

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 25, 2005

+ + + + +

The Board convened in Room 220 South,
441 Fourth Street, N.W., Washington, D.C., 20001,
pursuant to notice, at 9:00 a.m., Geoffrey H.
Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

KEVIN HILDEBRAND	Commissioner (AOC)
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Senior Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
ARTHUR JACKSON
JOHN MOORE

This transcript constitutes the minutes
from the public hearing held on October 25, 2005.

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CHAIRPERSON GRIFFIS: Call to order.

This portion is our public hearing of the Board of Zoning Adjustment of the District of Columbia. It is the 25th of October, 2005, and I am Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann, and our Zoning Commissioner--we do not have one at this immediate time. We may have one as we continue with our case proceedings today.

However, let me make--first of all, my opening remarks. I would ask that everyone please turn off cell phones, beepers or any noise-making devices that they have, so we don't disrupt the proceedings, that is the standard situation for us.

And it is even more important today, as we are now getting back into our hearing room. This has all been redone, reconfigured for the convenience and use of the public. We are hoping once it's absolutely complete, that it will be incredibly functional and adapt to serving everyone's needs. We are not fully up and running, however.

So it is important to understand our

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1 transmission--our sound and recording devices are
2 only those that are set up by the court reporter.
3 The court reporter is sitting to my right on the
4 floor, and he is creating the official record and
5 transcript of the proceedings today.

6 Attendant to that, there are several
7 very important things.

8 First of all, when coming forward to
9 speak to the Board, prior to that, you will need to
10 have filled out two witness cards. Witness cards
11 are available for you at the table where you entered
12 into the hearing room. Also at the table in front
13 of, where you will provide testimony. Two cards,
14 filled out, go to the court reporter sitting to my
15 right.

16 Then, make yourself comfortable, have a
17 seat, and you will need state your name and address
18 for the record. Once, only once, obviously it is to
19 identify you for the record and to get your name
20 spelled correctly, you put it in, in writing, on the
21 right.

22 As the microphones will make everyone
23 audible today, are the ones also creating the
24 official record. We are going to ask, if we have
25 technical difficulties--I will stop you just to make

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1 sure that you are getting on the record, and we'll
2 make sure that that works. So far it is working
3 perfectly this morning. And so, we'll just move
4 ahead.

5 The order of procedure for special
6 exceptions and variances is as follows.

7 First of all, we will hear from the
8 Applicant in the case presentation. All the
9 testimony that you need to provide.

10 Secondly, then we will go to any
11 government reports attendant to the application, the
12 Office of Planning, or the Department of
13 Transportation, whoever has put in reports on the
14 application.

15 Third, we will hear from the Advisory
16 Neighborhood Commission within which the property is
17 located.

18 Fourth, we will hear from persons or
19 parties in support of an application.

20 Fifth would be persons or parties in
21 opposition to an application.

22 And sixth, finally, we give an
23 opportunity for those Applicants to provide rebuttal
24 testimony, closing remarks or any sort of summations
25 that they might have.

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1 Cross examination of witnesses is
2 permitted by the applicant and parties in a case,
3 the ANC within which the property is located is
4 automatically a party in a case, and therefore will
5 be able to participate as a full party and then
6 obviously conduct cross examination also.

7 The record will be closed at the
8 conclusion of the hearings on the cases this
9 morning. It is very important to understand that
10 for numerous reasons, but the most important reason
11 is, anything that you want us to deliberate on,
12 anything that you want us to base our decision on,
13 must be on the record.

14 Therefore, anything that you need put it
15 should be submitted today, either orally or in
16 writing. We will not receive any information after
17 the hearing is closed, except for any specific
18 detail or data that we request. We will be very
19 specific of what additional information should be
20 submitted into the record, and when that is to be
21 submitted into the Office of Zoning.

22 The Sunshine Act requires that all of
23 our proceedings be held in the open and before this
24 public. This Board does enter into executive
25 sessions periodically for purposes of reviewing the

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1 record and/or deliberating on cases. This is in
2 accordance with the Sunshine Act, and it is also in
3 accordance with our rules, regulations and
4 procedures.

5 I think that is about what I need to say
6 today, except for the last piece, and that again is
7 to say a good morning to Ms. Bailey, on my very far
8 left, Mr. Moy, closer, representing the Office of
9 Zoning, and also the Office of Attorney General,
10 represented by Ms. Monroe.

11 I am going to ask everyone that is
12 present today that is going to provide testimony or
13 is thinking of providing testimony, if you would
14 please stand and give your attention to Ms. Bailey.
15 She is going to swear you in.

16 (Witnesses sworn.)

17 CHAIRPERSON GRIFFIS: Thank you very
18 much. Now that that has happened, we can move on to
19 preliminary matters.

20 Preliminary matters are those which
21 relate to whether a case will or should be heard
22 today. Requests for postponements, continuances,
23 withdrawals, whether proper and adequate notice has
24 been provided. These are elements of preliminary
25 matters and importance to the Board.

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1 If you have a preliminary matter for the
2 Board, meaning if you believe a case shouldn't go
3 forward, or you are not prepared to go forward with
4 a case today, I would ask that you come up and have
5 a seat at the table as an indication of having a
6 preliminary matter.

7 I will ask Ms. Bailey if she is aware of
8 any preliminary matters for the Board's attention at
9 this time.

10 MS. BAILEY: Mr. Chairman, members of
11 the Board, and to everyone, good morning. There are
12 preliminary matters, Mr. Chairman. However, they
13 are case-specific. And so, at the time the cases
14 are called, that is when Staff would discuss them.

15 CHAIRPERSON GRIFFIS: Excellent. I
16 don't see any participants indicating that they have
17 any preliminary matters, so let's do that.

18 Call the first case for the morning
19 session, please.

20 MS. BAILEY: The first case is
21 Application No. 17379, of Kelly Hansen, and it is
22 pursuant to 11 DCMR 3104.1 and 1202.1, for a special
23 exception for a two-story rear addition to a single-
24 family row dwelling under section 223, not meeting
25 the lot occupancy requirements, that's section 403.

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1 The property is located in the CAR/R-4 district, the
2 premises, 516 Groff Court, N.E., square 779, lot
3 124.

4 Mr. Chairman, as of Friday, we did not
5 have the affidavit of post, and we understand that
6 the Applicant did get it notarized this morning, and
7 we believe that they have it with them at this
8 point.

9 CHAIRPERSON GRIFFIS: Okay. Good
10 morning.

11 MS. HANSEN: Good morning. I am Kelly
12 Hansen and I am the owner of 516 Groff Court.

13 CHAIRPERSON GRIFFIS: Excellent. You
14 heard Ms. Bailey indicate with regard to the
15 postings. Do you have that?

16 MS. HANSEN: Yes.

17 CHAIRPERSON GRIFFIS: Excellent. We can
18 put that in the record. If you have anything else,
19 you can give it directly to Ms. Bailey. We can do
20 that later, because we are going to get right into
21 your situation.

22 However, we are going to need to waive
23 that in. I'm sorry. Do you want to see that?
24 That's--why don't we put that in right now, if you
25 don't mind. You can hand that to Ms. Bailey.

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1 And let me ask, while you are going
2 that. You can answer it when you return, whether--

3 MS. HANSEN: Was it posted for 15 days?

4 CHAIRPERSON GRIFFIS: Properly posted
5 and posted for the correct amount of time. And are
6 we just looking at the fact that the affidavit of
7 that proper posting is just not timely. Is that
8 correct?

9 MS. HANSEN: Yes. Yes. That is
10 correct.

11 CHAIRPERSON GRIFFIS: Okay. And we are
12 going to see that, as soon as this comes around. Do
13 you want to just quickly explain, then, why this
14 wasn't in the affidavit itself, wasn't timely
15 submitted?

16 MS. HANSEN: I think that was a spousal
17 miscommunication. I thought my husband was going to
18 be doing that--

19 CHAIRPERSON GRIFFIS: What regulation
20 does that come under? I think that's a waivable
21 offense.

22 MS. HANSEN: And he travels a lot for
23 work, and he called me last night and said, so, you
24 got the--and I said no. Oh, no!

25 CHAIRPERSON GRIFFIS: Okay. We clearly-

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1 -and the important part, of course, from the Board's
2 perspective is that it was posted, and that's, of
3 course, why we have this affidavit that you have to
4 swear to, that it was done timely. Because that's
5 the important part, to notice--possibilities of
6 notice, of course. The mailings that you did, and
7 also this posting, and I think--certainly with
8 particular case in this location, the posting would
9 be of critical importance.

10 Does the Board have any questions in
11 terms of the timeliness of the posting or that
12 submitted in today?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Is there any
15 objection to waiving the regulational requirements
16 in terms of the submission of the affidavit of
17 posting?

18 (No response.)

19 CHAIRPERSON GRIFFIS: If there is no
20 objection to waiving those requirements, we can move
21 ahead with the case.

22 (No response.)

23 CHAIRPERSON GRIFFIS: Noting no
24 objections, why don't we move right into this.

25 This is, of course, a 223, although

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1 223's are always--well, 223's are somewhat complex,
2 in that complexity is added to it with overlays.
3 This is a Cap Hill overlay, and I am sure you are
4 going to address that very briefly.

5 So, why don't we move ahead and turn it
6 over to you.

7 MR. CONNORS: Good morning. My name is
8 Dennis Connors. I'm at 708 Fifth Street, S.E. I'm
9 the architect for Kelly Hansen. I started the
10 project with Kelly. She was interested in expanding
11 the size of her very small house. It's a two-story
12 house. Each floor is approximately 360 or so square
13 feet, for a grand total of--what's that, less than
14 800 square feet for the two floors.

15 Because it is in a Cap. Hill overlay
16 district, which takes on the characteristics of the
17 R-4 zone. However, there is a limit to the FAR.
18 That was brought up during our process of presenting
19 to the community and so forth, which is a 1.8 FAR
20 max, three-story limit, 40 feet of height.

21 We feel that it's more appropriate to
22 add on a slight rear addition for two stories,
23 rather than putting on--trying to expand the house
24 by putting on a full three-story addition, although
25 the zoning would allow that. It's more historically

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1 appropriate to add a little back and a little up.

2 And this would certainly--adding about
3 400 square feet would certainly do Kelly and her
4 family good at this moment in time.

5 CHAIRPERSON GRIFFIS: Okay. So, to be
6 absolutely clear. In your testimony and also in the
7 written submission, you are meeting, you are under
8 the required FAR cap--for the Capitol Hill overlay.
9 Is that correct?

10 MR. CONNORS: Yes.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. CONNORS: And I have provided in a
13 fax recently also, we had sent something to the
14 Office of Planning and some of the neighborhood
15 groups, just mapping out in detail the section,
16 which shows the exact measurements of what we are
17 planning.

18 And if you do the calculation, and it's
19 listed below, it shows floor by floor what that
20 would be.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. CONNORS: Let me begin by showing
23 where the site is. The site is at the 300 block of
24 E Street, N.E. on Capitol Hill. It's an alley
25 dwelling. You can see that some of these pictures

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1 here--I have them labeled so it's clear where they
2 are taking from.

3 But on E Street, there are tall three-
4 story houses with basements to the south of the
5 property.

6 On Third Street, there are two-story
7 plus basement houses.

8 And then, internally, in the alley,
9 there are some other, more contemporary two-story
10 alley dwellings as you can see here.

11 This is the 516--this is the site here.
12 Five-sixteen. It's the center of a stick of five
13 houses. They were most likely built around 1910 or
14 the turn of the century.

15 And this is the view looking south.
16 South is actually up the alley, so any shadows that
17 are being cast on the particular site are actually
18 coming from the taller houses to the south.

19 And you can see the backyard here.
20 Adding on a small addition to this rear, really
21 again would not be creating too much of a shadow to
22 the neighbor because there's a job in the existing
23 conditions of those alley houses. The neighboring
24 house is to the south on Kelly's immediate alley
25 block. They are steps to the west, and they are

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1 indeed a little taller.

2 The existing floor plan is essentially
3 just an open living space with a small galley
4 kitchen. The second floor has two small bedrooms
5 and one bathroom. So you can see that the site of--
6 which is a little more than 12 feet wide, and about
7 55 feet deep is extremely small for a family
8 dwelling.

9 This is really the critical concept
10 here. We do know that because of the historic
11 nature of the site, adding a third-floor addition
12 will need to be treated in a sensitive fashion, so
13 we have some very rough preliminary site line
14 studies that of course will have to be brought up
15 with historic review.

16 What we did find out during the course
17 of this process is that some of the alley dimensions
18 are in fact incorrect. So we have addressed that to
19 the community before. The front alley is actually
20 about 20 feet. Whether or not that's in private
21 rear yards or in public space is relatively
22 undetermined at this time.

23 CHAIRPERSON GRIFFIS: I didn't
24 understand that comment.

25 MR. CONNORS: Oh, sure--

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1 CHAIRPERSON GRIFFIS: Whether it was in
2 private rear yards or public space, with your front
3 yard?

4 MR. CONNORS: Kelly's house actually
5 faces the rear yard of her neighbors in front of
6 her.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. CONNORS: And although on record,
9 the City shows that the alley is 15 feet wide.

10 CHAIRPERSON GRIFFIS: I see. You are
11 talking about this thin part indicated at the alley
12 is not designated corrected on the plat--

13 MR. CONNORS: They brought that up.

14 CHAIRPERSON GRIFFIS: Sure.

15 MR. CONNORS: And I went to go find if
16 that's true, and it is true. It's about 20 feet
17 wide, and I went to some of the original survey
18 information that I had obtained prior to filing the
19 application. And the plat I received was incorrect,
20 as opposed to the original information I used to
21 file the application. So I did think it was 20 feet
22 to begin with.

23 CHAIRPERSON GRIFFIS: It's a good call.
24 But it doesn't impact the--

25 MR. CONNORS: It doesn't impact. And in

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1 fact, the updated section that I send is accurate
2 and it's showing the 20 feet.

3 CHAIRPERSON GRIFFIS: I see. On that
4 aspect, what if the rear yard--because that was the
5 other aspect they had brought up.

6 Is the Stanton Park representative here
7 today? Stanton Park Neighborhood Association? Not
8 anyone to indicate this--sorry.

9 They had indicated that the rear yard
10 requirement of 20 feet is not met. How do you
11 address that?

12 MR. CONNORS: Yes. That is correct, as
13 well. In order to maximize the 70 percent for this
14 site, we would need relief of 3.58 feet for the rear
15 yard setback.

16 Originally I had thought that this was a
17 through lot, because it has, in a sense, two streets
18 on both sides.

19 CHAIRPERSON GRIFFIS: Sure.

20 MR. CONNORS: But the streets are
21 alleys. They are recorded alleys.

22 CHAIRPERSON GRIFFIS: Sure.

23

24 MR. CONNORS: But I was struggling to
25 gain that information from the Zoning

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1 Administrator's Office.

2 CHAIRPERSON GRIFFIS: I see.

3 MR. CONNORS: And at this point, I think
4 it makes more sense just to say that no, this is not
5 a through lot, that with the special section, we
6 would request the 3.58 feet.

7 CHAIRPERSON GRIFFIS: Okay. So, the
8 point being you didn't find definitive information
9 that an alley would be a street. In the
10 calculations you have a through lot in the
11 definition.

12 MR. CONNORS: That is correct.

13 CHAIRPERSON GRIFFIS: So, rather than
14 moving ahead with that, you have moved to the relief
15 that is being sought. I think the Board will be
16 fine with that, not being determinative whether this
17 would be a through lot or not, moving ahead, which
18 you are talking about in terms of the recess being
19 sought.

20 And let's go back, then, to the rear
21 yard. That, of course, is under Section 404 if I am
22 not mistaken, the regulations. That is a section
23 that is also covered under 223.

24 So it's an aspect of relief that is
25 being sought with the special exception, all under

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1 the same application. Is that correct?

2 MR. CONNORS: That's right.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MR. CONNORS: And the--we did present--
5 as you mentioned, we presented to various groups.

6 CHAIRPERSON GRIFFIS: Sure.

7 MR. CONNORS: The Stanton Park was the
8 first one, and they had been helpful, bringing up
9 some of those issues that we have addressed.

10 The Capitol Hill Restoration Society,
11 they are in support of the project. And the ANC.
12 And at the last meeting with the ANC, we did bring
13 up the issue about the rear yard, and they were in
14 favor of the amount of setback that we are
15 proposing, which is over 16 feet from the property
16 line.

17 CHAIRPERSON GRIFFIS: I see. Okay.
18 Anything else?

19 MR. CONNORS: That's it. I have
20 developed some preliminary concepts, too. Just in
21 terms of the rear facade that we would be proposing.
22 And it would be fitting with the character of the
23 neighborhood, double-hung windows and some sort of
24 brick veneer, or really we have to get into those
25 details with the historic staff at a future date.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. CONNORS: Where are you with the
3 HPRB review? Where are you in the process?

4 MR. CONNORS: Just at a staff level. We
5 haven't submitted for the conceptual review yet.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. CONNORS: It was thought that it was
8 best to seek the relief--

9 CHAIRPERSON GRIFFIS: Sure. Sure.
10 Right. Get the massing down, and then you'll go
11 through Historic Preservation review, or go on to
12 consent, whichever the staff, obviously, deems. But
13 your point being that the materiality and the
14 specific design will be taken up by the Historic
15 Preservation staff and Board.

16 MR. CONNORS: That's right. I don't
17 think this will be a consent project, just to let
18 you know. Because of the rooftop and--

19 CHAIRPERSON GRIFFIS: Do you want our
20 opinion on that? No, we can't give you that.

21 (Laughter.)

22 CHAIRPERSON GRIFFIS: Okay. Good
23 enough. Anything else, then? Any other Board
24 questions? Clarifications?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: Let me ask you
2 very quickly. Did you review 2507 section--
3 obviously, not that you would know these
4 regulations, but that is the alley lot--

5 MR. CONNORS: Yes.

6 CHAIRPERSON GRIFFIS: Yes. And you find
7 that you meet all the requirements of that section?

8 MR. CONNORS: At this point, we believe
9 so. There is one very vague requirement under that
10 section that has to do with the cost of the
11 addition.

12 CHAIRPERSON GRIFFIS: Yes--

13 MR. CONNORS: Can't be more than--

14 CHAIRPERSON GRIFFIS: --2507.3--

15 MR. CONNORS: More than 100 percent of
16 the value of the house, or something to that nature.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. CONNORS: And I--that's really up to
19 the owner, but we discussed that, and I don't think
20 that we are going to be putting in more than
21 100 percent of the value of the house into the
22 addition.

23 MS. HANSEN: No.

24 CHAIRPERSON GRIFFIS: Okay. Question,
25 Ms. Miller?

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1 VICE CHAIRPERSON MILLER: I think I read
2 that the alteration costs not exceed half the value
3 of the structure prior to the renovation.

4 CHAIRPERSON GRIFFIS: Right. More than
5 50 percent. It's an interesting piece. As I read
6 it, in looking at some of the--knowing some of the
7 other readings--knowing some of the other sections,
8 it seems to me maybe the Office of Planning knows
9 more or can add to this.

10 But it seems like that they are trying
11 to prevent--the intent of the section of this--if
12 something was absolutely destroyed, then let's let
13 it be destroyed and bring it into accordance with
14 the intent of the regulations as to not having
15 dwellings in alley lots.

16 So that was the kind of threshold that
17 seems to be thrown around. Look, if you have to add
18 back, half of the value of the house itself, just in
19 an addition or renovation of it, then I think the
20 regulation point to the fact that this should just
21 be let go.

22 That doesn't seem to be the case at all
23 here. It's a little situation that there is a small
24 addition that is being proposed in order to
25 accommodate the little bit of adaptability of the

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1 lifestyle, what's happening here.

2 So, I don't think we need to pursue it,
3 in my mind, any further, unless other Board members
4 want to bring up additional questions or concerns at
5 this point of 2507.

6 (No response.)

7 CHAIRPERSON GRIFFIS: Good. Not noting
8 anything else, then, let's move ahead, to the Office
9 of Planning. Mr. Jackson is with us, and we say a
10 very good morning to you.

11 MR. JACKSON: Good morning, Mr.
12 Chairman, members of the Board. My name is Arthur
13 Jackson. I am sitting in on this case. I will
14 briefly summarize the Office of Planning's report.

15 Essentially, the Office of Planning will
16 stand on the record. And we have found through our
17 review that the application as submitted is--in
18 terms of the property zoning, the intensity of use,
19 the character of the neighborhood, and standards for
20 special exceptions, it is consistent with those
21 requirements under Section 223.

22 And that this special exception should
23 be granted without substantial detriments to public
24 good, without substantially impairing the intent,
25 purpose and integrity of the zone plan as embodied

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1 by the zoning regulations and map.

2 So, essentially, the Office of Planning
3 recommends approval of the application as submitted
4 by the Applicant. We remain available to answer
5 questions.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you very much, Mr. Jackson. Are there any questions
8 from the Board?

9 MR. MANN: Yes.

10 CHAIRPERSON GRIFFIS: Yes, Mr. Mann?

11 MR. MANN: Do you know if the ANC took
12 any action on this application at their October 12th
13 meeting?

14 MR. JACKSON: We do not have any
15 recorded documentation of any actions they have
16 taken at this point.

17 MR. MANN: Okay.

18 CHAIRPERSON GRIFFIS: Any other
19 questions? Does the Applicant have any information
20 on the ANC? Did they take a vote?

21 MR. CONNORS: Yes, they took a vote, and
22 they voted in favor of supporting the full
23 application. I think there were two abstaining
24 votes, for some reason. But

25 CHAIRPERSON GRIFFIS: Interesting.

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1 MR. CONNORS: But we did request them to
2 send a letter, and I guess they haven't yet.

3 CHAIRPERSON GRIFFIS: Good. And that
4 was the ANC presentation that you testified to, in
5 terms of updating them on the rear yard? Is that
6 correct?

7 MR. CONNORS: Yes. We presented to them
8 twice. We presented to their zoning committee--

9 CHAIRPERSON GRIFFIS: Sure.

10 MR. CONNORS: --the week before they
11 approved it. The full vote. And then we presented
12 at the ANC on the 12th. And I forget the count, but
13 it was--

14 CHAIRPERSON GRIFFIS: Okay. Thank you.
15 Do you have any questions--do we have it? Exhibit
16 29?

17 VICE CHAIRPERSON MILLER: It says that
18 ANC 6-C voted 6-0, unanimous support for the
19 application.

20 CHAIRPERSON GRIFFIS: Oh, you know what?
21 That came in to us this morning.

22 MR. CONNORS: That's right.

23 CHAIRPERSON GRIFFIS: Indeed. Thank you
24 very much, Ms. Bailey, for bringing this to our
25 attention. This was faxed to us, that what it was.

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1 Indeed.

2 Good. As on that--was Exhibit No. 28,
3 we will make note of--I'm sorry. Do you have any
4 questions of the Office of Planning?

5 MR. CONNORS: No, I had been speaking
6 with the Office of Planning before.

7 CHAIRPERSON GRIFFIS: Good. Good. Do
8 you have a copy of the report?

9 MR. CONNORS: Yes.

10 CHAIRPERSON GRIFFIS: Excellent.
11 Excellent. It's a good report. Lays out the test
12 very clearly. And their analysis, very thoroughly.
13 We thank them for that, Mr. Jackson. Thank you very
14 much.

15 Let's move ahead, then, to any other
16 governmental reports that we have attendant to this
17 application.

18 And I would ask if there is a
19 representative from the Architect of the Capitol
20 here present with us this morning?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Not noting any
23 representative of the Architect of the Capitol, we
24 will note that Exhibit No. 28 is the submission on
25 which they found that there would be no adverse

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1 effect on the Capitol complex or the master plan.

2 We have noted other submissions.

3 Exhibit No. 22? You all have that? Did we get a
4 submission from the DCHD on this?

5 (Pause.)

6 CHAIRPERSON GRIFFIS: Am I looking at
7 this right?

8 MR. MANN: Yes, we did.

9 CHAIRPERSON GRIFFIS: Fascinating.
10 Okay. Were you aware of that? The Department of
11 Housing and Community Development?

12 MR. CONNORS: No.

13 MS. HANSEN: I'm sorry. Who is the
14 office?

15 CHAIRPERSON GRIFFIS: Department of
16 Housing and Community Development. Interesting. So
17 much--Mr. Jackson, were you aware of that? The
18 first in my understanding of a 223 case--

19 MR. JACKSON: No, I was not.

20 CHAIRPERSON GRIFFIS: Good. I'm--
21 supporting it.

22 MS. HANSEN: Oh!

23 (Laughter.)

24 CHAIRPERSON GRIFFIS: Not to raise any
25 concern for a moment there. Okay. Let's move

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1 ahead. I have--

2 MR. CONNORS: I don't think Kelly is
3 receiving any government funding for this particular
4 project, so--

5 CHAIRPERSON GRIFFIS: Right.

6 MS. HANSEN: But I'm willing to take
7 some.

8 (Laughter.)

9 CHAIRPERSON GRIFFIS: Who knows? See if
10 there's any CDBG money left!

11 (Laughter.)

12 CHAIRPERSON GRIFFIS: Okay. Historic
13 preservation--we understand that you are in the
14 process with that, and working with the staff
15 members. And the ANC, of course. Is the ANC
16 represented here, 6-C?

17 (No response.)

18 CHAIRPERSON GRIFFIS: Not noting any
19 representative of ANC-6-C, we have brought it up to
20 our attention, Exhibit No. 29, was the letter
21 representing their vote and their support. The
22 unanimous support of the application is indicated in
23 their last sentence, from Mort Dixon signing,
24 chairperson.

25 That would go through all of the

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1 attendant government reports.

2 To the ANC, I would ask that if anyone
3 here is present in support--persons present to would
4 provide testimony in support

5 (No response.)

6 CHAIRPERSON GRIFFIS: Not noting anyone
7 coming forward, is anyone present in support of the
8 application?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Or in opposition
11 to the application 17379, could come forward to
12 provide testimony.

13 (No response.)

14 CHAIRPERSON GRIFFIS: Also noting that
15 no others are here to provide persons to provide
16 testimony, we will turn it over to the Applicant,
17 Mr. Connors. If you have any closing remarks or
18 summation for us at this time?

19 MR. CONNORS: I don't have anything at
20 this moment, unless the owner, Kelly, has something
21 to say or add.

22 CHAIRPERSON GRIFFIS: Do you have
23 anything?

24 MS. HANSEN: No, thank you.

25 (Pause.)

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1 CHAIRPERSON GRIFFIS: Good. Ms. Bailey
2 brought it to my attention that I should probably
3 formally say that we do have the submissions,
4 Exhibit No. 26, from the Stanton Park Neighborhood
5 Association. Of course, we were referring to this
6 document extensively.

7 You had also mentioned the Capitol Hill
8 Restoration Society. And I would just make note
9 that in Exhibit No. 25, they are also supportive,
10 and they have indicated in their letter, the letter
11 of support from the adjacent property owners, were
12 also given to the Committee, and I would bring to
13 the attention of the record, of course, it's in the
14 record.

15 But the attention of the record of those
16 letters--we have Exhibit No. 24, from Mrs.
17 Blackford, of 317 F Street, N.E., also supportive of
18 the application.

19 It is interesting--I think we have
20 addressed all of the elements in the Stanton Park
21 Neighborhood Association. The FAR, of course. We
22 talked about the rear yard coming under 223 and
23 Section 404, able to be reviewed and granted relief
24 or not--the width of the alley is more of a
25 demarcation, rather--more of a DCRA and plat issue

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1 than a zoning issue at this point.

2 I don't see anything arising out of the
3 impact of the correct dimension of the alley
4 adjacent, whether it be 20 or 15 feet, but glad that
5 that was brought to the attention of the City.

6 They had brought up the issue of that
7 they were not provided with letters of support or
8 opposition from adjoining properties. And that is
9 their issue in terms of their own processing.

10 And I am certain that you have addressed
11 that with them. But for our purposes, our record is
12 full. A requirement is not to have adjacent
13 neighbors, although it provides us with additional
14 and important information as to what might rise to
15 the level of being objectionable or not.

16 Or, going to the specific test of 223,
17 which I think it's appropriate to go through now, if
18 the Applicant doesn't have any other closing remarks
19 or summations for the Board.

20 Yes, Ms. Hansen?

21 MS. HANSEN: I just would like to ask
22 for a bench decision today, if that was okay--

23 (Pause.)

24 CHAIRPERSON GRIFFIS: We're like a young
25 rock group, we're just working out the kinks to our

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1 sound system here.

2 (Laughter.)

3 CHAIRPERSON GRIFFIS: Okay. That being
4 said, I think the record is completely full on this.
5 I would believe that it is appropriate at the time
6 we have now for us to deliberate on this, and I
7 would move approval of application 17379, and ask
8 for a second.

9 MR. ETHERLY: Second, Mr. Chair.

10 CHAIRPERSON GRIFFIS: Thank you very
11 much, Mr. Etherly. And 223, of course, is an
12 excellent section. I won't take the time to reveal
13 my understanding of it, but go directly to the test
14 of this case.

15 I think it's important to leave off--to
16 start up with what I just left off, in terms of the
17 letters from adjacent neighbors. It's not that we
18 count up how many supporters and opposition, but
19 rather, look to the substance of these testimonies
20 as to whether it would or not meet the test of 223.

21 The critical aspects of 223 are these.
22 That it wouldn't impair the light and air and
23 privacy of use of the adjoining property. That is a
24 critical aspect as we are looking at these pieces
25 that don't rise to the level of a variance, but

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1 rather are a special exception, which is will any
2 negative impact be created or potentially created in
3 this.

4 We don't have any testimony or evidence
5 that it would in fact, with the Office of Planning,
6 with also all of the submission here, it seems to
7 me, to test very clearly and adequately and
8 appropriately.

9 Going to the last, which I think is of
10 great concern on numerous cases of 223's, how one
11 fits into the character of the area, you know, or
12 anything required of the Board's review to be
13 conditioned or required of the Applicant, in terms
14 of lighting or materiality.

15 I think that we can one, note that
16 nothing has arisen to the Board's concern that we
17 would need to get into that level.

18 But I also note the fact that they are
19 going through historic preservation review, of which
20 that is the--of great importance to the staff there,
21 of course. And with the Historic Preservation
22 Review Board, I think, we can have adequate
23 assurance that that will be looked at and taken care
24 of by those appropriately, given it is their mission
25 to deal with those types of issues.

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1 That being said, I will open up to any
2 others, Ms. Miller, for comment and deliberation.

3 VICE CHAIRPERSON MILLER: I just want to
4 note for the record, we also have a letter, Exhibit
5 24, from a neighbor at 317 F Street, Mrs. Blackford.
6 Anyway, she says she has no objection to the
7 application, but just requests that the alley in the
8 rear of the house not be blocked for more than short
9 periods of time during loading and unloading.

10 And I would say that that certainly
11 doesn't rise to a condition, as it sounds like it's
12 addressing a temporary condition during
13 construction. And I would gather that the Applicant
14 would be considerate that way.

15 MS. HANSEN: We have known our neighbors
16 for 12 years, and she has a difficult time pulling
17 into his garage. He is elderly and we will be
18 making sure we secure parking spaces and not throw
19 the whole neighborhood into a big kafuffle over
20 this.

21 We wouldn't want to inconvenience Dick
22 and Peggy. They are very nice people. And I
23 actually do have signed letters from my adjacent
24 neighbors, and additionally eight more. I have
25 names. I don't know why Stanton didn't have them.

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1 They were presented to ANC and Capital Hill
2 Restoration.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MS. HANSEN: I don't know if I need to
5 do that.

6 CHAIRPERSON GRIFFIS: Good. Moving
7 further forward, we have a motion. It has been
8 seconded. Ms. Miller, any other additional
9 deliberation on that?

10 VICE CHAIRPERSON MILLER: No.

11 CHAIRPERSON GRIFFIS: Very well. We do
12 have a motion, of course. It has been seconded.
13 However, we are going to need the proper spelling
14 for "kafuffle", before we close the record on this.

15 With that, we will ask for all those in
16 favor of the motion to signify by saying "aye".

17 (Chorus of ayes.)

18 CHAIRPERSON GRIFFIS: And opposed?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Abstaining?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Excellent. Why
23 don't we record the vote done.

24 MS. BAILEY: Mr. Chairman, the vote is
25 recorded--are you picking me up? The vote is

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1 recorded as 4-0-1 to approve the application. Mr.
2 Griffis made the motion. Mr. Etherly seconded. Mr.
3 Mann and Mrs. Miller are in agreement, and we don't
4 have a zoning commission with us today.

5 CHAIRPERSON GRIFFIS: Thank you very
6 much. I don't see any reason why we wouldn't waive
7 our rules and regulations, and issue a summary order
8 on this, unless the Applicant has any objection or
9 Board members have any objection to that.

10 (No response.)

11 CHAIRPERSON GRIFFIS: Not noting any
12 objection, does the Board or the Applicant have any
13 objection to issuing a summary order on this?

14 MR. CONNORS: No.

15 CHAIRPERSON GRIFFIS: Good. Very well.
16 Then we thank you very much. We appreciate you
17 coming down here. Excellent presentation. It was
18 very impressive and it's very clear reading it, so
19 we can get to this expeditiously.

20 If there is no other question or
21 procedure, we will wish you a very good morning, and
22 good luck with the addition and the historic
23 preservation review.

24 MR. CONNORS: Thank you very much.

25 MS. HANSEN: Thanks a lot. I appreciate

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1 it.

2 CHAIRPERSON GRIFFIS: Okay. Let's move
3 ahead, then, and call the next case for the morning.

4 MS. BAILEY: Mr. Chairman, I'll call the
5 next case, but with a caveat.

6 CHAIRPERSON GRIFFIS: Sure.

7 MS. BAILEY: The case was advertised in
8 the architect's name. However, I'm just going to
9 read it as it is advertised, and perhaps the
10 architect can explain the discrepancy.

11 Application No. 17374 of Michael John
12 Ray, pursuant to 11 DCMR 104.1, for a special
13 exception to allow a rear addition to an existing
14 flat under section 223 not meeting the rear yard
15 requirement and open court requirement. The
16 property is zoned R-5-B, and it's located at 2328
17 Nineteenth Street, N.W., Square 2539, Lot 211.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much. Good. Let's begin.

20 MR. RAY: My name is Michael John Ray.
21 I live at 2853 Ontario Road, Unit 104, and I am the
22 architect for this project and for the application.

23 A mistake was made on the application.
24 I think I was just following the asterisks. Next to
25 "owner of property" and then following down to where

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1 it says "owner or authorized agent." I am the
2 authorized agent for the owners.

3 They are both--they travel
4 internationally extensively and we were pretty
5 certain that they wouldn't be able to be here today,
6 so that's how the application went.

7 But I am not the owner of the property.
8 The owners are--sorry, I want to make sure--Kirsten
9 Canby and Norbert Schadi, and a letter authorizing
10 me as their agent was included in the application.

11 CHAIRPERSON GRIFFIS: Okay. I think
12 that's all we need at this time. Why don't we move
13 ahead.

14 Why don't' we clarify what you want us
15 to be looking at, also, in the application, as we go
16 through this in terms of the design. Let me turn it
17 over to you just for opening remarks.

18 MR. RAY: Very simply, there is an
19 existing two-story open porch as a rear addition to
20 a historic structure. The application is proposing
21 a new two-story structure, although with first-story
22 enclosed.

23 The technicality, and I guess the
24 primary reason for the application is that the
25 existing two-story porch violates the--or is it

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1 nonconformance?--with the 15-foot rear yard setback.

2 The proposed addition would be aligned
3 with the current face of the existing rear porch, so
4 therefore, in the same manner, nonconforming with
5 the 15-foot rear yard setback. In addition, there
6 are open court issues, both with the existing and
7 with what is proposed.

8 For those two reasons, we have applied
9 for this special exception that waives compliance or
10 approves nonconformance with those issues.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. RAY: That's to put is simply.

13 CHAIRPERSON GRIFFIS: Sure. What is the
14 alternate, then?

15 MR. RAY: The alternate is a condition
16 that more exactly replicates the form of the
17 existing porch, meaning that the existing porch is
18 justified to the north lot line, and that the open
19 court is solely on the south side of the porch.

20 So the alternate is merely instead of
21 introducing essentially two symmetrical small open
22 courts to either side of the form or the volume that
23 is enclosed, that the alternate shifts that same
24 area.

25 CHAIRPERSON GRIFFIS: Okay. Two

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1 questions. Why would you do that? Just for a larger
2 window line?

3 MR. RAY: No. Initially, it was
4 because--out of fear that two open courts would be
5 perceived as--

6 CHAIRPERSON GRIFFIS: So they would be
7 directed--why would you propose two "open courts",
8 as you are calling them? Is there a functional
9 purpose in the room to do that?

10 MR. RAY: Symmetry. And actually, I
11 should say then for the record that the owners at
12 this point--this application was submitted in May.
13 At this point in time, the owners are much more
14 comfortable with the alternate version of what is
15 being proposed.

16 CHAIRPERSON GRIFFIS: Oh, is that right?

17 MR. RAY: Correct.

18 CHAIRPERSON GRIFFIS: Okay. I mean, we
19 can move ahead just for that, then. It's totally up
20 to you. Quite frankly, I think there would be
21 perhaps a justifiable case to call what you have
22 labeled as "open courts" possible more court niches,
23 wouldn't come into the dimension requirements,
24 especially on your exact testimony that you just
25 provided, that it was in order to provide a symmetry

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1 to the addition in the back.

2 It seems to me, especially with that
3 small a dimension rise to that level, which wouldn't
4 be characterized as an open or closed court.

5 But why don't you tell us what you want
6 us to look at, and then we will proceed from there.

7 MR. RAY: Well, we have obtained HPRB
8 approval for either scheme.

9 CHAIRPERSON GRIFFIS: I see.

10 MR. RAY: And again, that was sometime
11 ago. At this point, the focus of what we intend to
12 submit to the Building Permit Office should we get
13 approval of our special exception, the application
14 is the alternate scheme.

15 CHAIRPERSON GRIFFIS: The alternate,
16 which would be--forgive me. But is there then a
17 plan showing the alternate?

18 MR. RAY: That would be Plan Sheet A-
19 1.1-Alt.

20 CHAIRPERSON GRIFFIS: One point one--oh.
21 Got you. Oh, here it is. Okay. In which case,
22 that--it seems like on the project south, sheets
23 south, but the bottom side of the south, is that the
24 3x5 cutout is also there, but that is the existing
25 piece. You did it on the north side of the sheet in

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1 order to have that symmetry. This is what is being
2 provided.

3 I think we can move ahead then, looking
4 at the alternate at this point, if that's acceptable
5 to you. I don't see any difficulty, it certainly
6 doesn't rise--

7 MR. RAY: Sure.

8 CHAIRPERSON GRIFFIS: I don't think
9 actually I would pursue the alternate in the first
10 as a open court, anyway.

11 So, let's move ahead, then, with the
12 proposed alternative on the first plan, and hear any
13 additional testimony that you would like to provide
14 on that.

15 MR. RAY: I have no additional
16 testimony.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. RAY: They are quite compatible with
19 one another, actually.

20 CHAIRPERSON GRIFFIS: Good. Let's go to
21 any additional Board questions, then, of the
22 Applicant. Any questions?

23 VICE CHAIRPERSON MILLER: Just with
24 respect to the name that the application is in. The
25 application is in your name and it's really on

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1 behalf of the owners. It is my understanding from
2 the record, and I just wanted you to confirm, that
3 in fact the neighbors and the ANC and everyone knew
4 that--well, everyone--the people in this record that
5 you can comment on, knew that it was in fact these
6 neighbors and not you?

7 MR. RAY: That is correct.

8 VICE CHAIRPERSON MILLER: Okay. Thank
9 you.

10 CHAIRPERSON GRIFFIS: Any other
11 questions?

12 (No response.)

13 CHAIRPERSON GRIFFIS: Very well. Let's
14 move ahead, then to the Office of Planning's report.

15 MR. JACKSON: Madam Chairman, members of
16 the Board, my name is Arthur Jackson, D.C. Office of
17 Planning, and I will again give the report on this
18 application.

19 Essentially, the Office of Planning
20 stands on the record with regard to this
21 application. Based on our review, which considered
22 both proposals, we find that the intensity of use,
23 the character of the neighborhood, the standards for
24 a special exception have been met. And the design
25 is consistent with other construction within the

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1 neighborhood, and reflects a number of the
2 characteristics in that regard.

3 That view is confirmed by the Historic
4 Preservation Office in that they support this
5 application, or supported the designs as presented.

6 The Office of Planning concludes the
7 special exception meets the required test, and may
8 be granted without substantial detriment to public
9 good, and without substantially impairing the
10 intent, purpose and integrity of the zone plan as
11 embodied by the zoning regulations and map.

12 Therefore, the Office of Planning
13 recommends approval of the application, as
14 submitted, and we support either option because we
15 found that the impacts in terms of air and light are
16 miniscule in either case.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you. Any questions from the Board regarding the
19 Office of Planning's report or analysis?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Does the
22 Applicant's representative have any examination
23 questions for the Office of Planning?

24 MR. RAY: No.

25 CHAIRPERSON GRIFFIS: Very well. Mr.

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1 Jackson, thank you very much. Let's move ahead,
2 then. We have indicated this, of course, under
3 Historic Preservation review. You indicated it
4 actually has that approval. Both alternatives we're
5 looking at, the alt scheme will go to the ANC. Is
6 the ANC-1C representative here today?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Not noting any
9 representative from the ANC here. It did submit an
10 Exhibit 23, with a recommendation of approval of the
11 application.

12 I do not have any other governmental
13 reports or community associations or ANC reports
14 regarding this application, unless anyone else is
15 aware of any.

16 Let me ask if there are people present
17 then to provide testimony, persons in Application
18 No. 17374, in support or in opposition?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Not noting any
21 additional persons present--or any persons present
22 to provide testimony, we'll move ahead and note for
23 the record Exhibit No. 29, which is also a submitted
24 petition.

25 Petitions in support of the application.

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1 I guess it's a couple of exhibits on that.
2 Statement of Support, Exhibits 29, 28, 27, 26. I
3 have--perhaps there's more.

4 Very well. Anything else for the
5 Board's attention, Ms. Miller?

6 VICE CHAIRPERSON MILLER: Mr. Chairman,
7 I think, as a technicality, we ought to amend the
8 application to be in the name of the owners. I
9 don't think there is any notice problem, because the
10 letters and also the representation of Mr. Ray, are
11 that they knew the address and the property that was
12 at issue.

13 But it's just a technicality.

14 CHAIRPERSON GRIFFIS: Okay. I don't
15 have any difficulty with that. It's interesting to
16 know: could you name your application anything you
17 want?

18 VICE CHAIRPERSON MILLER: I don't think
19 so.

20 CHAIRPERSON GRIFFIS: The regulations
21 indicate it has to be the name of the owner? That's
22 the application?

23 VICE CHAIRPERSON MILLER: Um, 3113.3
24 says the owner of the property for which application
25 is made may file an application with the Board.

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1 I mean, he filed on behalf of the
2 owners, which is correct, and which is also
3 authorized by 3113.4. But the owner has to be the
4 one making the application.

5 CHAIRPERSON GRIFFIS: The owner?

6 VICE CHAIRPERSON MILLER: It has to--
7 yes. The way I read--it's a technicality.

8 CHAIRPERSON GRIFFIS: It's a fun one.

9 VICE CHAIRPERSON MILLER: It's an easy
10 technicality to cure.

11 CHAIRPERSON GRIFFIS: Okay. Very well.
12 I think we can easily amend the application so--
13 obviously note to the order if approved would carry
14 the name of the owners so it would be--can be--I
15 can't pronounce the last--

16 VICE CHAIRPERSON MILLER: Schadi.

17 CHAIRPERSON GRIFFIS: Schadi. Okay.
18 Excellent. Anything else then?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Let me turn to the
21 Applicant and ask if you have any final remarks?
22 Summations? None?

23 MR. RAY: No.

24 CHAIRPERSON GRIFFIS: Very well. If
25 there is nothing further by the Board, I think the

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1 record is absolutely full on this, and technically
2 correct as far as I understand.

3 So I would move approval of Application
4 17374 of the owners of the 2328 Nineteenth Street,
5 N.W., and would move approval of the special
6 exception under Section 223, as this does not meet
7 the rear yard requirements under Section 404, and
8 would ask for a second.

9 VICE CHAIRPERSON MILLER: Second.

10 CHAIRPERSON GRIFFIS: Thank you very
11 much, Ms. Miller. I think a great reliance on two
12 aspects of this, which are very persuasive on the
13 Applicant's testimony, and submissions in the
14 documentation and also that of the analysis of the
15 Office of Planning. Noting all those criteria are
16 met as required under 223, and I am going to leave
17 it at that, as the record is full and I believe the
18 deliberation is enough on the public record.

19 And I ask for any other comments?

20 VICE CHAIRPERSON MILLER: Mr. Chairman,
21 perhaps, I think, we should clarify which set of
22 plans we are approving here. Is that the alternate?

23 CHAIRPERSON GRIFFIS: Absolutely.

24 VICE CHAIRPERSON MILLER: Okay.

25 CHAIRPERSON GRIFFIS: It's a good point

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1 for clarification. Of course, as we approve what
2 will be attached, essentially every condition of
3 every order, and condition number one is that of the
4 plans that are submitted, and therefore the plans
5 that we looked at and approved.

6 That's why alternatives are difficult
7 for the Board because we spend the time to dispense
8 with one, because we can only approve one. We can't
9 approve alternatives that I am aware of. I think it
10 would be difficult for us to do that, in terms of
11 the zoning aspect.

12 For clarification, of course, it's the
13 alternative. What's interesting is that obviously
14 we were all just here, and the record--the court
15 issue and whether the relief for a court would have
16 been provided. That is obviously one we did not
17 pursue, so there is not a whole host of testimony,
18 deliberation, comments and questions on that.

19 So, I think we are absolutely clear. If
20 not, Board members can bring that to my attention at
21 this point.

22 (No response.)

23 CHAIRPERSON GRIFFIS: Very well. Noting
24 that, we have the alternate plan as noted, and plan
25 8.1 Alt. We have a motion before us. It has been

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1 seconded. I would ask for all those in favor of the
2 motion signify by saying "aye".

3 (Chorus of ayes.)

4 CHAIRPERSON GRIFFIS: And opposed?

5 (No response.)

6 CHAIRPERSON GRIFFIS: Abstaining?

7 (No response.)

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

10 MS. BAILEY: Mr. Chairman, may I ask who
11 seconded the motion?

12 CHAIRPERSON GRIFFIS: Of course.

13 MS. BAILEY: Thank you.

14 CHAIRPERSON GRIFFIS: Oh, I thought she
15 said--good.

16 MS. BAILEY: Mr. Chairman, the vote is
17 recorded as 4-0-1 to approve the application. Mr.
18 Griffis made the motion, Mrs. Miller seconded, Mr.
19 Etherly and Mr. Mann are in agreement. We don't
20 have a Zoning Commission member here today.

21 Three things are attendant to this
22 application: the name change, the clarification of
23 plans, and relief was only granted from the rear
24 yard requirement under 223.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. BAILEY: Thank you, sir.

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

4 Very well. Anything else? Any other
5 questions, clarifications? Yes? Procedural
6 question?

7 MR. RAY: What about the open court,
8 then?

9 CHAIRPERSON GRIFFIS: You don't need it.

10 MR. RAY: Okay.

11 CHAIRPERSON GRIFFIS: That's my
12 understanding. My hesitation--but just for
13 clarification, procedure--the open court you were
14 bringing in, was that which was on the north side,
15 which was proposed, not in the alternative. Is that
16 correct?

17 MR. RAY: On the non-alternative scheme,
18 there were two open courts for symmetry.

19 CHAIRPERSON GRIFFIS: I see. So, in
20 terms of your thought process, you needed relief for
21 a nonconforming existing open court. So you were
22 nonconforming because of that open court and also
23 the rear yard.

24 And I think it's safe and clear to just
25 keep it at that and I don't see any reason why we

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1 wouldn't. It's an existing condition that isn't
2 changing, if that was, or would have been, or would
3 be looked at by the Zoning Administrator as an open
4 court not complying. Open court--it obviously can
5 be covered under the review that we have done.

6 I think that's a good clarification to
7 bring to our attention. And I don't have any
8 difficulty with that, unless others have questions
9 or difficulty with that?

10 (No response.)

11 CHAIRPERSON GRIFFIS: Okay. Good.
12 Thanks for bringing that to our attention. It's
13 already done.

14 Thank you very much. I appreciate it.
15 And good luck with that. If there is nothing
16 further on this case, we can move ahead. Ms. Bailey
17 will make note of those comments. And--oh, I guess--
18 -is there any concern from the Board? We can issue
19 a summary order on this?

20 (No response.)

21 CHAIRPERSON GRIFFIS: We can waive our
22 rules, regulations and a note, the relief as
23 actually advertised then, in the summary order.

24 Okay. Then let us move ahead to the
25 next case in order.

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1 MS. BAILEY: Application No. 17373 of
2 Douglas Knoll Cooperative, LP, pursuant to 11 DCMR
3 3104.1 for a special exception to allow a child
4 development center, that's 90 children and 20 staff,
5 under Section 205, and pursuant to 11 DCMR 3101.2,
6 for a variance from the off-street parking
7 requirements under Section 2101, last approved under
8 BZA Order No. 16902.

9 The property is located in the R-5-A
10 district, as 2017 Savannah Terrace, S.E., Square
11 5894, Lot 40.

12 CHAIRPERSON GRIFFIS: Good morning.

13 Okay. MR. JOHNSTON: My name is
14 Walter Johnston. I am the general partner of the
15 Douglas Knoll Limited Partnership. And I feel
16 embarrassed compared to all the other presentations
17 this morning. I feel so inadequate.

18 CHAIRPERSON GRIFFIS: That's not the
19 strongest way to start.

20 (Laughter.)

21 MR. JOHNSTON: Well--I'm sorry I'm not--

22 CHAIRPERSON GRIFFIS: No, I'm just
23 kidding. Go ahead.

24 MR. JOHNSTON: We had submitted this
25 several years ago.

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1 CHAIRPERSON GRIFFIS: Yes.

2 MR. JOHNSTON: And we had gotten BZA
3 approval for it. And we got a very rude education
4 in the funding availability for daycare centers.
5 Everybody likes to operate them, but nobody likes to
6 build them, unless they lend you a lot of money,
7 then you can charge people \$400 a week.

8 But when 50 percent of your population
9 is--not 50 percent, 100 percent of your population
10 is at 50 percent or less of average median income,
11 you know, it doesn't work very well from the
12 financing point of view.

13 So, we are back asking for approval of
14 the zoning application. We are making no change.
15 We understand the conditions in the Office of
16 Planning in terms of parking. In fact, the sidewalk
17 has been already built. The utilities have already
18 been brought to the site. That was done several
19 years ago.

20 That's really all I have to say. I'll
21 stand on the record as it was submitted, resubmitted
22 and submitted two years ago.

23 CHAIRPERSON GRIFFIS: Okay. Good. I'm
24 going to ask you just to move your microphone closer
25 to you so that we get that transmission a little bit

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1 better.

2 And let me ask you then, that in terms
3 of your comments, has there been any substantive
4 change from when this was submitted previously?

5 MR. JOHNSTON: None from a material
6 point of view as to the building itself.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. JOHNSTON: None. The only change is
9 that there might be some money available to build
10 it.

11 CHAIRPERSON GRIFFIS: Okay. Then let me
12 ask if there any questions from the Board at this
13 time?

14 (No response.)

15 CHAIRPERSON GRIFFIS: The answer is no?

16 VICE CHAIRPERSON MILLER: I'm sorry.
17 I'm not sure whether we had the order in the record,
18 but your--this was approved a couple of years ago.
19 Is that it?

20 MR. JOHNSTON: Yes.

21 VICE CHAIRPERSON MILLER: But--and it
22 has been built now?

23 MR. JOHNSTON: No, no, no!

24 VICE CHAIRPERSON MILLER: It hasn't been
25 built yet?

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1 MR. JOHNSTON: No, it has not been
2 built.

3 VICE CHAIRPERSON MILLER: Okay.

4 MR. JOHNSTON: And we actually received
5 the potential for funding, and that's what brought
6 us back.

7 VICE CHAIRPERSON MILLER: Okay. And in
8 that period of time have there been buildings that
9 have been built in the development? Or no?

10 MR. JOHNSTON: No.

11 VICE CHAIRPERSON MILLER: Traffic hasn't
12 changed? Nothing's changed?

13 MR. JOHNSTON: No.

14 VICE CHAIRPERSON MILLER: Okay.

15 CHAIRPERSON GRIFFIS: Are there any
16 questions, or do you want to walk through any of the
17 plans? Do you understand all the aspects that are
18 being proposed?

19 (Pause.)

20 CHAIRPERSON GRIFFIS: Is the previous
21 order in the file?

22 (Pause.)

23 CHAIRPERSON GRIFFIS: Okay. Well,
24 clearly all the daycare centers, of course, in the
25 regulations show the concern for the safety and

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1 well-being of the kids. One of those biggest
2 aspects that we have found, of course, is the drop-
3 off and pick-up. Did you want to just run through
4 and address the written submission of how that is
5 going to take place?

6 MR. JOHNSTON: In the prior rendition,
7 it was basically the Department of Transportation,
8 we would go to them. They would provide certain
9 drop-off parking spots on Savannah Terrace. And in
10 essence we would have a sidewalk which would be
11 built directly back to the daycare center. And the
12 daycare center would provide a person to supervise
13 the pick-up and the drop-off.

14 CHAIRPERSON GRIFFIS: Okay. And there
15 was some talk, as I recall, having sat on this, and
16 also in the written submission, the record that is
17 before us today, also the utilization of the
18 cul de sac on 22nd. So you have said that--

19 MR. JOHNSTON: The cul de sac is still--

20 CHAIRPERSON GRIFFIS: --the last one you
21 were talking about is 22nd--and it's not Savannah,
22 then, that is where the site--would be the drop-off,
23 but rather in that cul de sac, and then they would
24 walk up that sidewalk and the stairs?

25 MR. JOHNSTON: Correct. There's two

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1 ways, if you look at it that way. If you come up
2 Savannah Terrace, the bib to the driveway, which was
3 made wider.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. JOHNSTON: So that you could
6 actually, with the space, drop people off and keep
7 going. And I think the determination was also that
8 the parking space--there were a number of parking
9 spots in that parking lot in front of the daycare,
10 which was available.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. JOHNSTON: But we also had a great
13 deal of street parking as well.

14 CHAIRPERSON GRIFFIS: And across, on the
15 north side of Savannah--somewhat north here. That's
16 part of the development that--

17 MR. JOHNSTON: Yes. If you look at the
18 aerial map, on the Office of Planning's drawing, as
19 you come down 22nd Street from--there's a circle,
20 those four buildings are part of Douglas Knoll, and
21 you come down Savannah Terrace to--there's 11 lots,
22 18 buildings.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. JOHNSTON: Spread over 12 acres of
25 ground.

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1 CHAIRPERSON GRIFFIS: Are they all going
2 to development now?

3 MR. JOHNSTON: No. They're finished
4 building. Occupied.

5 CHAIRPERSON GRIFFIS: Right. And so, in
6 the testimony that has been submitted, "It is
7 anticipated that most of the children for this
8 daycare are coming from the surrounding area and
9 from the complex."

10 MR. JOHNSTON: It is--admission is open
11 to anyone, so the presumption is when you have 184
12 apartments with an average of three to four people
13 in an apartment, and you have almost 150 to 200
14 children living on the site, that the majority of
15 your children are going to come from the immediate
16 neighborhood.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. JOHNSTON: And that does not take
19 into account Parkside Terrace or--the village is
20 Parklands, which is around us, which is another
21 800 apartments.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. JOHNSTON: All within walking
24 distance. And if you look to the rear of the yellow
25 box, all of that behind you is Parklands.

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1 Everything in front would be Douglas Knoll. So it's
2 actually a very small number of slots for a very
3 large number of people.

4 CHAIRPERSON GRIFFIS: And how many
5 parking spaces are being provided?

6 MR. JOHNSTON: That's a terrible
7 question. I don't know the answer. We are not
8 providing any set parking spaces other than what is
9 on the site. There's a parking area directly in
10 front. There is the curbside management piece. And
11 that was it.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. JOHNSTON: We weren't building a new
14 parking lot for the facility.

15 CHAIRPERSON GRIFFIS: Right. But they
16 don't--do they have any designated parking for the
17 facility for staff?

18 MR. JOHNSTON: We don't. But I don't
19 think it is a part of the proposal.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. JOHNSTON: We certainly could do it.
22 I mean, we have--

23 CHAIRPERSON GRIFFIS: Are there any
24 reserved--do the residences have reserved parking?

25 MR. JOHNSTON: No.

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1 CHAIRPERSON GRIFFIS: Right. It's
2 unregulated?

3 MR. JOHNSTON: It's unregulated. But I
4 can certainly regulate five spaces, you know.

5 CHAIRPERSON GRIFFIS: Sure. Okay. Ms.
6 Miller?

7 VICE CHAIRPERSON MILLER: Maybe you can
8 clarify this for me then. Page 7 of the Office of
9 Planning report, under--

10 MR. JOHNSTON: Page 7?

11 VICE CHAIRPERSON MILLER: The Division
12 of Transportation says that "The Applicant proposes
13 to submit an application to DDOT to reserve three
14 parking spaces on the cul de sac closest to the
15 proposed center weekdays during the hours of
16 7:00 a.m. and 9:00 a.m. for 4:30 to 6:00.

17 MR. JOHNSTON: No, I think--when you say
18 cul de sac, you are saying something else to me,
19 altogether different than in the parking space
20 itself. If you look north, you'll see a cul de sac
21 at--not north. But just above the line, you'll see
22 a little cul de sac where 22nd comes down, in that
23 cul de sac is what I think was discussed the last
24 time we did this. That we would take in that area,
25 three spots.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. JOHNSTON: And I mean, if we said we
3 would do it, we'll do it.

4 VICE CHAIRPERSON MILLER: Oh, so these
5 are just--these are three spots just for those
6 periods of time. For drop-off and pick-up?

7 MR. JOHNSTON: I interpreted that as
8 being permanent spots for use. People coming and
9 going.

10 VICE CHAIRPERSON MILLER: For the day?

11 MR. JOHNSTON: For the day. That's my
12 recollection of it. I may not be right. In the
13 center of the cul de sac on 22nd Street, the
14 Applicant proposes to submit an application to
15 reserve three parking places to the proposed
16 center..." "The Applicant will also provide
17 designated handicap parking in the parking lot
18 adjacent to the center."

19 Now, that space is already there. The
20 handicap space, the parking is there. I am reading
21 this as being on the cul de sac, which is off of
22 22nd Street, which would access the site by steps
23 between the buildings. Again, these steps are
24 already existing.

25 (Pause.)

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1 VICE CHAIRPERSON MILLER: Okay. I have
2 one more question.

3 MR. JOHNSTON: No. Time's up. No.

4 (Laughter.)

5 VICE CHAIRPERSON MILLER: The Office of
6 Planning will get into this as well, but the Office
7 of Planning's report also references that you are
8 going to be using the basement of an adjacent
9 building for after school programs.

10 MR. JOHNSTON: Correct.

11 VICE CHAIRPERSON MILLER: Is that part
12 of this application for the child development
13 center, or is it something totally separate?

14 MR. JOHNSTON: It's part of.

15 VICE CHAIRPERSON MILLER: Part of?

16 MR. JOHNSTON: That was asked--it's part
17 of.

18 VICE CHAIRPERSON MILLER: Okay.

19 MR. JOHNSTON: And it was also asked, I
20 should point out, that during the day, the parking
21 spaces are--there's many, many parking spaces within
22 the facility. Our parking lots are virtually empty
23 during the day.

24 VICE CHAIRPERSON MILLER: Thank you.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. MANN: Also regarding the Office of
2 Planning report, on page 2, there were conditions, I
3 guess, from the previous order. One of them was,
4 "The facility shall mitigate area parking problems
5 by hiring local personnel and by encouraging the use
6 of public transportation by staff."

7 I was wondering if you could perhaps
8 address the local personnel issue and what your plan
9 is for staffing the center.

10 MR. JOHNSTON: That actually is going to
11 be a question that would be answered by the
12 operator. And that would be a requirement that is
13 set down to the operator, to hire locally. And the
14 proposal at the time, and still is, is that you
15 would look within your own communities for your
16 people who have experience in child care services.
17 And there is a benefit in having people who can walk
18 to work. And a benefit for people who can be close
19 enough to work.

20 There is certainly no lack of--there's a
21 lack of daycare, but there's also a large number of
22 people who have daycare experience in southeast.

23 MR. MANN: Right. That's pretty self-
24 evident to me, theoretically. I guess what I have a
25 little trouble with is the ambiguity of "local

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1 personnel". And I was wondering whether or not
2 there was any greater geographic definition of
3 "local personnel". And if it is something that we
4 can or should consider, just because it seems a
5 little difficult to me to enforce a condition like
6 that.

7 MR. JOHNSTON: I mean, if you wanted to
8 change the language to "D.C. first", that's
9 certainly not--I think the standard does require,
10 you know, that new hires come from D.C. And since
11 we are going to be getting money from CDBG to build
12 this, I'm sure that's going to be a requirement, in
13 their requirements. At least it has been consistent
14 in other projects we have done with the HCD where
15 CDBG money is involved, that you first source to the
16 community.

17 MR. MANN: Okay. So, it sounds like
18 there is going to be some programmatic requirement
19 that is going to necessitate hiring local personnel
20 within a certain--

21 MR. JOHNSTON: I think that more
22 importantly programmatic, I think it's a practical
23 consideration. To the operator, these people are
24 not overpaid. So if you can get people who are
25 close by, and can at least have access to you, you

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1 maintain--you lower that turnover. You lower that
2 constant revolving in and out, if somebody is going
3 to walk three blocks to work.

4 MR. MANN: Right.

5 MR. JOHNSTON: It's certainly in the
6 center's interest to do this.

7 MR. MANN: Yes. And again, that all
8 makes sense. I am just wondering, as a condition,
9 whether or not we want to keep it as it was
10 previously written, just because I think it's a
11 little difficult to enforce. But we can discuss
12 that when we deliberate on the conditions.

13 VICE CHAIRPERSON MILLER: Yes--

14 MR. JOHNSTON: You had your word!

15 (Laughter.)

16 VICE CHAIRPERSON MILLER: Yes, I want to
17 jump in here, too. Sometimes when we discuss and we
18 deliberate, we don't then have your input. And I'd
19 like to get as much input from you before we
20 deliberate on that because these were the conditions
21 that the other order imposed, but now it's up for
22 grabs again, basically. So--

23 MR. JOHNSTON: I was hoping not!

24 (Laughter.)

25 MR. JOHNSTON: If you would accept the

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1 conditions as they were!

2 VICE CHAIRPERSON MILLER: I want to
3 explore this also. As far as "local personnel"--if
4 you are saying, if we change that to "D.C.
5 personnel"--is that on a priority? Do you
6 understand that to be a priority or do you
7 understand that to be exclusive? You know, only
8 D.C. personnel.

9 MR. JOHNSTON: Well, I think you shoot
10 yourself in the foot if you make it exclusive.

11 VICE CHAIRPERSON MILLER: Exclusive that
12 there would be--

13 MR. JOHNSTON: It's a self-serving
14 benefit. And I have no objection if you want to say
15 D.C. is where your employment pool has to come from.
16 You have 20 staff people for 90 kids. What happens
17 if your executive director or the person you want to
18 run this happens to live in P.G. County? The person
19 with 20 years experience, with Easter Seal or United
20 Way? You know, has the experience, but someone--a
21 lot of your mid-management skill sets don't live in
22 the District anymore, because they can't afford to.

23 So, I am very happy to say I agree with
24 it, but I think that the problem you run into, or
25 the problem that you create, is at the mid-

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1 management level, not at the actual service provider
2 or--when you have infants and someone is taking care
3 of infants, it's usually going to be somebody who is
4 probably close to the community. Just because you
5 are not paying an outrageous sum.

6 But when you come to the administrative
7 levels, who are handling the payroll, the
8 scheduling, the timing, the maintenance of the
9 building, the insurance--all the other issues that
10 come into this, chances are you are going to be
11 getting somebody who has a college degree or a
12 master's degree in childcare development.

13 And I would submit to you that that
14 population, that labor pool is in a diminishing
15 supply in the District of Columbia.

16 MR. MANN: Right. It just seems to me
17 that you provided a very good argument for a
18 different set of policy objectives than we are
19 trying to achieve here. And I'm just wondering if,
20 instead, we shouldn't have a condition that says
21 something more like, the facility shall encourage
22 the use of public transportation by staff.

23 Because what we are trying to achieve
24 through our conditions is decreasing traffic
25 patterns. I mean, it's irrelevant from a zoning

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1 standpoint--

2 MR. JOHNSTON: Where they're hired from--
3 -

4 MR. MANN: Right. From where they are
5 hired.

6 CHAIRPERSON GRIFFIS: Unless we state
7 that they should be within walking distance, that
8 would address the parking issue. Or we hire
9 employees that don't own cars. That would be an
10 interesting condition.

11 MR. MANN: Right.

12 MR. JOHNSTON: What about bicycle racks?

13 CHAIRPERSON GRIFFIS: That is a whole
14 other group that we've apparently got to address.
15 But in all seriousness, I think that the point in
16 fact of the condition is exactly as Mr. Mann is
17 laying out, that we would condition something on an
18 order that would go to mitigate an adverse impact
19 that arises out of a zoning issue, that stays within
20 our jurisdiction.

21 It's interesting the way that this
22 condition was actually crafted: "The facility shall
23 mitigate area parking problems by hiring local
24 personnel and by encouraging the use of public
25 transportation by its staff." It went directly to

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1 saying that. But what's interesting, Mr. Mann, is,
2 and what you are saying is, just hiring locally
3 doesn't address specifically the area of parking.
4 Because locally could be just in the District of
5 Columbia. Or it could be anywhere else.

6 So, a point to ponder. Okay. Ms.
7 Miller, follow-up?

8 VICE CHAIRPERSON MILLER: Yes. On the
9 other part of that, how is use of public
10 transportation going to be encouraged?

11 MR. JOHNSTON: Well, the only one way it
12 can be encouraged. You have one bus that runs up
13 and down Alabama Avenue. Short of saying to
14 somebody, we are accessible to work, short of
15 encouraging the fact that the staff--even today, the
16 people who work at the apartment project, do their
17 own carpooling to the subway. We have people who
18 actually live outside the area, and they come into
19 the Suitland subway, off Alabama Avenue, and someone
20 goes and picks them up.

21 I mean, you can encourage it. I don't
22 think you can dictate it. I can certainly--would
23 like to say that we can--

24 CHAIRPERSON GRIFFIS: There are programs
25 that employers institute, you know--Metrochek, or

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1 something else of that nature, or--I know there's
2 other vehicles in larger complexes where this is--it
3 raises to a huge level of potential detrimental
4 impact. There's no management plans that could be
5 instituted that would indicate how that would be
6 done. But your testimony to the fact that those
7 levels haven't been addressed or anticipated.

8 MR. JOHNSTON: Yes. I don't see us
9 being in that involved and complicated a stage, but
10 to the extent that I agree with you--I agree with
11 you, to the extent we'll do what we need to do. We
12 are doing it anyway. Without being told to do it,
13 because it's necessary to maintain the labor pool.

14 VICE CHAIRPERSON MILLER: What are you
15 doing anyway?

16 MR. JOHNSTON: Getting people from the
17 subway to the apartment project to work. You see,
18 it's not just the daycare. You focusing on the
19 daycare.

20 And my answer, I'm saying that you
21 already have 184 units and a staff of five or six
22 people. We already have three people that are
23 carpooling from the apartment project to the subway,
24 because they don't want to move into the particular
25 area, and they want to stay where their families

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1 are.

2 So, I'm happy that I get a stable--
3 someone who has a family and wants to maintain it,
4 and if they are willing to come in on the subway,
5 I'm willing to give them my Exxon credit card so
6 they can put gas in someone else's car to go pick
7 them up five days a week. So, in essence, we are
8 doing what you are suggesting. But that's common
9 sense. That's just good business, from my point of
10 view.

11 VICE CHAIRPERSON MILLER: Thank you.

12 MR. MANN: One other question regarding
13 the previous--

14 MR. JOHNSTON: You have already caused
15 enough trouble!

16 MR. MANN: We are trying to make this
17 easier!

18 (Laughter.)

19 MR. MANN: Regarding the previous
20 conditions. If you don't know the answer--and even
21 if you do, we can ask others--

22 (Laughter.)

23 MR. MANN: The provision that said that
24 the center shall provide night lighting appropriate
25 for pedestrians. Was there something unique that

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1 necessitated providing additional lighting beyond
2 what might ordinarily be required?

3 MR. JOHNSTON: At the time we were here,
4 the project was not yet finished construction. And
5 I think someone was concerned about, if you are
6 going to build this walkway, and this building is
7 sitting behind the building, could you have a
8 security issue, could you have a safety issue.

9 Clearly, you are going to light the
10 building because that's just the smart thing to do.
11 And I see that as nothing more than an extension, or
12 just putting in walkway lights. You know, you put
13 lights on the building and you light the space.
14 That's just safety, security and common sense.

15 CHAIRPERSON GRIFFIS: What is the
16 lighting that is provided?

17 MR. JOHNSTON: There's--as I was--what
18 someone was just advising me is that there already
19 is significant lighting on the side of the building.
20 And that's true. At night you can certainly--

21 CHAIRPERSON GRIFFIS: Right. But is
22 there any--let's call it pedestrian scale or pathway
23 lighting? Are there poles--

24 MR. JOHNSTON: Right now there is
25 nothing. There's lighting--there's a parking lot.

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1 You have lights on--you have high velocity lights on
2 the side of the building, you have an ample amount
3 of lighting.

4 Remember, this is--right now you are
5 centered at the rear of an apartment building.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. JOHNSTON: And there is a tremendous
8 amount of lighting. And the design calls for
9 lighting as well.

10 CHAIRPERSON GRIFFIS: Okay. Mr. Etherly
11 and I were off the record. We were reminiscing
12 about the first case and the issue of lighting, with
13 that sidewalk. A previous member, as I recall, who
14 is not sitting on this now, was very concerned about
15 that aspect of, if you parked at the cul de sac, and
16 were walking up, at dusk or when it was dark would
17 it be safe, just for walking. But then is there--
18 does it create an unsafe environment.

19 Because it's just substantial distance,
20 not to mention elevation change.

21 MR. JOHNSTON: Uh-hum.

22 CHAIRPERSON GRIFFIS: And that was one
23 of the concerns that was being brought up.

24 MR. JOHNSTON: There is already an
25 extensive amount of lighting in place.

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1 CHAIRPERSON GRIFFIS: And that's coming
2 from the buildings, that you walk in between?

3 MR. JOHNSTON: Correct. And those
4 lights are positioned because--it's not even
5 mentioned here, but there is an entire, say, camera
6 system that just sort of--from a an observation
7 point of view that exists out there.

8 CHAIRPERSON GRIFFIS: There is?

9 MR. JOHNSTON: Yes.

10 CHAIRPERSON GRIFFIS: Okay. Is there
11 parking--rather, is there lighting on the surface
12 parking?

13 MR. JOHNSTON: Yes.

14 CHAIRPERSON GRIFFIS: And that's also
15 pole fixtures?

16 MR. JOHNSTON: Good question.

17 CHAIRPERSON GRIFFIS: Eight, ten feet?

18 MR. JOHNSTON: It is from the building.
19 From the buildings.

20 CHAIRPERSON GRIFFIS: The building?

21 MR. JOHNSTON: The buildings are three
22 stories high.

23 CHAIRPERSON GRIFFIS: But they
24 illuminate the parking?

25 MR. JOHNSTON: Yes.

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1 CHAIRPERSON GRIFFIS: Interesting.

2 Okay.

3 (Pause.)

4 CHAIRPERSON GRIFFIS: Any other

5 questions?

6 (Pause.)

7 CHAIRPERSON GRIFFIS: And then, on the
8 proposed construction of the daycare center, is
9 there--I am assuming that there is exterior lighting
10 on that at the entrance?

11 MR. JOHNSTON: Yes.

12 CHAIRPERSON GRIFFIS: And there also
13 sconces or wall mounted fixtures being proposed?

14 MR. JOHNSTON: I am going to say yes,
15 but--yes. How detailed do you want to get, because
16 I can let--

17 CHAIRPERSON GRIFFIS: Not very detailed.
18 That would be good.

19 MR. JOHNSTON: Yes. Plenty.

20 CHAIRPERSON GRIFFIS: And the placement,
21 the placement of it is also at the entrances, and
22 there are several places where you can get into the
23 structure. Is that correct?

24 MR. JOHNSTON: Correct.

25 CHAIRPERSON GRIFFIS: So, at every

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1 entrance, you have some sort of exterior lighting?

2 MR. JOHNSTON: At every entrance, you
3 have exterior lighting, and if I am not mistaken you
4 have lighting that covers the perimeter of the
5 building.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. MANN: Do you have a definition of
8 peak hours?

9 MR. JOHNSTON: Peak hours would be, I
10 think, 7:00 in the morning--7:30, until roughly 4:00
11 o'clock. But in what sense are you using peak
12 hours?

13 MR. MANN: Well, because there is
14 another condition here that says that "The center
15 shall schedule delivery of materials and other goods
16 during non-peak hours."

17 MR. JOHNSTON: That would be from
18 10:00 a.m. to 2:00.

19 MR. MANN: So, if we are going to have a
20 condition like that, then maybe it should say that
21 the delivery should occur between 10:00 a.m. and
22 2:00 p.m. Otherwise, "non-peak hours" is pretty--

23 MR. JOHNSTON: Pretty vague.

24 MR. MANN: --ambiguous. Okay.

25 CHAIRPERSON GRIFFIS: And, just for

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1 clarification, the trash receptacle is on the
2 surface parking area. Is that correct?

3 MR. JOHNSTON: Correct.

4 CHAIRPERSON GRIFFIS: And it is shown in
5 the small bump out pad there, closest to the center.
6 Is that a correct reading?

7 MR. JOHNSTON: That is correct as to
8 what's shown in the plans. The operation would be a
9 little different. We would move it to another spot,
10 but that's just it.

11 CHAIRPERSON GRIFFIS: So there is no
12 difficulty in scheduling a two times a week pick-up
13 for that?

14 MR. JOHNSTON: We do that already.

15 CHAIRPERSON GRIFFIS: Right. Okay.
16 Good. Anything else at this point? Clarifications?
17 Questions from the Board?

18 (No response.)

19 CHAIRPERSON GRIFFIS: No? Very well.
20 Let's move ahead, then, and go to the Office of
21 Planning report.

22 MR. MOORE: Good morning, Mr. Chair, and
23 members of the Board. I am John Moore, Office of
24 Planning. The Office of Planning stands in support
25 of the application therefor on the record.

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1 A brief history. You probably remember
2 when the application was first presented, the Office
3 of Planning opposed it, for some of the very reasons
4 being discussed, and the conditions right now, such
5 as drop-off and pick-up, lack of parking spaces, and
6 we deferred opposition to DDOT.

7 DDOT sent in a report in the previous
8 application also and recommended denial. At a
9 subsequent--later date, the Office of Planning
10 submitted a supplemental after DDOT worked out with
11 the Applicant and the community the conditions that
12 are before you now.

13 And we then changed our position and
14 support the application. Since nothing is
15 supposedly changed from that time to this, we are
16 still in support to address specifically some of the
17 concerns raised by the Board, such as Mr. Mann's
18 concern, and Ms. Miller's concern about the parking.

19 It is my understanding from talking to
20 the person who wrote the previous OP report and
21 talking to DDOT a couple of times, that the
22 Applicant is supposed to work with DDOT to get three
23 designated spaces on the cul de sac for their use.

24 The other two parking spaces, by the
25 way, for 20 staff, they were supposed to have about

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1 five parking spaces. One would be handicapped on
2 the existing parking lot that is already on the
3 property, and one more. Those two are supposed to
4 be signed, as for use by the center during their
5 hours operation. And the other three, DDOT, of
6 course, would put the signage on the public space.
7 If that clarifies it at all for you.

8 There was one other concern I think Mr.
9 Mann had. I forgot what it was.

10 MR. MANN: Well, I had raised, the local
11 hiring and whatnot. It's not necessarily a concern,
12 I am concerned that conditioning it isn't necessary.
13 It didn't seem to me that there is anything that
14 needed to be mitigated, necessarily. So, if I have
15 any concern, it's over-conditioning it.

16 MR. MOORE: Let me give the history of
17 that, Mr. Mann. There were extensive negotiations
18 with the community on this with the ANC, with the
19 Office of Planning, and the Applicant.

20 "Local" in this context is supposed to
21 be defined as from the apartment community area
22 first. Note it says "staff" because I think
23 somewhere in our report, they are going hire a
24 professional provider to operate the center. So we
25 understand that the professionals may not come from

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1 that community. They will be a part of whatever
2 team that they hire to come in there.

3 But what the community was looking for
4 was as many employment opportunities for people in
5 the local community.

6 Again, the issue about transportation.
7 As I have said before this Board on many occasions,
8 and it is a matter of record, Ward 8 has the most
9 transit-dependent population in the entire city.
10 So, most of the 90 kids, if they max out at 90, will
11 come from that local community. And most of them
12 will be taking the bus or in many cases, because
13 that--when you add to that, the Villages of
14 Parkland, that's a pretty large area in terms of
15 drawing power for 90 kids. Most of them will more
16 likely be walking to the center.

17 The issue of lighting. Given the
18 perception, be it real or imagined, of crime in the
19 Southeast part of the city, we would want to err on
20 making sure that there is adequate lighting on that
21 building, along those walkways, that the Chair has
22 already mentioned as kids leave that place to go to
23 their cars or whatever. Especially in the winter
24 when the sun is down at 6:00 o'clock, and there are
25 shadows and dark areas.

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1 I am not accepting totally the lighting
2 that is coming from the existing buildings as being
3 conducive in this case. We want to see specific
4 lighting on this building, and on the pathways that
5 come--the walkway as it basically leads there, and
6 goes out toward where cars will be picking up kids.
7 Or even walking. If that clarifies any of the
8 conditions on there.

9 But we didn't change any of them that
10 came out of the previous application.

11 CHAIRPERSON GRIFFIS: Good. Thank you
12 very much, Mr. Moore. Questions from the Board?
13 Clarifications?

14 (No response.)

15 CHAIRPERSON GRIFFIS: In terms of that
16 lighting, and I think was exactly one of the major
17 concerns of the Board and the Office of Planning
18 previously, have you been out to the site since it
19 has been developed? And I ask you that just to
20 note, do you recall--I am looking at this civil
21 plan, the temporal plan. It seems that there are
22 utility poles along the cul de sac. Are there
23 actual light fixtures also on that area?

24 MR. JOHNSTON: Yes.

25 CHAIRPERSON GRIFFIS: Okay. So that

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1 portion is illuminated. And what we would be
2 concerned with, of course, is the pathway going up,
3 as you moved away from that lighting. And maybe not
4 directly within the path of the building lighting.

5 MR. MOORE: The only issue I would have
6 is what will be the effect of that lighting, the
7 existing lighting, on the buildings yet to be built.
8 Especially the one that has a special need use in
9 it-that's children.

10 CHAIRPERSON GRIFFIS: And when you say
11 the building that is yet to be built, you mean the
12 center?

13 MR. MOORE: The center. Yes, sir.

14 CHAIRPERSON GRIFFIS: Okay. And what
15 about--what is your understanding of what is being
16 proposed in terms of the lighting on the structure
17 itself? Do you find that would be adequate in terms
18 of illuminating the surrounding area as you leave?
19 So if you leave that building and it's properly
20 illuminated, if you believe it will be, and then you
21 start walking down the steps, there is a point at
22 which you are inbetween the buildings and the
23 lighting that's spreading from those, your concern
24 is that, in that area, it may not be enough
25 illumination?

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1 MR. MOORE: That is exactly right, Mr.
2 Chair. If you look at the character of the site,
3 not only its topography, but it mentions that
4 portions of the site are wooded.

5 CHAIRPERSON GRIFFIS: Hmmmm.

6 MR. MOORE: I am concerned about the
7 wooded background of the building. And if the
8 existing lighting will shine on those wooded areas.
9 It may be a call about which the developer may want
10 to take a look at that during construction. So they
11 will be able to have a shadow study, such as an
12 applicant did a couple of weeks ago.

13 CHAIRPERSON GRIFFIS: Hmmmm.

14 MR. MOORE: But I am just concerned that
15 once that building is there, is there adequate
16 lighting already there, or is there a need for
17 additional lighting.

18 MR. JOHNSTON: We are not opposed to
19 adding any lighting. I mean, what we believe--the
20 more lighting the better, from between buildings,
21 between parking spaces, and certainly as a security
22 issue. Despite the reputation, security has not
23 been a big issue, at least from our experience.

24 But we would certainly enhance any of
25 the lighting that is shown on the plans.

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1 CHAIRPERSON GRIFFIS: Good. Okay.

2 Anything else? Yes, Ms. Miller?

3 VICE CHAIRPERSON MILLER: I don't think
4 we have a report from DDOT in our record. Is that
5 correct?

6 MR. MOORE: That is correct.

7 VICE CHAIRPERSON MILLER: I just wanted
8 to follow-up on your comment on page 4, that "It
9 appears that the rush hour and drop-off times would
10 overlap and could cause traffic problems if more
11 parents than anticipated drive their children to the
12 center. OP has referred the application to DDOT for
13 analysis and comments."

14 Did they get back to you verbally?

15 MR. MOORE: Yes.

16 VICE CHAIRPERSON MILLER: And are they
17 satisfied that it's not going to be a problem? Or
18 what?

19 MR. MOORE: Pretty much so. They did
20 file-by the way, they stood by the report they filed
21 when they briefed this application, when they
22 approved this one. Since they saw no changes taking
23 place.

24 VICE CHAIRPERSON MILLER: Okay.

25 MR. MOORE: And they were speaking of

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1 those hours as being the a.m. rush, being 7:30 to
2 9:00, and p.m., from 4:00 to 6:30, I believe.

3 VICE CHAIRPERSON MILLER: So there
4 wasn't any recommendation that drop-offs times and
5 pick-ups be adjusted to better work with rush hour?
6 No?

7 MR. MOORE: No. In the conversation I
8 had with them, when you actually look at it, the
9 effect of rush hour on Southeast in general isn't as
10 great as, of course, other parts of the city.

11 In this particular area, only Alabama
12 Avenue and Stanton Road would carry more than normal
13 levels of traffic during those peaks. Since this is
14 a block and a half or two off the avenue, the effect
15 shouldn't be that great.

16 VICE CHAIRPERSON MILLER: Plus they
17 don't anticipate a lot of children coming by cars?
18 Is that correct?

19 MR. MOORE: I personally wouldn't.

20 VICE CHAIRPERSON MILLER: Okay.

21 CHAIRPERSON GRIFFIS: How many units are
22 in Buildings 43 and 44?

23 MR. JOHNSTON: Um--

24 CHAIRPERSON GRIFFIS: The two-story
25 buildings. Do they have eight units in them? Each?

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1 Or--

2 MR. JOHNSTON: Buildings 33 and 34 are
3 which ones?

4 CHAIRPERSON GRIFFIS: Forty-three and
5 44.

6 MR. JOHNSTON: The cul de sac buildings--
7 -

8 CHAIRPERSON GRIFFIS: Yes.

9 MR. JOHNSTON: They have 10. Ten units.

10 CHAIRPERSON GRIFFIS: In each building?

11 MR. JOHNSTON: Yes.

12 CHAIRPERSON GRIFFIS: Just to put it in
13 perspective. I mean, we are not going to the
14 parking there. There is a small surface parking
15 with seven parking spaces and one handicapped. If
16 there's 20 units in there, you would assume, and in
17 fact our aerial photograph shows, that the
18 cul de sac will be parked.

19 And so it's an interesting thought that
20 it's going to be utilized. And when we talk about--
21 it's interesting to throw in this kind of rush hour,
22 and times of rush hour. I seem to recall we were
23 kind of anticipating what it might be, but it--I
24 think there is going to be some measure of flow-out
25 for sure. There is going to be vehicle traffic that

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1 we should be aware of, coming out of that
2 cul de sac.

3 And then out of the parking spaces. But
4 whether it's four lanes of high volume traffic, I
5 don't see. And the testimony that's here today--if
6 most of those children are anticipated to come from
7 the complex itself in the surrounding area, it may
8 well be limited impact, in terms of getting into
9 this area and dropping off, and then leaving from
10 it.

11 (Pause.)

12 CHAIRPERSON GRIFFIS: Okay. Other
13 questions? Clarifications? Anything regarding the
14 Office of Planning report?

15 MR. MANN: I don't know if this is
16 necessarily just for OP, but did we talk about FTEs
17 versus onsite? And do we want to?

18 CHAIRPERSON GRIFFIS: We haven't. It's
19 a good clarification. I'm not sure if the Office of
20 Planning wants to address it, but the Applicant can
21 certainly.

22 The previous condition, what Mr. Mann is
23 going directly to, which is an important aspect, is
24 indicated that the number of staff would now exceed
25 20. It would be our view--of the Board, constituted

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1 as it is now, in writing that condition, that that
2 would be total number of people. Is that your
3 understanding of that number?

4 MR. JOHNSTON: That is correct.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. JOHNSTON: I understand it is human
7 bodies, not hour slots.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Excellent. So I think that is perfectly
10 appropriate. And also a good clarification.

11 None of the other aspects and details
12 have changed, obviously, as you submitted in terms
13 of the anticipated age of children or number of
14 children. Is that correct?

15 MR. JOHNSTON: No.

16 CHAIRPERSON GRIFFIS: Anything else
17 then? Anything--

18 VICE CHAIRPERSON MILLER: I have one
19 more question.

20 CHAIRPERSON GRIFFIS: Ms. Miller?

21 VICE CHAIRPERSON MILLER: Yes. Can Mr.
22 Moore--are you anticipating some type of congested
23 situation at the drop-off and pick-up times with the
24 cars and the children?

25 I'll just tell you where I am leading

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1 to, and I'm wondering whether or not it would be
2 useful to have a condition or not, that a staff
3 person be out there to help direct the traffic.

4 MR. MOORE: We would definitely support
5 that contingency. That there should be staff at the
6 curbside during the hours that the kids would be
7 coming, those who drive, of course. To escort them
8 in and out of the building. It would be good--

9 MR. JOHNSTON: Our policy is "A staff
10 member shall be on hand for children between the
11 drop-off point and the building"--

12 VICE CHAIRPERSON MILLER: That is
13 correct. I am really asking something different,
14 because if there is a staff person escorting the
15 children. They are leaving the curb and coming back
16 and going back and forth. So there is not always
17 one person there directing the traffic.

18 I don't know whether it's necessary or
19 not, and that's what I am asking.

20 MR. MOORE: First it should be more than
21 "a" person.

22 VICE CHAIRPERSON MILLER: Un-huh.

23 MR. MOORE: It should be "persons".
24 With 90 children you need more--with 20 staff, you
25 could have more than one person with that kind of

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1 responsibility.

2 VICE CHAIRPERSON MILLER: Right. Okay.

3 CHAIRPERSON GRIFFIS: Anything else?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Okay. Let's
6 refresh, actually. Because, looking at this, I am
7 wondering how to get to the fact of drop-off and
8 pick-up happening in the cul de sac. It seems to
9 me, and what Ms. Miller and Mr. Mann, essentially
10 all of the Board is kind of focusing on, is the
11 safety of this. As I started off saying, drop-off
12 and pick-up is always the biggest piece.

13 One, you have to walk up all those
14 stairs.

15 Two, we've got a lighting issue, which
16 will come anyway, with the facility building there.
17 But if that is the primary route--what I am asking
18 you is--your narrow understanding of the site and
19 the conditions, would it not be easier to do drop-
20 off and pick-up off of Savannah Terrace, having
21 staff that was there that would collect children and
22 a staff member that would then move the--bring the
23 children up to the facility.

24 And one would be making sure that cars
25 keep moving as you drop-off a child, the cars keep

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1 moving out as opposed to going in the cul de sac,
2 which is going to be parked, and is only egress for
3 those two buildings there, and potentially others
4 that are in 41, 42, that haven't parked on the
5 surface.

6 MR. JOHNSTON: I will have to say that--
7 I will say that my memory is not as good as it used
8 to be, even three years ago. But it was my thought
9 that the original drop-off point was on 22nd Street
10 at the parking lot. And that the--

11 CHAIRPERSON GRIFFIS: Savannah--

12 MR. JOHNSTON: On Savannah Terrace. I'm
13 sorry. And that the cul de sac was added as an
14 extra--I cannot tell you how it got there, but I
15 always thought--because we built a sidewalk.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. JOHNSTON: If you've been to the
18 site, you'll see one sidewalk is like this, and one
19 sidewalk is like this, and it takes you back to a
20 hill that is there. And it was based on that being
21 a walkway to the mail building.

22 How we got up into the cul de sac, I do
23 not remember. And whether it was to mitigate or
24 make it lighter or to make it--to have two points to
25 drop-off, I don't remember.

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1 CHAIRPERSON GRIFFIS: Yes. I don't,
2 either.

3 MR. JOHNSTON: I started saying that I
4 thought it was on 22nd Street. I was talking about
5 being right on--on Savannah Terrace. I'm sorry.
6 Savannah Terrace, in front of the parking lot.

7 CHAIRPERSON GRIFFIS: Okay. Well, maybe
8 I am mistaking it. Is it my mind that is going
9 directly to the cul de sac as drop-off?

10 MR. JOHNSTON: No. No, it very clearly
11 says 22nd Street cul de sac.

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. JOHNSTON: But my recollection is
14 that the original proposal was to do it at Savannah
15 Terrace. Right at the parking lot, which makes more
16 sense. That's actually where we built the extra
17 sidewalk.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. JOHNSTON: I mean, it makes sense to
20 have it at the cul de sac, because you have the
21 steps that go right down into the building. So you
22 could theoretically have older kids go there and
23 come down, and have the younger ones come from the
24 other end.

25 But again, that's an administrative

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1 procedure.

2 CHAIRPERSON GRIFFIS: Right.

3 (Pause.)

4 CHAIRPERSON GRIFFIS: Comments?

5 VICE CHAIRPERSON MILLER: I'm looking at
6 the conditions that--they don't necessarily require--
7 -do they, where--the drop-off and pick-up are? They
8 talk about where the spaces are if you drop-off and
9 pick-up.

10 CHAIRPERSON GRIFFIS: I think the
11 problem with this condition is we conditioned it,
12 but it seems to read that we would be requiring
13 those three spaces dedicated, although we can't
14 really condition that they would be dedicated.

15 VICE CHAIRPERSON MILLER: Uh-huh.

16 CHAIRPERSON GRIFFIS: But that's placing
17 the drop-off and pick-up there. Savannah is not
18 even addressed in this. Which one could conclude--
19 we've seen them before--they always come back to us
20 that conclude that it would be prohibitive from
21 dropping off or picking up. I certainly don't think
22 that would be an appropriate response to this.

23 There it is. I mean, I don't--the only
24 drawback that I have seen in looking at this, in
25 terms of assessment and my limited understanding of

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1 all these aspects, we are going through all these
2 other 205 applications, is that if someone were
3 coming from 22nd Street traveling, which would be
4 left on this sheet, down Savannah, they would have
5 to do a U-turn on Savannah in order to drop-off
6 appropriately in front of the facility on that side,
7 where a staff member would be. So we wouldn't be
8 crossing the street. The cul de sac would not--
9 would lend itself to have the opportunity that no
10 matter what direction you came from, you would go in
11 appropriately and exit appropriately.

12 But I don't--again, on my understanding
13 of this, the density that I am seeing in terms of
14 this development, I don't see Savannah as being an
15 outrageously busy street, unless you have testimony
16 to the contrary, that it probably would not be that
17 difficult to pull into one of the surface parking
18 areas in order to properly turn around and drop-off
19 a child in front on Savannah.

20 VICE CHAIRPERSON MILLER: So why don't
21 we have the condition read that the drop-off and
22 pick-ups will be at either of those two places?

23 CHAIRPERSON GRIFFIS: Well, I think that
24 would be--yes.

25 VICE CHAIRPERSON MILLER: I think that

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1 we should.

2 CHAIRPERSON GRIFFIS: Yes. I think we
3 could craft the condition in order to provide the
4 intent of what we are saying. What I understand the
5 Board saying is, providing safe drop-off and pick-up
6 for the children, two access points or two drop-off
7 points have been identified to be utilized. A staff
8 member would assist in discharging of the child and
9 then an adult or staff member would escort the child
10 up to the facility from the Savannah Terrace and/or
11 the 22nd cul de sac. Right?

12 VICE CHAIRPERSON MILLER: Right. Which
13 leads me to my next question. Which--when we are
14 talking about--the way this condition is written
15 from the previous order, it talks about an adult
16 escorting children, and I am wondering if the intent
17 is staff or does it mean that a parent could, that
18 that's equally acceptable.

19 CHAIRPERSON GRIFFIS: I think the point
20 was, in the understanding of the Board, knowing some
21 of the more contentious cases that have come under
22 205, it was in order to keep it open enough that
23 one, an adult that didn't drive could walk their own
24 child to the facility.

25 VICE CHAIRPERSON MILLER: Ah.

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1 CHAIRPERSON GRIFFIS: Two, that you
2 could actually have volunteers that assisted the
3 school that were not staff, but would not count
4 towards the 20 that the staff would employ, because
5 they would be volunteers that were helping out and
6 assisting.

7 And I could go on and on, of the other
8 alternatives that might be a possibility, that we're
9 trying not to be precluded from.

10 But I think what was the intent of that,
11 is to say, we are not looking for the adult to drive
12 up, stop their car, get out, walk all the way up to
13 the facility, drop the rest of everyone else--

14 VICE CHAIRPERSON MILLER: Right.

15 CHAIRPERSON GRIFFIS: And move out
16 accordingly. You know how we write that.

17 (Laughter.)

18 CHAIRPERSON GRIFFIS: I think we can
19 craft it correctly enough that--staff and/or adult
20 volunteer, that will assist the children in walking.
21 Good.

22 VICE CHAIRPERSON MILLER: Uh-huh.

23 CHAIRPERSON GRIFFIS: Okay. We haven't
24 gotten through everything, so we can--why don't we
25 move ahead and take in the other additional

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1 information into the record that we so require.

2 We do have, of course, other agencies
3 that have reported in accordance with the 205
4 regulations, and showing the adequacy of meeting
5 those--being licensing, etc. The Department of
6 Health has recommended approval of the application
7 there in Exhibit No. 22.

8 We have walked through a little bit of
9 DDOT not having submitted directly to this, but the
10 testimony that the Office of Planning has indicated
11 that they are standing by their report in the
12 previous application.

13 ANC 8B--is there a representative from
14 ANC 8B here? Regarding a representative from the
15 ANC, we did not have an actual report from the ANC
16 on this application.

17 Did you go back and--

18 MR. JOHNSTON: Actually I spoke with
19 Jacques Patterson, who is the head of ANC 8B. And
20 I, quite frankly, thought that you would have gotten
21 a letter from him. I got no request from him to
22 attend the meeting. I talked to him several times a
23 month.

24 CHAIRPERSON GRIFFIS: Sure. Okay.
25 Maybe I missed it in the previously application, but

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1 I don't have any note of it being in--

2 MR. JOHNSTON: It was in the previous
3 application. There was a letter from them. But, as
4 I said, I have not been--I made the request, and I
5 have not heard anything back. And, quite frankly,
6 it's my fault for not pushing the issue, but--

7 CHAIRPERSON GRIFFIS: Okay. Good. That
8 is all of the submissions that I have note of in the
9 application at this point. I think it is
10 appropriate to ask if there is anyone here present
11 in support or in opposition to application 17373, if
12 they would come forward at this time, and have a
13 seat at the table as an indication of having
14 testimony.

15 (No response.)

16 CHAIRPERSON GRIFFIS: Not noting anyone
17 present to provide testimony under this application,
18 I think let's go to any conclusions or summations
19 that you have.

20 MR. JOHNSTON: No. I just--as I said
21 when I came, it's what was here, to your questions,
22 the answers. I would love to say--kind of ask you
23 to make a decision, but I think there's some
24 conditions that you want to rewrite, so I don't know
25 whether it is appropriate for me to ask you to make

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1 a decision, or do you want to go back and rewrite
2 it, and let me know when you do.

3 CHAIRPERSON GRIFFIS: Good. Follow-up
4 questions? Clarifications?

5 (No response.)

6 CHAIRPERSON GRIFFIS: No?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Any additional
9 information? Ready to go?

10 VICE CHAIRPERSON MILLER: Mr. Chairman,
11 I am ready to move approval of application No. 17373
12 of Douglas Knoll Cooperative LP pursuant to 11 DCMR
13 3104.1 for a special exception to allow a child
14 development center, 90 children and 20 staff, under
15 section 205 and pursuant to 11 DCMR 3103.2 for a
16 variance from the off street parking requirements
17 under Section 2101, at premises 2017 Savannah
18 Terrace, S.E., subject to conditions as articulated
19 today.

20 CHAIRPERSON GRIFFIS: Excellent. Is
21 there a second?

22 MR. ETHERLY: Second, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Good. Thank you,
24 Mr. Etherly. Any further deliberation on the
25 motion?

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1 (No response.)

2 VICE CHAIRPERSON MILLER: Good. I think
3 we have adequately addressed, if not fully
4 addressed, in this application, and noting all the
5 prior proceedings on this, on which some of us sat.

6 The requirements under 205, I think they
7 are adequately set out and addressed and met, and/or
8 addressed in our own conditions.

9 In terms of 205.6, the Board requires
10 special treatment in the way of designs, screenings,
11 buildings, plants and parking, area signs and other
12 requirements, lighting arise as one of the major
13 pieces. I am wondering if there is detail in terms
14 of our deliberation at this point that the Board
15 would like to take note of.

16 One of the conditions was, of course,
17 the center would provide appropriate night lighting
18 for pedestrians. Day lighting is something we don't
19 often require, but night lighting, of course, would
20 be appropriate, but specifically in all directness,
21 do we want to say what that actually is? Are we
22 raising to the level of appropriateness?

23 MR. MANN: All right. You see, that's
24 one of the reasons why I don't like a condition like
25 that, where it says "appropriate" night lighting,

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1 because I think that's just open to such broad
2 interpretation.

3 Whereas there's other regulatory
4 mechanisms that have already defined what
5 appropriate is. I mean, you can go to codes or OSHA
6 regulations or whatever and it tells you how many
7 lumens you need for certain--

8 CHAIRPERSON GRIFFIS: Right.

9 MR. MANN: --lighting requirements. And
10 so, I don't know. I find conditions like
11 appropriate night lighting a little problematic,
12 although it's certainly not fatal.

13 VICE CHAIRPERSON MILLER: I would hope
14 that we could put some provision in here, maybe
15 that's written so that this Board's more comfortable
16 with it. Because we did hear testimony from Mr.
17 Moore that there is a concern with security. And
18 that it would be a good idea to have some type of
19 additional lighting.

20 CHAIRPERSON GRIFFIS: Okay. Is there a
21 proposed aspect of that requirement in the
22 condition? We are running with the Applicant here
23 present, and they have indicated that they have no
24 difficulty in providing additional lighting.

25 We have the fact that on the facility

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1 itself as proposed, there will be lighting at each
2 of the entrances. So, if we look to the pathway, I
3 don't think--in my mind, I don't see the difficulty
4 in noting that the building illumination of the
5 sidewalk traveling north from the facility from
6 Savannah Terrace is adequately met.

7 But rather that pathway going down to
8 that pathway going down to the cul de sac and the
9 stair. It might be appropriate to say that two pole
10 fixtures would be provided on each side of the
11 stairway at the top and also at the bottom? Is that
12 what we are looking for?

13 MR. MANN: The kind of specificity that
14 I like.

15 CHAIRPERSON GRIFFIS: Make it look nice,
16 too.

17 MR. JOHNSTON: The developer is
18 perfectly willing to agree to that. Also willing to
19 agree to let his architect and engineers make the
20 final decisions as based on--you used the word
21 "OSHA", building code safety, life issues.

22 CHAIRPERSON GRIFFIS: Take your pick,
23 whatever you want.

24 MR. JOHNSTON: Whichever one, whichever
25 one you want.

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1 CHAIRPERSON GRIFFIS: I like that kind
2 of condition. Because you actually pick whatever
3 light fixture they want.

4 (Laughter.)

5 CHAIRPERSON GRIFFIS: That's it. We've
6 got to just make that a boilerplate on everything!

7 (Laughter.)

8 CHAIRPERSON GRIFFIS: Okay--

9 VICE CHAIRPERSON MILLER: Well-

10 MR. JOHNSTON: I'm not being flippant.

11 I mean, I--

12 CHAIRPERSON GRIFFIS: No. I know. I
13 am.

14 (Laughter.)

15 MR. JOHNSTON: It's important, and we
16 need to address it.

17 CHAIRPERSON GRIFFIS: Good. There's
18 some that are something like \$10,000 apiece!

19 Okay--Ms. Miller?

20 VICE CHAIRPERSON MILLER: Just listening
21 to you. I mean, you are the architect. But I think
22 placement would be important to say--night lighting
23 where--maybe not limit them to the exact type of
24 fixture.

25 CHAIRPERSON GRIFFIS: No, I totally

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1 understand. I think the type of fixture is
2 important, however.

3 VICE CHAIRPERSON MILLER: Okay.

4 CHAIRPERSON GRIFFIS: In terms of what
5 we are trying to do--illuminate specifically an
6 area. If you did a highway pole at 60 feet high,
7 you could get your lumens across, but that is not
8 necessarily appropriate for lighting a pathway down.

9 So what I was thinking was a pole and
10 lamp fixture of 8 to 10 feet high. And I think we
11 need to submit a condition.

12 VICE CHAIRPERSON MILLER: Okay.

13 CHAIRPERSON GRIFFIS: But this is what I
14 am proposing. And it would be one at the top of the
15 stair. So if you see as you come off the parking
16 and across the facility--if you look at it, and I am
17 pointing to 00, you have light that is shooting out
18 from the buildings here and light that is going to
19 be shooting here.

20 As you move away from the facility, you
21 are going to move away from your light source. And
22 you are going to want, right at those steps, just
23 for safety, not necessarily like someone is jumping
24 out and grabbing you, but safety just for walking,
25 so you can see the steps.

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1 Have one at the top, and conceivably
2 have one at the bottom. And they could be on
3 alternate sides. Also framed this very nicely.

4 The only question is whether there is a
5 third at the property, and does it go to the
6 cul de sac. You know what I mean?

7 VICE CHAIRPERSON MILLER: Uh-huh.

8 CHAIRPERSON GRIFFIS: For symmetry.

9 VICE CHAIRPERSON MILLER: Do you have a
10 proposal how to word it?

11 CHAIRPERSON GRIFFIS: I think that we
12 did. The condition they are to provide adequate
13 lighting for pedestrian circulation, that three pole
14 fixtures would be provided along the pathway from
15 the cul de sac to the facility.

16 VICE CHAIRPERSON MILLER: Good.

17 CHAIRPERSON GRIFFIS: I mean, leave it
18 to common sense that they wouldn't put them all
19 together.

20 VICE CHAIRPERSON MILLER: Okay.

21 CHAIRPERSON GRIFFIS: One at the top, at
22 the bottom, and one in the middle. Good?

23 VICE CHAIRPERSON MILLER: Good.

24 CHAIRPERSON GRIFFIS: Okay. Any other
25 conditions that need to be specifically addressed at

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1 this point, outside of what we have already
2 mentioned? Clarifications? Additional reports?

3 VICE CHAIRPERSON MILLER: Um--

4 CHAIRPERSON GRIFFIS: Yes, Ms. Miller?

5 VICE CHAIRPERSON MILLER: I think so. I
6 was kind of running through the runs that we are
7 keeping--

8 CHAIRPERSON GRIFFIS: Okay.

9 VICE CHAIRPERSON MILLER: And then I
10 have some proposed revisions.

11 CHAIRPERSON GRIFFIS: Good.

12 VICE CHAIRPERSON MILLER: The first one.
13 Approval should be for a period of seven years.
14 Number of staff shall not exceed 20. The age of
15 children shall be six weeks to 12 years. There
16 shall be no more than 90 children enrolled in the
17 center.

18 And anyone should stop me if you want to
19 change any of these.

20 CHAIRPERSON GRIFFIS: Good.

21 VICE CHAIRPERSON MILLER: Okay. The
22 play area shall be located immediately adjacent to
23 the center. The center shall operate Monday through
24 Friday, from 7:00 a.m. until 6:00 p.m.

25 CHAIRPERSON GRIFFIS: Right.

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1 VICE CHAIRPERSON MILLER: Okay. Trash
2 removal shall take place at least two times a week.
3 The center shall schedule delivery of materials and
4 other goods during non-peak hours, i.e., 10:00 a.m.
5 to 2:00 p.m.

6 CHAIRPERSON GRIFFIS: We are just going
7 to say 10:00 to 2:00.

8 VICE CHAIRPERSON MILLER: During 10:00
9 to 2:00. Okay. Three parking spaces shall be
10 dedicated on the 22nd Street cul de sac nearest to
11 the center for drop-off and pick-up between 7:00
12 a.m. and 9:00 a.m., and 4:30 p.m. and 6:00 p.m. Are
13 we okay with that condition?

14 MR. MANN: Did the Chairman want to
15 change the word "dedicated" to "provided"?

16 CHAIRPERSON GRIFFIS: Yes. I think that
17 is absolutely true. We ought to change that
18 verbiage. However, we are also stepping outside of
19 our own jurisdiction--

20 VICE CHAIRPERSON MILLER: That's what I
21 thought.

22 CHAIRPERSON GRIFFIS: --requiring that
23 public spaces be required as a condition in our
24 order. Quite frankly, the Applicant, not to mention
25 the facility operator has no control over that. And

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1 another agency would provide that.

2 So I have concern in requiring it.

3 VICE CHAIRPERSON MILLER: Then--I don't
4 think we should do it as written. We could change
5 it to say, later on, in OP's report, they phrase it
6 kind of this way, that "The Applicant shall submit
7 an application to DDOT to reserve three spaces on
8 the cul de sac closest to the proposed center
9 weekdays during the hours of 7:00 a.m. until 9:00
10 a.m. and 4:30 p.m. to 6:00 p.m.

11 MR. JOHNSTON: Did you say that to be
12 the cul de sac before or Savannah Terrace? Or and
13 Savannah Terrace?

14 CHAIRPERSON GRIFFIS: The drop-off and
15 pick-up we will get to. I mean, what she is going
16 to is just that specific condition, whether we keep
17 it in or not.

18 That parking space is--I don't know. I
19 think we--I would be open to dropping that and
20 re-crafting a drop-off and pick-up condition that
21 did deal with Savannah and the cul de sac. And if
22 we have to preface the condition in the cul de sac
23 based on if three parking spaces are dedicated on
24 22nd Street, then pick-up and drop-off will be
25 provided or can be provided.

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1 But I am not sure we need to raise it to
2 that level. My point being I think we ought to just
3 take that one out.

4 VICE CHAIRPERSON MILLER: Okay. Do you
5 want to come back to that, or do you want to--

6 CHAIRPERSON GRIFFIS: No. Oh, you mean
7 the drop-off and pick-up?

8 VICE CHAIRPERSON MILLER: Deal with it
9 now? Yes.

10 CHAIRPERSON GRIFFIS: Yes. I think we--
11 sure.

12 VICE CHAIRPERSON MILLER: Okay.

13 CHAIRPERSON GRIFFIS: I think the last
14 condition, I think we ought to move it to, the
15 operator of the center shall institute a procedure
16 whereby staff and/or adult volunteers shall escort
17 children between the drop-off point and the
18 building, drop-off points to be clearly designated
19 and utilized at Savannah Terrace and/or the
20 cul de sac on 22nd.

21 (Pause.)

22 CHAIRPERSON GRIFFIS: Any other detail
23 in that that we need?

24 VICE CHAIRPERSON MILLER: I just--I
25 thought this was a little bit wordy. I don't love

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1 the requiring that they institute a policy, but we
2 could do it that way, or we could just say that
3 children shall be escorted by an adult and staff
4 between drop-off and pick-up locations.

5 CHAIRPERSON GRIFFIS: Okay. That's
6 true. That's true. We don't need to institute a
7 procedure, but actually have it done.

8 VICE CHAIRPERSON MILLER: Okay.

9 CHAIRPERSON GRIFFIS: Okay.

10 VICE CHAIRPERSON MILLER: The next one,
11 I have a revision, the facility shall mitigate area
12 parking problems by hiring nonprofessional personnel
13 from the local community, i.e., Parkland community,
14 on a priority basis and by encouraging the use of
15 public transportation by staff.

16 CHAIRPERSON GRIFFIS: That's your
17 proposed?

18 VICE CHAIRPERSON MILLER: That's my
19 revision based on the testimony today. But hiring
20 local personnel was really general. It didn't
21 really get to the parking problem, in that the
22 intent was to hire people within the neighborhood,
23 but that, not to get into the professional level,
24 because they might not find a level of expertise--

25 CHAIRPERSON GRIFFIS: Well, I think we

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1 are going about it all wrong.

2 VICE CHAIRPERSON MILLER: Okay.

3 CHAIRPERSON GRIFFIS: I mean, because
4 even if you hired somebody from right next door,
5 well, say they bought a brand new car and they love
6 driving it, and they got out of it, they drove it
7 from the below surface parking lot all the way up to
8 the top surface parking lot. There is nothing
9 prohibiting that. Just hiring locally.

10 If we are really trying to stop them
11 from driving, then frankly the condition should
12 read, 75 percent of those hired are prohibited from
13 driving to the facility, or something of that
14 nature. I mean, go directly to the point. I don't
15 think employment gets to it.

16 VICE CHAIRPERSON MILLER: I think it's
17 similar. It's not here, but it's similar also to
18 when schools draw their population from the
19 neighborhood then they are more likely to be walking
20 than they are--

21 CHAIRPERSON GRIFFIS: They are, and I
22 absolutely agree there. They are probably more
23 likely to walk than not, but they are not
24 necessarily 100 percent going to do that. If you
25 are late to work, you are not going to walk down and

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1 stroll and have your cheer, which is the best time
2 of your life and the best start of the day, but
3 you're late. So you are going to jump in your car,
4 zip off, drop 'em off, and get to work. Even if you
5 live right next door.

6 So if we are concerned about that, then
7 we need to--

8 (Laughter.)

9 CHAIRPERSON GRIFFIS: You don't think
10 so?

11 VICE CHAIRPERSON MILLER: No.

12 MR. JOHNSTON: I would appreciate you
13 keeping me out of constitutional and legal issues as
14 to the right of someone to drive or not drive. I am
15 not prepared to bear that kind of legal--

16 CHAIRPERSON GRIFFIS: Right. Right.
17 Right. You don't think so?

18 VICE CHAIRPERSON MILLER: No, but I
19 think that is beside the point.

20 (Laughter.)

21 MR. JOHNSTON: You can only require
22 employees who have cars to go 60 miles--

23 VICE CHAIRPERSON MILLER: Sometimes it's
24 more of a hassle to drive than it is to walk if you
25 live nearby. So I think, that's the point if you

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1 live nearby, you are much more likely to walk and
2 not contribute to a traffic problem.

3 So, but it's up for grabs. If you all
4 don't think it should be in there. I think it is
5 relevant to the condition, though. Relevant to the
6 problem of mitigating parking problems.

7 CHAIRPERSON GRIFFIS: Others?

8 MR. MANN: Well, I don't necessarily
9 agree. I kind of voiced that earlier, though. If it
10 were up to me, the condition would probably say,
11 this center shall encourage the use of public
12 transportation by staff. But I also understand Mr.
13 Moore's testimony, there was something more to it.
14 I just don't necessarily agree that it goes to a
15 zoning requirement.

16 MR. ETHERLY: I would also agree, Mr.
17 Chair. I understand the direction in which Ms.
18 Miller's trying to head. But I would probably opt,
19 perhaps, just for language that refers to the
20 encouragement of public transportation usage by the
21 staff.

22 CHAIRPERSON GRIFFIS: Okay.

23 VICE CHAIRPERSON MILLER: Okay. I mean,
24 that's three runs. So, that's fine. So they will
25 read the facility shall mitigate area parking

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1 problems by encouraging the use of public
2 transportation by staff.

3 CHAIRPERSON GRIFFIS: Right.

4 VICE CHAIRPERSON MILLER: Okay.

5 CHAIRPERSON GRIFFIS: I think it's
6 interesting and accurate that--the Office of
7 Planning brings an interesting and important point.
8 It's just how far jurisdictionally do we have to get
9 into it, and whether we have the appropriate means
10 to address or intentionally deal with the situation.

11 Okay. Next?

12 VICE CHAIRPERSON MILLER: The next--go
13 ahead.

14 MR. MANN: I would prefer the wording
15 that I proposed--

16 VICE CHAIRPERSON MILLER: I'm sorry.
17 What was it?

18 MR. MANN: But we can talk about it,
19 which is the center shall encourage the use of
20 public transportation by staff.

21 CHAIRPERSON GRIFFIS: Right. Not to
22 mitigate any parking problems.

23 VICE CHAIRPERSON MILLER: Oh. Okay.

24 CHAIRPERSON GRIFFIS: That's what you
25 are saying. Right.

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1 MR. MANN: Right.

2 CHAIRPERSON GRIFFIS: It's on its own,
3 that's what it should do. Looks like we have
4 consensus on that.

5 VICE CHAIRPERSON MILLER: We didn't talk
6 about this next condition, that was in the earlier
7 order, and that is that the center shall contact
8 DDOT's Curbside Management Division for guidance on
9 traffic signage before opening the center. Okay.
10 I'm not up on where that is. And then we talked
11 about already the night lighting.

12 The additional condition that I want to
13 add is--we can work on the wording--but at least one
14 staff person shall be assigned a drop-off and pick-
15 up time to direct traffic. That was the issue we
16 talked about. It's not just escorting the children,
17 but that there be a staff person there to coordinate
18 any traffic, at drop-off and pick-up times.

19 Mr. Moore thought there should at least
20 be one person.

21 CHAIRPERSON GRIFFIS: Right.

22 VICE CHAIRPERSON MILLER: I mean, more
23 than one person. We have one person, all that's
24 being required right now, to escort children. And
25 we are saying there should be at least another

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1 person watching out for the cars and the kids at the
2 curb.

3 CHAIRPERSON GRIFFIS: I don't have any
4 difficulty with that. That's in with the drop-off
5 and pick-up, and instituting traffic. Whatever
6 management person, in those nice orange vests, with
7 whistles and a cap.

8 (Laughter.)

9 VICE CHAIRPERSON MILLER: Does anybody
10 else have any other conditions they want to add?

11 (No response.)

12 CHAIRPERSON GRIFFIS: I'm kidding about
13 the cap.

14 (Laughter.)

15 VICE CHAIRPERSON MILLER: I didn't write
16 that one down. That's it with the conditions. I
17 think there is also a variance in this application.
18 But nothing has changed that we heard with respect
19 to what existed at the time of the previous order,
20 so I think that remains the same.

21 CHAIRPERSON GRIFFIS: Good. Excellent.
22 Anything else, then, from others?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Okay. We do have
25 a motion before us. And it has been seconded with

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1 the conditions as outlined by the Board.

2 If there's no other further
3 deliberation, let me ask all those in favor signify
4 by saying "aye".

5 (Chorus of ayes.)

6 CHAIRPERSON GRIFFIS: And opposed?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Abstaining?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well.

11 MS. BAILEY: Mr. Chairman, the Board has
12 voted 4-0-1 to approve the application. Mrs. Miller
13 made the motion, Mr. Etherly seconded, Mr. Mann and
14 Mr. Griffis are in agreement with the motion, and
15 it's approved with conditions. And are we doing a
16 summary order, sir?

17 CHAIRPERSON GRIFFIS: Yes. I don't see
18 any reason why we would not waive our rules and
19 regulations.

20 (No response.)

21 CHAIRPERSON GRIFFIS: Very well. There
22 is no objection from the Board. I assume from the
23 Applicant there is no objection to issuing a summary
24 order.

25 MR. JOHNSTON: No.

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1 CHAIRPERSON GRIFFIS: Indeed. In which
2 case, why don't we do that, with the conditions as
3 listed, of course. Why don't we briefly--the Board
4 should review the conditions prior to issuance, but
5 that should expedite the issuance of the order.

6 Very well. Anything else, then?

7 MS. BAILEY: Not for the morning, Mr.
8 Chairman.

9 CHAIRPERSON GRIFFIS: Excellent. Thank
10 you all very much. I appreciate you all waddling
11 through this again, the second time. We are happy
12 to see that this is moving forward. I look forward
13 to seeing that illuminated path shortly.

14 If there is nothing further for the
15 Board, then let's adjourn the morning session of the
16 25th.

17 (Whereupon, the hearing recessed at 12:24 p.m., to
18 later reconvene for the Afternoon Session.)

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

1:47 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the Board of Zoning Adjustment of the District of Columbia.

It is the 25th of October, 2005, and my name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and Mr. Etherly, our other esteemed member of the Board. Representing the National Capital Planning Commission with us is Mr. Mann, and I believe we are anticipating the arrival of a Zoning Commissioner shortly, but we are going to move ahead with our schedule this afternoon.

And speaking to that, of course, our agendas are placed by the door. I don't believe they are hung on the wall yet, but we are getting settled in and all that, we'll come back at some point in the next couple of weeks. However, there should be one available to you at the table where you entered into the hearing room. Please pick it up and you can see where you are on the schedule this afternoon.

I am going to ask several things of

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1 which most of you might be well familiar. However,
2 let me indicate that, of course, all proceedings
3 before the Board of Zoning Adjustment are recorded.
4 They are normally recorded in two fashions. The
5 most important being the court reporter sitting to
6 my far right, who is creating the official
7 transcript.

8 We also often have live webcasts of our
9 proceedings. We do not have that yet. Because we
10 are moving back into the hearing room. This is our
11 second session back in the hearing room. And it is
12 still being put together. It will be finished very
13 soon, and when it is finished, it should be very
14 accommodating to the general public that utilizes
15 this room for zoning issues as well as others. But
16 that's all I need to say at this point.

17 However, attendant to today, we would
18 ask several things. Please turn off your cell
19 phones and beepers, etc., so that we don't disrupt
20 the transmission of our proceedings. And most
21 importantly, don't disrupt the attention span of
22 those providing testimony before the Board.

23 I would also ask, when coming forward to
24 speak to the Board, prior to that, you will need to
25 have filled out two witness cards. Witness cards

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1 should also be available for you at the table where
2 you entered into the hearing room. And they are
3 available right in front of the table, where you
4 will provide testimony. Two of those cards should
5 be filled out prior to coming forward to speak to
6 the Board, and given to the court reporter. That
7 way we will be able to give you credit on the
8 transcript for the testimony that you provide the
9 Board.

10 The order of procedure for special
11 exceptions and variances is as follows.

12 We will hear from the Applicant
13 presentation of their case.

14 We will hear from government agencies
15 reporting on the application.

16 Then we will hear from the ANC within
17 which the property is located.

18 Fourth, we will hear persons or parties
19 in support of an application.

20 Fifth would be persons or parties in
21 opposition to an application.

22 And sixth, finally, will be the
23 Applicant's rebuttal testimony, summations and
24 conclusions.

25 I will make sure that the order is

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1 followed and everyone understands when they should
2 be up here. No one will miss an opportunity for
3 appeals, of course. There is a different
4 chronology. I will get to that as it is required.

5 Cross examination of witnesses is
6 allowed by the applicant in a case. It is also
7 provided to parties in a case. The ANC within which
8 the property is located is automatically a party in
9 the case, and obviously will be a full participate
10 in all that that means. And it does also mean being
11 able to participate in cross examination.

12 The record will be closed at the
13 conclusion of the hearings on the cases. It will be
14 clear when the case is over. However, we will
15 oftentimes require additional information be
16 submitted into the record. It should be very well
17 understood that anything that is not put into the
18 record, either orally today in the proceedings or in
19 written submission, if it is not in the record, it
20 will not be considered by the Board in its decision.

21 So, we will make sure that you
22 understand that and are clear on what you are
23 putting into the record. We will make sure that all
24 that we feel is required to fulfill the record for
25 our deliberation is put in. If we require

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1 additional information in any sort of hearing, we
2 will be very specific on information what should be
3 submitted, and we are very specific on when that
4 should be submitted into the Office of Zoning.

5 The Sunshine Act requires the Board to
6 conduct all of its hearings in the open and before
7 this public. This Board does enter into executive
8 session periodically. Our executive sessions are
9 used for purposes of reviewing the record on a case
10 and/or deliberating on a case, in fairly rare
11 opportunities. The utilization of executive
12 sessions for these purposes is in accordance with
13 our rules, regulations and procedures. It is also
14 in accordance with the Sunshine Act.

15 I am going to indicate to you that of
16 course, all proceedings before the Board of Zoning
17 Adjustment scheduled for this afternoon, but most
18 are viewed as contested cases. The importance of
19 that is this: we ask that in creating the full
20 record in this hearing room for the Board's
21 deliberation, that we also don't create any false
22 appearances.

23 So we ask that people present today non
24 engage Board members in private or personal
25 conversations today, so that we don't give the

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1 appearance to those that are here that we are
2 somehow receiving information outside of the record
3 that is being created on each case.

4 That being said, I am going to ask for
5 everyone that is here today that is going to provide
6 testimony for the Board or even just thinking about
7 providing testimony, if you would stand and give
8 your attention to Ms. Bailey, who is on my very far
9 left. She is going to swear you in.

10 (Witnesses sworn.)

11 CHAIRPERSON GRIFFIS: Good. Thank you
12 all very much. And thank you, Ms. Bailey. And I
13 will say very good afternoon to Ms. Bailey, who is
14 with the Office of Zoning, Ms. Glazer, with the
15 Office of Attorney General, is next to her. Mr.
16 Moy, will be on my left closer to me, who is also
17 with the Office of Zoning. He will be returning
18 shortly.

19 Let me ask at this time, Ms. Bailey, if
20 you are aware of any preliminary matters.

21 Preliminary matters are those which
22 relate to whether a case will or should be heard
23 today. Requests for postponements, continuances, or
24 withdrawals, whether proper and adequate notice has
25 been provided. Ms. Bailey often gets those into the

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1 record, and will bring that to our attention. If
2 you believe there is a case on our calendar today
3 that should not proceed, for some element of a
4 preliminary matter, I would ask that you come
5 forward, have a seat at the table at the time, and I
6 will address you after I see if Ms. Bailey has
7 anything for it.

8 Ms. Bailey.

9 MS. BAILEY: Mr. Chairman, members of
10 the Board, good afternoon. There are two cases that
11 were withdrawn, Mr. Chairman, and I just wanted to
12 highlight those with the Board. And those are
13 Application No. 17357, 1464 Harvard LLC, and the
14 other one is 17342, Aidan Montessori School. Both
15 of those cases were withdrawn, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much. Not noting anyone else coming
18 forward with a preliminary matter, I think we are
19 ready to call the first case.

20 MS. BAILEY: Application No. 17349, of
21 Michael Taylor, pursuant to 11 DCMR 3104.1 for a
22 special exception to allow a rear addition to an
23 existing single family detached dwelling under
24 section 223, not meeting the lot occupancy, side
25 yard and nonconformance structure provisions. The

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1 property is located at 6919 Sixth Street, N.W.

2 (Pause.)

3 MR. FARMER: Good afternoon, Mr.
4 Chairman, members of the Board. I am Jon Farmer,
5 appearing on behalf of the Applicant, Michael
6 Taylor. With me are Edgar Nunley, zoning
7 consultant, and Mr. Luther Bruner, the project
8 architect.

9 We are here seeking special exception
10 relief under Section 223 of the zoning regs to
11 permit an addition to a single family home in R-1-5
12 zone district, located at 6919 Sixth Street, N.W.

13 As you are aware, this property has a
14 somewhat convoluted past, due to certain errors made
15 in the permitting process when the addition was
16 originally added to the house. To wit, the property
17 was originally a two-story structure on a single lot
18 of record, Lot 19, Square 3191. This lot was
19 substandard by modern zoning standards. The owner
20 addressed the problem by acquiring the Tax Lot 811
21 abutting Lot 19 to the rear. The lots are
22 continuous and the loan intended to combine the lots
23 into a single record lot that would be combined--
24 have a combined total of approximately 5700 square
25 feet.

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1 The first lot, Lot 19, is improved with
2 a one-story single family home with an attic that
3 was built in 1919. Lot 811 was improved with a one-
4 story garage, a one-car masonry garage, which was
5 originally built in 1947.

6 Mr. Taylor, after applying for the
7 requisite subdivision, applied for building permits
8 to add a one-story addition to the rear of the
9 combined properties. Construction was subsequently
10 stopped in response to complaints about the approval
11 process.

12 It was subsequently discovered that an
13 error had been made in the zoning calculations and
14 that the subdivided property would create both side
15 yard and lot occupancy nonconformities as built.
16 The addition was already on the roof at that
17 particular time.

18 In meetings with the Zoning
19 Administrator, it was determined that the
20 nonconformities would be eliminated if the garage
21 were raised, and the Zoning Administrator then
22 directed Mr. Taylor to seek a permit to so raise the
23 nonconforming garage.

24 The property is located in the Takoma
25 Park Historic District and the raise permit was

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1 subject to HPRB review. HPRB held the hearing, but
2 tabled the issues requesting that Mr. Taylor change
3 his plans and provide a topographical survey of the
4 property.

5 Thus unable to raise the garage, the
6 Zoning Administrator then directed the Applicant to
7 seek BZA relief for the special exception for the
8 addition.

9 Section 223 requires that the Applicant
10 show that the proposed addition does not adversely
11 affect the use or enjoyment of any other abutting or
12 adjacent properties. Particularly, any undue
13 effects on light and air to neighboring properties.
14 There must be some consideration of reasonable
15 amount of privacy, of use and enjoyment of the other
16 properties, that it will not unduly compromise--the
17 addition and the original building as viewed from
18 the street, or the public way, shall not
19 substantially visually intrude upon the character,
20 scale and pattern of houses along the subject street
21 frontage.

22 And also must demonstrate compliance
23 with these elements through the use of graphical
24 representations, plans, photos, elevations and
25 section drawings.

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1 As I am sure you have noted, we have
2 provided photographs, drawings and all
3 representative material. Mr. Bruner will walk the
4 Board through the architectural presentation and Mr.
5 Nunley will present the photographs.

6 The log occupancy is not to exceed
7 50 percent in the R-1-B district under Section 223.
8 In this particular case, we believe we have met the
9 requirements for the special exception as stated in
10 223. The light and air available to neighboring
11 properties is not unduly affected. The addition is
12 the same height as the existing structure. The
13 addition, because of the slope, will not impair
14 light or cast shadows in any adjacent property.

15 There is a 25-foot rear yard, which acts
16 as a buffer to the adjacent privacies.

17 The primary issue which seems to be
18 before us today is one of privacy. The privacy of
19 the neighboring properties in this particular case
20 will not be compromised. The photographic evidence
21 will show that the trees existing on the property
22 and other yards, along with the existing fence
23 provide a high degree of privacy.

24 Indeed, we believe--the standard we used
25 in determining the privacy is a "reasonable man"

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1 standard. It is not absolute privacy, but whether
2 the neighboring properties are unduly affected or
3 whether their enjoyment of their own properties
4 would be affected by the addition itself.

5 The Applicant has also revised the plans
6 to ensure that the privacy is maintained by removing
7 the rear deck along the rear of the property. And
8 he is pledged to add additional foliage to make sure
9 that the privacy of the neighbors is fully
10 protected.

11 In terms of visual intrusion, the
12 photographs that we have presented and will discuss
13 today show that the visual intrusion from the public
14 way is minimal. Moreover, once completed, the
15 addition will blend in scale and character with the
16 other buildings in the square. There is no interior
17 alley in the square. All the private properties are
18 adjacent and abutting.

19 The lot occupancy of this property with
20 the combined lots is less than 50 percent. We
21 calculate it to be 42.9 percent, and that is due--we
22 note that the Office of Planning has calculated it
23 to be 43.7, and that may be due to the consideration
24 of the pre-existing wooden deck, which was
25 originally proposed.

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1 If the Board has no questions for me, I
2 would like to turn it over to Mr. Bruner to make a
3 presentation, in terms of the architecture.

4 CHAIRPERSON GRIFFIS: Question?

5 VICE CHAIRPERSON MILLER: I just want to
6 get a clarification.

7 MR. FARMER: Uh-huh.

8 VICE CHAIRPERSON MILLER: You were
9 speaking fairly quickly, and I thought that you said
10 you are unable to raise the garage? Is that
11 correct?

12 MR. FARMER: That is correct.

13 VICE CHAIRPERSON MILLER: Did you say
14 that was in reaction to HPRB?

15 MR. FARMER: That is correct. The raise
16 permit had to be approved by HPRB. HPRB did not
17 approve the permit. Basically, they tabled the
18 issues and asked us to come back with a redesign.

19 VICE CHAIRPERSON MILLER: They asked you
20 to--

21 CHAIRPERSON GRIFFIS: They haven't
22 denied it. They just haven't approved the raise
23 permit.

24 VICE CHAIRPERSON MILLER: And you did
25 not come back to them?

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1 MR. FARMER: Well, not yet. Obviously,
2 we intend to go back, but we wanted to address the
3 BZA issues first.

4 VICE CHAIRPERSON MILLER: Thank you.

5 CHAIRPERSON GRIFFIS: All right.

6 Anything else at this point?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Very well. Let's
9 move ahead.

10 MR. FARMER: Mr. Bruner?

11 MR. BRUNER: I'm Luther Bruner,
12 Architect. Have we all got an idea of this plan?

13 CHAIRPERSON GRIFFIS: I think so. What
14 we are going to need for you to do, though, is pick
15 up a microphone. Those come off the bases, and you
16 can speak into that. Just want to make sure if you
17 are going to be heard.

18 MR. BRUNER: Is that it?

19 CHAIRPERSON GRIFFIS: It should work.
20 And then, Ms. Ferster, are you able to see these?

21 You are going to move around just in
22 case she can't see them, but make sure you are
23 comfortable. Okay. Let's move ahead.

24 MR. BRUNER: Like it is?

25 CHAIRPERSON GRIFFIS: Yes. I think

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1 that's fine.

2 MR. BRUNER: Okay. This is the existing
3 house, which was built back in the, oh, late
4 twenties, I guess. Or early teens. Somewhere. I
5 think he mentioned it before.

6 It's small, one-bedroom. It has a
7 basement of sorts, and it has a living room, dining
8 room, kitchen. And enclosed porch. To that, I
9 wanted to add a rear addition to the house here,
10 which includes a first floor, maintain the existing
11 roof line and size, and height, and a small basement
12 under here. "Basement" meaning something that you
13 can stand up in.

14 (Pause.)

15 MR. BRUNER: What I prepared was the
16 addition. This is the original house in here, which
17 is very light. And the addition to the rear, here,
18 which has three or four bedrooms, and a basement,
19 with recreation space and storage space.

20 Originally, we had a little deck out
21 here in back with a stair, which went down to the
22 lower level or the gray out in the backyard.

23 The garage that was mentioned is
24 outlined here. You see, it sits back a little bit
25 further than the original house. Consequently, it

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1 was a single building on the property, along with
2 the house.

3 As I said, the elevations of the house,
4 the roof line, window configuration, etc., all
5 conform to the original house that was designed.
6 Same height, same width, except it's deeper.

7 Since this plan was submitted and
8 approved, there was some question about the lot
9 occupancy and the amount of space that was being
10 used. Consequently, we agreed to cut this deck down
11 here to two feet instead of four and a half or five
12 feet, which came out looking like this. The small,
13 two-foot wide deck would be--it's not a deck. It's
14 a flower ledge. It's only about that wide. And we
15 put a spiral stair coming off the rear from the
16 living room, which shows here. This is the front,
17 this is the rear. The flower ledge here goes across
18 the house, except where the spiral stair comes out
19 at a landing. And you come down to ground here.

20 And that basically is the overall
21 concept of the house. Can you all see it?

22 CHAIRPERSON GRIFFIS: Absolutely. Those
23 are all in the record, at this point. Am I correct?

24 MR. FARMER: That is correct.

25 MR. BRUNER: Yes.

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1 CHAIRPERSON GRIFFIS: Okay. Any
2 questions from the Board?

3 MR. FARMER: Mr. Chairman, may I ask Mr.
4 Bruner to address a couple of points?

5 CHAIRPERSON GRIFFIS: Absolutely.

6 MR. FARMER: Mr. Bruner, could you give
7 the Board--

8 CHAIRPERSON GRIFFIS: Can you get on a
9 mike, though? I'm sorry.

10 MR. FARMER: Sorry. Mr. Bruner, could
11 you describe to the Board the condition and the
12 habitability of the original structure of the house?

13 MR. BRUNER: The original house was
14 basically frame, and it had been sitting for, when I
15 first saw it, two or three years ago--it had been
16 vacant for quite awhile. And there was quite a bit
17 of damage done by somebody or nature. Leaks and
18 that sort of thing. It needed a basic uplift to
19 make it commodious so that it would be habitable.

20 That was addressed in this new design,
21 or course.

22 MR. FARMER: Mr. Bruner, could you
23 describe the size of the rooms in the existing
24 house?

25 MR. BRUNER: The original house was

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1 almost a sharecropper's shack. The biggest room,
2 being the living room, was about 12x12. And they

3 CHAIRPERSON GRIFFIS: What was the
4 square footage of the original house?

5 MR. BRUNER: It was--

6 CHAIRPERSON GRIFFIS: Or the first
7 floor.

8 MR. BRUNER: The first floor was about
9 25x50. Yes, about 25x50.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. BRUNER: Which included the bedroom,
12 living room, dining room, kitchen and a bathroom.
13 That's about it.

14 It had--because of the shape of the
15 roof, A-frame, you had a little bit of room up
16 there. Maybe four to five feet clear once you got
17 up there.

18 CHAIRPERSON GRIFFIS: Okay. So it's
19 about a 2400 square foot house, you think--25x50
20 would give you 1250 for the first floor, and there's
21 two floors?

22 MR. BRUNER: No. No.

23 CHAIRPERSON GRIFFIS: There's just one
24 floor.

25 MR. BRUNER: The attic is not a floor.

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1 CHAIRPERSON GRIFFIS: I understand. I
2 see.

3 MR. BRUNER: You can't stand up. Nor is
4 the basement, because it's only a little bit, and a
5 six-foot ceiling height.

6 CHAIRPERSON GRIFFIS: I see. Okay.

7 MR. FARMER: Mr. Bruner, could you
8 describe the slope to the rear of the house?

9 MR. BRUNER: Slope in terms of grade, or
10 the--oh. The grade from this lower level here, it's
11 sits about a foot and a half above the floor line.
12 The natural grade from that point slopes down about
13 25-30 feet to the property line, which is where a
14 fence is. It drops about two, two and a half feet
15 in that distance.

16 It's shown here. The grade as it drops
17 down to the fence out here. This is the grade as it
18 exists now, relative to the house.

19 CHAIRPERSON GRIFFIS: Understood.

20 MR. FARMER: Mr. Bruner, could you
21 describe the house in terms of compatibility with
22 the other dwellings in the immediate vicinity?

23 MR. BRUNER: The building, as far as I
24 am concerned, pretty much is in conformity with the
25 overall fabric of the design, the aesthetics of the

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1 house. This happens to be a one-story house, single
2 story, with an attic, and a partial cellar, whereas
3 the surrounding houses have somewhat the same,
4 similar design, except there are quite a few of them
5 that are two-story. Full two-story, which go much
6 higher than this one.

7 MR. FARMER: And in terms of coloring
8 and architectural elements, could you give further
9 description to the Board?

10 MR. BRUNER: The general aesthetics of
11 the fenestration of the house was pretty much
12 maintained as the original structure, which was
13 here. This was the original, up to this line, in an
14 attempt to duplicate or replicate what was there,
15 with some modifications, of course. Small
16 modifications.

17 So that it then became what I like to
18 think of, if you add on so that when the finished
19 product is done, it doesn't look like it has been
20 touched. So that it's melded, as far as I'm
21 concerned, very nicely. Same roof, same shingle,
22 siding and stucco. All of that is similar,
23 quite similar to the original structure.

24 MR. FARMER: I have no further questions
25 for Mr. Bruner at this time. I turn it back over to

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1 the Board.

2 CHAIRPERSON GRIFFIS: Any follow-up
3 questions for the Board?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Not at this time.
6 Any other witnesses?

7 MR. FARMER: Yes. I would like to call
8 Mr. Ed Nunley. Mr. Nunley will be presenting the
9 photographs that you have in the record. He is the
10 originator, the author, of the photographs, and can
11 explain to the Board exactly what is seen. In
12 specific, he will address the privacy issue as well
13 as the compatibility issue with the other dwellings
14 in the square.

15 MR. NUNLEY: Good afternoon, Mr.
16 Chairman, members of the Board. The pictures were
17 taken to help us evaluate the potential for negative
18 impact that may result from the construction of the
19 addition relating to light and air, privacy of use
20 of neighboring properties and the visual intrusion
21 upon the character, scale and pattern of houses
22 along the subject street frontage, as well as from
23 neighboring properties not fronting on Sixth Street.

24

25 There were three perspectives. View of

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1 the neighboring properties from 6919 Sixth Street,
2 the subject property, view of the addition from
3 public space in front of the neighboring properties.
4 We did it from the public space, didn't want to
5 trespass on the people's properties. And also, I
6 included some neighborhood houses of similar shape,
7 style, height and scale, to show that it is, in
8 fact, consistent with construction in the
9 neighborhood.

10 Now, unfortunately, when these were put
11 together, they weren't put together in their one,
12 two, three order.

13 (Laughter.)

14 MR. NUNLEY: So, what I am going to do
15 is, I am going to go through them, if you will, page
16 by page. I'll make it as quick as possible. But
17 page by page to just give an indication of what we
18 were trying to show and what the picture is do in
19 fact show.

20 The first six pages show the view of
21 neighboring properties from the various windows on
22 the different floors of the subject property. We
23 went inside and the windows were closed up. We
24 opened them up and up to get the picture to show
25 what you can see looking through those windows from

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1 the inside of the house.

2 And they're labeled. This is the first
3 floor westernmost window, western is the one closest
4 to Sixth Street, toward 532 Cedar Street. And as
5 you can see, the tree buffer pretty much obscures
6 the view from that property.

7 Same situation on the second picture,
8 with is the first floor, the second window toward
9 532. That basically shows the top of the garage.
10 And some--you can see the house, but that's--you can
11 just barely see the house.

12 On the next page, you've got the third
13 window in the house again, from west to east, toward
14 532 Cedar. You can see the house, but the foliage
15 effectively obscures the view and, in my opinion,
16 doesn't affect the privacy of use of the property.

17 The next pictures, the third floor
18 window, third window. I'm sorry. First floor,
19 third window toward 528 Cedar. And again, you can
20 see the house only because it rises above some of
21 the tree buffer.

22 On the next page, you've got the first
23 floor, the last window, toward the yard of 530 Cedar
24 Street.

25 Now, we didn't try to tailor any of

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1 these to fit our purpose, so as you can see, you can
2 see into that backyard. But we don't feel that's an
3 undue condition. It's no more than if you lived any
4 other place and you had a neighbor and you look out
5 the window and you can see the neighbor's house.

6 This is a great distance away. I don't
7 feel that this is an intrusion on their privacy of
8 use.

9 The last window toward the yard of 530,
10 straight on, no angles. And again, you've got the
11 tree buffer.

12 Now, this is the attic, which you would
13 expect would give the greatest view. Windows from
14 the attic. Even though it's not habitable space,
15 there is a window up there, and you would expect
16 that because of its height, it would give the
17 greatest view of the adjacent properties. But what
18 you can see on the tops of the properties--this is
19 toward the library, which is at the corner of Fifth
20 and Cedar, from that window. So you can see the
21 houses, but you can't see into the houses, nor into
22 the yard from that perspective.

23 The next picture is a zoom from the
24 attic toward the library. So, zooming in, you still
25 can't look into houses, for example. You can

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1 probably see it's not compromised.

2 The next one is first floor, last window
3 toward property 528. Again, you can see just that
4 little corner of the yard, where they have the two
5 chairs and the table, I guess that is. And you can
6 see the next house, but not into the house.

7 Again, the attic rear window toward 528
8 and 526, you see the large tree buffer that obscures
9 the view. And you can see the house, but not into
10 the house.

11 And finally, zoom from the attic to 528
12 and 526, and still you can see the house, but that's
13 about it.

14 Now, the next set of pictures. This
15 shows 600 Cedar Street, N.W., which is across Sixth
16 Street from the property, right at Cedar, and I just
17 took this picture to show a neighborhood house of
18 similar scale.

19 On 517, same reason. Just to show this
20 similar scale. Different design, with a similar
21 scale.

22 And the next few pictures are designed
23 to do the same thing. Just show that the scale of
24 the house is consistent with other houses in the
25 neighborhood.

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1 Now, look at the library in there, but
2 that's pretty much a moot point. Then if we go down
3 to 500 Aspen, which would be the ninth page, it is
4 labeled, of course, 500 Aspen Street. Again,
5 showing scale.

6 And then you look at 501 Aspen, which is
7 hugely out of scale with anything else in the
8 neighborhood, but it's like two blocks away. The
9 neighborhood is comprised of a number of different
10 types of houses, sizes of houses, architecture and
11 scale. So we were just trying to show that it is--
12 that there are a variety of architectural styles and
13 scale in the neighborhood, and that this house is no
14 different than those.

15 Next it's just showing pictures of the
16 front of the subject property showing that you can't
17 see the addition from the public space in front of
18 6919.

19 The next picture, just from the rear, we
20 talked about the slope in the rear yard, the 25-foot
21 rear yard. These are views from within that rear
22 yard.

23 Okay. As we move along, we get to a
24 picture labeled 524 Butternut Street, and I just
25 took that one to show the side yard finish. It's

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1 very similar to the side yard that is proposed for
2 the addition.

3 CHAIRPERSON GRIFFIS: In terms of
4 material?

5 MR. NUNLEY: In terms of material. In
6 terms of material.

7 CHAIRPERSON GRIFFIS: Sure. It's a
8 stucco finish.

9 MR. NUNLEY: Yes.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. NUNLEY: Now, we get into the meat,
12 with the sidewalk in front of 528 Cedar Street
13 towards the addition. Again, we didn't encroach on
14 people's property, so we took all of the pictures
15 from the sidewalk. You can't see the addition from
16 this viewpoint, from this perspective. Again, the
17 tree buffer is such that it's invisible. Again,
18 when you get over to 6914 Fifth Street, which is on
19 the next page over, the same situation. And 6902,
20 which is just below that, you can't see the
21 addition.

22 These are Fifth Street. Now, the reason
23 we went as far as Fifth Street is because some of
24 the neighbors had indicated that they had a problem
25 with the intrusion of the addition. So we--again,

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1 we didn't go into their backyards. We didn't want
2 to trespass, but we did take pictures from the
3 public space to show what kind of view there would
4 be. And what kind of intrusion, if any, there might
5 be.

6 The next few pages show all of the
7 addresses on Cedar and on Fifth Street, 6900 Fifth
8 from two perspectives.

9 And then we go to--the next picture is a
10 single picture on a single page, 520 Butternut,
11 which shows in addition that it's very, very similar
12 to the one that we propose, which is just one block
13 away.

14 CHAIRPERSON GRIFFIS: How do you know
15 that is an addition?

16 MR. NUNLEY: Well, it just appears to be
17 an addition from the way that the design is. It may
18 have been the original building, but it doesn't
19 appear to be.

20 CHAIRPERSON GRIFFIS: Just to be clear.
21 Which portion do you think is an addition, or are
22 you trying to--

23 MR. NUNLEY: Well, definitely the
24 rearmost portion is an addition.

25 CHAIRPERSON GRIFFIS: Which is appearing

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1 to be kind of pink, in our picture?

2 MR. NUNLEY: Yes. Yes.

3 CHAIRPERSON GRIFFIS: So there is a one-
4 window and it looks like maybe a covered window--

5 MR. NUNLEY: That's what it appears to
6 me.

7 CHAIRPERSON GRIFFIS: Okay. So, the two
8 levels and possibly a basement or cellar underneath?

9 MR. NUNLEY: Uh-huh.

10 CHAIRPERSON GRIFFIS: That's the portion
11 that you are--

12 MR. NUNLEY: Yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. NUNLEY: But the scale of the house
15 in toto is very similar to what we have proposed,
16 and what we are looking to get approval for today.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. NUNLEY: Okay. Again, showing the
19 tree buffers from Cedar Street, and the privacy
20 fence. This was taken from the porch, the exterior-
21 -the porch of 6919 toward Cedar Street.

22 Again, I tried to get as many angles as
23 possible--

24 CHAIRPERSON GRIFFIS: Sure.

25 MR. NUNLEY: --to try to give a clear

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1 and complete picture. And the next is just kind of
2 disjointed. It's a house on Butternut that I just
3 happened to drive by and saw that it was of similar
4 scale and I took that picture. And the same for the
5 next one.

6 CHAIRPERSON GRIFFIS: Can I--just to put
7 it, frame it for my own understanding--

8 MR. NUNLEY: Yes, sure. Certainly.

9 CHAIRPERSON GRIFFIS: You are saying
10 there's an awful lot of similar scales. But let's
11 take this one in particular, Butternut. This
12 appears to me to be a three-story building. Is that
13 what it is--

14 MR. NUNLEY: It looks to be to me--I'm
15 talking about basically square footage, even though
16 the design is different--

17 CHAIRPERSON GRIFFIS: I see.

18 MR. NUNLEY: It appears to be, in terms
19 of scale, it appears similar in size, if you will.

20 CHAIRPERSON GRIFFIS: Okay. So you are
21 talking about not necessarily looking to make
22 similarities in height, but maybe in volume, volume
23 in square footage.

24 MR. NUNLEY: Height as well as volume,
25 but in all cases, height is not the issue.

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1 CHAIRPERSON GRIFFIS: Okay. I think I
2 understand.

3 MR. NUNLEY: All right. Again, from the
4 porch toward the 6915, which is the neighbor to the
5 south. The view is actually no different than just
6 from the original house, but I included that as
7 well.

8 Again, Cedar Street, another house on
9 Cedar Street, not the 500 block. Similar scale.

10 And then we get down to the Public
11 Library.

12 Now, with many of these houses, it is
13 very difficult to see the scale, because of the tree
14 buffer. That's one of the things that I have
15 pointed out, that there's a lot of foliage, natural
16 foliage, in the general area that buffers houses,
17 one from another.

18 That is in fact the case with our
19 property as well, as can be seen in a number of
20 these pictures.

21 I go past the side yard. We took other
22 pictures from the interior. That's what I am trying
23 to work my way toward now, toward the end of the
24 project.

25 (Pause.)

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1 MR. NUNLEY: Okay. Here we are. All
2 right. The only way I can really do this without
3 page numbers and without it having been put together
4 a little better is, it's 12 pages from the last.

5 CHAIRPERSON GRIFFIS: And what is the
6 heading of it.

7 MR. NUNLEY: It says rear yard, 532
8 Cedar from front porch, 2919 Sixth Street, is the
9 first picture.

10 CHAIRPERSON GRIFFIS: Okay.

11 (Pause.)

12 MR. NUNLEY: Oh, I'm sorry. I should
13 have said 2619. Typo.

14 (Pause.)

15 CHAIRPERSON GRIFFIS: Okay. Yes, 2619
16 Sixth Street. Good.

17 MR. NUNLEY: All right. Now what I
18 wanted to get to is the next, beginning with the
19 next picture, is where we--the windows were--some
20 were boarded up, some were covered for protection
21 since the property could not be--the construction
22 could not continue.

23 So we went in and we pulled off the
24 boarding, and the plastic protected pieces, to get
25 these shots. Now, this shot was taken from the

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1 center of the room, from the front room of the
2 existing building. So this is the view of that pre-
3 existing, and it has not changed.

4 The next page, this is the view of 6915,
5 which is, again, the neighbor to the south, from the
6 front room in the existing house. And again, you
7 see the tree buffer and the privacy fence.

8 Now, the next one is 532 Cedar from the
9 front room of the existing basement. The window
10 glass was dirty, but you can still see that there
11 isn't much you can see.

12 The next picture is from the existing
13 basement bathroom toward 532 Cedar, and it's in the
14 basement so you see the privacy fence, and the tree
15 buffer rising above it.

16 And from the basement toward the south,
17 looking at 6915, this is from the laundry room, you
18 can see the privacy fence and two windows but of
19 course you can't see into those windows.

20 All right. Now, again, another typo--
21 this is a view of 6919, that's 6915 from the
22 basement recreation room of 6919. And there are two
23 pictures which were taken from different distances
24 from the window but they show the same view.

25 Now, the existing attic had a bathroom

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1 in it, and it had a window in there, so we took that
2 shot but you can't see anything through that window.

3 The next one, 6915, from the basement,
4 all you see is the privacy fence.

5 You move to the view of 6915 from the
6 basement at the open window, which is about midway
7 in the addition, and I pointed the camera upward.
8 If I had pointed it straight, all you would see is
9 the privacy fence. But I wanted to give a clear
10 picture of what might be seen through that window.
11 So you can see the house, but you can't see into the
12 house.

13 The next one is a view of 6915 from the
14 basement at the center of the room, as opposed to
15 being right at the window, as I was with the earlier
16 picture. And all you see is the privacy fence and
17 the door to, I guess that's a door to his--what is
18 that--a shed back there.

19 This is another view from 6915. It
20 shows the principal building on the right and then
21 the--I'm not sure what that is--it looks like it was
22 originally built as a garage, but now used as a shed
23 or something else, to the left of that.

24 And from the basement window, the center
25 of the room, you see nothing, except the siding on

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1 the house. The same thing from the next picture on
2 the next page.

3 And from the basement rearmost window,
4 toward 530 Cedar, again, you've got the tree buffer
5 obscuring the view.

6 The next page, you've got 528 Cedar
7 Street from the northernmost, which would be the one
8 closest toward Cedar Street, rear basement window.
9 And you see the tops of the houses.

10 Now, there is a gazebo in the rear yard
11 of 6915, that you can barely see, again, because of
12 the tree buffer, but I shot in that direction just
13 to show that the tree buffer prevents visual
14 intrusion.

15 The next picture is just a picture of
16 the front of the existing house taken up through the
17 access to the garage. You can see the addition, but
18 in this case, the only reason you can see it is
19 because of the scaffolding that's up there.

20 And I took a picture of 6916 Sixth
21 Street because that was--that's across the street
22 from our property. There is no real impact to that
23 property at all, but I had a--an erroneous note that
24 indicated that they were in opposition. So, I just
25 wanted to see what that house looked like, and

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1 whether it could be considered to have an impact.

2 Now, we get back down to the other
3 parts, the other pictures that show the view of the
4 addition from the public space on Cedar Street and
5 on Fifth Street.

6 This is the view toward the addition
7 from the driveway at 6914 Fifth Street, and again
8 you see nothing but the tree buffer.

9 The next one is back to the house, first
10 floor, westernmost window, toward 532 Cedar. Oh.
11 I'm sorry. I'm back at the beginning!

12 (Laughter.)

13 MR. NUNLEY: I've gone all the way
14 through. But we took those pictures, again, so that
15 we would understand whether there would be any
16 impact and now that we believe that there is no
17 undue impact, we wanted to present them here at the
18 Board.

19 CHAIRPERSON GRIFFIS: Okay. I think the
20 only ones we missed were the garage.

21 MR. NUNLEY: Say that again, please?

22 CHAIRPERSON GRIFFIS: We had two of the
23 garage. Did you note those? Did I miss that?

24 MR. FARMER: Those were not discussed.
25 The two interior.

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1 MR. NUNLEY: Oh. I took those pictures
2 because when we were going before the Historic
3 Preservation Review Board, to try to get the garage-
4 - permission to remove the garage, a question came
5 to mind.

6 Was it in fact a historic structure?
7 When was it built?

8 CHAIRPERSON GRIFFIS: Uh-huh.

9 MR. NUNLEY: So as we walked through, I
10 saw that someone had written "1947" in the concrete,
11 so I took pictures of that, so we could chronicle
12 when the garage was built. And they got into this
13 package.

14 CHAIRPERSON GRIFFIS: Good.

15 (Laughter.)

16 CHAIRPERSON GRIFFIS: An old practical
17 joke, pour some new concrete and put 1949 in there?

18 MR. NUNLEY: Yes!

19 (Laughter.)

20 CHAIRPERSON GRIFFIS: Must be historic.
21 Good. Okay. Any questions on that clarification to
22 the Board? Yes?

23 VICE CHAIRPERSON MILLER: How many
24 stories does this house have?

25 MR. NUNLEY: This is--one story with an

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1 attic and a partial basement.

2 VICE CHAIRPERSON MILLER: And these
3 photos are from each story?

4 MR. NUNLEY: Yes.

5 VICE CHAIRPERSON MILLER: And the attic
6 as well?

7 MR. NUNLEY: And the attic. Basement,
8 main floor and attic. In both the existing
9 structure and the addition.

10 VICE CHAIRPERSON MILLER: And they cover
11 all the views around?

12 MR. NUNLEY: All the views to every
13 window.

14 VICE CHAIRPERSON MILLER: Okay. Thank
15 you.

16 (Pause.)

17 MR. FARMER: If I can just--one question
18 to Mr. Nunley. Mr. Nunley, having an opportunity to
19 observe the foliage and the tree buffers, what is
20 your opinion in terms of the change of seasons and
21 its effect on the buffer?

22 MR. NUNLEY: The leaves will--you will
23 lose the leaves, but my opinion is that the tree
24 buffer is so thick that even though there will be
25 more of a lien of sight than there would be in the

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1 summer, I don't think that it would constitute an
2 undue visual intrusion.

3 MR. FARMER: One simple follow-up
4 question. Can you give us a percentage of the number
5 of evergreens in that?

6 MR. NUNLEY: No!

7 (Laughter.)

8 MR. NUNLEY: No, I'm not--I have no way
9 of knowing that at this point.

10 MR. FARMER: No further questions.

11 VICE CHAIRPERSON MILLER: To follow up.
12 Are the trees that are creating the buffer, are they
13 evergreen or are they not?

14 MR. NUNLEY: Well, they are both. But
15 from what I have seen from the pictures, most are
16 not evergreen.

17 VICE CHAIRPERSON MILLER: Thank you.

18 CHAIRPERSON GRIFFIS: Your case.

19 Anything else?

20 MR. FARMER: That is it. I'll save my
21 reviewing remarks for summation.

22 CHAIRPERSON GRIFFIS: Sure. Excellent.
23 Let's go. Ms. Ferster, are you ready for cross of
24 the witnesses? Is there a chair?

25 MS. FERSTER: Good afternoon. Andrea

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1 Ferster, for the neighbors in opposition. I have a-
2 -I'd like to start with Mr. Bruner. Perhaps we
3 could share this microphone. Or you can pass the
4 other one.

5 (Pause.)

6 MS. FERSTER: It would be helpful,
7 because I have some questions about the drawings,
8 perhaps, if you could address them--what I would
9 like you to, Mr. Bruner, is just clarify the number
10 of rooms in both the original house and the
11 addition, by floor, because I was confused as to the
12 exact number of rooms and bedrooms that were in the
13 house. Can you start with the original house?

14 CHAIRPERSON GRIFFIS: If we could have
15 just a little clarification of the drawings, and
16 then I going to have to ask where we--what the need
17 to go too far into this, if we go too far into it.

18 So we are counting the number of rooms
19 in the original house, and the number of rooms in
20 the extension.

21 MS. FERSTER: That is correct. Starting
22 with the basement, how many rooms are in there?

23 MR. BRUNER: In the basement, there are
24 no rooms in the existing house. I'm sorry. It's
25 storage space.

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1 MS. FERSTER: Okay.

2 MR. BRUNER: It has a very low ceiling.

3 MS. FERSTER: Okay. How high is the
4 ceiling?

5 MR. BRUNER: I think it's about 6'6", if
6 that much.

7 MS. FERSTER: Six-six.

8 MR. BRUNER: To the joist.

9 MS. FERSTER: It could be used as living
10 space, but--

11 MR. BRUNER: Not legally.

12 MS. FERSTER: A bedroom. You mean you
13 can't have a legal room that's under 6'6"?

14 MR. BRUNER: That's right.

15 MS. FERSTER: Okay. On the first floor,
16 you say there's one bedroom?

17 MR. BRUNER: Yes.

18 MS. FERSTER: Okay. And on the--in the
19 attic, isn't it correct that there's a bathroom in
20 the attic?

21 MR. BRUNER: There is a bathroom.

22 MS. FERSTER: That's right. And there
23 are two rooms in the attic?

24 MR. BRUNER: Two spaces.

25 MS. FERSTER: Two spaces. Thanks. Now,

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1 in the addition, if we could just go, starting with
2 the bottom floor, the basement floor of the
3 addition. The ground floor.

4 MR. BRUNER: Okay.

5 MS. FERSTER: How many rooms in the
6 ground floor?

7 MR. BRUNER: In the ground floor, one,
8 two, three, four, five, six. Six rooms.

9 MS. FERSTER: Six rooms. How many
10 bedrooms?

11 MR. BRUNER: Two.

12 MS. FERSTER: Okay. The other four
13 rooms are what?

14 MR. BRUNER: Living room, dining room,
15 kitchen.

16 MS. FERSTER: And one more room. That's
17 five. Okay. If you have two bedrooms, one living
18 room, one dining room, one kitchen, which is five
19 rooms, what is the sixth room?

20 MR. BRUNER: I've got bedroom, bedroom,
21 dressing room--that's three bedrooms.

22 MS. FERSTER: Three bedrooms. Thank
23 you.

24 MR. BRUNER: Right. Dining room and
25 living room.

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1 MS. FERSTER: Okay. So, three bedrooms
2 in the ground floor. And the second floor, how many
3 rooms in the second floor?

4 MR. BRUNER: Second floor? There is no
5 second floor.

6 MS. FERSTER: Well, the floor above the
7 ground floor.

8 MR. BRUNER: Attic. It's either attic
9 or the floor below, the basement.

10 MS. FERSTER: Okay. How many rooms in
11 the floor above the ground? Okay. I understand. I
12 understand. Okay. How many rooms in the attic?

13 MR. BRUNER: Two.

14 MS. FERSTER: Two rooms in the attic.

15 MR. BRUNER: Well, two spaces.

16 MS. FERSTER: Two spaces?

17 MR. BRUNER: And a bathroom.

18 MS. FERSTER: Okay. So, then, on the
19 floor below the ground floor, how many rooms are in
20 that?

21 MR. BRUNER: That's the basement level.

22 MS. FERSTER: The basement level. Thank
23 you.

24 MR. BRUNER: Okay. In the basement
25 level, we have--where is my other plan--in the

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1 basement level, we have one, two, three, four, five
2 bedrooms.

3 MS. FERSTER: Five bedrooms. Okay.
4 Good. So, that's a total of eight bedrooms, then.
5 Correct?

6 MR. BRUNER: Yes.

7 MS. FERSTER: Okay. Thank you. I don't
8 have any further questions for you. Thanks.

9 MR. FARMER: Can I have redirect?

10 CHAIRPERSON GRIFFIS: Yes. That's okay,
11 go ahead with your questions.

12 MS. FERSTER: No, I have questions for
13 Mr. Nunley.

14 CHAIRPERSON GRIFFIS: Oh? You are?

15 MR. FARMER: She was done with Mr.
16 Bruner.

17 CHAIRPERSON GRIFFIS: Okay. Good.
18 Let's do that. We'll just do redirect to the
19 witnesses, Ms. Ferster, and then you can continue
20 on, if there is cross on the redirect, and hopefully
21 we'll move it on.

22 MR. FARMER: Mr. Bruner, I just want you
23 to clarify for the Board. The plans as shown, were
24 the original plans. As built, focusing your
25 attention on the basement level, how many rooms are

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1 there?

2 MR. BRUNER: In the existing basement?

3 MR. FARMER: In the existing basement.

4 MR. BRUNER: In the existing basement,
5 there are one, two, three--

6 CHAIRPERSON GRIFFIS: Hold on. It won't
7 be recorded. We don't have it.

8 MR. BRUNER: All right. In the basement
9 level, in the existing house, there are three rooms.

10 MR. FARMER: In the addition, how many
11 rooms are there? As built.

12 MR. BRUNER: In the addition?

13 MR. FARMER: Uh-huh.

14 MR. BRUNER: In the addition, we have
15 one, two, three, four, five bedrooms.

16 MR. FARMER: Mr. Bruner, are these
17 intended to be used as bedrooms?

18 MR. BRUNER: As far as I know, probably
19 three of them. I am not sure. There's some
20 question about the recreation space and storage
21 space, which was raised, but for the time being this
22 is simply the design that I came up with.

23 MR. FARMER: No further questions for
24 Mr. Bruner. I will clarify later.

25 CHAIRPERSON GRIFFIS: Okay. Well,

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1 perhaps some clarity, indicating that there, in your
2 line of questioning, what we are seeing here labeled
3 as four bedrooms, and one room for storage?

4 MR. FARMER: My under--obviously, I am
5 not supposed to testify, but based on my observation
6 as to what was built, and in speaking with the
7 owner, we don't have that number of "bedrooms" in
8 the basement. The spaces--there is a storage area,
9 study and recreational space and one bedroom.

10 CHAIRPERSON GRIFFIS: Okay. All right.
11 I am not understanding why we are counting bedrooms
12 yet. Maybe that will come into clarity.

13 MR. FARMER: I am not going to--

14 CHAIRPERSON GRIFFIS: The rooms are
15 rooms. I mean, what we are seeing here, the plans
16 that were essentially built, whether you label them
17 poolrooms, ballrooms, bedrooms, whatever.

18 MR. FARMER: Correct. That is
19 absolutely correct.

20 CHAIRPERSON GRIFFIS: Okay. Good.

21 MS. FERSTER: Thank you. Mr. Nunley, if
22 you could turn to your photographs for a moment. I
23 would just ask you to identify which of those
24 photographs were taken from the addition at the--I
25 guess from the attic. From the attic of the

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1 addition.

2 MR. NUNLEY: Bear with me while I hunt
3 through again. They weren't put in in any kind of
4 order that I could quickly get to them.

5 (Pause.)

6 MS. FERSTER: I'm sorry. While you are
7 hunting through, perhaps it might be helpful for you
8 to also hunt for the second--my second question,
9 which is, I would also like you to identify which of
10 the photos were taken from the floor below the attic
11 of the addition.

12 (Pause.)

13 MR. NUNLEY: All right. You are talking
14 about from the interior?

15 MS. FERSTER: That is correct.

16 MR. NUNLEY: Okay.

17 (Pause.)

18 MR. NUNLEY: All right. On the second
19 page, first floor, which would be the floor above
20 the basement and below the attic, third window
21 toward 532 Cedar Street, that's one. And again,
22 first floor, third window, toward 528 Cedar, which
23 is also on that same page.

24 MS. FERSTER: Okay.

25 MR. NUNLEY: First floor, the next page,

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1 first floor, last window, toward 530 Cedar, and
2 first floor, last window, toward the yard of 530,
3 straight on. Okay?

4 MS. FERSTER: Okay.

5 MR. NUNLEY: And on two pages down, the
6 one that is labeled first floor, last window, toward
7 528.

8 MS. FERSTER: Which page is that?

9 MR. NUNLEY: There aren't any numbers on
10 them, so--the fourth page.

11 (Pause.)

12 MR. NUNLEY: Eleventh page from the
13 back. And this is from the same level, but from the
14 existing house. It says view toward--

15 MS. FERSTER: No. That's fine. I'm
16 just interested in the views of the addition. So
17 that is not the addition?

18 MR. NUNLEY: The views from the
19 addition?

20 MS. FERSTER: The views from the
21 addition.

22 MR. NUNLEY: Okay. No, that one's not
23 from the addition. From the existing house.

24 (Pause.)

25 MR. NUNLEY: All right. Eighth page

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1 from the rear. And this is in the basement. You
2 still only interested in the--

3 MS. FERSTER: No. Just the first floor
4 of the attic. Thank you. Of the addition.

5 MR. FARMER: From the first floor--of
6 the attic?

7 MR. NUNLEY: Did she say first floor?

8 MS. FERSTER: Of the attic of the
9 addition, or the first floor of the addition.

10 MR. NUNLEY: Attic? Okay. Then the
11 eighth page, I believe it is, which says view--you
12 do have a copy of this, right?

13 MS. FERSTER: Yes.

14 MR. NUNLEY: Okay. View toward 530
15 Cedar from existing attic bathroom.

16 MS. FERSTER: Okay. That's existing
17 attic, not the addition, correct?

18 MR. NUNLEY: Yes. Same page, view of
19 6915, from basement of middle of room.

20 MS. FERSTER: Okay. So, that's not the
21 attic.

22 MR. NUNLEY: No, that's basement.
23 Basement, basement.

24 (Pause.)

25 MR. NUNLEY: It appears that's it in

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1 this package.

2 MS. FERSTER: Okay. So, is it correct,
3 then, that you have no photographs showing the view
4 from the attic of the addition?

5 MR. NUNLEY: I don't know if they are in
6 this package. I know we have the photos. We did
7 take the photos.

8 MS. FERSTER: Okay. But in that
9 package, there are no photos from the attic of the
10 addition? Is that correct?

11 MR. FARMER: There is one to the library
12 from the attic.

13 MR. NUNLEY: Yes, there is, but--

14 CHAIRPERSON GRIFFIS: How about the view
15 toward the library?

16 MR. NUNLEY: Yes, that's the one I was
17 looking for now. The view toward the library from
18 the attic, but we also had pictures--

19 CHAIRPERSON GRIFFIS: The fifth page
20 from the first.

21 MR. NUNLEY: Thank you.

22 MS. FERSTER: Okay. So that's the only
23 photo, then, from the attic, is of the view toward
24 the library?

25 MR. NUNLEY: Okay. We've got one, two--

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1 CHAIRPERSON GRIFFIS: What about the
2 page before that? Where are those photographs
3 shown? The bottom one says, "Attic, rear window
4 towards 528 and 526". Is that the addition? That
5 looks like a newly framed opening.

6 MR. NUNLEY: Yes. This is the addition.
7 This is from the attic addition.

8 CHAIRPERSON GRIFFIS: Okay. So, Ms.
9 Ferster, you are trying to find out where on the
10 addition on the attic level, the photographs were
11 taken from?

12 MR. FARMER: If I may--

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. FARMER: It's marked attic, rear
15 window, toward 528 and 526 Cedar Street.

16 CHAIRPERSON GRIFFIS: Right.

17 MS. FERSTER: Okay.

18 CHAIRPERSON GRIFFIS: So, if I am
19 understanding, just to go directly to the answer to
20 your question, if we start at the--one, two, three--
21 fourth page in on my package, that's where we start
22 with, in the addition, the rear, the attic.

23 MS. FERSTER: Okay. So there's two
24 photos taken from the attic.

25 MR. FARMER: No.

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1 CHAIRPERSON GRIFFIS: I'm counting
2 three. I'm counting four.

3 MS. FERSTER: I'm sorry. Do you have an
4 extra copy?

5 CHAIRPERSON GRIFFIS: Do we have an
6 extra copy of this?

7 MR. NUNLEY: I don't know that I brought
8 one--

9 CHAIRPERSON GRIFFIS: Okay. We can get--
10 --do we have--how many? Get them out there. Good.

11 (Pause.).

12 MS. FERSTER: Okay. All right. Thank
13 you. Let me ask you a couple of questions about the
14 pictures that you have shown from what you call the
15 first floor.

16 The picture that you showed shows
17 basically the third and the last window toward the
18 west of the addition. Is that correct?

19 MR. NUNLEY: I'm sorry. Could you
20 clarify exactly which photos you--

21 MR. FARMER: All of them are labeled.
22 Which one--

23 MS. FERSTER: Right. On page 2, and
24 page 3, and page 4, you indicated that those were
25 views from the addition, from the first floor, and

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1 they were--on page 2 you indicated that they were
2 the third window.

3 MR. NUNLEY: Uh-huh.

4 MS. FERSTER: And on page 3, the last
5 window, and page 4, also the last window. Do you
6 have--so those are the westernmost windows on the
7 addition. Is that correct? I'm sorry.

8 Easternmost windows on the addition. Is that
9 correct?

10 MR. NUNLEY: These are toward Cedar
11 Street.

12 MS. FERSTER: Towards Cedar Street?

13 MR. NUNLEY: If I maybe had elevations,
14 would it be helpful if he pointed to the--

15 MS. FERSTER: Yes, it would be,
16 actually.

17 (Pause.)

18 MR. NUNLEY: The last window, if that's
19 what you are referring to, is toward the east. The
20 easternmost.

21 MS. FERSTER: Okay. So, can you just
22 point on that elevation, which of the windows are
23 depicted in those photographs that I mentioned? The
24 third window and the last window?

25 MR. NUNLEY: Where is the first one--I'm

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1 sorry. Which--

2 MS. FERSTER: On the addition.

3 MR. NUNLEY: In which direction?

4 MS. FERSTER: He indicated that they
5 were third and the last windows and I think they
6 were on the east. In the eastern direction.

7 (Pause.)

8 MS. FERSTER: Toward the eastern end of
9 the house. Toward the front.

10 MR. NUNLEY: Toward the front is the
11 western.

12 MS. FERSTER: All right. So which were
13 the windows that you showed?

14 MR. NUNLEY: The eastern windows are the
15 ones that are toward the rear of the house.

16 MS. FERSTER: Okay. And which were the
17 windows that you showed on your photographs?

18 MR. NUNLEY: This would be--I assume
19 this is the first floor. This would be the
20 easternmost window.

21 MS. FERSTER: Okay. And then you showed
22 a picture from the one that is right next to that.
23 Is that correct?

24 MR. NUNLEY: Third window, yes.

25 MS. FERSTER: Okay. And did you show a

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1 picture from the one all the way toward the--

2 MR. NUNLEY: Here?

3 MS. FERSTER: Yes. The other two
4 windows. Are there any pictures from those other two
5 windows?

6 MR. NUNLEY: Yes. This is the existing
7 garage. Where's the rest--I'm sorry I don't have
8 this in a better organized manner, but--

9 CHAIRPERSON GRIFFIS: Actually, let's
10 get just clarification of your nomenclature of how
11 you have addressed the windows. I think that's
12 probably what she is struggling with.

13 MR. NUNLEY: Okay.

14 CHAIRPERSON GRIFFIS: And we will also
15 be--when you say "last" window, that means furthest
16 from the front?

17 MR. NUNLEY: Furthest from the front,
18 yes. When I came here, I was starting here--

19 CHAIRPERSON GRIFFIS: Good. So continue
20 with the last windows.

21 MR. NUNLEY: --and we moved in this
22 direction.

23 CHAIRPERSON GRIFFIS: Good. What's a
24 "third" window, though? The third window in the
25 addition?

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1 MR. NUNLEY: Yes.

2 CHAIRPERSON GRIFFIS: Okay. So it's the
3 third window counting from the addition.

4 MR. NUNLEY: Yes.

5 CHAIRPERSON GRIFFIS: That makes sense
6 to me. So that's four, second to last. But we
7 won't confuse it.

8 Okay. So that's on the--whichever
9 directional side it is--it's toward the street, is
10 how you have addressed it.

11 MR. NUNLEY: If this is the north
12 elevation, which would be facing toward Cedar.

13 CHAIRPERSON GRIFFIS: Okay. So we have
14 several from the last window, first level. Clear?

15 MR. NUNLEY: Yes.

16 CHAIRPERSON GRIFFIS: And then we have
17 several from the first level, last window, toward
18 528, which is the other side?

19 MR. NUNLEY: Uh-huh.

20 CHAIRPERSON GRIFFIS: If I am not
21 mistaken. Correct?

22 MR. NUNLEY: Right.

23 CHAIRPERSON GRIFFIS: Okay. And then
24 you have one in there that I am seeing. Where you
25 have the second window, and the third window, in the

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1 addition.

2 MR. NUNLEY: Yes.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. NUNLEY: In the lower level--

5 CHAIRPERSON GRIFFIS: That's okay. What
6 else do we have?

7 MS. FERSTER: Okay. Which photo depicts
8 the view from the south elevation on the first
9 floor?

10 MR. NUNLEY: Those are the ones toward
11 6915.

12 MS. FERSTER: Which one is that?

13 MR. NUNLEY: Are you looking for
14 specific--we have a series of windows from the
15 south.

16 (Pause.)

17 MS. FERSTER: And then the other
18 question we have is whether or not on the--on the
19 eastern, the back, the rear of the addition, the
20 eastern elevation, on the ground floor, whether
21 there are any views from that location?

22 (Pause.)

23 MR. NUNLEY: So you are concerned only
24 about the interior?

25 MS. FERSTER: Right. That is correct.

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1 (Pause.)

2 MR. NUNLEY: They don't appear to be
3 part of this package. I do have--I know we took
4 them.

5 MS. FERSTER: Okay. Thank you. Thank
6 you. So there is no photograph from the south
7 elevation ground floor, no photos from the ground
8 floor on the east elevation. That is correct?

9 MR. NUNLEY: No, that is not correct.
10 We do have them from the east elevation--I mean, the
11 north elevation. North elevation.

12 MS. FERSTER: Right. South. Rear,
13 ground floor, no photos?

14 MR. NUNLEY: They don't appear to be in
15 this package.

16 MS. FERSTER: Okay. Thank you. Okay.
17 I have one more question from you and then I'm done.

18 You testified that you did not believe
19 that the addition will affect the light and air of
20 the adjoining properties.

21 MR. NUNLEY: That is correct.

22 MS. FERSTER: Did you perform a sun path
23 study to reach that determination?

24 MR. NUNLEY: No, I did not. I just used
25 common sense approach in looking at the size and the

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1 number of trees.

2 MS. FERSTER: Okay. Thank you.

3 MR. NUNLEY: Uh-hum.

4 CHAIRPERSON GRIFFIS: Anything else?

5 MS. FERSTER: I have no further

6 questions.

7 CHAIRPERSON GRIFFIS: Good. Follow-up?

8 Clarifications from the Board?

9 VICE CHAIRPERSON MILLER: I just have a
10 couple of questions. One is, is the garage
11 attached, or not attached to the addition?

12 MR. NUNLEY: It is now attached to the
13 addition, yes.

14 VICE CHAIRPERSON MILLER: And also, with
15 respect to--

16 MR. NUNLEY: Well, when I say
17 "attached"--it's wall on wall. There is no
18 communication from the addition to the garage. You
19 know.

20 VICE CHAIRPERSON MILLER: It is
21 attached?

22 The wall?

23 MR. NUNLEY: Wall on wall, yes.

24 VICE CHAIRPERSON MILLER: Okay. Then my
25 next question is, just with respect to the number of

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1 stories, I believe you all said there was only one
2 story in this house? And that's doesn't sound--how
3 do you determine that there is only one story? You
4 are saying that the basement is not a story?

5 MR. NUNLEY: Well, no. The basement is
6 not a story. It's a cellar, by definition.

7 VICE CHAIRPERSON MILLER: It's a cellar?
8 What is--

9 MR. NUNLEY: By definition, the zoning
10 regulations. The ceiling height is less than four
11 feet above the adjacent grade.

12 VICE CHAIRPERSON MILLER: The ceiling
13 height is less than four feet--

14 MR. NUNLEY: Above the adjacent grade,
15 yes. I believe that was the determination that was
16 made.

17 VICE CHAIRPERSON MILLER: The basement
18 is only four feet high?

19 MR. NUNLEY: No. What I am saying is
20 that the ceiling of the basement level--

21 VICE CHAIRPERSON MILLER: Oh. Above the
22 grade.

23 MR. NUNLEY: --is less than four feet
24 above the adjacent grade, which by zoning
25 definition, makes it a cellar and not a basement.

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1 VICE CHAIRPERSON MILLER: Thank you.

2 MR. NUNLEY: And therefore not a story.

3 VICE CHAIRPERSON MILLER: Okay. Okay.

4 Then with respect to the attic, what makes that not
5 count as a story.

6 MR. NUNLEY: Because it doesn't have the
7 ceiling height to make it habitable.

8 VICE CHAIRPERSON MILLER: What ceiling
9 height does it have?

10 MR. NUNLEY: What is it?

11 MR. BRUNER: It varies from 6 feet down.

12 VICE CHAIRPERSON MILLER: So it's no
13 higher than six feet at any point. Is that what you
14 are saying?

15 MR. BRUNER: No, your cross-bracing in
16 the ceiling is approximately six feet above the
17 floor line. To the ridge of the room, it's probably
18 around eight or nine feet.

19 VICE CHAIRPERSON MILLER: Oh, I see.
20 Okay. So at the lowest point, it's below six feet.

21 MR. BRUNER: Below six.

22 VICE CHAIRPERSON MILLER: Okay. Thank
23 you.

24 CHAIRPERSON GRIFFIS: Very well. If
25 there is nothing else, let's go on, and hear from

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1 the Office of Planning.

2 MS. BROWN-ROBERTS: Good afternoon, Mr.
3 Chairman, and members of the Commission. I am
4 Maxine Brown-Roberts from the Office of Planning.

5 The Applicant is seeking a special
6 exception for the proposal that does not meet the
7 required lot occupancy and rear yard. The rear yard
8 setback is not provided on the north side because
9 HPRB has requested that the garage be retained. The
10 lot occupancy is lower than that which is allowed
11 under Section 223.

12 Section 223 outlines requirements
13 regarding the use, enjoyment and privacy of adjacent
14 properties, and that they will not be compromised.
15 In the Office of Planning position, proposed
16 addition will affect the adjacent neighbors because
17 of the building that towers over the adjacent
18 properties, that will be different in scale. The
19 buildings will not be screened by the existing
20 fences, because the building--the addition--is
21 higher.

22 The large glass doors to the rear of
23 the--will provide unobstructed views into the
24 property to the east. The architectural details on
25 the adjacent homes are not demonstrated in the plan

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1 submitted.

2 Because of these factors, the Office of
3 Planning recommends denial of the application.

4 Thank you, Mr. Chairman.

5 MR. ETHERLY: Very briefly, if I could,
6 Mr. Chairman. I just wanted to follow-up on the
7 Office of Planning's report.

8 Two very primary issues I would hazard a
9 guess. One, the issue of scale, if you will, of the
10 proposed project. And then secondly, the issue of
11 impact on privacy.

12 With respect to the issue of scale
13 first, we have heard a little bit of testimony about
14 some of the change in grade, topography, if you
15 will. In terms of--I am trying to get a sense of,
16 as we compare this property, to neighboring
17 properties, if the topography or if the grading were
18 not necessarily so variant, if you will, are we
19 looking at a structure that is still somewhat on
20 scale with surrounding properties?

21 Or would it be your sense--it's a little
22 bit of a hypothetical, so perhaps bear with me, as I
23 work through it. But if the topography, the
24 grading, were all equivalent, would this still be a
25 property that in your opinion would be out of scale

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1 with adjacent properties?

2 MS. BROWN-ROBERTS: I don't think so. I
3 think that the difference, the big difference is the
4 topography that causes the scale to differ,
5 especially, it's not--when you view it from, I
6 think, Sixth Street, you don't get the--it's a
7 different appearance that you get from that you get
8 on the eastern side of the property, because there
9 is such a great difference between what is on the
10 subject property and the adjacent neighbors.

11 So that is where my concern is with the
12 topography that causes this difference.

13 MR. ETHERLY: Okay. And then let me
14 move on, briefly, to the issue of privacy. We also
15 had a little bit of testimony from the Applicant
16 regarding the issue of some of the natural buffering
17 or shading, screening if you will, as provided by
18 some of the foliage in the immediate vicinity of the
19 subject property.

20 Is it your sense, or is it the Office of
21 Planning's sense, that even with that screen there
22 still would be a significant impact on privacy to
23 adjacent properties or does that screening help to
24 mitigate some of the concern that you are expressing
25 in your report?

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1 MS. BROWN-ROBERTS: I think it--there is
2 some screening from the foliage there. There is no
3 doubt about that.

4 But I think that because of the--when
5 there is a change in the weather, you know, a lot of
6 the trees are not deciduous, so they are going to
7 lose their leaves. So it is going to be opened up.
8 Especially when you look at the view from Cedar
9 Street. If you go out there when the foliage is
10 there, you can hardly see the addition.

11 But in the months when it is not there,
12 it is going to be clearly visible. And especially
13 that it is over the garage. It will be clearly
14 visible.

15 And the pictures, I think, that we have
16 seen, taken from the site, I think we get a
17 different scale or a different look, when we are
18 looking from the adjacent properties also.

19 MR. ETHERLY: Okay. With respect to
20 that issue of screening and perhaps also coming back
21 to the issue of kind of scope and size, is the
22 Office of Planning's concern also one that could
23 reasonably be boiled down to just a matter of
24 windows?

25 By that I mean, if the Applicant were to

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1 scale back on the number of windows that are
2 contemplated for introduction in the addition, would
3 that mitigate some OP's concerns? Or would--

4 MS. BROWN-ROBERTS: I think that that
5 could help. There's also the issue with us that
6 this addition is sort of a big box that was added
7 onto this house, and there's no variation in roof
8 line and that sort of thing. So, what you are
9 seeing from the adjacent properties is--because of
10 the topography and the building, the building gives
11 an image of being very large.

12 And because there is no variation, it
13 also sort of sticks out.

14 MR. ETHERLY: I see. So, with respect
15 to one of the photographs that was offered in the
16 submittal that we reviewed, to some extent today--
17 and I'll just pass you the page so you won't have to
18 hunt for it--it's the photograph labeled 520
19 Butternut showing similar addition--do you--is it
20 fair to state that--is that a fair characterization
21 of that addition in your mind, compared to what we
22 are looking at in the subject application?

23 MS. BROWN-ROBERTS: I don't think so.
24 When I look at this picture and the distance between
25 the houses are different.

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1 MR. ETHERLY: Uh-huh. Okay.

2 MS. BROWN-ROBERTS: I haven't viewed it,
3 but I think it's a little different.

4 MR. ETHERLY: Okay. Thank you. Thank
5 you, Mr. Chair.

6 CHAIRPERSON GRIFFIS: Any other
7 questions from the Board?

8 VICE CHAIRPERSON MILLER: I just want to
9 clarify. Does this building still need HPRB
10 approval?

11 MS. BROWN-ROBERTS: Yes, it does.

12 VICE CHAIRPERSON MILLER: Thank you.

13 CHAIRPERSON GRIFFIS: Anything else from
14 the Board?

15 (No response.)

16 CHAIRPERSON GRIFFIS: Do you have any
17 cross?

18 MR. FARMER: Yes.

19 CHAIRPERSON GRIFFIS: Can you see her?

20 (Laughter.)

21 CHAIRPERSON GRIFFIS: Let's move your
22 exhibit.

23 MR. FARMER: Have you had an opportunity
24 to review the topographical survey that was
25 requested by the Office of Planning?

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1 MS. BROWN-ROBERTS: Yes, I did.

2 MR. FARMER: Do you happen to have a
3 copy of it before you?

4 MS. BROWN-ROBERTS: Yes, I have a copy.

5 MR. FARMER: Did you get a larger copy
6 for me? These numbers are kind of small. I have--

7 MS. BROWN-ROBERTS: Yes. I have both a
8 big one and a small one.

9 MR. FARMER: Okay. Thanks. Looking at
10 the subject lot of the Applicant's property, which
11 is marked here as 811, in the upper right hand
12 corner--unfortunately, this set of plans does not
13 have complete contour lines. Or doesn't have
14 contour lines at all.

15 Do you see an elevation marking of
16 29659?

17 MS. BROWN-ROBERTS: Um--

18 MR. FARMER: And that's in the upper
19 right hand corner of the lot marked 811?

20 MS. BROWN-ROBERTS: Yes.

21 MR. FARMER: Okay. And looking at the
22 next topographical elevation, which is the
23 northeastern corner of the addition, which I believe
24 is marked 29958?

25 MS. BROWN-ROBERTS: East--yes. I think

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1 so.

2 MR. FARMER: Approximately what is the
3 difference between those two heights?

4 MS. BROWN-ROBERTS: Is it three-foot or
5 something like that?

6 MR. FARMER: Is that a severe slope?

7 MS. BROWN-ROBERTS: No, I wouldn't say
8 this is a severe slope.

9 MR. FARMER: Okay.

10 MS. BROWN-ROBERTS: But there is a
11 difference there.

12 MR. FARMER: No, I understand. Again,
13 focusing on the upper right hand elevation marking,
14 29659. Could you compare that to some of the other
15 elevation markings along Cedar Street?

16 MS. BROWN-ROBERTS: Um--

17 MR. FARMER: And I am looking at the
18 property lines of Cedar Street itself.

19 MS. BROWN-ROBERTS: Um, 295, 292, 294.

20 MR. FARMER: So, in your opinion, is
21 that fair to say that is also not a severe slope?

22 MS. BROWN-ROBERTS: You mean between
23 the--

24 MR. FARMER: Between the Applicant's
25 properties and Cedar Street.

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1 MS. BROWN-ROBERTS: No. When you are
2 comparing the--no. That's not a severe slope there.

3 MR. FARMER: So, the difference in
4 elevation really, to your mind, really results from
5 the present position of the Applicant's house, in
6 relation to the existing houses on Cedar Street?

7 MS. BROWN-ROBERTS: I am not sure if I
8 understand the question here.

9 MR. FARMER: You just indicated in your
10 testimony that the reason you thought the privacy of
11 those dwellings was interfered with--was because of
12 the severe slope, or because of the slope--reviewing
13 those numbers, are you still of the same opinion?

14 MS. BROWN-ROBERTS: Yes. From being out
15 there and looking at it, I can see there is a
16 difference, yes.

17 MR. FARMER: Mr. Chairman, can I make
18 one proffer. We may be best served in summation.
19 There is a notion of privacy, which is somewhat
20 undefined here, which I think is really going to be
21 a key issue for this.

22 What--I could obviously address
23 questions to Ms. Brown-Roberts on behalf of OP, but
24 I am not sure that will get us where we need to go.

25 CHAIRPERSON GRIFFIS: Right.

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1 MR. FARMER: So I'll save my remarks as
2 to what the standard of privacy is for summation.

3 CHAIRPERSON GRIFFIS: I think that's
4 appropriate.

5 MR. FARMER: Thank you. And no further
6 questions for Ms. Brown-Roberts.

7 CHAIRPERSON GRIFFIS: Thank you. Ms.
8 Ferster, do you have any cross for the Office of
9 Planning?

10 MS. FERSTER: Thank you. I just have
11 one question. In your written report, you also
12 indicated that one of the reasons why you believe
13 that the addition did not satisfy the criteria under
14 Section 223 was because of the scale and visual
15 character of the addition itself. Is that correct?

16 MS. BROWN-ROBERTS: Yes. That is
17 correct.

18 MS. FERSTER: Thank you.

19 CHAIRPERSON GRIFFIS: Good. Any follow-
20 up from the Board?

21 (No response.)

22 CHAIRPERSON GRIFFIS: Clarification from
23 the Office of Planning?

24 (No response.)

25 CHAIRPERSON GRIFFIS: If not, thank you

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1 very much.

2 MS. BROWN-ROBERTS: You're welcome.

3 CHAIRPERSON GRIFFIS: Appreciate the
4 report. Let's move ahead, then. It has been talked
5 about in terms of this being an Historic District.
6 We don't have finalization in Historic Preservation
7 in the record. We can move on to the ANC
8 presentation.

9 I'm sorry. I should have asked if you
10 had cross. We will allow you to have cross of the
11 witnesses or the Office of Planning at this point,
12 if you do find that Ms. Ferster didn't represent the
13 parties in opposition, or your position of the ANC.
14 Either way, you are coming up here, now.

15 MS. WHEELER: Thank you. I am Faith
16 Wheeler, ANC Commissioner in the single member
17 district, ANC-4B-02. And I have lived in Takoma for
18 27 years. Quite familiar with the neighborhood,
19 therefore.

20 And familiar with this particular block
21 in this particular square situation.

22 You asked if I had a cross reference
23 question for any of the--

24 CHAIRPERSON GRIFFIS: Yes. I can give
25 you the opportunity now, to start with any cross

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1 examination questions of the witnesses or the Office
2 of Planning if you have any. If not, we can move
3 ahead right to your case presentation.

4 MS. WHEELER: Okay. I had just one
5 question, for the Applicant. I heard two different
6 descriptions. I wonder if you could please describe
7 the existing structure. Just briefly.

8 MR. FARMER: Is that a question for the
9 architect? Or--

10 MS. WHEELER: Whoever would like to
11 address that.

12 MR. FARMER: Mr. Bruner?

13 MR. BRUNER: I'm Luther Bruner,
14 Architect. The existing house has a gable roof,
15 pitch roof. Shingled, and the walls are stucco and
16 siding, I believe.

17 CHAIRPERSON GRIFFIS: Is that--is what
18 you want to know--you want to know what the
19 condition of the existing was?

20 MS. WHEELER: No, I only want--the size.

21 CHAIRPERSON GRIFFIS: The size?

22 MS. WHEELER: The size.

23 CHAIRPERSON GRIFFIS: The size.

24 MR. BRUNER: The size of the house?

25 MS. WHEELER: Yes.

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1 CHAIRPERSON GRIFFIS: He indicated that
2 it was 25x50. Roughly. The first floor.

3 MR. BRUNER: The first floor.

4 MS. WHEELER: All right. The first
5 floor--

6 MR. BRUNER: There is an attic, and it
7 has a cellar.

8 MS. WHEELER: And the number of stories?

9 MR. BRUNER: One.

10 MS. WHEELER: One story?

11 MR. BRUNER: By zoning.

12 MS. WHEELER: Okay. Thank you. I was
13 curious because I have heard now three descriptions
14 of the height. One story, one and a half, and two
15 stories of the existing structure. This is an
16 observation.

17 The ANC has voted on this particular
18 issue, as a matter of fact. It voted twice. The
19 second was in a special meeting, and second and
20 concluding.

21 The second was in a meeting in June. It
22 was a special meeting, and it was indeed a vote on--
23 in support of--excuse me--that was in opposition to
24 Mr. Taylor's addition. And the resulting vote was 4
25 to 3, opposing Mr. Taylor's addition. This was

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1 taken on June 11 of this year.

2 CHAIRPERSON GRIFFIS: So on the 11th of
3 June, 2005, the ANC voted to oppose the application?

4 MS. WHEELER: That is correct.

5 CHAIRPERSON GRIFFIS: Exhibit No. 24 in
6 the record.

7 MS. WHEELER: With a quorum present, and
8 sufficiently noticed. So, with that said, would you
9 like to hear the resolution? Is that important to
10 you?

11 CHAIRPERSON GRIFFIS: The resolution is
12 in the record. I don't think we need to read it in.
13 You don't have to read it in the record. If you
14 want to highlight certain aspects to it, or of it,
15 that would be fine. Or you can just present it.
16 It's up to you. Whatever is efficient.

17 MS. WHEELER: It's simply opposing the
18 application for special exception. Nothing more
19 than that. No reason given. Just that. All right.

20

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. WHEELER: Eight commissioners
23 present, four voted in favor of opposing, and one
24 against. One abstained.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. WHEELER: In terms of my
2 observations, I think I will simply say briefly that
3 I certainly agree with the conclusion of the OP
4 report. And feel that this is certainly an
5 oversized addition. It's certainly different from
6 the character and rhythm and line of the houses on
7 that street in that neighborhood particularly. The
8 addition extends way back in the back yard, unlike
9 the other houses, unlike the additions to the other
10 houses. The additions are quite modest to the other
11 houses in relation to the existing structures or the
12 original structures. This is very different.

13 And we do take particular pride and care
14 in Takoma to preserve and respect its uniqueness and
15 not build out to the maximum allowed and beyond.

16 So I urge the Board of Zoning Adjustment
17 to reject Mr. Taylor's request for special exception
18 to build this intrusive addition in our
19 neighborhood.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much. Anything else?

22 MR. PAYTON: I would like to add that I
23 am Commissioner Doug Payton. I am the affected
24 commissioner. I live about two and a half blocks
25 from the addition. Therefore I am the commissioner

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1 on ANC-4B that lives closest to this addition,
2 although it is not in my single member district. My
3 single member district starts about a half-block
4 away, at Piney Branch.

5 I don't know if Commissioner Wheeler had
6 mentioned that we had voted on this twice. And I
7 did want to make sure that was clear. Both times,
8 the first vote in the May public meeting, to support
9 Mr. Taylor, and again that failed, as did the second
10 vote, opposing him, which passed.

11 CHAIRPERSON GRIFFIS: I see. Okay.

12 MR. PAYTON: Okay.

13 CHAIRPERSON GRIFFIS: Anything else?

14 MS. WHEELER: That's all, I believe.

15 CHAIRPERSON GRIFFIS: Good.

16 MS. WHEELER: Thank you.

17 CHAIRPERSON GRIFFIS: Thank you both
18 very much. It's a close vote. Don't go too far.
19 Let me ask you quickly.

20 Have a seat. Make yourselves
21 comfortable. In the ANC presentation, of course, we
22 give great weight to the resolution that's in. And
23 it is a vote in opposition to the application.

24 But can you tell me, in perhaps--what
25 were the issues that were raised in the ANC, in

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1 terms of the discussion?

2 MS. WHEELER: Well, the issues were, in
3 fact, the questions in Section 223. The light and
4 air available, privacy of use and enjoyment, the
5 addition as viewed from the street, etc.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. WHEELER: Several commissioners did
8 go and view the property from different aspects,
9 different angles.

10 CHAIRPERSON GRIFFIS: And you asked the
11 Applicant and they were there, and--so those were
12 the substantive issues that were actually discussed
13 and therefore voted on?

14 MS. WHEELER: Yes, sir.

15 CHAIRPERSON GRIFFIS: Good. Follow-up?
16 Any other question to the ANC from the Board?

17 VICE CHAIRPERSON MILLER: I have a
18 couple. With respect to the June 14 letter that was
19 submitted to us, it's Exhibit No. 24. It says that
20 proper notice of the meeting was given at the May 26
21 meeting, and it doesn't say that--or I'm not seeing
22 it, with respect to the June 11th meeting. Can you
23 tell me if notice was given of that special meeting?

24 MR. PAYTON: Yes, it was.

25 VICE CHAIRPERSON MILLER: And how was it

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1 given?

2 MR. PAYTON: It was--I know that it went
3 out on the list serves--it's basic methods that we
4 do with our meetings, postings will be list serves,
5 flyers notice, that's the way that we put them out.

6 VICE CHAIRPERSON MILLER: Okay. And was
7 the Applicant also given notice?

8 MR. PAYTON: I'm sure that the
9 commissioners--three commissioners called that
10 special meeting. I'm sure that he was, from them.
11 I don't know. I presume.

12 VICE CHAIRPERSON MILLER: Okay. Also, I
13 am just wondering, it sounds like you all have been
14 into Takoma Park for awhile and active in the ANC.
15 Is this uncommon for the ANC to oppose an addition,
16 or is this a common thing?

17 MS. WHEELER: This is the first case of
18 an addition that I recall. Is that correct? Of an
19 addition. We have had other--well, actually, we
20 have had--no other BZA cases, in any case. That's
21 true. We have had simple cases presented to other
22 BZA cases, in my tenure, which two and a half to
23 three years now.

24 We have had simple questions for
25 additions, I believe, but which have met with the

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1 approval of neighbors. And that is simply gone
2 through as a matter of course.

3 VICE CHAIRPERSON MILLER: Have you
4 supported those, or you have taken no action on
5 those?

6 MS. WHEELER: We have supported those.

7 VICE CHAIRPERSON MILLER: Okay. So this
8 is your--this is a first in your tenure, two and a
9 half to three years that you have opposed and
10 addition?

11 MS. WHEELER: Yes.

12 MR. PAYTON: To my knowledge, too. Yes.

13 VICE CHAIRPERSON MILLER: And in--I'm
14 sorry.

15 MR. PAYTON: I have been on this as long
16 as Faith. We both were elected first in--in 2000-
17 whatever.

18 (Laughter.)

19 MR. PAYTON: We have been there--this is
20 our second term.

21 MS. WHEELER: In 2002, I believe.
22 Something like that. This is our second term, yes.

23 VICE CHAIRPERSON MILLER: Okay. And I
24 guess my last question is, what--I read your
25 resolution and everything, but if you want to just

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1 crystallize for me, what is it about this addition
2 that is--I don't want to put words in your mouth,
3 but maybe--so egregious for you to take a position
4 against it.

5 MS. WHEELER: Well, from my point of
6 view, it is quite intrusive on the neighborhood. In
7 the back, it's--if I were living on that street or
8 in an adjacent property, I would feel very imposed
9 upon.

10 Privacy is certainly an issue. I have
11 actually in addition a renovation going on right
12 next to my house now, and that is one of my
13 concerns. Privacy. They are staying within the
14 original structure, however, but windows, for
15 example, is an issue.

16 So, I am quite attuned to this kind of
17 thing from my own personal experience as well as
18 simply being very, very interested in the character
19 of our neighborhood, which is one of the things that
20 drew me to the neighborhood in the first place, 26-
21 27 years ago.

22 The line, the back yard line, the back
23 building line of the houses on that street are
24 fairly consistent, with the exception of this
25 structure. This structure really protrudes into the

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1 backyard. It takes up most of the backyard. There
2 is very little space between the back of the
3 structure and the property line of the back yard.

4 Viewing the structure from the immediate
5 neighbor to the south and also to the northeast, the
6 homes of both, I find it extremely intrusive, just
7 viewing it either from their homes or from their
8 back yards. It is towering over their property.
9 The slope is quite substantial. As you have
10 noticed, the original drawings presented to both
11 BZA--I think it was BZA and HPRB--were showing a
12 grade, a level grade.

13 And at the first presentation of Mr.
14 Taylor and his associates to the ANC, they then
15 showed, I believe brought in the drawings with the
16 grade, close to the grade, the actual grade of the
17 lot. And I asked about that, because there was some
18 question about the grade.

19 And the person representing, a Mr.
20 Harris--representing Mr. Taylor at that point, said,
21 oh, the grade will be as shown on the original
22 drawings.

23 And I said, do you mean that you'll back
24 hoe soil, earth back over those windows, those
25 basement windows, which would mean bring it up to

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1 about half the level of the full basement windows,
2 as you notice in your drawings. The basement
3 windows of the addition are full basement windows.
4 Full windows. They are not the typical short
5 windows, basement windows.

6 And he said, oh yes. That, I think,
7 speaks for itself. One of the difficulties of this
8 particular proposal.

9 MR. PAYTON: I would like to add that
10 one of the things, not only the negative impingement
11 that--the issues of which Ms. Wheeler just spoke,
12 but one of the aspects of--there was no way that I
13 could support it as an affected commissioner, was
14 the neighbors. The neighbors do not support this.

15 The ones who are so adversely affected.
16 And neighbor do not support this. And I give that
17 great weight when I make a decision or vote.

18 VICE CHAIRPERSON MILLER: I just want to
19 follow upon your description of the addition being
20 intrusive. If in fact the Applicant could not view
21 into neighboring yards, or houses, at the windows,
22 as they seem to be representing in their case, would
23 it still be intrusive?

24 MS. WHEELER: I believe it would be,
25 yes. I would consider it quite intrusive as a

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1 structure. Yes, we look at the structure. Yes,
2 privacy certainly is an issue, which is what you are
3 addressing.

4 But the structure itself, in terms of
5 the character of the neighborhood, it intrudes upon
6 the character of the neighborhood.

7 VICE CHAIRPERSON MILLER: Thank you.

8 CHAIRPERSON GRIFFIS: Anything else?

9 MR. ETHERLY: To follow up on the
10 questioning that my colleague, Mrs. Miller, was
11 exploring, this is a question for either one of the
12 commissioners.

13 First of all, thank you very much for
14 your time. As you heard some of the interchange
15 between myself and the Office of Planning
16 representative, Ms. Brown-Roberts, I was trying to
17 kind of get a little bit at this issue of the grade
18 change and what it means for this particular piece
19 of property, relative to some of the surrounding
20 properties, and then also the issue of windows.

21 I think I have a fair understanding
22 about the fact of the grade change being somewhat
23 different enough that it creates a scale issue,
24 perhaps for just about anything that might go on
25 this property.

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1 Let me--and that is not making a
2 statement one way or the other--but just kind of
3 understanding the argument, let me deal with just
4 perhaps the windows primarily.

5 And I am somewhat familiar with Takoma
6 Park but of course have not had the joy and pleasure
7 of being in some of the back yards, based on some of
8 the pictures, photographic representations from the
9 Applicant. It appears that you've got sun, you've
10 got some great vistas back there.

11 But what I am intrigued by, perhaps, is
12 there's one picture which is labeled--this is in the
13 packet that was submitted by the Applicant--it's
14 labeled "zoom from attic to 528 and 526 Cedar
15 Street". Once again, "zoom from attic to 528 and
16 526 Cedar Street". I'll hold it up. You probably
17 can't see it from that distance, but I'll hold it up
18 somewhat so you can get a sense of the particular
19 picture that I am talking about.

20 There also was another picture which was
21 labeled "attic view toward library". And that's
22 this top picture here.

23 Now, the reason why I identified these
24 two pictures is just from the representation, there
25 are two properties that are photographed.

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1 There's one which appears to be sided,
2 and may be a very light yellow or perhaps even
3 marigold, although marigold might be a deeper
4 yellow, but we won't go there at this time of the
5 day. And a gray sided house.

6 What I am ultimately curious about is,
7 there's representation there that you have two very
8 significant structures, perhaps which might be
9 thought of as traditional, Takoma Park residences,
10 but tons of windows, fairly in close adjacency to
11 one another.

12 Is this necessarily very different from
13 what you would envision or what you currently see
14 now with the proposed addition to the subject
15 property?

16 MS. WHEELER: Very different in terms of
17 number of windows, you are referring to?

18 MR. ETHERLY: To an extent, perhaps
19 that's what I am kind of getting at, and I apologize
20 for the inarticulate way that I am phrasing the
21 question.

22 But when I look at this, my first
23 reaction to this particular picture was you have two
24 residences that appear to be fairly close to one
25 another, and a lot of windows. And part of what I

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1 hear in the concerns that have been raised to date
2 have been this is a structure which towers above
3 those in the immediate area because of the grade
4 issue, and that is going to be further exacerbated
5 by the fact that you have a large number of windows,
6 both at the basement level and on that first floor
7 level, that are going to be introduced with the
8 addition.

9 And I'm wondering, well, do you already
10 have some of that currently in existence, in some of
11 those back yards?

12 MS. WHEELER: Uh-huh.

13 MR. ETHERLY: So perhaps what I am
14 looking for is, no, Mr. Etherly, we don't have that.
15 You may kind of gleaned that perhaps from a first
16 blush at this picture, but realistically, what we
17 see in our back yards is not such a concentration of
18 windows, all bunched up against one another.

19 MR. PAYTON: I would go with the latter,
20 because my feeling is, again, it's a matter of
21 scale, and you're looking out, as opposed to being
22 on the ground looking up. It gives the feeling that
23 they are indeed focusing right over the yard.

24 Because, as you can see, the other
25 houses there, their rear additions are more to scale

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1 to the house. This is throughout the neighborhood,
2 the way an addition is.

3 I can think of several, several
4 bungalows in the vicinity who have additions, but
5 the additions are scaled back. And so consequently
6 there is a buffer zone of the yard. Summertime
7 foliage. But there is a buffering between it.
8 Because this is so massive, and comes back so
9 closely to the fence, there is no buffering there.

10 And consequently, what windows are
11 there, are looking right down over into it, as
12 opposed to the other windows that are set back and
13 there is a sense of scale.

14 MR. ETHERLY: Okay.

15 MS. WHEELER: It's a bit of a tower.
16 It's a bit of a tower effect, really. That's my
17 image, anyway.

18 MR. ETHERLY: Was there any discussion
19 at the ANC, in either of your two proceedings,
20 about--is there a particular balance point in the
21 formula that the ANC would be happy with? If we
22 dropped x number of windows and pulled back from the
23 fence x number of feet?

24 Is there a point at which you say, okay,
25 we might be able to live with this?

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1 MS. WHEELER: Well, I would say there
2 are differing opinions. Quite sharply differing
3 opinions in the ANC.

4 MR. ETHERLY: I understand.

5 MS. WHEELER: And one was total support,
6 which failed approval. Failed a majority, I should
7 say. And the other was, this is simply far
8 overbuilt, far out of character of Takoma, very
9 intrusive, and simply not acceptable.

10 MR. ETHERLY: And you would say nothing
11 emerged as even a close consensus point around a
12 middle ground? As you say, there was either one of
13 the two extremes at this particular point?

14 MS. WHEELER: Yes, I would say that
15 that's true, with the exception of those two who
16 abstained initially and the one who abstained
17 finally.

18 Of course, one of those who abstained
19 initially was one who voted with the majority.

20 MR. ETHERLY: Okay.

21 MS. WHEELER: Finally. And was
22 convinced by the arguments.

23 MR. ETHERLY: Okay. Excellent. That
24 answers my questions. Thank you both. Thank you,
25 Mr. Chair.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you very much.

3 Let me ask you directly, though, the
4 same question. Perhaps. Looking at the photograph
5 that Mr. Etherly pointed you to, we are now charged
6 with making a judgment. And the judgment will be if
7 we run with what you are proposing from the ANC's
8 vote that this is out of scale, it is intrusive
9 architecturally, and intrusive on the privacy.

10 How do we set the threshold? The
11 measuring point, without being accused of being so
12 subjective? Or non-objective?

13 MS. WHEELER: Sure.

14 CHAIRPERSON GRIFFIS: What was the
15 measuring point? How do you measure this photograph
16 difference? Are these smaller structures? Are
17 these further apart than what is being proposed?

18 MS. WHEELER: I appreciate the question,
19 because I think it is a very important question. It
20 is something that we do have to have, some kind of a
21 guideline that is applicable, not just to this case,
22 obviously, but applicable throughout future cases as
23 well.

24 And I find that especially important in
25 my particular considerations of issues such as this

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1 and similar ones.

2 I've thought about that, in fact, in
3 regard to this. And what I have come to, and what I
4 rely on, have come to focus on, is the scale, the
5 line of the back, the line of--some of the front--
6 yes. If you look straight on, it looks like a small
7 bungalow. But the line and the volume of the
8 structure in back are both quite different and quite
9 imposing. Imposing not in a positive sense, but
10 rather in a negative sense. In the back. In the
11 backs of the houses, in the yards of the houses are
12 really quite adjacent to each other.

13 There is not an alley separating those
14 back yards from the back yards of the houses to the
15 east. So they are right--it's a very
16 kind of intimate back yard convergence in back. And
17 this house extends well--well, what is it? It's 44
18 feet or something like that. The addition itself?
19 Forty-four feet in length, if I recall correctly.

20 Whereas the original structure, I think,
21 is 29 feet in length, in depth from the front of the
22 house to the back. I think that is the case.

23 And it simply is just--if it were a
24 large lot, with similar large lots--

25 CHAIRPERSON GRIFFIS: But isn't the

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1 proportion of the lot occupancy already given under
2 the 223 provision? We have that test. We have that
3 threshold. We don't need to come to that.

4 By the mere fact that they fall under
5 the 50 percent lot occupancy, it is deemed
6 appropriately scaled for a 223 special exception
7 case.

8 MS. WHEELER: Well, that I think--sure.
9 You can go by the figures and all of that, but then
10 you I think look at the specific example. Or the
11 specific case.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. WHEELER: And in this case, it
14 simply--subjective, I guess. One's subjective
15 statement is it feels too big. That's quite
16 subjective.

17 In terms of how you might judge it
18 against others, the line and rhythm, I think, is a
19 term that is often used. The line and rhythm of the
20 backs of the houses. This is quite different from
21 that.

22 And I think that might be far more
23 objective. If you stand in the back, this protrudes
24 much more than any other house on that street, of
25 that block.

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1 CHAIRPERSON GRIFFIS: Okay. I think I
2 understand.

3 MS. WHEELER: It extends quite a bit
4 back.

5 MR. PAYTON: If I might add a few--if
6 you are asking in a sense, what is our balance here,
7 what are we looking for--

8 CHAIRPERSON GRIFFIS: No, I'm not. Mr.
9 Etherly asked that. And actually, I don't want that
10 answer.

11 MR. PAYTON: Okay. It's just--what I'm
12 seeing is that--again, this is relying on my being
13 in the neighborhood and being in different bungalows
14 where there have been additions. There is a certain
15 scale to additions.

16 CHAIRPERSON GRIFFIS: Okay.
17 Proportionality. You don't mean scale.

18 MR. PAYTON: Proportionality. And this--
19 -it's almost harmonious throughout Takoma. And then
20 you have this glaring example. Something that is
21 completely unlike any addition I have seen to a
22 bungalow.

23 CHAIRPERSON GRIFFIS: Okay. What I
24 understand you both saying is, perhaps you are
25 agreeing with the Office of Planning, that says

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1 there is some sort of architectural design elements
2 that haven't been incorporated here that should have
3 been.

4 And that the proportionality an scale of
5 this addition is not in fitting from your
6 perception. Is that correct?

7 MS. WHEELER: Yes. Certainly the scale
8 isn't fitting.

9 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
10 last question?

11 VICE CHAIRPERSON MILLER: I mean, our
12 standards are set forth in 223.2. And I have been
13 looking at the--223.2(c) talks about scale and
14 pattern of houses and visual intrusion with respect
15 to the front.

16 And I know that what you are addressing
17 is a lot dealing with the back. And so then I look
18 to 223.2(b), and I am wondering if you would like to
19 address whether or not the enjoyment of neighboring
20 properties has been or would be compromised by the
21 addition?

22 MS. WHEELER: Certainly. May I go first
23 to (c), the point (c)?

24 VICE CHAIRPERSON MILLER: Okay. Sure.

25 MS. WHEELER: I read it again myself,

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1 just in preparation for coming up here. And I see
2 as a clause, as viewed from the street, alley and
3 other public way shall not substantially visually
4 intrude upon the character, scale and pattern of
5 houses along the subject street frontage.

6 Well, the street, alley and other public
7 way is part of the reference as well, as we have
8 heard from Cedar Street it is quite visible.

9 There is no alley. From Sixth Street,
10 it is not quite as visible. The addition.

11 In terms of (b), the privacy of use,
12 which you focused on--

13 VICE CHAIRPERSON MILLER: I'm sorry.
14 Did I miss something? Did you find some public way
15 where it was--

16 MS. WHEELER: Yes, Cedar Street, ma'am.
17 Cedar Street.

18 VICE CHAIRPERSON MILLER: Oh. Cedar
19 Street. Okay.

20 MS. WHEELER: And in terms of (b),
21 223.2(b), the privacy of use and enjoyment of
22 neighboring properties shall not be unduly
23 compromised. I feel that that's certainly an issue,
24 the privacy of use and enjoyment of the neighboring
25 properties, I feel would be unduly compromised.

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1 VICE CHAIRPERSON MILLER: I think this
2 is my last question. Can you say how it would be?
3 Or why it would be?

4 MS. WHEELER: Well, I think some if not
5 all of the neighbor, if I remember correctly, have
6 fences already up around their houses. Privacy
7 fences. And have enjoyed the privacy of their back
8 yards with those fences. This addition, which is
9 very tall, very close to the--a couple of the back
10 yards, I think three of the back yards or four of
11 the back yards, particularly, would intrude upon
12 that privacy. Would intrude upon any gathering or
13 any activity they would have in their back yard.

14 VICE CHAIRPERSON MILLER: Thank you.

15 CHAIRPERSON GRIFFIS: Anything else?

16 MR. FARMER: Just a few questions.

17 CHAIRPERSON GRIFFIS: Good.

18 MR. FARMER: First of all. Did the ANC
19 have occasion ever to vote in support of this
20 project?

21 MS. WHEELER: Yes, sir. Yes. That is
22 true. The first vote.

23 MR. FARMER: Have you actually visited
24 the site?

25 MS. WHEELER: Oh, yes, I have. Often.

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1 MR. FARMER: Have you observed the
2 actual slope in the back yard?

3 MS. WHEELER: Oh, yes.

4 MR. FARMER: And what is that slope?

5 MS. WHEELER: It's roughly ten feet.

6 MR. FARMER: From the rear of the house
7 to the fence?

8 MS. WHEELER: From the front of the
9 house to the back.

10 MR. FARMER: And in terms of size of the
11 rear yard, have you actually observed what size that
12 is?

13 MS. WHEELER: The size of the rear yard
14 from the back of the deck, as it has built now?

15 MR. FARMER: From the rear of the house
16 to the fence?

17 MS. WHEELER: Well, you need to describe
18 the rear of the house. But what I see is the
19 structure of the deck. Or what I saw when I was
20 there last, anyway, was the structure of the deck,
21 the back of the deck.

22 MR. FARMER: Let me clarify that, since
23 there is no rear deck on the existing addition.

24 MS. WHEELER: Okay.

25 MR. FARMER: From the east elevation

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1 wall to the rear fence, approximately what is that
2 distance?

3 MS. WHEELER: I can't give you a figure
4 now. I didn't take my take measure out, sir. But
5 it is--it feels very close.

6 MR. FARMER: Okay. No further
7 questions.

8 CHAIRPERSON GRIFFIS: Anything else?

9 MR. FARMER: No further questions.

10 CHAIRPERSON GRIFFIS: Okay. Ms.
11 Ferster?

12 MS. FERSTER: No.

13 CHAIRPERSON GRIFFIS: No questions?

14 MS. FERSTER: No.

15 CHAIRPERSON GRIFFIS: Good. Thank you
16 both very much. Let's move ahead, then. Ms.
17 Ferster, are you ready?

18 Can I just get an indication of those
19 present here today that are going to provide
20 testimony? Just see a show of hands?

21 (Show of hands.)

22 CHAIRPERSON GRIFFIS: So we have about
23 one, two, three, four, five, six or so. About half
24 a dozen. Okay. Let's move ahead then.

25 Do you mind? We'll get rid of the

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1 table. You ready?

2 MS. FERSTER: We are going to have a
3 slide show presentation for you, and I hope there is
4 a way to dim the lights when we are ready.

5 We are going to have three witnesses.
6 And while we are setting up with the slide show, I
7 would like to make a brief opening statement.

8 Our three witnesses are Joe Harris, who
9 is going to be presenting a slide show, and I have
10 copies of the power point that I would like to hand
11 out to you now.

12 Loretta Neumann and Anthony Giancola
13 will also be testifying. Mr. Giancola will be
14 talking about some of the lot occupancy
15 calculations, and he is going to use part of Mr.
16 Harris' power point, so he is going to--Mr. Harris
17 is going to stop for a moment, and Mr. Giancola is
18 going to give his testimony, and then Mr. Harris is
19 going to finish.

20 And then we will conclude with Loretta
21 Neumann, who is going to discuss some of the issues
22 that are unique to the Takoma Park Historic
23 District, and the scale and visual impact of the
24 addition on that.

25 Let me just hand out to you now, our

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1 exhibits.

2 (Pause.)

3 MS. FERSTER: Our testimony will show
4 today that this addition is one and a half times the
5 size of the original structure. It will add up to
6 eight bedrooms, and is grossly out of scale with the
7 dominant scale of houses within the Takoma Park
8 Historic District.

9 The houses in the historic district we
10 will show have additions. None of the houses in the
11 historic district will show--have additions that
12 exceed the maximum lot occupancy of the lots or the
13 size of the original house.

14 The total footprint of this house, if
15 the addition is permitted, will be comparable to the
16 largest Victorians in the historic district, which
17 the Applicant has highlighted in his photographs,
18 all of which are on very large lots, and all of
19 which possess an architectural significance that
20 cannot be replicated in a house of this type and on
21 a lot of this size.

22 For that reason, the Historic
23 Preservation Review Board has refused to approve
24 this addition.

25 We will also demonstrate that the new

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1 addition, which will introduce 14 new window
2 openings, eight of which are above the basement
3 level. It will intrude substantially on the
4 neighboring properties and will be visible from
5 Cedar Street and other public ways.

6 The application is opposed at every
7 level of government. The Office of Planning, the
8 Historic Preservation Review Board, and the Advisory
9 Neighborhood Commission are all on record in
10 opposing the application.

11 Due to the weather today, and the fact
12 that this is the third time this case has been
13 before the Board, many of the neighbors who wished
14 to appear were not able to appear in person. But
15 they have submitted letters for the record, as well
16 as signed petitions, which are also in the record.

17 In addition to the neighbors, the record
18 includes records from D.C. Council members Fenty and
19 Brown.

20 All told, we believe that our case will
21 show that this application fails to meet the
22 criteria of Section 223 and should be denied.

23 And now I am going to turn to Mr.
24 Harris, who is going to show his power point.

25 (Pause.)

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1 MR. HARRIS: Is this visible?

2 (Audience indicates yes.)

3 MR. HARRIS: Okay. Great. Thank you.

4 My name is Joseph Harris. I am a resident of 6915
5 Sixth Street, N.W., which is the property directly
6 south of the Applicant's property.

7 I am here today, and I should say I am a
8 34-year resident of the neighborhood, a 33-year
9 resident of the 6915 property.

10 I'm here today not only to represent
11 myself as an interested party, but also the 32-plus
12 residents of the contiguous block and the opposite
13 streets, who have unanimously opposed this exception
14 request and the size of the addition.

15 We recognize that this is a unique
16 situation, because it is an after-the-fact approval.
17 It does give us the opportunity to look at the
18 actual impact of the structure. So we welcome that
19 opportunity before you.

20 We also recognize that the focus of this
21 particular meeting is on Section 223.2, and the
22 various criteria, and therefore the presentation is
23 organized around addressing each of the criteria in
24 that, in 223.

25 I do want to start by saying that there

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1 is an issue, and it has been discussed extensively
2 so far, about the visual intrusion on the character,
3 scale and pattern of houses. What makes this a
4 special case is that the particular block that this
5 house is located on, and the house itself, is part
6 of the Takoma Historic District that was established
7 in 1980.

8 Some of the characteristics, we will
9 show through some of the slides--many of these are
10 older houses, but they vary in size. Some of them
11 being small Victorians, some of them being
12 bungalows. In fact, we have submitted to you an
13 article that recently appeared in the "Takoma Voice"
14 that talks about the difference between what are
15 called "four squares" and I will demonstrate them as
16 we are talking. Four squares, Victorians, Victorian
17 era houses, and then bungalows.

18 In all cases, it is a neighborhood that
19 is predominantly single family dwellings. As has
20 been indicated previously, trees and streetscapes
21 are important, but another element of the historic
22 nature of our neighborhood are the large and
23 spacious back yards, that we think are critical to
24 the character of the neighborhood.

25 All the houses surrounding the current

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1 addition have--I'm sorry, with the exception of one-
2 -have had some kind of addition over the 25 years of
3 the historic designation. So they all have been
4 subjected to review by Historic Preservation and
5 approval by Historic Preservation.

6 To get an understanding--because I
7 think--oops, sorry. Let me go back. To get an
8 understanding of what we are talking about, this
9 provides a little bit of an understanding of the
10 streetscape.

11 The house that--6919 is located at the
12 red dot. The three or four houses that we are going
13 to be looking at is my house at 6915, which is
14 directly south, and the three houses that front
15 Cedar Street, which also touch the property
16 directly.

17 But this is an illustration of the
18 different types of houses that are prevalent in the
19 neighborhood. The "F" stands for the four square
20 designation, "v" in this case--a small "v" is a
21 smaller Victorian or Victorian-era house, a large
22 "V" is a larger Victorian house, such as--there were
23 several references to 520 Butternut Street. That's
24 this house right here, which is considered a large
25 Victorian, and next to it on one side is a bungalow,

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1 and on the other side is a four square.

2 So, this gives you an understanding, and
3 there were--by the Applicant there were pictures
4 provided along Fifth Street, and I believe some
5 along Butternut Street as well.

6 CHAIRPERSON GRIFFIS: Actually, I am
7 going to ask you to get right into the substance of
8 your piece. You have 40 pages in this power point.
9 We don't have all afternoon. We have another large
10 case this afternoon.

11 MR. HARRIS: No problem. No problem.
12 There has been reference in the information provided
13 by the Applicant. There were a series of houses
14 that were shown as comparable to the bungalow
15 itself, the 6919 bungalow.

16 These are actual bungalows that are in
17 locations between a block and a block and a half of
18 the existing structure. And only one of these
19 bungalows, 6909 Fifth Street, which we will be
20 looking at in a minute, has an actual addition as
21 well.

22 But let's take a look at this issue of
23 visual intrusion in terms of the back yards of some
24 of the houses, and what the other additions look
25 like.

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1 Obviously, since I am doing the show, I
2 get to start with my house. This house is located
3 at 6915 Sixth Street. This is the front of the
4 house. It's what's called a double-gambrel, but it
5 actually looks more like a barn.

6 If you look at the back, this is an
7 approved addition that was put up in 1989. It's
8 approximately 12x16 feet, it is a large--it extends
9 the kitchen and then opens to a sunroom.

10 There is also a deck to the left over
11 here, and a small deck in the upper area as well.

12 As we move to the other side of 6919, we
13 see 532 Cedar. This is the house that is at the
14 corner of Cedar and Sixth Streets, N.W. This is a
15 pure four square house. And it has one of the
16 largest additions in the contiguous block and in the
17 neighborhood.

18 It actually has a two-story addition,
19 the top story being one bedroom, the bottom being a
20 kitchen extension--I'm sorry--a dining room
21 extension, and then there is this large porch area.
22 The 6919 would be approximately over here, in the
23 context of this house.

24 It should be noted that the two
25 properties, this house and the one next to it, seen

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1 at part of their back yard to become the lots that
2 were sold and I guess incorporated into the 6919
3 structure. That's why it was built approximately 20
4 years after the other houses on the block.

5 If we move to the next house, which is
6 530 Cedar Street, this is a house that has more of
7 what they call a farm appearance, but there is no
8 addition on this house. This is the original back
9 yard. There has been an added deck, and there is a
10 sleeping porch on the top floor which I think is
11 enclosed now, I believe.

12 But it hasn't had any addition.

13 The other house, which is one of the
14 houses that was viewed from the attic that you were
15 making reference to, is located at 528 Cedar. It is
16 also a four square. And its addition consists of
17 two separate small structures, one an extension of
18 the kitchen, the other the creation of a sunroom.
19 It also has an extensive upper deck and lower deck
20 with a hot tub at the lower deck area.

21 The references to the two houses--this
22 is the other house--so you can see these houses sit
23 next to each other, with about 10 or 15 feet space
24 between the two.

25 Since those are all larger houses, we

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1 wanted to take a moment to show the closest bungalow
2 with an addition.

3 This is a bungalow that is exactly one
4 block over on Fifth Street in the same location. In
5 this particular addition, the owners used a kind of
6 a step-down approach to keep it from towering out
7 over the neighborhood. And it's one large sunroom,
8 again, approximately 15x30 feet.

9 So, those are the types of houses and
10 additions that surround 6919, and then this is the
11 view of 6919, the structure itself.

12 Some of the features of the house, there
13 have been some questions about the size of the
14 house. The information on this was taken from the
15 original plans that were submitted for approval to
16 DCRA, so they reflect the drawings at the time that
17 they were submitted to DCRA.

18 The original structure is about a 29
19 foot square structure. The addition itself, and you
20 can see the original structure over here, part of
21 the original structure, excuse me. That is actually
22 the bathroom that was referenced in the attic area.
23 The bathroom window.

24 The structure itself at the addition is
25 one and a half times the length of the original

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1 house and is exactly as wide as the original house.

2 The basement--and there has been some
3 discussions about the number of rooms--so I won't go
4 into that. But in the original plans, these are the
5 three major windows. This is the view from the
6 attic. Over here are the two, I believe, windows
7 here and here that views are shown from--panoramic
8 views are shown in the submission by the Applicant.

9 But as you can see, from our
10 interpretation, what we have here is the equivalent
11 of a house grafted onto the back of a bungalow that
12 has the potential to house anywhere from six to
13 12 people.

14 I am going to pause for a moment because
15 there have been some questions about scale and the
16 like, and I am going to introduce Tony Giancola, who
17 is going to talk about the dimensions of the various
18 properties reflected in this particular slide.

19 Tony?

20 MR. GIANCOLA: Good afternoon, everyone.
21 Tony Giancola. I reside at 528 Cedar Street. It
22 was one of those houses you saw, the one with the
23 hot tub, I might add.

24 But nonetheless, my wife and I have
25 resided at this address for over 25 years. Just for

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1 your information, my education and experience--I am
2 a civil engineer, and a licensed engineer in the
3 District of Columbia.

4 As you can see, the primary focus of
5 this chart is to give you some sense of scale. And
6 if you look at the house in question, 6919, you can
7 get some indication of the lot coverage.

8 Now, I guess there has been some
9 discussion about the percent really is, based on
10 what you are measuring. I know Planning had a
11 different number than ours. And the Applicant had
12 another number.

13 But clearly it's well over 40 percent
14 occupancy, whether it's 42, 43 or 44, I think.

15 That is not the significant point here.
16 The significant point is the amount of lot coverage.
17 And as you can see here, the adjoining pictures that
18 Joey Harris just showed you, indicate that typically
19 the rest of the houses occupy anywhere from 23 to
20 29 percent of the property.

21 I think it's also important to note
22 that--let's talk about the slope a little bit. I
23 have actually taken the drawing, or got the
24 topographical survey that was just given to us, and
25 marked it up, giving an indication of what the

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1 existing building is in green, and the addition in
2 yellow.

3 But if you actually read the dimensions
4 or the topo, you get a sense from the existing
5 building, the existing 6919 building. It does drop
6 ten feet to the rear of the property.

7 Now, as you go to the end of the
8 addition, it's about three to four feet. If you go
9 to the edge of my building, or my house, at 528
10 Cedar, it's about five to six feet.

11 So there is a drop. The topo,
12 significant drop, I think, is from the existing
13 building to the back of the lot line. And that's
14 about ten feet.

15 So what in essence you get is an exposed
16 basement, which when you look at it, looks like a
17 floor. And so if you look at it from my property at
18 the site, it looks like it's a floor. The first
19 floor, followed by the main floor, which is to me a
20 second floor, followed by an attic, which to me is a
21 third floor.

22 That's the visual that I see. I sit in
23 my back yard. I sit in my back deck. I sit in my
24 back sunroom. I sit in my upper office. You know,
25 I actually stand in my front yard and I am visually

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1 assaulted by this huge structure. So it does in
2 fact impact the enjoyment and pleasure I get from my
3 property and particularly my rear yard and my rear
4 deck, and the rear of my house.

5 So it does impact on me. So what I am
6 going to do, I'm going to stop there. That's all my
7 part of it is, but I'm going to just bring this up
8 to the front, and you can get a sense of the scale
9 and the dimension of this drawing, this building or
10 this addition.

11 CHAIRPERSON GRIFFIS: Do you have a copy
12 of that, or is that the only one you have?

13 MR. GIANCOLA: That was the only drawing
14 I've got of the topo, but clearly it won't take long
15 to quickly look at it to get a sense of it.

16 CHAIRPERSON GRIFFIS: Right. That's not
17 my concern. You won't be getting that back. It's
18 in the record. We're going to need to make copies
19 of that.

20 MR. GIANCOLA: Doesn't take much to
21 highlight in what I basically did. There's nothing
22 in there about--except highlighting of the existing
23 drawings. To give you a sense of scale.

24 CHAIRPERSON GRIFFIS: Sure.

25 MR. GIANCOLA: Joey?

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1 MR. HARRIS: Okay. Moving on, we
2 focused the first part of our presentation on the
3 issues of scale and character and the like.

4 But really, the next part we wanted to
5 really take a closer look, is the adverse effect on
6 use of any adjoining property, and that relates to
7 privacy, light and air as well.

8 The issue that we face, and Tony has
9 raised, is that this is what a neighbor sees over a
10 six-foot privacy fence. Although there has been a
11 proposal here today for the elimination of the deck,
12 we will have three large patio doors looking out
13 over the neighboring houses. We have these windows
14 which at ground level may not be visible as you look
15 from inside the structure, but one thing that
16 happens is that, as you stand at the houses that are
17 below in grade, you look up to these windows.
18 Therefore they are visible from other properties as
19 well.

20 We also have a problem along the south
21 side of the house that has not been brought up
22 previously. And I am going to talk about that in a
23 few minutes. But that issue is the elimination of
24 the north passageway by the attachment of the garage
25 to the house itself has created a 73 foot long

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1 passageway that is eight feet wide along the south
2 side of the property. That is the only entrance and
3 egress to the back yard of the property, if this
4 construction is allowed to stay as it is.

5 It's eight feet wide. It's 73 feet
6 long. This part of it that you are viewing is the
7 44 foot addition. This again is a six foot privacy
8 fence, which gives you an indication of what it
9 looks like from the other--standing on the other
10 side.

11 Specifically, though, let's talk about
12 the issue of privacy of use and enjoyment of
13 neighboring properties.

14 This is what you see from 528 Cedar
15 Street, when you stand in the lower back yard. This
16 is exactly what you see.

17 True, there are some Leland cypresses
18 along the way here that block a portion along the
19 way. But they also don't block the whole way, and
20 because they are Leland cypresses, they are
21 evergreens, but the owner has indicated that the
22 lifespan is about five additional years, because
23 they are infected with rust disease, which is
24 starting--there is a set of them along the back of
25 the yard that died recently.

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1 This is what it looks like from the
2 window that Tony was making reference to on his
3 second floor. This is what it looks like from
4 inside the kitchen and the sunroom. Again, we are
5 shooting through a glass window and so apologize
6 that it is not a totally clear picture, but it does
7 give you a sense of what the size of the structure
8 is, and it does show you that there is no coverage
9 of foliage, summer or winter, along a major portion
10 of this back view.

11 Moving to the next property, which is
12 not 530 Cedar, this is the property that probably
13 has the biggest issue with the view of the structure
14 into the back yard of the property. This is the one
15 that you saw a shot from the discussion of the first
16 and third window was looking into this property,
17 approximately standing--in this picture we are
18 standing about halfway into the back yard of the
19 property.

20 But again, six foot privacy fence,
21 second floor bedroom window, view from the back
22 deck--this is a deciduous tree, so it will lose its
23 coverage within the next two to three weeks.

24 Because the next property over--we are
25 not going to make an issue of the next property

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1 because it abuts the front part of the structure,
2 which already exists, so I am going to swing all the
3 way around now to Sixth Street, to the 6915, which
4 is directly south of the property.

5 Again, this is the backyard view over a
6 six foot privacy fence, standing right at the
7 property line. This is the view from inside our
8 kitchen and sunroom. And this extends to the end of
9 the property as well.

10 These are the windows in which the
11 question was asked, were there any views provided
12 from those windows. This is what it looks like from
13 our second floor bedroom window.

14 The issue of light and air availability,
15 although it has not been discussed, it does have
16 relevance from our perspective for the one property,
17 the 6915 property, which happens to be our property.

18 The issue again being this is the south
19 property line here and here, that we have the 73
20 foot long tunnel. It's eight feet wide, and there
21 is a four foot overhand.

22 So that along would say that there are
23 issues in the morning of sunrise issues around the
24 blockage caused by the four foot overhand. This is
25 what it looks like from behind the 6919 property.

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1 This is actually done by leaning over the fence of
2 my property. So this is not shot from the exact
3 property.

4 This is what it looks like when you
5 stand on my back porch or back deck. And extends to
6 the whole length of this garage area that we have
7 here.

8 So, indeed, at least for the 6915
9 property, the issue of light and air is also--we'd
10 like to raise as not meeting the criteria.

11 The issue of the public way, which is
12 discussed under 223.2(c), although views have
13 already been provided that tend to show there is no
14 impact, this is what we see. And this is what we
15 see actually in the wintertime. This is what we
16 will be seeing in about a week or two.

17 This is standing on the sidewalk at 528
18 Cedar Street. And this is now standing between the
19 properties of 530 and 532 Cedar Street. So you can
20 see that--and by the way, these are the windows that
21 were referenced. This is a deck. This is where the
22 proposed deck or now--whatever. I'm sorry. I don't
23 remember the term, the small ledge.

24 In any case, so you can see some--and in
25 a few minutes, I am going to explain why there is a

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1 discrepancy between the two shots that were
2 provided.

3 Because graphical representation is an
4 issue, and that's why we wanted to take a moment to
5 talk about that. You have seen already a southwest
6 view. This is an actual scan view of the photograph
7 that you were provided earlier by Mr. Nunley, of
8 what was referred to as the rear yard toward the
9 southwest. There's the title down there. It's
10 actually toward the southeast.

11 But what we have done here is added a
12 reference arrow, to show you, this is what the
13 Applicant looks at when he sees, standing in his
14 back yard, looking out toward the property. This is
15 what the other property--it's not a bad view. But
16 this is what the property owner views. Same
17 reference arrow.

18 If we move to the northeast, similarly,
19 this what the Applicant views. This is what the
20 property owner standing at his or her property line
21 views.

22 Again, there has been discussion about
23 elevation. These pictures were taken by just
24 standing there and taking the pictures. So, the
25 issue of elevation shows that the general decrease--

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1 I've made reference to the attached garage, and the
2 fact that this side is now blocked, so that the
3 entrance and exit are only on the left side over
4 here.

5 This is the area from which those attic
6 panoramas were provided. This is the area where the
7 two shots were provided into 528, 530. No shots
8 were provided from any of these three large doors.

9 Now, this is an interesting view,
10 because this shows the view from the first floor.
11 This is the one that was from the last window, what
12 was referenced as the last window, looking into the
13 neighbor's yard.

14 This what you see again when you stand
15 in the neighbor's yard and look in the opposite
16 direction.

17 Again, the issue is both, from our
18 perspective, is both privacy and enjoyment of use.
19 This kind of negates any use of this whole back yard
20 area, without not only seeing this addition, but
21 being seen by any of the windows in the addition.

22 And if any of the windows are removed,
23 the addition still stays. So, that view stays
24 permanently.

25 Graphical representations have been an

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1 ongoing problem for us in trying to determine what
2 is going on and what was intended with this
3 property. These are some views that were originally
4 submitted to HPRB and with the original zoning
5 application to DCRA.

6 As you can see from these original
7 views, this was the grade that was proposed. This
8 was a fairly accurate representation of the house,
9 but when we got to the back yard, we saw what looked
10 like a simple version of the front yard. And that
11 was the intention, or the proposed intention until
12 this is what we actually see.

13 Now, if one were to follow, and I think
14 Commissioner Wheeler was referring to the question,
15 are you going to fill to grade, if you were going to
16 fill to grade, that would be filling to grade.

17 Frankly, we are baffled by the statement
18 that it has to be four and a half feet above grade,
19 because, as you can see, the entire addition is
20 above grade. It really is a basement first floor
21 addition.

22 Now, when we get to the side views, now
23 these are the side views that precede the recent
24 submission as of yesterday. This is the submission
25 that was provided.

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1 And throughout the original discussions
2 with HPRB and DCRA, there was no acknowledgement of
3 any grade. And even to the original vote before the
4 ANC, there was never an acknowledgement of any
5 change in grade in the property.

6 The submission for the July hearing
7 included the first acknowledgement of any change in
8 grade, and a shortening of the deck. But the newest
9 now has the addition of the spiral staircase, which
10 by the way, would be visible from Cedar Street as
11 well, and will probably be of some concern to HPRB,
12 based on the fact that there are no spiral
13 staircases on any of the other Victorian houses in
14 the neighborhood.

15 There are also problems with views, as
16 mentioned earlier. This is an interesting example
17 of what we would call misleading evidence.

18 The picture taken and submitted by Mr.
19 Nunley, on behalf of the Applicant, talks about this
20 view toward the addition, and there is some
21 discussion of whether the trees are deciduous or
22 not. But if we look closely at this view, this view
23 is taken by standing in front of a dogwood tree in
24 the front yard of 528 Cedar.

25 If you--and I want to call your

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1 attention to the corner of this dogwood tree,
2 because that's it right over here. If you step to
3 the left, approximately six feet, and look in the
4 same direction in the summertime, when there is
5 deciduous tree cover, that's what you see.

6 If you stepped to the left again in the
7 wintertime, when there is no deciduous tree cover,
8 and you see a very similar--you see the exact same
9 part of the dogwood tree, this is again what you see
10 without deciduous tree cover.

11 So, from our perspective, it is visible
12 from a public way. And this was of great concern to
13 HPRB when it was not previously disclosed to them,
14 that there was a view from Cedar Street as well.

15 This issue about same side yard
16 finishes, and I want to clarify that understanding
17 Mr. Nunley's testimony today, he did clarify that
18 the reference to the same side yard finish was not
19 the side yard itself, but actually the stucco finish
20 on the structure itself.

21 We took the statement "same side yard
22 finish" to mean he was referring to the same type of
23 alley way, which we wanted to indicate was not an
24 accurate representation because in this case you
25 have again what is the equivalent of an eight foot

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1 by 73 foot long alley way, with the next house ten
2 feet over. In this representation, it's actually 21
3 feet by the length of the house, which is 32 feet,
4 and the distance between the two houses--by the way,
5 this is that 530 Butternut house that has been--I'm
6 sorry--520 Butternut house that has been referenced
7 repeatedly in terms of whether it has a similar
8 addition.

9 This is that house on the other side of
10 the house. This is a four square, by the way, on
11 the--which is a corner house.

12 But as you can see, there is really no
13 comparison. But again, apologies if indeed the
14 reference to the same side yard was actually the
15 same house finish on the side.

16 Another area where we have some concern,
17 and I think it has been brought up before, is the
18 reference that this house has a similar addition. I
19 can say to you, as a 35 year resident of the
20 neighborhood, and this house has been vacant for
21 approximately 15 to 20 years, strangely enough,
22 there is no addition to this house.

23 This is an original large Victorian. It
24 is sitting next to a bungalow. The only thing that
25 has been done to it is that this is an enclosed

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1 sleeping porch. Many of the older Victorian houses
2 have sleeping porches, which over modern times have
3 been enclosed to become, you know, places where
4 people can store plants, nurseries and the like.

5 So, this is a two story, and even if one
6 were to count it as an addition, it's 28 feet wide,
7 which is the width of the 6919 bungalow, but it's
8 only nine and a half feet long, again, as opposed to
9 44 feet long. The house is probably six to eight
10 times the size of that little sleeping porch.

11 And again, the addition that Mr. Taylor
12 is proposing is actually one and a half times the
13 size of the original house.

14 But this problem with graphical
15 representation. There has been mention of a
16 hearing. There was actually a hearing last September
17 in front of HPRB to see the two properties together,
18 and to raise the garage so that the house could
19 become in compliance.

20 When the evidence was presented--

21 CHAIRPERSON GRIFFIS: It doesn't bear a
22 lot of jurisdictional importance for us to see what
23 HPRB's comments were. Rather, and I don't want to
24 get too far into the substance of what they are
25 actually commenting on.

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1 It's in the record. We can read that.
2 Why don't we move to the next slide.

3 MR. HARRIS: Okay. No problem. Well,
4 just very quickly. They are concerned about the
5 accuracy of the original presentations that they
6 originally approved.

7 CHAIRPERSON GRIFFIS: The original
8 presentation to HPRB?

9 MR. HARRIS: To HPRB.

10 CHAIRPERSON GRIFFIS: Okay. Let's move
11 on.

12 MR. HARRIS: So, in summary, we are
13 concerned because in the 25 year history of Historic
14 Takoma, all additions have conformed to both zoning
15 and historic regulations. This is a first. A house
16 that is intentionally or unintentionally
17 nonconforming to those regulations.

18 We view the addition--and we hope that
19 the graphics we have shown you indicate that we
20 consider this to be an aberration. It sticks out--
21 it's like viewing a battleship in the back yard.

22 We are also concerned that it does--and
23 we think we have shown by the graphics that we have
24 shared--that it does negatively impact on the air,
25 light and privacy of use and enjoyment of all the

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1 abutting properties. And that not only are all the
2 abutting properties owners, but all the owners on
3 the contiguous block on the opposing streets are
4 representatives, neighborhood organizations that you
5 will hear testify, all agree that this just does not
6 fit with our neighborhood, and with the types of
7 houses that we have had previously.

8 We welcome bungalows. We have lots of
9 bungalows. What we don't welcome is trying to turn
10 a bungalow into a large house. If you want to drive
11 a Humvee, you don't start by trying to build it on a
12 VW chassis. And we feel that's what the owner has
13 attempted to do here.

14 We also are concerned about the
15 outstanding issues about the adjoining of the
16 properties and the like, and that they be considered
17 so that any decisions made be made in light of the
18 other required regulatory processes that have to
19 take place.

20 That's it.

21 CHAIRPERSON GRIFFIS: Thank you very
22 much. Ms. Ferster?

23 MS. FERSTER: Mr. Hailes is going to
24 briefly speak to privacy.

25 (Pause.)

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1 MR. HAILES: Yes. Good afternoon.
2 Excuse me. My name is Larry Hailes. I live at 530
3 Cedar Street, N.W., and I wanted to speak briefly on
4 the privacy issue and the view from the street.

5 A lot of the pictures that you saw
6 happen to be from my back yard. And you can clearly
7 tell that from that vantage point, when you look
8 over the fence, the six foot privacy fence, you
9 basically see the entire unit.

10 Also, what you see is the--there has
11 been a lot of talk about the cover. And as you can
12 clearly see there is one tree there, and of course
13 when the seasons change, the cover is no longer
14 there.

15 So, from my perspective, and from the
16 vantage point of my house, what happens is that--
17 from the rear of my house, there is the deck,
18 there's the back yard, as you see. And then
19 immediately on the other side of the fence is the
20 addition.

21 And that addition provides a clear view--
22 --as stated earlier, it literally overwhelms the back
23 yard. It rises to a level where it's clearly
24 visible, and it clearly peers down over the rear of
25 my house.

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1 In addition to that, it provides a
2 direct line of sight--one of the things that I am
3 most concerned about, is that not only does it
4 provide a view of the back yard and the deck, it
5 also provides a direct line of sight into the rear
6 of my home.

7 The entire back of the house on the
8 upper level, there is my daughter's bedroom, my
9 son's bedroom, and on the lower level, is the
10 kitchen and the dining room. And obviously all of
11 these rooms have numerous windows. And again, the
12 addition there, when I look out any of the windows,
13 or when I stand out on the deck, there certainly is
14 a clear line of sight from my vantage point to the
15 addition that never existed before. None of the
16 other homes, obviously, has anything like that.

17 What you typically saw was the
18 neighbor's yard, as you looked out. You didn't see
19 any--you did not have any view into a neighbor's
20 home.

21 So that's the immediate concern of mine,
22 is that it literally removes what privacy we have
23 enjoyed for the past nine years in the yard, on the
24 deck, as well inside of the home. Those things are
25 all compromised by this addition.

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1 The only other point I wanted to make
2 was the view from the street. You saw the pictures
3 that were present. And what happens is that--of
4 course, the homes are detached. And so between 528
5 and 530, which is my address, and between 530 and
6 532, which is the neighbor's address, as pedestrians
7 walk the street, as they pass by, they can very
8 clearly see the addition rising up in the background
9 there. It's clearly visible. It's even--as Mr.
10 Harris' presentation showed, it's clearly visible
11 during the winter and even more so during the summer
12 when all the leaves are off the trees.

13 So there is a clear visual impact there,
14 in addition to the privacy issue. So those are the
15 points that I wanted to make. Thank you.

16 CHAIRPERSON GRIFFIS: Thank you very
17 much. Other witnesses, Ms. Ferster?

18 MS. FERSTER: Yes. Ms. Neumann.

19 MS. NEUMANN: You'll be happy to know
20 that Joey has said--Mr. Harris has already said so
21 much, and better than I probably would, I won't
22 repeat it. Except to reemphasize that in our
23 neighborhood, and I have lived there over 30 years,
24 and was part of helping it become an historic
25 district, we have not encountered this before.

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1 We have a lot of battles, and we have a
2 lot of fights, but nothing that's been quite on an
3 individual residential property the way this one has
4 been.

5 I live in one of the really large
6 houses. I live--and it's not one they cited--but at
7 the corner of Piney Branch and Blair Road. I have
8 almost an acre of land. I have a three story house,
9 and it is a full three stories, plus basement. It
10 is huge.

11 And I live next door to a house that is--
12 --I think something about the--you asked about those
13 two houses that were together and whether people
14 could see in them, because the windows were like
15 that.

16 Well, some of that is in--both in the
17 placement of the house, as to whether you are kind
18 of forward or backward from the next house over, and
19 it's also how close you are.

20 I am also a photographer, and that shot
21 that you showed, at least--that's the first I have
22 seen it. But when you held it up, I thought, oh,
23 yes, somebody with a zoom lens shot that, because it
24 foreshortened it, and made it appear that the two
25 houses were closer together than they are.

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1 The house next to my house, I'm this way
2 and they are back a bit, when I go to my back yard,
3 that house does loom over me.

4 Now, that is an original equally big
5 house to mine. I would never say they needed to
6 tear down that house because my back yard is so
7 exposed there.

8 But what it has made me is very
9 sensitive to the issues they are raising. The
10 privacy issue is very real. You have this sense
11 that people can look, you can't have friends in your
12 back yard without knowing they are going to be
13 looking at you. There is no way I can shield
14 myself.

15 I accept that because I live in an
16 historic house. The house next door is historic.
17 That is the way--those were historically.

18 But to artificially create a situation
19 where you have allowed somebody who has done--in
20 fact egregiously made factual errors in their
21 representations before. And then to, in fact, give
22 an imprimatur to something after the fact. They've
23 built this--it's almost done. You can see it. They
24 did this illegally in violation of the zoning. To
25 prove it now, says to the rest of the community, and

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1 frankly, to the rest of the city, oh, well. I can go
2 ahead and build it because they are not going to
3 make me tear it down. I might get a slap on the
4 hands.

5 I don't know what kind of penalties you
6 impose, but I do not think it is fair, and I think
7 it is egregious to, especially in an historic
8 district, to even consider this.

9 So I do hope--my recommendation here is
10 that you deny the application. And I think the
11 owner should be required to remove the portion of
12 the new construction that is in violation of zoning.
13 And if they want to have an addition, they go back
14 to HPRB and the get it handled that way, where the
15 design issues and other things can be adequately
16 dealt with.

17 Thank you very much.

18 CHAIRPERSON GRIFFIS: Thank you.

19 MS. FERSTER: Do you have written
20 testimony as well?

21 MS. NEUMANN: Yes, I have written
22 testimony. You should have it in there.

23 CHAIRPERSON GRIFFIS: Does the Applicant
24 also have a copy?

25 MS. NEUMANN: I'll be happy to give it

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1 to him.

2 CHAIRPERSON GRIFFIS: Anything else?

3 (No response.)

4 CHAIRPERSON GRIFFIS: Ms. Ferster, any
5 other witnesses?

6 MS. FERSTER: No. We have no other
7 witnesses for the parties. I believe there's
8 persons in opposition.

9 CHAIRPERSON GRIFFIS: Indeed. Good.
10 Let's move right ahead. Any questions from the
11 Board?

12 VICE CHAIRPERSON MILLER: I have a few
13 questions for Mr. Harris.

14 Just clarification. You talked about
15 the elimination of the passage way by the attachment
16 of the garage to the addition. And I am wondering,
17 what is the significance of that with respect to
18 223.2? Were you making a point?

19 MR. HARRIS: The point is again related
20 to what I believe is enjoyment of use and privacy.
21 In essence, my house is--borders on the south
22 passage way now that is the only way to come in and
23 out of the back yard.

24 With the number of bedrooms that are
25 anticipated, and with the potential for boarders and

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1 the like, which the owner has indicated to me was
2 his intention, I would be concerned now about foot
3 traffic up and down on the property line on a
4 regular basis, from privacy use.

5 From a light and air point of view, it
6 has created a 73 foot long tunnel, that is half
7 covered, that therefore creates additional shade
8 into my property, and I think as well affects the
9 fact that there is no air flow now the northern side
10 of my property.

11 CHAIRPERSON GRIFFIS: Anything else, Ms.
12 Miller?

13 VICE CHAIRPERSON MILLER: Also, with
14 respect to the four foot overhand, you made
15 reference to some type of blockage and I wasn't sure
16 what--

17 MR. HARRIS: Similarly, the sun--that
18 runs east to west. The sun rises on the--from the
19 east and therefore that four foot blockage way has
20 created additional shade.

21 There are trees there as well, but one
22 of the times where we looked for the sun, is when
23 those trees lose their leaves and we have the sun
24 coming into the house, and that's why we created the
25 sunroom and the light is to capture as much of that

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1 energy, especially now with oil prices, and gas
2 prices, we want to take advantage of getting as much
3 light into the house as possible.

4 Again, that we believe creates a problem
5 for us and for our property.

6 VICE CHAIRPERSON MILLER: Okay. But
7 suppose--you are saying both of these things have
8 affected the shade in your yard, but you can't
9 really quantify it, can you?

10 MR. HARRIS: No, I have not done the
11 same type of--like Mr. Nunley, it was just based on
12 observation.

13 VICE CHAIRPERSON MILLER: Okay. And my
14 last question is, I think you all might have said
15 that in 25 years, there has never been something
16 like this. And they have all complied--all
17 additions have complied with zoning and historic
18 preservation.

19 Does that mean that none have sought
20 special exception, even? They have all been just
21 matter of right?

22 MR. HARRIS: Yes. That is my
23 understanding.

24 VICE CHAIRPERSON MILLER: Okay.

25 MR. HARRIS: At least my memory. I

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1 don't know of any other request for an exception in
2 the immediate vicinity within the Takoma Historic
3 District.

4 VICE CHAIRPERSON MILLER: Okay. Thank
5 you.

6 CHAIRPERSON GRIFFIS: Anything else?
7 (No response.)

8 CHAIRPERSON GRIFFIS: Cross?
9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well. Okay.
11 Thank you all very much.

12 Let's go to persons. Do we have persons
13 in support of the application?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Testimony of
16 persons in opposition, let's fill the table. We had
17 about six or so, some of which went into the
18 witnesses, but let's fill--we've got four
19 comfortable chairs at this point.

20 (Pause.).

21 CHAIRPERSON GRIFFIS: Good. Any others?
22 (No response.)

23 CHAIRPERSON GRIFFIS: Very well. Good
24 afternoon.

25 MS. SMITH: Good afternoon. My name is

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1 Nancy Smith. I live at 604 Aspen Street, so I am
2 not directly impacted by this.

3 CHAIRPERSON GRIFFIS: Sure.

4 MS. SMITH: But I am within the historic
5 district. My husband and I have lived there for 37
6 years. So, probably longer than anybody else here.
7 And we are so strong in opposition to this
8 application. We believe it fails to meet the
9 standards. It negatively affects the community, and
10 he received his initial approval for his
11 construction by knowingly presenting the relevant
12 agencies with false information.

13 Given the massive size of the addition,
14 and the Applicant's stated intention to have
15 tenants, we suspect that the property will not be in
16 conformance with R-2-B zoning, either.

17 We have one of the larger four squares
18 in the neighborhood, and we have six bedrooms. We
19 have raised nine children in that house.

20 Why anyone would need eight bedrooms,
21 people don't have families our size anymore. I
22 mean, this clearly--hmm?

23 CHAIRPERSON GRIFFIS: Nothing.

24 MS. SMITH: We are a foster family also.
25 I won't go over all the stuff in my testimony,

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1 because it has been covered so thoroughly.

2 Just a couple--two points. I walk on
3 that block of Cedar Street almost daily. And I can
4 say that the impact on Cedar Street, which is the
5 core street of the historic district, is absolutely
6 overwhelming. It's not as though you have to make
7 an effort to see this addition, even when the trees
8 are leafed out.

9 It just hits you in the eye. Every
10 single person I have been with who is seeing it for
11 the first time, says the identical thing: Oh, my
12 god. What is that, and how did anyone get away with
13 building it.

14 And this is people from outside the
15 community, who aren't necessarily so knowledgeable
16 about historic preservation and so forth. It just
17 hits everybody in the eye as a monstrosity.

18 And my final point is something Loretta
19 also addressed, which is that it is really important
20 that we not allow someone to get away with something
21 like this, by building it and then trying to get
22 approval after the fact.

23 If Mr. Taylor is rewarded for just
24 flouting the law, it will be an invitation to other
25 unscrupulous developers to come in to our very hot

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1 Takoma neighborhood and try to do the same thing.

2 We are really depending on you to
3 protect us. Thank you.

4 CHAIRPERSON GRIFFIS: Thank you very
5 much.

6 MS. PEARSALL: My name is Lorraine
7 Pearsall. I am vice president of Historic Takoma,
8 and I would like to just state here that we are in
9 agreement with the neighborhood on this.

10 And we are also in agreement with the
11 recommendations of the Office of Planning, which
12 said that the building seems out of character and
13 scale with the neighborhood homes. That's
14 absolutely true.

15 This addition is way too large for the
16 scale of the neighborhood. I think you can see by
17 the graphics. I think the neighborhood's
18 presentation was very compelling.

19 I think that the photographs don't
20 really convey how really massive it is. And I went
21 back there in one of the yards that has the 7 foot
22 privacy fence. And that was this view that you saw
23 here.

24 I will say that this--the photograph
25 does not convey how massive this is. It looms over

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1 you. It is very intrusive, and I don't think--the
2 presence of windows has nothing to do with it.
3 There is nothing you can do with windows here that
4 is going to really mitigate this.

5 It's unfortunate, but it is just way too
6 big for its context. We do have big houses. They
7 are on large lots. This is a small house on a small
8 lot near other small houses. It is way out of
9 scale. It is one and a half times as large as the
10 original house. It is just unfortunately oversized.

11 It should have been thought of
12 differently. It could have been, the basement could
13 have been submerged. It could have been stepped
14 down. It could have been made smaller. There are a
15 lot of things that could have been done in creating
16 a nice addition in the back.

17 But unfortunately, this didn't happen.
18 It has to go back to the HPRB for further review.
19 And I think that this--their application, we do ask
20 that you deny it. And that this goes back for some
21 remediation.

22 Thank you.

23 CHAIRPERSON GRIFFIS: Thank you very
24 much. Questions, Board?

25 (No response.)

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1 CHAIRPERSON GRIFFIS: Cross? Ms.
2 Ferster?

3 MS. FERSTER: I would just add that I
4 totally agree with Lorraine about the pictures, bad
5 as they are, not representing the real effects from
6 the back yards of these houses.

7 CHAIRPERSON GRIFFIS: Good. That's a
8 good point to bring out, but I think the Board has
9 some familiarity with how to judge photographs from
10 every angle. But it will be decided from what the
11 presentation is supposed to make.

12 Okay. Are there others persons present?
13 (No response.)

14 CHAIRPERSON GRIFFIS: Very well. Let's
15 give you an opportunity to make closing remarks.
16 (Pause.)

17 MR. FARMER: Mr. Chairperson, members of
18 the Board. I am sure the Board, neither the Board
19 nor anyone else in this room has any interest in me
20 trying to dissect that 40 page document.

21 I think, after making the presentation
22 and hearing and seeing the opposite presentation, I
23 think it really boils down to two simple issues.

24 I think, as Board members have
25 recognized in their questions, there are certain

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1 standards which have already been met this addition,
2 as represented to the Board. Clearly, lot occupancy
3 is part of the discussion, etc., and should not be
4 an issue. I think we can all agree that it is less
5 than 50 percent. We differ by less than a
6 percentage point in terms of what the actual
7 occupancy is, from anyone in this room.

8 The question of light and air is one
9 which is of interest, insofar as the building is
10 situated from east to west. We would dispute any
11 notion that the light and air of this particular
12 project adversely affects any adjoining property.

13 Clearly, there is an adequate existing
14 side yard to the south. The affected overhang is
15 minimal. I think the Board will be easily able to
16 determine that from the materials that have been
17 presented by both sides at this particular juncture.

18
19 And to that extent we agree with the
20 Office of Planning's conclusions in that regard.

21 I think the more interesting and
22 probably the harder issue that we have to discuss is
23 the notion of privacy. And with privacy, I think
24 there has to be a consideration of relativity.
25 There is no right to absolute privacy in the zoning

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1 regulations. For that matter, I would say that
2 nowhere in the body of U.S. law is there a right to
3 absolute privacy. It is a matter of relativity.

4 The Board has seen views presented from
5 the neighboring properties. They have seen views
6 presented of the neighboring properties from Mr.
7 Taylor's property. Whose ox is being gored here? I
8 mean, he has an equal right to privacy. We have had
9 some notion of whether there is visual intrusion.
10 But whether he is overlooking someone's back yard,
11 whether he is looking in someone's windows, etc.

12 This is an urban area. There is no
13 denying it. Albeit historic, it is an urban area.
14 You will have windows, and there will be views. The
15 question is whether there--first of all, is there an
16 intent to invade someone's privacy? Clearly not.

17 Second of all, what is it that is seen?
18 Is it relative to a finding that this thing violates
19 an individual's privacy, or the privacy of a
20 particular dwelling? Probably not.

21 You have abutting houses. You have
22 houses with windows. Clearly, there are shades,
23 there are blinds, there are various window
24 treatments which can prevent one from seeing in or
25 from seeing out, which may be part of the solution

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1 here.

2 But I think on a relative scale, does
3 this particular addition violate anyone's privacy to
4 the extent that it should be denied on that basis?
5 Clearly not.

6 Again, as I said, I think it is a matter
7 of relativity. Whether the use and enjoyment is
8 unduly compromised is a decision for the Board. But
9 clearly not. People are neighbors. They have back
10 yards. They will continue to use their back yards.
11 Will Mr. Taylor's addition prevent people from using
12 their back yards? Clearly not. It may be a
13 consideration.

14 I'm sure Mr. Taylor intends to be a good
15 neighbor. If someone has undue concern over what he
16 sees, or his activities, there are forums to address
17 that.

18 Mr. Taylor has taken into consideration
19 the views of privacy. He removed that deck. He
20 made it into, if you will, a flower ledge, in order
21 to--he is not unduly overlooking someone else's
22 property.

23 These considerations, and I have said
24 several times, are really just relative. I don't
25 think, and I think the Board can find, that the

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1 addition in itself does not violate individual
2 privacy, or the privacy of the abutting yards.

3 A view of the building from the front
4 clearly indicates that there is no--you really can't
5 see the addition from the frontage of the street.

6 The views from Cedar Street, again, are
7 a matter of relativity. Again, there is no absolute
8 notion that it cannot be seen. The standard is not
9 one of invisibility. Clearly a structure can be
10 seen between the houses. What does that really
11 mean? Is it intrusive? Again, that is the Board's
12 judgment, but I would argue that it is not.

13 Simply what you are seeing is another
14 structure in a block without an alley. What is seen
15 from the public ways is minimal. The pictures will
16 demonstrate that. I could sit here and do dueling
17 views and technologies in terms of what the
18 photographs show. I don't think that adds anything
19 to this particular discussion.

20 The other issue which we obviously have
21 to address is really the matter of scale and
22 compatibility with the buildings and structures.
23 What the opponents have just presented on that
24 particular block by their own graphs shows that you
25 have a variety of structures in that particular

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1 square.

2 Is there a requirement that every
3 bungalow remain the same? No. Is there a
4 requirement that the rear line of every bungalow
5 along Sixth Street remain the same? Clearly not.

6 Again, it is a matter of relativity and
7 a matter of judgment as to what the compatibility
8 and scale are.

9 Our architect, Mr. Bruner, indicated
10 that the original house was extremely, extremely
11 small for living by modern standards.

12 Again, in order to make the house
13 livable by modern standards, the size of it was
14 increased by a simple addition, which we do not
15 think was visual intrusive from any public way. And
16 again, I think the issue in terms of the rear
17 addition is not really one of relative scale,
18 because I believe the scale is appropriate, albeit
19 larger than the original house, but the original
20 house was extremely small.

21 The house still maintains its "historic"
22 appearance, if you will, from the street with the
23 original bungalow. The original bungalow is there.
24 It has not been radically changed. The shape and
25 size of the addition are truly compatible with the

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1 building itself.

2 On that basis, I believe that the
3 special exception should be granted. Again, I think
4 for the Board this poses an interesting question,
5 because it is a matter of relativity and what the
6 rules actually require.

7 And again from what you can see from the
8 street it is not a standard of invisibility. And
9 the standard of privacy is not absolute. Therefore,
10 on that basis, we believe that this special
11 exception should be granted.

12 CHAIRPERSON GRIFFIS: Good. Thank you
13 very much. We appreciate everyone's time today. I
14 think the record is absolutely full on this.

15 So I will ask my Board members if they
16 require any addition information? None has been
17 noted so far in the hearings today. So let me just
18 open it up, if there is any other additional
19 information that we will require.

20 (No response.)

21 CHAIRPERSON GRIFFIS: Good. Very well.
22 I think the record would then be closed on this. I
23 will set this for a decision on the first of
24 November, which is in fact next week.

25 Unless there is any discussion on that

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1 from the Board, any difficulty. Yes, Ms. Ferster?

2 MS. FERSTER: Do you want proposed
3 findings of fact and conclusions of law?

4 CHAIRPERSON GRIFFIS: Comment? In one
5 Board member's opinion, no.

6 (Laughter.)

7 CHAIRPERSON GRIFFIS: Are there others?
8 I think this is a very straightforward case. It's a
9 223. The substantive--that testimony evidence that
10 we will be deliberating and deciding upon, I think,
11 has been presented and has been crossed or rebutted.
12 And I don't think there would be any reason to,
13 frankly, burden each side on doing that. Plus that
14 will add time to this. If not two weeks, it will
15 actually go towards the December public meeting
16 date. I don't see any reason to delay a decision on
17 this, unless others have a differing opinion.

18 (No response.)

19 CHAIRPERSON GRIFFIS: Good. Concerns?

20 VICE CHAIRPERSON MILLER: No. It's
21 acceptable to us that the record is closed and that
22 no parties will be submitting any proposed findings
23 of fact and conclusions of law.

24 CHAIRPERSON GRIFFIS: That is correct.
25 Absolutely clear. Okay. Anything else?

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1 MR. FARMER: That is it, sir.

2 CHAIRPERSON GRIFFIS: Good. Thank you
3 all very much. Again, I appreciate everyone's time
4 that has been put to pulling this all together.

5 We are going to take just a two minute
6 step-out. Hit the restroom, come back and go right
7 into the next case in the afternoon. And I ask for
8 members to adhere to that.

9 Thank you.

10 (Whereupon, the hearing recessed at 4:50 p.m., and
11 reconvened at 5:02 p.m.)

12 MS. BAILEY: The last case of the day is
13 Application No. 17310 of Deirdre O. Stancioff, and
14 it is pursuant to 11 DCMR 3100 and 3101, from the
15 administrative decision of the Zoning Administrator
16 of the Department of Consumer and Regulatory
17 Affairs.

18 Appellant alleges that the Zoning
19 Administrator erred by issuing building permits for
20 the construction of an addition to a single family
21 dwelling that does not comply with the lot
22 occupancy, Section 403, inside yard, Section 405,
23 requirements.

24 The property is located at 1812 Thirty-
25 Fifth Street, N.W., Square 1296, Lot 802. And it is

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1 zoned R-3.

2 There is a preliminary matter before the
3 Board at this time, Mr. Chairman. I would say a
4 motion, and that motion is to amend the appeal. And
5 it is filed by the Appellant.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you very much. Just for a note, I'll run through.
8 I think everyone is familiar with the chronology
9 that we are going to follow today.

10 So we will start with the Appellant. We
11 will go to the Zoning Administrator. We will have
12 the Intervenor, the owner, and then we will move on
13 to the ANC and go to closing or rebuttal from the
14 Appellant.

15 Let's move ahead, then. We do have a
16 motion. I am going to have introductions for the
17 record.

18 MS. HORVITZ: Good evening. This is
19 Laurie Horvitz, and I am here on behalf of the
20 Appellant, Deirdre Stancioff, who is sitting here to
21 my left.

22 CHAIRPERSON GRIFFIS: Thank you.

23 MS. FERGUSON: Good evening, Mr.
24 Chairman and members of the Board. I am Stephanie
25 Ferguson. I am here on behalf of the Zoning

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1 Administrator of the Department of Consumer and
2 Regulatory Affairs, and with me is Ms. Faye
3 Ogunneye, Chief of Zoning Review at the Department
4 of Consumer and Regulatory Affairs.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much.

7 We had new filings and a motion. Did
8 you want to briefly address the motion?

9 MS. FERGUSON: Yes, I would like to,
10 although I would also like to introduce--we do have
11 an ANC representative here, as well. If he wants to
12 come and just identify himself.

13 MR. EASON: Yes. Mr. Chairman, members.
14 I am Charles F. Eason, Jr. and I am a commissioner
15 with ANC-2E. I am here on behalf of ANC-2E.

16 CHAIRPERSON GRIFFIS: Okay. Thank you.

17 MS. HORVITZ: To address the motion. By
18 way of background, this appeal involves three
19 building permits already. The focus of the appeal
20 is on one building permit in which there was a
21 significant expansion of the scope of the work, and
22 that expansion of the scope of the work included
23 expanding the footprint such that there would be an
24 overage over the permissible lot occupancy for a
25 semidetached dwelling. And then, in addition, that

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1 same building permit also created a side lot issue
2 by building on top and expanding a nonconforming
3 side yard usage.

4 There was in early September, as in last
5 month, an amendment to one of the building permits,
6 and a new building permit issued that pertains to
7 the issues that are already pending before the
8 Board.

9 More specifically, one of the issues
10 that is going to be presented today is whether or
11 not a dwelling that starts out as a semidetached
12 dwelling, can convert itself as of right to a row
13 dwelling--

14 CHAIRPERSON GRIFFIS: Okay. Without
15 getting into the substance of the issue, the bottom
16 line, what you are looking at, is trying to
17 incorporate the most current permit, and you find
18 that it is based on the previous permits, and there
19 is substantive matters in that that are timely in
20 this appeal. Is that correct?

21 MS. HORVITZ: That is correct.

22 CHAIRPERSON GRIFFIS: Okay. Does the
23 government have any response to that?

24 MS. FERGUSON: The government would
25 object to the addition of the permit that was added

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1 in September 2005. The government believes that is
2 a totally different permit that is not, and was not,
3 the subject of the original appeal. And several
4 other--well, at least two other permits have been
5 issued between the original permit and this final
6 permit.

7 CHAIRPERSON GRIFFIS: Does the final
8 permit moot any of the previous permits?

9 MS. FERGUSON: It does not, but the
10 final permit does not include the other--well, the
11 proposed addition of the final permit does not
12 include the other permits, so--

13 CHAIRPERSON GRIFFIS: Are there any
14 elements on appeal in this proceeding that are
15 included that have been revised or amended in the
16 September permit?

17 MS. FERGUSON: I need a second. I
18 appreciate your indulgence.

19 (Pause.)

20 CHAIRPERSON GRIFFIS: Let me perhaps
21 direct your attention. On the motion submission,
22 our Exhibit No. 35, we can get that in front of you.
23 Let's look directly at the permit application or
24 more importantly, the permit issuance.

25 It says--Permit No. B477090 reads,

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1 "Revision to permit B467431, revision 2." But,
2 substantively, it is for the extension of roof
3 overhang at one wall to the property line.

4 Is that not an element that will be part
5 of the issue today?

6 MS. FERGUSON: Yes.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. FERGUSON: I believe my concern was,
9 if all of these additional permits and amendments
10 are being admitted or being proposed for admission,
11 or just this one, in addition to the original.

12 CHAIRPERSON GRIFFIS: Um--

13 MS. FERGUSON: I think I have of record
14 here three permits, one permit and two--this would
15 be the third amendment and I am asking if all three
16 of these, in addition to the original are being
17 proposed for admission today.

18 CHAIRPERSON GRIFFIS: That is my
19 understanding.

20 MS. FERGUSON: Okay.

21 CHAIRPERSON GRIFFIS: I mean, we--do you
22 have a comment on that?

23 MS. HORVITZ: Well, the original appeal
24 already included--

25 CHAIRPERSON GRIFFIS: We are going to

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1 get into--address that.

2 MS. HORVITZ: The original appeal
3 already included three permits.

4 CHAIRPERSON GRIFFIS: That is correct.

5 MS. HORVITZ: The motion to amend is
6 adding a fourth permit, which revises a permit that
7 was already the subject of this appeal.

8 CHAIRPERSON GRIFFIS: Yes.

9 MS. HORVITZ: I don't know if there are
10 two more beyond the four that I am asking for
11 consideration or not. To my knowledge there are
12 not.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. FERGUSON: I would like to clarify
15 the record to show that I have Permit No. B467431
16 issued on the 5th of November, 2004. Permit B468744
17 is a revised permit, issued on 12/29/2004. Permit
18 B474097 issued June 22, 2005. And Permit B477090
19 issued September 2, 2005.

20 My question went to perhaps a
21 misunderstanding on my part. My question was
22 whether all the other three, these last three that I
23 mentioned, were being offered to the record
24 simultaneously or being offered with this amendment
25 simultaneously. And it is my understanding that

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1 they are.

2 So I hope this clarifies the record.

3 CHAIRPERSON GRIFFIS: I think this is a
4 good clarification as to the problem, because that
5 is not my understanding. My understanding of this
6 motion was to amend the application to include the
7 September 2nd revised permit.

8 MS. HORVITZ: To answer Ms. Ferguson's
9 question as well, the November permit was already
10 part of the appeal. The December permit was already
11 part of the appeal. I don't know anything about the
12 June permit, and the September permit is the subject
13 of this present motion to amend.

14 CHAIRPERSON GRIFFIS: There we are.
15 Okay. Others? Do the ANC and the Intervenor-owner
16 want to speak to this? Does the ANC have a comment?

17 MR. EASON: The ANC would favor of
18 granting it.

19 CHAIRPERSON GRIFFIS: Okay. No
20 opposition to the motion.

21 I'm sorry. Can we get another chair up
22 here?

23 MR. KEYS: That's all right. Mr.
24 Chairman, George Keys on behalf of the owner of 1812
25 Thirty-Fifth Street Associates, LLC. We have no

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1 objection to the motion. I think it's a necessary
2 part of this hearing not to waste the Board's effort
3 and time that you have got to bring this in, because
4 the most recent permit, the September 2nd permit, is
5 the implementation of the plans that were submitted,
6 and that are the subject of this discussion.

7 CHAIRPERSON GRIFFIS: I absolutely
8 agree. I think we ought to move ahead.

9 We will grant the motion to amend, and
10 include in the proceedings, the revision permit, now
11 known as the B477090.

12 MS. FERGUSON: Mr. Chairman, would you
13 record the government--that the government does not
14 have any objection. The government just wanted to
15 clarify--

16 CHAIRPERSON GRIFFIS: Sure. Sure.

17 MS. FERGUSON: --the number of permits
18 being entered, being added.

19 CHAIRPERSON GRIFFIS: Excellent.

20 Comment?

21 MR. EASON: Mr. Chairman, from counsel's
22 comments just now, there appears to be another
23 permit, which she has referred to, that--as of the
24 posture of this matter, that would not be included
25 within the scope of the appeal.

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1 I wonder if they could be asked to make
2 some proffer--at least to us, as to the nature of
3 the activity that was permitted under that permit.
4 So we have some idea about it.

5 MS. FERGUSON: Which permit?

6 CHAIRPERSON GRIFFIS: The November
7 permit.

8 (Pause.)

9 MR. KEYS: Yes. If we could, Mr.
10 Chairman, Board members. This should not hold you
11 up.

12 CHAIRPERSON GRIFFIS: No.

13 MR. KEYS: This came up--arising from an
14 inspection visit when we changed a French door to a
15 window--no, a window to a French door in order to
16 move furniture in.

17 CHAIRPERSON GRIFFIS: Understood.

18 MR. KEYS: So it's a non-substantive
19 change to the building. It had no impact--

20 CHAIRPERSON GRIFFIS: It's certainly not
21 a zoning issue.

22 MR. KEYS: No.

23 CHAIRPERSON GRIFFIS: So we are going to
24 move ahead. I think that would have come to light
25 at some point, in any case. There it is. Let's

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1 begin where we were.

2 MS. HORVITZ: Thank you. I would like
3 to just give you kind of an overview of what this
4 issue is, although as you may vaguely recall, we
5 have been here several times, with several different
6 scenarios.

7 CHAIRPERSON GRIFFIS: There is no
8 vagueness to our recollection.

9 (Laughter.)

10 MS. HORVITZ: Sorry! Sorry for that.
11 Just by way of brief background, and then I will get
12 directly to presentation of some limited evidence.

13 I would like to primarily, however, rely
14 on the records that have already been submitted.

15 CHAIRPERSON GRIFFIS: Good.

16 MS. HORVITZ: As I start in my
17 introduction, Deirdre Stancioff is the Appellant
18 here. She resides next to the subject property.
19 And the subject property is 1812 Thirty-Fifth
20 Street, and Deirdre Stancioff resides next door,
21 1814 Thirty-Fifth Street.

22 The issue here is, as we have been
23 discussing, four building permits, all of which
24 started with revisions to a structure that existed
25 on the site prior--probably around the turn of the

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1 century.

2 So we have a structure that existed
3 prior to the 1958 zoning regs, and considerably
4 before that. And it was beyond dispute a
5 semidetached dwelling before these four permits came
6 to DCRA and the applications relating to them.

7 And by "a semidetached dwelling" I am
8 referring to the fact that there was a structure, a
9 dwelling that was built on one lot line, which
10 pertains to the side of the property where my client
11 is located on the northern side, and on the other
12 side of the property, there was a nonconforming side
13 yard.

14 And that nonconforming side yard was at
15 least two and a half feet wide, perhaps three feet
16 wide. We have seen different measurements at
17 different times. So approximately a two and a half
18 to three foot wide side yard.

19 At junctures starting in, I guess,
20 around 2004, we started to see applications, first
21 to repair fire damage, and then the significant
22 application, which was going to add a very large
23 addition and build on top of the existing structure.

24

25 So, by building on top of the existing

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1 structure, there was going to be extension of the
2 nonconforming use along the side yard. So it is an
3 extension of the nonconforming side yard.

4 That is a portion of the appeal, which
5 is, why was there approval of building permits that
6 allowed for the extension of the nonconforming use,
7 i.e., an extension on top of and next to a
8 nonconforming side yard.

9 The other issue that came up was that
10 the addition planned and then permitted included a
11 very significant rear addition, three stories, that
12 expanded the footprint of the property such that the
13 proposed dwelling would exceed the permissible lot
14 occupancy in excess of 40 percent for a semidetached
15 dwelling. That is the other significant aspect of
16 this appeal.

17 So what we have is a series of building
18 permits, all of which were approved by DCRA, and
19 issued, despite the knowledge of DCRA that the
20 footprint of the new structure was in fact closer to
21 44 percent lot occupancy instead of the maximum
22 permissible of 40 percent for the semidetached
23 dwelling that existed on the site.

24 Now, as you know, this Board has also
25 heard a special exception petition relating to this

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1 same property. At a juncture far after the permits
2 were issued, and construction was significantly
3 underway, there was an effort to obtain a special
4 exception from this Board. That petition for
5 special exception was denied.

6 So the current posture now is to
7 consider the appeal of the issuance of the building
8 permits, which permitted the structure to be built
9 in excess of the 40 percent lot occupancy, and with
10 the extension of the side yard nonconformity and
11 there has already been a denial of the petition for
12 special exception to build that same structure.

13 We will be talking a lot about the
14 trellis or perhaps it's a projection. Or perhaps
15 it's an eave. And I am not sure whether the
16 terminology will end up being important to the
17 Board. But just by way of background, the legal
18 issue here is whether or not by sticking a trellis
19 or an eave or a projection over the side yard, that
20 spans two and a half to three feet--whether or not
21 this owner of 1812 Thirty-Fifth Street, can convert
22 the property, as of right, to a row dwelling and
23 disregard, as a result, the zoning restrictions that
24 are applicable to semidetached dwellings.

25 Most significantly for my client, the

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1 lot occupancy issue. So, without having to come to
2 BZA, the owner would seek to build, whether it's 44
3 percent or 59 percent or 60 percent, by sticking a
4 trellis and eave or a projection over the side yard.

5 And so much of the debate, I imagine,
6 today is about whether or not a side yard is
7 required in an R-3 zone. And you know, that is a
8 legal issue that I am sure--we can answer as many
9 questions as you like, and I would like to address
10 in part in closing.

11 But at this juncture--obviously my
12 position is that there are requirements for a side
13 yard, if there is a semidetached dwelling. That is
14 what was here.

15 If there is an effort to take away that
16 side yard, whether conforming or nonconforming, the
17 mechanism for doing that is to come before this
18 Board.

19 Now, what I would like to do to short-
20 circuit the process here in terms of evidence, is
21 actually--perhaps a little unorthodox, I would like
22 to call the zoning review administrator as my first
23 witness, and set out for you what I think the
24 chronology is, and that it is fairly undisputed what
25 happened and what DCRA knew about this project, and

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1 the fact that the project as approved violated the
2 zoning regulations.

3 Now, that is essentially my jumping
4 straight to cross of an adverse witness. But I
5 think it would be the most efficient way to get the
6 facts before the Board.

7 Does anybody see a problem with that?

8 CHAIRPERSON GRIFFIS: Where do we start?
9 Unorthodox, yes. Has it been tried before? Yes. I
10 don't see that as the most efficient, quite frankly.

11 MS. HORVITZ: Okay. All right.

12 CHAIRPERSON GRIFFIS: I hear--I would
13 understand if the first objection to it would be--it
14 is your burden to present the case, not to show up
15 to cross. I am certain that I could not force Ms.
16 Ogunneye now to be your witness. In fact, it would
17 be up to her whether she joined on your side of the
18 table to become a witness opened up to direct
19 questioning. She is here and as part of her
20 presentation of the case, and therefore is open to
21 cross examination.

22 And so I think if there isn't any strong
23 other opinions regarding that, I think it would be
24 best if you put on your case, as brief as you would
25 like. There are submissions in the record, and that

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1 is appropriate.

2 And then we can move on, and obviously,
3 we will go to direct cross.

4 MS. HORVITZ: That's fine. I mean, I
5 was just trying to short circuit it.

6 CHAIRPERSON GRIFFIS: Sure.

7 MS. HORVITZ: Because I think actually
8 there are very few facts that are truly in dispute
9 here.

10 CHAIRPERSON GRIFFIS: Right.

11 MS. HORVITZ: And the chronology of
12 events is very well set out in the papers, as to
13 what DCRA knew, what they appreciated and what their
14 rationale was for issuing these building permits.

15 CHAIRPERSON GRIFFIS: Right.

16 MS. HORVITZ: I was just going to try to
17 set that out through the live testimony.

18 CHAIRPERSON GRIFFIS: Good. And no
19 question about it. And I think the entire Board
20 appreciates your succinctness. And I think, as one
21 Board member, absolutely agree. The issues are very
22 clear and there are few of them.

23 So as quickly as we need to address
24 them, I think that is appropriate.

25 MS. HORVITZ: All right, then. What I

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1 would like to do is very briefly put on Deirdre
2 Stancioff.

3 CHAIRPERSON GRIFFIS: Good.

4 MS. HORVITZ: And my preferred mechanism
5 for doing that is to direct a few questions at her
6 rather than just opening it up and having her
7 explain the circumstances.

8 So, without further introduction, what I
9 would like to do is--Ms. Stancioff, I would like to
10 direct your attention to some photographs that have
11 been submitted into the record.

12 And the Board might want to direct their
13 attention. They were exhibits that were attached to
14 the motion to amend the appeal. They are the very
15 last documents at the back of that package.

16 There are three photographs that I would
17 like her to explain what they are.

18 CHAIRPERSON GRIFFIS: I'm sorry. I was
19 listening to you. I think this is absolutely
20 appropriate, but going in terms of your line and
21 direction of presentation of case, it is not
22 inappropriate for you, as the legal counsel, as this
23 is a much more legal proceeding. You do not have to
24 have a witness enter into evidence anything that you
25 presented if it is not testimony.

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1 Obviously, if it's based in fact, I
2 don't have any difficulty in you running through--

3 MS. HORVITZ: Okay.

4 CHAIRPERSON GRIFFIS: And stating
5 factual basis or legal analysis and getting this
6 into the record. However you want to deal with it
7 is perfectly appropriate for us.

8 MS. HORVITZ: I appreciate that. And
9 maybe let me do that first, and then I'll have her
10 explain these photographs to you.

11 CHAIRPERSON GRIFFIS: Good.

12 MS. HORVITZ: I am a casualty of
13 spending most of my time in a courtroom, unless
14 before you, so I appreciate whatever clarification
15 you can give me about the informalities of your
16 process.

17 So let me just kind of brief what the
18 issues are and what the evidence is, already
19 submitted for you as exhibits.

20 First of all, let me direct your
21 attention of the fact that the appeal that Ms.
22 Stancioff filed included none other than 13
23 documentary exhibits, and then there was a
24 supplemental filing that was submitted before we
25 were first scheduled for hearing. That was sent in

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1 early September, and that included an additional
2 five exhibits.

3 And then there are some exhibits that
4 were submitted in this case in support of the
5 opposition to the motion to dismiss that I would ask
6 be also considered.

7 And finally, there was a supplemental
8 filing in mid-October, which accompanied the motion
9 to amend.

10 Those are the four places where the
11 Appellant has submitted record evidence for
12 consideration, and then in addition, I know that Mr.
13 Keys, on behalf of the owner of the property
14 submitted a filing early last week with some
15 additional documents.

16 Now, as I said, the issue here is
17 focused on lot occupancy and the side yard issue.
18 And what I would like to direct your attention to in
19 particular is the fact that there were two plan
20 correction list notations, in which the zoning
21 review process actually caught and flagged the issue
22 of a potential zoning issue.

23 And the two places in which you will
24 find these are in the original appeal, at Exhibit 9,
25 and then Exhibit 1.

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1 And I would first like to direct the
2 Board's attention to the plan correction list dated
3 October 5, 2004, in which Faye, and I am assuming
4 that is going to prove to be the witness here today,
5 stated, "Existing structure has a nonconforming side
6 yard, proposed addition over existing footprint
7 cannot be allowed, structure is"--this is important--
8 --"a semidetached dwelling and the max lot occupancy
9 is 40 percent. You need to modify proposed work to
10 bring into compliance or seek relief through BZA to
11 build proposed work. Reroute decision to zoning for
12 action."

13 This is in response to the application
14 in which the big addition was being added. This is
15 the one that was--the application was filed in
16 August, and it is the November permit. So, in
17 October they are still reviewing it, and it is being
18 flagged as a zoning problem.

19 Then, just 11 days later, and it was
20 submitted to you as exhibit 1 to the appeal. Faye
21 O. again issues a plan correction list, which says,
22 "Proposed lot occupancy is 44 percent, BZA relief
23 required." Note the nonconforming side, 2.5'x30.8',
24 I believe is included in the lot occupancy.

25 And so one of the issues that we may

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1 hear today--I'm sorry. It says to complete the
2 entry: "Reroute decision to zoning for action."

3 So one of the issues is that perhaps--
4 one of the reasons this problem arose to begin with
5 is that the calculations of lot occupancy originally
6 with the application had perhaps erroneously
7 excluded the nonconforming side yard dimensions.

8 Be that as it may, before the November
9 permit was issued, DCRA fully appreciated that there
10 was in fact a lot occupancy problem, and that there
11 was a nonconforming side yard and that it was a
12 semidetached dwelling that we were dealing with.

13 Then, just to take you through the
14 chronology of how, despite the circumstances, the
15 permits were issued, including the November permit,
16 which permitted exactly these circumstances, there
17 are some notes and I would direct your attention in
18 the appeal filing itself to exhibit 4, and more
19 specifically both the cover sheet to the plans and
20 then A-1 to the plans.

21 And you will see some scratch marks, and
22 I admit that they are very small and I have a full-
23 size version if anybody needs to look at them. An
24 addition where it is handwritten "trellis".

25 And it says, actually specifically,

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1 "Trellis above first floor". And that's located on
2 the cover page, which was the permit set dating back
3 to 7/23/04, but clearly that handwritten addition
4 was later, and is in fact dated 10/21/04, a
5 handwritten date for the addition of the trellis.

6 And you will see that again on page A-1,
7 where it says, "Trellis above first floor" and then
8 there are some initials, and it says "10/21/04".

9 So, on the 21st of October, apparently
10 there is an effort to add something called a
11 trellis, above the first floor. And I will submit
12 to you that I don't believe there were any other
13 documents available at the time that provided
14 greater specification of that issue, what exactly
15 what this trellis is going to look like, what it was
16 constructed of. But that may perhaps be explored
17 later.

18 I would then direct your attention to
19 the supplemental filing that was made by the
20 Appellant in support of the opposition to the motion
21 to dismiss and--hold on just a moment.

22 (Pause.)

23 MS. HORVITZ: Actually a better example
24 of the point is in our--in Appellant's supplemental
25 filing in September of 2005, we presented for your

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1 consideration, actually, the transcript from June 7,
2 2005, of sworn testimony of the owner of 1812
3 Thirty-Fifth Street, in which he explains how the
4 trellis came to be.

5 And we would submit that as part of our
6 case in chief. It is sworn testimony that was
7 presented before you in a special exception
8 proceeding in which the owner of the property says,
9 and the pertinent transcript pages are part of the
10 record here as an exhibit.

11 He says, "The trellis was designed as a
12 way to circumvent the lot occupancy restrictions of
13 a semidetached dwelling by converting us to a row
14 dwelling through the addition of the trellis."

15 There is also record evidence which
16 confirms that that was in fact the theory that DCRA
17 was espousing and explaining as well. I won't read
18 directly from it, but the record evidence includes
19 some communications from DCRA, that specifically
20 acknowledged that that also was the rationale for
21 the trellis.

22 Shortly thereafter, of course, and the
23 documents establish this, the early November permit
24 was issued and approved without any changes to the
25 lot occupancy to conform it down to 40 percent. And

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1 the trellis, presumably, was part of the plan.

2 Thereafter, however, following the
3 filing of the special exception--I'm sorry. Filing
4 the--following this appeal, then the owners of 1812
5 actually filed for special exception.

6 So we filed the appeal first, saying
7 what is going on here. There are a lot of occupancy
8 issues and side yard issues. Following that filing
9 in February, then in March DCRA recommends a special
10 exception filing. And in fact then the owner of
11 1812 in fact petitions for special exception.

12 And that probably is the other important
13 and most pertinent document for the Board's
14 consideration, because DCRA actually recommends the
15 filing of the petition for special exception in
16 these circumstances.

17 I direct your attention specifically to
18 our filing in September of 2005, which was again
19 that supplemental filing, exhibit 3. In that
20 circumstance, the zoning review branch chief
21 actually filed with this Board the following
22 memorandum, dated March 2, 2005. The subject was
23 the proposed rear addition to a single family
24 semidetached dwelling located as the premises 1812
25 Thirty-Fifth Street.

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1 It goes on to say, "Review of plans for
2 the proposed at the above subject premises indicates
3 that the Board of Zoning Adjustment approval is
4 required as follows: special exception pursuant to
5 Section 223.1, requirements for addition to an
6 existing single family semidetached structure in the
7 R-3 residential zone district." And attached to
8 that is the notes and computations page, which
9 establishes the lot occupancy and side yard issues.

10 So that that point DCRA was making
11 actually recommendations that in order for this
12 semidetached dwelling to have the footprint and the
13 characteristics of the plan that they had already
14 approved, that a special exception was appropriate.

15 And now, of course, we will hear the
16 position of DCRA as to why, after all this--it is
17 not necessary to have a special exception because of
18 the trellis.

19 Finally, just to complete the picture
20 and the chronology, I would direct your attention to
21 the latest building permit, the one that was the
22 subject of the motion to amend the appeal.

23 All available related papers have been
24 submitted attached to that motion to amend this
25 appeal. And the attached documents establish that a

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1 building permit was in fact issued to extend roof
2 overhang on one wall to property line.

3 And that's what the permit says. It
4 would not be self-evident from the permit itself
5 whether we are talking about the trellis or
6 something else. Quite honestly, that is what was
7 posted, and if that's all you looked at, we would
8 never know the answer to that question.

9 However, I would direct your attention
10 also to the supporting documents to the motion to
11 amend, and the application for construction permit,
12 actually said in description of proposed work:

13 "Extend roof overhang on one wall to about _____"--
14 it's crossed off--"from 16 inches over 30 feet long
15 side yard to replace approved trellis. This is a
16 revision to building permit No. B467431."

17 So evidently this latest building
18 permit, issued in September, applied for after the
19 special exception decision was announced on June 28,
20 but not issued. It was issued in September. It is
21 an effort to somehow revise the plans for the
22 trellis, and I have also attached what has in fact
23 been provided to me by counsel for the owner, which
24 purports to be some kind of graphic representation.
25 There's three houses. It's also attached to the

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1 motion to amend appeal.

2 And there is a drawing which says
3 something about an eave extending to property line.
4 And then there are some plans that evidently purport
5 to address this latest revision to the trellis.

6 Now, with that not so short
7 introduction, I would like just to explain to you
8 the three photographs that were submitted for the
9 Board's consideration with the motion to amend the
10 appeal.

11 And to do that, you have the
12 photographer, Deirdre Stancioff, sitting next to me.

13 So, Ms. Stancioff, what I am going to do
14 is first hold it up so the Board can see which one I
15 am talking about. It's the first of the three
16 photographs attached to the motion to amend.

17 MS. FERGUSON: Excuse me, Your Honor. I
18 don't have a copy of the photographs nor a copy of
19 the pleadings. I was not served with that.

20 CHAIRPERSON GRIFFIS: You weren't served
21 with the motion to amend the appeal?

22 MS. FERGUSON: No.

23 MS. HORVITZ: I'm sorry. I did serve
24 DCRA counsel. I did not serve Stephanie Ferguson
25 individually, because I actually didn't have her

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1 name, although she had entered an appearance in the
2 last thing. And then she called me and said, next
3 time you really need to serve me individually, but I
4 have it.

5 CHAIRPERSON GRIFFIS: Do you have a
6 copy?

7 MS. HORVITZ: Do I have an extra copy?
8 She represented to me that she was in possession of
9 it on October 11.

10 MS. FERGUSON: Actually, I represented
11 to you that it was sent to the Zoning Administrator.
12 We were in transition. We do have a new Zoning
13 Administrator. And the Zoning Administrator had
14 received it. But I do not have a copy of it.

15 MS. HORVITZ: Okay. Well, then.

16 CHAIRPERSON GRIFFIS: Let her see the
17 pictures.

18 MS. FERGUSON: Thank you.

19 MS. HORVITZ: I certainly apologize that
20 I didn't send it directly.

21 CHAIRPERSON GRIFFIS: That's all right.
22 Let's move. If you have an extra copy with you
23 today, we'll just make sure that she leaves with it.

24 MS. FERGUSON: Thank you.

25 MS. HORVITZ: Okay. So, I am going to

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1 direct Ms. Stancioff's attention first to this
2 photograph. Okay.

3 Now, Ms. Stancioff, can you tell me,
4 first of all, did you take this picture?

5 MS. STANCIOFF: Yes.

6 MS. HORVITZ: Can you tell me when you
7 took this picture?

8 MS. STANCIOFF: I took it--

9 MS. HORVITZ: Speak into the mike.
10 Approximately.

11 MS. STANCIOFF: About three weeks ago.

12 MS. HORVITZ: Okay. Within the last
13 month or two?

14 MS. STANCIOFF: The last month. You
15 know. In October.

16 MS. HORVITZ: All right. Now, can you
17 tell me what this picture depicts?

18 MS. STANCIOFF: Well, it's--on the left
19 hand side, is the house next door to the south,
20 1812. The house. And the chimney. And there is a
21 thing that looks like a gutter, with lights coming
22 out of it. I don't know what it is.

23 MS. HORVITZ: Okay. So if I understand
24 your testimony, the structure to the right in the
25 picture is actually 1812?

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1 MS. STANCIOFF: Yes.

2 MS. HORVITZ: All right. And the
3 structure to the left is the home to the south?

4 MS. STANCIOFF: Yes.

5 MS. HORVITZ: That's not your home,
6 that's Mr. Schmidt's home?

7 MS. STANCIOFF: No. That is Mr.
8 Schmidt's home.

9 MS. HORVITZ: Okay. So, you are on the
10 southern side of 1812 Thirty-Fifth Street?

11 MS. STANCIOFF: You mean taking the
12 picture?

13 MS. HORVITZ: Are you on the street?
14 Looking into the property?

15 MS. STANCIOFF: I am on the sidewalk,
16 looking up to the property.

17 MS. HORVITZ: Okay. And can you--I know
18 this is not the best resolution--are there windows
19 on the south side of 1812 Thirty-Fifth Street,
20 facing Mr. Schmidt's property?

21 MS. STANCIOFF: Yes.

22 MS. HORVITZ: There are?

23 MS. STANCIOFF: There are. About three
24 windows--or two windows towards the street, and then
25 there are some more at the back.

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1 MS. HORVITZ: All right. So, there are
2 window facing into the short--the narrow--

3 MS. STANCIOFF: Into Mr. Schmidt's
4 house. Yes.

5 MS. HORVITZ: Into the narrow side lot?

6 MS. STANCIOFF: Yes.

7 MS. HORVITZ: I'm sorry. Into the
8 narrow side yard?

9 MS. STANCIOFF: Yes.

10 MS. HORVITZ: Okay. Now, directing your
11 attention to another photograph, this one. The next
12 photograph in the packet. Did you also take this
13 picture?

14 MS. STANCIOFF: Yes.

15 MS. HORVITZ: Did you take it at
16 approximately the same time?

17 MS. STANCIOFF: Same day. Across the
18 street.

19 MS. HORVITZ: All right. Is it--what is
20 the property to the right in the picture?

21 MS. STANCIOFF: That's 1812 Thirty-Fifth
22 Street.

23 MS. HORVITZ: And then I see a small
24 space between the properties. What is that?

25 MS. STANCIOFF: That is the space

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1 between the--that's the--it's their property.

2 MS. HORVITZ: Is that the--

3 MS. STANCIOFF: That is the side yard.

4 MS. HORVITZ: Okay.

5 MS. STANCIOFF: You can see the windows.

6 But not very well.

7 MS. HORVITZ: All right. And then
8 lastly, the third photograph. I know this
9 resolution is perhaps even worse, but what is the--
10 when did you take this picture?

11 MS. STANCIOFF: I'm not sure when I took
12 it, maybe a month ago. I might have taken it the
13 same time. But I don't think so. I think I took it
14 before. In the early summer.

15 MS. HORVITZ: Okay. And where are you
16 when you are taking this photograph?

17 MS. STANCIOFF: I am at the other side.
18 The end there. Their fence is at--the back of their
19 garden is there. Where the fence is. And I am
20 behind it.

21 MS. HORVITZ: All right. So--

22 MS. STANCIOFF: I am not inside. I am
23 at the outside of their fence.

24 MS. HORVITZ: What is the structure to
25 the left in that photograph?

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1 MS. STANCIOFF: That's 1812.

2 MS. HORVITZ: And what is the structure
3 to the right?

4 MS. STANCIOFF: Mr. Schmidt's house.

5 MS. HORVITZ: Mr. Schmidt lives to the
6 south of 1812, and you live to the north?

7 MS. STANCIOFF: That's right.

8 MS. HORVITZ: Okay. That is all I would
9 like to do at this point. I reserve the right for
10 some rebuttal comments and, of course, cross.

11 CHAIRPERSON GRIFFIS: Thank you very
12 much. Is there a question from the government for
13 the witness?

14 MS. FERGUSON: Not by the government.

15 CHAIRPERSON GRIFFIS: Okay. Does the
16 ANC have any cross questions?

17 MR. EASON: No, sir.

18 CHAIRPERSON GRIFFIS: Mr. Farmer?

19 MR. KEYS: Mr. Keys.

20 CHAIRPERSON GRIFFIS: Mr. Keys. I'm
21 terribly sorry. Forgive me. Let's move ahead then.

22 CHAIRPERSON GRIFFIS: Comment?

23 VICE CHAIRPERSON MILLER: Comment. I
24 just wanted to make a comment to Ms. Horvitz. I
25 know you have said that you are used to appearing in

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1 courtrooms and you want a little guidance as to what
2 happens here.

3 I want to say that an appeal is a little
4 bit different from a special exception, which I know
5 you have already gone through.

6 I just want to say that I think in an
7 appeal, it's really--what is at issue is a legal
8 question. And you phrased the legal issue, as I
9 understand it, as well, with respect to whether or
10 not by adding on a trellis or an eave or some other
11 projection you can convert a single family dwelling
12 to a row house and then be exempt from the
13 regulations that apply to the single family
14 dwelling.

15 And you phrased that, and I just want to
16 ask--you didn't address that legal question yet,
17 whether you plan to do that later on, in closing, or
18 whether you want the opportunity now.

19 MS. HORVITZ: I would be happy to do it
20 now. The only thing I would like to clarify, and I
21 hope I didn't misspeak. It's not a single family
22 dwelling, it's a semidetached dwelling.

23 VICE CHAIRPERSON MILLER: I'm sorry. I
24 probably misspoke.

25 MS. HORVITZ: All right. So, the legal

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1 issue, as I understand it, and certainly I am open
2 to being told otherwise but--the legal issue as I
3 understand it is in large part whether or not a
4 semidetached dwelling in a R-3 zone, which obviously
5 does permit row dwellings under certain
6 circumstances. Whether that semidetached dwelling,
7 which by definition has a side yard, can convert
8 itself without coming before you for a special
9 exception, into a row dwelling. And in this case,
10 there has--that's the broad umbrella issue.

11 But the second issue, and you could
12 probably decide this solely on the second issue, is
13 even if that theoretically was a possibility, could
14 you do it through the mechanism of something akin to
15 an architectural embellishment or something that
16 doesn't add any real usable living space, is either
17 an eave or projection or a trellis.

18 So there are really two issues. The big
19 issue, which I know that you have confronted in some
20 other cases, and I will discuss them briefly, and
21 you have interpreted some the relevant regulations
22 already. The big issue is conversion as of right.

23 But even if you accept as a Board the
24 possibility that the conversion as of right is
25 appropriate in certain circumstances in an R-3

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1 district for a semidetached dwelling into a row
2 dwelling, there is this subset, and perhaps the more
3 difficult issue here, because you are really opening
4 up for huge abuse if you don't draw a line somewhere
5 and say, okay, even if we allow as of right
6 development, what is it?

7 What do you have to do to exercise that
8 right. And here you've got, I contend, an absolute
9 mockery of the system. Even if you accept the
10 proposition which the Appellant does not have as of
11 right conversion, it is a mockery, in my view, to
12 allow it to be done through this mechanism, which is
13 merely the introduction of something as
14 insignificant as a trellis or a projection or an
15 eave up to the lot line, which is what is not being
16 proposed according to the amended building permit.

17 And I know that the ANC has taken a
18 position, it's a matter of record, that they
19 similarly oppose specifically the use of that kind
20 of device to allow for as of right conversions.
21 Assuming that that's even the direction that the
22 Board is going to have.

23 Now, as to the legal argument itself,
24 and the legal authority upon which I rely, on behalf
25 of the Appellant, I refer first and foremost to 11

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1 DCMR 405.2, which states in an R-3, R-4 or R-5
2 district, a one family semidetached dwelling shall
3 be subject to the side yard requirements of an R-2
4 district.

5 Now, admittedly, 11 DCMR 405.6 does say
6 in part that a side yard shall not be required in an
7 R-3 district. However, there is an exception to it.
8 A provision to it. It says, except as provided in
9 Sections 405.1 and 405.2.

10 I just read you 405.2. It says that in
11 an R-3 district, if you are a one family
12 semidetached dwelling, you are subject to a side
13 yard requirement.

14 So I start with that as my--the
15 principal regulatory authority for the position that
16 we are taking.

17 However, I would also like to direct
18 your attention to several other legal authorities
19 that support Appellant's position. One is 11 DCMR
20 320.1, which says in pertinent part that the R-3
21 district is designed essentially for row dwellings,
22 but there--key word here--"shall" be included in an
23 R-3 district, areas within which row dwellings are
24 mingled with one family detached dwellings, one
25 family semidetached dwellings, and groups of three

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1 or more row dwellings.

2 And I would contend that if every single
3 semidetached dwelling could convert as of right in
4 an R-3 district, such an interpretation of the
5 zoning regulations would be in contravention of that
6 section, which clearly contemplates that an R-3
7 district includes not just row dwellings.

8 CHAIRPERSON GRIFFIS: You clarified that
9 point. Were there errors, in your legal opinion, in
10 granting a permit--sorry. In granting the permit--
11 is there any administrative error in granting the
12 permit based on specifically, you have just said,
13 320.1, which is the general provisions of an R-3
14 zone. The general provisions. And in my
15 understanding of your legal analysis of that
16 section, it says that the Zoning Administrator,
17 extending that out, your analysis, is that a Zoning
18 Administrator must somehow balance the entire R-3
19 neighborhood to understand that this is
20 predominantly row dwellings and allows it, but
21 should be intermingled with semidetached.

22 Therefore, having a holistic view of the
23 zoning 3 district, in order to establish whether
24 this tips the scale or not?

25 MS. HORVITZ: Interesting argument, but

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1 actually not the one that I had in mind.

2 What I am trying to communicate, I guess
3 inartfully, is that the--it's DCRA's position that
4 the reason that this permit could be issued is, it
5 is supportive as of right conversions. That it
6 feels that it is authorized to allow as of right
7 conversions of any and all semidetached dwellings.
8 All of them. Into row dwellings.

9 MS. FERGUSON: I am going to object.
10 That is not exactly DCRA's position.

11 CHAIRPERSON GRIFFIS: Good. I
12 understood the objection, and it is appropriate.

13 MS. HORVITZ: Okay.

14 CHAIRPERSON GRIFFIS: Refine that,
15 obviously.

16 MS. HORVITZ: My point is, that if that
17 is a part of the zoning interpretation that
18 justifies the approval of this permit, that as of
19 right conversions are fine, aside from the trellis
20 issue, you know, however you do it. That is an
21 acceptable way of building out on your property in
22 an R-3, when you have a semidetached dwelling.

23 CHAIRPERSON GRIFFIS: Section 320
24 doesn't talk to--you are going too deep into it, 320
25 doesn't talk to trellis or what have you.

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1 What I am misunderstanding in your
2 statement and your legal analysis is, how does 320
3 preclude--preclude one from creating a row dwelling
4 in an allowable district, in an R-3 district that
5 allows row dwellings.

6 You made the statement that said, it is
7 a violation of 320 because, look, 320 is supposed to
8 intermingle semidetached and detached. Therefore,
9 how could you take this under 320 and make it an
10 attached.

11 MS. HORVITZ: I guess the point I am
12 trying to make is, that somewhere there have to be
13 limits. That create the overall--that implement the
14 overall scheme for the zoning regulations.

15 CHAIRPERSON GRIFFIS: Right.

16 MS. HORVITZ: That's what everybody is
17 entrusted to do. DCRA is entrusted to do that.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. HORVITZ: BZA is entrusted to do
20 that.

21 CHAIRPERSON GRIFFIS: Right.

22 MS. HORVITZ: Not just--

23 CHAIRPERSON GRIFFIS: But now let's get
24 specifically to this appeal, because that is what is
25 at issue here. And if you--I did follow your

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1 argument, I believe. Because then what you are
2 saying is, the Zoning Administrator had the
3 responsibility to view the entire district in
4 analyzing whether this first step could be taken.
5 Of moving this somehow to a row dwelling or not.

6 MS. HORVITZ: Actually, the point that I
7 was trying to make is that I believe that this
8 provision is an argument that weighs against as of
9 right conversion. That there is a mechanism.
10 Obviously, if there are circumstances where you have
11 an undeveloped lot and it's not a conversion from a
12 semidetached dwelling.

13 CHAIRPERSON GRIFFIS: Okay. I guess
14 then--let me just go directly to it. In 320, does
15 it speak the language, the direct language, of that
16 regulation? Does it speak at all to conversions?

17 MS. HORVITZ: No. No, it does not.

18 CHAIRPERSON GRIFFIS: Okay. Okay.
19 Let's move on.

20 MS. HORVITZ: Okay. Fine. Now, to a
21 more limited extent, Appellant is also relying on a
22 number of definitions in the regulations to support
23 its position. I mean, there are a lot of
24 definitions. Unfortunately, not every definition
25 that would be pertinent to this case is in the

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1 regulations.

2 But some of the definitions are actually
3 rather instructive at helping us sort through this,
4 not the least of which is the definition of yard
5 side.

6 Because the definition of a yard, which
7 I will read, says, "A yard between any portion of a
8 building or other structure and the adjacent side
9 lot line extending for the full depth of the
10 building or structure".

11 So one of the issues before the Board
12 is, was there a side yard. I can't imagine that
13 there is a dispute on that, but in fact if you are
14 looking for authority, definitionally, we have
15 something that identifies that there was in fact a
16 side yard.

17 Similarly the definition of "dwelling",
18 one family semidetached, is an important legal point
19 to consider as the Board reviews this issue. That
20 definition, is a one family dwelling, the wall on
21 one side of which is either a party wall or a lot
22 line wall having one side yard.

23 So again we have the benefit of a
24 definition, and here we had a property with a lot
25 line wall on Deirdre Stancioff's side, and other the

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1 other side, we had a side yard, which I have just
2 read you the definition of.

3 So I refer you to all of those
4 regulations, and I do also actually have for the
5 Board's consideration if it likes, the Webster's
6 Unabridged Dictionary definition of trellis, if that
7 proves to be useful at a later time.

8 But I will circulate it if it becomes an
9 issue, perhaps on rebuttal.

10 So then we finally get to the remaining
11 legal issues. And I will conclude, which is prior
12 Board decisions on the subject of as of right
13 development.

14 I am the first to admit that I don't
15 know where the Board is going with this, but I will
16 say that the Pritchard decision does exist. It has
17 been narrowed a lot. But some of the principles
18 that have been articulated in that Pritchard
19 decision apply to this case in terms of weighing
20 against the conclusion that there should be an as of
21 right conversion under these circumstances.

22 And certainly I am happy, perhaps on
23 rebuttal, to distinguish some of the progeny to
24 Pritchard if that is necessary, and explain why I
25 don't think that the subsequent decisions hamper the

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1 Board in granting the relief that the Appellant
2 seeks here.

3 And finally, the Board has already ruled
4 on the special exception petition and made certain
5 findings of fact. I would assume that that is a
6 matter of public record, that I didn't need to
7 actually introduce into evidence, having not done
8 so, but there is a decision by this Board in
9 Application No. 17327, in which there were certain
10 findings of fact and conclusions of law that are
11 pertinent to this case, and which I contend support
12 the relief due to Deirdre Stancioff in this case,
13 that there was a semidetached dwelling and that
14 there should not be this structure absent special
15 exception, which has been denied.

16 CHAIRPERSON GRIFFIS: Ms. Miller?

17 VICE CHAIRPERSON MILLER: I just wanted
18 to ask you if you could elaborate more that your--
19 what you mean with respect to "as of right
20 conversions". Is there some regulation that speaks
21 to that? What is the significance of that, or how
22 does that happen?

23 MS. HORVITZ: To my knowledge, there is
24 nothing that defines this process clearly in the
25 regulations.

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1 I think that the terminology has really
2 arisen more from the Board decisions, such as--
3 analyses such as Pritchard, in which the Board has
4 used that terminology, and addressed when you are in
5 a particular zoning district, which allows for,
6 let's say, row dwellings, who can convert into a row
7 dwelling and when is special exception approval
8 required in order to do so.

9 So that is the origins of my use of the
10 terminology.

11 VICE CHAIRPERSON MILLER: So, is your
12 point here that if that is allowable, in any event,
13 that this case is distinguishable because it would
14 make a mockery of the regulations if you could
15 convert that way just by an embellishment or by a
16 non-structure that doesn't have much of a function
17 such as an eave?

18 MS. HORVITZ: Exactly. Assuming that
19 the Board is disinclined to agree with my advocacy
20 on the as of right issue, as a general proposition,
21 and favors some as of right development for any
22 variety of reasons, there is still the very
23 compelling issue here, which is that any such as of
24 right conversion should not have been allow in the
25 circumstances present here because of the specific

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1 nature of that conversion in terms of the
2 specifications of the work that we were going to
3 accomplish it.

4 VICE CHAIRPERSON MILLER: Thank you.

5 CHAIRPERSON GRIFFIS: Yes?

6 MR. HILDEBRAND: I just have one
7 question. Isn't the eave or trellis by definition a
8 property party wall or a building lot wall?

9 MS. HORVITZ: I would contend not.
10 Interestingly, there are only a few references to
11 projections and eaves in the regulations, and I did
12 in fact cite one of them in the motion to amend.
13 There's actually a provision that speaks to how far
14 a projection can go over a required side yard, and
15 there is a limit of only, I think, two feet.

16 Certainly it is not set forth clearly in
17 the definitions that you referred to, that a
18 projection or eave should constitute that kind of
19 lot line build-out, I guess, if you will.

20 And my position would be, you have got
21 to look at the fact that there is windows on the
22 side of this lot line. I mean, how can you have a
23 lot line development right next to another lot line
24 development and have windows facing into it?

25 (Laughter.)

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1 MS. HORVITZ: So, I don't know. I hope
2 I answered your question. I am not sure.

3 (Laughter.)

4 MR. HILDEBRAND: You gave me your
5 answer. That's fine.

6 MS. HORVITZ: Right.

7 CHAIRPERSON GRIFFIS: Good. Anything
8 else? Follow-up questions?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well. Thank
11 you very much. Let's move ahead, then, unless
12 there's any--there's otherwise any additional
13 testimony there, unless someone wants to raise that
14 issue, in terms of cross, or other opportunity.

15 (No response.)

16 CHAIRPERSON GRIFFIS: Okay. Very well.
17 We will move ahead, then and go to the government's
18 presentation.

19 MS. FERGUSON: Thank you, Mr. Chairman.
20 The government takes the position that the Zoning
21 Administrator's decision in issuing the building
22 permit was correct and not an error.

23 The Zoning Administrator prepared a
24 letter, dated March 21, 2005. I would like to
25 ensure that that is in the record. He clearly

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1 outlined his reasoning and his rationale for making
2 and proposing the options that he proposed, among
3 them the addition of a trellis.

4 He also proposed that they come before
5 the Board of Zoning Adjustment. Again, the letter
6 is dated March 21, 2005, and it has been referred to
7 several times by both sides, and by the Intervenor,
8 and I would like to ensure that it is entered into
9 the record.

10 In this letter, the then Zoning
11 Administrator referred to some of the documents
12 which have come to our attention again today. One
13 of them, dated the 5th of October, 2004, the other
14 dated the 16th of October 2004. Both are plan
15 correction lists. At the top, they have that they
16 are plan correction lists. The other identification
17 that is of note on these documents is that they are
18 internal documents, which identify the changes that
19 are required on plans prior to approval of the
20 plans.

21 Both of these documents have been
22 attached to the Appellant's exhibits. I am
23 satisfied that they would be in the record according
24 to her submission. I would not want to be
25 cumulative, but I would like to enter them if they

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1 are not in the record.

2 CHAIRPERSON GRIFFIS: Yes, I'm not
3 putting my finger on the Zoning Administrator's
4 letter to cite the exhibit number in the record.
5 So, for--

6 MS. FERGUSON: March 25, 2005.

7 CHAIRPERSON GRIFFIS: Yes. I know--I am
8 almost certain that I read it several times. But
9 I'm going to stop putting my finger on here.

10 So let's take that into the record.

11 MS. OGUNNEYE: Oh, 21?

12 MS. FERGUSON: March 21, 2005.

13 CHAIRPERSON GRIFFIS: March? Okay.

14 MS. FERGUSON: I don't have another copy
15 right now, but I would be able to make a copy
16 available to you.

17 CHAIRPERSON GRIFFIS: Did you submit
18 that--you submitted that independently? As part of
19 your case filing?

20 MS. FERGUSON: If I did not do it last
21 time, I believe that I intended to do it last time,
22 because the witness did read from the document the
23 last time.

24 CHAIRPERSON GRIFFIS: Right. Exactly.
25 I recall that.

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1 MS. HORVITZ: I did submit it.

2 CHAIRPERSON GRIFFIS: You submitted it?

3 MS. HORVITZ: I submitted it as--with
4 the September 2, 2005 transmittal, which was our
5 supplemental filing. If you go to Exhibit No. 2,
6 there is a one-page letter and then behind it--

7 CHAIRPERSON GRIFFIS: Right. The ANC
8 letter, and then--right. That's exactly where I've
9 seen it.

10 MS. HORVITZ: I believe that's what
11 we're referring to.

12 CHAIRPERSON GRIFFIS: I'm not sure
13 anyone else has submitted that, so it's under
14 Exhibit--our Exhibit 30, the Appellant's
15 supplemental Exhibit 2, March 21.

16 MS. FERGUSON: And I would like to ask
17 if the letters dated--if the documents dated--well,
18 they already have Exhibit No. 8, and--one has
19 Exhibit No. 8. I would like to offer the other one,
20 dated October 16, 2004, for the record.

21 CHAIRPERSON GRIFFIS: Okay. Good.

22 MS. FERGUSON: Okay. My point in
23 offering these documents is to demonstrate that they
24 are internal documents. They are a part of the
25 reviewing process prior to an approval or prior to

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1 the issuance of a building permit.

2 When the application goes through the
3 review process, and notations are made with regard
4 to the application, there is always consideration as
5 to what can be done to bring the application or the
6 proposed plan into compliance.

7 The review branch noted that the
8 proposed addition would increase the lot occupancy
9 to approximately 44 percent. So, after the initial
10 review, the proposed plans were discussed, and they
11 were revised to bring them into compliance with the
12 zoning regulations.

13 Yes, the side yard was nonconforming
14 prior to the construction. But the construction did
15 not expand a nonconforming side yard. The addition
16 of a trellis which according to the regulations is a
17 structure--we take that from the definitions, the
18 structure is "anything attached to something having
19 a permanent location on the ground and
20 including...."

21 But our point is that the trellis is
22 attached to something that has a permanent location
23 on the ground.

24 So the addition of the trellis
25 eliminated the nonconforming side yard, and

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1 converted that semidetached dwelling into a row
2 dwelling, which is allowed as a matter of right in
3 the R-3 zone.

4 And it is subject to a 60 percent lot
5 occupancy. According to the regulations at
6 320.3(b)--"b" as in boy--"a row dwelling is a matter
7 of right structure in an R-3 district".

8 The Zoning Administrator acted upon what
9 we believe to be valid and legitimate definitions in
10 the zoning regulations and proposed the addition of
11 a trellis as an option to what could be done to
12 bring these plans into compliance.

13 Also, the Zoning Administrator relied
14 upon 405.9 of the regulations. The pertinent part
15 of 405.9 is that side yards shall be provided on
16 lots in residential districts as set forth in the
17 following table. And it says, subject to special
18 requirements of other provisions of this chapter.

19 But chiefly it says that in an R-3 zone
20 district, the minimum width of each side yard is
21 none. None is required, except as provided under
22 405.1, 405.2 and 405.6, which relate to R-1, R-2 and
23 R-3 districts.

24 I go to 320.1. And I respond to a
25 question that has been posed. In accordance with

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1 320.1, that district is mainly row dwellings but may
2 be mingled with one family detached and semidetached
3 homes and groups of three or more row dwellings.

4 I go again to 320.3 to discuss the
5 matter of right uses and the R-3 district. Both row
6 dwellings and semidetached dwellings.

7 Then 320.3, row dwellings are permitted
8 as a matter of right in R-3 districts.

9 I go next to the plans. They have
10 already been offered, but I would like to ask our
11 tech to take a look at the plans, the Exhibit No. 11
12 and 11(a) to demonstrate exactly what is
13 distinguishable on the plan. As a matter of fact,
14 we are going to go directly to 11(a).

15 I would like to ask her, where is the
16 structure or what is the structure that is proposed
17 to bring the plans in compliance with the zoning
18 regulations?

19 MS. OGUNNEYE: That would be a trellis.

20 MS. FERGUSON: That would be a trellis?
21 And where exactly are the--would the trellis be
22 located? What floor, ground--could you describe
23 that for us.

24 MS. OGUNNEYE: It is shown on the first
25 floor plan, one the second floor plan. And all the

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1 way at the roof plan.

2 MS. FERGUSON: Is that your--is that
3 your signature? Do you recognize that signature?

4 MS. OGUNNEYE: Yes, I do.

5 MS. FERGUSON: Is that your signature?

6 MS. OGUNNEYE: Yes, it is.

7 MS. FERGUSON: What is the date of it?

8 MS. OGUNNEYE: Um, 10/21/04, I believe.

9 MS. FERGUSON: Again, I don't want to be
10 cumulative, but if this has not been entered, and I
11 believe that it has, it has Exhibit No. 11 at the
12 bottom. I would like to enter--offer it for the
13 record.

14 CHAIRPERSON GRIFFIS: I think we have
15 that as part of the motion. Is it not? Yes.
16 Exhibit 11.

17 MS. FERGUSON: Yes.

18 CHAIRPERSON GRIFFIS: For the motion.

19 MS. FERGUSON: Yes.

20 MR. EASON: Mr. Chairman, I am looking
21 over her shoulder, and I believe those exhibit
22 numbers may relate to the special exception case.
23 I'm not sure, but--

24 CHAIRPERSON GRIFFIS: Case 17310?

25 MR. EASON: Yes.

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1 MS. OGUNNEYE: It does.

2 CHAIRPERSON GRIFFIS: Case 17310. No, we
3 have them in this case. That would be the correct
4 exhibit for this case, 11. No, but we appreciate
5 that. We may get some crossover.

6 MR. EASON: Thank you.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. FERGUSON: Okay. Continuing. I
9 actually don't have a lot.

10 It's the Zoning Administrator's
11 contention that the decision to issue the building
12 permit for the proposed construction was a valid and
13 legitimately construed decision, consistent with the
14 current zoning regulations.

15 The revised plans were consistent, were
16 brought into compliance to be consistent with the
17 current zoning regulations, and for those reasons,
18 we believe that based upon the current state of the
19 regulations, the Zoning Administrator made the
20 correct decision. He did not err. In his wisdom,
21 he offered options to the parties to bring the plans
22 into compliance, and to give them options as to what
23 they could do if their plans were not successful.

24 And we believe that the issuance of the
25 building permit should be upheld.

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1 That's essentially it. That is the end
2 of our statement. If you have any questions, we are
3 available to answer questions. The tech will be
4 answering the technical questions.

5 CHAIRPERSON GRIFFIS: Okay. Let's move
6 ahead, then, to Board questions.

7 Let me--let's bring it up to speed. We
8 had some questions and some limited testimony in
9 terms of the trellis element. However, it is my
10 understanding and let me see if it's yours, that the
11 subsequent revised permit that we have included in
12 today's appeal, that talks of this overhang or eave,
13 does that function similar in your mind in terms of
14 the interpretation of the trellis? Does the trellis
15 still--well, that's the question.

16 MS. OGUNNEYE: Yes, to me it still does.
17 Again, it is the definition of structure that we are
18 looking at, and it is a structure--

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. OGUNNEYE: It's a permanent
21 location. It's--I'm sorry. Yes.

22 CHAIRPERSON GRIFFIS: Okay. Anything
23 other questions?

24 MR. HILDEBRAND: I find that actually
25 curious. In your earlier statement about the

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1 trellis, it was because of its relationship to the
2 ground, it having bearing on the ground. How does
3 the eave have bearing on the ground other than the
4 exterior wall of the building, which is set apart
5 from the property line?

6 MS. OGUNNEYE: I don't recall making
7 such a statement. The yard--the whole object was to
8 eliminate the existing nonconforming side yard. And
9 if we look under the definition for "yard", and I'll
10 read that section.

11 This would be the definition for "yard".
12 It says, "An exterior space other than a court, on
13 the same lot with a building or other structure. A
14 yard required by the provisions of this title shall
15 be open to the sky from the ground up, and shall not
16 be occupied by any building or structure, except as
17 specifically provided in this title. No building or
18 structure shall occupy in excess of 50 percent of a
19 yard required by this title."

20 And basically, whether it is a trellis
21 or the overhang, it does eliminate the side yard,
22 because in essence that yard space is not longer
23 unobstructed to the sky.

24 MR. HILDEBRAND: So, when you measure
25 the square footage for lot occupancy, you go to the

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1 edge of the eave line, as opposed to the face of the
2 building wall?

3 MS. OGUNNEYE: From a zoning standpoint,
4 you are looking at a bird's-eye view. And as long
5 as you are from lot line to lot line, and the side
6 yard is eliminated, it is included in the lot
7 occupancy.

8 MR. HILDEBRAND: So you measure the area
9 of a building based on its roof footprint as opposed
10 its building footprint?

11 MS. OGUNNEYE: When you look at the
12 definition of building area, it is the maximum
13 horizontal projected area of a building. And when
14 you look at the definition, of building, it tells
15 you--it speaks to structures. When you look under
16 the definition of structures it is anything that's
17 permanently located there that is attached to a
18 permanent part of the structure.

19 Now, this is a property that is located
20 in a zone where they could build up to the 60
21 percent lot occupancy by right.

22 MR. HILDEBRAND: So it is your position
23 that a row dwelling is not required to have two lot
24 line walls, two party walls, or a combination of the
25 two?

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1 MS. OGUNNEYE: The definition for row
2 dwelling just says one family dwelling that has no
3 side yards. And I haven't come across anywhere in
4 the regs that speaks to the walls in terms of making
5 the determination for the lot occupancy.

6 I mean, all we look out for is yes, you
7 are building lot line to lot line. But from a
8 bird's-eye view is where the trellis comes into
9 play.

10 MR. HILDEBRAND: Okay. So if you
11 extrapolate from the definition of semidetached one
12 family dwelling, where the defining characteristic
13 is a party wall or a lot line wall and then a side
14 yard, and then you go down to a row dwelling where
15 the definition is the elimination of side yards, you
16 wouldn't extrapolate from that that the row dwelling
17 would then either have two party walls, two lot line
18 walls, or a combination of the two?

19 MS. OGUNNEYE: Normally you would have a
20 party wall. Correct. But there is an existing wall
21 that is already there on the adjoining property lot
22 line.

23 So it is not a nonconforming--well, I
24 won't say nonconforming--it is not a side yard next
25 to another side yard. There is an existing common

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1 division wall that you could attach to.

2 Now, I don't know if memory serves me
3 right, and I'll ask that the Appellant chimes in,
4 but it might have been a historic issue as to
5 whether or not they could physically go over, but
6 you know, that's it.

7 MR. HILDEBRAND: Is the side yard still
8 open to the sky? Can you see the sky when you are
9 standing in the side yard?

10 MS. OGUNNEYE: I haven't been to the
11 site recently. I mean, the intent is--

12 MR. HILDEBRAND: In looking at the
13 photographs, would you think that you could?

14 MS. OGUNNEYE: If you are standing in
15 the side yard, looking up to the sky, no. But I
16 guess looking through to the addition's lot line.
17 But within the confines of her own lot lines, no.

18 MR. HILDEBRAND: Uh-hum.

19 MS. OGUNNEYE: And usually during the
20 review process, we are looking at 2D drawings, two-
21 dimensional.

22 (Pause.)

23 MR. HILDEBRAND: For me, that's it.

24 CHAIRPERSON GRIFFIS: Okay.

25 VICE CHAIRPERSON MILLER: Hi, Ms.

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1 Ogunneye. Could you clarify for me where is the
2 authority for the proposition that if there is an
3 eave that connects to--that reaches a lot line, that
4 there no longer then is a side yard because it is
5 over that yard.

6 MS. OGUNNEYE: I believe that there have
7 been precedents set whereby the trellises do
8 eliminate nonconforming side yards, and that is the
9 basis for it.

10 Now, there is no specific place that
11 says that, if you introduce a trellis, then the side
12 yard goes away.

13 VICE CHAIRPERSON MILLER: So there is
14 precedent for trellis affecting nonconformities,
15 making them disappear, but not necessarily a side
16 yard disappearing?

17 MS. OGUNNEYE: Um, if it's placed
18 appropriately, physically I guess the side yard does
19 not disappear, but in terms of a side yard--

20 VICE CHAIRPERSON MILLER: But legally,
21 you are saying, it does.

22 MS. OGUNNEYE: But in terms of it being
23 obstructed to the sky, it is.

24 VICE CHAIRPERSON MILLER: Oh, because it
25 is obstructed?

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1 MS. OGUNNEYE: Exactly.

2 VICE CHAIRPERSON MILLER: Okay. Okay.
3 So you are saying because it is obstructed, legally
4 it doesn't exist under our regulations.

5 MS. OGUNNEYE: Right.

6 VICE CHAIRPERSON MILLER: Okay. Why was
7 the trellis replaced with the eave? Do you know?

8 MS. OGUNNEYE: Um--

9 VICE CHAIRPERSON MILLER: You don't
10 know?

11 MS. OGUNNEYE: I'm not sure.

12 VICE CHAIRPERSON MILLER: Okay. And do
13 you know what purpose the eave serves in this case?

14 MS. OGUNNEYE: My assumption is--

15 CHAIRPERSON GRIFFIS: Do you want to
16 know if she reviewed this as part--I'm not sure what
17 purpose you are getting at for her to speculate on
18 the purpose of the eave--

19 VICE CHAIRPERSON MILLER: Well, I think
20 the allegation--the argument has been made that the
21 purpose of this eave is to circumvent the
22 regulations, in order to provide--so I am asking you
23 if you are aware of any other purpose of this.

24 And I guess the Chairman is then saying
25 in your review is that something that you would

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1 review, as to what the purpose of an eave would be.

2 MS. OGUNNEYE: That particular
3 application, I was just looking at, early on--may I
4 just have a minute or two to look at it? That final
5 permit.

6 VICE CHAIRPERSON MILLER: Sure.

7 (Pause.)

8 MS. FERGUSON: I would like to ask the
9 Board's indulgence. We do not have copies of the
10 drawings. We would like to ask the Appellant if she
11 might share the copies of the drawings with us. For
12 the last building permit, 7090.

13 (Pause.)

14

15

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1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 6:00 p.m.

3 CHAIRPERSON GRIFFIS: We have an official
4 rule, Section 8000, that after 6:00, everything is
5 shared.

6 (Laughter.)

7 MS. FERGUSON: Okay.

8 CHAIRPERSON GRIFFIS: So, it's after
9 6:00 o'clock. You can share everything.

10 (Laughter.)

11 (Pause.)

12 MS. OGUNNEYE: I'm sorry. I got clarity
13 on that. Apparently the application was put in
14 pretty much as a trellis, it's just that rather than
15 it being the trellis, like a transparent grid
16 trellis, they opted to do a full covered trellis.

17 It's not an extension of the roof
18 itself. This is attached to the side of the
19 building. And that is where my confusion was. So
20 that, in fact, it looks like an eave, but it is not
21 an eave. It's an attachment to the side of the
22 building.

23 VICE CHAIRPERSON MILLER: Okay. I mean,
24 it just appears in general like this attachment was
25 done in order to make it compliant and for no other

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1 reason, in order to do the addition.

2 CHAIRPERSON GRIFFIS: Yes, but there is
3 no problem with that. Is there?

4 VICE CHAIRPERSON MILLER: Well, there
5 could be a problem if you thought that it was a way
6 to circumvent regulations that shouldn't be
7 circumvented. It could be a problem--

8 CHAIRPERSON GRIFFIS: --the effect of
9 it, and afterward do an addition to a property?
10 Let's get to the substance of it.

11 What we are looking at here is, I think,
12 very clear. I'm not sure we need to go into that
13 direction.

14 Ms. Ogunneye, you testified, I thought
15 it was very clear. And in fact Mr. Bellows' letter
16 that is submitted into the record will make it even
17 more clear.

18 If I understand it correctly, your
19 limited testimony today indicates that the two
20 elements that are shown on the permit documents in
21 the different revised permits--those two elements in
22 your opinion of the zoning regulations, constitute a
23 structure.

24 That structure therefore makes an
25 attachment to this property line, making that an

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1 attachment, eliminating any side yard, making this
2 at one point semidetached structure into an attached
3 structure, a row dwelling. Is that correct?

4 MS. OGUNNEYE: Correct.

5 CHAIRPERSON GRIFFIS: And so, what is at
6 issue here, and the Appellant is obviously raising
7 to the discussion of they believe that's your error,
8 in establishing those two elements as making that
9 connection, and making this a row dwelling. Do I
10 have that right?

11 MS. FERGUSON: That is the Appellant's
12 position.

13 CHAIRPERSON GRIFFIS: Yes. I know
14 their--

15 MS. FERGUSON: We would proffer that
16 those decisions were made in accordance with the
17 current zoning regulations. Therefore, they comply
18 with the regulations. Now if there is something, we
19 don't see that they are circumventing the
20 regulations, we see that we are bringing those plans
21 into compliance with the regulations.

22 CHAIRPERSON GRIFFIS: Right. Well, yes.
23 And I want to--let's make it clear. Because an
24 appeal here is not whether the property owner made
25 steps to circumvent or find a loophole--I don't know

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1 we appeal that, or even get to the bottom line of
2 it.

3 What's at appeal here is the Zoning
4 Administrator's decision to grant a permit, and the
5 basis of that permit are these elements. That's
6 straightforward enough.

7 Okay. What Ms. Miller is going to is
8 whether that happens--or whether it rises to the
9 level of correctness. I know that's what she is
10 looking at. So, that's what we will investigate.

11 MS. OGUNNEYE: Right.

12 CHAIRPERSON GRIFFIS: Follow-up?

13 VICE CHAIRPERSON MILLER: Well, okay. I
14 think--I would like to ask you, Ms. Ogunneye, are
15 there any limits or any standards that control the
16 authority of the Zoning Administrator to approve
17 permits which convert property from semidetached to
18 row dwellings?

19 MS. OGUNNEYE: If I am understanding you
20 correctly, you are asking if there anywhere in the
21 zoning regs that would preclude the Zoning
22 Administrator from converting a semidetached
23 structure into a row dwelling? Is that your
24 question?

25 VICE CHAIRPERSON MILLER: Basically. I

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1 think that--let me just a little bit more specific.
2 And I think it comes from what the Appellant was
3 arguing.

4 If you could add an embellishment onto
5 any dwelling and convert its status, are there any
6 limits to that, that that may in fact circumvent the
7 spirit of the regulations, if not the regulations
8 themselves?

9 MS. FERGUSON: I would like to respond
10 to that. My response is going to be pretty similar
11 to the Appellant's response. I have several cases
12 here where the Board has come across this question
13 on a number of occasions, and they have been
14 narrowly construed and very specific circumstances,
15 but it does appear that the precedence has been set
16 to allow the conversion of that semidetached
17 dwelling to a row dwelling by the addition of a
18 trellis.

19 And it seems to me that the most--it
20 seems to me that the Zoning Administrator is going
21 to execute and administer the zoning regulations
22 within his wisdom and discretion based upon his
23 experience.

24 And the Zoning Administrator who made
25 that decision was a pretty experienced Zoning

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1 Administrator. I think what we need is direction
2 from the precedent-setting decisions.

3 CHAIRPERSON GRIFFIS: What are some of
4 these--what are the precedent-setting decisions that
5 you are saying? Because I hear you saying this.
6 There are Board decisions, but I have also just
7 heard you say that there are past Zoning
8 Administrator's decisions.

9 MS. FERGUSON: No, no. If I said that,
10 then I was in error. I was wrong to say that. I
11 have read several decisions. I'm just going to give
12 you some where I have not cited them, in reliance on
13 any of them.

14 CHAIRPERSON GRIFFIS: That's fine.

15 MS. FERGUSON: I don't think my case is
16 on all fours with any of them. But I do see that
17 this matter has been coming up, you know, a couple
18 of times. More than a few times. And perhaps we
19 need--

20 CHAIRPERSON GRIFFIS: We're very aware
21 of it. What cases are you looking at?

22 MS. FERGUSON: The Application No.
23 17007--

24 CHAIRPERSON GRIFFIS: What's the name of
25 that?

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1 MS. FERGUSON: Application of Kathleen
2 Peoples and Philip Sedlik Black.

3 CHAIRPERSON GRIFFIS: Good case. Next
4 one?

5 MS. FERGUSON: Appeal No. 17085, Louise
6 and Larry Smith and Mary Anne Snow and James Marsh.

7 CHAIRPERSON GRIFFIS: Uh-huh. Yes.
8 Knew that one would come back.

9 MS. FERGUSON: Application No. 16863 of
10 S&P Properties, and 16863A of S&P Properties. And
11 Appeal No. 16811 of David and Janet Pritchard.

12 And I bring these cases--offer these
13 cases informatively because they were informative to
14 me, but I still would not feel comfortable relying
15 upon them--

16 CHAIRPERSON GRIFFIS: Sure.

17 MS. FERGUSON: --in this discussion,
18 because I do not believe that the Zoning
19 Administrator relied upon them. I believe the
20 Zoning Administrator relied upon the zoning
21 regulations to come to the decision that he came to,
22 to issue that building permit.

23 CHAIRPERSON GRIFFIS: Good.

24 MS. FERGUSON: But I raised them because
25 I thought that, with a little bit more clarity and

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1 direction, and the decisions and precedents from the
2 Board, that might assist us.

3 CHAIRPERSON GRIFFIS: Excellent. It's a
4 good clarification. And I don't think we should
5 have cross on those cases as in the interpretation
6 of the decisions of the Zoning Administrator.

7 But I think it is important to cite
8 those in terms of when we are making the statements
9 that there are past precedents for the Board's
10 decisions.

11 Follow-up questions?

12 VICE CHAIRPERSON MILLER: This is my
13 last question, I think.

14 I think it's a little problematic, and I
15 want to know are there any circumstances you can
16 think of, for instance, where a connection would not
17 be sufficient to do this kind of conversion, when
18 you talked about trellises, that there is authority
19 for that. And that the ZA in this case, I gather,
20 thought an eave was okay.

21 Is any kind of projection okay?

22 MS. OGUNNEYE: Well, there is no set
23 limit on what projections could be. But however, in
24 this particular case, we are talking of a 2'6" side
25 yard, which you know is pretty narrow.

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1 And the addition that the Applicant
2 proposed, they did set back the required eight feet,
3 so it's not as much as them trying to circumvent,
4 because at the back, they could have set back six
5 feet. So it is not as much as them trying to
6 circumvent, because at the back they could have set
7 back six feet, and gone with the court width.

8 It was just a situation of this is what
9 we want to do. We know we are semidetached, but we
10 didn't realize the nonconforming side yard would be
11 counted towards our lot occupancy.

12 And that is where the whole review
13 process went wrong. They were coming to do the
14 addition initially, knowing that they are
15 semidetached. And they did propose to do the
16 addition setting back the required eight feet.
17 Unfortunately, in doing their calculations, they
18 didn't realize that the 2'6" nonconforming side yard
19 counted toward the lot occupancy.

20 So they came on at 30-whatever percent,
21 thinking they were well below the 40 percent. So I
22 wrote my comments. I guess they went back to the
23 drawing board and tried to figure out, well, what
24 can we do, how can we make it work.

25 VICE CHAIRPERSON MILLER: Thank you.

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1 MR. HILDEBRAND: Was there ever any
2 discussion of actually revising the design so that
3 it was more of a traditional row dwelling that did
4 go property line to property line?

5 MS. OGUNNEYE: To be perfectly honest, I
6 am not so clear on that, except that I pointed out
7 what the issues were, and that they needed to do
8 whatever they needed to do. I'd rather not try and
9 recollect what I am not too clear on, because I
10 think I already referred to that, earlier on.

11 MR. HILDEBRAND: Just to make sure I
12 understand, too. The trellis or eave option was
13 proposed by the Zoning Administrator as a solution
14 to this problem?

15 MS. OGUNNEYE: No.

16 MR. HILDEBRAND: It wasn't proffered by
17 the Applicant?

18 MS. OGUNNEYE: It was proposed by the
19 Applicant at the time.

20 MR. HILDEBRAND: And how did they come
21 to this solution? Do you have any idea?

22 MS. OGUNNEYE: I don't know. Probably
23 the architect. Could have been through the
24 architect.

25 MR. HILDEBRAND: Thank you.

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1 MR. MANN: This is on a slightly
2 different track, although related to Mr.
3 Hildebrand's questions. As I read the March 21st
4 letter from the Zoning Administrator to Commissioner
5 Solomon, on the top of page 2, the second full
6 paragraph, "It seems to me that the Zoning
7 Administrator at this point had made his decision
8 and offered up an option." And that options says
9 that, "In exchange for not moving revocation of the
10 building permit, I instructed the property owner to
11 file a revised permit application for referral to
12 the BZA. The application before the BZA will seek a
13 special exception. The Applicant understands that
14 approval of the request by the BZA is not
15 guaranteed. To that end, the Applicant has the
16 option of scaling back the project to within the two
17 percent flexibility discretion, in the event the BZA
18 denies the application."

19 So I guess what I don't understand is
20 given that a series of events happened and the BZA
21 denied the application, when then did we make the
22 leap to this additional alternative that a trellis
23 or an overhang was another option in addition to the
24 options that he laid out on March 21st?

25 MS. OGUNNEYE: No. The trellis option

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1 was always there from day one. The very first
2 approval of the application. What happened in March
3 is, when the Appellant had brought the property to
4 the Zoning Administrator's attention, they were not
5 quite happy with the building permit.

6 So what this letter was doing was
7 basically to mediate between both sides and see if
8 there could be a compromise.

9 MR. MANN: Why didn't the Zoning
10 Administrator say that there are three options,
11 instead of only two options?

12 MS. OGUNNEYE: Would the third option
13 be? I'm sorry.

14 MR. MANN: The third option would have
15 evidently been a trellis or an overhang or an eave.

16 MS. OGUNNEYE: But the trellis was
17 already partly there. That was always--I believe--

18 MR. MANN: Not according to this second
19 paragraph on page 2, if I read this correctly.
20 Where in this letter is the other option identified?

21 MS. OGUNNEYE: What happened is, the
22 trellis was in place. The option is okay, go ahead
23 and make changes, go to the BZA for a special
24 exception, which would eliminate that trellis that
25 was already approved. That was one option.

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1 The second option was, if you went to
2 the BZA, and the BZA didn't grant it, then you could
3 reduce the building and comply with the 40, or 42
4 with the BZA.

5 MR. MANN: Right, and that path wasn't
6 followed, given the outcome.

7 MS. OGUNNEYE: Remember that the
8 original building permit was always valid. When an
9 application goes in for a special exception, it is
10 upon approval that you can now bring it in and do a
11 revision to the other--the existing building permit,
12 which would now nullify that.

13 The original building permit was never
14 nullified, and this letter never intended to nullify
15 that. So the options that were given to the
16 Applicant were okay, you do have this for the
17 trellis, let's put that to the side.

18 Would you go to the BZA and see if you
19 could get approval, looking at it this way. And if
20 they do approve it, then, you know, it will become a
21 non-issue.

22 However, the permit with the trellis was
23 still valid.

24 MR. MANN: All right. I don't know if I
25 fully agree with that, but I appreciate your

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1 explaining that to me. Thank you.

2 MS. OGUNNEYE: May I ask why? Well, no,
3 I won't.

4 (Laughter.)

5 CHAIRPERSON GRIFFIS: Thank you. Any
6 other questions?

7 MR. MANN: No, not right now.

8 CHAIRPERSON GRIFFIS: Okay. Follow-up
9 on any other Board members' questions?

10 (No response.)

11 CHAIRPERSON GRIFFIS: Okay. Cross?

12 MS. HORVITZ: Yes. Thank you. Prior
13 to--I have a few questions for you.

14 MS. OGUNNEYE: Sure.

15 MS. HORVITZ: Prior to the permitting
16 process, was the dwelling at 1812 Thirty-Fifth
17 Street a semidetached dwelling?

18 MS. OGUNNEYE: Yes, it was.

19 MS. HORVITZ: Okay. Did you use any--do
20 you have any definition of trellis which you were
21 relying upon when signing off on approval of the
22 trellis?

23 MS. OGUNNEYE: Just that it's a
24 structure, and we do get a lot of applications that
25 come in using the word "trellis", and we always

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1 count it towards lot occupancy, even though you have
2 people that would argue that, well, it's open
3 partially to the sky.

4 So it has always been a set precedent
5 with the Zoning Administrator's office that any kind
6 of trellis, whether or not--I'm sorry, I'm looking
7 for the right word. Whether or not it is completely
8 covered or partially exposed counts toward lot
9 occupancy.

10 MS. HORVITZ: Well, did you have, at the
11 time that you first approved the building permit in
12 November--did you have any specifications of what
13 this trellis was going to look like?

14 MS. OGUNNEYE: Prior to what date?

15 MS. HORVITZ: On October 21, 2004, when
16 you signed off on the plans, and then the building
17 permit was issued in early November of 2004.

18 MS. OGUNNEYE: Uh-huh.

19 MS. HORVITZ: What, if any, drawings,
20 plans or specifications did you have available to
21 you at the time, that helped you understand exactly
22 what this trellis was going to look like?

23 MS. OGUNNEYE: Usually that's taken care
24 of by the structural review or the File Division.
25 All we do is look at the massing, the volume, the

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1 height FAR. We never look at the materials or the
2 configuration. We just make sure that it is being
3 built appropriately.

4 MS. HORVITZ: Did you know what the
5 materials were going to be to construct this? Was
6 it going to be wood?

7 MS. OGUNNEYE: I really wouldn't have
8 cared one way or the other, in terms of the whole
9 building. We don't look to what types of materials
10 that the building is--

11 MS. HORVITZ: What about the--I'm sorry.
12 .

13 MS. OGUNNEYE: I was going to say, what
14 the building is built with. Other disciplines would
15 review that.

16 MS. HORVITZ: What about the amount of
17 sky through which you might see through this
18 trellis? Did you have any information that told you
19 anything about that?

20 MS. OGUNNEYE: Again, there is nothing
21 that requires that I check that.

22 MS. HORVITZ: Right. But my question
23 is, at the time that you originally approved it,
24 based on the proposal that there be a trellis, did
25 you have any information about whether you would be

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1 able to see some or all of the sky--

2 MS. FERGUSON: She has already answered
3 that question.

4 MS. HORVITZ: She answered that she is
5 not required to. She didn't actually answer whether
6 she had any information--

7 MS. OGUNNEYE: No, no. I did answer
8 before that the way the Zoning Administrator has
9 always reviewed trellises is as 100 percent lot
10 occupancy, regardless of what percentage is open to
11 the sky or not.

12 MS. HORVITZ: Right. But my
13 understanding is that in part you were looking at
14 definitions of yard and the like, which relate to
15 how much of the sky you can see. So my question is,
16 how much of the sky was being proposed to be visible
17 when you approved the trellis?

18 MS. OGUNNEYE: Again, there is nothing
19 that requires for me to look at the percentage.
20 When I speak to structure or the yard or the
21 definitions, that is a general understanding that I
22 use in the review process. I am not going to go
23 looking at the definitions every time I do a review.

24 It's pretty much a given.

25 MS. HORVITZ: But where was the trellis

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1 going to be located when you first approved, for
2 zoning purposes, the plans that resulted in the
3 November 2004 permit? Where physically was the
4 trellis going to be located on the building?

5 MS. OGUNNEYE: Within the nonconforming
6 side yard.

7 MS. HORVITZ: At what height?

8 MS. OGUNNEYE: It was supposed to be
9 placed high enough to eliminate the nonconforming
10 side yard.

11 MS. HORVITZ: Well, was it going to be
12 near the roof line, was it going to be above the
13 second floor, was it going to be above the first
14 floor? Where was it going to be?

15 MS. OGUNNEYE: Well, actually it was
16 supposed to be way up at the roof line.

17 MS. HORVITZ: Why don't you take a look--
18 -instead of looking at the last version of the
19 plans, which was attached to the first permit--

20 MS. OGUNNEYE: That's the October 21
21 plans.

22 MS. HORVITZ: Well, in fact, if you take
23 a look at the plans as they existed before the
24 amendment that was filed and approved in September
25 of 2005, didn't the plans say that the trellis was

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1 going to be above the first floor?

2 I am directing the witness' attention to
3 the appeal document, Exhibit 4, the cover sheet.

4 (Pause.)

5 MS. HORVITZ: You're free to look at A1,
6 as well.

7 (Pause.)

8 MS. OGUNNEYE: I'm sorry. It's a bit
9 tiny. I think it says above first floor.

10 MS. HORVITZ: I have a full-size version
11 if you are uncertain of that.

12 MS. OGUNNEYE: Yes, it says above the
13 first floor.

14 MS. HORVITZ: And you are looking at the
15 cover sheet. And then I direct your attention to
16 A1, which also has a depiction of the trellis, and
17 what does it say there? Tell me if that is your
18 handwriting.

19 MS. OGUNNEYE: No, that is not my
20 handwriting.

21 MS. HORVITZ: That is not your
22 handwriting?

23 MS. OGUNNEYE: No.

24 MS. HORVITZ: What does it say there?

25 MS. OGUNNEYE: "Trellis above first

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1 level."

2 MS. HORVITZ: Okay. So, when you--when
3 it was approved, originally, this trellis was going
4 to be where?

5 MS. OGUNNEYE: Well, the trellis was
6 supposed to be way up at the roof level. I'm just
7 noticing that says first floor. Yes.

8 Because if you notice, it's hatched all
9 the through.

10 MS. FERGUSON: It has roof plan, but
11 first level. It's handwritten in there, first
12 level.

13 (Pause.)

14 MS. FERGUSON: You see it says roof
15 plan? First level.

16 MS. HORVITZ: The roof plan shows, as
17 you testified before, does it not something of the
18 aerial view of the property? Does it not? What you
19 are going to see from above, looking down. Correct?

20 MS. OGUNNEYE: Yes. That's what a roof
21 plan would do.

22 MS. HORVITZ: All right. So, when you
23 are showing that there is a trellis, and you see it
24 from above, wouldn't it be appropriate to indicate
25 that in fact it's not at the top level that you were

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1 putting it, it was down two floors below above the
2 first floor? Above first level. Correct?

3 MS. OGUNNEYE: No. The intent was for
4 the trellis to be up at the roof level.

5 MS. HORVITZ: So it's your testimony
6 that the trellis was never going to be attached to
7 Mr. Schmidt's property?

8 MS. OGUNNEYE: No. It was always going
9 to attached to her property.

10 MS. HORVITZ: There was not going to be
11 any connection with the adjacent property on the
12 south side?

13 MS. OGUNNEYE: Uh-huh.

14 MS. HORVITZ: No? Okay. And then the--
15 so, why have a new permit in September that now is
16 calling this an eave or a projection? What was the
17 need for the new permit?

18 MS. OGUNNEYE: My guess is rather than
19 have a transparent trellis, they went with the full
20 covered--

21 CHAIRPERSON GRIFFIS: Actually, posed
22 the way it is, what do you mean "need"?

23 MS. HORVITZ: Well, if what was going to
24 be built was already fully permanent and drawn--

25 CHAIRPERSON GRIFFIS: Well, then, the

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1 question would be for the Zoning Administrator's
2 purposes. I understand it wasn't required for an
3 additional revision to the permit? Isn't it?

4 I don't think she can speak to whether
5 there was a need--the need for it.

6 MS. HORVITZ: Okay.

7 CHAIRPERSON GRIFFIS: Was there a need
8 for it is a good question.

9 MS. HORVITZ: Okay.

10 MS. HORVITZ: What was your
11 understanding when the building permit that was most
12 recently approved in September came before you? Am
13 I correct that that was also--that you also reviewed
14 that?

15 MS. OGUNNEYE: As an--individually?
16 Personally?

17 MS. HORVITZ: On behalf of--did you do
18 the zoning review for the September 2nd permit?

19 MS. OGUNNEYE: Personally?

20 MS. HORVITZ: Yes.

21 MS. OGUNNEYE: No. I did not.

22 MS. HORVITZ: Do you have any
23 information about the--were you supervising the
24 person who did that?

25 MS. OGUNNEYE: No. I don't supervise.

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1 My people do walk-throughs or file--review jobs.
2 Every technician is capable to do the reviews on
3 their own. If they come across gray areas that they
4 are uncertain about, then they might come to me or
5 the Zoning Administrator.

6 MS. HORVITZ: All right. Do you have
7 any understanding as to whether or not the plans
8 that were submitted and then approved for the latest
9 building permit on September 2nd or 5th, 2005,
10 altered the specifications of the trellis in any
11 way?

12 MS. OGUNNEYE: Again, the specifications
13 are not something we review from a zoning
14 standpoint. If we approve any element--for instance,
15 if you do a garage addition to your house, and you
16 decide, okay, I am going to change it from a slate
17 roof to asphalt or whatever, it won't matter to
18 zoning. We'll just sign off. It's--

19 MS. HORVITZ: Well--

20 MS. OGUNNEYE: I mean, does that answer
21 your question?

22 MS. HORVITZ: Did DCRA recommend that
23 the permit--that the plans be revised again, in a
24 manner that would change the trellis from what was
25 proposed previously to something else in the

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1 September 2005 plan?

2 MS. OGUNNEYE: No.

3 MS. HORVITZ: Is it your understanding
4 that there--was there any need for this latest
5 permit from September of 2005?

6 MS. OGUNNEYE: Not that I know of.
7 Again, I was just seeing the application here. The
8 actual drawing--

9 MS. HORVITZ: Is it your testimony that
10 you were relying on the definition of "structure" as
11 your basis for treating this trellis as eliminating
12 of the side yard?

13 MS. OGUNNEYE: It would be one of a few
14 definitions, yes.

15 MS. HORVITZ: Does the definition of
16 structure make specific references to trellises?

17 MS. OGUNNEYE: It makes specific
18 reference to anything.

19 MS. HORVITZ: Does it use the word
20 "trellis"?

21 MS. OGUNNEYE: Not specifically, no.

22 MS. HORVITZ: Does it use the word
23 "projection"?

24 MS. OGUNNEYE: Projections don't come
25 into play with zoning.

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1 MS. HORVITZ: Does the definition of
2 structure use the word "eave"?

3 MS. FERGUSON: The definition for
4 "structure" is in the regulations, Title 11, DCMR--

5 MR. KEYS: Mr. Chairman, I think it
6 speaks for itself. I mean, this--the statute
7 doesn't include the word "elephant", either.

8 CHAIRPERSON GRIFFIS: We got the point.

9 MS. HORVITZ: All right. I think you
10 just said that projections don't fall under zoning.
11 Is that what you said?

12 MS. OGUNNEYE: I take that back. I
13 apologize.

14 MS. HORVITZ: All right. Are you
15 familiar with 11 DCMR 2502.2, which speaks to the
16 amount that an eave may project over a required side
17 yard?

18 MS. OGUNNEYE: Yes, I am.

19 MS. HORVITZ: What is your position, if
20 any, as to why DCRA could approve a projection or
21 eave that extended more than two feet over the then
22 existing side yard?

23 MS. OGUNNEYE: I believe I had made the
24 statement earlier when Ms. Miller brought it up. As
25 far as how much the eave overhangs--excuse me, it's

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1 been a long day.

2 Basically, the maximum projections
3 allowed for eaves is two feet, and that was why I
4 asked for clarity as to--was that a continuation of
5 a roof overhang or did they just use the word
6 "roof". But it is actually an attachment to the
7 building wall. It is not a continuation of the
8 roof, even though that was the word that was used on
9 the application.

10 MS. HORVITZ: Okay. Is it your
11 testimony that what is being proposed and what was
12 permitted is not an eave?

13 MS. OGUNNEYE: No. Not from the clarity
14 I got from the Applicant's representative.

15 MS. HORVITZ: And why is it not an eave?

16 MS. OGUNNEYE: It is not a continuation
17 of a main roof. It's a trellis for all intents and
18 purposes. It is a structure that is being attached
19 to the side wall, and I believe he did mention that
20 when I asked for clarity.

21 MS. HORVITZ: If something is not
22 defined in the regulations, do you ever go to
23 Webster's Unabridged Dictionary to help elucidate
24 what the meaning of a word is?

25 MS. OGUNNEYE: Yes, I do.

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1 MS. HORVITZ: And have you ever looked
2 up the word "trellis"?

3 MS. OGUNNEYE: Not recently. Again,
4 "trellis" is something that is not new to zoning.
5 Just like a lot of people use the word "pergola" but
6 we treat it all the same.

7 MS. HORVITZ: Okay. I think that's all
8 I have.

9 CHAIRPERSON GRIFFIS: Thank you. Yes?

10 VICE CHAIRPERSON MILLER: I just want to
11 get clarity on this question.

12 Ms. Ogunneye, basically what you said is
13 that what was built was not an eave. However, the
14 permit that has been added to the appeal is for an
15 eave. It says to extend roof overhang on one wall
16 to property line.

17 MS. OGUNNEYE: Uh-huh.

18 VICE CHAIRPERSON MILLER: So, is that an
19 error to have issued a permit for that?

20 MS. OGUNNEYE: In doing reviews, we
21 don't--well--in this particular case, no, it was not
22 issued in error. Yes, the wording might not have
23 been reflected appropriately. And that is why, when
24 you brought it up the first time, if you noticed, I
25 was taken aback, because I didn't expect it to be an

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1 overhang. The maximum allowed for a roof overhang
2 is two feet.

3 And I did ask the Applicant if it was
4 actually a roof continuing and you are extending the
5 overhang, and it is not.

6 VICE CHAIRPERSON MILLER: Then, what--
7 maybe you can't answer this. I don't have before me
8 the permit for the trellis, but basically it sounds
9 like you were saying that a trellis accurately
10 reflects what was done. And a roof overhang
11 doesn't.

12 MS. OGUNNEYE: Right.

13 VICE CHAIRPERSON MILLER: But this
14 permit replaces the previous permit.

15 MS. OGUNNEYE: Okay. This permit
16 replaces the previous permit. There was always a
17 trellis involved. At the time of the review, there
18 was no notation as to whether it was going to be
19 open or it's going to be completely roofed in. At
20 this point, they probably came in to amend or to
21 have the trellis become completely covered on the
22 top. That is the only explanation I can give.

23 Again, there is nothing that says to
24 what extent or what ratio a trellis has to be
25 transparent or, you know.

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1 VICE CHAIRPERSON MILLER: Thank you.

2 MS. OGUNNEYE: You're welcome.

3 CHAIRPERSON GRIFFIS: Anything else?

4 MR. HILDEBRAND: Yes. I am trying to
5 understand this a little bit more. Because the
6 permit revision does specifically say a "roof
7 overhang". It doesn't say a trellis. And the
8 drawings call it an eave, which is generally
9 associated with a roof. So, if the limitation on an
10 eave and roof overhang is two feet, how were they
11 allowed to go two and a half feet without getting a
12 special exception?

13 MS. OGUNNEYE: That's what I was saying,
14 when I asked to look at the application, it is not a
15 continuation of a roof, because I looked at the
16 drawings here.

17 MR. HILDEBRAND: The definition--
18 actually the building application says "extend roof
19 overhang on one wall". The application clearly
20 states that it's a roof overhang.

21 MS. OGUNNEYE: I guess the application
22 can get modified to read "trellis". I didn't do the
23 review. I wish it were done differently. But
24 again, that is why I asked to look at the drawings,
25 to understand if in fact it was an eave, because

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1 overhanging more than 24 inches would not have been
2 allowed.

3 CHAIRPERSON GRIFFIS: Let's move on,
4 because I think we're muddling an issue here--2502.2
5 indicates that cornices may project over any
6 required yard or court for a distance not to exceed
7 two feet. Does that in your understanding prohibit
8 any extension, cornice, eave or any other extension
9 if they are not those two from going more than two
10 feet? Is it prohibited?

11 MS. OGUNNEYE: No.

12 CHAIRPERSON GRIFFIS: I would think that
13 you would say no. However, once that extended
14 beyond two feet, it would start to count towards
15 occupying an open space.

16 So it's not as if a projection is
17 prohibited from being two feet from the building,
18 but rather once it is--

19 MS. OGUNNEYE: It counts.

20 CHAIRPERSON GRIFFIS: I would imagine
21 this is your reading, because it is my reading of
22 the regulations in 2502, that once that exceeds two
23 feet, you start calculating it into the occupancy of
24 a required rear yard. Meaning it takes over the
25 space.

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1 Just as a chimney would be an allowable
2 structure and a projection of rear side yard. And a
3 rear yard would be allowed, if I am not mistaken,
4 five feet and a side yard, I think it's two square
5 feet, or whatever it is specifically.

6 Once you go beyond that, anything beyond
7 that starts to count against your rear yard. So it
8 is not prohibited.

9 MR. HILDEBRAND: So your position is also
10 that it's not a required rear yard, you are
11 eliminating the yard. So this provision doesn't
12 even come into play.

13 MS. OGUNNEYE: Correct.

14 CHAIRPERSON GRIFFIS: Okay. Anything
15 else?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Very well. What
18 an interesting point. But it also makes it a bit of
19 a stopping point, I believe.

20 It's 7:00 o'clock. Let me just assess
21 where we are in terms of the time--additional time
22 required, Mr. Keys, that you might need for
23 presentation this evening. And then also the ANC,
24 to see if we can indulge and finish tonight. And if
25 not, when we would set.

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1 So why don't we just have you just
2 address that quickly, how much time you would need.

3 MR. KEYS: Mr. Chairman, I don't think I
4 need any more than ten minutes as far as either
5 cross examination or to get information in through a
6 witness.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. KEYS: And maybe five minutes for my
9 own statement. And I think I'm done.

10 CHAIRPERSON GRIFFIS: Okay. So, ANC
11 time?

12 MR. EASON: I couldn't imagine more than
13 ten minutes, if that.

14 CHAIRPERSON GRIFFIS: Ten minutes?
15 Okay. Board members, do we have 30 more minutes in
16 us?

17 VICE CHAIRPERSON MILLER: Okay.

18 CHAIRPERSON GRIFFIS: Okay. Let's move
19 ahead then. We'll--I'm sorry. Okay.

20 (Pause.)

21 CHAIRPERSON GRIFFIS: We'll get the
22 transcript in, to make sure everyone has them fully.
23 Mr. Keys, do you want to go next? And then the ANC
24 to follow? It's up to you, whichever way you want
25 to go. Yes.

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1 MR. KEYS: Mr. Chairman, I would like to
2 have the opportunity to ask Ms. Ogunneye one or two
3 questions.

4 CHAIRPERSON GRIFFIS: Oh, I'm sorry.
5 Did I not--

6 MR. KEYS: Yes.

7 CHAIRPERSON GRIFFIS: Forgive me. Yes.
8 Let's go to cross.

9 MR. KEYS: Ms. Ogunneye, did you say in
10 your direct testimony that there were other
11 situations, other reviews you've done that have
12 involved a building element like this projection?

13 MS. OGUNNEYE: Yes.

14 MR. KEYS: This is not the first time,
15 then, that you have seen this or that judgment was
16 made by the Zoning Administrator?

17 MS. OGUNNEYE: Correct. This won't be
18 the first.

19 MR. KEYS: And that was established
20 precedent in your office?

21 MS. OGUNNEYE: Correct.

22 MR. KEYS: Thank you. I think there is
23 one other aspect of this element in the building
24 that is under discussion. And that is, its specific
25 location. Why is it not--what problems would it

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1 create if it were lower in the building?

2 MS. OGUNNEYE: If the trellis was lower?

3 MR. KEYS: Yes.

4 MS. OGUNNEYE: It would create a
5 nonconforming court, the trellis.

6 MR. KEYS: And it would cease to be a
7 nonconforming court when it was raised to what
8 level?

9 MS. OGUNNEYE: To the--at least above
10 the uppermost level, the roof or the third floor.

11 MR. KEYS: Of the adjacent house, or of
12 the--

13 MS. OGUNNEYE: No. Of the property
14 itself.

15 MR. KEYS: Thank you. I have no further
16 questions for Ms. Ogunneye.

17 CHAIRPERSON GRIFFIS: Thank you very
18 much. Does the ANC have cross?

19 MR. EASON: Just one or two very quick
20 points. I appreciate it. And I guess I would say,
21 to you, we haven't really met before. But the issue
22 that the ANC is here on, it's really whether there
23 was an error by DCRA, and I hope that you understand
24 that--

25 MS. OGUNNEYE: I do!

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1 (Laughter.)

2 MR. EASON: It's not intending to be
3 critical. But we'll try to clarify this.

4 Our concern is what it did actually take
5 for a threshold, if it is a point that you can
6 describe, to create what was intended, I presume, by
7 the trellis to close off that space. How much does
8 it have to be? Could it be a fence? If I had a
9 fence from A to B, across the front of the house?
10 Or this side yard? Would that, in your
11 understanding of the regulations, be sufficient?

12 MS. OGUNNEYE: A fence would be a
13 vertical element. For the side yard, you have to
14 look at--well, sorry. From a building area
15 standpoint, there is a horizontal projection that we
16 are looking at. So you have to eliminate the
17 nonconforming horizontally, not vertically.

18 MR. EASON: I was really concerned with
19 the notion that you expressed about the structure
20 that converts the semidetached to a row house.

21 MS. OGUNNEYE: Uh-huh.

22 MR. EASON: And I wonder if you could
23 clarify for me, how substantial does that have to
24 be. If I put a fence across, would that not connect
25 one piece to the other, as a structure?

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1 MS. OGUNNEYE: I am trying to understand
2 in what the direction the fence is going across. If
3 it's going sideways, left to right, I mean, from a
4 bird's-eye view, it's just going to be a vertical
5 projection, which would be then maybe a 12-inch
6 fence, and won't cover the whole ground you need to
7 cover.

8 MR. EASON: So it is your testimony that
9 it must cover the existing side yard--

10 MS. OGUNNEYE: Correct.

11 MR. EASON: --in order to be the kind of
12 structure required. You talked about the structure
13 has to be a permanent location on the ground. That
14 was part of the definition, was it not, in the
15 regulations?

16 MS. OGUNNEYE: I believe it said
17 permanent location on the ground or attached to a
18 structure that is permanently located to the ground.

19 MR. EASON: Okay. So, a roof--

20 MS. OGUNNEYE: Anything attached to the
21 wall is permanent.

22 MR. EASON: I guess, you know, as a
23 layman, I will admit, as new to zoning as you could
24 possibly be, the notion is that you eliminating the
25 side yard.

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1 MS. OGUNNEYE: Uh-huh.

2 MR. EASON: That in this case, for
3 certain, it could still remain a pathway, right,
4 where people can walk from front to back. There are
5 windows on the side of the building, that overlook
6 this side yard. I guess I would say it just doesn't
7 kind of pass the smell test, in my standpoint,
8 whether you have really gotten rid of the side yard.

9

10 It has all the other characteristics of
11 a side yard. Think about a row house, one against
12 the other, you can't walk from front to back.

13 MS. OGUNNEYE: Correct.

14 MR. EASON: You can't look out on your
15 neighbor's--

16 CHAIRPERSON GRIFFIS: I hope this is a
17 cross examination question.

18 MR. EASON: Oh, it is.

19 CHAIRPERSON GRIFFIS: Good.

20 MR. EASON: I guess it is in the sense
21 that I am trying to understand at what stage, if
22 those come into your consideration, whatsoever,
23 those elements.

24 MS. OGUNNEYE: There is nothing in the
25 regs that is specific to those kinds of elements.

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1 Again, when it goes through the building code review
2 sections, they would have to make sure that it
3 complies with whatever--fire ratings, or whether or
4 not they can have the windows there.

5 But zoning doesn't focus on that.

6 MR. EASON: Okay. Thank you very much.

7 MS. OGUNNEYE: You're welcome.

8 (Pause.)

9 MR. KEYS: I would like to ask Mr. Dan
10 to come up. I'd like to ask him a few questions
11 that just might help respond to some of the Board's
12 concerns.

13 Would you state your name and address
14 for the record.

15 MR. DAN: My name is Andreas Dan. My
16 address is 11208 Tack House Court, in Potomac,
17 Maryland. And I am one of the partners in the LLC.

18 MR. KEYS: Mr. Dan, were you present at
19 the time the Zoning Administrator's office explained
20 the problem with the original application?

21 MR. DAN: No, I was not there.

22 MR. KEYS: Who was there?

23 MR. DAN: The architect was there, I
24 believe. Ms. Garcia-Tunon was there. Maybe we need
25 to--

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1 MR. KEYS: Perhaps. I think I can
2 probably get this out. You had an option when you
3 were told that the building didn't comply with lot
4 occupancy requirements, to change the design
5 entirely. Did you not?

6 MR. DAN: That is correct.

7 MR. KEYS: Why didn't you change it?

8 MR. DAN: We wanted to keep the general
9 character of the building. We did not want to have
10 something that went from side to side. I think I
11 testified to this earlier in the special exception,
12 that we were hoping to keep the special character of
13 the building, and we did not want to close up the
14 whole front.

15 MR. KEYS: Let me ask you another
16 question about the decision on plans. Do you know
17 where the idea of a projection, a trellis,
18 originated as a cure for this particular discrepancy
19 in the plans and the zoning requirements?

20 MR. DAN: It could have come from the
21 architect, who probably knew of a precedent.

22 MR. KEYS: Do you know that to be true?

23 MR. DAN: I don't know that to be true,
24 but I think it probably did come from the architect.
25 I wasn't present when--when the plans came back to

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1 me, that was the solution that I had seen. But I
2 don't know how it came about.

3 MR. KEYS: Thank you, Mr. Dan.

4 MR. DAN: Thank you.

5 MR. KEYS: Gisela, would you please give
6 your name and address for the record.

7 MS. GARCIA-TUNON: Gisela Garcia-Tunon.
8 And the address is 6504 Millwood Road, Bethesda,
9 Maryland.

10 MR. KEYS: And your connection to the
11 ownership of the property?

12 MS. GARCIA-TUNON: I am the other
13 partner.

14 MR. KEYS: Were you present at the time
15 the plans were discussed?

16 MS. GARCIA-TUNON: Yes, I was.

17 MR. KEYS: Can you tell us where the
18 suggestion came for eave-projection-trellis to
19 resolve the problem?

20 MS. GARCIA-TUNON: Yes, I believe it
21 came from Angel Clarence, who was on the board
22 before. And he said he--that it was done before.
23 We did not want to make the house bigger. We
24 thought we want it to stay in the 40 percent, but
25 that side yard was the one that defined it 43. So

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1 we did not want to make it 60 or anything else.

2 MR. KEYS: Thank you, Ms. Tunon. I
3 think all the facts are here before you. And I want
4 to put, I hope, a capstone on the legal analysis.

5 I think it is important and useful to
6 look at what the Board has said in other instances.
7 And--as soon as I can find them, I'll make reference
8 to them.

9 I would like to second the list of cases
10 that Mrs. Ferguson cited.

11 But I would also like to add to that
12 list 17331, JPI Apartments Development, which is a
13 fairly recent case. And in that case, this Board
14 grappled with the notion of a trellis in another
15 context.

16 And that context was connecting two
17 buildings. But what I thought was interesting is
18 that the Board noticed that the trellis to fit the
19 function and purpose must cover at least 51 percent
20 of the overhead space. And that is analogous and
21 akin to the concept here, that you are blocking out
22 and taking over space. You are denying the
23 existence of a side yard.

24 The Appellant has put forward the
25 proposition that this Board alone has the power to

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1 authorize the creation of a row dwelling by
2 modifying a semidetached dwelling. And I think that
3 is a misstatement, and I think it ignores what this
4 Board has in fact said about what can be done as a
5 matter of right.

6 And I would refer the Board to its
7 decision in 17085, which was an appeal. This was
8 Louise and held Larry Smith. And in this case, the
9 Board held and it decided, and it refers back to the
10 Peoples and Sedlik case.

11 The Board made it clear that Pritchard
12 doesn't preclude the construction of in field row
13 dwellings, and it goes on to say it doesn't break
14 with the construction of new, end unit row
15 dwellings, regardless of whether the structure
16 shares one common division wall or none at all.

17 And I think that's interesting, because
18 that really goes back to the definition of row
19 house, which refers to the absence of yards, not to
20 the existence of party walls on both sides. And I
21 think in this case, if you put the definitions in
22 where this board has gone before in narrowing what
23 Pritchard says, then I think you reach a conclusion
24 that the Zoning Administrator was entirely
25 appropriate in acting in reliance on what the design

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1 regulations plainly allow.

2 The reliance on terminology like
3 "required yard"--the key fact is that 405.9 makes no
4 required side yard in an R-3 district. And again
5 you find that concept echoed in Section 2502, which
6 deals with the projections.

7 Here we are not dealing with a required
8 side yard. The yard has been eliminated, and we are
9 left with a property which fits within the
10 characteristics of a row dwelling in R-3.

11 And, as we pointed out in the special
12 exception case, if you look at the configuration of
13 houses in this neighborhood, this neighborhood was
14 really designed for row houses. There is only a
15 20-foot width on these lots.

16 And you see the regular separation of
17 houses with two and a half foot side yards. I think
18 the conversion to row houses is not a far stretch.
19 I think it is appropriate for row house development
20 to occur, and I think the Zoning Administrator has
21 recognized that the regulations create flexibility
22 to allow structures to be created, and added to a
23 property that will eliminate that yard.

24 The other reality is my clients have
25 invested a great deal in pursuit of this building

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1 permit, in setting foundations, modifying
2 foundations and building this structure.

3 I think they have acted in good faith,
4 and in reliance on the advice of professionals, the
5 advice of the Zoning Administrator, and I think that
6 the regulations support the construction that the
7 Zoning Administrator had made.

8 And I think to hold otherwise would fail
9 to recognize the real equitable situation and the
10 dilemma that my clients have been put in. They have
11 had an enormous amount of delay associated with this
12 process. This building should have been completed
13 and occupied long before now.

14 But we have done what the Zoning
15 Administrator required us to do in coming before you
16 for the special exception. We are now here before
17 you in the appeal, and I think you should, for ample
18 reasons, including the equitable arguments I have
19 added, look at upholding the Zoning Administrator's
20 decision.

21 CHAIRPERSON GRIFFIS: Good. . Thank you
22 very much. Do we have cross to the witness'
23 testimony?

24 MS. HORVITZ: I have three questions.

25 CHAIRPERSON GRIFFIS: Of the witnesses?

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1 MS. HORVITZ: Yes.

2 CHAIRPERSON GRIFFIS: Okay. Which ones?
3 Why don't we bring them both up, if the witnesses
4 wouldn't mind coming back up.

5 MS. HORVITZ: I just wanted to, if there
6 is no dispute. You can come up. I think you can
7 answer.

8 CHAIRPERSON GRIFFIS: If you wouldn't
9 mind us moving that microphone in your direction.

10 MS. HORVITZ: On the south side of 1812
11 Thirty-Fifth Street, are there windows that face
12 into the two and a half foot wide space between your
13 structure and Mr. Schmidt's?

14 MR. KEYS: I think there has already
15 been testimony admitted as to that.

16 CHAIRPERSON GRIFFIS: Next question.

17 MS. HORVITZ: I just wanted to make sure
18 that that was clear.

19 CHAIRPERSON GRIFFIS: I think that's
20 irrefutable.

21 MS. HORVITZ: Thank you. And I asked
22 one question.

23 (Laughter.)

24 CHAIRPERSON GRIFFIS: Good. Anything
25 else?

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1 MS. HORVITZ: Can I make a four-minute
2 closing?

3 CHAIRPERSON GRIFFIS: No. We have the
4 ANC first. Am I right? Yes. Let's go.

5 MR. EASON: Thank you, Mr. Chairman and
6 members of the Board. Again, I'm Charles Eason. I
7 am a Commissioner with ANC-2E. The area where this
8 property is located.

9 The ANC has previously provided the
10 Board with a copy of the resolution that was adopted
11 by the ANC in connection with this project.

12 I won't take our time at this hour of
13 the day to read that into the record, but I draw
14 your attention to it, and to maybe just highlight a
15 couple of points.

16 We are particularly concerned about the
17 legal issues that are presented by this case.
18 Because of the notion and the position espoused by
19 DCRA that some sort of minor, largely cosmetic
20 element can be used to convert a semidetached
21 residence into a row house.

22 In this case, they are talking about the
23 impact obviously on the footprint, it's just a
24 couple of percentage points. But given this notion
25 that is espoused by DCRA, as the basis for their

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1 grant of these permits, that could easily have been
2 60 percent, not 43 or 44 percent.

3 We are also troubled by the fact that
4 the way that this case came up at this stage really
5 denied us the early opportunity to be involved in a
6 special exception process. The permits were issued
7 while the house was under construction. And we had
8 no opportunity to provide input at that point.

9 But we do really strongly disagree with
10 the underlying notion, which is the basis, I think,
11 really for this case, as to whether a minor,
12 cosmetic--something that lends nothing to the
13 structure, it's not habitable. It doesn't have any
14 other purpose, it would appear at this stage, other
15 than to attempt to make property compliant with the
16 side yard issues.

17 We oppose the improved structure the way
18 it's constructed. We feel it has an adverse impact
19 on the neighborhood, as well as the Appellant, and
20 the rest of the community.

21 We would urge the Board to take our
22 comments into consideration. We would note that the
23 letter to our Chair, Mr. Solomon, dated the 21st of
24 March does include addressing the issue that was
25 just raised by counsel.

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1 But really putting--on the second page,
2 this was quoted from earlier, it does put the owner
3 on notice that they proceed at their own risk, so to
4 the extent that there is an argument of some sort of
5 equities, we feel that that was a choice that the
6 owner made with full knowledge of the potential
7 repercussions.

8 So we would ask that the Board approve
9 the Appeal, and that the building permits be set
10 aside, and appropriate actions follow.

11 CHAIRPERSON GRIFFIS: Thank you very
12 much.

13 MR. EASON: You are very welcome.

14 CHAIRPERSON GRIFFIS: Does the Appellant
15 have any cross?

16 MS. HORVITZ: No.

17 MR. KEYS: Mr. Eason, may I see the
18 resolution that you referred to?

19 MR. EASON: Sure.

20 (Pause.)

21 MR. KEYS: Was this resolution filed in
22 the record in this case?

23 MR. EASON: I believe so. Yes, I know
24 it was. It was attached to the Appellant's--bear
25 with me. It was.

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1 MR. KEYS: Did you send me a copy?

2 MS. HORVITZ: I don't have a copy.

3 MR. EASON: It indicates that at the
4 time it was filed--sorry. The time that it was
5 mailed, that it was sent to the Applicant, the
6 owner--

7 MR. KEYS: The Applicant's
8 representative is me.

9 MR. EASON: I am not sure that we were
10 aware of that fact when this letter was written. In
11 fact--

12 MR. KEYS: The letter was written last
13 month.

14 MR. EASON: We had this discussion, I
15 believe, previously. At the time the ANC took this
16 action, I don't believe that your appearance had
17 been made known to us, in which case--that's why.

18 MR. KEYS: All right. I just want to be
19 able to read it.

20 CHAIRPERSON GRIFFIS: Just for
21 clarification, that was attached to the Appellant's
22 submission? Is that correct? What is the date on
23 it?

24 MR. EASON: September 8th. I believe
25 that it was Attachment No. 2, Supplemental--no. I

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1 take that back. I'm confusing it with something
2 else. But it was made part of the record earlier.
3 And I know that it was provided to the Board.

4 CHAIRPERSON GRIFFIS: Who signed the
5 letter? Was it from--

6 MR. EASON: Ed Solomon. Right.

7 CHAIRPERSON GRIFFIS: It's Exhibit No.
8 31 in our records.

9 MR. EASON: Okay.

10 CHAIRPERSON GRIFFIS: It was an exhibit
11 dated September 8, '05. It was five pages in its
12 submission. Is that correct?

13 (Pause.)

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. FERGUSON: Mr. Chairman, the
16 government does not have a copy. We would like to
17 have a copy, too.

18 CHAIRPERSON GRIFFIS: No one is to leave
19 this room without a copy of that document! I have
20 it, Exhibit No. 31, September 8. It was cc'd to the
21 Director, DCRA, General Counsel, DCRA, Ms. Lee of
22 General Counsel, Mr. Wilson, Deputy General Counsel,
23 Alan Bernstein, Corp. Counsel, Owner, 1835 Thirty-
24 Fifth Street, and Stancioff, the Appellant. Those
25 are the cc's on it. So, let's make sure that we all

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1 have those. If you need to make copies, we'll see
2 if we can get copies made to make sure that everyone
3 has it.

4 MS. FERGUSON: Thank you.

5 (Pause.)

6 CHAIRPERSON GRIFFIS: That's an
7 interesting point. The cc of the owner is listed--
8 it is incorrect. It is, as I said, 1835 Thirty-
9 Fifth Street. That is what is listed on the cc.
10 Mr. Hildebrand, in his awakesness at this hour,
11 pointed out that the Applicant's address is actually
12 1812.

13 Okay. But we are going to get copies to
14 everybody on that. Okay. Anything further?

15 (Pause.)

16 CHAIRPERSON GRIFFIS: Ms. Ogunneye just
17 stepped out for a moment?

18 MS. FERGUSON: Yes. I think she did.

19 CHAIRPERSON GRIFFIS: Did the government
20 have any cross of the ANC?

21 MS. FERGUSON: No, Mr. Chairman.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you. Are we finished with the ANC?

24 (Pause.)

25 CHAIRPERSON GRIFFIS: Okay. Thank you

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1 very much. We appreciate your patience in being
2 here all afternoon.

3 What is then left is possibly just a few
4 Board questions of Ms. Ogunneye when she returns,
5 and a five minute closing. Excellent.

6 Let's take three minutes and stretch our
7 legs and we will wait for Ms. Ogunneye to return.
8 (Whereupon, the hearing briefly recessed at
9 7:30 p.m., and reconvened at 7:39 p.m.)

10 CHAIRPERSON GRIFFIS: Back on the
11 record. Ms. Ogunneye, I think, we have just one or
12 two questions for you. Ms. Miller?

13 VICE CHAIRPERSON MILLER: Ms. Ogunneye,
14 I just want to make sure I am looking at an accurate
15 depiction of the addition with an eave or trellis,
16 whatever.

17 If this picture, I'm going to hold it
18 up, is attached to the motion to amend, to include
19 new revision to prior building permit. And it
20 appears to be a document that is attached to a DCRA
21 document. So, are you familiar with this document?

22 MS. OGUNNEYE: Yes.

23 VICE CHAIRPERSON MILLER: Is this were
24 the eave or trellis is? I just want to--is this an
25 accurate picture of what was approved?

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1 MS. OGUNNEYE: Yes, I believe so. Yes.

2 VICE CHAIRPERSON MILLER: Okay. Thank
3 you.

4 CHAIRPERSON GRIFFIS: Good. For
5 absolute clarity and technical correction, you
6 pointed to an elevation, not a picture. Correct?
7 It's part of the attachments, and the elevation is
8 part of the attachments to the permit documents, and
9 that was a DCRA document that was in question. So
10 the location is depicted in the drawing, and it's
11 actually noted as--actually I can't read the note.
12 So I won't.

13 Okay. Very well. If we don't have
14 anything further, or any other questions,
15 clarifications from the Board, I think we are ready
16 for the Appellant's closing summation or remarks
17 that you might have.

18 MS. HORVITZ: Thank you very much. And
19 I appreciate all the time you devoted at this late
20 hour to this issue.

21 It sounds to me, from having heard the
22 testimony presented today, that the issue is whether
23 or not the owner of 1812 Thirty-Fifth Street
24 succeeded in removing the side yard, I guess, and
25 the reality is that the side yard is still there.

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1 There's windows facing that side,
2 there's access, there's a gate, and you can see the
3 sky. If you notice the depiction that you just held
4 up, Ms. Miller, to the witness, Mr. Schmidt's
5 property, which is to the south, is appreciably
6 shorter than the new structure, the added structure.

7 So it's not as if this eave, projection,
8 or trellis is actually completely covering and then
9 touching from wall to wall two adjacent properties.

10 It's just not. It's not a fully
11 enclosed space. It's an overhang of a roof. Now, I
12 know that the Board has in the past looked at issues
13 such as when a trellis or projection should count
14 for purposes of lot occupancy.

15 Well, in this unique circumstance, this
16 space is always going to be counted as part of lot
17 occupancy, because it was a nonconforming side yard.
18 So how wide the projection was or how wide the
19 trellis was, it's never going to affect the lot
20 occupancy calculation.

21 The issue here is whether or not that
22 trellis or projection or eave eliminated the side
23 yard. And if so, whether the owner had the
24 authority to do so.

25 So there is a fact component to your

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1 decision-making, which is can this possibly
2 constitute the elimination of a side yard? Because
3 it creates some shade. And it's three stories up,
4 and it doesn't create an enclosed space. It doesn't
5 create any living space. And I do invite the Board
6 to look at the decisions that have been cited by all
7 parties. And it's really interesting, because the
8 presumption has been, I think, in the decisions that
9 you are looking at lot line to lot line development
10 when you are filling in for a row house.

11 That's the kind of language that is
12 coming up in cases such as Pritchard and in the
13 Louis and Larry Smith and Mary Anne Snow and James
14 Marsh decisions. In Pritchard, the Board said--read
15 together Sections 405.3 and 405.8 preclude the
16 conversion of a semidetached dwelling to a row
17 dwelling unless the addition to the semidetached
18 dwelling will share on what will otherwise be its
19 freestanding side, a common division wall, with an
20 existing building. Or a building being constructed
21 with the addition.

22 There was at least a presumption by the
23 Board that what we were talking about when we were
24 undertaking this analysis of a conversion as of
25 right, was a common division wall or a party wall or

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1 some kind of structure of that character.

2 Similarly, even when limiting Pritchard,
3 in the case of Louise and Larry Smith, and Mary Anne
4 Show and James Marsh, Appeal No. 17085, the Board
5 said Pritchard is limited to, and I quote, "Whether
6 the owner of a one family semidetached dwelling in
7 an R-4 district may convert the dwelling to a row
8 dwelling as a matter of right where the dwelling
9 will not share on both sides a common division wall
10 with an adjacent building".

11 Again, the assumption, the presumption
12 there was that you are going to see a building and a
13 wall on the lot line. I mean, there is a footnote
14 in one of those two cases where you go into what
15 Webster's says is a freestanding wall.

16 Here we have nothing like that. And for
17 DCRA and the owner to place reliance on those cases
18 is to extend those cases and to redefine the concept
19 that was being by the Board in those circumstances.

20 So, to close, it's apparent, both from
21 the chronology and the drawings, and the testimony
22 of DCRA that this eave or trellis or projection was
23 nothing other than the shortcut to, with the least
24 amount of expense, and with really no pretense of
25 taking away the side yard. That side yard is still

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1 there for trespass for light to the windows that
2 face that way.

3 And for the Board to allow that is in
4 fact to allow a mockery of the regulations that
5 require side yard for semidetached dwellings in an
6 R-3 district.

7 Thank you. I hope that the Board will
8 grant the appeal.

9 CHAIRPERSON GRIFFIS: Thank you very
10 much. I believe that would then conclude our
11 proceedings on this appeal. I thank you all for
12 staying through and finishing it this evening.

13 What we need to do at this point is to
14 establish whether we have additional filings that
15 are required by the Board. And if so, when they
16 should be submitted and accepted for decision-
17 making.

18 I have not, in my cumulative notes on
19 this, made a list of anything that we have
20 requested, but Ms. Bailey, I will also refer to your
21 expert knowledge and see if you have anything that
22 was indicated, and then Board members, if you would
23 also review your notes.

24 MS. BAILEY: Mr. Chairman, I didn't hear
25 anything that the Board had requested.

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1 CHAIRPERSON GRIFFIS: Excellent. I
2 don't have anything, either.

3 Ms. Miller?

4 VICE CHAIRPERSON MILLER: We didn't
5 request anything. The parties have cited cases,
6 Board decisions. We have written some of them down,
7 but I think it would be helpful if they wanted to
8 just put that in the record.

9 CHAIRPERSON GRIFFIS: A written
10 submission of it?

11 VICE CHAIRPERSON MILLER: No, not an
12 argument. I mean, the cases, the Board decisions,
13 that you want us to look at. I've heard Pritchard.
14 I've heard Snow. If there is something else that we
15 might have missed writing down, I think it would be
16 helpful just--I wouldn't require it. If you would
17 like to submit that.

18 CHAIRPERSON GRIFFIS: Okay. So we'll
19 get that. What we're looking for is an application
20 number, the order number and the order name so that
21 we can pull that. And no other narrative or
22 explanations on the cases.

23 I think what we will do at this point
24 for an opportunity, we need Mr. Etherly to get the
25 transcript on this.

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1 (Pause.)

2 CHAIRPERSON GRIFFIS: Very well. I
3 think then we will set this for a special public
4 meeting and decision on the 8th of November, unless
5 staff sees any difficulty in accommodating that and
6 seeing things that I don't. If someone bumps us
7 along on our schedule, I know that at the end of the
8 year we will take great grief, probably in front of
9 counsel for having late nights such as this.

10 Yes?

11 MS. BAILEY: But I have--every date--the
12 need for this to finish--every delay--this is what
13 happens--

14 CHAIRPERSON GRIFFIS: That is why I am
15 trying to set it as quickly as possible for a
16 decision. And that's what we would do. Rather
17 than--I have two choices. I can set it for our
18 regularly scheduled public meeting, which is the
19 first of every month. It would not be the first of
20 this month. It would be December 1st.

21 Or, I am doing it on the 8th. That is
22 what I would like to do, which is as close as
23 possible for us on that.

24 So, setting a special public meeting, we
25 would set that at--we'll set it for 9:00 o'clock,

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1 and decide that then.

2 Very well. Let's just get the case
3 filings--I'm not sure that needs to be served unless
4 everyone feels like it needs to be served on
5 everybody. But we will put it in the record. You
6 might as well just fax it to everybody. Get that
7 information out. If we could have that by--let's
8 get it tomorrow and get it out to the Board. That
9 shouldn't take much time. You've got it already.
10 We'll just have that faxed in or however you want to
11 put it in, and then send it to everybody else.

12 We are not keeping the record open for
13 any other filings then. There's no other
14 responsibilities for any of the participants in this
15 case.

16 The Board does have a full record on it.
17 We will not, obviously, accept into the record
18 anything else, and specifically haven't requested
19 findings or conclusions by participants.

20 Very well. Any other questions to
21 answer procedurally? Everyone clear on that?

22 (No response.)

23 CHAIRPERSON GRIFFIS: I appreciate
24 everybody's time this evening. And if there is no
25 other business for the Board, Ms. Bailey, Mr. Moy,

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1 if you are aware of any?

2 (No response.)

3 CHAIRPERSON GRIFFIS: If there is no
4 other business, then, why don't we conclude our
5 afternoon session.

6 I wish everyone a very good evening.

7 (Whereupon, the hearing concluded at 7:52 p.m.)

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