

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 7, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 2:35 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS, Commissioner

(This transcript constitutes the minutes from the public hearing held on Tuesday, December 7, 2004.)

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APPEARANCES (Continued)

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

| | |
|---------------------|--------------------|
| JOHN MOORE, | Office of Planning |
| MAXINE VAN ROBERTS, | Office of Planning |
| TRAVIS PARKER, | Office of Planning |

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, Esquire

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ON BEHALF OF THE
KALORAMA CITIZENS ASSOCIATION

JOHN HARGROVE
ANN HUGHES HARGROVE
1827 Belmont Road, N.W.
Washington, D.C. 20009
(202) 332-6320

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

(2:35 p.m.)

CHAIRPERSON GRIFFIS: Let me call to order the afternoon session of the 7th of December, 2004. My name is Geoff Griffis, Chairperson. Joining me today is Ms. Miller, the Vice Chair; also Mr. Etherly. Representing the Zoning Commission with us is Mr. Parsons, and representing the National Capital Planning Commission with us is Mr. Mann.

Copies of today's hearing agenda are available for you. They are located on the wall where you entered into the hearing room.

We appreciate everyone's patience for this afternoon. We had a very busy morning and a very busy break in between sessions, but we are here and ready to proceed.

There are several very important aspects that people need to understand in my opening remarks, and I will go through them very quickly, but hopefully they will be understandable.

All proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions. One is the court reporter who is sitting on the floor to my right; the second is we are being broadcast live on the Office of Zoning's website. We

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1 ask, attendant to those, both that people turn off
2 cell phones and beepers at this time so we don't have
3 any disruption of the proceedings and, more
4 specifically and importantly, disruption of people
5 giving testimony before us. We also ask before coming
6 forward to speak to the Board that you fill out two
7 witness cards. Witness cards are available at the
8 table where you came into the hearing room, and they
9 are also available on the front table where you will
10 provide testimony. Those two cards go to the court
11 reporter, who sits to my right, and that should be
12 before coming forward; then, of course, come forward,
13 make yourself very comfortable. You will need to
14 state your name and your address for the record before
15 speaking to the Board. You only need to do that once,
16 get it out of the way.

17 The order of procedure for special
18 exceptions and variances: First, we start with the
19 applicant and the presentation of their case and any
20 witnesses they might have. Second, we have government
21 reports attendant to the application such as the
22 Office of Planning or Department or Transportation.
23 Third, we will hear from the ANC within which the
24 property is located. Fourth, we will go to parties or
25 persons in support of the application. Fifth would be

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1 parties or persons in opposition to the application.
2 Sixth, finally, we would have any rebuttal testimony
3 and/or conclusions and summations by the applicant.

4 Cross-examination is permitted by the
5 applicant and parties in the case. The ANC within
6 which the property is located is automatically a party
7 in the case and therefore is obviously able to conduct
8 cross-examination of all the witnesses.

9 Nothing prohibits this Board from placing
10 reasonable restrictions on the direction, time, or
11 substance of cross-examination, but I will give that
12 direction, if needed, as we go through this afternoon.

13 The record will be closed at the
14 conclusion of each hearing except for any material
15 that the Board specifically requests, meaning anything
16 you want the Board to deliberate on needs to come in
17 today either in writing or in oral testimony.
18 Otherwise, the Board, if it does not see something
19 that it needs, will be very, very clear on when it is
20 to be submitted and what is to be submitted into the
21 Office of Zoning. After that material is received,
22 the record is closed, and that should be clearly
23 understood.

24 The Sunshine Act requires that the public
25 hearing of this Board be held in the open and before

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1 the public. This Board may enter into executive
2 session both during or after a hearing on a case, and
3 that would be in accordance with our rules and
4 procedure, regulations and the Sunshine Act, and it
5 would be used for purposes of reviewing or
6 deliberating on cases.

7 At this time, the Board -- actually, let
8 me have people be sworn in. We will get to any
9 preliminary matters. If you are here today and
10 thinking or planning on giving testimony, I'm going to
11 ask that you please stand and give your attention to
12 Ms. Bailey.

13 Ms. Bailey, with the Office of Zoning, a
14 very good afternoon, and also Mr. Moy with the Office
15 of Zoning.

16 Ms. Bailey is going to administer the
17 oath.

18 (Witnesses sworn.)

19 CHAIRPERSON GRIFFIS: Good. Thank you
20 very much, Ms. Bailey, and a very good afternoon to
21 you.

22 She is with the Office of Zoning, as I
23 said. Office of Attorney General is also with us, Ms.
24 Glazer.

25 CHAIRPERSON GRIFFIS: At this time,

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1 the Board will consider any preliminary matters
2 attendant to the schedule this afternoon and those
3 hearings on the schedule. Preliminary matters are
4 such as requests for postponements, continuance or
5 withdrawal, or whether proper and adequate notice has
6 been provided for a certain case. Bottom line: If
7 you are not ready to go forward with a case this
8 afternoon, I want you to come forward and let us know
9 that, or if you believe the Board should not continue
10 with a case this afternoon or hear a case this
11 afternoon, we can take that up, unless, of course,
12 it's more expeditious to do it within the case itself.

13 Mr. Moy, are you aware, or Ms. Bailey, of
14 any preliminary matters for the attention of the Board
15 prior to calling our first case?

16 MS. BAILEY: Mr. Chairman and to everyone,
17 good afternoon.

18 Staff does not have any preliminary
19 matters, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Okay. Does anyone
21 else have any preliminary matters they would like to
22 take up at this time?

23 (No response.)

24 CHAIRPERSON GRIFFIS: If not, let's call
25 the first case in the afternoon.

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APPLICATION OF MICHAEL AND MARION USHER

17247 ANC-2B

MS. BAILEY: Application Number 17247 of Michael and Marion Usher, pursuant to 11 DCMR 3104.1, for a special exception to allow a one-story rear addition to an existing single-family row dwelling under Section 223 not meeting the lot occupancy requirements at Section 403 and the nonconforming structure provision, Subsection 2001.3. The property is located in the D/DC/R-5-B District at premises 2021 Hillyer Place, Northwest, also known as Square 93, Lot 105.

CHAIRPERSON GRIFFIS: Thank you, Ms. Bailey.

Good afternoon. If you wouldn't mind introducing yourself very quickly for the record.

MR. GELL: Yes, Mr. Chairman. My name is Stephen Gell, 1101 30th Street, Northwest, Fifth Floor. With me is Marion Usher, the applicant, and Jane Treacy, the architect.

CHAIRPERSON GRIFFIS: Excellent. And we are, of course, here for a special exception under 223. This property does not meet the lot occupancy requirements under 403, and also Subsection 2001.3; is

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1 that correct?

2 MR. GELL: That's correct.

3 CHAIRPERSON GRIFFIS: Excellent. Do you
4 have any brief opening remarks or would you like to
5 stand on the record?

6 MR. GELL: No. I think I would simply --
7 I know you are pressed for time.

8 CHAIRPERSON GRIFFIS: I'm not. I thought
9 you were, actually.

10 MR. GELL: Well, we are as well.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. GELL: But I will simply introduce Ms.
13 Usher. She has a statement for the Board that she can
14 make at this time, and then the architect.

15 TESTIMONY BY MARION USHER

16 MS. USHER: Mr. Chairman, members of the
17 Board, good afternoon. My name is Marion Usher. My
18 husband and I have lived at 2021 Hillyer Place for
19 nearly 20 years.

20 The proposal before you is simply to
21 extend and enlarge my kitchen at the rear of the first
22 floor. We are doing this addition now -- we would
23 like to be doing this addition because we care for our
24 developmentally delayed grandson on a regular basis
25 and we need space for him to play and to be in the

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1 house. The addition will take up most of the space
2 that is already there now as a deck, and the deck will
3 be slightly enlarged.

4 Since we are only building a one-story
5 addition, we do not believe there will be any effect
6 on the light and air available to our neighbors. We
7 will not be affecting our 20-foot rear yard or the two
8 parking spaces in the rear.

9 I am pleased to report that my husband and
10 I went around to all our neighbors, and I think you
11 have a copy of the signed petition in support of our
12 project.

13 I also spoke with the L'Enfant Trust and
14 they said that as long as you all agree, they are on
15 board with what we have to do, and since the addition
16 is on the rear, it will not in any way affect the
17 historic ambience since it cannot be seen from the
18 front and will be tastefully done.

19 If you have any questions about the design
20 or construction, our architect, Jane Treacy, is here
21 to answer them, or I would be more than happy to
22 answer any questions.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much. Of course, in that petition, the
25 address -- it was the direct adjacent neighbors which

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1 also signed that; is that correct?

2 MS. USHER: Yes.

3 CHAIRPERSON GRIFFIS: And you showed them
4 plans and they had a good idea of what was going to --

5 MS. USHER: Yes.

6 CHAIRPERSON GRIFFIS: You mentioned the
7 L'Enfant Trust. Is there a historic easement on your
8 property?

9 MS. USHER: Yes.

10 CHAIRPERSON GRIFFIS: Okay. Any other
11 questions?

12 And you say that you haven't had any
13 evidence from all those talked about, whether it's in
14 the -- it's not in the record, but anything that was
15 evidence in terms of the use of adjoining properties
16 as being somehow affected negatively?

17 MS. USHER: No.

18 CHAIRPERSON GRIFFIS: Excellent. Okay.
19 Yes.

20 MR. GELL: Jane Treacy will show you the
21 plans.

22 TESTIMONY BY JANE TREACY

23 MS. TREACY: I'm Jane Treacy, Treacy &
24 Engleburgh Architects, 3335 Connecticut Avenue.

25 CHAIRPERSON GRIFFIS: Thank you very much.

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1 Actually, are these plans any different than what was
2 submitted into the record?

3 MS. TREACY: They are not.

4 CHAIRPERSON GRIFFIS: Then if you wouldn't
5 mind, in the --

6 MS. TREACY: Not at all.

7 CHAIRPERSON GRIFFIS: -- expedition of
8 time, I will just have the Board ask you any questions
9 that they might have in the understanding of these
10 drawings.

11 Board members, any questions?

12 MEMBER MANN: No questions.

13 CHAIRPERSON GRIFFIS: It's clear,
14 actually, Ms. Usher, in your opening statement and
15 also in the written statements that were submitted,
16 that the area which was going to be covered takes over
17 let's say three-quarters of the existing deck; is that
18 correct?

19 MS. USHER: Approximately three-quarters.

20 CHAIRPERSON GRIFFIS: And there is nothing
21 in the addition of that leg that comes out currently;
22 is that correct?

23 MS. USHER: No.

24 CHAIRPERSON GRIFFIS: So Ms. Usher's
25 statement of one-story addition today and also in the

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1 written submission is correct.

2 MS. USHER: It is.

3 CHAIRPERSON GRIFFIS: Excellent. Okay.

4 Any other questions of the Board?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Are there any
7 comments that you're aware of as the architect or the
8 designer that make this incompatible with the
9 character of the existing building or the compatible
10 buildings? You wrote also in the submission that the
11 lighting was picked specifically so as not interfere
12 with the adjacent neighbors.

13 MS. TREACY: Right.

14 CHAIRPERSON GRIFFIS: It's a residential
15 wall sconce and --

16 MS. TREACY: Oh. Yes. There are lights
17 back at the back that would be wall sconce, but there
18 are no windows facing this building from the
19 neighbors.

20 CHAIRPERSON GRIFFIS: Okay. Good.
21 Anything else, then? Anything else we should be aware
22 of that we haven't already seen in the record or on
23 the board now?

24 MS. TREACY: No.

25 CHAIRPERSON GRIFFIS: Questions?

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1 (No response.)

2 CHAIRPERSON GRIFFIS: Excellent. We will
3 give you 30 seconds for closing when we get there,
4 unless there is anything else you want to say at this
5 time.

6 MR. GELL: I think we will just stand on
7 the record and thank you very much for your time.

8 CHAIRPERSON GRIFFIS: That is an excellent
9 opinion to have.

10 Let's move on to the Office of Planning,
11 then, which is with us, and I must say, an excellent
12 report.

13 Are you in possession of the Office of
14 Planning's report on your property, Ms. Usher?

15 MS. USHER: This one?

16 CHAIRPERSON GRIFFIS: Yes.

17 MS. USHER: Yes.

18 CHAIRPERSON GRIFFIS: What do you think of
19 the color selection they --

20 (Laughter.)

21 MR. GELL: We were going to mention that.

22 MS. USHER: We were going to mention that.

23 CHAIRPERSON GRIFFIS: That's condition
24 number 2. You are not allowed to paint your house
25 that yellow.

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1 (Laughter.)

2 CHAIRPERSON GRIFFIS: Okay. Obviously a
3 small joke and probably not a good one, but obviously
4 highlighting the site.

5 The Board has become very familiar with
6 the Office of Planning report. Well, let me just say
7 good afternoon. You can open up or stand on the
8 record, if you would like.

9 REPORT FROM THE OFFICE OF PLANNING

10 BY JOHN MOORE

11 MR. MOORE: Thanks for those directions,
12 Mr. Chairman. I'm John Moore with the Office of
13 Planning, and we indeed stand on the record.

14 CHAIRPERSON GRIFFIS: Good. Thank you,
15 Mr. Moore.

16 Mr. Moore does great reports in terms of
17 focusing our eye, which is why I think we can get
18 through this very quickly, unless any other Board
19 members have questions. He has laid out the entire
20 test of the 223 and is actually recommending approval
21 of this application.

22 Is there any cross-examination for the
23 Office of Planning?

24 MR. GELL: No, sir.

25 CHAIRPERSON GRIFFIS: Any questions from

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1 the Board?

2 (No response.)

3 CHAIRPERSON GRIFFIS: Mr. Moore, thank you
4 very much.

5 Let's move on to any other government
6 reports. We did have a note in terms of the Historic
7 Preservation and the review of that. I don't have any
8 other government reports attendant to this
9 application, Mr. Gell, unless you are aware of any.

10 MR. GELL: The ANC.

11 CHAIRPERSON GRIFFIS: We will get to that
12 next. Any other government reports?

13 MR. GELL: Nothing else.

14 CHAIRPERSON GRIFFIS: Exhibit Number 25,
15 of course, is the ANC-2B. Is the ANC-2B
16 representative here with us today?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Not noting any
19 representative from the ANC, it was dated November 10,
20 2004. It's Exhibit Number 25, if I didn't already
21 say, and it did recommend approval. Is there anything
22 any Board member wants to highlight on that? Did they
23 properly note what a quorum is, Ms. Miller?

24 VICE CHAIRPERSON MILLER: They did.

25 CHAIRPERSON GRIFFIS: Excellent.

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1 VICE CHAIRPERSON MILLER: There were eight
2 of nine commissioners in attendance, and they had a
3 quorum.

4 CHAIRPERSON GRIFFIS: Good.

5 Is there anyone here attendant to
6 Application 17247, either in support or opposition,
7 that would like to provide testimony at this time,
8 persons to provide testimony?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Not noting anybody
11 rush to the table, I believe, Mr. Gell, we can turn it
12 over to you for any summation you would like to say.

13 I will just take note you mentioned the
14 petition that was submitted, Ms. Usher, into the
15 record. We also have two correspondence in support of
16 the application, Exhibit Number 22 and 24.
17 Twenty-four is, in fact, the petition; the other is
18 from a Dr. Morton Schussheim?

19 MS. USHER: Yes.

20 CHAIRPERSON GRIFFIS: Okay. Excellent.
21 That's all I have attendant to this application.

22 Mr. Gell?

23 MR. GELL: I will simply conclude with a
24 request that you decide the case and issue the order.

25 CHAIRPERSON GRIFFIS: Bench decision, Mr.

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1 Gell? Is that what you're asking? Requesting a bench
2 decision?

3 MR. GELL: Yes.

4 CHAIRPERSON GRIFFIS: Okay. Board
5 members, we have had deliberation on this. It is
6 properly taken up under a motion. I would move we
7 approve Application 17247, Michael and Marion Usher,
8 under a special exception to 223, not meeting the lot
9 occupancy requirements, and under Section 403 and also
10 2001.3, premises 2021 Hillyer Place, Northwest, and
11 ask for a second.

12 MEMBER MANN: Second.

13 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.
14 That almost took longer than the case did.

15 This is very clear in terms of 223, and
16 let me just say we can get through 223s very quickly
17 when applications are put together as completely as
18 this one has been, with great reliance on the Office
19 of Planning's report but also on a firm understanding
20 of what Section 223 is.

21 Section 223 of the zoning regulation was
22 written exactly for this purpose, for buildings that
23 are nonconforming based on the adoption of our zoning
24 regulations but need to be allowed to be flexible in
25 terms of contemporary families and small but adequate

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1 additions and reconfigurations of property.

2 This has, as outlined in the written
3 submissions and in our review today, met all the
4 criteria to be granted a special exception under 223,
5 and so I would support the motion. I will open it up
6 for anyone else who has any deliberation.

7 (No response.)

8 CHAIRPERSON GRIFFIS: Not noting any
9 further comments on that, the motion before us has
10 been seconded. I would ask for all those in favor to
11 signify by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON GRIFFIS: And opposed?
14 Abstaining?

15 (No response.)

16 CHAIRPERSON GRIFFIS: That being said --

17 MS. BAILEY: The vote is recorded as 5-0-0
18 to approve the application. Mr. Griffis made the
19 motion, Mr. Mann seconded. Mrs. Miller, Mr. Etherly
20 and Mr. Parsons are in agreement. The ANC's report
21 was given great weight.

22 We are doing a summary order, Mr.
23 Chairman?

24 CHAIRPERSON GRIFFIS: I believe we can
25 waive our regulations and issue a summary order on

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1 this case.

2 MS. BAILEY: Thank you.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 Thank you all very much.

5 MS. USHER: Thank you very much.

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

7 CHAIRPERSON GRIFFIS: Good renderings.

8 Okay. Let's call our next case.

9 APPLICATION OF SCOTT AND DIANA GOLD

10 17248 ANC-3G

11 MS. BAILEY: Application No. 17248 of
12 Scott and Diana Gold, pursuant to 11 DCMR 3104.1, for
13 a special exception to construct a one-story rear
14 addition to an existing single-family detached
15 dwelling under Section 223 not meeting the side yard
16 requirements under Section 405. The property is
17 located in the R-1-B District at premises 3722
18 McKinley Street, Northwest Square 1867, Lot 86.

19 CHAIRPERSON GRIFFIS: Good afternoon.
20 Just state your name and address.

21 MS. GOLD: My name is Diana Gold of 3722
22 McKinley Street.

23 First of all, thank you for listening to
24 our proposal. We simply want to extend our house. I
25 don't have the drawings that they did, but you should

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1 have the packet extending our house by three feet into
2 the current setback.

3 CHAIRPERSON GRIFFIS: Right. You are also
4 here under special exception under 223, as Ms. Bailey
5 as called this case. Good. Go ahead. Well, let me
6 just -- well, I will let you talk. Go ahead.

7 MS. GOLD: We were told it was the same
8 exception, that it was that we need three feet to go
9 into the setback because 90 percent of the house is
10 currently in the setback, and in order to square it
11 off, we just need that three feet because the current
12 addition that was built sometime in the '40s or '50s
13 didn't go the full length of the house.

14 We have two-and-a-half-year-old toddlers
15 and we're looking for an eat-in kitchen. They are
16 twins.

17 CHAIRPERSON GRIFFIS: Right. In the
18 written submission, it was talking about an addition
19 on this building and actually a reconfiguration of
20 some of it -- maybe it was in the Office of Planning's
21 report even -- and that it is basically accommodating
22 the interior space and the layout to make it a little
23 bit more open, and I believe there was a family room.

24 Of course, under the special exception,
25 it's not the showing of need or some sort of desperate

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1 element of why it has to happen but the fact that it
2 would not impair the light, use, privacy of the
3 adjacent neighbors. Is there any evidence that you
4 have found in talking with your neighbors and showing
5 them the plans --

6 MS. GOLD: No. The specific side neighbor
7 that this would affect the most, we have a signed
8 letter from them saying that they have no opposition
9 at all to the project. We also surveyed the
10 neighborhood front, back, side, two houses deep each,
11 and I had a petition signed. There was no opposition
12 whatsoever. We have also sent letters to about I
13 believe 20 to 25 houses in the entire surrounding area
14 and received no response of any opposition.

15 CHAIRPERSON GRIFFIS: Excellent. Of
16 course, you did present it to the ANC; is that
17 correct?

18 MS. GOLD: Yes, we did.

19 CHAIRPERSON GRIFFIS: And is ANC-34G
20 represented today in this case?

21 MS. GOLD: They are not, but we have the
22 letter of the -- they approved it unanimously.

23 CHAIRPERSON GRIFFIS: Yes. Exhibit Number
24 22 is the November 8, 2004 dated letter?

25 MS. GOLD: Yes.

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1 CHAIRPERSON GRIFFIS: Good. Anything else
2 you want us to know?

3 MS. GOLD: No, sir.

4 CHAIRPERSON GRIFFIS: Thank you.

5 Any questions from the Board?

6 (No response.)

7 CHAIRPERSON GRIFFIS: Actually, a quick
8 question under 223.2. You have a statement in your
9 application that the roof line will be attractively
10 detailed to reduce the massing, and I'm wondering,
11 what is that? That's a great trick if you can do it.

12 MS. GOLD: The architect did that.
13 Actually, we want to restore the architectural
14 integrity of the house to A-frame the back of the
15 roof, because originally -- we see this as a caboose
16 addition, and that's not very attractive.

17 CHAIRPERSON GRIFFIS: I see.

18 MS. GOLD: So we're putting the A-frame
19 back on. It will restore it to what it originally
20 looked like back in 1922.

21 CHAIRPERSON GRIFFIS: Oh. So that's
22 actually essentially the slope of the roof and the
23 type of roof as opposed to what it is now by creating
24 --

25 MS. GOLD: Right.

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1 CHAIRPERSON GRIFFIS: I see. That makes
2 much more sense. Very well.

3 If there is nothing further, I say a very
4 good afternoon to the Office of Planning with us this
5 afternoon.

6 REPORT FROM THE OFFICE OF PLANNING

7 BY MAXINE VAN ROBERTS

8 MS. VAN ROBERTS: Good afternoon, Mr.
9 Chairman and members of the Board. I'm Maxine Van
10 Roberts representing the Office of Planning.

11 The proposed addition is to an existing
12 nonconforming structure that does not meet the side
13 yard setback. From our review, we think that the
14 addition will not have an adverse effect on the use
15 and enjoyment of any of the abutting adjacent
16 dwellings or properties.

17 The adjacent house to the west is a larger
18 and taller building, and even with the addition to
19 this house, the light and air will not be unduly
20 affected.

21 Regarding the use and enjoyment of
22 neighboring properties, a small expansion on the
23 footprint of the existing rear structure and the rear
24 facade will not change much. Additionally, there is
25 some vegetation in the rear yard that will help to

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1 minimize any visibility, and therefore the privacy to
2 the neighboring properties will not be compromised.

3 In addition, the addition will not be
4 visible from the street, from McKinley Street in
5 particular, and therefore will not affect the
6 character of houses along that street.

7 All these things considered, the Office of
8 Planning recommends approval of this special
9 exception.

10 Thank you, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much. And again, an excellent report that
13 summarizes and gets very specific in the analysis of
14 223.

15 Are there any questions from the Board?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Does the applicant
18 have any cross-examination for the Office of Planning?
19 Any questions of them?

20 MS. GOLD: No. I was just -- am I
21 supposed to ask for a bench decision?

22 CHAIRPERSON GRIFFIS: No, not yet. Hold
23 that.

24 There is this talk, very quickly, in terms
25 of this large tree, and the Office of Planning had

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1 brought it up, part of the screening aspect of what
2 doesn't impact any of the addition. There is a large
3 tree on your property; is that correct?

4 MS. GOLD: Yes.

5 CHAIRPERSON GRIFFIS: Have you talked to
6 your contractor -- I note that this is a design build
7 -- have you talked to your construction crew of how
8 they are going to preserve or safeguard, not impacting
9 that tree?

10 MS. GOLD: Yes. We actually were speaking
11 to a special tree pruner who is going to prune it back
12 just a little bit, but actually it doesn't really go
13 into the house. It goes back by a little bit that
14 would have to be cut back, but it would preserve --

15 CHAIRPERSON GRIFFIS: But you're putting
16 in new footings.

17 MS. GOLD: Yes.

18 CHAIRPERSON GRIFFIS: You're digging down.

19 MS. GOLD: Yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. GOLD: Just on that one little part.

22 CHAIRPERSON GRIFFIS: I would suggest that
23 you just talk to your -- I guess the tree is in the
24 rear, isn't it?

25 MS. GOLD: The tree is on the other side

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1 of where we're building into the ground, the footing.

2 CHAIRPERSON GRIFFIS: There it is. Yes.
3 Well, you're going to have a footer that's going down
4 in that. Just when you get your tree person out
5 there, talk about where the roots are, how it might be
6 impacted.

7 MS. GOLD: Okay.

8 CHAIRPERSON GRIFFIS: And more
9 importantly, when the contractor is in there, if they
10 are bringing any sort of heavy equipment or anything
11 else, they just need to, you know, protect it so that
12 they don't run it over, however they do those things.
13 They are the professionals, right? Leave it to them.
14 Okay. Because it does look to be very substantial
15 and I'm sure it would be a great loss if you lose that
16 tree.

17 The one other aspect of this, and then we
18 can move on -- of course Office of Planning put it in
19 the application -- is also there is a nonconforming
20 side yard of 2.7 feet. Of course, the addition is
21 going to 3.8 feet. But do you have any trouble in
22 maintaining that side of the existing structure that
23 is only 2 feet 7 inches or 2.7 feet away from your
24 property line?

25 MS. GOLD: There's just a concrete path,

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1 which would not be changed at all. It would remain.

2 CHAIRPERSON GRIFFIS: I know it wouldn't
3 be changed. This may be a little bit off point, but
4 that's why I get to be up here and ask these silly
5 questions. But have you ever had any difficulty in
6 dealing with your siding or anything else in terms of
7 maintenance with a dimension of just two and a-half
8 feet?

9 MS. GOLD: No.

10 CHAIRPERSON GRIFFIS: There is no access
11 problem or anything like that, setting up a ladder or
12 anything?

13 MS. GOLD: No, because it's big enough for
14 a ladder.

15 CHAIRPERSON GRIFFIS: Okay. Interesting
16 point. Good.

17 Anything else, then? Any other questions
18 from the Board?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Let's move on to any
21 other government reports. I have an indication that
22 you are not located in a historic district. Is that
23 your understanding?

24 MS. GOLD: Well, we're in the Chevy Chase
25 historic district, but we're not a historic house or

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1 anything. We're not under any historical compliance,
2 if that is what you're asking.

3 CHAIRPERSON GRIFFIS: Great. I guess so.
4 ANC-34G -- I did ask if anyone was here representing.
5 I didn't see any. We do have Exhibit 22, which is a
6 recommendation of approval of the application. Any
7 comments on any of the report?

8 (No response.)

9 CHAIRPERSON GRIFFIS: Very well. We can
10 move on. I don't have anything else attendant to
11 that. Are you aware of anything else that was
12 submitted into the record that I haven't identified?

13 MS. GOLD: I think you have everything.
14 You have everything, sir.

15 CHAIRPERSON GRIFFIS: Excellent. Good.
16 In which case, any conclusions, summations you would
17 like to state?

18 MS. GOLD: No, just request for approval.
19 Is this when I ask for the bench?

20 CHAIRPERSON GRIFFIS: Yes. Okay.

21 MS. GOLD: Okay. I would ask for that
22 just because we wanted to start as soon as possible.

23 CHAIRPERSON GRIFFIS: She has asked for
24 the bench. Who is going to give it to her?

25 Okay. Let's move ahead, then. Okay. I

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1 would move approval of Application 17248 for the
2 special exception that consists of a one-story rear
3 addition.

4 MEMBER ETHERLY: Second, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 That is, of course, under Section 223 for
7 3722 McKinley Street, Northwest. This has also met
8 substantially in terms of the information we have
9 gleaned today but most importantly with the written
10 submissions the entire requirements for the special
11 exception as specifically outlined in 223, noting the
12 not having any negative impact on the light and air,
13 the use and privacy of adjoining neighbors.

14 The documentation has also been sufficient
15 in order for us to understand and with -- actually,
16 with the testimony today, it became a little bit more
17 clear what was trying to be described and then what I
18 was looking at in the drawings in terms of the design
19 style. There is the element, of course, that fits
20 into the character of the neighborhood and the
21 existing house, and I think that has all been
22 sufficiently met.

23 I think the Office of Planning's report is
24 an excellent report. It also is a recommendation and
25 can be relied heavily upon.

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1 Others? Any further deliberation on that?

2 (No response.)

3 CHAIRPERSON GRIFFIS: The motion is before
4 us and it has been seconded. I ask for all those in
5 favor to signify by saying aye.

6 (Chorus of ayes.)

7 CHAIRPERSON GRIFFIS: Opposed?
8 Abstaining?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Thank you very much.

11 MS. GOLD: Thank you, sir.

12 MS. BAILEY: The Board has voted 5-0-0 to
13 approve the application. Mr. Griffis made the motion;
14 Mr. Etherly seconded; Mr. Mann, Mr. Parsons and Mrs.
15 Miller are in agreement.

16 The ANC was given great weight, and we are
17 doing a summary order on this Mr. Chairman?

18 CHAIRPERSON GRIFFIS: Yes. I see no
19 reason not to waive our regulations and issue a
20 summary order on this.

21 MS. BAILEY: Thank you, sir.

22 CHAIRPERSON GRIFFIS: Thank you very much.

23 We are going to shift the schedule a
24 little bit this afternoon and we're going to call Case
25 Number 17221 at this time.

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APPLICATION OF MONTROSE, LLC

17221 ANC-1C

MS. BAILEY: Application 17221 of Montrose, LLC, pursuant to 11 DCMR 3104.1, for a special exception from the roof structure setback provisions under Subsection 411.11, 400.7(b), for an existing five-story residential condominium at premises 1819 Belmont Road, Northwest. The property is located in Square 2551, and it is zoned R-5-D.

CHAIRPERSON GRIFFIS: Okay. Board members, we are all aware of what is before us here, and let me just say there has been an awful lot of discussion from the Board, I know, and an awful lot of reading and deliberation on this special exception as we look at it, and I think there are some fundamental questions that are still rolling around for us at this time, and I would like to open it up for just some brief comments from the Board first before we get into the next steps on that.

I think we are really looking at answering the first question of whether this is the appropriate time to proceed with the special exception and whether we can, in fact, hear the special exception, and let me hear a few reactions to that from Board members at this moment.

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1 Mr. Etherly?

2 MEMBER ETHERLY: I will defer to my
3 colleague -- no, actually, let me start, Mr. Chair, by
4 just simply noting, as you alluded to, we are
5 intimately familiar with what has been a complex case
6 with a long history.

7 With regard to where we are at this
8 particular junction in time --

9 CHAIRPERSON GRIFFIS: I'm sorry. Where is
10 the applicant's rep? Is the applicant represented
11 here? Before we get too far into this, is the
12 applicant's representative here?

13 MR. ROTH: We haven't seen them, Mr.
14 Chairman.

15 COMMISSIONER PARSONS: Perhaps we ought to
16 rearrange our order again.

17 MR. ROTH: They certainly were aware of
18 the hearing today because we were delivered some
19 materials yesterday in anticipation of today's
20 hearing.

21 CHAIRPERSON GRIFFIS: Well, they were here
22 this morning, actually. Boy, you know, you can lay
23 out the plan in your mind so perfectly and then all of
24 a sudden --

25 (Laughter.)

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1 CHAIRPERSON GRIFFIS: Well, I apologize.
2 It's not appropriate to do this at this point. We
3 will go back to our regular order and we will get to
4 this the next case. I'm sorry for that. I had
5 assumed that they would be coming in from the wings as
6 we were getting rolling here and I guess that's not
7 the case. Maybe it will make the application go a
8 little bit quicker if --

9 (Laughter.)

10 CHAIRPERSON GRIFFIS: No. That's a big
11 joke. It's a very, very short stab at humor.

12 How about the other case that we have for
13 this afternoon? Are you guys ready to go? Everybody
14 here? Let's do that, then. We will postpone that
15 hearing for a couple of minutes and call the 17178.

16 APPLICATION OF POTTER'S HOUSE CHURCH

17 17178 ANC-1C

18 MS. BAILEY: Application of Potter's House
19 Church. As the Chairman indicated, 17178. And the
20 application is pursuant to 11 DCMR 3103.2 for a
21 variance from the floor area ratio requirements under
22 Subsection 771.2 and a variance from the open court
23 requirements under Section 776 to construct a
24 two-story rear addition to an existing multi-use --
25 that's restaurant/retail/arts and crafts -- commercial

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1 building in the C-2-B District at premises 1656, 1658,
2 and 1660 Columbia Road, Northwest. The property is
3 located in Square 2579 on Lot 801.

4 CHAIRPERSON GRIFFIS: Good afternoon.

5 MR. GROSS: Good afternoon, Mr. Chairman
6 and members of the Board. I'm Nathan W. Gross, a city
7 planner at the law firm of Arnold & Porter; also
8 residing at 4424 Alton Place, Northwest.

9 With me at the table are Meade Jones
10 Hanna, facility manager at Potter's House Church, and
11 Regina Reilly, project architect from Manna,
12 Incorporated. First Ms. Hanna will describe the
13 Potter's House mission, its operations, and the need
14 for the proposed addition, and then Ms. Reilly will
15 present the plans. Finally I will address the zoning
16 issues.

17 CHAIRPERSON GRIFFIS: I'm sorry. Just
18 give me a moment.

19 (Pause.)

20 CHAIRPERSON GRIFFIS: A couple of things,
21 Mr. Gross. First of all, I'm going to move you on
22 kind of quickly because we have a substantial amount
23 of --

24 MR. GROSS: Sure.

25 CHAIRPERSON GRIFFIS: -- information and

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1 it is fairly clear, and, although some may not believe
2 it, we are kind of knowledgeable about these things.

3 But let me ask you first a legal question
4 in terms of the court case and citings. We often have
5 a laundry list of those. I'm interested in -- and
6 perhaps I missed it -- that you didn't cite Monaco in
7 your case just based on in terms of the uniqueness
8 standard for non-profit corporations as the need for
9 their programs expand.

10 MR. GROSS: Well, all I can say is maybe I
11 just missed it, Mr. Chairman. I didn't think of that.

12 CHAIRPERSON GRIFFIS: Okay. I believe I'm
13 citing the right case, if I'm not mistaken. Okay.
14 It's something that we have often seen in terms of, of
15 course, that's one of the parts of the first test that
16 has to be met for the variance. But it has been
17 established with a court case and actually it has been
18 invoked by many applicants and found to be fairly
19 useful for the Board in looking at that.

20 MR. GROSS: I see.

21 CHAIRPERSON GRIFFIS: So I think we can
22 take that under advisement, obviously, as we look at
23 this case.

24 Let's move quickly into -- well, I will
25 let you proceed, but don't take it negatively if I

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1 move you on from where you are.

2 TESTIMONY BY MEADE JONES HANNA

3 AND REGINA REILLY

4 MS. HANNA: Good afternoon, Mr. Chairman
5 and members of the Board. I will only address -- I
6 believe you already know the history of Potter's
7 House. It's in the prehearing statement. If you
8 would like to hear that, I can do it later.

9 CHAIRPERSON GRIFFIS: You spawned a lot of
10 organizations in the neighborhood; is that correct?

11 MS. HANNA: I'm sorry? I didn't --

12 CHAIRPERSON GRIFFIS: The meeting house
13 was the forum of which a lot of neighborhood
14 organizations were created.

15 MS. HANNA: Right.

16 CHAIRPERSON GRIFFIS: And they all put in
17 letters of support, interestingly enough.

18 MS. HANNA: Well, and other neighbors did
19 and other organizations.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. HANNA: We are utilized by many
22 different organizations. Currently, we are utilized
23 every day of the week except for Saturday night, and I
24 have had to say no to many different organizations,
25 including our own but also Alcoholics Anonymous and

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1 Fannie Mae because of issues of confidentiality, of
2 space. Also our faith communities are growing and
3 would like extra space for Sunday school and Bible
4 study and that kind of thing.

5 CHAIRPERSON GRIFFIS: When you say faith
6 communities, do you mean, as you have indicated in
7 here -- two of them have meetings on Sundays and the
8 others have meetings on Tuesdays and Thursday nights
9 or whatever it is -- you mean you have churches that
10 have services here?

11 MS. HANNA: There are five different faith
12 communities. One meets on Sunday morning, one meets
13 Sunday afternoon, et cetera.

14 CHAIRPERSON GRIFFIS: All right. I
15 shouldn't have called them churches. We'll call them
16 faith communities.

17 MS. HANNA: It doesn't matter. We just
18 happen to use that terminology.

19 CHAIRPERSON GRIFFIS: Does this have any
20 impact on what we're looking at in terms of use or in
21 terms of any other requirements under the regulations?
22 That's a legal question.

23 MR. GROSS: Well, it's a matter-of-right
24 use, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Okay. Just for

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1 clarity. Let's move on.

2 MS. HANNA: In addition to our need for
3 more indoor space, our outdoor space has been a
4 problem for us and for our neighbors. Our backyard
5 sets back from the sidewalk much more than the corner
6 building, leaving refuge for all sorts of wandering
7 people and inappropriate activities. Though the
8 backyard is lighted, the awkward graduated shape of
9 the building makes it hard to light every nook and
10 cranny. I personally have interrupted gatherings and
11 groups drinking and sleeping there at midnight
12 personally --

13 CHAIRPERSON GRIFFIS: That's not part of
14 the faith communities, right?

15 MS. HANNA: No. No, it's not. Though we
16 may know them.

17 CHAIRPERSON GRIFFIS: I just want to be
18 clear.

19 MS. HANNA: Right.

20 CHAIRPERSON GRIFFIS: All right. I
21 understand where you're going with that, and the point
22 it's unsafe and it's unlit, it's not very well
23 monitored back there. Certainly we can't take that as
24 part of the practical difficulty in granting a
25 variance. You know, "I've got an unsafe backyard; I'm

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1 going to put a building in it." Now, I understand
2 what you're doing; your programs are expanding and
3 this is a great place to expand it because, look, this
4 is kind of an unenforceable area.

5 MS. HANNA: We need to do something.

6 CHAIRPERSON GRIFFIS: Let me go directly
7 to the question at hand, or in my mind. You have
8 indicated also that there is an access requirement as
9 the grade drops, and that's one of the uniqueness --

10 MS. HANNA: Yes.

11 CHAIRPERSON GRIFFIS: -- also that has
12 been presented. The grade drops substantially to that
13 Fuller, which is the adjacent street, and you need a
14 lift off of that side that will be provided there.
15 Don't you have accessible entrance from the front?

16 MS. HANNA: We have a handicap-accessible
17 entrance from the front but not the back.

18 CHAIRPERSON GRIFFIS: And there is no way
19 to keep it accessible from the front to where the back
20 areas would be, meaning you need two?

21 MS. HANNA: There is no way for anyone who
22 is handicapped to get into the back, period, because
23 of the six-foot grade of our yard, which also houses
24 --

25 CHAIRPERSON GRIFFIS: Right. I guess

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1 that's a question: Why would they, then? Why
2 wouldn't they come in the front?

3 MS. HANNA: They would come in the front.

4 CHAIRPERSON GRIFFIS: I see. So this is
5 an alternative area to give access.

6 MS. HANNA: Right.

7 CHAIRPERSON GRIFFIS: Nothing wrong with
8 that; I'm just trying to get clarity of it.

9 MS. HANNA: That's right.

10 CHAIRPERSON GRIFFIS: Okay. Okay. But
11 clearly also part of the uniqueness is not only the
12 grade slope, but also the stepping back of three
13 different directions of the three different areas of
14 the building. Were these three original structures
15 that were joined at one time?

16 MS. HANNA: No. I believe they were three
17 separate lots originally.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. HANNA: And then we bought the three.
20 Not separate lots; three separate operations within
21 that building and we actually opened up the --

22 CHAIRPERSON GRIFFIS: It would have been
23 on a single lot in a single building, you know, or was
24 it three original townhouses that were then combined?

25 MS. HANNA: I know that we rented

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1 originally two lots and we opened up those two lots on
2 the street level.

3 CHAIRPERSON GRIFFIS: Mr. Gross, do you
4 know the history of this?

5 MR. GROSS: I do not, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. GROSS: But that's -- well, no,
8 without evidence, I won't speculate.

9 CHAIRPERSON GRIFFIS: Good point. Okay.
10 So that's also one of the unique aspects of it, is
11 that we have three different dimensions back, and that
12 obviously makes some difficulty in utilizing those
13 smaller areas at the rear of the building. Okay.

14 What else? Any sort of negative impact
15 that you talked about or how this might hurt the
16 public good? I note that --

17 MS. HANNA: Yes.

18 CHAIRPERSON GRIFFIS: -- some of the
19 conditions and changes, in fact, some of the ANC,
20 which we will get to, had talked about, if I'm not
21 mistaken, had talked about some of the negotiations
22 with the adjacent neighbors. And what was changed,
23 just briefly?

24 MS. HANNA: On the second floor, we set
25 back five feet -- Regina can point it out -- set back

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1 five feet to allow for more light so that the
2 apartment building that is about nine feet away on the
3 east side will receive more light. They really want
4 the addition to solve these neighborhood problems, so
5 we negotiated and sat down with architects and
6 everyone and found that to be pleasing to everyone, as
7 well as I met with Ruth Sachs of Sarah's Circle, who
8 wanted an entrance not directly on Fuller Street but
9 around the corner right there so that we wouldn't
10 encourage more loitering just on the sidewalk, that
11 that entrance would be primarily an exit and not, you
12 know, not a place to hang out.

13 CHAIRPERSON GRIFFIS: Okay. So that
14 setback of five feet that has that, you know,
15 well-articulated guardrail around it, how do you get
16 there?

17 MS. HANNA: We are not sure yet. We will
18 probably have a door along this side on the second
19 floor.

20 CHAIRPERSON GRIFFIS: Okay. And the
21 adjacent property owners know that now there is going
22 to be a five-foot --

23 MS. HANNA: Yes.

24 CHAIRPERSON GRIFFIS: -- smoking lounge?

25 MS. HANNA: Yes.

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1 CHAIRPERSON GRIFFIS: Excellent.

2 MS. HANNA: And they don't mind. They
3 also are requiring us to paint it white, which we are
4 fine with doing that, too.

5 CHAIRPERSON GRIFFIS: All right.

6 MS. HANNA: So that's negotiations with
7 two different neighbors.

8 MR. GROSS: They also have a nine and a
9 half-foot setback on their side of the lot line also.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. GROSS: So the five feet adds to that.

12 MS. HANNA: Yes.

13 CHAIRPERSON GRIFFIS: So they are more
14 interested about just maintaining the light coming
15 down that area.

16 MS. HANNA: Right.

17 CHAIRPERSON GRIFFIS: And here I said it
18 was going to be brief and I have all the questions.

19 We've got all this talk about not being
20 lit and safe and all that. Where is the lighting?
21 What is happening back there?

22 MS. HANNA: We will be putting lighting
23 all along the -- I don't know if we drew it, but I
24 know we're definitely going to put lighting along the
25 sidewalk for all times.

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1 MS. REILLY: We will provide lighting on
2 the rear and as well as the sides, except we won't
3 shine it onto our neighbor's property, but the sides
4 and rear elevation will be lit.

5 CHAIRPERSON GRIFFIS: Okay. Some nice
6 wall wash type stuff that might illuminate the
7 building --

8 MS. REILLY: Yes.

9 CHAIRPERSON GRIFFIS: -- and make it look
10 a little accommodating? Excellent idea. Okay.

11 The court is that small cut that we're
12 just looking at where actually the lift comes; is that
13 correct?

14 MS. REILLY: The court was -- because of
15 the request from the neighbor to have a five-foot
16 setback --

17 CHAIRPERSON GRIFFIS: So the court is that
18 setback.

19 MS. REILLY: Yes. The court is the
20 setback on the second floor.

21 CHAIRPERSON GRIFFIS: I see. Good.

22 MS. REILLY: This is a conforming --

23 CHAIRPERSON GRIFFIS: It is.

24 MS. REILLY: Yes.

25 CHAIRPERSON GRIFFIS: Okay. That was my

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1 confusion. Good. Very well. That's all the
2 questions I have. Is there anything else either of
3 you would like to state at this time?

4 MS. HANNA: I would just like to reiterate
5 that we are the only raised yard that is there and it
6 houses lots of rats, which is one of the reasons all
7 the neighbors -- also the other second reason that the
8 neighbors don't like our yard is because of the rats.

9 So we will be having to remove that dirt no matter
10 what happens today. And the Health Department and our
11 exterminators both recommended us removing that raised
12 yard, leaving -- I don't know what that is going to
13 look like after that. But I just want to let you know
14 that. That's absolutely necessary for us to do
15 whether we get this variance today or not. You can
16 see it there, all those -- the steps -- that has to
17 go.

18 CHAIRPERSON GRIFFIS: Remove the raised
19 yard to get rid of the rats?

20 MS. HANNA: They have recommended -- the
21 rodent control people have been out two or three
22 times. We are a restaurant. We have --

23 CHAIRPERSON GRIFFIS: Yes. Actually,
24 where do you have your trash pickup?

25 MS. HANNA: Right there. They walk up the

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1 steps, get it. And we have paved over parts of it and
2 the rats have so many tunnels there that the concrete
3 has collapsed and they have dug through the cracks. I
4 mean, it's bad. So we are a health hazard.

5 CHAIRPERSON GRIFFIS: Okay. But that's
6 for the next board that we all sit on, rat patrol and
7 control and whatever it is that we do. No, it's not.
8 I'm sorry.

9 The trash, it's a commercial hauler; is
10 that correct?

11 MS. HANNA: Yes.

12 CHAIRPERSON GRIFFIS: And they go up the
13 stairs?

14 MS. HANNA: Yes, they do.

15 CHAIRPERSON GRIFFIS: And what kind of
16 bins do you have?

17 MS. HANNA: It's a restaurant during the
18 day.

19 CHAIRPERSON GRIFFIS: No, but what kind of
20 trash receptacles do you have?

21 MS. HANNA: Oh. Closed big things that --

22 CHAIRPERSON GRIFFIS: Plastic Hefty bags
23 that are set outside?

24 MS. HANNA: They are not bags; they are
25 actual --

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1 CHAIRPERSON GRIFFIS: Metal cans?

2 MS. HANNA: They are actually this
3 heavy-duty plastic that -- I mean, they eat through
4 everything, I will tell you that now. They eat
5 through concrete.

6 CHAIRPERSON GRIFFIS: I understand that.

7 MS. HANNA: But these large orange -- I'm
8 sorry -- yellow things that are closeable. Well, they
9 are these industrial-size huge things. I don't know
10 what you call them.

11 CHAIRPERSON GRIFFIS: I got you.

12 MS. HANNA: Cans with lids.

13 CHAIRPERSON GRIFFIS: Good. Okay. And
14 the addition to this will accommodate easier trash
15 pickup and a more sanitary condition that you think is
16 going to control rats? Is that what your testimony
17 is?

18 MS. HANNA: If you see the area -- yes.
19 She will show you. We will be sharing the area. This
20 fence here on the bottom picture is an area that is
21 already a trash area. We will be enlarging it.
22 Actually the photograph shows it better.

23 CHAIRPERSON GRIFFIS: That's all right.
24 It's noted on the drawings: wood fence and gates for
25 trash area.

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1 MS. HANNA: Right.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. HANNA: And we will be sharing it with
4 the folks that use it now.

5 CHAIRPERSON GRIFFIS: Sharing it with who?

6 MS. HANNA: With Columbia Road Health
7 Services and Demers Real Estate, which are the owners
8 of the property on both sides of us, and they have
9 agreed to that. They actually like that idea.

10 CHAIRPERSON GRIFFIS: Interesting. Okay.
11 Good. Anything else?

12 Excellent. Let's move on to the Office of
13 Planning, then, who has submitted a report. You guys
14 must fly around in helicopters all the time with these
15 aerial photographs.

16 MR. PARKER: Most of my time each day,
17 actually.

18 CHAIRPERSON GRIFFIS: That's some job.

19 REPORT FROM THE OFFICE OF PLANNING

20 BY TRAVIS PARKER

21 MR. PARKER: Good afternoon. I'm Travis
22 Parker with the Office of Planning.

23 The Office of Planning concurs with the
24 arguments in the applicant's statement. There is a
25 topographical issue on the back of this lot that I

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1 tried to describe in my report. I can attempt to make
2 it more clear if you would like, but the --

3 CHAIRPERSON GRIFFIS: I think the
4 photographs are pretty clear.

5 MR. PARKER: The topography rises and then
6 falls again, so this addition would make dealing with
7 that situation much easier, and it creates quite a
8 practical difficulty for accessing from the rear and
9 the new addition would allow handicapped access in the
10 rear as well as improvements on the interior for
11 handicapped access inside the building.

12 We don't believe it would cause any
13 substantial detriment to the neighborhood or to the
14 integrity of the zone plan, and we recommend approval.

15 I would be happy to answer any questions you have.

16 CHAIRPERSON GRIFFIS: Good. Thank you
17 very much.

18 Board, any questions of the Office of
19 Planning?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Does the applicant
22 have any cross-examination of the Office of Planning?

23 Is the ANC representing Application 17178
24 present today? Yes, sir.

25 MR. ROTH: Mr. Chairman, I'm Alan Roth,

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1 I'm chairperson of ANC-1C. I didn't come today
2 intending to speak on this case, but I'm happy to be
3 here and on behalf of the ANC reiterate our support,
4 which I believe we submitted to you in writing.

5 CHAIRPERSON GRIFFIS: Will be or is?

6 MR. ROTH: I believe it has been.

7 CHAIRPERSON GRIFFIS: Yes, Exhibit Number
8 40, which is recommending approval as modified, and I
9 made note about a little bit of that, obviously. They
10 brought it to you folks and talked about the adjacent
11 apartment building that wanted that setback.

12 MR. ROTH: Yes. We are always happy when
13 neighbors get together and work things out amongst
14 themselves.

15 CHAIRPERSON GRIFFIS: I think we are, too.

16 Good. Do you have any questions for the
17 ANC? Does the applicant have any cross-examination
18 for the ANC?

19 Ms. Miller?

20 VICE CHAIRPERSON MILLER: I just want to
21 compliment this ANC on how it submits its resolution.

22 It addresses all the prongs of the test that we need
23 to evaluate whether to give it great weight, and which
24 we will in this case because it addresses it so
25 thoroughly and clearly. Thank you.

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1 MR. ROTH: Thank you.

2 CHAIRPERSON GRIFFIS: Good. Thank you
3 very much. Quite our luck to have you down here, on
4 another case, perhaps, but nonetheless.

5 I don't have any other government reports,
6 Mr. Gross, unless to are aware of any. This is not a
7 historic district; is that correct?

8 MR. GROSS: That's correct, Mr. Chairman,
9 not a historic district.

10 CHAIRPERSON GRIFFIS: Excellent. And we
11 have heard now from the ANC-1C and, as has been
12 indicated, it is Exhibit Number 40.

13 Is anyone here, persons to give testimony
14 in support or in opposition to Application 17178 of
15 the Potter's House Church?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Not noting any
18 indication of persons to give testimony, let's first
19 turn it of to you for any closing summation or remarks
20 you might have.

21 MR. GROSS: Thank you for your
22 consideration, Mr. Chairman. We also would love to
23 get a bench decision if the Board sees fit. Thank
24 you.

25 CHAIRPERSON GRIFFIS: Good. Oh, you know,

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1 I have one other legal question in your analysis and,
2 you know, I can't put my finger on it right now. You
3 talked about the parking requirement, the parking
4 requirement would not be required based on the
5 existing building, and then there's the exception, or,
6 rather, there is -- the calculation of the retail
7 commercial use starts above 3,000, I believe, square
8 feet, and you indicated, well, this is 2,558 square
9 feet addition. I know those probably aren't exact
10 figures.

11 MR. GROSS: Yes.

12 CHAIRPERSON GRIFFIS: And therefore it's
13 under the 3,000, so it wouldn't count towards
14 calculating the parking. Now, doesn't the 3,000 count
15 towards the entire square footage?

16 MR. GROSS: My understanding was just the
17 addition, but there may be a little bit of a grey area
18 there. I guess there is a backup plan in the form of
19 Mr. Parker's OP report, which comes at it a different
20 way, noting that the addition does not exceed a 25
21 percent expansion; therefore there is a waiver that
22 way.

23 CHAIRPERSON GRIFFIS: Right. And that's
24 where I'm going. I have total confidence in that
25 analysis of it, but I'm not sure that the 3,000,

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1 actually, would take it -- I think that would be more
2 problematic for us to be looking at because then you
3 could conceivably do small additions constantly and
4 never have to be calculated.

5 I mean, the impact of parking, as I
6 understand it, especially for the retail, is to say,
7 look, the smaller ones aren't going to have a huge
8 impact, but once you get beyond this threshold, it
9 starts to have impact.

10 Clearly the addition to something that is
11 in existence makes a much stronger point. I think
12 it's actually more on point in terms of the 25 percent
13 increase intensity of use.

14 Yes?

15 MR. PARKER: We felt the same way. We did
16 not agree with the applicant's calculation. We
17 believe that it's a cumulative effect and 3,000 over
18 the whole project, but because the project doesn't
19 raise the total more than 25 percent of the aggregate,
20 there wasn't a need for additional parking.

21 CHAIRPERSON GRIFFIS: Good. Okay. I'm
22 glad we cleared that up. Very well.

23 In that case, if there is nothing further,
24 any other clarification or questions from the Board?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: I think it might be
2 appropriate to move ahead with this under a motion,
3 and I would move approval of Application 17178, the
4 Potter's House Church -- that would be the variance of
5 the floor area ratio requirements under 771.2, and
6 also the open court as has been modified under Section
7 776 to construct a two-story rear addition at 1656
8 1658 and 1660 Columbia Road, Northwest -- and ask for
9 a second.

10 VICE CHAIRPERSON MILLER: Second.

11 CHAIRPERSON GRIFFIS: Thank you, Ms.
12 Miller. I think there is fairly clear and ample
13 evidence in the record, first of all in terms of the
14 uniqueness, also relying briefly on Monaco in terms of
15 the non-profit status and the expanding programs but
16 also on the uniqueness that arises out of the property
17 itself.

18 Somewhat of its history -- three
19 properties that have been joined for numerous decades
20 in terms of a single program or a single facilitator
21 of programs, and then the impact of the growing and
22 expanding program and the site grade change that has,
23 in fact, precluded and created some problems in the
24 past.

25 In terms of the court, it's an interesting

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1 piece, the uniqueness and the practical difficulty of
2 compliance -- perhaps not the strongest we have seen
3 in terms of a variance case presentation, but it's an
4 aspect of accommodating some realistic conditions of,
5 one, when you look at a smaller site in terms of what
6 the program requirements are here in terms of getting
7 different entrances and egress, having a building that
8 fronts on two streets and utilizes both of those for
9 service and also for entrance and circulation, and
10 then accommodating in an urban setting a close
11 proximity of a residential building which is actually
12 an allowable, obviously, use in the area but a
13 different use than the adjoining. It seems to be an
14 appropriate aspect of dealing with the particularities
15 of this case and becomes practically difficult in
16 having a full addition but abutting too close to the
17 adjacent properties.

18 I think the last test, of course, whether
19 this would impair the intent and integrity of the zone
20 plan, the Office of Planning certainly lays it out
21 appropriately, and I agree with the aspect that this
22 is a matter-of-right use and we actually fleshed out
23 some of the other additional uses that come in here,
24 maybe accessory uses to the main use of the building,
25 and obviously are in compliance with that and don't

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1 change that.

2 The increase in massing is not also out of
3 the range that would speak to going to impair the
4 intent or the integrity of the zone plan, and the
5 public good -- I don't think this in any way has been
6 evidenced to impair that.

7 That's all I have on this one. If there
8 are other comments, deliberations on the motion that's
9 before us?

10 (No response.)

11 CHAIRPERSON GRIFFIS: The motion before us
12 having been seconded, if there is nothing further, I
13 would ask for all those in favor --

14 VICE CHAIRPERSON MILLER: I have
15 something.

16 CHAIRPERSON GRIFFIS: Oh. You do have
17 something.

18 VICE CHAIRPERSON MILLER: I just wanted to
19 make one small point, the fact that this is a
20 non-profit and it has been noted in the Court of
21 Appeals' decisions, and I think it's either the Monaco
22 decision or the St. Claire's decision, but in any
23 event, you know, they don't want non-profits to feel
24 like they can move if they can't get the variance --
25 if they can't, you know, comply with matter of right,

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1 then they can move, like maybe some resident or
2 whatever. I think that you have established that you
3 are important to the community surrounding you, and
4 therefore, again, the variance standard is a little
5 less high, you know. And I just wanted to recognize
6 your service to your community.

7 CHAIRPERSON GRIFFIS: Very well said.

8 Okay. Anything else?

9 (No response.)

10 CHAIRPERSON GRIFFIS: All right. We have
11 a motion before us. It has been seconded. I would
12 ask for all those in favor to signify by saying aye.

13 (Chorus of ayes.)

14 CHAIRPERSON GRIFFIS: And opposed?
15 Abstaining?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Ms. Bailey, if you
18 would record the vote.

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

23 CHAIRPERSON GRIFFIS: Good. Thank you. I
24 think we can issue a summary order.

25 MS. BAILEY: Summary order, Mr. Chairman.

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1 Okay.

2 CHAIRPERSON GRIFFIS: Not hearing an
3 objection from the Board, we can waive our regulations
4 and do that. Very well. Thank you.

5 MR. GROSS: Thank you very much.

6 CHAIRPERSON GRIFFIS: Thank you very much.
7 Very well. Let's call our next case.

8 MS. BAILEY: Are the parties here for
9 Application 17221; that is, Advisory Neighborhood
10 Commission 1C, the Kalorama Citizens Association, and
11 Montrose?

12 Mr. Chairman, the case was called
13 previously, so we are just picking up from what --
14 piggybacking, I guess, on what was done previously,
15 unless you want me to do it all over again.

16 VICE CHAIRPERSON MILLER: That's fine.

17 (Pause.)

18 APPLICATION OF MONTROSE, LLC

19 17221 ANC-1C

20 CHAIRPERSON GRIFFIS: Very well. Let's
21 move ahead with this. As we had falsely started
22 before, started discussing a little bit, we are going
23 to reiterate. The Board has some great concerns about
24 this, and some of it is, I might honestly say, some of
25 it is our own questions and our own trying to figure

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1 out the aspects of this special exception but also
2 aspects of procedure and process and schedule.

3 So what I'm going to do, and this -- well,
4 this is what is going to be laid out. We're going to
5 have a little bit of discussion from the Board and
6 talk limitedly about some of these issues, and then
7 there is going to be probably some alternatives of
8 direction to go in terms of processing this special
9 exception and perhaps others.

10 What we obviously are very open to is
11 answering any questions for clarification and brief
12 discussion, but I'm going to try and maintain control
13 where we go this afternoon just for clarity, for
14 everyone's sake.

15 With that, we do have preliminary elements
16 in this case, and that is we have two motions. One is
17 a motion to dismiss and one is a motion to postpone.
18 Under those aspects of motions, whether it be to the
19 merits of those or beyond, let's open up some
20 discussion from the Board.

21 MEMBER ETHERLY: Thank you very much, Mr.
22 Chair. As we initially began upon first calling this
23 case, I think what is a very critical question for me
24 right at the start here is, as we enter into
25 discussion around the motion to dismiss or postpone

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1 proceedings, I believe my colleagues will recall that
2 I was of and continue to be of the mind set that the
3 nucleus of facts that we're dealing with relative to
4 the particular application in front of us indeed call
5 very much into question a number of the issues, in my
6 mind, that were raised in 17109 -- of course, a case
7 and a decision which is still not pending but for
8 which the final decision of this Board is still
9 outstanding and will be issued shortly.

10 I would like to commend both the parties,
11 the applicant and the ANC, with regard to the
12 submissions that were provided on that question. I
13 thought they were both very, very helpful. But I will
14 note just as a starting point that I do continue to
15 believe that the facts that are at issue here are very
16 much part and parcel of the issues that were raised in
17 17109, and I would find it somewhat awkward, if not
18 administratively unwieldy, if you would, to move
19 forward with disposition of this particular special
20 exception case while that order is still outstanding.

21 I think that order is going to shed some
22 light in a very clear and powerful way on perhaps the
23 direction in which this special exception should
24 proceed. So I would note just for my colleagues as a
25 starting point that I would be of the opinion that a

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1 postponement at minimum would be in order, but I would
2 be open to discussion on that particular point. But
3 that tends to be my starting point, Mr. Chair, as we
4 look at some of the preliminary matters that have been
5 argued in front of us with regard to the motion.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you.

8 Others?

9 VICE CHAIRPERSON MILLER: I would concur
10 with my colleague, Mr. Etherly. I don't know if we
11 all see it exactly the same way, but it does seem to
12 me that we are here, the same parties are here, the
13 same facts are here, the same legal issues appear to
14 be present in this case, there is not a final order,
15 but there is an order pending before the same Board
16 concerning the same facts, and it seems inappropriate,
17 a waste of judicial resources, confusing, to try to
18 deal with those issues in this particular case.

19 It also appears to me that there isn't a
20 final order. My understanding, personal understanding
21 of the order was that the Board found that the
22 building was in violation of the Height Act, and
23 regardless of the legal issues that were involved in
24 that decision, I don't believe the Board has authority
25 to grant a special exception to a building that is in

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1 violation of the Height Act. So therefore I would
2 concur that we ought to at least put this case in
3 abeyance or continue it until after issuance of the
4 final order in the appeal case.

5 CHAIRPERSON GRIFFIS: Okay. Very well.

6 Mr. Parsons?

7 COMMISSIONER PARSONS: I would concur, and
8 just to emphasize, I think you're both talking about
9 postponement, not dismissal. That is a postponement
10 pending this order on 17109, correct? Okay.

11 VICE CHAIRPERSON MILLER: That's correct.

12 MEMBER ETHERLY: I would agree, and the
13 reason why I perhaps pause at the threshold of
14 dismissal is I think clearly there perhaps continue to
15 be outstanding questions regarding just precisely what
16 that order is going to say in terms of enunciating
17 this Board's decision in 17109 and those questions,
18 whether they are outstanding or whether there is need
19 for clarification, might give rise to subsequent
20 action in whatever additional form or steps that any
21 of the parties might decide to take here.

22 With an eye towards that, that's why I
23 pause at postponement as opposed to outright dismissal
24 because it may be the case that that order isn't
25 necessarily the last step in this journey as we try to

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1 take a look at this particular project.

2 CHAIRPERSON GRIFFIS: Well, it sounds like
3 the -- fundamentally what I'm understanding the Board
4 is saying is once the actual final order is issued,
5 the written order, which we're all working on, we're
6 all aware and adding points and taking out points for
7 clarification in our own deliberation and decision,
8 based on the clarity that that provides will inform us
9 on how we process elements of the special exception.
10 Is that your meaning, Mr. Etherly?

11 MEMBER ETHERLY: Yes, sir.

12 CHAIRPERSON GRIFFIS: And the point of
13 whether we can hear a special exception for something
14 that violates the Height Act, you're indicating that
15 there are elements on the documents that are submitted
16 in this special exception case at this time that are
17 still showing non-compatible with the Building Height
18 Act, and that's --

19 MEMBER ETHERLY: That would be correct.

20 CHAIRPERSON GRIFFIS: -- an element of the
21 deck.

22 MEMBER ETHERLY: That would be correct.

23 CHAIRPERSON GRIFFIS: So before us, in
24 adding up all those elements, there is a feeling so
25 far being voiced from the Board that, in fact, it,

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1 one, doesn't believe that the documentation is ready
2 to move ahead, and two, that there are questions in
3 our own minds, and Ms. Miller said it adequately, not
4 all the same, but there are enough questions of which
5 the Board is feeling that the finalization of the
6 order will perhaps bring some clarity of whether the
7 special exception is to proceed and how it might
8 proceed.

9 MEMBER ETHERLY: I would agree, and I
10 think another point that Mrs. Miller made in her
11 opening comments was the issue of judicial resources,
12 and I used the term administratively efficiency, I
13 believe. I think there is a nexus with regard to
14 those two issues here as well.

15 I don't want to dismiss this matter
16 outright simply because of the fact that there is that
17 outstanding order that I think will give some clarity
18 to what may, indeed, be the appropriate relief to
19 seek, if there is, indeed, relief to seek. I simply
20 don't think it's appropriate for us to move deeper
21 into this particular application with that order out
22 there because I think it is going to necessarily raise
23 some of the same issues.

24 I am not getting at the question of
25 whether or not it was appropriate for the special

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1 exception application to be brought. It's here. It's
2 in front of us. But I think with the outstanding
3 order, that is going to lend some clarity to what may
4 be available as an avenue of relief for this applicant
5 with regard to the subject property.

6 I will note that -- I will leave it at
7 that, Mr. Chairman. Thank you.

8 VICE CHAIRPERSON MILLER: Just to pick up
9 on what Mr. Etherly said, I think that based on the
10 pleadings that have come in on this case recently,
11 that when looking to resolve the issues that they
12 raise, they raise the same issues that are being
13 considered in the appeal case.

14 CHAIRPERSON GRIFFIS: Okay.

15 VICE CHAIRPERSON MILLER: But I would put
16 this on -- I would say that we could continue this
17 because, depending on how the final order comes out
18 may affect the special exception application. Maybe
19 it would change or maybe the legal issues would
20 change. I don't want to really prejudge it at this
21 point. I don't see any harm in putting it in
22 abeyance.

23 CHAIRPERSON GRIFFIS: Good. And I
24 appreciate your voicing your opinion, and I'm one that
25 doesn't share a lot of the aspects of that in terms of

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1 -- what you're saying is that, if I'm correct in my
2 legal terminology, this issue preclusion aspect of
3 hearing the same thing in two different forums or
4 whatever and how you do that.

5 But you made the statement that we are
6 hearing the same issue and being asked to address it.

7 I think what that does bring up and what I understand
8 you saying in addition to that aspect -- and, Mr.
9 Etherly, you just touched on it a little bit also --
10 is that a lot of the filings in today from all the
11 parties and the applicant, and in this same time
12 reviewing this order and editing it and fine-tuning it
13 as much as we are, has informed us that we may, in
14 fact, have additional questions that need to be
15 resolved as part of the appeal before we get into
16 further processing of the special exception. Is that
17 --

18 MEMBER ETHERLY: I'll stop short of where
19 you are, Mr. Chair. I think your comment perhaps
20 suggests a third course of action here, and that is,
21 if indeed there are avenues or routes that need to be
22 clarified, why flit around the edges, why not simply
23 wade back into the overall issues that were raised in
24 17109?

25 I would not be in support of moving in

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1 that direction primarily because, one, I would rather
2 have the order hit the street, get digested, get
3 interpreted, get read in a thoughtful and deliberate
4 way, and then if there is subsequent need for action
5 on the part of any person, party, or other interested
6 entity --

7 CHAIRPERSON GRIFFIS: Okay. Let me
8 clarify because maybe I wasn't very clear on it. I'm
9 not saying that no one wants this order to be issued.

10 I think we all want it to be issued very quickly.
11 What I was trying to understand is whether you felt
12 that there was actually additional information that we
13 were needing or time or whatever it is in terms of
14 finalizing the writing of our order.

15 MEMBER ETHERLY: No. I think the
16 finalization of the order needs to happen before
17 anything else happens in this proceeding.

18 CHAIRPERSON GRIFFIS: Right. Okay. Good.
19 Understood.

20 Anyone else? Other comments?

21 MS. BROWN: Mr. Griffis, when it's
22 appropriate, I would like to ask some points of
23 clarification.

24 CHAIRPERSON GRIFFIS: I can't imagine you
25 haven't all then asking that for a long time now.

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1 Okay. Absolutely I will give you appropriate time to
2 get this done. We will take them now. We will take
3 the questions in the hearing. Okay. Let's start,
4 applicant, Ms. Brown. If you wouldn't mind
5 introducing yourself for the record.

6 MS. BROWN: Yes. For the record, my name
7 is Carolyn Brown with the law firm of Holland &
8 Knight. I'm here on behalf of the applicant,
9 Montrose, LLC.

10 Given the direction that you seem to be
11 going with this discussion and leaning toward
12 postponement of the case, my question is, does that --
13 it will have a broad-reaching effect on many
14 applicants throughout the city who have come to this
15 Board before for special exception roof structure
16 relief under the 1910 Height Act.

17 CHAIRPERSON GRIFFIS: Right.

18 MS. BROWN: And for their clarification,
19 do we hold off filing any of those applications? We
20 had the one last July that came through that was at
21 the 130-foot level, and we were approved.

22 CHAIRPERSON GRIFFIS: Right. And you put
23 that in, and I think that's -- it's definitely a
24 concern of the Board in terms of actually the impact
25 and, quite frankly, one might say the real-life

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1 impacts the decisions in this case will have across
2 the city. I think that does take a serious amount of
3 review and understanding, and I think that's exactly
4 what I'm understanding the Board wanting to do, is
5 take the time to make sure that that order, when it's
6 issued, is fully reflective of the Board's intention
7 and its decision and is articulated enough that it
8 can't be misconstrued or perhaps maybe -- well, I
9 think that's why we're being, to my understanding,
10 more cautious, and rather than taking another step
11 that may confuse things further, maybe again taking a
12 little additional time, but I think it's valuable
13 time. That probably didn't help answer your question,
14 but --

15 MS. BROWN: Well, I guess it gets to my
16 second point of clarification. Is there any way that
17 we can have a time limit placed on the Board or --

18 CHAIRPERSON GRIFFIS: Oh, yes.

19 MS. BROWN: -- to issue this decision by
20 the end of the year so that we aren't stuck in a
21 situation where other applicants who need special
22 exception relief where the 1910 Height Act is involved
23 aren't left in limbo for another year and we're
24 stacking up like planes at O'Hara.

25 MR. ROTH: Mr. Chairman?

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1 CHAIRPERSON GRIFFIS: Yes?

2 MR. ROTH: May I be heard on that?

3 CHAIRPERSON GRIFFIS: Everyone is going to
4 be heard. What is your name and address, please?

5 MR. ROTH: Alan Roth, 1845 Vernon Street,
6 Northwest, Chairperson, ANC-1C.

7 I would urge the Board to take the time it
8 needs, whether that's a day, a week, a month, two
9 months, --

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. ROTH: -- to write the kind of
12 decision that it sounds to me that the Board members
13 want to write. I think it's totally inappropriate to
14 inject into this discussion in this case arguments
15 about what might be the problems that other
16 hypothetical applicants might have in other
17 hypothetical cases.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. ROTH: If the Board can issue the
20 decision and it's the kind of decision that you want
21 to issue by the end of the year, I think that's
22 totally suitable to our side.

23 CHAIRPERSON GRIFFIS: Good.

24 MR. ROTH: If you need more time --

25 CHAIRPERSON GRIFFIS: I appreciate your

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1 support of giving us more time. The Board is
2 concerned on two levels of that. First of all, there
3 is no reason for us to sit on this. We want this out
4 and it only --

5 MR. ROTH: Agreed.

6 CHAIRPERSON GRIFFIS: -- facilitates what
7 we do to do that.

8 In terms of your second point, I think
9 we're all going to be in agreement, and I don't think
10 either of you is stating any disagreement, there's got
11 to be clarity involved, and there's got to be clarity
12 of, one, the position of the Board, and clarity in
13 terms of process. So we are going to try to do both,
14 and that is why I think it's the proper move not to
15 continue with this special exception today.

16 MS. HARGROVE: Mr. Griffis, a quick
17 comment, if I may.

18 CHAIRPERSON GRIFFIS: Yes.

19 MS. HARGROVE: I am Ann Hargrove from the
20 Kalorama Citizens Association, and I want to point on
21 to that one good aspect of your decision, it's not
22 just how it might eventually through its order affect
23 other possible cases, but the fact is we had been very
24 worried that we would have no order on the first case,
25 that the second case would proceed, that we would not

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1 have a time for reconsideration and court case all
2 worked out in such a way that all this could be
3 jumbled up together at the end. It was a practical --
4 really a considerable worry to us because you're
5 dragging both them and us through a very long process
6 here.

7 CHAIRPERSON GRIFFIS: Right.

8 MS. HARGROVE: So thank you for taking
9 this step.

10 CHAIRPERSON GRIFFIS: Okay. Anything
11 else? Yes, Ms. Miller.

12 VICE CHAIRPERSON MILLER: Mr. Chairman, I
13 think, you know, I think this just goes to show that
14 these cases really deal with the same basic issue and
15 facts, at least, without getting into whether or not
16 it rises to the level of issue preclusion.

17 I think what we want to try to do, though,
18 in our proceedings, perhaps, is to separate the
19 special exception case and the appeal case. I think
20 that if there aren't any more questions here in the
21 hearing case and we don't have anything else we want
22 to say, I think what we would need to do is vote on
23 the motion to continue this case or hold it in
24 abeyance, and then perhaps, if we want to have further
25 discussion as to how we want to proceed with the

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1 appeal case, we could call a meeting on the appeal
2 case right now and discuss that. That would be my
3 suggestion.

4 CHAIRPERSON GRIFFIS: Yes.

5 MS. BROWN: I have one other suggestion.
6 I have a feeling we're not going to go with it, but if
7 there is any way that we could hear the special
8 exception today but then postpone a decision on it
9 until the other order comes out, that's another
10 solution. We're ready to go today and have been
11 planning on it.

12 Then my third point is completely
13 separate. I do want to file a pleading, a response to
14 something that the ANC and KCA filed on Friday in
15 response. It's a motion to strike that. I'm not
16 going to debate it here; I just want to submit it to
17 the record today.

18 CHAIRPERSON GRIFFIS: Good. Okay. I
19 think we can take that in the record as it was
20 submitted and we did have that filing with the ANC
21 coming in.

22 Let me tell you, you know, look, we're
23 supposed to do everything out in the open and before
24 the public, and we do. We obviously go in executive
25 session and we obviously do a lot on our own at home

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1 and late night, into the wee hours of the morning.

2 I will be honest, too: I was ready to go
3 on this up until two o'clock this afternoon, but that
4 doesn't mean that there weren't issues that are
5 rolling around in my head of, you know, quite frankly,
6 fundamental issues, and then the impact of, as you
7 say, one, getting everybody down here, but two, for
8 us, in terms of separating the appeal and the special
9 exception and trying to look at these as stand-alone,
10 but, look, the reality is there are aspects that
11 aren't.

12 It has become quite cumbersome, and it is
13 not often that this Board has perhaps ten different
14 directions it's going. Maybe two, maybe three we can
15 deal with, but when it comes to be ten, it seems to
16 speak to me more of there's a lot that we need to
17 tighten up here, and it's all our responsibility and,
18 believe me, we have an incredible amount of excellent
19 information that has been submitted.

20 I would suggest this: Ms. Miller has
21 offered a suggestion that we close the hearing and
22 call a special public meeting. That means we would
23 call, in fact, the Appeal 17109.

24 VICE CHAIRPERSON MILLER: I'm sorry, but I
25 also suggested that we rule on the motion first before

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1 we close it.

2 CHAIRPERSON GRIFFIS: I know, but I'm --

3 VICE CHAIRPERSON MILLER: I'm sorry.

4 Okay.

5 CHAIRPERSON GRIFFIS: -- running through
6 so people don't get too scared of what we're doing and
7 the amount of --

8 VICE CHAIRPERSON MILLER: Okay. I thought
9 you were rolling right in.

10 CHAIRPERSON GRIFFIS: -- control we're
11 taking in changing our process. And then I think that
12 after that, or depending on what happens there, I
13 think we can get back into a public hearing and close
14 our afternoon hearing and we will have an opportunity
15 to answer any questions that you might have as to what
16 happened in the public meeting. Of course, the public
17 meeting, we won't be able to address necessarily -- I
18 don't know if we would actually be precluded in the
19 public meeting -- would we? But why don't we do that
20 and keep it clean. We will keep the public meeting
21 open, and then we will close that and open the hearing
22 again. Is that kind of clear to everybody?

23 MR. ROTH: You have me totally confused.

24 CHAIRPERSON GRIFFIS: Good.

25 (Laughter.)

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1 MS. BROWN: I'm in agreement with Mr. Roth
2 for probably the first time.

3 (Laughter.)

4 CHAIRPERSON GRIFFIS: Well, bang the
5 gavel, we're all together.

6 The issue is this: What Ms. Miller was
7 talking about was dealing with perhaps some of the
8 elements, and I think the other Board members were in
9 agreement, dealing with some of the elements of the
10 Appeal 17109. That would mean we would have to open
11 that case again, and it would just be for I think some
12 clarification and some questions -- actually, some
13 discussion on that from the Board. That is the
14 appeal. We cannot do that in the hearing, and
15 especially in the hearing in this case, so
16 procedurally what we're going to do is close the
17 hearing, the afternoon hearing, we're going to open up
18 a special public meeting.

19 A special public meeting, of course, is
20 when the Board deliberates on a case that is before
21 us. That appeal is before us. After perhaps a brief
22 discussion, I will close that meeting, that special
23 public meeting, I will reopen the afternoon hearing.

24 We should probably stand up and turn
25 around every time we do this so that we know that

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1 we're changing.

2 COMMISSIONER PARSONS: Why can't we
3 postpone this case right now?

4 CHAIRPERSON GRIFFIS: Well, we are going
5 to postpone this case and then we have a second step
6 that we're going to do.

7 MEMBER MANN: Just for some discussion
8 among my colleagues and perhaps with an eye towards
9 the consternation that may appear on some of our
10 audience faces, procedurally there has to be a
11 separation between this special exception proceeding
12 and the prior case, and I agree with that, and I agree
13 with the direction in which Mrs. Miller is going.

14 From a procedural standpoint, I think Mrs.
15 Miller is suggesting that the Board has to first
16 dispose of the motion to postpone and dismiss that has
17 been put forth by KCA and ANC-1C. That has to be
18 dealt with first. I would suggest that those are two
19 separate motions because I would not be inclined to
20 support a motion to dismiss, but I would be inclined
21 to support a motion of postponement.

22 The second issue is perhaps with an eye
23 towards balancing the concern that is being raised by
24 the applicant, one course of action could conceivably
25 be to begin speaking towards some of the questions or

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1 some of the issues that are raised and called into
2 question by 17109, which I would not want to downplay
3 or minimize the significance of for my colleagues in
4 terms of going back into 17109.

5 At this particular juncture, I will note
6 for my colleagues that I would not be in support of
7 that. I would, rather, like to see the order come out
8 and then move forward in whatever way might be
9 determined once again by any of the interested
10 persons, parties or organizations, community or
11 otherwise, with respect to 17109.

12 It is a struggle, and I'm speaking as one
13 Board member, clearly there is a struggle between the
14 point that was raised by the applicant in that there
15 are serious questions that are raised by the
16 disposition of the issues in 17109 and they will have
17 impact on cases in the future as well as potentially
18 cases that are already on this docket, and I know that
19 this Board and the Chair are very sensitive to that.

20 On the other hand, part of my concern is
21 the process which we follow to begin answering some of
22 those questions, and I feel that it's important to
23 have the record in 17109 and the process completed by
24 having the order out.

25 But from a standpoint of just perhaps

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1 restating what the Chair is suggesting, I would
2 suggest, one, deal with the motion to dismiss and the
3 motion to postpone. That would be two separate
4 motions that the Board would have to decide, and I'm
5 comfortable dealing with both of those motions today.

6 If there is a desire to move forward with
7 a motion to take some additional step in terms of the
8 public meeting, it would be my suggestion, and I'm not
9 certain from an OAG standpoint what the process is
10 there, but I would not be in support of moving into a
11 special meeting on 17109. But procedurally and
12 according to our regulations, I'm not certain if
13 that's necessarily something that has to be done by
14 motion or if that is something that can simply be done
15 at the determination of the Chair.

16 MR. ROTH: Mr. Chairman?

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. ROTH: Two -- well, one request and
19 one question. On the disposition of the motion to
20 dismiss and motion to postpone in the pending case,
21 when we initially brought the motions, we discussed
22 them sort of together and sort of separately. Our
23 hope, I think, would be that if you vote to postpone
24 today, that that would be a postponement of the entire
25 case, including disposition of the motion to dismiss.

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1 If the order in the appeal case comes out
2 in a certain way, the arguments made in the motion to
3 dismiss continue to or may continue to be valid, and
4 if, on the other hand, the order comes out in a
5 different way, the motion to dismiss may be found to
6 be invalid. But I would hope that the Board would
7 hold in abeyance any ruling on the motion to dismiss
8 until we have the order so that we can argue the
9 motion to dismiss or make further submissions on the
10 motion to dismiss in relation to the actual terms of
11 the order. I guess that's the request I would make.

12 CHAIRPERSON GRIFFIS: All right.

13 MR. ROTH: The question I have relates to
14 the second or other procedure, and I guess I will hold
15 that until you are ready for it.

16 CHAIRPERSON GRIFFIS: Yes. Probably
17 shouldn't have broadcast the schedule, huh?

18 Let's move ahead. We have two motions
19 before us. Let's take up the motions. Let's start
20 with whichever one you want.

21 MEMBER ETHERLY: Mr. Chair, it would be my
22 motion to grant the motion of ANC-1C and KCA to
23 postpone action on 17221, which is the special
24 exception case before us, and I would invite a second.

25 VICE CHAIRPERSON MILLER: Second.

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1 MEMBER ETHERLY: Thank you very much, Mrs.
2 Miller.

3 I think for the reasons that we have
4 already discussed and laid out, Mr. Chair, whether you
5 buy into -- I don't think this is necessarily an
6 issue-preclusion question that we're getting to at
7 this particular juncture or any other similar such
8 theory. I simply believe that there is a closeness
9 and an affinity between 17221, the case that we are
10 presently engaged in, and 17109; that I would prefer
11 to see 17109's order issued before moving forward with
12 17221.

13 That is, of course, taking into
14 consideration the very important concern that was
15 raised by the applicant, and that is the issue of
16 timing, not only with respect to the impact on the
17 current application but also any other projects that
18 may be in the pipeline.

19 I understand the concern that was raised
20 by KCA and the ANC with regard to perhaps not buying
21 into a fallacy of all the hypothetical cases that are
22 in the pipeline out there, but I am concerned because
23 we all know that there are serious issues that are
24 raised by 17109.

25 It's just simply from a procedural

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1 standpoint I think it's cleaner for 17109 in terms of
2 the order to hit the street, get digested, get read,
3 and get read very carefully by a lot of lawyers and a
4 lot of members in the community, and then that will
5 probably inform where we are with respect to 17221.
6 So that's why I would support -- that's why I offered
7 the motion to postpone.

8 CHAIRPERSON GRIFFIS: Good. Thank you.

9 VICE CHAIRPERSON MILLER: I just want to
10 say that I certainly support the motion to postpone,
11 but I don't support all the reasons that Mr. Etherly
12 has elaborated, but I don't think that that matters.
13 I support it for the reasons that I suggested before
14 and I don't really want to go into too much detail,
15 but, you know, the issues seem to be the same and the
16 judicial resources and et cetera, that we ought to be
17 dealing with the final order in the appeal case first.

18 MEMBER ETHERLY: I agree. And just for
19 the sake of clarity, I simply view this as a motion to
20 postpone, and I will simply leave it at that. I don't
21 want to establish this as shall we say a precedent or
22 a blueprint for other motions to postpone that may
23 come down the pike. I just think it's appropriate to
24 postpone at this particular juncture.

25 CHAIRPERSON GRIFFIS: Good. Sounds like

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1 we all might have our reasons for that, and they may
2 all be different.

3 That being said, we have a motion before
4 us. Mr. Etherly has added to that motion in terms of
5 the substance of why postponement would be
6 appropriate. It has been seconded. Is there further
7 deliberation?

8 (No response.)

9 CHAIRPERSON GRIFFIS: Very well. I would
10 ask for all those in favor of the motion to signify by
11 saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON GRIFFIS: And opposed?

14 (No response.)

15 CHAIRPERSON GRIFFIS: We have a motion
16 before us from the party in opposition for dismissal
17 of the application. Is there deliberation on that?

18 MEMBER ETHERLY: Mr. Chair, it would be my
19 position to -- and I won't offer a motion as of yet,
20 but just for the benefit of my colleagues, it would be
21 my position to deny the motion to dismiss with regard
22 to the concern that was raised on the part of the ANC.

23 My thinking simply is, as we go through
24 this conversation, you will probably hear me say the
25 word clean, clean, clean, clean, clean, a number of

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1 different times, and the reason why I am hanging my
2 coats on such a big peg is it's an understatement to
3 say that this is a complex case, 17221 and 17109, and
4 I think they are part and parcel of the same bag of
5 luggage.

6 Clarity and cleanness in this particular
7 case, for me, would be not to have, you know, all of
8 these shadows and ghosts hanging over our heads in the
9 form of different motions that we don't deal with but
10 we just kind of leave them out there hanging for some
11 other point. I'd just as soon deny the motion to
12 dismiss.

13 We know this thing is going to be here in
14 front of us, it's going to get resolved one way or
15 another, and I think the postponement gives us an
16 opportunity for that process to work itself out in the
17 appropriate way. But I would rather not complicate
18 matters by having a motion of the significance of a
19 dismissal motion simply hanging out there in abeyance
20 for us to have to deal with at some subsequent point
21 in time.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. ROTH: Mr. Chairman?

24 CHAIRPERSON GRIFFIS: Yes. Oh, I'm sorry.

25 We're in the middle of a motion, deliberation of a

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1 motion.

2 MR. ROTH: Okay.

3 CHAIRPERSON GRIFFIS: Well, actually, did
4 you bring one?

5 MEMBER ETHERLY: No, I did not raise the
6 motion.

7 CHAIRPERSON GRIFFIS: Okay.

8 Yes.

9 MR. ROTH: I don't know what the Board's
10 intentions are on this motion, but at the very least,
11 I would ask that if the Board's intention is to deny
12 the motion to dismiss, that it be on the record that
13 it's without prejudice to renewing that motion.

14 CHAIRPERSON GRIFFIS: Our actions don't
15 take prejudice, and so it would all be without
16 prejudice.

17 Why don't we have the quick question in
18 terms of why not hold it in abeyance, why is
19 deliberative action -- does anyone want to comment on
20 that?

21 MEMBER MANN: Only insofar as I would
22 rather hold it in abeyance than support any sort of
23 motion to dismiss at this point. It gives us more
24 options.

25 CHAIRPERSON GRIFFIS: Yes. Options. All

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1 right. And the other aspect is we can dismiss
2 anything we want, any time.

3 MEMBER MANN: Right.

4 CHAIRPERSON GRIFFIS: We don't need their
5 motion to do that.

6 MEMBER MANN: Options of how to proceed in
7 the future, not options on how to dispose of the case.

8 CHAIRPERSON GRIFFIS: Right. Okay. Good.
9 Good point. Good point.

10 Others? Anything else?

11 VICE CHAIRPERSON MILLER: I would support
12 holding it in abeyance as well. I don't see any harm
13 to it. It seems very similar to the whole case. I
14 think there were, in my view, there were good reasons
15 to dismiss the case anyway, and the same reasons would
16 be -- this is just my personal view and my personal
17 vote -- there would be reasons to grant the motion to
18 dismiss, but I think that the wiser course is to hold
19 it in abeyance with the rest of the case. I don't see
20 any harm or any messiness in it whatsoever.

21 MEMBER ETHERLY: Mr. Chair, I will not,
22 you know, lengthen our deliberation and dialogue on
23 this particular issue, so I won't fall on the sword
24 here. I will, however, stick by my guns to the extent
25 that I would prefer this to be a voice vote as opposed

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1 to a consensus vote because I just -- this is
2 complicated and it's not going to get any easier, and
3 I think the motions practice, if it gets too
4 convoluted, it's just going to further complicate an
5 already intricate, intricate procedural posture. So
6 I'm prepared to move forward, but I will not support a
7 motion for abeyance. So to an extent, I'm calling the
8 vote on that particular question and, you know, more
9 than happy to move forward, but I will vote in
10 opposition to the motion to hold that in abeyance.

11 CHAIRPERSON GRIFFIS: That's fine.

12 Let's have it. Is there a motion?
13 Question?

14 VICE CHAIRPERSON MILLER: I thought there
15 was a motion on the dismissal, but I can frame a
16 motion. I would move that we hold --

17 CHAIRPERSON GRIFFIS: The motion to
18 dismiss in abeyance?

19 VICE CHAIRPERSON MILLER: -- the motion to
20 dismiss in abeyance. Thank you.

21 CHAIRPERSON GRIFFIS: Is there a second?

22 MEMBER MANN: Second.

23 CHAIRPERSON GRIFFIS: Thank you.

24 Discussion?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: Very well. We have
2 the motion before us. It has been seconded. Let me
3 ask for all those in favor to signify by saying aye.

4 (Chorus of ayes.)

5 CHAIRPERSON GRIFFIS:

6 CHAIRPERSON GRIFFIS: And opposed?

7 MEMBER ETHERLY: Opposed.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Abstaining?

10 (No response.)

11 CHAIRPERSON GRIFFIS: Very well. We will
12 just record that vote. Those are the two motions to
13 -- I'm sorry. Let's record it.

14 MS. BAILEY: Mr. Chairman, please bear
15 with me.

16 CHAIRPERSON GRIFFIS: Oh, no, take your
17 time.

18 MS. BAILEY: This is the motion to --

19 CHAIRPERSON GRIFFIS: This is the motion
20 to hold in abeyance the motion to dismiss.

21 MS. BAILEY: Okay. Mr. Etherly made the
22 motion; Mr. Mann seconded.

23 CHAIRPERSON GRIFFIS: I'm sorry. Ms.
24 Miller made the motion; Mr. Mann seconded. The vote
25 would be recorded as 4 to 1 to 0.

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1 MS. BAILEY: Thank you, sir.

2 CHAIRPERSON GRIFFIS: Of course.

3 Okay. There it is. Those are the
4 preliminary matters. In fact, we did postpone the
5 hearing on this case.

6 Anything else we need to discuss in the
7 hearing? Any other aspects of issues of import for
8 the Board at this time?

9 MS. BROWN: Mr. Chairman, if I could raise
10 a question to when is it postponed?

11 CHAIRPERSON GRIFFIS: I haven't forgotten
12 to answer that question.

13 Yes?

14 VICE CHAIRPERSON MILLER: The motion to
15 hold the case in -- special exception in abeyance and
16 the motion to dismiss in abeyance? It's my
17 understanding, and we didn't articulate it, that it
18 would be for after a final order is issued in the
19 appeal case.

20 CHAIRPERSON GRIFFIS: We haven't answered
21 that question yet.

22 VICE CHAIRPERSON MILLER: Well, we should
23 discuss it, then.

24 CHAIRPERSON GRIFFIS: We will. I'm not
25 leaving yet. It's four o'clock. We still have time.

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1 Is there anything else in terms of the
2 specifics? I think there's next steps that are going
3 to inform that, perhaps, the answer to that question.

4 MR. ROTH: Mr. Chairman?

5 CHAIRPERSON GRIFFIS: Yes?

6 MR. ROTH: I don't know whether the Board
7 intended this at the time of Mr. Etherly's motion to
8 grant the motion to postpone, but the way our motion
9 was written was until a date at least 30 days after
10 the order becomes final.

11 CHAIRPERSON GRIFFIS: I understand. We
12 have a lot of information to establish that.

13 Go ahead. When do you want to set the
14 hearing for? We can take it up. And I think the
15 motion, to be clear in terms of the motion to
16 postpone, was not a total adoption and approval of the
17 motion that was presented to us, but that which the
18 Board somewhat articulated on the differing issues.

19 So let's set this. Let's set it for the
20 hearing. It is being postponed until? Discussion?

21 VICE CHAIRPERSON MILLER: I guess what I
22 had in mind was that we wouldn't be setting a hearing
23 automatically, that the application would come back to
24 the Board to be considered after the final order. I
25 don't know when the Zoning Office would be scheduling

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1 a hearing.

2 CHAIRPERSON GRIFFIS: Okay.

3 VICE CHAIRPERSON MILLER: Perhaps the
4 parties at that point could --

5 CHAIRPERSON GRIFFIS: That should answer
6 the question.

7 VICE CHAIRPERSON MILLER: Well, maybe we
8 need to explore it, but I think the parties at that
9 point would have to reevaluate, especially the
10 applicant, the special exception.

11 CHAIRPERSON GRIFFIS: Right. So we have
12 one option. We have an option that the hearing would
13 be set 30 days after the issuance of the order, which
14 would obviously set a timing but not an exact timing
15 on it. It would also give some information on what
16 was going to be processed in the special exception.
17 That's one aspect, that's one way to do it.

18 We could, as we have done in the past,
19 let's just state a date for this. Set a date, we hold
20 it, we get it on the hearing.

21 Mr. Parsons?

22 COMMISSIONER PARSONS: Mr. Chairman, we
23 have no obligation to do this. I mean, we're looking
24 for an orderly process. We, too, cannot predict the
25 future as to when this process is going to be -- how

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1 it's going to evolve or when it's going to evolve.

2 CHAIRPERSON GRIFFIS: Who are you
3 addressing? Ms. Miller, who wants to set this, or --

4 COMMISSIONER PARSONS: No. You were
5 asking for a date and I'm trying to argue against
6 that.

7 CHAIRPERSON GRIFFIS: I said let's move
8 on. A Board member said why can't we resolve this, so
9 we've gone back to trying to resolve it. Now you're
10 saying we don't need to resolve it.

11 COMMISSIONER PARSONS: That's correct.

12 CHAIRPERSON GRIFFIS: Okay. Let's have a
13 couple more seconds on this to see if any of us agree.

14 MS. HARGROVE: Mr. Griffis, may I just ask
15 a simple question?

16 CHAIRPERSON GRIFFIS: There is no simple
17 question this afternoon.

18 MS. HARGROVE: I know. I know. Is there
19 any way we can even begin to estimate when the order
20 will be written so that then we can begin --

21 CHAIRPERSON GRIFFIS: No. There's a lot
22 of things that have to be done here.

23 MS. HARGROVE: All right. Well, I know,
24 but --

25 CHAIRPERSON GRIFFIS: And there will be.

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1 MS. HARGROVE: -- the question is whether
2 --

3 CHAIRPERSON GRIFFIS: I don't know why
4 it's clear to me.

5 MS. HARGROVE: -- whether you can estimate
6 whether it's a month or --

7 CHAIRPERSON GRIFFIS: I mean, I've got it
8 all down here. I'm not sure why everyone else is
9 confused on my left and my right.

10 MS. HARGROVE: -- whether it's two months
11 or what you're anticipating because there's no way you
12 can set a schedule until you have some general idea of
13 when you're going to do the order.

14 CHAIRPERSON GRIFFIS: That's very wise.

15 MS. HARGROVE: Not very wise, just very
16 obvious.

17 CHAIRPERSON GRIFFIS: That, too, which is
18 also why I wonder --

19 VICE CHAIRPERSON MILLER: Mr. Chairman, I
20 was trying to set a time certain, not a date, but what
21 is the trigger? What's the next trigger? Postponed
22 until what? And so perhaps we can figure that out. I
23 mean, one option would be postponed until, you know,
24 after the issuance of the final order and then require
25 the applicant --

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1 CHAIRPERSON GRIFFIS: Well, propose
2 something.

3 VICE CHAIRPERSON MILLER: I am trying to
4 throw out a suggestion.

5 At which point, then, I think we would
6 need the applicant to resubmit its interest in
7 pursuing the special exception application. Maybe
8 things -- if we're saying that a final order is going
9 to be issued and you have to wait and see what the
10 final order says, that may affect the special
11 exception application. So I think that we --

12 CHAIRPERSON GRIFFIS: Let's not make it
13 more complicated. They have an application before us.

14 We have postponed it. If they need to reformat their
15 application, how they present it, that's their
16 responsibility. If it changes dramatically because of
17 the issuance of the order, then so be it. Let's set
18 the date. Here's another option. Maybe it's the same
19 one. Thirty days after the issuance of the order to
20 the next available hearing. You guys want to decide
21 this. I'm just trying to facilitate that decision.

22 MS. BROWN: Mr. Griffis, if I could just
23 put my two cents' worth in, I would concur that 30
24 days after the issuance of the order would be
25 agreeable. Of course, we would want it to be the next

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1 time within that 30 days available, and it would not
2 exceed the 30-day limit, so that if the order came out
3 December 31st, we would be guaranteed a hearing by the
4 end of January.

5 MR. ROTH: Mr. Chairman? May I respond to
6 that? Again going back to -- and I recognize this is
7 not what the Board voted on before, but going back to
8 our original motion, we suggested 30 days or at least
9 30 days after the order becomes final, and the reason
10 for that is that within at least a couple of
11 timeframes in that first 30 days after its issuance,
12 there are some options that the parties may have
13 depending upon how the order comes out with regard
14 either to reconsideration or to judicial appeal.

15 CHAIRPERSON GRIFFIS: In your definition
16 of when the order becomes final, then the order
17 wouldn't be final if there was a motion for
18 reconsideration before the Board?

19 MR. ROTH: I think that's right.

20 MS. HARGROVE: That's correct.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. HARGROVE: Or the possibility of going
23 directly to court.

24 CHAIRPERSON GRIFFIS: Right.

25 VICE CHAIRPERSON MILLER: Mr. Chairman, I

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1 would certainly say that we should wait --

2 CHAIRPERSON GRIFFIS: Kind of wonder what
3 we're doing today. Okay. What?

4 VICE CHAIRPERSON MILLER: I would like to
5 suggest that we at least wait until after there is a
6 decision on any motion for reconsideration because
7 otherwise we're going to have the same problem. We
8 may have motions for reconsideration on the appeal
9 order and then the special exception application
10 starting, and that doesn't make sense. So I think we
11 at least have to wait for the time to run for an order
12 on reconsideration.

13 CHAIRPERSON GRIFFIS: Good. Since you
14 bring that up -- and I think there is no one that
15 isn't concerned in this room, and I think the Board
16 most importantly, about the schedule and doing this
17 expeditiously. Ms. Miller, I appreciate -- and
18 forgive me, I'm very tired this morning and so
19 impatient with my Board members. But I think you are
20 absolutely pushing us in the correct manner, and let's
21 try and clarify as much as possible and let's try and
22 get this expeditiously done.

23 The difficulty and what I clearly know is
24 the difficulty is we all have perhaps a little bit
25 different perspective on this, or maybe different

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1 feelings and opinions of how we ought to proceed, so I
2 think it's important to get it all out there and then
3 try and step back into finalizing everything. That's
4 what I was trying to do in the beginning, was setting
5 up more the general of what we were about to do and
6 then get into the specifics, but here it is.

7 I think, in my own mind, in looking at the
8 order and the iterations of the order before it's
9 going out, I need additional information. I think it
10 would be appropriate if the Board not wait and
11 anticipate a motion for reconsideration by one of the
12 parties in the case, but take it up on its own. I
13 think that would allow for the questions that we are
14 all well aware of that may well need additional
15 information and additional consideration by this
16 Board. It would expedite issuing the final order in
17 this case and may preclude any motions for
18 reconsideration in addition outside of the Board's own
19 manner.

20 It's not outside of the Board's
21 jurisdiction or process to have done this, and I think
22 that we have often erred in the fact of being totally
23 comprehensive in looking at applications and making
24 sure that we do have all the information before us
25 before we issue our order.

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1 Comments?

2 VICE CHAIRPERSON MILLER: Two comments.
3 One is, and I'm sure this will be repeated because I
4 think that we intend to switch into the other case,
5 when we're talking about how we're going to proceed
6 with the other case, but regardless of whether or not
7 the Board decides to reconsider the case or reopen it
8 or whatever, which will be addressed, I would still
9 think that we have to allow for the fact that there
10 may still be motions for reconsideration even if the
11 Board reconsiders on its own first.

12 CHAIRPERSON GRIFFIS: That's fine.

13 VICE CHAIRPERSON MILLER: So we should
14 build in that time for this case to start again if it
15 would ever start again.

16 CHAIRPERSON GRIFFIS: Okay. Good point.

17 Any other comments on that, then?

18 (No response.)

19 CHAIRPERSON GRIFFIS: I'm prepared to
20 bring a motion, which means we would conclude this
21 hearing. I would have to open up the special public
22 meeting. After that public meeting, we can bring a
23 motion in consideration of Appeal 17109. After that,
24 I would close the special public meeting and reopen
25 the hearing in the afternoon hearing.

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1 It would just be the hearing, it's not under any
2 case, and that would allow us to have any sort of
3 questions of process or set schedules for the next
4 hearing, and we have the motion to postpone in this
5 hearing. So once that is done, we could clarify both
6 of those issues and get the schedule together and
7 everyone would walk out of here with a small bit of
8 understanding of what we're doing. Does that make
9 sense?

10 VICE CHAIRPERSON MILLER: May I offer one
11 more view?

12 CHAIRPERSON GRIFFIS: Of course. Why not?

13 VICE CHAIRPERSON MILLER: I think it would
14 make sense -- I don't think we need to hear what's
15 going to happen in the meeting on the other case to
16 decide the time to which this case would be postponed.
17 I think that we could say that this case would be
18 held in abeyance until 30 days after any order on a
19 motion for reconsideration.

20 CHAIRPERSON GRIFFIS: What happens if
21 there is no motion for reconsideration?

22 VICE CHAIRPERSON MILLER: Well, then, the
23 time would run. I think there are ten days or so to
24 file a motion for reconsideration, and if none is
25 filed, then the order becomes final at that point.

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1 CHAIRPERSON GRIFFIS: So you're saying
2 what Mr. Roth is saying: when the order is final.

3 VICE CHAIRPERSON MILLER: When the order
4 is final as defined by after the time running for a
5 motion for reconsideration, yes.

6 MS. HARGROVE: Don't forget the response
7 to the motion, which I think is seven days in response
8 to the ten-day period.

9 VICE CHAIRPERSON MILLER: Okay.

10 MS. HARGROVE: But the point is anyone
11 could go to court within the 30 days whether or not
12 there is a reconsideration, so it really should be set
13 for one day after the 30 days.

14 VICE CHAIRPERSON MILLER: Okay. I mean, I
15 think that we can figure that out. I guess what we're
16 saying, I don't think we're going to wait for all
17 Court of Appeals' decisions, but I think we're going
18 to wait until our decision is final on a
19 reconsideration, and we can figure out those days if
20 we all know what we're talking about. And then I
21 think that this case is finished and then we can go
22 into the other case.

23 MR. ROTH: Mr. Chairman?

24 VICE CHAIRPERSON MILLER: This case, the
25 special exception case, we can close the hearing for

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1 today after we deal with whatever questions and then
2 move into the meeting on the appeal case, and if we
3 need to have a hearing, it would be related to the
4 appeal, not related to the special exception, as I
5 understand.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. ROTH: Mr. Chairman?

8 CHAIRPERSON GRIFFIS: Yes?

9 MR. ROTH: At the risk of --

10 CHAIRPERSON GRIFFIS: Go ahead.

11 MR. ROTH: -- testing your patience --

12 CHAIRPERSON GRIFFIS: No. I have tons.

13 MR. ROTH: We are, and I am guilty of
14 this, too, we are using the word "final" in lots of
15 different ways.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. ROTH: And so as it happens, I have at
18 the bottom of my folder here the relevant regulations,
19 and maybe it would be useful if I just ticked them off
20 because they are relatively short.

21 CHAIRPERSON GRIFFIS: What section?

22 MR. ROTH: 3125.6 says for purposes of
23 this chapter, a decision or order shall be and become
24 final upon its filing in the record and service upon
25 the parties. Then 3125.9 says no order of the Board

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1 shall take effect until ten days after it becomes
2 final pursuant to 3125.6.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. ROTH: And then 3126.2 says any party
5 may file a motion for reconsideration or rehearing of
6 any decision provided that the motion was filed within
7 ten days from the date of issuance of a final written
8 order by the Board.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. ROTH: So if I understood Ms. Miller
11 correctly, what you are saying is 30 days after one of
12 the latter two as opposed to the first.

13 CHAIRPERSON GRIFFIS: Thirty days after
14 the ten days of the issuance of the written order.

15 VICE CHAIRPERSON MILLER: I would say 30
16 days after any --

17 MR. ROTH: The disposition of --

18 VICE CHAIRPERSON MILLER: -- order on
19 reconsideration has been issued or the time has run
20 for the filing of the motion and opposition to the
21 motion. I think we all know --

22 CHAIRPERSON GRIFFIS: That will read well.

23 VICE CHAIRPERSON MILLER: -- and maybe our
24 OAG can help us actually write it very clearly, but I
25 think we all know what we're talking about, don't we?

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1 Don't we?

2 MR. ROTH: No. That's why I tried to --

3 VICE CHAIRPERSON MILLER: The final
4 reconsideration order or the time has run.

5 CHAIRPERSON GRIFFIS: Let's just set it.
6 For goodness' sakes, we're taking much too much time
7 on this. Let's postpone this to 30 days, the closest
8 Tuesday. We'll set it for 30 days plus ten days from
9 the issuance of the written order. If we get to that
10 point and the world has changed and we need to revisit
11 it, so be it. Otherwise, let's count on that. That's
12 40 days. That's ten days for the reconsideration,
13 that's 30 days to prepare.

14 VICE CHAIRPERSON MILLER: I'm sorry, I
15 just don't --

16 CHAIRPERSON GRIFFIS: Okay. You don't
17 agree.

18 VICE CHAIRPERSON MILLER: It just sounds
19 like --

20 CHAIRPERSON GRIFFIS: Is there any other
21 comment?

22 VICE CHAIRPERSON MILLER: -- we might get
23 caught in the middle of a reconsideration.

24 CHAIRPERSON GRIFFIS: Yes. There's a
25 million things. There could be a tornado. I mean,

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1 I'm not sure I can predict.

2 VICE CHAIRPERSON MILLER: Well --

3 CHAIRPERSON GRIFFIS: Let's hear others,
4 then. I mean, you and I don't agree.

5 Go ahead. You have a quick comment?

6 MS. BROWN: I would agree with that, yes,
7 sir. I think that that's very clear and we can move
8 on.

9 CHAIRPERSON GRIFFIS: Okay. Any other
10 comments?

11 CHAIRPERSON GRIFFIS: Okay. Any other
12 comments? Mr. Mann, you are okay with that?

13 MEMBER MANN: Yes, I'm fine with the
14 schedule you just proposed.

15 CHAIRPERSON GRIFFIS: Good. Excellent.

16 Mr. Etherly, you're okay with that? Okay.
17 Let's move ahead, then, and in terms of the
18 postponement, we will set it for that date, and
19 obviously that's not a date certain. We will issue a
20 date -- or I will make an announcement on the record
21 when that is established, obviously, when the written
22 order is issued and ten days after that. Okay.

23 COMMISSIONER PARSONS: Do you need a
24 motion to terminate this hearing and open a public
25 meeting?

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1 CHAIRPERSON GRIFFIS: No, I don't.

2 Very well. Is there any other official
3 business, Ms. Bailey, that you are aware of for the
4 afternoon session?

5 MS. BAILEY: Mr. Chairman, if we are
6 finished with Montrose, that's it.

7 SPECIAL PUBLIC MEETING

8 CHAIRPERSON GRIFFIS: Okay. At this time,
9 what I would like to do is adjourn the afternoon
10 session of the 7th of December, 2004, and also
11 simultaneously call a special public meeting of the
12 Board of Zoning Adjustment to December 7, 2004.

13 Board members, what I would like to do
14 under this special public meeting is look at Appeal
15 17109. Ms. Bailey, I don't know if you have that in
16 front of you to call it.

17 MS. BAILEY: I do, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Thank you.

19 APPEAL NO. 17109 OF

20 KALORAMA CITIZENS ASSOCIATION

21 MS. BAILEY: Appeal Number 17109 of
22 Kalorama Citizens Association, pursuant to 11 DCMR
23 3100, from the administrative decision of David Clark,
24 Director, Department of Consumer and Regulatory
25 Affairs, from the issuance of building permit numbers

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1 B455571 and B455876, dated October 6th and 16th, 2003,
2 respectively, to Montrose, LLC, to adjust the building
3 height to 70 feet and to revise penthouse roof
4 structure plans to construct an apartment building in
5 the R-5-D District at 1819 Belmont Road, Northwest.

6 CHAIRPERSON GRIFFIS: Thank you, Ms.
7 Bailey.

8 Board members, as I have said now, let me
9 reiterate under this record, first of all, in
10 reviewing the entire record and starting to write and
11 review the draft, the revisions of the draft order
12 that needs to get out, I believe that there is a
13 lacking of our deliberation and on the record in terms
14 of some of the information that is required to do a
15 very tight order, and in order to expedite the
16 issuance of the final order, I would like to move for
17 a reconsideration of Appeal 17109 and I would ask for
18 a second and I will speak to the motion.

19 MEMBER MANN: Second.

20 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.

21 I think there is an important issue, and
22 frankly I'm going to be brief on it, but there is an
23 important aspect and issue that I don't find has been
24 clearly articulated by the Board and it goes to the
25 sidewall and essentially the party wall that is rising

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1 substantially. Of course, in the record, it is fully
2 evidenced, but it is the aspect of how that is
3 actually dealt with.

4 What I would like to do, if this motion is
5 successful, is ask those participants in this case to
6 brief only that issue of the wall, party wall rising
7 above the adjacent property and whether that is
8 characterized as an exterior wall as it is regarded in
9 terms of the Height of Buildings Act of 1910.

10 Again, I think it seems like such a simple
11 issue, but it's a complicated issue with great
12 ramifications. You know, on a -- well, there it is.
13 Let me hear others, or if there is additional
14 information that may be needed in terms of issuing
15 this final order.

16 Yes? Anything.

17 VICE CHAIRPERSON MILLER: I will make a
18 comment. I think it certainly appears that this is a
19 pretty complex question or may have great
20 ramifications and it wasn't that fully addressed in
21 the appeal. I think Board members are coming at this
22 from different perspectives and some members had
23 concerns about this regardless of what happened in the
24 special exception case, but I can say honestly that
25 certainly when I read the pleadings in the special

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1 exception case, that they are much more fully in-depth
2 in addressing this issue. Therefore, in that you are
3 proposing that we reconsider this issue, I would
4 propose that we reopen the record to bring into this
5 appeal case any information that the parties may wish
6 to share on that issue.

7 In particular, I would be interested in an
8 exploration of what the ramifications of different
9 rulings on that question might be.

10 CHAIRPERSON GRIFFIS: Okay. Just for
11 clarification, we're talking about this one specific
12 issue, and that is the determination of whether the --
13 I don't know -- east wall is an exterior wall? Is
14 that what you're saying? And the ramifications of the
15 different aspects of a decision on that, whether it is
16 exterior or not exterior?

17 VICE CHAIRPERSON MILLER: I guess I would
18 want it just to be -- I wouldn't want to limit it too
19 much. I know there is a relationship between the
20 walls and the setback and the Height Act, and so I
21 would say just that issue in general, meaning we're
22 not getting into FAR and things like that.

23 CHAIRPERSON GRIFFIS: I just want to
24 clarify for myself but also for the submissions that
25 you're asking for, when you say "that issue," what is

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1 the issue?

2 VICE CHAIRPERSON MILLER: Well, what is
3 the issue. The issue of the penthouse being set back,
4 what --

5 CHAIRPERSON GRIFFIS: Okay. So all the
6 issues that arise out of whether that sidewall is
7 determined by the Board to be an exterior wall; is
8 that correct?

9 VICE CHAIRPERSON MILLER: Well, and the
10 issue of the setback in relation to the Building Act.

11 CHAIRPERSON GRIFFIS: Okay. Good.

12 VICE CHAIRPERSON MILLER: Maybe there is
13 no more. I don't know. If we're going to open --

14 CHAIRPERSON GRIFFIS: Well, the setback
15 goes directly to whether that's an exterior wall or
16 not. Okay.

17 VICE CHAIRPERSON MILLER: Fine.

18 COMMISSIONER PARSONS: Mr. Chairman, it
19 seems to me, if we can just focus on the word
20 "exterior," the regulations speak for themselves on
21 what happens if we go a different direction, --

22 CHAIRPERSON GRIFFIS: Exactly.

23 COMMISSIONER PARSONS: -- and not spend
24 pages and pages and pages on other ramifications of
25 that.

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1 CHAIRPERSON GRIFFIS: Right. Let me agree
2 with you there. I'm not thinking that this is needing
3 volume. I'm actually giving the opportunity for the
4 participants to address this issue, but I think it
5 should be on point and fairly brief, but I do believe
6 it's worth us at least taking a re-look or a
7 reconsideration in this matter. That's why I was just
8 making sure that Ms. Miller, when she said "the
9 issue," was sticking to the one issue, and I thought
10 maybe she might have another. That's fine. I think
11 we're on one issue.

12 Others? Mr. Etherly?

13 MEMBER ETHERLY: I just don't get it. As
14 unartful as it is, I just don't quite get it. I know
15 we have had conversation about this, so it's not that
16 I don't get it from that standpoint. It's not that I
17 don't get it from what I think part of what we're
18 talking about is, the ramifications of the decision in
19 17109, and I alluded to that in our conversation
20 during our hearing earlier. I am just not convinced
21 because I recollect having conversations on the record
22 and as part of our deliberative process at decision on
23 what this darn decision meant, and I'm just not quite
24 there.

25 That being said, I can't say no to the

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1 motion, but I'm just not quite at yes on it, but I
2 don't want us to waste time trying to get me to say
3 yes, trying to get me to the "yes" point because you
4 don't need me to get there, but I'm just going to be
5 very clear and very honest about my utter and complete
6 confusion with regard to what exactly the concern is
7 around this case because I thought we talked very
8 clearly about the ramification of that particular
9 issue, because what we're talking about to an extent,
10 I think, still is this issue of, when you talk about
11 zoning and when you talk about that darn exterior
12 wall, party wall, what have you, at what point does a
13 party wall or an exterior wall stop becoming one and
14 become the other, especially when you're talking about
15 a situation where you have a taller building next to a
16 shorter building. I recall us having discussion about
17 what potentially happens knowing full well that at
18 some point, that open space of the wall could become
19 -- could stop becoming exterior space because someone
20 could build up. I recall that conversation and I just
21 recall -- I'm just going to leave it at that because I
22 don't want to ramble on it and I don't want to make
23 this a federal case, but I am so utterly confused and
24 discombobulated on it.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MEMBER ETHERLY: I will just leave it at
2 that. Let's move forward. I'm going to abstain on
3 the vote here, but I'm doing it for a very specific
4 reason, and that is I'm not quite at yes, and saying
5 yes I think would -- it would concern me if I were to
6 vote yes in support of the motion. Part of me would
7 rather just see the decision come out and then let
8 that process move forward.

9 But I want to take cognizance and
10 recognition of the concern that I think I'm hearing
11 from my colleagues, but I also want to note by my
12 abstention vote that I'm just not simply convinced by
13 what I have heard regarding those concerns yet that
14 they are completely justified.

15 Let's move forward and let's not waste a
16 lot of time on it.

17 CHAIRPERSON GRIFFIS: Ms. Miller.

18 VICE CHAIRPERSON MILLER: I just want to
19 comment that in most cases, I feel like we have all of
20 the information that is out there that is required to
21 make a reasoned decision, and I feel like in that case
22 we -- I certainly feel we had sufficient information
23 to make a good decision; however, there seems to be a
24 lot more information out there that would fill the
25 record in the appeal case and that it would be useful

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1 to have it in.

2 MEMBER ETHERLY: So after about nine or
3 ten hearings, we couldn't extract enough information
4 to make that decision, and to think that we're going
5 to be able to fine-tune and hone whatever inquiry we
6 make after this reconsideration comes forward is
7 ludicrous.

8 VICE CHAIRPERSON MILLER: I don't think we
9 had nine or ten hearings, Mr. Etherly.

10 CHAIRPERSON GRIFFIS: Okay.

11 MEMBER ETHERLY: Let's move forward, Mr.
12 Chairman.

13 CHAIRPERSON GRIFFIS: Any other comments?

14 COMMISSIONER PARSONS: I think what I'm
15 looking for, Mr. Chairman, is the ramifications, if
16 any, on many other decisions that have been made in
17 the city. That certainly is something that was not
18 part of the hearing, and I'm not sure about that. So
19 before we trigger something that results in impacts
20 that we did not consider, that is the only purpose for
21 the reconsideration for me.

22 CHAIRPERSON GRIFFIS: Excellent. And
23 arising out of this issue.

24 COMMISSIONER PARSONS: Uh-huh.

25 CHAIRPERSON GRIFFIS: Right. So existing

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1 conditions or ramifications of certain decisions.

2 COMMISSIONER PARSONS: Right.

3 CHAIRPERSON GRIFFIS: I think that's a
4 well-stated point. Okay.

5 We have a motion before us. It has been
6 seconded. The motion is to reopen the record and
7 reconsider this one aspect of Appeal Number 17109. Is
8 there further comment, deliberation on this?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well. I would
11 ask for all those in favor, signify by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON GRIFFIS: Opposed?
14 Abstaining?

15 MEMBER ETHERLY: Abstaining.

16 CHAIRPERSON GRIFFIS: Thank you, Mr.
17 Etherly.

18 Let's record that vote.

19 MS. BAILEY: The vote is recorded as
20 4-0-1. Mr. Griffis made the motion, Mr. Mann second,
21 Mrs. Miller, Mr. Parsons are in agreement, Mr. Etherly
22 abstained, and that is to reopen the record on Appeal
23 Number 17109 to consider the one issue articulated by
24 the Board.

25 CHAIRPERSON GRIFFIS: Good. Thank you,

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1 Ms. Bailey.

2 Good. Now we just need to set up the
3 schedule. Without going through the formalities, my
4 attorneys tell me that I need to -- I'm going to open
5 this up for questions and let's set the schedule on
6 what we're doing here.

7 What I anticipate -- you've heard the
8 Board speak briefly but very specifically on certain
9 issues that they want briefed, and those briefings
10 should be -- as always my favorite phrase -- brief
11 briefs and to the point. It's not a large thing that
12 the Board is asking for continued clarification on and
13 reconsideration of.

14 We will be issuing an official order of
15 this which is reopening the record on the motion to
16 reconsider in which we will articulate exactly, as I'm
17 seeing this, two, three sentences of what the Board is
18 looking at, but I will take any questions for
19 clarification at this time if you have any in terms of
20 just what the Board is looking for in terms of
21 submissions.

22 Ms. Miller brought up an interesting point
23 of there were submissions in the special exception
24 case that were filed today that may well be
25 appropriate and to be adopted into. If that's the

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1 case, if you don't want to make -- well, if that is
2 the case, make it known and put it into the record.

3 Okay. Anything else?

4 (No response.)

5 CHAIRPERSON GRIFFIS: That only means two
6 things: I have confused you so horribly or -- I will
7 get to the schedule. I just want to make sure that
8 they understand what we're asking for first.

9 VICE CHAIRPERSON MILLER: Okay.

10 CHAIRPERSON GRIFFIS: Very well. Everyone
11 is okay with that? Let's get to the schedule.

12 What I would like to do right now, what
13 I'm proposing is those submissions are due on January
14 11. That would set a time for those submissions to
15 come in, and it would set a time for us in terms of
16 the other elements of this to set a decisionmaking on
17 the reconsideration for the 1st of February meeting.

18 Comments on the schedule, whether that's
19 appropriate for time, enough time, not enough time.

20 MS. BROWN: I think that it's more than
21 enough time and that we would be willing to submit
22 something next week.

23 CHAIRPERSON GRIFFIS: Next week.

24 MS. BROWN: So that we could have a
25 decision much earlier so -- I mean, we're coming up on

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1 almost two years that this building was first
2 permitted. It's a long time to make it drag out into
3 2005.

4 CHAIRPERSON GRIFFIS: Long time.

5 ANC?

6 MR. ROTH: I think the schedule that you
7 have laid out is fine. Again, with no disrespect
8 intended to Ms. Brown, but she --

9 CHAIRPERSON GRIFFIS: Then don't make any.

10 MR. ROTH: No, I think this is relevant.
11 She does this for a living. She does this every day.
12 The rest of us are volunteers, we have jobs, we have
13 lives.

14 CHAIRPERSON GRIFFIS: And that's not
15 disrespect. I think that's very respectful. But your
16 point is you need more time than just to turn around
17 in a week to put this in.

18 MR. ROTH: Yes. And the fact, again, that
19 the holiday season is coming up; people have things to
20 do.

21 CHAIRPERSON GRIFFIS: Well, one aspect of
22 that and what I want you to think about is can we get
23 this done, your filings, get it done before other
24 holidays hit us, and that way you can relax and have
25 fun.

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1 MR. ROTH: Mr. Chairman, right now --

2 CHAIRPERSON GRIFFIS: Did I say that out
3 loud?

4 (Laughter.)

5 MR. ROTH: Mr. Chairman, right now, my
6 relaxation and fun during the Christmas week will be
7 this case.

8 CHAIRPERSON GRIFFIS: I know. I'm sorry.
9 In all seriousness --

10 MR. ROTH: I mean that in all seriousness.

11 CHAIRPERSON GRIFFIS: -- isn't it better
12 to get it done quicker? Tell me exactly how long you
13 actually need so we can get this done as quickly as
14 possible.

15 Ms. Hargrove?

16 MS. HARGROVE: No, I think the schedule
17 you laid out was appropriate.

18 CHAIRPERSON GRIFFIS: Okay. There is no
19 way you can beat that schedule.

20 MS. HARGROVE: It would probably take that
21 time. It would be rather hard to because we all have
22 commitments right now.

23 If we thoroughly understand what you mean,
24 if you're dealing with the simple definition of what
25 an exterior wall is, that's one thing, but if you

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1 expect us to argue on a policy basis about the effect
2 of the decision on past cases or future cases, that's
3 another matter, and that really sort of takes it out
4 of the purview of being a legal issue and something
5 more likely a political decision.

6 I'm sorry, but I think that that is
7 correct. We're either dealing with what the law says
8 about this or we are not, and we really have to just
9 face up to it, and, you know, the decision which you
10 make is going to go one way or another, but it's
11 almost irrelevant because the fact of the matter is,
12 everything in the city just about is nonconforming, so
13 we're not worried about that. What we're worried
14 about is the standard we have set for the future, and
15 unfortunately we're not talking about just big
16 buildings downtown anymore; we're talking about small
17 row houses all over the city.

18 CHAIRPERSON GRIFFIS: That's exactly
19 right.

20 MS. HARGROVE: So we just have to be clear
21 exactly what you want. I mean, do you want us to
22 elaborate, which we have done, you know, enormously
23 well, I think, on what exterior walls are and what
24 their uses are and how they can be used in different
25 situations -- and we had lengthy hearings on this

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1 discussion -- or do you want us to go into the other
2 matter which Mr. Parsons clearly expressed and which
3 most of you sort of as an undertow expressed as well:
4 you're concerned about past decisions and future
5 decisions in pending cases. And that's sort of beyond
6 the scope of what is a legal issue here about what is
7 appropriate under the law.

8 CHAIRPERSON GRIFFIS: I don't know that I
9 agree with that assessment, but I think the Board is
10 asking for that. There is no way that you couldn't
11 take into consideration the implication of a formal
12 decision by this Board, and that has to be informed,
13 first of all, by the legal reading of the regulations;
14 it also has to be looked at in terms of -- or being
15 informed in terms of prior process.

16 As we look at certain things in the aspect
17 of prior process, if we suddenly fundamentally change
18 those or reaffirm them, what does that mean in terms
19 of further processing and buildings in the future? I
20 don't think it borders on or even closely gets into a
21 political decision. I don't think we have ever left
22 the confines of the regulations or the process, the
23 processing and review of these aspects.

24 Ms. Brown.

25 MS. BROWN: I couldn't agree with you

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1 more, Mr. Chairman, and I also agree with Mrs. Miller
2 that most of these materials are in one record or the
3 other, and I think that what you have asked us to do
4 is address it in a way that it's clear, concise, and
5 understandable, but it's simply cutting and pasting,
6 much of it, into new documents to form it to this
7 specific issue, which is not a monumental task.

8 I believe what Mr. Parsons is asking is
9 not a legal issue whatsoever; it's not a policy
10 question; it's simply a legal question of
11 implications, which I believe we have already
12 discussed as well. So I think that it's fine to take
13 a very short time to deal with this.

14 MR. ROTH: Mr. Chairman?

15 VICE CHAIRPERSON MILLER: I mean, I think
16 that's an interesting question, you know, whether we
17 can consider ramifications or not, but I guess I would
18 say at this point, it would be good to get that
19 information in and then we can decide whether or not
20 to consider it or not. If we are leaving the record
21 open for that, I know certainly the ANC hasn't really
22 had time to address that or research or whatever.
23 That's not a cut-and-paste.

24 CHAIRPERSON GRIFFIS: What? The
25 ramifications?

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1 VICE CHAIRPERSON MILLER: The
2 ramifications --

3 MS. BROWN: It's simply legal theory and
4 precedent and we have already -- we have addressed it
5 to some degree, and I think that we have -- and the
6 Board can consider that, Mrs. Miller, because we -- as
7 in the Smith case and some other cases, you do have to
8 consider procedural matters and precedent.

9 VICE CHAIRPERSON MILLER: May I just say
10 one other point? I just think they raise an
11 interesting point, and maybe if you don't think that
12 we should consider it, that would also be something to
13 brief, that that is not something the Board can
14 consider. So in a way, that's a new issue, at least
15 for the ANC.

16 MR. ROTH: Mr. Chairman?

17 CHAIRPERSON GRIFFIS: I don't think -- is
18 that a new issue for the ANC?

19 MR. ROTH: It is and it isn't. Let me see
20 if I can steer a course between you, Mr. Chairman, and
21 Ms. Hargrove and Ms. Brown.

22 I think I understand what Mr. Parsons
23 asked for, and I think to an extent, the material that
24 he has asked for is covered in Ms. Brown's submissions
25 in the other case. I think to an extent, we have

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1 responded to that.

2 The trouble that I have is that this issue
3 or this question proceeds from the assumption that
4 there is precedent from this Board. Our position is
5 that there is no precedent on this question from this
6 Board. Ms. Brown cites the Smith case. We didn't
7 have the opportunity to respond to the Smith case, but
8 I have read the Smith case. The Smith case, as far as
9 I'm concerned, not only doesn't say what her side says
10 it does, it says exactly the opposite.

11 CHAIRPERSON GRIFFIS: Okay. But we're not
12 arguing --

13 MR. ROTH: Well, I guess what I would say
14 is I find it difficult to -- what I find difficult is
15 the idea, and I know you want to keep the submission
16 brief -- brief briefs -- but I think much of this
17 discussion goes back to the question of,
18 notwithstanding what other things have been done under
19 the radar in this city for the past however many years
20 --

21 MS. BROWN: Mr. Chairman, I've got to
22 object --

23 CHAIRPERSON GRIFFIS: We're not asking for
24 a survey of illegal aspects or everything in D.C.
25 that's nonconforming. My gosh, if that is the case,

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1 then we're all in trouble and --

2 MR. ROTH: Well, Mr. Chairman, I'm with
3 Ms. Hargrove here. I don't see any way, sitting at
4 this table, to read or analyze the comments I've heard
5 from members of the Board today in any way other than
6 reflecting on some doubt that something that you might
7 do in this case because you think the law is one way
8 contradicts what the practices have been in the past.

9 MS. BROWN: And I'm going to object to the
10 line of this because he really is arguing the merits
11 of the case and we're getting far afield again. We
12 just need to stick to the schedule.

13 MR. ROTH: What I'm trying to do is define
14 the scope of this brief.

15 CHAIRPERSON GRIFFIS: And I'm just trying
16 to pick a date.

17 COMMISSIONER PARSONS: I like the date
18 you've picked already and I think we ought to conclude
19 this proceeding.

20 CHAIRPERSON GRIFFIS: Okay. Then we're
21 all going to the ball together.

22 Let's do it. We're going to keep it for
23 the 11th of January and decide this on February 1st,
24 the issue. I think that's going to facilitate
25 everybody. Also, quite frankly, that takes into

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1 account a little bit of the Board's schedule so that
2 we don't come up short on this again.

3 Let's take last go-around of any questions
4 or clarifications that folks might have. Anything?
5 Yes.

6 MS. BROWN: A projected date for the order
7 in 17109 will just be through this February 1 decision
8 date.

9 (Pause.)

10 CHAIRPERSON GRIFFIS: I had to make sure
11 that everyone understood that. The issuance of the
12 order won't be until after February 1st. What I would
13 hope is it will be moments away from February 1st
14 based on the decision -- that's the decisionmaking
15 that we will be stepping into on this single issue.
16 Look, I think we're going to be very clear, we're all
17 going to promise to get a good night's sleep before
18 that date, and we've got a lot of work to do, and the
19 more we do, the more expeditious it will be.

20 So in that, believe me -- well, I'm not
21 going to say any more on that. There's a lot done on
22 that order; it shouldn't take that much more.

23 MS. BROWN: If I could just make one point
24 of clarification, because we didn't seem to follow it
25 so carefully in this last submission on 17221, it's

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1 that there are no responses by the parties to the
2 filings.

3 CHAIRPERSON GRIFFIS: That's right. We've
4 got one filing date. We're going to set the filing
5 date. This is for our consideration. We don't need
6 to have arguments or --

7 MS. BROWN: Replies or anything else.

8 CHAIRPERSON GRIFFIS: There's plenty
9 enough argument. What we want is specific briefs and
10 we're adept enough to take the three opinions and put
11 them together, and I think that's actually a cleaner
12 way for us in a lot of aspects.

13 MR. ROTH: Mr. Chairman?

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. ROTH: I object to Ms. Brown's
16 suggestion that we be gagged in responding to her
17 final submission. We have now gone through several
18 iterations of briefing and rebriefing, new briefing --

19 CHAIRPERSON GRIFFIS: I'm not clear. What
20 final submission are you talking about?

21 MR. ROTH: I think the import of Ms.
22 Brown's question was that after we submit our
23 memorandum or briefs, on January 11th, that she is
24 trying to put on the record the notion that we are
25 then barred from making any further submissions on

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1 these issues.

2 CHAIRPERSON GRIFFIS: Right. You are and
3 she is.

4 MR. ROTH: Well, I understand that that's
5 what she would like, and the Board, I suppose, always
6 has the ability and the discretion to reject whatever
7 we might further submit, but I will object to that
8 procedure here because we have been through several
9 iterations with Ms. --

10 CHAIRPERSON GRIFFIS: All right. You want
11 to respond to the submissions.

12 MR. ROTH: I'm not saying we want to.

13 CHAIRPERSON GRIFFIS: But you want the
14 opportunity to.

15 MR. ROTH: I'm saying that we have had
16 enough experiences now with the way in which the
17 opposition construes case law that I do not want to be
18 gagged in that way, and I want to put that on the
19 record.

20 CHAIRPERSON GRIFFIS: Okay.

21 Comments? Directions? I'm of the opinion
22 we have one submission and one submission date. I
23 know the frustration and the kind of tentativeness of
24 once those submissions go on, gosh, you want to
25 address -- I would ask that you have a little bit of

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1 faith and confidence in the Board in our own reading.

2 I think we've got a couple of attorneys up here that
3 do a lot of case law research for us and we get into
4 these very substantially. That's not to diminish the
5 import of a lot of the responses that you in
6 particular have put in, and others, but I think we can
7 handle this small issue.

8 Others? Do we need responses? That's a
9 direct question here before us: Do we need responses
10 to the submissions on the 11th?

11 MR. ROTH: Optional responses.

12 CHAIRPERSON GRIFFIS: Yes. Anticipate.
13 You are given an opportunity, why wouldn't you take
14 it? Do we want responses?

15 MR. ROTH: Mr. Chairman, if I may, I will
16 commit to you on the record that, at least for the
17 ANC, it is not our intention and we will not submit a
18 further response unless we believe that the way in
19 which a case has been described or construed to the
20 Board is a misrepresentation of what that case stands
21 for.

22 CHAIRPERSON GRIFFIS: I am certain you are
23 never frivolous in your filings, so we won't accuse
24 you of that. Okay.

25 VICE CHAIRPERSON MILLER: I would just

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1 say, just to be consistent with my reasons for being
2 in favor of reopening the record and that we get
3 everything that we possibly could on this that sheds
4 light on this issue, that I wouldn't want to preclude
5 something from coming in that might --

6 MEMBER ETHERLY: Agreed, Mr. Chair.

7 CHAIRPERSON GRIFFIS: What? You want
8 everything? Okay. Ham and cheese, everything on it.

9 Responses are when? Ms. Bailey, would you
10 mind? Do you have our dates?

11 MS. BAILEY: Yes, Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Thank you.

13 MS. BAILEY: I put my calendar away; I
14 need to pull it out.

15 CHAIRPERSON GRIFFIS: Good. Take your
16 time.

17 MS. BAILEY: Submissions were due January
18 11th; the decision, February 1st; and you need a
19 response date. January 25th, Mr. Chairman? Is that
20 appropriate?

21 CHAIRPERSON GRIFFIS: What is that?
22 That's two weeks? Three weeks after? Two weeks after
23 the 11th?

24 MS. BAILEY: Two weeks after the 11th.

25 CHAIRPERSON GRIFFIS: Excellent.

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1 Do you think that's a substantial amount
2 of time? ANC?

3 MR. ROTH: Yes, sir.

4 CHAIRPERSON GRIFFIS: Ms. Hargrove?

5 MS. HARGROVE: Yes.

6 CHAIRPERSON GRIFFIS: Good.

7 Ms. Brown?

8 MS. BROWN: More than enough.

9 CHAIRPERSON GRIFFIS: More than enough.
10 Done.

11 MS. BROWN: Thank you.

12 CHAIRPERSON GRIFFIS: Everybody clear
13 about the schedule, know exactly what they're
14 submitting?

15 MR. HARGROVE: Mr. Chairman?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. HARGROVE: Mr. Chairman, for the
18 record, Larry Hargrove for KCA. Could I ask when the
19 written communication from the Board describing the
20 scope of the request for additional information is
21 likely to be available?

22 MS. BAILEY: Mr. Chairman, the transcript
23 will hopefully --

24 CHAIRPERSON GRIFFIS: What he is asking me
25 is I said that we will, out of this decisionmaking

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1 today and this motion and this special public meeting,
2 we are going to issue an -- it's essentially an order.

3 Anything official from the Board has to be written
4 and issued. So our order will be issued single-page
5 and we're going to enumerate exactly what we're asking
6 for the submission.

7 Ms. Bailey, Mr. Moy, I think we can work
8 together on this and get it out before next Tuesday;
9 is that true?

10 MS. BAILEY: That's doable, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Excellent. So I
12 would say within seven days.

13 Anything else?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Good. I appreciate
16 everyone's patience and understanding on this, and
17 hopefully this is the more expeditious way to go.

18 If there is nothing further, then -- Ms.
19 Bailey, anything further for our Board's attention?

20 MS. BAILEY: No, Mr. Chairman.

21 CHAIRPERSON GRIFFIS: We have been in and
22 out of hearings and special public meetings. I'm not
23 sure what we are in at this point, but it is still the
24 7th of December, 2004, and why don't we adjourn it,
25 then, and you all go have a special evening. Thank

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1 you all very much.

2 (Whereupon, at 4:55 p.m., the hearing
3 adjourned.)

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