

9 MS. MILLER: So when was there a problem?

10 MR. JAMES: They didn't state specifics at
11 the ANC meeting. They made a request and we granted
12 that request.

13 MR. MANN: The loitering problem only
14 occurred in the rear parking lot and not in the six-
15 car parking lot?

16 MR. JAMES: That is correct.

17 MR. MANN: And there were people loitering
18 in automobiles evidently?

19 MR. JAMES: Right.

20 CHAIRPERSON GRIFFIS: I suppose we should
21 take it under some consideration. How far back are
22 the houses from the edge and from the trees and all
23 that? Where is that? Oh, here it is. So
24 conceivably, you tell me, has there been in any of
25 these past orders or times going through, any time at

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1 all that noise generated in the evening or late at
2 night has been a problem for the adjacent neighbors?

3 MR. JAMES: Yes, sir. Actually, they have
4 problems, or they had had problems with their drive-
5 through speaker system.

6 CHAIRPERSON GRIFFIS: I'm saying like the
7 parking lot.

8 MR. JAMES: Other than that, sir, no I'm
9 not aware.

10 CHAIRPERSON GRIFFIS: So they can hear
11 your speakers on 35th Street?

12 MR. JAMES: They say they can. I think
13 they still hear them from five years ago. We had a
14 system that was very, very loud and abrupt before we
15 bought the new system and I think they still hear
16 their system in their sleep.

17 CHAIRPERSON GRIFFIS: I can believe that.
18 It's kind of like a bullhorn barking at you all the
19 time. You're in a commercial zone. Are you not?

20 MR. JAMES: Yes.

21 CHAIRPERSON GRIFFIS: Wow. That is
22 interesting. Across the alley in R-1-B. Okay.

23 MR. HORNE: Mr. James, do you think the
24 ANC's suggestion that the sound be limited to 40
25 decibels at night is reasonable?

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1 MR. JAMES: We don't think that it's
2 practical because the ambient noise is actually 50 to
3 60 decibels --

4 CHAIRPERSON GRIFFIS: The drive-through
5 speaker?

6 MR. JAMES: Yes, sir.

7 CHAIRPERSON GRIFFIS: We're moving off
8 that.

9 MR. JAMES: Okay.

10 CHAIRPERSON GRIFFIS: What else?

11 MR. HORNE: Have you done anything to the
12 lot in response to the concerns of the Office of
13 Planning?

14 MR. JAMES: We repainted the arrows and
15 markings and repainted the guardrails at the Office of
16 Planning request. We added more signage to the effect
17 of 30 minute Burger King parking on our lot.

18 CHAIRPERSON GRIFFIS: I thought there was
19 a sign already there.

20 MR. JAMES: There was one, sir. Actually,
21 I posted a sign in every space of the lot.

22 CHAIRPERSON GRIFFIS: Oh, really? Oh, I
23 see. You have them up here and they're on stakes.

24 MR. JAMES: Yes, sir.

25 CHAIRPERSON GRIFFIS: I gotcha. The other

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1 ones that don't have those where the red car is, I'm
2 looking at your submission, Exhibit C, those are your
3 spaces also. Right?

4 MR. JAMES: Yes, sir.

5 CHAIRPERSON GRIFFIS: Okay. That's fine.
6 There's a lot of signs. Okay. What else?

7 MR. HORNE: Do you think that daily trash
8 pickup for the dumpsters is necessary?

9 MR. JAMES: We don't think so. Originally
10 we were getting the dumpsters dumped once a week and
11 we've increased to two times and now to three times a
12 week and we don't think there's going to be a problem
13 with the overflowing trash anymore.

14 MR. HORNE: And has the guardrail at the
15 south end of the lot been repainted?

16 MR. JAMES: Yes, it has.

17 MR. HORNE: And have all the bumpers and
18 wheel stops been replaced and repainted at this time?

19 MR. JAMES: Yes, they have.

20 MR. HORNE: And have the directional
21 arrows been repainted?

22 MR. JAMES: Yes, ma'am.

23 CHAIRPERSON GRIFFIS: And the stripes?

24 MR. JAMES: We did not repaint the
25 stripes. We did a few and a few were in good

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1 condition. Actually we are going to repave and
2 restripe again at the beginning of next season.

3 CHAIRPERSON GRIFFIS: Okay. And the
4 guardrail you only own half of it? Is that why only
5 half's painted?

6 MR. JAMES: Which guardrail in question,
7 sir?

8 CHAIRPERSON GRIFFIS: The horizontal one
9 at the edge. Where is that picture? It's the last
10 picture in Exhibit C.

11 MR. JAMES: Oh, yes, sir. We painted the
12 side on our parking lot. The other side is for the
13 dry cleaner.

14 CHAIRPERSON GRIFFIS: Gotcha. Okay.

15 MR. HORNE: Unless the Board has
16 questions, that concludes our testimony.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Questions, Ms. Miller?

19 MS. MILLER: I just have some questions on
20 your application. I think on page 3 you state that
21 the applicant plans to install new landscaping at the
22 appropriate time and I'm wondering when is that?

23 MR. HORNE: What we were trying to address
24 was that the ANC had talked about having new
25 landscaping installed in the spring or the fall and

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1 certain plants have to be planted at different times
2 of the year and that's what we were trying to address
3 by saying at the appropriate time. As soon as
4 appropriate for the type of plant.

5 MS. MILLER: What do you -- I mean, do you
6 anticipate fall and spring planting or what?

7 MR. JAMES: Yes, ma'am. We do. Actually,
8 Danny Lopez can speak a little more on that.

9 CHAIRPERSON GRIFFIS: What's your
10 landscape management plan?

11 MR. LOPEZ: We're going to be putting some
12 shrubs along the side where the fence is.

13 MR. JAMES: When? They want to know when.

14 MR. LOPEZ: That's going to be taking
15 place before the fall.

16 CHAIRPERSON GRIFFIS: So these are going
17 to be year round?

18 MR. LOPEZ: Yes.

19 CHAIRPERSON GRIFFIS: So you have
20 additional year-round plants that will be kind of
21 permanent landscape that you're going to maintain in
22 good growing conditions?

23 MR. LOPEZ: Yes.

24 CHAIRPERSON GRIFFIS: Okay. And then Ms.
25 Miller is really interest in what are these highlight

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1 landscaping aspects? You've indicated in your
2 submission that you're going to plant flowers and
3 seasonal stuff. And then there's the verbiage of when
4 appropriate so seasonably appropriate. Are the
5 cabbages going in for fall? Isn't that what used to
6 be the big hit? That's right, pumpkins. But in all
7 seriousness, what is it? Just tell us what the plan
8 is.

9 MR. LOPEZ: We're going to be -- like in
10 the front of the building we keep flowers throughout
11 the year and we kind of like want to match --

12 MS. MILLER: We mean for the parking lot
13 area.

14 MR. LOPEZ: For the parking lot we usually
15 have like flowers that are summer flowers and that's
16 it.

17 CHAIRPERSON GRIFFIS: Where do you put
18 them? Where do they go? Are they all on this green
19 berm kind of thing?

20 MR. JAMES: They go up along the fence
21 line, sir.

22 MS. MILLER: What about the fall?

23 MR. JAMES: Excuse me?

24 MS. MILLER: Do you have plans to plant
25 something in the fall? What are you planning on

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1 planting in the fall?

2 MR. LOPEZ: In the fall we probably are
3 going to be doing like azaleas. That's our year-round
4 plants.

5 MS. MILLER: That sounds like you don't
6 really know specifically.

7 MR. HORNE: They agreed to add additional
8 landscaping but they did not talk with the ANC about
9 specific plan or specific plans.

10 MS. MILLER: Okay. I was wondering if you
11 could address just a little bit on page 5 the problem
12 with the carwash using a portion of the property and
13 how that affects this zoning case.

14 MR. JAMES: Mrs. Miller, we actually lease
15 our property from the carwash unfortunately. We have
16 asked them numerous times to stop using our property
17 to dry cars and they agreed. They, in fact, did not.

18 We actually sent them a letter in writing and they
19 agreed and they have, in fact, not. I believe the DOT
20 was proposing a guardrail to come down through the
21 carwash so they can't pull the cars and drive cars on
22 our property.

23 We were going to agree to posting either a
24 fence or a guardrail along the entrance so that you
25 come up Connecticut Avenue, go through the drive-

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1 through, and pull into the parking lot. I think that
2 will alleviate all of the carwash using any of our
3 spaces. I think that was one of the biggest problems
4 with Mr. Moore was the carwash using our space and the
5 space in front of the dumpsters.

6 CHAIRPERSON GRIFFIS: Who is Potomac Foods
7 then?

8 MR. JAMES: We own Burger King. It's
9 Potomac Foods Group.

10 CHAIRPERSON GRIFFIS: But you just said
11 you're leasing this parking lot?

12 MR. JAMES: We lease the building and the
13 land from the carwash, the owners of the carwash. I'm
14 not certain of the name of the owners there. We own
15 the building and the property is owned actually by the
16 carwash.

17 CHAIRPERSON GRIFFIS: You own the
18 structure but you're leasing.

19 MR. JAMES: Yes, sir.

20 CHAIRPERSON GRIFFIS: Long-term lease.

21 MR. JAMES: The old owners of the Burger
22 King from 1982 they owned the carwash and the Burger
23 King and our company bought the Burger King from this
24 gentleman.

25 CHAIRPERSON GRIFFIS: How recently was

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1 that?

2 MR. JAMES: Pardon?

3 CHAIRPERSON GRIFFIS: How recently was
4 that?

5 MR. JAMES: Eight years ago.

6 CHAIRPERSON GRIFFIS: All right. Let's
7 put this to rest very quickly. Mr. Horne, who is the
8 applicant here?

9 MR. JAMES: Potomac Foods.

10 CHAIRPERSON GRIFFIS: How can they be the
11 applicant if they don't own the property?

12 MR. HORNE: It was our understanding that
13 they did own the property. They are the ones who have
14 the certificate of occupancy from the property and
15 they were the applicant in all of the prior
16 applications.

17 CHAIRPERSON GRIFFIS: Interesting. Well,
18 yeah. In coming out they would have been up until
19 eight years ago. Is that right? You said the
20 property was sold or new arrangements were made eight
21 years ago?

22 MR. JAMES: I believe so, sir.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. HORNE: We would be happy to produce a
25 letter if required from the owner to resolve any

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1 issues about --

2 CHAIRPERSON GRIFFIS: I think it's proper
3 authorization to represent so we're going to run
4 through this. We're obviously going to keep the
5 record open. We'll get that cleared up and move on
6 from there. Boy, that will bring some new highlights
7 to your relationship with the adjacent property owner.

8 Okay. Where were we? Let's move -- Mr. Mann, did
9 you have additional --

10 MS. MILLER: I do.

11 CHAIRPERSON GRIFFIS: I'm sorry but his
12 finger is quivering on that and he was the one that
13 actually brought it to light.

14 MR. MANN: You've addressed those issues
15 regarding the ownership but I do have another
16 question. Just something I'm slightly confused about
17 with this entire application is there seems to be this
18 admission that conditions have deteriorated but I
19 haven't seen any evidence that admissions have
20 deteriorated other than the admission that they have.

21 It goes to, again, the length of time that you're
22 asking for this -- what are they asking for?

23 CHAIRPERSON GRIFFIS: Accessory parking.

24 MR. MANN: This accessory parking. There
25 just seems to be some admission that, yes, two years

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1 is the appropriate amount of time but I haven't seen
2 any reason why it shouldn't be four or five or longer.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. HORNE: I believe it was the Office of
5 Planning that determined that the conditions had
6 deteriorated but I think four years or longer would be
7 appropriate. Perhaps we do have the yearly reporting
8 requirement that might allow the ANC to keep apprised
9 of what's going on on the property and the condition
10 of the maintenance so that might be a more effective
11 way to determine over the long haul whether or not
12 that property is going to be adequately maintained on
13 a regular basis than to have the shorter term.

14 MR. MANN: So we may hear a greater
15 history on the deteriorating condition of the property
16 from the Office of Planning.

17 MR. HORNE: I believe everything is in
18 their report and their primary concern -- I really
19 should let them speak to it to tell you the truth.

20 MR. MANN: Okay.

21 MR. HORNE: We would also be happy to
22 agree to a condition whereby if we receive some sort
23 of violation we would have to return sooner to get
24 approval from the BZA rather than for the entire time,
25 whatever you think is appropriate.

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1 CHAIRPERSON GRIFFIS: Yeah. Well, I don't
2 foresee a condition of that nature. I mean, let's go
3 to the big picture here. If there's
4 noncompliance or it falls into disrepair, then they
5 ought to be cited and fined and remedy it and then
6 continue on unless we find fundamentally that there is
7 something that's not proper for us to approve in terms
8 of the special exception under Section 214.

9 If so, then we won't approve it. Other
10 than that, I can't see coming back for a special
11 exception and then take it away if there are
12 violations. But there it is. Let's move on. Ms.
13 Miller, you had other questions?

14 MS. MILLER: Yes. I just wanted to follow
15 up a little more on this use of the spaces for the
16 carwash and how that factors into our evaluation of
17 this application. I'm just not sure what the
18 connection is.

19 MR. HORNE: I think maybe that would be
20 addressed to the Office of Planning. They are the
21 ones that were concerned about the use of the lot by
22 the carwash. The carwash has also been using the
23 public space in the alley in front of the Burger King
24 and we really don't have any control over that use. I
25 think that the Office of Planning saw the use of the

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1 property by the carwash on a day where there was more
2 use than usual.

3 As you can see in our pictures, which are
4 attached, and were taken without the knowledge of the
5 applicant, there is not a whole lot of use at that
6 time of the property by the carwash but it is still
7 used for parking and for cars.

8 CHAIRPERSON GRIFFIS: Okay. Anything
9 else?

10 MS. MILLER: Just one more thing, I think.
11 There is a condition 8 you recommend and I don't
12 understand whether that's going to be one person or
13 two people. It says, "Applicant shall appoint a
14 neighborhood and ANC liaison.

15 MR. HORNE: It would be one person to be
16 the neighborhood and ANC liaison.

17 MS. MILLER: Okay.

18 CHAIRPERSON GRIFFIS: One point of contact
19 at the restaurant.

20 MR. HORNE: Yes. One of the concerns the
21 neighbors had brought up during our meeting was that
22 when there were complaints they would call the manager
23 of the Burger King who really doesn't have too much
24 control over the higher level decisions that go into
25 the property and they wanted to be able to contact

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1 somebody who was the district manager so we suggested
2 that they be able to contact an individual and have
3 their contact information which would allow them if
4 they have a complaint about a violation to really
5 actually get in touch with a person rather than
6 calling around and never reaching anyone.

7 CHAIRPERSON GRIFFIS: Okay. Anything
8 else?

9 MS. MILLER: One more thing. On these
10 conditions that you have, you have 10 conditions here,
11 and from what I have heard today it sounds like No. 7
12 you have in there but that's not really a condition
13 that you prefer. Is there any other condition that
14 you want to highlight for us that you don't really
15 prefer or do you have any other comments on the
16 conditions?

17 MR. HORNE: The conditions that we propose
18 are the conditions that we have agreed to. We do not
19 prefer the condition with regard to chaining the lot
20 because I'm not sure that actually addressed an
21 ongoing concern and rather addressed more of a concern
22 about whether or not prior orders still applied to the
23 current operations of the lot.

24 The other conditions are conditions that
25 directly address the concerns of community and we

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1 worked with the ANC to implement. Some conditions I
2 suggested, for example, by the Office of Planning, we
3 have already addressed, the repainting and that sort
4 of thing. These are the conditions that we are
5 willing to go ahead with and agree to.

6 CHAIRPERSON GRIFFIS: Good. Okay.

7 MS. MILLER: Thank you.

8 CHAIRPERSON GRIFFIS: What is your
9 understanding of the controversy over the carwash? OP
10 is about to tell us that they blocked the alley and
11 the circulation through. In fact, I'm kind of excited
12 to get to their report because it's an awful lot of
13 fun. What is your experience? What is your testimony
14 regarding the ins and outs of the parking lot and the
15 problems that have been created either with the
16 parking lot itself, the flow of your drive-through, or
17 the carwash or anything of that nature?

18 MR. JAMES: I don't believe that the
19 carwash has affected the flow of the drive-through
20 since it does sit in back of the alley. It has, in
21 fact, impeded some of the cars to enter into our
22 parking lot and exit from the parking lot. We have
23 addressed that with the management and the ownership
24 of the carwash.

25 CHAIRPERSON GRIFFIS: And that's when they

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1 pull their cars out and they are hand drying them and
2 waiting for them to get in and get out.

3 MR. JAMES: Yes, sir.

4 CHAIRPERSON GRIFFIS: They are impeding
5 the ingress and egress of your lot.

6 MR. JAMES: That is correct.

7 CHAIRPERSON GRIFFIS: I see. Okay.
8 Excellent. Anything else?

9 MR. HORNE: No.

10 CHAIRPERSON GRIFFIS: Mr. Parsons.

11 MR. PARSONS: I think we need some kind of
12 a landscape plan here. I really wasn't satisfied with
13 the kind of response we were getting as to what
14 landscaping is. If we're going to make a condition
15 that there be landscaping, we ought to know what that
16 is.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. PARSONS: And also there was mention
19 made of two trash cans recently had been installed.
20 They aren't in the photographs. The yellow paint is
21 there and that is easy to understand. They are not on
22 the small exhibit that you provided so there's nothing
23 in the record to say where these trash cans are, not
24 that they can't move.

25 MR. JAMES: Actually, at the time, I

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1 believe, the pictures were taken the trash cans were
2 on order. That was a suggestion of the ANC and we
3 went ahead and ordered the trash cans and they are in
4 now. We have put one at the north and the south sides
5 of the lots.

6 MR. PARSONS: So that's good. My
7 suggestion is --

8 CHAIRPERSON GRIFFIS: Excellent.

9 MR. PARSONS: -- we pin this down so that
10 we know exactly what they are obligated to do.

11 CHAIRPERSON GRIFFIS: Good. I will run
12 through all of these at the end and if there is
13 anything else that comes up. Excellent point. Okay.
14 Anything else from the Board? Let's move on then to
15 the Office of Planning.

16 Good afternoon.

17 MR. MOORE: Good afternoon, Mr. Chair, and
18 members of the Board. The Office of Planning does
19 support the application. We will try to defend why we
20 recommend two years as opposed to the previous four.
21 When the application was approved in 1994 it was for
22 five years and normally the time go up after the
23 applicant has demonstrated they have met the
24 conditions.

25 In this case I saw they had gone down from

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1 five to four and that gave me reason to look into the
2 transcript. The transcript from '94 extensively
3 talked about issues of maintenance, landscaping, and
4 the conflict between this carwash business.

5 After reading the transcript I then took a
6 visit to the site on July 26 and those conditions that
7 were mentioned were there. I saw all of them when I
8 went down on the 26th of July. I went into the store
9 and got the manager. I don't remember her name. She,
10 in turn, called Mr. James that afternoon and I talked
11 to him what I observed on the site. He agreed that he
12 would correct them.

13 When I went back again on the 2nd of
14 September, more than a month later, most of the
15 conditions had been met. The Office of Planning's
16 concern was the approval was for four years, not for
17 the period between July 26th and September 2nd when
18 the application was being prepared to be reviewed by
19 this Board.

20 Again, I also talked to the community who
21 had some real concerns about the same observations
22 that I made but they haven't said it yet. Much of the
23 issue has to do with the condition of the lot is the
24 result of impact of the carwash next door. The
25 employees sit on the hill to have lunch. As a matter

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1 of fact, they have made a makeshift bench on the hill.

2 They drop litter and debris and they
3 trample over the landscaping. Much of that is still
4 the applicant's responsibility but some of it they
5 can't control. I was really infuriated when I went
6 back on the 2nd of September to see all these cars
7 blocking the alley.

8 When you hear a citizen coming through the
9 drive-through ask you if you could ask someone to let
10 him get onto the alley while I'm standing there, as my
11 photograph indicates, speaking to a police officer
12 about that very issue. The police officer said to me,
13 "I don't see a problem." A second later I see why he
14 saw no problem. His vehicle was coming out of the
15 carwash to block the alley.

16 CHAIRPERSON GRIFFIS: A lot of police cars
17 seem to get washed there.

18 MR. MOORE: Yes, including people in my
19 office so this is rather delicate with my office.

20 CHAIRPERSON GRIFFIS: You're like an
21 investigative detective, though, I must say with these
22 photographs.

23 MR. MOORE: Yeah, I could lose my job.

24 CHAIRPERSON GRIFFIS: We'll protect you.

25 MR. MOORE: I talked to the applicant's

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1 attorney prior to and we agreed that we wouldn't
2 support an increase in the time of four years but we
3 could stand on the four years that was previously
4 ruled.

5 That was before I went back on the 2nd and
6 found that all of the things I asked for hadn't been
7 done. Some of them had been done but not all of them.

8 So, again, that was a demonstration to me that the
9 applicant had been maintaining the property as best
10 possible over a four-year period, not for that brief
11 period.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. MOORE: I talked also the ANC and they
14 mentioned to me that they had a single member
15 district meeting where there was more than 40 people
16 present. These very issues came up. I saw they were
17 compatible with what we had already observed.

18 I thought there should be a shorter lease,
19 to use an expression, on this application by which the
20 Board could monitor on a more regular basis than
21 normally. The last thing we wanted to do is take up
22 this Board's time, the applicant's time, and I don't
23 look forward to writing another report on two years,
24 but in this case we thought it warranted special
25 action. I'll answer any questions that you have.

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1 CHAIRPERSON GRIFFIS: Good. You heard the
2 applicant and the agency say that they would set up
3 one liaison and then have scheduled meetings or times
4 for feedback. In your opinion, would that help to
5 continue the compliance with the order as it exist?

6 MR. MOORE: I do think so. In the past,
7 as this Board is aware, that vehicle has worked very
8 well. In this case because the community is so
9 sensitive about these issues I think it could work in
10 this case.

11 CHAIRPERSON GRIFFIS: Okay. Clearly if
12 conditioned to be well maintained actually it's part
13 of the regulation to do it anyway. That's obviously a
14 compliance issue that could be monitored, measured,
15 and either said that it is in compliance or not.

16 MR. MOORE: That is true.

17 CHAIRPERSON GRIFFIS: Okay. Ms. Miller.

18 MS. MILLER: I was just going to ask if
19 there were any other controls that Mr. Moore thought
20 could be placed in the application. It sounds like
21 you were already talking about if they are measurable
22 factors for enforcement that we could tell if it were
23 violated and then there could be penalties for not
24 being in compliance. Is that right?

25 MR. MOORE: Two different levels. As

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1 relate to the lot itself, as I have indicated, I
2 believe that much of the lack of maintenance has to do
3 with the impact of the business it's doing. If they
4 follow DDOT's recommendation and put some sort of area
5 at the north end of their property thereby restricting
6 use of the carwash, that should address some of it
7 including, as I mentioned, the berm on the west side
8 is where the employees as you look at the photographs
9 they park their bikes there.

10 They have lunch there or whatever. That
11 is the area that is most in need of landscaping. That
12 may serve as a psychological barrier also to cut that
13 out. As relate to using public space for commercial
14 activity, we don't need the applicant on that one.
15 This has already been referred to the proper
16 authorities.

17 CHAIRPERSON GRIFFIS: Right. I saw that.

18 You called in the authorities.

19 MR. MOORE: If you look at the lot
20 photograph, you'll see that they also use Connecticut
21 Avenue and that's going to stop.

22 MS. MILLER: I think one of the problems
23 we have here, though, is that the individuals before
24 us aren't the owners of the property so we can't make
25 them make the changes.

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1 MR. MOORE: Well, that's a little
2 confusing to me because, again, in reading the
3 transcript, and Ms. Prince is here now from the
4 previous case, I think she stated that there had been
5 joint ownership prior to that but they had separated I
6 guess, according to the transcript I read from the
7 2000 event.

8 I'm amazed, too, to hear the applicant say
9 that it is the same owner still. As a matter of fact,
10 that same owner did tell the DDOT representatives who
11 went out there that it was still co-owned by the
12 carwash and I thought that was different than the
13 transcript from the previous hearing. It's still
14 rather confusing to me.

15 MS. MILLER: That's one of the issues that
16 will be resolved. I also just have a hypothetical
17 question, I guess. What do you think about three
18 years as opposed to two or four?

19 MR. MOORE: As I indicated, we didn't want
20 to recommend two because the time it would take up.
21 We can't say we recommend approval of the application
22 and then reduce it to the period by which will fly in
23 the face of that. I think that three years could be a
24 good compromise.

25 CHAIRPERSON GRIFFIS: Anything else?

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1 Questions of Office of Planning from the Board?
2 Really comprehensive report. I think the Board
3 absolutely appreciated in understanding all this.
4 Your emotion wasn't lost in your photographic essay, I
5 must say.

6 MR. MANN: No caption necessary.

7 CHAIRPERSON GRIFFIS: I love that one, No.
8 6. Okay. Does the applicant have any cross-
9 examination of the Office of Planning?

10 MR. HORNE: No, we do not.

11 CHAIRPERSON GRIFFIS: Okay. Yes. I'm
12 sorry. Indeed. Come in. Do you have cross from OP?
13 You need to come up here and be on our microphone.

14 MS. BAILEY: Are you sworn in, sir? Were
15 you sworn in?

16 MR. KESSLER: No, I was not.

17 MS. BAILEY: Please remaining standing,
18 sir, and raise your right hand.

19 (Whereupon, the witness was sworn.)

20 MR. KESSLER: My name is Carl Kessler and
21 I'm with ANC-3F. It's my single member district where
22 the Burger King is. My question for Mr. Moore is we
23 had a discussion on the telephone and when we had the
24 discussion on the telephone he was going to recommend
25 a lower decibel level for the loud speaker. I was

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1 just wondering why in the report that lower level is
2 not reflected as what was the change.

3 MR. MOORE: Mr. Kessler, I think I
4 mentioned to you on the phone that according to the
5 regulations in a commercial district the lowest
6 decibel level we can have is 60. In a residential
7 district 55. The lot itself is technically in a
8 residential district and the store in a commercial
9 district. All we can do is what the law will allow us to
10 do.

11 MR. KESSLER: The situation where it's
12 basically bleeding over to a residential district it
13 would seem to me the lower level should be the one
14 that you use rather than the commercial level.

15 MR. MOORE: As you will recall from our
16 conversation, I also said to you on that issue that I
17 could ask of the Board if they could impose
18 residential standards on a commercial property.

19 MR. KESSLER: That's why I'm wondering why
20 you didn't or haven't. Good.

21 MR. MOORE: I think in essence the Chair
22 is saying that's something he didn't want to deal
23 with.

24 CHAIRPERSON GRIFFIS: Let me clarify that.
25 Okay. And you came in a little bit after we got into

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1 this and the applicant's submission. The Board is
2 full aware of the decibel levels. Here is the point I
3 was making. We don't have jurisdiction to go over and
4 control the site itself, the speaker, the drive-
5 through, anything attended to that.

6 The direct question to the applicant was
7 if this parking lot went away, would the restaurant
8 still be able to be open? Would the speaker be there?

9 Would the drive-through be there? My point is this
10 is an application for an accessory parking structure
11 in the R-1-B under 214. Right? So for the special
12 exception we go directly to that.

13 If we can get into the aspects under 214
14 that lead us to the jurisdiction or authority to deal
15 with it, then we will but I don't see anything in 214
16 that allows us to tell them, for instance, to take
17 signage off the front of their building because it's
18 too bright or to knock a story off the building or
19 whatever it is. In terms of the primary operation,
20 that's not under discussion. Does that make sense?

21 MR. KESSLER: It does but --

22 CHAIRPERSON GRIFFIS: You need to hold
23 that.

24 MR. KESSLER: All right. It does except,
25 I mean, I thought noise was one of the standards for

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1 accessory audit as well.

2 CHAIRPERSON GRIFFIS: It's the noise that
3 the parking lot would make.

4 MR. KESSLER: Well, I mean --

5 CHAIRPERSON GRIFFIS: If the parking lot
6 goes away, does the drive-through go away?

7 MR. KESSLER: I'm not sure. I don't know.

8 It depends on what their policy is going to be. A
9 very serious issue among the neighbors is the noise
10 level because the speaker -- in my testimony I'll
11 discuss this but the speakers are very intrusive late
12 at night and it keeps a lot of people up. For the
13 Board not to address that.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. KESSLER: They haven't in previous
16 orders because we have the two previous orders that do
17 show the noise level being controlled.

18 CHAIRPERSON GRIFFIS: I'll let you talk
19 about it because we can flush it out. I'm perfectly
20 amenable to being persuaded. At this point I'm not.
21 In fact, in the previous order that the parking lot
22 was to be closed down, a chain was to go across at
23 9:00, did that reduce the sound of the speakers?

24 MR. KESSLER: One issue has nothing to do
25 with the other.

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1 CHAIRPERSON GRIFFIS: And that's what you
2 need to understand because it absolutely does. In our
3 authority for a special exception you've got to show
4 me how somehow this accessory parking lot relates
5 itself to the noise that's being created in the
6 primary structure.

7 MR. KESSLER: Well, like I say, what I
8 have are the two previous orders which show that noise
9 was controlled. The exact same issue was addressed in
10 two previous orders. I don't understand why in this
11 order it cannot also be addressed.

12 CHAIRPERSON GRIFFIS: We are going to give
13 you a couple minutes to get ready to present your
14 stuff. Before you go, let me get to a point here
15 because the Board is very concerned about that. We
16 also have a concern of what our authority is. We're
17 not disputing the fact that's an issue and it's a
18 serious issue for the community.

19 I think that anything we can flush out now
20 to remedy that, it may not come through as a Board
21 order and a condition on our order but if we can get
22 to what I think is the more important issue here, to
23 solve that problem or remedy it, or at least diminish
24 the impact of it, the better off you're going to be.

25 I mean, I don't live next to it but you're

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1 going to be. I think the liaison that we've talked
2 to, I don't know if you were here for that portion but
3 also that they have agreed to. I think you understand
4 that, too. There's going to be a point of
5 communication to deal with a lot of the larger issues
6 outside of the parking lot.

7 MR. KESSLER: I mean, my testimony
8 addresses that issue also but I'll be glad to give you
9 my response now but you might want to wait for my
10 testimony.

11 CHAIRPERSON GRIFFIS: Yes, indeed.

12 Any other questions for Office of Planning
13 then?

14 MS. MILLER: I so. I'm sorry. Are you
15 finished with Office of Planning?

16 MR. KESSLER: I am. Yes, I am.

17 MS. MILLER: I'm sorry. I thought of one
18 more question I just want to pursue.

19 Mr. Moore, on page eight of your report
20 you say that, "DDOT recommends that the applicant
21 eliminate one or two parking spaces located close to
22 the car wash entrance. Shift the raised curb where
23 these spaces are located and align the parking lot
24 entrance with all the drive-out entrance off of
25 Connecticut Avenue as this lane is not used for drive-

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1 through service." This sounded like the
2 recommendation you were making here to alleviate the
3 problems with the carwash. Is that right?

4 MR. MOORE: That is possibly right. I
5 have since talked to DDOT and, again, to get back to
6 this whole issue we are discussing today about
7 ownership, I said to them at that time this couldn't
8 be something that could be offered by the carwash
9 because Burger King owned the lot. As late as right
10 now we don't have clarity in terms of who owned the
11 lot so maybe it is something that can happen if the
12 carwash owner also owned the parking lot.

13 MS. MILLER: Right. Okay. Which takes me
14 to my next question and that is is this something that
15 you think should be a condition?

16 MR. MOORE: Yes.

17 MS. MILLER: Okay. Thank you.

18 MR. PARSONS: Mr. Chairman.

19 CHAIRPERSON GRIFFIS: I'm sorry. Mr.
20 Parsons.

21 MR. PARSONS: In Section 721.3 there's a
22 requirement that dumpsters be enclosed on three sides
23 with an opaque door on the fourth side. That is in
24 matter of right circumstances in a C-2-A. Have you
25 looked at that? I'm just drawn to this photograph

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1 that has these freestanding dumpsters. Has that come
2 up as a potential need here to enclose these?

3 MR. MOORE: Yes, if you impose the
4 commercial standards on our residential property
5 because the dumpster is on the residential side.

6 MR. PARSONS: I understand.

7 MR. MOORE: I believe that in some recent
8 discussions there were discussions about, I think,
9 welding shut the doors on one side of the dumpster.
10 The applicant can speak better than I can but I think
11 that area has been addressed for probably the very
12 reason that you're looking at it. People can go in
13 and sort of put trash in the dumpster, on the ground,
14 or whatever. I think the way they closed it off now
15 you can only put trash in from the top of it. The
16 applicant can address it better than I can.

17 MR. PARSONS: So the issue of screening it
18 as called for in the regulations in the commercial
19 zones hasn't come up?

20 MR. MOORE: No.

21 MR. PARSONS: I guess I would like to ask
22 the applicant what do you think? I mean, your other
23 establishments throughout the city do you have these
24 enclosed?

25 MR. JAMES: We don't have other locations

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1 that we weld the side door shut. The neighbors were
2 complaining about odor and potential rates.

3 CHAIRPERSON GRIFFIS: What about
4 enclosures, though? Building a physical enclosure for
5 those dumpsters, the two of them.

6 MR. PARSONS: Like a brick wall around it.

7 MR. JAMES: I think she can answer that.

8 MR. HORNE: The structures that can be
9 constructed on an alley lot are very limited. Pretty
10 much is limited to a private garage or an artist
11 studio so whether that would be permitted was an issue
12 for us. We thought it might not be permitted on an
13 alley lot.

14 CHAIRPERSON GRIFFIS: Interesting. So the
15 zoning regulations will prohibit building a structure
16 on the alley lot.

17 MS. MILLER: Do you have any regulations
18 in particular that you want to point to that prohibit
19 it?

20 MR. HORNE: Give me a moment.

21 MR. MOORE: Mr. Parsons, while they're
22 looking at this in the regs, if they were to build a
23 structure for the dumpsters, the location would
24 definitely have to change because it's already
25 abutting the alley and the sidewalk for the parking

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1 lot. If you put it in any other location, it's going
2 to be in close proximity to the residential houses so
3 it's as far away from the houses now as it can be.

4 MR. PARSONS: I understand. The
5 regulations are trying to get to exactly this. This
6 kind of dumpster facility is a bad neighbor to a
7 residential district and here we've got one where we
8 can't protect it because it's in a residential
9 district. It's weird.

10 CHAIRPERSON GRIFFIS: Is there any place
11 on this principal site to put your dumpsters?

12 MR. JAMES: We could put it back towards
13 the wooded area but that would be closest to the
14 neighbors.

15 CHAIRPERSON GRIFFIS: No, on the --

16 MR. JAMES: There is no area on the Burger
17 King lot. No, sir.

18 MR. MOORE: Unless they eliminate the six
19 parking spaces in the rear, and it still would be very
20 tight.

21 CHAIRPERSON GRIFFIS: 2507 is building on
22 alley lots.

23 MR. HORNE: Exactly. That was what I was
24 going to say.

25 CHAIRPERSON GRIFFIS: "Except to use as a

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1 one-family dwelling, a structure shall not be erected,
2 constructed, converted, altered, remodeled, restored,
3 or repaired for human habitation." We've got human
4 habitation. That doesn't mean their critters can't
5 live there. One-family dwelling. Height of building
6 structure. Okay. Bingo. No, we're not playing
7 bingo, are we?

8 What did you say? If you're going to say
9 more than that, you've got to come up here. So you
10 are arguing a point. We'll let you have an
11 opportunity to do that. Okay. I'm not sure 2507
12 necessarily precludes it. It's an interesting issue.

13 Okay. What else? Are there questions of the Office
14 of Planning? Did you comment at all about closing
15 down the lot at 9:00?

16 MR. MOORE: We can recommend that and be
17 pro-business. If the restaurant close at 1:00, it
18 would be impractical to close the parking lot at 9:00.

19 Although I do believe given that there are issues of
20 noise in the community, there should be some
21 compromise between the time they close and 9:00 when
22 they close down.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. MOORE: Maybe 11:00.

25 CHAIRPERSON GRIFFIS: Okay. Good point.

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1 Ms. Miller.

2 MS. MILLER: Are you aware of any
3 particular noise coming from the parking lot in the
4 evening that is of particular concern?

5 MR. MOORE: Not in my observation because
6 all of my site visits have been during the daytime
7 when there is already noise there.

8 CHAIRPERSON GRIFFIS: Anything else? Very
9 well. Let's go to the ANC-3F. Why don't we let them
10 have the table. You guys can go. You can move
11 easily.

12 MR. KESSLER: Hi. I'm Carl Kessler, the
13 ANC Commissioner for 3-F-01, the single member
14 district which the Burger King is located in. Thank
15 you for allowing me to testify today. The Burger King
16 has been in the neighborhood for many years. They
17 received their first special exception in 1982 after
18 an earlier rejection. Then the order was renewed again
19 in 1994 and 2000 with slight modifications each time.

20 Then on May 26, 2004, Burger King filed
21 for a special exception renewal. The company through
22 it's attorneys appeared at our ANC meeting prior to
23 the filing date, this being the only contact with the
24 ANC until the date of filing despite being invited by
25 me to do so.

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1 To find out the neighborhood reaction to
2 the filing after posting the application on our ANC
3 website, I held a neighborhood meeting on July 7,
4 2004, at which a number of complaints were aired about
5 the Burger King as a neighbor. Burger King was
6 invited to that meeting but did not send a
7 representative to it.

8 This was followed-up with a meeting
9 between the most affected neighbors, the Burger King
10 attorney, management representatives and me in August.

11 At that meeting the neighborhood's concerns were
12 aired and a number of changes were proposed by the
13 neighborhood. Prior to the ANC meeting the Burger
14 King attorney came back with a number of concessions
15 to try to allay the neighborhood's concerns.

16 At our September meeting the ANC passed a
17 resolution 0425 which approved the renewal of the
18 special exception but with a number of conditions by a
19 vote of seven, zero, zero, four being a quorum. I
20 think you have a copy of that resolution before you.

21 CHAIRPERSON GRIFFIS: I do. Exhibit No.
22 25.

23 MR. KESSLER: Okay. Now, let's discuss
24 the conditions one by one.

25 CHAIRPERSON GRIFFIS: Actually, let me be

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1 absolutely clear. You talk a lot about neighborhood
2 concerns and all that. What we need is what are the
3 actual concerns. Unless it's going to go right into
4 the conditions if they are linked directly to them,
5 then let's go to that. Telling me you had a lot of
6 meetings and who showed and who didn't show --

7 MR. KESSLER: As I go through the
8 conditions I was going to try to explain them.

9 CHAIRPERSON GRIFFIS: Perfect. Okay.
10 That's where I want to get to.

11 MR. KESSLER: Condition by condition.

12 CHAIRPERSON GRIFFIS: Excellent.

13 MR. KESSLER: That's what I was trying to
14 do.

15 CHAIRPERSON GRIFFIS: Good.

16 MR. KESSLER: Okay. Let's discussion
17 conditions one by one. The first condition to limit
18 it to two years instead of the usual four-year period.

19 Burger King seems to have a problem to meet the BZA
20 requirements. Let's first look at the adherence to
21 renewal requirement. The location received the first
22 parking lot special exception in order 13687 in July
23 of 1982 which had a three-year limitation on it. It
24 did not obtain, as far as I can tell, the next special
25 exception until November 1994 which is well beyond

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1 three years. Again, in --

2 CHAIRPERSON GRIFFIS: All right. Boy, we
3 have a lot of different timings going on here. If I
4 understand, your point is, they get approved for a
5 certain amount of time and they don't come into
6 compliance in that time.

7 MR. KESSLER: That also. I'm just trying
8 to say this is the reason that we think we need to
9 have a shorter lease as Mr. Moore talked about because
10 this seems to be, you know, if we go with the four
11 years, whatever problems they have will probably be
12 unaddressed for four more years.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. KESSLER: That's why we strongly urge
15 the two-year limitation.

16 CHAIRPERSON GRIFFIS: Okay. Good point.

17 MR. KESSLER: Okay. I can go through and
18 give you a list of all the conditions that they didn't
19 meet on those orders if that would be useful to you.

20 CHAIRPERSON GRIFFIS: In the past?

21 MR. KESSLER: Yes.

22 CHAIRPERSON GRIFFIS: Okay. Outside of
23 not maintaining the trash pickup, painting, curb.
24 What else have we not heard?

25 MR. KESSLER: Well, in 1982 have the

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1 condition about the chain and cable. That was not
2 met.

3 CHAIRPERSON GRIFFIS: Okay. We heard
4 about that.

5 MR. KESSLER: Condition 2 of the 1994
6 dealt with the fence which is not in great repair and
7 the trees need to be pruned.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. KESSLER: Condition 3 which really
10 concerns me was no continuous liaisons with the ANC.
11 I mean, we have had no contact with them. Even when
12 the ANC tried to encourage a contract, the only
13 contact we had other than this one meeting where I
14 tried to encourage the applicant to check with me
15 first before you file an application.

16 Next thing I heard the application was
17 filed and that's when I set up the special district
18 meeting. I was concerned also that they did not send
19 a representative to that single member district
20 meeting. That's a real concern of mine and is not
21 keeping the neighborhood apprised of what's going on
22 as far as their zoning requirements are concerned.

23 Also, in both the '94 and 2000 order was
24 the restriction on the sound level of the loud
25 speakers. In the '94 order was 70 decibels.

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1 Unfortunately, in both orders it's not very clear or
2 very specific what that means. It just says the level
3 should be 60 or 70 decibels.

4 Also, on the 2000 order to me it's really
5 unclear what they meant. They said something about
6 picking up four times a day. I'm not sure what that
7 meant. I don't think that meant the dumpster but that
8 was very unclear. The dumpster is supposed to be
9 picked up four times a day and the trash dumpsters
10 still seem to be overflowing. Again, no communication
11 with the ANC. So With all these violations through
12 these various orders, that's why we urge it be for a
13 shorter period of time.

14 Okay. All right. This next one is, "The
15 trash pickup shall be limited to the hours of 10:00
16 a.m. to 6:00 p.m. The neighbors have constantly
17 complained to the Burger King about early morning
18 deliveries with little success. Even after our meeting
19 in August when we received many assurance that there
20 would be no deliveries early in the morning, there are
21 such deliveries.

22 In fact, I received a complaint just on
23 Friday of a 5:30 a.m. delivery. There were a number of
24 houses that were really like right behind the Burger
25 King. This is after I had to stand for my -- from

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1 people who lived on that street they call Burger King
2 and the problem still exist.

3 MS. MILLER: I'm sorry. We're talking
4 about the accessory parking lot. Are there deliveries
5 to the parking lot?

6 MR. KESSLER: Well, the delivers are right
7 tangential to it, yes. Right on the alley which is
8 right beside it.

9 MS. MILLER: But not on it or to it? I
10 mean, I think this is part of the problem that exist
11 in this case is that there are problems with the
12 principal property.

13 MR. KESSLER: Well, I'm looking at the
14 214.7, the language of it. "The parking space shall
15 be so located that in relation to the parking shall be
16 so designed." These are facilities we're talking
17 about. That's 214.7. This is definitely a facility
18 we're talking about. This is related to that parking
19 lot so I think it's definitely something that should
20 be considered.

21 Okay. Trash pickup shall occur three
22 times a week. That's condition No. 3. The neighbors
23 are very concerned with the problem of overflowing
24 trash bins attracting rodents. I mean, that's a
25 problem in the neighborhood. As you will discuss, the

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1 Office of Planning has cited this problem in its
2 report. We are also requesting that the dumpsters
3 only have top access to prevent side doors from being
4 left open which is a perennial problem.

5 CHAIRPERSON GRIFFIS: Say that again?

6 MR. KESSLER: The side doors on the
7 dumpsters.

8 CHAIRPERSON GRIFFIS: That's why they're
9 talking about sealing them shut.

10 MR. KESSLER: Either sealing them or top
11 only. One of the arguments of the Burger King is that
12 it's difficult for their staff to put trash into the
13 dumpster if they didn't have the side doors. My
14 question to you is if the dumpster is filled higher
15 than the side doors they have to put it over the top
16 so why can't they just always put it over the top.

17 They can't just stuff it in the side
18 because the dumpster is filled higher than the door.
19 They must be putting it over the top as it is now so
20 why do they need to have side doors? I mean, this
21 trash can is overflowing. I mean, the dumpster is
22 overflowing so they definitely are loading it above
23 the doors.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. KESSLER: As far as the trash cans are

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1 concerned, which is condition No. 3, which thought
2 that was a good addition and we agreed with that. We
3 didn't specify a location or a design because they are
4 supposed to keep it empty and there wouldn't be a flow
5 of trash so we don't care what the design is or the
6 location.

7 The next one is the portion of trees
8 located on the Burger King property shall be pruned at
9 least once a year. All trees on the -- the ANC
10 supports this. In fact, BK has shown the initiative
11 by contacting me about pruning on the neighboring
12 properties which is part of that condition. I've
13 contacted the neighbors to get in contact with Burger
14 King because they have to give their permission to
15 allow Burger King people on this thing so I'm not sure
16 what the status of that is but that was the last I
17 know.

18 The next condition deals with the drive-
19 through loud speaker. The neighbors emphasize this
20 because corresponding conditions in previous orders
21 were so ambiguous that they were unenforceable. BK
22 did a sound study which we requested be performed at
23 night. The study was done between 8:00 and 9:00 p.m.

24 It found that the sound impact was less than the
25 ambient noise level.

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1 However, that is not when the loud speaker
2 noise is most intrusive. It's later when the
3 residents are trying to sleep. In fact, the report
4 itself makes that point that a study later at night
5 would be much more reflective of the real situation
6 because when people are sleeping is when it's the most
7 intrusive.

8 CHAIRPERSON GRIFFIS: Does the noise level
9 change?

10 MR. KESSLER: I don't know. All it said
11 is it should be done and it wasn't. It was done at
12 9:00 but it's 11:00 when more people are trying to
13 sleep that it becomes a problem. I can read you the
14 quote from the report where the engineer says that if
15 you would like.

16 CHAIRPERSON GRIFFIS: Yeah, go ahead. I
17 don't understand why the time would make a difference.

18 MR. KESSLER: "Since the drive-through
19 loud speaker measurement was very close to the
20 background level another measurement would be
21 necessary when the background levels are significantly
22 lower to determine the true level of the loud
23 speaker."

24 CHAIRPERSON GRIFFIS: What he's saying is
25 he's picking up all the ambient noise around so he's

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1 not really sure how much it's actually projecting out
2 os if you did it at night, the ambient noise would
3 diminish.

4 MR. KESSLER: Right. Exactly. That's
5 what is bothering the neighborhood because when they
6 are trying to sleep this loud speaker is not masked by
7 the ambient noise.

8 CHAIRPERSON GRIFFIS: I see.

9 MR. KESSLER: So that's why -- I mean,
10 Burger King's report says it was not necessarily done
11 at the appropriate time. To get a better measurement
12 it should have been done later. That's one reason we
13 are requesting 40 but I guess given the law we would
14 probably have to settle for something a little bit
15 higher.

16 MR. MANN: How did you go about making a
17 choice of 40 decibels is the appropriate level?

18 MR. KESSLER: Basically it was an
19 arbitrary figure because I was hoping -- I mean, I did
20 not have the report with me when I did the resolution
21 so I did not know what the report said. I was trying
22 to put the resolution together because I didn't get
23 the report until like 5:00 in the afternoon of our
24 meeting and the meeting was at 7:30. I mean, it was
25 really something to fill the space but something that

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1 would reduce the noise level would be very useful.

2 Okay. Next all parts dealing with
3 landscaping and debris. The Burger King's concession
4 was much more specific initially as far as this
5 particular condition was concerned but our ANC amended
6 it to this broader language which is the language that
7 appeared in the original 1982 order. I mean,
8 personally I wouldn't mind using the language the
9 Burger King originally offered versus using this more
10 general standard. Well, I'm just saying this is my
11 personal preference.

12 Okay. No. 7 deals with exterminators.
13 The ANC and Burger King agree on this condition. I
14 think it would be a really good idea to have an
15 exterminator frequently. As far as the retractable
16 cable and closing the entrance at 9:00 p.m., one of
17 the reasons that the neighborhood required this is
18 that people tend to congregate there late in the
19 evening.

20 People use that as a -- I don't live right
21 there but this is what I was told. They are concerned
22 about people parking there to hang out, for example.
23 that's why they requested that it be closed at 9:00.
24 You know, that it be shut down at 9:00 so it wouldn't
25 be used as a gathering place for cars, you know, and

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1 people.

2 The next deals with the neighborhood and
3 ANC liaisons. What we are trying to do with this
4 provision is that it's great that Burger King has
5 proposed this but one of the problems is no one knows
6 exactly who that person is and if they have a problem,
7 they don't know who to go to so we're trying to make
8 sure that Burger King has a way of alerting the
9 neighborhood. We have used the word residences rather
10 than property owners to make sure that it gets to the
11 people who are actually concerned about the noise and
12 other problems.

13 On the next one they are dealing with
14 grease. Because of the Fire Marshall's concerns we
15 agree with the Burger King. And for No. 11 we request
16 an annual report of some sort. Again, this is part of
17 the concern with communication with the ANC and the
18 neighborhood with some sort of report telling the
19 status of what they have been doing with these various
20 requirements. It would help alert the neighborhood to
21 the issues and also give the ANC an idea of what is
22 going on with the Burger King throughout. And
23 as far as --

24 CHAIRPERSON GRIFFIS: It would also give
25 them a reminder yearly that they need to be

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1 maintaining an updating things. Right?

2 MR. KESSLER: Exactly.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. KESSLER: And also we agree with all
5 the Office of Planning recommendations except the 60
6 decibel limit on Burger King's loud speaker. Also we
7 endorse the DDOT proposal about changing the egress
8 and exit on the parking lot.

9 CHAIRPERSON GRIFFIS: Were you here for
10 the ownership discussion?

11 MR. KESSLER: Just a couple minutes ago.
12 Just the tail end of it.

13 CHAIRPERSON GRIFFIS: Okay. Well, someone
14 will update you because that has a direct impact on
15 it. Okay. Anything else?

16 MR. KESSLER: That's all that I have.

17 CHAIRPERSON GRIFFIS: Questions from the
18 Board?

19 MS. PERRY: May I?

20 CHAIRPERSON GRIFFIS: Do you want to
21 finish the panel and then go to --

22 MS. PERRY: If we can.

23 CHAIRPERSON GRIFFIS: Absolutely

24 MS. PERRY: I didn't even bring real
25 testimony because I wasn't planning on being here but

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1 I'm Karen Perry. I'm the chair of ANC-3F. I was at
2 the community meeting that Mr. Kessler referred to,
3 the single member district meeting. There were more
4 than 40 residents there, one girl who had kept a diary
5 for the last four years of her phone calls to Burger
6 King.

7 While I realize the parking lot is
8 separate and the building and the noise and all of
9 that, I also heard this morning during the Sidwell
10 case reliance on past BZA orders which in this case
11 going back to 1982 does address sound levels. You're
12 laughing but I heard that this morning.

13 We have a problem. My gut instinct
14 originally was to not vote to approve this application
15 based on what I heard and I'm talking about
16 refrigerated delivery trucks at 4:00 in the morning
17 that sit there and idle and run those generators for
18 the refrigeration food trucks. We have not only the
19 homes behind there but the Hastings which is an
20 apartment building on the corner.

21 At 1:00 in the morning the loud speaker
22 going into your bedroom window, you know, "What do you
23 want with your cheeseburger," or whatever it is, it's
24 very annoying. This is what people have been living
25 with. They have been living with parties in the back

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1 parking lot because cars are just parking there at
2 night to go to the other establishments. There has
3 been no control from Burger King even during the day
4 in response to complaints.

5 I'm not just talking trash and debris.
6 I'm talking the carwash and everything else. I'm not
7 sure I know the answer but I know passing something
8 and enforcement is not the answer. I'm still trying
9 to get your BZA order from Kuri Brothers from a year
10 ago enforced by DCRA. They've done nothing. We all
11 remember that case so I won't go into it.

12 CHAIRPERSON GRIFFIS: How come you get to
13 go to all the good ones, uh? Okay.

14 MS. PERRY: But I'm just saying they paid
15 one \$500 fine in 13 years and you've done four BZA
16 orders already saying it's in violation.

17 CHAIRPERSON GRIFFIS: Right.

18 MS. PERRY: I'm not sure I know the answer
19 but just doing another four year exception where there
20 is no penalties for noncompliance hoping that the ANC
21 can rectify these things is not the answer either.
22 Burger King has a manager during the day. If the
23 carwash staff is on their property, somebody needs to
24 go out and throw them off or call the police.

25 CHAIRPERSON GRIFFIS: Good.

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1 MS. PERRY: I'm just saying there has been
2 no attempt other than when we hear from them every
3 four years. As somebody who has been on our ANC now
4 for more than two terms, I heard all of this. I heard
5 it with the last application. The trash will be
6 picked up, the dumpsters.

7 The loud speakers will be lowered. There
8 are people that live there and I don't know the
9 answer. I'm being very honest with you but I know I
10 don't ever want to go to another meeting where 40
11 people show up who can't sleep all night that keep
12 diaries of their phone calls to Burger King that were
13 never addressed --

14 CHAIRPERSON GRIFFIS: Good.

15 MS. PERRY: -- just to constantly be told,
16 "We have a new manager. We'll put a new person in
17 charge." That's all I have to say.

18 CHAIRPERSON GRIFFIS: Excellent.

19 MS. PERRY: One idea I have if Burger King
20 would agree, or if the Board could condition it, I
21 don't think you have the 1982 order. It wasn't part
22 of the Office of Planning Report, but I also have the
23 1980 one where they were denied use of the application
24 because of noise in the neighborhood and the cars and
25 everything else and the horns that you get from the

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1 delivery trucks.

2 But it was also talked about landscaping
3 with six-foot tall Canadian Hemlocks to shield it on
4 all sides of the parking lot. There were detailed
5 landscaping plans that were not obeyed. It even
6 talked about how many feet from center they will be
7 planted. To me this is just a repeat from 1980 on or
8 1982 of noncompliance. I don't know the answer but
9 another four-year special exception to me is just a
10 hard nut to swallow.

11 CHAIRPERSON GRIFFIS: Good. You brought
12 up some very excellent points and I'm glad you are
13 here to do that. First of all, let me address --

14 MS. PERRY: Maybe we could close the loud
15 speaker at midnight.

16 CHAIRPERSON GRIFFIS: Here's what I would
17 like to do. The issue is you bring up the point of,
18 look, you're here and compliance with orders is often
19 times but you're asking us to put conditions on. What
20 we're trying to do is make sure that we actually have,
21 one, the authority to go after. I mean, there are
22 clearly things that monitor noise in the city, right?

23 There's codes. There's measuring
24 implementation. You can clearly do it that way. Can
25 we support you in addressing that issue? That's what

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1 the Board is wrestling with and that's why we are
2 being so direct in trying to pull it out. The other
3 thing that you talked about which I think is critical
4 to address. First of all, you mentioned three cases.

5 This case, the morning case that you heard
6 deliberation on, and the Kuri Brothers case. They are
7 all a different hilt but I understand your exact
8 point. First of all, please, we note that. Let's
9 take the Kuri Brothers which is an appeal of a civil
10 infraction. What that was is the fines were already
11 out there. It wasn't as if they weren't in compliance
12 with our orders and we couldn't have the strength of
13 our order to deal with the situation. That was a fine
14 that they were contesting. I'm not going to get into
15 the merits of it. We understood the frustration
16 around that issue.

17 MS. PERRY: You voided their C of O
18 basically.

19 CHAIRPERSON GRIFFIS: Exactly.

20 MS. PERRY: And they are still operating
21 and that's my frustration. It expanded again.

22 CHAIRPERSON GRIFFIS: But the point is our
23 control stopped at the door with that and I hope you
24 understand that.

25 MS. PERRY: Oh, I do. I'm not blaming the

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1 Board but I think when I hear talk of enforcement of
2 conditions, I know it's through DCRA.

3 CHAIRPERSON GRIFFIS: And so you need to
4 get --

5 MS. PERRY: And you know that doesn't
6 happen.

7 CHAIRPERSON GRIFFIS: Listen. You need to
8 get that connection that this Board is trying to make
9 also because we agree with you 100 percent which is
10 why we don't put conditions that are beyond our
11 jurisdiction or authority. That's why we don't craft
12 conditions that aren't measurable or enforceable.

13 MS. PERRY: I understand that.

14 CHAIRPERSON GRIFFIS: That's what we're
15 trying to do. Secondly, you heard discussion as you
16 brought up about a deliberation session this morning
17 and their reliance on past orders from the Board. I'm
18 glad you brought that up because I don't think anyone
19 that sat on that this morning isn't thinking that this
20 afternoon.

21 It's a big issue in terms of what we are
22 looking at as the interpretive process or the
23 authority of which under one section the Board had.
24 Because it was not clear to the Board in reading the
25 straight regulations whether we had it or not, there

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1 was a reliance on the previous decisions of Boards.

2 If we look at this case and, believe me,
3 we have to ask the applicant's legal representatives
4 to talk about 24.7, if they make a persuasive case or
5 not, we may well rely on the past. Now, as I was
6 saying before, I think the concern of the Board, and I
7 think your concern, is not that we make our conditions
8 and that satisfies our obligation.

9 We want the situation to be dealt with.
10 Well, a condition of the speaker volume remedying the
11 situation, I'm not sure so we want to address that. A
12 lot was there. I appreciate you stating all those
13 things.

14 Ms. Miller.

15 MS. MILLER: I have a few comments and
16 some questions also. I certainly sympathize with what
17 you are saying about this loud speaker. That sounds
18 like a great adverse impact. I think the Board's
19 concern is that we may not have jurisdiction over that
20 issue since the sound is emanating not from the
21 property that is before us but from the principal lot.

22 If you can cite any authority to sway us
23 otherwise, that's great. I think the Board does look
24 to pass BZA decisions for guidance and precedence,
25 etc., but we don't follow necessarily everything. The

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1 Board can make mistakes and Court of Appeals can point
2 out mistakes. We are a lot more cognizant, I think,
3 recently about what's within our jurisdiction. If
4 it's not within our jurisdiction, we can't enforce it
5 anyway.

6 I think what we're looking for here,
7 though, is to do the best we can within our
8 jurisdiction. One of the things I hear you saying is,
9 okay, they have a bad track record in this case so
10 let's make the period shorter for the special
11 exception. That is something that is within our
12 jurisdiction to do.

13 You said something like it sounds like
14 they were ordered to have these tall trees around the
15 parking lot. That is something that is within our
16 jurisdiction to do. If it wasn't complied with, then
17 that is another issue that we have to think carefully
18 about, especially since you're saying what is the
19 point if DCRA is not enforcing these conditions
20 either.

21 It's a start having the right conditions
22 that can be enforced and are measurable. I think
23 those are two really good points that you made. I'm
24 curious about this noise in the parking lot. It
25 sounds like they have had this chain up at 9:00,

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1 right? Or this is something new? They haven't had it
2 and that's why the cars have come in. Okay. So by
3 putting the chain -- okay. Another question I have is
4 have neighbors complained about noise in the evening
5 versus noise in the daytime?

6 MR. KESSLER: Most of the complaints are
7 about noise in the evening because that is when it's
8 most noticeable. During the day there was so much
9 other noise with the carwash and all the other
10 commercial activities in that alley it was hard for
11 people to hear. Plus all the noise from Connecticut
12 Avenue and Alamar Street so it's very difficult for
13 the people to hear that. At night when they expect
14 peace and quiet is when it's really intrusive.

15 MS. MILLER: Okay. And particularly from
16 9:00 on when people are ready to go to sleep or their
17 kids are getting ready to go to sleep.

18 MS. PERRY: Yeah, people work during the
19 day and they come home at night and when you hear a
20 delivery truck at 4:00 in the morning or people out in
21 the back parking lot with the horns and the beer cans,
22 that's when they do hear it.

23 MS. MILLER: Do you have individuals
24 congregating in there? I mean, without the cars or
25 just cars?

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1 MR. KESSLER: Well, I have not personally
2 experienced this but what I was led to understand was
3 that cars and people hang out there. It's not every
4 night but it is a gathering place where people do
5 congregate. I guess teenagers or something driving
6 around. They probably go to the Burger King for
7 something to eat and then they hang out in the parking
8 lot.

9 MS. PERRY: It's a little more than that
10 from what came up at that meeting also, the single
11 member district meeting. The people who own the
12 carwash have a house right off the side street there
13 and they have parties and that's where some of the
14 noise is emanating from.

15 CHAIRPERSON GRIFFIS: In the parking lot?

16 MR. KESSLER: No, no.

17 MS. PERRY: They have cars that park back
18 in there.

19 MR. KESSLER: Ms. Perry, I know, but
20 that's a different location. There is another parking
21 lot which is being addressed by the police which is a
22 separate parking lot which has nothing to do with
23 Burger King. I don't want Burger King --

24 MS. PERRY: No, but it's the same alley.

25 MR. KESSLER: It's the same alley but it's

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1 not right next door. Not this parking lot.

2 CHAIRPERSON GRIFFIS: This is an active
3 place. How come I've never been invited?

4 MR. KESSLER: Well, what can I say?

5 MS. PERRY: Come anytime you want.

6 MR. KESSLER: That's right. Day and night
7 there's stuff going on.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. MILLER: Do you have an opinion about
10 enclosing the garbage cans or the dumpster?

11 MR. KESSLER: Yes, we do. We proposed
12 that when we had a neighborhood meeting.

13 CHAIRPERSON GRIFFIS: You proposed --

14 MR. KESSLER: Enclosing the trash cans.
15 Because of the rat issue we proposed enclosing the
16 dumpster.

17 CHAIRPERSON GRIFFIS: Okay. How would you
18 enclose it that would remedy the rat situation?

19 MR. KESSLER: Well, we have a school on
20 our block, the Sheridan School, and they have the same
21 problem and they put an enclosure around it which is
22 very tight to the ground and everything. The problem
23 really subsided.

24 CHAIRPERSON GRIFFIS: What is the
25 enclosure made of?

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1 MR. KESSLER: It's a wooden enclosure but
2 the way it's made it's very tightly fit to the ground
3 so there --

4 CHAIRPERSON GRIFFIS: A wooden enclosure
5 to dirt? Is that what it is?

6 MR. KESSLER: Well, in front it's to
7 asphalt but in the back it is to dirt. But the thing
8 is the structure is very tightly together and it's
9 very -- I don't know if it's actually buried in the
10 dirt but it's very tight to keep rats from getting
11 underneath the enclosure and getting into the trash
12 cans.

13 CHAIRPERSON GRIFFIS: Do you really think
14 it keeps rats out?

15 MR. KESSLER: Well, all I can say is the
16 evidence. I have not heard any complaints from my
17 neighbors about the problem since. It's been a couple
18 of years.

19 CHAIRPERSON GRIFFIS: I'm being direct
20 with you here. I think that is more out of sight, out
21 of mind.

22 MR. KESSLER: You're asking for
23 suggestions and I'm trying to give you something. I
24 haven't done a scientific study.

25 CHAIRPERSON GRIFFIS: We've had

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1 applications, and this is what I'm talking about in
2 terms of enclosures. I think, in one sense, it's a
3 good screening mechanism. I think we ought to explore
4 that. We ought to look at what we're trying to
5 actually remedy. If we're trying to screen it, that's
6 one thing.

7 A lot of times these things actually
8 create more problems. I don't know if any of the
9 Board members that are on now sat through this but one
10 of the worst ones I ever saw was a residential
11 building but they had built this enclosure around it.

12 It was pretty tight to the dumpster and people
13 throwing trash in the dumpster it overflowed into the
14 enclosure.

15 The guys coming to pick this up just back
16 up, put the dumpster on, dump it in the truck, dump it
17 back in. You've got this buildup of trash in this
18 enclosure that went on for weeks. It was a mess. I'm
19 not saying that would happen here but I'm just trying
20 to lay it all out there.

21 MR. KESSLER: The Sheridan School was
22 linked with more frequent pickups so that wouldn't
23 happen.

24 CHAIRPERSON GRIFFIS: Yeah, well --

25 MR. KESSLER: So they had like one a week

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1 and now they have it three or four times a week.
2 Between the two that problem wouldn't happen. I mean,
3 you just can't have a tight enclosure without having
4 more pickups to make sure that doesn't happen
5 consistently. Also, I would hope the Burger King
6 staff if that happens would notice that and make sure
7 anything on the ground would get back into the
8 dumpster.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. KESSLER: So it wouldn't happen in the
11 future.

12 CHAIRPERSON GRIFFIS: Yeah. I'm just
13 wondering if -- I mean, it's just kind of flushing out
14 what we're trying to remedy if we look at an
15 enclosure. If it's cleanup, then, you know, and not
16 having trash blowing around, then it's probably easier
17 to have them open so you can clean all around them.

18 Okay. What else? Where are we?

19 MS. MILLER: I have a follow-up question
20 on that one. I think you were here for the discussion
21 but I'm pretty sure Mr. Moore said that if they had an
22 enclosure around the dumpster, they would have to move
23 it. There wasn't enough room where it is. Did you
24 explore that?

25 MR. KESSLER: Well, we only made the

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1 proposal and, like I said, the Burger King attorney
2 came back to me and said that the regulations don't
3 allow it. I took her representation. I didn't
4 question it. But, I mean, that's why we proposed this
5 thing about having only top loading dumpster instead
6 is trying to deal with the same issue.

7 The issue was really the rodents and the
8 rats. I mean, odor is a problem, too, but that is
9 concern of the neighborhood and that's why we have a
10 provision about the fence. There's a fence between
11 the neighbors and the Burger King which has holes in
12 it and we want those repaired.

13 MS. MILLER: Is that before us?

14 MR. KESSLER: Yes. Let me see where it
15 says.

16 MS. PERRY: Ms. Miller, if I may, one of
17 the problems we've had with Burger King are these
18 green dumpsters that have these two sliding doors on
19 the side. They are kind of tall and thin.

20 CHAIRPERSON GRIFFIS: We are aware.

21 MS. PERRY: That's why we recommended
22 either top loading or that those doors be sealed
23 because they are constantly left open and that's when
24 you have the trash and the rats, either way.

25 MS. MILLER: Okay.

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1 MR. KESSLER: About the fence is something
2 that we discussed. I don't see it in the resolution.
3 I mean, I think -- I don't have the --

4 CHAIRPERSON GRIFFIS: Sealing the bottom
5 of the fence?

6 MR. KESSLER: Yes, sealing the bottom of
7 the fence. Right. I think that was a concession of
8 Burger King that they would be willing to do that at
9 our meeting in August.

10 MS. MILLER: Does the fence abut the
11 parking lot?

12 MR. KESSLER: Yes, it's on the hill so
13 there's an incline. There's a slope there. With the
14 slope it makes it easy for there to be space. You
15 know, open space because of the erosion and things
16 like that.

17 MS. MILLER: What does the sealing
18 address? Sealing the fence addresses what?

19 MR. KESSLER: Rodents coming in from the
20 alley into the private houses abutting the Burger King
21 alley or parking lot.

22 MS. MILLER: Okay.

23 MR. KESSLER: As the Chairman says, you
24 can't completely eradicate them but you can try
25 various mechanisms to control them.

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1 MS. MILLER: Make it a little harder for
2 them. Okay.

3 CHAIRPERSON GRIFFIS: Okay. What else?
4 Any other questions of the Board? Does the applicant
5 have any cross-examination of the ANC? Ms. Horne, any
6 cross?

7 MR. HORNE: No cross.

8 MS. MILLER: One more question. Sorry.

9 CHAIRPERSON GRIFFIS: Cross by Ms. Miller.

10 MS. MILLER: Does the ANC have any other
11 suggestions with respect to landscaping or anything
12 else?

13 MR. KESSLER: I do have the wording that
14 they proposed. The provision that I originally
15 proposed for that landscaping of the parking lot I can
16 read you that. It did not have specific plantings but
17 it did have an enforceable standard.

18 CHAIRPERSON GRIFFIS: Really? An
19 enforceable standard?

20 MS. PERRY: I would like to see us go back
21 to something that was in the 1982 order. I'm not that
22 familiar with plants so this could be the wrong type
23 of tree but it says --

24 MR. PARSONS: It looks to me like that is
25 the case. They planted the trees. They put in White

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1 Pine rather than Hemlock.

2 CHAIRPERSON GRIFFIS: The trees that are
3 there, although they were required to be six feet. It
4 looks like they've grown.

5 MS. PERRY: The lot shall be landscaped to
6 its north and south boundaries to separate it from the
7 other parking lots which might help us keep it
8 separate from the carwash if there was some
9 landscaping around that side of it.

10 MR. PARSONS: It's impossible unless a
11 fence is used. There's not a space for a plant to
12 grow.

13 MS. PERRY: Or tree boxes, whatever you
14 call those planter boxes.

15 MR. KESSLER: We also proposed that and
16 the Burger King came back and said it was not feasible
17 and we didn't press it. If you would like, I can read
18 you the wording that Burger King originally proposed
19 for this landscape.

20 CHAIRPERSON GRIFFIS: Go ahead.

21 MR. KESSLER: "The grass shall be mowed
22 twice per week and the hill shall be landscaped with
23 additional perennial flowers and the grass seeded and
24 fertilized at the appropriate time in the spring. All
25 green once planted on the hill shall be maintained in

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1 an attractive condition for the duration of this
2 order." This has sort of been a decided by me but
3 this is the gist of it.

4 MS. MILLER: For curiosity they proposed
5 that language but the ANC adopted a different
6 language?

7 MR. KESSLER: Yes. That's the way it was.
8 Moving west.

9 CHAIRPERSON GRIFFIS: Okay. Anything else
10 from the Board? No other cross from the ANC? Thank
11 you both very much. We appreciate it. I think we
12 have what we need on that. Let's move on then to -- I
13 lost my notes here.

14 MR. KESSLER: Mr. Chairman, do you want
15 any authority on this question about regulation of
16 tangential properties? You said you were looking for
17 additional authority.

18 CHAIRPERSON GRIFFIS: You said 214.7. Am
19 I correct?

20 MR. KESSLER: Yeah, it seems to me I could
21 read it that way, yes.

22 CHAIRPERSON GRIFFIS: Is that what you are
23 relying on?

24 MR. KESSLER: Well, that's one thing,
25 yeah. There may be something else. I was just

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1 wondering if there is some time period which you would
2 want that in.

3 CHAIRPERSON GRIFFIS: You are requesting
4 to keep the record open so that you could brief that
5 issue. Is that correct?

6 MR. KESSLER: Yes. I hope so, yes.

7 CHAIRPERSON GRIFFIS: I'll take that under
8 advisement. Let's move on then. It looks like that's
9 going to be it in terms of the Government reports,
10 ANC. I don't have anyone else in the hearing room to
11 provide testimony for persons or parties. Let's go
12 right up into the applicant and get them back up here.

13 First of all, let's take on the initial
14 question. Can you give us your legal opinion of
15 214.7, "Accessory parking space shall be so located
16 and facilities in relation to the parking lot shall be
17 so designed that they are not likely to become
18 objectionable for all the following reasons." Why
19 doesn't that include the Burger King, the principal
20 site?

21 MR. HORNE: We believe that would address
22 facilities located on the lot, not facilities located
23 on a different property.

24 CHAIRPERSON GRIFFIS: So what you're
25 saying is 214.7, "Accessory parking spaces shall be so

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1 located and facilities..." What, like a parking lot
2 attendant shack?

3 MR. HORNE: Yes.

4 CHAIRPERSON GRIFFIS: I see. So the
5 facilities in relation to the parking lot so it's
6 directly relation.

7 MR. HORNE: Yes, directly related to the
8 parking lot rather than --

9 CHAIRPERSON GRIFFIS: What lends itself to
10 that interpretation?

11 MR. HORNE: Well, the problem you get into
12 and what lends it to its interpretation is that any
13 use that related to a parking lot that required
14 approval under Section 214 would automatically no
15 longer be a matter-of-right use. It would have to
16 prove that it is not likely to be objectionable to
17 adjoining or nearby property because of noise,
18 traffic, or other objectionable conditions which is
19 the special exception standard.

20 CHAIRPERSON GRIFFIS: If I understand what
21 you're saying, this comes under the paragraph .7 which
22 comes under 214 which is the regulating section of
23 accessory parking spaces, not matter-of-right uses in
24 any other zone.

25 MR. HORNE: Right. Yes.

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1 CHAIRPERSON GRIFFIS: Okay. Board
2 members? For the nonlegal minds among us, which mine
3 may be the only one left, the rest of you being so
4 legal, if I'm understanding what you're saying
5 correctly, you have 214.7 saying accessory parking
6 spaces -- the facilities have to go directly to the
7 operation or the functioning or onsite with the
8 accessory parking space.

9 Otherwise, everything that comes in for an
10 accessory parking, which may be a matter of right
11 commercial establishment, may be a multi-family
12 residential, may be a church -- in fact, I think we've
13 seen one of them -- that you would open the door --
14 even though they are matter-of-right and need no
15 relief, you would open the door that we would go and
16 review them or their use as a special exception and,
17 therefore, even though it's matter of right, we would
18 have to assess whether they did or could create
19 anything that was objectionable for noise, traffic, or
20 anything else.

21 MR. HORNE: Yes, and I would actually
22 discourage the use of accessory parking lots which are
23 often needed in these neighborhoods to relief pressure
24 on neighboring streets because you would be
25 automatically putting your matter-of-right use up for

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1 grabs if you were required to satisfy a special
2 exception standard just because you are getting an
3 accessory parking lot.

4 CHAIRPERSON GRIFFIS: I see. Okay. Yes?

5 MS. MILLER: I think the parties should
6 have a chance to submit something, though, in the
7 event that they can research to see whether this has
8 come up in any other case or something like that.

9 MR. HORNE: We would be happy to do so.

10 CHAIRPERSON GRIFFIS: Just read the
11 regulations. All right. Tomorrow at 3:00 we want all
12 court case citings. We want a whole briefing. Okay.
13 Anything else? Anything else for closing?

14 MR. HORNE: Yes. I would like a brief
15 closing, please.

16 CHAIRPERSON GRIFFIS: Sure.

17 MR. HORNE: We've been working with the
18 ANC for over a year. We contacted Mr. Kessler in July
19 of 2003 to determine whether there were any concerns
20 about the lot. We appeared before the ANC September
21 15th of 2003 to find out if any members of the
22 community or the commissioners had any concerns with
23 the use of the lot. On that day no residents or
24 commissioners brought any specific concerns to our
25 attention.

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1 However, the next day one of the
2 commissioners did call and express concern about the
3 amount of trash in the dumpsters. At that time we
4 immediately increased the trash pickup from once a
5 week to two times per week. As we have testified, it
6 is now at three times per week. We also remained in
7 contact with Mr. Kessler and we met with the community
8 on August 18th.

9 At that meeting were the immediately
10 abutting neighbors including the woman who had kept
11 the diary of the noise that had occurred over the past
12 number of years. We had that meeting so that we could
13 find out what their specific concerns were and address
14 those concerns. We believe that the proposed
15 conditions will address their concerns.

16 Primarily their concern was that they had
17 not been able to get in touch with people because of
18 complaints so we suggested that we have the liaison
19 which will be a specific person with a specific phone
20 number that they will be able to call. We also
21 believe that the reporting requirement will address a
22 lot of the concerns of the neighbors.

23 In addition, this block is characterized
24 along Connecticut Avenue by a commercial use. There
25 is an alley. There is a public alley that runs all

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1 down the block. That alley is used by anyone in the
2 public who wants to drive down the alley. It is also
3 used by the other commercial uses.

4 There is a Days Inn on the block which has
5 trash pickup twice per day. Next door is a dry
6 cleaning establishment and there is also a realtor.
7 We have stuck to our commitment to have our deliveries
8 and trash pickup between the hours of 10:00 and 6:00.

9 We are happy to agree to that condition.

10 However, we cannot control if other
11 entities in the area may choose to have their
12 deliveries at other times and that may be a problem.

13 As far as landscaping goes, we are happy
14 to submit a landscape plan. We would be happy to
15 landscape the rear of the lot which is the west side
16 with some hearty year-round shrubs that are selected
17 by a landscape architect.

18 That area has been landscaped with trees
19 and those trees have matured and they provide quite a
20 buffer for the adjacent residential properties. The
21 portion of landscaping has already been reseeded for
22 next year so that there will be more grass.

23 With regard to the enclosure of the
24 dumpsters, when the neighbors asked us about the
25 enclosure of the dumpsters, they were primarily

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1 concerned with rats. It was our understanding that we
2 wanted to address the concern if the neighbors that we
3 not create an area that would be a harbor for rats.

4 If we did move the dumpsters in order to
5 create an enclosure, it's likely that we would have to
6 move them closer to the adjacent residential
7 properties at the back of the lot and that would just
8 increase any objectionable odor to the neighbors.
9 Instead we suggested that we have an exterminator some
10 once a month. We have already engaged the
11 exterminator. We believe that is the most direct way
12 to take care of the rat problem that is perceived.

13 We have already increased our trash pickup
14 to three times per week and we have increased to
15 increase them even more if necessary. However, as you
16 will see in the photographs attached as Exhibit C, the
17 dumpsters are not always overflowing and the trash
18 pickup increasing to three times a week has really
19 been working.

20 We have placed at this time two additional
21 trash cans on the lot. These are trash cans for
22 pedestrians and for customers of the Burger King and
23 they can also be used by the adjacent carwash in order
24 to make sure that litter does not collect on the lot.

25 That also has been working.

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1 We will be pruning the trees at least once
2 per year which will take care of any concerns of
3 neighbors with regard to the pruning of the trees. We
4 will maintain the landscape in a healthy and growing
5 condition.

6 When we spoke with the neighbors they did
7 not state that there was an existing problem with
8 loitering on the lot. They stated that they were
9 concerned there would be a problem with loitering on
10 the lot and that they wanted to be more proactive in
11 addressing that concern so we did agree to close the
12 entrance of the parking lot to vehicles at 9:00 p.m.
13 each night using a chain or a cable. The chain has
14 already been installed. It is not a retractable chain
15 because that was not available but we do have a
16 regular chain which has been installed and exist at
17 this time on the lot.

18 We also will be providing a report to the
19 ANC and the residences within 200 feet summarizing our
20 compliance with these conditions. We feel that this
21 report will address any concerns that we have not been
22 in compliance for a long period of time while people
23 have been unable to focus on what is going on in the
24 lot.

25 And, with that, I ask that you please

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1 approve the continuing use of this parking lot for the
2 Burger King pursuant to Section 214. Thank you.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 A couple more questions before you go, Ms. Horne.

5 MS. MILLER: I'm sorry. I have just a few
6 more follow-up. Did you give your position on the top
7 loading dumpster?

8 MR. HORNE: Yes. As you will see in our
9 proposed conditions, we have agreed that we would weld
10 one side of the door shut but we think that one side
11 should be open for employees who might not be tall to
12 be able to put their trash into the dumpsters. We
13 think it would be better to have at least one set of
14 doors not welded shut.

15 MS. MILLER: Okay. And on the pruning did
16 you have a condition before to prune the trees once a
17 year or no?

18 MR. HORNE: There was no condition prior.
19 That's a new condition.

20 MS. MILLER: Okay. And, finally, this is
21 a question in the theme of what we've heard today.
22 Why should the Board believe that you are going to be
23 in compliance in the future when there have been these
24 problems in the past? What is different?

25 MR. HORNE: Well, one thing that's

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1 different is that I think the concerns of the
2 community were not adequately addressed by the
3 conditions in the prior order. The conditions in the
4 prior order didn't really -- there was nothing with
5 regard to rats. There was nothing with regard to
6 having the lot closed at night. We have agreed to a
7 lot of new conditions.

8 I believe their concerns about this
9 property don't necessarily relate to the conditions
10 that are in the prior order. I think their concerns
11 are different. We really have -- as you can see in
12 the pictures that we have filed, the lot has not been
13 terribly badly maintained. It did need to be
14 repainted and restriped. We certainly are willing to
15 make sure that it is painted and striped
16 appropriately.

17 I think that the reporting requirement is
18 going to enable the community as well as the applicant
19 to focus on making sure that it is maintained. I
20 believe sometimes perhaps the community doesn't have
21 the opportunity to think about what they want to do
22 about a property until it comes up for its renewal.
23 This will give them more opportunity to focus on that.

24 We went to the ANC last year and we have been working
25 with them.

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1 It's only been recently since we filed
2 this application that these concerns have surfaced.
3 We think that the reporting requirement will enable
4 the community to really focus on their problems with
5 the lot. It will enable us to address their concerns
6 in a timely manner.

7 MS. MILLER: Thank you.

8 CHAIRPERSON GRIFFIS: Anything else? Very
9 well. Thank you very much, applicant and ANC
10 participants. Clearly there are a couple of important
11 issues that are coming up here. The noise from the
12 speaker is a big issue and whether we have authority
13 or not to deal with it. If we do, be prepared. If we
14 don't, take care of it anyway.

15 Just as a quick aside, it looks as though
16 the drive-through speaker is at the rear of the
17 property. Is that correct? So it's at the rear.
18 It's obvious that it's in this concrete canyon so it's
19 echoing everywhere.

20 I'm looking at the aerial from the Office
21 of Planning's map and it's pretty clear there's
22 nothing that -- no matter what decibel level that is
23 that sound is able to travel. I don't know. It seems
24 to me I would be surprised if that apartment building
25 in the corner is hearing a lot of it. If it is, wow,

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1 that's some serious concrete.

2 I know what you said so where I'm going
3 with this is maybe even a cover over that that might
4 even be lit with downlights. It may help in terms of
5 the drive-through and the safety. That may, in fact,
6 impact a little bit of the sound transmission out away
7 from it so it will block it a little bit. There it
8 is. We'll call that a little bonus. The BZA bonus at
9 the end of the day.

10 Okay. I think we could get into this on
11 the bench, however, we won't for the lack of a couple
12 of things. First of all, we're going to have a letter
13 just establishing the authority for Potomac Foods to
14 bring the application. Second, I think it would be
15 appropriate as we craft the condition to have a
16 landscape plan.

17 I don't think a landscape architect and
18 all that kind of stuff but focused on the area on what
19 is proposed, you know, shrubs. Be realistic with it.

20 Just give us the placement and be realistic in what
21 you're actually going to do and what you're actually
22 going to be able to maintain. Note the fact that I
23 think the buffering actually was probably more sound
24 prior. As Mr. Parsons has laid out, the trees were
25 put in. They are evergreen. They do create a buffer.

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1 I'm looking at the landscape now as more of a visual
2 aesthetic, but we'll let that go as it is.

3 MR. PARSONS: Let me jump in here.

4 CHAIRPERSON GRIFFIS: Sure.

5 MR. PARSONS: I would agree. I think the
6 worse thing we could do is inadvertently damage the
7 White Pines trying to put some shrubs in here. It
8 might be better off with a ground cover or something
9 of that nature rather than digging big holes into the
10 pine tree roots.

11 CHAIRPERSON GRIFFIS: I think that's an
12 excellent point. I'm looking at just the amount of
13 shade there and the trouble the grass even has
14 probably because of the canopy of the trees. Yeah, I
15 would tend to absolutely agree. Not to mention, here
16 is my thing on rats. If this is the problem with it,
17 what you don't want to create are all these places to
18 hide and to burrow around. I mean, the cleaner it is
19 and the more open it is, the more visual, they are
20 going to scurry into the nooks and crannies. I did a
21 lot of study in my own alley about this actually.

22 Nonetheless, I think, as Mr. Parsons is saying,
23 some low ground cover is probably very appropriate to
24 do to make it look a little bit better and then
25 anything else that you're deciding that can go onto

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1 the island out in the alley, all that kind of stuff,
2 will go there. Okay. We just want to know
3 what it is so that we know what's going to be
4 maintained. Oh boy. Here's our real arborist.

5 MS. MILLER: No, I'm not weighing in in
6 that capacity. I'm weighing in in the lawyer
7 capacity, and that is I was just thinking about this
8 issue of jurisdiction of whether or not -- one of the
9 issues we said you may brief is whether or not we have
10 jurisdiction over the principal property when the
11 accessory property is at issue.

12 I think that the ANC may also have not
13 been here when we discussed that these two pieces of
14 property may be owned by different owners. In fact,
15 Potomac Food owns the Burger King property and it's
16 possible that the carwash owns the accessory parking
17 lot.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. MILLER: That could be factored into
20 your research. Thank you.

21 CHAIRPERSON GRIFFIS: Research. You make
22 it sound like a big project. I'm not expecting a big
23 submission. We are also getting a very brief
24 photograph of just -- it's a photograph of the trash
25 receptacles that have been put on there and where they

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1 are just so we know what we're looking at.

2 Okay. As Ms. Miller has indicated, we are
3 keeping the record open for the legal briefing on
4 everything that has ever been attended to the
5 authority of the Board in accessory parking spaces and
6 under whether the principal property goes under the
7 special exception review in the accessory parking 214.

8 We'll get that set up in the schedule in a moment.

9 Note on this, and I think the applicant
10 and the ANC ought to take attendance to this, and the
11 ownership as we get into it. It's actually the
12 ownership that will be more. The Office of Planning
13 had indicated and cited that DDOT recommended the
14 applicant eliminate one or two parking spaces located
15 close to the carwash and create some sort of buffer
16 there. How does the Board feel about that? I mean,
17 this is our opportunity to either have that addressed
18 or not addressed if you are thinking that is actually
19 where the Board might go in terms of conditioning.

20 MS. MILLER: I think it should be
21 addressed. If, in fact, the carwash is the owner of
22 the property, then I would be interested in a
23 representation from them as to their position on
24 whether they are willing to -- what their position is
25 on making those changes and whether they are willing

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1 to do it.

2 CHAIRPERSON GRIFFIS: Okay. You mean the
3 applicant whether they'd be willing to make those
4 changes?

5 MS. MILLER: Whoever is the owner of the
6 property.

7 CHAIRPERSON GRIFFIS: Right. Let's hear
8 it now. Has this been something that has been
9 discussed? Has this been something that has been
10 discussed with your client whether they would be
11 amiable to fulfilling the DDOT recommendation?

12 MR. HORNE: We have discussed it in
13 general terms. However, I have been looking forward
14 to seeing the DDOT report and we have checked every
15 day and have never received a DDOT report so we really
16 don't have any idea of what they have in mind.

17 I know that we have discussed perhaps
18 putting a full guardrail in that area that would
19 prohibit cars from driving across the lot at that
20 area. It would provide us separation from the
21 property. It would be akin to the one on the other
22 side of the property which you can see a picture of in
23 Exhibit C to our prehearing statement. In order
24 to put -- there's not a lot of space for landscaping
25 and we would have to remove some parking spaces. We

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1 could do that but --

2 CHAIRPERSON GRIFFIS: Landscaping is a
3 little bit --

4 MR. HORNE: We just don't know what they
5 had in mind. They have not been in contact with us at
6 all. Mr. Moore did mention it and we are willing to
7 discuss it but we haven't seen any report. We haven't
8 seen any proposed plan or anything so we really just
9 don't know what they have in mind.

10 CHAIRPERSON GRIFFIS: Right. Okay. There
11 are a couple of things that just don't make any sense
12 to me. I'm not sure why they would take a couple of
13 spaces and what are you doing in those spaces if you
14 take them. I think another guardrail, one of those
15 metal guardrails, and paint it red. Okay, not red.

16 Anyway, that's pretty darn unsightly. It
17 may -- I don't know. We'll leave that open. It
18 doesn't make a lot of sense to me what has been
19 recommended except trying to curtail the carwash
20 overflow and the impeding of traffic. I think that is
21 going to be more programming than anything physical
22 that we end up doing.

23 MS. MILLER: My point is just that if your
24 client is the lessee and there really is a different
25 owner, we just need the authorization with respect to

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1 any changes that might be made to the property.

2 MR. HORNE: Well, we intend to provide an
3 authorization to subject the property to the
4 jurisdiction of this Board and the approval of the
5 Board of the use which would necessarily include any
6 conditions. Our applicant does have a legal right to
7 be on the property as a lessee. If they do not have
8 the authority to make the changes, then they don't
9 have the approval to use the lot. We would be happy
10 to --

11 CHAIRPERSON GRIFFIS: Once we get the
12 authority of who's putting together the accessory
13 parking lot, then they are responsible for the
14 compliance with the order. Once they have the
15 authority to bring the application, then I'm clear.
16 We can tell them to do whatever we want within some
17 reason.

18 That won't be a problem. I just want
19 clarity of the fact of whether the DDOT recommendation
20 had been flushed out and whether we needed comments
21 back from them. Okay. There it is. Is everyone
22 clear on what is to be submitted then? We've got
23 ownership letter coming from you, landscape plan,
24 trash receptacle illustration or placement, and we
25 have briefings from both.

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1 Ms. Bailey, anything else?

2 MS. BAILEY: Mr. Chairman, did you want to
3 ask the applicants for proposed findings? Is that
4 necessary?

5 CHAIRPERSON GRIFFIS: It's not required.
6 I don't think we are going to require to put it in a
7 draft order or anything like that. We'll keep the
8 record open if you want to put in proposed findings.
9 My feeling and, I think, the indication of the Board
10 is it's not needed. This is pretty easy to figure out
11 in terms of the findings and the conclusions but we'll
12 keep the record open if you want to. Spend time in
13 the legal library on the other issue. Okay. What
14 else?

15 MS. BAILEY: That's it, sir. Just the
16 decision date. I'm assuming you're making a decision
17 at your November public meeting, November 2nd public
18 meeting? That's an assumption on my part. I
19 shouldn't do that, I guess.

20 CHAIRPERSON GRIFFIS: And what is that,
21 Ms. Bailey? It always comes from you. We're going to
22 do that. That will allow three weeks to get all that
23 information in. Is that correct?

24 MS. BAILEY: Yes, sir. That would be on
25 the 26th of October we'll be asking for the

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1 submissions to come in.

2 CHAIRPERSON GRIFFIS: Good. Applicant
3 have any difficulty with that time?

4 MR. HORNE: No, we do not.

5 CHAIRPERSON GRIFFIS: ANC, is that enough
6 time to get that stuff in? Okay. You're going to
7 submit something. If you don't submit anything,
8 submit something that says we're not going to submit
9 something.

10 MR. KESSLER: I plan to.

11 CHAIRPERSON GRIFFIS: Okay. Good.
12 Excellent. There it is.

13 MS. BAILEY: So November --

14 CHAIRPERSON GRIFFIS: In all seriousness,
15 we are doing this at your request. Anything else?

16 MS. BAILEY: No, sir. That's it.

17 CHAIRPERSON GRIFFIS: Good. Everyone
18 clear on what is being submitted, when it's submitted?

19 Excellent. We'll set this for the public meeting as
20 Ms. Bailey has indicated. We have those submissions
21 coming in. We look forward to seeing you again.
22 Otherwise, the record will be closed outside of all
23 the specific information we have requested. Very
24 well. Ms. Bailey, anything else for this afternoon?

25 MS. BAILEY: No, Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: Mr. Moy, are you
2 aware of anything?

3 MR. MOY: Not today, sir.

4 CHAIRPERSON GRIFFIS: Excellent. Very
5 well then. That looks like the business of the Board
6 is finished for the day and I would adjourn the
7 afternoon session of the 5th of October, 2004.

8 (Whereupon, at 4:45 p.m. the public
9 hearing was adjourned.)

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