

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 8, 2005

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE	Office of Planning
STEPHEN MORDFIN	Office of Planning

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This transcript constitutes the minutes from the public hearing held on March 2, 2005.

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

10:03 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the morning session of the 5th of March 2005.

My name is Geoff Griffis, Chairperson.

Joining me today is the Vice Chair, Ms. Miller and also our important and esteemed mayoral appointee Mr. Etherly. Representing the National Capital Planning Commission with is Mr. Mann.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room. Please pick one up and you can see where you are in the chronology and what we will accomplish this morning.

I do apologize for the late detail. We had quite a bit of work to get done, but I think we'll make up our time and get everyone out in this beautiful snow for a warm lunch. Perhaps chicken soup.

There are very important things that I'll go through fairly quickly in terms of my opening remarks.

First of all, all procedures before the Board of Zoning Adjustment are being recorded and --in

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1 two fashions. The first fashion, of course, is the
2 court recorder sitting to my right. He is creating
3 the official transcript that will be part of the
4 record.

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

7 Attendant to both of those, we ask several
8 things. First of all, when coming forward to speak to
9 the Board for the first time, you will have needed to
10 state your name and address for the record.
11 Obviously, that will give you credit on all of the
12 transmissions and transcripts which will be created.

13 Before coming forward to speak to the
14 Board, I would ask that you fill out two witness
15 cards. Witness cards are available for you where you
16 entered in the hearing room. They're also available
17 at the table in front where you will provide
18 testimony.

19 I would ask that everyone please turn off
20 cell phones and beepers at this time so we don't
21 disrupt people giving testimony and any transmission
22 that we will be creating.

23 The order of procedure for special
24 exceptions and variances is first we hear from the
25 applicant and their case presentation and any

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1 witnesses that they might have.

2 Second, we'll hear any Government reports
3 or agencies reporting into the application such as the
4 Office of Planning or Department of Transportation.

5 Third, we will hear from the Advisory
6 Neighborhood Commission within which the property is
7 located.

8 Fourth, we will go to persons or parties
9 in support of an application.

10 Fifth, we will hear from persons or
11 parties in opposition to the application.

12 Sixth, finally, we will have closing
13 remarks and any rebuttal witnesses by the applicant.

14 Cross examination of witnesses is
15 permitted by the applicant and parties in a case. The
16 ANC as I've indicated within which the property is
17 located is automatically a party in the case and,
18 therefore, will be able to conduct cross examination.

19 There is nothing that limits this Board
20 from putting restrictions on cross examination. I
21 don't see any need to go through a labyrinth of zoning
22 regs to cite on this issue for this morning's cases,
23 but if need be, I will.

24 The record will be closed at the
25 conclusion of the hearing today except for any

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1 material that the Board would specifically request be
2 submitted into the record and we will be very specific
3 as to what should to be submitted into the record and
4 when it should be submitted into the Office of Zoning.

5 After that material is received, of
6 course, the record would finally be closed and no
7 other information would accepted into the record.

8 The reasons for that is, of course,
9 everything that this Board hears in a hearing is what
10 it will deliberate on. Another way to say it is the
11 official record that's created before us has to be
12 done in the open and before the public and that is the
13 limits of which we will base our decision.

14 So, it's very important that if the Board
15 requests certain information that it actually be put
16 into the record. Otherwise, we will not be able to
17 deliberate on it and it will not be a basis of our
18 decision.

19 The Sunshine Act requires that this Board
20 conduct its proceedings in the open and before the
21 public. We may, however, enter into executive session
22 both during or after a hearing on a case and that
23 would be for the purposes of reviewing the record on a
24 case or deliberating on that case and this would be in
25 accordance with our rules, regulations, and

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1 procedures. It is also in accordance with the
2 Sunshine Act.

3 Let me ask all those who are going to
4 provide testimony today or are thinking of providing
5 testimony if you would not -- if you would please
6 stand and give your attention to Ms. Bailey who is on
7 my very far right. She is going to administer the
8 oath.

9 MS. BAILEY: Do you solemnly swear or
10 affirm that the testimony you will be giving today
11 will be the truth, the whole truth, and nothing but
12 the truth? Thank you.

13 CHAIRPERSON GRIFFIS: Good. Thank you all
14 very much and a very good morning to you, Ms. Bailey,
15 with the Office of Zoning. Also Mr. Moy with the
16 Office of Zoning closer to my right.

17 Representing the Office of Attorney
18 General, Ms. Monroe is with us today keeping us out
19 severe trouble.

20 At this time, I believe that it is
21 appropriate for the Board to consider any preliminary
22 matters. Preliminary matters are those which relate
23 to whether a case will or should be heard today.
24 Requests for postponements, withdrawals or whether
25 adequate and proper notice has been provided are

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1 elements of which might be a preliminary matter.

2 If you have a preliminary matter on a
3 particular case in the Board's schedule this morning,
4 I would ask that you come forward and have a seat at
5 the table as an indication of a preliminary matter.

6 Ms. Bailey, are you aware of any
7 preliminary matters for the Board's attention at this
8 time?

9 MS. BAILEY: Mr. Chairman and to everyone,
10 good morning. There is one Mr. Chairman and it has to
11 do with the first case. That's Application Number
12 17290 of IDS-DC, Inc. That application was withdrawn,
13 Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Good. Thank you
15 very much. Therefore, there's no official action by
16 the Board required. Is that correct?

17 MS. BAILEY: Yes, sir.

18 CHAIRPERSON GRIFFIS: Good. Is there
19 anything else? And don't see any other preliminary
20 matters or indication of having such. Why don't we
21 call the first case of the morning?

22 MS. BAILEY: Application Number 17289 of
23 Third Baptist Church pursuant to 11 DCMR 3103.2 for a
24 variance from the off-street parking requirements
25 under subsection 2101.1 and pursuant to 11 DCMR 3104.1

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1 a special exception to establish a private school
2 under section 206. The property is located in the R-4
3 District at premises 1544 5th Street, N.W., Square
4 478, Lot 811.

5 CHAIRPERSON GRIFFIS: Ready?

6 MS. SACHS: Good morning --

7 CHAIRPERSON GRIFFIS: Good morning.

8 MS. SACHS: -- Mr. Chairman, members of
9 the Board. My name is Heidi Sachs. I'm from the law
10 firm of Shaw-Pittman. Garland Stillwell from Shaw-
11 Pittman is here with me as well.

12 We are here this morning to represent the
13 Applicant the E. E. Just Collegiate Academy in BZA
14 Application Number 17289.

15 The Applicant is here today seeking a
16 special exception under section 206 and a parking
17 variance pursuant to section 2101.1.

18 Special exception relief is necessary in
19 order for the school to operate in a residential zone.

20 E. E. Just Collegiate Academy is located
21 at 1544 5th Street, N.W. in the greater Shaw
22 neighborhood.

23 E. E. Just Collegiate Academy is located
24 in the Miles Educational Annex which is connected to
25 the Third Baptist Church located at the corner of 5th

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1 and Q Streets.

2 As discussed in detail in the pre-hearing
3 statement, the Applicant fully satisfies the standards
4 for the Board to grant the requested special exception
5 and variance relief.

6 We have two witnesses here this morning
7 who will provide statements and are available to
8 answer any questions that you may have.

9 Our first witness is Rev. Stanley Byrd,
10 Pastor of the Third Baptist Church. Rev. Byrd will
11 discuss the location of the school within the church
12 and will also talk about the churches long-standing
13 relationship with and commitment to the Shaw community
14 and without further ado, here's Rev. Byrd.

15 REV. BYRD: Good morning, Chairman.

16 CHAIRPERSON GRIFFIS: Good morning.

17 REV. BYRD: Good morning, Chairman Griffis
18 and to all the Board members.

19 My name is Stanley Byrd, Sr. and I have
20 the great privilege and honor to serve as the Pastor
21 of the Third Baptist Church at 1546 5th Street here in
22 Washington, D.C. and I'm here today to speak on behalf
23 of the Applicant, E. E. Just Collegiate Academy, which
24 is housed in our educational annex.

25 The Third Baptist Church is -- was founded

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1 in 1858 and has been in the Shaw community all of that
2 time. It has been in this current location since 1885
3 and the original church building still remains on --
4 on that lot and in the late 1850 -- 1950s, the church
5 acquired some properties which initially -- I mean it
6 essentially erected the educational annex.

7 Now, in that annex, we have Sunday School,
8 other outreach activities such as tutorial training,
9 computer training, job training. We also have the
10 Pause Writing Program for the children in the church
11 and in the community.

12 CHAIRPERSON GRIFFIS: So, the educational
13 annex is something that was acquired by the church --

14 REV. BYRD: Yes.

15 CHAIRPERSON GRIFFIS: -- some time ago?

16 REV. BYRD: In -- the land was acquired in
17 1950 and it was erected in the 1980s.

18 CHAIRPERSON GRIFFIS: 1980s and was there
19 other work done on the church recently?

20 REV. BYRD: Recently, not any major
21 renovations, you know.

22 CHAIRPERSON GRIFFIS: Interesting. Okay.

23 REV. BYRD: And I've -- I've had the
24 privilege to serve there the past seven years just --
25 and as a result, you know, we are here today to speak

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1 on behalf of the -- the school and the relationship
2 that the church and school has.

3 We constantly have, as I said, have been a
4 part of that community for many years prior to my
5 coming. Since I've been there, we've continued to
6 expand that relationship working with Scott Montgomery
7 School in terms of providing them rides to any of
8 their field trips, providing -- purchasing uniforms
9 for students who cannot afford to -- to purchase their
10 own uniforms.

11 We've been very active in terms of trying
12 to help those who found themselves in -- without
13 housing and we've been providing counseling and -- and
14 emergency food bank in the community.

15 CHAIRPERSON GRIFFIS: So, that's a church
16 outreach --

17 REV. BYRD: Yes.

18 CHAIRPERSON GRIFFIS: -- for the rest of
19 the community?

20 REV. BYRD: Right.

21 CHAIRPERSON GRIFFIS: Excellent and
22 certainly it -- if not stated directly in the
23 application, it definitely reads through the
24 importance of this institution in this area.

25 I think it's probably best if we move

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1 right into the 206 requirements. Obviously, that's
2 the jurisdiction which we'd have to be reviewing this
3 and I think we -- if -- if it's amenable to you, we
4 could just start talking about more of the impact and
5 then the -- the variance for the parking.

6 MS. SACHS: Sure. Sure. Well, I can talk
7 a little bit about that and then I will hand it over
8 to Mr. David Spruill who is the Headmaster of the E.
9 E. Just Collegiate Academy.

10 CHAIRPERSON GRIFFIS: Good. Let me
11 interrupt you again as I often do. I think one of our
12 important or the first question probably you need to
13 address is first of all the -- it's indicated that
14 this is for 11 students and --

15 MS. SACHS: Yes.

16 CHAIRPERSON GRIFFIS: -- and we just want
17 to clarify the fact of whether that's an enrollment
18 number or an on-site number and there's a little bit
19 of concern I think from the Board that is this the
20 absolute number.

21 To be very clear, if we approve something
22 today with what has been submitted, you have 11
23 students and one staff. There is no opportunity for
24 growth. So, I want to put that out there very quickly
25 in terms of thinking about this order and how long it

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1 might last and also, in terms of a time on the special
2 exception.

3 So, if there's an anticipation that this
4 may grow to 15, that obviously needs to be addressed
5 today.

6 Staff also there was a question obviously
7 there is one, but there was mentioned a volunteer, but
8 also a specific staff member. These are accounts that
9 we're -- we're obviously going to need to get to.

10 MS. SACHS: I can let Mr. Spruill speak --

11 CHAIRPERSON GRIFFIS: Excellent.

12 MS. SACHS: -- to those questions in more
13 detail, but I just want to point out that there is a
14 maximum capacity of 15 students at the school. Once
15 there are more than 15 students, the Applicant will
16 need to seek space elsewhere.

17 CHAIRPERSON GRIFFIS: So, that's 15
18 students on site is what you're saying. In terms of
19 the certificate of occupancy, they're only allowed to
20 have 15 students. Is that correct?

21 MS. SACHS: That's correct.

22 CHAIRPERSON GRIFFIS: Now, what would
23 preclude them from having 60 enrolled, but 15 on site
24 at all times?

25 MS. SACHS: Well, those are enrollment

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1 numbers.

2 CHAIRPERSON GRIFFIS: Right. What is? My
3 60 or your 15?

4 MS. SACHS: Fifteen.

5 CHAIRPERSON GRIFFIS: Indeed.

6 MS. SACHS: Fifteen.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. SACHS: Just to clarify, there is only
9 one teacher and that is Mr. Spruill.

10 CHAIRPERSON GRIFFIS: Good and we'll get
11 that in testimony now. Is that correct?

12 MR. SPRUILL: Good morning, Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Good morning.

14 MR. SPRUILL: My name is David Spruill,
15 Headmaster of E. E. Just Collegiate Academy and yes,
16 sir, the enrollment number is 15. Student/teacher
17 ratio 15 to 1.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. SPRUILL: Were there advancement for
20 that in the future, we would certainly have to
21 relocate space-wise and -- and whatnot.

22 CHAIRPERSON GRIFFIS: But, I'm -- I'm
23 sorry to interrupt you.

24 MR. SPRUILL: That's all right.

25 CHAIRPERSON GRIFFIS: And we see a lot of

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1 these at different levels. I mean from --

2 MR. SPRUILL: Um-hum.

3 CHAIRPERSON GRIFFIS: -- you know, ten to
4 whatever 16,000 students, but there -- there's also --
5 in my experience, there's -- there -- for instance,
6 you have an after-school program. Is that correct?

7 MR. SPRUILL: Yes, sir.

8 CHAIRPERSON GRIFFIS: And conceivably you
9 have a student that's enrolled in the day program that
10 goes home and you take up some -- a different student
11 for an afternoon program. I mean you may not do that
12 now, but is that something that might be possible?

13 MR. SPRUILL: Actually, sir, no, that
14 would not be possible because I'm -- I'm in the -- in
15 the business of actually knowing the students that I
16 actually am responsible for from sunup to sundown.
17 So, no, that would not be, you know --

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. SPRUILL: -- a possible situation.

20 CHAIRPERSON GRIFFIS: So, your on-site and
21 your enrollment are the same number?

22 MR. SPRUILL: Yes, sir. Yes, sir.

23 CHAIRPERSON GRIFFIS: I just make things
24 so complicated.

25 MR. SPRUILL: No, that's fine.

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1
2 CHAIRPERSON GRIFFIS: Good. So, we're
3 talking about 15 now which is a good clarification
4 from 11.

5 MR. SPRUILL: Yes, sir. Excellent.

6 CHAIRPERSON GRIFFIS: Okay. Go ahead.

7 MR. SPRUILL: And I just wanted to expand
8 on -- the school is a private Christian school
9 currently housing 11 students grades fifth and sixth
10 and as mentioned before, that's a capacity of 15 -- no
11 more than 15 students.

12 We're under a -- the Abeka curriculum
13 which is a Christian-based curriculum which is
14 utilized at -- for -- for the students at -- at the
15 school and because of the curriculum, it makes sense
16 to house the school inside of a church building,
17 faith-based, what have you.

18 The church allows us the use of the
19 sanctuary for Wednesday morning chapel services and it
20 just kind of brings a center to children who are being
21 reared today. It -- it's utmost respect, sense of
22 authority, respect for authority, what have you.
23 Having to know that there's a higher power being in
24 the faith-based curriculum.

25 The operation of the school is from 7:30

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1 a.m. until 3:30 p.m. with an after-school component
2 which runs from 3:30 p.m. until 6:00 p.m.

3 Outreach programs have been -- we have had
4 great ties with the neighboring school which is Scott
5 Montgomery Elementary which is on the opposite end of
6 5th Street. We've done a join effort with them in the
7 Thanksgiving basket drive this year. Our excess, we
8 took it over to them. We introduced ourselves to
9 them.

10 I'm a former United States Army drill
11 sergeant. My students, the entire school is on the
12 drill team because they're only 11.

13 CHAIRPERSON GRIFFIS: The fifth and sixth
14 graders are no problem for you.

15 MR. SPRUILL: No problem at all, sir, and
16 it's not the traditional step team. We have actual
17 uniforms. They're maneuvering not the bayonet rifles,
18 but the seven-foot flag poles. So, it's very military
19 oriented and we've performed at various high schools
20 and colleges in the area. We're due to do a
21 performance at Barnett Elementary this Thursday
22 morning. Some teachers caught us performing at Howard
23 University during a basketball game at half time.

24 And it just instills a lot of discipline
25 in our young students. I'm constantly reminding them

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1 that whenever we're out towards the Metro in public
2 that we share this space with other citizens. That
3 we're not to be loud. We're respectful of elders
4 walking down the street. Just that old school type of
5 mentality that kids are seeming to be missing at
6 today's -- in today's society.

7 So, the drill team has been an outreach to
8 the Montgomery Elementary. Students there are
9 certainly welcome to participate although I haven't
10 had any yet. The principal is aware of that and there
11 are -- as well as the church. Students of the church,
12 they're -- they're welcome to participate in this as
13 well.

14 And in conclusion, I'd -- I'd just like to
15 say that we've had great ties with the church as well.

16 The church, the deacons and the deaconesses have been
17 most -- most -- very impressed with the -- the
18 students and just their general manners and the
19 respect for the building and the respect for the area
20 that we're leasing out to the church.

21 Thank you.

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

24 In your submission, you indicate that
25 there is an outside play area which is somewhat

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1 buffered by the surrounding residential. What I found
2 intriguing is that there is a half hour outside time
3 for the students. Is that correct? There's only half
4 an hour a day?

5 MR. SPRUILL: Sometimes its extends, sir.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. SPRUILL: Reward permits an extra 15
8 minutes or so.

9 CHAIRPERSON GRIFFIS: So, that's certainly
10 not something that you are looking for us to condition
11 in an order if it needed to be that there was only 30
12 minutes allowed outside?

13 MR. SPRUILL: I'm sorry. I misunderstood.
14 Is there anything that?

15 CHAIRPERSON GRIFFIS: You want the
16 flexibility to be -- to have kids recreate outside as
17 -- as much as they need quite frankly. Would you
18 agree?

19 MR. SPRUILL: Yes, sir.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. SPRUILL: Yes, sir.

22 CHAIRPERSON GRIFFIS: Good.

23 MR. SPRUILL: We also use the Kennedy --
24 the Kennedy Rec Center is two blocks away from us. We
25 -- we also utilize that area for recreation and PE as

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1 well.

2 CHAIRPERSON GRIFFIS: Right. Which is a
3 new facility that's there. It has outside and indoor
4 areas.

5 MR. SPRUILL: Yes, sir, exactly.

6 CHAIRPERSON GRIFFIS: Is that correct?

7 MR. SPRUILL: Exactly. Located on 2nd
8 Street.

9 CHAIRPERSON GRIFFIS: We've heard things
10 about that in past applications. Excellent. And you
11 have teachers on staff as well as yourself?

12 MR. SPRUILL: No, sir, I'm the only one.

13 CHAIRPERSON GRIFFIS: Is that it?

14 MR. SPRUILL: Yes, sir.

15 CHAIRPERSON GRIFFIS: Okay. Anticipation
16 of growing?

17 MR. SPRUILL: Yes, sir, with growth. Yes,
18 sir, anticipation of more teachers. Absolutely.

19 CHAIRPERSON GRIFFIS: Okay. So, in terms
20 of us looking at this application today, how would --
21 what are you requesting then? It would be 15 students
22 enrollment and two staff members?

23 MR. SPRUILL: Fifteen to -- 15 to two.
24 Yes, sir.

25 CHAIRPERSON GRIFFIS: Is that --

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1 MR. SPRUILL: Fifteen to two.

2 CHAIRPERSON GRIFFIS: I mean so far
3 nothing has come in that gives any evidence or
4 testimony, we haven't finished with this yet, but
5 obviously, there's no evidence currently presented
6 that would rise to creating objectionable conditions.

7 So, to be direct, I think you've got some flexibility
8 to ask exactly what you need for and otherwise, we
9 can't create it. So, you have to tell us exactly what
10 it is.

11 So, two -- two teachers is what -- the
12 level that you're looking at. I think we can move
13 ahead with that.

14 MR. SPRUILL: Yes, sir. Yes, sir,
15 absolutely.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. SPRUILL: Two teachers and parking. I
18 park on the opposite side of 5th Street --

19 CHAIRPERSON GRIFFIS: Right.

20 MR. SPRUILL: -- which is available public
21 parking space there. So, that has posed no problems
22 whatsoever for the neighbors.

23 CHAIRPERSON GRIFFIS: Now, there was some
24 indication in the application that resident permit
25 parking was being instituted, but the area which you

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1 have available is not part of that which would be
2 instituted into the RPP.

3 MS. SACHS: If I could interrupt. We just
4 made aware in the --

5 CHAIRPERSON GRIFFIS: Your mike.

6 MS. SACHS: -- Office of Planning's
7 report.

8 CHAIRPERSON GRIFFIS: Can you turn your
9 mike on?

10 MS. SACHS: Oh, I'm sorry. We were just
11 made aware in the Office of Planning's report that the
12 site is within the boundaries of the proposed
13 residential parking program for the area around the
14 convention center and as a result, there will be three
15 dedicated spaces, two in front of the church building,
16 one in front of the education annex, that will be
17 dedicated to church and school parking.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. SPRUILL: And, Mr. Chairman, if I may,
20 I just wanted to state the fact that there have been
21 no objections to the -- from the neighbors in the
22 neighborhood. There are a lot of neighbors there who
23 are walking their dogs and whenever the children are
24 out, it's always a good relationship with the dogs and
25 the kids and so, that's been an absolute great

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1 relationship with the neighbors in that sense.

2 Our kids -- my kids are very disciplined.

3 There's no loud noise during recess. There's no loud
4 noise entering or exiting in the morning and
5 afternoon. There have been no problems from the
6 neighbors. Only good relationships. Mostly because
7 of the pets they're walking. There are a lot of pets
8 in that area. So, kids and dogs are a great mix. So,
9 that -- that has helped to have good ties with -- with
10 our neighbors.

11 CHAIRPERSON GRIFFIS: What about drop offs
12 in the morning? Where -- where does that occur?

13 MR. SPRUILL: Drop offs are staggered
14 right in front of the building. So, that doesn't --

15 CHAIRPERSON GRIFFIS: In the front?
16 That's on -- the front is on what street?

17 MR. SPRUILL: 5th Street. Yes, sir.

18 CHAIRPERSON GRIFFIS: On 5th.

19 MR. SPRUILL: I have photographs to show
20 if you'd to --

21 CHAIRPERSON GRIFFIS: Are they the same
22 one that -- that we have or are they different?

23 MR. SPRUILL: I believe they are, sir, but
24 just -- should I pass this to you?

25 CHAIRPERSON GRIFFIS: No, you can leave it

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1 right there.

2

3 MR. SPRUILL: Here it gives 5th Street
4 here and this is the location of the --

5 CHAIRPERSON GRIFFIS: We're going to need
6 you -- I'm sorry to -- you -- you just have to be on a
7 mike.

8 MR. SPRUILL: I'm sorry.

9 CHAIRPERSON GRIFFIS: Otherwise, you're
10 not getting picked up.

11 MR. SPRUILL: Here is 5th Street. The --
12 this is the front of the Miles Educational Annex and
13 the kids are dropped off right in front of the
14 building here. I have parents volunteering who pick
15 them up. They're -- they're dropped off in a
16 staggered situation as well as picked up in the
17 afternoon. So, there's never congestion there for --
18 causing a problem for the neighbors and so forth or
19 the church members.

20 CHAIRPERSON GRIFFIS: Can you use the
21 alley for curb space for a parking space out of
22 traffic?

23 MR. SPRUILL: Yes, sir, there's a section
24 right in front of the church that's designated for the
25 church. We use that for dropping off and picking up

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1 the students.

2 CHAIRPERSON GRIFFIS: Is it designated
3 parking for the students?

4 MR. SPRUILL: There appears to be two
5 spaces that don't have permit only signs in front of
6 the education annex and --

7 CHAIRPERSON GRIFFIS: Control --

8 MR. SPRUILL: No, they're not under our
9 control.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. SPRUILL: No. No, we don't have any
12 off-street parking available to us at this time.

13 CHAIRPERSON GRIFFIS: Got to follow my own
14 rule and turn my mike on when I talk. Okay. There it
15 is. Any other questions from the Board?

16 Now, of course, we do have -- well, Ms.
17 Miller.

18 VICE CHAIRPERSON MILLER: I have a few
19 questions.

20 I have one basic question. Well, to begin
21 with, it appears from the papers that the school is
22 already operating and I'm wondering if you can address
23 why that is in light of the fact that you don't have a
24 special exception yet?

25 MS. SACHS: Sure. Sure and that's a good

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1 and legitimate question. We had some talks with the
2 school I believe back in October and we were made
3 aware that the school was operating in the R-4 zone.

4 At that point, we informed the school that
5 they would need to apply to the Board of Zoning
6 Adjustment for a special exception because private
7 schools are not permitted to operate without special
8 exception in the R-4 zone.

9 From then on, the Applicant has pursued
10 all of the correct steps. The Applicant has
11 diligently performed and -- and has undertaken all of
12 the necessary steps --

13 CHAIRPERSON GRIFFIS: Indeed. So, are we
14 suppose to --

15 MS. SACHS: -- and here we are today.

16 CHAIRPERSON GRIFFIS: I glean from that
17 the fact that you opened up the school and weren't
18 aware that you, in fact, needed some sort of approval
19 from the city in terms of the zoning. Is that
20 correct?

21 MR. SPRUILL: Yes, sir, that is correct.

22 CHAIRPERSON GRIFFIS: Okay. So, in '04,
23 you obviously approached folks. Somehow, you got wind
24 that you may and now, you're here.

25 MR. SPRUILL: Yes, sir.

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1 CHAIRPERSON GRIFFIS: Okay.

2 VICE CHAIRPERSON MILLER: Thank you. My
3 next question is I just want to make sure and I know
4 that the chairman was trying to get at this also.
5 You've come here presenting what your needs are and
6 what you want approval for and we just want to make
7 sure that there's also a little room for growth if you
8 anticipate that in anyway and from what I understand,
9 the 15 students, that's the maximum capacity and
10 you're totally comfortable with that and I want to
11 make sure that on the staff question that you don't
12 see any possibility that you'd want to grow to three.

13
14 Because if -- if you're given -- you know,
15 we're going to put in an order, you know, the number
16 of staff, the number of students and so, if -- I just
17 wanted to make sure that is two going to anticipate
18 the future or do -- would you be more comfortable with
19 a little more? Three or something like that?

20 MR. SPRUILL: You know, a teacher loves a
21 small environment --

22 VICE CHAIRPERSON MILLER: Um-hum.

23 MR. SPRUILL: -- as well as the parents.
24 That's -- that's our biggest plus now. That the
25 student/teacher ratio is absolutely phenomenal. Kids

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1 are given more attention. That's why they're absolute
2 brilliant scholars now, but beyond, 15, these kids
3 will be with me until eighth grade, until they move on
4 to senior high. So, beyond -- I absolutely know
5 beyond 15 would not be the case because of the -- the
6 desire to have the small environment, the small
7 student --

8 VICE CHAIRPERSON MILLER: Right. I heard
9 you say that. I -- I wanted -- I wanted to make sure.

10 On the staff level --

11 MR. SPRUILL: Um-hum.

12 VICE CHAIRPERSON MILLER: -- is two also
13 the number that --

14 MR. SPRUILL: Three. I would say three.
15 Yes, ma'am.

16 VICE CHAIRPERSON MILLER: Three for a
17 comfort. Okay.

18 MR. SPRUILL: For a comfort. Absolute
19 comfort.

20 VICE CHAIRPERSON MILLER: Okay.

21 MR. SPRUILL: Be in need of a substitute
22 on day and whatnot. So.

23 VICE CHAIRPERSON MILLER: Okay. Right.

24 MR. SPRUILL: We would be great.

25 VICE CHAIRPERSON MILLER: Okay. And I

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1 just want to make sure --

2 CHAIRPERSON GRIFFIS: Anyone else want to
3 raise the bet there? For four. Mr. Mann? Okay. And
4 we've got you to increase to three.

5 MR. SPRUILL: Yes, sir.

6 CHAIRPERSON GRIFFIS: We're going to get a
7 better -- child development centers. Okay.

8 VICE CHAIRPERSON MILLER: One more
9 question and that goes to the dedicated parking
10 spaces. Does that mean -- is there going to be names
11 on those spaces? Reserved for church or reserved for
12 school. Is that what you mean by dedicated or what
13 did you all mean by dedicated?

14 MS. SACHS: Well, I'm just getting this
15 information from the Office of Planning report and
16 perhaps, Mr. Moore could speak more to this.

17 It's my understanding that there will be
18 three dedicated spaces and I'm not sure what type of
19 signage will be erected.

20 VICE CHAIRPERSON MILLER: Okay. Thank
21 you.

22 CHAIRPERSON GRIFFIS: We'll be sure to
23 give him a hard time. Okay.

24 One thing we haven't talked about, of
25 course, is oftentimes there are child development

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1 centers and the orders that go through there is a time
2 put on them. For instance, a specialist exception
3 might last for two years or it might last for five
4 years.

5 Has there been any discussion and maybe
6 perhaps I've missed it in the submissions.

7 MS. SACHS: No, Chairman Griffis, I don't
8 believe there has been any discussion today. I don't
9 think there was any discussion in any of our
10 submission materials either. I think that at this
11 point, the school is just unsure as to what its growth
12 will be. Currently, it doesn't want to expand past 15
13 children. So, ostensibly, it could be in this space
14 for five to ten years though.

15 CHAIRPERSON GRIFFIS: What do you propose
16 then in terms of a time limit?

17 MR. SPRUILL: I would say a time from five
18 to six years. Five to six years.

19 CHAIRPERSON GRIFFIS: Five to six. Okay.
20 Now, you made a statement on answering Ms. Miller's
21 questions that you'll be with these students until
22 eighth grade, until they go on to high school.

23 MR. SPRUILL: Yes, sir.

24 CHAIRPERSON GRIFFIS: You mean you have a
25 class now of fifth and sixth graders that are then

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1 going to stay until they all go to high school?

2 MR. SPRUILL: Exactly, sir. Be in the
3 ninth grade.

4 CHAIRPERSON GRIFFIS: And so, how do you
5 -- then what do you do? Then you get a whole new
6 class of fifth and sixth graders?

7 MR. SPRUILL: That's the -- I'm doing
8 something that's absolutely phenomenal. It's -- it's
9 -- I -- I have a core group and I nurture them until
10 ninth grade and then they move on and that -- that
11 certainly seems to be what's happening.

12 Now, I'm about to work on my doctorate and
13 I'm looking to somehow do a thesis of that. What is
14 the affect of long-term study with teachers and
15 students?

16 So, that, yes, sir, Mr. Chairman, would be
17 the case at this point.

18 CHAIRPERSON GRIFFIS: Okay. So, actually,
19 the application is not for a child development center
20 of fifth and sixth graders, but it's from fifth to
21 eighth grade.

22 Do you understand? If we -- if we approve
23 today --

24 MR. SPRUILL: Oh, I see.

25 CHAIRPERSON GRIFFIS: -- we just call it.

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1 We're done. We just approved you for 11 students --

2 MR. SPRUILL: Um-hum.

3 CHAIRPERSON GRIFFIS: -- fifth and sixth
4 graders. The minute you get a seventh grader in
5 there, you're in noncompliance and they could
6 conceivably worse case shut you down.

7 MR. SPRUILL: Um-hum.

8 CHAIRPERSON GRIFFIS: Pull your C of O.
9 That's why we're just really getting into the -- the
10 details here because we're about to detail a heck of a
11 lot of things in -- in terms of reviewing this order.

12 MR. SPRUILL: Okay.

13 CHAIRPERSON GRIFFIS: So, conceivably --
14 well, now, you've -- you've brought up the fact that
15 okay, so, it's fifth through eighth. Right?

16 MR. SPRUILL: Actually, fourth -- fourth
17 grade through eighth grade.

18 CHAIRPERSON GRIFFIS: Look at that. We've
19 got to increase teachers. We've got to increase --
20 excellent. Okay. We're getting somewhere.

21 MR. SPRUILL: We're still a maximum 15.

22 CHAIRPERSON GRIFFIS: We're getting
23 somewhere. Okay. And so, right. The student -- I'm
24 not revisiting staffers.

25 The -- and so just for my understanding

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1 then, as this class graduates, you'll bring on a whole
2 new class all of a sudden.

3 MR. SPRUILL: Well, it would be staggered.

4 Because the -- obviously, eighth graders would leave
5 before the seventh and sixth and fifth and fourth
6 graders. So, they would leave staggered each year.
7 Which means that as the eighth graders leave, I have
8 room for fourth graders which continues the cycle, but
9 still no more than 15 students.

10 So, they won't leave altogether. They'll
11 leave by class. Two -- two to three students at --
12 per time.

13 CHAIRPERSON GRIFFIS: Indeed. Okay. Ms.
14 Miller.

15 VICE CHAIRPERSON MILLER: I just wanted to
16 clarify though. So -- so, it's not just this one
17 group you're following through all the way. You keep
18 adding fourth graders or whatever --

19 MR. SPRUILL: Yes, ma'am.

20 VICE CHAIRPERSON MILLER: -- as the top
21 grade moves on? Okay.

22 MR. SPRUILL: Yes, ma'am, exactly.

23 CHAIRPERSON GRIFFIS: All right. Any
24 other questions of the Board? Anything else?

25 MS. SACHS: No.

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1 CHAIRPERSON GRIFFIS: ANC support?

2 MS. SACHS: Yes.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MS. SACHS: We have all of the necessary
5 approvals and support from the ANC.

6 CHAIRPERSON GRIFFIS: Let's move ahead and
7 see who else is lining up here in terms of the
8 application and we'll move ahead. Of course, we'll
9 give you an opportunity for any closing remarks and
10 address anything that goes about.

11 Let's move on to the Office of Planning
12 who has submitted an excellent report on this. A very
13 good morning, sir.

14 MR. MOORE: Good morning, Mr. Chair and
15 members of the Board. I'm John Moore of the Office of
16 Planning. We stand in support of the application.

17 In terms of trying to clarify the resident
18 parking program, there would be parking restrictions
19 on the areas in and around the convention center
20 except for the space in front of church and church
21 facilities.

22 The number three you see in the OP report
23 is basically a calculation that says the church width
24 would accommodate two cars and the annex will
25 accommodate a third cars. So, there's no hard fixed

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1 formula for saying three. It's just the amount of
2 space in front of the church.

3 With that, I'll take any questions.

4 CHAIRPERSON GRIFFIS: Excellent. So, the
5 -- the three spaces in front of the church are not
6 restricted, residential restricted. They're open
7 parking and they're not metered --

8 MR. MOORE: Yes, sir.

9 CHAIRPERSON GRIFFIS: -- or anything at
10 that point.

11 MR. MOORE: Right.

12 CHAIRPERSON GRIFFIS: So, that's why
13 they're available and with the street frontage that
14 the church accommodates, you're anticipating that, you
15 know, a home is not competing with that necessarily.

16 MR. MOORE: True.

17 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
18 follow-up questions.

19 VICE CHAIRPERSON MILLER: So, it's -- it's
20 more correct to say then they're not residentially
21 restricted and they're -- but, they're not
22 specifically dedicated to the church.

23 MR. MOORE: Not dedicated.

24 VICE CHAIRPERSON MILLER: Right.

25 MR. MOORE: Just not restricted.

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1 VICE CHAIRPERSON MILLER: Right. Okay.

2 CHAIRPERSON GRIFFIS: Good. Anything else
3 for the Office of Planning from the Board? Again,
4 indicate that it's an excellent report that walks
5 through the entire case of the special exception for
6 the 206.

7 It also addresses the part that we've kind
8 of skipped over very quickly. The variance for the
9 parking. It's obviously established from the fact
10 that there's an existing structure. It has been well
11 held by this Board and, of course, other courts that
12 the existing building can go towards the uniqueness of
13 a property and also can be the creation of a practical
14 difficulty in which case it is in this application.

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

18 MS. SACHS: No cross examination.

19 CHAIRPERSON GRIFFIS: No cross. Is the
20 ANC-2C represented today? ANC-2C for this Application
21 17289? Not noting the ANC is representative is here.

22 We thank you very much, Mr. Moore. Again,
23 an excellent report.

24 Let's move ahead then to the ANC report.
25 As there is not a member here present to present it,

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1 did you want to run through the ANC? Did we get a
2 submission of the ANC report?

3 MS. SACHS: Sure. Yes, we did and it is
4 in the exhibit log.

5 CHAIRPERSON GRIFFIS: Oh, 25. That's that
6 thing right in front of me. Got ya.

7 MS. SACHS: Yes, number --

8 CHAIRPERSON GRIFFIS: Good.

9 MS. SACHS: -- number 25.

10 CHAIRPERSON GRIFFIS: There was four --
11 we had four commissioners required as a quorum to
12 support the application.

13 Is there any clarifications that the Board
14 would like from that? I think it's pretty
15 straightforward. It meets the test to be granted
16 great weight and we will do so.

17 I would also indicate that we have Exhibit
18 Number 22, member from Council Member -- a letter from
19 Council Member Evans in support of the application.

20 Is there anything else in terms of agency
21 reports that I am missing. Is the Applicant aware of
22 any other submissions?

23 MS. SACHS: The Applicant just today
24 received two letters in support which I can submit for
25 the record.

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1 CHAIRPERSON GRIFFIS: From who?

2 MS. SACHS: One is from Ms. Betty Newall.

3 CHAIRPERSON GRIFFIS: So, they're adjacent
4 residents?

5 MS. SACHS: She is the representative of
6 the East Central Civic Association.

7 CHAIRPERSON GRIFFIS: I see.

8 MS. SACHS: We --

9 CHAIRPERSON GRIFFIS: Did you present to
10 the East Central Civic Association?

11 MR. BYRD: Well, it represents that area
12 and the church hosts their monthly meeting.

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. BYRD: As a matter of fact, we just
15 had a meeting last night. So.

16 CHAIRPERSON GRIFFIS: So, there may be a
17 conflict of interest though. Right. No.

18 Did you -- did you present this
19 application or anything to them or you talked to them
20 obviously about --

21 MR. BYRD: Right. Well, we informed them
22 about the school coming forward and we requested their
23 support.

24 CHAIRPERSON GRIFFIS: Great.

25 MR. BYRD: And they said they would write

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1 a letter.

2 CHAIRPERSON GRIFFIS: Great. And the
3 other letter is from? The residents?

4 MS. SACHS: The other letter is from a
5 woman who works at the Third Baptist Church.

6 CHAIRPERSON GRIFFIS: She live in the
7 area?

8 MS. SACHS: One of the deaconesses.

9 MR. BYRD: She lives in the city.

10 CHAIRPERSON GRIFFIS: Okay. That's all
11 right. Good. Let's put them in the record.

12 Let's move ahead then. If there's no
13 other submission or reports, is anyone here present
14 for Application 17289 either in support or in
15 opposition to provide testimony? Person to provide
16 testimony.

17 Not noting any indication of persons
18 present to provide testimony, let's move ahead to any
19 closing remarks that you might have.

20 MS. SACHS: Just in closing, I'd like to
21 say that because the Applicant satisfies the special
22 exception and variance relief standards and the
23 application has received the unanimous support of the
24 ANC-2C, we request that the Board approve this
25 application by bench decision.

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1 Thank you for your time.

2 CHAIRPERSON GRIFFIS: Good. Thank you
3 very much.

4 Board members, I'd like to get through
5 this fairly quickly. I think the application is full
6 and we're ready to move on.

7 I'm going to propose some conditions.
8 First before we go into a motion so the Applicant has
9 an opportunity to address them if I have gone in a --
10 in a direction that is not amenable, we'll have a
11 brief discussion about it.

12 But, I first would look to approval of the
13 facility for a period of five years. It would be for
14 a total number of teachers and staff not exceed three.

15 We would look for children's ages shall be from
16 fourth to eighth grade. Not really ages, but I can't
17 figure out the ages right now. There would be no more
18 than 15 children on site and no more than 15
19 enrollment.

20 The center would operate Monday through
21 Friday from 7:00 a.m. to 6:00 p.m. and that's all I
22 have.

23 Other elements. Mr. Mann, yes.

24 MEMBER MANN: I was just trying to recall
25 whether or not there were any proposed restrictions on

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1 the use of the play area.

2 CHAIRPERSON GRIFFIS: Yes, it's a good
3 point that we brought up. I was kind of -- I guess it
4 was the Office of Planning's report that put it in
5 there, but obviously, the information somewhere there
6 was a 30-minute period around lunchtime.

7 I don't see anything and based on, in
8 fact, a buffering of the site and the distance from
9 the residential. There's no evidence in the record
10 for me to be moved to go into conditioning any sort of
11 restrictions on outside. It seems to --

12 MEMBER MANN: No, we didn't hear anything
13 to that effect. I just remember reading something
14 about the limitations.

15 CHAIRPERSON GRIFFIS: Yes. No, the Office
16 -- I believe it was the Office of Planning's report.

17 Mr. Moore, you may bring clarification of
18 that. Wasn't it in your report that you indicated
19 that there was a 30-minute period? Indeed, under
20 noise.

21 MR. MOORE: Yes.

22 CHAIRPERSON GRIFFIS: Indeed.

23 MR. MOORE: And then information was
24 gotten from the headmaster.

25 CHAIRPERSON GRIFFIS: Oh, sure. Sure.

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1 Okay. Mr. Mann, let me see if I understand you
2 correctly then. You're not proposing a condition that
3 restricts it, but just --

4 MEMBER MANN: No, I'm not.

5 CHAIRPERSON GRIFFIS: -- make sure we were
6 aware.

7 MEMBER MANN: I just wanted to make sure
8 that we didn't overlook anything.

9 CHAIRPERSON GRIFFIS: Excellent. Anything
10 else?

11 VICE CHAIRPERSON MILLER: Since we're not
12 in a motion yet, I think I just would like to ask Mr.
13 Moore his opinion also on the term time limit.
14 Whether five years is long enough or do you have any
15 opinion on that?

16 MR. MOORE: As has been pretty customary
17 with this Board, a new application five years isn't a
18 bad period by which you can come in to monitor to see
19 if there's any problems going happen here. I doubt it
20 in this case. I called and I was quite favorably
21 impress with the student who answered the phone that
22 day. As I already told, the headmaster told me to
23 come in and visit to inside on one day.

24 But, I think five years would be
25 appropriate for this application.

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1 CHAIRPERSON GRIFFIS: Good. Anything
2 else?

3 The Applicant want to respond to any of
4 the proposed conditions at this time? Actually, this
5 would be the only time.

6 MR. SPRUILL: Full accept, Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you very much.

9 MR. SPRUILL: Thank you, sir.

10 CHAIRPERSON GRIFFIS: Okay. Board
11 members. Ms. Miller, action?

12 VICE CHAIRPERSON MILLER: Well, no, I just
13 want to throw out one -- one concern and we keep -- we
14 seem to be doing this to the Applicant like saying
15 don't you want a little more or whatever, but --

16 CHAIRPERSON GRIFFIS: Doesn't like to
17 stop.

18 VICE CHAIRPERSON MILLER: Okay. I just
19 had heard him say five to six years and I don't know
20 if the -- the school's only going to go for five
21 years.

22 CHAIRPERSON GRIFFIS: There it is. We
23 have five years on the table as proposed. If you'd
24 like to --

25 VICE CHAIRPERSON MILLER: All right. He's

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1 comfortable five --

2 CHAIRPERSON GRIFFIS: -- move a motion
3 with something different, then we'll take that up in
4 deliberation. Is there a motion?

5 Very well, I would move approval of
6 Application 17289 for Third Baptist Church and this
7 would be for the variance of the off-street parking
8 requirement as was calculated in the application.

9 This is also for the approval of the special
10 exception for the private school under section 206 and
11 that is for the premises at 1544 5th Street, N.W.

12 I have included in my motion six
13 conditions if I can recall correctly as we have
14 indicated and stated in that the timing, the
15 enrollment, the on site, et cetera.

16 And I would ask for a second.

17 VICE CHAIRPERSON MILLER: Second.

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

20 I think it's very appropriate and I put
21 great reliance on the Office of Planning's report and
22 their analysis of the 206 requirements for the special
23 exception and clearly for the variance under 2101 for
24 the parking and I don't believe I need to fill out
25 further the -- any additional comments in deliberation

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1 on that.

2 But, I will open up to others who have
3 motion for us that hasn't been added to the
4 conditions. So.

5 VICE CHAIRPERSON MILLER: Mr. Chairman,
6 just for clarification, I have in my notes five
7 conditions and I'm just wondering if I'm missing
8 something. If we could just clarify. I mean one
9 went to the term five years, the staff three, the
10 grade four to eight, no more than 15 in enrollment and
11 on site at one time, and then the hours of operation I
12 think was 7:00 to 6:00.

13 Is there something else in the conditions?

14 MEMBER MANN: The way that I recorded that
15 information was identical to yours except that I think
16 the Chairman kind of indicated that the 15 enrollment
17 and the 15 on site were two --

18 VICE CHAIRPERSON MILLER: Two different
19 conditions.

20 MEMBER MANN: -- separate ones.

21 VICE CHAIRPERSON MILLER: Okay. Thank
22 you.

23 CHAIRPERSON GRIFFIS: Whichever. Okay.
24 Any other questions? Deliberation? Comments on the
25 motion? Great. Okay.

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1 We have a motion before us the conditions
2 and then seconded. I'd ask all those in favor signify
3 by saying aye.

4 (AYES)

5 CHAIRPERSON GRIFFIS: And opposed?
6 Abstaining? Excellent. Why don't we record the vote?

7 MS. BAILEY: The vote is recorded as 4-0-1
8 to approve the application with conditions. Mr.
9 Griffis made the motion. Ms. Miller second. Mr. Mann
10 and Mr. Etherly are in agreement and we don't have a
11 Zoning Commission member with us today.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you very much, Ms. Bailey. Thank you all very much.

14 MS. SACHS: Thank you.

15 CHAIRPERSON GRIFFIS: Appreciate you being
16 down here and we look forward to the publication of
17 your doctoral thesis when it comes out.

18 MR. SPRUILL: Yes, sir. Thank you, Mr.
19 Chair.

20 CHAIRPERSON GRIFFIS: Indeed.

21 MR. SPRUILL: Thank you, sir.

22 CHAIRPERSON GRIFFIS: Let's move ahead and
23 call the next case for the morning.

24 Oh, Ms. Bailey.

25 MS. BAILEY: Yes, Mr. Chair.

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1 CHAIRPERSON GRIFFIS: We don't have any
2 party in opposition on this. I think it might be
3 appropriate to waive our rules and regulations into a
4 summary order.

5 MS. BAILEY: Summary order. That it is.
6 Application Number 17262 of ARCH Training Center
7 pursuant to 11 DCMR 3103.2 for variances from the lot
8 area and lot width requirements under section 401, a
9 variance from the lot occupancy requirements under
10 section 403, and a variance from the side yard
11 requirements under section 405 to allow the
12 construction of a new single-family detached dwelling
13 in the R-3 District at premises 1528 W Street, S.E.,
14 Square 5779, Lot 824.

15 CHAIRPERSON GRIFFIS: Excellent. Are we
16 ready?

17 MS. GIORDANO: We are.

18 CHAIRPERSON GRIFFIS: Very good morning to
19 you. It's a whole different kind of feel today.
20 Isn't it? Maybe it's the snow or something. All
21 right. I'll stay on the record and --

22 MS. GIORDANO: I think it's all the
23 positive cases.

24 Cynthia Giordano with Arnold & Porter law
25 firm. We are pro bono legal counsel for the Applicant

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1 ARCH Training Center.

2 With me from ARCH is Rachael Gautier who
3 is Vice President of ARCH and, of course, Nat Gross is
4 with my office from Arnold & Porter also.

5 The architects are from Inscape Studio.
6 We have Gregory Kearley who is a principal and Petros
7 Zouzoulas.

8 And also our ANC Single Member District
9 Representative Latesha Hudson is sitting at the table
10 with us as well.

11 I am going to turn the presentation over
12 to Ms. Gautier and then Nat will speak after her and
13 just kind of set the context on the zoning issues
14 because there are a number of variance at play here
15 before the architects proceed with the architectural
16 presentation.

17 So, unless there are any questions, we'll
18 go ahead and -- and get started with Ms. Gautier.

19 CHAIRPERSON GRIFFIS: Sure.

20 MS. GAUTIER: Hi. My name is Rachael
21 Gautier and I work with ARCH Training Center.

22 This project on W Street is part of our
23 curriculum for Youth Build which is one of our
24 programs at ARCH.

25 ARCH has been in Anacostia for 18 years

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1 doing job training and educational programs for ages
2 ranging from six to 12, 14 to 24 and then we also have
3 adult programs both for male and female.

4 The program that the W Street house is
5 going to be in conjunction with is Youth Build which
6 is a 16 to 24 year old age both female and male who
7 learn construction skills while they acquire also
8 educational training. They get their academics, you
9 know, up to at least a GED level. We try to encourage
10 them to go to school, to college or get in an
11 apprenticeship program after ARCH as well.

12 This program for the W Street house has
13 been infused into their curriculum for this year.
14 They're already busy building a to scale model of the
15 home. The architects both Petros and Greg who are
16 sitting here from Inscape have worked with them to do
17 so and they'll be a big part of the building process.

18 They've also been a part of the application process,
19 the estimate process. So, that they are learning all
20 facets.

21 So, this is not only going to be a, you
22 know, great thing for the neighborhood which, you
23 know, I feel because it's an empty lot and we're going
24 to build a home and have another viable member of a
25 community living in the home to spend money in the

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1 neighborhood hopefully when, you know, the -- the
2 downtown Anacostia area gets more commercial business.

3 So, I mean we're -- we really are hoping.
4 This part of our mission is also economic development
5 and we -- we do a lot with the commercial areas in
6 Anacostia as well. So.

7 CHAIRPERSON GRIFFIS: Good. Thank you.
8 Actually, one quick question.

9 Of course, the ANC had a letter that was
10 submitted that raises a question of -- and obviously
11 they're concerned none of which -- well, some of which
12 may go into the application for our jurisdiction in
13 terms of review, but do you want to just address
14 briefly. There was some concern about --

15 MS. GAUTIER: Yes.

16 CHAIRPERSON GRIFFIS: -- how this was
17 going to be sold or who it was sold to.

18 MS. GAUTIER: Right. There are -- there
19 are actually two -- two issues that I've -- I've --
20 I've heard both sides of it from the neighborhood.

21 So, there's one issue with some of the
22 neighbors that they're worried that the -- the house
23 will increase their taxes.

24 CHAIRPERSON GRIFFIS: Correct.

25 MS. GAUTIER: The other side though it's a

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1 -- it's a completely other issue. So, it really is
2 split. I don't know, down the middle, 40/60, what it
3 is, but we've heard from other neighbors that they
4 don't want the house sold at low income. They want it
5 sold at market and that market on the street can be
6 outwards of 400,000 to 500,000 based on -- so,
7 depending on who you talk to, the money issue and the
8 cost issue is going to be maybe one side or the other.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. GAUTIER: I can tell you where we are
11 on it.

12 CHAIRPERSON GRIFFIS: Good.

13 MS. GAUTIER: And hope that we can work
14 with the ANC or the neighbors to --

15 CHAIRPERSON GRIFFIS: That's not what I
16 care about actually, but how are you going to sell
17 this house. Is there a --

18 MS. GAUTIER: We -- okay. So, we -- we're
19 not -- we're not looking to -- ARCH -- ARCH is 40
20 percent funded from our own initiatives. We have a 13
21 percent operational cost which is, you know, you can
22 only go up to 35 percent. So, for us to have 13
23 percent, it's amazing as a nonprofit. We have 53
24 full-time employees.

25 So, we do have ways of making money. That

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1 -- that goes 100 percent in the program. We don't
2 pull a profit. It's just we fund ourselves as you can
3 -- you know, you could say.

4 On this house, however, we just want the
5 house to be built because of the way we're infusing it
6 into the curriculum. We don't -- we don't feel like
7 we're going to make a profit on it just based on the
8 way the house is going to get built.

9 CHAIRPERSON GRIFFIS: Okay. And let me be
10 clear because I -- I'm not concerned about whether
11 you're making a profit or not.

12 MS. GAUTIER: No, I know, but we're -- so,
13 I guess we're going to do it at cost. Maybe a little
14 bit above cost.

15 CHAIRPERSON GRIFFIS: How are you going to
16 sell it? Are you are going -- is it going on the
17 market? Do you have a list of --

18 MS. GAUTIER: One -- there are two ways
19 that --

20 CHAIRPERSON GRIFFIS: -- of pre-approved?

21 MS. GAUTIER: There are two ways that we
22 -- well, if -- if we go through Zoning, there are two
23 -- if we get the house through Zoning, there are two
24 ways that we've been thinking about it.

25 One way is because we have full-time

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1 employees all of which who have worked for ARCH, you
2 know, between two and ten years, we were hoping --
3 actually two and 15 years, but we're hoping that one
4 of the ways we could do is get our employees pre-
5 approved for the sale of the house because it's very
6 rare that we can offer our employees employee benefits
7 like this. Most of whom live in the neighborhood, all
8 of whom support the neighborhood, you know, Ward 7 and
9 8 --

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. GAUTIER: -- in some way.

12 CHAIRPERSON GRIFFIS: So, conceivably,
13 you're going to have a controlled list of which --

14 MS. GAUTIER: Right.

15 CHAIRPERSON GRIFFIS: -- you'll sell it
16 to.

17 MS. GAUTIER: However --

18 CHAIRPERSON GRIFFIS: And not just turn it
19 over the ReMax.

20 MS. GAUTIER: Right. However, the issue
21 is raised that the -- at the ANC that that's not how
22 they would like to see it go and I'm not going to --

23 CHAIRPERSON GRIFFIS: Understood.

24 MS. GAUTIER: -- I don't want to get into
25 anything --

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1 CHAIRPERSON GRIFFIS: Good.

2 MS. GAUTIER: So, we would probably just
3 put it on the market if that became an issue. So.

4 But, we would probably just put it on the
5 market if that became an issue.

6 CHAIRPERSON GRIFFIS: Well, don't lose too
7 much control of it. Okay. I don't think we need to
8 talk anymore about that.

9 MS. GAUTIER: Okay.

10 CHAIRPERSON GRIFFIS: That has nothing to
11 do with our jurisdiction or --

12 MS. GAUTIER: Okay.

13 CHAIRPERSON GRIFFIS: -- authority. It
14 was just an interest in terms of an issue that was
15 brought up.

16 So, let's move into our field of interest.

17 All right. Board members, let me ask you
18 while they get set up for this. Clearly, we have an
19 area variance because of the existing lot dimensions.

20 That being the total square footage and the width.
21 Do we need to hear much more evidence, testimony on
22 that issue? I think we're pretty clear on that. So,
23 we can move -- move ahead on the other that are a
24 little bit more particularly troublesome perhaps.

25 MR. GROSS: Okay. Well, I will just --

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1 Mr. Chairman, my thought was to go ahead of the
2 architects to provide just a little bit of land-use
3 context and also --

4 CHAIRPERSON GRIFFIS: Good.

5 MR. GROSS: -- to run through the variance
6 tests as a context because we actually have two
7 alternative plans.

8 CHAIRPERSON GRIFFIS: Uh oh.

9 MR. GROSS: And so, you'd have the
10 background and we're requesting that if you consider
11 the second plan that -- that you would accept that as
12 an application today, but I may leave that for when
13 the architects --

14 CHAIRPERSON GRIFFIS: Perfect.

15 MR. GROSS: -- present that. But, in
16 general --

17 CHAIRPERSON GRIFFIS: Do we have the
18 second plan?

19 MR. GROSS: You don't have it yet.

20 CHAIRPERSON GRIFFIS: Indeed. Okay.

21 MR. GROSS: This is Square 5779, the
22 subject square presented in two ways. The subject
23 property at 1528 W Street is shown first in the top
24 the way it was when it existed. Constructed in 1905.
25 Most of the houses along W Street built around the

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1 turn of the 20th century.

2 And here it is on the bottom with the
3 outbuilding and the house removed. Just showing the
4 lot the way it would be for development.

5 One observation is that the historic
6 pattern along W Street is that of deep narrow lots
7 kind of like you would expect in R-3 zoning which is
8 what you'd have here, but it's all -- except for the
9 pair of semi-detached kind of in the middle, it's all
10 detached houses sited virtually on or maybe in some
11 cases on the side lot line.

12 This is a little bit similar to what's
13 called zero lot line zoning today which is used out in
14 California and in other jurisdictions where the idea
15 is to have the attached houses without party walls,
16 but more density and the way they do that is -- of
17 course, the houses to decide to have one side yard
18 that's a little wider instead of two narrow side
19 yards. It wouldn't have lots of -- anyway, the only
20 reason for that observation is that this is the
21 historical pattern along here.

22 And the -- as you'll see, the footprint of
23 the proposed house fairly close to that property line.

24 It's consistent with the historical pattern of houses
25 along the street.

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1 As I mentioned, it is the R-3 zone which
2 allows, of course, single-family row dwellings and
3 also detached and semi-detached houses as a matter of
4 right with different standards.

5 Now, going down to the vacant lot, we have
6 a lot 24-feet wide versus 40 feet required for a
7 detached house. It would only be -- it would be less
8 for both a semi-detached or a -- or a row dwelling and
9 then 115-feet deep. So, we have 24 feet wide versus
10 40 and 2,760 square feet versus 4,000 square feet
11 required.

12 First observation is that in this zone if
13 there were a building on the property line, it would
14 be possible to construct a semi-detached house and
15 with a house 16-feet wide provide a conforming side
16 yard on the 16th Street -- on 16th Street side. That
17 is the house as proposed is 16-feet wide. The lot is
18 24. So, if you had an attached, you could -- you
19 could do a conforming side yard.

20 Obviously, there's no party wall. So,
21 that option is not there.

22 CHAIRPERSON GRIFFIS: So, you're saying
23 the point if -- if the adjacent property was built on
24 the property line, you could attach to that common
25 wall. Then you would obviously be moving the building

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1 over without losing the interior dimension and
2 providing a conforming side yard.

3 MR. GROSS: Right.

4 CHAIRPERSON GRIFFIS: And the side yard
5 would be on 16th Street?

6 MR. GROSS: Right. However, since there's
7 no party wall, it has to be a detached house and
8 becomes a difficult question of where you site it on
9 the lot and at this point, I would just want to run
10 through the exceptional conditions and resulting
11 practical difficulties real quickly.

12 Those are in our statement, too, but the
13 -- the lot and the house were created before there was
14 any zoning in the District of Columbia.

15 The lot obviously can't be expanded
16 because it's bounded on three sides by an alley and
17 two streets and on the other side by an improved house
18 and we are in the Anacostia Historic District which
19 makes any hypothetical acquisition of that house and
20 subdividing to create a larger lot pretty much out of
21 the question.

22 As I mentioned, the house was damaged by
23 water flowing into it from a broken fire hydrant in
24 front of it.

25 Historic preservation, we would argue, is

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1 also a constraint in this case in the sense that
2 design review is mandatory and it actually resulted in
3 an addition of a variance to the case that wasn't in
4 our original design.

5 CHAIRPERSON GRIFFIS: Which variance?

6 MR. GROSS: And that is the variance for a
7 court and -- and this came out in the OP report. We
8 actually didn't catch it, but in the modifications to
9 satisfy the HPRB, one design change that was made was
10 to create a wraparound porch and you'll see this in
11 the architect's plan which -- where it extends four
12 feet beyond the remainder of the house on the 16th
13 Street side so that the porch would go to the property
14 line.

15 And then the remainder of the house would
16 be -- would be set back four feet from the property
17 line.

18 CHAIRPERSON GRIFFIS: On the plans that we
19 have as proposed, what's the front of the house?

20 MR. GROSS: W Street I believe.

21 CHAIRPERSON GRIFFIS: Could you not pick
22 16th Street as the front of the house?

23 MR. KEARLEY: Do you want me to address
24 that?

25 CHAIRPERSON GRIFFIS: No, not necessarily.

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1 MR. KEARLEY: No. Okay.

2 CHAIRPERSON GRIFFIS: I'm asking for a
3 legal interpretation of whether you could pick 16th as
4 the front of the house.

5 MS. GIORDANO: We haven't really
6 considered that.

7 CHAIRPERSON GRIFFIS: Could you turn on
8 your mike?

9 MS. GIORDANO: I'm sorry. We haven't
10 considered that. So, I don't know the -- the answer
11 to your question --

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. GIORDANO: -- offhand.

14 CHAIRPERSON GRIFFIS: I mean it obviously
15 wouldn't cure your situation because then you'd need
16 to provide a rear yard.

17 MS. GIORDANO: I would eliminate that open
18 court --

19 CHAIRPERSON GRIFFIS: And you wouldn't --

20 MS. GIORDANO: -- is what you're saying.

21 CHAIRPERSON GRIFFIS: Right.

22 MS. GIORDANO: Um-hum.

23 CHAIRPERSON GRIFFIS: Then you'd -- you'd
24 add in a rear yard requirement which you couldn't
25 satisfy on that property line.

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1 MS. GIORDANO: Right. It seems like we're
2 just -- in this case, it's like an amoeba, you know.
3 You push and pull and another variance pops up and
4 that's -- that's been our frustration.

5 MR. GROSS: I believe the Preservation
6 Review Board would have a problem with that. I think
7 they wanted the front porch a certain way and wanted
8 it to --

9 CHAIRPERSON GRIFFIS: No, but, I'm not --

10 MS. GIORDANO: But, it's just for zoning
11 purposes.

12 MR. GROSS: Yes.

13 CHAIRPERSON GRIFFIS: Yes, design or
14 anything. I mean --

15 MS. GIORDANO: For zoning purposes. I --
16 I don't -- I'm not sure what the advantage would be
17 there in terms of number of variances.

18 CHAIRPERSON GRIFFIS: Okay. But, you
19 don't refute the fact that you couldn't pick 16th as
20 your front and W would be your side yard.

21 MS. GIORDANO: Yes.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. GROSS: The last constraint I would
24 observe is that the property line on 16th Street is
25 virtually on the sidewalk. So, that in the original

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1 design before the wraparound porch came into the
2 picture, we proposed a four or five-foot setback off
3 of 16th Street just because you wouldn't want that
4 side entrance landing right on the sidewalk and so,
5 you know, it's -- so --

6 CHAIRPERSON GRIFFIS: This place then --
7 well, maybe we'll wait. Go ahead.

8 MR. GROSS: I guess as far as the -- the
9 small interior side yard propose that only about three
10 feet in places in the center of the building and then
11 four feet in the rest of the building. That is indeed
12 narrow, but I guess I would say that certainly follows
13 the historic pattern and so, you have kind of a
14 tradeoff between historic preservation and zoning
15 standards and few windows were placed on -- on that
16 side of the house.

17 With that I think as far as tests two and
18 three on the variances, I think I'll stand on the --
19 on the statement on that and we can come back with
20 questions if you would like and -- and with that, I
21 think it's the architect's -- oh, I know. To formally
22 request that -- that if you are interested in the
23 design, it has been -- it has received conceptual
24 design approval from the HPRB. That one does have the
25 wraparound porch and that one does trigger the court

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1 variance which we did not have -- that is what we
2 would propose to amend the application today if you
3 decide to go in that direction.

4 And then we have a plan that's more along
5 the lines of the approach that --

6 CHAIRPERSON GRIFFIS: Yes. Right.

7 MR. GROSS: -- the Office of Planning
8 would suggest.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. ZOUZOULAS: Good morning. My name is
11 Petros Zouzoulas. I'll be talking briefly about the
12 context of the neighborhood so we get a better
13 understanding of the neighborhood and what sort of
14 help to shaped the design. Greg will be talking about
15 design specifically.

16 CHAIRPERSON GRIFFIS: Okay. Let me
17 interrupt you because I don't want -- we're not going
18 to go very far in the design stuff.

19 MR. ZOUZOULAS: Okay.

20 CHAIRPERSON GRIFFIS: These are actually
21 great boards and get diagrams. There's a limit at
22 which it's going to be pertinent for us to get too far
23 into it and you've already been through the labyrinth
24 of the historic review and to that, was there a
25 question -- the Office of Planning has a comment in

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1 their report about the side flange of a porch. Was
2 this a critical component of the presentation to HPRB?

3 MR. ZOUZOULAS: I'll let Greg tend to
4 that.

5 MR. KEARLEY: I'm going to talk about
6 this. My name's Greg Kearley. I'm principal with
7 Inscape Studio.

8 We worked very closely with Tim Denae in
9 coming up with the scheme here that was approved by
10 Historic and he actually recommended that we do the
11 wraparound porch. It was something that we worked --

12 CHAIRPERSON GRIFFIS: So, in your
13 presentation, you didn't have it as kind of an option
14 or --

15 MR. KEARLEY: No, not at all.

16 CHAIRPERSON GRIFFIS: -- discussion of
17 taking it off or putting it on?

18 MR. KEARLEY: No.

19 CHAIRPERSON GRIFFIS: And where are you
20 with the Historic? I know we just got the letter.
21 You've got conceptual approval?

22 MR. KEARLEY: We -- we went -- we had
23 original meeting Historic from a design that was --
24 was much different than this. It was more modern
25 design. They had some concerns about that.

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1 So, we worked with Tim for the next month
2 or so in terms of coming up with a scheme that was
3 going to be workable for Historic and they actually
4 put us on the consent list and we didn't even have to
5 go to the review based on the changes that we made
6 which is what you're seeing here.

7 CHAIRPERSON GRIFFIS: Oh, I see.

8 MR. KEARLEY: So, we didn't go to a second
9 meeting -- a second review. It was put on the
10 consent.

11 CHAIRPERSON GRIFFIS: Okay. So, you were
12 on the consent calendar and it went through unopposed?

13 MR. KEARLEY: Um-hum. Exactly.

14 CHAIRPERSON GRIFFIS: Okay. And this is
15 obviously a corner lot.

16 MR. KEARLEY: Exactly.

17 CHAIRPERSON GRIFFIS: A different
18 condition then the porch is on the rest of the W --

19 MR. KEARLEY: That's a little bit what
20 Petros was going to share with you. Some precedents
21 in the neighborhood for the wraparound porch.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. KEARLEY: Because it is a corner lot
24 and a couple of items that we talked about in terms of
25 just not talking about the design and telling you

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1 where bedrooms and those types of things, but why we
2 actually placed the building in certain location was
3 if we had -- if we had used the setbacks at eight
4 feet, current zoning regulations would have an eight-
5 foot wide building which --

6 CHAIRPERSON GRIFFIS: Right.

7 MR. KEARLEY: -- is unusable for a house.

8 In terms of the -- the side setback and asking for
9 the variance for the side setback which is adjacent to
10 the neighboring property, we are trying to be
11 consistent with what was in the neighborhood which was
12 about a four or five-foot distance between the houses
13 and we're actually going a little bit beyond that in
14 terms of having -- ours having four feet on ours plus
15 there's a couple of feet from the neighbor's side
16 yard.

17 One thing, when we're talking about the
18 lot occupancy variance we're asking for, the only
19 reason we're actually addressing that is the building
20 itself and the footprint of the building meets the lot
21 occupancy of 40 percent, but since we're engaging into
22 the side setback, you have to include that whole
23 setback in terms of the lot occupancy.

24 So, that kicks us to the 50 percent.
25 We're actually below 40 percent when you're talking

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1 about the footprint of the building and the decks and
2 the porches.

3 CHAIRPERSON GRIFFIS: And what's the
4 percentage of the lot occupancy if you don't include
5 -- although that's absolutely correct --

6 MR. KEARLEY: We're just below 40 percent.
7 We're like 39 and some change.

8 CHAIRPERSON GRIFFIS: That's with the
9 porch actually with structure?

10 MR. KEARLEY: With those two -- with the
11 wraparound porch.

12 CHAIRPERSON GRIFFIS: I see.

13 MR. KEARLEY: We're within -- we're within
14 -- we're within the 40 percent.

15 CHAIRPERSON GRIFFIS: So, in fact,
16 obviously, the intent of the regulations was if you
17 enclose that area, you ought to count it towards lot
18 -- because it functions the same way, but this is
19 fronting on a street.

20 MR. KEARLEY: Exactly.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. KEARLEY: So, we are -- I think we're
23 meeting the spirit of the lot occupancy of 40 percent
24 and the only reason we're actually -- we're kicked up
25 towards the 50 percent mark is because of the side --

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1 we're engaged into the side setback.

2 CHAIRPERSON GRIFFIS: Got ya.

3 MR. KEARLEY: Office of Planning had
4 addressed and wanted us to push the building all the
5 way to the edge of 16th Street. One of the reasons we
6 were a little reluctant to do that is one because of
7 the porch because Historic had given us specific
8 approvals on having that porch.

9 And also, there's not an official building
10 restriction line on 16th Street. But, when you look
11 at the buildings that are going I guess it would be
12 north of that street, there are setback somewhat from
13 the sidewalk and so, we were trying to be consistent
14 with that in setting it back the four feet from that
15 place -- from that particular street on 16th Street.

16 CHAIRPERSON GRIFFIS: Got ya.

17 MR. KEARLEY: And also, you would have --
18 if you had a side -- a side door, you would actually
19 be stepping right onto the sidewalk if you did that
20 and we wanted to have that four feet so we could
21 actually get out of the house.

22 CHAIRPERSON GRIFFIS: Knock your neighbors
23 in the head getting out. Huh?

24 MR. KEARLEY: So -- so, anyway, we --

25 CHAIRPERSON GRIFFIS: Maybe the fifth and

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1 sixth graders. No, it's a different neighborhood.

2 MR. KEARLEY: By creating two -- by
3 creating two setbacks, two side yards of four feet, we
4 were trying to come with a compromise in terms of the
5 existing historic nature of the neighborhood and also
6 addressing 16th Street and addressing the sort of an
7 unofficial building restriction line on 16th Street.

8 CHAIRPERSON GRIFFIS: Okay. But, more in
9 -- and in all seriousness, I clearly understand the
10 fact of your doors which will probably swing out or
11 maybe not, but the -- the issue of your side entry as
12 you've called it --

13 MR. KEARLEY: Um-hum.

14 CHAIRPERSON GRIFFIS: -- I mean there's a
15 great change there is there not from the sidewalk up?
16 Relatively.

17 MR. KEARLEY: It's -- it's not very steep,
18 but there is a grade change.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. KEARLEY: It's down --

21 CHAIRPERSON GRIFFIS: You have a level --
22 a level area.

23 MR. KEARLEY: -- three or four steps --

24 MS. GIORDANO: So, that's -- that's our
25 practical difficulty basically.

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1 CHAIRPERSON GRIFFIS: Right. And so, that
2 step out would have to accommodate on the sidewalk is
3 what you're saying.

4 MR. KEARLEY: Exactly.

5 CHAIRPERSON GRIFFIS: So, they'd be a curb
6 and okay.

7 MR. KEARLEY: Exactly. Which I didn't
8 think we would get city approval to build out on the
9 sidewalk. So.

10 CHAIRPERSON GRIFFIS: Probably not. Okay.

11 MR. KEARLEY: So, those are the
12 difficulties that we face when building the house in,
13 excuse me, in terms of designing the house. It
14 specifically related to the variances we're talking
15 about.

16 I think we did try to cover and work
17 within the spirit of the 40 percent lot occupancy and
18 we are within that except, you know, it rolls over
19 with the -- with engaging into that side yard.

20 And then we are a corner lot addressing
21 both W Street and 16th Street, we felt it was
22 important and moving back, you know, a reasonable
23 amount of space from the 16th Street so the building's
24 not right up against that sidewalk.

25 CHAIRPERSON GRIFFIS: Okay.

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1 VICE CHAIRPERSON MILLER: Could you just
2 clarify for me? There's a reference on page eight of
3 the pre-hearing statement to a side yard of two feet,
4 ten inches on the interior west side of the lot. What
5 is --

6 CHAIRPERSON GRIFFIS: The center of the
7 building bumps out.

8 MR. KEARLEY: The center of the building
9 bumps out on that side yard. So, you have a typical
10 side yard of four feet, but the center of the building
11 it bumps -- it's a little bit narrower.

12 VICE CHAIRPERSON MILLER: So, it's only --
13 part of it is -- part of the side yard is -- is that
14 narrow. Okay.

15 MR. KEARLEY: You can see right here where
16 it bumps out from the center. It was a design
17 decision that was made in terms of working with the
18 students and articulating the different forms of the
19 building.

20 CHAIRPERSON GRIFFIS: You can have them
21 lop it off if you'd like.

22 VICE CHAIRPERSON MILLER: I just wanted to
23 understand it.

24 CHAIRPERSON GRIFFIS: Totally within your
25 justification to do it.

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1 VICE CHAIRPERSON MILLER: Thank you.

2 CHAIRPERSON GRIFFIS: But, obviously in
3 all seriousness if I can muster that the -- the issue
4 that Office of Planning brings up is not unique to
5 this application. They're very consistent with making
6 sure that with these new buildings, one, it doesn't
7 encroach on the maintenance ability of adjacent --

8 MR. KEARLEY: Sure.

9 CHAIRPERSON GRIFFIS: -- but most
10 importantly on the house itself I mean as the new
11 homeowners and certainly as the developer would want
12 this --

13 MR. KEARLEY: Um-hum.

14 CHAIRPERSON GRIFFIS: -- should be
15 something that can function --

16 MR. KEARLEY: Sure.

17 CHAIRPERSON GRIFFIS: -- in -- at least
18 for 30 years and be maintained. So, that's where
19 we're --

20 MR. KEARLEY: And -- and that's -- I mean
21 we -- we want to work with Office of Planning
22 obviously and it's something where by having a typical
23 side yard of four feet we felt that was a comfortable
24 dimension in terms of accessing the side yard for
25 maintenance and for security reasons.

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1 I think a lot of it has to do with
2 security when you have side yards so people can move
3 freely if there's problems. So, it's something where
4 we try to come up -- we -- we try to balance having
5 the width of the house which is at 16 and the exterior
6 dimension with both -- both side yards.

7 So, we appreciate the concerns of Office
8 of Planing.

9 CHAIRPERSON GRIFFIS: Well, addressing it
10 directly, is it your opinion that someone could put a
11 ladder there and actually clear the gutters on that
12 side or repair the stucco or wash the windows?

13 MR. KEARLEY: I think -- yes, I think four
14 feet would be adequate to do --

15 CHAIRPERSON GRIFFIS: What about --

16 MR. KEARLEY: -- any type of maintenance
17 or upkeep to the particular house.

18 CHAIRPERSON GRIFFIS: What about two feet
19 ten inches?

20 MR. KEARLEY: Two fee ten inches, it
21 becomes narrow. That portion of the building is
22 actually a flat roof which we're hoping to maybe have
23 a green roof on, but it's something where access to
24 that particular roof could be done from inside the
25 house. So, you wouldn't necessarily need to access

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1 that particular of the roof and since it's -- it's --
2 it's only -- instead of maybe 25 feet high, you're
3 looking at something that's about 18/19 feet high.
4 That access to that particular portion of the
5 building, I don't think is being compromised by having
6 a narrower side yard at that portion of the building.

7 CHAIRPERSON GRIFFIS: Then you would
8 maintain the stucco on the elevation. You don't think
9 there's a problem in two feet ten inches?

10 MR. KEARLEY: I think it's tight, but I
11 think it's -- I think it's manageable.

12 Yes, the length of that segment is 16
13 feet. So, it's -- it's -- it's a short -- it's a
14 short distance in there.

15 CHAIRPERSON GRIFFIS: Or since -- Mr.
16 Mann.

17 MEMBER MANN: Can you -- can you point to
18 the four foot dimension on the open court?

19 MR. ZOUZOULAS: Yes, four foot in which?
20 Is that going --

21 MR. KEARLEY: East/west or --

22 MEMBER MANN: Yes.

23 MR. ZOUZOULAS: East/west.

24 MEMBER MANN: Going -- that's right.
25 East/west. From here to here.

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1 MR. KEARLEY: It's from the building --
2 face of the building to the sidewalk.

3 MEMBER MANN: So, the --

4 MR. KEARLEY: Which is -- the property
5 line is basically on the sidewalk.

6 MEMBER MANN: Okay. And under the zoning
7 definition then the open court is that more or less
8 rectangular area.

9 MR. ZOUZOULAS: It's this -- it's this
10 space in -- it's this space between the building and
11 the property line. Right. It's this area here. Just
12 this little area.

13 MR. KEARLEY: Typically, it seems to me
14 that I think the -- the courtyard, I think the intent
15 of these types of things for a courtyard is when you
16 have another building abutting that particular
17 property where you're -- where you're creating a -- a
18 -- sort of a light shaft or something that -- and
19 since we're on 16th Street and no one's going to
20 actually be able to abut this particular property,
21 that it's sort of a -- it -- to me, it's not a true
22 court because it doesn't have that. I think by
23 definition it is, but I think in the spirit of the
24 zoning regulations, we're not going to be able to
25 create an enclosed area on this space because you're

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1 on public space as you're coming out to there.

2 MEMBER MANN: What do you think terminates
3 the open court on 16th Street?

4 MR. KEARLEY: The entire length of the --

5 CHAIRPERSON GRIFFIS: Yes, it runs the
6 property.

7 MR. KEARLEY: -- the property.

8 CHAIRPERSON GRIFFIS: Because the court's
9 going to be defined by the building on two sides
10 and/or property lines.

11 MR. ZOUZOULAS: Okay.

12 CHAIRPERSON GRIFFIS: So, it's not just
13 that small little --

14 MR. ZOUZOULAS: Okay. So, it's the entire
15 length here.

16 CHAIRPERSON GRIFFIS: That's right.

17 MR. ZOUZOULAS: Okay.

18 MEMBER MANN: So, it's a court that
19 narrows into a very small neck as it passes in front
20 of the entrance canopy. Is that --

21 CHAIRPERSON GRIFFIS: No, because the --
22 no, the entrance can't -- wow. Interesting.

23 MR. KEARLEY: I think the definition if
24 it's two sides, you have the porch as one side. You
25 have the building as the other side and so, that four

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1 foot strip that runs the length of the building would
2 be considered a court.

3 CHAIRPERSON GRIFFIS: Let's ask the Office
4 of Planning how do they define that open court.

5 MR. MORDFIN: I had interpreted it, you
6 know, considering there are two sides to the building
7 and --

8 CHAIRPERSON GRIFFIS: Right.

9 MR. MORDFIN: -- there are no walls on
10 that canopy, so, I thought it was the entire length
11 from --

12 CHAIRPERSON GRIFFIS: Right.

13 MR. MORDFIN: -- from the side --

14 CHAIRPERSON GRIFFIS: What's interesting
15 -- I mean we're talking about lot occupancy it makes
16 no difference how we actually define it because you
17 could, in fact, I think make a strong case. The whole
18 point of a court or a side yard it has to be open to
19 the sky. So, the canopy covers that. So, you could
20 have a -- actually, it might then be a closed court,
21 but an open court let's call it on the left side of
22 the canopy and then an open court on the right side of
23 the canopy and then, you'd still have to calculate the
24 whole thing as you've done for lot occupancy because
25 it would all count towards it with the canopy just

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1 being different and all that.

2 Courts are a fascinating thing. Maybe we
3 could take some --

4 MR. KEARLEY: It's been -- it's always
5 difficult to actually figure out what is -- you know,
6 the definition of this and that's why it was actually
7 brought to our attention --

8 CHAIRPERSON GRIFFIS: Right.

9 MR. KEARLEY: -- after we had filed from
10 this. Because it wasn't our interpretation that this
11 was a court and, you know, once getting into it, I
12 think it fits the definition when you're talking about
13 the porch and the building acting as two sides of the
14 building and then you have this four foot dimension
15 between --

16 CHAIRPERSON GRIFFIS: Right.

17 MR. KEARLEY: -- the property line and the
18 actual side.

19 CHAIRPERSON GRIFFIS: Let me ask Office of
20 Planning that's been here, why this wouldn't be a
21 court niche? I mean a court niche, of course, is
22 defined as an aspect of something architecturally
23 that's happening that creates this thing, but doesn't
24 create -- you know, I'm not sure actually what the
25 difference is, but it sure is intriguing and obviously

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1 a court by definition isn't a court niche.

2 MR. MORDFIN: Well, from reading the
3 definition, I think there's also a court niche in
4 there.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. MORDFIN: Because you've got the two
7 end parts of the building and the middle part that's
8 pushed back and I think there you have a court niche.
9 You can see that in there.

10 CHAIRPERSON GRIFFIS: Okay. Indeed.

11 MR. MORDFIN: And that's the articulation.

12 CHAIRPERSON GRIFFIS: Excellent. Okay.
13 There it is hopefully. Anything else?

14 MEMBER MANN: It actually -- yes. It
15 actually wasn't quite clear to me. Where is the court
16 niche?

17 CHAIRPERSON GRIFFIS: On the top side.
18 Where the little bump out for the stucco area. Where
19 the diminished --

20 MR. KEARLEY: We're causing all kinds of
21 problems with this one. Put bump out.

22 MEMBER MANN: Well, you know, I mean quite
23 frankly, I don't think there's necessarily a problem.

24 What I was actually getting at was were it not for
25 the fact that HPRB suggested the porch, would there be

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1 otherwise a court issue at all? If -- if the porch --
2 if the wraparound porch went away, is there still any
3 court issue?

4 MR. GROSS: No. No, there's not.

5 MR. KEARLEY: We believe no and there was
6 something where -- I mean I think we agreed with --
7 with -- with the Historic and Tim in working with them
8 that -- that engaging both 16th Street and W Street
9 and this is something that we talked quite a bit about
10 is how to sort of engage both these streets. That the
11 wraparound porch was something that we -- we agreed
12 with them and that the -- you know, it was a dialogue.

13 I don't know who suggested what or who did what, but
14 we were in their office many times, you know,
15 sketching up ideas and talking to them. So.

16 CHAIRPERSON GRIFFIS: For clarity so we
17 don't get too bogged down in this, I don't think it's
18 an actual requirement of the Preservation Board to do
19 this, but I think the testimony, what evidence that we
20 have in here, it obviously is a good design move for
21 it.

22 You know, it's an interesting point that
23 we get into now at this --

24 MS. GIORDANO: I think at this point it is
25 a requirement.

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1 MR. KEARLEY: In the consent -- in the
2 consent letter, they actually wrote that there were
3 going to be a porch in there. So, I don't know.

4 CHAIRPERSON GRIFFIS: A porch.

5 MR. KEARLEY: Right.

6 CHAIRPERSON GRIFFIS: But, the portion of
7 the porch -- is it articulated in that letter that a
8 portion of the porch is on 16th Street?

9 MR. KEARLEY: Yes.

10 CHAIRPERSON GRIFFIS: It is?

11 MR. KEARLEY: It's clear. I think it's
12 pretty clear on that that it's both -- both streets.
13 That letter that the Historic wrote for the consent.

14 CHAIRPERSON GRIFFIS: Okay. All right.
15 We don't need to spend a lot more time on that.

16 MR. KEARLEY: The front porch has become
17 more traditional and functional and it addresses the
18 street corner and wrapping around 16th Street. So, I
19 -- so, it was part of their -- their ruling that --

20 CHAIRPERSON GRIFFIS: It's a -- it's a --
21 it's a dynamic piece. Although this is very small
22 scale, not to be negative, but on some of the larger
23 things we're doing, I think we have well established
24 the fact that design, intent, and direction can be
25 part of the -- the practical difficulties that arises

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1 out of the unique condition and situation.

2 I think we have on a smaller scale that
3 perhaps we've seen recently in larger buildings, but
4 it is -- you know, and frankly, I think it's -- Office
5 of Planning should be applauded for holding a very
6 strict line in bringing this to the attention. I
7 think we need to obviously look at their entire
8 analysis in reviewing this.

9 MR. KEARLEY: Sure.

10 CHAIRPERSON GRIFFIS: But, let's move
11 ahead with anything else that you need to tell us on
12 this at this time.

13 MR. KEARLEY: We will -- I guess -- I
14 think we're -- we're pretty much -- I don't know if we
15 have anything else to say about the architecture until
16 -- unless there's specific comments you want us to
17 address. I was going to hold off in -- in showing an
18 alternative plan which addresses Office of Planning at
19 your request. So, if it's something where you want us
20 to share that with you and bring that into the record,
21 we'll be glad to do that.

22 One of the reasons I'm not doing it right
23 now unless you ask me is we --

24 CHAIRPERSON GRIFFIS: We don't want to see
25 it.

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1 MR. KEARLEY: -- we have a preferred --

2 CHAIRPERSON GRIFFIS: We have an
3 application before us. We got the drawings in front
4 of us.

5 MR. KEARLEY: Yes, exactly.

6 CHAIRPERSON GRIFFIS: I don't -- I don't
7 think we're being to the level of seeing other stuff
8 at this point.

9 Did you have a quick question or
10 clarification?

11 VICE CHAIRPERSON MILLER: Well, I have a
12 quick question. Yes, we just got the Historic
13 Preservation report this morning --

14 MR. KEARLEY: Okay.

15 VICE CHAIRPERSON MILLER: -- up here. So,
16 I haven't actually studied it, but in listening to the
17 conversation, it -- it seems to me footnote two says
18 that the side porch could be eliminated. I mean I
19 don't -- it sounds like it's not necessarily required.

20 MR. KEARLEY: Okay.

21 VICE CHAIRPERSON MILLER: Am I reading it
22 wrong? I understand that they strongly prefer it and
23 recommend it and --

24 MR. KEARLEY: If it -- I -- I would agree
25 with you. If -- if that's there, I -- I don't -- I

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1 didn't read that footnote. So, it's something where
2 if that's the case, we would -- we would definitely
3 work with Office of Planning --

4 CHAIRPERSON GRIFFIS: Yes, it contradicts
5 in way what they're -- what they're -- what they're
6 indicating in footnote two is they were well aware
7 that this is coming to BZA and they're talking about a
8 couple of other things and they said if a larger side
9 yard is ultimately required on the opposite side,
10 it's certainly conceivable that the house could be
11 shifted a few feet towards 16th Street and the side
12 porch eliminated. I mean I think that's a well stated
13 footnote from the Preservation because essentially
14 what it's saying is they're not requiring making your
15 case for a variance and I think that's a good balance
16 between the two design review and then the zoning
17 elements. I think we have what we need in front of us
18 and can make our own deliberative --

19 MR. KEARLEY: And we do have that drawn up
20 if you need to see that.

21 CHAIRPERSON GRIFFIS: That's an option,
22 too.

23 MR. KEARLEY: We have -- we have -- we
24 have seven copies of that for you if you need that.
25 We have that option.

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1 CHAIRPERSON GRIFFIS: Okay. No more
2 talking about options here until we ask for it. Okay.

3 Anything else? Anything else from the
4 Applicant?

5 MS. GIORDANO: No, that concludes our
6 case.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. GIORDANO: Thank you.

9 CHAIRPERSON GRIFFIS: Then let's move
10 ahead then as we've jumped into the Office of
11 Planning's report already and have them present it for
12 us.

13 MR. MORDFIN: Good morning, Chairman and
14 members of the Board. I'm Stephen Mordfin with the
15 Office of the Planning.

16 And one of the variances that the
17 Applicant is requesting is to reduce the minimum width
18 of the west side yard from eight feet to two feet ten
19 inches and the need for this variance results from the
20 placement of a four-foot wide side porch on the east
21 side of the dwelling.

22 If the side porch were eliminated, a
23 minimum west side yard of six feet ten inches could be
24 provided significantly reducing the extent of the
25 variance requested. Therefore, the Office of Planning

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1 recommends against the granting of this variance.

2 A variance is also required to the minimum
3 width of an open court and the zoning regulations
4 require that the proposed open court be a minimum of
5 9.5 feet in width and the application proposes a width
6 of four feet, less than half and elimination of the
7 side porch would eliminate the open court and the need
8 for this variance and so, the Office of Planning also
9 recommends against the granting of this variance.

10 And the last variance that's required for
11 this application is to increase the lot occupancy from
12 40 percent to 50.8 and that's necessary because the
13 proposed side yard and the open court on the east side
14 of the building are less than five feet in width each
15 and therefore, cannot -- therefore, do count toward
16 lot occupancy and if the side porch were eliminated
17 again and the west side yard increased, the open court
18 on the east side could be eliminated reducing perhaps
19 or even eliminating the need for a lot occupancy
20 variance and so, the Office of Planning also
21 recommends against the granting of that variance.

22 The last variance which is to lot width
23 and lot area, the Office of Planning recommends
24 approval of as this is a lot that predates the
25 adoption of the zoning regulations and it cannot be

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1 enlarged.

2 And that concludes the presentation from
3 the Office of Planning.

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you very much. Questions from the Board? Ms. Miller?

6 VICE CHAIRPERSON MILLER: Could you
7 address for me in the context of the variance analysis
8 why Office of Planning opposes the variances that it
9 does?

10 I mean I think you said because they could
11 eliminate the porch. That's why you oppose it, but
12 could you address that in the -- in the variance test?

13 MR. MORDFIN: Yes. Well, this is an
14 unusually narrow lot and that would create some
15 practical difficulties in the application. However,
16 it's also a vacant lot which we think then expands the
17 options that are available to the Applicant and by
18 providing the side porch, we think that -- you know,
19 there's not a need to provide a side porch. This
20 isn't the actual dwelling itself, but this is a side
21 porch which is an amenity added onto the house and
22 that creates the need for -- for the variances.

23 Also, reducing it to two feet ten inches,
24 the Office of Planning is of the opinion that that is
25 too narrow and that's going to -- that it's not in the

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1 spirit of the zoning regulations to have a side yard
2 that narrow because of issues of maintaining not only
3 the yard, but also the side of the dwelling and that
4 the reason for having a wide side yard does serve a
5 purpose in that we think that reducing it to that
6 extend will impair that intent.

7 VICE CHAIRPERSON MILLER: I guess the
8 point of my question goes to things like, you know,
9 there may -- you may say that there may not be a need
10 for it or it's an amenity, but I guess my question is
11 is there for instance an adverse public impact --
12 detrimental impact to the neighbor, detrimental impact
13 to the zone plan. I mean reasons like that that we
14 should be rejecting --

15 MR. MORDFIN: Well, I believe the
16 detriment to impact to reducing the side yard is to
17 the neighbor. The neighbor on the other side.
18 Because it does bring these houses closer together.
19 It does reduce the ability of the Applicant to
20 maintain his property on this property without having
21 to infringe upon the adjoining property. The neighbor
22 to the west.

23 VICE CHAIRPERSON MILLER: And did you
24 discuss this application with the neighbor to the
25 west?

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1 MR. MORDFIN: No, I did not.

2 CHAIRPERSON GRIFFIS: Mr. Mordfin, you
3 brought up the fact that you are concerned which is
4 viable and understandable that space for the adjacent
5 property to conduct maintenance on their own property
6 based on the sighting of this house, but what's the
7 distance away from the property line of the adjacent
8 two-story residence with basement?

9 MR. MORDFIN: We estimate that that's
10 probably about two feet off of the property line. The
11 existing house to the west? Was that the question?

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. MORDFIN: The existing house to the
14 west, we estimate it was probably about two feet off
15 of the property line.

16 CHAIRPERSON GRIFFIS: So, on the drawings
17 here, are these not graphically scaled?

18 MR. KEARLEY: Well, if we -- I think we
19 can show that a little bit better in the board that
20 Nat brought which shows all the properties on that
21 particular street.

22 CHAIRPERSON GRIFFIS: But, so, the answer
23 to the question is yes, on this board?

24 MR. KEARLEY: On this board right here.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. KEARLEY: Yes.

2 CHAIRPERSON GRIFFIS: It makes it look
3 like it's got a nice ten-foot side yard.

4 MR. ZOUZOULAS: The -- the underlays --
5 the underlays that we got in terms of building
6 placement, we got from the city. This is the most --

7 CHAIRPERSON GRIFFIS: I don't care.

8 MR. ZOUZOULAS: Okay.

9 CHAIRPERSON GRIFFIS: But, are they
10 correct or not?

11 MR. ZOUZOULAS: We believe -- from what I
12 could calculate when I was at the site, I believe it
13 was in between three to four feet.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. ZOUZOULAS: Given there are no clear
16 lot lines, but, you know, given -- I know how wide our
17 particular lot is and --

18 CHAIRPERSON GRIFFIS: Indeed. Are there
19 privacy fences? We talked a lot about this
20 neighborhood character and placement of -- are there
21 privacy fences between most of these buildings?

22 MR. KEARLEY: Well, we have -- we can see
23 a little bit of the streetscape here. Actually --

24 MR. ZOUZOULAS: Currently, there aren't
25 any fences. I think there's a few fences in the back

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1 where people have their cars, but --

2 CHAIRPERSON GRIFFIS: Right.

3 MR. ZOUZOULAS: -- at the street level on
4 -- on W Street, you don't see any -- there aren't --
5 there aren't any fences.

6 CHAIRPERSON GRIFFIS: Okay. All right.
7 Now, just for a little bit. Okay. Anything else?
8 Board questions for the Office of Planning? Good.
9 Thank you very much, Mr. Mordfin. An excellent
10 report.

11 Does the Applicant have any cross
12 examination of the Office of Planning?

13 MS. GIORDANO: No, we don't.

14 CHAIRPERSON GRIFFIS: Indeed. Well, that
15 only means we move on. In which case, is ANC-8A
16 present today? Indeed.

17 COMMISSIONER HUDSON: Yes, I am. ANC-8A,
18 Single Member District 04. Currently, me and T'Chaka
19 Sapp, the other commissioner, we were at -- we were at
20 odds at exactly which single member district it is in.
21 It is T'Chaka Sapp's single member district.

22 CHAIRPERSON GRIFFIS: Um-hum.

23 COMMISSIONER HUDSON: My block cuts off
24 like right there and they were in communication with
25 T'Chaka Sapp and not with myself LaTasha Hudson and I

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1 come to brief -- brief the Board as a whole, the
2 commission as a whole tends to oppose the project.
3 So, I only can speak on behalf of myself.

4 CHAIRPERSON GRIFFIS: Indeed.

5 COMMISSIONER HUDSON: And I'm going to --
6 I'm suppose to resubmit the letter to the Office of
7 Zoning that we are still going to -- as a commission,
8 we still oppose, but myself, I do support it.

9 CHAIRPERSON GRIFFIS: Okay.

10 COMMISSIONER HUDSON: My name is
11 Commissioner Hudson of 1849 Good Hope Road, S.E.
12 Apartments.

13 CHAIRPERSON GRIFFIS: Good. Thank you
14 very much.

15 Did you want to talk a little about why
16 you personally don't oppose the project?

17 COMMISSIONER HUDSON: I personally don't
18 oppose. The reason why we opposed as a commission at
19 -- at the -- at the January meeting when they
20 presented it as -- presented it to us, the design was
21 totally different. It didn't have the porch.

22 They met our design requests. We weren't
23 -- the commission as a whole was not notified of the
24 design request being met. So, we then forwarded our
25 letter saying that we opposed the project.

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1 CHAIRPERSON GRIFFIS: I see.

2 COMMISSIONER HUDSON: And then we were
3 later -- we were informed maybe about a couple of days
4 ago --

5 CHAIRPERSON GRIFFIS: Okay.

6 COMMISSIONER HUDSON: -- that the design
7 was changed.

8 CHAIRPERSON GRIFFIS: Okay.

9 COMMISSIONER HUDSON: And that's why --

10 MS. GAUTIER: Can I -- can I add
11 something? We -- we actually have been in constant
12 contact with T'Chaka Sapp. He had not spoken to the
13 rest -- we -- we were talking to T'Chaka because
14 that's who we thought was the --

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. GAUTIER: -- ANC single member
17 district. He actually told -- told me that he was in
18 favor. Asked me to write up a letter, meet him at the
19 ANC. He never met me. We just kept missing each
20 other, but as communicated to me, he was willing to
21 sign a letter in support.

22 We showed him the designs a week later.
23 Got a piece of the Hardy plank which was one of the
24 other things they wanted us to do.

25 CHAIRPERSON GRIFFIS: Right. Material

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1 stuff.

2 MS. GAUTIER: So, we -- we had been -- he
3 had just not communicated our communications with the
4 rest of the ANC.

5 CHAIRPERSON GRIFFIS: Okay. Not unheard
6 of. Okay. Anything else?

7 MR. GROSS: Mr. Chairman, it's worth note
8 -- I'm sorry to cut in, but it's worth noting that the
9 original design was much more contemporary.

10 CHAIRPERSON GRIFFIS: Contemporary.

11 MR. GROSS: So, the original contact with
12 Historic Preservation resulted in quite a dramatic
13 change and I think the ANC was concerned about the
14 modern nature of the original design and how it fit
15 into the neighborhood.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. KEARLEY: One last thing on that, too.
18 That one of the -- I -- I think the -- the
19 relationship between W Street was something that the
20 ANC wanted to see in terms of that front porch not
21 being closed off from the street and so, we actually
22 opened it up to the street and have really a -- a
23 front door on W Street with steps coming up to that
24 and it's not gated. So, it does engage the
25 neighborhood. So, that was one of the concerns that

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1 ANC had that we addressed and we made -- I mean our
2 office made multiple attempts and Rachael at ARCH made
3 multiple attempts to try to get ANC together to do
4 this and it was --

5 CHAIRPERSON GRIFFIS: That's right. Yes.

6 MR. KEARLEY: -- it was not able to do.

7 CHAIRPERSON GRIFFIS: We're not going to
8 arbitrate communication with the ANC as much as we'd
9 love to. Wouldn't we want to take that? No.

10 But, I fully understand. There's always
11 communication problems especially when you're going
12 through all sorts of reviews and designs are changing
13 all the time.

14 MS. GAUTIER: I do want to add though,
15 LaTasha has been very forthcoming in the last few days
16 trying to get in touch with us and we appreciate her
17 being here. She's missing class.

18 COMMISSIONER HUDSON: Thank you.

19 CHAIRPERSON GRIFFIS: Indeed. Let's get
20 you out of here. Okay. And we -- and the Board
21 absolutely appreciates you taking the time to come and
22 present the position of yourself in support of this
23 application.

24 Okay. Any other questions from the Board?

25 Let's go to whether there's anyone else.

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1 There's no one else present here. So, I won't go into
2 the formalities of seeing if any other person would
3 like to give testimony.

4 We do have a support letter from 1673 W
5 Street, S.E., Exhibit Number 25.

6 Is the Applicant aware of any other
7 submissions that I haven't articulated at this time?
8 No others? Good.

9 Ms. Miller, questions to the Applicant?

10 VICE CHAIRPERSON MILLER: Yes, following
11 up on Office of Planning's opposition to the variance
12 related to the side porch, I'm interested if you could
13 address what the practical difficulties would be of
14 complying with the regulations if you didn't have the
15 side porch?

16 MS. GIORDANO: The -- as was mentioned, if
17 we had to move the building all the way to the 16th
18 Street property line, you would basically -- and --
19 and meet the requirements of the neighborhood to have
20 the eyes on the street and have an entrance there, you
21 would be basically stepping out of the house onto the
22 curb.

23 VICE CHAIRPERSON MILLER: Thank you.

24 CHAIRPERSON GRIFFIS: Anything else? Any
25 other questions from the Board? Does the Applicant

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1 have any closing remarks, summations that they want to
2 provide?

3 MS. GAUTIER: No. Thank you.

4 CHAIRPERSON GRIFFIS: Nothing else at this
5 time. Board members are we prepared to move ahead
6 with this today? It sounds like we are a hardy yes
7 there. Therefore, let's go right into it.

8 I think it's appropriate to take this up
9 under a motion and deliberation by the Board and
10 therefore, I would move approval of Application 17262.

11 For the four area variances which would
12 allow the construction of a single family detached
13 dwelling at 1528 W Street, S.E. and that is, of
14 course, for the area in which the lot dimensions --
15 the lot occupancy from 40 to just over 50.8 percent or
16 maybe it is exactly 50.8 percent from the side yard
17 that diminishes to the two foot ten for 16 feet on
18 that side and also the open court which fronts on
19 16th Street.

20 I'd ask for a second.

21 MEMBER MANN: Second.

22 CHAIRPERSON GRIFFIS: Thank you very much,
23 Mr. Mann.

24 Let me get quickly into this. I think it
25 -- it's an interesting piece and again, I -- I was

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1 absolutely pleased that the Office of Planning held a
2 very strong line and a very obviously direct one in
3 terms of the regulations and it's requirements.

4 As we look into this, it starts to unravel
5 in terms of the uniqueness of this property and the
6 practical difficulty that arises out of this
7 uniqueness. There was a whole statement of this
8 historical pattern on the block going up W Street. It
9 was also mentioned on 16th Street and that is a
10 setback.

11 The architect indicated that there is no
12 required building restriction line, but there's a
13 historical context at which buildings are set. As
14 this is a replacement, an in fill into a historic
15 neighborhood, not only has the design actually gone
16 through the design review, but implicit in that for us
17 I believe we ought to take under account how it does
18 fit into the character.

19 I mean if we talk about not impairing the
20 public good, which obviously is our later test after
21 the first two, how could we not take under great
22 advisement the historical pattern and then
23 specifically the -- the setback in keeping in mind
24 with the other adjacent buildings. 16th Street being
25 one, but also the W Street.

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1 I think in terms of the articulation of
2 the -- the design as I indicated earlier in the
3 application, it is -- does create a bit of a practical
4 difficulty in looking at this one. It is a smaller
5 lot for an R-3. It must have been rezoned before it
6 was actually plated in terms of the dimensions
7 although maybe not.

8 But, the point being as you chart to set a
9 house on a corner which now you're actually opening up
10 to primary facades on this that have to both have
11 character on the 16th Street and on the W Street, how
12 do you do that with -- with limited space and I think
13 it's been successfully done. Not that that's our
14 test, but obviously, it -- it is -- becomes a unique
15 circumstance in dealing with that corner and in
16 sighting the property on it.

17 It's very persuasive the de minimis aspect
18 of the lot occupancy. I mean really lot occupancy
19 does go to secure the open circulation of light and
20 air to adjacent properties and also the instant
21 property and as we start talking about progressing
22 above the 40 percent lot occupancy, what comes into
23 play is actually that which fronts on the 16th Street
24 which unless then close 16th Street and deed it over
25 to a developer, we can pretty much be secure that

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1 that's going to remain open and obviously won't
2 diminish the -- the light and air.

3 I think it's intriguing not that this has
4 anything to do with the zoning application, but
5 intriguing to try and facilitate two entrances in and
6 out of a building and in terms of -- actually, it's
7 like two different styles that have happened within
8 this building, but I digress too much.

9 On the other -- the side yard which I
10 think is probably the most concern to me in my review
11 of this application and in the terms of my own
12 deliberation that diminishing an area adjacent to or
13 in the side yard to two feet ten inches, there is only
14 one issue as we haven't had a lot of -- or testimony
15 that it would tend to diminish the light, air to the
16 adjacent property, but it is to the maintenance of
17 both.

18 I think if we look at it in terms of the
19 pattern of not having a lot of big privacy fences in
20 between these, the kind of openness between the -- the
21 property lines. Even if a fence was to go, the -- the
22 diminished dimension of which you would have to
23 facilitate a ladder to repair or maintain that wall I
24 think does not rise to a level of -- of denial of the
25 application and I don't think it creates an incredibly

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1 adverse condition for the adjacent property or for the
2 current or the proposed new resident of this property.

3 That being said, I'll open it up to any
4 others for their comments. Ms. Miller.

5 VICE CHAIRPERSON MILLER: Oh, I think
6 you've said it very well and I just would add I think
7 there was a good case for the practical difficulties
8 here when -- when certain changes were made to comply
9 with -- with our regulations that it causes other
10 problems and also that -- I think it's important that
11 while HPRB did not want to bind the BZA and they
12 couldn't in our -- in our decision making, I think we
13 should certainly waive in the public interest or no
14 public detriment category the importance of the
15 historic context and the design that they -- they
16 found would further that and also, I didn't think that
17 there was a public detriment case that was really made
18 in this case.

19 CHAIRPERSON GRIFFIS: Unless you don't
20 like stucco. We didn't really get into that. Did we?
21 We could color the stucco, you know. That's within
22 our jurisdiction under the -- okay.

23 Anything else then? Any other comments on
24 the motion? Very well.

25 We have a motion to approve before us. It

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1 has been seconded. Ask for all in favor signify by
2 saying aye.

3 (AYES)

4 CHAIRPERSON GRIFFIS: And opposed?
5 Abstaining?

6 Very well, Ms. Bailey, if you wouldn't
7 mind recording the vote.

8 MS. BAILEY: Yes, Mr. Chairman. The vote
9 is recorded as 4-0-1 to approve the application as
10 amended. Mr. Griffis made the motion. Mr. Mann
11 second. Mr. Etherly and Ms. Miller in agreement and
12 the Zoning Commission member did not hear this case.

13 And, Mr. Chairman, the ANC is in
14 opposition to this, but is the Board approving a
15 summary order?

16 CHAIRPERSON GRIFFIS: I'm not sure we can
17 with an ANC in opposition.

18 MS. BAILEY: So, we're doing a full order.

19 CHAIRPERSON GRIFFIS: Boy, that's some
20 fun. Anyone propose to submit a draft order?

21 We got a volunteer from the crowd.

22 MS. GIORDANO: We will submit a draft.

23 CHAIRPERSON GRIFFIS: Indeed. I think it
24 can be obviously very succinct and I -- I think the
25 Board's own deliberation will obviously inform that.

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1 Okay.

2 Very well. If there's nothing further,
3 thank you all very much for being here this morning
4 and let's move ahead. Good.

5 Is there any other business for the Board
6 in the morning session?

7 MS. BAILEY: No, Mr. Chairman, not that
8 I'm aware of.

9 CHAIRPERSON GRIFFIS: Good. Then if I'm
10 not mistaken, we've been called to go out and shovel
11 the front of 441. So, why don't we adjourn the
12 morning session and go get to work.

13 (Whereupon, the hearing was recessed at
14 11:42 a.m. to reconvene this same day.)
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:10 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the 5th of March, is it the 5th, it's already the 8th, indeed, of 2005. We'll just note for the record it's the same date it was this morning when we called this to action here.

That being said, I am Geoff Griffis, Chairperson.

Joining me today, of course, is the Vice Chair Ms. Miller and also our other mayoral appointee Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us this afternoon is Mr. Parsons.

A very good afternoon to all of you.

Copies of today's hearing agenda are available for you. They are located on the wall where you entered into the hearing room. You can pick it up and see what we have on our docket for today.

As many of you are aware and those that are not you should be aware that all proceedings before the Board of Zoning Adjustment are recorded and

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1 broadcast. They are recorded by two means. First
2 being the court reported sitting on the floor to my
3 right who is creating the official transcript of the
4 hearing. The second is we are being broadcast live on
5 the Office of Zoning's website.

6 Therefore, we ask several things. First
7 of all, I'd ask everyone to turn off their cell phones
8 and beepers at this time so we don't have a disruption
9 of the proceedings and the transmission.

10 I would also ask when coming forward to
11 speak to the Board that you state your name and
12 address for the record and then proceed with your
13 presentation to the Board.

14 Also, if you have not -- if you are not --
15 if you are a part of a new application hearing today,
16 I'd ask that you fill out two witness cards. Witness
17 cards are available for you at the table you entered
18 into and also the table in front where you will
19 provide testimony. Those two witness cards go to the
20 court reporter to my right prior to coming forward and
21 addressing the Board.

22 That being said, our order of procedure
23 for special exceptions and variances is first, we hear
24 from the applicant and their case presentation and all
25 their witnesses.

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1 Second, we will hear any Government report
2 attendant to the application.

3 Third, we will hear from the Advisory
4 Neighborhood Commission within which the property is
5 located.

6 Fourth, we will hear from persons or
7 parties in support of an application.

8 And fifth would be persons or parties in
9 opposition.

10 Sixth, finally, is the time for the
11 applicant to present any closing remarks, rebuttal
12 testimony or summations for the Board.

13 Cross examination of witnesses is
14 permitted by the applicant and parties in the case.
15 The ANC within which the property is located is
16 automatically a party in the case.

17 The record will be closed at the
18 conclusion of the hearing on the case except for any
19 material that this Board's requests and we will be
20 very specific on what is to be submitted and when it
21 is to be submitted into the Office of Zoning.

22 After that material is received, no other
23 information or material would be accepted into the
24 record. The record would be finally closed.

25 The Sunshine Act requires that we conduct

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1 all our proceedings in the open and before the public.

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

8 This Board must base its decisions on the
9 record that's created before us. So, we ask first
10 that you submit all the information that we request
11 into the record. Secondly, that we do ask that people
12 present today not engage Board members while present
13 in the hearing room in private conversations so that
14 we do not give the appearance of receiving information
15 outside of the record.

16 At this time -- actually, let me say a
17 very good afternoon to Ms. Bailey who's sitting on my
18 very far right with the Office of Zoning. Also, Mr.
19 Moy on my closer right with the Office of Zoning.

20 Representing the Office of the Attorney General
21 is Ms. Monroe.

22 Ms. Bailey -- let me first of those
23 present today that are planning or thinking about
24 providing testimony that have not been sworn in
25 previously, if you would please stand and give your

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1 attention to Ms. Bailey, she is going to administer
2 the oath or if you just want to go through it again
3 because you've been through it once, you can stand
4 also and get that done.

5 Has anyone here not been sworn in yet?
6 Good. We have a couple of takers. It's free. It's
7 also a little -- good. If you could just give your
8 attention to Ms. Bailey, she'll administer the oath.

9 MS. BAILEY: Please raise your right hand.

10 Do you solemnly swear or affirm that the testimony
11 you will be giving this afternoon will be the truth,
12 the whole truth, and nothing but the truth?

13 CHAIRPERSON GRIFFIS: Good. Thank you all
14 very much. I may have been unclear as an awful lot of
15 people are here for a continuation of a case and they
16 have already been sworn in and, therefore, wouldn't
17 need to be sworn in again. However, that being taken
18 care of, let us go to any preliminary matters.

19 Preliminary matters are those which relate
20 to whether a case will or should be heard today.
21 Requests for postponements, withdrawals, whether
22 adequate and proper notice has been provided for an
23 applicant or an application, these are types of
24 preliminary matters that the Board will take up at
25 this time.

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1 If you have a preliminary matter for the
2 Board's attention, I would ask that you come forward
3 and have a seat at the testimony table as an
4 indication.

5 I'm going to ask Ms. Bailey if she's aware
6 of any preliminary matters that the Board needs to pay
7 attention to at this time.

8 MS. BAILEY: Mr. Chairman and to everyone,
9 good afternoon and yes, sir, there are.

10 The first is a Civil Infraction matter and
11 it concerns Case Number 03-0002 of Mr. McRae. Is that
12 -- is that civil infraction appellant here at this
13 time?

14 CHAIRPERSON GRIFFIS: Are the parties in
15 the civil infraction here? If they would, would they
16 come forward please and have a seat at the table? Is
17 anyone here in the room at this time? Outside of
18 yourself, ma'am. Here for civil infraction appeal 03-
19 OAD-2800G, 03-OAD-2801G.

20 MS. GILBERT: Good afternoon. I
21 understand that -- Laura Gilsausi Gilbert for the
22 Department of Consumer and Regulatory Affairs.

23 I understand the Mr. McRae did file a
24 motion for a continuance. It was filed --

25 CHAIRPERSON GRIFFIS: Wait a -- do you

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1 know where he is?

2 MS. GILBERT: But, I have no idea.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. GILBERT: There is a written motion of
5 continuance in the file. That's all I'm aware of.

6 CHAIRPERSON GRIFFIS: And that's our
7 preliminary matter in this case.

8 MS. GILBERT: And we had a motion to
9 dismiss the appeal.

10 CHAIRPERSON GRIFFIS: Indeed you did.

11 MS. GILBERT: Right.

12 CHAIRPERSON GRIFFIS: Hum. Well, there it
13 is. Why don't we take up the first motion for that
14 who is present?

15 Board members, we have a motion before us
16 to dismiss.

17 I'm not sure we can hear any sort of
18 discussion on it from the Government side as we don't
19 have the others involved in this case, but actually,
20 I'm open for any procedures one might propose, Board
21 members.

22 Other than that, I'm fully prepared. I
23 think we have the information that we -- yes, if you
24 wouldn't -- do you want to just have a seat at table,
25 sir? Are you hear for a case in the afternoon?

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1 MS. GILBERT: Mr. McRae.

2 CHAIRPERSON GRIFFIS: Have a seat at the
3 table, sir.

4 MS. BAILEY: Are you, Mr. McRae?

5 MR. MCRAE: I am.

6 CHAIRPERSON GRIFFIS: There it is. So,
7 our small delay was worthwhile.

8 Very well. If you wouldn't mind, sir,
9 could you touch the base of your microphone. There's
10 a button. You can turn it on. I'm going to ask you
11 to state your name and address for the record.

12 MR. MCRAE: My name is James McRae and I
13 live at 3228 11th Street, N.W.

14 CHAIRPERSON GRIFFIS: Good and you're here
15 involving the Civil Infraction Appeal 03-OAD-2800G and
16 03-OAD-2801G. Is that correct?

17 MR. MCRAE: That's true, sir.

18 CHAIRPERSON GRIFFIS: Excellent. You
19 filed a motion for a continuance. Is that also
20 correct?

21 MR. MCRAE: That's true.

22 CHAIRPERSON GRIFFIS: Very well. Board
23 members, we have that in front of us. We have the
24 parties that are involved in this civil infraction at
25 this time. Is there questions from the Board?

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1 That's what we're doing. The motion for a
2 continuance. Yes.

3 Mr. McRae, let me ask you very quick. I'd
4 -- let me be straight. I don't find your motion for a
5 continuance persuasive at all. The filings were over
6 -- due over a year ago. The fact of the matter that
7 you've indicated that you didn't realize that your
8 counsel was no longer representing you --

9 MR. MCRAE: That's true.

10 CHAIRPERSON GRIFFIS: But, I don't
11 understand how you couldn't know that, but be that as
12 it may, what -- were you unaware that this date was
13 set?

14 MR. MCRAE: My counsel didn't notify me.
15 Sir, my counsel didn't notify me. I didn't know
16 anything until I received the motion on Saturday
17 evening.

18 I received a hand motion laying on the
19 floor by my door. I picked it up. That was the first
20 time I had any idea that my counsel was not
21 representing me.

22 CHAIRPERSON GRIFFIS: But, you knew this
23 proceeding was going -- was coming?

24 MR. MCRAE: Yes, I had this.

25 CHAIRPERSON GRIFFIS: How long ago did you

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1 know this proceeding was coming?

2

3 MR. MCRAE: I've had this since I believe
4 it was January.

5 CHAIRPERSON GRIFFIS: January.

6 MR. MCRAE: I was looking forward to
7 coming down here today, but I thought I had a counsel
8 coming with me.

9 CHAIRPERSON GRIFFIS: But, you weren't
10 working with your counsel to prepare for today?

11 MR. MCRAE: I had called my counsel on
12 several times and he never returned the call and it
13 wasn't like he's not paid. I'm filing --

14 CHAIRPERSON GRIFFIS: Okay. But, that's
15 not something we can do anything about.

16 Questions, Board members? Ms. Miller.

17 VICE CHAIRPERSON MILLER: Mr. McRae, did
18 you get a copy of the briefing order which required a
19 brief to be filed by last March, March 2004?

20 MR. MCRAE: No, I didn't.

21 CHAIRPERSON GRIFFIS: Were you aware
22 before your counsel dropped you as a client that that
23 was the schedule of submissions?

24 MR. MCRAE: No. This is the only thing
25 that I got and I'll --

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1 CHAIRPERSON GRIFFIS: What is that?

2 MR. MCRAE: This is --

3

4 CHAIRPERSON GRIFFIS: No, I can't have you
5 -- just have a seat. I'll -- I'll ask for things. If
6 you would just describe it please.

7 MR. MCRAE: It's something that says the
8 infraction and it says Dear Mr. McRae, you're hereby
9 notified to appear before the Board of Zoning on
10 Tuesday, March the 8th, 2005.

11 CHAIRPERSON GRIFFIS: And what's the date
12 on that?

13 MR. MCRAE: The only date on here is the
14 date that I'm suppose to appear. Today.

15 MEMBER ETHERLY: Mr. Chairman, if I may.
16 Mr. McRae, did you have a -- so, it would appear to be
17 the case that you did not have any direct
18 communication from your counsel with respect to his
19 discontinuance of his representation?

20 MR. MCRAE: No.

21 MEMBER ETHERLY: Okay.

22 MR. MCRAE: I did not.

23 MEMBER ETHERLY: If I may, Mr. Chair, I'd
24 like to direct a question to DCRA. In terms of any of
25 the documentary filing that you've undertaken, had you

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1 had any contact with Mr. McRae's counsel recently?

2 MS. GILBERT: I have not. In fact, I'm --
3 as an officer of the -- of the court, I do know that
4 the certificate of service on the briefing order is in
5 care of Mr. Galloway and I also note that the notice
6 -- I'm not trying to argue against my -- my client,
7 but the notice signed by Mr. Galloway, the certificate
8 of service did not named Mr. McRae. So.

9 CHAIRPERSON GRIFFIS: Very well.
10 Excellent, Mr. Etherly. Ms. Gilbert, do you have a
11 position on this motion for a continuance?

12 MS. GILBERT: Well, you know, I am
13 concerned that the proceedings have been, you know,
14 extended to the extent that they have, but I -- under
15 the circumstances, I -- you know, I don't know really
16 what to say.

17 CHAIRPERSON GRIFFIS: We don't have a case
18 to go forward today.

19 MS. GILBERT: Right.

20 CHAIRPERSON GRIFFIS: But, the issue
21 before us quite frankly and directly is whether we
22 dismiss this --

23 MS. GILBERT: Right.

24 CHAIRPERSON GRIFFIS: -- or we grant the
25 continuance and -- and that's where my mind is in

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1 terms of looking at this. I don't know if the Board
2 members have other opinions on this.

3 VICE CHAIRPERSON MILLER: Well, I -- I
4 want to ask another question before we -- we reached
5 that decision and that is, Mr. McRae, do you live at
6 2823 11th Street or do you work at that address?

7 MR. MCRAE: I live there.

8 VICE CHAIRPERSON MILLER: You live there
9 and you lived there in December 2003?

10 MR. MCRAE: Sure.

11 VICE CHAIRPERSON MILLER: Okay. And so,
12 did you get a copy of the order that -- that you're
13 appealing on that date?

14 MR. MCRAE: This is the only thing that
15 I've got here.

16 VICE CHAIRPERSON MILLER: Okay.

17 CHAIRPERSON GRIFFIS: You've never
18 received anything else on this entire proceeding?

19 MR. MCRAE: I haven't received anything.

20 VICE CHAIRPERSON MILLER: How about --

21 MR. MCRAE: As far as I was concerned, my
22 lawyer was handling everything.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. MCRAE: I thought everything was okay.

25 CHAIRPERSON GRIFFIS: Well, the record

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1 shows that you -- you received an NOI at your address.

2 So, that's not the only thing you've received.
3 You've received other materials involved in this
4 infraction.

5
6 MR. MCRAE: Sir --

7 CHAIRPERSON GRIFFIS: Is that correct?

8 MR. MCRAE: -- I haven't received anything
9 but this. This is the only thing I received until
10 Saturday evening I received a copy of the motion.

11 VICE CHAIRPERSON MILLER: But, Mr. McRae,
12 did you see the decision that you're appealing?

13 MR. MCRAE: I seen the decision. Yes.

14 VICE CHAIRPERSON MILLER: When did you
15 receive that decision?

16 MR. MCRAE: Saturday night.

17 VICE CHAIRPERSON MILLER: The decision
18 you're appealing from 2003?

19 MR. MCRAE: That's right. That's right.

20 CHAIRPERSON GRIFFIS: Who did you receive
21 it from?

22 MR. MCRAE: Laying in the gate of my door.

23 CHAIRPERSON GRIFFIS: Someone dropped it
24 off.

25 MS. GILBERT: I believe what --

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1 MR. MCRAE: Someone dropped it off.

2 MS. GILBERT: -- I believe what Mr.
3 McRae's referring to is that we hand delivered the
4 motion to dismiss on Saturday. The certificate of
5 service says it was --

6
7 CHAIRPERSON GRIFFIS: Okay.

8 MS. GILBERT: -- hand delivered on Friday.
9 It was actually hand delivered on Saturday because I
10 waited too late and couldn't get an investigator to
11 deliver it Friday.

12 CHAIRPERSON GRIFFIS: Understood.

13 MS. GILBERT: So, I personally delivered
14 it on Saturday.

15 VICE CHAIRPERSON MILLER: I just want to
16 finish with -- with -- where I was going is that the
17 copy of the decision and order that is the subject of
18 your appeal shows a certificate of service that it was
19 mailed postage prepaid to you on December 3rd, 2003.
20 I'm referring to the decision on DCRA that you're
21 appealing.

22 MR. MCRAE: I never got it.

23 MS. GILBERT: A decision by --

24 VICE CHAIRPERSON MILLER: And how do you
25 know what you're appealing if you never got the

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1 decision?

2 MR. MCRAE: The only thing -- the only way
3 I know what I'm appealing is from the motion that I
4 received Saturday night.

5 These are the only two items that I
6 received from you.

7 CHAIRPERSON GRIFFIS: Why did you retain
8 an attorney then?

9 VICE CHAIRPERSON MILLER: It's not from
10 us.

11 MR. MCRAE: I --

12 CHAIRPERSON GRIFFIS: If you didn't think
13 anything was coming, this is all news to you from
14 Saturday.

15 MR. MCRAE: I got an attorney because when
16 I went over on North Capitol Street, I didn't like
17 their ruling. I didn't think their ruling was fair.
18 In fact, I knew it wasn't fair. They didn't listen to
19 what I had to say. So, I had to get an attorney.

20 CHAIRPERSON GRIFFIS: But, that's because
21 you made the case in front of the administrative law
22 judge that you didn't receive the notice of
23 infraction. In fact, it was the second notice that --
24 and -- and the judge's order here indicates that you
25 said you didn't receive the first although you did

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1 receive the second and that's why you were requesting
2 a postponement of that hearing and he denied you.

3 MR. MCRAE: That's true.

4 CHAIRPERSON GRIFFIS: And that's why we're
5 here.

6 MR. MCRAE: I didn't receive your first.
7 I received your second. They wrote two infraction.
8 The first one, they sent the wrong place. The second
9 one I got.

10 CHAIRPERSON GRIFFIS: I understand that.
11 I've read the record. There it is. Let me hear from
12 others.

13 MEMBER ETHERLY: I think, Mr. Chair, the
14 rock and hard place that -- that perhaps we find
15 ourselves in is as Mrs. Miller was alluding to as we
16 -- as we proceed through the record, Mr. McRae, we
17 have as part of the record an indication that you're
18 previous attorney Mr. Galloway had apparently
19 concluded his representation with you in a notice --
20 well, there's an official notice at Exhibit Number 8
21 which denotes that Mr. Galloway concluded his
22 representation -- ended his representation of you with
23 regard to this matter as of essentially July the 8th,
24 2004.

25 It's your testimony today that you were

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1 not aware that Mr. Galloway, your -- your counsel, had
2 ceased to represent you until --

3 MR. MCRAE: That's true.

4 MEMBER ETHERLY: -- until Saturday.

5 MR. MCRAE: Until Saturday.

6 MEMBER ETHERLY: Okay. The -- the notice
7 that I've referencing at Exhibit Number 8, Mr. Chair,
8 does not note in the certificate of service page that
9 Mr. McRae was a -- was in receipt of service on that
10 notice, but the notice does note in relevant part that
11 the Appellant, Mr. McRae, has not maintained contact
12 with the undersigned attorney for several months.

13 Are you aware or were you aware of any
14 efforts on the part of Mr. Galloway to contact you
15 pursuant to this case?

16 MR. MCRAE: It's very easy for him to
17 contact me. I had two phone numbers, my address. I
18 called him constantly. He never returned by call and
19 the last that I talked to him he said that he was
20 handling this case.

21 MEMBER ETHERLY: And can you roughly
22 pinpoint or identify generally speaking what time --
23 what -- what was the last general time frame in which
24 you spoke with your attorney? A month ago, two months
25 ago, a week ago?

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1 MR. MCRAE: Probably about two months ago.

2 MEMBER ETHERLY: Okay. Mr. Chair, I'm --
3 I'm -- it's -- it's -- it is a rock and a hard place,
4 Mr. Chair. I -- I would perhaps err on the side of
5 trying to balance not unduly prejudicing the -- the
6 Appellant in this particular case.

7
8 Clearly, we have evidence that the -- that
9 -- that the counsel for whatever reason ceased his
10 representation of you, but enough of a question albeit
11 somewhat thinly, but I think enough of a question has
12 been raised with regard to Mr. McRae's familiarity or
13 I should say notice with regard to what he needed to
14 do in preparation for today that I might be inclined
15 to -- to be somewhat lenient with regard to a -- a
16 continuance in this regard.

17 But, I would be very brief and -- and
18 very, very limited in terms of the scope of that
19 continuance.

20 CHAIRPERSON GRIFFIS: You mean for the
21 second time?

22 MEMBER ETHERLY: For the second time.

23 CHAIRPERSON GRIFFIS: Mr. McRae, what kind
24 of time frame are we looking at if it was to be
25 entertained -- rather if it was to be granted a

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1 continuance? How long do you need to get an attorney
2 and prepare for a case?

3 MR. MCRAE: Well, I have several attorneys
4 say -- you know, it's a good possibility they'll take
5 the case.

6 CHAIRPERSON GRIFFIS: So, they'd be ready
7 to go tomorrow? What kind of time frame do you need?

8 MR. MCRAE: Not tomorrow, sir. They would
9 have to look at it and he would have to study the case
10 certainly.

11 CHAIRPERSON GRIFFIS: Okay. Ms. Miller.

12 VICE CHAIRPERSON MILLER: Mr. Chairman, I
13 -- I see this a different way. I think that it's
14 clear that at some point and certainly we have a
15 certificate of service that shows that Mr. McRae was
16 served with the decision that's on appeal right now
17 more than a year ago and that decision said that he
18 had 30 days to appeal at that time.

19 I don't see any indication of due
20 diligence on his part or good cause for us a year
21 later to be granting a motion to continue -- for a
22 continuance here.

23 Secondly, this goes to another issue which
24 we may get to with respect to the motion to dismiss.
25 I'm not even sure we have jurisdiction over this --

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1 this issue of timeliness, but I don't see anything to
2 rebut the certificate of service at least notifying
3 him of the decision and of his rights to appeal.

4 MEMBER ETHERLY: Mr. Chair, I understand
5 where my -- where my colleague Mrs. Miller lands on
6 this issue. I just want to be clear in terms of my
7 understanding of the situation. I -- I definitely
8 don't dispute that Mr. McRae received notice.

9 MR. MCRAE: Sir --

10 MEMBER ETHERLY: It's -- it's my sense
11 that he undertook steps to secure representation that
12 would carry him forward through -- through this
13 appeal, but it appears at some point that
14 representation ceased for whatever reason and I'm just
15 not certain enough if there was adequate notice
16 provided by Mr. McRae's counsel that that
17 representation had ceased. I don't see anything that
18 indicates that he received notice that his counsel was
19 no longer representing him.

20 That's my only concern, but I do agree
21 with Mrs. Miller in terms of having had adequate
22 notice, more than adequate notice with regard to the
23 fact that this matter was pending. So, my concern is
24 just prejudicing the -- the Appellant due to the -- to
25 the -- the loss of representation.

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1 VICE CHAIRPERSON MILLER: I just want to
2 add to that. I just don't see any effort that's
3 really been made on the Appellant's part and then he
4 did -- if he had notice of -- of this hearing and felt
5 he needed new counsel, then he could have done
6 something.

7 There's just not much affirmative evidence
8 of any kind of extenuating circumstances such as he
9 was ill or something to that affect.

10 MR. MCRAE: Excuse me. This was just
11 passed to me. This is the first time I've seen this.

12 MS. GILBERT: It's the notice from -- from
13 Attorney Galloway.

14 MR. MCRAE: Now, whatever -- whatever you
15 all sent out that you were suppose to send to me,
16 apparently you sent it to Mr. Galloway because Mr.
17 Galloway was handling the case.

18 I have not received but two pieces -- two
19 items and that's this item that I was looking to come
20 down here today on and the item that I received
21 Saturday night.

22 CHAIRPERSON GRIFFIS: And the order a year
23 ago.

24 MR. MCRAE: I didn't receive no more than
25 where I went to over on North Capitol for the

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1 infraction.

2 CHAIRPERSON GRIFFIS: Right. That's what
3 we're here for today. Ms. Gilbert.

4 MS. GILBERT: Yes, I mean honestly -- I
5 mean clearly I filed a motion to dismissed based upon
6 the failure to meet the terms of the briefing order
7 and to get a transcript and file a brief in this case.

8 However, you know, I have to say that I am a little
9 bit disturbed that an attorney is able to just file a
10 notice with the Board saying I'm no longer
11 representing this person and not serve the Appellant
12 with a copy of that notice and it appears in looking
13 at the briefing order --

14 CHAIRPERSON GRIFFIS: Setting this off 60
15 days, would you be prejudiced in anyway?

16 MS. GILBERT: Excuse me.

17 CHAIRPERSON GRIFFIS: If we set this off
18 60 days would you be prejudiced in anyway in
19 presenting your case?

20 MS. GILBERT: Not really.

21 CHAIRPERSON GRIFFIS: Not really? Not
22 very definitive. Is it? So, perhaps you might be?

23 MS. GILBERT: I mean --

24 CHAIRPERSON GRIFFIS: Would you or
25 wouldn't you?

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1 MS. GILBERT: -- obviously -- obviously
2 there is some kind of prejudice in not being able to
3 pursue the -- the fines. Right. But, beyond that,
4 there is no prejudice.

5 CHAIRPERSON GRIFFIS: Forty-five more
6 seconds. Comments?

7 MEMBER MANN: I'm going to simply add that
8 -- and I'm sure that this is not based in any sort of
9 legal requirement. I just find it somewhat unusual on
10 its face that a client doesn't realize that nine
11 months ago an attorney has filed papers that he's no
12 longer going to be representing his client.

13 CHAIRPERSON GRIFFIS: Agreed.

14 MR. MCRAE: I couldn't possibly know. He
15 didn't notify me.

16 CHAIRPERSON GRIFFIS: But, Mr. McRae, I
17 think what the Board is saying is that this has been
18 going on for over a year, over a year in terms of the
19 -- even the -- the initial date of the notice of
20 infraction and the appeal of the second notice of
21 infraction. If this was of great concern to you, it
22 would have been your burden and your attention to be
23 pursuing this.

24 So, to come to us to say, well, no one
25 told me nothing was going on and no one was working

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1 for me is hard for us to take the burden and -- and
2 frankly, interrupt our schedule and have to reschedule
3 this when we were ready to go this afternoon.

4 But, that being said, I also know that
5 civil infractions are a strange being in this city and
6 there's all sorts of different stops and not everyone
7 does them daily and we're certainly glad that they
8 don't.

9 I'm certain that you -- I'm not certain.
10 I imagine that you haven't been through this before
11 and it may well be a confusing endeavor and process to
12 get through and -- and we're not always clear in our
13 procedure and such.

14 So, therefore, I would suggest that -- let
15 me take up any further discussion from the Board of
16 setting this off 60 days. Ms. Bailey will find a date
17 for us that is appropriate in the afternoon or not.
18 I'm personally open and can be further persuaded if
19 the majority of the Board would like to --

20 MEMBER ETHERLY: Mr. Chairman.

21 CHAIRPERSON GRIFFIS: -- yes.

22 MEMBER ETHERLY: I will -- I will speak in
23 support of a 60-day continuance and I just want to be
24 very clear about -- about the grounds for -- for that
25 support.

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1 I think we're -- we're in something of --
2 I won't say a gray area, but we're in a little bit of
3 a -- of a middle ground here where I think to an
4 extent clearly and -- and especially the recipient of
5 a civil infraction shoulders the responsibility of
6 insuring that his or her case, his or her rights are
7 adequately defended and protected and -- and that is
8 indeed I think the burden of -- of any appellant or
9 any plaintiff or any defendant.

10 I think, however, there are indications
11 here that there were at minimum some basic and
12 preliminary steps that were undertaken by Mr. McRae to
13 protect and safeguard his rights.

14 For whatever reason, there appears to be
15 -- there appears to be some uncertainty as to the
16 manner in which those rights were safeguarded by the
17 counsel that he chose to -- to represent him before
18 this body.

19 I think there is enough of a question
20 there that raises some concern for me which as counsel
21 for DCRA indicated is a fairly important and
22 significant question and that is the -- the
23 responsibility of the requirement of an attorney to
24 notify his or her client of any decision relative to
25 their representation.

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1 That is of concern to me and I don't think
2 we have anything that's definitive in the record that
3 would suggest that there was adequate notice on the
4 part of -- of Mr. Galloway, Mr. McRae's former
5 counsel, that his representation was -- was being
6 discontinued.

7 I understand where my colleagues are
8 coming from, but I think it's a very important point
9 here that -- that is best protected and safeguarded
10 rather than used inadvertently as a hammer in this
11 case to -- to prohibit or prevent Mr. Galloway from
12 safeguarding his rights.

13 I don't hear a definitive answer from DCRA
14 that there's going to be some significant prejudice
15 assumed on the part of the District. So, in the
16 absence of that, I'm inclined to grant the 60-day
17 continuance, but with a very clear message that Mr.
18 McRae should undertake all due efforts to secure
19 counsel and -- and get back here.

20 Thank you, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Well said.

22 Anything else?

23 VICE CHAIRPERSON MILLER: If -- if I may,
24 I'd like to say a couple of things. One is I think
25 that it's significant that the notice of Mr.

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1 Galloway's withdrawal as your counsel was not sent to
2 you at least as indicated. So, I can concur at this
3 point then with a continuance based on that reason
4 that you may not have gotten notice.

5 I -- I would just like to suggest though
6 if I could for -- for the -- the hearing that we hold
7 in 60 days, I -- I am wondering personally as one
8 Board member whether or not we, in fact, have
9 jurisdiction over this case, whether or not this is,
10 in fact, a decision involving the zoning regulation or
11 whether not -- or whether it is, in fact, a decision
12 that's being appeal that involves 16 DCMR 3102 and
13 3102.3(a) that he wasn't entitled to a hearing because
14 he didn't respond to the two notices.

15 So, that's -- that's a question that I
16 just would like to lay -- lay out there. The parties
17 might keep that in mind.

18 Because we could be back here in 60 days
19 and dismiss for that reason or not, you know. It's
20 just a question that I had when I looked at the -- and
21 I understand it is a little ticklish because it would
22 come before you on the --

23 CHAIRPERSON GRIFFIS: Right. We need to
24 discuss --

25 VICE CHAIRPERSON MILLER: -- merits on the

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1 certificate of occupancy issue.

2 CHAIRPERSON GRIFFIS: Some of us are very
3 clear on the issue. Others have questions.

4 VICE CHAIRPERSON MILLER: Right.

5 CHAIRPERSON GRIFFIS: But, we'll deal with
6 that later. Is there any objection then from the
7 Board or other comments on this granting a
8 continuance, holding in abeyance the motion to
9 dismiss? Is there any -- yes, Mr. Parsons.

10 MEMBER PARSONS: Mr. McRae's asking for 45
11 days. Why are you going to 60?

12 CHAIRPERSON GRIFFIS: Because I think this
13 is a May kind of thing and that will get us into May.

14 MEMBER PARSONS: Oh. Okay.

15 CHAIRPERSON GRIFFIS: Look I -- no sense
16 in 45 days from now needing another couple of weeks
17 and frankly, our afternoons are not freed up until
18 about that date.

19 Ms. Bailey, you can correct me if I'm
20 wrong, but I was proposing the 17th of May.

21 MS. BAILEY: Certainly, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. GILBERT: If -- if I may supplement my
24 request although I'm -- although I've pretty much gone
25 along with the continuance for the reasons we've

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1 discussed, though an area in which there could be
2 prejudice is if a new attorney enters this case and
3 then asks for --

4 CHAIRPERSON GRIFFIS: That's exactly why I
5 was putting 60.

6 MS. GILBERT: 90 days to do briefing and
7 so on. So, the --

8
9 CHAIRPERSON GRIFFIS: Without a named
10 attorney at this point 45 days and 45 days will be
11 asked for a continuance because they just got the
12 case. Sixty days. I cannot imagine my support of
13 another continuance. I can't project, but I wouldn't
14 imagine that the Board members would support a
15 continuance and I would say Mr. McRae it seems to me
16 the consensus of the Board to grant this continuance,
17 but as Mr. Etherly has eloquently indicated, the
18 hammer will be used on the 17th of May and I can't
19 imagine that we would move this on any further.

20 Comments?

21 MS. GILBERT: Can the order indicate that
22 no further continuances, that any briefing --

23 CHAIRPERSON GRIFFIS: No, can't.

24 MS. GILBERT: -- needs to be done within
25 that period?

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1 VICE CHAIRPERSON MILLER: Mr. Chairman, I
2 was just wondering. Do we need to set a deadline for
3 when the Appellant needs to file his briefing?

4 CHAIRPERSON GRIFFIS: Do we want to get
5 through one issue, the -- the continuance and then we
6 can set the schedule --

7 VICE CHAIRPERSON MILLER: Sure.

8 CHAIRPERSON GRIFFIS: -- on how we get to
9 May? Is there any opposition to granting a
10 continuance for 60 days to the 17th of May? Mr. Mann.

11 MEMBER MANN: I'm opposed to it. Yes.

12 CHAIRPERSON GRIFFIS: Indeed. Would take
13 that as a voice roll and we can record the vote then
14 as indicated that Mr. Mann was in opposition to the --
15 to the motion for a continuance.

16 Ms. Bailey, do you mind? The 17th of May
17 is appropriate in the afternoon starting at 1:00. Is
18 that correct?

19 MS. BAILEY: It's shown as that's open,
20 Mr. Chairman.

21 CHAIRPERSON GRIFFIS: Excellent. Do you
22 have the -- can you run down the filing dates?

23 MS. BAILEY: May 3rd and DCRA may respond
24 by May 10th. So, the filings from Mr. McRae -- Mr.
25 McRae?

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1 MR. MCRAE: Yes.

2 MS. BAILEY: The filings are to come in
3 from your attorney by May 3rd and that will give DCRA
4 a week to respond by May 10th.

5 MR. MCRAE: Thank you.

6 MS. BAILEY: Is that sufficient time for
7 you, Ms. -- Laura? Ms. Gilsausi?

8 MS. GILBERT: Well, certainly, I would
9 prefer that Mr. McRae be required to file sooner and
10 that I be given until May 10th. So that I would have
11 two weeks to respond rather than one week to respond.

12 CHAIRPERSON GRIFFIS: I think that's
13 appropriate. Let's set it back a week. We've got two
14 weeks for a response.

15 MS. BAILEY: So, that will be April 26th.
16 Mr. McRae, April 26th your filing date, sir.

17 MR. MCRAE: Thank you.

18 CHAIRPERSON GRIFFIS: Very well. Is there
19 anything else attendant to this civil infraction case
20 that's a -- a preliminary matter for us? Ms. Gilbert,
21 Mr. McRae, you aware of anything else that requires
22 our attention at this time?

23 MR. MCRAE: No, sir.

24 MS. GILBERT: No, sir.

25 CHAIRPERSON GRIFFIS: Ms. Bailey.

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1 MS. BAILEY: Mr. Chairman, there is
2 another preliminary matter, but that's all for this
3 case.

4 CHAIRPERSON GRIFFIS: Indeed. Thank you,
5 both, very much. Appreciate your patience.

6 Let's move onto the next.

7 MS. BAILEY: There is a request from the
8 Brookland Union Baptist Church, Application Number
9 17261 for a postponement of this application as well,
10 Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Is the Applicant
12 present?

13 MR. SANDERS: Yes.

14 CHAIRPERSON GRIFFIS: Would you -- would
15 you mind coming forward? How are you?

16 MR. SANDERS: I'm doing fine, sir.

17 CHAIRPERSON GRIFFIS: Good. You wouldn't
18 mind just providing your name and address for the
19 record.

20 MR. SANDERS: My name is Andre Sanders. I
21 live at 1109 Allison Street, N.W., Washington, D.C.

22 CHAIRPERSON GRIFFIS: Excellent and you
23 had a preliminary matter for the Board's attention?

24 MR. SANDERS: Yes, we did.

25 CHAIRPERSON GRIFFIS: You do?

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1 MR. SANDERS: Say that again?

2 CHAIRPERSON GRIFFIS: I'm sorry. What is
3 it?

4 MR. SANDERS: No, I was waiting on you.

5 CHAIRPERSON GRIFFIS: Don't wait for me.
6 You tell me.

7 MR. SANDERS: Unfortunately, a lot of
8 stuff is not ready. We -- we turned the application
9 in. Turned in all our blueprints and scans.

10 The two gentlemen that is working with our
11 company because we're a small company I can bring
12 their affidavits. Both of them have been called -- if
13 you know, contractors have been going over to Iraq to
14 -- to make some money. So, we have two of our guys,
15 Mr. Charles O'Brien and Mr. Champ De Marcus went to
16 Iraq.

17 CHAIRPERSON GRIFFIS: And I'm sorry. What
18 -- how are they related to --

19 MR. SANDERS: They're the ones that
20 actually do the reports and actually do going out for
21 the outcome. They do our reports and stuff when they
22 go out to parking lots. When they go out to different
23 sites, they do the site designs.

24 So, it was kind of left on me. We're a
25 small company and it was left on me and another

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1 person.

2 CHAIRPERSON GRIFFIS: I see.

3 MR. SANDERS: And also, the Pastor was
4 trying to make it today and I just got off the phone
5 with him probably and about 30 minutes ago. Him and
6 his secretary had another issue within a church. A
7 very important issue. They --

8 CHAIRPERSON GRIFFIS: Okay. So, your
9 question your postponement of this which is actually
10 the second request.

11 MR. SANDERS: Correct.

12 CHAIRPERSON GRIFFIS: And what kind of
13 timing did you have in mind?

14 MR. SANDERS: Chuck will be back April.
15 The guys dealing with it, he will be back April the
16 26th.

17 CHAIRPERSON GRIFFIS: April the 26th. Is
18 Mr. McKay here?

19 MR. MCKAY: Yes.

20 MR. SANDERS: Yes.

21 CHAIRPERSON GRIFFIS: Mr. McKay, would you
22 mind coming forward?

23 Is the ANC commissioner here from 5A?
24 Would you mind coming up please.

25 They're back around the 26th which means

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1 -- you said, I'm sorry, the 26th of --

2 MR. SANDERS: That's -- that's when they
3 be -- that's when they'll be back.

4 CHAIRPERSON GRIFFIS: I know.

5 MR. SANDERS: They'll be in Dover,
6 Delaware.

7 CHAIRPERSON GRIFFIS: Which month? April?
8 May?

9
10 MR. SANDERS: April.

11 CHAIRPERSON GRIFFIS: April.

12 MR. SANDERS: They'll be here April.

13 CHAIRPERSON GRIFFIS: I see. Okay. So,
14 conceivably, this is ready to go on the 3rd of May.

15 Mr. McKay, speak to the motion for a
16 continuance please.

17 MR. MCKAY: Mr. Chairman, I speak to the
18 motion of dismissal. Frankly, this -- this -- all
19 this body BZA set this matter for a hearing on January
20 the 4th this year.

21 This representative for the Brookland
22 Union Baptist Church and representing the Applicant
23 requested a postponement so that the Applicant could
24 review and consider the comments of the Department of
25 Transportation, D.C.'s Department of Transportation

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1 and D.C.'s Office of Planning.

2 Now, among the Officer of Planning
3 recommendation was that the -- the Applicant to meet
4 with the ANC, that is the Advisory Neighborhood
5 Commission and the community groups to address the --
6 the neighbors concerns about the adverse impact of the
7 parking lot on the community.

8 The Applicant, that is Brookland Union
9 Baptist Church, has -- has addressed neither DDOT's,
10 the District Department of Transportation nor the
11 Office of Planning's recommendation. There's been no
12 revised plan offered. Nothing was added to the
13 record.

14 Again, this Applicant has wasted this
15 Board's time and frankly, our time, the community's
16 time.

17 These are further examples of the
18 Applicant's inability to keep its word, to deal with
19 the community in good faith, and to comply with the
20 regulations and codes of this city.

21 Now, for the Applicant's documented -- we
22 ask that BZA summarily deny the application and so, we
23 make the motion for dismissal strongly.

24 CHAIRPERSON GRIFFIS: Okay. I appreciate
25 that and that's understood. Is there any comment

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1 regarding the specific aspect that was brought up
2 today in terms of the staff that they were counting on
3 to put together their application documentation having
4 been called Iraq?

5 MR. MCKAY: You will recall that the
6 recommendation that the Office of Planning made in
7 which this Applicant specifically asked for a
8 postponement when we met on January the 4th. The
9 Office of Planning made three recommendations. Okay.

10 They said that in meeting and subsequent
11 conversation with the Applicant the Office of Planning
12 advised the Applicant to provide the following three
13 things. A pre-hearing statement detailing how the
14 zoning requirements would be met including section
15 214, section 2116 with emphasis on 216.6 through
16 2116.9, 2117, section 2303 as well as section 2108.

17 Secondly --

18 CHAIRPERSON GRIFFIS: Yes, I have all
19 that.

20 MR. MCKAY: Yes.

21 CHAIRPERSON GRIFFIS: You don't need to
22 tell us that.

23 MR. MCKAY: What I'm saying is that the
24 Applicant has demonstrated having done none of that,
25 having nothing to do at all with staff personnel being

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1 in Iraq.

2 We -- we are terribly inconvenienced.
3 We're prejudiced. We spend lots of time and effort
4 preparing for these hearings and apparently, they do
5 nothing. They absolute do nothing. They have not
6 made any effort to meet with us, the neighbors
7 concerning -- the neighbors of Brookland Union Baptist
8 Church nor with the ANC. Having nothing to do with
9 that staff personnel.

10 It has to do with the church's regard for
11 the community concerning and for this -- all this
12 body.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much. Let me just hear from the ANC and then
15 I'm going to let you respond to both of those and you
16 are Mr. Artisee. Are you not?

17 COMMISSIONER BOSTON: No. I'm -- I'm Mr.
18 Boston. Mr. Artisee is behind me a couple of rows.

19 CHAIRPERSON GRIFFIS: So, indeed.

20 COMMISSIONER BOSTON: I'm the new -- I'm
21 the new commissioner. My name is William Boston. I
22 live at 1201 Kearney Street, N.E.

23 CHAIRPERSON GRIFFIS: So, we're suppose to
24 give you a hard time. I have a note here. As a new
25 commissioner, please give him a hard time.

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1 COMMISSIONER BOSTON: Please don't do
2 that. I think I need a welcome instead.

3 CHAIRPERSON GRIFFIS: Yes.

4 COMMISSIONER BOSTON: I think that would
5 help.

6 CHAIRPERSON GRIFFIS: You're very -- very
7 welcome here of course.

8 I need you just to address from the ANC's
9 position --

10 COMMISSIONER BOSTON: Um-hum.

11 CHAIRPERSON GRIFFIS: -- the motion for a
12 -- a request for a continuance.

13 COMMISSIONER BOSTON: Yes, I believe the
14 continuance should be denied. I think what Mr. McKay
15 laid out certainly -- well, just the basics of how
16 this should have been done in the beginning. They did
17 not approach the community in proper time. They did
18 not approach the ANC. They did not approach the civic
19 association and then the houses were removed without
20 permit or one and a half.

21 So, when you begin to look at how this was
22 set in motion from the beginning, there was a total
23 disrespect for the ANC, the community, and for the
24 civic association.

25 That right there is really a foul.

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1 The church is historical. It's been there
2 for many years and then if you look in Brookland at
3 the difficulties we're having in Brookland, I'm sure
4 it's -- it's been laid out in the media. With the
5 crime that we're having, with the type of issues that
6 we're having in Brookland, if you look at -- if a
7 parking lot is there, it will only add to the type of
8 issues that we're having in Brookland, you know.

9 CHAIRPERSON GRIFFIS: Understood. We're
10 not getting into the substance of the case.

11 COMMISSIONER BOSTON: Okay. Okay. All
12 right.

13 CHAIRPERSON GRIFFIS: Good. You're whole
14 point is if I understand you correctly the same issues
15 that we had in January when this was first asked for a
16 continuance are the same issues we have now in March
17 and the proper procedure wasn't done and they're not
18 ready because. So, you don't support the motion for a
19 continuance.

20 COMMISSIONER BOSTON: Right. No, I do not
21 support the motion.

22 CHAIRPERSON GRIFFIS: Indeed. Thank you
23 very much. Okay. Yes, sir. Last word.

24 MR. SANDERS: How you doing? I -- when I
25 received this job in 2003, give you a little history,

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1 I came along with the job. I met some of the
2 community people. They asked me was I the company
3 come to tear the houses down. I said no, we just
4 bidding on the contract. Will not touch.

5 CHAIRPERSON GRIFFIS: Well, we're not
6 arguing substance here.

7 MR. SANDERS: Okay. Okay. Let's go back
8 then. Well, I called Mr. Boston when I left from the
9 last meeting in January and once I found out he was
10 the ANC Commissioner and I called him and I had asked
11 what -- how could I set a meeting up with the
12 community --

13 CHAIRPERSON GRIFFIS: I know.

14 MR. SANDERS: -- to try to resolve this
15 situation either to a flower garden because the
16 neighbors said they don't want a parking lot.

17 CHAIRPERSON GRIFFIS: But, this is a small
18 step. I mean we -- we don't -- we don't -- we're not
19 -- we don't often get very deep into who called who
20 and why wasn't the meeting set up.

21 If we were just dealing with that, I'd say
22 let's go ahead with the case, but here we are again
23 for the second time, same issues. I mean this brings
24 back distinct memories of the same conversation we
25 were having before of you're not ready to go. You

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1 haven't even put together the preliminary things to
2 submit that were due weeks before the January hearing
3 and we're now into mid-March.

4 And I mean I'm -- I'm very persuaded by
5 the -- the party in opposition indicating that they're
6 actually prejudiced by the fact that they've had to
7 prepare twice. They've had to put all this together
8 and come down here. I mean this is time on everyone's
9 account.

10 Why should we and what -- quite frankly,
11 what insurance do we even have if it was to continue
12 again that in -- in 90 to 120 days we'd be ready to go
13 at that point?

14 Let me ask you directly. Has the property
15 ever been posted for this application?

16 MR. SANDERS: Say that again.

17 CHAIRPERSON GRIFFIS: Has the property
18 been posted?

19 MR. SANDERS: Yes, I have posted it.

20 CHAIRPERSON GRIFFIS: Do you have the
21 affidavit of posting?

22 MR. SANDERS: I believe it's in the
23 office. I had to return it that evening with some
24 pictures.

25 CHAIRPERSON GRIFFIS: When did you turn

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1 that in?

2 MR. SANDERS: Way before January and then
3 I also gave the Pastor a copy. As a matter of fact,
4 the Pastor is the one who brought them down.

5 CHAIRPERSON GRIFFIS: Okay. I won't --
6 let's not detract from that issue. Okay. Yes, we're
7 going over it one more time very quickly and then have
8 Board comments.

9 MR. MCKAY: Two comments. One deal with
10 the posting and the second one deals with timeliness.

11 The property was posted for about two
12 weeks. It was posted the week of -- of Thanksgiving.

13 CHAIRPERSON GRIFFIS: Okay. This is all
14 going to be anecdotal though. I mean we have strict
15 requirements in terms of the submissions.

16 MR. MCKAY: But -- but -- but, it was
17 suppose to -- over two weeks and since then nothing.

18 CHAIRPERSON GRIFFIS: No. Let me be
19 clear. No matter what you say --

20 MR. MCKAY: Sure.

21 CHAIRPERSON GRIFFIS: -- it frankly
22 doesn't really matter --

23 MR. MCKAY: Sure.

24 CHAIRPERSON GRIFFIS: -- in the sense that
25 if they are required to put in a certified affidavit

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1 of posting, if it's in, it's in and then we can refute
2 that. If it isn't, it isn't.

3 MR. MCKAY: True. True.

4 CHAIRPERSON GRIFFIS: But, I -- I think
5 we're -- we're -- we don't need to spend a lot of time
6 on that. Second issue.

7 MR. MCKAY: And a -- a second comment is
8 that it is very ironic and very telling again that the
9 Applicant makes a motion for postponement on the very
10 day of the hearing.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. MCKAY: Okay. The issue with the --
13 with the -- the -- with the staff, Iraq and what have
14 you, according to him, preceded this by several weeks.

15 CHAIRPERSON GRIFFIS: Indeed. Well, said
16 again and it goes back to the -- to the whole point of
17 how much -- well, how it impacts you and also the ANC
18 in terms of showing up for the hearing and then asking
19 for a continuance. Okay.

20 Other questions, comments from the Board?

21 MR. SANDERS: Can I -- can I say
22 something?

23 MEMBER ETHERLY: Well, before yo comment,
24 Mr. Sanders, let's -- let's kind of -- give me a
25 little for -- real point in question, real point in

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1 answer. What is the nature of Mr. O'Brien's and Mr.
2 De Marcus' --

3 MR. SANDERS: Yes.

4 MEMBER ETHERLY: -- role with respect to
5 the project? Who are they and what do they do?

6 MR. SANDERS: Mr. Marcus with our company
7 is a legal writer and Mr. O'Brien is a project
8 director that actually -- he's not a PE, but he do
9 civil engineering. Where he just don't have his
10 stamp.

11 MEMBER ETHERLY: And with respect to the
12 -- the Iraq component, are -- are those two gentlemen
13 involved in -- in military service?

14 MR. SANDERS: No, they civil. They went
15 over --

16 MEMBER ETHERLY: Okay. Civilian
17 contractors essentially.

18 MR. SANDERS: Correct. Yes. Yes, sir.

19 MEMBER ETHERLY: Okay. They presently
20 have some type of business commitment --

21 MR. SANDERS: Correct.

22 MEMBER ETHERLY: -- in Iraq that prevents
23 them from being here.

24 MR. SANDERS: That is correct.

25 MEMBER ETHERLY: Okay. And how long had

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1 you been aware of that conflict or this scheduling
2 issue?

3 MR. SANDERS: Both left February the 7th.
4 One left February the 7th and one left February the
5 14th.

6 MEMBER ETHERLY: Okay. I won't ask the
7 logical question after that. Okay. Because it is
8 what it is.

9 The -- so, it's your sense that you can't
10 move forward today in terms of carrying this case
11 forward without them?

12 MR. SANDERS: I can, but as far as certain
13 paperwork, I do not have in my hands. As far as
14 verbally, yes, I could, but as far as in -- having the
15 actual hard copy documents, no.

16 MEMBER ETHERLY: Thank you. Thank you,
17 Mr. Chair.

18 CHAIRPERSON GRIFFIS: Anything else? Any
19 other questions? Yes.

20 MR. SANDERS: Also, I want to make noted
21 we are the contractors with the church and I spoke to
22 Mr. McKay on many occasions about the project and I
23 guess we -- we as the contractors not trying to get
24 directly personally involved, but the 16th of this
25 month, there's another problem maybe arising with the

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1 church.

2 The gates are leased that are up around
3 the -- the perimeter and we actually own the gates.
4 I've been pushing as far as in don't pull the gates
5 down. Don't pull the gates down. Because as you
6 know, you have to put gates up at every site that you
7 go to and I just want to make that noted with the
8 community. I'm trying to leave them up as long as I
9 can to the safety of children. Anybody can drop
10 debris. I don't want anybody to come to my
11 neighborhood and drop the debris and stuff.

12 CHAIRPERSON GRIFFIS: Okay. I'm not sure
13 there's any --

14 MR. SANDERS: The gates that we have up
15 there, they may be coming down.

16 CHAIRPERSON GRIFFIS: I know.

17 MEMBER ETHERLY: You're talking about the
18 wrought iron fence around --

19 MR. SANDERS: Not -- not the wrought iron.
20 Those are chain links --

21 MEMBER ETHERLY: Chain links.

22 MR. SANDERS: -- that we just put up
23 temporarily.

24 MEMBER ETHERLY: Okay.

25 VICE CHAIRPERSON MILLER: And how is that

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1 connected to the application if the gates come down?

2 MR. SANDERS: The safety issues. I'm
3 looking at safety issues and stuff. Far as, you know,
4 keeping the place still fenced in. Because like I
5 said, I understand. I always express my concern to
6 him, but in my neighborhood, I don't want nobody
7 putting trash within -- next door to me or across the
8 street from me.

9 MEMBER ETHERLY: Mr. Chair, would you like
10 to invite some deliberative comment at this particular
11 point up to --

12 CHAIRPERSON GRIFFIS: Absolutely.

13 MEMBER ETHERLY: I'm -- I'm inclined to
14 move forward today, Mr. Chair. Now, what direction
15 that might entail, I'm -- I'm open to discussion, but
16 -- but I -- I don't think we're in a situation here
17 where for me a compelling argument is being made for
18 continuance of the matter.

19 Mr. Sanders has indicated that he would be
20 able to move forward in some measure. I'm -- I'm just
21 not inclined to -- to -- to hold off.

22 COMMISSIONER BOSTON: May I make a comment
23 here? I make a comment.

24 This is very important because this sets a
25 precedent.

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1 As you know, we have several other
2 churches that have lots beside the churches and this
3 sets a precedent for several other areas, several
4 other churches in Brookland with little plots that sit
5 next to the churches and this is very important. Many
6 of the other churches and pastors are paying very
7 close attention to this because they have ideas that
8 they want to do with their plots and so, that's why
9 this is so important to the community area-wide.

10 CHAIRPERSON GRIFFIS: But, doesn't that
11 support your fact that you wanted to hear the case?

12 COMMISSIONER BOSTON: Excuse me.

13 CHAIRPERSON GRIFFIS: I mean does that --
14 what -- I'm not sure I'm understanding which way
15 you're going with that.

16 COMMISSIONER BOSTON: Oh, no. Well, I'm
17 saying that because I want a dismissal. Of course,
18 there's -- that's not -- I'm not changing my
19 direction. What I'm saying is that -- this has
20 further implications. If you allow a party to come
21 forth unprepared twice, they're asking for a third
22 time, on a matter in which they're asking for a
23 special exception and the community as a whole is
24 against, then the ANC is against the matter. I mean
25 it really lays out a ground in which other folks can

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1 -- can really push forward and try to make changes
2 that are against the will of the community.

3 CHAIRPERSON GRIFFIS: Good. Very well.
4 Understood. I do appreciate that and very well said.

5 Board members, I would move denial of the
6 motion for a continuance and ask for a second.

7 MEMBER ETHERLY: Seconded.

8 CHAIRPERSON GRIFFIS: Thank you, Mr.
9 Etherly. I think -- I think it -- one, a party in
10 opposition and the ANC have been very persuasive in
11 the fact of the difficulties of how they might be
12 adversely affected quite frankly in continuing this.

13 Also, I haven't heard anything persuasive
14 in terms of the Applicant's representative and Mr.
15 Sanders does represent the Applicant of why this is
16 any different than it was in January or why, in fact,
17 it's persuasive today on its face to grant another
18 continuance.

19 I don't have -- there hasn't been anything
20 shown to the fact that -- that they would or have
21 provisions since February to put together an
22 application not to mention the preliminary application
23 should have been filed in January. Still there's
24 enough time to put together the simplest things to
25 move ahead with this. So, I would not support

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1 granting a continuance.

2 Ms. Miller, did you have something?

3 VICE CHAIRPERSON MILLER: I guess I have a
4 little different point of view on it. I think what is
5 different is that there are the key personnel that
6 indicated that -- that are in Iraq. That seems like
7 somewhat of an extenuating circumstance.

8 Granted, I think it would have been
9 preferable if the Applicant had notified the Board and
10 the parties earlier that this was a problem so that
11 the community would not be prejudiced by preparing,
12 but I see that as different and I see it as very -- I
13 don't know where we're going on the next issue, but I
14 see it as very inefficient to proceed without the
15 responses that we asked for to -- to DDOT, to OP and
16 without having worked with the community.

17 So, I would be in favor of a -- a
18 continuance and then -- but, that would be the last
19 one with, you know, a strict continuance.

20 CHAIRPERSON GRIFFIS: Yes, Mr. Parsons.

21 MEMBER PARSONS: You want another opinion?

22 CHAIRPERSON GRIFFIS: Of course.

23 MEMBER PARSONS: I think the -- the proper
24 thing for us to do is to dismiss this case to -- to
25 allow the Applicant to go back and attempt to work

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1 with the community and bring this back in a -- in a --
2 in a different fashion.

3 I understand the extenuating
4 circumstances, but is there -- is there any limit as
5 to when they can file? We're looking into that. I
6 don't want to put them in a situation where they got
7 to wait nine months to come back.

8 CHAIRPERSON GRIFFIS: Well, in terms of
9 the regulation, in terms of timing, one, if a
10 continuance was not granted today, they could withdraw
11 after this motion. That would keep it open for a
12 refiling.

13 MEMBER PARSONS: But, it seems silly for
14 us to pretend we're hearing a case this afternoon.

15 CHAIRPERSON GRIFFIS: That's correct.

16 MEMBER PARSONS: I just want to dispose of
17 this.

18 CHAIRPERSON GRIFFIS: That's right.

19 MEMBER PARSONS: And not put anybody
20 through any agony when they're not prepared.

21 CHAIRPERSON GRIFFIS: Good.

22 MEMBER PARSONS: Give them a chance to --
23 to do that, but if you --

24 CHAIRPERSON GRIFFIS: I think that's
25 excellent points to be brought up. We have a motion

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1 before us. I don't think I will let that go without
2 addressing the options before we take next actions on
3 that.

4 If we want to dispense with the motion
5 that's before us at this time, is there anyone else
6 that wants to speak to the motion?

7 MEMBER PARSONS: No, I'm going to agree
8 with the position that you and -- that the Chairman
9 and Mr. Etherly --

10 CHAIRPERSON GRIFFIS: Excellent. We have
11 a motion to deny the continuance today. It has been
12 seconded. Let me ask for all those in favor signify
13 by saying aye.

14 (AYES)

15 CHAIRPERSON GRIFFIS: And opposed?

16 VICE CHAIRPERSON MILLER: Opposed.

17 CHAIRPERSON GRIFFIS: Thank you, Ms.
18 Miller. We'll get that recorded.

19 Mr. Sanders, are you aware of your options
20 at this point?

21 MR. SANDERS: No, sir.

22 CHAIRPERSON GRIFFIS: We have three. The
23 first option you could do right now and withdraw the
24 application and that, if I'm not mistaken, you will
25 correct me if I am, will allow you to bring back the

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1 application at -- at your timing.

2 The second is we will go to the case that
3 we have scheduled in the afternoon. It will take us
4 probably several hours. You would have several hours
5 to get ready and we'll call the case in this afternoon
6 and we'll hear it. That means you got to be ready to
7 go.

8 The third is that quite possibly we get to
9 that point and the -- the Board as a preliminary
10 matter when we call that case will take up the motion
11 from the party in opposition to dismiss it and it
12 could conceivably be dismissed today.

13 So, there's really two options that you
14 have, but there's three potential outcomes.

15 Is that understood?

16 MR. SANDERS: Sure.

17 CHAIRPERSON GRIFFIS: I mean I'm -- I'm
18 totally serious. I'll take time to make sure you --
19 you do clearly understand.

20 MR. SANDERS: I'll take the withdrawal.
21 Then I can come back once I can address the community.

22 Because I have been working somewhat with Mr. --

23 CHAIRPERSON GRIFFIS: Okay. Ms. Monroe,
24 do you agree with that opinion?

25 MS. MONROE: I just want to point that if

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1 the Applicant --

2 CHAIRPERSON GRIFFIS: Boy, it's hard to
3 get just a simply yes or no around here. Isn't it?
4 Go ahead.

5 MS. MONROE: I just want to point out that
6 if the Applicant withdraws, it says new applications
7 shall not be accepted for filing for at least 90 days.

8 Okay. So, you would have to wait 90 days if you
9 withdraw.

10 If the Board dismisses the application as
11 -- as Mr. Parsons was saying, for failure to comply
12 with procedural requirements which I assume we can --
13 we can see here, you couldn't accept a new filing for
14 at least 90 days. So, you'd have to wait 90 days
15 anyway and --

16 CHAIRPERSON GRIFFIS: All we're looking at
17 three months. Right? Okay. Mr. Sanders, it's up to
18 you. What -- what do you propose we do?

19 MR. SANDERS: Withdraw.

20 CHAIRPERSON GRIFFIS: You would like to
21 withdraw the application at this time?

22 MR. SANDERS: Yes.

23 CHAIRPERSON GRIFFIS: Very well. That
24 doesn't take any requirements, Board action and we
25 will note that Application 17261 has been withdrawn.

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1 Let me be straight and honest and direct
2 here. In my opinion, we look forward to seeing this
3 application and we certainly look forward to having
4 full support of it. We don't -- that's not a
5 requirement. Hopefully, things can be worked out to
6 the -- the -- to the best for everyone's circumstance.

7 With that being said, you've got some time
8 down here. You're all here in the same place. You
9 might want to take a few moments to get coordinated,
10 but that's frankly none of my business.

11 Outside of that, I appreciate you all
12 being down here and taking the time and, Mr. Boston,
13 we look forward to seeing you again very soon perhaps.

14 COMMISSIONER BOSTON: Thank you.

15 CHAIRPERSON GRIFFIS: Good. Thank you.

16 MS. MONROE: Mr. Chairman, can I say one
17 thing?

18 I just want to be sure that you are
19 authorized to withdraw this. I mean are you
20 representing the church here and their --

21 MR. SANDERS: Yes. Yes, I'm Andre
22 Sanders. Yes.

23 MS. MONROE: Okay. I want that on the
24 record to be sure that -- because you are the
25 contractor and --

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1 MR. SANDERS: Yes.

2 MS. MONROE: Okay. So, that's.

3 CHAIRPERSON GRIFFIS: They are the
4 Applicant's representative agent. Okay. Good.

5 Again, thank you.

6 Very well. Anything else for us to do
7 today? How about any other preliminary matters?

8 If not, let's move ahead then to the last
9 case in the afternoon and if there's no preliminary
10 matters attendant to that, let's -- let's call the
11 case.

12 MS. BAILEY: Application Number 17276 of
13 Phillips Park LLC pursuant to 11 -- for a special
14 exception to allow theoretical lots for 35 single
15 family detached dwellings. The project also includes
16 13 single family detached dwellings as a matter of
17 right. The project is under section 2516 and it's
18 located at premises 2101 Foxhall Road, N.W. The
19 property is zoned R-1-A and it's located in Square
20 1346, Lot 822.

21 CHAIRPERSON GRIFFIS: Good. Okay. Last
22 when we left off, we were going to call the -- the
23 persons in support of the application and parties and
24 persons in opposition to the application.

25 However, we've been handed today the

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1 submission from the Applicant. For whatever reason
2 and what -- there is some interest from the Board just
3 for a quick discussion on -- Mr. Nettler, are you
4 planning on calling these -- the witnesses that
5 prepared the documentation to this or is this
6 submission addressing the Board's request for
7 information and you were going to let this rest on its
8 face of -- go ahead.

9 MR. NETTLER: Well, this -- it is two
10 responses. One, it is a response to some of the
11 questions that have been raised by the Board and as
12 part of our rebuttal, the people who had been working
13 on this are here to -- to walk through the -- those
14 aspects of it and I can -- just in general what I'm
15 talking about is in terms of giving further clarity to
16 the storm water management plan that we had presented
17 initially and how that lays out.

18 We have moved at least -- we haven't
19 changed the -- the number of houses, still 46 and 33
20 and the -- for the most part the lot lines, but we've
21 moved the houses further away from the park. So, we
22 are having a bigger buffer, but otherwise these are
23 simply in response to the things that you had asked
24 for some further clarification on in terms of what the
25 presentations were in our opening presentation.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. NETTLER: And --

3 CHAIRPERSON GRIFFIS: So, conceivably,
4 we'll get through this and we'll go to your rebuttal
5 witnesses and closing statements. If you didn't call
6 rebuttal witnesses, then I would allow the parties in
7 opposition to address the -- your witnesses --

8 MR. NETTLER: Right. I understand.

9 CHAIRPERSON GRIFFIS: -- based on these
10 submissions.

11 MR. NETTLER: Right.

12 CHAIRPERSON GRIFFIS: Okay. I think that
13 -- I think that's fairly straightforward at this time.

14 We do have the additional submission from
15 the ANC also which I know Board members have and I'm
16 assuming it was served to everyone around.

17 We now have just been handed attached map,
18 larger scale plans submitted by DDOT from the ANC
19 also. Okay.

20 I think we're ready to go. Persons in
21 support today to give testimony. Are there persons
22 present in support of this application which happens
23 to be Application 17276.

24 Are there persons in opposition to the
25 application that want to give testimony? Persons?

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1 Yes? Not parties. Persons.

2 MR. NETTLER: I thought we had already
3 gone to parties in opposition when we finished.

4 CHAIRPERSON GRIFFIS: I know. I know.

5 MR. NETTLER: Okay.

6 CHAIRPERSON GRIFFIS: But, I like to start
7 slow --

8 MR. NETTLER: I'm sorry.

9 CHAIRPERSON GRIFFIS: -- on a snowy day.
10 There was some -- anyway. You're absolutely right.
11 Let's go into parties in opposition.

12 If the parties in opposition indicated how
13 -- an order of presentation of their cases, whatever
14 it is, let's -- let's roll.

15 Yes, I'm totally ready. Someone should
16 talk. Yes, is Ms. Brady here? She's out of town.
17 But, the -- the concern neighbors are going to be a
18 resident -- certain residents. CR. I knew it was a
19 CR somewhere. Okay. So, you're going to be
20 presenting that -- that --

21 MR. NETTLER: No, they already made their
22 presentation.

23 CHAIRPERSON GRIFFIS: Right. You're
24 right. Right. Right. Right. Because she was
25 leaving town.

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1 MR. NETTLER: We were discussing two.

2 CHAIRPERSON GRIFFIS: And we had that all
3 done.

4 MR. NETTLER: Right.

5 CHAIRPERSON GRIFFIS: Okay. Great.

6 MR. NETTLER: Right.

7 CHAIRPERSON GRIFFIS: Boy, it's all coming
8 back to me. Good. The process is lost, but substance
9 isn't. There it is. Yes.

10 MS. GATES: May I address you?

11 CHAIRPERSON GRIFFIS: Of course. Come
12 have a seat in our plush chairs. Make sure there's a
13 microphone on.

14 MS. GATES: Also with us today is Julie
15 Moore. I mentioned Julie in my testimony earlier.
16 There was some question about who she is. She is with
17 us today. Yes, she is and it would be nice if she had
18 an opportunity to address you herself.

19 CHAIRPERSON GRIFFIS: Under what capacity?
20 I mean why?

21 MS. GATES: I fully -- we have -- she has
22 acted as a resource --

23 CHAIRPERSON GRIFFIS: Correct.

24 MS. GATES: -- for us just as the
25 consultants have acted for the Appellant.

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1 CHAIRPERSON GRIFFIS: So, that's true and
2 we have -- we have her testimony in -- in the record.
3 Right?

4 MS. GATES: Well, you have a written
5 statement, but she's here today and it would be nice
6 if she could just have a word with you.

7 CHAIRPERSON GRIFFIS: Well, let me be
8 straight with you. It's kind of odd that you would
9 want to bring up a witness and subject her to cross
10 examination when, in fact, you have a free ride and
11 you put her statement in writing that hasn't been
12 crossed.

13 Why not be satisfied with what you have?
14 Perhaps I shouldn't say that on the record, but it
15 just seems to me there would be a little bit of
16 strategic error on your part unless she's bringing
17 further information.

18 In which case, I would suggest that you
19 have her called as a witness or one of the parties in
20 opposition and put it into their case.

21 MS. GATES: Thank you

22 CHAIRPERSON GRIFFIS: All right. Well,
23 tell me what you want to do. I'm just laying out all
24 -- I'm big on options today.

25 MS. GATES: I -- I -- and I really

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1 appreciate those.

2 COURT REPORTER: Excuse me, Your Honor.
3 There's a --

4 CHAIRPERSON GRIFFIS: Oh, see -- see he
5 calls me Your Honor.

6 Okay. While in all seriousness, let me
7 address the fact that Ms. Moore is here. Also just
8 indicate that we had the three remaining parties that
9 are presenting today. Is that correct?

10 CHAIRPERSON GRIFFIS: Two remaining
11 parties that are presenting today. They were
12 splitting 45 minutes. We were looking at about 15
13 minutes for each presentation. Ms. Hardy, is that
14 your recollection?

15 MS. HARDY: No, it's more like -- I
16 thought we had half an hour each.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. HARDY: Not that I need it.

19 CHAIRPERSON GRIFFIS: I got my notes here,
20 but I don't want to open them up because I thought it
21 was going to be clear, but I guess I'll do that.

22 MS. GLAZER: Mr. Chair, according to my
23 notes, you're correct. The first day of hearing when
24 the requests for party status were granted, the three
25 parties were told they would split 45 minutes.

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1 MS. HARDY: We were told we would split
2 whatever time Mr. Nettler took and he took more than
3 45 minutes.

4 CHAIRPERSON GRIFFIS: Ms. Hardy, if you
5 could turn your microphone --

6 MS. HARDY: Yes, beg your pardon. We were
7 told we would split whatever time the Applicant took
8 and they did take more than 45 minutes.

9 MR. MOY: Mr. Chairman -- Mr. Chairman,
10 according to my notes and Mr. Nettler can add to this,
11 that's correct. It's 45 minutes, but the Applicant
12 also had an additional time of 33 minutes and 17
13 seconds.

14 CHAIRPERSON GRIFFIS: Okay. Now, my notes
15 from the 15th of February, we set up 45 minutes and
16 the Applicant minutes and when I was -- and I have the
17 clock right in front of me. We added 15 minutes that
18 the clock didn't stop of which Board questions were
19 coming in. So, 15 minutes into the 45 was -- I mean I
20 think it -- and even to call it 60 which case -- I
21 don't know. Whatever.

22 MR. NETTLER: Yes, I wouldn't disagree
23 with that. I think -- because we had -- we had
24 pointed out the fact that the clock hadn't stopped,
25 but you did give us some additional time.

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1 But, if we were dividing up the time that
2 we had taken among the three who were parties in
3 opposition, then you'd have to take into account the
4 time that was spent by the -- certain residents of W
5 Street because they took more than 15 minutes in their
6 presentation. So --

7 CHAIRPERSON GRIFFIS: That's right.

8 MR. NETTLER: -- I don't know what --
9 whether you were counting the time that they took, but
10 that was -- your direction was the three had to divide
11 up that time that we had taken.

12 CHAIRPERSON GRIFFIS: That's right.

13 MR. NETTLER: It was more than 45 minutes,
14 but certain residents took up more than 15 minutes.

15 CHAIRPERSON GRIFFIS: Indeed. Those
16 certain residents. Okay. Ms. Hardy, how much time do
17 you need? Twenty minutes?

18 MS. HARDY: Mm.

19 CHAIRPERSON GRIFFIS: Indeed. We're going
20 to set 20 minutes just to be a little bit flexible on
21 this and stop talking about time and actually use it
22 and I'm sorry, Ms. Gates, you left, but I wasn't sure
23 on what you were doing with Ms. Moore. Perhaps,
24 you're going to talk to one of the parties in
25 opposition to call him as a witness and you'll advise

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1 us if that's otherwise.

2 Ms. Hardy, why don't we turn to you?

3 MS. HARDY: Okay. My name is Chandra
4 Hardy and I live at 2001 Foxhall Road. I'm the
5 adjacent property owner.

6 In fact, I'm the only resident on the
7 property of the former Phillips estate. My property,
8 Lot 818 is in Square 1346, was part of the Phillips
9 estate.

10 Since the 1930s when the Phillips family
11 acquired the property, only three families have lived
12 in my house. The mother and son of Marjorie Phillips
13 and my family. The children of Phillips grew up in
14 the house as did mine.

15 My house is part of the history of the
16 city and of my community. We have lived there for
17 almost 30 years and it's my intention to live the rest
18 of the my life in my house.

19 I welcome the residential development of
20 the former Phillips estate and I've been cooperative
21 with the developers in all of our discussions.

22 However, I oppose the current plan because
23 of its adverse affects on my life, the value of my
24 property, and the ecology of the 16-acre site.

25 I have tried to reach agreement with the

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1 developers on my concern, but I have learned that the
2 assurances I received from Mr. Visnick who was listed
3 up to a month ago as a joint owner and builder of the
4 project have no validity.

5 And two, in their presentation to the
6 Board, the development team has not indicated what
7 actions they propose to take to insure that my
8 concerns as the adjacent neighbor have been addressed.

9 In February 8th, I submitted a list of
10 reasonable conditions that I'm asking the BZA to
11 attach to this project. They're Exhibit 28.

12 On February 9th, I gave the exact same
13 list to the development team. I would like to speak
14 to these conditions or as many of them as I can in the
15 time available, but before I do, I would like you to
16 consider precisely where I am located in relation to
17 the development.

18 The topography of the Phillips estate is
19 like a very large steep bowl. My property is located
20 on the southeastern rim of this large bowl. The
21 northern boundary of my lot runs about 300 feet along
22 the development and the eastern boundary runs about
23 200 feet.

24 My house is located about 260 feet above
25 the development. This location means that I'm being

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1 sandwiched between two constant flows of traffic,
2 noise, and lights from the development and from
3 Foxhall Road. It also means that I am directly above
4 and in front of the noise and dust and visual
5 pollution during the period of construction.

6 Now, to my conditions, members of the
7 Board, I have asked for a perimeter fence to be
8 installed -- a permanent perimeter fence along the two
9 adjoining sides of our property for privacy and
10 security.

11 I was told that I would get an attractive
12 black iron fence and that they would landscape both
13 sides of the fence, but I have not been able to get
14 this agreement in writing.

15 Without this fence, anyone from the
16 development can walk across my property looking for a
17 shortcut to Foxhall Road.

18 I have also asked that a permanent fence
19 and landscaping take place within 90 days of the
20 regrading and land preparation and I have asked for
21 covered chain link fence to be installed between our
22 properties during the -- the land preparation phase.

23 Tree protection a big part of my
24 conditions. There are some magnificent old and native
25 trees on the Phillips property. This land was never

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1 cultivated and the landscape is in its natural state.

2 The loss of trees and the extensive regrading on the
3 property is environmentally damaging and will
4 irreversibly alter the ecology of the property.

5 There is little that I can do about this,
6 but I intend to do all that I can to protect the trees
7 that are on or near the border of my property.

8 The current site plan does not show
9 accurately all the trees along our current common
10 boarders nor does it identify the smaller trees on my
11 property that will be damaged by construction of
12 roads, retaining walls, and houses along the northern
13 boundary of my property.

14 I estimate that up to eight very large
15 more than 80 feet high very old poplar and sycamore
16 trees and several smaller trees will be destroyed.

17 The current site plan creates a legal
18 nuisance in this regard and it shows a large retaining
19 wall, six feet tall, is to be constructed near a group
20 of these old trees which you will recall that Mr.
21 Pitchford said in answer to my question that he was
22 more concerned about this wall than about the nearby
23 road. But, the large wall is needed because the road
24 is being constructed on a very steep slope.

25 In order to protect the root zone of these

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1 trees, the road must be located 50 to 60 feet away
2 from the trees instead of 25 feet which is currently
3 shown.

4 The developers cannot claim that they are
5 protecting old trees when they are planning to
6 construct retaining walls and steep roads near them.

7 I also asked that the developers be
8 responsible if the contractors ignore the guidelines
9 of Mr. Pitchford or if the workers accidentally cut into
10 the root system. These large trees can take up to ten
11 years to die after the root system is damaged. They
12 are expensive to remove and they're irreplaceable.

13 Members of the Board, I am conscious of
14 time and I will not read all of my conditions, but I
15 would like to speak to two that are left.

16 Protection during the period of
17 construction. The failure to include a construction
18 management plan and construction schedule in this
19 application to the BZA and the lack of discussion with
20 the neighbors about these plans is in my view a major
21 deficiency in the application.

22 I say this because this is a very large
23 project. Forty-six or is it forty-seven houses on 16
24 acres, but it is located in a very small corner of a
25 residential neighborhood. The property is bounded on

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1 two sides by national park land.

2 This means that 12 families, 11 on W
3 Street and Fox Place and me, will bear the brunt of
4 the impact of the construction and because of my
5 location, the damage to me will be the greatest.

6 The developers have said that they will
7 construct the houses along W Street first in order to
8 create a buffer against the construction of the 34
9 house. I'm asking for similar protection against the
10 impact of the construction activities.

11 The developers have said that the land
12 preparation phase could take eight to ten months. I
13 do not know if this estimate is for the entire 16
14 acres or part of it.

15 Mr. Griffis asked Mrs. Brady how long she
16 thought this project would take to complete and she
17 said four to five years.

18 I'm an economist and in my view, the
19 construction and sale of 47 multi-million dollar
20 houses could take eight to ten years depending on what
21 happens to the economy and the housing market.

22 Therefore, I am asking for protection
23 during a construction period in my view could last a
24 long time. I've asked that the construction staging
25 area, equipment vehicles and the vehicles of the

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1 workers to be parked in a secluded place to the far
2 right of my property and to be kept out of sight from
3 the back of my property which has 180 degree view of
4 the construction site.

5 The view from the front of my house is not
6 pretty. It faces Foxhall Road and the architecturally
7 uninspiring buildings of George Washington University.

8 The special value of my house lies in the
9 beauty of the woods and the adjoining park. Replacing
10 this landscape with a view of a building site and
11 construction vehicles will seriously reduce the value
12 of my property.

13 I will not read the full list of
14 conditions which are in Exhibit 28 and which I am
15 resubmitting today, but I would like the members of
16 the Board to know that I feel very strongly that the
17 quality of my life and the value of my property will
18 be harm by the failure to obtain all of these
19 protections during the period of construction.

20 On storm water management, I have two
21 storm water problems. My property lies well below the
22 Field School and W Street part of the Phillips
23 property and I have a permanently or I have had a
24 permanently wet basement and peeling walls over the
25 past two years. Several contractors have told me that

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1 this problem is caused by the rise of the water table
2 and the uncontrolled runoff from further up
3 Foxhall Road.

4 I have to be shown the grading plan and
5 storm water plans for the area of their property that
6 runs along Foxhall Road so that I can have them
7 reviewed by an engineer and assured that I will not be
8 adversely protected. I'm asking for information to
9 enable me to prevent a problem instead of having to
10 deal with it after the fact.

11 The second storm water problem relates to
12 the runoff along Foxhall Road. There is no storm
13 drain on Foxhall Road between W Street and White Haven
14 Parkway. The flow of water has eroded the asphalt
15 buffers along the road and the water flows across my
16 property and has caused erosion.

17 The developers have said they will install
18 a catch basin at the southern boundary of the property
19 and pipe the water to the drain at White Haven and
20 Foxhall. I am located at that southern boundary and I
21 would like to know when this new system to manage the
22 runoff will be installed and whether it has been
23 coordinated with DDOT.

24 Installing this pipe will entail a major
25 traffic disruption in front of my house. I would like

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1 to know if the pipe will be included in the repair of
2 the road which is planned to begin this spring or is
3 the road going to be dug up after it's been repaired.

4 When will this happen? Et cetera.

5 Finally, members of the Board, I have two
6 issues with regard to disputed parcels of land. It is
7 my contention that one of the theoretical lots, lot A
8 4, encroaches on my property.

9 There is also an issue about my continued
10 access to a cabin that I own which is located on
11 another theoretical lot, A 10.

12 I have been engaged in discussion with the
13 developers trying to settle these issues and I have
14 expressed willingness to continue to try to reach
15 agreement, but in reviewing this application, the
16 Board needs to be aware of these unresolved issues.

17 To conclude, I am asking the Board to
18 attach specific and enforceable conditions to minimize
19 the adverse impact of the development on my life and
20 my property. I'm asking for conditions that are
21 designed to prevent problems from arising and I'm
22 asking for conditions that will allow my to
23 participate in and not simply be informed about
24 decisions that will have an immediate and direct
25 impact on me especially those related to the

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1 protection of the trees on and near my property, the
2 construction management plan, the storm water plan,
3 and the installation of a perimeter fence.

4 Thank you.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 Board members, questions? Yes, Mr. Parsons.

7 MEMBER PARSONS: I want to talk about the
8 trees. You mentioned nine trees.

9 MS. HARDY: Yes.

10 MEMBER PARSONS: That you believe are on
11 your property?

12 MS. HARDY: They are on my property. Yes.

13 MEMBER PARSONS: And in the drawing
14 submitted to us, it shows some on your property and
15 some right on the property line.

16 MS. HARDY: Yes, the -- the ones near the
17 -- the specific ones near the retaining wall are on my
18 property. But, this -- the site plan basically they
19 had no obligation to show the trees on my property.
20 So, there are only a selected number of trees here.

21 I should have -- I should have -- the
22 survey that I am trying to complete of the trees on --
23 along the borders of my property and it was not -- I
24 could not complete it before this hearing, but one of
25 the things about a site plan, it -- it does not show

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1 all the trees on my property.

2 MEMBER PARSONS: So, it does show five?

3 MS. HARDY: It shows five that are
4 particularly near that wall.

5 MEMBER PARSONS: The wall. Um-hum. And
6 -- and you feel that if we move the road over, that
7 those trees --

8 MS. HARDY: Well, my understanding of the
9 -- the -- and I'm not an arborist. If those trees are
10 over eight-feet tall and they need a root zone area of
11 up to 70 feet and this -- this is -- this wall as far
12 as I understand it goes to 25 feet away from those
13 trees.

14 MEMBER PARSONS: Okay. Thank you.

15 CHAIRPERSON GRIFFIS: Any other questions?
16 Good. Let me ask you. First of all, it's often that
17 we have people come in that -- in opposition to an
18 application and speak about value of property and how
19 it might be diminished and you started out saying, in
20 fact, you're an economist and it will take two things,
21 eight to ten years to sell are these. Which my first
22 question to that is how you are setting that type of a
23 time period and two, what is it that leads you to
24 believe that you're property value would diminish
25 without getting in too lengthy of a period, but is it

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1 essentially loss of green open park land?

2 MS. HARDY: Yes, I mean on that one. The
3 -- the house is old. It's been there since 1930s and
4 it's been modernized in the '60s. The house itself is
5 -- is --

6 CHAIRPERSON GRIFFIS: So, it's more
7 valuable if you look out the back of your house on
8 the --

9 MS. HARDY: It's value because it's got
10 that 16 acres of --

11 CHAIRPERSON GRIFFIS: As opposed to being
12 adjacent to --

13 MS. HARDY: -- and then the park. But,
14 it's also -- it's not that you're just -- Mr. Barnes
15 is right. Four or five years from now, that place
16 might be landscaped and be pretty to look at, but in
17 the next -- if the -- if the project was completed in
18 four or five years, for that period if I am not
19 protected against the construction, vehicles and --
20 and what they do with the building site, I will be
21 looking at 180 degree view of a building site.

22 CHAIRPERSON GRIFFIS: Okay. So, if I --

23 MS. HARDY: And -- and -- and your --

24 CHAIRPERSON GRIFFIS: -- from -- from your
25 point of view as an economist, you say that generally

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1 we should be -- we should be persuaded of the fact
2 that a building that's surrounded by park land is more
3 valuable not of a building surrounded by development.

4 MS. HARDY: Yes, I should think so. Yes.

5 Maybe a building that has a view of -- of woods and a
6 national park is clearly got to be of more value than
7 a building that's looking at a construction site.

8 CHAIRPERSON GRIFFIS: Is it? What do you
9 base that on? That's all my question is. It's your
10 opinion that you --

11 MS. HARDY: That's my opinion. Yes, I'm
12 not --

13 CHAIRPERSON GRIFFIS: -- you would rather
14 look out on it.

15 MS. HARDY: Yes.

16 CHAIRPERSON GRIFFIS: So, conceivably a
17 piece of property downtown in the middle of the city
18 may well be more valuable than that way out miles into
19 farmland?

20 MS. HARDY: Yes, I mean I'm just -- right
21 now, I'm speaking general for any piece of property
22 anywhere. I can tell you that the piece of property
23 I'm --

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. HARDY: -- sitting on is -- is --

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1 CHAIRPERSON GRIFFIS: So, in your opinion
2 your --

3 MS. HARDY: -- is looking --

4 CHAIRPERSON GRIFFIS: The value of your --

5 MS. HARDY: The particular value because
6 of what it currently looks at and you replace that
7 with something else.

8 CHAIRPERSON GRIFFIS: The value of your
9 property to you will be diminished with development.

10 MS. HARDY: And I would imagine to anyone
11 else because of its view.

12 CHAIRPERSON GRIFFIS: I understand.

13 MS. HARDY: I said the view from the front
14 is nonexistent.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. HARDY: And your second question with
17 regard to the economy, 47 multi-million dollar houses,
18 the -- it -- it would be great if they could sell it
19 in four years, but interest rates are rising and --
20 and it's quite possible that you could have more
21 difficulty.

22 My problem is that you have to have a plan
23 for if it lasts longer. The longer the construction
24 period lasts is the longer I'm going to be exposed to
25 noise and dust and visual harm. That's my point.

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1 CHAIRPERSON GRIFFIS: I see.

2 MS. HARDY: I wish them great success in
3 finishing it in four years. We would all be better
4 off, but if it doesn't, I will be staring at a hole in
5 the ground for ten years.

6 CHAIRPERSON GRIFFIS: Indeed. Okay.
7 Ms. Miller.

8 VICE CHAIRPERSON MILLER: I just want to
9 make sure I understood your points about lots A 4 and
10 A 10. Did -- are you saying that you may have some
11 ownership rights on that --

12 MS. HARDY: Yes.

13 VICE CHAIRPERSON MILLER: Okay. And you
14 all are trying to work that out outside of this
15 application?

16 MS. HARDY: We were.

17 CHAIRPERSON GRIFFIS: Let me ask you
18 directly. What do you think our role is in those
19 issues?

20 MS. HARDY: Not at all.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. HARDY: I was simply informing you of
23 them.

24 CHAIRPERSON GRIFFIS: Indeed and I
25 appreciate that. That's a clarification I think we

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1 need and I think we can move on for that.

2 Ms. Miller, any other questions?

3 VICE CHAIRPERSON MILLER: No, not at this
4 time.

5 CHAIRPERSON GRIFFIS: Any other questions
6 from the Board? Does the Applicant have any cross
7 examination?

8 MR. NETTLER: Yes. Yes. Ms. Hardy,
9 you've made a -- I think a broad assertion that there
10 is a -- a number of issues that you wanted to have the
11 Applicant address and there were attempts at
12 addressing those things, but the Applicant has not --
13 to this date has not addressed the concerns that
14 you've raised before the Board today. Is that
15 correct?

16 MS. HARDY: Yes.

17 MR. NETTLER: And you're saying that the
18 -- are you saying that the Applicant was unwilling to
19 do a number of the things that you have raised as
20 concerns in terms of protecting trees and fencing and
21 dealing with whether it's grading, storm water
22 management, construction issues? Are you saying that
23 the Applicant was unwilling to do so?

24 MS. HARDY: I -- I would like to state how
25 I said it. I said that I was not able to obtain

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1 agreement in writing on any of these things. I would
2 get assurances about -- about things that would be
3 done, but in my opinion, they were not enforceable.

4 MR. NETTLER: Okay. And you were given a
5 -- you were provided a drafted agreement that related
6 to those issues. Weren't you?

7 MS. HARDY: I was given a draft agreement
8 and I turned it down because it lacked specificity.

9 MR. NETTLER: Okay. And one of the -- one
10 of the things -- the reasons you turned it down is,
11 correct, is because you wanted the Applicant to give
12 you some of its property. Wasn't that one of the
13 things that you wanted out of that agreement?

14 MS. HARDY: No, I'm not aware that I
15 wanted anybody to give me anything.

16 MR. NETTLER: You're not -- you're not
17 aware that you had asked the Applicant to give you
18 some of the portions of property that abuts your land
19 as part of the agreement for your support of this?

20 CHAIRPERSON GRIFFIS: Was this --

21 MS. HARDY: Absolutely, absolutely not.
22 We have been -- the Board said this matter was of --
23 not in your jurisdiction. On the -- on the disputed
24 parts of land, I have been engaged in a discussion
25 about a swamp and if I consider the swamp unfair, I

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1 have not asked you all to give me anything.

2 MR. NETTLER: Okay. And wasn't -- one of
3 the other things that you had asked for was to have an
4 opportunity to be able to have an easement that gave
5 you the right to utilize our storm water management
6 system and our road system so that you could develop
7 your site with an additional three houses?

8 MS. HARDY: Absolutely not. Again.

9 MR. NETTLER: Are you --

10 MS. HARDY: The record -- no, you point --
11 accuse me of things like this without me answering. I
12 have been engaged in a discussion about the swamp to
13 settle the -- the disputed parcel and in -- in one --
14 in my response that one of their proposal was unfair,
15 Mr. Barnes sent me an e-mail which I am happy to read
16 to you in which Mr. Barnes suggested that the
17 advantages that could be available to me via these
18 connections to your sewer because I am on a septic
19 tank.

20 Here is Mr. Barnes' -- Monday, January the
21 31st. The suggestion of the link to you was -- was
22 Mr. Barnes is pointing out that we can offer you a
23 substantial advantage in that regard by potentially
24 offering you access to our new road and new sanitary
25 sewer on your eastern boundary.

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1 This was not initiated by me. It was a
2 suggestion from Mr. Barnes.

3 MR. NETTLER: And you didn't -- you didn't
4 then follow that up when a draft agreement was
5 prepared requesting that the Applicant make sure that
6 the agreement take into account that you might develop
7 your property with an additional three houses and
8 that's why you requested this action.

9 CHAIRPERSON GRIFFIS: Okay. I don't
10 really see the relevance.

11 MR. NETTLER: Well, I'm going to the
12 credibility of some of the assertions --

13 CHAIRPERSON GRIFFIS: I know, but --

14 MR. NETTLER: -- being made as to whether
15 we're willing to do the things that really are --
16 potentially provide adverse impacts to this property
17 or whether we're dealing with --

18 CHAIRPERSON GRIFFIS: She made one single
19 assertion that she didn't have -- she didn't have
20 substantive belief that the agreements at the point
21 that they are now were enforceable. I don't -- I
22 don't think we need to go into a lot of the
23 substantive --

24 MS. HARDY: He should also point out --

25 MR. NETTLER: Well, she's --

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1 MS. HARDY: -- that I asked for the
2 agreement to be part of the BZA record and that was
3 the part that they did not want to have happen.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. NETTLER: Well, they're -- and with
6 regard to the -- let's deal with some other aspects
7 that you were asked -- that you made comments about
8 with regard to the specific project.

9 You said that the -- let's go back to the
10 -- go to the value issue. Is it your assertion that
11 if these houses are sold for multi-millions of dollars
12 as you're saying that the -- as the Applicants want to
13 do, that that in itself would devalue the -- your
14 property.

15 MS. HARDY: You must not have been
16 listening to me. I talked about the value of my
17 property going down during the period of construction
18 and it was in the context of during the period of
19 construction if I am not given protection against the
20 adverse affects of light, dust, and visual pollution
21 during the period of construction.

22 MR. NETTLER: Okay. So, you're not taking
23 the position that if this application is approved and
24 this project is developed that that will have an
25 adverse impact on your property?

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1 MS. HARDY: I haven't thought that far
2 down the road. My conditions were about during the
3 period of construction.

4 MR. NETTLER: Okay. And you said that as
5 an economist, it is your belief that it was more
6 likely that it would take ten years for these 46 or 33
7 houses which are the subject of this application to be
8 sold. Is that your position?

9 MS. HARDY: I said that as an economist,
10 it's my business to have contingency plan and as a
11 homeowner, I -- the developers told me maybe four
12 years, but as a homeowner, I have to look at the
13 possibility that if that doesn't happen I would be
14 exposed for longer.

15 MR. NETTLER: Okay. So, you're not
16 relying on any economic studies --

17 MS. HARDY: No.

18 MR. NETTLER: -- about the sales of
19 property --

20 MS. HARDY: No.

21 MR. NETTLER: -- or real estate --

22 MS. HARDY: No.

23 MR. NETTLER: -- in the District of
24 Columbia? Okay. And in terms of the construction
25 management plan that you had or the construction plans

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1 of the Applicant to start with construction along W
2 Street, is it your position that you would rather
3 they started construction of the buildings along your
4 property as opposed to the ones along W Street?

5 MS. HARDY: It is not my concern which one
6 you started with. I was simply saying that I -- I --
7 you gave a courtesy to W Street or that's how you
8 presented it. That you were responding to W Street
9 concerns about the same noise, dust, and visual
10 pollution. That's -- at least that's what I was told
11 and that you very kindly agreed to start it there and
12 I was simply saying that I would like a similar
13 courtesy in my case.

14 MR. NETTLER: You have made reference to
15 the trees that you said would be lost on your
16 property. Have you had a tree survey done of your
17 property?

18 MS. HARDY: No.

19 MR. NETTLER: Okay. And have you had a
20 landscape architect or an arborist provide you advice
21 about the -- the plans that have been prepared by the
22 Applicant with regard to the trees on its property?

23 MS. HARDY: I have asked, yes, for advice
24 on -- on the trees on my property. Yes.

25 MR. NETTLER: Okay. Could you give me the

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1 name of the arborist or landscape architect that you
2 utilized for those -- that purpose?

3 MS. HARDY: No.

4 MR. NETTLER: Do you not remember the name
5 of the --

6 MS. HARDY: No, I do remember, but I don't
7 think I want to.

8 MR. NETTLER: Could you direct the
9 Applicant to answer the question?

10 CHAIRPERSON GRIFFIS: She did answer it.
11 You asked her if she'd give you the name and she said
12 no.

13 MR. NETTLER: Did that -- did that
14 arborist or landscape architect produce a report for
15 you?

16 MS. HARDY: No.

17 MR. NETTLER: Did that landscape architect
18 or arborist come onto the Applicant's property at all?

19 MS. HARDY: Absolutely yes.

20 MR. NETTLER: And they did so with -- with
21 the Applicant's knowledge or the property owner's
22 knowledge?

23 MS. HARDY: Do you mean your property?
24 We're talking about mine.

25 MR. NETTLER: No, I'm talking about -- I'm

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1 talking -- I'm talking about the property which is the
2 subject of this application.

3 MS. HARDY: Yes, I mean I'm talking about
4 the trees on the border of my property and -- and the
5 development. Yes.

6 MR. NETTLER: No, I'm talking about the
7 trees on the -- on the property of the Applicants.

8 MS. HARDY: I'm sorry. Could you rephrase
9 your question?

10 MR. NETTLER: I'm asking you -- you said
11 that a -- you had either a landscape architect or some
12 arborist who -- who's name will remain I guess --

13 CHAIRPERSON GRIFFIS: Unknown.

14 MR. NETTLER: -- unknown.

15 MS. HARDY: Yes.

16 MR. NETTLER: And that this person has
17 come onto the property at some point to review the --

18 MS. HARDY: To look at my trees and the
19 likely hard it could -- I could face from your
20 development.

21 MR. NETTLER: And came to --

22 CHAIRPERSON GRIFFIS: The application is
23 this. I think we're getting a little distracted. He
24 wants to know did your consultant, arborist, landscape
25 architect --

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1 MS. HARDY: Yes.

2 CHAIRPERSON GRIFFIS: -- go on their
3 property.

4 MS. HARDY: Well, again the distinction
5 between what is their property please refer to the --
6 the typed sketch on your -- that was submitted to you
7 in 28, but there is no --

8 CHAIRPERSON GRIFFIS: In your
9 understanding --

10 MS. HARDY: -- it must have gone on their
11 property. Yes.

12 CHAIRPERSON GRIFFIS: They must have gone
13 on their property?

14 MS. HARDY: Yes, I would say yes.

15 CHAIRPERSON GRIFFIS: Did you know that
16 they went on their property?

17 MS. HARDY: Yes, I'm fairly certain --

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. HARDY: -- I could stipulate the
20 walking. They went on your property.

21 CHAIRPERSON GRIFFIS: So, they went on the
22 property.

23 MR. NETTLER: Okay. And when did they do
24 this?

25 MS. HARDY: Anytime in the last several

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1 months.

2 MR. NETTLER: You don't know the dates?
3 You weren't --

4 MS. HARDY: No.

5 MR. NETTLER: -- you weren't there when
6 they did this?

7 MS. HARDY: I was there some of the time.

8 MR. NETTLER: Okay. So, was it within --
9 was it January or February?

10 MS. HARDY: It was between January and
11 now. Yes.

12 MR. NETTLER: Okay. And did you have an
13 engineer look at the -- at the grading plan or the --
14 this retaining wall that you --

15 MS. HARDY: I had a friend who is an
16 architect and an engineer look at it. Yes.

17 MR. NETTLER: Okay. And what's the name
18 of that individual?

19 MS. HARDY: I'm not -- I don't -- it's not
20 my business to give it to you.

21 MR. NETTLER: Okay. And did that person
22 tell you that the so-called retaining wall that you
23 referred to as being six feet is on grade as it faces
24 your property?

25 MS. HARDY: Yes.

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1 MR. NETTLER: So, it's not six feet from
2 -- when you look at it from your property. It's not a
3 six-foot retaining wall. Is it?

4 MS. HARDY: I don't know what it -- what
5 it looked -- whether it's six foot when you look at it
6 from my property. It's six-foot tall I was told.

7 MR. NETTLER: Six-foot tall from what
8 vantage point?

9 MS. HARDY: From it's -- it is six-foot
10 tall.

11 MR. NETTLER: But, it's on grade when it -
12 - with regard to the -- where it's located and your
13 property. Isn't it?

14 MS. HARDY: I'm -- I -- your mystifying me
15 as to the relevance of that.

16 MR. NETTLER: Okay. Do you understand
17 whether there's going to be any grading along the
18 property that's adjacent to your lot?

19 MS. HARDY: Yes.

20 MR. NETTLER: Okay. And --

21 MS. HARDY: I understand there's grading.

22 MR. NETTLER: -- and who told you that
23 there's going to be grading along the property?

24 MS. HARDY: I can -- I can read also.
25 I've got your new attachment. I could see that the

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1 road rises from 200 feet to 250 feet.

2 MR. NETTLER: Okay. So, you're an
3 engineer as well as a --

4 MS. HARDY: No, I'm not an engineer, but
5 I'm also not stupid. I can read maps.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. NETTLER: Are you --

8 CHAIRPERSON GRIFFIS: This -- this is --
9 Mr. Nettler, we're taking just a brief moment just to
10 understand the importance of cross examination for the
11 Board's perspective and it is to have very
12 informative, very direct questions which elicit either
13 difficulties in a case presentation or other avenues
14 which need to be explored.

15 It should not be lost that, in fact, all
16 this process, Ms. Hardy and Mr. Nettler, is for the
17 Board's perspective and our understanding.

18 Although Mr. Nettler is asking some
19 perhaps difficult questions, just direct answers back
20 and, in fact, if there's a question that comes up that
21 is not of your understanding, ask for an
22 understanding. If you cannot answer, you say I cannot
23 answer and we move on.

24 MS. HARDY: Fine.

25 CHAIRPERSON GRIFFIS: So, obviously, this

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1 is a most heated point of any case presentation, but
2 it doesn't need to be totally uncomfortable for anyone
3 involved in this. So, why don't we proceed from this
4 point now.

5 MR. NETTLER: Thank you. You said that
6 the road that's on the -- on the Applicant's plans
7 needs to be relocated 50 or 60 feet away from the
8 trees that are indicated on the plan or that are near
9 your property. Was this based on some analysis that
10 was done by an arborist or a landscape architect?

11 MS. HARDY: Those were views that even
12 came in the discussion with Mr. Pitchford. That the
13 poplar trees need a 70-foot root zone area.

14 MR. NETTLER: So, you're saying that Mr.
15 Pitchford --

16 MS. HARDY: No, I'm not saying. See, he's
17 one of the people who said that, too.

18 MR. NETTLER: Okay. So, who said that the
19 road should be located 60 -- 50 or 60 feet away from
20 those trees?

21 MS. HARDY: I said it.

22 MR. NETTLER: But -- and that's based on
23 information you obtained from some landscape architect
24 or arborist?

25 MS. HARDY: And -- and the architect's and

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1 advice I received. Yes.

2 MR. NETTLER: Okay. And they specifically
3 told you that was the amount?

4 MS. HARDY: Yes.

5 MR. NETTLER: Okay. And these are the --
6 those people that you're unwilling to name.

7 MS. HARDY: Correct.

8 MR. NETTLER: Is that correct? Okay.

9 MS. HARDY: They've not given me
10 permission to name them.

11 MR. NETTLER: Okay. And you -- so, you've
12 asked as a condition that the Applicant be required to
13 landscape on your property if it should put up a fence
14 or not between your properties, but you're requesting
15 a fence anyway. But, that should be landscaping
16 placed on your property. Is that correct?

17 MS. HARDY: Yes.

18 MR. NETTLER: Okay. And -- and what's the
19 basis for that landscaping on your property?

20 MS. HARDY: None at all. Just good
21 neighborly stuff.

22 MR. NETTLER: Okay. I don't have any
23 other questions.

24 CHAIRPERSON GRIFFIS: Very well. Does the
25 ANC have any cross?

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1 MS. GATES: Do I give my name again now?

2 CHAIRPERSON GRIFFIS: Sure. Why not?

3 MS. GATES: Elma Gates, ANC-3D. Thank
4 you.

5 I'm -- I just want to be sure I understood
6 what you said, Mrs. Hardy. Did you say the Applicant
7 was or was not willing to put things in writing?

8 MS. HARDY: The Applicant, there was a
9 draft agreement about some of the issues, but they
10 lacked specificity. They were to the extent feasible
11 in general. There wasn't anything that I thought was
12 an enforceable condition, but they also did not want
13 the -- although the agreement preferred it to be about
14 the conditions that I had submitted to the BZA, they
15 did not want the agreement to be part of the BZA
16 record.

17 MS. GATES: And did they explain why?

18 MS. HARDY: No.

19 MS. GATES: At anytime during these
20 discussions, did you feel you were being threatened?

21 CHAIRPERSON GRIFFIS: What's the relevancy
22 of that?

23 MS. GATES: Well, I don't know. I just
24 have a sense. We've heard over and over about how
25 often they've met with the W Street residents.

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1 CHAIRPERSON GRIFFIS: So, there's some
2 unfairness with meeting with all the other residents
3 on W Street?

4 MS. GATES: Well, no, I'm not -- I don't
5 want to say there's unfairness, but --

6 CHAIRPERSON GRIFFIS: Where's the
7 threatening aspect come off?

8 MS. GATES: Well, if -- if they didn't
9 want things put in the BZA record that they agreed to
10 do, I feel that where's the trust here?

11 CHAIRPERSON GRIFFIS: Okay. Understood.
12 Good point. Not necessarily in agreement with you.
13 We have numerous agreements that are done outside of
14 any sort of BZA --

15 MS. GATES: But, we have nothing in
16 writing at this point.

17 CHAIRPERSON GRIFFIS: Okay. Anything
18 else?

19 MS. HARDY: I'd like -- two separate
20 parts. The question that the -- the conditions -- the
21 -- the agreement was purporting to be about the
22 conditions I submitted to the BZA.

23 CHAIRPERSON GRIFFIS: I understand that.

24 MS. HARDY: In which case, I thought it
25 should have been part of the BZA record. On the other

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1 aspect of Ms. Gates' question, I -- I did receive from
2 the contract sellers letters that I interpreted to be
3 threatening.

4 CHAIRPERSON GRIFFIS: Okay. But, I don't
5 want to get into that.

6 MS. HARDY: No.

7 CHAIRPERSON GRIFFIS: Unless you want to
8 produce those letters --

9 MS. GATES: And I -- I don't either.

10 CHAIRPERSON GRIFFIS: -- so that we can
11 have a subsequent hearing on how one was threatened
12 and I don't know what we'd do with that. It just goes
13 well beyond what we're going to be able to deal with
14 here.

15 MS. GATES: As a resident of Foxhall Road,
16 you are aware and you mentioned that Foxhall Road will
17 be upgrade. It's not upgraded, resurfaced, improved
18 for safety reasons starting this spring. If the storm
19 water plan that we saw is put in place, it will
20 require a considerable amount of regrading. Correct?

21 Because at the present time didn't you say the water
22 is running now down --

23 MS. HARDY: No.

24 MS. GATES: -- a culvert next to your
25 house?

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1 MS. HARDY: The -- the water runs and this
2 is evident. The water runs straight down from W
3 Street all the way to White Haven -- the drain at
4 White Haven Parkway.

5 MS. GATES: For -- for clarification --

6 MS. HARDY: Yes.

7 MS. GATES: -- Foxhall Road -- isn't
8 Foxhall Road sitting on the watershed for that area?

9 MS. HARDY: Yes.

10 MS. GATES: So, wouldn't it require sort
11 of a reverse here in the watershed? To get it to go
12 down White Haven instead of in your direction --

13 MS. HARDY: Yes, they would have to
14 design, you know, a grade. I was shown a pipe going
15 down the middle of the road and my -- my only question
16 on it is will they coordinate that with DDOT because
17 of having the -- I would have construction on three
18 sides of me if that is not coordinated since it would
19 take place in the front of my house.

20 MS. GATES: Thank you. And the perimeter
21 fence, you mentioned you wanted a special kind of
22 perimeter fence. The same kind of fence that was
23 agreed to for the W Street neighbors.

24 MS. HARDY: No, the fence that I -- these
25 were the -- what Mr. Visnick, when he was say project

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1 builder, we talked about a fence similar to the fence
2 on the neighboring St. Patrick's property.

3 MS. GATES: Okay.

4 MS. HARDY: The black fence.

5 MS. GATES: Okay. Thank you. I have no
6 more questions.

7 CHAIRPERSON GRIFFIS: Thank you. Other
8 parties in opposition cross? None of the friends?
9 Yes. Concerned citizen.

10 SPEAKER: Mr. Chair.

11 CHAIRPERSON GRIFFIS: Yes.

12 SPEAKER: I don't object. I -- clearly, I
13 thought that there could only be one cross examiner
14 per party. I thought that was the whole --

15 SPEAKER: There is today. We're -- we're
16 the only -- I'm the only one available.

17 SPEAKER: Okay. I -- I thought the rules
18 -- I just want to make sure I understood the rules. I
19 thought the rules were one of consistent -- no, I just
20 want to know --

21 CHAIRPERSON GRIFFIS: That's okay. None
22 of that was on the record. So, nonetheless, let me
23 just put that on the record in terms of the Friends of
24 White Haven were concerned that we're substituting the
25 person that represents their concerned neighbors and

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1 clearly, the intention -- the actual direction and
2 substance of it is the fact that we wouldn't have six
3 people at one time doing cross examination, different
4 topics and expertise, but rather one per party and it
5 seems like we have just one person here. Seems to
6 follow well. There it is. Why don't we have --

7 MR. NEVINS: I'm Louis Nevins with the --
8 some citizens of whatever we're called.

9 I just have one quick question for you,
10 Ms. Hardy. You've -- you've heard a lot of testimony
11 on the -- some of the safety issues and how difficult
12 it's going to be for people entering or trying to get
13 to the entrance that is proposed on Foxhall to look
14 southward and one of the reasons is that -- is the
15 high level of the berm in front of -- of your home.

16 If this developer came to you and said you
17 know, for the -- for the good of the order, we'd like
18 to cut some of that berm down. We'd really like to
19 lower -- lower the hillside and it might mean that you
20 have a little closer look at Foxhall Road, but it's
21 for the good of the order. Would you be inclined to
22 go along with something like that?

23 MS. HARDY: No.

24 MR. NEVINS: No further questions.

25 VICE CHAIRPERSON MILLER: Ms. Hardy. Ms.

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1 Hardy.

2 MS. HARDY: Sorry.

3 VICE CHAIRPERSON MILLER: That's okay. As
4 a follow up, I'm wondering if you would answer why you
5 wouldn't be inclined to do that?

6 MS. HARDY: Well, the long answers and the
7 short one is that construction on three sides of me
8 would be more than I could take. It would be a
9 considerable disruption and it would -- my property
10 apparently runs along Foxhall Road. It would -- there
11 would be loss of trees and I would be more exposed to
12 the light and traffic of Foxhall Road.

13 VICE CHAIRPERSON MILLER: Okay. Thank
14 you.

15 CHAIRPERSON GRIFFIS: Anything else?
16 Follow up for the Board?

17 I've called all the parties and there's no
18 other cross examination from the parties, the ANC, the
19 Applicant. Ms. Hardy.

20 MS. HARDY: Thank you.

21 CHAIRPERSON GRIFFIS: Thank you very much.

22 Let's move ahead then. Who's next? Friends, are we
23 ready?

24 MR. SNAPE: I see, Mr. Chair, that I'm not
25 able to bank the seven minutes that Mrs. Hardy had

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1 remaining.

2 CHAIRPERSON GRIFFIS: You need 27 minutes?

3 MR. SNAPE: I do have one preliminary
4 question on -- on Julie Moore. We are happy to have
5 her be a witness of Friends, but I'm worried that
6 we'll be further condensed with what we thought would
7 be about a 20-minute presentation.

8 Is she able to be a person in opposition
9 on her own or are we past that point? There was some
10 confusion.

11 CHAIRPERSON GRIFFIS: Yes, I gave that big
12 window of opportunity.

13 MR. SNAPE: Well, that was to Mrs. Haas.

14 CHAIRPERSON GRIFFIS: And no one jumped
15 forward.

16 MR. SNAPE: We're flexible. I'm just
17 asking, Mr. Chair.

18 CHAIRPERSON GRIFFIS: Let's just go. Call
19 Ms. Moore if it's part of your case presentation and
20 we'll deal with the time as it comes up with a little
21 bit of flexibility, but not much.

22 MR. SNAPE: Thank you, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Sure.

24 MR. SNAPE: Mr. Chair, Ms. Vice Chair, and
25 the rest of the Board, my name is Bill Snape. I am

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1 counsel for a group called Friends of White Haven.

2 As we have publicly stated several times,
3 the Friends are not opposed outright to this special
4 exception application and could indeed support it with
5 several reasonable conditions.

6 However, over the past several months, the
7 more we have learned about this proposal, the more we
8 have become concerned.

9 We believe regretfully there remains
10 significant outstanding questions that prevent this
11 Board from approving this present application package.

12 I refer you to the Advisory Neighborhood Commission
13 3B conditions that were past just last week that we
14 hardily endorse.

15 As a threshold legal matter, the Friends
16 are seeking protections for both the national park
17 land, White Haven and Glover Archibald and the
18 surrounding community as a neighboring property.

19 Three D.C. regulatory provisions directly
20 before this Board are pertinent here and I will
21 quickly recite them.

22 The first is 11 DCMR 3104 which states
23 that special exceptions must tend not to affect
24 adversely the use of neighboring property, in this
25 case the park land and some of the wetlands that we

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1 will talk about.

2 Second, pursuant to 11 DCMR 25-16-9, the
3 proposed development shall comply with the stand-up
4 provisions of this title and "shall not likely have an
5 adverse affect on the present character and future
6 development of the neighborhood."

7 And, then, third, under 11 DCMR 25-16-10,
8 there are a series of factors and issues that this
9 Board under law is required to consider including the
10 environment relating to water supply, water pollution,
11 soil erosion, and solid waste management. I will
12 return to the water issues in a second.

13 I have three substantive issues that I
14 would like to briefly lay out for you that cause us
15 this concern and then I will hand it over to Kent
16 Slowinski who will talk about some of the more
17 technical aspects of our presentation.

18 As I said several weeks ago, I -- I am
19 just a lawyer.

20 First on trees, we believe that saving 64
21 trees out of at least 252 special --

22 MR. NETTLER: If I might just -- if --

23 CHAIRPERSON GRIFFIS: Mr. Nettler.

24 MR. NETTLER: If he is just a lawyer is he
25 going to be because otherwise I'm going to object --

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1 CHAIRPERSON GRIFFIS: Indeed.

2 MR. NETTLER: -- providing to the Board
3 that this statement is -- is testimony that's going to
4 be provided by his witness or is it testimony that he
5 is being or that -- is it testimony that he's giving
6 regarding trees --

7 CHAIRPERSON GRIFFIS: Good. His question
8 goes directly to are you going to be cross examined on
9 this? Meaning you're providing testimony.

10 So, your statement was taken very
11 seriously in just being a lawyer. Are you laying out
12 the legal argument of which your witness is about
13 adopt and flesh out?

14 MR. SNAPE: I would have no -- the answer
15 is -- well, the answer is that on all technical legal
16 issues like this particularly in the environmental law
17 realm, the facts of the law are integrally related.
18 The issue of migratory birds, the issue of wetland
19 protection have technical components in the law that
20 must be addressed.

21 I would have no problem with Mr. Nettler
22 cross examining both of us to get at the technical
23 aspects or the legal aspects, but there's a very
24 natural interplay between these issues.

25 MR. NETTLER: Well, that's not what I was

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1 asking. The issue is whether the statement that he's
2 making --

3 CHAIRPERSON GRIFFIS: Correct.

4 MR. NETTLER: -- as to facts regarding
5 trees --

6 CHAIRPERSON GRIFFIS: Correct.

7 MR. NETTLER: -- migratory birds and
8 wetlands' issues are statements of fact which this
9 individual is making or statements that he's -- simply
10 a synopsis of what his witness is suppose to be
11 testifying to.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. NETTLER: Because if he's making them
14 and his witness doesn't have -- isn't -- isn't here to
15 testify as to those specific aspects, then I should be
16 able to cross examine him because he's appearing as a
17 witness --

18 CHAIRPERSON GRIFFIS: That was my
19 understanding also.

20 MR. SNAPE: No, I -- I agree with that and
21 I am only going to be talking about facts that are in
22 the record before us and my legal interpretation of
23 those facts. I -- I --

24 MR. NETTLER: So, I then I may able to
25 object anytime he goes beyond merely a legal

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1 interpretation of those facts if that's what the --

2 MR. SNAPE: Certainly as it relates to
3 Bill Snape's testimony. Yes.

4 CHAIRPERSON GRIFFIS: Oh, boy. We're
5 really getting lost here.

6 Are you providing testimony that will be
7 crossed?

8 MR. SNAPE: I'm providing an overview of
9 the legal parameters that I think --

10 CHAIRPERSON GRIFFIS: So, you don't
11 anticipate entertaining cross examination questions?

12 MR. SNAPE: They might in terms of
13 interpretation of facts that are in the record and
14 whether they're in the record or whether they're not
15 in the record and how the facts in the record relate
16 to what I view are legal obligations of the Applicant.

17 MR. NETTLER: Well, let's just deal with
18 the -- in concrete terms. In his first -- he is just
19 about to go into trees. I don't see any legal
20 argument being made here about trees. He's testifying
21 as to what --

22 CHAIRPERSON GRIFFIS: Right.

23 MR. NETTLER: -- is appropriate or not
24 appropriate for -- given the plan that's being
25 presented. Is that he -- is this just a synopsis of

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1 what Mr. Slowinski is going to be testifying about or
2 is this factual information that he is providing?

3 MR. SNAPE: It's factual information that
4 is in the record. For instance on the trees, just if
5 we can give an example and we can see whether there's
6 a -- an objection that will be upheld, it is clear
7 from the tree survey that has been submitted by the
8 Applicant that many of the saved trees border other
9 people's property and that's in the record. You don't
10 need to be an expert to see that.

11 CHAIRPERSON GRIFFIS: So, legal -- it's a
12 legal opinion that neither sufficient nor laudable is
13 64 trees out of 252? Whose testimony is that is the
14 question?

15 MR. SNAPE: That will be something that
16 Mr. Slowinski will address.

17 CHAIRPERSON GRIFFIS: Okay. So --

18 MR. SNAPE: I haven't even had a chance to
19 start yet if you recall, Mr. Chair.

20 CHAIRPERSON GRIFFIS: Absolutely. We like
21 to get all the objections over with --

22 MR. SNAPE: I had a chance to read it
23 before though and it says clearly on -- once we move
24 along --

25 CHAIRPERSON GRIFFIS: I'm clear on what

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1 the objection is and it needs -- and it's sufficient
2 to be clarified and it certainly is -- Mr. Nettler is
3 listening to this case. He's going to need to present
4 it. As far as I understand, you correct me if I'm
5 wrong, your witness is about to adopt all of the
6 testimony that you will summarize as you open.

7 MR. SNAPE: Absolutely.

8 CHAIRPERSON GRIFFIS: And he will be
9 crossed on all of the information that's here.

10 MR. SNAPE: Absolutely. It says on my
11 testimony accompanied by Kent Slowinski. That is why
12 he is here.

13 CHAIRPERSON GRIFFIS: Clear?

14 MR. NETTLER: Okay. So, to the extent
15 that anything is stated here. I just don't want to
16 have it come back to say that objections meet cross
17 examining this witness about these statements simply
18 because they're given by his counsel.

19 CHAIRPERSON GRIFFIS: I could not see
20 after this now having that objection come up.

21 MR. SNAPE: Okay. I wouldn't count on
22 that, Mr. Chair.

23 So, on the trees, just to -- to summarize,
24 on the trees, you can see from the information
25 supplied by the Applicant in the record that many of

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1 the trees they are saving arguably must be saved
2 because they certainly from the record indicate that
3 they're on the border of either of Mrs. Hardy's
4 property or the National Park Service property.

5 Moving on to migratory birds and other
6 wildlife, the concerns we have there. You do not need
7 to be a lawyer to see that there is a fox den on the
8 National Park Service property. Nowhere in the record
9 is the fox den and the health of this fox family
10 discussed. That is a factual issue not in the record
11 or considered by this Applicant.

12 Second, in the application, there's an
13 assertion that the migratory flight path for migratory
14 birds only relates to waterfowl. This is incorrect
15 based upon records that are in the Park Service's
16 position and that I have seen. These include many
17 declining species of birds including warblers,
18 sparrows, wrens, woodpeckers, flycatchers, vireos
19 finches, hawks, and eagles and as I think I mentioned,
20 last time the cerulean warbler particularly is a
21 species that is a candidate for the Federal endangered
22 species list. It has been cited on and around this
23 property according to Park Service records.

24 But, perhaps the most serious problem
25 caused by this development proposal, legal problem

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1 caused by this proposal which relate to both the tree
2 and the wildlife conservation concerns that we have is
3 the fact that there are wetlands of Federal
4 jurisdiction on the Phillips property and on the Park
5 Service property.

6 Nowhere in the record has the Army Corps
7 of Engineers or any D.C. agency indicated what would
8 happen to these wetlands, these accepted wetlands,
9 with the proposal now before this Board.

10 Indeed, all of the U.S. Army Corps
11 documents in the record support the Friends' view that
12 we should be proceeding with extreme caution and, in
13 fact, they are quoted in Tab 4 of the February pre-
14 hearing statement as reminding the Applicant that any
15 grading or filling of waters of the United States
16 including jurisdictional wetlands is subject to
17 authorization.

18 To our knowledge, no such authorization
19 has occurred and indeed conversations I've had with
20 the Army Corps of Engineers and the D.C. Department of
21 Health indicate that they have not been consulted on
22 any aspects of the plan as we now know it.

23 Related to this theme of lack of
24 information for this Board to -- for technical,
25 important information about the health of the wetlands

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1 and the health of the park land, Mr. Parsons I think
2 it was had asked for the preliminary geo-technical
3 engineering report at one of the previous hearings.
4 Well, Mr. Nettler did supply the September 21st, 2004
5 engineering report and it is clear on page seven of
6 this report that additional borings should be drilled
7 once the building location's proposed lowest levels,
8 proposed cuts and fill, and structural loads are
9 available.

10 At the time that this report was done,
11 those things were not available and, therefore, I
12 would argue as a matter of law this report is
13 preliminary and cannot be used to support this
14 development. There is no final report that I am aware
15 of on this central issue.

16 I would urge this Board to hear from the
17 U.S. Army Corps of Engineers or the D.C. Department of
18 Health, the Water Quality Office to understand the
19 impacts of this development -- this proposed
20 development on the Federal wetlands.

21 Mr. Slowinski will talk about the most
22 recent grading plan and our assertion that the
23 Applicant continues either to fight or simply to level
24 the steep grades that mark the natural topography of
25 this property and of the adjacent park land.

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1 Before I hand it over to Mr. Slowinski, I
2 would like to talk about three conditions that the
3 Friends are requesting that this Board adopt in
4 addition to the ANC-3D conditions that we again
5 hardily endorse.

6 One related to additional protection of
7 trees. Mr. Slowinski will address that.

8 Second is the -- wildlife experts who help
9 protect the fox den which we think ought to be
10 addressed since the Applicant has not addressed it at
11 all.

12 And third, to repeat, we really need to
13 hear from the U.S. Army Corps of Engineers and the
14 D.C. Department of Health on this final plan or near
15 final plans as they relate to wetland protection. We
16 have great concerns that we'll not only be violating
17 Federal and D.C. law with regard to this proposal, but
18 that it directly relates to the very factors that
19 you're suppose to be considering as you decide upon
20 this special exception.

21 So, with that, I will hand it over to Mr.
22 Slowinski who will add some details to the overview I
23 have given.

24 Thank you, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Thank you.

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1 MR. SLOWINSKI: Good afternoon. My name
2 is Kent Slowinski. I'm the Chair of the Friends of
3 White Haven. I have 22 years experience as a
4 landscape architect with LDR and Kent Slowinski
5 Landscape Architecture.

6 I grew up in Spring Valley in Wesley
7 Heights and I've lived in the neighborhood and enjoyed
8 the benefits of Glover Archibald Park for 48 years. I
9 live one long block north of the old Phillips estate
10 on Dexter Street.

11 My main concern is that what happens on
12 the Phillips property impacts wetlands on two national
13 parks. The Phillips wetland flows into the adjacent
14 White Haven wetland which flows into Glover Archibald
15 Park wetland as you see on attachment A.

16 Not all known wetlands are documented on
17 the D.C. wetland map.

18 Last Sunday, I walked the site. I -- I
19 had permission from Mr. Vissery to photograph the
20 albino deer. Joining me were ANC Commissioners and a
21 biologist from the Fish and Wildlife Service.

22 We identified a perennial stream in the
23 vicinities of lots A3, A5, and the proposed Foxhall
24 Road entrance approximately 400 feet northwest of the
25 designated wetland. See attachment B.

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1 We estimated the flow to be two gallons
2 per minute. The stream was already tagged as wetland
3 with pink and black striped ribbons.

4 Adjacent to the stream was a stand of
5 willow trees and cattails on approximately one acre of
6 wetland that was not tagged. This western wetland is
7 separate from the eastern wetland which was identified
8 in the pre-hearing statement as possibly being
9 augmented by a broken water line.

10 This western wetland and perennial stream
11 suggest that the eastern wetland might also be a
12 nature wetland fed by a perennial stream.

13 The true extent of wetlands and streams
14 both natural and manmade should be accurately
15 documented and peer reviewed by an independent third
16 party.

17 Steep slopes. On several occasions,
18 representatives for Phillips LLC presented their
19 developing plans to the community. Each time we were
20 reassured that they were working with the existing
21 contours and fitting the roads to the topography.

22 I was especially interested in seeing how
23 they proposed to do this as a quick slope analysis
24 shows that the site is approximately one-third slopes
25 exceeding 20 percent, one-third slopes ten to 20

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1 percent, and one-third slopes less than ten percent.

2 See attachment C.

3 It's a difficult site to develop. Roads
4 on steep slopes require extensive grading which
5 results in extensive tree loss. Extensive tree loss
6 results in increased storm water runoff, erosion, and
7 sedimentation.

8 Approximately 90 or approximately 80
9 percent of the property drains to the wetland which
10 flows onto the White Haven wetland. The wetland
11 serves as a bio-retention basin slowing runoff and
12 filtering sediments and pollutants.

13 As storm water flows are increased, the
14 wetland will dry out or excuse me. If storm water
15 flows are increased, the wetland will erode. As storm
16 water flows are decreased, the wetland will dry out
17 and die.

18 Extensive regrading. When I saw the
19 grading plan with existing contours for the first time
20 just last week, I realized they weren't working with
21 the contours. Instead, they are working the contours.

22 Instead of working with the steep slopes, the
23 proposed solution is to get rid of the steep slopes by
24 regrading most of the site. Approximately ten to 20
25 feet from the W Street area will be excavated and 20

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1 to -- ten to 20 feet of fill will be placed on what
2 might be manmade wetlands.

3 The slope of the southern wetland will be
4 approximately 30 feet high, 300 feet long and more
5 than 30 percent steep. The dimensions are similar to
6 an infamous retaining wall in the neighborhood that
7 many of you are familiar with.

8 Unfortunately, the Phillips site isn't
9 protected by tree and slope overlay.

10 Approximately 80 percent of the site will
11 be regraded. Removing native vegetation from most of
12 the site. See attachment D.

13 Such extensive regrading will increase
14 tree loss, storm water runoff, erosion, and
15 sedimentation. Filling in the wetlands will eliminate
16 the bio-retention benefits, removing sediments and
17 pollutants and reducing storm water runoff.

18 Tree preservation. There are
19 approximately 230 trees per acre on the four acre
20 eastern woodland as stated in the developers pre-
21 hearing statement or approximately 900 trees.

22 This area has steep slopes. Some more
23 than 33 percent.

24 If the intent is to save trees, the last
25 thing you want to do is place a road on steep slopes.

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1 A better alternative is to move the road to the side
2 of the woodland ridge and fit the houses to the slope
3 among the trees.

4 The proposed regarding requires retaining
5 walls some up to 12-feet high. See attachment E.
6 Some of which are built within the tree root
7 protection zones. One and a half feet per inch
8 caliper for poplar. One foot per inch caliper for
9 beech and one-half foot per inch caliper for oak.

10 The proposed cut and fill will likely
11 impact the sensitive poplar and beech roots.

12 One stand of trees on the southwest
13 portion of the site is completely encircled by
14 retaining walls. Many of these retaining walls and
15 the corresponding fill will disturb the root
16 protection zone of trees to be saved. There is no
17 information on these 12-foot high retaining walls such
18 as engineering, footing depth, materials, limits of
19 grading or tree root protection zones.

20 I'm going to skip ahead in the interest of
21 time.

22 Recommendations. With valuable woodland
23 and wetland habitat on this site and wetlands
24 downstream on two adjacent properties and the longest
25 running migratory bird study on the adjacent National

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1 Park, shouldn't we require or at least encourage
2 environmentally sensitive development?

3 The Friends of White Haven are not against
4 development. We're for good development, but all
5 begins with environmentally sensitive site planning
6 and design and as former Interior Secretary Bruce
7 Babbitt said eternal vigilance.

8 I have enclosed some proposed conditions
9 and I thank you for your attention.

10 CHAIRPERSON GRIFFIS: Thank you very much.

11 That's it?

12 MR. SNAPE: The only question I would
13 have, we're done with our testimony --

14 CHAIRPERSON GRIFFIS: You've got plenty --

15 MR. SNAPE: -- relates to the issue of
16 evidence and what's going to be in this record.

17 I would just like to -- I know the normal
18 practice, Mr. Chair, is that the record closes at the
19 end of today because the hearing will be over and I
20 have no idea obviously what this Board will decide
21 with regard with what to do with this application. I
22 would like to suggest, however, given the changing
23 nature of these proposals, the technical nature of
24 these proposals and I think the issues that are now
25 before you that you -- I respectfully ask that you

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1 consider keeping the record open if indeed that will
2 help you make a decision because I think there are
3 some data gaps that might help you.

4 Maybe not. You may -- I may be barking up
5 a tree that you're not at, but --

6 CHAIRPERSON GRIFFIS: No, but you need to
7 be specific. You've mentioned several times the Army
8 Corps of Engineer study or report --

9 MR. SNAPE: Right.

10 CHAIRPERSON GRIFFIS: -- on their review.
11 It is your understanding that that's a requirement
12 that would have to happen based on the different
13 phases of the development plan that goes through?

14 MR. SNAPE: Yes, and -- and particularly
15 in conjunction with D.C. Department of Health. I have
16 been --

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. SNAPE: Yes.

19 CHAIRPERSON GRIFFIS: Do you see them as
20 an authority of which they could change a plan that
21 was submitted to them for review? Do they have
22 approval process?

23 MR. SNAPE: Yes, certainly with regard to
24 a proposal that would fill a wetland under section 404
25 of the Clean Water Act. Yes.

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1 CHAIRPERSON GRIFFIS: So, conceivably,
2 this went forward positively with some iteration from
3 us and it went to the Army Corps, there would be
4 nothing that prohibited them from changing any aspects
5 that we -- we approve.

6 MR. SNAPE: No, but you're at a point -- I
7 mean the -- the Army Corps as I described just this
8 morning tend to be overwhelmed with a lot of these
9 types of disputes and you -- what you're setting up is
10 at that point legal conflict down the road where
11 perhaps you could prevent that train wreck now.

12 It is true that there will be legal
13 options down the road to deal with allegations that
14 wetlands are filled.

15 CHAIRPERSON GRIFFIS: Is there any reason
16 why the Army Corps wouldn't be here now?

17 MR. SNAPE: You know, I don't know. We
18 certainly could have asked them. It was late in the
19 process reading these recent grading plans that we
20 realized the centrality of the stuff they had in the
21 record and that was good up to a point, but that was
22 insufficient for any reasonable person to make a
23 decision.

24 CHAIRPERSON GRIFFIS: Just to be clear to
25 -- perhaps it's a -- you didn't ask them to be a

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1 witness?

2 MR. SNAPE: No, I -- it was this morning
3 and yesterday and I didn't feel as though that was my
4 -- I mean we're -- we're a party to this. We're a
5 private party. It seems to me that as a Government
6 agency -- I mean the people I was talking to, I could
7 not have --

8 CHAIRPERSON GRIFFIS: Sure. I'm not
9 saying it was your responsibility. I just want to
10 clarify --

11 MR. SNAPE: No.

12 CHAIRPERSON GRIFFIS: -- so we don't spend
13 a lot more time on that. Okay. But, are you calling
14 Ms. Moore?

15 MR. SNAPE: Yes.

16 CHAIRPERSON GRIFFIS: Let's do that. You
17 are Julie Moore, the conservation biologist?

18 MS. MOORE: Among other things. Yes. I
19 am Julie Moore.

20 CHAIRPERSON GRIFFIS: The secret witness.

21 MS. MOORE: Yes.

22 CHAIRPERSON GRIFFIS: Excellent. If you
23 wouldn't mind just stating your address for the
24 record.

25 MS. MOORE: I live at 1428 Cedar Avenue,

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1 McLean, Virginia.

2 CHAIRPERSON GRIFFIS: And what would you
3 like to tell us?

4 MS. MOORE: Rather than you all ask me
5 questions? I was asked to look at the site by Ann
6 Haas who's on the --

7 MR. NETTLER: Can I raise an objection?
8 To the extent that she's now going -- without people
9 asking her questions now going to testify essentially
10 what's already been submitted into the record, I think
11 that's inappropriate. She can -- if she's going to be
12 brought as a witness of this party, they can certainly
13 ask her questions, but the redundancy is not -- I
14 don't think it's appropriate here and by being called
15 as a witness, she can certainly be cross examined as
16 to that. But, I don't think giving the same statement
17 that's already been given is appropriate.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. SNAPE: Mr. Chair, there's no
20 independent analysis of the impact of wetlands beyond
21 the parties in this case. That's been one of the
22 fundamental problems of the application package.

23 CHAIRPERSON GRIFFIS: Okay. Which --

24 MR. NETTLER: Absolutely, that's not true,
25 but let's not get into that issue.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. NETTLER: What I'm talking about is --

3 CHAIRPERSON GRIFFIS: Let's reach this
4 thing and rather be redundant of you having to repeat
5 everything that we have in already and -- and frankly,
6 in terms of page four of the submission of the case
7 presentation, do you -- is it your reasonable
8 recommendation is to lay roads that fit the
9 topography; two, to reduce the lot sizes to save
10 valuable wetlands; three, preserve more trees and
11 groves; and four, to save certain percentages of
12 native vegetation on each lot?

13 MS. MOORE: That was a summary of the
14 recommendations I made at looking at the site. We
15 discussed wetlands here today a good bit. I mapped
16 all of eastern North Carolina wetlands in the mid-
17 '80s. I feel that I'm qualified to address what's a
18 wetland and what isn't and some of the questions that
19 have been asked today I think the recommendations I
20 was making were to help protect those wetlands.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. MOORE: That was the point. Was it
23 wasn't for aesthetic reasons or any other reasons. It
24 was because there were features on this site that were
25 both hard to interpret and also very fragile.

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1 That these recommendations were made in
2 regard particularly to the wetland situation and the
3 fact that that's a very complicated site both due to
4 past land use and also to the unusual drainage
5 patterns in that property.

6 Surprisingly enough, there are a number of
7 springs on that property that generate a tremendous of
8 water in addition to the broken mains that at one time
9 were pumping water through the area.

10 CHAIRPERSON GRIFFIS: You walked the site
11 on this photographic journey of albino deer?

12 MS. MOORE: I walked this site in December
13 with Ted Visnick the first time and then yesterday --
14 whenever that was looking for the deer, we were there,
15 too.

16 CHAIRPERSON GRIFFIS: Okay. And so, you
17 helped identify some of these wetlands that have now
18 been discussed?

19 MS. MOORE: I identified them in December.
20 I looked at them again. I also studied the aerial
21 photo and topographic maps.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. MOORE: And you may ask what my
24 interest is in this and it's purely as --

25 CHAIRPERSON GRIFFIS: Okay. Let's ask

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1 that. Good question, Ms. Miller.

2 VICE CHAIRPERSON MILLER: What's your
3 interest?

4 MS. MOORE: Moore. Moore is my name.

5 CHAIRPERSON GRIFFIS: No, I was giving my
6 Vice Chair credit for the good question.

7 MS. MOORE: I was asked initially to
8 identify trees. I am in a botanist. I have a
9 Master's Degree in Botany. I've taught extensively.
10 I've also worked for the Corps of Engineers. I now
11 work for the Fish and Wildlife Service in regard to a
12 very different part of --

13 CHAIRPERSON GRIFFIS: So, it's your job
14 why you care about these --

15 MS. MOORE: No, this is not -- this is not
16 my job. That's why I'm trying to clarify. This was
17 made by outside expertise and past experience. It was
18 not part of my work with the U.S. Fish and Wildlife
19 Service which is restricted to voluntary agreements
20 for private landowners with endangered species, but it
21 does relate to my former occupations.

22 CHAIRPERSON GRIFFIS: Okay. How did you
23 get called in from McLean, you said you lived?

24 MS. MOORE: I guess I work with one of
25 your members of the Advisory Neighborhood Commission

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1 who knew I could identify trees.

2 CHAIRPERSON GRIFFIS: I see.

3 MS. MOORE: I can also measure them and
4 estimate ages pretty well, too.

5 CHAIRPERSON GRIFFIS: What about
6 horoscopes? No, wait a minute.

7 MS. MOORE: Palms.

8 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
9 question.

10 VICE CHAIRPERSON MILLER: So, do you have
11 expertise with respect to the impact of the
12 development on the deer, the foxes, the migratory
13 birds or just -- or just the trees?

14 MS. MOORE: No, I can address all those
15 issues.

16 VICE CHAIRPERSON MILLER: Okay. If the
17 Applicant were to do a site plan in accordance with
18 your four recommendations, what would the difference
19 be with respect to that impact than from the way the
20 plan is now to the way it would be with your four
21 recommendations?

22 MS. MOORE: The recommendations were made
23 to minimize disturbance to the site. Disturbances
24 aren't only just for the wetlands. You've heard the
25 fact that the site will be graded and that less than I

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1 think it was 20 percent of the site -- ten percent of
2 the site will be left with its natural topography.
3 That's a pretty serious change.

4 Part of the property along the northern
5 boundary down to the bottom, it's a bowl as one of
6 your former witnesses said. So, the tremendous amount
7 of earth moving that will take place on this site is
8 probably not like anything else that's ever happened
9 in that neighborhood and that earth moving is what
10 needs to be minimized because the earth moving is not
11 only what traumatizes the neighbors when it happens
12 because it will be an extensive change in the
13 topography. Probably with some blasting going on also
14 for the subterranean rock material. So, you have that
15 earth moving which then impacts the wetlands and the
16 whole slopes and -- and actually --

17 CHAIRPERSON GRIFFIS: But, I think Ms.
18 Miller's direct question is so, you've got the plan
19 proposed. You're saying that there's problems with
20 what they're proposing.

21 MS. MOORE: I'm saying to minimize --

22 CHAIRPERSON GRIFFIS: Do you have anyway
23 of actually looking at the plan and giving some
24 indication of how they could change their physical
25 development plan?

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1 I'll tell you we understand. Don't remove
2 some earth.

3 MS. MOORE: Yes, I could.

4 CHAIRPERSON GRIFFIS: Don't -- okay.
5 Good. What is it?

6 MS. MOORE: Work with the topography.
7 Work with the wetlands. Use them an amenities.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. MOORE: It's a beautiful site. I
10 don't know if any of you all have been there, but it
11 really is a dramatic piece of property.

12 CHAIRPERSON GRIFFIS: Indeed. Okay.

13 VICE CHAIRPERSON MILLER: So, basically, I
14 hear you saying it would be much better if you -- if
15 you did it this way, but you're not really quantifying
16 that specifically like so many more birds would --

17 MS. MOORE: I haven't been asked to do
18 that, but I probably could.

19 VICE CHAIRPERSON MILLER: Okay. And then
20 I -- other --

21 CHAIRPERSON GRIFFIS: Wait a minute. You
22 could estimate how many birds would be impacted if
23 this development went through?

24 MS. MOORE: No, but you estimate the
25 existing forest cover and you -- then you estimate the

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1 removal of that forest cover and from that, you can
2 predict to some extent what the changing patterns will
3 -- use by that area will be.

4 It's not so much there will be three of
5 this less and four of that, but if you do remove some
6 of the trees, particularly, used by the nesting birds,
7 you can pretty well figure out that you've lost that
8 number.

9 CHAIRPERSON GRIFFIS: How many acres are
10 in this site?

11 MS. MOORE: Sixteen.

12 CHAIRPERSON GRIFFIS: How many acres are
13 adjacent that are wooded?

14 MS. MOORE: You have a -- two park strips,
15 one directly beneath to the south, and then the major
16 part, but the areas used currently is the issue by
17 these species. You're not anticipating they'll be
18 there. They will be displaced.

19 CHAIRPERSON GRIFFIS: Right.

20 MS. MOORE: And when they move into the
21 adjacent land, they will be in competition with the
22 species that are already there.

23 CHAIRPERSON GRIFFIS: Okay. So, we're at
24 full density for species in the wooded areas? Is that
25 right?

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1 MS. MOORE: Pretty much. Yes.

2 CHAIRPERSON GRIFFIS: Wow. That's a
3 concern. Okay.

4 MS. MOORE: Their displacement.

5 VICE CHAIRPERSON MILLER: You also make
6 the statement about laying the roads so that they fit
7 with the topography. Have you seen any plan of a road
8 layout like that that you would recommend instead of
9 the road layout that's before us?

10 MS. MOORE: Do you mean for this specific
11 property or for other properties?

12 VICE CHAIRPERSON MILLER: For this
13 property.

14 MS. MOORE: I have seen one or two
15 suggested layouts that were just based on that very
16 premise that was addressed. That was -- I actually
17 took the development plans myself and drew them on top
18 of the existing topography to see what the impacts
19 were. That now has been produced and shared with
20 people, but to me, that was how I analyzed what the
21 issues were by looking at the situation and so, I -- I
22 think that there are good plans that can be made for
23 this property.

24 There's one that was proposed, but other
25 ones could be proposed based on the fact you put your

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1 existing topographic map and then you work your road
2 system on top of that rather than vice versa.

3 Because what happens if you plan your
4 development and then put the topography, then you got
5 to change the topography and that's when the earth
6 moving comes in.

7 VICE CHAIRPERSON MILLER: Yes, I
8 understand that. Okay.

9 MS. MOORE: Okay.

10 VICE CHAIRPERSON MILLER: But, no one has
11 put that in the record as far as you --

12 MS. MOORE: I don't know if it's in the
13 record.

14 VICE CHAIRPERSON MILLER: As a proposal.

15 MS. MOORE: I've -- I've seen one that
16 this gentleman has developed, but I'm sure other ones
17 could be developed, too. It's -- it's quite possible.

18 This is a very nice plan that leaves some wetlands
19 protected and gives public open space to the
20 community.

21 This is going to be a very nice
22 neighborhood and if I was living there, it would be
23 great to have some space where you could walk both
24 with your children and your animals or just walk and
25 it -- within the community and not just on the roads

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1 between the houses.

2 MR. SNAPE: It's one of the -- one of the
3 attachments to Mr. Slowinski's testimony is an example
4 of an alternative.

5 VICE CHAIRPERSON MILLER: It's an example,
6 but it's not something specifically --

7 MR. SNAPE: Attachment G.

8 VICE CHAIRPERSON MILLER: -- you're
9 proposing.

10 MR. SNAPE: No, it's our proposal, but
11 it's -- it's more -- the reason I'm hesitating is
12 because we actually had an earlier dialogue with the
13 Applicant about this. We were told that that was not
14 feasible for a variety of reasons and -- and I'm
15 trying to be humble and realize there may be other
16 considerations, but this is an example of something
17 that we would put forth that would be ecologically
18 consistent with the topography. I'm not claiming
19 that's the only one and I'm just pointing that out.

20 But, it -- this proposal does what the
21 current proposal doesn't. It works with the
22 topography. That -- that is our point in issue. It
23 can be done.

24 MS. MOORE: And also protects the wetlands
25 rather than filling wetlands.

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1 VICE CHAIRPERSON MILLER: Right.

2 CHAIRPERSON GRIFFIS: Okay. It opens up
3 44th Street. Connects it into a cul-de-sac.
4 Essentially a turnaround in the center of the site.
5 It exists two -- twice onto W Street. Once onto
6 Foxhall Road. Is that correct?

7 MS. MOORE: Yes, that's the way it --

8 MR. SLOWINSKI: That's correct. 44th
9 Street is an abandoned right-of-way.

10 CHAIRPERSON GRIFFIS: Yes, I know.

11 MR. SLOWINSKI: There are piles of
12 concrete rubble.

13 CHAIRPERSON GRIFFIS: Right. The Park
14 Service representative talked a lot about what it was.

15 MR. SLOWINSKI: One of the principles of
16 environmentally sensitive development is to restore
17 impacted areas and if there is an issue with the
18 height of the houses on W Street, that area could be
19 excavated and that fill could be used to raise the
20 grade on the abandoned 44th Street right-of-way just
21 on the -- just on the owners property.

22 My understanding is that half of the
23 right-of-way would -- if it's transferred out of the
24 D.C. Government, half of it would go to the adjacent
25 property owners. So, the Park Service would get half

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1 and Phillips LLC would get the other half.

2 So, that road could be put on the Phillips
3 LLC half and they could restore the area, build it up.

4 Building it up would mean that -- cutting into the
5 bank side access to the driveways on that houses that
6 front on Glover Archibald Park would -- would be
7 minimized.

8 In addition to reducing the fill there,
9 they could have shared driveways. Two -- two
10 properties share the same driveway. So, there again
11 minimizing the impact.

12 CHAIRPERSON GRIFFIS: They do that?

13 MR. SLOWINSKI: This is -- this is one --

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. SLOWINSKI: -- one -- one of the ways
16 to get --

17 CHAIRPERSON GRIFFIS: Understood.

18 MR. SLOWINSKI: -- access to the lower
19 part of the site and avoiding the steep slopes.

20 CHAIRPERSON GRIFFIS: Good. Okay. Any
21 other questions?

22 VICE CHAIRPERSON MILLER: Oh, one more and
23 I don't know who wants to answer this, but it's in Mr.
24 Snape's testimony that the property has over a hundred
25 different birds species and I'm wondering what's the

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1 source for that?

2 MR. SNAPE: The source is data that's in
3 the Park Service files. Fifty years of data from the
4 Rachel Carson Society. Shirley Briggs who just
5 recently passed away married the Imperia who's
6 actually still alive. They kept files, incredible
7 files of bird sightings, fall, winter, summer and they
8 -- they note all of the species that have been
9 observed.

10 One of the -- a lot of them are in Glover
11 Archibald Park. One of them -- one of the sites
12 though that they observed and that was a regular
13 checking was point was right at the intersection of
14 the White Haven National Park, the Glover Archibald
15 Park, and the Phillips property. That was one of
16 their locations that they would look for birds and
17 that's -- I'm basing it from that.

18 VICE CHAIRPERSON MILLER: Okay. Thank
19 you.

20 CHAIRPERSON GRIFFIS: Any other questions?
21 Yes, Mr. Parsons.

22 MEMBER PARSONS: Mr. Snape, you -- you
23 speak of a fox den that is to the southeast of this
24 subject property. Where is that? Whose property is
25 that one?

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1 MR. SNAPE: It's on the Park Service's
2 line, Mr. Parsons.

3 MEMBER PARSONS: What would you have the
4 Applicant do?

5 MR. SNAPE: You know, I honestly don't
6 know. I am just a lawyer, but it was not mentioned.

7 The fox den -- I mean this is a carnivore
8 It's a -- it's a canid and I know that canids can be
9 displayed sometimes in this type of development. I
10 would just like some independent -- since the
11 Applicant has not mentioned the fox den in his -- in
12 the wildlife impacts, I would like just an independent
13 consultant scientific expert maybe even Ms. Moore to
14 -- to take a look at what things could be done to make
15 sure that fox then survives.

16 But, I -- I have no specifics except that
17 it wasn't in the Applicant's -- wasn't mentioned in
18 the Applicant's application.

19 MEMBER PARSONS: Thank you. Mr.
20 Slowinski, find your alternative site plan attachment
21 G, now are there -- are there substantive trees in
22 this Glover Archibald right-of-right or the 44th
23 Street right-of-way that would have to be removed?
24 That's why I'm asking.

25 MR. SLOWINSKI: The -- the -- go on.

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1 MS. MOORE: If I may answer that for him
2 because I did look at that very carefully, there was
3 an old roadway cut through there perhaps maybe 75
4 years ago. I don't know how old. Older trees are
5 along the edge and in the center, there are some
6 younger small diameter trees that have filled in what
7 had been the cutout area.

8 The older trees are on the edges rather
9 than in the middle of the road because that roadway is
10 much younger than the other area.

11 So, you asked if it's a substantial number
12 of trees there. Certainly, there is a number of small
13 diameter trees, but not many things -- I would say
14 very few trees over maybe five, maybe six inches in
15 diameter from my close look at the area.

16 Because it -- it was at one time
17 completely open as a roadway fairly recently.

18 MEMBER PARSONS: Open?

19 MS. MOORE: Um-hum.

20 MEMBER PARSONS: You mean paved?

21 MS. MOORE: Yes, there -- there are places
22 where there is concrete there that shows at one time
23 it was paved slightly below W Street and you can also
24 see -- if you walk in there, you can see a variety of
25 rocks and bricks that were thrown in that area. So,

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1 it may not have been all paved, but they did open it
2 -- they did make it -- a corridor was made in there
3 for the street, at one time cleared for a street.

4 But, it -- because it has some natural
5 soils in there, adjacent trees have seeded into it.
6 So, it was a fairly wide passageway through that --
7 through that area. You could easily put an existing
8 road through there now.

9 MEMBER PARSONS: You may be straying a
10 little bit from your expertise.

11 MS. MOORE: But, not size of trees.

12 MEMBER PARSONS: Let me go back to Mr.
13 Slowinski.

14 MS. MOORE: I'm sorry.

15 MEMBER PARSONS: And how wide --

16 MR. SLOWINSKI: Well, it was definitely
17 paved. It was regraded for a road. It's a -- it's a
18 uniform slope from the end of W Street down to the --
19 the White Haven wetland.

20 MEMBER PARSONS: So, how wide would this
21 road need to be under code? I don't -- I don't know
22 the answer to do. Do you?

23 MR. SLOWINSKI: I believe code is -- is it
24 24 or 26 feet?

25 MEMBER PARSONS: Don't ask me. I just

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1 wondered if you knew.

2 MR. SLOWINSKI: The right-of-way is 80 --

3 MEMBER PARSONS: I don't.

4 MR. SLOWINSKI: -- the right-of-way is 80
5 feet. So, half of that would be 40. So, I think you
6 have enough room to work a road in there.

7 MEMBER PARSONS: I see. So -- so, what
8 this -- this proposal would do I guess is to sacrifice
9 some of the trees along Glover Archibald in the tree
10 protection area that we identified earlier.

11 In other words, they already got these
12 smaller lots, 14, 15, 16, 17. We're going to have to
13 sacrifice some trees.

14 MR. SLOWINSKI: No, this would not
15 sacrifice any of those trees. You'd -- you'd
16 sacrifice some of the trees that are --

17 MEMBER PARSONS: You have to.

18 MR. SLOWINSKI: -- 44th Street right-of-
19 way.

20 MEMBER PARSONS: No, on lot 15 for
21 instance --

22 MR. SLOWINSKI: Okay.

23 MEMBER PARSONS: -- one of the major
24 preservation sets of trees that's proposed by the
25 Applicant would be impacted. So, if there's a

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1 driveway coming off of your new road to get into the
2 house, I'm presuming they would be sacrificed and I'm
3 not criticizing that. In other words, what you're
4 doing is saving what? A third of the property with --
5 with no lots on it to save the wetlands and other tree
6 preservation zones, but you're willing to sacrifice --
7 the result would be, not you're willing, I don't want
8 to personalize this. The result would be you would
9 lose those trees along Glover Archibald Park most
10 likely.

11 MR. SLOWINSKI: You'd lose some trees
12 before. Fewer trees than if you put a road along the
13 woodland branch.

14 MEMBER PARSONS: Yes, I understand.

15 MR. SLOWINSKI: Okay.

16 MEMBER PARSONS: I just wanted to --
17 because a major portion of those preservation --
18 preserved trees by the Applicant I think would be lost
19 under your scheme.

20 MR. SLOWINSKI: Suppose --

21 MEMBER PARSONS: Why is this road
22 necessary that goes between the -- the wetland
23 conservation area? It's the Loop Road. Why would you
24 need to drive through a -- the wetland there at all?
25 Because for fire access, a turnaround or -- or -- I

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1 mean it looks like a road through the wetland that
2 isn't necessary or between the wetlands.

3 MR. SLOWINSKI: You mean the southern part
4 of that loop?

5 MEMBER PARSONS: Thank you for helping me
6 do --

7 MR. SLOWINSKI: Yes

8 MEMBER PARSONS: -- that. Yes.

9 MR. SLOWINSKI: That's actually a road
10 that was rough graded back in the '80s by -- by John
11 Dregs.

12 MEMBER PARSONS: The Dregs Road. That's
13 shown on another exhibit. So --

14 MR. SLOWINSKI: Right.

15 MEMBER PARSONS: -- it exists --

16 MR. SLOWINSKI: It exists.

17 MEMBER PARSONS: And --

18 MR. SLOWINSKI: And it exists in the
19 field. It doesn't exist on the topographic map. As
20 there is approximately six to ten feet of fill north
21 of the wetland, but it doesn't show up on their
22 existing conditions.

23 MEMBER PARSONS: So -- so, you did this in
24 order to avoid cul-de-sac or -- or some other device
25 that would be required?

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1 MR. SLOWINSKI: Well, it would make sense
2 to provide easy access to the homes on the northern
3 part of the site and a cul-de-sac takes up space. It
4 takes -- I think it requires a 60-foot diameter.

5 MEMBER PARSONS: Yes.

6 MR. SLOWINSKI: So, a road would be less
7 impact and you already have the fill on the site. So,
8 it makes sense to continue the loop.

9 MEMBER PARSONS: If you -- makes sense.
10 Have you shared this with the Applicant?

11 MR. SLOWINSKI: I -- I shared a previous
12 version of this that I had drawn up before. I walked
13 the site before I realized that the central portion of
14 the site could, in fact, be man-made or natural
15 wetlands. Actually, I -- I drew this up last night.

16 MEMBER PARSONS: Ah, so, it's a little
17 fresh?

18 MR. SLOWINSKI: Yes.

19 MEMBER PARSONS: I'm just curious about
20 that little pipe stem thing going on up there at W and
21 Foxhall. What -- what -- what happened there between
22 four and five? Just --

23 MR. SLOWINSKI: That's -- that's one of
24 the features that the developers included.

25 MEMBER PARSONS: I see. Okay.

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1 MR. SLOWINSKI: Didn't want to rule it
2 out.

3 MEMBER PARSONS: A little plagiarism
4 there. MR. SNAPE: Comedy.

5 CHAIRPERSON GRIFFIS: Any other questions?
6 No.

7 MEMBER PARSONS: Wait. I did have one
8 question of Mr. Snape because he didn't read this
9 statement, but it's pretty -- pretty direct.

10 It has to do with wetlands. It's on page
11 three and it says "Perhaps the most serious problems
12 caused by this development proposal an issue
13 enteralgia which impacts both tree and wildlife
14 conservation is the high probability if not certainty
15 that the federally identified wetlands in Park Service
16 land and Phillips property will be irreversibly
17 damaged or destroyed."

18 Now, that's pretty close to expert
19 testimony. Where does that come from? As a lawyer,
20 where did you -- how did you come to that conclusion?

21 MR. SNAPE: That's a very good question
22 and I'm probably not expert to -- to make that
23 assertion by itself, but where it came from was
24 twofold. One, was the fact that the current plan
25 actually has development on the wetlands. That -- so,

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1 I, not to be glib, but it doesn't take a rocket
2 scientist to figure out that if the development is on
3 the wetland, it will be filled. That was how I got to
4 the Phillips property conclusion and I consulted with
5 Mr. Slowinski on that as well and he agreed with that
6 basic conclusion although perhaps he would word it
7 differently.

8 On the park land where I think the impacts
9 are admittedly more indirect, I based it on the fact
10 that there are tremendous amounts of fill being added
11 and sometimes as high as 30 feet as I understand it,
12 certainly 20 feet in a lot of areas, without any
13 assurance that -- that there would not be erosion and
14 runoff.

15 And so, that -- those two -- to me it was
16 -- and -- and my ultimate point in the recommendations
17 as you know the directness of that statement aside is
18 why isn't the Army Corps of Engineers and the D.C.
19 Department of Health making that determination. That
20 was my way of prodding perhaps too directly an expert
21 to actually make that determination, but I -- it seems
22 to me it's fairly clear that there's a huge concern on
23 that level.

24 MEMBER PARSONS: Thank you.

25 MR. SNAPE: That's my long winded answer.

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1 CHAIRPERSON GRIFFIS: Good. Anything else
2 from the Board? Mr. Nettler?

3 MR. NETTLER: If I could just to follow up
4 on Mr. Parsons' last question since it was directed to
5 Mr. Snape, Mr. Snape, when you keep on saying that the
6 Applicant is grading or filling or developing
7 wetlands, you're not talking about the wetlands that
8 are delineated by the Corps of Engineers. You're
9 talking about a wetlands area that the Corps of
10 Engineers has already determined is not a natural
11 wetlands. Aren't you?

12 MR. SNAPE: I honestly don't know. I
13 think it would be better to have Mr. Slowinski answer
14 that.

15 MR. NETTLER: Well, but you just responded
16 to Mr. Parsons. You're -- you're -- so, your response
17 to Mr. Parsons was based on what Mr. Slowinski told
18 you?

19 MR. SNAPE: It's my understanding that the
20 development as it's now planned is directly on
21 jurisdictional waters that the Army Corps of Engineers
22 has identified and in my conversation this morning
23 with George Harrison of the U.S. Army Corps of
24 Engineers, I -- I believed him to say that that was
25 true and that was confirmed that there was an issue as

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1 it related to that identified jurisdiction wetland.
2 Yes.

3 MR. NETTLER: Mr. Slowinski, is there --
4 is that true that there is -- that on the plan that
5 you're -- that you looked at that's proposed by the
6 Applicant there is either grading or development on
7 what's been determined by the Corps of Engineers
8 already to be the jurisdictional wetlands?

9 MR. SLOWINSKI: Based on the pink and
10 black striped ribbons that we saw on the site on
11 Sunday --

12 MR. NETTLER: No, I'm asking you about the
13 plans that have been filed. Does that show any
14 development, grading or otherwise, in the
15 jurisdictional wetlands? Not about ribbons.

16 MR. SLOWINSKI: Jurisdictional --

17 MR. NETTLER: Wetlands that the Corps of
18 Engineers --

19 MR. SLOWINSKI: -- wetlands --

20 MR. NETTLER: -- has determined to be
21 jurisdictional wetlands?

22 MR. SLOWINSKI: As -- as on the plans
23 submitted, no.

24 MR. NETTLER: No. Okay. So, there is no
25 -- so, and we do have a Corps of Engineers

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1 determination. Is it your position that the Corps of
2 -- Mr. Slowinski, it is your position that the Corps
3 of Engineers determination is not an independent
4 determination?

5 MR. SLOWINSKI: I -- I do not know.

6 MR. NETTLER: You don't know whether the
7 Corps of Engineers has been -- is -- is working for
8 the Applicant or somebody else. Is that what you
9 mean?

10 MR. SLOWINSKI: It may be independent, but
11 it may not be accurate.

12 MR. NETTLER: But, so far, that's the only
13 other determination that's been made with regard to
14 what's jurisdictional wetlands and what isn't
15 jurisdictional wetlands. Is that correct?

16 MR. SLOWINSKI: I'm not sure I understand
17 your question.

18 MR. NETTLER: Well, who else have the
19 authority to determine what are jurisdictional
20 wetlands?

21 MR. SLOWINSKI: The D.C. Department of
22 Environmental Health.

23 MR. NETTLER: Okay. And do you know
24 whether the D.C. Department of Environmental Health
25 has -- has determined? You -- you were here when they

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1 testified at the hearing the last time. Did they
2 testify any differently than the Corps of Engineers?

3 MR. SLOWINSKI: I -- I don't recall.

4 MR. NETTLER: Okay.

5 MR. SLOWINSKI: Um --

6 MR. NETTLER: That's all right. Thank
7 you.

8 MR. SNAPE: Well, I -- I'll answer that.

9 MR. NETTLER: No, that's -- the question's
10 not pending towards you. You're not a witness on this
11 -- on --

12 MR. SNAPE: But, it's a leading -- then I
13 object. It's a leading question and it leads to a
14 conclusion that's incorrect.

15 MR. NETTLER: Well, it's been asked. It's
16 been asked and answered already.

17 CHAIRPERSON GRIFFIS: Let's move on.

18 MR. SNAPE: Hold on. I want to make a
19 point to the Chair, Mr. Nettler.

20 First of all, we have two expert witnesses
21 here who have similar but not identical areas of -- of
22 expertise. I don't believe Ms. Moore was able to
23 answer that last question.

24 CHAIRPERSON GRIFFIS: That's right.

25 MR. NETTLER: Well, I didn't ask Ms. Moore

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1 that question.

2 MR. SNAPE: Okay.

3 MR. NETTLER: Well, get to Ms. Moore.

4 Mr. Slowinski, let me ask you. You're --
5 you're a landscape architect. Correct?

6 MR. SLOWINSKI: Yes.

7 MR. NETTLER: You're not a civil engineer.
8 Correct?

9 MR. SLOWINSKI: Correct.

10 MR. NETTLER: You're not a land planner?

11 MR. SLOWINSKI: I do some land planning in
12 my career.

13 MR. NETTLER: Okay. Do you do some land
14 planning in the District of Columbia?

15 MR. SLOWINSKI: Yes, I do.

16 MR. NETTLER: Okay. You're familiar with
17 the zoning regulations?

18 MR. SLOWINSKI: Yes, I am.

19 MR. NETTLER: Okay. The lots that you
20 have set out on Exhibit G to your testimony, have you
21 calculated the front yard/rear yard setbacks that are
22 required for those lots?

23 MR. SLOWINSKI: No, I haven't. This is
24 something that I drew up as a concept to show that
25 there are environmentally sensitive development

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1 alternatives.

2 The -- the lots do approximate the
3 required square footage and minimum width of lots.

4 MR. NETTLER: And what is -- a lot of them
5 are 7500 square foot lots. Is that correct?

6 MR. SLOWINSKI: Minimum. Yes.

7 MR. NETTLER: Okay. As opposed to the --
8 to the average 11,000 square foot lots that the
9 Applicant is proposing?

10 MR. SLOWINSKI: Correct.

11 MR. NETTLER: Okay. So, these are smaller
12 lots and this wetland conservation easement area that
13 you have in the center of this, this is not a -- this
14 is not part of the jurisdictional wetlands that the
15 Corps of Engineers has determined to be wetlands.
16 Correct?

17 MR. SLOWINSKI: Correct.

18 MR. NETTLER: Okay. And the wetland
19 conservation easement area that you have running
20 against White Haven Park, Ms. Hardy's property, Glover
21 Archibald Park, that's beyond the -- the area that the
22 Corps of Engineers has determined to be the
23 jurisdictional wetlands as well. Isn't it?

24 MR. SLOWINSKI: Correct.

25 MR. NETTLER: Okay. The -- let me ask you

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1 one other question about this -- this plan. You have
2 on here this road as Mr. Parsons pointed out that was
3 running along what is presently known as 44th Street
4 and you've testified that it's your understanding that
5 this was once a paved road?

6 MR. SLOWINSKI: It was regraded for a
7 road. Whether -- whether or not it was paved, it's --
8 it's -- I'm unable to determined. There are --

9 MR. NETTLER: Did you ever -- did you ever
10 consult the District of Columbia's either their
11 surveyor's office, Department of Transfers --
12 Department of Transportation records to determine
13 whether, in fact, this was ever graded as a road or
14 ever used as a road?

15 MR. SLOWINSKI: Just by visual inspection,
16 you can see it was regraded for a road.

17 MR. NETTLER: Okay. You're not a traffic
18 engineer also. Are you?

19 MR. SLOWINSKI: No.

20 MR. NETTLER: Okay. You're not a civil
21 engineer. Are you?

22 MR. SLOWINSKI: No, I'm not.

23 MR. NETTLER: Okay. And you're not an
24 environmental scientist. Right?

25 MR. SLOWINSKI: I'm a landscape architect.

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1 MR. NETTLER: Just a landscape architect.
2 Okay. Now, with regard to the road that you have
3 running through the top portion of the property, does
4 that one line up with the area that was -- does that
5 line up with the ingress and egress that the present
6 road is on the plan that is prepared by the Applicant?

7 MR. SLOWINSKI: Yes, it does.

8 MR. NETTLER: Okay. And this -- this plan
9 as well would require a fair amount of grading.
10 Wouldn't it?

11 MR. SLOWINSKI: Not as much as what has
12 been proposed --

13 MR. NETTLER: Have you done the
14 calculations as to how much grading would be required?

15 MR. SLOWINSKI: I am a landscape
16 architect. I can eyeball.

17 MR. NETTLER: You can eyeball, but you
18 don't have any calculations as to the amount of
19 grading?

20 MR. SLOWINSKI: That's correct.

21 MR. NETTLER: Okay. And do you have any
22 calculations as to the amount of fill that this would
23 require?

24 MR. SLOWINSKI: No, I don't.

25 MR. NETTLER: Okay. Do you know whether

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1 Colony Hill, Spring Valley, and Wesley Heights have
2 all been similarly graded as this plan -- the plan the
3 Applicant is providing for on this site?

4 MR. SLOWINSKI: I know that an effort was
5 made in Spring Valley and Wesley Heights to preserve
6 trees and to lay the roads to fit the topography.

7 MR. NETTLER: Right.

8 MR. SLOWINSKI: And this plan is more in
9 line than what the -- has been proposed.

10 MR. NETTLER: Okay. But, in terms of the
11 grading that was done in Spring Valley and Wesley
12 Heights and Colony Hill which served as a backdrop for
13 the Applicant's plan, wasn't the grading similar that
14 was done there as -- as what's being proposed here?

15 MR. SLOWINSKI: It's my understanding that
16 Spring Valley and Wesley Heights were used as examples
17 for lot sizes.

18 MR. NETTLER: That's your understanding as
19 to the only basis for using those?

20 MR. SLOWINSKI: Well, I -- I see very
21 little -- what's the word? I see very little
22 similarities in the way the roads fit the topography.

23 MR. NETTLER: Okay. Are you a registered
24 landscape architect?

25 MR. SLOWINSKI: I -- I was registered up

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1 until two years ago.

2 MR. NETTLER: Do you -- were you present
3 when Mr. Barnes testified as to the need for grading
4 and Mr. Pitchford testified the need for grading that
5 was done -- being done to save a significant amount of
6 trees? That the grading that was being proposed was
7 done in a way to preserve trees? Do you recall that
8 testimony? I know it was over a month ago now.

9 MR. SLOWINSKI: Not specifically. I -- I
10 couldn't say that. I couldn't recall.

11 MR. NETTLER: Okay. Now, even if the
12 roads followed the contours on the site, wouldn't it
13 still have to be graded out?

14 MR. SLOWINSKI: Yes.

15 MR. NETTLER: Okay. And would it be safe
16 to develop the site without any type of grading?

17 MR. SLOWINSKI: No.

18 MR. NETTLER: The bird sightings that were
19 mentioned as part of the records of the National Park
20 Service. Those are bird sightings on Park Service
21 property. Correct?

22 MR. SLOWINSKI: One of the -- or one of
23 the marker trees is visible from the property.

24 MR. NETTLER: Well, though --

25 MR. SLOWINSKI: It is -- it is on National

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1 Park Service property.

2 MR. NETTLER: -- it was mentioned that I
3 believe you adopted the testimony that there is all
4 these records that the Park Service keeps about --
5 about bird sightings that are just legion including
6 Rachel Carson Society records and so forth, but those
7 are only bird sightings on the Park Service property
8 and not -- they're not bird sightings on the -- on the
9 property owned by the Phillips -- on the Phillips
10 property.

11 MR. SLOWINSKI: I walked once with Neil
12 Fitzpatrick.

13 MR. NETTLER: I'm asking you about the
14 records that are kept.

15 MR. SLOWINSKI: They -- they do include
16 bird sightings and sounds. They record the sounds of
17 the birds and some of the birds can be actually on
18 this property.

19 MR. NETTLER: They can be, but they don't
20 show on those -- on all those records that you make
21 mention of.

22 MR. SLOWINSKI: Actually, they do. They
23 do. They have trails that are set up and the way they
24 mark it, they'll -- they'll put an arrow in the
25 direction in a -- in a line a feeder to the -- the

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1 area where the bird was either sighted or heard.

2 I walked once with Neil Fitzpatrick of the
3 National Audubon Society and it's pretty incredible
4 what a birder can identify and I -- I -- I would say
5 that some of the birds that have been sighted or heard
6 were on this property.

7 MR. NETTLER: Okay. And those are on
8 those records that you referred to?

9 MR. SLOWINSKI: Yes.

10 MR. NETTLER: Do you have a copy of those
11 records here?

12 MR. SLOWINSKI: I can -- I can --

13 MR. SNAPE: I have a copy of those. Not
14 here, but I have a copy.

15 MR. NETTLER: Ms. Moore, the site, you did
16 I gather two visits to the site. Correct?

17 The interior of the site is overrun with
18 invasive and exotic -- and mostly exotic vines and
19 shrubs. Is that correct?

20 MS. MOORE: Certainly a lot of the
21 interior is.

22 MR. NETTLER: Okay. And this very heavy
23 density of these vines has eliminated the majority of
24 the forest regeneration in that part of the property.
25 Hasn't it?

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1 MS. MOORE: It could be that that --
2 there's some disturbance that's been continuous in
3 that center part of the site. The vines are a
4 secondary product of whatever that disturbance was.

5 MR. NETTLER: Okay.

6 MS. MOORE: And they certainly do
7 interfere with natural reproduction of trees.

8 MR. NETTLER: Okay. But, the tree
9 canopies is along the perimeter of the site are pretty
10 thick. Aren't they?

11 MS. MOORE: Yes.

12 MR. NETTLER: Okay. And the perimeter of
13 forest would you say stands at a climax in the stage
14 of forest development?

15 MS. MOORE: I'd say a large part of it is
16 at what we call climax condition which means it's a
17 mature forest that's characteristic of the area.

18 MR. NETTLER: Okay. And these stands are
19 pretty typical of the -- would you say of the tulip
20 poplar forest associations that are found in the mid-
21 Atlantic area?

22 MS. MOORE: I'd say they're --

23 MR. NETTLER: Tulip poplar or white oak.

24 MS. MOORE: -- I'd say that -- yes, I
25 think they're -- I'd say their characteristic of this

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1 Potomac River drainage. I wouldn't go so far as to
2 say all of the southeast.

3 MR. NETTLER: Okay. And when you have a
4 lot of -- when you have mature trees that are in a
5 climax stage if -- it's possible that if they're over
6 mature that they're apt to fall in the short-term.
7 Aren't they?

8 MS. MOORE: Just as damaged trees do that
9 also, but the issue of a mature forest is it's also
10 self-reproducing and so that it -- you have younger
11 trees and older trees and so you have as -- as the old
12 ones go down due to either storms or tip overs that
13 there will be other ones that fill them in.

14 MR. NETTLER: Right. And you -- did you
15 have a chance to look at the different tree surveys
16 that have been done on the site?

17 MS. MOORE: Yes, I have.

18 MR. NETTLER: Okay. And those surveys
19 identify not just the mature trees. They identified
20 late successional stage of development of trees -- the
21 late successional stage of development. They
22 identified very, very small trees. They -- they
23 identified trees that were covered by District's tree
24 ordinance. Correct?

25 MS. MOORE: That's what was indicated on

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1 the maps. They did.

2 MR. NETTLER: Okay. And they made
3 distinctions between those trees that were likely to
4 fall, trees that were covered by the -- the tree
5 ordinance, and trees that were not covered by the tree
6 ordinance.

7 MS. MOORE: As best I can interpret them
8 reading what the legend was, that's what they said
9 they did.

10 MR. NETTLER: Okay. And wouldn't you say
11 that the best approach on a large site like this for
12 tree protection is to concentrate on the grouping of
13 trees?

14 MS. MOORE: Well, certainly.

15 MR. NETTLER: And which obviously enables
16 us to preserve more trees.

17 MS. MOORE: That's what I recommended.
18 Yes.

19 MR. NETTLER: Right. And if you enclose
20 these groupings of trees with whether it's fencing or
21 whether it's -- it is other types of protective
22 barriers to prevent development from impacting the
23 roots, you have a better chance of preserving those
24 stands of trees. Don't you? Do you not?

25 MS. MOORE: You certainly do.

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1 MR. NETTLER: Okay.

2 MS. MOORE: But, sediment, moving over
3 sites, is one of the quickest things to kill trees
4 particularly beeches and tulip poplars which have
5 extremely sensitive root systems as do dogwoods and
6 any kind of movement of -- new movement of water or
7 sediment through those areas where you set things
8 aside, frequently create problems that you don't
9 anticipate. So --

10 MR. NETTLER: Right. And that's -- and
11 so, it's up to the arborist working with the
12 construction people and with the planners to make sure
13 that to the extent that any of that sediment is being
14 moved or fill is being put in it doesn't impact those
15 trees that are trying to be protected. Correct?

16 MS. MOORE: Well, ideally you plan it
17 before it could happen so the arborist isn't out there
18 putting in fences to make sure it doesn't happen.

19 MR. NETTLER: Right. So, to the extent
20 that the arborist is recommending certain fences as --
21 as --

22 MS. MOORE: No, you don't understand. You
23 plan so you don't have the problem. The fences are
24 the last resort.

25 MR. NETTLER: The -- with regard to the

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1 storm water management plan, did you have any opinion
2 regarding the storm water management plan?

3 MS. MOORE: I'm not qualified to address
4 storm water management plans other than the fact there
5 was a lot of impervious surface on hillsides. It
6 would be moving a tremendous amount of water from the
7 top of the sight down to the bottom and that it didn't
8 look like there was an adequate -- the design was not
9 quite adequate to take care of the amount of water
10 that would be moving down the road.

11 MR. NETTLER: Not based on any expertise
12 that you have in this area?

13 MS. MOORE: No, not specifically.

14 MR. NETTLER: Okay.

15 MS. MOORE: But, I would -- may I mention
16 one thing that is confusing about wetlands? It's --

17 MR. NETTLER: Well, I don't think there's
18 a pending question. So, I don't think so.

19 MS. MOORE: Okay. The Clean Water Act --

20 MR. NETTLER: I said

21 CHAIRPERSON GRIFFIS: No. No. No, he's
22 got to ask the question. You have to answer a
23 question. That's what his point was.

24 MR. SNAPE: I thought it was a
25 continuation of her answer, Mr. Chair.

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1 CHAIRPERSON GRIFFIS: Not when she says
2 might I offer --

3 MR. SNAPE: Answers are frequently more
4 than one or two sentences long. I mean she said --

5 CHAIRPERSON GRIFFIS: Understood. Mr.
6 Nettle --

7 MR. SNAPE: -- she -- she gave a response
8 and then she --

9 CHAIRPERSON GRIFFIS: -- follow-up --

10 MR. SNAPE: -- there was a clause
11 connecting that. I mean it seems to me that it was
12 rationally connected to what she was already saying.

13 CHAIRPERSON GRIFFIS: Let's move along.

14 MR. NETTLER: I don't have any other
15 questions.

16 CHAIRPERSON GRIFFIS: Good. Last word.
17 We'll -- the sentence then. What were you going to
18 say about wetlands?

19 MS. MOORE: The issue isn't simply not
20 building on a wetland. It's also the sedimentation
21 that moves into a wetland.

22 CHAIRPERSON GRIFFIS: Indeed.

23 MS. MOORE: That is what the Clean Water
24 Act addresses and that is where the problems come in
25 addition to the building in a wetland.

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1 CHAIRPERSON GRIFFIS: Okay. Let's talk
2 about that in terms of now the -- the point that you
3 made with the wetlands, but also the point that you
4 were talking about the trees and -- and obviously, the
5 most devastating thing could be where soil is moving
6 over the root system. Basically, burying the tree.

7 MS. MOORE: I said that's one of the
8 things that happens.

9 CHAIRPERSON GRIFFIS: Okay. I'll get the
10 question out in a second and so, my -- what my concern
11 is or what I'm unclear on is that a construction time
12 period condition that you're concerned with?

13 MS. MOORE: No, I'm concerned about the
14 plans that's fitted up. If you're not careful, no
15 matter how many fences or whatever you put in, it
16 can't stop it if the volume is too high because the
17 design is odd.

18 CHAIRPERSON GRIFFIS: But, you're talking
19 about after it's all built out you're thinking that
20 sediments going to be eroding all the way down or is
21 it during construction? You got bulldozers that are
22 moving sediment.

23 MS. MOORE: I'm concerned about in the
24 initial stages when the land is --

25 CHAIRPERSON GRIFFIS: During construction?

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1 MS. MOORE: Yes.

2 CHAIRPERSON GRIFFIS: Construction is your
3 concern?

4 MS. MOORE: Design come first and then the
5 construction comes second.

6 CHAIRPERSON GRIFFIS: But, design, what
7 does that mean? You mean you have a blank land and
8 you want to regrade the whole thing and then you come
9 back and implant the trees?

10 MS. MOORE: No, that's exactly what I'm
11 trying to say you don't do.

12 So, often we think that we can stop
13 erosion on a site and frequently, we can't because of
14 the volume -- unknown volumes of water or storm
15 events. So, you plan so you don't set it up to have a
16 problem to start with.

17 CHAIRPERSON GRIFFIS: But, you're saying
18 if you put up -- if you put up fencing to protect
19 trees, then you obviously haven't planned well. So,
20 what is the planning?

21 MS. MOORE: No, I'm saying you have to --
22 you have to do both. It's a --

23 CHAIRPERSON GRIFFIS: So, your statement
24 in answer to the question is it's too late if you have
25 to put up fences is not correct?

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1 MS. MOORE: I said frequently it's too
2 late by that time because it's the design of the
3 operation that protects the trees not the fences. The
4 fences are a secondary issue.

5 CHAIRPERSON GRIFFIS: Indeed. For those
6 -- as you said, for those conditions where you cannot
7 anticipate, the hundred year storm. Was that this
8 case? We were doing that. No, it's probably
9 something else. Okay.

10 So, in those conditions where you have a
11 heavy rain or something that you obviously don't
12 totally anticipate, but you're saying design the roads
13 correctly so you don't have a lot of sediment erosion
14 or movement.

15 MS. MOORE: Certainly. That's exactly it.
16 So, that then the fencing becomes to keep the
17 vehicles out rather than to keep the sediment out.

18 CHAIRPERSON GRIFFIS: Or a construction
19 aesthetic. No, I'm kidding. I know. Okay.

20 What's the next? Anything else?

21 VICE CHAIRPERSON MILLER: I was wondering
22 if Mr. Nettler would clarify for the record what
23 jurisdictional wetlands are as compared to non-
24 jurisdictional wetlands?

25 MR. NETTLER: Jurisdictional wetlands are

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1 the wetlands areas that are -- that the Corps of
2 Engineers has the authority over and which are
3 required to be protected from the type of issues that
4 we've been talking about here and the Corps of
5 Engineers has -- in the submissions that we've made
6 has made a determination as to what those wetlands are
7 on this site, what are not wetlands and the buffer
8 areas that's being provided for the wetlands so as to
9 protect them from the types of things that have been
10 suggested as being possible adverse impacts on those
11 wetlands.

12 CHAIRPERSON GRIFFIS: Are there certain
13 restrictions with wetlands in terms of building areas?

14 The setbacks?

15 MR. NETTLER: Twenty-five feet buffer area
16 from the wetlands.

17 CHAIRPERSON GRIFFIS: Okay. So, if --

18 MR. SNAPE: That is not a requirement.
19 Twenty-five foot just for the record. I specifically
20 asked that question this morning.

21 CHAIRPERSON GRIFFIS: So, you don't think
22 there's any setback requirement from wetlands?

23 MR. SNAPE: It's a rule of thumb. I asked
24 is there a rule or regulation and the Army Corps of
25 Engineers officer who I talked to this morning said

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1 no, that that is a general rule they use in the
2 District to deal with these issues, but it depends on
3 the topography, you know, all these other
4 environmental factors that have been just discussed.

5 CHAIRPERSON GRIFFIS: But, he's not
6 saying, you know --

7 MR. NETTLER: It's a regulation of the
8 District of Columbia.

9 CHAIRPERSON GRIFFIS: -- you can have a
10 wetland, but -- right. But, you can have a wetland,
11 but conceivably there would be no setback. There's
12 always some sort of setback distance away from
13 wetland.

14 MR. SNAPE: That's right.

15 CHAIRPERSON GRIFFIS: The 25 feet is what
16 you're saying is not necessarily --

17 MR. SNAPE: Right. And I asked Mr. Greg
18 Hope this morning who's with the D.C. Department of
19 Health whether the 25 foot is a D.C. regulation and he
20 said no. Now, maybe he's wrong, but I've been trying
21 to get at this 25 foot issue and neither the Corps nor
22 the D.C. Department of Health was able to verify
23 precisely where that came from until the Army Corps of
24 Engineers guy who I called back said it's a general
25 rule of thumb.

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1 CHAIRPERSON GRIFFIS: Okay. But, we're
2 talking about generally here.

3 She's asking the big question of what's a
4 jurisdictional wetland. I don't want to banter about
5 whether it's 25/24 or 100 feet setback on this based
6 on the grade of it.

7 So, the issue is if it's jurisdictional,
8 it doesn't mean that you couldn't have a wetland or a
9 water standing on a piece of property which may
10 actually look exactly like a wetland, but
11 jurisdictional wetland will have those requirements
12 around it in terms of the development --

13 MR. NETTLER: Well, it has to -- a
14 wetlands that's covered by the Corps of Engineers and
15 that's protected by the Corps of Engineers has certain
16 characteristics about it.

17 One of the -- one of the things that it's
18 not -- that it's not something that's created by man
19 or -- or -- and that's this area that in our view has
20 been -- and the Corps of Engineers has agreed has been
21 suggested in the center of the site that is non-
22 natural wetlands area and so, it's not protected.

23 MR. SNAPE: The Army Corps of Engineers
24 does not agreed with how Mr. Nettler just describe it.

25 He's over stating it.

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1 MR. NETTLER: Well, all we have -- all we
2 -- all we have --

3 MR. SNAPE: Okay.

4 MR. NETTLER: -- in the record is what the
5 Corps of Engineers has said as a determination on it.
6 I'd object to any hearsay coming in here since --

7 CHAIRPERSON GRIFFIS: Right.

8 MR. NETTLER: -- what we have is two
9 statements from the Corps of Engineers. Both their
10 statement on the -- on the site which is a -- if you
11 -- you have a map that was filed with the application
12 as well as a statement that was in the letter that was
13 provided to us as to what the wetlands area is.

14 If the Corps of Engineers is going to
15 change that determination, that's something we're
16 going to have to deal with, but that's all that's in
17 the record at this point and nothing else and to say
18 that the Corps of Engineers has changed that, I don't
19 think is appropriate.

20 MR. SNAPE: No, it's in -- it's in -- it's
21 in Tab 4.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. SNAPE: No, this is a -- Mr. Chair.

24 CHAIRPERSON GRIFFIS: I understand it's in
25 the report in point, but it's more important that Ms.

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1 Miller gets her question answered.

2 MR. SNAPE: All right.

3 CHAIRPERSON GRIFFIS: And the we can move
4 on to you to rebut it or answer it also.

5 MR. SNAPE: All right. Thank you, Mr.
6 Chair. I apologize.

7 CHAIRPERSON GRIFFIS: So, we'll just slow
8 down the pace here and get through this. Anything
9 else?

10 VICE CHAIRPERSON MILLER: I -- I was
11 really just looking for a general answer and I know
12 you have different interpretations of what might be
13 required and I don't really want to get into that
14 argument right now.

15 I just want to also just understand
16 terminology. If there's -- if there's water in the
17 middle of this property that is not jurisdictional
18 wetland, is it still referred to as a wetland or is it
19 just referred to as water?

20 MR. NETTLER: Well, it's water. It's --
21 it is water that is being created because of a break
22 in a pipe and so, it is water. It's not --

23 VICE CHAIRPERSON MILLER: It's not -- in
24 your view, it's not wetlands?

25 MR. NETTLER: That's correct.

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1 VICE CHAIRPERSON MILLER: And now, in your
2 view, it is wetlands?

3 MR. NETTLER: It's not protected wetlands.

4 MR. SNAPE: My view is I'm a lawyer and I
5 don't know.

6 VICE CHAIRPERSON MILLER: Okay.

7 MEMBER PARSONS: Mr. Chairman, can I jump
8 in here?

9 VICE CHAIRPERSON MILLER: Thank you.

10 CHAIRPERSON GRIFFIS: Of course.

11 MEMBER PARSONS: These two witnesses who
12 are arguing with each other shouldn't be arguing with
13 each other and shouldn't be testifying and if we want
14 the answers to these questions, Mr. Nettler -- you'll
15 get them from -- from somebody else.

16 CHAIRPERSON GRIFFIS: Um-hum.

17 MEMBER PARSONS: Because this banter of --
18 of two lawyers --

19 CHAIRPERSON GRIFFIS: Isn't going to be
20 productive.

21 MEMBER PARSONS: -- is not helpful to me.

22 CHAIRPERSON GRIFFIS: Indeed. But, I
23 thought that three lawyers together might be.

24 MEMBER PARSONS: Well, yes, I --

25 CHAIRPERSON GRIFFIS: And it's -- that's

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1 just my own mission of --

2 MEMBER PARSONS: But, I'm going to ask --

3 MR. NETTLER: Mr. Parsons, I was asked for
4 a legal --

5 CHAIRPERSON GRIFFIS: Right.

6 MR. NETTLER: -- question -- I was asked a
7 legal question. I was not asked --

8 CHAIRPERSON GRIFFIS: I think we digressed
9 a little bit. Mr. Parsons point is in all
10 seriousness. I mean Ms. Miller really wanted a very,
11 very general answer to the question of what's a
12 jurisdictional wetland and I think that has been
13 provided. Correct?

14 MR. SNAPE: Well, she did just ask me a
15 question that I was going to answer. So, I'll --

16 VICE CHAIRPERSON MILLER: You know, it
17 has. I don't really want you all to pursue this. I
18 just wanted to know the terminology when you were
19 bantering about with certain words what you were
20 referring to and I understand that at this point.

21 CHAIRPERSON GRIFFIS: Okay. Any other
22 questions of the Board? Mr. Parsons.

23 MEMBER PARSONS: I did want to ask Ms.
24 Moore. You're familiar with Mr. Slowinski's Exhibit
25 B.

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1 MS. MOORE: Yes.

2 MEMBER PARSONS: And you said earlier that
3 you were an expert in identifying wetlands?

4 MS. MOORE: Yes.

5 MEMBER PARSONS: And have you --
6 admittedly, these are kidney-shaped scheme --
7 schematic drawings. So, as I understand it, the
8 southern wetland is the one that's been identified by
9 the Corps of Engineers or -- or in the previous
10 process.

11 MS. MOORE: Correct.

12 MEMBER PARSONS: Is that your
13 understanding as well?

14 MS. MOORE: This goes back to Ms. Miller's
15 what's a jurisdictional wetland versus what's a
16 wetland?

17 MEMBER PARSONS: Right.

18 MS. MOORE: What makes a wetland a wetland
19 is the hydrology, how much water there is and it can
20 be permanent. It can seasonal. It can be a saturated
21 site.

22 MEMBER PARSONS: Sure.

23 MS. MOORE: What the vegetation is and
24 what -- if the soils are hydric soils or not which
25 reflect long term water in the soil profile. Those

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1 are the three things that make a wetland a wetland.

2 MEMBER PARSONS: Okay.

3 MS. MOORE: And so, in these cases, I can
4 the Corps jurisdictions. I can also read the amount
5 of water on the surface and the vegetation that are
6 there and so, when it says these things -- when your
7 map indicates these are wetlands, these are wetlands
8 in the general sense that support wetland vegetation
9 and then that have surface water seasonally during the
10 year. Because it was certainly was -- there was water
11 on the surface coming through here at this time. It
12 may be from broken pipes or it may be because of the
13 snow, but these have wetland features whether they're
14 jurisdictional wetlands or not.

15 Does that answer your question?

16 MEMBER PARSONS: No.

17 MS. MOORE: Oh.

18 MEMBER PARSONS: The question was has the
19 Corps of Engineers identified this southern wetland as
20 identified in this by Mr. Slowinski? That's the one
21 the Applicant's trying to protect.

22 MS. MOORE: That's the one --

23 MEMBER PARSONS: If you don't know the
24 answer, that's fine.

25 MS. MOORE: No, it has designated flagging

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1 that indicates wetland.

2 MEMBER PARSONS: Okay.

3 MS. MOORE: Which also extend up a little
4 further beyond -- beyond the -- the southern area.
5 There -- there's more -- we keep saying pink tape with
6 stripes on it. That's what they used to designate
7 wetlands.

8 So, there's a southern area and then
9 there's some additional wetlands in -- in a narrow
10 strip going up to the west of the southernmost one.

11 MEMBER PARSONS: So, you would agree with
12 Mr. Slowinski's diagram on what he -- what he shows,
13 an eastern wetland and a western wetland?

14 MS. MOORE: Yes.

15 MEMBER PARSONS: Even -- even though you
16 believe that some of this might be runoff from -- from
17 a leaky pipe?

18 MS. MOORE: I was told that was the case
19 and at one time when I first went to the site, we
20 could see below the old house site where water was
21 coming out. That appears to have been stopped, but
22 the volume of the water is sufficient particularly in
23 these -- above the -- the two kidney -- the two
24 biggest kidneys that are parallel to each other.
25 There's surface water now and there's long-term

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1 wetland vegetation there. Dense stands of cattails
2 and willow trees which indicates there's been a
3 wetland there for some time. It may be artificial.

4 Without having the equipment to dig down
5 in the soil, I couldn't -- I could not tell you that,
6 but it is wet. They are wetland features.

7 MEMBER PARSONS: Okay. Thank you.

8 MR. NETTLER: Can I do a follow up to Mr
9 Parsons' question?

10 CHAIRPERSON GRIFFIS: His questions? You
11 should take a follow up.

12 MR. NETTLER: Thanks. Ms. Moore, you said
13 you haven't done any analysis of the soil in that area
14 that Mr. Parsons asked you about. Did you do any
15 analysis of the water? Any of the water that you had
16 seen there either?

17 MS. MOORE: I was observing flow and to
18 see how much sediment was it in, but I did not take
19 any testing equipment with me.

20 MR. NETTLER: Okay. So, you didn't -- you
21 didn't determine whether there was chlorine in that
22 water that was different than what the -- okay.

23 No other questions.

24 CHAIRPERSON GRIFFIS: Okay. Anything
25 else? Okay. Thank you. Any other questions? Good.

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1 Mr. Nettler, you'll all set with the cross
2 on this then?

3 Any redirect of your witnesses? Fabulous.
4 Ms. Gates?

5 MS. GATES: Ms. Moore, I believe in either
6 your testimony today or in testimony that was written,
7 you talked about treating wetlands as amenities.

8 In this particular instance, would you
9 describe for the Board how the wetland currently
10 exists, the slope to it as well as how the wetland
11 will exist once the grading is done?

12 MS. MOORE: If we can go back to the
13 picture.

14 MS. GATES: The kidney picture?

15 MS. MOORE: The kidney picture. There's
16 several situations on this property. The southernmost
17 wetland which runs along the southern boundary line is
18 largely wooded and that has a cistern. You can tell
19 the springs where water's been coming out of the base
20 of the hill on the western side for some time. It's
21 surrounded on the west by a steep slope.

22 Immediately to the north of it is the road
23 that was constructed. What is the name of that road?

24 MS. GATES: Drigs.

25 MS. MOORE: Drigs Road. Which has had --

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1 has impacted the site to some extent because of the
2 erosion and of -- actually the road has begun to wash
3 out in part.

4 But, the bottom area is a more natural-
5 type wetland. It has large trees around it and is
6 quite --

7 MS. GATES: That's -- that's actually the
8 area --

9 MS. MOORE: Is running water.

10 MS. GATES: -- I'm concerned about.

11 MS. MOORE: Okay. That particular area is
12 extremely attractive. It has a functioning system.
13 It has large trees and very steep slopes. It's a
14 fairly stable wetland. It's been there for a long
15 time as opposed to the one I was talking about
16 earlier, the large kidney, where there's active
17 seepage now and cattails.

18 As proposed, the Drigs Road would be built
19 up another 20 feet I think it was. Ten to 20 feet on
20 top of the existing area. So, the residents who live
21 north of this in no way could see this wetland. It
22 would be -- it would be a -- it would be a feature on
23 the site, but it wouldn't be an amenity in the sense
24 of having anything that could be observed or used as a
25 part of the community.

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1 MS. GATES: Would it -- will a situation
2 be created where you would sort of walk out to the
3 edge of a precipice to look down at it?

4 MS. MOORE: Yes, you would be a good bit
5 above the wetland, but my real concern about that --
6 adding soil on top of that is it's already an unstable
7 situation and it would be more -- more fill being put
8 on the north side of a wetland at a very steep slope.
9 With a 25-foot setback from that wetland, that's
10 barely as long as this room is and the -- and you'd be
11 -- if you were at the base of it from the wetland,
12 you'd be looking up and you'd be looking up almost 30
13 feet and that would almost all be bare soil.

14 So, if you came to look from the top down,
15 you'd be looking down and if you were at the bottom,
16 you'd be looking up.

17 My real concern is the sediment coming
18 down from that road into that wetland.

19 MS. GATES: As you were talking about
20 sediment, I was thinking about a super silt fence and
21 how does one build a super silt fence large enough to
22 hold back the amount of fill that proposed for this
23 area? I won't go there because I don't think that
24 question can be answered.

25 Mr. Slowinski, throughout the

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1 presentations for this project, we have been lead to
2 believe I think that we've heard a lot about following
3 natural topography and a comparison was made to Wesley
4 Heights and Spring Valley where we do have very hilly
5 streets and -- and houses are stepped down.

6 Would you as a resident of Wesley Heights
7 identify with this particular development in the same
8 way you would with Wesley Heights or Spring Valley?

9 MR. SLOWINSKI: No, I do not.

10 MS. GATES: And why is that?

11 MR. SLOWINSKI: They -- the roads do not
12 fit the topography and the site has been extensively
13 regraded.

14 Basically, the site one inclined plane at
15 ten to 12 percent slope leading down to the wetland.

16 MS. GATES: And earlier, wasn't your point
17 that if we followed the natural topography, we would
18 have a development that looked more like Wesley
19 Heights and Spring Valley?

20 MR. SLOWINSKI: Yes.

21 MS. GATES: Thank you. Ms. Snape, you
22 were talking about migratory birds and I understand
23 that Mr. Nettler is concerned about where records are
24 kept, et cetera, but does a migratory bird necessarily
25 know that this line delineates private property from a

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1 park land?

2 MR. NETTLER: Objection.

3 CHAIRPERSON GRIFFIS: Yes.

4 MR. NETTLER: She's asking if Mr. Snape, I
5 don't think Mr. Snape has identified himself as an
6 expert on what migratory birds know or do not know.

7 CHAIRPERSON GRIFFIS: Right. I think
8 that's more what -- that's an interesting way to
9 phrase it. Isn't it? Do they have that -- no.

10 MR. SNAPE: Mr. Chair, I have -- I will
11 let Ms. Moore answer it. I have spent hundreds of
12 hours birding on this site.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MR. SNAPE: And examining the data, but I
15 will defer to others who perhaps can answer --

16 CHAIRPERSON GRIFFIS: Ms. Moore, can you
17 answer that question? Do you know what migratory
18 birds know?

19 MS. MOORE: Boy, do I wish I did.

20 CHAIRPERSON GRIFFIS: Me too.

21 MS. MOORE: They don't distinguish. It's
22 the suitability of the available habitat that's makes
23 the difference regardless of ownership.

24 CHAIRPERSON GRIFFIS: Okay. There's no
25 big straight property line in the sky. Okay. Next

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1 question.

2 MS. GATES: Thank you. I have no more
3 questions.

4 CHAIRPERSON GRIFFIS: Very well. I think
5 that's all -- oh, I'm sorry. Yes. Certain residents.

6 SPEAKER: Certain residents. I shall
7 forever refer to myself as a certain resident at least
8 henceforth and forevermore.

9 I'm -- your pardon. I'm somewhat of a
10 novice at all of this and I am not sure what the
11 status of this. Is this part of the record now? Is
12 this -- this is not part of the application.

13 CHAIRPERSON GRIFFIS: Absolutely part of
14 the record.

15 SPEAKER: This is not --

16 CHAIRPERSON GRIFFIS: Not part of the
17 application. It's actually a party in somewhat
18 opposition. Maybe --

19 SPEAKER: Right. Another -- another --
20 just --

21 CHAIRPERSON GRIFFIS: -- submission as
22 part of their case presentation.

23 SPEAKER: So, that if this became --
24 somehow or other became the submission, if it was
25 amended to this degree, I'm not suggesting that it

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1 would be.

2 CHAIRPERSON GRIFFIS: Right.

3 SPEAKER: But, if it were, I gather there
4 would be some additional opportunity for certain
5 neighbors to -- certain residents --

6 CHAIRPERSON GRIFFIS: Yes.

7 SPEAKER: -- to come back and -- but, our
8 main concern has been --

9 CHAIRPERSON GRIFFIS: Any certain
10 residents could actually address.

11 SPEAKER: Certain residents of the --

12 CHAIRPERSON GRIFFIS: Yes. But, in all
13 seriousness, yes, if -- if you're concerned and your
14 direct question is could this be adopted without
15 comment by those parties, absolutely not.

16 SPEAKER: Okay.

17 CHAIRPERSON GRIFFIS: If that plan was
18 adopted which may be the smartest thing in the world
19 to do, that would fundamentally change the
20 application.

21 SPEAKER: Right.

22 CHAIRPERSON GRIFFIS: It would have to go
23 through at minimum at least a presentation for the
24 Board and certainly cross examination from all the
25 parties involved.

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1 SPEAKER: We're not prejudging it either.
2 I just would --

3 CHAIRPERSON GRIFFIS: Right.

4 SPEAKER: We just haven't had the
5 opportunity. I don't know what the traffic
6 implications are and that's been our main concern from
7 the -- from the get go, but anyway. That's really all
8 I have. I have no --

9 CHAIRPERSON GRIFFIS: That's it.

10 SPEAKER: -- no questions for you people
11 and I don't know anything about wetlands.

12 CHAIRPERSON GRIFFIS: Good. So, we'll
13 call that the cross of me. Okay.

14 SPEAKER: Fair enough.

15 CHAIRPERSON GRIFFIS: Ms. Miller.

16 VICE CHAIRPERSON MILLER: I just have a
17 follow up to that question. With respect to the --
18 the road that's more environmentally sensitive, did
19 you assess it at all with respect to traffic impacts?

20 MR. SLOWINSKI: No.

21 VICE CHAIRPERSON MILLER: Thank you.

22 CHAIRPERSON GRIFFIS: Is this the first
23 time that the Applicant has seen this proposal?

24 MR. SLOWINSKI: Proposal G?

25 CHAIRPERSON GRIFFIS: Yes.

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1 MR. SLOWINSKI: There was one similar to
2 it that I presented in January.

3 CHAIRPERSON GRIFFIS: Similar. Just
4 what's similar? Opening. Just concepts? Opening 44?
5 One interior road.

6 MR. SLOWINSKI: It has some of the same
7 ideas. Preserving the woodland.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. SLOWINSKI: Setting up a wetland
10 conservation easement area.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. SLOWINSKI: Laying out the roads to
13 respect the topography.

14 CHAIRPERSON GRIFFIS: Okay. So, in your
15 opinion as the Applicant looks at this, would this be
16 new information for them or would this be something
17 that you think that they would have understood as an
18 option in developing their own design?

19 MR. SLOWINSKI: Some of it, they have
20 heard before. Some of it is new.

21 CHAIRPERSON GRIFFIS: What -- what aspects
22 are new?

23 MR. SLOWINSKI: The wetland -- the large
24 wetland conservation area in the center.

25 CHAIRPERSON GRIFFIS: In the center.

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1 MR. SLOWINSKI: Yes.

2 CHAIRPERSON GRIFFIS: I see. Okay. How
3 did you access -- you don't have the other plan that
4 they've seen with you. Do you?

5 MR. SLOWINSKI: I'm sure one of our ANC
6 commissioners have it.

7 CHAIRPERSON GRIFFIS: Do you have a copy
8 of it? Here's where I'm trying to go. Is that -- is
9 -- conceivably a good question from the Board is the
10 Applicant why don't you do this rather than sending
11 this off for three months to figure out why or why
12 not? Let's figure out what they know.

13 MR. SLOWINSKI: Actually, the -- the
14 alternative plan that presented to the developer's
15 architect in January, when he said it he said it's too
16 late in the --

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. SLOWINSKI: -- at this stage to make
19 any changes.

20 CHAIRPERSON GRIFFIS: That's fine. And I
21 see you opened up so much with that one comment.

22 Mr. Nettler?

23 MR. NETTLER: If you're finished.

24 CHAIRPERSON GRIFFIS: Oh, no, not even
25 close, but go ahead.

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1 MR. NETTLER: No. No, I can wait until
2 they're finished.

3 CHAIRPERSON GRIFFIS: I actually just
4 wanted to see the submission, but I'm -- I'm finished
5 for the time.

6 Are you wanting to cross on this?

7 MR. NETTLER: Yes. This is it.

8 CHAIRPERSON GRIFFIS: So, this has not
9 been submitted in before?

10 MR. SLOWINSKI: This is something that I
11 showed the developer's architect back in January.

12 CHAIRPERSON GRIFFIS: That's not in the
13 record. Correct?

14 MR. SLOWINSKI: No, it isn't.

15 CHAIRPERSON GRIFFIS: Okay. Let's move
16 ahead.

17 MR. SLOWINSKI: It is -- it is the same
18 thing in that it's titled environmentally sensitive
19 design improvements.

20 CHAIRPERSON GRIFFIS: Okay. Some
21 similarity there in two words anyway. I'm done. Mr.
22 Nettler.

23 MR. NETTLER: Mr. Slowinski, didn't, in
24 fact, the Applicant's architect take some of the
25 suggestions you had on your prior proposal such as

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1 taking the road off the adjacency to the park and --
2 and moving it further upland on the property? Didn't
3 he do that?

4 MR. SLOWINSKI: Yes, he did, but in the
5 process he --

6 MR. NETTLER: Okay. So, that's -- so,
7 that's not a -- so, he didn't say that he --

8 MR. SLOWINSKI: -- he impacted two -- but
9 at streams and he took out more trees.

10 MR. NETTLER: Took out more trees. I see
11 and so -- so, it's not correct to say that he said it
12 was too late to adopt any of your suggestions. Was
13 it?

14 MR. SLOWINSKI: No, that is correct in
15 that he said it was too late to make any changes.

16 MR. NETTLER: Didn't he point out to you
17 that there were some other problems with your plan in
18 terms of both the actual sighting of houses on those
19 lots in terms of the impervious surfaces, in terms of
20 side yards, rear yards, and other setback
21 requirements? Didn't he also tell you that?

22 MR. SLOWINSKI: I'd -- I'd had since made
23 -- made revisions to that plan.

24 MR. NETTLER: But, you -- but -- but, I
25 understand from your testimony earlier today that

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1 notwithstanding the revisions you've made to it, you
2 still haven't done any analysis of the side yards, the
3 setbacks, rear yards, front yards that are required
4 for a theoretical subdivision. Isn't that correct?

5 MR. SLOWINSKI: On this plan or -- or --

6 MR. NETTLER: On -- on the plan that
7 you've just done that you've just handed in today.

8 MR. SLOWINSKI: It's a concept.

9 MR. NETTLER: It's a concept. Okay. So,
10 the answer's no.

11 CHAIRPERSON GRIFFIS: Okay. Good.
12 Anything else? Yes.

13 VICE CHAIRPERSON MILLER: I just -- well,
14 just one other question either for Mr. Slowinski or
15 for the certain neighbors. I think we ended the last
16 hearing where certain neighbors wanted to look into an
17 alternative for the road and I'm wondering whether
18 this -- how these two are connected if at all.

19 SPEAKER: Well, the concern that we had
20 was the access -- the proposed access on Foxhall. I
21 think our concern was that what is planned now does not
22 appear to us to be safe and I don't believe anybody
23 has used the word safe in describing it. They've used
24 the word safer because it would have a demand light.
25 But, I don't believe that any witness yet has used the

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1 word safe.

2 I think DDOT said that they hadn't really
3 come out and looked at it. But, they -- they -- they
4 agreed with the developer's proposal only to the
5 extent that they agreed that it would -- that the
6 planned entrance would accommodate the amount of
7 traffic it needs to accommodate onto Foxhall, but I
8 don't believe anybody has used the word safe.

9 I'm don't know if I'm answering your
10 question or not.

11 VICE CHAIRPERSON MILLER: No, my question
12 really was -- I'm sorry. My question really goes to
13 how does this alternative that Friends is presenting
14 relate in anyway if it does to what certain neighbors
15 wanted?

16 SPEAKER: It does because it would appear
17 to have a lot of cars coming out of the development
18 onto W Street and then I don't know whether -- I
19 gather the -- be expected to make another left turn
20 into the road that's planned now to get to the
21 entrance at Foxhall. I think our concern would be
22 that a lot of them would just proceed right up W
23 Street and we'd have even more competition to get out
24 of W Street which is not going to have a light. I
25 don't believe anybody has said that -- that we could

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1 have a light and so, I think it -- it could.

2 VICE CHAIRPERSON MILLER: Okay. It's not
3 an alternative you're supporting. Isn't it?

4 SPEAKER: I -- I -- I'm not sure that we
5 -- I don't want to say that.

6 VICE CHAIRPERSON MILLER: Okay.

7 SPEAKER: I don't understand. I don't
8 think any of us really understand enough about it
9 right now, but until it becomes presented, it becomes
10 the developers or a proposal that is before this
11 Board, I don't think we would want to comment on it.
12 It certainly doesn't address our primary issue, but
13 I'm not sure that it exacerbates any that it seems to,
14 but I'm not sure of that. Don't want to say that.

15 VICE CHAIRPERSON MILLER: Okay. Thank
16 you.

17 SPEAKER: Okay.

18 CHAIRPERSON GRIFFIS: Good. Anything
19 else? Very well. Thank you all very much. It seems
20 to me that we've concluded then the parties' cases we
21 can go to rebuttal witnesses, summations, and
22 conclusions by the Applicant.

23 Mr. Nettler, are you ready to proceed?

24 MR. NETTLER: Yes.

25 CHAIRPERSON GRIFFIS: Good. We're going

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1 to take ten minutes and then we'll get to it.

2 (Whereupon, at 4:30 p.m. off the record
3 until 4:47 p.m.)

4 CHAIRPERSON GRIFFIS: Whenever you're
5 ready.

6 MR. NETTLER: Good afternoon. Richard
7 Nettler for the Applicant. What I'd like to do is I
8 have a panel of our consultants here. I'd like to
9 walk through them with the different issues that
10 you've heard questions being raised about and then
11 open it up for cross examination both by yourself --
12 examination by yourself and by the others, but allow
13 us to sort of move through this I think which might be
14 a little quicker if we do it that way.

15 CHAIRPERSON GRIFFIS: Good. Okay.

16 MR. NETTLER: I also have provided to you
17 with the submissions that we made last week résumés of
18 the three additional people who were here from
19 Greenhorne & O'Mara -- O'Mara, Roy Gauzza, James
20 Ingram, and Mary -- oh -- Sears. Sorry, Mary. Each
21 of whom I'm proffering as an expert in terms of a --
22 Roy as a landscape architect, Mary as a civil
23 engineer, and James as an environmental scientist and
24 you will -- if there's no objection to their being
25 qualified as such or if you would like me to go

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1 through a little bit more in terms of their
2 qualifications, I can do that as well.

3 CHAIRPERSON GRIFFIS: Very well. Are
4 there any questions from the Board at this time in
5 terms of granting status of expert witnesses?

6 Is there any objection from the parties or
7 substantive issues to raise for the Board's
8 consideration? The ANC.

9 MS. GATES: My only question would be
10 what's happened to Mr. Lzn?

11 MR. NETTLER: Well, Mr. Lzn is sitting
12 here, but I'm asking about these three individuals.
13 We've already had Mr. Lzn's résumé --

14 CHAIRPERSON GRIFFIS: I don't understand
15 the question.

16 MS. GATES: I thought we were having a new
17 person present --

18 CHAIRPERSON GRIFFIS: I know. I can get
19 it --

20 MS. GATES: I thought we were having a new
21 person present a plan that Mr. Lzn had already
22 discussed with us.

23 CHAIRPERSON GRIFFIS: Mr. Nettler.

24 MR. NETTLER: Well, I don't know if that's
25 responsive to the issue I have about the -- the --

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1 these particular three individuals, but these
2 individuals have worked with Mr. Lzn and they will be
3 discussing the storm water management program, the
4 wetlands issues, the --

5 CHAIRPERSON GRIFFIS: Okay. So, they have
6 the specific unique knowledge of the actual plan that
7 had been submitted?

8 MR. NETTLER: Correct.

9 CHAIRPERSON GRIFFIS: Which is why they're
10 being called as a rebuttal witness.

11 MR. NETTLER: Correct.

12 CHAIRPERSON GRIFFIS: So, the work that
13 Mr. Lzn has done in the past is still on the record
14 and it's still substantive to the case.

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

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. NETTLER: Absolutely.

18 CHAIRPERSON GRIFFIS: Anything else? Any
19 other concerns that need to be raised for the parties
20 in opposition? Very well.

21 Board members, any concerns, questions to
22 the proposed witnesses?

23 If not, I don't see any issue in granting
24 the expert status to the three witnesses. So, why
25 don't we move ahead.

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1 MR. NETTLER: All right. Let me call Mr.
2 Pitchford first.

3 You've heard testimony about the -- from
4 those who were somewhat in opposition to the project
5 about the concerns regarding the trees, preservation
6 of the trees that we've delineated on our plans both
7 during construction and after construction.

8 Can you comment on that?

9 MR. PITCHFORD: Yes, I mean you could ask
10 me specific questions, but in general, you know, I
11 laid out in the first session the tree protection
12 process, the minimum clearance zones and critical root
13 zones and since that time, we've adjusted the grading
14 plan significantly to preserve the critical root zone
15 and minimum clearance zones of the trees.

16 MR. NETTLER: And -- and how will these be
17 protected during the construction period as well?

18 MR. PITCHFORD: Well, initially, the
19 stands of trees that I've identified would be
20 encompassed by the tree protection fence, a six-foot
21 tall wire mesh fence, which would encompass the
22 minimum clearance zone and a portion of the critical
23 root zone that I feel is necessary to keep them alive.
24 There would be no rough grading in those areas. They
25 would be off limits for everything during the rough

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1 grading process.

2 MR. NETTLER: And you're familiar with the
3 grading plan that's been developed. Have you not?

4 MR. PITCHFORD: Yes.

5 MR. NETTLER: Okay. And from -- based on
6 your review of that plan, do you perceive that as
7 having a adverse impact on our ability to protect
8 those trees?

9 MR. PITCHFORD: Not at all.

10 MR. NETTLER: And could you explain why
11 that -- that's --

12 MR. PITCHFORD: Well, I sat down with the
13 Barnes advance team and Greenhorne & O'Mara. We sat
14 down in the room for almost a full day and went over
15 this grading plan to make sure it allowed for the
16 protection of the trees and for the necessary grading
17 for the homes. So, I felt very good at the end of
18 that process.

19 MR. NETTLER: The -- Mr. Ingram, let me
20 turn to you. In terms of the wetlands area, could you
21 -- you've heard -- there were a number of questions
22 that were raised as to what were jurisdictional
23 wetlands and how that's defined and how the Corps
24 treated this site. Could you comment on that?

25 MR. INGRAM: What a wetland scientist does

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1 when they go out to a site to delineate the wetlands,
2 they'll generally flag the wetland boundaries.
3 Sometimes they'll also flag the limits of problematic
4 areas and then they will submit an application to the
5 Corps of Engineers to conduct what's referred to as a
6 jurisdictional determination.

7 An application was submitted to the Corps
8 of Engineers on September 2nd. The field visit with
9 the Corps of Engineers, Mr. George Harrison, was
10 completed on -- later that month on September 28th.

11 The -- at that field meeting, one of the
12 most critical things that was discussed was the large
13 area in the center of the site that's shown on some
14 graphics that I believe you all have that the
15 consultants did not believe should be jurisdictional
16 because of the previously discussed water leak.

17 There was testing that was done of this
18 water that confirmed the presence of chlorine and
19 fluoride in the water. Also, this area did not meet
20 one of the three parameters that are used to delineate
21 wetlands. It did not have hydric soils.

22 The Corps of Engineers only took
23 jurisdiction over what has been referred to today as
24 the southern wetland which perhaps we can show on this
25 drawing.

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1 So, that would be shown, I -- I guess
2 we'll refer to that as teal color area, in the -- in
3 the south. That's -- that was the limit of the
4 jurisdictional wetlands.

5 A map showing those wetlands was then
6 submitted to the Corps of Engineers on October 15th
7 and the Corps of Engineers in response to having
8 received that revised map on the 15th, that same day
9 sent out a letter approving of the wetland limits that
10 were submitted which is the southern wetland.

11 MR. NETTLER: As far as you understand
12 from the plans that have been presented by the
13 Applicant, is there any development that's being done
14 on the wetlands area that's been delineate?

15 MR. INGRAM: I'm not aware of any proposed
16 impacts.

17 MR. NETTLER: Okay. Is there any grading
18 that's being done?

19 MR. INGRAM: I'm not aware of any.

20 MR. NETTLER: Okay. And tell me is this a
21 high quality wetland and can you explain what that is?

22 MR. INGRAM: It isn't a high quality
23 wetland because there are so many invasive species
24 that -- that frankly dominate a lot of the site. A
25 mile -- there's a bunch of species, porcelain berry,

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1 mile a minute Asiatic bittersweet, tall fescue, and
2 other things. So, it's certainly not a pristine
3 wetland.

4 MR. NETTLER: But, from your perspective,
5 it is being protected?

6 MR. INGRAM: It is being protected and I
7 think, in fact, will likely be enhanced through the
8 development.

9 MR. NETTLER: And how will it be enhanced?

10 MR. INGRAM: It can be enhanced by the
11 removal of the nonnative invasive species and there --
12 there is currently a significant negative impact to
13 the wetland from the -- the leaking water line which
14 released chlorinated water at a constant rate and has
15 been doing so for approximately 17 years.

16 MR. NETTLER: Now, there's been talk about
17 a buffer around this wetland and the Applicant is
18 proposing a 25-foot buffer. Do you know where that
19 comes from?

20 MR. INGRAM: Well, first of all the Corps
21 of Engineers has no jurisdiction over anything outside
22 of -- their jurisdiction ends at the limit of the
23 wetlands and stream.

24 States or -- or local government can
25 impose buffers. In Maryland, there is a 25-foot

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1 buffer to vegetated wetlands. I'm not aware of -- of
2 a buffer requirement within the District. I believe
3 the District may have adopted the state of Maryland's
4 25-foot buffer.

5 MR. NETTLER: Okay. And do you think
6 that's a sufficient buffer for protecting this
7 wetlands area?

8 MR. INGRAM: I do particularly if the
9 invasive species are removed from the buffer and
10 native vegetation -- and it's replaced with native
11 vegetation and that ground is stabilized.

12 MR. NETTLER: Okay. And do you understand
13 that that's what's being proposed?

14 MR. INGRAM: I understand that nothing has
15 been finalized on that, but there's been discussions
16 in that direction.

17 MR. NETTLER: Okay. There -- there was
18 some discussion previously about whether there is the
19 discharge and we'll get into the storm water
20 management plan with another witness, but the
21 discharge from the storm water management of some salt
22 from the -- from snow removal. Do you perceive that
23 as being a -- a problem if there is any and do you --
24 do you -- with regards to this wetlands area?

25 MR. INGRAM: Well, there are several

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1 questions in your question. The first thing that --
2 as I understand it that's going to happen is that the
3 leak is going to be fixed. So, when the -- when that
4 water leak is fixed, the volume of water flowing to
5 and through that wetland will decrease significantly.

6 I can't tell you an exact percent, but pretty
7 significantly.

8 That'll be both positive and negative.
9 It'll be negative in that -- that one of the three
10 criteria for -- that wetlands need is water. So, the
11 volume of water will decrease. However, the water
12 that's getting there has been determined to contain
13 chlorine and fluoride and so, there will certainly be
14 an improvement in that that will -- will be decreased.

15 The -- with regard to the salt water, salt
16 that's used on the roads, I haven't done any analysis
17 that would compare the amount of road salt that would
18 reach the wetland post-development as compared to, you
19 know, chlorinated water today, but, you know, we have
20 salt water enter in our wetlands everywhere within our
21 area because of treatment.

22 MR. NETTLER: Mr. Pitchford, I have you
23 done any research from an arborist perspective on the
24 impact of salt on vegetation and trees?

25 MR. PITCHFORD: Well, I'm starting to.

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1 Because it's subjects that's of interest to me. One
2 of my volunteer roles is as a co-chair of the
3 Technical Advisory Board for the Casey Tree Foundation
4 here and one of the topics that we're looking at is
5 what the District uses for its road salts and how
6 that's affecting trees. So, I'm starting to get some
7 background on it.

8 But, my preliminary work from looking at
9 Michigan and Minnesota and their Departments of
10 Transportation and the studies they've done is that
11 sodium chloride ends up being about as environmentally
12 sound as any other alternative because some of the
13 other chemicals that some of these alternative
14 products contain.

15 So, what we're using now is basically what
16 they say the best that's available.

17 MR. NETTLER: Okay. Thank you. Mr.
18 Ingram, coming back to you.

19 You've heard some comments about the
20 cerulean warbler. Do you have any -- is this species
21 a rare species in this area?

22 MR. INGRAM: The cerulean warbler's
23 species is in decline nationwide. It is an endangered
24 species. It was proposed to be listed on the
25 Endangered Species Act in October 2000. However, do

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1 to funding cuts, Fish and Wildlife Service is not
2 processing applications to add new species.

3 With regard to whether there's good
4 habitat on this site, the good habitat is adjacent in
5 the park system. This is really -- the habitat on
6 this site, there is some. It's a -- it is what they
7 refer to as a forest interior species. It does not
8 like edge habitat and frankly, most of this site
9 contains edge habitat. There is some areas contiguous
10 to the park that would provide some habitat for the
11 species, but certainly, it's minuscule compared to
12 what's in the park.

13 MR. NETTLER: With regard -- you've heard
14 also mentioned that there are adjacent to this area
15 significant number of areas where birds do -- habitat
16 -- areas that are habitats for a variety of different
17 bird species.

18 Do you see the development that's being
19 proposed on this site and the trees that are being
20 preserved as something that will have an adverse
21 impact on the adjacent sites?

22 MR. INGRAM: Well, again, most of the
23 habitat that's on this site is edge habitat. There is
24 some -- probably some forest interior habitat on
25 certain portions of this site. So, there will

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1 probably be some minor impacts where there are the
2 larger forested areas, but I certainly can't see any
3 species being displayed regionally by, you know,
4 development of such a small parcel.

5 (Whereupon, at 5:00 p.m., the hearing
6 continued into the evening session.)
7
8

9 E-V-E-N-I-N-G S-E-S-S-I-O-N

10 5:00 p.m.

11 MR. NETTLER: Mary, there's been a lot of
12 questions about the storm water management plan for
13 this site. Could you walk us through what the plan is
14 and its impact and how it's being dealt with on the
15 site and its impacts? If you can.

16 MS. SEARS: Sure. If I could have the
17 storm water management plan exhibit up there.

18 Some -- I'll first start off with the
19 storm drain system. The existing storm drain system
20 along W Street which we are not touching that will
21 remain. We do not introduce any additional drainage
22 into it nor does it provide any drainage onto our
23 site.

24 Foxhall Road, we're proposing a couple of
25 inlets here and here to be picked up and discharged

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1 into the existing White Haven Parkway system. Thirty-
2 inch pipe existing. That will take the roadway
3 runoff. Again, does not -- no water from W Street
4 will enter onto our site.

5 For our proposed on-site storm water
6 management, this site is about 16.4 acres and it is
7 located in a watershed of the Glover Archibald Park
8 that at our discharge point at the confluence to that
9 park has a watershed of approximately 840 acres. So,
10 we're only 16.4 acres at the downstream end at that
11 confluence.

12 So, our storm water management provides a
13 quantity control and a quality control combined.

14 Our quantity control -- well, first let me
15 talk about the quality.

16 What we are proposing is the use of a
17 couple methods, BMPs, best management practices, which
18 involve buyer retention, filtera, and a base saver
19 unit. We are not proposing one downstream water
20 quality treatment. We are proposing a non-point
21 source solution which uses these throughout the site.

22 For example, buyer retention which is a
23 filtering device on the surface used to treat runoff
24 from pervious areas will be located in the teardrop
25 islands in the proposed roadway. We'll use a series

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1 of retaining walls within those islands to create flat
2 areas which are needed for buyer retention. Buyer
3 sits on flat areas and filters the water through.

4 In areas outside of the road of the median
5 strips where we can to the greatest extent possible,
6 for example, in some of the backs of lots where we've
7 graded flatter areas, we will also propose buyer
8 retention.

9 One area that's possibly in consideration
10 is the back of these lots right here.

11 In addition to buyer retention, we are
12 using filtera units. Filtera units are essentially
13 buyer retention in a box, in a concrete box. They are
14 inlet structures, curb opening inlets located along
15 the roadways. They look just like a storm drain inlet
16 except they have a filter media inside of them.

17 Runoff from the road enters these inlets
18 as it would a normal storm drain system. It's
19 filtered through and -- and after it's filtered,
20 discharges back into the storm drain pipe system.

21 Storm drain pipe system proposed is
22 throughout the whole roadway network and we will use
23 these to treat purely impervious runoff from the
24 streets. They can be planted with a tree or shrub and
25 a grate opening at the top and then they are used to

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1 enhance the streetscape.

2 Lastly, for water quality, we will use a
3 base saver system or unit device right before our
4 water quality underground pipe. The base saver unit
5 is not a filtering device, but a hydrodynamic
6 separator. It separates floatable pollutants from
7 those that settle and then discharges that treated
8 water -- all of these combined will end up in the
9 storm drain system which then after it's treated
10 dispersely throughout the site for water quality will
11 get into our underground storm water management pipe
12 system which is our quantity control.

13 We are proposing an underground system of
14 about 72-inch diameter corrugated metal pipe system.
15 This will -- what is shown here is size for a 15-year
16 post-development storm managed back to a two-year pre-
17 development release rate.

18 DCDOH standards only requires treating a
19 two-year post back to a two-year pre and a 15-year
20 post back to a 15-year pre. Our quantity goes above
21 those requirements and takes a 15-year post back to a
22 two-year pre.

23 MR. NETTLER: So, is this -- this proposal
24 goes beyond what is required by the D.C. regulations.

25 Correct?

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1 MS. SEARS: Yes, it does.

2 MR. NETTLER: Could you explain how it --
3 how the 15-year pre I guess is what you said or the 15
4 year is -- is equated to the two year?

5 MS. SEARS: The 15-year storm event has --
6 over a 24-hour period is defined as a rainfall of 6.79
7 inches in the District. A two-year storm event is
8 defined as 2.17 inches of rainfall over a 24-hour
9 period. What we are doing is taking that 6.79-inch
10 storm event and releasing it as if only a 2.17 two-
11 year storm event in the existing conditions fell.

12 MR. NETTLER: And what impact does that
13 have on the wetlands?

14 MS. SEARS: Well, any storm event from two
15 years through 15 years in a post -- after this place
16 has been constructed will release back at a storm
17 event that is a two-year existing condition now. It
18 only enhances the wetlands. It takes a 15 -- up to a
19 15-year post development storm and releases it at what
20 the wetland would -- is receiving today at a two-year
21 rate.

22 MR. NETTLER: Let's say you had a 25-year
23 storm come through. What -- how would -- how -- could
24 you quantify how that would be taken care of by this
25 system and -- and the consequences of the 25 year?

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1 MS. SEARS: Sure. In a 25-year storm
2 event, I think to clarify a 25-year event, this storm
3 drain system is only sized for a 15-year storm.
4 However, just because a 25-year storm event happened
5 doesn't mean all 25-year storm event which is 8.35
6 inch storm, that runoff volume isn't all overflowing
7 and going into the wetland. Up through a 15-year
8 storm event, it's picked up in our system and managed
9 both -- in our underground storm water management pipe
10 system.

11 What that means is the difference between
12 a 25-year storm and a 15-year storm which would
13 actually overflow is only 1.56 inches of runoff which
14 is less than a two-year storm event.

15 MR. NETTLER: And do you know what the
16 history has been in the District let's say over the
17 last five years in terms of rainfall?

18 MS. SEARS: Yes, from NOAA's website,
19 we've gotten data since the year 2000 until today and
20 each -- quantifying each month within each of those
21 years and there has only been five months total since
22 the year 2000 for which a storm over a 24-hour period
23 greater than a two-year storm event has occurred.

24 MR. NETTLER: That's why there are 15-year
25 storms and 25-year storms.

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1 MS. SEARS: Correct. The probably of a
2 15-year storm is one storm in 15 years and the
3 probably of a 25-year storm is one storm in 25 years.

4 MR. NETTLER: Now, did you look at the
5 amount of impervious surfaces that would be
6 accommodated by this storm water management program?

7 MS. SEARS: Yes, we did. In fact, we did
8 a pretty detailed analysis of what we are proposing
9 the number of lots, the houses, the rooftops, the
10 sidewalks, the driveways, the road network,
11 individually breaking them down into a square footage
12 amount, totalling those up, and adding a 15 percent
13 possibility for future additions and that amount is
14 276,176 square feet which is about 6.34 acres of our
15 16.4 acre site, only 39 percent.

16 MR. NETTLER: And that's accommodated by
17 this storm water management plan?

18 MS. SEARS: The preliminary storm water
19 management design that has been done had assumed a 50
20 percent impervious coverage which is beyond what we
21 will actually be doing.

22 MR. NETTLER: And you -- and in planning
23 this system, you -- did you look at the soil survey
24 that was done for the site as well?

25 MS. SEARS: Yes.

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1 MR. NETTLER: Okay. And how does it
2 relate to the soil survey that was done?

3 MS. SEARS: The preliminary geo-technical
4 report that was provided to you listed some borings
5 that had a ground water table level and possibilities
6 of structural fill, but relating to storm water
7 management, we could probably, as been inferred,
8 require an additional study and final design.
9 However, our storm water management design does not
10 rely on infiltratable soils. None of the devices we
11 have proposed for water quality need to have
12 infiltratable soils.

13 MR. NETTLER: In other words, regardless
14 of what the soil condition ultimately may be and so
15 far the soil survey suggests that it's -- this is land
16 that can be -- this is soil that can be built on, this
17 system can accommodate whatever soils are there. Is
18 that correct?

19 MS. SEARS: Correct. If soils are not
20 infiltratable, then, for example, in buyer retention,
21 we provide an under drain so that the water that
22 filters through gets into a -- that under drain and
23 that goes into the storm drain system.

24 As far as fill media and soil on the site
25 that may be fill, if they are not structurally

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1 compatible, then they will end construction and during
2 final design of the site, be replaced with structural
3 fill materials that can be suitable to be built on.

4 MR. NETTLER: Okay. You were here. I
5 think you heard testimony. A number of people were
6 looking at a program that was similar to the one that
7 was utilized for the field school, but yet alone, the
8 field school program seems to be creating problems.

9 First of all, are you familiar with the
10 program that was created for the field school?

11 MS. SEARS: Yes.

12 MR. NETTLER: And could you tell the Board
13 what that program is? The storm water management
14 program.

15 MS. SEARS: The storm water management
16 that was done for the field school used an underground
17 pipe system like we have and -- but, the -- one of the
18 main differences for water quality it just used a sand
19 filter at the very down -- the most downstream point
20 and only one device that treated all runoff as it got
21 to the lowest point of the site prior to entering into
22 the quantity underground storm water management.

23 MR. NETTLER: And in terms of its -- and
24 it's capacity in terms of the 15/2 year? What --

25 MS. SEARS: And we have gotten

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1 confirmation from DCDOH of the final design that was
2 done for that project which for their underground
3 storm water management system only provided that D.C.
4 required two-year post back to two-year pre and 15-
5 year post back to 15-year pre. Nothing more.

6 MR. NETTLER: So, this -- this plan --
7 this program again goes beyond the situation at the --
8 the storm water management program that was provided
9 at the field school?

10 MS. SEARS: Yes, because we are taking a
11 15-year post back to a two-year pre.

12 MR. NETTLER: And you heard that there
13 were -- notwithstanding the fact that ours -- our
14 storm water management proposal is -- goes beyond
15 theirs, that there was concerns in the neighborhood
16 about the fact -- the conditions adjacent to the field
17 school site -- downstream from the field school site
18 because of runoff. Had you made any inquiries to
19 determine what the cause of that was?

20 MS. SEARS: From all accounts that I have
21 been aware of, it is not storm water management
22 related, but constructed related issues.

23 MR. NETTLER: And what do you mean by
24 construction related issues?

25 MS. SEARS: Maybe not compacting the soils

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1 to the proper compaction which may have over time
2 eroded and caused the failure on the slopes that exist
3 today.

4 MR. NETTLER: And to -- to deal with that
5 situation, the District of Columbia Department of
6 Health would have to come back and develop a remedy
7 for the site if that was -- if that is the cause of
8 it. Correct?

9 MS. SEARS: That is true.

10 MR. NETTLER: Thank you. Mr. -- I'm
11 sorry. Roy Gauzza, you worked on the grading plan for
12 the site. Correct?

13 MR. GAUZZA: That's correct.

14 MR. NETTLER: Could you run through that
15 grading plan for the Board? And I think we have to
16 bring that up.

17 MR. GAUZZA: The grading plan addresses
18 input from our architect, our arborist, our engineer,
19 environmental, and planning and naturally, the site.

20 I would like to emphasis that the last
21 thing a developer wants to do is move earth.

22 So, we have minimized as much as possible
23 the grading of the site. It is a preliminary grading
24 plan and it shall be finalized for the permit process.

25 When I say preliminary, there's no spot

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1 shots, no proposed spots. That type of thing. Spots
2 being just a spot giving you the height of that
3 particular location.

4 We have taken --

5 MR. NETTLER: And that's normally -- and
6 that normally is finalize when you've got to the
7 permit process. Correct?

8 MR. GAUZZA: When we get to the permit
9 process, when we know what the houses will be, when we
10 know finished floor elevations, when we know garage
11 elevations. Most of the houses that we're proposing
12 will be walkouts meaning the basement will be of full
13 height exposed in the rear. The fronts will be full
14 height above.

15 MR. NETTLER: Is that so that the house
16 acts as its -- as a retaining wall rather than putting
17 in retaining walls into the site?

18 MR. GAUZZA: The house can act as a
19 retaining wall. It doesn't necessary preclude the
20 addition of retaining walls, but on a sloping site
21 like this, it's extremely typical. You will find this
22 on most sloping sites. Walkouts. That type of --

23 MR. NETTLER: Then, you're not providing
24 -- I'm sorry. I keep interrupting you. You're not
25 providing for the grading in the wetlands area.

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1 Correct?

2 MR. GAUZZA: There's no grading in the
3 wetlands. There's no grading in the buffer, in the
4 25-foot buffer. We are proposing a retaining wall
5 between the three to one slope above the wetlands and
6 the buffer outside the 25-foot buffer.

7 MR. NETTLER: And there's no grading in
8 the -- in the 50-foot buffer areas between the park
9 areas and the rears of any houses as well. Correct?

10 MR. GAUZZA: That's correct.

11 MR. NETTLER: And there no grading
12 adjacent to Ms. Hardy's property. Correct?

13 MR. GAUZZA: That's correct. We have a
14 retaining wall.

15 MR. NETTLER: But, that's not against her
16 property. Right?

17 MR. GAUZZA: That's not. No, it's not
18 against her. That's preventing the grading from
19 touching or coming closer to her property.

20 MR. NETTLER: Okay. I'm sorry. Go ahead.

21 MR. GAUZZA: We are incorporating a number
22 of retaining walls in an effort to save trees. I
23 believe we're saving quite a few trees with the
24 expense of the retaining walls. The retaining walls
25 are meant to save trees not hurt the minimum clearance

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1 which is our sacred area of the trees that should
2 ensure its survival.

3 With the preservation of the clusters of
4 trees, there should not be any significant wind throw.

5 Meaning that if you're removing a number of trees and
6 you save one or two, the stability is not as great as
7 it is when they are in a cluster. So, we are still
8 retaining most of the main clusters if not all of them
9 of the significant trees. I believe we're over 60,
10 possibly 64 trees. I think that's the final count.

11 Again, that's through the use of retaining
12 walls which is atypical on a site like this. A site
13 with these kinds of slopes is often developed. I'm
14 sure that you see them all the time in this
15 metropolitan area. It's just how feasible is it for
16 the developer to develop a site like this and in this
17 case, it is feasible.

18 So, the cut and fill may not balance, but
19 the steep slopes in themselves, existing steep slopes,
20 do not become a challenge to -- to developing this
21 site.

22 MR. NETTLER: Do you have a concern about
23 erosion on the site as a result of --

24 MR. GAUZZA: The erosion in my opinion is
25 not an issue when you deal with your sediment and

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1 erosion control plans and we won't be allowed to do
2 anything without a sediment erosion control plan and
3 with the proper placement of silt fence and, you know,
4 straw bales, any -- any -- the -- the sediment erosion
5 control plan has -- has not been prepared yet. But,
6 with several different methods, they're tried and true
7 methods and they are used to prevent erosion of
8 unstabilized slopes from eroding.

9 MR. NETTLER: You are a landscape
10 architect.

11 MR. GAUZZA: Correct.

12 MR. NETTLER: Correct? A registered
13 landscape architect?

14 MR. GAUZZA: Correct.

15 MR. NETTLER: In looking at the retaining
16 walls that you've provided on the grading plan, there
17 are -- it's not -- the grading doesn't provide for
18 retaining walls everywhere on the site. Does it?

19 MR. GAUZZA: It does not.

20 MR. NETTLER: Okay. But, in terms of
21 keeping down the height of those retaining walls, have
22 you looked at other measures for -- to make sure that
23 those are not very steep retaining walls?

24 MR. GAUZZA: We -- we began to look at
25 some of the walls. In one particular case, there was

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1 a nine foot at the corner. When you -- when you see
2 the top of wall and bottom of wall elevations on those
3 walls, that is just for that one point and it's an
4 arbitrary point. Just to give a feeling.

5 Actually, I tried to find the highest
6 point of the wall. So, the wall will feather down one
7 way or the other way.

8 I think in the case of the retaining wall
9 next to Ms. Hardy's property, the highest point is
10 indeed six feet, but it feathers down to four feet and
11 then it feathers down to nothing and that six feet is
12 -- perhaps 20 -- 20 lineal feet of a 65-foot wall is
13 perhaps six -- six feet high.

14 MR. NETTLER: And that's to insure that
15 you're not grading around the trees that are adjacent
16 to her property. Correct?

17 MR. GAUZZA: Correct. Correct. The
18 purpose -- I'm -- we have to say I believe the purpose
19 of -- 100 percent of the retaining walls is to save
20 trees in this particular case.

21 MR. NETTLER: Just one second. Thank you.

22 MR. BARNES: Good afternoon.

23 MR. NETTLER: Could you walk through the
24 development plan and how you've made -- and what
25 changes you've made to it to respond to some of the

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1 comments that were raised at the previous hearings
2 we've had.

3 MR. BARNES: Certainly. With pleasure.
4 Let's get back to the plan.

5 Throughout the process of the ANC and the
6 BZA hearings as we have heard concerns of neighbors or
7 interested parties where we had not been able to
8 respond to them before and they thought valid points
9 were made. We've tried to make adjustments,
10 refinements to the same spirit of the original design
11 to meet those intentions and some of the points raised
12 by the Board and other parties recently have been
13 incorporated.

14 Recently, there was quite a bit of
15 discussion about the -- the setbacks from the national
16 park land and the sort of visual pollution affect of
17 development and that's one of the things that we have
18 paid attention to. I'll draw your attention to the
19 southern area of this. This was contained in the
20 package that was landed out to you last Tuesday, but
21 the houses that front on the White Haven Park, the
22 national part on the south side have been located with
23 a little more accuracy.

24 In your package, there were three sections
25 drawn at Mr. Parsons' request through three of these

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1 houses that actually fronted onto the park just to be
2 sure that they could be developed. What we have done
3 is we have increased the size of the setback of the
4 building footprint along the southern area voluntarily
5 to address the concern that was raised.

6 We have with our tightest side over here
7 30 feet here and we're offering 30 feet all the way
8 along the eastern boundary in the land that we are not
9 claiming as a run and could when the road is closed,
10 but, in fact, would turn over to be park land. So
11 that you would have the 30-foot minimum setback there.

12 Along the most open sweeping gentle grades
13 down into the White Have Park which is the prettiest
14 relationship we probably have to public park land, we
15 are actually proposing a 40-foot setback on these five
16 sites that actually have that sort of orientation.

17 Because our architectural standards
18 require that the house be on or very close, the front
19 of it, to the building restriction line, then these
20 houses that are shown here and the sections that were
21 drawn in your package show that the house, in fact,
22 would be really quite far back in this case.

23 I've just jotted down the distances here.

24 Here where the house is closest, the point is -- the
25 point of this house is -- is 32 feet away from the

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1 park land. The point of this house here is 34 feet
2 away and that should get into the bigger sites that
3 goes to 80 feet, 130 feet over here, 90 feet, and more
4 than 100 feet at this case.

5 There might be a pool built in this area
6 that is 40 feet back from there, but it's not going to
7 be a tall structure. It's not going to be a looming
8 house because the house would end up being just
9 extraordinarily large and beyond the requirements that
10 we again have in the architectural standards. Would
11 the limit the development of the house.

12 MR. NETTLER: But, that wouldn't be in the
13 50-foot buffer area.

14 MR. BARNES: It would not be in the 50-
15 foot buffer area either, but the -- the Park Service
16 representative earlier, Mr. Murphy, who talked about
17 having what you see from the park not be a tall wall
18 or building close to the park is something that we
19 agree with them. So, we are also showing it in this
20 setback area. We would voluntarily plant native
21 species that are in our approved plant list to help
22 soften the visual appearance from the park.

23 The other thing that we have done since
24 the previous submission after some concerns of Mr.
25 Parsons and others is we have made this lot a 13th

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1 smaller. It used to have a dogleg into this --
2 probably the most beautiful part of the entire site
3 between the wetland and the -- the park on the south
4 and we've instead straightened the line, made the lot
5 smaller, and voluntarily given over almost 300 feet in
6 width, about 100 feet deep of private land that would
7 essentially be thrown in as kind of a visual buffer
8 and a connection to the wetland from the -- the park
9 area.

10 So, in fact, the feeling of the park when
11 you're in it is that, in fact, the development would
12 end after these four houses. There would be this deep
13 area here which is probably about 400 feet deep, more
14 than that, before you get to the first house that you
15 would see up here as you look in from the park and
16 then you get to these houses which again are on the
17 rim.

18 Again, this house is 80 feet. This house
19 about 100 feet back here. So, we have really tried to
20 address the concern of the -- the visual impact from
21 the national park land of the houses.

22 Other than that, during the grading which
23 was reconsidered as mentioned before, we went back and
24 looked at all the trees of significance and tried our
25 best to make adjustments to the layout of the roads

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1 and so on to save them.

2 One comment if I may about the grading is
3 contrary to some of the statements you heard earlier,
4 it has been our intention to work with the grades.
5 We've said it all along and I'm just going to describe
6 our attitude to that.

7 The site is a bowl. You've about that.
8 It's rather like a baseball glove. It's extremely
9 steep though on its perimeters. You could sled off of
10 this side, the slope below were the existing houses,
11 below Ms. Hardy's property and right down into the
12 wetland. That means that the center area here is
13 substantially depressed. The only places you can
14 access this either from Doherty Street or from Foxhall
15 and so, what we have done is kept some of the grade,
16 some of the roads following the Washington grid system
17 which is the way Wesley Heights, Spring Valley, and
18 other neighborhoods like this were planned and where
19 it started to get too steep, we have then followed the
20 lowest point in the valley.

21 The ridge that you heard about earlier,
22 the treed ridge on the right is exactly where we have
23 tried to locate this road following the ridge pretty
24 closely. You can see how many trees we were actually
25 saving close to this road because it's actually very

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1 close to the existing ridge as was mentioned earlier.

2 That ridge drops off almost to a cliff
3 right here. So, this portion here has to be filled
4 just as a matter of math. If you got to get down from
5 Foxhall Road where the safest traffic entrance is
6 because, of course, the grading exercise that we're
7 doing has to balance with all the needs of the
8 neighbors and the traffic and access and safety, this
9 is the safest way to get on and off Foxhall Road and
10 not drag everyone past the neighbors.

11 This road here is as steep as it can be.
12 Our grading has followed the gentlest possible path.
13 This just happens to be very low in here. So, we've
14 scrape off the -- the aggressive edge of this rim and
15 the very high contours that exist right here, we've
16 scraped those off and we've pulled them down into the
17 middle. There is a lot of fill in the middle.

18 You've heard a lot about the soils. The
19 soil's report is really -- there's nothing unusual
20 about it. As you would expect, there's quite a bit of
21 fill on the site of the old house. Nine feet of fill
22 one of the borings showed. This was underneath it,
23 perfectly normal and certainly stable for
24 construction.

25 We have nine houses. We've looked at the

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1 site closely. They'd be nine houses. Most of them in
2 this area here where the basements themselves would
3 not sit on the natural soil or cut below the current
4 soil, they would actually be on fill. There's nothing
5 unusual about it. It would have structural soils
6 below it. All the houses would be on piles, would
7 have a spread footing designed to accommodate it.

8 And as Roy said as we went through the
9 grading exercise, many of these houses are designed to
10 clutch the necessary grading to make the roads save to
11 act as a kind of a retaining wall. It's very typical
12 and very attractive for a steep site to walk in the
13 front door at the first floor level and walk out in
14 the backyard at the basement level.

15 So, these -- these houses here are all of
16 these terrific yards filled with existing trees where
17 you walk out at that level and the same is true with
18 the -- with this site over here.

19 MR. NETTLER: You've seen a couple of
20 plans that were -- concept plans that were developed
21 by the Friends of White Haven. Had you had a chance
22 to review the earlier plan?

23 MR. BARNES: Yes, the new plan that you
24 saw today, I had never seen until today, but the
25 earlier plan that was described that you saw waived

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1 around was somewhat similar in that there was a -- an
2 egg-shaped loop around here with a connection there
3 and a connection there. Somewhat similar to ours.

4 The time that we met with Mr. Slowinski
5 and one of his colleagues, we were impressed by some
6 of the concerns they had particularly about the -- and
7 a sense of openness to the wetland and try to
8 incorporate that to the White Haven Parkway and it was
9 at that time that we inspired by that discussion
10 changed the road that used to run all the way around
11 here with a bridge over the wetland to a much smaller
12 loop road.

13 This was also in response to some of Mrs.
14 Hardy's concerns about the amount of pavement and
15 light pollution that she would see so that there would
16 be much less road in her view and it would no longer
17 be a road on the edge of the park.

18 When we looked at that plan and it was a
19 preliminary plan although it gave up about half the
20 site of -- very strong third of the site to not being
21 developed at all which is very difficult to make the
22 numbers work, it also looked like the lot sizes
23 wouldn't meet minimum lot sizes.

24 My only comment on the plan that was
25 submitted today is it doesn't seem environmentally

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1 sensitive to me to come and build a road through 400
2 or 500 feet of area that we're going give over to the
3 park land to get down to the bottom area over here.

4 We have much less road I think in this development to
5 access, you know, more sites.

6 Our job is to try and balance all the
7 needs. The -- the -- the concerns that the Friends of
8 White Haven Park have are ones that we share
9 completely. We're interested in tree preservation.
10 We're interested in the amenities of the wetland.

11 One of the things about the slope that you
12 heard over here is that this is not precipitous. This
13 is a one in three slope. If you look at the ceiling
14 tiles over there and count them. From that light to
15 that light is nine feet and that's probably three feet
16 there. So, the slope you're looking at above the
17 wetland goes from right there down to right there.

18 You'll easily see the wetlands as an
19 amenity from these houses over here and it's not like
20 some kind of cliff we'll ski jump where the water goes
21 rushing down.

22 MR. NETTLER: You've had a number of
23 different concerns you've had to address in doing this
24 plan. Do you think that the concept that you looked
25 at today responds to those as well?

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1 MR. BARNES: I think that the -- the --
2 the plan that you saw today was advancing the
3 environmental issues at the expense of several others.

4 For example, all the neighbors who are the biggest
5 group of neighbors together with Ms. Hardy on the
6 south here, look, they would have almost all the
7 houses driving past W Street and creating, you know, a
8 difficult traffic situation over there.

9 I also think this is private land that is
10 up for development and one needs to try and balance
11 all of these factors together and the plan that we're
12 offering up here, we are within the site, voluntarily
13 leaving about three acres open. We have a little
14 neighborhood park up there. We have this boulevard in
15 the middle over here. The storm water is below. A
16 big open sloped meadow that would lead down to the
17 wetland and the wetland itself has then this other
18 beautiful hump of land. Certainly, the prettiest part
19 of the whole site over there, voluntarily given over.
20 That's about three acres.

21 There's another whole acre on the right-
22 hand side here which we could have claimed for the
23 developer, but instead we're offering it over to the
24 park.

25 So, essentially, there are four acres of

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1 area that we think is a very -- a substantial gesture
2 towards the environmental issues balance with the
3 needs of development.

4 MR. NETTLER: Okay. My last witness Mr.
5 Peterson. He hasn't testified before in this case.
6 He was sworn in and you do have his résumé from the
7 pre-hearing submission.

8 Mr. Peterson is a traffic engineer.

9 Did you have responsibility for reviewing
10 the -- the report that was done by Guro Slade?

11 MR. PETERSON: Yes, I did.

12 MR. NETTLER: And you've heard some
13 comments about the concerns both with regard to the --
14 the ingress and egress off of Foxhall and the use of W
15 Street. Could you comment about that?

16 MR. PETERSON: Certainly from my
17 perspective, the -- the concept of providing an access
18 to this site, it's own access to this site to Foxhall
19 Road is a great improvement and a benefit to those
20 residents that are on -- that live along W Street
21 because it removed a potential traffic impact that
22 would otherwise be directed to an intersection that is
23 far from desirable in terms of its -- its grades and
24 its approaches to Foxhall Road and one which has been
25 adamantly opposed for segmentation.

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1 So, by creating another access to -- to
2 the site, to Foxhall Road, we remove conflicts and one
3 of the objectives in traffic engineering is to -- to
4 spread out your conflicting movements. So, that
5 instead of concentrating conflicting movements at a
6 four-way intersection, we've removed them, put them at
7 a second access onto Foxhall Road and, therefore,
8 spread the conflicts out.

9 MR. NETTLER: You've heard a comment today
10 I assume that at no time has anybody said that this is
11 safe. Could you respond to that?

12 MR. PETERSON: First of all, in terms of
13 accidents related to land development, there's no
14 accidents or random events that occur at random times
15 and are not -- cannot be related to any particular
16 time for development or any specific development
17 location.

18 But, the thing that this -- by providing a
19 separate access to Foxhall Road for this site,
20 provides us an opportunity to engineer the final
21 intersection to meet current standards in terms of
22 site, distance, and the geometry of the road, the
23 creation of the extra -- the left-turn lane, all the
24 things that don't exist at the existing W Street
25 intersection and those things move towards making for

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1 a safer environment for the new access as contrasted
2 to the existing W Street intersection.

3 MR. NETTLER: Thank you. And the last
4 person, Mr. Pryor.

5 MR. PRYOR: Good evening.

6 MR. NETTLER: Mr. Pryor, you've heard a
7 number of comments over the last three days I guess of
8 hearings on this about whether you've been -- the
9 present Applicant has been the applicant throughout
10 this entire time and how can we assure that we're
11 sensitive to both your neighbor Mr. Hardy and the
12 other residents in the area. Could you comment on
13 that?

14 MR. PRYOR: Since the beginning, the
15 inception of this project over a year ago, we have
16 attempted to try to keep a continuity to this project
17 and to self and -- and as such, we have attempted to
18 use always local elements, engineers, consultants,
19 builders, architects, et cetera and it was our intent
20 at all times to give the neighbors a sense that there
21 was a local group here who was going to -- to take
22 this project to -- to term which was from the moment
23 of acquisition entitlement to it's actual build out of
24 site improvements and build out of the homes.

25 MR. NETTLER: Have you -- you -- you've

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1 heard some of the issues that Ms. Hardy has raised
2 about dealing with her site and protecting it. Have
3 you had any intention of not insuring that her site is
4 protected from the --

5 MR. PRYOR: On contrary. I think we've
6 pretty much bent ourselves over backwards trying to
7 have documents drafted, have her legal counsel draft
8 agreements, and every time that we've given her
9 agreements basically ready to sign, she has always
10 pulled back wanting to find additional factors to go
11 through, but we still are receptive to finding ways to
12 -- to resolve it.

13 MR. NETTLER: Good. Thank you. I don't
14 have any other questions of these witnesses.

15 CHAIRPERSON GRIFFIS: And no other
16 witnesses. Right?

17 MR. NETTLER: No.

18 CHAIRPERSON GRIFFIS: Seven will do it.
19 Let me ask the team perhaps the developer, the -- the
20 report which was going into the soil, there was an
21 issue that was brought up about the bedrock and
22 blasting. It -- it -- my reading at 18.5 feet you
23 start hitting heavy rock.

24 Is it -- I don't know who can answer this.

25 Is it proposed or has it been anticipated at this

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1 point that there would be that type of construction?

2 MR. BARNES: Just an architect not a soil
3 scientist, but we don't plan to have anything that low
4 at all.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. BARNES: So, I don't see -- nothing in
7 the soil's report suggested that we would need to
8 blast.

9 CHAIRPERSON GRIFFIS: Good and in terms of
10 the -- were did our traffic person go? A quick
11 question on -- you indicated that -- I forget what
12 your exact phrase was, but certainly bringing
13 intersections up to current standards, is it -- is it
14 your testimony that this evening talking about that
15 out of Foxhall that it would meet the current
16 standards?

17 MR. PETERSON: As far as I can determine,
18 it will be engineered to meet those standards. The
19 District has certain standards that and will imposed
20 those upon this access point.

21 CHAIRPERSON GRIFFIS: And you mentioned
22 one critical one and that is site distance. Did you
23 analyze this intersection in terms of meeting
24 standards for sight clearance?

25 MR. PETERSON: No, I have not made

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1 specific determination as to the potential reserved
2 for -- for sight distance at this location. I know
3 we've had testimony suggesting that it's not
4 available, but these are based on -- these aren't
5 engineered plans. We haven't got the -- all the
6 geometry in place yet to determine exactly what the
7 sight distance is.

8 CHAIRPERSON GRIFFIS: How much would
9 change once you started getting engineered plans or
10 could change? I mean I guess the direct question is
11 in terms of a traffic engineering standpoint, how much
12 reliance shall we place on these if -- if you can't
13 tell me that they're engineered enough to see whether
14 they would answer certain questions or standards?

15 MR. PETERSON: When you get into the -- to
16 the engineering, you will -- you will have actual curb
17 lines and once you've got those curb lines, there will
18 be determinations made that -- as to what's available
19 sight distance-wise and what you have to do to create
20 the sights.

21 I think the advantage of the proposed
22 location is that it's on a much flatter section of
23 Foxhall Road and -- and a relatively straight section
24 of Foxhall Road and therefore, you don't have the
25 hills and the crests conditions that tend to restrict

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1 sight distance. So, that the -- and then there's --
2 there's been comments about this fact that there's
3 trees along Foxhall Road, but the question that --
4 that you have to review is whether those are within
5 the city's right-of-way.

6 If they're within the city's right-of-way,
7 then the -- the city will ask to -- measures to be
8 taken to improve the sight distance to a point where
9 it meets the standards.

10 CHAIRPERSON GRIFFIS: Okay. And in
11 looking at this schematic or concept plan in terms of
12 that intersection, have you looked at it closely
13 enough to ascertain whether there is conceptually
14 enough room for all that's been asked to happen there?

15 Meaning, the -- the pull-off lane, the -- the cut in
16 the sidewalk. Have you looked at those aspects of it?

17 MR. PETERSON: As I -- as I understand it,
18 the -- any addition land that's required to create
19 that left-turn lane in the center will be coming from
20 the site side of the -- of the existing street. If
21 there's not existing right-of-way to accommodate it,
22 it will end up being dedicated as part of the
23 development plan.

24 CHAIRPERSON GRIFFIS: So, you don't have
25 any difficulty in believing that this concept plan

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1 could actually be realized?

2 MR. PETERSON: None. None whatsoever.

3 CHAIRPERSON GRIFFIS: I see and going to
4 the storm water management, you talked about the
5 filtera and also the -- the bay saver.

6 Two questions with that, do these actually
7 contain water? Meaning does that affect the amount of
8 water volume that's running into the -- the -- the
9 pipe storage system?

10 And, two, how much maintenance actually
11 goes into that? You've talked about the bay saver I
12 think it was that separated out larger objects. I
13 would take it like, you know, my daughter's boots in
14 the snow get washed and those wash down the drain.
15 So, we could retrieve it -- well, I digressed. But,
16 how much maintenance actually happens with those?

17 MS. SEARS: To answer your first question
18 about the storage of water with regard to the
19 filtering devices, filtera, the water -- it's not full
20 of water to begin with. It only has water as water
21 enters the street, runs along the curb, and enters the
22 inlet as if it -- in a normal storm. It's only sized
23 to take the water quality storm event which has the
24 pollutants and picks up those roadway pollutants in
25 it.

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1 Beyond that, it would bypass into the
2 proposed inlets that are just part of the storm drain
3 system alone.

4 The water filters through them to a pipe
5 which also enters into the storm drain system. So,
6 there's never any standing water in them --

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. SEARS: -- permanently. Water filters
9 through over time, less than a 24-hour period, but
10 there's never permanent ponding involved with these
11 things.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. SEARS: As far as maintenance goes,
14 both the filtera and the bay saver, it's one of the
15 advantages to using these type of devices. Water
16 quality and the design to treat them is always
17 changing and these are innovative techniques that
18 reduce such maintenance procedures.

19 For example, the filtera has a grate top.
20 Simple maintenance would be to come in, open the
21 grate, can take a rake, take out the trash that would
22 enter the normal roadway, cups, whatever and if
23 there's any sedimentation, it's just on the surface.
24 It could easily be scraped off and removed. You don't
25 need to replace the whole depth of the filter media in

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1 these devices.

2 Bay saver, the maintenance on those, they
3 are placed so that they are in proximity to a roadway
4 and the maintenance that bay saver has dictated is --
5 it's like a vacuum truck would come in. This is a
6 separator type of the device. It separates floatables
7 from the settlable solids and the vacuum truck can go
8 in and vacuum all of that out both the trash that
9 floats and the water that it's in as well as --

10 CHAIRPERSON GRIFFIS: Who does that? Is
11 that like a commercial company that does that?

12 MS. SEARS: Yes, and it's written into
13 when you buy these devices they have maintenance
14 agreements with the purchaser.

15 CHAIRPERSON GRIFFIS: Oh.

16 MS. SEARS: In this case, the homeowner's
17 association.

18 CHAIRPERSON GRIFFIS: That's a good idea.
19 Write in a maintenance plan that keep you going.
20 Okay. Excellent.

21 Oh, last question in terms of
22 organization. We've now talked an awful lot about
23 setbacks, the 40 feet from -- from the park. How is
24 that going to be incorporated into the ownership
25 documents and -- and preserved and maintained if it

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1 was, in fact, to be the -- the final plan that would
2 go forward?

3 MR. NETTLER: Well, there's actually three
4 -- three ways in which we're planning on doing that.
5 One is proposed conditions that we are suggesting
6 here. One is proposed conditions that we're
7 suggesting here. Two is by covenants that we are
8 going to place on the property and three is through
9 homeowners documents that we are -- that we are -- are
10 creating as well.

11 But, it's all based on I think as --
12 Anthony and we have working on pretty restrictive
13 guideline for each of those different -- in each of
14 those different -- for each of those different
15 protective measures.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. NETTLER: We have proposed a number of
18 conditions with our -- I think it was with our pre-
19 hearing statement and we are -- will be expanding upon
20 those to -- to accommodate what the changes -- they
21 are. That is, the additional setbacks that we are
22 willing to and buffer areas that we're willing to
23 provide as -- as detailed today in the plans that we
24 have submitted. As well as the restrictions as to
25 what could be done in any of those areas.

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1 CHAIRPERSON GRIFFIS: Okay. And do we
2 have -- do we know what the restrictions would be?

3 MR. NETTLER: Well, as Anthony said there
4 couldn't be any -- any development at all within those
5 particular buffer areas and the types of development
6 that would be on any property in the rear of their
7 houses in the non-buffer areas would also be
8 restricted as to that as well.

9 CHAIRPERSON GRIFFIS: Okay. Good.
10 Questions? Mr. Etherly.

11 MEMBER ETHERLY: Thank you very much, Mr.
12 Chair. Just very briefly. A short series of
13 questions for Ms. Sears and then I want -- a couple of
14 questions for Mr. Ingram.

15 Ms. Sears, with respect to water, help me
16 understand -- if you could put it succinctly, what's
17 -- how would you describe the biggest problem for this
18 site from the standpoint of water?

19 MS. SEARS: I think there are problems
20 that people have brought up, but I don't consider them
21 problems because I think our storm water management
22 that is proposed accommodates all the runoff.

23 MEMBER ETHERLY: Okay.

24 MS. SEARS: Both for water quality and
25 water quantity.

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1 MEMBER ETHERLY: But, is there something
2 that you would identify as kind of like the leading
3 thing that as you look at the design of the system and
4 it's implementation? As you said, there's a series of
5 concerns, but what's kind of the biggest issue? Is it
6 that the water on this site pretty much as it hits
7 whether it's runoff, whether it's a 15-year storm
8 event, a ten-year storm event, the big is -- is the
9 big issue the fact that all this water wants to head
10 towards what is that southwest corner of the site?

11 MS. SEARS: I don't believe that's a
12 problem.

13 MEMBER ETHERLY: Okay.

14 MS. SEARS: I think that the runoff
15 generally has a trend to go from the top left-corner
16 down to the bottom right.

17 MEMBER ETHERLY: Um-hum.

18 MS. SEARS: But, our -- the series of
19 devices that we are proposing for water quality pick
20 it up throughout that process.

21 MEMBER ETHERLY: Okay.

22 MS. SEARS: It's not at a downstream
23 point.

24 MEMBER ETHERLY: Okay.

25 MS. SEARS: So, I think we addressed that

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1 better than if we only had one device --

2 MEMBER ETHERLY: Okay.

3 MS. SEARS: -- downstream. As far as the
4 amount and the storm event, I would say you really
5 should be focusing from a storm water management
6 aspect on the everyday storms. That's what people
7 see. That's what people think causes their problems
8 and those storms as I mentioned earlier are mostly
9 except for five months out of the last five years --

10 MEMBER ETHERLY: Um-hum.

11 MS. SEARS: -- have been the smaller less
12 -- two-year storm of less.

13 MEMBER ETHERLY: Okay.

14 MS. SEARS: So, I think to the level which
15 DCDOH's standards are to address a 15-year storm and
16 they only require you to address it back to its 15-
17 year existing condition and we take it all the way
18 back to -- all storms up to a 15-year back to a two
19 year --

20 MEMBER ETHERLY: A two year.

21 MS. SEARS: -- which is your everyday --

22 MEMBER ETHERLY: Okay.

23 MS. SEARS: -- preexisting condition. I
24 think we more than meet the requirements and solve all
25 problems --

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1 MEMBER ETHERLY: Okay.

2 MS. SEARS: -- as far as runoff.

3 MEMBER ETHERLY: Now, you referenced a
4 little the field school. I just want to talk briefly
5 about that, but not get into too much detail.
6 Obviously, you haven't perhaps looked at that site
7 closely. But, you did reference some of the
8 challenges or some of the problems that that site has
9 encountered and you started to speak a little bit
10 about perhaps what may have been the root -- the root
11 of that particular problem.

12 As you talked about the field school,
13 could you state a little -- say again what you felt
14 the problem there? What was the stumbling block to
15 that system not operating efficiency based on what you
16 know broadly speaking?

17 MS. SEARS: Based on what I know, it's
18 construction related.

19 MEMBER ETHERLY: Okay.

20 MS. SEARS: Not the type of storm water
21 management devices that were proposed or used.

22 MEMBER ETHERLY: Okay. Have you seen in
23 terms of your experience with this project or let me
24 ask it another way, are there measures that you think
25 need to be implemented here or are there measures that

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1 you are aware of being implemented from a construction
2 standpoint that would avoid or not replicate those
3 kinds of issues for this particular site?

4 MS. SEARS: I think as standard protocol
5 there's inspection during construction phase and I
6 think that needs to be mandated which is typical to be
7 put on this final design plans that get reviewed and
8 approved during the permitting process at DCDOH.

9 They dictate now that we have to have a
10 sequence of construction on our plans which would call
11 out those times at which inspections need to be done.

12 MEMBER ETHERLY: Got ya, but as you
13 referenced the field school piece, I think one of the
14 things that you identify was maybe an issue of soil
15 compaction --

16 MS. SEARS: UM-hum.

17 MEMBER ETHERLY: -- and not having that
18 happen. There's -- above the typical or usually
19 required inspection steps in construction, there's
20 nothing specific that you would identify here whether
21 it's soil compaction or anything else that would need
22 to be done particular to this site in order to avoid
23 similar problems compared to what happened at the
24 field school site.

25 MS. SEARS: I don't think there's

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1 additional measures that need to be beyond what D.C.
2 would -- beyond the requirements of inspection.

3 As far as compactioning goes, there would
4 be -- I was kind of referring from storm water
5 management as having someone there storm water
6 management related to inspect that the pipes were put
7 in properly, proper bedding was there, but in addition
8 to storm water management inspector, as required --

9
10 MEMBER ETHERLY: Um-hum.

11 MS. SEARS: -- there should be a geo-
12 technical representative on site that does testing of
13 the soil as it's compacted.

14 MEMBER ETHERLY: But, it's your testimony
15 and belief that because of the -- the above and beyond
16 that you've done with this particular system, the soil
17 regardless of its type there and there should be a
18 further look at that. I think I hear you saying that.

19 MS. SEARS: Oh, yes, as far as the type of
20 soils --

21 MEMBER ETHERLY: But, that's not a
22 problem.

23 MS. SEARS: No, because our system that is
24 proposed can adapt to whatever additional geo-
25 technical investigations --

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1 MEMBER ETHERLY: Okay.

2 MS. SEARS: -- prove to be the soils in
3 this -- in this location.

4 MEMBER ETHERLY: Okay.

5 MS. SEARS: We don't have to have
6 infiltration to -- to do our system.

7 MEMBER ETHERLY: Okay.

8 MS. SEARS: All that will determine is
9 whether the underground pipes are perforated in a
10 gravel bed or whether they're solid.

11 MEMBER ETHERLY: Okay. Okay. Let me turn
12 to Mr. Ingram now. Just very briefly. I wanted to
13 talk a little bit about I think what's essentially
14 labeled as attachment B from the Friend's of White
15 Haven testimony. In particular, it's the testimony of
16 Mr. Slowinski and what I wanted to just talk briefly
17 about was the kind of wetland delineation sheet that
18 you see here.

19 Now, I want to make sure that I'm clear
20 with respect to -- as it's reflected in this document,
21 the southern wetland, that is the document that has
22 the jurisdictional delineation attached to it.
23 Correct?

24 MR. INGRAM: Yes, I believe they used as
25 they base map a map that had the actual jurisdictional

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1 limits of the wetland.

2 MEMBER ETHERLY: Okay.

3 MR. INGRAM: The limits that are shown
4 there and I wouldn't refer to this as any type of
5 delineation map.

6 MEMBER ETHERLY: Okay. Okay.

7 MR. INGRAM: It's a walk through.

8 MEMBER ETHERLY: But, broadly speaking,
9 that -- the area that we're talking about as the
10 jurisdictional delineation roughly is --

11 MR. INGRAM: Yes, sir.

12 MEMBER ETHERLY: -- in that vicinity?
13 Okay. Now, with respect to some of the other
14 undocumented "wetlands" that have been referenced in
15 the Friend's of White Haven --

16 MR. INGRAM: Um-hum.

17 MEMBER ETHERLY: -- testimony, is there
18 anything that we should be concerned about or that
19 gives you concern by virtue of the fact of these
20 undocumented wetlands or maybe the more
21 straightforward question is are they undocumented
22 wetlands, all they something that should be a problem
23 or should be of worry or concern here?

24 MR. INGRAM: Well, certainly it's an
25 unusual condition to go out on a property and have a

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1 water leak and have a -- in this case, an
2 approximately three acre wet area in the center of it.

3 However, the process of delineating a
4 wetland is pretty rigorous. I, myself, did not
5 delineate this wetland, but I reviewed some of the
6 information that was developed during the delineation
7 process and the soil's criteria is one of the most
8 important criteria and I, myself, have been on plenty
9 of sites where there was an artificial source of water
10 which would lead one to believe that there was a high
11 probability of a wetland there, but, in fact, there
12 were not underling hydric soils or wetland soils
13 there.

14 MEMBER ETHERLY: Um-hum.

15 MR. INGRAM: If that's the case, the Corps
16 of Engineers cannot take jurisdiction over those
17 areas. The legal boundaries of the wetlands are as
18 shown on that map.

19 MEMBER ETHERLY: Okay. Now, let's take a
20 step back then from the legal requirement and perhaps
21 from the spirit of what wetland delineation and the
22 protection and maintenance of wetlands were all about.

23 Is there anything relative to this
24 property outside of the formal boundaries that should
25 be taken into consideration as to site plan and as

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1 this overall project is being put together?
2 Understood than there's an official set of boundaries
3 here that's been -- that's been kind of set forth, but
4 should there -- perhaps from the spirit of the
5 approach to wetlands, should there be some other
6 things that are done on this site in your opinion?

7 MR. INGRAM: Certainly -- certainly, the
8 water leak needs to be fixed. The chlorine that is
9 going into the receiving wetland and into the stream
10 and into the national park is not good clearly.

11 Beyond that in terms of what will happen
12 during the development of the development plans and
13 during the construction process and thereafter, I
14 certainly think there are many opportunities here to
15 make the wetlands and the generous buffer surrounding
16 the wetlands be an amenity for the community and that
17 can be done through carefully developing a specific
18 landscape for the wetland and the buffer by planting,
19 you know, again native species particularly shrub
20 species, for example, that produce a lot of seeds and
21 berries for -- for birds.

22 MEMBER ETHERLY: Okay.

23 MR. INGRAM: So -- so, it would be very
24 easy to create an area here that will attract. I mean
25 people are innately attracted to water and they will

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1 be attracted to this portion of this site.

2 MEMBER ETHERLY: Okay. Thank you. Thank
3 you, Mr. Chair.

4 CHAIRPERSON GRIFFIS: Others?

5 MEMBER MANN: Yes.

6 CHAIRPERSON GRIFFIS: Mr. Mann.

7 MEMBER MANN: I just have a couple of
8 fairly narrow questions.

9 Has any further consideration been given
10 to the Park Service's request or discussion of a fence
11 along their property?

12 MR. NETTLER: Yes. Anthony, you want to
13 talk about it?

14 MR. BARNES: Again, our architectural
15 standards, we are requiring that a three-foot fence be
16 built against the Park Service property.

17 MEMBER MANN: And so, no consideration is
18 being given to the testimony that we heard last week
19 or the -- at the last hearing from the Park Service
20 representative that might have suggested that a
21 different sort of fence be considered?

22 MR. BARNES: I must have missed the
23 testimony.

24 MEMBER MANN: I know that there was some
25 discussion that perhaps some more appropriate fence

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1 might have been five or six feet although I don't know
2 that there was any definitive testimony of that sort.

3 I was just wondering whether or not you
4 had engaged in any further conversations with them
5 about that?

6 MR. BARNES: No, we haven't.

7 MEMBER MANN: Okay. Thank you.

8 CHAIRPERSON GRIFFIS: Let me just follow
9 up with that. My understanding and the recollection
10 that the testimony, and not looking at full record
11 notes, was that it was more of a boundary delineation
12 that they were looking for, but not necessarily, you
13 know, a six-foot stockade fence that might --

14 MEMBER MANN: Well, I think the one term
15 that we heard was psychological separation.

16 CHAIRPERSON GRIFFIS: Right. Exactly.

17 MEMBER MANN: So, they weren't insisting
18 necessarily on that.

19 CHAIRPERSON GRIFFIS: Okay.

20 MEMBER MANN: But, I was wondering whether
21 or not there had been any further discussions
22 regarding that with the Park Service so that it was
23 clearly understood by both of those groups what was
24 really being -- what was really being sought.

25 MR. NETTLER: We have -- we have although

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1 in -- in the letter that we submitted before that
2 issue came up, told the -- to Mr. Murphy, said that we
3 would work with them on whatever fence they thought
4 was appropriate. We would continue to work with them
5 and that has not changed.

6 CHAIRPERSON GRIFFIS: Okay. Excellent.

7 MR. NETTLER: This is -- architectural
8 guidelines standpoint, we have been suggesting a three
9 foot together with a landscape buffer that --

10 CHAIRPERSON GRIFFIS: Okay.

11 MEMBER MANN: I just didn't want that to
12 -- right. I just didn't want that to get lost.

13 CHAIRPERSON GRIFFIS: Indeed and I think
14 it's excellent to bring up. Three foot right now in
15 terms of the proposed guidelines. What kind of
16 material or fence are we actually visualizing here?

17 MR. BARNES: It would be either a black
18 dipped chain link fence or it would be something of a
19 wrought iron. Again, we're open to discussion.

20 CHAIRPERSON GRIFFIS: Certainly like a
21 picket or very thin.

22 MR. BARNES: It would specifically not be
23 a wooden fence.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. BARNES: But, it would be something

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1 that's more substantial.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BARNES: But, also transparent.

4 CHAIRPERSON GRIFFIS: Yes. But -- yes.

5 VICE CHAIRPERSON MILLER: My recollection
6 from -- on this subject of the fence which I think it
7 was pretty unsettled, but I thought there was a
8 question out there as to whether or not even there
9 should be a fence and I guess my question is is the
10 Applicant doing the fence only because -- only
11 response to the Park Service or is that something that
12 the Applicant wanted to do?

13 MR. BARNES: I'd say it's a combination.
14 We were initially led to believe that the Park Service
15 clearly wanted that fence and it makes sense to us so
16 that the delineation of private property to public
17 property is clear and together with a sense of
18 security so that people in the park realize when
19 they're reached private property. It makes the whole
20 neighborhood more secure not to invite people in by
21 not having that boundary. It's a combination.

22 CHAIRPERSON GRIFFIS: You don't want all
23 those birders walking through the park up into your
24 backyard. Rowdy bunch they are. Okay.

25 VICE CHAIRPERSON MILLER: Okay. I have

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1 one more -- another question.

2 CHAIRPERSON GRIFFIS: Indeed. Ms. Miller.

3 VICE CHAIRPERSON MILLER: If I dare. On
4 this 25-foot setback -- I mean no, 25-foot buffer zone
5 from the wetlands, is there some regulation or
6 something that the Applicant is relying on for that
7 number? The 25 feet.

8 MR. INGRAM: I'm not certain if D.C. has a
9 requirement. As I said earlier, I believe they may
10 have just adopted Maryland's 25-foot buffer.

11 CHAIRPERSON GRIFFIS: So, you're
12 establishing it on a regional standard set in
13 Maryland.

14 MR. INGRAM: Well, as was said earlier,
15 there was some testimony earlier that referred to
16 discussions that individuals had with the Corps of
17 Engineers.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. INGRAM: And again, the Corps of
20 Engineers cannot require such buffers. Only state or
21 local governments.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. BARNES: Can I also?

24 CHAIRPERSON GRIFFIS: Sure.

25 MR. BARNES: It's my understanding that if

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1 you build anything within 25 feet of the wetland and
2 it's only the wetland itself that has -- falls under
3 the jurisdiction of the Army Corps of Engineers,
4 you're required to get a special near wetland
5 construction permit.

6 So, the delineation was in response to not
7 wanting to do anything within 25 feet. We didn't need
8 the permits and we wouldn't disturb the wetlands.

9 MR. NETTLER: Well, we -- Frank, if you
10 want to answer this.

11 MR. LZN: DOH has indicated that 25-foot
12 buffer is what you need.

13 CHAIRPERSON GRIFFIS: Is what?

14 MR. LZN: What they need for the wetland.

15 CHAIRPERSON GRIFFIS: Is what they need,
16 but is it what they require?

17 MR. LZN: What they require. Yes.

18 MR. INGRAM: It would make sense. In the
19 District when you are going to have a wetland or a
20 proposed wetland impact or buffer impact, you --
21 because you fill out the state of Maryland
22 application, that application specifically, you -- on
23 that application, you have to list all buffer impacts.

24 So, if they're using the state of Maryland
25 application, then it would make sense that you would

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1 list all of those buffer impacts if there were any
2 within 25 feet of the wetlands.

3 CHAIRPERSON GRIFFIS: Okay. Anything
4 else?

5 VICE CHAIRPERSON MILLER: One other
6 question. Just -- just for clarification. I think I
7 understand what you're saying, but when you're talking
8 about the pools being in certain areas, but not
9 buildings are you talking about the setback areas like
10 the rear yard setback area or something like that?

11 MR. BARNES: It was something I referred
12 to. Yes, that the -- in the areas where there's still
13 -- the building restriction line would be moved back
14 is our -- is our suggestion to 40 feet along here and
15 30 feet there and 30 feet there.

16 It's actually -- it would -- no building
17 of any kind, no structure which includes a pool or
18 retaining wall or gazebo, anything could be built at
19 all in that area. In this area behind the house, you
20 could build a gazebo or a pool or something like that,
21 but it's more minor structure. So, that the scale of
22 the development from a visual point of view is
23 gradual.

24 VICE CHAIRPERSON MILLER: Right. Okay.
25 That's what I thought I just wanted to make sure.

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1 Thank you.

2 MEMBER PARSONS: I want to follow up on
3 that point. I think now that we've got the building
4 sited on your drawing, it's much more comforting to me
5 especially those 130-foot setbacks, 100-foot setbacks.

6 Would you be willing to say that other
7 major structures as pool house, cabanas, something of
8 that scale couldn't be built in that setback area?

9 I'm not making myself clear. You've got a
10 45-foot setback. I'm trying to push right to the wall
11 of the building and define that as well.

12 Because we've achieved the visual impact
13 of pushing the houses back that we could have achieved
14 by the original plan with a road, but now we are
15 allowing swimming pools and sometimes they come with
16 cabanas and outdoor kitchens or whatever people are
17 doing nowadays, which could be just as obnoxious,
18 defeating all that we've done.

19 So, is there anyway you could look at that
20 -- you're preparing some covenants. Don't have to
21 respond to that tonight, but I was hoping those
22 covenants --

23 MR. BARNES: The answer's yes.

24 MEMBER PARSONS: -- might -- yes.

25 MR. BARNES: Yes.

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1 MEMBER PARSONS: So, I should stop?

2 MR. BARNES: Yes.

3 MEMBER PARSONS: These sessions are very
4 helpful. Thank you for your response.

5 I wanted to talk to Ms. Sears and others
6 wherever. Whichever one of you.

7 Still a little troubled by this -- this
8 30-foot fill and I'm -- I'm glad you used the wall,
9 Mr. Barnes. It was very helpful.

10 But, you've got -- I -- I somehow this
11 isn't coming together as an amenity for this community
12 and when you look at the wetland, you've setback 25
13 foot. You've got a seven-foot high wall and then a
14 fill and I notice possibly the landscape architect has
15 sprinkled some trees on there, but underneath all
16 this, underneath all this, is your pipe system. Ms.
17 Sear's pipe system or maybe I shouldn't. Naming these
18 pipe systems, it will get us all in trouble.

19 That slope looks like it needs to be
20 landscape to me, but you've got maintenance people
21 coming in with big hoses and wanting to suck stuff out
22 of the -- the bay savers and so forth. What's really
23 going to -- what is this place going to look like from
24 the roadway and from the park below?

25 MS. SEARS: Well, from a storm water

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1 perspective, we aren't going to be planting directly
2 over where the pipes lay any major trees. Because if
3 ever for some reason in the future, you needed to --
4 if there was a failure which won't happen, but --

5 MEMBER PARSONS: Promise.

6 MS. SEARS: -- but -- promise. But, by
7 code, you should not be planting on the embankments
8 with trees over these facilities.

9 MEMBER PARSONS: So, it will probably be a
10 grass environment then?

11 MS. SEARS: Or for stability purposes, it
12 can be ground cover planting.

13 MEMBER PARSONS: I see, but something that
14 could be torn up --

15 MS. SEARS: Yes.

16 MEMBER PARSONS: -- in the event of an
17 emergency?

18 MS. SEARS: Yes. Yes.

19 MEMBER PARSONS: And you still got at
20 least four locations where -- where fellows or people
21 with hoses have to get down in to pump out these bay
22 saver things?

23 MS. SEARS: The bay saver, it's not up
24 there, but --

25 MEMBER PARSONS: I thought they were at

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1 the four corners of your treatment area?

2 MS. SEARS: There's only bay saver.

3 MEMBER PARSONS: Oh.

4 MS. SEARS: At the top, at the road.

5 MEMBER PARSONS: Oh.

6 MS. SEARS: There's only one bay saver.

7 The out falls are at the lower end of the pipe after
8 water fills up in the -- in the pipes and releases, we
9 have -- right there's the bay saver which is our last
10 water quality device. Down here --

11 MEMBER PARSONS: So, what are the --

12 MS. SEARS: -- is just -- well, right here
13 and right here are discharge points.

14 MEMBER PARSONS: Oh, those holes fakes me
15 out.

16 MS. SEARS: They are manholes.

17 MEMBER PARSONS: I thought they were bay
18 savers. Okay. Fine.

19 MS. SEARS: No. No, they're just access
20 points.

21 MEMBER PARSONS: All right. Now, whoever
22 designed the walls, who's the wall --

23 MR. BARNES: Could I add one more piece to
24 your answer -- to the answer about what it would look
25 like? If you imagined -- we heard a lot about the 30-

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1 feet. At the corner of the most extreme rise to that
2 point of the intersection down to that corner there,
3 there's 30 feet of grade change over about 100 feet.

4 MEMBER PARSONS: Yes.

5 MR. BARNES: So, it is a -- it is a gentle
6 grassy bank if I can go on the wall again like that.
7 That kind of slope all the way down. Which would be
8 grass or ground cover.

9 So, it's essentially looking down on a
10 stream bed over a long open green substantially flat
11 area except where the grade doesn't allow it and it
12 has to be the retaining wall right at the edge on the
13 right --

14 MEMBER PARSONS: Okay. At Exhibit 9,
15 there's a simple little detailed stonewall and in
16 keeping with the quality of the neighborhood, natural
17 stone is shown.

18 MR. BARNES: Yes.

19 MEMBER PARSONS: But, then there's a
20 troubling note or approved split-faced block retaining
21 wall.

22 MR. BARNES: Right.

23 MEMBER PARSONS: Now, that's a concrete
24 surface. A much different look than -- than this
25 natural stone.

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1 MR. BARNES: Right.

2 MEMBER PARSONS: Why are you suggesting
3 that?

4 MR. BARNES: And we plan not to use a
5 concrete retaining wall faced with stone as much as a
6 gravity retaining wall which is built either of
7 natural stone or these concrete block interlocking
8 elements.

9 A gravity retaining wall has a height
10 limit usually of around ten feet in which it makes
11 sense to do it and would never fail. Allows water
12 through it. Doesn't show mortar joints and it's a
13 much softer sort of feeling environment. The split
14 safe block systems of which there are some very
15 attractive ones out there can allow the wall to be
16 taller. They are engineered. They can be placed with
17 extreme precision.

18 So, in areas, for example, where the road
19 loops around here and we have a tall wall near to some
20 trees that we're very keen on saving, the precision of
21 the placement of those set of walls and their
22 engineering is something that we think we want to rely
23 on.

24 They are -- we care a lot that they be
25 attractive and as much as possible, we will use the

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1 natural stone, but there's some places where I think
2 the split-faced block would need to be in.

3 Facing the wetland area over here,
4 certainly would be attainable in stone. It would
5 certainly be our choice to use it there.

6 MEMBER PARSONS: So, you only use stone
7 where you're going higher than seven feet? You only
8 use the concrete material when you're going higher
9 than seven feet?

10 MR. BARNES: Even closer to ten feet.
11 That would be our plan. Um-hum.

12 MR. NETTLER: But, there is no site on
13 here which goes to that height. Correct?

14 MR. BARNES: No, we have one or two walls
15 taller than that and they're only right in this corner
16 right here right now.

17 MR. NETTLER: It's only -- it's only --
18 it's not the entire wall. Doesn't it --

19 MR. BARNES: Right. We might change our
20 minds and just stick with the natural stone all the
21 way, but it -- there are some of these split-faced --

22 MR. NETTLER: Preferable I think.

23 MR. BARNES: -- that are -- are -- are
24 attractive and those would only be the ones that would
25 be allowed.

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1 MEMBER PARSONS: As may know these
2 concrete walls, there's no height limit.

3 MR. BARNES: Right. They go forever.

4 MEMBER PARSONS: Up. They just keep
5 building.

6 MR. BARNES: I know.

7 MEMBER PARSONS: I don't know when they
8 collapse. All right. Good.

9 The Schnabble study says that you've got
10 brown and gray sandy silt. That's what you're going
11 to be building on as I grasp it.

12 Is that problematic?

13 MR. BARNES: No, it's -- it's probably
14 more of a question for a structural engineer, but
15 being somewhat familiar with the report as well, it's
16 not listed at all if you read the details of the
17 different types of soils as being unstable at all.
18 The coloration just helps them identify. No, it's
19 considered to be --

20 MEMBER PARSONS: So, sandy slit is not --

21 MR. BARNES: Sandy slit, no.

22 MEMBER PARSONS: -- not something --

23 MR. BARNES: No, if it contained a lot of
24 clay or something like that, they would not allow it
25 to be compacted. Then it couldn't be structural fill.

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1 That sort of soil is -- is used all the time for
2 structural fill. It's very common.

3 MEMBER PARSONS: I was just asking in case
4 you had to excavate this out and bring in --

5 MR. BARNES: No, we don't.

6 MEMBER PARSONS: -- material.

7 MR. BARNES: The only thing we should
8 excavate out is the fill in the area of the old house.

9 MEMBER PARSONS: Now, Ms. Sears, I guess
10 it was us that talked about the -- I'll call it the
11 boulevard. That is where the median is -- is
12 separating the roadways and there are these odd
13 looking devices that seem to be drawn the wrong way.
14 You described them as some kind of terrace device that
15 was capturing the water in a flat plane as it spilled
16 down. Is that correct? Did I get that right?

17 MR. BARNES: In your comment that they're
18 going the wrong way, the choice would be they could be
19 drawn like dams or they could be shown the opposite
20 way. They're drawn as if they were not -- as they're
21 back to front dams. I think that's what you're
22 referring to.

23 The purpose for that, there are small
24 retaining walls. They go up to two/two and a half
25 feet in height, but they don't raise up above the

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1 roadway at all.

2 If you follow the contour of the roadway
3 on either side, the curb edge would be completely
4 consistent, but as the road slopes down, these create
5 a cut that's a small flat area, a series of small flat
6 terraces inside of that island.

7 MEMBER PARSONS: So, as the road goes down
8 the hill, the wall goes like this and the flat area is
9 that way?

10 MR. BARNES: As the road goes past, they
11 are cut out next to the road, between the roads.

12 MEMBER PARSONS: Now, is there a curb or
13 something to keep people from sliding into this this
14 morning?

15 MR. BARNES: Does anyone go down to it,
16 yes.

17 MEMBER PARSONS: I mean I didn't see it on
18 the drawing. I just wanted -- it seems like a -- kind
19 of a navigational hazard for cars. A good thing for
20 the slowing of storm water, but --

21 MR. BARNES: Yes, there would -- there
22 would clearly have to be a curb.

23 MS. SEARS: Just to add to that real
24 quick. Even if there's a curb, water can still enter
25 the proposed buyer retention facilities in these

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1 islands by curb cuts.

2 MR. BARNES: Yes.

3 MS. SEARS: Right.

4 MR. BARNES: Sure.

5 MEMBER PARSONS: Now, Mrs. Hardy's trees.

6 Mr. Pitchford, you've been too quiet. We need your
7 help.

8 MR. PITCHFORD: I know. I thought you
9 forgot -- forgot about me.

10 MEMBER PARSONS: Now, she's concerned.
11 She got some expertise from somewhere. She can't
12 disclose the name. Says a tree needs 70 feet and I'm
13 not going to ask you to dispute an unknown expert.
14 But --

15 MR. PITCHFORD: Right.

16 MEMBER PARSONS: -- here we are with 25
17 feet.

18 MR. PITCHFORD: Right.

19 MEMBER PARSONS: So, help us with that.

20 MR. PITCHFORD: I explained it a little
21 bit in the first go round and that is that there is a
22 critical root zone which is much larger than the
23 minimum clearance zone --

24 MEMBER PARSONS: Yes.

25 MR. PITCHFORD: -- that I've talked about

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1 and that critical root zone can be rather amorphous.
2 Doesn't have to be a perfect circle. What we do is
3 look at the volume of that critical root zone and what
4 I'm really concerned about is the circle that is the
5 minimum clearance zone which is the thick scaffold
6 roots and the woody lateral roots that are critical
7 for the feeder roots to come off of and that sort of
8 thing. That's what we really want to avoid.

9 Once I avoid that, I can pick up the
10 critical root zone in other areas, for instance, in
11 her property. How much she's going to go doing
12 something in her property that will sever the root
13 zone of those trees which I doubt she would do. Then
14 there's plenty of critical root zone in her property
15 and elsewhere.

16 The really, really important part is that
17 minimum clearance zone which we've avoid now by moving
18 the retaining wall further out against the road.

19 So, I don't anticipate any problem with
20 that at all and if I did, we have talked about putting
21 this retaining wall on pier footings with grade beams
22 or -- or spanning the root system if I felt it was
23 necessary and I would do tests with an air spade to
24 see if there were larger roots down there that we
25 might impact. But, I wouldn't expect there to be any

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1 impact at all.

2 So, I think our new plan addresses her
3 concerns quite well.

4 MEMBER PARSONS: So, I don't have the
5 drawing in front of me. How far did you move it from
6 the previous submission?

7 MR. PITCHFORD: Oh, before, it was right
8 up against the property line basically. They moved it
9 20 feet. We've moved it outside the minimum clearance
10 zones for all the trees that she's talked about.

11 MEMBER PARSONS: Okay.

12 MR. PITCHFORD: So, that area between the
13 retaining wall and her trees would remain at existing
14 grade? Nothing would occur in there at all. It would
15 remain just as it is today.

16 MEMBER PARSONS: Good. Thank you.

17 CHAIRPERSON GRIFFIS: Quick follow-up on
18 that wall. We just had a description that -- the
19 utilization of the gravity walls be it split-faced or
20 the natural stone, it seems to me you were describing
21 the impact of deep footers or grade beams. What's
22 the difference in that?

23 MEMBER PARSONS: I don't know if there
24 would necessarily have to be a footer on that wall or
25 not. I'm not --

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1 CHAIRPERSON GRIFFIS: Conversation of the
2 -- the impact on the trees if you utilize a gravity
3 wall type construction described?

4 MR. BARNES: There's none. If we used a
5 conventional retaining wall, then you might need piers
6 or footers like that, but we think we can accomplish
7 all these walls with the gravity walls and that would
8 be --

9 CHAIRPERSON GRIFFIS: Then is there lesser
10 impact on the trees from the --

11 MEMBER PARSONS: Oh, definitely.
12 Absolutely.

13 MR. BARNES: Gravity wall doesn't have as
14 deep an excavation by a long shot.

15 CHAIRPERSON GRIFFIS: Indeed. Okay. Now,
16 I'm following up on all this storm water and setting
17 and all of that. I believe it's going to be for the
18 architect, but the Schnabble report also goes into the
19 subterranean conditions and I'm talking about
20 particular details in terms of water flow at slabs on
21 grade adjacent to below grade walls and also -- find
22 the exact thing here because I'm getting tired.

23 Temporary monitoring wells recommended
24 during the final investigation and better determine
25 ground water levels. That's a temporary condition in

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1 terms of their investigation.

2 But, just for our understanding, those
3 would be typical details in terms of drainage runoff
4 or drainage redirection around structures that were
5 below grade?

6 MR. BARNES: Yes, the code requires and
7 good building practice to keep basements dry would
8 require essentially that you consider every cut to be
9 a wet area and so, there are -- there's water
10 protection against the structure and then there's
11 gravel below the slab, below the house which is piped
12 away. There's also gravel against the side of the
13 house to take the static pressure and that is all
14 piped away and tied eventually into the storm water
15 management system.

16 CHAIRPERSON GRIFFIS: Okay. Good.

17 MEMBER PARSONS: I wanted to make sure
18 there's no misunderstanding. What I see with your new
19 grading plan where you've -- you've placed the house
20 -- I don't expect that that L is going to end up
21 exactly looking like it, but that is a commitment of
22 some kind that is -- last time, we had kind of dashed
23 line around the whole lot saying this is where they
24 could put the house. So, what does -- what do these
25 A10, A11, A12, A13 mean to us and mean to the Zoning

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1 Administrator when somebody goes forward to get a
2 building permit?

3 MR. BARNES: In conjunction with the
4 architectural standards which require that I think 30
5 percent of the front of the house be within two or
6 three feet of that front yard building restriction
7 line, it means that the front of the house will begin
8 at the front of the lot and not that the house could
9 be all the way at the back against the park.

10 We then also have some sure area
11 restriction ratios of how big the house could be based
12 on lot size as well as this D.C. coverage requirement
13 anyway on these lots. So, the houses that we've shown
14 and what we think are typical size that -- that we
15 would plan to build here on these sites and they would
16 certainly start near the road to maintain the road
17 scape which we see as a strong town planning and
18 neighborhood gesture and the, you know, the houses
19 would be build back as far as -- as the volume of the
20 house would require.

21 MEMBER PARSONS: Well --

22 MR. BARNES: So, our rules do require that
23 you start close to the street and the houses are going
24 to be similar in volume is our intention.

25 Does that answer the question?

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1 MEMBER PARSONS: No.

2 MR. BARNES: Okay.

3 MEMBER PARSONS: What --

4 MR. NETTLER: Maybe I -- maybe I can
5 answer it.

6 MEMBER PARSONS: I'm just trying to see if
7 -- if that line at the back of these houses means
8 anything. They're nice sections and they look great,
9 but how can we --

10 MR. NETTLER: It does in a sense because
11 as I explained before what we're envisioning happening
12 here is a number of different controls affecting each
13 of the placement of the houses. One is the covenants
14 that we're putting on there. The architectural
15 standards which become part of the -- both those
16 covenants and the homeowners as well as the conditions
17 that -- that we're proposing for placement here and
18 what the -- the idea here is when we -- when you ask
19 the question at the first hearing about showing how
20 you can place the houses on the site that doesn't have
21 this impact was to actually create a volume, an area,
22 that where the house would be. So, whether the -- you
23 know, whether you have a dogleg that goes on the right
24 side or the -- or the left is if yo look on the --

25 MEMBER PARSONS: Sure.

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1 MR. NETTLER: -- the two lots or whether
2 you have just a flat area, that's the volume there and
3 it's -- we're working within that volume for the
4 development because it's based on as Anthony said you
5 have to start under the guidelines. You're going to
6 have to start a certain number of feet from the front
7 of the lot and you won't be able to go back further
8 than a certain number of feet and so, that's that
9 volume.

10 MEMBER PARSONS: Okay. Maybe you could
11 put that into some control that you're going to submit
12 to us.

13 MR. NETTLER: Right.

14 MEMBER PARSONS: Thank you.

15 VICE CHAIRPERSON MILLER: I just want to
16 follow up on this pool house issue and this setback
17 and how you control it. Because you made a very quick
18 yes, you know, when it was being discussed. But, if
19 somebody wanted to have a pool house, could they have
20 it if they had like a smaller house further away from
21 the buffer zone?

22 MR. NETTLER: Well, I think the idea here
23 is to put -- we're trying to deal with the impacts on
24 the park first of all.

25 VICE CHAIRPERSON MILLER: Right. Right.

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1 MR. NETTLER: So, we're trying to limit
2 the amount of construction on those lots that face the
3 park. So, my expectation is that's where you're going
4 to have the most -- they may be the nicest lots
5 because they face the park, but you're going to have
6 the most restrictions in terms of what you can do in
7 the back of those houses.

8 But, when you get further into the site
9 and up, I think you're not going to have those same
10 types of restrictions. You still have the
11 restrictions in terms of the ones that Anthony has
12 talked about in terms of where you have to start the
13 construction and maintaining open space on each of
14 those lots, but you're going to be able to have people
15 who can have some additions that we've taken into
16 account the possibility of in the future for -- for
17 the storm water management program and the pools and
18 things that go along with that. I think primarily
19 though we're looking at those restrictions dealing
20 with houses that are backing up into the park.

21 VICE CHAIRPERSON MILLER: So, your
22 response to Mr. Parsons was limited to those houses
23 that back up to the park. Is that correct?

24 MR. NETTLER: Correct.

25 VICE CHAIRPERSON MILLER: Okay.

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1 MR. NETTLER: Right.

2 VICE CHAIRPERSON MILLER: And I guess the
3 response to my question is though are those houses
4 just not going to be able to have pool houses or -- or
5 are they going to -- or maybe this hasn't been worked
6 out or can they just be smaller and then they could
7 still have a pool house as long as they were the
8 required distance away?

9 MR. NETTLER: Yes, my concern about pool
10 houses, unfortunately, I've had this issue years ago
11 before the BZA with what's a legitimate pool house.
12 It goes back 20 years which was never --

13 CHAIRPERSON GRIFFIS: Not resolved.

14 MR. NETTLER: Right. The court never --
15 the court of appeals said, you know, you have a
16 typical -- what's a typical pool house in the District
17 of Columbia?

18 I think it's better not to get into this
19 amorphous idea as to yes, you can have a pool house,
20 but have a smaller house than sort of saying no, you
21 can't do certain things.

22 CHAIRPERSON GRIFFIS: But, if this --

23 MR. NETTLER: But, this is your volume of
24 the house.

25 CHAIRPERSON GRIFFIS: We're looking at a

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1 conceptual plan. We've set building restriction lines
2 or you're proposing them.

3 MR. NETTLER: Right.

4 CHAIRPERSON GRIFFIS: Aren't we then --
5 aren't we then to go to the regulations and say what
6 would be matter of right allowable to be built on this
7 site with the covenants that run with this --

8 MR. NETTLER: Yes, but we're actually
9 going beyond that. We're --

10 CHAIRPERSON GRIFFIS: I know you are.

11 MR. NETTLER: Right.

12 CHAIRPERSON GRIFFIS: But, if the Board's
13 searching for this security, what's the level of --
14 the threshold of security of what could actually be
15 proposed there?

16 So, in an R-1-B zone --

17 MR. NETTLER: Not R-1-B.

18 CHAIRPERSON GRIFFIS: What did I say?

19 MR. NETTLER: R-1-B.

20 CHAIRPERSON GRIFFIS: Sorry. You could
21 conceivably build an accessory structure on this site.

22 MR. NETTLER: Right and the Board has
23 decided and the court has agreed that an accessory
24 structure depends on what that use is. In terms of
25 its size, depends on what the use it.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. NETTLER: And what similar types of
3 accessory structures are in a similar type of zoned
4 area. So, for example, with the pool house, when in
5 -- I know it wasn't Foxhall, but it was -- maybe it
6 was Foxhall further up. It was Foxhall. The Davidson
7 pool house. I don't know if you all remember the
8 case, but where, you know, much, much further up
9 Foxhall, where you had a pool house that essentially
10 was a --

11 CHAIRPERSON GRIFFIS: Bigger than most of
12 our houses.

13 MR. NETTLER: Yes, bigger than most of our
14 houses.

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. NETTLER: Right.

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. NETTLER: Bedrooms on the top. Had a
19 kitchen and it was being masked as a pool house.

20 So, the idea was, you know, the zoning
21 regulations say accessory structures have certain
22 height requirements, well, how do you hide those in
23 the --- in the -- in that pool house and so, what I
24 argued and the court of appeals agreed with was you
25 had to go back to what are typical pool houses and the

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1 typical pool house is one that is a small little
2 structure that's related to the use that it's for
3 which is the pool and not some other uses.

4 You can't -- by you saying that you as a
5 Board have the zoning regulations to fall back on
6 doesn't give you an answer because it only gives the
7 general idea of what's the use that's considered
8 accessory and then --

9 CHAIRPERSON GRIFFIS: No, my point is it
10 gives us -- it gives us definitiveness at this point
11 in it's ambiguity of what it could possibly propose
12 because I want to be straight. We have conceptual
13 ideas of these design parameters. The only concrete
14 thing that's been presented at our -- to date in this
15 application is the restriction line of what structures
16 won't be build.

17 MR. NETTLER: Well, they're also the
18 conditions that we've already submitted which we're
19 expanding on.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. NETTLER: We already submitted those
22 to you in our -- our pre-hearing --

23 CHAIRPERSON GRIFFIS: Okay. But, it
24 doesn't address definitively if you do a small house
25 could you have a pool house or what the design of the

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1 pool houses are going to be or how they're going to
2 face or anything of that nature. We -- I haven't seen
3 any of that in this application.

4 MR. NETTLER: Right. Right.

5 CHAIRPERSON GRIFFIS: So, rather than
6 spend the time to kind of theoretically talk about
7 those aspects, I think we ought to fundamentally
8 understand what the base restrictions are within this
9 application that we're looking at.

10 MR. NETTLER: Right and the base
11 restrictions for those properties that face the park
12 are going to be different than the base restrictions
13 for the rest of the site.

14 CHAIRPERSON GRIFFIS: Based on the design
15 covenants that you're going to imposed.

16 MR. NETTLER: That's right.

17 CHAIRPERSON GRIFFIS: And perhaps --

18 MR. NETTLER: And they will become part of
19 this order.

20 CHAIRPERSON GRIFFIS: Right. Conditions.

21 MR. NETTLER: Right.

22 CHAIRPERSON GRIFFIS: Okay. What else?
23 Any other questions?

24 MEMBER MANN: I just want to clarify that
25 last sentence. Make sure I understand. CCRs are

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1 going to be developed for each of the lots depending
2 on where on the property they're located. Correct?

3 MR. NETTLER: In a sense, yes, that's
4 correct.

5 MEMBER MANN: And then you just said that
6 the information that's contained in those will also be
7 reflected as conditions of this order?

8 MR. NETTLER: Well, we -- the conditions
9 will -- will precede the CCRs.

10 MEMBER MANN: Right.

11 MR. NETTLER: But, we have specific
12 conditions that we've already suggested and that we
13 are -- have -- are expanding upon based on what you're
14 seeing here that we will provide as well as part of
15 this order.

16 So, it will then again get incorporated
17 into the CCRs.

18 MEMBER MANN: At the end of the day, the
19 CCRs can only become more restrictive?

20 MR. NETTLER: That's right. That's right.

21 MEMBER MANN: Okay.

22 CHAIRPERSON GRIFFIS: Okay. If there's
23 nothing else from the Board at this time, let's go to
24 cross examination. Does the ANC have any cross of the
25 witnesses seven?

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1 MS. GATES: So, I'll stand up and ask the
2 questions.

3 CHAIRPERSON GRIFFIS: No, we can pull up
4 another chair.

5 MS. GATES: You talked about covenants.
6 Having we just seen covenants in Spring Valley broken
7 by a vote of the homeowners association?

8 MR. NETTLER: I'm not aware of which
9 covenants you're talking about in Spring Valley that
10 were broken by the homeowners association.

11 MS. GATES: Well, I'm not going into a
12 lengthy thing.

13 CHAIRPERSON GRIFFIS: No, we don't want to
14 hear it.

15 MS. GATES: And just tell you, but yes,
16 this did just happen.

17 CHAIRPERSON GRIFFIS: Good to know. But,
18 isn't your direct question Mr. Nettler, what is your
19 client doing to insure the fact that you adopt all
20 these great design parameters and limits with a
21 homeowners association? What the control of changes
22 and amendments to that? What's to say in a year all
23 these guys get together and say boy, you know, what we
24 really want is a -- is a -- yes, a big truck --
25 monster truck --

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1 MS. GATES: We all want pool houses.

2 CHAIRPERSON GRIFFIS: And that's what
3 we're going to get. What's the insurance of that? Is
4 there any? Is what -- what --

5 MR. NETTLER: Well, there are. As I think
6 Mr. Mann noted that what we're doing here is we're
7 saying that the order itself will contain significant
8 -- the order here and the conditions that we're
9 suggesting will be significant restrictions. The CCRs
10 will only go beyond that to be even more restrictive
11 and CCRs can be developed in a way that can make it
12 very difficult to be amended which is not unusual in
13 terms of covenants either.

14 But, without knowing what situation that
15 Ms. Gates is referring to, I can't say whether that's
16 an analogous situation to this, but that's not --

17 CHAIRPERSON GRIFFIS: But, it's a
18 redundant insurance you're saying in terms of one, any
19 conditions in our order aren't changeable by a
20 homeowners association meeting and vote. They
21 obviously run with the land and so, they would have to
22 be complied with.

23 MR. NETTLER: That's correct.

24 CHAIRPERSON GRIFFIS: Okay. Other
25 questions?

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1 MS. GATES: I trust you.

2 CHAIRPERSON GRIFFIS: Did you say that
3 loud enough?

4 MS. GATES: Mr. Ingram, you said that, and
5 I think I'm going to say this right, that on September
6 2nd, the Army Corps received your application and then
7 on the 28th of September, they did a field visit with
8 you. Has the Corps seen, and really I just need a yes
9 or no here, has the Corps seen the most recent site
10 plans?

11 MR. INGRAM: Couple points and I'll be
12 quick. I wasn't the one who submitted the application
13 for the jurisdictional determination and the dates are
14 a little off, but no, the Corps hasn't seen the most
15 recent site plan. They typically never get involved
16 at this point in a project.

17 MS. GATES: Okay. And what about the
18 Department of Health?

19 MR. INGRAM: I'm not sure at what point in
20 the -- yes, my -- many times.

21 MS. GATES: So, they have reviewed this
22 most recent piece that we received last week?

23 MR. INGRAM: Yes.

24 MS. GATES: Okay. I'm referring to this
25 plan. There appear to be a number of wetland areas on

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1 here.

2 MR. INGRAM: Absolutely.

3 MS. GATES: The pipe. How can the pipe be
4 creating this many wetlands?

5 MR. INGRAM: Well, you know, one of the --
6 one of the most common mis-perceptions that we're
7 under is that water moves downhill. I'm here to tell
8 you water does not move downhill. It does move down
9 pressure which is not always downhill.

10 So, we don't know what happens to that
11 water at the point that it discharges from the leak.
12 It is reasonable that it infiltrates to a certain
13 elevation and then can move around that hillside at
14 that elevation to a number of different discharge
15 points.

16 MS. GATES: How long after WASA deals with
17 this leak will you be able to determine what is and
18 isn't a wetland?

19 MR. INGRAM: The issue is -- been to bed
20 as a result of the jurisdictional determination that
21 the Corps of Engineers did.

22 MS. GATES: They wouldn't -- you wouldn't
23 invite them to come back and revisit it because now
24 you know the leak isn't causing all these other
25 places?

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1 MR. INGRAM: They hadn't indicated to us
2 that they would want to come back to see anything post
3 check off --

4 MS. GATES: I'm asking if you would ask
5 them back.

6 MR. INGRAM: I'm not in a position to.

7 MS. GATES: Who is in a position to do
8 that? Let's direct the question to them.

9 MR. NETTLER: Well, I guess I can answer
10 the question. The answer is no. It's not -- there's
11 -- there's no basis for them to come back and do that
12 because they've made a determination based on their
13 review of the site as to what is within their
14 jurisdiction. So, whether it's we or WASA or more
15 likely us correct the problem with the leak, there
16 isn't going to be an issue for anybody to come back to
17 deal with.

18 MR. INGRAM: Let me just make one -- one
19 other point. I can tell by reviewing the record that
20 on the field day when -- when this work was completed
21 that an extensive amount of time was spent in that
22 three acre area digging soil profiles and looking at
23 the soils in that area because it was a problem area.

24 MS. GATES: Thank you.

25 MR. INGRAM: So, that would only become

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1 more upland over time when that leak shut off.

2 MS. GATES: Okay. Ms. Sears, I think I
3 might have missed something. On the drawing, there is
4 a storm pipe that travels along Foxhall Road.

5 MS. SEARS: A proposed storm drain.

6 MS. GATES: Okay. That you -- so, you all
7 are planning to put that in?

8 MS. SEARS: Yes, as part of the road.

9 MS. GATES: Okay. And what is the
10 relationship of that pipe to all this other storm
11 water management plan we've talked about tonight or
12 heard about?

13 MS. SEARS: That is only treating Foxhall
14 Road runoff.

15 MS. GATES: Okay. So, you all aren't
16 pumping anything in there?

17 MS. SEARS: No, not at all. Nothing from
18 our site gets into the -- it's just the road runoff.

19 MS. GATES: Okay. One little question
20 about the filtera system. Over time, do things like
21 road pollutant, I'm talking about oils, get into the
22 system or are they really all captured right on the
23 top in that area that you said could easily be cleaned
24 or is that the bay saver? I just --

25 MS. SEARS: Well, all pollutants in the

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1 road get treated by all these devices and the filtera
2 if it is in the roadway runoff that gets into it, yes,
3 it will enter the filtera, but it -- it filters
4 through. But, through the top portion of the filter
5 is where most of these pollutants are captured and it
6 can be scraped off and maintained over time.

7 The bay saver unit separates out the oils
8 which float from other pollutant which settle.

9 MS. GATES: And they don't build up over
10 time? In other words, at some point, the system
11 begins to fail is I guess my question. Either one of
12 these.

13 MS. SEARS: With proper maintenance, no,
14 they will not fail because they are maintained on the
15 annual basis.

16 MS. GATES: Okay. Mr. Barnes, I believe
17 you said that some of the houses in the bowl area --

18 MR. BARNES: Yes.

19 MS. GATES: -- might have to have pilings.

20 MR. BARNES: I was saying pilings are one
21 solution for building on fill. If there was ten feet
22 of fill below a basement which is probably the most
23 extreme case here, it might be economical if you test
24 the soil as the new purchaser of the lot to just put
25 -- to drill piles of dried piles down in there and

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1 residential piles are not like the sort of things you
2 see downtown if that's what you're concerned about.

3 A friction pile could be cast in -- in
4 place there rather easily and may be cheaper than a
5 wider spread footing or pulling up the soil and laying
6 it down to a compacted standard.

7 MS. GATES: Earlier, there was some talk
8 about maybe having subsurface rock.

9 MR. BARNES: Yes, subsurface rock that was
10 located was only in the spur of -- very steep spur of
11 land below Mrs. Hardy's property down there and it was
12 18 or 19 feet below the existing grade and we're not
13 planning to go down there at all.

14 MS. GATES: Okay.

15 MR. BARNES: The other drillings which
16 were like 20 feet deep each, none of them hit rock.

17 MS. GATES: Ms. Sears, I do have one more
18 question for you. In the bay saver system, the water
19 from that flows into the wetland. Correct?

20 MS. SEARS: Well, the water flows first
21 into the underground pipe system.

22 MS. GATES: Correct. And then --

23 MS. SEARS: And then --

24 MS. GATES: -- tell us how it gets into
25 the wetland from that system?

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1 MS. SEARS: Well, the bay saver unit is at
2 the end, the bottom portion of our storm drain system.

3 Water -- water enters the bay saver through pipe.
4 It's filtered through. This separates the floatable
5 pollutants from the settled pollutants. That clean
6 water will then go into the underground storm water
7 management for storage management and then get
8 discharged into the wetland at two proposed locations
9 there and there.

10 MS. GATES: And when it gets discharged,
11 does it come out of a perforated pipe and sort of get
12 released slowly or does it just get flushed out?

13 MS. SEARS: I think the best answer to
14 your question -- let me just let you envision what
15 happens in the underground storm water management.
16 Water enters it and fills up like a -- like say a
17 bathtub.

18 MS. GATES: Um-hum.

19 MS. SEARS: Filling a bathtub up and
20 there's a control structure. At both of the out fall
21 locations, there's two circles as we are graphically
22 representing them as manholes. Those would have a
23 control structure inside which has a small opening say
24 within a wall in the middle of the manhole that allows
25 that water to be released at a slower rate, our two-

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1 year pre-developed condition.

2 Okay. That is -- that releases within
3 that manhole and then it discharges through a large
4 pipe to accommodate a 15-year event into the -- the
5 wetland. It's not under pressure flow. It is a
6 gradual flow in the larger pipe after it's released at
7 that smaller orifice rate.

8 MS. GATES: So, it does not encourage silt
9 buildup?

10 MS. SEARS: No, all of the silt and
11 sediment and pollutants are already addressed through
12 our water quality --

13 MS. GATES: No, but if it runs over.

14 MS. SEARS: No, at the end of our
15 discharge points right here and here, we will have as
16 typical at out falls like a rip rap device which --

17 MS. GATES: I don't know what that is.

18 MS. SEARS: Okay. Stone --

19 MS. GATES: Okay.

20 MS. SEARS: -- at the end of the pipe to
21 prevent erosion, dissipates the water so that it is
22 not harmful to enter the wetlands.

23 The sediment has already been settled
24 prior to that. There's no sediment that would be
25 discharged.

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1 MS. GATES: Thank you.

2 CHAIRPERSON GRIFFIS: Good. Thank you.
3 Ms. Hardy.

4 MEMBER MANN: Can I just follow-up real --
5 real quick for a moment and just -- this is -- when
6 the -- the water comes out of that system that
7 eventually makes it way to the wetland, any -- any
8 potential remaining pollutants there just gets treated
9 in a more natural -- in a more natural way through the
10 wetland? Is that the idea? Anything that didn't
11 settle in the -- in the process.

12 MS. SEARS: If throughout the many devices
13 we have throughout the site there's still something
14 left that didn't get treated which all water is
15 entering these devices --

16 MEMBER MANN: Right.

17 MS. SEARS: -- from impervious areas, but
18 if -- if there's still a small trace of pollutant, yes
19 it would go through the wetland. But, keep in mind
20 which --

21 MEMBER MANN: Which is --

22 MS. SEARS: -- is the best natural --

23 MEMBER MANN: Exactly.

24 MS. SEARS: -- water treatment you can
25 have.

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1 MEMBER MANN: Right.

2 MS. SEARS: It's purpose is to filter.
3 So, I don't think at that point anything that is still
4 remaining would be in -- in such a small amount that
5 it's only there for the wetland to do it's job.

6 MEMBER MANN: I just wanted to kind of
7 close the loop on the purpose of the wetland.

8 MS. SEARS: Right.

9 CHAIRPERSON GRIFFIS: Right. I think it's
10 an excellent point.

11 MS. SEARS: It is a natural filter and it
12 will do that.

13 CHAIRPERSON GRIFFIS: Okay. Good
14 question. Ms. Hardy.

15 MS. HARDY: Did I get your name right,
16 sir?

17 MR. PRYOR: Right.

18 MS. HARDY: Isn't it a fact that you and I
19 have never met?

20 MR. PRYOR: That's correct.

21 MS. HARDY: Thank you.

22 MR. PRYOR: I believe you have met my
23 associate, Mr. Pearl, many times.

24 MS. HARDY: Yes, I had. Yes, but you and
25 I -- you because you use --

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1 MR. PRYOR: That's correct.

2 MS. HARDY: Now, are you aware of the
3 sequence of events that you characterize of me in
4 agreement with you about the facts that I received an
5 agreement on a Friday afternoon at 5:30 which was then
6 returned to you with our comments on Monday morning
7 and that at 5:30 on Monday afternoon before the 15th
8 which would Monday the 14th, that's when the documents
9 -- and those were the only exchanges that have taken
10 place between us.

11 MR. PRYOR: I'm only aware of the
12 correspondence between the two lawyers and the dates.
13 Not the chronological -- the time factor.

14 MS. HARDY: But, those -- those were the
15 dates. Are you aware that it was -- it was Friday the
16 10th and then this Monday the 14th.

17 MR. PRYOR: Again, I don't have the
18 document in front of me. I can't say.

19 MS. HARDY: Okay. It's just goes towards
20 your characterization of what I've been like now.

21 Are you aware also of the fact I refused
22 to sign your agreement because I thought your
23 conditions they were not specific of enforceable and
24 -- and one of the reasons was that you did not want it
25 to be part of the BZA record?

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1 MR. PRYOR: The fact of you not signing
2 the documents that have been proposed to and reviewed
3 by your counsel and my counsel and which we agreed to
4 was just returned to me saying she has not signed
5 period.

6 MS. HARDY: That's all you know about it.

7 MR. PRYOR: That's correct.

8 MS. HARDY: Okay. Well, because you did
9 add another ringer. You said something about I made
10 additional demands.

11 MR. PRYOR: I said nothing like that. I
12 believe that was said this morning to you by --

13 MS. HARDY: But, I apologize if I didn't
14 hear you, but that's what I thought I heard.

15 This may not be to you. Mr. Pitchford,
16 can I ask you to characterize my understanding of my
17 present situation with regard to protecting my trees?

18 I can either accept your understanding of
19 what is needed to protect my trees and Anthony's
20 presentation of what kind of walls you will build or I
21 can file a claim, a nuisance claim, to protect my
22 trees and then we can have battling landscape
23 architects and engineers. Is that your understanding
24 of how I'm to go with this?

25 MR. NETTLER: I'm objecting.

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1 CHAIRPERSON GRIFFIS: Yes, indeed. I
2 think you just need to rephrase the question to get to
3 the heart of what you're looking at --

4 MS. HARDY: Well, the --

5 CHAIRPERSON GRIFFIS: -- because he can't
6 -- well, just -- just for clarification, you've asked
7 him to tell you what you believe or what you were
8 thinking. I forget your exact words and you're laying
9 it out as this -- and I'm having a hard time
10 remembering --

11 MS. HARDY: Well, is this his
12 understanding of what is -- I -- I've said that I
13 think my trees are in danger.

14 CHAIRPERSON GRIFFIS: Right.

15 MS. HARDY: And I'm asking Mr. Pitchford
16 to comment on my understanding of what are the
17 alternatives that are there to protect my trees and it
18 would appear I'm asking him to say yes or no to
19 confirm that the only choice I have is to accept his
20 characterization of what is correct and Mr. Barnes'
21 characterization of the -- a wall that is 25-foot long
22 and six-feet high.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. HARDY: That it's not going to
25 endanger my trees.

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1 CHAIRPERSON GRIFFIS: Understand why you
2 should believe you?

3 MS. HARDY: Yes.

4 CHAIRPERSON GRIFFIS: Is that what it is?
5 Why should she believe you?

6 MR. PITCHFORD: Because I'm the expert.
7 No, I think we've gone to great extent to accommodate
8 your trees.

9 MS. HARDY: No, I accept you're an expert.

10 MR. PITCHFORD: Okay.

11 MS. HARDY: But, what I'm -- but, I'm --
12 this is really for the Board's understanding that all
13 I can do is have dueling experts and -- and to -- and
14 then to put it the way that someone else said today,
15 what I try to say to the Board, either I face --
16 claims and dueling experts on this issue or you find
17 preventative measures.

18 I don't see that there's -- that there's
19 preventative measures. The condition that I'm asking
20 for says Mr. Pitchford says this is the condition and
21 that's it or I sue and there must be something in
22 between that.

23 CHAIRPERSON GRIFFIS: One would hope
24 there's an awful lot in between those.

25 MS. HARDY: Well, okay.

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1 CHAIRPERSON GRIFFIS: First of all, we've
2 conducted public hearings on this which you were
3 actually granted party status to present a full case
4 and one forum was this one exactly where you presented
5 your case to bring your experts to refute the
6 Applicant's experts in what you believe is a wrong
7 determination in preserving your trees.

8 Secondly, well, I think that's really it.

9 MS. HARDY: Okay.

10 CHAIRPERSON GRIFFIS: You could have --

11 MS. HARDY: If that's only it then this --
12 this only -- this -- but, if that was not done because
13 I wasn't aware that's how it's suppose to be done, the
14 alternative is -- is a legal claim I guess to protect
15 the trees.

16 CHAIRPERSON GRIFFIS: Well, I certainly
17 hope you don't come to this forum to ask us directions
18 on --

19 MS. HARDY: No, I'm not asking you. I've
20 trying to clarify my own survey.

21 CHAIRPERSON GRIFFIS: I think -- and if
22 you asked my opinion of it which you haven't, but I'll
23 take the opportunity. I think there's an awful lot
24 more to do before you go into some litigious posture
25 in terms of providing to protect your trees if that's

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1 the fundamental aspect that is trying to be looked at
2 and in fact, it's a fundamental concern of this Board.

3 There is still time to input detailed
4 information of which we might be able to look at and
5 more so, it seems that the Applicant has been fairly
6 receptive. I don't know this, but only seeing in this
7 hearings, fairly receptive to any sort of options that
8 might be taken or concerns that could be addressed,
9 but we need to get them all out here in order for it
10 to happen and certainly for this Board's deliberation
11 in terms of its determination and conditions that
12 might be put out on order. Okay.

13 MS. HARDY: Well, I failed to get them to
14 -- to -- but I have one more question. I don't know
15 who it's addressed to. I have asked for specific
16 conditions during the construction period and I have
17 not heard any from anybody. I don't know. Maybe we
18 could try Anthony, but most of my concerns that I laid
19 out to you today --

20 CHAIRPERSON GRIFFIS: Indeed.

21 MS. HARDY: -- that bothered me terribly
22 during the construction period and not -- have not
23 been part of this presentation.

24 CHAIRPERSON GRIFFIS: Indeed. It was
25 interesting in -- let's get their connect up with the

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1 Chair and why does that? Let me address that briefly
2 because it was fascinating to me in listening to your
3 concerns of which are all very substantive that you
4 said you weren't necessarily objecting to new
5 development adjacent to your property and it might be
6 kind of nice once it's done, but the process to get
7 there, the construction was so objectionable that
8 conceivably you wouldn't be able to develop anything.

9 Is that my understanding?

10 MS. HARDY: Sorry, the last part missed
11 me. The first part I got. What was the last
12 sentence?

13 CHAIRPERSON GRIFFIS: It seems like the
14 means to the end. You don't have a problem with the
15 end, but the means to get there. Their construction
16 is objectionable.

17 MS. HARDY: Right. I --

18 CHAIRPERSON GRIFFIS: So, how can we --

19 MS. HARDY: Well, I think there are a
20 number of different mitigating things we can do.
21 There is phasing it.

22 CHAIRPERSON GRIFFIS: Right.

23 MS. HARDY: There is days, hours of work
24 and days of work. There is controls on the blasting
25 and the dynamite. I mean I'm at the top of a bowl

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1 that all this stuff's going to come out to me.

2 CHAIRPERSON GRIFFIS: Right. Just for
3 clarity, they've indicated that they're not going to
4 need to blast.

5 MS. HARDY: There's watering. There's
6 water. I mean you're asking me. I'm not a
7 construction engineer. If this project had a
8 contractor, I might get some answers on it.

9 CHAIRPERSON GRIFFIS: Okay. And forgive
10 me.

11 MS. HARDY: But, excuse me. But -- but,
12 you said.

13 CHAIRPERSON GRIFFIS: No, I see. Excuse
14 me.

15 MS. HARDY: I am not objecting to.

16 CHAIRPERSON GRIFFIS: It's my question.
17 The issue is you come back -- we're asking you for
18 information not -- not to say I'm not the expert.
19 It's your concern --

20 MS. HARDY: Yes.

21 CHAIRPERSON GRIFFIS: We're not going to
22 create the darn thing. If you have specific concerns
23 and that's what needs to be addressed, that's all I'm
24 asking you --

25 MS. HARDY: Okay.

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1 CHAIRPERSON GRIFFIS: -- is to get
2 specific with that.

3 MS. HARDY: I put my specific concerns.

4 CHAIRPERSON GRIFFIS: Secondly, is the
5 whole aspect of construction and construction
6 management agreement, this Board in my tenure on it
7 has moved decidedly away from that. That steps well
8 beyond our jurisdiction. Almost every single facet
9 that goes into or had been adopted in past
10 construction management agreements, there's an entire
11 agency that deals with construction and that's the
12 agency that ought to have that. For us to usurp that
13 jurisdiction steps beyond us.

14 And it's almost impossible for me to send
15 the Zoning Administrator out to go say are they in
16 compliance with zoning because they started
17 construction at 7:00 a.m. in the morning. He's going
18 to look at anyone that sends him out there and say I
19 have not a clue. It's not a zoning issue.

20 So, to put it into context, we need to
21 look at specifically those aspect that might be able
22 to be mitigated. You brought up phasing and such.

23 Let's here what -- what proposals there
24 might be for construction management and -- and
25 progress throughout.

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1 MR. BARNES: In -- in the agreement, the
2 near agreement that you've heard much about, we had
3 agreed on many terms that we were prepared to support
4 to address Mrs. Hardy's concerns including offering to
5 wash her house when it's covered with dust and things
6 like this and there was some things that were very
7 specific that were hard to guarantee like you would
8 not see a parked bulldozer below your house.

9 She is 200 feet above to bowl. It's kind
10 of hard to guarantee the sight lines.

11 I think I could say truthfully that as
12 with other neighbors, this groups remains very open to
13 reaching a private understanding with her to address
14 those concerns. We --

15 CHAIRPERSON GRIFFIS: For construction
16 management understanding?

17 MR. BARNES: Beg your pardon?

18 CHAIRPERSON GRIFFIS: A construction
19 management or is that understanding or agreement,
20 whatever you're proposing does that go beyond even the
21 construction management?

22 MR. BARNES: It was a combination of the
23 things in the case Mrs. Hardy --

24 CHAIRPERSON GRIFFIS: How soon do you
25 think that's going to be ratified?

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1 MR. NETTLER: To the extent it goes beyond
2 anything in construction management, I don't think
3 that's very soon because there's a very fundamental
4 difference of opinion as to what can be guaranteed.

5 CHAIRPERSON GRIFFIS: So, one -- one
6 option attentive seven on a Tuesday evening is to
7 break out the documents that need to be agreed upon
8 which might save some time and effort and actually
9 look at some milestones and accomplishments.

10 So, you could, in fact, go in and enter
11 into an understanding and create a construction
12 management agreement with yourself, the other
13 neighbors, and the developer and have it signed.

14 It will be legally enforceable. Will it
15 not, Mr. Nettler?

16 MR. NETTLER: Yes, it will.

17 CHAIRPERSON GRIFFIS: Indeed. So, that
18 can happen. Okay. Fine. I think I got a role as a
19 mitigator. What do you think, Mr. Etherly?

20 MEMBER ETHERLY: I agree, sir.

21 CHAIRPERSON GRIFFIS: Let's still zoning.

22 MEMBER ETHERLY: I agree, Your Honor.

23 CHAIRPERSON GRIFFIS: Other questions.

24 MS. HARDY: I -- may I ask for
25 clarification while --

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1 CHAIRPERSON GRIFFIS: Sure.

2 MS. HARDY: Two sides. I mean I'm the
3 adjacent neighbor and I understood that the Board has
4 some ability to mitigate the circumstances that I
5 believe adversely affect me and did I understand you
6 right that you're saying if I say that they -- if a
7 certain activity is during the construction period and
8 going to adversely affect me, you're saying that's not
9 within your jurisdiction to deal with?

10 CHAIRPERSON GRIFFIS: Oftentimes, the
11 specifics are not within our jurisdiction. The
12 aspects of adverse impact or adverse affect --

13 MS. HARDY: Yes.

14 CHAIRPERSON GRIFFIS: -- are those which
15 go to the development that's proposed and we measure
16 whether the development as proposed would create or
17 tend to create adverse impacts. That means once it's
18 built, once it's run, once it's occupied or once it's
19 use is established, it's zoning. These aspects run
20 with the land.

21 If we were to condition just on specifics,
22 if we were to condition an order that approved this
23 theoretical lot development that said construction
24 will start only at 7:00 a.m., then 30 years from now
25 when one of the houses wants to put an addition on,

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1 they would have to come into compliance with that
2 condition. Well, it makes not sense because the
3 condition was just set for a temporary situation and
4 that's why oftentimes we've moved well beyond
5 construction management agreements.

6 But, there's nothing that prohibits you or
7 precludes you from some signing frankly. Though
8 probably a more enforceable agreement and that would
9 be in the private realm.

10 MS. HARDY: Yes, I think that's it. I
11 think, Mr. Barnes, I just need to follow up saying
12 that I objected to one construction vehicle is to
13 minimize what I've had to say about a construction
14 staging area. That's not quite the same thing as
15 asking not to see one -- one vehicle.

16 Thank you.

17 CHAIRPERSON GRIFFIS: Understood. Thank
18 you. Okay. Next, Friends.

19 MR. SNAPE: Mr. Ingram, I'm looking for to
20 start out.

21 MR. INGRAM: Here I am.

22 MR. SNAPE: Mr. Ingram, are you familiar
23 with the jurisdiction determination that the Army
24 Corps of Engineers made with regard to the wetland in
25 the southeast portion of the Phillips property? Well,

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1 I see it right there.

2 MR. INGRAM: I am.

3 MR. SNAPE: I'm glad you have a copy. Is
4 there anywhere on that document where the Army Corps
5 says that the other wetlands that we've identified on
6 this map are not jurisdictional wetlands? Is there
7 anywhere on that document where it says they are not
8 jurisdictional wetlands?

9 MR. INGRAM: What it says is that the map
10 that was given to the Corps of Engineers was the
11 accurate depiction of the extent of jurisdictional
12 wetlands on the site.

13 MR. SNAPE: So, are you saying no, it does
14 not say? What are you saying? Can you -- I don't
15 understand that answer.

16 Is there anywhere on this document where
17 they say that these wetlands here in the middle and
18 here in the south, but particularly here in the
19 middle, that they're not jurisdictional wetlands? Is
20 it contained in that letter? Yes or no?

21 MR. INGRAM: I believe it -- allow me to
22 take review of the letter for a second. I think that
23 it may say that the wet area in the center that was
24 caused by the broken water line is not a
25 jurisdictional wetland, but let me review the letter

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1 for 30 seconds.

2 I do not see reference in their letter to
3 the area that was caused by the broken water line.

4 MR. SNAPE: Thank you, Mr. Ingram.

5 Sticking with the letter on the
6 jurisdictional determination, have you seen the maps
7 and data referenced on the last page of that letter?
8 It says data reviewed for jurisdictional
9 determination, mark all of it and there are several
10 maps and data sheets. Have you seen any of those maps
11 and data sheets?

12 MR. INGRAM: I'm not sure that I've seen
13 everything. I've seen some of the information.

14 MR. SNAPE: Mr. Nettler, are these maps or
15 data in your possession?

16 MR. NETTLER: If you can tell me which
17 maps and data you're referring to.

18 MR. SNAPE: I'm talking about geological
19 survey, topographic maps, and hydrologic maps which
20 are mentioned here as part of the record. Are you in
21 possession of these maps?

22 MR. NETTLER: They may -- I may or may
23 not. I just don't know sitting here that --

24 MR. SNAPE: Are these maps a part of the
25 record before this Board?

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1 MR. NETTLER: Some of them -- some of them
2 apparently are.

3 MR. SNAPE: Which ones are, Mr. Nettler?

4 MR. NETTLER: Well, I think at this point
5 we're getting beyond what's legitimate questions.

6 MR. SNAPE: How so, Mr. Nettler?

7 MR. NETTLER: I'm not here to testify as a
8 witness.

9 MR. SNAPE: Right.

10 MR. NETTLER: You want to ask the witness
11 here to testify.

12 MR. SNAPE: Well, I'm trying to -- either
13 one of you. I'm trying to just understand.

14 MR. INGRAM: Okay.

15 MR. NETTLER: Well, you can make argument
16 to --

17 MR. INGRAM: Okay. But, in the -- in the
18 section that is being referred to, it says that this
19 office concurs with the delineation report dated
20 September 2nd, 2004 prepared by Environmental Systems
21 Analysis. That report would have included a number of
22 maps. It is the obligation of the Corps of Engineers
23 to review the data that is supplied to them in support
24 of jurisdiction determination such that when they send
25 this letter out, they have made their final

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1 determination.

2 MR. SNAPE: Are the maps by the U.S.
3 Geological Survey in your possession, Mr. Ingram, or
4 are they in the record? Either one. You can answer
5 both questions.

6 MR. INGRAM: I don't know what maps you're
7 referring to by the USGS.

8 MR. SNAPE: This is -- I guess I'll
9 proceed.

10 CHAIRPERSON GRIFFIS: Yes. Indeed. If
11 they can't answer it, they can't answer it.

12 MR. SNAPE: Mr. Ingram, do you or anyone
13 here know whether WASA has fixed the pipe that was
14 leaking water? Do you know whether that pipe has been
15 fixed or not?

16 MR. INGRAM: I don't know for sure, but I
17 don't believe it has.

18 MR. SNAPE: Okay. Okay. Mr. Ingram, are
19 there any invasive species on either the National Park
20 Service wetland or on the wetland that has been
21 identified as a jurisdictional wetland? Are there any
22 invasive species on either of those two wetland
23 complexes?

24 MR. INGRAM: I've not looked at those
25 wetlands.

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1 MR. SNAPE: Can you explain -- you're not
2 a lawyer. Is that correct?

3 MR. INGRAM: Come from a family of them,
4 but I'm not one.

5 MR. SNAPE: Okay.

6 CHAIRPERSON GRIFFIS: We're going to have
7 to ask you to leave.

8 MR. SNAPE: Can you explain -- can you
9 explain why it is that the -- that the Army Corps
10 requires buffers? We've had a discussion. We don't
11 know if it's -- but, why does the Army Corps have
12 buffers?

13 MR. INGRAM: In fact, they've pointed out
14 under section 404 of the Clean Water Act, it is, in
15 fact, illegal for the U.S. Army Corps of Engineers to
16 require buffers to anything outside the jurisdictional
17 footprint of wetlands or streams.

18 MR. SNAPE: Do they not require buffers so
19 precisely those wetlands are not filled?

20 MR. NETTLER: Objection.

21 CHAIRPERSON GRIFFIS: Wait. Yes, why do
22 we continue with a question when the answer is they
23 don't have buffers.

24 MR. SNAPE: Well, I tried to frame in a --
25 in a -- the reality is that he's making a legal

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1 opinion about the Army Corps --

2 CHAIRPERSON GRIFFIS: He said the section
3 code that they don't require the buffers.

4 MR. SNAPE: And I was asking that don't we
5 have buffers as a regulatory matter and we all admit
6 that the Army Corps does have buffers as a regulatory
7 matter. Precisely --

8 CHAIRPERSON GRIFFIS: That's not exactly
9 the answer he said.

10 MR. INGRAM: No, the -- the -- what I had
11 said earlier was --

12 MR. SNAPE: I'll listen more carefully.

13 MR. INGRAM: -- that in the state of
14 Maryland, the state of Maryland has --

15 CHAIRPERSON GRIFFIS: Right. Right.
16 Don't answer a question that hasn't been asked. The
17 direct question was the Army Corps why do they require
18 the buffers and you cited 409 section 221 that
19 indicated they don't require them. Next question.

20 MR. INGRAM: Okay.

21 MR. SNAPE: Are you aware that in Virginia
22 they have 100 foot buffers in the Chesapeake Bay
23 region around wetlands, Mr. Ingram?

24 MR. INGRAM: The size of the buffers
25 depends whether you're in the critical area of the

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1 Chesapeake Bay or outside of it and whether you're
2 talking buffers to streams or buffers to wetlands.
3 The widths -- the widths, excuse me, are all over the
4 place.

5 MR. SNAPE: I think it was either you or
6 Mr. Gauzza, I hope I'm pronouncing your name
7 correctly, that said that you had spoken with someone
8 in the D.C. Department of Health about these plans
9 that are before the Board today as they impact the
10 jurisdictional wetland. Did I hear that correctly
11 from either you or Mr. Gauzza?

12 MR. INGRAM: Others have. I haven't had
13 -- I have not spoken to the Department of Health
14 concerning these plans.

15 MR. SNAPE: Okay. Can I ask who in the
16 Applicant's team did talk to the Department of Health?
17 I could have sworn I heard someone say they had
18 talked to the Department of Health.

19 CHAIRPERSON GRIFFIS: Mr. Lzn did.

20 MR. SNAPE: No? Mr. Lzn. Can I ask who
21 you spoke to in the Department of Health about these
22 plans before the Board today and they're impact on the
23 jurisdictional --

24 MR. LZN: I talked to Ademoso and the also
25 Chief, Tim Caracari.

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1 MR. SNAPE: Okay. Are -- is there a
2 written determination that they've made as it relates
3 to -- because -- I ask because as you know he didn't
4 have information when he testified here. So, is there
5 anything --

6 MR. LZN: Okay. The -- the 35-foot buffer
7 was implied to most of the -- sites. We have other
8 sites, they have -- they have said --

9 CHAIRPERSON GRIFFIS: Yes, but the
10 question is is there a written determination from the
11 Department of Health on the setback from the buffer?

12 MR. LZN: No, it's just verbal. It's
13 verbal. It was --

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. LZN: -- during the field trip.

16 CHAIRPERSON GRIFFIS: That's right. No.

17 MR. SNAPE: Okay. That is it for Mr.
18 Ingram. Mr. Pitchford, in your response to Ms. Moore
19 on her concerns about trees and grading and things
20 like that, you made the statement that trees that
21 could die within the next 20 years should be removed.
22 Can you explain? That was an -- it's an attachment.
23 Exhibit 12 I believe of the most recent submission.
24 It was in response to an e-mail to Ms. Moore.

25 CHAIRPERSON GRIFFIS: Wow.

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1 MR. PITCHFORD: I don't think -- yes, I
2 said that they don't make the best preservation
3 candidates. I don't believe I ever said that they
4 shouldn't -- should be removed.

5 MR. SNAPE: And can you explain why that
6 is? Why don't they?

7 MR. PITCHFORD: Well, simply that they're
8 likely to die within a shorter period of time.

9 MR. SNAPE: And so, you did write "I did
10 not want to pick trees that could fail within the next
11 20 years or less." In terms of mature -- you're
12 talking about mature trees here that you wanted to
13 keep.

14 MR. PITCHFORD: Correct.

15 MR. SNAPE: Okay. Mr. Barnes. Mr.
16 Barnes, why have you changed the grade or are you
17 proposing to change the grade along W Street? I
18 believe I've heard you say that you're going to lower
19 that portion of what we're calling the baseball mitt
20 or the bowl and can you just explain to me and the
21 Board why you're going to reduce level there if indeed
22 that is what you're doing?

23 MR. BARNES: There are two reasons. We
24 are planning to lower the level where it's higher than
25 the roadway for a couple of reasons.

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1 Firstly, in our discussions with the W
2 Street neighbors, they specifically were concerned
3 about houses being built up there that would tower
4 over them on the south side of the street.

5 Secondly, the -- because that exaggerates
6 the amount of fall to the lowest part of the site, it
7 made more sense in trying to make the grades more
8 gentle and the grading plan to scrape off the highest
9 exaggerated rim of the glover to make the grades more
10 gentle through the site.

11 MR. SNAPE: One last question for you, Mr.
12 Barnes. What is the -- with the proposed plan now
13 before the Board this evening, what is the steepest
14 slope or steepest grade that you'll now have on this
15 property? Do you know the answer to that?

16 MR. BARNES: I might defer to Roy.

17 MR. GAUZZA: On the roads, it's 12 percent
18 which is maximum code and on the green areas, it's a
19 three to one slopes.

20 MR. SNAPE: Okay. And what was the
21 steepest slope before -- as it stands right now? In
22 other words, I'm asking to compare this plan with just
23 the grade right now.

24 MR. GAUZZA: I believe it's probably 25
25 percent, but I'm not absolutely sure on that.

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1 MS. SEARS: Actually, just in a quick look
2 of a plan I have right now, there are existing slopes
3 up there that are two to one slopes. Steeper.

4 MR. GAUZZA: Twenty-five percent.

5 MR. SNAPE: Okay. Now, as opposed to the
6 future.

7 MS. SEARS: Existing.

8 MR. SNAPE: Right. I'm finished.

9 CHAIRPERSON GRIFFIS: Thank you very much.
10 Who else do we have? Ms. Gates, come up for your
11 last quick question and is that the parties? We've
12 done all the -- indeed.

13 MS. GATES: It's not a question, Mr.
14 Chairman.

15 CHAIRPERSON GRIFFIS: Uh-oh.

16 MS. GATES: It's a comment --

17 CHAIRPERSON GRIFFIS: Oh, dear.

18 MS. GATES: -- on your concern about the
19 construction management plan.

20 CHAIRPERSON GRIFFIS: Oh --

21 MS. GATES: I understand you feel --

22 CHAIRPERSON GRIFFIS: -- I couldn't
23 imagine that went unnoticed.

24 MS. GATES: I understand you feel you
25 don't have jurisdiction. However, having just lived

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1 through one of these unconditioned construction
2 plans --

3 CHAIRPERSON GRIFFIS: None of my comments
4 said that it wasn't disruptive.

5 MS. GATES: No, I'm going to tell you what
6 happened. When we went to DCRA with it, DCRA came
7 back to us and said there was no condition put in
8 this. It's the BZA's fault.

9 So, before the --

10 CHAIRPERSON GRIFFIS: That's nice.

11 MS. GATES: -- neighborhoods begin
12 planning hot potato --

13 CHAIRPERSON GRIFFIS: I'll leave the --
14 I'll leave the record open for all the parties, the
15 Applicant and yourself and attorneys.

16 MS. GATES: What do we do?

17 CHAIRPERSON GRIFFIS: You brief this Board
18 on where our jurisdiction is in the zoning regulations
19 to cover construction management, construction of
20 projects and I will -- I'll put in everything you ever
21 wanted. Easy enough.

22 MS. GATES: Do we have an enforcement
23 officer now for the BZA?

24 CHAIRPERSON GRIFFIS: We're getting well
25 beyond the scope of this hearing which is still in

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1 progress. So, I need to get into closings at this
2 point.

3 MS. GATES: Thank you.

4 CHAIRPERSON GRIFFIS: In terms of bigger
5 questions, in fact, the -- oh, I shouldn't say. The
6 office is open tomorrow and certainly the director's
7 in for -- for questions on that.

8 VICE CHAIRPERSON MILLER: Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Yes.

10 VICE CHAIRPERSON MILLER: I would just
11 like to make a comment on the construction management
12 question. I think in all the cases that I have sat on
13 in where there have been major ramifications for
14 construction management, while we have not had
15 conditions in orders, there have been agreements that
16 have been worked out by the parties that are
17 enforceable before another body.

18 CHAIRPERSON GRIFFIS: That's a great idea.

19 Okay. Last thing on that. Who would you rather
20 enforce, your attorneys or DCRA? Who do you want to
21 have in control of an agreement? Leave it up to you.

22 Mr. Nettler, how long do you need for your
23 closing?

24 MR. NETTLER: About five minutes.

25 CHAIRPERSON GRIFFIS: Five minutes. Let's

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1 go right into it unless the Board needs a quick break.

2 We all set. Are you ready to go right now?

3 MR. NETTLER: I'm ready.

4 CHAIRPERSON GRIFFIS: Okay. Let's do it.

5 MR. NETTLER: I know it's been a long
6 number of days in which we've heard a significant
7 amount of testimony, but I would like to at least
8 bring us back to what the requirement is for the Board
9 here.

10 This is a special exception that's being
11 sought and it's a special exception that's been part
12 of the zoning regulation since about 1989 since the
13 Zoning Commission adopted an emergency regulation
14 actually on May 5th, 1989.

15 And it was to insure that there were -- as
16 it says in the Zoning Commission's notice, to insure
17 that construction of these sites that require
18 theoretical subdivisions will protect residential
19 neighborhoods from developments which could have an
20 adverse affect on the neighborhood or be inharmonious
21 with the general propose and intent of the zoning
22 regulations.

23 And it was particularly directed at
24 situations I think all of which are the -- are the
25 issues that have been raised here which in terms of

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1 density, in terms of storm water management issues, in
2 terms of tree protection. While not going as far as
3 the tree and slope overlay or some of the other
4 overlays that have developed, it provided the Board
5 with an opportunity to take into account the variety
6 of different factors in making sure that a proposed
7 project on a theoretical subdivision is compatible
8 with a residential neighborhood.

9 It's also important to understand in terms
10 of -- it's called basic special exception juris
11 prudence zoning understandings that the -- the task on
12 the part of the Applicant is to determine whether
13 there's been a reasonable accommodation that's been
14 made to a variety of different issues that have been
15 raised and as well to -- that the Applicant is not in
16 the position of being charged with considering every
17 option that a party may raise in opposition, but
18 merely to make sure that they have made accommodations
19 or have mitigated what are potential impacts.

20 And the whole idea is because the special
21 exception process recognizes that you have a situation
22 where you have uses that are -- that are otherwise
23 permitted as a matter of right, but simply because of
24 where they're located and how they get developed do
25 have the potential for having impacts that are

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1 slightly different than a matter of right development
2 and we don't disagree with that.

3 And I think what we've tried to do and I
4 hope the testimony has demonstrated that over these
5 three meetings is that from the very beginning we
6 recognized that this site had a number of challenges
7 that had to be addressed.

8 It had traffic issues which are always
9 issues regarding any special exception process
10 regardless of whether it's one car coming out of a
11 site or a lot more. Everyone's going to raise a
12 traffic issue and you have to address it and you have
13 to be cognizant of how that gets resolved.

14 The second one was we wanted to make sure
15 that this site wasn't going to be built out to the
16 full capacity that it would -- would be permitted
17 otherwise under the zoning regulations. You've seen a
18 PUD that was approved for this site that had
19 significant more number of houses on this site located
20 in areas that -- actually in -- in the jurisdictional
21 wetlands areas that have been approved and for roads
22 going through there that were significantly different
23 in some respects than this, but -- but ultimately had
24 other restrictions that I think as Mr. Parsons pointed
25 out at the first meeting that were appropriate for

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1 being applied here as well to create this buffer
2 between the park and the part areas and the project.

3 Dealing with the runoff on -- on Foxhall,
4 while it's not something created by this project, it's
5 something that we've been willing to take upon
6 ourselves to remedy going beyond, I think, in some
7 respects what would otherwise be required to us and --
8 and addressing the situation with trees themselves.

9 And trees is a difficult issue. The
10 District after a long period of time, after many
11 efforts on the part of the counsel has recognized that
12 with the adoption of the tree ordinance and with the
13 regulations that have gone into effect I think last --
14 just this past month that there has to be a way of
15 protecting significant trees in the District of
16 Columbia and if those aren't protected, there has to
17 be a compensation that's paid for that to insure that
18 we still reforest the District of Columbia.

19 And so, with those things in mind, the
20 Applicant, I think, came together with the idea of
21 looking for consultants who would provide the ability
22 to demonstrate an understanding and a response to
23 those issues and at the same time, and -- and you've
24 heard them all here today, also identify a peer review
25 process to test those conclusions that were reached by

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1 its initial consultants.

2 The Greenhorne & O'Mara come in secondly
3 as a peer review, but nevertheless, they were the peer
4 review that was done here.

5 Mr. Peterson on the traffic issues and --
6 and others that you've heard from. Anthony didn't
7 have any peer review. I guess he doesn't have any
8 peer in this sense, but -- but he certainly was a
9 significant resource to us in understanding what we
10 needed to do to develop a project that was compatible
11 with what we thought were neighboring areas around
12 this portion of the District of Columbia, Spring
13 Valley, Wesley Heights, and Colony Hill.

14 Not only that, but we looked at, I think
15 -- as Anthony talked about as well, we looked at some
16 of the overlays as well that have been adopted to see
17 how they can be integrated in here even though they
18 didn't apply to this site and I think what you've
19 heard today, you know, it takes a little while to
20 bring things out and to get things refined and to --
21 and to address the issues that we've started to
22 address back in June about the storm water -- a storm
23 water management program that goes way beyond anyone
24 that's required under the local regulations and one
25 that's been developed on adjacent sites that people

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1 had asked us to look at as -- as recommendations for
2 this site.

3 So, we're going way beyond in that
4 respect. Going way beyond in insuring that we provide
5 this buffer to the -- to the park that's meaningful.
6 Going way beyond in insuring that we have sites.

7 Eleven -- average size of these lots 11,000
8 square feet. How many developers come before you with
9 the -- an opportunity to go way beyond not just to
10 9,000, you know, 20 percent/15 percent, but going way
11 beyond what would otherwise be required to insure that
12 we provide as many protections for the environment as
13 possible.

14 And the last thing I want to focus on is
15 the fact that there are a lot of competing interests
16 here. The W Street neighbors some of whom became
17 parties have certain interests using White Haven
18 Parkway. There are those W Street neighbors who have
19 certain interests in terms of what they wanted to see
20 along W Street in terms of the access into this area
21 or not. There are those who have particular concerns
22 about protecting trees at the expense of other
23 concerns whether they're traffic or whether they're
24 storm water management and there are others who have
25 personal concerns because they're adjacent to this

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1 property.

2 And what we've tried to do is reach an
3 accommodation. Just as this Board and as the core
4 recognizes what you're trying to achieve is an
5 accommodation. An accommodation of all those
6 competing interests, but with a project that at bottom
7 is environmentally sensitive, does not have an adverse
8 impact on traffic. That does, in fact, benefit the
9 present traffic situation, relieves certain stresses
10 on that traffic situation.

11 That will ultimately have a site that has
12 more trees on it and healthier trees on it than it has
13 today and that has houses on it that will be sited in
14 a way that will protect both the park and protect the
15 values of property in that area and I think that's
16 what's been presented here today.

17 And we would hope that you would support
18 it and we will provide you with those additional
19 conditions that we've spoken about with our proposed
20 findings of fact and conclusions of law.

21 CHAIRPERSON GRIFFIS: Excellent. Thank
22 you very much. We appreciate your participation, Mr.
23 Nettler and everyone's participation in this long case
24 and this will conclude our hearing.

25 At this time, I'm going to set up the

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1 dates for submissions.

2 Board members, I'll open it up very
3 quickly if we should keep the record open for any
4 other submissions and Ms. Bailey, I don't know if you
5 made any notes. I don't have anything that was
6 required. One thing that rises to my thought is maybe
7 we'd keep the record open for a supplemental Office of
8 Planning's report to react to the submissions that
9 were sent in. I don't see why anyone would object to
10 that.

11 Is there other elements that we would
12 require the record to be --

13 VICE CHAIRPERSON MILLER: I wouldn't
14 require this, but I -- it's one more comment on the
15 construction management issue.

16 I think that while the Board has concluded
17 that it doesn't have jurisdiction to enforce
18 construction management agreement, I -- I believe that
19 we are interested in whether or not a construction
20 management agreement exists because I think that does
21 address some adverse impacts.

22 So, if there does -- if there is a
23 construction management agreement that is agreed to, I
24 would be interested in having that information come
25 before the Board.

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1 CHAIRPERSON GRIFFIS: Right and to be
2 clear on that information that you're requesting,
3 we'll keep the record open for notification an
4 agreement has been signed.

5 We don't need the agreement sent into the
6 record. Is that correct?

7 VICE CHAIRPERSON MILLER: No. Yes, I
8 think that the existence is what's most important.

9 CHAIRPERSON GRIFFIS: Good.

10 VICE CHAIRPERSON MILLER: That the parties
11 come to an agreement.

12 CHAIRPERSON GRIFFIS: We'll note that. We
13 will keep the record open for the legal briefing on
14 jurisdiction for construction management agreements.
15 I wasn't actually kidding about that, but it's not a
16 requirement for the record.

17 Okay. If that's the case then -- yes, Mr.
18 Parsons.

19 MEMBER PARSONS: Well, I don't want to
20 beat this one to death, but I think I have to because
21 I want to tell you how critical this is to my vote and
22 that is these covenants and setbacks --

23 CHAIRPERSON GRIFFIS: Right.

24 MEMBER PARSONS: -- from the park and --
25 and if there's two instruments going on here, you said

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1 three, I think, suspenders, belt, and something else.

2 There's a homeowners association which has
3 not yet been formed. There are covenants to be filed
4 in the land records of the District of Columbia and
5 then our order. Are they duplicative? I mean are
6 they -- are they the same?

7 MR. NETTLER: As I explained to Mr. --

8 CHAIRPERSON GRIFFIS: Use your mike. You
9 need your mike, sir.

10 MR. NETTLER: Actually -- will actually
11 ultimately be more restrictive, but what I'm going to
12 give you is a baseline which -- a baseline which we've
13 talked about here today that would become part of this
14 order that will also be a baseline as part of those,
15 but those may go even farther beyond. But, they're --
16 but, this baseline is going to address the issues that
17 we've talked about.

18 MEMBER PARSONS: Okay. Thank you. So,
19 that would come in with the findings of fact.

20 MR. NETTLER: Correct.

21 MEMBER PARSONS: As a -- as a part of the
22 order.

23 MR. NETTLER: Right.

24 CHAIRPERSON GRIFFIS: And we have a couple
25 of stages here. The other aspect is, of course, we

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1 need to have specifically identified the site plan
2 which would be attached to the order and I'm assuming
3 that it's the one we have recently sent in, but we'll
4 note that. But, it will be noted as an exhibit.

5 One aspect and very quickly and we'll get
6 out of here. Board members, I'd propose to you.
7 Would you want --

8 MEMBER PARSONS: Yes.

9 CHAIRPERSON GRIFFIS: Would we want
10 proposed conditions sent in first for a week and then
11 -- and responses for that? Right now, we don't have
12 additional information coming into the record. So,
13 there's no responses.

14 I'm prepared to set this for a decision
15 the first of April which our first meeting is on the
16 5th. That would allow us for -- conceivably two weeks
17 for everyone to put together their draft orders.

18 Do we need -- I think there's enough
19 information in the record that we don't need responses
20 to proposed conditions if you follow what I say.

21 Is everyone in agreement? We'll just do
22 proposed orders, draft orders which will have the
23 conditions in it. Critical aspect of that, of course,
24 don't worry about the legal -- oh, I shouldn't say it
25 out loud. Should I? Don't worry about the up front

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1 stuff. Let us get to the substance. Okay.

2 Then that being not said on the record,
3 let's get --

4 VICE CHAIRPERSON MILLER: Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Yes.

6 VICE CHAIRPERSON MILLER: I'm sorry to
7 interrupt you. As I understand it then, all the
8 parties have the opportunity to submit proposed
9 findings and conclusions of law and proposed
10 conditions. Correct?

11 CHAIRPERSON GRIFFIS: As they always do.

12 VICE CHAIRPERSON MILLER: Right. Okay.
13 And we often have been saying as -- when you do your
14 proposed conditions, if you can put the rationale for
15 those conditions with it, that would be helpful to our
16 assessment of them. That's okay with you?

17 CHAIRPERSON GRIFFIS: That's absolutely
18 okay. In fact, it's an excellent point to keep
19 reiterating. That's the only reason why we have
20 conditions on orders. They're supposedly addressing a
21 specific piece of evidence that we found may tend to
22 or would -- the condition would abrogate or -- or
23 reduce the potential for an adverse impact.

24 So, we're going to know what the adverse
25 impact is before we start conditioning it. Okay.

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1 Enough from me.

2 Ms. Bailey, when are these due?

3 MS. BAILEY: Mr. Chairman, I just want to
4 go over very quickly what you've just said just to
5 make sure that I'm on the same page as you are.

6 CHAIRPERSON GRIFFIS: Good.

7 MS. BAILEY: And that's April 5th. That's
8 when the Board is scheduled to make a decision on the
9 case.

10 CHAIRPERSON GRIFFIS: Good.

11 MS. BAILEY: The submissions that were
12 spoken of were addressed just now, but there will be
13 no responses to those submissions. Am I correct, sir?

14 CHAIRPERSON GRIFFIS: That's correct.

15 MS. BAILEY: And the date that I'm
16 proposing for the submissions to come in will be March
17 28th.

18 CHAIRPERSON GRIFFIS: March 28th. Do any
19 of the parties or the Applicant have any difficulty
20 meeting that date? Not noting any responses or
21 difficulty in that time period. Okay.

22 Now, specifically, Mr. Nettler, you have a
23 condition number five which talks about work and
24 construction entrances going to be. It also goes into
25 phasing.

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1 One of the aspects that did come up in
2 this or a concern of this and also an aspect of the
3 application is the entire build out and the entire
4 phasing of this. I would anticipate and will draft it
5 myself if one isn't proposed of what the time line is
6 for this construction, articulate as well, and also
7 any aspects that's articulated either in a finding or
8 in a condition as to how the construction is phased
9 which will lend the Board's idea of how long it will
10 actually go.

11 I'm digressing quite a bit because I think
12 you know what I mean, but we're looking at a -- the
13 timing of full implementation of this project and
14 impact of that.

15 MR. NETTLER: Actually, the first Board
16 decision under the regulations back in 1990 dealing
17 with NV Homes and Foxwell Crescent created that --
18 that contained that condition.

19 CHAIRPERSON GRIFFIS: Right. And I think
20 it's an appropriate one. You've started a draft or
21 one of the conditions of it here. Okay.

22 Other than that, anything else? Oh, it's
23 the last opportunity. Very well.

24 Thank you all very much. We appreciate
25 you staying late this evening and we'll look forward

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1 to all those submissions.

2 Ms. Bailey, is there any other business
3 for the Board today?

4 MS. BAILEY: No, Mr. Chairman, that's it.

5 CHAIRPERSON GRIFFIS: Very well. Thank
6 you very much, Ms. Bailey.

7 MS. BAILEY: You're welcome.

8 CHAIRPERSON GRIFFIS: And let's go home
9 for dinner.

10 (Whereupon, the hearing was concluded at
11 7:24 p.m.)

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