

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 24, 2006

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner (NPS)
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON  
STEPHEN MORDFIN  
JOHN MOORE

This transcript constitutes the minutes from the public hearing held on October 24, 2006.

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Application of Kyrgyz Republic, pursuant to 11 DCMR 1002.1, to allow the location of a chancery at 2360 Massachusetts Avenue, N.W., in the D/R-3 District at premises 2360 Massachusetts Avenue, N.W. (Square 2507, Lot 50). 11

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

9:45 a.m.

CHAIRPERSON GRIFFIS: Good

morning to you all. Ladies and gentlemen,  
let me call to order the public hearing of  
the foreign missions of the Board of Zoning  
Adjustments of the District of Columbia. It  
is the 24th of October, 2006.

My name is Geoff Griffis,  
Chairperson. Joining me today is Vice  
Chair, Ms. Miller. Mr. Etherly is not going  
to be with us this morning, as he is ill.  
Representing this morning we have,  
representing the National Capitol Planning  
Commission Ms. Gallagher, and representing  
the National Park Service Mr. Parsons.

Copies of today's hearing agenda  
are available for you. They are located on  
the table where you entered into the hearing  
room. You can pick one up and see the rest  
of our schedule for this morning.

Please be aware, and I ask

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1 several things, be aware that we are being  
2 broadcast live on the Office of Zoning's  
3 website, and we are also being recorded by  
4 the court reporter sitting to my right.

5 Attendant to that, I ask that  
6 people turn off their cell phones and  
7 beepers at this time, so we don't have a  
8 disruption of our transmissions.

9  
10 I would also ask that anyone that  
11 is preparing to or is decidedly going to  
12 address the Board this morning if you would  
13 please pick up two witness cards. Witness  
14 cards are available at the table where you  
15 entered into the hearing room, also the  
16 table where you will provide testimony.  
17 Those two cards go to the court reporter  
18 prior to coming forward to speak to the  
19 Board.

20 The order of procedure for the  
21 foreign missions case will be as follows,  
22 and let me just state a little bit off my

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1 formal opening remarks for those that are,  
2 of course, the Foreign Missions BZA conducts  
3 itself under rulemaking procedures, not  
4 contested cases like many might be familiar  
5 with in presenting to the Board in variances  
6 or special exceptions, and what does that  
7 mean? This is not a contested case and,  
8 therefore, we do not have parties.

9 We will proceed hearing the  
10 statements and witnesses of the applicant.  
11 We will then go to the government reports  
12 attendant to the applicant. We will hear  
13 from any other recommendations of public  
14 agencies that are putting into this  
15 application. We will then go the Advisory  
16 Neighborhood Commission, which we will read  
17 or hear their report. Then we will go to  
18 persons to provide testimony, and all  
19 persons are, of course, able to provide that  
20 testimony. I will call those in support of  
21 this application first, and then I would ask  
22 for all those in opposition. That will be

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1 it. That will conclude our rulemaking on  
2 this, or in constitute of the FMBZA.

3 We will put time restraints on  
4 all the proceedings if needed. I'm not  
5 going to se those forth at this time,  
6 because I don't anticipate we will actually  
7 need to do that.

8 The record will be closed at the  
9 conclusion of the hearing on this case,  
10 except if we do need and require additional  
11 materials, of course, we will request those  
12 and will be very specific as to what should  
13 come into the record and when it should come  
14 into the record.

15 The Sunshine Act does, of course,  
16 require us to proceed in the open and before  
17 the public. Our rules, regulations and  
18 procedures also allow us to enter into  
19 Executive Session to review records and/or  
20 deliberate on cases.

21 The decision of this Board must  
22 be based exclusively on the record that we

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1 are creating this morning. So, as I say in  
2 all of my opening remarks, it's very  
3 important that all information that you are  
4 assuming we will base our decisions on that  
5 you offer it to the Board either orally or  
6 in written form. If it is outside the  
7 jurisdiction of which we will deliberate on,  
8 we will make sure that that is known to you,  
9 so you are not assuming that we are actually  
10 basing our decisions on information that we  
11 should not be.

12 At this time, I want to say a  
13 very good morning to Ms. Bailey with the  
14 Office of Zoning, Ms. Monroe with the Office  
15 of the Attorney General, and Mr. Moy on my  
16 right, also with the Office of Zoning.

17 I'm going to ask Ms. Bailey if  
18 she has any preliminary matters for the  
19 Board's attention. Preliminary matters are  
20 those which relate to whether a case will or  
21 should be heard today, requests for  
22 postponements, withdrawals, whether proper

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1 or adequate notice has been provided, these  
2 are the elements. I'm only requesting  
3 preliminary matters in Application 17543. I  
4 will ask Ms. Bailey, and if anyone is here  
5 for that case that has a preliminary matter  
6 for the Board's attention, I would ask that  
7 you come forward at this time and have a  
8 seat as an indication of having a  
9 preliminary matter.

10 Ms. Bailey, a very good morning  
11 to you.

12 MS. BAILEY: Mr. Chairman,  
13 Members of the Board, to everyone, good  
14 morning.

15 CHAIRPERSON GRIFFIS: Good  
16 morning.

17 MS. BAILEY: Mr. Chairman, the  
18 only preliminary matter in that case has to  
19 do with the request for party status that  
20 was filed.

21 CHAIRPERSON GRIFFIS: Excellent,  
22 thank you very much.

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1                   And, in most cases in variance,  
2                   special exception or a contested case before  
3                   the BZA, of course, that would be the  
4                   preliminary matter which we would take up as  
5                   we called this case. However, as I've said,  
6                   this is a rulemaking and, therefore, we  
7                   will not be reviewing an application for  
8                   party status as we would have no  
9                   jurisdiction to grant party status.

10                  However, we will encourage and look to  
11                  having those persons that have submitted in  
12                  this application coming forward at the  
13                  appropriate time to provide testimony.

14                  With that then, not having any  
15                  other indications of preliminary matters,  
16                  why don't we call the first case.

17                  MS. BAILEY: Application No.  
18                  17543 of Kyrgyz Republic, pursuant to 11  
19                  DCMR 1002.1, to allow the location of a  
20                  chancery at 2360 Massachusetts avenue, N.W.  
21                  The property is located in the D/R-3  
22                  District and the square is 2507, Lot 50.

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1 CHAIRPERSON GRIFFIS: Good  
2 morning.

3 MR. COLLINS: Good morning, Mr.  
4 Chairman and Members of the Board. May I  
5 begin?

6 CHAIRPERSON GRIFFIS: Please.

7 MR. COLLINS: Thank you.

8 My name is Christopher Collins,  
9 with the law firm of Holland & Knight.  
10 Seated to my left is Kyrus Freeman from our  
11 office. Seated to my immediate right is  
12 Ambassador Zamira Sydykova, from the Embassy  
13 of the Kyrgyz Republic, and seated to my far  
14 right is Mr. Kubanych Takyrbashev, also from  
15 the Embassy.

16 This is an FMBZA application to  
17 locate a chancery at 2360 Massachusetts  
18 Avenue, N.W., under the six criteria that  
19 are listed in the Foreign Missions Act and  
20 in Chapter 10 of the Zoning Regulations.

21 The Secretary of State, through  
22 the Office of Foreign Missions, has

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1 indicated their support for the three  
2 federal criteria, and the Mayor of the  
3 District of Columbia, through the Office of  
4 Planning, has indicated their support of the  
5 three local criteria in this application.

6 The statement that we filed  
7 describes in detail the application and all  
8 the particulars. You have seen through this  
9 application that it is a small chancery,  
10 with a small staff, with no adverse impact.

11 There is some procedural history  
12 that you must -- it's important for you to  
13 understand, and that is this, that the  
14 Embassy is currently in the location which  
15 we are requesting approval for, and the  
16 reason for that is as follows. The Embassy -  
17 - the Ambassador is a journalist by  
18 profession. She is -- this is her first  
19 ambassadorial posting, and when she came to  
20 Washington she hired a lawyer on behalf of  
21 the Embassy, and based on that purchased the  
22 property. The lawyer indicated that the

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1 process would take six months maximum time,  
2 and that he could get that approval, and  
3 that he knows people in the District.

4 Based on that representation, the  
5 Embassy leased commercial office space for  
6 six months. After about three or four  
7 months, without any contact from the lawyer,  
8 it was deemed that the lawyer disappeared  
9 with the money, with the papers, and never  
10 filed an application.

11 The Embassy really was in a bind  
12 at that point. The temporary lease expired,  
13 they had no choice, they had no place to go.  
14 They moved into this building, which they at  
15 that point had owned, and subsequently there  
16 was contact with the State Department. Our  
17 firm became involved, and the day that we  
18 were involved, the day we, you know, were  
19 retained, we met with the State Department,  
20 we contacted the Zoning Administrator's  
21 Office, and spoke to the Zoning  
22 Administrator about this, and everyone

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1 understood, you know, what the nature of the  
2 concern here, that the Embassy was in  
3 without having gone through the regulatory  
4 process.

5 And, a determination was made  
6 jointly with State Department and the Zoning  
7 Administrator that the Embassy would file an  
8 application immediately, request an  
9 expedited hearing, which we did, and that  
10 the Embassy would be allowed to remain in  
11 the premises pending the outcome of this  
12 case.

13 So, it's important that you  
14 understand that, and I wanted to make sure  
15 that you were aware of that.

16 The Embassy does understand the  
17 positions of the State Department and the  
18 Zoning Administrator. The Embassy wants to  
19 do the right thing.

20 The statement that we filed  
21 explains in detail how we meet the criteria  
22 of the application. As I've said before,

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1 the State Department supports, the Office of  
2 Planning supports, there are several letters  
3 in opposition, and I think there's some  
4 persons in opposition, we will address that  
5 at the appropriate time as well.

6 so, unless there's any questions,  
7 I'd like to go to the first and only  
8 witness, Ambassador Zamira Sydykova, I'd  
9 like to hand in her testimony, and some  
10 background about the Ambassador as well.

11 AMBASSADOR SYDYKOVA: Good  
12 morning, ladies and gentlemen, my name is  
13 Zamira Sydykova, and I am the Ambassador of  
14 the Kyrgyz Republic to the United States and  
15 Canada, and I am pleased to be here this  
16 morning to present our application for  
17 approval of our new chancery location on  
18 Massachusetts Avenue.

19 In 1992, after my country gained  
20 its independence from the Soviet Union, our  
21 chancery was established on Wisconsin  
22 Avenue. Last year, 2005, fair elections

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1 were held in our country, which resulted in  
2 the end of rule by the former President  
3 Akayev. This corrupt and authoritarian  
4 regime was overruled peacefully and it would  
5 be called the Tulip Revolution. Really, it  
6 was the victory of democracy.

7           Shortly after that time, I was  
8 appointed as the new Ambassador to the  
9 United States and Canada. Our former  
10 chancery on Wisconsin Avenue was to us a  
11 symbol of the former regime. We wanted to  
12 move near to our diplomatic colleagues from  
13 other countries, and there is more of them  
14 located on Massachusetts Avenue, to a more  
15 central location on Embassy Row, that's also  
16 convenient to public transportation.

17           I am a journalist by profession,  
18 and I was unfamiliar with the legal  
19 requirements for establishing a new embassy  
20 when I arrived here in Washington, and I  
21 regret that we are in this situation, and I  
22 ask for your understanding as you review our

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1 application for approval.

2 Let me address the six factors  
3 that you will consider in making your  
4 decision. First of all, the international  
5 obligations of the United States. The  
6 Kyrgyz Republic is a strong ally of the  
7 United States of America. Our countries  
8 have a strategic alliance where we allow our  
9 civil air bases to be used by the U.S.  
10 military for your operations in Afghanistan.  
11 We are the only country in this part of the  
12 world which allows the U.S. to do this.

13 The U.S. Embassy in Bishkek is in  
14 an historic building down town, across from  
15 the Foreign Ministry. In addition, the  
16 Kyrgyz Republic gave land to the U.S., to  
17 construct several buildings on its main  
18 Embassy Compound, which is located outside  
19 of down town on the way to the President's  
20 residence.

21 The State Department is in  
22 support of this criteria. I believe it is

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1 clear that we meet this test.

2 Number two, historic  
3 preservation. Our new building on  
4 Massachusetts Avenue is in an historic  
5 district, and was built in 1912. We are  
6 aware of its independence to the city. It  
7 is now also an important symbol of the  
8 Kyrgyz Republic to the United States, and we  
9 intend to maintain and enhance this  
10 property.

11 We have -- placed a plaque to the  
12 front of the building, in the same manner as  
13 many of our neighbors.

14 Number three, a decrease of  
15 street parking. As the submission  
16 indicates, we have only one diplomatic  
17 vehicle. We also have a driveway on the  
18 property to park this vehicle.  
19 Additionally, we have very few visitors to  
20 our chancery for visits and meetings, and  
21 there is always a supply of parking on the  
22 street to support those who drive. Those of

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1 our staff who do not live in the building  
2 take public transportation to work, and one  
3 of our staff members walks to work.

4 Number four, security issues.  
5 Our building is surrounded by many other  
6 embassies, and I believe that the Secret  
7 Service will be able to provide the same  
8 protection to us as it does to our many  
9 diplomatic neighbors. The State Department  
10 is in agreement.

11 Number five, the municipal  
12 interest. The intent to be good neighbors in  
13 the community, we intend to maintain our  
14 property, because it's an important symbol  
15 of our country. I was unable to attend the  
16 meeting of the ANC, because I was meeting  
17 with President Bush at the time. However,  
18 the remaining officers of my Embassy met  
19 with the ANC and assured them of our  
20 intention to be good neighbors and to  
21 maintain our property.

22 Number six, the Federal interest.

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1 The strategic alliance between the United  
2 States and the Kyrgyz Republic is an  
3 important factor to be considered in review  
4 of this criteria. Additionally, we are  
5 surrounded by many other embassies along  
6 Massachusetts Avenue, and this area has been  
7 deemed an important and appropriate location  
8 for the embassies.

9 Thank you very much for the  
10 opportunity to appear before you this  
11 morning. I just would like to mention that  
12 today is the official day of the United  
13 Nations, and fortunately the official day of  
14 Kyrgyz diplomacy, and your approval will  
15 give a great present for us.

16 Thank you so much for your  
17 consideration.

18 CHAIRPERSON GRIFFIS: Excellent.  
19 Thank you very much, and a very good morning  
20 to you.

21 MR. COLLINS: Thank you, Mr.  
22 chairman. That concludes our presentation.

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1 I'd be happy to answer any questions you  
2 might have, and be happy to come back later  
3 and discuss any other issues regarding  
4 others' testimony that you may receive.

5 CHAIRPERSON GRIFFIS: Excellent,  
6 thank you very much, Mr. Collins.

7 Are there questions? Questions  
8 from the Board?

9 Very well, if there's nothing, we  
10 will potentially ask you back just to verify  
11 a couple of other questions as we go through  
12 the rest of the proceedings and get  
13 additional information, we'll allow you to  
14 address that to our satisfaction.

15 With that then, let us proceed  
16 with the agency reports. I'd like to start  
17 with the District of Columbia's Office of  
18 Planning.

19 Mr. Jackson, a very good morning  
20 to you.

21 MR. JACKSON: Good morning, Mr.  
22 Chairman, Members of the FMBZA.

1                   My name is Arthur Jackson. I'm a  
2                   Development Use Specialist with the District  
3                   of Columbia Office of Planning, and I will  
4                   give a brief summary of the Office of  
5                   Planning report on this application.

6                   The Applicant has met several  
7                   times with the Office of Planning, well,  
8                   once with the Office of Planning, and we did  
9                   ask some additional questions of the  
10                  Applicant based on information that was not  
11                  provided in the original submittal. Some of  
12                  the information had to do with the number of  
13                  employees that they were going to have on  
14                  site, the number of bedrooms, and what the  
15                  status of the bedrooms would be going  
16                  forward, that is to say, in the initial  
17                  report it appeared that the issue about  
18                  whether or not people would be living on  
19                  site was one that could change over time,  
20                  but the Applicant, through the attorney,  
21                  explained that the prospective is that those  
22                  bedrooms will continue to be used as

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1 bedrooms over the long term.

2 They also verified the number of  
3 vehicles on site, because at one time there  
4 had been information that there had been two  
5 vehicles that were under the control of the  
6 Embassy, but that information was  
7 corroborated by explanation that one of the  
8 staff that had their own personal vehicle on  
9 the property had left the country. So, it  
10 is actually just one vehicle.

11 \ And, with that, we had sufficient  
12 information to continue our analysis.

13 Basically, what we found under the standards  
14 for approval under the Zoning Regulations,  
15 that this application met those standards.

16 In terms of the municipal interest, we were  
17 impressed by the fact that the Applicant had  
18 proposed no changes to the property, that  
19 they had undertaken some efforts to upgrade  
20 the existing services on site.

21 we ran this application by our  
22 Historic Preservation Review Staff, and they

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1 deemed the changes that were proposed, that  
2 is, the addition of a flag pole in the  
3 front, and the seals to building, were not  
4 and did not have an impact on the property,  
5 and as such they expressed no concerns about  
6 this proposed use.

7           Additionally, the use is  
8 existing, and some of these changes have  
9 been made, so that the impact of those  
10 changes on the building are immediately  
11 evident and as such they were satisfied that  
12 as proposed this use did not mean any --  
13 seem to mean that it would be a detriment to  
14 the Historic District.

15           In addition, the Applicant did  
16 state and agree to a limitation on the  
17 number of large activities -- large events  
18 they would have on the property. Their  
19 survey, although only over a couple of  
20 weeks, did seem to indicate that most of the  
21 visitors would be couriers, that there would  
22 be few meetings on site, and that there

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1 would be -- the traffic generated by this  
2 use would not be inordinate.

3 Based on that information, the  
4 Office of Planning determined that this  
5 proposal would be in the municipal interest,  
6 but we did suggest some conditions that  
7 would ensure that the long-term use would be  
8 the same as currently exists, and those  
9 conditions are outlined in our report, and I  
10 will step through those briefly.

11 One clarification I would make is  
12 that the number of mission officials and  
13 employees on site will not exceed six  
14 people, persons, in line with the comment  
15 that they have an additional security person  
16 that would be coming from their rental space  
17 to this property; that the total residential  
18 occupancy would be six people, primarily,  
19 consisting of Embassy staff and their  
20 families; that only two special events be  
21 held on site, commemorating the National Day  
22 at the end of August, and the anniversary of

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1 the Tulip Revolution on March 24th; that  
2 guests invited to the referenced events will  
3 not exceed 35 persons; and that if so,  
4 additional -- arrangements for additional  
5 parking, off-street parking spaces, will be  
6 made elsewhere; that vehicles on site driven  
7 by Embassy staff and officials will not  
8 exceed three.

9 I neglected to mention that in  
10 the early discussions with the Applicant  
11 they did indicate that the parking space in  
12 the public way and in the building was  
13 adequate for three vehicles, and on the site  
14 visit, well, we noticed two repair vehicles  
15 in the site and one other vehicle did come  
16 to visit, so that is sufficient for three  
17 vehicles.

18 And, I continue; and that  
19 variations from the referenced conditions  
20 and alteration of the existing building and  
21 grounds will be subject to FMBZA review in  
22 accordance with 1002 under Title 11, DCRA

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1 Zoning.

2 Now, understanding that this is  
3 always a requirement, given the history of  
4 the property and the fact that certain  
5 actions were taken without proper  
6 authorization, we just wanted to make this  
7 reminder to the staff, because, obviously,  
8 if you are going to decide to make some  
9 changes to your property the first thing you  
10 look at is your current authorization, they  
11 need to come back to you and get actual  
12 approval.

13 And, with that, that concludes  
14 the Office of Planning's brief summary of  
15 the report, and we will be available to  
16 answer questions.

17 CHAIRPERSON GRIFFIS: Excellent,  
18 thank you very much, Mr. Jackson.

19 Is it your understanding that  
20 this is historically a residential building?

21 MR. JACKSON: Yes, it is.

22 CHAIRPERSON GRIFFIS: Okay, and

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1 you've talked about the on-site, on your  
2 site visit you saw three vehicles that were  
3 there, and you said one in the public way,  
4 is this -- you were talking about a curbside  
5 parking space that one of the vehicles was  
6 in?

7 MR. JACKSON: No, there were --  
8 what they have is, if you look at the aerial  
9 on the back of my map, it's somewhat telling  
10 in that it shows the building, the property  
11 line for the building actually goes to the  
12 edge of the sidewalk, and then in front of  
13 the building you have open space, you have a  
14 sidewalk, and then you have the driveway.  
15 The driveway is in public way, so their  
16 driveway is in public space, but it's not in  
17 the drive aisle.

18 CHAIRPERSON GRIFFIS: So, they  
19 could stack up three cars, one in the  
20 garage, two in th driveway.

21 MR. JACKSON: It appears that  
22 way.

1                   CHAIRPERSON GRIFFIS: Right,  
2                   okay.

3                   And, you went over, I think well,  
4                   the utilization of this property, and have  
5                   broken it down into two frames, and that is  
6                   of residential occupancy and also of  
7                   employees.

8                   I guess what I need is a little  
9                   bit more understanding of why that is a  
10                  critical number, and maybe to put it another  
11                  way, is the size of the building such that  
12                  it could accommodate a large percentage more  
13                  or a large number more of residential or  
14                  office workers and, therefore, we need to  
15                  make sure that we restrict that in order for  
16                  whatever kind of potential adverse impact to  
17                  happen.

18                  MR. JACKSON: Well, the Office of  
19                  Planning took up a different tact on this.  
20                  Again, we are looking at a residential use,  
21                  which is a row house.

22                  CHAIRPERSON GRIFFIS: Yes.

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1                   MR. JACKSON: And, the Applicant  
2                   stated how they plan to use that use, how  
3                   they plan to utilize the property over the  
4                   current term.

5                   Further questions did not  
6                   indicate that they had any plans to change  
7                   the current pattern of use, such that for  
8                   the long term, to limit any potential future  
9                   impacts on the community it seemed  
10                  reasonable to structure the limitations on  
11                  how they plan to use the property now.

12                  Of course, now if they should  
13                  decide at some point that they wanted to  
14                  change all the bedrooms and turn them into  
15                  offices, or substantially increase the  
16                  staff, they would have the opportunity to  
17                  come back to the BZA to address that, but at  
18                  that time, since at this point I have not  
19                  actually made a site visit into the  
20                  property, nor have I delved into the details  
21                  of how the space will be utilized, but  
22                  recognizing that this current utilization is

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1 not having significant impacts, at that time  
2 we can make a determination as a staff, with  
3 additional information, about whether or not  
4 the increase in size would be appropriate.

5 CHAIRPERSON GRIFFIS: Okay. I  
6 guess I understand it more fully now with  
7 that comment. What you are trying to  
8 mitigate is the utilization as the office  
9 space, is that correct?

10 MR. JACKSON: Correct.

11 CHAIRPERSON GRIFFIS: Okay. I  
12 don't have anything else.

13 Any other questions?

14 VICE CHAIRPERSON MILLER: Good  
15 morning, Mr. Jackson.

16 I just want to pursue these  
17 conditions a little further, because in my  
18 experience sitting on FMBZA cases I don't  
19 think that I've had occasion to see these  
20 types of conditions or conditions proposed  
21 by Office of Planning with respect to an  
22 embassy.

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1                   So, I'm wondering what's  
2                   different about this embassy. I heard you  
3                   say that the fact that they already started  
4                   living in the embassy without authorization,  
5                   but we did hear from Mr. Collins as to why  
6                   that happened.

7                   So, I guess my question is, in  
8                   general, is there something really different  
9                   about this embassy that requires all these  
10                  conditions, and then, specifically, how are  
11                  each of these conditions related to the  
12                  municipal interest, which I think is the  
13                  criteria we are looking at with respect to  
14                  these conditions.

15                  MR. JACKSON: All right. Well,  
16                  again, just to clarify, this is going to be  
17                  a chancery use, and as such it's an office  
18                  use in a residential district.

19                  The long-term impacts of a  
20                  residential use such as the embassy would  
21                  not be an Office of Planning concern. In  
22                  fact, we'd encourage it to continue if it

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1 was possible to use it as a chancery, as a  
2 residence, as an embassy, and we think we'd  
3 be more than willing to work with the  
4 Applicant in that area, but that's not the  
5 proposal.

6 It was intended for that use at  
7 one time, but that time has past. So, now  
8 we are talking about an office use. The  
9 embassy is not -- the building itself is  
10 relatively the same size as other buildings  
11 around it, however, the other buildings  
12 around it are either entirely residence or  
13 entirely chancery -- entirely institutional  
14 uses.

15 Our concern is that we can make  
16 the long-term impacts of this new use  
17 predictable, in that it's a relatively --  
18 it's not really a large site, and there's  
19 not really much flexibility about how the  
20 site can be used.

21 If you note on the aerial again,  
22 it's a narrow lot, behind it is River Road,

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1 I believe, but there's not any possibility  
2 of getting access to the rear of the  
3 property. So, if they were to hire a lot of  
4 other staff on the site, it is unlikely they  
5 will be able to access it from the rear to  
6 provide a parking lot.

7 Note also that it's along a  
8 street that, Massachusetts Avenue, although  
9 nice and fairly wide, and with good parking  
10 spaces, there are a number of other  
11 institutional uses in the area. So, does  
12 that mean that they should not be allowed to  
13 use the street for their purposes? Not at  
14 all.

15 However, if we can make the  
16 potential impacts predictable, such as  
17 identifying that there will only be two  
18 occasions where they would need 35 or more  
19 spaces in the area, such as indicating when  
20 during the year that would occur, as well as  
21 understanding what the current impact is in  
22 terms of the office portion of this use, and

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1 being able to say, well, if that's the  
2 impact now, do we want to maintain that  
3 impact or have it gradually increase.

4 We would err on the side of  
5 setting some clear standards for the non-  
6 residential use, and so we can indicate to  
7 the community, the community will know what  
8 the long-term potential impacts would be.

9 Now, we looked -- we think that  
10 these are reasonable given what the  
11 Applicant has said today. If they wanted to  
12 clarify and somehow describe some other  
13 projection of how they'd like to use the  
14 property, but they haven't at this point,  
15 and I think -- so that's why we want to use  
16 these -- put these requirements in place,  
17 and as such we think it's in the municipal  
18 interest to do what we can to preserve the  
19 current character of the neighborhood, and  
20 the surrounding neighborhood is not just  
21 Massachusetts Avenue, it's the neighboring  
22 streets, it's the residences beyond that. As

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1 much as we can keep the impacts of this use  
2 on a level playing or a predictable -- and  
3 make them predictable, I think the community  
4 is well served.

5 VICE CHAIRPERSON MILLER: Thank  
6 you, that was very helpful.

7 But, however, with respect to the  
8 residential occupancy then, why is Office of  
9 Planning -- is that just for predictability  
10 as well, or what, that doesn't go to the  
11 concern with respect to the office use.

12 MR. JACKSON: Well, the thought  
13 would be that we also don't think this is  
14 appropriate for a dormitory. So, if you  
15 have three bedrooms, you can load three  
16 bedrooms any way you want, but we think to  
17 be reasonable if that's the way the  
18 Applicant thinks it will be used, then we  
19 think that's a number that probably should  
20 be maintained over time, as opposed to,  
21 generally, when you have more residents then  
22 you need to get a van to get them around,

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1 because they no longer will be taking mass  
2 transit, you need additional cars.

3 The related impacts to having a  
4 higher density of residential uses could be  
5 significant also, over the long term.

6 But, I guess, in terms of  
7 magnitude, though, we are more concerned  
8 about the office component than we are the  
9 residential.

10 Have I answered your question?

11 VICE CHAIRPERSON MILLER: And,  
12 your figure of 35 people, persons, allowed  
13 in an event, where did that number come  
14 from?

15 MR. JACKSON: The Applicant.

16 VICE CHAIRPERSON MILLER: Okay, I  
17 guess we'll get -- talk to the Applicant  
18 about that.

19 MR. JACKSON: Yes, I think in the  
20 statement it was between 25 and 35 persons  
21 to an event, and intuitively it appears that  
22 25 to 35 persons is what the space will hold

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1 when they have events in the building.

2 VICE CHAIRPERSON MILLER: Oh,  
3 okay.

4 MR. JACKSON: Again, we have not  
5 done further analysis to actually visit the  
6 building and measure anything, but based on  
7 their statements we think that they have  
8 been forthcoming in explaining how they use  
9 the properties, and any questions the Office  
10 of Planning has presented, and as such we  
11 think the veracity at this point is  
12 unquestioned.

13 CHAIRPERSON GRIFFIS: Excellent.  
14 Anything else, Ms. Miller?

15 Any other questions?

16 COMMISSIONER PARSONS: I just  
17 wanted to asked Mr. Jackson if he has any  
18 evidence that the Applicant has agreed to  
19 these conditions, or you just took the  
20 information.

21 MR. JACKSON: Yes, they agreed.

22 COMMISSIONER PARSONS: Thank you.

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1 CHAIRPERSON GRIFFIS: Good.

2 Anything else?

3 Just another follow-up, I'm not  
4 sure, are you aware of the on-street parking  
5 in that area? Is it residential or is it  
6 diplomatic?

7 MR. JACKSON: It's not diplomatic  
8 in this area of Massachusetts Avenue.

9 CHAIRPERSON GRIFFIS: Right out  
10 in front of this particular property.

11 Are you aware of an intention of  
12 applying for any diplomatic parking on the  
13 street?

14 MR. JACKSON: That question was  
15 not raised with the Applicant.

16 CHAIRPERSON GRIFFIS: Okay.  
17 Good.

18 Anything else? Very well.

19 Thank you very much, Mr. Jackson.  
20 This was a very informative and an excellent  
21 report that I think brought a lot of focus  
22 to the Board's attention on the issues that

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1       you have explored. It's an interesting  
2       statement that you've made that the  
3       municipal interest is served by providing a  
4       predictability to the community.

5               Let's move ahead then and ask  
6       that the representative from the Secretary  
7       of State, if they are here, indeed, a very  
8       good morning.

9               MR. MASSEY: Mr. Chairman,  
10       Members of the Board, my name is Richard  
11       Massey. I'm the Office Director in the  
12       Office of Foreign Missions, Department of  
13       State.

14              CHAIRPERSON GRIFFIS: Welcome.

15              MR. MASSEY: I'm here to  
16       represent the Department regarding the  
17       request of the Kyrgyz Republic to use the  
18       property at 2360 Mass Avenue as a chancery.

19              The Kyrgyz Government originally  
20       purchased the property for use as a  
21       residence, and has decided it wants to  
22       change the use to a chancery. The

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1 Department of State has no objection to the  
2 change in use. Approval would certainly  
3 fulfill our international obligation, and  
4 there are no special security requirements  
5 relating to parking, and the site can  
6 certainly be adequately protected.

7 So, we certainly have no problem  
8 with the Board approving the change in use  
9 of the property as a chancery.

10 I would want to make one comment  
11 about Mr. Jackson's presentation that gives  
12 me a bit of concern. I think the decision  
13 here has to be made to approve the use of  
14 the property as a chancery.

15 Now, inside the building as a  
16 chancery that will be the decision of the  
17 Ambassador to how it is to be used, but once  
18 it's a chancery use that's what it is.  
19 There won't be an inspection by the City of  
20 the insides of what bedroom is used as such,  
21 that will not be possible. So, I don't  
22 think we should go down that road. It

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1 should be a clean decision on its use as a  
2 chancery, which it is being used right now.

3 If they choose to continue to use  
4 part of it for residential purposes, that's  
5 perfectly fine, as it would be in any case  
6 of any chancery. But, I wouldn't want to  
7 have -- go down the road of having too much  
8 -- too many types of conditions that cannot  
9 be checked, and the Department of State  
10 wouldn't want to have the responsibility of  
11 having to confirm one way or the other,  
12 that's not what we would do, and neither  
13 would the City be able to do it.

14 Other than that, that concludes  
15 my presentation.

16 CHAIRPERSON GRIFFIS: Excellent,  
17 thank you very much, it's a pleasure to have  
18 you here before us.

19 You bring up an excellent point,  
20 if a condition was to be put upon not  
21 disapproving this that who would be or how  
22 would the enforcement mechanism take place.

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1       Would our Zoning Administrator knock on the  
2       Foreign Chancellor's door to try and  
3       inspect, and would they have enforcement  
4       capabilities? It's an interesting point  
5       that we will need to take under advisement.

6               Any other questions? Very well.

7               VICE CHAIRPERSON MILLER: I just  
8       want to --

9               CHAIRPERSON GRIFFIS: Yes.

10              VICE CHAIRPERSON MILLER: --  
11       clarify, with respect to the specific  
12       conditions that the Office of Planning has  
13       proposed, do you find them all problematic,  
14       or do you find any of them not problematic?

15              MR. MASSEY: Ms. Miller, I  
16       haven't really looked at them intensely or  
17       closely to think about it from that point of  
18       view. We have no objection in general, but  
19       from prior experience, as I've been in this  
20       business for a long, long time, and I don't  
21       like a Board order to have details in the  
22       order that we know in advance is something

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1 that cannot be reasonably enforced, and it  
2 just, I think, to my mind, since we do want  
3 to be responsible in carrying out a Board  
4 order, for instance, some orders have talked  
5 about we won't go for parking on the street,  
6 those are things we can enforce. But, we  
7 certainly are not going to enforce how many  
8 -- what rooms are used inside a building for  
9 what purposes, once it's approved for  
10 chancery use.

11 And so, I just wanted you to be  
12 aware of that.

13 CHAIRPERSON GRIFFIS: Do you have  
14 comments on the Office of Planning's concern  
15 about the special events and the attendees  
16 to special events, and the frequency of  
17 them?

18 MR. MASSEY: No, I do think it's  
19 -- to count the number of guests at an event  
20 is a bit unnecessary. So, I don't --  
21 there's no way to enforce that either, no  
22 one is going to be counting the numbers.

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1 I think if the embassy says  
2 that's what they are going to have as a  
3 reasonable number in their property, why  
4 that's perfectly fine.

5 CHAIRPERSON GRIFFIS: What about  
6 the frequency of events and the impact on  
7 the surrounding residential area?

8 MR. MASSEY: I think that's a  
9 more common restriction, and I think most  
10 embassies go -- do those things. We never  
11 had any objection that I'm aware of in my  
12 experience where the City or the ANC has  
13 come to us and said they have too many  
14 parties. So, that's not unreasonable, if  
15 they agree to it.

16 CHAIRPERSON GRIFFIS: Very well.  
17 Anything else? Any other  
18 questions?

19 Thank you very much.

20 Let us move ahead, I don't have  
21 any other government reports or public  
22 agencies attendant to this application,

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1 unless other Board Members are aware of any  
2 we can move ahead to ANC-2D. Is the ANC  
3 present? Very well.

4 We will note Exhibit 35 in the  
5 record is the ANC's position. I'll allow  
6 any Board Members to address that if they  
7 want at this time. It is a unanimous  
8 consent not to support the application.

9 Any comments?

10 VICE CHAIRPERSON MILLER: If I  
11 recall, and that's a great weight standard,  
12 but I don't think it specifically raised  
13 issues or concerns for us to address. Is  
14 that correct? Yes, that's correct, they  
15 voted not to support the application, and  
16 then they addressed the criteria, and that  
17 it was -- they took a unanimous vote at a  
18 meeting that was timely noticed, and a  
19 quorum was present, but, basically, they  
20 just said that they voted not to support the  
21 application. They didn't set forth in there  
22 any specific reasons or concerns.

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1 CHAIRPERSON GRIFFIS: Excellent,  
2 thank you.

3 Very well, if there's nothing  
4 further then, let me ask those persons here  
5 to provide testimony to the Board in support  
6 of this application to come forward at this  
7 time. Persons in support.

8 Let's move then to persons in  
9 opposition. Are there persons present to  
10 provide testimony in opposition?

11 Very well, come forward and make  
12 yourselves comfortable. I'm going to ask  
13 that you state your name and address for the  
14 record, and then you can proceed.

15 MS. DUMAS: Good morning. My  
16 name is Kinley Dumas, with the law firm of  
17 Robbins, Kaplan, Miller & Cerise,  
18 representing Ms. Soniya Carvalho and Mr.  
19 Saumya Mitra, who are to my right, the  
20 owners and occupants of 2362 Massachusetts  
21 Avenue, N.W.

22 CHAIRPERSON GRIFFIS: That's an

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1 adjacent property?

2 MS. DUMAS: Yes, it is.

3 Our clients oppose the subject  
4 application for several reasons. First,  
5 concern for structural integrity of the  
6 building as it exists today, and ongoing  
7 maintenance of the building, which impacts  
8 both historic preservation and other  
9 municipal interest considerations.

10 Secondly, they object to the  
11 further degradation of the residential  
12 character of the neighborhood, by allowing  
13 chanceries to displace a residential use in  
14 a residential zone.

15 And finally, they object to the  
16 approval, especially on an expedited basis,  
17 of an illegally operating chancery in a  
18 residentially zoned neighborhood.

19 First, the condition of the  
20 subject property. Approval of the  
21 application without any information about th  
22 existing property, no plans, no drawings, no

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1 structural survey, no information about the  
2 interior layout of the space, or how the  
3 space will be used, undermines the  
4 determination of the municipal interest,  
5 because it's impossible to determine whether  
6 any repairs or upgrades are required to  
7 occupy the space with an institutional use,  
8 which carries different requirements than a  
9 residential use.

10 Moreover, there are several  
11 residences planned for the third floor of  
12 the existing building, which although Mr.  
13 Jackson noted that the Office of Planning  
14 did not want this to become a dormitory use,  
15 does have a greater -- may have a greater  
16 impact than a typical residential use.

17 The Bowmans, who are the adjacent  
18 property owner on the opposite side of the  
19 subject property, who, unfortunately, were  
20 unable to be here today, submitted a letter  
21 which has pointed out that the subject  
22 property is in a significant state of

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1 disrepair, and that the party wall between  
2 their property and the subject property is  
3 deteriorated and is falling inward into  
4 their property.

5 The application before you  
6 proposes absolutely no interior or exterior  
7 alterations or repairs, and the concern of  
8 the neighbors about both the existing  
9 condition of the building and the ongoing  
10 maintenance of the building is not without  
11 basis.

12 The former Libyan Embassy has sat  
13 in a state of disrepair for many years,  
14 without action on the part of that  
15 government or others. It's our  
16 understanding that anybody entering that  
17 property must sign a release of liability  
18 due to danger of collapse. And, many of the  
19 smaller embassies and chanceries located  
20 within this neighborhood are occupied by the  
21 foreign missions of governments which do not  
22 have the resources to invest in the upkeep

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1 of capital assets within this country.

2 Approving the application at this  
3 time, without any planned structural  
4 upgrades or repairs to current Code  
5 requirements for institutional or apartment  
6 uses would reward rather than sanction the  
7 Applicant for occupying the property as a  
8 chancery without your approval.

9 Sheridan-Kalorama, moving on to  
10 the degradation of the residential  
11 character, Sheridan-Kalorama has lost a  
12 large percentage of its housing stock to  
13 chancery uses since the Foreign Missions Act  
14 was enacted in 1982. With 116 chanceries,  
15 it has the highest concentration of foreign  
16 missions than any neighborhood within the  
17 District of Columbia.

18 It's important to note that the  
19 application before you does not seek to  
20 transfer an institutional property to  
21 another institutional users. I think you  
22 understand that. This is a residential

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1 building that has been in residential use  
2 since it was constructed. It's being lost  
3 as a residence to a chancery use. Loss of  
4 the housing stock within this historic  
5 residential neighborhood degrades the  
6 Sheridan-Kalorama Historic District. This  
7 has a significant impact on historic  
8 preservation, which is one of the things  
9 that you are required to consider in  
10 approving a chancery application.

11 Again, going back to the  
12 structural condition and integrity of the  
13 building, there's no assurance that this  
14 Applicant will be committed to ongoing  
15 maintenance of the property, despite, with  
16 all due respect, to what the Ambassador had  
17 to say about their commitment to be in this  
18 location, the structure is a contributing  
19 building within an historic district, and  
20 must be maintained.

21 Finally, approval after the fact.  
22 This building has been in use as a chancery

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1 for several months without your approval.  
2 We understand the Applicant purchased the  
3 property in November of 2005, and had some  
4 difficulty with the legal advice that they  
5 were given, but based on the presentation of  
6 the Advisory Neighborhood Commission and the  
7 communication between the Applicant and  
8 community thus far, the neighbors feel that  
9 this application simply seeks approval for  
10 an ongoing illegal use.

11 And, once this application is  
12 approved, there will -- as the  
13 representative from the Department of State  
14 pointed out, there really can't be any  
15 ongoing continued monitoring for compliance  
16 with the conditions of approval that have  
17 been suggested by the Office of Planning.

18 While the conditions of approval  
19 are probably a step in the right direction,  
20 our clients believe that it's not sufficient  
21 to make sure that this chancery use is  
22 within the municipal interest.

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1                   And, on that basis, we urge  
2 denial.

3                   CHAIRPERSON GRIFFIS: Excellent,  
4 thank you.

5                   Questions?

6                   Let me start with a couple of  
7 questions then. Let me understand your  
8 position, that you believe that we should  
9 bar ourselves from actually even hearing  
10 this because of the fact that they've  
11 occupied the building to date.

12                  MS. DUMAS: Not necessarily that  
13 you should bar yourselves from hearing it,  
14 but that --

15                  CHAIRPERSON GRIFFIS: It should  
16 be determinative of our outcome.

17                  MS. DUMAS: Pardon?

18                  CHAIRPERSON GRIFFIS: We should  
19 disapprove it because they are there.

20                  MS. DUMAS: Well, it's a  
21 difficult position to be in, having an  
22 expedited application before you with

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1 absolutely no information about how the  
2 space is -- the condition of the space or  
3 how the space intends to be used.

4 CHAIRPERSON GRIFFIS: Good, and  
5 that brings up the next question, because  
6 that's an excellent point to bring up. Where  
7 do you see our jurisdiction or the review of  
8 the municipal interest going to alteration,  
9 repairs or functioning on the interior?  
10 And, let me ask before you answer that,  
11 because I think that's your position, I'll  
12 ask Mr. Jackson if he believes that interior  
13 plans are required for him to establish  
14 whether this is within or not within the  
15 municipal interest, because, of course,  
16 representing the Mayor he would be the one  
17 to determine that.

18 MR. JACKSON: Thank you, Mr.  
19 Chairman.

20 Now, the Office of Planning has  
21 received plans for chanceries, or for  
22 embassies, chancery uses, but usually those

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1 chanceries are renovating the property. They  
2 are making changes, exterior modifications,  
3 they are adding additional square footage,  
4 more than simply signs and banners. So, in  
5 this case it would not be unusual for a use  
6 conversion that does not involve exterior  
7 changes or expansions not to have plans.

8 CHAIRPERSON GRIFFIS: Right, and  
9 it's your understanding that there's no  
10 addition that's happening on this building.

11 MR. JACKSON: No, and the  
12 information that we have is simply upgrading  
13 the existing services inside the building,  
14 and, of course, adding the seal and the  
15 flag.

16 CHAIRPERSON GRIFFIS: Was there  
17 address and discussion of the current  
18 condition of this property, and the concern  
19 of the condition and upkeep?

20 MR. JACKSON: No, there was not.

21 MS. DUMAS: Our position is  
22 simply that because the neighbors have

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1 raised an issue with the condition of the  
2 property that the Office of Planning, in  
3 determining whether approval of this  
4 application is within the municipal  
5 interest, should have considered that those  
6 issues of the condition of the structure and  
7 asked additional information of the  
8 Applicant so they could make that  
9 determination.

10 And, that determination would be  
11 in accordance with the historic preservation  
12 law.

13 CHAIRPERSON GRIFFIS: Right. I  
14 don't disagree, it's an interesting point to  
15 bring up, the fact that there may be some  
16 threshold analysis of the ability to have,  
17 as you put it, the upkeep of a capital asset  
18 as part of the municipal interest review.  
19 It's an interesting point.

20 Okay. Others?

21 VICE CHAIRPERSON MILLER: I'm not  
22 sure if I heard you correctly, so I just

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1 want to double check with you. Did you say  
2 that conversion from residential use to a  
3 chancery was contrary to historic  
4 preservation?

5 MS. DUMAS: We believe that in  
6 this case the conversion from a residential  
7 use to a chancery use, an institutional use,  
8 in a building where the structural integrity  
9 of the building is in question, or the  
10 question has been raised by the neighbors,  
11 would be contrary to historic preservation.  
12 It's degrading the residential character of  
13 the neighborhood, the Sheridan-Kalorama  
14 Historic District is residential in nature,  
15 and although it has been a location that has  
16 been very desirable for foreign missions to  
17 locate in, you are losing a residential  
18 building to a chancery use. And again, the  
19 ongoing upkeep of the building becomes an  
20 issue, so we raise a question about the  
21 maintenance of the building.

22 CHAIRPERSON GRIFFIS: I guess I'm

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1 not understanding why it's so critical, or  
2 there's a decided difference between a  
3 private owner's ability to upkeep and this  
4 use as being proposed. Where am I to  
5 understand that kind of bright line  
6 differentiation?

7 MS. DUMAS: Oh, I think it comes  
8 in the building codes. I mean, when you  
9 have an institutional --

10 CHAIRPERSON GRIFFIS: That's a  
11 good point.

12 MS. DUMAS: -- use versus a  
13 residential use, you have different load  
14 requirements, you have different impact on  
15 the building.

16 CHAIRPERSON GRIFFIS: But, we are  
17 talking about upkeep. I mean, that's what I  
18 thought we were talking about, is the  
19 maintenance and repair of the building and  
20 the structure itself.

21 You are saying that there's  
22 different levels?

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1 MS. DUMAS: Even with the  
2 conditions that have been proposed by the  
3 Office of Planning, this building will  
4 experience a greater impact than a typical  
5 residential building.

6 CHAIRPERSON GRIFFIS: Okay, but  
7 then we are talking about different things.  
8 I mean, we are talking about impact, and I  
9 understand that, utilization, but I thought  
10 you were going more towards the requirements  
11 for historic preservation and the concern of  
12 the adjacent -- your clients' concern of the  
13 actual physical repair or upkeep of the  
14 building.

15 And, what I don't understand is,  
16 what is the difference for our purposes  
17 today from a private owner and from a  
18 chancery use?

19 MS. DUMAS: Simply that the  
20 chancery use has a greater impact on the  
21 neighborhood, has a greater impact on the  
22 building, and requires additional

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1 maintenance than would be required of a  
2 typical residential use, single-family  
3 residential use.

4 CHAIRPERSON GRIFFIS: Okay.  
5 Okay. How are we to take an understanding  
6 of this being located in a Diplomatic  
7 Overlay, in terms of your testimony?

8 MS. DUMAS: Well, that's a good  
9 question. One of the things that the Zoning  
10 Commission has been considering, based on an  
11 action last year in a map amendment proposed  
12 by the Sheridan-Kalorama Neighborhood  
13 Council, it was suggested that the Office of  
14 Planning, before the Zoning Commission, take  
15 action on that map amendment in Case No.  
16 0421, that the Office of Planning come back  
17 with a text amendment to change the  
18 requirements for either designating property  
19 as appropriate for a chancery use, and  
20 possibly repealing that Diplomatic Overlay  
21 altogether. That has been under  
22 consideration by the Office of Planning, in

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1 fact, the Sheridan-Kalorama Neighborhood  
2 Council and the Office of Planning have a  
3 meeting in the upcoming couple weeks to  
4 discuss two different proposals for the text  
5 amendment.

6 It's the Sheridan-Kalorama  
7 Neighborhood Council's position, and our  
8 clients' position, that the loss of housing  
9 stock, due to chanceries in Sheridan-  
10 Kalorama, has a negative impact on both  
11 historic preservation in that historic  
12 district and the municipal interest. And,  
13 therefore, despite the Diplomatic Overlay,  
14 not all properties that are designated  
15 diplomatic at this point are appropriate for  
16 chancery uses.

17 CHAIRPERSON GRIFFIS: Excellent.  
18 Obviously, you know a lot of what's  
19 happening, but is that jurisdictional for us  
20 now? Has it been adopted by the Zoning  
21 Commission?

22 MS. DUMAS: It has not, at this

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1 point.

2 CHAIRPERSON GRIFFIS: Okay.

3 Anything else?

4 Other questions?

5 COMMISSIONER PARSONS: I just  
6 have one.

7 CHAIRPERSON GRIFFIS: Mr.  
8 Parsons.

9 COMMISSIONER PARSONS: Do you  
10 think your clients and the Sheridan-Kalorama  
11 Association would object to this being used  
12 as an embassy?

13 MS. DUMAS: No.

14 COMMISSIONER PARSONS: wouldn't  
15 the same criteria apply, the concern about  
16 maintenance and so forth?

17 MS. DUMAS: The concern about  
18 maintenance certainly would continue, but  
19 the impact on the neighborhood is  
20 significantly different between a chancery  
21 and an embassy use.

22 COMMISSIONER PARSONS: I

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1 understand. Thank you.

2 CHAIRPERSON GRIFFIS: Any other  
3 questions from the Board?

4 Very well, thank you very much.

5 MS. DUMAS: Thank you very much.

6 CHAIRPERSON GRIFFIS: Let's move  
7 ahead then. Are there other persons present  
8 that would like to provide testimony in  
9 support or in opposition?

10 Let's just take note then, if  
11 there's no one here present, we do have  
12 additional letters of opposition, Exhibits  
13 32, 34, 36, we do have delivered to us 36,  
14 which is the Sheridan-Kalorama Neighborhood  
15 Council, and the Board has read and reviewed  
16 this.

17 I'd like to, if there's no other  
18 persons present, to call the Applicant's  
19 representative up again. I think the Board  
20 has a little -- a couple of additional  
21 questions.

22 We'll start with Ms. Miller.

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1                   VICE CHAIRPERSON MILLER: I would  
2 like to ask the Applicant about the  
3 conditions. Starting with the first  
4 condition, well, let me just start in  
5 general. The Office of Planning has put  
6 forth conditions that they've represented  
7 that the Applicant has agreed to. Do you  
8 agree to all those conditions that are in  
9 the office of Planning's report, page five?

10                   AMBASSADOR SYDYKOVA: The number  
11 of mission officials and the employees on  
12 site at any one time shall not exceed six  
13 persons.

14                   VICE CHAIRPERSON MILLER: Okay,  
15 let's start with that one then. Let me ask  
16 you this, are there other employees related  
17 to the chancery --

18                   AMBASSADOR SYDYKOVA: No.

19                   VICE CHAIRPERSON MILLER: -- that  
20 are off site, or this is your total number  
21 of employees?

22                   AMBASSADOR SYDYKOVA: It's total

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1 number of employees, yes, it's -- we have  
2 four diplomats and two technical assistants  
3 in the Embassy. They live with their  
4 families in there on the Massachusetts.

5 VICE CHAIRPERSON MILLER: Mr.  
6 Collins, let me just ask you about this. Is  
7 this the number that you all think should  
8 stay -- can have no flexibility, for  
9 instance, there's no anticipation or you  
10 would have to come back before the FMBZA if  
11 you wanted seven employees?

12 MR. COLLINS: Well, that's a very  
13 good question that I was thinking about as  
14 this discussion was going back and forth,  
15 and without having consulted with my client,  
16 at one point there were eight, and then it  
17 went down to five, and then it's six. So  
18 now, it's six, but at the time we wrote the  
19 statement that we filed it was five.

20 So, it may be -- you know, as  
21 some people get posted, some leave, it's not  
22 necessarily that they do that, you know,

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1 right at the same time. There may be some  
2 overlap, as there was.

3 So, if I may just confer for a  
4 second.

5 AMBASSADOR SYDYKOVA: Of course,  
6 maybe we'll be appointed one more diplomat,  
7 but I am not sure, because you know that we  
8 have mission in New York, which, you know,  
9 they are working separate consulate of  
10 Kyrgyz Republic in New York, in New York  
11 City, and in the U.N. And, maybe it will be  
12 enough to have in Washington diplomats.

13 VICE CHAIRPERSON MILLER: I  
14 guess, Mr. Collins, you have a lot of  
15 experience in these kind of applications,  
16 any my question is, I understand Mr.  
17 Jackson's point about predictability for the  
18 neighborhood, but how is this case different  
19 from other chanceries where there's been a  
20 limitation or condition on the number of  
21 employees.

22 MR. COLLINS: There really is no

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1 difference in terms of the operation of the  
2 chancery. It's a small chancery. It has now  
3 six, it had several months ago five.

4 There's no indication that there's going to  
5 be more than six. They only have certain  
6 jobs to do. The country is small. The  
7 country is not getting larger. Certainly,  
8 its strategic importance to the United  
9 States is there, but at this point they are  
10 able to operate with what they have.

11 And, I would just like to say as  
12 an aside that all the concern, and maybe I  
13 should address that at a later point, the  
14 concerns that were expressed about the six,  
15 but I'll just let it go and then come back  
16 to that at a later point.

17 But, to answer your question,  
18 there's no difference between this embassy  
19 and any of the other embassies, where, as a  
20 matter of fact, I think there was in one  
21 particular embassy a request to limit the  
22 number of people and the FMBZA determined

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1 not to do that, and I believe that was  
2 Latvia, down the street on Massachusetts  
3 Avenue.

4 VICE CHAIRPERSON MILLER: Do you  
5 know, and maybe I should have asked this of  
6 the Office of Planning, but do you know  
7 where this concern about a dormitory is  
8 coming from, with respect to limiting the  
9 number of persons who can reside at the  
10 chancery?

11 MR. COLLINS: I think that came  
12 from the fact that under the Zoning  
13 Regulations up to six unrelated individuals  
14 can occupy a dwelling as a single family.  
15 And so, rather than have this as a dormitory  
16 or something with an unlimited number of  
17 people with, you know, bunk beds and things,  
18 which clearly is not the indication, but the  
19 number six was fixed because that's what a  
20 single family is under the Zoning  
21 Regulations, when you are talking about  
22 unrelated individuals in a single

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1 housekeeping situation, and we thought that  
2 was a reasonable number, which we came up  
3 with that number.

4 Right now there's, I believe,  
5 four, three -- three?

6 AMBASSADOR SYDYKOVA: Four.

7 MR. COLLINS: Four.

8 AMBASSADOR SYDYKOVA: Four  
9 bedrooms.

10 MR. COLLINS: Four bedrooms, but  
11 right now there are three individuals. It  
12 likely will not get above six, but if a  
13 family comes with, you know, two children,  
14 that go to the local school, then it may be  
15 six, but right now it's small, it's three.  
16 Two of those three work in the building.

17 VICE CHAIRPERSON MILLER: And,  
18 the number 35, is that the number that the  
19 Applicant is comfortable with with respect  
20 to people who can attend an event?

21 MR. COLLINS: Well, that's the  
22 number that we came up with based upon the

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1 size of the facility, on the ground floor,  
2 it's not a large building. It's a small  
3 building.

4 But, the condition that if  
5 there's anything more than 35 that we would  
6 make accommodation for off-street parking.  
7 So, it's a limit, 35 is a reasonable number  
8 based on what the building could comfortably  
9 fit.

10 VICE CHAIRPERSON MILLER: At one  
11 time.

12 MR. COLLINS: At one time, that's  
13 correct.

14 VICE CHAIRPERSON MILLER: I  
15 guess, okay, my last general question is,  
16 State Department raised the issue about  
17 enforcement. How do you see these  
18 conditions being enforced?

19 MR. COLLINS: Well, it's the same  
20 as any other embassy, going back to your  
21 question before, it's the same as any other  
22 embassy. No other embassy, local officials

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1 don't knock on the door and get inside  
2 unless the embassy lets them inside, and the  
3 Foreign Missions Act, under the Vienna  
4 Convention, they are immune to that type of  
5 thing.

6 But, I think -- so, based on  
7 that, all you can rely upon is the good  
8 faith representation by the Applicant,  
9 whether it's the Kyrgyz Republic, or the  
10 Embassy of Canada, or the Embassy of Egypt,  
11 or the Embassy of China, it's the same  
12 issue.

13 CHAIRPERSON GRIFFIS: Anything  
14 else?

15 Mr. Collins, we are going to hear  
16 your concerns as you started out, and I'm  
17 assuming that you were going to address the  
18 repair, alterations and current conditions  
19 and the anticipated conditions of the  
20 property, and when you do address that I  
21 would like to hear whether you do agree with  
22 the fact that the foreign missions are to

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1           comply substantially with the District of  
2           Columbia's building and other regulatory  
3           codes, in a manner that, of course, would be  
4           established by the Secretary of State.

5                       MR. COLLINS:  Yes, that's  
6           correct.

7                       Before I do that, I have just one  
8           housekeeping measure.  The ANC's letter, I  
9           see I noted that it was dated October 17th,  
10          so it was timely.  We told them we would  
11          waive the timeliness if they were submitting  
12          late, because we only met with them a week  
13          ago last night, a week ago Monday.  So, they  
14          were able to get in the second day.

15                      I do note that it doesn't meet  
16          the requirements of Section 3115, but you  
17          did note that, Ms. Miller, it does say that  
18          they are not opposed, but it doesn't say why  
19          they are not opposed.

20                      There's been a lot of talk, or  
21          we've heard about the building being in an  
22          advanced state of disrepair, and

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1 dilapidated, as I think one of the letters  
2 mentioned, I think, frankly, that's a little  
3 bit insulting. The building is not falling  
4 down, it is not in an advanced stage of  
5 disrepair. It's occupied as a chancery.  
6 I've been in it, it's a very nice building.  
7 It needs a paint job, it will get a paint  
8 job, on the front, the building is white, it  
9 will be painted white.

10 If there's any -- I also think,  
11 frankly, it's a little bit insulting that  
12 the neighbors would think that because  
13 people from the Kyrgyz Republic don't speak  
14 English as their first language, maybe they  
15 don't care about the building code, or they  
16 don't care about investing in their own  
17 property. I just -- I just -- I don't know  
18 where this is coming from, and maybe I'm  
19 just going a little bit too far, but  
20 certainly the Embassy is concerned about the  
21 building, as the Ambassador mentioned, this  
22 is their representation -- this represents

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1 their country. This is the Kyrgyz Republic  
2 in the United States. This is -- when  
3 people look to it, they are going to look at  
4 this building, and if this building is in an  
5 advanced state of disrepair, it's going to  
6 be embarrassing to the country, not just the  
7 Embassy.

8 So, to say that -- this throwing  
9 around speculation, you know, one statement  
10 leads to another, leads to another, it  
11 sounds like, you know, if you believe what's  
12 being said that the building is about to  
13 fall down, and that the Kyrgyz Republic will  
14 just walk away and maybe buy another  
15 building. That's just not reflecting  
16 reality.

17 This is an important building,  
18 it's in the heart of the Sheridan-Kalorama  
19 Embassy Row, it's the Diplomatic Overlay  
20 Zone. Chanceries are required to comply  
21 substantially with building codes, in a  
22 manner determined by the Secretary of State,

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1 and it's my understanding the Secretary of  
2 State requires full compliance with the  
3 building code. And, the fact that there,  
4 you know, may be a fire in this building,  
5 there may be a fire in the neighbor's  
6 building that would impact the Kyrgyz  
7 Republic, so, you know, I think this is a  
8 concern that may be shared by everybody who  
9 occupies a row building. But, the fact is  
10 that this building, with six employees,  
11 which is the same size as a family, you  
12 know, six unrelated individuals, to say that  
13 it's going to have a lot more impact I just  
14 don't see it, I just don't see it. We've  
15 laid out what it is.

16           AMBASSADOR SYDYKOVA: I would  
17 like to add a little bit. You know that my  
18 responsibility in this country, in the rules  
19 of this country, but I'm responsible for my  
20 country, because I'm appointed as Ambassador  
21 and, of course, am responsible for all that  
22 is going on, it will be here with our

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1 government folks in this country.

2 Of course, and I represent my  
3 country, and they Embassy is my place, you  
4 know, I'm the woman, and, of course, I like  
5 you to have good faith in this here.

6 CHAIRPERSON GRIFFIS: Thank you.

7 MR. COLLINS: If I just may go  
8 down some of these other concerns that were  
9 raised to make sure we touch on them all,  
10 there is no requirement for plans to be  
11 submitted for maintenance, or anything else,  
12 if you are just occupying the building.

13 We are asking for, there was  
14 question about approval on an expedited  
15 basis, we are asking for -- we asked for an  
16 expedited hearing based upon the  
17 circumstances. We would like an expedited  
18 hearing basis of decision, but if that's not  
19 your pleasure then you don't need to do  
20 that.

21 Comparing this building to the  
22 living Libyan Embassy that was vacant for a

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1 long period of time, and other embassies  
2 that have been vacant and falling down, is  
3 just an unfair comparison, just it has no --  
4 there's no basis for such a comparison.

5           There was talk about Sheridan-  
6 Kalorama having lost a large amount of  
7 housing to chanceries, and that the SKNC had  
8 filed a petition to change that in the  
9 Sheridan-Kalorama area, and reference was  
10 made to the case 04-21 pending at the Zoning  
11 Commission. I'm holding up, I'm not going to  
12 submit for the record, a petition by the  
13 Sheridan-Kalorama Neighborhood Council,  
14 which became Case No. 04-21. This is about  
15 two inches thick, about four centimeters  
16 thick, a lot of supporting documentation.  
17 What I'd like to just submit for you in this  
18 documentation, which identified a lot of  
19 exhibits as to locations that should not by  
20 square, by maps, locations that should not  
21 be in the Diplomatic Overlay, colors and  
22 different things, but let me just show you

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1 one document I'd like to submit for the  
2 record, and that is the petition to amend  
3 the zoning map itself, the form. And, what  
4 you'll notice in that form, that of all the  
5 squares that SKNC had requested to be  
6 eliminated from the Diplomatic Overlay, this  
7 square is not one of them. Square 2107 is  
8 not on this list. This is across  
9 Massachusetts Avenue from the primary  
10 locations where there was a proposal to  
11 eliminate the Diplomatic Overlay.

12 The fact is, in our document that  
13 we submitted, we listed all the chanceries  
14 in the area. The area is predominated by  
15 chanceries. It's in a Diplomatic Overlay,  
16 where it's been pre-deemed to be compatible  
17 with adjacent uses. So, I don't think that  
18 there can be any serious consideration of  
19 denying this because it would have any  
20 impact on the residential neighborhood,  
21 based on the regulations that are in place  
22 now, it's a Diplomatic Overlay, it's pre-

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1 deemed compatible, subject to the six  
2 criteria of the Foreign Missions Act, which  
3 we have demonstrated we have complied with.

4 I believe that answers -- that's  
5 a long way of answering some of the  
6 questions. If you have any others, I'd be  
7 happy to take them.

8 CHAIRPERSON GRIFFIS: Just a  
9 clarification, you are not asking us to take  
10 up jurisdiction on the zoning map amendment  
11 and look at all these squares as this has  
12 been coming in, correct?

13 MR. COLLINS: Not at all. My  
14 only purpose for submitting that was to  
15 demonstrate to you that, notwithstanding  
16 what's been said by SKNC, having concern  
17 about the Diplomatic Overlay, this is not  
18 one of the squares that they are concerned  
19 about.

20 CHAIRPERSON GRIFFIS: Okay.  
21 Excellent.

22 It's not beyond us then to

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1 respond to the Zoning Commission, take it  
2 under -- maybe it is. Okay. I think,  
3 obviously, it's interesting how -- and I  
4 don't think it's appropriate at all to put  
5 that entire evidence of the Zoning  
6 Commission's case into the record, so I  
7 appreciate you not doing that, taking this  
8 limited excerpt.

9 Follow-up questions or  
10 clarifications from the Board? Anything  
11 else for the Applicant?

12 If there's nothing further then,  
13 and, Ambassador, thank you very much, we do  
14 appreciate it. This would end our  
15 rulemaking of the FMBZA.

16 Let's set a decision on this, as  
17 we are moving ahead with our schedule this  
18 morning. There's a lot of information that  
19 has come into the record this morning that I  
20 would like to take time and have the Board  
21 take time on. I can, and let me put it out  
22 to the Board Members, set this for a special

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1 decision on the next week, 31st, or we can  
2 set it to our already scheduled first  
3 Tuesday of the month, which would be the  
4 14th of November, as we will not be meeting  
5 on the actual first Tuesday.

6 I believe Mr. Parsons would not  
7 be available on the 14th, which would mean  
8 we would need the quorum of us three if we  
9 were available on the 14th, or I would take  
10 quick decisions on the 31st. It is up to  
11 you.

12 VICE CHAIRPERSON MILLER: I'd be  
13 in favor of the 31st, in that our calendar  
14 is lighter on the 31st.

15 CHAIRPERSON GRIFFIS: Excellent.  
16 Ms. Gallagher, do you have any  
17 opinion?

18 MS. GALLAGHER: That would be  
19 fine.

20 CHAIRPERSON GRIFFIS: Perfect,  
21 why don't we set this then for a special  
22 public meeting on the 31st, that would be

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1 the Tuesday next.

2 I don't have any other requests  
3 for additional information be taken into the  
4 record, unless others had any that have come  
5 to mind at this point.

6 Ms. Bailey, am I correct in that?

7 MS. BAILEY: I just wanted to  
8 clarify that we are doing this first thing  
9 Tuesday morning, next Tuesday morning, and  
10 that's 9:30 or 9:00?

11 CHAIRPERSON GRIFFIS: Excellent  
12 question, we'll get to that in a moment.

13 However, we don't have any  
14 additional filings, as I understand it, that  
15 would be good, so Ms. Bailey is absolutely  
16 on point of, I think we would set this for  
17 9:30, special public meeting. We will call  
18 our hearing then after that, it would be  
19 close to 10:00, unless there's any objection  
20 to be brought to the Board's attention at  
21 this time. Very well, we'll do that.

22 Mr. Jackson, thank you very much,

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1 everyone, thank you.

2 MR. JACKSON: Thank you.

3 CHAIRPERSON GRIFFIS: Let us move  
4 ahead then, and thank Ms. Gallagher, Mr.  
5 Parsons, for being here, we do appreciate  
6 it, good to see you. We will see you both  
7 next Tuesday, and as they leave us, I would  
8 ask that our representative from the  
9 National Capitol Planning Commission join  
10 us. However, I am going to make up the  
11 time, and welcome everyone here for our  
12 public hearing on the 24th of October, 2006,  
13 say a very good morning to all of you, and  
14 call to order that public hearing.

15 This is the Board of Zoning  
16 Adjustments of the District of Columbia. My  
17 name is Geoff Griffis, Chairperson. Joining  
18 me today is the Vice Chair, Ms. Miller.

19 Mr. Etherly, as noted, is out ill  
20 this morning. Mr. Mann will be representing  
21 the National Capitol Planning Commission,  
22 and representing the Zoning Commission with

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1 us this morning will be Mr. Jeffries.

2 Copies of today's hearing agenda  
3 are available for you, you've had plenty of  
4 time to look those over and rifle through  
5 all the papers that are on the table where  
6 you enter into the hearing room.

7 It is very important that if you  
8 have not already taken the time to take the  
9 time to fill out two witness cards. Witness  
10 cards are available at the table and also at  
11 the front where you are going to provide  
12 testimony. Those should go to the court  
13 reporter. You can do that now in  
14 anticipation of presenting to the Board.

15 As noted, and already said, all  
16 our proceedings are being recorded. They  
17 are recorded in two fashions. The most  
18 important, of course, is the court reporter  
19 sitting to my right. He is creating the  
20 official transcript. We are also being  
21 broadcast live in the office of Zoning's  
22 website. However, attendant to both of

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1 those, I ask that you turn off your cell  
2 phones and beepers at this time, and it is  
3 very important for you when coming forward  
4 and when you are going to address the Board,  
5 if you would just state your name and  
6 address for the record. You only need to do  
7 this once, obviously, that puts you on the  
8 record and we can move ahead.

9 Variances and public special  
10 exceptions follow the following chronology.  
11 We hear from the Applicant's presentation of  
12 their case. We'll hear from any government  
13 reports attendant the application. We will  
14 then go to the Advisory Neighborhood  
15 Commission. I will call for persons or  
16 parties in support of an application. I  
17 will then call for persons or parties in  
18 opposition to an application, and I will  
19 then finally ask the Applicant to come  
20 forward again to make any conclusion remarks  
21 or summations or take question from the  
22 Board.

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1                   Cross examination of witnesses is  
2 permitted by the Applicant and parties in  
3 the case, the ANC within which the property  
4 is located is automatically a party in the  
5 case, and, therefore, will be able to  
6 conduct cross examination. Of course,  
7 participants in our public hearings can come  
8 for forward as a party and/or person. I'll  
9 get into the details of that as needed as we  
10 proceed.

11                   It should be noted that the  
12 record will be closed at the conclusion of  
13 our hearings today, unless we continue our  
14 hearings. You will be aware of that if they  
15 do, or unless we ask for specific  
16 information to be put into the record, no  
17 other information will be submitted or  
18 accepted into the record.

19                   It should be absolutely  
20 understood that these are contested cases  
21 before the Board. Several things are  
22 attendant to that. First of all, we will

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1           only deliberate and decide on that case  
2           which is presented and formulated for us  
3           today, our formal case, and that will be  
4           done in the open and before the public in  
5           accordance with the Sunshine Act and also in  
6           accordance with our rules, regulations and  
7           procedures.

8                        I would also ask that people  
9           present today not engage Board Members in  
10          conversation if we take a break or there is  
11          a recess, as would might -- it might give  
12          the appearance of receiving information  
13          outside of the public record of which we are  
14          creating before us today.

15                       That's the abbreviated version,  
16          and I want to move on very quick because  
17          we've gotten well into our morning and I  
18          want to expedite the rest of the cases as we  
19          can.

20                       So, you don't need to hear me  
21          talk more, except for this, and that is to  
22          say a very good morning to Ms. Bailey again,

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1 with the office of Zoning. She's going to  
2 go through any preliminary matters that we  
3 might have.

4           However, if you have a  
5 preliminary matter, meaning you believe that  
6 there is a case on our schedule this morning  
7 that should not be heard, or is there  
8 confusion, complications, or elements that  
9 we should decide prior to calling it, I  
10 would ask that you come forward, have a seat  
11 at the table in front of us as an indication  
12 of a preliminary matter.

13           Ms. Bailey, are you aware of any  
14 preliminary matters for the Board's  
15 attention?

16           MS. BAILEY: No, Mr. Chairman.

17           CHAIRPERSON GRIFFIS: Excellent,  
18 thank you very much then.

19           Not seeing any other indication,  
20 why don't we call the first case.

21           MS. BAILEY: Sorry, could I just  
22 swear the witnesses?

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1 CHAIRPERSON GRIFFIS: Oh, you  
2 know what, that's a very important aspect  
3 that we ought to do, too. We can't expedite  
4 right through that.

5 Very well. I would ask that all  
6 those persons that are going to address the  
7 Board if you would please stand at this time  
8 and give your attention to Ms. Bailey, she  
9 is going to swear you in.

10 MS. BAILEY: Would you please  
11 raise your right hands?

12 (Whereupon, witnesses sworn.)

13 CHAIRPERSON GRIFFIS: Excellent,  
14 thank you all very much.

15 With that then, we can call the  
16 first case, and I'd ask the first Applicant  
17 to come forward and begin to get ready.

18 MS. BAILEY: Application No.  
19 17529 of Jill Vohr, pursuant to 11 DCMR  
20 3104.1 for a special exception to allow a  
21 two-story rear addition to an existing  
22 single-family row dwelling under section

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1 223, not meeting the lot occupancy  
2 requirements of Section 403. The property is  
3 located at 208 10th Street, S.E.. It is  
4 Square 969, Lot 25, and it's zoned R-4.

5 CHAIRPERSON GRIFFIS: Excellent,  
6 thank you very much.

7 A very good morning to you. If  
8 you wouldn't mind, can you turn your  
9 microphone on, state your name and address  
10 for the record, and you may proceed. I  
11 think your application is very full. It,  
12 obviously, meets the submission requirements  
13 that we have. The Board may have some  
14 questions for you. I say all this to say  
15 that you are -- you can make any summations  
16 you want and stand on the record, or proceed  
17 with the full case. It's up to you.

18 MR. DORMAN: Good morning. My  
19 name is Kendall Dorman, and I'm with  
20 Wiebensen and Dorman Architects at 1711  
21 Connecticut Avenue, N.W. Ms. Vohr cannot be  
22 with us today. She gave birth to a baby girl

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1 on Saturday, and if it's not apparent, to my  
2 right here is Francis Dirren, who is  
3 actually the proud father.

4 CHAIRPERSON GRIFFIS: Indeed.

5 MR. DORMAN: So, he'll be  
6 representing Ms. Vohr in any owner issues  
7 you might have.

8 CHAIRPERSON GRIFFIS: Good.

9 MR. DORMAN: I will take your  
10 suggestion and keep my presentation short.  
11 Most of what I would want to say reviews the  
12 Department of Planning's recommendations,  
13 and most of the stuff I would agree with and  
14 it would be redundant if I went on and said  
15 that.

16 I will also say that the owner  
17 has been very diligent in pursuing all the  
18 requirements with the ANC, with historic,  
19 and with any of the neighborhood groups, the  
20 Capitol Hill Restoration Society.

21 So, that's all I have to say.

22 CHAIRPERSON GRIFFIS: Excellent,

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1           thank you very much, and congratulations,  
2           sir.

3                         MR. DIRREN:   Thank you.

4                         CHAIRPERSON GRIFFIS:   We'll try  
5           and get you out of here so you can go nap,  
6           and also I would hope that the Office of  
7           Planning's report, which, of course, was  
8           based on the information that you provided  
9           them and their own analysis, however, we  
10          will move on to them very quickly.

11                        I didn't have any specific  
12          questions to go through at this time.   Board  
13          Members?   Any questions, clarifications?

14                        Good.   We'll take note,  
15          obviously, of the excellent graphic  
16          representation, the architectural drawings,  
17          also the -- I think it's the existing  
18          photographic sheet that was part -- it's  
19          actually Exhibit 17 for us, as it was  
20          separated from the drawings, gives an  
21          excellent perspective of what is being  
22          proposed and the area in which it's being

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1 proposed mostly. So, clarity, obviously, is  
2 an excellent point in presentation of one's  
3 case.

4 If there's nothing further then  
5 at this time, let's move quickly ahead, and  
6 we can go directly to the Office of  
7 Planning's report.

8 MR. MORDFIN: Good morning, Chair  
9 and Members of the Board, I'm Stephen  
10 Mordfin with the Office of Planning.

11 CHAIRPERSON GRIFFIS: Good  
12 morning.

13 MR. MORDFIN: The subject  
14 application is in conformance to the  
15 criteria for approval of a special exception  
16 pursuant to Section 223, because a row house  
17 is a permitted use within the R-4 Zone  
18 District. Lighting and air to neighboring  
19 properties will not be unduly affected,  
20 because the proposed addition extends out  
21 only two more feet than the existing  
22 situation.

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1 Privacy and use of enjoyment of  
2 neighboring properties shall not be unduly  
3 compromised, because no windows are proposed  
4 on the sides, and the entire rear yard is  
5 provided as required.

6 The addition will not  
7 substantially intrudes upon the character,  
8 scale and pattern of houses as viewed from  
9 the street, because it is designed to be  
10 residential in appearance and will only be  
11 minimally visible from Independence Avenue.

12 The Applicant submitted  
13 photographs and drawings in support of the  
14 application. The proposed lot occupancy is  
15 66 percent, less than the maximum 70 percent  
16 permitted within the R-4 Zone District, and  
17 the proposed building will not introduce or  
18 expand a non-conforming use.

19 Therefore, the Office of Planning  
20 recommends approval of the application as  
21 submitted by the Applicant.

22 Thank you.

1                   CHAIRPERSON GRIFFIS: Excellent,  
2                   thank you very much, and it is an excellent  
3                   report, not to mention the graphic  
4                   representation, but the analysis as broken  
5                   down specifically on the Section 223.

6                   Questions from the Board?

7                   Does the Applicant have any cross  
8                   examination of the Office of Planning, any  
9                   questions for the Office of Planning?

10                  MR. DIRREN: No.

11                  CHAIRPERSON GRIFFIS: Very well.

12                  Is the ANC present, 6B, ANC? Not  
13                  noting any presence of the ANC.

14                  Very well, thank you very much.  
15                  We do appreciate it, excellent report.

16                  Let's move ahead then and note  
17                  ANC-6B's report, Exhibit 25 I believe, in  
18                  our case filing, it does indicate a  
19                  unanimous 7:0 vote, I believe that meets the  
20                  great weight that it should be afforded, Ms.  
21                  Miller, is that correct?

22                  VICE CHAIRPERSON MILLER: That's

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1 correct, and it doesn't raise any issues or  
2 concerns for us to address. It states that  
3 it supports the application.

4 CHAIRPERSON GRIFFIS: Very well.

5 Let's move ahead then, I don't  
6 have any other attendant reports to this  
7 application.

8 I'd ask for all those persons  
9 present to provide testimony in support of  
10 the application come forward at this time.  
11 Any persons present to provide testimony?

12 Any persons in opposition to the  
13 application 17529? Again, not noting any  
14 other persons present to provide testimony,  
15 we can move ahead to any closing remarks  
16 that you might have.

17 MR. DORMAN: i would also say  
18 that there was probably some letters written  
19 in support of the project from some of the  
20 neighbors. I don't know if that was a part  
21 of your proposal. We have copies of them if  
22 you don't, but --

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1 MR. DIRREN: They were submitted  
2 on October 11th.

3 CHAIRPERSON GRIFFIS: I have a  
4 petition, Exhibit No. 23, is that as  
5 indicating the letters?

6 MR. DIRREN: Yes.

7 CHAIRPERSON GRIFFIS: Great,  
8 excellent point to bring up. I usually get  
9 to do that, but I forgot to mention that,  
10 Exhibit No. 23, of course, is letters and  
11 petitions, there's, in fact, a back-up e-  
12 mail on that, and we have taken note of  
13 that. I know the Board has all reviewed  
14 each and every one of those.

15 MR. DIRREN: Okay.

16 CHAIRPERSON GRIFFIS: Somewhat  
17 identical in nature, which made it easy.

18 MR. DIRREN: Thank you.

19 CHAIRPERSON GRIFFIS: Okay,  
20 anything else?

21 MR. DORMAN: Unless you have some  
22 problems that I should know about, I don't

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1 have anything else.

2 CHAIRPERSON GRIFFIS: Should we  
3 take the time to go through our problems  
4 with him? Very well.

5 Any other questions from the  
6 Board? Sometimes they wish they didn't give  
7 me a microphone. Very well, if there's  
8 nothing further, as I started out saying, I  
9 think this is, in fact, an absolutely full  
10 in terms of our requirements, and not just  
11 to mention our requirements, it is for the  
12 Board's full deliberation, but  
13 understanding, of course, is what it comes  
14 down to.

15 I think this is ready to proceed  
16 if there's no objection from the Board, and  
17 I would move approval of Application 17529.  
18 That would be for the special exception  
19 under 223, which would allow a two-story  
20 rear addition to an existing family row  
21 dwelling, which does not meet the lot  
22 occupancy requirements at the premises of

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1 208 10th Street, S.E.

2 I ask for a second.

3 VICE CHAIRPERSON MILLER: Second.

4 CHAIRPERSON GRIFFIS: Excellent,  
5 thank you very much. I think the record,  
6 obviously, shows, as we've gone through  
7 today the filings, recommended approval of  
8 the Office of Planning, I think the Board  
9 can give great substance and weight to the  
10 Office of Planning's analysis, but it's also  
11 concurred with the ANC, and those adjacent  
12 neighbors that they've written in.

13 It's an excellent project, and  
14 it's exactly what 223 has really been laid  
15 out for, is that accommodating of the small  
16 additions to single-family that may not be  
17 in compliance with our regulations as they  
18 were written after these buildings existed.

19 Certainly, it would not be the  
20 intent of our Zoning Regulations to impair  
21 the limited reconfiguration for differing  
22 lifestyles and differing times, and I think

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1 that's exactly what 223 is for, and this  
2 meets all the criteria as was gone through  
3 with the Office of Planning and the filings,  
4 and that's all I need to say on it.

5 It does meet the special  
6 exception requirements also.

7 Others? Any other comments then?

8 Not hearing any other comments,  
9 we do have a motion before us, it's been  
10 seconded. I ask for all those in favor  
11 signify by saying aye.

12 (Ayes.)

13 CHAIRPERSON GRIFFIS: And,  
14 opposed? Abstaining?

15 Ms. Bailey, if you wouldn't mind.

16 MS. BAILEY: Mr. Chairman, the  
17 vote is 4:0:1 to approve the application.  
18 Mr. Griffis made the motion, Ms. Miller  
19 seconded, Mr. Mann and Mr. Jeffries  
20 approved, and Mr. Etherly is not present  
21 today.

22 CHAIRPERSON GRIFFIS: Excellent.

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1 I don't see any reason why we wouldn't issue  
2 a summary order on this to waive our rules  
3 and regulations, unless any of the Board  
4 objects or the Applicant objects.

5 Not noting any objections, I  
6 would say a very -- prior to wishing you a  
7 very good morning I would just make one note  
8 in terms of looking at the elevation. I  
9 think it's really kind of an excellent way  
10 to animate the rear of that building, and I  
11 think the way the building is laid out,  
12 although it wasn't of our full deliberation,  
13 it was well noted that it's, I think, very  
14 well done.

15 With that then, a very good  
16 morning to you, enjoy, congratulations, and  
17 let's move ahead.

18 MS. BAILEY: Ready for the next  
19 case, Mr. Chairman?

20 CHAIRPERSON GRIFFIS: Yes,  
21 please.

22 MS. BAILEY: Application No.

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1 17530 of Bruce Brown and Amy Rifkind,  
2 pursuant to 11 DCMR 3104.1, for a special  
3 exception to allow additions to an existing  
4 single-family detached dwelling under  
5 section 223, not meeting the side yard  
6 requirements of section 405. The property is  
7 located at 3930 Huntington Street, N.W.,  
8 Square 1754, Lot 14, and it is zoned R-1-B.

9 CHAIRPERSON GRIFFIS: Excellent,  
10 thank you very much.

11 When you are ready, you can  
12 introduce yourself for the record with your  
13 name and address. You just need to turn the  
14 microphone on.

15 MS. RIFKIND: Is it on?

16 CHAIRPERSON GRIFFIS: Yes.

17 MS. RIFKIND: My name is Amy  
18 Rifkind, I live at 3930 Huntington Street,  
19 and I am the Applicant. My husband, Bruce  
20 Brown, is also here today, as well as  
21 Richard Crone. Should he give his address?

22 CHAIRPERSON GRIFFIS: Excellent.

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1 MR. CRONE: Richard Crone  
2 Architect, 7711 Brookville Road, Chevy  
3 Chase, Maryland.

4 CHAIRPERSON GRIFFIS: Excellent.  
5 Thank you very much.

6 We'll turn it over to you.  
7 Again, I would make the same type of notes,  
8 that I think the application is very full.  
9 We can probably get through this pretty  
10 quickly. If you want to make some  
11 highlighting notes and point the direction  
12 to the Board of where you would like us to  
13 focus, that would be appropriate.

14 MS. RIFKIND: I will rely largely  
15 on our submission, with two, perhaps, notes.  
16 Our house is a 1920s house built three feet  
17 from the alley. We are surrounded by an  
18 alley on two sides, both on the western edge  
19 and on the rear edge.

20 Most of what we would like to do,  
21 which is a small addition, could be done as  
22 a right. We are really here to ask for an

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1 additional three feet.

2 CHAIRPERSON GRIFFIS: Right.

3 MS. RIFKIND: I think both the  
4 application, and Richard can speak to this  
5 further, why the three feet is preferable  
6 for us, both from a use perspective, as well  
7 as from an aesthetic perspective.

8 CHAIRPERSON GRIFFIS: Right.

9 MS. RIFKIND: And, the only other  
10 thing I think I'd like to note is that we  
11 have substantial neighbor support. We have  
12 talked to our neighbors. We have a letter  
13 in the file from our neighbor who is  
14 immediately to our west at 3932 Huntington,  
15 and they have been very supportive of our  
16 plans and have seen them and talked about  
17 them with us.

18 And, we attended an ANC hearing,  
19 at which we presented our plans, and at  
20 which the ANC voted in favor of our  
21 application, and I think you have a letter  
22 in the file to that effect.

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1                   CHAIRPERSON GRIFFIS: Absolutely,  
2 we appreciate that, and then the three feet  
3 disparity, I think we should say on the  
4 record, we've been through all of the  
5 information that's submitted and it's very  
6 clear, and actually just above 380 square  
7 feet of the total addition is somewhat  
8 small, and clearly we are talking about a  
9 small area in the side yard.

10                   But, please proceed.

11                   MR. CRONE: I really have little  
12 to add to what Amy has said. I think that  
13 the addition, as an architect speaking, I  
14 think it's a much more natural outgrowth for  
15 the property for the house to be constructed  
16 to stay in line, rather than to try to push  
17 it over three feet would look more  
18 contorted.

19                   CHAIRPERSON GRIFFIS: Let me ask  
20 you on this, you have an existing five foot  
21 side yard, is that correct, on a small  
22 portion of the existing structure?

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1 MR. CRONE: On a small portion we  
2 do.

3 CHAIRPERSON GRIFFIS: Okay, and  
4 are you decreasing any of that?

5 MR. CRONE: No, we are not.

6 CHAIRPERSON GRIFFIS: You are not  
7 decreasing that area.

8 MR. CRONE: No, we are not.

9 CHAIRPERSON GRIFFIS: The side  
10 yard.

11 MR. CRONE: That's correct, and  
12 then, of course, we have the 12-foot alley  
13 to the right side of us, so it in no way  
14 impacts the rhythm or the open space or the  
15 light.

16 CHAIRPERSON GRIFFIS: No, and  
17 actually there's -- gosh, I don't know if  
18 it's your submission, I'll pull it up here,  
19 maybe it's Office -- it must be yours, the  
20 Office of Planning has put it in their  
21 report, I mean, it's kind of an excellent  
22 representation of the view and the area of

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1 what it's going to be.

2 But, your reading of 405.8  
3 indicates that you would need to come in for  
4 a special exception based on the location of  
5 that addition.

6 MR. CRONE: The way the current  
7 Zoning laws are written, anything built  
8 after -- well, what's the date, 1952, I  
9 believe they are requiring a 7-8 foot side  
10 yard.

11 CHAIRPERSON GRIFFIS: Sure.

12 MR. CRONE: We were reading it.

13 MS. RIFKIND: Because of the  
14 three feet, we thought we could do it  
15 because we had the five-foot in part, but we  
16 were told that --

17 CHAIRPERSON GRIFFIS: Who told  
18 you that?

19 MS. RIFKIND: Someone from the  
20 Office of Planning.

21 CHAIRPERSON GRIFFIS: Okay,  
22 that's an interesting point, and we go to

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1 405.8 and it reads, "In the case of a  
2 building existing on or before May 12,  
3 1958," this building existed before 1958?

4 MS. RIFKIND: Yes.

5 CHAIRPERSON GRIFFIS: "... with a  
6 side yard less than 8 feet wide, an  
7 extension or addition may be made to the  
8 building, provided that the width of the  
9 existing side yard shall not be decreased  
10 ..., " you've indicated yo8u are not  
11 decreasing the side yard, is that correct?

12 MR. CRONE: No.

13 CHAIRPERSON GRIFFIS: I see, "...  
14 and provided further that the width of the  
15 existing side yard shall be a minimum of 5  
16 feet." Is it a minimum of 5 feet?

17 MR. CRONE: It is 5 feet.

18 MS. RIFKIND: Part of it is 5  
19 feet, part of it is 3 feet, that's what we  
20 were --

21 CHAIRPERSON GRIFFIS: But, the  
22 existing portion is 3 feet.

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1 MR. CRONE: Correct.

2 CHAIRPERSON GRIFFIS: Your  
3 existing portion is 3 feet.

4 MR. CRONE: Correct.

5 CHAIRPERSON GRIFFIS: The 5 foot  
6 width of the existing side yard shall be a  
7 minimum of 5 feet, that's interesting, it's  
8 an interesting reading of 405.8. Okay,  
9 fascinating, we had an extra minute I had to  
10 kill. Okay.

11 Let's move ahead.

12 MR. CRONE: That's all I have to  
13 say, it would be nice to know that we don't  
14 need to be here today, but --

15 CHAIRPERSON GRIFFIS: It would be  
16 anti-climatic, wouldn't it?

17 MR. CRONE: Right.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. CRONE: I would like to say  
20 one thing, I think there was, in the report,  
21 I don't know if it's in the ANC or the other  
22 report, it was saying that the fence that is

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1 shown to connect the house and the garage  
2 will be in line with where the fence is now,  
3 but the addition that we are proposing will  
4 replace the first 13 feet of the fence. It  
5 will still be 5 feet off the property line.

6 CHAIRPERSON GRIFFIS: On the  
7 public alley side.

8 MR. CRONE: That's correct.

9 CHAIRPERSON GRIFFIS: Right,  
10 okay. Excellent. Very well.

11 Anything else? Any other  
12 questions from the Board?

13 VICE CHAIRPERSON MILLER: Could  
14 you just explain what's being decreased how  
15 much, and -- no, I just have a question with  
16 this 3 feet, 5 feet.

17 CHAIRPERSON GRIFFIS: Can I just  
18 address that? They've indicated twice that  
19 they are not decreasing anything. The side  
20 yard is not being decreased, is that  
21 correct?

22 MR. CRONE: There presently are

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1 two side yard setbacks, one 3 feet where  
2 there's a chimney in place and a stairwell,  
3 which is shown on the site plan, the survey,  
4 and then behind that there's a 2 foot offset  
5 which gives the existing building at 5 feet  
6 away, and we proposed our addition to extend  
7 off of the 5 foot setback. So, we are not  
8 extending the 3 foot, but the 5 foot setback  
9 in line.

10 It's a two-story addition, the  
11 first floor is 13 feet back, the second  
12 floor is ten feet back. It's a stepped  
13 addition, to keep the scale down.

14 VICE CHAIRPERSON MILLER: Thank  
15 you.

16 CHAIRPERSON GRIFFIS: Okay, good.

17 If there's nothing further, let's  
18 go right into the Office of Planning, and  
19 give them a very hard time. I say that in  
20 great humor.

21 Obviously, your reading of 405.8  
22 now, and you'll get to your report, it's the

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1 last sentence, the width of the existing  
2 side yard shall be a minimum of 5 feet, and,  
3 therefore, not having all of the side yard  
4 at least 5 feet it put them into a special  
5 exception.

6 MR. MOORE: I think so.

7 CHAIRPERSON GRIFFIS: Good, okay.

8 MR. MOORE: With that, good  
9 morning, Mr. Chair and Members of the Board,  
10 I'm John Moore with the Office of Planning.

11 The Office of Planning will stand  
12 on the record and support the application.  
13 As we illustrate on page two of the OP  
14 report, we use arrows in green to show where  
15 the addition will be built. It's on the  
16 setback portion of the existing structure  
17 and, therefore, it will meet the 5 foot  
18 minimum to qualify for special exception of  
19 the side yard.

20 The 3 feet, as you already said  
21 twice now, is only on the existing portion  
22 of the house.

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1 CHAIRPERSON GRIFFIS: Excellent.

2 Okay.

3 And, as I said, I want to say  
4 even further, it's a fantastic report. I  
5 mean, it really makes it easy to understand  
6 your analysis, and, frankly, adds to the  
7 understanding of the project itself, and  
8 that's all I need to say on that.

9 Are there questions from the  
10 Board of the Office of Planning?

11 Does the Applicant have any  
12 questions of the Office of Planning?

13 Very well, if there's nothing  
14 further then let's move ahead. This is not  
15 located in an Historic District, is that  
16 correct?

17 MR. CRONE: Correct.

18 CHAIRPERSON GRIFFIS: Is the ANC  
19 present, ANC-3E? Not noting any presence of  
20 the ANC, I would note that we have two  
21 exhibit numbers, 24 and 26, both are rather  
22 the ANC's unanimous consent 4:0 to recommend

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1 approval is noted in our case filing. I  
2 believe it meets all of the requirements to  
3 be afforded great weight. Actually, it  
4 doesn't.

5 Ms. Miller, let me ask you,  
6 however, is that your reading of the ANC's  
7 report, that it does not meet the criterion  
8 for being granted great weight, as it  
9 doesn't state what a quorum is.

10 Exhibit 26 is what in our  
11 records? I don't have it.

12 VICE CHAIRPERSON MILLER: With  
13 respect to your first question, I guess I  
14 found also that it didn't meet the great  
15 weight requirements, and that I didn't see  
16 that the question of notice was addressed.

17 CHAIRPERSON GRIFFIS: And notice.  
18 Okay. very well. However, we'll take it  
19 under advisement, of course, their  
20 deliberation on this, and their vote of  
21 recommending approval for this.

22 Let's move ahead.

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1                   VICE CHAIRPERSON MILLER: It just  
2 means that we don't have to -- we are not  
3 required to address their issues or  
4 concerns.

5                   CHAIRPERSON GRIFFIS: Exactly.

6                   We do have one letter of support,  
7 Exhibit No. 2, from Marshall and Joan Wolf.  
8 Unless the Applicant is aware of any other  
9 submissions of support or in opposition, any  
10 other letters that you are aware of? No?  
11 Very well. I think our record is full on  
12 that, and I'll turn it back over to you for  
13 any closing remarks or summations you might  
14 have.

15                  MS. RIFKIND: I think we will go  
16 with our record and what's been said here  
17 today, and would just request, if we could,  
18 to get a summary decision today, if  
19 possible. We'd love to get started.

20                  CHAIRPERSON GRIFFIS: Excellent.  
21 Request for a summary order and bench  
22 decision.

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1                   One quick question, on the back  
2                   it's more of interest than anything else, in  
3                   the massing of the ANC that shows the back  
4                   deck on the exterior, and there's a solid  
5                   portion, is that a masonry, or is that just  
6                   part of the deck?

7                   MR. CRONE: That is to be done in  
8                   field stone, it's a dry stack stone wall of  
9                   about 18 inches tall.

10                  CHAIRPERSON GRIFFIS: Excellent.

11                  MR. CRONE: It looks like a  
12                  concrete bunker, I apologize, on the drawing  
13                  here.

14                  CHAIRPERSON GRIFFIS: No, no, I  
15                  think it's fine.

16                  MR. CRONE: But, it is a stone  
17                  wall.

18                  CHAIRPERSON GRIFFIS: And so,  
19                  part of that is actually a small retaining  
20                  or knee wall, and then the deck portion --

21                  MR. CRONE: Right.

22                  CHAIRPERSON GRIFFIS: -- is below

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1 it at the floor level.

2 MR. CRONE: Right, it will be  
3 like an integrated bench on top of that.

4 CHAIRPERSON GRIFFIS: Right,  
5 phenomenal, very nice.

6 MR. CRONE: And, if you look on  
7 the plan, it shows that the entire deck is  
8 not a wood deck, but it's a stone deck.

9 CHAIRPERSON GRIFFIS: Stone.

10 MR. CRONE: -- Stone deck over  
11 concrete.

12 CHAIRPERSON GRIFFIS: Right, yes,  
13 the plans show it well. If you go to the  
14 Office of Planning's report, and they have  
15 the massing on the second page.

16 MR. CRONE: It shows the 18 inch  
17 stone wall noted as a seating wall around  
18 the perimeter.

19 CHAIRPERSON GRIFFIS: Yes,  
20 excellent. Okay.

21 I don't have anything else.

22 Very well, I don't find any other

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1 information we need for the record, I think  
2 it's entirely full, unless the Applicant has  
3 anything else attendant to this application  
4 that we should be aware of.

5 Not noting any further comments  
6 or submissions or conclusions, I think we  
7 ought to move ahead, and I would move  
8 approval of Application 17530, and that  
9 would allow under special exception under  
10 section 223 for the addition to the existing  
11 single-family detached dwelling, and that is  
12 at the premises of 3930 Huntington Street,  
13 N.W. I would ask for a second.

14 COMMISSIONER JEFFRIES: Second.

15 CHAIRPERSON GRIFFIS: That was  
16 pins and needles there for a moment. Thank  
17 you very much, Mr. Jeffries, do appreciate  
18 that.

19 You know, one of -- well, there  
20 it is, I was fully aware that this was an R-  
21 1-B District, which, of course, goes to a  
22 larger lot occupancy and site restrictions,

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1 of which all these are met except for that  
2 under 405.8. We had limited discussion on  
3 whether this would actually need to be here  
4 or not. However, we might have more  
5 comments on that.

6 Not making a determination of  
7 that in either direction, but, frankly,  
8 moving ahead with this application as it was  
9 presented, I think we can clearly see that  
10 this meets all the criteria of 223. There's  
11 been no evidence in the record that this  
12 would in any way impair the light, air, use  
13 or privacy of the adjacent neighbors or  
14 properties. It has been clearly graphically  
15 shown and represented for the Board's  
16 understanding and review, relying  
17 extensively on the Office of Planning's  
18 report and their analysis, I think that one  
19 would only be able to move to approval of  
20 this, and that would be our position also.

21 Noting also the ANC, of course,  
22 is in support of this application, as are

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1 the adjacent neighbors who have written in  
2 this report.

3 I'll open it up for others'  
4 comments at this time.

5 VICE CHAIRPERSON MILLER: I would  
6 agree with what you said, Mr. Chairman, and  
7 I just want to note that 405.8 can be a  
8 confusing provision, and that we actually  
9 have other cases dealing with this  
10 regulation, and just --

11 CHAIRPERSON GRIFFIS: Currently.

12 VICE CHAIRPERSON MILLER: --  
13 currently, and it's my opinion, after I've  
14 looked at the plans carefully, it does  
15 appear that in this case the extension is to  
16 the 5 foot wide part of the side yard, and  
17 therefore I would conclude that it meets the  
18 requirements of 405.8, and you might not  
19 need a special exception. But, I can  
20 understand, given the different measurements  
21 of your side yards, I mean, it's not all one  
22 side yard, why that could be confusing, or

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1 maybe not everybody would reach that  
2 conclusion.

3 But, in any event, I do think  
4 that the Applicant meets the special  
5 exception criteria.

6 CHAIRPERSON GRIFFIS: Well said.

7 Others? Anything else? Very  
8 well.

9 If there's nothing further, we do  
10 have a motion before us, and it's been  
11 seconded, all in favor signify by saying  
12 aye.

13 (Ayes.)

14 CHAIRPERSON GRIFFIS: And  
15 opposed?

16 Abstaining?

17 Ms. Bailey?

18 MS. BAILEY: Mr. Jeffries, did  
19 you second the motion?

20 CHAIRPERSON GRIFFIS: He did,  
21 indeed.

22 COMMISSIONER JEFFRIES: Yes.

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1 MS. BAILEY: Thank you.

2 Mr. Chairman, the vote is 4:0:1  
3 to approve the application. Mr. Griffis  
4 made the motion. Mr. Jeffries seconded, Mr.  
5 Mann, Ms. Miller agreed to support the  
6 application, and Mr. Etherly is not present  
7 today.

8 CHAIRPERSON GRIFFIS: Excellent,  
9 thank you very much.

10 I don't see any reason why we  
11 wouldn't waive our rules and regulations  
12 unless there's opposition we can issue a  
13 summary order on this.

14 Not noting any opposition to  
15 that, let us do that.

16 That being said, thank you very  
17 much, we do appreciate it, good luck.  
18 Hopefully, you'll be able to enjoy that  
19 outdoor space fairly soon.

20 Very well. Ms. Bailey, is there  
21 any other before for the Board this morning?

22 MS. BAILEY: No, Mr. Chairman,

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1           that's it.

2                           CHAIRPERSON GRIFFIS:  If there's  
3           no further business, let's adjourn.

4                           (Whereupon, the above-entitled  
5           was recessed at 11:26 a.m., to reconvene at  
6           1:28 p.m., this same day.)

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

1:28 p.m.

CHAIRPERSON GRIFFIS: Good  
afternoon, ladies and gentlemen. Let me  
call to order our afternoon session on the  
24th of October, 2006. This is the District  
of Columbia's Board of Zoning Adjustment.

My name is Geoff Griffis,  
Chairperson. Joining me today is the Vice  
Chair, Ms. Miller, and representing the  
National Capitol Commission is Mr. Mann.

I'm going to dispense with a lot  
of the detail of this, except for those  
absolutely critical aspects, and let you  
know that, of course, our agenda is  
published and there's hard copies for you to  
look at.

We will be proceeding with  
special exceptions and variances in the  
afternoon, and also appeals are on our

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1 schedule. To that, it is very important  
2 that you understand that all of our  
3 proceedings will be held in the open before  
4 the public, according to our Sunshine Act,  
5 and also according to our rules, regulations  
6 and procedures. This would also allow us to  
7 enter into Executive Sessions at times  
8 during and after hearings on cases, and we  
9 utilize that for differing reasons.

10 The decision of this Board is  
11 based exclusively on the record that will be  
12 created before us this afternoon, and we  
13 will make every great effort to finish by  
14 6:00 this afternoon.

15 With that, a very good afternoon  
16 to Ms. Bailey, and also Mr. Moy with the  
17 Office of Zoning.

18 What else do we need to do?

19 I think we should take up  
20 preliminary matters first, and then we'll  
21 see if we have witnesses that need to be  
22 sworn in for the afternoon.

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1                   So, with that, Ms. Bailey, let me  
2 ask you if you are aware of any preliminary  
3 matters for the afternoon session.

4                   MS. BAILEY: Mr. Chairman,  
5 Members of the Board, good afternoon.

6                   There are two preliminary  
7 matters, and there are two cases in the  
8 afternoon. The first is Appeal No. 17317,  
9 Washington Harbour Condominium Units Owners  
10 Association, Inc. That appeal was  
11 withdrawn, Mr. Chairman.

12                   CHAIRPERSON GRIFFIS: Excellent,  
13 so there's no action by the Board required,  
14 is that correct?

15                   MS. BAILEY: No action is  
16 required, that's absolutely right.

17                   CHAIRPERSON GRIFFIS: Very well.

18                   MS. BAILEY: The second matter  
19 has to do with Application No. 17490 of  
20 First Church of Christ, Scientist, There is  
21 a request for the hearing on this case to be  
22 postponed.

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1                   CHAIRPERSON GRIFFIS: Excellent,  
2 why don't we hear that, and have discussion  
3 on it, and let me also say we are joined by  
4 the Office of Attorney General, Ms. Monroe,  
5 and happily so.

6                   Let's hear -- the representative  
7 of the Applicant is present?

8                   MR. FREEMAN: Yes, Kyrus Freeman,  
9 Holland & Knight, on behalf of the  
10 Applicant.

11                   We filed a letter on october 3,  
12 2006 requesting a further continuance of  
13 this case, because we retained a new  
14 architect and consultant to figure out the  
15 best way to proceed with development, in  
16 terms of design and programming of our  
17 building.

18                   CHAIRPERSON GRIFFIS: Now, this  
19 is the second request, the first request was  
20 the same issue, was it not?

21                   MR. FREEMAN: The sec -- we did  
22 not have the new architect at the time of

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1 the first request. We switched architects  
2 between the two requests, and we've retained  
3 Emily Eig to help us in terms of dealing  
4 with the character of the building.

5 CHAIRPERSON GRIFFIS: What's the  
6 rest of the design team?

7 MR. FREEMAN: The subject  
8 property may be designated as an historic  
9 structure.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. FREEMAN: So, we've retained  
12 Emily Eig to help us do that process.

13 CHAIRPERSON GRIFFIS: But, you  
14 are saying a new architectural firm and  
15 other consultant had recently been attained.  
16 Who is the new architectural firm?

17 MR. FREEMAN: Emily Eig is the  
18 new -- I'm sorry, the -- is the Historic  
19 Preservation person, and the new architect  
20 firm is -- I can't think of their name right  
21 now.

22 CHAIRMAN GRIFFIS: Not an issue,

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1           okay.  If you have that, if you could dig  
2           that up before you leave, but if not that's  
3           all right.

4                       And, you are joined by?  Are you  
5           here for this case also?

6                       MR. LUMPUY:  Yes, sir.

7                       CHAIRPERSON GRIFFIS:  Why don't  
8           you come up and introduce yourself.

9                       Good afternoon.

10                      MR. LUMPUY:  Yes, I'm here as an  
11           opponent on the request for a variance on  
12           height.

13                      CHAIRPERSON GRIFFIS:  Okay, and  
14           your name and address?

15                      MR. LUMPUY:  Sure, my name is  
16           Carlos Lumpuy, 2366 Champlain Street, N.W.

17                      CHAIRPERSON GRIFFIS:  Excellent,  
18           and you are present here as an individual?

19                      MR. LUMPUY:  Yes, as an  
20           individual and property owner on Champlain  
21           Street.

22                      CHAIRPERSON GRIFFIS:  Excellent.

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1 Okay. Very well.

2 Let's move ahead. Any other  
3 questions from the Board? Clarifications?

4 Let me ask you, is there a time  
5 line that has been discussed of which would  
6 be appropriate to start looking at a date,  
7 if this was to be postponed?

8 MR. FREEMAN: As you know, this  
9 is our second request for a continuance, so  
10 in order to not keep carving dates on your  
11 calendar, we would respectfully request that  
12 we submit a letter to the Office of Zoning  
13 to let everybody know when we are prepared  
14 to proceed with the hearing.

15 CHAIRPERSON GRIFFIS: Okay. And,  
16 as you well know, I'm not sure we've ever  
17 granted three postponements.

18 MR. FREEMAN: So, in order to not  
19 request a third postponement, we are here  
20 today.

21 CHAIRPERSON GRIFFIS: Right, very  
22 well.

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1 I think we can't keep it open  
2 ended, because this would be our only public  
3 announcement for a continuance. We would  
4 have to have a resubmission of an  
5 application in order to then go through the  
6 announcement. So, I think it would probably  
7 be best if we set a date, and have it  
8 reasonable enough that we could hit that,  
9 and then we'll deal with it as we get there.

10 That being said, is there a  
11 thought at all?

12 MR. FREEMAN: We would ask for  
13 the furthest date out that we could get, in  
14 order to make sure we are prepared by that  
15 time.

16 CHAIRPERSON GRIFFIS: Okay.  
17 Let's pare it down a little bit. Are we  
18 looking at February or March?

19 MR. FREEMAN: March.

20 CHAIRPERSON GRIFFIS: I mean, we  
21 can go later, that's easier.

22 MR. FREEMAN: My preference would

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1 be to go as late as possible, let's say --

2 CHAIRPERSON GRIFFIS: May-June?

3 MR. FREEMAN: June.

4 CHAIRPERSON GRIFFIS: June,

5 that's easy. I think we've got some

6 unscheduled times in June. Uh-oh, do we

7 have an issue?

8 MR. MOY: No, no, no, the Board  
9 is on track, we should do a tentative date  
10 in June, if that's the month that we are  
11 looking at.

12 CHAIRPERSON GRIFFIS: Yes,  
13 absolutely. We can't have an open ended, we  
14 need to set a date.

15 Then, I suggest we start calling  
16 those dates in June. Let me ask, of course,  
17 it's inappropriate for you to weigh in on  
18 this, however, you are here, do you have any  
19 difficulty or do you have any opinion on  
20 setting a continued hearing postponing this  
21 until June?

22 MR. LUMPUY: I'd prefer it

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1 earlier, in that I own five parcels on  
2 Champlain Street, and I was here in February  
3 during the Kings Creek application.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. LUMPUY: In opposition of the  
6 height restriction, and we were told in 1987  
7 that we would be 40 feet.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. LUMPUY: This Board took  
10 action raising the height mid-block on  
11 Champlain Street to 50 feet, and I prepared  
12 a page and a half, I just took a flight up  
13 from Florida, because I saw the sign on the  
14 church when I was here last week, and I  
15 didn't know there would be a continuance.

16 All I'd ask is that we get some  
17 kind of notice so that we could come back,  
18 and as long as I'm here, I won't take til  
19 6:00, I mean, you've only got two cases, and  
20 if I could just get my statement on the  
21 record I'd appreciate it.

22 CHAIRPERSON GRIFFIS: Yes, and

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1 there's no difficulty in submitting your  
2 letter into the record. I mean, the record  
3 is open.

4 MR. LUMPUY: Okay.

5 CHAIRPERSON GRIFFIS: Taking  
6 testimony right now we can't do, because we  
7 would have to call the case, and then we'd  
8 have to proceed through the case  
9 presentation, and as we are hearing, that  
10 case presentation is going to substantively  
11 change. We don't really even know what we  
12 are here to review or not, but your current  
13 letter there's no difficulty in that,  
14 putting it in.

15 MR. LUMPUY: Okay.

16 CHAIRPERSON GRIFFIS: But, let me  
17 add to that, I would suggest and direct you  
18 to continually check the file, certainly, as  
19 we get closer to a June date, if that's what  
20 we set.

21 MR. LUMPUY: See, the thing is,  
22 when I came here in February, Mr. Chairman,

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1 I did mention that this would happen. There  
2 are many undeveloped lots on Champlain  
3 Street, from Euclid to Kalorama Road, and in  
4 my statement in February I was censored, I  
5 was limited to two minutes, and I couldn't  
6 get everything out, but I did say that if  
7 this Board approved the height to 50 feet,  
8 which is contrary to the Reed Overlay, and  
9 contrary to what we were told in 1987, that  
10 there would be subsequent multiple height  
11 increase requests.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. LUMPUY: And, here it is in  
14 october.

15 CHAIRPERSON GRIFFIS: Good.

16 MR. LUMPUY: And, this is the  
17 beginning of many more.

18 CHAIRPERSON GRIFFIS: Indeed.

19 MR. LUMPUY: And, it is -- as a  
20 property owner of five parcels on Champlain  
21 Street --

22 CHAIRPERSON GRIFFIS: I

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1 understand.

2 MR. LUMPUY: -- I want to keep it  
3 at 40 feet, but as more and more come  
4 forward at 50 feet --

5 CHAIRPERSON GRIFFIS: Right.

6 MR. LUMPUY: -- I will find  
7 myself obligated to rise 50 feet as well,  
8 and this is not conducive to the uniformity  
9 of height on this residential street.

10 CHAIRPERSON GRIFFIS: And, to --

11 MR. LUMPUY: That's why I'm here,  
12 sir.

13 CHAIRPERSON GRIFFIS: -- I  
14 understand -- and to have great pertinence,  
15 we need to have you do all this under the  
16 application of which you are here today, but  
17 which we haven't called.

18 So, let's get that together and  
19 set the date.

20 MR. LUMPUY: I just want you to  
21 understand why I'm here.

22 CHAIRPERSON GRIFFIS: No, I

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1 absolutely appreciate it. I take a little  
2 bit of issue with the fact that one of our  
3 proceedings has, therefore, gone to make  
4 others happen, but we can discuss that much  
5 fuller in the application when it's called.

6 Ms. Bailey, what dates do you  
7 have in June?

8 MS. BAILEY: I want to suggest,  
9 Mr. Chairman, June 12th, June 19th, or June  
10 26th, in the afternoon, if that's okay.

11 The first, June 12th, and, Mr.  
12 Chairman, correct me if I'm incorrect, but  
13 this will be the third scheduled date so the  
14 Applicant should be ready to proceed at that  
15 point.

16 CHAIRPERSON GRIFFIS: This will  
17 be the second, the second reschedule, right,  
18 the third date. I'm sorry, is that what you  
19 said? Right.

20 MR. FREEMAN: It's the third  
21 date, there was a date in July, there is  
22 today, and the June date.

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1                   If I can request the 26th, if  
2                   that's possible.

3                   CHAIRPERSON GRIFFIS:   Okay, the  
4                   26th in the afternoon.

5                   MR. LUMPUY:    I'll mark my  
6                   calendar, June 26th.  It looks like it's  
7                   going to be a brief afternoon session.

8                   CHAIRPERSON GRIFFIS:  Today?  Is  
9                   that what you mean?

10                  MR. LUMPUY:    You've got two  
11                  cases.

12                  CHAIRPERSON GRIFFIS:  Well, it  
13                  could have taken the whole afternoon, that's  
14                  the trouble at times when we schedule these  
15                  things.

16                  However, there it is, the 26th of  
17                  June, this will serve as our public notice.  
18                  Obviously, you are going to be out doing  
19                  other things in the public, and also mostly  
20                  getting your application together, the  
21                  design together, so we'll look forward to  
22                  seeing the filings as timely as -- well, as

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1 soon as they are ready to come into the  
2 record, and we will call this for hearing on  
3 the 26th of June.

4 MR. FREEMAN: I just want to note  
5 one thing for the record.

6 CHAIRPERSON GRIFFIS: Sure.

7 MR. FREEMAN: I have a copy of a  
8 letter dated October 19th from ANC-1B,  
9 stating no objection to our request for  
10 continuance. Obviously, they didn't state a  
11 date in the future for it to be continued  
12 to, but I just want to make sure you have  
13 that in front of you.

14 CHAIRPERSON GRIFFIS: What date  
15 did that come in?

16 MR. FREEMAN: The letter is dated  
17 October 19, 2006.

18 CHAIRPERSON GRIFFIS: I don't  
19 have that in the record.

20 MR. LUMPUY: Last week, the ANC  
21 took the position.

22 CHAIRPERSON GRIFFIS: Do you have

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1 that, Ms. Bailey? Okay, good, we have it in  
2 the record, it didn't make it into my file  
3 getting out here today. Oh, you have it.  
4 Excellent. We'll make sure that that  
5 exhibit, I believe it's going to be Exhibit  
6 No. 30, but check for that, to make sure  
7 that that's the right number.

8 That being said, anything else?

9 MR. FREEMAN: No.

10 CHAIRPERSON GRIFFIS: Very well,  
11 thank you very much.

12 MR. FREEMAN: Thank you.

13 MR. LUMPUIY: Thank you, sir.

14 CHAIRPERSON GRIFFIS: Look  
15 forward to seeing you in June, if not  
16 before.

17 Very well, anything else, Ms.  
18 Bailey?

19 MS. BAILEY: No, Mr. Chairman,  
20 good afternoon.

21 CHAIRPERSON GRIFFIS: And, a very  
22 good afternoon to you.

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1                   There being no other business for  
2                   the Board, let's adjourn.

3                   (Whereupon, the above-entitled  
4                   matter was concluded at 1:41 p.m.)

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