

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,  
FEBRUARY 15, 2005

+ + + + +

The Public Meeting convened in Room 220 South, 441 4<sup>th</sup> Street, NW Washington, D.C. 20001, pursuant to notice at 10:11 a.m., Geoffrey Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chair
CURTIS L. ETHERLY, JR.	Member
JOHN A. MANN, II	(NCPC)

ZONING COMMISSION MEMBERS PRESENT:

JOHN G. PARSONS	Commissioner (National Park Service)
GREGORY JEFFRIES	Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF THE ATTORNEY-GENERAL STAFF PRESENT:

SHERRY GLAZER, ESQ.

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This transcript constitutes the minutes of the  
Public Hearing held on February 15, 2005.

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

2 10:11 a.m.

3 CHAIRPERSON GRIFFIS: Good morning. Let me  
4 call to order our Public Hearing of February 15, 2005,  
5 and wish everyone again a very good morning.

6 I am the Chairperson, Geoffrey Griffis.

7 Joining me is Vice Chair Ms. Miller and  
8 Mr. Etherly. Representing the National Capital  
9 Planning Commission is Mr. Mann.

10 And for this morning's session,  
11 representing the Zoning Commission is Mr. Jeffries.

12 Copies of the today's hearing agenda are  
13 available for you. They are located where you entered  
14 into this hearing room. I would ask you to pick that  
15 up and see where you are on the chronology as we run  
16 through this.

17 There are several very important aspects  
18 that I'll go through and perhaps very quickly. But I  
19 would remind you if we vary from it.

20 But, first and foremost, all proceedings  
21 before the Board of Zoning Adjustment are recorded.  
22 They are recorded in two fashions, the most important  
23 being the Court Reporter who sits to my right on the  
24 floor. He's creating the official transcript.

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1                   Secondly, we are being broadcast live on  
2 the Office of Zoning's website.

3                   So, attendant to both of those, I ask that  
4 everyone turn off their cell phones and beepers and  
5 noise makers at this time. I would also ask when  
6 people are coming forward that you first fill out two  
7 witness cards. Witness cards are available at the  
8 table where you entered into. They are also available  
9 at the table where you will provide testimony.

10                   Those two cards go to the Recorder period  
11 to coming forward to speak to the Board. The reason  
12 is, so of course we can, on the transcript, give you  
13 credit for everything that you say, which will be of  
14 great import and spell your name correctly for the  
15 official transcript.

16                   The order of procedure for Special  
17 Exceptions and Variances. First, we hear from the  
18 Applicant in the presentation of their case.

19                   Secondly, we'll hear from any Government  
20 agencies reporting on the case, Office of Planning,  
21 Department of Transportation, etcetera.

22                   Third, we will hear the report of the  
23 Advisory Neighborhood Commission.

24                   Fourth, we will hear from persons or  
25 parties in support of an application.

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1 Fifth, would be persons or parties in  
2 opposition to an application.

3 And, sixth, finally, we will have an  
4 opportunity for any closing summation, rebuttal  
5 witness by the Applicant.

6 Cross examination of witnesses is  
7 permitted by the Applicant and parties in the case.

8 The ANC in which the property is located  
9 is automatically a party in the case and, therefore,  
10 will be able to conduct cross examination.

11 The record will be closed at the  
12 conclusion of the hearing on the case and I would  
13 imagine we would conclude all of our hearings this  
14 morning. The important of that is this. This Board  
15 will only deliberate on the information that's created  
16 in the record, so it's created in the record before us  
17 today.

18 So, anything that you believe we should be  
19 taking into consideration should be put into the  
20 record. Obviously, it should be pertinent and  
21 jurisdictional to the application before this Board.

22 The Sunshine Act requires that this Board  
23 conduct all proceedings in the open and before the  
24 public. This Board may, however, enter into Executive  
25 Session, both during or after a hearing on a case.

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1 That is for the purposes of deliberating on a case or  
2 just reviewing the record.

3 Executive Sessions are in accordance with  
4 the Sunshine Act and they are also in accordance with  
5 our rules, regulations and procedures.

6 Let me ask at this time, anyone that is  
7 here present today that is going to testify or is  
8 thinking about testifying, if you would please stand  
9 and give your attention to Ms. Bailey and I will say a  
10 very good morning to Ms. Bailey. She is going to  
11 swear you in.

12 MS. BAILEY: Please raise your right hand.

13 Do you solemnly swear or affirm that the  
14 testimony you will be giving today will be the truth,  
15 the whole truth and nothing but the truth?

16 CHAIRPERSON GRIFFIS: Good. Thank you  
17 very much, all of you, and thank you, Ms. Bailey.  
18 And, again, a very good morning to you.

19 The Board at this time will consider any  
20 preliminary matters. Preliminary matters are those  
21 which state whether a case will or should be heard  
22 today. Request for postponements, withdrawals, or  
23 whether proper and adequate notice has been provided  
24 on the application are areas of preliminary attention  
25 and preliminary matters for the Board.

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1 Ms. Bailey, are you aware of any  
2 preliminary matters for our attention at this time?

3 MS. BAILEY: Mr. Chairman, good morning  
4 and to everyone, good morning as well.

5 Staff does not have any at this time, sir.

6 CHAIRPERSON GRIFFIS: Good. Is anyone  
7 present here with any application scheduled in the  
8 morning have a preliminary matter, if you would come  
9 forward or just give an indication.

10 Not seeing any indication by those present  
11 that we have preliminary matters, let's call the  
12 first case for our morning session.

13 MS. BAILEY: Application Number 17286 of  
14 Grace Guggenheim, pursuant to 11 DCMR, 3104.1 for a  
15 Special Exception to allow additions to an existing  
16 single family semi-detached dwelling under Section  
17 223, not meeting the lot occupancy, Section 43, Rear  
18 Yard, Section 44, and nonconformance structure  
19 provision in subsection 2001.3.

20 The property is located in the R3 District  
21 at the premises 2912 Cortland Place, Northwest.  
22 Square 2103, Lot 60.

23 CHAIRPERSON GRIFFIS: Good morning.

24 MR. HORSEY: Good morning, Mr. Chair,  
25 members of the Board.

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1 My name is Outerbridge Horsey. I'm an  
2 architect and to my left is Grace Guggenheim, my  
3 client, and the owner of the premises at 2912 Cortland  
4 Place.

5 We're here before to seek relief on a  
6 Special Exception to allow additions all at the roof  
7 level to this single-family house. It's in an R3  
8 District. It's an addition to a nonconforming house.

9 The house is nonconforming due to the lot occupancy  
10 and the rear yard.

11 We actually were before this Board for a  
12 variance in 1996 and sought relief for those two  
13 conditions. They were granted relief. And the  
14 proposed additions now do not increase either of those  
15 two non-conformities.

16 I do note that the BZA paperwork includes  
17 a side yard nonconformity, which I'm not aware of and  
18 I don't believe exists. So, I'm --

19 I could just run through the project for  
20 you if you like?

21 CHAIRPERSON GRIFFIS: No. Why don't we  
22 open it up to Board questions if they have any.

23 MR. HORSEY: Okay. Sure.

24 CHAIRPERSON GRIFFIS: If you're satisfied  
25 with that?

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1 MR. HORSEY: That's fine.

2 CHAIRPERSON GRIFFIS: In addition to  
3 clarify, of course, what you said in offering the  
4 submission, we did have -- there was a previous  
5 variance which set the massing of this. And the  
6 proposal is just to add dormers, not changing any of  
7 the aspects of the massing, be it the lot occupancy or  
8 anything of that aspect.

9 And this is before us under a Special  
10 Exception session because it's an addition to a  
11 nonconforming.

12 MR. HORSEY: Correct.

13 CHAIRPERSON GRIFFIS: Good. Okay.

14 Do we have any further information on that  
15 side yard? I mean, there's nothing impacted at all.  
16 It would just be an existing unchanged aspect and you  
17 don't believe that it actually is nonconforming?

18 MR. HORSEY: Correct.

19 CHAIRPERSON GRIFFIS: Okay. I think we  
20 can move ahead then.

21 Is there any questions from the Board?

22 MR. MANN: Yes.

23 CHAIRPERSON GRIFFIS: Yes, Mr. Mann.

24 MR. MANN: Somewhere in this submission I  
25 see that this project was submitted to the Commission

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1 on fine Arts. Is that correct?

2 MR. HORSEY: Yes. It was.

3 MR. MANN: Can you tell me what triggered  
4 that submission?

5 MR. HORSEY: It's across the street, as  
6 you see in the -- probably the best document is the  
7 excellent Office of Planning report that you have.  
8 The aerial photograph you'll see across the street is  
9 the portion of what's called Woodley Park. It's  
10 connected indirectly to the Zoological Park and so  
11 it's incorporated in the Ships Head --

12 MR. MANN: And what was the outcome of the  
13 submission?

14 MR. HORSEY: I think we submitted it, a  
15 copy of it. They approved the current design, which  
16 actually --

17 MR. MANN: You need to just repeat that  
18 for the record. We didn't pick you up.

19 MR. HORSEY: Their purview is over the  
20 front of the house and that contains one of our  
21 doorways to the side --

22 MR. MANN: I'm sorry. I'm going to  
23 interrupt you again. The Court Reporter is indicated  
24 he's not getting you. You just need to be closer to a  
25 microphone.

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1 MR. HORSEY: The Commission of Fine Arts  
2 has jurisdiction because of the Ship's Head, Lusack,  
3 and they approve they approved this submission which  
4 shows the dormer on the front and the side and the  
5 rear.

6 MR. MANN: All right. Thank you.

7 CHAIRPERSON GRIFFIS: Good. And you  
8 indicated, of course, they had no objection to the  
9 addition. Is that correct?

10 MR. HORSEY: That's right.

11 CHAIRPERSON GRIFFIS: Okay. Good.

12 Any other questions of the Board?

13 MR. MANN: Did this require -- is it in a  
14 historic district?

15 MR. HORSEY: No. It's not.

16 MR. MANN: Okay.

17 CHAIRPERSON GRIFFIS: Okay. Good.

18 Anything else?

19 MR. HORSEY: I did submit, make sure you  
20 got them, the two letters from the adjoining  
21 neighbors, both of them support the project.

22 CHAIRPERSON GRIFFIS: Yes. We were just  
23 handed that. I believe, they're from the Moran  
24 family. Is that the way you say it? And also  
25 Anderson Lance. Okay. We have both of those. 2910

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1 Cortland and 2914 Cortland.

2 Good. If there's no other questions,  
3 clarifications of the Board, why don't we move on then  
4 to the Office of Planning.

5 MR. MOORE: Good morning, Mr. Chair and  
6 members of the Board.

7 I'm John Moore, of the Office of Planning  
8 and we stand in support of the application and  
9 therefore on the record.

10 CHAIRPERSON GRIFFIS: Excellent. Thank  
11 you, Mr. Moore.

12 Is there any questions of the Board in  
13 clarifying again a very thorough, excellent analysis  
14 from the Office of Planning.

15 If there's no other questions of the  
16 Board, does the Applicant have any cross examination  
17 of the Office of Planning?

18 MR. HORSEY: No.

19 CHAIRPERSON GRIFFIS: Good. Let me just  
20 say again very briefly that as far -- I think it's an  
21 excellent report not only getting into the history  
22 that past relief outline, but also obviously the  
23 direct requirements under 223.

24 That being said, let's move on. Any other  
25 government agency reports? We've talked about CFA.

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1           Mr. Horsey, I don't have any other  
2           indication of any other Government agencies reporting  
3           on this application. Are you aware of any others?

4           MR. HORSEY: No.

5           CHAIRPERSON GRIFFIS: Excellent. Board  
6           members? I don't see anything else either.

7           Let's move to the ANC which is Exhibit  
8           Number 22.

9           Is the representative from the ANC-3C here  
10          on this application? Not knowing of any  
11          representative, we do have Exhibit Number 22. They  
12          are in support of the application.

13          Is there comments from the Board on this?

14          Applicant have any comments on the ANC's  
15          report?

16          No comments on the ANC report she  
17          obviously presented.

18          Let's move on then to -- anyone here  
19          present persons in support or in opposition to  
20          Application 17286, Grace Guggenheim, can come forward  
21          at this time to provide testimony to persons present?

22          Not noting anyone running at the table at  
23          this time, I don't believe there is anybody present  
24          today to give testimony either in support or in  
25          opposition to the application.

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1                   It seems to me that runs through my whole  
2 agenda on this application.

3                   We'll turn it over to the Applicant for  
4 any closing remarks he might have.

5                   MR. HORSEY: I have no closing remarks at  
6 this time.

7                   CHAIRPERSON GRIFFIS:           Very succinct.  
8 Nice. Okay.

9                   Any other comments from the Board?

10                  I think we ought to move ahead on this and  
11 I move approval of Application 17286 for a Special  
12 Exception under 223 for 2912 Cortland Place, NW. And  
13 I'd ask for a second.

14                  VICE CHAIR MILLER: Second.

15                  CHAIRPERSON GRIFFIS:           Thank you, Ms.  
16 Miller.

17                  I think it is very clear and, in fact,  
18 it's appropriate to stand on the record that this  
19 application as it is so complete. I take great  
20 reliance on the Office of Planning's Report in its  
21 analysis. Obviously, there has been no evidence and  
22 rather persuasive evidence to the contrary that this  
23 would unduly affect the light and air prior to the use  
24 and enjoyment of the adjacent.

25                  Certainly, it stays within character and

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1 scale. I think actually the dormers are quite a nice  
2 addition and I think they've been designed quite well  
3 in terms of their setting and their articulation. And  
4 I will let it go at that.

5 Any other comments on that?

6 We have a motion before us. It's been  
7 seconded. I'm going to ask for all those in favor  
8 state by saving aye.

9 (AYES)

10 CHAIRPERSON GRIFFIS: Opposed?  
11 Abstaining?

12 Ms. Bailey.

13 MS. BAILEY: The vote is recorded as five,  
14 zero, zero to approve the application.

15 Mr. Griffis made the motion. Mrs. Miller  
16 second. Mr. Mann, Mr. Etherly and Mr. Jeffries are in  
17 agreement.

18 CHAIRPERSON GRIFFIS: Excellent.

19 I'd suggest that we issue a summary order  
20 on this unless any Board member has an objection and  
21 we'll waive our regulations and requirements for that.

22 Not knowing of any objections, we'll issue  
23 a summary order on that.

24 Thank you very much.

25 MR. HORSEY: Thank you, Mr. Chair.

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1 CHAIRPERSON GRIFFIS: Have a great day.

2 MR. HORSEY: And members of the Board.

3 CHAIRPERSON GRIFFIS: I understand it's  
4 about 60 degrees. You can probably start construction  
5 today.

6 Let's move ahead then to the second case  
7 of the morning please.

8 MS. BAILEY: Application Number 17287, of  
9 Robin Epstein, pursuant to 11 DCMR 3104.1, for a  
10 Special Exception to construct a two-store rear  
11 addition to an existing single family row dwelling  
12 under Section 223, not meeting the lot occupancy,  
13 Section 43, Rear Yard, Section 44, Requirements.

14 The property is located in the R4 District  
15 at the premises at 1542 First Street, NW, Square 552,  
16 Lot 199.

17 CHAIRPERSON GRIFFIS: Good morning.

18 MR. NUNLEY: Good morning, Chairman  
19 Griffis, Board Members and other staff of the Office  
20 of Zoning.

21 My name is Edgar Nunley. I'm here along  
22 with the owner of the property, Mr. Robin Epstein.

23 Before I start any further, I'd like to  
24 submit something that didn't get into the record. We  
25 have talked with the neighbors on both sides of the

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1 property and one has given us a letter indicating no  
2 opposition. The other indicated no opposition  
3 verbally, but we'd like to submit this one.

4 CHAIRPERSON GRIFFIS: That's fine.

5 MR. NUNLEY: Short and straight to the  
6 point then.

7 CHAIRPERSON GRIFFIS: I'll say. In one  
8 sentence, they have no objection.

9 Good. Well, that's clear. Anything else  
10 for us to do?

11 MR. NUNLEY: Well, at this point we think  
12 that we can stand on the record and we'd like to just  
13 make ourselves available for any questions the Board  
14 may ask.

15 CHAIRPERSON GRIFFIS: Good. I think  
16 that's appropriate also. Obviously, we'll hear from  
17 the lot occupancy, also the minimum rear yard and lot  
18 area, which is an existing condition from 1909 --

19 MR. NUNLEY: Yes.

20 CHAIRPERSON GRIFFIS: -- when this was  
21 built. Is that correct?

22 MR. NUNLEY: That's correct.

23 CHAIRPERSON GRIFFIS: Good. Has there  
24 been any indication from any of -- obviously,  
25 submitted opinions from the adjacent neighbors. Have

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1 there been any comments or anything that would tend to  
2 lead us to look at whether it was objectionable for  
3 light and air use, privacy, the adjacent properties?

4 MR. NUNLEY: No. We've had no such  
5 comments. In fact, we've spoken with neighbors going  
6 two houses on either side. They've all indicated  
7 support.

8 Three have given written support. The  
9 other gave verbal support and he wasn't able to be  
10 here today.

11 We've also gone to the ANC and the Bates  
12 Area civic Association and given a presentation and  
13 we've gotten support from both of those entities.  
14 And, of course the Office of Planning has given a  
15 letter.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. NUNLEY: Positive response.

18 CHAIRPERSON GRIFFIS: And the existing  
19 property, as it shows in the photographs, but also in  
20 the written documentation, it has a screened-in porch.  
21 An existing structure.

22 MR. NUNLEY: That's correct.

23 CHAIRPERSON GRIFFIS: and essentially  
24 this addition is incorporating that --

25 MR. NUNLEY: Yes. It will.

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1                   CHAIRPERSON GRIFFIS:           -- kind of  
2 footprint and expanding out as you've indicated,  
3 expand the liveable space in this property in the  
4 kitchen as it's showing.

5                   Very well. I don't have anything else for  
6 the Applicant at this time. Are there other questions  
7 from the Board?

8                   Good. Let's move ahead then to the Office  
9 of Planning and say a very good morning.

10                  MR. MORDFIN: Good morning, Chairman, and  
11 Members of the Board. I'm Stephen Mordfin with the  
12 Office of Planning and this is a Special Exception  
13 Application pursuant to 223, to permit a rear addition  
14 onto a row house.

15                  Please note that the staff report does  
16 contain an error. The application request reduced the  
17 rear yard to 12.5 feet and not 7.5 feet as is stated  
18 in the report.

19                  CHAIRPERSON GRIFFIS:           Right. Good.  
20 Thank you.

21                  MR. MORDFIN: And this application is in  
22 conformance with the provisions of Section 223 in that  
23 the request is to add onto a row dwelling. Is  
24 permitted as a matter of right in the R4 zone  
25 District. Light and air will not be unduly affected,

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1 because of the proposed building addition is to be  
2 located in approximately the same location as the  
3 former rear porch. Privacy, use and enjoyment will  
4 not be unduly compromised because there will be no  
5 windows on the sides. And the combination proposed  
6 rear yard and a required side of the adjoining  
7 property to the rear is 20.5 feet.

8 The building addition will be visible from  
9 Q Street only and will not substantially intrude upon  
10 the character, scale and pattern of houses along that  
11 frontage.

12 The proposed lot occupancy is 69.5, .4  
13 percent less than the max of 70 percent permitted  
14 under Section 223 and the approval of the subject  
15 application will not permit the introduction or  
16 expansion of a nonconforming use.

17 Therefore, the Office of Planning  
18 recommends approval of the application as submitted by  
19 the Applicant.

20 And that conclude the Office of Planning's  
21 presentation.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you.

24 I have a quick question. It's an  
25 excellent report.

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1                   On your last -- I believe it's the last  
2 page, the last page I have which is your -- the map  
3 and footprints of the buildings.

4                   Do you know just off the top of your head,  
5 as we look at the footprints of that, it would seem  
6 that it is not showing the existing porch, the  
7 screened-in porch area. Is that your understanding  
8 also?

9                   MR. MORDFIN: It does appear that it  
10 doesn't --

11                   CHAIRPERSON GRIFFIS: Okay.

12                   MR. MORDFIN: -- show those porches.

13                   CHAIRPERSON GRIFFIS: Okay. And that's  
14 fine. It's just for clarity, because conceivably  
15 there are others on the row dwellings on that square.  
16 Right?

17                   MR. MORDFIN: Yes.

18                   CHAIRPERSON GRIFFIS: Yes. Indeed.  
19 Okay.

20                   Good. Does the Applicant have any  
21 questions or examination of the Office of Planning?

22                   MR. NUNLEY: No.

23                   CHAIRPERSON GRIFFIS: Let me just ask.  
24 Is the ANC present today, ANC-5C in this application?

25                   Okay. Ms. Miller, questions of the Office

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1 of Planning?

2 VICE CHAIR MILLER: I just have one  
3 question.

4 On page 2 you say that the building  
5 addition replaces the one-store screened-in porch.  
6 DCRA requires the Applicant to remove and I'm  
7 wondering if you know that porch was required to be  
8 removed?

9 MR. MORDFIN: I believe it was in poor  
10 condition, but the Applicant probably can answer that  
11 question better.

12 MR. EPSTEIN: My name is Rob Epstein. I'm  
13 the Applicant.

14 When I bought the property in August,  
15 there was a condemnation procedure underway. And when  
16 I checked with D.C., they wanted that rear porch  
17 removed because of structural problems with it.

18 CHAIRPERSON GRIFFIS: Condemnation just  
19 for that or the whole property?

20 MR. EPSTEIN: I'm sorry? No, condemnation  
21 was for the rear --

22 CHAIRPERSON GRIFFIS: Just for that rear.

23 MR. EPSTEIN: On the structural integrity  
24 of the rear porch.

25 CHAIRPERSON GRIFFIS: Okay. I see.

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1 Good.

2 VICE CHAIR MILLER: Thank you.

3 CHAIRPERSON GRIFFIS: Anything else?  
4 Anything else?

5 Thank you very much, Mr. Mordfin.

6 Let's move ahead then. I don't have any  
7 other agency submissions in this application.

8 The site is not located in an historic  
9 district. Is that correct?

10 MR. NUNLEY: No. It is not.

11 CHAIRPERSON GRIFFIS: Okay. ANC-5C has  
12 not indicated that they are present today, but Exhibit  
13 Number 23 recommends approval of the application.

14 I don't know -- is this -- is this. Oh,  
15 it does need to be waived, that's right. I had made a  
16 note of that.

17 Is there any objection?

18 VICE CHAIR MILLER: No objections to  
19 waiving it.

20 CHAIRPERSON GRIFFIS: Good. I think we  
21 should take in then Exhibit Number 23 as they had  
22 asked for us to request a seven-day filing  
23 requirement, unless the Applicant has an objection for  
24 us accepting the ANC report?

25 MR. NUNLEY: No objection.

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1                   CHAIRPERSON GRIFFIS:     Excellent.   Let's  
2                   move ahead then.

3                   There's    indication    in    this    letter  
4                   obviously some stuff, but there's aspects of a tree  
5                   stump.    Also, the rear wall.   Do we need to know  
6                   anything about -- no.   I shouldn't say that.

7                   What can you tell us about that?

8                   MR. EPSTEIN:    There was a large tree in  
9                   the back of the property which I removed and our  
10                  neighbors to the right, 1544 were very appreciative of  
11                  that, although upon further examination, we noted that  
12                  the roots of the tree are probably impacting upon part  
13                  of the neighbor's yard.

14                  I had to remove that tree stump anyway  
15                  upon commencement of construction, in order to put my  
16                  foundation --

17                  CHAIRPERSON GRIFFIS:    Right.

18                  MR. EPSTEIN:    -- exactly right there.   So,  
19                  I gave him my commitment, oral commitment, but  
20                  certainly I'll follow through with it to remove the  
21                  entire tree stump and the roots and replace any damage  
22                  that may have impacted on his walkway.

23                  CHAIRPERSON GRIFFIS:    Okay.    Oh, so it's  
24                  a walkway?   It's for a walkway.

25                  MR. EPSTEIN:    It's a retaining wall that

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1 leads to a staircase that goes to his basement.

2 CHAIRPERSON GRIFFIS: Good. So, you're  
3 proposing you're going to grind out the stump and then  
4 try and get as many roots as possible out.

5 MR. EPSTEIN: I'm going to remove all the  
6 roots.

7 CHAIRPERSON GRIFFIS: Okay. What kind of  
8 tree was it?

9 MR. EPSTEIN: -- Large.

10 CHAIRPERSON GRIFFIS: Yes. You know,  
11 they can be very destructive forces ripping up  
12 sidewalks, foundations and all that.

13 Ms. Miller, a comment?

14 VICE CHAIR MILLER: There's also a  
15 reference in the ANC report to a retaining wall being  
16 fixed?

17 MR. EPSTEIN: That's part of the same  
18 issue. There is a -- In fact, you might even be able  
19 to see it in the photograph over here.

20 CHAIRPERSON GRIFFIS: Yes. I think we  
21 have -- Mr. Epstein has it pulled out. The rear yard  
22 photograph that you goes with your submission.

23 MR. EPSTEIN: I reference this photograph.  
24 And actually, you can see part of the tree stump here  
25 and the retaining wall is just part of the basement

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1 staircase that the neighbor has over there.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. EPSTEIN: So, to the extent that the  
4 tree or the tree roots or even my construction would  
5 cause any damage over there, we're prepared to repair  
6 it immediately.

7 CHAIRPERSON GRIFFIS: Right. Good.

8 Okay. Anything else? Any other questions  
9 of the Board?

10 I don't have any other Government reports.

11 The ANC's filing we have gone through.

12 Let me ask if anyone here is present has  
13 person to provide testimony to the Board in  
14 Application 17287 of Robin Epstein that's in support  
15 or in opposition?

16 Very well. Let's move ahead to any  
17 closing remarks that you might have.

18 MR. NUNLEY: Only that we would like to  
19 request a bench decision and hopefully a summary  
20 order.

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

23 Again, 223 an excellent point of our  
24 regulations that has set up the ability of homeowners  
25 to come before the Board and not rise to the level of

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1 a variance in trying to make accommodations for  
2 changes in one's life. And certainly as Washington in  
3 it's historic nature has an awful lot of buildings  
4 that were built well before the zoning regulations  
5 were actually enacted. And so, our action or  
6 codification of the regulations, we created numerous,  
7 if not thousands upon thousands of housing that were  
8 then nonconforming. And 223 is the vehicle which such  
9 exception can be requested for relief of those  
10 aspects, this being again another example of that and  
11 I think one that rises to the level of support and  
12 approval. And I would move approval of Application  
13 17287 for the Special Exception to construct a two-  
14 story rear addition to the existing family row  
15 dwelling under Section 223, not meeting the lot  
16 occupancy, rear yard requirements of 1542 First  
17 Street, NW.

18 Ask for a second?

19 MEMBER ETHERLY: Second.

20 CHAIRPERSON GRIFFIS: Thank you, Mr.  
21 Etherly. I do appreciate that.

22 We do have letters of support which we had  
23 mentioned. Exhibit 20, Briscoe? Is that correct?  
24 Yes.

25 And we do have the support of the ANC and

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1 most importantly as I find in terms of the analysis  
2 and relying on the this specific case, the  
3 recommendation and approval from the Office of  
4 Planning, Exhibit Number 22, which slates out a full  
5 analysis.

6 The photographs presented by the Applicant  
7 and the Office of Planning give excellent context to  
8 this and clearly the requirements of the 223  
9 submission that being the documentation and then  
10 discussing the aspects of light and air. And they're  
11 available in privacy and use to the adjacent  
12 neighbors. I don't see anything rising to be  
13 persuasive that this would not meet our approval.  
14 And, therefore, I obviously do support it.

15 Let me open it up to others for any other  
16 comments.

17 Very well. Not noting any other  
18 additional comments, we do have a motion before us  
19 that has been seconded.

20 I ask for all those in favor signify by  
21 saying aye.

22 (AYES)

23 CHAIRPERSON GRIFFIS: And opposed? And  
24 abstentions?

25 Very well. Ms. Bailey, if you would not

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1 mind, you can record the vote.

2 MS. BAILEY: Mr. Chairman, the vote is  
3 recorded as five, zero, zero to approve the  
4 application. Mr. Griffis made the motion. Mr.  
5 Etherly seconded, Mr. Jeffries, Mr. Mann and Mrs.  
6 Miller are in support and we're doing a summary order,  
7 did you say, sir?

8 CHAIRPERSON GRIFFIS: Good. I had not  
9 said it, but excellent point to bring up. I don't see  
10 any reason unless there's any objection by the Board  
11 members, we will waive our regulations and issue a  
12 summary report. We don't have a party in opposition.  
13 This is very straightforward. And the record is  
14 substantially full.

15 So, not knowing any objection, let's issue  
16 a summary order.

17 Good. Thank you all very much. Have a  
18 great day. And you're able to enjoy the 60-degree  
19 weather too.

20 Good. Why don't we move on.

21 MS. BAILEY: Application Number 17284 of  
22 Miranda R. Brown, pursuant to 11 DCMR 1303.2 for  
23 modification of plans under subsection 3125.8 for a  
24 four-story single family detached dwelling that was  
25 approved under BZA Application Number 16929 dated

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1 November 22nd, 2002.

2 The requested modification will allow the  
3 construction of a three-story single family, detached  
4 dwelling with mezzanine. The property is located R-1B  
5 and it's at 3120 Pennsylvania Avenue, SE, Square 5545,  
6 Lot 3.

7 CHAIRPERSON GRIFFIS: Good. Thank you,  
8 Ms. Bailey.

9 Good morning.

10 MS. BROWN: Good morning, Mr. Chairman,  
11 and Board members.

12 My name is Miranda Brown. I'm the  
13 Applicant in this case. I come before you today  
14 because DCRA requested that I come and have a  
15 modification from an attic to a mezzanine.

16 CHAIRPERSON GRIFFIS: Fascinating?

17 MS. BROWN: Fascinating.

18 CHAIRPERSON GRIFFIS: I mean, you know,  
19 you really get into this stuff.

20 What is the difference between an attic  
21 and -- oh, no. We don't want to talk about that.

22 Good. What can you tell us?

23 MS. BROWN: I'm here today because DCRA  
24 told me I needed to change my attic to a mezzanine.

25 CHAIRPERSON GRIFFIS: Okay. And just to

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1 be clear in all seriousness, because this is serious  
2 business.

3 The aspect is a modification from a  
4 previous order, so there was an approval for this to  
5 be -- for it to be built and as the plan has changed  
6 during construction or at this point in its history,  
7 you've modified it and, therefore, the order has to be  
8 modified. Is that correct?

9 MS. BROWN: Correct. Correct.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. BROWN: DCRA requested that I modify  
12 the house.

13 CHAIRPERSON GRIFFIS: Well, let me be  
14 clear on that.

15 They requested that you - -

16 MS. BROWN: Yes.

17 CHAIRPERSON GRIFFIS: -- modify the  
18 house?

19 MS. BROWN: Yes.

20 CHAIRPERSON GRIFFIS: Take an attic out  
21 and make it a mezzanine?

22 MS. BROWN: Yes. DCRA requested that I do  
23 so.

24 CHAIRPERSON GRIFFIS: Why?

25 MS. BROWN: They said that I had to do it.

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1 I was hoping today that a representative would be  
2 here and could explain why they told me to do it. But  
3 I was instructed by DCRA to change it and I did.

4 CHAIRPERSON GRIFFIS: when in the process  
5 did DCRA instructed you? During the permit process?

6 MS. BROWN: No. No. I have it on here. I  
7 have it some place.

8 Okay. November the 14th. Oh, that's not  
9 it. I don't know the exact date, but I was told to  
10 change it but that's not the right date.

11 CHAIRPERSON GRIFFIS: So, when did you  
12 actually construct this?

13 MS. BROWN: The house is still under  
14 construction. It's in the dry-walling stage right now  
15 and I'm just waiting for a summary order so that I can  
16 finish the change.

17 CHAIRPERSON GRIFFIS: I see.

18 And so -- but you obviously had permits.  
19 Right?

20 MS. BROWN: Yes.

21 CHAIRPERSON GRIFFIS: And on 15 November,  
22 is that `05?

23 MS. BROWN: I have two permits.

24 CHAIRPERSON GRIFFIS: Is it `04 on that?

25 Contract agreement from DCRA. I have that.

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1 MS. BROWN: I have two permits.

2 CHAIRPERSON GRIFFIS: You have two  
3 permits?

4 CHAIRPERSON GRIFFIS: I have two permits.

5 CHAIRPERSON GRIFFIS: So, you have the  
6 initial base building permit?

7 MS. BROWN: Yes.

8 CHAIRPERSON GRIFFIS: And you went in for  
9 a modification at some --

10 MS. BROWN: After they told -- yes. They  
11 told me I had to have a new permit, so I had a new  
12 permit issued. Okay.

13 No. They said the total permit. The  
14 first original permit is B460054. That's for a three-  
15 story building based on the first hearing that I had.

16 Then after the DCRA instructed me to  
17 change the house, I was issued permit B466265. That  
18 changed the house to a two-story with basement and  
19 mezzanine. And I continued to build the house.

20 And then they told me to apply for an  
21 order from this court.

22 CHAIRPERSON GRIFFIS: So, when they --  
23 when they -- we're going to move off pretty quickly,  
24 but so when you got the comments back and the second  
25 approved modification permit, DCRA, you weren't given

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1 any reasoning or building code or zoning section that  
2 told you that you needed to remove an attic and create  
3 a mezzanine?

4 MS. BROWN: Well, according to the zoning  
5 -- DCRA, there's no such thing as an attic in D.C.

6 CHAIRPERSON GRIFFIS: Oh, boy.

7 MS. BROWN: Okay.

8 CHAIRPERSON GRIFFIS: Okay. Go ahead.

9 There is, and in fact it's a defined term  
10 in the zoning regulations.

11 MS. BROWN: It's not in the zoning  
12 regulations. They showed it to me. It's not in --  
13 it's not available in the zoning regulations.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. BROWN: Okay.

16 CHAIRPERSON GRIFFIS: I hope the record  
17 is --

18 Go ahead.

19 MS. BROWN: So --

20 CHAIRPERSON GRIFFIS: So, they were  
21 saying that you called that an attic but there's no  
22 such thing as an attic is your understanding that DCRA  
23 zoning administrator indicated. Right?

24 MS. BROWN: Correct. And then there was  
25 an issue about the basement. They had a definition of

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1 a basement. So, between the basement and the attic,  
2 they decided that I needed a mezzanine.

3 CHAIRPERSON GRIFFIS: So, you have a  
4 basement?

5 MS. BROWN: I have a basement.

6 CHAIRPERSON GRIFFIS: First floor?

7 MS. BROWN: First floor.

8 CHAIRPERSON GRIFFIS: Second floor?

9 MS. BROWN: Second floor.

10 CHAIRPERSON GRIFFIS: And you had an  
11 attic?

12 MS. BROWN: I had an attic and now it's a  
13 mezzanine.

14 CHAIRPERSON GRIFFIS: And now you have a  
15 mezzanine.

16 MS. BROWN: Correct.

17 CHAIRPERSON GRIFFIS: Mezzanine is really  
18 counting it as a story, but neither would an attic. I  
19 don't know. I don't know. I don't know.

20 Okay, last question.

21 MS. BROWN: Okay.

22 CHAIRPERSON GRIFFIS: Your attic as  
23 proposed, could you walk up there and --

24 MS. BROWN: Yes.

25 CHAIRPERSON GRIFFIS: -- was there head

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1 height and all that?

2 MS. BROWN: Yes.

3 CHAIRPERSON GRIFFIS: Okay. Let's move  
4 on.

5 Good. Okay. So, we have a modification  
6 of that, of course, because it was previously approved  
7 but it was being built according to the approval of  
8 the documents that were --

9 MS. BROWN: Correct.

10 CHAIRPERSON GRIFFIS: -- before the Board  
11 before? Interesting.

12 MS. BROWN: It was built -- it's still  
13 being according to the documents that were presented  
14 to the Board originally and the modification  
15 documents.

16 CHAIRPERSON GRIFFIS: Okay. Okay.

17 Very well. Anything else you can tell us?  
18 Questions?

19 VICE CHAIR MILLER: I'm sorry. You know,  
20 it's hard to follow exactly what's been changed. But  
21 it sounds like you had to make a change to build a  
22 mezzanine instead of an attic, so why are you saying  
23 there was no change in building according to the  
24 documents that were before the Board in the last  
25 order?

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1 MS. BROWN: Because they gave me a permit.  
2 They told me to change it and we went through an  
3 entire process again and I have a permit for it. So,  
4 I'm still building according to the codes. I'm still  
5 building with the permit.

6 VICE CHAIR MILLER: Right.

7 MS. BROWN: I have the permits, let's put  
8 it like that.

9 VICE CHAIR MILLER: But did you make a  
10 change in the design so that it's design --

11 MS. BROWN: Yes. The architect had to  
12 make a change in design based on what DCRA told him  
13 to.

14 VICE CHAIR MILLER: And do we have that  
15 before us?

16 MS. BROWN: Yes. Yes. That's what is  
17 before you right now.

18 VICE CHAIR MILLER: The change in the  
19 design?

20 MS. BROWN: The changes in the design.

21 VICE CHAIR MILLER: Okay. I better look  
22 at that.

23 MS. BROWN: Okay.

24 VICE CHAIR MILLER: Thank you.

25 CHAIRPERSON GRIFFIS: Okay. Anything

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1 else you'd like to tell us at this time?

2 MS. BROWN: No. Not at this time.

3 CHAIRPERSON GRIFFIS: Very well.

4 Let's move ahead then to the Office of  
5 Planning, Exhibit Number 29. They are recommending  
6 approval of this application. Well, I'll let them  
7 speak for themselves.

8 MS. THOMAS: Good morning, Mr. Chairman,  
9 Members of the Board.

10 I'm Karen Thomas from the Office of  
11 Planning.

12 We recommend approval of the request  
13 because we believe that it has no new requested  
14 modification, did not change the material facts upon  
15 which the Board relied in approving the original  
16 application. And we have no further comments on that.

17 CHAIRPERSON GRIFFIS: Good. Does the  
18 Applicant have any cross examination of the Office of  
19 Planning?

20 MS. BROWN: No. I do not. I think they  
21 did an excellent job.

22 CHAIRPERSON GRIFFIS: I would agree.

23 Does any other Board members have any  
24 questions of the Office of Planning?

25 Since there's no further questions of the

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1 Office of Planning, let's move ahead then.

2 Is the representative from the ANC-7B  
3 here? Oh, excellent.

4 MR. SPAULDING: It was in the bulletin  
5 staff. I'm Vince Spaulding, ANC Commissioner for 7B-  
6 04, which includes the residence at 3120 Pennsylvania  
7 Avenue with the -- in the District.

8 The Commission met on this matter on the  
9 20th of January `05 and after duly providing a notice  
10 to the residents of 3100 block of Pennsylvania Avenue,  
11 an area surrounding that particular location, and a  
12 motion was passed by four commissioners in favor, two  
13 commissioners voting in opposition, that the  
14 application be approved.

15 And within our ANC, we require six persons  
16 to be present to have a quorum, so we did, in fact,  
17 have a quorum.

18 CHAIRPERSON GRIFFIS: Excellent. Thank  
19 you.

20 MR. SPAULDING: We sent a letter in. I  
21 guess you have it in your files?

22 CHAIRPERSON GRIFFIS: Yes. We do.  
23 Exhibit Number 30.

24 MR. SPAULDING: Right.

25 CHAIRPERSON GRIFFIS: Good. Any

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1 questions of the Board?

2 This is the second time you've seen this,  
3 is it not?

4 MR. SPAULDING: No. The -- actually, I  
5 guess since I was being a commissioner, this is the  
6 first time I've seen it.

7 CHAIRPERSON GRIFFIS: Okay. So, you  
8 weren't on in the original application?

9 MR. SPAULDING: No.

10 CHAIRPERSON GRIFFIS: In 2002?

11 MR. SPAULDING: No.

12 CHAIRPERSON GRIFFIS: Okay.

13 Well, good. Does the Applicant have any  
14 cross examination of the ANC member?

15 MS. BROWN: No. I do not.

16 CHAIRPERSON GRIFFIS: Very well. Again,  
17 thank you very much. We appreciate you coming down  
18 and presenting that to us. And we will afford that  
19 the great weight as our requirements allow us.

20 Let's move ahead then. Don't have any  
21 other agency or associations or ANC reports.

22 Let me ask if there are people present  
23 today on Application 17284 to provide testimony.  
24 Persons to provide testimony?

25 Excellent. If you wouldn't mind. Anyone

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1 that is going to do that, why don't we fill the table  
2 and what I'm going to ask as you state your name and  
3 address for the record. And I would also ask that you  
4 indicate whether you are in support or in opposition  
5 of the application.

6 While those folks are getting ready, it's  
7 a fascinating piece this whole story and don't let me  
8 delay you. Just come forward and have a seat and make  
9 yourselves comfortable.

10 If you have submissions, they are going to  
11 go to staff at the far end of the dias and they will  
12 distribute.

13 But this whole aspect of attic and  
14 mezzanine and I think the way I'm reading it is that  
15 there might be some issue of whether it complied with  
16 the story.

17 Mr. Moy? See if you agree with me. I  
18 don't believe the attic counts toward a story. If you  
19 read the definition of stories, although it doesn't  
20 enumerate the fact that attics are not counted,  
21 obviously as aspects as they say what is or is not  
22 counted, doesn't mean anything not mentioned is  
23 totally incorporated into it.

24 And you'd have to go to another aspect of  
25 that as well if it was a story, it would certainly go

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1 towards gross square foot, which would then be  
2 translated in some jurisdictions in the District  
3 zoning into FAR, or Floor Area Ratio. And it's fairly  
4 clear that if an attic provides a certain headroom  
5 above 6'6", that I would go to count towards floor  
6 area and anything below that would not. So, that's  
7 probably where the difficulty or maybe the difficulty  
8 arises. But automatically counting towards story, I  
9 don't think it is absolutely spelled out in the  
10 regulations.

11 But that's as long a delay as I needed to  
12 get everyone comfortable up here and situated.

13 So, why don't we move ahead with testimony  
14 and I'll start on my right.

15 MS. SMITH: Okay. My name is Joyce Smith,  
16 and, you know, there ought to be an in between,  
17 between opposed and proponent.

18 I don't technically oppose the building.  
19 My issue is the height of the dwelling.

20 I don't know if any of you all have come  
21 out to our neighborhood, but the dwelling as it is  
22 being built is so much out of sync with our  
23 neighborhood.

24 I've listened to the other testimonies  
25 that you all have today talked about other houses.

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1 And I don't know whether or not we were given the same  
2 kind of examination in our neighborhood as some of the  
3 other issues before this Board -- this hearing.

4 I don't know what the height restriction  
5 is for the zoning. And I don't know whether or not  
6 how you classify a basement. My definition of a  
7 basement was that it had to be at least three-fourths  
8 below ground with windows abutting the next house.

9 Ms. Brown's basement is totally above  
10 floor. If that's the definition of a basement then,  
11 you know, I don't have any opposition.

12 But I need to know are there new  
13 definitions for basement? And, if so, that needs to  
14 be explained to us.

15 My opposition is not the house itself, but  
16 the height of the house.

17 CHAIRPERSON GRIFFIS: Okay. Excellent.  
18 And you brought up two very decided, succinct points.

19 One is height of the building allowed in  
20 this zoned district. This is an R1B district and the  
21 height of the building is allowed to be 40 feet.  
22 That's 40 feet measured from the measuring point of  
23 the front of the building to the ceiling of the upper  
24 most story.

25 Second now the basement. There's a

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1 difference between basement and cellar for zoning  
2 purposes.

3 The zoning indicates that a cellar is that  
4 level which its ceiling is no more than four feet  
5 above the adjacent grade. That's a cellar.

6 A basement obviously is that which has a  
7 ceiling above four feet of the adjacent grade and  
8 there's no maximum for that.

9 Now, the issue for zoning purposes with a  
10 basement is that it counts towards story, FAR. FAR is  
11 a calculation in the zone district which you're in.

12 But most importantly in terms of the R-1B,  
13 it would count towards the story. And so that would  
14 go to the maximum stories allowed in this district.

15 Is that clear?

16 MS. SMITH: It is clear. So, in other  
17 words, the basement can -- the basement is counted as  
18 the first floor or not? It's counted as a basement  
19 and then the next floor is the first floor and then  
20 the second floor and then the mezzanine is the third  
21 floor, not the fourth floor?

22 CHAIRPERSON GRIFFIS: Right.

23 MS. SMITH: Okay. Okay.

24 CHAIRPERSON GRIFFIS: Right. The  
25 basement would start the counting of the stories, so

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1 you'd have a basement, first floor, second floor,  
2 second story.

3 MS. SMITH: Okay. That needed to be made  
4 clear to me.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. SMITH: And then I guess, Ms. Brown is  
7 within her right to have this big tall -- it just goes  
8 to the esthetics of our neighborhood. I mean, that's  
9 my opposition.

10 CHAIRPERSON GRIFFIS: Right.

11 MS. SMITH: That's all I have to --

12 CHAIRPERSON GRIFFIS: Now, did you --  
13 were you aware or did you participate in the previous  
14 variance?

15 MS. SMITH: And the -- no. Because -- see  
16 I've known -- it's really kind of unfortunate because  
17 I've known this family for ever and ever. So, when  
18 Miranda said -- I'm calling her Miranda, because she's  
19 Miranda to me.

20 When Ms. Brown told me she was going to  
21 build a house, you know, she talked to me. And she  
22 said, I really want my house to be similar to yours.  
23 So, I thought, well, fine. It's going to similar to  
24 mine. I don't have any opposition. So, why should I  
25 come to the hearing. I just didn't.

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1           But in hindsight, we probably all should.  
2           Everybody on the block should have come. But we were  
3           just, you know, we were trusting. I just thought it  
4           was going to be similar to the houses. I thought her  
5           house would be similar to our home.

6           I knew she couldn't build a stone house  
7           because our house is of stone. You can't build that.

8           You can't buy that kind of stone anymore. But I at  
9           least thought it would look similar to the rest. It  
10          wouldn't be so different.

11          That's my -- that's my, yes. That's my --  
12          CHAIRPERSON GRIFFIS:    What kind of stone  
13          do you have?

14          MS. SMITH:    I have -- it's that Italian  
15          stone. The gray and the, you know, it's one of those  
16          stones that you can't buy anymore probably.

17          It was built -- the Italians built that  
18          whole area.

19          CHAIRPERSON GRIFFIS:    Really?

20          MS. SMITH:    So, you know, it's real stone  
21          and brick.

22          CHAIRPERSON GRIFFIS:    We still have some  
23          quarries going. We can probably find some of the  
24          stone. Don't give up on that.

25          MS. SMITH:    But, you know, I wouldn't want

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1 to, you know --

2 CHAIRPERSON GRIFFIS: When the next one  
3 that comes through.

4 MS. SMITH: Personally, I would -- I mean,  
5 that's just unrealistic to think that.

6 CHAIRPERSON GRIFFIS: No. I understand.

7 MS. SMITH: You know what I'm saying?

8 CHAIRPERSON GRIFFIS: Yes.

9 MS. SMITH: I'm not being difficult.

10 CHAIRPERSON GRIFFIS: Right. The  
11 material cost and the craftsmanship have obviously  
12 changed in this day and age. But there's other -- I  
13 think in the next, if there is other things that  
14 happen in the neighborhood, the best is not  
15 necessarily to come down here. Obviously, it's great  
16 to come down here and participate in a public hearing,  
17 but to sit down and look at the documentation, because  
18 often times no matter what, professional designers  
19 talking to each other often hear different things.

20 But when you look at the actual graphics  
21 and documentation, then you can understand it a bit  
22 more.

23 MS. SMITH: Right.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. SMITH: Okay.

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1 CHAIRPERSON GRIFFIS: But we appreciate  
2 you bringing all those aspects to our attention at  
3 this time.

4 Yes, ma'am?

5 MS. BROWN: Good morning.

6 CHAIRPERSON GRIFFIS: I'm sorry, just  
7 before you go too far, what I'm going to do -- what I  
8 thought we would do is have the panel, but let me ask  
9 the Applicant if you have any cross examination? Any  
10 questions?

11 MS. BROWN: I just have one statement.

12 No --

13 CHAIRPERSON GRIFFIS: It's just cross  
14 examination right now.

15 MS. BROWN: Okay.

16 CHAIRPERSON GRIFFIS: You can keep your  
17 statement to the conclusion.

18 MS. BROWN: Okay. Okay, then.

19 CHAIRPERSON GRIFFIS: No cross?

20 MS. BROWN: No cross.

21 CHAIRPERSON GRIFFIS: Good. Thank you  
22 very much. Okay.

23 Let's move ahead.

24 MS. NESBITT: Good morning and thank you  
25 guys for allowing us to come and voice our concerns.

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1           When Joyce and the neighborhood and we had  
2 talked about Ms. Brown building her home back in 2002,  
3 we thought -- we was delighted. We thought great.  
4 This property is finally being built up. It would  
5 great and the assumption was that it would be similar  
6 to the homes in our neighborhood.

7           If you looked at some of the pictures I  
8 presented up to the front there, this house extends  
9 all the way through our whole neighborhood -- our  
10 backyards. It doesn't align up with any of the  
11 houses. Even if it would have just been brought back  
12 maybe 10 more feet, we would have still had a cut-off  
13 in our backyards. That did not happen.

14           And none of that came up until August 12th  
15 of 2004, at which time we started becoming alarmed and  
16 presenting things to the -- what is it, the DCRA at  
17 that time writing letters, getting an attorney  
18 involved. It wasn't as if we waited until this house  
19 was suddenly built to decide to start voicing our  
20 concerns about the size of this house and the length  
21 of this house.

22           Over the next two weeks, this house went  
23 from being one flat to a four-story home with a roof  
24 on the top almost.

25           Again, we continued to voice our concerns

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1 about all of this and our attorney at that time, he's  
2 still representing us, Mr. Nicholas, wrote a letter  
3 also to DCRA to find out what was going on.

4 The permit that we had also pulled from  
5 Mrs. Miranda Brown during that time that was issued in  
6 March 19th, '04, said that this house was still going  
7 to be a three-story, single-family dwelling. And at  
8 that time, they were going to adjust the soil because  
9 the soil was unstable.

10 That did not even come close to what was  
11 being put up on this property at that particular time  
12 or is continuing to be built on this property at this  
13 continuing time.

14 At that time, an inspector came out and  
15 said that, oh, there's no problems. It's staying  
16 within 40 feet and the length is fine. We continued  
17 to pursue this agreement with this house and with the  
18 construction of this house and we finally received the  
19 letter on December 22nd which said that the DCRA did  
20 not approve the home being built at that time and they  
21 put a stop work order on it.

22 CHAIRPERSON GRIFFIS: What do you mean,  
23 didn't approve the house being built?

24 MS. NESBITT: This is the letter that we  
25 received on September 23rd and it said, we have

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1 reviewed the plans and the variance orders from the  
2 Board of Zoning and Adjustment, the BZA, to allow the  
3 property owner to deviate from the norm lot, the sides  
4 and size of the requirements of the R1B residential  
5 zone.

6           However, in our review of the plans and  
7 the BZA order, we found no evidence of the Board's  
8 intent to allow the relief to build a fourth floor at  
9 the property. For this reason, we have issued a stop  
10 work order until we can finalize research to determine  
11 if the added fourth floor is legally constructed. Any  
12 additional work performed at the work site will be  
13 subject to the property owner to fines and penalties.

14           That was at the time. That was the last  
15 we heard.

16           CHAIRPERSON GRIFFIS:        So, that's what  
17 this is?

18           MS. NESBITT:   That's what -- and suddenly  
19 after we received this letter, then we got changes of  
20 what this house was going to be. We're now going to  
21 have an attic and an above-ground basement. And it  
22 was okay for it to be this long and so forth and so  
23 on.

24           CHAIRPERSON GRIFFIS:   Right.

25           MS. NESBITT:   Through all of this time,

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1 Ms. Brown has never come to any of us and said, what  
2 can we do to try to make this work, so that you guys  
3 don't have to have my wall of her house -- if you  
4 looked at these pictures here. When I look out of my  
5 day room, which I used to could look out of my day  
6 room. Now I look out of my day room and all I have is  
7 Ms. Brown's house to look at because it extends the  
8 whole backyard.

9 Now, the front of her house was built that  
10 way --

11 CHAIRPERSON GRIFFIS: Were you aware of  
12 the application in 2002?

13 MS. NESBITT: I was aware of the  
14 application in 2002. Granted I can't replant and  
15 granted the permit that's even issued still says a  
16 three-story, single-family dwelling --

17 CHAIRPERSON GRIFFIS: right.

18 MS. NESBITT: -- at that time.

19 And we like Joyce says, we weren't in  
20 objection to her building a house. When she presented  
21 her ideas to build this house --

22 CHAIRPERSON GRIFFIS: How did she present  
23 her idea?

24 MS. NESBITT: Her ideas to build this  
25 house was to build this house so that it was in

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1 compliance to the other homes in the neighborhood. If  
2 you look at this house, that is way out of compliance  
3 of any norm of any house in our neighborhood.

4 CHAIRPERSON GRIFFIS: Right.

5 MS. NESBITT: I mean, it didn't matter if  
6 she built it up a little bit, if she came out a little  
7 bit. She could have even come out a little farther  
8 than the normal house on our block. That would not  
9 have been an issue. The fact of the matter that this  
10 house goes all the way to the back, almost to the  
11 fence at the end of the yard. You'd have less than 12  
12 feet between the end of her house and the fence. And  
13 you can measure that off.

14 CHAIRPERSON GRIFFIS: But I guess to put  
15 it in perspective --

16 MS. NESBITT: It's in the picture there.

17 CHAIRPERSON GRIFFIS: No. I understand  
18 that.

19 But to put it in perspective and I  
20 understand what the two testimonies that we've heard  
21 is that you were under the understanding that it was  
22 going to be in character with the existing buildings.

23 MS. NESBITT: Absolutely. And these --

24 CHAIRPERSON GRIFFIS: And that's fine,  
25 but --

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1 CHAIRPERSON GRIFFIS: And even the permit  
2 called for that.

3 CHAIRPERSON GRIFFIS: Well, no. The  
4 permit doesn't say build in existing character. And  
5 my problem is that our jurisdiction goes not to some  
6 of the existing character, but specifically to all the  
7 aspects of which we regulate.

8 MS. NESBITT: Right.

9 CHAIRPERSON GRIFFIS: You describe --  
10 you find it objectionable that it fills up so much of  
11 the lot and goes so deep.

12 CHAIRPERSON GRIFFIS: Right.

13 CHAIRPERSON GRIFFIS: Is that correct?

14 But according to our regulation, lot  
15 occupancy is allowed to be 40 percent and I don't see  
16 anything, unless I'm mistaken here, I don't see  
17 anything that shows that it actually is not compliant  
18 with that.

19 Does that make sense to you?

20 MS. NESBITT: It does, but if you look at  
21 -- if you're talking lot occupancy from the front of  
22 the yard to the back of the yard is what you're  
23 saying? The entire?

24 CHAIRPERSON GRIFFIS: The entire site.

25 MS. NESBITT: The area which she says that

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1 is her property, because her intention to us at our  
2 ANC meeting, was the reason her house had to be built  
3 so far back was because her lot did not start until  
4 the mid-line of our properties. Now, that's what her  
5 answer was in.

6 If that if in fact the case, then she  
7 exceeds 40 percent of that property. Because she had  
8 told us at our meeting that her lot itself started at  
9 further back. Like it four be where her house begins  
10 at is where her lot itself starts at.

11 Now, if her lot in fact starts there, then  
12 she is more than 40 feet of her home is more than 40  
13 feet of the lot.

14 CHAIRPERSON GRIFFIS: Yes. But it's kind  
15 of like your discussions with her, it's a lot of  
16 words. What I need to know is, if you really and  
17 actually this is the wrong forum, because what you  
18 really are --

19 MS. NESBITT: This is just the forum they  
20 told us to come to.

21 CHAIRPERSON GRIFFIS: No. I know.

22 MS. NESBITT: Which is why we ended up  
23 here.

24 CHAIRPERSON GRIFFIS: And it's fine. And  
25 I don't mind it. The difficulty is there will be a

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1 line in which our jurisdiction stops --

2 MS. NESBITT: Right.

3 CHAIRPERSON GRIFFIS: -- in which we can  
4 do anything. And so the worst thing I always felt  
5 when I was sitting on that side table presenting to  
6 Boards like this, and when I'm here is to raise  
7 expectations that we might be able to do anything.

8 So, what I want to do is just establish  
9 quickly what your concerns are and then I want to  
10 assess the fact of whether we can do anything about it  
11 or not.

12 MS. NESBITT: Right.

13 CHAIRPERSON GRIFFIS: And it sounds to me  
14 more like you're voicing and creating an appeal of the  
15 permit that was issued, rather than --

16 MS. NESBITT: Okay.

17 CHAIRPERSON GRIFFIS: -- being able for  
18 us to assess in terms of the modification of our  
19 previous order. And that's what I want to be careful  
20 with and not -- well, and not raise our -- so we can  
21 go back and revisit so many things.

22 Let me -- is there any other direct  
23 comments at this time on that?

24 Ms. Miller, you seem befuddled?  
25 Questions?

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1                   VICE CHAIR MILLER: Well, I think what's  
2 before us is we granted three variances in the last  
3 order.

4                   MS. NESBITT: We didn't know -- I didn't  
5 even know anything about any of the variances.  
6 Period.

7                   VICE CHAIR MILLER: Right.

8                   MS. NESBITT: They were never brought to  
9 our attention that there was a variance except for  
10 this last one.

11                   VICE CHAIR MILLER: The last order  
12 basically --

13                   MS. NESBITT: Except for this last one.

14                   VICE CHAIR MILLER: Okay. But the last  
15 order, as our orders usually do, have plans attached  
16 and they were supposed to build in accordance with  
17 those plans. And so I haven't see -- I want to look  
18 at the plans that support this.

19                   MS. NESBITT: That you see, okay.

20                   VICE CHAIR MILLER: They're seeking a  
21 modification from what was approved before.

22                   MS. NESBITT: Right.

23                   VICE CHAIR MILLER: Related to the  
24 variances that this Board gave it, it didn't give any  
25 height variances. We gave variances to side yard and

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1 things like that.

2 CHAIRPERSON GRIFFIS: Right. And not any  
3 variance for lot occupancy either.

4 VICE CHAIR MILLER: Right. So, my own  
5 concern is, did the Board approve a mezzanine or an  
6 attic or was it looking at, did that effect our  
7 previous order.

8 So, that's what I'm thinking right now.

9 CHAIRPERSON GRIFFIS: Even -- and I  
10 understand. And it's an excellent point to bring up.

11 But even if -- I'm assuming this was a  
12 self-certified application before, although maybe it  
13 wasn't. It was referred by DCRA and they referred it  
14 -- I have that -- those letters are actually in the  
15 file here.

16 VICE CHAIR MILLER: January 10th, 2002.

17 CHAIRPERSON GRIFFIS: I'm sorry. I just  
18 had it front of me.

19 Okay. 2002 and the BZA had reviewed the  
20 plans and proposed three story, single-family dwelling  
21 above such premises. The variance relief from  
22 401.3405 for non-conforming minimum lot area, minimum  
23 side yard requirements are expected with the single-  
24 family dwelling in R1B.

25 So, even if there were plans attached that

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1 showed something that was above the height or anything  
2 like that, it wouldn't mean that we granted approval  
3 for it. It probably means, I would say definitively,  
4 that we didn't necessarily look at it, but we looked  
5 at what it was referred to and what the relief sought  
6 was before the Board. And that was for not conforming  
7 to the minimum lot area and the side yard requirement.

8 So, none of this was ever discussed before  
9 the Board.

10 VICE CHAIR MILLER: But it says that it  
11 was for three stories. Is that correct?

12 CHAIRPERSON GRIFFIS: Can you turn off  
13 those mikes? We're getting some feedback.

14 Pardon me?

15 VICE CHAIR MILLER: But the Board looked  
16 at it as three stories. And it sounds like the DCRA  
17 looked at it and said, maybe this is not three  
18 stories. Maybe it's four stories because you have an  
19 attic and a mezzanine would make it four stories.

20 CHAIRPERSON GRIFFIS: But not in 2002.

21 VICE CHAIR MILLER: Right.

22 CHAIRPERSON GRIFFIS: They did that in  
23 2004. Is that correct? 2004. So, two years after  
24 our hearing. Permits are already pulled. And DCRA  
25 re-reviews. I don't know. There's probably nothing

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1 wrong with that. And says that they actually have an  
2 additional story.

3 Mr. Moy is the voice of wisdom today.

4 Mr. Moy?

5 MR. MOY: I don't know about that.

6 I just want to support the Chairs'  
7 chronology on the history from the Board's approval of  
8 this case in 2002, that you're correct. The  
9 application before the Board at that time was a  
10 variance relief on lot area and lot width requirements  
11 under 401 and a variance on the side yard requirements  
12 under 405.

13 I think it's gone through the process  
14 through DCRA and the permitting process and that's why  
15 we're seeing this back with the DCRA and the  
16 Applicant's filing of the application to where we are  
17 today.

18 So, as far as the staff is concerned,  
19 obviously making sense at least in terms of the  
20 procedure and process.

21 CHAIRPERSON GRIFFIS: Yes.

22 MS. BROWN: Can I make a few comments?

23 CHAIRPERSON GRIFFIS: At the end.

24 MS. BROWN: Okay. Because it was going to  
25 clear up something. You see the sheet of paper here?

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1 CHAIRPERSON GRIFFIS: Good. That's why  
2 you get the last word. You get all the conclusions  
3 and summations.

4 MS. BROWN: Okay. Okay.

5 CHAIRPERSON GRIFFIS: Okay. Is there  
6 anything else that -- right. Okay. Yes, I know. I  
7 just wanted to make sure.

8 And you didn't have any cross examination?

9 MS. BROWN: Yes. I do.

10 CHAIRPERSON GRIFFIS: Excellent. Cross  
11 examination questions?

12 MS. BROWN: Yes. The first thing she  
13 talks about an attorney. I was never aware of an  
14 attorney. The letter that she talks about --

15 CHAIRPERSON GRIFFIS: This is a  
16 statement.

17 MS. BROWN: The statement.

18 CHAIRPERSON GRIFFIS: No. What I need  
19 you to do is -- cross examination is the vehicle on  
20 which if there is a case presented in opposition, it's  
21 your time to --

22 MS. BROWN: Okay.

23 CHAIRPERSON GRIFFIS: -- poke holes in  
24 the case that's presented. So, all you're doing is  
25 asking your questions to either clarify for the Board

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1 her testimony or refute her testimony through  
2 questions. It's a very clever, kind of legal  
3 maneuvering stuff.

4 MS. BROWN: Oh, okay.

5 I wasn't aware of a lawyer. I wasn't  
6 aware of these letters that they received from DCRA.

7 CHAIRPERSON GRIFFIS: It's still a  
8 statement though. I need you to ask her questions.

9 MS. BROWN: Okay.

10 CHAIRPERSON GRIFFIS: You don't have to.

11 MS. BROWN: Excuse me. Tell me how is my  
12 house so different from everyone else's house? It is  
13 no two houses on this block that look alike?

14 CHAIRPERSON GRIFFIS: Right. Okay.

15 The question is, how is it?

16 MS. BROWN: How is it --

17 CHAIRPERSON GRIFFIS: Why do you think  
18 this is so different than all the others?

19 MS. NESBITT: No two houses on our block  
20 look alike.

21 CHAIRPERSON GRIFFIS: Okay. Quick  
22 questions, quick answers. If you would just turn your  
23 microphone back on.

24 MS. NESBITT: No other house on our block  
25 completely obstructs every house backyard on our

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1 block.

2 CHAIRPERSON GRIFFIS: Okay. It sits back  
3 farther than the other.

4 MS. NESBITT: That's one. Not only sits  
5 farther back, but right on the other side of the end  
6 of her little patio, which wasn't even there when this  
7 picture was taken, is a little shed house, which has -  
8 - probably you can just jump over to the step to get  
9 there.

10 On the other side of that shed house which  
11 sits -- the diameter of that shed house is less --  
12 pretty much less than the width of your table going  
13 this way, is the fence for the next neighbor's yard to  
14 go down to the next block.

15 Now, prior to that and no other house --  
16 her house -- the next house to her house it's almost a  
17 whole roof, not even a roof, a whole level plus a roof  
18 over the top of that.

19 The houses on our block run in succinct.  
20 You know, because it goes up a hill. So, her house  
21 being where it is, basically has another huge house  
22 sitting right in the middle of the block versus being  
23 level with the rest of the houses going up. But  
24 that's really so much the issue as the issue that she  
25 has now taken this house and built it to take our

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1 whole backyards.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. NESBITT: No other house on our block  
4 takes up the whole backyard as far as looking at a  
5 house though.

6 CHAIRPERSON GRIFFIS: Another question?

7 MS. BROWN: My house, lot occupancy, is  
8 less than 40 percent. My neighbors were not aware --

9 CHAIRPERSON GRIFFIS: Questions?

10 MS. BROWN: Questions. Questions.

11 Well, I have to make this statement  
12 because there's a lot I have to say.

13 CHAIRPERSON GRIFFIS: Excellent.

14 MS. BROWN: Okay?

15 CHAIRPERSON GRIFFIS: Okay. Good. Thank  
16 you very much.

17 MS. BROWN: You're welcome.

18 MS. BAILEY: Mr. Chairman, would the last  
19 speaker please identify herself?

20 MS. NESBITT: Deborah Nesbitt.

21 MS. BAILEY: Thank you.

22 CHAIRPERSON GRIFFIS: And your address?

23 MS. NESBITT: 3144 Pennsylvania Avenue.

24 CHAIRPERSON GRIFFIS: Excellent. Thank  
25 you very much.

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1 Good morning.

2 MS. WILSON: Good morning. I'm Ethel  
3 Wilson and I live at 3130 Pennsylvania Avenue, SE.  
4 And I'm here this morning to voice -- to voice my  
5 concern and to make a comment.

6 When Ms. Brown told me that she was going  
7 to build a house, I was excited about it and we were  
8 walking up the street and I was just very excited.  
9 She says, and I'm going to build it similar to the  
10 ones in the neighborhood. For me, fine. It's okay.  
11 And I even told her about the one that was built right  
12 behind my house on the next street. And directed her,  
13 because she said she was having a difficulty getting a  
14 builder.

15 I said, well, look. Go talk to this guy  
16 who just built a new house and he blended well with  
17 the neighborhood. Really did a good job.

18 Well, I didn't have no reason to go to any  
19 hearings because she told me what she was going to do.

20 I didn't see any blueprints. I wouldn't have known  
21 what I was looking at if I had seen them. I got to be  
22 honest with you all. I wouldn't have known what I was  
23 looking at. I mean, because I don't do maps well, so  
24 I know I wouldn't have understood her blueprints.

25 But I took her word that it would be

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1 similar to the houses in the neighborhood.

2 What I really expecting was a house that  
3 was similar to the ones in the neighborhood. Not  
4 necessarily and I mean the height is the thing that  
5 concerns me. And I got to be honest. I would be  
6 lying if I told you that the fact that she moved it  
7 all the way through the backyard didn't bother me. It  
8 does.

9 As a matter of fact, when I saw the four  
10 walls go up, I got sick. I really got sick. I  
11 couldn't eat when I realized that this was going to be  
12 permanent. It was going to be permanent. I would not  
13 eat that week, for about two or three weeks. And I'm  
14 not lying about this.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. WILSON: It really bothered me because  
17 it was a shock. I never expected the house to go  
18 through the whole back of our backyards. I really  
19 didn't. And I got to be honest. I really didn't.  
20 That is what really threw me, that threw me, plus the  
21 height. I watched the four floors go up and that was  
22 when we started making some phone calls.

23 It's like look. This thing, I don't know  
24 how high it's going to go. But it's right completely  
25 through the backyard. It did bother me.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MS. WILSON: But once the house -- and I  
3 started -- once they got it up, I said, okay. Let me  
4 go see if I can look out my attic window and see  
5 anything. I can't. I see the roof of her house.

6 I looked for the trees down Pennsylvania  
7 Avenue. I see no trees anymore. We used to be able  
8 to see those before that fourth floor roof, you know,  
9 that's attached there. It hurts because this is my  
10 home. It has been my home. I'm retired. I don't --  
11 I hadn't expected to move. But it does hurt and I  
12 mean, I'm not angry. But it hurts.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. WILSON: Because I never, ever  
15 expected to wake up one morning and find that the wall  
16 that I have to face every day I go out in my backyard,  
17 the wall side of her house is so high. I even have  
18 been thinking if I could drive well, I would never --  
19 not ever probably use my backyard. I would just back  
20 out to go because it's upsetting. It is upsetting.  
21 I'm not going to lie to you and say it does not upset  
22 me and it hurts.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. WILSON: But it's the height is what I  
25 was concerned about.

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1 Elizabeth Carter called me in September  
2 and said that she had truly had violated her permit  
3 because of the height structure and that they were  
4 ordering a stop work order on the house because of the  
5 height.

6 It does -- it does not look like the rest  
7 of the houses. It's a very small lot for a very tall  
8 house. It does throw things out of sync.

9 I am like very sorry about all of this,  
10 but it does -- it does hurt. And I'm just here to say  
11 that it has changed my life in terms of my environment  
12 for what my living has to be from now on.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MS. WILSON: It has.

15 CHAIRPERSON GRIFFIS: Good. Well, thank  
16 you, Ms. Wilson. We appreciate you bringing that to  
17 the Board's attention.

18 Obviously, it is very personal as it is  
19 for you being adjacent to anything new in the  
20 construction and the concern over the height and also  
21 the lot occupancy you've discussed.

22 So, we appreciate you being here and being  
23 a participant in this public hearing.

24 We're going to see where we go with this  
25 and how we can deal with this, as I've indicated in

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1 terms of our appropriate response and also our  
2 appropriate jurisdiction.

3 Let me see if there are any questions from  
4 the Board, Ms. Wilson.

5 VICE CHAIR MILLER: I have a question  
6 about the stop work order. I don't know who has that  
7 answer. I just wanted to pin down when that was  
8 issued and at what stage is it?

9 CHAIRPERSON GRIFFIS: Well, why don't we  
10 finish then with Ms. Wilson --

11 VICE CHAIR MILLER: Okay.

12 CHAIRPERSON GRIFFIS: -- and if there's  
13 not direct questions, as she's not the one to answer  
14 anything about the stop work order.

15 VICE CHAIR MILLER: Okay.

16 CHAIRPERSON GRIFFIS: Is there a cross  
17 examination, Ms. Wilson?

18 MS. WILSON: No.

19 CHAIRPERSON GRIFFIS: No questions.  
20 Okay. Then, thank you very much, Ms. Wilson.

21 You want to know the date of the stop  
22 order -- work order? The issuance?

23 VICE CHAIR MILLER: And also what stage  
24 the construction was in when the stop work order was  
25 issued.

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1                   MEMBER ETHERLY: Perhaps, Mr. Chair, as a  
2 little bit of -- I might want to suggest, Mr. Chair,  
3 perhaps, as a little bit of context for Mrs. Miller's  
4 question, but also perhaps for some of the testimony  
5 that we've been hearing. And, perhaps, the additional  
6 testimony that we will hear from the final witness.

7                   I think we're at a little bit of an  
8 interesting place. Clearly the testimony that we're  
9 hearing is taking us, I think, to a scope that's a  
10 little wider and larger than what's before us in terms  
11 of the modification question.

12                   I'm not suggesting that that's a bad  
13 thing, but I think as you heard the Chair indicate,  
14 and I'm speaking both to the Applicant as well as to  
15 our witnesses, I think there are some questions about  
16 what kind of posture we are in today inasmuch as what  
17 we can do with some of the concerns that are being  
18 raised.

19                   So, perhaps, as just a little bit of  
20 context, Mr. Chair, I might be willing to suggest if  
21 there is an opportunity maybe for a brief recess to  
22 talk a little bit in Executive Session about how we  
23 want to proceed, because I think we're --

24                   CHAIRPERSON GRIFFIS: Right. Mr. Etherly  
25 brings up an excellent point.

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1 I mean, I think, this is a difficult  
2 situation in that we have a variance and as this has  
3 come before us, there may be other sections in which  
4 actually should be before us in terms of modification  
5 of plans.

6 Why don't we do that. Let's take -- the  
7 Board will just 10 minutes. We'll be back out.

8 What I want to do is leave your conclusion  
9 and remarks until after we return and figure out where  
10 we're going and how we deal with this.

11 Is there others -- oh, present to give  
12 testimony?

13 Yes, you sir. Is there anyone else that's  
14 going to provide testimony today? Okay. Why don't we  
15 finish up then with persons to provide testimony and  
16 then we'll take a short break.

17 You had indicated you wanted to submit  
18 something?

19 MS. NESBITT: No. She was asking about  
20 the stop work order. I was going to give you the  
21 letter we had received.

22 CHAIRPERSON GRIFFIS: I see. Okay. All  
23 right. We'll see if we need into the record. Very  
24 well.

25 Good morning.

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1 MR. HARTISAN: Good morning. My name is  
2 Curtis Hartisan of 3100 Pennsylvania Avenue, SE.

3 I don't know Miranda. She came to me and  
4 said that she wanted to build a house and that it  
5 would conform to the neighborhood. I said, great.

6 Construction started on the house and in  
7 August of last year, or the permit said basically  
8 three floor, a basement and two floors, I think it  
9 was.

10 In August when it was apparent they were  
11 adding a fourth floor to the building of 2004, we  
12 began communicating with DCRA. And the attorney wrote  
13 a letter defining a basement according to D.C.  
14 regulations. It begins that portion of a building  
15 below ground. There is no portion of this building  
16 below ground.

17 At that point, DCRA had an opportunity to  
18 do something about it, an opportunity missed. They  
19 did not return phone calls. I sat on hold for about  
20 45 minutes one day and finally spoke to, I think his  
21 name was Mr. Clark, explained to him what was  
22 happening.

23 He said, well, maybe that is some kind of  
24 mezzanine or something. And my response was, then you  
25 should define mezzanine because once again D.C.

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1 regulations says that a mezzanine cannot occupy more  
2 than one-third of the floor space. And it had height  
3 restrictions.

4 From that point on, we never received  
5 anymore communication. He would not return phone  
6 calls.

7 CHAIRPERSON GRIFFIS: I'm sorry. And who  
8 is "he"?

9 MR. HARTISAN: His name was Mr. Clark, I  
10 think.

11 CHAIRPERSON GRIFFIS: Mr. Clark?

12 MR. HARTISAN: Uh-huh.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. HARTISAN: Now, from that point, the  
15 construction -- the tempo of the construction  
16 increase.

17 We didn't hear anything until the day  
18 after the last shingle was placed on the roof. Then  
19 they came out and issued a stop work order.

20 A week later, they reissued the permit  
21 just to give you a time line. The second permit  
22 called for a basement, two floors and the mezzanine.  
23 There is still no basement.

24 As I understand it, apartment buildings,  
25 the basement can be above ground. It is my

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1 understanding in a residential building, a basement is  
2 defined as that portion of a building below ground.

3 My issue is the way that it's been handled  
4 by DCRA. Now, her house doesn't impact me at all.  
5 Well, she takes a real hour of my morning sunlight.  
6 It bothers people to the west -- to the east of her  
7 because they can't see anything.

8 My view of the District from my attic goes  
9 from -- in the winter, from National Airport over to  
10 South Dakota and Rhode Island Avenue. I get a fairly  
11 decent panoramic view of the city.

12 The -- if DCRA had acted in August when we  
13 brought it to their attention, they could have  
14 corrected the situation at that time. But they  
15 didn't. They sat and they did nothing. And  
16 everything proceeded. And that's why we are here  
17 today and maybe that answers your question about where  
18 the construction was at the time of the stop work  
19 order.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. HARTISAN: They were still  
22 constructing. They had finished putting up -- they  
23 had finished building the fourth floor, the walls of  
24 the fourth floor and they had finished the roof.

25 CHAIRPERSON GRIFFIS: Good.

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1 MR. HARTISAN: And they day after the roof  
2 was finished, was when they came and issued the stop  
3 work order.

4 CHAIRPERSON GRIFFIS: Okay. We  
5 appreciate that.

6 Anything else you'd like to tell us?

7 You bring up some excellent points of the  
8 definition, of course, the basement is that story that  
9 is partly below grade of which the ceiling is above  
10 four feet of the adjacent. But here's the situation.

11 And I did cut off Ms. Miller's question and didn't  
12 allow a lot of answers until the history of all this  
13 stuff, because what we're to look at is only a  
14 modification from an attic to a mezzanine. And that  
15 approval of that modification.

16 Now, there obviously a whole lot of other  
17 issues here, all being within a whole different  
18 iteration and form which would come before the Board.

19 Maybe. I don't know if it can. I don't know if it's  
20 timely. I don't know, obviously, it's not before us.

21 And it goes to more of an appeal process  
22 than an Applicant provided a variance.

23 But let me open it up to any other  
24 questions.

25 Does anyone has any questions of this

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1 gentleman?

2                   Excellent.    Is there cross examination?  
3 Cross questions?

4                   MS. BROWN: I just have one question.

5                   CHAIRPERSON GRIFFIS:       Okay.    But you  
6 don't have any cross, do you?

7                   MS. BROWN: Yes. I have one question.

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

10                  MS. BROWN:    Have you ever been in my  
11 house?

12                  MR. HARTISAN: No.

13                  MS. BROWN:    Okay.    So, how can you say  
14 it's totally above grade -- above the ground? It is  
15 not.

16                  MR. HARTISAN: I watched them prepare the  
17 slab. I watched them pour the slab. I watched them  
18 build the footing on the slab.

19                  MS. BROWN: Okay.

20                  MR. HARTISAN: And unless I'm mistaken --

21                  MS. BROWN: Excuse me. Parts of my house  
22 is below grade. It's below grade.

23                  All of my house is not.

24                  CHAIRPERSON GRIFFIS:       Okay.    But your  
25 question is not testimony.

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1 MS. BROWN: Okay. I'm just asking if  
2 he --

3 CHAIRPERSON GRIFFIS: Okay. If both  
4 sides --

5 MS. BROWN: That he's saying --

6 CHAIRPERSON GRIFFIS: Understood. I  
7 understood your question. I understood the answer.

8 MS. BROWN: Okay.

9 CHAIRPERSON GRIFFIS: Good. Any other  
10 questions?

11 MS. BROWN: No.

12 CHAIRPERSON GRIFFIS: Thank you very  
13 much. Appreciate you being down here this morning.

14 We're going to take 10 minutes. We'll be  
15 right back.

16 MS. BROWN: Okay.

17 CHAIRPERSON GRIFFIS: Do you want to ask  
18 some procedural question? Okay. We'll get to it.  
19 Right. And we have that. You're showing us the  
20 Zoning Administrator's matrix calculation.

21 (Whereupon, off the record from 11:27 a.m.  
22 to 12:01 a.m.)

23 CHAIRPERSON GRIFFIS: Very well. Let's  
24 presume.

25 We did take into the record, I just want

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1 to take note the September 23rd, 2004, letter from  
2 Denzel Nobel who was the Acting Zoning Administrator  
3 at the time, addressed to Mr. Ward. And I believe you  
4 have this letter also.

5 MS. BROWN: No. I never received a copy.

6 CHAIRPERSON GRIFFIS: Can you turn your  
7 mike on?

8 MS. BROWN: No. I never received a copy.

9 CHAIRPERSON GRIFFIS: Do you have one  
10 now?

11 MS. BROWN: No. I do not. I still do not  
12 have a copy of it.

13 CHAIRPERSON GRIFFIS: Who provided -- do  
14 you have an extra copy? Okay. One is coming out.

15 MS. BROWN: Okay.

16 CHAIRPERSON GRIFFIS: This letters  
17 responds to the September 10, 2004, letter DCRA  
18 Director David Clark, regarding neighborhood concerns  
19 about a house under construction at the above-  
20 captioned property.

21 We have reviewed the plans and variance  
22 order from the Board of Zoning Adjustment that allowed  
23 the property owner to deviate from the normal lot,  
24 side yard size requirements of the R1B residential  
25 zone. However, in our review of the plan, the BZA

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1 order, we found no evidence of the Board's intent to  
2 allow relief to build the fourth floor at the  
3 property. For this reason, we have issued a stop work  
4 order until we can finalize research to determine if  
5 the added fourth floor is legally constructed.

6 Any additional work performed at the work  
7 site, subject to the impending case, etcetera.

8 That was the point of the letter. And  
9 this goes directly to the questions of not only  
10 requesting the stop work order, just trying to get  
11 another idea of again, going to my first question as  
12 we started this, how are we here when clearly we  
13 didn't grant height variance before or an additional  
14 story variance and that's really not what is at issue  
15 before us today.

16 What is at issue before us today has been  
17 presented and I think it's correctly put is, our  
18 review of a modification from an attic to a mezzanine.

19 And so the criterion for us to assess that and either  
20 approve it or deny it, would be whether this  
21 modification of the plan, this interior modification,  
22 would substantively impact or change the previous  
23 order and the issues in deliberation in the previous  
24 order.

25 So, that's where we are at this point.

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1 I think we're ready to move to conclusions  
2 from the Applicant or quick questions or  
3 clarifications or anything else.

4 Good. In which case, why don't we turn it  
5 over to for any closing remarks.

6 MS. BROWN: Okay. My closing remarks.

7 I have built an ADA compliant home in  
8 accordance with all of DCRA's requirements. I have  
9 met the -- my house does not exceed 40 feet. It does  
10 not exceed the lot occupancy. It does not exceed the  
11 rear yard. It meets all of DCRA's requirements.

12 The stop work order that you were  
13 referring to, that stop work order, that same  
14 individual, Denzel Noble, gave the approval for permit  
15 number B466265 to be issued. And that was issued on  
16 9/29/04. This letter was dated September the 23rd,  
17 2004.

18 Noble is the one that actually changed the  
19 stop work order to a valid building permit.

20 That's all I have to say.

21 CHAIRPERSON GRIFFIS: Okay. Thank you  
22 very much.

23 Comments? Yes. Mr. Etherly?

24 MEMBER ETHERLY: Thank you very much, Mr.  
25 Chair.

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1 I think it would be appropriate to move  
2 forward on the motion. It would be my motion to  
3 approve Application Number 17284 for modification of  
4 plans. And I invite a second.

5 CHAIRPERSON GRIFFIS: Second.

6 MEMBER ETHERLY: Thank you very much, Mr.  
7 Chair.

8 I think we've had very, very full and  
9 adequate discussion. I think it's very important.  
10 I've used the term before without necessarily being  
11 too legalistic in referring to it. But let me just  
12 first speak to the testimony that's been brought forth  
13 by the neighbors, because they have a number of very  
14 excellent and valid points were raised. And I want  
15 the neighbors to understand and the residents of the  
16 community to understand at least from my perspective  
17 of where I think we are.

18 I think you heard us struggling with what  
19 exactly do we do with the comments that you brought  
20 forward. And they were, indeed, valid questions to be  
21 raised.

22 I think in all honestly we found ourselves  
23 in a situation where unfortunately a number of those  
24 questions would have been more appropriate at the  
25 earlier proceeding.

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1           That being said, of course, I think a  
2 number of the neighbors and residents noting that, in  
3 fact, in their testimony, that perhaps had they had a  
4 greater understanding or a deeper understanding of  
5 what was before them, they might have found their way  
6 down her back in 2002. And I understand that and I  
7 appreciate your willingness to acknowledge that.

8           I think this Board clearly takes your  
9 testimony and I'm fairly hopeful that Mrs. Brown takes  
10 your testimony, of course, is not as many of you said,  
11 not opposing the resident, but opposing concerns about  
12 the height. And I understand where you're coming  
13 from. But as was noted by the Chair once we came back  
14 out, I think clearly what we have in front of us is a  
15 very narrow, very simple question and that is a  
16 modification of the existing plans that were in front  
17 of back in 2002.

18           And based on that criteria, which is  
19 fairly straightforward, inasmuch as are there any  
20 material changes to the plans that we saw in front of  
21 back in 2002, that answer from my standpoint and the  
22 reason why I move forward with the motion, is that  
23 with respect to looking at the issue of the mezzanine  
24 level of this property.

25           I'll pause there, Mr. Chair.

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1 CHAIRPERSON GRIFFIS: Good. Thank you  
2 very much and very well said. I absolutely agree in  
3 terms of setting the stage for which we have a  
4 decision before us. And I think that's important.

5 I'm going to be succinct and just refer to  
6 Office of Planning's analysis in this and read their  
7 second to last paragraph which says, OP has no  
8 objection to the modification to permit the completion  
9 of the residence approved by the Board in October  
10 2002.

11 The interior modification does not affect  
12 the side yard variance or any other previously granted  
13 variances.

14 Really, that's the test of which we're  
15 looking at here. This is an interior modification.

16 In addition, no other relief to the  
17 mezzanine would be required. Section 199 states the  
18 mezzanine shall not be considered a story in  
19 determining the maximum stories permitted for us.

20 That was somewhat the beginning and the  
21 end and I believe for me in terms of deliberation.  
22 And I agree with you, there's always a concern as to,  
23 you know, how this all fits in. And as I had said in  
24 the beginning, and I know Mr. Etherly agreed with  
25 this, but for our purposes we have to -- we have a

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1 very strict framework of which we look at things and  
2 can decide things. And unless there are other avenues  
3 that were approached, we really can't go beyond what  
4 we have exactly before us now.

5 Ms. Miller?

6 VICE CHAIR MILLER: I just want to make a  
7 few comments because I had to sort this out and maybe  
8 it will become clearer. I don't know if I expressed  
9 how I got to this point.

10 But basically when this application was  
11 before the Board previously they looked at three  
12 variances dealing with side yards and other things,  
13 not dealing with the attic or the mezzanine in  
14 question. And when DCRA looked at it, they saw an  
15 attic on the plan and it appeared that an attic brings  
16 a different connotation such as that can be counted as  
17 a story, in which case it wouldn't be legal. However,  
18 mezzanine is a legal use of that floor.

19 So, the question before us is could we  
20 grant a modification changing the plan from attic to  
21 mezzanine without affecting the relief that was  
22 granted and in a way that also is obviously legal in  
23 accordance with the law.

24 So, I felt upon that we absolutely can do  
25 that.

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1 CHAIRPERSON GRIFFIS: Very well.

2 Anything else?

3 I think that -- yes, Mr. Etherly.

4 MEMBER ETHERLY: Thank you, Mr. Chair.

5 I'll just note finally because I think it is important  
6 often times to state, I know I share the Board's  
7 sentiments and I want to thank the members of the  
8 community and neighbors for taking their time to come  
9 forward and provide their testimony today. You did  
10 what any civic resident, citizen is required to do and  
11 that is, you gave up your time to come down and share  
12 some concerns and expressed them on the record.

13 Granted, the outcome may not be the one  
14 that you would desire, but hopefully you feel and you  
15 understand that you brought some questions forth that  
16 we had to give some consideration to. I trust that  
17 you understand how we resolved those questions as  
18 we've moved forward. And I appreciate you for taking  
19 time out of your busy day along with as the Chairman  
20 has noted, the beautiful 60 degree day in the middle  
21 of February.

22 But all that being said, Mr. Chair, I'm  
23 prepared to move forward.

24 CHAIRPERSON GRIFFIS: Thank you. Thank  
25 you very much, Mr. Etherly. I appreciate that.

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1                   We do have a motion before us that has  
2                   been seconded. I'd ask for all in favor do so by  
3                   saying aye.

4                   (AYES)

5                   CHAIRPERSON GRIFFIS:           And opposed?  
6                   Abstaining?

7                   Very well, Ms. Bailey, if you have a  
8                   moment.

9                   MS. BAILEY: The vote is being recorded as  
10                  four, zero, one, to approve the application. Mr.  
11                  Etherly made the motion, Mr. Griffis second. Mr. Mann  
12                  and Mrs. Miller are in in support and Mr. Jeffries is  
13                  not with us at this moment.

14                  CHAIRPERSON GRIFFIS: Good. Then, unless  
15                  there's any objection from the Board, I'd suggest that  
16                  we waive our regulation and issue a summary order on  
17                  this?

18                  MEMBER ETHERLY: No objection, Mr. Chair.

19                  CHAIRPERSON GRIFFIS: Excellent.

20                  MS. BAILEY: Thank you, sir.

21                  CHAIRPERSON GRIFFIS:           Thank you, Ms.  
22                  Bailey.

23                  Thank you very much. We appreciate  
24                  everybody's patience with us in figuring this all out  
25                  and getting through this morning and this application.

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1                   Ms. Bailey, is there any other business  
2 for the Board this morning?

3                   MS. BAILEY:    Not for the morning, Mr.  
4 Chair.

5                   CHAIRPERSON GRIFFIS:   Very well.  Then I  
6 will adjourn the morning session of the 15th of  
7 February.

8                   (Whereupon, the above matter was adjourned  
9 to resume again at 1:33 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:33 p.m.

CHAIRPERSON GRIFFIS: Let me call to order on the 15th of February 2005 afternoon Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller and also our member, Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us this afternoon is Mr. Parsons.

Copies of today's hearing agenda are available for you. They are located at the wall where you entered the hearing room. If you're here for the second case in the afternoon, check the date on that schedule.

There are several very important things that I go through in my openings. The most being -- yes. We'll make it the most important thing to say today.

All proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions. The first, the Court Reporter sitting on

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1 the floor to my right is creating the official  
2 transcript.

3 Secondly, we are being broadcast live on  
4 the Office of Zoning's website.

5 Attendant to both of those, there are  
6 several things.

7 First, I would ask the people to turn off  
8 their cell phone and beepers at this time so that you  
9 don't disrupt those giving testimony and our  
10 transmission for this hearing.

11 Secondly, when coming forward to speak to  
12 the Board prior to having a seat and making yourself  
13 comfortable, you're going to need to fill out two  
14 witness cards. Witness cards are available on the  
15 table you entered into the hearing room. They are  
16 also available where you will provide testimony to the  
17 Board.

18 Those two cards go to the Recorder prior  
19 to sitting down. This is, of course, for the purposes  
20 of spelling your name correctly on the transcript, but  
21 also making sure that all those important pieces of  
22 the fact that you will testify to are given credit to  
23 you in the transcript.

24 The transcript, of course, is the official  
25 document and is part of the official record.

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1           When coming forward to speak to the Board,  
2 I'm going to need you to turn the microphone on and  
3 state your name and address for the record. You only  
4 need to do this once setting it up for your testimony  
5 and then you can proceed.

6           The order of special exceptions and  
7 variances is as follows:

8           First, we hear the case presentation by  
9 the Applicant.

10          Second, we will hear from all Government  
11 agencies that have responded to the application.  
12 Department of Transportation, Office of Planning, such  
13 as those.

14          Third, we will hear from the Advisory  
15 Neighborhood Commission.

16          Fourth, would be persons and/or parties in  
17 support of the application.

18          Fifth, would be persons and/or parties in  
19 opposition to the application.

20          And, sixth, finally, we would have  
21 rebuttal witnesses by the Applicant and closing  
22 remarks by the Applicant.

23          So, make it know if you are presenting a  
24 case or testimony. You will begin it and you will end  
25 it all in the time of which we will give you.

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1           The Applicant is given two opportunities.  
2           They present their case and then they present a  
3 closing or rebuttal testimony and closing.

4           Just to make in your mind on how you will  
5 proceed in the hearings this afternoon.

6           Pursuant to our regulations, 3117 and 31.4  
7 and .5, there are all sorts of complexities of timing  
8 and requirements and all these great powers that we  
9 have on this Board. I'm not going to run through all  
10 those, but be it mindful and I will tell you this. We  
11 are going to set time for all participants in this  
12 case.

13           Persons providing testimony are afforded  
14 three minutes and I will watch the clock on that as we  
15 go forward.

16           What I will do is assess the Applicant's  
17 proposed amount of time for a presentation of the  
18 case. Every party that will be presenting a case will  
19 be afforded an equal amount of time.

20           We are to establish a judicial division of  
21 time and I assure you that we will provide an equal  
22 amount of time.

23           Cross examination and Board question of  
24 Applicant's or parties do not count toward any time as  
25 you assess how you're putting together your case.

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1           Cross examination of witnesses is allowed  
2 by the Applicant, of course, parties either in support  
3 or opposition in the case and the ANC, which is  
4 automatically a party in the case.

5           Nothing prohibits this Board from setting  
6 time limits on cross examination, directing those  
7 asking the questions to be on point or to establish  
8 how it might be germane to the application that's  
9 before us. And I will get to those specifics if we  
10 need to and at the appropriate time.

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

16           After all the hearings are done and all  
17 the additional submissions are put into the record,  
18 the record will be finally closed and nothing outside  
19 of what we requested will be accepted into it. So,  
20 it's very important to understand that you put what  
21 you think the Board is going to deliberate on into the  
22 record, so that we actually will.

23           The Sunshine Act requires that this Board  
24 conduct all its hearings in the open and before the  
25 public. This Board may enter into Executive Session

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1 both during or after a hearing on a case and that  
2 would be for purposes of reviewing records or  
3 deliberating on a case. This would be in accordance  
4 with the Sunshine Act and it is also in accordance  
5 with our rule, regulations and procedures.

6 At this time, I would like to say a very  
7 good afternoon to Ms. Bailey with the Office of  
8 Zoning. Also, Mr. Moy, who is sitting on my right  
9 with the Office of Zoning.

10 Ms. Bailey, I would ask -- actually, I  
11 would ask everyone here present today that is thinking  
12 about or going to provide testimony if you would  
13 please stand and give your attention to Ms. Bailey.  
14 She is going to swear you in.

15 MS. BAILEY: Please raise your right hand.

16 Do you solemnly swear or affirm that the  
17 testimony you will be giving today will be the truth,  
18 the whole truth and nothing but the truth?

19 CHAIRPERSON GRIFFIS: Good. Thank you  
20 all very much. Thank you, Ms. Bailey.

21 Ms. Bailey, at this time, I think the  
22 Board can entertain any preliminary matters.  
23 Preliminary matters are those which relate to whether  
24 a case will or should be heard today. Requests for  
25 postponements, withdrawals or whether you believe

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1 there was adequate notice of the application and other  
2 issues of that sort are preliminary matters.

3 If you have a preliminary matter for the  
4 Board's attention in this afternoon's schedule, I  
5 would ask that you come forward, have a seat at the  
6 table in front of us as an indicating. And I will ask  
7 Ms. Bailey if you are aware of any preliminary matters  
8 for the Board's attention at this time?

9 MS. BAILEY: Mr. Chairman, good afternoon  
10 and to everyone good afternoon, as well.

11 There are preliminary matters. However,  
12 we only have one case this afternoon, Mr. Chairman,  
13 and it is case specific. So, staff would be  
14 recommending to perhaps call the case and then we can  
15 discuss any preliminary matters.

16 CHAIRPERSON GRIFFIS: Good. Thank you,  
17 Ms. Bailey. I think that's appropriate.

18 Does anyone present have any preliminary  
19 matters before we call the case in the afternoon?

20 Not seeing an indication of that, Ms.  
21 Bailey, why don't we call the first case in the  
22 afternoon.

23 MS. BAILEY: Thank you, sir.

24 I will begin by saying the application was  
25 advertised one way and we understand that it has

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1 changed. The name has changed. So, I will call both  
2 names and it was advertised as First Capital Trust,  
3 LLC and T.M. Visnic Custom Home Builders, LLC. I  
4 understand the name has been changed to Phillips Park,  
5 LLC. And the Applicant is requesting a special  
6 exception to allow theoretical lots for 35 single-  
7 family detached dwellings under Section 2516.

8 The project also includes 12 single  
9 family, detached dwellings as a matter of right.

10 The property is located in the R18  
11 District of premises 2101 Foxhall Road, NW, Square  
12 1346, Lot 822.

13 And there are several requests for party  
14 status, Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Indeed. Thank you  
16 very much.

17 I think it's absolutely appropriate we  
18 need to establish parties in this case are there are  
19 to be any.

20 Let me have -- Mr. Nettler, if you  
21 wouldn't mind introducing yourself for the record so  
22 that we can have discourse.

23 MR. NETTLER: Good afternoon. My name is  
24 Richard Nettler with the law firm of Robins, Kaplan,  
25 Miller and Surecee and we're here on behalf of

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1 Phillips Park, LLC.

2 CHAIRPERSON GRIFFIS: Excellent.

3 Is there a representative from Friends of  
4 White Haven representing the party application?

5 Yes, sir. Oh, if you gentlemen wouldn't  
6 mind coming forward and just having a seat.

7 And then we have also Mrs. Hardy is  
8 present.

9 Ms. Hardy. How are you? You can, I  
10 think, stay there for the time being.

11 I have a quick question for Friends of  
12 White Haven. If you gentlemen, wouldn't mind  
13 introducing yourself for the record, just name and  
14 address please.

15 MR. SNAPE: My name is William Snape, S-N-  
16 A-P-E. 5268 Watson Street, NW. 20016.

17 MR. SLOWINSKI: My name is Kent Slowinski,  
18 S-L-O-W-I-N-S-K-I. My address is 4505 Dexter Street,  
19 NW.

20 CHAIRPERSON GRIFFIS: Good. My quick  
21 question and I think the Board share this.

22 Can you summarize your request for party  
23 status in that the filings that we have. I thought it  
24 was just my copy and we've looked at the original and  
25 they're not legible. So, if are prepared, if you

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1 wouldn't mind, just summarizing the answers to the  
2 questions on the application?

3 MR. SNAPE: Absolutely.

4 I don't have the application immediately  
5 in front of me, but we are requesting party status as  
6 I look for the application, because we are an  
7 association -- we believe we have standing under juris  
8 prudence as high as the Supreme Court where we have  
9 viewed, enjoyed, gone to White Haven National  
10 Parkland, which is at issue, at least party in this  
11 case.

12 We believe, therefore, that we do deserve  
13 party status as a result of our long-standing interest  
14 in the White Haven National Parkland and that there  
15 are no other interests that we are aware of that are  
16 speaking on behalf of the Parkland at this particular  
17 hearing.

18 CHAIRPERSON GRIFFIS: Right. Two things.

19 What do you see as the environmental,  
20 economic or social impacts that are likely to be  
21 affected if this was approved and also how -- you've  
22 just touched on it, but how are you more distinctly or  
23 uniquely affected than the general public?

24 MR. SNAPE: We are an association  
25 dedicated to protecting White Haven National Park.

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1 That is our whole race on DETRA is to protect and  
2 preserve Friends of White Haven Park for future  
3 generations and present generations.

4 The most significant environmental impact  
5 that we are concerned about are the impacts this  
6 development would have on the wetlands that occur on  
7 the National Park. There are sediment and storm water  
8 and tree issues related, but our number one  
9 environmental concern is the health of those wetlands  
10 on the actual National Park itself.

11 CHAIRPERSON GRIFFIS: Okay. And you  
12 don't think anyone is representing the National Park's  
13 interest?

14 MR. SNAPE: To date, Ms. Griffis, no. We  
15 have not seen the Park Service publicly engaged on  
16 this project. And even if the Park Service were  
17 publicly engaged, we think it's pretty clear that we  
18 have a unique interest in the health and long-term  
19 vitality of this parkland and, therefore --

20 CHAIRPERSON GRIFFIS: Are there users?

21 MR. SNAPE: We are users.

22 CHAIRPERSON GRIFFIS: I see. Okay.

23 And, you know, just -- well. Where is  
24 White Haven Park and how is it adjacent to this land?

25 MR. SNAPE: White Haven Park is a narrow

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1 four --

2 CHAIRPERSON GRIFFIS: Do you have  
3 anything graphic to show? I'm a very visual person.

4 MR. SNAPE: As Kent is looking for exactly  
5 where it is on that graphic, it's the green?

6 MR. SLOWINSKI: Oh, below the green.

7 MR. SNAPE: It is a strip of parkland, Mr.  
8 Griffis, that on one side is bounded by Foxhall Road.  
9 Four acres later on a narrow strip it abuts Grover  
10 Archibald Park. To the north is the old Brady Estate.  
11 To the south -- excuse me, to the south is the old  
12 Brady Estate. To the north is the property that is at  
13 issue here this afternoon.

14 CHAIRPERSON GRIFFIS: So, White Haven  
15 actually connects into the other park that runs  
16 north/south?

17 MR. SNAPE: That is correct.

18 CHAIRPERSON GRIFFIS: It's that little  
19 armature?

20 MR. SNAPE: That is correct.

21 CHAIRPERSON GRIFFIS: Okay. Good.

22 Any other questions from the Board?

23 VICE CHAIR MILLER: I'm just curious a  
24 little bit more about your group.

25 Are you a 501 C3 organization?

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1 MR. SNAPE: No. We are not. We are an  
2 association established under the law of the District  
3 of Columbia. We have not established ourselves as a  
4 501 C3. We are an association.

5 VICE CHAIR MILLER: And how many people  
6 are in your association?

7 MR. SNAPE: 15-20.

8 VICE CHAIR MILLER: And your mission is  
9 all about White Haven --

10 MR. SNAPE: It's completely dedicated to  
11 the preservation and protection of this parkland. We  
12 were formed about three years ago during the mayor's  
13 mansion debate.

14 VICE CHAIR MILLER: Very good. Thank you.

15 MR. PARSONS: Mr. Chairman, I do have one  
16 question.

17 Mr. Snape, although the application is  
18 generally illegible, which may be of no fault of  
19 yours, it appears you've checked two boxes here, that  
20 you would be a proponent and an opponent. Where does  
21 that rest at the moment in that you signed this the  
22 first of this month?

23 MR. SNAPE: Thank you, Mr. Parsons.

24 We actually could be a proponent of this  
25 project if certain conditions are met and we are

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1 prepared either as a party hopefully or as witnesses  
2 to explain what those conditions would be, but we are  
3 not necessarily opposed to this project. We are only  
4 opposed if certain conditions that we think are  
5 reasonable are not met.

6 MR. PARSONS: Thank you.

7 MR. SNAPE: Or made a part of the  
8 conditions of the order.

9 CHAIRPERSON GRIFFIS: So, if granted, it  
10 would be for party down the middle?

11 MR. SNAPE: Yes. It would be. Neutral  
12 party.

13 CHAIRPERSON GRIFFIS: Indeed. Any other  
14 questions? Follow up?

15 How do you become a member of your  
16 association?

17 MR. SNAPE: You can contact our chair who  
18 is immediately to my left, Kent Slowinski or myself.

19 CHAIRPERSON GRIFFIS: Are their dues  
20 involved?

21 MR. SNAPE: There are no dues involved.  
22 We met regularly however.

23 CHAIRPERSON GRIFFIS: Just showing up.

24 MR. SNAPE: That's right.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. SNAPE: First amendment.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. SNAPE: Also participating in a park  
4 clean-up in April would improve your chances of  
5 joining.

6 CHAIRPERSON GRIFFIS: Okay. So, there is  
7 an initiation there.

8 MR. SNAPE: Okay. Mr. Griffis, I do have  
9 a copy. I think the problem lies with the fact that  
10 my computer had a hard time printing out the party  
11 status application that was printing out in blue. I  
12 have not a completely legible but a more legible  
13 version of our party status application if you would  
14 want me to bring that to the clerk or to anyone else?

15 CHAIRPERSON GRIFFIS: Yes. I think we  
16 can at the appropriate time bring it into the record  
17 and we'll just attach it to or put in another exhibit  
18 number.

19 Ms. Miller has a follow-up question.

20 MR. SNAPE: Okay.

21 VICE CHAIR MILLER: I just wanted to  
22 follow up on your statement that you clearly have  
23 standing based on the Supreme Court case and -

24 MR. SNAPE: Yes.

25 VICE CHAIR MILLER: -- and if could just

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1 elaborate what you meant by that?

2 MR. SNAPE: Right. Under Supreme Court  
3 juris prudence, you can have associational standing.  
4 This is particularly true in environmental cases what  
5 I am most familiar with. And there are many cases  
6 that deal with this. The one that I cited in our  
7 party status application was a 1992 Supreme Court case  
8 called Lou Hans v. Defenders of Wildlife.

9 And this case has actually become a sort  
10 of black letter law explanation of how you achieve  
11 associational standing in Federal Courts. And in all  
12 bodies that could appeal to the Federal Court system  
13 and this, of course, would be one of them.

14 The party must be injured by the proposed  
15 action or potentially imminently to be injured. The  
16 injury must be potentially caused by a party that is  
17 in the action itself. And that, third, the relief  
18 asked for by the association must be able to be  
19 redressed by the Court or by this body in terms of  
20 what we are asking for. It's a three-part standing  
21 test. And we believe we meet all three prongs of that  
22 test.

23 VICE CHAIR MILLER: Thank you.

24 CHAIRPERSON GRIFFIS: Mr. Nettler,  
25 comments, as representative of the Applicant on the

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1 request for party status?

2 MR. NETTLER: My only comment is although  
3 the Supreme Court and the D.C. Court of Appeals have  
4 altered the associational standing criteria since 1992  
5 limiting it at this time. I'm not going to object nor  
6 do I support their application for party status.

7 I'm not objecting to it. I'm leaving it  
8 to your discretion.

9 CHAIRPERSON GRIFFIS: It kind of fits in  
10 the mantra of their own --

11 MR. NETTLER: It's sort of their proponent  
12 situation. That's correct.

13 CHAIRPERSON GRIFFIS: We're for and we're  
14 against.

15 MR. NETTLER: That's right.

16 CHAIRPERSON GRIFFIS: Good. Well, we  
17 decided to go no where so far.

18 Okay. Yes.

19 Is the ANC present? ANC member? Indeed.  
20 Do you have an opinion on the request for party status  
21 of Friends of White Haven at this time?

22 MS. GATES: I would support it.

23 CHAIRPERSON GRIFFIS: Okay. And the ANC  
24 has indicated that they support, ANC 3D, the request  
25 for party status in the Friends of White Haven.

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1 Board members, comments?

2 MEMBER ETHERLY: Mr. Chair, I would have  
3 no objection to the application. I would just  
4 perhaps, ask one final question of either  
5 representatives.

6 Do noted that there are a number -- couple  
7 of conditions that if they were accepted that would  
8 perhaps sway your position, your posture towards  
9 supporting the application.

10 Do you feel that a party -- a party status  
11 or status as a party participant in this case would  
12 help you best address some of those conditions or do  
13 you feel that testimony would enable you to still  
14 bring some of those conditions forward for  
15 consideration by the Board?

16 MR. SNAPE: I believe and we believe that  
17 the party status would help us achieve our ends to  
18 protect the White Haven Park more fully because it  
19 allows us to fully participant in this hearing in a  
20 way as a witness we are not. Obviously, relating to  
21 the cross examination of the witnesses potentially.

22 MEMBER ETHERLY: Okay.

23 MR. SNAPE: I want to emphasize, we are  
24 not seeking to -- we'll get to the substance of our  
25 conditions later, but we are not seeking to add a

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1 boat=load of conditions. We just have some thoughts  
2 and concerns that as a party we think we're better  
3 able to articulate and protect.

4 MEMBER ETHERLY: Mr. Chair, I would have  
5 no objection. I'd be comfortable moving approval of  
6 moving to grant party status to Friends of White  
7 Haven.

8 CHAIRPERSON GRIFFIS: So moved. Is there  
9 a second?

10 MR. MANN: Second.

11 CHAIRPERSON GRIFFIS: I would assume that  
12 in that motion in the second that we are actually  
13 looking to grant party in opposition. If that  
14 position changed during the course of the hearing,  
15 obviously, the record could reflect that. But I think  
16 for clarity, that would be appropriate at this time.

17 Is that in agreement?

18 MEMBER ETHERLY: That's in agreement.

19 CHAIRPERSON GRIFFIS: Okay. Very well.

20 We got a motion of course to grant party  
21 status to the White Haven Friends.

22 All those in favor say aye.

23 (AYE)

24 CHAIRPERSON GRIFFIS: And opposed?

25 Abstaining?

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1           Very well.    And just for clarity also  
2 during cross examination, of course, you'll have one  
3 representative that will conduct the cross and then  
4 we'll move on from there.   Your case presentation  
5 we'll let you guys figure out how you want to do that.

6           Okay.   Let's go to the next then.

7           We do have Ms. Hardy.   Is that correct?

8           If you wouldn't mind if you could come  
9 forward.   Just introduce yourself for the record.

10          A very good afternoon, Ms. Hardy.

11          MS. HARDY:   You too.

12          CHAIRPERSON GRIFFIS:    If you wouldn't  
13 just mind saying your name and address for the record.

14          MS. HARDY:   My name is Chandra Hardy.   I  
15 live an 2001 Foxhall road.

16          CHAIRPERSON GRIFFIS:    Excellent.   And  
17 you've indicated that, in fact, that you uniquely and  
18 distinctly affected based on the high ground on which  
19 your house is located and the impact that this  
20 development might have on it.   Is that correct?

21          MS. HARDY:   Yes.

22          CHAIRPERSON GRIFFIS:    Good.   Is there any  
23 other questions or clarification from the Board?

24          Mr. Nettler?   Position?

25          MR. NETTLER:   No objection.

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1 CHAIRPERSON GRIFFIS: No objection. Does  
2 the ANC have any objections? The ANC has indicated no  
3 objection visually from the back of the room, so we  
4 don't her walking up constantly.

5 Very well. Is there a motion?

6 MEMBER ETHERLY: Mr. Chair, I would move  
7 approval of the party's application of Ms. Chandra  
8 Hardy and as a party in opposition. I invite a  
9 second.

10 CHAIRPERSON GRIFFIS: I would second the  
11 motion. Let's bring it up for any further  
12 deliberation.

13 MEMBER ETHERLY: I'll just note for the  
14 record, Mr. Chair, that I think the application  
15 adequately states and satisfies the grounds for the  
16 party status application and would be sufficient for  
17 meeting the requirements of our party status.

18 CHAIRPERSON GRIFFIS: Good. Thank you  
19 very much. I would tend to agree.

20 Therefore, we have a motion before us to  
21 grant party status to Ms. Hardy in opposition and  
22 seconded. All those in favor state so by saying aye.

23 (AYES)

24 CHAIRPERSON GRIFFIS: And opposed?  
25 Abstaining?

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1 Let's move ahead then.

2 Ms. Hardy, of course, we will call you up  
3 at a time to present your entire case. You will have  
4 the same responsibilities as the Applicant does for  
5 any filings that the Board requests. And you, of  
6 course, will be able to conduct cross examination of  
7 all the witnesses that are presented.

8 So, we will get into that very quickly.

9 We have a last request for party status  
10 which is from Capital C Certain residents of 4400  
11 block of W Street, NW, and Foxboro Place, NW.

12 Margaret Brady is represented the group?  
13 Yes? Indeed.

14 Mr. Nettler, are you in receipt of this?

15 MR. NETTLER: Just this afternoon.

16 CHAIRPERSON GRIFFIS: Indeed, as with us.

17 Very well. Ms. Brady, first of all, it is  
18 not timely filed.

19 Can you give us some background on the  
20 fact of why this is coming in today?

21 MS. BRADY: Yes. I can.

22 First of all, I represent -- our group is  
23 comprised of 11 homes that if you'll give me just a  
24 second, I'll show where we are since it's a visual.

25 CHAIRPERSON GRIFFIS: Are they adjacent?

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1 MS. BRADY: Yes. They are right along the  
2 street -- W Street which dead ends. We're on the  
3 north side of the property. It dead ends, and then  
4 there's a cul de sac at the end of the dead end, which  
5 is Foxboro Place. So, our 11 homes are along W Street  
6 which dead ends and into the cul de sac.

7 And the reason we did not file a timely  
8 request for party status is that quite honestly we  
9 weren't aware of the need to have party status.

10 The notice arrived in December, late  
11 December, and again quite honestly, a lot of us were  
12 taken up with holiday things and let it slip. And at  
13 the time, we were in discussions with the Vin  
14 Developer and we were quite pleased with the progress  
15 that we were making in conjunction with the developer  
16 as to issues that we had.

17 It was then -- and we talked about party  
18 status and we didn't feel like that we needed it. We  
19 didn't recognize what party status gave us. I mean,  
20 we're not --

21 CHAIRPERSON GRIFFIS: Okay. You weren't  
22 aware. You became aware and now you're submitted in.

23 So, tell us why you are uniquely impacted.

24 MS. BRADY: We are uniquely impacted  
25 because our access to and from our neighborhood is

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1 only through the intersection of W Street and Foxhall  
2 Road, which has to be one of the most danger  
3 intersections that currently exists in the city. And  
4 it's dangerous with the number of residents that are  
5 there right now. We can't see having anymore  
6 residents there without an overall solution to the  
7 traffic on Foxhall Road, so as not to cause safety  
8 issues for the new residents, as well as increase the  
9 problems that we have.

10 CHAIRPERSON GRIFFIS: Right. Okay.  
11 Understood.

12 MS. BRADY: And I would like to say, there  
13 were two things that changed from the time that the  
14 developer went to the ANC the first time and then  
15 their last presentation which we were unaware of.

16 CHAIRPERSON GRIFFIS: Okay. Right.

17 MS. BRADY: Okay.

18 CHAIRPERSON GRIFFIS: Okay. Before we get  
19 into testimony in case presentation.

20 First of all, is there any objection to  
21 waiving this in before we go further in reviewing this  
22 from the Board?

23 Mr. Nettler, do you have any objection?

24 MR. NETTLER: Yes. I do.

25 CHAIRPERSON GRIFFIS: Indeed.

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1           MR. NETTLER:     I do object on the  
2           timeliness issue as well as the fact that it purports  
3           to be on behalf of 11 -- either 11 or certain  
4           residents of the 4400 block of W Street, since we did  
5           receive both e-mails and information from some of the  
6           residents along that 4400 block that they were  
7           supportive of the project and this doesn't --

8           CHAIRPERSON GRIFFIS:   Just to keep it all  
9           procedurally correct.  If we're going to discuss it  
10          more and hear your objection, why don't we waive it in  
11          so it's actually in the record for us to discuss.  And  
12          then we can get to the timeliness and it may be that  
13          it is denied based on the timeliness of it, but and  
14          unless you see a problem in dealing with it that way.

15          MR. NETTLER:     I don't have any problem  
16          dealing with it that way.

17          CHAIRPERSON GRIFFIS:   Okay.  Let's just  
18          take that -- unless the Board members have any major  
19          objection, let's just move ahead and take it in.  
20          Obviously, it's an exhibit now in the record and we'll  
21          continue with you, Mr. Nettler.

22                 You have concerns in the fact that it  
23                 purports to represent residents but you're not sure  
24                 how many or whether it actually represents a  
25                 substantial amount?

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1 MR. NETTLER: Or anyone other than those  
2 who might be here today. But it's unclear from here  
3 since it doesn't list the specific residents who are  
4 the certain residents of the 4400 block who are trying  
5 to appear as a party through Ms. Brady.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MR. NETTLER: And I think that would be  
8 certainly necessary for you to be able to even  
9 consider whether to give party status to a group that  
10 calls itself as certain residents of the 4400 block of  
11 W Street.

12 CHAIRPERSON GRIFFIS: Ms. Brady, do you  
13 have a list and addresses of people?

14 MS. BRADY: I do. Yes. I do.

15 CHAIRPERSON GRIFFIS: If you wouldn't  
16 mind, you can present it to Ms. Bailey.

17 MR. NETTLER: And may I have a copy as  
18 well?

19 CHAIRPERSON GRIFFIS: Indeed.

20 MR. PARSONS: While we're getting that,  
21 Mr. Nettler, do you have letters from some of these  
22 residents that you wanted to enter into the record?

23 MR. NETTLER: No. I don't.

24 MR. PARSONS: Thank you.

25 CHAIRPERSON GRIFFIS: Ms. Brady, do you

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1 have duplicate copies of this list?

2 MS. BRADY: Yes.

3 CHAIRPERSON GRIFFIS: Can you give one to  
4 Mr. Nettler?

5 MR. NETTLER: Since we were not aware that  
6 there was going to be a party representing anybody on  
7 W Street that was opposed to this thing and our last  
8 discussion with some of those residents was in support  
9 of, it wasn't felt necessary that we needed to have  
10 something that would deal with whether there were 11  
11 residents who were opposed to the project.

12 MS. BRADY: Mr. Griffis, am I able to make  
13 a comment now?

14 CHAIRPERSON GRIFFIS: Not until I figure  
15 out what I'm going with --

16 MS. BAILEY: Do you have any more copies?

17 MS. BRADY: Yes. I've got other copies.

18 MEMBER ETHERLY: As we're perhaps  
19 considering the application and getting some of our  
20 materials in order, Mr. Chair, I might broach the  
21 question of whether or not there might be some utility  
22 gained in perhaps consideration of keeping Mr.  
23 Nettler's objection in my mind for a moment. But  
24 might there be some consideration of combining or  
25 consolidating the Hardy application with the -- with

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1 this particular application, just from the standpoint  
2 of expediency sake?

3 There is some similarity in that there is  
4 a reference in Ms. Hardy's application, two concerns  
5 about travel --

6 MS. BRADY: Right.

7 MEMBER ETHERLY: -- albeit traffic from a  
8 somewhat different perspective in terms of where it  
9 impacts her property.

10 MS. BRADY: Right.

11 MEMBER ETHERLY: But I'm just kind of  
12 thinking through to help keep us moving forward with  
13 this very wonderful interview that we've gotten, Mr.  
14 Chair, in terms of facilitating these party  
15 applications.

16 CHAIRPERSON GRIFFIS: Are there any  
17 comments on that?

18 MEMBER ETHERLY: And I guess as you  
19 consider that question, the operative issue would be,  
20 of course, if you feel that there's a very distinct --

21 MS. BRADY: There is one distinction that  
22 I think needs to be made which is Ms. Hardy's property  
23 faces Foxhall Road. Our properties have to go through  
24 the intersection of W and Foxhall to gain -- to get  
25 onto the city road system. I mean, we're -- you know,

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1 we're locked in. And it is the traffic consideration  
2 that is our main objection and to the entire project.

3 We say in our testimony that I hope we'll  
4 have the opportunity to give that, you know, we've  
5 recognized that this piece of land was going to be  
6 developed and we were very pleased with the discussion  
7 that we had had with Mr. Visnic who was the then  
8 developer. And we saw the hearing notice that listed  
9 -- that the people preparing were LL whatever and  
10 Visnic Custom Homes, and it was for 37 houses.

11 And then all of sudden, we discovered that  
12 there's an additional house and that Mr. Visnic is not  
13 involved anymore. This was when we realized we might  
14 need party status, because our concern is that the  
15 traffic issues be resolved on Foxhall Road.

16 MEMBER ETHERLY: Okay. So, it would be  
17 your testimony that there is probably a distinction  
18 between your property and Ms. Hardy's property?

19 MS. BRADY: I think there is mainly  
20 because of that one difference in the location.

21 MEMBER ETHERLY: Okay. And I'll note for  
22 the record that Mrs. Hardy was also indicating in the  
23 affirmative that there would be a distinction between  
24 her concerns and your concerns. So, I'll withdraw  
25 that suggestion but needed something to facilitate the

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1 discussion.

2 CHAIRPERSON GRIFFIS: Excellent point.

3 Ms. Brady, for clarification, you have a  
4 three-page letter?

5 MS. BRADY: I shortened it for the  
6 testimony.

7 CHAIRPERSON GRIFFIS: Right. And the two  
8 pages of signatures on the back, they're signing --  
9 these are basically the signatures to this letter?

10 MS. BRADY: To the letter and to the party  
11 status.

12 CHAIRPERSON GRIFFIS: Right. Okay.

13 MS. BRADY: Yes.

14 CHAIRPERSON GRIFFIS: For clarification.  
15 Okay.

16 Mr. Nettler?

17 MR. NETTLER: Well, I now have a list of  
18 those who were there, so resolves that issue, which is  
19 -- that leaves us with the timeliness issue. And we  
20 would object because of it being untimely.

21 CHAIRPERSON GRIFFIS: Okay. And the basis  
22 of how it might impact your case or proceedings today  
23 or might -- the Applicant?

24 MR. NETTLER: It won't impact the  
25 presentation of our case.

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1                   CHAIRPERSON GRIFFIS:           And it is  
2           prejudicial in some way? I mean, what would be the  
3           basis of us denying --

4                   MR. NETTLER:     Only prejudicial to the  
5           extent that as I was commenting on Mr. Parsons'  
6           question in terms of us having been able to either  
7           discuss this further with those who sought to be a  
8           party at a time when there was that opportunity or  
9           with those who live -- the other individuals who live  
10          on Foxboro and W Street who are not represented by  
11          this letter of which there are others, I see by  
12          looking at it who might have participated in this  
13          matter.

14                   CHAIRPERSON GRIFFIS:     Okay. So, if you  
15          knew this was coming, you would have countered it with  
16          your own letters?

17                   MR. NETTLER:     Not necessarily. It would  
18          have been an opportunity to first of all explain that  
19          one of the houses -- the one house that she's talking  
20          on Foxhall is not a part of this application. There  
21          are other things in here that we could clarify that  
22          would have allowed us to address the issues that are  
23          being raised here, which aren't even before the Board.

24                   CHAIRPERSON GRIFFIS:     Right.

25                   MR. NETTLER:     And we'll get to them, I

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1 guess, if you grant them party status -- whether you  
2 grant them party status of not. But we will obviously  
3 get to them.

4 CHAIRPERSON GRIFFIS: Okay. And there it  
5 is.

6 And, yes, Mr. Parsons?

7 MR. PARSONS: There are, as I grasp it  
8 eight addresses.

9 MS. BRADY: That's correct. And can speak  
10 to the other three if you would like.

11 MR. PARSONS: That's exactly where I was  
12 going.

13 MS. BRADY: Oh, good. Okay.

14 One of the addresses that's not signed off  
15 is Senator Ted Stevens. And Senator Stevens is always  
16 very careful about putting his name on a document like  
17 this is my understanding. And so I cannot say that he  
18 is -- that he -- that he is part of this, but I will  
19 tell you that he has been represented at every meeting  
20 we've had and he is certainly not against this.

21 The two remaining residents --

22 MR. PARSONS: He's not against this?

23 MS. BRADY: Yes. He is not against what  
24 we have asked for.

25 CHAIRPERSON GRIFFIS: Okay. I think we

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1 can eliminate a lot of the representations of people  
2 that aren't name and signed under your letter because  
3 it just opens up a whole --

4 MS. BRADY: Okay.

5 CHAIRPERSON GRIFFIS: -- cluster of  
6 problems in which we can't resolve.

7 MS. BRADY: All right.

8 CHAIRPERSON GRIFFIS: As Mr. Nettler is  
9 about to object strongly and you can't say what did he  
10 say. So, we might as well --

11 MS. BRADY: Okay. So, all right. He's  
12 one -- he's one --

13 MR. PARSONS: That wasn't where I was  
14 going.

15 MS. BRADY: Oh, I'm sorry.

16 MR. PARSONS: Are you still soliciting  
17 people to become certain residents as far as this  
18 goes?

19 MS. BRADY: The remaining two. One is out  
20 of the country and when and if she's back in the  
21 country. You know, I've e-mailed her. She's on our  
22 e-mail list and whatever. And, yes. We would love to  
23 have her and don't anticipate any problem.

24 The last one is a owner of a home that's a  
25 rental property who we've always had difficulty

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1 getting hold of.

2 MR. PARSONS: Thank you.

3 MS. BRADY: You know, the thing that we  
4 have felt the most is that this little, we will refer  
5 to as a fragmented neighborhood originally, our little  
6 fragmented neighborhood is really together on our  
7 feeling about this. We've been able to --

8 CHAIRPERSON GRIFFIS: Okay. We're going  
9 to have plenty of time for testimony.

10 MEMBER ETHERLY: And it would be your  
11 sense, Mrs. Brady, I want to just get you to clarify  
12 your response to Mr. Parson's question, that the list  
13 of our neighbors is fairly set. You wouldn't  
14 anticipate this list expanding?

15 MS. BRADY: We might get one more. The  
16 woman I mentioned who is out of the country, if she  
17 returns during the process.

18 MEMBER ETHERLY: Mr. Chair, I would just,  
19 I mean, I don't want to predispose to that, I don't  
20 think we've reached out to the ANC yet to ascertain  
21 whether or not they would have an objection.

22 So, perhaps I'll hold my comment before.

23 CHAIRPERSON GRIFFIS: Good. Great. I'm  
24 not sure -- yes. Let's hear the ANC for comment.

25 MS. GATES: The ANC would absolutely

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1 support this application. Ms. Brady is correct when  
2 she says that there was a last-minute switch. The ANC  
3 experienced the same last-minute switch.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. GATES: And I will address that in my  
6 testimony, but I agree that these neighbors deserve  
7 every, every, every piece of attention and special  
8 consideration that the Board can give them.

9 CHAIRPERSON GRIFFIS: Excellent.

10 And if you wouldn't mind giving us your  
11 name and address for the record, Ms. Gates.

12 MS. GATES: It's Alma Gates, G-A-T-E-S.  
13 4911 Ashby Street, NW, 20007.

14 CHAIRPERSON GRIFFIS: Thanks a lot.  
15 Thank you. And you are, obviously, the representative  
16 of --

17 MS. GATES: I am the Chair of ANC 3D.

18 CHAIRPERSON GRIFFIS: Good. Indeed.

19 And have an opportunity to present to the  
20 Board. Can I ask you just specifically.

21 Did the ANC take up with an official  
22 action the review of any of these party status  
23 applications?

24 MS. GATES: No.

25 CHAIRPERSON GRIFFIS: Okay.

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1 Ms. Miller, any questions?

2 VICE CHAIR MILLER: Yes.

3 Ms. Brady, if I'm reading your application  
4 correctly that the only concern you have with respect  
5 to the traffic.

6 MR. GODWIN: The major concern. To us  
7 that's the show-stopper, that the traffic situation is  
8 so bad on Foxhall Road that we feel like this is the  
9 final opportunity the city has to make a -- to find a  
10 solution that works for Foxhall Road.

11 VICE CHAIR MILLER: So, it's broader --  
12 Foxhall Road is -- the issue is broader than just how  
13 it affects your street, or you would just be  
14 concerned --

15 MS. BRADY: Well, at first -- I think,  
16 yes.

17 I do think it is, but it comes home to us  
18 every time we have to leave our homes and try and get  
19 out onto Foxhall Road. So, it's -- but I think you'll  
20 hear from other people that it really spans the area  
21 from Whitehaven Parkway where it intersects Foxhall  
22 Road all the way up past north of the Field School.  
23 That's the segment of Foxhall Road that in the last  
24 five years has had the addition of George Washington  
25 University at Mount Vernon College. The Field School,

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1 bought the Cafritts Estate and converted it to a  
2 school. Both of those -- both of those new  
3 constructions were major issues for the area and now  
4 we're adding on top of it a new development without  
5 substantial changes in how the traffic is dealt with  
6 on Foxhall Road.

7 VICE CHAIR MILLER: Okay. I guess I'd  
8 like to ask the ANC also.

9 Is that the same issue that you would also  
10 be addressing in respect to traffic?

11 MS. GATES: Yes, Ms. Miller. It is.

12 VICE CHAIR MILLER: So, will your  
13 presentation be --

14 MS. GATES: I believe these neighbors have  
15 much greater concern than just traffic. They are  
16 going to be impacted by years of construction.

17 CHAIRPERSON GRIFFIS: I guess what Ms.  
18 Miller is directly asking is, how is their position  
19 different than your position?

20 MS. GATES: I don't know how their  
21 position is different from ours. I know their concern  
22 is safety. Our concern is safety, but the way we  
23 solve that may be different, that's all.

24 CHAIRPERSON GRIFFIS: But don't you  
25 represent those residents?

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1 MS. GATES: Yes, sir.

2 CHAIRPERSON GRIFFIS: But you're saying  
3 in the larger population that you represent, the  
4 issues are perhaps dealt with differently?

5 MS. GATES: Yes.

6 CHAIRPERSON GRIFFIS: Follow up?

7 MS. GATES: I am also focusing on Mr.  
8 Slade's traffic report and that put in my DDOT.

9 CHAIRPERSON GRIFFIS: Honing in on that.

10 VICE CHAIR MILLER: I guess what I'm  
11 trying to get at --

12 MS. GATES: But I don't want to give away  
13 any secrets.

14 CHAIRPERSON GRIFFIS: No, don't.

15 VICE CHAIR MILLER: It sounds like you're  
16 going to be addressing the same issues although your  
17 residents may be more immediately impacted in that one  
18 specific street. And I think what we try to avoid is  
19 redundancy and long cross examination and I don't know  
20 if we were to grant you party status, perhaps, the  
21 solution would be that you could coordinate on the  
22 issues that are the same for those, you know.

23 MS. BRADY: We know we've had a difference  
24 of opinion with the ANC on the possible solution to  
25 this traffic issue, so we would have concern there.

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1 And I should not overplay the traffic to the -- to  
2 underplay the two other recommendations that we would  
3 like to make in the Board which is in our -- and we do  
4 have other --

5 CHAIRPERSON GRIFFIS: What are the  
6 issues, not the recommendations?

7 MS. BRADY: It's either that the -- things  
8 that the developer has agreed to would be scrupulously  
9 adhered to if, in fact, the development goes forward,  
10 if it's approved.

11 There have been, as I said, we had had --

12 CHAIRPERSON GRIFFIS: Okay. That's the  
13 second issue.

14 What's the third issue?

15 MS. BRADY: Okay. And then third issue is  
16 really the -- the elimination of the ninth house on  
17 the south side of W Street --

18 CHAIRPERSON GRIFFIS: Okay. So, a  
19 reconfiguration --

20 MS. BRADY: -- which becomes the 13th --

21 CHAIRPERSON GRIFFIS: -- of the master  
22 plan?

23 MS. BRADY: Right.

24 CHAIRPERSON GRIFFIS: Okay. Excellent.

25 I'm aware of all the issues.

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1 Mr. Etherly?

2 MEMBER ETHERLY: Mr. Chair, based on what  
3 I've heard and taking into consideration Mr. Nettler's  
4 objection, I would nevertheless be comfortable with  
5 granting party status to what would be essentially the  
6 4400 block of W Street and Foxboro Place residents, as  
7 I think there's been enough stated with respect to  
8 distinction in terms of some of the concerns that have  
9 been raised from a traffic standpoint and also impacts  
10 them.

11 MS. BRADY: Right.

12 MEMBER ETHERLY: My biggest concern was  
13 whether or not there was just too much of a  
14 commonality between some of the concerns that you had  
15 raised versus some of those that might come from Mrs.  
16 Miller's questioning the ANC or Mrs. Hardy's  
17 application. But I think there's enough of a  
18 distinction there. I would just simply note that I  
19 think it will be very critical to, as we, you know --  
20 should the application for your party status be  
21 granted, that as we discuss traffic, that we're all  
22 very clear and distinct in keeping that conversation  
23 focused.

24 But I would be comfortable making a  
25 motion, Mr. Chair, to move forward with granting the

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1 party status application of certain residents of the  
2 4400 block of W Street and Foxboro Place. And invite  
3 a second.

4 MR. PARSONS: Second.

5 MEMBER ETHERLY: Thank you very much.

6 Thank you, Mr. Chair.

7 CHAIRPERSON GRIFFIS: Good. We have the  
8 motion before us. They said it all.

9 Yes?

10 MEMBER ETHERLY: I'll just also note for  
11 the record, Mr. Chair, because there was an objection  
12 leveled.

13 I think clearly there's been enough of a  
14 conversation already with regard to concerns about  
15 traffic in the broad sense. And I think also in  
16 somewhat of a specific sense through the ANC and  
17 through, perhaps, some of the back and forth that's  
18 already happened between some of the affected members  
19 of the community such that I don't think there's going  
20 to be any prejudice that would be place upon the  
21 Applicant or the party status application of certain  
22 residents of the 4400 block of W Street be granted.  
23 So, I wanted to be sure to speak to Mr. Nettler's  
24 objection.

25 I heard his concerns, but I just didn't --

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1 I just don't see the prejudice there if the  
2 application were granted.

3 CHAIRPERSON GRIFFIS: Well said. The  
4 record does reflect the opposition.

5 Yes, Ms. Miller?

6 VICE CHAIR MILLER: I just would like to  
7 follow up on that as well because I appreciate what  
8 Mr. Nettler has said. At least as I understand it. I  
9 think he said that if he had known that these  
10 individuals were feeling like they had to oppose the  
11 application, that they would have made more of an  
12 efforts to bring to their attention some information  
13 or work it out or whatever.

14 But in any event, I would think that a  
15 granting of party status wouldn't preclude that in the  
16 future and that party status application have been  
17 amended and can be amended to drop out people if  
18 circumstances change.

19 CHAIRPERSON GRIFFIS: Good. Very well.

20 We have a motion before us that has been  
21 seconded.

22 I would ask that all in favor signal by  
23 saying aye.

24 (AYES)

25 CHAIRPERSON GRIFFIS: Opposed?

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1 Abstaining?

2 Very well, we've granted party status to  
3 three parties in the case. We're about to move  
4 forward.

5 Mr. Nettler, I'm going to ask you  
6 preliminarily your assessment of how much time you  
7 will need to present your case?

8 MR. NETTLER: Probably about 45 minutes.

9 CHAIRPERSON GRIFFIS: Good. Forty-five  
10 minutes.

11 For clarity and all, we now have three  
12 parties in opposition. All three parties will have  
13 the same amount of time as the Applicant cumulative.  
14 Meaning, you all will split the amount of time that  
15 Mr. Nettler gets. So, if he uses 44 minutes and 30  
16 seconds, 44 minutes and 30 seconds will be split three  
17 ways and you all need to coordinate that and how you  
18 break up that time. How you break it up is up to you.

19 If the first party goes on for 44 minutes,  
20 then the last two have 30 seconds each.

21 I am going to run the clock just to show  
22 that we don't get into major arguments to deal with  
23 that take up too much of our time about whether I  
24 fairly appropriately watched the clock or not. And I  
25 don't think we'll get to that point at this juncture.

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1                   With that said, Mr. Nettler, I believe  
2 we're ready to proceed, unless the Board has any other  
3 comments, concerns. Oh, I'm sorry, is Mr. -- out  
4 there.

5                   Ms. Bailey that would be tremendous.

6                   Mr. Nettler, are you ready to go?

7                   MR. NETTLER: I'm ready to go.

8                   CHAIRPERSON GRIFFIS: Let's go.

9                   MR. NETTLER: Thank you very much.

10                   This is the application of Phillips Park,  
11 LLC, which as I said in the preheating statement,  
12 successor to First Capital Trust, LLC.

13                   First Capital Trust was the -- First  
14 Capital Trust is the contract purchaser of the  
15 property going back to June. It created a limited  
16 liability company for the purpose of acquiring the  
17 property, which the owner of the property, RAHA 3,  
18 Inc., is authorized as a successor to First Capital  
19 Trust to go forward with the application.

20                   As in the letter that was submitted back  
21 when our application was submitted by, again, by the  
22 owner of the property who is under your rules, the  
23 only one legitimately authorized to pursue an  
24 application. He did authorize First Capital Trust,  
25 LLC and us to appear as agents for the owner to pursue

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1 this application. And he submitted with our --  
2 allowed us to submit with our preheating statement, a  
3 letter authorizing the change from First Capital Trust  
4 to Phillips Park, LLC.

5 So, in that sense, there has been a  
6 continuity in terms of the contract purchaser from the  
7 time this thing was submitted until the time that we  
8 are here today.

9 This matter is here before you for a  
10 Special Exception to approve 33 single-family homes  
11 that are proposed to be developed on the former  
12 Phillips Estate site, a site that was previously owned  
13 by Duncan and Margerie Phillips, the creators of the  
14 Phillips Gallery and to, I think, had owned the site  
15 from either the early 1900s or late 1890s, but  
16 certainly had had a home on the site. The home was  
17 demolished some years ago.

18 There had been a number of plans over the  
19 last 20 years actually for development of the site,  
20 beginning in the 1980s with a planned development that  
21 would have developed a significant portion of the site  
22 with both town homes and single-family homes up  
23 through the late '80s and into the '90s with a project  
24 that was proposed and that was reviewed under large  
25 tract review for a development project -- a

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1 development that would have been also a significant  
2 number of homes, not using the entire site.

3 This site is subject to the theoretical  
4 subdivision regulations. Probably Mr. Parsons might  
5 remember back in 1988 those regulations were adopted  
6 by the Zoning Commission in response to a number of  
7 development projects -- response to a number of  
8 development projects that were going forward on large  
9 estates. The Rockefeller Estate which had just been  
10 completed, but which actually had its last component  
11 that was being considered.

12 There was a development by WC&AM Miller  
13 that was being completed at the same time. This one  
14 was in somewhat of a large tract review process that  
15 obviously never got completed. But I had proposed to  
16 the Zoning Commission a change in the zoning  
17 regulations to take theoretical subdivisions out from  
18 matter of right development and to create a Special  
19 Exception process for the purpose of addressing  
20 precisely those issues that we are going to hear  
21 today.

22 And when I was confronted with this  
23 proposal back in June by First Capital Trust, my  
24 advice to them and I think as you will hear, the  
25 advice that what had to be followed through with any

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1 theoretical subdivision of this type of property, is  
2 you got to address its impact on the park. You've got  
3 to address the landscape, the trees that are on the  
4 site. You have to address density issues and you  
5 certainly have to address the traffic that may be  
6 generated.

7 With this particular project we are  
8 confronted with a project that, as I said, is 33  
9 homes. If you look at the site plans that have been  
10 provided to you, there are a number of homes along W  
11 Street and Foxhall Road which are themselves matter of  
12 right -- project of matter of right sites. They are  
13 not, I repeat, they are not the subject of this  
14 application because they can be constructed as a  
15 matter of right, including a home that was referenced  
16 earlier by these certain residents of W Street. Those  
17 are not part of this application. We're dealing with  
18 -- the site.

19 CHAIRPERSON GRIFFIS: Briefly, you bring  
20 up the site plan. Looking at the site plan and, I  
21 believe, one site plan is on your Exhibit Number 3 of  
22 your submission.

23 There's been some question actually. The  
24 Office of Planning had indicated that they weren't  
25 ready to make a recommendation when they wrote their -

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1 - is this the current site plan?

2 MR. NETTLER: No. We're going to get into  
3 that.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. NETTLER: In fact, there were a number  
6 of recommendations that were made to us, both by the  
7 Friends of White Haven and by the -- we've had  
8 discussions from a number of different neighbors --

9 CHAIRPERSON GRIFFIS: Right.

10 MR. NETTLER: -- in the area.

11 CHAIRPERSON GRIFFIS: That's understood.

12 MR. NETTLER: And we've had discussion  
13 with the Park Service and we will be presenting you --

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. NETTLER: -- with a variation on  
16 that --

17 CHAIRPERSON GRIFFIS: So, we don't have  
18 the current --

19 MR. NETTLER: -- presentation.

20 CHAIRPERSON GRIFFIS: -- right now?

21 MR. NETTLER: That's correct.

22 And you will see that coming up.

23 CHAIRPERSON GRIFFIS: Okay. More  
24 surprises.

25 MR. NETTLER: There's not that much of a

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1 surprise. There really is, as you will see, an  
2 attempt to deal even further with environmental issues  
3 in a way that's even more complete, I think, from our  
4 perspective.

5 The criteria is pretty well settled in  
6 terms of your authority in terms of granting a special  
7 exception. There haven't been that many in terms of  
8 special exceptions for -- under the theoretical  
9 subdivision provision, since it was adopted in 1989.  
10 I think there's probably been about three or four of  
11 them. Only one which is somewhat comparable to this  
12 in terms of size, but this does present an  
13 opportunity, which I think we feel has adequately  
14 addressed the issues that I looked at and raised with  
15 out clients -- our clients back in June.

16 And I think to further enhance the ability  
17 to address those issues, we suggested and that was  
18 adopted in part, a sort of a peer review process as  
19 you will hear a little bit about to go through and  
20 evaluate the project as it was going forward. In  
21 particular, know that traffic was a significant issue  
22 and is always a significant issue whenever there is  
23 development.

24 We have brought in Steve Peterson to -- as  
25 a peer reviewer of the traffic plan, traffic review,

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1 the traffic study had been done by Garrow & Slade.

2 We brought in arborists to look at the  
3 tree issues that has resulted in a number of different  
4 changes and protections for some of those trees. And  
5 we have with us Greenhorne & O'Mana as well today as  
6 we said in our application which have looked at a  
7 variety of issues that you're going to hear.

8 And without going into those specific  
9 issues, I'd like to turn it over to Mr. Pryor who is  
10 the First Capital Trust and Phillips Park, LLC.

11 CHAIRPERSON GRIFFIS: Excellent.

12 Before you introduce yourself, just for  
13 clarification. In your written submission you  
14 indicated there was peer review of your traffic study  
15 and also the arborists and you stated that again.

16 MR. NETTLER: Yes.

17 CHAIRPERSON GRIFFIS: Am I correct?

18 MR. NETTLER: Yes.

19 CHAIRPERSON GRIFFIS: That's the only two  
20 -- those are the two peer reviews that you received  
21 then?

22 MR. NETTLER: Well, we've actually brought  
23 in Greenhorne & O'Mana too to look at a number of  
24 issues that were still outstanding in terms of the  
25 grading, in terms of --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. NETTLER: -- other landscaping issues.

3 In terms of storm water management issues and they  
4 will be testifying about that today.

5 CHAIRPERSON GRIFFIS: Okay. Excellent.  
6 Good.

7 Good afternoon.

8 MR. WILLIAMS: Good morning.

9 My name is William Pryor, 700 West 51st  
10 Street in Miami, Florida.

11 I'm here as the managing member of  
12 Phillips Park, LLC, who is the Applicant before this  
13 Board this morning -- this afternoon.

14 I had asked Mr. Nettler to allow me a few  
15 moment of this hearing so as to allow me the  
16 opportunity to elaborating on who we are and what our  
17 intentions are.

18 On this first point, I would like to bring  
19 in front of you or I could bring in front of you a  
20 litany of different project that my associates and I  
21 have accomplished over the last 22 years in the  
22 residential real estate business. And also mention to  
23 you several projects which are the similar larger or  
24 smaller in scope, but it suffices to say that whatever  
25 projects we have done, we have always done project

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1 with the intent of being residential and a residential  
2 which is a -- to the community a plus and never a  
3 negative, meaning we try to accomplish a community's -  
4 - development within a community which will be  
5 assimilated into a project. Never be a statement in  
6 itself.

7 Over the years, I've accomplished many of  
8 these projects. And I've been able to do, whether  
9 it's a planned urban development, land improvement  
10 project and, of course, build our projects itself.

11 Whatever the case is, the underlying issue  
12 is residential integration to the project. And my  
13 utmost recommendation to all the consultants whenever  
14 I do give those initial directives, I try to remain  
15 hands-off is, please work with the community and try  
16 to find the best solution to their problems.

17 As to our intentions, allow me to regress  
18 one moment.

19 When I first moved here to the District of  
20 Columbia back in '74 after college, I fell in love  
21 with the city. I loved the way its politics, its  
22 peoples and most importantly the organization. The  
23 different areas not only in Northwest, but in  
24 Southeast, Capital, etcetera.

25 But there was one place when I left five

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1 years later that I kept in my mind, which I was always  
2 fascinated by and that was the Foxhall area. So much  
3 so that several years later in the mid `80s, I even  
4 came down from New York where I was at the time doing  
5 development, and had looked at the property, which I  
6 believed to be the Brady Estate, but unfortunately, it  
7 brought to nothing because the amounts they were  
8 asking for it or complexity was not up to the caliper  
9 of what I could do then.

10 Today now which we are talking 20 -- 15  
11 years later, I've been given the opportunity of doing  
12 the Phillips Park property.

13 It came about by chance. We came here  
14 over a year ago. When I heard the name Foxhall my  
15 ears said, let's go. Let's try it. And I've been  
16 committed for one year to try to work out this  
17 project, first with a KC and put it through an  
18 unsuccessful application, unsuccessful bid for the  
19 auction. And then I proceeded to ask for the  
20 possibility of the adjoining properties which was, in  
21 this case, the property that became know -- was the  
22 Dunmarlin Estate, ex Phillips Estate.

23 I do not consider myself to be an  
24 outsider. This project for me represents what I  
25 consider to be a calling card to the community. I

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1 have given Ms. Gates after the ANC meeting last time,  
2 my proven commitment to work with the community. I've  
3 been talked to Mr. Nettler on how best to proceed with  
4 this type of process.

5 Through the ANC we tried to meet their  
6 requirements. We tried to meet the demands both in  
7 the hearings and outside of the hearings, so much so  
8 that one of the people -- one of the associations who  
9 has standing now came to us after the second meeting  
10 of after the first formal meeting. Excuse me, second  
11 meeting which would first be the formal, informal and  
12 had requested certain changes.

13 Those changes were addressed and actually  
14 you will hear about them later on. And we tried to  
15 incorporate the best we could, keeping in mind W  
16 Street Associations' concerns and that's when this  
17 whole issue of which began because of issues of two  
18 exit means of egress from the property on W Street.  
19 One disappeared. They thought that we had done it  
20 unbeknownst to them. Instead it was just a process of  
21 listening to the comments of the neighborhood.

22 But without going on to the details as I  
23 mentioned, I'm sure the consultants will get into that  
24 and are more qualified to do. I would just like to  
25 mention that I have great confidence in the team we

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1 put together. That team is being spearheaded by Mr.  
2 Nettler and his firm. But more importantly, to this  
3 commitment that I have is BZA and a team of Mr.  
4 Anthony Barnes' team that he has here. And I believe  
5 that both of them with following through in the  
6 commitment that I have, will see a project through  
7 that if you were to visit it five, ten years, I  
8 fervently hope will not be recognizable as being other  
9 than part of W Street to the North or to the South.

10 Thank you very much.

11 CHAIRPERSON GRIFFIS: Good. Thank you  
12 very much.

13 Very quick question just for my  
14 clarification. You obviously are in for a theoretical  
15 subdivision with a number of matter of right of lots.

16 Are you going to be building all these  
17 houses?

18 MR. WILLIAMS: We intend on doing the  
19 first phase which is the lot improvement phase at  
20 which time with the coordinations of Mr. Barnes, we  
21 are working on guidelines and we would like to bring  
22 in several builders who would meet those criterias to  
23 be able to build out.

24 CHAIRPERSON GRIFFIS: Okay. Good.

25 Anything else right now? Excellent.

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1 Let's continue.

2 Thank you very much.

3 MR. WILLIAMS: Thank you all.

4 MR. NETTLER: Our next witness is Mr.  
5 Barnes. I'd like to proffer him as an expert in  
6 architecture. He's been before this Board before and  
7 has been accepted as an expert as well. And I believe  
8 his CV is part of the pre-hearing --

9 CHAIRPERSON GRIFFIS: Yes.

10 MR. NETTLER: -- application or statement?

11 CHAIRPERSON GRIFFIS: Yes. It's Appendix  
12 15. Do all the parties in opposition have this? Do  
13 you have copies? I don't think we need responses by  
14 everybody.

15 Board members, any comments you would like  
16 to give me as I assess the granting of expert status?

17 One comment off the record.

18 Yes, Ms. Miller?

19 VICE CHAIR MILLER: I would support it.

20 CHAIRPERSON GRIFFIS: Indeed. I have no  
21 difficulty and I don't see any reason we wouldn't --  
22 to -- we have three, four. No, we have three. For  
23 Vance and Barnes. We're looking at all of them or --

24 MR. NETTLER: Just one.

25 CHAIRPERSON GRIFFIS: Indeed. Good. I

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1 have no difficulty. Why don't we continue them.

2 A very good afternoon.

3 MR. BARNES: Good afternoon.

4 MR. NETTLER: And before he does continue,  
5 I have -- I passed out to you copies of the  
6 presentation that we're doing.

7 CHAIRPERSON GRIFFIS: Oh, the PowerPoint  
8 that's about to go?

9 MR. NETTLER: So, you now have before you  
10 the plan that you were asking about before.

11 CHAIRPERSON GRIFFIS: Great. And, of  
12 course, copies have been distributed to the parties --

13 MR. NETTLER: Yes.

14 CHAIRPERSON GRIFFIS: -- and the ANC?  
15 Excellent.

16 I think we're all ready.

17 MR. BARNES: Good afternoon, Mr. Griffis,  
18 members of the Board.

19 My name is Anthony Barnes. Barnes & Vanze  
20 Architects. 1238 Wisconsin Avenue, NW, Washington  
21 D.C. 20007.

22 Our firm is based in the practice of high  
23 and residential architecture. I live very close to  
24 the site in Wesley Heights. I consider myself a  
25 neighbor. And I've been building houses in Washington

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1 for roughly 20 years.

2 I want to bring you through the process  
3 that we engaged in studying and then developing the  
4 designs for the layout of this property. And then the  
5 recommendations we have under the architectural  
6 guidelines, etcetera.

7 CHAIRPERSON GRIFFIS: Good. You just  
8 indicated that you've been building houses for some  
9 time. Have you been designing them too?

10 MR. BARNES: I've been designing them.  
11 I've built none of them.

12 CHAIRPERSON GRIFFIS: Okay. Good.

13 MR. BARNES: Forgive me. I'm sorry.

14 CHAIRPERSON GRIFFIS: Expert.

15 MR. BARNES: I ask you to bring your  
16 attention to the Power Point now.

17 The property in question is the green that  
18 you see there below. Grover Archibald Park is our  
19 neighbor to the immediate east. The White Haven Park  
20 is our neighbor to the immediate south. This is also  
21 the Potomac River and this is the reservoir.

22 The red circles, orange circles that you  
23 see are neighborhood near by that we studied in some  
24 detail to learn sort of appropriate precedent because  
25 we felt that there were some terrific established

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1 near by neighborhood that had the kind of  
2 characteristics that we thought be appropriate in a  
3 development here.

4 And one of the reasons we agreed to join  
5 this team was that from the beginning, the owner had  
6 expressed a willingness to try and do the right thing  
7 about neighborhood development, rather than just  
8 maximizing what was possible on the site. And if that  
9 had been the case, we would not have been involved.

10 CHAIRPERSON GRIFFIS: So, you had a lot  
11 of impact then in the actual master plan and the land  
12 planning?

13 MR. BARNES: Yes, indeed.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. BARNES: We had a lot to do with  
16 that --

17 CHAIRPERSON GRIFFIS: Great.

18 MR. BARNES: -- from the beginning.

19 MR. NETTLER: Let me just ask you a  
20 question.

21 When you were looking -- when you were  
22 deciding on which sites to look at, were you also  
23 focusing on sites that were subject to other overlays?

24 MR. BARNES: No. We were looking at, I  
25 believe, R1A, possible R1B neighborhoods as well, what

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1 we considered to be appropriate models in the  
2 immediate, you know, within a mile's radius of where  
3 we are.

4 MR. NETTLER: Okay. And some of these  
5 were in Wesley Park?

6 MR. BARNES: Wesley heights, Spring  
7 Valley, W Street, both to the east and west of Foxhall  
8 Road because they were very adjacent to the property  
9 and Colony Hills which is immediately south. I'll  
10 actually go back and just point out which they are.

11 The site is right here. The W Street  
12 neighbors that you've heard of are there. There's a  
13 little finger of Wesley Heights on 44th Street, which  
14 dead ends by the Field School, which we look at as  
15 well.

16 There are some houses that rundown the  
17 west side of Foxhall Road on W. We looked at those  
18 there. This is Colony Hill, which is the neighborhood  
19 immediately south of the Brady Estate. It's our next  
20 neighborhood immediately to the south. This portion  
21 of Wesley Heights and all these different areas in  
22 Spring Valley.

23 One of the characteristics that was  
24 significant about this site is its terrain. I don't  
25 now if any of the Board members have visited it, but

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1 this site forges through a 100 feet or so. It's got  
2 some forest that remains from the garde that existed  
3 when the Dunmarlin Estate was there. It is bordered  
4 by parks. So, it is very much potentially a garden  
5 neighborhood, as are the ones we are looking at.

6 And the areas that we've studied are all  
7 the areas where there are challenging terrain and we  
8 looked at the way in which the town planners and city  
9 planners addressed that.

10 If we go now to the area of Wesley  
11 Heights, which is this Foxhall Road here. This is  
12 Garfield Street. And this is New Mexico Avenue. The  
13 grid of Washington, which is very evident through much  
14 of Wesley Heights is broken by this one little  
15 diagonal street, which recognizes that it runs down a  
16 rather steep little water shed at the end of what is  
17 now probably a buried stream.

18 But in the departure from the grid, the  
19 town planners saw that was an appropriate way to work  
20 with the grade rather than against it and put homes  
21 down in there that actually followed the contour of  
22 the land, creating some sort of unique and attractive  
23 characteristics.

24 Spring Valley is even more challenged in  
25 nits terrain. And you see that the Washington grid is

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1 almost non-existent once you move away from -- this is  
2 the American University campus here on the right.  
3 Once you move south and west of that area -- this is  
4 Lotford Road down here which heads down towards Sibley  
5 Hospital and you can see that the streets wind  
6 dramatically.

7 This is really disbarring the natural  
8 contours when the WC&AN and Miller Companies developed  
9 Wesley Heights and right after it Spring Valley, they  
10 actually made a point of recognizing the contours and  
11 then one of the two partners -- I don't know if it was  
12 WC or AN, spent the rest of his career sort of  
13 forwarding a method of town planning all over the  
14 country as a way to both save trees, save cost in  
15 development and actually produce a better looking  
16 neighborhood. So, instead just built those into the  
17 grid across the terrain, that was really his point.

18 So, for example, down here on Rockwood  
19 Parkway, it follows an old natural stream bed. There  
20 is also this rather delightful little neighborhood  
21 park created in a teardrop there where there is this  
22 little boulevard action that happens in the road.  
23 Which is something we took note of.

24 As we look through these neighborhoods as  
25 well, we were also looking at lot size and density.

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1 And I will bring you lastly in this particular  
2 presentation to Colony Hill which is 30 some houses  
3 immediately south of the Brady Estate. It is probably  
4 the most integrated neighborhood, obviously, other  
5 than the W Street neighbors, which is very close to  
6 the site.

7 Colony Hill again has tremendous fall of  
8 land, probably a little more than 100 feet and, again,  
9 the roads in the middle of Colony Hill tend to  
10 recognize that and solve their zoning problems that  
11 way, their lay-out problems.

12 CHAIRPERSON GRIFFIS: Wait a minute.  
13 Just for clarification. You're going through an awful  
14 lot of information and it's very important. You're at  
15 the right speed.

16 MR. BARNES: Yes.

17 CHAIRPERSON GRIFFIS: Now, when I look at  
18 number 10 in that area that is not of a grid shape --

19 MR. BARNES: Yes.

20 CHAIRPERSON GRIFFIS: -- in the road that  
21 leads around, there are segments of gray that come off  
22 it. What are those segments?

23 MR. BARNES: The gray that you see there?

24 CHAIRPERSON GRIFFIS: I understand that  
25 there's a street there. A driveway?

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1 MR. BARNES: It's a driveway. Yes.

2 CHAIRPERSON GRIFFIS: So, there's a  
3 driveway and the yellow is a footprint of a house or a  
4 structure. Is that correct?

5 MR. BARNES: The yellow is a footprint of  
6 a house.

7 CHAIRPERSON GRIFFIS: Okay. Good.

8 When you go back to 6 in the diagonal road  
9 that you were talking about that was following the  
10 grade on that, on the north side of that, that are  
11 showing there are structures. Are there access to  
12 residences on the south side or --

13 MR. BARNES: Yes. There are access on  
14 both side of that street on the north, east and the  
15 southwest side.

16 CHAIRPERSON GRIFFIS: Okay. And it's just  
17 not large enough to show a driveway or a paved access?

18 MR. BARNES: Or this map that we  
19 downloaded is not as accurate .

20 CHAIRPERSON GRIFFIS: Not as accurate.  
21 Right. Just want to make sure we're all understanding  
22 the same thing with that map.

23 MR. NETTLER: Mr. Griffis.

24 CHAIRPERSON GRIFFIS: Yes.

25 MR. NETTLER: I noticed both in the

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1 questioning of Mr. Pryor and Mr. Barnes the clock  
2 didn't stop, so if you might take that into account.

3 CHAIRPERSON GRIFFIS: I do. I have them  
4 all down in my notes here.

5 MR. NETTLER: Okay.

6 CHAIRPERSON GRIFFIS: Three questions of  
7 mine, three minutes extra.

8 Okay. Let's go ahead.

9 MR. BARNES: Thank you.

10 I just want to spend a moment on the  
11 density of the development and lot size.

12 As we look through these particular area  
13 in the Wesley Heights that I showed you, everything  
14 south of Kindell, the average lot size including  
15 bigger and smaller lots, and there is some variety to  
16 the credit of the variety, is around about 11,000  
17 square feet. And the areas of Spring Valley that we  
18 focused on particularly following those grades as  
19 well, there are a couple of exceptionally lots that I  
20 didn't use to again come to an average very close to  
21 11,000 feet.

22 The Colony Hill neighborhood that you see  
23 right here, there is one enormous house where there's  
24 an old log cabin preserved there, which skews the  
25 numbers a bit, but it's about an 8,300, 8,400 square

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1 foot average lot size in that development.

2 That size is very similar to what you find  
3 on W Street and Foxboro Place immediately adjacent to  
4 the property. There's one bigger property. Many of  
5 those are actually even less than 8,000 feet.

6 So, we settled as a recommendation to the  
7 owners on a lot size that we would target of a density  
8 that would equal about 11,000 square feet. Some of  
9 the lots would be bigger, some of the lots would be  
10 smaller based on the terrain and the needs of the  
11 planners that moved round.

12 I'd now like to speak a little bit to the  
13 character of these neighborhoods as you visit them.

14 These series of slides are taken in these  
15 neighborhoods that we focused on and the  
16 characteristics of them that are clearly significant,  
17 somewhat obvious as the streets follow down the  
18 terrain and following the curve. There's a very  
19 pleasing consistency in the front yard development  
20 because the developers have lined up the houses pretty  
21 much in line with each other, a little bit of  
22 adjustment due to the local design of each house, but  
23 there's a front yard setback that's relatively  
24 generous. These are not typically divided by fences.

25 In fact, private land is demarcated by hedges.

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1 There's landscaping, trees, parking and so on.

2 So, there's a very attractive street scape  
3 that is created by the consistency of the scale of  
4 the houses, the planer lining up along the streets and  
5 the ability to have this sort of green front yard that  
6 becomes part of the typical character of these  
7 neighborhoods as you move through them.

8 And some of the houses -- some of the  
9 areas the lots are a little bigger and the houses a  
10 bit further apart and it actually allows for a more  
11 natural transition of grade where the grade is  
12 steeper. There are also views that are created across  
13 the roof of the neighboring house because of the  
14 grade.

15 The steeper grade also offers  
16 opportunities if, indeed, for example, the garage has  
17 to face the street and we're discouraging that in  
18 every case. The grade allows that to happen in a more  
19 elegant manner.

20 The changes in grade are also obviously  
21 accomplished by retaining walls and stairs, which add  
22 to the character of the neighborhoods as you go  
23 through them.

24 CHAIRPERSON GRIFFIS: So, you're  
25 discouraging the garage facing the streets?

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1 MR. BARNES: Yes. We are.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BARNES: It's in the architectural  
4 guidelines.

5 There are also signature houses that help  
6 give some specific character to these neighborhood on  
7 street corners or aligning with the access of a  
8 street. As you see, these are memorable things for  
9 people that visit the neighborhoods.

10 This is the little tear drop park that I  
11 mentioned earlier that's on Rockwood Parkway in Spring  
12 Valley and it's an area that has attracted the  
13 attention of the immediate neighbors who formed a  
14 little club and maintain it, you might imagine.

15 So, essentially, it's the character of  
16 those neighborhoods that we were really after.

17 This is now the plan that we brought to  
18 the last ANC hearing that included where we were  
19 voted. We got a positive vote and it shows the  
20 intended plan of the development. So, running you  
21 through it quickly.

22 W Street is on the north here. This is  
23 Foxboro Place there. You can see the footprint of the  
24 houses of the neighbors who you heard from earlier.  
25 This is Foxhall Road. This is Mrs. Sandra Hardy's

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1 property right here immediately on the left. This  
2 used to be the mother-in-law's house for Mr. Phillips,  
3 I believe and this is the frontage onto the White  
4 Haven Park down here. This is all apparently Grover  
5 Archibald Park, but there is, in fact, a paved street,  
6 44th Street has never been improved, but exists there  
7 which fronts our property.

8 CHAIRPERSON GRIFFIS: What would it  
9 connect to if it continued?

10 MR. BARNES: I don't know. I've never  
11 that plan where it connected through to anything.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. BARNES: It is also -- discontinues up  
14 here where it would have connected to 44th Street,  
15 which is paved and improved north of the Field School  
16 and has never run south of that to my knowledge.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. BARNES: There are some sewers and  
19 other things that show an intention to improve it but  
20 I don't believe it was ever paved.

21 The principal arrangement of our lots.  
22 You can see the matter of right houses are run along  
23 Foxhall and along W Street.

24 Once you get into the development, we  
25 realize very early on that because of the very

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1 difficult traffic situation at W and Foxhall, that we  
2 really needed to have another entrance to the main  
3 street grid. This is of significant improvement in  
4 our mind because the distance between a light that  
5 exists at White Haven and out at the field School and  
6 the site lines are a whole lot clearer than at W,  
7 which really is difficult. There will be more detail  
8 on traffic later. So, I won't go into that much.

9 We created a boulevard down, running  
10 through the steepest part of the terrain. This is a  
11 high point on the north and the west and the bold runs  
12 down toward the southeast.

13 The one significant natural feature on the  
14 site was, in fact, a wetland here. It's not all a big  
15 pool, but our blue draws your attention to it. The  
16 Army Corps of Engineers was brought in to study the  
17 site to determine where the wetland was and wasn't.  
18 And they have claimed jurisdiction and with a 25-foot  
19 buffer around it, that is being preserved within the  
20 development.

21 There was an artificial wetland right  
22 through the middle of this that was determined to be  
23 caused by a water main that's been running for around  
24 about 12 years since the house was demolished because  
25 it ran to an out building and was never identified and

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1 turned off. So, there is fluoride in the water and  
2 other things that made this a non-official wetland and  
3 the Army Corps being involved in.

4 CHAIRPERSON GRIFFIS: Did anyone on the  
5 south ever complain about water pressures?

6 UNIDENTIFIED SPEAKER: Well, it's 12 years  
7 we've lived with it.

8 CHAIRPERSON GRIFFIS: Okay. Go ahead.

9 MR. BARNES: Not to my knowledge.

10 This loop road that runs through earlier  
11 on used to have another entrance onto W which I'll  
12 discuss with you and there have been a number of  
13 changes to the plan, but the lots that are being  
14 developed that are the reason we are here before you  
15 today, are on these building footprints that you see  
16 lightly shaded in this area here.

17 Because of the terrain being so steep down  
18 here, we have kept a piece of the Washington grid to  
19 service the back of these houses here and then we are  
20 following sort of a natural contour to address those  
21 issues with grading.

22 I'm going go now to a sketch that we  
23 brought to the neighbors on W Street in our  
24 discussions with them and they were pointing out their  
25 concerns to us. And this is something that we acted

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1 on.

2 Initially, there used to be a second road  
3 that connected on W Street that made little more sense  
4 of this loop. They are specifically, if we would try  
5 and reduce the number of connections to the street, we  
6 felt that for safety in the neighborhood, we needed at  
7 least two ways to get in, so we kept the one further  
8 to the east, aligned it with Foxboro at an angle, put  
9 all the houses so that they would face neighbor front  
10 door to front door. But in deference to their  
11 request, that a green buffer that they had been used  
12 to all the years that they've lived down there without  
13 development on the site, that we provide a  
14 naturalistic planted strip with a similar setback of  
15 these houses voluntarily to that that they have on the  
16 north side.

17 This planted strip would be provided by  
18 the developers and contain a mix of approved deciduous  
19 and evergreen trees.

20 We have also set aside a small corner area  
21 here so that it wouldn't be buildable. There's one  
22 significant tree we're saving and this would create a  
23 little green corner that is so reminiscent of what's  
24 there right now.

25 The other thing we did, which we felt was

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1 significant and the neighbors seem to appreciate it is  
2 we've done our best to line up our houses so that when  
3 people look out of their front doors or step out of  
4 their front doors on W, they have a view shared  
5 between the houses, rather than at the houses.

6 Another thing that was significant for  
7 them is there's a lot of terrain along the Phillips'  
8 site here at the moment, most of it much higher than W  
9 Street, whereas W follows a fairly even grade all the  
10 way down there.

11 Many neighbors here were concerned that  
12 when they looked out of their doors if a new house we  
13 built, it would start a story and a half higher than  
14 their first floors. So, we agreed and it suits our  
15 grading to grade this down so that the south side of  
16 the street follows the contour of W.

17 To go back to our development now. The  
18 change that the neighbors mentioned, I will refer to  
19 at this point here.

20 Consistently throughout the programs,  
21 we've been trying to improve environmental issues  
22 related to the impact of the development and one of  
23 the in-house moves in that regard was with the  
24 arborist, Mr. Pitchford who you will meet later.

25 We ascertained that if we rearranged the

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1 lot lines on the east side of the property against the  
2 44th paved street, and actually shifted one more house  
3 to a matter of right location on W without changing  
4 the number of lots in the entire development, we were  
5 actually able to save some other substantial trees  
6 that were terrific. So, we just thought in the end,  
7 the environmental improvement by doing that was sort  
8 of winning the day.

9 This did happen late in the proceedings.  
10 There were other things happening right before the ANC  
11 meeting. Discussion with the Friends of White Haven  
12 Park, which were forcing other changes in our  
13 development but did not allow us to go back and make  
14 the appropriate presentation to the W Street  
15 neighbors, which I would have liked to have done.

16 We had many discussions with them, spent  
17 time in their homes, e-mail, called, had them in our  
18 office and so that was something that I regret and I  
19 apologize to them.

20 The other significant change in the  
21 development that you should now about which resulted  
22 from our discussions with Ms. Hardy and a letter that  
23 was written by the Friends of the White Haven Park,  
24 where they were explaining various concerns that they  
25 had, was to take a loop road that used to exist right

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1 against the park out here with a bridge that went over  
2 the wetland, shorten it substantially and turn the  
3 lots that used to be on the north side of that road to  
4 be on the south side of that road.

5 We've also reduced the amount of land that  
6 we were going to sell and develop. This spur at the  
7 edge of the wetland and opening onto White Haven Park,  
8 we've voluntarily, because there's some great trees  
9 there which we're saving, we've voluntarily moved the  
10 property line back so that there's -- that would not  
11 be on, but that, in fact, would be part of an easement  
12 arrangement or a covenant that we would be offering to  
13 the Park Service when the development is done.

14 So, this loop road removes the paved  
15 surface from the edge of the park which was a great  
16 concern for Ms. Hardy who is looking down here. She's  
17 been concerned about light pollution, about looking at  
18 a lot of asphalt and so that was another change that  
19 we made.

20 The other significant change is that we  
21 are going to offer to the Park Service a covenant that  
22 is favoring all the lots that back up to the park  
23 here. The rear yards, 25 feet, so that they can help  
24 control what grows there. We're going to have the  
25 homeowners association make a survey of that area

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1 every six months to make sure no invasive species are  
2 being, you know, planted there or growing there and  
3 controlled with the right kind of herbicides or  
4 products that can used to eradicate those things.

5 I just wanted to see if there are any  
6 other things that were significant there.

7 I think those are really the issues  
8 related there to the development.

9 This is a little bit hard for you to see,  
10 but I'm just going to read through our thrust on tree  
11 preservation.

12 We obviously want to try and preserve the  
13 forest nature of the property. It's existing. We  
14 respect it. It adds value to the property. We're  
15 interested in doing as much as possible.

16 We want to maintain and protect the most  
17 desirable trees on the property, plant a lot of new  
18 indigenous trees. Sixty five of 107 trees that are  
19 being determined by the arborists to be in good  
20 condition are now slated for preservation. So, around  
21 61 percent.

22 There are 356 new native trees of  
23 significant caliber to be planted. More detail on  
24 that later.

25 Over 400 healthy, good indigenous trees

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1 existing and new trees, which is more than the  
2 existing number of healthy trees, will result at the  
3 end of the development.

4 Retention of a certified arborist to  
5 oversee the grading and the construction phases to  
6 insure every effort is exhausted towards preserving  
7 these trees will be part of this development.

8 So, the owners have committed that an  
9 arborist will be through all of the site development  
10 and, you know, the development of these houses. In  
11 our architectural guidelines, that arborist is a  
12 member of the architectural committee.

13 Provisions for theoretical lots that are  
14 being met that are a requirement here. The density of  
15 the development is around 40 percent less than is  
16 allowed. We're not going for the 7,500 square foot  
17 minimum that's allowed. We have bigger lots, as you  
18 know. The maximum 40 percent lot occupancy will  
19 definitely be less than that.

20 Height, setback and lot requirements we  
21 will comply with. The grading of driveways no steeper  
22 than 12 percent. The minimum width of them at seven.

23 Front yard setbacks are 25 feet throughout the  
24 development.

25 Rear yard setbacks are also 25 feet and as

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1 I mentioned, the reapportion is going to be given over  
2 in a covenant where it abuts the parkland.

3 All the dedicated right of ways or the  
4 private roads are at least 25 feet wide.

5 Two entrances are provided into the  
6 development, so no 60 foot diameter or dead end is  
7 required at all.

8 Just to run through some of the  
9 environmental initiatives again.

10 The larger lot size allows us to  
11 accomplish more of the grading naturally between house  
12 platforms by having a larger site, so there's less  
13 impact in the grading.

14 The southern loop that I mentioned that  
15 has been much reduced reduces the amount of asphalt  
16 and saves a number of more valuable trees in that area  
17 and, of course, removes any construction from the  
18 wetland. We originally had a bridge there.

19 Now tree preservation. As I mentioned,  
20 we're saving more trees. These late initiatives saved  
21 about 10 more valuable trees. And all small trees, of  
22 course, that are of value within the wetland and in  
23 the area of big trees, even though they don't appear  
24 on everyone's maps, are clearly going to be saved as  
25 well. We're interested in saving clumps of trees for

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1 character.

2 We tried to be as environmentally  
3 sensitive as we possibly can in this. It is a private  
4 site but we've tried to preserve the most valuable  
5 areas on the site, which are the wetlands and the  
6 opening of the wetland into the parkland really  
7 forever and forever. So, the parkland is essentially  
8 invited into the neighborhood through our offering of  
9 this voluntary sort of green park there. This lawn  
10 below, which would be our storm water management and  
11 then the wetland area and its wide mouth out into the  
12 park.

13 So, we've offer a green swath right  
14 through the heart of the development that connects us  
15 to the parkland. So, essentially, the developed area  
16 is almost like a horseshoe that is surrounded on two  
17 sides at least by green land, by green and this we see  
18 as a great advantage here.

19 When Friends of White Haven wrote their  
20 letter and pointed out their concerns to us, these are  
21 our responses to the main issues they raised as we saw  
22 them.

23 The road was placed immediately adjacent  
24 to he park initially. We revised the road and moved  
25 it from the edge of the park. They were concerned

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1 that the wetlands would be damaged due to the road and  
2 were not going to have the road next to us.

3 The wetlands will be fed by water of the  
4 quality and quantity and velocity unchanged from the  
5 existing. You will hear about storm water management  
6 later, which we've taken very seriously and the whole  
7 point is that the outflow from a storm water  
8 containment and treatment facility is not going to be  
9 beyond that in the thing right now.

10 There was a comment in their letter about  
11 the demise of bird bearing trees. We're going to  
12 every effort to save existing tree canopy that we can.

13 We're adding an enormous number of trees and, of  
14 course, our site is really a fragment of a large  
15 existing tree area in the surrounding parks that  
16 provide plenty of environment for these birds.

17 The conservation easement which requested  
18 and we're offering covenants that are, in fact, more  
19 restrictive of the homeowners, so it's better than the  
20 requested covenant.

21 And, finally, there is a stream that runs  
22 underneath on the east side of the lot under the paper  
23 street, 44th Street. And since we're not increasing  
24 the velocity in the stream in the wetland, we see that  
25 there should be no damage to that.

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1           Quickly, the architectural guidelines that  
2 we have proposed that in your document, the purpose is  
3 really to maintain the feel of the neighborhood to  
4 enhance and preserve the natural features and the  
5 environment. There were many issues that addressed  
6 that, and to insure the quality of both design and  
7 construction.

8           The neighbors immediately adjacent wanted  
9 to be sure this is quality development. It's  
10 absolutely our intention to make sure that that's the  
11 case.

12           It regulates the siting of houses, the  
13 arrangement, the orientation where the front door is,  
14 the alignment of facades, vehicular access, the FAR  
15 and coverage.

16           Environmental protection fencing,  
17 preservation of existing trees and wetlands. We have  
18 a 25 foot rear yard buffers we mentioned before. And  
19 then it also addresses architectural elements such as  
20 exterior materials, walls, roof, windows, exterior  
21 door, lighting and garage orientation.

22           CHAIRPERSON GRIFFIS: And we don't have  
23 those actual guidelines in the record now. Is that  
24 correct?

25           MR. BARNES: I believe they were in a

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1 packet given to you today. Well, there is an outline  
2 -- about a three-page outline of those.

3 CHAIRPERSON GRIFFIS: Was that in the  
4 hand-out of this presentation or no?

5 MR. NETTLER: Yes. I believe

6 CHAIRPERSON GRIFFIS: I believe it's  
7 coming now.

8 MR. NETTLER: It was distributed to you.

9 CHAIRPERSON GRIFFIS: It was already?

10 MR. NETTLER: It's being distributed. I  
11 think it was just --

12 CHAIRPERSON GRIFFIS: Just --

13 MR. NETTLER: Yes.

14 CHAIRPERSON GRIFFIS: Okay. Look at  
15 there.

16 MR. BARNES: There is one more significant  
17 thing I'll just mention about the arrangement of the  
18 houses here in our discussions with the neighbors is  
19 that we are only going to have pedestrian access north  
20 onto W Street out of recognition of the neighbors on  
21 that side having grown used to this green facade that  
22 they faced across the road. All of the lots on W  
23 Street, all the vehicular access, including the last  
24 house that was essentially pushed up from the area on  
25 the east to preserve more tress, this house will have

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1 a dogleg driveway, exclusive and right of way  
2 exclusive in the neighborhood so that all of these  
3 only offer a pathway for pedestrian access to W.

4 So, we're doing everything we can to try  
5 and keep cars off of W, and garages and driveways.

6 CHAIRPERSON GRIFFIS: And there's  
7 sidewalks on the interior street?

8 MR. BARNES: Excuse me. Thank you for  
9 mentioning.

10 We are providing a sidewalk on at least  
11 one side of every interior street, because this is  
12 really a very open pedestrian-friendly neighborhood.  
13 And we hope that our W Street neighbors will  
14 eventually, you know, be part of our neighborhood when  
15 it's built out. They don't have sidewalks now. We  
16 are providing one on the south side of W.

17 So, it will e safe and conducive to people  
18 walking with their kids and dogs and so on.

19 I'm not going to turn it over to my  
20 colleague, Louis Slade to address the issues relating  
21 to the traffic.

22 MR. NETTLER: And before he does that,  
23 I've got two comments. One is, just a correction in  
24 terms of the way in which the covenants were  
25 described.

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1           The covenants are being placed on the  
2 property.   Covenants are not given to the Park  
3 Service.   They are covenants that we've agreed to in  
4 terms of that provide certain restrictions that will  
5 be part of, not just the covenants themselves, but  
6 part of the homeowner's association that would be  
7 placed with restrictions on the property prior to the  
8 first unit ever being transferred.   And those were  
9 provided to you in the documents that you've got.

10           And the second thing is, I obviously  
11 misjudged the time in which our initial and most  
12 important part of the presentation.   We've given the,  
13 I think, the community's interest and certainly your  
14 interest --

15           CHAIRPERSON GRIFFIS:   Right.   Let me make  
16 it clear.

17           I asked you for estimate.   The clock's  
18 going to run.   It's going to flip at zero and then  
19 we'll assess.   If you get close to 60, you got an  
20 additional six minutes of my time on this.   If we get  
21 close to 60, we're going to have reassess just in  
22 terms of that.   But let's not worry too much about  
23 that.

24           MR. NETTLER:   Mr. Slade has been accepted  
25 before here as an expert in traffic.

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1 CHAIRPERSON GRIFFIS: Indeed. And I  
2 don't see any difficulty in doing so again, unless  
3 others have objections. He does his documentation  
4 also as part of the record.

5 Let's move ahead, Mr. Slade as an expert  
6 witness.

7 MR. SLADE: Thank you, Mr. Griffis and  
8 members of the Board.

9 My name is Louis Slade. My firm and I  
10 were members of this team. We worked with Mr. Barnes'  
11 office on the development of the site plan and we did  
12 the traffic impact study in accordance with District  
13 COT guidelines and standards.

14 This has been a very intense traffic  
15 analysis that we did for this project. We initially  
16 met with DDOT. We did an initial study where we  
17 looked at all of the alternatives possible for access  
18 to the site directly onto W as is -- directly onto  
19 Foxhall as is current proposed. Directly onto W alone  
20 and this combination of both W and Foxhall.

21 And in an initial study we determined that  
22 the plan that you're seeing before you produces the  
23 best traffic situation that's possible for this  
24 property and for our neighbors on W Street.

25 DDOT was very involved in that. We met

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1 with the community on one occasion in Mr. Barnes'  
2 office. We went to the ANC a couple of times. DDOT  
3 is in concurrence. And as was mentioned we had a peer  
4 reviewer on this project who is here today. He  
5 objectively reviewed our work. We never met with him.  
6 He simply reviewed our study. Went to the site on  
7 his own, so forth, and I'm not sure if he is  
8 testifying today, but he can confirm that.

9 I want to go right to a summary first of  
10 what we found.

11 This project will generate a relatively  
12 small amount of traffic that it puts onto Foxhall Road  
13 and so the impacts on this section of Foxhall Road are  
14 essentially negligible of the project.

15 What the project does do, which is a  
16 positive effect, is it creates a new means of access  
17 to Foxhall Road for existing W Street. That portion  
18 of W Street that's east of Foxhall Road.

19 And when I look at that site plan that Mr.  
20 Barnes just presented, I think of it as becoming a  
21 single neighborhood, with the homes that are being  
22 proposed today as well as the existing homes, using  
23 the same street network and having really two points  
24 of access. The existing one where W intersects  
25 Foxhall and the new one that is proposed. So, this

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1 will work in this neighborhood.

2 CHAIRPERSON GRIFFIS: Let me see if I  
3 understand that correctly, because I know it's the --  
4 I didn't understand it then and I don't understand it  
5 now.

6 You're saying that residents, current  
7 residents on W Street would actually enter into this  
8 site as another alternative to Foxhall?

9 MR. SLADE: They would certainly be able  
10 to. Yes. They certainly would be able to.

11 CHAIRPERSON GRIFFIS: They would be able  
12 to because it's a private road, but it's not going to  
13 be gated?

14 MR. SLADE: Correct.

15 CHAIRPERSON GRIFFIS: Does it make sense  
16 that they actually would meander through all of that?

17 MR. SLADE: I'm going to provide you with  
18 some evidence why we believe they will prefer to use  
19 it over their existing entrance to Foxhall Road, which  
20 is -- has difficulties.

21 CHAIRPERSON GRIFFIS: Interesting. Okay.

22 MR. SLADE: And if you think about that,  
23 Mr. Griffis, I don't know where you live, but I know  
24 where I live there is many ways into the neighborhood.  
25 I'm sure they were developed in separate segments and,

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1 you know, I prefer to come in a way into my  
2 neighborhood that's safer and gets me more most  
3 efficiently in both safety and time-wise.

4 CHAIRPERSON GRIFFIS: Well, to that,  
5 aren't more alternatives advantageous in terms of  
6 traffic management?

7 MR. SLADE: Yes. Because it disperses the  
8 traffic and provides alternatives.

9 CHAIRPERSON GRIFFIS: So, even on  
10 Foxhall, and your sitting on one north/south road, but  
11 it disburses the traffic as it enters and exits if you  
12 have obviously more streets that connect to it?

13 MR. SLADE: yes.

14 CHAIRPERSON GRIFFIS: But here you've  
15 limited the number of accesses to and from this, but  
16 you're also saying that it might be used by the  
17 adjacent residents to access other areas onto Foxhall?

18 MR. SLADE: Yes. And as in professional  
19 football, if I caught this pass and you pushed me out  
20 of bounds, this time is credited to me, I assume --  
21 the clocked has stopped, is that right?

22 CHAIRPERSON GRIFFIS: I'm the one who is  
23 terribly concerns about time. So, I'll monitor.  
24 Okay.

25 So, all right. Well, just to put it in as

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1 we go through this. I think I have some concern about  
2 limiting all the accesses and egressing -- ingress.

3 MR. SLADE: Well, let me continue one  
4 other point about this.

5 Notwithstanding the fact that it's  
6 desirable to have two points of access into a  
7 residential area, for life safety reasons, if there's  
8 a car crash and there's burning vehicles blocking one  
9 point of access, it's good to have another point of  
10 access. So, that was, of course, one of the reasons  
11 why was have created a site plan with two points of  
12 access.

13 CHAIRPERSON GRIFFIS: Sure. I was say  
14 minimum two.

15 MR. SLADE: Which, of course, it works for  
16 existing W Street as well.

17 These photographs that were projected here  
18 show you a little bit of existing conditions.

19 Right here it says, traffic looking north.  
20 We are at the frontage of the site looking toward W  
21 Street and this is a portion of Foxhall road that's  
22 plunging down the hillside fairly steeply in the upper  
23 part of the photo.

24 W Street is right in here. There's  
25 actually a street sign and I can't quite see it. I

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1 don't now if you can. It says W Street right there.  
2 So, W Street is in that little corner. You can see  
3 Foxhall is curving away to the left and it's widening  
4 out as you approach the Field School entrance, which  
5 is just up the hill at this point. So, we're standing  
6 at the entrance looking north.

7 This is at W Street. This is W Street  
8 right here. The lower right-hand corner of this photo  
9 looking north and there's that curve and that steep  
10 hillside.

11 Here we are looking south. I'll go to  
12 this photo first. This is the frontage of the Field  
13 School and we're looking south. This is traffic  
14 heading northbound on Foxhall Road. I wanted to show  
15 this one just because it shows the sidewalk.

16 There's a pedestrian safety issue along  
17 Foxhall Road because the sidewalks aren't continuous.

18 I don't think Mr. Barnes mentioned that the sidewalk  
19 would be developed across the frontage on Foxhall Road  
20 and would pick up this sidewalk. There would be a gap  
21 at the end of this sidewalk before you get down to W,  
22 but we pick it up and carry it further south.

23 CHAIRPERSON GRIFFIS: So that required  
24 sidewalk a policy of the previous order would actually  
25 connect to something?

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1 MR. SLADE: Begin to. I'm not sure it  
2 gets us all the way because there's --

3 CHAIRPERSON GRIFFIS: Okay. So, part of  
4 it --

5 MR. SLADE: -- individual homes --

6 CHAIRPERSON GRIFFIS: Part of the  
7 proposed development would not necessarily bring a  
8 sidewalk up off the -- well, it's on public property,  
9 but it wouldn't connect all the way up to this area?

10 MR. SLADE: Correct.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. SLADE: There would be short gaps.  
13 Relatively short gaps.

14 CHAIRPERSON GRIFFIS: That's going south  
15 in the middle of the street and then back to the  
16 sidewalk. Okay.

17 MR. SLADE: I'm standing here taking  
18 standing at approximately where the entrance on  
19 Foxhall will be into Dunmarlin looking south. This is  
20 the location of the White Haven Parkway signalized  
21 intersection with Foxhall Road.

22 And looking southward here, you can see  
23 that the site distance. You can see a great distance  
24 looking down Foxhall Road, which you cannot see when  
25 you're --as you go further up the more curved and

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1 steeper portions of Foxhall Road where W is located.

2 MR. MANN: And where is Ms. Hardy's house  
3 on that, if it is?

4 MR. SLADE: This is Ms. Hardy's driveway  
5 right there.

6 MR. MANN: All right. Thank you.

7 MR. SLADE: This is on W Street. This is  
8 the approach to Foxhall Road on the eastern portion of  
9 W Street. It's a single lane to the stop sign where  
10 you stop and then you got to look down that portion,  
11 but especially up that curve portion to your right.

12 So, this is -- one of the issues here is  
13 the safety of being able to get out onto Foxhall Road  
14 from W Street directly.

15 Now, we've summarized the findings of the  
16 report in these graphics. I can go through this  
17 rather quickly.

18 This summarizes existing conditions.  
19 There's the traffic signal at the Field School and a  
20 traffic signal at White Haven Parkway. There are stop  
21 signs on W Street for the approach onto Foxhall Road.  
22 You can see the curve beginning to the left here.  
23 This is the steeper section.

24 Dunmarlin is in this location. There is  
25 Was it is today with the cul de sac on Foxboro Place.

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1           What our traffic analysis of existing  
2 conditions found that the delays at the signals at  
3 Field School and at White Haven are within a very  
4 acceptable range, good levels of service. But delays  
5 at W Street are significant for W Street traffic  
6 trying to get out on Foxhall Road. This is during the  
7 morning and afternoon peak periods. And it's very  
8 difficult to get onto Foxhall because there is a lot  
9 of traffic moving up and down Foxhall and it's moving  
10 at a speed exceeding the speed limit and the site  
11 distance is very limited. So, you have to sit there  
12 and wait for what looks like an acceptable and safe  
13 gap and turn out into a dangerous condition.

14           This is intended to display what the  
15 matter of right situation would be without Dunmarlin,  
16 if a dozen or more homes were built along here.

17           When we did this study, the number of  
18 homes that we assume could be on these fronting two  
19 street with driveways directly onto W and driveways  
20 directly onto Foxhall, there's a dozen. I think that  
21 number is now 13? Is that correct?

22           And if that were the case, then traffic  
23 conditions would get worse at W because we would be  
24 adding cars that were coming out. And every car has a  
25 significant delay effect on the residents that are

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1 already there, because if someone is turning left, you  
2 can't turn right because they're in the way, because  
3 it's a single lane out there. The one who is turning  
4 left is waiting for a long period of time. And the  
5 delay gets longer and longer, even though the amount  
6 of traffic is a very -- a very small amount but the  
7 delays can be excessive.

8 The advantage of Dunmarlin is that, we've  
9 talked about this already a little bit. It provides a  
10 second point, so even for the residents on W Street  
11 who would backtrack a little bit to come out here, it  
12 would find site distances to be greater. They can see  
13 further up and down the road, so they can make the  
14 decision when they have a safe gap to turn out more  
15 safely.

16 They are not facing another street across  
17 the way as they are today. When that safe gap arrives  
18 today at W Street, you have to compete with the person  
19 who is across the street from you. And if he's  
20 turning right and you want to turn left, he'll beat  
21 you into that gap and you got a wait. Whereas, here  
22 you don't have that competition.

23 We're closer to this signal. This signal  
24 does create gaps in the traffic stream and while as  
25 the traffic moves up the hill from White Haven, it

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1 turns left and goes up a hill and kind of spreads out  
2 and the gaps disappear. When we're closer, that  
3 spreading effect is not as pronounced.

4 So, for a number of reasons, this will be  
5 a more attractive place to get out onto Foxhall Road  
6 for all the homes that can use it on the east side of  
7 the street.

8 And I'll just repeat our findings of our  
9 studies that DDOT concurred with that the impact on  
10 traffic conditions on Foxhall itself of these  
11 additional homes and the traffic they generate, is  
12 negligible but the effect of having a second point of  
13 access in creating this little piece of street  
14 network, is beneficial.

15 Thank you.

16 CHAIRPERSON GRIFFIS: Thank you very  
17 much.

18 Do you have a question?

19 VICE CHAIR MILLER: Yes. I do have a  
20 question.

21 I'm not sure if I remember correctly, but  
22 I think that initially there was another street that  
23 exited out of the development to Foxhall. Is that  
24 correct? To W Street?

25 MR. SLADE: To W Street.

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1 VICE CHAIR MILLER: And that was  
2 eliminated in response to the wishes of some parts of  
3 the community. Is that correct?

4 MR. SLADE: Yes.

5 VICE CHAIR MILLER: Can you just explain  
6 briefly that this is the better plan or the previous  
7 one was better or what is that about?

8 MR. SLADE: As Mr. Barnes indicated, that  
9 connection finished a portion of the looping of the  
10 interior streets from a plan design standpoint. From  
11 a traffic standpoint it wasn't necessarily. It wasn't  
12 undesirable, but it wasn't necessary.

13 VICE CHAIR MILLER: Okay. And my other  
14 question.

15 Mr. Barnes raised it, but I'm sure you can  
16 answer it. He was talking about having one sidewalk  
17 for every street in the development and I'm just  
18 curious. How do you decide whether you should have a  
19 sidewalk on one side of the street or on both sides of  
20 the street?

21 MR. SLADE: I think Mr. Barnes should  
22 answer that.

23 VICE CHAIR MILLER: Okay.

24 MR. SLADE: I mean, it has more to do with  
25 the grading issues on a steep site than really

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1 providing for pedestrian traffic.

2 VICE CHAIR MILLER: So, it wasn't -- you  
3 don't see a pedestrian safety concern with respect to  
4 that issue?

5 MR. SLADE: Well, the traffic lines within  
6 Dunmarlin are very, very low and moving at slow speeds  
7 because of the curved linear streets and so forth.  
8 So, no. I don't see a traffic safety issue. I do not  
9 see it.

10 VICE CHAIR MILLER: Thank you.

11 CHAIRPERSON GRIFFIS: Is there an  
12 anticipated parking lane in this development that you  
13 studied?

14 MR. SLADE: Well, each house, of course,  
15 will have its own driveway.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. SLADE: The street will be 22 feet  
18 wide. That would permit enough width for parking on  
19 the curb on one side or the other. I think most  
20 people will park in their driveways.

21 CHAIRPERSON GRIFFIS: 22 feet for parking  
22 land and two-way traffic?

23 MR. SLADE: Yes.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. NETTLER: Excuse me, Mr. Slade.

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1           Some of the interior roadways are even  
2 wider than that, aren't they?

3           MR. SLADE: Yes. As you get closer to the  
4 exit points, they will be wider.

5           MR. NETTLER: Do you know the width of the  
6 one that has the island that goes down the middle of  
7 it? No. All right.

8           MR. SLADE: I'm hearing from -- that it's  
9 16 feet on either side of the island, so two 16 foot  
10 roadways on either side of the median island.

11          CHAIRPERSON GRIFFIS: Okay. That's the  
12 widest portion of that section. Is that right?

13          MR. SLADE: Yes.

14          CHAIRPERSON GRIFFIS: Those are one way,  
15 I imagine as it splits the island.

16          MR. SLADE: Correct.

17          CHAIRPERSON GRIFFIS: Okay. I still don't  
18 get your math on it. Two-way street, 22 feet and a  
19 park lane. How much your drive line? Eight feet?

20          MR. SLADE: The street will be -- the  
21 paved parkway will be 22 feet. If a car is parked  
22 there, you'll pass that automobile. If there's an  
23 automobile approaching you, you'll wait and allow him  
24 to pass and then you'll pass that parked automobile.

25          CHAIRPERSON GRIFFIS: Thank you. Okay.

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1 There it is.

2 MR. NETTLER: The widths of the interior  
3 streets are what are provided for in the zoning  
4 regulations. It was intended that before a fire  
5 vehicle was adopted into the rationale, behind them  
6 was fire vehicles and for other purposes, you wanted  
7 to try to replicate as best as possible residential  
8 street. And so you've got a 25-foot right of way of  
9 which 22 feet is the width of the street.

10 There used to be prior to the adoption of  
11 the theoretical subdivision regulations, I believe,  
12 they were generally around 18 feet.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. NETTLER: So, they were increased in  
15 width.

16 CHAIRPERSON GRIFFIS: Right. Yes. I  
17 understand. I'm not -- I'm just trying to get fuller  
18 understanding of how it's going to be actually  
19 utilized in the program. I have firmly in my mind  
20 that these are private street. And also it's an  
21 interesting point that you bring up in the zoning  
22 regulations in terms of the amount of right of way  
23 openings. Where frankly speaking, in your submission  
24 you've already indicated that you're going to bring it  
25 up to D.C. street standards, with all those

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1 implications.

2 MR. NETTLER: Right.

3 CHAIRPERSON GRIFFIS: Because we wouldn't  
4 normally be going through to issue what are the  
5 standards for streets, because obviously it's in the  
6 public right of way. I was just interested in terms  
7 of now we're talking about the circulation of adjacent  
8 properties through this site that may access Foxhall  
9 and just trying to get a picture.

10 You have driveways that are actually  
11 cutting into those and that's fine. Are there  
12 anticipated parking on the street and then with that  
13 somehow -- well, it's a traffic counting device  
14 obviously if you have to slow down to pass by someone.

15 So, I'm just wondering what the actual circulation  
16 pattern would be. Okay.

17 So, that's enough said. Let's move ahead.

18 Maybe not enough said.

19 Yes?

20 VICE CHAIR MILLER: I was just wondering  
21 if Mr. Barnes would like to come up and answer my  
22 question about the sidewalks, why they are only on one  
23 side of the street?

24 MR. BARNES: Sure. We're trying to  
25 provide the right amount of paved streets for the safe

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1 passage of cars on a parked vehicle and then having  
2 sidewalks on the one side will certainly, we think,  
3 address the need for sidewalks adequately without  
4 having to have them on both sides. It's more paving.

5 It creates more run off. It complicates the storm  
6 water management and so on. And we have cited these  
7 sidewalks on the sides of the street where they make  
8 the most sense in terms of pedestrian safety to cross  
9 over to get to the little public park or south of the  
10 W Street houses where we have all the driveways on the  
11 north side of our road, this sidewalk is on the south  
12 side, so that you're crossing hardly any driveways.  
13 Again, just trying to address the safety issue.

14 VICE CHAIR MILLER: Thank you.

15 MR. NETTLER: Our next witness is Mr.  
16 Pitchford, who actually has been before you recently  
17 and accepted as an expert -- an arborist. And his  
18 resume is also a part of your record.

19 CHAIRPERSON GRIFFIS: When did we see you  
20 last? Knollwood. All right. Some of have good  
21 memories. Okay.

22 MR. PITCHFORD: Thank you very much.

23 My name is Keith Pitchford, 2213 40th  
24 Place, NW, Washington, D.C.

25 I was brought onto this project in

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1 November to help with the tree protection efforts on  
2 this site. I did a survey of the trees at that time.

3 Before me, two other surveys had been done by other  
4 foresters or other arborists and they have assembled a  
5 list of what they called specimen preservation  
6 candidate trees of which there were 107 in total on  
7 the site.

8 At that time, they had come up with a  
9 number somewhere I think it was 55 or 60 trees to be  
10 preserved. I did a rather exhaustive survey of their  
11 trees. I kicked a few of them out and added a few  
12 others and now we're up to about 65 trees as Mr.  
13 Barnes mentioned earlier.

14 It is a wonderful site for trees. There's  
15 really two major areas of big trees on the site. On  
16 the eastern part of the site and also on the southern  
17 part of the site and I'm sure most people that live in  
18 the area of this property know that these are very  
19 nice trees. They are large. They are in what I would  
20 call the sub-climax or climax stage or forest  
21 succession. They're really near the end of the life  
22 of the forest, but still have a lot of life in them.  
23 But it's a site that's characterized by large diameter  
24 trees, generally big spacing between the trees and  
25 some regeneration between them and this is some

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1 pictures of a few of the specimens that we picked out.

2 It's hard to see, but the specimens have orange  
3 ribbons around them. And this is from -- these two  
4 photos are from the eastern side of the property.

5 And when I went into this side, I really  
6 looked at it from a stance of tree protection and  
7 there really are two zones that I look at. And it's  
8 really fairly methodological approval that I take  
9 during tree protection. It's certainly not haphazard  
10 or arbitrary. I look at trees that are going to be  
11 candidates for long-term survival on the property.

12 I have to calculate two distinct zones  
13 around each tree. And it's very important to  
14 calculate that, because it goes into the site  
15 planning. One is what I call the minimum clearance  
16 zone and that is a zone that's equal to half a foot  
17 away from the tree, on all sides for every inch of  
18 tree diameter. So, if you have a 20-inch diameter  
19 tree, you're looking at a ten-foot limit around the  
20 tree that you really do not want to encroach on at  
21 all, because that's where you have the big scaffold  
22 roots that keep the tree upright and you have the big  
23 woody roots from which the feeder roots emanate.

24 It's really the heart of the tree and you  
25 really can't get inside that.

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1           Outside of that, there's another zone that  
2 we call the critical root zone, which encompasses the  
3 feeder roots that are important for feeding the tree  
4 with water and nutrients and so forth. But the  
5 difference is that critical root zone has a little bit  
6 of flexibility. It is not always a perfect circle  
7 around the tree like these minimum clearance zones  
8 are. And that's important, because when you're trying  
9 to houses in around these large trees, you really have  
10 to keep the foot print out of that minimum clearance  
11 zone, but you can work a little bit with the critical  
12 root zone, because we know that roots go two to three  
13 times beyond the drip line of the tree. It's quite a  
14 large area.

15           So, as long as you can maintain that  
16 critical root zone in some shape, and keep that volume  
17 of critical root zone, then we know we can keep the  
18 tree with a strong sense of certainty.

19           So, that's what I've done. I've worked  
20 with Mr. Barnes and his staff on manipulating the site  
21 plan a little bit as was mentioned earlier. We moved  
22 a few lot lines to collect a few more of these minimum  
23 clearance zones and I think we've done a really,  
24 really good job of integrating these big trees into  
25 the site.

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1           Okay. This is a picture of one of the big  
2 trees that actually was included in the first go  
3 around. I kicked it out because of the large defect  
4 that you see down the side of it. It's a nice big  
5 black oak, but unfortunately it looks like it was hit  
6 by lightening some years ago. I has a big scar.  
7 Chances are it's probably got a large area of decay  
8 inside, probably some trunk rot working in that tree.  
9 It's just not a good candidate, even though it's a  
10 big tree.

11           And that's sort of the unfortunate part of  
12 these mature stands is that you will get these big  
13 trees that might look pretty good, but they do have  
14 structural defects and you don't want to put a house  
15 next to a tree like that with a big structural defect.

16           So, I do eliminate those. It's unfortunate, but it  
17 happens.

18           This is a map that is showing you the  
19 minimum clearing zones for all these trees. Now take  
20 -- remember that the critical root zone is going to be  
21 larger than these circles and the critical root zone  
22 is going to have a different shape. It is not as I  
23 said, always a perfect circle. I can work it around a  
24 building, but the really important is that these are  
25 the minimum clearance zones from these zones on these

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1 lots. And as you can see, there are spaces on each  
2 one of these squares where they've defined a lot to  
3 put a house without getting into these minimum  
4 clearance zones.

5 And that's what's critical. As you can  
6 see at the top of the map there on the right, where  
7 you have that row of circles, it looks like little  
8 bubbles up there on the top at A29, it looks like. We  
9 moved that lot line to go right down the middle of  
10 those trees, so that we could get clearance from all  
11 those minimum clearance zones.

12 I hope that's making sense to you. But  
13 there is a methodology to this and that's why I want  
14 to talk about it.

15 The other thing that's important is I've  
16 been focusing on groupings of trees. As you can see a  
17 lot of these preservation candidates are in groups,  
18 which is real nice because I can often times save more  
19 trees with the same critical root zone. I can get two  
20 or three tree saved in the same critical root zone as  
21 I would with one big tree. So, I get the advantage of  
22 getting more trees in the same protection effort.

23 I also get more advantage as far as soil  
24 chemistry. It's better for reducing soil erosion,  
25 better of wildlife. A lot of advantages to collecting

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1 these trees.

2 And also during the grading process, it's  
3 easier for me to protect these groups of trees during  
4 the grading process, because we'll put fencing around  
5 these groupings and keep the big machinery out. And  
6 then if there's fine grading that takes place inside  
7 that, it will be with much small equipment under my  
8 supervision and that's how we make this work.

9 This is a project that I did up in  
10 Annapolis recently. We actually won an award from the  
11 Historical Commission on this preservation effort, but  
12 it was two trees. A big willow oak and a Norway  
13 spruce but it's not in this photo. But there were a  
14 number of houses around this tree and the BB&T Bank  
15 bought it and it's made a branch bank out of it. And  
16 they wanted to keep these two big trees. So, you can  
17 see the tree production fencing around that big tree  
18 at the top and all the activity that's going on around  
19 it.

20 And then at the bottom is the finished  
21 product with that tree looking very nice. But the  
22 important thing is right here, this pavement here, is  
23 actually a permeable pavement. It's an interlocking  
24 permeable paver that I bridged over the root system so  
25 that we could integrate the parking lot and maintain

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1 the root system. So, there's a slight rise in this  
2 level right there of about eight or ten inches where  
3 the road goes over the root system. And that's a big,  
4 big part of this tree protection effort. And will be  
5 a part of this effort on the Dunmarlin project as  
6 well.

7 Here is some of the guidelines that we've  
8 been working up. It is very important to put  
9 guidelines out there for the community to designate  
10 tree protection measures and landscaping measures that  
11 we are using to maintain the trees and maintain the  
12 natural character of the site. I talked a little bit  
13 about them.

14 Just pick out a few of them here.

15 We had some plant lists that we'll talk  
16 here in a second that will be avoiding any kind of  
17 invasive, exotic and basic materials that could get  
18 into the surrounding parks. I know that's very  
19 important to the Park Service.

20 I'll be working with the Park Service  
21 horticulturist to refine the list, if they feel I've  
22 missed some plants from my list. But it is very  
23 important to get these guidelines out there.

24 I've worked with other communities in the  
25 D.C. areas that have similar kind of guidelines and

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1 they do work quite well.

2 Here are some of the prohibitive plants  
3 that we're going to eliminate. Some that you probably  
4 know of in the landscape that we have found over time  
5 that are not naturalized. They are getting out of  
6 the, you know, their normal habitat and getting into  
7 rock Creek Park and particularly Norway Maple, Lampus,  
8 the Tree of Heaven, Sycamore Maple, Polonia, Silver  
9 Maple. A bunch of them.

10 Shrubs. The Burning Bush, unfortunately,  
11 that nice bright red -- now you want them as scrub.  
12 It is very invasive. I would not be recommending  
13 that. One I don't have on here is Rose of Sharon.  
14 Hibiscus, which is also fairly invasive.

15 But as I said, I will working with the  
16 Park Service to refine this. But certain we do not  
17 want to encourage plants or shrubs or vines or ground  
18 covers like English Ivy, which you'll see in second is  
19 just unfortunately very, very invasive in our  
20 landscape.

21 These are some of the vines that are  
22 existing in the center of this site. Most of the nice  
23 trees are around the perimeter of the site and that's  
24 because this land was open in the center. I'm sure  
25 for the Phillips Estate landscape. But over time

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1 these invasive vines, Porcelain Berry, Bittersweet and  
2 Multiple Rose have moved in and it's really suffocated  
3 any new tree regeneration in the middle of that site.

4 And you can in the bottom, the English Ivy is  
5 climbing up some of these big trees. That will have  
6 to be cut out because it does smother the foliage and  
7 can kill the trees.

8 So, we are very, very concerned about  
9 invasive vines and actually the interior development  
10 of the site will remove a lot of the source of this  
11 invasive material that is a problem to the Park. So,  
12 there is a big positive on that end.

13 And these are just some of the evergreens  
14 that I would like to see plants. I like to get away  
15 from the tried and true stuff and integrate some other  
16 trees that I know that are very good in this  
17 landscape. They might not be as widely used, but will  
18 be very elegant.

19 Norway Spruce is used quite a bit. The  
20 California Incense Cedar is a nice tree around here.  
21 Not used quite that much. The Fall Cyprus,  
22 Cryptomeria we use quite a bit. There's some nice  
23 cultivars of that.

24 Oriental Spruce, the Pycia Orientalis is a  
25 very nice tree. Just a lot of good evergreens that we

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1 could integrate into the site that are not invasive,  
2 but naturalized.

3 And here are some of the shade trees. The  
4 Sugar Maples obviously, the European Beech is  
5 wonderful, Tulip Poplars, Kentucky Coffee Tree. Sour  
6 Wood, a beautiful tree. Scarlet Oak, which by the way  
7 is the D.C. State tree.

8 But anyways there's a little pallet of  
9 some of the trees we'll recommend.

10 And finally here just some of the small  
11 trees. The Sweet Bay Magnolia, two of which -- they  
12 are onsite right now. Beautiful trees, but we'd like  
13 to see more of those. Some of the Service Berry, the  
14 Witch Hazel, which is really nice. This Tea Crab, a  
15 nice one. A French tree. So, a lot of nice flowering  
16 trees that will show year round interest, not  
17 invasive, low maintenance, very nice trees. And  
18 that's the kind of thing we would be including in the  
19 planting guidelines.

20 And I think that's it for me.

21 CHAIRPERSON GRIFFIS: Thank you.

22 I have just one quick clarification  
23 question.

24 You're using the terminology invasive and  
25 naturalized and all that stuff. Are you talking about

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1 the impact on the park in terms of invasiveness of  
2 what's in the park or can you just quickly define  
3 those terms?

4 MR. PITCHFORD: Well, there's both what  
5 are called exotics and native invasive. Greenbrier is  
6 actually a native vine, but it is rather invasive. It  
7 spreads very rapidly. Birds and so forth spread it  
8 and it takes over. And the problem is that it  
9 smothers the other plants on the site, whether it's  
10 ground covers or small trees, in particular. And it's  
11 just very hard to control. It just gets out of its--

12 CHAIRPERSON GRIFFIS: How invasive is  
13 this species of plants that have successful.

14 MR. PITCHFORD: Migrates. It migrates.

15 CHAIRPERSON GRIFFIS: It migrates. In  
16 five years it may take over everything and --

17 MR. PITCHFORD: That's right. The Park  
18 Service, I've worked with the Park Service. I've  
19 worked with Sue Salmons over there and talked to her  
20 about projects that I have on invasive plant  
21 management. And I know it's a big, big project for  
22 the Park Service and I'm, very aware of the plants  
23 that cause problems for the parks.

24 CHAIRPERSON GRIFFIS: Okay. And so  
25 naturalized, they're more friendly species. They

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1 like --

2 MR. PITCHFORD: Native or naturalized.  
3 Naturalized means they didn't grow up here in the  
4 States. They came in, but they didn't get out of  
5 control.

6 CHAIRPERSON GRIFFIS: I see. Excellent.  
7 Okay.

8 MR. PITCHFORD: Okay. Thank you.  
9 Who do we have left?

10 MR. NETTLER: Yes. Our last witness is  
11 Frank Lin who will talk about storm water management  
12 and grading issues and you have his C.V. as well.  
13 He's with Greenhorne O'Mara. We'd also pose him as an  
14 expert in engineering.

15 MR. LIN: Good afternoon, Mr. Chairman and  
16 members of the Board.

17 I'm Frank Lin with Greenhorne O'Mara at  
18 9001 -- Road, Greenbelt 20770.

19 I'd like to talk about storm water  
20 management that we had previously to you provided  
21 storm water proposal is in accordance with the D.C.  
22 Government guidelines. And on top of that, we'd like  
23 to propose some water quality -- the water quality  
24 will be better than before.

25 We tried to use to provide the rain garden

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1 on each lot for the great extent that the terrain  
2 permits, so the water quality will be better. And  
3 also I would like to take this opportunity to respond  
4 to the issue that was -- that has not been addressed  
5 before.

6 Okay. That is regarding the drainage  
7 problem on Foxhall Road that Mrs. Hardy has raise up.

8 We will divert the water to a storm drain system that  
9 is on White Haven Parkway. That is to the southwest  
10 corner from our site. And it's --

11 And also we have done a couple of few  
12 visits and it was downstream of our property and it's  
13 going to be very close to a failure. So, we will  
14 study and provide proposal to improve this problem.

15 That is here.

16 And also we will offer -- study for the  
17 dumpster area from outside to compress with the  
18 midstream at the L4 and come up with a proposal  
19 regarding -- to prevent further erosion.

20 And also on the 44th Street, that's an  
21 existing center sewer line. Somebody said it was  
22 leaking. So, we have sent a crew out there to do --  
23 the existing center sewer line and send it to us for  
24 confirmation. If there's a leak, then WASA would  
25 repair it. So, there be no more leak to the river.

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1 CHAIRPERSON GRIFFIS: Within 12 years?

2 MR. LIN: No. -- has been done.

3 CHAIRPERSON GRIFFIS: Oh, okay.

4 MR. LIN: And most times the tech can't  
5 review it.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. LIN: There's one more issue about the  
8 road has been paved on the W Street. Storm placed  
9 there. Somebody be question about like the storm-  
10 water management has not been provided. So, will do  
11 the investigation on that and provide to D.C. DOT so  
12 we can come up with that to solve this problem.

13 MR. NETTLER: These are existing problems.  
14 Correct? That we're --

15 MR. LIN: That's issues. Not the  
16 problems.

17 MR. NETTLER: With regard to the site,  
18 however, you want to explain the two methods of storm-  
19 water management that we're proposing for the site?

20 MR. LIN: Okay. The storm management we  
21 have to talk about one of water quantity and one of  
22 water quality.

23 Water quality the premise engineer has  
24 provide underground -- structure to the water quality.

25 But on top of that, we would like to promote using

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1 rain garden on each lot if terrain permit. So, that  
2 way you can have infiltration to the system and it  
3 provide better quality for the roof top area and the  
4 driveway.

5 For the rural area, you will be going into  
6 the center of the structure for water quality control.

7 And also if the terrain does not provide enough space  
8 for that, then a base saver system will provide the  
9 same water quality control.

10 For the quality control, we will provide  
11 the same system that has been used in this Field  
12 School is regarding underground oversize pipe storage  
13 to attenuate -- out to -- storm and back to a two year  
14 pre-development storm. So, the erosion -- there  
15 shouldn't be anymore erosion than it has before.

16 Okay. Next I want to talk about the  
17 grading. The roads that we had designed, this one  
18 will be no more than 12 percent and we will work  
19 around and this encounter and also the architect will  
20 provide the building design to work with the existing  
21 terrain. So, that way we can minimize the impact and  
22 the balance of the current view -- earth work.

23 MR. NETTLER: You want to explain what  
24 this slide represents?

25 MR. LIN: This slide, it is the layout for

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1 storm water, center sewer and also the water line.  
2 Okay. We have talked to WASA regarding the water  
3 supply for this development. The only thing we can  
4 connect to is this existing -- line over here. And  
5 that has been looked. So, we provide a water line cut  
6 into the existing -- line.

7 And meanwhile, earlier we talk about the  
8 water leak because of prior demolition. We have  
9 talked to WASA and the WASA has decided this is the  
10 landowners responsibility. So we will take this time  
11 to correct this problem so there will be no more water  
12 leak over here.

13 And regarding the -- sewer, there's an  
14 existing 10 inch center sewer that I have mentioned  
15 before only previous proposals there was two  
16 connections into the 10 inch center sewer. We have  
17 modified that to have only one connection to the  
18 existing center sewer. And we will be obliged to  
19 avoid disturbing more trees.

20 MR. NETTLER: Thank you.

21 That concludes that presentation. Thank  
22 you.

23 CHAIRPERSON GRIFFIS: Good. Thank you.  
24 Let's start -- yes, sir?

25 OFFICER McELWEE: Excuse me, Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: There's an officer  
2 with him. You're going to have to come up and be on a  
3 microphone if you don't mind.

4 I'm sorry to interrupt you. I'm Officer  
5 McElwee. Second District. At the request of Mr.  
6 Larson, we were asked to conduct a traffic survey  
7 along Foxhall Road. And I have some brief testimony.

8 I was wondering if I could offer it due to the fact  
9 that I have to attend another group proceeding at 4:00  
10 p.m.

11 CHAIRPERSON GRIFFIS: Another group. I  
12 actually wanted you out in the street. Okay.

13 Mr. Nettler, any difficulty with that?

14 MR. NETTLER: No. I think actually -- I  
15 think it's actually already part of the record. At  
16 least, I saw it -- thought that it was, but that's  
17 fine.

18 CHAIRPERSON GRIFFIS: Right. The radar  
19 gun report --

20 OFFICER McELWEE: Yes.

21 CHAIRPERSON GRIFFIS: -- where you caught  
22 all those suburbanites?

23 OFFICER McELWEE: Yes, sir.

24 CHAIRPERSON GRIFFIS: Okay. I saw that.

25 Okay.

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1 I think it's no problems any of the  
2 parties in opposition object.

3 Let's do this now. I'm going to take  
4 Board questions and then we're going to take a quick  
5 break and then we'll do cross examination of all the  
6 witnesses.

7 Okay.

8 OFFICER McELWEE: All right.

9 Good afternoon, Chairman Griffis and  
10 members of the Board of the Zoning Adjustment.

11 My name is Anthony McElwee and I'm  
12 assigned as a traffic officer at the second district  
13 of the Metropolitan Police Department.

14 At the beginning of January 2005, I was  
15 assigned by my lieutenant to conduct a traffic study  
16 along the 2100 block of Foxhall Road. I have spent  
17 time observing and enforcing speeds along Foxhall Road  
18 in the 2100 block over the past several months.

19 Through the survey that I conducted, the  
20 average speed there I found to be 30 to 35 miles per  
21 hours, depending on the volume of traffic. The speed  
22 limit is clearly marked 25 miles per hour and the area  
23 between is two school zones that are a quarter of a  
24 mile apart.

25 I specifically posted along the 2100 block

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1 of Foxhall Road during morning rush hours between 7:30  
2 and 8:30 a.m. on January 7, 2005, as well as the  
3 evening rush hour between 5:30 and 6:30 p.m. on  
4 January 10th, 2005. This location is at the proposed  
5 new access road into the Dunmarlin Development. You  
6 will find my reports for dates attached to the letter  
7 in your file, which was submitted by Lieutenant Genie  
8 Sullivan. However, the average violator that I issued  
9 the tickets to who were stopped, the average speed was  
10 41 miles per hour for violators.

11 It is my opinion due to the heavy volume  
12 of traffic combined with pedestrian traffic, that  
13 makes Foxhall Road more dangerous than other roads in  
14 the area. The road itself in the 2100 block of  
15 Foxhall Road is much narrower due to fact there is no  
16 shoulder in this area of the roadway. This area is  
17 prone to accidents.

18 It should be noted that on January 13,  
19 2005, while conducting this survey, there were two  
20 separate motor vehicle accidents that occurred when I  
21 was in this area within 41 minutes of each other. One  
22 of these was a head-on collision directly in front of  
23 the proposed new entrance to the Dunmarlin  
24 Development. This involved injuries and also it  
25 involved an arrest of the subject that was under the

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1 influence of a controlled substance or alcohol.

2 That's all that I have.

3 CHAIRPERSON GRIFFIS: Good. Thank you  
4 very much. We appreciate you spending the time with  
5 this this afternoon.

6 Do we have any Board questions?

7 Ms. Miller?

8 VICE CHAIR MILLER: I'm just wondering  
9 before you go if you have any recommendations that you  
10 wanted us to consider in the context of this  
11 development as far as traffic?

12 OFFICER McELWEE: My only recommendation  
13 would be, as I said, there is a heavy volume of  
14 traffic during rush hour, morning and in the P.M. And  
15 I think my recommendation through my opinion would be  
16 that a traffic light at the entrance to Dunmarlin  
17 right there at Foxhall Road would be appropriate.

18 I know there's two other traffic lights,  
19 however, this would be a traffic light that could be  
20 set off as a vehicle approached it. It trips a  
21 recorder that activates the lights. So, if there's no  
22 traffic coming out, the light will stay green.

23 CHAIRPERSON GRIFFIS: I see. So, an on  
24 demand signal.

25 OFFICER McELWEE: Yes.

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1 CHAIRPERSON GRIFFIS: Ingress and egress  
2 from the development.

3 Good. Thank you. Any other more  
4 questions?

5 VICE CHAIR MILLER: I was just wondering  
6 as a follow up if you had raised that with DDOT?

7 OFFICER McELWEE: No. I have not.

8 VICE CHAIR MILLER: Okay. Thank you.

9 CHAIRPERSON GRIFFIS: Anybody else here?  
10 Oh, before you go, Mr. Etherly, any cross  
11 examination?

12 MEMBER ETHERLY: No.

13 CHAIRPERSON GRIFFIS: The ANC have any  
14 cross to the officer? Parties certain -- yes.  
15 Residents?

16 Just to be absolutely clear, anything  
17 stated in this room has to be on a microphone. So,  
18 you got to come up and make yourself comfortable.  
19 Everything takes a little bit more time. But this way  
20 it all is official.

21 MS. BRADY: We just wondered why the  
22 traffic -- the rush hours were selected from 7:30 to  
23 8:30 and 5:30 to 6:30, because we find that the rush  
24 is --

25 CHAIRPERSON GRIFFIS: Okay. That's the

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1 question, rather than a statement.

2 Yes. Why did you select those times?

3 MS. BRADY: Thank you.

4 OFFICER McELWEE: That was what my  
5 lieutenant asked me to be out there during those  
6 times. I believe it came down through Mr. Joel Larson  
7 through that survey.

8 CHAIRPERSON GRIFFIS: Okay.

9 OFFICER McELWEE: That was what --

10 CHAIRPERSON GRIFFIS: That wasn't the  
11 lieutenant's problems, it was Mr. Larson's fault.  
12 Okay.

13 OFFICER McELWEE: But I was also out there  
14 during other periods of the time.

15 MS. BRADY: Did you notice if the traffic  
16 continued heavy beyond these hours that you were --the  
17 stated hours?

18 OFFICER McELWEE: Yes. No doubt there is  
19 -- there's heavy periods of traffic. There's also a  
20 school that lets out during the noontime hours and  
21 generally there's some commuting that goes through  
22 there and the traffic is heavy volume. Yes.

23 MS. BRADY: Thank you.

24 CHAIRPERSON GRIFFIS: Okay. So, you  
25 wouldn't classify this as 7:30 t 8:30, whatever the

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1 hours were in the morning and the afternoon as --  
2 they're specific examples of that time, but not  
3 necessarily a derivative of any other time during the  
4 day. The volume may be as high or lower? Is that - -

5 OFFICER McELWEE: The rush hour is  
6 extremely high on volume of traffic. Very busy. And  
7 the rest of the day, the volume is still high, not as  
8 high as rush hour, but it's congested.

9 CHAIRPERSON GRIFFIS: Okay. Excellent.  
10 Thank you.

11 MS. BRADY: But rush hour, would you agree  
12 that rush hour is longer than the periods that you  
13 there observing?

14 OFFICER McELWEE: Yes. It is.

15 MS. BRADY: Okay. I don't have anything  
16 further.

17 CHAIRPERSON GRIFFIS: Good. Ms. Case you  
18 now have a question? Oh, no. This is cross  
19 examination of the officer.

20 If there is any other cross? I'm sorry,  
21 Ms. Taylor.

22 Any other parties in opposition?

23 No other cross?

24 Very well. Thank you very much.

25 OFFICER McELWEE: Thank you.

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1                   CHAIRPERSON GRIFFIS:    Appreciate it again  
2 and we do, as indicated, we have the entire report in  
3 written form in the record, Exhibit Number 27.

4                   Let's move ahead then.   Where were we?

5                   Questions?   Indeed.   Okay.

6                   Why don't we start, if the Board's okay,  
7 why don't we start in reverse of the witnesses and  
8 move up to the front.

9                   I have a quick question in terms of storm  
10 water management.   Actually, just a couple just for  
11 clarification.

12                   On the exhibit list, our Exhibit Number 8,  
13 which I'm not sure of the chronology of all this  
14 stuff, Tab M, is a Storm Water Management Plan, that I  
15 believe graphically indicates what you indicated was  
16 going to be present and that is a pipe array and  
17 that's a storage or is that a filtering?

18                   Great.    And that's all below grade.  
19 Correct?   That's feet of piping?

20                   MR. LIN:   Right.   That is underground.

21                   CHAIRPERSON GRIFFIS:   Indeed.   And it's  
22 fed from the street, so basically the street drains  
23 and all that.

24                   MR. LIN:   Right.

25                   CHAIRPERSON GRIFFIS:   And it goes into

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1 that?

2 MR. LIN: Right.

3 CHAIRPERSON GRIFFIS: Filters and --  
4 okay.

5 You indicated that -- that you -- as you  
6 started, I wasn't really clear. You were bringing up  
7 a lot of existing problems that are off the site.

8 MR. LIN: Right.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. LIN: That was raised by other  
11 parties.

12 CHAIRPERSON GRIFFIS: Okay. And were you  
13 suggesting that by this development and the remedies  
14 of storm water management that you will successfully  
15 cure those issues?

16 MR. LIN: Oh, we will -- what was the  
17 agency regarding the D.C. DOT, because that is the  
18 public property. We cannot touch that. We can offer  
19 another suggestion to them -- come out with them and  
20 then if there's anybody going change that, had to work  
21 with D.C. DOT regarding those issues. Talking about  
22 efficiency of the -- storm management.

23 CHAIRPERSON GRIFFIS: Okay. Right.

24 So, you acknowledge the fact there are  
25 problems outside of your control, but you're happy to

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1 give recommendations on what DDOT should do --

2 MR. LIN: Right.

3 CHAIRPERSON GRIFFIS: -- or whoever is  
4 management of that.

5 You mentioned a couple of aspects of great  
6 technical and precise --

7 You indicated that the individual  
8 residents might be worked with in terms of using rain  
9 gardens.

10 MR. LIN: Rain garden. Yes.

11 CHAIRPERSON GRIFFIS: Okay. We need to  
12 discuss a little more of what that means and also this  
13 base saver system and how they're all going to  
14 integrate together with this pipe storage and the sand  
15 filtration and why do we have a pool on the bottom.

16 MR. LIN: Sure. The rain garden is --

17 CHAIRPERSON GRIFFIS: For non-storm water  
18 management engineers?

19 MR. LIN: Sure. Rain garden is kind of  
20 like a -- retention. It has a depression to depend  
21 the first flush of the water from the roof and the  
22 driveway of each lot. So, if we collect it at the  
23 depression and then using the existing soil conditions  
24 that has infiltration rate high enough for  
25 infiltration. Then beyond exceed that required volume

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1 for the under drain to connect into the storm water  
2 system that we provide.

3 And then from that go into this  
4 underground oversized pipe for part of the control.

5 CHAIRPERSON GRIFFIS: Okay. But this  
6 depression that you're talking about, that's what  
7 we're seeing in terms of the pond or element on the  
8 bottom. Correct?

9 MR. LIN: No.

10 CHAIRPERSON GRIFFIS: You're saying it's  
11 on every individual --

12 MR. LIN: Of every lot.

13 CHAIRPERSON GRIFFIS: Interesting.

14 MR. LIN: If the terrain permits.

15 CHAIRPERSON GRIFFIS: And you're saying  
16 that is in fact you will create that depression,  
17 hopefully it will be maintained and then it will be  
18 analyzed so that it has enough infiltration of the  
19 water to handle -- essentially to handle, so you don't  
20 have a swamp every time it rains on all the  
21 properties.

22 MR. LIN: Right.

23 CHAIRPERSON GRIFFIS: But you can filter  
24 individual roof water on site without having to get it  
25 off onto pavements and things like that?

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1 MR. LIN: Right. That's correct.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. LIN: And will do -- basically, the  
4 site is -- the soil is caused by speed it has good  
5 infiltration rate and we will provide some of --  
6 analysis regarding infiltration rate.

7 CHAIRPERSON GRIFFIS: Okay. How do you  
8 stop someone from grading their property and doing  
9 away with your dimple in the soil?

10 MR. LIN: Can you repeat that again?

11 MR. NETTLER: It's going to be part of the  
12 homeowners' association covenants based on your --

13 CHAIRPERSON GRIFFIS: So, they would be  
14 well aware that --

15 MR. NETTLER: Right.

16 CHAIRPERSON GRIFFIS: -- look, this is  
17 not where you put your stone patio because this is  
18 where we're filtering water.

19 MR. NETTLER: Right.

20 CHAIRPERSON GRIFFIS: Okay. Indeed.  
21 Good.

22 Mr. Parsons?

23 MR. PARSONS: Mr. Lin, there's an exhibit  
24 which is -- I'm just going to hold it up because I'm  
25 not sure you've seen it before.

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1 Is this your work?

2 CHAIRPERSON GRIFFIS: Right. In fact,  
3 that's the one I was just referring to. It's Exhibit  
4 M on the first --

5 MR. PARSONS: Exhibit M in the --

6 CHAIRPERSON GRIFFIS: Right. In the  
7 exhibit list, our Exhibit 8.

8 MR. PARSONS: Exhibit list. Yes.

9 MR. NETTLER: That's been -- you have an  
10 update to that. I think that was just presented  
11 today.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. NETTLER: Which you should have as  
14 part of the packet that we have given out.

15 CHAIRPERSON GRIFFIS: Good. Which didn't  
16 show the pipe flow.

17 MR. PARSONS: It did not show --

18 MR. NETTLER: No. It does have --

19 Excuse me, I'm sorry. It does.

20 CHAIRPERSON GRIFFIS: I didn't see it.

21 But that's not where Mr. Parsons I going  
22 anyway.

23 MR. NETTLER: Okay.

24 MR. PARSONS: I know what you gave us  
25 today does not include this -- this retention --

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1 MR. NETTLER: It doesn't include that one.

2 MR. LIN: It doesn't include that because  
3 in here it says storm in facility area. So, those  
4 facility will buried in this area.

5 CHAIRPERSON GRIFFIS: Okay. Good.

6 MR. PARSONS: So, did you design this  
7 facility?

8 MR. LIN: Yes.

9 MR. PARSONS: And what -- tell us about  
10 it, if you will. What does it accomplish?

11 MR. LIN: Okay. Well, we're going to do  
12 it this way.

13 The storm water coming will be collected  
14 and then conveyed through the proposed storm drain  
15 system. First through the water quality structure,  
16 that is same filter structure.

17 Then overflow through the underground  
18 oversized pipe for storage. So, that will attenuate  
19 the water so control the rate of the discharge through  
20 12 hours period.

21 So, the discharge of the water from the  
22 development, will be no more than two-year pre-  
23 development rate.

24 MR. PARSONS: So, that only accommodates a  
25 two-year storm?

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1 MR. LIN: Right. That is in accordance  
2 with -- no. It's controlled -- or storm.

3 MR. PARSONS: All right.

4 MR. LIN: And then only -- two-year storm  
5 pre-development rate.

6 MR. PARSONS: Okay. This diagram doesn't  
7 show a sand filter at the beginning of this system.  
8 It seems to show one at the end.

9 MR. NETTLER: The diagram that you're  
10 looking at is not this diagram. This is a  
11 modification of that.

12 MR. PARSONS: But there's no modification,  
13 Mr. Nettler. I mean, there's no current drawing of  
14 what's proposed.

15 MR. LIN: No. I didn't show it there.  
16 But this will be combined within this storm water  
17 management area.

18 MR. PARSONS: I mean the grading plan that  
19 was submitted today shows very steep slopes over this.

20 MR. LIN: Okay. This area is not -- it's  
21 not a depression. This --

22 MR. PARSONS: Understand. And your  
23 grading diagram shows a great deal of fill and a steep  
24 slope down to the wetlands on top of this.

25 MR. LIN: Right. The facility will be

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1 beyond the buffer, 25-foot buffer from the well end  
2 and, of course, there's fill in there too. But the  
3 storage is inside this oversized pipe, not above the  
4 pipe.

5 MR. PARSONS: This say 60 inch pipe array.

6 MR. LIN: Right.

7 MR. PARSONS: So, it's a series of 60 inch  
8 pipes.

9 MR. LIN: Right. It could be 84 inch.  
10 It depends on also we have to accommodate -- the  
11 irrigation we have to do. That is shown over here.

12 MR. PARSONS: Let me say. I think it  
13 would be helpful if you have a new diagram that  
14 relates to this which shows the design of this and  
15 calculations of the storm water run-off --

16 MR. LIN: We'll provide that. Yes.

17 MR. PARSONS: -- that's coming off of  
18 these streets.

19 MR. LIN: We have done --

20 MR. PARSONS: Are you taking any water off  
21 of Foxhall Road?

22 MR. LIN: No. Originally, it was  
23 suggested to divert to our site and then a couple of  
24 day ago it will change saying we have to divert to the  
25 White Haven Parkway storm drain system. So, we will

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1 work -- actually, we have discovered D.C. DOT has  
2 planned to improve Foxhall Road. We don't know the  
3 schedule yet. And we check into that.

4 So, we will coordinate with them regarding  
5 how to divert this water into White Haven Parkway  
6 storm water system.

7 If we do the improvement first, we will do  
8 that diversion. If it's not, then we will coordinate  
9 with D.C. DOT.

10 MR. PARSONS: And that would be White  
11 Haven Parkway to the west?

12 MR. LIN: Yes. It's over here.

13 MR. PARSONS: Not to the east?

14 MR. LIN: Right. On this one is a utility  
15 map from WASA. Okay. This is White Haven Parkway.  
16 Over here is a storm drain system over here.

17 MR. PARSONS: Thank you. Okay.

18 Now, I'll talk to you and Mr. Barnes at  
19 the same time and maybe the tree people at the same  
20 time.

21 We were just handed this site plan which I  
22 think is the fourth one I've seen today and I  
23 appreciate it's a moving target, I guess, as various  
24 sub-consultants come together. I'm not sure. But the  
25 specimen trees keep moving about, where you're ones

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1 you're going to save are moving about on these  
2 illustration.

3 And the grading diagram also shows, I  
4 think, significant grading on the trees that you're  
5 trying to protect and I'm not sure we can do it  
6 verbally as much as maybe we can reconcile these two  
7 plans.

8 MR. NETTLER: Let me first, before I turn  
9 it over Mr. Pitchford, is just explain what we -- what  
10 you're seen is a number of things coming together,  
11 which are, we had responded to the Friends of White  
12 Haven request at the ANC meeting with, as Mr. Barnes  
13 had shown you, which was a rougher design. And what  
14 we've been trying to do over the last two weeks after  
15 meeting with the ANC is to continuously refine that so  
16 that the trees and the tree, storm water management  
17 program and the grading get finalized as much as  
18 possible given what did you say, it was a moving  
19 target in terms of the changes in the design.

20 What I think is important to understand  
21 here is that our expectation is that the lot lines --  
22 this is the closest we've gotten to the lot line that  
23 we're going to get in the conceptual stage that we are  
24 today, because our expectations as we try to preserve  
25 those trees, those lot lines within a very small

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1 degree are probably going to move so that we don't  
2 have construction and grading on those and maybe Mr.  
3 Pitchford can explain that a little bit more.

4 MR. PARSONS: Well, let me get very  
5 specific, rather than general.

6 Take a look at Lot 813. Lot 813 in  
7 Barnes' diagram shows a cluster -- a significant  
8 cluster of trees on it.

9 MR. PITCHFORD: Yes.

10 MR. PARSONS: The next plan, called the  
11 Current Site Plan, shows a completely different  
12 configuration of trees on Lot 813. I don't know if  
13 that's yours, Mr. Pitchford, or somebody else's.

14 And then Mr. Lin's plan shows extensive  
15 grading over those trees, whichever if they're Mr.  
16 Barnes' trees or your trees. So, what I'm suggesting  
17 is that you get this together and repackage it and  
18 come on back and say, are we really saving 65 trees or  
19 not?

20 I'm very concerned about Lot 813 anyway  
21 for other reasons. But, it seems to me to be a very  
22 problematic coordination between the three of you.

23 MR. PITCHFORD: Right. Let me just  
24 address both of your questions.

25 One was, is it a moving target? It really

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1 hasn't been as fluid as you might think, except that  
2 we are gaining trees. I mean, we have worked very  
3 hard to pick up a few nice trees, rather than lose  
4 them and that was the effort of that small loop road  
5 at the bottom of the property.

6 You know, and we really do have a very  
7 nice collection of trees right now to work with. And  
8 it is going to take some work with regard to the  
9 grading plan and I've made that very clear to the  
10 engineers and the site plan people. And they seem  
11 very willing to make these adjustments.

12 The reason why I talked a little bit about  
13 the critical root zones being a bit malleable is that  
14 they are. I mean, we can move them around a little  
15 bit as long as we save that volume of critical root  
16 zone that I feel is important to keep the tree healthy  
17 and they stay out of that minimum clearance zone.

18 So, it is a -- once we get down to the  
19 final site plan and grading, it is going to be a very  
20 detailed process. There's no question. We're going  
21 to have sit down and really look at the need for some  
22 retaining walls or some pier footings or raised grade  
23 beam features or bridges over some of these root  
24 zones. But if the commitment is there by the owners  
25 to keep these trees, and I believe it is, then we will

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1 work around them and keep them there. I'm quite  
2 certain we can.

3 But we've ended up picking up more trees  
4 than we did before -- than we had before.

5 MR. BARNES: Mr. Parsons, can I address  
6 the question as well?

7 This is a preliminary grade plan which you  
8 will notice has no retaining walls shown in it. Sort  
9 of a first pass of grading without taking into account  
10 some of these other tree-saving issues. You're  
11 absolutely right. There's more coordination that's  
12 needed. There will need to be some retaining walls  
13 and some of the grading that's shown won't be able to  
14 take place in the areas where the trees are.

15 It needs to be -- it obviously needs to be  
16 worked out in more detail.

17 MR. PARSONS: Well, how are we going to do  
18 that? I mean, one of the main proffers of this is to  
19 save 65 trees? By the way, I only count 50 on this.  
20 It may not be your diagram, but --

21 MR. PITCHFORD: Yes. That is not mine.  
22 It does not have all --

23 MR. PARSONS: I think we have to reconcile  
24 this, because that's one of the major proffers of your  
25 -- of your project here. And certainly Lots 824 --

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1 824, 813, very problematic. To retain the trees that  
2 you're testifying you're going to retain.

3 I think we need -- I don't know how you're  
4 going to get a driveway down to 813. If that's the  
5 pad you're proposing to build on, I guess that's what  
6 these grading diagrams show, each one of these lots  
7 has a potential pad as shown by Mr. Lin.

8 Is that correct?

9 MR. PITCHFORD: That's what I understand.

10 MR. PARSONS: Yes.

11 MR. NETTLER: It has a potential pad, but  
12 the entire pad is not going to be developed.

13 What -- this is -- the pad represents what  
14 under the zoning regulations is permissible in terms  
15 of side yards, rear yards and front yards which are  
16 required under the theoretical subdivision  
17 regulations. They are not the -- the development will  
18 not encompass the entire pad.

19 MR. PARSONS: No. I'm talking of Mr.  
20 Lin's plan. It's the ones that shows that.

21 MR. NETTLER: Right. I understand.

22 MR. PARSONS: Not this one.

23 MR. NETTLER: Okay. I understand that.

24 CHAIRPERSON GRIFFIS: Wait.

25 But, Mr. Parsons, your -- of 813, the more

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1 level area at the top as a pad for the building  
2 footprint or are you talking about the entire --

3 MR. BARNES: The grades don't need to be  
4 moved much on 813 to be able to put a house on it.  
5 It's shown that there is some grading on here. There  
6 should probably be almost no grading on 813. And you  
7 can put a house there and preserve the trees.

8 MR. PARSONS: Well, that's not what the  
9 drawing shows. It shows the entire contours of the  
10 site pushed from where it say A13 toward the --

11 MR. BARNES: I'm so sorry. I was looking  
12 at Lot 113. Excuse me. I was looking at --

13 MR. PARSONS: Anyway, I guess what I would  
14 ask is, without spending the afternoon on this, is to  
15 take a look at this grading plan in the context of  
16 what you, Mr. Pitchford, and say --

17 MR. PITCHFORD: I agree.

18 MR. PARSONS: Show us that this site is  
19 really buildable, because I don't think it is. I  
20 don't think you can get a driveway to it. I don't  
21 think you can build there without destroying this cox  
22 of trees that has been on all of the drawings so far  
23 today, maybe in different configurations.

24 MR. PITCHFORD: That would be one of the  
25 more difficult sensitive sites. There's no question.

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1       You pointed out the two most difficult on the  
2 property. But that's no bad given the number of sites  
3 we have to have just two or even three problematic  
4 sites.

5                   CHAIRPERSON GRIFFIS:    Right. Okay.

6                   I think it's clear what he's asking for.  
7 I mean, obviously, if we're getting, and you guys keep  
8 now saying it's preliminarily conceptual, but by the  
9 time we get to an order approved, it's going to be  
10 very specific and it will be conditioned.

11                   And Mr. Parsons bring up the specific  
12 point of we're talking about exact account of the  
13 trees that are preserved, is that something will  
14 actually be conditioned. If this is an actual reality  
15 , great trees should preserved, but won't be, we don't  
16 want to have that written into an order that would  
17 then have complications down the road or just not be  
18 done.

19                   So, what we're looking at specifically is  
20 one, the tree plan which is excellent information  
21 overlaid onto the proposed grading plan. Obviously,  
22 we see a little bit more realistic aspect of where  
23 those are occurring and then, Mr. Parsons, you wanted  
24 to actually see how one might access the site,  
25 perhaps, through a footprint building, footprint and

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1 driveway or an indication or that?

2 MR. PARSONS: Yes. Similar to what Mr.  
3 Barnes did.

4 CHAIRPERSON GRIFFIS: Right. Exactly.

5 MR. PARSONS: I can't remember what  
6 exhibit it is, but he did have typical landscape plan  
7 and siting plan on a particular lot.

8 MR. NETTLER: Well, we actually have -- we  
9 did three of them. But we can do one on this as well.

10 CHAIRPERSON GRIFFIS: Right. It was  
11 Exhibit -- or Tab 3 of the submission and there's  
12 actually four sites that we're looking at. Plan a,  
13 Plan B, the typical Plan D and B Plan, C House.

14 MR. NETTLER: Okay.

15 MR. PARSONS: Now, I think I miss spoke  
16 earlier when I said A24. I meant 35 and 34. I  
17 couldn't read that print.

18 CHAIRPERSON GRIFFIS: Regarding what?

19 MR. PARSONS: This study for 35 and 34 and  
20 13.

21 CHAIRPERSON GRIFFIS: I'm sorry. Now I'm  
22 confused.

23 MR. PARSONS: 813 is the one we spoke -

24 CHAIRPERSON GRIFFIS: Right. You're  
25 talking about lots. Those are numbers.

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1 MR. PARSONS: And than there's 835 --

2 CHAIRPERSON GRIFFIS: Corresponding to  
3 lots. Exactly. Now, good. Okay.

4 Anything else on that?

5 Are there other questions?

6 MR. PARSONS: Yes. Will Mr. Barnes be the  
7 architect of this project or will you be bringing in -  
8 - each lot owner bringing in their own architect?

9 MR. BARNES: Our expectation is that there  
10 will other architects that would be pre-qualified to  
11 come work on the sites. We plan to design a number of  
12 the houses on the sites, but certainly not all of  
13 them. And we are within us to chair the Architectural  
14 Review Committee and enforce the standards through the  
15 initial development of the lots.

16 MR. PARSONS: So, the homeowner's  
17 association if that's what it's going to be called.  
18 Is that correct?

19 MR. BARNES: Yes.

20 MR. PARSONS: Will have an Architectural  
21 Review Committee?

22 MR. BARNES: Yes, indeed. Indeed.

23 MR. PARSONS: And you will be chairman of  
24 that? I'm kidding. Okay. It would be difficult to  
25 practice and be chairman of the review board I

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1 suppose.

2 MR. BARNES: I can always abstain.

3 MR. PARSONS: It's often my experience in  
4 homeowners' associations, the expertise to deal with  
5 these issues is not there.

6 MR. BARNES: The make up of the  
7 Architectural review Board, which is noted in the  
8 guidelines that you've handed out today, would include  
9 at least one other peer architect, representation of  
10 the owners of the properties, a landscape architect or  
11 civil engineer, an arborist, as well as someone from  
12 our office.

13 MR. PARSONS: So, these are people the  
14 homeowners' association or initially the developer, I  
15 suppose, would retain?

16 MR. BARNES: Exactly.

17 MR. PARSONS: To serve on this committee?

18 MR. BARNES: Exactly. Exactly.

19 MR. PARSONS: Is that written inhere  
20 anywhere?

21 MR. BARNES: Yes, sir.

22 MR. PARSONS: Where do I find that? Tab  
23 what?

24 MR. BARNES: What's in the architectural  
25 review. It's in the architectural guidelines which I

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1 think were only recently refined -- handed out today.

2 MR. PARSONS: Oh, you just passed them  
3 out.

4 MR. NETTLER: Right. You did.

5 MR. PARSONS: I haven't had a chance to  
6 read them. Thank you.

7 Mr. Nettler, you've been kind enough to  
8 include the zoning of 1981. A case I remember very  
9 well. And not that it guides us. It's obsolete. It  
10 was a different project and so forth, but we worked  
11 very hard to get setbacks of 30 feet from the parks.  
12 And I'm wondering why you came to a different  
13 conclusion here?

14 MR. NETTLER: In terms of the setbacks on  
15 the park?

16 MR. PARSONS: Correct.

17 MR. NETTLER: Well, the setbacks from the  
18 park aren't as we said. That we have an initial  
19 setback that's part of the rear yard, but the houses  
20 aren't built up to that rear portion of the lot.

21 The expectation is that those pads that  
22 then back up to those rear yards are then open space  
23 behind those houses. So, in most cases here, and  
24 maybe I'll give over to -- afterwards, but I think  
25 you're talking about more than 30 feet from the edge

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1 of the park to where those houses would be built.

2 MR. PARSONS: How do we know that?

3 MR. BARNES: May I answer that?

4 MR. NETTLER: Yes. Sure.

5 MR. BARNES: May I answer that question?

6 In the architectural guideline, there is a  
7 requirement that the front of the house be on or  
8 within I think three or five feet of the front yard,  
9 building restriction line. So, to help create the  
10 consistent street scape like you saw in the other  
11 neighborhoods that we focused on this, appropriate  
12 models, the houses have to start at the street scape.

13 So, unless someone builds the house, you know, eight  
14 feet wide and 40 or 50 feet long, they're not going to  
15 reach all the way to the backyard.

16 So, because that is a requirement, each  
17 house has to start right at the front of the lot. So,  
18 with the exception of perhaps the narrowest side on  
19 the east side where the loop road goes, it's probably  
20 impossible not to cross the 40 percent or 35 percent  
21 building footprint and get there.

22 MR. PARSONS: Well, then I don't know what  
23 diagram to hold up. Let's try this one. It's called  
24 the Current Site Plan.

25 MR. BARNES: Okay.

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1                   MR. PARSONS: And I'm not sure that's the  
2 one that's on the wall or the same information as the  
3 one on the wall. But--

4                   MR. BARNES: I believe it's the one you're  
5 holding.

6                   MR. PARSONS: This shows dashed lines up  
7 to within 25 feet of the parks as I grasp it.

8                   MR. BARNES: Right. And --

9                   MR. PARSONS: I'm not sure what they mean.  
10                   That's why Mr. Lin's grading plan was instructive,  
11 but how is it we can push the line back from the park  
12 a little farther to make sure that these massive  
13 structure, and certainly on a 20,000 square foot lot  
14 here, you're going to have the largest structures in  
15 the subdivision facing the park.

16                   MR. NETTLER: let me, if I might.

17                   MR. PARSONS: I'm trying to push that line  
18 down --

19                   MR. NETTLER: I'm sorry. Those are not --  
20 those are not the --

21                   MR. PARSONS: -- to get some reality.

22                   MR. NETTLER: Those lines that you see  
23 there are only there because they reflect the 25 foot  
24 -- the 25 foot portion adjacent to the park that's  
25 set off. That's not the building line for those lots.

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1 MR. PARSONS: I'm encouraging you to do  
2 that.

3 MR. NETTLER: Right. Which is what --

4 MR. PARSONS: To give a building line. A  
5 true setback for all of these lots going along the  
6 park. And not to say, well, we'll set back 25 feet,  
7 because that's why --

8 MR. NETTLER: We're talking about the same  
9 thing and, I guess, maybe I'm not making myself clear.

10 MR. PARSONS: I want a 100 foot setback to  
11 be specific.

12 MR. NETTLER: I can't give a 100 foot  
13 setback. I understand what you're saying.

14 MR. PARSONS: Well, it's easier to talk  
15 specifics than it is generalities.

16 MR. NETTLER: Right. And maybe Mr. Barnes  
17 can answer this better than I.

18 What I thought Mr. Barnes was trying to  
19 explain to you was, by putting the requirement that  
20 the house be built within a certain feet from the  
21 front, we were pushing it off of what could  
22 conceivably be a rear building line, if the house was  
23 built was all the way off of the front of the lot.

24 So, we've got a 25 foot yard -- front yard  
25 that's required, because these are theoretical lots.

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1 You then have a requirement on the architectural  
2 guidelines that it has to be built, was it three or  
3 four feet? Is that --

4 MR. BARNES: I can't remember that.

5 MR. NETTLER: Three or four feet off of  
6 that line. That doesn't allow you to then go all the  
7 way back, because we then have other covenants that  
8 are restricting in all the -- which we provided to you  
9 as well, in all of the parcels that back up onto the  
10 park of what you can do in the rear of those houses  
11 that are then built.

12 And in addition to that, is beyond that  
13 area that you can -- whether you can put in a pool or  
14 not put in a pool because you put restriction on that,  
15 then the additional buffer that's then provided.

16 So, they're actually way beyond 30 feet as  
17 you notice in the other order in terms of development  
18 for those houses, away from the park. Because you can  
19 build back that far, given where you have to start on  
20 it.

21 If you want us to add something that makes  
22 it somewhat more -- makes it clearer, then we can  
23 certainly do that, but that's what I thought Mr.  
24 Barnes was trying to explain in addressing your  
25 concern, which I think is one that we share about how

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1 close anything gets to the park.

2 MR. BARNES: May I add something, Mr.  
3 Parsons?

4 MR. PARSONS: Please.

5 MR. BARNES: If the houses start --  
6 because there's a 40 percent in this Zone R1A, there's  
7 a 40 percent restriction on lot coverage. If the  
8 houses just in terms of geometry of the houses start  
9 at the front yard restriction line that we're  
10 requiring of them, the possibility any of them could  
11 be that long to get all the way back there, I think  
12 you're going to run into 40 percent with useable rooms  
13 and not get there.

14 We don't have a specific line anywhere  
15 that says, a building may not go any closer than 25  
16 feet. What is possible and likely is that there might  
17 be other improvements. There might be a swimming  
18 pool. There might be a terrace that would be in the  
19 backyard that you cannot come any closer than the 25  
20 foot setback from the park.

21 If you're asking if the developers would  
22 consider a larger distance than 25 feet, that's  
23 something for the clients to answer.

24 MR. PARSONS: Well, I would certainly ask  
25 you to consider that. I think these lots are

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1 inordinately large. And will just result in massive  
2 houses that require swimming pools, tennis courts,  
3 retaining walls to make sure that they -- they can  
4 fill the backyard to accommodate those needs.

5 MR. BARNES: I don't believe any of these  
6 lots are big enough.

7 MR. PARSONS: And that's the vandalism, if  
8 you will, that I'm trying to see if we can pin it  
9 down, because it's not in your interest as developer  
10 in a first-grade community --

11 MR. BARNES: Right.

12 MR. PARSONS: -- to allow that to happen.

13 MR. BARNES: I don't believe any to these  
14 lots could accommodate a tennis court for what it's  
15 worth. But pools. Yes. There will be pools.

16 MR. PARSONS: Maybe a combination.

17 MR. BARNES: --

18 MR. PARSONS: I beat that to death. I  
19 want to go to this issue of the road that you moved.

20 MR. NETTLER: Excuse me.

21 MR. PARSONS: The road that was moved?

22 MR. BARNES: Yes.

23 MR. PARSONS: The road then as originally  
24 proposed would solve some of the problems I was just  
25 sharing with you. That is, the road is definitive.

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1 The front doors of the houses are --

2 MR. BARNES: Right.

3 MR. PARSONS: -- are alongside the road.  
4 And whatever they do in their backyard is away from  
5 the park.

6 And I applaud you for taking that  
7 approach. Now, that puts you squarely between friends  
8 and others.

9 MR. BARNES: Indeed.

10 MR. PARSONS: Why did you choose that  
11 approach in the beginning? I'm not asking you to  
12 defend it, but you certainly took that approach.

13 MR. BARNES: Two reasons, specifically.

14 It had been our intention the design the  
15 road system that each road go through and be a  
16 continuous loop that would allow someone driving  
17 through the neighborhood or lost in the neighborhood  
18 a way through, not into a dead end.

19 The way that the terrain is arranged on  
20 that lower spur between the wetland and the White  
21 Haven Park, certainly lends itself to development with  
22 the road that would follow the grade going down there  
23 and provide access best back the other way.

24 We also were aware in earlier discussions  
25 with the Park Service, we were under the impression

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1 that they preferred a road at the southern boundary  
2 than they would the rear yards.

3 When we ran into I thought a very -- the  
4 well put and, you know, environmental strong reasons  
5 that the White Haven folks did not like the road  
6 there, and so Mrs. Hardy had similar reservations, it  
7 seems to us that in the environmental balance would  
8 probably be best served by tightening up the loop by  
9 putting restrictions in the rear yards that backed  
10 onto the park so that things couldn't get out of hand  
11 against the park to create the green buffer. And then  
12 in the end, not having a roadway right up against the  
13 park made more sense from an environmental point here.

14 So, we were to balance the two competing notions and  
15 came around to that being what we thought was best.

16 MR. PARSONS: What, again, is the  
17 environmental point of view?

18 MR. BARNES: Well, they might be able to  
19 articulate it if invited better than myself, but they  
20 were concerned, I believe, that a road right next to  
21 the park was an attractive nuisance, would bring cars  
22 right next to the park rather than gardens and it  
23 would bring paving and run off right next to the park  
24 as opposed to yards, which would be, you know, have  
25 perkable soils and so on.

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1                   MR. NETTLER:     It is also, is it not  
2 correct, that it -- it resulted by moving the road, it  
3 resulted in the preservation of more trees?

4                   MR. BARNES:     There were some more trees  
5 saved and also in the end not building a bridge,  
6 although there are approved manners to build a bridge  
7 through a wetland, which would have been an attractive  
8 feature here, you're still leaping over the wetlands  
9 and some construction would be in there during that  
10 process.

11                   This loop meant that we kept all  
12 construction roads out of the wetland altogether and  
13 that seemed to be a benefit as well as the tree  
14 savings.

15                   MR. PARSONS:    So, the bridge which isn't  
16 shown in this exhibit I keep picking up.  Maybe it's  
17 for a good --

18                   MR. BARNES:     I'll show it where it was.

19                   MR. PARSONS:    It isn't really shown, but  
20 it was a bridge over the wetlands?

21                   MR. BARNES:     There was a bridge that was  
22 going to connect the road.  This loop road previously  
23 shown ran along the edge of the park.

24                   MR. PARSONS:    Yes.

25                   MR. BARNES:     Went over the wetland and

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1 connected up right there.

2 CHAIRPERSON GRIFFIS: He's got it.

3 MR. PARSONS: So, is the bridge the entire  
4 wetland?

5 MR. BARNES: I believe it needed to bridge  
6 the entire wetland. Yes.

7 MR. PARSONS: Now, what is the appearance  
8 of that wetland today?

9 MR. BARNES: There's a small stream.  
10 There are some cattails. There are trees around it.  
11 It's not --

12 MR. PARSONS: No other construction? I  
13 mean, it's just pure wetland? Nothing else?

14 MR. BARNES: It's a small narrow wetland,  
15 because there is existing grade around it, but it's a  
16 pretty -- it's essentially a pretty stream with, you  
17 know, a wetland vegetation around it.

18 MR. PARSONS: So, hasn't there been some  
19 filling on this property prior to your involvement?

20 MR. BARNES: Oh, yes. I think there has  
21 been. There is an old well or what looks like an old  
22 well here right at the beginning of the wetland, where  
23 there's an old structure that was probably where the  
24 Phillips Estate, we believe, got its water from  
25 initially before there was city water.

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1                   And there's certainly evidence of fill  
2 along W and in the whole area where the pad of the  
3 main house and probably the original terrace and  
4 gardens were.

5                   MR. PARSONS:    So, none of that fill got  
6 down in here into the wetlands?

7                   MR. BARNES:    Not to my knowledge.  I've  
8 walked it and I haven't seen anything to suggest that.

9                   MR. PARSONS:    Now, how do we know -- Mr.  
10 Lin just mentioned that Foxhall Road would be rebuilt.  
11 Is that something -- I guess we ought to ask the  
12 Office of Planning about that rather than --

13                   MR. LIN:    I have checked -- I called D.C.  
14 DOT and talked to a Mr. Patrick and he is looking at  
15 that now for me so I'll follow up with that.

16                   MR. BARNES:    There is some history to an  
17 initiative to improve Foxhall road because of its  
18 condition and so on.  And there is some sort of plan  
19 in the library nearby and I had heard that there a  
20 schedule that would have some of this work be started  
21 this spring.  There's been an ongoing Foxhall  
22 improvement initiative with DDOT.  Maybe Joe Osborne.

23                   CHAIRPERSON GRIFFIS:    You can -- that  
24 scope or schedule or both?

25                   MR. PARSONS:    Well, their site plan.

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1 Well, a site plan. We'll pick this one. The third  
2 ANC submittal shows, you know, some reconfiguration of  
3 Foxhall Road --

4 CHAIRPERSON GRIFFIS: Right.

5 MR. PARSONS: It's beyond our  
6 jurisdiction, but I wondered whether --

7 MR. BARNES: The recent configuration  
8 you're seeing there, is we're taking out of our  
9 property an entrance lane -- create an entrance land  
10 into the site off of Foxhall.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. BARNES: So, that you --

13 CHAIRPERSON GRIFFIS: The point though  
14 is, what he's looking at and even the other, any  
15 aspect on Foxhall Road is within the scope of this  
16 development. It's actually going to happen  
17 irregardless of whether the city is redoing the entire  
18 street. Hopefully, the schedules coincide so that you  
19 don't rip it up twice.

20 MR. NETTLER: well, that's what we've  
21 talked to them about. That's right.

22 CHAIRPERSON GRIFFIS: Right. Okay. So,  
23 that's what we're looking at.

24 So, the critical aspect of this schedule  
25 for our understanding but irregardless that scopes

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1 going to be done.

2 MR. NETTLER: Right. We understood it was  
3 supposed to start in the spring. That may not happen,  
4 but we've told them we wanted to coordinate with them.

5 Because the houses that would be built first, are the  
6 matter of right houses which are the ones that sit  
7 directly on Foxhall.

8 MR. PARSONS: Oh. I'm glad you brought  
9 that up. That's my last question.

10 MR. BARNES: All right. Can I make a  
11 correction?

12 Some of the matter of right lots were in  
13 the first plan. The matter of right lots that we plan  
14 to build first were along W Street so that the W  
15 Street neighbors had the shortest concentrated period  
16 of construction. And then these new houses would  
17 provide a buffer for them for noise and disturbance  
18 for the rest of the construction of the building.

19 MR. PARSONS: I thought I had a pretty  
20 good hint on the regulations, but this is a new one to  
21 me.

22 The matter of right houses are matter of  
23 right only because they have frontage on W Street and  
24 Foxhall? They don't have access?

25 MR. NETTLER: Well, they do have access.

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1 MR. PARSONS: Theoretical access.

2 MR. NETTLER: No. They have access that  
3 we've agreed that we will provide as an easement  
4 through the property. But we could as Mr. Slade  
5 demonstrated, we could, as a matter of right, take  
6 each individual lot and have a driveway off of it.  
7 We're essentially giving it access off of the easement  
8 that we're creating off of that lot that -- off of the  
9 entrance to the remaining part of the larger lot.

10 MR. PARSONS: So, I'm having trouble  
11 understanding why if it's so dependent on -- if  
12 they're so dependent on the proposal before us, how is  
13 it that they are matter or fight?

14 MR. NETTLER: Well, they're not dependent.  
15 We're willing to take that away from -- we're willing  
16 to take away from them the driveways. They  
17 individually -- each lot can go in separately with a  
18 house on it for approval by the Zoning Administrator,  
19 because it meets all of the zoning regulations,  
20 including it would have a driveway that could be  
21 provided off of Foxhall. Each one of them separately  
22 and the way the zoning Administrator looks at them is,  
23 he doesn't look at it as 13 lots. He takes each lot  
24 separately to see whether it meets the zoning  
25 requirement that has street frontage.

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1           And what we're saying is, we're willing to  
2 forego having a driveway for each one of them and  
3 simply come in through the lot in the back. Come in  
4 through the larger -- the larger lot that would be --  
5 the larger record lot that would be created separate  
6 and apart from the 13 record lots.

7           MR. PARSONS: So, why is it that they're  
8 not part of this proposal?

9           MR. NETTLER: Because they are matter of  
10 right lots. They can be constructed without us having  
11 to get any zoning relief.

12           MR. BARNES: We've been trying to present  
13 an integrated plan of the lots that could be developed  
14 as a matter of right without asking for any  
15 privileges, together with the ones that we're here  
16 for, because we're trying to plan this as an  
17 integrated neighborhood and we're trying to respond to  
18 the concerns of neighbors over all new changes  
19 including matter or right lots.

20           So, we are willingly placing some  
21 restrictions, organizational matters over lots which  
22 would just be -- allowed to them to build their houses  
23 the way they wanted to better serve the neighborhood  
24 plan as a whole and some of the concerns of the  
25 neighbors.

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1 MR. NETTLER: The way it would work in the  
2 Zoning Administrator's office is, you'd have 13 record  
3 lot numbers and the interior would be number 14. The  
4 number 14 can be a access point, if we simply weren't  
5 going to anything, but we were going to commit  
6 ourselves not to have driveways on Foxhall or W.  
7 Number 14 itself can be an access point for each of  
8 those lots in the back and that's the way it would be  
9 presented to the zoning Administrator. And each one  
10 of those without regard to what's going on with the  
11 other 33 theoretical lots at all. Let's say there was  
12 no 33 theoretical lots, each one of those lots would  
13 then go forward as a separate buildable lot, because  
14 it has that access to it.

15 It's not access from a --that the  
16 individual lot has to have the access, you know, as a  
17 driveway on Foxhall, it has to have the street  
18 frontage and it has to have the parking space and you  
19 have to be able to get to the parking space.

20 MR. PARSONS: I guess I still don't  
21 understand why you didn't include it. I mean, I  
22 cannot believe you get four curb cuts onto Foxhall  
23 Road from the Department of Transportation. I just  
24 can't believe it.

25 It may be theoretically possible, but I

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1 just can't imagine that.

2 CHAIRPERSON GRIFFIS: I think we can --  
3 why don't we just have you brief it and we can have  
4 just a small thing. I think in terms of -- and we'll  
5 look at the regulations. Because the whole point of  
6 the fact is that it's street frontage access, not  
7 necessary that you are required to put a driveway with  
8 a garage frontage on that street, but rather the lot  
9 is a matter of right in terms of that aspect of the  
10 regulations. And because it fronts a street.

11 Additionally, you said if you laid them  
12 out in terms of the required dimensions for all the  
13 regulations, so that there is no relief in terms of  
14 that subdivision.

15 MR. NETTLER: Correct.

16 CHAIRPERSON GRIFFIS: Okay. So, we can  
17 get -- if we can't answer that ourselves, we'll ask  
18 for further information on that.

19 MR. PARSONS: Thank you for your patience,  
20 Mr. Chairman and other members.

21 CHAIRPERSON GRIFFIS: I have tons of it.

22 MR. PARSONS: Thank you.

23 CHAIRPERSON GRIFFIS: Good anything else?  
24 That's all the questions for all the  
25 witnesses?

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1 MR. PARSONS: Yes.

2 CHAIRPERSON GRIFFIS: Excellent.

3 Any other questions by the Board members?

4 Yes. Mr. Mann.

5 MR. MANN: Just a couple.

6 There are several places in the  
7 application where you indicate that there's a lot of  
8 coordination and discussion with the National Park  
9 Service, but I was wondering if we should -- should we  
10 expect -- is there going to be -- when will these  
11 things -- when will the agreements come to completion  
12 and should we expect to see further documentation  
13 regarding -- I don't know -- well, a lot of the  
14 aspects that Mr. Parsons was discussing, particularly  
15 regarding trees and the edge treatments and a three-  
16 foot fence on the eastern southern borders.

17 Will there be any other information that  
18 we should be made aware of regarding this coordination  
19 with the NPS?

20 MR. NETTLER: We have provided to the  
21 people that we've been working with a letter  
22 indicating the coordination that we see going forward  
23 with the project and I can talk to Mr. Murphy. He's  
24 sitting in the back of the room and see if he has any  
25 problem with my providing you with a copy of the

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1 letter. But, it lays out the issues that we've talked  
2 about and how -- and we believe it requires that  
3 coordination because it is a work in progress in terms  
4 of making sure that these issues are addressed. And I  
5 will talk to him and see if he has a problem with my  
6 providing it to you.

7 MR. MANN: Okay. The three-foot fence  
8 that is going to be built on the eastern southern  
9 border. On the eastern border, is that going to be  
10 between the property that we're talking about today  
11 and 44th Street? Or is going to be between 44th  
12 Street and the NPS land?

13 MR. NETTLER: I'm sorry. Let me go back  
14 to the question right before that because Mr. Murphy  
15 says I can provide you with the letter that we have  
16 provided to him, except if I make it clear that there  
17 was a quote in the first paragraph of the letter about  
18 the Park Service being on board with our project,  
19 which that maybe a little bit -- about him being on  
20 board with maybe a little bit too broad, in terms --  
21 what I was trying to get across was the fact that we  
22 have identified a number -- well, he has identified a  
23 number of issues. We are willing to resolve those  
24 issues. We've discussed in the letter how we're going  
25 to resolve those and things that we've already done in

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1 terms of it so, please take that with a grain of salt.

2 MR. MANN: Okay. The fence that's  
3 proposed --

4 MR. NETTLER: I'm sorry about that.

5 MR. MANN: That's all right.

6 The fence that's proposed on the eastern  
7 edge of the property, is that being proposed between  
8 the subject property and 44th Street or between 44th  
9 Street and the NPS land?

10 MR. BARNES: It would be at the edge of  
11 the property so that the 44th Street paper street  
12 appears to be and feels like parkland.

13 MR. MANN: Okay. Will this proposal  
14 require submission to other agencies, such as  
15 Commission on Fine Arts?

16 As people were to develop -- as the lots  
17 are developed, would they require submission to CFA?

18 MR. NETTLER: Not that I'm aware of. No.

19 MR. MAY: Okay.

20 MR. NETTLER: The -- it does obviously  
21 require other D.C. agencies to review it throughout  
22 the permitting process, but it does not -- it does not  
23 sit adjacent to Rock Creek Park, so it's not governed  
24 by -- it's out within the Commission of Fine Arts  
25 jurisdiction as far as I understand.

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1 MR. MANN: Okay. Thank you.

2 CHAIRPERSON GRIFFIS: Any other  
3 questions? Question of the Board?

4 Good. I think we'll have more last piece  
5 -- if I recall correctly in the written submission,  
6 there was some detail of burying and sort of the  
7 power, phone and all this high internet stuff and  
8 connections and then there was an agreement with  
9 adjacent properties also to deal with their situation.  
10 Is that right?

11 MR. BARNES: Right. At the moment there  
12 are above-ground power lines and low voltage  
13 improvements on W Street. We have made a commitment  
14 to the W Street neighbors that the owner said they  
15 would agree to bury those provisions on the south side  
16 of W Street. And all the new services are intended to  
17 be provided below grade within the development.

18 CHAIRPERSON GRIFFIS: Okay. And the  
19 south side is the property side. Is that correct?

20 MR. BARNES: The south side is our  
21 property side. Yes.

22 CHAIRPERSON GRIFFIS: Good. Any other  
23 questions by the Board at this time?

24 Excellent. We're going to take a short  
25 break. Let everyone stand up and stretch their

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1 muscles, get the blood flowing.

2 When we return, what we're going to do is  
3 we're going to have the witnesses at panel here and  
4 we're going to start with the cross examination and  
5 then we'll go to however you want to decide the cross  
6 questions and we'll have cross of all of the  
7 witnesses.

8 I imagine we're going to get through cross  
9 and probably some of the --

10 CHAIRPERSON GRIFFIS: Okay. Agencies  
11 this evening, we are going to try and hit a schedule  
12 of ending at 6:00. We may go a little bit over, but  
13 we're certainly not going to 10:00 or 11:00 tonight,  
14 unless I change my mind and be persuaded.

15 But, indeed, there it is. Okay. We'll  
16 see you in 10 minutes.

17 (Whereupon, off the record from 4:28 p.m.  
18 to 4:49 p.m.)

19 CHAIRPERSON GRIFFIS: Do we have our  
20 witness panel up?

21 Pardon me?

22 Very well. Does the ANC have anymore  
23 questions?

24 While we have this time when the panel is  
25 getting assembled for cross examination, we're going

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1 to get through all cross.

2 At a point where we get close to 6:00, it  
3 looks like depending on how much cross examination  
4 there is, of course, that's untimed and it's always a  
5 little bit unpredictable, although I will be on top of  
6 everyone to keep direct and not repeat questions, of  
7 course. There's no purpose for repeating questions.

8 Let me say two things.

9 First of all, cross examination is now the  
10 opportunity for those parties involved in the case to  
11 question witnesses that essentially poke holes in  
12 their case or investigate further information that you  
13 feel supports your case presentation and your issues  
14 and may not have come out in the testimony of the  
15 Applicant's case.

16 So, I ask a couple of things in direction.

17 First of all that the questions are short, succinct  
18 and clear and the answer are the same. As much  
19 questions can be poised in a yes, no answer format,  
20 the better.

21 In the end result, all of these questions  
22 are for the benefit of the Board. We are the ones  
23 that are trying to evaluate where you're going in the  
24 investigation and, therefore look at weaknesses of a  
25 case presentation or vice versa.

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1                   So, that being said.

2                   The second piece that I know there is  
3 going to be concern about how far we get along and  
4 then what do we do after this?

5                   The issue is going to be, it looks like  
6 we'll just get through cross examination tonight. We  
7 will at that point set a new schedule, a new schedule  
8 date to continue this and we will announce it in  
9 public and that will be the only formal announcement  
10 of the next date in a continuation of this hearing.

11                  As we are speaking, dates are being  
12 assessed. I will make that everyone can be relatively  
13 accommodated with such a large group, of course, it is  
14 going to be difficult, but we will try and do our best  
15 to do it.

16                  With that, I think we're already to roll.

17                  Do we have everybody here? Three, yes.  
18 Mr. Nettler?

19                  MR. NETTLER: Not that there were --

20                  CHAIRPERSON GRIFFIS: Okay. So, we're  
21 waiting on one person.

22                  Mr. Nettler, while we give 30 more seconds  
23 to that, can I ask you a quick question on the follow  
24 up of a statement you made that there were similar  
25 applications to this theoretical lot application. Did

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1 I understand that correctly?

2 MR. NETTLER: Not that there were  
3 theoretical lot applications for this site.

4 CHAIRPERSON GRIFFIS: No.

5 MR. NETTLER: That since that regulation  
6 was adopted, I think there's only been about four  
7 cases really that have been --

8 CHAIRPERSON GRIFFIS: That utilized the  
9 section of theoretical lots.

10 MR. NETTLER: Correct.

11 CHAIRPERSON GRIFFIS: Okay. And do you  
12 recall any of those? Were any of them fairly current?

13 MR. NETTLER: There's one that is which  
14 I'm not sure -- I might have provided it, but I'll g  
15 look and check. The other three were very, very small  
16 situations. And really weren't analogous to this.

17 That hasn't come up yet but --

18 VICE CHAIR MILLER: No. But it's --

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. NETTLER: So, in terms of there being  
21 actual decisions, there's only been about three or  
22 four or them. One of them is for a site -- one of  
23 them is for a site that is not that far from this one,  
24 but I'll give you the application and we'll all sit  
25 down and just -- I've got a witness so --

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1 CHAIRPERSON GRIFFIS: Okay. That's all we  
2 need.

3 Very well. Let's go ahead then. We can  
4 address the cross examination of those witnesses that  
5 are here now and when the fourth one comes back in, we  
6 can move on to that one.

7 MS. HAAS: I'm Ann Haas, H-A-A-S. And I'm  
8 the ANC Commissioner who is a single member district  
9 goes from Foxhall Village to the Firsttown Reservoir  
10 area and up Foxhall Road to the Phillips Estate.

11 My address is 1601 45th Street.

12 Okay. I guess this is Anthony Barnes.

13 Do you have a site contract that will keep  
14 you on the project throughout its duration?

15 MR. BARNES: I have a contract with agreed  
16 terms, not signed, but it addresses the plan that I've  
17 gathered here on the project.

18 MS. HAAS: Okay. Do you think it will be  
19 signed soon or --

20 CHAIRPERSON GRIFFIS: I'm going to ask  
21 you. You are very soft spoken, which is amazing.

22 However, for our purposes, you need to be  
23 soft spoken directly into a microphone.

24 MS. HAAS: Okay. All right. Okay.

25 Do you anticipate its being signed in the

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1 near future?

2 MR. BARNES: Imminently.

3 MS. HAAS: Okay. Let's see.

4 Page 28 of the February application makes  
5 mention that the W Street matter of right houses shall  
6 be completed first. How many houses are you proposing  
7 to place on W Street?

8 MR. BARNES: As part of the current plan,  
9 there are 10 shown and that's what we prefer to build.

10 MS. HAAS: Okay. And so many by right  
11 then will be have altogether?

12 MR. BARNES: By moving the one lot that  
13 was shown initially on the east side up into the  
14 matter of right lots, the total in the whole  
15 development has changed, but the number of matter of  
16 right lots has increased by one, from 13 to 14, I  
17 believe, it is.

18 MS. HAAS: I thought it was five and seven  
19 and that would be 12. Right? Is that right?

20 MR. BARNES: Sorry. It went from 12 to  
21 13.

22 MS. HAAS: Nine. Okay. One, two, three,  
23 four, five.

24 CHAIRPERSON GRIFFIS: Wait. And how many  
25 are fronting W Street?

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1 MR. BARNES: Twelve or thirteen.

2 CHAIRPERSON GRIFFIS: Nine count no the  
3 image that's right behind you.

4 MR. BARNES: Yes.

5 CHAIRPERSON GRIFFIS: So, it's nine that  
6 you -- the answer to the question.

7 MR. BARNES: Nine. Nine on W Street.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. HAAS: Okay. Page 32 of the  
10 application refers to minimal site lines in either  
11 direction at W Street. Aren't the current site lines  
12 to the south of proposed Dunmarlin access stripe even  
13 more restrictive and would an on-demand traffic light  
14 be a good idea there?

15 MR. BARNES: I think the slides that were  
16 shown with the testimony of the traffic engineer, show  
17 that because there is actually a high point close to -  
18 - on Foxhall Road or at least a level point right  
19 opposite the entrance, the site lines are much better  
20 both up and down Foxhall Road, so there's increased  
21 safety already.

22 However, I do agree that an on-demand  
23 light would increase the safety enormously for anyone  
24 trying to enter or leave the development.

25 MS. HAAS: Okay.

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1 MS. GATES: When you met with the ANC  
2 earlier this month, there was an agreement that you  
3 proposed that you would relinquish all rights to 44th  
4 Street. And would work with the developer to have  
5 jurisdiction transferred back to the District. That  
6 has not been mentioned today and it was one of the  
7 conditions the ANC put forward. Can you tell us what  
8 the current thinking is?

9 MR. BARNES: My understanding, the offer  
10 is still open to do that from our side. I believe  
11 that the Park Service is not sure that it necessarily  
12 wants the jurisdiction overall of the land.

13 You might ask Mr. Nettler if he can  
14 clarify. I don't know.

15 CHAIRPERSON GRIFFIS: Well, let's go.

16 As far as your understanding is, you don't  
17 have an agreement but you're amenable as

18 MR. BARNES: We remain amenable to turn  
19 those rights over.

20 CHAIRPERSON GRIFFIS: You're amenable to  
21 do that?

22 MR. BARNES: Yes.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. BARNES: Our position has not changed.

25 MS. GATES: At which point will this

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1 Architectural Review Board kick in?

2 MR. BARNES: It's going to be active as  
3 soon as any lots come up for development. As soon as  
4 anyone is, you know, any site is ready and graded.  
5 The formal tribunal will be convened, I guess, but the  
6 same members of that group are being retained by the  
7 developer to advise all the way through the  
8 development of the lots.

9 We do have more grading and tree  
10 reconciliation to do as Mr. Parsons pointed out. And  
11 the same team is going to be doing all of that work  
12 until such point as it then starts to address the  
13 needs of new perspective homeowners.

14 MS. GATES: How many of the matter of  
15 right houses -- my impression from your testimony was  
16 that you have really contributed the design concept  
17 for this development.

18 So, how many of those houses, matter of  
19 right houses, are you actually planning to design?

20 MR. BARNES: As many as I can, but it's  
21 not tied down anywhere.

22 MS. GATES: So that, I take it is part of  
23 the unsigned contract?

24 MR. BARNES: A certain number of houses --  
25 a third is what we are talking about doing that I our

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1 firm would design. It doesn't say where they would be  
2 in the development.

3 MS. GATES: So, it's a third of 47  
4 scattered about?

5 MR. BARNES: It could be that way or it  
6 could be all one place. Just a third that we  
7 discussed.

8 MS. GATES: And as a well-respected  
9 practicing architect in the city, how do you deal with  
10 your colleagues when you absolutely hate what is being  
11 proposed?

12 Now, I'm speaking as Mr. Barnes, head of  
13 this Architectural Review Board.

14 (Whereupon, at 5:00 p.m., the hearing  
15 continued into the evening session.)

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E-V-E-N-I-N-G S-E-S-S-I-O-N

5:00 p.m.

CHAIRPERSON GRIFFIS: He's been sworn in as in the public record.

Mr. Barnes, how do you deal with these errant architects?

MR. BARNES: With care and respect.

The guidelines have been written to try and -- not to exclude any styles but to try and focus the designs in ways that are derivative of the traditional styles seen on the East Coast, most of which arrived originally from Europe, but modified by planet and traditions on the eastern seaboard.

There are proportions of windows and roof slopes and materials that help guide that, but it doesn't specifically mention a style that's been forbidden or required in any point.

MS. GATES: So, it would limit building material --

MR. BARNES: Yes.

MS. GATES: Okay. Thank you.

MR. BARNES: Yes. So, by building materials. Yes. That's how we go.

MS. GATES: I have no more questions.

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1 Thank you.

2 MS. HAAS: Okay. Now, do you have a  
3 signed contract for this project?

4 MR. PITCHFORD: Do I have a signed  
5 contract?

6 MS. HAAS: For the duration. Right.

7 MR. PITCHFORD: For the duration? Not as  
8 of yet. I fully anticipate one. Yes.

9 MS. HAAS: In the near future?

10 MR. PITCHFORD: I hope so in the next  
11 week.

12 MS. HAAS: Okay.

13 MR. PITCHFORD: By the end of tonight  
14 would be nice.

15 MS. HAAS: How long does it take root  
16 damage to manifest itself?

17 MR. PITCHFORD: Wow. We could run a  
18 workshop on that, but it can take a long time, if the  
19 tree is healthy. The tree can compartmentalize  
20 pathogens and keep them at bay for quite a while.

21 If the tree is weakened, if the system is  
22 weakened, the pathogen can move in rather quickly,  
23 within a matter of a few years.

24 MS. HAAS: And are there particular trees  
25 that are especially sensitive to being disturbed

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1 during construction and, if so, how do you plan to  
2 protect the?

3 MR. PITCHFORD: Well, this question was  
4 asked at the ANC meeting too, which was the tool  
5 popper and, you know, those of us in the industry know  
6 that they are sensitive to root damage. My  
7 experience, and I've been doing this awhile, is that  
8 if you can maintain that minimum clearance zone around  
9 those trees that you're a whole lot further ahead of  
10 the game and if you can maintain a good large critical  
11 root zone, then I always apportion the largest  
12 critical root zone a foot and a half per diameter inch  
13 for those trees because of their sensitivity. But it  
14 does take some extra work, there's no doubt.

15 MS. HAAS: What about beech trees?

16 MR. BARNES: Beech trees are very  
17 sensitive as well.

18 MS. HAAS: How many big beech trees does  
19 this site have?

20 MR. BARNES: Numbers, I mean, right off  
21 the top of my head, probably a good dozen large beech  
22 trees.

23 MS. HAAS: And how do you protect them?

24 MR. BARNES: The Beech trees. Well, they  
25 get a foot and a half of critical root zone for

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1 every --

2 MS. HAAS: I mean for a fence or, you  
3 know?

4 MR. BARNES: Oh, yes. They get, as I  
5 showed in that one slide, they get a very high, six-  
6 foot tall wire mesh fence. I like to set them in the  
7 ground rather than on blocks so they can't be moved.

8 I've been to sites where I've had wire  
9 mesh fence that was set in concrete and I come to it  
10 and it's stacked in a pile over to the side. So, it  
11 has to be really very well anchored in order to be  
12 permanent.

13 But the big thing with beech trees is to  
14 keep their roots covered. They don't like to have  
15 their roots sun scalded. That's when they get very  
16 sensitive. So, you have to mulch them and all sort of  
17 irrigation techniques and soil moisture monitoring  
18 that would go into it as well.

19 MS. HAAS: Let's see. I guess those are  
20 my main tree questions.

21 Alma, do you have any?

22 MS. GATES: I really just have one more  
23 and it is not a silly question. It sounds silly.

24 You're well aware of the deer herd that  
25 live in this area. When I was there Sunday, they were

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1 right at Foxhall Road.

2 Are there species of trees, the shrubs,  
3 etcetera, that you are recommending on the list that  
4 are considered deer food?

5 MR. PITCHFORD: Well, I don't think so,  
6 but the deer seem to expand their pallet every year it  
7 seems. You know, certainly they like the arborvitae,  
8 the yews. I don't have those on my list. They are  
9 very hard to control as you know, but I don't have any  
10 on the list that I would are primary food for the  
11 deer.

12 MS. GATES: So, we wouldn't see any Leland  
13 Cyprus?

14 MR. PITCHFORD: I don't like the Lelands.  
15 All sorts of Pseridim Canker problems with that tree  
16 right now. It's not one that I'm really  
17 recommending. It's not invasive, but it just has a  
18 lot of inherent problems right now.

19 MS. GATES: will you have a role with the  
20 Architectural Review Board as far as once a house is  
21 designed, accepted by the Board. Will you have a role  
22 as far as landscaping?

23 MR. PITCHFORD: I would be happy to do  
24 that if I were asked.

25 MS. GATES: But will you oversee what is

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1 being proposed?

2 MR. PITCHFORD: Well, I will certainly  
3 probably write the majority of the tree protection --  
4 I will definitely write the tree protection  
5 guidelines, but certainly the landscape guidelines, I  
6 think I would have a say in it as well. Sure.

7 MS. GATES: Thank you. I have no more  
8 questions.

9 MS. HAAS: Would that include the  
10 wetlands?

11 MR. PITCHFORD: I'm not really as trained  
12 in the wetland science as I would to be to serve that  
13 function, so I think -- I have a friend that I work  
14 with who works with me occasionally on wetland issues  
15 and I might recommend him or others that I know, but I  
16 probably would not do myself. No.

17 MS. HAAS: Okay. I think enough.

18 MS. GATES: Actually, I'm going to turn to  
19 Mr. Slade, I think.

20 I'm going to the book for the Board that  
21 has numbers. Number tabs.

22 CHAIRPERSON GRIFFIS: The Book. Capital  
23 T, Capital B. Good. You mean the Applicant's  
24 submission?

25 MS. GATES: Yes.

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1 CHAIRPERSON GRIFFIS: Indeed.

2 MS. GATES: And I'm behind tab 7, which is  
3 this plan.

4 Do we have a slide of this?

5 CHAIRPERSON GRIFFIS: Which is the up  
6 close entrance on Foxhall. Is that correct?

7 MS. GATES: Yes. It's this one. But we  
8 don't have a slide.

9 Mr. Slade, your proposal is to create an  
10 interior lane. Correct?

11 MR. SLADE: When you say interior lane,  
12 which are you referring to?

13 MS. GATES: I'm talking about your  
14 removing some of -- I'm referring to this as your own  
15 property here that would allow cars coming north to  
16 simply fold into the development and cars wanting to  
17 go north out of the development would use this sort of  
18 interior access lane to feed into Foxhall.

19 MR. SLADE: Yes.

20 MS. GATES: Okay. Where is the stop sign  
21 for anyone coming out of the development?

22 MR. SLADE: We're proposing a sidewalk and  
23 the cars would be stopped on the east side of the  
24 sidewalk inside the property. So, if you imagine the  
25 sidewalk reaching this -- our entrance on either side,

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1 north and south of the entrance, and there would be a  
2 handicap ramp down to the entrance with a crosswalk  
3 painted on the entrance. And behind that crosswalk to  
4 the east side, there would be a stop bar and the stop  
5 sign would be at that location.

6 So, the cars would stop. The first car in  
7 line would have its front bumper just inside the  
8 crosswalk.

9 MS. GATES: So, I've come here on this  
10 interior road and I'm here. Can you tell the Board  
11 what's here please?

12 MR. SLADE: Well, there would be a lot  
13 there.

14 MS. GATES: No. What currently exists  
15 right -- if you come out of this --

16 MR. SLADE: Well, there's just the wooded  
17 open space that's part of the property.

18 MS. GATES: Isn't it a six-foot high berm?

19 MR. SLADE: Yes. There's --

20 MS. GATES: And it totally blocks the line  
21 of site for anyone coming out of here?

22 MR. SLADE: Yes.

23 MS. GATES: Okay.

24 MR. SLADE: Well, you can't come out of  
25 there now. There's no road.

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1 MS. GATES: I understand, but this is your  
2 proposal. So, how can it possibly be safer for anyone  
3 stopped back here at a stop sign to make a left turn  
4 here?

5 MR. SLADE: Well, first of all that  
6 corner, that -- the southwest parcel. And that  
7 intersection is exactly where you're finger is, is a  
8 lot where there will be a home will be built, so that  
9 will be regraded to accommodate that lot.

10 MS. GATES: But this belongs to Mrs.  
11 Hardy, doesn't it?

12 MR. SLADE: That piece down there is Mrs.  
13 Hardy's piece. Yes.

14 MR. BARNES: Can I also answer the  
15 question for a minute.

16 The first 100 feet or so of the area to  
17 the left of that stop sign is part -- is the first lot  
18 of our development. And the berm that Ms. Gates  
19 refers to begins to rise in that area, not  
20 immediately, but it does more toward Mrs. Hardy's  
21 property line which is probably there.

22 Obviously, we would grade that out and  
23 remove any trees that are in that area. We don't have  
24 control of Mrs. Hardy's property and if it were  
25 clearer, it would be better.

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1           The grades on Foxhall Road help the site  
2 lines be substantially better once you get there.  
3 Those cars may need to inch forward to see better  
4 right now. We've been discussing with Mrs. Hardy who  
5 is open to the notion of a sidewalk and some grading  
6 and dealing with the berm in front of her property,  
7 but she also has legitimate concerns about sound and  
8 screening from Foxhall Road. And we believe both  
9 issues can be address adequately, but some of that is  
10 part of the future.

11           MS. GATES: Wouldn't this whole problem be  
12 solved though if an on-demand light were placed there?

13           MR. SLADE: The site distance issue is  
14 solved by the presence of a traffic signal. Yes.

15           MS. GATES: Thank you. I realize traffic  
16 isn't going to improve on Foxhall Road, but that isn't  
17 being -- that isn't a consideration for this  
18 development. But I think the safety of the residents  
19 on W Street, if they are being allowed to -- I'm  
20 sorry, I'm testifying.

21           CHAIRPERSON GRIFFIS: You felt my wrath  
22 coming down on you.

23           Any other questions?

24           MS. GATES: No. Thank you.

25           CHAIRPERSON GRIFFIS: Any other

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1 witnesses?

2 MS. GATES: Yes. Mr. Lin.

3 What is your working relationship with  
4 Steven Crom?

5 MR. LIN: Steven Crom is a previous  
6 engineer.

7 MS. GATES: And when did you join this  
8 project?

9 MR. LIN: It was a couple of weeks ago.

10 MS. GATES: You talked about DDOT making  
11 improvements to Foxhall Road.

12 MR. LIN: Okay. Mr. Slade, mentioned  
13 about, Foxhall improvements. So, I make a phone call  
14 to Mr. O'Valley of PCPOP and he's checked into that.

15 MS. GATES: In previous presentations, we  
16 have seen a large catchment basin and I believe this  
17 was mentioned before. I just want to make sure I  
18 understood it.

19 The catchment basin that was above the  
20 wetlands no longer exists.

21 MR. LIN: It's still there. It going to  
22 be -- we have calculated that. It will be 60 foot by  
23 2000 feet.

24 MS. GATES: So, that will remains and in  
25 addition to that we have ecologically sensitive rain

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1 gardens.

2 MR. LIN: It possible if terrain permit.

3 MS. GATES: Do rain gardens -- would the  
4 rain gardens that you're proposing require residents,  
5 homeowners to maintain them? Is it something that  
6 just takes care of itself?

7 MR. LIN: It's typically -- yes. Just  
8 like a regular lawn mowing. That's all.

9 MS. GATES: Like regular lawn moving?

10 MR. LIN: Yes. It's essentially -- but  
11 it specify for the area and that's it.

12 MS. GATES: So, each yard has some grading  
13 in it that creates this rain garden and from the day  
14 the people move in in perpetuity, the rain garden  
15 takes care of itself?

16 MR. LIN: Right. You cannot plant tree  
17 there though.

18 MS. GATES: Okay.

19 MR. BARNES: If I may address something.

20 The homeowners' association will clearly  
21 need to administer and monitor these the same way that  
22 they are committed to the rear yards that would be the  
23 buffer onto the park. It clearly needs some  
24 maintenance and oversight.

25 MS. GATES: I see these homeowners really

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1 having quite a list of -- a checklist to deal with.

2 Mr. Lin, are you aware that there's  
3 already -- I think you alluded to this, a serious  
4 drainage problem on Foxhall Road?

5 MR. LIN: It's not serious because I went  
6 there a couple of times wherever the drainage that was  
7 divert to a culvert south of Mrs. Hardy's residence,  
8 the -- is only starting from south of the -- at the  
9 high points. So, from the high point, the most that  
10 are going to -- of the street during this catch basin.

11 And south of that going to that culvert -- existing  
12 culvert beyond the stream it will be going eastward  
13 and westward. So, actually it's very minimum drainage  
14 going to that culvert.

15 MS. GATES: Where is the watershed for  
16 this area?

17 MR. LIN: The watershed would go -- again,  
18 it -- go to the park.

19 MS. GATES: No. Where is the watershed  
20 located for this area?

21 MR. BARNES: Are you specifically  
22 referring to the water on Foxhall?

23 MS. GATES: Yes.

24 MR. BARNES: I believe the watershed is  
25 exclusively south from the intersection of W, because

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1 there are storm water devices to catch water from --

2 MS. GATES: The watershed? The watershed?

3 MR. BARNES: The high point of the  
4 watershed is Foxhall Road as far as I know.

5 MS. GATES: It is at Field School.

6 MR. BARNES: Okay.

7 MS. GATES: There has been ongoing, as you  
8 are aware no doubt, there is --

9 CHAIRPERSON GRIFFIS: Or are you aware?

10 MS. GATES: Are you aware -- thank you,  
11 Chairman.

12 Are you aware there is an ongoing problem  
13 between Field School and the contract, because their  
14 storm water system that you're referring to in here  
15 has failed?

16 MR. LIN: I didn't know about that issue.

17 MS. GATES: Well, are you aware that the  
18 people that live below McArthur Boulevard on Hutchins  
19 Place, which is a slight dogleg from where White Haven  
20 crosses McArthur are flooded on a regular basis from  
21 water running down White Haven Parkway where you are  
22 proposing to put this water?

23 MR. LIN: I heard about that.

24 MR. BARNES: So, how will adding more  
25 water, regrading Foxhall Road according to your plan

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1 mitigate the problems the people on Hutchins Place are  
2 having before the regrading takes place?

3 MR. LIN: Okay. What's going to happen  
4 is, we will coordinate with DDOT. If our development  
5 come first, we will include the -- we will provide the  
6 catch basin. That will include all the -- and that  
7 going to be better to the system when White Haven  
8 Parkway. That way the drainage is reduced going  
9 downstream to -- the -- you're talking about.

10 MS. GATES: So, you're proposing putting  
11 in a new storm drain at White Haven and Foxhall?

12 MR. LIN: No. We connected the existing  
13 system over there from Foxhall road.

14 MS. GATES: I got it. I got it.

15 I'm sorry. I've sort of lost my train of  
16 thought here.

17 Are you aware that the plans for  
18 improvements to Foxhall Road are sitting in the  
19 Palisades Library? Are you aware the deadline for  
20 comments February 25th?

21 MR. LIN: No. Because I just heard of the  
22 improvement from Mr. Slade. That's why I start --

23 MS. GATES: Are you aware, Mr. Slade, of  
24 those plans in the library?

25 MR. SLADE: I learned that at your ANC

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1 meeting.

2 MS. GATES: And have you gone to see them?

3 MR. SLADE: No, but I have left Voicemail  
4 with Mr. Kaleed and DDOT who will be -- have some  
5 level of involvement in that project.

6 MS. GATES: Are you planning to ask him to  
7 postpone those improvements?

8 MR. SLADE: No. Pending -- we're going to  
9 inform him of this project and pending, of course, the  
10 action of the BZA, is the timing works. I've worked  
11 with Mr. Kaleed in the past in situations like this.  
12 He will look for opportunities to integrate any  
13 changes that this project might foster in a timely way  
14 that would not delay the Foxhall Road -- DDOT Foxhall  
15 Road improvements.

16 MS. GATES: And what kind of changes are  
17 you talking about right now?

18 MR. SLADE: Well, we talked about this  
19 storm water connection as one possibility.

20 If this project -- if Dunmarlin had  
21 reached -- if Dunmarlin reaches a point where the  
22 developers of Dunmarlin are confident that they are  
23 going to be able to go ahead, and then Mr. Kaleed to  
24 say to them, I'm speculating totally.

25 I can include your required connection as

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1 an add-on to my contract, but of course I'll need you  
2 to pay for that. I'll need the developers of  
3 Dunmarlin to pay for it.

4 MS. GATES: I think you've lost me there  
5 on your contract.

6 MR. SLADE: DDOT looks for opportunities  
7 to avoid what Mr. Griffis referred to earlier which is  
8 just fix the street and now we come back and tear it  
9 up.

10 MS. GATES: Exactly.

11 MR. SLADE: So, one of Mr. Kaleed's  
12 objectives is to be aware of everything that might be  
13 happening that could cause that to happen and  
14 incorporate changes to the design so he doesn't have  
15 to come back and tear it up for our storm drain  
16 connection.

17 MS. GATES: So --

18 MR. SLADE: So, we would, you know, we  
19 already are trying to contact them to make sure they  
20 are aware of the kinds of things that Dunmarlin would  
21 need to do in the public right of way on Foxhall Road,  
22 so Mr. Kaleed can decide whether he wants to try to do  
23 some of them concurrent with the -- their project.

24 MS. GATES: If the long-awaited  
25 improvements are to begin in April and I believe that

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1 they are, how will these improvements be incorporated?  
2 How will you have time to get them incorporated when  
3 we may still be here in April?

4 MR. SLADE: Well, I don't know if it's  
5 going to be possible, but starting in April doesn't  
6 mean that he's excavating to do the storm water  
7 connection, for example, until perhaps August. So,  
8 depending on the staging of his project, there's  
9 always a possibility.

10 MS. GATES: And, Mr. Barnes, have you  
11 applied for any permits yet?

12 MR. BARNES: No. No. It's premature.

13 MS. GATES: Thank you. I have no more  
14 questions.

15 MS. HAAS: I have a question about the  
16 Field School.

17 Will you be talking with them about their  
18 drainage system in anticipation of this project?

19 MR. LIN: Well, actually, Park Service has  
20 just show me a set of plan that were designed for this  
21 Field Service storm water facility. And he will share  
22 with me a copy. I promise him starting that and see  
23 if there's a problem there, it can be construction  
24 problem, it can be a design problem.

25 MS. HAAS: Because I understand that there

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1 are a couple of neighbors who are still experiencing  
2 water problems now and we're hearing that the Field  
3 School System is the standard and that's kind of  
4 scary.

5 MR. LIN: Well, it's not --

6 CHAIRPERSON GRIFFIS: Wouldn't you agree?

7 MS. HAAS: Don't you agree?

8 MR. LIN: It's not only that. Because  
9 sometimes you have a design drawing. You may not  
10 build to that. So, we have to look at as built one  
11 too.

12 CHAIRPERSON GRIFFIS: Okay. Anything  
13 else?

14 I thank you all very much.

15 Just have a quick follow up questions of  
16 the Board.

17 Mr. Mann.

18 MR. MANN: Ms. Gates brought our attention  
19 to the attachment behind Tab 7. I'd like to just ask  
20 a question to clarify that. I don't really quite  
21 understand precisely what I'm looking at, although it  
22 says Option 1, it looks like it might actually be more  
23 than one option.

24 To start with, are the hatched marked  
25 areas medians or areas deleted as medians which --

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1                   MR. SLADE: It would probably be. This is  
2 not a design, it's a sketch, but it would probably be  
3 pinstriping.

4                   MR. MANN: Okay. And so we have appear to  
5 have two southbound lanes, one of which is the  
6 dedicated left hand turn lane.

7                   MR. SLADE: Correct.

8                   THE COURT: And then it narrows back to  
9 one lane. Then one northbound lane which is a through  
10 land and a right turn lane. And then as you're  
11 heading west, you would turn right into a northbound  
12 lane.

13                   But what I don't understand is, and maybe  
14 there are two options actually being depicted.  
15 Doesn't that right hand turn lane take you right onto  
16 the sidewalk?

17                   MR. BARNES: I think what's being shown is  
18 the property line of the subject property would need  
19 to be -- it would need volunteer land to make that  
20 second land occur, which they're prepared to do  
21 because there's not enough right of way that's under  
22 city control right now. So, that's what --

23                   CHAIRPERSON GRIFFIS: Are you preserving  
24 sidewalks across that entrance in whatever option you  
25 propose?

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1                   MR. BARNES: Yes. The idea is to try and  
2 suggest that pedestrian safety crossing, that there  
3 would be a stripped walk or something.

4                   CHAIRPERSON GRIFFIS: No. I'm saying.  
5 It brings up an interesting point. Your drive lanes  
6 do cross into the sidewalk. And my point is, as  
7 you're indicating and the property line would have to  
8 be moved back or an easement be granted.

9                   You're preserving sidewalks all the way  
10 through on Foxhall, so they wouldn't be interrupted.  
11 Is that correct?

12                   MR. BARNES: Yes.

13                   CHAIRPERSON GRIFFIS: Okay. And they  
14 would turn into the site also?

15                   MR. BARNES: Yes.

16                   CHAIRPERSON GRIFFIS: Okay. So, that's a  
17 critical aspect because obviously that's not showing  
18 on the options in this diagram. But it's worth  
19 understanding.

20                   MR. BARNES: It's small, but it's shown on  
21 our bigger site plan. It's hard to read.

22                   CHAIRPERSON GRIFFIS: Okay. And so  
23 following up then, is the definitive -- well, how do  
24 you go about getting this definitive in terms of the  
25 impact on the property. Meaning, you're going to have

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1 coordinate this with DDOT, correct, in terms of  
2 changing the drive lanes and the turn lanes? What's  
3 the anticipated schedule for that? Or are you going  
4 ahead -- are we looking at on the property line, which  
5 is all our jurisdiction really goes to, are we then to  
6 look at a site plan that shows the property line set  
7 back accommodating a sidewalk that would also  
8 accommodate an anticipated turn lane?

9 MR. BARNES: The plan that was at the end  
10 of this development -- the very last -- oops. The  
11 sidewalks are actually shown there and they would be  
12 created in a right of way that would end up being  
13 partly in Foxhall Road. There would be some sort of  
14 right of way deeded to the city to create the turn  
15 lane and the sidewalk would be on our side of Foxhall  
16 before the useable property that could be sold to  
17 someone would actually -- that new property line for  
18 sale would be created to allow the sidewalk on Foxhall  
19 and the turn lane to exist within the current property  
20 line.

21 CHAIRPERSON GRIFFIS: Okay. Understood.

22 However, it's only the north side that you  
23 set it back. On the south side it still would have to  
24 overlap, because your sidewalk stays aligned with what  
25 looks like would be in alignment with Foxhall with no

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1 turn lane.

2 MR. BARNES: Clearly, it needs to align in  
3 such a way that it makes sense.

4 CHAIRPERSON GRIFFIS: Okay. Okay. And  
5 that's all --

6 MR. BARNES: But I recognize it needs to.

7 CHAIRPERSON GRIFFIS: So, I think an  
8 excellent question, Mr. Mann.

9 Let's continue with a quick follow up.

10 Ms. Miller?

11 VICE CHAIR MILLER: Mr. Slade, we heard  
12 from various people today that an on-demand light  
13 would increase safety. Is that under consideration by  
14 DDOT in connection with the improvements to Foxhall  
15 Road?

16 MR. SLADE: It is not yet.

17 The ANC attached it as a condition to  
18 their approval and we agreed that we would talk to  
19 DDOT as soon as it was appropriate, which would be  
20 after BZA's assumed approval of the project.

21 MS. GATES: Mr. Slade, wasn't the  
22 attachment or the agreement that the developer would  
23 cover the expenses involved in the installation of  
24 this light, that we never intended -- I do not believe  
25 we intended this to be DDOT's nickle.

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1                   MR. SLADE :       As I remember your  
2 resolution, your resolution said it would be the  
3 developer's nickle. And I can't speak for them as to  
4 how they are going to respond to that condition.

5                   MS. GATES:   Well, I believe, wasn't the  
6 agreement -- I thought we got a thumbs up head nods,  
7 either from Mr. Nettler or the developer sitting there  
8 that, yes, they agreed to this? Is that your  
9 recollection?

10                  MR. SLADE:  that was my -- that is exactly  
11 what I remember. I don't remember whether it was  
12 verbal, nodding, thumbs or whatever. But that's my  
13 understanding.

14                  CHAIRPERSON GRIFFIS:   But there were no  
15 high five's involved?

16                  MS. GATES:  No.

17                  CHAIRPERSON GRIFFIS:  Okay. Just nickels.

18                  MS. GATES:  Thank you.

19                  CHAIRPERSON GRIFFIS:  Of course.

20                         Just to be clear, of course, I'm not sure  
21 how much control this Board would have over this in  
22 this particular Special Exception of conditioning the  
23 provision of a signalized light. But clearly we're  
24 are looking at traffic impact. And I think it's an  
25 important aspect to have a discussion on.

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1 MS. GATES: May I ask you to refer to the  
2 Field School case please?

3 CHAIRPERSON GRIFFIS: When the --

4 MS. GATES: Where signalized intersection  
5 was required.

6 CHAIRPERSON GRIFFIS: All right. Very  
7 well. Let's move ahead. Let's get the next cross.

8 Who would like to go next in the party in  
9 opposition. The Friends? Excellent.

10 MR. SNAPE: Good evening now, I think.

11 Mr. Lin, I'll start with you.

12 Has the storm water plan been peer  
13 reviewed yet?

14 MR. LIN: My or --

15 MR. SNAPE: Yes. Well, the current -- the  
16 current storm water plant for the project?

17 MR. LIN: By whom?

18 MR. SNAPE: I'm just asking, has it been  
19 peer reviewed by anybody?

20 MR. LIN: No.

21 MR. SNAPE: Well, do you expect that it  
22 will be?

23 MR. LIN: Yes.

24 MR. SNAPE: Do you know when?

25 MR. LIN: After this meeting.

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1 MR. SNAPE: After this meeting?

2 MR. SNAPE: After this meeting.

3 MR. LIN: Yes.

4 MR. SNAPE: Okay.

5 CHAIRPERSON GRIFFIS: There's a whole  
6 great future after this meeting.

7 MR. SNAPE: It appear that way.

8 CHAIRPERSON GRIFFIS: You said you have  
9 more clarification on that? You were getting out of  
10 your chair.

11 MR. LIN: Because were have the same.  
12 Because I start this project a couple more two weeks  
13 ago.

14 CHAIRPERSON GRIFFIS: If you don't know,  
15 you don't know.

16 MR. LIN: Yes.

17 CHAIRPERSON GRIFFIS: That's the better  
18 answer. I don't know.

19 MR. SNAPE: Was there someone else who was  
20 going to add something?

21 CHAIRPERSON GRIFFIS: I don't know.

22 MR. NETTLER: Are you here --

23 MR. LIN: For the previous?

24 MR. NETTLER: Right. Or --

25 MR. LIN: Proposal. Yes.

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1 CHAIRPERSON GRIFFIS: Okay. So  
2 clarification is brought that we're actually talking  
3 to the peer reviewer of the original storm water  
4 management.

5 MR. SNAPE: So, you wrote the plan and  
6 were the peer reviewer for the plan? Or there was  
7 another person, a previous person wrote it and you  
8 peer -- Was this person from the same firm or is it  
9 different?

10 MR. LIN: Same firm.

11 MR. SNAPE: All right. Same set of  
12 questions with regard to the grading plan, which I  
13 think was just released today for the first time. Is  
14 that correct, this grading plan? Will this grading  
15 plan be peer reviewed?

16 MR. NETTLER: It's the exact same thing.  
17 They are the peer review for the prior plans that had  
18 been --

19 CHAIRPERSON GRIFFIS: Okay. They are the  
20 peer review for the prior plans, Mr. Nettler is  
21 saying. But was there a prior grading plan that was  
22 reviewed by you? So, there's an original -- let's  
23 call it the original grading plan --

24 MR. LIN: Yes.

25 CHAIRPERSON GRIFFIS: -- and you have

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1 looked at that and also created a new grading plan  
2 which you submitted today?

3 MR. LIN: Right.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. SNAPE: Thank you, Mr. Nettler.

6 MR. BARNES: May I add that we plan to  
7 review it obviously for the needed integration, the  
8 tree saving, the design of the lots and the roadways.

9 MR. SNAPE: Terrific. Thank you.

10 I want turn our attention to the filter  
11 catchment system. I'm not sure I'm talking about that  
12 precisely.

13 But will this filter system, is it  
14 currently designed to filter salt?

15 MR. LIN: Salt. This is designed to  
16 filter what it specifies in the storm management  
17 guidelines for by the first -- water quality control.

18 MR. SNAPE: So, salt that would be put  
19 down on these roads, if these roads or road system was  
20 to be built during the winter, if there was a snow  
21 storm, this filter would not be able to catch that  
22 salt from the system you now created? It would not  
23 catch the salt? Would not filter the salt?

24 MR. LIN: Right.

25 MR. SNAPE: Is it your best opinion and

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1 expert understanding that that salt then would very  
2 possibly go into the wetland that's there?

3 MR. LIN: It's possible, but we -- we  
4 didn't create more.

5 MR. SNAPE: You didn't create more what?

6 MR. LIN: More like a salt going to the  
7 wetlands.

8 MR. SNAPE: Okay. My question --

9 MR. LIN: Actually, if I can say, the salt  
10 portion of the check against the guidelines say  
11 there's some different facility that provides kind of  
12 water quality control -- that.

13 MR. SNAPE: Okay. Just so we're clear on  
14 my question. My assumption was that there will be  
15 more -- my question is assuming there would be more  
16 salt as a result of a new road that will have more  
17 snow on it at some point that will have salt applied  
18 to it. That was the assumption of my question.

19 MR. LIN: Well, I will say it this way.  
20 With the rain garden system, the salt or the --  
21 through the grand, not through by pass through the  
22 wetland.

23 MR. SNAPE: Okay. I'll get to the rain  
24 garden system again in a second.

25 I have the same set of questions with

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1 regard to chlorine. There was a mention that there  
2 will be some pools in this development.

3 Would this filter system filter through  
4 the chlorine?

5 MR. LIN: Okay. Actually, the pool water  
6 is going through the waste water line not through the  
7 storm drain.

8 MR. SNAPE: Okay.

9 MR. LIN: So, it shouldn't be an issue.

10 MR. SNAPE: Okay. Okay.

11 MR. BARNES: That's a D.C. requirement.

12 MR. SNAPE: Thank you. Since you  
13 mentioned the rain gardens, let me turn to that. I  
14 was going to do that near the end, but it's relevant.

15 What percentage of the property, about 16  
16 acres of the property, will be dedicated to rain  
17 gardens?

18 MR. LIN: Like I said probably --

19 MR. SNAPE: I didn't catch the exact  
20 amount.

21 MR. LIN: Okay. What I say is if the  
22 terrain permits to provide that.

23 MR. SNAPE: So, what will be the general  
24 percentage of the property that will have -- I'm not  
25 sure I know how big this will be, is what I'm trying

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1 to get at. How big this rain garden apparatus will  
2 be.

3 MR. LIN: Well, this is a conceptual.  
4 What we propose to do is we provide with this extent  
5 the grading permits. Because rain garden is required  
6 in a flood area to have a depression. If it's deep  
7 slope, it won't work.

8 MR. SNAPE: Okay.

9 MR. LIN: So, it be somewhere you can  
10 create a -- build a pad and build within that --  
11 provide that kind of facility.

12 MR. SNAPE: Okay. Thank you. I think I  
13 understand that.

14 Will -- for the properties, the lots that  
15 will have these rain gardens, and this may not be for  
16 Mr. Lin. This maybe for Mr. Nettler or someone else.

17 Will this be a covenant condition on the  
18 deed for these properties? Is that the expectation?

19 Mr. Nettler.

20 MR. BARNES: Thank you. I would believe  
21 so, yes. We do have other covenant controlled buffer  
22 areas around the edge of the property and I think this  
23 about be appropriate to be included and for  
24 maintenance the same manner.

25 MR. SNAPE: That makes sense.

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1                   And, Mr. Barnes, approximately when do you  
2 think we will see the rain garden design? What's a  
3 reasonable time?

4                   MR. BARNES: After this meeting?

5                   CHAIRPERSON GRIFFIS: As soon as we know  
6 what plans. Right?

7                   MR. BARNES: Not to be factious, as soon  
8 as the grading plan is much more resolved than  
9 wherever these things can be provided, we'll put down  
10 on the grading plan -- detailed grading plan.

11                  MR. SNAPE: I'm going to go back to Mr.  
12 Lin again.

13                  You had talked about a two-year storm  
14 capacity and a 15-year storm capacity and I'm frankly  
15 not familiar with whatever the regulations may  
16 require. I don't know if it's two year or 15 year.  
17 But assuming it's the more, maybe someone knows that,  
18 but assuming --

19                  MR. LIN: Let me put it this way.

20                  MR. SNAPE: Yes, please.

21                  MR. LIN: We have done a calculation based  
22 on the current conditions, the two year -- three CFS  
23 down through the well end. That's our calculation of  
24 the 15-year development site, you will produce 15-year  
25 storm. So, we have to provide attenuation storage so

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1 we can slow down the flow rate so there's no more than  
2 2 CFS.

3 MR. SNAPE: Okay. Does anyone know? I do  
4 not know the answer to this and it may not be fair to  
5 ask Mr. Lin this question. But, does anyone know how  
6 many 15-year storms we've had in the last 15 years?  
7 It's a serious question.

8 MR. LIN: Well, USDS should have that.

9 MR. SNAPE: Okay. I'd like the Board to  
10 know that it's possible there have been a lot of  
11 these, by no one here knows the answer to that.

12 I'm going to turn to grading now.

13 And I think, Mr. Lin, again, it's for you  
14 but any of you can chime in.

15 What is the slope of the fill area leading  
16 down to the wetland?

17 MR. LIN: Slope area that we have now is  
18 lie 3:1, but this is real sort of conceptual, because  
19 right now we don't have advantage of using retaining  
20 wall to reduce the grade. So, our -- will have more  
21 detail and the steep slope condition will be reduced.

22 MR. SNAPE: Okay. Well, I don't want to  
23 offend Mr. Nettler, because I'm a lawyer too, but I am  
24 just a lawyer and I always thought that slop grades  
25 were expressed in percentages. Is there a number

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1 grade --

2 MR. LIN: 33 percent.

3 MR. SNAPE: Say that again?

4 MR. LIN: 33 percent.

5 MR. SNAPE: 33 percent. Okay.

6 How high is the fill going to be on that  
7 grade? Do we know how much fill? How high the fill  
8 is going to be?

9 Any of you? Mr. Barnes? Mr. Lin?

10 MR. BARNES: It looks like 10 feet to me.

11 Excuse me. It looks like about 10 feet of fill to  
12 me. But it's preliminary.

13 MR. SNAPE: Okay. Mr. Barnes, I think  
14 this is a question for you, but any of you can, again,  
15 chime in.

16 What was the reason that you did not seek  
17 a 100 foot setback from the wetlands? What was the  
18 rationale behind that design? I believe, we are at 25  
19 feet right now?

20 MR. BARNES: Well, this is a private  
21 development. Twenty-five feet is, I believe, what's  
22 required as agreed to -- excuse me. What is required.

23 It was agreed to by the Army Corps of Engineers and  
24 so we were obviously happy to respect that, because  
25 they are -- the owners are trying to develop the land.

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1 MR. SNAPE: A lot of answers in the  
2 audience, but thank you. I appreciate that.

3 Has the Park Service -- does anyone know  
4 whether the Park Service or any D.C. environmental  
5 agency has taken a look at that 25 foot figure?

6 MR. BARNES: Well, I know that  
7 representatives of the Park Service has walked the  
8 land with several of the consultants and the owners  
9 along the way. So, they are certainly familiar with  
10 it and I presume they are content with it or we would  
11 have heard otherwise.

12 MR. SNAPE: Okay. I have a question for  
13 Mr. Pitchford.

14 MR. PITCHFORD: Good evening.

15 MR. SNAPE: Approximately how many trees  
16 are on the entire property right now?

17 MR. PITCHFORD: I believe the first survey  
18 I saw was, of all the tree, 250 were surveyed, but of  
19 all diameter sizes.

20 MR. SNAPE: Okay. And is it right. I  
21 heard you correctly say that the majority of these  
22 trees are in the eastern, southern portion of the  
23 property?

24 MR. PITCHFORD: Correct.

25 MR. SNAPE: Is that correct?

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1 MR. PITCHFORD: Well, there's up some  
2 along Foxhall but, yes. Primarily east and south.

3 MR. SNAPE: And in those wooded areas,  
4 what is the density of trees per acre roughly? Do you  
5 know the answer to that?

6 MR. PITCHFORD: Basal area, probably 90  
7 square feet per acre. Ten, twelve trees per acre.  
8 Ten count. Something like that.

9 MR. SNAPE: A theoretical question for  
10 either Mr. Barnes or Mr. Pitchford. I think I'm  
11 butchering your name and I apologize.

12 MR. PITCHFORD: That's all right. It gets  
13 butchered all the time.

14 MR. SNAPE: You can butcher mine too.  
15 Had the design roads --it's my  
16 understanding -- the assumption of my question is that  
17 the road design has not necessarily followed the  
18 topography of the grade. That may be an assumption  
19 that Mr. Barnes or others challenge and the assumption  
20 of my question. But, is it true, would you agree that  
21 we could save more trees if the roads did follows the  
22 topography of the land? Is that a fair question?

23 MR. PITCHFORD: My perception -- I have  
24 not seen the road flagged out on the landscape so I  
25 can't really say. It seems to me like it's following

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1 the contours pretty well.

2 MR. SNAPE: Mr. Barnes?

3 MR. BARNES: I'd be happy to address that.

4 There is a -- there's a maximum amount of  
5 steepness of 12 percent allows on a public road. With  
6 that as a constraint, these roads will be laid out to  
7 follow the terrain heading down the bowls and so on  
8 and in the most sympathetic way possible to allow the  
9 least amount of fill. But that does not mean that in  
10 a given area that you want me to have some fill below  
11 that road to maintain the 12 percent. But it's still  
12 true to say that it's following the grade.

13 If you try to bulldoze a grid across this,  
14 much, much, much more fill would be required so it's  
15 been the intent all along to follow the grade.

16 MR. SNAPE: Thank you, Mr. Barnes.

17 MR. BARNES: We just can't match the  
18 grades of the --

19 MR. SNAPE: Thank you. That is all my  
20 questions.

21 Thank you very much.

22 CHAIRPERSON GRIFFIS: Who would like to  
23 be next? Yes. Ms. Hardy.

24 MS. HARDY: Chairman, quick questions.

25 Mr. Barnes might want to answer it.

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1           One of the privileges of living on this  
2 property for maybe 30 years is that I know a lot about  
3 it. And I've been concerned is that no one has talked  
4 about security.

5           In one of these folders that was submitted  
6 to the Board shows many of the 6,000 homeless people  
7 in D.C. live in the park. Actually have lived on the  
8 Phillips property. And I've been concerned that when  
9 the land is cleared, these people will move into White  
10 Haven Park. And yet the developers have not provided  
11 any information on how they are going to secure this  
12 development.

13           CHAIRPERSON GRIFFIS:       Good. So, your  
14 question is, how are you going to secure it from --  
15 I'm sorry, did you say a homeless population that's  
16 living in the park that might be displaced by a  
17 development like this?

18           MS. HARDY: Yes. Yes.

19           CHAIRPERSON GRIFFIS: Okay.

20           MS. HARDY: Plus, how would they provide  
21 adequate security given the gave that --

22           CHAIRPERSON GRIFFIS:       What type of  
23 security are you looking for?

24           MS. HARDY: Well, a fence, basically. Or  
25 any other kind of security.

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1 CHAIRPERSON GRIFFIS: So, security  
2 against trespassing on private property?

3 MS. HARDY: Yes. Yes. Yes.

4 Or in Georgetown, they have a 24-hour  
5 security systems in developments.

6 CHAIRPERSON GRIFFIS: Indeed.

7 MS. HARDY: But the --

8 CHAIRPERSON GRIFFIS: Understood.  
9 Question?

10 MS. HARDY: What have they done about  
11 security?

12 MR. BARNES: In our discussions with Ms.  
13 Hardy, we've agreed to place a fence of mutually  
14 agreed upon design between her property and our ours  
15 so that her property wouldn't be directly affected we  
16 were are.

17 We have also offered to share the cost of  
18 a fence between her property and the White Haven Park  
19 on the side -- on the south side.

20 We plan to fence the property lines to the  
21 park on the south and the east with a three-foot  
22 fence. That's what we're currently proposing.

23 MS. HARDY: Mr. Chair, with all respect,  
24 the three-foot fence is no security.

25 CHAIRPERSON GRIFFIS: I know. But just

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1 ask him questions and we'll figure out the details.

2 MS. HARDY: Okay. So, that's the answer  
3 on security? A three-foot fence around the park?

4 MR. BARNES: If I can say that, you know,  
5 the White Haven Park right now provide cover in the  
6 tangle of vines that are there now, but it's not treed  
7 and wooded the way that the Grover Archibald Park is  
8 concerned. I'm no expert on where homeless people  
9 would choose to live, but I would imagine they would  
10 have a much safer and easier time living on the --  
11 further east and southern reaches of the park than  
12 they would right in White Haven. But this is  
13 speculation.

14 MS. HARDY: This is security --

15 My next question is probably for Mr.  
16 Pitchford about trees.

17 This one, I don't know where in the  
18 pictures, but it's on my property line. It's this  
19 nice big bunch of red things down there.

20 As you can see it's -- it's got some very  
21 nice popular trees down there. And the road --

22 MR. PITCHFORD: Sycamore.

23 MR. PITCHFORD: And sycamore. I'm  
24 concerned, it doesn't show there, but there is a  
25 retaining wall.

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1           Could you please tell me what are the  
2 precautions that you have in mind to assure me that  
3 that road which I thought should be 60 feet away from  
4 those trees to protect them, maybe more like 30 feet  
5 away from the root system.

6           And also while you're commenting on that,  
7 could you please elaborate on the retaining wall and  
8 its likely impact on those trees.

9           MR. PITCHFORD: Yes. I am familiar with  
10 three that, I believe, strattle the property line  
11 right there and they are a concern of the owners for  
12 sure. They are pretty nice trees.

13           One of the advantages of having this road  
14 and this configuration versus running that way as we  
15 basically steer the road away from those trees a  
16 little sooner. There's also a little strip of green  
17 space there that's not going to be developed that's  
18 right in the critical root zone of those trees.

19           MS. HARDY: There's a retaining wall that  
20 is not currently being shown that this is available in  
21 here.

22           MR. PITCHFORD: I'm not --

23           MS. HARDY: That picture doesn't show a  
24 retaining wall, but this one shows a retaining --

25           MR. PITCHFORD: I'm not familiar with the

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1 retaining wall.

2 CHAIRPERSON GRIFFIS: Is there a proposed  
3 retaining wall?

4 MS. HARDY: There is a retaining wall in  
5 there in one of the drawings.

6 MR. BARNES: The retaining wall has been  
7 planned all along right here between the edge of the  
8 road and Mrs. Hardy's property. And clearly the  
9 location and the design and the techniques for  
10 installing the wall need to be coordinated with Mr.  
11 Pitchford.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. BARNES: To make sure they --

14 CHAIRPERSON GRIFFIS: For clarity sake,  
15 there is a proposed retaining wall there?

16 MR. BARNES: Yes, indeed.

17 MR. PITCHFORD: Right.

18 CHAIRPERSON GRIFFIS: Somewhat parallel  
19 to the property line.

20 MR. PITCHFORD: As I mentioned, the  
21 minimum clearance zones earlier, that's what's really  
22 critical to me is to keep that --

23 MS. HARDY: Well, my question was  
24 specifically whether you thought, given the size of  
25 the size of the trees that that -- the location of

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1 that road, which according to my calculations, should  
2 be 60 feet away and it looks more like 30 feet away?

3 MR. PITCHFORD: I'm not as concerned about  
4 the road as I would be about --

5 MS. HARDY: No. I am.

6 MR. PITCHFORD: Yes. But you asked me the  
7 question, so I'm telling you.

8 MS. HARDY: Okay.

9 MR. PITCHFORD: I mean my concern would be  
10 more for the retaining wall and any continuous footer  
11 that might have to be installed for that. So, I would  
12 work with the engineers to move that certainly out of  
13 that minimum clearance zone of those trees, that's for  
14 sure.

15 But you have all this root zone up here  
16 that we can capture and keep these trees healthy. And  
17 we can work over this root zone area here in some way.

18 We can span that without digging down into the root  
19 zone. But it's going to take a little work.

20 CHAIRPERSON GRIFFIS: When you talk about  
21 the critical zone for the place that has the retaining  
22 wall, look at this graphic that she's pointing your  
23 attention to which is labeled, the Current Site Plan  
24 on the one I have.

25 If those are correctly represented, the

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1 trees, do you think that that retaining wall can be  
2 placed where it's being proposed?

3 MR. PITCHFORD: I don't know how far away  
4 it is from the tree. But if it's as close as it looks  
5 like here, it could be a problem. No question. But I  
6 don't know. I've never seen any figures.

7 MR. BARNES: this plan shows the most  
8 critical portion of the root zones of those trees in  
9 relation to the road layout.

10 MR. PITCHFORD: That's the minimum  
11 clearance zone of the trees.

12 CHAIRPERSON GRIFFIS: But not to the  
13 retaining wall?

14 MS. HARDY: That doesn't even show the  
15 retaining wall.

16 CHAIRPERSON GRIFFIS: Oh, I'm sorry.  
17 You're putting another plan that's up there. Okay.  
18 Let's all look at that one.

19 MR. PITCHFORD: That shows the critical  
20 tree root area.

21 CHAIRPERSON GRIFFIS: Which is --

22 MR. BARNES: And the retaining wall is  
23 shown and it clearly needs to be moved closer to the  
24 road.

25 CHAIRPERSON GRIFFIS: Okay. There it is.

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1 MR. PITCHFORD: That would have to be  
2 changed to satisfy me. Yes.

3 CHAIRPERSON GRIFFIS: Excellent cross  
4 examination question which happens in that area.  
5 We'll look for that to be accommodated in new form  
6 there.

7 Okay. Yes?

8 MS. BRADY: First, I would ask Mr.  
9 Pitchford.

10 I don't have the application, so I haven't  
11 seen your name in writing. I apologize.

12 MR. PITCHFORD: That's no problem.

13 MS. BRADY: Why are you planning to use so  
14 many trees that are not native to the northeast when  
15 there are plenty available that would be non-invasive?

16 MR. PITCHFORD: Well, interestingly, there  
17 aren't a whole lot of native trees in our area. Most  
18 of the trees we have here are European or Asian  
19 introductions. We have very, very, very few truly  
20 native trees in this area. And I think that's a bit  
21 of a misnomer but we really don't have a large number  
22 of natives.

23 But all the trees that I would use would  
24 be either native, like some of the oaks, but not all  
25 the oaks, but some of them. And those that are

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1 naturalized that I know have not shown invasive  
2 characteristics.

3 MS. BRADY: I think, Mr. Barnes, maybe  
4 these questions go to you.

5 On the restrictions and/or the covenants  
6 that would have to agreed to for the development, will  
7 there be a restriction from someone purchasing more  
8 than one lot and building a combined lots?

9 MR. BARNES: I think that's an excellent  
10 question.

11 The way in which it's worded is that this  
12 would be discouraged. We'd spoken to the owners about  
13 that. We have the same concern that there are not  
14 being sort of mansification. It's this new word in  
15 development circles, and it is certainly our intention  
16 that large groups can't be assembled for that reason.  
17 We said actively discourage, I believe, was the  
18 phrasing.

19 MS. BRADY: Will there be a covenant that  
20 would prevent the loop road that continues into  
21 Foxhall Place being -- us being denied access at some  
22 point, since that is a private road?

23 MR. BARNES: I'm sure they would be happy  
24 to provide it, because it's certainly our intention to  
25 keep the neighborhood open and offer you access should

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1 you choose to have it.

2 MS. BRADY: Okay. Is the construction  
3 area -- where is the construction area and access to  
4 the construction area going to be staged?

5 MR. BARNES: This is not a good question.

6 The way in which the development is  
7 planned to be developed, so the construction entrance  
8 would be located somewhere in the area where the final  
9 roadway is planned to come in off of Foxhall. There  
10 would be a wash down stand and there would be rock in  
11 the way that the codes require.

12 We then plan to have a staging area for  
13 construction substantially in this area here which  
14 would be quite a bit down from Foxhall and quite a bit  
15 down from W when the grading is done. And the houses  
16 would plan to be developed initially along W Street  
17 and down around in here. Then in the middle here.  
18 Probably down here. And the second last area and then  
19 backing out of the site in that area. That's the plan  
20 for the way the development would proceed.

21 MS. BRADY: And so all the access to and  
22 from the construction area is off of Foxhall Road?

23 MR. BARNES: Right. That's a commitment we  
24 made to W Street neighbors is that we plan to access  
25 all the construction activity -- there may be a case

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1 where a crane has to park there for a day. There may  
2 be a few exceptions, but it is our plan to do all the  
3 construction inside the site and not burden W Street  
4 with traffic and access.

5 MS. BRADY: If you are not -- if you and  
6 Mrs. Hardy are not able to agree on the grading of the  
7 berm on her property, without the grading of the berm  
8 on her property, is there still a line of site problem  
9 with your proposed entrance and exist on Foxhall Road?

10 MR. BARNES: It's a hard question to  
11 answer exactly without standing there. I believe that  
12 it's better if we can agree with Mrs. Hardy and put  
13 the sidewalk there, but it's not unsafe without it.

14 MS. BRADY: Let's see. I now have some  
15 questions for Mr. Slade.

16 Could be put the slide up that has the  
17 traffic diagram, probably the very last one. The  
18 proposed one. Yes.

19 Are you aware that the language in the  
20 bottom right box, I think, is incorrect?

21 MR. SLADE: No. I'm not aware of that but  
22 I'll look right now and we can correct it.

23 CHAIRPERSON GRIFFIS: Let's get the  
24 question correct. The question is the fact that it  
25 references Field School. Is that it?

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1 MS. BRADY: Correct.

2 CHAIRPERSON GRIFFIS: Okay. What should  
3 it say?

4 MR. SLADE: I think on the others it says  
5 -- oh, my goodness, it says that on all of them. It  
6 should say -- thank you.

7 MS. BRADY: You're welcome.

8 MR. SLADE: I've looked at this so many  
9 times.

10 MS. BRADY: Yes. Mr. Slade, were you the  
11 traffic consultant for the George Washington  
12 University project at Mount Vernon?

13 MR. SLADE: Yes.

14 MS. BRADY: And what was your conclusion  
15 about the safety of Foxhall Road when you presented  
16 your traffic study?

17 MR. SLADE: I don't remember.

18 MS. BRADY: Were you the traffic  
19 consultant for the Field School?

20 MR. SLADE: Yes.

21 MS. BRADY: And what was your conclusion  
22 about the safety of Foxhall Road at the conclusion of  
23 that study?

24 MR. SLADE: I did look at that recently  
25 and there was a statement in our report that said with

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1 this signal at Field School. I'm not quoting, but I'm  
2 trying to get the content or the intent of the  
3 statement.

4 With the signal at Field School, safety  
5 conditions should improve at W and Foxhall Road.

6 MS. BRADY: Are you planning on being the  
7 consultant for the Brady Estate project?

8 MR. SLADE: Yes.

9 MS. BRADY: Okay. Are you aware that  
10 accidents have continued to occur at Field School even  
11 with the addition of the bump-out lane and the on-  
12 demand traffic light?

13 MS. BRADY: Are you aware that at White  
14 Haven Parkway where the box was incorrectly noted,  
15 there is a three lane, so it has a middle turn lane  
16 there and are you aware the traffic continues to come  
17 up at that left turn lane and not turn left. And as  
18 the road narrows to two lanes at that point, disregard  
19 the fact that they've now lost a lane of traffic and  
20 that there have been accidents there?

21 MR. SLADE: I have experienced that  
22 personally. Not an accident, but --

23 MS. BRADY: But being forced to slam on  
24 brakes. Exactly.

25 MR. SLADE: Be cut off.

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1 MS. BRADY: And it is still your  
2 recommendation that a middle turn lane coming out of  
3 Foxhall Road at that point would be a safe solution?

4 MR. SLADE: Yes.

5 MS. BRADY: Okay.

6 MR. BARNES: Can I comment on that?

7 MS. BRADY: Certainly.

8 MR. BARNES: The left turn on Foxhall Road  
9 coming to White Haven, I don't believe it's a  
10 protected left turn lane. It's two lanes and then  
11 there are arrows in the roadway, but there's no  
12 striping that make it a protected left turn lane the  
13 way it is --

14 MS. BRADY: There is striping there.

15 MR. BARNES: Well, people just move on and  
16 off that.

17 MS. BRADY: Yes. Exactly.

18 MR. BARNES: You point out issues on  
19 safety on Foxhall Road which we recognize and, of  
20 course, have no control.

21 MS. BRADY: I understand.

22 Mr. Slade, over what period of time does  
23 your traffic study come up with the number of 46 a.m.  
24 cars that would have to turn onto Foxhall Road?

25 MR. SLADE: The analysis is for the single

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1 hour in the morning, single hour in the evening where  
2 traffic is at its peak.

3 MS. BRADY: All right. And you heard the  
4 testimony earlier from the policeman that the peak  
5 morning rush hour is longer than this period of time?

6 MR. SLADE: Yes. And I agree with that.

7 MS. BRADY: Let's see. And given these  
8 number of cars that you estimate would be turning out,  
9 how long, given the amount of traffic that there is on  
10 Foxhall Road, would each car have to wait before  
11 they're able to turn onto Foxhall Road?

12 MR. SLADE: Well, I need a moment to look  
13 at our estimates.

14 I'm sorry. I picked up one of our reports  
15 and it's an older report. So, it will take me a  
16 little longer than I would like to. Rob, do you have  
17 it there? Great.

18 I'm looking at page 13 of our report,  
19 which is one of the tabs in the application document.

20 And at our site driveway, this is for the morning  
21 peak hour, which is the more difficult time period  
22 than the evening peak hour.

23 The average -- our estimate of the average  
24 delay time would be 24 seconds for someone leaving at  
25 the Dunmarlin driveway to get onto Foxhall Road.

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1 MS. BRADY: And turning south onto Foxhall  
2 Road?

3 MR. SLADE: This is an overall average of  
4 all the vehicle that come out there.

5 MS. BRADY: Okay. So, your numbers are an  
6 average of a car turning north that has to wait for  
7 there to be clearance to turn and a car turning -- I'm  
8 sorry. A car turning south who would have to wait for  
9 clearance in both lanes -- in all three lanes perhaps  
10 if they're the same lane. And a car turning right or  
11 north that only has to wait for the traffic going  
12 north?

13 MR. SLADE: That's correct.

14 MS. BRADY: Let's see how can I put this  
15 into a question? I guess I can't.

16 And then one last question for Mr. Barnes.

17 Given that we do want the two  
18 neighborhoods to come together, would you consider  
19 putting on your Architectural Review Board someone  
20 from our neighborhood?

21 MR. BARNES: The contention is, I think,  
22 it's something like 60 or 70 percent build out of the  
23 property. Then one of the representative homeowners  
24 from the development would be on that board. That's  
25 contained in there. I'm not sure if our owners could

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1 agree that someone from off site should actually have  
2 say over what gets built on this site since none of  
3 them have ever had a say over what was built on your  
4 sites.

5 I understand the reason for the question.

6 I would instead ask that the lines of communication  
7 that have been open, continue to be open. We'd make  
8 commitment to have quarterly updates, to have a  
9 website, to have a hotline. I think the flow of  
10 information backwards and forwards and hearing your  
11 concerns and responding to them is just an ongoing  
12 process. I don't think one can ask the owners to put  
13 one of your members on that group. I understand why  
14 you ask, but I don't think so.

15 MS. BRADY: I'm sorry. I do have one last  
16 question, Mr. Slade.

17 I believe that your conclusion in your  
18 traffic study was that this development would not add  
19 to the dangerous situation on Foxhall Road. Am I  
20 paraphrasing that well or would you like to paraphrase  
21 it differently please?

22 MR. BARNES: How about if I read it?

23 MS. BRADY: Sure. Thank you.

24 MR. BARNES: Well, we referred in the  
25 conclusions to the capacity analysis which addresses

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1 how the intersections will operate and the delay and  
2 congestion at the intersection. We didn't  
3 specifically talk about safety.

4 MS. BRADY: I'm sorry. It doesn't address  
5 safety?

6 MR. BARNES: Right.

7 MS. BRADY: What does it address?

8 MR. BARNES: The study and all traffic  
9 studies in the District address the ability of the  
10 offset intersection to handle the additional traffic  
11 load in terms of capacity of the intersections.

12 MS. BRADY: May I ask --

13 MR. BARNES: Now, we did address safety in  
14 that we said that by providing this second access  
15 point for W Street, east traffic for your  
16 neighborhood, it would provide an alternative to the  
17 existing W Street that was safer than the existing W  
18 Street. So, it was our view that this was a benefit,  
19 at least to your population of the whole traffic  
20 population.

21 MS. BRADY: Maybe I should ask you what  
22 the definition of "handle" is and when an intersection  
23 can handle. What does that mean?

24 MR. BARNES: It means that delays at that  
25 intersection are within an acceptable limits.

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1 MS. BRADY: And it does not speak to the  
2 safety of the intersection?

3 MR. BARNES: This particular test does not  
4 speak to the safety of the intersection.

5 MS. BRADY: Thank you very much.

6 CHAIRPERSON GRIFFIS: Redirect?

7 MR. NETTLER: Mr. Slade, when you  
8 concluded your analysis of the traffic impacts of this  
9 development, am I correct that you had concluded that  
10 the traffic generated by this development would be  
11 negligible in terms of its impact on the street scape.  
12 Is that correct? The street system?

13 MR. SLADE: Yes.

14 MR. NETTLER: Okay. That conclusion, as  
15 well as your recommendation for the access off of W  
16 Street through the project and out onto Foxhall was  
17 also reviewed by Mr. Peterson. Correct?

18 MR. SLADE: Yes.

19 MR. NETTLER: Okay. Mr. Peterson was not  
20 the traffic expert for the Field School or for Mount  
21 Vernon, was he?

22 MR. SLADE: Correct.

23 MR. NETTLER: All right. So, he  
24 independently reviewed your conclusions and he  
25 ultimately concurred with them, did he not?

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1 MR. SLADE: Yes.

2 MR. NETTLER: Okay.

3 CHAIRPERSON GRIFFIS: Anything else?

4 MR. NETTLER: No.

5 CHAIRPERSON GRIFFIS: Any recross on that  
6 redirect testimony?

7 Okay. Trying to follow procedure.

8 Very well. I think we're all set then.

9 Yes, Ms. Miller? Follow up question?

10 VICE CHAIR MILLER: I just have one  
11 question for Mr. Barnes.

12 How do you intend to discourage building  
13 on combined lots?

14 MR. BARNES: On which lots? Combined  
15 lots?

16 VICE CHAIR MILLER: Combined lots. You  
17 made a remark that you intend to discourage it.

18 MR. BARNES: I would ask that the  
19 developers consider limiting the number of lots that  
20 could be gathered together in one parcel. The word  
21 that I've been allowed to use when I address the issue  
22 so far is discouraged. But I think probably there  
23 should be something written into the agreements that  
24 limits say no more than two or three lots that are  
25 adjacent could be funneled together and so on. I know

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1 of no other device.

2 VICE CHAIR MILLER: So, is it your opinion  
3 that it would be okay if two or three lots were  
4 combined?

5 MR. BARNES: Certainly in my opinion, two  
6 lots.

7 VICE CHAIR MILLER: Two lots.

8 MR. BARNES: My own personal opinion, two  
9 lots would be a descent minimum or maximum, excuse me.  
10 A descent maximum.

11 VICE CHAIR MILLER: And it doesn't matter  
12 how many of those there might be?

13 MR. BARNES: You raise an interesting  
14 point. I do think that the variety of size of houses  
15 in any one given neighborhood given the depth and our  
16 people in different income groups to be able to settle  
17 there.

18 There are some smaller lots here that are,  
19 you know, 8,000, 8,500 square feet. There are some  
20 other lots that are maybe approaching 20. The  
21 neighborhoods that spoke to that we have researched  
22 all contain at least one or two much larger lots at  
23 least with, you know, a substantially bigger house. I  
24 mean, it's not so much that the house if 25,000 feet,  
25 it's a house with a much bigger yard. And so we

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1 actually have included a FAR limiting calculation  
2 modeled after those that exist over in Wesley Heights.

3 There's a zoning overlay called the Wesley Heights  
4 Overlay District that limits FAR which substantially  
5 controls the bulk of the house. And this would be  
6 triggered by any house that is bigger than or taller  
7 than a story and a half in height. Then it would  
8 limit the buildable footprint from 40 percent to 35  
9 percent. And the FAR calculation, which is, I think,  
10 2,000 square feet plus 40 percent of the area of the  
11 lot, would govern the total amount of finished house  
12 that can be build.

13 So, you can't build an enormous mansion on  
14 these lots. I think the Wesley Heights regulation is  
15 very cleverly written and we've worded ours based on  
16 that.

17 VICE CHAIR MILLER: Thank you.

18 CHAIRPERSON GRIFFIS: Any follow up from  
19 the Board?

20 MR. NETTLER: Yes. I have a follow up  
21 from that question.

22 CHAIRPERSON GRIFFIS: Indeed.

23 MR. NETTLER: Ms. Miller asked, following  
24 that.

25 CHAIRPERSON GRIFFIS: Good.

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1 MR. NETTLER: Mr. Barnes, isn't it  
2 instead feasible to -- instead of putting limitations  
3 on someone purchasing more than one lot, focus instead  
4 in on the architectural guidelines for that  
5 situation, since wouldn't that be a way of actually  
6 providing for more green space by focusing on -- if  
7 someone was to combine the lot into two, but you still  
8 limited the development on the lot, you then would  
9 save more space and have less of impermeable surfaces?

10 MR. BARNES: I think it's a good point. I  
11 think that in the same way that we've started an FAR  
12 and coverage program that limits coverage, I think one  
13 can --

14 MR. NETTLER: Well, FAR coverage because  
15 that's going to exist regardless. It's a -- it's  
16 really a -- it's really architectural restrictions  
17 that allow you to deal with what the size of a lot and  
18 what's built on the lot and the rear yard and how you  
19 deal with lots that are adjacent to the park. Not  
20 necessarily combining one lot of another.

21 MR. BARNES: Yes. But I think the devices  
22 that would most -- could be written in such a way that  
23 they would be easy to respect and check would be using  
24 FAR and coverage, if more than one lot is purchased.  
25 Then you reduce the amount of coverage more. Maybe

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1 the coverage is restricted to 15 or 20 percent and the  
2 FAR is not allowed. Then it drops to 20 percent plus  
3 2,000 square feet of the combined lot size.

4 I think there's a way you could develop  
5 the form and it's a good idea.

6 VICE CHAIR MILLER: This is a follow up.

7 Would this be something that you would add  
8 to your guidelines that you've already --

9 MR. BARNES: Yes. It's not addressed  
10 other than the term to discourage, but I think it's a  
11 fine idea. I'd be happy to try and write such  
12 languages.

13 VICE CHAIR MILLER: Thank you.

14 CHAIRPERSON GRIFFIS: Follow up to the  
15 follow up to the redirect?

16 MR. NETTLER: I was just going to respond.

17 I think that's a way of -- you've asked  
18 us, Mr. Parsons, and you've asked us to come back and  
19 address how the houses back up and I think that's  
20 another way of addressing that same issue.

21 CHAIRPERSON GRIFFIS: Good. It goes to  
22 this question, of course.

23 We were submitted the architectural  
24 standards and I suppose a lot of this has now been  
25 evident as preliminary or conceptual. Is that

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1 correct?

2 MR. BARNES: It is an outline, you know,  
3 that in the end when those documents are done, it's  
4 probably a 30 page document right now.

5 CHAIRPERSON GRIFFIS: Okay. And it gets  
6 to an interesting point. You can assume that we  
7 understand nor do any of the Board members necessarily  
8 written this. But this is an outline of the  
9 architectural standards. So, there is substance or  
10 much more detail in terms of all the outline  
11 guidelines, almost like a -- like an outline  
12 specification. Right?

13 MR. BARNES: Yes.

14 CHAIRPERSON GRIFFIS: Actual talking of  
15 materials, specifics, architectural details. I mean  
16 you picked up on some of these in terms of windows and  
17 doors.

18 So --

19 MR. BARNES: Yes. Exactly.

20 CHAIRPERSON GRIFFIS: I'm sorry. But  
21 then the schedule of that being complete would be  
22 when? Anticipated?

23 MR. BARNES: After this meeting.

24 It could be --

25 CHAIRPERSON GRIFFIS: You know, that's --

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1 day.

2 MR. BARNES: Probably just --

3 CHAIRPERSON GRIFFIS: I'm going to write  
4 that down somewhere. Okay.

5 I mean just in the milestone of the  
6 schedule of this entire project, that's telling me  
7 it's going to be obviously be in the association  
8 documents. Right?

9 MR. BARNES: Yes. And it would be prior  
10 to the sale of any lots, because it --

11 CHAIRPERSON GRIFFIS: Right.

12 MR. BARNES: -- needs to be incorporated  
13 into the homeowner's document.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. BARNES: How quick it could be wried,  
16 it's probably a month out before it would be --

17 CHAIRPERSON GRIFFIS: Okay. But -- and  
18 then the other direct question is on schedule.

19 You would anticipate that it would be  
20 finished for submission here or would you?

21 MR. NETTLER: No. Because what we're  
22 trying to do is provide some very basic restrictions  
23 that address the type of concerns that we would  
24 expect --

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. NETTLER: -- that you would have had  
2 and the neighbors have and address those and them and  
3 the flushing out of them in terms of additional things  
4 -- go beyond those themselves.

5 CHAIRPERSON GRIFFIS: So, it goes  
6 directly then to the substance of the way the Board  
7 looks at this and clearly we have a vehicle in order  
8 to condition aspects --

9 MR. NETTLER: Right.

10 CHAIRPERSON GRIFFIS: -- and that we  
11 could condition certain specifics that would be  
12 incorporated into the architectural design guidelines.

13 MR. NETTLER: Right.

14 CHAIRPERSON GRIFFIS: Like pink. It's  
15 one of my favorite colors of which front doors could  
16 be. Is my mike still on? Okay. There it is.

17 What else do we have? Any other follow  
18 ups? Any other cross? Anything else for today?

19 Nothing from the Board either?

20 Very well. Then I thank you all for being  
21 here, but before anyone moves, let us get down to a  
22 quick schedule here and I would propose this.

23 Very well. We're going to set this for  
24 the 22nd of February, first case in the morning.

25 MR. LAWSON: Mr. Chair, if I may. Sorry.

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1 It's me over here.

2 I just thought I should let you know that  
3 I would not be able to attend the meeting on the 22nd,  
4 so think that's a great date that you've chosen.

5 No. I actually will be out of town on the  
6 22nd. Sorry.

7 CHAIRPERSON GRIFFIS: Oh, that's is --

8 MR. LAWSON: We can have somebody else  
9 from the Office of Planning representing the Office of  
10 Planning, but I wouldn't be able to be here.

11 CHAIRPERSON GRIFFIS:

12 MR. PARSONS: Do you think -- your  
13 existing report dated, I guess, the 8th, says that you  
14 would have a more complete review of the new proposal  
15 in time for the hearing.

16 Is that something you're preparing in  
17 writing that would be able to be available to us?

18 MR. LAWSON: The Office of Planning could  
19 certain prepare something in writing that would  
20 include additional comments based on the information  
21 that was presented at the meeting today. I guess -- I  
22 think there would be no opportunity for questions.  
23 That's all.

24 CHAIRPERSON GRIFFIS: Okay. Well, we have  
25 two choices. We can continue to have someone else

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1 from the Office of Planning present obviously the  
2 report from Office of Planning.

3 Let me hear any objections for doing that  
4 from the parties and the Applicant as Mr. Lawson will  
5 not be cross examined here.

6 His report will obviously represent the  
7 agency in which he is employed and the person he deems  
8 responsible enough to take his place would be open to  
9 cross examination.

10 Any of the parties in opposition or the  
11 ANC have difficult with that proceeding?

12 Okay. If you're going to say more than  
13 that, you have to get up here.

14 MS. GATES: Given the fact the DDOT  
15 representative will not be here, we've heard so much  
16 about traffic. Mr. Lawson will not be here. There  
17 will be no opportunity for cross examination, I think  
18 we're missing a big piece of information.

19 I also will be at a two-day, all day  
20 meeting with the Army Corps of Engineers discussing  
21 munitions for mediation in Spring Valley on the 22nd.

22 So, I cannot be here.

23 CHAIRPERSON GRIFFIS: In the morning?  
24 All? You have two meetings?

25 MS. GATES: It starts at 10:00 and it ends

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1 about 4:30.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. GATES: Both days.

4 CHAIRPERSON GRIFFIS: Okay. Any other  
5 problems with the 22nd on the parties, Applicant's or  
6 the problems with the Office of Planning?

7 Okay. I fully understand, Ms. Gates.  
8 However, according to our schedule, which I'm trying  
9 to get this wherever I can as close as I can, we  
10 wouldn't be until the end of April if we don't pick  
11 the 22nd. We're not supposed to be meeting on the  
12 22nd for numerous reasons. So, this is actually a  
13 special hearing date for us.

14 The only other time, unless I'm incorrect,  
15 I see at this point would be a month and a half,  
16 almost two months away.

17 MS. GATES: well, maybe by the end of that  
18 time we would have the reports in that we need to see.

19 CHAIRPERSON GRIFFIS: Ms. Gates, is there  
20 anyone from the ANC that could represent you on the  
21 22nd?

22 MS. GATES: Well, I presented a report as  
23 well as Ms. Haas has presented a report. I think I  
24 would like to deliver my report. I feel I have a  
25 responsibility to do that and would appreciate the

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1 Board's consideration.

2 CHAIRPERSON GRIFFIS: Ms. Brady, your  
3 case presentation is going to take how long? All  
4 right.

5 MS. GATES: Would you permit someone to  
6 read my testimony?

7 CHAIRPERSON GRIFFIS: Of course. You  
8 could put it in writing and just submit it.

9 MS. GATES: I just don't think it's quite  
10 the same, but I would appreciate your understanding on  
11 this.

12 CHAIRPERSON GRIFFIS: Believe me, I'm  
13 trying to accommodate --

14 MS. GATES: Thank you.

15 MR. PARSONS: well, we always accept other  
16 members of the ANC. If we get a letter from the  
17 chairman saying this member will represent us. So,  
18 she's got live testimony. I can see your point.

19 CHAIRPERSON GRIFFIS: Here's the other  
20 alternative.

21 We won't have a lot of executive session  
22 that morning as we're coming in. We don't have a full  
23 slate.

24 Is it possible for you to be down here  
25 first. We could start with your presentation. We

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1 could do that first thing in the morning as we get  
2 here. We could set it for 9:00 conceivably. I'll get  
3 here -- we're here usually --

4 MS. GATES: That would be agreeable.

5 CHAIRPERSON GRIFFIS: We'd have an hour  
6 before you had to leave.

7 If there's no objection to that, we could  
8 hear the ANC presentation first and then we'd go to  
9 the substitute for Mr. Lawson, of which I want to talk  
10 about briefly. And then move on from there.

11 MS. GATES: Thank you.

12 CHAIRPERSON GRIFFIS: Okay. Now, the ANC  
13 is presenting one case. Is that correct? So, you're  
14 presenting it?

15 MS. GATES: Yes. Although I think Ms.  
16 Haas may have some components of this. We've sort of  
17 divided into sections.

18 If you only want one part.

19 CHAIRPERSON GRIFFIS: No. I'm trying to  
20 just get an assessment of time here.

21 So, both of you. You will lead --  
22 however, you arrange it, but we're going to have two  
23 ANC members presenting the ANC's case.

24 MS. GATES: I believe so.

25 CHAIRPERSON GRIFFIS: Okay. There it is.

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1                   Complications?   Questions?   Any problems  
2   with that?

3                   9:00.   We're on the 22nd of February.

4                   Let me just get clarification.

5                   Mr. Lawson, do you believe that you could,  
6   in fact, have someone here to present the report.   Is  
7   that correct?

8                   MR. LAWSON:   Yes.   Just clarify two quick  
9   points.

10                  First of all, Office of Planning wouldn't  
11   address DDOT issues regardless.

12                  CHAIRPERSON GRIFFIS:   Right.

13                  MR. LAWSON:   Secondly, I will contact DDOT  
14   and suggest that they have a representative here at  
15   the meeting and I can try to find somebody who is  
16   available to attend.

17                  I'll make sure that somebody can attend  
18   the meeting and hopefully it will be somebody who is  
19   already familiar with this case.

20                  CHAIRPERSON GRIFFIS:   Excellent.

21                  In which case, we will do the same  
22   actually and we'll contact Office of Planning to  
23   reiterate that support of Mr. Lawson.   We'll also be  
24   contacting the Department of Transportation from the  
25   Office of Zoning, so that they might be able to

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1 present their own analysis.

2 All right.

3 Then, anything else?

4 Procedure, everyone clear on it? Any  
5 questions on procedure or schedule?

6 Very well then. We'll see you all at 9:00  
7 on the 22nd of February in the a.m. We will only  
8 conduct the hearing in the morning. We will look to  
9 conclude that by 12:00 or 1:00. But that should be  
10 ample time to get through the substitutive.

11 Ms. Bailey, is there anything additional  
12 business for the Board?

13 No other business, then let's adjourn the  
14 afternoon session.

15 Thank you.

16 (Whereupon, the above matter was concluded  
17 at 6:20 p.m.)

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